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Economic Analysis of Judicial Conciliation in Brazilian Financial Institutions

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Abstract

The present work aims to analyze the economic efficiency of judicial conciliation in defaulted credit contracts, through a case study of a major Brazilian financial institution, between the years 2014 and 2019. From the perspective of the economic analysis of law, this study analyzes the efficiency of conciliation in collective settlement events organized by the Federal Court, using three methods of assessment: maximization of gains and minimization of costs, Pareto efficiency, and the Kaldor-Hicks criterion. The results indicate that conciliation, when successful, demonstrates economic efficiency; however, as a public policy, it does not achieve indices compatible with the advantages stemming from its adoption. These findings contribute to the scientific literature that studies alternative dispute-resolution methods by providing empirical evidence for financial institutions and policymakers in the sector.

JEL classification numbers: K10, K12, K15, K41.
Keywords: Economic Analysis of Law, Pareto's efficiency, Kaldor-Hicks criterion, Judicial Conciliation, Economic Efficiency.

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1. Introduction

The term "multi-door justice" was first used by Professor Frank Sander (1979), from Harvard Law School. Multi-door justice no longer considers jurisdictional activity, embodied in the imposition of a decision by the state judge, as the only one capable of resolving conflicts. Therefore, the responsibility for resolving a conflict becomes the responsibility of all those interested in a given issue, based on a structured system with different rights protection mechanisms, with jurisdiction being one of several available techniques.

Brazilian legislation has made significant progress in providing for the use of Alternative Conflict Resolution Methods (MASCs). Examples of this are the Arbitration laws (Law No. 9,307 of 1996), the Special Civil Courts (Law No. 9,099, of 1999), the Resolution of the National Council of Justice No. 125/2010 and the Civil Procedure Code (Law No. 13,256 2015). In theory, it is assumed that the adoption of these methods would have the potential to increase the scope of social pacification.

Along the same lines, the CPC/2015 was prepared from the perspective of economic rationality, since its Explanatory Memorandum establishes that the process must be designed and applied to achieve the objective of reaching an adequate end, in the shortest time and at the lowest possible cost. The diploma contains an express provision, in Article 3, §§ 2 and 3, that it is up to the State, the judiciary bodies, the parties, and lawyers, whenever possible, to promote a consensual solution to conflicts.

It should be noted that the legal framework under construction does not intend to restrict free access to justice, which is a constitutional guarantee, but to offer alternatives for resolving conflicts more quickly. In several countries, these alternative methods have proven to be an important instrument of social pacification, and can be used at any time during the dispute: both before judicialization, the so-called pre-procedural conciliation, and during the process, the socalled procedural conciliation.

A great exponent in the application of alternative means of resolving disputes is the USA, where the system developed to encourage consensual resolution of agreements is efficient, achieving success most of the time (Almeida, 2016). It is appropriate to point out a divergence between these data: while Cooter and Ulen (2010) defend a 95% success rate, Chang and Klerman (2022) point out that this percentage is below 70%, depending on the material submitted. to consensual resolution.

In Germany, an empirical study on a random sample of processes from 2009 found a percentage of 32.44% of agreements reached, in a total of 860 civil cases analyzed (Berlemann and Christmann 2018). The authors also highlight that policymakers around the world are interested in designing institutions that promote higher settlement rates, aiming to alleviate the overburdened judiciary.

In China, in turn, Wenying (2005) highlights the importance and success of conciliation, in its various forms, playing an important role in resolving disputes.

This happens both outside the formal judicial system, with a success rate of 94.8%, and within it, in the so-called institutional conciliation, with a conciliation success rate of around 80%. Here, too, Chang and Klerman (2022) present a measurement metric that points to a success rate in Chinese judicial conciliation of around 60%, lower but still relevant.

Chang and Klerman (2022) indicate that the country's legal system influences its results in conciliation. Nations that apply common law, such as the United States, United Kingdom, and Australia, exhibit higher rates of agreement. Countries whose legal systems are based on French civil law, such as France and Belgium, have lower rates. Meanwhile, countries that adopt legal systems belonging to the German or Nordic civil law families, such as Germany, China, and Sweden, tend to record agreement rates at intermediate levels.

