Revista ARACÊ
ISSN: 2358-2472

JUDICIAL PUBLIC POLICY: ANALYSIS OF THE CONCEPT OF NUDGE IN THE PERFORMANCE OF THE JUDICIARY BY THE INCREMENTAL EFFECTIVENESS OF THE REURB-S OF 56 MUNICIPALITIES IN GOIÁS (2023-2024)

https://doi.org/10.56238/arev7n2-021

Submitted on: 01/04/2025 **Publication date:** 02/04/2025

Cleuler Barbosa das Neves[1] and Maysa Teixeira Santos[2].

ABSTRACT

Despite the classic Tripartition of the functions of the State, conceived by Montesquieu, restricting jurisdiction, typical of the Judiciary, by "saying the law"; this power has innovated by executing judicial public policies, aiming to encourage the other Powers to promote public policies with incremental effectiveness, as seems to be the case of the RegularizAÇÃO Program. In this context, this atypical performance of the Court of Justice of the State of Goiás is analyzed, through the performance of the General Internal Affairs Office of Justice of the State of Goiás, in the context of the concept of nudges.

Keywords: Nudge. Judiciary. Judicial Public Policies. Urban Land Regularization of Social Interest. Reurb-S.

[1] Dr. in Environmental Sciences from UFG. Effective professor and productivity scholarship holder of the Graduate Program in Law and Public Policy – PPGDP at UFG (master's and professional doctorate). Attorney of the State of Goiás.
[2] Graduated in Law from the Federal University of Goiás – UFG. Postgraduate degree in Labor Law and Procedure – CERS/Estácio de Sá University and in Civil Law and Procedure – IGD/UniCambury. Master's student in Law and Public Policy at the Federal University of Goiás – UFG. Effective public servant of the TJDFT.

Revista ARACÊ
ISSN: 2358-2472

INTRODUCTION

Among the social rights, listed in article 6 of the current Constitution of the Federative Republic of Brazil (BRASIL, 1988), is the right to housing, raised to a fundamental right as a result of the ratification by Brazil (Decree No. 591, of July 6, 1992) of the International Covenant on Economic, Social and Cultural Rights, adopted by the XXI Session of the United Nations General Assembly, on December 19, 1966, in New York.

One of the ways to guarantee this fundamental right to housing is the processing of the Urban Land Regularization (Reurb), which is the material competence of the Municipalities, according to the intelligence of article 30, item VIII, of the CRFB.

Despite the material competence of the Municipalities, the Judiciary has promoted actions aimed at encouraging the Municipal Executive Branch to carry out REURB, especially in the Social Interest modality (Reurb-S), in order to give more effectiveness to the right to housing for the predominantly low-income population.

At the same time, in the field of Economics, the theory of *nudges emerges*, consisting of giving "a little push", as a way to encourage the making of good choices, without eliminating the other existing possibilities.

In this article, it is intended to build a relationship between the performance of the Judiciary, through the General Internal Affairs Office of Justice of the State of Goiás, within the scope of the RegularizAÇÃO Program, with the concept of *nudge*.

RIGHT TO HOUSING

Housing is a universal human right, recognized as such in 1948 with the Universal Declaration of Human Rights (UDHR), drafted by representatives of different legal and cultural backgrounds and proclaimed by the United Nations General Assembly in Paris.

Article 25, item 1, of the UDHR provides that everyone has the right to a standard of living sufficient to ensure health and well-being for himself and his family, especially, among other rights, to housing.

"The house[3]", by Vinícius de Moraes, fails to reach the dimension of the right to housing. This is because, in addition to having minimum conditions of habitability, with walls, ceiling, door and windows, such right must also provide, among other guarantees, safety, availability of public services and infrastructure, such as treated water and sewage,

[3] Available at: https://www.viniciusdemoraes.com.br/pt-br/poesia/poesias-avulsas/casa.

Revista ARACÊ
ISSN: 2358-2472

electricity, garbage collection, at an affordable cost (low tariffs) and adequate location (low risk of fires, landslides and floods).

In Brazil, the right to housing is provided for in the list of social rights of the Constitution of the Federative Republic of Brazil/1988 (art. 6), appearing as a fundamental right, as a result of the ratification by Brazil (Decree No. 591, of July 6, 1992) of the International Covenant on Economic, Social and Cultural Rights, adopted by the XXI Session of the General Assembly of the United Nations, on December 19, 1966, in New York.

Despite the established norm, the realization of the right to decent housing for the Brazilian low-income population, and the world, is still a challenge.

The João Pinheiro Foundation (FJP), responsible for analyzing the housing situation in Brazil since 1995, conceptualizes the *housing deficit*: "as a comprehensive term that can be used to refer to a certain number of families who live in precarious housing conditions in a certain region, or even people who do not have any housing".[4]

According to the FJP, there is a "regional heterogeneity of the Brazilian housing deficit". The foundation points out that the main component of the housing deficit in Brazil is the excessive burden of urban rent (3.24 million), followed by precarious housing (1.68 million) and cohabitation (1.28 million);[5] with the predominance of the excessive burden component with rent in three regions: Southeast, South and Midwest; and precarious housing in two: North and Northeast. As can be seen in the following table provided by FJP:

Table 01 - Housing Deficit Data Table – Brazil and Regions (PnadC 2022)

Region	Rustic	Improvised	Precarious housing	Rooms	Cohabiting Unit Deficit	Cohabitation	Burden	Housing Deficit (Precarious Housing + Cohabitation + Encumbrance)
N	116.993	214.269	331.262	16.922	240.480	257.402	184.665	773.329
NE	272.979	430.277	703.256	17.606	348.848	366.454	691.322	1.761.032
IF	51.918	284.993	336.911	56.634	427.698	484.332	1.622.398	2.443.642
S	125.881	67.483	193.364	5.734	92.048	97.782	446.481	737.626

[4] Created in 1969, the João Pinheiro Foundation is a research and teaching institution linked to the State Secretariat of Planning and Management of Minas Gerais. A source of knowledge and information for the development of the state and the country, it is characterized by continuous innovation in the production of statistics and in the creation of economic, financial, demographic and social indicators. MINAS GERAIS. João Pinheiro Foundation – FJP. Available at: https://fjp.mg.gov.br/a-fjp/.
[5] Available at: https://docs.google.com/spreadsheets/d/1tuIpjU_cxacFJbrpZiyPrDfKzlenmo52/edit?gid=1485816641#gid=1485816641.

