Computerisation of the judicial process in front of some constitutional principles: bureaucracy or dehumanization?

SANTOS, Martha Aghajani [1]

PITTMAN, Michele Cristina Barbosa Teixeira [2]


Abstract: this article aims at studying the impact caused by the computerization of Judicial Process forward the various realities in which we operate, do a quick analysis on the 11,419/06 Law, which proposes many changes in the justice system, reducing cost, time, and labor and how that will affect access to justice as well as the implementation of the principle of equality and respect for the dignity of the human person, what are some of the fundamental principles enshrined by the Constitution. Let's look forward to these principles, if the judiciary with this process of Computerization will be working for the bureaucracy or the dehumanization on your machine.

Keywords: Computerization; Access to justice; Procedural Economy; Dignity of the human person; Bureaucracy or Dehumanization.

ABSTRACT: This article aims to study the impact of the computerization of the Judiciary to the various realities in which we operate, the quick review about the Law 11,419/06, which proposes many changes
in the judicial system, reducing actions, costs, time and labor of work and how this will affect access to justice and the implementation of the principle of human dignity, which is one of the fundamental principles safeguarded by the Federal Constitution. Let's look forward to these principles, the Judiciary with this process of computerization will be working to reduce bureaucracy or the dehumanization in their administrative machine.

**KEYWORDS:** Computerization; Access to Justice; Procedural economy; Dignity of the Human Person; Debureaucratization or Dehumanization.

**INTRODUCTION**

This article aims to raise some important questions that have not been analyzed by editing the 11,419 Law/06 which comes to computerize the process. Bothered much with procedural economy, reducing or even abolishing some minor acts of procedural process, to achieve a faster process, without worrying about the consequences of these changes.

In a first moment will be made a brief statement about the positives that the law 11,419/06, brings to the Judicial System. Points that would be very positive in another reality, that is not what we found at the moment in which we are living.

This will be another moment to be parsed, which is the Brazilian reality, where Internet access is not common at all and the Judiciary is drowned half as many processes, a precarious system and with few resources. Let's look at this point, access to justice and the implementation of the principle of equality and respect for the dignity of the human person, which is in the case of computerization of Judicial proceedings linked closely with Internet access, which should be a right for all.

In another moment will be discussed if we are facing a bureaucracy or dehumanization of the judiciary, since with the reduction of certain acts the process becomes faster, getting more processes to our judges make decisions, which can often not be humanized decisions. Rise yet, the issue of digital inclusion.

At this point, we're going to raise questions about those decisions, if they become dehumanised and superficial decisions, the result of a trial, because making machine with many more processes to be determined, the judges will not have time to devote to the process, which can humanly decisions aren't as fair as you expect.

And the end will be presented for the completion of this work, raising the positive and negative issues that computerization system, especially in the face of Brazilian reality, in social and legal issue in which we live and analyzing still the effectiveness in complying with certain principles. We will conclude yet, if
that law is good or not, whether or not conditions to be effectively applied, if the answer is negative, what would be the way to achieve that effectiveness or at least to try to get to it.

**11,419 LAW/2006 – COMPUTERIZATION of JUDICIAL PROCESS**

11,419 law/06 arrives in our legal system to assist the Judiciary in the bureaucracy of the process, creating ways to leave the procedural process swifter, devoid of many bureaucratic actions that make the long and expensive process. For Charles Henry Abraham (2009), the 11,419/06 Law creates a new mentality in the process and defies the jurists to modernity, being a constructive model and inseparable of technology lived in reality. And still, saying: the real revolution applied to the legal world has its inception through 11,419/06 Act, whose scope is to materialize the intent to discipline the electronic process (ABRAHAM, 2009:19).

As this understanding we have to the law/06 11,419, takes the right operators on the path of modernity, that is the reality of globalised world in which we live, leaving the entire computerized process to reduce time and costs. The centerpiece of the computerisation of the Judicial Process is in the quest to simplify and even abolish acts with minor leave the slow processes, thus moving towards getting a faster process, with less cost and greater quality in the decision.

Aimed at the implementation of the principle of Procedural Economy, since with the computerization various acts will be abolished, and the deputies more time available for engaging the most important acts and requiring greater attention. This Bill comes up with a good proposal, it remains to be seen whether she will adapt the reality we live in today, because the obstacles to be overcome are many, as we shall see in the write of this article.

**PRINCIPLE OF PROCEDURAL ECONOMY**

As Ada Grinover Pellegrini understanding (2009:79), the so-called principle of Procedural Economy calls for maximum results in the performance of duty with minimal job possible procedural activities. With the computerization of the judiciary, acts as the Protocol requests are no longer exists, as well as processes that have to earn capes and clips, those would be some of the acts that would be abolished from the procedural process, resulting in a significant reduction of time in the service of the deputies and spent on administrative machine.

