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From Ideal to Reality: Alternative Dispute Resolution and Its Implementation in Brazilian Supreme Courts

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Abstract

With more than 200 million inhabitants, Brazil is one of the most populous countries in the world, but it also has one of the most congested judicial systems in the world. The data don't deny it: the expressive volume of cases processed in the Brazilian legal system reflects a culture that has long associated access to justice exclusively with the traditional judicial route. However, this reality has revealed a fact: the state justice system is no longer the only way to resolve conflicts, and it is necessary to rethink the mechanisms for resolving disputes. This has paved the way for the strengthening of alternative methods of conflict resolution, which were initially seen as timid but now play an important role in conflict resolution. This Article then looks at the practical implementation of these methods in the Brazilian Supreme Courts, focusing on institutions such as the Superior Court of Justice, the Superior Labour Court, and the Federal Supreme Court, analyzing their regulations, institutional practices, and the results obtained. By showing how these mechanisms have been incorporated into forensic practice, the Article highlights the importance of adopting and constantly strengthening multi-door justice in Brazil, prioritizing dialogue and social pacification as pillars for a more efficient and harmonious system of access to justice.

Keywords

Brazilian Judiciary, Judicial Governance, Access to Justice, Multiport Justice, National Council of Justice, Alternative Dispute Resolution, Mediation, Conciliation, Arbitration

1. Introduction

Brazil has millions of pending cases—83.8 million to be exact, according to the

National Council of Justice for the year 2023. There are many reasons for this high number: first of all, it should be noted that the 1988 Constitution provided an important guarantee for the protection of rights and access to justice, with the guarantee that no violation or threat to a right will not be reviewed by the judiciary (Article 5, XXXV). It also organized the Public Defender's Office in a more structured way, guaranteeing legal aid to low-income citizens and providing that all citizens who duly prove that they have no resources shall receive full and free legal aid (Article 5, LXXIV).

In addition, in 1990, the Consumer Defense Act was enacted, which established a microsystem of collective rights in Brazil and began to protect many of the claims that were repeatedly brought before the judiciary due to the massification of consumer relations. In 1995, Law No. 9099 guaranteed citizens the possibility of exercising their right to sue in certain situations, free of charge and without the need to hire a lawyer.

Although the benefits of broad access to justice in Brazil are numerous—such as reducing inequalities, protecting fundamental rights, and strengthening citizenship—the fact is that the judiciary is unable to adequately meet these demands. The number of judges, civil servants, and other court staff is limited and insufficient to deal with the thousands of cases in progress. And this lack of preparedness comes at a cost: not only financially—maintaining an increasingly bloated judicial machine—but also in terms of the quality of the judicial service. With more cases than can be processed, there is a greater risk of mistakes being made, whether on the part of the clerks, who are caught up in the bureaucracy of processing cases, or on the part of the judges, who often fail to analyze the factual and legal circumstances of each case more thoroughly and, as a result, fail to deliver the judicial excellence that is expected of them.

As we can see, there is a clear paradox in the Brazilian reality: broad access to justice has led to an avalanche of lawsuits in the judiciary, slowing down the entire legal system, and the delay in providing justice—which may still be provided in a flawed way—is a form of injustice. It was, therefore, necessary to rethink the way in which so many conflicts could be managed and dealt with in an appropriate manner. Henrique Ávila and Tricia Navarro Xavier Cabral point out that a change in judicial governance was needed to deal with these problems. One of the solutions created was the figure of the judge-manager, who "optimizes the functioning of the judicial units through rational and reasoned decisions that seek to satisfy the needs of the jurisdictions" (Ávila & Cabral, 2022).

The creation of the National Council of the Judiciary, following Constitutional Amendment No. 45/2004, has also played an important role in improving the management of the Brazilian judiciary. Its objectives include the control of the administrative and financial activities of the judiciary and the fulfilment of the functional duties of judges. These objectives are to be achieved through the autonomy of the judiciary, the observance of the Statute of the Judiciary, the preparation of statistical reports on the judgments handed down by each unit of the

Federation in the different organs of the judiciary, and reports proposing the necessary measures on the situation of the judiciary in the country and on the activities of the Council (Article 103-B, § 4, items I, VI and VII).

This Council played an important role in diagnosing the need for mechanisms to resolve conflicts other than through the courts, especially in cases where the parties would have a relationship after the outcome of the conflict that fell upon them, and it was necessary to achieve something more difficult, which is social pacification, having created the National Public Policy for the Adequate Treatment of Conflicts of Interest through Resolution 125 of 2010, which will be discussed below. However, before detailing the important normative role played by this Council, it is important to contextualize the arrival of multi-door justice in the Brazilian legal system.

2. The Impact of Globalization and the Evolution of Conflict Resolution Methods

The effects of globalization have made human relationships more complex, and the diversity of interests and values of each individual has also made life in society more conflictual, with the number of disputes gradually increasing. It was in this context that Harvard Law School Professor Frank Sander gave a lecture in 1976 entitled "Varieties of Conflict Processing", in which he defended the possibility of using forms of conflict resolution other than the judiciary to curb the high level of litigation. This was the birth of alternative dispute resolution, which showed that the judiciary was no longer the sole and exclusive means of resolving disputes.

