



# Article

# An institutional analysis of telework and performance in the **Brazilian Judiciary**

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Focusing on institutions within the Brazilian Judiciary and grounded in institutional theory, this research analyzed the performance of the Federal Regional Courts (TRFs) in light of the COVID-19 pandemic. Using a qualitative approach, the study examined the resolutions issued by the National Council of Justice (CNJ) from 2018 to 2024. Court productivity, measured by the net congestion rate from 2018 to 2023, was the primary performance indicator. Results showed that the average net congestion rate tended to increase over the period, indicating a decline in performance. Page Test was used to validate this trend. Alongside these findings, it was observed that rules governing work arrangements were adapted in response to institutional pressures. Given that this is an underexplored area in the literature, the study contributes institutional insights regarding the CNJ's regulations that guide TRF operations in Brazil. Although telework was initially implemented as a temporary measure, it resulted in permanent changes in the courts studied.

**Keywords:** judiciary; COVID-19; telework; institutional theory.

# Uma análise institucional do trabalho não presencial e do desempenho no judiciário brasileiro

Com foco em órgãos do Poder Judiciário e sob a ótica da Teoria Institucional, a pesquisa objetivou analisar o desempenho dos Tribunais Regionais Federais (TRFs) considerando a pandemia da COVID-19. Com abordagem qualitativa, analisaram-se as Resoluções expedidas pelo Conselho Nacional de Justiça (CNJ) durante os anos de 2018 a 2024. Como medida de desempenho, utilizou-se a produtividade dos tribunais a partir da Taxa de

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Congestionamento Líquida (TCL) de 2018 a 2023. Constatou-se que a TCL média apresentou tendência de aumento ao longo do período analisado; portanto, o desempenho tendeu a piorar. Para confirmar o crescimento da TCL, utilizou-se o Teste de Page. Paralelamente a tais evidências, observou-se que as normas sobre o regime de trabalho foram alteradas consoante as pressões institucionais. Considerado um campo pouco explorado na literatura, o presente estudo contribui com reflexões institucionais acerca dos normativos emitidos pelo CNJ e que orientam a atuação dos TRFs no Brasil. A implementação do teletrabalho, embora temporária, ensejou mudanças permanentes nos tribunais estudados.

Palavras-chave: poder judiciário; COVID-19; trabalho não presencial; teoria institucional.

# Un análisis institucional del trabajo remoto y el desempeño en el Poder Judicial brasileño

Centrada en los órganos del Poder Judicial y desde la perspectiva de la teoría institucional, la investigación tuvo como objetivo analizar la actuación de los tribunales regionales federales (TRF) frente a la pandemia de COVID-19. Utilizando un enfoque cualitativo, se analizaron las resoluciones emitidas por el Consejo Nacional de Justicia (CNJ) durante los años 2018 a 2024. Como medida de desempeño se utilizó la productividad de los tribunales con base en la Tasa Neta de Congestión (TNC) del año 2018 al 2023. Se encontró que la TNC promedio mostró una tendencia creciente a lo largo del periodo analizado, por lo tanto, el desempeño tendió a empeorar. Para confirmar el crecimiento de la TNC se utilizó la prueba de Page. Paralelamente a dicha evidencia, se observó que las reglas sobre el régimen de trabajo fueron modificadas en función de las presiones institucionales. Considerado un campo poco explorado en la literatura, el presente estudio contribuye con reflexiones institucionales sobre las regulaciones emitidas por el CNJ y que orientan la acción de los TRF en Brasil. La implementación del teletrabajo, aunque temporal, provocó cambios permanentes en los tribunales estudiados.

Palabras clave: poder judicial; COVID-19; trabajo no presencial; teoría institucional.

# 1. INTRODUCTION

This article draws on Institutional Theory (Selznick, 1996) to analyze the performance of Brazilian courts from a non-positivist perspective, while also considering the social factors affecting how the Judiciary operates in Brazil. Discussions on institutional performance that address factors beyond utilitarian efficiency are important for a better understanding of various phenomena (Brignall & Modell, 2000), especially in the Judiciary (Lima et al., 2016).

Variables such as trial span or number of solved cases can be used to measure performance in courts (Ng et al., 2008). Another variable is congestion rate, the ratio of inputs to outputs (Morais & Andrade, 2021; Sátiro et al., 2021), which reflects the size of a court (Buscaglia & Dakolias, 1999; Voigt, 2016). However, as the congestion rate is limited in measuring productivity (see section 3), this study uses the Net Congestion Rate (NCR), which excludes suspended and temporarily archived cases.

In the present study, the term remote work refers only to the emergency telecommuting work regime in force from March 2020 to December 2022, i.e., during the COVID-19 pandemic, according to National Council of Justice (CNJ) Resolution No. 313 (CNJ, 2020a). To be sure, non-emergency telecommuting, referred to in this study as telework, has been legally available as a working arrangement since 2016, when the National Council of Justice issued Resolution No. 227 (CNJ, 2016) defining the bases for its optional implementation in Justice bodies.

Before the pandemic, Caillier (2016) pointed out that teleworking servants were more motivated to work and performed better than those at the workplace. Morais and Andrade (2021) and Sátiro et al. (2021) addressed the impact of the pandemic on the Judiciary with a focus on remote work; in both studies, the findings showed an increased number of trial resolutions.

