

## Challenges of Internal Justification in Judicial Decision-Making Processes

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### Abstract

*A documentary review was carried out on the production and publication of research papers related to the study of the variables Judicial Decision Making and Internal Processes. The purpose of the bibliometric analysis proposed in this document was to know the main characteristics of the volume of publications registered in the Scopus database during the period 2017-2022, achieving the identification of 22 publications. The information provided by this platform was organized through graphs and figures categorizing the information by Year of Publication, Country of Origin, Area of Knowledge and Type of Publication. Once these characteristics have been described, the position of different authors towards the proposed theme is referenced through a qualitative analysis. Among the main findings made through this research, it is found that Italy, Holland and the United States, with 4 publications were the countries with the highest scientific production registered on behalf of authors affiliated with institutions of these nations. The Area of Knowledge that made the greatest contribution to the construction of bibliographic material referring to the study of Judicial Decision Making and Internal Processes, was Social Sciences with 20 published documents, and the Type of Publication most used during the period indicated above were Journal Articles with 55% of the total scientific production.*

**Keywords:** *Internal Justification, Judicial Decision Making.*

### 1. Introduction

In the field of law, legal decision-making is a critical process that has important consequences for society. To ensure the fairness and fairness of this process, it is important that judgments are properly reasoned and justified. The internal reasoning of the judgment suggests that the judge used his conclusions consistently and logically. However, facing the challenges of internal reasoning in legal decision-making is not easy. Judges face various difficulties and obstacles that can reduce the quality and transparency of their reasoning. We explore some of these challenges below.

First, the complexity of the cases can make internal deliberation difficult. Legal cases often involve a lot of information and arguments presented by the parties. Judges should

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carefully analyze and evaluate this information to make an informed decision. However, the complexity of the cases can make it difficult to identify the most important arguments and build a solid logical chain. Second, cognitive biases and human limitations can affect the internal justification of judgments. Judges are people prone to biases and cognitive errors. These biases can affect your ability to objectively evaluate the evidence and apply logical reasoning. The internal reasoning of the court's decision must be independent of such prejudices and ensure equal treatment before the law.

Another major challenge is the balance between legal certainty and the ability to adapt to social changes. Judicial decisions must be based on the existing legal framework, but they must also be able to respond to changes in society and the evolution of values and norms. The challenge for judges is to reconcile the application of the law with the need to adapt to new social realities and demands, and this task can generate problems in the internal justification of decisions.

Another challenge is the lack of openness and transparency of the legal decision-making process. The internal reasoning of the decision should be clear and understandable to the parties and the general public. Lack of transparency can undermine trust in the legal system and raise doubts about the impartiality and objectivity of decisions. In summary, it can be stated that the challenges of internal reasoning in legal decision-making processes are diverse and complex. Judges must face the complexity of cases, overcome cognitive biases, balance legal certainty with adaptability to change, and ensure transparency in their reasoning. These challenges are fundamental to ensuring the quality and legitimacy of judicial decisions in a democratic and just society. For this reason, this article seeks to describe the main characteristics of the compendium of publications indexed in the Scopus database related to the variables Judicial Decision Making and Internal Processes, as well. As the description of the position of certain authors affiliated with institutions, during the period between 2017 and 2022.

## **2. General Objective**

Analyze from a bibliometric and bibliographic perspective, the elaboration and publication of research works in high-impact journals indexed in the Scopus database on the variables Judicial Decision Making and Internal Processes, during the period 2017-2022.

## **3. Methodology**

This article is carried out through a research with mixed orientation that combines the quantitative and qualitative method.

On the one hand, a quantitative analysis of the information selected in Scopus is carried out under a bibliometric approach of the scientific production corresponding to the study of Judicial Decision Making and Internal Processes.

On the other hand, examples of some research works published in the area of study indicated above are analyzed from a qualitative perspective, starting from a bibliographic approach that allows describing the position of different authors towards the proposed topic. It is important to note that the entire search was performed through Scopus, managing to establish the parameters referenced in Figure 1.