Sander's proposal was consolidated in the creation of the so-called Alternative Dispute Resolution (ADR) methods. These methods are in line with the famous waves of access to justice envisaged by Mauro Cappelletti and Bryant Garth, who identified three major phases in the evolution of access to justice: the first, on legal aid for the underprivileged, reflects a time when the priority was to make access to justice available to everyone, including those who could not afford it. At that time, it was important to democratize access to justice by removing the financial barriers that prevented people from exercising this right.

In the second phase, it was necessary to extend legal representation beyond individual interests to include diffuse and collective rights. In the Brazilian case, as already mentioned, one of the most important milestones in this movement was consumer law, with the enactment of the Consumer Defense Code in 1990. This legislation not only guaranteed the protection of consumers, but also made possible the collective defense of rights, allowing associations and organizations to represent diffuse interests in court. This extension ensured that conflicts affecting thousands of citizens could be dealt with more efficiently and adequately.

Finally, the third phase proposes that access to justice should go beyond mere access to the courts and seek solutions that are faster, more effective, and more responsive to citizens' needs. This concept argues that state jurisdiction is not the only legitimate means of resolving conflicts, and it values consensual methods such as

mediation and arbitration in close dialogue with the idea put forward by Sander.

In this sense, Candido Dinamarco points out that in order to fully achieve access to justice, it is necessary to "eliminate the evils that oppose the universalization of legal protection and to improve the system internally, so that it is faster and more effective in offering fair and effective solutions". He adds: "Access to justice is not the same as simply going to court [...] it is necessary that the claims brought before the judges actually reach a substantive decision" (Dinamarco, 2024). Furthermore, Kazuo Watanabe points out that these mechanisms "should not be studied and organized as a solution to the crisis of the slow pace of justice, as a way of reducing the number of cases accumulated in the judiciary, but as methods of dealing more adequately with the conflicts of interest that arise in society" (Watanabe, 2022).

Following Frank Sander's line, the National Council of the Judiciary issued Resolution No. 125/2020 to consolidate alternative methods of conflict resolution as another option for the judiciary in cases where the conflict in question is suitable to be resolved through these channels. Again, Professor Watanabe teaches that "the reduction of procedures will be a necessary result of their successful adoption, but not their primary scope" (Watanabe, 2022).

3. Resolution 125/2010 of the National Council of Justice

Resolution No. 125/2010 establishes the National Judicial Policy for the adequate treatment of conflicts of interest within the scope of the judiciary and updates the concept of access to justice. From the very first Article, the resolution emphasises that all citizens are guaranteed the resolution of conflicts by means appropriate to their nature and peculiarity, in addition to emphasising in the only paragraph that judicial bodies must provide assistance and guidance to citizens.

It is undeniable that the wording proposes a broadening of access to justice, not only as "access to justice", but as a right to justice in the broad sense, which includes a more transformative vision of this concept. The needs of the parties are suited to any type of conflict resolution, even in simpler matters where the citizen is simply seeking clarification of doubts or uncertainties.

It is in this context that the two instruments that form the pillars of the Resolution in question emerge: conciliation and mediation. Although they have the same purpose, there are important differences. While the former is preferably used in situations where there is no prior relationship between the parties, the latter must have such a relationship. The Code of Civil Procedure, which entered into force in 2015, in Article 165, expressly opted for the use of the word "preferably" in order to make the choice of the instrument to be adopted by the parties more flexible, also in line with the spirit that guides these two Institutes.

In line with the Resolution, the Code also sought to promote other forms of conflict resolution by stating in Article 3 that conciliation, mediation, and other methods of consensual conflict resolution should be encouraged by judges, lawyers, public defenders, and members of the Public Prosecution Service, including

in the course of judicial proceedings. Article 139, item V, continues in the same vein, stipulating that the judge shall at all times encourage the parties to settle their disputes themselves, preferably with the assistance of conciliators and judicial mediators. Article 168 states that the parties may choose, by mutual agreement, a conciliator, a mediator, or a Private Chamber of Conciliation and Mediation, the first two of which may or may not be registered with the competent court (§ 1).

There is, therefore, a whole set of rules to ensure that the outcome of the dispute is not only satisfactory to the parties involved, but that there is an effective settlement of the dispute in question, which would be more difficult to achieve if it came from the state jurisdiction, which imposes decisions based on the judge's interpretation of the dispute presented to him.

Still, on the subject of Resolution No. 125/2010, it is clear that it establishes innovative guidelines. Article 3 establishes that the National Council of Justice shall assist the courts in the implementation of the services described in Article 1, in particular in the training and accreditation of mediators and conciliators and in the conduct of mediations and conciliations

Another important innovation of the Resolution was the creation of Judicial Centres for Conflict Resolution and Citizenship—CEJUSCs, which consist of centres set up within the courts to manage conciliation and mediation sessions and hearings conducted by conciliators and mediators and to provide assistance and advice to citizens (Article 8). These centres must be set up in places where there are already courts and tribunals for holding such hearings. Where these don't exist, which is particularly the case in the interior of the country, the resolution provides for the possibility of "travelling conciliation and mediation", using mediators and conciliators registered with the courts. The centres must also include sections for pre-litigation conflicts, litigation conflicts, and citizenship (Article 10), may be staffed by public prosecutors, public defenders, lawyers, and advocates (Article 11), and must have at least one server working exclusively there (Article 9, § 3).

