



Direito em Revista

NÚMERO 37/2024



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Rua Antônio de Paiva Cantelmo, 1222 – Centro
CEP. 85.601-270. Francisco Beltrão – Paraná – Brasil
(46) 3524-4242 / cesul@cesul.br / npic@cesul.br / www.cesul.br

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Apresentação

O Centro de Ensino Superior CESUL se destaca no panorama educacional brasileiro ao oferecer uma sólida formação acadêmica e profissional, com especial atenção ao Bacharelado em Direito, curso mais longo da instituição. Para garantir a excelência em sua missão, o CESUL investe no desenvolvimento contínuo de seus docentes, incentivando tanto o aprimoramento didático quanto a produção de conhecimento, fortalecendo, assim, a cultura jurídica no Paraná e no Brasil.

A *Direito em Revista* desempenha um papel fundamental nesse contexto, selecionando criteriosamente artigos que buscam não apenas expandir as fronteiras da Ciência do Direito, mas também oferecer respostas reflexivas e inovadoras aos desafios jurídicos, políticos e sociais da atualidade. A publicação reúne produções de professores e alunos de programas de pós-graduação, estabelecendo-se como um espaço de diálogo acadêmico que promove a evolução do pensamento jurídico e contribui para o debate público qualificado.

Na 37ª edição, referente ao segundo semestre de 2024, a *Direito em Revista* reafirma seu compromisso com a excelência acadêmica ao publicar reflexões de relevância científica e social, fortalecendo o vínculo entre a pesquisa jurídica e as necessidades da sociedade brasileira.

Gustavo Ellwanger Calovi

PRODUCTIVITY OF BRAZILIAN JUDGES IN POST-1988: HISTORICAL AND COMPARATIVE PERSPECTIVE

A PRODUTIVIDADE DOS MAGISTRADOS BRASILEIROS NO PÓS-1988: PERSPECTIVA HISTÓRICA E COMPARADA

Wagner Silveira Feloniuk¹

Abstract: The productivity of Brazilian judges is constantly cited in reports as one of the most positive highlights of the Brazilian Judicial System. This research seeks to verify the level of demand from society on the system and data on this productivity. Then, it looks for some of the main reasons and addresses them briefly, bringing data that help to understand the phenomenon. Finally, comparative data from thirty-eight countries are brought. They show that the judges really manage to reach a high level of productivity, surpassing most of the other countries researched. The problems of procedural delay and their consequences have not been overcome, but there has been a successful movement to increase productivity and, among the results, is the current decrease in the stock of cases awaiting judgment in Brazil, an important element so that, in the future, procedural delay is reduced consistently.

¹ Professor Adjunto na Faculdade de Direito da Universidade Federal do Rio Grande (FURG) e Professor Permanente no Programa de Pós-Graduação em História da Universidade Federal do Rio Grande (FURG).

Keywords: Judge productivity. Brazilian Judicial System. History of Constitutional Law.

Resumo: *A produtividade dos magistrados brasileiros é constantemente citada em relatórios como um dos destaques mais positivos do Sistema Judiciário Brasileiro. Esta pesquisa procura verificar qual o patamar de demanda da sociedade sobre o sistema e dados sobre essa produtividade. Depois, ela procura alguns motivos principais e os aborda brevemente, trazendo dados que ajudam a entender o fenômeno. Por fim, dados comparados de trinta e oito países são trazidos. Eles mostram que os juízes realmente conseguem alcançar um patamar alto, superando a maior parte dos outros países pesquisados. Os problemas de mora processual e suas consequências não foram superados, mas houve um movimento bem sucedido em aumentar a produtividade e, dentre os resultados, está a atual diminuição do estoque de processos aguardando julgamentos no Brasil, um elemento importante para que, no futuro, a mora processual seja diminuída de maneira consistente.*

Palavras-chave: *Produtividade do magistrado. Sistema Judiciário Brasileiro. História do Direito Constitucional.*

SUMMARY: Introduction. 1 The productivity of Brazilian judges. 2 Reasons for the increase. 3 Comparative perspective. Final considerations. References.