By inquiring the impacts of implementing remote work and easing telework on the performance of Regional Federal Courts (TRFs - acronym in Portuguese for Tribunais Regionais Federais),

this study provides insights into the overall performance of the Judiciary in Brazil. Performance versus working arrangement is a yet unexplored topic in the literature (Anakpo et al., 2023; Martins et al., 2024), with existing studies providing inconclusive findings (Metselaar et al., 2023).

The Regional Federal Courts were chosen for the present study because they are Judiciary bodies classified as common justice. Using productivity data from courts in the same branch of justice presumably allows for homogeneous comparisons. This study is limited in scope to empirical data on the performance of Regional Federal Courts from 2018 to 2023; these data were confronted with the discourse of efficiency and increased performance as institutionalized through CNJ regulations from 2018 to 2024, especially during the COVID-19 pandemic.

Established by Constitutional Amendment No. 45, as of December 30, 2004, the National Council of Justice emerged as a response to the need both for greater transparency, efficiency and accountability in the Judiciary (especially regarding the courts' administrative and financial control), and for greater compliance of the judges to their functional duties. The National Council of Justice defines guidelines and promotes internal control of all Judiciary bodies, except for the Supreme Federal Court (STF acronym in Portuguese for Supremo Tribunal Federal).

The National Council of Justice also addresses the modernization challenges of the Judiciary, especially regarding its deficiencies caused by its fragmented practices. Its operation is considered key to improving the Brazilian judicial system and achieving the ideal of efficient, tempestive justice (Sátiro et al., 2021). In this context, it was expected that the standardization of activities and the operationalization of courts during the COVID-19 health crisis occurred uniformly at the national level, given the CNJ guidance and provisions.

# 2. THEORETICAL FRAMEWORK

Institutional Theory provides a framework to understand how organizations are influenced by normative pressures, beliefs and values, whether internal or external (Zucker, 1987). Previously, conventional theories assumed that a formal and rational framework was the most efficient way to coordinate and control the complex structures within an organization (Meyer & Rowan, 1977).

Institutions are regulatory, normative and cultural-cognitive elements embedding symbolism, social activities and material resources that promote stability in social life in the form of durable, multifaceted (but not immutable) social structures (Scott, 2014). From the perspective of New Institutional Sociology (NIS), the public sector, influenced by external factors, seeks to legitimize its actions with the appearance of efficiency (Carruthers, 1995), which is consistent with the present study focused on courts.

Institutions change over time, modifying economic incentives and behaviors and generating new demands that exert pressure on organizations; these demands in turn shape organizations similarly in a phenomenon called isomorphism (North, 1990). This phenomenon promotes similarity across organizations and can occur competitively or institutionally under the justification of a search for legitimacy. Competitive isomorphism takes place where selection and adaptation in competitive environments make organizations resemble each other (DiMaggio & Powell, 1983). Institutionally, organizational policies and myths help understand how institutional pressures lead organizations to seek legitimacy (Aldrich, 1979; DiMaggio & Powell, 1991; Lodge & Wegrich, 2005).

Institutionalization is hardly a simple process. Organizations interact with and are influenced by fragmented environments (D'Aunno et al., 1991) which give rise to contesting sources of legitimation and institutionalization. Institutionalization has been applied to both explain the process of legitimization and understand the patterns and processes of organizational change. Selective adaptation to institutional demands is common in both private and public sectors. Studies have shown that organizations face institutionalization challenges because of legitimacy-contesting fragmented environments. The literature also supports the creation of new rules and regulations to manage such dynamics (Monticelli et al., 2018; Oliver, 1991).

Institutional Theory presumably provides a better lens to explain numerous organizational problems in Brazil. However, studies have been often limited to specific topics (see Box 1), which has restricted further discussions in the Judiciary. For example, the Proquest® database retrieved only 30 articles published in Brazilian indexed open access journals from 2015 to 2025. However, the number would drop to 23 articles if one used a new filter that limits the retrievals to peer-reviewed journals.

#### **BOX 1** GOOGLE SCHOLAR® SURVEY OF OPEN ACCESS JOURNALS, BRAZIL, 2020–2025

Authors	Findings	Theoretical dimensions
Santos and Gonçalves (2025)	Cultural, political and institutional aspects can directly affect the desired outcome. These include the transition from traditional public administration to novel public administration.	Institutionalization.
Santos and Cursino (2024)	Most studies report that external pressures on organizations come from the government, funders, boards of directors, customers, among others. From this perspective, coercive isomorphism emerges as the main force explaining the adoption of new accounting practices.	New Institutional Sociology.
Innocenti and Gasparetto (2024)	It provides empirical evidence on changes in managerial accounting over time, under the influence of isomorphic pressures and legitimacy frameworks in the Brazilian third sector.	Coercive, mimetic and normative isomorphism; guided by rationality and efficiency to legitimize actions, reduce uncertainty and harmonize with accepted conventions.
Gonçalves and Gomes (2023)	Institutionalization and isomorphism.	Contractual breaches.

(Continue)

Authors	Findings	Theoretical dimensions
Zanotelli and Santos (2022)	Bureaucratization and isomorphism.	The professionalization, organization and conduct of managers before transparency demands can only be identified in specific aspects as a possible condition for raising their scores in the National Transparency Ranking.
Matias-Pereira (2021)	During the period analyzed, the institutionalist approach evolved continuously in accounting research, notably in managerial accounting, corporate accounting, social and environmental accounting, auditing and public	Old Institutional Economics (OIE), New Institutional Economics (NIE), and New Institutional Sociology (NIS).

