I - THE CRISIS OF THE JUDICIARY AND ITS CAUSES

When it comes to the judiciary crisis, normally one thinks on its effects and consequences. However, little has been discussed seriously, the causes of the crisis and possible ways of solving the problem.

The judiciary has traditionally has had a reactive posture, facing problems that already exist and rehearsing with empirical solutions.

It is argued that the judiciary needs to know the real causes of the crisis it faces, and on top of reality, plan the future of the institution in order to improve its performance and overcome its challenges.

It starts with the fact that Brazil has changed significantly over the past twenty years, following universal changes. From the global point of view, it is a fact that we live in a mass society, with repercussions on the very notion of contract, which is no longer the expression of a bilateral agreement, but a set of standardized rules imposed by major companies for a universe of consumers. In Brazil, the social and economic affluence of large groups of people, who formerly lived on the margins of economic life of the nation, has incorporated a huge number of people into those relationships, consuming telephone services, banking, financial, insurance, cable television, etc. This results in an enormous potential growth for possible litigation.
Allied to this, there was in the same period, a huge increase in the number of lawyers working in the country. As a natural consequence of greater competition, there was a distinct change of law practice: instead of lawyers being sought by people dissatisfied due to a real conflict of interest, lawyers began to seek potential customers, offering their services on the market in an aggressively way. In many cases, the market even exists, but is artificially created by the new practice attorneys.

Moreover, due to late arrival of the Welfare State among us, there was also an expansion of fundamental social rights, especially in health, welfare, housing. With the forecast of such constitutional rights, and with greater public awareness of their rights, there was also a major trend do initiate lawsuit towards the implementation of such rights. No wonder we talk about 'judicialization of health' in Brazil.

We can not forget, in terms of diagnosis of the causes, a permanent schizophrenic attitude of the Brazilian state, in all its spheres (federal, states, municipalities), to try to delay as possible the payment of its debts, leaving them preferentially for successive governments, even if it means a significant increase in the debt itself, due to interest, monetary fines, court costs and legal fees. This implies an huge amount of lawsuits that simply cannot reach its end.

Diagnosed the causes, it must be suggested possible solutions, from strategic planning.

II – STRATEGIC MANAGEMENT

Traditionally, Judiciary has been studied through the prism of POWER. However, only recently has been given due importance to the judiciary as SERVICE PROVIDER.
On the first point, the *Independence* is the fundamental problem. On the second point, *efficiency* is what matters. To society, as important as the question of judicial power is the issue of judiciary as a service provider.

Since we began to think seriously in search of greater efficiency of the judiciary, as a service provider, the movement went through several waves.

Initially, it sought to face the problem through legislative reforms that sought to simplify procedures, reduce appeals, to make the process more agile and quick.

Also, efforts were made to better equip the judiciary - more judges, more infrastructure (especially computers), plus support staff.

Some countries have also developed ways to solve problems away from the courts, implementing Alternative Dispute Resolution methods - ADR.

Despite the adoption of such measures in many countries, the problem persisted. The scarcity of resources and universal financial limitations made it necessary to go beyond simply preaching 'MORE OF THE SAME "(more judges, more resources, more buildings, etc.).

The years 1990 onwards, almost all countries start to invest in reforms that strengthen the capacity of organization and administration of justice. The solution is necessarily a more efficient and professional administration. Management techniques that work in the private and public sphere, with appropriate adaptations can and should be used also in the judiciary.

Commendable, in that sense, the determination of CNJ that all courts of the country should adopt strategic planning as well as providing knowledge of administration and judicial management for their judges.
Among the possible solutions to the crisis of justice, one has to necessarily pass through an appreciation of class actions, procedural tool that can be further developed, especially for that, where possible, to enforce judgments away from the courts, under the supervision of a supervisor named by the court, as it was sought in the 'project-saving' from the Judiciary of the Rio Grande do Sul State. In that case, in class actions filed to recover losses of income in savings, due to several economic plans in the late eighties and early nineties, once it was defined in a court decision the percentages that ought to be paid, it was determined that banks should calculate the amounts owed to each saver and deposit directly into their accounts the amounts due under the supervision of a trustee and the penalty of high fines for any noncompliance.

One thing seems certain. In a mass society in which a great amount of disputes are also identical, growing much more rapidly than the growth of the structure of the judiciary, there is no way to face this reality with the instruments of a certain type of process that was created in the nineteenth century to resolve inter-subjective disputes then existed.

The procedural remedy must consider the nature of the disease. If the problem is the mass type of claims, then the answer necessarily involves the use of collective action.

