

# The Impact of COVID-19 on Brazilian Judiciary: Reflections on a Justice 4.0 and a 100% Digital Judgment in the Post-pandemic Context<sup>1</sup>

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*This paper aims to examine the impact that the advent of the COVID-19 pandemic had on the organisation and routine of the Judiciary in Brazil, especially with regard to the expansion of the use of technology in judicial activities. It is not forgotten that the start of the Brazilian Judiciary virtualisation dates to the beginning of the 1990s and, even since 2006, there is a law that deals with the electronic judicial process. However, the pandemic period generated intense investment by the judicial Public Administration in the digital fulfilment of electronic procedural acts, such as videoconference hearings, an alternative found as a way to guarantee the continuity of judicial provision during the period of suspension of face-to-face activities (physical). Like that, the article will approach some of the important innovations that the Brazilian Judiciary suffered during the pandemic, with emphasis on the Justice 4.0 and 100% Digital Judgment. The research was developed under theoretical and hypothetical-deductive methods, based on a broad systematic review of the literature, including books and scientific articles, in addition to consultation of normative acts and legislation. In the end, it is concluded that the pandemic left an unquestionable positive legacy for the Judiciary virtualisation in Brazil in a future post-pandemic context.*

**Keywords:** Brazilian judiciary; COVID-19 pandemic; Electronic justice; Justice 4.0; 100% Digital Judgment.

## Introduction

At the end of 2019, in the Wuhan city, Hubei Province, China, an epidemiological infection with SARS-CoV-2 was detected. On 30 January, 2020, the World Health Organisation (WHO) declared that the outbreak of the disease caused by the new coronavirus constituted a public health emergency of international importance. Faced with the accelerated spread of the disease, the WHO, on 11 March, 2020, declared that the disease COVID-19 was characterised as a pandemic<sup>2</sup>.

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<sup>1</sup>The authors thank Mrs. Erika Fernandes for her valuable help and advice in the translation of this paper.

<sup>2</sup>Joint WHO-China Study (2021).

In Brazil, Law No. 13,979 of 6 February, 2020, which established measures to face the public health emergency of international importance arising from the coronavirus, responsible for the 2019 outbreak. Subsequently, the National Congress approved Legislative Decree No. 6, of 20 March, 2020, which recognised, notably for exempting the government from achieving fiscal responsibility goals, the occurrence of the state of public calamity.

To prevent the spread of COVID-19, health authorities, worldwide and in Brazil, indicated the need to avoid crowding and social distancing. As a result, most activities, both in the private sector and in the public sector, had their face-to-face (physical) execution suspended, including the closing of many stores, departments and buildings.

In general, everyone was affected by the consequences of the pandemic. Simple activities, like shopping at the supermarket, going to a restaurant or watching a play, had to be reinvented. It was not different with the Brazilian Public Administration. After all, with the suspension of face-to-face services, the Government needed to invest in the use of new information and communication technologies (ICTs) to enable the provision of services remotely, from access to the worldwide web<sup>3</sup>.

The Brazilian Judiciary also suffered the consequences triggered by the COVID-19 pandemic. In March 2020, the buildings of the Brazilian courts were closed and all physical activity was reduced to the minimum. Thence fore, judges, civil servants and collaborators began to work remotely, directly from their respective homes<sup>4</sup>. Initially, court hearings were suspended and gradually resumed, but, under the virtual modality, through the entry of participants to the digital platforms offered by the courts<sup>5</sup>.

Certainly, technology was the great asset that made it possible for judicial activity, of an essential nature, to not be interrupted during the pandemic.

Between moments of increase and decrease in the number of infected, Brazil, a country that has already surpassed more than 600 thousand deaths due to the new coronavirus<sup>6</sup>, lived with extremes that ranged from periods of explosion and peaks of cases, including the decree from local lockdowns, to contagion control times, with the flexibility that allowed the release of face masks<sup>7</sup>. Although, even between difficulties, in a context of such uncertainty, the Brazilian Judiciary did not fail to provide justice to its citizens.

In fact, led by the National Justice Council<sup>8</sup>, the Brazilian Judiciary issued a series of normative acts that established the criteria for the use of technology as a measure that made it possible to preserve judicial services. Throughout this work, we will approach the solutions adopted, such as virtual appointments between judges and lawyers, public service through a digital platform, virtualisation of

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<sup>3</sup>Reck & Hübner (2021).

<sup>4</sup>Fogaça & Machado (2021).

<sup>5</sup>Almeida & Pinto (2020).

<sup>6</sup>Brazil, Ministry of Health (2022).

<sup>7</sup>Acioli (2020).

<sup>8</sup>In Portuguese, Conselho Nacional de Justiça, hereinafter referred to by the original acronym CNJ.

physical processes, telework of judges and servers, videoconference hearings, which allowed access to participants directly from their respective homes or place of work, etc. In addition, two CNJ initiatives will be highlighted that illustrate how technologies have qualified the Judiciary Power's performance, making it more accessible and efficient: Justice 4.0 and 100% Digital Judgment.

The main objective of this article is to examine to what extent all the innovations arising from the COVID-19 pandemic tend to perpetuate with the Brazilian Judiciary, effectively inserting themselves into the judicial routine even in a post-pandemic scenario.

This research is justified by the fact that the pandemic has dramatically increased the use of technology by the Judiciary in Brazil. From a timid and lengthy insertion, during the pandemic, there was a real boom in the application of digital functionalities to essential support of judicial activity.

In this context, utilities, facilities, systems and tools were developed that made the judiciary faster, more effective, more economical and less bureaucratic, as can be seen from the positive results of Brazilian procedural statistics<sup>9</sup>. Therefore, it is relevant to examine which legacy of the pandemic should be maintained even after the state of calamity ends. It is opportune, then, to highlight a new and irreversible Brazilian Electronic Justice, whose solid foundations were laid during the pandemic.

The methodology adopted in this research is a broad systematic review of the literature, including books and scientific articles, Brazilian and foreign, besides to consulting normative acts and legislation. Theoretical and hypothetical-deductive methods were used.

