LEGAL ANALYSIS OF THE ASSIS SYSTEM: RISKS OF NULLITY OF JUDICIAL ACTS IN THE CONTEXT OF ALGORITHMIC GOVERNANCE AND DISCRIMINATORY BIASES

Eloisa Samy Santiago [*]

Abstract: This article examines the possibility of nullity of judicial decisions mediated by artificial intelligence systems, with an emphasis on ASSIS, implemented by the Rio de Janeiro Court of Justice in 2024. It is hypothesized that the assisted use of AI may introduce defects capable of undermining due process, equality, and human dignity. The investigation adopts a qualitative methodology, of a descriptive and explanatory nature, with an interdisciplinary approach. Bibliographic and documentary review, doctrinal research, and content analysis applied to regulations, judicial decisions, and technical materials are employed. The study mobilizes concepts such as "emergent misalignment" and "idiosyncratic bias" to demonstrate how specific technical flaws can trigger the nullity of acts and substantiate institutional liability.

Keywords: Artificial Intelligence Systems in the Judiciary; Nullity of Judicial Decisions; Fundamental Procedural Guarantees; Algorithmic Bias and Technical Failures; Institutional Responsibility.

INTRODUCTION

Technological advancement in the legal field constitutes an irreversible phenomenon. The launch, in August 2024, of the ASSIS system by the Rio de Janeiro Court of Justice (TJRJ) marks a turning point in this transformation. Conceived as a tool to support judicial activity, ASSIS assists judges in drafting rulings and judgments, replicating the drafting style and decision-making history of the user based on the artificial intelligence training with their personal repository.

Although it promises gains in efficiency and productivity, the adoption of systems of this nature carries unavoidable risks: the opacity of internal processes, the reproduction of biases, the dilution of human responsibility, and the fragmentation of jurisprudential coherence threaten fundamental values of the judiciary. If not addressed through solid normative and ethical frameworks, these risks compromise judicial independence and weaken public trust in the impartiality of justice.

The hypothesis of this article is that judicial decisions made with the

[*] Master of Laws (LL.M.) from the Federal University of Rio de Janeiro (UFRJ), Brazil. Email: esamyrj@gmail.com / ORCID iD: https://orcid.org/0009-0002-8739-7866

assistance of systems like ASSIS may be considered null for compromising constitutional principles. Such nullity arises not only from the absence of final human deliberation but, above all, from algorithmic opacity and the incorporation of biases that, when applied systematically, are amplified and become structural defects of the entire process, violating due process, equality, and human dignity.

The aspect of ASSIS that prompted this analysis is its training method: the artificial intelligence is fed with each judge's personal repository - including prior rulings and judgments - in order to replicate the user's writing style and decision-making history. While its developers argue that this personalization increases the accuracy and relevance of generated suggestions, it is precisely this feature that raises the central concern and the interest in examining the potential nullity of decisions mediated by the system.

The emerging problem is as follows: automated decisions have been adopted under the appearance of neutrality, efficiency, or inevitability, without formal accountability mechanisms or adequate means of challenge. In this way, a new mode of normative production is established, unrecognized as such, but whose effects are real and of high regulatory density. These effects become particularly visible when algorithmic operation replaces public deliberation, regulatory procedure, or institutional oversight with automated decisions. In this context, algorithms begin to produce selections with normative value - that is, decisions that guide behaviors, distribute risks, organize preferences, and produce exclusions - without this normativity being formally recognized or legally controlled.

This configuration results in the consolidation of a form of algorithmic domination, characterized by decision-making opacity, depersonalization of normative effects, and the naturalization of its consequences. The algorithm thus becomes a de facto normative instance, although not recognized by law. Its authority derives from the absence of institutional mechanisms capable of challenging it, translating it legally, or conditioning its operation by external normative parameters. The asymmetry between the de facto normative function of algorithms and the lack of adequate legal regulation creates a space of silent structural domination, in which the user is subjected to opaque, unquestionable, and potentially discriminatory decisions. The regulatory regime itself becomes dysfunctional, reduced to the position of spectator of decision-making processes operating outside its normative grammar.

In addition to the algorithmic biases already identified in the literature[1],

[1] Toledo, Claudia & Daniel Pessoa, *The Use of Artificial Intelligence in Judicial Decision-Making*, Rev. Investigações Constitucionais, vol. 10, no. 1, e237 (Jan.–Apr. 2023), available at https://doi.org/10.5380/rinc.v10i1.86319 (last visited Sept. 25, 2025).

the analysis considers a recent phenomenon observed in the field of artificial intelligence: "emergent misalignment."

The concept describes the latent incongruity between the system's apparent compliance and its internal operation, which begins to follow its own opaque and deviant logic, detached from the initially defined objectives. In essence, it is a model that preserves the simulation of obedience while internalizing patterns of behavior that are impervious to human supervision and normative alignment.

The assessment of these risks takes as reference the European Charter of Ethics on the Use of Artificial Intelligence in Judicial Systems and CNJ Resolution No. 615/2025, instruments that establish ethical and legal parameters for the use of AI in the judicial sphere. The comparison between these principles and the functioning of ASSIS allows for the articulation of new technical concepts and traditional legal categories, examining how idiosyncratic bias and emergent misalignment may justify the nullity of judicial decisions mediated by AI.

