Chapter 21

Effectiveness of mediation and conciliation in extrajudicial services as an effective means in resolution of disputes

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ABSTRACT
The present work has as its theme "Effectiveness of mediation and conciliation in extrajudicial services as an effective means of resolving disputes". During the work, mediation and conciliation were presented as effective tools and alternatives in dispute resolution. Therefore, in the course of this monographic work, certain questions are answered, such as: How is the right to citizenship and the guarantee of access to justice implemented in Brazil? What is the performance of extrajudicial services for dejudicialization? For the elaboration of this work, a study will be carried out through bibliographical, scientific and documentary research, in addition to disposing of the doctrines of Caio Cesar Vieira Rocha (2017), Carlos Alberto de Salles (2020), Fernanda Tartuce (2018), Fabiana Marion Spengler (2013). Finally, it is concluded that mediation and conciliation are currently considered by many to be the "key/tool" to open new doors to justice in Brazil, especially during the Covid-19 pandemic. Furthermore, with advances in the use of new technologies and information, fundamental changes are needed, particularly with regard to access to justice. It also concludes that justice cannot be stopped and that citizenship does not consist only in political messages in favor of individual rights, but also in the State's obligation to provide minimum conditions for the exercise of that right.

Keywords: Extrajudicial services, Mediation and conciliation, Dejudicialization, COVID-19, Dispute resolution.

1 INTRODUCTION

The present work has as its theme "Implementation of mediation and conciliation in extrajudicial services as an effective means in the resolution of disputes". During the work, mediation and conciliation were presented as effective tools and alternatives in dispute resolution. Moreover, mediation and conciliation is presented as a way to prevent the citizen from being judicially destitubly. Although it has existed for a long time, mediation has re-emerged as a support to ensure continuity of access to justice.

Therefore, it is understandable that mediation goes beyond a "process", which is defined as a conflict resolution technique mediated by third-party mediators. However, article 2 of Law No. 13,140/2015 must be based on Art. 13.140/2015, where it establishes that no one is obliged to continue participating in the conciliation and mediation process.

It is emphasized that mediation and conciliation had great progress in the pandemic period, videoconferencing, already in use in the Justice of the State of Rio de Janeiro - TJRJ, became an unprecedented resource to help magistrates work during quarantines against the pandemic of the new coronavirus. Judge Vanessa Cavalieri of the Court of Childhood and Youth of the Capital and Judge André Tredinnick, the First Family Court of the Leopoldina Regional Forum, held an important hearing by videoconference with the available technology.

In addition, in the pandemic period of Covid-19, according to what was presented on the TJRJ website, the use of mediation grew, and it was even possible to hold a mediation meeting by videoconference, adapting the needs and emergence caused by the pandemic, because with the pandemic it became very difficult to physically access to one of the sticks, for security measures. Moreover, mediation and conciliation were created with the objective of presenting alternatives for the resolution of conflicts outside the judiciary is to implement traditional justice and, at the same time, create means for effective resolution of conflicts, opening and expanding access to justice.

Therefore, in the course of this monographic work, certain questions are answered, such as: How does the right to citizenship and the guarantee of access to justice in Brazil be effective? What is the action of extrajudicial services for dejudicialization? How does the use of mediation and reconciliation of conflicts as an effective means of ensuring dispute solutions? What are the alternative methods of conflict resolution in Brazil to ensure access to justice?

For the elaboration of this work will be made a study through bibliographic, scientific and documentary research, besides disposing of the doctrines of Caio Cesar Vieira Rocha (2017), Carlos Alberto de Salles (2020), Fernanda Tartuce (2018), Fabiana Marion Spengler (2013). It has been perfected with books, articles, monographs, documents, archives of public and private institutions, data, abstracts and reviews about the texts worked. Thus, it is through an in-depth bibliographic research, one can obtain a broad perspective on the subject and a point of departure based on facts. That's because, with this research, it helps to understand what has been published on the subject. In addition, literature reviews can optimize processes already performed throughout the research process, reducing the accumulation of errors.

To promote a better understanding of the theme, the structure of the present work was divided into three chapters. The first chapter brings up the introductory concepts of access to justice in Brazil, in addition to exposing the right to citizenship and the guarantee of access to justice, and still in the chapter is talked about the difficulties of access to justice in the Covid-19 pandemic.

In the second chapter, the conceptual aspects of extrajudicial services are exposed, where the history of extrajudicial services in Brazil and notarial and registral law are exposed. In this chapter, the species of

Extrajudicial Serventias and the performance of extrajudicial services and dejudicialization are also exposed.

The third chapter aims to provide mediation and reconciliation of conflicts, presenting the concepts, models, phases of mediation, tools and principles; mediation and conciliation within the scope of extrajudicial services. Thus, it presents the role of the mediator and conciliator in the virtual modality in the pandemic period as a guarantee of access to justice.

Finally, it was concluded by presenting that mediation and conciliation are currently considered, by many, as "keys/tools" to open new doors to access to justice in Brazil, especially during the Covid-19 pandemic period. Moreover, with the advance of the use of new technologies and information, it is necessary to impose fundamental transformations, especially with regard to access to the justice system. It was also concluded that justice cannot stop, citizenship is not only related to political information for individual rights, but also to the duty of the State to supply the minimum conditions for the exercise of this right.

2 INTRODUCTORY CONCEPTS D ACCESSTO JUSTICE IN BRAZIL

In order to be able to have a better understanding of the chapter, it is necessary to make a brief approach to the introductory concepts of access to justice in Brazil, especially regarding its purpose, legal basis and indoctrination.

Initially, it can be said that the Brazilian judicial system originated in the mid-1530s, when King Portuguese granted Martim Afonso de Sousa, executive and judicial authority, where he was the first to settle the Brazilian people from lands in ethnic conflict. In this context, according to Linhares (2016), in 1534, to enforce the rights of all, justice was made, the first administrative divisions were created in Brazil, allowing the assignees to apply the current Portuguese customs, thus ensuring the creation of public offices and judicial and official documents.

Effective access to justice in Brazil was also the target of important measures, being one of the most difficult the enactment of the Law of Free Mutual Legal Assistance (Law 1.060/50), also enshrined in the Brazilian Federal Constitution (1988). Thus, the Brazilian Free Mutual Legal Assistance Law, referring to the first wave of legal aid.

In addition, the creation of Special Civil Court ruled from Law 7.244/1984 and is currently governed by Law 9.099/95, called as Special Civil and Criminal Court. The main objective of these measures is to deal with conflicts more quickly and effectively, where any citizen can find a way out of solving their problem, and everything is done fairly for all.

In addition, access to justice begins with understanding the possibility of rights. After that, the mechanisms for exercising rights are effective, specifically when rights are violated. Moreover, in terms of knowledge of rights, it should be noted that they are largely transmitted initially through information. Moreover, as Spengler (2013, p. 9) teaches: "The obstruction of access to justice, an increasingly growing

problem in Latin American countries and Europe, promotes an increasing distancing between the judiciary and the population."

> The marked growth of access to justice, which evolved together with the transition from the liberal conception to the social conception of the modern State, allowed different social groups to seek effective means of protection for the solution of their conflicts. At that time laissez faire prevailed as the dominant maxim, all people were formally presumed equal and the mechanisms of access to justice were created without concern for their practical or effective efficiency (SPENGLER, 2013, p. 9).