It is important to emphasise the progress that came after the Resolution. Especially, we will focus on the progress made in setting up CEJUSCs by looking at the numbers. By the end of 2023, there were 1930 CEJUSCs across Brazil, primarily in State Courts, totaling 1724 units (89.3%). The remaining 129 CEJUSCs (6.7%) were located in Labour Courts, and 77 (4%) were located in Federal Courts. For comparison, in 2014, there were 362 CEJUSCs; this figure grew by 80.7% to reach 654 centres in 2015. By 2016, this figure had increased to 808, reaching 1724 by 2023. In other words, over the course of nine years, the number of centres has essentially quintupled.

The Resolution also sets out, in its annex, the curricular guidelines for the training of conciliators and mediators to be registered by the courts. The course is designed to train and improve professionals to work in the CEJUSCs, and even before registration, third-party mediators must have two years' cumulative experience in conciliation or mediation, be over 21 years of age, and have a university degree. Once these conditions have been met, the course is divided into two stages,

one theoretical and the other practical, with a minimum of 40 hours for the first and 60 hours for the second.

There is also the possibility of private conciliation and mediation chambers, which must be registered with the relevant courts or with the National Register of Judicial Mediators and Conciliators, holding sessions in connection with court proceedings. The Code of Civil Procedure provides that both the courts and the Registry must keep a register of qualified professionals, indicating their areas of expertise (Article 167). In addition, the courts must determine the percentage of unpaid hearings to be assisted by private conciliation and mediation chambers in order to deal with cases in which free legal aid has been granted in exchange for their accreditation (Article 12-D of the Resolution).

Also, in 2015, Law No. 13,140 was enacted, which provides mediation between private individuals as a means of resolving disputes and for the self-composition of conflicts within the public administration. It is clear that no one is obliged to remain in a mediation procedure (Article 2, § 2), and that only part of the conflict may be submitted to mediation, and it is not necessary that the whole conflict be submitted to mediation (Article 3, § 1). The Code also stipulates that mediation must be confidential, which applies to all the content produced therein, and that its content may not be used for any purpose other than that provided for by the express agreement of the parties (Article 166, § 1).

An important development introduced by Resolution No. 125/2020 is the concept of 'community mediation', which the Permanent Centres for Consensual Methods of Conflict Resolution should encourage (Article 7, Paragraph 2). This type of mediation deals with conflicts confined to a particular community and its residents, enabling them to resolve the conflict together. Empirical data shows that, since 2011 (one year after the resolution was issued), there has been an increase in the number of programmes using this type of mediation (Mourão & Naidin, 2019). This reinforces the fact that the resolution has definitely encouraged this practice, even if it did not originate it. The first law to regulate community mediation was Law No. 8.161/2004 in the state of Mato Grosso. Other legislation was introduced by state public prosecutors' offices: in Ceará was created the "Community Mediation Center Programme" through Resolution No. 01/2007, while in Maranhão was introduced the "Incentive for the Implementation of Community Mediation Center of the State Public Prosecutor's Office" through Resolution No. 28/2015.

Undoubtedly, one of the biggest challenges for mediation and conciliation is still their expansion throughout Brazil, so that all Brazilians can actually have access to these methods. The lack of structure is particularly acute in states in the north and northeast of Brazil, which have many rural and inland areas dominated by people on low incomes who are unaware of ADR. The National Council of Justice publishes the 'Justice in Numbers' report every year, which provides an overview of the figures for the national judiciary, seeking to give publicity and transparency to the Brazilian public administration. In the 2024 report, data from the year 2023 showed that in the state of Roraima (in the north of Brazil), the

Court of Justice has only 4 CEJUSCs. Moreover, in the Labour Courts of the 13th and 19th Regions, which respectively cover the states of Paraíba and Alagoas (both in the north-east of Brazil), there are no CEJUSCs at all. The same is also observed in the Regional Court of the 3rd Region, which covers the states of São Paulo and Mato Grosso do Sul, where there are no CEJUSCs (Conselho Nacional de Justiça, 2024). The latter court is located in the southeast of Brazil, its richest region, and no reasonable justification can be found for this serious omission.

From all of the above, it is clear that the main principle guiding both mediation and conciliation is that of self-regulation, which consists of the parties working together to determine the best solution to the legal dispute. Although the conciliator has a more active role than the mediator and can propose alternatives for resolving the conflict, this principle still prevails, and the parties can accept or reject the proposals made. Here, the parties are the absolute protagonists of the process, and for this reason, Fredie Didier states that "the mediator and the conciliator are therefore prohibited from forcing the interested parties to compose themselves" (Didier Jr., 2023).

In this public policy, therefore, alternative means of resolving conflicts, especially consensual ones such as conciliation and mediation, play an important role. However, its purpose is broader and not limited to the implementation of these two instruments. Although the Resolution does not mention arbitration, this alternative method should also be promoted in light of this normative act. The appointment of an impartial third party to act in an arbitration procedure and the choice of this alternative route is already an element that reduces the potential hostility between the parties, even if the decisions taken during the procedure do not satisfy the wishes of all of them.

For this reason, and in line with the spirit of understanding promoted by the Resolution, arbitration can also be included in the policy of consensual conflict resolution.

