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## Conventionality control and protection of LGBTQIA+ people: a legal analysis of CNJ Resolution No. 582/2024

*Conventionality control and the protection of LGBTQIA+ people: a legal analysis of CNJ Resolution no. 582/2024*

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### SUMMARY

This article examines CNJ Resolution No. 582/2024 as a mechanism for confronting institutional LGBTphobia and promoting the rights of LGBTQIA+ people within the Judiciary.

This study analyzes the creation of the National Forum for the Promotion of the Rights of LGBTQIA+ People and the *Rogéria Form*, conceived as a standardized instrument for risk identification, registration of violence, and referral for protective responses. The research adopts a legal-theoretical and documentary approach, based on doctrine on conventionality control and access to justice, the jurisprudence of the Supreme Federal Court, and normative acts of the National Council of Justice. It argues that Resolution No. 582/2024 concretizes the duty to harmonize domestic law with the American Convention on Human Rights and the jurisprudence of the Inter-American Court, giving effect to the pro homine principle. It concludes that the regulation represents legitimate institutional activism, with a pedagogical and transformative function, whose emancipatory potential depends on the qualified implementation of the *Rogéria Form* and permanent policies of training and monitoring in the justice system.

**Keywords:** Conventionality control. Human rights. LGBTQIA+ people. Access to justice. National Council of Justice.

### ABSTRACT

The article examines National Council of Justice (CNJ) Resolution No. 582/2024 as a mechanism to tackle institutional LGBTphobia and promote LGBTQIA+ rights within the Brazilian Judiciary. It analyzes the creation of the National Forum for the Promotion of LGBTQIA+ Rights and of the "Rogéria Form", conceived as a standardized tool for risk identification, recording of violence and referral of protective measures. The research adopts a legal-theoretical and documentary approach, grounded in scholarship on conventionality control and access to justice, in landmark decisions of the Brazilian Supreme Federal Court and in CNJ normative acts. It argues that Resolution No. 582/2024 gives effect to the duty to harmonize domestic law with the American Convention on Human Rights and the case law of the Inter-American Court, reinforcing the pro homine principle.

It concludes that the Resolution embodies legitimate institutional activism, with pedagogical and transformative functions, whose emancipatory potential depends on the qualified implementation of the Rogéria Form and on permanent training and monitoring policies in the justice system.

**Keywords:** Conventionality control. Human rights. LGBTQIA+ people. Access to justice. National Council of Justice (Brazil).

### 1. Introduction

The persistence of high rates of violence against LGBTQIA+ people in Brazil highlights... the selective and often negligent actions of the State in protecting fundamental rights, especially when it comes to bodies and existences that deviate from the heteronormative matrix. Recent studies have described this scenario as an expression of genuine "LGBTfobia" (LGBTphobia).



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"State," marked by social vulnerability, archival violence, and negligence regarding hate crimes.

in contexts marked by politics of death and a conservative sexual morality that reinforces cisheterocentric family models, whiteness and the mandate of masculinity (IRINEU et al., 2024).

Internationally, the Yogyakarta Principles (2007) consolidated the understanding that sexual orientation and gender identity are essential dimensions of human dignity, prohibiting any form of discrimination or abuse and requiring positive measures from States to prevention, protection and repair.

Despite this regulatory framework, the institutional response remains fragmented and inconsistent, especially when the violence affects LGBTQIA+ people in situations of heightened vulnerability. In this context, the National Council of Justice approved Resolution No. 582/2024, establishing the National Forum for the Promotion of the Rights of LGBTQIA+ People and the General Emergency and Imminent Risk to Persons Incident Report Form LGBTQIA+ (Rogéria Form), with the objective of identifying risk factors, standardizing the Recording incidents and supporting the actions of the justice system and the protection network in management of the identified risk (CNJ, 2024).

