

Reference Number: 2023/003/LEPG

Center for Legal Practices as Instruments for Access to Justice in Southern Brazil

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Domain: Law, Economics, Politics and Governance.

IUC course/conference: INTERNATIONAL CONFERENCE ON THE FUTURE OF PEACE

Category: Report

Submitted: 6 January 2023

Date of publication: 5 April 2023

DOI: <https://doi.org/10.53099/ntkd4310>

ISSN: 2787-5717

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Center for Legal Practices as Instruments for Access to Justice in Southern Brazil

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Abstract

The Center of Legal Practices is intended to guarantee law students a field of experience and knowledge that constitutes possibilities for the articulation of theory and practice, in order to develop skills, habits, and attitudes relevant and necessary for the acquisition of professional skills. On the theoretical side, it seeks to give opportunities for law school students, both UNIARP and University Center of Brusque Center of Legal Practices to work in simulated civil, criminal, and labor practice, in order to develop the skills and knowledge necessary for the performance of various legal branches in the practice of law. On the practical side, currently, the NPJ handles lawsuits involving the most diverse civil areas. The mission of these centers is to increase access to justice, assist in the dejudicialization process, and through its conciliation projects, seek the resolution of conflicts through alternative resolution methods. In this way, the Centers for Legal practice do not only have value as an instrument for training future lawyers, but have a societal function as well, in particular, to make legal counsel more accessible.

Key words: Legal Practice Center, legal education, access to justice

1. Legal Practice Internships

In Brazil, the legal practice internship, supervised by a higher education institution, is a mandatory part of legal education. Some schools adopt what is called a “model firm,” and others choose variations of it, including pro bono clinics, etc. These practices are integrated with the law school’s curriculum in the country.

Such curricular legal practice internships are a requirement that ensures law school students gain the necessary practice and experience to become successful lawyers, including legal research, writing, negotiation, litigation, and other important skills. This allows students to have a professional practice of the law while still receiving their education, utilizing hands-on experience with real-life legal cases and clients.

These requirements ensure that all law school students in Brazil are well-prepared for their future careers as lawyers. Additional goals are achieved as the legal practice centers integrate with local needs and societal demands. These goals can be summarized as:

1. Law schools’ pro bono clinics provide free legal services to those who cannot afford them, and helps to ensure that everyone in the community has access to justice regardless of their income level.

2. Law schools’ pro bono clinics provide legal advice and representation to vulnerable communities, such as the elderly, immigrants, and those with disabilities. This helps ensure that such groups are able to access the legal system to defend their rights.

3. Law schools’ pro bono clinics help raise awareness of legal issues in the community and can help people become more informed about their rights and responsibilities.

4. Law schools’ pro bono clinics provide a platform for students to gain practical legal experience and develop their skills. This helps build the legal profession in Brazil and improve the quality of legal services available in the country.

In the context of the current paper, both the Center of Legal Practices of the Alto Vale do Rio do Peixe University (UNIARP) and the Center of Legal Practices of the Centro Univesitário de Brusque exceed the mandatory idea of providing legal practice to its students but also become a source of pro bono service to the local communities.

2. Access to Justice

In article 3 of The Constitution of the Federative Republic of Brazil of 1988, it presents fundamental objectives: “to build a free, fair and solidary society; guarantee national development; eradicate poverty and marginalization and reduce social and regional inequalities;

and promote the good of all, without prejudice of origin, race, sex, color, age and any other forms of discrimination”. Subsequently, the Brazilian constituent legislator listed social rights as formal access to education, health, food, work, housing, security, social security, maternity protection, childhood, and assistance to the helpless, which are all closely linked to the issue of access to justice. As a constitutional right, the country has made efforts to improve access through legal aid programs, the implementation of a Public Defender system, and other initiatives.

The principle of access to justice presents the idea that all people should have equal access to the legal system regardless of their social and economic circumstances. This includes access to legal representation, court proceedings, and administrative proceedings. However, Brazil still faces many challenges in providing equal access to justice. There are disparities between the poor and wealthy, the urban and rural populations, and men and women. The legal system is also complex and difficult to navigate, with often lengthy and expensive court proceedings. This can lead to people not pursuing their legal rights and remedies, or choosing to seek out informal, informal justice mechanisms instead.

