

Online Alternative Dispute Resolution experiences in Portugal:

- *The RAL + Platform*
- *Conducting mediation procedures in an online format*



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CEPEJ - Annual Meeting – **Online
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The Directorate-General for Justice Policy (DGPJ)

The DGPJ is a state central body of direct administration of the Portuguese Ministry of Justice.

...Among the several attributions of the DGPJ, we can find:

- **The Coordination of the Alternative Dispute Resolution Office, briefly referred to as GRAL, which is responsible for promote and support the operation regarding the extrajudicial resolution of disputes, such as:**



FAMILY MEDIATION SYSTEM

- A Confidential, **non-contentious**, **out of court** way to **solve family disputes** whereby two or more parties voluntarily seek to reach a mutually acceptable agreement (**negotiated solution**) with the assistance of a **specialized dispute mediator**.
- A service promoted by the **Ministry of Justice** that allows for an inexpensive way to solve family disputes out of court.
- The system relies on the managing of geographically organized lists of **qualified family mediators**.



LABOUR MEDIATION SYSTEM

- A confidential, **non-contentious**, **extrajudicial** method of solving **labour disputes** whereby the **employer and employee voluntarily** seek to reach a mutually acceptable agreement (**negotiated solution**) with the assistance of a **specialised dispute mediator**.
- **Applicable to Individual employment contracts.**
- **Excluded from the Labor Mediation System are matters regarding accidents at work and unalienable rights.**
- A **Service promoted by the Ministry of Justice**, that allows for out of court resolution of **labour disputes**.
- The DGPJ ensures the listing of trained labour mediators and the supervision of that list. The list is **geographically organized**.

JUSTICE OF THE PEACE COURTS



- Courts with special characteristics, competent to solve **common civil causes** (up to €15,000), excluding those involving family law, inheritance law and labour law;
- Proximity courts, where the procedural formalities are kept to a minimum;
 - Informality;
 - Orality;
 - Absolute procedural economy;
 - Designed to solve disputes quickly and at a low cost;
 - Designed to **solve the dispute by agreement, whenever possible.**

Platform RAL +

- Initial implementation of the **pilot** phase, since 3/05/2023



Platform created by Decree-Law 26/2024 of 3 April, in force since 19/05/2024.

- Regulation of electronic processing awaits.

- Applicable to the Family Mediation System
- Applicable to the Labour Mediation System
- Applicable to 10 Justice of the Peace courts (initially to 5 pilot justice of the peace courts and since 19/05/2024, to 5 more justice of the peace courts).

Using the platform

- **The use of the platform is mandatory:**
 - **for professionals (lawyers, solicitors, mediators and service's staff);**
- **The use of the platform is optional for citizens and companies**

Safety Vs accessibility and inclusiveness

- IT IS MANDATORY FOR THE AUTHOR OF REQUESTS FOR MEDIATION, OR THE PLAINTIFF IN COURT ACTION (JUSTICE OF THE PEACE COURTS), TO AUTHENTICATE THEMSELVES ON THE PLATFORM, USING A **CITIZEN'S CARD OR DIGITAL MOBILE KEY**
 - **Citizen card authentication requires that the person has a smartcard reader and is in possession of the authentication pin provided by the registration services**
 - **Authentication using the digital mobile key requires that the person has activated the digital mobile key near the registration services and is in possession of the authentication pin**

- Those who do not meet these conditions will not be able to submit their requests directly on the platform, but may contact the services of the justice of the peace (in person) or the support services of the public mediation services (by email) in order to submit their requests.

RAL + - Alternative Dispute Resolution Platform



ALL IN ONE PLACE

DEMATERIALIZATION OF
THE PROCEDURE

ELECTRONIC
NOTIFICATIONS

PERFORMANCE OF
ACTS

CONSULTATION OF
PROCEDURES

INTEROPERABILITY WITH OTHER SYSTEMS

AMA / Digital Mobile Key

Tribunais.org / Authentication of legal representatives

Citius / Submission of mediation requests by the judicial authority or referral of appeals from the Justice of Peace to the courts of appeal

SIEJ / Integration for statistical purposes and other indicators



RAL + functionalities – Parties & Professionals:

- Once the process has been submitted to the platform, it will be possible to:
 - receive notifications for procedural acts (via the platform itself);
 - submit documentation in the case (applications, challenges, proof of legal aid, etc.);
 - consult schedules of events (mediation sessions, trial hearings, etc.);
 - Be notified of the final judgment/access the agreement reached in mediation

RAL + functionalities – Services:

