

ARTICLES

MULTIPARTY MEDIATION AS SOLUTION FOR URBAN CONFLICTS: A CASE ANALYSIS FROM BRAZIL

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Social conflicts are becoming more complex every day and, therefore, the development of alternative forms of conflict resolution is necessary in view of the limited role of the Judiciary. With this, mediation gains more space in Brazil and in the world through the 2019 Singapore Convention on Mediation. Mediation is beneficial in the urban context to stimulate the population's participation and guarantee legitimacy at different levels of power. It enables public and private convergences, better public interest comprehension about the best way of life in cities and enhanced democratic management due to better dialogue and cooperation with the public administration. Mediation focuses on the interventions' reasons, the role of those involved in the process, welcoming the urban conflict with its peculiarities. It promotes the constitutional principles of democracy, pacification, solidarity, dignity, autonomy of will, speed and popular participation in the administration of Justice. However, in urban conflicts, which involve public administration and a multiplicity of parts, it is often necessary to apply collective or multiparty mediation. Thus, the article's main objective is to address the effectiveness of multiparty mediation as a solution to urban conflicts through the analysis of 5 (five) concrete cases mediated at the Judicial Dispute Resolution Centers – CEJUSC of the Rio Grande State Court of Justice of the South in Brazil. In the first step, a theoretical-descriptive analysis of multiparty mediation in Brazil and the mediator's role is carried out. In a second step, we will perform the analysis of practical cases to reach the appropriate conclusions.

Keywords: Brazil; conflicts in the city; mediation; multiparty mediation; case analysis; public administration.

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Introduction

Mediation is beneficial in the urban context to stimulate the population's participation and guarantee legitimacy at different levels of power. It enables public and private convergences, better public interest comprehension about the best way of life in cities, and enhanced democratic management due to better dialogue and cooperation with the public administration.¹ Mediation focuses on the interventions' reasons, the role of those involved in the process, welcoming the urban conflict with its peculiarities. It also promotes the constitutional principles of democracy, pacification, solidarity, dignity, the autonomy of will, speed, and popular participation

¹ On arbitration in contracts with the Brazilian public administration see Rafael C.R. Oliveira, *Arbitragem nos contratos da Administração Pública*, 1(1) Revista Brasileira de Alternative Dispute Resolution – RBADR 101 (2019). On arbitration and public administration in Portugal see Tiago Serrão & Diogo Calado, *A arbitragem de direito administrativo, em Portugal: uma visão panorâmica*, 1(1) Revista Brasileira de Alternative Dispute Resolution – RBADR 249 (2019). For a comparative view of arbitration in administrative law between Brazil and Portugal, see Daniel B. Ferreira & Rafael C.R. Oliveira, *A arbitragem no direito administrativo: perspectivas atuais e futuras através de um estudo comparativo e temático entre Brasil e Portugal*, 1(2) Revista Brasileira de Alternative Dispute Resolution – RBADR 139 (2019).

in the administration of Justice.² Besides, mediation, when practiced by the public administration, strictly complies with the principles set out in Article 37 of the Federal Constitution, namely: lawfulness, impersonality, morality, publicity, and efficiency.³ Such principles applied in Brazil are very similar to those provided for in article 6 of the Administrative Procedure Code of the Russian Federation.⁴

Multiparty mediation has protocols that are broader than mediation in an everyday context (dyadic or two-party mediation). It promotes participation, multiple actions, democratic management, legitimacy, and the integration of different actors in the population's interest. Thus, it necessarily involves public entities such as Public Ministry, Public Defender, Legislative Power, Executive Power, Public Advocacy, and Representative Entities.

The complexity in multiparty mediations requires planning. One must explain the procedures that define the schedule, operating rules, studies, and other information relevant to mediators' work. The effectiveness of applying the rules of conduct in the face of negotiations depends on experience, skill, and feeling to lead the effective dialogue to resolve the conflict, both in the legal and sociological spheres.

In line with those above, the cases presented in this research represent repossession of ownership and urban mobility. Through a prospective dialogue and the public administration's presence, multiparty mediation succeeded. Thus, the intensity and permanence of interpersonal bonds are evident, considering the different forms of coexistence in the urban space, according to the principle of mediation, which aims to re-establish the relationships between individuals living in the community.

The article's main objective is to address multiparty mediation's effectiveness as a solution to urban conflicts. The work thus outlines specific topics: 1. A brief history of mediation in Brazil; 2. Expository report on collective disputes in the city; 3. Aspects of multiparty mediation considering protocol, diagnosis, approval, and public entities' presence; 4. Differentiated techniques of multiparty mediation; 5. The effectiveness of mediation on the five cases presented.

The article has a descriptive approach. It describes the application of mediation in Brazil, focusing on multiparty mediation. It is also prescriptive for it establishes the importance of analyzing practical cases for the evolution of best practices and mediation approaches.

² For specific characteristics of Multiparty Mediations, see Ana L. Isoldi, *Mediação de Conflitos: a mediação como mecanismo de pacificação urbana* 511 (2019).

³ Article 37: The governmental entities and entities owned by the Government in any of the powers of the Union, the states, the Federal District and the municipalities shall obey the principles of lawfulness, impersonality, morality, publicity, and efficiency, and also the following (Jun. 21, 2021), available at http://www.stf.jus.br/arquivo/cms/legislacaoConstituicao/anexo/brazil_federal_constitution.pdf.

⁴ On the topic see Nataliya Bocharova, *Party Autonomy in Administrative (Judicial) Proceedings*, 3(2) BRICS L.J. 153 (2016).

It is worth mentioning that there is a limited number of researches addressing the issue by analyzing practical cases that involve the public administration; however, they do so in multiparty negotiations, not mediations.⁵ Nevertheless, they are essential because mediation is a negotiation with a neutral third party.

The references consulted are based on specific technical literature, scientific articles, manuals on the subject, and Brazilian legislation on mediation.

1. Mediation in Brazil

Mediation in Brazil started to gain strength from the 90s, with Article 5, item XXXV, of the Brazilian Federative Republic's Constitution, which deals with solving the difficulty of access to justice through methods that concretize this Warranty. But it was in the new Civil Procedure Code where it was possible to identify the concern with the regulation of mediation within the scope of the judicial process, not excluding prior mediation or other methods of conflict resolution.⁶

Through Resolution nº 125 of 29 November 2010, of the National Council of Justice (CNJ), that mediation had a morale boost in Brazil, offering users of the Brazilian judicial system different spaces for dialogue, reflection, the provocation of behavioral changes, as well as helping to understand its role in resolving any conflict. The Brazilian Mediation Act (Act nº 13.140 of 26 June 2015) finally set the legal framework of mediation. It regulates mediation to offer greater legal certainty to the procedures, establish guidelines capable of stabilizing a public policy of dissemination inside the Judiciary, and encourage its use in different spaces, public and private, to deal with different types of conflicts. Previously, the only way to resolve the collective (multiparty) dispute would be through adjudication in the Judiciary. Our object of study is not mediation in Brazilian public class actions⁷ but multiparty lawsuits, especially in repossession cases.⁸

⁵ Sanda Kaufman et al., *Multiparty Negotiations in the Public Sphere in The Negotiator's Desk Reference* 413 (Chris Honeyman & Andrew K. Schneider eds., 2017).

