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# CONFLICT RESOLUTION: RISKS, BENEFITS AND IMPACTS (DOCTRINAL PRINCIPLES – AN INTRODUCTION INTO THE JUDICIARY)

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**Summary:**

In the context of the national legal system, this text seeks to provide a systemic view of mediation, conciliation and arbitration based on doctrinal principles (not in a broad way, but simplified in the conception of the judiciary). The benefits of such alternative techniques will be examined and linked to the doctrine and laws that control them. That said, due to the recognized 'slowness' of the judicial system. The objective is that mediation is used when there is a prior relationship between the parties, as it requires effort in investigating and studying the issue. Furthermore, it points directly to the proposed theme according to the primary forms of mediation and the way these disputes work and how they are examined. Therefore, we point in the direction of contradiction – where the principles of the allegation will support the conciliation that is typically used when there is no prior relationship and must effectively focus on resolving the issue (a fact proposed to the judiciary). In this way, we agree that the 'arbitrator' must take special care eventually to demonstrate that the benefits of the arbitration procedure outweigh any potential inconveniences, thus making it a quick process, with technical precision that can/could encourage its effectiveness in the judicial system - be it in a given location, or in the national territory.

**Key words:**Alternative methods. Conciliation. Mediation/Arbitration.

***Abstract:***
In the context of the national legal system, this text seeks to provide a systemic view of mediation, conciliation and arbitration from doctrinal principles (not broadly, but simplified in the conception of the judiciary). The benefits of such alternative techniques will be examined and associated with the doctrine and laws that control them. This is because of the recognized 'slowness' of the judicial system. It is thus intended that mediation is used when there is a prior relationship between the parties, because it requires effort in the investigation and study of the issue. Furthermore, it points directly to the proposed theme according to the primary forms of mediation and how these disputes work and how they are examined. Thus, we point in the direction of the adversarial - where the principles of plea-bargaining will support conciliation that is typically employed when there is no prior relationship and should effectively focus on resolving the issue (fact proposed to the judiciary). Thus, we agree that the 'arbitrator' should take special interest eventually in demonstrating that the benefits of the arbitration procedure outweigh any potential drawbacks, thus making it a fast process, with technical precision that can/will encourage its effectiveness in the judicial system - either in a given locality, or in the national territory.
**Keywords:**Alternative methods. Conciliation. Mediation/Arbitration**.**

## Introduction

Delayed justice is not justice; It is a qualified and obvious injustice, according to the eminent jurist *Rui Barbosa*. In fact, the notion that the judicial system is slow, wastes money along the way, and often serves mind like purpose of judicial provision that is already too deeply rooted in society

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Brazilian. Therefore, the good desired in life or even the part that 'dies' (lacks) without receiving it, can expire after years of waiting – on occasion, at the end of the process; pitiful.

From this perspective above, to give an idea of the situation - a process in the State Courts can take an average of 3 (three) years and 4 (four) months in the first instance; and 11 (eleven) months in the second instance, and 4 (four) years and 3 (three) months in the judicial execution phase; That said, according to the report *Justice in Numbers*, prepared by the National Council of Justice - CNJ in 2021. Therefore, it is necessary to wait more than eight years for a 'conflict' to be resolved - which is a socially worrying condition. In this way, during this provisional period the parties and the requested right itself 'disappear'; therefore, significantly adding to the large number of cases of injustice.

Furthermore, it is necessary to consider that, since the parties themselves are not capable of resolving a dispute through negotiation - the excessive reason to seek the Judiciary automatically disqualifies them; As a result, a social fabric is formed made up of people who oppose peaceful resolution and who often use the legal system as a *instrument of revenge*–we believe.

## MEDIATION AND CONCILIATION – a unilateral essence

Based on the approaches previously discussed - here we will point out the bases that correspond to unilaterality, as a rule, due to the viability of Mediation, as well as Conciliation, as they are often resolved through 'self-reinforcement' in which one side employs 'all ' the available methods, including force, to defeat another, as a result of the development and dissemination of law. Therefore, we point out here that the concept of self-reinforcement is generally defined as *take the law into your own hands*–in other words, it is based on this judicial assumption. As can be seen, for example, in article 345 of the Penal Code - which penalizes the person who uses force, even if it is to *satisfy a legitimate demand*; but, the legal system generally rejects these actions.

