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Enablers of Electronic Judicial Process in Brazil

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Abstract

The deployment of e-Justice reforms aiming for more efficient and effective justice administration faces great barriers, even though considerable resources have been invested worldwide. This paper describes the factors that have enabled the Electronic Judicial Process deployment in Brazil. Currently, in the country, 98.9% of all judicial proceedings are held electronically. We focus on enablers of normative, technical, political, organisational, institutional, and related governance aspects. The research is important due to its potential to help other countries on their path to the informatisation of justice.

Keywords: e-Justice; Cyberjustice; e-Court; Justice administration; Brazil.

1. INTRODUÇÃO

Justice Systems (JS) face great barriers to implementing digital transformation judicial reforms. It seems that e-Justice, usually considered a sector of e-Government, has some specificities that complicate the deployment of Information Technology (IT) in the judiciary (Kitoogo & Bitwayiki, 2009; Yu & Xia, 2020). The public legal sector has been slower than other government sectors to integrate IT into its activity (Al-Naimat et al., 2021; Cerrillo & Fabra, 2008). The cause could be that justice and law professionals are conservative and, in some cases, hostile toward technologies by emphasising bad aspects of it (Thornton, 2016). It is acknowledged that the justice system is embedded in high techno, legal, organisational, and institutional complexities (Contini & Cordella, 2015), which leads to low results of the digitalisation of justice projects, although the considerable resources invested in them (Fabri, 2008). For example, the last European Judicial System Evaluation Report asserts that, for now, it is only possible to provide the deployment indicators of IT tools for State Members but not the results of its use. The average indicator of the EU member's score is 6.2, a total of 10 (Council of Europe - Commission of Efficiency of Justice - CEPEJ, 2022, p. 118).

This paper describes the factors that have enabled the Electronic Judicial Process (EJP) deployment in Brazil. Currently, the country has a rate of 98.9% of informatisation of the JS, i.e. a little more than 1% of total new judicial cases are paper-based, no matter if criminal, civil or

administrative (Conselho Nacional de Justiça, 2023). This result is relevant in a country with 215 million inhabitants and great diversity. The paper emphasises important normative, technical, political, organisational, institutional and related governance aspects of e-Justice adoption and uses in Brazil. Besides the legal tradition and cultural differences between countries, the Brazilian case set some landmarks that may be common and help others to address their reforms.

The paper is divided into five parts, including the introduction. The second presents the e-Justice concepts and the importance of Court Case Management Systems to the judiciary. The Third describes the Brazilian Judicial System. The first part of the Fourth Section indicates technical, organisational, political and institutional events that occurred in the past 16 years, most of which were consubstantiated in laws and norms. Finally, in the Fifth, the conclusion and future research are presented.

2. E-JUSTICE AND THE COURT CASE MANAGEMENT SYSTEM

The term e-Justice is generally used to describe deploying, adopting, and using any IT tools in the justice domain. These tools may vary from simple online forms to complex artificial intelligence applications or a mix of many electronic tools (Rocha, Carvalho, & Suxberger, 2021). Some researchers consider e-Justice just another sub-domain of e-Government (Andrade, Joia, & Kamlot, 2012) although justice has some specificities that warrant more accurate studies. Context, users, and type of services offered are some differences between e-Justice compared to e-Government pointed out by Yu & Xia (2020). The EU prefer the term cyberjustice, used in preference to e-Justice, "... broadly understood as grouping together all the situations in which the application of ICTs, at least, forms part of a dispute resolution process, whether in or out of court (European Commission for the Efficiency of Justice (CEPEJ), 2016)".

This paper focuses on the Court Case Management System (CCMS), a central tool for the court's efficient administration of justice. It is considered "the heart" of e-Justice operations containing all documents and lawsuit information (Contini & Cordella, 2015; CEPEJ, 2019). Unlike its predecessors, which served mainly for back-office and court staff work and did not require the Internet, the actual CCMS is an integrated web-based system with many features, involving all digital procedural stages, from case submission to court decision and case filing. The various CCMS in Brazil are generally called Electronic Judicial Process (EJP).

