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Access to Justice and Due Process as Superprinciples of Procedure Law in the Brazilian Constitution of 1988

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Abstract

This article aims to identify the said superprinciples of procedure law that can be found in the current Brazilian Constitution, as a way to establish the main constitutional cord to judicial procedure in Brazil. Thus, a systematic and orderly analysis of the two most important procedure principles recognized by the Brazilian legal science, access to justice and due process, will be performed, each principle being studied on its own. This is qualitative research with exploratory objectives, using as a procedural basis the specialized bibliography and legislation, on an inductive method. It was observed that, in theory, both access to justice and due process establish the spinal cord to the procedural law in the current Brazilian Constitution, with the possibility of other principles, sometimes also observable in the Constitution or not, to result from them and also influence the exercise of jurisdiction in the country.

Keywords

Access to Justice, Brazilian Constitution, Due Process, Principles, Procedure Law

1. Introduction

This paper seeks to identify, in the current Brazilian Constitution which was promulgated in 1988, the main principles that define the constitutional limits of procedure law, those being access to justice and due process, so as to make it possible to understand the basis of the rites in the Brazilian legal system.

This research is important because, as in other legal systems, the Brazilian procedure law represents one of the possible instruments, if not the most, one of the most important ones, to guarantee rights. This also means that, if misused,

procedure law can also be used to hinder the recognition of said rights, principally if they are distorted by skillful or experienced attorneys.

Thus, research identifying the constitutional limits to procedure law represents the possibility of establishing the minimum structure of the judicial rites, and its recognition results in a proper legal system that is harder to manipulate in order to unscrupulously direct rulings that do not respect material law.

To reach this general objective, each of the amply recognized principles will the study in each of the chapters of the paper.

Firstly, the principle of access to justice will be studied, its limitations and results being identified in a complex systematic such as the one observed in Brazil. Then, due process will be undertaken, considering its position as a superprinciple in the Brazilian Constitution.

This is qualitative research, with an exploratory objective, and will be based on the analysis of the applicable bibliography and legislation, in an inductive method.

2. Principles as Constitutional Norms

In the model of organization of jurisdiction adopted by the Brazilian system, the Constitution has a central position, not only as a superior norm, through which the others must be interpreted and with which they must necessarily harmonize, but also due to the fact that Brazil has chosen for structuring its jurisdictional model based on the Constitution.

The Brazilian legal system is a complex and multi-faceted structure that has evolved over time to address the diverse needs of its population. The Brazilian Constitution, promulgated in 1988, is the supreme law of the land. It establishes the fundamental principles and rights of citizens, the organization of the state, and the separation of powers. As mentioned by Becho and Oliveira (2021: p. 973), Brazil follows a civil law system, influenced by Roman-Germanic traditions. Laws are primarily codified, and legal decisions are based on written statutes.

This means, in effect, that the procedural rules themselves and the organization of the bodies involved in the exercise of jurisdiction are standardized in the Constitution from the beginning.

In general, these procedural norms are characterized by principles or rules recognized as fundamental rights applicable to people who are subject to the exercise of jurisdiction, and are therefore, for the most part, included in the largest list of fundamental rights and guarantees of the Brazilian Constitution, its 5th article. As mentioned by Borges and Marchetti Filho (2024: p. 470), as fundamental rights that structure procedure, these rights are considered principles.

On the other hand, the constitutional norms that structure the Judiciary are part of the State's organizational norms, and are provided for in Chapter III of the Constitution, which comprises articles 92 to 126.

Based on the lessons of Canotilho (2003: pp. 1160-1161), as they have a high

degree of abstraction, require application to concrete cases and are the basis or constitute the reason for other procedural norms, these constitutional norms are almost in their totality comprised of constitutional principles applied to Brazilian jurisdiction.

Therefore, the exercise of jurisdiction in Brazil, regardless of whether common or special, as is the case applied to labor relations, must necessarily be in harmony with these constitutional principles, which not only need to be taken into consideration in the creation of infra-constitutional procedural norms, but also make compatible and systematize such norms and their significant number, in addition to filling the inevitable gaps that arise in the extraordinary moments observed during specific cases.

It is also important to note that, in addition to the principles established by the constitutional text, which are still fundamental rights, there are a series of resulting principles, some of which are also included in the Constitution, while others are provided for in infra-constitutional procedural norms and some continue to be conceived only in doctrinal and jurisprudential terms.

