

How to cite this article:

Cedeño Espinoza, A. M. & Pérez Barrios, E. E. (2023). Eficacia de la mediación realizada en el centro de mediación laboral del Ministerio del Trabajo del Guayas. *MLS Law and International Politics*, 2(2), 19-32. doi: 10.58747/mlslip.v2i2.2266.

EFFECTIVENESS OF THE MEDIATION CONDUCTED AT THE LABOR MEDIATION CENTER OF THE MINISTRY OF LABOR OF GUAYAS

Andrea Milvia Cedeño Espinoza

Universidad Internacional Iberoamericana (Ecuador)

anmicees97@gmail.com - <https://orcid.org/0009-0002-3440-9915>

Edgar Estuardo Pérez Barrios

Universidad Internacional Iberoamericana (Guatemala)

estuardo.perez@unib.org - <https://orcid.org/0000-0003-0414-1137>

Abstract. Mediation as an alternative method of resolving labor conflicts is an auxiliary procedure to the justice system that seeks to reduce the number of labor lawsuits that involve negotiable matters. This investigation studied the effectiveness of the settlements achieved by the Labor Mediation Center of the Ministry of Labor in the province of Guayas, Ecuador, between the years 2020 and 2022. To demonstrate the research hypothesis, methodological techniques were applied based on the statistics of requests and mediation agreements, and the number of legal cases resolved and pending per month. This research required a quantitative analysis with a longitudinal non-experimental research design, with a correlational scope of action-research. The Pearson correlation demonstrated that, to a certain extent, there is a moderate positive relationship causing the number of agreements reached by the Mediation Center increased at a comparable rate to the number of labor-related resolved in court. This Mediation Center had an effectiveness of agreements that served as a complementary aid to the courts. For this reason, it is suggested a readjustment of the justice system and its alternative methods of conflict resolution, incorporating telematic mediation sessions, mandatory mediation prior to the start of a labor trial and promoting a mediation culture in Ecuador that predominantly encourages friendly, peaceful, and constructive resolution of conflicts.

Keywords: Labor mediation, labor law, labor conflicts, conflict resolution, extrajudicial conciliation.

EFICACIA DE LA MEDIACIÓN REALIZADA EN EL CENTRO DE MEDIACIÓN LABORAL DEL MINISTERIO DEL TRABAJO DEL GUAYAS

Resumen. La mediación como método alternativo de resolución de conflictos de trabajo es un procedimiento auxiliar al sistema de justicia que busca disminuir la cantidad de juicios laborales que versan sobre materia transigible. En la presente investigación, se estudió la efectividad de los arreglos logrados por el Centro de Mediación Laboral del Ministerio del Trabajo en la provincia del Guayas, Ecuador, entre los años 2020 a 2022. Para demostrar la hipótesis de investigación, se aplicaron técnicas metodológicas a partir de las estadísticas de solicitudes y acuerdos de mediación, la cantidad de causas judiciales resueltas por mes y en trámite. Esta investigación requirió de un análisis cuantitativo con un diseño de investigación no experimental longitudinal, con

alcance correlacional de investigación-acción. La correlación de Pearson demostró que existe una relación positiva moderada que provoca que el número de acuerdos alcanzados por el Centro de Mediación aumente a una velocidad equiparable a la cantidad de juicios resueltos en materia laboral. El Centro de Mediación estudiado tuvo una efectividad de acuerdos que sirvió como una ayuda complementaria a los tribunales. Por ese motivo, se sugiere readecuar el sistema de justicia y sus métodos alternativos de resolución de conflictos, incorporando sesiones de mediación telemáticas, la mediación obligatoria previo inicio a un juicio laboral y fomentar en Ecuador una cultura mediadora que promueva predominantemente la resolución amigable, pacífica y constructiva de conflictos.

Palabras clave: Mediación Laboral, Derecho Laboral, conflictos de trabajo, solución de conflictos, conciliación extrajudicial.

Introduction

The purpose of this research is to determine the effectiveness of mediation as an alternative method of labor dispute resolution. Ecuador has constitutionalized a viable alternative to decongest the labor courts: to encourage the application of alternative dispute resolution methods, among which mediation stands out due to the voluntary nature of its agreements. Although its effectiveness is still questioned due to its relative novelty and the recent creation of centers for its exercise, there has been a boom in its reception from the years 2020 to 2022, marked by a global pandemic that made it difficult to enforce labor rights before the labor courts. To this end, the performance of the Labor Mediation Center of the Ministry of Labor of the province of Guayas, Ecuador, will be examined during the years 2020 to 2022. We will analyze whether the use of mediation techniques favors the achievement of agreements between employers and workers, and compare the number of labor disputes resolved through mediation with those that go to court. Finally, the effectiveness of mediation will be evaluated by correlating the number of agreements reached with the number of mediation requests submitted to the Center.

Labor Law, as part of Social Law, tends to generate frictions of interests between the contracting parties due to the imbalance of power existing between them. To maintain a harmonious relationship, both parties need a quick solution, which is not always possible through peaceful means. The judicial resolution seeks to establish an ideal of justice, but it cannot ensure that both parties are satisfied with what has been resolved. This is how alternative means appear that end litigation with similar or more favorable results, which Carnelutti once called "jurisdictional equivalents". To understand these procedures, including labor mediation, it is first necessary to explain the cause that gives rise to it: the conflict. In this case, we will refer to the conflict as a labor dispute, which Francesco Carnelutti defined as that which exists "...when one of the parties claims the protection of its interest... in contrast with the interest of the other and where the latter opposes it by means of the injury of the interest or by means of the contestation of the claims". (1928, pág. 43) In other words, both parties are protecting their individual or collective interests, either by imposing them or by yielding to the claims of the other party.