### 3.1. Methodological design

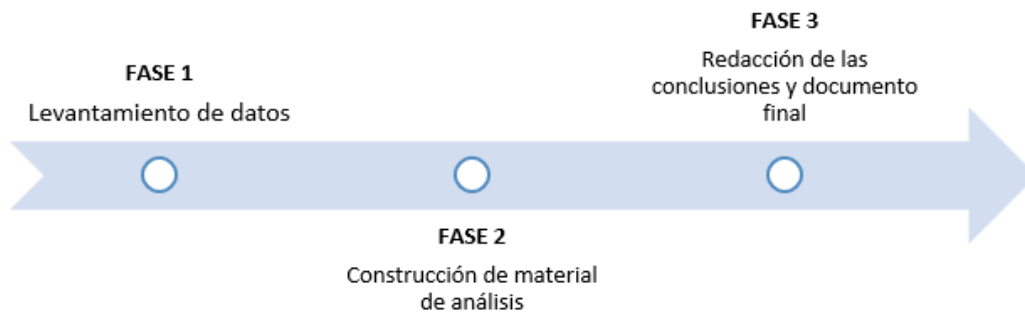


Figure 1. Methodological design

Source: Authors.

#### 3.1.1 Phase 1: Data collection

Data collection was executed from the Search tool on the Scopus website, where 22 publications were obtained from the choice of the following filters:

TITLE-ABS-KEY ( judicial AND decision-making, AND internal AND processes ) AND ( LIMIT-TO ( PUBYEAR , 2022 ) OR LIMIT-TO ( PUBYEAR , 2021 ) OR LIMIT-TO ( PUBYEAR , 2020 ) OR LIMIT-TO ( PUBYEAR , 2019 ) OR LIMIT-TO ( PUBYEAR , 2018 ) OR LIMIT-TO ( PUBYEAR , 2017 ) )

- Published documents whose study variables are related to the study of Judicial Decision Making and Internal Processes.
- Limited to the years 2017-2022.
- Limited to Latin American countries.
- Without distinction of area of knowledge.
- Regardless of type of publication.

#### 3.1.2 Phase 2: Construction of analysis material

The information collected in Scopus during the previous phase is organized and subsequently classified by graphs, figures and tables as follows:

- Co-occurrence of words.
- Year of publication.
- Country of origin of the publication.
- Area of knowledge.
- Type of publication.

#### 3.1.3 Phase 3: Drafting of conclusions and outcome document

In this phase, we proceed with the analysis of the results previously yielded resulting in the determination of conclusions and, consequently, the obtaining of the final document.

## 4. Results

### 4.1 Co-occurrence of words

Figure 2 shows the Co-occurrence of keywords found in the publications identified in the Scopus database.



Figure 2. Co-occurrence of words

Source: Own elaboration (2023); based on data exported from Scopus.

Decision Making was the most frequently used keyword within the studies identified through the execution of Phase 1 of the Methodological Design proposed for the development of this article. Risk Assessment is also among the most frequently used variables, associated with variables such as Recommendation Systems, Big Data, Crime, Surveillance. From the above, it is striking that, in a judicial context, internal justification implies that judges must base their decisions on legal principles, judicial precedents, evidence presented and relevant legal arguments. This involves carefully evaluating and weighing the available information, analyzing the arguments of the parties involved, and applying legal reasoning to reach a conclusion. In addition, the expectation of a clear and coherent internal justification also poses challenges in terms of resources and time. Judges must balance the need to provide a detailed and reasoned explanation with efficiency and promptness in resolving cases.

#### 4.2 Distribution of scientific production by year of publication

Figure 3 shows how scientific production is distributed according to the year of publication.

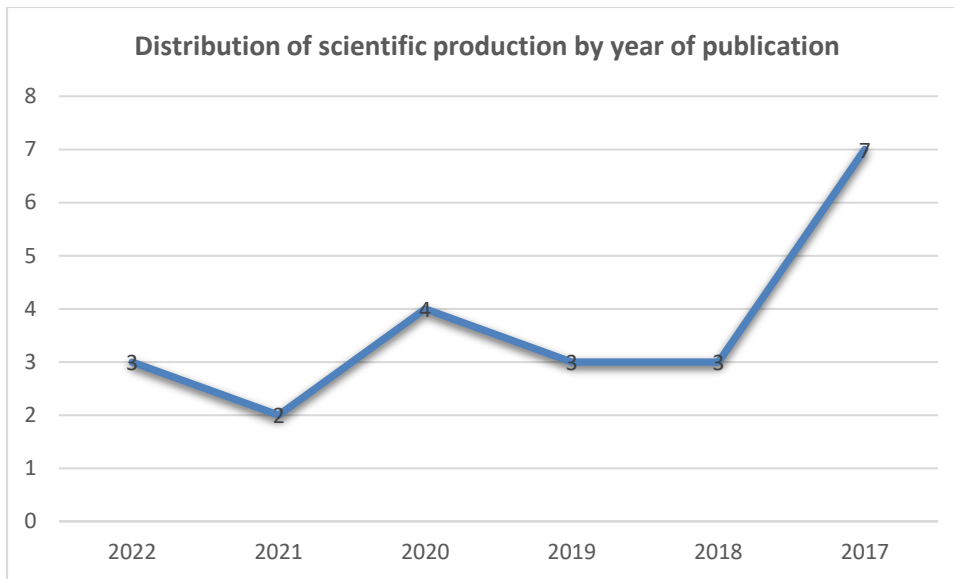


Figure 3. Distribution of scientific production by year of publication.