In this sense, Fernandes and Garcia (2016: p. 103) exemplify that, from the principle of the natural judge, principles such as inertia of jurisdiction, independence, impartiality, indefeasibility, judicial gratuitousness, investiture, adherence to the territory, non-delegability, non-declinability, independence of jurisdiction arise, while the principle of access to justice creates principles such as demand, autonomy of action, disposition, ample defense, eventuality, objective and subjective stability of the demand, *perpertuatio jurisdictionis* and recursivity, and the principle of Due Legal Process causes the recognition of principles such as official impulse, Contradictory, publicity, purpose, prejudice, search for truth, legality of evidence, evaluation of evidence, free conviction, rational persuasion, double degree of jurisdiction and fungibility of the resource.

Although there is no way (or reason to) define any hierarchical structure between such principles, it is possible to recognize that some of them are quite central when discussing jurisdiction, such as the principle of access to justice and the principle of due process. Without the objective of establishing any hierarchy criteria, the constitutional principles applied to the jurisdiction considered most impactful will be worked before the principles that, although also applicable, may be considered less central or more peripheral.

Before, however, beginning the analysis of each constitutional principle of the process, it is prudent to address, albeit in a simplified way, the definition of a legal principle.

Firstly, it is necessary to note that, despite doctrinal disagreement (da Silva, 2003: p. 271), the most well-accepted theory about the nature of principles is that they constitute true legal norms. In this sense, Norberto Bobbio (1999: p. 158) presents that general principles are fundamental or very general norms of the system, the most general norms.

From this recognition, it is possible to say that norms are a genus, of which

principles are a species. In this direction is even the doctrine defended by Robert Alexy (2008: p. 87), when he says that both are brought together under the concept of norm, since both rules and principles are norms, because both say what should be, both can be formulated through the basic deontic expressions of duty, permission and prohibition, and principles are, as much as rules, reasons for concrete judgments of ought-to-be, albeit of a very different kind, which makes the distinction between rules and principles is a distinction between two types of norms.

Thus, having established that the principles are inserted within the concept of norms, together with the rules, it is necessary to establish the difference between the two, as a way of individualizing the concept of principle.

In an effort to analyze this difference, Marco Aurélio Ghisi Machado (2019: pp. 44-48) opts for four criteria of distinction, namely, generality, content, normative structure and particularities of application, with principles having greater generality (abstraction) than rules, principles identifying values to be preserved or ends to be achieved and rules being limited to indicating regulations of conduct. If the fact foreseen in the abstract in the rule occurs, the concrete effect is produced already prescribed, while the principles only indicate ends, ideals to be achieved, with the Interpreter being responsible for defining the actions to achieve this end, and, lastly, if the facts narrated in the rule occur, the consequences must be applied, directly and automatically, producing the applicable rule's effects, while, for principles, they have a load of value, with relevant ethical and political foundations, which indicate a direction to follow, they are commandments of optimization, so they do not apply as "all or nothing", but always as far as possible and within legal possibilities.

Thus, based on these considerations, it can be understood that principles are legal norms endowed with generality and abstraction, not restricted to specific situations, identifying values to be preserved or ends to be achieved, with the interpreter being responsible for defining the actions to achieve this end, and are value-laden, with relevant ethical and political foundations, which indicate a direction to follow.

Having made these considerations and reached a general definition for principles, the recognized constitutional principles of the process will be analyzed.

3. Principle of Access to Justice

The principle of access to justice is constitutionally provided for in the 5th article, item XXXV, of the 1988 Constitution, which establishes as a fundamental right the impossibility of excluding offense or threats to rights from the Judiciary's assessment.

Although several other constitutional norms reinforce the principle of access to justice, the aforementioned article is the norm that directly establishes in Brazil the right to request judicial protection from the State, through the Judiciary.

It is important to note, considering this fact, that the constituent, much more

than recognizing the right of access to justice, was concerned with determining the impossibility of impediments to this access, establishing as a fundamental right the assessment of cases in which there is, or at least is understood to exist, offense or threat to the right. It is for this reason that the principle of access to justice is also often called the principle of indefeasibility of jurisdiction or judicial control.

Of all the constitutional principles applicable to jurisdiction, the principle of access to justice is considered one of the most important, leading to it being considered by Schiavi (2012: p. 29) as the ultimate purpose of all constitutional principles of the process, being one of the most relevant democratic instruments for guaranteeing citizen rights and protecting human dignity. However, at the same time, it is, perhaps, the most complex. This is due to the fact that this principle goes far beyond being a more direct principle, with linear application, but is, in fact, one of the most multifaceted principles and with the greatest number of considerations among constitutional principles.

