

Proposal for a National Bank of non-prosecution agreements

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ABSTRACT

The complexity of the modern world, with the advance of Information and Communications Technologies, has brought to light a new area of human knowledge, the so-called Digital Humanities. Despite the many difficulties of conceptualization, in synthesis, Digital Humanities introduces digital technologies applied to Humanities courses. Digital Humanities can be used within the scope of the Anti-Crime Package (Law nº 13,964/2019), specifically in Non-Prosecution Agreements. The absence of communication channels between the 29 Public Prosecution Offices that can sign such agreements prevents verifying individuals who have already signed them. Thus, one of the legal requirements of this measure cannot be guaranteed. This article aims to propose a National Bank of Non-Prosecution Agreements within the scope of Digital Humanities and Knowledge Organization for consultation purposes by the agencies involved and the general population, an initiative to be coordinated by the National Council of the Public Prosecution Service.

Keywords: digital humanities, knowledge organization, non-prosecution agreements, National Bank, public prosecution service

1. INTRODUCTION

Information and Communications Technologies (ICT) permeate practically all aspects of modern life (Damian et al., 2015). The term Digital Humanities emerged to demonstrate the existence of a branch of human knowledge that combines the application of digital technologies to the Humanities, conceptualized by Ortega (2013, p. 3) as “(...) the space of convergence between computer science, digital media, and humanistic courses in the search for new interpretative models and new knowledge paradigms according to the transformations operated within the digital society”. This conception presents a multifaceted range of applications of Digital Humanities to solve insurmountable problems from eras in which digital technologies did not yet exist or were in their infancy.

In this context, this proposal emerges as a form of solving a problem that arose with the advent of the Anti-Crime Package (Law nº 13,964/2019), specifically in the field of Non-Prosecution Agreements: the verification of all objective and subjective conditions of the subject who intends to sign such an agreement with the Public Prosecution Service. Among these conditions is the one provided for in paragraph 2, item III of article 28-A of the Code of Criminal Procedure, which determines that only a person who has benefited in the last five years can sign the non-prosecution agreement.

Measuring this requirement in a country like Brazil, with a federative format and a complex justice system, which includes State, Federal, and Military Justice, among

others, is highly problematic since there are 29 Public Prosecution Offices with the attribution to sign such an agreement. Thus, this work aims to demonstrate the feasibility and possibility of creating a National Bank of Non-Prosecution Agreements involving the 29 interested Public Prosecution Offices and the National Council of the Public Prosecution Service as the highest body in the administrative field of the 29 *Parquets* mentioned above.

Therefore, this study is exploratory, qualitative research based on a bibliographic survey on the theme Digital Humanities and Criminal Prosecution Agreements an institute of Brazilian Criminal Procedural Law and Knowledge Organization, aims to demonstrate the possibility, relevance, and feasibility of a proposal for a National Bank of Non-Prosecution Agreements. A survey was performed through the exploratory bibliographic research concerning similar initiatives in the field of Law as Applied Social Science, which also demonstrate the validity of the application of Information Science, especially in Knowledge Organization, to help solve the proposed problem, which is the creation of the database of national scope. Subsequently, the various nuances necessary for the proposal of a project of this nature will be explored based on the theoretical framework presented, with the description of its phases and essential stages of conception, creation, and implementation.

2. THEORETICAL FRAMEWORK

Because it is a multidisciplinary initiative and characteristic of Digital Humanities, the theoretical framework will be subdivided into i) Digital Humanities, ii) Non-Prosecution Agreements, and iii) Information Science and Knowledge Organization.

2.1 Digital Humanities and its interdisciplinary character

Although the term raises doubts regarding its conceptualization, perhaps even because the discussion on the topic is recent in the history of human scientific evolution, it is consensus that the initial milestone of Digital Humanities was the project of the first electronic index of the works of Thomas Aquinas, headed by the Italian priest Roberto Busa. Other projects later emerged in the area, such as Project Gutenberg (1971), Thesaurus Linguae Graecae (1972), Women writer project (1986), and Tex Encoding (1987), all characterized by the application of digital technologies allied to humanistic courses. Such initiatives advanced quickly with the advent of the Internet, with the concept of Digital Humanities emerging around 1990 to name them (Tăut, 2017).

Cuartas-Restrepo (2016) also presents an assortment of concepts for the term Digital Humanities, demonstrating the breadth and scope of the theme. However, a tonic is perceived in all concepts: the integration between digital technologies and contents of the Humanistic Sciences understood as the Human Sciences, Applied Humanities, among other branches within this area of concentration.

