

## **THE DEMATERIALIZATION OF THE COURT AND DELIVERING JUDICIAL SERVICE: IMPLICATIONS OF ADOPTING VIRTUAL HEARINGS AS AN INSTRUMENT OF ACCESS TO JUSTICE IN BRAZIL**

Innovation and performance in justice organizations

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### **RESUMO**

The modernization of the Judiciary imposes the use of technological instruments. This could speed up the judicial proceedings, which include the Court hearings. In addressing the state of the art of the scientific literature upon the subject, this article aims to analyze the effectiveness of virtual hearings as a tool available to improve access to justice, reducing the costs and the court delay in the Brazilian judicial reality. Another question of this study is whether virtual court hearings can be adopted as a standard in all areas or whether they should be ruled out in more delicate matters such as family law, criminal law, domestic violence, or when children are involved. The issue has grown in importance in the light of recent COVID-19 pandemic, which has pushed great changes in justice systems around the world. The method used is a literature review, an analysis of empirical studies and comparing the adoption of virtual hearings in different countries. Currently, the delay in dispute resolution compromises the quality and the efficiency of the judicial system. As stated in the “Justiça em Números” Report (Conselho Nacional de Justiça, 2021), at the end of 2020, there were 74.5 million pending cases before Brazilian courts. The average length of time taken to process cases before Federal and State Courts in Brazil is over five years. The delay also leads to a continuous and undesirable increase in expenses. As Dijk and Dumbrava (2013) point out, most European countries face the same problems. To meet these challenges, they carried out reforms in the judiciary, simplifying procedures, using artificial intelligence and digitalizing these procedures. These reforms have favored orality and videoconferencing, especially in countries with large territorial distances. Court hearings are usually solemn acts that need previous preparation and a physical structure that can accommodate all the participants. This demands time and financial resources, which a significant part of the Brazilian people does not have. Brazil has an unsatisfactory quality of infrastructure and urban mobility problems due to the lack of public policies in these areas. These problems affect the vulnerable and marginalized groups the most, who live on the outskirts of the big cities or in the countryside. Therefore, they have difficulty traveling to the Courthouse. With the evolution of information and communication technology (ICT), it becomes important to verify if the Court hearing needs to take place in a courtroom, delimited in a building, or if it is possible to transfer it to a virtual environment. Considering the Judiciary as a public service, Susskind (2019) argues that it is possible to remodel the Judiciary structures and way of acting to modernize them. The author argues that many of the Judiciary buildings where the Courts are located keep the same characteristics of the 19th century. However, these places will now receive a strong influence from the technology created by a digital society. A major advantage of delivering justice services primarily digital, connected to the internet, is that it enables changes to facilities and the proceedings. Some Court facilities can be downsized or even closed, which reduces the maintenance costs. The use of artificial intelligence and workflow automation can help reducing backlog of pending cases. Virtual hearings allow parties and witnesses to participate wherever they are, as long as they

have access to an electronic device connected to the internet. To guarantee access to the technological tools and to restructure the judicial system is important to think of a collaborative interaction between the public sector and the private sector, achieving the idea of new public governance. This view of governance emphasizes the services processes and outcomes, in an inter-organizational governance, which tends to be a more efficient mechanism of governance. (Dickinson, 2016). Nevertheless, some relevant objections are presented about the feasibility of a virtual court hearing. Usually, the problems pointed out are related to the access to these technological tools by a significant part of the population, either due to economic or even cultural reasons. Procedural obstacles are also presented, especially regarding to the evidentiary hearing. Soares and Alves (2020) advise against holding virtual evidentiary hearings, pointing out problems of ensuring publicity of hearings. They also argue that is hard to take personal testimony of the parties and obtain a confession virtually. There would be also a risk of adequately identifying the witnesses and controlling any external interference with their testimony, as well as guaranteeing their incommunicability. Finally, these authors highlight that is difficult for a judge to evaluate the evidence given virtually. The hypothesis presented is that virtual hearings do not harm the giving of evidence, as well as do not result in loss of legitimacy of the Judiciary. Instead of preventing a part of the population from having access to Justice, it ends up having the opposite effect, by reducing the costs of procedural monitoring and reducing the time lead. In addition, it can allow legal aid to reach people who live far from urban centers or in places without lawyers. In the first section, the reframing of the concept of access to justice is addressed, in order to adapt it to the present, as one of the dimensions of judicial governance (Akutsu & Guimarães, 2012). In the second part, the legal framework related to the virtual hearings in Brazil is discussed, with an approach to their characteristics and objections to their implementation. The third section analyzes the adoption of virtual hearings in some countries, as a way of verifying the feasibility of using them as a pattern. Finally, the conclusion gives a brief summary and critique of the findings.

**PALAVRAS-CHAVE:** Virtual Hearings, Access to Justice, Judicial Governance.

## REFERÊNCIAS

Akutsu, L., & Guimarães, T. de A. (2012). Dimensões da governança judicial e sua aplicação ao sistema judicial brasileiro. *Revista Direito GV*, 8(1), 183–202.  
<https://doi.org/10.1590/s1808-24322012000100008>

Conselho Nacional de Justiça. (2021). Relatório Justiça em Números. CNJ.

Dickinson, H. (2016). From New Public Management to New Public Governance: The implications for a ‘new public service.’ *The Three Sector Solution*, 41–61.  
<https://doi.org/10.22459/tss.07.2016.03>

Dijk, F. van, & Dumbrava, H. (2013). Judiciary In Times Of Scarcity: Retrenchment And Reform. *International Journal for Court Administration*, 5(1), 15.  
<https://doi.org/10.18352/ijca.4>

Soares, C. H., & Alves, L. de S. (2020). Audiência Telepresencial e Devido Processo Constitucional. *VirtuaJus*, 5(8), 301–330.