UMA PROPOSIÇÃO DE AJUSTES SOBRE POLÍTICAS PÚBLICAS PELA COOPERAÇÃO JUDICIÁRIA NO BRASIL

A PROPOSITION OF ADJUSTMENTS ON PUBLIC POLICIES BY JUDICIARY COOPERATION IN BRAZIL

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ÁREA(S): direito processual civil; direito constitucional.

RESUMO: O Brasil sofre com incertezas judiciais na efetivação de direitos fundamentais. Uma única cidade pode ter decisões tão diversas quanto a diversidade de juízes nela atuantes. As Cortes Superiores tem obtido bons resultados com a padronização de jurisprudência. Ainda assim, parece importante que um juízo singular possa se harmonizar aos demais e compartilhar demandas e decisões para potencializar a efetivação de políticas públicas. O instrumento que pode democratizar a jurisdição em um sentido convergente a esse fim é a cooperação judiciária. Isso pode ocorrer devido à flexibilização dos processos e dos poderes judiciais, que podem ser autorregulados para alcançar melhores resultados globais, tanto no geral quanto em políticas públicas. A cooperação judiciária pode auxiliar a robustecer a eficiência na primeira instância no Judiciário brasileiro, com arranjos mais democráticos e melhor voltados à atividade-fim, e menos importes com as estruturas estáticas – processo e jurisdição. A cooperação judicial combinada à administração judicial pode potencializar mudanças significativas na justiça brasileira em primeira instância. A pesquisa será qualitativa na apreciação de obras, decisões e documentos. Ela utilizará o método analítico para compreensão dos fenômenos, sem prejuízo da abordagem descritiva, principalmente para compreensão de conceitos.

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ABSTRACT: *Brazil is suffering from legal uncertainty by the Judiciary in the realization of fundamental rights. A single city, even, can have decisions as diverse are the judges. Higher courts have obtained good results with the standardization of jurisprudence. Still, it seems essential that the Judex a quo can harmonize themselves to share demands and decisions to improve public policies' implementation. The instrument that can democratize the single jurisdiction for this purpose is judicial cooperation. It may be due to the flexibility of the process and judicial powers, which may be self-regulated to achieve better overall results both in general and in public policies. Judicial cooperation can help improve the efficiency of the first instance of the brazilian Judiciary with more democratic arrangements that are more concerned with end-activity and less with static structures – process and jurisdiction. Judicial cooperation combined with judicial administration can potentiate significant changes in brazilian justice at first instance. The research will be qualitative in the appreciation of works, decisions, and documents. And will use the analytical method for understanding the phenomena, without prejudice to the descriptive approach, especially for understanding concepts.*

PALAVRAS-CHAVE: políticas públicas; cooperação judiciária; administração da justiça.

KEYWORDS: *public policies; judicial cooperation; administration of Judiciary.*

SUMÁRIO: Introdução; 1 Noções preliminares do sistema de cooperação judicial nacional; 2 Eficiência judicial e flexibilidade de competências; 3 Espécies de cooperação judicial; 4 Cooperação judicial e competência adequada; 5 Cooperação e políticas públicas; Conclusões; Referências.

SUMMARY: *Introduction; 1 Preliminary notions of national judicial cooperation; 2 Judicial efficiency and flexibility of competencies; 3 Kinds of judicial cooperation; 4 Judicial cooperation and adequate competence; 5 Cooperation and public policies; Conclusions; References.*

INTRODUCTION

The brazilian Judiciary slips in lethargy[2] from a lack of uniformity in its decisions[3]. There is criticism because other institutions would have a uniform position in their deliberations. It is common in

[2] As Maria Tereza Still Sadek affirms: "*Operators of law and citizens share the same general observation: the main mark of Brazilian justice is slowness*". In: SADEK, Maria Tereza Aina. Acesso *à* justiça: visão da sociedade (Access to justice: society's view). *Revista Justitia*, São Paulo, n. 65, jan./jun. 2008.

[3] CAMBI, Eduardo. Segurança jurídica e efetividade processual (Legal security and procedural effectiveness). *Revista dos Tribunais Sul*., v. 4, p. 175-190, mar./abr. 2014.

the same competency area, distinct judges to proffer different decisions on the same topic[4]. This way, while the Judiciary is subject to multiple possible decisions, other organizations, e.g., Audit Courts[5], enjoy credibility. It is because they decide uniformly; this brings legal certainty. It probably happens since it resolves issues in a single collegial court[6].

Due to this in brazilian Courts, there is a strong movement towards strengthening legal security. It already happened in the Supreme Court of Brazil (SCOB, aka STF), according to Federal Laws 11,417 and 11,418 of 2006, respectively subjects Binding Precedent and repetitive appeals. This tendency is occurring at all jurisdictional levels.

It follows too in superior courts as Federal Superior Court (FSC, aka STJ) concerning repetitive appeals, see Federal Law n. 11,672 of 2008. Moreover, at lower courts, as the Repetitive Demand Resolution Incident – (RDRI) and the Assumption of Competence Incident – (ACI), see Civil Procedure Code (CPC), edited in 2015. So, gradually, it seems there is already an effort to obtain reasonable legal certainty in the brazilian legal system. Therefore, the courts have acted to similar group cases for joint judgment. Despite this effort launched at the Court's level, the same does not seem to occur in trial courts.