Throughout the study, it is sought to demonstrate that technological innovation can only contribute to strengthening the Rule of Law if it respects, in both its design and use, the normative and ethical limits that preserve the essence of the judiciary.

I. THE REGULATORY FRAMEWORK OF AI IN THE JUDICIARY AND THE RISKS OF NONCOMPLIANCE

ASSIS, developed by the Artificial Intelligence Advisory Office of the Secretariat-General for Information Technology of the Court of Justice of the State of Rio de Janeiro, is a legal assistant designed to support first-instance judicial activity. Based on generative language models, specifically GPT-4, its primary purpose is to assist judges in drafting decisions and judgment drafts, as well as answering questions regarding the content of cases.[2]

Integrated with the Electronic Judicial Process (PJe) document database, the system can, upon receiving a case number, automatically access all corresponding procedural documents. Based on these documents, ASSIS processes information, identifies relevant elements, and extracts critical details, providing judges with the tools necessary to fully understand the case. Natural language processing technology enables the system to interpret procedural dynamics, the parties' arguments, and other legal elements, producing precise and well-founded drafts.

[2] Brazil, Rio de Janeiro Court of Justice, *ASSIS – Generative Artificial Intelligence Assistant*, available at https://www.tjrj.jus.br/magistrado/servicos/assis/o-projeto (last visited Sept. 25, 2025).

CNJ Resolution No. 615/2025[3], published on March 11, 2025, establishes the regulatory framework for the use of artificial intelligence in the Brazilian Judiciary.

Article 2 of the Resolution sets out fundamental principles, such as respect for human rights, democratic values, the centrality of the human person, and the promotion of equality, plurality, and judicial fairness. Article 3 reinforces principles of justice, equity, inclusion, non-discrimination, transparency, efficiency, explainability, contestability, auditability, and reliability. Among these, non-discrimination stands out, aiming to prevent AI from producing or amplifying inequalities, especially when handling sensitive data. Violation of this principle constitutes an affront to constitutional principles of human dignity, equality, and due process, potentially giving rise to the absolute nullity of procedural acts (Arts. 113, § 2, and 282, § 1, CPC).

Article 4 defines key concepts, distinguishing between "AI system" (item I) and "generative AI" (item IX), whose detailed regulation is found in Chapter VI. The concepts of auditability (XVII), explainability (XVIII), and contestability (XIX) establish the basis for human oversight of algorithms. The National Committee on Artificial Intelligence in the Judiciary (item XII) functions as the central governance body.

Article 8 specifically addresses discriminatory biases, imposing preventive measures and continuous auditing (§1), as well as determining (§3) the discontinuation of the solution if the bias cannot be eliminated, acting as a definitive safety mechanism.

The Resolution also provides for: registration of solutions on the Sinapses[4] platform (Art. 24); Algorithmic Impact Assessment for high-risk systems (Art. 14); and prohibition of excessively risky solutions, such as those without human supervision or that classify individuals to assess rights (Art. 10). The Annex differentiates high- and low-risk activities, considering high-risk those related to evidence production, criminal classification, and formulation of conclusive judgments, and low-risk tasks such as document summarization or detection of decision-making patterns.

At the international level, the European Charter of Ethics[5] (CEPEJ)

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[3] Brazil, National Council of Justice (CNJ), Resolution No. 615, of Mar. 11, 2025, Diário da Justiça do Conselho Nacional de Justiça, no. 54, 2–16 (Mar. 14, 2025), available at https://atos.cnj.jus.br/files/original1555302025031467d4517244566.pdf (last visited Sept. 25, 2025).

[4] Brazil, National Council of Justice (CNJ), *National Committee on Artificial Intelligence in the Judiciary (CNIAJ)*, available at https://www.cnj.jus.br/sistemas/plataforma-sinapses/comite-nacional-de-inteligencia-artificial-do-judiciario-cniaj/ (last visited Sept. 25, 2025).

[5] European Union, CEPEJ, *European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment* (Dec. 3–4, 2018), available at

establishes principles guiding the use of AI in the judiciary, aiming to ensure compliance with the European Convention on Human Rights[6]. This document constitutes an example of soft law, a set of high-level ethical principles serving as a guide for the design and implementation of AI systems in justice.

Both the European Union AI Act[7] and the European Charter consider AI systems in the judiciary to represent a high risk, given their potential impact on fundamental rights, fact-finding, and the application of law.

These regulations require formal impact assessments, independent external audits, and robust institutional safeguards, even when the final decision is reviewed by a human.

This creates a regulatory discrepancy: while CNJ Resolution No. 615/2025 classifies ASSIS as low risk, international standards advocate maximum precaution, recognizing that systems influencing judicial decisions have the potential to affect fundamental rights, fact-finding, and the application of law.

The requirement for external audits constitutes a high international standard to ensure the integrity and ethical, responsible use of AI systems. However, ASSIS does not make its internal traceability and oversight mechanisms publicly available, keeping them accessible only to internal auditors and court managers. This limitation directly violates the transparency necessary for external monitoring of data processing methods.

