
COLLECTIVE DISPUTE RESOLUTION WITH MEDIATION: POLAND AND BRAZIL DIFFERENCES

RESOLUÇÃO COLETIVA DE DISPUTAS COM A MEDIAÇÃO: DIFERENÇAS ENTRE POLÔNIA E BRASIL

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ABSTRACT

Objective: The purpose of this study is showing the similarities and differences about the mediation of conflict about labor's rights in Poland and Brazil and to demonstrate improvement for both systems of mediation.

Methodology: The research uses a bibliographic and documental research technique. , The inductive approach was adopting. Its methodological objective is exploratory and propositional.

Results: This study concluded that it is possible to apply the mediation in collective labor conflicts, but not in Brazil. It was possible to conclude too that the mediation in these type of conflict in Poland has a procedure with phases which helps to solve the collective bargain; that there are a lot of advantages to applied mediation to solve conflicts resolutions of everyday life, included conflicts about labor disputes and that Brazil should allowed the application of this ADR in disputes about work's rights.



Contributions: This paper presents the differences of mediation in conflict about labor law in Poland and Brazil. Finally, it was discovered that Labor Court in Brazil (TST) has been judging less half judicial cases than the received proceeding by that Court, so mediation is a tool to increase this number of judgments of judicial trials.

Keywords: alternative dispute resolution; collective disputes; labor law; mediation in collective disputes; court of work's rights.

RESUMO

Objetivo: o objetivo deste estudo é mostrar as semelhanças e diferenças sobre a mediação de conflitos sobre direitos trabalhistas na Polônia e no Brasil e demonstrar melhorias para ambos os sistemas de mediação.

Metodologia: A pesquisa utiliza a técnica de pesquisa bibliográfica e documental. A abordagem indutiva estava adotando. Seu objetivo metodológico é exploratório e proposicional.

Resultados: Este estudo concluiu que é possível aplicar a mediação em conflitos coletivos de trabalho, mas não no Brasil. Foi possível concluir também que a mediação neste tipo de conflito na Polónia possui um procedimento com fases que ajuda a resolver o acordo coletivo; que são muitas as vantagens da mediação aplicada para solucionar conflitos de resolução do cotidiano, inclusive conflitos sobre disputas trabalhistas e que o Brasil deveria permitir a aplicação deste ADR em disputas sobre direitos trabalhistas.

Contribuições: Este artigo apresenta as diferenças da mediação em conflitos sobre o direito do trabalho na Polónia e no Brasil. Por fim, constatou-se que o Tribunal do Trabalho do Brasil (TST) vem julgando menos da metade dos processos judiciais do que o processo recebido por aquele Tribunal, sendo a mediação uma ferramenta para aumentar esse número de sentenças de julgamentos judiciais.

Palavras-chave: resolução alternativa de disputas; disputas coletivas; lei trabalhista; mediação em conflitos coletivos; tribunal dos direitos do trabalho.

1 INTRODUCTION

There is an increasing number of labor conflicts, particularly in times of economic and social crisis, when the existing unequal distribution of wealth and power in the capitalist system is aggravated. The labor law disputes are divided into individual



and collective conflicts. The first one involves the employee and employers disputing about a labor contract, while the second one is about groups of workers and employers, within the scope of the establishment or company, or even of the category.

The satisfaction with the reward systems produces can produce more efficiency of service as well as financial benefits to the organization (Beck Krala & others, 2017, p.17). However, it is naturally that disputes about work's rights happens inside the company and conflicts about collective labor law becomes real. It is possible to say that conflict is common during the expansion of industrial (Borras et al., 2011, Hall, 2011, Gerber, 2011, Li, 2015) and the mediation is necessary to try to solve this kind of dispute.

The importance of this paper is to demonstrate improvement for both systems of mediation. It is worthwhile, because it was possible to discover that in Poland, it is possible to apply mediation in collective labor disputes, but the same is not true in Brazil for example. Therefore, this study possibilities the advance of the knowledge about mediation, because it makes possible. Thus, this paper shows this paper presents the similarities of definition and procedure of mediation in Poland and Brazil, the mediation in conflict collective about labor and the differences of mediation in conflict about labor law in Poland and Brazil.