However, a closer look at the issue reveals that in the Code of Civil Procedure of 2015, articles 67 to 69, there is a provision for a crucial instrument that seems to be able to allow the trial courts to become safer and to improve dynamicity and productivity – is national judiciary cooperation.

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4 DELGADO, José Augusto. A imprevisibilidade das decisões judiciárias e seus reflexos na segurança jurídica (The unpredictability of judicial decisions and their impact on legal certainty). Available at: https://www.stj.jus.br/internet_docs/ministros/Discursos/0001105/dircuso-min-delgado.htm. Accessed on: 01/12/2020.

5 The Superior Council of the Public Attorney's Office is also an impressive body in this point of view, considering that its deliberations involve the universe of attorneys assigned to each institution and links the prosecutors as pointed out in MARQUES NETO, Floriano de Azevedo; PAULA, Juliana Bonacorsi de. Os sete impasses da Administração Pública no Brasil (The seven impasses of Public Administration in Brazil). In: PEREZ, Marcos Augusto; SOUZA, Rodrigo Pagani de. *Controle da Administração Pública* (Control of Public Administration). Belo Horizonte: Forum, 2019. p. 36.

6 PEREIRA, Ana Paula Sampaio Silva. Segurança jurídica e devido processo legal administrativo (Legal certainty and due administrative, legal process). Dissertation for obtaining a Master of Law degree from the Faculty of Law of Uniceub. Available at TCU's Digital Library at the link: https://portal.tcu.gov.br/biblioteca-digital/seguranca-juridica-e-devido-processo-legal-administrativo.htm. Accessed on: 01/12/2020.

1 PRELIMINARY NOTIONS OF NATIONAL JUDICIAL COOPERATION

In 2017, Professor Antonio do Passo Cabral presented unpublished studies in Brazil on the subject[7]. He asserts that it is necessary to review the natural judge's static concept and align it with the idea of adequate competence, with the modern judge being one based on flexibility, functionality, and effectiveness.

This tack, Professor Fredie Didier Jr., in 2020, presents to Brazil with the book Cooperação Judiciária Nacional (National Judiciary Cooperation). It is starting the outline for a theory of judicial cooperation in national law. In these studies, he brings to light essential concepts such as the principle of adequate competence, the "translatio iudicii", and the direction of efficiency applied to the process. He discusses besides types and implications of different cooperative acts. In the end, he presents a suggestion of the brazilian model of national judiciary cooperation[8].

In the prior CPC (1973), judicial cooperation occurred only through precatory, rogatory, and order letters. These were considered collaboration as such. The first advance took place in 1995 with Federal Law 9,099, which allowed acts in other counties by any means of communication (article 13, paragraph 2).

The National Council of Justice (NCJ, aka CNJ), in 2011, through Recomendação nº 38 (Recommendation n. 38), outlined guidelines to the courts for mechanisms for cooperation among courts and established essential instruments such as the centers of judicial cooperation and the figure of the cooperating judge. Following this Recommendation, in 2015, the new Code of

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7 CABRAL, Antonio do Passo. *Juiz natural e eficiência processual*: flexibilização, delegação, coordena*ção* de competências no processo civil (Natural judge and procedural efficiency: flexibility, delegation, coordination of powers in civil proceedings). A thesis presented in the competition of tests and titles to fill the position of Full Professor. Faculty of Law of the State University of Rio de Janeiro. Rio de Janeiro: author's edition, 2017.

8 DIDIER JR., Fredie. *Cooperação judiciária nacional* – Esboço de uma teoria para o direito brasileiro. (National Judicial Cooperation – Outline of a theory for Brazilian law). Salvador: Juspodivm, 2020. Professor Fredie Didier Jr. recently joined the commission in the National Council of Justice – CNJ, which edited the very recent Resolution n. 350 of 10/27/2020 that systematizes national judicial cooperation. The work has not yet dealt with CNJ Resolution 350/2020, as it is very recent, but it has enormous value for studies in this exciting area of procedural knowledge.

Civil Procedure established, in Article 67, "the duty of reciprocal cooperation in all instances and levels of jurisdiction, through its magistrates and civil servants".

The new CPC also established 3 (three) forms of judicial cooperation, which may occurs through request, delegation, or negotiation[9].

The new cooperation model overcame the model of the letters. Fredie Didier Jr. pointed out[10] this was a significant milestone. This new system power a process more democratic, efficient, and technological.

Nowadays, what has happened most is that the many courts make available passive rooms[11], where the judge of the case, by videoconference in a passive room, can himself and directly have contact with the evidence. The proof is more trustable than with the letter system. The Court that decides will be the one who will have direct contact with the evidence produced and will not need court help.

Nevertheless, this is only the "tip of the iceberg". The provisions of Articles 67 to 69 of the current CPC point to a scenario in which joint process management becomes possible, through collective production of evidence, gathering repetitive processes, the collaborative practice of acts of service of process, legal notice, and execution, among others[12].

