REPORT 2. "ADMINISTRATIVE MEDIATION: REALITY AND PERSPECTIVES"

Summary document

I. DISPUTE AND ITS RESOLUTION IN THE ADMINISTRATIVE FIELD

1. Concept and definition of "adequate" or complementary dispute resolution mechanisms

The "adequate" dispute resolution mechanisms, also referred to in their original conceptualization as "alternative" or "complementary", arise from the need to modernize the traditional justice system, with the essential objective of offering citizens a simple, fast, and economic option for resolving their disputes, compared to traditional judicial channels. The Spanish legislator (in the Draft Law on Procedural Efficiency) has opted to call these mechanisms "adequate", considering that they are not "alternatives" to the judicial system, but rather that they may be, precisely, more "adequate" for resolving a certain dispute than other alternatives provided in the traditional judicial system. Despite being diverse, they have similar characteristics, among which it can be noted that they are less-formal mechanisms than judicial ones and that they offer greater possibilities to the parties to participate actively and control the process of resolving their disputes more closely. Most of them have been developed in the private sector, although administrative bodies and courts are beginning to introduce them at the intra-procedural level due to the advantages they entail and the increasing difficulty to access justice.

These mechanisms include both negotiation systems that aim to allow the parties to reach a reasonable solution on their own, and systems in which a third party unrelated to the dispute intervenes and acts as an aid to dispute resolution (mediation).

The mechanisms for protecting conflicting interests can be classified into self-protection mechanisms (unilateral decision of one of the parties in the dispute), self-compositive mechanisms, and hetero-compositive mechanisms. Self-compositive dispute resolution methods include conciliation, mediation, and settlement. Hetero-compositive dispute resolution methods include arbitration and the judicial procedure.

Although the mechanisms described above work very well in the private sphere, where relations can be much more flexible and egalitarian than in the public sphere, this system should not exclude public law or, more specifically, administrative law. Currently, administrative law has two types of dispute resolution mechanisms: self-protection, which allows the administration to resolve disputes unilaterally; and hetero-compositive, based on contentious-administrative jurisdiction. However, almost no attention has been given to the self-compositive mechanisms in this legal matter. In current times, it is important to implement a flexible system so that the bureaucracy can survive in a changing and conflictive system. It is therefore necessary to analyse and propose the fundamentals of how this mechanism is seen from an administrative perspective to determine its possibilities. The main self-compositive mechanism would be mediation.

Conceptually, administrative mediation can be identified with any type of mediated procedure involving one or more public administrations. When administrative mediation occurs with a private person (whether citizen or legal person), it would be a common administrative mediation; however, when there are two public administrations in dispute, the mediation would be referred to as inter-administrative mediation. Administrative mediation has phases and procedures that are very similar to any other branch of law, such as civil or criminal law. Nevertheless, it also has unique specialties due to the public nature of one of the parties, so that the principles of legality and general interest depend on the object of the dispute and the final agreement, if any. Unlike private mediation, where there are attempts to make legality more flexible in favour of the autonomy of agreements, in administrative law, the observance of current legality must be stricter.

2. Mediation as a means of resolving disputes in the administrative field

It is essential to understand the importance of the informing principles of mediation to be able to apply them later both legally and practically. In mediation, understood as a general concept, it is possible to identify various principles that are always present regardless of the subject matter:

a) Voluntariness. This is based on the principle that the parties are autonomous and self-determined. However, this does not mean that going to mediation should always be voluntary, since there are already attempts to make the adequate dispute resolution mechanisms a judicial "procedural requirement".

b) Impartiality and neutrality. Impartiality has two aspects: observance and action. Observance commits to preventing the parties in conflict making agreements that are prohibited by the legal system, that is, making illegal agreements. Action enables the mediator to intervene when legal limits are being exceeded or when they observe that during the negotiation the debate becomes increasingly conflictive. Neutrality is, perhaps, ethically the most complicated part for the mediator since it is the commitment to use their influence to keep the final decision about the mediation result in the hands of the parties in conflict.