Maintaining ASSIS in the low-risk category ignores the complexity and scope of its effects, which include the potential amplification of historical biases, opacity in decision-making processes, and limitations on independent external audits. This classification demonstrates a critical dissonance between internal regulation and international standards for ethical use, with which Brazil has committed. While global regulations recommend maximum precaution and structural mitigation mechanisms - acknowledging that even support systems can produce significant impacts on individual rights and judicial legitimacy - the TJRJ's approach underestimates these risks. Such disregard ultimately compromises normative compliance and the judiciary's legitimacy itself.

In March 2024, the UN General Assembly adopted Resolution A/78/L.494[8], entitled "Harnessing the Opportunities of Safe, Secure and

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https://rm.coe.int/168093b7e0 (last visited Sept. 25, 2025).

[6] Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms* (1950), available at https://www.echr.coe.int/documents/d/echr/convention_por (last visited Sept. 25, 2025).

[7] European Union, Regulation (EU) 2024/1689 of the European Parliament and of the Council (AI Act), June 13, 2024, available at https://eur-lex.europa.eu/legal-content/PT/TXT/?uri=CELEX:32024R1689 (last visited Sept. 25, 2025).

[8] United Nations General Assembly, Resolution A/78/L.49, *Leveraging Opportunities*

Trustworthy Artificial Intelligence (AI) Systems for Sustainable Development." Brazil was one of 193 signatory countries to this document, which establishes principles for the responsible development and use of AI, focusing on the protection of human rights and the promotion of social justice. Although Resolution A/78/L.494 is a soft law instrument without binding effect, it reflects international commitments that may influence the interpretation and application of Brazilian constitutional principles. Failure to align with these commitments can be interpreted as a failure to uphold the principles of international cooperation and the defense of human rights, as provided in the Federal Constitution.

Furthermore, the Resolution suggests the creation of global regulatory frameworks for artificial intelligence. Brazil's lack of alignment with these guidelines could result in difficulties integrating into global AI governance initiatives, affecting its international standing.

In this context, classifying the ASSIS system as low risk disregards the recommendations of Resolution A/78/L.494 and can be seen as a failure to align national regulation with international standards, undermining Brazil's credibility in global commitments related to the ethical use of AI.

II. THE NATURE OF ALGORITHMIC BIASES AND THE RISK OF UNLAWFUL DISCRIMINATION

The automation of decision-making processes, such as those operated by the ASSIS system, introduces a series of biases that may be more difficult to identify and correct than traditional human prejudices. The lack of transparency and the inherent complexity of many algorithms create a fertile environment for the perpetuation of inequalities, resulting in decisions that, ultimately, may be legally null.

Algorithmic opacity refers to the difficulty in understanding the functioning of highly complex AI systems, particularly those structured on deep learning techniques. It is not merely an industrial secret or restricted access issue, but an intrinsic obscurity arising from the mathematical density of the models and the vast volume of historical data used in their training, which often carries latent biases. Consequently, the machine's decision-making process is poorly transparent.

The result is a structural limitation on traceability: neither the user nor internal or external audits can effectively reconstruct the logical chain leading to the outcome. This opacity compromises the response to the fundamental due process question: "What is the reason for this decision?" By obscuring

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of Safe, Secure, and Reliable Artificial Intelligence (AI) Systems for Sustainable Development (Mar. 21, 2024), available at https://docs.un.org/en/A/78/L.49 (last visited Sept. 25, 2025).

variables, weights, and determining criteria, the system undermines the requirement of explainability, an essential condition for legal legitimacy and the validity of judicial decisions.

As with the European Charter of Ethics, CNJ Resolution No. 615/2025 recognizes the seriousness of this problem by requiring transparency, impartiality, and fairness in data processing methods, as well as adequate explainability of results.

If ASSIS generates a recommendation that the judge adopts, but it is impossible to explain the underlying logic clearly and accessibly, the final decision lacks effective human reasoning, constituting a legitimacy flaw that may lead to the nullity of the judicial act due to lack of motivation. The right of the litigant to challenge the decision is directly compromised by opacity, as it is impossible to contest what cannot be understood.

Algorithms may also incorporate and amplify human biases through heuristics and cognitive patterns already documented[9]. In the context of ASSIS, such biases may directly affect the fairness of decisions.

The table below illustrates how these biases manifest within the system and the corresponding risks of legal nullity.

Type of Bias	Definition	Potential Manifestation in ASSIS	Risk of Legal Nullity
Availability Heuristic	Assessing the probability of an event based on the ease of access to related information, ignoring less evident data.	The system associates social roles with a specific group based on the predominance of such representations in the training data.	Discriminatory biases, violating the constitutional principle of equality and the protection of fundamental rights.
Anchoring Heuristic	Making decisions influenced by previously presented information that serves as an "anchor."	The system suggests compensation or penalties based on historical median values, rather than considering social evolution and the particularities of the case.	Anchoring on outdated or unfair patterns, leading to decisions without proper contextualization or reasoning.