It relevant opening is because the list of cooperation acts seems to be not definitive. This way, CPC leaves appropriate signs (Article 68, "caput" and § 2) of the clarifications yet not discovered as relevant as legal pre-established specifications. It becomes evident when the literal text of Resolution nº 350/2020 puts in article 6, caption: "In addition to others defined by consensus, acts of cooperation may consist of".

It seems that with this, the forms have less prestige[13], to the detriment of the results. It is the flexible procedure, which, acting in a plastic way, shapes

9 DIDIER JR., Fredie. *Cooperação judiciária nacional...*, p. 75-77.

10 Ibidem, p. 66.

11 CNJ regulated issue, primarily because of the Covid-19 pandemic through *Resolução nº 341, de 07.10.2020 (Resolution n. 341 of 10/07/2020)*, but the courts had already been using the device progressively.

12 DIDIER JR., Fredie. *Cooperação judiciária nacional...*, p. 67.

13 Forms have long been considered less important than results, according to Article 250 of the CPC of 1973, revoked in 2015. It was instrumentality to safeguard the process as saw in DINAMARCO,

itself to solve, in the best way, the many difficulties that may arise in the course of the process, especially when relations take more than one judgment, which makes the need for judicial cooperation to emerge.

Therefore, the flexibility[14] seems to be dispersed by the new CPC, signals that it is due to the strong democratic vein – the cooperation, justice, and effectiveness provided for in Article 6, in line with the efficiency provided for in Article 8.

2 JUDICIAL EFFICIENCY AND FLEXIBILITY OF COMPETENCIES

These concepts, effectiveness, and efficiency, are close but seem not to be identical. In José Miguel Garcia Medina's lesson[15], the efficiency[16] would be "to organize and carry out the acts to achieve the best possible result". Efficiency is doing more with less and implies the procedural economy.

On the other hand, effectiveness points to the idea that the expected result happens. The proceeding expects a fair merit decision that materializes the judicial order (articles 4º and 6º of CPC)[17].

Cândido Rangel. *A instrumentalidade do processo* (The Instrumentality of the Process). 9. ed. São Paulo: Malheiros, 2001. Nowadays, it seems much more important than the process itself to solve the problem inherent to each demand, as shown in Article 4 of the CPC 2015.

14 GAJARDONI, Fernando da Fonseca. Os procedimentos simplificados e flexibilizados no novo CPC (Simplified and flexible procedures in the new CPC). In: CÂMARA, Alexandre Freitas; GAIO JÚNIOR, Antonio Pereira (Org.). *O novo processo civil brasileiro* – Novos reflexos e persrpectivas de acordo com as Leis nºs 13.105/2015 e 13.256/2016 (Civil Procedure Code: new reflections and perspectives according to Laws 13.105/2015 and 13.256/2016). Belo Horizonte: Del Rey, 2016. p. 131-158.

15 MEDINA, José Miguel Garcia. *Curso de direito processual civil moderno* (Course in Modern Civil Procedural Law). 3. ed. rev., current. e ampl. São Paulo: Revista dos Tribunais, 2017. p. 114.

16 The most potent instrument of procedural efficiency is in full swing in Brazil – it is the increasing computerization of the processes and information related to them, see *Resolução nº 345, de 09.10.2020 (Resolution n. 345 of 10/09/2020) of the CNJ* that provides for 100% Digital Justice. If procedural democracy (flexibility) seems to be the great driving force behind a more just and reasonable process, efficiency paves the way with large steps through information technology, materializing Article 37 of the Constitution's provisions.

17 DIDIER JR., Fredie. *Curso de direito processual civil*: introdução ao direito processual civil, parte geral e processo de conhecimento (Civil Procedural Law Course: introduction to civil procedural law, general part, and knowledge process). 19. ed. Salvador: Juspodivm, v. 1, 2017. p. 117.

The effectiveness of the process, through procedural flexibility[18], finds its most inspiring source in Article 190 of the CPC. It broadly admits the possibility of changes in the procedure through the parties' conventions subject to judicial review, regarding the vulnerabilities and abuse; situations in which it may not be approved (single paragraph).

The change process is occurring in the procedure and jurisdiction; both are becoming more flexible and dynamic. Thus, the proceeding may change form, and jurisdiction, structure. It allows new standards to solve complex and even challenging problems. Therefore, judges can practice acts together, directly impacting the traditional concepts that each judge must act alone. They can establish concerts to share competence to resolve particular circumstances that are hard to solve solely.

In his intentions, Resolution n. 350 names it as "procedural management" and "sharing of competencies". Judges act together in the same processing or work together to define the bests strategies and solutions to solve similar suits.

For specimen, when a court appoints a single specialist that produces evidence for just one suit. In suits linked to the same fact, like a collapse of a building that generates multiples sues. The professional appointed could act in several claims and even for different judges. The last adjustment for a single appointment may allow single labor for all sues and judges and just one payment.

These situations indicate how powerful the idea of judicial cooperation could be, especially in a concerted mode.

3 KINDS OF JUDICIAL COOPERATION

Fredie Didier, in the book Cooperação Judiciária Nacional[19] (National Judicial Cooperation) points to three types of judicial cooperation: by request, delegation, and negotiation.