INTRODUCTION

The research done here is specific, it deals with one of the numbers constantly celebrated in reports of the Brazilian Judiciary - the productivity of its judges - and, preferably, it should be read with other publications that better justify the judicial system and are mentioned in this work. It is part of a larger collection of data that has not previously addressed the topic of productivity.

The objective is to verify the known data, to search the reasons for the Brazilian numbers and to conclude the research showing a

comparison with 38 other countries, most of them in Europe. The data show that, effectively, Brazil has a very efficient Judiciary and that it has shown itself capable of different adaptations in a constant search to achieve the results seen today. The problems have not been solved, but a lot has been done.

Brazil is going through a period of strengthening the judicial system, it has been a phenomenon since the period the Constitution of 1988 was drafted and culminated in a very significant increase in the number of cases and people working in the area - inside and outside the Government apparatus, as well as a society that seeks the Judiciary to resolve its conflicts. In 1990, 3.6 million cases were filed in Brazil; in 2019, there were 30.2 million. An expressive increase that demanded a multifaceted action by the Government in the quest to accommodate a demand that was growing at such a high pace.

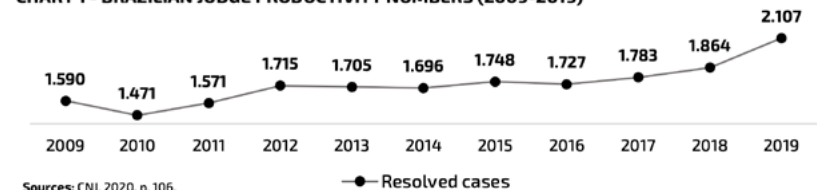
1. THE PRODUCTIVITY OF BRAZILIAN JUDGES

A success history in the Brazilian Judicial System is that of productivity of judges. Even in the introductory words of Justice Dias Toffoli, launching the latest Justice in Numbers (*Justiça em Números*), of 2020, he narrates how the capacity of judgment has grown, the average increase was 13%². This is not an atypical year, productivity is increasing steadily. Brazilian judges were responsible for dismissing 2,107 cases, each, throughout the year. In all, they dismissed 35.39 million cases in

² CONSELHO NACIONAL DE JUSTIÇA (CNJ). *Justiça em Números*. Brasília: Conselho Nacional de Justiça, 2020, p. 5.

2019; in 2018, were only 31.88 million. A decade ago, in 2010, 25.32 million. In 2000, 6.16 million had been dismissed. In 1990, 2.41 million.

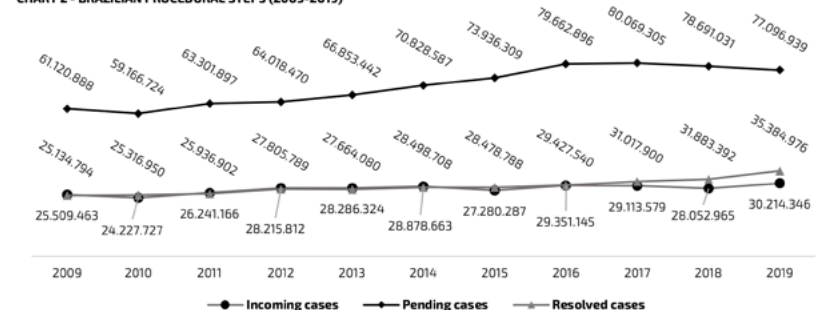
CHART 1 - BRAZILIAN JUDGE PRODUCTIVITY NUMBERS (2009-2019)



Sources: CNI, 2020, p. 106.

There is yet another way of looking at this number. In a comparison between the numbers of cases entering the system (incoming cases) and those leaving (resolved cases), the year 2015 was the first in a very important series to overcome the problems of procedural delay in Brazil. From that moment on, there were more resolved cases than incoming ones, something that has not happened consistently since the new Constitution. The difference was initially very small, but it went up and, in this year of 2019, the most successful, it already exceeds the 5 million - 30.21 million incoming cases, and the referred 35.39 million resolved.

CHART 2 - BRAZILIAN PROCEDURAL STEPS (2009-2019)



Sources: CNI, 2020.

In conclusion, the Brazilian Judicial System has achieved a significant success. Initially, with a view detached from the legal field, one

would think that the number of judges may have increased at the same level. This, however, is not true. There was a significant increase in the number of judges between 1990 and 2019, of 184%, the judges went from 6,371 to 18,091 (although it should be noted that this is the second consecutive year of decline, in 2017 there were 18,141 active judges). In other words, the judgments could not be explained in this way.

