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Mediatized judiciary: norm (fundamental rights) *versus* social experimentation

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Abstract

We propose a study of judicial practice in a society undergoing mediatization. We noticed that the way the procedural actors behave, in the context where the institutions are crossed by mediatization logics, tensions the instituted. Social experimentation pressures the norm (and fundamental rights). In this context, we consider it productive to make methodological reflections on how to research within the legal-communicational interface. After contextualizing the present moment (judicial activism) mobilizing the concept of mediatization, we used the concept of interactional devices to investigate the two empirical objects selected for the study of cases. The first, the dispute over the position of the cameras in the testimony of former President Lula before the ex-judge Sérgio Moro. The second, the debate about the meaning of being a journalist, mediated by the judicial practice in the judicial process of blogger Eduardo Guimarães. In both cases we notice the phenomena of judicial activism and judicialization becoming more complex by mediatization. We perceive the fundamental right of due process and the constitutional guarantee to the secrecy of the source being strained by experiments that go beyond canonical legal logics, putting at risk indispensable rights to the Democratic State of Law.

Keywords: Mediatized judiciary. Interactional devices. Social experimentation. Judicial activism. Fundamental rights.

Introduction

The focus of this article is the study of judicial practice from the interface between Law and Communication, in which we propose methodological reflections with transcendence potential for communicational research with different objects. From this point of view, it is important to make a first note about the meaning of interface that we adopted in our observations. What we propose is not a "comparative" study. We do not intend to expose "communicational issues" on one hand and "legal issues" on the other to explain or discover similarities and differences. It is not, therefore, about saying what is communicational in the legal aspect and what is legal in the communicational one, as someone who establishes a rigid delimitation between two fields (BRAGA, 2012) and observes the mutual interferences.

Although Law is strongly constituted as a field, as a practice and specific knowledge, our focus is on the communicational aspects of legal practice. We take into account that Law, as a social reality, is a communicational process. After all, laws, judgments, hearings, subjective rights, plenary sessions of collegiate courts, among others, are revealed through texts (written, oral or images) and try to solve the problems that the practice raises through arrangements (BRAGA; CALAZANS, 2017) that are formed interactionally, by communicative actions (in consensus and dissent). In these terms, Law (as a social process) *is communication*.

For this reason, we center this text around the problem, starting with a brief reflection on how to make questions. Our object of study is the Judiciary. It is through this mediation that different actors interact – the judicial practice as a social process. It is important to understand under what logics such mediation takes place. In this context, the word "logics" is used in the sense proposed by Braga (2015, p. 19, our translation), namely: "when do we refer to the logics of a social process? To begin with, we are signaling the existence of certain patterns, modes of functioning and of action". In addition, at this moment, in which we intend to present the way to address the problem, another pertinent question appears: what are the logics of the Judiciary in the exercise of judicial practice? This first question gives rise to another: from what angle will the Judiciary Power be studied?

As an introduction, we clarify that the problem of our research is not directed to the logic of the Judiciary as an institution, but to the different logics adopted by subjects who interact (consensually and conflictively) mediated by judicial practice. With this perspective, the research focuses on cases of legal action in which such action, in addition to triggering its usual interactional strategies, expresses communicational processes in experimentation of tactics in the field of mediatization. The cases that we will study refer to the use of cameras in the testimony of ex-president Lula to "Operation Car Wash"; and the coercive conduct of blogger Eduardo Guimarães[1].

1 The two cases studied here were the object of observation in our book "Midiatized Judiciary: judicialization, activism and communication", published in 2022, by Max Limonad (MENDONÇA: 2022). The book is the result of our doctoral thesis. For the present article, the case studies received significant reformulations.

From this point of view, the Judiciary is seen as a social process, so we propose a focus on logic, after all, "saying the logic is saying the process" (BRAGA, 2015, p. 20). We understand that procedural logics, in any structured scope, correspond to the set of generally accepted and established ways that this scope activates to achieve its objectives. These logics can be qualified according to the type of their actions. Thus, we can say that a court interacts according to usual communicational logics in the forensic scope, fulfilling, at the same time, those properly legal logics (which its communicational process serves and favors effectiveness).