**Source:** Elaborated by the authors.

accounting.

Searching for "new institutional sociology" and "accounting" and "isomorphism" resulted in 34 articles retrieved, but they did not address the topic proposed in this article directly. Searching for "new institutional sociology" and "accounting" and "isomorphism" and "public administration" provided 15 hits, one of which was excluded because the abstract did not contain the search terms. However, search was limited in the Coordination for the Improvement of Higher Education Personnel (Capes) Portal, as the articles were more empirical than conceptual as to the application of the notion of isomorphism. One of the articles was in fact a theoretical essay that discussed the process of doctoral training in Administration in Brazil. Nine of the articles analyzed consisted of empirical studies in the most diverse organizations in the public sector. Nonetheless, theoretical studies or essays on the state-of-art in Institutional Theory and more precisely in New Institutional Sociology were limited to five articles (Costa & Oliveira, 2024; Bueno et al., 2024; Czajkowski, 2023; Ribeiro, 2022; Cappellari et al., 2021).

In addition, few studies have focused on the Judiciary context and performance, let alone on telework or remote work. Besides the articles in Box 1, the following studies stand out (not limited to the Brazilian context): Lewin et al. (1982), Buscaglia and Dakolias (1999), Beer (2006), Nogueira et al. (2012), Yeung and Azevedo (2012), Gomes and Guimarães (2013), Espasa and Esteller-Moré (2015), Falavigna et al. (2015), and Voigt (2016). The following articles also stand out, but they do not involve Institutional Theory: Venturini et al. (2020), Sátiro and Sousa (2021), Sekunda and Risden (2022), and Sousa et al. (2022).

Lewin et al. (1982) and Nogueira et al. (2012) used data envelopment analysis, a non-parametric optimization model, to compare the efficiency of courts. Lewin et al. (1982) approached criminal courts in the United States using as unit of measurement the weighted ratio of a sum of outputs to a sum of inputs. Nogueira et al. (2012) compared the relative efficiency of the state courts of justice in Brazil by using different measures, including: new cases, number of judges, number of sentences and judgments, and information technology expenses.

Espasa and Esteller-Moré (2015) addressed the efficiency of courts in Catalonia by using the stochastic frontier model. Their findings indicated that the Catalan courts' underperformance was caused by congestion rather than inefficiency. To be sure, inefficiency decreased over time and was correlated with the presence of temporary judges.

Beenstock (2001) analyzed the courts of justice in Israel and found that the judges' productivity did not correlate directly to the number of cases in their courts. The author suggested that it would be possible to reduce the number of judges and still maintain the number of outputs. Such findings were later corroborated by Beenstock and Haitovski (2004).

In the context of COVID-19 restrictions, Hrdinova et al. (2020) analyzed the response of Ohio courts in the first pandemic weeks. The study purported to determine which functions were considered essential and which functions had come to be performed remotely. Surprisingly, nearly one hundred courts did not mention the use of technology, suggesting a lack of infrastructure for virtual proceedings.

Likewise, Wallace and Laster (2021) reported a case study on the implementation of digital technologies in courts in the State of Victoria, Australia. The authors assessed whether the pandemic was a catalyst for permanent digital innovation in the courts, i.e., whether digitalization represented a structural innovation. They found that the so-called virtual courts were less as a genuine innovation than fixes to optimize existing processes. Fabri (2024) corroborates this understanding by demonstrating that systems developed incrementally are more commonly and easily used in the Judiciary.

In Brazil, Sátiro et al. (2021) examined the institutional responses of the Judiciary to the pandemic. Their findings included: (1) before the pandemic, only 5% of servants telecommuted but this figure increased to 84% upon emergency measures, (2) CNJ reports indicate an increase in court productivity as measured by a decrease in the congestion rate. Morais and Andrade (2021) corroborate these findings, pointing out that telework was successfully implemented and promoted court productivity.

Also, the effects of the pandemic were felt in various sectors of the economy, as some organizations also experienced an increase in their productivity (Baccili & Cruz, 2021; Barros et al., 2021; Batistella et al., 2022; Lopes & Lunardi, 2022; Matias & Mallagoli, 2022). Metselaar et al. (2023) corroborated that telework can improve performance by increasing autonomy and satisfaction; however, as they pointed out, working outside the office, but not at home, does not benefit performance significantly.

# 3. METHODS

Using a qualitative approach, this study collected data through documentary research based on performance reports and regulations on the Regional Federal Courts in Brazil. Given the lack of reports that could be used to measure the Judiciary servants' productivity before the pandemic, data on judicial proceedings were sought for in Justiça Pesquisa, an annual publication by the National Council of Justice that serves as the main source for measuring the activities carried out by Brazilian courts (CNJ, 2021a). Initially, the congestion rate, i.e., the ratio of pending cases to closed cases in a given court in a year (CNJ, 2022a), was considered as a potential metric for measuring court productivity in this study.

This metric, developed by the Department of Judicial Research of the National Council of Justice, is limited to measure productivity: even if a court increases the number of cases judged, thus reducing its pending cases, some cases remain suspended (thus pending) due to legal circumstances that are

beyond the court's control. Also, in some circumstances a case cannot be neither adjudicated nor closed for some legal reason and remains in the so-called "provisional archive".

