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SEARCHING FOR PROCEDURAL SUSTAINABILITY: CONSIDERATIONS FROM THE PERSPECTIVE OF BRAZILIAN PROCEDURAL LAW

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ABSTRACT

This article aims to identify the scientific possibility of developing what is intended to be called procedural sustainability, putting the proposal to the test based on the current Brazilian Procedural Law. This model proposes for legal actions in Brazil to be conducted from a necessary ideal of sustainability. To this end, a study of the specialized literature on sustainability was initially conducted, in order to understand it scientifically. Then, we propose what would be the procedural sustainability, in comparison with other sustainability models. Finally, the verification of Brazilian procedural branches was carried out based on the proposed operational concept. As a result, the possibility of developing a concept of procedural sustainability

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with two aspects, result and structure, was observed, and it was possible to verify that some procedural branches better meet this sustainability duty than others. It is a qualitative, exploratory, and bibliographic research, using the inductive method.

Keywords: Brazilian Procedural Law; procedural sustainability; sustainability.

BUSCANDO A SUSTENTABILIDADE PROCESSUAL: CONSIDERAÇÕES A PARTIR DA PERSPECTIVA DO DIREITO PROCESSUAL BRASILEIRO

RESUMO

O presente artigo destina-se a identificar a possibilidade científica de se desenvolver o que se pretende chamar de sustentabilidade processual, colocando a proposta à prova a partir do direito processual brasileiro atual. A partir da concepção desse modelo, propõe-se que as ações judiciais no Brasil também devam ser conduzidas a partir do necessário ideal da sustentabilidade. Para tanto, inicialmente foi feito um estudo da literatura especializada sobre a sustentabilidade, para compreendê-la cientificamente. Em seguida, foi proposto o que seria a sustentabilidade processual, em comparação com outros modelos de sustentabilidade. Por fim, foi realizada a verificação de ramos processuais brasileiros a partir do conceito operacional proposto. Como resultado, foi observada a possibilidade de desenvolver um conceito de sustentabilidade processual com dois aspectos, de resultado e de estrutura, e foi possível verificar que alguns ramos processuais atendem melhor a esse dever de sustentabilidade do que outros. Trata-se de uma pesquisa qualitativa, exploratória e bibliográfica, de método indutivo.

Palavras-Chave: *Direito Processual Brasileiro; sustentabilidade; sustentabilidade processual.*

INTRODUCTION

Currently, significant importance has been given to sustainability and sustainable development, even from constitutional principles. However, the initial perspective of sustainability as a way to protect the environment no longer persists; its main objective has been expanded beyond that of protecting the environment, aiming, instead, toward the maintenance of life on Earth.

With this paradigm shift, the perspective of sustainability, in its various dimensions, was placed over several other aspects of human relations, such as corporations.

The aim of this article is to develop a perspective of sustainability within procedural law, which is proposed as procedural sustainability, with the interest of verifying its scientific possibility and possible incidence within Brazilian law.

For this purpose, we will conduct a detailed reading of the specialized doctrine on sustainability, its history, its definition, and its dimensions. Subsequently, we will develop an operational concept of sustainability, considering the arising issues and the existing sustainability models. Finally, we will conduct an analysis of Brazilian procedural law, based on the proposed operational concept.

The research developed is theoretical-qualitative and the article is based on the use of the inductive method, based on a bibliographic and normative review; and the Cartesian method was used for data treatment.

1 INITIAL CONSIDERATIONS ON SUSTAINABILITY

Any discussion about sustainability necessarily depends on previous discussions about its existence and its definition as a destination desired by science. Undeniably, sustainability is intrinsically linked to the environment and its protection, despite the historical separation between the two institutes.

Another important connection on sustainability is with sustainable development, since, according to Bodnar (2011), until it reached the current recognition as a fundamental guarantee according to Article 5 § 2 of the Brazilian Federal Constitution, development had ecological issues as a secondary legal interest to be fostered, especially in less developed countries. The UN even recognized development as a human right in 1986.

It was in this context, and soon after the recognition of the need for development, that the idea of sustainable development arose, the basic concept of which reflects the fulfillment of current needs without compromising the fulfillment of future needs.

Obviously, environmental degradation is one of the greatest risks, capable of compromising future generations, but this should not be the only perspective through which sustainable development is visualized.

Bodnar's understanding (2011, p. 329) on the history of sustainable development is that there is "a need for economic advances for underdeveloped countries, including with the use of new technologies in developed countries, but without exceeding the limits necessary to maintain ecological balance" (our translation).