[9] Santiago, Eloisa Samy, *Algorithmic Impact Assessment: Ethical and Legal Challenges in Identifying and Mitigating Gender Bias* (Master's thesis, Federal University of Rio de Janeiro, National School of Law, Graduate Program in Law, 2025).

Confirmation Bias	Valuing information that confirms preexisting beliefs while minimizing contradictory information.	The algorithm reinforces gender, racial, and class stereotypes, prioritizing data that supports biased views about who is "entitled" to a right.	Consolidation of discriminatory models that perpetuate prejudices and result in substantially unjust decisions.
Illusory Correlation	Attributing causal relationships between variables that, in reality, have no objective connection.	The system correlates a party's socioeconomic condition with the legal merit of their case, leading to discriminatory decisions.	Violation of equality, as decisions are based on spurious associations rather than valid legal grounds.
Hindsight Bias	The belief that outcomes were predictable from the outset, distorting analysis and memory of facts.	The system interprets case facts in light of already known outcomes, ignoring the context and barriers that hindered social or professional progress of an individual or group.	Lack of contextual reasoning, leading to decisions that disregard historical complexities and structural barriers.

However, ASSIS presents an additional layer of complexity. Unlike the social biases already identified, it introduces idiosyncratic bias, of an individual nature. Because it is trained on each judge's personal decision-making archive, the system not only reproduces the writing style but also incorporates unconscious patterns, preferences, and inclinations specific to the judge.

The term "idiosyncratic" comes from Greek, where *idios* means "personal" or "own," and *syncrasis* refers to "mixture" or "temperament."

In judicial activity, idiosyncratic biases, or *status quo*[10] biases, are cognitive deviations that manifest during case analysis. These are subjective particularities of the judge - not broadly shared prejudices or common reasoning patterns - which may subtly influence, for example, how evidence is processed and evaluated or how a specific legal institution is interpreted. In this context, a judicial decision can be inadvertently influenced by personal

[10] Ambros, Christiano & Daniel Lodetti, *Cognitive Biases in Intelligence Activity: Concepts, Categories, and Mitigation Methods*, Rev. Bras. Inteligência, no. 14, 9–34 (Dec. 2019), available at https://rbi.abin.gov.br/RBI/article/download/157/130/241 (last visited Sept. 25, 2025).

aversion or sympathy toward a certain argument or legal thesis, even when facts and law indicate a different course. Thus, the judge's decision begins to reflect their own inclinations rather than constituting an objective analysis of the merits, allowing subjectivity to compromise the impartiality of judgment.

In civil cases, the judge's challenge is to balance personal interpretation with impartiality and proper reasoning. Partiality implies a violation of the right to adversarial proceedings and full defense, as guaranteed under Article 5, items LIV and LV, of the Federal Constitution.[11] Moreover, decisions influenced by personal sympathy or aversion violate Article 93, item IX, of the NCPC.[12]

While human decisions may be affected by subjective inclinations, in AI-mediated decisions the issue appears in a different form: emergent misalignment.

This phenomenon occurs when an AI system, instead of following the institutional objectives for which it was created, begins to construct its own decision-making criteria, often in subtle and unforeseen ways. This is not a simple error or technical failure but a more complex process: the system learns to act coherently with itself, yet misaligned with the constitutional and normative values meant to guide it.[13]

Emergent misalignment occurs in advanced AI systems when objectives, heuristics, or decision-making criteria diverge, in unforeseen and persistent ways, from the normative and institutional intentions that justified the system's design and use. It is qualitatively distinct from isolated failures, as it reflects the internal transformation of the system's optimization function into instrumental goals that autonomously guide the AI's behavior, resistant to local corrections.

Technically, emergent misalignment arises when the AI system, in seeking to optimize itself, relies on limited or simplified learning signals (proxies), prioritizing operational metrics while sidelining the normative principles meant to guide it. Legally, this translates into decisions or recommendations producing effects contrary to due process, equality, and reasoned justification, without being immediately detectable as ordinary human errors.

This problem is exacerbated when the system incorporates idiosyncratic

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[11] Brazil, Constitution of the Federative Republic of Brazil of 1988, available at https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm (last visited Sept. 25, 2025).

[12] Brazil, Law No. 13,105, of Mar. 16, 2015 (Code of Civil Procedure), available at https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm (last visited Sept. 25, 2025).

[13] Betley, Jan, Daniel Tan, Niels Warncke et al., *Emergent Misalignment: Narrow Finetuning Can Produce Broadly Misaligned LLMs*, arXiv:2502.17424 (2025), available at https://doi.org/10.48550/arXiv.2502.17424 (last visited Sept. 25, 2025).

biases. In the judicial environment, we know that judges may, for personal, cultural, or cognitive reasons, exhibit individual preferences in their decisions. However, these individual inclinations rarely contaminate the legal system as a whole because corrective mechanisms exist, such as appeals, collegial oversight, jurisprudential standardization, and public access to decisions. The justice system possesses, so to speak, institutional "antibodies" against idiosyncrasy. Yet, when reinforcement learning AI is used, institutional control and correction mechanisms are weakened.

