

Procedural Acceleration and Judicial Procedure in Electronic Media: Case Study at the Court of the State of São Paulo

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Abstract: This article discusses the average time of trial processes in both physical and digital media, from the Brazilian State Courts of Justice, and the results obtained by the implementation of the digital judicial process in these Courts. Therefore, a literature review on digital judicial process was performed, and quantitative and qualitative analysis of time series data and information obtained from the National Council of Justice - Justice in Numbers, in the years 2009, 2010 and 2011, from the Brazilian State Courts of Justice. As a result, it was possible to verify the occurrence of very large variation between the time of the filing of cases in trial and its transit to the same class processes into courts of equal competence, in the same period. By analyzing more carefully those courts where best practices related to digital process are employed, where there is use of electronic management system of lawsuits, and a staff of clerks and magistrates well scaled with respect to work load, the results are very positive, demonstrating the procedural acceleration in digital media can be three to four times faster than in the physical media.

Keywords: IT Governance, State Courts of Justice; Modernisation of the Judiciary, Electronic Government.

1 Introduction

Of technological innovations are transforming, and continuously strides, the Brazilian judicial body, in public management, legal and legislative power. This is changing the routine of legal and generating benefits for the courts and for the general population.

This scenario of rapid change promotes cost savings for the public purse. The advances in the legal and legislative areas, and the adoption of computerized systems for virtualization processes result in the gradual reduction of the need for physical space, furniture and stationery materials for court records office. In future, there will be more needed rent or construction of buildings for the filing of physical procedures.

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The economy of procedure was perceived, with the abolition of manual routines that do not add value to the conduct of proceedings (dead time of the process), the automation of various procedural acts, and considerably increase the security and authenticity of procedural acts, transparency, promptness and more society's control over the judiciary.

The Courts are investing in virtualization justice, the change of culture and work routines. Despite the benefits that may be achieved through the adoption of management systems of digital legal proceedings, there are still many issues to be tackled in the near future, some relating to the management model and methods of work, others are caused by the task of breaking the cultural barriers imposed in secular work routines, learned and signed by decades of practice.

The inability to achieve the increase of efficiency of the Brazilian Judiciary only by simple expansion of personnel (Magistrates and servers) or working structures (with the maintenance of existing work routines and culture of the paper, with the use of case file, layers of cardboard or plastic, colored tapes, books and record cards, stamps, carts to transport legal procedures, filing cabinets to folders) was knowned.

To achieve the increase of efficiency of the judiciary, the current skills and knowledge of judges and servers, operating standards, policies, rules and criteria adopted for the operation and structuring activities for service court, among other components, need progress toward the adoption of unrestricted digital lawsuit, combined the best practices of e-government, broadly and unconditional, to increase and modernize the Brazilian Justice.

Taking the considerations made, this article discusses the average time of trial processes in the physical and digital various State Courts of Justice of Brazil, and the results obtained by these courts virtualization, based on quantitative and qualitative analysis of time series data and information obtained from the CNJ - Justice in Numbers, in the years 2009, 2010 and 2011, the Brazilian State Courts, and also reports productivity and drive procedural disclosed by Corregedorias State,

2 Methodology

Regarding the methodological design, it is a quantitative survey classified as to the purposes as exploratory and descriptive in relation to the media: a case study [Ver10].

To obtain data regarding the number of new cases, sentences, acceleration and procedure and congestion, the analysis of time series data and information obtained from the National Council of Justice was held - Justice in Numbers, in the years 2009, 2010 and 2011, against Brazilain State Court, and also reports productivity and drive procedural disclosed by Court State. These are public data available to any interested party access to the site of the National Council of Justice.

The analysis was focused on procedural acceleration, looking for speed gains provided by the adoption of digital lawsuit, performing comparisons between units that operate

with judicial processes in the physical media and digital media, since operating under similar conditions and with the same classes procedural .

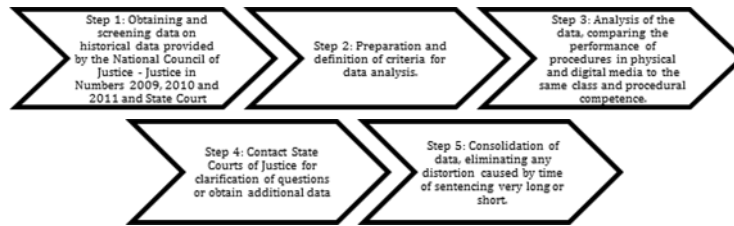


Figure 1 - Research Methodology, divided into 5 stages of implementation.

