

DIGITAL TRANSPARENCY IN THE CONTEXT OF ELECTORAL JUSTICE: An analysis of the tribunal regional electoral court of Tocantins

TRANSPARÊNCIA DIGITAL NO ÂMBITO DA JUSTIÇA ELEITORAL: Uma análise do tribunal regional eleitoral do Tocantins

LA TRANSPARENCIA DIGITAL EN EL CONTEXTO DE LA JUSTICIA ELECTORAL: Un análisis del tribunal electoral regional de Tocantins

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ABSTRACT

The framework of the Electoral Justice is established in the Federal Constitution and in the *Lei de Acesso à Informação*¹ (LAI). Thus, the work questions whether the *Portal da Transparência*² (PT) of the *Tribunal Eleitoral do Tocantins*³ provides transparency on the information that citizens effectively seek and whether the content of the information searched by the user is easy to understand. The work used bibliographical and documentary research. Data collection was based on the results of the questionnaire applied by the CNJ. The choice for the Content Analysis method was due to the interpretive nature of this work. The results demonstrate that the visibility policy implemented by TRE-TO has proven to be effective and efficient, in addition to presenting possible improvements.

KEYWORDS: Electoral justice; Lei de Acesso à Informação; Transparency; Portal da Transparência.

Introduction

The Electoral Court is an organ of specialized jurisdiction that integrates the Judiciary and takes care of the organization of the electoral process (electoral registration, voting, counting of votes, qualification of those elected, etc.). Therefore, it works to ensure respect for popular sovereignty and citizenship (TRIBUNAL SUPERIOR ELEITORAL - TSE, 2020).

Historically, one of the guiding principles of the 1930 Revolution was the moralization of the electoral system. Before that, Brazil was ruled by the oligarchies of Minas Gerais and São Paulo, a period that history records under the name of the *política do café com leite*⁴ or Oligarchies Republic. With several frauds in the electoral process,

¹ Law on access to information

² Transparency Portal

³ Electoral Court of Tocantins

⁴ Coffee with milk politics

the perpetuation of power was interspersed between these two states, which caused discontent among the military sectors that sought to moralize politics.

In this context, Decree No. 21.076, of February 24, 1932, considered the first Electoral Code in Brazil, was approved. In it, women's vote was instituted; changing the minimum voting age; proportional representation; the secret ballot in an impenetrable booth; universal and direct suffrage; the regulation of all elections, federal, state and municipal by the same legal diploma; the creation of the *Justiça Eleitoral*⁵; the competence of the *Tribunal Regional*⁶ to prosecute and judge electoral crimes and even the provision of the use of the voting machine, among others (FERREIRA, 1991).

In 1937, Getúlio Vargas bestowed the "Polish" constitution, as it became known, which extinguished the *Justiça Eleitoral*, abolishing the existing political parties, free elections were suspended, establishing an indirect election for President of the Republic. Facing pressure, Vargas announced, in 1945, general elections, launching Eurico Gaspar Dutra, minister of war, as his candidate. Vargas is removed from power by the military ministers who pass the government to the president of the *Supremo Tribunal Federal*⁷, who also presided over the TSE⁸ until the election and inauguration of the new president of the Republic, General Dutra, in January 1946, putting an end to the so-called *Estado Novo*⁹.

With the advent of the 1946 Constitution, a new Electoral Code was enacted, Law No. 1164, of July 24, 1950, in force until the enactment of Law No. 4,737, of July 15, 1965, in force until the present day, which came to harmonize with several sparse laws alluding to the matter and the Magna Carta of 1988.

During the military regime, from 1964 to 1985, both the structure and the competence of the Electoral Justice were preserved. However, from 1966 to 1979, bipartisan partyism was experienced, consisting of the *Aliança Renovadora Nacional*¹⁰, known as Arena, with a military ideology, and the *Movimento Democrático Brasileiro*¹¹ (MDB), of consenting opposition.

With the advent of the 1988 Constitution, a plebiscite was held to define the form of government (Republic or Monarchy) and the system of government (parliamentary or presidential). The Political Charter also innovated in the electoral aspect, providing that the President, Governors and Mayors in those municipalities with more than 200

⁵ Electoral Justice

⁶ Regional Court

⁷ Supreme Federal Court

⁸ Superior Electoral Court

⁹ New State

¹⁰ National Renewal Alliance

¹¹ Brazilian Democratic Movement

thousand voters would be elected by absolute majority (half plus one of the votes) or in two rounds, if no candidate reached a majority in the first ballot. In municipalities with less than 200,000 voters, they would be elected in a single vote.

