ACCESS TO JUSTICE IN CONSUMER RELATIONS: A CRITICAL ANALYSIS OF BILL Nº. 533/2019

ACESSO À JUSTIÇA NAS RELAÇÕES DE CONSUMO: ANÁLISE CRÍTICA DO PL 533/2019

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Ana Paula Kosloski Miranda[1] *– https://orcid.org/0009-0002-3534-819X*

Andreza Cristina Baggio[2] *– https://orcid.org/0000-0001-9574-6494*

Abstract: *This study aims to critically analyze Bill Nº. 533/2019, which proposes conditioning the filing of consumer lawsuits upon proof of a prior attempt at the extrajudicial resolution of the dispute. It is based on the hypothesis that, although the proposal may contribute to dejudicialization and to strengthening a culture of conciliation, its mandatory implementation may constitute an unconstitutional barrier to the fundamental right of access to justice, particularly for consumers in situations of vulnerability. A qualitative approach is adopted, based on bibliographical, documentary, legislative, and jurisprudential research, in order to examine the historical and normative development of the Multi-Door Justice model in Brazil, from the earliest public policies encouraging mediation and conciliation to the contemporary development of Online Dispute Resolution (ODR) platforms. Within this context, the constitutional compatibility of requiring a mandatory prior attempt at extrajudicial dispute resolution is examined, together with the potential impact of such a requirement on the effectiveness of judicial protection. As a result, the study proposes the adoption of safeguard provisions aimed at protecting vulnerable consumers, as well as the cooperative integration of the extrajudicial and judicial stages, so that dejudicialization may be consolidated as an instrument that facilitates - rather than restricts - access to a just legal order.*

Keywords: *Access to justice. Dejudicialization. Consumer relations. Prior attempt at extrajudicial dispute resolution. Online Dispute Resolution (ODR).*

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[1] Public Servant at the Secretariat of Justice and Citizenship – DH. Master's Candidate in the Graduate Program in Law (PPGD) at UNINTER. E-mail:anapaulakmiranda.adv@gmail.com. ZIP Code: 80020-110. Curitiba, Paraná, Brazil. UNINTER – International University Center. https://orcid.org/my-orcid?orcid=0009-0002-3534-819X

[2] Ph.D. in Economic and Socio-Environmental Law from the Pontifical Catholic University of Paraná (2010); M.Sc. in Economic and Social Law from the Pontifical Catholic University of Paraná (2006); Professor in the Master's Program in Law at UNINTER – International University Center. E-mail:baggio.andreza@gmail.com. ZIP Code: 80020-110. Curitiba, Paraná, Brazil. UNINTER – International University Center. https://orcid.org/0000-0001-9574-6494

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Summary: *1. Introduction. 2. Current panorama of access to justice in Brazil. 3. Multi-door justice: paths to dejudicialization. 3.1 Dispute resolution in the digital age: Online Dispute Resolution, inclusion and the role of the State. 4. The claim resisted in Bill Nº. 533/2019 and its impacts on consumer access to justice. 5. Final considerations. 6. References.*

1 INTRODUCTION

The growing judicialization of consumer relations in Brazil constitutes one of the most significant phenomena of the contemporary justice system. The exponential increase in lawsuits involving suppliers and consumers reflects not only the increasing complexity of the mass market and the widespread use of adhesion contracts, but also consumers' growing awareness of their rights and the structural difficulties faced by companies in adopting preventive compliance and contractual governance practices. Within this context, the Judiciary assumes a central role in the protection of individual and collective consumer rights, although it consequently bears the burden of procedural overload and the resulting delays.

It is within this context of judicial saturation that the debate on dejudicialization mechanisms and the strengthening of multi-door justice has gained prominence. The concept of multi-door justice proposes the coexistence of various judicial and extrajudicial avenues for dispute resolution as an expression of a pluralistic and efficient system of access to justice. Inspired by the third wave of access-to-justice reforms described by Cappelletti and Garth (1988), this perspective is based on the premise that access to justice is not limited to formal access to the courts but also encompasses the effectiveness of judicial protection and the availability of appropriate alternative means of dispute resolution.

It is within this framework that Bill Nº. 533/2019 is situated. The Bill proposes making the filing of consumer lawsuits conditional upon proof of a prior attempt at extrajudicial dispute resolution. Although the proposal is guided by a discourse of efficiency and social pacification, it raises serious concerns regarding its compatibility with the fundamental right of access to justice, as provided for in Article 5, item XXXV, of the Federal Constitution.

The purpose of this article is to critically examine the aforementioned Bill by investigating whether the mandatory requirement of a prior attempt at extrajudicial settlement constitutes an unconstitutional obstacle to the exercise of the right of action, particularly in light of the principles of vulnerability, objective good faith, and the effectiveness of judicial protection. The study is based on the hypothesis that imposing such a requirement, although supported by legitimate objectives of dejudicialization, may unduly restrict full judicial protection, thereby undermining the essential core of the right of action and compromising consumers' access to the justice system.

The methodology adopted is qualitative and is based on bibliographical, documentary, and case-law research, with an analytical focus on the current legal framework, particularly the text of Bill N.º 533/2019, and on the doctrinal scholarship addressing multi-door justice, dejudicialization, and access to justice. The study seeks to contribute to the academic and institutional debate on the constitutional limits of public policies aimed at dejudicialization, while reflecting on the necessary balance between efficiency and legal inclusion.

To this end, the article examines the concept and evolution of multi-door justice, analyzes the role of Online Dispute Resolution (ODR) platforms as instruments of consensual dispute resolution, and assesses the constitutionality of requiring a mandatory prior extrajudicial dispute resolution attempt in consumer lawsuits. Finally, it discusses whether encouraging consensual dispute resolution, when transformed into a procedural precondition, ultimately creates barriers to access precisely for the most vulnerable consumers, who lack the technical and economic resources necessary to make effective use of such platforms.

It is concluded that, although Bill N.º 533/2019 has merit in fostering a culture of conciliation and promoting the rationalization of the judicial system, its compulsory imposition may constitute an unconstitutional restriction on the fundamental right of access to justice, transforming what should be a facilitating avenue into an exclusionary mechanism of judicial protection. The contemporary challenge, therefore, lies in reconciling the policy of dejudicialization with the preservation of the Judiciary's counter-majoritarian function and with the guarantee that justice, through any of its avenues, remains effectively accessible to all.