1. The principle of access to justice suggests that all individuals should have equal access to the legal system, regardless of their economic and social circumstances.

2. This principle includes the right to legal representation, court proceedings, and administrative proceedings.

3. This principle ensures that all individuals have the same level of access to the legal system and are able to exercise their legal rights.

4. The principle of access to justice is a fundamental human right, as it is essential for the protection of other human rights.

5. The principle of access to justice is an important part of a fair and just society, as it ensures that all individuals are treated equally and have their rights protected.

In order for access to justice to remain effective in Brazil, a number of reforms and initiatives need to be implemented. These include improving access to legal aid services, developing better legal education and public awareness campaigns, and increasing the efficiency of the judicial system. The government also needs to invest more in the Public Defender system and improve its capacity to provide legal assistance to those who need it. Finally, the government must ensure that all citizens, regardless of their economic or social background, have equal access to the judicial system. While these changes are yet to come, civil society and voluntarism can play an important role.

Access to Justice is mentioned in item XXXV of art. 5 of the aforementioned constitutional text, and it is worth noting from the outset that this cannot be seen solely as a formal right to jurisdiction. Such a mention is necessary because, given the numerous

propositions about the content of access to justice, it is possible to verify that in some cases it approaches the idea of equality, as a condition of a fair and ethical result in the application of the norm. In others, it is a requirement for defining which members of a given society should be treated homogeneously, based on the requirement that everyone has the right to have their interests assessed and resolved by the Public Power, particularly by the Judiciary.

Another extremely important category for understanding the principle of access to justice is due process of law, presented in item LV of article 5 of the Brazilian Constitution. In stating that “no one will be deprived of liberty or property without due process of law”, the constitutional text protects the right to life, liberty, and property in all its aspects. Although it relates to procedural protection, it also comprises a substantial aspect, linked to substantive law. Access to Justice is a guarantee, as well as the right to ample defense, equality between the parties, and the adversary system, which all arise from the due process of law.

In this way, it is possible to verify that the conception of access to justice progressed concomitantly with the evolution of State models, and was first synonymous with access to the Judiciary. From a second perspective, it came to be seen as access to a fair legal order, understood here as an environment for the analysis and valuation of the law, which ensures a balance between the litigants, and a fair and effective result of the process.

Every process of evolution regarding the recognition of justice as a fundamental value or access to the justice system as an essential human right for the realization of all others acts in accordance with articles 8 and 10 of the Universal Declaration of Human Rights.

In the year 2018, the Inter-American Commission on Human Rights concluded that Brazil must invest in the fight against impunity and expand access to justice for needy populations, highlighting the importance of strengthening the Public Defender's Offices to achieve this goal. But in addition to such verification, other alternatives are equally as effective for this purpose, such as local promotion for conflict resolution and mediation, and the existence of Legal Practice Centers, as are presented below.

These alternatives are in line with Sustainable Development Goal 17 (SDG 17), which is to “strengthen the means of implementation and revitalize the global partnership for sustainable development.” SDG 17 seeks to improve access to justice by increasing access to legal services, supporting legal aid programs, and strengthening legal structures. Access to justice is essential to achieving the SDGs, as SDG 16 promotes peaceful and inclusive societies, and SDG 10 calls for reducing inequality. Access to justice is necessary for those who are vulnerable and marginalized to ensure their rights are protected and their voices are heard. By strengthening access to justice, SDG 17 seeks to create a more equitable, just, and inclusive global society.

In conclusion, access to justice is a fundamental human right that is essential for the realization of all other rights. It is a guarantee of due process of law and a fair legal order, and

it is essential for ensuring that the interests of all members of a given society are fairly assessed and resolved by the public power, particularly by the judiciary. Brazil has made efforts to improve access to justice through legal aid programs and the implementation of a Public Defender system, but there are still disparities between different groups and the legal system can be complex and difficult to navigate. To address these challenges, Brazil must invest in the fight against impunity and expand access to justice for disadvantaged populations, including through the strengthening of Legal Practice Centers and the promotion of conflict resolution and mediation. Efforts of organizations that will be further discussed in this paper are in line with Sustainable Development Goal 17, which seeks to improve access to justice and create a more equitable, just, and inclusive global society.

