

The use of ICT in Brazilian Courts

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Abstract: Transparency and effectiveness are emphasized as two positive consequences of the use of information and communication technologies (ICT) in the Courts. Indeed, ICT expanded the possibilities of access to information and judicial decisions, as well as its use especially in acts of distraintment, have given greater transparency and effectiveness to the judicial acts. In Brazil, federal, state and labor courts have web sites where judicial information is disclosed and their decisions are published. Moreover, they have agreements with the Federal Revenue Secretariat, the Central Bank and the National Register of Automobiles that allow them to implement all acts of distraintment. However, not all Courts are at the same stage as to the use of ICT because, on one hand, their web pages do not have all the features available and, on the other hand, their users are unable to explore the full potential offered by the new technologies. Delivering a diagnosis of the existing offer in the Courts' web sites and of the use of their agreements with other public services is the first task that is being proposed here. This paper intends to examine how such things are changing the judicial function and, in particular, the figure of the judge, in addition to contributing to a new insertion of the Judiciary in the society.

Keywords: e-justice. Brazil. web services. access

1. Introduction

Judicial work isn't what it used to be. In fact, in a time not so long ago, decisions used to be written as if they were one of a kind even for cases related to mass litigation. In order to get to know its contents, even if one could anticipate them, one would have to physically go to Court. A daily follow-up of every case was required in order to avoid surprises such as the missing of a deadline. Briefly, the everyday judicial work was then a very time consuming task. But, one must recognize, the widespread use of ICT in the Courts has completely reshaped judicial work (Fabri & Contini, 2001; Oskamp, Lodder & Apistola, 2004; Santos, 2005). It is definitely no longer what it used be. Computers have redefined the access to information and redesigned the decision-making process. Judicial information can now be gathered on a worldwide basis as much as computers have shortened the judicial procedures required to bring effectiveness to its decisions. Acts of distraintment, for instance, are no longer done by an Officer of the Court, but are executed through a single keyboard touch. Paperwork seems condemned to disappear as cases are filed and decisions are rendered online. In brief, nothing is as it used to be.

Brazilian Courts are not unaccustomed to such a scenario. As a matter of fact, the widespread use of ICT has provoked a whole set of questions that vary from the originality of a judicial decision to the parties' protection of privacy. Furthermore, it has redefined the boundaries of lawyers and judges' works as it enables just about anyone to track the law in the making and most of all to question the professional decisions they make. On the other hand, this direct contact has a significant impact on the courts' effectiveness as it reduces time and increases participation. As a consequence, what used to be a ciphered knowledge becomes then available to the parties who no longer feel the necessity to go through a professional's mediation in order to know what is happening and anticipate what may happen.

In this paper, it will be discussed how the suppression through ICT of such an intermediation is bringing transparency and effectiveness to the Brazilian judicial system and additionally changing judicial function. Delivering a diagnosis of the existing offer in the courts' web sites and of the use of their agreements with other public services is the first task that will be examined. Federal, state and labor courts web sites will be explored as to verify how judicial information is disclosed and decisions are published. Secondly, the availability of agreements with the Federal Revenue Secretariat, the Central Bank and the National Register of Automobiles that allow them to implement all acts of distraintment will be verified. Finally, in a third and final part, speculation as to how these things are changing the functioning of the judicial system will be forwarded.

2. The general public knows what is going on: ICT and web services in the Brazilian courts

There are at least two different ways to present the Brazilian judicial system: from a political approach, it is split between a federal branch and a dispersed state system as well as from a jurisdictional perspective it is mostly divided into three separate branches: federal, labor and state courts. The first two structures are responsible for matters related to federal institutions and labor conflicts respectively. All other matters are usually processed by the states' jurisdictions, which are autonomous and regionally organized by every State. There is a national appellate court for labor subjects, the *Tribunal Superior do Trabalho* (Superior Labor Tribunal). Both the general federal system and the states' courts systems are submitted to the federal law empire granted by a possible review of the decisions by a federal established high court, named *Superior Tribunal de Justiça* (Superior Justice Tribunal). The constitutional judicial review is made in a tribunal that operates partly in the way of a constitutional court, named *Supremo Tribunal Federal* (Federal Supreme Tribunal). In its agenda, it operates also as the last review court, when any suit has a constitutional consequence.

