NEW TECHNOLOGIES IN THE CONTEXT OF NOTARY OFFICES: AN ANALYSIS OF THE IMPLEMENTATION OF ELECTRONIC NOTARIAL ACTS THROUGH THE E-NOTARIADO PLATFORM IN LIGHT OF THE TERRITORIAL JURISDICTION ESTABLISHED BY LAW

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Abstract: This article examines the impact of new technologies on Brazilian notarial services, focusing on the implementation of electronic notarial acts via the *e-Notariado* platform and its effects on territorial jurisdiction. Starting from the context of judicial overload and the promotion of a "multi-door" justice system, the study highlights the growing role of extrajudicial services—particularly notary offices—in offering alternative pathways for conflict resolution and legal formalization. It then reconstructs the historical and legal framework of the notarial function in Brazil, emphasizing its nature as a public function delegated to private professionals under strict judicial oversight. Against this backdrop, the article analyzes the regulatory activity of the National Council of Justice (CNJ), especially Provision No. 149/2023, which consolidates the rules on electronic notarial acts and introduces exclusive territorial competence criteria for their performance. Using a deductive, qualitative, bibliographic and documentary method, the research investigates whether the CNJ, by restricting users' free choice of notary and redefining territorial limits, has exceeded its regulatory powers and encroached upon the Union's exclusive legislative competence over public records. The conclusion is that such regulation potentially modifies federal law, raising serious questions about the validity of the administrative act.

Keywords: electronic notarial acts; *e-Notariado*; National Council of Justice; territorial jurisdiction; regulatory power.

INTRODUCTION

The excessive number of judicial proceedings in Brazil leads, among other negative consequences, to the harmful delay in the delivery of judicial services, thereby emptying the constitutional precept that enshrines the reasonable duration of the process as a fundamental right. This troubling scenario has created the need to consider alternatives to judicialization. As a result, the idea of a *multi-door justice system*[1]—characterized by the

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[1] Didier Jr., Fredie & Leandro Fernandez, *Introdução à justiça multiportas: sistema de solução de problemas jurídicos e o perfil do acesso à justiça no Brasil* (Juspodivm 2024).

encouragement of consensual resolution of legal disputes—has gained traction in Brazil.

Within this context, extrajudicial services, popularly known as notary and registry offices (*cartórios*), have emerged as significant actors. Among them is the notary office (*tabelionato de notas*), whose head—the *tabelião*, or notary—has gained prominence due to successive legislative changes that conferred new responsibilities previously entrusted solely to the Judiciary.

Although notaries perform their activities in a private capacity, by delegation of public authority, this delegation entails the need for judicial oversight of their acts. Among the bodies responsible for such oversight is the National Council of Justice (CNJ), which, attentive to the new demands imposed by technological developments, has been issuing normative acts aimed at improving notarial and registry services.

Among these acts is Provision No. 149 of August 30, 2023, which instituted the Code of Norms of the National Judicial Inspectorate (*Corregedoria Nacional de Justiça*), consolidating the system of electronic notarial acts known as *e-Notariado*, and introducing changes to federal legislation regarding territorial jurisdiction.

Thus, the research problem may be formulated as follows: Is it permissible for the CNJ, through a provision, to establish territorial jurisdiction rules governing the performance of notarial acts?

The general objective of this article is to analyze the notarial function, including a historical examination of this activity and the Judiciary's supervisory role. The specific objectives concern the analysis of the implementation of electronic notarial acts and whether the regulation establishing territorial jurisdiction for such acts conflicts with governing federal legislation.

The relevance of this study lies in the contemporaneity and importance of the topic. As a working hypothesis, it is posited that the CNJ, by regulating the performance of electronic notarial acts and establishing rules governing the competent notary office, effectively amended federal law, thereby encroaching on the Union's exclusive legislative authority.

The method employed is deductive, and the research is qualitative, bibliographical, and documentary.

I. THE NOTARY ACTIVITY

The history of notaries is intertwined with that of civilization itself, as Leonardo Brandelli teaches. According to him, notaries "throughout time (…) have recorded, through their documented acts, the evolution of law and of humanity, registering (…) great events," thereby performing a "pre-legal

activity, arising from social needs."[2]

In Brazil, not so long ago, political allies and socially prestigious individuals were rewarded with notary offices; in other words, only those with the right connections were able to exercise the functions of notary and registrar. As a result, it became common sense to view notarial and registry activities as a type of inheritance passed from father to son.

However, with the enactment of the 1988 Federal Constitution, a substantial change occurred in the process of entering these careers: notarial and registry services began to be carried out privately through delegation from the Public Authority, following approval in a specific public competitive examination[3].

Although notarial and registry services are performed by private individuals, they are legal activities inherent to the State, and those who hold these positions are considered public agents.

Those who perform notarial activity are legal professionals endowed with *public faith*, meaning that acts performed in the exercise of their public function carry a presumption of veracity, as provided in Article 3 of Law No. 8,935/1994[4], known as the "Law of Notaries and Registrars."

