Integration project of Family Mediation in the Court of Family and Children

Alexandra Vanessa de Almeida
Official of Justice in the Region of Coimbra
Degree in Technical Superior of Justice
Postdoctoral Degree in Family Mediation

Abstract

This reflection allows us to design Family Mediation in a Family and Children Court (TFM), even if at an early stage, it is only on an experimental basis.

We can verify that for Family Mediation to work, exceptional physical conditions are not necessary and the means to be used are few and easily accessible.

As for the benefits that Family Mediation could bring about by operating in a TFM, these are enormous and endless. From lowering the pendency of a Family and Juvenile Court, resolving parental conflict at an early stage, avoiding the successive defaults that “clog” sections of court cases among many other advantages.

Mediation is the future, and when we have the couple to talk, without conflict, we have a happy child with a promising future and that is indeed the most important.

Introduction

At present, there are different types of family, noting the increase in single-parent families, associated with the high number of divorces and the decrease in the number of marriages. The exercise of parenting continues in the post-separation or divorce phase and it is up to both parents to take shared responsibility in their children's lives.

It is fundamental to regulate the exercise of parental responsibilities, among other aspects on which we will speak later, and it is here that there are often serious conflicts between the couple that lead to the enormous suffering of their children.

Going to Family Measurement makes the difference, it emerges as an alternative means of settling disputes, through which two or more parties voluntarily seek the assistance of a third
party, impartial, independent and devoid of enforcement powers, the construction of an agreement concerning the subject-matter of the dispute.

This agreement must be satisfactory to both parties in order to put an end to the existing conflict.

Family Mediation, an extrajudicial process of conflict resolution, used in situations of separation and divorce, brings advantages to the family and their relationships, which can thus translate into added value for families.

We will then frame, explain and demonstrate how Family Mediation can help families by being included in a Family and Juvenile Court and most importantly, respecting the best interests of children.

**Family Mediation VS Technical Assistance to the Courts**

**Family Mediation in Courts**

As we know, conflict is a process: it builds and deconstructs itself and Family Mediation contributes to its deconstruction.

In mediation we work on the perspective that conflict has a transformative potential, and therefore, it is ALWAYS voluntary and does not result when imposed.

**The objectives of Family Mediation are:**

- that the couple maintain decision-making capacity over the family organization;
- reduce existing conflicts by facilitating communication;
- identify and clarify the specificity of each situation using specific techniques;
- make possible a more adequate use of the legal system, contributing to the elaboration of a family agreement that can be legally approved.

**Technical advisory services to the courts**

The objectives of the Technical Assistance are:

- support the instruction of the Civil Guardian Processes and their incidents;
- support children involved in the processes;
- give the necessary input so that the Judge can reasonably decide. The solution of the conflict is in the Judge's hand.
The Technical Assistance to the Courts should prevail over Family Mediation whenever there is suspicion of family violence (physical and/or emotional). In these cases, it is fundamental to identify the personality characteristics of the aggressors (empathic deficit, reduced resistance to frustration, high impulsiveness and emotional dependence) through a psychological evaluation.

The fact that they generally have a borderline personality and try to please people (to whom they are not affectionately attached) generally induces technicians to believe in their version of the conflict and their role as victims, which makes psychological assessment indispensable.

What is the responsibility of each of these answers

It is incumbent upon Family Mediation:

• Help the couple in the breakup phase, whether they are living in the same house or in different housing.
• The intention is to elaborate the agreements that satisfy the needs of the various elements of the family.
• Contributing in this way to its reorganization and recovery of a stable and functional balance.
• In this period of transformation and crisis, it is fundamental to create functional autonomy in order to strengthen the emotional, physical and financial autonomy of families, improving the balance of their new family and social reality.
• Balance achieved through a process of learning new ways of resolving conflicts.
• Gradually fostering the autonomy and functional maturation of family mechanics without the need for third-party intervention in the same resolution.
• In short the conflict perspective solved.
• The couple overcomes the conflict and resumes their ability to decide.
• What will facilitate future adjustments, with the reality of the lesson learned, enabling the actors for possible future situations, certainly contributing to a less conflictive society.
It is the responsibility of the Technical Advisers to the Courts:

- Support the education of civil suits and their incidents.
- Assess the family's ability to meet the material, relational and psycho-affective needs of minors.
- Assess the specific needs and needs of minors.
- Evaluate the relation of the minor with the Parents / Guardians / Educators.
- Prepare social reports for diagnostic evaluation.
- Draw up intervention plans and follow-up reports in the scope of the Procedures for Regulation of the Exercise of Parental Responsibilities, Insertion of Guardianship, Inhibition of the Exercise of Parental Responsibilities, or other, superiorly designated.
- Intervene in a court hearing / parental conference, accompany meetings / supervised visits and follow court deliveries.
- This advice makes it possible to continue to exist the couple's lack of skills to self-resolve conflict in a family environment.
- And it always makes it necessary to have the intervention of third parties in resolving the couple's conflicts.

"If you give a fish to a hungry man, you will feed him for a day. If you teach him to fish, you will feed him all his life."

Anne Ritchie

When conflict perpetuates and prevents parental responsibilities from being adequately taken care of, children often have emotional / emotional difficulties, such as insecurity, low self-esteem, psychosomatic symptoms, systematic opposition behaviors, difficulties in adapting, social isolation, etc.

In what cases can Family Mediation be used?

- Regulation or alteration and non-compliance with the exercise of parental responsibilities;
- Divorce and separation of people and property;
- Conversion of separation of persons and property into divorce;
- Reconciliation of separated spouses;
• Allocation and alteration of food, provisional or definitive;
• Deprivation of the right to use the surnames of the other spouse and authorization to use the surname of the former spouse;
• Assignment of family home.