Revista ARACÊ
ISSN: 2358-2472

CO	37.770	80.090	117.860	14.653	69.257	83.909	297.915	499.685
Br	**605.542**	**1.077.112**	**1.682.654**	**111.548**	**1.178.331**	**1.289.879**	**3.242.780**	**6.215.313**

Source – João Pinheiro Foundation (FJP), based on data collection from the IBGE's PnadC 2022.

Adopting the operationalization of the FJP concepts, it is clear that the calculation of the *excessive rent burden* is carried out considering only rented urban households, with a household income of up to three minimum wages and that spend more than 30% (thirty percent) of their income on rent.

Precarious housing, *on the other hand* , is divided into two subcomponents: improvised housing and rustic housing. Improvised households, extracted from the CadÚnico (Unified Registry) database, are conceptualized as:

> [...] space that, at the time of the interview, is precariously adapted by the family to serve as a home. In these households, it is generally not possible to distinguish rooms or individualize spaces. Usually, they do not have access to basic services such as water supply, electricity, sanitation or garbage collection, configuring a situation of extreme vulnerability. In these places, people or families can settle down, adapting the space to their needs. Improvised private households can be in private areas such as abandoned buildings or houses, constructions, camps in rural areas, or in public areas such as tents, tents, etc. (BRASIL, 2017, p. 47).

In turn, *rustic households*, built based on the Continuous National Household Sample Survey (IBGE) (PNADC),[6] are conceptualized based on the precarious materials that predominate in the construction of the external walls of the household, especially rammed earth without coating, reclaimed wood and other precarious materials.

Finally, *cohabitation* is divided between the subcomponents of room and cohabiting domestic units, both obtained by the PnadC. The first concerns private households with one or more rooms located in a room, tenement or pig's head house. The second subcomponent is calculated by identifying households where there is the presence of at least one secondary household nucleus and where there is also a density of more than two residents per bedroom. The sum of both subcomponents results in the total of the cohabitation indicator.

In the state of Goiás, the Mauro Borges Institute[7] (IMB), using the methodology used by the Jones dos Santos Neves Institute, which consists of using data from CadÚnico –

[6] Available at: https://www.ibge.gov.br/estatisticas/sociais/trabalho/9171-pesquisa-nacional-por-amostra-de-domicilios-continua-mensal.html?=&t=o-que-e.
[7] Available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://goias.gov.br/seinfra/wp-content/uploads/sites/6/2024/01/Annex-V--Deficit Report-Habitacional.pdf; -https://www.transparencia.go.gov.br/wp-content/uploads/sites/2/joomla/ex2022/AN

Revista ARACÊ
ISSN: 2358-2472

Cadastro Único, calculated the *number of people in housing deficit in the state of Goiás*, in the years 2017, 2018, 2021 and 2022, also based on the following concepts: *excessive burden with urban rent*, *improvised housing*, *family cohabitation*, *rustic housing*, excessive density in rented housing (Guerra; Cruvinel; Macedo, 2022).

As a result, in the technical reports for the year 2022, it was found by the IMB that just over 6% of the population of Goiás suffers from some type of deficit in their housing; and most of the problem is caused by the excessive burden with rent. Based on the data analyzed, excessive spending on rent represents more than 79% of the index of households in deficit in the State of Goiás, in 2021.

As indicated by the IMB itself, not all the population of Goiás is registered in CadÚnico, a factor that leads to believe that the data presented may vary due to underreporting. But one can already have an idea of the great challenge to be faced by the Government in the state of Goiás to solve the question posed, since 6% of its population in 2022, out of 7,056,495 [8], suggests the number of 423,390, that is, almost half a million people in *a situation of housing deficit* in Goiás. In addition to the problem of underreporting, there is the problem of time lag, as this type of social problem in Brazil usually presents a profile of aggravation with the simple passage of time.

According to the João Pinheiro Foundation, based on data from the 2022 PnadC, the total housing deficit in the State of Goiás would be 211,743 households (8.1% of the housing deficit in Brazil),[9] which is in line with the information above the IMB, provided that an approximate average of 2.0 inhabitants per household with precarious housing or cohabitation or with excessive rent burden is assumed, that is compatible.

In this context, as one of the ways to seek *incremental effectiveness* for the constitutional right to housing, there is the legal institute of Urban Land Regularization – REURB.

EXO_Relat%C3%B3rio_Anual_de_Atividades_IMB-SGG_2022.pdf; https://goias.gov.br/imb/wp-content/uploads/sites/29/2024/01/repositorio_2022_030_informes_tecnicos_deficit_habitacional_com_base_nos_dados_do_cadunico_2021_2022.pdf
[8] Available at: https://www.ibge.gov.br/cidades-e-estados/go.html.
[9] Available at: https://docs.google.com/spreadsheets/d/1OqAuggLve9HoPrI8jJcaAfSu1q5DCvdc/edit?gid=1828572335#gid=1828572335.

Revista ARACÊ
ISSN: 2358-2472

URBAN LAND REGULARIZATION - REURB

Pursuant to article 9 of Law No. 13,465, of July 11, 2017 (LReurb), Urban Land Regularization consists of a set of "[...] legal, urban, environmental and social measures aimed at the incorporation of informal urban centers into urban territorial planning and the titling of their occupants".

