JUDICIARY CRISIS: THE ACCESS TO JUSTICE GUARANTEED BY THE APPROPRIATE DISPUTE SOLUTION METHODS

CRISE DO JUDICIÁRIO: O ACESSO À JUSTIÇA GARANTIDO PELOS MÉTODOS ADEQUADOS DE SOLUÇÃO DE CONFLITOS

Daniel Firmato de Almeida Glória[1]
Paulo Eduardo Diniz Ricaldoni Lopes[2]

ABSTRACT

The work proposes to analyze the effectiveness of the principle of access to justice considering the hyperbolic Judiciary statistics. Initially, to understand the application of the principle, it will be studier its definition. Afterwards, the Judiciary's data will be analyzed to check the situation of the national courts. Finally, the alternative dispute resolution methods will be studied as a solution to guarantee the effectiveness of the principle and the reduction of the number of processes in progress. This article uses the deductive method and its theoretical framework is the Constitution of the Republic and the Justice in Numbers 2020 report.

KEYWORDS: Access to justice. Judiciary Crisis. Appropriate dispute resolution.

RESUMO

O trabalho propõe analisar a efetividade do princípio do acesso à justiça diante dos números do Judiciário. Inicialmente, para entender a aplicação do princípio do acesso à justiça será estudada a sua definição. Após, serão analisados os dados do Judiciário para que possa verificar a situação dos tribunais nacionais. Por fim, os métodos adequados de resolução de conflito serão estudados como solução para garantir a efetividade do princípio e a redução do número de processos em tramitação. O presente artigo utiliza o método dedutivo e tem como referencial teórico a Constituição da República e o relatório Justiça em Números 2020.

PALAVRAS-CHAVE: *Acesso à justiça. Crise no Judiciário. Métodos adequados de solução de conflitos.*

1 Master (2001) and PhD in Economic Law from the Federal University of Minas Gerais (2012). He is a professor of Economic and Consumer Law at the FUMEC University of Belo Horizonte. Public Defender Coordinator of the Public Defender Specializing in Consumer Law. Has experience in the area of Law, with emphasis on Economic Law and Consumer Law. In addition, he has experience in the coordination of the Law Course, as well as in the implementation and execution of pedagogical projects. Director of BRASILCON - Brazilian Institute of Consumer Policy and Law. ORCID iD: https://orcid.org/0000-0002-9560-520X. Lattes: http://lattes.cnpq.br/8418203288672612. E-mail: danielfirmato@fumec.br.

2 Master in Private Law from FUMEC University. Postgraduate in Applied Civil Law from the Pontifical Catholic University of Minas Gerais (2014). Graduated in Law from the Pontifical Catholic University of Minas Gerais (2014). Legal Manager at Juris Correspondente. Has experience in the area of Law, with emphasis on Private Law, acting mainly in Business, Consumer and Mediation Law. ORCID iD: https://orcid.org/0000-0002-4485-7677. Lattes: http://lattes.cnpq.br/3270066796596842. E-mail: pauloricaldoni@gmail.com.

How to cite this article/Como citar esse artigo:
GLÓRIA, Daniel Firmato de Almeida; LOPES, Paulo Eduardo Diniz Ricaldoni. *Judiciary crisis: the access to justice guaranteed by the appropriate dispute solution methods.* Revista Meritum, Belo Horizonte, vol. 15, n. 2, p. 263-284, May/Aug. 2020. DOI: https://doi.org/10.46560/meritum.v15i2.8256.

1. INTRODUCTION

Brazilian society has a litigious tradition, in which in the face of conflicts, it seeks a third party (Judiciary) to protect its rights. Consequently, the national courts are overloaded with thousands of proceedings and new lawsuits are filed, making it impossible for the parties to obtain a full solution in a reasonable time. Currently, the labor force in the courts is not able to effectively and within a reasonable time render the merit decision, however, given the financial deficit of the Judiciary, hiring new professionals is not a feasible alternative.

This is an extremely important issue, since taking in consideration the scenario observed in the courts, the principle of access to justice is not effectively and fully achieved, since, although the judicial appreciation of conflicts (access to jurisdiction) occurs, they are not judged in a timely manner. Consequently, in view of the situation in which the judicial archive is found, it is not rare for the object of the lawsuit is lost due to the long period of time between the filing of the action and its final discharge, bringing losses and unnecessary costs to the State and to the parties.

In order to reduce the collection without depending directly on the Judiciary, the legislator stipulated in paragraph 3, article 3 of the Code of Civil Procedures (CCP) that the Law operators must, before and during actions, encourage usage of appropriate methods of self-composed conflict resolution. Thus, the work proposes to analyze whether, in view of the ineffectiveness of the principle of access to justice, proven by the numbers presented by the National Council of Justice, the adequate methods of conflict resolution are feasible to guarantee the solution of citizens' imbroglios, as well as reduce the number of lawsuits in the Judiciary.

In chapter two, a brief historical survey of the principle of access to justice since its beginnings was sought, followed in chapter three by its definition for State of Democratic Rule of Law. It was also emphasized that Justice cannot be confused with jurisdiction, so that in addition to guaranteeing citizens the right to seek a solution to their controversies in the Judiciary, they must be solved effectively and in a timely manner.

In chapter four, the 'Justice in numbers' report made available by the National Council of Justice (CNJ) for the year 2019 was used to confirm the hypothesis of a crisis in the judicial archives due to the high number of lawsuits in progress and the consequent losses that the delay in resolving disputes causes to the jurisdiction.

Finally, the last chapter presents the appropriate methods of conflict resolution as a solution to ensure the satisfaction of citizens who may together, or with the help of a third party, seek an agreement that brings benefits of mutual gain, removing the uncertainty of a judicial process and in less time, consequently, reducing the number of new lawsuits.

To enable the research, the hypothetical-deductive method was used, through a bibliographic research (books, articles, dissertations, theses, journals, legislation, among others) to seek to differentiate access to justice from access to jurisdiction and then, using data analysis, to ascertain the situation of the judicial collection in the country. Finally, appropriate methods of conflict resolution were presented as a proposal to ensure greater effectiveness of the principle of access to justice.

2. HISTORICAL EVOLUTION OF ACCESS TO JUSTICE

In its early days, the principle of access to justice was provided in the Magna Carta of 1215, which in its article 40 stipulated that "to no one we shall sell, to no one we shall deny or delay right or justice (LIBRARY, 2014, our translation[3]). However, because it was conceived on the concept of an absolutist state, individual freedoms were limited by nobility. However, even if almost the entire population lived under the low conditions imposed by the monarchy, Liberalism was only strengthened when the bourgeoisie dissatisfied with the lack of freedom to manage its profits and ventures took up arms with the revolution.

> In general terms, the Liberal State is characterized by its omission in the face of social and economic problems, not consecrating social and economic rights in its text beyond the basic rule of non-intervention in the economic domain. The liberal constitutions declare individual rights, understood as rights that regulate individual conduct and protect the sphere of individual interests, against the state, the limit of these rights being the right of the other, in addition to ensuring political rights. (MAGALHÃES, 2002, p. 63).

The bourgeoisie's quest to reduce state control in the private sphere, so that it could freely manage its wealth and enjoy it in the way it decides, is perfectly expressed by the famous phrase "laissez faire, laissez aller, laissez passer" which in literal translation means "let it do, let it go, let it pass". Moreover, for Adam Smith, the state or its representatives must limit themselves to defending the nation against enemies, protecting its citizens and guaranteeing basic conditions for public works (SMITH, 1996).

