

**THE NORMATIVE EVOLUTION OF THE NATIONAL COUNCIL OF
JUSTICE: TOWARDS POPULAR PARTICIPATION**

*A EVOLUÇÃO NORMATIVA DO CONSELHO NACIONAL DE JUSTIÇA: NO CAMINHO DA
PARTICIPAÇÃO POPULAR*

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RESUMO

O objetivo deste artigo é explanar acerca das normativas do Conselho Nacional de Justiça (CNJ) em que foram encontrados indícios de fomento à participação popular, e como essas normativas estão evoluindo. Assim, o artigo apresenta duas partes, além da introdução, em que uma busca fundamentar a criação e os objetivos do CNJ, e a segunda parte consiste na explicitação das normativas em que foi possível detectar a possibilidade de atuação social. Foi possível

discriminar como as normativas têm evoluído acerca desse aspecto, pois vêm estabelecendo instrumentos que podem ser utilizados pela sociedade, viabilizando a comunicação entre a instituição e a sociedade.

Palavras-Chave: Conselho Nacional de Justiça. Participação Popular. Legislação.

ABSTRACT

The main goal of this paper is to explain about the norms of the National Council of Justice (CNJ) in which evidence was found to encourage popular participation, and how these norms are evolving. Thus, the text presents two parts, in addition to the introduction, in which a search seeks to substantiate the creation and objectives of the CNJ, and the second part consists of explaining the rules in which it was possible to detect the possibility of social participation. It was possible to discriminate how the regulations have evolved on this aspect, as it has been establishing instruments that can be used by society, enabling communication between the institution and society.

KEYWORDS: National Council of Justice. Popular Participation. Legislation.

1 INTRODUCTION

The 1988 Federal Constitution established a new state, adopting a democratic regime in a post-dictatorship moment in Brazil. The existing scenario encompassed a population that was deprived of several rights inherent to their human dignity. From then on, throughout the history of Brazil, democratic aspirations have been pressing, in an increasingly latent way, on the part of the collectively, clamoring for greater citizen participation in politics, with a view to overcoming the boundaries of mere electoral suffrage.

In the core of the fundamental rights and guarantees, listed in a non-exhaustive list in Brazil's current "Grand Charter", a Democratic State of Law is instituted in the caput of Article 1, consistent with the submission of public power to the same law that is created itself, that being, however, a manifestation of popular will, since "all power emanates from the people, who exercise it through elected representatives or directly" (BRAZIL, 1988), under the Constitution; thus, the first step in the constitutionalization of participation and democracy.

However, the aforementioned constitutional provision provides only a representative democracy, which allows citizens to participate in the electoral

process every two years, choosing their representatives through the vote. Despite the fact that other instruments are provided for, which allow citizen participation in the political decisions of the State, such as plebiscite, referendum, popular initiative, among others. Even so it is still not sufficient to remove from the population the common feeling that they are not being effectively represented.

Outras formas de participação as quais envolvem a comunidade necessitam ser estudadas e implementadas nas decisões do poder público, reconhecendo a voz da população nos assuntos que versem seus interesses. Aproximar os atores sociais e instituições interessadas nas tomadas de decisões políticas é uma forma de democratizar a elaboração dos objetivos e elucidação destes, possibilitando uma atuação mais certa por parte do Estado.

Participation is an important instrument of democracy, which needs to be effective and present in public agencies, seeking to encourage society to be collaborative in its processes and providing instruments so that this goal becomes a reality. Among the examples of this form of participation already put into practice are the participatory budgeting and the work of the Municipal Health Councils, as well as the School and Safety Councils.

A democracia participativa é compreendida, então, como um sistema de governo em que todos os cidadãos podem tomar parte do processo de decisões políticas, por meio do diálogo coletivo. Tem-se, portanto, na democracia participativa, um modelo inclusivo, integrador e dialógico (SAEGER; PINHO NETO; LOUREIRO, 2018, p.111).

Thus, the will of one is opposed to the will of all. Collective discussions allow minorities to be present and to express their interests, bringing these desires to discussion and debate. In this way, the people themselves, the holders of power, exercise this power, instead of being represented by political groups chosen by means of the vote, but which, in many cases, opt for their particular ideals, and are not concerned with truly representing those who elected them.