This type of learning functions through trial and error: the machine receives "rewards" or "signals of correctness" for each decision it makes and gradually adjusts its operation to maximize such rewards. If the rewards are imperfectly defined - and in law they almost always are, since translating principles into numbers is impossible to do fully - the system tends to find shortcuts that increase operational efficiency at the expense of core justice values.

Here is where some judges' idiosyncratic bias can become dangerous. Imagine a judge who imposes harsher penalties on defendants from a particular region. In daily practice, this idiosyncrasy would be mitigated by the legal system: other judges, higher courts, and appeals would correct the excess. But when such decisions are used as training material, the machine does not see it as an "error to correct" but as a pattern to emulate. Through reinforcement learning, this pattern can be multiplied and even amplified, transforming a personal preference into a general rule guiding thousands of decisions.

A hypothetical example illustrates this. Suppose a sentencing support system is trained to reduce recidivism using historical data. If the data show harsher punishment of low-income defendants, the system will interpret this as a successful strategy to reduce recidivism and recommend increasingly severe sentences in such cases. The result is emergent misalignment: the machine believes it is performing correctly, but in fact, it is violating principles of equality and proportionality.

Another example: a recommendation system in child custody cases. If historical decisions gave greater weight to biological ties over socioaffective bonds, the system would learn to replicate this logic, even if current jurisprudence trends in the opposite direction. What would be merely an individual bias in a human judge, corrected by the legal system, becomes a structural deviation in AI, potentially affecting a significant portion of decisions.

Therefore, emergent misalignment, due to the incorporation of idiosyncratic biases, can become a systemic failure, transforming localized human preferences into amplified algorithmic patterns and undermining the corrective mechanisms inherent to due process and other procedural

guarantees.

The pursuit of personalization can perpetuate and even amplify biases, making justice increasingly dependent on the particularities of the artificial intelligence associated with each judge. When the system reproduces a judge's decision-making style and subjective preferences, instead of ensuring an objective analysis of the facts and the law, it creates a situation in which a judicial decision may not reflect the impartiality required by the legal system. Mechanized and institutionalized by the system, this subjectivity undermines jurisprudential uniformity, weakens legal certainty, and threatens fundamental rights, such as the adversarial principle and the right to full defense, constitutionally protected.

Thus, emergent misalignment reveals a flaw in legitimacy and legality, since the decision loses its proper intellectual foundation, a requirement highlighted in Article 93, item IX, of the Civil Procedure Code. Algorithmic opacity prevents the litigant from understanding the decision-making logic, hindering the exercise of the right to challenge and appeal the decision. In this sense, the arbitration performed by the automated system, laden with idiosyncratic biases, violates fundamental principles such as equality, non-discrimination, and human dignity as enshrined in the Federal Constitution. The decision, reduced to a "black box," undermines due process and distorts the very judicial function, highlighting the impairment of the dialogical function of jurisprudence.

Indeed, the automated production of decisions, calibrated on each judge's decision-making archive, tends to crystallize idiosyncratic patterns and individual preferences. By perpetuating particular styles and inclinations, artificial intelligence not only amplifies subjective traits but also diminishes the judicial system's capacity to make dynamic interpretative adjustments, necessary for the law to keep pace with social, cultural, and economic changes, thereby preserving its legitimacy and effectiveness.

Jurisprudence, in its classical sense, constitutes a continuous, dialogical, and evolving process, in which higher courts, precedents, and decisions of equal hierarchy interact, allowing the law to adapt to new social realities and demands for effective justice. This adaptive character ensures that established understandings can be reviewed, corrected, or expanded in light of new contexts, preserving coherence, predictability, and, above all, respect for due process and other procedural guarantees that legitimize the judiciary.

The use of personalized artificial intelligence, when disconnected from institutional supervision and control mechanisms, tends to freeze individual decision-making patterns, transforming singular preferences into artificial precedents. These then repeat mechanically, without the corrective filter of judicial oversight instruments and without space for the interpretative evolution that characterizes the law in democratic societies.

III. NULLITY OF JUDICIAL ACTS: CAUSES AND LEGAL MECHANISMS

In the 1970s, José Carlos Barbosa Moreira, a renowned procedural scholar, clearly asserted that the reasoning behind judicial decisions constitutes an indispensable guarantee for the Rule of Law. He emphasized that in several countries, the duty to provide reasoning was already accorded constitutional stature and imposed on judges.

This approach not only ensures greater stability of the law, shielding it from fluctuations in ordinary legislation, but also redefines the understanding of the topic by situating it at the core of fundamental guarantees structuring the legal system.[14]

The 2015 Brazilian Civil Procedure Code introduced significant innovations in civil proceedings, among which stand out the requirement for analytical reasoning in judicial decisions (Art. 489, §§ 1 and 2) and the consolidation of a cooperative procedural model, outlined in several legal provisions. Procedural cooperation and analytical reasoning are closely linked, as the cooperative model requires greater dialogue among the parties and implies moving beyond merely formal adversarial proceedings toward substantive adversarial engagement. It is not sufficient for parties to be aware of proceedings and have an opportunity to present arguments; the judge must effectively consider the claims submitted. Although decision-making remains the judge's prerogative, the exercise of judicial function becomes conditioned upon the analysis of the parties' arguments. In this context, the process acquires a character of "conditional asymmetry": the judge's decisional authority is preserved but must be legitimized through dialogue and effective consideration of procedural submissions.[15]

Following this lesson, the requirement for analytical reasoning finds support in the logic of cooperative process. This perspective, however, cannot be dissociated from other structuring principles of Brazilian civil procedure. Among them, the principle *pas de nullité sans grief*, enshrined in Article 282, §1, of the Civil Procedure Code, stands out, according to which the nullity of a procedural act should only be recognized when there is actual harm to a party. The purpose of this provision is to prevent proceduralism from

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[14] Moreira, José Carlos Barbosa, *Processual Law Topics: Second Series* 84 (Saraiva 1980), 84.