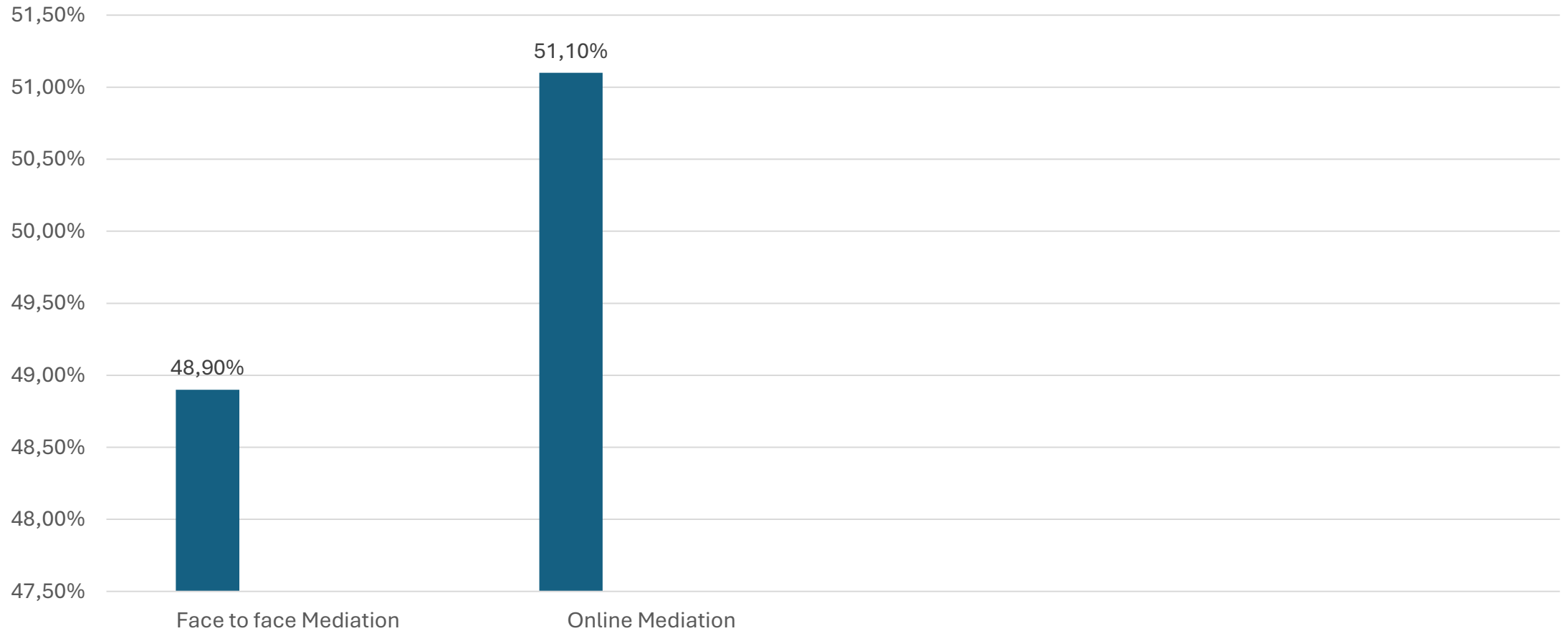
- the entire process, which had been carried out on paper, is now dematerialized
- Interoperability with relevant systems (Vg: *Citius*-receiving applications/sending cases to the judicial courts; *S/EJ* – enables feeding the official justice statistics information system)

- **...Nevertheless, nowadays, the RAL + platform does not allow diligences to be carried out online, through the platform itself**

Conducting online mediation

- On the other hand, the public mediation systems managed by the Ministry of Justice already allows this:
- The Family Mediation System works on the basis of 87 territorially circumscribed lists of mediators and 1 list of mediators available to conduct mediation procedures online
- Inscription on this *online list* depends on a voluntary act by the mediator, who declares that he or she is qualified to do so
- Conducting the procedure in this format presupposes that the parties involved in the conflict choose it, instead of the face-to-face format
- The use of any IT platform that allows sound and image transmission in real time and to which all those involved (parties and mediator) have access is allowed.

Format of mediation procedures (FMS, 2023)



**Mediators' perception on conducting
proceedings in the online format**

1) Advantages

- **Accessibility (geographically distance between parties)**
- Speed/Flexibility (easier scheduling of sessions)
- No conditioning on room availability
- Greater convenience (no traveling)/better time management/lower costs
- More informal context
- Greater interactivity in sharing documentation during the session itself
- **Security in a context of physical vulnerability**

SPECIFIC TO THE PARTIES:

- Enabling participation in a procedure that would otherwise not be possible (constraints on sharing space between parties, **parties may be prisoners**)

SPECIFIC TO THE MEDIATOR

- Potentiates greater self-scrutiny/evaluation (continuous improvement of the mediator's work) – enables mirror and real-time observation

2) Disadvantages/risks

- Technical failures/interruption/miscommunication
- Risks associated with data recording and transmission (“non-secure” platforms)

SPECIFIC TO THE MEDIATOR:

- Difficulty managing emotions
- Difficulty interpreting non-verbal manifestations/reactions
- Difficulty in establishing empathy and helping to promote it
- Difficulty in enforcing the principle of confidentiality (the inevitability of not being in control of the setting / the possibility of unauthorized recordings)

2) Disadvantages/risks

SPECIFIC TO THE PARTIES:

- Excessive informality/distraction
- Difficulty in formalizing documents (non-users of digital signature)
- Distrust on platforms/lower involvement of mediated parties
- Lack of awareness of digital illiteracy

COMPENSATORY STRATEGIES

- Secure and structured communication regarding the rules of the procedure (limits imposed by confidentiality)
- Alternation between face-to-face and online sessions - hybrid format

Improving the experience - Proposals

- More/better Regulation:
- Requirement of specialized training for the mediator
- Requirement of “professional” software that guarantees
 - a) the identity of all participants;
 - b) a more intuitive/facilitated experience for parties

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