The effectiveness of a democratic system of government depends on several elements, and it should also be analyzed and taken into consideration that democracy has a mutative nature, undergoing adaptations over time and in the places where it occurs. For this reason, it cannot be understood in one single way.

Sendo assim, as tentativas de conceituar a democracia devem considerar os contextos sócio-políticos nos quais se dá o seu exercício e ainda os elementos que a influenciaram desde o seu surgimento até as

adaptações e modificações verificadas ao longo do tempo (SAEGER; PINHO NETO; LOUREIRO, 2018, p.111).

Thus, the institutionalization of popular participation was extended to the Judiciary, which sought to democratize Justice and, during its reform process, established the National Council of Justice (CNJ) as an organ of control and transparency over the Judiciary.

Within the process of institutional maturation of the National Council of Justice (CNJ), especially in the institutionalization of strategic planning as an efficient and transparent management tool, which allowed for greater social participation, closer ties between the various bodies of the Judiciary, employees, and society.

Planning and strategic management, as provided by Resolution No. 221, 2016, instrumented popular participation in the preparation of the national goals of the Judiciary, cited in Resolution No. 198, 2014, instituting the principles of participatory and democratic management, to make an integration between various social agents and by various participation mechanisms.

Following the example of the State of Tocantins, since 2017, with the introduction of the Citizen Inspectorate project and, as of 2019, the Citizen Justice program, within the scope of the General Inspectorate of Justice and the Presidency of the Court of Justice of the State of Tocantins, consultations have been held with the State Prosecution Service, the Public Defender's Office, the Brazilian Bar Association (OAB), civil servers and the community, to provide the basis for preparing strategic planning, setting targets and values for the next five-year period. Several courts in Brazil have adopted the practice of consulting the various segments of the justice system to prepare strategic planning and set targets.

This management model represents a direct relationship between participatory democracy and access to information, since the data collected can be found on the websites of the courts, especially the CNJ.

Based on this background, the purpose of this article is to explain the normative rules of the National Council of Justice in which signs of promoting popular participation were found, and how these normative rules are evolving as the years go by.

In this way, the article has two parts, in addition to this one, in which one part seeks to substantiate the creation and the objectives of the CNJ, and the second part consists of the explicitness of the normatives in which it was possible to detect the possibility of social action.

2 THE NATIONAL COUNCIL OF JUSTICE FROM THE REFORM IN THE JUDICIARY

The National Council of Justice was installed on June 14th, 2005, by the Constitutional Amendment (EC) no. 45, of December 30th, 2004. Since the promulgation of the 1988 Federal Constitution, there was a provision for the creation of a collegiate and autonomous body to supervise and control the actions of the Judiciary. Thus, Koerner, Barreira, and Inatomi (2017, p.18) comment that

A Constituição brasileira de 1988 adotou os princípios do Estado social e democrático de direito, enunciou de forma extensa e detalhada direitos individuais, coletivos, políticos e sociais e criou novos instrumentos processuais para protegê-los. Ela inovou quanto ao papel do Poder Judiciário, ao fortalecer sua posição institucional frente aos demais poderes do Estado e modificar seu papel na promoção dos direitos fundamentais (KOERNER; BARREIRA; INATOMI, 2017, P.18).

The creation of the National Council of the Judiciary, which appeared in 1979, by Constitutional Amendment No. 7, 1977, was the first idealization, in Brazil, of an organ that would exercise control over the Judiciary, in which it remained in force until the promulgation of the Federal Constitution, 1988 (SOUZA, 2016).

The fact is that, with the absence of a fiscalizer body, and before the advent of EC no. 45, the Judiciary Branch had its image increasingly weakened, failing to provide a judicial service that met the demands of the population.

In 1992, a reform of the Judiciary was born on the agenda, initiated by Constitutional Amendment Proposal no. 96, of 1992, which was propelled by Congressman Hélio Bicudo (PT- SP). The purpose of this amendment was to seek more transparency and agility. The process lasted over five years until it reached the final proposal, which effectively resulted in the approval of the Constitutional Amendment that provided for the external control of the Judiciary (CORRÊA, 2014).