2 CURRENT OVERVIEW OF ACCESS TO JUSTICE IN BRAZIL

The Federal Constitution of 1988 (CF/88), in Article 5, item XXXV, establishes the principle of non-excludability of judicial review, protected as an entrenched constitutional clause (Article 60, §4, IV), by providing that no injury or threat to a right shall be excluded from review by the Judiciary.[3] This constitutional provision, which has been broadly interpreted by legal scholarship and case law[4], is reaffirmed by the 2015 Code of Civil Procedure (CPC/2015)[5], which consolidates judicial proceedings as an instrument of social pacification and the realization of fundamental rights, in line with the need for a justice system that is effective, expeditious, and fair.[6]

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[3] MARIANO JUNIOR, Raul, *E-Due Process: Devido Processo Digital e Acesso à Justiça***,** São Paulo: Grupo Almedina, 2023, p. 39.

[4] MARTINS, Nathana Maria Silva, BRITO, Dante Ponte de, "Acesso à justiça e pretensão resistida no âmbito extrajudicial como condição para propositura de ação pelo consumidor", *Revista da Academia de Ciências do Piauí*, ano 1, nº 01, Piauí, 2020, p. 65-83, Disponível em: <https://periodicos.ufpi.br/index.php/acipi/article/view/703/670>. Acesso em 10/05/2025. p. 70.

[5] BRASIL, *Código de Processo Civil*, Lei n.º 13.105, de 16 março de 2016. Disponível em: <https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm>. Acesso em 15/05/2025.

[6] MARCHETTI FILHO, Gilberto Ferreira, *Os direitos fundamentais, a pacificação dos conflitos sociais e o Código de processo civil***,** Campo Grande: Contemplar, 2018. p. 138.

Constitutional Amendment No. 45/2004, which introduced, among other innovations, the National Council of Justice (CNJ) with the purpose of improving the administration of justice, sought to consolidate the reforms of the Brazilian justice system by expanding its institutional reach and ensuring greater efficiency and accessibility in the resolution of disputes, with the aim of removing the obstacles that hinder effective access to prompt and accessible justice.[7]

A closer examination reveals that the infraconstitutional provisions seek to provide a broad guarantee that extends beyond the limits of the Judiciary, which is entrusted with the exercise of judicial authority, albeit not on an exclusive basis. Within this context, extrajudicial voluntary jurisdiction has gained increasing prominence.[8]

It is important to distinguish access to justice from access to judicial review. Whereas judicial review refers to the State's function of resolving disputes, access to justice has a broader scope, encompassing measures aimed at preventing disputes, simplifying procedures, reducing costs, and creating expeditious means of dispute resolution, often without judicial intervention.[9]

Nevertheless, the Brazilian legal tradition has historically centered on the Judiciary as the virtually exclusive means of dispute resolution. This model, combined with procedural delay, insufficient investment in institutional infrastructure and personnel, and a deeply rooted culture of litigation, has resulted in judicial overload.[10]

According to data published by the National Council of Justice (CNJ) in 2024,[11] more than 35 million lawsuits were filed in 2023, representing the highest number recorded in two decades and an increase of 9.4% compared with the previous year. Particular emphasis should be given to the state courts, which received more than 25 million new cases, with health insurance companies, telecommunications providers, and banking institutions ranking among the principal litigants, thereby contributing significantly to court congestion.[12]

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7 RIBEIRO, Ludmila, "A emenda constitucional 45 e a questão do acesso à justiça", *Revista Direito GV*, n.º 4, vol. 8, São Paulo, 2008. p. 465-492, Disponível em: <https://www.scielo.br/j/rdgv/a/dH9wcccm76gvn8qstZkYDCJ/?format=pdf&lang=pt>. Acesso em 16/07/20225. p. 469

8 PINHO, Humberto Dalla Bernardina de Pinho. "A releitura do princípio do acesso à justiça e o necessário redimensionamento da intervenção judicial na resolução dos conflitos na contemporaneidade", v. 21, nº. 3, t. 1, p. 241-271, Rio de Janeiro: Revista EMERJ, 2019, Disponível em: <https://www.emerj.tjrj.jus.br/revistaemerj_online/edicoes/revista_v21_n3/tomo1/revista_v21_n3_tomo1_241.pdf>. Acesso em 16/07/2025. p. 248.

9 MARTINS, Nathana Maria Silva, BRITO, Dante Ponte de, "Acesso à justiça e pretensão resistida no âmbito extrajudicial como condição para propositura de ação pelo consumidor"**,** *Revista da Academia de Ciências do Piauí*, ano 1, n.º 01, 2020, p. 65-83, Disponível em: <https://periodicos.ufpi.br/index.php/acipi/article/view/703/670>. Acesso em 10/05/2025. p. 70.

10 GUILHERME, Luiz Fernando do Vale de Almeida, *Meios extrajudiciais de solução de conflitos: manual dos MESCs.* 2ª. ed. São Paulo: Manole, 2022.

11 CNJ, Conselho Nacional de Justiça, *Justiça em números 2024.* Conselho Nacional de Justiça, Brasília: CNJ, 2024. Disponível em: <https://www.cnj.jus.br/wp-content/uploads/2025/04/justica-em-numeros-2024.pdf>. Acesso em 12/05/2025.

12 LONGO, Samantha Mendes, "A recomendação n.º 71/2020 do conselho nacional de justiça: objetivos e desafios", MOREIRA, António Júdice, NASCIMENTO, Asdrubal Franco, BEYRODT, Christiana

Within this context, the contemporary concept of access to justice has evolved beyond the mere possibility of filing lawsuits, encompassing the creation of appropriate and alternative dispute resolution mechanisms capable of ensuring the full exercise of rights under conditions of equality.[13]

The alternative dispute resolution mechanisms have become an integral part of the justice system, expanding the field of interest of procedural law scholars and fostering ongoing reforms.[14] Judges and members of the Public Prosecutor's Office have acknowledged the justice system's crisis of effectiveness[15], marked primarily by inequalities that restrict access to the Judiciary for vulnerable segments of the population and undermine the realization of fundamental rights.[16]

The Consumer Protection Code (CDC/90) has contributed to addressing this issue by ensuring that consumers are afforded facilitated access to both the Judiciary and administrative bodies, such as Consumer Protection Agencies (Procons) and regulatory agencies, thereby strengthening public awareness and the protection of citizens.[17]

It is well established that, for access to justice to be effective, effective mechanisms for the enforcement of rights must be available, and the mere availability of the Judiciary as the sole avenue for dispute resolution is insufficient.[18]

However, it is essential to respect individual autonomy by ensuring equality of conditions and informed decision-making, as provided in Article 166[19] of the

(ORG), *Recuperação Judicial e Falência: Métodos de Solução de Conflitos - Brasil e Portugal***,** São Paulo: Grupo Almedina, 2022, p. 24.

13 *Idem*, p. 25.