⁶ About mediation regulation see Andrea Maia et al., *Origens e norteadores da mediação de conflitos in Mediação de Conflitos: para iniciantes, praticantes e docentes* 45, 50 (Tania Almeida et al. coord., 2019).

⁷ It is worth mentioning that mediation is not only allowed but also encouraged in class actions under the terms of the Brazilian Mediation Act (Article 3, § 2º combined with Article 32, item II). About mediation and class actions see Humberto D.B. de Pinho, *Acordos em litígios coletivos: limites e possibilidades do consenso em direitos transindividuais após o advento do CPC/2015 e da Lei de Mediação*, 16(1) *Revista Interdisciplinar de Direito* 191 (2018). About class actions in Brazil see Ada P. Grinover, *Comparison of the Class Action for Damages in the American Judicial System to the Brazilian Class Action: The Requirements of Admissibility*, 2(1) *BRICS L.J.* 33 (2015).

⁸ According to Article 565 of the Brazilian Civil Procedure Code, the judge must schedule a mediation session in repossession cases before analyzing the preliminary injunction request. See, *in verbis*, Art. 565. In a multiparty dispute for the possession of real property, when the disturbance or criminal trespass stated in the complaint occurred over a year and a day previously, prior to analyzing the request for a preliminary injunction, the judge shall schedule a mediation hearing, to be held in up

After the National Council of Justice Resolution nº 125, many actions have emerged to disseminate mediation. It was established that each court should have two distinct bodies: the Permanent Nucleus of Consensual Conflict Resolution Methods – NUPEMEC, responsible for promoting consensual methods in that court, creating internal policies, qualifying the technical team and multiplying this proposal; and the Judicial Conflict Resolution Centers – CEJUSC, which should function as chambers for the proper management of conflicts. It is the so-called multi-door courthouse.⁹

The Brazilian Mediation Act (Act nº 13.140/2015) regulates the self-composition of conflicts within the scope of Public Administration, allowing the Union, the States, the Federal District, and the Municipalities to create chambers for the prevention and administrative resolution of conflicts. Many private institutions are operating in an out-of-court format. On the other hand, the ADR providers accredited to the courts of justice exercise the methods of conflict resolution under the coordination of NUPEMEC, configuring another way of supporting justice.

The Brazilian Civil Procedure Code, Act nº 13.105 of 16 March 2015, structurally encourages the practice of judicial mediation, as, for example, in Article 3º, § 3º,¹⁰ Article 139, item V¹¹ and Article 334.¹² It makes a rule to summon the defendant to appear previously in a conciliation and mediation hearing.¹³

It is also important to mention the promotion of mediation and consensual conflict solutions in Brazilian law schools.¹⁴ The curricula of law schools must respect the National Curriculum Guidelines promulgated by the Ministry of Education in

to thirty (30) days, in compliance with the provisions of §§ 2 and 4 (Jun. 21, 2021), available at http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/113105.htm.

⁹ On multi-door courthouse see Francisco J. Cahali, *Curso de arbitragem: mediação: conciliação: Resolução CNJ 125/2010* 53 (2017).

¹⁰ Article 3: Neither injury nor threat to a right shall be precluded from judicial examination. § 1 Arbitration is allowed, in accordance with statutory law. § 2 The State must, whenever possible, encourage the parties to reach a consensual settlement of the dispute. § 3 Judges, lawyers, public defenders and prosecutors must encourage the use of conciliation, mediation and other methods of consensual dispute resolution, even during the course of proceedings (Jun. 21, 2021), available at http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/113105.htm.

¹¹ Article 139: The judge shall conduct the proceedings in accordance with the provisions of this Code, having a duty to: V – foster, at any moment, the resolution of the dispute by the parties, preferably with the assistance of judicial conciliators and mediators (Jun. 21, 2021), available at http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/113105.htm.

¹² Article 334: If the complaint fulfils the essential requirements and if there is no preliminary denial of the claim, the judge shall schedule a conciliation or mediation hearing with at least thirty (30) days' notice, and the defendant shall be summoned with at least twenty (20) days' notice (Jun. 21, 2021), available at http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/113105.htm.

¹³ Teresa A.A. Wambier & Cassio S. Bueno, *Civil Justice in Brazil*, 3(4) BRICS L.J. 6 (2016).

¹⁴ On legal education in the BRICS see Oleg Vinnichenko & Elena Gladun, *Legal Education in the BRICS Countries in the Context of Globalization: A Comparative Analysis*, 5(3) BRICS L.J. 4 (2018).

conjunction with the National Education Council and the Higher Education Chamber. In 2018, the old Curricular Guidelines from 2004 were updated (Resolution CNE/CES nº 9/2004)¹⁵ by Resolution nº 5 of 2018 that included consensual forms of conflict resolution as mandatory courses for all law schools under Article 5, item II.¹⁶ This change intends to make lawyers less litigious and more peacemakers and community organizers.

The country's courts, aiming to standardize public policy in the Judiciary, establish mediation and conciliation principles, namely: independence, neutrality, the autonomy of will, confidentiality, orality, and informality. There is also a Code of Ethics and a thorough training program for mediators and judicial conciliators courses. The organization and qualification for mediators' training occur through workshops, support groups, workshops, and other practices to guide the user to resolve their differences satisfactorily.¹⁷

As a conflict resolution method in Brazil, mediation fits all cases and persons who accept settlement by negotiation. Conflicts concerning alienable rights or inalienable rights that admit transactions can go through mediation. The existing legal relationship may be judicial,¹⁸ with an ongoing lawsuit, or extrajudicial, before adjudication. Extrajudicial mediation is the most appropriate method for the consensual resolution of conflicts. It must also be disclosed and recognized by the Judiciary as an auxiliary method of the judicial procedure. In both cases, mediation deserves to be applied.

Significant advances occurred in the state-level Justice. At the end of 2019, there were already 1,284¹⁹ CEJUSCs installed. Since then, that number has grown every year. In 2014, there were 362 CEJUSCs. In 2015, the structure grew by 80.7% and advanced to 654 centers. In 2016, the number of units increased to 808, in 2017 to 982, and in 2018 to 1,088. The new Brazilian Civil Procedure Code impact, which entered into force in March 2016 and made it mandatory to hold a prior conciliation and mediation hearing, should be highlighted. The number of settlement agreements' ratifying judgments increased by 5.6% in three years, from 3,680,138 in 2016 to

¹⁵ Resolução CNE/CES nº 9, de 29 de setembro de 2004 (Jun. 21, 2021), available at http://portal.mec.gov.br/cne/arquivos/pdf/rces09_04.pdf.

¹⁶ Resolução nº 5, de 17 de dezembro de 2018 (Jun. 21, 2021), available at https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/55640393/do1-2018-12-18-resolucao-n-5-de-17-de-dezembro-de-2018-55640113.

¹⁷ Learn more about multiparty mediation, as well as organizing and qualifying mediators: Cláudio F. Machado, *Mediação com múltiplas partes no setor agrícola do Estado do Rio Grande do Sul: o diálogo como instrumento de mudança de paradigma*, 3 *Tribuna de Justiça do Rio Grande do Sul* 12, 25 (2017).