Thus, it can be seen that the *Justiça Eleitoral* framework is established in the Federal Constitution as well as the right to access public information, both of which have constitutional support expressed in various provisions.

On November 18, 2011, Law No. 12,527, entitled *Lei de Acesso à Informação* (LAI), was enacted. The Magna Carta had already enshrined in its 5th article "everyone has the right to receive from public bodies information of their private interest, or of collective or general interest, which will be provided within the term of the law"¹² (BRASIL, 1988).

LAI introduces the culture of transparency in public administration and in civil society itself. It has core elements such as the guarantee to the right of access, the delimitation of application, active and passive information disclosure procedures, formulation of information requests, exceptions to the information rule, appeal procedures, as well as a transparency policy, aiming to make access to public information the rule and secrecy the exception. It also defines deadlines and procedures for the disclosure and access to information requested by citizens and establishes the obligation of transparency to all federal powers and entities.

However, it is clear that transparency still does not occur efficiently and effectively. The availability of data on the transparency portals offered by public entities still leaves something to be desired in many cases, as they either do not meet the needs of citizens so that there is an effective social control, or they are unavailable at that time due to technological problems.

This fact is confirmed by Batista (2014, p. 148), when he states that:

Brazil, despite complying with the fundamental principles set in the Federal Constitution and yielding to internal pressures from civil society movements organized for the right to access information and external charges from international organizations, is still not prepared to make the *Lei de Acesso à Informação* effective. This lack of preparation occurs in the domains of access and more strongly of appropriation, for the mediation of public information is necessary, because, although there are international guidelines and internal and external pressures calling for transparency, and the State itself claims it seeks to comply with this principle, the information produced by the State is not transparent, its meaning is not given, it needs to be constructed¹³. (BATISTA, 2014, p. 148).

¹² Translated by the authors

¹³ Translated by the authors

The issue of public transparency is of significant relevance in the current situation, since there is a trend towards progressive society participation in control systems, reinforcing its legitimacy in the exercise of citizenship before the State.

Following this line of reasoning, it is intended to question: does the electronic portal of the Electoral justice of Tocantins fulfill the objectives for which it was created? Does the information provided meets what the citizens actually seek? Is the content of the information searched by the user easy to understand??

In this context, this article aimed to identify and discuss the adequacy of the *Portal da Transparência* (PT) of the *Tribunal Regional Eleitoral do Tocantins* (TRE-TO) to the requirements of the Conselho Nacional de Justiça¹⁴(CNJ), regarding compliance with the requirements of the Federal Law No. 12,527/2011 – *Lei de Acesso à Informação* (LAI).

The specific objectives were: a) to analyze the information made available in the PT of TRE-TO; b) analyze the requirements of the CNJ in relation to the PT; c) identify and discuss the adequacy of the TRE-TO PT to the CNJ requirements; and d) compare the information presented in the PT of TRE-TO with that established in the *Lei de Acesso à Informação* (LAI).

The reasons that led to the choice of the theme arose due to the holding of a series of public hearings promoted by the Regional Electoral Ombudsman in various regions of the State of Tocantins, with the purpose of publicizing the services offered and making the population aware of the importance of accessing the *Portal da Transparência da Justiça Eleitoral*¹⁵, seeking advances and improvement of access to Justice, as a way of establishing the right to information.

Another relevant reason for the choice was the interdisciplinary proposal of the theme and its relevance in the scope of human rights, which allows the State to open their doors to the citizens, allowing their demands and concerns to be heard and answered, thus providing that any person, natural or legal, without the need to present a justified reason, receives public information from bodies and entities, based on the legal regulation based on the *Lei de Acesso à Informação* (LAI).

The LAI has a normative framework of excellence, however, there are still obstacles to the right to access to information in the daily life of citizens due to the lack of transparency in the content made available to citizens. Jardim (2008) says that:

The informational transparency of the State, expressed in the legal discourse, is overcome by the informational opacity of the public administration, a phenomenon historically associated with the State

¹⁴ National Council of Justice

¹⁵ Electoral Justice Transparency Portal

project sustained in Brazil and other Latin American countries. This project has favored a State that systematically neglects the interests of the societies it would serve¹⁶. (JARDIM, 2008, p. 89).

In this context, the right to citizenship is configured in a category of human rights, requiring a democratic space so that it can be exercised and respected by the State and private individuals.

Therefore, the justification for this article is to encourage the search for clear and objective information through the PT of the Electoral Justice of Tocantins, as well as reflection for an effective exercise of citizenship, enabling citizens to monitor its effective functionality in a transparent way, without it being outdated or yet having inoperable technological information systems, thus frustrating access to information by the public service user.