While this brief presentation of the Brazilian judicial system may not translate the complexity found in its everyday work, it suffices for a general grasp of its functioning and to set the basis for the data that will be dealt in this paper. As a matter of fact, the Brazilian judicial data is actually separately gathered by the three branches, which allows different analysis for each one of them. As table I indicates, 72.07% of the Brazilian judges are attached to the states' system. But their distribution is very unequal as the State of São Paulo by itself is responsible for 2,154 judges, *i.e.*, 19.69% of the total number. On the other hand, the federal and labor systems are responsible for 8.87% and 19.06% of the Brazilian judges respectively.

Table 1: Brazilian judicial system

System	Courts	Judges
Federal	05	1.346
Labor	24	2.892
States	27	10.936
Total	56	15.174

Source: *Justiça em números, edição 2006*, retrieved 18 January 2009

Every court has its web page which provides different services to the general public (Veronese, Fontainha & Fragale Filho, 2006). Moreover, their autonomy allows every web page to have a design of its own. For this paper, every court web site has been visited to track a predetermined set of web services:

- *Acompanhamento processual* corresponds to an online lawsuit follow-up that allows any user to obtain the latest information on any judicial case, requiring the use of any one of three different data: the bar registration number from the lawyers involved, the name of either one of the litigants or the number of the law suit itself;
- "Push system" relates to the e-mail sending of information relating to a single and specific law suit upon request by the user;
- "Jurisprudential database" corresponds to a solved cases database, which is indexed from a thesaurus and access from simple to more refined queries;
- "Jurisprudential newsletters" corresponds to the periodical release of the courts various opinions on different legal matters; and
- "Electronic petition" which is the basis for a paper free law suit where petitions are sent to the Court in a PDF format.

The data gathered from the web pages is presented in figure I. As one can see, the basic web service provided by all courts is *acompanhamento processual*. Such an offer means that just about anyone can gather information on any lawsuit at anytime. It is though a service that requires a reiterative action from the user, *i.e.*, every time one wants any information on a lawsuit, one has to go back to the court web page and repeat the procedure. This can be avoided by the so-called "push system", which sends, upon request by the user, any news on a given lawsuit. Such a service is nonetheless not available in every court. As a matter of fact, although offered by all federal courts, the "push system" doesn't exist in three labor courts and in seven state courts.

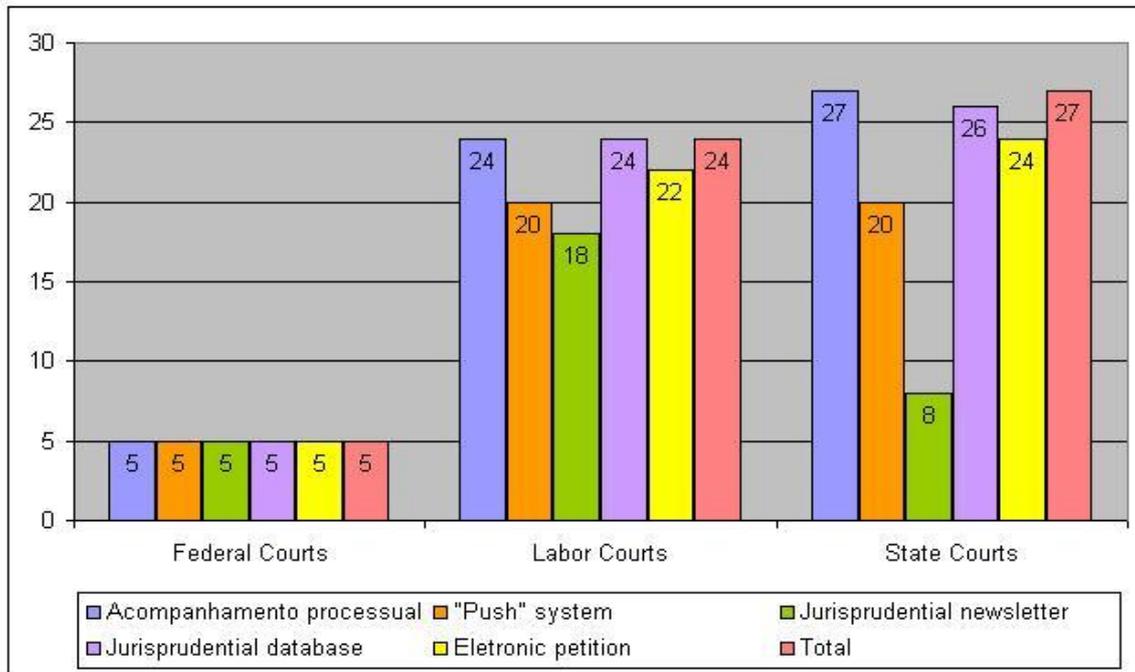


Figure 1: Online services offered by Brazilian courts. (Source: Brazilian courts web sites, retrieved 18 January 2009)