14 CRESPO, Mariana Hernandez, "Perspectiva sistêmica dos métodos alternativos de resolução de conflitos na América Latina: aprimorando a sombra da lei através da participação do cidadão", *in* ALMEIDA, Rafael Alves de, CRESPO, Tania Almeida, Mariana Hernandez, org., *Tribunal Multiportas: investindo no capital social para maximizar o sistema de solução de conflitos no Brasil*, Rio de Janeiro: Editora FGV, 2012, Disponível em: <https://bibliotecadigital.fgv.br/dspace/bitstream/handle/10438/10361/Tribunal%20Multiportas.pdf>. Acesso em: 15/05/2025. p.57

15 SADEK, Maria Tereza, *Judiciário: mudanças e reformas.* Estudos Avançados, 18 (51), 2004, Disponível em: <https://www.scielo.br/j/ea/a/rmr7WmNQZLyrPJ7VfWLFPyc>. Acesso em 15/05/2025. p. 84.

16 FARIA, José Eduardo, O sistema brasileiro de Justiça; experiência recente e futuros desafios, Estudos Avançados, 18 (51), 2004. Disponível em: <https://www.scielo.br/j/ea/a/7SxL3ZVmwbGPNsgbRRM3FmQ/?format=pdf&lang=pt>. Acesso em 15/05/2025. p. 105

17 MARTINS, Nathana Maria Silva, BRITO, Dante Ponte de**, "**Acesso à justiça e pretensão resistida no âmbito extrajudicial como condição para propositura de ação pelo consumidor", *Revista da Academia de Ciências do Piauí*, ano 1, n.º 01, Piauí, 2020, p. 65-83, Disponível em: <https://periodicos.ufpi.br/index.php/acipi/article/view/703/670>. Acesso em 10/05/2025. p. 72.

18 PORTO, Antônio José Maristrello, NOGUEIRA, Rafaela, QUIRINO, Carina de Castro, "Resolução de conflitos on-line no Brasil: um mecanismo em construção"*, Revista de Direito do Consumidor*, vol. 114, 2017, p. 3.

19 BRASIL. Lei n.º 13.105, de 16 março de 2016, *Código de Processo Civil***,** art. 166. A conciliação e a mediação são informadas pelos princípios da independência, da imparcialidade, da autonomia da vontade, da confidencialidade, da oralidade, da informalidade e da decisão informada, Disponível em: <https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm>. Acesso em 15/05/2025.

Code of Civil Procedure[20], so that the parties are fully informed of the available consensual methods of dispute resolution and their effectiveness.[21]

Furthermore, any analysis of access to justice must take into account the existing structural, educational, and cultural barriers, lest the principle of effectiveness be undermined.

From a structural perspective, it is essential to ensure adequate infrastructure, efficient information technology, and well-organized procedures capable of accommodating existing demands. From an educational standpoint, there is an urgent need to reform legal education so as to equip legal professionals to work with consensual methods of dispute resolution. From a cultural perspective, it is necessary to overcome deeply rooted and distorted perceptions regarding consensual dispute resolution methods, so that they may be recognized as legitimate and effective mechanisms for resolving disputes.[22]

3 MULTI-DOOR JUSTICE AS A PATHWAY TO DEJUDICIALIZATION

The term "dejudicialization" refers to the model that allows matters requiring State intervention to be transformed into legal situations through administrative proceedings capable of producing the necessary legal effects. This approach is permissible provided that no legally incapacitated person is involved and that any disputes may be resolved by the parties themselves, thereby avoiding judicialization.[23]

The concept of the Multi-Door Courthouse emerged in the 1960s in the United States from the proposal advanced by Frank Sander, a Harvard Law School professor, who advocated the adoption of alternative methods of dispute resolution outside the Judiciary to mitigate judicial overload by providing multiple avenues for resolving disputes in a manner that is more efficient and better suited to the particular circumstances of each case.[24]

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20 DIDIER JUNIOR, Freddie, ZANETI JUNIOR, Hermes., *Justiça multiportas e tutela constitucional adequada: autocomposição em direitos coletivos***,** Civil Procedure Review, vol. 7, n.º 3, 2016, p. 59-99, Disponível em: <https://www.civilprocedurereview.com/revista/article/view/132>. Acesso em 04/07/2025. p. 63.

21 GUERRERO, Luis Fernando, *Teoria Geral dos Processos: Os métodos de solução de conflitos e o processo civil,* Coleção Ibmec São Paulo, Série Direito e Resolução de Disputas, 2.ª ed, São Paulo: Grupo Almedina, 2022, p. 32.

22 LESSA NETO, João Luiz, O novo CPC adotou o modelo multiportas!!! E agora?!, Métodos Alternativos de Solução de Conflitos – ADR, *Revista de Processo*, RePro vol. 244, 2015. Disponível em <https://www.mpsp.mp.br/portal/page/portal/documentacao_e_divulgacao/doc_biblioteca/bibli_servicos_produtos/bibli_boletim/bibli_bol_2006/RPro_n.244.17.PDF>. Acesso em 15/07/2025. p. 5.

23 FERNANDES, David Augusto, DUARTE, Márcia Michele Garcia, Desjudicialização: hipóteses possíveis e a busca por fundamentos para sua ampliação, *Revista disciplinar de direito - Faculdade de Direito de Valença*, v. 21, n.º 2, 2023, Disponível em: <https://revistas.faa.edu.br/FDV/article/view/1443>. Acesso em 01/07/2025. p 3.

24 ANDRADE, Henrique dos Santos, MARCACINI, Augusto. "Os novos meios alternativos ao judiciário para a solução de conflito, apoiados pelas tecnologias da informação e comunicação", *Revista de Processo*, vol. 42, n.º 268, São Paulo, 2017, p. 587 – 612, Disponível em: </https://hdl.handle.net/20.500.12178/113366>. Acesso em 04/07/2025. p 591.

The methods proposed by Sander include the screening clerk (door 1), mediation (door 2), arbitration (door 3), fact finding (door 4), malpractice screening panel (door 5), superior court (door 6), and ombudsman (door 7). According to Sander, a dispute-screening mechanism could exist either within or outside the courts, allowing each case to be assessed and directed to the appropriate "door," where a solution could be achieved in a more expeditious and satisfactory manner according to its particular characteristics.[25]

In Brazil, among the most widely used and recognized extrajudicial methods of dispute resolution (EMDRs), arbitration stands out under Law N.º 9.307/1996 as a method of heterocompositive dispute resolution through which a third party or an arbitral tribunal decides the dispute submitted to its jurisdiction by agreement of the parties.[26]

Likewise, within the framework of consensual dispute resolution, mediation, conciliation, and negotiation provide the parties with freedom of choice and decision regarding the resolution of the dispute. In such cases, whenever a third party is involved, that person acts as an intermediary or facilitator of communication and rapprochement between the parties.[27]

From the perspective of procedural law, alternative methods of dispute resolution may be used only in matters involving disposable property rights[28] or in matters in which settlement is legally permissible[29]. Accordingly, no settlement hearing shall be held in cases in which consensual dispute resolution is not legally admissible.[30]

It should be noted that the 2015 Code of Civil Procedure (CPC/2015)[31] adopted the multi-door model in civil proceedings by providing that each case should be directed to the method most appropriate for its resolution and that every

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25 NOGUEIRA, Gustavo Santana, *O sistema de múltiplas portas e o acesso à justiça no Brasil: perspectivas a partir do novo código de processo civil*, Novo Processo Civil, vol. 1, *Revista de Processo*, vol. 276, São Paulo, 2018, Disponível em: <https://juslaboris.tst.jus.br/handle/20.500.12178/125831>. Acesso em: 01/07/20225, p. 619.

