

THE POTENTIAL OF E-JUSTICE IN BRAZIL

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1. Introduction

Access to justice, the guarantee offered by the State that a violation of one's rights will be taken before – and these rights eventually secured by – a judge, or a court of justice is a fundamental human right for a society that intends to provide its citizens with a modern and egalitarian legal system. A menace to this fundamental right of reaching the judiciary system whenever necessary is a menace to the essence of the society itself.

2. Access to justice in Brazil

Brazilian legal system is organized in such a way as to suggest that this broad access stretches out to a practically unlimited extension. This so-called universal access to justice is implemented through diverse mechanisms. Gratuity of access to a lawsuit is constitutionally secured to any Brazilian citizen or resident that proves not to hold financial conditions to afford the costs of the demand, including applicable expenses and taxes, technical production of evidence, and even lawyers' fees. Court administration organisms are growingly implementing more informal, settling-oriented instances of the judiciary, in buildings which are located closer and closer to the population, in public places of easy access. Television advertising, informing the population what and where are the legal services available to them have also become a popular strategy trying to minimize the distance between courts and citizens. A television channel, with extensive internet interaction, exclusively dedicated to cover news, information and decisions related to Brazilian legal system is on the air, nationwide. Even a strong movement of simplification of the legal jargon in Brazil is on the move. All of these actions, from the development of legal tools in the Procedural

Law system, to more generic Justice administration policies, reveal a clear tendency of bringing the Judiciary Power in Brazil much closer to the citizen than it used to be in the previous decades.

3. The social costs of a wide open Access to justice

Guaranteeing this access, however, can bring its own and often demanding challenges. The population in Brazil has reached approximately 190 million people. A country with continental dimensions obviously has to face continental-size problems. As a result of these wide open access to justice, Brazilian courts house over nothing less than 45 million lawsuits, with 18,6 million new lawsuits filed every year, before different instances of the judiciary system. It is a massive problem to be faced, where creativity and innovation are necessary, but also confronted and frequently limited by legal parameters of procedural law, and constitutional guarantees.

It is needless to say that this enormous amount of lawsuits is certainly one, if not the main reason for the excessive amount of time that it takes a legal solution to be found in a case presented before a Brazilian court of justice. No matter the number of judges working in the country, the proportion of judges per case will hardly ever be ideal in this scenario. It is also believed that such a broad access to justice may also have contributed to a high degree of litigiousness which can be found in Brazilian society. The Brazilian State of Rio Grande do Sul, for example, led the statistics of lawsuits filed in 2008, when 1,5 million new cases reached the State Court, in a proportion of more than 14 new lawsuits per 100 inhabitants.

It is imperative that Brazilian society finds a way to deal with these problems and, principally, with its consequences. A proper solution can never depend upon a single policy, measure, law or decision. An adequate approach to face the unwanted effect of the excessive duration of a lawsuit in Brazil has to consider different factors, variables, characteristics and – perhaps the most important – start from the understanding that it is the model of justice administration adopted in the country, rather than the forms that surround it, that creates the conditions for these issues to arise.

4. Justice productivity and the guarantee to reasonable duration of a lawsuit

The history of lawsuits in Brazil is one of patience, paper and time. Due to historical reasons and influences, the country has a tradition of written, excessively formal and solemn legal procedures, some of which end up compromising effectiveness, and the reasonable expectation of the citizen – which, in Brazil, has achieved the status of a

constitutional right – that the intervention of a Judge, in the role of the State, will actually find and dictate a solution for his problem. Authors refer to it as the principle of the reasonable duration of a lawsuit. The former way of understanding a lawsuit transformed it in an aim, an objective, rather than in a tool to achieve a greater goal, which should always be the solution of social conflicts and controversies, with only the formalities that are essential to keep the integrity and stability of the procedural system. Brazilian society has always lived with lawsuits which were excessively formal and lasted excessively long. A lawsuit that disregards essential, legal material issues to dedicate itself to sheer procedures, or that lasts indefinitely in time is of little or of no use at all as long as effective justice is concerned.

