

ORAL EVIDENCE IN ELECTRONIC MEDIA: THE NECESSARY DOMAIN OF INFORMATION AND COMMUNICATION TECHNOLOGIES

Prova Oral em Meio Eletrônico: O Necessário Domínio das Tecnologias da Informação e Comunicação

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ABSTRACT: The main objective of this research is to analyze the influence of Information and Communication Technologies (ICTs) on Brazilian Law, situated in a digital society reality. To do this, we initially analyze what is meant by ICTs, so that we can understand their use when producing an oral test in electronic form. In order to improve the production of oral evidence in digital media, this article deals with the principle of operosity as essential to the fluidity of the pursuit of rights in electronic media, so that it is also necessary to address the limits, possibilities and controversial issues of production oral exam in digital media. Using the deductive method and systematic interpretation, this work concludes with the perception that Law needs to adapt even better to the digital society, seeking necessary tools to improve its performance in the face of available electronic media – which are increasingly developing in a needing constant updates in the understanding and use of these digital media by procedural agents.

Keywords: Oral evidence; digital society; Information and Communication Technologies (ICTs); principle of operativeness.

RESUMO: A presente pesquisa tem como objetivo central analisar a influência das Tecnologias da Informação e Comunicação (TICs) no Direito brasileiro, situando-se numa realidade de sociedade digital. Para isso, analisa-se inicialmente o que se entende por TICs, para que se possa compreender a sua utilização no momento de produção de prova oral em meio eletrônico. De forma a perfectibilizar a produção de prova oral em meio digital, o presente artigo versa sobre o princípio da operosidade como essencial à fluidez da persecução dos direitos em meio eletrônico, de forma que também é preciso tratar dos limites, possibilidades e questões controversas da produção de prova oral em meio digital. Utilizando-se do método dedutivo e interpretação sistemática, este trabalho conclui com a percepção de que o Direito precisa ainda melhor se adequar à sociedade digital, buscando ferramentas necessárias para aprimorar sua atuação frente aos meios eletrônicos disponíveis – que cada vez mais se desenvolvem de maneira a precisar de constantes atualizações de compreensão e utilização dessas mídias digitais por parte dos agentes processuais.

Palavras-chave: Prova oral; sociedade digital; Tecnologias da Informação e Comunicação (TICs); princípio da operosidade.

INTRODUCTION

It is rational to understand that today's society has included digital evolutions as common factors in everyday life and, therefore, the digital environment has become part of social culture itself. As a result, many changes occur in interpersonal relationships, in the

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means of communication, in the carrying out of leisure and work activities. Law, as a factor that is part of this culture, needs to embrace social concerns and also include the new tools of the digital society in its actions.

Based on this premise, this research addresses the wide use of Information and Communication Technologies (ICTs) in Brazilian law, so that it is possible to understand the influence of these ICTs and the reason why they have become essential in the development of the activity jurisdiction in the Digital Era

In order to give an outline to the research, the importance of producing oral evidence for the completion of due legal process will be discussed in a second moment, considering, from this, the production of oral evidence in electronic media, treating it as a necessary adaptation of the Judiciary to the now envisaged 100% Digital Judgment.

In this sense, the research concludes in the last item dealing specifically with controversial issues regarding the production of oral evidence in electronic media, and compliance with what is understood as the principle of operosity, essential for the good adaptation of jurisdictional activity to digital platforms. Considering that the production of evidence is essential to guarantee access to law and a fair legal order, it is necessary to understand its limits and possibilities in this new context of digital media, in which everything is changeable.

1. THE WIDE USE OF INFORMATION AND COMMUNICATION TECHNOLOGIES (TICS) IN BRAZILIAN LAW

The premise used to construct this research is that the Digital Society is already a reality. Cybervirtual culture is no longer just a receiver of content distributed through the media, but is a producer and distributor-emitter of products and, therefore, content.² The reflection of this new reality in terms of technology is not limited to the informational factor, but also influences the current economy, personal and employment relationships, issues of social behavior and, thus, brings consequences into the reality of Law.³

Therefore, it is necessary to pay attention to the speed at which social changes have occurred. Technology has brought an acceleration to society, in terms of evolutions and constant needs for adaptation.⁴ In other words, it is clear from this that society evolves

² DA SILVA, Vanessa Toste Soares. **Sociedade Digital: O Poder da multidão participativa**. 2013. 67 f. Dissertação (Mestrado em Comunicação Estratégica: publicidade e relações públicas) – Faculdade de Artes e Letras, Universidade da Beira Interior, Covilhã - Portugal, 2013. p. 1.

