v. 4, n. 24, 2024

Scientific Journal of Applied Social and Clinical Science

Acceptance date: 26/11/2024

JURY COURT: A THERMOMETER OF BRAZILIAN VIOLENCE AND JUSTICE

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Abstract: This paper analyzes the Jury Tribunal in Brazil, highlighting its historical and contemporary importance. The study covers the origins of the Jury Tribunal from Ancient Rome to its implementation in Brazil, passing through Greece, England and the United States. It explores the constitutional principles that govern the Jury Court in Brazil, such as the fullness of defense, the secrecy of votes, the sovereignty of verdicts and the competence to judge crimes against life. It also discusses the innovations brought about by Law 11.689/08, which introduced the unified hearing and the direct examination of witnesses, and by Law 13.964/19 (Anti-Crime Package), which brought the possibility of audiovisual recording of testimony and the review of decisions by the Court of Justice. It also presents statistics on the effectiveness of the Jury Court in Brazil, highlighting National Jury Week and National Jury Month, which aim to speed up trials of crimes against life. It concludes that, despite its importance, the Jury Court faces significant challenges, such as the slow pace of trials and the backlog of pending cases, suggesting the need for new measures to improve its efficiency.
Keywords: Jury Tribunal; efficiency; Law 11.689/08; Anti-Crime Package.

INTRODUCTION

The purpose of this study is to present the main aspects of the Jury Court, a special body of the Judiciary popularly known as the popular jury.

The analysis proposed here will consider the changes implemented by Law No. 11,689, of June 9, 2008, as well as Law No. 13,964, of December 24, 2019, which have a direct impact on the dynamics of this body.

Although provided for in our Federal Constitution in article 5, item XXXVIII, this body is not a typically Brazilian legal creation, since its origin, according to some authors, dates back several centuries, which will be discussed in greater detail in item 2.

As such, it is the implementation of a legal tradition already established in other countries and used by Brazil as an instrument of law enforcement, having, according to the Federal Constitution, four guiding principles: a) full defense; b) the secrecy of votes; c) the sovereignty of verdicts; d) the competence to judge crimes against life.

Its operation observes several important aspects to meet the guarantees described in our Federal Constitution, which will be described in section 3.

Its practical application still faces challenges in terms of its speed and scope, and currently requires some specific actions by the Judiciary, especially the National Council of Justice (CNJ), to promote greater effectiveness. These aspects will be addressed in section 4.

Finally, we offer our understanding of the subject, its characteristics and the current state of use in Brazil, which will be detailed in the final considerations.

This study is based on brief bibliographical research and reflection based on legal doctrine, case law, statistical studies and current Brazilian legislation.

A BRIEF HISTORY OF THE ORIGIN OF THE JURY TRIAL

ANCIENT ROME AND ANCIENT GREECE

There is a great deal of doctrinal imprecision about the origins of the Jury Tribunal. The controversy is so great that Carlos Maximiliano, after much research, went so far as to state that "the origins of the institute are so vague and undefined that they are lost in the night of time" (ZUCCA, 2024).

There are three main theories as to the origin of the Jury. Some claim that the institute

originated in the Mosaic era (Moses); others suggest the classical era of Greece and Rome; while the more conceptualist prefer to affirm its cradle in England, at the time of the Lateran Council[1] (MORAES,2024).

In this sense, Nestor Távora states that (LARA,2024):

> "The origin of the Jury Tribunal is seen in both Greece and Rome, and some see a divine foundation for the legitimacy of this body. Under this inspiration, the trial of Jesus Christ, despite lacking the minimum guarantees of defense, is remembered as a process with characteristics that resemble the jury. Controversies about the origin aside, most of the doctrine points to England's Magna Carta of 1215 as the root of the Jury Tribunal, as well as its most recent antecedent, the French Revolution of 1789".

The Jury Tribunal, in its current form, originated in England's Magna Carta of 1215. It is known, of course, that the world knew the jury before that. In Palestine, there was the Court of Twenty-Three in villages where the population exceeded 120 families. These courts heard and judged criminal cases related to crimes punishable by death. The members were chosen from among priests, Levites and the main heads of families in Israel (NUCCI, 2015).

In Greece, the existence of the jury had been known since the 4th century BC. The so-called *Court of Heliastics* was the common jurisdiction, meeting in[1] public square and made up of citizens representing the people. In Sparta, the Ephors (judges of the people) had similar duties to the Heliasts (NUCCI, 2015).

The Romans, like the Greeks, distinguished between *delicta publica* and *delicta privata*, with public criminal proceedings and private criminal proceedings. While in the former, the state merely acted as an arbitrator, with the magistrate limited to analyzing the evidence presented to him by the parties, in the latter, the state acted as the subject of a public power of repression (TOURINHO FILHO, 2012).

In Rome, during the Republic, the jury acted in the form of commissioned judges,

known as *quoestiones*. When they became definitive, they were renamed *quoestiones perpetuoe* around 155 BC (NUCCI, 2015).