To correct a possible analytical distortion, this study used the net congestion rate (NCR) as a productivity measure to assess court performance. This metric excludes suspended cases and provisionally archived cases. It is analyzed as follows: the higher the result, the worse the court performance (see Section 4.1). Data were collected from the file JN\_03-Jun-2024.csv, available for download on the CNJ website and used to prepare an official report named Relatório Justiça em Números 2024 (CNJ, 2024).

To confirm the trend of increased average NCR (see Figure 2, subsection 4.1) and, therefore, reduced performance over time, the Page test (Siegel & Castellan, 2006) was conducted considering that the data are non-normal and the sample is small (5 Regional Federal Courts in 6 years, totaling n = 30). Considering a 95% confidence interval, if the p-value obtained in the test were lower than 0.05, the data were regarded as following the expected trend.

Figure 1 shows the geographical distribution of the Regional Federal Courts. Noticeably, Act No. 14226/2021 created the 6th Regional Federal Court (as of January 1, 2022) by splitting the 1st Region. The present analysis disregarded the 6th Region because data on its performance are available only from 2022 onwards.

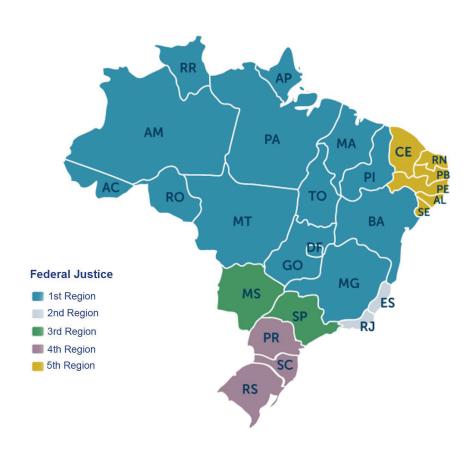
The Regional Federal Courts were chosen for this study because they are Judiciary bodies classified as common justice. Using productivity data from courts in the same branch of justice presumably allows for homogeneous performance comparisons.

The data collected encompasses different courts within a Region. Using the 1st Region (TRF1) as an example, its NCR includes cases originating in the 1st-instance courts, appeals to 2<sup>nd</sup>-instance courts, and cases originating in the TRF1 itself.

Analyzing the data separately would require pondering the intrinsic characteristics of the appeal courts. Furthermore, the Regional Federal Courts' headquarter structure could influence their performance. Consequently, for the purposes of this study, a decision was made to consider all TRF jurisdictions conjointly.

FIGURE 1

# **GEOGRAPHICAL DISTRIBUTION OF REGIONAL FEDERAL COURTS**



Source: Portal do Superior Tribunal de Justiça (2019).

The documentary research was limited to the Resolutions issued by the National Council of Justice from 2018 to 2024, all of which were content analyzed (Bardin, 1977). The initial analysis covered 38 Resolutions that contained the terms "pandemic" and "COVID-19" in their abstracts. The most recurring themes and those involving telecommuting were coded.

The following final documents were collected and analyzed (see Box 2, subsection 4.2): CNJ Resolution No. 313 (CNJ, 2020a), CNJ Resolution No. 345 (CNJ, 2020c), CNJ Resolution No. 371 (CNJ, 2021a), CNJ Resolution No. 372 (CNJ, 2021c), and CNJ Resolution No. 375 (CNJ, 2021d). In addition, CNJ Resolution No. 481 (CNJ, 2022b), as of November 22, 2022, stands out for revoking the emergency remote work regime then in force under the justification of the end of the COVID-19 pandemic and the need to return to in-person activities.

Importantly, the Regional Federal Courts are also subject to the administrative control of the Council of Federal Justice (CJF - acronym in Portuguese for Conselho da Justiça Federal). The CJF issued only one regulation related to the COVID-19 pandemic as available on the CNJ website, namely Recommendation No. 1/2020, which was limited to community service penalties and cited Resolution CNJ No. 313/2020. No overlapping of regulations on the topic under study was found

that applied to the Regional Federal Courts. Therefore, this study only analyzed the CNJ Resolutions on the COVID-19 pandemic, given its centralized administrative control over the other bodies of the Brazilian Judiciary.

Finally, this study includes some limitations. This study did not approach the individuality of different actors as a variable that reflect on court productivity, including personal and family health issues, breaking of professional and private boundaries, and isolation-driven psychological effects, among others. Besides, a trade-off decision was made in choosing the Regional Federal Courts as object of analysis and the NCR as performance measure, and in limiting the scope to CNJ Resolutions and to a reduced timeframe. Such limitations, however, are consistent with the general purpose of this study, which focuses on a qualitative discussion of both Judiciary performance and the institutional impact of the COVID-19 pandemic.

# 4. FINDINGS AND DISCUSSION

# 4.1 Performance analysis

To analyze performance based on court productivity, the first move was to assess whether an increased NCR could have been caused by an extraordinary increase in new cases. To this end, the Justiça em Números (2024) - Ano Base 2023 database was used to identify the number of new cases in the Regional Federal Courts in the period. All Regional Federal Courts showed a drop in the number of new cases in 2020 and 2022 as compared to the previous years, that is, they experienced a reduction in the demand for jurisdictional services. The number of new cases increased in the sum of all Regional Federal Courts in 2021 and 2023, reaching levels higher than those before the COVID-19 pandemic.

