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HUMAN DIGNITY AND ACESS TO JUSTICE

DIGNIDADE HUMANA E ACESSO À JUSTIÇA

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RESUMO

Trilhando o extenso e laborioso percurso da dignidade humana, em sua faceta nuclear, fica evidente que não há meios de se pensar uma garantia de dignidade mínima sem que seja assegurado o efetivo acesso à justiça, ambos os temas se permeiam e se exigem. Valendo-se da bibliografia disponível sobre o tema, o presente trabalho almeja levantar alguns pontos dessa relação em seu diálogo com os desafios contemporâneos, rememorando o percurso da dignidade humana desde as primeiras Declarações de direitos do século XVIII – em seu sonho abstrato de universalização – passando pela dura experiência do século XX e seu fortalecimento no pós-guerra. Em caminho correlato, o acesso à justiça encontra seu impulso inicial na exitosa experiência romana, reavivada no início da Modernidade e que ganha seus belos traços no século XVIII. Assim como a temática da dignidade humana, o acesso à justiça ganha fôlego no pós-guerra e floresce definitivamente ao fim do século XX, em especial, no caso brasileiro, com a Constituição, de 1988. Longe de significar uma exaustiva consolidação de ambos, novos desafios são apresentados, com a necessidade de aprofundamento das discussões acerca de mecanismos de efetivação. Multiplicam-se debates e propostas de como reduzir os impactos da crise do judiciário e como a implementação de novas tecnologias podem auxiliar na democratização de acesso à justiça e com isso, ao menos em ideário, assegurar uma garantia da dignidade humana. Muito embora os remédios para os problemas contemporâneos de acesso à justiça e proteção da dignidade humana estejam ainda sendo levantados e trabalhados, desafios supervenientes não cessam de alvorar, propulsionando a busca constante da humanidade pelo ideal de justiça.

Palavras-Chave: Dignidade Humana. Acesso à Justiça. Direitos Humanos. Efetivação de Direitos.

ABSTRACT

Travelling through the extensive and laborious path of human dignity, in its core self, it is made evident that there is no way of thinking about a guarantee of minimum dignity without ensuring effective access to justice, both themes permeate and demand each other. Taking advantage of the extensive bibliography available on the matter, the present work aims to raise some notes of the relationship os both, in its dialogue with the contemporary challenges, recalling the course of human dignity since the first Declarations of rights in the 18th century - on its abstract dream of universalization - going through the hard experience of the 20th century and its strengthening in the post-war period. In a related way, access to justice found its first impulse in the successful Roman experience, revived at the early days of Modernity and gaining its beautiful features in the 18th century. Just like the subject of human dignity, access to justice gained momentum in the post-war period and definitely flourished at the end of the 20th century, especially in Brazil with the Constitution of 1988. Far from meaning an exhaustive consolidation of both, new challenges are presented with the need to deepen the discussions about developing mechanisms to really make them effective. Debates and proposals multiply on how to reduce the impacts of the judiciary crisis and how the implementation of new technologies can help democratize access to justice and thereby, at least in terms of ideas, ensure a of human dignity. Even though the remedies for the contemporary problems of access to justice and protection of human dignity are being raised and putting into work, supervening challenges do not cease to dawn, propelling humanity's constant search for the ideal of justice.

KEYWORDS: Human Dignity. Access to Justice. Human Rights. Protection of Rights.

1 INTRODUCTION

The shine of the diamond requires polishing. The shine of justice demands movement, work, action. Justice is done; that is, it is made, it doesn't just happen, nor it is offered for free. In litigation or consensus, it doesn't flourish without effort and often not even with all the effort. Doing justice is a legal challenge that does not dispense with the help of the state, society or the individual as a subject of law. Without it, every ideal of society that we build and pursue fades away, lost between pure, uncompromising selfishness and brutality. "Every sentence must be a brick in the construction of a fair society" (SILVA, 1999, p. 10). If outside the polis there can only be supermen or infra-men, we have no choice but to seek the realization of justice in human reality, in society, because only there will the human condition be guaranteed, only there can there be dignity for the human being. In short, there can be no dignity where there is no justice. This is the vital connection between these two elements that require Law and Politics, ultimately all of us, to work ceaselessly to improve. Not them, not us. This is a collective task, for everyone.

The aim of this article is to explore precisely this connection between human dignity and justice from the perspective of the problem of access to justice. By evaluating the notion of human dignity and the meaning it assumes in contemporary times, the text will seek to explain the link between access to justice and dignity, a link that has favored the debate on access, ensuring the necessary attention for the problem to be mitigated and for solutions to the new challenges related to the issue to be put forward. This will briefly point out the remedies adopted and the challenges for access to justice to contribute to a more effective realization of human dignity.