After the French Revolution in 1789, with the aim of combating the ideas and methods espoused by the magistrates of the monarchical regime, the jury was established in France. The aim was to replace a judiciary made up predominantly of magistrates linked to the monarchy, with another made up of the people, surrounded by the new republican ideals (NUCCI, 2015).

From then on, it spread to the rest of Europe as an ideal of freedom and democracy to be pursued, as if only the people knew how to deliver fair judgments. Let's remember that the Judiciary was not independent, which is why the jury trial was presented as fair and impartial, because it was produced by people of the people, without the participation of magistrates considered corrupt and linked to the interests of the sovereign.(NUCCI, 2015).

ENGLISH AND AMERICAN LAW

The jury trial system has a rich history that begins in England and extends to the United States. The jury is an ancient institution that has adapted and evolved over the centuries, becoming a symbol of justice and democracy in many countries.

In England, the jury court originated around the 12th century, during the reign of Henry II. The system began to develop in a more structured way with the king's reforms, which introduced the idea of the jury as part of the judicial process. The Magna Carta of 1215 was an important milestone, establishing that no one should be imprisoned or punished without a fair trial by their peers.

1. Lateran Council: decreed measures against lords if they protected heresies in their territories, even threatening them with the loss of these territories.

Over time, the role of jurors in England has evolved. Initially, jurors were responsible for providing information about the local facts, but eventually came to decide guilt or innocence based on the evidence presented.

In the United States, the jury system was incorporated from the English legal tradition with the arrival of the British settlers. Supreme Court decisions, such as the 1968 Duncan v. Louisiana case, are crucial to understanding the application of jury law and are available in legal databases such as Oyez and Justia.

In the United States, the jury trial is a judicial process in which a group of citizens is chosen to hear the evidence presented in a criminal case and determine whether the defendant is guilty or innocent. The jury is made up of 12 members and its decision must be unanimous. A judge presides over the trial, advising the jury on the relevant laws and monitoring the progress of the case. During the trial, the prosecutor and the defense present their evidence, and the defendant has the right to give evidence in his own defense. When the jury convicts someone, the sentence generally tends to be harsher than the one imposed by a judge. Although the right to a jury trial is guaranteed by the US Constitution, its application can vary, as it is not used in all states (SIQUEIRA, 2022).

The Sixth Amendment to the US Constitution guarantees the right to a jury trial in criminal cases, while the Seventh Amendment guarantees the right to a jury in civil cases where the value of the dispute exceeds 20 dollars.

In the United States, the jury system has evolved and is applied in a variety of ways in different state and federal jurisdictions. Laws and procedures may vary, but the basic principle of a jury trial is a constant.

THE JURY TRIAL IN BRAZIL

The word "Jury" has its origins in Latin, jurare, and its meaning in a free translation can be understood as "to take an oath", which is a reference to the oath taken by the members of the sentencing council (jurors). From the outset, the understanding is that the jury decides on the conviction or acquittal of the defendant, and it is up to the presiding judge to express this decision, which must be aligned with the understanding and will of the jury (TJDFT, 2024b).

In Brazil, the Jury Tribunal was created by the Law of June 18, 1822, with jurisdiction restricted to press crimes. Its composition was made up of twenty-four citizens who were selected from what was understood to be "good, honorable, intelligent and patriotic men", however, in relation to the pronouncement, it was possible to appeal to the Prince (DINIZ NETO, 2006).

According to Diniz Neto (2006), the composition, competence and sovereignty of the jury court have undergone several changes over time, since various legislations have succeeded each other from the time of Imperial Brazil to the Federal Constitution of 1988.

According to the same author, with the granting of the Empire's Constitution in March 1824, the Jury Court was elevated to the category of a branch of the Judiciary, becoming independent and expanding its attributions. It was made up of judges and jurors who had to rule on the facts and apply the law.

Diniz Neto (2006) recalls that it was only in 1889, with the advent of the first Republican Constituent Assembly, that there was an intense debate about its suppression. However, Decree 848 of October 11, 1890, which organized the Federal Court, created the Federal Jury, and later in the 1891 Constitution, in its article 72, § 31, it stated: "The institution of the Jury is maintained".

Finally, the Brazilian Code of Criminal Procedure - Decree-Law No. 3.689 of October 3, 1941 - regulated the jurisdiction of the Jury Tribunal in Articles 406 and 497. The same author points out that at the time, other codes dealing with the Jury existed in the federation units, as well as extravagant laws such as those relating to press crimes and crimes against the popular economy (DINIZ NETO, 2006).

Currently in our Federal Constitution in its article 5, item XXXVIII, it is established that "The institution of the jury is recognized, with the organization that the law gives it, assured: a) the fullness of defense; b) the secrecy of the votes; c) the sovereignty of the verdicts; d) the competence for the trial of crimes against life" (DINIZ NETO, 2006).

CHARACTERISTICS AND OPERATION

The logic behind the trial of crimes against life by jury is based on the idea that the defendant should be judged by his peers (CAPEZ, 2023).

