

## Saúde e Sociedade



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# Discourses in Health Public Hearing and their impact on the decisions of the Supreme Court: an analysis to the theory of social systems'

Os discursos na Audiência Pública da Saúde e seu impacto nas decisões do Supremo Tribunal Federal: uma análise à luz da teoria dos sistemas sociais

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## Abstract

The *judicialization of health* social phenomenon caused the Federal Supreme Court (STF) ask for a Public Hearing in 2009. The call of society in its different segments should provide the basis for the judge's decisions. The discourses given at the event were investigated in order to answer whether the public health audience presented arguments that have been incorporated by the Supreme Court seat of their decisions, denoting changes in the legal subsystem. The research was conducted on the basis of the STF data center, available on the internet. The method of discourse analysis (AD) and comparative matrices of judgments was used. The results concluded that the hearing proved to be strategic and that the participant's discourses by distinct segments demonstrated that the right to health has no hegemonic meaning in society. It was concluded that the two social subsystems - health and law - had the opportunity for mutual learning. The legal subsystem incorporated in the decisions analyzed 20% of the arguments presented at the Health Public Hearing.

**Keywords:** Health System; Judiciary; Court Decisions; Health Law; Public Hearing.

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## Resumo

O fenômeno social denominado *judicialização da saúde* levou o Supremo Tribunal Federal (STF) a convocar uma *audiência pública*, em 2009. A oitiva da sociedade, em seus diferentes segmentos, deveria prover os julgadores de embasamento para suas decisões. Os discursos proferidos no evento foram investigados, com o intuito de responder se a Audiência Pública da Saúde apresentou argumentos que foram incorporados pelo STF em sede de suas decisões, de modo a denotar alterações no subsistema judicial. A pesquisa foi realizada por meio da base de dados do STF, disponível na internet. Foi utilizado o método da Análise de Discurso e matrizes comparativas de decisões judiciais. Os resultados concluíram que a audiência se revelou estratégica e que os discursos apresentaram teses distintas conforme os segmentos participantes, demonstrando que o direito à saúde não apresenta significado hegemônico na sociedade. Conclui-se que os dois subsistemas sociais - saúde e direito - tiveram oportunidade de mútua aprendizagem. O subsistema jurídico incorporou, nas decisões analisadas, 20% dos argumentos apresentados na Audiência Pública da Saúde.

**Palavras-chave:** Sistema Único de Saúde; Poder Judiciário; Decisões Judiciais; Audiência Pública da Saúde.

## Introduction

The implementation of the Health Public Hearing by the Supreme Federal Court (STF) in 2009 was a milestone in the relations between the legal and the political system, regarding the Brazilian National Health System (SUS) and health care related activities and services in Brazil.

Although it was a major event with consequences for both systems, there was no effective studies and research about that remarkable meeting, whether in the legal field or in the social sciences.

This study aimed at assessing and analyzing the discourses given at the STF Health Public Hearing and assess whether they had an impact on subsequent decisions taken by the Constitutional Court on such health issue.

Therefore, we started from the Social Systems Theory, built by Niklas Luhmann, according to which there is a global social system formed by social subsystems. These subsystems capture senses in the environment, change their own codes and remain them alive. To account for the social conformation, Luhmann indicates communication as an organizing factor, which explains the configuration of such subsystems to the function they fulfill - the subsystems are functional and have their own codes (Corsi; Esposito; Baraldi, 1996).

When two subsystems come into connection, as in the case of this study, which combination of legal, political and health subsystems is appreciated, they are called *structural coupling* (Corsi; Esposito; Baraldi, 1996), to employ the *luhmannian* expression (Luhmann, 2004). In case of two structural functional subsystems coupling, there is an exchanged *stimuli*, what is called, according to the theory, as *irritation*.

A subsystem should be allowed to receive irritations, as they trigger adjustments in accordance with its internal grammar keeping it alive and active, which shows the chance of learning between subsystems, against which the subsystem remains or changes.

However, there can be no overlapping subsystems, as they lose their specificities and start to make decisions by unrelated codes - phenomenon called *corruption*, to use the Luhmann language (2004).

Under such assumptions, the Health Public Hearing can be seen as the structural coupling of legal, political and health subsystems.

Before the rule of law, the legal subsystem also provides legal responses to the political problems. It turns out that, strictly speaking, policy issues are brought to the law subsystem shifted of its legal code. The problem presents itself when the law seeks to determine the policy and the policy seeks to limit the law.

