



SELF-COMPOSITION WITHIN THE SCOPE OF CONSTITUTIONAL JUSTICE

SELF-COMPOSITION WITHIN THE CONTEXT OF CONSTITUTIONAL JUSTICE

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SUMMARY

The 1988 Federal Constitution advocates justice as the supreme value of a fraternal, pluralistic and unprejudiced society, founded on social harmony and committed, in the domestic and international order, to the peaceful resolution of disputes. The aim of this study was to analyze how self-composition has been implemented within the scope of constitutional justice. The study was conducted through bibliographical research and critical analyses. Self-composition has the capacity to humanize the judiciary to the extent that it encourages dialogue and changes the course of the social culture of litigation, focusing on a more peaceful, conciliatory and dialectical culture. It gives the parties the power to adapt the best solution to that conflict, and it is possible that the most appropriate solution for the parties may be completely counterintuitive, but it will be the one that completely extinguishes the dispute and, therefore, the fairest for the parties. Aiming to implement self-composition in proceedings under its jurisdiction, the Supreme Federal Court has published successive Resolutions creating centers for alternative methods of conflict resolution.

Keywords:Self-composition. Conflicts. Constitutional. Justice.

ABSTRACT

The Federal Constitution of 1988 advocates justice as the supreme value of a fraternal, pluralistic and unprejudiced society, founded on social harmony and committed, in the internal and international order, to the peaceful resolution of disputes. We sought to analyze how self-composition has been implemented within the scope of constitutional justice. The study was carried out through bibliographical research and critical analysis. Self-composition has the ability to humanize the judiciary as it encourages dialogue and changes the course of the social culture of litigation, focusing on a more pacifying, conciliatory and dialectical culture. It gives the parties the power to adapt the best solution to that conflict, and it is possible that the solution best suited to the parties may be completely counterintuitive, but it will be the one that will completely extinguish the dispute and, therefore, be the fairest for the parties. Aiming to implement self-composition in processes within its jurisdiction, the Federal Supreme Court published successive Resolutions creating centers for alternative methods of conflict resolution.

Keywords:Self-composition. Conflicts. Constitutional. Justice

1. INTRODUCTION

The Preamble of the 1988 Federal Constitution advocates justice as the supreme value of a fraternal, pluralistic and unprejudiced society, founded on social harmony and committed, in the internal and international order, to the peaceful resolution of disputes.¹

It is worth highlighting, by virtue of Constitutional Amendment No. 45, of December 8, 2004, which was inserted as a fundamental constitutional right, the guarantee of a reasonable duration of the process. This amendment gave rise to item LXXVIII of article 5 of the Federal Constitution.²

¹ “We, representatives of the Brazilian people, gathered in the National Constituent Assembly to establish a Democratic State, destined to ensure the exercise of social and individual rights, freedom, security, well-being, development, equality and justice as supreme values of a fraternal, pluralistic and unprejudiced society, founded on social harmony and committed, in the internal and international order, to the peaceful resolution of controversies, promulgate, under the protection of God, the following CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL.” Available at https://www.planalto.gov.br/ccivil_03/constituicao.htm. Accessed on 10/11/2024.

² “LXXVIII. Everyone, in the judicial and administrative spheres, is assured a reasonable duration of the process and the means that guarantee the speed of its processing.” CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL. Available at <https://www.>



However, to meet the extensive range of fundamental rights and guarantees on various topics in different areas of life, judicial solutions have proven insufficient, largely due to the extraordinary number of cases, far beyond the numerical capacity of judges and judicial bodies, which are faced with a profusion of regulations, but also in the face of the increasing complexity of demands, as well as the collectivization of many of the latter.

In doctrine, in recent decades the idea of access to justice has expanded, previously seen only as access to the Judiciary and now considered as access to a fair legal order.

In this sense, Humberto Dalla Bernardina de Pinho says:³

Without a doubt, access to justice is a basic social right of individuals. However, this right is not limited to mere access to judicial bodies and the state judiciary. Much more than that, it must represent effective access to a fair legal order.

This understanding, brought by Kazuo Watanabe⁴, is of fundamental importance for understanding the movement and for systematic and lucid action.

