

The virtualization of the hearing and its consequences in the context of civil procedure regarding speed and monetary economy



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ABSTRACT

The virtualization of hearings in civil proceedings is a current issue lacking debate and scientific analysis, especially in Brazil, which due to its continental dimensions has one of the largest judicial structures in the world. The aim of this article was to know if the virtualization of the hearings brought greater speed in the processing time of the processes and if the monetary expenses of the judiciary were reduced, presenting the main driving factor that drives its implementation in such an atypical way, using a qualitative inductive method of subjective character with the study of documentary bibliographic research, articles, books, websites, yearbooks, laws and resolutions. Coming to the conclusion that the implementation of virtual and teleface-to-face hearings brought greater procedural speed and lower monetary expenses, these being driven by the advent of the COVID-19 pandemic that atypically and abruptly forced humanity to readjust, including justice itself, which needed significant modifications, changes that are supported in a legal and normative way by the National Council of Justice – CNJ and by the autonomy of each court and branch of the justice for their own needs.

Keywords: Audiences, Virtualization, Speed.

1 INTRODUCTION

The Brazilian judicial system is composed of several acts that constitute and integrate justice in its molds. Within the due process of law acquired with the redemocratization of 1988, the hearing has a role of high relevance, for being able to implement the contradictory and broad defense, both principles extremely fundamental to the legal system.

The doctrine does not have peace in conceptualizing the term audience, often not even mentioning such a concept, because it understands that it is already inherent in the study of justice. Thus, it is considered a hearing as an "act of hearing the party in court; public act determined and fixed



by the judge that is carried out with the presence of the interested parties, the witnesses, the organ of the Public Prosecutor's Office (MP) previously notified".

Given this, it is understood as a whole hearing, judicial act in which the parties and their attorneys, with the witnesses, experts, (if applicable) appear before the judge and / or mediator, conciliator arbitrator to make their oral arguments and provide clarification of the dispute.

The New Code of Civil Procedure of 2015 (CPC/15) implemented in the justice system several modalities and forms of hearings, being the preliminaries of mediation and conciliation (art. 334), sanitizing (art. 357, §3), trial and instruction (art. 358 to 368), self-composition (art. 139, V) and clarification (art. 139, VIII).

The world has modernized and with it the judicial process also to adapt to social needs, thus replacing the old and traditional paper with a digital medium that was greatly accelerated with the pandemic that was established on the planet by mid-December of the year 2019. With the need for readjustment, the acts of the judiciary were modified and the hearings were transferred to the digital environment, raising a problem to know if such methods brought greater procedural agility and lower monetary expenditure, if they only maintained it, or even made them unviable.

2 THEORETICAL FOUNDATION

Law 11,419 of December 19, 2006 provides for the computerization of the judicial process, thus bringing the digitization of the procedural acts of the judiciary.

Art. 1 The use of electronic means in the processing of judicial proceedings, communication of acts and transmission of procedural documents shall be admitted under the terms of this Law.

§ 1 - The provisions of this Law shall apply, indistinctly, to civil, criminal and labor proceedings, as well as to special courts, in any degree of jurisdiction.

§ 2 - For the provisions of this Law, it is considered:

I - electronic means any form of storage or traffic of documents and digital files;

II - electronic transmission any form of distance communication with the use of communication networks, preferably the world wide web;

III - electronic signature, the following forms of unequivocal identification of the signatory:

a) digital signature based on a digital certificate issued by an accredited Certification Authority, in the form of a specific law;

b) through user registration in the Judiciary, as disciplined by the respective organs. (Emphasis added).

It is noted that the digitization did not happen uniformly and with all areas of the judiciary, initiated in those that have greater procedural volume such as civil, criminal and labor. Thus, the modernization of the judiciary is not new, but it was accelerated too much with the COVID-19 pandemic that took place in the world in December 2019 and arrived in Brazil on February 25, 2020¹.