(c) Confidentiality. This is the basis of trust between the parties and the mediator.

d) Good faith. It is necessary that there is good faith between the parties involved in the mediation procedure so that there is a spirit of listening to the other party and looking for solutions to the problem.

e) Flexibility. This characteristic allows creative and tailor-made solutions to be found for each case, leading to efficient dispute resolution.

Any negotiation procedure, not only mediation, is based on the parties' needs, interests, and positions. The minimums that are acceptable for the parties will be settled and the negotiating positions between the parties can be transmitted to achieve fluid communication.

The mediation process consists of several phases. First there is an initial phase, which is known as an information session. Then there may be intermediate sessions, understood as individual (only with one of the parties) or public (with both parties). These sessions seek to determine the parties' needs or the options available to each of them. Finally, in the last session the mediation will be closed, and an agreement will or will not be reached. This process consolidates what was discussed in the sessions and what is included in the mediation agreement, if any.

The nullity action can be exercised against any mediation agreement and invalidates the contracts. In addition, it is important to highlight that in

administrative law, unlike other legal disciplines, there are two principles that must also govern the mediation agreement: the principle of legality and the principle of general interest. The agreement, in essence, is not directly enforceable. To make it enforceable, it must be attested to by a notary (in the case of extrajudicial mediation), or judicially approved (in the case of intrajudicial mediation).

II. ADMINISTRATIVE MEDIATION IN THE EUROPEAN CONTEXT

1. Mediation at the European level: European Council and European Union

At the European level, there has been an increase over recent decades in the popularity of using mediation in general and in the administrative sphere in particular. The turning point in administrative matters has already appeared in the new millennium thanks to the Recommendation (2001)9 of the Committee of Ministers to Member States on alternatives to litigation between administrative authorities and private parties. It is recommended to use administrative mediation in all cases where possible; that is, applied in a general way or, if this is not possible, in a sectoral way.

2. Mediation in Comparative Law: France and Italy

Concerning administrative mediation in the French territory, the *Code des relations entre le public et l'Administration*, of 23 October 2015, provides the possibility of using alternative dispute resolution techniques in administrative procedures, in a way that regulates the conciliation (arts. 421-1 and 421-2), mediation (arts. 421-1, 422-1 and 422-2), settlement (arts. 423-1 to 423-7) and intervention by the ombudsman (art. 424-1). The ombudsman is an interesting figure because other countries, such as the United Kingdom, also use this figure in mediation procedures.

In *Decree* 2022-433 a mandatory prior mediation is established in two specific administrative matters: those relating to public teaching (non-university) workers and matters of territorial entities and their public establishments that have made

an agreement with the Territorial Public Management Centre, as long as it is with respect to their personal situation; and in social matters, with respect to social, housing or unemployment assistance.

It is noteworthy that the French system discourages the use of administrative appeals by suspending the filing of contentious-administrative appeals in cases of mandatory mediation, and allowing, subsequently, appeals to be optionally filed administratively, but this does not suspend the term of the jurisdictional appeal.

In the Italian legal system, mediation in administrative law has been incorporated by the “L’accordo sostitutivo”, regulated by the Law no. 241 of 7 August 1990 of new rules on administrative procedure and the right to access administrative documents, which allows agreements to be established between the administration and private subjects in their administrative law relations.

In the tax field, conventional termination procedures, including mediation, are regulated both administratively and in contentious-administrative proceedings.

III. ADMINISTRATIVE MEDIATION IN THE SPANISH LEGAL SYSTEM

1. Current legal framework

The current legal framework of administrative mediation differs depending on the procedural moment of the dispute. If this is within an administrative procedure, the applicable legal framework will be that of Law 39/2015 of 1 October, on the Common Administrative Procedure of Public Administrations. Otherwise, if the dispute has already been postponed and prosecuted, it will be Law 29/1998 of 13 July regulating the Contentious-Administrative Jurisdiction. The principle of legality and the pursuit of the general interest and sectoral rules must be considered.