The number of incoming cases has also increased considerably, 735.3% since 1990, but it is also lower. The number of resolved cases has increased, since 1990, by 1367%. And, all happened while the IBGE shows an increase of 43% in the number of inhabitants, which went from 146.92 to 210.15 million between 1990 and 2019. The table showing these advances in historical series can be seen below:

TABLE 1 - CASES IN BRAZILIAN JUDICIAL SYSTEM (1990-2019)

Year	Population	%	Incoming cases	%	Per 100,000	Pending cases	%	Per 100,000	Resolved cases	%	Per 100,000
1990	146,917,459		3,617,064		2,462				2,411,847		1,642
1991	149,094,266	15%	4,250,133	175%	2,851				2,947,177		1,977
1992	151,546,843	3.2%	4,560,833	26.1%	3,010				3,214,948	33%	2,121
1993	153,985,576	4.8%	4,419,699	22.2%	2,870				3,347,725	39%	2,174
1994	156,430,949	6.5%	3,423,403	-5.4%	2,188				2,533,619	5%	1,620
1995	158,874,963	8.1%	4,266,325	179%	2,685				2,970,509	23%	1,870
1996	161,323,169	9.8%	5,901,824	63.2%	3,658				4,106,962	70%	2,546
1997	163,779,827	11.5%	6,964,506	92.5%	4,252				5,472,489	127%	3,341
1998	166,252,088	13.2%	7,719,169	113.4%	4,643				5,188,146	115%	3,121
1999	168,753,552	14.9%	8,717,300	141.0%	5,166				5,791,959	140%	3,432
2000	169,590,693	15.4%	9,463,246	161.6%	5,580				6,164,532	156%	3,635
2001	172,385,826	17.3%	9,489,657	162.4%	5,505				8,063,303	234%	4,677
2002	174,632,960	18.9%	9,764,616	170.0%	5,592				7,506,697	211%	4,299
2003	176,871,437	20.4%									
2004	181,569,056	23.6%									
2005	184,184,264	25.4%	14,969,063	313.8%	8,127						
2006	186,770,562	27.1%									
2007	187,641,714	27.7%									
2008	189,605,006	29.1%									
2009	191,480,630	30.3%	25,509,463	605.3%	13,322	61,120,888	31,920	25,134,794	94.2%	13,127	
2010	190,755,799	29.8%	24,227,727	569.8%	12,701	59,166,724	31,017	25,316,950	950%	13,272	
2011	192,379,287	30.9%	26,241,166	625.5%	13,640	63,301,897	32,905	25,936,902	975%	13,482	
2012	193,904,015	32.0%	28,215,812	680.1%	14,551	64,018,470	33,016	27,805,789	1053%	14,340	
2013	201,032,714	36.8%	28,286,324	682.0%	14,071	66,853,442	33,255	27,664,080	1047%	13,761	
2014	202,768,562	38.0%	28,878,663	698.4%	14,242	70,828,587	34,931	28,498,708	1082%	14,055	
2015	204,450,049	39.2%	27,280,287	654.2%	13,343	73,936,309	36,164	28,478,788	1081%	13,929	
2016	206,081,432	40.3%	29,351,145	711.5%	14,242	79,662,896	38,656	29,427,540	1120%	14,280	
2017	207,660,929	41.3%	29,113,579	704.9%	14,020	80,069,305	38,558	31,017,900	1186%	14,937	
2018	208,494,900	41.9%	28,052,965	675.6%	13,455	78,691,031	37,742	31,883,392	1222%	15,292	
2019	210,147,125	43.0%	30,214,346	735.3%	14,378	77,096,939	36,687	35,384,976	1367%	16,838	

Sources: IBGE, 2020; JUSTIÇA EM NÚMEROS, 2009-2019; SADEK, 2004, p. 13.

* The percentage increase calculation is not done if there are no data found on the base year (1990).

The reasons for this increase in cases have been investigated in another research³. An important issue, not addressed in it, however, is to try to understand what reasons would have led to such a huge increase in productivity and how it can be compared to other countries.