Thus, the general research problem we have arrived at is the following: what are the communicational logics that are perceptible in the interactional arrangements mediated by judicial practice? We think that the heuristic proposed by Braga and Calazans (2017), based on the concept of interactional matrices, which involves the ideas of interactional devices and social circuits, works well as a theoretical angle to guide *how to make questions.*

Theoretical perspective of observation

The research has in mind the historical stage of social organization in which it is currently going through, identified by Communication scholars by the *mediatization* phenomenon. This term is not solely used as a reference to the advancement of communication technologies (in spite of its undeniable importance in the processes of interaction between persons and social groups). Nor is the term *mediatization* used to characterize a possible role of communication vehicles (the media) in the conduct of various social processes (political, economic, ethical etc.) (GUAZINA, 2007). Instead, the expression is used to indicate the way of socially coexisting, which, in general, marks and characterizes the contemporary society.

Mediatization, as Braga (2015) argues in his distinction between media logics and mediatization logics, does not refer to an expansion of mediatic logics in society, nor is it a consequence of an influence of the media on society. It is a general social process of search and experimentation of technological processes by participants from the most diverse sectors in their own interest. This generates circuits that cross institutions, leading to border events between social fields, stressing usual practices, enabling commutations and friction between different fields – which may represent productive innovation and progress, but also misguided attempts, internal conflicts within a field between its participants and spaces of anomie and lack of control.

Thus, the mediatization phenomenon is understood here as the way in which the mediatization society organizes itself from the mediatic mode of interaction (FAUSTO NETO, 2008), but depending on initiatives from non-media sectors of society. We start from the assumption that communication is a broad process within which the institutions take place (BRAGA, 2010).

When we observe the judicial practice taking into account the phenomenon of mediatization, the latter is not reduced to the penetration of media logics in the legal field

(BRAGA, 2015). Certainly, this penetration exists. When the Federal Supreme Court decides to broadcast live the sessions of its Plenary through an institutional television channel, it is using techniques and proposing a way of interacting with its audiences that traditionally belongs to the media. In order to do this, they hire professionals to operate cameras, video editors, cinematographers, journalists to comment on the broadcasts of trials, etc. This angle of observation is also fruitful, but it is not just to this what we are referring.

According to Sodré's (2013) reflection, mediatization is not a phenomenon of technological determinism, but a way to exist socially and communicationally, in which interactions instrumentalized by information technologies, data processing and electronics enhanced by the consumer economy, form a true *mediatic bios*.

It is in this context that we are observing the performance of the Judiciary. The perspective that we take into account does not isolate the legal field in its logic to describe the influences (positive or negative) of the media in the performance on that field. We take into account that, especially from the last decade of the 20th century and the first decades of the 21st century, the social interaction has become more complex. The Communication Theories thought in the second and third quarters of the 20th century, anchored in the studies of the media and in unidirectional emission and reception mechanisms, are no longer enough to understand the multiple arrangements made possible by the many communication instruments that became naturalized in the daily lives of people and institutions.

Judicial practice takes place in this context of mediatization. Both the interactions between actors within the specialized field of Law and the relations of the specialized field with other subjects occur in the context of mediatization.

It so happens that, in the judicial activity, naturalized interactional habits are part of the historical process of stabilizing individual rights and guarantees. The ongoing social experimentation stressing the norm risks rights, demanding procedural adjustments that, without isolating the judicial activity, preserves its function in the Democratic State of Law.

The concept of interactional devices to question judicial practice

Judicial practice is commonly studied from the point of view of other Human Sciences. Legal Science has this practice as its object, par excellence. But Political Theory, Sociology, Philosophy and Journalism also observe it from points of view that are strongly pre-established by normatively stabilized epistemologies. In general, from such angles, communication often appears as an accessory phenomenon.