Antunes and Oliveira (2020, p. 617) point out that, in this context of idealizing sustainable development, there is, in the Ottawa Charter, the establishment of five perspectives to be remembered: "integration of conservation and development; meeting basic human needs; promoting equity and social justice; providing social self-determination and cultural diversity; and maintaining ecological integration" (our translation).

In other words, while the ecological proposal is one of the pillars of sustainable development and sustainability, several other perspectives need to be considered in order to truly consolidate it.

Considering this finding, Bodnar (2011, p. 329) reports that, in 2002, the integral concept of sustainability was created at the Rio+10 event in Johannesburg, establishing, "beyond the global dimension, the ecological, social, and economic perspectives as qualifiers of any development project, as well as the certainty that without social justice it is not possible to achieve a healthy and balanced environment in its broad perspective" (our translation).

Sustainability, therefore, would be of international concern regarding the sustainable development of nations, going beyond the environment, but "an effort that involves several nuances of a development ideal" (GOMES; FERREIRA, 2017, p. 94).

Antunes and Oliveira (2020, p. 617) report that this perception is part of the Triple Bottom Line concept, developed by economist John Elkington, "according to which the sustainability of development depends on simultaneous fulfillment of the imperatives of economic prosperity, environmental conservation and social justice" (our translation).

Thus, in Bodnar's view (2011), from 2002 on, the correct term

is sustainability, replacing the idea of sustainable development, thus consolidating the idea that the elements of sustainability cannot have hierarchy and should be complementary and dependent, with synergy.

Sustainability, as Souza (2012) explains, emerges in a context of a complex and transnational legal order, based on contextualized development, which aligns the protection of the environment, economy, and social development.

From the perspective of law, Souza (2012, p. 246) also recognizes that sustainability "can be consolidated as a new instigative paradigm within law in the postmodernity, since it currently functions as a kind of meta principle, with a propensity of applicability on a global scale" (our translation). Additionally, sustainability arises in the transition of legal culture, since, with transnationalization, "it is not enough to develop sophisticated legal theories in relation to sectoral themes and institutes that protect the complex phenomenon of human coexistence", and there is "the need for emergence and consolidation of a new law paradigm, which must be more useful and efficient in meeting the demands of humanity in the current context" (SOUZA, 2012, p. 242; our translation).

Due to this multifaceted complexity, Bodnar (2011, p. 330) describes the concept of sustainability as perpetually incomplete, always subject to the specificities of real situations and contexts, due to the variables that modify its concreteness, similar to the concept of justice. The author concludes its conceptualization by saying that it is a "open, permeable, ideological, subjective, and relational concept. What is considered sustainable in a period of profound economic crisis may not be in a period of abundance" (BODNAR, 2011, p. 330-331; our translation), and it is more common and simpler to indicate what is unsustainable rather than what is sustainable.

Moreover, sustainability necessarily communicates between environmental protection and other areas, and cannot be "a subject restricted to the circle of environmentalists or professionals specialized in environmental studies" (SOUZA, 2016, p. 248; our translation).

That is why Antunes and Oliveira (2020) remember that environmental protection cannot be sought without being realistically and economically viable, under penalty of sacrificing the poorest population. In this path, according to Bodnar (2011, p. 338), "fair and equitable distribution cannot only mean the transfer of negative risks and externalities generated by unsustainable development", considering that, for people of this generation, there must be a commitment to "manage risks with intelligence and

responsibility, to efficiently mitigate negative externalities generated by human interference, and especially to transfer as much ecological capital as possible to the entire community of future life" (our translation).

Thus, the great objective of sustainability is that future projects seek to improve the social conditions of fragile populations, mostly because social, economic, and environmental issues are closely linked, and their joint protection is more appropriate (BODNAR, 2011). In other words, social, economic, and environmental well-being are assumptions related to sustainability.

Thus, Freitas (2016, p. 61) explains that "sustainability is multidimensional, because well-being is multidimensional" (our translation), and it is because of this recognized multidimensionality that the specialized doctrine today works with the definition of sustainability dimensions.

These dimensions need to be developed together, without prevalence or forgetfulness of one in detriment of the other since, in the example raised by Gomes and Oliveira (2017), the environment cannot be properly preserved at the expense of social balance, nor can poverty be eradicated concretely with environmental destruction. Freitas (2016, p. 77) reports that the dimensions of sustainability "intertwine and are mutually constitutive, in a dialectic of sustainability, which cannot, under penalty of irreparable damage, be broken" (our translation).