³ TEIXEIRA, Tarcisio. **Direito Digital e processo eletrônico**. 6. ed. São Paulo: SaraivaJur, 2022. p. 29.

⁴ SALES SARLET, Gabrielle Bezerra; RIEFFEL, Franciele Bonho. As novas tecnologias de informação e de comunicação (TIC) e o direito à desconexão como direito humano e fundamental no ordenamento jurídico brasileiro. **Revista de**

alongside technology, which, by constantly presenting so many new features, also forges new needs on the part of society. It is an organic process⁵ that happens cyclically, from which a set of beliefs and values originates through the relationship between technology and social actors, which is called cyberculture.⁶

In this context, Information and Communication Technologies (ICTs) are the convergence between information, telecommunications and data processing technologies into a single technology. They are, therefore, the unification of electronic communications and the integration of telecommunications, caused by the good construction of electronic devices such as computers, cell phones, tablets (hardware) and accessible programs that run on these computers (software). It is this integration that allows users to access, archive, transmit, record, forward information, among other possibilities for the functionality of ICTs.⁷

The importance of this understanding for Law becomes essential from the moment the 100% Digital Judgment⁸ was assumed through Resolution 345/2020 of the CNJ.⁹ Even though ICTs were already widely used, this resolution made them pure mechanisms of access to justice – even if optional – by considering that it is possible to elect a procedural procedure exclusively electronically, thus depending on access to the connection.¹⁰

Direitos Humanos e Efetividade, Salvador, v. 4, n. 1, p. 115-134, jan.-jul. 2018. Versão em PDF. p. 1-20. Disponível em: <https://revistadostribunais.com.br>. Acesso em: 25 abr. 2022. p. 3-4.

⁵ Neste sentido: “Não podemos dizer que a sociedade forçou o utilizador a tornar-se novamente produtor, nem que este é o responsável pela metamorfose a que se assiste diariamente na sociedade. Trata-se de um processo orgânico entre estas duas polaridades que se influenciam mutuamente, num ciclo-vicioso que origina o panorama social, cultural e comunicacional em que o utilizador e consumidor comum da Internet se encontra envolvido.” Cf. DA SILVA, Vanessa Toste Soares. **Sociedade Digital: O Poder da multidão participativa**. 2013. 67 f. Dissertação (Mestrado em Comunicação Estratégica: publicidade e relações públicas) – Faculdade de Artes e Letras, Universidade da Beira Interior, Covilhã - Portugal, 2013. p. 1.

⁶ Neste contexto: “[A] vida social sofreu grandes transformações com o surgimento do ciberespaço que é o espaço virtual onde as pessoas interagem e, destacadamente, da cibercultura representada pelo conjunto de crenças e valores criados a partir da tecnologia da informação (TI). Dessa maneira, resulta a ideia de que a vida na contemporaneidade está por um clique, tanto no que favorece ao livre desenvolvimento da personalidade quanto ao aniquilamento de seus atributos nucleares.” Cf. SALES SARLET, Gabrielle Bezerra; RIEFFEL, Franciele Bonho. As novas tecnologias de informação e de comunicação (TIC) e o direito à desconexão como direito humano e fundamental no ordenamento jurídico brasileiro. **Revista de Direitos Humanos e Efetividade**, Salvador, v. 4, n. 1, p. 115-134, jan.-jul. 2018. Versão em PDF. p. 1-20. Disponível em: <https://revistadostribunais.com.br>. Acesso em: 25 abr. 2022. p. 6.

⁷ BERNI, Duílio Landell de Moura. O acesso às TIC como um Direito Fundamental e o papel da inclusão digital. In: V Jornada de Direitos Fundamentais, 2018, Santiago. **Anais da V Jornada de Direitos Fundamentais**, p. 1-14, 2018. p. 2-3.

⁸ REICHEL, Luis Alberto. Reflexões sobre o modelo do “juízo 100% digital: à luz do direito fundamental ao acesso à justiça. In: SARLET, Ingo Wolfgang; RUARO, Regina Linden; LEAL, Augusto Antônio Fontanive. **Direito, Ambiente e Tecnologia: estudos em homenagem ao professor Carlos Alberto Molinaro**. p. 637-649. Porto Alegre: Fundação Fênix, 2021.