Human dignity is a new idea in the long journey of humanity. Rather than a task to be accomplished, it is a subject for reflection, whose greatest challenge is still - and perhaps always will be - to understand the magnitude of its meaning and the incalculable transformative potential

that these two associated words bring with them or, in another way, the devastating potential that their disregard can leverage.

With each new chapter of this journey, we uncover new corners of dignity, new demands that, if met, contribute to its realization. An endless list of rights pleads for responsibility in this role, as well as a conglomerate of values, which invites us to reflect on the very nature of human dignity: value or system of values in harmony and governed by a greater good?

This is a reflection that we will leave for an opportune moment, given the limitations that the present work imposes on us. Here, we intend to shed some light on the specific issue of access to justice and how it is indelibly and viscerally linked to the idea of human dignity.

In order to do this, we need to make a few brief observations about dignity itself, a fundamental and daily exercise when faced with such a challenging subject. The more we reflect on dignity, the closer we get to understanding it - from any perspective - the more we equip ourselves with the necessary conditions to deal with the challenges and tools that contemporary law offers us.

On this journey, history and philosophy are helpful companions that shed light and give us the breath we need to think about dignity. This is because human dignity is not purely and simply a legal concept; rather, it is a cultural production, rich and complex like any work of human culture, which knows no barriers imposed by the disciplinarity of modern knowledge, transiting and dialoguing with politics, morality, philosophy - just to name a few areas - throughout its historical experience in order to fulfill a task that is above the particular objective of each of these areas and which can only be achieved by considering all of them in order to understand it. Thus, the Law does not create it - although its contribution is equally required - it embraces it as a goal, as a cornerstone to guide its own creation and action.

To limit human dignity to a purely juridical perception, or worse, an exclusively legalistic one, is to impoverish it to the point of stripping it of all its potential, undermining its possibilities, reducing it to a device that punctually meets a simple claim. This is a tempting and natural path for those already trained in the daily grind of legal practice, but one that should be avoided if there is still any commitment to justice to be renewed on a daily basis.

Human dignity is, rather, an idea, the complexity of which cannot be translated, nor reduced to the legal sphere, but which must serve as a guide, an inspiration and, especially, a guide for the daily renewal of the experience of law. Therefore, we will briefly review some of the issues related to it in order to assess the relevance of access to justice in this matter.

Access to justice, which is an essentially legal concept that finds its realization in the law, is built on historical legal experience, which requires us to look to the past, evaluating its construction and its rise to an essential strategic position in the law in the face of its end. It should be noted, however, that it is only in recent history, more specifically in the 20th century, that we identify a conscious connection between human dignity and access to justice, given the turbulent social and economic transformations that took shape in the 19th century and accelerated in the 20th century, establishing new relationships, values and rights. Thus, the link between human dignity and access to justice, which already existed, although implicitly, is revealed at this time and, consequently, imposes new challenges, new reflections and new solutions. The prominence that access to justice has recently received demands a renewal of the law, in other words, a new turn in history in this spiral of infinite approximation to the realization of human dignity. Our last look in this text will be at this future that has yet to unfold.

2 HUMAN DIGNITY IN TRAJECTORY

Human dignity has become an increasingly recurrent and demanded expression since the second half of the 20th century. A great pillar of the democratic rule of law, it has become the main standard of human rights and an unavoidable parameter for fairness[1]. Justice, particularly in concrete cases, is not unilateral; it requires consideration of both the involved parties and ensuring respect for their dignity, regardless of the subject of the claim. Nothing can disqualify human beings, even in the name of achieving justice.

This is obviously a great and recent achievement for the law, which has shed new light on the possibilities of understanding justice from the perspective of dignity. However, through this wide and inviting doorway, other less valuable possibilities have also passed. The relevance of dignity to justice has meant that it has also become a recurring argument, invoked in the name of any cause, a kind of wild card that reinforces the argument, that brings a great appeal of justice to the cause in question. However, we forget, intoxicated with the possibilities and advantages that dignity can offer us, that not every injustice suffered necessarily represents an injury to human dignity, from which we can conclude that it does not apply unrestrictedly to each and every dispute. This ends up impoverishing it, reducing it to a simple rhetorical resource, which can add nothing significant to the discussion, nor to the outcome of the case. There are many examples of human dignity being used in situations where the damage to the essential core of man is not well defined. By means of illustration, we cite Direct Action for Unconstitutionality No. 1.856/RJ (BRASIL, 2011).