> As a result, the ratio between capital and income seems to regulate everywhere the ratio between working people and idle people. Wherever capital predominates, labor prevails; and wherever income prevails, idleness prevails. Therefore, any increase or decrease in capital tends to increase or decrease the actual amount of labor, the contingent of productive citizens and, consequently, the exchange value of the annual production of land and labor of the country, the real wealth and income of all its inhabitants. Capital is increased by parsimony and diminished by waste and mismanagement.
>
> [...]
>
> Just as an individual's capital can only be increased by what he saves from his annual income or annual earnings, so the capital of a society, which is equivalent to the sum of the capital of all its individuals, can only be increased in this way. Parsimony, and not labor, is the immediate cause of the capital increase. In fact, labor provides the object that parsimony accumulates. With all that labor can acquire, if parsimony did not save and accumulate, capital would never be greater. (SMITH, 1996, p. 129).

The minimal liberal state was the initial framework for the effective protection of the population's natural rights, with the state entity being responsible for abstaining from private matters and only guaranteeing the existence of rights.

> The bourgeoisie, the dominated class, at first and then the dominant class, formulated the philosophical principles of its social revolt.
>
> And, both before and after, it did nothing but generalize them doctrinally as common ideas to all the components of the social body. But by the time it

3 To no one will we sell, to no one deny or delay right or justice.

> takes political control of society, the bourgeoisie is no longer interested in maintaining in practice the universality of those principles, as the apanage of all men, only in a formal way does it sustain them, since at the level of political application they are in fact conserving the constitutive principles of a class ideology. (BONAVIDES, 2001, p. 42).

In the Liberal State paradigm (built on bourgeois ideology), methods of conflict resolution reflected the individualistic character of rights, that is, the State should keep its actions to a minimum, only guaranteeing order and protecting individual freedoms.

> Right to access to judicial protection essentially meant the *formal* (sic) right of the aggrieved individual to file or contest an action. The theory that while access to justice could be a 'natural right', natural rights did not require state action for their protection. These rights were considered prior to the state: their preservation required only that the state not allow them to be infringed by others. The state, therefore, remained passive in relation to problems such as a person's ability to recognize their rights and adequately defend them in *practice* (sic). (CAPPELLETTI; GARTH, 2002, p. 9).

According to the authors, still, for the liberal conception, it was not the obligation of the state entity to guarantee indiscriminately the judicial action, but only the formal access to justice (in a restricted way). Therefore, only citizens who could afford to defend their rights could seek judicial review of their disputes (CAPPELLETTI; GARTH, 2002).

The economic improvement and the consequent industrial development coming from the Liberal State led to an accelerated and unplanned rural exodus, creating overpopulated urban centers without basic health and work conditions for citizens who "survived" in precarious conditions. Formal equality, exploitation of the proletariat and self-regulation of the market, began the questioning of non-interventionism by the state.

> The Constitutions of Mexico (1917) and Weimar (1919) bring new rights that demand a forceful state action for their concrete implementation, strictly aimed at bringing considerable improvements in the material living conditions of the population in general, especially the working class. They talk about the right to health, housing, food, education, social security, etc. A new branch of Law is emerging, aimed at compensating, on the legal level, the natural unbalance between capital and work. Labor Law, thus, emerges as a valuable instrument aimed at adding ethical values to capitalism, thus humanizing the tormenting labor justice relations until then. In the legal scenario in general, the gestation of public order norms destined to limit the autonomy of will of the parties in favor of the interests of the collectivity is highlighted. (SARMENTO, 2006, p. 13).

Bourgeois society took advantage of general population mobilization to replace the feudal regime, but after its rise, it took over state power and created new forms of oppression. Using new technologies, it improved the means of production to be able to manufacture goods at lower costs than those of rival nations that were still regulated under the feudal regime, forcing these countries to adopt the same form of government, on pain of extinction of the state (MARX, ENGELS, 2014). As a result, the big cities received a population amount greater than their capacities, aggravating the degrading conditions that the citizens survived. In this way, the new revolutionary force considered it necessary for the state to abandon individualism and start to adopt community thinking in order to guarantee the interests of all. (MARX, ENGELS, 2014).

> In the form of machines, the working environment immediately becomes the worker's competitor. The return on capital is directly due to the number of workers whose conditions of existence have been annihilated by the machine. Since the tool is handled by the machine, the labor power loses in turn in its exchange value and in its use value. The worker, like paper money out of circulation, becomes non-marketable. The part of the working class that the use of machines turns at random into a superfluous population, that is, a population from which capital no longer has any direct need to secure its income, succumbs to the unequal struggle of the former professional or manufacturing exploitation against mechanical exploitation, filling the market and causing the price of labor to fall below its value. Workers thrown into misery have a double consolation, saying that their sufferings are passing and that the machine slowly invades a field of production, which breaks the intensity and extent of their destructive work. These two consolations cancel each other out. Everywhere the machine seizes an area of production, it engenders chronic misery in its competitor: the working class. (MARX, 2018).

Advocating the minimal state, the bourgeoisie considered it unfeasible to protect the population, but in the face of eminent revolutionary threats, governments were forced to adopt social proposals, especially those coming from the proletariat, which even though it was a fundamental part of the transition from Absolutism to Liberalism, did not have its desires and demands considered (ALBUQUERQUE; BARROSO 2018). As a strategy to halt these revolutions, mechanisms to protect the hypo-sufficient were adopted, such as material equality, state intervention and a better balance between market and society. Therefore, since one of the foundations of the Social State is the dignity of the human person, the State should not only create rights, but also establish sufficient instruments to make them effective.

The constant evolution of society has given rise to new forms of state, in which rights have abandoned their exclusively individualistic character in search of widespread protection for all their members. For the paradigm of the Social State, based on the solidarity and dignity of the human person, the state entity should not only create rights, but make possible instruments capable of making them effective.

> The basic difference between the classic concept of liberalism and that of the Welfare State is that, while that concept is only about placing barriers to the State, forgetting to set positive obligations for it as well, here, while maintaining the barriers, goals and tasks to which it did not previously feel obliged are added. The basic identity between the rule of law and the welfare state, in turn, lies in the fact that the latter takes and maintains respect for individual rights from the former and it is on this basis that it builds its own principles. (GORDILLO, 1977, p. 174).

Anew, resulting from the evolution of consciousness and society, the paradigm of the Democratic State of Law was conceived having as some of its fundamental principles popular sovereignty as the origin of State Power and the primacy of legality, mixing points of the Liberal and Democratic States (BOBBIO, 1986).

> Liberal states and democratic states are interdependent in two ways: in the direction that goes from liberalism to democracy, in the sense that certain freedoms are necessary for the correct exercise of democratic power, and in the opposite direction that goes from democracy to liberalism, in the sense that democratic power is necessary to guarantee the existence and persistence of fundamental freedoms. In other words: a non-liberal state is unlikely

> to be able to ensure the proper functioning of democracy, and an undemocratic state is unlikely to be able to guarantee fundamental freedoms. (BOBBIO, 1986, p. 20).

In this interlocution between paradigms, freedom can only be guaranteed by the State if there is a democracy that allows the conservation and development of individual guarantees based on the constitutional text. Thus, under the paradigm of the Democratic State of Law, the effective principle of access to justice is of fundamental relevance to individual, collective, diffuse and transindividual rights, because in the absence of the principle, the population would not have the means to enforce its fundamental guarantees.

> In this manner, the Democratic State of Law is a new order that adheres to the precepts of the paradigms of liberal law and social law, which means the joining of the principles of the State of Law and the Democratic State, that is, it promotes the limitation of the exercise of state power with the supremacy of the Constitution of the Republic and the democracy of process, in which the magistrate must remove the application of rules contrary to the Constitution of the Republic, always aiming at the realization of fundamental rights. (CAMARGOS, 2020, p. 20).

In Brazil, the principle of access to justice as a fundamental right was first stipulated in the 1946 Constitution of the United States of Brazil, and it was determined in paragraph 4 of article 141 that "the law may not exclude from the appreciation of the Judiciary any injury of individual right" (BRAZIL, 1946). However, in 1964 with the Coup d'Etat, the principle was first mitigated by Institutional Act no. 2, which excluded from the Judiciary's appreciation:

> I - the acts practiced by the Supreme Command of the Revolution and the Federal Government, based on the Institutional Act of April 9, 1964, this Institutional Act and its complementary acts;
>
> II - resolutions of the Legislative Assemblies and the House of Aldermen that have revoked elective mandates or declared Governors, Deputies, Mayors or Aldermen impeded, as of March 31, 1964, until the promulgation of this Act. (BRAZIL, 1965).