The concept of interactional devices works as a way of articulating knowledge formulated within the scope of Social Sciences, in general, to recognize the various arrangements formed in interactions mediated by judicial practice.

For Foucault (1994, p. 299), a device involves

> a resolutely heterogeneous set, comprising discourses, institutions, architectural organizations, regulatory decisions, laws, administrative measures, scientific statements, [...] both the said and the unsaid, there are the elements of the device. The device [...] is the system of relationships that can be established between these elements.

To characterize the interactional devices, Braga (2018, 2018, p. 89, our translation, emphasis in the original) proposes:

> In the Foucauldian model – in the angles in which we assume it as valid for any type of device – substance is the system of relationships between the constituent elements of the device. In a device that is perceived as interactional, the construction of the system of relationships between participants, from the beginning of its elaboration, *constitutes the very problem that requests tentative strategies*.

The established legal interactional device stems from a long practice and from legal studies. The insertion, there, of mediatized elements (in experimentation by the participants), implies other tactics and interactional risks in the legal process. Thus, we mobilize the concept of interactional device as an aid to understand how the actors involved in the observed cases interact and how such interaction affects the rights and the very method of resolving conflicts submitted to the Judiciary.

Aspects of the political-judicial context that participate in the understanding of judicial practice

There is a remarkable ongoing phenomenon in judicial practice, which legal thought calls judicial activism. This activism is fostered by and fosterer of judicialization of social demands (political, ethical, economic, religious, etc.). It is worth noting that in academic research carried out from the point of view of Theory and Sociology of Law, the themes of judicial activism and judicialization of social demands are objects of extensive studies (STRECK; TASSINARI; LEPPER, 2015).

In our research, the phenomena of judicial activism and the judicialization of social demands are seen as contextualizing a general framework in which judicial practice is tensioned by changes in mediatization. The Judiciary is an instance of social interaction; it works as a great mediator of political, ethical, religious conflicts, etc. This task of conflict mediator became more complex in Brazil in the second decade of the 21st century, given the political instabilities.

Mediatization affects social fields and processes as a whole. Any social process, both the more institutionalized (such as those mediated by state agencies) and the more informal one (such as everyday private relationships), can only be adequately understood with due

location in time and space. Even strongly established institutions, such as legal ones, have the characteristics of their time.

In the current context, mediatization logics (BRAGA, 2015) are being tentatively used by the most diverse social actors, in the study of episodes of Judiciary's participation in matters of public interest. Rather than classifying them as examples of activism, it is important for us to try to understand the movements that subjects, in consensus or in conflict, and mediated by judicial practice, make to adjust their actions.

Without adopting judicial activism as an explanatory theory, we do not ignore its importance as a matter of horizon, as the phenomenon of activism can be viewed from several angles. In our proposal, we place it as a general context of micro-arrangements within which rights are being affected (in the flow of mediatized judicial practice).

A second matter of horizon, connected with the previous one, concerns the exercise of judicial activity itself. If the first question refers to the result of the arrangements between actors (subjective arrangements) in rights as legal norms (objective arrangements), the second horizon question focuses on the subjective arrangements themselves. Judicial activity is carried out through communicational interactions between parties, judges and prosecutors, who relate to each other following normatively predetermined standards by law.

With this in mind, it is indispensable to ask: how are the interactions that make up the jurisdictional provision being affected? Are also part of the horizon issues the tensions within the legal field caused by actors who resist the new arrangements and strategies that are not in line with the stabilizations on which the autonomy of Law in the Democratic State is based (CASARA, 2019).

The general questions – social interactions mediated by judicial practice in the context of judicial activism and judicialization – structure the horizon of observation of specific arrangements that will be understood in the study of concrete cases selected for the methodological reflection that we propose. In the following section, we will move closer towards the cases – the testimony of former President Lula to Sérgio Moro and the search and seizure of Eduardo Guimarães.

What to observe in the observables? (First approximation)

Our objective is not to understand what the Judiciary is or should be, but what it does and how it does it. Therefore, our view privileges judicial practice, which is the typical function exercised by the Judiciary: judging. Jurisdiction is a practice whose objective is to settle conflicts through the mediation of law. We will discuss about the purpose of such angle.