[15] Didier Jr., Fredie & Ravi Peixoto, *Art. 489, § 1 of the CPC and its Application to the Claims of Procedural Parties – A Precedent of the STJ*, Rev. Jurídica da Escola Superior de Advocacia da OAB-PR, Special ed., year 3, no. 1 (May 2018), available at https://revistajuridica.esa.oabpr.org.br/wp-content/uploads/2018/05/revista_esa_6_3.pdf (last visited Sept. 26, 2025).

becoming an arena of meaningless formalities, reaffirming its instrumental nature in the realization of justice. Nevertheless, this principle cannot be read in isolation, as the Federal Constitution, as the supreme law, establishes the parameters for the validity and interpretation of all infraconstitutional law.

The Constitution projects structuring values over procedural law, such as Article 5, items LIV and LV, and imposes on the public administration, at all levels, the observance of principles such as legality, impersonality, morality, publicity, and efficiency. These principles also bind the Judiciary, requiring judgments to be public and all decisions to be properly reasoned, ensuring transparency and democratic legitimacy in the judiciary. These provisions constitute normative parameters for the validity and compliance of procedural acts.

According to Cristina Reindolff da Motta, reasoning in judicial decisions:

> … is the guarantee that an individual has to know whether they are facing a correct decision (one that complies with the Constitution), as it demonstrates the reasons why a decision applies to a given concrete case. Nonetheless, the absence of reasoning is characteristic of authoritarian regimes, where public access to the rationale is denied and decisions are made obscurely.[16]

In 2011, the Access to Information Law (Law No. 12,527/2011)[17] was enacted to regulate the fundamental right of access to public information in Brazil and to consolidate an administrative culture guided by transparency. The law establishes public access to acts and data as the default rule, reserving secrecy only for cases expressly provided by law. It also stipulates that information of collective interest should be made available proactively, without reliance on individual requests. To this end, it recommends the use of technological resources to facilitate communication and data access, promoting efficiency and broad reach.

The law further encourages the strengthening of a transparency culture within public administration, recognizing the importance of training agents and citizens in this regard. Finally, it seeks to promote social oversight of state actions, enabling society to actively participate in monitoring and evaluating public policies.

Although ASSIS does not exercise a judicial function, it directly influences judgment construction by systematizing data and providing

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[16] Motta, Cristina Reindolff da, *The Reasoning of Civil Decisions as a Condition for Correct/Appropriate Response* (Livraria do Advogado Editora 2012).

[17] Brazil, Law No. 12,527, of Nov. 18, 2011 (Access to Information Law), available at https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12527.htm (last visited Sept. 25, 2025).

interpretative support to the judge.

The use of reinforcement learning makes the system susceptible to emergent misalignment, in which historical patterns - including not only judges' idiosyncratic biases but also underlying social biases present in the training data, arising from different heuristics and cognitive tendencies - may be internalized by the algorithm, transforming individual preferences into repetitive, mechanized norms. What would be an isolated inclination, mitigated by judicial oversight mechanisms, crystallizes into recurring recommendations, affecting the coherence and uniformity of jurisprudence, as well as legal certainty.

The complexity of language models, combined with the opacity of learning, makes it difficult to explain the suggestions provided. Even though ASSIS does not decide autonomously, it can reinforce discriminatory or unequal patterns present in the training data, indirectly impacting the impartiality and fairness of judgments.

In this context, the opacity of the ASSIS system, whose internal audit and traceability mechanisms are not publicly available, reveals a tension with the constitutional requirements of publicity (Art. 37, caput, CRFB/88) and public reasoning in judicial decisions (Art. 93, IX, CRFB/88).

The unavailability of external audits and the restriction of social scrutiny prevent democratic oversight and full understanding of automated decisions. Even if no immediate individual harm is identified, this lack of transparency produces a structural prejudice incompatible with the guarantees of due process (Art. 5, LIV, CRFB/88), adversarial proceedings, and the right to full defense (Art. 5, LV, CRFB/88).

This structural prejudice does not manifest solely as tangible harm to a party in a specific case, but as erosion of the constitutional foundations legitimizing the exercise of jurisdiction. If parties cannot understand, monitor, or effectively challenge automated decisions, the adversarial process and full defense become mere formalities without substance, undermining the essence of due process. In this sense, the absence of transparency compromises legal certainty and weakens democratic confidence in the Judiciary.