In this way, dignity, which already demanded so much to understand, has become even more nebulous, emptied of meaning. Its use has become easy and commonplace, but its understanding seems to be further and further away from us. Dignity cannot be realized under these conditions, and the paths that society has taken today, struggling with so many challenges and conflicts, have certainly been aggravated by the lack of light and reflection on the subject.

Historical experience and the philosophy that accompanies it are, in this case, fundamental elements for rescuing the reflective exercise on dignity. Before invoking it, we need to allow ourselves to think about it, to ask what it is, what its purpose is, what its role is, what its potential is and what it means for our culture.

Although dignity is an expression that has long been known in Western history and law, as Salgado (2009, 2011) has already described[2], our current understanding is indebted to the recent past. It was only with the appreciation of the human being, specifically their reason and the status that this reason gives them, a movement that came about with the Enlightenment, that we can identify the concept of human dignity without the risk of incurring in anachronisms.

It refers to the distinctive element of the human being, to what gives them a unique, unquantifiable value, as Kant wanted to define it.

> "No reino dos fins tudo tem ou um preço ou uma dignidade. Quando uma coisa tem um preço, pode-se pôr em vez dela qualquer outra como equivalente; mas quando uma coisa está acima de todo o preço, e portanto não permite equivalente, então tem ela dignidade. [...] Ora a moralidade é a única condição que pode fazer de um ser racional

[1] Uma pena aplicada a um infrator, por mais grave que seja o crime cometido, não pode realizar justiça se desconsidera a dignidade humana do condenado. A satisfação da vítima, por si, a pacificação da sociedade, a resolução do conflito não é mais suficiente para a realização da justiça frente ao paradigma da dignidade humana.

[2] Nesse sentido, vale a advertência de que embora a expressão "dignidade humana" possa ser identificada em momentos históricos recuados, a concepção atual está diretamente vinculada à Modernidade, em que pese às contribuições pretéritas. Não se pretende, com isso, olvidar as contribuições de toda a experiência ocidental, mas apenas evitar conclusões precipitadas que localizam a dignidade humana em tempos históricos anteriores aos da Modernidade.

> um fim em si mesmo, pois só por ela lhe é possível ser membro legislador no reino dos fins. Portanto a moralidade, e a humanidade enquanto capaz de moralidade, são as únicas coisas que têm dignidade" (KANT, 2007, I. BA 77).

According to Hunt (2009, p. 20), its conception took place at the same historical moment in which some rights, then called natural[3], are claimed as essential for a human being to be recognized as such, in other words, rights that pertain to human nature itself.

This perception can be identified in some of the first historical Declarations of Law, such as that prescribed in the Declaration of Independence of the United States of America, of July 4, 1776, "We hold these truths to be self-evident: that all men are created equal, endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness" (UNITED STATES OF AMERICA, 1776).

Or even in the Declaration of the Rights of Man and of the Citizen of 1789.

> "Os representantes do povo francês, constituídos em Assembléia nacional, considerando que a ignorância, o esquecimento ou o desprezo dos direitos do homem são as causas únicas das infelicidades públicas e da corrupção dos governos, resolvem expor, numa declaração solene, os direitos naturais, inalienáveis e sagrados do homem, a fim de que esta declaração, constantemente presente a todos os membros do corpo social, lhes lembre sem cessar seus direitos e seus deveres, a fim de que os atos do poder legislativo e os do poder executivo, podendo ser a cada instante comparados com a meta de toda instituição política, sejam mais respeitados, a fim de que as reclamações dos cidadãos, fundadas de agora em diante sobre princípios simples- e incontestáveis, se destinem sempre à manutenção da constituição e à felicidade de todos" (FRANÇA, 1789).

To say that there are rights inherent to human nature means that they were not granted by a political authority that has the power to do so and, consequently, are independent of political moods. The discourse on natural rights is not only contemporary with the very concept of human dignity, but it is also linked to it, since they are, from the outset, seen as fundamental to its realization, in other words, as instruments for the realization of dignity.

Thus, the first declarations of law came into being based on the conviction of the unquestionable value of the human being, on the certainty of the need to respect him without precondition or bargaining being imposed on him. Of course, between the first declarations and reality, the distance was almost insurmountable, but these declarations have become a constant in the recent history of law, which has gradually brought about the possibility of revising social values and transforming society.

The issue of human dignity was given a new and important lease of life in the second post-war period. The ills faced by the 20th century served as a warning of the risk of neglecting human dignity, or simply maintaining it abstractly and formally, without any commitment to its realization. The problem of dignity is not confined to legal texts, treaties or declarations. Rather, it is a legal problem that demands, like all others, political and, consequently, social involvement.

