



Electronic processing of jurisdictional proceedings in Mozambique: procedural controversy in the justice administration sector

Electronic processing of jurisdictional processes in Mozambique: controversy of procedures in the justice administration sector

Electronic processing of jurisdictional processes in Mozambique: procedural controversy in the justice administration sector

Raul de Miguel Benjamin Jofrisse Nhamitambo¹

SUMMARY

This research seeks to analyse the electronic processing of judicial proceedings in Mozambique, namely disputes arising in the procedure within the scope of the Justice Administration sector. However, the electronic processing of judicial proceedings is carried out through a platform (software), in which the entities of the judicial administration register the parties involved in the proceedings and, subsequently, assign a key to guarantee the security of the data in the system. The main problem of the Law that establishes the legal regime for the electronic processing of judicial proceedings and creates the Technological Management Centre of the Justice Sector is that the electronic processing of these proceedings will also be carried out, initially, by traditional means, where the applicant may submit the initial petition or the petition in physical format at the secretariat of the Justice Administration body. And, not only that, according to the Law itself, the document submitted to the bodies mentioned below must (obligatory) be in PDF, PNG, MP3 or MP4 format. How is it possible to submit an electronic document in physical format?

Keywords: Electronic Processing, Administration of Justice, Jurisdictional Proceedings.

¹ Doctor of Legal Sciences, from the University for International Cooperation in Mexico (UCIMEXICO) – Mexico (2020); Master in Corporate Legal Advice, from the University of Madrid (UDIMA) - Madrid (2016); Degree in Legal Sciences and Criminal Investigation, from the now defunct Alberto Chipande Higher Institute of Sciences and Technology (ISCTAC) - Beira (2011); Lawyer and Member of the Mozambican Bar Association (since April 2018); Assistant Professor of Information and Communications Technologies Law (ICT Law) - at the Joaquim Chissano University (UJC) - Maputo (since February 2020), in the Degree Course in Information Technologies and Systems Engineering; Assistant Professor of Administrative Law and Notions of Administrative Law - at the Pedagogical University of Maputo (UP - Maputo), in the Degree Courses in Human Resources Management and Public and Educational Management; Senior Legal Assistance Technician - Legal Office (UP - Maputo); University Professor of Introduction to Law, Administrative Law I and II and Labor Law, in the Bachelor's Degrees in Law, Accounting and Auditing and Public and Local Administration - at the Instituto Superior Maria Mãe de África (ISMMA); Assistant Professor at the Instituto Superior de Contabilidade e Auditoria de Moçambique (ISCAM), teaching the subject Complements of Taxation in the Master's Course in Auditing; Author, Reviewer, External Evaluator and Reviewer in the Multidisciplinary Scientific Journal O Saber (since Semester II of 2024); Author, Evaluator and Reviewer in the Multidisciplinary Journal RECIMA21 (since Semester I of 2025) and in the International Journal Consinter de Direito (International Council for Contemporary Studies in Postgraduate Studies - CONSINTER), since Semester II of 2025 and Organizer of the Digital Scientific Publisher (Since Semester I of 2025). Matola – Maputo.

ABSTRACT

This research seeks to analyze the electronic processing of jurisdictional processes in Mozambique, specifically the existing disputes in the procedure within the Administration of Justice sector. However, the electronic processing of jurisdictional processes is carried out through a platform (software), in which jurisdictional administration entities register the parties involved in the process and subsequently assign a key to guarantee the security of the data in the system. The main problem with the Law that establishes the legal regime for the electronic processing of jurisdictional processes and creates the Technological Management Center of the Justice Sector is that the electronic processing of these processes will also be carried out, initially, through traditional means, where the applicant may submit the initial petition or the petition in physical format to the registry office of the Administration of Justice body. Furthermore, according to the same Law, the document to be submitted to the bodies mentioned below must (Mandatory) be in PDF, PNG, MP3, or MP4 format. How can I submit an electronic document in physical format?

Keywords: Electronic Processing, Administration of Justice, Jurisdictional Processes.

ABSTRACT

This investigation seeks to analyze the electronic processing of jurisdictional processes in Mozambique, specifically the existing controversy in the procedure in the Justice Administration sector. However, the electronic jurisdictional processing of the processes is carried out through a platform (software), in which the jurisdictional administration entities will register the parties involved in the process and will subsequently assign a key to guarantee the security of the data in the system. The main problem that exists in the Law that establishes the legal regime for the electronic processing of legal processes and creates the Centro de Gestión Tecnológica del Sector Justicia is that the electronic processing of these processes will also be carried out, at first, via the traditional route, where the applicant can present the initial petition or the petition in physical format before the registry office of the Administración de Justicia body. And, at the same time, in terms of the same law, the document to be presented to the bodies mentioned below must (Obligatorily) be in PDF, PNG, MP3 or MP4 format. How is it possible to present an electronic document in physical format?

Keyword: Electronic Tramitación, Administración de Justicia, Procesos Jurisdiccionales.

INTRODUCTION

The electronic processing of legal proceedings in Mozambique was approved by Law No. 8/2024, of July 7 (which establishes the legal regime for the electronic processing of legal proceedings and creates the Technological Management Center for the Justice Sector), applying to all proceedings that are processed, at any level of jurisdiction, in the courts of

common, special or specialized jurisdiction, in the Constitutional Council, in the Ministry Public and in investigation and instruction bodies, including their assistants.

