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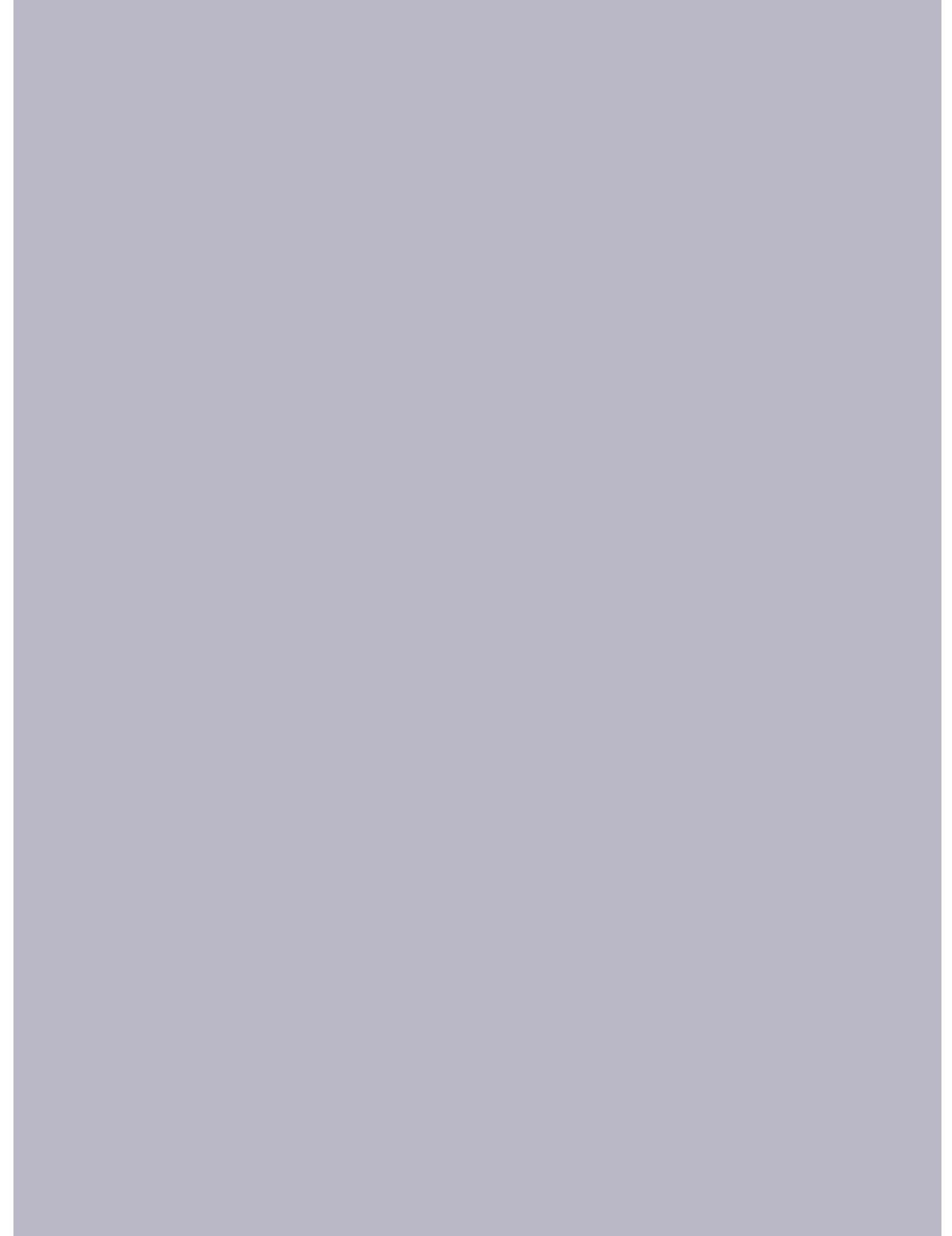
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COIMBRA

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Digital Transformation and Governance in the Judiciary

COORDENAÇÃO:

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Pedro Miguel Alves Ribeiro Correia
Lorenzo-Mateo Bujosa Vadell





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TÍTULO

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Pedro Miguel Alves Ribeiro Correia
Lorenzo-Mateo Bujosa Vadell

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Fabrício Castagna Lunardi
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Digital Transformation and Governance in the Judiciary

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University Of Coimbra
National School For Training And Improvement Of Judges (Enfam)

**ACADEMIC AND SCIENTIFIC COOPERATION BETWEEN THE FACULTY OF LAW OF
THE UNIVERSITY OF COIMBRA (FDUC) AND THE BRAZILIAN NATIONAL SCHOOL
FOR TRAINING AND IMPROVEMENT OF JUDGES (ENFAM)**

On August 31, 2022, FDUC (Portugal) and ENFAM (Brazil) signed, through their top representatives, an Academic and Scientific Cooperation Agreement aimed at implementing joint and effective actions that would ensure the performance of academic activities related to teaching and research, by of their Research Centers and Institutes. The cooperation has involved the implementation of projects, research groups, international seminars, scientific publications, data sharing and exchange of experiences, among other products.

This book is another important product of the Scientific and Academic Cooperation Agreement between the two renowned higher education institutions, of the partnership between research groups, as well as of the collaboration of professors and researchers from the University of Salamanca.

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Have a great read!

Brasília/Coimbra/Salamanca, March 2025.

*Fabrício Castagna Lunardi
Pedro Miguel Alves Ribeiro Correia
Lorenzo-Mateo Bujosa Vadell*

Editors

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Salomão Akhnaton Zoroastro Spencer Elesbon*

Summary: 1. Introduction. 2. Procedural interest and extrajudicial platforms for resolving consumer conflicts. 3. Profile of cases in Civil Small Claims Courts (JECs) of Espírito Santo, Brazil. 4. Major litigants and their participation in extrajudicial platforms. 5. Feasibility of integrating extrajudicial platforms to the Civil Small Claims Courts of Espírito Santo. 6. Conclusions. References.

Abstract: This research investigates the viability of extrajudicial platforms as alternative means of resolving consumer disputes and avoiding litigation in the Judiciary. It questions the premise that claims in court may be inadmissible if these channels are not used beforehand, due to lack of procedural interest. The empirical study analyzes data from the Civil Small Claims Courts' procedural systems in Espírito Santo state (Brazil), outlining the profiles of the demands and identifying the main litigants. Given the significant proportion of consumer-related cases, it examines how the main defendants perform on extrajudicial platforms, using consumer satisfaction metrics, especially time and complaint resolution rates. The conclusions show that these platforms are successful but recommends a personalized approach that considers the past behavior of specific suppliers to guide judicial actions. It suggests the implementation of strategies and sanctions targeted at the parties involved, aiming to discourage abusive use of the legal process and enhance consumer protection.

Keywords: Extrajudicial platforms; consumer conflicts; procedural interest; dispute prevention.

1. Introduction

The Civil Small Claims Courts (JECs), established by article 98 of the Constitution of the Republic of Brazil (1988) and instituted by Law No. 9,099, of 1995, are part of the phenomenon that Cappelletti and Garth (1988) identified as the third wave of access to justice and the trend observed at the time of establishing special procedures for handling small claims. Guided by simplicity and informality, they adopt a very succinct, oral and focused procedure, for disputes whose value does not exceed forty national minimum wages.¹ Among the measures intended to achieve brevity and broaden access, there are the reduction in the number of appeals, the

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¹ Equivalent to R\$52,800.00 or approximately US\$11,058.51, on August 1, 2023.

emphasis on conciliation, the involvement of lay judges in the instruction and adjudication, the gratuity in the first degree of jurisdiction and the possibility of waiving legal representation in cases of up to twenty national minimum wages (Brazil, 1995).

The Civil Small Claims Courts (JECs)² system faces a flood of lawsuits related to consumer issues. Historical data do not indicate a downward trend in the number of new lawsuits filed or in the congestion rate of these cases (CNJ, 2020b).³

Research confirms that consumer rights violations are among the main reasons for seeking legal protection in Brazil (Ramos, 2021; AMB, 2019). The analysis of the top 100 national litigants in 2011 revealed that most of the defendant companies belonged to the banking, insurance, telecommunications, energy, air transport and retail sectors (CNJ, 2012). Further research on the profile of consumer demands identified a similar pattern, with a concentration of cases in the banking and telecommunications sectors (CNJ, 2018).

The pursuit of extrajudicial solutions to disputes is encouraged by the justice system, but many cases still end up in court. And despite the institutional preference for alternative dispute resolution mechanisms, the JECs have relatively low conciliation rates (Elesbon, 2022b).

This paper summarizes research that investigated whether prior use of extrajudicial dispute resolution channels should be a prerequisite for accessing the judicial system.⁴

The objective of the study is to examine the relationship between access to justice, procedural interest and extrajudicial mechanisms of conflict resolution, especially in the Small Claims Courts of Espírito Santo. The research will focus on the largest litigants in that state, investigating whether they use extrajudicial platforms and whether the outcomes are more effective and faster than the judicial system. In the end, it aims to assess whether the integration of extrajudicial platforms can be an effective strategy to reduce the growing judicialization in the consumer sector (Elesbon, 2022b).

For this work, a broad notion of conflict resolution platforms was adopted, encompassing all communication mechanisms between suppliers and consumers, mediated or not by neutral third parties, not restricted to computerized online dispute resolution systems (Elesbon, 2022b).

The methodology involves bibliographic and jurisprudential research, data collection from the computerized systems of the Espírito Santo State Court of Justice, and analysis of the results obtained from extrajudicial platforms. Information from related research, conducted through surveys and semi-structured interviews, was compiled (Elesbon, 2022a).