REURB applies only to existing informal urban centers. According to the dogmatics of Adauto Lucio Cardoso (2016), the irregularity and precariousness of buildings have historically been produced through spontaneous occupations, organized or not, of empty land or properties and through market mechanisms. In this context, the REURB procedure would lend itself to regularizing such spontaneous, often precarious, housing, in addition to preventing and discouraging the formation of new informal urban centers.

In compliance with the urban development policy established in article 182 of the Federal Constitution, Law No. 13,465/2017 orders the entities of the federation, including, therefore, the *Municipalities*, the full development of the city's social functions and the guarantee of the well-being of its inhabitants (article 10, item VIII, of Law No. 13,465/2017).

The objectives listed in this article 10 of LReurb are:

a) to identify the informal urban centers that should be regularized, to organize them and *to ensure the provision of public services to their occupants, in order to improve urban and environmental conditions in relation to the previous informal occupation situation*;
b) to create real estate units compatible with urban territorial planning and *to constitute rights in rem over them in favor of their occupants*;
c) *to expand access to urbanized land by the low-income population*, in order to prioritize the permanence of occupants in their own regularized informal urban centers;
d) to promote *social integration and the generation of employment and income*;
e) to encourage the extrajudicial resolution of conflicts, in order to strengthen consensuality and cooperation between the State and society;
f) *guarantee* the *social right* to *decent housing and adequate living conditions*; which calls for greater *effectiveness* of actions, programs and public policies aimed at a gradual, but consistent, reduction of the housing deficit in all municipalities in the country.
g) to ensure the effectiveness of the *social function of property*;

Revista
ARACÊ
ISSN: 2358-2472

h) to implement the constitutional principle of *efficiency in the occupation and use of the land*;
i) to grant real rights, preferably in *the name of the woman*;
j) to allow *the participation of interested parties* in the stages of the land regularization process.

One of the modalities of REURB is the land regularization of social interest, provided for in article 13, item I, of Law No. 13,465/2017 (Reurb-S), applicable to informal urban centers predominantly occupied by *low-income population*, as defined by an act of the municipal Executive Branch.

Municipal Law No. 10,231, of August 3, 2018, which provides for the housing policy of the Municipality of Goiânia, through the donation of lots or housing units and land regularization of properties owned by the municipality to low-income families, describes the profile of the beneficiary families, listing the following criteria (art. 2):

a) are *registered* with the Municipal Public Administration;
b) *do not* have *a monthly income higher than 05 (five) minimum wages* in force;
c) prove fixed residence in the Municipality of Goiânia for at least five (5) years;
d) does not have among its members someone who was the owner of real estate on the date of occupation of the property object of donation;
e) does not have among its members someone who has already benefited from another housing program promoted by the Government, whether municipal, state or federal.

The establishment of stricter criteria for the classification of REURB-S is justified in view of the high housing deficit in the country and the benefit offered to beneficiaries, consisting of the exemption from costs and emoluments, in the case of the first registration of REURB-S (art. 13, paragraph 1, item I, of Law No. 13,465/2017).

Also exempt from costs and emoluments, in the context of REURB-S: the registration of land legitimation; the registration of the title of legitimation of possession and its conversion into a property title; the registration of the CRF and the land regularization project, with opening of registration for each regularized urban real estate unit; the first registration of residential construction; provided that the limit of up to seventy square meters is respected; the acquisition of the first real right over a real estate unit derived from

Revista ARACÊ
ISSN: 2358-2472

REURB-S; the first registration of the real right of slab within the scope of REURB-S; and the provision of registration certificates for acts related to REURB-S.

Several are *entitled* to request the establishment of an urban land regularization procedure, under the terms of article 14 of Law No. 13,465/2017, however, it *is the responsibility* of the *Municipality* where the informal urban centers to be regularized are located, the processing, analysis and approval of land regularization projects, as well as the issuance of the Land Regularization Certificate – CRF, document issued at the end of the REURB procedure, consisting of the approved land regularization project, the term of commitment related to its execution and, in the case of land legitimation and legitimation of possession, the list of occupants of the regularized informal urban nucleus, their due qualification and the real rights that were conferred on them.

Such municipal competence comes from the Federal Constitution, which establishes in its article 30, item VII, the duty of the municipal entity to promote, as appropriate, *adequate territorial planning*, through planning and control of the use, subdivision and occupation of urban land.

Although the Municipality takes the lead in urban land regularization procedures, there are several actors that act together, either because they are on the list of legitimate, or as incentives.

In this context, the Judiciary has also acted as an incentive for urban land regularization procedures throughout the country, assuming a peculiar posture, if considered its primary function of saying the right when provoked, along the lines of the tripartition of the functions of the powers advocated by Montesquieu.

About this innovative role of the Judiciary in favor of the human right to housing that we will now make considerations.

ROLE OF THE JUDICIARY

In order to analyze the leading role that the Judiciary has assumed in the scenario of the Democratic Rule of Law, it is necessary to carry out a prior analysis of the concept and some developments of the right to access to justice, to be analyzed in the historical context of the transition from the Liberal State to the Social State.

The eighteenth and nineteenth centuries were marked by the *laissez-faire system*, with the State assuming an absentee posture, that is, restricted to ensuring the enjoyment of freedoms by individuals, with a focus on civil and political rights.

Revista
ARACÊ
ISSN: 2358-2472

In this context, access to justice was perceived only from the perspective of the Judiciary's core activity, in the resolution of conflicts submitted to the State-Judge. In addition, it would consist of any right among the others, achieved by those who could bear the costs of acquiring it.

In the twentieth century, there is a change in the way the State acts. In the welfare state, the role of the state is expanded in guaranteeing a wider range of rights. In addition to civil and political rights, social and collective rights began to be protected.

In this new scenario, the State starts to act actively in the protection of rights and in the construction of mechanisms for access to justice.

