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SELF- COMPOSITION WITHIN THE CONTEXT OF CONSTITUTIONAL JUSTICE

Sandra Eliza de Lima Taveira

FADISP – Autonomous Law School of São Paulo, master's degree in social Function of Law, sandraelizalima@gmail.com

ABSTRACT

The Federal Constitution of 1988 advocates justice as the supreme value of a fraternal, pluralistic, and unprejudiced society, founded on social harmony and committed, in both the internal and international orders, to the peaceful resolution of disputes. It sought to analyze how self-settlement has been implemented in the scope of constitutional justice. The study was carried out through bibliographic research and critical analysis. Self-settlement can humanize the judiciary to the extent that it encourages dialogue and alters the social culture of litigation, fostering a more pacifying, conciliatory, and dialectical culture. It passes on to the parties the power to adapt the best solution to that conflict, and it is possible that the most appropriate solution for the parties is totally counterintuitive, but it will be the one that will completely extinguish the dispute and, therefore, the fairest for the parties. To implement self-settlement in cases within its jurisdiction, the Federal Supreme Court published successive Resolutions establishing centers for alternative methods of conflict resolution.
Keywords: Self-composition. Conflicts. Constitutional. Justice.

1. INTRODUCTION

The Preamble of the Federal Constitution of 1988 advocates justice as the supreme value of a fraternal, pluralistic, and unprejudiced society, founded on social harmony and committed, in both the internal and international orders, to the peaceful resolution of disputes.

It is noteworthy that, by virtue of Constitutional Amendment No. 45, of December 8, 2004, which was inserted as a fundamental constitutional right, the guarantee of the reasonable duration of the process. This amendment gave rise to item LXXVIII of article 5 of the Federal Constitution.

However, to meet the extensive range of fundamental rights and guarantees of various topics in various; areas of life, judicial solutions have proven to be insufficient, largely due to the extraordinary number of lawsuits, far beyond the numerical capacity of judges and judicial bodies, which are faced with a profusion of norms, but also in the face of the increasing complexity of the demands, as well as, in the face of the collectivization of many of the latter (Kemp, 2021).

In the doctrine, the idea of access to justice has expanded in recent decades, from access to the Judiciary to access to a fair legal order.

In this sense, Humberto Dalla Bernardina de Pinho explains:

> Undoubtedly, access to justice is a basic social right of individuals. However, this right is not restricted to mere access to the judicial organs and the state judiciary. Far beyond that, it must represent effective access to a fair legal order.
> This understanding, brought by Kazuo Watanabe, is of fundamental importance to the study of movement and to systematic, lucid performance.
> In this context, the proposals for the new Code of Civil Procedure are

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> inserted, from a more conscious perspective, to improve the technique and substance of procedural law as an essential means of allowing access to the so-called fair legal order.

In this line, at the legislative level, several legal diplomas have provided for the conciliatory route, which has been increasingly encouraged and gained strength over the last fifty years. See, for example:

1. The CPC of 1973, article 331, with the preliminary hearing, successively amended by Laws No. 8952/94 (which included conciliation as one of the duties of the judge and inserted it as one of the purposes of the preliminary hearing) and Law No. 10444/2002 (which replaced the expression "conciliation hearing" with "preliminary hearing");
2. the former Special Court of Small Claims, Law No. 7,244/84, art. 2;
3. The Special Civil and Criminal Courts, Law 9.099, of 12/26/1995, arts. 16, 17, and 21, and the Federal Special Courts Law No. 10,259, of 07/12/2001, arts. 9, 11, and 12;

Following this line, in recent decades, the CNJ and the CPC of 2015 have consolidated, as public and judicial policies, the alternative ways of resolving conflicts (conciliation, mediation, and others), giving ample concreteness to the constitutional precept of seeking a harmonious and peaceful solution to controversies, combined with that of the speed of the process

2. DEVELOPMENT

The national judicial policy for the adequate treatment of conflicts.

In 2010, the National Council of Justice published Resolution No. 1255, which establishes a national policy encouraging the creation of conciliation and mediation centers. It can be inferred from the explanatory memorandum of this regulation, instituting the national judicial policy of adequate treatment of conflicts, regarding access to justice, meaning access to a fair legal order, that it has been established that the organs of the Judiciary have an obligation to offer mediation and conciliation services, and these self-composition methods are important for the movement of the culture of peace.

In fact, self-settlement can humanize the judiciary, insofar as it encourages dialogue and shifts the social culture of litigation toward a more pacifying, conciliatory, and dialectical approach. It passes on to the parties the power to adapt the best solution to that conflict, and it is possible that the most appropriate solution for the parties is totally counterintuitive, but it will be the one that will completely extinguish the dispute and, therefore, the fairest for the parties.