The very definition of access to justice, as reported by Cappelletti and Garth (1988: pp. 12-13), is complex, which is why the authors chose to centralize their notion based on the two purposes of the jurisdictional system: to be "equally accessible to all" and to "produce results that are individual and socially fair". In the words of Salles and Cruz (2021: p. 1), the term access to justice itself is a kaleidoscopic expression, given the fact that it refers to many different ideas.

In truth, the principle of access to justice does much more than the expression itself indicates, representing, as a fundamental right, something beyond the subjective dimension of constitutional guarantees, but also imposing a legal-objective dimension, which even has ramifications that are organizational and procedural (Sarlet, 2008).

Thus, in order to identify at least the core of the principle of access to justice as a fundamental guarantee, so that an analysis can be established of how a possible change in Brazil's jurisdictional structure could impact it, it is necessary to identify this principle from different directions: its history, its aspects and its characteristics, for example.

As Salles and Cruz (2020: p. 107) report, access to justice is an institute of remote historical origin, and it is possible to identify its idea in texts such as the Code of Hammurabi and the Bible, as they already provided for models of search for justice and third party interference in your guarantee.

To start from this historical analysis of access to justice, it would be prudent, therefore, to observe the process of recognizing jurisdiction itself, which in turn is linked to the history of conflict resolution processes. In this sense, the idea of the emergence of access to justice starts from the moment when the possibility of people taking their conflicts to third parties who, with power, could put an end to such conflicts is identified.

Paroski (2008: p. 105), in this sense, observes that those first responsible for this decision-making process were the priests, endowed with divine power (or in

the power arising from popular belief in this divine representation), who made decisions based on their own convictions and understandings, or based on what was previously decided by them or other priests, but without any concern with democratic access to this decision-making process or guarantees applicable to it.

de Amorim (2017: pp. 80-81) reports that the written emergence of recognition of access to justice, as mentioned in the case of the Code of Hammurabi, is part of the written consolidation of these decisions, establishing precedents.

This formalization process made it possible for access to justice to be more widespread and reach the status of a guarantee for citizens in nations in the process of social advancement. As Salles and Cruz (2020: p. 107) record, the English Magna Carta of 1215 already provides for the impossibility of access to justice being sold, prevented or delayed.

From then on, the guarantee of access to justice was recognized by organized societies, and, according to Salles and Cruz (2020: p. 107), currently, this is a right that is recognized, explicitly or implicitly, in the Constitutions of many countries. But in addition to the recognition at national level, this guarantee also achieved the status of an internationally recognized right, being even provided for in supranational norms, such as the Universal Declaration of Human Rights and the European Convention on Human Rights, as reported by Silva (2018: p. 174).

In Brazil, access to justice was not immediately constitutionalized. It is worth noting that the Civil Code of 1916 already recognized that for every right there would be an action to guarantee it, and that the 1934 Constitution, as brief as its existence was, already included fundamental rights and their enforcement through the Judiciary (Alves, 2020: p. 31).

The true constitutional recognition of access to justice occurs in the 1946 Constitution, enshrining this principle that until then was advocated only by doctrine. In its wording, it was established that the law could not exclude harm to individual rights from the Judiciary's assessment. In the 1967 Constitution and the 1969 Amendment, the principle was maintained unchanged, until Amendment no. 7/77 reformed the article that provided the principle to recognize the possibility of limitation due to the need to exhaust administrative means to resolve the conflict (Bebber, 1997: pp. 175-176).

As stated, the principle of access to justice, or as is commonly recognized due to the current constitutional text, the principle of non-defeasibility of jurisdiction or the principle of the right of action, is based mainly on 5th article, item XXXV, of the 1988 Constitution.

Having made this brief historical digression about the recognition of the principle, it is necessary to observe how it was understood during its evolution, as a way of establishing its current perspective.

Although there were previously existing means of access to justice, these were not always adequate or guarantors of effective and real justice. As Oliveira (2018: p. 96) reports, the initial perception of access to justice as a right was simply lim-

ited to the guarantee that there would be an organ of the Judiciary in which the citizen could propose action to satisfy their rights. In other words, access to justice was concluded at the strict moment when it was established which actions could be proposed before the Judiciary.

