

The Electronic Process in the Brazilian Judicial System: Much More Than an Option; It Is a Solution

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Introduction

First, it is important to mention that I participated in this conference not only as a Brazilian federal judge who has experience with the development and use of cyberjustice, but also as a student in the master's program of the Université de Montréal, which provided me with an opportunity for cultural immersion and extensive research concerning the use of technology in courts as a means to enhance access to justice and to accelerate its delivery.

When I graduated from law school at the University of Brasília, in 1985, I first started working at the Faculty of Law, and a few years later (1987), I became a lawyer for the university. Arriving at work, I was given a traditional 1940-model Remington typewriter to write drafts of my opinions and petitions that would later be transferred by an assistant to better quality paper using an electric typewriter. Soon enough, aiming for celerity, I gained the right to use an XP computer and a matrix printer so that the files would not pile up on my desk for too long. The use of technology to enhance the development of legal activities has always been part of my beliefs for the future.

Everyone who is involved in making access to justice a reality for all individuals dreams of wide-open doors leading to timely and fair justice. And cyberjustice has been included as a possible path to achieve this goal.

Limited to the purpose of the conference and based on our experience in Brazil,¹ I want to share my conviction that there is no way to opt out of the technological revolution without the risk of paying a high price for being left out of the globalized world, since it has been a long time since humans could stay away from technology and still lead an integrated life.

Information and communication technology has revolutionized our lives, causing dependency on many different levels. Some examples include systems related to banking,² transportation, communications, health diagnosis and cure research, information, education, leisure, development of sports techniques, personal and commercial relations, and conflict resolution.

In the digital and globalized era, one cannot think of development or democratization of rights without considering the new configuration of social relations. For the judiciary, it is a challenging moment that invites us to review traditional formats and, with this transformation, improve access to and delivery of justice. Advancements should not be limited to procedural innovations, or else an important opportunity for integrating new concepts will be missed.³

The Brazilian minister of justice, Jose Cardozo, emphasized that computerizing the process of delivering justice is imperative to resolving many of the legal problems faced by the Brazilian judiciary. The implementation of electronic processes certainly confers more celerity, accessibility, and efficiency to the judicial system.⁴

Brazilian Justice in Numbers

Time and distance are new concepts in an internet-based society. Hence, if there are complaints about the tardiness of judicial decisions in a paper-based world, it is undeniable that the celerity which citizens could expect from the judiciary can be increased in an environment where research, communication, and decisions can be provided in shorter time frames, saving time and money.

In order to understand the use of cyberjustice in Brazil, it is important to take into consideration the structure of the judicial branch and the administrative autonomy of the courts. An autonomous and divided judicial system, with different specializations and levels, certainly faces some difficulties in developing solutions that will be uniform and meet the needs of all stakeholders.

The macro-organizational structure of the Brazilian judiciary system is established by article 92 of the Brazilian Constitution:

- I – Supreme Federal Court
- I-A – National Council of Justice
- II – Superior Court of Justice
- III – Federal Regional Courts and the Federal Judges
- IV – Labour Courts and Judges
- V – Electoral Courts and Judges
- VI – Military Courts and Judges
- VII – Courts and Judges of the states, of the Federal District and of the territories

Besides the Superior Court of Justice, there are three other superior courts: the Superior Labour Court (Article 111, I); the Superior Electoral Court (Article 118, I); and the Superior Military Court (Article 118, I). The federal justice system has five Federal Regional Courts (of appeals) responsible for all 26 states and a single federal district, and 27 federal judiciary sections.⁵ The labour justice system has 24 Regional Labour Courts (of appeal), the electoral justice system has 27 Regional Electoral Courts (of appeal), and each of the 26 states of the federation and the Federal District has a Court of Justice.

The size of the Brazilian problem is reflected in the numbers. Since 2004, the Brazilian National Council of Justice has been presenting national statistics to inform the general public and identify challenges. Submitting this data to other institutions, to academic analyses, and to public evaluation is considered as a way to build shared solutions that may lead to the construction of a more fair society and favour the reduction of inequalities.

The Justice by the Numbers 2013/2014 revealed last week that in 2013, 95.14 million cases were being processed in Brazilian courts,⁶ among which 70% corresponded to cases remaining from previous years (66.8 million) and 30% were new cases (28.6 million). It is important to mention that 16,429 judges were in charge of settling these disputes.