In all legal systems, efforts are maintained to increase the rates of alternative conflict resolution, given the observation that this instrument can achieve objectives that the end of the demand for the imposition of a judicial decision cannot: "obtain faster and less costly resolutions, tailor creative solutions, meet business objectives, improve relationships, enhance the quality of human interaction, and 'open up' the dispute resolution process to the broader community" (Stipanowich, 2004)

In Brazil, whose legal framework is influenced by several legal systems (De Lyra Tavares, 1990), alternative conflict resolution methods were elevated to the status of public policy, through National Justice Council Resolution 125/2010. The conciliation efforts carried out by the Judiciary since 2008 began to take place, after the publication of Resolution 125, as a public policy initiative and, for this reason, strengthened as an instrument of social pacification.

Thus, faced with the problem of excessive litigation that clogs our courts, combined with the success of conciliatory means in other countries, it was decided to develop a public policy to encourage alternative conflict resolution, to face a problem that affects society. and the consequences arising from it. However, despite the efforts concentrated on this policy, its results still present a timid performance in the country.

The yearbook Justice in Numbers (JN), published by the National Council of Justice, presented in its 2023 edition the historical series of agreements in all segments of the Judiciary, in which it is observed that the highest percentage of judicial conflicts resolved through conciliation took place in 2016 and reached 13.6% (JN 2023:193), of a total of 27.6 million 1st Degree sentences and 2nd Degree terminative decisions (JN 2023:97).

Borges (2023) highlights that among the goals established by the judiciary in all its segments, only one refers to the alternative solution of judicialized conflicts, with no specific goal for pre-procedural conciliation. A possible reason for such discreet action would be the fact that access to justice is a constitutional guarantee. However, it is worth questioning whether this situation does not conflict with the very purpose of the judiciary, which is to serve those under its jurisdiction.

Conciliation does not mean denying free access to justice, but offering another way to resolve disputes over available rights, based on cooperation between the parties

and not the imposition of a decision by the State-Judge (De Freitas and Satori, 2018). And this is important, especially given the reality that prevails in our courts, which shows that the average annual rate of justice congestion is 79%, that is, of 100 cases in progress, only 21 are resolved.

The periodical published by the CNJ shows that the pending stock of lawsuits awaiting legal resolution reached 81 million cases in 2023 (JN 2023:94). It can be concluded that the courts are unable to quickly process processes, causing congestion in judicial service that affects and dissatisfies society. At the same time, society is the main litigant, thus creating a vicious circle that moves away from the search for social well-being.

Having information on these exorbitant numbers of disputes in progress makes it easier to understand the importance of alternative conflict resolution methods and, given their results, the need to seek to increase their efficiency to contain the growing litigation and, consequently, to the increase in social pacification, as is happening in other countries.

Considering that the State has created rules in the light of economic rationality, seeking greater efficiency in resolving disputes, whether judicial or not, there is nothing more appropriate for evaluating conciliation than using means provided by economic science applied to the analysis of law. This instrument proves to be important for evaluating the economic efficiency of conciliation, not only in resolving the existing conflict in the specific case but also as a means of maximizing the well-being of society.

In this context, the national financial institution considered in the research occupies a prominent position among the biggest litigants in the Federal Court. More precisely, 2nd position as a defendant and 3rd position as a plaintiff, appearing as a party in around 3 million processes, according to the Statistics Panel - CNJ. Their active participation in the conciliation efforts carried out by the judiciary allowed the collection of metadata in the time frame presented in this research.

This is data relating to the reconciliation of credit contracts which, in addition to recovering amounts, aims to resolve disputes and, collaterally, minimize the effects of default. In this regard, according to information from the Serasa Experian website, published on January 20, 2020, it reached the mark of 63.8 million people in November 2019, compared to 62.6 million in November 2018. These quantities have been growing, reaching the number of 71.45 million negative people in the country in July 2023.

Therefore, the present work aims to investigate, based on the economic analysis of law, whether conciliation has been efficient as an instrument for recovering defaulted credits, reducing costs and default time. To this end, a case study is carried out, considering data from a large Brazilian financial institution, regarding the results obtained in conciliatory initiatives between the years 2014 and 2019. This information will be subjected to the comparison of the three forms of efficiency measurement suggested by Fernandes (2013): maximizing gains and minimizing costs, Pareto efficiency, and Kaldor-Hicks efficiency.

In addition to the temporal limitation, the condition of contracts signed with exclusive resources of the financial institution was also applied as a criterion for the selection of metadata. This limitation of the research is justified by the fact that in this hypothesis there is greater autonomy for the entity to establish parameters for conciliation. This is different from what happens in loan contracts with public resources, in which criteria for eventual agreements are established by the holder of these resources.

