



ACTIVE TRANSPARENCY: A STUDY OF THE ELECTRONIC PORTALS OF MEDIUM-SIZED STATE COURTS IN BRAZIL

Transparência Ativa: Um Estudo dos Portais Eletrônicos de Justiça Estadual de Médio Porte do Brasil

Transparencia Activa: Estudio de los Portales Electrónicos de los Tribunales Estatales de Tamaño Medio de Brasil

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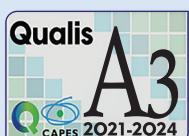
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ABSTRACT | Objective: This study aims to analyze the compliance of medium-sized courts in Brazil with active transparency standards established by national legislation, taking into account the gaps identified in previous studies on both active and passive transparency. Specifically, it evaluates adherence to Resolutions No. 102/2009 and No. 215/2015 of the National Council of Justice (CNJ). **Methodology:** A descriptive, quantitative research design was adopted, focusing on medium-sized courts as classified by the CNJ in the 2022 edition of the *Justice in Numbers* report (base year: 2021). Data were collected through systematic observation of the official



websites of each court, using a structured script to assess the degree of compliance with legal transparency requirements. **Results:** All courts analyzed failed to comply with at least two of the evaluated criteria. A 20% decrease was observed in institutional transparency, and a 13.5% decrease in remuneration disclosure. Conversely, there was an 8.7% improvement in budgetary and financial transparency, a 46.8% increase in social instruction transparency, and a 36% increase in compliance with open data criteria. These findings point to persistent shortcomings such as formalism, lack of openness in public documents, and limited adherence to open data standards. **Conclusion:** The lack of standardization in digital systems across courts hampers machine processing, content indexing, and data reuse. The study concludes that the Brazilian Judiciary is still progressing slowly in implementing transparency practices that align with constitutional and legal mandates.

Keywords | Active transparency; Courts of justice; Brazilian legislation; Judiciary.

RESUMO | Objetivo: Analisar o cumprimento das normas de transparéncia ativa por tribunais de justiça de médio porte no Brasil, com base nas Resoluções do Conselho Nacional de Justiça (CNJ) nº 102/2009 e nº 215/2015, considerando lacunas identificadas em estudos anteriores sobre transparéncia ativa e passiva. **Metodologia:** A pesquisa utilizou uma abordagem quantitativa e descritiva. A unidade de análise foi composta pelos tribunais classificados como de médio porte no Relatório Justiça em Números 2022 (ano-base 2021). Os dados foram coletados a partir dos sites oficiais dos tribunais, com base em um roteiro de observações desenvolvido para avaliar o nível de conformidade com as normas legais. **Resultados:** Verificou-se que todos os tribunais descumpriam ao menos dois dos critérios avaliados. Houve redução de 20% no critério institucional e de 13,5% no critério de remuneração. Em contrapartida, registrou-se aumento de 8,7% no critério orçamentário e financeiro, 46,8% no critério de instrução social e 36% em dados abertos. Os dados apontam falhas na implementação efetiva da transparéncia ativa, com presença de práticas formais e restrições ao acesso a informações públicas. **Conclusão:** A ausência de padronização entre os sistemas eletrônicos dos tribunais compromete a automação, a indexação e a reutilização dos dados. Conclui-se que o Poder Judiciário ainda avança de forma limitada no cumprimento das normas de transparéncia ativa, em desacordo com a legislação vigente.

Palavras-chave | Transparéncia ativa; Tribunais de justiça; Legislação brasileira; Poder Judiciário.

RESUMEN | Objetivo: Analizar el cumplimiento de las normas de transparencia activa establecidas por la legislación brasileña, considerando las deficiencias identificadas en estudios previos sobre transparencia activa y pasiva. El estudio evaluó el grado de cumplimiento de las Resoluciones nº 102/2009 y nº 215/2015 del Consejo Nacional de Justicia (CNJ) por parte de los tribunales de justicia de tamaño mediano. **Metodología:** Se adoptó un enfoque cuantitativo y una metodología descriptiva. La unidad de análisis estuvo compuesta por tribunales clasificados como medianos según el informe *Justicia en Números 2022* (año base 2021) del CNJ. Los datos fueron recolectados a través de los sitios web oficiales de los tribunales, utilizando un guion de observación para medir el grado de conformidad con las normas legales. **Resultados:** Todos los tribunales analizados incumplieron al menos dos de los criterios evaluados. Se observó una reducción del 20% en el criterio institucional y del 13,5% en el de remuneración. En contraste, hubo un aumento del 8,7% en el criterio presupuestario y financiero, del 46,8% en el de instrucción social, y del 36% en el cumplimiento con datos abiertos. Los resultados revelan persistencia de formalismo excesivo, falta de apertura documental y deficiencias en el cumplimiento de los estándares de datos abiertos. **Conclusión:** La falta de estandarización de los sistemas digitales de los tribunales estatales dificulta el procesamiento automático, la indexación y la reutilización de datos. El Poder Judicial aún presenta avances lentos en la adopción de prácticas alineadas con las normas constitucionales y legales sobre transparencia.