As courts get closer to the public, and the citizen finds more and more democratic tools to access the Judiciary system, the number of lawsuits grows, what leads to other complications, as, for example, extremely high costs to keep the structure always functional and available, and at least one objective, operational problem of storage of these records.

The duration issue may be faced in many ways. Mediation and arbitration experiences have been conducted in the country, in an effort to reduce formal litigiousness and abbreviate conflicts. Procedural law is in constant change, the latest ones concerning enforcing of decisions of first instance and protective and precautionary measures which are necessary to secure the effectiveness of the legal action, as well as attempts to reduce technical options to appeal and bring discussions to higher courts, all of these as mechanisms to reduce delay. Productivity aims have been established, the last one requiring judges prioritize and decide actions filed before 2005. These are not pioneer actions. The State of California passed the Trial Court Delay Reduction Act, in 1992, systematizing official actions to eliminate delay in the progress and ultimate resolution of litigation, as an evidence that efforts to assume and maintain control over the pace of litigation is a worldwide concern.

5. Information technology resources serving the administration of justice

Recent years have brought new perspectives in the efforts to find a solution to the aforementioned problems. The alternative which is the object of this work is, in fact, nothing more than a new perspective in justice administration. New tools, based in instruments provided by information technology, that offer one more alternative to achieve the goal of effectiveness, and whose first implementation results already show a strong indication that it can be a valuable mechanism for the cause.

Software and integrated systems which makes it possible for information technology to help store and conduct a lawsuit through electronic records and communication have been discussed and tested in Brazil over the last decade. After some isolated

experiences, in 2006, a federal law went into force (Federal Law n.º 11.419/2006), allowing Brazilian courts to implement digital procedural systems and solutions. The country is nowadays promoting an institutional approach as part of the effort to face the historical problems faced various institutions in Brazil, such as universities, lawyers' associations and research institutes have decided to take part in the quest and walk this step forward in facing the problem. Led by the Judiciary, through practical initiatives proposed and conducted by the National Council of Justice, the change is going on.

It is important to stress that the way lawsuits are being migrated to digital media in Brazil does not imply significant change to the structure of national Procedural Law, but a simple innovation in the model. Having discovered that 60% of the time of a lawsuit consists of pure bureaucratic activities, what happens is that these bureaucratic procedures are considerably sped through massive use of IT resources, with minimum legislative effort, eliminating redundant work, and allowing some tasks to be automated.

6. E-process tools and systems

Paper is eliminated, the systems receive digitally certificated files as legal documents, communication and notification of the events of the case is carried out through the Internet, and the final command is also often fulfilled by electronic means. Records are also kept and accessed by electronic means, dismissing the physical existence of the lawsuit, at least in paper form. Results are only starting to arise, but are already stimulating.

Although the systems currently in use just reproduce the model of an ordinary paper lawsuit, the mere use of a structured computer system to organize a legal action manages to eliminate, as already said, redundant, repetitive work, extinguishing some useless, time-consuming bureaucratic-only tasks, speeding the whole process, results suggest. In addition, these systems provide the extremely useful alternative to automatically store precise statistic data that can be further used to monitor and feedback the system, for decision support purposes.

According to the Labor Court of the State of Paraíba, one of the pioneer instances of Brazilian justice to adopt and implement electronic lawsuit systems and tools, the time reduction effect could be perfectly noticed in the very first year of the experience. In may 2009, after a year of operation of the system, some time lapses, as the time to schedule a hearing, conclusion of the case to a decision, and execution of the decision itself have decreased an average of 50%.

7. Conclusion

The results, as has been pointed out, are still preliminary. Although they can be exciting, since it is a simple conceptual innovation that can bring positive impacts in the productivity of Brazilian justice, further investigation has to monitor and continuously analyze the middle and long term effects of the large scale implementation of this solution, to verify if similar results will be achieved in different spheres of the Judiciary Power, like civil, administrative, taxation, criminal, constitutional, electoral and other courts of justice.

Finally, it is also essential to deepen the study to evaluate to what extent the historical problems of duration, formality and storage can be adequately faced with minimum side effects, and minimum impact on other complex issues, such as privacy, security, and accessibility.

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