How Family Mediation Works

• Parties having a dispute in the family relationship may, voluntarily and by joint decision, submit the dispute to mediation.
• The judge may, at the request of the parties or on their own initiative, after obtaining their consent, determine the intervention of the mediation, as determined by Article 24 of the New Regime of the Civil Protection Process, approved by Law 141/2015, of 8 September.
• Whenever mediation results in an agreement, the Judge must verify if it satisfies the child's interest and, if so, approves it.
• In order for the remaining agreements obtained through mediation to be valid in court, they must be approved by the Judge or presented at the conservatory, as the case may be.

Costs for parties

• The use of the Family Mediation System (SMF) has a cost of € 50 for each party, regardless of the number of mediation sessions. There may be no payment of this fee when the Judge decides to intervene in the mediation or when legal aid is granted to one or both parties, specifically for family mediation.

Mediator's Fees

a) € 120, when the process is concluded by agreement of the parties reached through mediation;
b) € 100, when the parties do not agree on mediation;
(c) € 25, where, in spite of the diligence evidenced by the mediator, no consent is obtained, it is found that the parties do not meet the conditions for participation in the mediation or in case of some type of impediment on the part of the mediator of conflicts.
Practical application in Family and Juvenile Courts

In spite of the Family Mediation, if it was legislated and planned some years ago, it was from September 2015, through Law 141/2015 of 8 September, which became an integral part of the General Regime of the Civil Protection and as of this date, there was a great demand for mediation by the courts, thus:

• Once the case has been brought to court, the judges, with the vast experience and sensitivity they have, after examining the case or at a conference, are able to see which couples are there is latent conflict.

• In light of this conflict that may exist, and if the parties agree, the Judge may refer them to Family Mediation.

• It is true that mediation is voluntary and the parties must agree to mediation, but if the case is referred by the Judge, with the information that mediation is something that will allow them to talk, in order to reach the best solution for their children and for themselves, certainly the parties will be available for mediation.

• It was even useful that a Pre-Mediation be mandatory for all couples, where all the advantages of Family Mediation would be explained, because there is a great lack of knowledge of the population about this alternative litigation resolution.

• The burden of judicial stigma is removed, enabling a less formal environment, facilitating conflict resolution.

• It is suggested that the Magistrates demonstrate the success of Family Mediation by advising the parties as an alternative to follow.

• The affirmation and credibility of the judges will make the difference between the acceptance of this new alternative of settlement of extrajudicial disputes by the interveners.

• In short, FAMILY MEDIATION is the fastest, most effective, economic and non-bureaucratic alternative.

. The Mediation currently used by the Courts is the Public Family Mediation System (SPMF), sending an e-mail to the Directorate General of Justice Policy (DGPJ) to request the appointment of a Mediator.

. But, as can be seen in article 24 of Law no. 141/2015 of 8 September, the Judge may appeal to both the Public System and a Private Mediator:
"In any state of the case and whenever it deems it appropriate, in particular in the process of regulating the exercise of parental responsibilities, the court may decide, with the consent of the interested parties or at their request, to intervene in public or private mediation services."

Project for the Family and Children Court

Being the official subscriber of Justice in the County of Coimbra, and having the real notion of what is happening in a Court of Family and Minors, it is urgent to implement Family Mediation in the courts, even if it is experimental, certainly the results in the medium / long term will be those of less processes, because the existing conflict between couples is improved and even completely remedied through Family Mediation.

- To reduce the time that the Judges are to make conferences or judgments, allowing time for them to dismiss cases and expedite them.
- The Family and Juvenile Court must have a mediation office, which will operate by appointment, with a full-time mediator.
- After screening of the Magistrates, the Magistrates must understand the processes that can be re-routed to Family Mediation.
- There should be a quiet room with a table (preferably round), equipped with a computer and a printer in the premises of the Court of Family and Minors.
- It would also be important to have a room for the children, with some toys, crayons, leaves, games, in case it is necessary to listen to them. With the authorization of the parents, the child can be heard.
- Proceedings must be sent to the family mediator present by e-mail, containing only the names and telephone contacts of the parties, or if the Judge so wishes, can immediately present the mediator to the parties.
- The family mediator will contact the parties, scheduling a day and an hour to start mediation.
- The parties only have to go to the TFM, not needing to travel to other places, centralizing all the proceedings in court, but in a more informal way, thus removing the burden of judicial stigma.
- Through the mediation and exercises that together they will do, the parties get another perception of the conflict, even if there is no agreement, the conflict tends to drop significantly, because it places the parties talking to each other.
• The Family Mediation is fundamental in cases of parental alienation, close follow-up of the couple, putting them to communicate about what disturbs them, will cause the conflict to diminish or disappear in its totality, getting an agreement that is actually fulfilled for both, to meet their expectations as a parental couple, without ever forgetting the superior interest of the child.

• The agreement is worked and negotiated with both parties, an agreement that follows the legal procedures, and which, after being done, only requires the homologation of the Judge.

• The mediator draws up the agreement from the first to the last line, thus taking the work of the magistrates and the Justice Officers.

• This is a way to rationalize resources and human resources, obtaining results that in the medium/long term will make a difference in a Court of Family and Minors, with a substantial decrease in pending and with happy parents and children.

References

- António José Fialho - “Guia Prático do Divórcio e das Responsabilidades Parentais” - Centro de Estudos Judiciários
- Rita Severino – “Mediação Familiar em Portugal – As ruturas conjugais e as responsabilidades parentais” – Universidade Católica – Lisboa – 2012
- www.dgpj.mj.pt/sections/gral
- Lei n.º 29/2013 de 19 de Abril
- Lei 141/2015 de 8 de Setembro
- Código Civil – 20ª Edição – Porto Editora