So, how can such disputes between the parties be resolved? The alleged direct self-composition appears as support. In this exemplified illustration, the parties resolve the impasse by themselves and without the help of others as a mediator socially established by the contexts expressed by them. Thus, an agreement can be formed in three ways, according to Lima (2021); Netto; Longo (2022): From the 1st. *Withdrawal*: in this hypothesis, the individual simply renounces the invoked right, submitting to the will of the other – it is, therefore, a unilateral act; 2. by *Transaction*: through reciprocal concessions, the parties reach a common denominator; and by 3. *Submission*: one of the parties recognizes the other's intention, ceasing to put up resistance.

In any case, it is possible that the parties need a third party to facilitate the conversation or even offer solutions; of course, if they are not able to solve the problem themselves. However, this lies the assisted indirect self-composition in accordance with the principles established by Costa (2004), as it is important to establish an understanding that the differences between conciliation and mediation, as examples of this type of dispute resolution, require attention and insight from legislators – because each case is different; each life is a life (we take here the importance of establishing the human side in the judgment of each action).

It is valid to consider that the 'pacifying conflict' is only natural and aims to achieve the ideal state of pacification of society; mediation, in turn, is a figure inherent to human nature. Therefore, as a result, most people have had the opportunity to resolve disputes amicably, as mediation is a technical attribute of justice and is mainly based on the area of expertise of the mediator who seeks to 'help' the parties understand each other's perspectives. others and reach agreements through mutual understanding; This was pointed out by Costa (2004). Therefore, as a result, the mediator is significant, since it preserves the communication of the parties – where the work does not include, however, making suggestions on how to resolve the issue.

### The effectiveness of/in the Law: principles and foundations

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Still in the same line of reasoning, we observe here the Civil Procedure Code (CPC) which provides in its art. 165, which *the mediator will preferably work in circumstances where there is a prior connection between the parties, in accordance with the meaning of the self-composition modalities*. As a result, prior to this issue, we point out here, communication is preserved, as it helps the parties to 'discover' particular solutions to mutually beneficial resolutions in accordance with Law nº 13,105/2015.

That said, the role of mediation gains ground in disputes where there is *feelings involved*, going beyond strictly economic considerations, can be deduced from the definition of the legal text, as it is through this that attempts are made to 'reconstruct social ties between the individuals involved', in addition to resolving the

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conflict, according to Cabral (2017).

From these perspectives, we also observe here the 'meaning' of the mediator – this stands out, particularly, in family law (an important context from this bias in conciliation); where it plays a fundamental role in restoring the 'broken lines of communication' and pacifying the disputes that are fierce throughout the process. However, since communication is one of the first pillars to fall when there is a problem, its usefulness extends to a series of other areas - which ends up advancing the development of society in this conceptual, contextual and analytical – historically speaking.

Therefore, after this brief digression from these fundamental pillars – it is important to consider that both mediation and conciliation are important in our society – each has its professional role, as they are outlined based on article 165, Section 2, of the CPC, but without restricting or frightening, as Law No. 13,105/2015 will also establish that it is preferable for the conciliator to act when there has never been a relationship between the parties; preponderant factor in this starting point between the parties. Therefore, as a result, while in mediation the entire conflict scenario is worked out in more detail and a lot of time is spent understanding and addressing the issues that follow; in conciliation the emphasis is on suggesting solutions. From this perspective, according to Cabral (2017), the issue is treated more superficially in conciliation and the objective of the process is essentially self-composition and not the resolution of the conflict.

Still within these details discussed here - the previous model is effective and constitutes support from the Special Civil Court that establishes its principles based on Law No. 9,099/1995, which is descriptive and aims to highlight the distinction between institutions, where under the terms of art. . 2nd of the law, conciliation will be tested in this situation whenever possible. Therefore, we must consider the following analytical perspective:*the scenario where a customer's suitcase was lost by an air operator*; There are only patrimonial interests available in this situation and there are no emotional ties. Thus, the conciliator will adopt a more proactive approach and may even make suggestions for 'potential settlement amounts', rather than focusing on the *question at hand*.