Mediation is positioned as an ally in conflict resolution, providing support to the parties involved to overcome the problems that afflict them. For this reason, it is essential to define it on the basis of its fundamental concepts in order to be able to apply it successfully in the work context. Jay Folberg and Alison Taylor define it as a process in which "participants, with the assistance of a neutral person or persons, systematically isolate the issues in dispute in order to find options, consider alternatives, and reach a mutual agreement that suits their needs." (1996, pág. 65)

It is debatable in the doctrine on mediation the possibility of the mediator to propose settlement formulas, since there is no consensus on this function of the mediator. As a neutral third party, his integrity and impartiality should not be questioned when performing an

assignment that may not be his responsibility. When the mediator employs mediation techniques, he or she is actually bringing the parties to the employment relationship into a dialogue in which they can create their own solutions tailored to their needs. By shifting this responsibility to the mediator, the protagonism is taken away from the parties, who should be the ones to compose their relationship in a peaceful manner and in accordance with their legitimate interests. In the event that the mediator is legally empowered to formulate settlement proposals, these are not binding on the parties unless they accept them favorably.

The characteristics of labor mediation are essential to distinguish it from other alternative dispute resolution methods. The first and most important characteristic is the voluntary nature of appearance in the process. A decision forced upon the parties is useless if they are unwilling to comply with it. The request for mediation filed by either party is the first approach that demonstrates the willingness of one of the parties to resolve the conflict through a mediator. The willingness of the other party is required to initiate this process, so its failure to appear at the mediation hearing or inflexibility in yielding to any claim, terminates the mediation.

The second characteristic, the neutrality and impartiality of the mediator, is fundamental to establish trust in the process and in the third party involved, promoting the collaboration of the parties who trust the techniques used by the mediator and express their conformity with his or her management. If the mediator does not act impartially, it is suggested that he/she be excused from hearing the case, since the decision would tend to favor one of the parties to the detriment of the other.

The third characteristic, equality between the parties, is related to the previous characteristic. In labor law, we understand that there is no real or material equality between the parties, since one of them is subordinated to the other in exchange for remuneration. Since there is an inequivalence of power, the prevailing claims are usually those of the dominant party in the employment relationship. To prevent this, the mediator should use criteria of fairness and have sufficient legal knowledge to safeguard the labor rights that could be affected by an unfair decision.

The fourth characteristic, self-determination, should also be considered equally important, since it is the parties who are free to accept the outcome of the negotiation and the conditions under which they end the conflict. Without this, the objective of mediation would be altered, harming the voluntariness and autonomy of the agreements reached.

Another important feature is the confidentiality of the procedure, which guarantees that all issues discussed will be known only to the parties involved and cannot be invoked in court as evidence for or against any of the parties. The confidentiality of the mediator makes him/her the confidant of the parties, creating an atmosphere of trust and understanding. In this way, relationships that may have been affected by the beginning of the conflict are reestablished and communication is improved, obtaining a lasting solution over time. An example of its application is presented in collective labor disputes, where mandatory mediation between the parties helps to reach agreements between them before initiating a process before the Court or Conciliation and Arbitration Board; the list of demands can be discussed in a controlled environment, without pressure and with a more fluid communication if there is an experienced mediator who approaches the claims of the parties and helps them to find a more suitable solution.

These definitions, when complemented with the characteristics of labor mediation, allow us to affirm that labor mediation is a voluntary, confidential, impartial, flexible and effective alternative dispute resolution method, with solutions that seek to be sustainable over time and beneficial to both parties. The agreements arising therefrom must be complied with in good faith, respecting the rights and constitutional principles of the parties, especially the effective judicial protection, unrenounceability, intangibility and inalienability of labor rights. The conception of mediation as a means to achieve social justice arises from the struggle for

equity, which encompasses not only the vindication of rights and their respect, but also the harmonization of relations between the working class and the employer in order to achieve well-being and peaceful coexistence.

Method

This research required a quantitative analysis that, through statistical data, demonstrated the effectiveness of the mediation techniques used in labor disputes by comparing the number of mediation requests that achieve a total or partial agreement with those mediation hearings in which this result is not obtained. Data on the number of agreements reached at the Mediation Center of the Guayas branch of the Ministry of Labor in mediation hearings held between 2020 and 2022 were used. To determine the effectiveness of mediation in reaching agreements, a longitudinal non-experimental research design with correlational action research scope was employed. Thus, the degree of relationship between the selected variables in a given Mediation Center and the action measures to be used to improve its results was determined. It was necessary to use this methodological design because it contains stable and determined variables, which were linked together to obtain a correlation on the effectiveness of the application of an alternative dispute resolution method such as mediation versus the number of active lawsuits in labor matters.

The population group studied was composed of economically active workers of legal age who came to resolve their disputes either before the Labor Mediation Center or before a Labor Court with jurisdiction in the province of Guayas, between 2020 and 2022.