In this case, the electronic processing of judicial processes in Mozambique applies to bodies such as the Attorney General's Office, the Attorney General's Offices of Republic at provincial and district level, the National Criminal Investigation Service (SERNIC) at provincial and district level, the Constitutional Council, the Supreme Court, the provincial and district judicial courts, the Administrative Court, the courts provincial administrative bodies, the Provincial Labor Court of the City and Province of Maputo, the Maritime Court of the City of Maputo, the Juvenile Court of the City of Maputo, the Customs and Tax Courts of the City of Maputo and the courts of Sofala, Tete, Inhambane, Cabo Delgado and Nampula, the Mozambican Bar Association, the Institute of Legal Assistance and Sponsorship (IPAJ), the provincial penitentiaries and districts and other bodies that assist the Administration of Justice. In this form of dispute resolution, the parties must register on the platform of the bodies of the Administration of Justice, where applicable, and begins with the electronic submission of the petition in PDF, PNG, MP3 and MP4 formats. Furthermore, there is a real gap for part of the legislator regarding the development of legal instruments in Mozambique, in the case sub judice, with regard to the aforementioned Law, which, in its article 16, No. 2, establishes that the electronic processing of jurisdictional proceedings also begins with the presentation of a petition in physical format, which the designated server will later scan and upload to the platform. This means that the term "electronic procedure" is disqualified, keeping only the term "process" jurisdictional".

The electronic processing of jurisdictional proceedings is an act by which the applicant requests a specific right or contests a specific claim via the internet and/or virtually, addressed to a body of the Administration of Justice.

METHODOLOGY

This research will be conducted based on the reading of several electronic manuals dedicated theses and dissertations and several international journals with articles previously published.

The research is characterized by:

Regarding the objective: Bibliographical, based on previously prepared material and published, such as books, scientific articles and legislation. According to CRESWELL, the research bibliographical is based on previously prepared and published material, such as books, scientific articles and legislation. This approach allows for a critical and in-depth analysis of existing theories and perspectives on the subject, providing a solid basis for the construction of knowledge. ²

As for its nature: Basic or pure, seeking to produce new knowledge on the topic in question. As for its nature, this study is classified as basic or pure, seeking to produce new knowledge about people's access to disability to work in the Mozambican legal system. As Lakatos and Marconi, basic research aims to generate theories and concepts, contributing to the advancement of understanding on a given topic.³

Regarding the approach: Qualitative, seeking to understand the meanings and interpretations of phenomena related to the topic. The qualitative approach adopted in this study, as MINAYO emphasizes, we seek to understand the meanings and interpretations of phenomena related to the topic. ⁴

LITERATIVE REVIEW

Electronic Processing of Jurisdictional Proceedings

Neto (2002, p. 200) states that computerization is growing at a much faster pace than previously thought. It is clear that innovation and rapid updating are requirements essential for facing and solving problems in any sector, including judiciary, as is the object of this study.

Lira (2004, p. 11) argues that the electronic process or the digital process can be more easily understood as a complete replacement of the physical paper medium in detriment of the hardware available for computing. Instead of printed files,

² CRESWELL, John W. Research Design: Qualitative, Quantitative and Mixed Methods. 3rd Edition. Porto Alegre: Artmed, 2010.

³ Lacatos, Eva Maria; Marconi, Marina de Andrade. Fundamentals of Scientific Methodology. 7th edition. New York: Oxford University Press, 2010.

⁴ MINAYO, Maria Cecília de Souza (Org.). Social Research: Theory, Method and Creativity. 33rd edition. Petropolis, RJ: Voices, 2014.

forming chains that accumulate on our cards, we have databases that contain two processes in themselves, and not just in their movement.

According to Rabelo (2020), the computerization of the judicial process must be examined in public policy perspective, and not just as a modernization procedure technological. Therefore, it is necessary to adopt a single system, which manifests itself through

(modeling), resulting in improved development of systems with a character evolutionary, in addition to optimizing the rationalization of resources. Ultimately, we need of normalization.

According to Rover, cited by Machado and Miranda (2010, p. 15), the phenomenon of computing in legal sciences it sometimes presents itself as an object, sometimes as a means. As an object, this relationship would define Computer Law, responsible for the constant discussion and regulation regarding the use of information technology. Its field of study covers the legal standards that should govern the use of electronic systems in society and its consequences.

It also covers all legal analysis, which affects the rights to privacy, information and freedom, user protection and software protection. In its most concretely, this integration is called Legal Informatics, and refers to the "use of methodology and techniques for 'processing' information via computer in art and science of Law". The Digital Judicial Process, also known as virtual process, electronic process or telematic process, can be defined as a system computerized system that reproduces the entire judicial procedure in electronic format, replacing the recording of procedural acts carried out on paper with storage and handling of minutes in digital format.

Right to Access the Internet

According to Canotilho and Moreira (2010, p. 823), cited by [unknown source], the right access to the Internet is, paraphrasing Gomes Canotilho and Vital Moreira, a "right constitutional communicative". As an amplifier of already recognized rights, it is not difficult to find examples that illustrate its functionality: communication and interaction, which the use of the Internet encourages, expands the ways of exercising freedom

of communication and expression; the right of access to information, as well as its research and transmission; access to knowledge, in what it means for the development of economic activity, education or culture; strengthens the democratic participation; access to public services; and promotes development⁵ :

1. The right to the Internet, as the right to use the Internet and its services, is closely linked to freedom of communication, the ability to use services communication systems available on the Internet, through which the user transmits and receives information. This special communication platform, the Internet, allows the dissemination of information on a global scale, an intense flow of information that occurs in real time and in which each participant is simultaneously sender and receiver.

2. In exercising their freedom of communication, the Internet and dematerialization allow the user, as a transmitter, to multiply the recipients of content diverse and diversify the forms of expression. Therefore, the right to the Internet assumes special importance and also becomes inseparable from the exercise of freedom of expression.

Ibidem, the use of the Internet also favors the expansion of democratic participation.

Whether it is a reactive response to queries sent electronically, or a participation proactive electronics, both enhanced by the increase in information reaching citizens, whether exercised individually or collectively, electronic participation manifests itself in several facets⁶ .