Regarding delegated agents, such as notaries, Hely Lopes Meirelles explains:

> Delegated agents: these are private individuals—natural or legal persons—who do not fall within the proper definition of public agents, but who receive the assignment to carry out a specific activity, work,

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[2] Brandelli, Leonardo, *Teoria geral do direito notarial* (2d ed., Saraiva 2007), 3.

[3] Check: "Art. 236. Notarial and registry services shall be exercised in a private capacity, by delegation of the Public Authority. §1 A law shall regulate the activities, establish the civil and criminal liability of notaries, registrars, and their assistants, and define the oversight of their acts by the Judiciary. §2 A federal law shall establish general rules for determining the fees related to acts performed by notarial and registry services. §3 Entry into notarial and registry activity depends on a public competitive examination of tests and titles, and no notarial or registry office may remain vacant, without the opening of a selection process for appointment or removal, for more than six months." (freely translated). [Originally: "*Art. 236. Os serviços notariais e de registro são exercidos em caráter privado, por delegação do Poder Público. § 1º Lei regulará as atividades, disciplinará a responsabilidade civil e criminal dos notários, dos oficiais de registro e de seus prepostos, e definirá a fiscalização de seus atos pelo Poder Judiciário. § 2º Lei federal estabelecerá normas gerais para fixação de emolumentos relativos aos atos praticados pelos serviços notariais e de registro. § 3º O ingresso na atividade notarial e de registro depende de concurso público de provas e títulos, não se permitindo que qualquer serventia fique vaga, sem abertura de concurso de provimento ou de remoção, por mais de seis meses*".]

[4] Check: "Art. 3. A notary, or *tabelião*, and a registrar, or *oficial de registro*, are legal professionals endowed with public faith, to whom the exercise of notarial and registry activity is delegated." (freely translated). [Originally: "*Art. 3º Notário, ou tabelião, e oficial de registro, ou registrador, são profissionais do direito, dotados de fé pública, a quem é delegado o exercício da atividade notarial e de registro*".]

> or public service, performing it in their own name, at their own expense and risk, though in accordance with State regulations and under the permanent supervision of the delegating authority. These agents are not civil servants nor honorary representatives of the State; nevertheless, they form a distinct category of collaborators of the Public Authority. This category includes concessionaires and permit holders of public works and services, non-state notarial and registry officers, auctioneers, sworn translators and interpreters, and others who receive delegation to perform some state activity or service of collective interest[5].

Thus, the constituent legislator of 1988 established an exclusively private regime for extrajudicial services, exercised through delegation by the public authority.

Luís Roberto Barroso, however, emphasizes that the fact that these services are provided under a clearly private regime does not deprive them of their nature as a public function[6].

Indeed, the exercise of notarial and registry activity constitutes a public service, even when performed privately by individuals. In this sense, the case law of the Federal Supreme Court has affirmed that notarial activity falls within the concept of public service. Consider the following:

> HEADNOTE: DIRECT ACTION OF UNCONSTITUTIONALITY. PROVISIONS Nos. 747/2000 AND 750/2001 OF THE HIGH COUNCIL OF THE JUDICIARY OF THE STATE OF SÃO PAULO, WHICH REORGANIZED NOTARIAL AND REGISTRY SERVICES THROUGH ACCUMULATION, DE-ACCUMULATION, EXTINCTION, AND CREATION OF UNITS.
> 1. LEGAL REGIME OF NOTARIAL AND REGISTRY SERVICES.
> I – These are legal activities inherent to the State, though exercised by private individuals through delegation. Exercised or transferred, but not through concession or permission governed by Article 175 of the Constitution, which regulates contractual instruments for the privatization of public *material* services (not legal services).
> II – The delegation that grants these activities their functionality does not in any way amount to contractual clauses.
> III – Delegation may only be granted to a natural person and not to a company or commercial entity, since the Federal Constitution addresses concessions or permissions of public service as pertaining to businesses.

[5] Meirelles, Hely Lopes, *Direito administrativo brasileiro* (35th ed., Malheiros 2009), 80-81.

[6] Barroso, Luís Roberto, *Parecer jurídico*, https://arisp.files.wordpress.com/2008/02/parecerluisrobertobarroso.pdf (last visited Mar. 10, 2025).

IV – To become a delegate of the Public Authority, such individual must qualify through a public competitive examination of tests and titles, and not through bidding procedures, which are constitutionally required only for concessions or permissions for public *material* services.
V – These are state activities whose private exercise is subject exclusively to the supervision of the Judiciary, not the Executive, since supervision of concessionaires normally falls to Executive authorities. The Judiciary acts to ensure certainty and legal clarity in interpersonal relations, though not in a contentious manner as in judicial proceedings.
VI – Notarial and registry activities are not remunerated by tariffs or public prices, but by emoluments governed by general norms necessarily established by federal law.
2. CREATION AND EXTINCTION OF EXTRAJUDICIAL OFFICES.
Extrajudicial offices consist of a bundle of public powers, though exercised under private delegation. Such powers place these offices in a position of formalizing acts that create, preserve, modify, transform, and extinguish rights and obligations. Any change in these state powers (creation, extinction, accumulation, or de-accumulation of units) must occur through formal legislation, following the rule that no one is obligated to act or refrain from acting except by law.
3. PROCESS OF 'UNCONSTITUTIONALIZATION'. 'STILL CONSTITUTIONAL' NORMS.
Given that the Supreme Court denied injunctive relief over ten years ago, and more than 700 individuals have since been approved in public examinations and received delegations in good faith, overturning the effects of the contested provisions would cause serious harm to the public interest. Thus, the Court adopted the doctrine of "still constitutional" norms.
4. Direct action dismissed.
(STF, ADI 2415, Justice Ayres Britto, Full Court, Sept. 22, 2011, Electronic Judgment DJe-028, published Feb. 9, 2012)[7]

