

MEDIATION OF  
CONFLICTS AND  
SECURITY  
SOCIAL

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SOCIAL SECURITY

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SUMMARY

This article's theme is the analysis of the institute of conflict mediation as a way to assist in the management of public security. To this end, the work has the general objective of verifying whether conflict mediation is capable of helping to reduce violence and, as specific objectives, the analysis of the institute of conflict mediation, the principles that guide it and its effectiveness in terms of public security. . The methodology applied was bibliographical research, using the hypothetical-deductive approach method. The concepts listed demonstrate that traditional models of combating violence are not having their due effects. From this perspective, the institute of conflict mediation emerges, which, given its principles and peculiarities, can greatly contribute to solving problems of different natures before they evolve into violence and crimes.

**Key words:**Mediation. Principles. Security.

ABSTRACT

This article has its theme the analysis of the institute of conflict mediation as a way to assist in the management of public security. For this purpose, the work has as its general objective to verify if conflict mediation is able to help in reducing violence and, as specific objectives, the analysis of the conflict mediation institute, the guiding principles and its effectiveness in the public security plan. The applied methodology was bibliographic research, using the hypothetical-deductive approach method. The concepts listed demonstrate that the traditional models of combating violence are not having their due effects. In this perspective, the institute of conflict mediation emerges, which, in view of its principles and peculiarities, can greatly contribute so that problems of various kinds can be solved before they evolve into violence and crimes.

**Keywords:**Mediation. Principles. Safety.

## 1. INTRODUCTION

The issue of public security has always been, and continues to be, one of the main concerns of the entire Brazilian community, especially given the alarming rates of violence that plague our society. The population, in fear, increasingly demands solutions to this problem from their governments.

Despite all the efforts aimed at resolving this impasse, what can be seen is that there are no significant advances, as the population continues to live daily with fear, which leads us to believe, at least in theory, that the models of security understood as traditional are not reaching the level of effectiveness, while they do not achieve their objectives.

Being aware of the relevance of this topic, the present work presents as a research problem the analysis of the institute of conflict mediation as a new tool available to managers to face problems involving public security.

Taking this issue into account, some hypotheses arise, namely, indicators of social violence demonstrate that traditional coping models are not yielding the expected results and, in this context, conflict mediation would emerge as a new option in the field of public security management.

Therefore, the general objective of this work is to verify whether conflict mediation is capable of helping to reduce violence. To this end, the specific objectives are the analysis of the institute of conflict mediation, the principles that guide it and its effectiveness in terms of public security.

This work is of great importance given the growing feeling of insecurity faced daily by the population, in line with the State's duty to ensure that public security effectively reaches the social environment.

To carry out and develop this work, bibliographical research will be used, using the hypothetical-deductive approach method, to verify whether conflict mediation is capable of helping managers with public security problems.

## 2 THEORETICAL FRAMEWORK

The increase in violence and crime are problems that have been plaguing the population for countless years and, at least in theory, there is no solution in sight. People live with the feeling of fear daily, both on the street, while going about their routine tasks, and inside their own homes. To the detriment of this, and rightly so, they demand public policies and affirmative actions from the State that guarantee security for all.

Although security is a fundamental right guaranteed by our Magna Carta, it has always been a difficult and extremely delicate problem for managers to face.

The increase in crime rates and the population's dissatisfaction with public security over the years leads us to believe, at least in theory, that the model considered traditional for combating violence has not had its due effects. In this way, more and more managers are looking for new tools to confront and combat violence.

It is from this perspective that there is increasing focus on new ways of dealing with such problems. One of these innovations, which deviates a little from the model considered traditional, which simply punishes individuals after committing a certain crime, is the use of conflict mediation, about which we will make some brief comments.