The independent variable is the number of total or partial mediation agreements reached, covered by a mediation act. There are two dependent variables identified for the analysis of this particular case. The first variable considered is the number of labor-related court cases that are resolved per month. The second variable analyzed was the effectiveness of mediation as an alternative dispute resolution method, defined by the result recorded in the respective minutes.

The instruments and measurement techniques used in this study are purely statistical. Quantitative data were collected in an orderly manner by counting the number of applications received at the Mediation Center and processed through the MATLAB platform. This statistical tool helped in obtaining the standard deviation and mean, along with several graphs that help to visualize the data more clearly.

Pearson's correlation (or "product-moment coefficient") was obtained, which, according to Hernández Sampieri et al. (2014, pág. 304) is the statistical test to be used for the analysis of the relationship between two study variables measured by intervals or ratio. Measures of variability and central tendency, in this case the standard deviation and its mean, were calculated to evaluate the dispersion and homogeneity of the data around the mean, and to determine to what extent the results are accurate and reliable. The effectiveness of labor mediation was also determined by relating the number of agreements reached in mediation hearings to the number of court cases in labor matters. We correlated the number of court cases filed with the number of cases pending in order to determine whether there is a relationship between these two variables. Additionally, the results of labor mediation requests filed between the years 2020 to 2022 were plotted. The number of agreements reached through mediation was also calculated versus the number of applications filed during this period.

Results

When processing the data, it can be seen that the Mediation Center of the Guayas branch of the Ministry of Labor processed a total of 9,693 mediation requests between 2022 and 2022, 44.37% of which ended in a total or partial agreement.

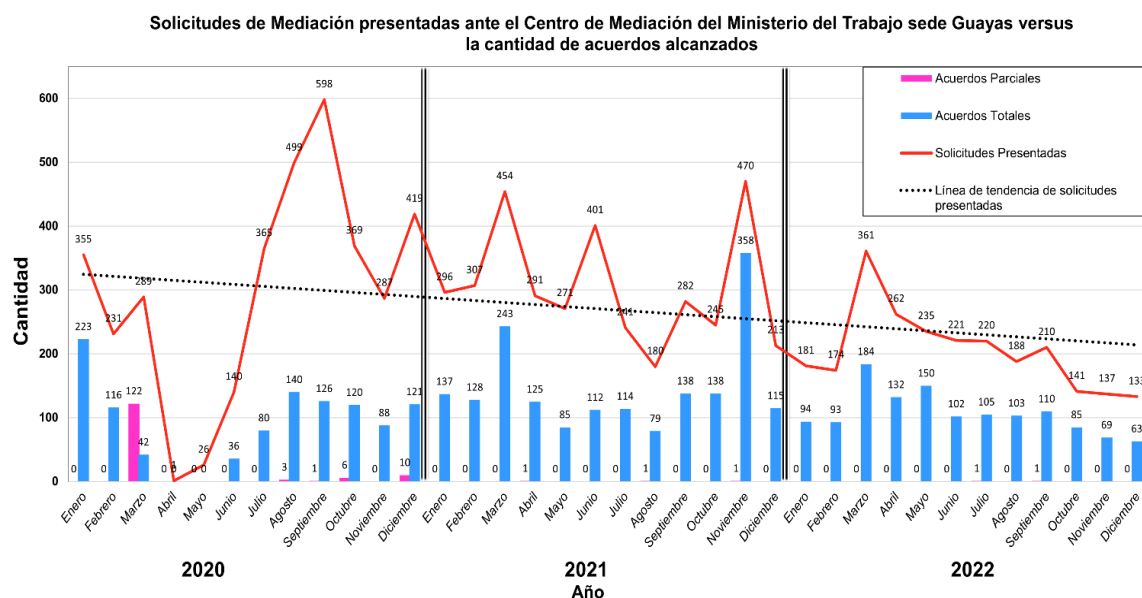
Table 1

Percentage distribution of mediation outcomes achieved by the Labor Mediation Center of the Ministry of Labor

Mediation Results (TDM) 2020-2022		
Result	#	%
Total and partial agreements	4301	44.37%
Failure to appear	5202	53.67%
Impossibility of agreement	190	1.96%
Total	9.693	100%
Average	3.231 agreements	