Thus, since the Universal Declaration of 1948 and the gradual strengthening of the rule of law in democratic form, a new reflective exercise and a new commitment have been made to human dignity, one that is more aware of the need for everyone to get involved, of the need to commit to its realization, otherwise we will return to darker days.

[3] Lynn Hunt aborda sobre a forma como o termo direito natural, comum até o século XVIII vai aos poucos dando lugar para outros termos, como direitos do homem e direitos humanos.

With the inclusion of new rights in the list of human rights, human dignity has also taken on new colors. The more extensive list of human rights and the political, economic and social transformations of recent decades have brought about a real revolution that has once again placed human dignity at the center of reflection as the primary value of the Democratic Rule of Law and as the main element for achieving justice in society. "The Rule of Law is thus the political form that gives fundamental rights axiological primacy: there is no legal norm more important than those which, by enshrining rights, become nuclear to the entire legal system" (HORTA, 2011, p. 36).

Paradoxically, it is only when we restrict human dignity to the most elementary, to that without which human beings lose their condition, that we find its broadest and most powerful horizon for the realization of justice. Dignity is not realized by claiming rights of any kind, by constantly invoking it in petitions for all causes, by abusing the expression in all court decisions in any type of claim. In order to effectively fulfill its role of protecting each individual, guaranteeing them fair and dignified treatment, it must be invoked exclusively when someone receives a treatment that is incompatible with their nature as a human being. There are many rights that can be harmed, but few injuries affect our dignity. It is then, and only then, that human dignity must be invoked, as an unshakeable defense of respect and treatment compatible with the nature of a human being, in any situation, without any conditions.

This restriction of use makes dignity the most powerful tool for defending human beings against the inhumanity to which everyone may - at some point in their lives, or for many, their entire lives - be vulnerable. But the perception of this paradox and of all the potential that human dignity represents for respect for the human being and, therefore, for the realization of justice, depends precisely on a clearer understanding of its meaning, as an expression of the value that only the human being can express.

The perception of the importance of access to justice as a way of realizing human dignity is recent, and this has led to an increase in debates on the subject, leading to important changes in state and social structures that undoubtedly contribute to the realization of justice and a more dignified life.

Before confronting the problem in contemporary times, some historical observations about access to justice are interesting for our purposes.

3 BRIEF NOTES ON THE HISTORICAL EXPERIENCE OF ACCESS TO JUSTICE

In the Roman legal experience, law is organized according to existential categories, person and thing[4]. Thus, there is the person, the holder of the right, in other words, the subject of the right, and the things over which the rights are exercised. The subject of the right needs an instrument to exercise and satisfy the right in an irresistible way. That instrument is the actio. "One of the greatest discoveries of the Roman, on the ethical level lato sensu, is the subject of law and properly the universal subject of law, holder of the universality of actio" (SALGADO, 2001, p. 50).

From this perspective, all the Roman law is structured. As Gaius explains, "every right we use belongs to people, things or actions" (Gaius, Inst. I, 1, 8 and D. 1.5.1). The actio instrumentalizes the subject of the right and makes the process of broadly enforcing the right possible by putting them in a position to demand their right; in a word, it is not enough to grant the right, it is necessary to offer the means for its holder to be able to demand it. It is no coincidence that enforceability has become one of the fundamental categories of law, not only in the Roman

[4] Temas tratados respectivamente nos Livros I e II das Institutas do Corpus Iuris Civilis de Justiniano.

experience, but also throughout the Western legal tradition, and it gives rise to a perception of justice that is more affectionate to law than to morality.

As Salgado explains, "it is, however, enforceability that characterizes the new conception of justice, brought about by Roman juristic, whereby the subject of the right is no longer the passive recipient of the active and unilateral subject of the moral duty, or of the act founded on the mere subjective moral conscience of the moral agent, depending on his decision, nor is it any longer placed as the object of the realization of the feeling of a certain humiliating charity or pity (...)" (SALGADO, 2006, p. 84). Through the actio, the subject of the right is elevated and becomes equal in the legal relationship to the debtor and assumes the possibility of an active action if the latter refuses to fulfill the duty.

Now, if enforceability is a distinctive category of law compared to morality, and if actio is the instrument by which the subject of a right can demand that their right be made effective through a formal process before a competent authority, it can be concluded that the issue of access to justice would become a vital problem for the realization of law and the realization of justice, especially when you consider that Western law was built on exactly this basis.

