National Council of Justice

Bursting the Judicial Bubble

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Main Point

• The NCJ has the potential to change the Judicial Power and the justice system, but its future is uncertain and there are many challenges.
What is the NCJ?

• A body of external control of the Judicial Power created by the 45th Constitutional Amendment in 2004.
• The 1988 Constitution – with its 245 articles – did not include any mention of external control of the Judicial Power.
• Different from European and Latin American counterparts.
Hierarchy

- Second position in the constitutional hierarchy – just below de STF
- Above all the other courts
Poder Judiciário
(Fluxo Processual)

STF
Supremo Tribunal Federal
Supreme Federal Court

CNJ
Conselho Nacional de Justiça
National Council of Justice

STJ
Superior Tribunal de Justiça
Supreme Court of Justice

TSE
Tribunal Superior Eleitoral
Superior Electoral Court

TST
Tribunal Superior do Trabalho
Superior Labor Court

STM
Superior Tribunal Militar
Superior Military Court

TJs
Tribunais de Justiça dos Estados
State Courts

TRFs
Tribunais Regionais Federais
Regional Federal Courts

TREs
Tribunais Regionais Eleitorais
Regional Electoral Courts

TRTs
Tribunais Regionais do Trabalho
Regional Labor Courts

Juiz de Direito
State Judge

Juiz Federal
Federal Judge

Juiz Eleitoral
Electoral Judge

Juiz do Trabalho
Labor Judge

Juiz-auditor
Military Judge
Composed of 15 members who are over than thirty-five and below sixty-six years of age, for a term of two years, with one continuation allowed, including:

- One Justice from the Federal Supreme Court, appointed by the respective Court
- One Justice from the Superior Tribunal of Justice, appointed by the respective Court;
- One Justice from the Superior Tribunal of Labor, appointed by the respective Court;
- One Justice from a State Tribunal of Justice, appointed by the Federal Supreme Court;
- One state judge, appointed by the Federal Supreme Court;
- One judge from a Federal Regional Tribunal, appointed by the Superior Tribunal of Justice;
- One federal judge, appointed by the Superior Tribunal of Justice;
- One judge from a Regional Court of Labor, appointed by the Superior Tribunal of Labor;
- One labor law judge, appointed by the Superior Tribunal of Labor;
- One member from the federal Public Prosecutor’s Office, appointed by the Attorney General of the Republic;
- One member of the state Public Prosecutor’s Office, chosen by the Attorney General of the Republic among the names appointed by the competent bodies of each State institution;
- Two lawyers, appointed by the Federal Council of the Brazilian Bar Association;
- Two citizens, of notable juridical learning and spotless reputation,
  • one appointed by the Chamber of Deputies and the other appointed by the Federal Senate.
Members of the NCJ

15 in total, each with 2 year terms:

• 9 representatives from the JP;
• 1 representative from the Public Prosecutor's Federal office;
• 1 from the P.P. State Office.
• 2 lawyers appointed by the Brazilian Bar Association;
• 2 citizens appointed by House of Representatives/Senate and named by the President;
What are the main duties of the NCJ?

• Control and plan administrative aspects without interfering with jurisdictional independence of the JP.
• Democratize justice.
• Improve administrative efficiency, morality, and transparency.
• Guarantee unity and autonomy of the JP.
NCJ: Institutional Construction

• It is not a continuous and evolving process
• Different rhythms, distinct strategies

• RESULT: expansion or retraction of the institution
# Relationship between President and Inspector

<table>
<thead>
<tr>
<th>President</th>
<th>Inspector</th>
<th>Relationship</th>
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<tr>
<td>Gilmar Mendes (2008-2010)</td>
<td>Gilson Dipp</td>
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<td>Cezar Peluso (2010-2012)</td>
<td>Eliana Calmon</td>
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<td>Carlos Ayres Britto (2012)</td>
<td>Eliana Calmon</td>
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<td>Joaquim Barbosa (2012-2014)</td>
<td>Francisco Falcão</td>
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<td>Ricardo Lewandowski (2014-Present)</td>
<td>Nancy Andrighi</td>
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Administrative Achievements
There is still room for improvement

• Establishment of clear and pre-determined goals;
• Digitalization, systematization, and standardization of data/information regarding courts and proceedings;
• Inspections in prisons.
Non-Achieved Goals

• suits related to improbity and crimes against Public Administration surrendered until 2011 should have been judged by the end of 2013 (only 62,000 out of 114,000 have been judged; (54%))

• The above goal was reset in 2013 adding up to the suit entered in 2012

• Only 110,000 out of 198,000 corruption-related have indeed been judged.
Regarding State Justice, which bears most of the corruption suits, in the total of 105,000 suits only very small tribunals have achieved the goals, i.e. Amapa (95%) and Acre (88%).

In contrast, the worst are Piaui (21%) and Bahia (only 8%).
Important Decisions

• Resolution against nepotism;
• Regulation of the participation of judges in conferences and meetings;
• Establishment of a salary cap
• Ability to investigate magistrates.
Difficulties for the Future

• Lewandowski is critical of the powers given to the NCJ, although he is the current President; Not much is likely to be done under his presidency

• Continuing conflicts between members and the presidency of the council;

• Loman;

• What will be the impact of the new age limit (the cane amendment) on the NCJ?