Tăut (2017) made another critical reflection on the topic based on the statements of Fitzpatrick (2012, p. 14) that one should not expand too much on the concept of Digital Humanities to the point of including “(...) every medievalist with a website”. In contrast, Lisa Spiro (2012) works with concepts of values linked to Digital Humanities, placing collaboration and diversity among them.

In this sense, the restriction of the field proposed by Fitzpatrick would contrast with values in the scope of Digital Humanities. Inclusion can be cited in addition to those mentioned by Lisa Spiro since digital technologies are currently responsible for the inclusion of thousands of people

in the digital world and, at the same time, access to information previously unavailable. This occurs with a device that fits in your hand: a smartphone, which transforms humans into an informational society (Castells, 2002).

Having overcome the difficulty of conceptualizing and validating the theme of Digital Humanities, we highlight its interdisciplinary nature. Because the concept of Digital Humanities represents the application of digital technologies to the humanities, it is verified as a multidisciplinary field from its concept. Therefore, according to the lesson of Lin (2012), the complexity of issues in a current society exceeds the capacity to address these issues in a single area of knowledge, with the need for multi or interdisciplinary study and understanding of such phenomena.

Thus, when concerning Digital Humanities, one will always refer to at least two disciplines: the area of Applied Digital Technology and the Humanistic Science involved. In this case, as will be demonstrated later, in addition to Applied Human Science (Law) and database technology to create the National Bank of Non-Prosecution Agreements, we also have the Information Science approach through one of its areas of expertise, the Knowledge Organization.

2.2 Non-prosecution agreements

With the advent of Law n° 13,964/2019, popularly known as the “Anti-Crime Package”, which improved several points of Brazilian criminal procedural legislation, the institute of the Non-Prosecution Agreement was included in the national legal system, allowing perpetrators of crimes whose sentence is fewer to four years to enjoy this institute. Through this agreement, the perpetrator of the crime and the Public Prosecution Service sign an agreement in which the criminal agent confesses to the commission of

the crime, repairs the damage, and, fulfilling the other legal requirements, ceases to be prosecuted and convicted for the commission of such a crime (article 28-A of Law nº 13,964/2019), which is later approved by the Judiciary.

Among the conditions provided for entering into such an agreement is that of paragraph 2, item III of article 28-A of the Code of Criminal Procedure, which provides:

Art. 28-A. When not the case of filing and having formally and circumstantially confessed to the commission of a criminal offense without violence or serious threat and with a minimum sentence of fewer than 4 (four) years, the Public Prosecution Service may propose a non-prosecution agreement, provided that it is necessary and sufficient for disapproval and prevention of the crime, under the following adjusted conditions:

(...)

Paragraph 2. The provisions of the head provision in this article do not apply in the following cases:

(...)

III - have been the agent benefited in the 5 (five) years before the commission of the offense, in a non-prosecution agreement, criminal transaction, or conditional suspension of the process; and

The problem concerning this device is the difficulty of assessing whether the perpetrator of the crime and interested in signing the non-prosecution agreement has already benefited from this measure, criminal transaction, or conditional suspension of the process in the last five years. It should be noted that the 26 state Public Prosecution

Offices, the Federal Public Prosecution Service, the Public Prosecution Service of the Federal District and Territories, and the Military Public Prosecution Service can establish such benefits, adding up to 29 different public agencies, which often do not have any search tool in their databases that record the granting of these decriminalizing measures.

Thus, by way of example, a citizen who, in the last five years, has lived in Santa Catarina, Amazonas, Acre, Pernambuco, and Mato Grosso do Sul should enter into a non-prosecution agreement with the Federal Public Prosecution Service acting in Santa Catarina. The Federal *Parquet* would be responsible for the survey in these other four federal units to verify if that person has already signed a non-prosecution agreement in that period. This consultation would involve all state Prosecution Offices, Federal Prosecution Service, and Military Prosecution Service, resulting in often slow bureaucracy and a lack of centralized information.

Therefore, the present proposal aims to suggest the creation of a National Bank of Non-Prosecution Agreements, which is nothing more than a national database, like the National Bank for Monitoring Prisons¹, which will gather data on the conclusion of non-prosecution agreements in all Public Prosecution Offices in the country, serving as a consultation tool for assessing who in the country has signed this type of agreement.

2.3 Information science and knowledge organization

As a proposal for the creation of a stabilized vocabulary and standardization of information standards by the Brazilian

1 Initiative of the National Council of Justice, which assists in the management of documentation regarding arrest/internment and respective releases throughout Brazil.