Ibidem, networks contribute to greater awareness among citizens about the common problems and the power that each person has in resolving them, through interaction with public institutions and political actors in general, becoming a stage for the political activism. The development of the internet has favored greater participation of citizens in political life and in the public affairs of the country in general, whether by initiative own, exchanging information interactively with its environment, expressing itself through the use of social networks or opinion blogs, in defense of their own projects,

⁵ As Lucchi wrote: "The Internet has become an essential instrument and can now be seen as a necessary condition for the proper enjoyment of a number of rights, including the rights of access to information and communication": LUCCHI, Nicola, "Internet Content Governance and Human Rights", *Vanderbilt Journal of Entertainment & Technology Law*, Vol. 16, No. 4, 2014, p. 809 et seq., available at http://www.jetlaw.org/wp-content/uploads/2014/06/Lucchi_Final.pdf (2 December 2015), p. 811.

⁶ An analysis on the topic can be found in: AICHHOLZER, Georg/ ALLHUTTER, Doris, "Online Forms of Political Participation and Their Impact in Democracy", *Manu:Script*, June 2011, available at http://epub.oeaw.ac.at/0xc1aa500e_0x00290b64.pdf (December 3, 2024).



or at the request of public institutions, in particular through participation in surveys electronic means, live chats or through collaboration in initiatives that allow citizens to obtain the necessary feedback on the policies applied and to be applied⁷ .

The right to use the internet is essential, even today, to access the widest range of variety of administrative services offered online. Information technologies — and here we are already talking about legal information technologies — they currently allow, the development of digital legal and administrative activities. In its Recommendation on strengthening security and fundamental freedoms on the Internet, the The European Parliament recognised the need for legal regulation of the technical means that allow citizens to access electronic administrative services⁸ .

Access to Internet Services by the Mozambican Population

According to AIM (2024), approximately 73% of the Mozambican population does not has access to Internet services in Mozambique, according to updated data from Ministry of Transport and Communications, currently called Ministry of Communications and Digital Transformation.

Ibidem: “We face the challenge of changing paradigms, identifying innovative solutions and environmentally friendly, based on the active participation of the private sector, to provide Internet access for all,” said the Minister of Transport and Communications, Mateus Magala, at the launch of the VaMoz Digital project, which took place today in Maputo.

Ibidem.: VaMoz is an initiative supported by the European Union, the Organization International Telecommunications Agency (ITU) and by the Italian government, through the for International Cooperation.

Secondly, Magala stated that the development of human capital in the area Information and Communication Technologies (ICT) should be one of the priorities of the VaMoz Digital program. Secondly, “we cannot carry out a process of digital transformation without highly trained technicians in cybersecurity, intelligence

7 The Constitution of the Republic enshrines, in article 48, the right to participate in public life.

8 Recital B of the European Parliament Recommendation of 26 March 2009 states: "Whereas governments and public interest organisations and institutions should provide adequate technical support to enable citizens to participate actively and effectively in administrative procedures through e-government applications. The Recommendation is available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P6-TA-2009-0194+0+DOC+PDF+V0//FR> (accessed 15 December 2024).

artificial intelligence, robotics and fifth-generation networks, just to name a few examples,” he said.
Magala.

In Ibdin, the Government expects the technical team implementing VaMoz Digital present concrete proposals for legal reform and new negotiation models in areas of the digital economy, spectrum sharing, infrastructure and incentives for coverage of rural internet services.

In turn, European Commissioner Jutta Urpilainen explained that the digital revolution brought with it accelerated connections.

In Ibdin, he therefore believes that his management must be cautious in order to release all of his potential, benefiting everyone and in a fair way.

In Ibdin, “Our global investment strategy places its trust in digital infrastructure for good governance and business development, using technological capabilities,” said Urpilainen.

In Ibdin, the VaMoz Digital project aims, among several objectives, to stimulate investment, private sector financing and training for girls, women and people with disabilities disability, promoting inclusion, with a special focus on young people.

In Ibdin, “This is a country of young people. But 50% of the citizens are between 10 and 35 years old, and it is That’s why we need to be vigilant,” he said.

Access to Justice as a Fundamental Human Right

According to Miranda (2000, p. 53), cited by Costa (p. 9), fundamental rights are "rights founded on the legal order", as opposed to human rights that derive "of human nature". Secondly, fundamental rights arise "from necessity, at the systematic level of the legal system — and above all of Constitution — to consider fundamental rights in correlation with others subjective and objective concepts". What we can conclude from this is that rights fundamental are entirely related to political, economic, social and cultural, and they influence each other. Thirdly, the rights fundamental today are not limited to those imposed by Natural Law. There are many others: rights of the active citizen, of the worker, of the citizen, etc. There are guaranteed rights

to institutions, groups or legal entities". In turn, Canotilho tells us about this of this distinction: "Human rights arise from human nature itself, hence their inviolable, timeless and universal character; "Fundamental rights are those rights objectively valid in a specific legal system." According to Gersztein (2013, p. 2), the right of access to justice is a fundamental right that guarantees to all citizens of a given state the right to the effective administration of justice, and not merely the right to appear before the judiciary.

Access to Justice in Comparative Law

United States of America

According to Costa (p. 18), the American Revolution was an important milestone in modern constitutionalism. The American Federal Constitution brought a new state structure, conceiving the nation as a "Kingdom of Law", in which the people were called to create their own laws and make their own decisions. The expression "we the people" is well known and represents exactly that. Some related ideas with the right of access to justice began to emerge as early as 1776 with the constitutions of Pennsylvania, North Carolina, and Maryland. All have enshrined the due diligence clause. legal process. In 1777, the New York Bill of Rights first used time the term "due process of law", which would later be included in the 5th and 14th Amendments of 1789. It is also worth mentioning the Sixth Amendment, which deals with procedural guarantees for criminal defense, and the Seventh Amendment, which enshrined the right to a trial by jury. In the second half of the 19th century, it received a new interpretation, making constitutionally guaranteed rights are intangible; the judiciary could, for annul laws that violate the criteria of reasonableness and convenience.