If, on the one hand, the issue has not been dealt with in this way throughout history - it should be noted that the concern with access to justice for the realization of the just is a contemporary agenda - on the other hand, it is possible to find in various historical documents provisions that addressed the issue, albeit occasionally. One could not expect, under penalty of anachronism, that medieval or even modern people would give the issue the relevance and dimension that we attribute to it today. It is also important to say that in these historical periods what we witness is a precarious application of the law which, when linked to political power, rarely provides access to the population. It is therefore worth warning against taking any legal provision from the periods mentioned as an indication of a commitment, especially on the part of the political powers of the time, to guarantee frank and unrestricted access to justice for the population. Add to this the fact that many disputes were settled by other bodies and mechanisms that had no direct link to the political power in force. Jurisdiction was not a monopoly of the state in the Middle Ages and throughout Modernity it underwent a process of concentration that resulted, formally and also in practice, in its absolute concentration in the hands of the contemporary state: it is the state that says the law.

Despite this warning, we cannot deny the presence of provisions that have addressed the issue of access to justice, although their scope and applicability are always debatable. This can be seen in the “Magna Carta”, which states that "the demands of the commons shall not follow our courts, but shall take place in some fixed place". And furthermore, "we will not sell, deny or delay right or justice to anyone" (ENGLAND, 1215).

The Bill of Rights, of 1689, is even more explicit in establishing that "subjects have the right of petition to the king, and all arrests and persecutions against the exercise of this right shall be unlawful" (ENGLAND, 1689). The provision not only illustrates the difficulty of access to justice, but also provides evidence of an understanding that is gradually becoming established of the importance of ensuring it.

In the American Declaration of Independence, the issue of access to justice is listed among the grounds: "He hindered the Administration of Justice, by refusing assent to laws which established Judicial powers" (UNITED STATES OF AMERICA, 1776). And, more explicitly, the French Constitution of 1793, in its Article 32: "The right to present petitions to the depositaries of public authority may under no circumstances be prohibited, suspended or mutilated" (FRANCE, 1793).

The declarations of rights produced from the end of the 18th century onwards and the constitutions that gradually incorporated them as fundamental rights brought up, albeit timidly, the

issue of access to justice. However, mentions of the issue are limited to the paradigm in force at the time: these declarations emphasize individual rights, which is why the guarantee of access to justice becomes necessary. However, this guarantee is made in an absolutely abstract way, in line with the very concept of equality that was enshrined therein; in other words, formal equality, before the law, as Cappelletti and Garth (1988, p. 10) argue.

The same situation can be identified in Brazil's constitutional history, with the absence of an express mention of the right to take legal action to guarantee rights in the Constitution of 1824, or throughout the Republic, in a more explicit way, although still formal, with the use of the expression "general right to petition public authorities".”[5] , without prejudice to other measures that have favored access to justice in certain contexts.

A paradigmatic shift took place in the 20th century, favoring the overcoming of a purely formal approach to the subject. Whether through the influence of the Florence Project in some Latin American countries, marked by the important work of[6] Cappelletti, Garth and Earl Johnson Jr. (1979, 1988), or through the writings of Boaventura de Souza Santos (1977, 1988, 1989) during his stay in Brazil in the 1970s, or even through the studies of Joaquim Falcão (1981), the theme of access to justice is taking shape in Brazil. This spectrum of influences proposed by Junqueira (1996) allows us to understand the trajectory of the theme of access to justice in Brazilian thought.

Access to justice, already provided for in previous Brazilian texts, demarcated under the sign of the general right of petition, is now, in the current Constitution (1988), definitively aligned with the defense of rights and not only in cases of illegality or abuse of power (art. 5, XXXIV, a). The Judiciary's review is now unavoidable, whether in cases of injury or even threats to rights (art. 5, XXXV). Free legal actions such as habeas corpus and habeas data (art. 5, LXXVII) are guaranteed, alongside the provision of full and free legal assistance (art. 5, LXXIV), as well as the provision of a reasonable length of proceedings (art. 5, LXXVIII).

At the same time, there is a greater concern with the issue of access to justice and a clearer understanding of its relevance to the realization of human dignity, which can be seen not only in constitutional texts, as illustrated here, but also in infra-constitutional legislation and public policies that are sensitive to the problem. This concern also has an impact on the procedural law: "Jurists must now recognize that procedural techniques serve social functions" (CAPPELLETTI; GARTH, 1988, p. 12).

4 CONTEMPORARY SOLUTIONS AND CHALLENGES OF THE ACCESS TO JUSTICE

It is impossible to think of the defense of rights and the consequent protection of human dignity apart from the possibility of access to the judiciary as a guarantee of protection and enforcement of these rights. If we evaluate, for example, the data from the Brazilian Institute of Geography and Statistics, we can see a vertiginous progression in the demand before the Judiciary.