⁹ BRASIL. Conselho Nacional de Justiça. **Resolução n. 345, de 09 de outubro de 2020**. Dispõe sobre o “Juízo 100% Digital” e dá outras providências. Brasília, 2020. Disponível em: <https://atos.cnj.jus.br/files/original175500202010145f873b7482503.pdf>. Acesso em: 27 abr. 2022.

¹⁰ “Art. 1º Autorizar a adoção, pelos tribunais, das medidas necessárias à implementação do ‘Juízo 100% Digital’ no Poder Judiciário. Parágrafo único. No âmbito do ‘Juízo 100% Digital’, todos os atos processuais serão exclusivamente praticados por meio eletrônico e remoto por intermédio da rede mundial de computadores.” Cf. BRASIL. Conselho Nacional de Justiça. **Resolução n. 345, de 09 de outubro de 2020**. Dispõe sobre o “Juízo 100% Digital” e dá outras

The e-procedural principle of access to connection is based on the understanding that the electronic process is located on the network and therefore connects procedural agents to each other due to the network formed by the e-process.¹¹ Consequently, the virtual network of the process connects it to the virtual world as a whole, making all relationships, interactions and procedural activities occur virtually, including in this area the object of study of this article, namely, the production of oral evidence.¹²

An important highlight is the fact that access to the connection requires access to ICTs, and this access cannot be given only formally.¹³ In a broad sense, access to ICTs comprises material access to digital media accompanied by intellectual mastery of these technologies, which in turn depends on effective digital inclusion.¹⁴ The State assumes responsibility for this inclusion based on solidarity and social justice, provided for in art. 3rd, I, of the Federal Constitution.¹⁵

Therefore, to guarantee access to the law in a digital society, it is necessary to guarantee the right to connection through digital inclusion so that one can have access to e-justice.

Considering the scope given to this research, the institution of evidence in civil proceedings is an essential means of guaranteeing access to justice, as it is a basic element in the construction of the judge's conviction. Carrying out an oral test electronically is, therefore, a means of guaranteeing access to e-justice, and will be analyzed in the next item of this article.

According to the teachings of Marco Antonio Rodrigues and Maurício Tamer, when having as an essential core that the application of material law and any adjustment thereof with the resolution of conflicts depend directly on the complete demonstration of the facts, this understanding highlights the importance of the law of evidence, as it is the first and proper task of the evidentiary activity to make the connection between the event in the world

providências. Brasília, 2020. Disponível em: <https://atos.cnj.jus.br/files/original175500202010145f873b7482503.pdf>. Acesso em: 27 abr. 2022.

¹¹ GILLET, Sérgio Augusto da Costa; ALFF, Hannah Pereira. Do direito de acesso à justiça ao direito à conexão: online dispute resolutions como meio de acesso à e-justiça. In: **Anais Sociology of Law 2019: o direito na sociedade tecnológica**. Canoas: Unilasalle, v. 5, p. 2173-2186, 2019.

¹² CHAVES JÚNIOR, José Eduardo de Resende. O processo em rede. In: ROVER, José Aires (coord.). **Comentários à lei do processo eletrônico**. São Paulo: LTr, 2010.

¹³ MALHEIRO, Emerson Penha. A inclusão digital como direito fundamental na sociedade da informação. **Revista dos Tribunais**. v. 987, p. 39-54, jan. 2018. Versão em PDF. p. 1-12. Disponível em: <https://revistadostribunais.com.br>. Acesso em: 25 abr. 2022.

¹⁴ BERNI, Duílio Landell de Moura. O acesso às TIC como um Direito Fundamental e o papel da inclusão digital. In: V Jornada de Direitos Fundamentais, 2018, Santiago. **Anais da V Jornada de Direitos Fundamentais**, p. 1-14, 2018. p. 3-4.