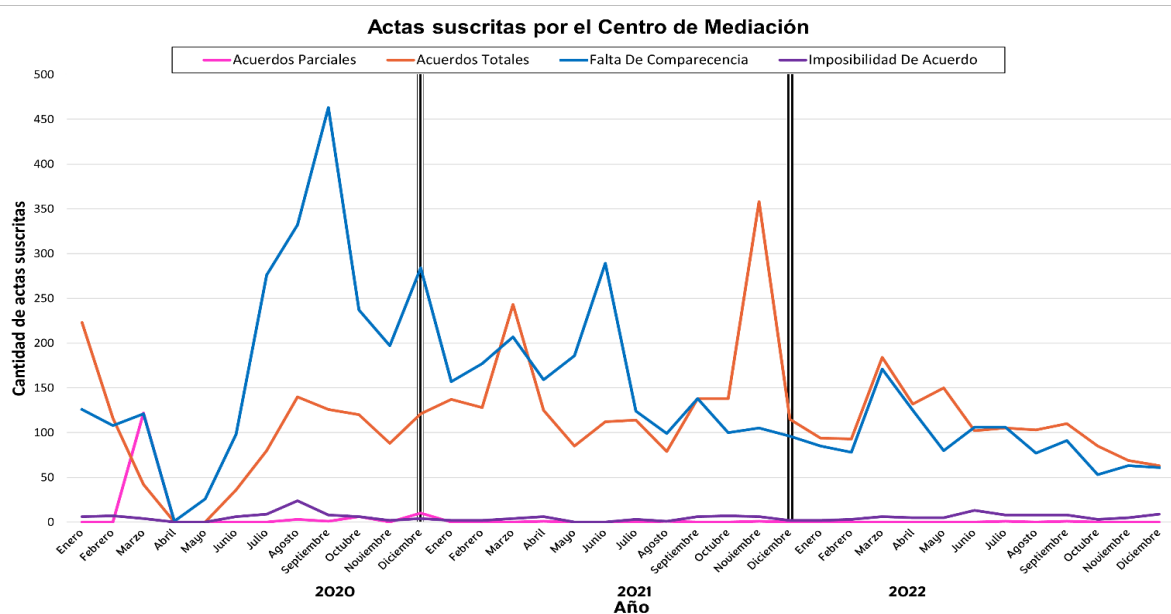
Figure 1

Comparison of the number of requests submitted to the Mediation Center of the Ministry of Labor with the number of agreements reached.



The trend line shows that the number of mediation requests submitted per month gradually decreases, with the Mediation Center receiving its highest number of requests in September 2020, and its highest total settlement rate in November 2021. Partial settlements were not the predominant outcome at this Mediation Center within the time period studied. In April and May 2020, no results of the mediation were reported, as in mid-March the government declared a state of emergency throughout the country due to the COVID-19 pandemic.

Figure 2
 Comparison of mediation results, years 2020 to 2022.

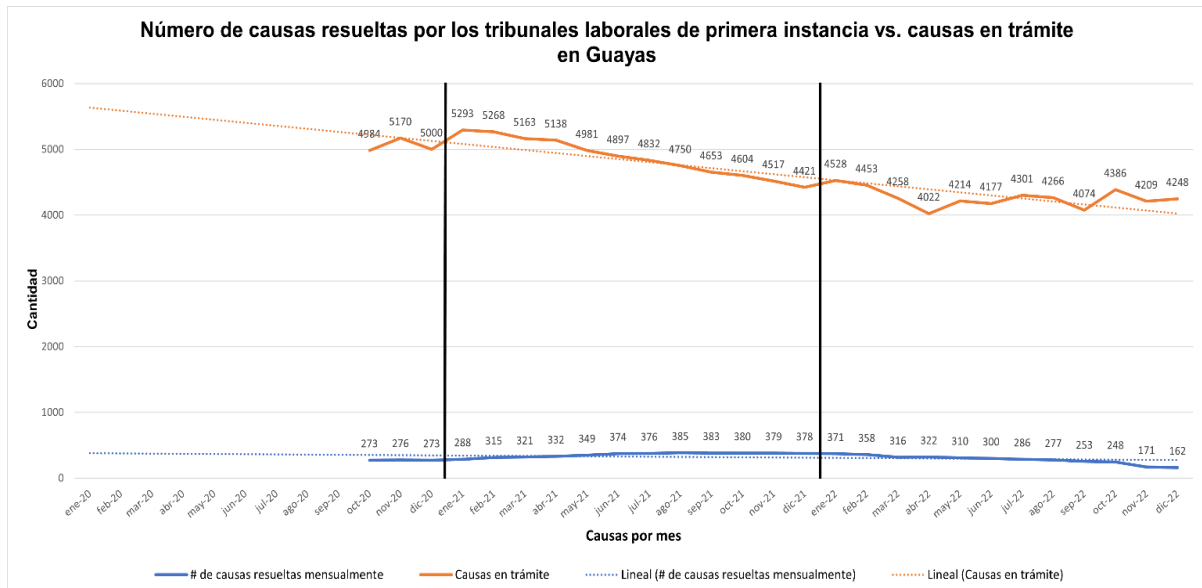


Note. The data in Table 1, Figures 1 and 2 are published in the Unified Labor System (SUT), in the category "Social Dialogue and Labor Mediation", by the Labor Mediation Directorate of the Ministry of Labor of Ecuador. Data available at <https://sut.trabajo.gob.ec/>

The record that the mediator issues through a mediation record can have 4 outcomes: the agreed points that completely end the conflict through a total agreement are indicated; the record of partial agreement details the agreements reached in order not to discuss them again, and leaves the possibility for the parties to resolve the unresolved points through another method of conflict resolution; the non-appearance of one or both parties is recorded; or, the impossibility of any agreement despite efforts to improve communication between the parties. A high rate of non-appearance is noted in the third quarter of 2020, and the highest rate of settlements in the last quarter of 2021. On the other hand, in 2022, the number of minutes signed for total settlements and for failure to appear is very similar, in line with a downward trend in mediation requests presented in Figure 1. Partial agreements and lack of agreement are also closely plotted, being the data that varied the least over time and whose results in minutes were presented less frequently. As for the variability of the data on cases resolved on a monthly basis, these are less dispersed and tend to be relatively close to the average. On the other hand, the data on pending cases per month have a much greater dispersion, so it is safe to say that they tend to vary much more from month to month than the number of trials resolved.