This reaction to restrictions on fundamental rights has been called the due diligence clause. process noun. Another important element was the due process clause procedural, which consisted of a set of procedural guarantees, initially of a procedural nature formal, whose main objective was to guarantee the individual a process regulated by law. The subsequent influence of natural law on the Supreme Federal Court was responsible

for defining due process as "the natural right of individuals to a trial guided by the principles of justice."⁹

It was argued that the process should be fair and, furthermore, if there was a procedure guided by a notion of justice, it should also be a fair process.

The 14th Amendment, which we have already mentioned, enshrined the guarantee of fair treatment and independence for religious, racial and ethnic groups in a wide range of activities, such as education, religion, philanthropy and political action. This has been changing over over time, extending the protection of minority rights and the principle of equality before the law for blacks, indigenous people, women, Mexican workers and Asian immigrants. These changes occurred in the mid-20th century as a result the actions of American judges under pressure from social movements of the time, such as the combating racial discrimination, also reacting to the deprivation of rights so evident in Europe under the Nazi-fascist regimes.

In addition to the role we have mentioned here, the 14th Amendment can also be considered the embryo of the principle of access to justice. No citizen under its jurisdiction could be deprived of the protection of the laws. Every citizen had the opportunity to defend his fundamental rights and respect established laws. ¹⁰

Today, we can affirm that the doctrine is moving towards the following characteristic features: regarding access to justice in the United States: adequate subpoena, opportunity oral explanation, possibility of producing evidence, submission of evidence to the system accusatory, need for motivation of the decision, always based on the evidence collected in the case, impartiality of the judge, free access to justice. ¹¹

Germany

According to Costa (p. 19), German constitutional law is important because it influenced the Brazilian and European constitutional law, including Portuguese, especially in times latest.

⁹ DUARTE, Ronnie Preuss. Same. Page 37.

¹⁰ CUÉLLAR, Berto Igor Caballero. Idem. Page 21.

¹¹ DUARTE, Ronnie Preuss. Same. Page 38.

The constitutionalization movement began in Germany in 1817, although in that At that time it was not yet possible to speak of Germany as a country, given that unification would only take place in 1870/12. During this period, we can speak of two constitutions: the resulting from the Frankfurt Assembly of 1849 and the Prussian Charter of 1850. The Charter of Bismarck emerged in 1871. The 19th century in Germany was characterized by "intense and long struggles of the German nation to limit monarchical power and formally establish the rights of freedom"¹³.

In 1919, after the First World War, the Weimar Constitution was adopted, which, as already mentioned above, played an important role in the implementation of the Welfare State and the fundamentalization of social rights. The essential conditions for this purpose were the creation and recognition of the republican form of government, the establishment of new types of taxation aimed at large fortunes and socialization of companies. In relation to justice, the Weimar Constitution only mentions, in Article 102, the independence of judges¹⁴, and in Article 105, the natural judge. There are still no express references to the right of access to justice.

After the dark period of Nazism, with severe limitations on fundamental rights and subversion of the law, the Bonn Basic Law was promulgated on May 23, 1949, essential for the constitutionalization of certain procedural guarantees, which have passed also to be included in the new norms of International Law soon after the Second World War. The Basic Law of Bonn also provided for the guarantee of a fair trial and access to courts and justice. ¹⁵16. The guarantee of a fair trial is indeed considered a fundamental right. As far as fundamental rights are concerned, these are immediately applicable in Germany and may be materially incorporated in other fundamental rights contained in international laws or treaties. The role played by the German Constitutional Court in defining the content of a fair trial was also important to the evolution of this notion.

¹² GUEDES, Marco Aurelio Peri. Fundamental rights in German constitutional documents from 1850 to 1871. In Revista Electrónica del Instituto de Investigaciones "Ambrosio L. Gioja" – Year III, Number 4, 2009.

Available at http://www.derecho.uba.ar/revistagioja/articulos/R0004A003_0008_investigacion.pdf. Page 127.

¹³ GUEDES, Marco Aurelio Peri. Same. Page 127.

¹⁴ MIRANDA, Jorge. Historical Texts on Constitutional Law. Printed. National – Mint. Lisbon 1990. Pg. 282. Weimar Constitution of 1919, Article 102.

¹⁵ MIRANDA, Jorge. Idem. Page 350 Bonn Constitution of 1949, articles 3 and 19.

¹⁶ Articles 92, 97, 101 and 103 of the Fundamental Law of Bonn, available at: http://www.brasil.diplo.de/contentblob/3254212/Daten/1330556/ConstituicaoPortugues_PDF.pdf, accessed on April 20, 2025.



At the constitutional level, the guarantees existing in German law are as follows: guarantee of a competent and impartial judge, the guarantee of due process and adversarial system, the right to evidence, access to courts and equal treatment, the guarantee of an effective trial, free justice and transparency of the trial.

Brazil

According to Castro (p. 20), Brazil had seven constitutional texts. The first constitution emerged in 1824. Brazilian constitutional law was influenced by Portuguese law, just as our law was also influenced by Brazilian law. These effects were felt both after independence and in more advanced times, such as the Constitution of 1988, which was influenced by our Constitution of 1976, or our Constitution of 1911, which was influenced by the Brazilian Constitution of 1891. According to Castro (p. 21), the Constitution of 1824, at the level of Justice, only provided for some institutional guarantees for the judiciary, expressly providing for independence of the judiciary, the guarantee of the natural judge and the guarantee of the stability of decisions judicial. In 1832, a procedural reform would take place that would include several principles important procedural matters: the principle of publicity, the principle of immediacy of the judge, the procedural speed and preclusion. The Republican Constitution of 1891 gave greater attention to the judiciary, establishing the lifelong nature of judges in article 57¹⁷ as a way of guaranteeing the independence of judges in relation to other powers. He referred also the possibility of controlling the constitutionality of laws, the stability of judicial decisions and the dual instance of jurisdiction¹⁸, the principle of equality and legality and the right to petition¹⁹.