Palabra clave | Transparencia activa; Tribunales de justicia; Legislación brasileña; Poder judicial.



1 INTRODUCTION

Transparency is a crucial element for the healthy functioning of any democratic system, and in the Brazilian context, it is no different. In recent decades, the search for greater transparency in the public sector has been a recurring theme in political and academic debate, driven by the need to strengthen governance and combat corruption. In this sense, Brazil has adopted measures and policies to promote transparency in various sectors, including government, public institutions and the justice system.

The Brazilian Federal Constitution (1988) established fundamental principles for transparency, such as access to information and publicity of administrative acts. Article 37 of the Constitution establishes that public administration must comply with the principles of legality, impartiality, morality, publicity and efficiency. The principle of publicity, present in this context, requires that administrative acts be transparent and duly publicized, guaranteeing access to information by citizens. Furthermore, the Constitution also provides for the right of access to information, ensuring that everyone has the right to receive public information, except for that which is protected by confidentiality. Therefore, transparency is a central element in the organization and functioning of the State, seeking to guarantee participation, accountability and society's trust in public institutions. (Federal Constitution of Brazil, 1988, Article 37)

According to Oliveira et al. (2022, p. 04), for the State to ensure that efficient results are achieved in terms of transparency, "accountability is one of the central elements of public governance, since public agents must be required to account for their actions and decisions and, in the event of misconduct, receive punishment". Regarding transparency, in the conception of Oliveira and Abdalla (2019), transparency is recognized as a public value adopted by society to combat corruption, together with accountability. Furthermore, it is considered a complex tool for good governance, being implemented in programs, policies, organizations, and nations, respecting the confidentiality of sensitive data. Therefore, transparency is a constant concern for policymakers, alongside concepts such as responsibility, efficiency, and effectiveness.

Regarding the guarantee of citizen access to public information, according to Silva and Bruni (2019), despite being a seemingly obvious prerogative, it is a recent achievement at a global level. This trend reflects the search for transparency not just as a passing trend, but as an essential tool for strengthening modern democracies. Transparency contributes to strengthening democracy by allowing citizens to have access to relevant information about government actions, its policies and public spending. This enables citizens to understand how decisions are made and how resources are used, allowing greater social control over public power. (ARANTES, 2014).

However, despite regulatory advances, challenges still persist in the effective implementation of transparency in Brazil. Several studies have pointed out gaps in the disclosure of information by the public sector. Araújo and Marques (2019) examined the official websites of twenty-three agencies of the Brazilian Federal Executive Branch and detected that there was a relevant and evident non-compliance with the guidelines for active transparency on the websites of the agencies of the Federal Executive Branch, such as the disclosure of information on competencies, opening hours to the public, organizational structure, programs financed by the Workers' Support Fund,



statistical reports with the number of requests for access to information received, and information declassified in recent years. Lima, Oliveira and Abdalla (2019) evaluated the active transparency of Federal Public Universities in Brazil, since the CGU guide used as a guided navigation protocol has not been fully complied with.

Silva and Bruni (2019) conducted a study on the socioeconomic variables that influence passive public transparency in municipalities, finding that socioeconomic aspects affecting the population can exert greater influence than factors related to the social and economic characteristics of the municipality. Cruz and Zuccolotto (2020), in their study of active transparency in the Brazilian Judiciary, observed that the judiciary fails to comply with many of the active transparency criteria defined in the research, such as the Institutional, Budgetary and Financial Criteria, Social Instruction and Open Data. Non-compliance with transparency laws, whether passive or active, is notorious, as well as obstacles related to the organizational culture and bureaucratic resistance of Brazilian public institutions.

Therefore, this paper raises the following problem: "Does the Judiciary comply with the active transparency requirements defined by Brazilian legislation?" Given the problem presented, the objective was to verify the level of compliance of medium-sized Courts of Justice with the standards for proactive disclosure of information established by the CNJ on its official website, the transparency requirements provided for in CNJ Resolutions No. 102 of December 15, 2009 (CNJ Resolution No. 102 of 2009) and No. 215 of December 16, 2015 (CNJ Resolution No. 215 of 2015), which regulate the transparency obligations provided for in the 1988 Federal Constitution, the LRF and the LAI. The choice of CNJ resolutions is intentional in this study and is based on the logic of legal formalism. As highlighted by authors Zuccolotto and Cruz (2019), formalism can be understood as the disagreement between formal power, that which is written in the text of the law as the de facto power, and the conduct that is practiced by both the state and its citizens. In other words, laws exist but there is a gap between the application of the legal text and the conduct of the Judiciary, public administrators or even society in general.