The concept of access to justice cannot be examined in the literal sense, that is, there is no way to affirm that access to justice simply means asking for a resolution of the merits from a state judge, as if it were sufficient to guarantee citizens the right of access to the courts. In Brazil, however, access to justice is a social right, and the Federal Constitution (1988), promulgated during the period of redemocratization and post-dictatorship, guarantees the realization of this right. In addition, as Rocha teaches (2017, p. 7):

> The concept of access to justice in the contemporary world must be understood as the guarantee of entry to a fair process, capable of providing the resolution of disputes quickly, safely and effectively, through the implementation of mechanisms of social pacification that allow the clearance of state jurisdiction, which is aimed at those incompossible by other means.

It should be emphasized that judicial damage or legal threat cannot be excluded by any law. That is, it is a very specific characteristic of Brazilian law, where access to justice is essential through the realization of substantive aspects of social change of rights, especially in the national judicial system, namely, to achieve expansion, rationalization and control, and the power of government agencies. According to Tartuce (2018, p. 27): "as the judicial process has no longer been considered an appropriate way to make up all conflicts, the State must offer various means to ensure access to justice." Access to justice must continue to be understood as a social right in a socialist context, in the political sphere and in the economic environment.

Finally, it is understood that access to justice is important to guarantee the rights to due process. Therefore, these rights cannot be absent in the daily lives of citizens. It is noteworthy that, to justice, it cannot be paraded at any time, and that citizenship is not only related to political information for the right of the individual, but also to the obligations of the State to provide the minimum conditions for the exercise of this right.

2.1 D IGO TO CITIZENSHIP AND THE GUARANTEE OF ACCESS TO JUSTICE

The right to citizenship is so important and relevant that it was added to the list in our CRFB of 1988. We live in a democratic country of law, because according to the community's point of view, rights are constituted with the tolerance of citizenship representatives so that there is no inequality. Moreover, as Tartuce (2018, p. 369) teaches: "Citizenship will have a voice and a time, being heard and considered part of the democratic process of guaranteeing rights."

However, the judiciary acts with the main role in the resolution of social conflicts. In addition, it acts as guarantor of dispute resolutions, so that everything is resolved within a reasonable time. It is perceived that only access to justice is not enough, because access to justice must be done fairly and quickly, so that rights do not perish, and that fundamental rights can actually be implemented. As Spengler (2013, p. 168) teaches: "In order to establish the construction of the bases on which the realization of citizenship and social life will be sustained." According to Article 1, Federal Constitution (1988):

> Art. 1º The Federative Republic of Brazil, formed by the indissoluble union of States and Municipalities and the Federal District, constitutes a Democratic State of Law and has as its foundations: I - sovereignty; II - citizenship; III - the dignity of the human person; IV - the social values of work and free enterprise; V - political pluralism.

It is essential that we know about the themes of citizenship, whether at the national or international level, because it is not only in national legislation, but also in documents that are considered important at the international level. According to Masson (2020, p. 149):

> Redesigned from the perspective of a universal and participatory citizenship, the concept of "people" will no longer find legitimacy in an exclusionary and discriminatory nationalism against the "other" (foreign). The rereading of citizenship, based on the senses of constitutional patriotism and, consequently, detached from the concept of nationality, is still incipient and, therefore, will remain under construction and in search of improvement.

However, the Constitution of the Federative Republic of Brazil (1988) has an objective of contributing to the formation of citizens who learn and understand their citizenship and their basic rights and guarantees, so that they can encourage young people to think about the country and achieve their basic goals. According to Zaneti Jr. (2016, p. 67):

> Since the Federal Constitution of 988, the expansion of the list of fundamental rights and guarantees, among which access to justice and the inexception of the judiciary should be highlighted, can be pointed out as a catalyst for the growth of lawsuits. Added to this is globalization, the diversification of social relations and, with the greater interaction of people, a greater number of conflicts arising.

The problem of procedural delay in Brazil refers to many appeals of the courts, especially in the High Court, which has a small number of judges in relation to the first instance, being a significant problem, which legislators are trying to solve with the new Code of Civil Procedure. However, under the law, especially civil proceedings, the content of the key access to justice has become so fluid that it has come to contain values that are often opposed. Moreover, Spengler (2013, p. 10):

> The increasing access to justice for the solution of conflicts of interest in socially impactful areas evidences that the term jurisdiction can no longer be restricted to the classic say the law, that is, it is not enough to guarantee access to justice, but to that public freedom must be added the right to a proper judicial provision to produce the practical effects to which it is foreordained.

It is noteworthy that access to justice is one of the most important rights highlighted in the CRFB (1988), and also means rights to due process, the right to procedural protections and a fair, fast and effective

trial. That is, access to justice is a social right guaranteed by the Federal Constitution (1988), where it is guaranteed through Article 5, item XXXV, which establishes that everyone has the right to access justice equally.

> Article 5 º All are equal before the law, without distinction of any nature, ensuring to Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property, in the following terms: XXXV- the law will not exclude from the assessment of the Judiciary injury or threat to law (CRFB, 1988).

Therefore, we must work to improve access to justice for those in need by addressing disparities. That is, by better promoting procedural rules and justice, but not failing to provide differentiated conflict resolution mechanisms that can leverage technology effectively. It is believed that there should be more approaches and guidelines to deal with access to justice. According to Tartuce (2018, p. 20):

> Access to justice deserves attention especially considering that it does not necessarily coincide with access to the judiciary; ensuring the indemotion of judicial provision, an important achievement of the rule of law, does not depart from the proposal to think of productive ways of comparting the parties to the conflict. Mediation is addressed taking into account its ability to redeem its own responsibility in the parties without inducts with the conclusion of agreements.

Access to justice should continue to be understood as a social right in the political sphere, in the economic context and in the socialist context. It is understood that access to justice begins with education, which is the starting point. Moreover, access to justice begins with the understanding of the possibilities of rights, and when rights are violated, one must review mechanisms to exercise them and guarantee them in a broader and more effective way.

2.2 DIFFICULTIES IN ACCESSING JUSTICE IN THE COVID-19 PANDEMIC

During this period of transformation that was caused by the pandemic of Covid-19, in the essences of the social lifestyle, people were awakened about the real problem of access to justice, mainly referring to the lack of opportunities for minorities and vulnerable groups. Conforme, Arena et al; (2020), where all this has become virtual and is, to some extent, imposed on the jurisdictions of your property access to its technical tools.

Therefore, it is worth mentioning that the objective of this study is to present how the modification caused by the pandemic affects the Brazilian judiciary. In addition to presenting the measures that have been taken to safeguard access to justice. In understanding Law No. 13,994 (2020), it is emphasized that it was one of the actions that appeared in the consequent subjects of digital platforms, where it says that it can be used to hold mediation hearings and conciliation meetings during confinement.

Another important measure was the CNJ Resolution No. 313 (2020), which was preceded by decree no. 61 of March 31, 2020, establishing an emergency videoconference platform, to hold hearings and trial meetings in the judiciary, while the period of social isolation caused by the Covid-19 pandemic lasts.

The changes that occurred during the pandemic, were motivated in social lifestyles, caused by the pandemic of Covid-19, many had difficulties in accessing justice at the time, nod. According to DPGE-RJ, (2020, p. 375):

> Covid-19 has caused transformations in all aspects of our economy and society at large. This was no different with regard to legal services. Teams of professionals in the area are working differently; services are being reconfigured; organizations are adapting at an unprecedented speed. These effects are manifested throughout the world, in all types of organizations providing legal assistance and access to justice services.

However, this has changed overall, making it virtual the entrance to its technical tools is, to an appropriate extent, being assigned to its own jurisdiction. According to Souza Neto (2020), according to the new information technologies, which came to happen due to the COVID-19 pandemic, there had to be major changes in the way the judicial system develops, and remembering that the legislation has everything to do with this new panorama. Consider about this new method, where it spontaneously requests an analysis of the role of an impartial third party, which can be a judge, mediator or arbitrator, the resolution of conflicts and the network, is collegiate in the same way that it is appropriate for a dispute resolution.