The 1934 Constitution reinforced the independence of the judiciary²⁰, the stability of decisions through the intangibility of the res judicata²¹ (Article 113.3), speed procedural in public offices²² (Article 113, No. 35) and the right of jurisdiction²³ (Article 113, no. 37). In its article 114, it included an open clause to the principles it adopted. This generated a controversy between doctrine and jurisprudence. The first considered

17 Constitución de la República de los Estados Unidos del Brasil (February 24, 1891) available at http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao91.htm. Article 57 . 18 Idem. Article 59.

19 Same. Article 72.

20 Constitución de la República de los Estados Unidos del Brasil (July 16, 1934) available at http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao34.htm. Article 64.

21 Idem. Art.113 – (...)3)

22 Idem. Art.113 – (...)35)

23 Idem. Art.113 – (...)37)



that this clause provided for the existence of due process, while the case law disagreed with this position. However, there were concessions when some authors also stated that this clause included the principle of natural justice, the binding obligation of the judge in relation to the law and the right of action. From this, they deduced that the guarantee of due process was implicit. This Constitution, of a more progressive nature, would be replaced by another authoritarian one, the 1939 Constitution, which would be followed by Constitutions of 1946, 1967 and 1969.

The 1988 Constitution, currently in force in Brazil, was influenced both by the Law Fundamental of Bonn as by our Constitution of 1976. This was the result of the restoration of democracy after the military dictatorship, which would establish a regime democratic with separation of powers and protection of fundamental rights. Title II has five chapters dedicated to individual, social, nationality, political rights and partisans. Article 5, Section XXXV, established the right of legal action, inalienability of judicial review, as well as the obligation of the Judiciary to analyze any case that represents a threat or violation of someone's rights. Article 5 also established the guarantee of due process²⁴, the guarantee of a judge independent and impartial, the natural judge predetermined by law, the right of access to justice, the right to adversarial proceedings and the production of evidence, the reasonable duration of the proceedings and its effectiveness, free access to the jurisdictional function, the motivation of the judicial decision and the publicity of the process²⁵.

Socialist Regimes: The Specific Cases of the USSR and Cuba

According to Costa (p. 22), in this section we will address access to justice and law in countries that had or still have a socialist regime. We will only do a brief one, but not exhaustive, summary of the Soviet Union, whose law later influenced other countries, and Cuba as a current example.

The October Revolution of 1917 in Russia was an important milestone in the history of humanity. He broke with the dominant economic system, capitalism, and proposed the construction of a new society, socialism, where there would no longer be exploitation of man for man. With the Declaration of the Rights of Workers and

²⁴Idem. Art.113 – (...).

²⁵86 Lo same. Article 5 (...) LIV.

Exploited, of 1918, also guaranteed a set of rights that are today considered fundamental rights of the population in many countries.

Before examining the Constitutions of the USSR, it is necessary to briefly distinguish between the law of Western capitalist countries and the perspective of law from a perspective socialist. Throughout history, law has always been used as an instrument of class domination; it has always been used as an object of the ruling class to subjugate the dominated class, with the clear objective of "protecting and maintaining a social order specific"²⁶, currently, capitalism.

According to Fonseca (p. 7), cited by Costa (p. 22), he tells us in the same sense: "...it is from social experience and the economic relations of production and exchange that it generates, which the need for the State arises, as an expression of a social class in Power, and for the Law, to serve it."²⁷ Jacques Bellon concludes: "Your law, like ours, is only a class will transformed into law, but while our class will, after having been the will of the mass of workers freed from the yoke of the owners, it was transformed into our classless society at the will of all, your Western law intends to express everyone's interest when in reality it is not, at best, nothing more than a compromise – a safety valve designed to prevent explosion of the established order..."²⁸ The Soviet Union had four constitutions: the Constitution of 1918, the Constitution of 1924, the Constitution of 1936 and the Constitution of 1977. We will discuss here only the last two. Chapter IX of the 1936 Constitution defined the different types of courts and their hierarchy (Articles 102, 104); the method election of these courts (Articles 105, 106, 107, 108 and 109); the language in which the legal proceedings will be conducted and an interpreter is guaranteed in case of lack of understanding of that language (Article 110); the openness of the trial as a rule and the right of the defendant to the defense (Article 111); the independence of judges and their subordination to the law (Article 112)²⁹. The 1977 Constitution becomes broader, defining equality of all citizens before the law, including foreigners or stateless persons (Article 37),

²⁶ Bellon, Jacques. Soviet Law. Coimbra. Livraria Almedina, 1975. Page 10. Álvaro Cunhal defends, although referring to administrative justice, the same point of view: "In all societies divided into classes, administrative justice through the courts is class justice and the courts are an instrument of domination of one or more classes over other classes." In CUNHAL, Álvaro. Class Struggles in Portugal at the End of the Middle Ages. Path. University Collection. 1997. 3rd edition.

²⁷FONSECA, Guilherme da. Same. Page 7.

²⁸BELLON, Jacques. Idem. Page 10/11.

²⁹ Constitution of the USSR. www.marxists.org/portugues/stalin/biografia/ludwig/constituicao.htm. December available en

guaranteeing the right to appeal to the courts (Article 57) and guaranteeing free legal aid (Article 161)³⁰.

In Cuba, the socialist regime emerged with the Cuban Revolution on January 1, 1959.