It is also important to highlight that the choice of judicialized contracts that will be submitted to conciliation is made based on objective conditions, such as accounting classification H, according to CMN Resolution No. 2,682/1999, which represents credits overdue for more than 180 days, already released. to loss. Eligible contracts are subject to a discount on late payment charges, with only the value of the debt remaining, which may, depending on the type of banking product, represent a discount of up to 90% of the debt.

In pre-procedural reconciliations, the credits, as a rule, were not recorded as an accounting loss, due to delays of less than 180 days. The agreement, in these cases, may offer a discount for payment of outstanding installments, and enable the resumption of the contract or its restructuring, with debt renewal, depending on the banking product under discussion and the recovery policy adopted. In contracts with a real guarantee, pre-procedural conciliation results in the suspension of acts to recover the assets that guarantee the loan.

Finally, it should be noted that the research period, from 2014 to 2019, was intentional, to avoid the period of the COVID-19 pandemic, a time in which the financial institution acted strongly as an instrument to execute public policies to mitigate losses. financial consequences resulting from the lockdown, which would have the potential to impact the results of the analysis, as a result of the State's strong intervention in the economy.

As variables for the present empirical analysis, the following data were provided: total number of contracts taken to conciliation in each year of the research, judicialized or not, and the number of agreements signed. There is data relating to the average value of credit recovery in each type of reconciliation and the average time of default in the period. In addition, in judicialized contracts, the average legal cost is borne by the financial institution.

For the proposed analysis, in addition to this introduction, the work has four more sections for the presentation and treatment of the proposed topic, as follows: section two presents a theoretical review, section three explains the methodology to be applied and the data to be used in the analysis, in section four the results are presented and discussed and section five presents the research conclusions.

2. Theoretical Reference

The central object of Economic studies consists of human behavior, which occurs as a result of the adoption of conduct by agents, which can be verified in a market context, based on mechanisms that enable the free exchange of resources between individuals or organizations, and/or of authorities, in a clear restriction on freedom of choice (Fernandez, 2013). Both contexts coexist in conciliation, as at the same time as there is negotiating freedom, there are rules and parameters established by the financial institution for classifying a contract as eligible for agreement, in addition to parameters for negotiating the credit due.

As Yeung (2017) points out, contrary to common sense, the focus of the study of the economy is not money or the market, but the consequences of individuals' decisions or choices and their implications in reality, which concludes that the application of Economics to the study of Law is an important instrument for drafting rules, whose purpose is to maximize results for social well-being.

Furthermore, according to Fernandez (2013), to analyze human behavior in the market context, the understanding that this is an interaction of a pecuniary nature only must be overcome, but that it encompasses a scenario in which an approximation of interests and the 6 obtaining of utilities through the subjects' freedom of decision, even if guided by rules, which may have pecuniary implications, but are not restricted to them.

Parreira and Benacchio (2012) observe that this economic discipline does not experience unanimity among scholars, since while some understand that there is an exclusion of moral principles and values for human dignity, its defenders see it as an instrument that allows legal issues to be more effective. in maximizing wealth and allocating scarce resources more efficiently, with the subsequent improvement of social well-being.

Traditional Economic Theory establishes basic assumptions for understanding its application to Law: rational choice of individuals, which is independent of cognitive capacity, education, or specific knowledge, and can be made out of utility, necessity, or pleasure; and scarcity, with time and money being most affected. Every rational choice is limited in origin by the finiteness of time and money. This gives rise to two important concepts: tradeoff, according to which every choice results in a renunciation; and opportunity cost, which refers to the value of what was not chosen (Yeung, 2017).

Thus, every rational choice has an underlying reason, an incentive to make a certain decision over another. The most basic incentive is the pecuniary one, but there are others, also objective, such as the incentive not to break the law to avoid a sanction or penalty, the incentive not to have the CPF/CNPJ registered in credit restriction registers when maintaining a debt, and many other non-financial uses, which are also considered in a rational choice.

Such issues studied by Economic Science serve as a basis for analyzing the conciliation proposed here, by placing individuals and organizations with clashing interests to negotiate a solution that resolves the conflict that arises from a breach

of contract, whose existence is determined and limited by law, permeate the assumptions and concepts discussed above.

Economics applied to Law addresses the intersection between Law and Economics, highlighting the importance of understanding human decisions in a context of scarce resources, based on the development of a theory of value applied to choices made by the State, organizations, or the individual and its legal consequences. To this end, it offers a theoretical tool to understand social facts and the responses of social agents to changes in their incentive structures (Gico Jr., 2010).