It is noteworthy that the measures of social distancing have completely changed the work routine of the legal aid agencies, where they required the adoption of technical means and the reorganization of remote work. According to DPGE-RJ (2020, p. 31), during the outbreak of the pandemic, limited resources and temporary solutions, abolished by compromising access to justice:

> Social isolation measures have completely altered the work routine of legal aid agencies, driving the adoption of technological means and reorganization around remote work. However, 18 limited resources and improvised solutions ended up compromising access to justice during the pandemic outbreak.

However, the updated uncertainty group that promises the stability of the legal aid system, it is understood that it can continue in the foreseeable future, and the economic crisis triggered by measures of mandatory social distancing, which created the prospect of cutting legal aid budgets in some countries being 25%, , can continue to bring great damage to access to justice (STJ, 2020, online). It is clear that, in the near future, legal and legal aid services will continue to be spread online, so that budget cuts can be made, due to the economic crisis that were caused by measures of social distancing.

3 CONCEPTUAL ASPECTS OF EXTRAJUDICIAL SERVICES

After making a brief contextualization of the importance of guaranteeing access to justice, it is necessary to mention the main means and purposes in the use of the social function of extrajudicial services and dejudicialization, which will be presented in the course of the chapter.

It is notorious that the judiciary in the pandemic period proved ineffective, through the so-called "crisis of process" and "crises arising from compliance with a fair legal order", mainly as guarantor of access to justice. Therefore, Zaneti (2016), states that dejudicialization is an inevitable procedure, but the

question is whether the new model of dejudicialization proposed in the Brazilian system of conflict resolution through extrajudicial services has the capacity to resolve claims as determined in courts.

> In a structural way, with the implementation programs in the short, medium and long term, legal courses should be updated and prepared by the legal professional not only for the litigious clash and adversarial confrontation, but also for the prevention of conflicts and their overcoming by extrajudicial mechanisms of self-composition (ROCHA; SOLOMON, 2017, p. 220).

We are currently experiencing a great moment of upheaval in the legal system, and extrajudicial services have gained enormous prominence in the current dejudicialization movement. Moreover, as Tartuce (2018, p. 313) has:

> It is worth noting that the realization of consensual means in the notarial databases was referenced in Law No. 13,140/2015. In accordance with Article 42, the law of mediation applies, in that it is appropriate, to other consensual forms of conflict resolution (such as community and school mediations) and to those carried out in extrajudicial services, provided that within the scope of their powers.

In addition, the goal of creating alternatives to conflict resolution outside the judiciary is to implement traditional justice while creating effective conflict resolution tools that open up and expand access to justice for marginalized populations. Moreover, the means of effection of extrajudicial services includes a unique tool, "conflict mediation", which allows resolution of conflicts through regulated and supervised activities. Moreover, according to Salles (2020, p. 32-33):

> Among the final provisions of the Mediation Law, the extension of the law, in what is appropriate, to community and school mediations and those carried out in extrajudicial services (art. 42) deserves to be mentioned; the reproduction of the same caveat of The Matter 125 regarding mediation in labor relations (art. 42, §único); the possibility for public administration bodies to set up chambers for conflict resolution on regulated or supervised activities between individuals; modifications to Law 9.469/1997 to regulate the competence for authorizations of agreements or transactions in disputes by public companies and federal authorities; and, finally, the reproduction of the permission for mediation to be done over the Internet or other means of communication at a distance, provided that with the consensus of the parties.

It is emphasized that "judicial assessment" has its necessary forms of conflict resolution, which by the way has been opening doors to other forms of conflict resolution involving different tools. According to Rock & Solomon (2017, p. 7):

> The concept of access to justice in the contemporary world must be understood as the guarantee of entry to a fair process, capable of providing the resolution of disputes quickly, safely and effectively, through the implementation of mechanisms of social pacification that allow the clearance of state jurisdiction, which is aimed at those incompossible by other means. The rapid transformation and interaction between peoples, by the force of globalization, thus also the new era of rights, has brought forth the longing of society for alternative and extrajudicial forms of prevention and resolution of intersubjective conflicts, of which mediation and arbitration are notorious examples.

It is understood that the jurisdiction which would initially be exercised by the Judiciary may be delegated to exercise, for example, by out-of-court services or community meeting rooms, conciliation

centres and out-of-court mediators, provided that they have the characteristics and guarantees inherent in the jurisdiction.

3.1 THE PERFORMANCE OF EXTRAJUDICIAL SERVICES AND THE DEJUDICIALIZATION

The "multi-door justice", present in the CPC through its most prominent institutions, mediation and conciliation, provided for in Art. 334 of the CPC (2015):

> Art. 334. If the application meets the essential requirements and is not the case for preliminary dismissal of the application, the judge shall appoint a conciliation or mediation hearing at least 30 (thirty) days in advance, and the defendant shall be cited at least twenty (20) days in advance.

Out-of-court services have a huge social role in reducing bureaucracy and dejudicialisation, their use is increasingly frequent. Currently, we are going through a dejudicialization movement, and extrajudicial services have gained dimensions are greater in reputation. According to Zaneti Jr. et. Al (2016, p. 252):

> The modern conformation of access to justice, in addition to the simple a day in court, guarantees people the reach to the effective solution of the conflict, through judicial and extrajudicial means. Following the global trend of reducing litigation and judicialization, the culture of dialogue and collaborative methods, the New Code of Civil Procedure has erected the consensual solution of conflicts as a "fundamental norm of civil procedure.

It is worth noting that dejudicialization aims to find some consensual form of conflict resolution within the judicial system, which is effective through the prism of the new Code of Civil Procedure (2015), where mediation and conciliation emerges as an essential tool in dispute resolutions.

> Within the Framework of the CNJ, the competence to manage the national conflict management policy was the responsibility of the "Committee on Access to the Justice System" and the "Conciliation Steering Committee", which are chaired by the Directors with defined mandates. Res. 125 also provides for the duty of the courts and the CNJ to organize data on the implementation of the "Policy" and the creation of a "Conciliation Portal" on the CNJ website. Res. 125 was the subject of two amendments, one in 2013 and the other in 2016, after which its text became longer and more detailed and with a greater number of rules of procedure (SALLES, 2020, p. 25).

Finally, given that the overcrowded judiciary and the slowness of the day-to-day justice make it increasingly difficult to effect justice. According to Zaneti Jr. et. Al (2016), the social role of extrajudicial services in dejudicialization provides several opportunities for justice and flexibility in procedures and legal certainty through this transfer of power, provisions of a basic judicial nature, rescued the judiciary, accepted extrajudicial services and proved the correct position to promote judicial outsourcing and dejudicialization.

3.2 NOTARIAL AND REGISTRAL LAW

With the advent of Article 236 of the Federal Constitution (1988), and according to Federal Law No. 8,935 (1994), called "Notary Law and Registry or Notaries and Registrars Law", notaries and registrars now have a clearer legal character, although the subject is little addressed in the legal world. According to

Article 3 of Federal Law No. 8,935 (1994): "3rd Notary, or notary, and registrar, or registrar, are professionals of the law, endowed with public faith, to whom the exercise of notarial and registration activity is delegated".

In understanding of Article 236 of the Federal Constitution (1988), it is emphasized that notary or notary, are activities carried out through a delegation of public service, so "Article 236, § 1 Law will regulate the activities, discipline the civil and criminal liability of notaries, registration officers and their agents, and will define the supervision of their acts by the Judiciary".