The process of drafting the Cuban Constitution began in 1975, a process that, as the introductory note to the Constitution tells us, involved more than 6 million people in the discussion of their project. They formulated proposals for amendments to 60 articles. On 15 February 1976, the Constitution was submitted to a referendum in which 98% participated of voters, and in which 97.7% of them voted in favor by direct, secret and universal.³¹ The Cuban Constitution would be approved on February 24, 1976. From here it turns out that the Cuban Constitution is the result of a broad democratic process of discussion and construction, which covered broad sectors of the population. This Constitution was reviewed three times: in 1978, 1992 and 2002. Regarding justice, the Cuban Constitution guarantees the full freedom and dignity of man, ensuring the exercise of his rights (Article 9); guarantees the defense of citizens' rights against unlawful actions of officials or agents of the State (Article 26); the equality of citizens before the law, with equal rights and duties (article 41), and foreigners also have the same rights and duties, except in special cases provided for by law (Article 34); the guarantee of a trial, the defense of the defendant and the guarantee that no statement will be obtained through the use of force (Article 59); the recognition of the right to petition (Article 63); establishes the hierarchy, functioning and election of members of the courts (articles 120 and 121); the independence of the courts is established (Article 122); and establishes although the courts must balance their work (Article 125)³¹. Narciso Cobo Roura stated, in statements to Radio Reloj, on May 25, 2012, that the project social and participatory system that exists in Cuba guarantees protection to all Cubans transparent and effective legal system of its rights, which is the existence of legal norms humanists facilitate access to justice, which facilitates the constant supervision to which they are subject the courts guarantee a more responsible and ethical performance of them and that all Cubans have the right to all the benefits of justice as well as free legal representation³². On the other hand, Rubén Ferro, president of the Supreme

³⁰ FONSECA, Guilherme da. Idem. Constitution of the USSR, see articles 37, 57 and 161.

³¹ Constitution of the Republic Available http://www.poderjudicial.cuba/index.php?option=com_content&view=article&id=1418&Itemid=83.

See articles 9, 26, 34, 41, 59, 63, 120, 121, 122 and 125.

³² <https://www.radioreloj.cu/noticias-radio-reloj/36-nacionales/8446-el-acceso-a-la-justicia-un-recho-de-cada-cubano>.

People's Tribunal of Cuba, he told us in 2000, in a seminar on Commercial Law International, that Cuba is a State of Law that organizes its justice system with based on internationally recognized principles: the principle of due process legal, equality of the parties, judicial mediation and the right to evidence and publicity of facts. He also referred to the speed of trials in Cuba, the right to appeal, the representation by lawyers, access to the public and the existence of a popular system participation in justice, which gives Cubans great confidence in their systems of justice³³.

From the analysis we carried out we can conclude, contrary to what Gouveia claims (p. 202) ³⁴, That the socialist constitutions, both the Soviet and the Cuban, guarantee a set of fundamental rights and are not merely programmatic; that the regimes socialists referred to here are true States governed by the Rule of Law, because Western ideologists only plan for the existence of a rule of law when it serves the interests of his class; when he no longer serves the rule of law, there is no longer any Rule of Law; that the constitutional and ordinary laws of these countries guarantee broad access to justice and the courts for citizens.³⁵.

Portuguese Constitutional Law and Access to Justice

Before the Constitutions, the Alfonsine and Philippine Ordinances, as well as some decrees and regulations from the 17th and 18th centuries already provided for the access of the indigent to the courts³⁶. However, at that time, it was not possible to speak of fundamental rights,

³³ HIERRO, Rubens Remigio. Access to justice in Cuba. Cuban Law Magazine. No. 16. Diciembre 2000. Available at <http://vlex.com/vid/acceso-justicia-cuba-50024538>.

³⁴ GOUVEIA, Jorge Bacelar. Idem. Pg. 202.

³⁵ As in Europe, those with fewer financial resources are more likely to end up in prison, often because they cannot afford a lawyer, for example. At a conference in Latin America on the Administration of Justice, several speakers noted: "For some Latin American jurists, the legal profession in their countries is at the service of the economically powerful classes. As someone once said: 'In Latin America, prisons are a machine for grinding the flesh of poor prisoners'". Available at http://vlex.com/vid/xii-continental-americanademocratas50024556?ix_resultado=3.0&query%5Bbuscable_id%5D=2615&query%5Bbuscable_type%5D

=Source&query%5Bfilters_order%5D=source&query%5Bq%5D=Acceso+a+la+Justicia#secc2. The reason for this reference lies in the simple question of whether a State of Law is a State that punishes the poorest more easily than the richest.

Santos, Boaventura Sousa. Access to Law and Justice: a fundamental right at stake. Coimbra 2002. p. 163.

³⁶ SANTOS, Boaventura Souza. Access to the right to justice: a fundamental right in consultation. Coimbra 2002. Pg. 163.

much less in access to justice and the tribunes as a fundamental right of all cities.

It was, like modern constitutionalism, a period that emerged in Portugal in the 19th century, influenced by liberal movements originating in South America North and Europe, which began to enshrine fundamental rights and establish in Constitution determines rules regarding access to justice. Following the interpretation According to Bacelar Gouveia, we can divide Portuguese constitutionalism into four periods: the liberal monarchical period (which encompasses the Constitutions of 1822, 1826 and 1838), the liberal republican period (Constitution of 1911), or nationalist-authoritative period (Constitution of 1933) and the social-democratic period (Constitution of 1976)³⁷. In our analysis, it is worth highlighting a strong concern with the judiciary from the beginning, as well such as the absence of the right to access justice. This situation only changed with the 25th of April 1974, and more specifically with the Constitution of 1976. This trend continues reflecting the European scenario up until the post-war period in Germany and Italy.

Let us begin our analysis with the Constitution of 1822, which emerged from the Liberal Revolution.

Portuguese Constitution of August 24, 1820. This Constitution was influenced by liberalism and initially proclaimed first-generation fundamental freedoms and rights. These were divided into two categories: human rights and rights of the nation. He focused on on four principles: the democratic principle, the representative principle, the principle the separation of powers and the principle of legal equality and respect for personality rights³⁸. The concern of this Constitution ³⁹ The Constitution of Justice was limited to to the judiciary, with several articles that spoke of its independence, permanence in office, remuneration, district rotation, types of judges elected and inadmissibility of forum privileges. ¹ In its article 176 there was a recognition far from the guarantee of the natural judge⁴⁰, Article 201 spoke of the publicity of the process ⁴¹, Article 188 provided that issues of greater economic relevance, as well as those that were subject to a situation of nullity or notorious injustice, would be

³⁷ GOUVEIA, Jorge Bacelar. Same. Page. 397.