About the aforementioned transition, the Minister of the Superior Labor Court, Prof. Morgana de Almeida Richa, in the work *Judicial Public Policies and Access to Justice*, in the following dogmatic terms:

> [...] The nineteenth-century model of liberal democracy was based on individualistic factors. The individual was the source of power, endowed with primacy over society, so that the entire conjuncture of rights aimed to preserve basic natural rights, according to the French declaration, notably safeguarding norms of the citizen's freedom, security, property and resistance to oppression.
> [...] The State would only be responsible for supervising social coexistence, according to the pre-established legal order, in order to guarantee the free play of economic forces, governed by the laws of the market, in prestige to the private autonomy of the will. In the wake of this, the Judiciary conceived at this time had the purpose of ensuring the preservation of individual freedom and protection of the autonomy of the will.
> The traditional view of the concept of access to justice was based on the idea that it was the duty of the State to resolve the dispute, guaranteeing the right to appeal to the Judiciary, devoid of any socio-political content. Access to justice meant, therefore, the mere exercise of the right of action, which considered only the position of the plaintiff, since the judicial action was focused only on the issues of the right invoked.
> [...] Modern society has become aware that a merely formal rule of law was insufficient, without providing adequate and efficient instruments for the concrete realization of substantive law.
> [...] From the twentieth century onwards, the collective and the social became the focus of governmental and legislative policy in the countries of the civilized world, expanding the focus of the new Constitutions, also reaching the right and duty of the State to recognize and guarantee the new structure required by society after the integration of classical freedoms with social rights. (Richa, 2022, p.17-19).

Despite the difficulty of outlining a specific concept of access to justice, Mauro Cappelletti and Bryant Garth (1988) propose that this right can be seen through two aspects: 1) *a system* that must be equally accessible to all; 2) *a system* that produces individually and socially just results.

Thus, these authors argue that the right to access to justice does not only represent the entry into the organs of the Judiciary, to obtain the judicial protection of the State, in the

Revista
ARACÊ
ISSN: 2358-2472

end-activity of stating the right, but also consists of the protection of an order of values and fundamental rights.

Morgana de Almeida Richa (2022) ratifies this view by arguing that access to justice becomes an authentic manifestation of the Democratic Rule of Law, recognized as a human right after World War II, with the Universal Declaration of Human Rights, in 1948, by the United Nations.

Other international diplomas began to provide for access to justice after the 2nd World War: 1) the International Covenant on Economic, Social and Cultural Rights, adopted by the XXI Session of the United Nations General Assembly, on December 19, 1966, in New York; 2) the European Convention on Human Rights, signed in Rome, November 4, 1950; 3) the American Convention on Human Rights (*Pact* of San *José, Costa Rica*), of November 22, *1969*; 4) the American Convention on Human Rights, signed at the Inter-American Specialized Conference on Human Rights, in San José, Costa Rica, on November 22, 1969, including to enable a complaint to the Inter-American Commission on Human Rights.

In the context of the Social State, Mauro Cappelletti and Bryant Garth (1988), together with a multidisciplinary team, elaborated the Florence Project; they worked with the concept of renewal waves, based on the legal reforms and movements that occurred in the United States of America.

There were three waves of renewal indicated by the authors: 1st Wave – Legal Aid; 2nd Wave – Provide representation to groups with diffuse interests; 3rd Wave – "Approach to access to justice".

In the present article, emphasis will be given to the third wave. According to the authors, it "[...] includes the previous positions, but goes far beyond them, thus representing an attempt *to attack the barriers to access* in a more articulated and comprehensive way" (Cappelletti, 1988, p. 31).

Considering the broader view developed in the context of the third wave, Richa (2022) points out that the implementation of judicial public policies as a way to guarantee access to justice. It indicates that, in the context of the multi-door system, access to justice can take different forms.

The author also gives some examples of *judicial public policies* developed by the Judiciary to guarantee access to justice, such as *conciliation and mediation* policies, the

Revista ARACÊ
ISSN: 2358-2472

prison system of penal execution and *socio-educational measures*, *to combat violence against women*, as well as the *safe work program*.

Such actions, even if outside the traditional judicial processes, have correlations with them, insofar as they work towards the minimization of litigation, when one thinks about encouraging the use of appropriate forms of dispute resolution, such as conciliation and mediation; in the guarantee of dignity of people serving sentences or socio-educational measures; in the improvement of health and safety in general in work environments; in the speed of processes that discuss the safety of victims of gender violence; among other measures that improve the functioning of the judicial system.

More recently, the Judiciary has also started to encourage the *implementation of public policies by other branches*, either through judicial decisions or in the administrative sphere, through the execution of agreements.

But things were not always like this and, perhaps, this new posture of the Judiciary would cause astonishment to Montesquieu, who idealized a more watertight tripartition between the three powers, establishing singular functions for each of them.

In the following lines, we will build the path that the State, in general, has taken to get here and how this path has been influencing the right to housing, especially in the context of the search for more effectiveness through urban land regularization of social interest.

JUDICIAL PUBLIC POLICIES: A NEW ATYPICAL PATH

As a way of ensuring greater access to justice and social and collective rights, which gained relevance in the context of the Welfare State in the twentieth century, discussions about incremental public policies of this effectiveness also emerged.

Linked to the concept of *Policies*, they would be *actions* directed to new governmental problems, designed to *guide* the State in *decision-making*, considering the needs, existing resources and processes of power.

For José Martins Tude (2022), public policies consist of a material dimension of the term politics. According to him:

> [...] It is in the concept of *policy/policies* that the closest definition of what we understand as public policies is found. They are the concrete contents of political action, that is, the material result of political programs or government plans, they are the State's resolutions to the technical and most immediate problems of society. (Tude, 2022, p. 103).

Revista
ARACÊ
ISSN: 2358-2472

Considering the tripartition of powers advocated by Montesquieu, it would be up to the Legislative and Executive Branches, as democratically elected actors, to elaborate and decide on public policies to be executed by the administrative bureaucracy.

