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Electronic Judicial Process and Interoperability: Currently State of Affairs in Brazil and Comparative Law

Given the currently discussion on e-Justice, several challenges have been faced, in areas ranging from the adaptation of the procedural law to the technical and regulatory details regarding the electronic judicial process (EJP) systems construction. The main concern is enabling the proper implementation of EJP and the fulfillment of a more timely and effective administration of justice. There is, however, a gap that still must be addressed: the issue of interoperability. It can be defined as the communication capacity of the EJPs systems between themselves and several other facets. The Brazilian Judiciary is composed of 5 higher courts, 27 state appellate courts, 5 federal appellate courts and 24 labor appellate courts. According to the current Brazilian legislation, however, it would be legally possible to have at least more than 50 different systems of EJP. Taking into account the legal framework for EJPs, the role of the National Council of Justice (CNJ), the material provided by the Comparative Law and empirical data, the research aims to provide an overall picture of the currently situation of implementation of the EJPs and its interoperability in Brazil.

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1 Introduction: the Research Project on Electronic Judicial Process (EJP) and Interoperability

[Rz 1] As is well known, given the new dynamic created and boosted by the diffusion of ICTs and the Internet, the discussion on Electronic Justice and Electronic Governance entered the agenda not only of civil society, but, mostly, of the state agencies responsible for the Administration of Justice, including also researchers and universities from many countries and legal traditions.

[Rz 2] Several challenges have been faced, in areas ranging from the adaptation of the procedural law to the new digital reality, the accessibility of actors to the electronic judicial process (parties, lawyers, state organs and other agents), to technical and normative/regulatory details regarding the construction of interoperable systems (software), which will enable the effective and proper implementation of the electronic judicial process, fulfilling its promises to a more timely and effective administration of justice in the Constitutional State.

[Rz 3] In the latter aspect the Interdisciplinary Research Group on Electronic Justice at Federal University of Parana-UFPR, Brazil identified a gap to be filled by Academia concerning the issue of *interoperability*. This paper presents the on-going results of the current research project of the group for the academic years of 2014/2015, synthesized as «*Electronic Judicial Process and Interoperability: Currently State of Affairs in Brazil and Comparative Law*». More than showing the results of an already completed investigation, the article aims to bring into debate the research groups preliminary findings and working hypotheses. It highlights the general motivations and reasons for the proposed investigation.

[Rz 4] Interoperability can be defined, in a first and simplistic approach, as the communication capacity of the electronic judicial process systems between themselves. In a more broad and comprehensive approach, interoperability encompasses much more facets.

[Rz 5] FRANCESCO CONTINI and GIOVAN FRANCESCO LANZARA, writing on interoperability in the European context, have apprehended the complexity of the issue and said clearly: «*The conditions for interoperability do not reside in the systems that happen to run at a specific point in time, but in the underlying infrastructure that supports systems operations and communications. Interoperability, then, is be more productively framed within the broader issue of the development of Information and Communication Infrastructures. The concrete possibility attaining interoperability depends on the existence and the quality of the underlying infrastructure — technical, legal, organizational, and semantic and on the features of the agency that such infrastructure enables*» (CONTINI, FRANCESCO; LANZARA, GIOVAN FRANCESCO. Beyond Interoperability: Designing Systems for European Civil Proceedings Online. In: Contini, Francesco; Lanzara, Giovan Francesco (Org.). *Building Interoperability for European*

Civil Proceedings Online. Bologna: CLUEB, 2013, p. 32).

[Rz 6] Therefore, it seems quite obvious that investigating the relation between *interoperability* and *electronic judicial process* can be held, mainly, in a dual perspective: first, a technical one, concerning the software writing that will allow that the several applications constituting the *electronic judicial process* hold a «dialogue», i.e. «speak» the same language; and, on the other side, a regulatory and infrastructural one, from which, considering the concrete necessities and the existing conditions/systems of *electronic judicial processes* in a certain country/region, allows its legal framework to be scrutinized, analyzed and, in a normative sense, makes possible to build, after further investigation, policy proposals to best implement interoperability. In other words, to make such *dialogue* work the best feasible way.

