

# Scientific Journal of Applied Social and Clinical Science

## ALTERNATIVE DISPUTE RESOLUTION MECHANISMS (MASC) IN HIDALGO, MEXICO: AN INITIAL ANALYSIS

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**Abstract:** In the last part of the 20th century, the need to improve the Justice System in Mexico arose due to various signs that showed and evidenced a large number of problems, in form and substance, that did not allow the fulfillment of the ideal of justice described. In the Political Constitution of the United Mexican States, enshrined mainly in Article 17, which indicates that it must be expeditious, prompt, complete, impartial and free of charge (CPEUM, 1917), it would have too many complications for its operational development. Within the proposed changes, forms of justice administration were introduced that allow, in certain cases and under certain conditions, to use options that may be processes with short times, or agreements between the parties. Within the latter are the Alternative Dispute Resolution Mechanisms (MASC). The investigation aims to identify the way in which the MASC are being used, within the state of Hidalgo, both by the State Attorney's Office and the local Courts, during the period 2016-2021, and thus have a valid reference that allows us to know the real situation of these procedures, which will also allow their comparison with what happens at the national level. The knowledge generated, through the use of existing information, will make it possible to have the elements that allow indicating whether the MASC are really contributing to the SPA, in addition to knowing if the impact that is had with the support of these procedures is significant within the System. of Criminal Justice of the country.

**Keywords:** Alternative Dispute Resolution Mechanisms, adversarial criminal system, alternative justice

## INTRODUCTION

The article 17 of the Political Constitution of the United Mexican States, in its second paragraph, indicates that justice must be expeditious, prompt, complete, impartial and free (CPEUM, 1917). The failure of the actors involved to ensure that the system has these qualities is something that continues to be owed to society as a whole, and which, until now, the Mexican State has not been able to do.

With the creation of the Accusatory Criminal System, a series of challenges arose for the administration and delivery of justice. Among the new features that were incorporated are the Alternative Methods for the Resolution of Disputes or Conflicts (MASC), which are recognized by various names.

The MASCs. Despite their recent use in Mexico, since they have been used since the constitutional reform of article 18 in 2005, and their implementation was expanded in 2008 with the reform of constitutional article 17 (Galicia Osorio, 2014), however, there are antecedents of its use since ancient Rome (Naranjo, 2022). Based on Article 17 of the Constitution, in 2014 the National Law on Alternative Mechanisms for the Resolution of Disputes in Criminal Matters was issued.

In the state of Hidalgo, alternative justice is present since the publication of the Alternative Justice Law for the state of Hidalgo in 2008, which was repealed with the Law of Alternative Dispute Resolution Mechanisms for the State of Hidalgo in 2013. In this law, in its article 49, it is indicated that the Alternative Justice Center, dependent on the State Attorney General's Office, will be in charge of the alternative dispute resolution mechanisms that must be applied in the corresponding branch (LMASCEH, 2013).

## DEVELOPMENT

### BACKGROUND

In the case of Mexico as an independent nation, various Constitutions have been created, some of a federalist nature and others of a centralist type, mainly. The last Constitution, in force to this day, is the Constitution of 1917, which has undergone changes and modifications in its structure since then. Each government, since the beginning of Independent Mexico, has wanted to express its ideas, in one way or another, through partial or radical modifications in its regulations, mainly by adjusting the Constitution. In the 19th century, there were several Constitutions that were adjusted and modified, until the one of 1857, which remained in force until 1917. The current Constitution, of 1917, as the maximum document that contains the essence of Mexican legislation, has endured to this day. days, but it has undergone countless adaptations, each one based on the needs that have existed throughout the 20th century and what is carried over from the 21st century.

In the last part of the 20th century, the need to improve the Justice System in Mexico arose, due to various signs that were shown and evidenced a large number of problems, both in form and substance.

The Alternative Methods for the Resolution of Controversies or Conflicts are part of a scheme proposed by the Accusatory Criminal System, in which it is intended that, for certain cases and under certain conditions, citizens can quickly resolve conflicts that arise between them, without having to resort to an entire legal process that can take a lot of time and money when, through reaching an agreement between them, in accordance with the schemes established in the law and, supported by specialists in the field of dispute resolution, an agreement can be generated, with legal character and force, which must be observed by the parties.

In the latest report published by México Evalúa (2022), it indicates that the impunity rate in Mexico in 2020 was 94.8%, with the degree of effectiveness of the Criminal Justice System being 5.2%. That is why Alternative Dispute Resolution Mechanisms become a tool that must be used to support this problem based on the potential they have. However, reality indicates that its use was 7.3% in 2019 and in 2020 it decreased to 6.1% of cases (México Evalúa, 2022). This organization indicates that the most used mechanism was mediation, in 91.9% of cases; followed by conciliation, with 7.2%, and finally the restorative meeting with 0.9% of cases.