The way the world dealt with the atypical nature presented by the threat to human life was

¹ <https://www.unasus.gov.br/noticia/coronavirus-brasil-confirma-primeiro-caso-da-doenca>



diverse and the judiciary also had to adapt to the context imposed by nature. It all began with the so-called **EXTRAORDINARY DUTY REGIME** of the judiciary with resolution No. 313 of the National Council of Justice (CNJ), which suspended any and all work and face-to-face service in the units of the judiciary, except the Federal Supreme Court (STF) and the Electoral Justice.

Art. 1° Establish the regime of Extraordinary Duty, within the scope of the National Judiciary, to standardize the functioning of judicial services and ensure access to justice in this emergency period, in order to prevent the contagion by the new Coronavirus – Covid-19.

Single paragraph. This Resolution does not apply to the Federal Supreme Court and the Electoral Justice.

Art. 3° The face-to-face service of parties, lawyers and interested parties is suspended, which must be carried out remotely by the available technological means.

§ 1 Each judicial unit shall maintain a remote service channel, to be widely disseminated by the courts.

§ 2 Not achieved service in the form of the first paragraph, the courts shall provide means to meet, in person, lawyers, public and private, members of the Public Prosecutor's Office and judicial police, during the forensic file.

Art. 4° In the period of Extraordinary Duty, the assessment of the following matters is guaranteed:

I – habeas corpus and writ of mandamus;

II – injunctions and anticipation of protection of any nature, including in the scope of special courts;

III – communications of arrest in flagrante, requests for the granting of provisional freedom, imposition and substitution of precautionary measures other than prison, and disinternment;

IV – representation of the police authority or the Public Prosecutor's Office aiming at the decree of preventive or temporary detention;

V – requests for search and seizure of persons, goods or values, telephone and telematic interceptions, provided that the urgency is objectively proven;

Among the measures adopted, citizens were guaranteed the appraisal(s) of matters classified as indispensable, as stated in article 4 of the resolution.

The situation became so exceptional that even the deadlines were suspended for a period of 43 days and later extended for another 15 days with the resolution of the CNJ No. 314. Thus totaling a break of 58 days.

Art. 5° The procedural deadlines are suspended from the publication of this Resolution, until April 30, 2020.

Single paragraph. The suspension provided for in the caput does not prevent the practice of a procedural act necessary for the preservation of rights and of an urgent nature, respecting the provisions of article 4 of this Resolution.

When the activities returned, the scenario was still critical, needing to ensure the organization



of the judiciary for the so-called virtualization². This was the milestone of some hearings in the virtual mode through platforms such as ZOOM, MEET, TEMS and WhatsApp.

In the case of virtual hearings, it should be noted that not all of them were covered by the virtualization regime, either because of their peculiarities or because of the procedural necessity in vogue. These have several forms and modalities, which are:

- **The preliminaries of mediation and conciliation (art. 334):** considered preliminary, as these hearings may result in agreement between the parties, which would end the process before its consideration by the judge. What will differentiate whether it will be a mediation hearing to conciliation is the type of "conflict. According to §§ 2 and 3 of article 165 of the CPC/15, it will be conciliation "in cases where there is no previous link between the parties"; will be mediation, "in cases where there is a previous link between the parties." (FREDIE, 2019).
- **Sanitizers (art. 357, §3):** it is the hearing that aims to adapt the process to follow the phase of instruction and trial, thus avoiding useless or unnecessary evidence, this hearing is a faculty of the judge, being only made in causes of greater complexity of fact or law as precepted by the legal statute of art. 357 in paragraph §3.
- **Judgment and instruction (art. 358 to 368):** Considered the last hearing of the knowledge phase, this will only be held when you have the production of oral evidence. "If there is no need to hear the expert, take personal testimony or hear witnesses, the hearing will be waived." (VINICIUS, 2021).
- **Self-composition (art.139, V): hearing** aimed at resolving the conflict by means of agreement between the parties before the delivery of the judgment and after the conciliation and/or mediation hearing. It is the faculty offered by the principle of cooperation aimed at the settlement of conflicts by the parties to the dispute themselves.
- **Clarification (art.139, VIII):** is the hearing that allows the judge at any time to request the personal appearance of the parties to inquire about the facts of the case.