[Rz 7] The groups research will focus on the latter perspective. To answer the working hypotheses that soon will be clarified, the research will take into account the characteristics of the Brazilian legal framework for judicial electronic process, the role of the National Council of Justice (CNJ), the material provided by the Comparative Law concerning the issue and, more importantly, an empirical survey aiming to provide an overall picture of the currently situation of the actual *implementation* of the electronic judicial process and its *interoperability* throughout the Brazilian federation.

[Rz 8] Articles 8th and 18 of the Brazilian Legal Framework on *Computerization of the Judicial Process* (Federal Statute No. 11.419/2006) states that «*The organs of the Judiciary* (i.e., Courts) *may develop electronic systems for processing lawsuits through digital files total or partially, using, preferably, the worldwide network of computers and access through internal and external networks*» and that they «(...) *shall regulate this Act, when applicable, within their respective competences*».

[Rz 9] Considering that the Brazilian Judiciary Branch is composed of 5 higher courts, 27 state and district appellate courts, 5 federal appellate courts and 24 labor appellate courts, is clear that, according to the aforementioned articles it would be legally possible to have at least more than 50 different systems of *judicial electronic process*.

[Rz 10] Nowadays several systems coexist. Among others, it is possible to mention as example the PJe, eProc, Projudi and SAJ systems, some of them in operation for more than half a decade, after several years of investment, development and improvement by Courts.

[Rz 11] By the end of 2013, the Brazilian National Council of Justice (CNJ) imposed, by Resolution No. 185/2013-CNJ, the national implementation of *PJe System* to all courts, *a system* developed by the National Council itself.

[Rz 12] The first question to be answered is simply: is that *provision* according to the Brazilian Legal Framework on *Computerization of the Judicial Process* (Federal Statute No. 11.419/2006)? Does that solution comply with the model of federation existing in Brazil?

[Rz 13] Then, pragmatically is important to question if that *imposition is effectively* the best solution to the problem of communication between the several *systems of electronic judicial process* existing among the Brazilian Judiciary. It must be stressed: some of them in operation for a long time. Wouldnt it be more efficient to simply look for and propose new ways to regulate and implement interoperability more effectively?

[Rz 14] As previously stated, the research aims to do a mapping of the main *electronic processes systems* in use in Brazil from the perspective of interoperability among those most relevant and widespread, building one metric for the empirical survey.

2 The context of the problem of Interoperability in Brazil

[Rz 15] Nowadays the Brazilian Judicial System offers a great opportunity to observe how the e-Justice phenomena can quickly change the legal institutions and the legal practice. After the Brazilian Constitution of 1988, Brazil have been through a lot of reforms and changes into its social, political and judicial systems, taking the country to a fast modernization of its institutions. For example, Brazil has a fully digital electoral system with electronic ballot box machines. The last presidential election had 105,542,273 valid voters and 53% of them elected Dilma Rousseff as president, the results being known only 3 hours after the electronic ballots were closed.

[Rz 16] In the legal field, the State of Sao Paulo has an Appellate Court that has 40 million of citizens under its jurisdiction. Most probably the Appellate Court of Sao Paulo is the biggest Court of the world, with 441 judges working and forming the college of Judges.

[Rz 17] Another data can help to understand the complexity of the Brazilian Legal reality. Brazil has 16.429 judges — 13.841 (84%) in Lower Courts (1st Instance) and 2.305 (14%) in Appellate Courts. The labor force of Judicial branch comprises 421,5 thousand workers (276,6 thousand of which are officials/public servants — 67%). The stock of lawsuits is of 95,14 million, of which 66,8 million (70%) were pending judgment before 2013 and 28,3 million (30%) were new lawsuits filed in that year. The number of judgments rendered in 2013 was 25,7 million. The average rate per judge was 1.564 judgments.