3. Local promotion of conflict resolution and mediation

Local promotion of conflict resolution and mediation addresses conflict in communities by encouraging the use of mediation and other forms of peaceful dispute resolution to resolve disputes. This may include providing education and training on conflict resolution skills, working with local organizations to create and implement conflict resolution programs, and providing support and resources to individuals and groups who experience conflict.

Local promotion of conflict resolution and mediation is important because it reduces the amount of violence and conflict in a community and encourages individuals and groups to find peaceful solutions to their differences. It also helps to create a safe and healthy environment in which individuals can work together to resolve disputes without resorting to violence.

Local promotion of conflict resolution and mediation is also effective because it prevents future conflicts from arising and helps resolve existing conflicts in a peaceful manner. It also helps to build trust and understanding between individuals and groups within a community, which can build a stronger sense of community and a more cooperative environment. Local promotion of conflict resolution and mediation is also effective because it creates a culture of peace and respect within a community. The promotion of conflict resolution and mediation should include a variety of different strategies, such as:

1. Encouraging dialogue and communication between parties in conflict and helping to facilitate constructive conversations. This includes providing a neutral space where parties can speak openly and honestly, as well as providing basic conflict resolution skills.

2. Supporting existing initiatives that promote collaborative problem-solving and conflict-resolution efforts. This could include providing resources, such as training and educational materials, to support existing initiatives.

3. Developing and implementing local policies and procedures to ensure that conflicts are addressed in a timely and appropriate manner. This could include developing protocols for handling disputes, establishing dispute resolution teams, providing mediation services and/or setting up a conflict resolution center.

4. Educating the public about the benefits of resolving conflicts through mediation and other forms of dispute resolution. This could include providing information about conflict resolution services, holding seminars and workshops, and offering educational resources to the local community.

5. Providing resources, such as financial assistance, to help parties experiencing conflict access mediation services and other forms of dispute resolution. This could include providing access to qualified mediators, providing financial assistance for mediation, and offering grants to help fund the cost of dispute resolution services.

6. Encouraging the use of alternative dispute resolution methods, such as arbitration and collaborative law, to resolve conflicts. This could include providing information about arbitration and other forms of dispute resolution and offering financial assistance to parties that choose to use these methods.

7. Working with local law enforcement, government agencies, and other stakeholders to ensure that conflicts are addressed in a timely and effective manner. This could include developing protocols for how law enforcement should respond to conflicts, developing partnerships with local government and other stakeholders to promote dispute resolution, and working with local schools and community organizations to provide conflict resolution education and resources in order to better relationships and build stronger communities.

“Think globally, act locally” is a catchphrase that has been used in different contexts for the last decade. For the context of this paper, the promotion of conflict resolution locally is important, and actors of society, especially legal professionals, must act to make sure that the right of access to justice is achieved in their local sphere. In this context:

Despite the fact that the Brazilian Constitution and legislation have recognized for years the legitimacy of the self-compositional mechanisms of negotiation, conciliation and mediation and the heterocompositional mechanism of arbitration, a predilection for litigation has developed that perhaps was not necessary, since the legal system has other efficient instruments to prevent and resolve conflicts. It happens that democratizing access to justice also involves the correct use of this right, so that more and more people can enjoy, in this case, the services of the Judiciary. The Constitution of the Republic of 1988 and the infra-constitutional legislation provide both access to justice and procedural effectiveness and celerity as inescapable conditions for the optimization of the services provided by the Judiciary (PESSOA, 2020, p.15).¹

¹ Translated by author, original text reads “Apesar de a Constituição e a legislação brasileiras reconhecerem há anos a legitimidade dos mecanismos autocompositivos da negociação, da conciliação e da mediação e do mecanismo heterocompositivo da arbitragem, desenvolveu-se uma predileção pela litigância que talvez não fosse necessária, já que o ordenamento dispõe de outros instrumentos eficientes para prevenir e resolver conflitos.