Source: Own elaboration (2023); based on data exported from Scopus

Among the main characteristics evidenced by the distribution of scientific production by year of publication, a level of number of publications registered in Scopus is notorious in 2017, reaching a total of 7 documents published in journals indexed in said platform. This can be explained by articles such as the one entitled "The Other Court". Constitutional Justice and Dissent in Comparative Perspective: The Case of South Africa" This article aims to explore the role of dissenting opinions in constitutional courts from a peculiar perspective: that of the dissenting judge. What are the most recurrent lines of argument used by dissidents? What is the idea about the law, the Constitution and the theories of legal interpretation around these opinions? What does the dissenting opinion say about the internal balance of the court? What is the portrait of judges and justice that can be extrapolated from the analysis of dissenting opinions? These questions will be answered using the Constitutional Court of South Africa as a test case. Drawing on the main findings of comparative studies on constitutional justice, the article analyzes the separate opinions issued by Albie Sachs and Katie O'Regan in the time frame of their tenure (1995 – 2009). It finds that, despite a conspicuous number of dissents, the constitutional reasoning seems quite cohesive with reference to the role of the constitutional court and judges, and to the way the Constitution should be read and implemented. Among the reasons that explain the South African paradox (where dissent serves unity) are not only the method of the Court's decision-making process, but also the "transformative role" in which judges feel invested. In interpreting and applying the Constitution, they firmly believe that they are contributing to the creation of a new legal and social order.(Pannia, 2022)

#### 4.3 Distribution of scientific production by country of origin

Figure 4 shows how scientific production is distributed according to the nationality of the authors.

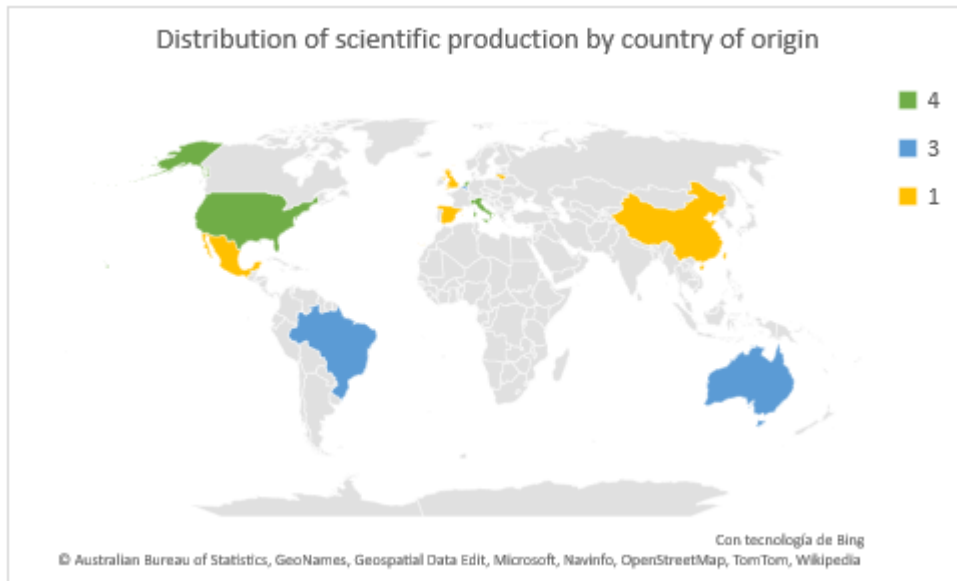


Figure 4. Distribution of scientific production by country of origin.

Source: Own elaboration (2023); based on data provided by Scopus.