[Rz 18] The Brazilian Supreme Court («Supremo Tribunal Federal» — STF in Portuguese) also has expressive numbers of trials and decisions. In the last years STF was criticized due this numbers. The main reason of criticism is that the Brazilian Constitutional Court was not totally involved in constitutional matters, but in secondary matters, for instance, judging high rank officials in criminal cases, like those of corruption.¹

[Rz 19] In this context of a high number of trials, the Legal authorities planned a deep reform into the Brazilian Judicial System. Following the successful of the electronic electoral system, the formulation of Electronic Judicial Systems was started and turned into an official and permanent policy to be adopted by the totality of Brazilian Courts.

3 Legislation on Brazilian E-Justice

[Rz 20] The National Council of Justice — CNJ — of Brazil was created by the Constitutional Amendment No. 45 of 2004 (this amendment regulates the so-called Reform of the Judiciary) to exercise the function of an external control organ to the Judiciary. This function includes two types of assignments: a) strategic planning and administrative management of the legal courts; b) disciplinary and correctional control of the activities of judges.

[Rz 21] Related to the strategic planning of the Brazilian Judicial Power, the CNJ adopted a strong policy to enforce the use of ICTs in the Brazilian Courts. The computerization of the Brazilian Courts has its legal beginning with the Federal Statute No. 11.280 and mainly with No. 11.419, both of 2006. Since 2006, then, the Brazilian Courts began to develop their own systems of EJP — Eletronic Judicial Process. The CNJ formulated its own system called PJE («Processo Judicial

¹ For instance, in 2013 the STF decided 45.361 processes. Since 1989, the STF decided 1.348.750 processes. For more details see <http://www.fgv.br/supremoemnumeros/visualizacoes/cfilter-stf/index.html>.

Eletrônico» in Portuguese). It was officially launched on June 21st, 2011. In many cases and even since before PJE, several other systems of EJP were developed by several Brazilian courts, being in use by them until now.

4 Main systems of Electronic Judicial Process operating in Brazil

[Rz 22] The main systems of Electronic Judicial Process operating in Brazil and its Courts are:

E-SAJ — In use in State Courts of Sao Paulo and 7 other States.

PROJUDI — The former National Council of Justice — CNJ software, in use in the State Courts of Parana and 19 other States

E-PROC — In use in the Federal Courts of the 4th Region (Federal Justice Circuits for the States of Parana, Santa Catarina and Rio Grande do Sul) and State Courts of Tocantins — 3,0+ million of active lawsuits

PJe — The current National Council of Justice — CNJ software (proposed to be adopted by all Brazilian Courts)

[Rz 23] These systems have a considerable size and power to process millions of judicial processes. For instance, the following table show some data about them:

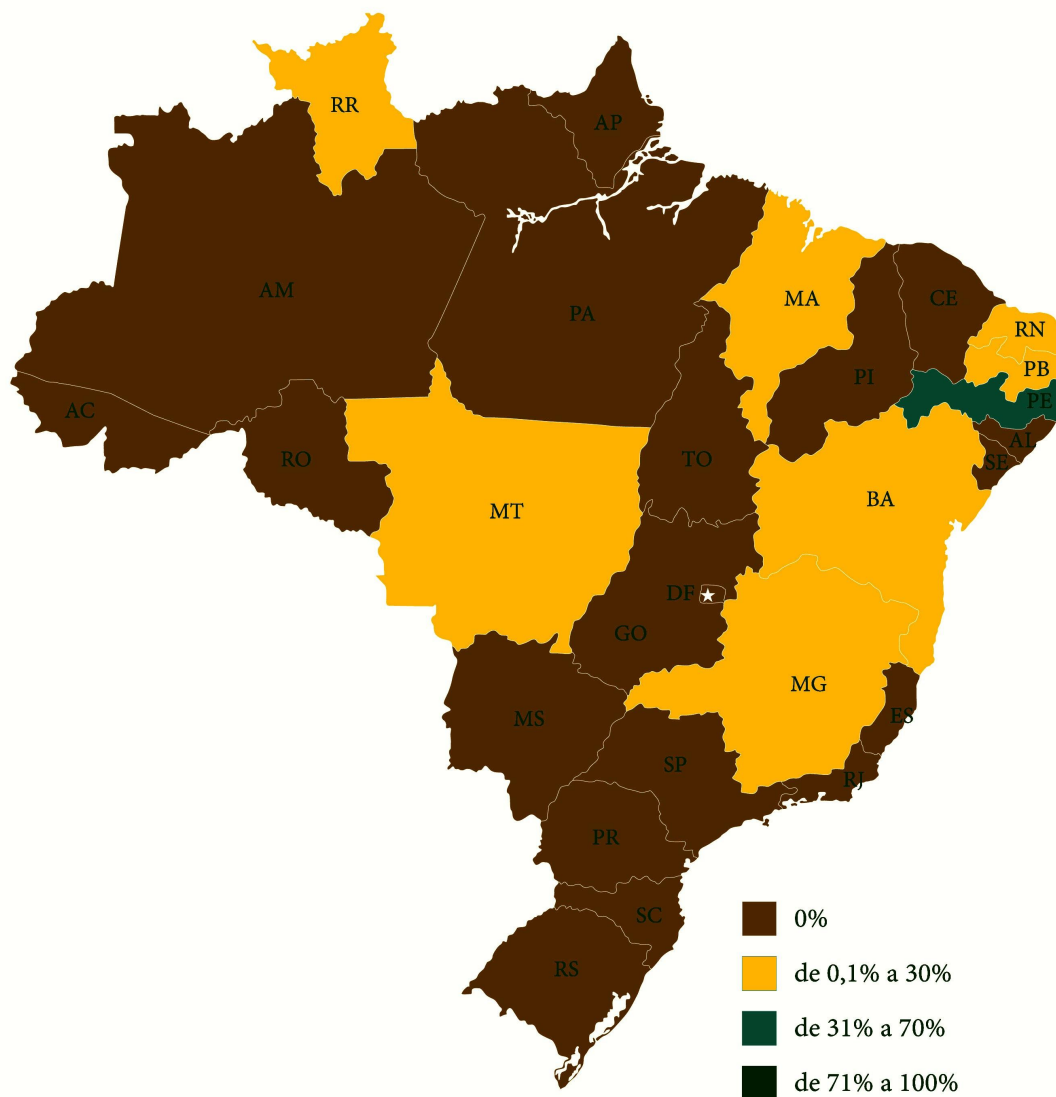
E-SAJ (Data from Dec. 2014)	1,973,337 digital processes (active and stored)
PROJUDI (Data from Dec. 2014) Parana State Courts	Total registered cases: 3,856,418
Total distributed processes: 3,827,265	
Total active processes: 1,521,535	
Total distributed appellations: 192,092	
Total active lawyers: 61,958	
Total parties with access to the system: 67,131	
Projudi is implemented in all Parana State Districts.	
E-PROC (Data from Dec. 2014)	3.031.102 digital processes

PJE (no consolidated data)

[Rz 24] PJE is the current system proposed by the National Council of Justice. In the graphics below, it is possible observe that PJE was strongly adopted by Labor Courts (figure 2), and it is not received yet by the State Appellate Courts (figure 1). This fact is due to the tension between the National / Federal policies and State policies concerning the Judicial Power. The Labor Courts in Brazil are Federal, and they adopted the system proposed by CNJ; the State Appellate Courts, instead, have autonomously developed their own systems of EJP (Electronic Judicial Process).