On the other hand, it can be seen that the Democratic State does not support social exclusion, demanding the sharing of man in the formulation of a social political project with the surrounding community.

Thus, this work is based on characterizing this right of access to information as an already recognized constitutional right, analyzing the various principles that guide it. On the other hand, analyzing Brazilian legislation, especially the *Lei de Acesso à Informação*, Law No. 12,527/2011, and assessing its adherence, especially regarding to the PT in the scope of the Electoral Justice in Tocantins. As a support tool, the questionnaire carried out annually by the CNJ regarding the adequacy of the aforementioned portal will be used.

1 Article framework

The article aims to analyze the functionality of the *Portal da Transparência* within the Electoral Justice of Tocantins and, therefore, possible ways of improvement in order to better meet the demands of the community regarding the fundamental right of access to public information, in comparison to the questionnaire applied by the *Conselho Nacional de Justiça* (CNJ), 2nd edition, 2019.

The CNJ's annual questionnaire establishes that courts and councils publish on their websites relevant information about their financial and budgetary management, related to expenditure on human resources, general services, as well as cleaning and IT services, consumables, acquisition of assets and other costing expenses.

¹⁶ Translated by the authors

Citizens need to take possession of these legal instruments of access to information and mobilize themselves around an effective social control of the State, even though they want to demonstrate that the deficiency concerns the difficulty in using transparency instruments (portals), in the sense that, even being available, citizens find it difficult to access and understand it. However, this is not seen as the crucial problem, on the contrary, websites being outdated and unavailable for technical reasons has been quite common, making evident the need for investments by public managers in technology and human resources, in order to provide the individual with the full right of access to public information.

Another challenge is related to the effective use of popular participation tools made available by the State, and through them it is possible for citizens to have conditions to actively participate in government actions and to positively interfere in the decision-making process and in the formation of acts of government, ensuring respect for fundamental rights and strengthening public management.

For Bento (2015, p.62) "The right to know and to have access to information that somehow concerns the interests of the community is now recognized as an indissoluble part of the institutional framework of democracies"¹⁷.

Access to justice can be seen as a fundamental requirement, since it is a basic human right, a current and egalitarian legal complex that seeks to ensure, and not just make available the rights to which everyone is entitled (CAPELLETTI; GARTH, 1993).

1.1 Public Transparency

The word transparency has its origins in medieval Latin, arising from the adjective *transparens-entis* (TRANSPARÊNCIA, 2020). The theme of transparency has permeated the public discourse and, in this context, to support this article, it is necessary to extract some theoretical constructions related to the theme proposed herein.

By transparency it is meant the quality or condition of what is transparent, quality of what is unambiguous; clarity, limpidity (HOUAISS, 2009). Thus, it can be said that an object exhibits transparency when light manages to penetrate the object and pass through it. (AURÉLIO, 2002).

It should be noted that transparent is not said of the body that is fully exhibited to the gaze, but of the body that does not prevent the gaze from passing through it and glimpse other bodies that, if it were opaque, it would hide¹⁸ (GOMES; AMORIM; ALMADA, 2015, p. 1).

¹⁷ Translated by the authors

¹⁸ Translated by the authors

Transparency, much more than a simple physical property, has a more significant use as a metaphor, an analogy. Thus, "we understand that being transparent is the ability to be observed without distortions"¹⁹ (SCHAUER, 2014, p. 86).

For Birkinshaw (2006), regarding the field of public administration, transparency can be understood as the management of public affairs for the public, and Black (1997) completes the definition by declaring that transparency is the opposite of opaque policies, in that one does not have access to decisions, what they represent, how they are made and what is gained or lost with them.

From the point of view of physics, transparency is what "it is intended to see the substance as it is presented to the world, devoid of judgments and beliefs about the facts of life as socially perceived"²⁰ (RITA apud LUHMANN, 1995).

Batista (2010), on the other hand, highlights, in different terms, approximately the same issues. For the author, the problems related to public transparency are concentrated in three dimensions: the physical, intellectual and communicational dimensions. When there are difficulties in physically accessing the information, the questions refer to the physical dimension. The intellectual dimension is associated with difficulties related to the intellectual understanding of information. Finally, the lack of effective communication between the State and citizens, and even the excess of information, comprise the communicational dimension.

Berrones (2016a) observes the occurrence of public transparency in three dimensions: a technical dimension, associated with the complexity of the processes necessary for its implementation; a political dimension, which favors the dialogue between the rulers and the ruled and, thirdly, an institutional dimension, which defines transparency as a public policy. In this way, so that information is not masked from citizens, public entities must give their transparency initiatives characteristics of accessibility, evidence, visibility and publicity.