¹⁸ On judicial mediation see Fernando G. de M. Netto & Samantha Pelajo, *O futuro da justiça multipartas: Mediação em risco?*, 1(2) *Revista Brasileira de Alternative Dispute Resolution – RBADR* 121 (2019).

¹⁹ Of the 1,284 CEJUSCs existing in Brazil, 43 are in the State of Rio Grande do Sul, where the cases presented in this paper come from.

3,887,226 in 2019. Concerning 2020 there was an increase of 228,782, which means 6.3% of agreements' ratifying judgments.²⁰

Given the progression of the aforementioned positive indexes, it is worth emphasizing multiparty mediations. In this type of mediation, it is necessary to adopt intercultural dialogue as a paradigm in the consensual resolution of collective conflicts. Due to its scope, it includes people with different cultural backgrounds and different perspectives on human dignity. Only a process of dialogue with the inclusion and intersection of these perspectives, overcoming universalist and relativist views, can guarantee the adequate and harmonious realization of a right's debate without creating exclusions. So, a democratic collective conflict resolution model is necessary. Those involved can resolve their disputes constructively, strengthen their social relationships, identify interests underlying the conflict, promote cooperative associations, and explore strategies to prevent or resolve future controversies and educate yourself for a better mutual understanding.²¹

2. Multiparty Urban Disputes

In every society or community, there are conflicts. That is why a legal system is necessary (*ubi societas ibi jus*). There is no denying that social practices occur under conflicting patterns that stimulate the links developed by personal relationships. Interpersonal differences provide the diversity of ideas and perceptions that motivate people's renewal and the system itself, boosting innovation and creativity.

Globalization's social impacts emerge prolonged intersubjective relationships that regularly involve collective rights and generate disagreements between groups. In common sense, the word conflict refers to negativity because it is associated with the dispute. However, the self-composing means of dispute resolution can stimulate transformation processes, whether at the individual or social level.²²

When the conflict arises, the parties to the dispute generally seek to benefit from a facilitator who helps them act in a constructive attitude towards solving the problem, defining common interests, and assisting them in finding valid information. In that way, they become able to explore different scenarios and options.²³

²⁰ See the results on the methods of conflict resolution in the Brazilian Courts in 2020 in: Conselho Nacional de Justiça (CNJ), *Justiça em Números, Relatório Anual 171 (2020)* (Jun. 21, 2021), available at <https://www.cnj.jus.br/pesquisas-judiciarias/justica-em-numeros/>.

²¹ Guilherme M.M. Brasil & Lídia M. Ribas, *Mediação de conflitos coletivos: Adequando o acesso à justiça dos conflitos pós-modernos*, 19(35) *Revista Direito e Justiça – Reflexões sociojurídicas*. Universidade Federal do Mato Grosso do Sul 59 (2019).

²² See the definition of conflict in Juan C. Vezzulla, *La mediación para una comunidad participativa*, Instituto de Mediação e Arbitragem de Portugal (2005) (Jun. 21, 2021), available at <https://imap.pt/>. (Translated by the authors.)

²³ Martin C. Euwema et al., *Industrial Relations & Conflict Management* 22 (2019).

Collective or multiparty conflict is different because it involves collective rights. In general, the greater complexity of communal clashes involves public policies. These conflicts occur both in the administrative sphere and adjudicated disputes, resulting from the questioning of actions or omissions by the Public Administration or litigation involving social or economic groups.²⁴

Collective conflicts in urban centers trigger various disputes due to the improper ownership of land or buildings²⁵ and the deficiency of urban mobility. These different circumstances have in common the need to build an appropriate solution in which public and private entities involved in possible risk or damage to the affected community collaborate.²⁶

Deficiency in urban mobility is another crucial generator of collective conflicts. It refers to issues involving transportation and the dynamics of displacement and flow of people. According to the Urban Mobilization Plan of the Ministry of Cities, mobility in cities is a significant factor in citizens' quality of life. The model of circulation of people and cargo within the urban territory interferes with the country's economic development, as the distribution of products, the health, and productivity of its population depend on it, among others.²⁷

Although the object of analysis of this article is multiparty mediation, it is essential to highlight that collective conflicts can be managed by *Dispute System Design*²⁸ – DSD, which corresponds to the Design of Dispute Systems. This method allows the customization of systems that address the conflict in all its complexity. In this sense, DSD is a method and not a conflict resolution mechanism; therefore, its purpose is to create a system capable of effectively resolving a dispute. The DSD methodology

²⁴ On collective conflicts involving public policies see Luciane M. de Souza, *Meios consensuais de solução de conflitos envolvendo entes públicos e a mediação de conflitos coletivos*, Tese de Doutorado, Universidade Federal de Santa Catarina (2010), at 76 (Jun. 21, 2021), available at <https://repositorio.ufsc.br/xmlui/handle/123456789/94327>.

²⁵ It deals with the invasion of property or trespassing. Complex and social urban phenomenon consistent with the entry of a group of people in public and private urban areas for housing purposes. Act nº 11.977/2009 named the phenomenon as settlement; the recent Acts nº 13.465, of 11 July 2017, prescribes it as an informal urban nucleus. However, Article 11, item III, of the same act defines an occupier as being, *verbatim*, "one who holds power over an ideal lot or fraction of public or private land in the informal urban nucleus."

²⁶ Housing is one of the social rights prescribed by Article 6 of the Constitution of the Federative Republic of Brazil, *verbatim*: Article 6: Education, health, food, work, housing, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute are social rights, as set forth by this Constitution.

²⁷ See the Ministry of Cities' Urban Mobilization Plan to learn about mobility in cities as a preponderant factor in people's quality of life: Secretaria Nacional de Transporte e Mobilidade Urbana, Ministério das Cidades, PLANMOB – Plano de Mobilização Urbana das Cidades (2015), at 28 (Jun. 21, 2021), available at <http://planodiretor.mprs.mp.br/arquivos/planmob.pdf>.

²⁸ Examples of the use of the DSD in Brazil were the compensation to family members for the airplane crashes in 2007 and 2009 that occurred with TAM and Air France respectively.

presupposes the existence of a “designer” who, in cooperation with those interested in the conflict, will develop a tailored product, analyzing the peculiarities of the characters, the relationship, and the conflicting object, and thereby establishing the alternative methods of solution conflicts (ADRs) for the case.²⁹

3. Multiparty Mediation

Mediation is the most efficient method for resolving controversies of a trans-individual spectrum.³⁰ It favors a democratic and dialectical model for solving the collective conflicts, with the participation of those who plead for the solution, represented by a legitimate third party, and those responsible for resolving the issue and build solutions that jointly and reciprocally define their needs and limitations.³¹

Mediation at the collective level ensures social participation and the management³² of how the different group manifestations can converge constructively. The goal is to elaborate on decisions that are capable of protecting all interests involved. Usually, there is a plurality of rights holders as plaintiffs and one or more public entities (of the same or different federation levels).³³

In turn, collaborative participation expands representativeness and legitimacy concerning other methods. But this requires ensuring the inclusion of fragile groups and their assisted involvement in the debates. Besides, there is no dilemma of choice between individual and collective interest in mediation. The dialogues aim to reconcile all the stakes involved, unlike traditional models, in which there is no such integration effort.³⁴

3.1. Presence of Public Entities

In the mediation of collective conflicts, public entities’ participation is necessary to face the technical complexity, democratic, and even political challenges. The

²⁹ On *Dispute System Design – ODR* see Monica T. Costa & Maira L. Castro, *Desenhando modelos de sistema de disputas para a administração pública: Proposições acerca da política pública de fornecimento de medicamentos pelo viés do diálogo internacional*, 8(3) *Revista Brasileira de Políticas Públicas – UNICEUB* 102, 107 (2018).