To achieve our objective, we are attentive to the arrangements elaborated and reworked in the observed cases, taking into account the specific objectives of the subjects involved (people, political parties, the media, defendants, judges, prosecutors, voters, etc.) and their strategies – to

think about how the pre-established rules for the arrangements are tensioned and affected by the strategies (BOURDIEU, 2004).

In this context, judicial practice, as an instrument of mediation (MARTÍN-BARBERO, 1997) of legally relevant conflicts, can be seen as a macro device (BRAGA; CALAZANS, 2017) that, although subject to numerous transformations according to the variation of the historical context, survives the passage of time and stabilizes in certain periods. However, if we limited our observation to this macro perspective, we would have the risk of emphasizing the institutionalized, the resolved (BRAGA, 2018). It is not our purpose, although we do not ignore it. This is why the macroscopic perspective is referred to as a horizon issue, contextualizing the general research problem.

From a microscopic point of view, at the level of the specific problem, we propose a focus on micro-arrangements. Judicial practice is seen in the singularity of the cases. This singularity will be sought in the specific (communicative) arrangements that may come to light when mobilizing the concept of interactional devices to investigate them. The observables are singular practices, chosen for their singularity and not the judicial practice as a whole.

What to observe in the observables? (Second approximation)

In the cases observation, we use the term "arrangements" in a broad sense; we want to refer to how things are after interactions. Or how they are situated in the flow of interactions, because these never cease. After all, the final judgment of a sentence puts an end to the judicial process, but not to the social interactions surrounding the case. These interactions, on the contrary, are often intensified after the end of the process, giving rise to conflicts and consensus around the outcome of the trial, giving continuity to the arrangements that were built during the procedural process.

The term "arrangement" is not limited to agreements between people, but to the result of interactions, including those not foreseen by the subjects involved. Therefore, the arrangements are of subjects – people, institutions, parties, lawyers, police, politicians, judges, prosecutors, journalists, etc. – from whose angle we call subjective arrangements; but the arrangements are also of meaning... The said, or done in a given context, set to circulate, even in apparently closed and regulated circuits such as the legal one, meets another said or done. The articulation of these two (in practice, they are many, infinite) forms a third thing or meaning, which in contact with other third things (done or said) form others, etc. From this angle, we call them objective arrangements.

In addition, we are attentive to the criticism (which we deem relevant) of technocentrism (MIÈGE, 2009). The observables in this research are not things or essences. When technological instruments are highlighted, what is in view is the uses actors make of such technologies, or what subjects do with things, and not what these things determine people to do.

The empirical ones are judicial cases, but our view will not focus on the Judiciary as an institution with strongly stabilized and regulated practices – from which its institutional nature results. In the methodology that we propose, the empirical ones are perceived in their singularity, in order to understand the arrangements of each case, hence the idea of studying two different cases.

The Judiciary is the seat of objectification of laws and rights. A right abstractly provided by law is realized in the judicial-decision-making activity (in the activity of the judge). The ethical-legal principles that link the interpretation of current norms, which give content to the validity of the Law and derive from axiological acquisitions that man in his historical coexistence is making (tradition), are also carried out in judicial practice (NEVES, 2008). This way of looking at the law privileges the judgment of the concrete case as an instance par excellence for the realization and elaboration of the law. It is at this moment of creating the solution for a concrete case through the mediation of general and abstract norm that the judicial activity takes place. In the cases selected and described in the next section, our focus will be on the judicial activity in progress. In each case, we expected to perceive the arrangements, strategies, disruptions, etc. that are being elaborated once and again in the context of mediatization.

For this, we mobilized the reflection of Braga (2018, p. 20): "The social participants arrange themselves, in the surrounding conditions, to meet the objectives given, in facing the urgencies that require integrated action". Our proposal is to observe the arrangements that are formed by the interaction of the subjects in legal cases. Beforehand, we can say that such arrangements are communicational and legal. Moreover, insofar as they are legal, they affect rights.