2 THEORETICAL FRAMEWORK

2.1 THE DIFFERENCES OF MEDIATION IN CONFLICT ABOUT LABOR LAW IN POLAND AND BRAZIL

According to the Law about the settlement of collective labor disputes of Poland (POLAND, 1991, online). It is perceived that the object of a collective conflict of may be the interest of the worker with respect to working conditions and also the content of the relations of work. In other words, collective bargaining does not only concern the circumstances of work but also, in a broader sense, is related to all factors that directly or indirectly determine the content of the labor relation. (BROŃSKI AND



JAROTA, 2015, p.35).

The mediation in Polish legal system has an important place in the collective dispute resolution procedure, because it allows the use of all methods of resolving conflicts, before labor unions go to strike - the most severe form of pursuing their interests. However, in Brazil, it is not possible to apply the mediation in labor collective conflicts. Mediation Act in that country is the Federal Law number 13.140 of June 26, 2015, which regulates mediation between individuals as a means of settling disputes and on the self-determination of conflicts within the public administration.

According to the article 42 from that Act (Brazil, Congresso Nacional, 2018, online), mediation in labor relations will be regulated by another law. In Brazil, there are 03 (three) main acts that regulate the mediation of conflicts, which are: Resolution n. 125 of the National Council of Justice (BRASIL, 2010, online), which provides on the National Judicial Policy for adequate treatment of conflicts of interest within the scope of the Judiciary and other measures; the New Code of Civil Procedure (BRASIL, 2015, online), Law no. 13,105, March 16, 2015; and Law no. 13.140, of June 26, 2015 (BRASIL, 2015, online), which deals with mediation between individuals as a means of dispute settlement and on the self-determination of conflicts within the public administration. Thus, at the table below it is possible find the main differences between Poland and Brazil related to mediation in individual conflicts about labor's rights:



Table 1 - Differences between Poland and Brazil related to mediation in individual conflicts about labor's rights

Differences	Poland Collective Labor Disputes Act - 1991	Brazil Law nº. 13.140/15
Liberation of Mediator from their job during mediation period	The Mediator has this right. However, it should be until 30 days each year	The Mediator does not have this right.
Regulation Act establishing the minimum remuneration for the Mediator	There is this Act in Poland.	There is not this Act in Brazil. The parties has to establish this subject before the mediation
Mediator can apply warning punishment on trial	The Mediator can apply it if the part delay in the implementation of the agreement unjustifiably	The Law does not regulate this. However, the parties can establish this rule before mediation stars.
Phase of Social Arbitration Council or Strike	There are those phases if the Mediation does not have the agreement.	The Law does not regulate those phases.

Note. Source: Poland. Law about the settlement of collective labor disputes, created on 23 of May of 1991 in Poland; and Brazil. Congresso Nacional. Lei da Mediação (Law n. 13.140, created on 29 of 2015 in Brazil). Brasília, Distrito Federal, April 2018.

It is important to note that none of these three normative acts, unlike Poland, allow Mediation in collective bargaining agreements. In addition, Art. 42, sole paragraph of Law nº. 13.140/15 provides that mediation in labor relations will be regulated by law (BRAZIL, 2015, online). Currently, there is no normative act that regulates this issue. With these provisions, continue to discuss the procedure for the resolution of collective labor disputes in Poland, by the Polish Law on Settlement of Collective Labor Disputes. Brazil has not any law to regulate the application of mediation to solve conflicts collectives about labor's rights. However, that country allowed the application of this ADR as a tool of management of individual disputes about labor law



3 RESEARCH METHODOLOGY

The methodology used on this paper is based on critical analysis of legislation of Poland and Brazil about mediation of conflict about labor law to understand this phenomenon in a comprehensive and holistic way. Thus, it was utilized the interpretive method with focus on the similarities and difference between the laws of those countries.