Arbitration in Brazil: Progress, Limitations, and Comparisons with Other Consensual Methods of Conflict Resolution

Arbitration is a means of resolving conflicts that is similar, but not identical, to the judicial system. Here, the parties place their trust in a third party, in this case, the arbitrator, who is the same as a full judge, to resolve the dispute submitted to him. Although the judiciary still has a monopoly on coercive enforcement, in other words, if the losing party does not comply with the award voluntarily, the arbitrator is given the other powers inherent in the judiciary, just like state judges.

Arbitration is used in particular for complex disputes involving technical issues that require special attention and in-depth analysis that state judges, who are often overburdened with court cases, cannot provide. Thus, not only the possibility of choosing arbitrators specialized in the matter in dispute, but also their greater availability compared to state judges makes this procedure preferable for resolving conflicts in sectors such as construction, the financial market, and energy.

The Brazilian legislature has sought to strengthen and promote the use of arbitration in the context of the multi-door justice system. In addition to Law 9307/1996, which regulates the institution in Brazil, Article 515.VII of the Code of Civil Procedure provides that a domestic arbitral award is an enforceable title like a court judgment and does not need to be ratified by the judiciary in order to take effect.

Notably, in the Brazilian case, not all disputes can be submitted to arbitration. Article 1 of the Brazilian Arbitration Law states that persons capable of contracting may use arbitration to settle disputes relating to existing property rights. From this wording, it can be concluded that disputes to be submitted to arbitration must meet the requirements of subjective and objective arbitrability. With regard to the former, Antonio José de Mattos Neto argues that "the subjective right is the power attributed to the will of the subject and guaranteed by the legal system for the satisfaction of one's own interests".

The debate about which conflicts can and cannot be submitted to arbitration is highly controversial. André Luís Monteiro believes that the Brazilian legal system, for the purposes of objective arbitrability, adopts the terms of Article 852 of the Civil Code, which states that it is forbidden to enter into an agreement to settle matters of status, personal family law, and other matters that are not strictly patrimonial in nature. Thus, in the author's view, conflicts relating to property rights and rights in rem may be submitted to arbitration in Brazil (Monteiro, 2018).

From this point of view, the central question of the discussion would be the concept of "strictly patrimonial" in Article 852 of the Civil Code. From the outset, it can be said that not all property rights are available. Antonio José de Mattos Neto argues that "patrimonial means pecuniary, but not everything that represents economic utility is available" (Mattos Neto, 2005). The author's work, based on an exclusionary reading of what is determined by Article 1 of Law No. 9307/1996, discusses which rights are not available under Brazilian law and, therefore, cannot be submitted to arbitration. According to him, there are 11 rights excluded from Brazilian arbitration law, ranging from personal rights to matters related to antitrust law.

The debate is long, and there is no clear consensus. The fact is that matters that were previously unthinkable to be submitted to arbitration, such as meta-individual rights and credit issues related to judicial recovery and bankruptcy, have found an alternative to the judiciary in arbitration. Finally, the great flexibility of the procedure allows the arbitral tribunal and the parties to adapt it to the specificities of each case.

In addition to the issue of unavailability of rights, another factor that undoubtedly keeps many disputes away from arbitration is the cost of arbitration, and that has a significant impact, especially for low-income individuals and small companies, because either they will not be able to afford the costs or the high sums to be paid to the arbitration centers will not worth the use of arbitration. An analysis of the 2024 Cost Regulations of the Brazilian Centre for Mediation and Arbitration (CBMA), one of the main arbitration chambers in Brazil, shows that an arbitration

case of up to R$500,000.00 will cost no less than R$69,000.00 in administrative fees and the fees of the arbitrators who will make up the tribunal. Although arbitration was not designed to relieve the judiciary, it could reach an even greater number of litigants if costs were more flexible or if arbitral chambers were created specifically for small and medium-sized disputes, possibly reaching smaller companies. Simplified or accelerated arbitration, involving a single arbitrator and shorter procedural deadlines, is currently gaining ground in international arbitration centers. An example is the London Court of International Arbitration (LCIA) Rules of Arbitration, which provide for this type of procedure in Section 11.3.

Unlike Resolution No. 125/2010, there is no standardised rule governing the training of arbitrators in the Arbitration Chambers. It is up to each Chamber to set its own requirements for allowing people to work as arbitrators in proceedings before the Chambers. Typically, the regulations do not stipulate any particular criteria; it suffices that the arbitrator is trusted by the parties.

Compared to mediation and conciliation, arbitration is a method that has peculiarities that distinguish it from these other forms of conflict resolution, but it has a great advantage in that Brazil is a signatory to the New York Convention, by virtue of Decree No. 4.311/2002. As such, the Superior Court of Justice is responsible for ratifying foreign judgments—judicial or arbitral—as long as they comply with due process of law, are in accordance with Brazilian public policy and, in the case of arbitration, there is a valid arbitration agreement.

In the case of mediation, Brazil is a signatory to the Singapore Convention, which applies to any agreement resulting from mediation concluded in writing by the parties for the purpose of settling a commercial dispute between at least two parties from different countries. The Convention does not apply to the resolution of disputes in which one of the parties participates for personal purposes or which relate to family, inheritance, or labour law.