### 2.1 CONFLICT MEDIATION

Dealing with public security has always been a matter of extreme delicacy for managers, given the alarming rates of crime and violence and the population's incessant demand for an effective response from the State to tackle this problem. It is from this perspective that there is increasing talk about using alternative means, which deviate a little from the traditional forms of justice to which we are accustomed, those that basically seek to penalize the individual after committing an illegal act. In this line of reasoning, the institute of conflict mediation is increasingly

on the agenda, emerging as a tool available to society to face public security problems. Pursuant to the sole paragraph of the first article of Law 13,140/2015, which regulates the aforementioned institute,

Mediation is considered to be the technical activity carried out by an impartial third party without decision-making power, who, chosen or accepted by the parties, helps and encourages them to identify or develop consensual solutions to the controversy (LAW No. 13,140, 2015).

Although it is not as common in the criminal sphere, it is already widely disseminated in the civil sphere, bringing greater speed to demands and contributing to the relief of the Judiciary, taking into account its peculiarities, in particular, the autonomy of the parties and informality.

To better understand the institute of mediation, it is necessary to briefly analyze its principles, which will contribute methodologically to addressing the central issue of this work.

### **2.1.1 Principles that guide mediation**

Law 13,140/15, in its second article, provides for the principles that guide mediation. These are not exhaustive principles, but the principles underlying the matter relating to the problem involved are also applied, be it civil, criminal or another branch of law. However, mediation has as its basic principle that of human dignity. The aforementioned law provides:

Art. 2 Mediation will be guided by the following principles: I - Impartiality of the mediator;  
II - Isonomy between the parties; III - orality;  
IV - Informality;  
V - Autonomy of the will of the parties; VI - Search for consensus;  
VII - confidentiality;  
VIII - good faith. (LAW No. 13,140, 2015).

The principle of mediator impartiality carries with it the idea that the mediator has no interest in the cause or the solution to be found, treating litigants equally. It is clear that this principle is specific to the person of the mediator, who must not advise or take sides with any of the parties. It is essential that there is no

any type of relationship or conflict of interest between the mediator and one of the parties that may interfere in the search for a solution to the conflict. In that regard:

On the other hand, it is clear that neutrality is not required of the judge. Nor could it. It will be up to him to say the result or, in the case of an agreement presided over by him, he is not allowed to give his opinion, which is why he is not neutral.

Differently, the mediator, in addition to observing all legal requirements regarding his impartiality, must pay attention, with extreme zeal, to his neutrality, since, in one way or another, he intervenes in the communication process in the mediation space (ALBUQUERQUE, 2017, p. 79).

The second principle deals with equality between the parties, who must be treated equally during mediation, so that a more comfortable environment is created, capable of repentance on the part of the offender and capable of promoting understanding between the parties. The central objective is not to judge right and wrong, but to seek the most appropriate solution to the problem. This principle, however, allows the mediator to indicate when the agreement notably benefits only one of the parties, paying attention to material equality, which is achieved by taking into account the inequalities of those involved. About this topic:

The mediator's responsibility to guarantee, during the mediation process, equality, respect for the autonomy of will and the empowerment of those involved in resolving their conflicts requires, above all, an ethical stance. The mediator's "way of being", which translates into a neutral, impartial and non-judgmental position, will be decisive in his intervention and the success of a mediation. Mediation is not limited to an agreement, but to understanding differences, respecting the singularities of each person and understanding that it is possible to deal with differences without disrespecting or devaluing the cultural, moral and ethical values of each mediator (FAGUNDES, 2017, p. 306).

Orality and informality go hand in hand. The non-requirement of exaggerated formalism allows the parties to propose the best path to be followed so that the solution to the problems is achieved. And there is nothing better than communication between the parties, following the principle of orality, so that such guidelines are drawn up. Conversation between those involved is a key part of this process, using simple and common language, which allows everyone to express their ideas and come together to reach an agreement.

The principle of autonomy of the parties' will means that it is solely and exclusively up to those involved to sign the agreement or not. As they are the main characters in this relationship, everything that may be decided must be by their will and with their permission. The interests of the parties must always be respected, even if they

choose not to continue with the mediation process. Following this understanding:

In other words, the mediator is a moderator, as he cannot suggest a way out of the problem faced, and must leave it to the parties to negotiate the dispute, so that they can reach a solution without his direct intervention, and must only ensure the minimum conditions of cordiality and dialogue between the parties (PERPETUO, *et. al*, 2018, p. 14).