The social legal context is based on the imposing sentence, handed down by a robed judge, which ends up generating the duality of "win-lose", which generates discontent in the winner and the loser as well and, consequently, gives rise to appeals and more appeals that obstruct the courts with repetitive demands and attempts to solve a problem that is often impossible to be truly solved by the common jurisdictional route.

It is known that the conflict comprises two aspects: objective and subjective. The adjudicative system addresses only the first aspect, framing the conflict within the legal norm, but leaves aside the subjective aspect, which therefore will not be completely resolved. In the face of such a deficiency, a cycle of conflicts occurs systematically, being discussed and rediscussed in the judiciary.

On the other hand, self-composition methods are alternatives to common jurisdiction, offering a form that is sometimes more appropriate to the conflict, with the scope to definitively resolve that demand. These methods, assisted by a mediator or conciliator who must guide the parties towards a solution, combat both aspects of the conflict, because, while adapting the

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conflict to the legal norm, they also work on its subjective, sociological aspect, dealing with the parties on the most sensitive points that are the background of the conflict.
First, it should be noted that the most common ways to reach a consensus amicably are conciliation and mediation. Although both have the same objective – the peaceful solution of the conflict, there are differences between them.
In this sense, mediation is a form of conflict resolution in which a neutral and impartial third party facilitates dialogue between the parties so that they can autonomously develop a better solution to the conflict. As a rule, it is used in multidimensional or complex conflicts.
Conciliation, on the other hand, is used in simpler or restricted conflicts, in which the third facilitator can adopt a more active but neutral position and remain impartial. It is a brief consensual process.
In turn, in support of the national judicial policy of adequate treatment of conflicts enshrined by the CNJ, the 2015 CPC, reflecting a paradigm shift relative to the 1973 CPC and earlier versions, also values conciliation and mediation, as highlighted in its explanatory memorandum.
Finally, to implement self-settlement in cases within its jurisdiction, the Federal Supreme Court issued successive Resolutions establishing centers for alternative methods of conflict resolution.

Normative background of the STF on consensual solutions, judicial cooperation, and resolution of structural and complex disputes.

Through successive resolutions, the STF created the Mediation and Conciliation Center (CMC), the Center for Judicial Cooperation (CCJ), the Center for Coordination and Support for Structural Demands and Complex Litigation (CADEC) and the Center for Alternative Dispute Solutions (CESAL).

Mediation and Conciliation Center – CMC

Initially, Resolution No. 697, of August 6, 2020, created the CMC – Mediation and Conciliation Center, attributing to this body the "search and implementation of consensual solutions in the Federal Supreme Court"[7].
It is important to highlight the foundations that inspired the creation of the CMC, as stated in its recitals, which are:
1. the normative density of the principle of reasonable duration of the process (art. 5, item LXXVIII, FC),
2. the need to consolidate the permanent practice of encouraging consensual dispute resolution mechanisms,
3. Resolution 125/2010 of the National Council of Justice, which encourages the creation of nuclei of
conciliation, which, although it does not apply to this Court, inspires the adoption of such a position;
4. The inspiring principles of the Code of Civil Procedure, especially the rule expressed in paragraph 3 of Article 3,
5. The existence of a potential propensity to enter into agreements in proceedings of original jurisdiction or appeal pending before this Court.

According to Resolution 697 of August 6, 2020, the Mediation and Conciliation Center – CMC of the Federal Supreme Court was created during the presidential administration of Minister Dias Toffoli. It was directly subordinated to the Presidency of the Court and was coordinated by an assistant judge of the Presidency.

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This body sought, using mediation or conciliation, the solution of legal issues subject to the jurisdiction of the STF for which, by its nature, the law allowed the peaceful solution of that conflict, that is, the application of an alternative means with prevalence over the common procedural rite.
In turn, the attempt at conciliation could occur within the regimental hypotheses of the Presidency's competence or at the discretion of the rapporteur, at any procedural stage. Interested parties could petition the Presidency of the STF to request the center's action in situations that could trigger conflicts of original jurisdiction of the STF, to enable the peaceful resolution of the controversy before judicialization.
The rapporteurs had the power to forward the records to the CMC, at any time, ex officio or upon provocation by the parties. The CMC, at the request of the rapporteur, would provide the necessary support to the offices in the conciliation attempts carried out.
The justices could appoint civil servants and assistant judges and instructors from their offices to act in conciliatory activities in the processes of their rapporteurship. The following could act as mediators and/or conciliators, on a voluntary and unpaid basis: retired ministers; magistrates, members of the Public Prosecutor's Office, lawyers and retired public defenders; civil servants of the Judiciary; and lawyers (Kemp, 2021).
It was highlighted that the activity would not constitute an employment relationship and would not entail expenses to the STF. In addition, the coordinator, the mediator, the conciliator, the parties, their lawyers, members of the Public Prosecutor's Office and the Public Defender's Office, technical assistants and others involved, directly or indirectly, in the activities, are subject to the confidentiality clause, and must maintain confidentiality regarding what is said, exhibited or debated in the session, so as not to allow such occurrences to be considered for purposes other than those of the conciliation attempt.
It should be noted that conflicts resolved by the Mediation and Conciliation Center – CMC benefited from a shorter process and reduced litigation, because when the solution was accepted by both parties, the possibility of new questions on the subject decreased.
And since the STF has the competence to resolve several conflicts considered institutional by states against the Union, by an agency within the Union, etc., this could avoid new demands, as the solutions have defined institutional roles that, if followed, would avoid new conflicts within the Court.
However, as of the publication of Resolution 790/2022, the CMC became part of CESAL – Center for Alternative Litigation Solutions, together with the CCJ – Center for Judicial Cooperation and CADEC – Center for Coordination and Support for Structural Demands and Complex Litigation.