2 LITERATURE REVIEW

In the Brazilian scenario, the 1988 Federal Constitution established in its constitutional text the fundamental principles for transparency in all public sector bodies, such as access to information and the publicity of their administrative acts. In addition, in 2011, the Access to Information Law (LAI) (Law No. 12,527/2011) was enacted. This was a significant milestone, guaranteeing citizens the right to request and receive information from public bodies on their official websites. Despite the advances in Brazilian regulations, challenges still persist in the effective implementation of transparency in Brazil. Several studies have pointed out gaps in the dissemination of information by the public sector, such as Araújo and Marques (2019), Lima, Oliveira and Abdalla (2019), Silva and Bruni (2019), Cruz and Zuccolotto (2020), and obstacles related to organizational culture and bureaucratic resistance and excessive formalism of the Judiciary.



2.1 Fiscal Responsibility Law

The Fiscal Responsibility Law (LRF), supported by Chapter II of Title VI of the Brazilian Federal Constitution (Federal Constitution of Brazil, 1988), establishes public finance rules aimed at responsible fiscal management. This law imposes on the government the obligation to spontaneously disclose information of public interest, known as active transparency, as well as the obligation to meet the public's demands for information, known as passive transparency. These guidelines were later regulated by Law No. 12,527/2011, known as the Access to Information Law (LAI). (Access to Information Law, 2011.) The LRF has some essential characteristics, including: mandatory transparency in fiscal management; the establishment of limits on personnel expenses; the prohibition of obtaining loans to pay current expenses; the definition of fiscal targets and limits on public debt; the establishment of mechanisms for monitoring and evaluating fiscal management; and the accountability of managers who fail to comply with the established standards" (Complementary Law No. 101/2000, article 1).

2.2 Access to Information Act

The Access to Information Act (LAI) (Law No. 12,527/2011) aims to ensure the fundamental right of citizens to access information, establishing that the procedures carried out by the Union, States, Federal District and Municipalities must comply with the basic principles of public administration. This law states that publicity is a general precept and secrecy is an exception, establishing the procedures to be observed, such as the disclosure of information of public interest regardless of requests, the use of means of communication enabled by information technology, the promotion of the development of a culture of transparency in public administration and the contribution to the development of social control of public administration (BRASIL, 2011).

It also presents fundamental characteristics, such as: the guarantee of the fundamental right of access to information; the obligation of active transparency on the part of public bodies; the provision of information of public interest in accessible formats; the definition of deadlines for responding to requests for information; the protection of personal and confidential information; the creation of appeal and review mechanisms; and the accountability of managers who fail to comply with the provisions of the law. (Law No. 12,527/2011)

2.3 Justice in Numbers Report

Another relevant initiative that supports transparency in the Judiciary is the NCJ's "Justice in Numbers" report, which has been published annually since 2004, becoming the main source of official statistics for the Brazilian Judiciary. This report provides details on the structure and litigation of the Judiciary, as well as essential indicators and analyses to support judicial management in the country. An important measure adopted was the replacement of printed media with electronic media, as a way of promoting environmental preservation (Justice in Numbers Report, 2021). In addition, the report established uniform rules and procedures in the various



branches of the Judiciary (BRASIL, 2015), consolidating itself as the main source of measurement of judicial activity (BRASIL, 2015).

In the context of Judiciary, which is the subject of this study, the National Council of Justice (NCJ) is the body that regulates the rules and procedures related to active and passive transparency. Resolutions 102 and 215 of the NCJ establish that the administrative and judicial bodies of the Judiciary must guarantee individuals and legal entities the right to access information, through objective and agile procedures, in a transparent, clear and easily accessible language. In addition, these resolutions determine the disclosure of information of general interest produced or held by the bodies of the Brazilian Judiciary, regardless of request, through electronic means, except for confidential information that is temporarily restricted due to its essentiality for the security of society and the State. In other words, only confidential data must be protected.

2.4 Related studies

Cruz and Zuccolotto (2020) surveyed 50% of state courts from 2018 to 2020. This survey individually covered 13 courts of justice in the states of Pará, Amazonas, Roraima, Bahia, Pernambuco, Rio Grande do Norte, Sergipe, Goiás, Mato Grosso do Sul, São Paulo, Espírito Santo, Rio Grande do Sul, and Santa Catarina. The results showed that the state courts studied did not largely meet the transparency obligations provided for in the laws. Low transparency can be an obstacle to the effectiveness of accountability, in addition to the lack of disclosure of data in an open format by the courts, which makes it impossible to manipulate, filter, and cross-reference these data. It is believed that the lack of transparency in the Brazilian Judiciary does not result from the absence of standards, but possibly from the historical and institutional characteristics of formalism and the propensity for confidential acts.

Thus, it is observed that active transparency must still be the object of study and observation by public managers, so that this transparency can be perceived by society and achieve one of its purposes, which is social control.