Understanding this need in the Brazilian local context requires that societal forces come into play to make it feasible that such conflict resolution is put into place. Through agreements with the local judiciary, it is not uncommon that law schools to host such actions in their Centers of Legal Practices. Outlined below are the actions of both the Center of Legal Practices of the Alto Vale do Rio do Peixe University (UNIARP) and the Center of Legal Practices of the Centro Univesitário de Brusque.

4. Center of Legal Practices (NPJ) of the Law School of the Alto Vale do Rio do Peixe University (UNIARP)

The Center of Legal Practices (NPJ) is a Pro Bono Clinic that started its work in 2001 and integrates the Law School at UNIARP (Universidade Alto Vale do Rio do Peixe). The intent of the Center of Legal Practices is to guarantee law students a field of experience and knowledge that constitutes possibilities for the articulation of theory and practice, developing skills, habits, and attitudes relevant and necessary for the acquisition of professional skills.

On the theoretical side, it seeks to give opportunities to law school students. NPJ works with students in simulated practice in the civil, criminal, and labor-areas of law in order to help develop the skills and knowledge necessary for the performance of various legal branches. It also promotes simulated hearings, where students work in all procedural development until the moment of the sentence, acting in the various roles of legal operators and experiencing effective professional practice.

On the practical side, the NPJ handles about five hundred and sixty lawsuits involving the most diverse civil areas. There is, however, no action in criminal proceedings considering that since August 2012, the Public Defender's Office of the State of Santa Catarina has worked with the District of Caçador in criminal proceedings and investigations.

Concrete experiences and cases of conflict resolution often involve collaboration with local institutions and communities. One such example is the partnership between a university and the local judiciary (TJSC) where conciliation hearings are held on campus. This allows for easier access to justice for individuals who may not be able to travel to the courthouse. Additionally, the university's legal clinic (NPJ) also takes students to smaller nearby cities to provide legal assistance to the population in those areas. While specific details about cases cannot be shared due to client confidentiality, it is clear that these initiatives provide valuable

Ocorre que democratizar o acesso à Justiça envolve também a correta utilização desse direito, a fim de que mais e mais pessoas possam usufruir, no caso, dos serviços do Judiciário. A Constituição da República de 1988 e a legislação infraconstitucional preveem tanto o acesso à Justiça quanto a efetividade e a celeridade processuais como condições inafastáveis para a otimização dos serviços prestados pelo Poder Judiciário.” (PESSOA, 2020, p.15).

opportunities for students to gain practical experience while also addressing the legal needs of the community.

UNIARP's NPJ understands that a legal operator's mission is to assist in the dejudicialization process and thus seeks through its conciliation project the resolution of conflicts through alternative resolution. Before filing the lawsuits, this procedure attempts to solve the conflict between the parties harmoniously through a conciliation attempt.

Such pro bono work provides students with the tools and knowledge to become peacebuilders and social peacekeepers, as well as enforcers of Sustainable Development Goal number 16: to promote just peaceful, and inclusive societies. The students are also taught the importance of upholding the rule of law. Thus, in this experience, academia plays a role in the promotion of peace and adequately equipping its future lawyers and legal professionals.

5. Centro Universitário de Brusque's Legal Practice Center

The Centro Universitário de Brusque's Legal Practice Center, located in the city of Brusque, State of Santa Catarina in southern Brazil, was inaugurated on April 1, 1995, with more than 27 years of service to the community. It also serves as an appropriate environment for the academic practice of future law graduates studying at the aforementioned University Center. Created for the development of the mandatory supervised curricular internship of the course to the social realities aimed at delivering effective, ethical, and speedy jurisdictional provision, the NPJ works to serve the community in a situation of economic deficiency, providing the aforementioned access to justice and the realization of rights constitutionally guaranteed.

In its day-to-day activities, the Centro Universitário de Brusque's Legal Practice Center meets demands related to Civil Law, with emphasis on Family Law, Social Security, and State responsibility in actions aimed at the delivery of medicines, as an example, in addition to other judicial issues that promote conciliation and mediation. In addition to these activities along with the aim of professionalizing academics, partnerships are carried out with the State Court of Justice, the State Security Secretariat, Public Defender's Office, law firms, and legal departments of companies in Brusque and region, to lead activities focused on lectures involving citizenship issues.