The technique of interpretation in accordance with the Constitution is based on the principle of constitutional supremacy, which requires compatibility of all norms in the legal system with the Constitution. For this reason, it is also considered a form of judicial decision in exercising constitutional control. This mechanism can be applied both in concrete and abstract control, aiming to ensure unity and coherence of the legal system in accordance with the Federal Constitution.

Thus, constitutionally compliant interpretation of *pas de nullité sans grief* requires that the concept of "prejudice" not be reduced to the immediate

individual sphere but also include its collective and structural dimension. The lack of effective publicity and independent external audits may justify corrective measures, including the nullity of automated judicial acts, when such deficiencies violate constitutional principles.

It can therefore be concluded that the mere existence of restricted internal audits does not satisfy the constitutional requirements for democratic control and judicial legitimacy. *Pas de nullité sans grief*, interpreted in light of the Constitution, must encompass the notion of structural prejudice which, even without immediately perceptible harm, represents a serious violation of fundamental rights and a threat to the integrity of jurisdiction.

There is a procedure for preparing an Algorithmic Impact Assessment (AIA) and a Data Protection Impact Report (RIPD) related to ASSIS. The request for these documents was recorded in a September 2024 meeting, following the presentation of the tool at the Court of Justice of the State of Rio de Janeiro. The initiative to request the AIA and RIPD came from the Director of the Department of Security and Informatics, with a stipulated execution deadline of ten days.[18] However, to date, no specific Algorithmic Impact Assessment report for ASSIS has been identified.

From the perspective of *pas de nullité sans grief*, the absence of a specific Algorithmic Impact Assessment (AIA) and Data Protection Impact Report (RIPD) for ASSIS concretely evidences a structural failure in the democratic oversight and control of the system. Without the preparation of these documents, there is no way to verify how the assistant processes information, which patterns it reproduces, or whether it perpetuates historical and idiosyncratic biases of judges.

The absence of an AIA, even without immediate harm to a party, demonstrates that the opacity of the decision-making process constitutes a serious violation of constitutional principles such as publicity (Art. 37, caput), reasoning (Art. 93, IX), and due process (Art. 5, LIV), thereby legitimizing the nullity of automated acts. Thus, the lack of these reports provides sufficient legal grounds to challenge the validity of decisions made using a system whose operation remains unauditable and potentially biased.

Nullity may be invoked if it is proven that the system was trained with data tainted by prejudices, that the methodology for data collection and processing was flawed, or that the absence of a detailed log of the decision-making process prevented oversight. Without mechanisms guaranteeing the integrity and traceability of the data, the defense cannot effectively contest the decision, and the institution cannot defend itself against accusations of

[18] Brazil, Rio de Janeiro Court of Justice, *Request for the Preparation of Algorithmic Impact Assessment (AIA) and Data Protection Impact Report (RIPD) for ASSIS* (Sept. 2024 meeting), available at https://portaltj.tjrj.jus.br/documents/d/portal-conhecimento/02-16-09-2024-pdf (last visited Sept. 25, 2025).

bias and discrimination.

Among the principles reaffirmed by the National Council of Justice, the so-called "user-in-control" principle (*human-in-the-loop*), codified in Art. 6, IV, of CNJ Resolution No. 615/2025, stands out. It stipulates that the autonomy of the judge must be preserved and strengthened through the use of artificial intelligence tools. This principle means that the judge cannot be reduced to a mere approver of algorithmic outputs and must always have the final say, with the possibility of revision, dissent, and independent reasoning.

This perspective leads to two main consequences. First, transparency: parties have the right to be informed that an automated system was used in the process, to understand the limits of its intervention, and to know, in accessible language, the extent to which it influenced the final decision, in accordance with Art. 7, II, of CNJ Resolution No. 615/2025. Second, reviewability: all AI activity must be subject to critical oversight by the judge, as ensured by the principle of human control in the same resolution.

Both the Brazilian General Data Protection Law[19] (LGPD) and the European Charter converge on the conclusion that, even if consent is not a condition of validity for judicial acts, there is a legal duty to provide clear, timely, and sufficient information, ensuring that parties can question, challenge, and request a critical review of the automated decision-making criteria employed.

The discussion of parties' consent gains constitutional and infraconstitutional relevance here. Jurisdiction does not depend on litigants' agreement, as it derives from the exercise of state power. However, the use of artificial intelligence capable of substantially influencing the content of a decision directly affects fundamental rights to full defense and adversarial proceedings. Accordingly, the LGPD (Law No. 13,709/2018) introduced into Brazilian law the requirement of informed consent as a legal basis for the processing of personal data in various situations (Arts. 7, I, and 11, I, LGPD), as well as guaranteeing the data subject the right to review decisions made solely based on automated processing of personal data (Art. 20, LGPD).

Systematic interpretation, guided by the principle of constitutional supremacy, allows the conclusion that the "user-in-control" principle, when articulated with the LGPD and fundamental rights, assumes the form of a duty imposed on the Judiciary. This duty requires effective human oversight and procedural transparency, including unequivocal obtaining of parties' consent. Omission in this task does not constitute a mere irregularity but represents a structural threat to fair process, legal certainty, and democratic trust in the judiciary. Its violation triggers the nullity of the decision, as the

[19] Brazil, Law No. 13,709, of Aug. 14, 2018 (General Data Protection Law), available at https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/l13709.htm (last visited Sept. 25, 2025).

harm affects not just form but the substance of adversarial proceedings, full defense, and the legitimacy of decisions. This constitutes nullity based on the effective erosion of procedural guarantees, requiring measures to restore human oversight and control over the automated system.