2. Administrative Mediation Types

There are different kinds of administrative mediations depending on where the conceptual focus is placed when they are classified. There are three specific types:

- Subjective. In this case, mediation gives relevance to the subjects involved, so there are two different types of administrative mediation: common and inter-administrative. The first is the "administrative mediation" par excellence, in which there is a dispute between a citizen or a legal person and a public administration. The second type is inter-administrative mediation, where both parties in conflict are public administrations.
- Procedural. This can be classified as extrajudicial or intrajudicial mediation depending on the moment that the dispute is in.
- Material. In this case, the focus is on the matter under mediation, so the focus is on the principle of legality.

Within an administrative procedure it is possible for the parties in conflict to agree to apply a mediation procedure, the result of which may replace the administrative resolution that, traditionally, has come to end the administrative route or, in any case, to give access to the legal system of administrative appeals (art. 86.1 Law 39/2015).

The regulations of the common administrative procedure also include the possibility of mediation that has been given the name "contestation" in the legal academy. Consequently, it is possible at the legal level to replace the appeals regime with an administrative mediation when it is provided for in advance (art. 112.2 of Law 39/2015). However, from the theoretical point of view, it is argued that this possibility is limited in practice only to the causes that can promote an administrative appeal. Thus, administrative mediation will be possible in cases of nullity and voidability, as provided for in art. 112.1 of Law 39/2015, and therefore, articles 47 and 48 of Law 39/2015 must be considered in the implementation and use of this system. Thus, the ability to mediate in a contestation way is largely limited to the motives regulated by the law of common procedure.

Intrajudicial mediation is that which takes place once the dispute has been judicialized and at the request of the Judge.

A characteristic of mediation, and hence its complementarity, is that the solution to the dispute comes from the parties, and not from a third party, as occurs in arbitration. The parties in conflict are the ones who make the final decision on the conflict with the help of the mediator (who for intrajudicial mediation is the judge), who must facilitate reaching a consensus without directly interfering in the decision made by the parties.

There is no established procedure for regulating contentious-administrative intrajudicial mediation; however, in article 77 LJCA, there is the precept that allows a possibility for reaching an agreement that ends the dispute to be submitted to the parties for them to consider. This is in addition to article 19 LEC, which is applicable on a supplementary basis to the contentious-administrative jurisdiction.

One of the most controversial issues regarding intrajudicial mediation is that of delimiting or establishing which issues are subject to it. Article 77 LJCA indicates that the judge or court may submit for the consideration of the parties the possibility of reaching an agreement that ends the dispute "when the trial is on matters susceptible to settlement and, in particular, when it is overestimated in amount". Article 19.1 LEC indicates that the parties are empowered to dispense with the trial and may submit to mediation or arbitration for any matter that is the subject of the trial "except when the law prohibits it or establishes limitations for reasons of general interest or for the benefit of a third party". This includes a vague and imprecise list of the issues that can be submitted to intrajudicial mediation.

Articles 77.2 LCJA and 415.1 LEC provide that intrajudicial mediation will not suspend the contentious-administrative procedure already initiated; however, the parties may request this by mutual agreement from the judge, which "may occur at any time prior to the day on which the lawsuit has been declared concluded for sentence".

If the parties reach an agreement that "implies the disappearance of the dispute", the judge or court will issue an order declaring the procedure terminated, provided that what was agreed was not manifestly contrary to the legal system, nor harmful to the public interest or third parties (art. 77.3 LJCA). In this same sense, article 415.2 LEC refers to the necessity for the parties' agreement to be

judicially approved, with which it will have the effects attributed by law to the judicial transaction.

If the parties do not reach an agreement, or are not willing to conclude it immediately, the contentious-administrative procedure, if it has been suspended, will continue its course (art. 415.3 LEC).