³⁰ That goes beyond what belongs or concerns only one person, being of collective interest or belonging to a collectivity – covering transindividual right, groups, category or class of people whose legal relationship is of joint interest.

³¹ Brasil & Ribas 2019.

³² Multiparty mediation requires the mediator the mastery of negotiation techniques and knowledge about the topic of conflict to identify common points and divergences, enabling solution alternatives. The neutral will be in charge of keeping the parties focused on solving the problem.

³³ Regarding the protection of those involved in the collective conflict, see de Souza, *supra* note 24, at 353.

³⁴ See the importance of collaborative participation in multiparty mediation in Judith E. Innes & David E. Booher, *Reframing Public Participation: Strategies for the 21st Century*, 5(4) *Plan. Theory Pract.* 419, 430 (2007).

consensual resolution of these conflicts refers to attending to administrative and judicial procedures in the same way it implements public policies. This participation's relevance is evident, primarily when it extends beyond the legitimate parties and includes those directly affected or interested in the dispute. In these cases, it is possible to better adjust public policy to the real needs of all those involved.³⁵

Since mediation involves public policies, participants must be directly affected by the dispute and must have legal, technical, and financial resources to resolve the conflict. That said, a feasible understanding is possible and guarantees the protection of the interests involved and the rule of law at the same time. That is why the Public Prosecutor's Office, Public Defender's office, or associations that defend the interests involved must participate. Depending on the case, external control is also necessary so that other entities may get involved, such as members of the legislative branch or the auditors' court.³⁶

In compliance with Articles 127 and 129 of the Federative Republic of Brazil's Constitution,³⁷ the Public Prosecutor's Office represents the collectivity to guarantee fairness and equal treatment. The Public Power will be engaged in this solution and may provide an adequate response than the dispute's simple judicial settlement.³⁸

The Act n° 7.347 (Public Class Action Act) in its Article 5, item 1 provides for the Public Prosecutor's participation in multiparty mediations to preserve legal limits. The Public Prosecutor's Office must be invoked, though its participation is not regular. However, its omission or refusal will not imply that the mediation cannot proceed. However, due to its legitimacy, the Prosecutor should analyze the terms of the settlement agreement at the end. He may show some objections.³⁹

Equally, the Public Defender's Office⁴⁰ does not have mandatory participation in the negotiations. However, it is responsible and legitimate, as an expression and instrument of the democratic regime, to care for the least favored involved in the conflict. Article 134

³⁵ See about better adequacy of public policies in multiparty mediation Alexandre A. Gavronski, *Técnicas extraprocessuais de tutela coletiva: a efetividade da tutela coletiva fora do processo judicial* 256 (2010).

³⁶ On legal legitimacy of actors invited to multiparty mediation, see Luciane M. de Souza, *Resolução consensual de conflitos coletivos e políticas públicas* 92 (2014).

³⁷ Article 127: The Public Prosecution is a permanent institution, essential to the jurisdictional function of the State, and it is its duty to defend the juridical order, the democratic regime and the inalienable social and individual interests. Article 129: The following are institutional functions of the Public Prosecution (...).

³⁸ On the Public Prosecutor's Office in Multiparty Mediation see Luiz G. Marinoni et al., *3 Curso de Processo Civil* 176 (2015).

³⁹ The absence of the Prosecutor in multiparty mediations does not prevent the resolution of the conflict. See de Souza 2014, at 94.

⁴⁰ The Public Civil Action Act n° 11.448, of 2007, in its Art. 5º, includes the Public Defender's Office among those entitled to file a public civil action.

of the Brazilian Federal Constitution⁴¹ grants the defense of individual and collective rights through the Public Defender's Office free of charge to those in need.

The Executive and Legislative Powers play an essential role in collective mediations. The Executive Branch provides the participation of any entity with technical competence on the conflict in the negotiations. These contributions evolve to identify the technical solution and recognize the extent of the problem, including budgetary issues. In turn, the Legislative Power legitimizes possible regulatory changes and oversees the Executive Power's performance. It also can identify possible unconstitutionality.⁴²

In conjunction with the multiparty mediation participants, Public Advocacy⁴³ has the function of defending, promoting, and guiding the Union's public interests, and the States, Municipalities, and the Federal District. It also represents political entities judicially and extrajudicially, contributes to the design of public policies, and provides consultancy and legal advice to the Executive Branch. The professional's role is to control, defend, and legally inspect the management acts.⁴⁴

Representative Entities from sectors affected by public policies, representatives of homogeneous individual interests involved in the conflict, and private entities with interests and responsibilities related to the controversy, can also compose the group of actors in multiparty mediation. They participate as technical assistants of all the parties in conflict, and their opinion is vital to the solution's technical adequacy.⁴⁵

3.2. Protocol, Diagnosis and Planning

The multiparty mediation protocol is essentially distinct from any other negotiation model. Its complexity requires organization, planning, in addition to mitigation of the confidentiality rule. As an initial procedure, the judicial process analysis is fundamental for the understanding of the dispute and the identification of the actors involved in the collective conflict. Multiparty mediations are commonly held in several, and sometimes exhaustive, sessions. In due course, the mediators may request individual sessions to identify the interests and needs of each party.

⁴¹ Article 134: The Public Legal Defense is an essential institution to the jurisdictional function of the State and is responsible for the judicial guidance and the defense, in all levels, of the needy, under the terms of Article 5, item LXXIV.

⁴² See how the public power can serve the community in de Souza 2014, at 97.

⁴³ See Article 182 of the Brazilian Civil Procedure Code: It is the duty of the Attorney General's Office to defend and promote the public interests of the Federal Government, the States, the Federal District and Municipal Districts, by means of legal representation, in all federal spheres, of the public legal entities that make up the government.

⁴⁴ On the participation of Public Advocacy in multiparty mediation see *Advocacia pública: entenda melhor o seu papel*, G7 Jurídico (Jun. 21, 2021), available at <https://blog.g7juridico.com.br/advocacia-publica/>.

⁴⁵ On the actors participating in a multiparty mediation see de Souza 2014, at 101.

In most collective conflicts of repossession, the protocol requires some public mediation sessions at the occupation place. Open sessions aim to clarify to the community about the concept and procedure of mediation and the election's holding to choose the representatives legitimized by the occupants of the occupied area. The elected representatives must attend future mediation sessions held at the premises in the local forum, where negotiations between all those involved in the conflict occur. It is an authentic procedural opportunity to listen to the affected people.⁴⁶

Due to the nature of multiparty mediation, with the presence of public entities, the sessions' topics and the negotiation's evolution are recorded in reports and raised to the knowledge of the state judge, of the public entities themselves, and involved. It is also part of the protocol, the judge to know with full clarity the terms of understanding in the ratification moment before the parties can fully agree with it.