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[7] Brazil, Supremo Tribunal Federal, *Ação Direta de Inconstitucionalidade No. 2.415/DF*, Plenário, 22 Sept. 2011 (Braz.), https://jurisprudencia.stf.jus.br/pages/search/sjur204198/false (last visited Mar. 10, 2025). Freely translated. Originally: "*EMENTA: AÇÃO DIRETA DE INCONSTITUCIONALIDADE. PROVIMENTOS N. 747/2000 E 750/2001, DO CONSELHO SUPERIOR DA MAGISTRATURA DO ESTADO DE SÃO PAULO, QUE REORGANIZARAM OS SERVIÇOS NOTARIAIS E DE REGISTRO, MEDIANTE ACUMULAÇÃO, DESACUMULAÇÃO, EXTINÇÃO E CRIAÇÃO DE UNIDADES. 1. REGIME JURÍDICO DOS SERVIÇOS NOTARIAIS E DE REGISTRO. I – Trata-se de atividades jurídicas que são próprias do Estado, porém exercidas por particulares mediante delegação. Exercidas ou traspassadas, mas não por conduto da*

Furthermore, under the law regulating notarial activity (Law No. 8,935/1994), obtaining a delegation requires meeting the following criteria: Brazilian nationality, full civil capacity, compliance with electoral and military obligations, a law degree (or, for non-law graduates, ten years of

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concessão ou da permissão, normadas pelo caput do art. 175 da Constituição como instrumentos contratuais de privatização do exercício dessa atividade material (não jurídica) em que se constituem os serviços públicos. II – A delegação que lhes timbra a funcionalidade não se traduz, por nenhuma forma, em cláusulas contratuais. III – A sua delegação somente pode recair sobre pessoa natural, e não sobre uma empresa ou pessoa mercantil, visto que de empresa ou pessoa mercantil é que versa a Magna Carta Federal em tema de concessão ou permissão de serviço público. IV – Para se tornar delegatária do Poder Público, tal pessoa natural há de ganhar habilitação em concurso público de provas e títulos, e não por adjudicação em processo licitatório, regrado, este, pela Constituição como antecedente necessário do contrato de concessão ou de permissão para o desempenho de serviço público. V – Cuida-se ainda de atividades estatais cujo exercício privado jaz sob a exclusiva fiscalização do Poder Judiciário, e não sob órgão ou entidade do Poder Executivo, sabido que por órgão ou entidade do Poder Executivo é que se dá a imediata fiscalização das empresas concessionárias ou permissionárias de serviços públicos. Por órgãos do Poder Judiciário é que se marca a presença do Estado para conferir certeza e liquidez jurídica às relações inter-partes, com esta conhecida diferença: o modo usual de atuação do Poder Judiciário se dá sob o signo da contenciosidade, enquanto o invariável modo de atuação das serventias extra-forenses não adentra essa delicada esfera da litigiosidade entre sujeitos de direito. VI – Enfim, as atividades notariais e de registro não se inscrevem no âmbito das remuneráveis por tarifa ou preço público, mas no círculo das que se pautam por uma tabela de emolumentos, jungidos estes a normas gerais que se editam por lei necessariamente federal. 2. CRIAÇÃO E EXTINÇÃO DE SERVENTIAS EXTRAJUDICIAIS. As serventias extrajudiciais se compõem de um feixe de competências públicas, embora exercidas em regime de delegação a pessoa privada. Competências que fazem de tais serventias uma instância de formalização de atos de criação, preservação, modificação, transformação e extinção de direitos e obrigações. Se esse feixe de competências públicas investe as serventias extrajudiciais em parcela do poder estatal idônea à colocação de terceiros numa condição de servil acatamento, a modificação dessas competências estatais (criação, extinção, acumulação e desacumulação de unidades) somente é de ser realizada por meio de lei em sentido formal, segundo a regra de que ninguém será obrigado a fazer ou deixar de fazer alguma coisa senão em virtude de lei. Precedentes. 3. PROCESSO DE INCONSTITUCIONALIZAÇÃO. NORMAS "AINDA CONSTITUCIONAIS". Tendo em vista que o Supremo Tribunal Federal indeferiu o pedido de medida liminar há mais de dez anos e que, nesse período, mais de setecentas pessoas foram aprovadas em concurso público e receberam, de boa-fé, as delegações do serviço extrajudicial, a desconstituição dos efeitos concretos emanados dos Provimentos n. 747/2000 e 750/2001 causaria desmesurados prejuízos ao interesse social. Adoção da tese da norma jurídica "ainda constitucional". Preservação: a) da validade dos atos notariais praticados no Estado de São Paulo, à luz dos provimentos impugnados; b) das outorgas regularmente concedidas a delegatários concursados (eventuais vícios na investidura do delegatário, máxime a ausência de aprovação em concurso público, não se encontram a salvo de posterior declaração de nulidade); c) do curso normal do processo seletivo para o recrutamento de novos delegatários. 4. Ação direta julgada improcedente. (STF, ADI 2415, Relator(a): AYRES BRITTO, Tribunal Pleno, julgado em 22-09-2011, ACÓRDÃO ELETRÔNICO DJe-028 DIVULG 08-02-2012 PUBLIC 09-02-2012)"

experience in notarial or registry services by the date of the first publication of the examination notice), and proof of conduct compatible with the profession[8].