To reduce the complexity as installed, the STF considered as appropriate to open an irritations field and called the Health Public Hearing, whose discourses were analyzed and compared with the established codes.

## Methods

Descriptive and analytical surveys were conducted in quali-quantitative character, whose object was the Health Public Hearing and the unit of analysis consisted of discourses made in this public hearing and the decisions of the STF. The Health Public Hearing was held in Brasilia, between April and May 2009, in the STF headquarters. All the lines have been selected, constituting a sample of 64 discourses available on the STF database (<http://www.stf.jus.br/portal/audienciaPublica/audienciaPublica.asp?tipo=realizada>), guided by the criteria proposed by the Discourse Analysis method (AD) and its auxiliary tool, the Qualiquantisoft program (Lefèvre; Lefèvre, 2003). This program allows the realization of qualitative and quantitative researches and facilitates the implementation of such AD, making the investigator work simpler and faster.

The set of discursive formations of all kinds, although in interaction in such an environment is never fully conceivable in AD. This aims to establish procedures to expose the reader what is implied in the discourse, which makes the AD dependent on social sciences and its evolution (Lefèvre; Lefèvre, 2003).

A qualified discourse, not for its personal *attendance*, was deleted.

For a methodological option, the discourses were grouped into four subsystems, for their liaison representativeness: (i) legal subsystem (J); (ii) political

subsystem (P); (iii) scientific subsystem (C); and (iv) organized social subsystem (SC).

There were considered 3 analysis macro-categories: A - Thesis: category in which every discourse fragments with theoretical approaches were inserted; B - Proposals: category in which discourse fragments with demands for programmatic action were inserted; and C - Dilemmas: category with discourses fragments of narratives of disputes concerning the realization of the right to health.

14 subcategories and 5 micro-categories were adopted, as shown in Table 1.

The arguments of such discourses were faced with the following subsequent decisions issued by the STF: Suspension of Temporary Relief (STA) 175, 211 and 178; Suspensions of Writs 3,724, 2,944, 2,361, 3,345 and 3,355; Suspension of Injunction (SL) 47; and Recommendation 31, of the National Justice Council (CNJ), chaired by the STF. This choice had as a criterion as being the first public post-hearing decisions to traverse on the topic of health.

This analysis was performed in a binary measurement: “strong” and “not strong”.

Arguments of discourses were considered “strong”, those reproduced by the STF at time of such analyzed decisions, denoting the adhesion of the addressee to what was delivered in such public hearing, and thus determining how effective the discourse was. Arguments not used by the STF in the analyzed decisions were marked as “not strong”.

## Outcomes and Discussion

The 63 discourses as analyzed originated 705 arguments, of which only 20% were considered “strong” and 564 (80%) were “not strong”, i.e. they did not impact in subsequent decisions taken by the STF and the CNJ, which stated that same trend was maintained when observing the categories individually.

Subject to the discourses which makes up the Subcategory A.1 - the legal and political importance of the Health Public Hearing - it can be inferred that exhibitors kept high expectations with the hearing outcomes and the decisions that the STF would now take. The arguments considered as “strong” presented: (i) legal justifications and objectives for convening Health Public Hearing; (ii) communica-

**Table 1 - Representation of categories, subcategories and micro-categories of analysis of the discourses at the STF Health Public Hearing, 2009**

| Category A            | Thesis: theoretical approaches on an issue.  |
|-----------------------|--|
| Subcategory A.1       | The legal and political importance of the Health Public Hearing.   |
| Subcategory A.2       | Legalization, theory and practice.   |
| Subcategory A.3       | Proposition of binding abridgements.   |
| Subcategory A.4       | Extraordinary appeal.  |
| Subcategory A.5       | Responsibility in SUS.   |
| Micro-category A.5.1  | Joint and several liability.   |
| Micro-category A.5.2  | Responsibility according to skills.  |
| Subcategory A.6       | Conflict of interest.  |
| Subcategory A.7       | Effectiveness of fundamental rights.   |
| Subcategory A.8       | Fraud in public health policy and legalization.  |
| Subcategory A.9       | Patent protection.   |
| Subcategory A.10      | Technological registration and resources.  |
| Subcategory A.11      | SUS financing.   |
| Subcategory A.12      | Conceptual public health policy aspects.   |
| Subcategory A.13      | Social development is to improve the citizen's quality of life.  |
| Subcategory A.14      | Effectiveness of the right to health.  |
| Micro-category A.14.1 | The right to health should be independent of public policies.  |
| Micro-category A.14.2 | The right to health should be given through public policies.   |
| Micro-category A.14.3 | The right to health should be given through public policies, exceptions admitted.                              |
| <b>Category B</b>     | Proposals: demands by programmatic actions.  |
| <b>Category C</b>     | Dilemmas: conflicts experienced by those involved in relations concerning realization of the right to health.. |