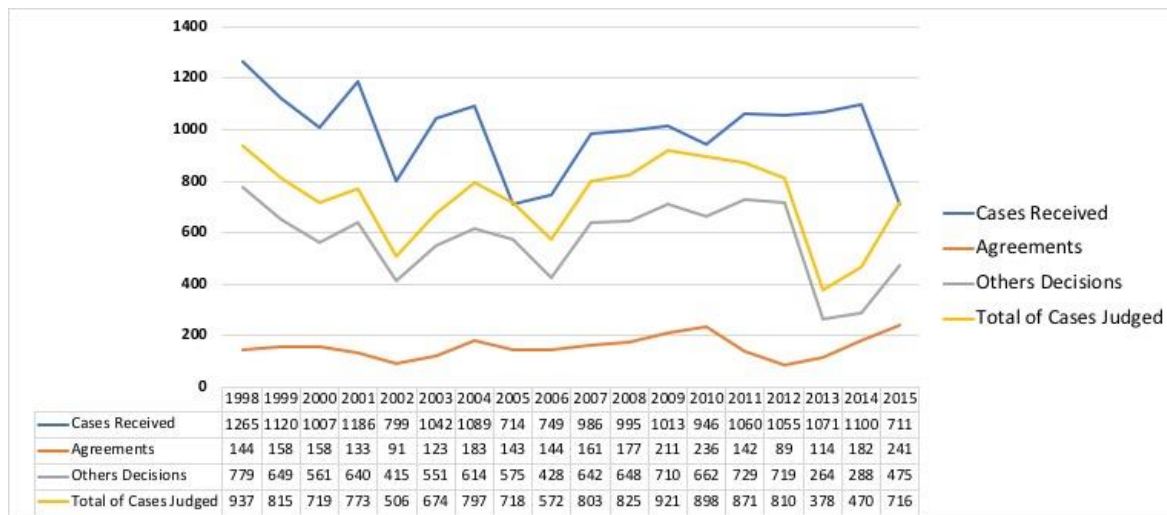
It was applied too documentary analysis to make possible categorize the improvement of legislation of Poland and Brazil. In order to discuss deeply the subject of this paper the authors have made the collect of the Ministry of Labor and Social Policy from Poland about the results of mediations in this country during 1994 to 2015. It was collected the numbers concerning to collective disputes in Brazil from Tribunal Superior do Trabalho (the Supreme Court of Labor Work in that country) as well.

4 RESULTS

The number of collective disputes in Brazil has been changing since 1998. In this specific year, the Labor Court (TST) received 1.265 cases to judge, but only 937 had a decision from that Court, about 74%. Besides, in 2017, TST received 640 cases and judged 627 (97%) (Brazil. Tribunal Regional do Trabalho, 2018, online). The number of collective disputes in Brazil has been changing since 1998. More details on this topic are shown in table below:



Figure 1 - Number of collective disputes in Brazil



Note. Source: Brazil. Tribunal Regional do Trabalho (TST). Dissídios Coletivos na JT. Brasília, Distrito Federal, April 2018. <http://www.tst.jus.br/web/estatistica/jt/dissidios-coletivos>. Access: 03.fev.2021.

According to the graphic is possible to realize that in 1998, the Labor Court (TST) received 1.265 cases to judge, but only 937 had a decision from that Court, about 74%. Besides, in 2017, TST received 640 cases and judged 627 (97%). However, this number does not signify which those judge cases was received by TSE in that year, because there is a repressed demand.

This term means that there are others cases received by TSE during previous years (2016 for instance), but they were judged just in 2017. TST has a data called Índice de Congestionamento – IC which measures the percentage of repressed demand for definitive solutions in the processes under way in the TST. It corresponds to the proportion of processes still unresolved (Brazil, 2016).

In the last 10 years (1995 – 2015), the average rate of this index was 55.8%. In 2015, the IC was 53.4% (Brazil, 2016). Thus, it is visible that IC in Brazil is really higher. The Labor Court in Brazil has been judging less half judicial cases than the received proceeding by that Court. The application of the mediation in collective disputes will represent tool of industrial conflicts management and it would help drop down the rate of IC.