Thus, the economic analysis of Law is seen as useful for elucidating paths for elaborating and evaluating the consequences of norms and public policies, with a view to their social objectives, including efficiency, impacts on growth, and concepts of equity. To this end, it is important that the analysis of efficiency also considers its potential for future gains, from an intertemporal perspective (Meneguim and Bugarin, 2017), bringing concepts from the discipline of Welfare Economics into the discussion.

As Salama teaches, in the economic analysis of Law, efficiency is related to the maximization of a measure of value (Botelho, 2016). Social pacification, through cooperation between parties in dispute, is the value chosen by public policy to encourage conciliation. Thus, this work proposes to analyze the results of conflict resolution through conciliation (ex-post) 7 and reflection on its economic efficiency (Fernandez, 2013) for the financial institution, from the perspective of economic analysis of Law.

Considering that Brazil is one of the most litigious countries in the world, with the prevalence of seeking to resolve conflicts through judicial imposition, instead of cooperation between the parties, the tools of economic analysis of Law can greatly contribute to the structuring and rooting of a collaborative culture in resolving disputes and its adequate fit in harmonious methods of resolving conflicts and disputes of interests (Travain, 2022).

Occupying a prominent place in the study of Economics applied to Law, the analysis of economic efficiency rests on decisions about the distribution of resources (Mauricio Junior, 2015), or the best use of these scarce resources in the search for social well-being (Das Neves Gonçalves and Stelzer, 2012). For this reason, as a measure of efficiency in conciliations, it is expected that the result will be achieved quickly and effectively (Garcez, 2013).

One of the ways of measuring economic efficiency is carried out by analyzing the effectiveness of the actions and mechanisms used by agents to achieve a certain result. Efficacy, within the traditional view of economic analysis of Law, is a relationship between obtained results and desired results or between the established goal and the goal that was effectively achieved (Vellozo and Detoni, 2019).

It turns out that within the conciliation policy adopted by the financial institution, there is no specific goal for conciliation efforts. It can therefore be assumed that the target for reconciling defaulted credits submitted to conciliation is always 100% of contracts eligible for agreement and taken to joint efforts. Therefore, to this traditional assessment of effectiveness based on achieving the goal, it is proposed

to apply the concept of operational effectiveness, as presented by Hexsel and Henkin (2003).

The authors explore Michael Porter's (1996) concept of operational effectiveness in the light of Economic Theory, as an instrument for increasing efficiency in a competitive situation. In it, operational effectiveness is presented as the ability of an organization to carry out its similar activities more efficiently than its competitors, based on the analysis of quality, speed, cost, efficiency, and innovation in operational activities.

This analysis, considering the competition between the parties involved, would be possible if the research started from the comparison of the results of the reconciliation between financial institutions and their defaulted contracts of the same nature. However, in the case of reconciling defaulted contracts signed between a given bank and its customers, measuring operational effectiveness should not aim to achieve an advantage in a competitive environment, which is precisely the idea that conciliation aims to mitigate.

To transpose the concept of operational effectiveness in evaluating the results of conciliation between parties in dispute, it is necessary to remove the search for competitive advantage from the equation, to establish a correlation between the results of conciliation as an effective instrument for recovering credit from quickly, reducing the costs arising from default.

This is because costs are minimized when the parties opt for an agreement, avoiding or reducing the costs of demand (Correia and Mendes, 2013). This inference is by the Coase Theorem (1960), which established the foundations of the Economic Theory of Contracts, whereby the parties do not only consider production costs, but also transaction costs, and if they can agree to a cooperative way, they would maximize social gains (Yeung, 2017).

A parenthesis is opened here to outline considerations about the two hypotheses contained in the Coase Theorem: efficiency, whereby the parties can reach an efficient solution in a dispute; and invariance, according to which the efficient solution will always be reached, regardless of the applicable legal system (Klein, 2011). Note that the theorem is based on the concept of the prevalence of rational choice, already discussed above, used by traditional Economic Theory, to support the development of economic models.

Degani (2009), in turn, conceptualizes financial expenditure as all expenses incurred when it is necessary to resort to the market, which includes negotiation, drafting, and guaranteeing that a contract will be fulfilled. However, for Cooter and Ulen (2010), costs involve any loss resulting from the resolution of a dispute, and in the case of judicialized cases, such costs can be understood as the sum of administrative and judicial costs, which include the assumption of the risk of the occurrence errors in the application of the law.