However, neither the LJCA nor the LEC indicate what happens if the parties reach a partial agreement that does not imply "the disappearance of the dispute" but rather only the disappearance of part of it. In this sense, we consider that nothing prevents the judge or the court from approving those aspects of the dispute on which there is agreement between the parties, and ordering, at the request of the parties, the continuation of the contentious-administrative procedure to resolve those matters on which there is still disagreement.

3. Administrative mediation in some sectoral areas

In the field of access to public information, the Autonomous Community of Catalonia has been a pioneer in incorporating mediation into dispute resolution by recently joining the Valencian Community.

Catalan Law 19/2014 of 29 December, on transparency, access to public information and good governance (LTAIPBG) includes a special administrative appeal before an independent body, in the case of Catalonia, this is the Commission for Guaranteeing the Right of Access to Public Information (GAIP). This claim is considered a substitute for administrative appeals and can be filed against any express or presumed resolution regarding access to public information, optionally and prior to it being challenged in contentious-administrative proceedings. The novelty, compared to state legislation, lies in the provision for applying a mediation procedure to process and, eventually, finalize claims regarding exercising the right of access to public information submitted to the regional transparency authority.

It is the claimant's option to process the claim through the mediation procedure and the administration against which the claim is made is obliged to participate if the claimant requests it. The mediated procedure is carried out under the supervision of the guarantor, who summons and guides the parties during the

session in accordance with the established mediation procedure. In this process, the mediator (who must be a member of GAIP) and the GAIP services in general are responsible for making the file, providing the necessary information and assessments, organizing the mediation sessions, guiding and directing them, formalizing and making the agreements public, and ensuring their execution.

The figures confirm that mediation is one of the most useful ways to resolve claims concerning access to public information in Catalonia and, although it is still a minority option, is becoming increasingly more relevant.

Law 1/2022 of 13 April on transparency and good governance of the Valencian Community, has also incorporated as a novelty, in addition to the ordinary complaint procedure, the possibility of challenging the resolutions of requests for access to information through a mediation procedure.

The regulation is similar to that of Catalonia. The novelty of the Valencian regulation is that the mediator is "appointed by the Valencian Council of Transparency from among the staff of its technical support office and must have specific training and knowledge in administrative mediation" (art. 39.3).

We must also refer, at the state level, to Law 3/2022 of 24 February on university coexistence (LCU), since one of the highlights of this law is to promote and implement, on a preferential basis, alternative dispute resolution modalities based on mediation. It is considered that mediation could be more effective in addressing certain behaviours and disputes between members of the university community belonging or not to the same group (arts. 1 and 2). The Law indicates that all cases can be evaluated to be potentially resolved with mediation, except for cases of sexual or gender-based harassment and those that are outside the university environment, unless they affect university coexistence, altering it or preventing "the normal development of essential functions, teaching, research and knowledge transfer" (art. 1.1 of the LCU).

Another aspect highlighted by the LCU is the intervention of experts in the field in the analysis of a dispute and the evaluation of whether or not it is susceptible to mediation and, after that, the intervention in the mediation process. The disciplinary authority aims to correct student infractions that violate coexistence or that prevent the normal development of teaching functions, and allows people

involved in the disciplinary procedure to benefit from the mediation procedure. Therefore, if the Coexistence Commission deems this alternative appropriate, the disciplinary procedure will not be processed unless the mediation procedure concludes without agreement (art. 19).

Article 5 of the LCU refers to universities developing in their Coexistence Rules alternative means of resolving coexistence disputes based on mediation applied before and during the disciplinary procedure. Specifically, in its article 3.1, the LCU obliges all universities, both public and private, to approve the Rules of Coexistence, establishing in its Fourth Additional Provision a maximum period of one year from its entry into force to proceed with their approval (this period ended on 26 February 2023).