3. THE BRAZILIAN JUDICIAL SYSTEM

We first present an overview of the Brazilian Judicial System to understand better the complexity of the EJP deployment process in the country. Brazil is a Federative Republic composed of the union of 26 states and the federal district. Brazil has adopted a civil law system. The Judiciary

comprises five segments: three specialised branches deal with electoral, military, and labour matters, and the ordinary justice is divided into state and federal justice. Federal courts judge the cases in which the government is a party to the litigation. State justice is present in all 27 Brazilian federal units and encompasses many judicial cases. Small claim courts deal with less complex civil matters, small claims, misdemeanours, and less offensive crimes whose maximum sentence does not exceed two years (Conselho Nacional da Justiça - CNJ, 2022).

There are approximately 14.800 judicial units (courts) in Brazil, with approximately 18.000 judges and 266.000 clerks working. Like the other branches, state justice is divided into lower courts (first instance) and courts of appeal (second instance) (Conselho Nacional da Justiça - CNJ, 2022).

Figure 1 depicts the Structure of the Brazilian Judiciary:

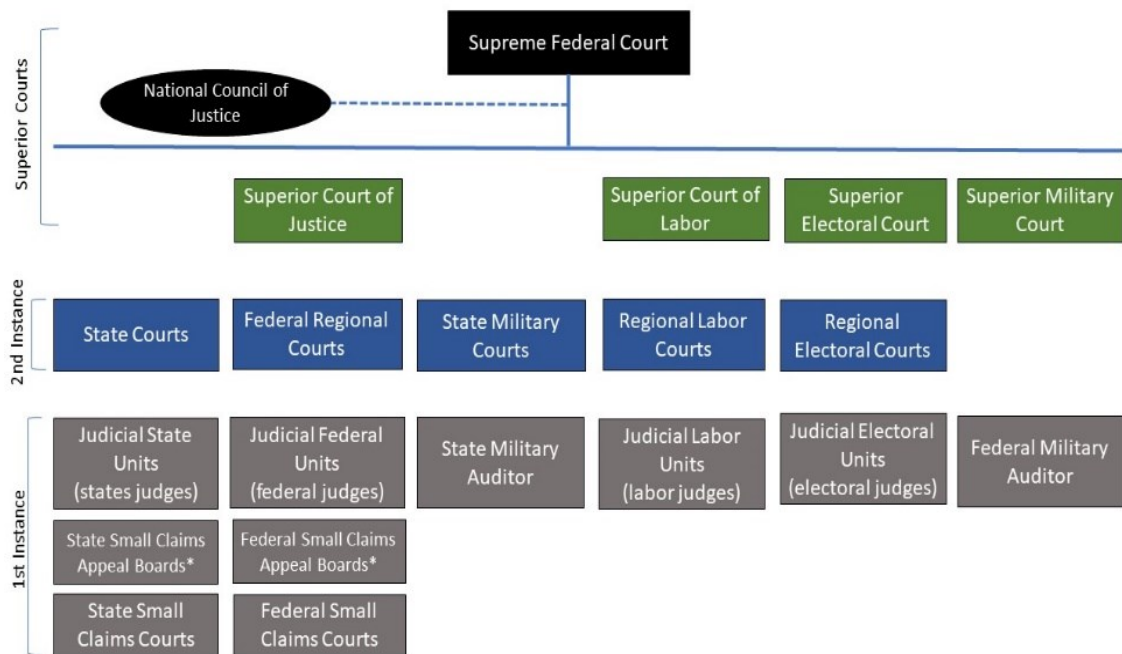


Figure 1 – Structure of the Brazilian Judiciary System (Adapted from NCJ, 2023).

4. EJP HISTORY

As pointed out by Contini & Cordella (2015) studying the role of IT as an autonomous actor in the dynamics between law and technology, there is a "growing relevance of the regulation needed to deploy technology in this domain (p. 125)." They argue that ex-ante regulation is insufficient as only in daily organisational practice will the solution be improved, indicating the need for new requirements that will lead to post regulation to solve the issue and ensure a fair trial.

In this Section, we will depict the normative base enabling the EJP in Brazil, acknowledging that it is the result of enacting these techno-legal assemblages, as stated by Contini & Cordella (2015).

Then, we describe the stages of its deployment and the main concerns that emerged during the process.