Processo Judicial Eletrônico - PJe

BALANÇO DA IMPLANTAÇÃO DO PJE Tribunais Estaduais

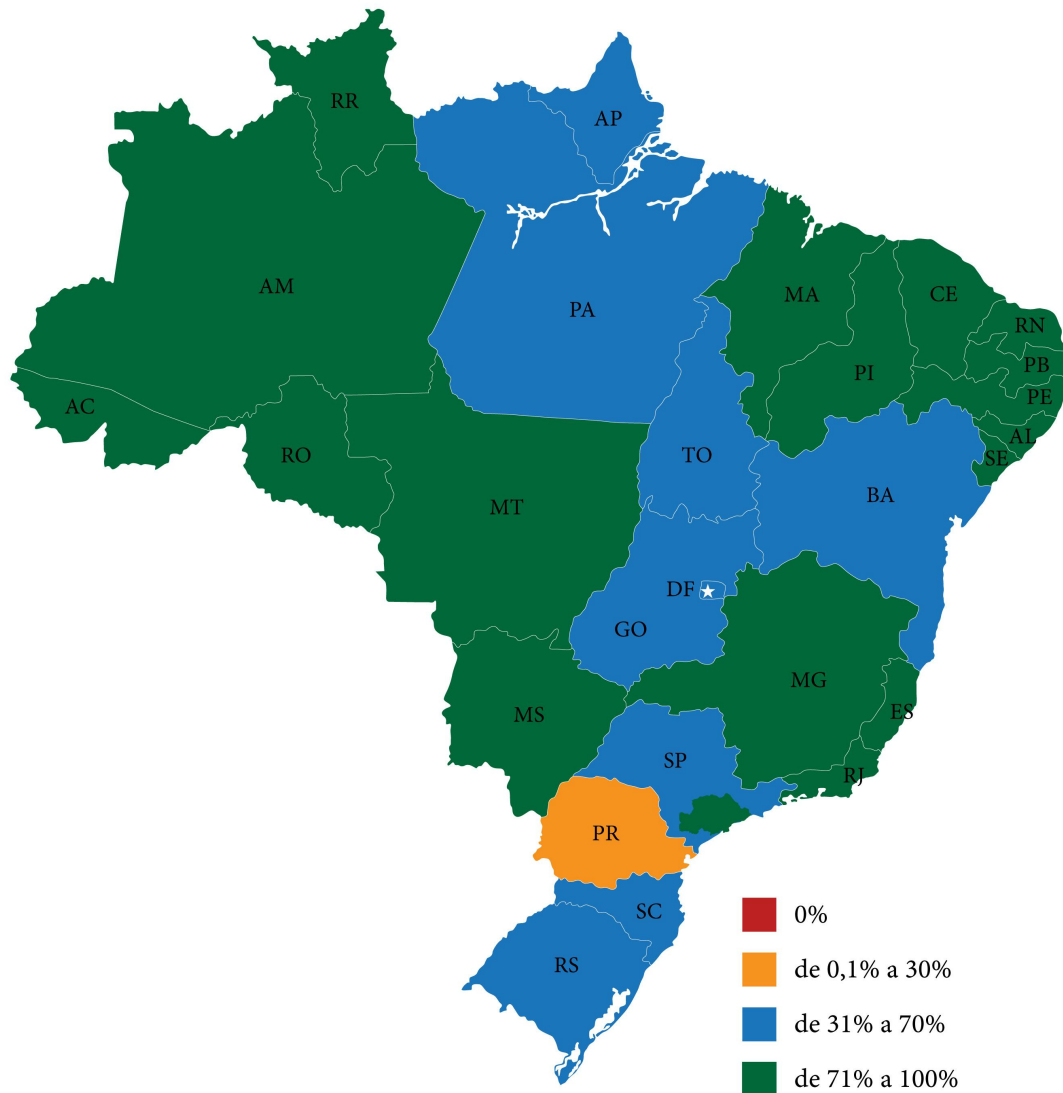


Stages of PJe Implementation at the Brazilian States (up to 2013) — State Appellate Courts²

² For more details see <http://www.cnj.jus.br/programas-de-a-a-z/sistemas/processo-judicial-eletronico-pje/mapas-de-implantacao>.

