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THE NATIONAL JUDICIAL COUNCIL (CNJ) AND THE CREATION OF DIGITAL PROCEDURAL PLATFORMS (PJe): METHODOLOGY FOR COMPARED RESEARCH OF JUDICIAL EFFICIENCY

O CONSELHO NACIONAL DE JUSTIÇA (CNJ) E A CRIAÇÃO DO PROCESSO JUDICIAL ELETRÔNICO (PJe): METODOLOGIA PARA A PESQUISA COMPARADA SOBRE A EFICIÊNCIA DO JUDICIÁRIO

Fabricio Ricardo de Limas Tomio[*]

Ilton Norberto Robl Filho[**]

Rafael dos Santos-Pinto[***]

ABSTRACT: The Brazilian federal constitution of 1988 affirmed the access to the judiciary as a fundamental right of the citizen. As national institutions at the time were considered to be too slow and inefficient for adequate and timely legal responses the judiciary arrived at the digital age with the goals of more ample access of the citizen to the courts and a more reasonable duration of the legal procedure. In the spirit of the constitutional mandate for a more accessible and faster judiciary a digital procedure law framework was created. The law determined the transition of the procedures of Brazilian courts from archaic masses of paper-based documents to digital databases that would encompass all legal decisions, party petitions and court acts. At first, the federal norms that instituted this framework though did not stipulate a centralized database or platform for the national judiciary. The profusion of several platforms with diverging degrees of implementation, access and efficiency was detrimental to the accessibility of the citizen and parties to the judiciary and thus violated the constitutional principles regarding the digital procedure. The National Council of Justice established in December 18th 2013 the obligation of all Brazilian Courts to use a specific centralized database (PJe). More recently a new national Civil Procedure Code was promulgated, bringing forth several new rules that regulate digital procedure and the digital procedure platforms. This paper aims to determine the methodological tools to analyze the Brazilian digital platforms in comparison with those of other countries and measure judicial efficiency.

KEYWORDS: Digital Access to the Judiciary. Digital Procedure. Empirical legal studies. Judicial Efficiency.

RESUMO: a Constituição Federal Brasileira de 1988 elencou o acesso ao Judiciário como direito fundamental do cidadão. Como as instituições nacionais da época eram consideradas demasiado morosas e ineficientes para conferir provimentos legais adequados e ágeis, o Judiciário chegou à era digital com os objetivos de um mais amplo acesso do cidadão aos tribunais e uma mais razoável duração do processo judicial. No espírito da disposição constitucional que exigiu um Judiciário mais acessível e ágil criou-se uma estrutura legal para o processo eletrônico. A lei determinou a

[*] Political Science PhD and Professor in Faculty of Law at Federal University of Paraná – Brazil. *E-mail*: f.tomio@yahoo.com.br

[**] Law PhD and Professor in Faculty of Law at Federal University of Paraná and Passo Fundo University – Brazil. *E-mail*: norbertorobl@gmail.com

[***] Master and PhD candidate at Federal University of Paraná – Brazil. *E-mail*: rafaelspinto00@gmail.com

transição dos procedimentos dos tribunais brasileiros de uma arcaica massa de documentos de papel para bancos de dados virtuais que englobariam todas as decisões judiciais, petições de partes e atos dos tribunais. Em um primeiro momento as leis federais que instituíram esta estrutura legal não estipularam um banco de dados ou plataforma centralizada para o Judiciário nacional. A profusão de várias plataformas com diversos graus de implementação, acesso e eficiência foram prejudiciais ao acesso dos cidadãos e partes ao Judiciário e, portanto, violaram os princípios constitucionais norteadores do processo eletrônico. O Conselho Nacional de Justiça estabeleceu, em 18 de dezembro de 2013, a obrigação de todos os tribunais brasileiros usarem uma só base de dados centralizada (PJe). Mais recentemente foi promulgado um novo Código de Processo Civil nacional, trazendo consigo novas regras que regulamentam o processo eletrônico e as plataformas processuais eletrônicas. Este trabalho visa determinar as ferramentas metodológicas para analisar as plataformas eletrônicas brasileiras em comparação com aquelas de outros países e medir sua eficiência judicial.

PALAVRAS-CHAVE: Acesso eletrônico ao Judiciário. Processo eletrônico. Pesquisa empírica sobre o Judiciário. Eficiência judicial.

1 INTRODUCTION[1]

The digital access to the judiciary is a right in construction throughout the world in general and in Brazil in specific. The established Brazilian legal practice still utilizes procedural registry, management and proceedings in the form of written documents. On the other hand, technological and digital advances allow for the building of new forms of legal procedures: the digital legal procedure, or e-justice.

In Brazil, especially after the promulgation of Law n. 11,416/2006, which established the framework of the digital procedure in Brazil, the digital access to the courts entered the debate of the legal community. This same law allowed that each state and federal court develop its own digital procedure platform.

The National Justice Council, created by the Reform of the Judiciary Act (Constitutional Amendment n. 45/2004) latter edited the Resolution n. 185 in December 18 2013, determining the adoption of a single and standard platform in all Brazilian courts. Furthermore, a new Civil Procedure Code (Law n°. 13,105/2015**)** was recently promulgated in Brazil. The new procedure code brought forth several new rules regarding digital procedure and digital procedure platforms, incentivizing, as a whole, litigation and procedural acts by digital means. This new Code, although, did not extensively regulate digital procedure, preferring rather to establish guiding principles and conferring to the National Judicial Council the power to regulate these systems.