Souza (2016) explains that the historical tradition of sustainability science recognizes three dimensions, namely, environmental, social, and economic, but, in addition to these, the author, similar to Bodnar (2011), recognizes the existence of technology. Antunes and Oliveira (2020) speak of two more dimensions: ethics and legal-political.

Undeniably, there are many dimensions that can be acknowledged within sustainability. Sachs (2002), for example, recognises eight dimensions. However, for the purposes of a necessary synthesis, we will only address those already mentioned.

The environmental dimension, in Souza's words (2016, p. 253), "comprises the guarantee of protection over the planetary system, in order to maintain the conditions that enable life on Earth" (our translation). According to Gomes and Ferreira (2017, p. 95), for this dimension, it "is non-negotiable the premise that the environment. balanced according to a healthy quality of life, for present and future generations, must be properly preserved and protected, at the risk of nature no longer supporting life on Earth" (our translation).

The social dimension, for Bodnar (2011) and Souza (2012), is one of the most important dimensions, because it is fragile and more directly linked to the environment. For Gomes and Ferreira (2017), it emphasizes the concern with humans and their well-being since the concepts of quality of human life and environmental quality are inseparable.

According to Souza (2016, p. 254), this dimension ranges from culture to the exercise of human rights, seeking "a more homogeneous and better governed society" (our translation). The economic dimension is based on the need to observe that development will only be sustainable if there is due attention to the financial aspects of the analyzed and proposed changes, because the economic issue is the basis of relations and human existence, and the reason for social and environmental progression. The author defines this dimension as the concern with balancing the generation of wealth, sustainability, and the equitable social situation.

Thus, the "economic factor can never be treated with indifference nor be disregarded, because it is from a healthy and responsible economy" (GOMES; FERREIRA, 2017, p. 95; our translation). In the same sense, Souza (2012, p. 245) clarifies at another time that "the basis of production necessarily depends on the natural system, that is, what is generated by nature and, especially, by energy" (our translation), while the reverse is also true.

The technological dimension is the driving force behind the other ones, since, for Souza (2016, p. 255), it allows "the creation, construction, and reinvention of the mechanism of effectiveness of the other traditional dimensions of sustainability", considering that "the society of the future will be what, through social engineering, is able to build and what science and technology allow or require" (our translation). That is why Bodnar (2011) defends its indispensability and should not be excluded from the environmental-social-economic triad.

The ethical dimension, for Gomes and Ferreira (2017, p. 95), is related to the duty of the present generation to maintain the sustainability of the existence of future generations, through an "environmental and social heritage that will be passed on to future generations, in a plexus of solidarity and fraternity of acceptance of the human being as a person and of the environment as nature, responsible for managing the lives of all living beings" (our translation).

Finally, the legal-political dimension is related to fundamental rights, which must be guaranteed not only to people today, but also to future

generations. In this sense, Freitas (2016, p. 72) understands this dimension as the guarantee over the right to a future, protecting the freedom of each citizen in a way that is "intersubjective to the intertemporal aspect of the fundamental rights and responsibilities of present and future generations, whenever directly feasible" (our translation).

Thus, this dimension relates to the Democratic State of Law to guarantee basic rights, which Freitas (2016, p. 74-75) assesses several related to dignified longevity, such as food, decent environment, education, impartial information, security, housing and income, which will result in "social promotion, respect for human dignity and human rights, a better and more adequate distribution of income, and the concepts of ethical origin, which are inseparable aspects of the concept of sustainability" (GOMES; FERREIRA, 2017, p. 96; our translation).

The study of the dimensions of sustainability requires the caution advised by Souza (2016), in the sense that there should be no hierarchy between them, but a process of horizontality, so that none of them is negatively affected by the other.

The perception of sustainability, especially from its dimensions, is essential, above all in the context of a risk society, in which we are currently inserted. The term risk society, coined by Beck (2011), reflects the doubt of how development can be maintained according to acceptable parameters, despite the threats and risks inherent to the late modernization process.

Bodnar (2009) understands that the result of this risk society, created by the production and consumption model based on unbridled profit and development, causes a greater need for environmental justice, and therefore, for sustainability, since the risks and harmful effects of unsustainability occur inequitably. In the same sense, Souza points out (2012, p. 244-245):

> social and environmental problems are known to be necessarily interconnected and it will only be possible to adequately protect the environment with the improvement of the general conditions of the populations. The fact that the environmental problems and the subsequent risks have grown at great strides and their slow resolution has become public knowledge because of its impact increases the importance of environmental education in its various dimensions. The challenge, then, is to create the conditions to, if not reduce, at least mitigate the worrying scenario of population risk.

