

Kluwer Mediation Blog

Will ADR save brazilian Courts from an avalanche of new cases due to brazilian General Data Protection Act?

Andrea Maia (Mediar360 – Dispute Resolution) and Gustavo Caneiro (FGV Mediacao) · Wednesday, July 8th, 2020

Following up on a series of posts initiated [last March](#) associated to the Brazilian General Data Protection Act, the following article is co-authored by Gustavo Carneiro, a dear friend and expert on the subject matter.

The Brazilian General Data Protection Act, which will come into force next August, sets up principles, duties and rights to protect personal and sensitive data. As we have already mentioned before, it established the creation of a national agency, with a body of experts to supervise the implementation of the guarantees for personal data usage in Brazil. For those who are familiar with Portuguese, I would suggest reading more on the subject in [this report](#), published by Instituto Tecnologia e Sociedade. The information represents undoubtedly a great contribution to all involved in the implementation of the new rules, and to the challenges it will bring to the Brazilian Judicial System not to mention the wide range of worldwide experiences related to ADR and Data Protection.

Similarly to the challenges brought by our Consumer Code three decades ago, scholars are now expecting an avalanche of new cases, due to the recognition of so many new rights by Brazilian citizens. Some would expect companies to invest their resources in compliance methods in order to abide by these new rules. However, it is more likely they will invest them in their litigation areas in order to litigate in courts.

This is why these researchers are defending the implementation of both public and private Alternative Dispute Resolution by the National Authority and we couldn't agree more.

This report shows us the successful experiences in Data Protection Law and ADR in different countries, such as South Korea, Australia, New Zealand and United Kingdom. There are many different models of public authorities giving incentives for Alternative Dispute Resolution such as mediation, arbitration and online platforms and also public and private entities.

Brazil already has successful cases in this field. Consumidor.gov.br, a platform designed for consumer disputes is a good example. Claims are made by consumers directly to companies and the government doesn't interfere directly: it only hosts the data of disputes at the platform and produces ranks and rates of resolution for disputes. Results are very encouraging: more than 80% of cases are solved outside courts. Also, there are other rates, such as: reply time to answer a

complaint, number of disputes solved and approval of consumers. Besides, there is already a solid field of private lawtechs in the country, which could be used for solving cases and develop a wide structure of ADR related to Personal Data Rights, since Mediation Law already allows Mediation to be used for disposable rights.

This new chapter of Brazilian Data Protection is about to begin and it is cristal clear that ADR is the only path to go if we want to make these rights effective.


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The graphic features a black background with white text and a circular icon. The icon depicts a group of stylized human figures, with one figure in the center being magnified by a magnifying glass. The background is accented with horizontal lines in blue and green.

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