Accurate diagnosis of the conflict's broad spectrum is a crucial step in multiparty mediation's design.⁴⁷ The detailed investigation of the problem⁴⁸ with the identification of convergent and divergent aspects between the parties, causes, characteristics, consequences, people affected, time, resources, among others, is essential for generating possible solutions. The diagnostic study concluded in a report must be delivered to the court.

The planning stage is where the mediator establishes its proposal, presents the objective, and develops the multiparty mediation. In this context, the mediator outlines the following procedures, namely: the session schedule, the rules of operation, time, studies and information to be made available, commitment to participation in the meetings and the group with their representatives, definition of the locations to be held the sessions and hearings mediation, the form of manifestation of the groups, as well as how the information is going to be made public.

Such information will determine the rules of conduct in the face of negotiations, which aim to resolve routine doubts and enable overcoming insecurities, which usually emerge in the path of those who participate in constructing a more dialogical justice system part of the Culture of Peace. Thus, the guidelines planned do not intend

⁴⁶ See how public sessions of multiparty mediation take place in Leticia Marques Osório, *O direito à moradia como direito humano in Direito à moradia adequada: o que é, para quem serve, como defender e efetivar* 39 (Edésio Fernandes & Betania Alfonsin coord., 2014).

⁴⁷ Developed at the Harvard Business School, the Dispute System Design (DSD) theory seeks, in summary, to analyze the types of conflicts, their interests, positions, rules, conflict of powers, economic situation. Thus, strategically delineate a customized design for the solution and adequate treatment of the dispute through a specific methodology for each type of conflict, social, and individual. It is a technique available to act in massified or repetitive conflicts, mainly.

⁴⁸ Interested groups and public bodies are involved in building the decision for a process that seeks consensus. Participants need to educate and persuade each other about their needs and interests. See *A Practical Guide to Consensus* 8–9 (1999) (Jun. 21, 2021), also available at <http://www.policyconsensus.org/publications/practicalguide/index.html>.

to plaster the practice or even cancel any innovative ideas capable of contributing to the conversations' progress.⁴⁹

3.3. Judicial Confirmation: Settlement Agreement's Legal Validity

Mediation finishes with an understanding between the parties, namely the agreement. In this desired path, symbolic acts usually produce feelings of satisfaction and commitment with the fulfillment of the pact and obtaining a friendly solution. In addition to the legal effects, the settlement agreement must be drafted with clarity, simplicity, objectivity, and specificity.

For the realization of the multiparty mediation settlement agreement, which goes beyond the ordinary circumstances of regular mediation, the judge shall examine in detail the following:

- Whether the settlement agreement observes the factual and legal points of the case;
- Whether the due process was observed in the course of mediation;
- Whether the legal parameters were observed;
- Whether there is clarity in the delimitation of obligations, in the provision of responsibilities and deadlines;
- If there are means for monitoring compliance and clear and proportionate sanctions for total or partial non-compliance.

The confirmed settlement agreement will replace the judicial sentence becoming a valid judicial enforcement order.⁵⁰

In summary, it is not enough to stipulate a particular obligation. A clear and objective definition of circumstances must be in the settlement agreement, such as the time, place, date, mode, and periodicity for due compliance. Depending on applicable legislation, the judge strictly examines whether the collective rights in the agreement's content and the respective obligations provided for are satisfactory to effectiveness.

To ensure compliance with the settlement agreement, the mediator can use another mechanism used when writing the document, which is positivity. The way to spell out the obligations assumed by the parties should encourage the practice of the conduct. In this sense, the mediator must endeavor to describe the desired behavior constructively and optimistically, emphasizing the character of benevolence and the mutual commitment that one seeks to achieve during all the phases of mediation in which they engaged.⁵¹

⁴⁹ See guidelines and planning for multiparty mediation: NÚPIA, *Recomendações para planejamento e condução de audiências de mediação* (2019), at 2 (Jun. 21, 2021), available at https://site.mppr.mp.br/arquivos/Image/Nupia/Planejamento_e_conducao_de_audiencia_de_mediacao.pdf.

⁵⁰ See the judicial confirmation of the settlement agreement in de Souza 2014, at 156.

⁵¹ The CNJ (National Council of Justice) indicates other mechanisms to seal agreements, see Conselho Nacional de Justiça, *Manual de Mediação Judicial* (6th ed. 2016), at 245 (Jun. 21, 2021), available at <https://www.cnj.jus.br/wp-content/uploads/2015/06/f247f5ce60df2774c59d6e2ddd9bfec54.pdf>.

4. Mediation Techniques for Multiparty Disputes

The use of mediation techniques refers to the numerous tools that enable the mediator to manage the conflict strategically. The proper choice and the appropriate handling of these tools tend to provide efficacy and effectiveness to work. However, it is essential to consider that multiple factors influence the expected impact. Impacts are built through interaction, and their quality comes from the articulation between the intervention's object, the parties, and the mediator.⁵²

There are several techniques that the mediator can use in mediation. Among them, recontextualization (or paraphrasing), listening to implicit proposals, cuddling (positive reinforcement), silence, caucus (individual sessions), role changing, generation of options, normalization, question organization, prospective focus, reality test, and validation of feelings. These tools, among others of equal importance, are practical when adequately used by the mediator.⁵³

The mediations of great complexity, such as collective repossession and urban mobility discussed in this article, require, in addition to the applicable standard tools, techniques that depend on the mediator's skill, creativity, and experience. The methods are formed from a mix of knowledge on the topic of conflict, namely: a well-established *rapport*⁵⁴ with the parties, ability in self-implicating issues,⁵⁵ identification of the work schedule, prospective view of the dispute, care in the speech given at meetings, confirmation interpretations, identification of common and unusual interests, the balance between the parties, construction of objective criteria, attention to non-verbal language, the cultural clash, identification of subjective interests, among others that arise from the specificity of each case in a conflict situation.

It is also up to the collective conflict mediator to learn about the existing dispute through technical studies to develop a strategy, an action plan for mediation development. For the greater scope of the conflict, knowledge also implies holding individual sessions with the parties, configured as pre-mediation. In pre-mediations, it is possible to identify each group's intentions and generate an estimated flowchart to understand the participants regarding the mediation procedure better. The mediator's strategy refers to an overall action plan that can help in decision-making in conflict situations.⁵⁶

⁵² On the quality of the articulation between the mediating parties and the mediator see Tania Almeida, *Caixa de ferramentas da mediação: aportes práticos e teóricos* 470 (2014).

⁵³ On mediation techniques see Manual de Mediação Judicial, *supra* note 51, at 233.

⁵⁴ *Rapport* – Trust that allows parties to feel secure about the mediation process and the mediator.

⁵⁵ Self-implicating questions are those that the mediator asks in search of “the possibility of someone identifying, in the course of the dialogue process aimed at self-composition, their participation as co-responsible – by misunderstanding and understanding, or by any other correlated event.” Almeida 2014, at 76.

⁵⁶ The mediator can establish strategies such as an action plan, see Euwema et al. 2019, at 12.