[18] Professor Paulo Mendes de Oliveira deals with the procedural flexibility provided for in the current CPC in a celebrated and in-depth study that shows how much more democratic the process has become today in Brazil (OLIVEIRA, Paulo Mendes de. *Segurança jurídica e processo* (Legal certainty and process) [electronic book] From rigidity to procedural flexibility. 1. ed. São Paulo: Thomson Reuters Brasil, 2018. 6MB; ePUB.

[19] DIDIER JR., Fredie. *Cooperação judiciária nacional...*, p. 75-77.

Cooperation by request is considered more straightforward. It is a prompt answer as the letter rogatory (commission) requested by one judge to another one.

Cooperation by delegation is when a judicial body transfers competence to practice one or a few procedural acts to another linked to it; a good example being the mandate issued by courts for individual or lower courts.

The difference is in the request, the source asks for cooperation; in the delegation, it determines cooperation.

Cooperation by according would be the big announcement. Because it is "a general rule, consensual and before the practice of acts of cooperation" would be necessary, according to Fredie Didier's teaching[20].

4 JUDICIAL COOPERATION AND ADEQUATE COMPETENCE

Here, professor Antonio do Passo Cabral[21] indicates that the judge could decline jurisdiction directly to another that he believed was better able to solve the problem (e.g., more technically qualified judge). Its position is terrific since jurisdiction must pay attention to Public Administration's efficiency (Federal Brazilian Constitution, Article 37).

In an environment where everyone is acting responsibly, this would be best. However, as the book "Roots of Brazil" by Sérgio Buarque de Holanda points out[22], brazilians can be emotional and focused on self-interests. So perhaps the mere personal feelings of the people involved in the competence adjustment agreement can make it a challenge.

The present study does not intend to simplify things drastically and affirm that everything takes place in the "brazilian way"; that is not the case.

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20 Ibidem, p. 77.

21 CABRAL, Antonio do Passo. *Juiz natural e eficiência processual...*, p. 374. "*Besides, contrary to representing any offense to fundamental guarantees, the motivated decline for adequate competence is a decision that best implements access to justice. Understanding that the commitment to provide jurisdictional protection involves the optimal exercise of jurisdictional prerogatives, if there is any other judicial body that can decide better, it is natural to conclude that there is an effective duty of the judge, acting on the principle of adequate jurisdiction, to remit this cases for judgment*".

22 HOLANDA, Sérgio Buarque de. *Raízes do Brasil* (Roots of Brazil). 26. ed. 14. reimp. São Paulo: Companhia das Letras, 1995. Especially chapters 2 and 5, which deal, respectively, with work, adventure and the cordial man.

Although, the successive problems that we see occurring, daily, in different power levels, based in particular on "patrimonialism" and on the "adventurous spirit" (Iberian heritage, according to Sérgio Buarque de Holanda); it seems to indicate that, to avoid abuses among judges, any solution in this respect appears that it should preferably consider according to a them.

On the other hand, Luiz Guilherme Marinoni, Sérgio Cruz Arenhart, and Daniel Mitidiero[23] point out that the judge should merely assume who receives the request. For the practice of a concerted act or any other judicial cooperation act, he would have no management over whether it is accepted or not the request for cooperation. It is also the opinion of Alexandre de Freitas Câmara[24].

Article 8 of Resolution n. 350/2020-CNJ points to this position of pure and simple acceptance by the judge who receives the request for cooperation. The National Council of Justice seemed to want, here, to deal with more straightforward situations, such as acts without great complexity, in which the requested judge does not interfere in the content of the cooperated action, and only on formal aspects, which seems to have been the keynote in this rule.

On the other hand, Article 11 of the same Resolution deals with cooperation negotiated between courts, for the practice of joint acts and concerted acts, in the proper way, being a necessary advance in the sense that different courts can establish multiple forms of agreements for the solution of several problems.

Unlike the provisions of article 8, it is evident in article 11 that the judges will negotiate, and they define the questions and solutions. Through the Center of Judicial Cooperation, judges will inform their courts about the agreement they have made (§ 5). However, the courts can not intervene in the judges' settlements, not even ratifying their agreement.

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[23] MARINONI, Luiz Guilherme; ARENHART, Sérgio Cruz; MITIDIERO, Daniel. *Novo curso de processo civil*: tutela dos direitos mediante procedimento comum. (New civil procedure course: protection of rights through common procedure). 3. ed. São Paulo: RT, 2017. p. 74.

[24] CÂMARA, Alexandre Freitas. *O novo processo civil brasileiro* (The new Brazilian civil procedure). 3. ed. rev. atual. e ampl. São Paulo: Forensic, 2017.

This broad freedom, it seems, has dramatically strengthened the jurisdiction of the first degree, which in this rule, finds an elastic basis for remodeling competencies according to the agreement signed.

The CNJ, through the Center of Judicial Cooperation, must be informed too of the agreements signed, less as a form of control (mere publicity, § 4 of article 11) and more as a source of information and influence for the entire Judiciary, through relevant practices (article 17).

At this point, the concept of adequate competence matters, as the most appropriate judge to decide the issue better[25].