2. REASONS FOR THE INCREASE

A number of reasons led to such an expressive increase in productivity of Brazilian judges. Material and human resources, institutional disposition, new technologies, legislative concern. Specifying the exact role of each one of them is difficult, especially because the data is so ample and some of these reasons vary according to the branch of Justice, including among the various State Courts. Still, six of them stand out below.

The first is the aforementioned increase in the number of judges, and it was very expressive. It was accompanied by equally relevant increases from other institutions, an increase in the entire judicial system. The Public Advocacy (*Defensoria Pública*)⁴, as an additional example, seems to be growing even faster than the Judiciary. According to the last published research, in 2015, it would have 6,062 members, which was almost twice as many as in 2003, when there were 3,250 - a greater increase than that of judges in the same period. On the Judiciary, see the historical series below:

³ FELONIUK, Wagner. Sistema Judiciário Brasileiro: história recente e dados comparados. No prelo.

⁴ MINISTÉRIO DA JUSTIÇA (MJ). IV Diagnóstico da Defensoria Pública no Brasil. Brasília: Ministério da Justiça, 2015, p. 16.

TABLE 2 - ACTIVE JUDGES IN BRAZIL (1990-2019)

Year	Population	%	Judges	%	Per 100,000
1990	146,917,459		6.371		4,336
1991	149,094,266	1.5%			
1992	151,546,843	3.2%			
1993	153,985,576	4.8%			
1994	156,430,949	6.5%			
1995	158,874,963	8.1%			
1996	161,323,169	9.8%			
1997	163,779,827	11.5%			
1998	166,252,088	13.2%			
1999	168,753,552	14.9%			
2000	169,590,693	15.4%			
2001	172,385,826	17.3%			
2002	174,632,960	18.9%			
2003	176,871,437	20.4%	13,488	111.7%	7.626
2004	181,569,056	23.6%	13,597	113.4%	7.489
2005	184,184,264	25.4%	14,509	127.7%	7.877
2006	186,770,562	27.1%	15,101	137.0%	8.085
2007	187,641,714	27.7%	15,698	146.4%	8.366
2008	189,605,006	29.1%	15,806	148.1%	8.336
2009	191,480,630	30.3%	15,946	150.3%	8.328
2010	190,755,799	29.8%	16,883	165.0%	8.851
2011	192,379,287	30.9%	16,908	165.4%	8.789
2012	193,904,015	32.0%	16,686	161.9%	8.605
2013	201,032,714	36.8%	17,088	168.2%	8.500
2014	202,768,562	38.0%	17,404	173.2%	8.583
2015	204,450,049	39.2%	17,589	176.1%	8.603
2016	206,081,432	40.3%	17,914	181.2%	8.693
2017	207,660,929	41.3%	18,168	185.2%	8.749
2018	208,494,900	41.9%	18,141	184.7%	8.701
2019	210,147,125	43.0%	18,091	184.0%	8.609

Sources: CNJ, 2009-2019; IBGE, 2020; SILVEIRA, 1990, p. 96-106.

A second reason is the creation of the National Council of Justice (*Conselho Nacional de Justiça - CNJ*)⁵. The institution is not created with the works of the constituent, but with the main reform made to

⁵ See more: SADEK, Maria Tereza. Controle Externo do Poder Judiciário. In: SADEK, Maria Tereza (org). Reforma do judiciário. Rio de Janeiro: Centro Edelstein de Pesquisas Sociais, 2010.

the Judiciary after the Constitution. Constitutional Amendment number 45/2004, established the institution as part of the Judiciary, inserting it in article 92 of the Constitution⁶. The institution would meet for the first time in the middle of the following year, starting on June 14. Despite the various initial controversies over its role and composition, which included citizens, lawyers and members of the Public Prosecution (*Ministério Público*) (that is, non-judges), it assumed its institutional role and was successful in its policies. From that moment on, there were more statistics, reports from all the branches, the publication of Justice in Numbers. They allowed for greater planning and creation of internal policies in search of effectiveness - not only in the number of judgments, but in

⁶ Its attributions are inserted in article 103-B, paragraph 4: "Article 103-B. The National Council of Justice is composed of 15 (fifteen) members appointed for a two-year term of office, one reappointment being permitted, as follows: [...]"