Pedersoli (2011, p.24-25), on the subject, cites that

[...] a reforma do Judiciário no ordenamento pátrio, implementada mormente pela Emenda Constitucional 45/2004, avulta como ponto culminante de um processo já gestado nos debates da Constituinte de 1987, vindo de encontro à crise do sistema de justiça e à incapacidade

de respostas às demandas sociais formuladas (PEDERSOLI, 2011, p.24-25).

Thus, the creation of the National Council of Justice occurred, a public institution, which came to improve all the work of the Brazilian Judiciary system, mainly seeking control and transparency in the administrative and procedural arenas (MERIEVERTON, 2018).

As set forth in art. 103-B of the 1988 Federal Constitution, the CNJ is made up of fifteen members, including two citizens of notable legal knowledge and unblemished reputation, with a two-year term of office that can only be renewed once. In this way, the members must seek to ensure that the provision of justice is carried out for the benefit of society as a whole, seeking morality, efficiency and effectiveness, being an instrument for the advancement and development of the Judiciary (ORTEGA, 2011; CORRÊA, 2014).

As the CNJ's own information shows, its actions are as follows:

Na Política Judiciária: zelar pela autonomia do Poder Judiciário e pelo cumprimento do Estatuto da Magistratura, expedindo atos normativos e recomendações.

Na Gestão: definir o planejamento estratégico, os planos de metas e os programas de avaliação institucional do Poder Judiciário.

Na Prestação de Serviços ao Cidadão: receber reclamações, petições eletrônicas e representações contra membros ou órgãos do Judiciário, inclusive contra seus serviços auxiliares, serventias e órgãos prestadores de serviços notariais e de registro que atuem por delegação do poder público ou oficializado.

Na Moralidade: julgar processos disciplinares, assegurada ampla defesa, podendo determinar a remoção, a disponibilidade ou a aposentadoria com subsídios ou proventos proporcionais ao tempo de serviço e aplicar outras sanções administrativas.

Na Eficiência dos Serviços Judiciais: melhores práticas e celeridade: elaborar e publicar semestralmente relatório estatístico sobre movimentação processual e outros indicadores pertinentes à atividade jurisdicional em todo o País (CNJ, 2020).

It is also informed that the CNJ develops and organizes some programs nationwide that prioritize the environment, human rights and technologies, as well as institutional management (CORRÊA, 2014).

As far as its functions are concerned, these are classified as political, administrative, correctional, propositional, disciplinary, informative and opinion-making. The political function refers to planning and measures aimed at caring for the autonomy of the Judiciary. The administrative function is the CNJ, which acts as manager of the tactics of the administrative, financial, and logistical resources of the Judiciary, that is, administrative control. The correctional and disciplinary function is carried out by the Minister of Corrections, where corrections and inspections are carried out to ascertain the facts related to judicial and notarial services. In the propositional and informative function, the CNJ will annually prepare the report that will contain the activities of the Council, there must be a message from the president of the STF and be sent to the National Congress, and also prepare a report with statistical data with respect to cases and sentences rendered in the different branches of the Judiciary (LAGO, 2017).

It should be noted that, in the exercise of its control, the CNJ can issue normative acts, which must be administrative, as provided in Article 102 of the Internal Rules, which states that "The Plenary may, by absolute majority, issue normative acts, through Resolutions, Instructions or Administrative Statements, and also Recommendations" (CNJ, 2009).

Resolutions are the regulatory instruments used by the CNJ, in compliance with the law, to carry out its acts and management actions. Administrative pronouncements are the summaries of expositions of matters already discussed in the Plenary. The normative instructions of the Presidency are the decisions taken by the president of the Council, which seek to streamline the internal operation of the CNJ, acts that determine the behavior to meet certain executions, and recommendations are the acts that determine the courts and magistrates to be fulfilled some objective (CASTRO; SANTOS, 2011).

Therefore, the importance of the CNJ in the Judiciary becomes clear, as well as its attributions and functions, because it seeks to watch over the proper functioning and organization of the Judiciary by always acting in the exercise of its functions.