Later, when the Institutional Act No. 5 was promulgated, it was determined that:

> The President of the Republic may decree intervention in states and municipalities, without the limitations provided for in the Constitution, suspend the political rights of any citizens for a period of 10 years and revoke federal, state and municipal elective mandates, and make other provisions. [...]
>
> Article 11 - All acts performed in accordance with this Institutional Act and its Complementary Acts, as well as their respective effects, are excluded from any judicial review. (BRAZIL, 1968).

Such mitigation lasted until 1978, when Constitutional Amendment no. 11 in its Article 3 revoked the "institutional and complementary acts, insofar as they are contrary to the 1988 Constitution of the Republic, except for the effects of acts performed on the basis thereof, which are excluded from judicial review" (BRAZIL, 1978).

Finally, in 1988, with the promulgation of the Constitution of the Republic, the original constituent, playing the role of representative of the people, already instituted in the preamble, the adoption of the Democratic State based on the exercise and guarantee of social, individual, freedom and justice rights, among others.

3. THE PRINCIPLE OF ACCESS TO JUSTICE

In a society founded under the paradigm of the Democratic State of Law, making the principle of access to justice effective is of fundamental importance so that all rights (individual, collective, diffuse and transindividual) can be guaranteed to the population.

> The term 'access to justice' is admittedly difficult to define, but it serves to determine two basic purposes of the legal system - the system by which people can claim their rights and/or resolve their disputes under the auspices of the state. First, the system must be equally accessible to all; second, it must produce results that are individually and socially just. (CAPPELLETTI; GARTH, 2002, p. 8).

For the principle of access to justice to be effectively understood, a definition for justice must be sought. Aristotle, in his work Nicomachean Ethics initially defines it as "that disposition of character that makes people inclined to do what is just, that makes them act justly and desire what is just; and in the same way, injustice is understood as the disposition that makes them act unjustly and desire what is unjust. (ARISTÓTELES, 1991, p. 94).

Aware that the definition of justice is not a simple task, unscramble its affirmation, conceptualizing the just man as the honest and respectful individual who has the greatest virtues when exercising it before others, acting in a way that brings benefits to all and not only to himself (ARISTÓTELES, 1991). It is possible to perceive the outlines of material equality when the philosopher assimilates as each subject has differences, to be just is not to guarantee the same conditions, but to treat the equal in a similar way and the different in a different way.

> Now, in the dispositions they make about all matters, laws aim at the common advantage, either of everyone, of the best or of those who hold power or something of this kind; so that, in a certain sense, we call just those acts that tend to produce and preserve, for political society, happiness and the elements that compose it. And the law commands us to do both the acts of a brave man (for example, not deserting our post, nor running away, nor giving up our weapons) and those of a temperate man (for example, not committing adultery, nor indulging in lust) and those of a calm man (for example, not hitting anyone, nor slandering); and likewise with regard to the other virtues and forms of evil, prescribing certain acts and condemning others; and the well-drafted law does these things right, while the hastily conceived laws do them less good. (ARISTÓTELES, 1991, p. 96).

John Rawls in his work 'A Theory of Justice' teaches that all individuals must have unavailable rights, that is, those that even in the face of supposed social welfare cannot be mitigated (RAWLS, 2000).

> Each person possesses an inviolability based on justice that not even the welfare of society can ignore. For this reason, justice denies that the loss of freedom for some is justified by a greater good shared by others. It does not allow the sacrifices imposed on a few to have less value than the greater total of the advantages enjoyed by many. Therefore, in a just society, the freedoms of equal citizenship are considered inviolable; the rights guaranteed by justice are not subject to political negotiation or the calculation of social interests. The only thing that allows us to accept a mistaken theory is the lack of a better theory; analogously, an injustice is tolerable only when it is

> necessary to avoid an even greater injustice. Being the first virtues of human activities, truth and justice are unavailable. (RAWLS, 2000, p. 4).

In a society (faced with pre-existing differences as a social condition), it is common for citizens to suffer favors or detriment as a result of these conditions, and justice must protect these inequalities and guarantee that fundamental rights and duties are equally guaranteed among its members (RAWLS, 2000).

> In this way of considering the principles of justice I will call justice as equity.
>
> Thus, we must imagine that those who engage in social cooperation choose together, in joint action, the principles that should assign the basic rights and duties and determine the division of social benefits. Men must decide beforehand how they are to regulate their mutual claims and what the constitutional charter for founding their society should be. As each person must decide with the use of reason what constitutes his good, that is, the system of purposes which, according to his reason, he must pursue, so a group of people must decide once and for all what among them must be considered fair and unjust. The choice that rational men would make in this hypothetical situation of equitable freedom, assuming for the moment that the problems of choice have a solution, determines the principles of justice.
>
> In justice as equity the original position of equality corresponds to the state of nature in traditional social contract theory. This position is obviously not conceived as a real historical situation, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized in such a way as to lead to a certain conception of justice. (RAWLS, 2000, p. 13).

Rawls teaches that formal justice will only be effective when equitable justice (that which must be accepted consensually and applicable to all without exception) is accepted by citizens and in the face of the peculiarities of each case presented impartially handled by judges and authorities (RAWLS, 2000).

> Treating similar cases in a similar manner is not enough to guarantee substantive justice. This depends on the principles according to which the basic structure is put together. There is no contradiction in assuming that a slave or caste society, or some other society that sanctions the most arbitrary forms of discrimination, is administered in a balanced and consistent manner, although this may be unlikely. However, formal justice, or justice as regularity, excludes significant types of injustice. For if institutions are supposed to be reasonably fair, it is then of great importance that authorities should be impartial and not submit to the influence of personal, monetary, or any other irrelevant considerations when dealing with particular cases. Formal justice in the case of legal institutions is merely an aspect of the rule of law that supports and ensures legitimate expectations. One type of injustice is the failure of judges and other authorities to adhere to proper rules and interpretations when judging claims. A person is unfair in that by character and inclination he is willing to such acts. Moreover, even where laws and institutions are unjust, it is often best that they are consistently enforced. In this way, those who are submitted to them at least know what is required of them and can protect themselves adequately; while there is an even greater injustice if those who are already disadvantaged are treated arbitrarily in particular cases where the rules would give them some security. [...] In general, all that can be said is that the strength of the demands of formal justice, of the obedience of the system, clearly depends on the substantive justice of the institutions and the possibility of reform. (RAWLS, 2000, p. 62-63).

Rawls' thinking is perfectly suited to the reality of the Democratic Rule of Law because it has an inclusive character of individuals who aim to carry out personal projects under equal conditions (even if only formal) so that the citizen becomes the very author of the rules created and not just a recipient (MORAIS, 2007).

Mainly, in the Democratic Rule of Law, the access to Justice is part of the list of Human Rights, being fundamental it's guarantee so that the others can be recognized. Moreover, for society to have the effective guarantee of its rights, it is essential that it be expanded, become fairer and faster to provide judicial services, and it is the state's duty to devise instruments to achieve this (ANNONI, 2006).

In Brazil, in order to effect judicial appreciation of conflicts, the economic capacity of the parties cannot be an impediment, thus, through the gratuitousness of justice, the judicial costs will be suspended because the party is unable to afford them (BRAZIL, 2015). Also, special courts were created with exemption from costs, fees, expenses and attorneys' fees in the first degree (article 54 and following of Law 9.099/95) (BRAZIL, 1995). Finally, the Office of the Public Defender was established as a fundamental instrument for the promotion of human rights with the free and full defense of individual and collective rights to all those who do not have conditions but need judicial or extrajudicial protection (article 134 of CR/88).