Paragraph 4. It is incumbent upon the Council to control the administrative and financial operation of the Judicial Branch and the proper discharge of official duties by judges, and it shall, in addition to other duties that the Statute of the Judiciary may confer upon it:

I - ensure that the Judicial Branch is autonomous and that the Statute of the Judiciary is complied with, and it may issue regulatory acts within its jurisdiction, or recommend measures;

II - ensure that article 37 is complied with, and examine, ex-officio or upon request, the legality of administrative acts carried out by members or bodies of the Judicial Branch, and it may revoke or review them, or stipulate a deadline for the adoption of the necessary measures to achieve due execution of the law, without prejudice to the powers of the Federal Audit Court;

III - receive and examine complaints against members or bodies of the Judicial Branch, including against its ancillary services, clerical offices, and bodies in charge of notary and registration services which operate by virtue of Government delegation or have been made official, without prejudice to the courts' disciplinary competence and their power to correct administrative acts, and it may order that pending disciplinary proceedings be forwarded to the National Council of Justice, determine the removal, placement on paid availability, or retirement with compensation or pension in proportion to the length of service, and enforce other administrative sanctions, full defense being ensured;

IV - present a formal charge to the Public Prosecution, in the case of crime against public administration or abuse of authority; V - review, ex-officio or upon request, disciplinary proceedings against judges and members of courts tried in the preceding twelve months;

VI - prepare a twice-a-year statistical report on proceedings and judgements rendered per unit of the Federation in the various bodies of the Judicial Branch;

VII - prepare a yearly report, including the measures it deems necessary, on the state of the Judicial Branch in the Country and on the Council's activities, which report must be an integral part of a message to be forwarded by the Chief Justice of the Supreme Federal Court to the National Congress upon the opening of the legislative session".

the establishment of priorities, of new electronic systems, of areas that would need more attention.

The creation of the CNJ showed something new, a third factor: the institutional disposition of the entire judicial system to be accounted for productivity. The initial years were of relative reluctance, but the creation of statistics and greater inspection became part of the Judiciary Branch and other institutions - the control was created and, perhaps more importantly, effectively accepted. It was a broad adaptation movement that has changed over time, but more and more the establishment of thresholds, indexes, performance controls, data declarations, were present. The role is also complemented by internal departments, such as internal affairs, increasingly checking the performance of Brazilian judges. The Productivity Module is a relevant means of assessing this aspect⁷. Along with this accountability, important initiatives were created, such as the Itinerant Justice and many other organizations established to resolve found issues⁸.

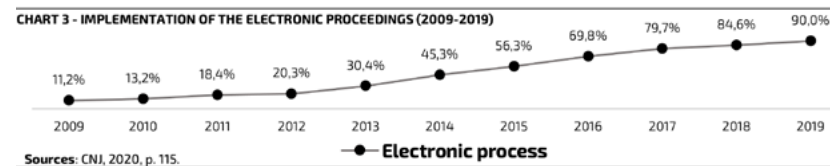
A fourth relevant element was the concern with the production of legislation that would assist in the issue of procedural delay. Even before the current Constitution, there is the Small Claims Court (1984). Then came the Constitution, which reinforced the guarantees of the Judiciary and, in the same amendment that created the CNJ, it was established the reasonable length of proceedings an Individual Right of Brazilians: "*Art. 5º, LXXVIII - a reasonable length of proceedings and the means to guarantee their expeditious consideration are ensured to everyone, both*

⁷ On the subject, it is especially interesting to know the Panel, a publicly available access tool accessible from the CNJ Monthly Productivity Module website: <<https://www.cnj.jus.br/pesquisas-judiciarias/modulo-de-productividade-mensal/>>.

⁸ RIBEIRO, Ludmila; MACHADO, Igor Suzano. A Emenda no 45/2004 e o acesso à Justiça dez anos depois. Diálogos sobre Justiça, Brasília, núm. 2, p. 57-76, mai./ago. 2014, p. 66.

in the judicial and administrative spheres". Then, Brazilian procedural laws, their revisions, and especially the Civil Procedure Code created in 2015, deserve to be cited, they were created after lengthy discussions and were very concerned with adequate judicial protection⁹.