In the context of this research, the failure of conciliation results in the option of initiating or maintaining litigation. This option, in addition to increasing transaction costs, also increases social costs. Neves (2016), when dealing with social costs, cites the work of K. William Kapp, for whom these are costs “not paid” by the agents

that produce them, but which can be minimized through reforms and appropriate institutional changes, that is, State action

Porto (2015), analyzing the Coase Theorem, established that efficiency will always be present when transaction costs are zero, regardless of the applicable standard. Even if it is considered that zero transaction costs only exist as an ideal hypothesis, the premise of searching for solutions that maximize the efficiency of transactions to achieve the reduction of these costs and, at the same time, the improvement of the benefits and conditions of agents, remains valid.

Thus, the premise is that what should be sought are solutions that maximize the efficiency of transactions, reducing as much as possible the costs arising from the conflict, both transaction costs and social costs. The conciliation efforts are intended to be part of this premise of reducing transaction costs, aiming for the parties to reach the best possible result, by mutual understanding, with the minimum imposition of a solution by the State.

In this work, we intend to contribute to the specialized literature, bringing empirical evidence about the conciliation carried out in a financial institution in Brazil, through the use of tools from the economic analysis of law. It is intended to present inferences not only about transaction costs but also about their social costs, which emanate from default and result in overloading the judicial machine, with its consequences for the parties involved in the conflict and society.

3. Methodology

According to Gico Jr. (2010:26), the economic analysis of law is not characterized by determining values that guide society, recognizing that each class of problem requires the application of methods or techniques appropriate to the concrete situation, without departing from the inexorable reality of that the parties do not have all the appropriate knowledge to approach any problem in the best way, converging with the idea that coined the term multi-door justice.

It is considered that for the application of analysis methodologies, it is necessary to start with the choice (reduction) of relevant variables to simplify the analyzed problem, to allow a more punctual and precise approach to factual issues, never removing the need for a review of theoretical models and their conclusions. This reinforces the scientific method that permeates the applied methodologies.

Fernandez (2013) establishes as an efficiency analysis methodology the comparison of three perspectives: 1) maximizing gains and minimizing costs; 2) Pareto efficiency, reaching Pareto optimum; 3) Kaldor-Hicks criterion, which evaluates the efficiency of a policy or change based on the compensation potential of the harmed party, even in theory (Botelho, 2016).

In item 1, efficiency is achieved when it is impossible to increase benefits without increasing costs; in item 2, efficiency is achieved when it is no longer possible to improve the situation of one of the parties, without worsening that of the other. There is also the concept of Pareto superior when it is possible to improve the situation of one party, without making the other party worse; finally, in item 3, the

criterion by which, to improve a given situation, one of the parties agrees to bear more losses, given the possibility of future compensation.

Still about the Kaldor-Hicks criterion, Botelho (2016) clarifies that its main purpose is to consider situations that go unnoticed by Pareto efficiency, from an efficient view of socioeconomic relationships and decisions. Contrary to the theory developed by Pareto, the Kaldor-Hicks efficiency criterion allows identifying efficiency in situations in which improving the condition of one party results in greater harm to the other, as long as there is a possibility of compensation (Fernandez, 2013).

According to this criterion, even if a situation causes losses for one of the parties, the expectation that there may be compensation makes its result efficient, as there is a prospect of general improvement about the previous situation (Fernandez, 2013). In other words, the Kaldor-Hicks criterion allows the equalization of the imbalance initially identified by the Pareto method. This is why the comparison between the three conceptions of efficiency is important to arrive at a more robust analysis of the results.

The first two efficiency measurement items have to do with the balance between losses and gains resulting from the interaction between the parties, while the Kaldor-Hicks criterion applies in a situation of imbalance, when one of the parties bears a greater cost in favor of the improvement of an adverse social or environmental situation, with the possibility, not the certainty, of future compensation. In other words, the Kaldor-Hicks criterion is applied based on an exercise in predicting the dynamic efficiency of individuals' choices.

Thus, a case study is carried out considering a large Brazilian financial institution. By applying these efficiency perspectives, it is possible to analyze whether the results of the reconciliations carried out by the bank maximize benefits and minimize costs and whether it is possible to achieve a balance where neither party is harmed. Or, even, whether the benefits for one party justify potential losses for the other, as long as there is the possibility of compensation. This will allow us to assess whether conciliation facilitates the search for mutually beneficial solutions efficiently.