4.1. Normative Base for EJP Deployment

The cornerstone of the Brazilian electronic process was the enactment of Law n. 9800/99, which enabled the parties to use a facsimile system of data and image transmission to carry out procedural acts that previously would have been done by written petition (Albergaria Neto & Lopes Júnior, 2021). Next, Law n. 10.259/2001 authorised courts to organise services for summoning parties and receiving petitions electronically (Rabelo, 2019).

In 2001, the institution of Brazilian Public Key Infrastructure (ICP-Brasil), which guarantees the authenticity, integrity, and legal validity of documents in electronic form (BRASIL, 2001), is an important technical enable for the EJP deployment. There were reactions against using ICP-Brasil for e-Justice activities, mainly by the Brazilian Bar Association. The main opposition was political and intended to prevent the Brazilian Judiciary from being technically subordinated to a system based on an executive initiative (Filho & Veronese, 2008). The controversy was solved only in 2006 with a specific regulation approved by the Legislative branch. The Judiciary then created a Certification Authority of Justice, subordinated to the Brazilian root certification authority (Romagnoli & Bartalo, 2015).

In 2004, the "Pact in Favour of a Fast and More Republican Judiciary" had special political importance once it was signed by the chief of the three state branches. It was followed by Amendment No. 45/2004 of the Federal Constitution of Brazil. Both addressed the changes that would come into force during the following years. The first one recognised that:

"Few national problems have so much consensus regarding diagnosis as the judicial issues. The slowness of judicial processes and the low efficiency of its decisions slow down national development, discourage investments, favour indebtedness, generate impunity and undermine citizens' belief in the democratic system (BRASIL, 2004)."

Judicial Reform was instituted by Constitutional Amendment No. 45/2004 to make the justice system swifter and more efficient. The guarantee of "reasonable duration of the process" has been provided in the Brazilian Constitution. The National Council of Justice (NCJ) was created on the same occasion and established in 2005. NCJ plays a relevant judicial policy and management role. Among its attributions are the issuance of normative acts and recommendations, establishing targets and strategic plans, and controlling statistical data on the courts (Supremo Tribunal Federal, 2020). The EJP would not have been possible without the creation of the NCJ, which coordinated the deployment of e-Justice in Brazil. In 2006, Law n° 11.280 allowed courts to regulate the practice and official electronic communication of procedural acts.

Law nº 11.419/06, called "Law of Electronic Judicial Process", completed the normative judicial reforms of the Brazilian Judiciary. This regulatory framework changed the paradigm from the physical paper-based format to the digital one while safeguarding all legal precepts. The Law explicitly addresses the informatisation of judicial proceedings, presenting general rules on adopting electronic means for the practice of judicial acts. From then, the electronic process has become the standard. Three innovations are worth mentioning:

- The change of proceedings from physical to digital format is applicable indistinctly to civil, criminal, and labour proceedings, as well as to special courts at any level of jurisdiction.
- Summonses, subpoenas, and notifications can be performed electronically.
- Electronic journals are created to disclose administrative and judicial acts, replacing other means of disclosure for all legal purposes.

The Brazilian justice suffered a fundamental paradigm shift brought by this Law, mainly due to the new establishment of deadlines with access up to 24 hours a day and the service of subpoenas and summonses by electronic means (Sousa, Miranda, Sousa, & Ramalho, 2017). As stressed Rabelo (2019, p. 276)

"The auspicious summons by electronic means was an excellent legislative innovation, as it created a new form of summons, in addition to the traditional one, which was already carried out by electronic justice. It is also worth mentioning the summons "via the system" or through the courts' portals, which can be done without even publication in the official gazette".