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The objective of this paper is to present a methodology of analysis of the digital procedure platform adopted by the Brazilian judiciary in the Resolution n. 185/2013, with the goals of observing if this system allows for an adequate access to the courts and the promotion of a reasonable duration of legal procedure in Brazil.

This study comes to fruition in a moment when the Department of Judicial Researches of the National Judicial Council has begun a round of discussions with lawyers and academics over the most adequate method to analyze the positive points and necessary alterations to the unified digital judicial platform. A discussion, overall, made much more challenging since the recent promulgation of the new Civil Procedure Code.

This article is structured as follows. A discussion over the reform of the Brazilian judiciary is presented in section 2, centered in the creation and promotion of the fundamental right to a reasonable duration of legal procedure, analyzing the impact of judicializing politics and the amplification of the access to justice after the 1988 Federal Constitution. The reasons for the creation of the National Judicial Council are presented in section 3, alongside the decision of this Council for the construction and standardizing of e-justice procedure and the new provisions brought by the digital procedure norms of the new Code, pondering the challenges this new law brings to the implementation and measuring of digital platforms.

Finally, section 5 concludes this paper with the proposal of a method of analysis of the unified digital platform based in four structural axes.

2 THE PROBLEM OF THE JUDICIALIZATION OF POLITICS, ACCESS TO JUSTICE IN BRAZIL, REFORM OF BRAZILIAN JUDICIARY AND DIGITAL PROCESS

The reform of the Brazilian judiciary was established as a priority in the beginning of the first term of President Luiz Inácio Lula da Silva. In 2003 the Justice Ministry created the Bureau of the Reform in the Judiciary alongside the promulgation of the Constitutional amendment n. 45 – "Judicial Reform" – in 2003. This constitutional reform established in article 5, LXXVIII of the Brazilian Constitution the fundamental right to the reasonable duration of legal procedure alongside the means that guaranteed procedural brevity[2] as well as the creation of the Conselho Nacional de Justiça – CNJ (National Justice Council).[3]

[2] For an analysis of the construction of the human right to access to the judiciary in a timely matter, in comparative law, doctrine, jurisprudence, norms and treatises see CALHAO, Antônio Ernani Pedroso. *Justiça Célere e Eficiente*: uma questão de governança judicial. São Paulo: Ltr, 2010, p. 127-84. Also, on adequate judicial provisions in Brazil and the defense of the fundamental right to a reasonable duration of legal procedures before Constitutional Amendment n. 45, see MARINONI, Luiz Guilherme; ARENHART, Sérgio Cruz. *Manual do Processo de Conhecimento*: a Tutela

In Brazil the debate over judicial reform pertains to, amongst other phenomena, the extension of the guarantees of rights by means of the effects of judicializing politics and the expansion of the access to the judiciary. In summary, the introduction of new and numerous guarantees in the Constitutional text brought in consequence a greater and more active judicial demand of these rights. The process of judicializing politics begins in Brazil especially after the promulgation of the 1988 Federal Constitution, and is a global trend in democratic welfare States. In addition, the judicializing of politics represents more than mere judicial activism.

In broad terms, activism may be conceptualized as any act of the Judge that goes beyond a mechanic interpretation that seeks the manifestation of the "will of the lawmaker". On the other hand, the judicializing of politics is a more complex process that involves the attribution of new powers to the judiciary and a greater demand over themes that, originally, were attributed to the executive and legislative branches in traditional democratic practices.

Vianna, Burgos and Salles (2007, p. 39) point to three important themes for the judicializing of politics in contemporary democratic welfare States: international courts; post-war constitutionalism; and the welfare State. The fist theme pertains to the creation of international courts, especially those made to sanction human rights violations.

Brazil has not been unfazed by this phenomenon. After the 1988 Federal Constitution important international human rights treatises were ratified and incorporated in national law. One example was the American Convention on Human Rights, ratified in 1992. In December 10th 1998, as dictated by the Convention, Brazil recognized interamerican jurisdiction over cases brought by member-states and by the Interamerican Commission on Human Rights. The Court generated important sentences against Brazil, the first of which was the Ximenes Lopes vs. Brazil case, from July 4th 2006. The case pertained to a Brazilian citizen that was institutionalized in a psychiatric facility and died after four days of internment.[4]

Jurisdicional através do Processo de Conhecimento. 2. ed. São Paulo: RT, 2003, p. 70-4. On the importance of adequate administration of justice and the concretization of this right, see ARRUDA, Samuel Miranda. O Direito Fundamental à Razoável Duração do Processo. In: CANOTILHO, José Joaquim Gomes et al. (Coord.). *Comentários à Constituição do Brasil*. São Paulo: Saraiva, 2013, p. 509-10.

[3] On the motivation for the creation of the National Judicial Council and its analysis see ROBL FILHO, Ilton Norberto. *Conselho Nacional de Justiça*: Estado Democrático de Direito e Accountability. São Paulo: Saraiva, 2013; see also TOMIO, Fabricio Ricardo de Limas; ROBL FILHO, Ilton Norberto. Accountability e Independência Judiciais: uma Análise da Competência do Conselho Nacional de Justiça (CNJ). *Revista de Sociologia e Política*, v. 21, p. 29-46, 2013a.