26 ZAFFARI, Eduardo Kucker, SCHOLZECHOLZE, Martha Luciana, *Solução de conflitos jurídicos*, Porto Alegre: Sagah, 2020, p. 52.

27 *Idem,* p. 52.

28 Art. 1º As pessoas capazes de contratar poderão valer-se da arbitragem para dirimir litígios relativos a direitos patrimoniais disponíveis. *Dispõe sobre a arbitragem***.** Lei n.º 9.307. de 23 de setembro de 1996, Disponível em: <https://www.planalto.gov.br/ccivil_03/leis/l9307.htm>. Acesso em 01/07/2025.

29 GUERRERO, Luis Fernando, *Teoria Geral dos Processos: Os métodos de solução de conflitos e o processo civil,* Coleção Ibmec São Paulo, Série Direito e Resolução de Disputas, 2. ed, São Paulo: Grupo Almedina, São Paulo, 2022, p 32.

30 BRASIL. Lei n.º 13.105, de 16 de março de 2015. *Código Processo Civil.* Art. 334 §4º A audiência não será realizada: II - quando não se admitir a autocomposição. Disponível em: <https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm>. Acesso em 01/07/2015.

31 BRASIL. Lei n.º 13.105, de 16 de março de 2015. *Código Processo Civil.* Art. 3º, §3º, do CPC/2015, A conciliação, a mediação e outros métodos de solução consensual de conflitos deverão ser estimulados por juízes, advogados, defensores públicos e membros do Ministério Público, inclusive no curso do processo judicial. Disponível em: <https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm>. Acesso em 01/07/2015.

effort should be made to enable the parties to reach a consensual settlement[32]. However, it did not permit every dispute to be resolved through this approach.

Within this context, the National Council of Justice (CNJ) plays a fundamental role in promoting initiatives that foster consensual dispute resolution and social pacification. To that end, in 2010 it issued Resolution N.º 125, establishing the Judicial Policy for the Appropriate Treatment of Conflicts of Interest within the Judiciary.[33]

Furthermore, by creating the Conciliation Movement in August 2006, the CNJ sought to transform a culture characterized by excessive litigation by encouraging the resolution of disputes through agreements between the parties.[34]

It should be emphasized that these legal provisions do not violate the constitutionality of the law, since the parties remain free to decline consensual dispute resolution, as expressly provided in Article 334, §4, item II, of the 2015 Code of Civil Procedure (CPC/2015), which establishes that no settlement hearing shall be held where both parties expressly indicate that they have no interest in consensual dispute resolution.

3.1 Conflict Resolution in the Digital Era: Online Dispute Resolution, Inclusion, And the Role of the State

Technological advances have given rise to new complexities in disputes, particularly those involving electronic commerce, digital platforms, and customer loyalty clauses.[35] At the same time, they have enabled the expansion of alternative dispute resolution methods through Online Dispute Resolution (ODR), which facilitates online communication between the parties and facilitators in an expeditious and remote manner.[36]

Initially developed to resolve disputes arising from consumer relations, ODR, based on the principles of Alternative Dispute Resolution (ADR) applied to virtual contractual relationships, offers advantages such as expeditiousness, convenience,

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[32] LESSA NETO, João Luiz, "O novo CPC adotou o modelo Multiportas!! E agora?" *Revista de Processo*, vol 244, 2015, Disponível em: <https://www.mpsp.mp.br/portal/page/portal/documentacao_e_divulgacao/doc_biblioteca/bibli_servicos_produtos/bibli_boletim/bibli_bol_2006/RPro_n.244.17.PDF>. Acesso em 04/07/2025, p. 3.

[33] CNJ, Conselho Nacional de Justiça, Resolução n.º 125 de 29/11/2010, *Dispõe sobre a Política Judiciária Nacional de tratamento adequado dos conflitos de interesses no âmbito do Poder Judiciário e dá outras providências,* Disponível em: <https://atos.cnj.jus.br/atos/detalhar/156>. Acesso em: 02/07/2025.

[34] CNJ, Conselho Nacional de Justiça, *Movimento pela Conciliação,* Disponível em: <https://www.cnj.jus.br/programas-e-acoes/conciliacao-e-mediacao/movimento-pela-conciliacao/>. Acesso em: 07/01/2025.

[35] MARIANO JUNIOR, Raul, *E-Due Process: Devido Processo Digital e Acesso à Justiça,* São Paulo: Grupo Almedina, 2023, p.45.

[36] WATKINS, Caio**, "**A online dispute resolution (ODR) e o processo judicial: caminhos para a integração", *Revista Eletrônica da Procuradoria Geral do Estado do Rio de Janeiro - PGE-RJ*, v. 5, n.º 1, Rio de Janeiro, 2022, Disponível em: <https://revistaeletronica.pge.rj.gov.br/index.php/pge/article/view/258>. Acesso em 13/05/2025. p. 7.

cost reduction, and the adaptation of procedures to the specific circumstances of each case.[37]

Electronic communication tools have been widely incorporated into and encouraged by the 2015 Code of Civil Procedure (CPC/2015)[38]. Accordingly, there is no legal impediment to a judge replacing the settlement hearing provided for in Article 334, §7, of the CPC/2015[39] by referring the parties to a properly structured and supervised ODR platform, provided that respect for fundamental rights and guarantees is ensured.[40]

Within the framework of Multi-Door Justice, ODR may be regarded as another appropriate avenue for dispute resolution, and it falls to the judge to screen and direct disputes to the alternative method most suitable for their resolution, which will not necessarily be conciliation or mediation as provided for in the CPC/2015.[41]

In Brazil, ODR initiatives are already underway in both the public and private sectors. One example is the consumidor.gov.br platform[42], which provides a public online service for the alternative resolution of consumer disputes by enabling direct communication between consumers and suppliers. The platform combines information technology, user interaction, and data sharing and is monitored by the Consumer Protection Agencies (Procons) and the National Consumer Secretariat, which is linked to the Ministry of Justice.[43]

The *consumidor.gov.br* ODR platform constitutes a commendable public initiative by making possible the implementation of a policy that encourages the consensual resolution of disputes. Accordingly, the Federal Government has made

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37 FACHIN, Luiz Edson, Arruda, Desdêmona T. B. Toledo, MUNHOZ, José L., "Mediação e conciliação no novo Código de Processo Civil: limites e possibilidades da online dispute resolution no Direito brasileiro", MUNHOZ, José Lucio, Org., *Cinco anos do CPC: questões polêmicas: em homenagem a José Roberto Neves Amorim*, Barueri: Manole, 2020. p 33.