Source: Prepared by the authors.

tion that all subsidies coming from hearsay that would be used by the courts; (iii) significant number of lawsuits related to ensuring the right to health pending on the Brazilian Judiciary, as justification for convening public hearing.

The subcategory A.2, Legalization, in theory and practice, brought as “strong” arguments those with: (i) the existence of opposing arguments on the right to health; (ii) lawsuits with claims relating to the right to health associated with inefficiency, ineffectiveness or State negligence; (iii) lawsuits facing drugs requests without registration or those experimental, *versus* the Clinical Protocol and Therapeutic Guidelines (PCDT) and the Evidence-Based Medicine (MBE); (iv) legal uncertainty, given the lack of uniformity of judicial decisions, which violate both procedural rites as does not previously hear managers; (v) Court jurisdiction, to assess the legality of any public policy; (vi) the need for decisions to be guided case-by-case and based on proportional solutions - it is not “*all for all*” and not “*the case of anyone else may not protect the right of others.*”

The STA 178 (and other lawsuits) exposed argumentation thesis in the way that those resorting to the Courts aiming to see the desired health benefits defended and theses of those who dispute the arguments pleading them. So, as it was categorically stated in the decision, it means the analysis of controversial theses.

Just by acknowledging the existence of numerous pending lawsuits, some of them were treated with relevance at the hearing: (i) the proposal of binding abridgements, as said in the subcategory A.3; and (ii) the extraordinary appeal with enacted general repercussion, concerning the obligation of the State to supply high-cost medicines, intended for pulmonary hypertension, as said in the subcategory A.4.

The subcategory A.3, which deals with the proposition of binding abridgement for recognition of joint and several responsibility between the federal entities to enforce the right to health is also linked to subcategories A.4 and A.5. The subcategory A.5 had both theoretical perspectives defended: A.5.1, the joint and several responsibility of entities, previously kept in the decisions of the STF; A.5.2, one that defends the entity responsibility as defined in the legislation ordinary skills, which can be enjoyed

in the judgment of RE 566,471 as reported by the Supreme Federal Court Justice Marco Aurelio de Mello, as highlighted by decision STA 178 (and other lawsuits) as said in the subcategory A.4.

The STF has historically preserved the principle of loyalty to the Federation, and therefore to democracy. From the reasons given in the assessment of “strong” arguments which make up the subcategory A.5, it can be assumed that the binding abridgement proposition about the joint and several liability statement deserves protection before the STF - remaining that constitutional interpretation of which joint entities are responsible on the right to health.

The subcategory A.6 specified a number of opportunities for conflicts of interest, but the argument considered as being “strong” reported no conflict of interest between the political subsystem and the legal subsystem, with regard to the exercise of the powers of each one of them.

In the subcategory A.7, Effectiveness of fundamental rights, the arguments considered as being “strong” indicated that: (i) the reason for State existence is the enforcement of fundamental rights; (ii) the problem reflected in the legalization of health is the inefficiency, ineffectiveness or state neglecting; (iii) the fundamental rights have immediate effectiveness and application, may be required in court, being then to define the constraints to its quest; (iv) the legalization begins in the budget composition that does not guarantee sufficient resources to health actions and services; and (v) the requirement of legal rights is linked to information about them.

The subcategory A.8, Fraud in public health policy and legalization, one acknowledged in its strong argument the existence of fraud in the filing of actions - considered as indisputable data. It should be noted that the STF, when manifesting itself about the inadmissibility of generic production applications, of oppositions and also of judgments, recognized that individual cases are not being treated according to their individual peculiarities.

The subcategory A.9, Patent protection, explained consistent theses, however, not recognized by the STF in the analyzed decisions, attention must be given to future decisions of the STF, towards patents, especially the Declaratory Action of Unconstitutionality (ADI) 4234.