As mentioned above, the Federal Constitution (FC), in its article 5, item XXXVIII, lays down four basic principles inherent to this court, which we will detail below (CAPEZ, 2023):

- **The fullness** of the defense - This implies the expansion of what already occurs in criminal proceedings, which is the broad defense, i.e. the exercise of the defense to an even greater degree. It allows for the full exercise of technical defense by a qualified professional, who can not only limit himself to using legal arguments, but also use extra-legal arguments, being able to invoke social, emotional and criminal policy reasons, etc. In addition, there is the exercise of self-defense in which the defendant, making use of his right, can present his personal thesis, that is, his account to the judge of the version he believes to be the most convenient and beneficial, during his interrogation in court.
- **The secrecy of the votes** - This is a principle that has very specific characteristics applied only to the jury court, because in it, according to the STF, the provisions of art. 93, IX, CF, which deals with the principle of publicity of the decisions of the Judiciary, do not apply, so the details of the votes taken in the secret room do not need to be published, but only their final result, following what is in arts. 485, 486 and 487 of the Code of Criminal Procedure.
- **Sovereignty of verdicts** - The decision of the Jury Court cannot be modified by a sitting judge, and it is up to the presiding judge to hand down the sentence in line with the will of the sentencing council (jury). However, although the Jury's decision is sovereign, this principle is considered relative, as it allows the verdict to be appealed, according to the Principle of the Double Degree of Jurisdiction for cases in which the decision falls within the scope of art. 593, paragraphs a, b, c or d of the CPP. However, the possibility of annulling the decision on the merits is limited if the jury's decision is manifestly contrary to the evidence in the case file, which implies that the jury will have to return and hold a new trial.
- **Jurisdiction to try crimes against life** - Jurisdiction to try crimes against life lies exclusively with the jury (Art. 5, XXXVIII, d, CF; Art. 74, § 1, CPP), however, according to the author, this jurisdiction does not prevent the infra-constitutional legislator from expanding the jurisdiction of the jury in the future to try other crimes.

It is worth noting that criminal offenses that do not threaten the life of the victim, even if they result in death - such as robbery or bodily injury followed by death - are not considered crimes against life, and therefore do not fall under the jurisdiction of the jury, according to STF Precedent 603:

> "Jurisdiction for the prosecution and trial of robbery lies with the single judge and not the jury. (STF, 2024)"

In the same vein, Capez (2023) states that the jury has jurisdiction over the crimes of intentional homicide (Art. 121, CP), inducing, instigating or aiding suicide or self-mutilation (Art. 122, CP), infanticide (Art. 123, CP) and abortion (Art. 124 to 127, CP) in their attempted and consummated forms. In addition to these, of course, there are the related crimes, those which, due to the attraction of the jury (Arts. 76, 77 and 78, I, CPP), must also be tried by the People's Court (NUCCI, 2020).

COMPOSITION

The composition of the Jury Court is made up of a presiding judge and twenty-five jurors drawn in advance, seven of whom will be drawn to actually make up the sentencing council and who will be tasked with answering the proposed questions that may conclude in the conviction or acquittal of the defendant (TJDFT, 2024b).

According to Marrey (2000), the judge competent to preside over the Jury Court is the head of the Jury Court or the judge replacing him. His duties are exhaustively prescribed in art. 497 of the CPP.

Article 423 of the Code of Criminal Procedure determines the number of jurors that must be enlisted, which can be from 800 to 1,500 for counties with more than one million inhabitants, from 300 to 700 for counties with more than 100,000 inhabitants, with the remaining possibility of 80 to 400 for counties with smaller populations (BRASIL, 2024a).

Every month, in compliance with articles 433 and 447 of the Criminal Procedure Code, 25 jurors will be drawn from among the enlisted jurors to take part in the installation sessions of the Jury Court, during which 7 will be drawn from among the 25 to make up the sentencing council (BRASIL, 2024a).

The establishment of this collegiate body carries out the trial by answering the questions drawn up by the presiding judge relating to the criminal act and other circumstances that are essential for the conclusion of the trial. The questions proposed to the jury deal with the materiality of the crime (whether the crime took place), authorship (whether the accused committed the crime he is being charged with), whether the accused should be acquitted, causes for reducing the sentence and mitigating factors, causes for increasing the sentence and qualifying factors, etc (TJDFT, 2024b).

The work is conducted by the presiding judge, who performs various functions, including controlling and policing the session so that it runs smoothly, without inappropriate interference from the parties. At the end, it is up to the presiding judge to determine the sentence if the defendant is found guilty (TJDFT, 2024b).

BIPHASIC OR STAGGERED RITE

According to CAPEZ (2023), the rite for cases that need to be submitted to the jury is biphasic or staggered. This understanding is corroborated by Badaró (2016), and, according to the authors, it is divided into two phases:

- **First phase** - begins with the filing of charges by the Public Prosecutor's Office and ends with the decision to indict, also known as the Judicium accusationis or summary of guilt.