3 NORMATIVE EVOLUTION REGARDING THE PARTICIPATION OF THE PEOPLE IN THE SCOPE OF THE CNJ

With the National Council of Justice established, it has been seeking to update and create norms in order to have a more democratic, participatory CNJ that functions as efficiently as possible. Thus, the evolution of the norms for participation in the CNJ is developed from Resolution No. 49 of 2007, which provides for the organization of the Center for Statistics and Strategic Management in the bodies of the Judiciary:

Art. 1º Os órgãos do Poder Judiciário relacionados no art. 92 incisos II ao VII da Constituição Federativa do Brasil devem organizar em sua estrutura unidade administrativa competente para elaboração de estatística e plano de gestão estratégica do Tribunal (CNJ, 2007).

Each branch of the Judiciary needs a permanent Statistics and Strategic Management Center, which sends data to the CNJ and has a Statistics and Strategic Management Commission, which will oversee all the data that configures the PJ Statistics System. These data will be used by the CNJ as a basis for instructing national judicial policy actions.

Thus, the existence of a well-consolidated Statistics System has highlighted the need for Strategic Planning, mainly due to the social demand to have a more accessible Judiciary, in order to manage the Judiciary in the best possible way, and to enforce "[...] individual and social rights, in order to boost the realization of the Rule of Law" (CHAER; AZEVEDO; BONIFÁCIO, 2009, p.02).

Resolution no. 70, of 2009, was the first to provide for Strategic Planning and Management within the Judiciary, inspired by the tool known as Balanced Scorecard (BSC), widely used in private organizations, and which was adapted for the judicial public sector by this Resolution. Sauerbronn et al. (2016, p.13) comment that "the objective of this planning was to reduce uncertainties about the decision processes in relation to the administration of the Judiciary, [...]". In this Resolution, the mission, vision, and attributes of Judicial Value for society are instituted, as well as national goals, indicators, and projects, and the management bank of good judicial practices.

With administrative modernization occurring throughout the state, this Resolution also sought, according to Freitas and Bontempo (2019), modernization and professionalization of the Judicial system, improving the delivery of services provided, based on the organization of all its structures, improving the provision of information within the Center for Statistics and Strategic Management.

However, this Resolution was repealed and replaced by Resolution No. 198 of 2014, based on a need to review the previously established strategic plan, thus, this Resolution provides for Strategic Planning and Management within the Judiciary:

Art. 1º Instituir a Estratégia Nacional do Poder Judiciário para o sexênio 2015/2020 – Estratégia Judiciário 2020 – aplicável aos tribunais indicados nos incisos II a VII do art. 92 da Constituição Federal e aos Conselhos da Justiça, nos termos do Anexo, sintetizada nos seguintes componentes:

- a) Missão;
- b) Visão;
- c) Valores;
- d) Macro desafios do Poder Judiciário.

Parágrafo único. Os atos normativos e as políticas judiciárias emanados do CNJ serão fundamentados, no que couber, na Estratégia Nacional do Poder Judiciário (CNJ, 2014).

This Resolution establishes different goals for the Judiciary during the 2015–2020 period, namely Continuous Measurement Goals (MMC), Periodic Measurement Goals (MMP) and National Goals (MN). The MMC are monitored by the CNJ throughout the entire period of the Strategic Plan in effect; the MMP are assisted by the CNJ in predefined periods during the Plan in effect; and the NPM are a set of Continuing and Periodic Goals. For the preparation of the National Targets, a basket of Indicators and Strategic Initiatives is used as a basis, which is composed of institutional performance metrics.

The macro challenges pointed out in article 1 are divided into three topics: society, internal processes, and resources. Here, society is openly mentioned as a component of the strategic management of the Judiciary, which seeks to guarantee citizenship rights, mitigating social inequalities and guaranteeing the social rights of minorities, and effectiveness in judicial provision, which encompasses Access to Justice, Length of Process and Cost.

The effort of the Resolution in trying to attend and listen to the society also appears in its article 6º:

Art. 6º Os órgãos do Poder Judiciário devem promover a participação efetiva de magistrados de primeiro e segundo graus, ministros, serventuários e demais integrantes do sistema judiciário e de entidades de classe, na elaboração de suas propostas orçamentárias e de seus planejamentos estratégicos, garantida a contribuição da sociedade (CNJ, 2014, grifos nossos).