The existence of a jurisprudential database is a reality in almost every court, as there is only one state court that does not offer such a service. Actually, the federal databases have been unified by the *Conselho de Justiça Federal* (Federal Justice Council); the labor databases have been integrated in the same manner by the *Tribunal Superior do Trabalho*. Thus, one does not have to visit every court web page in order to gather information, but can easily do it through the high courts. Such an integrated system does not exist for the states' courts, although links to their jurisprudential database are available at the *Conselho Nacional de Justiça* (National Council of Justice) web page. On jurisprudential matters, it is also necessary to refer to the "jurisprudential newsletter". Although present at every federal court, at a little bit more than three fourths of the labor courts and at almost one third of the state courts, it is rare to find courts that offer such a service in the same way as the "push system". "Jurisprudential newsletters" are therefore available to every user who is willing to visit the court web page.

Finally, there is the electronic petition system. Although figure I can give the impression that such a system is generalized in almost every court, such data must be examined very carefully. As a matter of fact, e-petition is not present in the federal courts as a whole, but is specifically used for the *Juizados Federais Especiais* (Special Federal Jurisdictions), which have a very specific jurisdictional competence. On the other hand, it is present in almost every labor and state court mostly because both the *Tribunal Superior do Trabalho* and the *Conselho Nacional de Justiça* respectively have made available all the necessary technology in order to make it possible. The former has then integrated all 24 labor courts in an e-doc basis as well as the latter has incorporated all state courts into the PROJUDI system, which stands for *Processo Judicial Digital* (Digital Judicial Procedure).

While they are not accounted for in figure I, there are other services provided by the Brazilian courts (Silva and Borges, 2003) that are worth a mention. For instance, some courts offer a "push system" through cell phones. One of the federal courts allows the making of "oral arguments by video conference" which is a web service that allows lawyers to take part in the judicial hearings and deliberations although they are not physically present at the court. Many other courts allow an online service through which one demands to physically take part in the oral arguments. Some courts offer a communication service through podcasts in which they talk about and inform the general public of the courts' jurisprudential tendencies and the legislative innovations. One labor court broadcasts its hearings on the web. Briefly, there are no limits to creativity!

3. The public service comes together: ICT and judicial agreements with other services

One of the major difficulties for the public service has been the building up of a common database which would allow cross-referencing of the general public data. For instance, a judicial order asking for information on a litigant's tax revenue would take months, or even years to be answered. The scenario would not be different in the case of a seizure of a car, as it would take several months for the order to be correctly registered on the National Register of Automobiles. The disclosure of a bank account could undergo several months, even years. These situations would not be the result of a surprising incapacity to provide an answer but it would mostly be related to the difficulty in gathering the requested information, putting it all together and forwarding to the judicial system. This happened mostly because the different databases would not communicate among themselves. ICT has nonetheless made possible such communications and for now, courts have agreements with the Central Bank of Brazil, the National Department of Transit and the Federal Revenue Secretariat that allow them to implement online all acts of distraintment (Ponciano, Barbosa and Freitas, 2006; Ponciano, 2008). In the following sections, each agreement will be very briefly examined.

3.1 The Central Bank of Brazil and the Bacenjud system

Over the years, the Central Bank of Brazil (BCB) had become overloaded by judicial requests of banking information and money seizures. Thus, a partnership was established in 2002 among the BCB, the Brazilian Superior Courts and the different entities of the national financial system in order to establish a computerized system to respond to the judicial orders of distraintment in the bank accounts and financial applications, to provide financial information and to register bankruptcy episodes. As a consequence, the software "Bacenjud 1.0" was created and, in less than a year, as it can be seen in table II, the computerized orders corresponded to more than the double than those on paper.