38 *Idem*, p. 32.

39 Art. 334 §7º A audiência de conciliação ou de mediação pode realizar-se por meio eletrônico, nos termos da lei. BRASIL. *Código Processo Civil.* Lei n.º 13.105, de 16 de março de 2015, Disponível em: <https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm>. Acesso em 01/07/2015.

40 WATKINS, Caio, "A online dispute resolution (ODR) e o processo judicial: caminhos para a integração", *Revista Eletrônica da Procuradoria Geral do Estado do Rio de Janeiro - PGE-RJ*, v. 5, n. 1, Rio de Janeiro, 2022, Disponível em: <https://revistaeletronica.pge.rj.gov.br/index.php/pge/article/view/258>. Acesso em 13/05/2025. p. 15.

41 WATKINS, Caio, "A online dispute resolution (ODR) e o processo judicial: caminhos para a integração", *Revista Eletrônica da Procuradoria Geral do Estado do Rio de Janeiro - PGE-RJ*, v. 5, n. 1, Rio de Janeiro, 2022, Disponível em: <https://revistaeletronica.pge.rj.gov.br/index.php/pge/article/view/258>. Acesso em 13/05/2025. p. 15.

42 O *Consumidor.gov.br* é um serviço público que permite a interlocução direta entre consumidores e empresas para solução de conflitos de consumo pela internet. Disponível em: <https://www.consumidor.gov.br/pages/principal/?1751395660508>. Acesso em: 01 jul. 2025.

43 FACHIN, Luiz Edson, ARRUDA, Desdêmona T. B. Toledo, MUNHOZ, José L., "Mediação e conciliação no novo Código de Processo Civil: limites e possibilidades da online dispute resolution no Direito brasileiro", MUNHOS, José Lucio, Org., *Cinco anos do CPC: questões polêmicas: em homenagem a José Roberto Neves Amorim*, Barueri: Manole, 2020. p. 32.

the use of this system mandatory for the resolution of disputes involving agencies and entities of the direct and indirect federal public administration.[44]

The National Council of Justice (CNJ) has been testing the integration of the Electronic Judicial Process (PJe) system with the *consumidor.gov.br* platform and has already launched pilot projects before the Court of Justice of the Federal District and Territories (TJDFT) and the Federal Regional Court of the 1st Region (TRF-1)[45]. However, the participation of companies in the *consumidor.gov.br* platform[46] is voluntary and limited to those that formally adhere to the service by signing the required agreement, which creates significant difficulties for consumers attempting to bring claims against suppliers that are not registered on the platform.

Accordingly, although necessary, these transformations will alter the legal landscape only if implemented together. In this regard, Antônio Hilário Urquiza and Adelson Luiz Correia, citing Boaventura de Sousa Santos, recognize that the judicial system, by itself, is not capable of remedying all social injustices, but must assume its share of responsibility in the search for solutions.[47]

With regard to consumers, before imposing mandatory prior recourse to consensual dispute resolution, it is necessary to assess whether the body of rules and principles governing consensual dispute resolution is compatible with the absence of direct State action or with only indirect State intervention, particularly in a context of increasing encouragement of dejudicialization.[48]

Users expect an ODR process that is expeditious, straightforward, fair, and easy to understand, making it essential to avoid introducing unnecessary complexity.[49]

It should also be recognized that, within the justice system, technology, although capable of expanding access to justice and improving procedural efficiency, may also hinder or even prevent the exercise of rights. This occurs when technology itself becomes an obstacle to access to justice for the so-called digitally excluded, namely individuals who lack the resources necessary to use the

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44 BOCHENEK, Antônio César, ELESBON, Salomão Akhnaton Zoroastro Spencer, "ODR'S em conflitos de consumo: o consumidor.gov.br precisa de um nudge?" *Revista Consister de Direito,* ano IX, n.º XVI, Juruá, 2023, Disponível em: <https://doi.org/10.19135/revista.consinter.00016.20>. Acesso em 02/07/2025. p. 447.

45 WATKINS, Caio. "A online dispute resolution (ODR) e o processo judicial: caminhos para a integração." *Revista Eletrônica da Procuradoria Geral do Estado do Rio de Janeiro - PGE-RJ*, v. 5, n. 1, Rio de Janeiro, 2022, Disponível em: <https://revistaeletronica.pge.rj.gov.br/index.php/pge/article/view/258>. Acesso em 13/05/2025. p. 15.

46 Site *Consumidor.gov.br*. Disponível em: <https://www.consumidor.gov.br/pages/principal/empresas-participantes>. Acesso em 04/07/2025.

47 URQUIZA, Antônio Hilário Aquilera, CORREIA, Adelson Luiz, "Acesso à justiça em Cappelletti/Garth e Boaventura de Souza Santos", *Revista de Direito Brasileira*, v. 20, n.º 8, São Paulo, 2018, p. 310.

48 GUERREIRO, Luis Fernando, *Teoria Geral dos Processos: Os métodos de solução de conflitos e o processo civil,* Coleção Ibmec São Paulo, Série Direito e Resolução de Disputas, 2. ed, Grupo Almedina, São Paulo, 2022, p 40.

49 BOCHENEK, Antônio César, ELESBON, Salomão Akhnaton Zoroastro Spencer," ODR'S em conflitos de consumo: o consumidor.gov.br precisa de um nudge?", *Revista Consister de Direito,* Ano IX, n.º XVI, Juruá, 2023, Disponível em: <https://doi.org/10.19135/revista.consinter.00016.20>. Acesso em 02/07/2025. p. 447.

technological tools made available by the Judiciary and other institutions, thereby resulting in digital vulnerability.[50]

Therefore, any discussion concerning the use of technology within the Judiciary must be examined from the perspective of access to justice in its broadest sense, understood as access to a just legal order. This requires ensuring that everyone, without restriction, has the right to seek judicial protection from the State through the constitutional and legal mechanisms necessary to give effect to that right.[51]

By conditioning access to the Judiciary upon prior proof of an attempt at consensual dispute resolution, the proposal raises significant questions regarding the limits between dejudicialization and the preservation of the fundamental right of access to justice, particularly in a context that requires reconciling procedural efficiency with the guarantee of access to a just legal order.

4 THE CONTESTED CLAIM IN BILL N.º 533/2019 AND ITS IMPACTS ON CONSUMERS' ACCESS TO JUSTICE

Bill N.º 533/2019[52], currently under consideration by the Consumer Protection Committee of the Chamber of Deputies, proposes significant amendments to the 2015 Code of Civil Procedure (CPC/2015) through the insertion of a sole paragraph into Article 17 and a §3 into Article 491.