¹⁵ “Art. 3º Constituem objetivos fundamentais da República Federativa do Brasil: I - construir uma sociedade livre, justa e solidária;” Cf. BRASIL. Constituição (1988). **Constituição Federal da República Federativa do Brasil**. Brasília, 1988. Disponível em: http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm. Acesso em: 27 abr. 2022.

of facts and which relevant facts are brought to the jurisdictional scope. Understanding the production of oral evidence in electronic media is essential to access to justice, and for this it is also necessary to give due importance to understanding how information and communication technologies are inserted for this purpose.¹⁶

2. THE INFLUENCE OF ICT ON THE PRODUCTION OF ORAL TEST IN ELECTRONIC MEDIUM

In order to understand the importance of this study, it is first necessary to make notes about the evidence itself in civil proceedings, and before it is even about evidence, it is necessary to understand what is a fact for the Law.¹⁷

According to Beclaute Oliveira Silva¹⁸, a fact is an event. It is seen as a change in the world that is not static, as it is not permanent. Thus, it is necessary to somehow capture some aspects of this fact so that its event remains proven, and this is called proof, as it is essential for Law to be able to demonstrate and prove that the event that generates a claim before the Judiciary happened as reported.¹⁹ In other words, the report is proof, even if subjective, as it is in accordance with the vision of the person reporting. The production of evidence is, then, the attempt to render impartial a report that in turn is partial in nature as it depends on someone's perspective. This all means that evidence must be something worthy of trust within the jurisdictional environment, so that the claim obtains the most appropriate and fair response.²⁰

Every claim that is brought to the necessary assessment by the Judiciary has as its starting point some event in the world of facts – if not more than one.²¹ From this or these

¹⁶ RODRIGUES, Marco Antonio; TAMER, Maurício. **Justiça Digital**: o acesso digital à justiça e as tecnologias da informação na resolução de conflitos. São Paulo: Editora Juspodivm, 2021. p. 283.

¹⁷ Regarding the debate that evidence in Law has a different function and conceptualization than in other areas, it is recommended: FERRER-BÉLTRAN, Jordi. **Valoração racional da prova**. 2 ed. rev. e atual. São Paulo: JusPodivm, 2022.

¹⁸ SILVA, Beclaute Oliveira. **A destinação da prova e seu reflexo nos meios adequados de efetivação dos direitos** (palestra), Congresso Internacional de Direito Probatório, Modalidade Virtual, 18 de novembro, 2021. Disponível em: <https://www.youtube.com/watch?v=EN622NUY9RI&t=2340s>. Acesso em: 12 maio 2022.

¹⁹ In this regard: “Há verdadeiro direito constitucional à prova. E isso deve ser enfatizado sobretudo em razão da necessidade de se compreender a prova e os respectivos meios de confecção dentro da realidade contemporânea em que os fatos a serem demonstrados estão inseridos. A prova deve ser viabilizada de acordo com as configurações com o que o fato a ser provado se apresenta.” Cf. RODRIGUES, Marco Antonio; TAMER, Maurício. **Justiça Digital**: o acesso digital à justiça e as tecnologias da informação na resolução de conflitos. São Paulo: Editora Juspodivm, 2021. p. 284.

²⁰ CINTIA, Antonio Carlos de Araújo; GRINÓVER, Ada Pellegrini; DINAMARCO, Cândido Rangel. **Teoria Geral do Processo**. 31. ed. São Paulo: Malheiros, 2015. p. 427.

²¹ Therefore, it stands out: “Alguém, responsável por conferir a leitura jurídica sobre o fato, precisa saber se o fato ocorreu ou não e, se sim, todas as suas circunstâncias. A prova, em linhas gerais, é o meio pelo qual é formada a convicção desse alguém em relação a fato específico. [...] Os meios probatórios, ao seu turno, devem ser compreendidos em relação à prova a partir de uma relação instrumental de meio e resultado. É a técnica processual ou procedimental de obtenção da prova. De uma maneira geral, toda técnica representa a predisposição de meios ordenados a obter certos resultados só se justificando pela existência de determinada finalidade a cumprir. Os meios probatórios são técnicas processuais ou procedimentais e, portanto, porque são mecanismos delineados à obtenção de um resultado, no caso, a prova sobre o fato.” Cf. RODRIGUES, Marco Antonio; TAMER, Maurício. **Justiça Digital**: o acesso digital à justiça e as tecnologias da informação na resolução de conflitos. São Paulo: Editora Juspodivm, 2021. p. 288-290.

events, a demand becomes, as such, the basis for requesting, in court, the consequences arising from these events that then become part of the legal world. Proof²² is what allows this causal relationship between events in the world of facts and the appropriate response that must flow from its assessment at the legal level.²³

Therefore, the importance of producing evidence for the process is noted²⁴, as it is the impartial means by which it is possible to transport events from the world of facts to the procedural environment²⁵ in the most reliable way possible²⁶ in order to serve as an instrument through which the judge will form its conviction²⁷ about the occurrence – or not – of the disputed facts that were presented in the process.²⁸