Table 2: Seizure orders 1998-2008

Year	Paper orders	Bacenjud 1.0	Bacenjud 2.0	Total
1998	6,384	0	0	6,384
1999	54,515	0	0	54,515
2000	71,461	0	0	71,461
2001	80,586	524	0	81,110
2002	99,697	44,756	0	144,453
2003	118,505	262,892	0	381,397
2004	116,350	473,198	0	589,548
2005	128,856	615,870	61,946	806,672
2006	134,114	62,149	1,320,289	1,516,552
2007	75,838	79,908	2,693,576	2,849,322
2008 (until Nov.)	57,037	20,123	3,328,899	3,406,059
Total	943,343	1,559,420	7,404,710	9,907,473

Source: Banco Central do Brasil, retrieved 19 January 2009

After the release of "Bacenjud 1.0", things would no longer be the same. As a matter of fact, acts of distraintment became so easily done that some questions around its legality were brought forward, mostly based on an alleged breach of financial records' confidentiality and on a violation of privacy (Marinoni, 2008). Nonetheless, as the Bacenjud system progressed, such a debate was settled by a Bill introducing a disposition on the Civil Procedure Code establishing the legality of the online seizure. By that time, the BCB released a new version of the system, *i.e.*, the software "Bacenjud 2.0", which very shortly replaced the old version in all courts. As it is shown in figure II, three years after its release, seizure orders in paper and in the old software version are extremely residual and represent only 2.2% of all orders.

Thus the system became very popular in the courts and its use, which was originally made mostly by labor judges, progressed to include both the federal and states systems. But the curves' tendencies shown in figure III should not be misinterpreted. Bacenjud is still mostly used by labor judges as they average 536.3 annual orders while state judges issue only 145.8 orders on average. Actually, federal judges who average 136.3 annual orders are almost at the same level as the state judges.

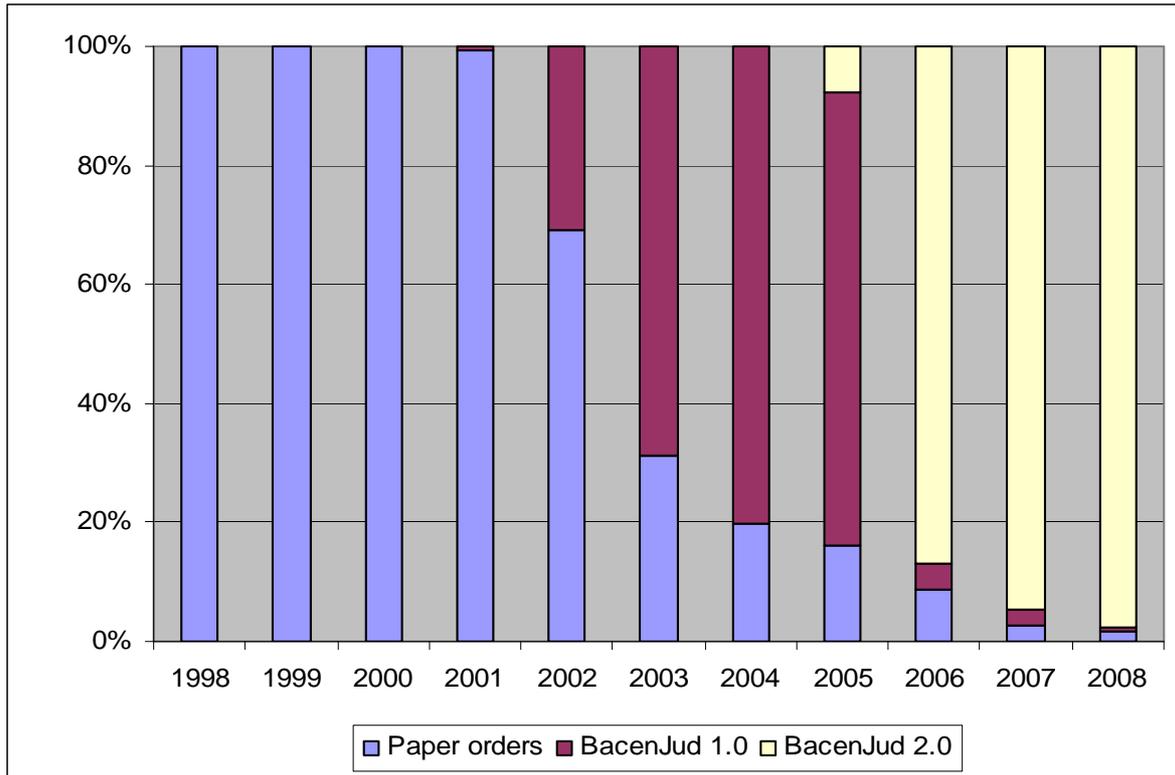


Figure 2: Seizure orders 1998-2008 (Source: Banco Central do Brasil, retrieved 19 January 2009)