> The 1988 Federal Constitution is considered one of the most complete in the world when dealing with fundamental rights and guarantees, since it consecrated material equality, guaranteeing all Brazilians the reduction of social inequality, as well as free legal assistance to the needy, the creation of special courts for less complex causes and crimes with less offensive potential, restructured and strengthened the Public Ministry and reorganized the Public Defender's Office. (SEIXAS; SOUZA, 2013, p. 82).

As Adriana Silva points out, justice should not be confused with jurisdiction, the former being related to the search for the solution of the conflict with the sanitation of divergences and the latter as "saying the right, giving the solution to the proposed case, without, however, necessarily worrying about the contentment or satisfaction of the parties" (SILVA, 2005, p. 87).

Corroborating this understanding, Bruno Salles presents the principle in two conceptions: the first, also called "Access to the Judiciary or to the Courts" is the one that is effective by guaranteeing the exercise of the right of action before a duly institutionalized Judiciary; the second, has a broader meaning, enabling the citizen to have ample legal information and other forms of accessibility to his/her rights, even if outside the Jurisdictional organization, being named by the author as "Access to the Right or to the Rights" (SALLES, 2019).

> Access to justice has been understood, for the most part, as the constitutional principle that underlies the right of access to the courts, the right to appeal the violation of subjective law. This meaning is in perfect harmony with the Democratic State, which must be built according to the commandment of the Constitution in its Article 1. However, access to justice, in our sense, encompasses other characteristics besides the procedural dimension. We consider this aspect to be extremely important, but by not bringing it into the discussion in its due relevance - impediments that make it impossible for citizens to have full access to justice - we will be emphasizing the pure instrumentality to the detriment of the substantiality of the constitutional precept. (ROCHA; ALVES, 2011, p. 133-134).

Aware that only ensuring that conflicts are appreciated by the judiciary does not guarantee the effectiveness of access to justice, the CCP in its article 4 stipulates that "the parties have the right to obtain within a reasonable time the complete solution of the merits, including a satisfactory one" (BRAZIL, 2015). Likewise, the European Convention on Human Rights, using the Universal Declaration of Human Rights as a basis, in view of the procedural effectiveness, has agreed that any person has the right "that his cause be examined, fairly and publicly, within a reasonable time by an independent and impartial tribunal established by law" (ECHR, 1950).

An excellent example of the guarantee of jurisdiction, but not justice, is the case distributed in 1885 by the Count and Countess of Eu claiming possession of the Guanabara Palace, which was the subject of a scuffle by Marshal Deodoro da Fonseca during the proclamation of the republic, which only after 125 years (in 2020) did the last appeals before the Supreme Court become res judicata. Two years earlier, more than 123 years after its distribution, Special Appeal No. 1.149.487/RJ[4] (BRAZIL, 2019a) and Special Appeal 1.141.490/RJ[5] (BRAZIL, 2019b) were judged by the Superior Court of Justice. Finally, after 125 years, the appeals of Bill of Review No. 761.820/RJ (BRAZIL, 2020d) and Bill of Review No. 764.506/RJ (BRAZIL, 2020e), were dismissed while awaiting the decision of the Superior Court of Justice (STJ), as well as the Regimental Appeal in Extraordinary Appeal with Bill of Review No. 1. 250.467/RJ (BRAZIL, 2020f) were known, but their follow-up was denied because no constitutional offense was identified.

The litigation initiated by the imperial family sounds like a distant reality, but the procedural delay brings losses to citizens in daily situations such as the divorce of a couple with minor children. According to article 733 of the CPC, even if there is an agreement between the spouses, if they have minor children, they must request the homologation of the agreement (BRAZIL, 2015). However, due to the delay resulting from the high procedural collection, that child, until then incapable, may reach the age of majority before the transaction is homologated and the parties may waive the dispute to perform the act in notary public. The problem in this situation is that the Judiciary, by not being effective, was unnecessarily moved, generating costs to the parties and to the State.

> The importance of the movement called access to justice and the mechanisms created to guarantee the inclusion of an increasing number of citizens in the judiciary is evident.
>
> These mechanisms of access to justice, which resulted in an avalanche of lawsuits, gave rise to another problem: the progress of litigation and the slowness of judicial delivery.
>
> Therefore, it is not enough to create only formal mechanisms of access to justice, allowing mere access to the Judiciary, without worrying about the progressive increase of litigation and the consequent slowness of judicial

4 The asset was obtained with the use of National Treasury resources as a dowry and could only be used as an address for the imperial family. With the proclamation of the Republic, the royal privileges and real estate titles were extinguished, as well as Laws 166/1840 and 1,904/1870 stipulated that the goods used for housing the imperial family were property of the National Treasury. Thus in the first degree it was understood that as the property belongs to the Union and with the end of the monarchy the counts no longer possess titles guaranteeing their property, there is no violation of the right of possession. This understanding was confirmed by the 2nd degree and by Superior's Court of Justice (STJ) Fourth Class.

5 The second achievement has as its object the claim action proposed by the heirs of the Count and the Countess of I requesting the restitution of the Palace to the imperial estate or, if it was not possible, the conversion into indemnity. In the first degree, the preliminary injunction was accepted, which was confirmed by the Third Class of the TRF-2nd Region and the Fourth Class of the STJ.

> protection. It is necessary to face the phenomenon of excessive mass litigiousness and ensure effective and timely judicial provision with isonomy. Fair tutelage is not only that provided in a timely manner. (ZANFERDINI; MAZZO, p. 94-95, 2015).

Furthermore, for the Democratic State under the Rule of Law, a conception of coexistential justice must be adopted that comprises not only the resolution of the dispute (in its entirety) but also the maintenance of relations among individuals. In a different way from "traditional justice" in which one of the parties is the winner and the other defeated, coexistential justice seeks the consensus of litigation (SILVA, 2005).

> Coexistential justice, on the other hand, is not destined to trancher (sic), to decide and define, but rather to patch up (precisely a mending justice), to relieve situations of rupture or tension, in order to preserve a durable good, that is, the peaceful coexistence of subjects who are part of a group or of a complex relationship, from whose means they could hardly be subtrairse (sic). Contentious justice is not so concerned with these values, since it looks more to the past than to the future. Contentious justice goes very well for traditional relationships, but not for those that have presented themselves with the most typical and constant of contemporary society, for which what sociologists call total institutions, that is, integral institutions, in which we, as members of various economic, cultural or social communities, are compelled to spend a considerable part of our life and activity: factories, schools, condominiums, neighborhood parishes, etc. [...]
>
> In these relationships the noble and bourgeois ideal of the struggle for the right is not easily adjusted. Kampf ums Recht should give way to a die Billigkeit, that is, to the struggle for equity (sic), for a just solution acceptable to all contenders. In these situations, that search for the truth to know who was right and who was wrong (in the past), must lead to the search for a possibility of permanence and coexistence (in the future), always in the interest of the parties themselves. (CUNHA, 2015, p. 66).

In this conception, Justice goes beyond the jurisdiction itself, and the State must guarantee (besides the solution of the dispute's merit) the due appreciation of the conflict, so that, when properly worked, the relations that are deteriorated or dismantled can be re-established.

Therefore, guaranteeing citizens the possibility of having their disputes reviewed by the Judiciary is only one part of the principle of access to justice, which in order to be fully complied with, it is necessary that the decision be prolonged in a timely manner. Therefore, using the appropriate methods of conflict resolution (CSSM), individuals will be able to jointly and with the help of third parties achieve justice in its broadest sense, which is to have the interest of each one assured in a satisfactory manner.