After this overview of the difference between the methods, Candido Dinamarco makes an important point about the jurisdiction between them: in arbitration, the arbitrators "decide imperatively with the support of a power that does not come from sovereignty, as is the case with state judges, but from an authentic power granted to them by the parties to the dispute when they express their will to use the arbitration methods". In conciliation and mediation, "the mediator and the conciliator do not exercise jurisdiction, but, each in his or her own way, assist the litigants and guide their understanding towards solutions that are acceptable to both" (Dinamarco, 2024).

4. Mediation, Conciliation and Arbitration in Public Administration: Overcoming the Paradigm of Unavailability

In Brazil, empirical data shows that the public administration is a major litigant in ongoing claims. At first glance, one might think that disputes involving state assets could not be submitted to arbitration because the public administration would not subordinate its sovereignty to private courts, but only to state courts.

According to this line of reasoning, there would be an incompatibility between the apparent unavailability of the public interest and the adoption of private rules and rites to settle inherent disputes.

However, this view does not correspond to the current understanding. Although the principle of unavailability is one of the foundations of administrative law and establishes that the public administration cannot dispose of the public interest, since it does not belong to it but to the community, not every administrative contract involves unavailable rights. Marcelo José Magalhães Bonicio rightly points out that "the State is not and cannot be considered as an entity with a wide discretion to dispose of its assets and rights (...)" (Bonicio, 2015). For this reason, the public administration is currently a party to various arbitration proceedings, including arbitration clauses in administrative contracts, provided that the subject matter of the contract deals exclusively with available rights.

In addition to arbitration, mediation, and conciliation are becoming increasingly important in conflicts involving the public administration. In turn, it has shown its satisfaction with these two instruments. At the federal level, Decree No. 12,091/2024 created the Federal Network for Mediation and Negotiation—Resolve, which aims to organise, promote and improve the use of conflict resolution through mediation and negotiation as management tools and to improve the implementation of public policies. This decree is aimed at mediations and negotiations involving the bodies and entities of the direct, autonomous, and basic federal public administration.

In addition, the Office of the General Counsel of the Federal Government, an executive body of the Office of the General Counsel of the Federal Government, has at its disposal the Chamber of Conciliation and Arbitration of the Federal Public Administration—CCAF, in order to settle by conciliation disputes between federal public administration bodies, between federal public administration entities or between a federal public administration body and a federal public administration entity; between federal public administration bodies or entities and the States, the Federal District or the Municipalities or their public bodies or foundations; between federal public administration bodies or entities and federal public or mixed capital companies; and between private individuals and federal public administration bodies or entities, in specific cases provided for by law. This Chamber was created by Decree No. 10,608/2021—now repealed—and regulated by AGU Decree No. 24/2021 and, according to figures published in the press, has enabled the Federal Government to negotiate R$278.5 billion (Valor Econômico, 2023).

At the state level, several public prosecutor's offices have set up what is known as the Administrative Chamber for Conflict Resolution, CASC, so that the state public administration concerned and the direct public administration bodies or autarchies of that state can hear and settle disputes. The chamber also applies to conflicts between these bodies and entities from other public administrations or private individuals. For example, the model of these Chambers has been implemented in the states of Paraná (established and regulated by State Decree No. 8473/2021), Rio de

Janeiro (established by State Decree No. 45,590/2016—now repealed—and regulated by State Law No. 9629/2022), Mato Grosso do Sul (established by State Law No. 288/2021 and regulated by PGE Resolution No. 362/2022), Santa Catarina (instituted by State Law No. 780/2021 and regulated by CONSUP Resolution No. 4/2022) and Rio Grande do Sul (instituted by State Law No. 14,794/2015 and regulated by State Decree No. 55,551/2020). In terms of numbers, for instance, Rio de Janeiro during the years 2021 and 2022 had an economy of around R$130 million with settlements in the Administrative Chamber. This is a good example of the effectiveness of ADR in Brazilian public administration.

5. The Protagonism of Higher Courts in Dispute Resolution

In addition to the scenario described above, conflict resolution methods have also advanced in Brazil's higher courts, particularly in the Superior Court of Justice (STJ), the Superior Labour Court (TST), and the Federal Supreme Court (STF).

At the STJ, which is responsible for standardising the interpretation of Brazilian federal legislation, the CEJUSC/STJ was created by STJ Resolution No. 14/2024, which seeks to reach agreements within the jurisdiction of the court. The Centre has three chambers: public law, private law, and criminal law. The first chamber focuses on dialogue with representatives of the public administration, with the aim of establishing procedures that allow for consensual solutions in cases where the administration is the plaintiff or defendant (Article 2, §1).

The Chamber of Private Law, on the other hand, aims to promote consensual solutions to individual or collective disputes and to engage in dialogue with various bodies, such as the Federal Public Prosecutor's Office and the public defenders, with economic sectors and with litigants with several appeals before the Court on the same matter, with a view to establishing procedures capable of proposing and enabling a consensual solution to the conflict (Article 2, §2). The issue of litigants with multiple appeals before the Court is particularly relevant. The STJ often deals with companies and organisations that have hundreds or even thousands of cases on similar issues. Adopting agreed practices in these cases can significantly reduce the volume of repetitive claims, thereby promoting greater procedural efficiency and reducing the Court's backlog. This policy makes it possible to prevent new cases from being brought on the same issues, allowing the Court to work more efficiently.