Public Prosecution Offices involved, there is a need within this specific domain of knowledge and its discursive community, formed by a range of participants of heterogeneous origin, in the concept used by Binger Hjørland and Hanne Albrechtsen (1995, *apud* Hjørland, 2002), and the higher body to those already mentioned, in the figure of the National Council of the Public Prosecution Service, normative edit, similar to Circular Letter nº 3,454 of June 14th, 2010, of the Central Bank of Brazil, being a document of Knowledge Organization, in line with what was recommended by Beghtol (1995), as cited by Dias (2015), to bring a full understanding of the domain to be modeled and in the choice of terms to be used by the actors integrating the discursive community involved in the initiative.

Within the scope of the Central Bank, Circular Letter nº 3,454 was a watershed document, which aimed to: “In accordance with the provisions of the sole paragraph of article 5 of Circular nº 3.290 of September 5th, 2005, we disclose the layout to be adopted to provide information to the competent authorities, when requested (...)”. In other words, from the publication of this document, all financial institutions in Brazil, when meeting breaches of banking secrecy granted by the Judiciary, began to deliver the banking information of the targets of these measures in a standard format, present in the Circular Letter, with stabilization of the communication vocabulary and language between all agents involved (Judicial Police, Public Prosecution Offices, Judiciary, Central Bank of Brazil, and Brazilian financial institutions), thus allowing the institution and use of a single banking information management system in Brazil, SIMBA.

On the other hand, as much as we discuss bodies of the exact nature, the Public Prosecution Offices, we must

indicate their heterogeneous condition since there are the state and Public Prosecution Office of the Union (MPU in Portuguese), composed of the Federal Public Prosecution Service (MPF in Portuguese), the Labor Public Prosecution Service (MPT in Portuguese), the Military Public Prosecution Service (MPM in Portuguese), and the Federal District and Territories Public Prosecution Service (MPDFT in Portuguese). In addition to this distinction, we can draw several others, such as the reality of each state's Public Prosecution Offices, with their organizational laws. The same can be said regarding the branches of the MPU and their systems for processing electronic processes, forms of action, nature of the causes that act, among other specificities.

All this highlights the heterogeneous nature of this discursive community and the need, within the scope of the proposal presented in this article, for a stage of Knowledge Organization before implementing the proposed system. Thus, an initiative similar to the one adopted by the Central Bank of Brazil could be carried out by the National Council of the Public Prosecution Service so that, after the diagnosis phase of the non-prosecution agreements in the country, it edits a similar document to stabilize and create a single language of communication between all the actors involved in the initiative.

3. THE NATIONAL BANK'S PROPOSAL FOR NON-PROSECUTION AGREEMENTS

From this topic, the National Bank of Non-Prosecution Agreements proposal will be presented, subdivided into stages similar to a project to defend the feasibility of implementing a proposal.

3.1 Justification

The entry into force of the Anti-Crime Package (Law nº 13,964/2019) introduced the non-prosecution agreement into the Brazilian legal system, allowing perpetrators of crimes of which the minimum sentence is fewer than four years to sign an agreement with the Public Prosecution Service later approved by the Judiciary, in which they will practice a series of acts adjusted in the said document in exchange for not being criminally prosecuted. However, among the requirements to enter into such an agreement are not having benefited from it in the last five years or having a criminal transaction and/or conditional suspension of the process (art. 28-A, paragraph 2, item III, of the Code of Criminal Procedure).

There is currently no single form of consultation among 26 state Public Prosecution Offices, the Federal Public Prosecution Service, the Public Prosecution Service of the Federal District and Territories, and the Military Public Prosecution Service, totaling 29 public agencies, regarding who signed this device, making accurate research on the subject impossible. In this sense, there is the possibility of creating a National Bank of Non-Prosecution Agreements, which, as a suggestion, would be managed by the National Council of the Public Prosecution Service, in compliance with its constitutional function present in article 130-A, paragraph 2, item I, of the Federal Constitution.

3.2 Objectives and target audience

The general objective of this proposal is the creation of a national database that gathers information from all individuals who have entered into non-prosecution agreements within the framework of the 26 state Public Prosecution

Offices, the Federal Public Prosecution Service, the Public Prosecution Service of the Federal District and Territories, and the Military Public Prosecution Service. The measure, as a form of applying the Digital Humanities in the context of access to Justice, involves the Public Prosecution Service as a constitutional actor responsible for the defense of the legal order, the democratic regime, and unavailable social and individual interests (art. 127 of the Federal Constitution).