In this context, the proposals of the new Code of Civil Procedure are included, in perspective more conscious, in order to improve the technique and substance of procedural law as essential means to allow access to the much-proclaimed fair legal order.

Along these lines, at the legislative level, several legal instruments have provided for the conciliatory route, which has been increasingly encouraged and gained strength over the last fifty years. See, for example:

a) the 1973 CPC, art. 331, with the preliminary hearing, successively amended by laws no. 8952/94 (which included conciliation as one of the judge's duties and inserted it as one of the purposes of the preliminary hearing) and law no. 10444/2002 (which replaced the expression "conciliation hearing" with "preliminary hearing");

b) the former Small Claims Court, Law No. 7,244/84, art. 2;

c) the Special Civil and Criminal Courts, Law 9,099, of 12/26/1995, arts. 16, 17 and 21, and ... Federal Specials Law No. 10,259, of 07/12/2001, arts. 9, 11 and 12;

Following this line, in recent decades, the CNJ and the 2015 CPC have consolidated, as public and judicial policies, alternative means of conflict resolution (conciliation, mediation and others), giving broad concreteness to the constitutional precept of seeking a harmonious and peaceful solution to controversies combined with the speed of the process.

2. DEVELOPMENT

The national judicial policy for the adequate treatment of conflicts.

The National Council of Justice in 2010 published Resolution No. 125⁵ which establishes the national policy that encourages the creation of conciliation and mediation centers. It can be inferred from the explanatory memorandum of this regulation, establishing the national judicial policy for the adequate treatment of conflicts, regarding access to justice meaning access to a fair legal order, that it has been established that the Judiciary bodies have an obligation to offer mediation and conciliation services, these self-composing methods being important for the movement of the culture of peace.

In fact, self-composition has the ability to humanize the judiciary as it encourages dialogue and changes the course of the social culture of litigation, focusing on a more peaceful, conciliatory and dialectical culture. It gives the parties the power to adapt the best solution to that conflict, and it is possible that the solution most appropriate to the parties may be completely counterintuitive, but it will be the one that completely extinguishes the litigation and, therefore, the fairest for the parties.

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The social legal context is based on the mandatory sentence, handed down by a judge, which ends up generating the duality of "win-lose", which generates discontent in the winner and the loser.

planalto.gov.br/ccivil_03/constituicao/constituicao.htm . Accessed on 10/11/2024.

³PINHO, Humberto Dalla Bernardina de Pinho. "The reinterpretation of the principle of access to justice and the necessary resizing of judicial intervention in the resolution of conflicts in contemporary times". EMERJ Journal, Rio de Janeiro, v. 21, n. 3, t. 1, p. 241-271, Sep./Dec. 2019. Rio de Janeiro State Magistrates' School (EMERJ) . Available at <https://bdjur.stj.jus.br/jspui/handle/2011/139955>.

⁴WATANABE, Kazuo et. all. Access to Justice and Modern Society, in Participation and Process, Rio de Janeiro: Revista dos Tribunais, 1988, p. 128.

⁵Resolution No. 125 of 11/29/2010. DJE/CNJ No. 219/2010, of 12/01/2010, p.2-14 and republished in DJE/CNJ No. 39/2011, of 03/01/2011, p. 2-15. Available at <https://atos.cnj.jus.br/atos/detalhar/156> . Accessed on 10/11/2024.

loser too and, consequently, gives rise to appeals and more appeals that obstruct the courts with repetitive demands and attempts to solve a problem that is often impossible to be truly resolved through the common jurisdictional route.

It is known that the conflict is composed of two aspects, objective and subjective, the adjudicative system only attacks the first aspect, framing that conflict to the legal norm, but leaves aside the subjective aspect of the conflict, which, therefore, will not be resolved completely. Faced with such a deficiency, there is a circle of conflicts that occur systematically, being discussed and re-discussed in the judiciary.

On the other hand, self-composition methods are alternatives to common jurisdiction, sometimes providing a more appropriate form for the conflict, with the aim of definitively resolving that demand. These methods, assisted by a mediator or conciliator who must guide the parties towards a solution, combat both aspects of the conflict, because, while they adapt the conflict to the legal norm, they also work on its subjective, sociological aspect, addressing with the parties the most sensitive points that are the background of the conflict.