² In the Brazilian judicial system, there are different courts to handle small claims, depending on whether they are civil disputes between individuals, criminal actions, or issues involving government entities.

³ In the year 2019, a total of 3,815,940 new non-criminal cases were filed in the Brazilian States Small Claims Courts. The “congestion rate” in 2019, which represents the percentage of cases without a resolution in the same base year, was 48.7% (ELESBON, 2022b).

⁴ This chapter summarizes the main findings and conclusions of the research, originally published in the form of a dissertation for the Master's in Law and Judicial Power program at the National School of Magistrates' Training and Enhancement (Escola Nacional de Formação e Aperfeiçoamento de Magistrados – ENFAM) (ELESBON, 2022b).

The ultimate goal is to encourage alternative conflict resolution and provide guidelines to improve access to justice without compromising consumer rights protection.

2. Procedural interest and extrajudicial platforms for resolving consumer conflicts

The jurisprudence of the Brazilian constitutional court, Supremo Tribunal Federal (STF), explores the delicate balance between procedural interest and access to justice. In the landmark case of Extraordinary Appeal (RE) No. 631.240/MG, the prevailing thesis states that a prior administrative request can be a prerequisite for initiating social security and assistance actions. The STF ruled that, in cases where the original grant of a benefit depends on this previous requirement, the harm or threat to the right, which constitute the procedural interest, could not be assumed before its effective formulation (Brasil, 2014).⁵

Although the ratio decidendi is focused on the legitimacy of the requirement of this prior petition, RE No. 631.240/MG also emphasized situations where the administrative request, on the contrary, is unnecessary (Brasil, 2014).

The STF established, in general, that the requirement of prior application is waived whenever the conduct of the social security authority (INSS) involves an action or omission that harms the beneficiary or expresses clear resistance to the claim. This happens, for example, when the INSS fails to provide the most advantageous provision to the interested party, in reviewing a previously granted benefit, in which case the body should act *ex officio*.⁶ In these cases, the direct pursuit of the Judiciary System is legitimate, as the action is essential to prevent or remove damage to the plaintiff's right.

Another scenario where the prior administrative request may be waived is the existence of a position that is clearly contrary to the claim of the interested party, at the administrative level, or the offer of a defense on the merits (refuting the substantive legal issues), within the scope of the judicial process itself. In such situations, where administrative success is unlikely, the search for extrajudicial assistance could be futile, procrastinatory and excessively costly, delaying the attainment of the necessary legal protection for the citizen.

⁵ The Rapporteur of the appeal, Justice Luís Roberto Barroso, defined the requirement of "procedural interest" in terms of the elements of utility, adequacy, and necessity: "Utility means that the lawsuit must bring benefit to the plaintiff, that is, it must represent an enhancement of their legal sphere. [...] Adequacy, in turn, translates into the correspondence between the chosen procedural means by the plaintiff and the sought-after judicial relief. If the suitability of the means to achieve the end is not observed, there can be no judicial pronouncement on the merits, as the plaintiff lacks standing to use that procedural avenue for the intended objectives. [...] Necessity, finally, consists of demonstrating that the intervention of the Judiciary is indispensable for the satisfaction of the plaintiff's claim. Along these lines, a person who needs medication does not have an interest in bringing an action if it is provided free of charge" (BRASIL, 2014).

⁶ This duty to act arises from Article 88 of Law No. 8.213/1991, which states that it is the responsibility of the INSS (National Institute of Social Security) to "clarify the beneficiaries about their social rights and the means of exercising them, and jointly establish with them the process for solving problems that arise from their relationship with Social Security" (BRASIL, 1991).

The leading case acknowledges that the administrative application to the INSS is generally cheaper and more accessible than direct access to the Judiciary. However, in the presence of factual circumstances where these attributes are lacking, direct litigation should be allowed in court, even if there is no final position in the administrative instance. This is especially the case of the excessive delay, longer than 45 days, for the administrative analysis of the request.⁷

It is observed that the winning thesis does not impose indiscriminate barriers to access to justice. In essence, it emphasizes the importance of minimal interaction between the parties and seeks a balance between the need for legal protection and the efficient use of judicial resources. The main objective is not to reduce the volume of judicialized cases, but to ensure the effective protection of citizens' rights, by the least costly and most suitable means, both from the perspective of the litigant and the administration of justice (Elesbon, 2021).

This is not an isolated precedent. In the context of ADI No. 2.139/DF⁸, which focused on labor disputes, the discussion revolved around the mandatory nature of pre-procedural conciliation as a prerequisite for filing a lawsuit (Brasil, 2018). The Court ruled that such a requirement was incompatible with the constitutional guarantee of access to Justice, stressing that the self-composition route must be voluntary and cannot be a hindrance to direct access to the Judiciary (Elesbon, 2021).

The understanding outlined in RE No. 631.240/MG and ADI No. 2.139/DF, together, indicates that the existence of conditions of action, including procedural interest, does not conflict with access to Justice, but the generalized imposition of prior attempts at settlement may be contrary to this fundamental constitutional guarantee (Elesbon, 2021).

The jurisprudence of the Brazilian Supreme Court aims to ensure balanced access to justice, favoring effective legal protection and procedural efficiency, while taking into account the competence and adequacy of available administrative instances (Elesbon, 2021). The goal is to prevent administrative process from becoming a futile obstacle and, at the same time, to safeguard the rights of citizens, preventing the abusive use of the process and the unnecessary waste of public resources. The search for alternative methods of resolving disputes is encouraged, but direct access to Justice is guaranteed in case of injury or threat to the right.

This general idea has been extended beyond social security benefits, as demonstrated by Special Appeal (REsp) No. 1.734.733/PE, which deals with compensation or restitution of tax undue debt, RE No. 839.353/MA, regarding the compulsory DPVAT insurance charge and the REsp. No. 1.349.453-MS, concerning the exhibition of documents (Gajardoni, 2020, *passim*). The common point is that the opposing party is not expected to act *ex officio*. It is the request of the interested party that "triggers a behavior desired by the author, which may or may not occur within a reasonable period. The inertia or subsequent refusal is what will bring up the conflict with the interest of the applicant" (Elesbon, 2021).

⁷ The deadline is defined by Article 41-A, paragraph 5, of Law No. 8,213/1991 (BRAZIL, 1991).

⁸ The Direct Action of Unconstitutionality (ADI) is a concentrated legal action aimed at discussing the constitutionality of a law or general normative act, before the Brazilian "Supremo Tribunal Federal".

In the context of consumer relations, this approach is also applicable. For example, in scenarios such as insurance and health plans, in which the company's response is necessary to characterize the injury or threat, the previous administrative request may be required. This also applies to the exercise of the statutory right of withdrawal in contracts carried out outside the commercial establishment, as provided in art. 49 of the Consumer Protection Code (Brazil, 1990). In these and other similar scenarios, the supplier cannot anticipate the consumer's expression of intent; instead, the consumer is expected to act, for example, to initiate the administrative regulation of the loss event (Elesbon, 2021). For this reason, it is plausible to dismiss the case without prejudice, avoiding a resolution on the merits, due to the lack of prior contact between the parties (Elesbon, 2022b, 2022b).

Conversely, in cases such as undue charges and listings in bad payers databases (Werneck, 2021), the prior administrative request is not shown to be an essential requirement, because the narrative of harm to the consumer is already present.⁹

Therefore, a joint analysis of the precedents examined indicates that the prior administrative request, although legitimate under certain circumstances, can be waived in various situations in consumer conflicts. The imposition of strict administrative requirements as a condition for accessing the Judiciary lacks support in the *ratio decidendi* of the studied precedents, and is restricted to cases where, effectively, the absence of prior contact is incongruent with the very existence of procedural interest.

The aim is to ensure effective access to justice whenever rights are harmed or threatened, while also fostering the pursuit of consensual solutions. The challenge lies in finding the necessary and effective means for this encouragement, as opposed to the constant stimuli for litigation in court.

The obstacle is even bigger when one notices that, despite the filter imposed by this prior administrative request, the excessive judicialization of social security and assistance actions still persists, with a significant increase in the number of cases filed after the establishment of the precedent (CNJ, 2020a).

More broadly, initiatives to promote conciliation have not always achieved the expected results. The expansion of Judicial Conflict Resolution Centers (CEJUSCs) and the mandatory conciliation hearings, for example, did not lead to a substantial increase in conciliations (Chiesi, 2021). The need for additional incentives to use these non-adjudicatory means is clear.

⁹ The exception arises from the very opinion of the Rapporteur, Minister Barroso, in RE (Extraordinary Appeal) No. 631,240-MG: "[...] when an electricity utility company makes an undue charge on a electricity bill, it is not necessary for the consumer, to bring a lawsuit, to demonstrate that they contested the debt administratively: their right is harmed by the mere existence of the charge, and it is sufficient to describe this context for the configuration of the interest to act. A lawsuit seeking the annulment of the debt, therefore, is: (i) useful, as it frees the plaintiff from an undue obligation; (ii) appropriate, since a proper procedure is adopted; and (iii) necessary, as only a judge can compel the utility company to annul the debt, and it is not permissible for the plaintiff to do so on their own" (BRASIL, 2014).

“In the field of consumer disputes, many factors encourage litigation over self-settlement. Examples include the free access to Small Claims Courts and the prospect of higher compensations through litigation (Figueiredo, 2020).