### **The Changes in the Brazilian Judiciary during the Pandemic**

On 17 March, 2020, the CNJ issued Recommendation No. 62, which advised Courts and magistrates to adopt preventive measures to avoid the spread of infection by the new coronavirus within the scope of the Brazilian criminal justice and socio-educational systems. Among the recommended measures, the one contained in article 7 of the normative act has to be observed: the reassignment of hearings in cases in which the defendant is released and its realisation by videoconference in cases in which the person is deprived of liberty.

Days later, on 19 March, 2020, the CNJ approved Resolution No. 313, which established the Extraordinary Duty regime within the Brazilian Judiciary, to standardise the functioning of judicial services, with the objective of, at the same time, preventing the COVID-19 contagion and guarantee access to justice during the abnormality period.

The aforementioned regime resulted in the suspension of the face-to-face work of magistrates, civil servants, interns and employees in the judicial units, who began to perform their duties remotely, from their respective homes, in a telework regime, as well as ensured the maintenance of services considered essential, giving priority to emergency procedures. In addition, the face-to-face

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<sup>9</sup>National Justice Council (2021).

service, lawyers and interested parts was suspended and started to be carried out remotely. Procedural deadlines were also suspended.

On 31 March, 2020, the CNJ, by Ordinance No. 61, instituted the Emergency Videoconferencing Platform for holding hearings and trial sessions in the Judiciary, in the period of social isolation caused by the COVID-19 pandemic.

Afterwards, on 20 April, 2020, the CNJ approved Resolution No. 314, which extended the regime established by Resolution No. 313, but determined the resumption of deadlines for processes that are processed in electronic media, maintaining the suspension only of physical processes. In fact, § 4 of article 6 authorised the full digitalisation of physical processes, so that they can be processed in electronic form.

The resumption of in-person jurisdictional services within the scope of the Judiciary in Brazil was only authorised on 1 June, 2020, pursuant to CNJ Resolution No. 322, which recommended compliance with biosecurity rules and measures to prevent the spread of COVID-19. Article 3, I, admitted the full resumption of procedural deadlines in electronic and physical processes. The resolution allowed for the exceptional holding of face-to-face hearings, in the courtrooms, but stated that the hearings and acts will be held, whenever possible, preferably by videoconference, also authorising the act to be carried out in a hybrid way, with the presence of some people in the courtroom and the virtual participation of others who are able to.

Clearly, the COVID-19 pandemic has given rise to a scenario of many challenges and notorious transformations for the Judiciary in Brazil<sup>10</sup>, in which the adoption of new routines and procedures in a remote (online) regime has gained prominence<sup>11</sup>.

Thus, the changes undergone by the Brazilian Judiciary during the pandemic are so relevant that there will hardly be a return to the *status quo ante*. The main innovations bequeathed by the pandemic period will be discussed in more detail below, fulfilling, since now, to point out that many of them are not unprecedented creations. However, the pandemic undoubtedly acted as a factor for accelerating and consolidating many tools that, although already existing, were not yet fully inserted into the Brazilian judicial routine<sup>12</sup>.

### *Hearings by Videoconference*

The first virtual hearing held in Brazil took place on 26 April, 1996, in São Paulo<sup>13</sup>. However, it was not a routine, so that, as a rule, the hearings took place in person, in the courtrooms. In fact, there were many criticisms against videoconferencing, which came to be characterised as a status-degradation ceremony<sup>14</sup>. For example, there are people who understand that in the distance

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<sup>10</sup>Dutra & Melo (2021).

<sup>11</sup>Siqueira, Lara & Lima (2020).

<sup>12</sup>Guimarães & Parchen (2020).

<sup>13</sup>Nunes (1996).

<sup>14</sup>Dotti (1997).

hearing the judge cannot access important non-verbal elements, such as the voice intonation, the body posture and the emotion in the eyes<sup>15</sup>, which can impair the judgment.

Finally, Law No. 11,690 of 9 June, 2008, and then Law No. 11,900 of 8 January, 2009, expressly authorised the holding of videoconference interviews in Brazilian criminal proceedings, but only authorised in exceptional situations<sup>16</sup>. The rule continued to be face-to-face hearings, which is why the number of virtual hearings actually held until 2020 is not significant.

Likewise, in civil proceedings, videoconference hearings were also not a daily reality before the beginning of the pandemic. Not even the validity of the new Civil Procedure Code<sup>17</sup>, in 2015, which contains a set of devices that authorise the videoconferencing use<sup>18</sup>, was enough for the virtual hearings' generalisation in Brazil. Thus, in practical terms, both in criminal proceedings and in civil proceedings, the expressive majority of hearings held in Brazil followed the traditional model, that is, with the physical presence of the parts in the courtroom, on the court's premises.

With the advent of the COVID-19 pandemic, because of the need to observe the recommendations of the health authorities for social distance and due to the suspension of face-to-face activities in order to avoid the agglomeration, there was no other alternative for the Brazilian Judiciary than to bet on virtual hearings as a viable alternative to ensure the continuity of judicial activity<sup>19</sup>.

After a few months and the pandemic dragged on, remote hearings became increasingly common. It is important to say, the number of videoconference hearings showed a notable growth, since now they were no held as an exception, but as a rule or “semi rule” or, at least, a “temporary rule”<sup>20</sup>.

With the contagion partial control and the decrease in the number of infected, at the time of the restriction measures flexibility, the Brazilian forensic reality started to include three types of hearings, depending on the way in which the participation of the parts in the procedural act is made possible (Judge, Public Ministry, defendant, lawyer, Public Defender, parts, victim, witnesses, expert s and auxiliary justice departments): in *virtual hearings*, all of them, in full, enter the videoconference act, directly from their respective places (residence or work); in the *face-to-face hearing*, all participants physically meet at the courthouse; and in the *hybrid hearing*, part of the procedural participants is physically present in the courtroom and other ones participates in the act by videoconference<sup>21</sup>.