As stated earlier, in the concept of adequate competence, Professor Antonio Cabral indicates that he would decide the process, the judge most prepared.

Professor Fredie Didier Jr., a pioneer in dealing with this issue, indicates that we are moving towards the recognition of jurisdiction based on adequate competence, which he will use as a guide for establishing competence, not the traditional criteria, based on fixed competencies. So, the efficiency and effectiveness[26] empower judicial cooperation[27] to solve demands better.

Thus the competence is in the process of mitigation. Because of effectiveness and efficiency, and still according to the guidelines given by Res. 350/2020-CNJ, current CPC, and decisions.

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[25] CABRAL, Antonio do Passo. *Juiz natural e eficiência processual...*, p. 370-371. "*In the combination of guarantees and efficiency in the essential core of the natural judge, we saw that the procedural system could no longer rely on the logic of parliamentary legality for the task of sharing powers.* If jurisdictional protection is to be provided optimally, employing appropriate procedural techniques for each case, the parties are entitled to have their dispute, once judicialized, decided by the most appropriate Court among those competent to do so. (1) *The analysis must be drawn from concrete circumstances that must be weighed by the judge. (2) In this scenario, the natural judge's principle is not limited to the 'cold' abstraction of the law but incorporates some adequacy and competence efficiency measures. (3) The natural judge becomes the judge who can decide better*" (without italics in the original).

[26] BRAZIL. STJ, Conflito de Competência nº 144.922/MG (*Conflict of Competence* 144.922/MG).

[27] DIDIER JR., Fredie. *Cooperação judiciária nacional...*, p. 9. "*But the decisive fact for me to decide to organize these ideas was the closest contact I had with two of the most relevant collective cases in progress in Brazil: the case of the Fundão dam rupture, in Mariana, and the case of events geophysicists in neighborhoods of Maceió, Alagoas. These cases, and many others, not necessarily with the same degree of legal, social, and economic complexity, will never be resolved in an efficient, fair, and appropriate manner without judicial cooperation*".

The natural judge's rule is becoming a more flexible judge for a jurisdiction that can be adaptable and plastic, changing, when necessary, solutions at each demand. It means a big worry about effectiveness and efficiency, more than with fixed competencies.

Democracy[28] interestingly reaches the Judiciary and, in particular, at the first instance, where situations generally pulsate with greater intensity, due to the firm contact of the judge with lawyers and all the people who work in the process.

In this context, the modification of competence may occur, precisely the combined interpretation of items II and IV of Article 69 of CPC.

There seems to be a window of opportunity when it appears that processes can be brought together for just one judgment, in agreement, between two or more trial courts. These premises may be influence other related matters[29].

As pointed out, it would be possible to think about many issues. In the scope of joint acts and concerted acts (art. 11 of Res. n. 350/2020-CNJ), perhaps initial ideas may emerge based on this, and a fertile field for this would be precisely the treatment of great plaintiffs. Together with the financial sector, the public sector (governments in the most varied spheres) seems to occupy the top of the "ranking" of litigation in Brazil, whether in the active or passive sphere[30].

So, according to the well-known Pareto rule, it seems that the most reasonable thing to do is to think of strategies and solutions that allow dealing with the excessive number of demands involving precisely these legal entities.

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28 ZAFFARONI, Eugenio Raúl. *Poder Judiciário*: crises, acertos e desacertos. (Judiciary: crises, hits, and misses). São Paulo: Revista dos Tribunais, 1995. p. 158. *The Argentine jurist points out that one of the major problems is the appellate courts' resistance because of the desire to maintain a centralized power structure.*

29 CABRAL, Antonio do Passo. *Juiz natural e eficiência processual... According to this author, we can verify that the civil procedural system would be moving towards a flexible, functional, and coordinated Judiciary, as opposed to a Judiciary with rigid competencies, guided by the "per se" competence (natural judge and not the resolution of the demand) and isolated (usually the magistrate acts alone).*

30 The survey of the Association of Brazilian Magistrates (aka AMB). *O uso da Justiça e o litígio no Brasil* (The use of justice and litigation in Brazil). from 2018, points out that in most of the 11 (eleven) federated units surveyed, either the government or the financial sector were responsible due to the large number of demands filed in the first degree (p. 18). Available at: https://www.amb.com.br/wp-content/uploads/2018/05/Pesquisa-AMB-10.pdf. Accessed on: 12/15/2020.

5 COOPERATION AND PUBLIC POLICIES

In this work, to limit the reach, it is only intended to indicate that judicial cooperation can be a powerful instrument for a more efficient Judicial Administration[31], from the point of view of demand management, linked to public policies' realization.

The exciting idea is to think about multiple trial courts, from the same region, in joint or concerted actions, coordinating themselves to help solve public policies' problems.

The first challenge is that different judges tend to have the most varied decisions, according to the internal axiological knowledge that affects them[32]. The issue can be polished, precisely through dialogue[33].

Even so, e.g., if it were only the two great demands in terms of public policies in Brazil – the right to health and education; it is already a big challenge[34].

A confluence of competencies for a given judgment (specialization) can adjust processes to the judge (ou judges) chosen to decide some matter.