By means of the strategies elaborated for the Judiciary, its execution is the responsibility of its members, and it is necessary to hold events to promote these strategies, in addition to the National Meetings. These annual meetings seek to evaluate the strategies and the national targets, always making adjustments when necessary, and also reward the best performances in meeting the targets, together with the implementation of good legal practices.

With the creation and implementation of good practices, in articles 13, 14 and 15 of the referred Resolution, the CNJ establishes the Bank of Good Practices and Ideas for the Judiciary (BPIJus), in order to fit it constantly update, with the aim of improving judicial services, and the best practices available in the Bank will compete for the Excellence in Strategic Management Award, in which the BPIJus will consist of:

- I - práticas sugeridas por servidores, tribunais ou conselhos do Poder Judiciário, alinhadas aos Macro desafios mencionados no Anexo; e
- II - ideias inovadoras para melhoria do Judiciário, apresentadas por qualquer pessoa (CNJ, 2014).

Based on Resolution number 198, 2014, on Strategic Planning and Management within the Judiciary, Ordinance number 167, 2015, establishes the Strategic Plan of the National Council of Justice for the period 2015–2020, establishing what the strategic components of the CNJ are: mission, vision of the future, values, strategic objectives and indicators, goals, programs, projects and actions.

In its values, it is possible to identify two that are aimed at society, seeking its participation in the Judiciary's Strategic Planning: integration, which brings the CNJ closer to the other Judiciary bodies, to its own employees, and to society; and transparency, linked to the constitutional principle of publicity, which facilitates society's access to information and can help in the participation process.

With this Ordinance, the strategic objectives, for the period 2015–2020, were also established, in which there is the firming of participatory evolution in the CNJ, in item VI of the 1st paragraph of Article 2, which institutes the stimulation of “[...] internal communication, integration and collaboration in the CNJ and expand the external dissemination of institutional actions” (CNJ, 2015).

In this mold of the evolution of strategic planning, this is commented by Maciel (2014, p. 514):

O planejamento estratégico na secretaria judicial é, portanto, um processo continuado e sistêmico de tomada de decisão, em que os planos são revistos permanentemente conforme a evolução das circunstâncias, considerando-se as demandas da sociedade, pois suas atividades se destinam diretamente para o bem-estar da sociedade (MACIEL, 2014, p.514).

Through the establishment of strategic planning and management, the CNJ has Resolution No. 221 of 2016, which seeks to effectuate in a practical way the popular participation in the preparation of the national goals of the Judiciary, cited in Resolution No. 198 of 2014, instituting the principles of participatory and democratic management, to make an integration between various social agents and by various participation mechanisms.

Art. 2º São princípios de gestão participativa e democrática:

- I – o desenvolvimento de uma cultura de participação nos tribunais, permeável às opiniões de magistrados de todos os graus de jurisdição e servidores, das respectivas associações de classe e dos jurisdicionados;
- II – o fortalecimento das estruturas de governança e da atuação em rede, a promover a integração do Poder Judiciário;
- III – o diálogo institucional como mecanismo de interação e cooperação permanentes entre os órgãos do Poder Judiciário e o Conselho Nacional de Justiça;
- IV – a aproximação entre o Poder Judiciário e a sociedade (CNJ, 2016).

After the principles of participatory and democratic management have been specified, the conditions that are necessary for participation to be effective are defined: network governance, the leadership of network representatives, the availability of ways and means of participation, and transparency.

Network governance and the leadership of network representatives were instituted in Ordinance No. 138 of 2013, subsequently regulated in Ordinance No. 59 of 2019, establishing procedures on the Collaborative Governance Network of the Judiciary. The ways and means of participation are described in chapter II of the referred Resolution, subsequently commented on, and transparency consists of an important requirement for effective social participation.

This participatory advance is already present in Bochenek, Dalazoana and Rissetti (2013), when dealing with good governance within the CNJ; and in Raminelli and Oliveira (2014), who analyze the CNJ page in a social network, when establishing the relationship between a participatory democracy and access to information. Corroborating with these, Battezzini, Reginato and Zambam (2017) highlight how information is a necessary pillar in the process of emancipation of society.

