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Specificities of Extrajudicial Conciliation in Colombia Concerning Involved Parties

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ABSTRACT

Extrajudicial conciliation in Colombia exhibits unique characteristics concerning the diverse parties eligible for participation, stemming directly from regulations governing this alternative conflict resolution method. This work of research aims to employ critical analysis, bibliographic review and documentary examination to identify the specific features of the process that directly or indirectly influence the eligibility of parties to engage in the conciliation hearing within the judicial process. It is evident that the presence of conflicting parties at the conciliation hearing is obligatory. Additionally, legal representatives and those summoned as guarantors may also attend. However, unofficial agents possess limited authority in the process, lacking the necessary rights to ensure their involvement in the conciliation hearing.

KEY WORDS: Extrajudicial Conciliation, ADR, Conciliation, Parties, Procedural Law.

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Particularidades de la conciliación extrajudicial en Colombia respecto a las partes involucradas

RESUMEN

La conciliación extrajudicial en Colombia como mecanismo de solución de conflictos presenta características especiales respecto a las partes que pueden participar en ella como resultado directo de la aplicación de normas jurídico-procesales. El objeto de la presente investigación es determinar, mediante la metodología del análisis crítico, la revisión bibliográfica y documental, cuales de las figuras procesales que tienen participación directa o indirecta en el proceso judicial, reúnen los requisitos de parte para actuar en la audiencia de conciliación. Se concluye que la comparecencia de las partes en conflicto al procedimiento conciliatorio es obligatoria, pero que a la audiencia adicionalmente podrán comparecer los apoderados y los llamados en garantía. No obstante, el agente oficioso posee facultades limitadas en el procedimiento, toda vez que carece de las atribuciones necesarias para avalar su actuar en la audiencia de conciliación.

PALABRAS CLAVE: conciliación extrajudicial, MASC, conciliación, partes, derecho procesal.

Introduction

Conciliation is a method of self-composed conflict resolution designed to provide disputing parties with a precise and suitable opportunity to resolve conflicts peacefully and mutually agreed upon. It involves a neutral third party who lacks decision-making power but can offer suggested solutions to help reach constructive resolutions.

Extrajudicial conciliation can occur either before or outside of a formal legal process as an alternative conflict resolution method. In Colombia, it holds significant importance, particularly when mandated by the Judicial System in many legal proceedings. Consequently, the Court frequently integrates this process into judicial proceedings to pursue justice.

In instances where conciliation has not been a prerequisite in litigation processes, it has been incorporated as a phase within the process itself. This inclusion has faced criticism from several authors who argue that it compromises the voluntary nature of this alternative conflict resolution method.

However, it is essential to note that once the rules governing judicial processes become involved in the conciliation process, certain actions must be taken. Specifically, it is crucial to analyze whether the concept presented by the authorized party participating in the conciliation hearing undergoes any modifications; particularly, regarding the presence of factors like the guarantor, the legal representative, and the unofficial agent.

Conciliation and its Role in Access to Justice

Society inherently requires efficient conflict resolution tools for individuals involved in disputes (Arrieta-López and Carrasquilla-Díaz, 2021; Rodríguez-Serpa *et al.*, 2023). The Colombian Political Constitution (1991) in articles 228 and 229 affirms access to justice as a fundamental right for all citizens. However, the exclusive exercise of dispensing justice was not solely vested in the judges of the Republic. The Constitution also recognized the potential for any ordinary person to receive a temporary vestment of jurisdiction in the capacity of conciliators or arbitrators.

Article 116 of this Constitution permits the participation of these individuals by mutual agreement of the parties, aiming to confer the same effects as a judicial decision through a sentence, albeit enacted through a conciliation act or an arbitral judgement. The Constitutional Court has provided the following guidance on this matter: Within the scope of this Court's jurisdiction, the right to access justice embodies various facets. Among them, it involves the availability of fair and effective processes for the determination of legal rights and obligations. Additionally, the resolution of disputes should occur within a reasonable timeframe, devoid of

unwarranted delays. Decisions must adhere to due legal processes. There should be a broad array of mechanisms available for dispute resolutions. Means to facilitate access to justice for the poor must exist. Justice services should be accessible across the entire national territory. This right must be also be upheld through alternative conflict resolution methods. (Judgement C-1195/01, 2001).