Subsequently, an NCR-based comparative analysis of new cases showed that the net congestion rate increased in the first year of both the pandemic and the emergency remote work (2020) despite a decline in the number of new cases. In other words, the Regional Federal Courts' productivity declined (see Table 1 and Figure 2). Even with fewer inputs, the courts began to resolve fewer legal cases.

Table 1 presents the annual net congestion rates by Regional Federal Court and the annual mean for all courts. This productivity measure was used to assess the Regional Federal Courts' performances, with the highest NCR indicating the worst performance.

ANNUAL PRODUCTIVITY PER REGIONAL FEDERAL COURT TABLE 1

Courts	Year	Productivity (Net Congestion Rate)	Courts	Year	Productivity (Net Congestion Rate)
	Overall mean in 2018	0.55346242		2018	0.61097366
	Overall mean in 2018	0.54696652		2019	0.60195217
	Overall mean in 2020	0.62786456		2020	0.70864487
All	Overall mean in 2021	0.60626969	TRF3	2021	0.69898853
	Overall mean in 2022	0.57459638		2022	0.71527952
	Overall mean in 2023	0.58622528		2023	0.66510367
	2018–2023 overall mean	0.58256414		2018-2023 mean	0.66682374
	2018	0.57840585		2018	0.55280420
	2019	0.53742162	TRF4	2019	0.51207463
	2020	0.76305080		2020	0.55195733
TRF1	2021	0.68862256		2021	0.52839999
	2022	0.49057084		2022	0.52508116
	2023	0.65999997		2023	0.52775460
	2018-2023 mean	0.61967861		2018-2023 mean	0.53301199
	2018	0.50416858		2018	0.52095983
	2019	0.53170829		2019	0.55167590
	2020	0.52547777		2020	0.59019202
TRF2	2021	0.55858007	TRF5	2021	0.55675730
	2022	0.58342698		2022	0.55862341
	2023	0.53312433		2023	0.54514383
	2018-2023 mean	0.53941434		2018-2023 mean	0.55389205

**Source:** Elaborated by the authors based on research data.

As shown in Table 1, considering the average productivity of all courts, the overall mean for 2018–2023 was approximately 0.5825. The TRF3 courts' (States of Sao Paulo and Mato Grosso do Sul) mean for 2018–2023 (approximately 0.6668) was higher than the overall mean, i.e., their performances were below the mean of all courts. The same applied to the TRF1 courts (mean of approximately 0.6197 for 2018-2023).

The overall annual mean varied over time: an increase from approximately 0.5534 in 2018 to approximately 0.6278 in 2020, but a decline in 2023 (approximately 0.5862). Figure 2 provides a clearer overview by showing the NCR trend line from 2018 to 2023 both for each Region and for all courts.

The trend of all courts over the years is as follows considering each overall annual NCR mean compared to that of the previous year: a decline in 2019, an increase in 2020 (the first pandemic year), a decline in 2021 and 2022 (but still with means higher than those of 2019), an increase in 2023 (but also a mean higher than that of 2019). In other words, the general trend was for the NCR to increase, signaling a decline in the Regional Federal Courts' performances.

0.8 0.75 0.7 0.65 0.6 0.55 0.5 0.45 2019 2018 2020 2021 2022 2023 TRF4

FIGURE 2 PRODUCTIVITY TREND (NET CONGESTION RATE - TCL) BY YEAR

**Source:** Elaborated by the authors based on research data.

As mentioned in section 3, the Page test was conducted (see Table 2) to confirm the growth trend of the NCR mean over time – as observed in Figure 2 – and, therefore, the reduction in court performance in the period. Considering a 95% confidence interval, the data were regarded as following the expected trend as the p-value obtained in the test was lower than 0.05. However, this finding should be assessed with caution because of the short time window under study. In other words, the trend was attested statistically, but its confirmation requires further investigation in future studies with larger samples.

#### TABLE 2 PAGE TEST REPORT

L-statistics	Z	p-value
389.00	59.8080	0.0001

Source: Elaborated by the authors based on research data.

With a qualitative focus, this study also further investigates the temporal trend of the NCR means. In the next section, it confronts the trend of NCR increase over time, indicating a worsening in the courts' average performances, with the discourse of efficiency institutionalized through the CNJ regulations during the pandemic.

# 4.2 Document analysis

Act No. 11419, as of December 19, 2006 (Lei No. 11419, 2006), which provides for increased implementation and use of information technology in judicial proceedings, was the first experience of telecommuting, when courts started to admit and handle proceedings digitally. The National Council of Justice (2016) issued Resolution No. 227 defining the bases for implementing telework in the Justice bodies but granting the courts with the power to decide to adopt or not this working arrangement.

As stated before, this study uses the term remote work to refer only to the emergency telecommuting work regime in force from March 2020 to December 2022, i.e., during the COVID-19 pandemic, according to CNJ Resolution No. 313 (CNJ, 2020a).

Prior to the pandemic, telework was not imposed as a rule; as a matter of fact, a maximum of 30% of servants per unit were allowed in this working arrangement according to Resolution No. 227 (CNJ, 2016). In fact, barriers were in place that curbed the implementation of such a working arrangement in the public sector (Choi, 2018). In 2018, 16.2% of the proceedings were still brought by physically (CNJ, 2020b).

During the pandemic, CNJ Resolution No. 313 (CNJ, 2020a), as of March 19, 2020, defined that the courts should adopt a remote work regime on an emergency basis. Given the National Council of Justice's constitutionally assigned authority to issue regulations that must be complied by all Judiciary bodies (except for the Supreme Federal Court), all Regional Federal Courts were forced to change their operating methods amidst the pandemic.