In addition, in an innovative way, the Criminal Chamber was established to promote the implementation of restorative practices involving the offender and, where appropriate, the victim, his or her family, and other interested parties, with the presence of representatives of the community directly or indirectly affected and one or more persons designated as restorative facilitators (Article 2, §3). The aim is to provide a more humane restorative process that values dialogue and holds the offender accountable in an alternative, and even more effective, way than simply carrying out the sentence.

The Resolution provides that when a case is referred to the CEJUSC, a screening process will be carried out to identify the nature of the conflict and to assess the

most appropriate means for a consensual resolution, which will be done by the supervisor of the relevant chamber, unless the parties have previously agreed on the choice (Article 7). This exception is important because, even in the context of a higher court, there is respect for the autonomy of the parties to choose the method of conflict resolution they consider most appropriate without any external imposition.

In the judicial sphere, the Court has already had the opportunity to confirm agreements ratified by the CEJUSC, even in the face of ministerial disagreement. In the context of a family agreement on child custody and alimony, the Public Prosecutor's Office of the State of Acre filed an appeal, claiming that the Family Court that had ruled on the case had violated the principle of prevention and that the Centre was not competent to approve the agreement. The Fourth Panel of the STJ, however, rejected the Ministry's claim, pointing out that "the coordinating judge of the CEJUSC, in the exercise of his jurisdiction, the performance of which did not involve any contested claim between the parties, but the mere voluntary and public administration of family interests, verified the expediency of the act, as well as the absence of defects or any damage to the defendants or their descendants". He went on to say that the decision in question should serve as a "paradigm for the other courts of the Federation with regard to the need to disseminate with greater intensity the culture of seeking to resolve disputes through the use of alternative methods to those of traditional legal systems" (Superior Tribunal de Justiça, 2017).

Two cases that had been dragging on for years have been brought to a satisfactory conclusion through mediations set up within the STJ. The first case involved an ex-couple whose initial appeal reached the court in 2013. In 2020, they finally reached an agreement through mediation, bringing an end to 15 court cases that had been ongoing at various levels (Superior Tribunal de Justiça, 2020). The second case, which took place in 2023, ended a dispute that began in 2007 within an hour and a half of mediation. These successful mediations were made possible by the already lengthy procedural process, the procedural uncertainties of what was yet to come, and, of course, the parties' interest in ending their respective disputes (Superior Tribunal de Justiça, 2023a).

With regard to arbitration, the Court has an important role to play as it is responsible for the ratification of foreign arbitral awards in Brazil and is the body where arbitration disputes are resolved. In this sense, the Court's support for the Institute is virtually unlimited. According to Judge Ricardo Villas Bôas Cueva, of the actions for annulment of arbitral awards that reach the Court, 99% have a favourable outcome for the arbitral tribunal (Superior Tribunal de Justiça, 2023b).

In the labour field, the TST, the Supreme Labour Court, has created the Centre for Conciliation and Public Policy Support—NACOPP/CSJT-TST, and the Judicial Centre for Consensual Methods of Dispute Resolution of the Superior Labour Court—CEJUSC/TST, which act in a complementary manner. According to Administrative Resolution No. 2395/2022, the Support Centre must, among other

things, promote the conciliation phase of collective disputes within the original jurisdiction of the Court (Article 2, item X); the Centre is responsible for adopting the necessary measures to hold mediation and conciliation hearings in individual disputes before the Court, with particular attention to global negotiations involving cases from two or more Regional Labour Courts (Article 8, item III).

The centre's success is undeniable: according to the court itself, the TST has negotiated R$500 million in conciliation hearings since its creation. The state labour courts have negotiated R$6.9 billion in more than 122,100 agreements (Tribunal Superior do Trabalho, 2024).

For a long time, arbitration was considered incompatible with the labour sphere, where conflicts were usually characterised by the worker's lack of power over the employer. However, the 2017 labour reform included the possibility of including arbitration clauses in individual labour contracts, as long as the employee's remuneration is at least twice the ceiling for benefits under the General Social Security System. Given that this ceiling will be R$8092.54 in 2025, the employee must receive a salary of at least R$16,184 for the arbitration clause to be applicable. In addition, under the law, the option to arbitrate must come from the employee; if it comes from the employer, the employee must expressly agree to it.

The arbitrability of labour rights is a sensitive issue because, prior to the legislation in question, there was not a great deal of doctrine on the subject. Fabiane Verçosa points out that "it is rare for a labour judge to take an interest in arbitration, even in the academic sphere" (Verçosa, 2019). However, in the judgment of an ordinary appeal before the TRT of the 1st Region, the rapporteur, Judge Enoque Ribeiro dos Santos, provided valuable clarification on the myth of the unavailability of labour rights: "The fact is that not all labour rights are unavailable at all times, because if they were, they could never be the subject of a transaction or even of collective bargaining. Indeed, if all rights enjoyed an absolute, intangible unavailability, there would certainly be an obstacle to the development of the legal and social order. In fact, there is no need to speak of the absolute unavailability of a right in the abstract, because it is in the specific case that the judiciary will assess whether this right is unavailable or not, analysing it and weighing it against the other rights, principles, and norms present in the legal system" (Tribunal Regional do Trabalho da 1ª Região, 2017).