Finally, modifying the Brazilian Code of Civil Procedure in 2015 granted the primary regulation of electronic judicial proceedings to the National Council of Justice. It also authorised electronic practices that, until then, were experimental (Tavares & Mota, 2016). Figure 2 summarises the chronology of normative changes that provided the basis for electronic justice in Brazil:

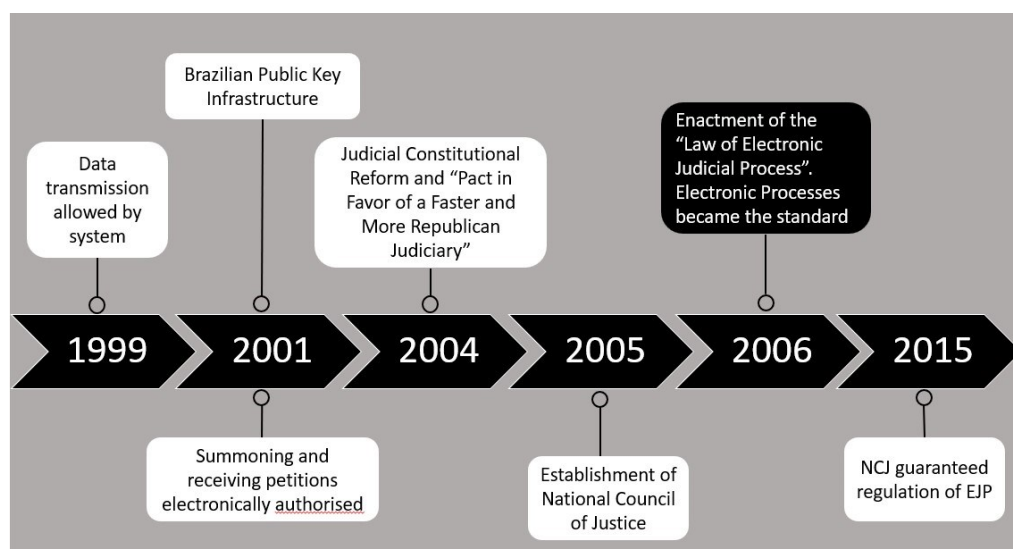


Figure 2 – Chronology of the normative basis for Brazilian e-Justice (elaborated by the authors).

4.2. EJP Deployment Process

The automation of judicial processes in Brazil is characterised by administrative decentralisation. Courts began developing or outsourcing systems according to their realities. These first applications did not always meet the necessary common prerequisites of usability, interoperability, and availability (Andrade & Joia, 2012; Moreira, 2015). Until that moment, there was no obligation to use electronic processes. The NCJ, in the Strategic Plan, defined the year 2014 as the deadline for all lawsuits to be filed in digital form (Andrade & Joia, 2012).

A ground-break initiative was "Electronic Process" (e-Proc), one of the earliest systems (2003) used in the country by the Federal Regional Court of the 4th Region (Southern Region of Brazil). Developed by public servants from the IT area as open-source software, it saved the cost of purchasing licenses. It was the first court to authorise the replacement of paper proceedings with electronic ones (Gonçalves, Ângela, Haonat, Fernando, & Martins, 2020; Guimarães, Odelius, Medeiros, & Santana, 2011).

An essential step to nationalising the electronic process was taken in 2007. Taxonomic and terminological standardisation of classes, matters, movements, and procedural documents were established by the "Unified Procedural Tables". Started by the NCJ and adopted by the entire Brazilian Judiciary, the tables were one of the bases for EJP deployment and posterior judicial data management (Conselho Nacional de Justiça - CNJ, n.d.).

In 2009 the NCJ created the Model Requirements for System Computerised Process Management and Legal Documents (MoReq-Jus). It aims to ensure the observance of minimum requirements for the various systems adopted in the electronic process, ensuring reliability, authenticity, and accessibility of documents managed in the different existing electronic process platforms (Porto, 2017).

Due to the number of different applications being used in the country, NJC started its attempt to launch a national platform for the Brazilian Judiciary aiming at the adoption of a unified electronic process. Until then, the multiple systems developed for the same purpose, even within a single autonomous judiciary unit, were limited in scope and effectiveness due to an absence of coordination and integration (Andrade & Joia, 2012, p. 540).

The Electronic Digital Process (Projudi in Portuguese) was the solution NJC chose to carry out procedural handling. The system was freely distributed among courts, and 19 of the 27 Brazilian states got to use the application. From this point onwards, courts adapted the Projudi system to their existing working processes in an automated manner. There was a little remodelling of working processes and routine changes to minimise the judges' resistance to using the system (Andrade & Joia, 2012). The Projudi was much modified considering different court characteristics. Afterwards, the NJC took the coordination and controlled standardisation of the so-called Electronic Judicial Process into its hands.