4. THE CRISIS OF THE JUDICIAL ACQUIS

The National Council of Justice (CNJ) was created by the constitutional amendment nº 45/2004 as the competent organ to control the administrative and financial performance of the Judiciary, being in charge of preparing an annual report on the situation of the Judiciary and proposing necessary measures according to the data presented (BRAZIL, 1988). Its mis-

sion is "to develop judicial policies that promote the effectiveness and unity of the Judiciary, oriented to the values of justice and social peace" (BRAZIL, 2020b).

Since 2004, the 'Justice in Figures' report, using data analysis and statistics, has contributed to the publicity and transparency of the judiciary by translating the reality of the national courts as to their structure, litigiousness, financial situation, time of proceedings, BRAZIL, 2020a).

> The Justice in Figures Report and the main document on the publicity and transparency of the Judiciary, which consolidates in a single publication general data on the performance of the Judiciary and covers information on expenses, revenues, access to justice and a wide range of procedural indicators, with variables that measure the level of performance, computerization, productivity and the appealability of justice.
>
> The diagnosis, prepared annually by the Department of Judicial Research (DPJ), under the supervision of the CNJ's Special Secretariat for Programs, Research and Strategic Management (SEP), presents detailed information by court and by justice segment, in addition to an 11-year historical series from 2009 to 2019. The information has been collected since the creation of the CNJ and the first report was prepared in 2006, with data from the 2004 base year. In 2009, in a process of broad revision and improvement of the glossaries and indicators of the Judiciary Statistics System (SIESPJ), important changes of concept were made, and therefore the data presented here adopt the time cut from that year on, maintaining the history for consultation on the CNJ's own website.
>
> The 16th edition of the Justice in Figures Report gathers information from the 90 organs of the Judiciary, listed in article 92 of the Constitution of the Federative Republic of Brazil of 1988, excluding the Supreme Court and the National Council of Justice. Thus, Justice in Numbers includes: the 27 State Courts of Justice (TJs); the five Federal Regional Courts (TRFs); the 24 Regional Labor Courts (TRTs); the 27 Regional Electoral Courts (TREs); the three State Military Courts (TJMs); the Superior Court of Justice (STJ); the Superior Labor Court (TST); the Superior Electoral Court (TSE) and the Superior Military Court (STM). (BRAZIL, 2020a, p. 9).

According to the report, in the year 2019 more than 30.2 million new achievements were distributed, while 35.4 million were definitively lowered, so that the Judiciary closed the year with a total of almost 77.1 million achievements in progress (BRAZIL, 2020a). Of this total, 14.2 million (18.5%) were suspended, demurrage or in provisional archive (BRAZIL, 2020a), but even if they are not actually being moved, expenses with servers in charge of the archives and expenses with their maintenance, for example, are necessary.

Table 1 - Judicial collection in 2019

	número de processos
In process	77.096.939
New	30.214.346
Completed	35.384.976
Total collection (in process + new - downloaded)	71.926.309

Source: Elaborated by the author with data extracted from CNJ (BRAZIL, 2020a, p. 49).

The year 2019 was marked by a 4.08% reduction in the number of lawsuits compared to the previous year, with the Labor and State Courts together reducing the stock by 2.7 million, the main responsible for the reduction (BRAZIL, 2020a). In turn, during the years 2018-2019, the accumulated index of reduction of the judicial collection was 3%, however, even if it seems promising, if the average annual reduction of 2.9 million cases is maintained, it will take 25 years to close the 72 million cases in progress in the national courts.

The work force in the judiciary in that year was 268,175 employees and 18,091 magistrates, with 15,552 judges assigned to the first instance and 2,808 accumulating special judicial functions and 1,115 in appeal classes (BRAZIL, 2020a).

Table 2 - Judiciary Labor Force

	Judges
Available positions	22.706
Vacant positions	4.615
In office	18.091
1st Degree	15.552
2nd Degree	2.463
Superior Courts	76

Source: Elaborated by the author with data extracted from CNJ (BRAZIL, 2020a, p. 86).

Table 3 - Servers Workforce

	Servidores
Available positions	276.331
Vacant positions	8.156
In office	268.175
Judicial area	211.295
1st Degree	176.992
2nd Degree	30.920
Superior Courts	3.383
Administrative Area	56.880

Source: Elaborated by the author with data extracted from CNJ (BRAZIL, 2020a, p. 86).

Based on the total number of cases in the judicial collection (71,926,309), the number of acting magistrates (18,091) and the total number of acting judges (268,175), at the end of 2019, each judge had 3,976 cases under his care and only 15 servers to assist them.

Based on these numbers, it is possible to notice that it is impracticable to guarantee the celerity of the proceedings and the reasonable duration (article 5, item LXXVIII of CR/88), as well as the integral solution of merit (article 4 of the Code of Civil Procedure) (BRAZIL, 2015).

In order to be able to verify the processing time of the proceedings before the courts, the CNJ analyzed the average time spent from the distribution until the rendering of the sentence; the average time off work, i.e., the starting date of each procedural phase until its termination (for example, the time spent between the distribution of the case until the beginning of the

execution phase); and, finally, the measured duration of pending proceedings (among other reasons, those that have been re-proceeded by decisions annulled in appeals or conflicts of jurisdiction) (BRAZIL, 2020a).

Table 4 - Average time for the Superior Courts

Office	Sentence	Finish	Pending
Superior Court of Justice	9m	1y and 6m	2y and 6m
Superior Labor Court	1y and 4m	1y and 6m	2a and 1m

Source: Elaborated by the author with data extracted from CNJ (BRAZIL, 2020a, p. 179).

Table 5 - Average processing time in 2nd Degree

Office	Sentence	Finish	Pending
Total	10m	10m	2y and 1m
State Courts of Justice	8m	1y	2y and 6m
Federal Regional Courts	2y	2y and 5m	2y and 4m
Regional Labor Courts	5m	10m	1y
State Recursal Classes	7m	8m	1y and 10m

Source: Elaborated by the author with data extracted from CNJ (BRAZIL, 2020a, p. 179).

Table 6 - Average processing time in the 1st Degree

Órgão	Sentença	Baixa	Pendente
Cognition Total	2y	1y	3y and 11m
State Courts	2y and 5m	3y e 7m	4y and 2m
Federal Courts	1y and 7m	2y e 10m	3y and 9m
Work Courts	8m	1y	1y and 1m
State Special Courts	9m	1y and 6m	1y and 10m
Federal Special Courts	1y	1y and 9m	1y and 5m
Execution Total	4y and 9m	6y and 6m	7y
State Courts	4y and 9m	6y and 11m	7y
Federal Courts	7y and 10m	8y and 3m	8y and 4m
Work Courts	3y and 11m	2y and 6m	4y and 10m
State Special Courts	1y and 2m	1y and 7m	2y and 3m
Federal Special Courts	7m	1y and 10m	11m

Source: Elaborated by the author with data extracted from CNJ (BRAZIL, 2020a, p. 179-180).

Adding up all the time needed in each instance and court, the average length of a case was 2 years and 2 months to be sentenced, 3 years and 3 months to be lowered and 5 years and 2 months when they were pending (BRAZIL, 2020a, p. 181).

It is clear that the high number of acts in progress causes damage to the population, because on average, each jurisdiction will have to wait more than 2 years for its litigation to be decided and if it is necessary to begin execution, the time required will increase to more than 3 years. Moreover, although the objective of the creation of the special courts is to guarantee greater speed to the deeds, the reality shows another, because the party will have to wait 9 months to obtain a sentence in the State Special Courts and 1 year in the Federal Special Courts.

Due to the long term in the resolution of the litigation, if the party withdraws from the action for the loss of the object, for having reached an extrajudicial agreement or any other reason, not only the parties, but the State will have unnecessary expenses with initial costs, attorney's fees, infrastructure, personnel, equipment, physical space, among others.

