

ALTERNATIVE WAYS OF CONFLICT RESOLUTION

Degree in Legal Studies (Solicitors)

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Code: 16915

Main Scientific Area: Legal Practice

Lecturer: Diana Isabel da Silva Leiras

Language of Instruction: Portuguese

Regime: S2

Contact Hours: 45h Total Workload: 95h

ECTS: 5,0

Objectives

To frame and contextualize the Alternative Dispute Resolution (ADR) in the construction of alternative justice, in the sense of informality;

Study the Alternative Dispute Resolution types, as conciliation, mediation and arbitration, recognizing the advantages and disadvantages;

Contextualize the Peace Court in the Alternative Dispute Resolution and know the procedural principles;

Expose and analyse, critique and deeply the procedure of processes on the Peace Court, recognizing all phases and procedural rules;

Know the Mediation and Voluntary Arbitration regimes.

Learning Outcomes

The students must be able:

Recognize the characteristics of the ADR, as well as its historical evolution; understand the ADR phenomenon and identify its position in Portuguese order and in the EU;

Distinguish the various commitments, knowing point its main characteristics and principles that govern them, in comparison with the judicial processes; knowing the operators in the ADR and the status of the Mediator, Arbitrator and Judge of Peace;

Identify the possible use of ADR in concrete situations; recognize the phases of mediation and its scope, and its regime; use voluntary arbitration (ad hoc or institutionalized); being able to intervene in the proceedings of the processes that run under the Peace Court and to position itself in the option for many ADR.

Course Contents

Part I - Introduction

1. Notion of litigation

2. The various means of ADR: negotiation, mediation, conciliation, arbitration and Peace Court

Parte II - Mediation

1. Principles of mediation
2. Mediation models
3. Mediation procedure
4. Areas of Mediation: consumer mediation; criminal mediation; family mediation
5. The mediator: profile and deontology

Part III - Peace Court

1. Underlying principles
2. Processing
3. The mediation in the Peace Court
4. Conciliation in the Peace Court
5. Costs
6. Territorial competence

Part IV - The Arbitration

1. Concept and law rules. The role of the “referee”
2. Arbitration typologies: necessary and voluntary
3. Arbitration convention
4. Constitution of the arbitral tribunal
5. Process and procedure arbitral

Recommended Bibliography

- CHUMBINHO, João - Julgados de Paz na Prática Processual Civil. Lisboa: Quid Iuris, 2007;
- FERREIRA, J. O. Cardona - Julgados de Paz - Organização, Competência e Funcionamento, 4.^a Edição Revista e Atualizada. Coimbra: Almedina, 2019;
- GOUVEIA, Mariana França - Curso de Resolução Alternativa de Litígios. Coimbra: Almedina, 2019 (3.^a Edição, Reimpressão); GOUVEIA, Mariana França;
- MACHADO, José Carlos Soares - Resolução Alternativa de Litígios, Coimbra: Almedina, 2017;
- LOPES, Dulce e PATRÃO, Afonso, Lei da Mediação Comentada, Coimbra: Almedina, 2.^a edição - reimpressão 2021;
- MONTEIRO, António Pedro Pinto, SILVA, Artur Flamínio, e MIRANTE, Daniela - Manual da Arbitragem. Coimbra: Almedina, 2019;
- SILVA, Paula Costa e - A nova face da Justiça – Os meios extrajudiciais de Resolução de Controvérsias. Coimbra: Coimbra Editora, 2009;
- PITÃO, José António de França; PITÃO, Gustavo França - Lei dos Julgados de Paz Anotada, Lisboa: Quid Iuris,

2017;

VICENTE, Dário Moura e outros - Lei da Arbitragem Voluntária - Anotada, Coimbra: Almedina, 2019.

V.V.AA, A Lei da Mediação de Conflitos: estudos sobre a sua aplicação (Cátia Marques Cebola, Coord.), Coimbra, Almedina, 2023, disponível para consulta em <https://iconline.ipleiria.pt/handle/10400.8/8794>

Learning and Teaching Methods

The syllabus of the Part - Introduction enable framing and contextualizing the Alternative Dispute Resolution (ADR) in the construction of alternative justice, in the sense of informality; The issues developed in Parts II, III and IV (relating to the topics of mediation, Peace Court and arbitration) allow study the Alternative Dispute Resolution types, as conciliation, mediation and arbitration, recognizing the advantages and disadvantages; contextualize the Peace Court in the Alternative Dispute Resolution and know the procedural principles; expose and analyse, critique and deeply the procedure of processes on the Peace Court, recognizing all phases and procedural rules, as well as knowing and apply Voluntary Arbitration regime.

Assessment Methods

1. In the continuous and periodic evaluation, the evaluation is carried out:

Through two written tests, both performed in person;

The first test will account for 40% of the final grade;

The second test will account for 60% of the final grade;

A minimum score of 8.0 is required for each test (whole number, without rounding);

The tests dates will be announced by the Course Director on the E-learning platform/Moodle;

The student is approved if he obtains the medium of the marks obtained in each test (in accordance with their respective weightings) rating equal to or higher than 10.

2. Evaluation by final exam is conducted through written exam with 100% weighting. The student is approved if he obtains rating equal to or higher than 10.