A fifth element is the adoption of the electronic proceedings in Brazil. The data shows a rapid adoption from the end of the 2000s. In 2009, 11.2% of the proceedings were electronic. In 2019, this rate reaches 88%. Even before, diverse initiatives have progressively brought cases or elements of their proceedings to the digital realm. From the last ten years, however, this movement has accelerated and, today, it is possible to affirm that the end of the trajectory is coming and in a few more years there will be an universalization. The increase is shown below. It is important to consider, in the idea of electronic, not only the component specifically linked to having the proceedings done electronically, but to a large set of initiatives and proposals for the use of information technology, artificial intelligence, virtual audiences, access by the parties and their attorneys. There are several projects under development in these directions, they are not publicized in an organized way - which is not surprising, as many are actually possibilities under development. But they impact - and will impact - even more on the judicial system.



⁹ See the brief introductory notes to the code at MARINONI, Luiz Guilherme; ARENHART, Sérgio Cruz; MITIDIERO, Daniel. *Novo Código de Processo Civil Comentado*. 3 ed. São Paulo: Ed. Revista dos Tribunais, 2017, p. 147-148.

As a sixth and final reason, there is a consideration to be made about the existing structure to serve Brazilian judges. To serve the 18,091 judges, there are a total of 268,175 civil servants, requested or commissioned personnel and a further 159,876 people in the auxiliary workforce (outsourced workers, interns, conciliators, judges of the peace, volunteers). The judges represent only 4.1% of the workforce present in the Brazilian Judiciary, less than one twentieth of the people working there¹⁰. Today, there are 446,142 public agents in the Judiciary alone (excluding the structures of the Public Prosecution, Public Advocacy, the Advocacy-General of the Union and other institutions). This is not something unknown: the Brazilian judge, besides judging, manages a group of people acting to ensure that their decisions are applied quickly to the largest number of cases possible. In general, there is no actuation of a judge alone, or served by one or two assistants - there is a very significant group of people around (and the same happens with other institutions, although they also do not appear in this statistic).

So, taken together, these factors led to more productivity. It does not seem possible to specify which ones were more important, they acted together and in very different ways in the composition of this picture.

3. COMPARATIVE PERSPECTIVE

The Brazilian Judiciary get to celebrate the achieved rates. A better view, however, can be given by looking at Brazil in a comparative perspective. The number of resolved cases in a number of countries will be shown, as well as the number of judges in each of them. They were taken espe-

¹⁰ CONSELHO NACIONAL DE JUSTIÇA (CNJ). *Justiça em Números*. Brasília: Conselho Nacional de Justiça, 2020, p. 86.

cially from the *Council of Europe - European Commission for the efficiency of justice's* report. Data for all countries (including Brazil) are from 2016, as they are the newest available for Europe. A table shows the following result:

TABLE 3 - RESOLVED CASES AND JUDGES FROM A COMPARATIVE PERSPECTIVE (2016)

Year	Resolved cases	Resolved cases per 100,000 inhabitants	Judges	Judges per 100,000 inhabitants	Resolved cases per judge
Portugal	128,170	1,241	1,966	19,04	65
Monaco	3,313	8,702	37	97,19	90
Norway	89,389	1,708	559	10,68	160
Latvia	103,467	5,280	503	25,67	206
Bulgaria	597,302	8,380	2,255	31,64	265
Sweden	334,243	3,368	1,179	11,88	283
Albania	103,800	3,609	363	12,62	286
Ukraine	1,854,829	4,121	6,203	13,78	299
Noth Macedonia	178,872	8,597	566	27,20	316
Switzerland	445,134	5,316	1,251	14,94	356
Montenegro	117,412	18,867	318	51,10	369
Republic of Moldova	178,421	6,367	418	14,92	427
Czech Republic	1,301,464	12,317	3,005	28,44	433
Romania	2,122,065	10,771	4,628	23,49	459
Georgia	132,046	3,542	278	7,46	475
Finland	511,509	9,308	1,068	19,43	479
Hungary	1,395,697	14,221	2,811	28,64	497
Lithuania	387,623	13,514	778	27,12	498
France	3,636,214	5,450	6,995	10,48	520
Spain	3,151,897	6,781	5,367	11,55	587
Armenia	156,865	5,343	231	7,87	679
Netherlands	1,600,005	9,395	2,331	13,69	686
Croatia	1,294,328	31,007	1,797	43,05	720
Belgium	1,327,589	11,716	1,600	14,12	830
Slovakia	1,163,430	21,423	1,311	24,14	887
Italy	5,732,100	9,455	6,395	10,55	896
Serbia	2,516,790	35,657	2,707	38,35	930
Azerbaijan	491,297	5,035	509	5,22	965
Slovenia	852,415	41,278	880	42,61	969
Morocco	2,883,073	8,208	2,938	8,36	981
Poland	11,376,464	29,962	9,980	26,28	1,140
Israel	854,418	9,998	735	8,60	1,162
Bosnia Herzegovina	1,235,618	36,489	1,014	29,94	1,219