In summary, since the 1988 Constitution: (i) the legal title that empowers notarial and registry officers is a delegation from the State; (ii) these activities are expressly characterized as privately exercised by their holders; (iii) their discipline and liability are governed by ordinary law, as are general norms on emoluments; (iv) entry into notarial and registry careers requires a public competitive examination, and no vacancy may remain unfilled for more than six months without such examination; and (v) judicial oversight of their acts is mandatory[9].

Regarding acts within the competence of the notary of deeds (*tabelião de notas*), these include drafting public deeds, powers of attorney, and notarial minutes, preparing and approving wills, acknowledging signatures and certifying copies, certifying the fulfillment or failure of conditions and other contractual elements, and acting as mediator, conciliator, and arbitrator[10].

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[8] Check: "Art. 14. Delegation for the exercise of notarial and registry activity depends on the following requirements: I – qualification through a public competitive examination of tests and titles; II – Brazilian nationality; III – civil capacity; IV – compliance with electoral and military obligations; V – a law degree; VI – verification of conduct compatible with the exercise of the profession. Art. 15. The examinations shall be conducted by the Judiciary, with the participation, in all of their phases, of the Brazilian Bar Association (OAB), the Public Prosecutor's Office, one notary, and one registrar. §1 The examination shall be opened by the publication of a notice, which shall include the tie-breaking criteria. §2 Non-law graduates who, by the date of the first publication of the notice of the examination of tests and titles, have completed ten years of service in notarial or registry activity may apply for the public competitive examination. §3 (Vetoed)." (freely translated) [Originally: "*Art. 14. A delegação para o exercício da atividade notarial e de registro depende dos seguintes requisitos: I - habilitação em concurso público de provas e títulos; II - nacionalidade brasileira; III - capacidade civil; IV - quitação com as obrigações eleitorais e militares; V - diploma de bacharel em direito; VI - verificação de conduta condigna para o exercício da profissão. Art. 15. Os concursos serão realizados pelo Poder Judiciário, com a participação, em todas as suas fases, da Ordem dos Advogados do Brasil, do Ministério Público, de um notário e de um registrador. § 1º O concurso será aberto com a publicação de edital, dele constando os critérios de desempate. § 2º Ao concurso público poderão concorrer candidatos não bacharéis em direito que tenham completado, até a data da primeira publicação do edital do concurso de provas e títulos, dez anos de exercício em serviço notarial ou de registro. § 3º (Vetado)*".]

[9] Mello, Celso Antônio Bandeira de, A competência para a criação e extinção de serviços notariais e de registros para a delegação e para o provimento desses serviços, 22 *Rev. Dir. Imobiliário* 197 (1999).

[10] Check: "Art. 7. The notaries of deeds have the exclusive competence to: I – draft public deeds and powers of attorney; II – draft public wills and approve sealed wills; III – draft notarial minutes; IV – acknowledge signatures; V – authenticate copies. (…) Art. 7-A. Notaries of deeds also have competence, without exclusivity, to perform, among other activities: I – certify the fulfillment or failure of conditions and other contractual elements,

II. BRIEF CONSIDERATIONS ON THE CNJ AND ITS RELATIONSHIP WITH NOTARIAL ACTIVITIES

Constitutional Amendment No. 45 of 2004 established the National Council of Justice (CNJ), with the aim of centralizing the control of administrative, financial, and disciplinary activities exercised by the bodies of the Judiciary[11], which it then became part of, as set forth in Article 92, section I-A of the Federal Constitution[12].

Article 103-B of the Federal Constitution further provides that the CNJ shall be composed of 15 members, appointed for a 2-year term, with the possibility of a single reappointment. These members are: (i) the President of the Federal Supreme Court, who shall preside over the Council; (ii) one Justice of the Superior Court of Justice, who shall serve as Inspector General; (iii) one Justice of the Superior Labor Court; (iv) one Appellate Judge from a State Court of Justice; (v) four judges—a state judge, a judge of the Regional Federal Court and of the Federal Court, a judge of the Regional Labor Court and of the Labor Court; (vi) two members of the Public Prosecutor's Office, one from the federal branch and one from a state branch; (vii) two attorneys; and (viii) two citizens.

Among the various duties of the CNJ, it is relevant for the purposes of this article to emphasize its powers of oversight and regulation of the Judiciary with respect to acts performed by its bodies (Federal Constitution of 1988, art. 103-B, §4, I, II and III[13]).