Araújo and Marques (2019) examined the official websites of twenty-three agencies of the Brazilian Federal Executive Branch in relation to compliance with the legal guidelines for active transparency. The results of the study reported that, in 2016, there was a significant and evident non-compliance with the active transparency guidelines on the websites of the agencies of the Federal Executive Branch. The results also revealed that the websites of the public agencies and entities evaluated did not comply with several legal requirements, such as the disclosure of information on competencies, opening hours to the public, organizational structure, programs financed by the Workers' Support Fund, statistical reports with the number of requests for access to information received, information declassified in the last twelve months, information classified in each level of secrecy, among others. Araújo and Marques (2019) concluded that, during the application of the LAI in Brazil, non-compliance with the legal principles that regulate access to public information has been observed at all levels of government, covering federal, state and municipal bodies in the three branches of government (MARTINS; JEREMIAS JUNIOR; ENCISO, 2019).



In the context of Federal Public Universities, Lima, Oliveira and Abdalla (2019) evaluated the active transparency of Federal Public Universities in Brazil in light of the Access to Information Law. The results revealed that the evaluation of the active transparency of all federal universities revealed the existence of a long way to go, since the CGU guide used as a guided navigation protocol has not been fully complied with (LIMA, 2018).

Silva and Bruni (2019) conducted a study on the socioeconomic variables that influence passive public transparency in Brazilian municipalities. Based on a random sample of 1,133 municipalities, the study used the Transparent Brazil Scale (TBE) to assess passive public transparency. Statistical analyses revealed a significant correlation between passive public transparency and variables such as population education, per capita revenue, and population age. Surprisingly, population age showed a result opposite to that expected. In addition to the statistical findings, the study also contributed to clarifying the difference between active and passive public transparency, highlighting the representative characteristics of each type (SOUZA NETTO et al., 2022).

According to Tavares and Muller (2021), they show that the use of programming languages, business intelligence techniques, big data, machine learning, artificial intelligence applied to transparency portals and open format data made available by the Public Administration, as determined by the Access to Information Law, can enable communication between citizens and government based on the access made possible by the advent of the internet and the development of various instruments, such as the compilation and production of automated reports, tables, references and immediate access to documents and data of a public nature (HOMERCHER, 2011).

3 METHOD

Aiming to continue the study of Transparency in Public Power and improve the analysis and discussion on active transparency in the Brazilian Judiciary, this article studied the medium-sized courts of justice in Brazil classified by the CNJ in the annual Justice in Numbers Report 2022 (base year 2021), through a descriptive research with a quantitative approach, where the researcher records and describes the observed facts without interfering in them (Prodanov; Freitas, 2013). The study was carried out through the official internet pages of each court, individually, using an observation script established by Cruz and Zuccolotto (2020), in their article "Active Transparency in the Judiciary: a study of the electronic portals of the Courts of Justice based on the Brazilian Constitution, the LRF, LAI and resolutions No. 102 of 2009 and No. 215 of 2015 of the CNJ". So that it would be possible to quantify the level of compliance with the law through the actions of the Judiciary.

CNJ Resolution No. 102 of December 15, 2009, establishes that the Superior Court of Justice, the Superior Labor Court, and the Courts and Judges of the States, Federal District and Territories must publish on their websites and forward to the CNJ, in compliance with its definitions and deadlines, information regulating the publication of information related to budgetary and financial management, staffing tables and respective remuneration structures of the courts and councils. Table 1 shows the items to be observed by the courts:



Table 1. Items to be observed by the courts according to CNJ resolution No. 102/2009

#	ITEM
1	Your budget and financial management data;
2	Information on the respective remuneration structures, numbers of permanent and commissioned personnel, and functional origin of the occupants of commissioned positions;
3	The list of members of the judiciary and other public agents;
4	The list of employees of contracted companies working in the Organs;
5	The list of civil servants and employees who are not part of the body's own staff, excluding those holding a commissioned position or position of trust.

Source: Brasil, 2009.

However, it is worth considering that the annexes of CNJ Resolution No. 102/2009 cover expenses, transfers and revenues (Annex I); Monitoring of Budget Execution (Annex II); Remuneration Structure (Annex III); Number of Effective Positions (Annex IV); Members and Public Agents (Annex V); Employees of Contracted Companies Working in the Agencies (Annex VI); Servers and/or employees not part of the agency's own staff working in the agency without holding a commissioned position or position of trust (Annex VII); and, Details of the Personnel Payroll (Annex VIII).

In addition, Resolution No. 215 of December 16, 2015, establishes that the administrative and judicial bodies of the Judiciary must guarantee individuals and legal entities the right to access information, through objective and agile procedures, in a transparent, clear manner and in language that is easy to understand. Publicity is a general rule and confidentiality is an exception. Disclosing information of general interest produced or held on their websites (Brazil, 2015).