Some scholars like Bejarano (2019) elucidate that conciliation involves a third party, the Conciliator, who aims to reconcile all involved parties to prevent litigation or resolve a controversy. While conciliation may yield effects akin to a judicial sentence, its primary intent differs significantly. The conciliator does not possess the authority to resolve the lawsuit but rather equips conflicting parties in with tools to autonomously seek a peaceful resolution to their dispute.

Tamez *et al.* (2018) articulate that “conciliators do not interpret the law. Instead, they analyze and gauge the interests presented by the parties. Consequently, the outcomes obtained lack the decisive character of a judicial sentence.” Hence, this aligns with the reference in article 11 of the Constitution, clarifying that conciliators do not administer justice as they neither exercise jurisdiction nor enforce the Law. However, the agreements or solutions reached through conciliation among the involved parties can have specific effects on a judicial decision in the final stage.

In contrast, Arboleda López *et al.* (2018) emphasize that “conciliation is not merely a means of alleviating judicial congestion; its significance surpasses decongestion by fostering a social network, dialogue, and the establishment of agreements as a savvy method for conflict resolution.” Thus, it is regarded as an alternative mechanism for resolving disputes and a novel approach to dispensing justice (Arrieta-López *et al.*, 2021).

It is crucial to view conciliation not solely as an alternative or complementary conflict resolution method but also as a proactive or resolving activity associated with ongoing or impending judicial actions. It promotes peaceful coexistence and facilitates negotiable agreements among the parties involved in situations related to tolerant, abandoned, or reconcilable disputes. This occurs with the involvement of a temporary judicially invested neutral third party known as the conciliator.

In Colombia, civil conciliation holds significant importance and is regulated by Law 640 (2001). While this legislation remains current, it has been replaced by another law referred to as “The Statute of Conciliation”, identified by number 2220 (2022). This law, signed into effect by the President on June 30, 2022, will be enforced six months after its signing (art. 145). Although this law covers various aspects of conciliation, including administration and labor aspects, this article will primarily highlight the civil aspects studied.

Parties Involved in Extrajudicial Conciliation

Extrajudicial Conciliation, as elucidated by the Constitutional Court (Sentence C-902, 2008), occurs when conducted before or outside a judicial process as an alternative conflict resolution method. Through this process, the involved parties mutually opt to resolve their conflict amicably, circumventing the need for trial. Alternatively, parties may seek conciliation as an initial step before resorting to a judicial process, aiming to resolve the conflict at that stage (Arrieta-López, 2022). At any juncture, a party involved may voluntarily initiate conciliation, even while engaged in a judicial process, provided there is no verdict (similar to the option of pursuing arbitration).

Nevertheless, in the Colombia Legal System, extrajudicial conciliation may not always occur voluntarily or spontaneously. In certain instances, individuals seeking justice may be required to have exhausted conciliation as a mandatory prerequisite before commencing a judicial process (Navarro-Hernández, 2022; Hernández García de Velazco, *et al.*, 2020).

As per articles 35 and 36 of Law 640 (2021), in all matters susceptible to conciliation, extrajudicial conciliation under this law becomes a mandatory procedural condition for civil, family, and administrative judicial proceedings. However, in cases where it is not considered a procedural requirement, conciliation is regarded as an exceptional mechanism (Meza-Godoy *et al.*, 2021). These instances are detailed below:

- a. Whenever, under oath, in a lawsuit, it is stated that the defendant's mail address, housing address, or workplace address is unknown, or the defendant is absent and whereabouts are undisclosed.
- b. When there is an intention, during the process, to request precautionary measures by Law that allow direct recourse to ordinary jurisdiction.
- c. In divorce and expropriation processes.
- d. In processes with executive and settlement aspirations.
- e. In family processes involving family violence. The Constitutional Court, under Sentence C-1195 (2001), introduced this provision in support of victim protection by preventing their encounter with the aggressor. The Court expressed: "The obligatory nature of the prejudicial conciliation as a procedural requirement ends is not only deemed appropriate to achieve desired objectives, but also serves as an effective guide to attain these goals. However, the only exception lies in family matters entangled with issues of family violence. In such instances, the constitutionality of

mandatory conciliation depends on whether there are any circumstances involving family violence. It is neither appropriate nor effective to compel the victim to encounter their aggressor in cases of family violence within the family. Thus, the enforcement of the law must be contingent upon the absence of family violence. In these situations, the victim need not be present during the conciliation hearing. The victim must be allowed to communicate such circumstance to the judge if they opt to directly approach the State Jurisdiction (Constitutional Court, Sentence C-1195, 2001)“.

- f. In all other cases specified by the Law, such as cases involving the restitution of tenure.

It is noteworthy that Law 2220 of 2022 upholds the procedural principle of conciliation in civil terms within declarative processes, except for division processes, expropriation, warnings, and cases involving intermediaries. The law exempts the obligation to exhaust this requirement in cancellation, repossession, and restitution of tenure processes (Art.68).

The inclusion of warning processes among those exempt from this procedural requirement is considered a prudent decision. Law 1564 of 2012 in its articles 419 through 421, omitted this provision, which somehow compromised the legislator’s aim to establish an efficient method for cancelling small monetary contractual obligations lacking executive deeds or being incomplete.

However, the incorporation of conciliation as a procedural prerequisite raises questions about the compromise of this conflict resolution method’s intrinsic characteristic —stemming from parties’ decisions. It transforms into a pre-process procedure and becomes an indispensable step towards accessing justice.

There is a possibility that citizens might confuse the notice to attend a conciliation hearing with a judicial law notification. This divergence from the initial standpoint regarding conciliation undermines the idea that conciliation should not only alleviate judicial congestion, but also provide a more satisfying way to resolve conflicts. It is about parties finding a solution themselves, not a judge declaring a winner or a loser.

Authors like Meza-Godoy *et al.* (2018) criticize the legal imposition of conciliation as a procedural prerequisite for attaining justice. This contradicts the true essence of conciliation. Narváez and Castilla (2022) indicate that alternative conflict resolution mechanisms have not functioned as anticipated in the administration of justice. The case of prejudicial conciliation illustrates how it has moved away from the parties’ willingness, becoming just another procedural step.

Nonetheless, the procedural prerequisite intends to ensure that the involved parties have this opportunity to resolve conflicts among themselves, not through an uninvolved third party. When its mandatory nature emphasizes promoting a peaceful, self-compositional conflict resolution, the coercive aspect might, in some cases, dampen the willingness to agree, as suggested by (Azula, 2016).

It seems that Law 1564 of 2012, known as the General Process Code, emphasized the importance of extrajudicial conciliation by citing it as a cause for inadmissibility of a lawsuit rather than outright rejection. This approach aims to safeguard access to justice in the plaintiff unintentionally omitted to disclose or provide evidence of having fulfilled this requirement. It grants the opportunity for the process to proceed upon submission of the missing evidence.

While this consideration is essential, the ramifications of non-compliance with the procedural requirement can be severe within the context of legal proceedings. Here are the consequences:

- a. Fine: If extrajudicial conciliation is a requirement and a judicial lawsuit proceeds without any justified absence from the conciliation hearing (as outlined in articles 22 and 29 of Law 640 of 2001), the judge may impose a fine on the party that failed to justify their non-attendance. This fine can amount to up to two (2) monthly minimum legal salary payments and is directed to the Judicial Superior Council (Art 35).
- b. Inadmissibility and Rejection of Lawsuit: The plaintiff might rectify their mistake in case it was due to an oversight or negligence. Failure to rectify such an error within five days after notification of the ruling requesting correction could lead to the subsequent rejection of the lawsuit, as described in Article 90, numeral 7 of Law 1564 of 2012,
- c. Serious indication: Except in labor, family and police-related matters, failure of any involved party to attend a scheduled and notified conciliation hearing, without justification within three (3), might be considered a serious indication fault. This fault could be construed against their interests or exceptions of merit in a potential judicial process concerning the same facts (Law 640, 2001, art. 22).