Within the pandemic context, the modalities, encompassed by virtualization, constitute conciliation and mediation, instruction and trial (in civil proceedings, because in criminal proceedings there is still severe rigidity with their adoption) and clarifications. As usual, the hearing of sanitation and self-composition rarely occurs, being rarely used in the virtual system.

For the implementation of these hearings, the CNJ downloaded resolution number 354 of November 2020, which establishes on the digital compliance with procedural act and court order and

²The doctrine does not have peace in conceptualizing the term audience, often not even mentioning such a concept, because it understands that it is already inherent in the study of justice. Thus, it is considered a hearing as an "act of hearing the party in court; public act determined and fixed by the judge that is carried out with the presence of the interested parties, the witnesses, the organ of the Public Prosecutor's Office (MP) previously notified".



participation in virtual hearings by videoconference or telepresence. That is, with this resolution the judiciary, the courts and the magistrates gained permission to hold the hearings in the virtual environment, in addition to its regulation.

The big question is whether this virtualization brings agility to the process, making the judiciary even less time-consuming than it is, and more accessible in monetary matters, because the cost of maintaining a process is high both for the State (when there are hyposufficient) and for private agents.

Every year the CNJ publishes a report³ containing all the statistics regarding progress, cost, time, the number of people and processes, among others, to inform and demonstrate how justice is going. Given these yearbooks⁴ it is possible to ascertain how the judiciary is working in Brazil in relation to the numbers.

In what pertains **to the processing time of the processes**, the CNJ is based on 3 (three) indicators, being "(I) the average time from the initial to the sentence, (II) the average time from the initial to the low and (III) the average duration of the processes that were still pending in the year of closing of the edition".

In the year 2018 (2019 yearbook, since the yearbook of the year always refers to the previous year) before the institution of the hearings in the virtual mode, the processing time of the processes in the 1st degree of jurisdiction of the state courts were constituted as figure 1.

Figure 1 – Processing time of the processes in the state courts in 2018



Source: Justice in numbers 2019

As can be seen, in the knowledge processes it took on average 2 years and **4 months** to obtain a sentence, while in executions the average time will be **6 years and 1 month**.

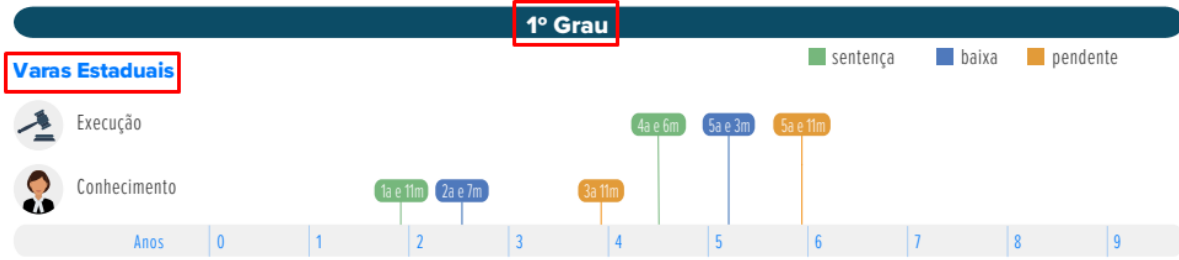
With the permissibility and the ability to hold virtual hearings, this average time was modified, as can be seen in Figure 2.

³ It is worth mentioning that the edition of the yearbook refers to the year prior to the year of publication.

⁴ Called "JUSTICE IN NUMBERS".



Figure 2 – Processing time of the processes in the state courts in 2021



Source: Justice in numbers 2022

The average time for the delivery of a sentence in the knowledge phase increased to 1 year and 11 months, thus decreasing 5 months when compared to the numbers before the virtual hearings. In the executions the result was expressive, decreasing in 1 year and 7 months after the adherence the hearings in the virtual modality.

The special courts by their own nature have the ability to be faster, it can be differentiated as shown in figures 3 and 4.