[4] The Court, in this case, confirmed the violation to the rights of live, physical integrity and judicial guaranties and protection. It is important to note that it is only possible to take action in the regional system of protection of Human Rights, as well as in the global system, after seeking the protection of national systems. As to this first case: see LAPA, Fernanda Brandão; PAUL, Chrystiane de Castro Benatto. A primeira condenação do Brasil perante a Corte Interamericana de Direitos Humanos. *Revista de Direito do Cesusc*. N. 2, jan-jun, p. 87-107, 2007. About the case Gomes Lund and others vs. Brazil, pertaining to the Araguaia guerilla, in November 24th 2010 the Court declared that

The second structural theme that brought forth the judicializing of politics in contemporary democratic welfare States was the defense and promotion of the values of constitutional democracy after the Second World War. The establishment of a model of constitutional democracy in Brazil and the role of control of legality and constitutionality ascribed to magistrates – taking in account institutional and decisional independence of the courts – implemented the judicializing of politics. As any part in litigation may request the application of the Constitution in the concrete case (and several social groups present actions of concentrated and abstract judicial control of constitutionality) the judicializing of politics became an inescapable fact.

Vianna, Burgo e Salles (2007, p. 42) correctly state that there is an incorporation of civil society in the community of interprets of the constitution. This is an important, as well as partially true claim. By means of class actions such as the *Mandado de Segurança Coletivo* (Collective Writ of Mandamus), *Ação Civil Pública* (Civil Class Action) and actions of concentrated constitutional control, societies and social groups may present their struggles in legal terms and propose to magistrates their constitutional interpretation. In this sense, it is true that civil society entered the community of interpreters. It is undeniable, although, that the main constitutional interprets, due to their power to impose their decisions, are the courts, a collective of unelected state agents.

The third theme of judicializing politics is observed in the establishment of democratic welfare States and the revision of the promise of this State. Relevant social rights such as to education, work, health, habitation, safety, rest and social security were introduced in constitutions worldwide especially in the 20th Century. Rights in general, and especially social rights, only come to fruition trough public policies. Public policies are discussed by civil society and State agents, and their implementation is coordinated especially by elected State agents of the legislative and executive branch and by bureaucrats of the executive branch.

Once registered these brief considerations over the phenomenon of judicializing politics and its various themes, it is furthermore important to note that this process is a choice made by political agents and civil society, all of whom allow the judiciary to augment its political participation. Constitutional norms that authorize judicializing politics and the constant use of the judiciary by citizens, social groups and State agents are causes of this phenomenon.

There are two main arguments for a more intense political role for the judiciary: i) the guarantee of rights; and ii) the fragmentation of political power and consequent difficulty in

the Brazilian amnesty law is incompatible with the Convention and that several instances of Human Rights violations were present, establishing various obligations to the Brazilian State (adaptation of internal laws, criminal prosecution over the Araguaia Guerrilla, civil torts for the affected, amongst others). See OEA. Organização dos Estados Americanos. *Corte Interamericana de Direitos Humanos*. Gomes Lund e Outros vs. Brasil. San Jose, 24 nov. 2010. Available at: <http://www.conjur.com.br/dl/sentenca-comissao-internacional.pdf>. Date accessed: 21 Jan. 2012.

decision-making (FEREJOHN, 2002, p. 55). Aside the judicializing of politics and the politicizing of the judiciary, after the 1988 Constitution there was an explosion of legal actions brought to the courts.[5] These cases are responsible for a greater social relevance of the judiciary, and are pointed to as important dimensions of the "crises" of the judiciary.

As to the greater demand of the courts, there are an ever-increasing number of cases and legal measures. Several factors that influence this problem are: i) industrialization and urbanization; ii) stable and regular workings of the judiciary; iii) the existence and knowledge of rights; iv) trust of the legal system (SADEK, 2004, p. 85).

It should also be noted that there were severe problems over the access to the judiciary for most of the population before the 1988 Federal Constitution: i) economic impossibility in paying court costs and lawyers; ii) predominance of single party litigation opposed to class and collective actions; iii) inadequate or inexistent legal aids and defense of vulnerable segments.[6] All these structural problems acted to the accumulation judicial demands and cases.

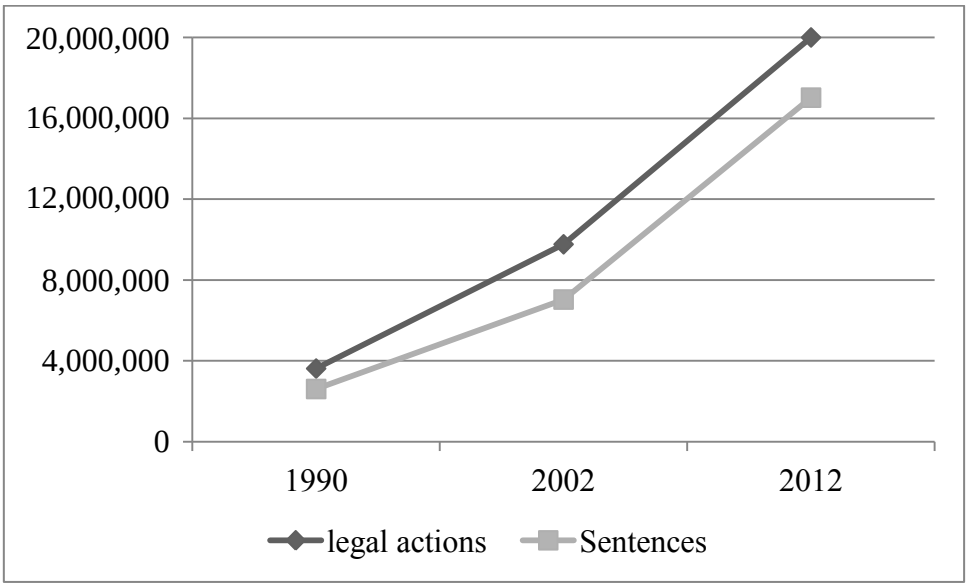
With de advent of the 1988 Constitution: i) constitutional guarantees were expanded and imposed a duty for lawmakers to promulgate norms over important themes (family, consumers, strikes, amongst others); ii) public defenders in district, state and federal levels were instituted for the needy; iii) collective and class procedure was consolidated, beginning with the Civil Public Action (*Ação Civil Pública*) of 1985 and amplified in the Consumer Defense Code (*Código de Defesa do Consumidor*) of 1990; iv) the workings of the judiciary became more stable and regular, as well as assuming total behavioral and institutional autonomy. These elements contributed to a great increase in demands proposed in the courts.