Firstly, it is important to note that the most common ways to reach a consensus amicably are conciliation and mediation. Although both have the same objective – the peaceful resolution of the conflict, there are differences between them.

In this sense, mediation is a form of conflict resolution in which a neutral and impartial third party facilitates dialogue between the parties so that they can autonomously construct a better solution to the conflict. As a rule, it is used in multidimensional or complex conflicts.

Conciliation is used in simpler or more restricted conflicts in which the third facilitator can adopt a more active, yet neutral and impartial position with regard to the conflict. It is a brief consensual process.

In turn, in reinforcement of the aforementioned national judicial policy of adequate conflict treatment enshrined by the CNJ, the 2015 CPC, revealing a paradigm shift in relation to the 1973 CPC and previous ones, also values conciliation and mediation, as highlighted in its explanatory memorandum.⁶

Finally, aiming to implement self-composition in processes within its jurisdiction, the Supreme Federal Court published successive Resolutions creating centers for alternative methods of conflict resolution.

STF's normative background on consensual solutions, judicial cooperation and resolution of structural and complex disputes.

Through successive resolutions, the STF created the Mediation and Conciliation Center – CMC, the Judicial Cooperation Center – CCJ, the Center for Coordination and Support for Structural Demands and Complex Disputes (CADEC) and the Center for Alternative Dispute Resolutions (CESAL).

Mediation and Conciliation Center – CMC

Initially, Resolution No. 697, of August 6, 2020, created the CMC – Mediation and Conciliation Center, assigning this body the “search and implementation of consensual solutions in the Federal Supreme Court”⁷.

It is important to highlight the foundations that inspired the creation of the CMC, as set out in its recitals, namely:

- a) the normative density of the principle of reasonable duration of the process (art. 5, inc. LXXVIII, CF),
- b) the need to consolidate the permanent practice of encouraging consensual mechanisms of dispute resolution,

c) Resolution 125/2010 of the National Council of Justice, which encourages the creation of centers of conciliation, which, although not applicable to this Court, inspires the adoption of a similar position;

d) the inspiring principles of the Code of Civil Procedure, mainly the rule expressed in §

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⁶ “The aim was to convert the process into an instrument included in the social context in which its effect will take place. result. Emphasis was placed on the possibility of the parties ending the conflict through mediation or conciliation. It was understood that the effective satisfaction of the parties can occur more intensely if the solution is created by them and not imposed by the judge.” Code of Civil Procedure and related norms. 7th edition. Brasília: Federal Senate. Coordination of Technical Editions, 2015. Available at <https://www2.senado.leg.br/bdsf/bitstream/handle/id/512422/001041135.pdf>. Accessed on 10/11/2024. 7

⁷ Resolution No. 697, of August 6, 2020. Published in the DJE/STF, no. 198, p. 1 on 8/7/2020. Available at <https://www.stf.jus.br/arquivo/norma/resolucao697-2020.pdf>. Accessed on 10/11/2024.



e) the existence of a potential propensity to enter into agreements in proceedings under original jurisdiction or appeal pending in this Court.

According to the text of Resolution 697, of August 6, 2020, the Mediation and Conciliation Center – CMC of the Federal Supreme Court was created during the presidential administration of Minister Dias Toffoli by Resolution 697/2020. It was directly subordinate to the Presidency of the Court and was coordinated by an auxiliary judge of the Presidency.

This body sought, using mediation or conciliation, to resolve legal issues subject to the jurisdiction of the STF for which, by their nature, the law allowed the peaceful resolution of that conflict, that is, the application of an alternative means that prevailed over the common procedural rite.

In turn, the attempt at conciliation could occur in the procedural hypotheses under the jurisdiction of the Presidency or at the discretion of the rapporteur, at any procedural stage. Interested parties could petition the Presidency of the STF to request the center's intervention in situations that could trigger conflicts within the original jurisdiction of the STF to enable the peaceful resolution of the controversy before judicialization.