The subcategory A.10, Technological registration and resources, presented strong arguments derived from the association between the good scientific practice - MBE - and the formulation of documents which could indicate criteria for diagnosis and treatment - PCDT - as a way to enable the constitutional principle of universal and equal access to the health benefits. Because it gives accreditation to the arguments pertaining to MBE and the PCDT, the STF determined that treatment provided by the SUS should be privileged rather than different option, pleaded in court by the patient. However, they became exceptional cases where the patient can prove, by satisfactory evidence, the ineffectiveness of what is offered by SUS - to be analyzed in each case. They even assumed that the PCDT were dubious, whether by inadequate scientific evidence adopted by SUS, either by inadequate PDCTs themselves.

The STF, when issuing an opinion on the claims that refer to requests not covered by public policies, confirmed what was exposed in the subcategory a.10: (i) in case of unregistered drugs before the National Health Surveillance Agency (ANVISA), there is not a legal permission where the government may acquire them. The first reason is the legal prohibition as to the dispensation in the country. It highlighted the Anvisa’s economic regulation competence and that exceptions to dispensing drugs without registration in the country are also prescribed by law and the legal subsystem must stick to them. Another point is: (ii) in the case of medicines without scientific evidence, the following items should be considered: (ii.1) first, if public policy provides treatment for that disease - if so, the tender offer should be privileged; (ii.2) where the public offer does not provide the user - with evidence in the lawsuit of such ineffective treatment. When the requests relate to: (II.3) “experimental treatment”, they must be borne by the parties in their evaluation, there is no condemnation to the Brazilian National Health System. And finally, (ii.4) where the desired treatment has not been incorporated by the SUS and is not experimental, it is necessary that the application is to be legitimately accompanied by proof of effectiveness of that intended treatment and may even be contested by the PCDT.

The subcategory A.11, SUS financing, among 42 arguments, only 8 were considered “strong”. From these, the great expectation was hosted by the regulation of Constitutional Amendment (EC) No. 29/2000, in order to bring stability to the financial SUS funding - to expand the percentage of Union involvement and thus stabilize spending. On 01/13/2012, the EC n. 29/2000 was regulated without any direct financial addition to the SUS. There is, from the action of civil society and health managers, the intent of the bill presentation by popular initiative, in order to constitutionally prescribe that the equivalent of 10% of gross incomes of the Federal Union which is intended for health. To discuss issues relating to health financing, it would be necessary to address the concentration of tax collection to the Union coffers (that intended for tax reform) which even mentioned in the Health Public Hearing, was considered a “not strong” argument.

Strong arguments have recognized that the budget composition is tripartite, which resources are finite with infinite needs, therefore indicate the need is to: (i) establish parameters for actions and health services provided by the State; (ii) apply resources appropriately; and (iii) to promote democratic participation in budgeting.

In absolute numbers, the subcategory with the highest number of arguments was A.12. Conceptual public health policy aspects, with 142 arguments coming from 41 discourses, however, among all submitted items, only 10 were considered “strong”. The “strong” arguments expressed: (i) tripartism for single system conformation; (ii) the competencies of each entity expressed in the Law n. 8080/1990 and what is bound to the government aimed to ensure the effectiveness of the right to health; (iii) the concepts and drug registration rules in Brazil, contained in the Law n. 6360/1976; (iv) Law n. 9782/1999, creation of ANVISA; (v) the precision on that integrality cannot be a full open concept, lacking rules and parameters; (vi) experimental drugs are only used in research environment; (vii) there is no legal justification for SUS archetypal expenses relating to unregistered medicines in Brazil - so without assured safety and efficacy; and, finally, (viii) the need to conduct the PCDT to the centrality of the legal debate. Among the “not strong” arguments, atten-

tion was directed to the references to extending the prestige of the government and its legislating power.

The subcategory A.14, Effectiveness of the right to health, was divided into 3 micro-categories: Micro-category A.14.1, demonstrations which understand that the right to health should be given regardless of any public policy; micro-category A.14.2, demonstrations which understand that the right to health should be given through public policies; and micro-category A.14.3, demonstrations which understand that the right to health should be given through public policies, exceptions admitted. These positions vary according to the interpretations of Article 196 of the Federal Constitution (CF) which states the social right to health.

The micro-category A.14.1 understood that all health claim must be met and funded by the State, regardless of the existence of public policy. That was not the position taken by the STF, however, amongst 7 arguments which constituted this micro-category, 2 were considered strong: (i) that which stated the public hearing to discuss the guarantee of the right to health and how the judiciary should act to accomplish it; and (ii) that which said the State cannot deny the lifetime warranty, unless the claim refers to non- recommended treatments.