The Bill proposes the insertion of a sole paragraph into Article 17 of the CPC/2015, providing that: "in cases involving disposable property rights, the existence of a procedural interest requires evidence that the defendant has refused to satisfy the claimant's claim."

With respect to Article 491, the legislative proposal provides for the insertion of a third paragraph establishing that:

> *§ 3. In determining the extent of the obligation, the judge shall take into consideration the defendant's actual refusal to satisfy the claimant's claim, including, in cases involving disposable property rights, whether the claimant, by any means, sought conciliation before initiating judicial proceedings.* (Authors' translation).

The purpose of Bill N.º 533/2019 is to incorporate into the legal system the concept of a contested claim, understood as the requirement that the claimant

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[50] MAIA, Maurilio Casas, A "vulnerabilidade eletrônica' e a sexta onda renovatória de acesos a justiça" na "sociedade 5.0": a tecnologia enquanto obstáculo e facilitadora do acesso, *A Revista dos Tribunais,* vol. 1052, São Paulo, 2023, Disponível em: <https://bd.tjdft.jus.br/items/e2ae69cc-66c5-4188-b769-8bb80dd9e06c>, Acesso em 11/05/2025, p. 41.

[51] SIQUEIRA, Dirceu Pereira, MENDES JUNIOR Jr., Frederico, SANTOS, Marcel Ferreira dos, "Poder Judiciário na era Digital: o impacto das novas tecnologias de informação e de comunicação no exercício da jurisdição", *Revista Internacional Consister de Direito,* ano IX, n.º XVII, Juruá, 2023, Disponível em: <https://revistaconsinter.com/index.php/ojs/article/view/554/909>. Acesso em: 02/07/2025. p. 253.

[52] BRASIL, Projeto de Lei nº 533/2019, *Acrescenta o parágrafo único ao artigo 17 e §3º ao artigo 491, ambos do Código de Processo Civil*. Disponível em: <https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=2874306&filename=Tramitacao-PL%20533/2019>. Acesso em 01/07/2025.

demonstrate having attempted to resolve the dispute through extrajudicial means before resorting to the Judiciary.

According to Carlos Eduardo Ferraz de Mattos Barroso, a claim consists of the demand, request, or application submitted by a party before the court through judicial proceedings in order to obtain a judgment recognizing the asserted right and requiring the defendant to comply with it.[53]

It is the responsibility of the Judiciary to resolve the conflicts and disputes that arise within society in accordance with the legal rules governing relations among its members. Since jurisdiction is inert and cannot be exercised ex officio, it is incumbent upon the holder of the contested claim to invoke judicial protection so that the court may exercise its jurisdiction in relation to a specific case.[54]

Within this context, the individual exercises a right—or, according to part of the legal scholarship, a power—which is the right of action, for the protection of which the State must ensure the proper provision of judicial relief.[55]

With respect to the concept of resistance, José Eduardo Carreira Alvim explains that:

> *"(...) resistance may consist in the fact that, without infringing another person's interest, the opposing party contests the claim or, without contesting the claim, infringes the interest; it may also occur that the resistance extends to both situations, in which the opposing party both contests the claim and infringes the interest."*[56] (Authors' translation).

In the pre-litigation context, there is an ongoing movement to reinterpret the concept of interest to sue, based on the premise that judicial intervention is necessary only when one party has opposed the other party's claim, such that, as a general rule, some form of prior extrajudicial demand would be required.[57]

Bill N.º 533/2019 provides that a contested claim may be demonstrated by means of a complaint submitted by the consumer directly to the defendant or to agencies of the Public Administration or the National Consumer Protection System, so that only after the company's refusal to satisfy the demand has been established would the consumer acquire standing and the procedural interest necessary to file a judicial action.[58]

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53 BARROSO, Carlos Eduardo Ferraz de Mattos. *Processo Civil-Teoria Geral do Processo e Processo de Conhecimento.* 19ª Ed. Rio de Janeiro: Saraiva Jur, 2024. p. 3.

54 DINAMARCO, Cândido Rangel. et. al. *Teoria geral do processo*. 28 ed. São Paulo: Malheiros Editores, 2012. p. 279.

55 *Idem*. p. 279.

56 ALVIM, J. E. Carreira. *Teoria Geral do Processo*. 26ª ed. Rio de Janeiro: Forense, 2025. p. 5.

57 WATKINS, Caio. "A online dispute resolution (ODR) e o processo judicial: caminhos para a integração", *Revista Eletrônica da Procuradoria Geral do Estado do Rio de Janeiro – PGE*, v. 5, n. 1, Rio de janeiro, 2022. Disponível em: <file:///C:/Users/anapa/Downloads/A+ONLINE+D/ISPUTE+RESOLUTION+(ODR)+E+O+PROCESSO+JUDICIAL.pdf>. Acesso em 01/07/2025. p. 14.

58 MARTINS, Nathana Maria Silva. Brito, Dante Ponte de, *Acesso à justiça e pretensão resistida no âmbito extrajudicial como condição para propositura de ação pelo consumidor,* Revista da

CNJ Resolution N.º 358/2020[59] established that courts shall make available an electronic system for dispute resolution through conciliation and mediation (Art. 1) and that such system shall include the registration of extrajudicial cases (Art. 1, §7, item III). In other words, it consists of an ODR platform that may be used even before judicial proceedings are initiated.

Research conducted by the Public Prosecutor's Office of the State of Minas Gerais, in partnership with FIPE (2021), reveals that 90% of Brazilian consumers contact companies directly in an attempt to resolve consumer disputes, demonstrating a willingness to pursue direct resolution, although not always successfully. On average, each consumer contacted the supplier four times in an effort to resolve the same dispute.[60]

Although consumers sought to resolve their disputes directly with companies, 87.2% did not resort to consumer protection agencies. The principal reasons reported were bureaucracy or the effort involved (26.1%), the slowness of the process (16.6%), and lack of confidence in the ability of those agencies to resolve disputes (10.2%). These findings demonstrate the lack of public confidence in such institutions and explain why many consumers choose instead to bring their claims directly before the Judiciary.[61]

The Court of Justice of the State of Rio Grande do Sul (TJRS), in partnership with the National Consumer Secretariat of the Ministry of Justice, implemented the "Direct Resolution – Consumer" project, through which court users are encouraged to use the consumidor.gov.br platform. The project emphasizes that, if an amicable settlement is unsuccessful, the record of the prior attempt at extrajudicial resolution may constitute relevant evidence in any subsequent judicial action, serving as an indication of the supplier's contested refusal to satisfy the consumer's claim.[62]

Academia de Ciências do Piauí, ano 1, nº 01, 2020, Disponível em: <https://periodicos.ufpi.br/index.php/acipi/article/view/703/670>. Acesso em 10/05/2025. p. 78.