The rapporteurs had the power to forward the case files to the CMC at any time, either ex officio or upon request by the parties. The CMC, at the request of the rapporteur, would provide the necessary support to the offices in the conciliation attempts made.

Ministers could appoint civil servants and auxiliary judges and instructors from their offices to act in conciliation activities in cases under their jurisdiction. The following could act as mediators and/or conciliators, on a voluntary and unpaid basis: retired ministers; magistrates, members of the Public Prosecutor's Office, retired lawyers and public defenders; civil servants of the Judiciary; and lawyers.

It was emphasized that the activity would not constitute an employment relationship and would not entail expenses for the STF. In addition, the coordinator, the mediator, the conciliator, the parties, their lawyers, members of the Public Prosecutor's Office and the Public Defender's Office, technical assistants and others directly or indirectly involved in the activities are subject to a confidentiality clause and must maintain confidentiality regarding what is said, shown or discussed in the session, so as not to allow such occurrences to be considered for purposes other than those of attempting conciliation.

It is worth noting that conflicts resolved by the Mediation and Conciliation Center – CMC benefited from the shortening of the process and reduced litigation because when the solution was accepted by both parties, the possibility of new questions about the matter decreased.

And since the STF has the power to resolve several conflicts considered institutional between states against the Union, between bodies within the Union, etc., this could avoid new lawsuits because the solutions ended up defining institutional roles that, if followed, avoid new conflicts within the Court.

However, following the publication of Resolution 790/2022, the CMC became part of CESAL – Center for Alternative Dispute Resolutions, together with the CCJ – Center for Judicial Cooperation and CADEC – Coordination and Support Center for Structural Demands and Complex Disputes.

Judicial Cooperation Center – CCJ.

Created by Resolution 775/2022⁸, which provided for the reciprocal cooperation of the STF with other bodies of the Judiciary for the practice of judicial or administrative acts, including, among numerous other attributions, cooperation with other courts and/or entities not part of the Judiciary, including for the “resolution of conflicts by consensual means” (art. 5, item X).

Its creation was based on the principles of cooperation and efficiency “guiding all jurisdictional activity” and on the duty of cooperation imposed on all bodies of the Judiciary, as provided for in the CPC, arts. 6, 8 and 67, and also in Resolution No. 350, of 10/27/2020, of the CNJ – National Council of Justice, what it establishes guidelines and procedures on national judicial cooperation between the bodies of the Power Judiciary and other institutions and entities, and provides other measures”⁹.

⁸ Resolution No. 775, of 31 of May of 2022. Published in DJE/STF, n. 107, p. 1-2 of 02/06/2022. Available at <https://www.stf.jus.br/arquivo/norma/resolucao775-2022.pdf>. Accessed on 10/11/2024.

⁹ Resolution no.350 of October 27, 2020. Published in DJE/CNJ No. 129/2024, of June 12, 2024, p. 2-9 (republication). Available at <https://atos.cnj.jus.br/atos/detalhar/3556>. Accessed on 10/11/2024.



Coordination and Support Center for Structural Demands and Complex Disputes (CADEC)

Created by Resolution No. 790/2022¹⁰, Its objective was to assist the STF in resolving processes aimed at restructuring a certain state of affairs that was not in accordance with the Federal Constitution and that required, for the realization of rights, special procedural implementation techniques and differentiated jurisdictional interventions.

As provided for in Article 3 of Resolution 790/2022, this body was responsible for “assisting in the resolution of structural demands and complex disputes within the jurisdiction of this Supreme Court”.

It is up to the rapporteur to indicate the process to be submitted to Cadec.

With the referral, the unit would take steps to detail the structural problem and outline the measures needed to address it, proposing goals and deadlines.

Center for Alternative Dispute Resolution (CESAL)

The Center for Alternative Dispute Resolutions – CESAL was also established by Resolution No. 790/2022, mentioned above, with the aim of assisting in the resolution of Structural Demands and Complex Disputes”. It supports the Offices in the search for consensual solutions to legal issues and provides assistance in the resolution of structural disputes and complex demands within the jurisdiction of the Supreme Court.