CNJ Resolution No. 329, of 30 July, 2020, established criteria for holding virtual hearings in criminal proceedings during the state of public calamity resulting from the COVID-19 pandemic. The act provides that the

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<sup>15</sup>Oliveira (1996).

<sup>16</sup>Mascarenhas, Alves & Mascarenhas (2013).

<sup>17</sup>Law No. 13,105 of 16 March, 2015.

<sup>18</sup>Article 236, § 3 (procedural acts in general); article 385, § 3 (personal testimony); article 453, § 1 (inquiry of the witness); article 461, § 2 (confrontation); article 937, § 4 (oral support of the lawyer).

<sup>19</sup>Guimarães & Parchen (2020).

<sup>20</sup>Martins (2020).

<sup>21</sup>Malan & Saad (2022) at 364-365.

videoconference hearings must observe the maximum equivalence with those carried out face to face<sup>22</sup>.

In turn, CNJ Resolution No. 330 of 26 August, 2020, established criteria for holding virtual hearings in processes aimed at investigating infractions committed by adolescents and the subsequent application of socio-educational measures to young offenders, during the state of public calamity.

Due to the polemic surrounding the generalisation of hearings by videoconference<sup>23</sup>, there was special controversy regarding the holding of certain specific types of hearing in digital media. The most emblematic example is the custody hearing. It is the act that gives the newly arrested person the opportunity to denounce possible episodes of mistreatment, torture and/or degrading treatment. Thus, there are many criticisms regarding the spontaneity of the act carried out directly from the penitentiary unit (which may have served as a stage for possible atrocities committed against the prisoner)<sup>24</sup>.

Therefore, CNJ Resolution No. 329 of 2020 initially prohibited the holding of a custody hearing by videoconference.

However, with the enactment of CNJ Resolution No. 357 of 26 November, 2020, the act became accepted, provided that there is the concomitant use of more than one camera in the environment or 360-degree cameras, in order to allow viewing space during the act, in addition to the use of an external camera to monitor the prisoner's entry into the room and its door<sup>25</sup>.

CNJ Resolution No. 354 of 19 November, 2020, provided for the digital compliance with procedural act and court order. In addition, it regulated the holding of hearings and trial sessions by videoconference and telepresence. The act clarifies that the authorisation for virtual participation depends on technical feasibility and is subject to the judge's convenience<sup>26</sup>.

CNJ Resolution No. 358 of 2 December, 2020, created technological solutions for the handling of conflicts by the Judiciary through conciliation and mediation, authorising sessions to be held through the videoconferencing system. Therefore, the parts will be able to opt for any digital means available and suitable for everyone involved.

CNJ Resolution No. 465 of 22 June, 2022, established guidelines for holding videoconferences within the Brazilian Judiciary, with the purpose of improving judicial provision in a digital way.

After more than two years of the pandemic, the number of remote hearings held in Brazil is quite significant. For example, in São Paulo state, the most populous unit of the Federation, the headlines of edition No. 3318, of 14 July, 2021, reported that the Court of Justice had held 466 thousand hearings during the

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<sup>22</sup>Resolution No. 329 of 30 July, 2020, article 4, § 1.

<sup>23</sup>Forster, Schäfer, Previdelli & Buralde (2020).

<sup>24</sup>Ocampos (2022).

<sup>25</sup>Resolution No. 329 of 30 July, 2020, article 19, with the wording given by the Resolution No. 357 of 26 November, 2020.

<sup>26</sup>Resolution No. 354 of 19 November, 2020, article 4, § 2.

pandemic, between March 2020 and June 2021, with 238.9 thousand in the first half of 2021<sup>27</sup>.

In view of the notable gains in productivity and efficiency, as well as the advantages of practicality and convenience for participants, it is credible to consider that even after the pandemic is over, videoconferencing audiences will continue to be adopted on a large scale<sup>28</sup>.

### *Teleworking for Magistrates and Officials*

Law No. 13,467 of 13 July, 2017, amended the Labour Laws in Brazil Consolidation, an old diploma dating from 1943, to include regulations on teleworking or remote work, defined by article 75-B as one in which services are provided outside the employer's premises, predominantly or not, with the use of information and communication technologies (ICTs).

Within the scope of the Brazilian Judiciary, CNJ Resolution No. 227 of 15 June, 2016, authorises that the servers' activities of the Judiciary departments, may be carried out remotely, under the name of teleworking, optional adherence. It adds that teleworking aims, among others, to increase the productivity and quality of employee's work, to save time and reduce the cost of commuting employees to the workplace and to promote a results-oriented culture, with focus on increasing the efficiency of services provided to society.

However, it was after the outbreak of the COVID-19 pandemic that telework reached an undeniable projection<sup>29</sup>. This is because with the closing of court buildings and the suspension of face-to-face work, practically all Brazilian judges and clerks began to work remotely, directly from their respective homes.

The unprecedented generalisation of teleworking has brought up a series of new issues, such as the right to disconnect from work and organise the routine, separating personal life and professional tasks<sup>30</sup>, as well as attention to workers' mental health, in a context of abnormality, in which there was a weakening of face-to-face social interaction<sup>31</sup>.

Without prejudice, the positive results from telework implemented as an emergency during the pandemic, signal the remote work appreciation even in a post-pandemic.

In this sense, for example, considering the experience obtained and the results achieved with carrying out remote work during social isolation due to the Covid-19 pandemic and in view of the significant expenses reduction, observed with the provisional implementation of teleworking during the pandemic, in São Paulo state, Resolution No. 850, of 14 April, 2021, was edited, which regulated teleworking within the scope of the state Judiciary power.

In the same sense, given the new reality experienced from the new coronavirus pandemic, which demonstrated that judicial activity can be provided remotely with

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<sup>27</sup>São Paulo (2021).

<sup>28</sup>Forster, Schäfer, Previdelli & Buralde (2020) at 236.

<sup>29</sup>Fogaça & Machado (2021).

<sup>30</sup>Nascimento & Creado (2020).

<sup>31</sup>Santos & Padilha (2021).

the same efficiency, quality and effectiveness, the CNJ held a public hearing on 13 October, 2021 to discuss the topic and obtain subsidies to prepare a draft resolution on the remote work regime for judges, aiming at increasing productivity, improving the organisational climate and expanding access to justice.

