

ALTERNATIVE RESOLUTION OF DISPUTES IN THE DOMINICAN REPUBLIC

By

Dilia Leticia Jorge Mera*

In the Dominican Republic the use of alternative dispute resolution (“ADR”) mechanisms has been gaining popularity among both lawyers and judges. It is no secret that the judicial process can be long, slow, sometimes tedious and usually expensive. It is for those reasons and others that ADR has risen in appeal.

Mediation, conciliation and arbitration are the three methods used and established in different areas inside our legal system to settle conflicts or disputes out of court.

Conciliation, defined as a process whereby the parties to a dispute attempt to settle their differences before the filing of a legal action¹, is used in our country in the labor field as well as in conflicts involving children. The Labor Code of 1992² established as a principle a mandatory process of conciliation before the filing of any legal procedure and mandates that judges continue to always promote conciliation at every step of the judicial process.

* Dilia Leticia Mera practices family law in her own firm, DLJM Oficina de Abogados, in Santo Domingo, Dominican Republic. Ms. Mera may be contacted at dilejome@yahoo.com

¹<http://www.lexjuridica.com/diccionario/c.htm>

² Law No. 16-92 of May 29, 1992, which created the Labor Code of the Dominican Republic, Official Gazette 9836.

There is a similar requirement in matters concerning children. Our Law 136-03 or Code of the National System for the Protection of the Fundamental Rights of Children and Adolescents³, establishes as mandatory a conciliation process before any custody, visitation or child support dispute may be heard by the court.

Although it is not a labor or child matter, conciliation is also contemplated in Law 173 for the protection of importers--agents of goods and products⁴, which establishes a mandatory conciliation procedure for the grantor or grantee before the Official Chamber of Commerce in order to amicably conciliate its differences, before starting any legal procedure.

Arbitration in the Dominican Republic, as in other countries, is “a dispute resolution process in which the parties, or their attorneys, present evidence and make arguments to a single decision maker called an arbitrator, or a panel of three arbitrators, sometimes referred to as a tribunal, who makes a decision in the case. The decision is binding unless the parties agree it will not be binding.”⁵

In the Dominican Republic this mechanism is used in civil and commercial matters. “We can say, unequivocally, that arbitration was before the 80’s an inapplicable legal instrument, even though the Civil Procedure Code has long

³ Law No. 136-03 of July 22, 2003, which entered into force on August 2004.

⁴ Law No. 173 for the protection of importers agents of goods and products, of April 6, 1996, Official Gazette No. 8979.

⁵ http://www.peoples-law.org/core/mediation/adr_directory/definitions-terms.htm

recognized it.⁶ This has changed through the years. An ad hoc arbitration procedure was established under Law 489-08⁷ regarding commercial arbitration, exclusively for civil and commercial transactions. However, other conflicts, regarding the civil status of people, child support, divorce procedures, interdiction procedures against adults or missing people, children's issues, and issues regarding public policy, are expressively barred from the arbitration procedure.

Institutional arbitration was established by law 50-87 about Commercial and Production Chambers (which modified the articles related to arbitration in the Civil Procedure Code). It was later modified by law 181-09,⁸ which created a Center for Alternative Controversies Resolutions in every Commercial and Production Chamber existing in the country. In that Center, controversies can be presented and can be solved by any alternative conflict resolution such as, but not limited, to amicable composition, conciliation, mediation and arbitration.

Another important step toward increasing alternative resolutions in the judicial system was the resolution enacted by the Supreme Court in 2006 which declared as a public policy of the judicial system, the implementation and promotion of alternative resolution conflicts mechanisms in every court around the country. It

⁶ Arias Arzeno, Samuel (et al). (2001). Resolución Alternativa de Disputas. Santo Domingo. Escuela Nacional de la Judicatura. P. 339.

⁷ Law No. 489-08 dated December 30, 2008, about Commercial Arbitration. Publisher in Oficial Gazette No. 10502, December 30, 2008.

⁸ Law No. 181-09 dated June 4, 2009, about Oficial Chambers of Comerse and Production of the Republic.

recommended to judges and other public officials that they collaborate in the establishment and development of those mechanisms.⁹

The penal area is not far behind either. In 2007 the Supreme Court enacted resolution No. 1029–2007¹⁰ in order to promote alternative dispute resolution for cases that do not interfere with public policy.

Alternative dispute resolution of family law matters received a major boost from the Supreme Court when in 2006 it promulgated Resolution No. 886-2006¹¹. That enactment created the Family Mediation Center of the Judiciary, in the capital of Santo Domingo.

In support of its adoption of Resolution No. 886-2006, the Supreme Court explained that the family is “the most important social institution in society, is the center of many conflicts that do not always have an adequate response in the traditional justice system” and said that “family mediation is an effective mechanism in the search for solutions and agreements in family disputes which aims to preserve family harmony.”

⁹ Resolution No. 402-2006 dated March 9, 2006, declared as a public policy of the judicial system the implementation and promotion of alternative resolution conflicts mechanisms.

¹⁰ Resolution 1029-2007, dated May 3, 2007, regulates procedures of Alternative Resolution Penal Conflicts established on the Penal Procedure Code.

¹¹ Resolution 886-2006, dated April 20, 2006, which regulates the Family Mediation Center of the Judiciary.

That resolution established that the Center was to handle cases such as, but not limited to, divorce, child support, parental authority conflicts, custody, visitation rights and paternity issues, with the hope that they could be solved in a fast, quiet and confidential procedure, with special personnel trained and qualified in mediation, willing to facilitate conversations among the parties. In 2007, two more units were added to the Center, known as Justices Community Home, established in the provinces of Santiago and West Santo Domingo.

In a country where litigation has been the only way to resolve conflicts or disputes, the number of people using the Family Mediation Center of the Judicial Power in the capital of Santo Domingo and the Units in Santiago and West Santo Domingo, and the rate of success among those participating, are promising.

	2006	2007	2008	2009	Until April 2010	Total
Notice of meetings	166	1,732	2,804	5,039	2,477	12,218
Mediations done	155	584	1,231	1,471	603	4,044
Agreements	85	360	831	843	373	2,492
Non-Agreements	58	168	286	376	185	1,073

Definitely the Dominican Republic has taken big steps toward a simpler and more amicable way to end legal disputes. We still have a long road to run, first by letting people know about these mechanisms, but most importantly by making them aware of what the alternatives are all about, how they can use them and

what the advantages are, and ultimately by trying to change the perception that the only option to resolve disputes is by fighting in a court of justice.