Considering all these factors, the oral test is in a situation of constant attempt to balance the essential aspects of the test. Among them, the view that it must be something worthy of trust. This is because the oral test has human people as its protagonist, who, as they are, carry with them biases, idiosyncrasies, and of course, personal issues, and thus the oral test receives continuous criticism that it is a fragile test, susceptible to fraud, dissimulation. and easily modifiable.²⁹

However, the oral test breaks the paradigm of fragility once language is given due importance. Language not only for what is said, but for what you want to transmit. Language is not limited to words, but opens up its entire context, which is why it is fluid and adaptable. Language adapts to society and the temporal environment in which it operates, because what matters is to be understood.

Thus, it is clear that both Law and language evolve with society, so that ICTs influence both. In response to this need for change, the 2015 Civil Procedure Code already included in its text some possibilities for using ICTs in the procedural environment.³⁰

²² Regarding proof theory, it is recommended: TARUFFO, Michele. **Páginas sobre justicia civil**. Madrid: Marcial Pons, 2009.

²³ RAMOS, Vitor de Paula. **Ônus da prova no processo civil**: do ônus ao dever de provar. São Paulo: Revista dos Tribunais, 2015.

²⁴ REICHELTL, Luis Alberto. **A prova no direito processual civil**. Porto Alegre: Livraria do Advogado, 2009.

²⁵ RODRIGUES, Marco Antonio; TAMER, Maurício. **Justiça Digital**: o acesso digital à justiça e as tecnologias da informação na resolução de conflitos. São Paulo: Editora Juspodivm, 2021. p. 290.

²⁶ RAMOS, Vitor de Paula. **Prova testemunhal**: do subjetivismo ao objetivismo, do isolamento científico ao diálogo com a psicologia e a epistemologia. 3 ed. rev. e atual. São Paulo: JusPodivm, 2022.

²⁷ DINAMARCO, Cândido Rangel; BADARÓ, Gustavo Henrique Righi Ivahy; LOPES, Bruno Vasconcelos Carrilho. **Teoria Geral do Processo**. 32. ed. São Paulo: Malheiros, 2020. p. 428.

²⁸ Sobre os aspectos da prova: Prova sob o aspecto objetivo seria o conjunto dos meios produtores de certeza jurídica; meios utilizados para comprovar a existência de fatos relevantes para o processo. Prova sob o aspecto subjetivo seria a própria convicção formada sobre a ocorrência ou não dos fatos alegados em âmbito processual. Cf. REICHELTL, Luis Alberto. **A prova no direito processual civil**. Porto Alegre: Livraria do Advogado, 2009. p. 46-48.

²⁹ CHAVES, Luciano Athayde. A prova oral e o problema da verdade no direito processual: as contribuições do construtivismo lógico-semântico. **Revista de Processo**, v. 275, p. 67-88, jan. 2018. Versão em PDF. p. 1-16. Disponível em: <https://revistadostribunais.com.br>. Acesso em: 25 abr. 2022.

³⁰ BRASIL. **Lei n. 13.105, de 16 de março de 2015**. Código de Processo Civil. Brasília, 2015. Disponível em: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/13105.htm. Acesso em: 12 maio 2022.

The art. 453, § 1 and 2 of CPC/2015 regulates that witnesses testify, at the pre-trial and trial hearing, before the judge of the case, except when the witness resides in a judicial district, section or subsection other than the one where the case is being processed. choose to carry out their hearing through videoconferencing or another technological resource for transmitting and receiving sounds and images in a synchronous manner, and the courts that choose to do so must maintain equipment for transmitting and receiving sounds and images.

Similarly, there is also art. 937, §4, also of CPC/2015, which indicates the possibility for lawyers with professional domicile in a city other than the one where the court is based to make their oral argument via videoconference – or other corresponding technological resource, as long as the lawyer requests it on time prior to support.³¹ Added to this, there is the already mentioned Resolution no. 345 of the CNJ which provides for the “100% Digital Judgment”.

Therefore, the oral test is no longer a single moment. When carried out digitally, the test is recorded and recorded, so that its preservation also allows its reproduction and authenticity.³²

Outside the scope of recording per se, the collection of evidence involves a recording, which is often exactly what is happening in the procedural environment, but sometimes, by choice of the judge, the recording is made based on what the The magistrate or magistrate chooses to record each speech or statement. Here again we return to the importance of language. By making a faithful recording, it is possible to interpret the text of what actually happened. When making a recording based on what the magistrate intends to record, it may result in any consultation of the records altering the meaning of the evidence collected – carrying subjectivity, either by using different words in the record, or by suppressing part of the content. for not giving due importance to the report based on the impressions resulting from the collection.