Austria	3,397,759	38,891	2,397	27,44	1,418
Estonia	341,821	25,978	232	17,63	1,473
Brazil	29,427,540	14,280	17,914	8,69	1,643
Uk-Egland and Wales	3,918,431	6,712	1,760	3,01	2,226
Ireland	491,752	10,341	162	3,41	3,036
Denmark	2,380,338	41,556	372	6,49	6,399

Sources: CE, 2016; CNJ, 2017.

Among the European countries (and Israel) that inserted enough data in the European report to make the comparison, Brazil has high productivity. Given its population, it is by far the country with the most resolved cases in 2016. But in this respect, the country does not have a rate beyond the usual - of 39 countries, Brazil occupies the 11th position with 14,279 resolved cases per 100 thousand. The countries with the highest rates are Slovenia and Denmark, both with more than 41 thousand resolved cases per 100 thousand inhabitants.

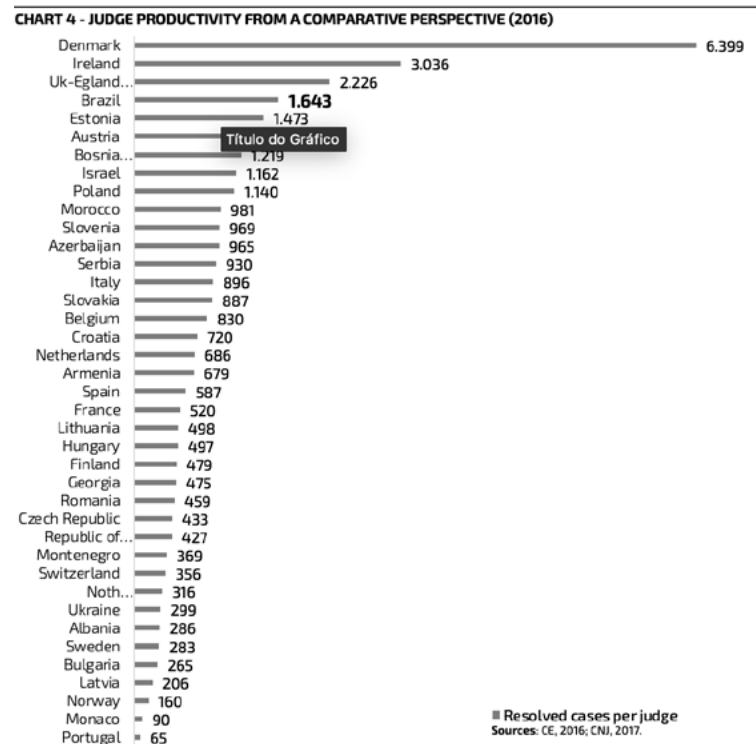
However, when it is put in the equation that Brazil had 17,914 judges (or 8.69 per 100,000, a very low number), the result is that each of them, on average, resolved 1,643 cases - the fourth highest rate. And that was in 2016. The numbers for 2019, as shown in Graph 1, are higher¹¹. Only Denmark (6,399), Ireland (3,036) and England and Wales (2,226) have higher rates than Brazilian's.