Figure 3

Comparison of the number of cases resolved monthly by the labor courts versus the number that remain pending. (idem)



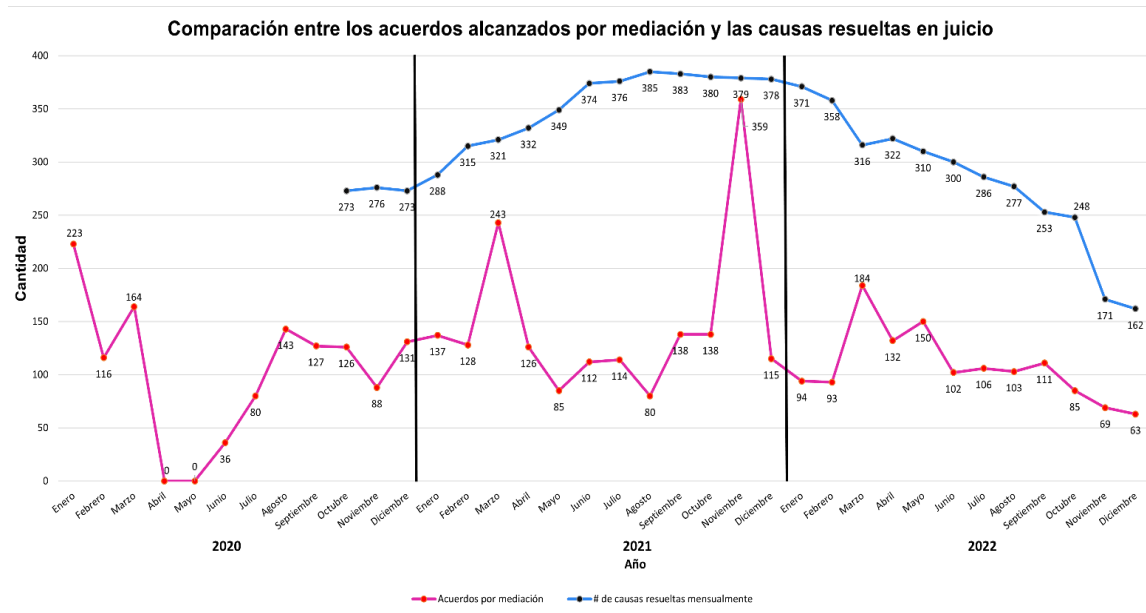
Note. The data in Figure 3 are published on the web page of the Judiciary Council of Ecuador under the title "Productivity of judges at the national level", classified by subject matter. For more information, see website: <https://www.funcionjudicial.gob.ec/productividadjuzgadoresin> in the section "Previous statistics by subject".

Figure 3 shows that, until October 2020, no data was collected on the productivity of judges or the number of cases they had to handle. Case congestion is common in the courts of justice; however, there was no way to quantify it previously as the Judicial Function was not required to keep statistics. For this reason, the projection or trend line is illustrative and useful for drawing conclusions from these data. (Consejo de la Judicatura, 2022)

Pearson's correlation helped determine the interrelationship between these study variables, resulting in 0.2452. This is a positive, albeit weak, correlation, which implies that the number of cases pending with the number of cases dispatched each month does not have a strong relationship with which it can be concluded that one variable effectively depends on the other.

Figure 4

Comparison of the number of agreements reached through mediation and the number of cases resolved monthly by the labor courts.



In order to make a comparison between the total or partial settlements reached through mediation and the number of cases resolved monthly in trials, the Pearson correlation coefficient was calculated in the Matlab statistical tool. Through this statistical measure, it was found that there is a positive correlation of 0.31 between these variables. This is a positive correlation that is greater than that calculated on the data analyzed in Figure 3, and is interpreted as a moderate linear dependence or relationship between variables. With the dispersion of the data reaching significant extremes, a possible more linear relationship between variables could have been affected. It is even greater in the case of lawsuits, where there are 9 months without statistical data. With a moderate correlation, it can be interpreted that the number of agreements reached by the Mediation Center of the Ministry of Labor (Guayas branch) increases at a similar rate to the number of labor lawsuits resolved.

Discussion

One of the common factors present in all statistical data analysis performed and plotted is the drastic drop in mediation results in the months of April and May 2020. Following the declaration of the global pandemic by COVID-19 and restrictive measures such as containment, activities came to a standstill and therefore no data were collected, with the number of agreements reached in 2020 varying extremely. Thus, in the third quarter of 2020, the number of requests increased substantially, unblocking a possible congestion caused by the inaction of the Mediation Center. In the analogous case of the Mediation Center of the Judicial Function of Ecuador (within the same period of time of this study), of the 25,336 requests submitted, 92% of them resulted in an agreement (Narváz Calderón, 2021, pág. 937), while in this research on the Mediation Center of the Ministry of Labor, there were 9,693 requests for mediation, reaching an agreement in 44.37% of the sessions. This is due to the fact that failure to appear predominates as the most common result in this investigation, constituting 53.67% of the resolutions.