Thus, in the cycle of public policies conceived by John Kingdon (2003), the choice of the agenda, the formulation of alternatives or policies, the decision or evaluation of options, implementation and evaluation of public policies would be centralized in the aforementioned powers. However, whether in the initially bureaucratic format, marked by technique; or by the managerial system, as by the intended Administrative Reform of 1998 in Brazil, the Brazilian State has not been able to achieve all the intended social aspirations.

Maria Paula Dallari Bucci (2002) deals with the situation posed in the following terms:

> [...] One could contest the study of public policies in the sphere of administrative law, since it would be "political acts", "decision-making acts that imply the setting of goals, guidelines or government plans: [that] are part of the political function of the Government and will be executed by the Public Administration (in the strict sense), in the exercise of the administrative function itself". It is up to the representatives of the people, that is, the Legislative Branch and the political leadership of the government, to decide on public policies. The Administration is responsible for its execution. However, the fact that public policy is a "normative framework of action" informed by "elements of public power, elements of *expertise* and elements that tend to constitute a local order" – all of which fall within the orbit of the bureaucratic apparatus – makes the Administration play a relevant role in the analysis and elaboration of the assumptions that underpin public policy. The idea is a succession of acts in time, in which the Legislature and the government first outline the policy guidelines and then the Public Administration executes it, it becomes more of a type of ideal than a fact of reality. "This conflict reveals not only the crisis between the Executive and the Legislative, in terms of ownership of the legislative initiative, but also the overcoming of all formal organization of the liberal State." (Bucci, 2002. p. 249).

Thus, the recipients of public policies began to turn to the Judiciary in search of the realization of the rights once sought, but, for the most part, still unachieved, characterizing their low *effectiveness*.

It is in this context that, as guardian of the constitutional norm, the Judiciary begins to exercise an increasingly greater role among the powers.

Jeovan Assis da Silva and Pedro de Abreu e Lima Florêncio differ the concepts of *judicial policies* and *judicial policies*. Those would be promoted in the typical performance of the Judiciary, evidenced in the following aspects: 1) in the impact that the judicial decisions taken by the higher courts have on the lower courts; 2) in the judicial pronouncement taken in relation to public policies carried out by other powers; 3) in

Revista ARACÊ
ISSN: 2358-2472

political decisions made based on the interpretation of the Constitution and the elaboration of judicial precedents.

In this sense, the strength of the precedents created by the Superior Courts over the others can be highlighted; the strength of binding precedents; the judgment on issues that were previously only discussed and thought about in other spheres of power, such as the determination of the supply of high-cost medicines by the Government to those who need it, through individual demands; and so on.

Emblematic judgments can also be mentioned, such as the judgment of Direct Action of Unconstitutionality (ADI) 4277 and the Allegation of Non-Compliance with a Fundamental Precept (ADPF) 132, through which, in May 2011, the Plenary of the Federal Supreme Court (STF), unanimously, equated same-sex relations with stable unions between men and women, thus recognizing the same-sex union as a family nucleus, they demonstrate the social relevance of judicial decisions, going beyond the boundaries of the private interests of the parties in the judicial process, to reach other social actors who are not part of the litigation.

Certainly, the execution of *judicial public policies* has increased the number of demands of the Judiciary; many of them, as noted, intend to implement public policies that have not been successful – with gains in incremental effectiveness – under the implementation of the other powers.

How could a Power also marked by vices and ills, such as slowness, high costs and the aforementioned cumulative congestion of demands, act to help those who did not have their constitutional desires met?

This scenario mobilized the Judiciary to develop and execute *judicial public policies*, as a way to improve jurisdictional provision, either in an attempt to *reduce the number of* litigations, or through *actions* that began to reflect deep social issues.

Regarding *judicial public policies*, Morgana de Almeida Richa discusses, which would be those:

> [...] *prepared by the Judiciary itself*, capable of conducting the guidelines of multidimensional actions, conditioned to a roadmap that includes: construction of agenda, formulation of alternatives, planning, action plans and subsequent *systematic evaluation* of the *actions* instituted *by the judiciary*. This, in turn, is responsible for directing programs that socially implement the guarantee of access to justice, fostering the development of a regime that ensures the dignity of citizens. (Richa, 2022. p. 169-170).

Revista ARACÊ
ISSN: 2358-2472

By promoting judicial public policies, the Judiciary acts outside its typical activity; which can be placed in the face of the cycle of public policies elaborated by John Kingdon (2003), in order to establish political-institutional actions in favor of increasing the effectiveness of access to justice through the constant search for the improvement of the jurisdictional provision and the administration of justice.

A relevant institution for the assumption of this new posture by the Judiciary is the National Council of Justice (CNJ). Created with the Judicial Reform – Constitutional Amendment No. 45/2004, it presents the "[...] role of the formulating body of an indeclinable national judicial policy". (STF, ADI 3367-1-DF, 2004).

In symmetry, the Superior Council of Labor Justice (CSJT) and the Council of Federal Justice (CJF) also play an important role, with respective actions in the Labor and Common Federal Courts.

Among the *judicial public policies* developed within the scope of the Judiciary is the RegularizACTION Program.

REGULARIZACTION PROGRAM

The RegularizACTION Program was jointly instituted by the Presidency of the Court of Justice and the General Internal Affairs Office of Justice of the State of Goiás, through Joint Provision No. 14, of July 26, 2023,[10] with the purpose of:

> [...] to promote, define, coordinate, guide, implement, supervise and expedite the measures related to the *Urban Land Regularization of Social Interest* – REURB-S, ensuring the right to title the ownership of the occupied properties in the manner provided for in the relevant legislation. (art. 1 of TJGO Joint Provision No. 14/2023).

It is worth noting that the program intends to assist the Municipalities in administrative procedures initiated by the adhering municipal entities, in accordance with the provisions of Federal Law No. 13,465/2017, Federal Decree No. 9,310/2018, articles 1,125 to 1,174 of the Code of Rules and Procedures of the Extrajudicial Forum and other rules in force.