Empirical-descriptive work

Introductory notes

The phenomenon of mediatization in judicial practice is studied taking into account the insertion of acts and actors of the Judiciary in social media. At this point, it is worth noting the institutional choice made by the Judiciary itself and auxiliary bodies, for exposing their performance in the media in such a way that society begins to follow trials and police actions or the Public Ministry as if they were a reality show.

As we pointed out in the Introduction, the two cases dealt with here correspond to the testimony of former President Lula to "Operation Car Wash"; and the coercive conduct of blogger Eduardo Guimarães. What justifies the choice of these two cases is the fact that to the usual interactional processes by which such types of judicial acts are habitually exercised, interactional elements from the media sphere were added, through direct experimentation of

the legal actors. This change produced interface gestures that are not tested and limit situations – which favor perceptions that enable an acute understanding of both the experimental gesture and the habitual logics that are eventually strained.

The mediatized judicial practice does not consist only in the disclosure of judgments, but in stages of production of evidence and arguments construction (even before the final judgment). This intense exposure of judges and judging bodies inserts the formation of the magistrate's conviction in communication circuits. It is no longer just about forming the conviction and "putting into circulation" the result of the judgment, but a mediatization of the very process of forming the conviction of the judge.

In general, we perceive in the episodes studied the tension between instituted (legal) rules and actions raised by strategies developed to face new urgencies, as proposed by Braga (2018, p. 19): "Scrutinizing the rules is relevant, because they summarize the arrangement obtained and not because they are the foundation of social occurrences. The scrutiny of strategies is required, because without them the rules are abstract".

The cameras in the testimony of former President Lula

The first case is the interrogation of former President Lula before the ex-judge Sérgio Moro (May 10, 2017) in which the debate between the defense and the prosecution on the position of the film cameras of the interrogation preceded the substantive discussion of the process. On the case, see report by Charleaux (2017, n.p., our translation):

> Lula's lawyers believe that the way these depositions are recorded, with a camera focusing only on the defendant, without broader plans that include lawyers, prosecutors and the judge, harms the defense and favors the prosecution. Therefore, they asked for two changes: to include broader plans and to record the audience with their own team. [...] The former president's defense considers that this format generates "a distorted image" and prevents "the posture of the judge, the prosecuting body, lawyers and other agents involved in the act from being evaluated", which "would instill a negative character in the defendant". Therefore, they request that the framework also includes the deponent's interlocutors. [...] Judge Moro [partially] accepted this defense request, saying that there will be a second camera "that will portray the courtroom from a wider angle". The Federal Public Ministry - responsible for the prosecution - had asked Moro to deny the defense's request, but it was defeated.

As an illustration, the following images show the position of the additional camera after the discussion (Figure 1) and in the normal position (Figure 2):

Figure 1 - Additional camera position

Source:VEJA (2017).

Figure 2 - Normal camera position

Source: VEJA (2017).

The process in which the position of the cameras was discussed is the same in which the complaint was presented by the Federal Public Ministry through a press conference held on September 14, 2016, in which the prosecutors in charge of "Operation Car Wash" task force illustrated the case "didactically" with the use of a PowerPoint presentation. It is not difficult to say that the act of offering the complaint, in legal terms, is formal, materialized by a written text, signed by the Prosecutor. This text was in no way consistent with the PowerPoint presentation for which the Federal Prosecutor at that moment, Deltan Dallagnol, in March 23, 2022, would be sentenced by the Superior Court of Justice to pay compensation for moral damages in favor of former President Lula.

The set of consensual and conflicting relationships that form this circuit resulted in arrangements of sense that gave meaning to the condemnation of former President Lula. With the observation that the meaning of his imprisonment is also conflicted. After all, political allies and opponents, social organizations, voters, financial market investors, rural and industrial producers, etc. attribute different meanings to Lula's arrest. The mediatization logics observed by the actors involved in this judicial process, in view of the achievement of their strategies, complicated the interactions within the circuit that had as its axis: denunciation-prosecution-conviction-prison of former President Lula.

