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Online Dispute Resolution in Brazil – Evolution Paradoxes

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It has been two years since the 1st Online Dispute Resolution Journey (I Jornada de Meios Eletrônicos para a Resolução de Conflitos - MESC) held at CEST.

Significant improvements have been achieved in these last 2 years, influencing behavior and achieving thousand Brazilians, literally thousand people and hundreds of companies.

At the same time, very little has been notices in the general population behavior to evidence that this can be considered a cultural shift, permeating the social fabric, as would be expected in an effective sociotechnical change.

Three are the points to be highlighted in this text that provoke the paradox in which the Brazilian market and society stands:

- acceptance of online dispute resolution as means for conflicts resolution,
- the lack of understanding and the need to become a socially acceptable practice and
- the culture of wanting to be under the rule of law and then litigate, bringing every Issue to the court.

The progress of online dispute resolution

The development of solutions linked to the legal environment by making use of technological resources is in full bloom. As demonstrated by organizations such as the Brazilian Association of LawTech & LegalTech Companies (AB2L), among all possible areas of application of technology in law, conflict resolution is one that stands out with the presence of several participating companies with different degrees of maturity.

Despite of the efforts to obtain more accurate data - as in the whole new market - the numbers reported tend to be influenced either by the quest for "share of mind" of the target audience, or by the necessary market conquest, or by the desperate search to repeat models and millionaire investment rounds.

In fact, the group of companies operating in this arena allows estimating that hundreds of thousands of cases have already been addressed, with positive results. It also constitutes an object of research to be carried out systematic marker research to define and measure the overall market place.

Non-recognition of the negotiated solution

Although it is debatable, the search for negotiated solutions is not present in the country's culture. The positioning of the consumer, facing the bad service or faulty product, is still seeking to express their frustration through multiple social and personal channels. There is no confidence that the quest for solution with the service provider or manufacturer of the product leads to the resolution of the issue. There is in fact a search for channels where they can expose the provider or manufacturer to a public trial, with no possibility of defense. In fact, the response to this channel is based on three lines:

- protect the company's image on the marketplace;

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- ignore the complaint in an attempt to discredit the channel;
- respond directly to the client (from the exposure of the problem in the channel), or indirectly (redirecting the client to talk with the company).

In any case, the damage to the company image was already made and the quality or speed of the response or resolution of the problem, in general, is not reflected in the same channel where the exposure was initiated.

The Litigation Culture

Just as the child seeks conflict when he or she feels trapped and she knows that a protector (father or mother) can support her, our society increasingly believes that it has rights without duties, and that there is an ill-defined and identified entity as a government or judiciary that has unique role to satisfy such rights and protect them. The litigation is sought under the aegis of the judiciary.

In this way, from minor conflicts in interpersonal or commercial relations to the major corporate issues, paternalism is sought or more seriously a protection of the conflicts, as if it were an obligation of the judiciary or the government and exempt each and every one to resolve the conflict not expecting anyone to exercise their skills and capacities to negotiate. There are two tacit assumptions: the consumer is always as incapable of seeking his right and that of the company always as alien to the problem of its consumer. There is no recognition that in a free and competitive economy it is in the company's interest to keep the consumer satisfied and it is in the interest of the consumer to have the company that serves him better and better. This recognition has been weakened by years of state interference, whether in statist movements or in legislation, in many cases irrelevant and excessive about small details of ordinary life.

Perspectives

The evolution and survival of the most adaptable is inexorable, even in social or collective behaviors. The efforts of the new Lawtech or Legaltech companies have demonstrated their results in building operational models that lead to better solutions for both consumers and businesses. The cost and timing of a judicial system burdened with issues in such a complex spectrum as it is today exposes its inefficiency and lack of practicality to everyday consumer issues.

The change in expectations, procedures and costs involved is therefore natural and should occur both in companies and in the very structure of the judiciary and related associations, as well as in the consumer itself. This change has begun, even if it is not yet permeated and intrinsic in the culture.

The operation model of new companies, new business leaders and the practical and formal education of new generations in the use of technologies as facilitators of day-to-day processes, including conflict resolution, tends to impose, even if not at the speed that should be expected in a free and competitive society.

More disruptive technologies such as artificial intelligence, blockchain, and data science will play their role, but within a visible planning horizon, they will still be tools that can and will shape changes in society. And there is plenty of room and variants for results.

The paradoxes between good results, lack of recognition and cultural conflicts will be solved in the process of evolution or application of new technologies.

Efforts to bring the academy closer to the real issues in seminars and discussion days are another small building block on this evolutionary path.



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This article is a result of the authors' ascertainment and analysis, without compulsorily reflecting CEST's opinion.