From a theoretical point of view, the initiative of the higher body directly engages with the The concept of access to justice as a basic human right, as understood by Cappelletti and Garth, is... a fundamental requirement of any legal system that intends to "guarantee, and not merely proclaim" rights, since the ownership of rights is meaningless without effective mechanisms of Claim and protection (Cappelletti; Garth, 2002). At the same time, it fits into a reading contemporary dignity that legitimizes the positive action of the State to correct asymmetries. structural power structures and guarantee minimum material conditions for a dignified existence (Ramos; Gama, 2023).

On the other hand, from the perspective of conventionality control, Resolution No. 582/2024 It represents more than a judicial policy aimed at promoting rights: it is an expression of The duty of the Brazilian State to adapt its internal legal system to international treaties and norms. of human rights. According to Ferrer Mac-Gregor (2016), the control of conventionality imposes the all national authorities have the duty to interpret and apply domestic law accordingly. with the American Convention on Human Rights and with the jurisprudence of the Court Inter-American Commission on Human Rights, functioning as a mechanism for normative harmonization.

Therefore, Resolution No. 582/2024 can be understood as an administrative act that It inherently exerts a dimension of conventionality control, by internalizing itself within the justice system. International standards such as the Yogyakarta Principles and the Court's Advisory Opinion 24/17 Inter-American, which recognizes sexual orientation and gender identity as categories.



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fully protected in the inter-American system.

By promoting the recording, visibility, and prevention of institutional violence, the CNJ It fulfills the international duty to prevent, protect against, and redress human rights violations. (articles 1.1 and 2 of the American Convention), strengthening the link between domestic law and conventional commitments. Thus, the Rogéria Form and the National Forum for the Promotion of The rights of LGBTQIA+ people are configured as institutional expressions of this policy of conventional normative and governance integration.

Finally, the resolution that is the subject of this work not only expands access to justice — as argued by Cappelletti and Garth (2002) — but reaffirms the transformative function of law. in promoting substantive equality and in the legal recognition of differences. In this sense, This article aims to analyze to what extent Resolution No. 582/2024 of the CNJ, especially through the implementation of the Rogéria Form, it contributes to addressing from state-sponsored LGBTphobia and institutional violence, as well as to strengthen access to justice and the effectiveness of human rights through the lens of conventionality control.

## **2. LEGAL RECOGNITION AND INCLUSION POLICIES**

### **2.1. Affirmation of Rights and Institutionalization of Protection**

The trajectory of LGBTQIA+ rights in Brazil reflects the process of Consolidation of the Democratic Rule of Law and the strengthening of the notion of dignity as structuring principle. From a historical point of view, Brazilian jurisprudence reveals that the The recognition of diverse gender identities and sexual orientations emerged from the clash between social exclusion, institutional moralism, and the normative force of fundamental rights.

As explained in the *STF (Supreme Federal Court) Jurisprudence Notebook: Rights of LGBTQIA+ People* (2022), the recognition of same-sex civil unions (ADPF 132 and ADI 4277, judged in 2011) This marked the beginning of this journey, by stating that sexual orientation does not constitute legitimate factor of legal inequality, reaffirming that "the concrete use of sexuality is part of the "autonomy of the will of natural persons" (p. 81). The decision paradigmatically enshrined, the idea that freedom and equality are inseparable dimensions for a new parameter of civil and symbolic inclusion.

Similarly, the judgment in ADPF 291 (2015) promoted the removal in Brazil of discriminatory expressions in the Military Penal Code, recognizing that differentiation based Sexual orientation is a direct violation of the principles of dignity and equality (p. 35). In 2018, The Court moved forward with ADI 4275 and RE 670.422, guaranteeing the right to change one's name and Gender in the civil registry of transgender people, regardless of surgery, in light of the rights to honor, to freedom and self-determination (p. 17). Similarly, in 2019 the judgments of MI 4733 and



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The actions of ADO 26 culminated in the criminalization of homophobia and transphobia, acknowledging the legislative omission. unconstitutional and applying, by analogy, Law 7.716/1989 to crimes of discrimination by sexual orientation and gender identity (p. 77).