The permission for the judge to exercise jurisdiction away from the judicial courts is in line with the answer that Richard Susskind gives to his question: “Is court a service or a place? When people and organisations are in dispute and call upon the state to settle their differences, must they congregate in physical courtrooms?”<sup>32</sup>. Definitely, the court is a service and not a place. After all, regardless of where he is, now, especially from all the innovations and transformations that came with the COVID-19 pandemic, the judge will be able to provide the essential judicial service. In other words, Justice can be accessed and enforced from anywhere.

### *The Electronic Judicial Process*

Since 2006, Brazil has a national law that allows the use of electronic means in legal proceedings, acts communication and procedural documents transmission. This is Law No. 11,419 of 19 December, 2006, which provides for the judicial process virtualisation. Article 8 of the law authorises the Judiciary departments to develop electronic systems for processing lawsuits through digital records, preferably using the worldwide web<sup>33</sup>.

The electronic process adoption, replacing the old process in physical records, has brought countless benefits to the Brazilian Judiciary, mainly in terms of efficiency and economy.

Thus, the electronic process extinguished a series of activities that became unnecessary (e.g. joining of petitions), speeded up the appraisal of requests, allowed the services optimisation, enabled the appraisal of repetitive demands in series, reduced the financial cost of the processes, freed judges and clerks to dedicate themselves to core activities, reduced the time spent on their activities and allowed the incorporation of new functionalities that lead to the judicial activity improvement<sup>34</sup>.

In short, the electronic process implementation meant a true revolution in the way the Judiciary works in Brazil and imposed a review of traditional routines and practices<sup>35</sup>.

It happens that, in a country like Brazil, with continental dimensions and 27 federative units, 91 courts and hundreds of Judicial Districts and Sections, the process of Justice automation developed in a decentralised way, since the courts began the simultaneous creation of judicial computerisation different systems, it

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<sup>32</sup>Susskind (2019) at 95.

<sup>33</sup>Law No. 11,419 of 19 December, 2006, article 8.

<sup>34</sup>Dantas Neto (2015).

<sup>35</sup>Gabriel, Abreu & Porto (2021) at 16.

developed in a local, individual and isolated way, without any standardisation and uniformity criteria<sup>36</sup>.

As an example, the Courts of Justice of São Paulo, Santa Catarina and Mato Grosso do Sul states adopted the SAJ automation system. In turn, the Courts of Justice of Paraná, Bahia and Goiás states use the PROJUDI system. The Tocantins state, the Federal Regional Courts of the 2nd and 4th region and the Superior Military Court use the e-Proc system.

Plus, it should be mentioned that the Courts of Justice of Minas Gerais, Mato Grosso, Maranhão, Pernambuco, Paraíba, Rio Grande do Sul, Rio Grande do Norte and Roraima states implemented the PJe system. Still, there are other systems adopted in Brazil. As can be seen, there is a big difference between the various Brazilian courts, each using a system, without interconnection and connectivity with each other.

Consequently, several obstacles and practical barriers were perceived. Imagine, for example, the hypothesis of the lawyer who performs his activities in Tocantins, Goiás and São Paulo states and needs to migrate between different systems (e-Proc, PROJUDI and SAJ), with different functionalities, tools, in short, with different languages and procedures.

Considering the heterogeneous reality that has been consolidated in Brazil, around the innovations implemented at the time of the pandemic, the CNJ spearheaded the creation of the Judiciary Digital Platform (PDPJ-Br).

The measure aims to improve the judicial service, ease of access, greater information availability and risks and costs reduction, through the adoption of a single, standardised and free solution for procedural processing throughout the Brazilian Judiciary, which avoids redundant, overlapping, duplicated and conflicting actions and provides the interoperability of informational objects, records and online resources<sup>37</sup>.

In fact, driven by these objectives, the CNJ published Resolution No. 335 of 29 September 2020, which aims to modernise the Electronic Judicial Process platform and transform it into a multiservice system, with the possibility of being adapted according to the specific needs and demands of each court, provide the unification of the procedural process in Brazil.

The Judiciary's Digital Platform promotes collaborative development between Brazilian courts, encouraging each court to create its features, which will be available to other courts, in a kind of marketplace based on a community concept of mutual benefit<sup>38</sup>.

In addition, the Digital Platform, as it is hosted in the cloud, does not present availability and accessibility problems.

CNJ Resolution No. 455 of 27 April, 2022, established the Judiciary Portal of Services (PSPJ), as a solution to be developed on the Judiciary Digital Platform (PDPJ-Br), destined to external users to allow, among other functionalities, the unified consultation of all electronic processes in progress in the procedural systems connected to the PDPJ-Br.

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<sup>36</sup>Gabriel, Abreu & Porto (2021) at 19.

<sup>37</sup>Santos & Torres (2020).

<sup>38</sup>Gabriel, Abreu & Porto (2021).

*The Use of Artificial Intelligence (AI)*

The term “Artificial Intelligence” appeared for the first time in 1955, in the title of a proposed project by John McCarthy, with the Dartmouth College, at the University of New Hampshire, in the United States of America, in allusion to science and to the engineering of making intelligent machines<sup>39</sup>.

Nowadays, the artificial intelligence concept has the purpose of, through software, accomplishing something that the human being could do, however, in a faster way. Thus, through its algorithms, heuristics and methodologies are developed that are based on the way the human brain solves problems, to enable the computer, in an approximation movement of human intelligence, to acquire and preserve knowledge that enable it to respond to new situations<sup>40</sup>.

In recent years, with the increasing adoption of the Brazilian Courts of Justice to the electronic judicial process model, associated with the increasing virtualisation of legal practice, several initiatives have emerged aimed at technological innovation in the Brazilian Judiciary, largely involving some type of Intelligence model. Artificial Intelligence (AI), with the aim of providing greater efficiency and effectiveness to the processing and judgment of lawsuits<sup>41</sup>.