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respecting the specific competence of protest notaries; II – act as mediators or conciliators; III – act as arbitrators. (…)" (freely translated). [Originally: "*Art. 7º Aos tabeliães de notas compete com exclusividade: I - lavrar escrituras e procurações, públicas; II - lavrar testamentos públicos e aprovar os cerrados; III - lavrar atas notariais; IV - reconhecer firmas; V - autenticar cópias. (...) Art. 7º-A Aos tabeliães de notas também compete, sem exclusividade, entre outras atividades: I - certificar o implemento ou a frustração de condições e outros elementos negociais, respeitada a competência própria dos tabeliães de protesto; II - atuar como mediador ou conciliador; III - atuar como árbitro. (...)*"]

[11] Jorge, Mário Helton, *O Conselho Nacional de Justiça e o controle externo administrativo, financeiro e disciplinar do Poder Judiciário*, in *Reforma do Judiciário: primeiros ensaios críticos sobre a EC nº 45/2004* 111 (Teresa Arruda Alvim Wambier et al. eds., Revista dos Tribunais 2005).

[12] Check: "Art. 92. The bodies of the Judiciary are: (…) I-A – the National Council of Justice." (freely translated). [Originally: "*Art. 92. São órgãos do Poder Judiciário: (...) I-A o Conselho Nacional de Justiça*".]

[13] Check: "(…) §4 The Council is responsible for overseeing the administrative and financial performance of the Judiciary and ensuring compliance with judges' functional duties, and it shall, in addition to other powers granted to it by the Statute of the Judiciary: I – safeguard the autonomy of the Judiciary and ensure compliance with the Statute of the Judiciary, being authorized to issue regulatory acts, within the scope of its competence, or to recommend measures; II – ensure observance of Article 37 and review, ex officio or upon

In this regard, Luís Paulo Aliende Ribeiro states, concerning the CNJ's competence to supervise and regulate notarial and registry activity, that:

> "(…) The National Council of Justice is an organ that forms part of the Judiciary and has competence to regulate, at the national level, notarial and registry activities, (…) and it also includes (…) the National Inspectorate of Justice, whose responsibilities (…) encompass regulatory, supervisory, and sanctioning powers (…)."[14]

III. On territorial jurisdiction for the performance of notarial acts and the regulation of the electronic format by the CNJ

Law No. 8.935/1994, in its Articles 8 and 9, authorized the free choice of the notary of deeds (*tabelião de notas*), regardless of the domicile of the users of the services or the location of the assets involved in the act; however, the notary may not perform acts outside the limits of the Municipality for which the delegation was granted[15].

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request, the legality of administrative acts performed by members or bodies of the Judiciary, being authorized to annul them, revise them, or set a deadline for the adoption of measures necessary to secure exact compliance with the law, without prejudice to the jurisdiction of the Federal Court of Accounts; III – receive and consider complaints against members or bodies of the Judiciary, including its auxiliary services, court offices, and notarial and registry services that operate by public delegation or officialization, without prejudice to the disciplinary and correctional powers of the courts, and being authorized to assume jurisdiction over ongoing disciplinary proceedings, order removal or compulsory leave, and apply other administrative sanctions, ensuring full defense (…)." (freely translated) [Originally: "*(...) § 4º Compete ao Conselho o controle da atuação administrativa e financeira do Poder Judiciário e do cumprimento dos deveres funcionais dos juízes, cabendo-lhe, além de outras atribuições que lhe forem conferidas pelo Estatuto da Magistratura: I - zelar pela autonomia do Poder Judiciário e pelo cumprimento do Estatuto da Magistratura, podendo expedir atos regulamentares, no âmbito de sua competência, ou recomendar providências; II - zelar pela observância do art. 37 e apreciar, de ofício ou mediante provocação, a legalidade dos atos administrativos praticados por membros ou órgãos do Poder Judiciário, podendo desconstituí-los, revê-los ou fixar prazo para que se adotem as providências necessárias ao exato cumprimento da lei, sem prejuízo da competência do Tribunal de Contas da União; III - receber e conhecer das reclamações contra membros ou órgãos do Poder Judiciário, inclusive contra seus serviços auxiliares, serventias e órgãos prestadores de serviços notariais e de registro que atuem por delegação do poder público ou oficializados, sem prejuízo da competência disciplinar e correicional dos tribunais, podendo avocar processos disciplinares em curso, determinar a remoção ou a disponibilidade e aplicar outras sanções administrativas, assegurada ampla defesa (...)*".]

[14] Ribeiro, Luís Paulo Aliende, *Regulação da função notarial e de registro* (Saraiva 2009), 145-146.

[15] Check: "Art. 8. The choice of the notary of deeds is free, regardless of the domicile of the parties or the location of the assets that are the object of the act or transaction. Art. 9. The notary of deeds may not perform acts of their office outside the Municipality for which

Commenting on these provisions, Walter Ceneviva notes that "(…) the choice is not subject to the restrictions typical of procedural jurisdiction, which predominates for acts formalized in court (…)", stating further that "(…) the municipality is the exclusive area within which the notary may act (…)"[16].