3.1 Definitions of the items and objects of analysis

The observation items gather and reproduce the Brazilian standards of active transparency. The criteria were divided into five to account for the level of compliance with each criterion. These are the Institutional Criteria; Budgetary and Financial; Remuneration; Social Instruction; and Open Data. During the verification of compliance with the observed items, they were classified into two types of classification: "complied" and "did not comply". The classification was assigned to a binary scoring system: 0 (zero) for did not comply and 1 (one) for complied. Thus, when quantifying the analysis criteria, those who met most of the observation items were considered "complied". This quantification was intended to analyze the information collected and identify the level of compliance with the requirements. The data analysis was restricted to the exercise of the courts' activities in 2021 and 2022; the research was carried out between January 10, 2022, and May 10, 2022. Each state court defined in the sample was accessed individually on their official websites available on the internet, in the area dedicated to Transparency.



3.2 Sample definition

To select the sample for this research, we chose to study medium-sized courts of justice, as they make up 34% of the state courts of justice in Brazil and are classified by the CNJ annually through the Justice in Numbers 2021 report. Thus, this sample totaled 09 medium-sized State Courts of Justice, in Brazil there are 26 State Courts of Justice: TJ Bahia (TJBA), TJ Santa Catarina (TJSC), TJ Goiás (TJGO), TJ Pernambuco (TJPE), TJ Ceará (TJCE), TJ Mato Grosso (TJMT), TJ Maranhão (TJMA), TJ Pará (TJPA), and TJ Espírito Santo (TJES).

The Court of Justice of the Federal District and Territories was excluded from the population subject to analysis because they are maintained by the Union, making them unfeasible in comparison with state courts of justice, as shown in Table 3.

Table 3. Sample Definition Medium-Sized Courts of Justice

Regions	North	Northeast	Midwest	Southwest	South
States	AC, AM, AP, PR, RO, RR, TO	AL, BA, CE, MA, PB, PE, PI, RN, SE	GO, NS, MT	ES, MG, RJ, SP	PR, RS, SC
Proportion of TJ by region	7/26	9/26	3/26	4/26	3/26
Percentage of TJ by region	26,9%	34,6%	11,6%	15,3%	11,6%
Sample	1	4	2	1	1
TJ selected	PR	BA, CE, PE, MA	GO, MT	ES	SC

Source: Adapted from Cruz and Zuccoloto 2020.

In this way, it was possible to cover the four regions of the country with the selection criteria researched, with the largest number of courts concentrated in the northeast region, followed by the north, southeast, central west and south. It also covered the various social and economic realities. As well as comparison and complementation with other studies of active transparency in Judiciary.

4. Results and Discussions

Figure 1 shows the the level of compliance of the Courts of Justice of the Judiciary studied by Zuccolotto and Cruz (2019) with the medium-sized courts of justice that are the object of study of this article, based on the analysis criteria defined in the methodology, namely: Institutional, Budgetary and Financial Criteria, Remuneration, Social Instruction and Open Data