According to data from the IBGE (2006), in 1912, with an estimated population of around 24 million people, the Federal Supreme Court heard 676 cases. In 1998, with a population of over 169 million, Brazil saw its Constitutional Court hear 21,516 cases. A similar movement also occurred in the jurisdiction of the Federal Court, which in 1912 numbered 5,241 and jumped to 475,037 in 1998.

[5] (art. 72, § 9° da BRASIL, 1891, art. 113, § 10o da 1934, art. 122, § 7o da 1937, art. 141, § 37o da 1946)

[6] Os resultados encontrados formaram os quatro volumes da obra conhecida como Access to Justice, Vol. 1 A World Survey (Eds. Mauro Cappelletti and Bryant Garth), Vol. 2 Promising Situations (Eds. Mauro Capelletti and John Weisner), Vol. 3 Emerging Issues and Perspectives (Eds. M. Cappelletti and B. Garth), Vol. 4 The Anthropological Perspective (Ed. Klaus-Friedrich Koch).

Leaving aside possible normative changes that may have had an impact on the activity of the courts and the Federal Court itself, Brazil has experienced, with a population growth of around 600%, a percentage increase in the number of cases in the thousands. While the caseload of STF increased by 3,000%, the one of the Federal Court increased by almost 9,000%.

Although the growth in the number of cases can be seen as an indication of the expansion of access to justice and its dissemination to more layers of society, it must be admitted that there are several factors - which it is not necessary to assess here - that may have had an impact on such a significant increase[7]. In this sense, the thoughts of Vitovsky are illustrative:

> De fato, é notória a judicialização rotinizada, a massificação da litigação. Por sua vez, o aumento da litigação não é resultado da abertura do sistema jurídico a novos litigantes mas é antes o resultado do uso mais intensivo e recorrente da via judicial por parte dos mesmo litigantes: os repeat players, mormente, no caso brasileiro, os conflitos com a administração pública (VITOVSKY, 2016, p. 181).

The democratization – still insufficient in some cases - of this access to the courts has been promoted with the help of various measures, such as the structuring and institutionalization of Public Defenders' Offices, free legal aid, among others (see art. 134 of the 1988 Constitution and Constitutional Amendment 45 of 30 December 2004). Even the increase in the number of legal courses on offer in Brazil has contributed to wider access. The growth in demand has created new challenges, since the number of cases is increasing and speed inevitably suffers the impacts of this increase.

At this point, we must pay attention to the fact that access to justice means more than simply having the possibility of making use of the structure of the State, of suing, it also presupposes that judgments are actually carried out in time to remove the threat or injury to the right. According to Cappelletti and Garth (1988), the problem of access to justice requires first of all a guarantee of equal access and then a result that can be individually and socially considered fair.

As far as equality is concerned, access to justice faces barriers that go beyond the economic issue, although this is always preponderant in debates and in the measures adopted to mitigate the problem. João António Fernandes Pedroso (2011, p. 147) points to impediments of various kinds, namely economic, educational, cultural and legal. The effort to reduce or eliminate costs for those who need it most can be seen in the various measures presented below. However, achieving equality is more complex than simply equalizing economic conditions. This is why other initiatives are needed.

Quality formal education committed to the training for citizenship is indispensable. Without an understanding of the individual as a holder of rights and as capable and legitimized to claim their rights, there is no possibility of broader access to justice, and it would not be an exaggeration to admit that there would not even be a possibility of achieving justice. As conceived in the Roman experience, the action of the subject of law is fundamental to the realization of justice.

At this point, the Brazilian reality is even more complex, as research such as that by Guzzo and Euzébios Filho (2005) and Zago (2006) warns, because the difficulties of access to justice, generated by the educational gap, are interconnected and are fed back by economic barriers. Although instruments to mitigate inequality have already been implemented, such as free legal aid and free judicial assistance, the effects of this inequality are alarming.

Boaventura goes further by stating:

[7] Os números são aqui apontados apenas a título ilustrativo, de forma a dar ao leitor uma dimensão do crescimento das demandas apresentadas ao judiciário, sem a pretensão de uma avaliação quantitativa profunda.

> Mas, há também uma outra área, que é a da procura suprimida. É a procura daqueles cidadãos que têm consciência dos seus direitos, mas que se sentem totalmente impotentes para os reivindicar quando são violados. [...] Ficam totalmente desalentados sempre que entram no sistema judicial, sempre que contatam com as autoridades, que os esmagam pela sua linguagem esotérica, pela sua presença arrogante, pela sua maneira cerimonial de vestir, pelos seus edifícios esmagadores, pelas suas labirínticas secretarias etc. Esses cidadãos intimidados e impotentes são detentores de uma procura invisibilizada (SANTOS, 2014, p. 23).