Controlling the emotional environment in mediation with many people, such as group sessions, is essential for adjusting how the parties will act in the dispute resolution process. The mediator's performance profile is a model of behavior for the participants; their attitudes lead to performing between groups. In this bias, non-verbal language, or body language, added to accessible communication and neutral language, can instill in the parties some feelings that positively change their behavior.⁵⁷

It is worth highlighting the keen perception (*feeling*),⁵⁸ a relevant characteristic of the mediator's cognition. Although it does not appear in descriptive manuals, it develops gradually through his professional career and becomes part of the mediator's emotional skills. It is the *feeling* that enables the mediator to make immediate decisions if there is no evolution in the mediation procedure. For example, the fundamental interference of mediators in the City of Porto Alegre Urban Mobility Case (Case 5 – Next chapter) made possible the parties' union in the construction of the agreement. In the moment of mediation stagnation, the mediators communicated the mediation's closure if there was no progress in the next session. This decision made the parties aware of the loss of the opportunity to resolve the critical dispute promptly, a situation that the pandemic required. Decisions like this need precision, determination, and commitment from the mediator.

Contact with various cases, such as the collective possessory and its main stakeholders as occupiers, owners, and public agents responsible for housing policy, allows mediators to develop more in-depth knowledge of legal, administrative, and technical issues. It also allows the mediator to know its causes and the consequences of urban occupations. Also, he gets familiarized with the solution's possibilities and limits. These include land and urban regularization, housing policies, resettlement, forced eviction, tenure security, the concession of administrative benefits, cooperatives' formation, and associations with housing purpose. Such expertise occurs through contact with the reality of occupations in the course of the sessions.⁵⁹

In the mediation's instrumental universe, there are all the means for adequately handling conflicts in different areas. The more the mediator equips himself with technical knowledge, emotional development, and cognitive skills, the more his perception will make him more secure in disputes to be faced. This developed

⁵⁷ On forms of language to be used in mediation see Manual de Mediação Judicial, *supra* note 51, at 210.

⁵⁸ The *feeling* is the same as foreboding or intuition. These skills are fundamental to the professional environment and personal life, resulting from the knowledge and the same experiences that a person goes through throughout his life. We can make the right decision, for example, most of the time, in addition to drawing on our experience, tacit and explicit knowledge, or available information, it is also vital that we resort to *feeling*. That is to say, an intuition that takes us in a specific direction.

⁵⁹ On the mediator's expertise in acting in collective conflicts see Cláudio A. Mello, *Direito à moradia e conciliação judicial nos conflitos possessórios coletivos: a experiência de Porto Alegre*, 9(4) Revista de Direito da Cidade 2072, 2088 (2017).

toolbox does not mitigate confidentiality, competence, impartiality, neutrality, independence and autonomy, respect for public order, and the laws in force that govern judicial mediators. The Mediator's Code of Ethics provides these principles in Article 1,⁶⁰ Schedule III of the Resolution n° 125 of the National Council of Justice.⁶¹

5. Analysis of Multiparty Mediation Effectiveness in the Light of Practical Cases

The cases presented⁶² below deal with collective conflicts of great complexity. The first four cases deal with repossession cases: Case 1 – an occupation of private property; Case 2 – an occupation of public area, and Case 3 – cooperatives, private and public area; Case 4 – an occupation of a private area allegedly sold. And Case 5 refers to the deficiency in urban mobility in the city of Porto Alegre, State of Rio Grande do Sul. The five judicial cases are from Rio Grande do Sul Court of Justice and refer to the last five years (2015–2020). Mediation proceeded through the local CEJUSCs – Judicial Center for Conflict Resolution, and all of them achieved a settlement of agreement and had their BATNA⁶³ confirmed judicially.

CASE # 1 – REPOSSESSION – VIAMÃO/RS

Place: City of Viamão – State of Rio Grande do Sul

Year: 2017

Procedure Duration: 6 months

Number of Sessions: 13 sessions

Coordinating Mediator: Carla Zir Delgado

Mediators: André Strey, Silvia Arano, Celso Luiz Rodrigues

Court of Justice: CEJUSCs – Judicial Center for Conflict Resolution, City of Viamão/RS⁶⁴

Dispute: Private property occupied by 650 families

DISPUTE: On 11 December 2017, mediation negotiations regarding repossession began, where 650 families unduly occupied specific private property. The first mediation session was held at the premises of the local Forum. Two (2) members

⁶⁰ Article 1 – The fundamental principles that govern the performance of conciliators and judicial mediators are, namely: confidentiality, informed decision, competence, impartiality, independence and autonomy, respect for public order and current laws, empowerment and validation (Jun. 21, 2021), available at <https://atos.cnj.jus.br/atos/detalhar/156>.

⁶¹ See the legal acts governing judicial mediators in de Souza 2014, at 39.

⁶² The cases covered in the article were narrated by the Judicial Mediator, Carla Zir Delgado, who acted and coordinated the multiparty mediations. In all cases, the lawsuits numbers are cited and the CEJUSCs where the mediation was performed.

⁶³ BATNA is the acronym for *Best Alternative to a Negotiated Agreement*.

⁶⁴ Tribunal de Justiça do Rio Grande do Sul. Processo: n° 039/1.12.0001162-5.

of the board of the occupiers' Association, their attorneys-in-fact, and the National Movement for the Struggle for Housing representative.

DEVELOPMENT: It is an area of private property of reasonable geographical proportions. The mediator's team acted to promote the dialogue between those involved to understand the interests of all those involved.

Through negotiation in a mediation session, a topographic study in the area was established by the occupants. To carry out this work, the Municipality of Viamão made available a topographer, accompanied "on the spot" by one of the mediators, in four (04) visits, once a week, for four consecutive weeks. The mediation team held several public hearings on 01/27, 05/05, 05/19, 08/04 and 09/15/2018, at the occupation site to clarify the community regarding mediation principles and objectives. On that occasion, their representatives were chosen.

The Chácara da Figueira Association, located in Santo Inácio's neighborhood, legitimized by the community, followed the election of ten (10) representatives in five (05) public hearings held at the site. After the hearings, eight (08) sessions were held at the CEJUSC facilities, in the Forum in the City of Viamão. At the time, the Association committed itself to negotiate with the occupied area owner, with 650 families involved. Of these, 350 were represented by the Association, which assumed the area's negotiation in its entirety. That happened without the other 300 families' consent.

AGREEMENT: After several rounds of negotiations, in which market assessments of the area under discussion were requested, approximately 24 hectares of land, the parties reached an understanding. On 1 November 2018, the Occupants' Association purchased 24 hectares of land (about 350 families joined, totaling 650).

After the Settlement of the Agreement's judicial confirmation, two public mediation sessions were held to monitor the deal established. As it is a complex mediation, reaching a significant number of people, and the payment extending over more than five years, there is a need for constant monitoring so that the Association can comply with the agreement signed and ratified in court.

CASE # 2 – REPOSSESSION – SÃO LEOPOLDO/RS

Place: City of São Leopoldo – State of Rio Grande do Sul

Year: 2018

Procedure Duration: 1 year

Number of Sessions: 11 sessions

Coordinating Mediator: Carla Zir Delgado

Mediators: André Strey, Silvia Arano, Celso Luiz Rodrigues

Court of Justice: CEJUSCs – Judicial Center for Conflict Resolution – São Leopoldo/RS⁶⁵

⁶⁵ Tribunal de Justiça do Rio Grande do Sul (TJ-RS). Processo: nº 039/1.12.0001162-5.