Between the years 2014 and 2019, the financial institution took 86,226 defaulted contracts to conciliation efforts organized by the Federal Court, of which 21,691 were resolved by agreement, which is equivalent to a general percentage of 25.15% of successful conciliations. In almost all years of the series presented, the bank's success percentages in the contracts subject to research are higher than the averages presented in the Justice in Numbers yearbook (JN 2023:193).

Even so, these same percentages demonstrate that there is room for improvement, compared to the results presented in Table 1, which indicates the total number of contracts taken to conciliation each year of the cut-off, with the number of agreements signed and their respective percentage.

Table 1: Number of contracts taken to conciliation

Non-Judicialized Contracts				Judicialized Contracts		
Year	**Contracts**	**Agreement**	**%**	**Contracts**	**Agreement**	**%**
2014	5.792	840	14,50%	7.054	1.940	27,50%
2015	13.104	1.103	8,42%	6.733	1.427	21,19%
2016	6.873	1.895	27,57%	6.818	1.253	18,38%
2017	2.835	1.442	50,86%	12.184	3.319	27,24%
2018	3.274	529	16,16%	12.790	3.446	26,94%
2019	1.321	527	39,89%	7.448	3.970	53,30%
Total	33.199	6.336	19,08%	53.027	15.355	28,96%

Source: Prepared by the authors.

About the recovery of credit resulting from these joint efforts, it can be seen in Table 2 that there is no substantial difference between the amounts collected in pre-procedural and procedural agreements, making it possible to infer that in the latter there is a transaction cost- borne by the financial institution considerably greater than in the first.

Table 2: Average value of reconciliations

Non-Judicializes	Contracts	Judicialized	Contracts
Contracts Hab	Contracts Com	Contracts Hab	Contracts Com
2.448,06	33.162,33	3.022,20	37.231,85

Source: Prepared by the authors.

Regarding the duration of default, Table 3 also shows the time from default to agreement. This table shows a significant temporal difference in conflict resolution. It should also be noted that the average amount spent on legal proceedings is R$1,254.65.

Table 3: Average time for agreement on contracts submitted for conciliation

Non-Judicialized		Contracts	Judicialized	Contracts
Contracts Hab		Contracts Com	Contracts Hab	Contracts Com
Dias	18	22	406	1.371

Source: Prepared by the authors.

In the next section, the metadata relating to reconciliation contained in Tables 1, 2, and 3 will be subjected to an economic analysis of their efficiency, based on a comparison between the three forms presented above: balance between cost and benefit, balance between the situation of well-being of the parties (Pareto efficiency), and in the event of an imbalance, the possibility, even in theory, of compensation (Kaldor-Hicks criterion).

4. Results

The metadata provided, referring to the results of the Federal Court's conciliation efforts, allowed some insights regarding its operational effectiveness and the consequent economic efficiency resulting from the success of reaching an agreement that resolved the conflict. Initially, it is necessary to establish some preliminary questions, which guided the economic analysis of the conciliation.

First, this work considered the results of the conciliation, based on the analysis of the relationship between the cost-benefit methodologies and the Pareto criterion, to measure the static or immediate efficiency achieved at the time of the agreement. It was also proposed to carry out a predictive exercise to analyze its dynamic or intertemporal efficiency as a public policy, according to the Kaldor-Hicks compensation criterion.

Second, the time from default to resolution of the dispute is crucial for this analysis of the economic efficiency of conciliations. This happens because the longer the default period, the higher the debt value and transaction costs will be, directly affecting its operational effectiveness. Therefore, in a default that lasts over time, it seems correct to infer that the financial institution, in addition to assuming a higher transaction cost, renounces a larger portion of its credit to make reconciliation viable, see values in Table 2.

Third, it is necessary to recognize that default has an intrinsic social cost that goes beyond the existence of an unpaid debt. The problem does not lie in a single debt, but in its entirety, which directly affects the cost of money and access to credit. As the cost of money increases, access to credit becomes more difficult for society. This negative externality of default has consequences for social well-being, as it excludes part of the population from the financial and consumer market.

So, even with a greater immediate loss, the solution of the already judicialized debt through conciliation, in the context studied here, still represents an improvement in the previous situation of default, and this improvement meets the premise of Pareto efficiency, even with a higher transaction cost. Conciliation, therefore, regardless of when the agreement is reached, does not just resolve a debt. It emanates immediate benefits that cover more than just pecuniary issues.

Below is Table 4, which shows a summary of the application of the methodology used in analyzing the results of the conciliation modalities, followed by the corresponding economic analysis.