Furthermore, the CESAL would promote judicial cooperation between the STF and other bodies of the Judiciary. It is coordinated by an Auxiliary Judge appointed by the Presidency, to which it is directly subordinate.

CESAL could act both in cases under the jurisdiction of the Presiding Minister and in those under the jurisdiction of other Ministers of the Court, depending, in the latter case, on the referral of the case by the Rapporteur Minister.

New configuration of support units regarding structural and complex processes and consensual conflict resolution.

According to the Corte Aberta portal, of the STF,¹¹ Statistics continue to show that the number of cases in the Judiciary, including in the STF, has grown dramatically; this has also occurred in relation to structural demands and complex disputes, with a major economic impact and on public policies.

Thus, from Regulatory Act No. 27, of December 11, 2023¹², approved by decision of the STF Plenary¹³, given the increase in the number of structural processes before the STF and the growing demand for the use of consensual methods for conflict resolution, the units described above (CMC, CCJ, CADEC and CESAL) were transformed into the Jurisdiction Support Advisory (AAJ), a unit linked to the General Secretariat of the Presidency and composed of the following centers:

- 1) Center for Structural and Complex Processes (NUPEC);
- 2) Consensual Dispute Resolution Center (NUSOL);
- 3) Data Analysis and Statistics Center (NUADE).

The Jurisdiction Support Office (AAJ) aims to:

- a) structure, expand and qualify the current Center for Alternative Dispute Resolutions (CESAL), providing it with an interdisciplinary team suitable for carrying out its functions;
- b) provide specialized human and technical resources to assist in the provision of jurisdiction, upon request of the Presidency and the Cabinets;
- c) allow the prioritization of the most relevant processes for people and the country;
- d) ensure greater efficiency and speed in the management of the collection.

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Center for Structural and Complex Processes (NUPEC)

The Structural and Complex Processes Center (NUPEC) will be responsible for supporting the identification and

¹⁰Resolution No. 790, of December 22, 2022. Published in the DJE/STF on 1/12/2023. Available at <https://www.stf.jus.br/file/standard/resolucao790-2022.pdf>. Accessed on 10/11/2024.

¹¹BRAZIL. Supreme Federal Court. Open Court Panel. 2023. Available at: <https://portal.stf.jus.br/hotsites/corteaberta/>. Accessed on: 10/13/2024.

¹².Regulatory Act No. 27, OF December 11, 2023. Published in the DJE/STF on 12/13/2023. Available at <https://digital.stf.jus.br/publico/publicacao/324654>. Accessed on 10/12/2024.

¹³.Administrative decision PADM 1/DF. Available at: <https://digital.stf.jus.br/decisoes-monocraticas/api/public/votos/128452/conteudo.pdf>. Accessed on 10/12/2024.

processing of structural and complex actions, and may, at the request of the President and/or Cabinets of Ministers:

- i) issue technical notes and reports on topics discussed in these actions;
- (ii) assist in the construction of indicators for monitoring and evaluating the effectiveness of measures determined in these processes;
- (iii) support the supervision and monitoring of the implementation of decisions by producing reports and support for the creation of Monitoring Rooms for each structural process.

Consensual Dispute Resolution Center (NUSOL)

The Consensual Dispute Resolution Center (NUSOL) is responsible for:

- a) support the Offices in seeking and implementing consensual solutions to procedural conflicts and pre-procedural;
- b) establish judicial cooperation between the STF and other bodies of the Judiciary.
- c) act in the integration of the Mediation and Conciliation Center (CMC/STF) with the Cooperation Center Judiciary (CCJ/STF), regulated, respectively, by STF Resolutions No. 697/2020 and 775/2022;
- d) assist in screening processes which, due to their characteristics, include a consensual solution;
- e) conduct or support conciliation or mediation sessions, or other appropriate method of dispute resolution; controversies, at the request of the Rapporteur;
- f) promote, always consensually, judicial cooperation between the STF and other bodies of the Power Judiciary, or with other entities of the justice system and organized civil society.

Data Analysis and Statistics Center (NUADE)

This center is responsible for providing statistical data to the Presidency and the Cabinets of Ministers, aiming to qualify and improve decision-making, assisting in speed and promoting transparency in the STF.