The decisions above, therefore, comprise a historical cycle of affirmation of citizenship. LGBTQIA+, based on dignity, equality, and the protection of diversity. They not only They consolidate inclusive constitutional jurisprudence, but create the legal and ethical foundations for... State policies of recognition and reparation. Thus, CNJ Resolution No. 582/2024 is included. within this historical continuum as a judicial policy promoting inclusion and memory. institutional, materializing the commitment of the Brazilian State to the effectiveness of rights. humans and the production of egalitarian sociability.

This regulation established the *Rogéria Form* and the National Forum for the Promotion of Rights of LGBTQIA+ People: Mechanisms that transform the duty of protection into practice. institutional, standardizing the reception process and allowing for the formulation of public policies based on... in evidence (CNJ, 2024). It is, therefore, an instrument for memory management and prevention of institutional violence, which responds to decades of state omission and invisibility. statistic.

Guilherme Scotti (2020) argues that law, as a *medium* of social integration, It operates a universalizing and reflexive function: it is through it that differences are mediated, and the subjects, recognized as equal in dignity and worth. Legal recognition, in this From this perspective, it transcends the formal dimension of rights, constituting itself as a symbolic practice of belonging and mutual respect.

The reflections of the *Corpolítica* project (2019), in literary coherence, complement this. reading to identify that the erasure of LGBTQIA+ experiences in institutions constitutes a form of epistemic and archival violence, responsible for perpetuating silencing and exclusion. The construction of a “dissident collective memory” (pp. 10-25) therefore emerges as essential political practice for the effectiveness of social justice and for the transformation of structures. institutional.

Through Resolution No. 582/2024, a historical and theoretical movement is realized, transforming the ethical duty of the State into institutional action. By recognizing the need for In order to register and make visible the violence against LGBTQIA+ people, the CNJ reaffirms that justice must... It should also be about memory and reparation, not just judgment. Thus, the *Rogéria Form* represents More than an administrative protocol — it is an act of ethical and political recognition, part of a State policy of inclusion and equal sociability.

From the perspective of conventionality control, CNJ Resolution No. 582/2024 represents a concrete way of reconciling domestic law with international commitments



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human rights assumed by Brazil. As Ramos (2009) argues, it is necessary

to understand that:

[...] in addition to the control of constitutionality – analysis of the vertical compatibility between internal norms and the Constitution – the control of conventionality of Human Rights is imperative: the analysis of the compatibility of internal norms with the norms of international human rights treaties ratified by Brazil (RAMOS, 2009, p. 246).

Thus, the CNJ, in issuing Resolution No. 582/2024, acts as an implementing body. fulfilling this duty, transforming international obligations into practical guidelines for action. institutional, in accordance with the treaties and the jurisprudence of the Inter-American Court of Human Rights.

Ramos further emphasizes that this control cannot be limited to a theoretical exercise or formal, and should imply the effective incorporation of the interpretation made by the final interpreters. of conventional norms. For the author:

[...] it is urgent that Brazil, through its highest court – the Supreme Federal Court, exercise an applied conventionality control, that is, that it uses the interpretation carried out by the final interpreters of these human rights treaty norms, which are the international human rights bodies established by these treaties (RAMOS, 2009, p. 246).

This reading allows us to understand the role of the CNJ, in establishing the Rogéria Form and The National Forum for the Promotion of LGBTQIA+ Rights transcends the sphere. administrative: this is a concrete exercise of normative and ethical conformity to the parameters conventional. Finally, Resolution No. 582/2024 inserts the Judiciary into the hermeneutical circuit. of the Inter-American System, contributing to the strengthening of a justice system that not only recognizes, but effectively protects and promotes human rights in accordance with the American Convention on Human Rights and the advisory opinions of the Inter-American Court.