However, there was no concern with the effectiveness of this guarantee, as, despite the theoretical possibility of filing an action, the implementation of this claim required specific conditions from interested parties.

The recognition of these limiting conditions made great progress with the contributions of Cappelletti and Garth (1988: p. 5), who observed that "the ownership of rights is meaningless in the absence of mechanisms for their effective claim". In other words, there would be no real access to justice if the mechanisms for claiming rights were not effective, and effectiveness would not come from simply making the bodies of the Judiciary available to citizens, since there would be a series of barriers that would prevent them from actually being guaranteed.

There is then recognition of the separation of formal access to justice, merely concerning the idea of there being a Judiciary available to everyone, and material or real access to justice, which reconciles this provision of the right to action with a series of enabling mechanisms that are intended to bring down or at least minimize your exercise.

This recognition obviously took place during a historical process, being especially centered on the change from the Liberal State to the Social State.

To the extent that the Liberal State embodies the so-called first generation rights, which represent fundamental rights and the impediment of the State from achieving them, in a true negative provision, access to justice would mean a mere provision to citizens who would have the freedom to use it, and then the state contribution would be finalized (Beduschi, 2015: pp. 1016-1017). However, with the Social State and second generation rights, called prestacional, in which the State must act to guarantee the rights of citizens, access to justice comes to be seen, albeit implicitly, as a concern of the public authorities in ensure that those interested in taking legal action were able to do so (Alves, 2020: pp. 21-22).

For Salles and Cruz (2020: p. 109), this change reflects the recognition of a second conception of access to justice:

> The first conception takes as Access to Justice the input of a given claim, through the exercise of the right of action, in the institutionalized judicial system. The spirit is to invoke the Jurisdiction for the settlement of the conflict, the declaration and the enforcement of the applicable law. The second conception, on the other hand, broadens the idea of Access to Justice to project it beyond the variable linked to the proposition of the action or the use of the judicial system. To this end, the whole socio-political-cultural context is assessed and the degree of legal information and citizens' level of accessibility to rights is included in the analysis, even if fruition occurs outside the judicial apparatus, whether in public bodies, in administrative pro-

ceedings, arbitration and extrajudicial mediation, or informal and private conflict resolution agencies.

This change, however, was incipient and considerably diffuse, requiring a broader theoretical approach for it to be truly widespread.

Costa (2020: p. 120) criticizes the traditional idea of access to justice, which is limited to the idea of presenting a certain claim to the Judiciary, not only because it is not concerned with the real possibility of the litigant asserting what (s)he claims before the judge, but also by understanding that this idea of access to justice is based on an authoritarian conception of the process that legitimizes the judge to decide alone. In other words, for the author, the idea of the principle should enable the parties to contribute and consider the factual limitations that could prevent this participation.

In this sense, the contribution of Cappelletti and Garth (1988: p. 15) is interesting as it goes beyond recognizing these barriers to access to justice, but the authors also identified existing mechanisms, in different countries, that allow these barriers to overcome limitations, which they agreed to call waves of access to justice (De Oliveira Neto, 2016: p. 39).

The first barrier refers to the high cost involved in using the judiciary, whether due to the necessary direct expenditure of resources on procedural costs, such as lawyer or expert fees, for example, or indirectly, with the need to dedicate oneself to the process (Alves, 2020: p. 24).

According to Cappelletti and Garth (1988: pp. 15-21), this economic barrier can be separated into three different categories: 1) costs relating to the functioning of the Judiciary Branch itself; 2) the low expressiveness of many actions, which makes the use of costly jurisdiction impractical for the State; and, 3) the time necessary to participate in the action, which is impractical in a society whose livelihood normally requires exclusive dedication to work, and the litigant's common dependence on the resources discussed.

Along with the direct economic issue, Cappelletti and Garth (1988: pp. 24-25) also reinforce two points that are combined with this limitation: the general population's lack of knowledge about their own rights and how to claim them, and the low habituality that these people have with using the Judiciary. This, as recorded by Oliveira (2018: p. 93), is the representation of "social and symbolic barriers", reflections of characteristics such as the private (and little accessible) language that is conventionally called "legalese", the exacerbated formalism in the jurisdictional dynamics and the sumptuousness of legal bodies and organizations.

In effect, people with little (or no) knowledge of law and little (or no) experience of participating in the Judiciary will inevitably have their effective access to justice unfeasible. The situation is even worse when taking into account the fact that most of the usual litigants are state bodies or large companies (Oliveira, 2018: p. 91), obviously represented by experienced lawyers.