Maintaining self-sufficient organs capable of spending less on their functioning than the revenues received is essential for the population to have proper access to basic subsistence guarantees. However, the judiciary does not change this hypothesis, since in 2019, a total deficit of R$ 23.8 billion was registered, which needed to be complemented by public coffers. Likewise, in the two-year period 2017-2018, the percentage of spending required to maintain the Judiciary (2.6%) was practically inversely proportional to the reduction in its collection (3%), but in 2019 the total spent exceeded 100 billion reais, causing an increase of 7 billion reais compared to 2018 (BRAZIL, 2020a).

Therefore, considering the alternative of increasing the number of professionals in the courts as a way to reduce the judicial collection is unfeasible, since it would consequently increase the judicial deficit. However, self-composition is a viable alternative to guarantee access to justice, reduce the procedural collection and make the body self-sufficient. In this sense, the Code of Civil Procedure (CPC), determines that operators of the Law must encourage the use of self-composing methods (article 3 paragraph 3) and makes it mandatory after the distribution of the initial petition, the holding of conciliation or mediation hearings (article 334) (BRAZIL, 2015).

After the CPC came into force in 2016, there was an increase in the index of conciliations from 11.1% in 2015 to 13.6% in 2016, but the year 2019 was marked by the third consecutive year of reduction in the percentage of conciliations in the judiciary, being 13.5% in 2017, 12.7% in 2018 and 12.5% in 2019 (BRAZIL, 2020a).

Table 7 - Conciliation Ratio

Year	Ratio	Sentences Total	Homologatory sentences
2015	11,1%	27,5 million	3,05 million
2016	13,6%	27,7 million	3,77 million
2017	13,5%	28,3 million	3,82 million
2018	12,7%	29,5 million	3,75 million
2019	12,5%	31,7 million	3,96 million

Fonte: Elaborado pelo autor com dados extraídos do CNJ (BRASIL, 2020a).

Even if it presents itself as promising, the percentage of self-composed resolutions in the Judiciary compared to extrajudicial forms of conflict resolution is not as effective. In 2018[6], while the Judiciary obtained only 12.7% (BRAZIL, 2020a) of agreements signed in conciliations, the average percentage of resolution in the Procons was 76% and 81% in the platform Consumidor.gov.br was 81% (BRAZIL, 2019d).

5. ADEQUATE METHODS OF CONFLICT RESOLUTION

Out-of-court conflict resolution institutes are progressively gaining in importance and are now widely used, so the old name alternative methods is replaced by appropriate methods. When called "alternative" the institutes become a substitute option to the established (Judicial) system as the main predilection of the parties. However, when this presumption of hierarchy between methods is replaced with "adequate", they become similar and no longer "a second option".

> This is a terminological argument between the use of "alternative" or "suitable" methods. When the first is used, it is assumed that there is an ordinary and, therefore, a principal way. With the phrase "adequate methods" there is no predisposition in favor of one or other form of dispute resolution, and the topical evaluation of relevance is directed. In this case, it is undeniable that currently in Brazil there is wide adherence to the judicial heterocompositive way, which fully justifies the allusion to other forms of dispute resolution as alternative methods. On the other hand, the presentation of the subject as such conditions to a subsidiary choice behavior, which shows itself inapt to the promotion and potential they present, which seems to justify with even more intensity the choice for the second expression presented. (SCARPARO, 2018, p. 67).

In any human society conflict is inherent and inevitable (SAMPAIO, 2016) and if we consider that the hyperbolic numbers of the national judicial collection cause the impossibility of having a full resolution of the dispute in a timely manner, it is necessary to analyze the use of appropriate methods of conflict resolution as capable of guaranteeing effective access to justice.

Currently, the simplest adequate method is the negotiation that occurs directly among those involved, working the conflict among themselves without any intervention from third parties. Even if the act of negotiating can be done directly by the parties, if it is in their interest, they can choose to have it conducted by third parties as in conciliation and mediation.

The use of conciliation is indicated in situations where the conflict is objective, that is, the parties have no significant relationship or interest in creating one. They usually occur in consumer contracts, in which the citizen buys a good and in the face of a problem, wants only the solution of his situation.

> Art. 165. The courts will create judicial centers for the consensual resolution of conflicts, responsible for holding conciliation and mediation sessions and

6 The data from 2018 were used, since this was the year of the last report made available by SENACON and for this reason they were compared with the report made available by CNJ for the same year.

> hearings, and for developing programs to assist, guide and encourage self-composition.
>
> [...]
>
> § 2 The conciliator, who shall act preferentially in cases in which there is no previous bond between the parties, may suggest solutions to the dispute, being prohibited the use of any type of constraint or intimidation for the parties to conciliate.
>
> § 3º The mediator, who will act preferentially in the cases in which there is a previous bond between the parties, will help the interested parties to understand the issues and interests in conflict, so that they can, by reestablishing the communication, identify, by themselves, consensual solutions that generate mutual benefits. (BRAZIL, 2015).

On the other hand, mediation is the institute that attempts the healthiest solution for the imbroglio that may exist, in which the mediator will act in an indirect way, being the facilitator of communication between those involved in search of a mutually beneficial solution.

The CNJ defines mediation as an integrative negotiation (that the parties seek a solution in which both win) mediated by one or more impartial and neutral mediators, who will facilitate communication between the parties so that they can understand their interests and create solutions that bring positive change and mutual gain (BRAZIL, 2016). As Fredie Didier Júnior explains, the difference between conciliation and mediation is tenuous:

> The difference between conciliation and mediation is subtle - and perhaps, in a more analytically rigorous thought, non-existent, at least in its substantial aspect. The doctrine usually considers them as distinct techniques for obtaining self-composition.
>
> The conciliator has a more active participation in the negotiation process, and may even suggest solutions to the litigation. The conciliation technique is more suitable for cases in which there was no previous link between those involved.
>
> The mediator plays a somewhat different role. It is up to him/her to serve as a communication vehicle between the interested parties, a facilitator of the dialogue between them, helping them to understand the issues and interests in conflict, so that they can identify, by themselves, consensual solutions that generate mutual benefits. In the mediation technique, the mediator does not propose solutions to the interested parties. It is therefore more suitable in cases where there is a previous and permanent relationship between the interested parties, as in cases of corporate and family conflicts. Mediation will be successful when those involved manage to build a negotiated solution to the conflict. (DIDIER JÚNIOR, 2016, p. 274).

As its main objective is the consensus in any of the methods used, those involved are not obliged to reach a transaction at the end of the procedure used, being guaranteed that at any time the work will be interrupted, without this limiting the search by the Judiciary.

Carlos Vasconcelos teaches that in an adversarial dispute such as the judicial or arbitral one, the communication is already considerably lost and at each speech or argument, these will be received as an attack and instead of exposing what the real interests are, the opposing party will present a new argument to refute what was presented (VASCONCELOS, 2018).

> What usually occurs in conflict processed with an adversarial approach is the hypertrophy of the one-sided argument, almost no matter what the other

> speaks or writes. For this reason, while one expresses himself, the other already prepares a new argument. By identifying that they are not being understood, listened to, read, the parties exalt themselves and dramatize, further polarizing the positions.
>
> The transforming solution to the conflict depends on the recognition of differences and the identification of common and contradictory interests, which underlie it, because the interpersonal relationship is based on some expectation, value or common interest.
>
> [...]
>
> Conflict, when well conducted, can result in positive change and new opportunities for mutual gain. (VASCONCELOS, 2018).

For Roger Fisher, Willian Ury and Bruce Patton, in order for those involved to achieve their goal, techniques capable of maximizing the result must be used. The procedure proposed by the authors has four steps: separate people from problems, focus on interests rather than positions, create mutual gain options and focus on objective criteria (FISHER, URY and PATTON, 2018).

Separating people from problems means removing the emotional part of conflicts, so that the person involved can understand the discussion of a neutral position without its sentimental character. Normally, when an act is performed by someone with whom the individual already has a raid and by another person with whom he or she has great appreciation, in the first case it will be aggravated by negative feelings, while in the second it may be received without greater repercussions. Therefore, by taking the sentimental element out of the conflict, it is possible to observe it from a neutral position to increase trust between the parties and reduce noise in communication.