The present initiative is inserted in the context of Digital Humanities. As stated by Lisa Spiro, the area is configured by sharing some of the values, such as free access, collaboration, collegiality, connectivity, diversity, and experimentation (Spiro, 2012). The proposal presented here presents several of these values. It is a system of free access of collaboration between the various agencies of the Public Prosecution Service in the country and the National Council of the Public Prosecution Service, whose access presupposes connectivity, consisting of an innovative initiative with some degree of experimentation since this measure is unprecedented in the scope of the Brazilian Public Prosecution Service.

Furthermore, Liu (2013) asserts that, although the field of Digital Humanities does not have a fixed concept and its conceptualization is hard work, one must roughly consider the application of digital technologies to the study of the Humanities. In this case, the database technologies are applied in alliance with Law and Information Science to provide access to Justice of special interest to the Public Prosecution Service and the Judiciary.

The specific objectives, in turn, are:

- i) survey within the scope of the 26 state Public Prosecution Offices, the Federal Public Prosecution

Service, the Public Prosecution Service of the Federal District and Territories, and the Military Public Prosecution Service to identify how non-prosecution agreements are registered in the prosecution systems of such bodies;

- ii) subsequently, elaborate a normative, under the responsibility of the National Council of the Public Prosecution Service, like the normative present in Circular Letter nº 3454 of the Central Bank of Brazil, by way of knowledge organization, to establish criteria for the provision of data on non-prosecution agreements by the Public Prosecution Offices of the country, as a form of delivering the information already structured for input into the database and standardizing the forms of access to such information, monitoring methods, and evaluation of the project operation;
- iii) create the physical and logical structure of the database to receive information about non-prosecution agreements signed in the country and communication module between the entities responsible for feeding and administering the database; and
- iv) create the database query portal.

We also identified that the initiative's target audiences are members and servants of the Public Prosecution Offices, the Judiciary, and other citizens interested in this survey.

3.3 Description of the action or methodology

The first step towards implementing the initiative would be a diagnosis within the scope of the 26 state Public Prosecution Offices, the Federal Public Prosecution Service, the Public Prosecution Service of the Federal District and Territories, and the Military Public Prosecution Service to

map the form in which non-prosecution agreements are registered in the document processing systems of each of these bodies.

This diagnosis aims to identify the forms of registration of the non-prosecution agreement in the scope of the Brazilian Public Prosecution Offices to provide subsidies to the National Council of the Public Prosecution Service for the edition of a standard that determines:

- i) The creation of the National Bank of non-prosecution agreements;
- ii) the stabilization of vocabulary and uniform forms of all the Public Prosecution Offices involved in feeding the database that will form the national repository as Knowledge Organization;
- iii) the frequency at which the database should be fed;
- iv) the creation of a commission for monitoring the phases of project implementation and its subsequent execution, composed of members and servants of the Public Prosecution Offices involved, the National Council of the Public Prosecution Service, and representatives of civil society; and
- v) the criteria for evaluating the operation of the National Bank for non-prosecution agreements.

Once this standard has been published, a period must be established to adapt the bodies responsible for feeding the system to the defined regulations, which can also be used to create the physical structure and *hardware*, and the *software* to be used for receiving the data (via *web service*, for example) and the tools and query page to be provided to the target audience. In addition, the National Council of the Public Prosecution Service would also be responsible for the national dissemination of the system creation and

implementation as a form of popularizing and democratizing its access.

3.4 Impact

It is estimated that there will be a national impact with the creation of the measure. First, it will be a facilitator for the bodies involved in settlement of non-prosecution agreements (Public Prosecutors, Judiciary) since there will be a centralized point of national consultation, allowing only those citizens who fit the legal requirements to benefit, giving greater efficiency and effectiveness to this criminal procedural institute. There will also be a social impact, allowing general and unrestricted consultation to this content to assist society in obtaining information about who has already signed or not a criminal prosecution agreement in Brazil. This information interests the citizen and the government in analyzing the measure's effectiveness, planning course corrections, and improving legislation on the subject, also serving as a diagnostic tool for successfully implementing the institute in the country.

On the other hand, it is also necessary to weigh the degree of access and information to be made available to each target audience since they are sensitive data that enter the sphere of people's privacy. For compliance with the provisions of the General Data Protection Law (Law nº 13,709/2018), we suggest creating distinct access profiles to provide the Public Prosecution Service and the Judiciary with more complete data compatible with the exercise of their constitutional tasks and functions, and access profiles with more restricted information to the general public as a form of protecting the

data saved in the database and the people to whom they concern.