The methodological procedures followed these steps, shown in Figure 1:

- In step 1 of the months of October and November 2012 was conducted to obtain data and selection of historical data provided by National Justice Council (through the report of Justice in Numbers 2009, 2010 and 2011, and also reports productivity and disseminated by procedural motion for State Courts) with a focus on the amount of new processes, sentences, acceleration, procedure and congestion, considering physical and digital processes. The data selection and grouping criteria took into account the experience and the empirical experience of the researchers;
- the criteria for data analysis were defined in step 2. Therefore, in order to perform the comparison of the data with the highest degree of similarity and proximity, it was considered as criteria for analyzing the processes of the same class and procedural competence, the conduct of which developed into jurisdictional units belonging to the same State Court of Justice;
- tabulation and analysis of data was performed in step 3, comparing the performance of physical and digital processes to the same class and procedural competence.
- the strategy to make contact by telephone with the Court of Justice was utilized in step 4, and the respective websites of the Courts and Sites were visited in order to answer questions and better understand the context and situation analyzed;
- The consolidation of data related to Step 5 was performed to eliminate possible distortions caused by time of sentencing too long or short and adjustments in the analyzes, considering the context of their courts of justice.

With the methodological procedures demonstrated, it follows for the theoretical and the brief case presentation examined: procedural acceleration resulting from the adoption of digital lawsuit by Brazilian State Courts.

For this study, data were considered for the Court of the State of São Paulo.

3 The Judicial Process in Digital Media

The law 11419 of December 19, 2006, which provides for the computerization of the judicial procedure, regulates the use of electronic media in the processing procedures, in

the communication of acts, and the transmission parts in all degrees of jurisdiction in civil cases, criminal and labor, as stipulated by article 1 °.

With this legal advance, the digital lawsuit was legitimized, creating conditions for the provision of court services in a more rapid, low-cost and eliminating paper.

According Rover [Ro08], digital process is a result of computerization and a minimal set of meaningful actions and, therefore, the documents organized and arranged in a sequence defined workflows - representing procedural steps, meeting requirements of authenticity, temporality and integrity, with the elimination of the use of paper.

Based on this definition, the lawsuit digital is defined as a result of the advances of legislative, legal, technological, management and e-government, and above all, awareness of society and of law operators of the need for the jurisdictional service with higher quality and speed.

For the digital lawsuit is really feasible, according to the study Krammes [Kr08], specialized computer systems are needed in order to create the conditions necessary for the automation of routine work, with a focus on virtualization of lawsuits. In this vein, Silva et al [SBRK08] asserts that the incorporation of new technologies tends to promote efficiency gains in the activities and services provided by public entities, and Rifkin [Ri05] argues that the intensification of the introduction of new and sophisticated information technology and communication and new management techniques allow a constant increase of the productivity.

The National Council of Justice (CNJ) determined using the management systems of digital lawsuits, and virtualization of significant portion of procedures pending in the courts, through Resolution No. 90, dated September 29, 2009.

The use of specialized computer systems can result in speed and productivity, especially in performing routine and repetitive tasks, eliminating the so-called dead time of the procedure, which is conceptualized by Olivieri [Ol10], as "one in which the procedure is in progress, without procedural acts are occurring that effectively lead to the end of the process".

According Botelho [Bo07], approximately 2/3 of the total time of processing the actions of ordinary rite of Brazilian lawsuits is consumed with called dead time of the procedure. which is the aggregation of time periods for joining document (petitions and paper documents), stamps, mount folder, view the parts of the process by lawyers and prosecutors, physical movements progress, with comings-and-coming to offices, and residences of judges, lawyers , prosecutors and defenders. In contrast, knowledge-intensive tasks performed by law enforcement officers last about 1/3 of the total time of processing. This situation demonstrates that the bureaucracy demanded for the maintenance and the management of physical processes reached critical levels for the parameters minimum efficiency of state action; constitutes heavy burden on service efficiency of jurisdictional service.

On the other hand with the elimination or drastic reduction of the dead time of the lawsuit, brought about by digital processing of court proceedings, procedural acts that demand intellectual activity can become bottlenecks in processing of the digital procedures, such as production of petitions, resources, opinions and decisions.

3.1 Benefits from Digital Judicial Procedures

The scanning files, laws and jurisprudence, in conjunction with search tools and ease of access the internet, make the search process more agile and easy. The research is one of the main stages of the legal work. The ease of storage and retrieval of documents results in time savings in preparing opinions, decisions and theses, allowing operators of law to dedicate time and attention to higher value-added activities (such as the phases of analysis and production of legal theories) and greatly increases the productivity of these professionals, as well as large reduction in costs of the entire process.

In performing the analysis of various authors, such as [Bo07], [Le06], [Le09], [Li02], [Mac00], [Mad07], [Mad12], [Kr08], [Ro08], [Si10], benefits enabled by digital lawsuit were identified and highlighted:

- a) Ubiquity's lawsuit: the parties involved in the process can access at any time or place;
- b) Remote actions: lawyers can remotely perform actions such as petitions, appeal, etc;
- c) Digital Security: the security and authenticity are guaranteed with the use of digital certificate;
- d) Elimination of the paper: the process is moved by digital means, without the need for impression its parts;
- e) verification and monitoring: supervisory body can remotely access the procedures and find possible fraud.

4 Slowness and the Brazilian Justice

According Madalena [Mad07], the value of digital judicial process lies in obtaining productive advantage, with the elimination of tasks assigned to the operators of the law (judges, prosecutors, lawyers and court clerks of justice). The most of the adjudication service must be replaced by computerized automated, in order to promote the speed of judicial judgments. This assertion is corroborated by Silva [Sil10], to consider the lawsuit digital solution for slowness, since the length is the antithesis of justice. Still this sense, it was described in the Justice in Numbers Report 2010 by the National Council of Justice, presents the slowness as undesirable risk, which may result in lower demand for judicial services by disbelief.