The result is that the current context requires constant analysis and concern with sustainability, in all its dimensions, and in various aspects of society.

2 SEEKING AN OPERATIONAL CONCEPT FOR PROCEDURAL SUSTAINABILITY

Once the current perception of sustainability is identified from fragments of the specialized literature, the application of this theory is proposed to another sphere of the relationship between people: jurisdiction, especially the procedures to which conflicts are submitted in order to achieve the solution of the law, usually considered "procedural law".

To develop the proposed dialogue, some initial considerations must be made, especially regarding institute which is being proposed.

At first, it is important to note that this proposal does not deal specifically with two well-studied institutes, despite being always important for legal science: the sustainability of the judiciary and the judicial protection of the environment.

Undeniably, dealing with both points is still essential, and any dialogue that is interested in associating sustainability and jurisdiction ought to consider the two aspects presented. The relevance and timeliness of these themes have not been lost, mostly because they reflect problems that are still current, to the extent that there is still room for improvement in the sustainability of the judiciary system, and because full effectiveness is not guaranteed for judicial decisions dealing with the environment.

As Barbosa (2008, p. 115-116) reports, the acknowledgment that the judiciary has not been managed in a sustainable way is not recent, nor is it exclusive to Brazil; and we can identify several reasons why this problem exists. The novelty is that, nowadays, proposals have begun to modify this reality to make the judiciary "more agile, transparent, democratic, fair, 'modern'", even if it is already delayed by the current context of postmodernity, but it is nonetheless welcomed.

As Guaragni, Barros, and Knoerr (2019) warn, the Judiciary needs, as part of the State, to direct its own culture and activities to a sustainable structure, in order to influence all its members in daily practices, due to the daily number of waste produced by the judiciary.

These efforts, today, have been observed more and more frequently, given the more widespread awareness about the importance of ensuring sustainability, especially in the management of public resources in federal agencies.

For example, it is possible to mention the Guide to Sustainable Contracts of the Labor Court (*Guia de Contratações Sustentáveis da Justiça do*

Trabalho) in Brazil, launched in 2014 by the Superior Council for Labor Justice – CNJT, with the objective of establishing guidelines related to the acquisition of goods, contracting services of engineering and waste treatment, in compliance with Resolution No. 103, form May 25, 2012, annexed to the Guide, which establishes the "inclusion of sustainability criteria in the procurement of goods and services within the scope of Labor Justice" (our translation).

Historically, one of the main steps in this direction was the computerization of the process. Anjos (2013) reports that this process was outlined a few years before it came into force, and that the main legislative change in this direction was through Law No. 11,419/2016, which boosted the electronic process in Brazil, "with the main purpose of effecting procedural speed, however, one must always respect the principles of the Brazilian legal system in addition to making sure that the healthy work of law operators is for the environment, due to the implications that such changes can generate" (ANJOS, 2013, p. 263; our translation).

On environmental protection itself, the problem lies mainly in the difficulty in dealing effectively and judicially with environmental issue, especially given the difficulty of holding people accountable and repairing the damages. Notably, Bodnar (2009, p. 107) warned that access to environmental justice "means a resizing in the content and scope of this fundamental postulate, precisely in function of the commitment it must make to the effective protection of the environment" (our translation).

Marin and Lunelli (2010, p. 317) report as main characteristics of the judicial protection of the environment:

> The appropriate process to environmental protection is that which recognizes, beforehand, the peculiarities of the asset that is intended to protect. […] The process for environmental defense must be a socio-collective character, based on the importance to be attributed, above all, to the protection of the asset in question. The primary objective is to quickly obtain the desired environmental asset. Procedural aspects cannot therefore overlap with the protected material asset.

Moreover, Souza (2012) warns that adequate environmental protection will only occur with the improvement of the general conditions of society, since environmental and social problems are necessarily interconnected, and that environmental risks make environmental education necessary in its various dimensions.

In reality, both the issue of a sustainable functioning of the judiciary and a judicial protection of environmental problems matter in the need for

the jurisdiction as a whole to take an active, non-passive, position as an instrument to deal with environmental degradation problems that are happening ever faster and more intense, as reported by Moreira (2012).

These are necessary and important dialogues, which belong exclusively to environmental law as a specific branch of the Brazilian legal system, albeit with international inspirations.

The great point is that, both in research regarding environmental protection and in those dealing with the sustainability of the judiciary, the challenges that are observed can also be looked at from a procedural perspective.