Center for Judicial Cooperation – CCJ.

Created by Resolution 775/20228, which provided for the reciprocal cooperation of the STF with the other bodies of the Judiciary for the practice of judicial or administrative acts, including, among numerous other attributions, cooperation with other courts and/or entities not part of the Judiciary, including for the "resolution of conflicts by consensual means" (article 5, item X).
Its creation was based on the principles of cooperation and efficiency "guiding all jurisdictional activity" and on the duty of cooperation imposed on all bodies of the Judiciary, as provided for in the CPC, articles 6, 8 and 67, and also in Resolution No. 350, of 10/27/2020, of the CNJ – National Council of Justice, which "establishes guidelines and procedures on national judicial cooperation between the bodies of the Branch Judiciary and other institutions and entities, and provides other measures".

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Center for Coordination and Support for Structural Demands and Complex Litigation (CADEC)

Created by Resolution No. 790/202210, it aimed to assist the STF in resolving cases aimed at restructuring a situation in disagreement with the Federal Constitution and that required, for the realization of rights, special procedural effectiveness techniques and differentiated jurisdictional interventions.
As provided for in article 3 of Resolution 790/2022, it was incumbent on this body to "assist in the resolution of structural demands and complex litigation within the competence of this Supreme Court".
It is up to the rapporteur to indicate the process to be submitted to Cadec.
With the shipment, the unit would adopt measures to detail the structural problem and outline the necessary measures to face it, proposing goals and deadlines.

Center for Alternative Dispute Resolution (CESAL)
The Center for Alternative Dispute Solutions – CESAL was also established by Resolution No. 790/2022, mentioned above, aiming to assist in the resolution of Structural Demands and Complex Litigation. He supports the Offices in the search for consensual solutions to legal issues and assists them in the resolution of structural disputes and complex demands under the jurisdiction of the Supreme Court
In addition, **CESAL would promote judicial cooperation between the STF and** other bodies of the Judiciary. And it is coordinated by an Assistant Judge appointed by the Presidency, to which it is directly subordinate.
CESAL could act both in cases within the competence of the Chief Justice and in those of the rapporteurship of the other Justices of the Court, depending, in the latter case, on referral by the reporting minister.

New configuration of the support units in terms of structural and complex processes, and the consensual resolution of conflicts.

According to the STF's Corte Aberta portal,11 Statistics continue to show that the number of lawsuits in the Judiciary, including the STF, has grown dramatically; this has also occurred in relation to structural demands and complex litigation, with great economic and public policy impacts.
Thus, as of Regulatory Act No. 27, of December 11, 202312, approved by decision of the Plenary of the STF13, in view of the increase in the number of structural proceedings before the STF and the growing demand for the use of consensual methods for the resolution of conflicts, the units described above (CMC, CCJ, CADEC and CESAL), were transformed into the Jurisdiction Support Advisory (AAJ), unit linked to the General Secretariat of the Presidency and composed of the following nuclei:
Center for Structural and Complex Processes (NUPEC);
1. Center for Consensual Conflict Resolution (NUSOL);
2. Center for Data Analysis and Statistics (NUADE). The Jurisdiction Support Advisory (AAJ) aims to:
1. Structure, expand, and qualify the current Center for Alternative Dispute Solutions (CESAL), providing it with an interdisciplinary team appropriate to the performance of its functions;
1. Provide specialized human and technical resources to assist in jurisdictional provision, at the request of the Presidency and the Cabinets;
2. allow the prioritization of the most relevant processes for people and the country;

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3. Ensure greater efficiency and speed in the management of the collection.