The system being idealised at the time was a unified system that could also consider different courts' particularities. The envisaged benefits were eliminating redundant procedures, a higher procedural speed, generating productivity indicators, comparison between judicial bodies, procedural communication between different bodies, better use of physical spaces, and the possibility of implementing telework. Mainly, the system was expected to help eradicate the stigma of procedural slowness and rationalise the use of resources (Barbosa, 2013; Moreira, 2015). Based on the system developed by the Federal Regional Court of the 5th Region (North-eastern Region of Brazil), the NJC took over to develop the system by itself, which would then be adopted by the entire country. Its main functionalities are (Tavares & Mota, 2016):

- Filing, numbering, validation, registration, and distribution of cases.
- Permitting hearings, subpoenas, payments, calculations, and issuance of certificates.
- Allowing the definition of procedural flows by the courts.
- Allowing set secrecy and confidentiality for documents and entire proceedings.
- Besides judicial servants, parties and attorneys can also produce new digital documents.
- Integration with institutions outside the Judiciary (Brazilian Bar Association, Public Prosecutor's Office and Office of Attorney General).

Subsequent updates allowed access to mobile phones and television proceedings (Rabelo, 2019). The latest version of the EJP was released in September 2022.

Officially, the system was instituted in 2013 by Resolution n. 185 of December 2013, which granted a gradual and planned deployment, determining all courts to develop a plan and a schedule

in compliance with its precepts (Hino & Cunha, 2020; Rover, 2019; Santanna & Limberger, 2018). It is worth mentioning there is a mandatory existence of face-to-face service rooms for lawyers and people over 60 years old (Rabelo, 2019). The EJP became the only system accepted in Brazil for creating, developing, contracting or implementing a system or electronic judicial process module. Anything else other than the EJP is prohibited for security and economic reasons.

Almost ten years after its official deployment, the EJP faces difficulties and severe criticisms, mainly from lawyers and Regional Bar Associations (Moreira, 2015). Although "despite the fact that the Brazilian Courts are governed by the same legal agenda and are meant to comply with similar procedures and rules, each court has its own identity, values and culture, leading it to develop different workflows, sometimes far removed from workflows addressing a similar process in another court" (Andrade & Joia, 2012, p. 541). Therefore, different platforms are still used among State Courts, Labour Courts, and Federal Courts (Santanna & Limberger, 2018). The state justice system uses eight electronic systems besides the EJP (Hino & Cunha, 2020). The idea of a single system has not yet been achieved. In 2020, the NJC, under pressure from some courts that resisted adopting the EJP, launched the National Digital Platform of Brazilian Judiciary (DataJud), affirming that EJP is the priority system for Brazilian courts but also allows the maintenance of other systems. These other court systems must meet three conditions: compliance with the interoperability platform, the possibility of collaborative development, and the availability of modules and evolutions in the National Platform (Conselho Nacional de Justiça, 2020).

Even with problems to be solved, the EJP brought undeniable and unprecedented progress to the justice system. One is the statistical data for the administration of justice (Santanna & Limberger, 2018). The DataJUd centralises and stores procedural data and metadata relating to all courts' (few) physical or electronic, public or secret proceedings. It allows information to be made available through a public API, safeguarding the secrecy and confidentiality of the information following procedural legislation and the General Data Protection Law (Conselho Nacional da Justiça - Brazil, 2023).

Data generated from standardisation and EJP actual use also permitted many Brazilian states to use Artificial Intelligence (AI) systems to enhance court performance. For example, the Federal District and Territories Court uses an application to assist in the classification and distribution of tax enforcement (Rabelo, 2019). Nowadays, there are 64 AI judicial tools in use or under development in Brazil (Salomão, 2020).

5. CONCLUSION

JS face important challenges to the deployment of IT due to the high complexity of enacting law and technology. Some countries failed or had less expected results for their judicial reform

projects. In this paper, we present the factors that enabled the deployment and real use of EJP in Brazil, where almost 100% of judicial proceedings are conducted electronically. We highlight normative framework supporting e-Justice and the role and importance of the leadership of NCJ to drive digital innovation in the Brazilian judiciary as main enablers of the EJP. We also described the process of EJP deployment from the initial decentralisation to the ideal of a common system until the establishment of the standards and the launch of DataJud. We conclude that Brazilian is a successful case considering IT real use. The enablers can help other countries in their way to the informatisation of JS. We suggest future research concerning the impacts of Brazilian e-Justice on efficiency and effectiveness, as IT doesn't necessarily mean a better justice administration.