This reduction of time and expenses, is of paramount importance to the Judiciary, since the same, does not have as much physical space to store processes or resources to maintain this system, wrapped in paper, paper clips, Staples, etc.
The decrease of certain acts, would take the process to become faster and lead to effectuation of the principle of Procedural Economy. There would be a devolution of acts in the secretariats, leaving the Deputies engaged in acts of major importance. The rooms would be more physical space, since they wouldn't have piles and piles of cases awaiting some movement. The hiring also could be contained, as there would be a decrease in work. The gains would be many, with lower costs and less employees, the State would spend too much to keep the judicial apparatus. And the judges would still have more time to devote to the process. This law aims to simplify certain acts, reduce the costs of the physical process, as well as lead to a rapid procedure, since with less bureaucratic acts the process tends to move faster.

Acts as prosecuting cases, number sheets for sheets, stamp, add documents, among others that make the process out of a table to another, so that the movements are met slowly, since the judicial system lacks manpower, be forgotten.

Thus, with the advent of the electronic process, theoretically many delays and problems could be avoided by making the process comply with their role, giving effectiveness to the principles listed in the Constitution, especially article 5°, LXXX, which gives individual guarantee the right of reasonable duration of the process.

COMPUTERISATION OF THE JUDICIAL PROCESS AND THE BRAZILIAN REALITY

In theory the law 11,419/06, that comes to our legal system to computerize the Judicial Process would work well, bringing speed to the process, reducing time, cost and labor. Just edit this law many points have not been analyzed, the most important one would be the reality in which we operate. It is a reality in our country, that many cities and citizens still do not have Internet access, it would be an obstacle to access to justice through the judicial process, since the Internet is the crux of this process and cannot be disregarded.

There is talk that the Internet infrastructure is deficient in our country, causing a difficulty of accessibility. Other issues to be raised would be that not everyone knows Internet access or even touch a computer, we have today many jurists who do not know, that are outside of the reality of the computerization and the globalized world.

In January 2013 the ratings published statistics on the number of Internet users in Brazil, saying that it would be a total of 105 million Brazilians. Even though a large number of users, there are still many Brazilians out of reality, since, according to data of IBGE published also in January 2013, Brazil would have a population which at that time revolved around 201 million people.

Based on these data we can see that we still have a long way to go, until the Internet becomes a reality
common to all. So, we came across another barrier to access to Justice come true, through the Judicial Process. We know that every change requires a period of adaptation, in this case perhaps even a paradigm, since there are people who refuse to modernity.

Other relevant points would be that, with computerization the judiciary which already lacks many features, would have to spend more to suit this computerization, and deploy systems and train their employees, which costs money and time. These issues raised here, are just a few of the many that can and are already emerging with the computerization of the process that is already a reality in various forums, as it comes to a system is prone to failure.

Thus, how can the implementation of access to justice in the face of so many problems?

Maybe with public policies more geared to the citizen, to make internet public media, to which everyone has access. Invest more in information, giving every opportunity to meet and understand the internet system, as well as the judicial process electronic, through courses, or booklets.

**PRINCIPLE OF EQUALITY-RESPECT THE DIGNITY OF THE HUMAN PERSON**

Principle of equality is enshrined in article 5, of the Constitution, which deals with the Fundamental rights and guarantees. This principle is considered inalienable and imprescriptible, that every human person is entitled. Its purpose is that all people have equal rights, without any distinction. It is a relation between State and People, where the State must provide all rights and equal opportunities.

Thus, the analysis of this principle in the face of computerisation of judiciary is of the utmost importance, because it can be undermined, since, as seen above, the access to justice through the electronic process, passes through some difficulties. How to guarantee to all persons equal rights, when we live in a Country where social inequalities are visible, especially at the present time we are living now, the middle of an economic crisis, where people even are able to pay their household bills, such as water, light, which are essential expenses to provide its existence.

What shall we say then, if these people have to pay for internet, main point of access to the Judicial Process.

However, this crisis not only affects the individuals, or we could say, the not connected directly with the law, as lawyers, with their offices, where some, can barely stay in front of such a crisis, which affects both the country as the judiciary.

People who are connected directly to the right, will have to invest in courses to learn how to handle the
electronic system, that is, expenses will be created. Maybe this problem doesn't affect both the right operators who work in large poles, you're already accustomed to high costs and increased expenses, and have more incentives for information because they know that the differential in these places, is always being updated.