All of these principles must be used to reach consensus between the parties, which is the central focus of mediation. The parties must, through conversation, find the best solution to their problems, with the help of the mediator, who must act with extreme good faith, justifying the trust placed in him by the parties involved, with the latter having the guarantee that what was treated there will be covered by the principle of confidentiality.

Although these are just the principles listed in the law that regulates mediation, as already informed, this is not an exhaustive list, and the general principles of law, as well as those specific to the area, must always be respected, so that the fundamental right to human dignity is always guaranteed in the mediation process.

Having made these considerations about the institute of conflict mediation, as well as the principles that govern it, we begin to analyze its applicability in the management of public security.

## 2.2 CONFLICT MEDIATION AND PUBLIC SAFETY

As already exhaustively analyzed, the violence and crime rates prove that the current, and considered traditional, model of tackling such problems is not having its expected effects.

It is in this environment that the institute of conflict mediation emerges as a new tool available to managers to face this delicate issue of public security.

Despite already being widely used in the civil sphere, managers are taking a liking to using it in the criminal area. Mediation allows those involved to sit down and discuss the real reasons why they are not able to live in harmony. We are not trying to find out who is right or wrong in the eyes of the law, but rather, confronting the root causes

of the problem, so that the parties reach an agreement and that no more problems arise from this relationship.

It should be noted that the simple penalization of a certain offender is not capable of generating such effects, as there is no tackling the problem in its essence, and, after a certain time, new frictions will probably arise, considering that the problem has not been addressed term. In that regard:

They also act not only in the resolution, but also in the prevention of conflicts, insofar as the participants, instead of being constrained by the inescapable decision of a third party, as occurs with hetero compositional methods, are the authors of the agreement themselves. In this way, they are given the opportunity to recover their autonomy, with the expansion of their analytical and decision-making capacity, based on the recognition of their needs and potential, through training in collaborative dialogue and negotiation techniques, so that they can pass to dispense with the Judiciary to resolve possible new conflicts (ALMEIDA, PELAJO; JONATHAN, 2016, p. 67).

The principles that guide mediation, especially the autonomy of will, informality and orality create favorable conditions for those involved to move towards an agreement that can effectively end the problem in its essence.

Less complex problems, related to the population's daily life, and the relationship between relatives and neighbors are examples of conflicts that can be resolved at their origin, through mediation policies, restorative justice and community police. By bringing people closer to security agencies and creating suitable means for mediation, countless social conflicts can be resolved, thus preventing them from turning into violence and crimes.

## CONCLUSION

In view of all the above, we can see that the problem of public security has always been, and continues to be, an extremely delicate problem to be faced by managers. Violence and crime rates prove that the traditional model of coping is not being able to cope.

Simply penalizing an individual after committing an offense is not a capable and sufficient means of preventing new crimes from being committed, given that there is no real confrontation of the problem. On the other hand, the institute of conflict mediation

presents itself as a tool of great importance for combating the insecurity that plagues society.

Principles such as autonomy of will, informality and orality provide favorable conditions for those involved to move towards an agreement that can effectively end the problem in its essence.

The use of this institute, combined with public policies aimed at restorative justice and community police, can bring great advances to public security, as they bring the population closer to security agencies and, at the same time, less complex problems in the population's daily lives, relationships between relatives and neighbors can be resolved through dialogue, preventing their evolution into violence and crimes.

Such actions are of great value and can greatly contribute to the State being able to provide more security to the population, as well as giving greater trust and credibility to state bodies that work in this area, making the feeling of insecurity that perpetuates in our society increasingly smaller.

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ISSN 2675-9128  
DOI 10.51473

Volume 4 - Número 4  
Abril de 2021