> The Magna Carta was innodent in determining that the entry into the registerand notarial career should take place through a contest of tests and titles, sealing the transmission of the services of parents to children until then practiced. Thus, those who pass the contest will be entitled to enter the career of registrar or notary, whose difference we will see soon (SALLES, 2018, p. 11).

Out-of-court notaries are spread across the country, including network notaries and intermediate notaries, with only one out-of-court notary accumulating several jurisdictions. Consequently, there is an irreversible tendency to dejudicialize institutions related to the treatment of available rights and non-litigation issues.

> In the global scenario, notarial activity is indispensable to the realization of real estate business in the vast majority of countries. In Brazil, this is also the general rule, exceptional by sparse legislation that created the figure of the particular instrument with public writing force (MONTEIRO, 2018, p. 03).

According to Zaneti Jr. et. Al (2016, p. 6):

> Thus, the entire national legal system is being directed to out-of-court solutions, whether self-compositional (mediation, conciliation, direct negotiation or other means of consensual settlement of disputes) or heterocompresses (such as arbitration, recognized by cpc/2015 as extrastate jurisdiction, Art. 337, § 6).

Notaries and registrars are private persons who cooperate with the government, performing public functions, occasionally outside the state's field, acting within the scope of the holders of extrajudicial services. According to Salles (2018, p. 21): "Notarial activity proposes to authenticate facts, receives the declaration of will of the people, giving it a legal form, either for validity or for authenticity".

In this sense, it is worth mentioning that the notarial and registral functions are of a hybrid nature, with the contours of the systems of public and private law, as mentioned earlier. As he teaches, Salles (2018, p. 28): "The professional who receives the delegation of the notarial activity is the holder who receives the name of notary (or notary) and registrar (or registrar), depending on the activity he will provide, as defined in Art. 3 and 5, of Law No. 8,935/1994."

Therefore, according to the normative text and the theoretical orientation above, the law to notarization can be defined as a set of norms and principles that govern the functions of a public notary. In addition, similarly, Registration Law No. 6,015 (1973) deals with a set of rules and principles governing

registrar registration activities (civil, real estate, legal entities and securities and documents). According to Salles (2018, p. 29):

> It is worth mentioning that the independence of the holders of the services is seen from two perspectives: with regard to administrative organization, in which independence is broad; and with regard to the technique, giving the delimitation of the exercise of the registration or notarial function, in which its independence will be more restricted, because it will be legal, since it can only act in accordance with all legislative and normative instruments (laws, provisions, normative instructions, etc.).

There are relevant differences in the normative texts that make up the notarial law and the registration law in terms of conduct, authority and attribution. According to Ceneviva (2014), notaries are created not only because of the above norms, but also for reasons of need and personal and social utility, they are jurists linked to civil affairs in the daily life of ordinary people, responsible for the application and improvement of private law.

> Notarial activity can be considered as a mechanism that enables the applicability of fundamental rights, such as housing and private property, which are vital to the dignity of the human person. Thus, in response to the guarantee of this right, the State creates positive norms and society welcomes them (MONTEIRO, 2018, p. 11).

Finally, it is emphasized that the professional representative of the notarial law and registration law must be present when the legal business is concluded, helping the parties to listen to their respective anaffairs before the closing of the business, advising on the risks, benefits, tax aspects, legal effects and consequences of the actions envisaged, so that legal care and precautions are adopted.

3.3 SPECIES OF EXTRAJUDICIAL SERVENTIAS

The first type of notary is the one where we register our first act of civil life in the "Registry Office", thus the Civil Registry Office is responsible for acts that affect legal relations between different citizens. Thus, births, marriages, deaths etc. It is important to note that any changes are also the competence of this body, such as divorce records, change of first or last name etc. As Salles teaches (2018, p. 29):

> The notarial activities are practiced by the so-called notaries (or notaries), who are those approved in competition of tests and titles for admission to the Notaries of Notes, Notaries of Protests of Titles and Notaries of Registration of Maritime Contracts.

The notary of notes, is defined as the place that people most use for the attribution they receive. Notaries are responsible for giving credibility to notaries and ensuring publicity, security and legal effectiveness.

> LNR, by including in its list (art. 4°) notaries of notes, registration of maritime contracts and protest of securities, officers of registration of real estate, titles and documents, civil legal entities, natural persons and prohibitions and guardianship, as well as registration of distribution, established valid normivity for professionals in the commercial and civil area (CENEVIVA, 2010, p. 1686).

As Salles (2018, p. 174) teaches: "From this point of view, anyone may request the Notary of Notes to issue a Certificate of Public Deed of separation, divorce or stable union of third parties, and have access to the terms of said instrument."

> The Notary Of Protests, governed by Law 9,492 of September 10, 1997. Law 9.492/1997 conceptualizes protest as a formal and solemn act, which constitutes proof of default and non-compliance with obligation stemming from credit securities and other debt documents. Like the officers of the Notary Of Notes, the officers of the Notary of Protests are called notaries, and not registrars (SALLES, 2018, p. 208-209).

Last and not least, the Real Estate Registry Office is mentioned. According to Salles (2018), this registry office is responsible for archiving the entire history of the property, its certain area, in addition to providing advertising, authenticity and security in relation to the information contained in its files.

> Art. 5 º Holders of notaries and registration services are: I - notaries of banknotes; II - notaries and officers of registration of maritime contracts; III - notaries of protest of titles; IV - real estate registration officers; V - officers of registration of titles and documents and civil entities of legal entities; VI - civil registry officers of natural persons and interdictions and guardianship; VII - distribution registration officers (BRASIL, Law No. 8,935, 1994).

Finally, it should be noted that the Real Estate Registry Office is not only responsible for the registration of real estate, but also for real estate-related endorsements and understanding of the conduct of applications for out-of-court ownership.

3 INTRODUCTORY CONCEPTS OF MEDIATION AND CONCILIATION OF CONFLICTS

Following the American model of mediation, Brazil, in a more timid proportion, began to implement this method in the labor sphere in the 1990s. According to Takahashi (2019), where the main discussion sprees were wage adjustments, employee participation in the company's profits, employer's debts in relation to the employee, among other discussions.

Also in the 1990s, Mrs Zulaiê Cobra drafted a Bill, together with the Brazilian Institute of Procedural Law, which dealt with mediation as a concise method of dissolving conflicts, where the intention was to mature mediation in civil proceedings and be governed by a law of its own (PL 4827/1998). Nevertheless, mediation is increasingly widespread in Brazil, being exercised in organs of the Judiciary, to the extent that it has the express support of the Supreme Court, the National Council of Justice and the Ministry of Justice.

According to Neves (2021), mediation has been handled since biblical times, where the issues were resolved without it being necessary to take the case to the authorities. Jesus thus teaches when the gospels of the second testament are written. Over time, in the 1950s, China began to use mediation in the family sphere through conciliatory courts, which were located in public spaces, organized in committees, while in the rural domain, the committees stayed in villages, and who was the third impartial was the head of the village.

According to Neves (2021), mediation arose in order to alleviate the chaos it faced in the American judicial system, with numerous lawsuits, due to the great demand, and delay in solving the cases, the United States developed a method for there to be a means where alternative methods for conflict resolution were discussed.

From then on, the ADR (alternative dispute resolution) originated, here in Brazil known as RASD's (appropriate dispute resolution), a model where it identifies the best alternative means for conflict resolution (AZAMBUJA, 2019). This method had a positive result throughout the American territory, being such a success, that mediation began to be spread throughout the continent and globe. It was seen as a valuable mechanism that satisfied the parties, as it was equipped with agility and speed, causing the issue discussed to sanasse immediately through an impartial third party, who does not have the mission to decide, but only assist the parties in obtaining the consensual solution.