In the field of tourism, the Autonomous Community of the Canary Islands has included an innovative regulation that is committed to mediation as a novel procedure for ending and resolving disputes. Law 2/2013 of 29 May, on the renovation and modernization of tourism in the Canary Islands, developed through Decree 85/2015, includes both the conventional termination of the procedure and mediation as a substitute mechanism for administrative appeals. This Law, in the field of tourism renewal and modernization, materializes the possibility provided for in article 112.2 of Law 39/2015 to replace administrative appeals with a mediation procedure. If mediation is chosen instead of the corresponding administrative appeal, then it must be requested within fifteen days from the date of notification of the resolution. This procedure "will be carried out by a collegiate body or specific commission not subject to hierarchical instructions, in accordance with the provisions of the basic legislation and the rule determined by regulation, with respect to the principles, guarantees and deadlines that the law regulating the common procedure includes" (art. 28.2).

The Canary Island regulations also determine the limits of mediation, so that the principles, guarantees and deadlines of the mediation, recognized by the legislation for citizens and interested persons, must be adapted to the legal system, protection of the environmental, and the rights of third parties possibly affected by the agreement and who have a direct and legitimate interest. Likewise, the decree regulates the mediation procedure in detail in its article 42.

Regarding the sanctioning procedure, art. 90.4 LPACAP establishes that "when the sanctioned conducts have caused damages to the administrations and the amount intended to compensate these damages has not been determined in the file, it will be fixed by a complementary procedure, whose resolution will be immediately enforceable". This procedure is subject to conventional termination, but neither this nor the acceptance of the resolution by the offender will imply the voluntary recognition of their responsibility. In short, this procedure implies that when the sanction is not determined, an agreement can be established between the public administration in question and the affected person through an agreement, thus moving away from the idea of the administration imposing a sanction. Some examples are the administrative sanction that is not quantified but rather rated (between light, serious or very serious) on a minimum to maximum pecuniary range, so that the final amount can be negotiated or in which appropriate payment plans that facilitate the payment of the sanction can be agreed. However, it is worth considering the complications that this conventional termination entails in relation to the public interest and the autonomy of will in the negotiations.

Urban planning is also a field that aims to find consensual solutions for land transformation without losing sight of the need to comply with the social function of the property. Thus, what has come to be called "conventional urbanism" is common in the field of urban planning as a complementary mechanism to the insufficiency of urban planning instruments and urban classification and qualification techniques.

Resolving disputes in urban planning law based on voluntary negotiation between the parties involved, as an alternative to judicial processes and arbitration, can be a solution for responding to disagreements in land management and transformation processes (management, licenses, etc.) in which individual and collective interests are intertwined. Mediation can be very useful not only to manage conflict, but also to prevent it.

There are different types of administrative mediation in the urban area. One type is institutional, which is configured as a public service linked to the principle of good administration (art. 41 CDFUE), in which, unlike other mediations, it is mandatory for the administration to appear; the solution is proposed by the

mediator and is not binding (conventional), it is the procedural termination provided for in articles 86 and 112.2 of Law 39/2015. Another type is intrajudicial contentious-administrative (MICA), which is applied to end a judicial dispute, and in which the mediation agreement is approved by the judge.

It is also worth highlighting patrimonial liability as a material object of administrative mediation, as it is one of the great theoretical proposals that exist today. So much so that even article 86.5 of Law 39/2015 observes its potential by regulating its specific case.

In mediation in the public function, the outstanding tool is in art. 45 of Royal Legislative Decree 5/2015 of 30 October, which approves the consolidated text of the Law on the Basic Statute of Public Employees (hereinafter EBEP), which establishes an extrajudicial system for resolving collective disputes of public servants. Mediation is established as a mandatory system if requested by one of the parties, with a binding force equivalent to the agreements and pacts they make, which are subject to subsequent challenge.