Dispute: Occupation of public land by 157 families

DISPUTE: It is a public area improperly occupied by 157 families. Through a project in partnership with a local university, the municipality decided to negotiate and regularize the land in a peaceful manner through mediation.

DEVELOPMENT: This mediation deals with repossession. Eight mediation sessions were held on the forum and three public mediation hearings at Escola Padre Orestes in the City of São Leopoldo. The participants were:

- The Municipality, represented by the Municipal Secretary of Housing, and the Municipality Attorney's Office;
- The judicial mediators;
- Representatives of the occupied areas.

On 18 January 2018, in a ceremony at the Noble Saloon of the Municipality of São Leopoldo / RS, legal acts were enacted (Acts Projects nº 825, 826, and 827), which targeted public areas for purposes of housing policies, benefiting 157 families in the region. In due course, the Urban Inclusion Project was presented, and the MOU with Unisinos (University of Vale do Rio dos Sinos) to develop the Projects. Other sessions were held for negotiations between the Municipality and the families to address the key issues (processing of projects and resettlement of families) that were already concluded. Likewise, there was a meeting between the residents' committee and the Municipal Housing Secretariat – SEMHAB, to update information about the projects and strategies for regularizing the occupation.

AGREEMENT: Through Legislation Act Projects nº 825, 826, and 827, which target public areas for housing policies, 157 families from the region benefited, in an agreement signed at a public hearing held on 08/29/2018.

Another public area repossession lawsuit was added to the mediation. A property known as Cerâmica Anita. This suit was forwarded to the CEJUSC, to be solved through mediation at the end of 2015. It involved approximately 189 families. Ten sessions were held on the premises of the São Leopoldo forum, and in March 2016, followed by a public mediation session held at the occupied area. These sessions were attended by mediators, representatives of the occupied zone, representatives of the Public Power (Municipal Housing Secretary, the Municipality Attorney's Office, and the Coordinator of Urban Planning Projects). The Municipality decided to give away the area, and the families managed to stay in the place.

CASE # 3 – REPOSSESSION – PORTO ALEGRE/RS

Place: City of Porto Alegre – State of Rio Grande do Sul

Year: 2017

Procedure Duration: Ongoing

Number of Sessions: 6 sessions

Coordinating Mediator: Carla Zir Delgado

Mediators: Luciana Severo, André Strey, Celso Luiz Rodrigues

Court of Justice: CEJUSC – Judicial Center for Conflict Resolution – Central – Porto Alegre/RS⁶⁶

Dispute: Occupation of private property – 44 Hectares

DISPUTE: The dispute concerns 44 hectares of a private area occupied by families that have settled illegally. Although the owner was interested in negotiating the invaded land with the occupants, it was necessary to find the appropriate and safe means for this transaction.

DEVELOPMENT: This mediation refers to the process of repossession. It started with a multiparty mediation session with four occupants of the area, the owners, and the Municipality Attorney. This session clarified that the occupied area of approximately 44 hectares would be formally divided into three registrations.

During the negotiation phase, a public session was scheduled. The area would be negotiated in three registrations separately, with the implementation, assisted by the city of Porto Alegre/RS, of three cooperatives. In two other public sessions, representatives of each area, called A, B and C, were elected to attend the mediation session at the Porto Alegre Forum and thus start negotiations.

Occupants from areas A and B were identified. Area C missed the session. Several issues were raised regarding the legitimacy of the repossession judicial sentence and its effects.

A third public mediation session was held so that the occupants of area C could adhere. On occasion, a Study of area B was presented, prepared by the attorney for the three areas' occupants. In this public mediation session, the principles and procedures of mediation were again clarified, with the occupants of area A, area B, an occupant of area C, and representatives of DEMHAB (Municipal Housing Department of Porto Alegre). It was also established that mediation sessions would occur separately with each site.

AGREEMENT: Area A: there will be a subdivision by the area owner due to the small number of occupants (12 occupants). Area B: as it consists of 180 families, they will establish a cooperative with advice from the Municipality of Porto Alegre to negotiate and purchase the area. After the purchase, which will be negotiated between the cooperative and the owner in a mediation session to be held in the Porto Alegre/RS Forum, the City Hall will regularize the area through REURB (Legislative Act nº 13465 – Land and Urban Regularization of Municipalities).

In relation to area A, the mediation session was held with a Partial Agreement Settlement. The parties chose the allotment modality, as it was a small number of occupants, and the agreement was confirmed by the judge. Regarding the occupants of area B, the Coordinating Judge of CEJUSC of Porto Alegre was requested to guarantee credibility in the mediation process, where there was no consensus among the 180 families involved. The judge clarified the possibility of forming cooperatives, or

⁶⁶ Tribunal de Justiça do Rio Grande do Sul (TJ-RS). Processo: nº 001/1.05.0274206-6.

cooperatives and subdivisions in an ideal part of the occupied area. Area B has many problems with drug trafficking and other crimes. The occupants, on several occasions, requested the presence of the Public Prosecutor's Office. However, as it is a private area without a permanent preservation area, they could not intervene. In this context, forty families appointed an attorney with powers to compromise in the mediation process and, thus, form a cooperative in an ideal part of the land because the Porto Alegre City Hall offers some incentives and helps in forming these cooperatives.

This multiparty mediation is in progress. The problem of area A has been satisfactorily solved. Negotiations with area B and C remaining to be concluded. There is also a plan to subdivide area C due to the small number of occupants.

CASE # 4 – STEIGLEDER'S FAMILY – SÃO LEOPOLDO/RS

Place: São Leopoldo/RS

Year: 2018

Procedure Duration: 1 ano (parcial), restante em andamento

Number of Sessions: 10 sessions

Coordinating Mediator: Carla Zir Delgado

Mediators: André Strey, Celso Rodrigues e Silvia Arano

Court of Justice: CEJUSC – Judicial Center for Conflict Resolution – São Leopoldo/RS⁶⁷

Dispute: Reintegração de posse em área privada

DISPUTE: An extensive private area was sold to COHAB – Housing Cooperative. As the taxes due were not paid, they offered to return 12 hectares as payment of the debt. However, the occupiers desired to pay off the debt by splitting the land. One part would be paid by the Cooperative and another by the Movement for Housing. The owner was not willing to accept this payment format, hence the dispute.

DEVELOPMENT: The mediation started with individual sessions. The first meeting was held with the representative of the owner and the party's lawyer. Both reported that the occupied area came from a negotiation between the Housing Cooperative (Cooperativa Habitacional – COOHAP) and the owners. The situation has occurred since 2002, and there was a Term of Conduct Adjustment in 2010 (TAC). The negotiation has lasted for more than 20 years unsuccessfully.

Once the area's occupants were identified, about 20 people attended the individual mediation session and the representative of the Movement for the Struggle for Housing. It was explained to those present at the session the need for the occupants to elect their representatives. Thus, negotiations could proceed in multiparty sessions to be held at the Forum of São Leopoldo. In this session, some occupants of the area who did not belong to the group represented by the Movement for Housing were identified. They had already purchased plots of land from COOHAP.