It is relevant to choose who should decide, that everyone should get involved: interested person, judges, judiciary officials, prosecutors, local lawyers, municipal, state prosecutors, representative of the city council, representative of the executive and the provincial legislature. Listening to

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31 FUX, Luiz. *Novo Código de Processo Civil temático* (New thematic Civil Procedure Code). São Paulo: Mackenzie, 2015. p. 945-949.

32 *For example, some more traditional judges tend to give power back to the holder of the power to carry out the policy in the best way. Other, more progressive judges, using the theory of fundamental rights and the Judiciary's counter-majority role, tend to affirm that the Judiciary can not only, but should it, to realize public policies not implemented by the government.*

33 *Two paths are perceived and passed through the Permanent Centers for Consensual Conflict Resolution Methods (NUPEMECs); and Judicial Centers for Conflict Resolution and Citizenship (CEJUSCS) a judicial policy of the CNJ provided for in* Res. 125/2010-CNJ*, dealing with multiport justice. The first is in meetings between the judges involved, making a mediator present. The other, more improved, demand that the judges be trained in mediation, thus facilitating to a great extent the understanding of the consensual solution of the issue.*

34 *It is also the social rights that most consume the public budget, with the principal provision rights having a large budgetary connection.*

these people could allow a better perception of the desires and perspectives on this, potentially with valuable contributions[35-36].

Afterward, the judges involved could or not perform a concert between them in the sense of how that judicial unit (set of judges related to the same theme) would position itself. If there were an agreement between all those involved, it would be signed to establish ways to guarantee a better (more uniform) treatment of public policy issues and who would be the judge(s) involved.

In case of non-agreement, because it is enough that a judge dissents, which can make the general agreement impractical, without prejudice to the conclusion of partial concerts between some judges. A suggestion report, in this case, is sent to the Court as a study for analysis.

Materialize public policies' adjustments (and even other demands). It is interesting to think in the articulator judge (or articulation judge). He promotes the facilitation of joint or concerted acts among the judges acting with him.

The CNJ, when dealing with the cooperating judge in articles 12 to 14 of Resolution n. 350/2020. It seemed to want to treat the issue centrally, focusing on requests for cooperation in which the judge who receives the request responds (Article 8). Centrally and similarly to the form established in Recommendation n. 38/2011, cooperating judges are centralized figures, usually based in the Court or capital. It is evident when article 12 of Resolution n. 350/2020-CNJ establishes that "Each court, by its competent bodies, will designate one or more magistrates to act as Cooperation Judges, also called point of contact".

The focus seems was really on a central cooperating judge, mostly when requests for cooperation between judges of different courts occur.

The Resolution n. 350/2020-CNJ, Article 14, II, is even established that the cooperating judge must act in concert with cooperative trial courts and solve the resulting problems (macro vision). However, we propose that judicial cooperation occurs at a micro, narrow, and refined level. In each county court,

[35] *So, this meeting, a kind of public hearing, has its legal validity basis in article 138 of the CPC and other constitutional rules used by the STF.*

[36] *Interestingly, the set of different positions can lead to curious confluence. It can indicate that a more agile or more technical judge is preferred, or committed to specific ideologies, or one that combines these characteristics.*

there should be a local cooperating judge[37]. The primary mission would be to articulate the different judges to promote local jurisdiction's effectiveness and efficiency.

The local cooperating judge would meet with the judges concerned with particular points and start negotiations with them and other interested people to solve problems caused by different decisions' dispersion.

It would be the judge who received the community's legal, political, and social segments and presented the problems generated by the multiplicity and diversity of jurisdictional decisions in that local context.

Unlike the cooperating judge provided for in Articles 12 to 14 of Resolution n. 350/2020-CNJ, this local cooperation judge would be democratically chosen by the peers themselves as the one best able to exercise this task of adjustments oriented to a more effective and efficient jurisdiction.

The democratic choice by the district judges themselves would avoid many problems, in particular, that it may become just a bureaucratic post or marked by subjectivisms because, indeed, the colleagues of the judicial unit know each other better than the Court knows.

We also think that all judges should be encouraged to participate in judicial cooperation. To that end, the simple regulation of a council of judges in each judicial unit, for deliberation on these matters, would already link each magistrate to the cause of judicial cooperation, so that it makes efforts to think of the jurisdiction as efficient and effective, and not more like something sealed and compartmentalized. It can be interesting because the judges' group can always be adjusting and rationalizing problems. Being part of a formal structure (Council) can imbue a feeling (element of incentive and behavior) that they feel embraced by the cause: cooperate to improve.

On the other hand, we believe that specific competencies must articulate judges, especially in larger judicial units. We think that particular competencies must have their articulating judges, especially in larger judicial branches. The banking law courts, e.g., considering that banks are among the greatest

[37] *In the same sense, it is imperative to engage civil servants of the Judiciary in the cooperation process, p. ex. with each department, having at least one representative to discuss, together with the magistrates, various issues related to cooperation between the courts, to improve the unit as a whole.*

plaintiffs in Brazil, would have their articulating judge, chosen by the judges of that area in the region, establishing concerts among the judges' zone promote effectiveness. For sample, they seek to align decisions or even re-discuss with important actors in the process, banks, financiers, and the Central Bank itself, how to resolve specific issues best.