Processo Judicial Eletrônico - PJe

BALANÇO DA IMPLANTAÇÃO DO PJE Tribunais Regionais do Trabalho



Stages of PJe Implementation at the Brazilian States (up to 2013) — Labor Appellate Courts³

³ For more details see <http://www.cnj.jus.br/programas-de-a-a-z/sistemas/processo-judicial-eletronico-pje/mapas-de-implantacao>.

5 The problem of Interoperability of EJPs in Brazil

[Rz 25] In the context showed before, it is clear that Brazilian lawyers face several problems concerning interoperability: there are different systems of EJP working in several levels (State level, Federal Level and National Level) and in several Courts (Labor Courts, Civil and Criminal Courts, Federal Courts, Militar Courts and Higher Courts). In summary, the main sources of problems related to interoperability in Brazil are:

1. Brazil has dozens of systems of Electronic Judicial Process systems;
2. Systems are not interoperable between themselves and between Lower Courts, Appellate Courts and Superior Courts;
3. Interoperability gaps between systems are mostly solved through solutions thought for paper based procedures;
4. Lawyers must operate the same legal procedures in different systems.

[Rz 26] Also the Brazilian Judicial Power faced some peripheral problems of interoperability, like the maintenance of accessibility of the Judicial Process for persons (Citizens and Lawyers) with physical disabilities, specially for blind people. The main system proposed by the National Council of Justice — CNJ, the Electronic Judicial Process (PJe), for instance, does not allow the adequate accessibility of assistive technology.

5.1 Two Models of Interoperability in progress in Brazil

[Rz 27] Until the last mandate of the Justice Joaquim Barbosa at the Presidency of the CNJ, in the middle of 2014, the CNJ had assumed one Model of Interoperability, in which the system PJe would be the only system for all Brazilian Judicial Courts (as proposed by the National Council of Justice in its the last Resolution on the topic, the already mentioned No. 185/2013-CNJ). In this model PJE had the central and main role, and the other Brazilian Courts would be around, as figure 1 shows.