On the other hand, the COVID-19 pandemic also readapted the justice system and its alternative dispute resolution methods by incorporating telematic mediation sessions, hoping to

achieve similar results without having to go in person. The Regulations for the Operation of the Labor Mediation Center of the Ministry of Labor do not provide for the possibility of conducting these sessions virtually, which is why mediation conducted through the Mediation Center of the Judicial Function could be more convenient for parties wishing to resolve their disputes by telematic means. The use of information and communication technologies (ICTs) has revolutionized the way these conflict resolution processes are carried out. This proposal is presented in studies on other Mediation Centers, as is the case of the *Centre de Mediació de la Generalitat de Catalunya* (Carpio Miró, 2021) and that of public mediators in the Judicial Branch of the State of Nuevo León, Mexico (Escalera Silva, Amador Corral, and España Lozano, 2021). In an analysis by Denys Dontsov et al. (2021, pág. 924) on Ukrainian mediation, it was concluded that it is feasible to implement technological methods to conduct mediation, considering three main factors: the transigibility or "mediability" of the case and its intention to resolve the conflict using a minimum of technological skills; the greater amount of responsibility and preparation necessary to handle technological means without neglecting the principle of confidentiality; and, achieving the trust of the parties in the mediation process, in the mediator and in the parties, knowing that, to achieve this end, new and special methods will be required. All of the challenges listed above are likely to justify why this Mediation Center has not adapted to the use of new technologies, having a higher no-show rate and receiving fewer requests than other centers such as the Judicial Function. (Centro Nacional de Mediación de la Función Judicial, 2021)

The impact within the pandemic was also manifested in the Judicial Function, by an increase in labor disputes to an unknown extent. Studies by the International Labor Organization regarding the changes produced at the global level by the readaptation of the justice system agree that most judicial institutions do not have reference statistics to compare the greater or lesser impact of the pandemic. Among the respondents to the ILO report, 40% of them do not have statistics and yet they noted an increase in labor cases and their congestion due to the limited judicial activity during this time (2022, págs. 26-46) It is noteworthy that the ILO studied the judicial system of almost all American countries, except for Ecuador, Suriname, Cuba, Guyana and French Guiana. You may have found very little information with which to conduct a study of this magnitude.

Within the temporality of this study, it should be noted that the Ministry of Labor issued the Guidelines for the Application of Labor Mediation on December 21, 2022, published in January 2023 in the Official Gazette. It is likely that, upon analyzing the downward trend of mediation requests and agreements of this Center, the Minister of Labor has decided to incorporate and expand the guidelines on labor mediation. It can even be noted that, along with the decrease in mediation requests and agreements, the number of cases resolved at trial also decreased without reducing the number of pending cases. To determine the causes that justify the decrease or increase in court cases and mediation requests, a study similar to that of Ochoa Escobar et al. could be conducted (2021) based on surveys of experts, judges or mediators, as the case may be, applying Kendall's method to understand which causes the respondents consider more or less influential in the results achieved. One cause for analysis could be the cost of accessing it. The Mediation Center, which is the subject of this research, does not charge any fees for its services, which should motivate an increase in those interested in applying mediation and avoiding the costs of a trial. There are exceptions such as the United Kingdom, a territory where mediations are not the most commonly used alternative dispute resolution mechanism because they charge a fee to access it; however, it has proven to be effective in 65% of cases (Jones and Prassl, 2016). Charging a fee or not for access to mediation is a debatable alternative, although it is not feasible in Ecuador either materially or constitutionally, since Article 75 of the Constitution of the Republic of Ecuador grants the right to free access to justice to all persons.

The law requires labor mediation in the case of collective disputes, which is why this mediation center will continue to receive requests mainly from this group. On the other hand, individual labor disputes continue to prioritize the solution of conflicts in an adversarial manner, as opposed to the labor inspector or the labor judge. The inflexibility of their positions forces the parties to find a solution in the most confrontational manner possible, hoping to obtain effective judicial protection, which cannot be achieved if there is an excessive delay in the processing of the case due to the exorbitant number of pending trials. The solution contemplated by certain legal systems such as Spain (Consejo General del Poder Judicial Español, 2019) and Guatemala (Consejo de la Carrera Judicial de Guatemala, 2019), consists of mandatory mediation prior to the commencement of a labor lawsuit, which has become a positive trend in terms of decongesting the courts. This position is disputed since one of the basic characteristics of mediation is voluntariness, and the obligatory nature of completing a pre-procedural phase could be confused with the ability of the parties to decide the outcome of the conflict by expressing their will and consent. (Basantes Bombón and Barrionuevo Núñez, 2023, pp. 4147) It also has its defenders such as Valdés Dal-Ré (1992, pág. 26) who considers that voluntariness is protected because it derives from the nature of the agreements, and not from the obligation to resort to the extrajudicial procedure. In the case of the Argentine capital, labor conciliation is mandatory and provides for a 20-day term to resolve any conflict. The United Nations Development Program (2012, pág. 73) analyzed mediation as an institution without its effectiveness varying according to the subject matter, this being the case of mandatory civil mediation, in which 65% of conflicts arising in Buenos Aires are resolved without the need to proceed to trial. In a survey of lawyers in Buenos Aires, 90% of them rate the results obtained through mediation positively, and analyze the existing variations in the judicial processes. In the Ecuadorian case, in collective labor disputes, the parties are obliged to mediate before initiating a process before the Conciliation and Arbitration Board or Tribunal, in two consecutive calls.