The above indicates that, although Alternative Dispute Resolution Methods have important possibilities because disputes can be resolved expeditiously and with a restorative approach, they are little used. This allows us to search for the reasons why these methods are rarely used, making their study of greater interest.

Knowing the reasons for non-use, in a prospective review, outside of this study, would allow the generation of policies to expand its use, since by knowing what is happening, planning can be carried out that allows its development.

### THEORETICAL DISCUSSION

The Accusatory Penal System (SPA), since its establishment, has incorporated figures that allow an administration of justice that is, among other characteristics, expeditious, prompt and complete; in addition to being in accordance with the needs of the population.

The Political Constitution of the United Mexican States establishes in its Article 17 the relevance of the solution of the conflict on procedural formalisms; emphasis is placed on collective actions and repair of damage; the use of alternative dispute resolution mechanisms is foreseen; It is indicated that

the sentences must be explained publicly; The independence of the courts and the execution of resolutions are emphasized; It is indicated on the professionalization and improvement of the public defender's office throughout the national territory.

The MASC are elements that are put at the service of society, to help resolve disputes in an expeditious and prompt manner, however, the inadequate management of the information that has been generated at the national level does not allow verification of the real impact that these have. This is why there is a need to know what is happening at the local level and, this way, have accurate information on this topic.

That is why, as part of this process in the SPA, as well as the problems of the accumulation of cases in the country's judicial system, marked by a serious bureaucratic backlog that has bogged down judicial resolutions, as well as an increase in violence and the number of crimes, at the national level, due to various elements, which include the response by the State to reduce its presence and control among society in general, the need to include figures that would support this process was determined, all of this within the legal framework, to allow the resolution of certain types of cases, could include, among others, an abbreviated trial procedure, in addition to two types of alternative solutions: the reparatory agreement and the conditional suspension of the process (Code National Criminal Procedures, 2014).

Among the reforms that stand out as improvements to the accusatory criminal system are the application of the criterion of opportunity or not initiating the investigation if it is considered that the event in question does not warrant it, as well as trials resolved expeditiously through alternative solutions for conflict resolution (Espíritu, 2016):

The Alternative Conflict Resolution Methods, accepted in Criminal Matters in Mexico, are: mediation, conciliation, and the restorative meeting. Arbitration was not included within the scope of the MASC, at least within the National Law of Alternative Dispute Resolution Mechanisms in Criminal Matters.

Among the conflicts that have been generated from the reform of the national penal system, for reasons beyond its control, and that go more hand in hand with social problems that have been accumulating, as well as deficient management of social complications, are has the idea that the SPA does not function as expected, even creating, among various governors and political actors, activities that have sought to return to the previous penal system, alleging the lack of results. According to the World Justice Project (WJP, 2022), the country's situation is stagnant or deteriorating, the main causes of this are: the weakening of institutional counterweights, the detriment of the criminal justice system and little anti-corruption progress; Among the factors that make up this index is the so-called absence of corruption and criminal justice, which have a value of 0.36, which indicates that there are quite serious problems in both subjects. On the other hand, the Institute for Economy and Peace (IEP, 2022) released the Mexico Peace Index 2022, which measures peace based on trends, analysis and estimates of the economic impact generated by national violence. It also determines that there is a greater presence of organized crime and corruption, mainly.

The Alternative Dispute Resolution Mechanisms (MASC) seek a meeting between the parties to the conflict so that through dialogue they can resolve their differences; with their use, ministerial congestion could be reduced. However, despite its potential, only 7.3% was used for 2019 and 6.1% in 2020. In 2020, only 50% were resolved, and the rest are in process (ME, 2021).

## METHOD

An empirical, qualitative investigation will be carried out, with an inductive-deductive methodological approach, which will be generated through the collection of information from the period 2016 to 2021, both by the State Attorney's Office and local Courts. The limited period corresponds to the information generated during the state government in force during that time.

The research is empirical because it will be based on the information collected in the place where it is generated: the Alternative Justice Center of the State Attorney General's Office, Pachuca headquarters. The information will be limited to the period 2016-2021, for the reasons described in the previous paragraph. The research is qualitative because most of the information will be subjected to a reflection process supported by the information provided by the mediators, conciliators or agents involved in the restorative meeting.