The difficulty might be in greater cities in the interior, which so far, many have not yet adopted the Electronic court case, where there is a lack of information and even a greater resistance to this type of update on the part of lawyers, not to mention the lack of resources of the judiciary, to fund the training of their deputies.

Therefore, in order to be ensured to all persons equality in the democratic State of law, with all the issues raised above, require that everyone has access to Electronic court case through the internet, may become an obstacle, hindering the implementation of the principle of equality.

But, to make sure that doesn't happen, we need efficient public policies so that there is a social and digital inclusion, making easy the access to the Judicial Process, for all people and not only to those who have greater purchasing power.

In this way, the principle of equality will be effectively applied and respected the dignity of the human person.

Teaches José Ricardo Engel (2003): "it should be noted that the human condition is the core reference for the entire legal axiology, behold, the human being is the protagonist of the life of the right. In this way, the central and structuring principle of all contemporary legal orders. "

Being the human condition the greater good of life, we must then respect and create means to effect the implementation of the principle of Dignity of the human person. For Immanuel Kant (2004:65):

The Kingdom of ends, everything has or a price or a dignity. When a thing has a price, can be replaced by something equivalent; on the other hand, the thing you think up any price, and so does not admit any equivalence, a dignity.

**BUREAUCRACY OR DEHUMANIZATION OF THE JUDICIARY**

The Computerisation of the Judicial Process by the law/06 first 11,419 would only bring good results to the Judiciary, many would be the positives, some already stated at the beginning of this article. This bureaucracy of the judiciary, is a goal long ago sought to make the judiciary more agile in practice of their actions to have a faster process, where the quest for Justice is really fair, having as starting point the
reasonable duration of the process. Because we know that justice delayed is not justice.

One of those ways is represented by the principle of access to justice to which all people are entitled and which has already been addressed above. The question then is: how have wide access to justice and respect for the dignity of the human person through a fully electronic process?

Are we not facing a dehumanization of Judiciary? As a chance to answer the questions above, would be that without the wide access to the Internet for all Brazilians, access to justice and respect for human dignity be impaired.

The injury would, especially in actions postulated without the presence of lawyers, such as habeas corpus, habeas data, labor claims and actions in special courts. Since in such cases the very interested can come in with the action. If this interest does not have Internet access or don't know how to access it, how he can assert his right to have wide access to justice.

We know that most people who seek the judiciary, are the weakest parts of the deal, especially the ones who seek the solution of the dispute without the presence of a lawyer, for not having resources to the hiring of a trader.

Can be asked at this point the presence of the public defender's Office is the body created to defend these people regarded as lacking, since they can't have access to justice by themselves, or by an attorney, use this organ.

Useless the judiciary be computerized, ready to expedite the procedural formalities, because the defenders are always full, with long queues.

We don't have enough defenders to meet the demand, i.e., Justice will continue to be late and the access to justice undermined, because the parties are going to be dependent on other people or other organs, at the mercy of the lengthy judiciary. About the dehumanization of Judiciary we can highlight several points, the first of which has already been quoted above, it would be the fact that the exclusion of people the judiciary for lack of digital inclusion. Another point to be highlighted would be that, to computerize the judiciary, there would be less bureaucratic acts, a time-saving, leading more processes the table of judges more quickly.

Now the judges have to judge a number of processes, i.e. the amount of processes in the wait queue to trial it's giant, imagine how this queue will be when processes go up more quickly to the judges. There is also a shortage of manpower in this area, it would take more judges available to expedite such demand. But the main issue here is the following: with an excessive amount of processes to be judged in a short
time, as would be the quality on those judged, as would decisions that require greater study in specific cases, we wouldn't be so superficial and inhuman judgments front.

Vincenzo Vigoriti (2011) says that there are no "technical time-outs" in process "are those necessary for the decision", i.e. the time needed to analyze the case to reach a plausible decision. I wonder if we wouldn't be walking to mass trials, where production exceeds the quality. The problem is not taken into consideration with the computerisation of the Judicial Process, is that before the judges were already overburdened with processes to be judged and decisions were already questionable, not being so, a logical solution to increase these processes, causing legal insecurity.

There are already a lot in judicial decisions as a result of the trials, recast. Imagine how it will be with this computerization, more processes to judge, less time, and the quality of supervision.

What might happen is that to get the best technique to apply to the Judiciary through computerization, seeking the reduction of acts, costs and time, to achieve a faster process, decisions may become dehumanised.

The processes will not take upon itself the watchful eyes of the judge, to make an accurate assessment of questions on the record. The judge will run the risk of turning a trials machine working to produce decisions, to meet the demands and the statistics which will be bound, and not to have justice done in concrete cases.