In view of these limitations, Cappelletti and Garth (1988: p. 31) recorded con-

crete possibilities for overcoming this first obstacle, which was embodied in the first wave of access to justice: legal assistance.

As Schwab and Gottwald (1984: p. 41) noted, it has long been known that recognizing the constitutional guarantee of access to justice does not mean that the exercise of the process must be free, especially given the high cost of maintaining the judiciary. However, what should be sought is to prevent the expenditure from being exacerbated or disproportionate in relation to the party.

Thus, Cappelletti and Garth (1988: p. 32) point out that nations have developed mechanisms to overcome the economic difficulty of accessing justice, generally centered on public lawyers, whether paid by the State for acting on behalf of those in need, as in the Judicare system, whether hired by the State to act, as public servants, always as lawyers for those in need, not unlike the Brazilian model of Public Defender's Office. In general, these public lawyers work from providing guidance on litigants' rights to representing them in court.

Furthermore, it was customary to differ the value of costs with the judiciary based on how much the litigant could bear to cover the value of using the process, either by proportional reduction or suspension of the amounts, or by transferring the costs to the opposing litigant, if the author wins. This happens in Brazil not only as a normative commandment, but also as a jurisprudential precedent (Nery Jr., 2017: p. 220).

Another obstacle identified by Cappelletti and Garth (1988: p. 49) is associated with the difficulty of representing diffuse and collective interests, normally overcome by the legal legitimization of government bodies or private lawyers to claim collective rights or interests.

The latest wave of access to justice from Cappelletti and Garth (1988: p. 67) is linked to the possibility of using extrajudicial mechanisms to resolve conflicts, as a way of reducing the need for judicialization of these conflicts and reducing the need for swelling of the Judiciary, as well as its inherent costs.

In this sense, the use of alternative (sometimes called "appropriate") extra-state means of resolving conflicts should be encouraged, such as mediation, conciliation and arbitration, since, according to Zanferdini (2012: p. 251), these mechanisms are effective, preserve peace and provide justice that restores, while state jurisdiction sometimes does not reach the cause of the conflict, does not resolve it completely, perpetuating the disputes.

For this reason, Silva (2018: p. 203) understands that these alternative means do not conflict with the guarantee of access to justice and are a legitimate form of voluntary replacement of state justice, noting that access to justice should not be confused with access to the Judiciary, with these extra-state mechanisms also expressing access to justice. It is for this reason that Vigoriti (2011: p. 387) understands that the primary use of jurisdiction as a means of resolving conflicts should reduce over time.

In fact, the use of alternative means of resolving conflicts is also important as a tool for reducing the number of legal demands. In the same direction, there is a new approach to access to justice, in the view of Bonicio (2016: p. 133), since the

Judiciary may never have the capacity to effectively manage all the processes that are ongoing.

This is not limited to Brazil, since, thinking about the Italian reality, Vigoriti (2011: p. 395) points out that being against alternative conflict resolution methods does not make sense, considering that there are not enough resources that can be allocated to jurisdictional bodies, making state justice out of step with today's demands.

Another important note when talking about access to justice is the fact that the existence of procedural rules for judging the action does not represent an attack on the guarantee of access, as these conditions are necessary for the judge to resolve the dispute. Therefore, if the legal requirements regarding procedural conditions are not met, it is understood that there will be no way for the judge to present an adequate response to the author's claim (Nery Jr., 2017: p. 218).

Therefore, in an attempt to observe the main characteristics of the principle of access to justice, Klaus Jr., Piffer and Hülse (2023: p. 6) present five essential points about the guarantee:

> 1) The principle of access to justice suggests that all individuals should have equal access to the legal system, regardless of their economic and social circumstances. 2) This principle includes the right to legal representation, court proceedings, and administrative proceedings. 3) This principle ensures that all individuals have the same level of access to the legal system and are able to exercise their legal rights. 4) The principle of access to justice is a fundamental human right, as it is essential for the protection of other human rights. 5) The principle of access to justice is an important part of a fair and just society, as it ensures that all individuals are treated equally and have their rights protected.