Figure 3 – Processing time of the processes in the special state and federal courts in 2018



Source: Justice in numbers 2019

Figure 4 – Processing time of the processes in the special state and federal courts in 2021



Source: Justice in numbers 2022



As can be seen, the state courts maintained the capacity of time for the delivery of sentence having no interference with the advent of virtual hearings, while the federal special courts managed to decrease by 3 months in the knowledge phase and 1 month in the execution phase so that the process had sentence delivery.

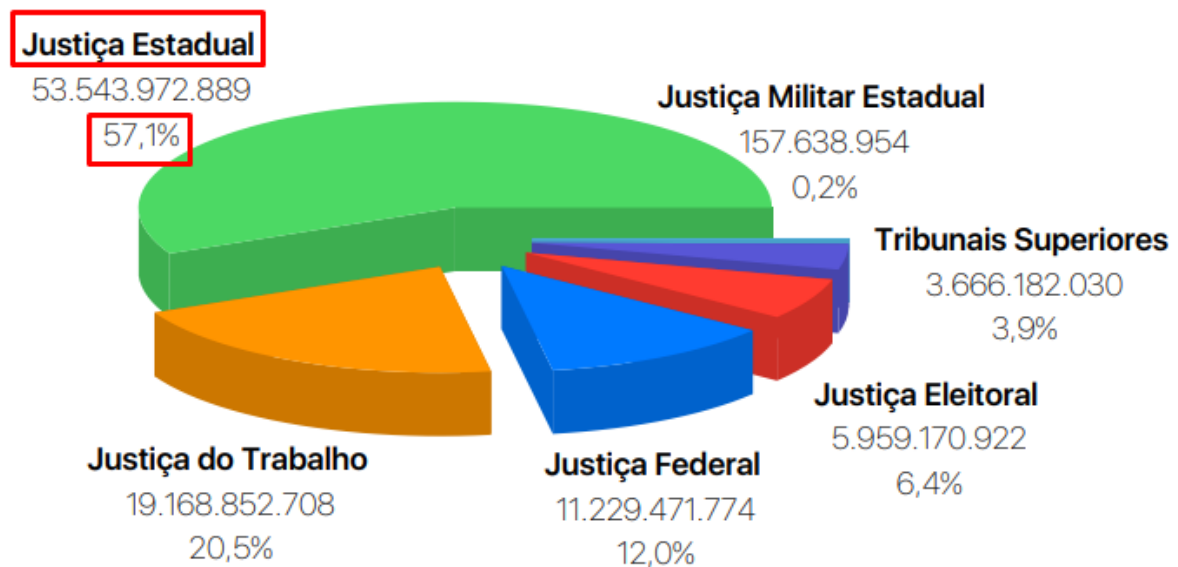
In view of the data, it is noted that the virtual and teleface-to-face hearings enabled a flexibility and greater agility to the judiciary, which allowed it to be able to pronounce sentence more quickly. Such results are significant to the justice system that has long been tumultuous and burdened with numerous lawsuits.

Another point to be analyzed is the **total expenses and revenues with justice in Brazil**. These expenses include what is paid to the servers, the expenses to maintain justice and even the expenses with the inactive.

In 2018, justice expenses totaled **93.7 billion reais**⁵, corresponding to a decrease compared to previous years. The report also points out that the procedural volume also grew in maximum proportion⁶

For each segment of justice it is noted that the one that consumes the most resources is the state courts, responsible for more than 50% of the total expenses, as can be seen in the graph below.

Figure 5 – total expenditure by branch of justice in 2018



Source: Justice in numbers 2019

It is worth mentioning that the expenses with human resources are "responsible for approximately 91% of the total expenditure and include, in addition to the remuneration with