When Labor Court judges a case, it is not appropriate to the parties, because,



besides other reasons, in a trial process, a lot of time and money is involved. Not to mention that the person that will decide the dispute, the judge, is not chosen by the parties. Perhaps, applying mediation in collective disputes is better to the parties involved.

In Poland, for example, this application has been performed successfully. Mediation is a tool for promote access to justice which is a Human Rights example. That right (of access to justice) has come to be regarded as the fundamental requirement - the most basic of human rights – of a modern and egalitarian legal system which has a goal to guarantee the rights of all person (Cappelletti, Garth, p. 58, 1999).

Access to justice must therefore be universal and efficient enough to be capable of producing individual and socially just results, with a primacy of substantial equality. According Conselho Nacional de Justiça (CNJ), 52% of cases received for Labor Work did not have judgments in 2014.

It is important to say that CNJ has the goal to inspect the Court of Brazil and the last research about Labor Work cases was in 2014. Cinthia Robert and Elida Séguin (2000, p.180) understand that access to justice as a form of legal protection. Also, they told that the relevance from it is juridical and also moral, political and social. Is important that the Court judge the cases bring to them in a short time. If not, the government will lose the credibility.

5 FINAL CONSIDERATIONS

After the analysis of legislation about mediation in Poland and Brazil it was possible concluded that the mediation is a method to solve disputes. It involves an impartial and neutral person, the mediator, facilitating the dialogue between the involved parties in conflict. It is a process to help parties find a mutually satisfactory agreement.

The mediator is chosen or accepted by the parties and helps them to prevent or resolve conflicts in a consensual way. The mediation has been used in many



different disputes in the world, including labor conflicts. In Poland, that institute has been applied it in collective disputes about employment rights, among other cases.

The similarities between mediation applied in Poland and Brazil are related about those items: Type of solution controversy; Management of conflict; During of mediation; Where is located the mediation; Who the mediator is; Who makes the mediation rules; Which type of dispute mediation can be apply and Main advantages showed on Table 1. However, there are some differences about mediation of conflict about labor law between those countries such as related to Liberation of Mediator from their job during mediation period; Regulation Act establishing the minimum remuneration for the Mediator; Mediator can apply warning punishment on trial Phase of Social Arbitration Council or Strike as showed on this paper.

Instead this, it was possible to observe that in Brazil mediation is applied to solve demands in the field of individual labor rights. However, this ADR is not used in collective disputes about labor law in that country, because Federal Law number 13.140 states that mediation in collective labor relations should be regulated by another law, but this Act does not exist yet. It is considered that the fact that Brazilian law does not allow the application of mediation in collective labor disputes is considered as not so good. In that country, Labor Court had to judge 61% of the received cases in 1988 and 68% in 2017, which represents a higher number.

In that country, TST (Supreme Court of Labor) has been judging less half judicial cases than the received proceeding by that Court. The average rate of IC index in the last 10 years (1995 – 2015), of this index was 55.8%. The application of mediation in collective disputes would help to drop down this number. However, that application will be possible just if Brazil Government has a law to regulate this issue.

Mediation is confidentiality and much less expensive than a trial dispute. The mediation helps the parties in conflict to solve the dispute in a more constructive way. If Brazil were allowed to use mediation in such cases, the number of agreements should be higher, and the government would spend less money to solve that kind of demand. Mediation in collective disputes is also a toll of industrial conflict management because conflict between employer and labor unions is a case of organizational conflict which is very specific and important part of management in any organization where



labor unions operate. So, Brazil should apply these ADR to solve disputes about collective bargains about labor work too.

The number of collective disputes in Brazil has been changing since 1998. In this specific year, the Labor Court (TST) received 1.265 cases to judge, but only 937 had a decision from that Court, about 74%. Besides, in 2017, TST received 640 cases and judged 627 (97%) (Brazil. Tribunal Regional do Trabalho, 2018, online). The number of collective disputes in Brazil has been changing since 1998.

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