Given the beginning of mediation in the sphere of work, the institute began to migrate to other areas cautiously, but gaining strength throughout its experiments. It then became a strong tool for business issues and essential to the business momentum, since trading is a constant act within business activity (TARTUCE, 2018). Currently the Brazilian judicial system is emdued in lawsuits due to its demand being well requested by various types of claims. Although the demand is high, the institutes responsible for resolving the cases do not meet all the claims in a timely manner.

The Code of Civil Procedure (2015) is based as one of its premises the incentive of the use of mediation and conciliation for the resolution of conflicts, suggesting that in the voluntary modality the parties will dilute the issue in the judicial and extrajudicial forms of composition of disputes.

Mediation is an alternative method of conflict resolution and is provided for in Law 13.140 (2015), the Mediation Law is responsible for regulating conflict mediation. Mediation aims to strengthen the basic bond of the relationship and stimulate with the help of other mediators to spare the desires of other interested people, highlight the positive points of the parties in conflict resolution and take as a natural result of the process, the real benefits, where it has many in interest in resolving conflict.

Mediation is a technical activity in a peaceful conflict resolution process, in which an impartial third person conducts separate meetings with those involved in the conflict, allowing them to reflect on the existing interrelationship lightly and fairly in order to reach a consensual agreement for the dispute (TARTUCE, 2018).

According to Salles (2020), mediation consists of a mechanism theoretically assisted by a third neutral and specialized person, with the purpose of stimulating their personal resources so that they can transform conflicting action into other alternative means for conflict resolution. Mediation stands out as a consensual, voluntary and informal means of precaution, control and pacification of conflicts promoted by a neutral party; using the special techniques to reach an agreement.

3.1 PRELIMINARY VIEWS OF THE CONFLICT

Previously, when there was still no idea of mediation as a solution to conflicts, the conflict itself was a dispute, where one party should emerge victorious, while the other would not lose what was the matter of dealing. According to Leal (2017), each party used its tricks to weaken the other and abolish the arguments that, in no way, could not overlap with the other argument. Lacombe and Heilborn point out that the conflict starts with communication failures, different expectations, incompatibility of objectives and different interpretation of the facts.

Currently, due to the evolution of the history of mediation in the contemporary world, another value is noted when it comes to conflict resolution. Instead of having a dispute, where one loses and the other wins, mediation proposes that both parties come out victorious and satisfied, so that there is not a feeling of injury, but a feeling of rejoicing (LEAL, 2017).

According to Leal (2017), conflicts are part of human nature, so where there are people, there is conflict, but it can also be generated, an opportunity for changes for social and personal development. If conflict is inherent to the human being, it is up to us to adopt mediation as a lifestyle, since, not only in domestic relationships, and more common in life, but also in the work environment, we live with situations of divergence, especially with regard to the opposition of ideas. The conflict is so embedded in the daily life of corporations, that most people deal with it almost unconsciously.

It is worth mentioning that the more we are aware of the subject, the greater our knowledge and mastery to achieve the high level of conflict resolution. The greater our elevation, the more prepared we will be to solve conflicting situations in business life or in any sphere of life.

3.1.1 Role of Mediator and Conciliator

The mediator is an indispensable component for the process of self-composition, because, although its competence does not allow him to give a type of sentence in the situation, his role is to unite the parties in a peaceful path, without influencing any of them, since impartiality is the main characteristic of the mediator. Scavone Junior (2018, p. 303) brings the following concept about the conciliator:

> The conciliator may be judicial, acting as an assistant to justice in conciliation hearings (CPC, art. 334), in accordance with the arts. 165 to 175 cpc, or extrajudicial, without, in this case, specific law to regulate the procedure or requirements for its performance. In both forms of action, the rules of Law 13,140/2015 will apply by extension.

The mediator is an aid, however, it is not limited to only facilitating understanding among citizens in the search for a better for their conflicts. The technical aspect of the professional should propose an objectivity to the process in case of non-agreement. Also, for Scavone Junior (2018, p. 303):

> The mediator, as well as the arbitrator, is any capable person who enjoys the trust of the parties (art. 9 of Law 13.140/2015). The mediator may be judicial, designated in the course of judicial or extrajudicial proceedings, to the exact extent that it acts before the existence of any conflict. Being out of court, Law 13.140/2015 did not require any specific or higher training, limiting itself to being able and enjoying the confidence of the parties.

In the United States, the profession of mediator is accredited for this purpose, therefore, the activity is professionalized, giving an expert status to the individual who works in this area. The ability to negotiate is another indispensable characteristic, whereas having the knowledge about negotiation is knowing how to treat and generate a quiet environment so that the parties feel comfortable in the face of litigation (TARTUCE, 2018). The time factor is essential for successful mediation, as the mediator should, in a timely manner, instigate the parties into a satisfactory solution. The driver of the case should have control of the situation, but not of the results, having an important performance in the communication between the parties.

Nevertheless, there is a possibility of there being many variations in a mediation process, but the operating structure is basically the same. He regularly initiates it by having a meeting with the parties involved, planning to establish the general rules, according to how the mediation process should come. According to Takahashi (2019), the conclusive phase of the mediation process is the agreement, and may be public, through a declaration or contract. In the agreement, the responsibilities of each party are defined so that there is a commitment and a guarantee that everything is fulfilled.

In successful cases, traders tend to be committed to the agreement that is generated, making the percentage of settlement stakes quite high. As Takahashi (2019) teaches, in other situations, mediation presents difficulties to be used when there is inexperience of negotiators; issues that are not put as priorities and make it difficult to conclude; the parties do not give in and remain firm in their positions; the parties differ in their expectations of what is a rational and fair agreement.

To better understand conflict mediation activities, it is necessary to understand how the intervention of an impartial, independent and unrelated third party occurs. As a premise, the mediator will not continue the usual paradigm of outsourcing management, resolution or transformation of conflicts. According to Zaneti Jr (2016, p. 30): "Mediation is a system also used in Brazil and inspired by the North American experience. Three factors that recommend it: a) saving time and money; b) control of the process by the parties; (c) obtaining more satisfactory agreements".

> The second reason for updating the work was the edition of Law 13,140, of June 26, 2015, which, in addition to being the legal framework of mediation in Brazil, represents the evolution of the country in order to honor the option for consensual methods of dispute resolution (conciliatory justice), linked, undoubtedly, to the most current concept of access to justice. The Mediation Law regulates in minutiae both judicial mediation and out-of-court mediation, in addition to providing for the power to conduct mediation involving the Public Administration (ROCHA, 2017, p. 10).

However, the mediator must have some skills to conduct mediation, he does not need to be a "refined" mediator, but the mediator needs to adopt several different guidelines, and the mediator needs to accept the model of continuous improvement in the process, make continuous improvement and be attentive

to the quality indicators that will be pre- -Validated. However, the main tool of the mediator is "impartiality", which is worth visualizing in the doctrine of Tartuce (2018, p. 53):

> The mediator does not properly induce people to an agreement: it contributes to the re-establishment of communication so that they generate new forms of relationship and dispute settlement. Its action occurs in the sense of generating opportunities for reflection and referrals so that the individuals themselves lead in the elaboration of proposals.

However, for better conduct of the negotiator in each case, there is a list of principles that help in the progress of the case. For Takahashi (2019), mediation transcends a process, is the art and technology of conflict resolution mediated by a third-party mediator, not limited to public agents, but also to private agents. People, your goal is to peacefully resolve the differences between people and strengthen their relationships. Emphasize that one should at least avoid any possible wear and tear, maintain the bond of trust and link their mutual commitment.