The services provided at the NPJ through free legal assistance are intended for people in situations of socioeconomic vulnerability. Free assistance is provided through screening and participants must provide information for the following criteria as part of Resolution CA 03/2017, art. 5: "I – Number of family members who live with the service user; II – Individual or family monthly income; III – Number of movable and immovable assets and the conditions

in which they are presented (whether they are rented, financed, paid off, mortgaged, pledged or disposed of)".

These public service activities available to people in situations of economic vulnerability began effectively in 1996 and increased considerably each year, eventually reaching 1276 services in the year 2019, with the protocol of 740 legal documents. Such numbers, by themselves, demonstrate the efficiency and importance of the performance of the NPJ of the Centro Universitário de Brusque regarding the consolidation of the right of access to justice, as well as an instrument for the promotion and realization of rights, and a tool to contribute to the fundamental objectives of the Federative Republic of Brazil.²

The Center has exhibited significant growth in its community services, providing 1,963 legal services in 2022, representing a 90% increase from prior years. Projections for the first half of 2023 suggest an estimated 1,084 new services. This development is of scientific interest as it exemplifies the expansion of access to justice through innovative methods of legal service provision. The clinic offers traditional in-person services, including legal assistance, small claims court, and family mediation, complemented by an increasingly popular hybrid service delivery model. The hybrid model, which involves online consultations, has proven especially beneficial for incarcerated clients and those located in other jurisdictions. Its use has significantly improved access to justice, providing consensual dispute-resolution options for a broader segment of the population.³

6. Final Considerations

The Center of Legal Practices at the Alto Vale do Rio do Peixe University (UNIARP) and the Center of Legal Practices at the Centro Univesitário de Brusque are institutions that have a significant impact both on legal education and on the provision of access to justice in Brazil. These centers provide students with the opportunity to engage in simulated legal practices and work on real legal cases, giving them valuable hands-on experience and the chance to develop the skills and knowledge necessary for a successful legal career. Additionally, through their conciliation projects and other initiatives, these centers work to assist in the dejudicialization process and seek alternative methods for resolving conflicts.

Despite these efforts, Brazil continues to face challenges in providing equal access to justice for all citizens, particularly disadvantaged groups. The legal system can be complex and difficult to navigate, with lengthy court proceedings that may discourage people from pursuing

² Pieces of information gathered from the commemorative publication of the Center's 25th anniversary. Silveira, Engel, Hoffmann, 2021.

³ TJSC. NPJ de Brusque, parceiro do PJSC, prevê mais de mil atendimentos no 1º semestre de 2023. Available at: <https://www.tjsc.jus.br/web/imprensa/-/npj-de-brusque-parceiro-do-pjsc-preve-mais-de-mil-atendimentos-no-1-semester-de-2023>.

their legal rights or seeking out informal justice mechanisms instead. The principle of access to justice dictates that everyone should have equal access to the legal system regardless of their social or economic circumstances, but this is not always the case in practice.

The centers of legal practices at UNIARP and the Centro Universitário de Brusque are working to improve access to justice in their local communities, but it is important for all legal institutions in Brazil to strive for improvement and work towards the goal of ensuring equal access to justice for all. This includes providing legal representation and assistance, streamlining court and administrative proceedings, and addressing disparities between different groups. By addressing these issues and working towards a more equitable legal system, these centers can help to fulfill the constitutional goals of building a free, fair, and solidary society and promoting the common good.

In addition to their role in legal education and access to justice, these centers also have a broader societal impact. By helping to resolve conflicts and provide legal assistance, they contribute to the overall well-being and prosperity of their communities. Through their work, these centers demonstrate the potential for legal institutions to make a positive difference in society and help to fulfill the constitutional mandate to eradicate poverty and marginalization and reduce social and regional inequalities.

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Note: Special thanks to Professor Goran Bandov PhD (University of Zagreb), Conference Director.