An oral test, when reduced to terms and words considered important by a certain judge, can cause a great loss of its content and even change its original meaning.³³

Collecting the oral test in a digital format will thus allow for a breadth of cognition in the second instance. The evidence collected and recorded in electronic media will allow, regardless of the context or judge, the moment of collection of the oral evidence to be

³¹ REICHELT, Luis Alberto. Reflexões sobre o modelo do “juízo 100% digital: à luz do direito fundamental ao acesso à justiça. In: SARLET, Ingo Wolfgang; RUARO, Regina Linden; LEAL, Augusto Antônio Fontanive. **Direito, Ambiente e Tecnologia**: estudos em homenagem ao professor Carlos Alberto Molinaro. p. 637-649. Porto Alegre: Fundação Fênix, 2021.

³² TEIXEIRA, Tarcisio. **Direito Digital e processo eletrônico**. 6. ed. São Paulo: SaraivaJur, 2022.

³³ DA SILVA, Felipe Carvalho Gonçalves. O registro eletrônico da prova oral sob a ótica do acesso à justiça. **Revista da Magistratura do Estado do Rio de Janeiro – EMERJ**, Rio de Janeiro, v. 21, n. 1, p. 113-134, jan.-abr. 2019.

revisited and interpreted, surpassing the written records characteristic of degradation. In this way, the judge responsible for the sentence is not tied to or obliged by the evidence produced before a different judge who would express a possible degradation to his or her subjectivity.³⁴

It is clear from all of this that the production of oral exams in digital media is linked to the good use of ICTs, considering that their domain, not only formal, but also intellectual, is essential for their good development, which is also linked to compliance with the principle of operosity.

3. ORAL TEST IN ELECTRONIC MEDIUM AND THE PRINCIPLE OF OPESORITY

In most civil procedural law studies, it is clear that the behavior of procedural agents must be linked to some principle that guides how certain activities should be developed. These guidelines help to ensure legal certainty and ensure the best fulfillment of all fundamental rights inherent to the fair process.

When dealing with digital evidence itself, the validity and usefulness of this evidence must undergo verification beyond the principled triad that governs all evidentiary activity – that is, the prohibition against illicit evidence, evidentiary freedom and rational persuasion of the recipient of the evidence – extending- This respect also includes compliance with three central factors, namely authenticity, integrity and preservation of the chain of custody.³⁵

Even though all these factors are fully perceptible and correspond to all evidentiary production, not just digital ones, it cannot be denied that in the case of digital evidence there are some circumstances specific to this specific procedural means. For example, the authenticity of digital evidence can be understood as the quality of the evidence, which allows consolidating the certainty of the author of the digital fact; integrity will be seen as the quality of digital evidence in the sense of completeness or non-adulteration of original content.³⁶

In any case, joining these fundamental factors, when talking about oral exams in the digital environment, the most general principle that also stands out is that of diligence.

The principle of operosity provides that all those involved in jurisdictional activity must act in order to obtain maximum production. In other words, everyone involved in

³⁴ DA SILVA, Felipe Carvalho Gonçalves. O registro eletrônico da prova oral sob a ótica do acesso à justiça. **Revista da Magistratura do Estado do Rio de Janeiro – EMERJ**, Rio de Janeiro, v. 21, n. 1, p. 113-134, jan.-abr. 2019.

³⁵ RODRIGUES, Marco Antonio; TAMER, Maurício. **Justiça Digital: o acesso digital à justiça e as tecnologias da informação na resolução de conflitos**. São Paulo: Editora Juspodivm, 2021. p. 293.