In the same sense, Silva (2018: pp. 198-199) lists the rights that the principle of access to justice encompasses as the right to information and knowledge about substantial law and the organization of permanent research carried out by specialists and aimed at uncovering the adequacy of the legal order to reality. economic situation of the country; the right to an organized Justice made up of prepared judges, in tune with social reality and committed to achieving a fair legal order; the right to preordination of suitable and appropriate procedural instruments to promote the effective protection of rights; and the right to the removal of all obstacles that may hinder effective access to justice.

Thus, it is noted that the principle of access to justice not only brings a series of guarantees of its own, but also reinforces other constitutional principles of process, not unlike the principle of due process, from which it should not be dissociated.

4. Due Process Principle

Like the principle of access to justice, the principle of due process is a superprin-

ciple, insofar as it is in a prominent position among the constitutional principles of the process. This is because the principle of due legal process establishes much more than a specific duty, but reinforces and systematizes, in a comprehensive way, the other constitutional principles applicable to the process and those that were established in the Civil Procedure Code of 2015 as Fundamental Norms, explained in its primary 12 articles.

Thus, it will not be "due", nor much less "legal", the process that goes against the Constitution, that excludes from judicial assessment injury or threat to rights and that shows aversion to the consensual solution of conflicts, that undermines the right of the parties to obtain the solution on the merits within a reasonable time, which is developed contrary to objective good faith and which does not rely on the minimum and adequate cooperation of the subjects to reach a fair and effective decision within a reasonable time, which does not provide the parties with equal treatment, in which the judge fails to meet social purposes and the demands of the common good, with protection for the dignity of the human person and in compliance with proportionality, reasonableness, legality, publicity and efficiency, in which the parties are deprived of right to a hearing and the right not to be surprised by a judicial decision on the basis of which they did not have the opportunity to express themselves, that does not have adequately reasoned decisions and that has been in unjustified disobedience to the chronological order of judgments, subject to legal exceptions (Silva, 2018: pp. 134-135).

As Costa (2020: pp. 100-101) reports, the principle of due legal process was only included in Brazil in the 1988 Constitution, which formally inaugurated it by inserting it in article 5, item LIV, even though it was already included in the Brazilian legal system implicitly due to international pacts to which Brazil was already a signatory at the time before the current Constitution.

Identifying a meaning of the principle of due legal process is, in itself, a subject of debate. As Lucon (2008: p. 272) notes, the concept of due legal process is complicated due to the difficulty of establishing its extension and application, as it is a vague and significantly indeterminate expression, which is why the United States tradition, a large precursor of the principle known as due process, is in the sense that one cannot define or "imprison" the guarantee in a closed concept, but establish a process of exercising judgment by judges, who define its use (Silva, 2018: p. 136).

Timm (2008: pp. 752-754) provides an important historical overview of due process in the Anglo-Saxon tradition, recording the entry of the principle as part of the American Bill of Rights of 1791, as part of the fifth amendment, based on the idea of expression Law of the Land from the English Magna Carta of 1215. The author even notes that the expression due process of law itself was already used in the Statute of Westminster of the Liberties of London, of 1354. It is worth noting Silva's (2018: p. 139) note in the sense that the idea of due process could already be found in the Germanic law of Conrad II, Decree of 1037.

This historical analysis is important due to the change in meaning that the

principle has undergone. For Lucon (2008: p. 273), in his initial perception, due legal process has a procedural or formal effect (procedural due process of law), which translates into the idea that there must be, in a previously established or recognized way, a system of procedural rules to be applied to the action, which must be followed so that there is adequate jurisdictional provision (Silva, 2018: p. 144).

Thus, there would be procedural due process when the magistrate processed and judged the action faithfully following the procedural rules already established, mainly in the applicable infra-constitutional procedural rules.

For Nelson Nery Jr. (2017: pp. 117-118), this aspect of due process of law is the most common meaning of the principle in Brazilian law, from which a series of other procedural rules arise, such as the right to summons and knowledge of the content of the accusation; the right to a speedy and public trial; the right to call witnesses and notify them to appear before the courts; the right to contradictory procedure; the right not to be prosecuted, tried or convicted for alleged infringement of ex post facto laws; the right to full equality between prosecution and defense; the right against illegal search and seizure measures; the right not to be accused or convicted on the basis of illegally obtained evidence; the right to legal assistance, including free legal assistance; and the privilege against self-incrimination.

Nowadays, however, the idea of due legal process has been expanded to include a material or substantial meaning of the principle, which reflects the notion that the judge, at the moment he must apply the procedural law, has the autonomy to evaluate the norm with the aim of verifying its reasonableness, justice and proportionality, in defense of what Lucon (2008: p. 275) establishes as the great columns or landmarks of the democratic regime.