3.1.2 Tis the civil and tools of Mediation and Conciliation

Some authors prefer to more fully conceptualize mediation as a self-commendable process, where the parties are conducted by a third person without any interest in the cause, using negotiation to find a solution that meets the interest of those involved (AZEVEDO, 2015). Mediation is carried out by specialized professionals, whose role is to assist them according to interests related to the conflict, promoting dialogue and making each party put itself in the place of the other in relation to the problem.

Techniques are the tricks or tools used for the development and completion of a particular thing, and in all executions, technique is required. There are several techniques that are not exactly the right, but can adapt well in a mediation situation. For Scavone Junior (2018, p. 24):

> Heterocomposition is the solution of the conflict by the action of a third party with power to impose, by judgment, the rule applicable to the case presented to it. The solution through the Judiciary (state jurisdiction) stems from the systematic attribution of the State, which must say the law and, mainly, impose the solution of the conflict.

The techniques used in mediation do not only serve to provoke the parties to reach an agreement, but seek to establish cooperation between them. Thus, the agreement becomes the logical consequence, resulting from a good work of cooperation carried out throughout the procedure, and not its basic premise (AZAMBUJA, 2019)

For Azambuja (2019), the techniques of conflict mediation, we can come to the conclusion that each case has its peculiarity. Each case must be taken into account the fact that generates the cause, the emotional involved, the expectation of the parties in relation to the resolution of the dispute.

To this end, there are different techniques that help the mediator in influencing the parties to the final conclusion. We can mention the 6 main techniques used for a better result of the lide, which are: active listening; rapport; caucus; brainstorming; paraphrasing and abstracting (ALMEIDA, 2014).

ACTIVE LISTENING: It is the set of attitudes during communication, so that the mediator maintains full focus on the testimony of the parties, avoiding parallel thoughts and interruptions. According to Almeida (2014, p. 78):

> Active Listening is based on the tripod legitimation, balancing and questions and aims to: (i) offer a quality of dialogue whose acceptance allows people to feel legitimized in their contributions and participation; (ii) strike a balance between giving voice and time to the members of the conversation and enabling a listening that includes the other's point of view; (iii) offer questions that generate information, provide progress and movement to the Mediation process.

The mediator cannot be influenced by the belief of one of the parties, values, divergent thoughts or ideologies, demonstrating that he is at his attention, is interested in hearing what one of the components has to say and maintain his body expression according to his attention. Whenever the deponent is speaking, it is important to agree with the content of the speech, demonstrating to the interlocutor that he is being heard. Also, for Almeida (2014, p. 314):

> In reality, we need to review the mediator's concept of active listening and include a combination of meanings —vision and listening—so that nonverbal communication is not dissociated from the verbal in its observation. Because if we were dissociated, we'd be working with a partial wiretap. In fact, with the smallest share of expression of the mediated, the words spoken.

RAPPORT: It is a reliable establishment of the mediator with the parties, where the components are at ease to expose their views. The needs of each component are indispensable to be heard, because interests and proposals will be perceived to resolve the conflict. The person responsible for the procedure acts with the objective of supporting those involved. Also, for Almeida (2014, p. 47):

> The active and welcoming conduct of the mediator (rapport) should provoke in the mediated the favoring of an appropriate verbal and nonverbal expression and an inclusive listening — which considers the point of view of the other as a possibility. Among the techniques derived from the communication and analysis of the narratives used in this stage, the following are privileged: the clarification of the reports — dismembering the objectivity and subjectivity of its content; the identification and perception, on the part of the mediated, of common, complementary and divergent interests contained in the narratives; the invitation to reflect and to be considered from the point of view of the other.

CAUCUS: This technique is used for situations where the conflict is quite frayed and emotions are on the skin, the parties are aggressive and the dialogue does not proceed fluidly. The professional talks in isolation with each party and listens both in a timely and equal time, so as not to favor any of those involved. This method is generally used in cases of sharing, financial and business information. Moreover, for Almeida (2014, p. 68):

> Private or individual meetings, also known by the expression caucus, are intended to provide an exclusive space of conversation with one of the mediators, including or not their network of pertinence and lawyer(s), and meet multiple purposes: to allow access to the speeches of each one, without the interference of the presence of the other; cause reflections aimed at resolving apparent impasses; identify the subjective agenda of the question presented.

Nevertheless, this technique can still be used to assist in the flow of information, being useful for negotiation and help the parties to review the strength of their cases. Moreover, as *for BRAINSTORMING*: for Almeida (2014), this practice includes granting people the freedom to provide ideas to solve problems without compromising or prejudging proposals, verifying the feasibility of proposals and limiting access to projects that may be a starting point for dispute resolution.

PARAPHRASING: In some cases, the parties produce numerous reports full of value judgments, hostility and other factors that impair the understanding of the subject. A mediator helps parties understand what it really means and encourages them to understand new claims. This technique is called recontextualization because the mediator intends to make the parties see the dispute from another angle. For Leal (2020, p. 165):

> Mediation consists of so-called Alternative Dispute Resolutions (ADRs) or Alternative Dispute Resolution Methods (Mascs). It is a voluntary procedure in which a third impartial person, in this case, the mediator, through the application of techniques such as active listening and paraphrasing, helps the parties to re-establish dialogue in order to identify their interests and needs.

According to Tartuce (2018), the objective of mediation is to provide assistance in obtaining agreements, based on the needs of the people and they, as such, should have information about the process for decision-making throughout it., that is, to resolve or prevent a conflict through communication between those involved with the collaboration of an impartial third party, called mediator. In the midst of alternative practices, mediation seeks to provide a qualified space of dialogue that allows the expansion of perceptions and provides a good solution to those involved.

3.2 MEDIATION AND CONCILIATION IN THE PANDEMIC PERIOD AS A GUARANTEE OF ACCESS TO JUSTICE AND DEJUDICIALIZATION

The dejudicialization of disputes and self-composition by the parties to the process is already a reality in the procedural systems of countries that have the courage to resolve the problematic and structural issues of the judiciary (TJAP, 2022). Above all, achieving satisfaction by the parties involved in the conflicts promotes the benefits and values of social pacification.

This whole issue had a need for regulation, so that this practice would function vigorously, being highlighted by the legal system as an aid that could improve the quality of justice and quality of a peaceful social life. Moreover, as Tartuce (2018, p. 313) has:

> It is worth noting that the realization of consensual means in the notarial databases was referenced in Law No. 13,140/2015. In accordance with Article 42, the law of mediation applies, in that it is appropriate, to other consensual forms of conflict resolution (such as community and school mediations) and to those carried out in extrajudicial services, provided that within the scope of their powers.

The goal of creating alternatives to conflict resolution outside the judiciary is to implement traditional justice while creating effective conflict resolution tools that open up and expand access to justice for marginalized populations. In addition, among the means of implementation of out-of-court services is a unique tool, the "mediation of conflicts", which allows the resolution of conflicts through normative and supervisory activities. Moreover, according to Salles (2020, p. 32-33):

> Among the final provisions of the Mediation Law, the extension of the law, in what is appropriate, to community and school mediations and those carried out in extrajudicial services (art. 42) deserves to be mentioned; the reproduction of the same caveat of The Matter 125 regarding mediation in labor relations (art. 42, §único); the possibility for public administration bodies to set up chambers for conflict resolution on regulated or supervised activities between individuals; modifications to Law 9.469/1997 to regulate the competence for authorizations of agreements or transactions in disputes by public companies and federal authorities; and, finally, the reproduction of the permission for mediation to be done over the Internet or other means of communication at a distance, provided that with the consensus of the parties.