Finally, at the Federal Supreme Court, Resolution No. 697/2020 established the Centre for Mediation and Conciliation—CMC, with the aim of expanding the use of consensual methods of conflict resolution, making it possible to resolve pre-litigation controversies or controversies during the proceedings, through mediation or conciliation for legal issues that fall under the jurisdiction of the STF (Article 2 and only paragraph). Attempts at mediation may be made at any stage of the procedure in cases falling within the competence of the Presidency or at the discretion of the rapporteur. In the case of pre-litigation disputes, the parties concerned must submit a request to the President of the Tribunal, provided that the cases to be submitted to the Centre fall within the original jurisdiction of the Tri-

bunal (Article 3 and only paragraph).

The Centre was responsible for the ratification of an important agreement between the Federal Government and the State of Bahia regarding the latter's exclusion from the Integrated Financial Administration System—SIAFI. The system in question is responsible for controlling the financial, budgetary, asset, and accounting execution of the direct federal public administration bodies that are included in the Union's fiscal budget. However, according to the State, its inclusion in SIAFI's list of defaulting entities and the decision to return the disputed amounts jeopardised the execution of public projects and public works. This controversy gave rise to two original civil actions before the Supreme Court, which ended with the ratification of the agreement in the original action 3303[1].

In addition to the CMC, it is also worth highlighting the creation of the Centre for the Consensual Resolution of Disputes (NUSOL), which is part of the Support for the Resolution of Disputes in the Judiciary, established by Law No. 27/2023, and whose function is to assist the Judicial Offices in the implementation of consensual solutions to procedural and pre-procedural conflicts, by holding or supporting mediation or conciliation sessions, whenever requested by the Rapporteur. At the end of 2024, the difficult dispute over the debts of the State of Rio de Janeiro was referred to this Centre, in the original action 3678[2], which also gave rise to an original civil action within the jurisdiction of the Court, challenging the clauses of the fiscal recovery agreement between the federal entities, which would jeopardise the State's coffers and cause a federal imbalance.

Since the Federal Supreme Court has the task of defending the Constitution, controversies concerning arbitration do not come before it as often as before the STJ. However, it is worth noting that even before the enactment of the Arbitration Law in 1996, the Court had already recognised the constitutionality of the institution in the Brazilian legal system, in the judgment of the Ag. SEC 5.206-7[3], although the decision in question was limited to the assessment of the arbitration agreement, without addressing issues related to arbitration clauses. Subsequently, when asked about the constitutionality of the Arbitration Law in the interlocutory appeal 52,181[4], the Court considered all the articles contained therein to be constitutional and clarified that arbitration is compatible with the constitutional provision of the non-appealability of jurisdiction, since the choice of the Institute is an exercise of the parties' autonomy in choosing an alternative to the judiciary to resolve this specific conflict.

Despite the numerous advantages of introducing multi-door justice into the Brazilian legal system, there are still challenges to be overcome. One of these is the cultural resistance of some members of society and legal actors, who still don't see

[1]Supremo Tribunal Federal (1973). Ação Originária Cível 3.303 Bahia.

[2]Supremo Tribunal Federal (1973). Ação Originária Cível 3.678 Rio de Janeiro.

[3]Supremo Tribunal Federal (2001). Agravo Regimental na Sentença Estrangeira 5.206-7 Reino da Espanha.

[4]Supremo Tribunal Federal (1973). Agravo de Instrumento 52.181 Guanabara.

these methods as a legitimate way of resolving conflicts. Kazuo Watanabe explains that this stems from the "strong dependence that Brazilians have always had on state paternalism. Many people still think that consensual means of resolving conflicts are less noble, typical of people with a less developed culture and that the noblest method is to find a solution through a judge's verdict in a court case" (Watanabe, 2022).

Cultural change is slow and does not suddenly change alongside legislative modernisation. It will take time for this mindset to change, although the positive figures relating to ADR reinforce its effectiveness in resolving certain types of conflict. The 'Justice in Numbers' report for 2024 has publicised the successful rates of mediation and conciliation. For example, conciliation has gradually increased in the enforcement stage, and the success rate in the cognizance stage of non-criminal cases at first instance is 20.9% (Conselho Nacional de Justiça, 2024). These results demonstrate not only growing trust in consensual methods but also the judiciary's increasing institutional support for their application. The prospects for Multiport Justice in Brazil are positive and signal the country's commitment to a new concept of justice that prioritises dialogue, the autonomy of the parties, and the search for peaceful and lasting solutions to conflicts.

6. Conclusion

In light of the complexities and challenges faced by the Brazilian judiciary, the implementation of alternative dispute resolution (ADR) methods has proven to be an essential step toward a more efficient, accessible, and harmonious legal system. The evolution from a purely litigation-focused culture to a multi-door justice system reflects a necessary adaptation to the growing demand for more flexible and expeditious means of conflict resolution. By incorporating mediation, conciliation, and arbitration into the legal framework, Brazil has not only alleviated the burden on the judiciary but has also fostered a culture of dialogue and cooperation, which is fundamental for long-term social pacification.