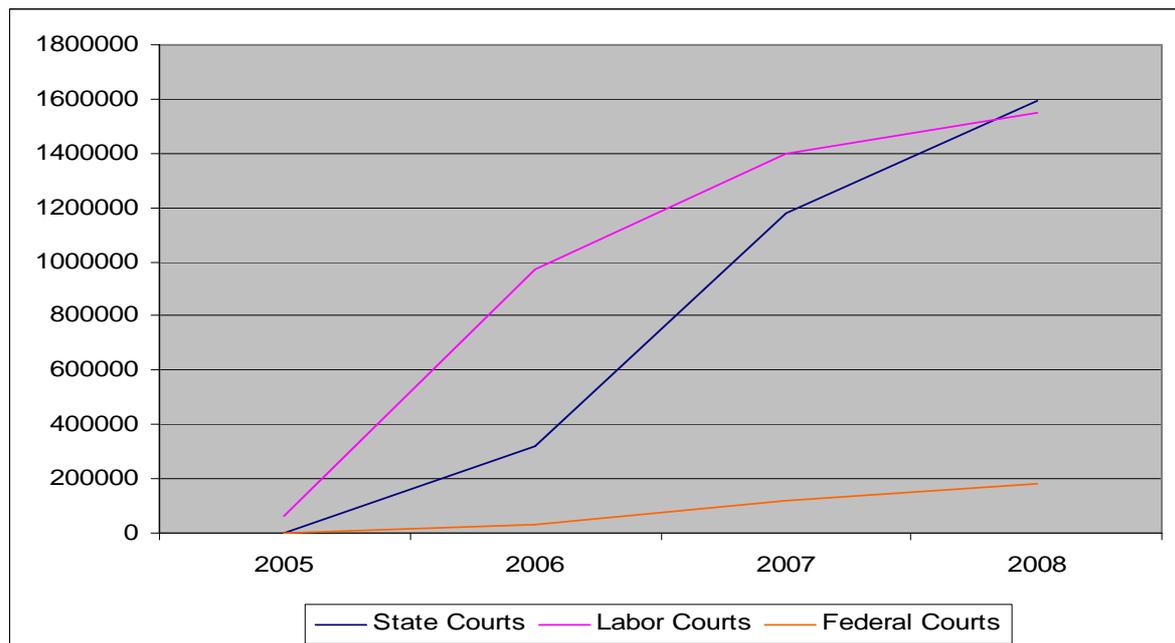


Figure 3: "Bacenjud 2.0" orders 2005-2008 (Source: Banco Central do Brasil, retrieved 19 January 2009)

As electronic seizure orders become a usual task and an important tool for the judicial celerity and effectiveness, the *Conselho Nacional de Justiça* decided in October 2008 that the use of "Bacenjud 2.0" was mandatory for every judge in the country.

3.2 The National Department of Transit and the Renajud system

Similarly to the BCB, the National Department of Transit (DENATRAN) was overloaded by judicial requests of information and seizure orders for automobiles registered in the National Register of

Automobiles (RENAVAM). By November 2006, the example offered by the Bacenjud system was followed and the Renajud system was put in place. As it is shown in figure IV, it is a web electronic tool that connects the Judiciary and the DENATRAN and allows judges to place online seizure orders in the RENAVAM database. Such orders are then transferred to the States' Departments of Transit (DETRANS) database with the specified restrictions imposed on the vehicle, which can forbid either its transfer, the annual renewal of its matriculation, or its circulation (what imposes its conveyance to a public deposit).