Given the statement of reasons preceding the Resolution text itself, the National Council of Justice aimed to prevent the spread of the SARS-CoV-2 (Severe Acute Respiratory Syndrome Coronavirus 2) and face the fact that the Judiciary bodies operated mostly in person in Brazil. It also justified that jurisdictional services could not be interrupted even during a pandemic, as this would harm fundamental rights. Another justification was the need to standardize the functioning of the Judiciary in this context. Excerpts from the statement of reasons are provided below:

> [...] the National Council of Justice is responsible for monitoring and regulating the Judiciary and the acts of its bodies (Article 103-B, § 4°, I, II and III, of the Federal Constitution) (CNJ, 2020a),

- [...] the existence of conflicting criteria regarding the suspension of legal proceedings causes judicial uncertainty and potential harm to the protection of fundamental rights (CNJ, 2020a),
- [...] the need to standardize the functioning of the Judiciary nationally in view of this exceptional emergency situation (CNJ, 2020a).1

The issuance of CNJ Resolution No. 313/2020, which temporarily imposed emergency remote work to all servants, suspended CNJ Resolution No. 227/2016, which until then provided for optional telework. However, the experience served as a basis for changes to be made to CNJ Resolution No. 227/2016 still during the pandemic.

One of these changes was promoted by CNJ Resolution No. 371 (CNJ, 2021b), which eased the rules for telework. Originally, application for telework was forbidden for all servants on probation, those holding a management or leadership position, and those having subordinates. Given that the pandemic forced all servants to work remotely, impediments related to probationary periods and people management were no longer insurmountable. Thus, CNJ Resolution No. 371/2021 revoked during the COVID-19 pandemic the prohibitions for managers to work remotely and only prohibited remote work for servants in their first probation year.

The easing of rules for telework, particularly during the pandemic, was justified by the recognition that such a working arrangement could potentially motivate the country's servants. Furthermore, the permission of telework for managers and servants (even those in an advanced stage of probation) proved to be unharmful to jurisdictional activities. On the contrary, flexibility was achieved by invoking the principle of efficiency in Public Administration. Excerpts from the statement of reasons are provided below:

- [...] Public Administration must be guided by the principle of efficiency, in accordance with Article 37 of the Constitution of the Republic (CNJ, 2021b),
- [...] the Judiciary must work towards continuous improvement in the quality of jurisdictional services (CNJ, 2021b),
- [...] the need to motivate and engage human resources, providing them with conditions for developing their personal and professional potential (CNJ, 2021b). <sup>2</sup>

<sup>&</sup>lt;sup>1</sup>Original in Portuguese:

<sup>&</sup>quot;[...] cabe ao Conselho Nacional de Justiça a fiscalização e a normatização do Poder Judiciário e dos atos praticados por seus órgãos (artigo 103-B, § 4°, I, II e III, da CF) (CNJ, 2020a);

<sup>[...]</sup> que a existência de critérios conflitantes quanto à suspensão do expediente forense gera insegurança jurídica e potenciais prejuízos à tutela de direitos fundamentais (CNJ, 2020a);

<sup>[...]</sup> a necessidade de se uniformizar, nacionalmente, o funcionamento do Poder Judiciário em face desse quadro excepcional e emergencial (CNJ, 2020a)."

<sup>&</sup>lt;sup>2</sup>Original in Portuguese:

<sup>&</sup>quot;[...] a Administração Pública deve se pautar pelo princípio da eficiência, nos termos do art. 37 da Constituição da República (CNJ, 2021b);

<sup>[...]</sup> o Poder Judiciário deve trabalhar pelo aprimoramento contínuo da qualidade dos serviços jurisdicionais (CNJ, 2021b);

<sup>[...]</sup> a necessidade de motivar e comprometer os recursos humanos, propiciando-lhes condições para o desenvolvimento de suas potencialidades pessoais e profissionais (CNJ, 2021b)."

Another pandemic-driven change to the Resolution on telework was the creation of a "remote work team" through CNJ Resolution No. 375/2021 (CNJ, 2021d). This team consists of a group of servants located in different departments, physically separated, but who meet remotely to conduct projects that could benefit more than one Judiciary department. Excerpts from the statement of reasons are provided below:

- [...] the skills, talents and expertises of the Judiciary human resources are often dispersed across different districts and federative units, which makes it difficult to team up to exchange knowledge and experiences (CNJ, 2021d),
- [...] the growing challenges of the Judiciary in times of globalization, multiculturalism, and digital transformation (CNJ, 2021d),
- [...] remote work and new technologies allow the meeting and integration of specialists from the most diverse locations (CNJ, 2021d).3

The purpose of such a team and the isomorphic justification given for its creation are once again anchored in the search for better performance and efficiency. Besides, changes to the working arrangement, as problematized, represents what the present study calls as pandemic-driven institutional change.

Finally, CNJ Resolution No. 481 (CNJ, 2022b) was issued in late 2022 for revoking the emergency remote work and imposing the return to in-person activities under the justification of the end of the COVID-19 pandemic. Box 2 summarizes the regulations and their effects as observed in the present study.