Despite these advancements, challenges remain. The persistence of cultural resistance among legal professionals and society at large continues to hinder the full acceptance of ADR methods. Many still perceive court rulings as the most legitimate form of justice, overlooking the advantages of negotiated and consensual solutions. Additionally, ensuring the proper training and qualification of mediators, conciliators, and arbitrators is crucial to maintaining the credibility and effectiveness of these mechanisms. Overcoming these obstacles requires continuous efforts from legal institutions, academia, and policymakers to promote a broader understanding of the benefits of ADR.

The experience of higher courts, particularly the Superior Court of Justice and the Federal Supreme Court, demonstrates the growing recognition of ADR as a viable and efficient approach. As Brazil continues to expand and refine its use of these mechanisms, it moves closer to achieving a more balanced and effective justice system—one that prioritizes both efficiency and fairness in the resolution of disputes.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

References

Ávila, H., & Cabral, T. N. X. (2022). Gestão judicial e solução adequada de conflitos: Um diálogo necessário. In H. Zaneti Jr., & T. N. X. Cabral (Eds.), *Justiça multiportas: Mediação, conciliação, arbitragem e outros meios de solução adequada para conflitos* (pp. 49-58). JusPodivm.

Bonicio, M. J. M. (2015). Arbitragem e Estado: Ensaio sobre litígio adequado. *Revista de Processo, 45,* 155-174.

Conselho Nacional de Justiça (CNJ) (2024). *Justiça em Números 2024*.

Didier Jr., F. (2023). *Curso de Direito Processual Civil* (Vol. 1, 25ª ed.). JusPodivm.

Dinamarco, C. R. (2024). *Instituições de Direito Processual Civil* (Vol. 1, 11ª ed.). JusPodivm.

Mattos Neto, A. J. (2005). Direitos patrimoniais disponíveis e indisponíveis à luz da lei de arbitragem. *Revista de Processo, 30,* 153-166.

Monteiro, A. L. (2018). Arbitragem, "Competência Internacional Exclusiva" e homologação de sentença arbitral estrangeira que verse sobre bens imóveis situados no Brasil. *Kluwer Law International, 15,* 7-44.

Mourão, B. M., & Naidin, S. (2019). *Mediação comunitária no Brasil: Diálogo entre conceitos e práticas*. CESeC.

Superior Tribunal de Justiça (2017, de dezembro 11). *Quarta Turma reconhece acordo em ação já sentenciada e prestigia atuação de centro de conciliação*. https://www.stj.jus.br/sites/portalp/Paginas/Comunicacao/Noticias-antigas/2017/2017-12-11_09-32_Quarta-Turma-reconhece-acordo-em-acao-ja-sentenciada-e-prestigia-atuacao-de-centro-de-conciliacao.aspx

Superior Tribunal de Justiça (2020, de junho 01). *Mediação de sucesso no STJ reforça possibilidade de solução consensual em qualquer fase do processo*. https://www.stj.jus.br/sites/portalp/Paginas/Comunicacao/Noticias/Mediacao-de-sucesso-no-STJ-reforca-possibilidade-de-solucao-consensual-em-qualquer-fase-do-processo.aspx

Superior Tribunal de Justiça (2023a, de fevereiro 23). *Acordo no STJ encerra processo de indenização que já durava mais de 15 anos*. https://www.stj.jus.br/sites/portalp/Paginas/Comunicacao/Noticias/2023/23022023-Acordo-no-STJ-encerra-processo-de-indenizacao-que-ja-durava-mais-de-15-anos.aspx

Superior Tribunal de Justiça (2023b, de novembro 27). *Seminário discute relação da Justiça estatal com a arbitragem e o papel do STJ*. https://www.stj.jus.br/sites/portalp/Paginas/Comunicacao/Noticias/2023/27112023-Seminario-discute-relacao-da-Justica-estatal-com-a-arbitragem-e-o-papel-do-STJ.aspx

Tribunal Regional do Trabalho da 1ª Região (2017). *Recurso Ordinário 0011289-92.2013.-5.01.0042 Rio de Janeiro.*

Tribunal Superior do Trabalho (2024, de abril 3). *Soluções conciliadas em centros especializados da Justiça do Trabalho movimentaram mais de R$ 7 bilhões em 2023*. https://tst.jus.br/-/tst-uniformiza-pol%C3%ADtica-de-concilia%C3%A7%C3%A3o-e-cria-centro-de-solu%C3%A7%C3%A3o-consensual-de-conflitos

Valor Econômico (2023, 5 de setembro). *Câmara de mediação da AGU resolveu R$ 278 bi em litígios*. https://valor.globo.com/legislacao/noticia/2023/09/05/camara-de-mediacao-da-agu-

resolveu-r-278-bi-em-litigios.ghtml

Verçosa, F. (2019). Arbitragem para a Resolução de Dissídios Individuais Trabalhistas. Comentário ao Acórdão Prolatado pela 5ª Turma do TST no RR 11289-92.2013.5.01.0042. Rel. Min. Breno Medeiros, J. 06.02.2019. *Revista Brasileira de Arbitragem, 16,* 122-159.

Watanabe, K. (2022). Acesso à justiça e solução pacífica dos conflitos de interesses. In H. Zaneti Jr., & T. N. X. Cabral (Eds.), *Justiça multiportas: Mediação, conciliação, arbitragem e outros meios de solução adequada para conflitos* (pp. 41-48). JusPodivm.