³⁶ For greater depth: RODRIGUES, Marco Antonio; TAMER, Maurício. **Justiça Digital: o acesso digital à justiça e as tecnologias da informação na resolução de conflitos**. São Paulo: Editora Juspodivm, 2021. p. 293-296.

judicial activity must perform their functions in the best possible way, so that effective access to justice can be achieved so that a fair legal order is guaranteed.³⁷

It is to say, through operosity, that everyone must act in the most productive and laborious way possible.³⁸ Ethics and productivity must be the guiding thread of the activities carried out, as the principle of operosity foresees that a certain function must be entrusted to those who have the best conditions to perform it, so as not to obstruct the procedural progress and guarantee the fluidity of the process. jurisdictional activity.³⁹

Even though it is not the scope of the present study, it is noteworthy that the principle of operosity is very much mixed with the principle of cooperation⁴⁰, even though they are not the same. While cooperation presupposes that agents cooperate among themselves, between courts, between parties, between parties and magistrates, the principle of operosity brings the focus to who performs this or that function. The person who performs must act ethically in his activity in a pure way, which in total will be part of a collaborative system where everyone performs their functions in the same way.

It is also possible to say that operosity is very similar to efficiency. However, it is observed that efficiency also refers to a whole. To be efficient you need to act quickly, seek the best result with the tools you already have. Being efficient means achieving “good performance of your tasks” in a less costly way and following the parameters stipulated by legislation.⁴¹ To be cooperative, you must first be efficient, and for the best fulfillment of efficiency, you must respect operosity, which defines the responsibility of the function to those who have the best conditions to perform it..

FINAL CONSIDERATIONS

With Resolution no. 345/2020, of the CNJ, the Judiciary began to allow 100% Digital Justice. The fact is that this update was already part of the new social desires arising from the digital society, as discussed in this article. The Digital Era comes with new needs, new tools,

³⁷ HILL, Flávia Pereira. **O direito processual transnacional como forma de acesso à justiça no século XXI**: os reflexos e desafios da sociedade contemporânea para o direito processual civil e a concepção de um título executivo transnacional. Rio de Janeiro: GZ Editora, 2013.

³⁸ MAZZOLA, Marcelo. Dever de comprometimento do juiz e a audiência de mediação do art. 334 do NCPC. Críticas aos dribles hermenêuticos e à sua designação aleatória. **Revista de Processo**, v. 276, p. 125-150, fev. 2018. Versão em PDF. p. 1-15. Disponível em: <https://revistadostribunais.com.br>. Acesso em: 27 abr. 2022.

³⁹ CABRAL, Antonio do Passo. Imparcialidade e imparcialidade. Por uma teoria sobre repartição de incompatibilidade de funções nos processos civil e penal. **Revista de Processo**, v. 149, p. 339-364, jul. 2007. Versão em PDF. p. 1-18. Disponível em: <https://revistadostribunais.com.br>. Acesso em: 27 abr. 2022.

⁴⁰ Regarding national judicial cooperation and the collaborative process model, it is recommended: DIDIER JR., Fredie. **Cooperação judiciária nacional**: esboço de uma teoria para o Direito brasileiro (arts. 67-69, CPC). Salvador: Juspodivm, 2020.; MITIDIERO, Daniel. **Colaboração no processo civil**: do modelo ao princípio. 4. ed. rev., atual. e ampl. São Paulo: Thomson Reuters Brasil, 2019.

⁴¹ JOBIM, Marco Félix. **As funções da Eficiência no Processo Civil Brasileiro**. São Paulo: Thompson Reuters Brasil, 2018. p. 34-35.

new updates in what is generally understood as a social contract. Relationships underwent changes and, therefore, triggered changes in cultural patterns that began to integrate factors, sensations, perceptions and facilitations provided by the realities of cyberspace into their daily lives.

The 100% Digital Court is the possibility for all procedural acts to be developed within digital platforms. Therefore, it is reiterated that it is not mandatory, but rather that the entire process takes place digitally, or only the necessary part of the process, such as, for example, the collection of oral evidence considered as the object of this work. For this reality to be possible and increasingly broader in terms of facilitation, access and mastery of the use of Information and Communication Technologies necessary for the fluidity of the process in electronic media must be guaranteed.

ICTs assist in this constant evolution of digital justice, allowing acts to occur through virtual platforms. However, the necessary concern of those who are not guaranteed due access to ICTs and their right to connection is highlighted, meaning that they do not have the necessary domain mentioned. This domain stands out, not only physically and formally, but also intellectually, allowing effective access to justice (or e-justice as also discussed here).

The production of an oral test admits a broad influence of these ICTs so that it is possible to carry it out electronically – synchronously or asynchronously –, as long as the principle of operosity and all those other principles inherent to the general theory of the test, and the more specific ones of the test, are respected. digital medium. The limits and possibilities of oral evidence in digital media depend on the mastery of ICTs, and constant doctrinal discussions about their potential benefit in guaranteeing access to justice.

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