The National Council of Justice (CNJ), after conducting empirical research on alternative dispute resolution methods in consumer relations, proposed the integration of the electronic judicial process (PJe)¹⁰ with “Consumidor.gov.br” (a government platform for online dispute resolution, which will be described later). The goal was to promote usage and facilitate access to the ODR platform, in order to reduce judicialization in this area (CNJ, 2018).

However, the analysis of two concrete initiatives inspired by the CNJ proposal, developed by the Court of Justice of the Federal District and Territories (TJDFT) and by the Court of Justice of Maranhão (TJMA), revealed the obstacles that the proposal faces. The first project consisted of the effective integration between the aforementioned systems, allowing “Consumidor.gov.br” to be accessed during the initial petition on PJe. The second initiative, not involving technology developments, focused on encouraging the use of extrajudicial platforms, through judges interventions in already filed actions, with the possibility of suspending proceedings, replacing conciliatory hearings and, as a last resort, dismissal due to lack of procedural interest. The TJDFT project experienced low uptake in its early years, raising questions about the workflow design and its effectiveness.¹¹ The Resolution Norm edited by the TJMA, in turn, was institutionally challenged by the class of lawyers before the National Council of Justice, which culminated in its revocation by the Maranhão court itself (Elesbon, 2022b).¹² Both approaches fell short of initial expectations.

Undoubtedly, there are institutional and cultural resistances to be overcome.

A perception survey conducted among legal practitioners in the state of Espírito Santo¹³ revealed extensive use of extrajudicial consumer dispute resolution platforms. More than eighty percent of respondents stated that they had already utilized at least one of these platforms, and nearly half had interacted with Online Dispute Resolution (ODR) platforms mentioned in the survey questionnaire (“Consumidor.gov.br” and “Reclame Aqui”). However, while recognizing

¹⁰ The PJE is a procedural system in digital records, an instrument for the implementation of online courts, created and maintained by the National Council of Justice (CNJ).

¹¹ In the case of TJDFT (Tribunal de Justiça do Distrito Federal e dos Territórios), active selection of “Consumidor.gov.br” is required during the initial filing. A more appropriate approach would be to offer this channel as the default option, with the plaintiff having the choice to opt out of using the platform, thereby enhancing its effectiveness as a nudge. This alternative design has been adopted by the Bahia State Court in the design of the “Virtual Negotiation” system within the Projudi platform (ELESBON & BOCHENEK, 2023).

¹² The possibility of dismissal due to lack of resisted claim was not explicitly mentioned in Resolution TJMA nº 43/2017. However, the motivations behind the norm made reference to RE nº 631.240/MG. In practice, judges in Maranhão started adopting this measure, which led to a subsequent reaction from the Brazilian Bar Association (ELESBON, 2022b).

¹³ The survey involved lawyers, public defenders, judges, members of the Public Prosecutor’s Office, and judicial employees. The questions covered the use of the platforms, the advantages compared to the judicial process, the provision of alternative channels by the Judiciary, and the impacts that the prior attempt at extrajudicial resolution should have on the judicial process (ELESBON, 2022a).

the merits of these channels, particularly their swiftness and reduced bureaucracy, the prevailing stance among interviewees was slightly unfavorable towards the requirement of prior conciliation attempts as a condition for initiating legal action. A resistant standpoint that was much more pronounced among lawyers (Elesbon, 2022a).¹⁴

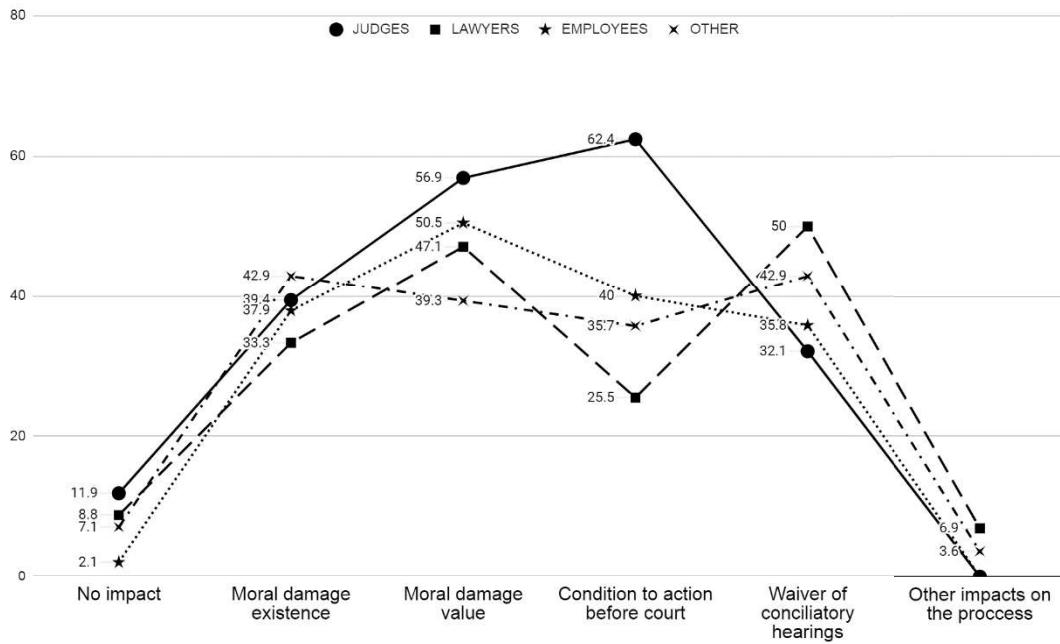


Figure 1. Agreement of legal practitioners with the possible impacts of the use of extrajudicial platforms on the judicial process.

From: Elesbon, 2022a, 150.

As will be seen below, these perceptions were partly corroborated by the quantitative research data. The response time in extrajudicial platforms is very brief, and the success rate of complaints is significant, aligning with the institutional purpose that these less bureaucratic, faster, and less costly mechanisms should be adopted as alternatives to state jurisdiction. However, in cases where the 'filter' of resisted claims is not legitimate, other incentives for seeking consensus must be provided to overcome the resistance that still exists.

Given this need to verify the practical applicability of precedents set by the Brazilian Supreme Court and to assess the suitability of extrajudicial channels for handling consumer disputes, the research focused on quantitatively outlining the profile of demands in the Brazilian Civil Small Claims Courts in the state of Espírito Santo. This involved identifying, among other relevant aspects, the major defendants and the outcomes achieved by consumers in both court and the main extrajudicial channels (Elesbon, 2022b).

¹⁴ Another significant finding was the low confidence of legal professionals in the outcomes, impartiality, and quality of information provided in these extrajudicial platforms. There was nearly a consensus in the assertion that suppliers would be less willing to negotiate outside the Judiciary (ELESBON, 2022a).

3. Profile of cases in Civil Small Claims Courts (JECS) of Espírito Santo

The first stage of the quantitative analysis consisted of identifying the most frequent litigants in the Civil Small Claims Courts of Espírito Santo. Data extracted from two case management systems in electronic records (PJe and Projudi) were analyzed, totaling 110,876 (one hundred and ten thousand, eight hundred and seventy-six) cases distributed between the years 2019 and 2020.¹⁵ The data was provided by the Department of Information Technology of the Court of Justice, through the Supervision of Small Claims Courts (Elesbon, 2022b).

The focus was on the cognition stage, until the delivery of the first judgment in the records (categorized as the civil small claims court procedure – code 436, in the Unified Process Tables of the National Council of Justice). The structured data covered: case number (the systems provide an unique ID to each case), date of filing, jurisdiction, value attributed to the cause, names and CPF/CNPJs¹⁶ of the applicants, lawyers in the plaintiff side, names and CPF/CNPJs of the defendants and respective lawyers, main subject, secondary subjects, code/description and date of the first judgment (Elesbon, 2022b).

After aggregating the information to minimize duplicates, the 35 (thirty-five) major defendants were extracted from that list (Elesbon, 2022b), resulting in the following table.

Table 1. Major defendants, judgement results and consumer-favorable outcomes

Defendant	Identified Cases	Partial Sample	Granted (%)	Partially Granted (%)	Denied (%)	Settlement (%)	Favorable Outcomes (%)
GLOBAL RESULTS (FOR REFERENCE)	110,876	110,876	10.0	19.9	10.0	20.2	50.1
TELEFONICA BRASIL S.A	5,995	3,848	5.9	26.4	11.3	32.9	65.2
EDP – ESCELSA – ESPIRITO SANTO CENTRAIS ELETRICAS S/A	5,805	4,413	15.3	27.3	13.3	4.9	47.5
TAM LINHAS AEREAS S.A	2,162	1,782	9.3	29.9	6.0	32	71.2
OI MOVEL S.A. – EM RECUPERACAO JUDICIAL	2,138	1,103	8.9	33.7	11.1	21.9	64.5
BANCO BMG SA	1,961	1,832	10.3	31.8	13.4	6.2	48.3
GOL LINHAS AEREAS S/A	1,907	1,577	14.7	35.2	12.2	13.6	63.5
CLARO	1,727	1,189	3.4	26.7	8.9	35.8	65.9
AZUL	1,697	1,469	12.1	27.2	7.5	30.2	69.5
BANCO BRADESCO SA	1,495	1,156	10.9	27.8	15.3	9.0	47.7
BANCO DO BRASIL S/A	1,475	756	7.3	18.5	16.2	24.5	50.3

¹⁵ There was no significant processing of cases in physical files during the period from 2019 to 2020, as considered by the research, so the data from the corresponding system (E-jud) were not included in the tables.