Parallel to this referral, other measures must be covered by a comprehensive strategic planning. Some suggestions are of broader breathe. Others remain at the micro level. Let's divide them into four groups, from more general to more specific, although some can be seen as of responsibility of all who are committed to the theme.
GENERAL MEASURES:

1. The CNJ must maintain its leadership on the issue of strategic rethinking of the Judiciary, coordinating the movement and facilitating the dissemination of good practices.

2. Should continue efforts to gather statistics on the judiciary, in all its aspects: statistical data on the growth of demand, its profile, etc.. Without knowing the present, one cannot project the future.

3. There should be a further discussion on the role of regulating agencies, because a more active performance of the same, more tightly regulating the services they regulated, imposing heavier administrative sanctions in hazardous areas such as telecommunications, insurance and banks, for example, all of this could contribute to avoid litigation.

4. It should be created a supportive culture, to prestige and monitoring local experiments (pilot projects), as has happened with the Alternative Dispute Resolution (ADR) methods, in the USA, back in the eighties.

5. Procedural reforms should seek to enhance the first degree of jurisdiction, with a consequent reduction of the number of appeals, following the lessons of comparative experience.

6. As a consequence of the previous item, the Superior Courts may focus only on the important role of harmonizing case law, without being concerned as 'error correction court' (a court concerned to correct injustices eventually committed by the lower courts).

COURT ADMINISTRATION MEASURES:
a. There must be strengthened the culture of professional management of the judiciary. A good judge does not necessarily mean a good administrator. The indication for strategic positions related to planning and management, can not be guided by criteria of friendship, but that of competence and expertise.
b. Efforts should be made for implementation full computerization of judicial services, including virtual process.
c. There should be created databases on good practices, so that they could be widespreaded, implying a greater rationalization of secretary routines, eliminating remaining unnecessary and procrastinatory praxes.
d. Courts must always assume the task of calling attention of all their members of the importance of judicial administration and management at all levels (management of the Judiciary, management of the Forum, management of the judicial unity).
e. There should be increased specialization of judges and judicial units, due to the obvious gain of expertise of judges, resulting in more rapid and more uniform judicial adjudication.

MEASURES RELATED TO THE JUDICIAL SCHOOLS:

a. Nowadays we realize the fundamental role of the Judicial Schools, due to the obvious fact that the Law Schools form basically lawyers, not judges. Its up do each institution to form their own members, giving them those contents that are not seen in the Law Schools, but which are essential to proper and efficient adjudication.
b. Thus, the Judicial Schools in charge of initial and continuing training and education of judges should pay more attention to issues relating to administration and management of the judiciary at all levels.
c. We must create a culture of effectiveness of adjudication, insufflating judges to a greater commitment to the efficiency of their activity. Consequently, alongside the concern of most dogmatic content of courses ministered do the judges, we must expand the space devoted to the important issue of management and administration.

d. We must be aware that it is not enough to take care of judges’ education. It is necessary also to take care of the continuing education of employees.

MEASURES RELATED TO THE JUDICIAL ACTIVITY:

a. All studies show the importance of proactive leadership in any organization. The judge is seen as a natural leader in his court. He should use it to motivate employees. There is no enthusiasm able to resist an unmotivated judge.

b. There must be abandoned the style of doctrinal long sentences, filled with quotes, where the complexity of the case does not require such development.

c. The judge must always be sensitive to the value and effectiveness of conciliation, which must be encouraged. Especially for low complexity demands, conciliation and mediation may prove to be a remarkable tool for reducing the volume of litigation.

d. Perhaps it is the opportune time to reconsider the granting of legal aid in some Brazilian states, where sometimes it is granted on demand and without proof of need. There is not, effectively, a ‘free’ Justice. If you’re not paying, someone is paying for you, because the judicial machinery is expensive and does not work for free. Obviously, AJG should actually be granted when its absence is an obstacle to access justice. However, the experience of comparative law shows that most
developed countries have much stricter mechanisms for granting legal aid (virtually nonexistent in the North American federal courts), with preliminary examination on the merits of the claim, in other countries (France, for example). Legal aid obtained in an easy way is a strong stimulus to frivolous demand, within the logic "if we loose, we loose nothing."

e. Judges should also penalize more intensively bad faith litigators, according to the law, due to it discouraging factor. Many delaying practices probably would not be used if the lawyer knew that his conduct could be costly.

CONCLUDING:

Improve the judiciary, making it more accessible, more efficient, more fair – would that be an utopia? Perhaps.

But in this case, should it be allowed to paraphrase Eduardo Galeano, when he compares utopias to the horizon, saying:

Utopias are like the horizon:
I walk two steps and the horizon retreats two steps.
I go further one kilometer and horizon goes back one kilometer.
I climb the mountains and the horizon hides behind the next mountain.
But then, what are the utopias for?
They stand for this: to make us walk!