Finally, it is worth considering individual disputes, since the EBEP does not refer to them. The claim of an individual worker must be made through the existing instruments, which puts an end to the administrative route and the subsequent judicial claim (art. 112 et seq. LPACAP). This aspect is limiting, especially when the administration personnel have the possibility of starting a work mediation process under collective negotiation or the legal work regime.

New areas where administrative mediation can be developed have also been explored. In the field of housing, the Government of Catalonia has arbitrated a free mediation service (Ofideute), through the Housing Agency of Catalonia, to resolve disputes between individuals and financial institutions to avoid evictions in the event of non-payment of mortgage instalments. It should also be noted that the recent State Law 12/2023 of 24 May on the right to housing, obliges large holders to submit to a mediation procedure with the tenant, whether tenant or occupant, to try to reach an agreement before filing a lawsuit for eviction (Third Transitional Provision and Fifth Final Provision).

Public procurement is a material environment conducive to mediation. This would be the case, for example, in determining possible subsumption or not of the

factual assumptions that, due to legal provisions or the specifications, enable the contract to be modified, prices to be revised, the contract to be economically rebalanced, or the object of the contract or the special execution conditions to be satisfied. A transaction system already operates, even informally, in all these assumptions, within the phases of execution or termination of the contract, in the event of any discrepancies that may arise between the adjudicator and the contract purchaser without the intervention of third parties. As a result, a self-compositive system such as mediation would also be feasible. However, in the stages prior to the adjudication of the contract we also find cases with the characteristics indicated; for example, before determining the viability of an offer that has incurred, a priori, a presumption of reckless discharge; or determining whether an academic or professional degree is sufficient to satisfy the studies or experience required in the specifications as an element of economic capacity or adjudication criterion; etc. The main advantage that could urge the introduction of mediation in the field of public procurement would be the objective of improving the current system of administrative appeals referred to in articles 86 and 112.2 of the LPAC.

However, article 112.2 of the LPAC opens the possibility of a contractual agreement between the contracting entity and the economic operator, which replaces it in favour of a mediation procedure that meets the requirements and guarantees expressed therein. In this sense, article 44.6 of the LCSP indicates the applicability of article 112.2 of the LPAC in cases in which it is not appropriate to file a special appeal in matters of public procurement. Therefore, there will be a contractual document, such as that of the specifications of particular administrative clauses or a similar document that is provided for in the contracting instructions of public sector entities that are not contracting authorities, in which it is possible to validly establish the possibility that, at the time of formulating their offers, the bidders renounce the system of ordinary appeals provided for in the LPAC through a mediation procedure. In addition, it could be expected to be carried out at the time immediately prior to the challenge or at the request of mediation with respect to the administrative act in question that has been issued within the public procurement procedure.

If this possibility is accepted by a bidder, mediation would displace the appeal system, establishing itself in a mandatory or optional way prior to judicial proceedings. However, this possibility is limited to administrative contracts and disputes that may arise regarding the preparation, selection, and adjudication phases of private contracts.

There are two possible administrative bodies that could exercise the role of mediator: independent administrative bodies or bodies dependent on the judiciary assigned to carry out mediation prior to the contentious-administrative process. An example of an independent administrative body is the Central Administrative Court of Contractual Resources. In the event that a procedure for the reimbursement of subsidies is initiated, the possibility of an administrative mediation can be viewed from two perspectives: one that deals with all or part of the reimbursement based on the argumentation of the objectives; and one that is a possible delimitation of the reimbursement by making an economic agreement between the parties that establishes a fair amount and a payment plan that improves the efficiency of the administrative activity.

Mediation is also relevant in environmental disputes for two reasons: administrative mediation is important for streamlining processes and reducing the workload of the courts; and it is important for improving access to environmental justice and expanding citizens' rights to participate in decision-making in environmental matters.

IV. DIFFICULTIES OF MEDIATION IN THE PUBLIC ADMINISTRATION

Limiting aspects to administrative mediation include the principles of legality and achieving the general interest. The manifestation of the principle of legality is ultimately observed in two fields or possibilities: regulated powers and discretionary powers.