Table 4: Results

EFFICIENCY							
		Time of Recovery		**Benefit-Cost**		**Efic. Pareto**	**Kaldor-Hicks**
		Default	**Value**			**Improvementin**	**Possibility**
						Situation	Compensation
pré-proc	com.	22 days	R$ 33.162,33	Increase	Decrease	Present	Present
	hab.	18 days	R$ 2.448,06	Increase	Decrease	Present	Present
Proc	com.	1.371 days	R$ 37.231,85	Decrease	Aumenta	Present	Present
	hab.	406 days	R$ 3.022,20	Decrease	Aumenta	Present	Present

Source: Prepared by the authors.

Analysis of the Economic Efficiency of Pre-Procedural Conciliation: this type of conciliation showed results that suggest its economic efficiency, with reduced transaction costs and greater benefits for interested parties. This denoted a greater balance between cost and benefit obtained by the parties, since, while the first is reduced, the second is maximized. When successful, the conciliation resolved the debt in a short space of time, with lower transaction costs and more effective credit recovery.

In the same way, when analyzing its results based on Pareto efficiency, pre-procedural conciliation suggested an improvement in the situation of the parties about the previous default condition, which had a positive impact on both those involved and society. Concluding by the static economic efficiency of procedural conciliation, as a form of alternative conflict resolution, also about the second method of analysis was chosen.

Analysis of the Economic Efficiency of Procedural Conciliation: in it, the immediate economic efficiency was reduced by the longer time of default and, consequently, by the higher cost of the transaction, which is directly reflected in the value of the debt and the need for a greater tradeoff by the financial institution, causing a more pronounced imbalance in the cost and benefit experienced by the parties. The fact that a larger portion of your credit is waived, with higher transaction costs, results in a greater loss borne by the bank.

Although the tradeoff meant a greater immediate loss for the financial institution, the opportunity cost made the agreement advantageous. This is because, despite the greater waiver of its credits, for the financial institution, the resolution of the dispute still represented an improvement about the previous default situation, as it resulted in the write-off of the accounting entry as a loss. It was concluded that despite a higher cost, conciliation also resulted in an improvement in the situation of the parties, which is in line with Pareto's efficiency.

Application of the Kaldor-Hicks Criterion to the Analysis of Economic Efficiency: through data analysis based on the application of the Kaldor-Hicks criterion, it was assessed that, whether in pre-procedural or procedural conciliation, there is a prospect of future compensation for any initial imbalance arising from the

agreement. It should be noted that compensation does not need to occur, nor does it necessarily mean financial gains. This perspective of compensation goes beyond the objective of the public policy established by the CNJ, which is to offer another instrument of social pacification and may generate positive externalities, as it favors the financial sanitation of credit borrowers.

In other words, in the specific case of joint efforts to reconcile overdue credits, possible intertemporal compensation for the losses experienced by the financial institution could be the re-establishment of the commercial relationship between bank and customer, the recovery of access to credit and the purchasing power of the debtor, the contribution to the fall in default rates and the cost of money, reflecting positively on the movement of the economy, among other utilities, with positive repercussions on society.

By applying the Kaldor-Hicks criterion, it is enough that these utilities are possible to occur for the conciliation to be considered efficient, despite the less favorable immediate conditions supported by the financial institution. Here, it is a dynamic efficiency, whose existence and benefits represent the compensation of initial costs, measurable over time (Meneguim and Bugarin, 2017). In other words, the result of conciliation has the potential to transcend static efficiency, to achieve dynamic efficiency, with the total or partial reversal of its social costs.

All of the above considerations demonstrated, based on a deductive theoretical model, based on the comparison between three tools of economic analysis of law, the economic efficiency of both static and dynamic conciliation, not only for resolving a conflict between parties but with potential benefits for society, which exceed the transaction costs borne by the financial institution at the time of the agreement.

Regardless of the advantages of conciliation, notably pre-procedural about procedural, the metadata provided by the bank demonstrated two issues: 1) the percentages of agreement achieved in procedural conciliation were only lower than those achieved in pre-procedural in 2016 and 2017, even with this one's greater efficiency compared to that one; 2) most contracts did not end by agreement, opting to wait for a decision to be imposed by the judiciary, which is the least efficient option.

This finding is inconsistent with the second hypothesis contained in the Coase Theorem, which refers to invariance since the parties most of the time do not opt for the most economically efficient solution. Given the losses resulting from maintaining the legal action, which contribute to the increase in costs borne by the parties, as well as the negative externalities imposed on society as a whole, it is correct to conclude that not conciliating is the least efficient option.