## **2.2. The Right to Access to Justice**

Reading CNJ Resolution No. 582/2024 allows us to understand it as a policy of Effective implementation of fundamental rights and the realization of conventionality control in Brazil. In its considerations, the National Council of Justice expressly links the rule to Yogyakarta Principles (2007), to Advisory Opinion No. 24/17 of the Inter-American Court of Human Rights and articles 3 and 5 of the 1988 Federal Constitution.

According to André de Carvalho Ramos (2016), conventionality control is a It is the duty of all state bodies and represents a mechanism for realizing rights. Humans, making it essential that the interpretation of national norms be in accordance with the law. with the *pro homine principle*. In this sense, CNJ Resolution No. 582/2024, when articulating the grounds constitutional and international law fulfills precisely this hermeneutical function: it ensures that the law Internal law should be interpreted and applied in a way that ensures maximum protection of people's rights.



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LGBTQIA+ rights and the prevention of violations based on sexual orientation and gender identity. Thus, This translates into a state response that goes beyond the symbolic level and enters the realm of... normative and institutional effectiveness.

Conventionality control is a process of realizing human rights, in which the interpretation of norms must always seek the result that most favors the human person, according to the principle of maximum effectiveness" (RAMOS, 2016, p. 4).

From a theoretical perspective, the Resolution reaffirms what Cappelletti and Garth (2002) describe. as the ethical core of the modern legal system — effective access to justice. For the authors, "the The concept of ownership of rights is meaningless in the absence of mechanisms for its effective enforcement. "claim", with access to justice being the "most basic of human rights" (Cappelletti; Garth, 2002, pp. 5-6). In creating the Rogéria Form and the National Forum for the Promotion of the Rights of For LGBTQIA+ people, the CNJ (National Council of Justice) expands the scope of this principle, establishing mechanisms that... They ensure visibility, support, and institutional response to situations of risk and violence.

As Scotti (2020) observes, law fulfills a function of mediation and social integration. guaranteeing mutual recognition and substantial equality between subjects. This concept It connects to the reflexive dimension of conventionality control, according to Ramos (2016, p. 5). who understands treaty interpretation as a process of realizing dignity. Human development through the normative effectiveness of fundamental rights. In this sense:

The expansion of conventionality control stems from the understanding that the State, by ratifying human rights treaties, assumes a permanent commitment to conforming its legal system to international norms (Ramos, 2016, p. 6).

The National Forum for the Promotion of the Rights of LGBTQIA+ People, therefore, This represents the participatory dimension of this policy, by bringing together public bodies, civil society and protection networks. This is an instance of democratic governance and the dissemination of a culture of human rights, consistent with Ramos's idea (2016, p. 7) that the control of Conventionality is also a process of cultural internalization, through which institutions They incorporate values of protection and equality into the daily routine of public management. According to Ramos (2016), "The full effectiveness of conventionality control requires the engagement of institutions and the "Incorporating the language of human rights into everyday practices."

The *Rogéria Form*, in turn and in this way, constitutes the practical expression of Resolution. Its preventive and educational nature allows for the identification of risk factors, systematization This instrument provides data and guides public policies for protection and prevention. It responds to the criticism of Cappelletti and Garth (2002) argue that legal systems must go beyond mere formality. procedural and address the social causes of the conflict (p. 10). At the same time, it adheres to the principle of maximum effectiveness highlighted by Ramos (2016), in transforming the duty of prevention and Remediation is a concrete procedure for recording and monitoring violations.



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Finally, the effectiveness of the Resolution depends on the institutional internalization of a culture.

human rights. The lack of adequate training and administrative commitment can undermine

the transformative power of the instrument. Thus, Resolution No. 582/2024 consolidates a model of

Justice that articulates constitutional principles and international parameters, transforming control.

of conventionality as a framework for governance and social inclusion.