This means that there is no possible margin for negotiation in any mediation, and therefore, a procedure before a regulated authority would be a waste of time for both the administration and the citizen. In the legal academy, the possibility of administrative mediation under these circumstances is widely assumed because it allows that margin for negotiation. In addition, achieving the general interest is

another of the legal limits to the mediation agreement, since it must be justified that the mediation agreement pursues the general interest. Therefore, not all agreements will be possible within a mediated procedure, and the public administration will be cast in a position of general interest that must be respected. This aspect may further unbalance the power between the parties in non-inter-administrative disputes. The rejection positions are derived from the current position of administrative predominance.

An administrative mediation would imply the need to equalize the balance of power to achieve an effective and efficient result, which can mean the rejection of the traditional bureaucratic organization that sees how the old paradigm changes and even the need to enter into debate with citizens about the decisions made.

There are many difficulties that must be overcome to implement intrajudicial mediation. Among these difficulties is the insufficient regulation in the contentious-administrative order. In addition, the main obstacle is currently the authorization regime necessary for the administration to commit, since the representatives of the public administrations need an express authorization, sometimes even with a prior hearing of the Council of State or equivalent advisory body. This rigidity does not facilitate the agility, flexibility, and simplicity required in mediation.

The implementation of intrajudicial mediation in the different autonomous communities is uneven due, in part, to the different levels of involvement of the public authorities. This impacts effective judicial protection in terms of equity, and therefore it is absolutely essential that the different competent administrations offer all citizens, regardless of the territory in which they are located, the possibility of mediation.

Another of the main difficulties that intrajudicial mediation encounters is the additional cost that it can represent for the parties, and especially for citizens, because it is necessary to pay the lawyer’s fees as well as the expenses of the mediation. There are also other less obstructive difficulties, such as: the lack of appropriate training of judicial bodies to promote mediation when appropriate; that neither the parties nor the judicial bodies know about the existing services; and the insufficiency of existing resources.

V. SOME PROPOSALS FOR IMPROVEMENT

The limitation of contentious administrative mediation, that is, substituting administrative appeals of article 112 of Law 39/2015, is broadly limiting with what the administrative dispute could represent. It is true that mediation replaces appeals and, therefore, should not exceed their functions; however, limiting mediation causes the procedure to become rigid, which is not appropriate if an effective resolution for the dispute is to be sought through a mediation procedure. Procedural flexibility is one of the basic principles of mediation and without it these types of alternative solutions lose all their meaning, as they would, again, bureaucratize the problem. The proposed improvement is to make the reasons for resorting to mediation more flexible, expanding the capacity to present this possibility in any case.

it is necessary to activate intrajudicial mediation in its current state, regardless of the need for a complete measurement regulation in the contentious-administrative jurisdictional order. As discussed above, mediation has a wide range of practical applications, since it is the courts themselves, with the agreement of the parties, who can defer, in the matters indicated in the previous sections, the resolution of the dispute to mediation at any stage of the process. This is verified by the Guide for the Practice of Intrajudicial Mediation of the General Council of the Judiciary and the protocols that have been indicated above, since it contemplates the possibility that, even in its current state, the courts and the parties involved may refer to mediation.

There are some sectoral areas such as transparency, university coexistence, tourism, the sanctioning procedure, urban planning, patrimonial responsibility, and the public function that incorporate mediation in the resolution of disputes. However, some of these sectors require regulatory development and improvements to their practical application.

In addition, other sectoral areas have been identified, such as housing, public procurement, subsidies, and the environment, which are conducive to administrative mediation. Therefore, it is proposed to study the comprehensive

implementation of measures such as mediation in each of these areas by developing and modifying the sectoral legislation that regulates each area.