Law 2020 of 2022, which governs conciliation regulations, specifies the consequences of non-attendance at a conciliation hearing when it is considered a procedural requirement. This includes the serious indication against the interests or exceptions of merit in a judicial hearing for those who fail to attend. Additionally, it imposes a fine of up to two (2) current minimum monthly salary payments (Art. 59).

Parties Involved in Extrajudicial Conciliation during a Judicial Process

The involvement of parties in conflict is integral to resolving their disputes with the help of a neutral third party offering potential solution. The significance of the parties' presence at the conciliation hearing has been stressed not only in Law 640 of 2001 but also in jurisprudence and doctrine. The final resolution of conflicts is deemed to stem from the conscious willingness of the involved parties to end their dispute. Sentence C-1195 (2001), based on its procedural acceptance, characterized conciliation as "a conflict resolution mechanism wherein two or more people independently manage to resolve their differences with the aid of a third neutral and qualified party referred to as a conciliator." This is observed substantively as "an act signifying the agreement the parties decide, certified by the conciliator."

However, within judicial processes, the term "party" assumes a specific technical meaning, distinct from its common usage. Paz (2015) delineates a party as an individual participating in a process by filling a petition claiming a right. This individual is termed the plaintiff, while the individual against whom the process is initiated is called the defendant. In this strict context, these are the designated parties within the legal process.

The right to participate directly in a legal process stems from constitutional law, particularly the right of access to justice. The Law specifies instances where initiating a legal process without legal representation is permissible, an exception to the general rule. This aligns with the guarantee of the access to justice, encompassing measures such as poverty protection and provision for public defense, as established in Article 2 of Law 270 of 1996. Therefore, this capacity extends not only to natural or legal persons (Cuesta, 2015; Díaz, 2020), but also to those unborn individuals, autonomous patrimonies, and groups of people, as detailed in Article 53 of Law 1564 of 2012.

Moreover, it is crucial to recognize that not all litigants reaching the courts are adults. Sometimes, minors also attend the courts, but must do so through their legal representatives. For instance, if a child needs to request food maintenance, it must be done through their legal representative. This principle applies in various situations:

- Legal entities, through their legal representatives, are permitted by Law 1564 (2012) to participate in legal proceedings. This involvement can occur through two different figures: the legal representative for judicial matters and the general attorney. Both representatives must be duly registered in the Public Register of Commerce (Arrieta-López and Meza-Godoy, 2019). These representatives are mandated to possess conciliation faculties in all cases.

- Similarly, in the case of a legal entity, representation must be undertaken by the liquidator registered in the Public Register of Commerce at the time of their appearance as the liquidator in the process, as established by Article 54 of the General Code of the Process.
- Autonomous patrimonies can be represented by the lawyer or representative of the fiduciary society acting as the spokesperson.
- In family matters, as previously mentioned, minors must attend hearings with their legal representatives.
- It is crucial to note the inclusion of people with disabilities on this list. According to Law 1996 (2019) in Colombia, all individuals with disabilities are entitled to rights and obligations with equal status. They possess legal capacity on par with others, regardless of any conditions, and they are entitled to support when needed for their legal requirements. Support may include communication assistance, comprehension of legal acts and their consequences, facilitation of expressing their will, and assistance in making personal decisions. While there might be established support for judicial matters, each case requires a specific analysis to determine the necessity of such assistance.

Given the above, it is essential to distinguish between those directly and indirectly involved in the legal process. This initial analysis falls within the purview of the conciliator, who must ascertain the entitlement of attendees to exercise their rights based on the documents presented in the conciliation suit and the facts presented therein (Tamez *et al.*, 2018). Subsequently, made in the Courts may be signed by those willing to withdraw, resign, convene or reconcile the presented. Notification, if feasible, must be provided to the parties who are required to appear on the day of the hearing (Mojica Cortés, 2009).