¹⁶ CPF and CNPJ are unique identification codes for natural and legal persons, respectively, issued by the federal government in Brazil.

Defendant	Identified Cases	Partial Sample	Granted (%)	Partially Granted (%)	Denied (%)	Settlement (%)	Favorable Outcomes (%)
SAMARCO MINERACAO S.A.	1,243	1,193	27.1	32.0	5.4	13.1	72.2
BANCO SANTANDER	1,214	916	11.5	30.0	15.4	13.6	55.1
COMPANHIA ESPIRITO SANTENSE DE SANEAMENTO CESAN	1,118	929	7.7	18.0	15.7	14.8	40.5
VIA VAREJO S/A	1,012	651	12.0	29.0	7.9	27.2	68.2
BANCO PAN S.A.	966	902	10.7	22.2	14.4	8.7	41.6
BANCO DO ESTADO DO ESPIRITO SANTO	958	721	6.9	19.6	28.6	10.0	36.5
BANCO ITAU S/A	906	651	8.5	24.1	14.2	18.9	51.5
UNIMED VITORIA COOPERATIVA DE TRABALHO MEDICO	838	764	13.7	25.2	11.0	13.7	52.6
B2W COMPANHIA DIGITAL	744	616	13.3	33.5	15.6	14.5	61.3
SKY SERVICOS DE BANDA LARGA LTDA.	693	528	5.4	23.2	6.0	52.4	81.0
DACASA FINANCEIRA S/A – SOCIEDADE DE CREDITO FINANCIAME	689	634	9.8	25.2	20.9	5.7	40.7
TIM CELULAR S.A.	668	506	8.3	30.0	7.2	32.7	71.0
BANCO ITAU CONSIGNADO S.A.	620	575	10.4	16.7	11.0	9.9	37.0
SEGURADORA LIDER DO CONSORCIO DO SEGURO DPVAT SA	579	546	21.0	30.3	7.9	0.5	51.8
BV FINANCEIRA SA CREDITO FINANCIAMENTO E INVESTIMENTO	578	502	4.5	24.5	15.0	13.1	42.1
DECOLAR.COM	578	518	7.2	30.5	5.9	37.2	74.9
LOJAS SIPOLATTI COMERCIO E SERVICOS LTDA	572	305	7.6	27.3	14.9	23.3	58.2
OCEANAIR LINHAS AEREAS S/A (AVIANCA)	544	410	14.1	27.6	3.4	11.5	53.2
BANCO BRADESCARD S.A.	510	439	11.0	26.9	14.7	14.2	52.1
MERCADO PAGO	506	460	8.3	31.5	16.2	6.7	46.5
BANCO SAFRA S A	455	414	7.3	17.0	14.9	23.1	47.4
BANCO ITAUCARD S.A.	431	420	6.6	27.2	14.8	22.4	56.2
CNOVA COMERCIO ELETRONICO S.A.	426	369	16.6	27.9	4.9	26.7	71.2
SAMSUNG ELETRONICA DA AMAZONIA LTDA	397	376	7.8	18.8	13.9	25.2	51.8
CIELO S.A.	368	344	10.6	39.6	14.0	2.7	52.9

From: Elesbon, 2022b, 164-165.

The table provides the total number of identified cases for each defendant and the partial sample, considered for the subsequent analysis. The following columns record the number of cases where the initial request was judged entirely granted, partially granted, denied, and those where the parties reached a settlement. The final column consolidates the outcomes favorable to

consumers, encompassing both entirely and partially granted judgments, as well as settlements (Elesbon, 2022b).¹⁷

The litigants identified in the table accounted for at least 40% of all cases filed during the period. They are predominantly suppliers of products and services.¹⁸ Notably, there are 13 companies from the banking sector, 5 from telecommunications, 4 from e-commerce, and 4 from the airline industry, reflecting a national trend in consumer litigation (Elesbon, 2022b; CNJ, 2018).¹⁹

The most frequent subjects also align with the consumer-oriented nature of the lawsuits.²⁰ Out of the 15 most frequent subjects, 9 are explicitly listed under consumer law in the Unified Table of the National Council of Justice (CNJ). Interestingly, “Consumer Law – Compensation for Moral Damage” was the subject that stood out the most in the analyzed data (Elesbon, 2022b).

This implies that both from a subjective perspective, of the litigants, and from an objective perspective, involving matters in dispute, consumer law and litigation in the Civil Small Claims Courts of Espírito Santo are strongly correlated.

The structured data revealed other relevant insights.

Approximately 80% of the cases analyzed had judgments registered during the research timeframe. Among these, 31.4% were decided within 100 days, 56.5% between 100 days and a year, and only 12.1% after a year of proceedings. The average time elapsed until the first sentence was 187 days. Cases closed through settlements achieved this outcome in an average of 142 days (Elesbon, 2022b).²¹

The consensual settlement rate among the entire set of cases was 20.2% (settlements IDs on the database). Nationally, within the scope of small claims courts, the same rate stood at 17.7%,

¹⁷ It is important to emphasize that the data related to case “movements” are subject to inaccuracies because they are manually entered by users, sometimes using generic options that do not provide precise information about the exact content of the judicial actions taken. Therefore, reference percentages from the overall sample were presented for comparison with the specific indexes for each supplier (Elesbon, 2022b). The same methodology was suggested by the research on major consumer litigants conducted by the National Council of Justice (CNJ, 2018, 33-38).

¹⁸ With the exception of one, Samarco Mineração S.A., whose presence among the major litigants resulted from an environmental disaster in the year 2015, which led to the filing of tens of thousands of indemnity lawsuits (ELESBON, 2022).

¹⁹ A similar profile was identified by Edson Pontes Pinto (2023) in a comparative empirical research on the performance of suppliers on “Consumidor.gov.br” and in the Civil Small Claims Courts of the State of Rondônia – Brazil.

²⁰ The most frequent topics and their respective areas were as follows: in civil law: flight cancellation, traffic accidents, condominium expenses, contract termination, and money refund. In consumer law: consumer contracts – health plans, flight delays, obligation to do / not do, compensation for moral damage, compensation for material damage, wrongful inclusion in defaulters’ registry, consumer contracts – banking, consumer contracts – electricity supply. In civil and labor procedural law: non-performance.

²¹ Nationally, the average time was 11 months in the knowledge phase, according to data from the “Justiça em Números” (Justice in Numbers) report (CNJ, 2021, 202). A similar empirical study conducted at the Court of Justice of Rondônia identified the timeframe until the first judgment as 138 days for actions against telecommunications companies, 133 days for banks, and 145 days for e-commerce companies (PINTO, 2023).

as mentioned in the “Justice in Numbers” report (CNJ, 2021). The plaintiffs’ favorable outcomes in the total sample were 50.1%.

The presence of lawyers on the plaintiff’s side is significant and impacts various aspects of the cases.

Although the Law No. 9.099/95 allows for the filing of claims without the assistance of an attorney, in practice, this only occurred in 25.6% of the assessed cases. The plaintiff hired a lawyer, was assisted by a legal representative or public defender in 74.4% of the overall cases and in 84.7% of demands involving major litigants (Elesbon, 2022b), corroborating the phenomenon of “professionalization” of cases in the Brazilian Civil Small Claims Courts (CNJ, 2015).

The disparity becomes even more apparent when considering that the monetary value of the claims was below twenty national minimum wages in 82.5% of the cases (Elesbon, 2022b).

The conciliation rate in court was lower among those assisted by attorneys than in cases where the plaintiff self-represented (19.5% vs. 22.2%), which seems to align with the perceptions of legal professionals heard in another stage of the research (Elesbon, 2022a).

On the other hand, legal representation ensured more favorable overall outcomes for consumers. Success rates, including both full and partial awards of claims as well as settlements, were achieved in 52.4% of cases with an attorney on the plaintiff’s side, compared to 43.6% of cases without such representation. In general, therefore, the success rates for plaintiffs are higher when represented by a legal professional. Additionally, the abnormal termination of cases without resolution on the merits, dismissed for procedural reasons, is more common for self-represented plaintiffs without an attorney (8.2% of cases with an attorney and 16.6% without) (Elesbon, 2022b).

The average time until the first judgment is 189 days when the plaintiff was represented by an attorney, and 179 days without one (Elesbon, 2022b).

Among the fifteen major litigants, there is a decrease in the number of settlements (17.7% of cases), but the combined success rate (settlements, full and partial awards for the plaintiff) increases to 62.4%, with 64.3% success for plaintiffs assisted by attorneys and 49.4% for those without legal representation (Elesbon, 2022b).

Table 2. Results of the first judgment – plaintiffs represented or not by an attorney

	With Legal Representation	Without Legal Representation	Average
GRANTED	10.5	8.7	10.0
PARTIALLY GRANTED	22.4	12.7	19.9
DENIED	9.5	11.5	10.0
APPROVAL OF SETTLEMENTS	19.5	22.2	20.2
WITHDRAWAL	8.9	8.0	8.7
PLAINTIFF NO-SHOW IN COURT	1.3	2.6	1.6
ABANDONMENT BY THE PLAINTIFF	3.0	4.4	3.4
DISMISSAL WITHOUT PREJUDICE	3.9	9.6	5.4

From: Elesbon, 2022b, 175.

The defendants list reveals that the settlement rate, and in general, the success rates of consumer claims, vary significantly among the defendants, which, as will be explored further, mirrors the behavior of suppliers in extrajudicial channels (Elesbon, 2022b).