[5] About the process of the judicializing, after the 1988 Constitution, Carvalho analyzes how the increase in the number of bodies which could legitimately apply for judicial review, and the independent power of the judiciary, increase in the extent to which the Federal Supreme Court intervened in the world of politics (see CARVALHO, Ernani. Judicialização da política no Brasil: controlo de constitucionalidade e racionalidade política. *Análise Social*, Lisboa, n. 191, abr. 2009). Tomio & Robl demonstrate that given the number of legitimate, the massive introduction of judicialization indicates that the control of constitutionality is used by minorities as signaling for political positioning and maximizing future electoral opportunities (see TOMIO, Fabricio Ricardo de Limas; ROBL FILHO, Ilton Norberto. Empirical Legal Research: Teoria e Metodologia para a Abordagem do Processo Decisório de Controle de Constitucionalidade do STF. In: VESTENA, Carolina Alves; SIQUEIRA, Gustavo Silveira (Org.). *Direito e Experiências Jurídicas*. Belo Horizonte: Arraes/CAPES, 2013b, v. 2, p. 96-117). Also, on the admissibility of preconstitutional law review in the Federal Supreme Court, see PIRES, Teresinha Inês Teles. Os direitos individuais e a revisão do direito pré-constitucional brasileiro em sede de controle concentrado de constitucionalidade. *Revista da Faculdade de Direito UFPR*, v. 59, n. 3, 2014.

[6] For a detailed analysis of the reasons for the concentration of judicial conflicts in the industrial and urbanized Brazilian society, see VIANNA, Luiz Werneck; BURGOS, Marcelo Baumann; SALLES, Paula Martins. Dezessete Anos de Judicialização da Política. *Tempo social*: revista de sociologia da USP. V. 19, n. 2, p. 39-85, 2007, p. 42-3, and SADEK, Maria Tereza. Judiciário: Mudanças e Reformas. *USP- Estudos avançados*. V. 18, n. 51, p. 91-92, maio/ago. 2004, p. 85-6.

A particular data may illustrate this increase in the demand for justice (see Graph 1). In 1990, 3,617,064 legal actions were taken in lower courts and only 2,411,847 had sentences. In 2002, however, 9,764,616 were presented and 7,506,697 had final sentences (SADEK, 2004, p. 87). This period of time saw a 270% increase in actions brought to the courts. In 2012 the number of actions was further augmented. Statistics from the National Justice Council point to 20,040,039 new cases only in the lower state courts, and 17,021,163 had sentences (CNJ, 2013, p. 313). The amplification of measures taken in the judiciary was counteracted by a search for more expedient and efficient legal procedures and proceedings.[7]

Graph 1 Legal actions and sentences in lower courts (1990, 2002 and 2012)



Source: Sadek (2004, p. 87); CNJ (2013, p. 313).

Several reforms in the procedural law were made with the goal of incrementing procedural expediency.[8] WAMBIER and TALAMINI (2015, p. 206) stated that procedural norms progressively turned from a "tolerance" of new uses of technology by the courts to a clear posture of promoting of the digitalization of legal procedure. Comparing the actions initiated and the sentences proffered in 2002 we arrive at the proportion of 77% of legal demands dully answered.

[7] Efficiency has long been sought after. For example, the introduction of concentrated constitutional control in Brazilian law in 1965 had the goal of augmenting judicial efficiency, as the Supreme Federal Court could tackle questions over the constitutionality in lower courts.

[8] As examples, Law n. 8,952/1994, established provisional sentences, and Law n. 10,444/2002, for anticipated provisions. These measures came to light in the spirit of reviewing and simplification of the law and the procedure, as had been done in other countries. See MOHAMED, Duryana bt. Electronic court system (E-Court): Development and implementation in the Malaysian Courts and other jurisdictions. *The Law Review*, 2011, p. 485-6.

As such, depending of the jurisdiction, in 2002 it would require five to eight years without new demands for all actions to be sentenced (SADEK, 2004, p. 94).

The search for a more expedient procedure in part could be accomplished with the alteration of infra-constitutional laws and the adoption, for example, of laws like Law n. 11,419/2006, that instituted the Digital Procedure, as well as by the action of the National Justice Council. Recently the new Civil Procedural Code added its own digital procedure norms, innovating in some aspects, but maintaining specialized norms and the National Justice Council in the forefront of implementation and interoperability of the national platforms (articles 193 and 196 of law n. 13,105/2015).

Law n. 11,419/2006, as such, remains the first and foremost framework for e-justice and digital procedure in Brazil. This law instituted the first systematic approach to digital petitions and procedure. The provisions of the law were divided only in three sections, the transition to e-justice, the electronic communication of court acts, and electronic procedures. All provisions were general and had the goal of laying a framework for the various e-justice platforms and systems.[9]

3 DIGITAL PROCEDURAL PLATFORMS, NEW CIVIL PROCEDURAL CODE AND NATIONAL JUDICIAL COUNCIL

In the last decade, various changes in the judicial branch may be attributed to the action of the National Judicial Council (CNJ) and the implementation of several of its directives. The National Judicial Council is the office responsible for the accountability over the courts, magistrates, judiciary public servants and delegated services.