59 BRASIL, Resolução n. 358 de 02/12/2020, Disponível em:< https://atos.cnj.jus.br/atos/detalhar/3604>. Acesso em 01/07/2025.

60 These data are contained in the unprecedented survey entitled “National Consumer Diagnosis: Victim of Abusive Conduct During the Pandemic”, in which two thousand individuals residing in the 27 federal units of Brazil were interviewed between November of the previous year and January of the current year, all of whom had in common the fact that they had been victims of some form of abusive conduct during the 18 months preceding the survey. National Consumer Diagnosis: Victim of Abusive Conduct During the Pandemic.Consumer Protection Prosecutor's Office of Belo Horizonte. 2021. Available at: https://www.mpmg.mp.br/data/files/98/56/E7/BC/9D44A7109CEB34A7760849A8/DIAGN_STICO%20NACIONAL%20DO%20CONSUMIDOR%20_5_.pdf. Accessed on July 2, 2025. p. 9.

61 Diagnóstico Nacional do Consumidor: Vítima de conduta abusiva durante a pandemia. Promotoria de Justiça de Defesa do Consumidor de Belo horizonte, 2021, Disponível em: https://www.mpmg.mp.br/data/files/98/56/E7/BC/9D44A7109CEB34A7760849A8/DIAGN_STICO%20NACIONAL%20DO%20CONSUMIDOR%20_5_.pdf. Acesso 02/07/2025. p.11.

62 The "Direct Resolution – Consumer" Project is a partnership between the Judiciary of the State of Rio Grande do Sul and the National Consumer Secretariat of the Ministry of Justice, aimed at providing an alternative means of resolving consumer disputes in order to avoid the filing of judicial proceedings. Available at: https://www.tjrs.jus.br/novo/projeto-solucao-direta-consumidor/. Accessed on July 1, 2025.

Even so, in accordance with the principle of the non-excludability of judicial review, the case law of the TJRS has recognized that the interest to sue cannot be conditioned upon the prior exhaustion of administrative remedies, particularly in consumer and banking contract revision cases.

An example is the recent decision of the Court of Justice of the State of Rio Grande do Sul in Civil Appeal N.º 52512102220248210001, which rejected the preliminary objection of lack of interest to sue upon recognizing that disputes concerning the abusive nature of contractual clauses do not require a prior attempt at extrajudicial resolution, thereby ensuring the consumer's right of immediate access to the Judiciary.[63]

By contrast, the Court of Justice of the State of Minas Gerais (TJMG) has held that, in actions seeking specific performance arising out of consumer relationships, the interest to sue is conditioned upon proof of a prior attempt at extrajudicial dispute resolution, as illustrated below:

> *HEADNOTE: CIVIL APPEAL. ACTION FOR REVISION OF CONTRACTUAL TERMS. INTEREST TO SUE. THEME 91. MODULATION OF EFFECTS. CLAIMANT ORDERED TO AMEND THE INITIAL COMPLAINT. FAILURE TO COMPLY. DISMISSAL OF THE ACTION. Under the legal thesis established in the merits judgment rendered in IRDR No. 1.0000.22.157099-7/002 (Theme 91), published on October 30, 2024,* ***the existence of the interest to sue in actions seeking specific performance within the context of consumer relationships is conditioned upon proof of a prior attempt at the extrajudicial resolution of the dispute****. For reasons of social interest and legal certainty, the effects of the legal thesis established*

[63] Headnote: CIVIL APPEAL. BANKING LEGAL TRANSACTIONS. ACTION FOR REVISION OF CONTRACT. PRELIMINARY APPELLATE OBJECTION OF LACK OF INTEREST TO SUE DISMISSED. REMUNERATIVE INTEREST. ABUSIVENESS ESTABLISHED. SET-OFF OF AMOUNTS. ATTORNEYS' FEES. AWARD BASED ON EQUITABLE ASSESSMENT. MODIFICATION OF THE CALCULATION BASIS**.** The preliminary appellate objection of lack of interest to sue is dismissed, since the matter in dispute does not require the exhaustion of administrative remedies prior to the filing of the action. The assessment of the abusiveness of remunerative interest must be based on a balancing of the established consumer relationship and any excessive disadvantage imposed on the consumer, taking into account the average rate published by the Central Bank of Brazil, which serves as the benchmark for evaluating the contracted rate, as well as the analysis of the other factors comprising the financial transaction. The abusiveness of the remunerative interest stipulated in the contract is established, as it considerably exceeds the average market rate applicable to the same period and transaction type. Absence of evidentiary elements justifying the high remunerative interest rate applied to the legal transaction. Set-off of amounts unduly paid is permissible with respect to overdue installments, pursuant to Article 182 of the Civil Code. As regards future installments, pursuant to Article 369 of the Civil Code, the set-off of amounts is not admissible due to the absence of enforceability. This is a case for awarding attorneys' fees based on equitable assessment, pursuant to Article 85, § 8, of the Code of Civil Procedure, since applying the percentage criterion (10% to 20%) to the amount of the judgment, the economic benefit obtained, or the amount attributed to the claim would result in an insignificant award. APPEAL OF THE PLAINTIFF GRANTED. APPEAL OF THE DEFENDANT DENIED (Civil Appeal No. 52512102220248210001, Sixteenth Civil Chamber, Court of Justice of the State of Rio Grande do Sul, Rapporteur: Sandro Silva Sanchotene, decided on May 8, 2025). Judgment Date: May 8, 2025. Publication Date: May 8, 2025. Available at:https://www.tjrs.jus.br/novo/buscas-solr/?aba=jurisprudencia&conteudo_busca=ementa_completa. Accessed on July 1, 2025.

> *in the aforementioned repetitive proceeding were modulated so that, in cases where the defendant has not yet filed a statement of defense, once the absence of the interest to sue has been established, the claimant shall be ordered to amend the initial complaint (Art. 321 of the CPC) within thirty business days in order to submit evidence of the prior extrajudicial request for resolution of the dispute or to provide grounds justifying the waiver of prior proof of an administrative request. The claimant's failure to comply with the obligation to submit the prior extrajudicial request for resolution of the dispute, despite having been ordered to do so, gives rise to the dismissal of the action for lack of interest to sue.*[64] *(Emphasis added.)* (Authors' translation).

Recent and conflicting decisions by the courts reveal a concern with preventing formal requirements from becoming obstacles to the exercise of the right of action, highlighting the need for caution regarding legislative initiatives such as Bill N.º 533/2019, which seek to condition the filing of judicial actions upon proof of the defendant's prior refusal to satisfy the claimant's claim, under penalty of violating the fundamental right of access to justice.