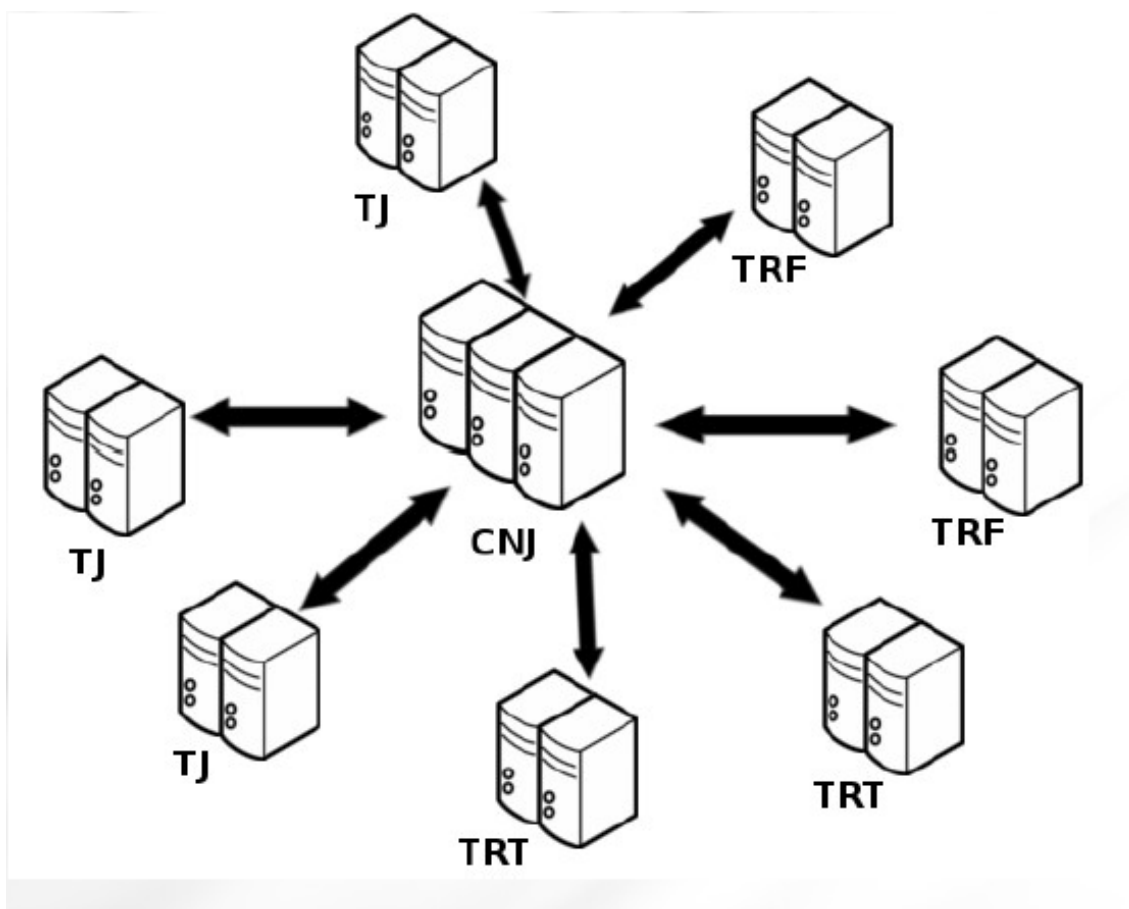


Figure 1

[Rz 28] Currently, in the mandate of the Justice Ricardo Lewandowski as president of the Council, the CNJ is assuming a different approach, the so called Virtual Office one, in which PJe can co-exist and work together with other systems. In this model the electronic judicial process system software is not so important. The most important feature is to follow the model of interoperability, as Figure 2 shows.

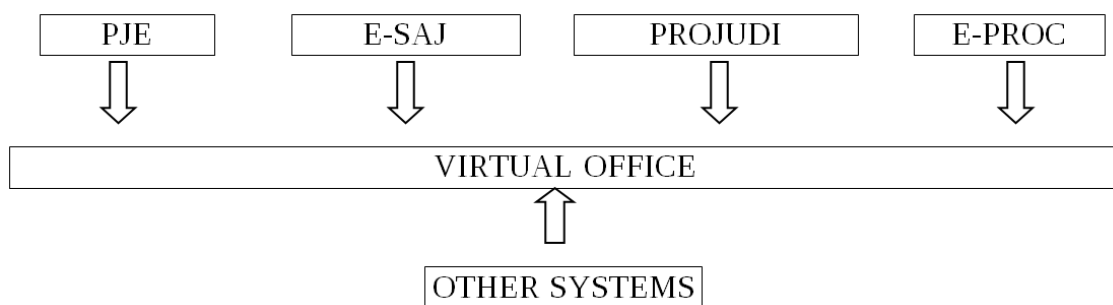


Figure 2

[Rz 29] Brazil already has a National Model of Interoperability for the Executive Branch, the E-PING (Interoperability Patterns of Electronic Government). The model of Interoperability of the

Judicial Branch — MNI (National Model of Interoperability), is under development by the CNJ. It should be noted, however, that since 2009 Brazilian Courts follow the system of Documental Management called MoReq-Jus (Model Requirements for Computerized Systems of Document and Process Management of the Judiciary).

[Rz 30] The last and most important result that we have in 2014 concerning interoperability is the already mentioned «Virtual Office» project. The National Council of Justice and the Brazilian Bar Association (OAB — «Ordem dos Advogados do Brasil» in Portuguese) are working together to develop a software that will integrate the EJPs of all Brazilian Courts and allow to the user one unified access to the Judicial Branch of government digital services. The main idea of this project is to allow lawyers, prosecutors and other agents involved with judicial processes to access and follow all their lawsuits in different Courts in just one virtual environment (a website or a standalone software), and not inside of each of the several Electronic Judicial Systems developed by each Brazilian Court, as it works today.