The micro-category A.14.2 understood that the right to health is restricted to that which is regulated by public policy and, further, that the STF has kept orderly position, this was not its option. Among the four arguments which shaped this micro-category, 2 were considered “strong”: (i) Article 196 of the Constitution served as the basis for decisions whose interpretation led to believe that the right to health is unlimited and that the State must provide “everything to everyone”; and (ii) the CF provides that health is the State’s obligation and that there will be appropriate means to carry out this obligation: the public policies.

The micro-category A.14.3 was accepted by the STF: one must respect the public policy but one has to admit exceptions. Upon this parameter, the decision STA 178 (and other processes) was based and was inserted the Recommendation 31 from the CNJ. The strong arguments of such micro-category argued: (i) the possibility of analysis of individual cases cannot be closed because there are reasons

for the exceptionality, such as allergic reactions and medical iatrogenesis.

Aiming to exhaust the questions about the constitutional law, the STF held the interpretation of Article 196 of the Constitution highlighting its main elements: “the right of all”, “duty of the State”, “social and economic policies”, “reducing the risk of diseases and other diseases “ and “ actions and services for its promotion, protection and recovery. “

The Category B, Proposals, presented demands per program activities and consisted of 87 arguments, of which 16 were considered “strong”.

The proposals brought by such four subsystems to the Health Public Hearing were not concerned with the scope and skills of each subsystem. In cases where the arguments extrapolated the specific skills of legal subsystem - as in the proposed strengthening and composition of the health technology incorporation committee in SUS, or even the legislative change with a view to pharmaceutical care in SUS, even later mentioned by Law n. 12,401 / 2011 - they were considered in the context of research, as “not strong”.

The “strong” arguments pointed to: (i) regulating the EC n. 29/2000, in order to ensure the SUS financing; (ii) admit lawsuits which expresses individual cases, for specific reasons, lack of treatments not taken over by PCDT; (iii) do not provide unregistered drugs before ANVISA, for thus it is expressed in law; (iv) admit that experimental treatments are only made in the context of research, because this is how the rule is established; (v) confer PCDT credibility, bringing them to the legal debate, however, allowing its defense, because of lack of updating and constant development; (vi) supply health benefits not granted in public policy, provided they are not prohibited by the State and there is no treatment provided; (vii) listen to managers before granting injunctions; (viii) admit the formation of conciliatory committees, avoiding the large flow of lawsuits in the legal and political subsystems; (ix) train judges and lawyers to know the public health policy; (x) produce enough evidence of health provision requirements; and (xi) provide technical advice to legal subsystem.

Both judges and courts must decide all questions presented to them and which are always exposed to the possibilities of overcoming the operating limits,

which arises especially when the object of analysis is the realization of social rights, such as health.

There is recognition in the sense that existing dilemmas are founded on consistent logical end to confront the issue of effective social right to health.

In category C it was possible to identify 99 arguments, 23 of which were considered “strong”. By the STA 178 (and other lawsuits), we observed the dilemmas with narratives with reasons / counter-arguments.

in the list of 23 “strong”, arguments, it is possible to assign a highlight to the fact that accomplishment to the social right to health is, per se, a challenge that must be analyzed case by case, according to need criteria. The political and health subsystems deal with scarce resources and infinite needs (possible reserve × minimum existential), in a society which recognizes the prevention of social regression. The managers always have the thesis of the possible reserve, however, by legal subsystem, they do not support the budget damage imposed on them by a judicial decision. Moreover, with financial constraints, they shall impose ethical choices and not focused choices in the cost of treatments.

The STA 178 (and other lawsuits) has considered that if there is no public offer to the intended legal item, the political and health subsystem present their justifications, as well as collaborate with the legal subsystem in the decision, empowering it with technical and required data. About new treatments, the STF argued that the absence of PCDT cannot be hindrance to individual or collective access to the provision of health untested by SUS.

For Santos (2010, p. 111), on the issue of health legalization, “*there is no one persecuted and no persecutors.*” However, the author acknowledged the existence of “*excesses and deviations*”.