With the aim of achieving the principles of publicity, efficiency, transparency and statistical information compliance (also pertaining to the obligation of the Council itself to elaborate every six months statistical reports of the judiciary) the System of Statistics of the Judiciary (SIESPJ) was established by the Resolution n. 76/09. In this manner, all courts have the duty to inform the Council statistical data over: i) financing, donations and spending; ii) quantity of in-court actions (work-load, exceeding demand, quantity of appeals, and reforms of decisions); iii) access to the judiciary; iv) demand profile (as articles 14, I, II, III and IV of Resolution 76/09).

[9] The pilot programs of the new e-justice venture were "fiscal execution" cases: judicial demands of the State against debtors for the purposes of compulsory payment and asset seizures. See BUENO, Tânia C. D. et al. *E-courts in Brazil*: Conceptual model for entirely electronic court process. 18th BILETA Conference, 2003. Available at: <http://www.bileta.ac.uk/content/files/conference%20papers/2003/E-Courts%20in%20Brazil%20-%20Conceptual%20Model%20for%20Entirely%20Electronic%20Court%20Process.pdf>. Date accessed: 20 Mar. 2014. These measures came to fruition with the examples of success of e-justice reform in enforcement procedures in several countries. See LUPOI, Michele Angelo. Enforcement of a claim with the support of the new information technology. *Revista de Processo*, p. 321-353, n. 193, 2011, p. 341-9.

The National Judicial Council also incentivized the creation and development of digital procedures in Brazil, as the digital format would have profound impact over several dimensions of the procedural system as a hole, such as the temporal dimension, contributing to a greater celerity, transparency, clearer rules of access, administration and information checking, as well as a measure of universality, making the procedural system much more democratic and accessible for the ordinary citizen.

All Brazilian courts had, in 2013, their own digital platforms for case consultation and information. A good number also had digital petition systems. Some already had implemented the "digital procedure". Even so, as is natural in the implementation of any new system, problems arose from this ample policy of creation of efficient digital systems. The growing number of institutions that digitized is proportional to the plurality of adopted systems in each sphere of procedural jurisdiction.

Although these systems of information research, digital petition and digital procedure in Brazilian courts were autonomous and, as a rule, singular, they did not communicate with each other. The diversity of systems caused distortions, as for example between the search mechanism of case consultation in the city of Curitiba, Paraná state (http://www.assejepar.com.br), that, as a rule, did not even present the content of the sentences, in contrast to the Regional Labor Court of the 23rd region (http://www.trt23.jus.br), in which all decisions, acts, sentences and votes were fully presented.

It became common for the web-site of the Curitiba Court to present the information "not informed", denoting an inexplicable gap between the procedural sequence of acts (and its control by the court) and the information open to the public.

Rosa, Teixeira and Pinto (2013, p. 244), well define the problem:

> The ICT revolution in Brazilian Courts can be divided into three phases: individual initiatives, computerization and virtualization. Individual initiatives are carried by each court member, and relate to the identification and usage of productivity tools (like text processors or spreadsheet editors) that each member best identifies to carry out its functions. With this approach, each court member created his own procedural criteria and taxonomy for each task, which resulted in a higher fragmentation of work inside the same court division.

In this resided the problem: the lack of a single and uniform standard for procedural control platforms.[10] Uniform systems have strong advantages, as for example, may be observed in

[10] Alexandre Atheniense is correct in affirming that "[...] some time ago there would be a great chasm between the rules implemented in the first and latter years, creating a great difficulty for the citizens and requiring caution in monitoring the procedures that will gradually be instated in each instance of the judiciary. There will be courts without information and others with precarious systems, and still those with latest generation systems in full function. Unfortunately it will

the fact that presidents Barack Obama, Dilma Rousseff and the Queen of England all share a same technological microblog platform to communicate with citizens: Twitter.

Striving for efficiency in communication various world leaders chose Twitter as their primary communication medium, a private, autonomous and free platform. Similarly, there are laudable initiatives such as the partnership of the Brazilian Federal Supreme Court, alongside the official medial channel TV Justiça (Justice TV) with YouTube to divulge its content (http://www.youtube.com/user/STF). The Federal Supreme Court opted to use a free, universally recognizable digital channel rather than creating one of its own.

Thus, correctly, the National Judicial Council determined in Resolution n. 185 the adoption of a single digital standard based on a specific platform already in existence (PJe) that should be used by all Brazilian judicial institutions. With a single computer program model the centralization is easily obtained.

Before the determination of a single standard, for example, private corporations charged for software that could "capture" case information in several web-sites of courts, to facilitate the work of law firms. This service may soon be unnecessary with the implementation of a single platform of case control. In other words a standard software model, used by all courts, is necessary to the adequate communication of information.

The new Civil Procedural Code fortified both the obligation of the courts to institute and maintain inter-operational systems and platforms that permit easy access of the parties, as well as the role of the National Justice Council in regulating these digital platforms. First, the 2015 Civil Procedural Code allows that procedural acts be totally or partially digital (article 193)[11]. These digital acts must be fully public and accessible via internet (article 197)[12], and permit full access of

fall on the user to train and learn each of these systems" (ATHENIENSE, Alexandre. *Comentários à Lei 11.419/2006 e as Práticas Processuais por meio Eletrônico nos Tribunais Brasileiros.* Curitiba: Juruá, 2010, p. 82).