6 The main goals of the Research Project

[Rz 31] Another part of the research project involves both empirical and theoretical research. The main goals are:

1. Quantify the interoperability capability of the main systems of electronic judicial process in Brazil through specific surveys and metrics;
2. Formulate the semantics of the judicial processes;
3. Interchange knowledge and experience with the projects of European Union in Interoperability, for instance: E-CODEX (e-Justice Communication via Online Data Exchange) and BIECPO (Building Interoperability for European Civil Proceedings Online).

6.1 Point 1 — Quantifying the Interoperability of EJP

[Rz 32] Related to point 1, the research aims to do a mapping of the main electronic processes systems in use in Brazil from the perspective of interoperability among those most relevant and widespread. The group will apply in 2015 the following survey with 9 questions, to be answered by the ICT teams of the Brazilian Courts:

1. Is the system interoperable with the EJS of superior and lower judicial instances?
2. Is the system interoperable with software aimed at aiding the visually or hearing impaired?
3. Is the system interoperable with several operational systems like Windows, OS X and Linux?
4. Is the system interoperable with any web browser?
5. Is the system interoperable with mobile phones and tablets (Android and iOS)?
6. Is the system interoperable with the EJS of other Courts?
7. Is the system externally interoperable with registers and other auxiliary organs to the Judiciary?
8. Is the system interoperable with systems of Judicial fees payment?
9. Which is the access of the user to the system: via login/password or digital certificate?

[Rz 33] Through these questions the group will measure the interoperability of the EJS of Brazil and also will rank the most and less interoperable EJS. The research group is still working to

refine these questions to achieve better results.

6.2 Point 2 and 3 — Semantics of Judicial Process and EJS and Interoperability in Comparative Law

[Rz 34] Related to point 2 and 3, Brazil has some features in its judicial system that can support EJS strongly interoperable. One reason is that the Brazilian Procedural codes, like the Civil Procedure Code and Criminal Procedure Code, are unique for all the country and the legal procedure matter is in the hands of exclusive Federal Legislative Authority. Thus Brazil has a centralized source of legal norms. All the Legal proceedings are the same in any state of Brazil. This allow the formulation of just one semantics for the Civil and Criminal Procedure norms.

[Rz 35] For this policy, the CNJ adopted a standardization of basic procedural classification, of procedural steps, of issues and parties, thus, each new process receives a standard nomenclature. This system is called «Unified Procedure Tables» or «Tabelas Processuais Unificadas» in Portuguese. It aimed the standardization of the terminology and taxonomy of procedure classes, procedural matters and procedure stages within the State Courts, Federal Courts, Labour Courts and the higher courts, to be employed in their Electronic procedural systems. This system avoid that different Brazilian Courts nominate the same legal action or procedure with different designations.

[Rz 36] Also each new lawsuit in Brazil receives one number that indentify it in all the country. The structure of the numerical composition, with twenty digits, is specific for identification of the source of the processes, year of their beginning, their judiciary organ or segment and Court of the respective segment or judicial district. It provides greater security and accelerate the procedure, dispensing the memorizing of several numbers in the processes of the same claim.

[Rz 37] These characters of the Brazilian Legal System differs from the scenario of European Union. EU has to deal with different National legislations and with many languages and idioms. Thus the construction of Interoperability of Legal Systems in Europe appears to be much more difficult than to develop it in Brazil. The researchers of the Brazilian Project on Interoperability are observing the Projects E-CODEX (e-Justice Communication via Online Data Exchange) and BIECPO» (Building Interoperability for European Civil Proceedings Online) of the EU. The difference of complexity between EU and Brazil must encourage Brazilian Judicial Courts persevere and achieve the goal of interoperability.

[Rz 38] These are, in a brief summary, our preliminary findings and working hypotheses.

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