In turn, Letícia Maculan and Paulo Hermano invite us to reflect on the possibility of interpreting these articles as contradictory—on the one hand proclaiming the free choice of the notary, and on the other restricting the notary's activity to the municipality where the office is located. They highlight, however, that such a contradiction is merely apparent. See:

> "(…) Articles 8 and 9 of the Notarial and Registry Law contain two apparently contradictory commands capable of harmonizing the freedom of choice of the notary (which broadens the scope of service) and territoriality (which restricts that scope):
> (…) The contradiction, as stated, is merely apparent. The full freedom of choice granted to the interested party (art. 8) honors their private autonomy and reveals their subjective right to select the Notary they trust. The delimitation set forth in art. 9 identifies a territorial circumscription within which the Notary must perform the functions delegated through a public competitive examination. (…)
> In any case, the territorial circumscription does not imply a restriction on the performance of acts by the notary—that is, the location of the property or domicile of the parties is absolutely irrelevant, for example, if the interested party chooses the notary of their preference.
> Thus, those wishing to perform a notarial act may appear in person and choose any notary office, even from another municipality or State than that of the property's location or the parties' domicile. The criterion to be observed by the party is free, subjectively grounded in the trust placed in the notary. The performance of acts by the notary is also unrestricted, anchored in the choice made by the interested party. (…)"[17]

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the delegation was granted." (freely translated) [Originally: "*Art. 8º É livre a escolha do tabelião de notas, qualquer que seja o domicílio das partes ou o lugar de situação dos bens objeto do ato ou negócio. Art. 9º O tabelião de notas não poderá praticar atos de seu ofício fora do Município para o qual recebeu delegação*".]

[16] Ceneviva, Walter, *Lei dos notários e dos registradores comentada: Lei nº 8.935/94* (8th ed., Saraiva 2010), 95-96. Freely translated. Originally: "*(...) a escolha não é submetida às restrições próprias da competência processual, predominante quanto a atos formalizados em juízo (...)", sendo que "(...) o município é o âmbito exclusivo no qual o tabelião pode atuar (...)*".

[17] Assumpção, Letícia Franco Maculan & Paulo Hermano Soares Ribeiro, *Territorialidade e ato notarial eletrônico*, Portal CNB/MG, https://cnbmg.org.br/artigo-

However, among the countless measures adopted to prevent the spread of the novel coronavirus (COVID-19), in-person service to the public in notarial and registry offices was suspended pursuant to CNJ Provision No. 91 of March 22, 2020[18]. This led to the later issuance of another normative act of the same nature by the CNJ, Provision No. 100 of May 26, 2020[19], establishing the system of electronic notarial acts, known as *e-Notariado*.

Later, on August 30, 2023, the CNJ consolidated all of its normative acts related to notarial and registry services into a single provision, Provision No. 149[20], which came to be known as the "National Code of Norms of the National Inspectorate of Justice." This new provision revoked Provision No. 100 and reaffirmed the establishment of the electronic notarial acts system, *e-Notariado*. According to Article 290, the system shall be made available online by the Notarial College of Brazil and aims to promote interconnection among notaries, improving technologies and procedures to enable electronic services through a standardized national system.
Articles 302, 303, and 306, §1, contain rules modifying territorial jurisdiction through restrictions and the establishment of exclusivity, as follows:

> "Art. 302. The notary of deeds of the circumscription of the property or of the domicile of the acquirer is exclusively competent, remotely, to execute deeds electronically through *e-Notariado*, with videoconferencing and digital signatures of the parties.
> §1. When there are one or more properties located in different circumscriptions in the same notarial act, any of the notaries of those circumscriptions shall be competent to perform the remote acts.
> §2. If the property is located in the same State of the Federation as the domicile of the acquirer, the acquirer may choose any notary office within that State to execute the act.
> (…)
> Art. 303. The notary of deeds of the circumscription where the fact occurred or, when this criterion is inapplicable, the notary of the domicile of the requesting party, is competent to execute electronic notarial minutes remotely and exclusively through *e-Notariado*, with videoconferencing and digital signatures of the parties.

territorialidade-e-ato-notarial-eletronico-por-leticia-franco-maculan-assumpcao-e-paulo-hermano-soares-ribeiro/ (last visited Mar. 10, 2025).

[18] Brazil, Conselho Nacional de Justiça, Provimento No. 91, de 22 de março de 2020, https://www.migalhas.com.br/arquivos/2020/3/2ED02976E0F3C4_provimento91.pdf (last visited Mar. 10, 2025).

[19] Brazil, Conselho Nacional de Justiça, Provimento No. 100, de 26 de maio de 2020 (Braz.), https://atos.cnj.jus.br/atos/detalhar/3334 (last visited Mar. 10, 2025).

[20] Brazil, Conselho Nacional de Justiça, Provimento No. 149, de 30 de agosto de 2023 (Braz.), https://atos.cnj.jus.br/atos/detalhar/5243 (last visited Mar. 10, 2025).