This means that – and this is the central point of this research –the concern should not only be with the sustainable functioning of the judiciary nor with the judicialization of environmental issues, but it is necessary to look at procedural law with equal concern for its sustainability.

Notably, it is not in our interest to establish a new dimension of sustainability, but rather to give a vision of sustainability to procedural law, similarly to how corporate sustainability is projected.

According to Souza (2016), corporate sustainability is a business model in which entrepreneurs and managers use concrete business strategies and actions for sustainable management, not only in the economic and financial dimension but also in the other dimensions of sustainability, such as environmental and social, that is, corporate sustainability is necessarily concerned with the future of the corporation itself, of other corporations, and of society as a whole.

The proposal here follows the same direction; the rules of procedure reflected by procedural law should be carried in a sustainable way, that is, respecting the various dimensions of sustainability, such as environmental, social, economic, technological, ethics, and legal-political.

The idea is that only with this concern will it be possible to ensure that the exercise of jurisdiction does not have a harmful effect on society and that it will be possible, in the future, to maintain the functionality of the judicial exercise, in spite of the various environmental, economic, social, technological, ethical or legal-political changes, which should occur and have been occurring. This what we propose as "procedural sustainability".

Procedural sustainability would thus be similar to corporate sustainability, the concern that procedural law must be idealized in a sustainable way, in other words, ensuring that future generations are not made impaired by negative impacts of judicial action, nor have their possibility to

obtain an effective and comprehensive judicial protection limited, reduced, or even completely denied.

Thus, we can immediately identify the incidence of two aspects of procedural sustainability: one of result and one of structure.

The first, much more sympathetic toward magistrates, lawyers, and parties, is related to handling and decision-making in specific cases, which must take into account all dimensions of sustainability. That is, procedural acts must be carried out and decisions must be made considering their social, environmental, economic impacts.

This is, in general, an existing concern, mainly in research carried out to establish the social function of the sentence, for example. It should be warned, however, that sustainability ought to be taken under consideration, but never with the bias of modifying reality or true justice, given that there is no jurisdiction if the result is unfair. That is, procedural sustainability can never be invoked to judge an action differently than actually proven, in fact and in law, in the records, nor can it be used as a basis for practicing a procedural act contrary to or prohibited by law, in the name of environmental, social, or economic protection. It would not be sustainable from an ethical point of view nor from a legal-political point of view.

What the proposed procedural sustainability requires is that, if there are procedural options or solution for the case, one should choose the one that best respects the dimensions of sustainability. As stated, this concern exists, even by the recognition, for example, of game theory in procedural law.

Bodnar (2009, p. 106) observes this aspect by recognizing that "in the judicial decision-making sphere one must be aware that it is the options of the present that will define the quality of all forms of life in the future. The decision needs to establish consistent links with the future in the constant and persistent construction of sustainability" (our translation).

Given the recognition that the resulting aspect already carries, the main concern will therefore be the structural aspect of procedural sustainability.

The concern at this point is not with the outcome of the judicial activity, but with the possibility that the judicial models, projects, plans, and actions are both effective and sustainable.

Procedural sustainability, in its structural aspect, would be the establishment of procedural rules and acts that are sustainable, while also giving an effective response to the issues presented, which has always been the main concern of the jurisdiction. This sustainability would be analyzed in

its various dimensions.

In the understandings of Antunes and Oliveira (2020), the use of a process that is concerned with sustainability, which the authors refer to as coherent and stable interpretation guidelines, will result in greater social and institutional security, in addition to incentives for investment in production.

Moreira (2012, p. 285) points out that "the science of law, for many years, proved to be stiffened from the procedural point of view", which is observable by the long lasting tendency of using prints and papers in court records, without any concern with the reuse or recycling of the raw material used, which was commonly unfeasible due to the need to make forensic files.

In this sense, it is observed that, at least in the past, the way of conducting procedural law was not sustainable in the environmental dimension. Thus, Moreira (2012, p. 285) reports that "the way of entering the judiciary through the so-called traditional way, causes many other obstacles to the emergence of a fully effective Judiciary, that is, one that meets concern for the environment, with its procedural aspects" (our translation).

From the point of view of the social dimension, jurisdiction has always been permeated with weaknesses, observed by the difficulties imposed on citizens inherent to its functioning, such as the physical structural organization of the Judiciary, the rules of access, and use and the technical-legal language.

The great structure of the judiciary; the considerable number of judges, civil servants, and collaborators; and the complexity of the entanglement of procedural acts, much of which is costly to the interested parties and to the State, represent the difficulties of sustainability in the economic dimension.