³⁸ CUÉLLAR, Berto Igor Caballero. Idem. Page 24.

³⁹ MIRANDA, George. Idem. Portuguese Constitution of 1822. Page 137 and following. See articles 176, 183, 184, 185, 178, 9.

⁴⁰ MIRANDA, George. Idem. Article 176.

⁴¹ Portuguese Constitution of 1822 available at http://debates.parlamento.pt/Constituicoes_PDF/CRP_1822.pdf. Article 201.



subject to appeal, articles 191 IV and 19242. The right of access to the courts was not guaranteed; what existed was the right to petition the Executive and Legislative branches in article 16, and article 17 was also important in this area⁴³.

On April 25th, as a result of a long process of resistance by the Portuguese people, the Revolution that would overthrow the fascist regime. In 1976, the Constituent Assembly, elected by direct, universal and secret suffrage, approved a new Constitution which, despite of the numerous revisions, remains one of the most progressive in Europe. It was here that the right of access to the courts was expressly enshrined in Article 20,⁴⁴ which prohibits the denial of justice due to insufficient financial means.⁴⁵ This article was modified over time, with some additions to its most important content.

In the 1982 revision the title was changed to: Access to the Law and the Courts.⁴⁶ Section 1 addressed the right to information and legal protection, and Section 2 referred to impossibility of denying justice due to insufficient financial resources. The review of 1989 brought with it the express guarantee of access to the law and the courts for the defense of any legal position, in addition to stipulating legal consultation and representation legal. Finally, the 1997 revision changed the article title again to: Access to Law and Effective Legal Protection. It introduced the right of the party to be accompanied by attorney, the right to a sentence within a reasonable time and due process of law, existence of rapid and priority mechanisms for the defense of rights, freedoms and guarantees.

The current constitutional framework has not changed much, but the legal framework has changed, subverting much of what the Constitution tells us.

⁴² MIRANDA, George. Idem. Idem. See article 188, 191 IV, 192.

⁴³ MIRANDA, George. Idem. See articles 16 and 17.

⁴⁴ Constitution of the Portuguese Republic. National Press – Casa da Moeda – Lisbon 1976. Article 20 (Defence of Rights) “1. Everyone is guaranteed access to the courts to defend their rights, and justice may not be denied due to insufficient financial means. 2. Everyone is guaranteed the right to resist any order that violates their rights, freedoms and guarantees and to repel any aggression by force, when recourse to public authority is not possible.”

⁴⁵ Santos, Boaventura Sousa. Ibid. Page 168. “Gomes Canotilho and Vital Moreira, commenting on this provision, distinguished two related but distinct rights: the right of access to justice, provided for in paragraph 1, and the right of access to the courts, provided for in paragraph 2. The authors understand that this connection is evident, since knowledge of the rights is a condition for their exercise and application. The right of access to justice encompasses the right to information and legal protection, and the right of access to the courts, in addition to being an instrument for defending rights and interests, is also an important element of the material principle of equality and of the democratic principle itself.”

⁴⁶ Duarte, Ronnie Preuss. Page 82 “According to LEBRE DE FREITAS, this latest revision is of notable importance in the modernization of the Code of Civil Procedure which, in the period between 1939 and 1961, was “throughout Europe, either less guaranteed and or more dissatisfied with the general principles, designated as constitutional dignity”. The reforms in procedural legislation were integrated into the constitutional text, guaranteeing access to justice at a level already recognized in the doctrine and jurisprudence of democratic countries. The constitutional text includes fundamental rights and principles of civil procedure, such as the right of action, the right of defense, the adversarial principle, the principle of equality of arms, the reasonable duration of the process and the duty to justify judicial decisions.

RESULTS AND DISCUSSION

Internet Access as a Primary Requirement for Electronic Data Processing Jurisdictional Proceedings in Mozambique

Internet access in Mozambique has been a long-standing problem and with the evolution of information and communication technologies in Mozambique and the existence of some mobile phone companies, it has generally been very difficult for the Mozambican population to access it.

More than half of the Mozambican population does not have access to the Internet, nor does it have access to a suitable platform for its use. This makes it difficult to use.

Many citizens live in rural areas, where simple access to the mobile phone network is been torture. Some climb mountains to access the Internet.

This will make access to justice through electronic judicial processes more difficult due to the lack of financial means. This leads us to believe that this form of access to justice will only be available to those who have the financial means to access them services assigned to the Justice Administration System.

Given that less than half of the Mozambican population has the privilege of accessing Internet and information and communication technologies, there will be unequal treatment. There may be electronic justice for those who have financial means and traditional justice for who does not have it, thus disqualifying the electronic processing of legal proceedings. Furthermore, it violates the constitutional principle of universality and equality, enshrined in article 35 of the Constitution of the Republic of Mozambique.

Looking at the current situation of Mozambican telephone companies, there are times when the Internet network becomes unavailable due to an Internet failure or outage. Many fundamental human rights are violated, such as the right to communication and expression, among others.

The quality of the Internet in Mozambique is not optimal, with fluctuations in network every working day, which may compromise the practical implementation of processes electronic judicial systems. The population living in rural areas will suffer serious violations of

their fundamental rights, such as access to justice, which may also make the slower process, violating the principle of legality and speed.

Mozambique is a country immune to the various technological transformations, following the evolution of information and communication technologies around the world. However, the There is no rush to keep up with global developments. First of all, it is necessary create reliable conditions for the continuity of an electronic judicial process that covers all Mozambicans and not just a small group of citizens.