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REFERENCES

- Albergaria Neto, J., & Lopes Júnior, N. de A. (2021). The Constitutional Principle of the Reasonable Duration of Proceedings and the Implementation of the Electronic Judicial Process as a Way of Ensuring celerity to disputes. *Revista Eletrônica Direito e Política*, 26(1), 129-157.
- Al-Naimat, O., Akiab, N., Al-Ahliyya, A.-D., Mufdi, M., & Maaqqbeh, F. (2021). Transition to e-Litigation as a mechanism to activate e-court in Jordan: an analytical study. *Journal of Legal, Ethical and Regulatory Issues*, 24(1).
- Andrade, A., & Joia, L. A. (2012). Organizational structure and ICT strategies in the Brazilian Judiciary System. *Government Information Quarterly*, 29(SUPPL. 1). <https://doi.org/10.1016/j.giq.2011.08.003>
- Andrade, A., Joia, L. A., & Kamlot, D. (2012). E-government in the judiciary system: Assessing the correlation between IT investment and the efficiency of courts of justice in Brazil. In *Handbook of Research on E-Government in Emerging Economies: Adoption, E-Participation, and Legal Frameworks*, IGI Global, 158-178- Doi: 10.4018/978-1-4666-0324-0.ch008
- Barbosa, A. J. R. M. (2013). O Processo Judicial Eletrônico como Instrumento de Concretização do Direito Fundamental à Celeridade da Prestação da Tutela Jurisdicional. *Revista Esmat, Palmas*, 5(6), 101–122.
- BRASIL. (2001, June 29). *Medida Provisória n. 2200 - Institui a Infra-Estrutura de Chaves Públicas Brasileira - ICP-Brasil, transforma o Instituto Nacional de Tecnologia da Informação em autarquia, e dá outras providências*. Diário Oficial Da União. https://www.planalto.gov.br/ccivil_03/mpv/antigas_2001/2200-2.htm
- BRASIL. (2004). *Pacto de Estado em Favor de um Judiciário mais Rápido e Republicano*. Diário Oficial Da União.
- Cerrillo, A. M., & Fabra, P. A. (2008). *E-Justice: Using Information and Communication Technologies in the Court System*, Hershey, New York.
- Conselho Nacional da Justiça - Brazil. (2023). *DATAJUD Base de Dados do Poder Judiciário*. <https://www.cnj.jus.br/sistemas/datajud/sobre/> (March 22, 2023).
- Conselho Nacional da Justiça - CNJ. (2022). *Justiça em Números 2022*. www.cnj.jus.br
- Conselho Nacional de Justiça. (2020). Resolução n. 335 de 29 de Setembro de 2020. Diário de Justiça (2020).
- Conselho Nacional de Justiça. (2023). *Painéis CNJ*. <https://www.cnj.jus.br/pesquisas-judiciarias/paineis-cnj/> (March 4, 2023).
- Conselho Nacional de Justiça - CNJ. (n.d.). Tabelas processuais unificadas. <https://www.cnj.jus.br/programas-e-acoess/tabela-processuais->

- Tavares, T. P., & Mota, M. F. (2016). Processo Judicial Eletrônico: Principais Mudanças Procedimentais Amparadas pelo Novo Processo Civil Brasileiro. *Interfaces Científicas - Direito*, 5(1), 81–94. Doi: 10.17564/2316-381x.2016v5n1p81-94
- Thornton, J. (2016). *Cost, Accuracy, and Subjective Fairness in Legal Information Technology: A Response to Technological Due Process Critics*. *New York University Law Review*, 91(6), 1821. <https://heinonline.org/HOL/License>
- Yu, J., & Xia, J. (2020). E-justice evaluation factors: The case of Smart Court of China. *Information Development*, (10). Doi: 10.1177/0266666920967387