Among the most significant results is the positive correlation between the agreements reached through mediation and the number of cases resolved monthly in trials. Ideally, this correlation should be negative in the event that mediation predominates as an alternative dispute resolution method that substantially decreases the number of court cases in labor matters (Folberg and Taylor, 1992). This finding proves that mediation is effective, albeit in a limited way, because the rate at which the courts receive cases continues to increase. As there was a gradual decrease in the number of requests filed at the Mediation Center, the number of cases resolved at trial also decreased. This resulted in a slight increase in case congestion, which is not yet representative enough to consider this alternative dispute resolution method as the most effective or even a total solution, if not a partial one. In Colombia, labor disputes resolved through conciliation had a decrease of 42 percentage points between the years 2016 and 2017 (Morad Acero et al., 2020), a trend that begins to present itself in the Mediation Center studied between the years 2021 and 2022. Although the Labor Mediation Center of the Ministry of Labor of Ecuador, Guayas, only reaches agreements in 44.37% of the sessions, the same scenario can be seen from another angle: there are 4301 labor disputes that do not enter the courts of justice. It could be accepted, among the interpreters of the statistics presented in this study, that mediation is an aid or assistance to the courts that requires greater public dissemination by the Judicial Function of Ecuador to citizens in order to expand its use and preference over other alternative methods of conflict resolution.

It is found that there is a moderate positive correlation between the rate at which agreements are reached at the Mediation Center of the Ministry of Labor and the court cases that are resolved in judicial matters, thus increasing in an almost equal trend. In addition, the collaboration that the Mediation Center provides in the decongestion of cases is not enough to reduce the number of labor lawsuits that arise daily. This is because the number of lawsuits

continues in a progressive exponential increase that cannot be slowed down by a single alternative dispute resolution method.

The mediation techniques being applied by the mediators of this Center favor the reaching of agreements between the parties. The statistical data analyzed allow us to judge from an objective point of view whether the parties, through the outcome of the mediation, reflect that the techniques employed were effective. The interpretation of the calculations was based on the quantitative data available, measuring effectiveness based on the results of the mediation minutes. The statistical analysis shows that the effectiveness of the methods according to their capacity to obtain agreements amounted to 44.37% of the sessions. It means that the mediators are reaching agreements at this Center, albeit in a limited way.

A comparison of the number of labor disputes resolved through mediation versus those handled in the courts shows a probable dependency relationship. For a more complete analysis, the linear trend of data on cases resolved at trial in the months of January to September 2020 was predicted, and in October 2020, official statistics evidencing judicial congestion could be obtained in a more precise and geographically limited manner. When comparing them, a constant fluctuation of these values is noted, with a variability that does not allow drawing definitive conclusions or predicting their future behavior. These limitations also do not allow us to contrast them with previous data through a historical analysis, nor to draw conclusions using other variables that have been studied previously. Analyzing the number of disputes submitted to the Mediation Center of the Ministry of Labor, it is clear that mediation has not yet reached a substantial number of followers that would contribute to reduce the congestion of the labor courts.

Conclusions

Changes need to be implemented in the Labor Mediation Directorate of the Ministry of Labor in order to refer cases from the ordinary justice system to mediation, especially those whose small amount or number of claims can be heard by this Mediation Center. The results obtained for total settlements are satisfactory, indicating that each time hearings take place, mediators have about a 50% probability of reaching settlements. With an average of 3,231 cases per year, approximately 270 requests per month, and hundreds of agreements per month, this mediation center acts according to its capacity and resources, with better results to be expected if the number of cases that end due to the failure of the parties to appear would be reduced.

By maintaining a trend of constant minutes signed for failure to appear, it can be noted that the Mediation Center studied lacks the necessary resources to implement changes. The human resources of the Center's mediators require constant and necessary training to improve their techniques. In terms of infrastructure, although there are several mediation centers throughout the country, efforts are needed to improve the population's accessibility to mediation. Greater investment is also needed to adapt to these changes, taking into account the need to use technological means with the same legal effects as a face-to-face mediation session, as is the case in the ordinary justice system. Finally, it can be concluded that the mediation carried out at the Labor Mediation Center of the Ministry of Labor of Ecuador, Guayas branch, is effective, relating to the ordinary justice provided by the courts of justice as a help or aid that contributes to finding the best possible settlement for the parties without having to go to court.

Based on the above findings, several recommendations are presented that could improve the way in which labor mediation is delivered. They could even be used as a reference in other matters where there is a backlog of cases to be resolved. To reverse the current trend, proposals to increase the number of mediation requests and decrease the number of labor lawsuits should be considered. It would be ideal to incorporate a mandatory phase of prior labor mediation, which would prevent the filing of labor lawsuits without obtaining the record of impossibility

of mediation, failure to appear or partial agreement. If sufficient resources are allocated by the State, this alternative could save money in the long run to be used for conflict prevention instead of legal proceedings.

Recommendations

The Mediation Center should also survey those who come to submit requests for mediation. In this way, the parties' perception of the techniques applied by the mediator, his or her impartiality, communication strategies, punctuality and empathy could be ascertained. This would help to enlist solutions to the serious problem of non-appearance of the parties to mediation hearings. The number of requests can be kept growing by keeping mediators in constant training to provide quality service. Above all, emphasis should be placed on teaching techniques that foster communication, empathy and consensus, obtaining binding agreements tailored to the needs of the parties without the need to go to the enforcement phase, so that it eventually becomes the parties' favorite alternative for resolving conflicts. Measures should also be implemented by the Judicial Function and greater efforts should be made by the competent bodies to take advantage of the benefits of mediation in the most efficient way possible. In the end, the mediator's communication techniques are as important as the protagonism of the parties and their willingness to reach agreements.