Systems Developed for Brazilian Courts

Every day, technology gains more ground in the courts. In Brazil, no judge can choose if she or he wants to adapt to new technologies.

Judges can decide their cases, but they cannot make the choice of having only paper-based procedures in their courts. Individual judges do not make these administrative decisions according to their own individual judicial priorities since they have to consider the administration of justice as a whole and the investments that are made to provide a better service to the public.

However, judges are appointed as members of committees and groups responsible for the development of tools and the implementation of new technologies in Brazilian courts in order to guarantee that systems are in line with the law and their way of working. Judges have a very active role in these processes, and besides deciding cases, they are frequently involved in the management of caseloads, searching for ways to decide the cases faster and better.

The electronic process can be a way to control the duration of the process in the courts and to organize the procedures necessary to prepare a case to be heard. The administration of the various stages of each and every file has to be afforded the reasonable time required for justice to be delivered.

Although my participation in this conference does not have the objective of comparing different systems implemented in Brazilian courts or giving exhaustive details about their development, I will provide some examples to illustrate the degree to which technology has modified the Brazilian judiciary.

Despite the fact that some people still face difficulties in integrating computers in their daily lives, computers undoubtedly not only replace typewriters, but also help us to manage time more efficiently.

In 1991, the Brazilian legislature included in rental law n. 8.245⁷ the possibility of notifying the tenant by fax. Later on, in 1999, Brazilian federal law n. 9.800, known as the "Law of Facsimile," allowed for the electronic transmission of petitions to courts,⁸ establishing conditions and limits for validity of the document and requiring the presentation of originals in court.

At the same time, for law professionals, it was made possible to follow the edition of laws, precedents from courts, and last but not least, the procedures in cases of interest. Initially, one of the major benefits of the use of technology in the judiciary was related to the automation of case information, providing the public with fast and transparent data about what happens in courts. In the late 1990s, many Brazilian tribunals implemented systems that would

allow lawyers to obtain records about their cases without leaving their offices and before the judiciary official journal was released. Some systems even send automatic e-mails to the parties and lawyers associated with the case every time there is an update in the file history.⁹

In July 2001, Brazilian federal law n. 10.259, which created the federal small claims courts, provided a general regulation for the development of software to use in these new courts.¹⁰ The absence of detailed rules led many courts to develop their own regulations and systems, adapted from the existing code of procedure. We had many different experiences implemented in different courts, from small-claims courts to the Supreme Court. And despite the effort of the National Council of Justice, based on Brazilian federal law n. 11.419 of December 2006, different parameters still coexist, because it is not an easy task to transfer the data stored in pre-existing systems that were developed in incompatible technological languages.

Supreme Federal Court (STF)

The Brazilian Supreme Court, with the goal of observing the provisions of Brazilian Federal Law 11.419/2006 and accelerating the delivery of justice, regulated cyberjustice by enacting Resolution 344/2007. The system named e-STF was officially launched on June 21, 2007 to process an extraordinary appeal.¹¹ Users needed to be previously registered in the STF, and petitions or documents could be sent electronically via the internet.¹²

In November 2007, Resolution STF n. 350 already regulated the use of digital certification for electronic petitions, but it was not mandatory for all users, and access to the system still required prior registration. However, the use of digital certification to send petitions and documents made it unnecessary to present originals in court.¹³

In October 2009, through Resolution STF n. 407, the mandatory use of digital certification for electronic petitions in the Supreme Court was established, although other alternatives remained available.¹⁴ Since February 2010, eight types of actions can only be filed electronically, and by July 2010, the STF had more than 2,000 electronic files, which represented a small but important step toward computerization of the court.¹⁵

In October 2014, the Supreme Court already had more than half of its almost 50,000 cases processed completely in electronic files.

Superior Court of Justice (STJ)

The Superior Court of Justice was the first court with national jurisdiction to entirely eliminate paper-based files by developing a system where all procedures are electronic. Speaking of numbers demonstrating the intensive use of technology in the Superior Court of Justice, between the months of January through March of 2009, more than 236,000 cases were digitized, in addition to around 1,200 new cases filed electronically every day.