To focus on interests rather than positions is to understand what the individual really wants and not what he or she appears to want. Not infrequently, two people want the same object (positions), but for different reasons (interests). For example, two brothers are arguing to decide who will have the right to drive the family vehicle (that's their position, they want the vehicle), so the logical solution is for them to take turns doing good, which won't make them both happy. However, after going deeper into the conflict, they discover that one of the brothers wants the car to go to his college at night and the other at daytime (that's the interest).

After exploring the conflict, it is possible to look for mutual gain options. In the case presented as the interests are not conflicting, it would be enough to divide the use of the vehicle by period of the day and both will have their interests completely satisfied, unlike the solution based on positions, which besides not solving the imbroglio, would make the good idle in the moment that the other could use.

Finally, to focus on objective criteria the parties should not argue over parameters that are not possible to achieve, because no matter how much they agree, if it is unfeasible, maintaining the discussion at that point would only bring wear and tear and would further disturb the relationship. It can also be understood as the use of pre-established standards such as price lists, legal norms or expert evaluations.

> Any method of negotiation can be judged impartially according to three criteria: it must lead to a sensible agreement if possible, it must be efficient, and it must improve or at least not harm the relationship between the parties. (A sensible agreement can be defined as one that, as far as possible, meets the

> legitimate interests of each side, resolves conflicts of interest fairly, is durable, and takes into account the interests of the community. (FISHER; URY; PATTON, 2018).

Using the help of negotiation techniques, one abandons the amateurish and instinctive character of a negotiation to a technical and well worked out procedure in search of an agreement in which all interests are cured and none of the parties feels at a disadvantage in relation to the other.

Therefore, by using the appropriate methods of conflict resolution, not only the parties directly interested have benefited, because they will have their dilemma solved in a timely manner, adequately and certainly, as the structure of the judiciary, which with the consequent reduction of new cases may have a timely and adequate time to solve the existing collection and new cases that arise.

6. CONCLUSION

In view of the data presented, it is possible to see that the number of acts in progress in our courts makes it impossible for the parties to obtain the full result of the act in a timely manner, so that the principle of access to justice is not fully guaranteed. In the year 2019, even if it is closed with a reduction in the collection, the percentage is still low and if the trend is maintained, the time necessary for the achievements in progress will be several years.

Furthermore, the Judiciary has not been able to be financially self-sufficient, closing each year with a billionaire deficit, which makes it impossible to increase the existing labor force (servers and magistrates). Also, to demand that cases be judged in reduced time would lead to decisions that, without having spent the necessary time to convince the magistrate, would bring dissatisfaction for the parties and legal insecurity for the population.

Ensuring that the population can take their disputes to court is only part of the principle of access to justice, that to stop them being fully effective must be judged in an appropriate manner and in a timely manner.

To change this scenario, it is necessary to change the culture of society, which must give up litigiousness in order to initially use self-composition to resolve its conflicts and only when it is impossible to reach an agreement, to judicialize its claims. In this sense, the adequate methods of conflict resolution have faster and less costly procedures for the parties, as well as with the help of negotiation techniques allow the parties to understand the conflict and together aim for a mutually beneficial solution.

By using appropriate methods of conflict resolution (self-compositive), it is possible to reduce costs and provide greater speed in resolving conflicts, so that those involved can assume the role of key players in their demand. Likewise, when appropriately specialized professionals use negotiation techniques, it is possible that together they seek a solution that brings mutual benefits.

Regardless of the way the self-composition is worked out (a negotiation directly done by those involved or with the help of a third party), it is possible to aim for a term that is satisfac-

tory. By abandoning the prosecuting nature of a lawsuit or heterocomposition, the parties will be able to identify the needs, pains and options of the other, spending the necessary time to negotiate, without the uncertainty of the judiciary in which only at the end of the fight will it be possible to know the result.

Therefore, since Brazil does not have sufficient financial resources to increase the structure of the judiciary, as well as to demand greater speed from magistrates would cause losses to the population, the principle of access to justice tied only to jurisdiction is not effectively guaranteed. It is concluded as of essential importance the overlapping of the culture of litigation by the culture of self-composition. So that with the use of appropriate methods of conflict resolution, citizens will be guaranteed effective access to justice, in addition to the control of the decision of their conflicts aimed at agreements that bring benefits to all involved

Besides the benefits brought to the parties directly involved, they allow a reduction in the judicial collection, since with the reduction of the distribution of new achievements, the magistrates and servers will be able to take charge of existing cases and spend the necessary time for their solution.

REFERENCES

ALBUQUERQUE, Aline; BARROSO, Aléssia. *Human Rights Course*. Rio de Janeiro: Lumen Juris, 2018.

ANNONI, Danielle. *The human right of access to justice within a reasonable time*. 2006. 346 p. Thesis (Doctorate) - Postgraduate Course in Law, Federal University of Santa Catarina, Florianópolis. 2006. Available at: https://repositorio.ufsc.br/handle/123456789/89512. Access on: 22 nov. 2020.

ARISTÓTELES. *Nicomachean Ethics*. Translation by Leonel Vallandro and Gerd Hornheim. Pinheiros: Nova Cultural, 1991.

BOBBIO, Norberto. *The Future of Democracy - A Defense of the Rules of the Game*. Translation by Marco Aurélio Nogueira. 2. ed. Rio de Janeiro, Paz e Terra, 1986.

BONAVIDES, Paulo. *From Liberal State to Social State*. 7. ed. São Paulo: Malheiros Editores, 2001.

BRAZIL. Institutional Act No. 2, October 27, 1965. *Federal Official Gazette*, Brasília, October 27, 1965. Available at: http://www.planalto.gov.br/ccivil_03/AIT/ait-02-65.htm. Access on: 22 Nov. 2020.

BRAZIL. Institutional Act No. 5, of December 13, 1968. *Federal Official Gazette*, Brasília, 13 Dec. 1968. Available at: http://www.planalto.gov.br/ccivil_03/ait/ait-05-68.htm. Access on 22 Nov. 2020.

BRAZIL. Code of Civil Procedure. *Federal Official Gazette*, Brasília, 16 mar. 2015a. Available at: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm. Access on: 22 nov. 2020.

BRAZIL. National Council of Justice. *Justice in Figures 2020*: base year 2019. Brasília: CNJ, 2020a. Available at: https://www.cnj.jus.br/wp-content/uploads/2020/08/WEB-V3-Justi%C3%A7a-em-N%C3%BAmeros-2020-atualizado-em-25-08-2020.pdf. Access on: 22 Nov. 2020.

BRAZIL. National Council of Justice. *Manual of Judicial Mediation*: According to Law 13.140/15 (Mediation Law), Law 13.105/15 (New Code of Civil Procedure) and Amendment 2 of Resolution 125/10. 6. ed. Brasília: CNJ, 2016. Available at: https://www.cnj.jus.br/wp-content/uploads/2015/06/f247f5ce60df2774c59d6e2dddbfec54.pdf. Access on: 22 nov. 2020.

BRAZIL. National Council of Justice. *Who we are*. 2020b. Available at: https://www.cnj.jus.br/sobre-o-cnj/quem-somos/. Available at: 22 Nov. 2020.

BRAZIL. Constitution of the Federative Republic of Brazil. *Federal Official Gazette*, Brasília, 05 Oct. 1988. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed on: 22 Nov. 2020.

BRAZIL. Constitution of the United States of Brazil. *Federal Official Gazette*, Rio de Janeiro, 19 Sep. 1946. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao46.htm. Access on: 22 Nov. 2020.

BRAZIL. Constitutional Amendment No. 11, October 13, 1978. Alters provisions of the Federal Constitution. *Federal Official Gazette*, Brasília, 13 Oct. 1978. Available at: http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc_anterior1988/emc11-78.htm. Access on: 22 Nov. 2020.