> Sole paragraph. The execution of an electronic public power of attorney shall fall to the notary of the domicile of the grantor or of the location of the property, if applicable. (…)
> Art. 306. (…)
> §1. In the case of a document related to a motor vehicle, the notary of deeds of the municipality where the vehicle is registered or of the domicile of the acquirer indicated in the Vehicle Registration Certificate (CRV) or the Authorization for Transfer of Vehicle Ownership (ATPV) shall be competent to perform remote signature acknowledgment. (…)"

Based on these findings, it is possible to conclude that, invoking its regulatory authority, the CNJ, through Provision No. 149, consolidated the implementation of an electronic system for the performance of notarial acts, modifying the legal provisions concerning the free choice of the notary of deeds and the prohibition on performing acts outside the municipality for which the delegation was granted.

IV. ON TERRITORIAL JURISDICTION FOR THE PERFORMANCE OF NOTARIAL ACTS AND THE REGULATION OF THE ELECTRONIC FORMAT BY THE CNJ

According to Manoel Gonçalves Ferreira Filho, "(...) the separation of powers (...) presupposes the tripartition of the functions of the State, that is, the distinction between the legislative, administrative (or executive), and judicial functions (...)", and although such a classification is attributed to Montesquieu, it has antecedents in the works of Aristotle and Locke[21].

With regard to the legislative function, Gilmar Mendes and Paulo Branco[22] teach that it is typical of the Legislative Branch, and that primary normative acts create rights and obligations. The normative instruments are described in Article 59 of the Federal Constitution, which lists constitutional amendments, supplementary laws, ordinary laws, delegated laws, provisional measures, legislative decrees, and resolutions.

Furthermore, according to these authors, "(...) in some cases, the Constitution reserves the possibility of initiating the legislative process to certain authorities or bodies only (...)", such that "(...) cases of reserved initiative must not be expanded through interpretation (...)"[23].

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[21] Ferreira Filho, Manoel Gonçalves, *Curso de direito constitucional* (34th ed., Saraiva 2008), 135-136. Freely translated. Originally: "*(...) a separação dos poderes (...) pressupõe a tripartição das funções do Estado, ou seja, a distinção das funções legislativa, administrativa (ou executiva) e jurisdicional (...)*".

[22] Mendes, Gilmar Ferreira & Paulo Gustavo Gonet Branco, *Curso de direito constitucional* (9th ed., Saraiva 2014), 890.

[23] Mendes, Gilmar Ferreira & Paulo Gustavo Gonet Branco, *Curso de direito*

Thus, the 1988 Federal Constitution established that the Union has exclusive competence to legislate on public records[24], a term which, according to the reasoning contained in the opinion of Justice Gilmar Mendes in the judgment of ADPF No. 209/SP[25], also encompasses notarial activity.

In this context, the CNJ regulated the practice of electronic notarial acts by creating the system known as *e-Notariado* and establishing exclusive jurisdiction for the notary of deeds as follows, pursuant to Provision No. 149/2023:

NOTARIAL ACT	COMPETENT NOTARY
Execution of deeds	The notary of the circumscription where the property is located or of the domicile of the acquirer (art. 302, caput)
Execution of deeds involving one or several properties in different circumscriptions	Any of the notaries of those circumscriptions (§1 of art. 302)
Execution of deeds involving property located in the same State as the domicile of the acquirer	Any notary within the same State (§2 of art. 302)
Execution of notarial minutes	The notary of the circumscription where the fact occurred, or, if this criterion does not apply, the notary of the domicile of the applicant (art. 303, caput)
Execution of public power of attorney	The notary of the domicile of the grantor (sole paragraph of art. 303)
Remote acknowledgment of signatures for transfer of motor vehicles	The notary of the municipality where the vehicle is registered or where the acquirer resides (§1 of art. 306)

However, even if one accepts that "(...) the organization of the three branches of government in the Constitution always involves a certain degree of one branch's intrusion into the functions reserved for another (...)"[26], it remains necessary to question whether the CNJ can modify a territorial jurisdiction rule for the practice of notarial acts that is established by federal law and that implements a constitutional provision.

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constitucional (9th ed., Saraiva 2014), 891.

[24] Check: "Art. 22. It is the exclusive competence of the Union to legislate on: (…) XXV – public records; (…)." [Originally: "*Art. 22. Compete privativamente à União legislar sobre: (...) XXV - registros públicos; (...)*"]

[25] Brazil, Supremo Tribunal Federal, Arguição de Descumprimento de Preceito Fundamental No. 209/SP, Plenário, 3 May 2023 (Braz.), https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=767501769 (last visited Mar. 10, 2025).

[26] Ferreira Filho, Manoel Gonçalves, *Curso de direito constitucional* (34th ed., Saraiva 2008), 137.

Ricardo Dal Pizzol further explains that, traditionally, the term "regulation" is associated with acts whose issuance lies within the exclusive competence of the Chief of the Executive Branch, based on Article 84, IV, of the Federal Constitution, serving to clarify the scope of a law and make it more executable (executive regulations). Nonetheless, citing Hely Lopes Meirelles, he notes that there is also the possibility of regulations governing matters not yet addressed by law (autonomous regulations) [27].

Also relevant are the teachings of José Adércio Leite Sampaio, who warns that "regulatory power entails the internal discipline of the functioning (...)" without, however, introducing innovations into the legal order. Thus, there must "(...) be no doubt about the space of the regulation, nor may it invade the domain of the law (...)"[28].