### **3. Conventionality Control and Institutional Activism: Resolution No. 582/2024 as an Inclusive Justice Policy**

Conventionality control is becoming established as an essential instrument for

to ensure compliance of domestic regulations with international human rights treaties.

From this perspective, the National Council of Justice, through Resolution No. 582/2024, exercises

playing an active role in implementing this control, promoting a model of institutional governance.

aligned with the Inter-American System of Human Rights. As stated by Calixto, Amorim and

Oak:

[...] in addition to advocating for the interpretation of the Constitution linked to principles, defending the dissemination of constitutional norms throughout the legal system, and suggesting judicial activism (especially by constitutional jurisdiction) to uphold moral values, the modifications made also ended up opening the Constitution to human rights, in order to address the social, economic, environmental, and political challenges faced by the State (Ramos, 2012), since, by including principles, morality, and material aspects within the scope of constitutional law, it establishes such rights and reinforces the need for their complete observance by all.

The institutional dimension of this control is evident in the incorporation, by the Resolution, of

international and constitutional commitments to equality and non-discrimination. Ramos (2016, p.

14) reinforces this interpretation by stating that the "so-called primacy of the most favorable rule means that

The interpreter must necessarily apply the rule that most favors the individual.

In this way, the primacy of the most favorable standard leads us to apply either the international standard or the...

internal rule, depending on which is more favorable to civilians.

In this context, Resolution No. 582/2024 reveals legitimate institutional activism.

focused on transforming administrative practices and promoting an organizational culture of

respect for difference. This perspective is close to Scotti's (2020) conception, according to which the

Law functions as an instrument of social integration and mutual recognition, ensuring

that public space be truly inclusive. In this way:

[...] the control of conventionality should be understood as a continuous process of institutional improvement, and not as a simple technique of normative compatibility" (Calixto; Amorim; Carvalho, 2020, p. 39).

By promoting the internalization of international standards and the redesign of routines

In administrative matters, the CNJ reinforces the educational character of the conventionality control. This stance

This engages with Cappelletti and Garth (2002), for whom access to justice is an instrument of

Social transformation, capable of reorienting institutions towards fairer and more inclusive practices. In this



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In this sense, Resolution No. 582/2024 carries out a hermeneutical and pedagogical action by the Judiciary, demonstrating that the effectiveness of human rights depends on the integration of commitment Legal, institutional ethics, and daily practice.

#### 4. Final Considerations

The analysis of CNJ Resolution No. 582/2024 demonstrates that the control of conventionality It can operate as a structuring axis of judicial policy for the promotion of human rights. standard, when establishing the National Forum for the Promotion of the Rights of LGBTQIA+ People and the *Rogéria's form* transforms the international commitments undertaken by Brazil into Instruments for preventing, recording, and addressing violations. In this sense, the actions of the CNJ (National Council of Justice) are important. It exemplifies legitimate and necessary institutional activism aimed at achieving equality. material and human dignity.

According to Calixto, Amorim and Carvalho (2020), "judicial activism is a neutral phenomenon, which can become an instrument for the effectiveness of human rights when guided by "Democratic and humanitarian values." This model of action reveals the pedagogical dimension of conventionality control, which, according to Ramos (2016), should be understood as The process of cultural internalization of international protection norms.

The Resolution, therefore, goes beyond its normative character, constituting itself as a tool of institutional and social transformation, through the induction of a new culture of recognition and welcoming, reinforcing the idea that access to justice is a right that is only fully realized. when the State actively recognizes and protects differences.

Finally, the regulation should be seen as a paradigmatic landmark of an inclusive justice system and reflective. Its transformative potential will depend, however, on the consolidation of practices. Permanent training, monitoring and evaluation programs capable of translating the language of Human rights in concrete actions. The control of conventionality, in this context, is not... not merely legal technique, but an expression of an ethical project for society - a justice that, Recognizing the wounds of exclusion, it is committed to reparation, memory, and dignity.

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