BRAZIL. National Secretariat of Consumer. *Consumer in numbers*: Complaints of consumption in 2018. 2019. Available at: https://www.justica.gov.br/news/collective-nitf-content-1552676889.94/arquivos/consumidor-em-numeros-2018_portal.pdf. Access on: 22 Nov. 2020.

BRAZIL. *Superior Court of Justice*. Special Appeal 1.149. 487/RJ, Reporting Justice Antônio Carlos Ferreira, judged on Dec. 6, 2018, published in the Diário da Justiça electronic on Feb. 15, 2019. Available at: https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=200901327733&dt_publicacao=15/02/2019. Access on: 22 Nov. 2020.

BRAZIL, *Superior Court of Justice*. Internal Appeal in Special Appeal 1.141.490/RJ, Reporting Justice Antônio Carlos Ferreira, judged on Dec. 6, 2018, published in the Diário da Justiça electronic on Feb. 14, 2019g. Available at: https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=200901310978&dt_publicacao=14/02/2019. Access on: 22 Nov. 2020.

BRAZIL. *Supreme Court*. Bill of Review 761.820/RJ, Reporting Justice Rosa Weber, judged Aug. 18, 2020, published in the Diário da Justiça electronic on Aug. 25, 2020d. Available at: http://portal.stf.jus.br/processos/downloadPeca.asp?id=15344146749&ext=.pdf. Access on: 22 Nov. 2020.

BRAZIL. *Supreme Court*. Bill of Review 764.506/RJ, Reporting Justice Rosa Weber, judged on Aug. 18, 2020, published in the Diário da Justiça electronic on Aug. 25, 2020e. Available at: http://portal.stf.jus.br/processos/downloadPeca.asp?id=15344147487&ext=.pdf. Access on: 22 Nov. 2020.

BRAZIL. *Supreme Court*. Bill of Review in Extraordinary Appeal with Bill of Review 1,250,467/RJ, Reporting Justice Rosa Weber, judged on June 29, 2020, published in the Electronic Court Gazette on Aug. 05. 2020f. Available at: http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=753386305. Access on: 22 Nov. 2020.

CAMARGOS, Laís Alves. The constitutional right to appeal and to substantiate decisions: critical study of the trial in a single instance by the 2nd degree courts. Dissertation. (Master) - FUMEC University, Belo Horizonte, 2020.

CUNHA, José Sebastião Fagundes. From conciliation, mediation and endoprocedural arbitration and the new Code of Civil Procedure. In: *Revista electrónica [do] Tribunal Regional do Trabalho da 9ª Região*: v. 4, n. 44, p. 50-70, Sep. 2015. Available at: https://juslaboris.tst.jus.br/bitstream/handle/20.500.12178/89494/2015_cunha_jose_conciliacao_mediacao.pdf?sequence=1&isAllowed=y. Access on: 22 Nov. 2020

DIDIER JÚNIOR, Fredie. *Civil procedural law course*: introduction to civil procedural law, general part and knowledge process. 18. ed. Salvador: Juspodivm, 2016.

ECHR. European Court of Human Rights. *European Convention on Human Rights*, adopted November 4, 1950. 1950. Available at: https://www.echr.coe.int/Documents/Convention_POR.pdf. Access on November 22, 2020.

FISHER, Roger; URY, William; PATTON, Bruce. *How to reach yes*: How to negotiate agreements without making concessions. Translation by Rachel Agavino. Rio de Janeiro: Sextante, 2018. E-book.

GORDILLO, Agustín. General Principles of Public Law. Translation by Rachel Agavino, Sextante, 2018. Brazilian by Marco Aurélio Greco. São Paulo: RT, 1977.

LIBRARY, British. *English translation of Magna Carta*. 2014. Available at: https://www.bl.uk/magna-carta/articles/magna-carta-english-translation. Access on: 25 Sep. 2020.

MAGALHÃES, José Luiz Quadros de. *Direito Constitucional*. Tomo I. 2. ed. Belo Horizonte: Commandments, 2002.

MARX, Karl Heinrich. *The Capital*. Translated by Ronaldo Alves Schmidt. 8 ed. Rio de Janeiro: LTC, 2018. E-book.

MARX, Karl Heinrich; ENGELS, Friedrich. *The Communist Manifest*. Translated by Débora Landsberg. São Paulo: Zahar Express, 2014.

MORAIS, Márcio Eduardo Pedrosa. "Thinking about justice in the twenty-first century: a brief study on the thoughts of Aristotle and Rawls on justice and its applicability in the Democratic State of Law. In: *XVI National Congress of CONPEDI*. Florianópolis: CONPEDI, 2007. Available at: http://www.publicadireito.com.br/conpedi/manaus/arquivos/anais/bh/marcio_eduardo_da_silva_pedrosa_morais.pdf. Access on 22 Nov. 2020.

RAWLS, John. *A theory of justice*. Translation by Almiro Pisetta and Lenita M. R. Esteves. São Paulo: Martins Fontes, 2000.

ROCHA, José Cláudio; ALVES, Cristiano Cruz. Access to Justice: to the Judiciary or to the Just Legal System? *Meritum Magazine*. Belo Horizonte, v. 6, n. 1, p. 133-161, jan./jul. 2011. Available at: http://www.fumec.br/revistas/meritum/article/view/1068/761. Access on: 22 Nov. 2020.

SALLES, Bruno Makowiecky. *Access to Justice and Democratic Balance*: Exchanges between Civil Law and Common Law. 2019. 509 f. Thesis (Doctorate) - Doctorate Course in Legal Science of the University of Vale do Itajaí - UNIVALI, Itajaí. 2019. Available at: https://www.univali.br/Lists/TrabalhosDoutorado/Attachments/264/TESE%20BRUNO%20MAKOWIECKY%20SALLES%20-%20TOTAL.pdf. Access on: 22 Nov. 2020.

SAMPAIO, Lia Regina Castaldi. General theory of conflict - view of psychology In: BACELLAR, Roberto Portugal (Coord.). *Conciliation and Mediation - teaching under construction*. São Paulo: IPAM - Instituto Paulista de magistrados, 2016. p. 320-325.

SARMENTO, Daniel. *Direitos Fundamentais e Relações Privadas*. 2. ed. Rio de Janeiro: Lumen Juris, 2006.

SCARPARO, Eduardo. Negotiating Strategically in Civil Litigation. In: MACEDO, Elaine Harzheim; DAMASCENO, Marina (org.). *Multiport system and integrated conflict resolution methods. Porto Alegre*: ediPUCRS, 2018. p. 63-104.

SEIXAS, Bernardo Silva de; SOUZA, Roberta Kelly Silva. Historical Evolution of Access to Justice in the Brazilian Constitutions. *Revista de Direito e Democracia*, v. 14, n.1, p. 68-85, jan./jun. 2013. Available at: http://www.periodicos.ulbra.br/index.php/direito/article/view/2660/1883. Access on: 22 Nov. 2020.

SILVA, Adriana dos Santos. *Access to Justice and Arbitration*: A Path to the Crisis of the Judiciary. Barueri: Manole, 2005.

SMITH, Adam. *The Wealth of Nations*: Investigations on Nature and its causes. São Paulo: Nova Cultural Ltda., 1996.

VASCONCELOS, Carlos Eduardo de. *Conflict mediation and restorative practices*. 6. ed. São Paulo: Method, 2018. E-book.

ZANFERDINI, Flávia de Almeida Montingelli; MAZZO, Fernando Henrique Machado. From the movement of access to justice to concerns about the increase in mass litigation. *Meritum Magazine*. Belo Horizonte, v. 10, n. 1, p. 77-100, jan./jun. 2015. Available at: http://www.fumec.br/revistas/meritum/article/view/3369/1814. Access on Nov. 22, 2020.

Recebido/*Received:* 30.09.2020.

Aprovado/*Approved:* 25.11.2020.