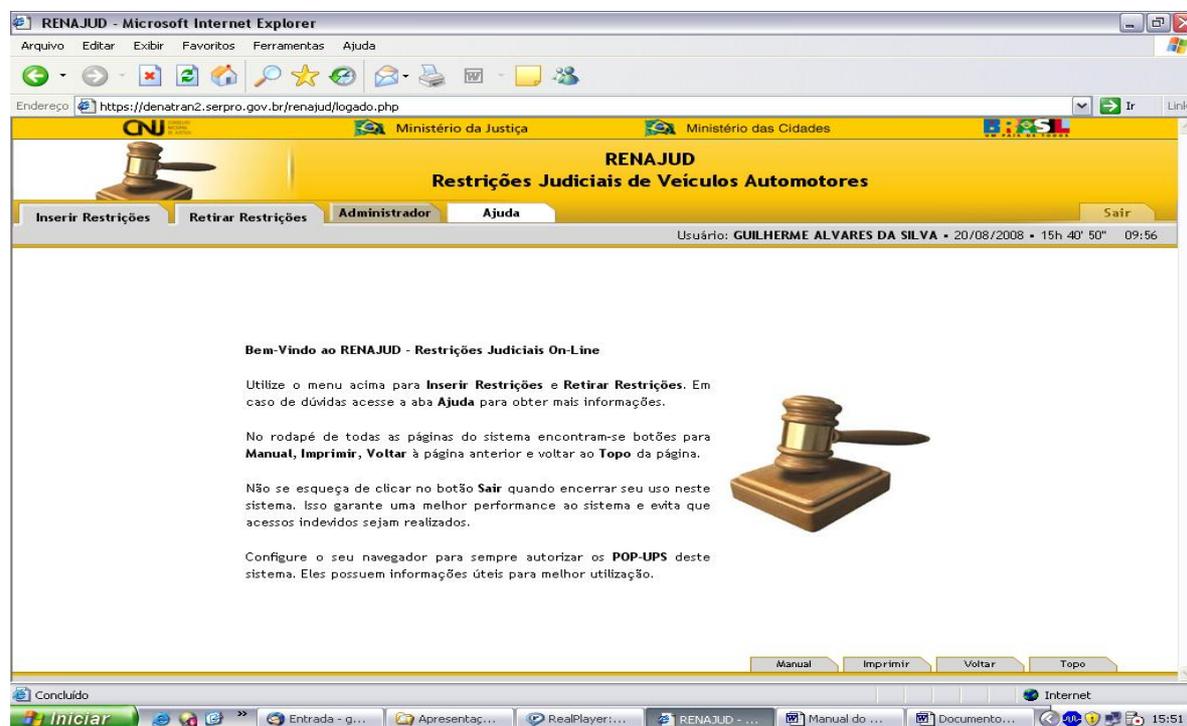


Figure 4: “Renajud” system Welcome page (Source: *Renajud manual*, retrieved 14 January 2009)

Although there are still no available statistics on its use, it is obvious that its adoption will provide a very much welcomed procedural standardization and it will shorten the delay between the judicial order and its execution.

3.3 The tax revenue services and the Infojud system

The *Informações ao Poder Judiciário* (Infojud) system was implemented by the *Secretaria da Receita Federal* (Federal Revenue Secretariat) in June 2006, shortly before the Renajud system. It eliminates all paper work and allows judges to formulate online requests for fiscal information on any Brazilian taxpayer. In other words, it does not grant direct access to the Federal Revenue Secretariat database. The request requires a digital signature which identifies the judge at its origin and also provides for latter traceability. The requested information is processed and forwarded to the judge's mail box. Among the data that can be solicited, one finds the declarations of income tax, rural land tax, and real estate transactions. Even though it seems quite evident that such a system may improve the quality of the judicial work, similarly to the Renajud system, there are still no available statistics on the extent of its use.

As it is shown in figure 5 Infojud is in fact a service integrated in the *Centro de Atendimento Virtual* (e-CAC), which is a web service center for taxpayers provided by the Federal Revenue Secretariat. At e-CAC, services are grouped accordingly to the nature and the kind of taxpayer (individual or corporate) and they all require a digital signature. It facilitates taxpayers' life as it exempts one from the necessity to physical attend to a governmental agency to ask for a specific service. Therefore, it is rather symbolic that judicial orders are processed and answered through the same web space made available to each and every Brazilian citizen. What a change!