- **Second phase** - begins with the receipt of the case file by the presiding judge of the Jury Court, and ends with the trial of the Jury Court, also known as the Judicium causae.

JUDGMENT OF ACCUSATION - Judicium accusationis

As mentioned above, this is the first phase, which usually begins with the filing of a complaint by the Public Prosecutor's Office or, in specific cases, a criminal complaint by the offended party.

Filing a criminal complaint

Both the accusation and the criminal complaint must follow the provisions of article 41 of the CPP, however, Badaró (2016) states that, in the case of the Jury Court, there is the difference that the accuser should not ask for a conviction but only for an indictment.

The deadlines for filing charges must comply with article 46 of the CPP. It is worth noting that the complaint must be filed within 5 days of receipt of the police investigation when the accused is in prison, and within 15 days when he is released (BADARÓ, 2016).

Admissibility judgment

In the case of intentional crimes against life, it is permissible for the admissibility judgment to be made before the summons and consequently the defendant's response, so the judge can reject it. This understanding is supported by art. 395 of the CPP (BADARÓ, 2016).

Summoning the accused

The summons of the accused by the Jury Court does not differ in form, and the rules prescribed in articles 352 to 369 of the CPP apply (BADARÓ, 2016). According to art. 406 of the CPP, after the defendant has been summoned, a period of ten days is given to present a defense (CAPEZ, 2023).

Response

If the accused does not respond, the judge must appoint a defender to represent the defendant in his technical defense (Art. 408, CPP). The presentation of a defense is essential for the process to proceed, generating absolute nullity in cases where it is absent (CAPEZ, 2023).

The answer is the same as that expected in the ordinary common procedure (Art. 396-a, CPP), so it should contain the defense on the merits, allegations of preliminary issues, as well as the pleading of exceptions (BADARÓ, 2016).

Reply

Once this legal requirement has been met, the judge will hear the Public Prosecutor's Office or the plaintiff within five days on the preliminaries and documents filed in the case (CAPEZ, 2023).

The accuser can comment on the documents attached to the case file by means of the accused's reply, with a reply only being necessary if new documents or any preliminary arguments are added. In cases where the accuser replies, the accused will be allowed to reply again (BADARÓ, 2016).

According to Badaró (2016), although at the end of the first phase of the process (prosecution trial) the judge must make a decision, which may include summary acquittal, this decision may also be made at that moment after the replies, and may apply the provisions of art. 397 of the CPP if the requirements are met.

Preliminary hearing, debates and judgment

Subsequently, the judge will order the examination of witnesses and the carrying out of any steps requested by the parties within ten days.

Lima (2008) and Capez (2023) point out that, as a result of a change in the CPP (Criminal Procedure Code) following the enactment of Law No. 11,690 of June 9, 2008, which amended Article 212 of the CPP (Criminal Procedure Code), the presidential system was abolished and the cross-examination system came into force, as it does in the US model, since questions to witnesses can now be put directly to them without the need for intermediation by the judge, who may supplement the questions if he deems it necessary.

> Art. 212. Questions shall be put by the parties directly to the witness, and the judge shall not allow questions that may induce an answer, are unrelated to the case or repeat a question that has already been answered.

At the pre-trial hearing, statements will be taken from the victim and, if possible, prosecution and defense witnesses will be questioned, as well as any clarifications from experts. If necessary, the accused will be questioned and debated (CAPEZ, 2023).

DECISION

At this stage of the jury trial, the decision must be duly substantiated and may be made by the court (TJDFT, 2024):

Indictment - According to article 413 of the Code of Criminal Procedure (CPP), in cases where the judge is convinced of the materiality of the facts (there was a crime) and that there is sufficient evidence of authorship or even of the defendant's participation, there will be an admission of the accusation made against the accused, which must be duly substantiated in the records, as well as a statement of the legal provision for which he is being accused. The case is then referred for trial by the jury (TJDFT, 2024; CAPEZ, 2023; BRASIL, 2004a).

Capez (2023) points out that the indictment does not involve a trial on the merits, since the judge cannot acquit or convict the accused, as this would violate the principle of the supremacy of the verdict, which belongs to the Jury Court, so only the evidence of materiality and indications of authorship are analyzed.

In the indictment, the principle of in dubio pro societate applies, i.e. if there is any doubt, the judge must take the matter to the jury, as the indictment is a purely procedural act with a mixed, non-terminating interlocutory classification (CAPEZ, 2023).

This act authorizes the case to move on to the second phase of the trial (TJDFT, 2024; CAPEZ, 2023).

Disqualification - In cases where the judge is convinced that there has been a crime and even that there is evidence of authorship against the accused, but the crime in question is not classified as intentional against life, there will be a disqualification, that is, the judge will declare that it is not the competence of the Jury Court and will refer it to the competent court (TJDFT, 2024; CAPEZ, 2023).