This Resolution establishes the modalities of democratic participation that can be used, these being the dialogue table, videoconference, polls and surveys, public consultation, public hearing, working group, forums and meetings, and ombudsman offices. Through these devices, it is possible to hear society on various topics, becoming what Souza and Cardoso (2018) call effective channels of participation, in which democratic participation is strengthened and citizenship is consolidated.

In the formulation of judicial policies, described in Chapter IV, the participatory process can occur in the elaboration or development of proposals. For the elaboration of these, several ways can be used, such as a dialogue table, videoconferencing, polls and surveys, and working groups, giving their opinion about a previous policy proposal from the CNJ. To participate in the development of the proposal it will be necessary to use public consultation, public hearings, forums and meetings, to hear suggestions and opinions, in an attempt to improve a proposal already outlined by the CNJ, but not approved..

The participatory process in the formulation of national goals is done by the Collaborative Governance Network of the Judiciary; based on this, Ordinance No. 114 of 2016 establishes the guidelines of the participatory process in the formulation of national goals in the Judiciary.

This Ordinance files that the court representatives in the Governance Network must use videoconferencing, polls and surveys, public consultation, public hearing or forums and meetings to ensure participation. After the participatory

process, an analytical report must be prepared and contain the general information about the process carried out, the number of participants and their perfil, and the suggestions and manifestations made.

After the participatory process is concluded, the court representatives in the Governance Network will propose an Initial Proposal of National Goals (PIME) to the Presidency, with the technical aspects of the proposal and the suggestions arising from the participatory process. When approved, it is forwarded to the coordinators of the Justice Segment Management Committee, who will consolidate the PIME, and sent to the CNJ so that it can be examined by the Presidency of the Permanent Commission on Strategic Management, Statistics and Budget.

Thus, the PIME is consolidated in the Advanced Proposal of National Goals (PAME), which the CNJ must take into consideration, according to art. 14 of the mentioned Ordinance:

- I - os Macro desafios 2015–2020 do Poder Judiciário;
- II - os resultados estatísticos e de diagnósticos do Poder Judiciário;
- III - as séries históricas de desempenhos anteriores nas metas nacionais; IV - as políticas judiciárias do CNJ;
- V - as diretrizes de gestão da Presidência do CNJ; VI - a participação da sociedade (CNJ, 2016).

Once it has been verified that all the PAME requirements are correct in the document in question, the CNJ establishes the final proposal for national targets to be voted on at the National Meeting of the Judiciary. Consequently, by consolidating these goals, it is possible to see the search for effective participation by society within the scope of the CNJ. With the exposure of the normative evolution of the CNJ, which has been seeking to insert society in its decision-making process, it is possible to visualize the exposed by Frateschi (2016), in other words, citizens need to be more than spectators and be able to interfere in decision-making processes, deepening democracy by using institutional participation channels.

By explaining the above regulations, it is understood that these are very recent innovations and their development depends on the effective participation of society in this important topic. The final considerations are presented below.

4 FINAL CONSIDERATIONS

From this idea, exploring the National Council of Justice and its norms regarding popular participation, it was possible to discriminate how they have evolved about this aspect. Thus, the notion of the Democratic Rule of Law is becoming stronger and consolidating democracy from another point of view, distinguishing itself from the perception that democracy is only valid with the vote.

The structuring of social participation within the scope of the Judiciary begins with the creation of the CNJ itself, and over time this conception has evolved in its regulations, as explained, beginning in 2007, with the organization of the Nucleus of Statistics and Strategic Management of the Judiciary, until 2016, with the establishment of the guidelines of the participatory process in the formulation of national goals in the Judiciary. The instruments established by the CNJ that can be used by society enable effective communication between the institution and the people.

Despite the advances evidenced in this article, it is necessary to advance even more, since the last normative law cited is from 2016; it is necessary, therefore, that the relationship between institutions and society evolves. For this to happen, these instruments need to be increasingly disseminated, updated, and, whenever possible, expand the number of possible instruments.

In view of the explanation presented, it is necessary that more studies be conducted on the implementation of these instruments established by the CNJ, due to the difficulty of finding them in academic publications that present the real participation of society in the Judiciary.

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