It is crucial for the conciliator to analyze each case impartially, irrespective of who requested the conciliation hearing. This request may originate from either the plaintiff or by its legal representative (Concept No. 12919, 2004). The crucial aspect for the conciliator is the appearance of participants at the hearing, regardless of whether they are a plaintiff or defendant who sought the hearing (Peña-Sandoval, 2017). Hence, for the purposes of the conciliation process, a party is considered such whether they are requested by the conciliation request or the conciliator's request, guided by the attributes specified in Article 8 of Law 640 (2001) for the hearing.

Certainly, the enactment of the General Code of the Process prompted discussions about who holds the right to be considered involved parties and who qualifies as third parties. This differentiation must be meticulously regarded in civil conciliation to

ensure the relevance and the appropriateness of the attendees. The aforementioned Code included various parties such as the legal process partners (art. 60), the needed legal process partners (art. 61), the quasi-necessary legal process partners (art. 62), the exclusive participant (art. 63), the called in-guarantee (art. 64), the tenner (art. 67), the process successor (art. 68), and the participants for incidents. As third parties, only the coadjutant (art. 71) and the official attendee (art. 72) were recognized. Consequently, as outlined General Code of the Process, parties involved in each particular case are required to attend the conciliation hearing to present their differences and strive, through the third-party conciliator, to reach agreement formulas that, if accepted, will be documented in the agreement act.

Regarding the assessment of parties in judicial conciliation, it is vital for the conciliator, upon receiving the initial request, to verify the capacity of the involved parties to participate. Secondly, the conciliator must ascertain if all pertinent parties were duly invited according to the cause or grounds for the request. Thirdly, the conciliator is mandated to invite any omitted parties (Law 640, 2001, art. 8).

Under Law 2220 of June of 2022, termed the conciliation statute under article 58, the attendance of the parties was ratified as an obligation, regardless of whether their lawyers are present or not. However, this statute only allows the attendance of a lawyer representing the party if the party itself is not present in the municipality where the hearing is scheduled, is outside the country at that moment, or in situations that might be deemed coincidental or constitute force majeure.

Continuing the analysis of individuals participating in a conciliation hearing, it is essential to consider three other procedural entities:

- The call-in guarantee: This individual, while ensuring patrimonial responsibility due to an adverse decision, may be summoned to a hearing through a lawsuit or in the context of a transfer as an exercise in contradiction. Designated as part of the Process General Code, the call-in guarantee can be a legal specialist or voluntary participant. If the conciliator brings this individual into view in their request, not all the organizer's behest, it is at the conciliator's discretion to summon them to the conciliation hearing. The same principle applies when a legal entity is requested in cases of merger, division, or when a legal buyer of rights emerges, where the conciliator might call them as procedural successors with legal concerns in the conciliation process.
- Lawyers are essential in providing technical defense during procedural actions (Law 1564, 2012, arts. 53 and 57). The right to be represented by a lawyer aims to safeguard the effective exercise of the right to defense, as outlined in Article 29 of the Political Constitution. However, this representation requirement differs from the conciliation hearing. While lawyers may attend the conciliation hearing (Law 1564, 2012, art. 1), the

presence of the party is mandatory for the commencement and conduct of the hearing, with potential sanctions for unjustified absence (Law 640, 2001, art. 22). Additionally, a fine sanction is specified in Article 35 of Law 640 (2001) for non-justified non-attendance. It is noteworthy that during the state of emergency declared by the President of Colombia amid during the Covid-19 pandemic, Decree 491 (2020) authorized hearings to take place via technological communication channels. Platforms such as Teams, Zoom, or Google Meet facilitated remote meetings, enabling parties from different municipalities to engage without necessitating the physical presence of lawyers as legal representatives. However, this decree had a temporary nature and ceased on June 30, 2022. Subsequently, the conciliation statute established in Law 2220 of June 30, 2022, solidified the use of information technologies in conciliation. Nevertheless, this statute has an initiation regime that becomes effective six (6) months after its promulgation (Law 2220, art. 145). Consequently, at the time of this article development, the rules active before the enactment of this statute, including Law 640 (2001), remained applicable.

- The unofficial agent that we will analyze in the following section.