Sustainability in the technological dimension was mainly hampered by the historical stiffness of the jurisdiction, whose traditional format imposes the practice of acts often outdated or of inaccessible models, without the prediction of alternative means.

The legal-political dimension is perhaps the most concretely present in the duty of procedural sustainability. According to Antunes and Oliveira (2020, p. 619), legal-political coherence means that "the legal system, in its static and dynamic perspectives, must form a rational and harmonious whole" (our translation), and this rationality and harmony depends on a concrete, coherent, effective, and stable procedural construction.

These perceptions allow us to conclude that the need for procedural sustainability perspectives historically exists and has been perceived, even if such perspectives have not been properly named or condensed. Bodnar (2009, p. 106; our translation) represents this reality well:

> In the construction of the ideal decision for the specific case, the hermeneutic challenge of jurisdiction is no longer a simple exercise of subsuming the fact to the norm, but rather an intense activity of building and pondering, participating and conversing, which considers the indispensable transdisciplinary contributions and that cautiously projects the effects and consequences of the decision for the future. In this context of risks and challenges, it is observed the need to consolidate new models of management, governance, and regulation for the construction of sustainability, with more social inclusion, environmental prudence, and respect for fundamental rights, including those of the future generations. A desire which also depends on a qualified and effective jurisdiction.

The effect of recognizing the characterization of procedural sustainability is that it is possible that procedural changes and innovations should, for the sake of sustainability, recognize the need to respect the duties demonstrated.

As stated above, the procedural sustainability of results should be the objective of the parties, lawyers, magistrates, and members of the Public Prosecutor's Office. On the other hand, the procedural sustainability of structure should be the North for those who establish rules of procedure. Most of the time this means the Legislative Power, however, we should not forget the other sources of procedural law, such as the internal regulations of the Courts, doctrine, and customs.

The recognition of this sustainability bias will also allow for dialogues to be developed allowing the verification of sustainable viability of the procedural rules already in force, as will be intended to do next with the analysis of Brazilian Procedural Law, especially from the comparison with the Civil Procedure Code of 2015 (*Código de Processo Civil de 2015* – CPC/15).

3 A PROCEDURAL (UN)SUSTAINABILITY OF PROCEDURAL LAW IN BRAZIL

Once understood the operational concept, defined by Pasold (2018) as "the one that results from the elaboration of the Researcher, either by the use of ideas of other authors (always referenced, of course) combined

with those of the Researcher themselves or by their original creation" (our translation), proposed that procedural sustainability comprises the duty of submitting actions to the Judiciary to be processed under a sustainability bias, and that this processing should be considered both in actual cases, by the actors of the action (to what was proposed the name of procedural sustainability of results) and in the production of procedural norms (named procedural sustainability of structure), it becomes possible to carry out the dialogue proposed in this article.

As stated, the concern with the proper functioning of procedural law in the conduct of actions – in their environmental, social, economic, technological, ethical, and legal-political aspects – has already been, comparatively, its sustainable structural maintenance, much more visible today.

The Civil Procedure Code of 2015, as an organizational model of civil procedural law, already reflects (even as a structure of principle) the concrete duty of sustainable participation in the action, when it determines the cooperation between the actors of the process in its Article 6, the duty of good faith of its Article 5, and the obligation of the magistrate to conduct the process in its Article 8.

That is, in the civil procedural area, the practice of procedural sustainability of results is already based on the legislation itself that meets the purpose of procedural sustainability of structure, not only because it is organized by the principle of CPC/15, but also by several provisions of the new procedural law that reinforce the need for sustainable conduct of the process.

Technically, this process of acknowledging the importance of developing procedural rules compatible with the notion that the result and structure should provide improvements and not setbacks, in several aspects predate the CPC/15, already being observed with the paradigm shift brought by the Federal Constitution of 1988.

The Constitution, as Antunes and Oliveira (2020) reports, establishes the guideline of sustainable development, a fundamental guarantee provided for in Article 5 §2, combining economic viability, environmental responsibility, social justice, legal-political coherence, and ethical adequacy for enterprises and public policies.

The obligation/mission also appears to be able to be transported into procedural law. The duty of procedural effectiveness, inscribed in Article 5 XXXV, of the Constitution, which establishes the fundamental guarantee of access to justice and non-obviating jurisdiction, already reveals the

constitutional interest that the procedural model adopted in Brazil is sustainable.

Gomes and Ferreira (2017, p. 94) recognized this connection and reported that the guarantee of effectiveness of the process is related "directly to the pillars of sustainability, while the full development of sustainability depends on a joint effort for the application and development of fundamental rights, in order to enable the well-being of present and future generations" (our translation).