Impronunciation - According to art. 414 of the CPP, in cases where the judge is not convinced of the existence of a crime or that there is insufficient evidence of authorship, he will decide on impronunciation, which will mean that for the time being there is insufficient evidence to refer the case for trial by the Jury Court. If sufficient proof of materiality or evidence of authorship is found before the case is dismissed, the case can be reopened and re-examined by the judge for a new decision (TJDFT, 2024; CAPEZ, 2023; BRASIL, 2024a).

Summary acquittal - In accordance with article 415 of the Criminal Procedure Code, in cases where, in the light of the evidence, the judge is convinced that the accused is not the perpetrator or a participant, that the facts do not exist, that the fact does not constitute a crime, or that a cause for exemption from punishment or even exclusion from the crime has been demonstrated, supported by arti-

cle 415 of the Criminal Procedure Code, the decision will be for summary acquittal, since there is no proof of materiality or evidence of authorship, and in these cases the Merits will be judged and the innocence of the accused will be declared. It should be emphasized that this requires indisputable evidence and that the judge has no doubts. This is an exceptional decision (TJDFT, 2024; CAPEZ, 2023).

JUDGMENT OF CAUSE - ***Judicium causae***

This is the second phase of the process, which only begins when the judge decides to indict.

Installation - The act that marks the opening of the jury court by the presiding judge, with the presence of a member of the public prosecutor's office, a clerk and bailiffs. At this point, the judge will ask the bailiff to call the jurors who have been drawn and will analyze their requests for excusal (TJDFT, 2024a).

Selection of Jurors - Together with the prosecutor, clerk and usher, the judge will check that the ballot box contains the ballots of 25 jurors. This act can only continue if at least 15 of the jurors drawn are present, otherwise the judge will stop the session. If 15 or more are present, the judge will declare the session open and place the ballots with the names of the jurors present in the box in the ballot box for later drawing (TJDFT, 2024a).

Announcement of proceedings - The judge will order the bailiff to make the **announcement** and certify the diligence of the case file (TJDFT, 2024a).

Calling witnesses - Witnesses are kept in separate locations before being called to testify. The main reason for keeping witnesses incommunicado is to preserve the impartiality and veracity of their testimony. If witnesses were able to talk to each other, they could align their stories, which would compromise the integrity of the judicial process.

Taking the defendant to the plenary session - The defendant will be taken to the plenary session by escort, and the use of handcuffs is not mandatory. If handcuffs are used, they must be justified, and are only authorized by the need to guarantee the order of the proceedings, the safety of witnesses, and the physical integrity of those present (TJDFT, 2024a).

Drawing of the Jurors - The presiding judge will draw the jurors present to form the seven--member sentencing council (TJDFT, 2024a).

But first, it will warn that it will not be possible to participate in the same council (TJDFT, 2024a):

I - husband and wife;

II - ascendant and descendant;

III - father-in-law and son-in-law or daughter-in-law;

IV - brothers and sisters-in-law, during the marriage;

V - uncle and nephew;

VI - stepfather, stepmother or stepson.

This impediment also applies to people who have been in a stable union (TJDFT, 2024a). In addition, the following may not serve as jurors (TJDFT, 2024):

I - has acted in a previous trial in the same case, regardless of the determining cause of the subsequent trial; II - in the case of a concurrence of persons, has been a member of the Sentencing Council that tried the other accused; II - has expressed a prior disposition to convict or acquit the accused.

Hearing of witnesses - In cases where witnesses have been appointed by the parties, the jurors are first told that they may ask questions, which may be asked by the presiding judge. In addition, the judge will ask the prosecutor, the defense and the jurors if they wish to have a comparison, recognize people, things, or even clarifications to be offered by the experts (TJDFT, 2024a).

Possible reading of documents - The judge will ask the prosecutor and the jurors if they are interested in reading any of the documents contained in the case file (TJDFT, 2024a).

Interrogation of the Defendant - Before the interrogation begins, the judge will explain to the defendant his constitutional right to remain silent. If the defendant does not object to being questioned, it will be open to the Prosecutor and then the Defense and finally the Jurors if they wish to question the defendant (TJDFT, 2024a).

Debate between prosecution and defense - In this act, the Prosecutor will first be given the floor for up to one and a half hours. The defense will then be given the floor for the same amount of time. In cases where there is a rejoinder and a rejoinder, another hour will be allowed for each (TJDFT, 2024a).

In cases where there is more than one accused, there will be an extra hour for debate and double the time for reply and rejoinder (TJDFT, 2024a).

Reading of the questions - The judge will read the questions that will be voted on by the sentencing council, and a copy will be given to the jurors as well as to the Prosecutor and Defense. After the reading, the Prosecutor and Defense will be asked if they would like to make any requests or complaints and if the jurors would like any explanations regarding the questions (TJDFT, 2024a).

If there is no controversy, the presiding judge invites the jurors, prosecutor, defense and clerk to go with him to the secret room (TJDFT, 2024a).

Voting in the secret room - First of all, the parties will be warned that interventions that disturb the free expression of opinion will not be allowed, under penalty of being removed from the room. After the vote, the judge will inform them that incommunicado voting is over and that he will pass sentence (TJDFT, 2024a).