Once one can equalize among the many judgments, according to, gather or join processes (CPC, 69, II); to establish concerts among them (CPC, 69, IV); and to perform joint acts (Res. 350/2020, art. 11).

Equalization can occur singular process, according to Article 6 of the CPC: "All subjects of the process must cooperate so that a fair and effective decision of merit is obtained within a reasonable time"; and also Article 5, of the same code, which strengthens this understanding: "Anyone who participates in the process, in any case, must behave according to good faith".

So, cooperation can take place both within the process and between processes.

Moreover, cooperation can advance and reach beyond the processes (with an effect on them), in these terms, Resolution n. 350/2020-CNJ foresees in articles 15 and 16, for inter-institutional cooperation to occur between organs of the Judiciary, legal bodies (MP, OAB, defenders, prosecutors) and the Public Administration. In these items, it could also have envisaged private entities wishing to establish cooperation with the Judiciary.

According to article 15, inter-institutional cooperation may occur by harmonizing procedures and routines, judicial management, strategies for dealing with repetitive demands, or collective processes, including preventively[38]; joint efforts to frame processes in precedent situations.

These indications point to a powerful means of judicial, legal, administrative, and social harmonization among the many institutions that make up society. In this last aspect, we believe that Resolution n. 350/2020-CNJ was accurate because it left an excellent opening to treat the most diverse problems that contribute to the Judiciary in harmony with the legal system's different subjects for the solution of multiple situations. The inter-institutional,

[38] *By the mid-1980s, American judges were already arguing and working about the importance of preventing litigation by stimulating agreements before demands*. PROVINE, D. Marie. Managing negotiated justice: Settlement procedures in the courts. *Justice System Journal*, v. 12 (1), p. 91-112, 1987.

judicial, and procedural cooperation forms a robust substantive tripod, the core of democracy in the process. The aim is to achieve an efficient and effective approach, which will be satisfactory for all[39].

CONCLUSIONS

It's many efforts been waiting. The challenges are notable, but good seeds already are in the ground. It important to remember, It implies a confrontation between fundamental values: efficiency and fairness[40]. However, it is necessary to empower efficiency because of the slowness of the brazilian Judiciary.

From our perspective, we believe that it is necessary to encourage judges, civil servants, and other subjects in each district to participate in this cooperative system that emerges within the traditional brazilian judicial process. To take the process to a new level, where it is less critical who solves what, for a paradigm in which the shared solution of problems is relevant, a joint effort so that each conflict has a solution.

It seems that this movement can bring the Judiciary more down, closer to the procedural actors and, especially, to society[41]. It is not bad, since the judges could renew themselves. They can strengthen his legitimacy as an element of the democratic context[42]. Guaranteeing that, more important than them (rigid

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[39] Boaventura de Sousa Santos states that: "*The democratization of the administration of justice is a fundamental dimension of the democratization of social, economic and political life*". In SANTOS, Boaventura de Souza. Introdução *à* Sociologia da Administração da Justiça (Introduction to the Sociology of Justice Administration). *Revista Crítica de Ciências Sociais*, November 1989. Available at: http://www.boaventuradesousasantos.pt/media/pdfs/Introducao_a_sociologia_da_adm_justica_RCCS21.PDF. Accessed on: 12/23/2020.

[40] BRUNET, Edward. The Triumph of Efficiency and Discretion over Competing Complex Litigation Policies. *Review of Litigation*, v. 10 (2), p. 273-308, 1991. *The study indicates the preponderance of flexibility and efficiency to the judge, especially for complex issues of civil jurisdiction. It also points out that this discretion must be regulated to avoid more disorders than benefits*.

[41] *The deepening of judicial cooperation, in the terms presented, brings the Brazilian justice model closer to the American model, in which the judges are elected*. GREER, Hal W. Elective judiciary and democracy. *American Law Review*, n. 43 (4), p. 516-526, 1909.

[42] MENDES, Gilmar Ferreira; COELHO, Inocêncio Mártires; WHITE Paulo Gustavo Gonet. *Curso de direito constitucional* (Constitutional Law Course). 2. ed. São Paulo: Saraiva, 2008. p. 932-933; GOMES, Luiz Flavio. *A dimensão da magistratura*: no Estado Constitucional e Democrático de Direito (The dimension of the judiciary: in the Constitutional and Democratic State of Law). São Paulo: Revista dos Tribunais, 1997; GOMES, Luiz Flávio. *These authors point out the need for a democratic judiciary so that it can serve as a foundation for a democratic Judiciary*, p. 16-19.

competences) and than the structures of the justice system, is the mission's idea to be fulfilled, the purpose for which the Judiciary has to solve problems, to alleviate society, safeguarding fundamental rights[43].

However, if this is the mission – to serve society (Article 8, CPC)[44] – let it be, not without clashes, obstacles, and continuous improvement. Still, we will certainly have greater chances of success in an environment of sharing mission and leadership.