By *joining* the program, the Municipality submits to obligations, such as the need to observe a schedule with a fixed deadline for the completion of the REURB-S procedure, with the delivery of the registered titles to the beneficiaries.

[10] Available at: https://www.tjgo.jus.br/images/docs/corregedoria/Provimento_Conjunto_n_14_2023_-_Programa_RegualrizAO.pdf.

Revista ARACÊ
ISSN: 2358-2472

To this end, the Governance Center in Land Regularization was established, with diversified training (magistrates, civil servants and real estate registrars), with the purpose of acting as a facilitator, cooperating with the Municipalities of Goiás adhering to the Program in the implementation of the land regularization procedure of social interest in their respective locations, as an interlocutor between the various actors that make up a REURB-S.

Thus, the regulation regulates that the Governance Center in Land Regularization has as attributions the study, *planning*, presentation of the schedule of activities and the *resolution of issues* related to the procedure of urban land regularization in the REURB-S modality.

A few months after the issuance of Joint Provision No. 14/2023, the National Council of Justice, through Provision No. 158, of December 5, 2023, [11] instituted, within the scope of the Judiciary, the Permanent Program for Full Land Regularization of Informal Urban Centers and Favelas – "Safe Soil - Favela", with validity and effectiveness over all States of the Federation, with the purpose of, in a very similar way to the Regularization Program:

> [...] to promote *social, urban, legal and environmental* actions related to Urban Land Regularization – Reurb, incorporating informal nuclei into urban territorial planning and titling their occupants with the respective real estate records, even if located in an area initially considered rural. (Article 1 of CNJ Provision No. 158/2023).

In addition to emphasizing the alignment of the purposes indicated by the RegularizAÇÃO Program and the Permanent Program for Full Land Regularization of Informal Urban Centers and Favelas – "Safe Soil - Favela", it is appropriate to note that the program instituted at the national level established *guidelines* to be followed by the Internal Affairs Offices of the States and the Federal District in their respective programs, as well as elements to be followed by the local Censorship Agencies, all listed in articles 2 and 3 of Provision 158/2023.

The correlation between the two programs reveals the concern of the Judiciary to *encourage* the establishment, processing and completion of urban land regularization procedures, especially those of social interest, aiming at promoting citizens' access to the human right to housing and, why not, considering the third wave advocated by Mauro Cappelletti and Bryant Garth (1988), of access to justice, in its broad sense.

[11] Available at: https://atos.cnj.jus.br/atos/detalhar/5380.

Revista
ARACÊ
ISSN: 2358-2472

LIBERTARIAN PATERNALISM AND NUDGE THEORY: OBSERVATIONS ON REGULARIZACTION

Nudge consists of a *theory of behavioral economics*, coined by Richard H. Thaler and Cass R. Sunstein, in the book *Nudge* (2019) – *how to make better decisions about health, money, and happiness*, which consists of carrying out small interventions or indirect nudges capable of influencing people's choices in a predictable way, but without prohibiting the other options.

In other words, a *nudge* is an intervention that aims to alter people's behavior in a way that leads them to make decisions that are more beneficial to themselves, without removing their freedom of choice. To this end, the authors work with the concept of "choice architecture", an expression used in reference to the process through which choices would be shaped by contextual variables.

The concept is intertwined with the politics of libertarian paternalism that combines elements of paternalism (intervention for the well-being of individuals) with respect for individual freedom, to the greatest extent possible. According to this view, it is acceptable for the State or other authorities to intervene in individual choices to protect people from serious harm, as long as such intervention does not significantly restrict freedom of choice.

In summary, both *nudge* and libertarian paternalism seek to influence people's behavior toward choices that are considered beneficial, without suppressing individual freedom.

In the book *Nudge – How to make better decisions about health, money and happiness*, these authors list herd behavior as one of the forms of *nugde* , which is based on the strength that social influences cause in people's choices. Regarding the forms of social influence, they provide as follows:

> [...] Social influences are grouped into two basic categories. The first involves *information*. If many people do or think something, their actions and thoughts convey information about what would be most convenient to do or think. The second involves *social pressure*. If you care about what others think about you, you may end up following the crowd to avoid their wrath or ingratiating yourself with them. (Sunstein; Thaler, 2019, p. 67).

There is a commonplace that *nudges* have been used in the implementation of public policies. An example can be seen in the use of *information* about the harm of tobacco consumption to human health, which is mandatorily placed on cigarette packages,

Revista ARACÊ
ISSN: 2358-2472

as a way to encourage a decrease in the number of users or their daily attendance, without, however, imposing an express prohibition on its consumption.

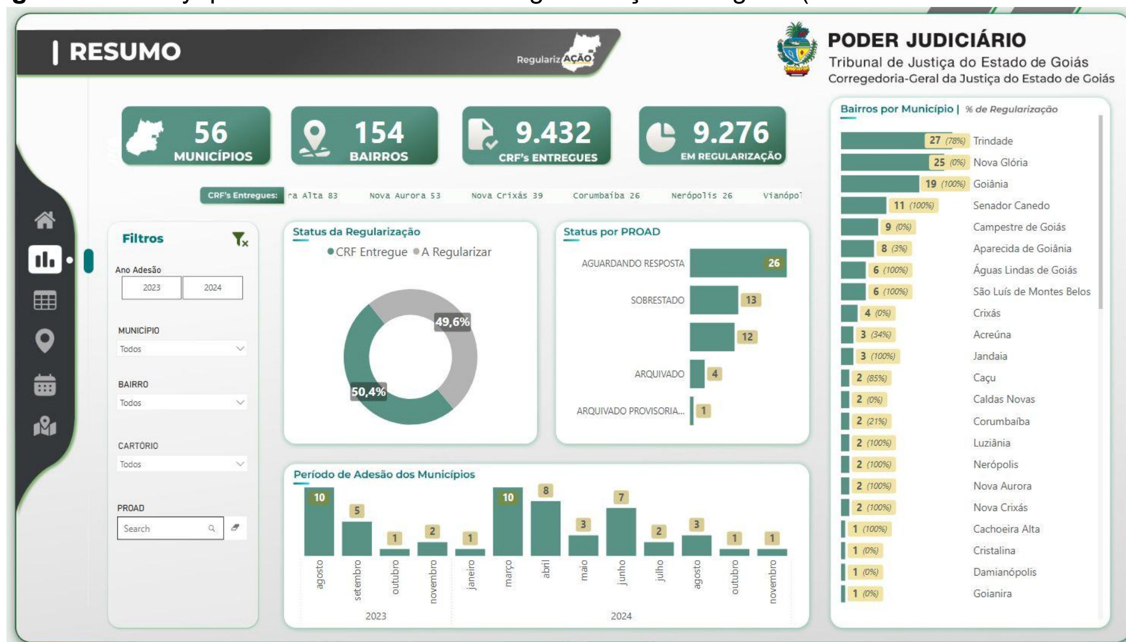
It is reasonable to assume that the Judiciary has also used *nudges* within the scope of the RegularizACTION Program.