Some highlights of the project “Justice in the Virtual Era” include:

- Faster justice—the distribution of lawsuits that would take at least seven days now takes a few seconds. The time spent in procedures to file an appeal to the STJ, which used to take six months, is now reduced to six days;
- Enhanced access—though the STJ is situated in Brasilia, the system allows lawyers from all over the country to send petitions, to search for information, and to be notified of judgments with no travel costs;
- Reduction of costs—in 2008, the STJ spent BRL\$1.7 million on toner and ink cartridges for printers, more than BRL\$600,000 on paper, and almost BRL\$7 million on postal services. These costs have significantly decreased with e-STJ;
- Environmental preservation—in the STJ, approximately 300,000 cases are processed every year. In paper, this corresponds to more than 113 million pages, or between 26,000 and 32,000 trees, 54 million litres of water, and 2.7 kWh of energy. Nature is certainly preserved thanks to electronic processes;
- Security—the use of digital certification to sign documents and access information guarantees the integrity of documents and protection of information; and
- Work environment—although some routines also have to be established in relation to the excessive use of computers, the storage of paper files used to be the cause of many diseases. Court personnel now achieve higher performance and have a better quality of life.¹⁶

The e-STJ is currently regulated by Resolution STJ n. 14, of June 28, 2013.

National Council of Justice (CNJ)

Although more than 25 different systems coexist in Brazilian courts, the National Council of Justice, created in 2004, undertook to bring federal and state courts, of different specializations, to the same digital standards, and it is trying to work on solutions that can be evenly implemented despite the diversity of infrastructures. In December 2013, through Resolution CNJ n. 185, Brazil undertook to adopt PJe as the only electronic process for all Brazilian courts by 2018.¹⁷ In the meantime, all courts should have it installed in at least 10% of their units by December of this year. This system already has three versions: the first one was developed for the 5th Federal Region Court, the second for Labour Courts (PJe-JT), and the third, the national version, for all other courts.

The system has been in use since April 2010, and as of June 2014, more than 35,000 cases had been e-filed in 106 courts of the 5th Federal Region.¹⁸

Federal Court of the 1st Region (TRF1)

In the 1st Federal Region Courts there are four major electronic process systems, one for federal small claims (JEF virtual—developed in visual basic); another for tax courts (PJD-EF in ASP); another for civil courts (e-Jur in JAVA); and a pilot project of the PJe (also in JAVA) in civil courts of the Federal District judicial section. These complex systems do not intercommunicate, but the idea is to unify all components in the PJe platform, which also represents the substitution of pin codes for digital certificates.

Federal Court of the 4th Region (TRF4)

The TRF4 experiment is considered a success by all its users. The e-proc, originally created to meet the needs of federal small claims courts in 2003, was adapted to other types of cases. Today, almost three million electronic cases have already been filed within this consolidated system, which has recently inaugurated a special module for pre-conciliation online. It is expected that the investments made and the credibility of the software will guarantee its maintenance, despite the use of the PJe in other federal courts.¹⁹ Interoperability may be the key to their coexistence.

Digital Certificate—A New Signature

Each day more courts are adopting systems that require the use of digital certificates. A digital certificate connects or correlates a person with a cryptographic key pair in order to guarantee the identification of the user, as well as the security and validity of electronic documents.

Through Provisional Measure 2200, of 28 June 2001,²⁰ the Brazilian government launched the Brazilian Public Key Infrastructure—PKI Brazil,²¹ and adopted a legal model which observes the principles of authenticity, integrity, confidentiality, and legal validity for the certification of electronic documents, equipment, applications, and transactions. Authenticity ensures that the author is the person named in the certificate used in the signature. Integrity means that the document was not modified after its release. Confidentiality denies unauthorized people access to contents of messages or documents. Legal validity, associated with non-repudiation in crypto-technical parlance, establishes that the sender cannot refute authorship after signing once the information becomes verifiable by any third party and “with high assurance can be asserted to be genuine.”²²

The National Institute of Information Technology (ITI) is the Brazilian federal agency of the executive branch that supports the Brazilian Public Key Infrastructure—PKI Brazil, which is the first certificate authority of the chain—CA root. It also has the important goal of promoting digital inclusion²³ and, in a single-root architecture, accrediting, supervising, and auditing the other participants in the chain.