Electronic Processing of Jurisdictional Proceedings in Mozambique: Procedural Litigation in the Administration of the Justice Sector

Law No. 8/2024, of July, was recently approved, establishing the legal regime of the electronic processing of jurisdictional processes and creates the Management Center Technological Sector of Justice. It applies to all processes that run under the terms of the ordinary, special or specialized courts, at any level of jurisdiction, in Constitutional Council, in the Public Prosecutor's Office and in the investigation and instruction bodies, including their assistants, under the terms of article 2 of the same legal diploma.

The objectives of this law are: to facilitate access to justice services by citizens and procedural stakeholders; streamline the processing of cases; reduce costs of access to justice services; manage processes appropriately; establish the interoperability between the systems of the Justice Sector bodies and other bodies of the State; guarantee availability, integrity, confidentiality, transparency and the authenticity of information and data for decision-making; and carry out conferences, hearings and videoconference hearings, in light of Article 3.

Paragraph a) of article 3, paragraph 1, of Law no. 8/2024, of June 7, establishes that the processing electronic legal proceedings aim to facilitate access for citizens and stakeholders procedural matters to the justice services. We understand that the objective under analysis regarding citizens' access to justice services is: The Department of Justice Services is not suitable, considering that internet services and access to platforms digital technologies are almost non-existent in Mozambican society and, considering the high cost of living, it would be beneficial for individuals (public and private companies and public institutions – public administration) and some citizens with power, who have



of economic and financial means to create the necessary conditions for access to justice electronics in judicial processes with quality, effectiveness and efficiency. Thus, it causes, above all, social inequality and discrimination.

The Mozambican legislator was controversial through article 16, paragraph 2, of Law no. 8/2024, of June 7, stating that "When the procedural document is presented in physical form, the Justice Sector employee who receives it will insert it into the system electronically, in the order of receipt, under the terms provided for in procedural laws". In this context, all electronic procedures are carried out online and, where applicable, through legal proceedings. Therefore, when we process legal proceedings in physical format, we are talking about traditional processes, which disqualifies the privilege to be considered electronic processes.

Furthermore, the same legislator, as mentioned above, establishes that "The parts and evidence procedural documents must be presented in portable document format (PDF) or any other format another non-editable format, and multimedia files can be presented in the format suitable for the computer system for processing legal proceedings, namely PNG, MP3 or MP4", under the terms of article 17 of Law 8/2024, of 7 June. In other words, the fundamental characteristic for considering legal proceedings as electronic is the presentation of documents in PDF, PNG, MP3 or MP4 format.

From the aforementioned controversy, we understand that the existence of the aforementioned law does not have applicability or prerogative. Since the Mozambican legislator states categorically that the electronic system is equivalent to the traditional system and that it is integrated into the electronic system for processing judicial proceedings, which, in our humble opinion, does not correspond to the truth.

CONCLUSION

It can be concluded that the electronic processing of legal proceedings is a new way access to justice which, in Mozambique, is far from being widely implemented.

For the process to be carried out, citizens first need to have access to electronic devices (hardware), something difficult for many families in Mozambique. They also need to have access to the internet, which has been



extremely complicated due to financial conditions and also suppliers of internet services.

The difficulty faced by consumers and users in accessing the internet has led to the disuse of a quality network, which compromises the execution of tasks that rely exclusively on the internet and have not produced the desired results. Or that is, even those who have the means to use the internet have faced fluctuations in your daily life.

On the controversy surrounding the Mozambican legislator regarding the perception of what is really electronic processing, from the perspective of judicial processes. It should be noted that Law 8/2024, of July, already approved and in force, although its implementation has not yet been initiated, requires that the electronic processing of jurisdictional proceedings be made electronically and can only be sent in PDF or PNG, MP3 and MP4. Otherwise, it is classified as traditional procedural processing of cases. jurisdictional.

RECOMMENDATION

It is recommended that:

- The Mozambican legislator, on the initiative of the current government, withdraws or fully revokes Article 2 of Article 16 of Law No. 8/2024 of July. Otherwise, the objectives of the aforementioned law will become obsolete or unsuitable for their respective legal purposes; and
- The Mozambican government must rethink the law, taking into account, above all, its target audience. It must also create conditions to provide the Mozambican people with a tablet and free access to high-quality internet, so that legal proceedings can be effectively processed electronically.

REFERENCES

Mozambique Information Agency (AIM). Approximately 73% of the Mozambican population does not have access to internet services. Published June 19, 2024. <https://aimnews.org/2024/06/19/cerca-de-73-da-populacao-mocambicana-nao-tem-acesso-a-servicos-de-internet/>, accessed April 5, 2025.

Castro, Catarina Sarmiento e. Internet Law. Scientific Journal of Cyber Law of the Center for Legal Research in Cyberspace – CIJIC – of the Faculty of Law of the University of Lisbon. 2nd Edition. 2016.

https://www.researchgate.net/publication/313359981_Direito_a_Internet. Accessed on April 5, 2025.

GERSZTEIN, Paola Coelho. The fundamental right of access to justice from the Portuguese-Brazilian perspective. COSTILLA. Brazil, 2013, p. 2.

Lyra, Leandro de Lima. The Electronic Process and its Implementation in the Brazilian Justice System. 2004, p. 11. <https://projudi.tjrr.jus.br/projudi/informacoesExtras/MonografiaProcessoDigitalLeandro.pdf>, accessed April 5, 2025.

Law No.

11.419/06 – Electronic Process. Electronic Journal of Law, Justice and Citizenship. 2010. p. 15. <https://docs.uninove.br/arte/fac/publicacoes/pdfs/magali.pdf>. Accessed on April 5, 2025.

Neto, Cunha. Manual of Legal Informatics. 2002, p. 200, Brazil apud SOUZA, Adriana, p. 2. [1-the-application-of-artificial-intelligence-in-the-judicial-power-and-efficiency.pdf](#), accessed on April 5, 2025.

Rabelo, Tiago. Unifying electronic judicial systems is necessary. Court of Justice of the Federal District and Territories. 2020. Unifying electronic judicial systems is necessary — Court of Justice of the Federal District and Territories, accessed on April 5, 2025.