The Case of the Unofficial Agent

In Colombia, the general rule is that individuals involved in a legal process must engage directly, even if they are represented by a lawyer. This appears contradictory when considering that anyone directly affected in a legal matter should logically have access to the court to defend their rights. The concept of the unofficial agent addresses what happens when an individual cannot directly engage in court proceeding. Article 57 of Law 1564 (2012) states that if a person is absent or unable to act, another party can file or respond to a lawsuit on their behalf. even without formal authorization. In such cases, a sworn statement confirming such condition is sufficient and can be presented when initiating or responding to legal actions.

Tamayo (2004, p. 296) defines the unofficial agency as follows: Unofficial agency occurs when a person, the unofficial agent or management agent, performs an act on behave of another person. the owner of the legal transaction or interested party, spontaneously and without legal appointment.

Regarding the Unofficial Agency, Díaz (2010) states: The Supreme Court has clarified that the unofficial agency is not limited to situations where a representative acts without specific authorization. It extends to scenarios where a person, without legal authority, takes on acts for another's assets, intending to enforce directives.

The criteria for acting as an unofficial agent seem straightforward. It involves a situation where someone is absent or unable to initiate or respond to a lawsuit. In either case, it is crucial to inform all involved parties that the individual is acting as an unofficial agent, a step that must be facilitated through a lawyer.

Various situations can necessitate the involvement of an unofficial agent. For example, consider a scenario where a father, representing his adult son with a handicap who lacks assigned assistance, needs to file a petition against a driver responsible for personal injuries. Another instance could involve a son recently diagnosed with a mental illness and sued in a Civil Court. These examples aim to ensure that individuals with disabilities can assert their rights independently. The Constitutional Court addressed this matter in Sentence T-044 of 1996: The Unofficial Agency only acts when defending an incapable person, its purpose is to prevent a lack of legal representation from perpetuating violations of fundamental rights or exacerbating existing risks. It aims to prioritize rights over formalities, upholding the law above all else. Thus, the Unofficial Agency, a procedural institute more meaningful in its contribution to fundamental rights realization, aids those incapable of seeking justice independently. It ensures judicial attention when it cannot be attained otherwise. It aims for the State to respond based on the request of the Unofficial Agent.

A key characteristic of the Unofficial Agency is the absence of legal authorization or consent from the represented party. This absence of formal agreement renders it akin to a quasi-contract in obligations. However, it is crucial for this process to provide a real benefit to the third party rather than causing harm for this quasi-contract to be established.

However, a legal process typically necessitates the involvement of parties with a vested interest. Article 57 of the General Code of the Process outlines two specific situations where the unofficial agent's role is limited: initiating a lawsuit and responding to one. Yet, for the involvement of the unofficial agent to be valid, a process called ratification is essential.

Ratification essentially legitimizes the actions of the unofficial agent. Failure to ratify could lead to the process being terminated (if the agent initiated the process) or the lawsuit being deemed unanswered. Leading to further legal (if the agent responded to the lawsuit). Despite the procedural view of lacking an execution order, the terms of ratification to validate their actions.

If ratification is deemed necessary shortly after the unofficial agent's within a process, it logically implies that the agent acts due to the absence or temporary incapacity (physical or mental) of a party, necessitating ratification to validate their actions.

In extrajudicial conciliation hearings, private individuals or legal representatives often attend, presuming to act as unofficial agents of a third party. They cite the second paragraph of Article 1 of Law 640 of 2001 to justify this action, which states that parties must attend the conciliation hearing and may do it with their legal representative. This aspect possesses a significant issue in extrajudicial conciliation, requiring analysis for a proper solution.

Understanding the requirements outlined in Law 640 (2001) regarding party attendance is crucial:

1. The plaintiff or defendant party's presence is required at the hearing (Article 1, paragraph 2).
2. The party may attend the hearing with their legal representative (Article 1, paragraph 2).
3. When the hearing is outside the judicial circuit, the legal representative may attend with the necessary authority to conciliate in behalf of the party (Article 1, paragraph 2).
4. Non-attendance by any party constitutes a serious fault and may result in penalties of up to two minimum salaries (Articles 22 and 35).
5. Law 2220 (2022) allows the legal representative's attendance at the hearing on behalf of a party absent due to being outside the municipality or country, in accidental cases, or do to force majeure (Law 2220 of 2022, Article 58).

