

# Kluwer Mediation Blog

## The Dejudicialization Diet

Andrea Maia (Mediar360 – Dispute Resolution) · Wednesday, March 8th, 2023

The inspiration to write this article came from a film I watched recently – *The Whale* – starring Brendan Fraser, who plays an obese man leading an extremely sedentary life. In my opinion, his character's (Charlie) physiognomy is one of the elements that captures the story narrative.

Again, the inspiration to write the article, after watching the movie, came as I realized how coherent it would be to draw a parallel between the present status of the Brazilian judicial system and the conditions (or the context) involving the film's main character.

The way I see it, "Charlie" serves as an analogy of an obese system that takes in/absorbs around 74 million lawsuits each year, making the Brazilian judicial system one of the heaviest (and thus slowest) in the world, resulting in an overburdened market of lawyers and other legal professionals.

Having said that, Charlie and the Brazilian judicial system definitely have a lot in common and need to take action to become "healthier". Just like any individual who needs to lose weight to feel healthy, the same applies to our judicial system. On a second note, our judicial system needs to go on a diet urgently!

Working as a professional mediator for the last 10 years has given me the chance to experiment several "healthier" dispute system designs around the world. The constant search for a wider range of adequate and innovative ways to solve disputes increases the chances of best solutions to all involved. From parties to judges and to society as a whole, of course.

In addition, the constant search for a wider range of adequate and innovative ways to solve disputes is also aligned with the 17 Global Goals (also known as Sustainable Development Goals or SDG#17) and "promoting peaceful and inclusive societies through sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels" are all part of one of these goals (Goal 16)

Thus, like many professionals in the consensual conflict resolution area, I see this trend with great enthusiasm, mainly if initiatives as such aim to promote a more peaceful society and if this includes working on a healthier judicial system.

Increasing awareness about the *dejudicialization* culture represents great progress to the conflict resolution movement and contributes significantly to relieve the burden on the judicial system, thus allowing it to perform its role faster, more democratically and efficiently.

Compared to many other countries around the world, the good news is that Brazil is picking up fast as far as the *dejudicialization* awareness campaign is concerned.

With this in mind, the *Special Commission on Dejudicialization of the Federal Council of the Brazilian Bar Association (OAB)* has just approved the creation of the *Brazilian Dejudicialization Seal (Selo Brasileiro de Desjudicialização)*. The initiative aims to promote and recognize projects and actions that reduce Brazilian courts' present backlog. According to the latest data from *Justice in Numbers Report* (Justiça em Números), by National Council of Justice (CNJ – Conselho Nacional de Justiça), there are about 74 million lawsuits in Brazilian courts.

“We are struggling for the legal profession to enter new spaces and to be able to experience new practices. The greatest achievement of this Commission to now is the unanimous approval of the Brazilian Seal of Dejudicialization, which awards a company or institution's conduct as the ideal one to be practiced – and this will encourage a whole new performance model”, says Diego Paiva Vasconcelos, the commission's president.

At present, the projects awaits final approval by the Federal Council of the Brazilian Bar Association (OAB – Ordem dos Advogados do Brasil) and will focus on companies in general (telephone companies, banks, energy, water utilities, government entities).

The recognition will also be granted to effective policies for its implementation, such as the use of ODR (Online Dispute Resolution) tools and other innovative ways to prevent new lawsuits and that encourage *dejudicialization* in general.

Finally, we need to analyze the issue from another perspective. In other words, society is to be blamed for the judicial system's bad 'health' condition, considering in Brazil people want to judicialize almost each everyday conflict. We call this phenomenon the Litigation Culture.

Overall, the great majority of lawsuits relate to odd causes, or conflicts that could be managed by mediation. Also, labor lawsuits, lawsuits involving private services, consumer related suits, real estate lawsuits, among so many others, consist of a dispute 'fast food menu', regardless of the complexity of the conflicts involved.

Mediation is picking up fast in Brazil but there is still a lot of room to expand. The Brazilian mindset makes the work of mediators little known. In the last few years, I have been dedicating myself to spread the word about mediation among lawyers and other professional areas in general, through online courses, lectures, debates and creation of social media content. I see other professionals following this path and this is a good sign. If the mediation and alternative dispute resolution market grows, everyone can benefit from this, not only professionals, but the economy and large-scale interpersonal relationships in our society.

The most important thing is that there is already a movement to popularize alternative means of dispute resolution, such as mediation. This area is already booming, generating opportunities for people from various professional fields, and thus playing a relevant role in the country's economy.

When Mediation and other forms of alternative dispute resolution become popular (because it is a matter of time, not a mere possibility), I dare say that Brazil will be one of the greatest powers in this segment worldwide, taking into consideration its judicial system, its size and population (approximately 214 million inhabitants by 2023).

Until then, the *dejudicialization* diet is the best recommendation (prescription).

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

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