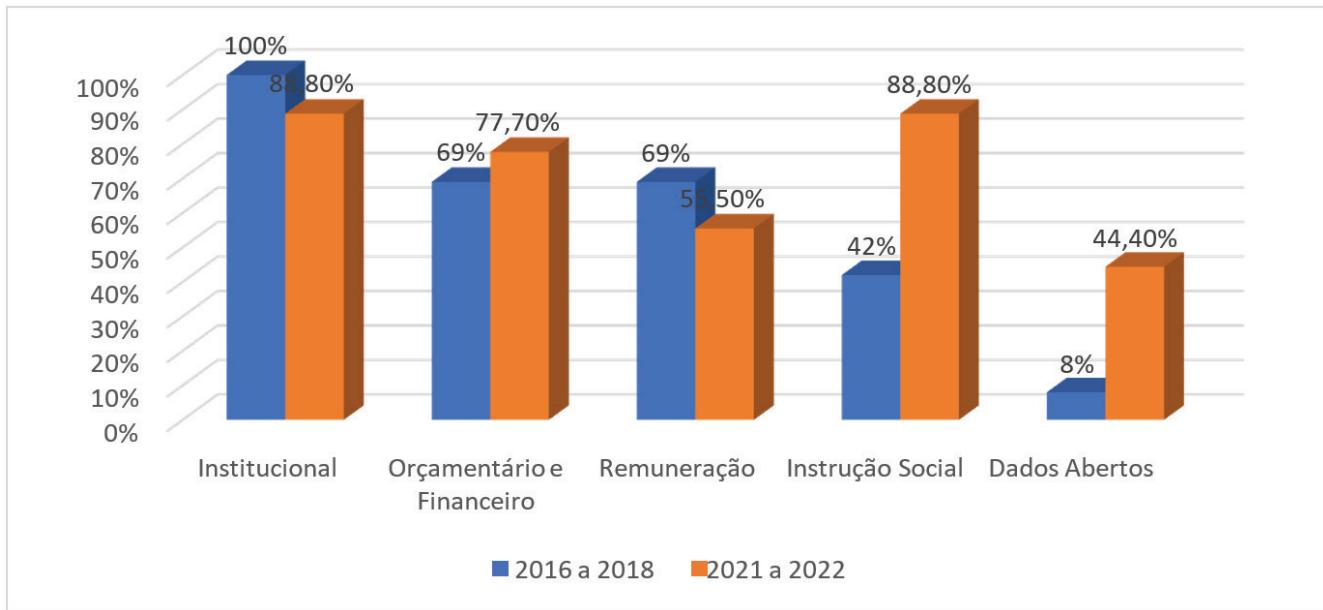


Figure 1. between State Courts and Medium-sized State Courts of Justice

Source: JA, 2023

a. Verification of Institutional Criteria

Midwest, the list of employees of contracted companies, the disclosure of the list of non-member civil servants and employees assigned by other bodies, the list of members and civil servants who participate in councils and similar bodies, external to the institution, the disclosure of the organizational chart of the Court of Justice and its respective competencies. There was no compliance with only one court, the TJSC. A divergence can be observed between the requirements of the resolution as there was a late disclosure of information in the quarterly format of the number of effective and commissioned positions, members of the judiciary and other public agents, list of employees of contracted companies, list of civil servants and employees, not members of the TJ staff, assigned by other bodies.



Table 1. Verification of Institutional Criteria

Institutional Criteria	MEDIUM-SIZED COURTS OF JUSTICE								
	BA	SC	GO	PE	CE	MT	MA	PR	ES
Presence of the transparency icon on the TJ page.	1	1	1	1	1	1	1	1	1
Disclosure of the number of permanent and commissioned positions.	1	0	1	1	1	1	1	1	1
Disclosure of members of the judiciary and other public agents.	1	0	1	1	1	1	1	1	1
Disclosure of the list of employees of companies contracted by the TJ.	1	0	1	1	1	1	1	0	0
Disclosure of the list of civil servants and employees, not members of the TJ staff, assigned by other organs.	1	0	1	1	1	1	1	1	0
Disclosure of the list of members and employees who participate in councils and similar bodies, external to the institution.	1	1	0	1	1	0	0	1	0
Disclosure of the Court of Justice's organizational chart and respective competences.	0	1	1	1	1	1	1	1	1
Disclosure of addresses, telephone numbers and opening hours of the Court of Justice Organ.	1	1	1	1	1	1	1	1	1

Source: The author, 2023.

As shown in Table 1, the Institutional Criterion consists of 8 items from the observation guide and was met by 88.8% of the courts. Only TJPE and TJCE met 100% of the criteria surveyed. It is worth noting that TJSC failed to comply with 50% of the items and TJES failed to comply with 3 of the 8 items. It is clear that the other courts failed to comply with 1 of the items. The item in which the evaluated courts failed to comply the most was "Disclosure of the list of members and employees who participate in councils and similar bodies, external to the institution".

b. Budget and Financial Criteria Verification

The budgetary and financial criterion consists of four items, and the following are assessed in this criterion: disclosure of personnel and social security expenses; disclosure of operating expenses; expenditure on investments and financial investments; transfers to the federal or state treasury of revenues collected by the TJ; and disclosure of budget allocation and execution. It was complied with by 77.7% (7 of the 9 courts studied); only the TJSC and the TJCE failed to comply, as they totaled 100% non-compliance with the item researched.

Table 2. Analysis of budgetary and financial criteria

Budgetary and Financial Criteria	MEDIUM-SIZED COURTS OF JUSTICE								
	BA	SC	GO	PE	CE	MT	MA	PR	ES
Disclosure of personnel and social security expenses, and other operating expenses.	1	0	1	1	0	1	1	1	1
Disclosure of expenditure on investments and financial investments.	1	0	1	1	0	1	1	1	1
Disclosure of transfers from the federal or state treasury and revenues directly collected by the TJ.	1	0	1	1	0	1	1	1	1
Disclosure of budget allocation and execution.	1	0	1	1	1	1	1	1	1

Source: The author, 2023

c. Verification of the Remuneration Criteria

In the remuneration criterion, the items that deal with the disclosure of the remuneration structure of the staff were observed; the remuneration structure of the members of the judiciary; and the details of the personnel payroll, as can be seen in Table 3.