It is crucial to remember that to understand the concept under Law 640 (2001), the subject of procedural law must have the capacity to exercise it, as mentioned in Article 534 and subsequent Law 1564 of 2012. Thus, it is essential to dismiss the possibility that whoever acts according to the rights of the petition must be a third party without the rights to reach an agreement, reject, conciliate, withdraw or otherwise settle the dispute rights. Lastly, the completion of joint action is necessary to ensure the legitimacy of the hearing in case an agreement is reached.

Regarding the unofficial agent, it is essential to consider that the origins of obligations for that judicial figure differ from those that created the hearing order. Similarly, the judicial representative authorized for the hearing also differs. The hearing order stems from a contractual resource, while the unofficial agent arises from the quasi-contract. Thus, when acting on behalf of another person without an official prior contract, the unofficial agent exercises functions as an external participant from the parties, lacking the authority to decide on the rights debated in the hearing.

In addition to the previously mentioned aspects, concerning the concept of the unofficial agent, it is notable that Law 60 (2001) outlines a hearing procedure and officialization with temporary limitations for the appointment of a conciliator, extending up to three (3) months or five (5) months only under the emergency decree No 491 of 2020. However, neither Law 60 nor the Conciliator Statute under Law 2220 (2022) regulates the attendance of unofficial agents or their subsequent ratification, unlike what is stipulated in Article 57 of Law 1564 (2012) for lawsuits and their responses. Therefore, unofficial agents must be specifically ratified for the action or exception they perform for the party they represent.

Consequently, if the law prohibits the presence of a legal representative without the required presence of the party within the judicial circuit where the hearing occurs, unofficial agents will undoubtedly not be permitted to act on behalf of a third party without the acknowledgement of the client or the authority to decide on matter being debated. Nevertheless, Law 2220 (2022), used to issue the Conciliation Statute, allows the exercise of the unofficial agent in the conciliation process for filing a petition provided the concerned individual ratifies it within ten days. If not ratified, it will be considered as if the petition was never filed. (Law 2220, 2022. Art. 50). However, this law did not include the unofficial agent's presence in the hearing, thereby maintaining the requirement of the parties' presence during the hearing (Law 2220, 2022, art. 58).

In conclusion, it is evident that the unofficial agent cannot participate in the conciliation hearing nor rely on the provisions of the Procedural General Code to justify its involvement. Due to the lack of rights, faculties, or legal attributions supporting their participation, the unofficial agent's recognition in conciliation hearings is not justified. If a legal representative or an individual attends an extrajudicial conciliation hearing, claiming to act as an unofficial agent of a third party, the conciliator must recognize the absence of the party and consider the potential sanctions as stipulated by the law states in such cases.

Conclusions

1. Conciliation, as an alternative conflict resolution method, offers peaceful access to justice without the direct involvement of a judge who resolves disputes through coercion and decision-making.
2. The mandatory requirement for a conciliation hearing in various judicial processes might seem to impose on the voluntary nature of conciliation. However, this requirement aims to propose peaceful resolution and self-resolution of conflicts, often encouraged by the impartial third-party conciliator.

3. While representation holds significance in the judicial process, Laws 640 (2001) and 2220 (2022) explicitly demand the presence of conflicting parties in the conciliation hearing. This emphasis on attendance does not diminish the inherently self-resolving nature of this conflict resolution method.
4. The conciliator's role involves assessing the qualifications of the plaintiff and defendant and determining if any participants should be required to attend the hearing, ensuring the thorough documentation of all decisions made.
5. The concept of the unofficial agent, while existing within the framework of figures representing parties in judicial processes, cannot participate in a the conciliation hearing on behalf of another individual unless specifically requested in the conciliation act. If an unofficial agent participates without the represented party being present, the conciliator would consider the represented party as absent.

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