Within the distribution of scientific production by country of origin, records from institutions were taken into account, establishing Italy, Holland and the United States., as the country of this community, with the highest number of publications indexed in Scopus during the period 2017-2022, with a total of 4 publications in total. In second place, Australia, Brazil with 3 scientific papers, and United Kingdom, Mexico, Hong Kong ranking third presenting to the scientific community, with a total of 1 documents among which is the article entitled "The impact of agreements on the prescription of warnings and the procedural speed of the Internal Tax Service of Brazil" This study aimed to discover the consequences of the Detailed Administrative Term (TCA) and the Term of Conduct Adjustment (TAC) in the prescription of warning sanctions and in the procedural speed of the Brazilian Internal Revenue Service (Coger-RFB). The investigation was justified because the Penitentiary System of the Federal Executive Branch (SisCor) has concentrated efforts to comply with the principles of efficiency and reasonable duration of the processes, which have as a backdrop the procedural speed, so it is necessary to know if its instruments are having the expected effect. In addition, procedural speed is a concern of the Public Administration and society, because to achieve the best justice it is important that it is not late. The research was applied, descriptive, explanatory, quantitative, qualitative and empirical, with the fruits collected in the vineyard of the Correction in Data Panel of the CGU, in the Performance Reports of the Coger-RFB, in the reGENCY regulations, in the jurisprudence, in the doctrine and in the consultations with the public organisms. It was concluded that the TCA and the TAC did not have a positive impact on the procedural speed of the Coger-RFB, since after their arrival, the procedural duration increased significantly. It was also concluded that the introduction of these instruments through an administrative act is not legally appropriate, requiring a legislative change for that purpose.(Vicente, 2022)

#### 4.4 Distribution of scientific production by area of knowledge

Figure 5 shows the distribution of the elaboration of scientific publications from the area of knowledge through which the different research methodologies are implemented.

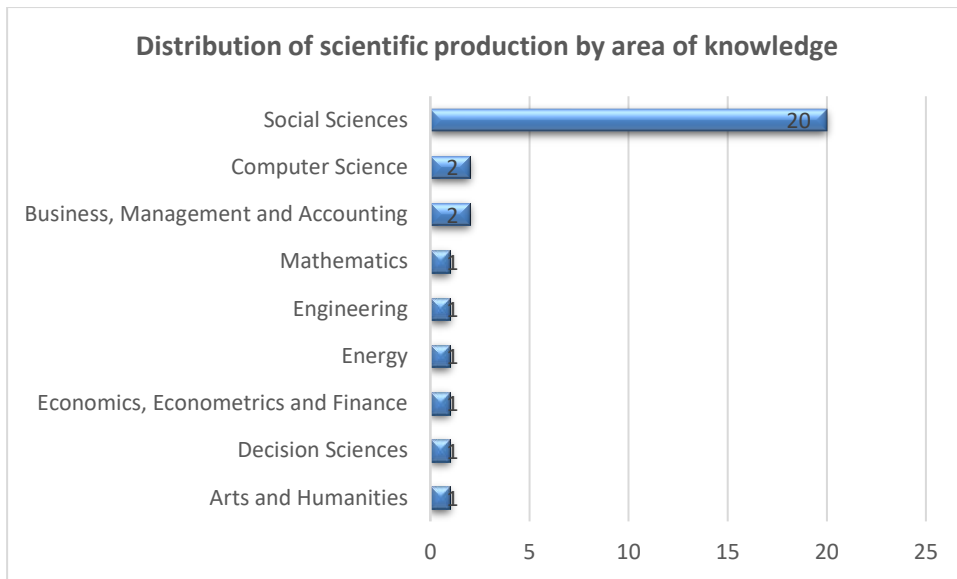


Figure 5. Distribution of scientific production by area of knowledge.

Source: Own elaboration (2023); based on data provided by Scopus.

Social Sciences was the area of knowledge with the highest number of publications registered in Scopus with a total of 20 documents that have based their methodologies Judicial Decision Making and Internal Processes. In second place, Computer Science with 2 articles and Business, Management and Accounting in third place with 2. The above can be explained thanks to the contribution and study of different branches, the article with the greatest impact was registered by the Social Sciences area entitled "Legitimation of a 'zombie idea': childhood vaccines and autism: the complex history of two trials on vaccine injuries in Italy" This study employs a doctrinal and empirical analysis to explore two Italian trials that affirmed a causal link between childhood vaccines and autism. Using a combination of actor-network theory and legal pragmatism, we uncovered a network of actors and institutions inside and outside the legal system that enabled these shocking decisions that contributed to a crisis in vaccination coverage in Italy. These include trial strategies, resources, communication practices between the arms of government, awareness and responsiveness of institutional actors, and institutional mechanisms that govern the integration of scientific expertise into the legal process. By forensically analyzing how a 'zombie idea' received a patent of legitimacy in the Italian context, this study provides useful lessons for legal systems facing complex and controversial public health issues.(Rizzi, 2021)

#### 4.5 Type of publication

In the following graph, you will observe the distribution of the bibliographic finding according to the type of publication made by each of the authors found in Scopus.