Increasing access to knowledge should be a necessary part of public policies aimed at guaranteeing access to justice, since you can't claim judicial protection for a right that you don't even know exists. This factor has a direct connection with the cultural context which, in turn, encourages and favors the exercise of rights or inhibits it.

It is also important to point out the barriers encountered in the legal sphere itself, among which the slowness, bureaucracy and excessive formalism are worth highlighting, as Sadek (2010, p. 161) has already pointed out. Formalism and the bureaucratization of legal practice - in some cases clearly exacerbated - only aggravate a problem that is already difficult to deal with. When taken to the extreme, both characteristics generate a narrowing of access linked to the issue of knowledge that ends up removing a large part of society from the mere possibility of knowing the law and how justice works, as Cunha (2008, p. 7) and Economides (1999) point out, endorsing the relevance of legal education in making this access effective, as highlighted by Bonaventura (1996) and Vitovsky (2016, p. 178).

This is not to deny the importance of proper training for legal professionals, nor the relevance of the lexicon, rites and formalities that law generally demands. The point is to emphasize the necessary relationship between the complexity of the law - especially that related to bureaucracy and excessive formalism - and the difficulty of access to justice.

Given these considerations and the need to tackle the difficulty of access to justice, we can analyze the problem from two perspectives, namely the perspective of the remedies used to alleviate the difficulty of access[8] and the challenges posed by technology, social changes and even the medicines themselves.

The first front revolves around proposals, either to relieve the Judiciary of part of its caseload, or to organize it in such a way as to speed up the assessment of claims. Legislative reforms to simplify the process and restructure the judiciary are necessary measures that require constant review and effective contact with practical reality. According to Jiukoski (2020), other initiatives can also help in this regard, such as conflict resolution through mediation and arbitration. Although these instruments have their own difficulties in terms of application and dissemination, they are interesting and valid responses to the growing demands.

Likewise, the creation of small claims courts can be seen as a measure that simultaneously speeds up the response given by the judiciary and democratizes access to justice, as Cunha (2008) points out. The specialization of justice by complexity proposed in the Special Courts Law (1995) (art. 3) allows citizens to act alone in defense of their rights at times (art. 9), which, together with a reduction in formalism and simplification of the procedural rite, translates into significantly easier access to the judiciary.

The Brazilian experience with the Special Courts has its correlatives in several other countries, from the Courts of Small Claims in the United States of America analyzed by Steele (1981), to the

[8] Não é objetivo de este trabalho propor uma visão definitiva, ou mesmo apontar soluções categóricas para os problemas que envolvem a questão, mas apenas indicar medidas já adotadas ou passíveis de implementação que podem contribuir para um melhor acesso à justiça.

so-called Defensores Del Pluebo and the Marcs themselves as proposals for decentralizing justice in Latin America, as analyzed by D'Araújo (2001).

Alternatives for funding lawyers or voluntary work aimed at promoting access to justice, especially for economically disadvantaged sectors of society, such as the judicare system, for example, are also initiatives that offer positive results. Pedroso (2011, p. 134) points out that in the case of common law, it is common for individual initiatives or associations to provide the population with greater access to justice, either through funding, volunteering or alternative means of resolving conflicts, such as mediation and arbitration, which benefit from the greater freedom granted to these alternatives in this system. In societies with a tendency towards codification, state means of conflict resolution are more developed, with fewer initiatives of an extra-official nature. These measures go hand in hand with the free legal aid offered by the State.

Access to justice has been elevated to the top of the agenda, especially since the realization of human dignity has become a priority. Despite all the measures adopted in favor of access to justice, it is interesting to note that new challenges loom on the horizon, some linked to consequences arising from the very measures facilitating access, others resulting from the transformations experienced in society.

Thus, there are notes of the formation of an excessively judicializing culture, which would unnecessarily overload the judiciary, as a side effect of policies aimed at simplifying and facilitating access to justice. This is a controversial point, because although it can be considered in theory, in practice there is still a long way to go to guarantee effective access for the population.

While the connection between human dignity and access to justice is undeniable, the link between access to justice and democracy is less explicit and therefore less debated. Democracy has seen its concept expanded and complexified in recent decades, enriched by new experiences and new demands. It is therefore necessary to ask whether we can call democratic a state that alienates a large part of the population from the provision of justice, through the difficulty of access. In other words, is there democracy in a state where public policies are unable to guarantee citizens whose rights have been violated broad access and effective responses from the judiciary? This seems to be, alongside the effort to propose new alternatives, the main issue to think about in the near future. And it is desirable that this should be done, not only for the sake of democracy, as D'Onnell (1993, p. 67) and Marshall (1992, p. 8) state, but also because this issue is a new driving force for the spread of access to justice, similar to what happened between it and dignity.