Mediation is a consensus method for dealing with disputes. However, this is how impartial people behave and can facilitate communication between those involved, giving them a full understanding of the complexities of a dispute situation and thus coming out of a stalemate that surrounds them. Therefore, mediation is a mutually agreed form and is not intended to be performed by a third party, but its logic is completely different from the action that judge has the power to enforce. In the understanding of Scavone (2018, p. 20):

> Article 3 of the CPC 2015 is thus written: "Art. 3) It will not be excluded from the judicial assessment threat or injury to law. § 1 - Arbitration is permitted in the form of law. § 2 - The State shall promote, whenever possible, the consensual settlement of conflicts. § 3 - Conciliation, mediation and other methods of consensual settlement of conflicts shall be encouraged by judges, lawyers, public defenders and members of the Public Prosecutor's Office, including in the course of the judicial proceedings."

It should be noted that in Brazil there is a set of rules through recent legislative reforms on the method of resolving civil disputes. The beginning of this trajectory was in 2010, through Resolution No. 125 National Council of Justice and three other Federal Laws of 2015, as salles (2020, p. 22) mentions:

> This agenda gained special momentum with the confirmation of the volume of cases and appeals in the courts and came to fruition with the edition of a sequence of normative diplomas between the years 2010 and 2015. The milestones of this rapid trajectory are, in 2010, Resolution No. 125 of the National Council of Justice and, already in 2015, the three federal laws that structured this system: the law that reformed the Arbitration Law (Law 13,129), the Mediation Law (Law 13,140) and the Code of Civil Procedure itself (Law 13,105).

Thus, it stresses that the "multi-door justice", present in the CPC through its most prominent institutions, mediation and conciliation, provided for in Art. 334 of the CPC (2015):

> Art. 334. If the application meets the essential requirements and is not the case for preliminary dismissal of the application, the judge shall appoint a conciliation or mediation hearing at least 30 (thirty) days in advance, and the defendant shall be cited at least twenty (20) days in advance.

The Code of Civil Procedure also generated expectation in the change of behavior of litigants, with regard to the act of resolving their conflicts in a judicial way, offering through mediation a structure fit for this purpose.

3.3 GUIDING PRINCIPLES OF MEDIATION AND CONCILIATION

This chapter shows the relationship of guiding principles in the solution of the deal fairly, transforming adversity through dialogue with a principled basis, both for the techniques applied by the mediator and for the success of the procedure itself. The fundamental and basic principles that guide mediation are listed in Law 13,140 of 2015 of the CNJ (Mediation Law) in article 2, they are:

> Mediation will be guided by the following principles: I - impartiality of the mediator; II - isonomy between the parties; III - orality; IV - informality; V -autonomy of the will of the parties; VI - search for consensus; VII -confidentiality; VIII - good faith (BRASIL, 2015).

The principles are norms that will be implemented in the best possible way, within the recurring legal possibilities, so that their existence depends on the analyses to be carried out at the time of their application (TARTUCE, 2018).

Three of the principles mentioned in the article 2 list of the Mediation Law can be considered as the essential principles of mediation, they are: that of isonomy between the parties, the search for consensus and good faith. All other principles are also set out in Article 166 of the CPC/2015.

3.3.1 The principle of isonomy

This principle plays an important role in mediation, so that the parties involved are treated equally and impartially, providing the same standards of participation and the same opportunities in the mediation process (Law 13.140 of 2015 of the CNJ, ART. 2)

It is important that there is a purpose to contribute to a harmonic outcome between the parties. The mediator must be careful to treat the parties equally, providing both parties with the same criteria of participation and the same opportunities and treatment (Law 13.140 of 2015 of the CNJ, ART. 2º).

3.3.2 Principle of autonomy of will

One of the essential principles of mediation is that of autonomy of will, occurs when the parties are there of their own free will, by willingness. This means that the final result will only exist if it is by the will of the parties, that is, it is free the person to express his will to accept only the obligations that are appropriate to him (Law 13.140 of 2015 of the CNJ, ART. 2), the parties can administer the procedure in any way they wish and put an end to mediation when they wish.

> The recognition of the autonomy of the will implies that the deliberation expressed by a fully capable person, with freedom and observance of legal canons, should be considered sovereign. The term "will" expresses interesting meanings: 1. the human being's faculty of wanting, choosing, freely practicing or failing to practice certain acts; 2. inner strength that impels the individual to accomplish what he has set out, to achieve his/her ends or desires – courage, determination and firmness; 3. great willingness to accomplish something for others - commitment, interest, zeal; 4. ability to choose, to decide between possible alternatives - volition; 5. feeling of desire or aspiration motivated by a physical, physiological, psychological or moral appeal – wanting; 6. deliberation, determination, decision that someone expresses in order to be fulfilled or respected (TARTUCE, 2018, p. 214).

In Article 2, item V, and paragraph 2 of Law 13,140 (BRASIL, 2015), it states that no one will be obliged to remain in the proceedings against their will, a fact that is also reinforced by the principle of willingness. It is the will of those involved to leave the mediation session at any time if they so wish, without being harmed.

With regard to the principle in the Mediation Law: "Art. 2. Mediation will be guided by the following principles: [...] V - autonomy of the will of the parties; [...] § 2 – no one will be obliged to remain in mediation procedure" (BRASIL, LEI 13.140, 2015) Then mediation will be governed according to the autonomy of the will of the interested parties, including with regard to the definition of procedural rules. Therefore this freedom must be guaranteed to the mediating and it is up to the mediator to respect that will.

The importance of autonomy of will means that the deliberations expressed by a person are adequate competence, free will and in line with laws and regulations should be considered sovereign. According to Tartuce (2018), autonomy seeks a fundamental point, which is voluntary, because for such guidelines, it is very important to observe for many people that mediation is indispensable, and the conversation can only happen if the participants accept it clearly; they need to choose the path agreed by both parties and to insist on mediation of goodwill from the beginning until the end of the procedure.

3.3.3 Principle of good faith

In the mediation session, the parties involved must act according to the ethical and moral values of society, given the need for the presence of sincerity, loyalty, honesty, justice and other characteristics for the procedures performed to be effective. Without this principle, the commitment of the hearing is certain (Law 13.140 of 2015 of the CNJ, ART. 2).

> The principle of good faith is of the utmost relevance in mediation: to participate with loyalty and a real willingness to talk are essential conducts so that the consensual pathway can develop efficiently. After all, if one of those involved ceases to take mediation seriously, his posture will generate a regrettable waste of time for all (TARTUCE, 2018, p. 231).

Good faith governs contractual relations can be regarded as the presumption of obligation to act or behave before the other with loyalty and justice. (Law 13,140 of 2015). For Tartuce (2018, p. 231) "Good faith consists in intimate feeling and conviction as to the loyalty, honesty and justice of one's own behavior in view of the realization of the purposes for which it is directed." It is the willingness of the parties to

resolve the conflict, because if there is a demand for the resolution of the conflict, it is understood that the party has good will and without intention of wanting to harm the other.

3.3.4 Principle of impartiality

Impartiality is an indispensable requirement in mediation, where the mediator acts in a neutral manner and cannot take sides, because the guidelines are assigned to them must be carried out impartially, preserving the credibility of mediation, that is, no preference or differentiated treatment should be given to any of those involved in the conflict (Law 13.140 of 2015).

In mediation, the mediator cannot be influenced by his ethical and moral values so that they do not interfere in the solution of the conflict, ensuring a balance of power between the parties involved (Law 13,140 of 2015 of the CNJ, ART. 2).