In fact, there are currently numerous examples of the use of AI in the Judiciary departments’ routine in Brazil. In this sense, a survey carried out by Fundação Getúlio Vargas identified important artificial intelligence systems used by the Brazilian Justice, with emphasis on<sup>42</sup>: VICTOR, an auxiliary tool used by the Federal Supreme Court in the rapid and automated filtering of repetitive judicial precedents<sup>43</sup>; ATHOS, used by the Superior Court of Justice to index jurisprudence; SÓCRATES, also adopted by the Superior Court of Justice for the monitoring and grouping of cases and for the identification of judicial precedents; BEM-TE-VI, used by the Superior Labour Court to facilitate the management of cases that enter the offices of the Court’s Ministers; SINARA, used by the Federal Court of the 3<sup>th</sup> Region to support the identification of legal texts, such as laws, articles and paragraphs, and also to enable the search for subjects to facilitate the work in the offices; e JULIA (Labour Jurisprudence with Artificial Intelligence), created by the Federal Court of the 5<sup>th</sup> Region, to assist in jurisprudential research.

However, despite the numerous advantages that the adoption of AI tools can provide, it cannot be ignored that its use arouses controversies.

In fact, there are many controversies surrounding the topic, such as the risk of dehumanising judicial decisions, the activities that can serve the use of AI, the control of predictive (and potentially discriminatory) in decisions and the protection of data privacy, in addition to ethical elements involved in the decision-making process that may be unattainable for machines<sup>44</sup>.

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<sup>39</sup>Carvalho (2022) at 21.

<sup>40</sup>Schorr & Nedel (2020) at 4.

<sup>41</sup>Nascimento, Coelho, Miranda & Mello (2022).

<sup>42</sup>Salomão (2021).

<sup>43</sup>Magalhães & Vieira (2020).

<sup>44</sup>Hijmans & Raab (2021).

In this regard, it is important to bear in mind that:

*The use of artificial intelligence should provide for the expansion of autonomy, and not its restriction. In the event of a prescriptive approach, the user needs to be informed, in a clear and understandable way, explaining the link and the options available, including the possibility of legal advice. A court decision that has used artificial intelligence must inform the data that was used for training the model, the algorithm technique, if there is a bias in the training data and the interpretability of the model.*<sup>45</sup>

In this line of reasoning, considering the increase in the availability of AI and the expansion of its use during the pandemic, the CNJ published Resolution No. 332 of 21 August, 2020, which talks about ethics, transparency and governance in production and the use of AI within the Judiciary. According to the normative act, AI is applied to the Judiciary with the objective of promoting the well-being of the jurisdictions and the equitable provision of the jurisdiction<sup>46</sup>. In addition, it is foreseen that court decisions supported by AI tools must preserve the values of equality, non-discrimination, plurality and solidarity, so that they can effectively assist in achieving fair trials<sup>47</sup>.

Soon after, on 4 December, 2020, Ordinance No. 271, which regulates research, project development, use, inter-institutional coordination in the field of artificial intelligence within the Judiciary, was edited. It says that the use of AI by the Judiciary will take place on a common platform, accessible by everyone<sup>48</sup>.

Artificial intelligence had its use potentiated during the course of the pandemic<sup>49</sup>. Although, we must consider that the correct insertion of AI as a factor of collaboration in the decision-making process requires human values, such as sensitivity.

### **The “100% Digital Judgment”**

The use of technology in favour of the Judiciary in Brazil did not come from the pandemic. It is a much older reality. As seen, virtual hearings, for example, have been held since the mid-90s. Furthermore, since 2006 Brazil has a law that regulates the electronic judicial process. On the other hand, it is undeniable that the COVID-19 pandemic acted as a factor in accelerating the Brazilian Judiciary virtualisation process<sup>50</sup>.

All the innovations and digital transformations that were boosted during the pandemic and the new features and tools that emerged in the pandemic, from March 2020, paved fertile ground for the CNJ to lay the foundations for a bold and unprecedented project in the Brazilian Judiciary: the “100% Digital Judgment”.

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<sup>45</sup>Salomão, (2021) at 20.

<sup>46</sup>Resolution No. 332 of 21 August, 2020, article 2.

<sup>47</sup>Resolution No. 332 of 21 August, 2020, article 7.

<sup>48</sup>Ordinance No. 271 of 4 December, 2020, article 4.

<sup>49</sup>Barros & Cota (2021).

<sup>50</sup>Siqueira, Lara & Lima (2020).

CNJ Resolution No. 345 of 9 October, 2020, approved during the pandemic, authorised the adoption, by Brazilian courts, of the necessary measures to implement the “100% Digital Judgment” in the Judiciary.

Within the scope of the “100% Digital Judgment”, all procedural acts will be performed exclusively electronically and remotely through the Worldwide Web<sup>51</sup>.

In other words, the “100% Digital Judgment” allows all procedural acts, such as notifications, hearings and trial sessions, to be carried out exclusively by electronic means. In this way, it will not be necessary for the parts and other procedural subjects to be physically in a court building, saving time and money.

Membership is optional. Therefore, it is up to the parts and the lawyers, by mutual agreement, to choose, optionally, the “100% Digital Judgment”. The option for the tool can be made at any moment of the process, as long as it is before the sentence is pronounced.

Within the “100% Digital Judgment” scope, the Judiciary will have disposal all the entire IT and telecommunication infrastructure so that the public service can be done remotely, through chat, telephone, email or video call.

By the way, under the sole paragraph of article 4 terms of CNJ Resolution No. 345 of 9 October, 2020, the “Virtual Counter” may serve users. It is a videoconferencing platform that allows immediate contact between the external user and the service sector of each judicial unit, popularly known as 'counter', during public service hours, whose creation was regulated by CNJ Resolution No. 372 of 12 February, 2021.

The “100% Digital Judgment” can be applied to processes in any Judiciary area, whether labour, civil, family or childhood and youth. Despite this, there are some people who understand that the “100% Digital Judgment” should be avoided in all criminal cases involving children and adolescents who are victims or violence witnesses<sup>52</sup>.