The identity of the supplier and the subject matter in dispute both contribute to assessing the likelihood of successful judicial conciliation. For example, settlements were approved in 28.3% of cases under the subject “4830 – Flight Cancellation” and in 35.5% of those under the subject “4829 – Flight Delay”. On the other end of this spectrum, the average was only 8.2% for settlements in cases with the subject “7752 – Consumer Contracts – Banking” and 3.8% for “7760 – Consumer Contracts – Electricity Supply” (Elesbon, 2022b).

There is a decrease in the percentage of judgements ratifying agreements as the claims monetary value increases, particularly among the top fifteen litigants (Elesbon, 2022b).

Table 3. Self-settlement results in proportion to the value of the claim in minimum wages (M.W.)

Settlements	10 M.W. or Less	From 10 to 20 M.W.	From 20 to 30 M.W.	From 30 to 40 M.W.	Above 40 M.W.
MAJOR DEFENDANTS	19.8	18.7	13.5	11.3	5.3
FULL SAMPLE	23.1	18.6	15.8	13.9	10.2

From: Elesbon, 2022b, 177.

4. Major litigants and their participation in extrajudicial platforms

According to the Brazilian Supreme Federal Court’s jurisprudence, consumers cannot be compelled to use alternative extrajudicial dispute resolution methods if they are likely to be ineffective or unproductive. Therefore, the research aimed to evaluate the involvement of major litigants in public and private conflict resolution platforms, and to compare their success rates with those obtained in the courts.

The indicators used focused on agility and effectiveness. The first one compared the response time on the platforms to that in the judiciary, measuring the average time until the issuance of the first judgment. The second indicator measured successful outcomes for consumers in each channel. To achieve this, metrics related to the degree of satisfaction with results in extrajudicial channels were contrasted with the numbers of favorable outcomes obtained in judicial proceedings (Elesbon, 2022b).

The behavior of suppliers was analyzed in relation to the main extrajudicial platforms mentioned in a perception survey of legal professionals in Espírito Santo (Elesbon, 2022a). Data covered typical online dispute resolution channels (such as Consumidor.gov.br, Reclame Aqui)²² and governmental consumer assistance entities, which originated from in-person or virtual

²² The mentioned platforms can be considered ODRs (Online Dispute Resolution) in a broad sense, although strictly speaking, they are limited to communication between the involved parties and the establishment of a reputation system, without offering sophisticated decision support tools that could be categorized as a “fourth party” in the concept of Katsh and Rule (ELESBON & BOCHENEK, 2023; RULE & KATSH, 2016).

interactions (specifically from Procons, through the National Consumer Defense Information System, and from the National Secretariat of Consumer Defense, through the National Register of Substantiated Complaints).²³

The “Consumidor.gov.br” is an online asynchronous and unassisted negotiation portal, established by Decree No. 8.573/2015. Access is carried out through a “gov.br” account, intended for interaction with federal public services.²⁴ Consumers submit their demands via internet, which are then forwarded to accredited suppliers. These suppliers have up to 10 days to respond. Subsequently, within a 20-day period, complainants can categorize disputes as resolved or unresolved and assign a rating to the supplier on a scale of 1 to 5 points, based on the level of satisfaction achieved. If the evaluation period expires without assessment, the matter will be automatically classified as “resolved”.²⁵ The data is publicly accessible, allowing it to function as a reputation system.²⁶ The portal’s statistical dashboard aggregates information on average response time, user satisfaction level, and complaint resolution rate. It also enables detailed breakdowns by supplier, industry segment, and federal state, among other parameters. The platform is overseen by the National Secretariat for Consumer Defense – SENACON (Elesbon & Bochenek, 2023).

In 2019, the Ministry of Justice and Public Security and the National Council of Justice signed a technical cooperation agreement to integrate “Consumidor.gov” with the Electronic Judicial Process (PJe), aiming to enhance the use of online alternative resolution methods for consumer disputes (Brasil, 2019).

The following year, “Consumidor.gov.br” became the “official digital platform of the federal direct, autonomous, and foundational public administration for self-composition in consumer relations disputes” (Article 1-A, Decree No. 10.197/2020). According to Ordinance No. 15/2020 by SENACON, registration on the platform became compulsory for the following suppliers: I) those providing public or essential services, on a national or regional scale; II) those operating digital platforms for passenger transport, food delivery, and e-commerce; and III) those ranked among the top two hundred most complained-about companies in SINDEC (National System of Consumer Defense Information).

²³ Other channels were studied and referenced sparsely. In particular, Customer Service Centers (SACs) were not compiled due to the unavailability of internal data from the suppliers themselves. Regulatory agencies, on the other hand, started redirecting demands from the main regulated sectors (telecommunications, financial services, basic services) to the “Consumidor.gov.br” platform.

²⁴ According to Decree 8.936/2016 issued by the Presidency of the Republic of Brazil.

²⁵ This methodology is criticized because it can generate a bias towards a favorable perception of resolution by the supplier (FIGUEIREDO, 2020). Within the scope of the state of Espírito Santo, for the years 2019 and 2020, 41.46% of the complaints were not evaluated by consumers. Nevertheless, they were automatically counted as “resolved” (ELESBON, 2022b).

²⁶ On the topic: “The creation of a public database with solved/not solved information and the satisfaction rank can further enhance good practices. Companies need to protect their reputation and, therefore, want to show to the market that they care about their clients, making an effort to gain good rates on the platform” (SURIANI, 2020).

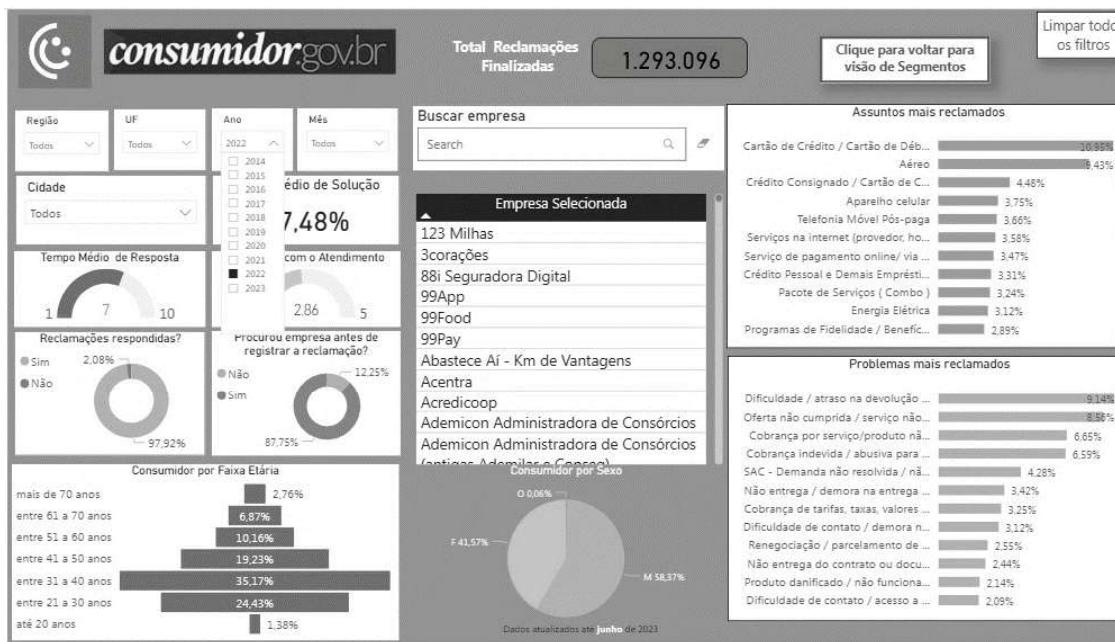


Figure 2. Statistical dashboard of “Consumidor.gov.br”.

From: Ministério da Justiça, 2023.

As of July 31, 2023, the portal had 4,858,501 registered users, with 1,331 participating companies.²⁷ In the year 2022, a total of 1,293,096 complaints were resolved, with an average solution rate of 77.48%, a response time of about 7 days, and a satisfaction level with customer service averaging 2.86 points. Complaints were answered in 97.92% of cases, and in 87.85% of cases, users reported having already contacted the company before registering the complaint on the platform.

Thirty-two out of the thirty-five major litigants in the Small Claims Courts of Espírito Santo were represented on this platform.²⁸ To compare their performance in court, the research collected the ratings assigned by consumers, aggregated in the “satisfaction with customer service” index.²⁹ Partial results are shown in the table at the end of this section.

The second analyzed extrajudicial platform, “Reclame Aqui”, was the only ODR of private nature highlighted in the perception survey of legal professionals in Espírito Santo (Elesbon, 2022a).³⁰ Created in 2001, the portal had over 360,000 companies and 30 million registered consumers, with a monthly average of 1 million complaints and 30 million accesses, according to data released in 2020 (Reclame Aqui, 2020).

²⁷ Data available at: <<https://www.consumidor.gov.br/pages/indicador/infografico/abrir>>.

²⁸ The data is for the year 2021 and was extracted from the “Consumidor.gov.br” portal on October 11, 2021.

²⁹ The criterion of satisfaction rating is not immune to criticism (Werneck, 2021). Nevertheless, as it involves an explicit consumer standpoint, it carries a lesser distortion than the implicit evaluation from the resolution index of the complaints (ELESBON, 2022). Furthermore, as subsequently identified by Edson Pinto, the degree of satisfaction is closely correlated with resolvability. In the sample analyzed by the aforementioned author, in complaints “where the complaint was classified as resolved, the average consumer rating was 4.28, and in cases where it was responded to but not resolved, the average consumer rating was 1.52.” (PINTO, 2023, 6).