Sentencing - At the end of the voting in the secret room, the presiding judge will draw up the verdict. At this point, the jurors should take their seats in the courtroom and, with everyone standing, the verdict will be read out. After it has been read, the session will be closed with the following words (TJDFT, 2024a) :

> "I thank the jurors for their presence and for doing their duty. The jurors are excused. I would also like to thank the Prosecutor, the Defender and the court clerks present here."
>
> "I declare the sitting closed".

THE JURY TRIAL IN NUMBERS IN BRAZIL

Since 2016, the National Jury Week, which establishes a concentrated effort to carry out trials of crimes against life, was started in Brazil and in 2017, by virtue of Ordinance 69 of the National Council of Justice (CNJ), this initiative was institutionalized (CNJ, 2024).

Later, given its relevance, the initiative was changed to National Jury Month, which takes place in November of each year (CNJ, 2024).

This action, in addition to speeding up the cases themselves, has also become important for: accumulating knowledge about homicide cases; knowing the capacity of the courts to schedule cases and hold sessions that result in sentences; and giving visibility to statistical trends in trials that consider victims and defendants involved.

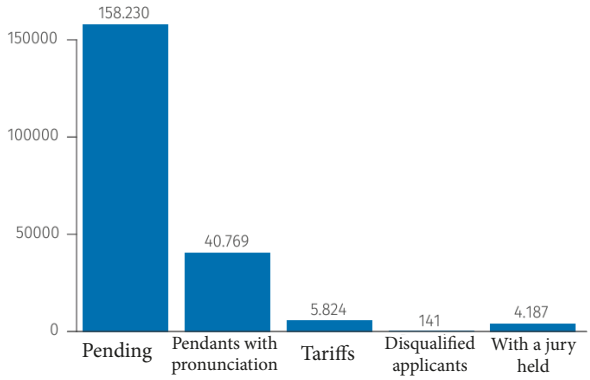
According to the CNJ (2023), in addition to reaching the judges and civil servants of the state courts, this work also encompasses society so that together they can apply the law.

In its 2023 edition, the CNJ's guidance was to give preference to judgments in cases with the following characteristics:

- Femicide - cases in which the homicide involved violence against women should be identified;

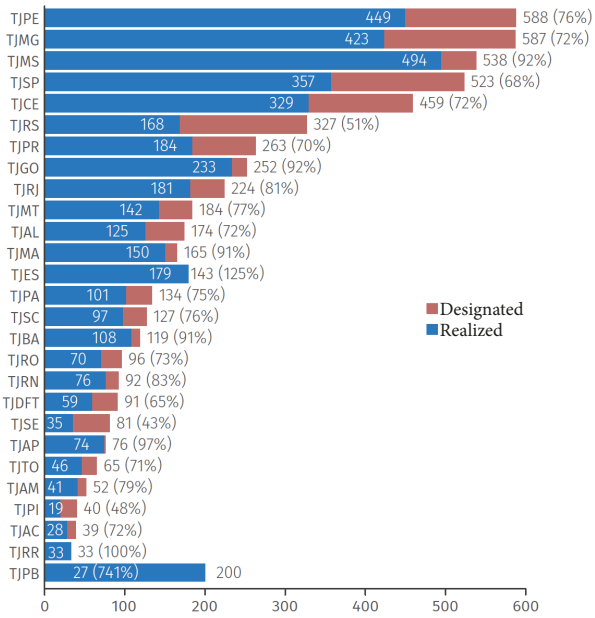
- Murder by a police officer - whether or not in the course of their duties;
- Murder involving a police officer - on duty or not;
- Crimes against life committed against minors under 14 years of age;
- Crimes against life awaiting a second trial.

As can be seen in the following graph, of the 158,230 cases pending in 2023, only 5,824 were scheduled, corresponding to 3.7% of the total number of pending cases and 14.3% of the cases in which defendants were convicted. When we analyze the cases in which a jury was actually held in November 2023, we have 4,187, which is equivalent to 71.9% of those that had been scheduled. Therefore, it is understood that 10.3% of the criminal cases before the jury with defendants pronounced in the Judiciary had a jury session during the month of the concentrated effort.



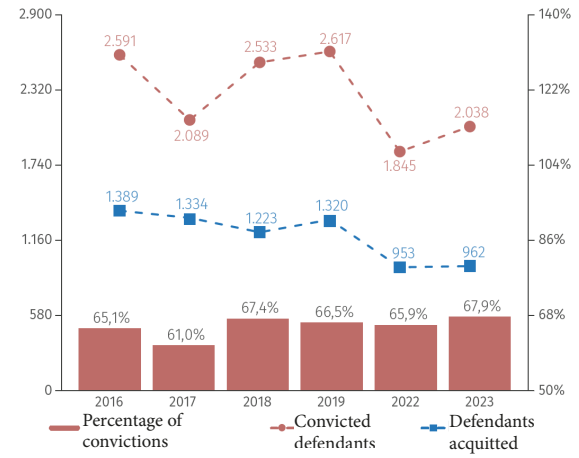
SOURCE: National Jury Month 2023/DPJ/CNJ

When we look at the distribution of jury court sessions scheduled and held by Federative Unit, we see that Mato Grosso do Sul is the one that managed to hold the largest number of sessions, followed by Pernambuco and Minas Gerais, with the following number of sessions held respectively: 494, 449 and 423. Of particular note is the state of Paraíba, which predicted 27 but held 200 sessions.