At the same time, as Bodnar points out (2009, p. 111), the very guarantee of access to justice and effectiveness of the process depends on sustainability, since it "depends on the joint implementation of the foundational and optimizing principles of jurisdiction, among which deserve to be highlighted: solidarity, sustainability, dignity of the human person, social justice, citizenship, cooperation, democratic participation, intergenerational justice" (our translation).

It can also be considered that the constitutional interest in procedural sustainability was reinforced from the Constitutional Amendment No. 45/2004, which was added to Article 5 with the Item LXXVIII, which establishes the fundamental guarantee of reasonable duration of the process, recently reinforced by Article 4 of the CPC/15.

According to Gomes and Ferreira (2017, p. 102), the slowness of the Judiciary is directly confronted by this principle, and for sustainability to exist, "the jurisdiction needs a legal response to its conflict, in a timely manner to produce its effects, so that the asset of life in dispute is still available and has not deteriorated due to time" (our translation), otherwise judicial protection would not be adequate or effective, and there is therefore no sustainability.

According to Gomes and Ferreira (2017, p. 106), the reasonable duration of the process should be read as the legal-political dimension of sustainability since "without the reasonable duration of the procedure there is no effectiveness of the legal-political dimension and, without this dimension, there is no sustainability, therefore, discussion is necessary" (our translation).

Freitas (2016, p. 75), in this same perspective, places the reasonable duration of the process as an element of sustainability, as "timely outcome and the best cooperative definition of competencies, in a trully dialogical and preferably conciliatory posture, given the limitations of the traditional method of command and control" (our translation).

It is therefore necessary to warn that the reasonable duration of the process does not necessarily mean in a superb speed, but rather that the action must last as long as enough for the instruction to be properly carried out and the case can be resolved correctly.

That is, one does not seek a quick end to the actions, which could undeniably result in hasty or premature judgments, of causes not yet mature and without the proper instruction and participation of the parties.

It is for this reason that the reasonable duration of the process finds limits on other fundamental procedural principles such as contradictory and broad defense, since its objective must be allied to the interest of a fair process, preventing improper and unwarranted extensions, but without a summarization of the process (GOMES; FERREIRA, 2017).

Allied to the reasonable duration of the process is the computerization of procedural law, with both processes being closely linked, to the extent that, for Moreira (2012), written petitions, which depend on physical delivery to the protocol, receipt in secretariat, joined and forwarded to the assessment, naturally cause delay, which ceases to exist with electronic processes kept in network.

As Boucinhas Filho (2017) reports, computerization brings many benefits to the functioning of processes, since it optimizes the physical space of jurisdictional units and offices, reduces the use of paper, and reduces the contact of servers with harmful substances resulting from the archiving of paper, such as mold, essentially meaning an approach toward the objective of sustainability. The author reports that there will also be a reduction in public spending on material, personnel, and physical spaces for archives.

Similarly, Moreira (2017) reinforces that the computerization of the process means a better use of natural resources, also considering the environmental dimension of sustainability. Additionally, the author envisions that computerization meets the social dimension of sustainability, since there is "a real demystification of the process, with the possibility of effective monitoring by the parties involved, and, in real time, of the procedures pertinent to the achievement" (MOREIRA, 2012, p. 291; our translation).

Moreover, the computerization of the case removes the need for the physical presence of the parties, lawyers and, as recently reinforced by the need for isolation due to COVID-19, of magistrates and civil servants.

Computerization is not seen by the doctrine as just a positive point. Among the negative points, Boucinhas Filho (2017) reports the lack of limit on the duration of the workday, the effects of continuous exposure to

screens, the difficulty of handling the virtual process, and the increase of stress in user.

Similarly, Moreira (2012) sees as setbacks of the computerization of the process the difficulty in enabling and ensuring the quality of the transition from conventional to electronic, the possibility of security risks of the data put into court and the exclusionary character to those who are outside the current technological context.

Although, as stated, the computerization of the process removes the need for high paper consumption, a greater amount of electricity will be used, which generates the debate about the use of non-renewable natural resources for energy production, as Moreira (2012) reports, but the author herself points out that the cost-benefit still weighs on computerization to be more sustainable.

Another example of CPC/15's concern with procedural sustainability was the recognition of the system of precedents, the result of the approximation of the tradition of common law to civil law that has been perceived recently, showing a convergence of systems in Brazil (GOMES; FERREIRA, 2018).