In this dynamic of adapting the world of law to reality and searching for more effective alternatives to solve the problem, the debate on the use of technology has arisen. As Nunes (2022, p. 31) argues, technology would have the power to facilitate access, reduce costs, especially by allowing the party to sue and appear in court without having to travel, which in itself is often enough to prevent access to justice. In this respect, several measures are already underway, whether through the implementation and updating of the Electronic Judicial Process (PJE), its possible integration of Artificial Intelligence mechanisms (CNJ Ordinance No. 271 of 2020) - or even the Synapses Platform itself - as well as alternatives for electronic procedural communication, electronic attachment, conciliation and digital mediation (ODR), among several other strategies proposed by the National Council of Justice.

Nunes (2022, p. 28-29) points out, however, that this technological advance is not evenly distributed throughout the country: there are courts with computerization rates that reach the totality of cases, while others have timid numbers.

Technology has the ability to streamline processes, contributing to faster responses to demands. Practices in this direction can be identified in various parts of the world, but particularly

in Brazil and other countries where poverty rates are considerable, the question of access to technology itself remains.

> Em pesquisa divulgada em abril de 2020 pelo IBGE, identificamos que, pelo menos ¼ da população brasileira ainda não possui acesso à internet. Em regiões como norte e nordeste do país este percentual gira em torno de 36%. O acesso nas zonas rurais chega a apenas 49,2%. O percentual de domicílios atendidos, segundo a pesquisa chega é de 79,1%, o que pode parecer muito alto para um país de dimensões continentais. Todavia, a mesma pesquisa relata que a diferença de renda entre as famílias com e sem acesso à internet é significativa. E ainda, o estudo informa que o celular é utilizado como principal forma de conexão em 99,2% dos domicílios, sendo que em 45,5% deles, o celular é o único meio disponível para acesso. A pesquisa do IBGE mostrou, também, que o grupo na faixa etária entre 20 e 24 anos é o que mais utiliza a internet – 91% das pessoas com essa faixa de idade se conectava à rede em 2018 (NUNES; PAOLINELLI, 2022, p. 70–71).

A number of problems arise with the insertion of technology, many of which have not yet been properly mapped - others of abundant complexity - such as the relationship between the structure of digital platforms and the induction of behavior and manipulation of the will, since "the belief in the autonomy of the will has been thrown to the ground by captology (technology that manipulates)" (FOGG, 1998; NUNES; PAOLINELLI, 2022, p. 73).

Thus, the welcome introduction of technology that would allow everything from the distribution and control of the procedural flow to the participation in hearings virtually would bring with it a new impediment, the challenge of access to devices and the internet that allow this participation, or even the knowledge of how such tools can be used, as they argue (PINTO; MARQUES; PRATA, 2021, p. 104). Digital exclusion has been shown to limit access to justice.

> "Assim, acreditamos que a questão de resolver o problema do acesso à justiça pela tecnologia deve ser refletida sob as lentes do déficit de acessibilidade tecnológica de boa parcela da população brasileira.[...] Caso contrário, a tecnologia, apesar de todas as potencialidades, corre um enorme risco de paradoxo: ao mesmo tempo que permite a correção de problemas graves pode (sempre a depender do modo como implementada) acentuar mais a exclusão ou reforçar um ideal de acesso à justiça não comprometido com seu papel redistributivo e democrático" (NUNES; PAOLINELLI, 2022, p. 71–76).

5 FINAL CONSIDERATIONS: DIGNITY AND ACCESS TO JUSTICE

The problem of access to justice is far from being completely solved, and this is not unique to the countries with the highest poverty rates. In recent decades, it has been possible to identify several efforts, many of which have had some success, to facilitate access to justice.

As we have tried to emphasize, the issue has received more attention since the protection of human dignity, especially through the realization of fundamental rights, became the order of the day. In the same way that we learned from the Romans that there is no point in granting material rights to citizens without offering them the means, the instruments (actio) to claim and enforce them, we realized that human dignity, the enforcement of which does not rest exclusively in the active hands of the state as provider, depends on the actions of the subject of law in favor of the protection and enforcement of their own rights, which, in turn, is not possible without access to justice. Human dignity and access to justice are therefore inevitably linked.

This link has brought to the theoretical debate and the practical experience of law the mission of finding more effective forms of access to justice which, as has been said, are not resolved by simply filing a lawsuit with the judiciary, but require a swift and fair response.

In this effort to think about and implement measures to facilitate and democratize access to justice, new challenges arise, reinforcing the idea that the wheel of history is always turning, pushing us towards a constant effort to improve the law as a necessary path to achieving justice.

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