Source: National Jury Month 2023/DPJ/CNJ

When we look at the historical series on the outcome of jury sentences, as shown in the following graph, we see that the percentage of convictions varies between 61% and 67.9%, with convicted defendants ranging from 1,845 to 2,617 people.



Source: National Jury Month 2023/DPJ/CNJ

When we compare the data between pending cases and actual cases, we see that the Brazilian judicial system currently has a considerable deficit, as it has only been able to hold 3.7% of pending juries, which indicates that over time there is no downward trend.

The three federative units with the lowest effectiveness, considering the percentage realized, in holding pending juries are Bahia, Rio Grande do Sul and Pará, with 0.08%, 1.6% and 1.7% respectively.

However, Rio Grande do Sul stands out with 20,131 pending cases, followed by Minas Gerais, Pernambuco and Bahia with 17,899, 17,286 and 14,491 pending cases respectively.

In these courts, where we have the largest absolute number of cases related to crimes against life, there are the following respective percentages: 1.6%, 3.2%, 3.4% and 0.8% of cases scheduled, this percentage of juries actually held is very low when compared to the volume of cases still awaiting trial.

Court	Pending	Pendants with pro-nunciation	Tariffs	Disqualified applicants	With a jury held	Percentages on the agenda	Percentage with realized jurisprudence
TJAC	227	39	38	0	28	16,7%	73,7%
TJAL	3.068	798	174	5	125	5,7%	71,8%
TJAM	943	580	51	0	44	5,4%	86,3%
TJAP	1.985	484	76	0	72	3,8%	94,7%
TJBA	14.491	3.921	119	5	108	0,8%	90,8%
TJCE	9.038	2.540	457	9	329	5,1%	72,0%
TJDFT	2.586	617	91	0	58	3,5%	63,7%
TJES	5.079	2.901	179	0	85	3,5%	47,5%
TJGO	1.655	391	237	11	218	14,3%	92,0%
TJMA	1.257	489	171	7	132	13,6%	77,2%
TJMG	17.899	4.707	572	2	407	3,2%	71,2%
TJMS	2.044	652	508	17	473	24,9%	93,1%
TJMT	3.771	929	165	0	120	4,4%	72,7%
TJPA	8.234	825	140	6	101	1,7%	72,1%
TJPB	4.279	1.053	75	3	200	1,8%	266,7%
TJPE	17.286	3.597	588	10	449	3,4%	76,4%
TJPI	3.658	746	67	6	16	1,8%	23,9%
TJPR	10.777	3.853	249	1	178	2,3%	71,5%
TJRJ	9.516	2.482	400	1	182	4,2%	45,5%
TJRN	2.189	505	93	6	77	4,2%	82,8%
TJRO	1.259	326	253	5	70	20,1%	27,7%
TJRR	1.676	334	33	0	30	2,0%	90,9%
TJRS	20.131	4.128	319	0	167	1,6%	52,4%
TJSC	3.791	1.245	127	3	97	3,4%	76,4%
TJSE	2.064	408	81	1	35	3,9%	43,2%
TJSP	6.629	1.578	496	43	340	7,5%	68,5%
TJTO	2.698	641	65	0	46	2,4%	70,8%
Total	158.230	40.769	5.824	141	4.187	3,7%	71,9%

Source: National Jury Month 2023/DPJ/CNJ

When we compare the number of cases between the years 2022 and 2023 in relation to the percentage of juries held, we see that there is a deficit in Brazilian judicial action due to the increase in response time for the trial of crimes against life, as the number of cases in 2022 was 153,218 compared to 158,230 in 2023, an increase of 5,012 cases, which shows an increase of 3.2% in the year.

In 2023 only 4,187 cases were judged, which corresponds to 2.64% of pending cases, i.e. it was not possible to regress in the number of cases, which indicates a trend in annual growth rather than a reduction.

CHANGES MADE BY LAW 11.689/08 AND THE ANTI-CRIME PACKAGE

The innovations brought about by Law 11.689/08 and the Anti-Crime Package (Law 13.964/19) represent important steps towards modernizing and making the Jury Tribunal more efficient.

Law 11.689/08 changed the minimum age for someone to serve as a juror from 21 to 18 and increased the number of jurors summoned to the trial session from 21 to 25. It also established a ban on the use of handcuffs, except when absolutely necessary (ESCOLA SUPERIOR DO MINISTÉRIO PÚBLICO, 2008).