[11] "Art. 193 Os atos processuais podem ser total ou parcialmente digitais, de forma a permitir que sejam produzidos, comunicados, armazenados e validados por meio eletrônico, na forma da lei. (Procedural acts may be total or partially digital, as they may be produced, communicated, stored and validated electronically, as established in law)".

[12] "Art. 197. Os tribunais divulgarão as informações constantes de seu sistema de automação em página própria na rede mundial de computadores, gozando a divulgação de presunção de veracidade e confiabilidade. (The courts shall divulge information stored in their automation systems in a web-page in the internet, and this information will have presumption of veracity and trust)".

all citizens except in cases of legal secrecy (article 195)[13]. All courts must maintain, free of charge, equipment for the use of parties that permit access to the digital platforms (article 198)[14].

Aside from these structural norms, the new Civil Procedural Code does not specify rules for the digital procedure and platforms themselves. Rather, the Code provides guiding principles and enshrines the power of the National Justice Council in regulating these platforms and guaranteeing the compatibility of its systems (article 196)[15].

The principles of digital procedural platforms, as established in article 194 are: a) continuous access to the platform; b) independence of the platform; c) accessibility of the systems; d) interoperability of the systems, services, data and information. The continuous access and independence of the platforms guarantee that parties will be able to petition and consult court documents at any time and with use of any hardware (MARCACINI, 2015, p. 606-7). The accessibility and interoperability of the systems require courts to provide digital platforms that permit the exchange of data and information amongst themselves, and the equal implementation of new technologies in all systems (MARCACINI, 2015, p. 607-8).

In summary, the new Civil Procedural Code introduced new guiding principles to the digital procedural platforms but chose not to regulate them in minutia. This specific regulation was left to specialized laws, such as Law n. 11,419/2006, and enshrined the the power of the National Justice Council to regulate and incorporate new technology to these procedural platforms.

4 DIGITAL PROCEDURE AND COMPARED METHODOLOGY

The implementation of e-justice in all courts aims to better legal action as to, primordially, make more expedite and effective. On the other hand the procedural unification aims to build a

[13] "Art. 195. O registro de ato processual eletrônico deverá ser feito em padrões abertos, que atenderão aos requisitos de autenticidade, integridade, temporalidade, não repúdio, conservação e, nos casos que tramitem em segredo de justiça, confidencialidade, observada a infraestrutura de chaves públicas unificada nacionalmente, nos termos da lei. (The registration of the digital procedural act must be done in open sources, which accomplish the requisites of authenticity, integrity, temporality, non-refusal, conservation and, in the case of legal secrecy, confidentiality, observe the infrastructure of unified public keys)".

[14] "Art. 198. As unidades do Poder Judiciário deverão manter gratuitamente, à disposição dos interessados, equipamentos necessários à prática de atos processuais e à consulta e ao acesso ao sistema e aos documentos dele constantes. (All units of the Judiciary shall maintain free of charge, at the disposition of all interested parties, equipment necessary to the practice of procedural acts and the consultation and access to the systems and its documents)".

[15] "Art. 196. Compete ao Conselho Nacional de Justiça e, supletivamente, aos tribunais, regulamentar a prática e a comunicação oficial de atos processuais por meio eletrônico e velar pela compatibilidade dos sistemas, disciplinando a incorporação progressiva de novos avanços tecnológicos e editando, para esse fim, os atos que forem necessários, respeitadas as normas fundamentais deste Código. (It is the role of the National Justice Council, and supplementary of the courts, to regulate the practice and official communication of procedural acts by electronic means, and to guarantee the compatibility of the systems, regulating the progressive incorporation of new technological advances and editing, for this end, the necessary provisions, respecting the fundamental norms of this Code)".

unified national procedure that allows citizens and lawyers to use a certain system more efficiently, bringing forth the benefits of a more expedite and just legal system, that respects the democratic State.

Thus, the studies on the digital procedure in Brazil must establish criteria and adequate methodologies to measure the positive and negative aspects of the PJe Unified platform, as well as to propose alterations in the platform.[16] In this manner the methodology is presented for the study of (compared) efficiency of the PJe, in the phases of collection, analysis and critique of the data.[17]

4.1 MACROECONOMIC COMPARISON AND INDEXES OF THE BRAZILIAN JUDICIAL SYSTEM

The comparative study, taking in consideration the differences between each country and judicial system, might allow for, based on data from the National Judicial Council, CEPEJ (European Commission for the Efficiency of Justice), CEJA / JSCA (Centro de Estudos de Justiça das Américas / Justice Studies Center of the Americas) and BJS (Bureau of Judicial Statistics), the following indexes (Brazilian and international of the last decade), to take dimension of the capacity of the Brazilian judiciary in answering the demands for an expedite, efficient and adequate jurisdiction for the effectiveness of constitutional and democratic guarantees: I) expenses of the judiciary (budget); II) Human resources (magistrates, staff, auxiliary services, attorney's office, public defenders); III) Demand of jurisdiction (new cases per inhabitant and magistrate, overflow index and resolution index).

4.2 THE COLLECTION AND DESCRIPTION OF THE DIGITAL SYSTEMS AND ITS INSTITUTIONAL, TECHNICAL AND HUMAN COMPONENTS

In this phase, beginning on the collective regulatory instructions of the National Judiciary council (resolutions) and the digital platform PJe, indexes will be stipulated that will allow for the

[16] Some reflections on the methodology of analysis of the electronic procedure were versed in SERBENA, Cesar Antonio. Interfaces atuais entre a E-Justiça e a Q-Justiça no Brasil. *Revista de Sociologia e Política*, v. 21, p. 47-56, 2013.