The Brazilian legal system, founded on constitutional principles such as equality, non-discrimination, human dignity, and due process, acts as a barrier against the imprudent delegation of decisions to AI systems. Delegating decision-making functions to artificial intelligence systems, such as ASSIS, impacts the structuring principles of law and philosophy, redefining the relationship between technology, humans, and the State. The act of judging is a human prerogative and an exercise of sovereignty, and to be legitimate, a judicial decision must be issued by a "natural judge," understood as a human being endowed with moral judgment, critical reflection, and discretion.

The reasoning behind judicial decisions is a constitutional imperative and guarantees that the Judiciary is subject to reason and law, not to arbitrariness. However, in "black-box" AI systems, the decision-making process is opaque and unintelligible, making reasoning a challenge. CNJ Resolution No. 615/2025, by requiring that decisions be "properly motivated and reasoned," points to the need for the underlying logic of the decision to be comprehensible. If a judge merely endorses ASSIS's recommendation without critical analysis and independent reasoning that incorporates human judgment, the decision becomes null due to a defect in reasoning.

The risk of nullity also arises when human oversight becomes merely formal or devoid of substance. A judge who, out of overconfidence or institutional pressures, approves ASSIS's decision without thorough analysis, is not exercising their function as "human-in-command." This can be demonstrated in a judicial challenge, arguing that oversight was ineffective and that the decision, although formally human, is in fact the result of an automated and potentially biased process.

CONCLUSION

The incorporation of automated systems in the Judiciary presents the State with a decisive and unavoidable challenge: to harmonize technological innovation with the preservation of constitutional foundations that structure the jurisdiction.

The analysis of the ASSIS system demonstrates that the integration of artificial intelligence into judicial activity is not merely a technical issue but lies at the core of legal and constitutional questions. The pursuit of procedural efficiency, though legitimate, cannot override the structuring guarantees of the Democratic Rule of Law, such as due process, public access to decisions,

analytical reasoning in judicial decisions, and the preservation of judicial impartiality. Efficiency cannot, strictly speaking, justify the sacrifice of principles that underpin the very legitimacy of the judiciary.

Algorithmic opacity, combined with the absence of an Algorithmic Impact Assessment (AIA) and a Data Protection Impact Report (RIPD), compromises the transparency and traceability of the decision-making process. The lack of such technological governance mechanisms establishes a democratic and institutional deficit, affecting the legitimacy of jurisdiction and violating constitutional principles of accountability and external oversight. Even in the absence of immediate individual harm, the structural prejudice resulting from the lack of auditability constitutes a violation of fundamental procedural guarantees, legitimizing the nullity of AI-mediated judicial acts under the principle of *nullité sans grief*.

A second critical aspect is the incorporation of idiosyncratic biases and the phenomenon of emergent misalignment, which transform judges' subjective preferences into structural algorithmic patterns. This crystallization of inequalities amplifies human imperfections, affecting jurisprudential coherence and reinforcing discriminatory patterns. The personalization of judgments, when automated on a large scale, does not enhance judicial impartiality; on the contrary, it exposes the judicial system to risks of discrimination and weakens traditional mechanisms for legal standardization and correction.

In this context, interpretation according to the principle of *pas de nullité sans grief* requires considering the concept of "prejudice" in a structural, rather than merely individual, dimension. Structural harm, evidenced by the erosion of fundamental procedural guarantees and the weakening of democratic confidence in the judiciary, legitimizes the nullity of automated decisions lacking critical human oversight, informed consent from the parties, and effective transparency.

Consequently, algorithmic governance constitutes an inescapable requirement for the validity of AI-assisted judicial decisions, encompassing independent auditing, publication of accessible technical reports, preservation of the natural judge as the ultimate decision-making authority, and assurance that parties are informed and can contest the use of automated systems. Without these mechanisms, technological innovation becomes an institutional risk, compromising the Rule of Law and public trust in the judiciary.

In summary, the use of systems such as ASSIS can only coexist with constitutional democracy if subjected to rigorous ethical, legal, and technical governance. Technology must remain a tool subordinated to public reason, never a substitute for human deliberation. To maintain legitimacy, the judiciary must ensure that artificial intelligence operates under strict human

control, in accordance with constitutional values that structure justice as an essential and inalienable function of the State, reflecting the conception of jurisdiction as a public, objective function that legitimizes constitutional democracy.

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Eloisa Samy Santiago
Master of Laws (LL.M.) from the Federal University of Rio de Janeiro – UFRJ; Postgraduate with a Specialization in Gender and Law from the School of Magistracy of the State of Rio de Janeiro – EMERJ; Lawyer.
Email: jrocha@viseu.com.br Email: esamyrj@gmail.com
ORCID iD: https://orcid.org/0009-0002-8739-7866

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