Having analyzed the concepts indicated as well as the performance of the Court of Justice of the State of Goiás, especially the General Internal Affairs Office of Justice of the State of Goiás, within the scope of the RegularizACTION Program, the aforementioned program is conceived here as a case of *nudge*.

This is because the Judiciary assumes a posture of encouraging or inducing the Municipalities, so that they are stimulated to promote a more effective Urban Land Regularization, especially that of Social Interest (Reurb-S).

Even in view of the recent performance of the RegularizACTION Program, which began its work in August 2023, with the establishment of the Governance Center in Land Regularization, in consultation with the PowerBi System of the General Internal Affairs Office of Justice of the State of Goiás,[12] it is noted that, by December 2024, 56 (forty-six) Municipalities in Goiás have already joined the Program.

Fig. 1 - Summary: panel of activities of the RegularizAÇÃO Program (CG of the TJGO: 2023-2024)



Source: TJGO General Internal Affairs Office (2023-2024).

[12] Available at: https://app.powerbi.com/view?r=eyJrIjoiMTI5NDc5NGItZjg3YS00YzMzLWIwM2YtMzMzNDhhOWIwZWUyIiwidCI6IjdjNDQ3OGVlLTcxNWItNGFjMC1hNjAwLWY4MWI2ZGM2M2JjZCJ9.

Revista
ARACÊ
ISSN: 2358-2472

Despite the lack of material competence of the Judiciary for the direct execution of the public housing policy in question, it is speculated that the adhesion of 22.8% of the 246 Municipalities of Goiás[13] to the RegularizACTION Program is due, in theory, to the *visibility* that the Court of Justice of the State of Goiás has given to the performance of the 56 adhering Municipalities (almost 1/4 in two years), already reaching 154 neighborhoods, with 9,432 CRF's delivered, especially regarding the results achieved by them in the processing of REURB-S in each of the localities, which calls for an empirical research design that allows taking this conjecture to an *empirical test of hypothesis* through *valid data collection*, which depends on the operationalization of the concept of visibility (Moore; Notz; Flihner, 2023).

Thus, *it is conjectured* that this *inductive incentive* occurs from the perspective of the concept of *herd*, enunciated by Richard H. Thaler and Cass R. Sunstein (2019), considering the possible *social pressure* on the Municipalities that do not adhere to the RegularizAÇÃO Program, due to the way the local population could see the head of the Municipal Executive Branch who fails to adhere to the assistance of the Judiciary in carrying out the REURB-S, notably if faced with others, adherents, who, at least in theory, could achieve greater incremental effectiveness over time.

FINAL CONSIDERATIONS

The performance of the Court of Justice of the State of Goiás, through the General Internal Affairs Office of Justice in the RegularizACTION Program, configures an *atypical action* of the Judiciary, as an incentive to induce the search for *incremental effectiveness* of the right to housing, which can be monitored by collecting data on the *housing deficit* of the adhering Municipality over time.

Maintaining the possibilities of adhesion or not of the Municipalities to the aforementioned Program, the Judiciary of the State of Goiás applies a public policy that can be characterized as *libertarian paternalism*, since it does not oblige it and because it has instituted a council with attribution to cooperate in the solution of issues that arise during a complex administrative process such as that of Reurb-S.

However, by giving *visibility* to the performance of the adhering municipal entities, the General Internal Affairs Office of Justice of the State of Goiás encourages their adhesion and, as a consequence, with it, intends to "give a little push" so that the

---

[13] Available at: https://goias.gov.br/conheca-os-municipios-goianos/.

Revista ARACÊ
ISSN: 2358-2472

Municipalities of Goiás not only initiate procedures for Urban Land Regularization of Social Interest, but are also able to conclude their respective REURB-S with support to overcome their major obstacles.

It is true that the observations indicated are still incipient, given the recent execution of the Regularization ACTION Program, as well as the absence of empirical data on the monitoring of its results, such as a quarterly history of the housing deficit of the adhering Municipalities. The ideal would be to collect all from the 246 Municipalities of the State of Goiás,[14] to compare the adherents with the not; as well as to create a ranking, from the lowest to the largest deficit, another for the number of families titled per four months and also a historical series with the proportion (%) of people titled as a proportion of the total population in deficit of the respective Municipality.

This atypical activity of the Judiciary, in the RegularizACTION Program and the use of *nudges* in the execution of public policies are two categorical factors that draw attention to the improvement of the design of empirical research that can contribute to a diagnosis and an evaluation of the *effectiveness* of the social phenomenon addressed, as well as to find findings that serve as evidence to suggest incremental improvements in this effectiveness based on a valid data collection.

[14] Available at: https://goias.gov.br/conheca-os-municipios-goianos/.