³⁰ The inclusion of “Reclame Aqui” in the survey came about after numerous spontaneous mentions by participants during the testing stage and construction of the survey questionnaire (ELESBON, 2022a).

Consumers can file their complaints directly on the “Reclame Aqui” portal or through “WhatsApp”, initiating an asynchronous negotiation process. At the end of the procedure, they can rate the company as excellent, good, fair, poor, or not recommended, and indicate whether the complainers would or would not do business with them again. The data is aggregated into a publicly accessible “reputation” index for suppliers.³¹ Consumer posts are published, but their personal information is not disclosed and is visible only to the company involved in the negotiation (Chimenti & Ferreira, 2019).

The table at the end of this section contains information taken from the website on October 11, 2021, covering the twelve months prior to the survey. Out of the previously listed thirty-five defendants, eight were not present on the “Reclame Aqui”.

Providers that do not operate on the “Reclame Aqui” and consequently do not respond to complaints filed on it are automatically labeled as “not recommended.” To avoid distortions, given that there is no consumer evaluation in these cases, the decision was made to exclude the rating from the table, designating them with the abbreviation “NP” (not participant), in order to distinguish them from those that were indeed evaluated by users (Elesbon, 2022).

Compared to the “Consumidor.gov.br”, the following were absent from the “Reclame Aqui”: telecommunications providers, the airline Avianca, and Samsung. On the other hand, “CESAN”, a water supply and sewage services provider, and “UNIMED Vitória”, a health insurance plan, responded to queries on the “Reclame Aqui” but not on the “Consumidor.gov.br.”

Next, records from the National Consumer Defense Information System – SINDEC were analyzed. This system compiles data from the twenty-seven state PROCONs (Consumer Protection Agencies) and over six hundred municipal PROCONs (Ministry of Justice, 2022).³²

The perception survey of legal professionals in Espírito Santo (Elesbon, 2022a) and data presented by Aquino and Carvalho (2016) indicate that PROCON is one of the channels preferred by consumers, widely recognized and possessing an eminently positive reputation (Oliveira & Cunha, 2016).

Unlike the other channels considered here, in addition to registering complaints, consumer guidance, and dialogue with suppliers, these entities have the authority to impose sanctions on suppliers in case of rights violations, following a due administrative process (Gabbay & Cunha, 2010). As stated by Bochenek (2013, 299), “This is an excellent example of integrating access to rights and justice without the need to obtain a judicial response.”

³¹ According to the platform, the reputation is calculated based on the Response Rate (RR), Average Ratings (Consumer Rating) (AR), Resolution Rate (RR), and New Business Rate (Would Do Business Again?) (NBR), using the following formula: Reputation Score = ((RR * 2) + (AR * 10 * 3) + (RR * 3) + (NBR * 2)) / 100. The result is converted into a “seal” with labels like “not recommended”, “poor”, “average”, “good”, and “excellent” (Reclame Aqui, 2021).

³² In 2019, the implementation of a new system called “Pro Consumidor” was initiated, which will replace SINDEC and provide new functionalities for the integration of state and municipal Consumer Protection Agencies (Procons) (MINISTRY OF JUSTICE, 2021).

The SINDEC data was collected on October 12, 2021, and pertains to the Preliminary Solution Index (ISP), focusing on the spatial scope of the State of Espírito Santo for the same year.³³ There is no detailed information about the average response time or ratings assigned by consumers. Only the percentage of cases that were submitted to providers through PROCONs and resolved without the need for administrative proceedings to be initiated is provided (Elesbon, 2022b).³⁴

Within the administrative framework of consumer protection, data from the National Registry of Substantiated Complaints (CNRF) was also examined. Governed by Article 44 of Law No. 8.078/90, this repository compiles “information about harm or threat to consumer rights analyzed by a public consumer protection agency, upon request or ex officio, deemed valid by a definitive decision” (Article 58, II of Decree No. 2.181/97). The information is consolidated annually at the national level, and the data in the table refers to the year 2019.³⁵

The reason for examining CNRF data to assess extrajudicial resolution lies in the fact that it contains issues that were not immediately resolved through PROCONs, highlighting the willingness of certain suppliers to address demands when subjected to the sanctioning administrative process (Elesbon, 2022b).

Between 2019 and 2020, TELEFONICA BRASIL S.A. (Vivo) was involved in at least 5,995 cases in the Brazilian Small Claims Courts of Espírito Santo. During the same period, PROCONs in Espírito Santo registered 2,660 Preliminary Information Letters (CIPs).³⁶ EDP – ESCELSA – ESPÍRITO SANTO CENTRAIS ELETRICAS S/A faced a minimum of 5,805 civil court cases and 2,038 CIPs in PROCON. For TAM LINHAS AÉREAS S.A., there were 2,162 filed cases against 83 CIPs. OI MÓVEL S.A. – IN JUDICIAL RECOVERY was involved in at least 2,138 cases and received 1,772 CIPs during the same period. Finally, BANCO BMG SA was a defendant in a minimum of 1,961 cases between 2019 and 2020 and received 1,037 CIPs (Elesbon, 2022b).

Regarding the top 15 suppliers with the most complaints on “Consumidor.gov.br” in Espírito Santo between 2019 and 2020, Vivo – Telefônica (GVT) stands out with 6,575 complaints, followed by Oi Fixo with 2,821 and Serasa Experian with 1,776. Vivo – Telefônica, NET, Caixa Econômica

³³ For comparative purposes, in the year 2023, up to the date of the inquiry on 01/08/2023, the Average Preliminary Solution Index, after the issuance of CIP (preliminary information letter), stood at 74.23% in the state of Espírito Santo.

³⁴ It is assumed that these are positive results. However, there is a hidden figure in these data. It cannot be ruled out that the resolution index is including outcomes resulting from consumer inaction. After all, SINDEC includes options like “expired deadline” (the consumer does not return and does not make contact within the stipulated deadline) and “lapse of time” (there was no response from the consumer or proposal from the supplier within the respective deadlines) as possible ways to close the case (ELESBON, 2022b; BESSA, MOURA & SILVA, 2014).

³⁵ The most recent data available as of the date of the query was on October 23, 2021. The time frame of this data does not coincide with that of SINDEC, so the information should be carefully compared (ELESBON, 2022b).

³⁶ Regarding the Consumer Protection Agencies (Procons), there was a significant reduction in access in 2020 for the five main litigants, possibly related to the COVID-19 pandemic restrictions. In 2021, with the easing of restrictions, the number of interactions has already surpassed 2020 for 4 out of the 5 main companies, between January 1 and October 12 (ELESBON, 2022b).

Federal, and others are among the 35 major litigants in the Small Claims Courts of Espírito Santo (Elesbon, 2022b).

When comparing the volume of complaints on “Consumidor.gov.br” with judicial processes, some companies show a significant discrepancy, with high litigation and low extrajudicial demand (e.g., Banco BMG), while others have few court cases but a high number of extrajudicial interactions (e.g., NET). However, it is not possible to establish a clear correlation between consumer ratings and the number of cases. For instance, Vivo, with a rating of 4.1 in Espírito Santo, is among the most complained about on “Consumidor.gov.br” and in the courts (Elesbon, 2022b).

The following table visually represents the degrees of success on each platform, with “excellent” results shown in white and less favorable results in dark gray.³⁷ The data was internally compared, evaluating litigants across various aspects, including settlements, favorable judicial outcomes, consumer ratings, and success of demands on extrajudicial platforms. Companies were organized by the percentage of settlements approved in the Projudi/PJe systems in descending order, with values adjusted from 0 to 100 for easier comparison (Elesbon, 2022b).

Table 4. Suppliers performances, consolidated and color encoded.

	EXCELLENT	AVERAGE	BAD	NOT PARTICIPANT		
Supplier/ Defendant	Settlements %	Favorable Results %	Consumidor. Gov.br	Reclame Aqui	Sindec	Cnrf
SKY	52.4	81.0	66		72.22	72.3
DECOLAR.COM	37.2	74.9	40	28.4	43.24	66.7
CLARO	35.8	65.9	76		76.27	73.2
VIVO	32.9	65.2	84		85.47	58.1
TIM	32.7	71.0	78		85.51	76.5
TAM	32.0	71.2	58	58.2	39.66	66.7
AZUL	30.2	69.5	84	85.5	57.78	33.3
VIA VAREJO	27.2	68.2	54	60.2	66.52	68.1
CNOVA	26.7	71.2	54	58.8	66.52	84.6
SAMSUNG	25.2	51.8	44		46.56	74.5
BANCO DO BRASIL	24.5	50.3	58	59.0	69.00	28.4
SIPOLATTI	23.3	58.2	60	53.9	67.57	70.0
BANCO SAFRA	23.1	47.4	44	60.3	48.28	52.9
ITAUCARD	22.4	56.2	70	80.1		55.3
OI	21.9	64.5	72		74.38	79.3
ITAU	18.9	51.5	66	63.3	65.37	25.0

³⁷ For each column, the difference between the highest and lowest scores was calculated, and this range was then divided into three segments. The blank cells represent the results in the top third of this range, and so on in succession (ELESBON, 2022b, 205).