Thus, Schiavi (2012: pp. 24-25) defines the principle, in its substantial or material meaning, as being one that, observing the constitutional commandments, is capable of materializing, in a fair, reasonable and rapid manner, the rights postulated in judgment, using the principle of proportionality, avoiding arbitrary actions by public authorities.

What is essential to understand about the Principle of Due Process is that its importance is much more linked to the fact that it is an inspiration for procedural law than a guarantee with direct practical effects.

In other words, the principle has its relevance based on the fact that it derives from other principles and guarantees, some constitutional but many infra-constitutional, which seek to provide litigants with the certainty that the exercise of jurisdiction will be fair. And, in addition, it translates into autonomy for the judge so that, when applying procedural rules, they rule out those that undermine this fairness.

It is for this reason that Bonicio (2016: pp. 69-70) records that few decisions of the Federal Supreme Court use the principle of due legal process directly, while the 2015 Civil Procedure Code, on the other hand, has strong inspiration in the

beginning to define its own fundamental norms, even though it does not mention it even once, its perception being the result of the projection made of its effects.

As Silva (2018: p. 141) points out, due legal process is comprehensive, insofar as all other constitutional procedural consequences would follow from its provision, understanding the other principles, rules, rights and guarantees applicable to the process provided for in the Constitution. But beyond that, the principle also has an organizational function, since it groups all these guarantees, and an integrative one, since it can eventually fill any gaps that may exist between the other procedural principles already provided for.

Furthermore, based on the idea of substantial due process, it would have the function of a guide, as a source to rule out any unfair, unreasonable or disproportionate procedural rules.

Lastly, enhancing the principle of due legal process in the Brazilian Constitution requires a multifaceted approach that addresses structural, procedural, and cultural aspects of the legal system. By implementing strategies such as improving access to legal aid, enhancing judicial efficiency, ensuring procedural fairness, enhancing legal education and awareness, addressing corruption, promoting fair trial guarantees, enhancing accountability and oversight, and legislative reforms, Brazil can ensure that its judicial system is fair, efficient, and accessible to all citizens, upholding the fundamental principles of justice and human rights.

5. Conclusion

This paper explored the two main principles of juridical process established in the Brazilian Constitution, the access to justice principle and the due process principle. These principles are sometimes called superprinciples because they not only foresee a norm in themselves, but they also establish the foundation of most other procedural principles, many times also integrating them.

Firstly, the characteristic of principles as norms was highlighted. This makes it possible to say that both the principles of access to justice and due process not only provide in themselves a set of rules to be followed both by litigants and judges, but also, as mentioned, set the inspiration for other principles, connecting them.

Then, an analysis of access to justice in the Brazilian legal system was performed, both through a historical and a placement point of view. It was possible to observe that access to justice, in Brazil, represents much more than the simple access of the Judiciary Branch, but it also establishes an order to the State to make this access real, limiting the impacts that obstacles such as low funds or inexperience might cause to litigants.

Finally, the due process principle was studied, making it possible to see that it currently means the traditional idea that legal proceedings must follow a preestablished set of procedural rules, but it also has a newer notion to it, that requires judges to actively reflect on how to better these rules so they are the

most effective possible in court.

Access to justice and due process are fundamental components of a fair and effective judicial system. In Brazil, various factors influence these aspects of judicial practice, and by addressing these factors, Brazil can enhance access to justice and ensure due process for all its citizens, promoting a more equitable and effective legal system.

Some suggestions that could be made are expanding legal aid programs to provide free or low-cost legal representation to underserved populations; investing in the training and professional development of judges and court staff to improve efficiency, fairness, and integrity in the judicial system; implementing widespread legal literacy programs to educate the public about their rights and how to access legal services; leveraging technology to streamline judicial processes and make legal services more accessible, while addressing the digital divide; strengthening anti-corruption measures within the judiciary and broader legal system to ensure impartiality and fairness; reviewing and simplifying legal procedures to reduce complexity and make the judicial system more user-friendly; and increasing investment in judicial infrastructure and services in rural and remote areas to ensure equitable access across regions.

This study is introductory in the sense that it starts a dialogue about the principiological procedure system in Brazilian Constitution, firstly pointing out the most important principles. Further research on the other principles, especially the ones that arise from access to justice and due process, is not only encouraged but also should be performed.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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