Revista ARACÊ
ISSN: 2358-2472

REFERENCES

1. Brasil. (1988). Constituição da República Federativa do Brasil. Art. 6º. Available at: https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed on January 17, 2025.

2. Brasil, Instituto Brasileiro de Geografia e Estatística (IBGE). (n.d.). PnadC - Pesquisa Nacional por Amostra de Domicílios Contínua. Available at: https://www.ibge.gov.br/estatisticas/sociais/trabalho/9171-pesquisa-nacional-por-amostra-de-domicilios-continua-mensal.html?=&t=o-que-e. Accessed on June 2, 2024.

3. Brasil, Supremo Tribunal Federal (STF). (2004). ADI 3367-1-DF. Relator: Ministro Cezar Peluso. Distrito Federal, December 4, 2004. Available at: https://portal.stf.jus.br/processos/detalhe.asp?incidente=2260590. Accessed on June 2, 2024.

4. Brasil, Conselho Nacional de Justiça (CNJ). (2023). Provimento n. 158 de 5 de dezembro de 2023. Available at: https://atos.cnj.jus.br/atos/detalhar/5380. Accessed on June 13, 2024.

5. Bucci, M. P. D. (2002). Direito administrativo e políticas públicas. São Paulo: Editora Saraiva.

6. Cappelletti, M. (1988). Acesso à justiça (E. G. Northfleet, Trans.). Porto Alegre: Fabris.

7. Cardoso, A. L. (2016). Assentamentos precários no Brasil: Discutindo conceitos. In M. P. Morais, C. Krause, & V. C. Lima Neto (Eds.), Caraterização e tipologia de assentamentos precários: Estudos de caso brasileiros (pp. 29-52). Brasília: Ipea. Available at: https://repositorio.ipea.gov.br/handle/11058/6801. Accessed on June 21, 2024.

8. Goiás. (n.d.). Painel de Municípios Goianos. Available at: https://goias.gov.br/conheca-os-municipios-goianos/. Accessed on January 20, 2025.

9. Goiás, Instituto Mauro Borges de Estatísticas e Estudos Socioeconômicos. (2021). Déficit habitacional com base nos dados do CadÚnico 2021. Available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://goias.gov.br/seinfra/wp-content/uploads/sites/6/2024/01/Anexo-V-Informe-do-Deficit-Habitacional.pdf. Accessed on June 2, 2024.

10. Goiás, Tribunal de Justiça do Estado de Goiás (TJGO). (2023). Provimento Conjunto n. 14/2023. Available at: https://www.tjgo.jus.br/images/docs/corregedoria/Provimento_Conjunto_n_14_2023_-_Programa_RegualrizAO.pdf. Accessed on June 13, 2024.

11. Goiás, Tribunal de Justiça do Estado de Goiás (TJGO). (n.d.). Painel de Gestão das Atividades – RegularizAÇÃO. Available at: https://app.powerbi.com/view?r=eyJrIjoiMTI5NDc5NGItZjg3YS00YzMzLWIwM2YtMzMzNDhhOWIwZWUyIiwidCI6IjdjNDQ3OGVlLTcxNWItNGFjMC1hNjAwLWY4MWI2ZGM2M2JjZCJ9. Accessed on July 28, 2024.

12. Guerra, G. R., Cruvinel, E. de C., & Macedo, M. R. (2021). Déficit habitacional com base nos dados do CadÚnico 2021. Informe técnico IMB. Available at: file:///C:/Users/Gisele/Documents/Cleuler/repositorio_2022_030_informes_tecnicos_deficit_habitacional_com_base_nos_dados_do_cadunico_2021_2022.pdf. Accessed on June 12, 2024.

13. Kingdon, J. W. (2003). Agendas, alternatives, and public policies (3rd ed.). New York: Harper Collins.

14. Minas Gerais, Fundação João Pinheiro (FJP). (n.d.). A FJP. Available at: https://fjp.mg.gov.br/a-fjp/. Accessed on May 2, 2024.

15. Minas Gerais, Fundação João Pinheiro (FJP). (2022). Déficit habitacional no Brasil (com base na PnadC - Pesquisa Nacional por Amostra de Domicílios Contínua 2022). Available at: https://docs.google.com/spreadsheets/d/1OqAuggLve9HoPrI8jJcaAfSu1q5DCvdc/edit?gid=1828572335#gid=1828572335. Accessed on January 20, 2025.

16. Moore, D. S., Notz, W. I., & Flihner, M. A. (2023). A estatística básica e sua prática (A. M. L. de Farias, Trans., 9th ed.). Rio de Janeiro: LTC.

17. Moraes, M. V. da C. de M. (n.d.). A casa. Available at: https://www.viniciusdemoraes.com.br/pt-br/poesia/poesias-avulsas/casa. Accessed on June 1, 2024.

18. Richa, M. de A. (2022). Políticas públicas judiciárias e acesso à justiça. São Paulo: LTr.

19. Rocha, B. A., & Galuppo, M. C. (n.d.). Paternalismo libertário no Estado Democrático de Direito. Available at: https://repositorio.ufmg.br/handle/1843/39479. Accessed on July 28, 2024.

20. Rocha, C. A. A. da. (2021). Nudges e paternalismo libertário: Apontamentos sobre questões emergentes. Revista Brasileira de Terapia Comportamental e Cognitiva, 23, 1-19. Available at: https://rbtcc.com.br/RBTCC/article/view/1525. Accessed on July 29, 2024.

21. Sunstein, C. R., & Thaler, R. H. (2019). Nudge – como tomar melhores decisões sobre saúde, dinheiro e felicidade (Â. Lessa, Trans., 1st ed.). Rio de Janeiro: Objetiva.

22. Tude, J. M. (2020). Conceitos gerais de políticas públicas. Available at: http://www.videolivraria.com.br/pdfs.pdf. Accessed on November 4, 2020. As cited in Richa, M. de A. (2022). Políticas públicas judiciárias e acesso à justiça (p. 103). São Paulo: LTr.