There is a strong emphasis of the STF to the items to be observed by the judiciary: (i) the requirement of enough production of science-based evidence - and the necessary production of evidences may, in many cases, cause avert to the granting of interim measures; (ii) if the provision of desired health through a lawsuit is appropriate to the patient’s needs; (Iii) the measurement of the drug registration and possibilities of acquisition by the State; (iv) the existence of MBE and PCDT adopted



by SUS for the analyzed case; (v) evaluation of the existence of public policy that addresses what is desired through the lawsuit; (vi) evaluation of the existence of a drug dispensing policy sustained by MBE; (vii) the current admission of MBE to allow the questioning of scientific order on the adequacy of the provision of such health provision; (viii) the argument that the reservation as possible (lack of resources), by itself, does not eliminate the State obligation (Union, States, Federal District and Municipalities) and the provision of health services. The assessment of the arguments of injury to the order, economy and separation of powers was not object of such STA 178 (and other lawsuits).

## Conclusion

With the conflict between the legal basis and the fact, in the search for answers, it is necessary that the legal subsystem recognizes the existence of codes of other subsystems in its action. It is within the political-health subsystem that public health policies are formalized and executed which, in turn, have a formalization process, to the extent that they have established standards (laws, decrees and administrative acts). It is appropriate that the health policy formalization reflects the collective intention to the effect of social rights, by means of infra-constitutional or infra-legal acts. The legal subsystem, by ignoring this framework, comes to foist the political and health subsystem compliance with those various decisions made, based on a distributive justice.

Such tensions have led numerous legal proceedings involving the comprehension of the right to health, pending before the Judiciary, and gave rise to the convening of the Health Public Hearing, which, as seen from the perspective of the Social Systems Theory, was understood as structural coupling and an open field to irritation between the subsystems. Consequently, the goal was to cause in the core of such legal subsystem - the court - the absorption of grounds on the Brazilian National Health System.

As already stated, the macro-category A was composed of 705 discourse arguments, of which the judicial subsystem employed 121 in the analyzed decisions. From the 99 discourse arguments which

composed the macro-category B, 23 were employed; and from 87 discourse arguments which composed the macro-category C, 16 were used. The absorption of arguments presented at the public hearing, by the legal subsystem, was about 20% of total arguments.

The STF settings are likely to demonstrate regularity and uniformity of judicial decisions over time, especially by the fact that the linked judiciary was advised to follow the Recommendation 31 from the CNJ. In practical terms, in the lawsuits which incessantly come to courts and prosecutors' offices of federal entities, the attempt to standardize those judgments can demonstrate effective gains, whether for support and organization of SUS, whether to guide the Judiciary procedures.

The legal subsystem, represented by the magistrates, is placed in a position to decide on the "life or death" of the individual, having to contend with the complexities out of its code and can commit to certain health programs to the community (individual right × collective right).

Subject to the claims based - second term coined by a representative of the political and health subsystem, hoping-based medicine - requiring unregistered drugs before ANVISA, out of their specifications or being experimental, beyond endanger the patient's situation, and if dealing with high-cost technologies, they can undermine policies to the community.

The Health Public Hearing also brought the political subsystem health issues that deserve observation and decision making. The first point concerns with the order of the lawsuits that are already contained in public policy. The STF understood that, in cases where there is a defined public policy and addressing the cause, there is an unquestionable existence of the right.

The STF surrendered to normative expectations orderly; whose claiming the realization of such right to health and which are included in public policies should be granted, as well as cases where there is, by appropriate jointly evidence, proof that the State's supply is not able to meet the individual case. This was the thesis essentially heeded by the STF and where two elements are contained: the realization of the right to health analysis will be conducted on a case by case analysis; and claims which were not normalized by SUS must be assessed in all their constituent elements. Consequently, judges are

subject to the possibilities of overcoming their operating limits - which does not mean to take codes from other subsystems. No doubt there was a mutual learning between the political and legal systems by structural coupling of such public hearing.

In this framework of analysis, one can see that there is more tension, without, however, having solved any of the others. The overall existing system model, bureaucratic, limited to a pre-formed logic conflicts with an innovative type: finalistic, agile, practical, more susceptible to structural couplings, willing to learn and communicate - even closing of the subsystems is preserved.

Only through the combination of subsystems autopoietic closure and irritations resulting from the environment is that the law can evolve - and, when evolving, lead to the evolution of the global social system and again be provoked by it.

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### Authors' contribution

Santos conceived the project and analyzed and interpreted all data. All authors conceived, structured and reviewed this article.

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