The system of mandatory precedents, as Antunes and Oliveira (2020, p. 633) reports, enables courts to establish interpretation guidelines with a certain stability, contributing to the reduction of the processing time and the number of actions, moving away from the risk of "legal adventures" in the face of prior recognition of the positions of the courts, especially the superiors.

Therefore, it is possible to notice that the system of precedents, as enrolled in the CPC/15, ends up corroborating the need for procedural sustainability, by avoiding the unnecessary use of the Judiciary, which could mean in the cramming of actions.

What is perceived, therefore, is that, in the current model of Civil Procedural Law, directed by CPC/15, which already shows some concern with procedural sustainability, there is still room for further discussion.

However, it is possible to identify, in a perceptible way, that some other branches of Brazilian procedural law do not seem to be attentive to the need for procedural sustainability, especially in its structural aspect. This fragility is especially noted in Labor Procedural Law.

The Labor Procedural Law is, except for a few and practically insignificant exceptions, based on the Consolidation of Labor Laws of 1943 (*Consolidação Das Leis do Trabalho* – CLT). A few changes, also without

great expressiveness, have occurred over the years – such as the Labor Reform of 2017 – but the core and spirit of Labor Procedural Law remain (ALVES, 2020). Its advanced age obviously represents a number of weaknesses from the point of view of sustainability.

A clear example of this fragility is the lack of a structure that systematizes the rules applicable to the work in the specific case, since, as Rodrigues (2015) reports, the incidence of autonomous norms is a particularity of labor relations, allowed by the Federal Constitution, which often involve multiple interpretations or are contradictory, which makes labor courts crowded with actions with long discussions about points of interpretation of working relationships.

Another observable weakness refers to access to Labor Justice. The model of access to labor jurisdiction adopted by the CLT was conceived in the context of when it was promulgated, with a low number of lawyers and with even less possibility of paying fees.

It is for this reason that the main mechanism of access to labor justice available to workers and employers without financial resources is the principle of the *jus postulandi* of the parties provided for in Article 791 of the CLT, which allows the parties to participate in labor lawsuits without a lawyer.

Although the principle of Procedural Labor Law has adopted, from the lessons of Schiavi (2012), principles such as informality, in an attempt to debureaucratize and simplify the work procedure, the many changes of the Brazilian legal system, such as computerization and the improvement of judicial activity, mean that access to labor justice, as it is today, is unsustainable. The question of the postulatory capacity of the parties is an example of fragility, but many others can be perceived (ALVES, 2020).

As the third and final apparent example of structural unsustainability of Labor Procedural Law, one can mention the fragility represented by the risk of the filed labor lawsuits, which, according to Barros (2015), causes the vast majority of labor lawsuits to be filed post-dispensation, making the Labor Justice eminently indemnifying, signifying a collapse of their social bias.

The result of this definition of indemnity by the Labor Justice, allied to the difficulties of its access by the parties, causes, as reported by Alemão (2017), the reiterated and already politically exposed dialogue of the extinction of the Labor Justice for its incorporation into the common justice, the ultimate result of a procedural model that does not meet the proposed procedural sustainability.

FINAL CONSIDERATIONS

The discussion of this research is based on the objective of identifying the scientific possibility of what we propose as procedural sustainability. To achieve this objective, a significant reading of the bibliography specialized in sustainability was performed, identifying its definition and dimensions.

In this sense, we observed that sustainability, according to the most specialized scientific research today, should be understood as multifaceted and broad, much more like a guideline to be followed, by which social relations are revisited, rather than just an objective in itself.

Subsequently, based on the elements described about sustainability in its historical vision, we were able to develop, from postulates such as corporate sustainability, the concept of procedural sustainability.

Two aspects of procedural sustainability have been identified. The first, called result, is the responsibility of the procedural subjects to lead the dispute throughout its processes, including the decision, in order to ensure sustainability in its various dimensions.

The second, called structure, is the mission, mainly of the legislator and the courts, to build procedural systems that are both socially, environmentally, economically, ethically, legal- politically, and technologically responsible, and are feasible and effective, not only at the time of their idealization but also for future generations.

It was possible to observe, from the proposed definitions, that the procedural sustainability of results, despite the previous lack of definition, is already, at least superficially, a concern. The procedural sustainability of structure, on the other hand, requires closer care, to a lesser extent in some procedural systems – as in Civil Procedural Law; and to a greater degree in others – as in Labor Procedural Law.

The scientific proposal presented here is, of course, an initial and hypothetical reading, which will require further and repeated readings from other perspectives. However, it is a current and necessary dialogue, with the objective of ensuring the full sustainability of the Brazilian legal system.

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