[17] There are other studies that investigated similar questions, only in a more directed and less comprehensive manner. One such study (ECKHARD, Gustavo André; SANTOS, Clezio Saldanha dos. Democracia e acesso à justiça no processo eletrônico. *Direito, Estado e Sociedade*. Rio de Janeiro, n. 34, p. 68-88, 2009), sought to measure user satisfaction with the system. Forms were sent to all registered users with the simple questions of if the system was sufficiently fast, accessible to citizens, practical and adequate for the judicial demands. For other works that measure the success of e-justice systems, see AGRIFOGLIO, Rocco; LEPORE, Luigi; METALLO, Concetta. Measuring the success of E-Justice: A validation of DeLone and McLean Model. In: SPAGNOLETTI, Paolo. *Organizational Change and information Systems*. New York: Springer, 2013, p. 86 et seq.) and CARBONI, Nadia; VELICOGNA, Marco. Electronic Data Exchange within European Justice: A Good Opportunity? *International Journal for Court Administration*, [S.l.], v. 4, n. 3, p. 104-120, dec. 2012. ISSN 2156-7964. Available at: <http://www.iacajournal.org/index.php/ijca/article/view/URN%3ANBN%3ANL%3AUI%3A10-1-115926>. Date accessed: 20 Mar. 2014, p. 4-6.

measurement of: the efficacy of imposition of the PJe to the courts (measured by adoption quota between 2010-2013); the operational capacity of the system developed by the CNJ (measured by the response of its operators, court workers, magistrates and lawyers that make use of the platform); the subjective aspects and expectations of implementation of a expedite access to jurisdiction by adhesion to PJe.

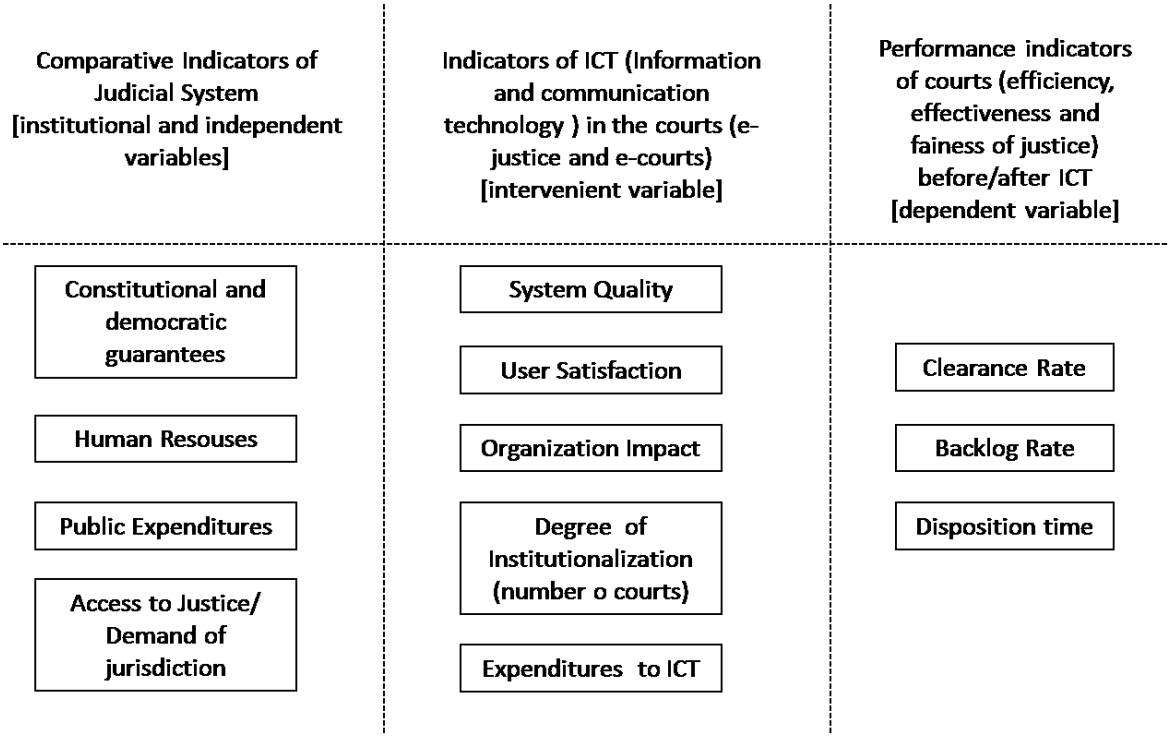
4.3 CATALOGING, ANALYSIS AND COMPARISON AND EVALUATION OF THE OPERATION OF THE SYSTEM (INDEX OF DIGITAL PROCEDURES AND MEASUREMENT OF THE EFFICIENCY OF THE IMPLEMENTATION OF THE DIGITAL PROCEDURE)

This stage centers on the contrast of a (national and international) comparative index of the PJe with those of other digital systems existent in Brazilian courts before the unification by the National Council in December 18th 2013, as well as to similar digital reforms implemented in other countries (taking data from CEPEJ – European Commission for the Efficiency of Justice, CEJA – Justice Studies Center of the Americas and BJS – Bureau of Justice Statistics).

In Brazil the index of digital procedure was created by resolution n. 76/2009 of the National Judicial Council, as to measure the level of digital proceedings of the courts. The index is obtained by the number of the total and new digital cases in the first and second judicial instances, as well as appeals chambers and special courts. In this manner, the index will pertain to digital cases and not the total existent caseload.