In the case under discussion, we perceive the use of media logic to achieve legal-procedural strategies. The use of typically media technologies by the Judiciary provides new tensions for the uses those subjects make or want to make of such technologies in the face of pre-established rules or even on the way of establishing the rules. The actors in the process (Defense, Prosecution and Judge) became aware of this! If the framing of the camera in the recording of the interrogation images was indifferent to the outcome of the case (or the meaning of the sentence), the defense would not have formulated the request, and, if it did, the prosecution would not oppose it and neither would the judge weigh such arguments.

How this affects the production of meanings of norms that affirm the fundamental guarantees (or other rights) that sustain the Democratic State of Law is a question worth asking. Legal interpretation is not a merely declaratory act of a meaning already made in the Law, but the result of interpretation, which is a contextual and intersubjective act. If the context is the use of media logic (mediatization) in judgments, the interpretation, as a process of constituting the meaning of the norm, also changes. The focus of our methodological proposal is to understand that new arrangements (including interpretive ones) are provided by these crossings.

In this sense, it is interesting to think about the judicial practice from the concept of interactional device (BRAGA, 2006), as an instance that mediates (in a communicational process) the elaboration of the meanings of Law. We speak of mediation because our view of the Judiciary is not as a "foreign body" to "influence" the community, but as an instance in which different actors interact, with the sense of law being the result of this multiple interaction that is communicational.

The coercive conduct of blogger Eduardo Guimarães

The second case study is the coercive conduct (Search and Criminal Apprehension nº 5008762-24.2017.4.04.7000/PR) of blogger Eduardo Guimarães, editor of Blog da Cidadania. In unraveling the criminal case against Guimarães, the concept of Journalist attempted by Sérgio Moro took place from the interaction of the judging body with other social actors through the internet.

As we said, the Judiciary, as the body that resolves the specific case, is, par excellence, the seat of objectification of laws and rights. The rights abstractly provided by law are realized in the judge's activity. Commonly, the judgment of a case works as a parameter for other similar cases, especially when there is great social repercussion. That is why the judgment of this process is so important. In it, the Judiciary was close to establishing a possible parameter for the limits of the guarantee of secrecy of the source.

The case was selected to think about the meaning arrangements of both the concept of journalist and the limits of the right to secrecy of the source, conflictingly elaborated in the flow of tensions between different actors (judge, prosecutor, police, organization of journalists, the defendant himself, etc.), all mediated by judicial practice.

Narration by Eduardo Guimarães about his coercive conduct:

> At 6 am on March 21st of this year, my wife and I were sleeping when we heard a noise like someone was breaking-in our apartment's front door. I thought it was a neighbor starting some housework ahead of schedule and, as I had gone to sleep a few hours earlier, I turned over and went back to sleep. Seconds later, I hear my wife desperately say that they had come to arrest me. My daughter Victoria, 18 years old, 26 kilos, with cerebral palsy, who was sleeping in the next room, was startled by the police knocking on the door and began to complain, as she does when she is nervous. I get up, alarmed, run to the living room and find my wife at the door, ajar. As I finish opening the door, I see four federal police officers. And the doorman of the building with a frightened expression on his face. Detail: my wife wore skimpy nightwear. She asked to change. She did not get permission from the police. Meanwhile, Victoria watched with wide eyes. The officers communicated that they had a search and seizure order and began to search the apartment. They forced the doorman into my bedroom, which they started rummaging through, opening drawers, closet doors, and anywhere else possible. They found my computer (laptop), demanded the password to turn it on and, thus, they could change this password to have access whenever they wanted. I asked to copy some personal data, but I was not allowed. They asked to unlock my cell phone for the same purpose. After the search, nothing being found, the officers announced my bench warrant. I tried to call my lawyer, Dr. Fernando Hideo, but I couldn't. It was a little past 6 o'clock. My wife asked them to wait for

> me to speak with the lawyer, but they didn't allow me to. They demanded that I get dressed and accompany them. My wife and I went into Victoria's room, where they were more respectful, to hug each other. She cried, my daughter made her characteristic sounds, because she doesn't speak. I wondered if she would ever see them again (BLOG DA CIDADANIA, 2017, n.p.).