Center for Structural and Complex Processes (NUPEC)

The Center for Structural and Complex Processes (NUPEC) will be responsible for supporting the identification and **processing of structural and complex actions, and may, at the request of the President and/or Cabinets of Ministers:**

1. Issue technical notes and reports on topics discussed in these actions;
1. assist in the construction of indicators for monitoring and evaluating the effectiveness of the measures determined in these processes;
2. Support the supervision and monitoring of the implementation of decisions, producing reports, and support for the creation of Monitoring Rooms for each structural process.

Center for Consensual Conflict Resolution (NUSOL)

The Consensual Conflict Resolution Center (NUSOL) is responsible for:

1. to support the Offices to seek and implement consensual solutions to procedural and pre-procedural conflicts;
2. Establish judicial cooperation between the STF and the other organs of the Judiciary.
3. Act in the integration of the Mediation and Conciliation Center (CMC/STF) with the Cooperation Center
Judicial (CCJ/STF), regulated, respectively, by STF Resolutions No. 697/2020 and 775/2022;
4. assist in the screening of processes which, due to their characteristics, support a consensual solution;
5. hold or support conciliation or mediation sessions, or other appropriate method of dispute resolution, at the request of the Reporter;
6. promote consensually, judicial cooperation between the STF and other organs of the Power Judiciary, or with other entities of the justice system and organized civil society.

Center for Data Analysis and Statistics (NUADE)

This center is responsible for providing statistical data to the Presidency and the Cabinets of Ministers, aiming to support decision-making, improve speed, and promote transparency in the STF.

Some examples of cases of consensual settlement of disputes in the STF14.

ADI No. 7,486 – Rapporteur Minister Dias Toffoli.
She oversees the competitions of the Military Police of the State of Pará, in whose notices there were restrictions on women's participation. After a conciliation hearing, the State of Pará agreed to proceed in the following phases of the competition, excluding such gender limitation. Once the agreement was ratified, the contest was unlocked, and losses to the Military Police cadres were avoided.

ARE 1.380.067 – Relator Ministro André Mendonça.
In a conciliation hearing, the parties agreed on a procedural calendar, requesting the suspension of the action to establish direct and extrajudicial communication for the exchange of documents and information to subsidize an attempt at an agreement.

ADPF 635 – Rapporteur Minister Edson Fachin.

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An interesting case regarding police lethality in Rio de Janeiro.
The records were forwarded to the Centers for Consensual Resolution of Conflicts and Structural and Complex Processes in order to, through dialogue, subsidize the Rapporteur to monitor compliance with the determinations to that state.
A contextualization hearing *was designated*, with highly technical content, aimed at collecting information and clarifications to support decision-making, aligning the expectations of those involved, without prejudice to reaching consensus on specific points.

Other examples of structural litigation and major economic impact brought to the STF15.

Original Civil Action ACO No. 1,100 - Conflicts involving indigenous peoples.
A group of farmers asks for the annulment of a 2003 ordinance that redefined and expanded the boundaries of the Indigenous Reserve, in Santa Catarina, related to the Xokleng indigenous community

Original Civil Action ACO No. 2,550 - Conflicts involving Water.
filed by the MPF, so that the National Water Agency refrained from determining the reduction of the
Minimum inflow of the Santa Cecilia dam, on the Paraíba do Sul River

RCL No. 19,537 - Conflicts involving Trade Union Entities.
Representatives of the Union of Civil Servants and Employees of the Councils and Orders for the Inspection of Professional Practice in Rio Grande do Sul and the Regional Councils for Professional Inspection in the state agreed to formalize an agreement during discussions of the legal regime applicable to the workers of the professional councils.

ADPF 347 - the unconstitutional situation of the prison system;
ADPFs 709 and 742 - the protection of the indigenous and quilombola population in the Covid-19 pandemic;
ADPF 973 - the protection of the homeless population; **ADPF 760 -** the policy for the protection of the Legal Amazon; **ADPF 976 -** structural racism;
ADI 5090 - the inflation adjustment of the FGTS;
ADIs 7047 and 7064 - questions about the new regime of writs.

CONCLUSION

The present and brief study, through the STF rules mentioned above and the examples of complex cases mentioned above, demonstrates that, finally, the STF itself incorporated, internally, within the scope of constitutional jurisdiction, the possibility of conciliation and mediation, in addition to other alternative ways of resolving demands, applying the national judicial policy of adequate treatment of conflicts, within the scope of its competence, also becoming a multi-door court, especially in the solution of structural disputes or disputes of great economic impact, which contributes to face the critical panorama of insufficiency of the Judiciary in the face of the profusion of litigations that come before it and, thus, expand the achievement of the peaceful resolution of controversies, and the supreme value of justice, proclaimed by the Federal Constitution of 1988 in its preamble.

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