To carry out the first phase, bibliographic information on the topic of MASC will be collected, starting from the change to an Accusatory Criminal System and the use of MASC under certain circumstances. In the second phase, the cases handled in mediation, conciliation, and the restorative meeting will be classified, as well as any other cases, if they are in force at the state level, such as arbitration. Based on this information, the different cases assisted through this system can be determined, in addition to the usage statistics and the behavior of each one. In phase 3, the information obtained between the different MASC used will be analyzed to compare it with national parameters and review behavior with respect to what is happening at the national level. In phase 4, a series of activities will be carried out with the people involved as the support axis in the MASC, that is, the mediators, conciliators and agents of the restorative board, so that, based

on their experience and the information collected, The causes of the use of the MASC are determined, these activities can be an open interview, or a closed or semi-open questionnaire.

This work has as its scope the first phase of the project, that is, the general information kept by the MASC at the national level, and on the existing information from various sources consulted.

## RESULTS

Until now, the administration of justice in various parts of Mexico has been overwhelmed, and if we add to that the climate of violence generated by the insecurity caused by various criminal groups, the feeling among the population is one of uncertainty and fear. That is why, for the success of the Accusatory Criminal System, and the implementation of support tools such as Alternative Dispute Resolution Methods, public policies on social matters must be generated or modified (Tanús Namnum, 2016) (Hernández de Gante, 2017), and culture (Olmeda García & Capito Mate, 2015). The Belisario Domínguez Institute, dependent on the Senate of the Republic (IBD, 2019), recognizes the progress in the matter, but also its concern about the high levels of impunity at the national level.

It is likely that the main cause of the low use of Alternative Dispute Resolution Methods (MASC) both in the Alternative Justice Center of the State Attorney General's Office, as well as in the State Alternative Justice Center of the State of Hidalgo (CEJAEH), dependent on the Judiciary Council of the State of Hidalgo, is of a cultural nature, this is due to the fact that the process of formation and maturity of the Accusatory Penal System is in the adaptation phase to the traditional schemes and molds that for more For a century they were used in Mexico and, specifically, in the state of Hidalgo.

Ignorance or deliberate failure so that, instead of carrying out an alternative procedure in the administration of justice, the route of the courts is considered must be eradicated, through information campaigns to the main actors of the judicial process who must know and apply these schemes, for the benefit first of all of the victims and second of all of the perpetrators.

Now, it is transcendental to analyze that there is a generational change, which assumes and has a greater understanding about the characteristics proposed by this type of procedures that, used correctly, will affect criminal cases within the Courts, also allowing there is considerable progress in the administration of justice.

It is important to note that this paradigm shift must be accompanied by several activities and actions that are important to consider, especially for a better functioning of the MASC:

1. Judges. As part of the balance that they must express, it is important that they promote and indicate, in accordance with what the regulations determine, the convenience of using Alternative Dispute Resolution Methods as a mechanism that can allow them to resolve a significant number of disputes. problems presented before the courts and that, by their nature, must be directed to this type of legal support, which would allow only the cases that have a greater impact, and that the adversarial justice system itself does not allow it, to have to be resolved with more time of dedication.
2. Public Ministries. It is their responsibility to consider the MASC in greater depth, since it would allow a significant number of cases to be resolved without the need to go to trial, which would also benefit them

by having a significant impact on the administration of justice. promptly and expeditiously, and resolve cases that warrant it.

3. Defense Lawyers. The knowledge and professional ethics that concern them are part of the information that they must indicate to their clients and their families, in such a way that they promote the resolution of conflicts through this type of schemes.
4. General public. A promotional campaign must be carried out on the elements now existing in the adversarial criminal justice system with citizens in general, where the impact that this has on the resolution of conflicts, the way of working and how they are achieved is reported. to the agreements that, in addition, are endorsed by the judicial system itself.

## CONCLUSIONS

- The Alternative Methods for the Resolution of Disputes are presented as a form of conflict resolution in a prompt and expeditious manner, in accordance with what is indicated in the Constitution of the United Mexican States, the National Code of Criminal Procedures and the same National Law. of Alternative Mechanisms for the Resolution of Disputes in Criminal Matters.
- There is a lack of knowledge, possibly deliberate, that does not allow the application of the MASC in a forceful way, so the impact that this type of measures must have is less than expected, according to parameters established by various organizations. National and international.

- A greater dissemination and training campaign must be carried out among the different actors in the adversarial criminal justice system so that the benefits of using these alternatives can be seen for the benefit of each of those involved.
- The analysis carried out in this phase of the investigation must be contrasted with the information obtained at the Alternative Justice Center of the State Attorney General's Office, in order to determine what is happening in the state of Hidalgo and corroborate or modify the existing information. local level.

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