In terms of public policies, we believe that there is a regulatory convergence in the legal system, indicating that there should be a better uniformity in dealing with these problems. Because Articles 20 and 21 of the brazilian Rules Introductory Law (aka LINDB expressly indicate that the judges must decide considering their decisions' practical consequences. It means that they are sensitive topics because, as pointed out, a simple collective action can, e.g., embarrass the County's budget.

Same sense, Article 22, LINDB requires, in the rules of administrative management, the real difficulties of the manager and the demands of his position be considered, in evident allusion to the duty of the magistrate to observe reality and not to act in a watertight manner, as if only he exists in the district. Reinforce it, Article 23 of the LINDB asserts that a transition rule is necessary in the case of a new interpretation or new guidance on administrative regulation. It is a way to allow the magistrate to pay attention to reality again and not decide without establishing criteria that will enable the public machine's natural progress.

Therefore, it is not enough for the judge to decide; he must decide well, broadly based on the most diverse elements that exist in reality in his surroundings. He can better harmonize rights and their consequences. Here, we return to adequate competence, which is very well complemented by judicial cooperation. Regarding public policies and processes, the issue becomes even more relevant because of this strongly democratic cooperation

[43] BEDAQUE, José Roberto dos Santos. *Instrumentalismo e garantismo*: visões opostas do fenômeno processual? (Instrumentalism and guaranteeism: opposing views of the procedural phenomenon?). Coord. José Roberto dos Santos Bedaque, Lia Carolina Batista Cintra e Elie Pierre Eid. Brasília: Gazeta Jurídica, 2016. p. 18-19.

[44] *Article 8 of the CPC and Article 5 of the Law of Introduction to the Rules of Brazilian Law (aka LINDB) indicate exactly that the judge will pay attention to the requirements of the common good when applying the law.*

aspect. Its multiple elements tend to be a powerful instrument to illuminate several possible paths in the realization of judicialized public policies as:

1) The return of public policy to the original actors;
2) The eventual recognition that, in particular technical areas, the Judiciary Power is insufficient to decide demands[45];
3) The technical call to participate in the public policy adjustment process, such as the participation as "amicus curiae" of the respective Court of Auditors; and
4) The justification of public policy through "public governance"[46], as TCU correctly points out, applies governance and management concepts to achieve effectiveness and efficiency[47].

Governance and management are related concepts. The first is a guiding (strategic) function, responsible for establishing the guidelines based on the needs determined and considering the interests involved. The second, materializing (operational), is responsible for seeking the most profitable way to implement established policies and execute plans and agreements.

In terms of judicial cooperation, governance would be the strategic level. Diverse judgments, including civil servants, legal actors, and society representatives affected by the same issues and problems, would establish strategic elements for shared governance[48].

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[45] *On issues of the financial market, e.g., regulatory agencies, issues of great complexity, in which one or a set of experts may not appear to have the legitimacy to replace entire specialized bodies*. In this sense: RODRIGUES, Maria Isabel Romero. O controle judicial de agências reguladoras e novos parâmetros de desempenho (The judicial control of regulatory agencies and new performance parameters). In: PEREZ, Marco Augusto; SOUZA Rodrigo Pagani de. *Controle da Administração Pública* (Control of public administration). Belo Horizonte: Forum, 2017. p. 134.

[46] Federal Decree n. 9,203/2017 conceptualizes public governance as the "*set of leadership, strategy and control mechanisms put in place to evaluate, direct and monitor management, to conduct public policies and provide services of interest to society*".

[47] FEDERAL AUDIT COURT (TCU). Governança pública (Public governance). Available at: https://portal.tcu.gov.br/governanca/governancapublica/governanca-no-setor-publico/. Accessed at: 12/23/2020.

[48] As well pointed out in ALMEIDA, Paulo Roberto de. O Brasil no contexto da governança global (Brazil, in the context of global governance). *Cadernos Adenauer IX* (2008), Governança global (Global governance), Rio de Janeiro: Konrad Adenauer Foundation, n. 3, March 2009. p. 199-219. *Shared governance to define strategic objectives democratically based on communion with society. Transferring this to the process and the Judiciary and leading to the communion of the actors certainly has excellent chances of giving*

Here, the articulating judge's figure would appear, who would foster these arrangements among the various colleagues, to solve problems. He would be an actual administrative figure with the County's chief justice because while the chief judge is concerned with building supervision, personnel management, and public registries. The articulating judge would be interested, in essence, with the problems that are occurring in the end activity itself (jurisdictional provision) of all judges in the County.

On the other hand, each judge would act in governance through the Council. Thus, everyone would have the opportunity to actively engage in resolving procedural problems, including those related to the point of adequate competence.

In another round, judge-director, judge-articulator, Council, legal operators, civil servants, and civil society can establish norms and agreements that affect them, in the sense of governance of the judicial activity in a broad sense (activities-means and activities-end).

These dialogues that can be validated by the cooperation tools may allow stimulating solutions, for the ever-present problems of management and judicial administration, especially in public policy issues.

It is an exciting picture. We believe it is fertile for new and inspiring future studies.

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greater legitimacy to the Judiciary and even more adequately resolving the problems and issues materialized in the processes.

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