Some examples of cases of consensual dispute resolution in the STF¹⁴.

ADI No. 7,486 – Rapporteur Minister Dias Toffoli.

It oversees the competitions for the Military Police of the State of Pará, whose notices contained restrictions on the participation of women. After a conciliation hearing, the State of Pará agreed to continue in the following stages of the competition, excluding this gender restriction. Once the agreement was approved, the competition was unblocked and losses to the PM's staff were avoided.

ARE 1,380,067 – Rapporteur Minister André Mendonça.

At a conciliation hearing, the parties agreed on a procedural calendar, requesting that the proceedings be suspended to establish direct, extrajudicial communication to exchange documents and information capable of supporting an attempt at an agreement.

ADPF 635 – Rapporteur Minister Edson Fachin.

Case interesting on the subject of police lethality in Rio de Janeiro.

The case was forwarded to the Centers for Consensual Conflict Resolution and Structural and Complex Processes in order to, through dialogue, support the Rapporteur in monitoring compliance with the determinations in that state.

A was designated *contextualization hearing*, with eminently technical content, aiming to gather information and clarifications to support decision-making, aligning the expectations of those involved, without prejudice to providing some consensus on specific points.

14 .NAVARRO, Tricia. Advances in consensus in the Supreme Court: a multi-door court. 04/15/2024. Legal Consultant. Available at: <https://www.conjur.com.br/2024-abr-15/os-avancos-da-consensualidade-no-supremo-uma-corte-multiportas/>. Accessed on 10/12/2024.

Other examples of structural and high-impact economic disputes brought to the STF¹⁵.**Original Civil Action ACO No. 1,100 - Conflicts involving indigenous peoples.**

Group of farmers calls for the annulment of a 2003 ordinance that redefined and expanded the boundaries of the Indigenous Reserve, in Santa Catarina, related to the Xokleng indigenous community

Original Civil Action ACO No. 2,550 - Disputes involving Water.

Filed by the MPF, so that the National Water Agency would refrain from determining the reduction of the minimum flow rate into the Santa Cecilia dam, on the Paraíba do Sul River

RCL No. 19,537 - Conflicts involving Trade Union Entities.

Representatives of the Union of Civil Servants and Employees of the Professional Practice Inspection Councils and Orders in Rio Grande do Sul and of Regional Professional Inspection Councils in the state agreed to formalize an agreement in the process that discussed the legal regime applicable to workers of professional councils.

ADPF 347 -the unconstitutional state of affairs of the prison system;

ADPFs 709 and 742 -the protection of the indigenous and quilombola population during the Covid-19 pandemic; **ADPF 973** -protection for the homeless population; **ADPF 760** -the policy of protecting the Legal Amazon; **ADPF 976** -structural racism; **ADI 5090** -monetary correction of the FGTS;

ADIs 7047 and 7064 -questions about the new court order regime.

3. CONCLUSION

This brief study, through the aforementioned STF rules and the examples of complex cases, demonstrates that, finally, the STF itself has incorporated, internally, within the scope of constitutional jurisdiction, the possibility of conciliation and mediation, in addition to other alternative ways of resolving demands, applying the national judicial policy of adequate treatment of conflicts, within the scope of its jurisdiction, also becoming a multi-door court, especially in the resolution of structural disputes or those of great economic impact, which contributes to addressing the critical panorama of insufficiency of the Judiciary in the face of the profusion of disputes that come before it and, thus, expanding the realization of the peaceful resolution of controversies, and the supreme value of justice, proclaimed by the Federal Constitution of 1988 in its preamble.

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_____. CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL, art. 5, item LXXVIII. Available at https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm . Accessed on 10/11/2024. "LXXVIII.

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15 . NAVARRO, Tricia; CASIMIRO, Matthewand EDOKAWA, Pâmella Sada Dias Innovations in the STF: a multi-door court. Available at https://www.jota.info/artigos/inovacoes-no-stf-um-tribunal-multiportas#_ftn1 . 12/20/2023. Accessed on 10/11/2024.



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