The ITI has accredited the AC-Jus—a first-level Certificate Authority for the Judiciary, created in December 2004.²⁴ Usually, the digital signatures produced by certificates mentioned above are legally equivalent to handwritten signatures, but the Cert-jus certificates include other particular characteristics such as the identification of public servants—their position, ID number, and where they work—which is a digital functional identity that ascribes responsibility for the production of the electronic document to a public agent.

The ITI announced that in 2011 and 2012 over two million digital certificates were issued per year in PKI-Brazil and each day new applications increase the use of this technology.²⁵

The participation of the bar in the updating process of professionals is essential in helping lawyers overcome many obstacles they

face in the use of new tools. For example, the bar of Rio de Janeiro, the second largest in Brazil, has been providing courses on digital certification and the electronic process. In addition, projects like the “Get Digital” caravan, which visited 60 subsections, was responsible for providing information to lawyers concerning the requirement of digital certification to access new technological judicial systems and to facilitate the acquisition of digital certificates, with an explanation of technical procedures.²⁶

As President of the Technical Committee of CA-JUS in 2006/2007, I experienced the security procedures involving the expedition of digital certificates and the maintenance of the information in safe rooms with very strict access. However, given the growing demand, a considerable increase in the number of registration authorities, and the proliferation of applications that require these certificates, there is a risk of fraud during primary identification (presentation of physical documents) and this has to be taken seriously, in order to prevent the efficiency and reliability of the tool from being called into question.

The increased use of biometry to identify a user may be the next step to enhance trust in the ownership of the certificate, since it uses a key that cannot be borrowed or taken from a person, minimizing the possibility of error in the identification process.

Digital certification, despite the restrictions it still presents for some users, has been considered an essential instrument in providing validity to e-procedures and securing controlled access to files.

Conclusion

Nobody likes to spend a day in court. If justice is needed, something has already gone wrong. This can be even harder if individuals have to face overloaded courts, where time and costs are totally unpredictable. Despite the new challenges it can raise and in light of the results obtained to date, the use of technology in the courts can definitely be considered a mechanism to overcome large caseloads and to improve the reasonable duration of procedures.

If the whole world is communicating through the internet, it is no longer time to decide *if* technology will be used in courts, but rather *how* it is going to be used in order to guarantee efficiency and protection of rights.²⁷

The electronic process, included in the list of services known as online dispute-resolution mechanisms, can help the judiciary resolve more quickly the disputes of the online and offline “community through the use of the tools of online technology and its 24-hours-per-day, 7-days-per-week, 365-days-per-year access.”²⁸

The new conflicts developed in a globalized society demand a new way of judging. We judges cannot produce individualized pieces of judicial art on a case-by-case basis with no consideration for precedent or potential impacts on other lawsuits and on the social, political, and cultural environments. The judiciary, as a social organizer, must do its part and the technological advancements in the courts may represent much more than a reduction of costs. They can speed up the rendering of decisions, guarantee and expand access to justice, and enhance democracy as a result of transparency of information and the participation of diverse social actors.²⁹

We are certainly following a path where delivering justice without cyberjustice will no longer be an option. In addition, we must keep in mind that public justice, as well as public-health and educational systems, should be available to all citizens and efficiently provided by the state as a means to reducing inequalities in democratic societies.

Notes

- 1 Federal judge since November 1995, appointed President of the Permanent Commission to Standardize the Study of Information Technology Platform in Federal Courts by the Federal Council of Justice, and Chair of the Technical Commission of Judiciary Certifying Authority—AC-JUS—May 2006 / August 2007 (1104 Act PRESI TRF₁ – 1193, 04/19/2006, 04/24/2006 and DJ CJF Ordinance no. 042, 04/24/2006); assigned by the Council of Federal Courts as member of the Committee of Procedures Systems and Records for the Federal Justice (Ordinance CJF n. 119 05/11/2011) and by the 1st Regional Federal Court as member of the Special Committee on Standard Procedures Records (Ordinance/PRESI 600-298, from 05/11/2006 to 04/17/2008); of the Management Committee of e-JUS (Ordinance/PRESI 600-291, from 12/24/2007 to 04/17/2008); of the Committee for the Implementation of Tax Enforcement Virtual Procedures (PRESI 600-329 from 06/05/2006 to 04/17/2008); and of the Commission for the Creation of the Manual of Virtual Small-Claims System (Ordinance/PRESI 600-574 of 10/27/2005 to 04/17/2008); designated Head of Goals for the Judiciary for the years 2010, 2011, and