The compatibility of data will be taken in contrast to the efficacy indexes (Clearance Rate – the number of resolved cases are divided by the number of incoming cases; Backlog Rate – effectiveness of the court at a time, taking into account the total number of cases that entered, downloaded and stock cases pending at the end of the period; Disposition time – the estimated time that is needed to bring a case to an end) from 2010 onwards, taking in account the implementation effects of digital platforms in other legal systems (see Figure 1).

Figure 1 Indicators and Variables[18]



Digital procedure indexes of court cases allow for the observation of the level of adherence of the Brazilian judiciary to the new computer technologies and the adoption of current-edge procedural methodologies of litigious cases. The European Commission for the Efficiency of Justice (CEPEJ), a branch of the European Council, in its 4th report (data from 2008, 2010 and 2012), begun a research to ascertain the stages of digital reform in its member-states, as well as established a comparative panorama of the situation of these countries.

The comparing of Brazilian, American and European data of digital reform and efficiency allows for the comprehension of how the implementation of the digital procedure answers the demand for a more rapid judicial response that is also compatible with the principles of justice in democratic welfare States.

4.4 CRITICAL AND ONTOLOGICAL EVALUATION OF THE EFFECTS OF INFORMATION OF BRAZILIAN JURISDICTION AND IMPLEMENTATION OF PJe

The evaluation and production of a critical diagnostic aims to reflect over the capacity and implementation of the PJe and of the Brazilian judiciary to respond to the demands for an efficient

[18] Methodology created for the purposes of this investigation.

jurisdiction that is also adequate to the effectiveness of constitutional and democratic guarantees. The premise is that the uniform treatment of control, access and petition generates positive impacts to lawyers (prescriptive reflection) and to users/citizens (descriptive reflection). This would allow for a simpler workload for lawyers and judges and facilitates access of the citizen to legal and case information. It is clear that these goals would make for a simpler day-to-day law practice and allow for a faster legal procedure. The challenge for the transparency and universal application of digital procedural platforms in Brazil is the availability of a data-transfer network that offers accessible prices and reasonable speeds of data traffic.

5 FINAL CONSIDERATIONS

In the digital age, most citizens tend to have access to digital internet connected resources.[19] Virtually all State bureaus maintain digital databases and procedures. The judiciary is no exception. Digital databases and platforms give singular opportunities for lawyers and citizens to have immediate and expedite access to legal, case and procedural information. Courts and judges also have their workload simplified by digital resources.

It is imperative, though, that the efficiency brought by new technologies are counterbalanced by constitutional principles and guarantees of due process and fundamental rights. In this manner a centralized, single platform, seems, at face value, the most efficient and secure implementation of digital methodologies.

The fundamental question proposed is how to evaluate if this centralized, universal model, is actually the most adequate, taking in account the specific needs and characteristics of the Brazilian legal system. The proposed method of analysis aims to answerer this question, evaluate the current implemented system and suggest alterations and alternatives.

In this manner the proposed methodology will employ comparative indicators of Judicial Systems along with Indicators of ICT and Performance Indicators of the Courts, that conjugated in a comprehensive analysis will allow for a global description and critique of the e-justice system in implementation in Brazil.

[19] For an analysis of "information and technology poverty" and the prospects of digital access for democratic and political purposes see WILHELM, Anthony G. *Democracy in the Digital Age*: Chalanges to Political Life in Cyberspace. Livro digital: Taylor and Francis e-library, New York, 2000. Available at: <http://books.google.com.br/books?hl=ptBR&lr=&id=6eKSAgAAQBAJ&oi=fnd&pg=PP1&dq=digital+age&ots=-MlmZLOawX&sig=X3dMi3tl4kIr_NMGsKQu6VE0xuU#v=onepage&q=digital%20age&f=false>. Date accessed: 20 Mar. 2014.

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THE NATIONAL JUDICIAL COUNCIL (CNJ) AND THE CREATION OF DIGITAL PROCEDURAL PLATFORMS (PJe): METHODOLOGY FOR COMPARED RESEARCH OF JUDICIAL EFFICIENCY

ABSTRACT: The Brazilian federal constitution of 1988 affirmed the access to the judiciary as a fundamental right of the citizen. As national institutions at the time were considered to be too slow and inefficient for adequate and timely legal responses the judiciary arrived at the digital age with the goals of more ample access of the citizen to the courts and a more reasonable duration of the legal procedure. In the spirit of the constitutional mandate for a more accessible and faster judiciary a digital procedure law framework was created. The law determined the transition of the procedures of Brazilian courts from archaic masses of paper-based documents to digital databases that would encompass all legal decisions, party petitions and court acts. At first, the federal norms that instituted this framework though did not stipulate a centralized database or platform for the national judiciary. The profusion of several platforms with diverging degrees of implementation, access and efficiency was detrimental to the accessibility of the citizen and parties to the judiciary and thus violated the constitutional principles regarding the digital procedure. The National Council of Justice established in December 18th 2013 the obligation of all Brazilian Courts to use a specific centralized database (PJe). More recently a new national Civil Procedure Code was promulgated, bringing forth several new rules that regulate digital procedure and the digital procedure platforms. This paper aims to determine the methodological tools to analyze the Brazilian digital platforms in comparison with those of other countries and measure judicial efficiency.

KEYWORDS: Digital Access to the Judiciary. Digital Procedure. Empirical legal studies. Judicial Efficiency.

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