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JUDICIAL MEDIATION IN THE CONTEXT OF THE COMPANY

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ABSTRACT: This article aims to deal with judicial mediation in the context of the company, whose measure is inserted as one of the alternative means of conflict resolution (these being understood as divergence between two or more parties): *alternative dispute resolutions* (ADRS), in which the solution is delivered to them, whether individuals or legal entities are involved. This institute is foreseen in Brazil in the Judicial Mediation Law under n. 13.140/2015 [1], in the Code of Civil Procedure - Law no. 13.105/2015 [2] and in Resolution number 125/2010 of the National Council of Justice [3]. Submitting a process to mediation, applicable in the case of a conflict involving available rights or unavailable rights that admit a transaction (when there is the possibility of some kind of negotiation), a third neutral element, called a mediator, assists the parties. In this environment, autonomy of the will is privileged, valuing consensus, which the doctrine calls procedural consensualism. There are legal principles governing the matter. Mediation aims at dialogue between those involved. Companies will have a lot to gain if, facing conflicts in their midst or among other companies, they choose this path. This, little by little, is being known and adopted. In the business sector in Brazil, the challenges are many. And so also when, in the commercial sector, in general, there are conflicts. Our civil procedural law requires that the parties be accompanied by a lawyer or public defender (very important figures in the process), especially in the sessions they hold. These will play a key role in the success of the respective procedures. The present work makes use of bibliographical research, focused on the study of the theories emitted by the authors that expose the subject. It uses national and foreign doctrine, the Law, Court resolutions, the National Council of Justice and the Constitution of the Federative Republic of Brazil. The method will be inductive. Judicial mediations in the country are carried out in the Judicial Centers for Conflict Resolution and Citizenship (CEJUSCS) and also in the Judicial Courts that have jurisdiction. Many countries are familiar with the institute under study, including the United States, France, Japan, Canada and Australia. If a mediation procedure is successful, the result will be consecrated win x win, without loser or winner. In the last two decades, this medium has been used with time gain (shorter process duration) and lower costs. Finally, it is concluded that companies must be suggested, when appropriate, to submit conflicts to mediation, as it is healthy for them, as we understand that it is defined as a public policy measure. If there is a satisfactory result, there is empowerment of the parties.

Keywords: Alternative means of conflict resolution, judicial mediation, business sector, consensualism.

INTRODUCTION

The main objective of investigating the subject of judicial mediation in the context of the company is to visualize its potential for advantages, in addition to being able to know it better.

Such a means of conflict resolution that is self-composing, if chosen and with it being successful, will end up shortening the duration of the process, with cost savings and less tension.

The choice is justified by what has been observed in practice, whose demand has increased since the 1990s.

On the subject of judicial mediation, there have been many works, many studies, but especially focusing on mediation in the business field, they are few. Doctrine in this regard needs to be increased.

In this work, the inductive method will be adopted; the research will be bibliographical with support in the national doctrine and, to a

lesser extent, in the foreign one, in addition to using the legislation.

The main aspects related to business mediation will be involved in the work. It will have chapters, which will deal with: in the first, the summary; in the second, the introduction; in the third, mediation – generalities; in the fourth, business mediation; and, finally, will follow the conclusions. In these, an apology for the mediation institute is made, which translates into an adequate and humanized conflict resolution tool.

DEVELOPMENT

MEDIATION - GENERAL

The aforementioned Law under number: 13.140/2015, in art. 1, sole paragraph, explains that "mediation is considered to be the technical activity carried out by an impartial third party without decision-making power, which, chosen or accepted by the parties, helps and encourages them to identify or develop consensual solutions to the dispute".

The third party, called a mediator, acts technically by facilitating communication between the parties involved, which, individuals or legal entities (companies), need to be accompanied, in the sessions, by lawyers or public defenders. Such a requirement does not exist if the case falls within the jurisdiction of the Special Civil Courts. These are governed by Laws No. 9,099 of September 26, 1995 and 12,153 of December 22, 2009.

The principle called informed decision will be well received with the presence of lawyers and/or, also, public defenders, who will provide quantitative and qualitative information to interested parties.

Several principles guide mediation, including the aforementioned, and also the following ones provided for in the Law: the mediator's impartiality, isonomy between the parties, orality, informality, autonomy of the parties' will, confidentiality, goodwill faith and the search for consensus (the latter refers to the activity that aims to help the parties to seek consensus [4] and is highly valued.

Mediators need, by the law of the country, to be trained in order to obtain professional registration, needing to participate in a course promoted by entities accredited by the courts (the course curriculum is defined by the National Council of Justice) [5]. They are not required to have a legal education, but they must have a degree for at least two years in an institution recognized by the Ministry of Education (the appropriate qualification must be recognized by the National School of Mediation and Conciliation of the Ministry of Justice or by the National Council of Justice).

The training will comply with the minimum qualification requirements [6]; the curriculum guidelines are provided for in Annex I of Resolution 125/2010 of the National Council of Justice. The course has theoretical classes and a practical part, respectively, with 40 (forty) hours and 60 (sixty) hours. In the practical part, monitoring is carried out by a supervisor, who is also an observer.

Then, they will be registered, allowing the respective courts to disclose statistical data, according to art. 167 of the Code of Civil Procedure, §§ 3 and 4.

Those mediators who act with intent or negligence in a mediation or act in a mediation procedure, despite being prevented or suspected, will be excluded from the respective register.