An important data that always deserves to be highlighted are the limits in quantitative comparisons. It is not possible to know if differences in the understanding of what a judicial proceeding is and its proce-

¹¹ The difference between Chart 1, produced by the CNJ, of 1,727 cases per judge, and the one found with the direct division between resolved cases and judges found in this research - of 1,643 cases is acknowledged. Methodological differences can explain them, it was preferred to not change any of the numbers and to publish the number of 1,643, even if not found by the CNJ, to apply to Brazil the same method as those of the other compared countries.

duce are not causing substantial changes in these numbers - in fact, it is known that in almost all cases, this is a factor and that prevents an accurate comparison. Certainly, the judges of Portugal are not nearly thirty times less productive than the Brazilians - perhaps, they merely work with far fewer civil servants and auxiliary workers, for example. Even so, the similarities between these systems exist and it is possible to conclude that the Brazilian judged effectively reach a very high degree of productivity.

In a graphical visualization, it would be possible to construct the productivity of Brazilian judged in compared perspective to European countries as follows:



The institutional, legislative and organizational paths followed were successful, although it is not possible to say, with the research done, the weight of each one.

FINAL CONSIDERATIONS

Despite the victory that represents the more than 35 million resolved cases in 2019, the same statistic (see Table 1) points out that we have exactly 77,096,939 cases waiting to be judged. If Brazil did not receive any case for two years, there would still be cases left. As pointed out in the research cited in Footnote 2, this is a higher level, much higher, than any European country. Brazil has undergone a profound change since the Constitution of 1988, the progress in the judicial system has been great, it has inserted Brazil in another civilizational level and deserves effusive praise. But the success over procedural delay has not been achieved. The final words will be dedicated to adversity.

The maxim of English origin: *“Justice delayed is justice denied”* is factual and felt by the entire Brazilian society. The most extreme examples involve criminal prosecutions. The 2017 CNJ¹² numbers on pre-trial detainees show Brazilians waiting an average of 368 days to find out if they are really going to be convicted and should be in prison. The state with the worst average reaches 974 days. Another CNJ report, from the same year¹³, indicates that in a given period analyzed at that time, 36,797 pre-trial detainees had been convicted after their trials and that 4,621 had been acquitted. This means that more than a tenth of these

12 CONSELHO NACIONAL DE JUSTIÇA (CNJ). Reunião Especial de Jurisdição. Brasília: Conselho Nacional de Justiça, 2017. Relatório do Sistema Prisional Brasileiro, p. 8.

13 CONSELHO NACIONAL DE JUSTIÇA (CNJ). Reunião Especial de Jurisdição - Relatório Final. Brasília: Conselho Nacional de Justiça, 2017, p. 75.

people who waited in prison, some for several years, after all, should have been out of the prison system all that time, they should have been free, as they were found not guilty. The cases brought by the press show a reality even more shocking than the numbers - some prisons last much longer and, eventually, people were forgotten in prison, it was not possible to identify the reason for their arrests promptly due to some case that justified their imprisonment¹⁴. And the reason for these studies to be carried out at that time was the data from the Ministry of Justice that 41% of Brazilian prisoners had no final sentence¹⁵ - that is, it was a systematic problem.

Brazil has made significant advances. However, it copes with situations that can be explained, understood, but there must be broad engagement by public agents and society so that they no longer occur. Comparatively, the advances achieved are really great, Brazil has a very good performance. Today, too, more cases are being resolved than are incoming. Consistently, the stock seems to be decreasing, which indicates that, finally, the problem of procedural delay is receiving a set of treatments that leads to a positive perspective in the long term.

The search must be for even more progress, at the highest possible pace, so that Brazil reaches a situation of low stock and is able to judge cases in an effectively reasonable way. A judgment does not have to be fast, speed is no more relevant than a full cognition, which respects the full defense, adversary system and the search of truth that can be found. But it must be done in a timely manner and in a way that respects the

¹⁴ One of the cases has the news with the following title: "Man is released after being imprisoned for almost 2 years due to 'bureaucratic mistakes'". See more at: <<https://www.redebrasilatual.com.br/cidadania/2020/12/prisao-irregular-cdp-defensoria/>>.

¹⁵ CONSELHO NACIONAL DE JUSTIÇA (CNJ). *Reunião Especial de Jurisdição - Relatório Final*. Brasília: Conselho Nacional de Justiça, 2017, p. 7.

Constitution and the individual rights recognized in it. The judicial system today plays an excellent role in this field, but more is needed.

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