#### **BOX 2 REGULATIONS ANALYZED**

Regulation title	Scope	Main measures adopted	Regulation dimension	Impacts	Issuance context
Act No. 11419/2006	All the Brazilian Judiciary	- It authorized legal acts and proceedings by digital means in all branches of the Judiciary, eliminating the use of paper whenever possible.	Procedural	<ul> <li>Need to digitize physical documents,</li> <li>Provision of equipment and Internet access for bringing by lawsuits and charges,</li> <li>Need to regulate and standardize digital documents.</li> </ul>	Non- emergency
					(Continue)

<sup>&</sup>lt;sup>3</sup> Original in Portuguese:

<sup>&</sup>quot;[...] as competências, talentos e expertises dos recursos humanos que compõem o Poder Judiciário encontram-se, não raro, dispersas em diferentes comarcas e unidades federativas, o que dificulta a atuação em conjunto visando à troca de saberes e experiências (CNJ, 2021d); [...] os crescentes desafios que se colocam para o Poder Judiciário em tempos de globalização, multiculturalismo e transformação digital (CNJ, 2021d);

<sup>[...]</sup> que o trabalho remoto e as novas tecnologias permitem a reunião e a integração de especialistas das mais diversas localidades (CNJ, 2021d)."

Regulation title	Scope	Main measures adopted	Regulation dimension	Impacts	Issuance context
CNJ Resolution No. 227/2016	Judiciary bodies under the control of the National Council of Justice	- It defined the bases and guidelines for implementing telework, the adoption of which was optional.	Procedural and administrative	<ul> <li>Low initial engagement,</li> <li>Strict implementation criteria,</li> <li>Technological and work-related barriers.</li> </ul>	Non- emergency
CNJ Resolution No. 313/2020	Judiciary bodies under the control of the National Council of Justice, except for the Supreme Federal Court and the Electoral Court	- It established an extraordinary on-call regime, with the suspension of in-person work.	Procedural and administrative	- Coercive adoption of remote work, - Abrupt adaptation of all servants to the new working arrangement, - Increased NCR in the Regional Federal Courts in 2020, - Decline in the number of new cases.	Emergency
CNJ Resolution No. 345/2020	Judiciary bodies under the control of the National Council of Justice	- It regulated guidelines contained in Act No. 11419/2006 for implementing the "100% Digital Court", - It required that all proceedings be carried out electronically and remotely by the adherent bodies.	Procedural	- Wider application of a regulation already provided for in 2006, - Creation of a new — permanent — practice during a transitory context (pandemic).	Non- emergency
CNJ Resolution No. 371/2021	Judiciary bodies under the control of the National Council of Justice	- It allowed servants in the second probation year to apply for telework.	Procedural and administrative	- Relaxation of a CNJ Resolution No. 227/2016 rule on the admission to telework Implementation of a permanent change during a transitory context	Emergency

(Continue)

(pandemic).

Regulation title	Scope	Main measures adopted	Regulation dimension	Impacts	Issuance context
CNJ Resolution No. 372/2021	Judiciary bodies under the control of the National Council of Justice	- It regulated guidelines contained in Act No. 11419/2006 for implementing the "Virtual Service Desk", - It demanded the provision of a videoconferencing tool for immediate contact with the customer service department of each judicial unit.	Procedural	- Wider application of a regulation already provided for in 2006, - Creation of a new – permanent – practice during a transitory context (pandemic).	Non- emergency
CNJ Resolution No. 375/2021	Judiciary bodies under the control of the National Council of Justice	- It authorized the creation of a remote work team of servants and judges from any jurisdictional or administrative unit to formulate legal theses, develop theoretical solutions, and conduct empirical research and studies on complex issues.	Procedural and administrative	- Relaxation in the composition of work teams by changing the teleworking rule in CNJ Resolution No. 227/2016, - Implementation of a permanent change during a transitory context (pandemic).	Non- emergency
CNJ Resolution No. 481/2022	Judiciary bodies under the control of the National Council of Justice	- It revoked the extraordinary on-call remote work regime in place during the COVID-19-driven health emergency.	Procedural and administrative	- Return to in-person activities, with the opportunity to create regulations on a hybrid working arrangement (partly remote and partly in-person).	Non- emergency

**Source:** Elaborated by the authors.

# 4.3 Discussion

Considering the analysis of regulations and court performances over the years, this section discusses the performance of the Regional Federal Courts in the context of the SARS-CoV-2 pandemic from an Institutional Theory perspective. In the pandemic, the Regional Federal Courts institutionalized the emergency remote work to maintain stability before normative, political, and social pressures.

A characteristic of the institutional perspective is precisely to consider contextual and temporal effects on social life (Scott, 2010). In fact, the pandemic, as a contextual factor, forced the Judiciary to change practices, which appears to have affected both the performances of the Regional Federal Courts and the then resistance to telework. According to Sátiro et al. (2021), the COVID-19-driven

public health emergency has led to state and government transformations worldwide; some of such transformations were already underway and have been intensified. Wallace and Laster (2021) provide empirical evidence of such improvement transformations, which were less genuine innovations than fixes to optimize existing processes.

In the Regional Federal Courts, the experience of all servants working remotely served amidst the very pandemic as a basis for further changes to the CNJ Resolution No. 227/2016. Originally, application for telework was forbidden for all servants on probation, those holding a management or leadership position, and those having subordinates, but changes revoked such impediments and allowed most of them to apply for telework. Importantly, the essence of such changes began to (1) be understood as no longer harmful to jurisdictional activities and (2) were justified by the principle of efficiency in Public Administration.