The Justice in Numbers Report 2010 describes the functioning of the judiciary, noting procedural intense movement in the courts. A Brazilian justice has a high level of congestion (more than 70% in the State Court, with about 60.1 million cases awaiting trial). These data demonstrate the high cost of the Judiciary for the country, with its negative social consequences, responsible for undermining the confidence of jurisdictional, away investments and foreign companies and retract the market, affecting the entire economy.

These numbers reflect the growth of litigation across the country, so the increased caseload and the difficulty in judging with speed in the processes hinder the provision of judicial services with quality and efficiency.

5 Data analysis

The state of São Paulo was selected for data analysis because it was possible to compare the times of judgment between the physical and digital. For both, their websites were accessed and scrutinized in order to compare the data of Justice in numbers reports and data released by the State Courts of Justice. Importantly, the sites have page where they are released reports on the proceedings of that state.

When performing data analysis, an occurrence of wide variation in time between the time elapsed between the filing of the processes and the the moment a final judicial decision was recorded for the same class of cases in courts of equal jurisdiction, in the same period. Even at verifying the occurrence of cases where the average length of the trial processes digital outperformed the average trial of physical processes, most likely due to the following facts:

- a) The average time of proceedings and judgment of a digital process may have been directly influenced by scanning physical processes, in units where there is a processing of physical and digital processes;
- b) Best practices related to digital process are not being used or observed because of clinging to outdated work routines;
- c) Increased workload of magistrates, since the digital process eliminates the dead time of the process, the judge gets faster processes for orders and judgments;
- d) However, when considering more carefully those units where there are proceedings majority of digital processes, where good practices related to digital process are employed, with a staff of clerks and magistrates well dimensioned with respect to workload, the results are very positive.

Considering the availability of data found on the sites of the courts and the successful implementation of management systems of digital processes, and the relevance given, data related to the Court of the State of São Paulo was collected for analysis.

The State Court of São Paulo (TJSP) is in the unique situation, being the highest Court of Justice of Brazil, and the immense amount of lawsuits in the pipeline. The Justice in Numbers Report states that approximately 50% of all cases pending in the State Court of São Paulo.

The site reports that the highest court of justice in the country is implementing its management system of digital processes throughout the state, with a target for completion in 2014. Despite the size and complexity of TJSP, the average processing cases in court in the physical media is of 808 days, whereas processes in digital media is of 497 days. This represents an acceleration of 162% procedural.

In the table below, we present some results for the Central Court of the Special Civil Courts of the district of São Paulo, whose implantation was performed in 2010:

Comarca	Competence	Average time to conduct procedures in physical media (days)	Average time to conduct procedures in digital media (days)	Accelerated Procedure (%)
São Paulo - Central District Court of the Civil Special Court	Eviction	537	126	426%
	extrajudicial execution	1.346	264	509%
	Procedure of the Special Court	760	215	353%

Table 1: Comparison of average processing time

An average gain of 429.33% procedural acceleration was observed in these cases, to consider the three cases studied (Eviction, with acceleration of 426% procedural; extrajudicial execution, with acceleration of 509%; and Procedure of the Special Court, with procedural acceleration of 353%). Procedure acceleration was observed in all cases studied.

6 Conclusions

According Botelho (2007), a greater purpose in installing systems for managing digital lawsuit to court support services exists. The deployment of digital lawsuit requires clear definition of its purpose and results to be achieved in order to justify the changes of structure and the current paradigm, since it is necessary to restructure key public services, creating the need for training and adaptation of law operators, targeting investments in information technology, change management and strategies methods of people and procedures, among others.

This purpose must be identified with the best customer service in the public interest, in order to increase the population's access to justice by improving the adjudication through the deployment and use of digital lawsuit. With this aim, the hypothesis that the digital

process is faster than the physical process was confirmed, since the distribution until the final judicial decision.

Therefore, the time series data and information obtained from the report Justice in Numbers released by CNJ (in the years 2009, 2010 and 2011) were collected, and also reports productivity and movement procedural released by State Magistrate Court the State of São Paulo. Based on data for processes that were processed during the period from 2009 to 2011, we can conclude that the judicial process digital is faster than the physical process, reaching an average to a percentage of 429% acceleration time conduct of the procedures.

The analysis showed that the judicial process in digital media is the effective tool to combat lengthy process.

This article has shown that the deployment of digital lawsuit can increase 200% to 400% acceleration time operation of procedures, between the distribution and the final judgment of sentence. This acceleration is associated with the disposal of the dead time of the procedures, present in some stages in the processing to the final sentence.

These results invigorate the notion that the digital process is the main tool to combat the slow judiciary and assist in increasing the confidence index in justice in Brazil.

Finally, the digital process provides more transparency and agility in service delivery jurisdictional, influencing positively the assessment of the Judiciary as an important provider of public service. It is the main tool for combating delays in the delivery of judicial services, strengthening public institutions and increasing access to justice.

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