> Essential impartiality guideline of the means of conflict resolution, impartiality represents the equidistance and the absence of commitment in relation to those involved in the conflict. Crucial both in the procurement and consensual means, its presence is a determining factor for the recognized as valid the action of the third party involved in the conflict (either to decide or to foster consensus). To act on a case, the impartial third party must be completely foreign to the interests at stake, not being linked to the parties by special personal relationships (TARTUCE, 2018, p. 226).

The principle of impartiality the mediator must adopt a neutral attitude and shall not favour, distinguish or benefit either party. According to Scavone Junior (2018), the principle of impartiality, where he says that the principle is as a basic criterion for conflict resolution, fair representation is equidistant and non-existent commitment to the people involved in the conflict. It is fundamental both in the decision and in the way the parties agree, their presence is a decisive factor affecting the performance of the third intervener conflict, whether in the decision or instigating consensus.

3.3.5 The principle of individual freedom

In today's era, it incorporates the possibility of uninterrupted execution of any nature, the very choice, therefore, everyone will be able to follow your life project in the best possible way suitable for you from the point of view of privacy, intimacy and free exercise of private life. According to Tartuce (2018, p. 2016):

> The principle of individual freedom, in present times, constitutes the possibility of making, without interference of any nature, their own choices; thus, each one can seek to realize his life project as best suits him in a perspective of privacy, intimacy and free exercise of private life.

Mediation, by confronting the transformations of the past and transforming them into the present, offers both the opportunity to discover works, where it accepts the reorganization of the relationship to think about the future.

3.3.6 The principle of informality

Where it repays the deficiency of fixed rules and procedures, considering the different probabilities of dispute settlement, in addition to preventing the mediator from reaching a deadlock, this principle is essential for the parties to freely determine the best exit. Because mediation is through a fair third party, using techniques to clarify situations, opinions, statements and possibilities presented in the interaction. According to Takahashi (2019, p. 29): "It is within these limits that the principle of informality must be understood. Flexibility is sought that allows greater freedom of action of the parties and the third facilitator, without this means renouncing any rule."

> With these considerations, we go to the analysis of the principles of conciliation and mediation brought by Art. 166 of the CPC, by Art. 2 of the Mediation Law and by Art. 1 of the Code of Ethics of Conciliators and Judicial Mediators of Annex III of Resolution No. 125/2010. These principles are: informality, orality, confidentiality, search for consensus, good faith, impartiality, independence and autonomy, isonomy between the parties, autonomy of will, informed decision, empowerment, validation, respect for public order and current laws, and competence (TAKAHASHI, 2019, p. 29).

It is important to note that although the Mediation Law provides that informality is one of its principles that is in Article 2, IV of Law 13.140 (2015), where it guides the role of the mediator and stipulates that he must remind the mediator at the beginning of the first meeting and when it deems necessary confidentiality rules applicable to the procedure by the parties, article 14 of the same law mentioned above.

3.3.7 The principle of confidentiality

It is directed on protecting the confidentiality of knowledge, proposals, documents including all records produced in the process. They can only be used in terms that are considered and provided with the relevant personnel, where mediation is a mutually agreed method involving participants who voluntarily participate in a dialogue, where it is essential to have will and sincerity so that they can communicate and seek solutions. According to Tartuce (2018, p. 232): "Good faith is intrinsically linked to confidentiality; secrecy, moreover, is usually identified as one of the advantages arising from the adoption of mediation."

> To this extent, confidentiality is the instrument capable of conferring a high degree of sharing so that people feel "comfortable to reveal intimate, sensitive and often strategic information" that they would certainly not externalize in a procedure guided by advertising (TARTUCE, 2018, p. 232-233).

In this sense, confidentiality is a tool that can provide a lot of sharing, so that people can freely disclose private, sensitive and generally strategically important information, and this information will certainly not be externalin a program guided by advertising. According to Tartuce (2018, p. 233):

> The CPC/2015 recognizes the importance of the confidentiality available, in Article 166, § 1, that it extends to all information produced in the course of the procedure, the content of which cannot be used for purposes other than that provided for by express deliberation of the parties.

According to Article 30, § 1 of Law 13.140/2015 where it states that the principle of confidentiality emphasizes that the obligation of confidentiality applies not only to participants in consensus meetings as mediators and parties, but also as agents, lawyers, technical consultants and others who have confidence in their direct or indirect participation in mediation.

3.3.8 The Principle of Orality

It aims to show the accuracy of conversation between the people involved in active listening, in other words it means that, you need to understand what is being said, not just for an immediate response and counterattack. The methods for achieving such a task are diverse, and the main center is explanation and cognitive provocation. The reflections and the elaboration of questions open channels of listening and new possibilities for the participants. According to Takahashi (2019, p. 29): "The principle of orality is directly related to informality. In conciliation and mediation, simple forms are valued, done orally, and not in writing, through direct contact between the parties."

For Tartuce (2018, p. 223): "the greater integration of the parties in the resolution of conflicts is guided, above all, by the principle of orality, and "would have no meaning if they were not given the opportunity to engender or conceive their own decision, composing the dispute by themselves". The greater integration of the parties in the conflict resolution process is mainly due to oral principles, and if they do not have the opportunity to produce or design their own decisions, opening a process on their own.

4 CONCLUSION

The study concludes, highlighting the importance of access to justice, which aims to provide people with disputes through the guidance of the State, however, access to justice is a right capable of promoting other rights, that is, through it, guaranteed to protect other rights in the face of damage or threat of damage.

Currently, access to justice should also include obtaining alternative conflict resolution, which allows analyzing the evolution of mediation over the years and examining its use of electronic mediation, from the beginning of the pandemic to the present day. As can be seen in current research, access to justice should not only be understood as entering the judiciary. It is much larger than simple offers the possibility of someone filing a lawsuit. Effective access to justice is necessary to overcome some obstacles, so mediation emerges as a facilitator.

It can be seen that the concept of mediation is closely related to reconciliation. It is worth mentioning, however, that the research occurred at a different time, and its purpose. Mediation as a form of effective access to justice is an effective mechanism, as has been shown in the course of the work.

The conflict can be viewed from a different perspective because it has a mediator participating in the process to alleviate existing problems. It is indisputable that the Internet, a common tool for accessing digital mediation platforms, can be a means of bringing actors closer to the exercise of democracy. Because due to the transformation and training of those involved, digital mediation is an alternative way to act as a

judicial institution, facilitating society's access to justice, legitimizing its participation, judicial or extrajudicial.

Therefore, it is the main mission of the country and the responsibility of all citizens to formulate public policies that help society achieve justice and accelerate social demands. The study concluded that states are specifically assing themselves to raise awareness of the use of these means more efficiently. So this new phase that the world is going through shows that Brazil is investing in electronic methods to help reduce the actual accuracy of the process. As a yes, mediation shows a differentiated and restorative view of justice, increasingly appears between law and society.

Finally, it is concluded that it is understandable that mediation transcends the "process", which is defined as a conflict resolution technique mediated by a third mediator. However, it must be based on article 2 of Law 13.140/2015 establishes that no one is obliged to continue participating in mediation and conciliation proceedings. Notifiedly, conciliation and mediation advanced greatly during the pandemic, with the use of videoconferencing at the Court of Justice of the State of Rio de Janeiro (TJRJ), during the quarantine of COVID-19. Needless to say, the powers originally exercised by the judiciary may be delegated by means such as out-of-court services or community rooms, mediation centres and out-of-court mediators, provided that they have the characteristics and guarantees inherent in the jurisdiction.

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