Table 3. Remuneration Observation Criteria

Remuneration Criteria	MEDIUM-SIZED COURTS OF JUSTICE								
	BA	SC	PE	GO	CE	MT	MA	PR	ES
Disclosure of the remuneration structure of staff, in accordance with Annex III of CNJ Resolution No. 102 of 2009.	1	0	0	1	1	1	1	1	0
Disclosure of the remuneration structure of members of the judiciary, in accordance with Annex III of CNJ Resolution No. 102 of 2009.	1	0	0	1	1	1	0	1	0
Disclosure of details of the payroll, in accordance with Annex VIII of CNJ Resolution No. 102 of 2009.	1	1	0	1	1	1	0	1	0

Source: The author, 2023

In Table 3, the Remuneration Criterion is composed of 03 items and was complied with by 55.5% (5/9) of the courts, being non-complied with by TJSC; TJPE; TJMA and TJES. The TJPE and TJES failed to comply with 100% of the items. The detailed data on the TJMT payroll could be accessed by prior registration with the following data: CPF, full name, email and reCAPTCHA so that we could have access to the information justified with the following information:

“Dear user, article 6, paragraph 2, of Resolution no. 215/2015-CNJ determines that “the individual and nominal information on the remuneration of a member or employee mentioned in item “d” of section IV will be automatically made available upon prior identification of the interested party, in order to guarantee security and the prohibition of anonymity, in accordance with art. 5, caput and section IV, of the Federal Constitution, safeguarding the confidentiality of the applicant’s personal data, which will be under the custody and

responsibility of the competent unit, and their sharing or disclosure is prohibited, under penalty of law; Please identify yourself below to regulate access to the information sought."

Another serious observation observed in relation to this is that the information regarding the details of the payroll of personnel in the TJMA could also only be accessed using login and password. During the research, user registration was requested to access the system and no response was given, making it impossible to proactively and easily access the information inherent to the researched question.

d. Verification of the Social Instruction Criterion

The social instruction criterion, which consists of the disclosure of information such as bidding procedures; contracts signed; answers and frequently asked questions from society and the presence of the SIC icon, was met by 88.8% of the courts surveyed, with only the TJPR failing to comply with most of the items and the TJCE failing to present the SIC icon, which is so important not only for active transparency but also for passive transparency, since its function is to guide the public on how to access information and through which electronic requests for information can be filed. It was also noted that 04 courts did not present the channel for the most frequently asked questions and answers from society, namely the TJBA, JPE, TJMA and the TJPR.

Table 4. Analysis of Observation Criteria Social Instruction

Social Instruction Criteria	MEDIUM-SIZED COURTS OF JUSTICE								
	BA	SC	GO	PE	CE	MT	MA	PR	ES
Disclosure of information on bidding procedures, as provided for in article 6, VII, "a", of CNJ Resolution No. 215 of 2015.	1	1	1	1	1	1	1	1	1
Disclosure of information on bidding procedures, as provided for in article 6, VII, "a", of CNJ Resolution No. 215 of 2015.	1	1	1	1	1	1	1	1	1
Disclosure of answers to society's most frequently asked questions, as provided for in article 6, VIII, of CNJ Resolution No. 215 of 2015.	0	1	1	0	1	1	0	0	1
Presence of the Citizen Information Service (SIC), designed to guide the public on how to access information and through which electronic requests for information can be filed, article 10 of CNJ Resolution No. 215 of 2015	1	1	1	1	0	1	1	0	1

Source: The author, 2023

e. Verification of the Open Data Criteria

The open data criterion had the lowest percentage of compliance, with only 44.4% of medium-sized courts of justice complying with the observed item. The disclosure in an open format of information such as personnel expenses, investments and financial investments; resources received from the federal or state treasury; budget allocation and execution; remuneration



structure of members of the judiciary and civil servants, details of the payroll of personnel as shown in Table 5.

Table 5. Analysis of the open data criterion

Open Data Criteria	MEDIUM-SIZED COURTS OF JUSTICE								
	BA	SC	GO	PE	CE	MT	MA	PR	ES
Information disclosed in Annex I of CNJ Resolution No. 102/2009, published in open format.	0	1	1	0	1	0	0	0	1
Information disclosed in Annex II of CNJ Resolution No. 102/2009, published in open format.	0	1	1	0	1	0	0	0	1
Information disclosed in Annex III of CNJ Resolution No. 102/2009, published in open format.	0	1	1	0	1	0	0	0	1
The remuneration structure of members of the judiciary, disclosed in Annex III of CNJ Resolution No. 102/2009, published in open format.	0	1	1	0	1	0	0	0	1
Information disclosed in Annex IV of CNJ Resolution No. 102/2009, published in open format.	0	1	1	0	1	0	0	0	1
Information disclosed in Annex VI of CNJ Resolution No. 102/2009, published in open format.	0	1	1	0	1	0	0	0	1
Information disclosed in Annex VII of CNJ Resolution No. 102/2009, published in open format.	0	1	1	0	1	0	0	0	1
Information disclosed in Annex VIII of CNJ Resolution No. 102/2009, published in open format.	0	1	1	0	1	0	0	0	1

Source: The author, 2023

It was found that, of the 9 courts studied, only 4 complied and 5 failed to comply with 100% of the criteria of the observation guide. This failure occurred because during the observations, it was identified that the courts that failed to comply with all the items of these criteria disclosed the information in their own system, which, as a result, generated the data in only one type of file format, making it difficult to easily access the information and reproduce it. For example, TJBA only provided data in PDF format for all items. TJBA, TJMT, TJPE, and TJPR also failed to comply by only disclosing the information in one format, and TJMA, in addition to disclosing the information in only one format, presented an error when generating the information in PDF format, making it impossible to access the information and making it impossible to evaluate the data provided. The data in this regard is defined in the CNJ resolutions that all data must be disclosed in more than one format to enable the reproduction of the Judiciary's data.