⁶⁷ Tribunal de Justiça do Rio Grande do Sul (TJ-RS). Processo: 0331.15.0004863.1.

Once representatives of the different occupations were elected, the first multiparty mediation session was held. On occasion, the owners' representative dealt with the entire 12 hectares, which was returned to the owners due to the non-payment of other neighboring areas, previously acquired by Cooperativa COOHAP. During the mediation session, there was a need for the Housing Secretariat to clarify four hectares that the owners negotiated with the city to pay due taxes.

In the second mediation session, with the parties' presence, the remaining 8 hectares were divided due to the groups' different purposes that occupied the area. The owners initially resisted accepting this negotiation path; however, In the following mediation session, it was established by the mediators, the dismemberment of the area of 8 hectares in Area 1 – 38,489.96 m², and Area 2 – 43,113.98 m², demonstrated in the presented plants.

AGREEMENT: After six subsequent mediation sessions, a partial settlement agreement was reached, where the parties established the dismemberment of the area. Area 1 was negotiated between the owners and the COOHAP Cooperative for R \$ 700,000.00 (seven hundred thousand reais), and area 2 continues to be negotiated with the Movement for the Struggle for Housing. The process is suspended until the negotiation conclusion as it depends on the release of federal funds from the My House, My Life program (a federal government housing program).

CASE # 5 – URBAN MOBILITY – PORTO ALEGRE/RS

Place: Porto Alegre/RS

Year: 2020

Procedure Duration: 6 months

Number of Sessions: 16 sessions

Mediators: Carla Zir Delgado, Izabel Fagundes

Drafting mediator: Luciana Severo

Court of Justice: CEJUSC – CEJUSC – Judicial Center for Conflict Resolution – Corporate Law⁶⁸ – Porto Alegre/RS

Dispute: The collapse of public transport as an effect of the pandemic.

CONFLICT: The transport sector was one of the most affected by the social distance measures adopted to contain the progress of COVID-19 in March 2020. Porto Alegre's bus companies registered a 72% decrease in the number of users. In the situation of "force majeure," the pandemic accelerated the process of disagreement with the Municipality growing since 2015. The collective lawsuit demanded covering all costs in the system, which totaled approximately R\$ 67 million. In the current model, public transport is becoming unsustainable, at risk of extinction.

⁶⁸ Rio Grande do Sul Court of Justice (TJ-RS). Judicial Proceeding numbers: 0168906.03.2014.8.21.0001; 0168898.26.2014.8.21.0001; 0158993.94.2014.8.21.0001; 5021981.40.2020.8.21.0001; 5021983.10.2020.8.21.0001; 5030084.36.2020.8.21.0001; 0212301.74.2016.8.21.0001; 021229907.2016.8.21.0001; 9042531.90.2017.8.21.0001; 0045610.70.2016.8.21.0001.

DEVELOPMENT: All the parties involved in the conflict were identified: Porto Alegre City Hall, and the private bus consortiums Via Leste, MOB, Mais, and Viva Sul. After that, the conflict was mapped, and the initial planning of the multiparty mediation flow is outlined. Urban Mobility, as a social right, stood out from the beginning and, mainly, the interdependence of other rights such as the right to health, education, and work.

This mediation inaugurated the Corporate Law CEJUSC of Porto Alegre. Sixteen mediation sessions were held, among them joint and individual sessions to build the dialogue. That helps to structure the planning of transactions to maximize the possibility of a successful collaboration between the parties and also to experiment with estimates and positions to ensure that each party understands and considers the different oppositions and assessments. That dialogue also discourages proposals that may hinder negotiations or appear unrealistic and unsatisfactory and encourage the parties to obtain more resources and information. In some instances, the mediator suggests possibilities of resolution that enable the parties to formulate their own opinions. Also, a study of Brazil's successful experiences and the world regarding the case was performed to generate alternatives.

With such complexity, in the sessions were present the Public Prosecutor's Office's, the Coordinating Judge of CEJUSC, the third Vice-President of the TJRS, and the Internal Affairs of Justice, in the mediation sessions. They all played the role of supporting the mediators since in multiparty mediation, there is no confidentiality.

In times of pandemic, urban mobility mediation was configured as an ODR (*Online Dispute Resolution*), using technology to hold virtual meetings. Even with several participants and the 16 sessions, the mediators maintained absolute control, both in technical maneuvers and in the human factor's leadership. Due to the technology use, there was a need for a third mediator's participation in the drafter's role, that is, issuing reports and consolidating the relevant negotiation topics.

AGREEMENT: The concessionaires waived the amount of R\$ 27.8 million, referring to capital remuneration, depreciation, and service fees from 19 March to 31 July 2020, with the municipality contributing R\$ 39.3 million. The resources contributed by the Municipality of Porto Alegre will be reverted in credits to be used by people registered in the Federal Government's Single Registry. The users that will have the priority to use this credit are the ones who are in a situation of social vulnerability (to be used exclusively between 9 am and 4:59 pm and from 8 pm to 5:59 am). In short, the municipality and concessionaires agreed in a friendly and responsible manner, through productive dialogue on behalf of the community. The settlement agreement signed includes other items.

Conclusion

The social repercussion of urban collective conflicts shows the use of mechanisms capable of resolving them more quickly and by consensus than in the typical lawsuits

before the courts of justice. The diversity of collective conflicts involving public policies is found in mediation to prevent and resolve the conflict, shaping better communication to resolve the dispute, adhering to the promotion of democracy, and especially the parties' autonomy.

By analyzing the five cases, we exposed all the multiparty mediation protocol aspects, the diagnosis, public entities' interaction, and respective approvals. These cases reveal both the complex spectrum and repercussions of urban conflicts.

The selected cases' vision and stimulus clearly show that the theoretical-practical foundations, when applied with the profile of the mediator's experience, skill and feeling reach a promising agreement in the multiple dimensions of social benefit.

In case 1, in Viamão/RS, the mediation procedure lasted for six months and made 350 families legally own their home. In case 2, in São Leopoldo/RS, legislative housing acts were approved, allocating 157 families in one year. In case 3, in Porto Alegre, capital of Rio Grande do Sul, another case of repossession led to the negotiation of private lands by creating cooperatives and regularization by the Law. Case 4, from São Leopoldo/RS, which involved the Steigleder family, regularized land plot sale to squatters by dismembering the land. In Case 5, mediation reestablished communication between the parties and enabled an unprecedented agreement in 4 months.

We also emphasize the importance of partial settlement agreements in complex conflicts, as we observed in cases 3 and 4. The breakdown of the dispute into chapters becomes essential to its simplification and for the parties to focus on resolving urgent issues.

In short, the conflict can constitute itself in the cities' socialized space. The confrontation itself becomes an act of recognition, producer of transformation between the interactions and the resulting social relations. Thus, mediation is the path that leads to the dissemination of social pacification. The mediator, especially in multiparty mediation in urban conflicts, exercises the community organizers' function in its purest form.

In a nutshell, this paper aims to contribute to the ADR community and demonstrate that analyzing cases is relevant for improving multiparty mediation techniques and practices.

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