VI. CONCLUSIONS

1. The "adequate" dispute resolution mechanisms arise from the need to modernize the traditional justice system, with the essential objective of offering citizens a simple, fast, and economic option for resolving their disputes, compared to traditional judicial channels.

2. Administrative mediation can be identified with any type of mediated procedure involving one or more public administrations. When administrative mediation occurs with a private person, it is a common administrative mediation; however, when there are two public administrations in conflict, the mediation is referred to as inter-administrative.

3. Administrative mediation has unique specialties derived from the public nature of one of the parties; therefore, the principles of legality and general interest depend on the object of the dispute and the final agreement, if any.

4. In mediation it is possible to apply various principles that are always present in any case regardless of the subject matter: voluntariness; impartiality and neutrality; confidentiality; good faith and flexibility.

5. The mediation process is composed of several phases: an initial phase, which is known as an informative session; intermediate phases, understood as individual or public; and, lastly, with the final phase in which a mediation agreement is or is not reached.

6. The parties must reach the mediation agreement of their own volition. The nullity action may be exercised against this agreement for the causes that invalidate the contracts, considering the principle of legality and the principle of general interest. This agreement will not be directly enforceable, as it must be attested to by a notary to be enforced.

7. At the European level, the use of mediation has been increasing for decades. Mediation is regulated in neighbouring countries such as France and Italy.

8. The current legal framework of administrative mediation differs depending on the procedural moment of the dispute. If the dispute is within an administrative procedure, the applicable legal framework will be that of Law 39/2015 of 1 October on the Common Administrative Procedure of Public Administrations. Otherwise, if the dispute has already been postponed and prosecuted, it will be Law 29/1998 of 13 July regulating the Contentious-Administrative Jurisdiction. However, sectoral regulations must also be considered.

9. There are different kinds of administrative mediations depending on where the conceptual focus is placed when they are classified. Specifically, there are subjective, procedural and material administrative mediations.

10. Within an administrative procedure, it is possible for the parties in conflict to agree to a mediation procedure whose result may replace the administrative resolution that, traditionally, has come to end the administrative procedure or, in any case, to give access to the legal system of administrative appeals.

11. Administrative intrajudicial mediation is understood to be the mediation that takes place once the dispute has been judged and at the request of the Judge.

12. It is necessary to use the wide availability of article 77 of the LJCA. However, it is important to provide mediation with a legal framework of reference, to the extent that it is based on public law as its own institution.

13. Mediation does not involve specific difficulties and therefore it can be used, with some limitations of a legal nature, in the regulated, discretionary powers, in the exercise of the self-organizing powers of the administrations and in the application of indeterminate legal concepts.

14. Both administrative and judicial mediation can operate in a material field of action derived from relations between administrations and citizens, but considering the principle of legality, the public interest, and the principle of good administration.

15. Administrative and judicial mediation must serve to introduce into the practices of the public administrations the principles of rationality, objectivity, transparency, motivation, and efficiency, which constitute the duty of good administration, recognized as a fundamental right in the Charter of Fundamental

Rights of the European Union, which guides the decisions of the courts of the contentious-administrative order.

16. Administrative mediation has been incorporated into some sectoral areas such as transparency, university coexistence, tourism, sanctioning procedure, urban planning, patrimonial responsibility, and public service. Likewise, other new areas have been highlighted in which administrative mediation could be carried out, such as housing, public procurement, subsidies, and the environment.

17. Mediation, both in relation to the public function and the sanctioning procedure, has shortcomings that could be solved with regulatory development. It is necessary to make a *lege ferenda* proposal that incorporates all the aspects that have not currently been addressed in relation to administrative mediation. This is due to the importance that mediation already has, not only for the contentious-administrative jurisdictional system, but also for the effective resolution of disputes between the administration and third parties in a different way of doing "justice" that incorporates the understanding between the parties and the possibility that the legal relationship is prolonged over time in the best possible way (both in the relationship between the administration and administration workers and in the relationship between the administration and citizens).