Within the Superior Court of Justice (STJ), the Fourth Panel,[65] under the reporting Justice Antonio Carlos Ferreira, recently held that the interest to sue exists even in the absence of proof of a prior extrajudicial request, provided that the opposing party appears before the court and contests the claimant's demand. Accordingly, the absence of a prior administrative request does not constitute a prerequisite for establishing the procedural interest required to bring a judicial action.

The Federal Supreme Court (STF) has adopted a similar position, as demonstrated in Extraordinary Appeal N.º 631.240/MG, which addressed the requirement of a prior administrative request for the filing of social security and welfare actions. On that occasion, Justice Luís Roberto Barroso emphasized that, in accordance with the principle of the non-excludability of judicial review, access to the Judiciary must be guaranteed whenever there is an actual or threatened violation of a right, in conformity with the constitutional framework.[66]

Although the merits of the initiative are acknowledged, its mandatory nature is open to question, since such a requirement may render the filing of numerous judicial actions impracticable. By its very nature, jurisdiction is inert and may be

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64 Tribunal de Justiça Minas Gerais. Disponível em: <https://www5.tjmg.jus.br/jurisprudencia/pesquisaPalavrasEspelhoAcordao.do?&numeroRegistro=3&totalLinhas=45&paginaNumero=3&linhasPorPagina=1&palavras=interesse%20agir%20a%E7%F5es%20natureza%20prestacional%20rela%E7%F5es%20consumo&pesquisarPor=ementa&orderByData=2&referenciaLegislativa=Clique%20na%20lupa%20para%20pesquisar%20as%20refer%EAncias%20cadastradas...&pesquisaPalavras=Pesquisar&excluirRepetitivos=true&>. Acesso em 14/07/2025.

65 STJ. AgInt no AgInt no Agravo em Recurso Especial n.º 2672945-SP (2024/0223682-8), Ministro Antonio Carlos Ferreira, 4.º Turma, Sessão virtual de 22/04/2025 a 28/04/2025.

66 ELESBON, Salomão Akhnaton Zoroastro Spencer, A exigibilidade da tentativa prévia de resolução do conflito e o acesso do consumidor à justiça à luz dos precedentes do Supremo Tribunal Federal, *Revista de Direito, Globalização e Responsabilidade nas Relações de Consumo, 2021,* Disponível em: <https://www.indexlaw.org/index.php/revistadgrc/article/view/8187/pdf>. Acesso em 10/07/2025. p. 43

exercised only upon the initiative of a party, as established by the legal rules governing social relations. Accordingly, it is incumbent upon the holder of the contested claim to invoke the exercise of judicial power, thereby enabling the State, through the administration of justice, to ensure the exercise of the right of action in specific cases.[67]

José Roberto dos Santos Bedaque defines access to justice - or, more precisely, access to a just legal order -as the guarantee afforded to everyone, without restriction, of the right to seek judicial protection from the State through the constitutionally prescribed means necessary to ensure the effective exercise of that right.[68]

Within this context, it is appropriate to question the validity of the amendment to the 2015 Code of Civil Procedure (CPC/2015) proposed by Bill N.º 533/2019 at the present time, particularly considering that not all consumers have easy access to the various mechanisms of extrajudicial dispute resolution, such as telephone services, internet access, or even consumer protection agencies, such as the Procons.[69]

In summary, it is necessary to reflect upon the potential constitutional risks of the proposal, since conditioning access to the Judiciary upon prior proof of an attempt at extrajudicial dispute resolution may create a barrier to the exercise of the fundamental right of action, thereby restricting access to full and effective judicial protection.

5 FINAL CONSIDERATIONS

The hypothesis guiding this study was to determine whether the requirement of a prior attempt at extrajudicial dispute resolution, as proposed by Bill No. 533/2019, constitutes an undue restriction on the fundamental right of access to justice, particularly with respect to consumers in situations of vulnerability. Following an analysis of the relevant statutory framework, legal scholarship, and case law, it is concluded that the hypothesis is partially confirmed, requiring a balancing between the public policy of dejudicialization and the preservation of the right of action as a fundamental constitutional guarantee.

Access to justice is not limited to the mere possibility of bringing claims before the Judiciary; rather, it encompasses the right to obtain a just legal order that is effective and accessible to all citizens. From this perspective, encouraging consensual dispute resolution and the use of Online Dispute Resolution (ODR)

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67 DINAMARCO, Cândido Rangel, *Teoria geral do processo*, 28 ed., São Paulo: Malheiros Editores, 2012, p. 279.

68 BEDAQUE, José Roberto dos Santos. *Tutela cautelar e tutela antecipada: tutelas sumárias e de urgência.* São Paulo, Malheiros, 2009. p. 71

69 MARTINS, Nathana Maria Silva, BRITO, Dante Ponte de, Acesso à justiça e pretensão resistida no âmbito extrajudicial como condição para propositura de ação pelo consumidor, *Revista da Academia de Ciências do Piauí,* ano 1, nº 01, Piauí, 2020. Disponível em: <https://periodicos.ufpi.br/index.php/acipi/article/view/703/670>. Acesso em 10/05/2025. p. 78.

platforms represents a significant advance in the pursuit of a more efficient and expeditious justice system, provided that such mechanisms are designed as instruments that facilitate, rather than hinder, access to judicial protection.

Should Bill N.º 533/2019 ultimately be enacted, however, it will be necessary to establish safeguard provisions capable of preserving the balance between dejudicialization and consumer protection. Such measures should include exceptions for consumers in situations of economic, technical, or informational vulnerability; the simplification of ODR platforms through the use of clear and accessible language; and the establishment of reasonable time limits for suppliers to respond, the failure of which should give rise to a presumption of refusal and, consequently, permit the consumer to commence judicial proceedings.

These measures are essential to prevent consumers from remaining indefinitely at the mercy of the supplier's initiative and to ensure that the right of action may be exercised fully whenever the extrajudicial avenue proves ineffective.

Furthermore, it is recommended that the extrajudicial phase be integrated with judicial conciliation, such as through the coordination between the *consumidor.gov.br* platform and the Electronic Judicial Process (PJe), so that the prior attempt at extrajudicial dispute resolution becomes a preparatory and complementary stage of judicial proceedings, rather than a preclusive requirement.

In conclusion, although Bill N.º 533/2019 presents undeniable merits by fostering a culture of conciliation and promoting the rationalization of the justice system, its mandatory and unrestricted implementation, without appropriate safeguards, tends to constitute an unconstitutional restriction on the fundamental right of access to justice, thereby violating the essential core of Article 5, XXXV, of the Federal Constitution. Accordingly, dejudicialization should be understood not as an exclusionary filter, but as an instrument for the effective realization of judicial protection, reaffirming the State's commitment to consumer protection and to the achievement of a truly just legal order.

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