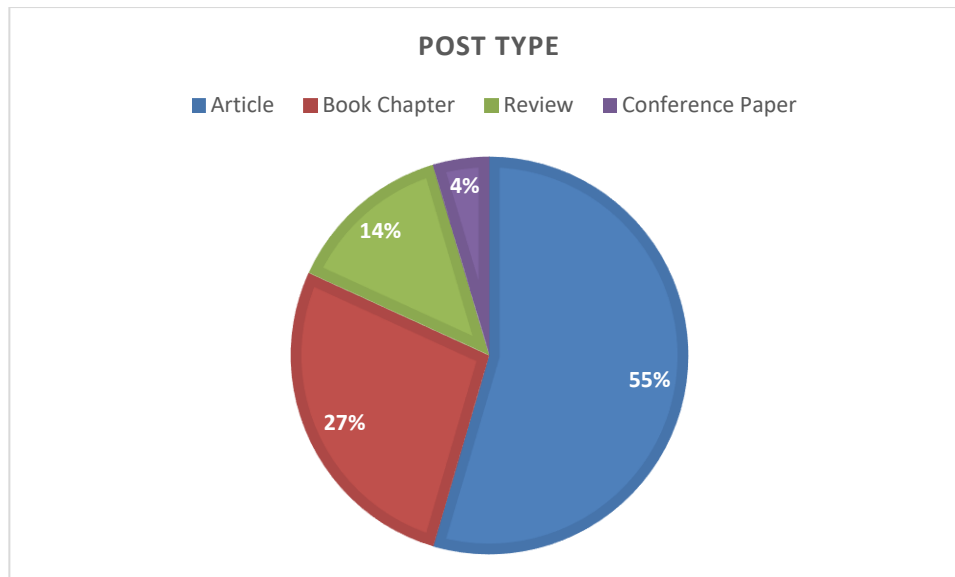


Figure 6. Type of publication.

Source: Own elaboration (2023); based on data provided by Scopus.

The type of publication most frequently used by the researchers referenced in the body of this document was the Journal Article with 55% of the total production identified for analysis, followed by the Book Chapter with 27%. Conference Journal are part of this classification, representing 14% of the research papers published during the period 2017-2022 in journals indexed in Scopus. In the latter category, the one entitled "Holding the European Asylum Support Office accountable for its role in asylum decision-making: mission impossible?" stands out. This article discusses the emergence of joint implementation patterns in EU asylum policy and the resulting accountability challenge, drawing on both legal analysis and political science theories. I also refer to administrative practice documented in secondary sources. Currently, EASO is subject to a patchwork of accountability processes. Two main pitfalls emerge: the intricate balance between responsibility and independence; and accessibility for the individual. In this context, I focus on out-of-court accountability through the European Ombudsman which, combined with the internal 'individual complaints mechanism' foreseen within EASO, could help to ensure the procedural rights of applicants. (Tsourdi, 2020)

## 5. Conclusions

Through the bibliometric analysis carried out in the present research work, it was established that Italy, Holland and the United States was the country with the highest number of records published for the variables Judicial Decision Making and Internal Processes with a total of 4 publications in the Scopus database. In the same way, it was established that the application of theories framed in the area of Social Sciences, were the most frequently used in the measurement of the impact generated by internal reasoning in legal decision-making, since it creates important challenges that require careful consideration. These challenges are mainly related to the need to ensure transparency, consistency and impartiality in the reasoning and justification of judgments. One of the biggest challenges is consistency in the application of legal principles. Judges must ensure that their decisions are consistent with the existing legal framework and previous case law. This requires careful analysis and evaluation of relevant precedents and their consistent application to individual cases. Without strong and consistent internal justification, there is a risk of creating legal uncertainty and undermining trust in the legal system. Another challenge is to ensure that legal decisions are understandable and accessible to actors and society at large. Internal reasoning should be clear and



transparent so that the parties understand the reasons for the decision and assess its validity. It is also important from the point of view of quality control and accountability of the legal system. In addition, internal reasoning must face the challenge of avoiding biases and prejudices in decision-making. Judges need to be aware of their biases and ensure that their reasoning is supported by objective and legal evidence. This requires a critical examination of one's own assumptions and biases, as well as a willingness to consider different perspectives and arguments.

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