Supplier/ Defendant	Settlements %	Favorable Results %	Consumidor. Gov.br	Reclame Aqui	Sindec	Cnrf
CESAN	14.8	40.5		48.7	74.76	100.0
B2W	14.5	61.3	58	71.2	60.00	66.7
BRADESCARD	14.2	52.1	52	63.1		72.7
UNIMED VITÓRIA	13.7	52.6		57.4	76.92	
GOL	13.6	63.5	72	51.0	58.70	77.8
SANTANDER	13.6	55.1	56	56.4	56.91	48.2
BV	13.1	42.1	48	63.1	72.00	28.3
SAMARCO	13.1	72.2				
AVIANCA/OCEANAIR	11.5	53.2	46			23.1
BANESTES	10.0	36.5	44	53.0	64.84	
ITAU CONSIG.	9.9	37.0	52	56.8		26.2
BRADESCO	9.0	47.7	44	63.9	48.17	54.4
PAN	8.7	41.6	52	63.0	56.85	42.8
MERCADO PAGO	6.7	46.5	52	59.3	61.83	69.1
BMG	6.2	48.3	50	58.1	66.39	44.5
DACASA	5.7	40.7	46	56.8	81.33	66.7
EDP – ESCELSA	4.9	47.5	38	62.2	69.86	27.3
CIELO	2.7	52.9	42	78.7	48.15	29.4
SEG.LIDER DPVAT	0.5	51.8	50	69.8		66.7

From: Elesbon, 2022b, 206-207.

The contrast between court settlements and the average rating on “Consumidor.gov.br” (adjusted to a scale of 0 to 100%) suggests a correlation, indicating that companies with low resolution rates on the platform also tend to have similar outcomes in judicial and extrajudicial channels. However, this correlation is not observed in the nationwide data from “Reclame Aqui” (Elesbon, 2022b).

The data reveals significant patterns for consideration regarding effectiveness. For instance, “Sky” demonstrates a high proportion of resolution in court (52.4%), high ratings on “Consumidor.gov.br” (rating 3.3), and high response rates in SINDEC/CIPs (72.22%). This suggests a spontaneously favorable disposition towards self-composition (Elesbon, 2022b).

Conversely, “Decolar.com” presents good rates of resolution in court (37.2%), but with less favorable ratings on “Consumidor.gov.br” (rating 2), “Reclame Aqui” (2.84), and SINDEC/CIPs (43.24%). The high success rate in the judicial process (74.9%) and the handling of substantiated complaints (66.7%) suggest that this company’s variable approach is related to the possibility of facing sanctions in these instances (Elesbon, 2022b).

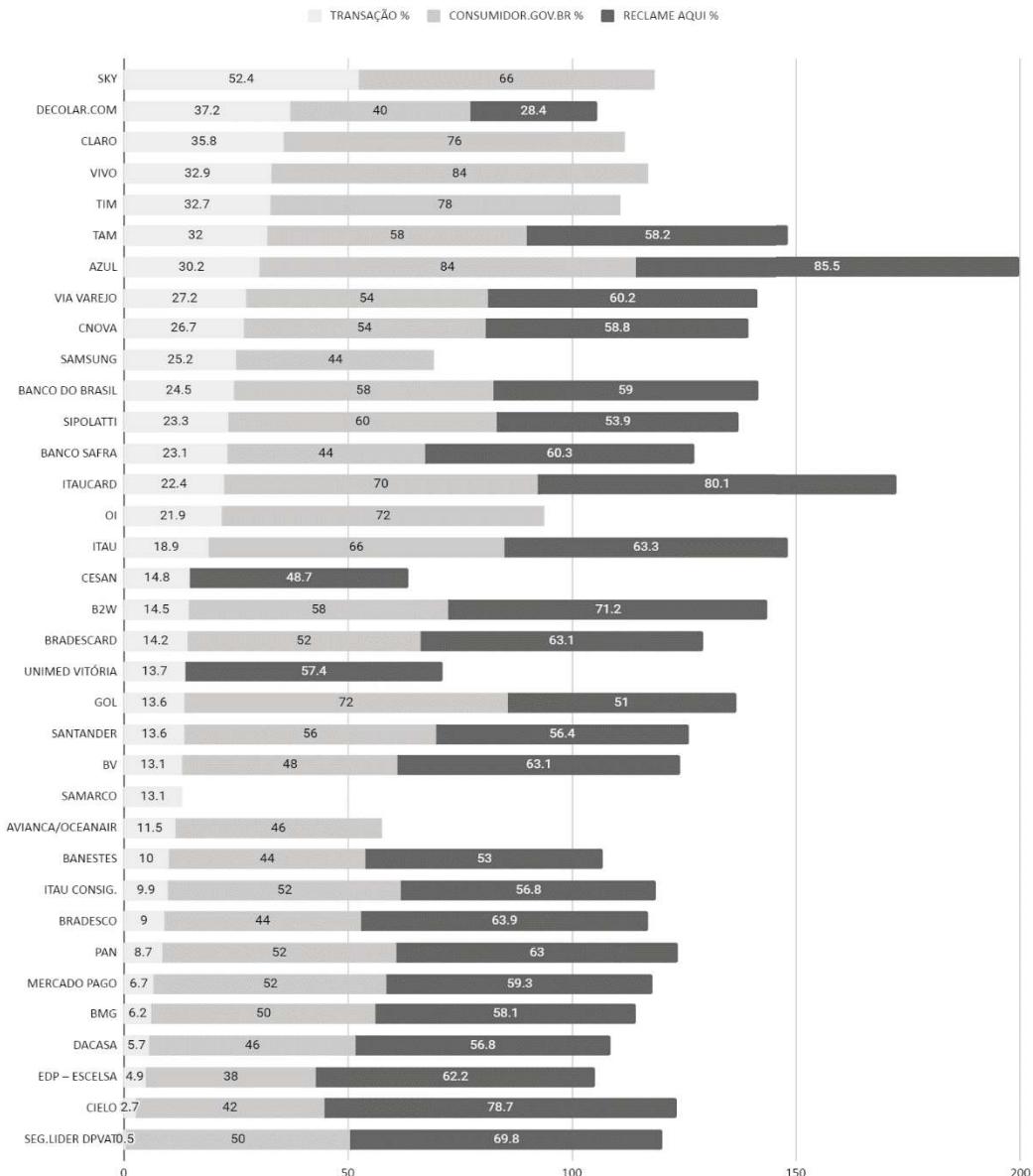


Figure 3. Successful negotiations in Court, Consumidor.gov.br and Reclame Aqui.

From: The author, from research data (2023).

It's important to note that companies with better extrajudicial ratings often tend to perform positively in court as well. This is the case for companies like VIVO, AZUL, TIM, and CLARO, which are well-rated on the "Consumidor.gov.br" and also have above-average reconciliation rates in court. On the other hand, suppliers with lower ratings, such as BANESTES, BRADESCO, CIELO, and EDP – ESCELSA, tend to have lower settlement percentages (Elesbon, 2022b).

However, the analysis suggests that the relationship between consumer ratings and reconciliation is complex and can vary by platform.³⁸

³⁸The "Reclame Aqui" also classifies the intention of the complainant to do business again with the mentioned companies, as follows: Azul, 89.7%; Itaucard, 83.5%; Cielo, 77.4%; B2W, 74.5%; and Seguradora Lider do Consorcio do Seguro DPVAT, 75%. In terms of those rated negatively, we have: Sipolatti, 52.9%; Banestes, 52.9%; Gol, 63.7%; Cesan, 64.4%; and Decolar.com, 31.3% (ELESBON, 2022b).

“Cielo” has a rating of less than 50% on the “Consumidor.gov.br”, but over 75% on the “Reclame Aqui.”

“EDP-ESCELSA” shows reluctance towards court settlement, with a low percentage of approved settlements (4.9%) and higher rates of judgments in favor of the plaintiff. Its rating on “Consumidor.gov.br” was 1.9, meaning it was unsatisfactory in nearly 60% of cases. However, its reputation of 7.7 on the “Reclame Aqui” is classified as good, and this same behavior is shown in SINDEC/PROCON.

In summary, the analysis of the systems highlights the active participation of the main litigants in the Small Claims Courts of Espírito Santo on the national extrajudicial platforms. The results generally demonstrate efficiency in terms of time and consumer satisfaction, which often surpass those achieved in court (Elesbon, 2022b).

It is crucial, nevertheless, to evaluate the behavior of companies both within and outside of legal proceedings before imposing a general and unrestricted condition on consumer access to the Judiciary. Although this approach is suitable in many cases, it can be ineffective in specific situations. The analyzed percentages reveal scenarios where immediately appealing to the Judiciary might be advantageous, particularly to facilitate non-adversarial resolution (Elesbon, 2022b).

For instance, when dealing with Sky, it is reasonable to recommend that a consumer first try to resolve the issue through extrajudicial means. After all, the possibility of settling the dispute with this company is real and relatively high. On the other hand, when dealing with Decolar.com, it is unlikely that a consumer will achieve success through negotiation methods without the intervention of public authority. Requiring the use of these alternative routes as a condition for taking legal action may violate the principles established by the Brazilian Supreme Court (Elesbon, 2022b).

This individualized treatment is reflected in the jurisprudence of the Supreme Federal Court, as demonstrated at the beginning of this study. In addition to examining the nature of the conflict, it is crucial to consider the historical resistance of suppliers to claims and the actual effectiveness of extrajudicial alternatives in terms of time and results (Elesbon, 2022b).

The existence of other approaches, especially Online Dispute Resolution (ODR) channels which have not been analyzed, and which might offer equally or even better outcomes, should not be dismissed. The informality and flexibility in this choice are relevant aspects to be considered (Elesbon, 2022b).