The “100% Digital Judgment” may also be used for the proper and consensual treatment of disputes, through virtual conciliation or mediation hearings that provide for the preservation or restoration of bonds between the parts in conflict<sup>53</sup>. In fact, Law No. 13,994 of 24 April, 2020, made it possible to hold a virtual conciliation hearing within the scope of Small Claims Courts, by the use of available technological resources for the transmission of sounds and images in real time.

In short, by the “100% Digital Judgment” not only the processes will be virtual, but all procedural acts, including public service, hearings and trial sessions and communication acts, all will be carried out by electronic and remote means.

From this perspective, it can only be concluded that the “100% Digital Judgment”, considering the effective transformation in the Brazilian judicial routine, represents a disruptive innovation for the Brazilian Judiciary. After all, the new system caused a rupture with the standards, models and technologies already

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<sup>51</sup>Resolution No. 345, of 9 October, 2020, article 1, § 1.

<sup>52</sup>Ribeiro & Veronese (2022) at 33.

<sup>53</sup>Wolff & Silveira (2022).

established in the traditional forensic procedure of action and dynamically changed the way of the judicial environment working and communicating<sup>54</sup>.

In this sense, CNJ Resolution 345 of 9 October, 2020, signals a true revolution in the Brazilian judicial process way of working, because it contributes to changing a traditional culture, which is still rooted in the Brazilian justice system, which considers the court physical space as an essential jurisdictional activities locus.

The “100% Digital Judgment” a traditional way of judgment, with physical headquarters and staff with a work schedule, but which includes videoconference hearings in its routine. Not. It is a Court whose performance is possible by means of technological devices that allow the judicial provision to occur at a distance.

In this way, we can say that the innovative project led by the CNJ symbolises that Justice is much more a service than merely a place and, in this sense, it is the first step that Brazilian Justice takes towards online courts. Like Richard Susskind words, about online courts:

It involves and requires radical change. It represents a much greater leap than the swing from physical to virtual hearings. Although virtual hearings give rise to great consternation, they belong in the same broad paradigm as traditional courtrooms. Online courts are a different idea altogether. Even in the first generation, where human judges are deciding the cases, online judging takes away much that many people hold dear – the public hearing, the day in court, the direct interaction with other human beings. On the other hand, it is likely to make court service much more accessible and affordable, and will chime with those who cannot recall a pre-internet world.<sup>55</sup>

The “100% Digital Judgment” follows what Susskind says: under its procedure, there are no more physical hearings in the courtrooms, there is no more day-to-day in the courtroom and there is no direct face-to-face interaction between the parts and others procedural participants. Unlike, everyone intervenes remotely, by internet access.

Just like online courts, the “100% Digital Judgment” does not entail the mere change from physical courtrooms to virtual ones, but rather encompasses a complete meaning transformation and proposal of judicial system action, with the consequent change in Judiciary culture. Through it, the courts can become more accessible, more understandable, simpler, cheaper and more effective, providing better quality services.

In fact, the “100% Digital Judgment” is just beginning, the first step towards a progressive, scalable of Brazilian Justice Virtualisation progress. In other words, the project lays the foundations that could lead, in the near future, to the improvement of an advanced system of online courts, in which the user himself, without the need to assistance from a lawyer, can make even low-complexity requests electronically<sup>56</sup>. Soon virtual courts may be an irrefutable reality in Brazil.

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<sup>54</sup>Magalhães & Vieira (2020).

<sup>55</sup>Susskind (2019) at 60-61.

<sup>56</sup>Schiller (2021).

Finally, the “100% digital judgment” represents a new management and work model, which uses all the potential that technology can provide to the Judiciary, with a significant cost and time reduction, both for the State and for the parts themselves, and that leads to a significant increase in efficiency, culminating in the promotion of an effective access to justice<sup>57</sup>.

By the way, among the advantages, it is possible to highlight the increase in speed by the use of technology, as delays arising from the need to practice physical acts or that require the presence of the parts in the court buildings are avoided.

Consequently, there is also a significant reduction in ordinary expenses with fuel, transportation, food, etc. In addition, there will be no sudden interruption of the litigants' parts routine, who will not need to be absent from work for the whole day, because the trip to the court will be waived.

The “100% Digital Judgment”, in the specific Judiciary scope, is aligned with the entire Brazilian Public Administration virtualisation broader movement, including in the Executive and Legislative Powers domain, as well as of municipalities and public companies.

In fact, the pandemic also encouraged a considerable increase in public sector investment in the use of new information and communication technologies (ICTs)<sup>58</sup>.

It is not by chance that it was during the pandemic that this Law, of 29 March, 2021 was published, providing principles, rules and instruments for Digital Government in Brazil, in order to increase the Public Administration efficiency, especially through the bureaucracy reduction, modernisation, innovation, digital transformation, social and citizen participation by electronic means, including mobile devices, as well as the relationship strengthening and simplification between public authorities and society.

Digital Government allows the user to access public services by digital means, without the need for in person request, and uses technology as a means to optimise the services by the Public Administration provision (e-Public Services), focusing on universal access and technological development and innovation promotion in the public sector.

In this way, the Digital Government corresponds to the ICTs use so that technological innovation promotes provision of public services improvement to all citizens, without any discrimination<sup>59</sup>.

According to the law, the Digital Government will use digital solutions to provide greater speed and efficiency to the electronic administrative processes<sup>60</sup>. In addition, Law No. 14,129 of 29 March, 2021 adds that the digital provision of public services access will be carried out, preferably, by self-service<sup>61</sup>.

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<sup>57</sup>Gabriel, Abreu & Porto (2021).

<sup>58</sup>Nóbrega & Heinen (2021).

<sup>59</sup>Cristóvam, Saikali & Sousa (2020).

<sup>60</sup>Law No. 14,129 of 29 March, 2021, article 5.

<sup>61</sup>Law No. 14,129 of 29 March, 2021, article 14.

Thus, it is possible to conclude that the “100% Digital Judgment” and the Digital Government are coming together and results of the same movement, the public power virtualisation in Brazil.