However, to detail the level of non-compliance with the items observed by medium-sized JWs in the survey, Table 6 was prepared.

Table 6. Number of observation items not complied with by the Courts of Justice

TJ	Institutional	Budgetary and Financial	Remuneration	Social Instruction	Open Data
BA	12,5%	0%	0%	25%	100%
SC	50%	100%	66,6%	0%	0%
GO	12,5%	0%	100%	0%	0%
PE	0%	0%	0%	25%	100%
CE	0%	75%	0%	25%	0%
MT	12,5%	0%	0%	0%	100%
MA	12,5%	0%	66,6%	25%	100%
PR	12,5%	0%	0%	50%	100%
ES	37,5%	0%	100%	0%	0%

Source: The author, 2023

Quantity of observation items not complied with by the Courts of Justice to allow visualization of the percentage of items not observed on the websites of medium-sized state courts. The percentage was calculated according to the percentage achieved of items not observed for each analysis criterion and the total number of items of the criteria.

Finally, Tavares et al. (2021) shows that the digital government law brought greater regulations to active public transparency and the opening of government databases, in the digital sphere, it brought important normative advances for the implementation of digital government as a platform for social control, in addition to relevant instruments for innovation, such as innovation laboratories and knowledge networks, focusing on communication as a prerequisite for transparency (BITENCOURT; RECK, 2018).

5 CONCLUSION

It is concluded that medium-sized courts of justice do not fully comply with the Access to Information Act and, consequently, with the 1988 Federal Constitution. Furthermore, they do not comply with the active transparency standards provided for by the CNJ, the regulatory body of the Brazilian Judiciary, in CNJ Resolutions No. 102 of December 15, 2009 (CNJ Resolution No. 102 of 2009) and No. 215 of December 16, 2015 (CNJ Resolution No. 215 of 2015). It was found that the general objective was duly fulfilled, given that medium-sized courts were selected proportionally by region. Regarding the specific objectives of this research, it was found that: 1 - Medium-sized courts of justice fail to comply with Resolution No. 102 of December 15, 2009. 2 - Medium-sized courts of justice also fail to comply with the active transparency standards set forth in Resolution No. 215 of December 16, 2015. It was evident that items 1 and 2 of the specific objectives show a high rate of non-compliance with the open data criterion, as most medium-sized courts of justice published information in only one format, either PDF, only XLS or only Excel, showing a difficulty in standardizing state court systems and making automated processing by machines, copying and indexing of content difficult, compromising transparency and reproduction of data.



Another detail that reinforces the secrecy of the judiciary is that the data from the Payroll Details of the TJ Maranhão and TJ Mato Grosso TJMT could only be accessed upon prior registration, with registration with CPF and one of them did not return the registration in the system showing that the Judiciary is still moving slowly with practices that diverge from the standards established by the Federal Constitution and the laws that came to regulate transparency in the Public Power. 3 - From 2021 to 2022 compared to the period from 2018 to 2020 in relation to the criteria of active transparency with regard to the Institutional Criterion there was a 20% reduction in the level of compliance with this criterion, while in the Budgetary and Financial Criterion it increased by 8.7%. In relation to Remuneration, it reduced by 13.5%. In Social Instruction it increased by 46.8%. And in Open Data there was a 36% increase in the level of compliance.

Therefore, medium-sized state courts have not fully complied with all the requirements expressed and provided for in CNJ resolutions No. 102 of 2009 and No. 215 of 2015 based on the LAI and LRF and the Federal Constitution of 1988. This indicates that the Brazilian Judiciary continues to reveal signs of excessive formalism and secrecy in documents that should be widely published. Medium-sized courts of justice have failed to comply with at least two of the items of the observed criteria, indicating insufficient compliance with the active transparency standards provided for by law and that these may hinder the creation of a transparent democratic State, potentially making it impossible for the people to exercise accountability in the courts of justice. This demonstrates a possible slowness in the adaptation of the Judiciary to Information Systems with transparency standards, and such systems need to be updated and standardized.

Given the importance of the topic for Brazilian democracy and the guarantee of the people's right to access information that is easily accessible and easy to reproduce, this study may serve as a reference for other studies in the area.

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