It should be noted that the concern above does not arise solely from the fact that provisions consist of "(...) internal administrative acts containing directions and instructions issued by the Inspectorate or the courts to regulate and standardize services (...)"[29], but also from the understanding that, even if one considers the possibility of autonomous regulations in the Brazilian context, the CNJ's autonomous regulatory power is strictly limited to "(...) the control of the administrative and financial actions of the Judiciary or the enforcement of judges' functional duties (...)"[30].

This problem—namely, the invasion of legislative competence—was long ago identified by Manoel Gonçalves Ferreira Filho, who highlighted "(...) the issue of courts creating new legal rules, not indirectly and disguised as interpretation, but openly and directly as a consequence of a delegation of legislative power by the constituent power (...)"[31].

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[27] Pizzol, Ricardo Dal, *Limites do poder regulamentar do Conselho Nacional de Justiça* (2014), https://www.tjsp.jus.br/download/EPM/Publicacoes/ObrasJuridicas/14-federalismo.pdf (last visited Mar. 10, 2025).

[28] Sampaio, José Adércio Leite, *Conselho Nacional de Justiça e a independência do Judiciário* (Del Rey 2007), 277-278. Freely translated. Originally: "o poder regulamentar importa a disciplina interna de funcionamento (...)", sem, todavia, inovar a ordem jurídica", de modo que não pode "(...) haver dúvida sobre o espaço do regulamento nem invadir o âmbito da lei (...)".

[29] Meirelles, Hely Lopes, *Direito administrativo brasileiro* (35th ed., Malheiros 2009), 210. Freely translated. Originally: "*(...) em atos administrativos internos, contendo determinações e instruções que a Corregedoria ou os tribunais expedem para a regularização e uniformização dos serviços (...)*".

[30] Meirelles, Hely Lopes, *Direito administrativo brasileiro* (35th ed., Malheiros 2009), 210. Freely translated. Originally: "*(...) controle da atuação administrativa e financeira do Poder Judiciário ou sobre o cumprimento de deveres funcionais dos juízes (...)*".

[31] Ferreira Filho, Manoel Gonçalves, *Do processo legislativo* (5th ed., Saraiva 2002), 190. Freely translated. Originally: "*(...) a questão do estabelecimento por parte de tribunais de regras jurídicas novas, não indireta e disfarçadamente sob a capa da interpretação, mas ostensiva e diretamente como decorrência de uma outorga de poder legislativo por parte do constituinte*".

Thus, it follows that the CNJ's regulation of territorial jurisdiction for the practice of electronic notarial acts effectively repealed provisions of federal law governing the matter, insofar as it restricted the free choice of the notary of deeds by service users, who became bound to the options contained in the administrative regulation. Therefore, it would not be unreasonable to argue that the provision in question exceeded the limits of regulatory power.

This was indeed the understanding expressed by Letícia Maculan and Paulo Hermano when they addressed the issue. Consider:

> "(…) CNJ Provision No. 100/2020 repeals Article 8 of Law 8.935/2020, modulating the party's freedom to choose the notary of their preference, which raises debate regarding the legitimacy and scope of that normative act in this matter. The Federal Constitution authorizes the issuance of "regulatory acts by the National Council of Justice within the scope of its competence," and it is within this normative limitation that the impossibility of altering laws in the formal sense is found. The normative limitation suggests that the CNJ cannot, through a provision, substitute the general will (the Legislative Branch), repealing or revoking norms enacted through the legislative process. It is mistaken to assert that the derivative constituent has "delegated" to the Councils the power to break with the principle of legal reserve. We understand that Articles 8 and 9 of Law 8.935/1994 were conceived within the paradigm of geographic limitations, which have been surpassed by the possibilities of the digital world. (…)"[32]

CONCLUSION

This article initially examined how successive legislative changes have drawn increasing attention to extrajudicial services, particularly due to the assignment of new responsibilities that previously belonged exclusively to the Judiciary.

It then presented an overview of notarial activity and of the National Council of Justice (CNJ), with considerations about the relationship between the two—especially regarding the regulatory authority exercised by the CNJ. It was also found that the National Council of Justice, as the body responsible for overseeing and regulating the Judiciary in relation to acts performed by notarial and registry services, implemented through a provision the practice of electronic notarial acts by means of a system known as *e-Notariado*, and

[32] Assumpção, Letícia Franco Maculan & Paulo Hermano Soares Ribeiro, *Territorialidade e ato notarial eletrônico*, Portal CNB/MG, https://cnbmg.org.br/artigo-territorialidade-e-ato-notarial-eletronico-por-leticia-franco-maculan-assumpcao-e-paulo-hermano-soares-ribeiro/ (last visited Mar. 10, 2025).

furthermore established restricted rules of jurisdiction for their execution.

Therefore, the conclusion reached is that, in addressing territorial jurisdiction for the performance of electronic notarial acts and restricting the free choice of service users as established by the federal law governing notarial and registry activity, the CNJ effectively encroached upon the Union's exclusive legislative competence, exceeding the limits of its regulatory power. This raises questions concerning the validity of the administrative act issued by the CNJ.

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