In addition, both contribute to a disruptive transformation through the Brazilian culture radical abandonment, which still insists that the existence of people working in a certain physical space is essential for the services provision.

As stated above, the “100% Digital Judgment” has countless advantages, among which we can highlight: it provides greater speed through technology, avoiding delays and procrastinations in the process progress; it rationalises the budgetary resources use by the Judiciary organs, contributing to the expenses reduction; the improvement in processes and demands management; it generates an increase in the judicial provision efficiency; it expands the access to justice guarantee.

Notwithstanding these benefits, it cannot be ignored that there is a consistent obstacle to the “100% Digital Judgment” universalisation: the significant digital divide that still exists in Brazil.

After all, through the “100% Digital Judgment” special rite, (reminding that is an optional choice), the parts will appear in court entirely remotely, that is, electronically, by the digital platforms access, available by the Justice. Now, for this to be possible, it is a factual assumption that the parts have (in some way) internet accessibility.

It turns out that internet access is not a reality for all Brazilian people.

Even though the mediation of the functioning of state figures comes to rely on technological tools, the reality of many individuals has a degree of socioeconomic asymmetry so marked that it prevents them from following the State of the art of 21<sup>st</sup>-century technologies. Internet and smartphone are entirely unaware of the reality of a considerable portion of the population.<sup>62</sup>

In this sense, the Continuous National Household Sample Survey - Continuous PNAD 2018, carried out by the Brazilian Institute of Geography and Statistics, showed that about a quarter (25%) of the Brazilian population over 10 years old (approximately 47 million people) did not use the internet in the fourth quarter of 2018. The reasons stated by the sample interviewed to justify the lack of internet use were: they did not know how to use the internet (41.6%); lack of interest in accessing the internet (34.6%); internet access service was expensive (11.8%); the electronic equipment needed to make the service viable was expensive (5.7%); unavailability internet access in the places they used to go (4.5%). Furthermore, the study showed that the accessing the internet difficulty varies according to age and schooling indicators, as 57.5% of people over 60 years old said they did not know how to use the internet and 67.9% of uneducated people said they did not access the internet<sup>63</sup>.

According to CNJ Recommendation No. 101, of 12 July, 2021, parts who do not have internet and other digital media access or do not have the ability or

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<sup>62</sup>Reyna, Gabardo & Santos (2020) at 32.

<sup>63</sup>Brazilian Institute of Geography and Statistics (2020).

knowledge to use them are digital excluded<sup>64</sup>. The act recommends that Brazilian courts adopt specific measures to guarantee access to justice for them.

Faced with the millions of Brazilians reality who are deprived of the internet access and ICTs, now, the mandatory imposition of a Justice that takes place exclusively in electronic media could mean, in practical terms, the prohibition or obstruction of justice access for a large number of vulnerable people.

Precisely for this reason, the "100% Digital Judgment", as previously stated, it is an option, which must be exercised by the plaintiff at the time of the action distribution, and the defendant may oppose this choice until the moment of submitting your objection<sup>65</sup>.

By the way, adapting to the Brazilian reality in which digital inclusion still does not reach all people, which makes it difficult, for example, to interview certain witnesses by videoconference, when they do not have a smartphone or computer, CNJ Resolution No. 378 of 9 March, 2021, amended the previous CNJ Resolution No. 345 of 9 October, 2020. It began to provide that the "100% Digital Judgment" may also use services provided in person by other court departments, such as those of adequate resolution conflicts, compliance with warrants, calculation centres, and others, provided that the procedural acts can be converted into electronic<sup>66</sup>.

The new wording of CNJ Resolution No. 345 of 9 October, 2020 also authorises that, if the evidence production or other procedural acts in a virtual way remains unfeasible, its performance in person will not prevent the process progress within "100% Digital Judgment" scope<sup>67</sup>.

In order to enable the fulfilment of certain procedural acts in person, for example by a hybrid hearing, the courts may adopt measures to maximise access to justice for the digitally excluded, such as providing rooms for the testimonies collection in hearings by videoconference, as authorised by CNJ Resolution No 341 of 7 October, 2020.

Alternatively, the Digital Inclusion Points implementation that allow, in an adequate way, the performance of procedural acts, mainly parts, witnesses and other justice collaborators depositions, by videoconference, as well as providing assistance by the Virtual Counter, as provided for in Recommendation No. 130 of 22 June, 2022.

It should also be noted that Law No. 14,129 of 2021 establishes that the Digital Government does not prevent the public service provision of a face-to-face nature when indispensable<sup>68</sup> and ensures the citizen's right to this service<sup>69</sup>.

In fact, the "100% Digital Judgment" is still a project just beginning its execution in Brazil, and it is to be expected that its regulation will need some adjustments.

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<sup>64</sup>Recommendation No. 101 of 12 July, 2021, article 1, item I.

<sup>65</sup>Resolution No. 345 of 9 October, 2020, article 3.

<sup>66</sup>Resolution No. 345 of 9 October, 2020, article 1, § 3.

<sup>67</sup>Resolution No. 345 of 9 October, 2020, article 1, § 2.

<sup>68</sup>Law No. 14,129 of 29 March, 2021, article 3, item II.

<sup>69</sup>Law No. 14,129 of 29 March, 2021, article 3, item XVI and article 14.

However, without prejudice to the norm improvement, it is an irrefutable reality that is in place and that tends to consolidate over the years.

In the São Paulo State, for example, Joint Provision No. 32 of 2020 provides for the “100% Digital Judgment” procedure implementation, initially as a pilot program in the Family and Succession, Civil and Special Courts of the Regional Court. XV - Butantã, of the Court of Justice of São Paulo State. Given the success of the project, Joint Provision No. 17 of 2021 expanded the procedure to the Counties of Atibaia and Porto Feliz.

#### **Brazilian Justice 4.0**

Klaus Schwab used the expression “fourth industrial revolution” to refer to the movement of expanding the technologies use linked to the internet for the industrial production improvement and transformation that had its epicentre from the 2010s.