It should be noted that the present work analyzed efficiency based on the concept of perfect rationality, whereby individuals will always seek the choice that maximizes their benefits. However, the reality demonstrated in this research pointed to the existence of biases in these choices, the result of which did not always result in the choice of the optimal solution to a dispute. Such cognitive biases represent what behavioral economics calls limited rationality, which leads to decision-making

with inefficient results (Tabak, 2015).

The study of these biases is the subject of behavioral economics and denotes the multidisciplinary nature of the economic analysis of law. Its relevance lies in the fact that, from the understanding of this limited rationality, it is possible to develop solutions that mitigate its influence on choices, making decision-making more efficient. Therefore, this is an aspect that deserves attention from researchers in the area of economics applied to law.

About the general numbers presented for conciliation, and even without a target set for the completion of agreements, when considering the total number of contracts in the sample, the results presented in Table 1 demonstrate that despite all efforts towards a cooperative solution of the dispute, there is a low efficiency of the public policy instituted by the Judiciary, with results below those achieved by other countries.

Therefore, even if conciliation is economically efficient when considering the specific case, the conciliatory policy instituted by the Judiciary, put into effect in collective efforts, when considering the total picture of default, even with all the financial and social incentives resulting from it, can be classified as inefficient as an instrument for mitigating default, social pacification and maximizing well-being.

It is noteworthy, within this context of default and its social costs, that in 2023 the Federal Government launched a public policy aimed at the financial restructuring of the most vulnerable portion of the population: the Desenrola Brasil Program. Through MP 1,176/23, converted into Law 14,690/23, the Federal Government established rules for debt renegotiation that have already benefited 10.7 million Brazilians and transacted 29 billion in debt, producing important research material on static and dynamics of this public policy.

It should be noted that the scope of the Federal Government's Desenrola Program transcends the public policy of encouraging conciliation, established by the Judiciary. While the latter aims to encourage the resolution of conflicts subject to judicialization, the former aims to contribute to the financial health of the most vulnerable portion of the population, allowing their return to the credit and consumer market.

In other words, these results, which represent positive externalities in the conflict resolution policy established by the CNJ, in the Desenrola Program become the objective of the Federal Government's public policy. In common, both policies have the immediate effects of resolving a dispute between parties and, as an intertemporal effect, resulting in the financial recovery of those involved, with possible repercussions on economic growth, due to the financial inclusion of part of the population.

5. Conclusion

This work sought to investigate the efficiency of judicial conciliations in financial institutions, based on the economic analysis of law. To this end, a case study was carried out considering a large Brazilian financial institution and its characteristics related to the number of contracts submitted to conciliation, the number of agreements made, the average amount recovered in each type of conciliation, and the average time of default, upon which three economic efficiency analysis methodologies were applied: balance between cost incurred and benefit obtained; Pareto efficiency and Kador-Hicks criterion.

The results indicate that, from the point of view of reducing transaction costs, there is economic efficiency in both pre-procedural conciliation and procedural conciliation, as both have the immediate result of reducing social costs. Furthermore, they demonstrate the greater economic efficiency resulting from the conciliation signed before the filing of the action, which in addition to further reducing transaction costs, avoids the judicialization of the dispute, contributing to the control of litigation.

When considering the results of conciliations, it is easier to identify the immediate benefits achieved and costs avoided for the parties that reach an agreement, with positive repercussions on other utilities, which reverberate not only in the lives of those involved but also in society. Any increase in costs borne by one of the parties can be offset by these positive benefits resulting from the resolution of a conflict.

However, even given these advantages, conciliation as a public policy has not yet achieved results equivalent to the benefits arising from it and the reasons for this finding deserve investigation, so that it is possible to develop and apply more effective measures in an attempt to strengthen the culture of cooperation in the search for conflict resolution. This is all to achieve efficiency in maximizing the well-being of everyone involved.

This analysis is useful for the scientific literature that deals with the topic related to alternative conflict resolution methods, by highlighting their economic efficiency, and which also points to the need to carry out further study on the phenomenon and, based on an understanding of its evolution in the national context, develop instruments to maximize its efficiency also as a public policy for controlling litigation and social pacification.

Furthermore, the relevance and need for further studies on this research are evidenced by a recent fact: the Desenrola Brasil Program. Established by MP 1,176/23, converted into Law 14,690/23, this public policy of the Federal Government brings to light the importance of themes relating to alternative conflict resolution and the financial sanitation of society, given the high default rates in Brazil and its social cost, whose negative effects are felt throughout society.

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