Respecting the most suitable channel for each case, instead of imposing a specific platform on the consumer, is an evidence-based approach, since different platforms have different outcomes. The requirement for a prior attempt at conflict resolution, therefore, should consider multiple channels to maximize opportunities for reaching an agreement³⁹ and acknowledge that the legal route is the best option for consumer protection in some cases.⁴⁰

³⁹ With the same recommendation, refer to Daniel LIMA (2019), PARO, MARQUES e DUARTE (2020).

⁴⁰ In other words, “it only makes sense to condition access to the Judiciary upon demonstrating that there was a prior attempt to resolve the issue through extrajudicial means if – and only if – the extrajudicial system for receiving and resolving disputes has the capacity to process the complaint and address it in a reasonable

5. Feasibility of integrating extrajudicial platforms to the civil small claims Courts of Espírito Santo, Brazil

Regarding the feasibility of integrating the “Consumidor.gov.br” system with the Electronic Judicial Process (PJe) system within the scope of the Court of Justice of Espírito Santo (TJES), the main obstacle faced was the lack of adequate infrastructure, as the court had low technological maturity⁴¹, and limited capacity to develop new computerized systems during the study period (Elesbon, 2022b).

In a prospective scenario where technological obstacles are overcome, the unification of electronic processing systems would be highly advantageous. This would create a unified platform, offering greater convenience to users and eliminating the need to interact with different tools for dispute resolution (Elesbon, 2022b). Moreover, automatically redirecting consumers to the extrajudicial platform during filing could serve as an important nudge of default choice (Elesbon & Bochenek, 2023).⁴²

Achieving full integration with “Consumidor.gov.br” could be a future goal, but in the meantime, using available information in a strategic way opens up a promising path to respond to the growing demand for access to justice.

In fact, even without direct support from computerized systems, alternatives could be adopted within the current landscape of the Court of Justice of Espírito Santo (TJES), by applying the tools and resources already available. All this requires is effective knowledge management, by compiling and disseminating structured information from the systems currently used by the court (Elesbon, 2022b).⁴³

The proposition is based on employing the legal data analytics (jurimetrics),⁴⁴ combined with data from extrajudicial platforms, to support the decisions of judges, parties involved, and lawyers.⁴⁵ This would allow the targeted application of alternative measures and incentives, such

timeframe, with responses to complainants that are not only brief but can, in most cases, satisfy them adequately” (GAJARDONI, 2020).

⁴¹ An inspection carried out by the National Council of Justice (CNJ), in the year 2021, identified delays in computerization, an insufficient workforce, and low digitization of the case files (Brazil, 2021). In the subsequent years, there has been a significant investment in modernizing the IT infrastructure, expanding the electronic judicial process, and virtualizing physical processes (TJES, 2022; TJES, 2023).

⁴² That proposition is included in the flow suggested by the National Council of Justice (CNJ, 2018).

⁴³ The outlined integration process begins with the generation of intelligence data for case management and conciliation strategies. These pieces of information would be compiled into tables, obtained from classifications in the PJe, data from “Consumidor.gov.br”, analyses from “Reclame Aqui”, among others. While automating this process would provide an advantage, its initial implementation can occur without this feature.

⁴⁴ By migrating processes to the PJe, identifying the main litigant parties and their demand profiles becomes more efficient since these pieces of information converge into a single database. One can already identify the main litigants in the segment on a dashboard provided by the National Council of Justice. However, it would help to widen the dashboard scope in order to display more litigants at once.

⁴⁵ A study by the Brazilian Association of Magistrates (AMB) on how the judicial system and litigation are used in the country found similar patterns. The AMB study recommends actions to curb excessive judicialization, such as setting up intelligence centers to track high-demand cases, developing technological tools for data

as suspending or dismissing cases, waiving conciliatory hearings, and imposing sanctions for behaviors inconsistent with good faith and cooperation (Gajardoni, 2020), based on analogous experiences implemented by other courts.⁴⁶

It is worth highlighting the possibility of awarding damages for moral harm in cases of deliberate disregard of consumers' rights⁴⁷, similar to punitive damages (Elesbon & Bochenek, 2023). The survey of legal practitioners' perceptions in Espírito Santo showed that the pursuit of such compensation strongly influences the interviewees' discourse, being a major factor in litigation (Elesbon, 2022a). This conclusion is backed by objective data from case distribution, which shows the importance of the subject "Consumer Law – Compensation for Moral Damage" among new cases in the period under investigation (Elesbon, 2022b). Taking into account the parties' extrajudicial behavior and sanctioning those that go against good faith and cooperation can act as a strong deterrent, encouraging companies to deal with issues more responsibly and proactively, while also motivating consumers to try consensual resolution before.⁴⁸

In summary, the study suggests a model driven by data and technology to tackle the growing judicialization of consumer issues in the Court of Justice of Espírito Santo (TJES). By analyzing the demands profile and using information from extrajudicial platforms, the court can make informed decisions, encourage alternative dispute resolution, and reduce the caseload.

These findings, combined with data on parties' behavior in extrajudicial resolution platforms, can be externally disclosed. The public availability of information about resolution trends on these platforms can influence suppliers' reputation and affect their practices (Elesbon & Bochenek, 2023). The introduction of the quality seals that acknowledge the conciliation efforts is also a valid suggestion, supported by guidelines from the National Council of Justice (Brazil, 2010).

However, to make the information-based strategy and the decision-making processes more effective, judges and other legal practitioners need to be persuaded and adjust their practices. Therefore, institutional coordination among different judicial levels, specialized units, and external entities is essential for implementing these changes successfully (Elesbon, 2022b).

analysis, dialoguing with the Brazilian Bar Association, and promoting alternative methods for conflict resolution (AMB, 2015).

⁴⁶ Examples of this are the aforementioned project of the Court of Justice of Maranhão (TJMA) and the one organized by the 11th Civil and Criminal Small Claims Court of the Metropolitan District of Curitiba, Paraná, which eliminates the need for conciliation hearings, replacing them with negotiations through "Consumidor.gov.br" (ELESBON, 2022b).

⁴⁷ This involves compensating the consumer who is a victim of "deliberate disdain" towards their dignity (BERGSTEIN, 2019) or due to their "productive deviation" (DESSAUNE, 2019), that is, the needless spending of their time and energy to overcome the stalemate with the supplier.

⁴⁸ "Here, it is not solely about the conciliation statistics of each supplier, but also about their conduct in the specific case. The documentation of prior contact, inherent in the functioning of the mentioned platforms ('Consumidor.gov.br', Procon, and 'Reclame Aqui'), would facilitate the subsequent analysis of this conduct by the judge. [...] The record of prior negotiations would allow for an assessment of whether the party sought extrajudicial means and was treated with contempt (justifying potential compensation), or conversely, if they neglected reasonable opportunities for settlement, aiming for pecuniary gain in court" (ELESBON, 2022b, 231-232).

6. Conclusions

Consumer disputes generate an increasing annual volume of new cases that require urgent alternatives to address them, considering the global challenges of the Judiciary. Extrajudicial platforms, especially the “Consumidor.gov.br”, are accessible and effective, but they have not reduced the number of judicial proceedings considerably. This leads to the question of whether consumers need more incentives to use these platforms as their first choice for resolving disputes.

This research asked whether the prior use of extrajudicial methods of dispute resolution could be required as a prerequisite for a consumer to file a lawsuit. The Supreme Federal Court’s jurisprudence indicates that it could, but with certain caveats. It is not reasonable to require extrajudicial self-composition unconditionally, especially on a particular platform. What is sought is to approach suppliers in an appropriate and feasible way, in specific cases, before consumers take the initiative before the Judiciary.

Regarding the profile of cases in the civil small claims courts in Espírito Santo, the data analysis does not provide a precise answer to the number of cases that could meet the interest threshold filter. However, it is clear that a widespread application of this filter would not be feasible. While a considerable number of cases could meet the threshold, many would not meet the criteria, especially because compensation claims are predominant in these courts.

Given this scenario, a question arises of how extrajudicial platforms can help reduce litigation when the interest threshold filter does not apply. The advantages offered by these platforms are crucial in this regard. The research showed that these benefits vary by supplier, but in general, the platforms offer more positive outcomes in terms of time and self-settlement.

For litigation prevention, attempting extrajudicial resolution has tangible benefits, such as settling the impasse before litigation and avoiding costlier and lengthier legal proceedings. Moreover, even when self-settlement is not reached immediately, the information collected in this process can be valuable for future judgment, such as the assessment of parties’ behavior, to evaluate moral damages.

The integration of data from extrajudicial platforms and judicial proceedings is also crucial. This information can help judges make more informed decisions and promote transparency and impartiality. Strategies that link compensation for damages to consumers’ dignity and prior negotiations between the parties can influence litigants’ behavior.

However, to implement these strategies, institutional coordination and a democratic dialogue environment are required. Technological integration models may vary depending on the available resources, but the focus should always be on improving the organizational culture and supporting decisions that streamline the process and affect the parties.

The ultimate goal is to promote access to justice and consumer protection, balancing the use of alternative means and litigation before the courts. The interest threshold filter has a role, but it is not the only solution; a culture of consensus should be fostered gradually, considering the advantages and implications of the available alternatives.

The intelligent use of data generated by these platforms is central to this approach, providing the parties with relevant information and helping them make informed decisions. Technology is

an ally in this process, but the role of judicial bodies and other stakeholders is essential for ensuring the effectiveness and advantages of the strategies for all involved. In this sense, one should seek a paradigm shift that focuses on improving organizational culture and promoting a collaborative approach to consumer conflict resolution.

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