Also called Industry 4.0, it is about of a paradigm shift that leads to a new way of producing, consuming and relating to goods, products and services, which is in the process of emergence due to the convergence of digital, physical and biological technologies, resulting in significant changes in interpersonal dynamics.

Thus, it is a “technological revolution that will fundamentally alter the way we live, work, and report to one another. In its scale, scope, and complexity, the transformation will be unlike anything humankind has experienced before”<sup>70</sup>.

Inevitably, the fourth industrial revolution effects spilled over into every field of civil society, altering the way we shop, study, or even meet and engage with new people. In the same way, Industry 4.0 also influenced the judicial environment, stimulating a new way of thinking about Justice, which culminated in the emergence of the expression Justice 4.0.

In general, Justice 4.0 is the one developed in the fourth industrial revolution context, with the Judiciary theory and practice modification, where secular notions of what was understood by conflict resolution forms were traditionally applied, with the emergency of a jurisdiction new notion, increasingly virtual and within everyone's reach, with uninterrupted availability, provided at an unimaginable speed, from the integration between the forensic routine and the new information and communication technologies (ICTs)<sup>71</sup>.

In Brazil, the Justice 4.0 consolidation was led by the CNJ through the “Justice 4.0 Program – Innovation and Effectiveness in the Realisation of Justice for All”, developed in partnership with the United Nations Development Program (UNDP). Through actions and projects whose execution is accompanied by teams from both the UNDP and the CNJ, the program aims to promote access to justice, based on the collaborative use of products that employ new ICTs and artificial intelligence.

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<sup>70</sup>Schwab (2016).

<sup>71</sup>Santana, Teixeira & Moura Junior (2020).

To this extent, Justice 4.0 aims to increase the governance, transparency, efficiency and speed of the Judiciary, with the consequent public expenses reduction, making the Brazilian Justice closer to the citizen.

In short, “The Justice 4.0 Program fosters the development and the use of new technologies and artificial intelligence to make the Brazilian justice system more efficient and effective”<sup>72</sup>.

Among the main actions and projects that integrate Justice 4.0 are: the implementation of the “100% Digital Judgment” implementation; the Digital Platform of the Judiciary standardisation (PDPJ-Br), with the degree expansion of the electronic judicial process automation and the incentive to the Artificial Intelligence (AI) use in the judicial activity; the Codex system improvement, a platform for transforming and extracting procedural information that makes it possible to feed statistical data for management and can also be used as an input for an AI model; and the development of an asset search and recovery tool (Sniper).

In addition, CNJ Resolution No. 385 of 6 April, 2021, authorises Brazilian courts to institute “Justice 4.0 Council” specialised in the same matter and with competence over the entire area located within the limits of its jurisdiction. Each “Justice 4.0 Council” must have a judge, who will coordinate it, and at least two other judges<sup>73</sup>, who will only process cases that, comply with the “100% Digital Judgment”<sup>74</sup>.

In São Paulo state, Joint Ordinance No. 10,135 of 2022 implements, as of 8 August, 2022, the “1st Justice 4.0 Specialised Council” of the Court of Justice of São Paulo State, with competence to prosecute and judge actions referring to traffic demands.

Justice 4.0 is an innovative management model that is intended to be consolidated in Brazil as an important technological advancement towards a more efficient, faster and closer to the citizen Judiciary, replacing the old slow, bureaucratic and ineffective Justice<sup>75</sup>.

## Conclusions

The COVID-19 pandemic has significantly affected all countries on the globe, including Brazil. In addition, its consequences reached practically all areas of social life, reaching everyone. With the Judiciary, it was not different. In a context of abnormality, in which preventive health measures determined social distancing and the suspension of face-to-face services, the Brazilian Justice needed to reinvent itself and, with creativity, bet on massive investment in technology to develop tools that allowed the continuity of provision uninterruptedly.

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<sup>72</sup>National Justice Council (2022).

<sup>73</sup>Resolution No. 385 of 6 April, 2021, article 1, § 3.

<sup>74</sup>Resolution No. 385 of 6 April, 2021, article 1, § 2.

<sup>75</sup>Gabriel, Abreu & Porto (2021).

The Brazilian Judiciary was already leading technological modernisation actions. In fact, the electronic judicial process was already a usual reality. However, the new coronavirus pandemic served as an unquestionable factor in accelerating Brazilian Justice Virtualisation.

In the pandemic, tools, methodologies and platforms were developed that contributed to making access to justice in Brazil more efficient, faster and less costly, in addition to bringing the Judiciary closer to the citizen. Many innovations and transformations applied in this period have already been inserted in the Brazilian Judiciary services routine, such as virtual hearings and distance service. It is credible to think that such measures, which proved to be quite successful and promising, will remain even after the end of the state of calamity.

The pandemic positive legacy for the Brazilian Justice virtualisation, increasingly electronic, can be symbolised by two projects proposed by the CNJ that translate a new, disruptive vision of jurisdiction: the “100% Digital Judgment” and Justice 4.0, which, together, introduced important changes in the existing interpersonal relationships in the judiciary.

The “100% Digital Judgment” authorised new or old processes to be performed remotely, including virtual or hybrid hearings. The Justice 4.0 Program, in turn, enables remote participation in procedural acts at the judge discretion and without the need for physical presence at the courthouse. In this sense, they are in full compliance with the Sustainable Development Goals (SDGs) goals and indicators – Agenda 2030, of the United Nations (UN), notably with SDG No. 16 – Peace, Justice and Effective Institutions.

The expectation is that the process fostered at the time of the pandemic will not stop, unlikely, and will advance on a large scale. In this sense, the CNJ heads many programs still in progress. For example, the following are planned for the year 2022: the Unified Services Portal implementation, the deliveries of the National Asset Management System and new version of the National Bank of Penal Measures and Prisons, the new functionalities incorporation in the National Adoption and Reception System and the National Bank of Precedents creation.

The present and future of Brazilian justice is digital.

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## Legislation

### Laws -

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- Ordinance No. 61 of 31 March, 2020  
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### Recommendations -

- Recommendation No. 62 of 17 March, 2020  
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### Resolutions -

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