This law also aimed to protect the secrecy of votes by correcting an old flaw in the quesitation in cases of unanimous voting. Before this change, the secrecy of the jurors' votes was jeopardized when they all voted unanimously, as it was possible to deduce that all the jurors had voted in the same direction. The amendment to article 483, paragraph 1, of the Code of Criminal Procedure (CPP) established that if more than three jurors answer negatively to the questions of materiality and authorship, the vote is closed with the acquittal of the accused, without the need to collect the other votes (BRASILEIRO, 2021).

Even before Law 11.689/08, the jury procedure was biphasic or staggered, divided into two phases: the first, *indicium accusationis* (summary of guilt), which began with the indictment and lasted until the decision to *indict*; and the second, *indicium causae* (judgment of the cause), which began with the preparation of the case for trial in plenary. The law kept this structure, but eliminated the accusatory libel, with the second phase beginning with the preparation for the plenary trial. This two-phase system allows a judge to evaluate the accusation and the evidence in order to decide whether there is a basis for trial by jury (BRASILEIRO, 2021).

With the new wording of articles 406 to 412 of the CPP, all procedural acts are now brought together in a single hearing, promoting the principle of the reasonable duration of the process (ESCOLA SUPERIOR DO MINISTÉRIO PÚBLICO, 2008).

Law 11.689/08 also allowed documents to be attached during the pre-trial hearing, relaxing a previous rule that prohibited this practice during closing arguments. Another adjustment was the replacement of written closing arguments with oral arguments at the hearing (BRASILEIRO, 2021).

The hypotheses for summary acquittal (art. 415) have been expanded to include cases in which the lack of materiality or the absence of participation by the accused is demonstrated (ESCOLA SUPERIOR DO MINISTÉRIO PÚBLICO, 2008).

Another relevant change was the reformulation of art. 414 of the CPP, which now requires the judge to justify the indictment of the accused when there is insufficient evidence of authorship or participation, replacing the old provision of art. 409 (BRASILEIRO, 2021).

Before the 2008 reform, the appeal against imprisonment was the RESE. With Law 11.689/08, the appeal became the appropriate procedure for decisions of imprisonment and summary acquittal (BRASILEIRO, 2021).

The simplification of the questions (articles 482 and 483) was an important measure to avoid nullities and make it easier for jurors to understand, eliminating complexities that often caused nullities (ESCOLA SUPERIOR DO MINISTÉRIO PÚBLICO, 2008; BRASILEIRO, 2021).

Another significant change was the extinction of the protest for a new jury, an appeal that allowed the convict, if the sentence was equal to or greater than 20 years, to request a new trial (BRASILEIRO, 2021).

In December 2019, Law No. 13,964/2019, the Anti-Crime Package, was sanctioned, which brought changes to the procedure of the Jury Court, including the possibility of provisional execution of the sentence for convictions equal to or greater than 15 years (SILVA, 2019).

The Federal Supreme Court (STF) also revised its understanding of the provisional execution of sentences after conviction by the jury, authorizing immediate imprisonment after the trial, regardless of the total sentence imposed (STF, 2024).

Finally, the Anti-Crime Package introduced the concept of the Judge of Guarantees, responsible for supervising the police investigation and safeguarding the individual rights of those being investigated, a role that ends with the filing of charges (SANTOS, 2023).

These reforms aim to improve transparency, speed and justice in the Jury Court

FINAL CONSIDERATIONS

Since their creation and over time in various countries, Jury Courts have been established to meet the need, in specific cases, to allow the interpretation of the law and the circumstances of the act carried out to be carried out by society itself, represented by the members of the jury.

The Jury Court is an essential institution in the Brazilian judicial system, as it offers a mechanism that allows society to participate directly in the trial of serious crimes, especially those against life. This study highlights both the historical and contemporary importance of the Jury Court and the challenges it faces today.

Fundamental to ensuring fair and transparent trials, the Jury Court allows ordinary citizens, representing society, to decide on the guilt or innocence of the accused, which reinforces the legitimacy of judicial decisions. In addition, the constitutional principles governing the Jury Court - such as the fullness of the defense, the secrecy of votes and the sovereignty of verdicts - guarantee that the rights of the defendants are respected during the process.

Despite its importance, the Jury Court faces challenges that compromise its effectiveness. One of the main problems is the slow pace of trials. The study revealed that only a small percentage of pending cases are tried each year, resulting in a growing backlog of cases. In 2023, for example, only 2.64% of pending cases were tried, while the number of new cases increased by 3.2%.

This inefficiency is aggravated by the lack of resources and the need for greater speed in proceedings. Initiatives such as National Jury Week and National Jury Month seek to speed up trials, but are still insufficient to deal with the volume of pending cases.

The Jury Court is a vital part of the Brazilian justice system, but it faces significant challenges that compromise its efficiency. Implementing measures to increase the speed of trials and reduce the number of pending cases is fundamental to ensuring more agile and effective justice. With the right reforms and investment, the Jury Court can continue to play its essential role in promoting justice and protecting citizens' rights.

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