The decisive factor in the outcome of Eduardo Guimarães trial was precisely his qualification as a blogger/journalist. The ex-judge Sérgio Moro, who tried him, faced the problem of qualifying Guimarães' professional activity:

> Better examining the blog in question, http://www.blogdacidadania.com.br/, accessed on the present date, I can see that it does not appear to be a proper space for journalism, but for political propaganda, illustrated by highlighted information, although outdated, that the holder would be a candidate for councilor for the city of São Paulo (PCdoB).
>
> Although a journalist's degree is not absolutely necessary for the exercise of the profession, the evidence collected indicates that Carlos Eduardo Cairo Guimarães is not a journalist, with or without a degree, and that his blog is only intended to allow the exercise of his own freedom of speech and broadcast partisan political propaganda. Despite the relevance of these rights, the constitutional protection of source secrecy is not relevant to them.
>
> Certainly, this judge is not unaware that the profession of journalist can be exercised without a higher education degree in the area. However, the mere fact that someone owns a blog on the internet does not automatically make them a journalist[2] (JUSTIÇA FEDERAL, 2017, n.p.).

Certainly, a case in which the accused presents himself as a journalist would stimulate the interest of class entities and the mass communication vehicles themselves. After all, the legal concept of journalist has as a corollary the establishment of criteria for the attribution of legal guarantees granted specifically to this professional. This affects the daily activity of communication companies and the work of journalism professionals. With this, we want to emphasize that the novelty of the case is not in its media appeal, but in the web of relationships (KAUFMANN, 2002), and why not say in the functioning of judicial practice as an interactional device, to bundle interactions and mediate conflicts and consensus in the flow of relationships.

It is possible to notice the appropriation of mediatization logics by the actors. For example, the defendant (the blogger) could simply present his technical defense through his lawyer. But,

2 Transcribed text of the Criminal Search and Seizure case nº 5008762-24.2017.4.04.7000/PR, signed by the ex- Federal Judge Sérgio Fernando Moro, of the 13th Federal Court of Curitiba, on 03/23/2017, at 11:24 am.

without dispensing with the technical defense, he published a detailed account of how he was conducted. In this narrative, he used rhetorical resources in order to sensitize his audience (PERELMAN; OLBRECHTS-TYTECA, 2005), which at that time was not composed only of blog readers. In one of the judge's orders (transcribed below), the magistrate mentioned that he had read the Blog da Cidadania to formulate his conviction. Furthermore, such an account fueled a series of public debates about the secrecy of sources and the professional prerogatives that the judge in the case took into account in his decision-making process.

The interaction between the Judiciary and society through the internet was important for the judge who presided over the case involving blogger Eduardo Guimarães to review his position regarding the journalist concept and the consequent limits of protecting the confidentiality of sources. Next, we cut out some fragments of the judicial decision of the case in order to illustrate what is being discussed:

> It should, however, be recognized that, since the investigation, there have been public manifestations by some respected journalists and journalists' associations questioning the investigation and defending that part of Eduardo Cairo Guimarães' activity would be journalistic in nature. They also expressed concern about the risk of breaking the confidentiality of a journalistic source in a criminal investigation. Among them is ABRAJI – Brazilian Association of Investigative Journalism, an association of outstanding reputation that released a note to that effect on 03/22/2017 (http://www.abraji.org.br/?id=90&id_noticia=3763). Nevertheless, the manifestation of some members of the journalist class and some journalists' associations in the sense that part of Eduardo Cairo Guimarães' activity would have a journalistic nature, although it does not bind the Court, cannot be ignored as a probative and evaluative element [...][3] (JUSTIÇA FEDERAL, 2017, n.p.).