- 2012, for the 1st Regional Federal Court (Ordinance/PRESI/CENAG-282, 07/21/2010; Ordinance/PRESI/CENAG-165, 06/04/2011; and Ordinance/PRESI/CENAG-266, 07/20/2012), Coordinator of the Regional Committee of Procedures Records for 1st Regional Federal Court (Ordinance/PRESI/CENAG-199, 02/05/2011); and member of the Committee on Security of the Federal Courts (Ordinance CJF 09, 31/08/2011).
- 2 "Why do you think banks have become electronic?" The Honourable Justice Thomas Granger of the Superior Court of Justice, Ontario, asks matter-of-factly. "Banks have realized that you save money doing it. The government does the same thing." Luigi Benetton, "Guide to Courtroom Technology in Canada" *CBA Practice Link* (September 2009), online: <www.cba.org/cba/practicelink/solosmall_technology/courts.aspx>
 - 3 Rômulo Valentini, "A padronização de procedimentos no processo do trabalho e sua aplicabilidade no processo eletrônico – o constante aperfeiçoamento da prestação jurisdicional," *Revista do Tribunal Regional do Trabalho da 1ª Região* 23:52 (2012):133 at 136.
 - 4 Jose Carlos De Araujo Almeida Filho, *Processo Eletrônico e Teoria Geral do Processo Eletrônico* (Rio de Janeiro: Ed Forense, 2008) at preface.
 - 5 First instance for each state of the federation and the federal district.
 - 6 Data are derived from all Brazilian Judiciary Courts, excluding the Supreme Federal Court. Information obtained by the National Council of Justice corresponds to numbers provided by the Superior Court of Justice, the Federal Regional Courts, the Labour Courts, the Electoral Courts, the Military Courts, and the courts of the states, of the Federal District, and of the territories.
 - 7 Brazilian Federal Law n. 8.245/199, "art. 58. [...] V- desde que autorizado no contrato, a citação, intimação ou notificação far - se - á mediante correspondência com aviso de recebimento, ou, tratando - se de pessoa jurídica ou firma individual, também mediante telex ou fac-símile, ou, ainda, sendo necessário, pelas demais formas previstas no Código de Processo Civil." ["Art. 58. [...] V – once authorized in the contract, the summons, subpoena or notification shall be made by mail with note of receipt, or, in the case of legal entity or individual firm, also by telex or facsimile, or even, if necessary, by other provided forms in the Code of Civil Procedure."]
 - 8 Brazilian Federal Law n. 9.800/1999, "art. 1º É permitida às partes a utilização de sistema de transmissão de dados e imagens tipo fac-símile ou outro similar, para a prática de atos processuais que dependam de petição escrita." ["Art. 1º The parties are allowed to use image and data transmission systems, images by facsimile or other similar, for the practice of procedural acts that rely on written petition."]
 - 9 Alexandre Atheniense, "Advocacia e Informatica" (December 1996), *Jus navigandi*, online: <jus.com.br/artigos/1754/advocacia-e-informatica>.