Thus, the computerization of Judicial Process will be undermined if not interested parties to guarantee that your case be tried as best as possible, being sought at all times the realization of Justice. Whether the bureaucracy of the judiciary through the use of the electronic process will become a dehumanization, it's something to think about about all the points raised in the present work, and that can only be found with the use of the system, that is when the problems could arise here questioned, and so we will see how the Judiciary will behave in front of obstacles.

What we do know is that our country is going through a difficult time, where almost all sectors are in crisis, and the judiciary is already bankrupt, unable to pay its role, which is to materialize the Justice, through his trial.

It is in the interest of the whole society that the electronic process is efficient in its use, and to take the judiciary this slowness and ineffectiveness in the provision of Justice, and that all reap the fruits that this tree can give, as long as it is watered and fertilized properly, making the entire Plantation is re-established at its core.
FINAL CONSIDERATIONS

The present article had as its focal point a rapid analysis of 11,419/06 Law in our legal system and already operational in various forums, showing some positive points, starting from the premise of procedural economy.

The effectiveness of the economy takes place in that system of computerization, because several acts are no longer exists, reducing costs to the judiciary. Also creates more time so that the deputies of Justice to focus on most important acts to the process.

But this law in practice is not so good and not so good, has several negative points in its application, especially by failing to take into account the reality in which we operate, impairing the effectiveness of the principle of equality, which is related to access to justice, which through this electronic process is not effective, since not all people who have access to the internet.

The internet is the crux of this system and that is not available to all people, because we don't have public policies geared to that kind of access, rendering ineffective the principle of equality hurting the dignity of the human person, where everyone has to have equal treatment or be socially and now also entered digitally.

We're going through a delicate moment in our country, we live a very big economic crisis, where people can't even pay their basic accounts, such as water, electricity, the trip to the supermarket became more expensive and unemployment hit at our doors.

All this crisis directly affects on society, making digital inclusion more difficult for low-income people, even, are the most resort to judicial power. We can give the solution this search at least favored the judiciary, that they make use of the public defender's Office for example, because there they have a person with broad access to electronic process, it's just not that simple.

We know that the judicial organs are overflowing with processes and do not have enough professionals to such demand. Looking for a Free Justice in our country, is asking for a lot of patience, especially to be answered, since the defenders have expressive queues every day. All that prevent compliance with the access to justice.

For the really defenders could serve all in need would require a greater investment of the judiciary on hiring more people.

Taking into account what has been stated above, the Judiciary which is already drowning in processes and
decisions to be taken by their magistrates, who can't keep up with the demand for solutions of disputes, therefore, fail to comply with constitutional principles.

The computerisation of the Judicial Process is plausible, since that is made on the basis of the reality of the Judicial system, which is already chaotic and full of problems to be solved.

With this computerization more stones on the way there will be and in fact are already emerging, but as all obstacles have to be overcome to achieve the goal, we hope that this will be overcome.

The law highlights bothered a lot in reducing acts, costs, time and Manpower, to achieve a faster process, but has not examined what it could represent up front, since it did not consider the reality of Brazilians and the judiciary which is already precarious and that computerization needs to fit in a variety of ways.

It is necessary that all people have access to this system, and that Act training of deputies of Justice, jurists in General, i.e. a judicial system that is not inclusive of many resources, will have to spend more, with both programs, as with the expertise of its employees.

It appears then that the purpose of the law is plausible, especially as the economy of procedure and the process is quicker, but still does not reach the goal for which it proposes, since we live in a different reality, which can be changed, but in the long run and with public policies more forceful.

BIBLIOGRAPHICAL REFERENCES


VIGORITI, Vincenzo. Notes on the cost and duration of civil proceedings in Italy. Process magazine. São

[1] Graduate student in law – dispute resolution Alternatives Business Solutions, at Escola Paulista de Direito – EPD, São Paulo, postgraduate degree in public law from the Faculty of law of the Sul de Minas-MSDS, graduated in law from the law school of southern Minas Gerais-MSDS, a lawyer specialized in civil and Labour law in the State of Minas Gerais and São Paulo, e-mail: macsantosadv@gmail.com

[2] Graduate student in law on alternative solutions of controversies from Escola Paulista de Direito – EPD. Post-graduate degree in public law and Private Law School Prof. Damasio de Jesus. Postgraduate teacher training to higher education the University Legal Anhanguera Uniderp. Educational Management MBA by Universidade Anhanguera Uniderp. Graduated from the Faculty of law of Itu. Email: mbct_5@hotmail.com