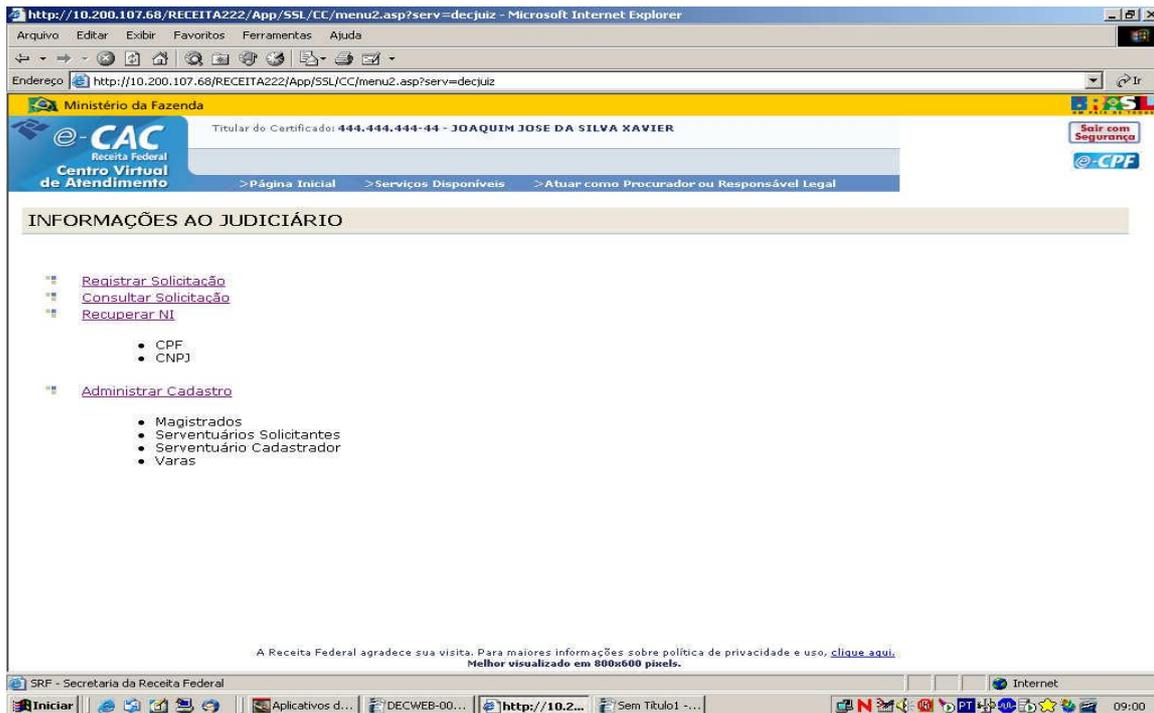


Figure 5: "Infojud" system welcome page (Source: *Infojud manual*, retrieved 14 January 2009)

4. Transforming the profession: ICT and the judges' new practices

ICT is definitely changing the practice of law. As a matter of fact, judicial professions are on the verge of a radical change as we move from a print-based industrial society to an IT-based information society. The intermediation provided by a judge's work is thus no longer limited to the building of an accepted decision by the parties, but it has become a very complex task where other functions have been integrated. ICT provides new input to its actions as well as enhancing its accessibility and transparency. But as it also reshapes the role of lawyers (Susskind, 2008), it exposes the existence of a professional digital divide between lawyers and among different Brazilian courts and regions. Actually, even within the courts its use varies accordingly to a judges' ability to cope with the technological innovations. Of course, there are the resistant ones who refuse to go along with it. They insist on old professional habits that do not fit into the new space-time judicial paradigm (Faria, 2004) which asks for almost instantaneous replies to recurring problems and a more participative posture from judges. Mostly they are still attached to a social division of judicial work in which their sole obligation consists in delivering a decision. From their point of view, everything else should then be completed by other public employees.

But the social division of judicial work is no longer like this. ICT has provided for judges to carry out the execution of their own decisions. They are asked to implement the technical operations that give effectiveness to their rulings. Such an improvement is followed by another major change which is transparency. As judges are encouraged to work differently, to change their posture as to the rapport they entertain with the parties and the people overall, their work becomes available to public scrutiny. As transparency grows to be a general trend of the judicial system, different and new services are offered through the web: e-petition, online court broadcasting, podcasting. Even administrative information such as the public employees' wages is now available and subject to public criticism. As a consequence of all these changes, a new kind of accountability emerges and a judge's legitimacy is no longer accounted for only at the public examinations one has to go through in order to join the public service. Actually, it is reiterated on an everyday basis accordingly to every judge's assimilation of the new possibilities offered by the integration of ICT in the courts. Isn't it a new world?

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