- 10 Brazilian Federal Law n. 10.259/2001, “art 8 [...] § 2º Os tribunais poderão organizar serviço de intimação das partes e de recepção de petições por meio eletrônico; ...art. 24. O Centro de Estudos Judiciários do Conselho da Justiça Federal e as Escolas de Magistratura dos Tribunais Regionais Federais criarão programas de informática necessários para subsidiar a instrução das causas submetidas aos Juizados e promoverão cursos de aperfeiçoamento destinados aos seus magistrados e servidores.” [“Art. 8. [...] § 2º The courts may prepare a subpoena service of the parties using electronic communication; ... Art. 24. The Judicial Studies Centre of the Council of Federal Justice and the Judiciary Schools of the Federal Regional Courts will create computer programs necessary to support preparatory inquiries in cases submitted to the Courts and promote training for its judges and servers.”]
- 11 “Recurso Extraordinário”—used to contest decisions that could have been provided without the correct observation of Constitutional provisions.
- 12 “Tramitação eletrônica de processos judiciais foi iniciada no STF em 2007,” (2010) Supremo Tribunal Federal, online: <www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=156088&modo=cms>.
- 13 Ibid.
- 14 Paper-based petitions could be presented at the protocol section, sent by mail, by fax, or by email—the two latter ones had their validity conditioned to the presentation of the originals
- 15 The caseload in the Supreme Court in July 2010 corresponded to 90,164 cases. STF, *supra* note 12.
- 16 “Justiça na era virtual,” Supremo Tribunal Federal, online: <www2.stf.jus.br/portalStfInternacional/cms/verConteudo.php?sigla=portalStfCooperacao_pt_br&idConteudo=190769&modo=cms> (information provided by the Supreme Court website).
- 17 Resolution CNJ n. 185/2013, “art. 34. As Presidências dos Tribunais devem constituir Comitê Gestor e adotar as providências necessárias à implantação do PJe, conforme plano e cronograma a serem previamente aprovados pela Presidência do CNJ, ouvido o Comitê Gestor Nacional [...] § 3º O cronograma deve relacionar os órgãos julgadores de 1º e 2º Graus em que o PJe será gradualmente implantado, a contar do ano de 2014, de modo a atingir 100% (cem por cento) nos anos de 2016, 2017 ou 2018, a depender do porte do Tribunal no relatório Justiça em Números (pequeno, médio ou grande porte, respectivamente).” [“Art. 34. The Presidencies of the courts should constitute a Management Committee and adopt the necessary measures of the implementation of PJe (electronic Judicial Procedure) according to a plan and schedule to be previously approved by the Presidency of the CNJ (National Council of Justice), after consultation with the National Management Committee

- [...]§ 3º. The schedule should list the judging bodies of 1st and 2nd Degrees in which the PJe will be gradually deployed, from the year 2014, in order to achieve 100% (one hundred percent) in the years 2016, 2017 or 2018, depending on the size of the scale of the Court in the report Justice in Numbers (small, medium or large scale, respectively)."] Tarcisio Teixeira, *Curso de direito e processo eletrônico* (São Paulo: Editora Saraiva, 2014) at 436–37.
- 18 “Processo judicial eletrônico está implantado em 34 tribunais do país” (June 2014), *Consultor Jurídico*, online: <www.conjur.com.br/2014-jun-09/processo-judicial-eletronico-implantado-34-tribunais-pais>.
 - 19 Jomar Martins, “Proposta do CNJ ameaça sistema criado pelo TRF-4” (December 2013), *Consultor Jurídico*, online: <www.conjur.com.br/2013-dez-12/proposta-cnj-ameaca-sistema-trf-juiz-assessor-presidencia>.
 - 20 Re-edited as Provisional Measure 2200-02, 24 August 2001.
 - 21 Infraestrutura de Chaves Públicas Brasileira (ICP Brasil).
 - 22 Adrian McCullagh and William Caelli, “Non-repudiation in the digital environment,” *Peer Reviewed Journal on the Internet* 5:8 (2000), online: <pear.accc.uic.edu/ojs/index.php/fm/article/view/778/687>.
 - 23 Instituto Nacional de Tecnologia da Informação, online: <www.iti.gov.br/institucional/quem-somos>.
 - 24 Resolution STJ/CJF nº 001, 20 December 2004, online: <www.acjus.jus.br/legislacao/resolucoes>.
 - 25 *Revista Digital* v2 2012 at 7, online: <http://www.iti.gov.br/images/publicacoes/revista-digital/revista_digital_2_2012.pdf>.
 - 26 *Ibid.* at 11–13.
 - 27 Luiz Flávio Gomes, “Judiciário não pode resistir aos avanços da tecnologia” (October 2002), *Consultor Jurídico*, online: <www.conjur.com.br/2002-out-27/judiciario_ao_resistir aos_avancos_tecnologicos>.
 - 28 Lucille M. Ponte and Thomas D. Cavenagh, *Cyberjustice Online Dispute Resolution (ODR) for E-commerce* (Pearson: Prentice Hall, 2006).
 - 29 Francisco Rossal De Araujo et al., “Avancos tecnologicos – Acesso ao Judiciario e outros temas,” *COAD* 36 (2009) at 647.

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