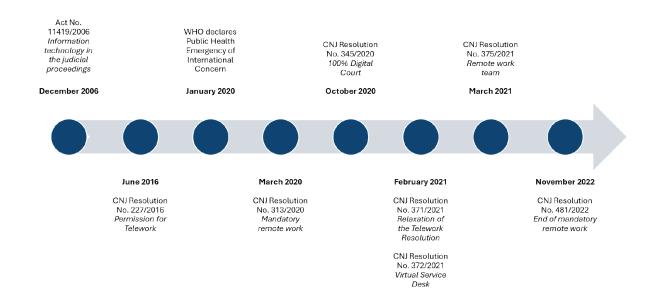
As mentioned above, the literature has pointed to increased productivity in organizations during the pandemic (Baccili & Cruz, 2021; Barros et al., 2021; Batistella et al., 2022; Lopes & Lunardi, 2022; Matias & Mallagoli, 2022; Morais & Andrade, 2021; Sátiro et al., 2021), but such a trend was not observed in the present study. To be sure, the relaxation of telework in particular may be seen as an institutional factor resulting from the SARS-CoV-2 pandemic context. According to Meyer and Rowan (1977), the adequacy of organization is demonstrated more through mechanisms of social legitimacy than merely through economic or financial criteria.

The present findings show that the institutionalization of relaxations in the teleworking rule brought about by changes in CNJ Resolutions during the pandemic provides evidence of an institutional change, one which runs counter to the principle of efficiency and point to a new reality (new standard) experienced by the actors involved. Initially implemented on an optional basis and later on an emergency basis, telecommuting - whether remote work or telework - has become a permanent feature despite changes in productivity.

Figure 3 shows a timeline of the regulations analyzed in the present study. The short interval between the Resolutions is consistent with the findings in Sátiro et al. (2021), who pointed out that the Judiciary was proactive in facing the pandemic.

The impacts of telework and remote work on the performance of the Judiciary can be summarized as follows: empirically, such working arrangements correlated to a trend for worsening performance across the Regional Federal Courts, as their net congestion rates increased over time. Considering the contextual effects, it can be inferred that institutional pressures have affected the practices in force in the courts under analysis and resulted in the relaxation of telework rules, contradicting the functionalist utilitarian discourse.

#### FIGURE 3 TIMELINE OF REGULATIONS



**Source:** Elaborated by the authors.

# 5. FINAL REMARKS

Building on Institutional Theory, this study set out to analyze the performance of Regional Federal Courts in the context of the SARS-CoV-2 (COVID-19) pandemic. It was based on data related to the productivity of such courts two years before the pandemic (2018-2019), during the pandemic (2020–2022), and one year thereafter (2023), considering the regulations that instituted and revoked the emergency remote work and recognized the possibility of hybrid work (CNJ, 2022b). However, data succeeding year 2023 should be further explored to better enlighten an institutional reflection on working arrangements versus performance in Brazilian courts.

Despite its limitations, this study contributed to expanding the body of research focusing on the Brazilian Judiciary, which has been a gap in the literature (Oliveira et al., 2019). Institutional discussions on performance that address factors beyond utilitarian efficiency are important for a better understanding of various phenomena in the Judiciary (Brignall & Modell, 2000). In fact, the literature needs to further explore the determinants of the Regional Federal Courts' performance and the National Council of Justice' role in providing jurisdictional services.

Not only did this study analyze the regulations on the Regional Federal Courts' activities issued by the National Council of Justice from 2018 to 2024, but it also assessed the courts' net congestion rate. Empirically, the emergency remote work regime correlated to a trend for worsening in the courts' average performance. Despite this finding, regulatory changes were made even during the pandemic to expand the provision of jurisdictional services via telework; this remains in force to this day, even though the average productivity has not returned to previous levels.

Despite the limitation of this study in ignoring the fact that the individuality of different actors may reflect on the Regional Federal Court's organizational productivity, the findings suggest that the changes that occurred especially after the relaxation of telecommuting may represent an institutional factor resulting from the SARS-CoV-2 pandemic context. In other words, there are factors beyond utilitarian efficiency that seem to determine the courts' performance in providing jurisdictional services. Such factors should be considered when the National Council of Justice standardizes the matter.

Further studies could expand the present research scope by analyzing larger periods before and after the pandemic both to confirm the trend observed for the courts' average performance and provide more robust statistical test results. Furthermore, similar analyses can approach other branches of justice to compare trends. The model proposed in this study could also be improved with the inclusion of further variables, such as geographic location or human resources.

Future studies are expected not only to expand the NCR data, but also to discuss the phenomenon of institutional dysmorphia and contrast it with institutional isomorphism. According to Monticelli et al. (2018), in some cases the practices actually required by the institutional environment are quite different from the practices that an organization itself believes to be required within its own institutional framework. In these cases, the organizations promote institutional adaptations in response to demands, regardless of the legitimacy of such demands.

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Mariana Guerra: Conceptualization (Equal); Formal analysis (Supporting); Methodology (Equal); Writing – original draft (Equal); Writing - review & editing (Lead).

Andrea de Oliveira Gonçalves: Conceptualization (Supporting); Methodology (Supporting); Writing – original draft (Supporting); Writing – review & editing (Supporting).

# **DATA AVAILABILITY**

The entire dataset supporting the present findings was published in the article itself and is in the public domain.

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