3.5 Partnerships, interfaces, and resources

Concerning partnerships, joint action is assumed between all Public Prosecution Offices of Brazil and the National Council of the Public Prosecution Service, with subsequent participation of the Judiciary and the National Council of Justice, the latter two as system users.

The project interfaces would work through the National Council of the Public Prosecution Service, the highest administrative body in Brazil, regarding all organs of the national *Parquet*. In addition to centralizing data collection and hosting the database, “*the control of the administrative and financial performance of the Public Prosecution Service*” (BRASIL, 1988, art. 130-A, § 2º, inciso I) is the Council’s constitutional role, which is why it has the authority, legitimacy, and attribution to undertake such an initiative.

In addition, the database query system may also have a communication module in which the responsible areas of each Public Prosecution Office in the country may establish communication to address issues related to the database inputs and others relevant to the project. Regarding resources, the diagnostic phase is internal to each Public Prosecution Office, only designating commissions to carry out the relevant surveys, bearing the costs involved by each of the institutions involved. The creation of the database infrastructure would run at the expense of the National Council of the Public Prosecution Service, which has its budget allocation within the Union Budget.

3.6 Implementation, monitoring, and evaluation schedule

The project execution schedule is thus subdivided:

- Phase 1 - diagnosis: six months to create the commissions in each Public Prosecution Office involved and carry out the surveys;
- Phase 2 – a meeting of the elements and editing of the standard by the National Council of the Public Prosecution Service: six months to analyze the results of the first phase and write a resolution covering the items described in the second paragraph of item 6 of this project.
- Phase 3 – creating the *hardware* and *software* necessary to receive the data and creating the database of the communication module between those involved in feeding the system and query interface of the National Bank for non-prosecution agreements.
- Phase 4 - implementation: entry into force of the system, with permanent monitoring of its operation and actions to evaluate its functioning and effectiveness, and dissemination of its existence as a form to promote its use and democratization of access.

A commission established by the National Council of the Public Prosecution Service may be responsible for the project monitoring, in a norm to be edited in the project's second phase.

The evaluation of the project implementation phases and its execution and operation will be formalized in a standard published by the National Council of the Public Prosecution Service.

4. CONCLUSION

The term Digital Humanities, although challenging to conceptualize, is currently present in the daily life of academia and within society, having reached “a critical mass of participants, publications, conferences, major competitions, institutionalization (centers, programs, job advertisements), a general visibility (...)” (Liu, 2013, p. 410, our translation).

In this sense, many initiatives combine humanities courses with the use of tools from the digital world. The field of Applied Humanities, especially Law, cannot ignore this reality and must draw from this source to solve its challenges and benefit society. Within this perspective, the emergence of the Anti-Crime Package (Law n° 13,964/2019) innovated the legal field, especially non-prosecution agreements, as a tool to modernize Brazilian criminal procedural legislation.

However, the most significant difficulty for the agreement of this institute is verifying the condition provided for in article 28-A, paragraph 2, item III, of the Code of Criminal Procedure: if the citizen interested in signing a non-prosecution agreement has already agreed to this institute, criminal transaction, and/or conditional suspension of the process in Brazil in the last five years. For this reason, as it involves surveys in 29 different Public Prosecution agencies, a National Bank of Non-Prosecution Agreements is proposed as an initiative of Digital Humanities applied to Law with the help of Information Science to stabilize language and vocabulary among all participating entities through the Knowledge Organization to allow the proposed initiative to be uniformly applied and the

database to be fed so that the data is input already structured, facilitating its treatment phase.

Thus, the National Council of the Public Prosecution Service would lead the initiative by centralizing administrative issues, proposing the necessary regulations, and providing the physical and logical structure necessary to implement this national database. On the other hand, in addition to the demonstrated usefulness of the National Bank for non-prosecution agreements, it is also a tool for access to Justice, which would allow consultations by citizens and provide possibilities for measurement and studies on the efficiency and effectiveness of applying the measure inserted by the Anti-Crime Package in Brazilian legislation.

Finally, it should be noted that the text is still an initial proposal of this database, with room for future studies on the specific digital technologies to be adopted, the database architecture and systems to be adopted, and even specific work on Information Science, especially Knowledge Organization, on, for example, how to establish the controlled vocabulary to be used among the entities involved to feed the database.

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