As appropriate, it must be said that the mediator can meet with the parties, either together or separately, always very important that people are well oriented about mediation.

Unlike adversarial processes, this institute does not look for the innocent or guilty [7]. It doesn't even think about winners or losers.

If necessary, both the Law and the doctrine and jurisprudence admit the possibility of co-mediation, where more than one mediator

works in the mediation session(s). In these cases, they will work on a systemic approach to the dispute, taking into account its different aspects [8]. It is even opportune that it is multidisciplinary to adequately address the conflict.

Unlike conciliation, mediation is always voluntary. The author of a demand, when entering the court, can choose whether or not to carry out the mediation. The defendant, in turn, if an act is scheduled - pure and simple hearing or mediation -, if he is not interested in the act, he must manifest himself within 10 (ten) days before [9].

In mediation it can even be said that it often brings together a judicial service which requires interdisciplinary qualities. In the interdisciplinary context, not only technical, but ethical, human, environmental qualities, among others, have been demanded from her. It is of its essence that, in many cases, mediators have familiarity in different areas of human knowledge, as well as sensitivity.

Mediation and conciliation, in addition to arbitration, are democratic forms of conflict resolution.

The so-called alternative means, treated here, are so valued in the doctrine that they can no longer be called alternative, they have become regular means [10].

In addition to those mentioned, the North American experience adopts others. When talking about alternative means of conflict resolution, Americans use the term ADR – *Alternative Dispute Resolution,* having a vision not at all similar to that of Europeans [11].

Regarding the procedure of these routes in Brazilian law, it is flexible, not bound by rules, there is freedom in the procedure (in the sessions), privileging the free autonomy of the interested parties, the aforementioned. The mediator, in fulfilling his role, facilitates the solution of the dispute without interfering with the substance of the decision of those involved.

By opportune, it is necessary to say that such methods that are mentioned are seen as a form of universal access to justice [12].

With regard to the fundamental rights guaranteed by our Federal Constitution, among them the dignity of the human person, freedom, equality and psychological integrity, they cannot be disregarded in the face of personal desires and must also be respected by mediators, mediators, lawyers and defenders. public [13].

BUSINESS MEDIATION

There is no limitation to the doctrine for the use of conflict mediation [14]. These are registered when there is divergence between two or more parties or when two or more things are opposed [15], being, in reality, a lack of understanding.

The institute proves to be useful in the business area, whether involving internal or external conflicts, but it is still unknown to a large part of the market. Precisely within the company, family or otherwise, there are often challenges that need to be well managed.

In Brazil, after the validity of the aforementioned Mediation Law, dated June 26, 2015, there was a greater demand for this route, which is a kind of self-composition (dispute resolution without the judicial authority intervening). It integrates the calls: ADRs – *Alternative Dispute Resolutions* in the language of americans.

In the business sector, mediation can be used to efficiently meet the commercial interests of contracting companies, whether to resolve internal conflicts or not, pending issues between groups of companies, resolve corporate disputes, relationships involving franchises, contracts in the area of intellectual property, in even family businesses.

As is known, in the business segment,

businessmen have used mediation, where, according to the institute, aided by mediators, they have conducted communication between the parties seeking understanding and consensus, leading them to build, in together, their own decisions, their solutions [16].

When it comes to mediation between family businesses, which play a respectable role in the national and international economy, it assumes as a useful instrument and indicator of good corporate governance practices [17].

As the mediator must preferably act where there is a previous link between the parties (this is the law for us), the measure is of paramount importance in the case of a conflict in corporate matters (will it have sufficient technique, it is believed, for a better outcome). He will certainly focus on proposals with knowledge of the facts [18]. And he must always ensure the equal participation of the parties to whom the solution of the case is delivered [19]. From them, the mediator and the mediator (the latter when participating in sessions). They are required: study, techniques, experience, constant learning, among other attributes [20]. Also: that they do not present themselves as authority figures. The neutral, clear, transparent conversational tone has the power to stimulate dialogue.

To all that has been said, it must be added that in the case of mediation known as intra-organizational (internally within the company), mediations are included with a view to resolving disputes involving employees, departments, directors, directors and even partners [21].

From the above, as can be seen, mediation can serve to resolve conflicts within the company, as well as with third parties.

CONCLUSIONS

The demand in Brazil for business mediation in the context of the company has grown since 1990.

Your choice in the sector is a very important avenue. In it, unlike what happens in conciliation, there is greater participation with those involved, even so that they can continue after the mediation session (or sessions), whether there is an agreement or not. positive contract and active listening with the participation of lawyers, which characterize the legal certainty of the agreements, if any. If existing, cost and duration reduction of the process, resolving as damage; There will be, finally, pacification, where the benefit of the solution was built by the parties.

The companies involved, if they have not decided a court decision, and always, there is a winner and an informed one.

In view of the advantages presented, in all segments of the area, many professionals today have to be businessmen necessary for the processes they work, which are protected in the mediation where lawsuits are made or in conflict centers. and Citizenship (CEJUSCS).

If no agreement is reached, the judicial process will continue on a regular basis.

As can be seen, mediation appears in a very tabular model as a public policy for the resolution of various conflicts. Strictly speaking, conflict resolution policies in Brazil are allocated in Resolution n. 125/2010 of the National Council of Justice, in the aforementioned Mediation Law and the new Civil Procedure Code.

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