The report above reveals how the public debates promoted by Guimarães through his blog participated in the construction of the meaning attributed by the magistrate to his professional condition. In addition, it is interesting to note the pressure of new uses on established rules. According to the legal rules in force, the judge must judge according to the evidence and information contained in the case file. It is the evidence in the file that binds the judge's conviction, this is the reason for the magistrate's statement: "although it does not bind the Court". However, despite not being legally binding, the judge states that the public manifestations - which came to Moro's knowledge through the internet – within the scope of the debate on the legal concept of journalist and specifically on the condition of the accused blogger, should be taken into account in forming their conviction. We note here a clear tension

3 Transcript of the Search and Seizure Criminal Proceeding No. 5008762-24.2017.4.04.7000/PR, signed by Federal Judge Sérgio Fernando Moro, of the 13th Federal Court of Curitiba, on March 23, 2017, at 11:24:57 am. Access on 30 June. 2022.

between the legally established and social experiments. In this case, experiments made not only by journalists, but also by the defendant and the judge in the case.

Conclusions

One of the objectives of the work is to debate a methodological approach with the potential to unravel (BRAGA, 2011) communicational aspects of the empirical objects studied. We thought about how to formulate questions for the study of social processes in order to give centrality to Communication by mobilizing the chosen theoretical perspectives. The concepts of mediatization and interactional devices triggered for the study of the cases of Lula's interrogation and Eduardo Guimarães' warrant show social interactions in mediatization logics tensioning strongly regulated interactional devices.

We believe this debate is productive for the development of research in Communication and for epistemological reflections in the field. The way in which we studied the cases showed us the meanings of fundamental rights being strained (and, in the end, resisting) by experiments with a plurality of actors participating consensually and conflictively under the mediation of judicial practice.

From the point of view of the rights that the regulation of legal provisions serves, the tensions that experimentation makes in the norm should serve as a warning. Former President Lula and journalist Eduardo Guimarães were defendants in criminal proceedings. The Democratic Rule of Law is based on fundamental guarantees, including the right to due process and ample defense (CASARA, 2019), which were pressured by actors in the justice system to the detriment of defendants. In the end, Lula's conviction was annulled by the Federal Supreme Court, which recognized the disrespect for due process of law in the cases against the former president – indicating, without disregarding other variables, a reaction within the legal field to "Operation Car Wash" experiments. The evidence produced with the coercive conduct of Eduardo Guimarães was considered illegal due to violation of the constitutional guarantee to the secrecy of sources. The blogger was recognized as a journalist by "Operation Car Wash" itself, which did not resist the counter-pressure of the journalistic field; not without risks for Democracy (SIQUEIRA NETO, 2017).

We note relationships that can be made between the cases, we highlight mainly the tensions between social uses (including within the judiciary field itself) and established norms. The experimentation to which we refer is both of the actors, whose interaction is mediated by the Judiciary, and of the Judiciary itself, inscribing the social processes studied in a broader phenomenon that the concept of mediatization gives intelligibility. The concept of interactional devices, in turn, directs the observation of cases to interactional processes with the aim of extracting the meanings that constitute the flow of relationships.

For studies in the legal field, our research points to the interactional logics (of mediatization) that cross the judicial processes, making the mediating task of judicial practice

more complex. We understand that legal research angled by the concepts of judicial activism and judicialization of social demands cannot do without the communicational context that studies of the phenomenon of mediatization help to unveil.

The jurisdictional function achieved stability through legal knowledge (practical and doctrinal) constituted in long-term historical processes, through which predictability (part of the right to due process of law) has the procedural liturgy as an enabling instrument. We have seen that the stabilized legal practice has been strained by communicational experiments typical of the society in mediatization, which generate positive opportunities, but also risks to principles dear to the Democratic State of Law.

Our research draws attention to the need for a reflexive activity in support of the future development of legal practices, in which new strategies, required by mediatization in society in general, can be channeled into interactional gestures of the exercise of justice in renewed structures that come to be acquire a future stability – in other ways, but ensuring, as before, a culture that values balance and the legally just.

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