That said, the judiciary has worked to make the*mediation*and from*conciliation*a regular aside home, defending resolutions on the matter. We see that Resolution No. 125/2010, of the National Council of Justice, is unquestionably representative with the main objective of punishing such consensual methods of conflict resolution; because art. 8th, of the Normative Act, gives the courts the responsibility for establishing existing Judicial Conflict Resolution and Citizenship Centers, that is, CEJUSCs, according to the CNJ, 2010. In addition, several amendments to the aforementioned Resolution were gradually published. Therefore, it is worth considering the example of Resolution No. 2/2016, which established the duty of continuous improvement for conciliators and mediators, as well as Resolution No. 326/2020, which founded the curricular guidelines and supervised internship for these professionals – according to the CNJ (2016; 2020), just to support our current discussion.

**Arbitration – from the legal scenario: perspectives**

Regarding arbitration, we can therefore consider that it is a common practice in Brazil, in fact, it has already been outlined in art. 160, of the Constitution of the Empire, of 1824, which gave the parties the authority to choose arbitrators; where the 1988 Federal Constitution declares the peaceful resolution of disagreements as a basic principle in its preamble. However, the promulgation of Law No. 9307/1996, which mandates arbitration, gave a notable boost to the issue. The normative act, in turn, describes the institute and specifies the application procedures – undoubtedly, the consideration of the key elements makes it clear whether it is practical as a self-composing method in this judicial perspective.

Therefore, it is worth considering that the legislation already makes it clear in its*first article*that capable persons who have available property rights may submit disputes to arbitration; Furthermore, subsequent legislation, Law No. 13,129/2015, added two paragraphs to the aforementioned clause and specified the public administration the option of submitting to such an institute. It is healthy that the so-called convention arbitration is necessary, because in order to*that the parties expressly agree to submit to arbitration*. The commitment in turn, the arbitration clause, are at least two types that belong to this theoretical-practical context.



The commitment based on the approaches becomes a 'bilateral legal transaction' that aims to submit an ongoing dispute to arbitration, according to Azevedo (1996). On the other hand, the arbitration clause (can be considered a fundamental document that governs the parties' legal relationship) already makes it clear that any dispute arising from it (action) must be resolved through arbitration.

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Therefore, it is necessary to question the advantages of selecting arbitration as a means of resolve the dispute – where the speed of the process must undoubtedly stand out. In this regard, according to Rodovalho (2015), he specifies that *the duration of dispute resolution can be agreed in advance by the parties; but, in the absence of a written agreement, the six-month period established* in art. 23, of the Arbitration Law; This, in turn, is quick in contrast, as the six-month deadline for completion is stipulated in the law itself, although extensions are often granted. However, even with the extension, the main arbitration chambers last just over a year – sometimes including evidence and hearings according to Ramalho (2015) who also adds the so-called "accelerated arbitrations" within this same perspective.

Therefore, in order to avoid possible annulment of the arbitration decision, the parties may also seek chambers or arbitrators of recognized competence. Furthermore, even if the judiciary is forced to hear from a reluctant witness, the time involved will undoubtedly be shorter than in a typical case that takes into account appeals that can go all the way to the Supreme Court. Luckily, we understand that, in these approaches listed, arbitration is a viable method of resolving disputes, but it still has to 'mature' in the national legal system, particularly in terms of successful use to the general public (i.e.: active subjects of these and these legal actions).

**Final considerations**

Therefore, waiting years for the outcome of legal proceedings is undoubtedly a consideration that must be taken into account when understanding that alternative methods of conflict resolution in a connected world and where speed is a crucial vector – make interactions more dynamic.

Furthermore, we observe how mediation is an alternative strategy that not only 'saves' relationships, but also 'ruins' the parties. Those in conflict are urged to reconsider their respective contributions with a view to the future, even if the connection between them does not continue, at least they can leave this dynamic of maturity and introduce subjects capable of resolving their own personal disputes in the social and cultural communal context. in your daily life.

However, we demonstrate here that conciliation when used effectively and efficiently can translate it into *meaningful method of amicable resolution*; as the parties can benefit significantly, especially in terms of the speed with which the problem is resolved – as it has a more active role in conducting the mediation. So, it is *mister* encourage society's acceptance of this *method* as humanitarian support - a trend that can be reinforced by reducing costs and increasing the accessibility of arbitration processes not only in Brazil, but also internationally.

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