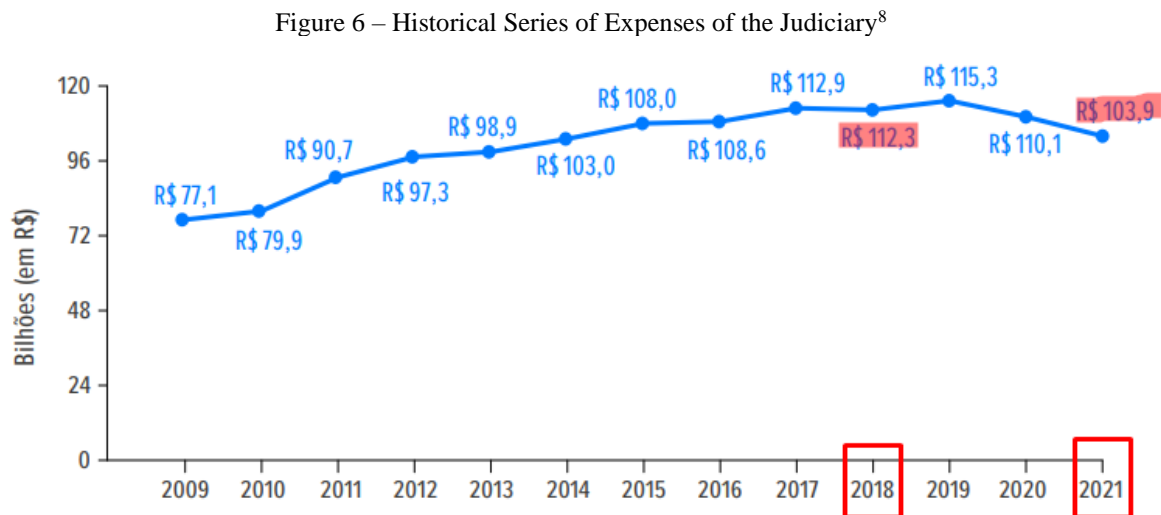
⁵ There is divergence with the expenditure figures of the Brazilian judiciary in 2018, because the 2022 yearbook reports that the expenditure is 112.3 billion.

⁶ Audience all, act



magistrates, servers, inactive, outsourced and trainees, the other aids and assistance due, such as food assistance, daily, tickets, among others"⁷

There is divergence in the spending of justice expenses in the year 2018. In the 2019 yearbook (which refers to the previous year – 2018), the amount of R\$ 93.7 billion reais was **presented, but when the 2022 yearbook was presented (which refers to the previous year – 2021) the value presented is R\$ 112.3 billion reais, while the value of 2021 is R\$ 103.9 billion reais**, as can be seen in Figure 6.



Source: Justice in numbers 2022

Despite the divergences of data presented by the CNJ itself in its yearbooks, the expenses of the judiciary have been decreasing when compared to the years 2018 and 2021. These years being the milestone for the institution of virtual and teleface-to-face hearings, constituting the year 2018 prior to the institution of the new modality and the year 2021 its institution.

The value before holding virtual hearings are dubious not knowing for sure what is the truth, so you can have 2 different results to know what is the economy of legal expenses in Brazil. The first is considering the 2019 yearbook that brings the value of R \$ 93.7 billion reais (for the 2018 exercício). Considering this data, the economy of the judiciary is **10.2 billion reais**. In the second scenario, the one presented by the 2022 yearbook (referring to the 2021 fiscal year) shows a saving of **R\$ 8.4 billion reais**.

In view of the two cases, there is a decrease in the expenses of the judiciary, resulting in greater savings, thus proving that virtual hearings are more advantageous in the economic aspect.

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⁸ judicial in which the parties and their attorneys-in-fact, with



3 FINAL CONSIDERATIONS

In view of all the above, it can be seen that the virtual and teleface-to-face hearings brought greater speed in the processing time of the processes and lower monetary expenditure to the justice system in Brazil, thus demonstrating through qualitative means made available by the CNJ that the new modality of hearing brings expressive numerical results to the judiciary.

However, these results do not guarantee that the quality of the service provided has increased or that these factors corroborate with greater accessibility of the most vulnerable people to justice, and this advent may be a means to further distance the decisions made from reality, because the greater the distance from the object the greater its strangeness.

Undoubtedly these measures are necessary for social adequacy, but they must be structured, thought and weighed, after all the process is a set of acts that will define the future life of a human being affecting him immediately and the collectivity in a mediate way, for such reasons one must always reaffirm the dignity of the human person and the constitutional guarantees to avoid that the very nature of individuals make them dehumanized and do with May the atrocities and barbarities already experienced in history be recurrent in the courts.



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