Regarding improvements in the current statistics, it is suggested that data be obtained that incorporate new variables and parameters to analyze. These variables may be the duration of cases, availability of human and physical resources, and types of cases brought before the judges. A more complete study could contain statistical data from the Judicial Function for a longer period of time and from other Mediation Centers that also perform labor mediation in significant amounts. This quantitative study could also be complemented with qualitative data from surveys of experts, judges, mediators, labor mediation applicants and plaintiffs in labor cases. A comparative study is also suggested in other provinces of Ecuador that could show better results in mediation agreements than those of the province of Guayas. These data can be useful for the authorities to implement solutions applicable to the judicial system as a whole, provided that its actors have prior training to enable them to use them and the new provisions are clear to all players. The implementation of these new ideas will depend heavily on the parties with opposing interests, whose flexibility in ceding positions must be greater than their desire to obtain a given consideration. This would encourage a greater amount of research that will be a reference when it comes to formulating innovative solutions, for a justice of last resort.

The close relationship between one method of conflict resolution and the other produces a symbiotic relationship between ordinary and alternative justice, which can be strengthened with appropriate regulations and tested for effectiveness with data to be collected in the future. Labor mediation requires additional tools to be preferred over other alternative dispute resolution methods. Ideally, the advantages and disadvantages of one or the other method should be more widely communicated, highlighting mediation for its capacity to incorporate proposals created by the parties themselves and to obtain agreements with controllable results, avoiding formalisms and the uncertain contingency of a trial.

It is recommended to add the use of technological tools to enable telematic mediation, an option that is already applied in other arbitration and mediation centers in the country and is used by the ordinary justice system in its hearings. This would reduce the failure to appear for mediation and discourage the initiation of lawsuits for conflicts that could be avoided with proper communication between the parties. These recommendations work and have been applied in other countries with legislation dedicated to conflict resolution education. For this reason, Ecuador must foster a mediating culture that promotes predominantly the amicable, peaceful and constructive resolution of conflicts.

References

- Carnelutti, F. (1928). *Lezioni di Diritto Industriale*. Edizioni Scientifiche.
- Carpio Miró, A. (2021). Mediación en línea en tiempos de COVID-19. *Revista de Mediación*, 1(14), 1-7. <https://revistademediacion.com/wp-content/uploads/2021/07/Revista27-6-1.pdf>
- Centro Nacional de Mediación de la Función Judicial. (2021). *Acuerdos Logrados en 2014-2020 por el Centro Nacional de Mediación de la Función Judicial*. Función Judicial del Ecuador.
- Consejo de la Carrera Judicial de Guatemala. (2019). *Estadísticas e indicadores judiciales, Vías alternativas período 2017-2018*. Centro de Información, desarrollo y estadísticas. <http://www.oj.gob.gt/estadisticas/vias%20alternas%20de%20terminacion.pdf>
- Consejo de la Judicatura. (2022). *Informe Estadístico Jurisdiccional Anual*. Obtenido de Función Judicial del Ecuador: https://www.funcionjudicial.gob.ec/www/pdf/INFORME_ESTADISTICO_JURISDICCIONAL_ANUAL_2022.pdf
- Consejo General del Poder Judicial Español. (2019). *Estadística de Mediación, arbitraje y conciliación laboral 2018*. Sección de estadística judicial. <https://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Medios-alternativos-de-resolucion-de-conflictos/Mediacion--Arbitraje-y-Conciliacion-laborales/>
- Dirección de Mediación Laboral del Ministerio del Trabajo del Ecuador. (4 de mayo de 2023). *Sistema Único de Trabajo (SUT)*. Mediación laboral y Diálogo Social. <https://sut.trabajo.gob.ec/mrl/contenido/indicadores/indiDialogoSocial.xhtml>
- Dontsov, D., Neugodnikov, A., Bignyak, O., Kharytonova, O., & Panova, L. (2021). Online mediation due to the quarantine caused by COVID-19 Pandemic. *Cuestiones políticas*, 39(68), 914-926.
- Folberg, J., & Taylor, A. (1996). *Mediación: resolución de conflictos sin litigio*. Limusa Grupo Noriega Editores.
- Hernández Sampieri, R., Fernández Collado, C., & Baptista Lucio, P. (2014). *Metodología de la Investigación*. Mc Graw Hill Education.
- Narváez Calderón, M. I. (2021). La mediación y su impacto en época de coronavirus, caso Ecuador. *Polo del Conocimiento*, 6(4), 922-940. <https://dialnet.unirioja.es/descarga/articulo/7927010.pdf>
- Ochoa Escobar, L. M., Burbano Teran, C. M., Torres Ferrín, J. J., & Sánchez Santacruz, R. F. (2021). Impactos sociales de la pandemia COVID-19 en la provincia de Los Ríos, Ecuador. *Revista Dilemas Contemporáneos: Educación, Política y Valores.*, 62(Edición Especial), 1-16.
- Organización Internacional del Trabajo. (2022). *Informe sobre la encuesta de evaluación rápida: La respuesta de los mecanismos de resolución de conflictos laborales a la pandemia de COVID-19*. Organización Internacional del Trabajo.
- Programa de las Naciones Unidas para el Desarrollo. (2012). *Estudio de la mediación prejudicial obligatoria: un aporte para el debate*. Fundación Libra.
- Valdés Dal-Ré, F. (1992). Tutela judicial y autotutela colectiva en la solución de los conflictos colectivos. *Relaciones laborales*, 25-38.

Date received: 03/07/2023

Revision date: 13/09/2023

Date of acceptance: 10/10/2023