In Berrones' conception, public transparency results from processes that:

combine tense relationships between opacity and publicity; secrecy and news, subjects and citizens; light-dark and lights; bureaucratic centralism and individual and collective freedoms; privileges and equality that explain how public power is designed and implemented with the intervention of specific actors, agencies, strategies, times and objectives. These dichotomies have been and are present in different degrees of impact on the path that leads to the reinforcement of transparency as a public policy. This means that the democratization of

¹⁹ Translated by the authors

²⁰ Translated by the authors

power because of its distribution, openness and accessibility are not mechanical actions or processes, but are part of struggles, pressures, demands and responses that combine to give life to the advancement of modern societies (BERRONES, 2016b, p. 200)²¹.

Regarding public transparency, different views can be observed. The first, more common, is the one that is confused with the principle of advertising (VAZ; RIBEIRO; MATHEUS, 2011). The adopted reference is based on our 1988 Magna Carta (BRASIL, 1988) in its article 37. In this sense, the infra-constitutional normative provides that government information be disclosed to the community as a way to demonstrate transparency. In the conception of other researchers, many of the actions defined by governments as actions that aim at transparency represent nothing more than the search for the spectacle (ABDALA; TORRES, 2016; ANJOS; EZEQUIEL, 2011).

As stated by Roumeem Islam (2003), transparent governments govern better because the expansion of information provides the existence of a political market with less corruption and, in turn, more efficiency.

1.2 Transparency in the Democratic State

The debate on transparency in the public sector has constantly appeared both in academic environment and in the political, administrative, journalistic and social spheres. Politicians use the term in speeches, journalists debate the topic, academics carry out research to generate understanding and increase knowledge about transparency, civil society entities use it to talk about social control, etc. This debate is usually associated with issues such as democracy, participatory governance, trust in government, open government, corruption, accountability and social control (CUCCINIELLO et al., 2014; GRIMMELIKHUIJSEN; KASYMOVA, 2015; GRIMMELIKHUIJSEN, 2012; JORGE; LOURENÇO; ROLAS, 2015; LOURENÇO et al., 2013; MEIJER; HART; WORTHY, 2015; MEIJER, 2015).

Thus, it is not enough for institutions to be well equipped, with access to information policies and active, participative and interested citizens. It is necessary for the community to know what will be controlled and how to do it.

For this reason, the approval of the LAI represents a historic moment in the struggle for human rights, as it results from "a process marked by the denial of access to public archives, as was the case with the *Guerrilha do Araguaia*, valorization of the culture of secrecy, abuse of power and relations between public and private in Brazil"²² (BATISTA, 2012, p. 204-205).

²¹ Translated by the authors

²² Translated by the authors

On the other hand, it is not enough that there is access to information and institutions are well equipped, with policies for access to information and active, participative and interested citizens. The collectivity needs to know what will be controlled and how to do it.

According to Siraque (2009, p.103), social control:

It is the act performed individually or collectively by the members of society, through entities legally organized or not, through the various legal instruments made available to the citizenry to inspect, monitor, watch over, examine, inquire and gather information about something.²³

1.3 Electoral Justice Transparency Portals

The Electoral Justice of Tocantins makes available on its transparency portal the main information of public interest through in-person service, telephone, electronic form and messaging application or even through the Post Office, offering several and varied means of access to citizens in order to obtain the desired information. It also offers a series of information of public interest on its website, making its management more transparent to society, so that it can monitor each of the actions this electoral agency undertakes. This information is varied and can be accessed from the website's transparency menu (www.tre-to.jus.br) and contains, among others:

- a) Complete data on all Court bids, in all modalities, with all documentation;
- b) Statistics of all cases distributed, redistributed and judged;
- c) Remuneration structure for civil servants and magistrates;
- d) Information on all purchases by the Court, detailed by month;
- e) Information on all contracts signed by the Court;
- f) President's Ordinances;
- g) Provisions of Internal Affairs;
- h) Number of permanent employees;
- i) List of all materials for donation;
- j) Reports on Budget and Financial Management, with monthly breakdown, including accrued liabilities;
- k) List of all civil servants, magistrates, prosecutors, outsources and employees loaned by other bodies that provide services at the Court;
- l) List of official vehicles in use;
- m) Internal audit reports, with respective monitoring;

²³ Translated by the authors

n) Annual management reports, containing a summary of the main actions taken by the Court, in addition to personnel, budget, government procurement and control data;

o) Tax management report;

p) Processing report of all processes in progress in the TRE and in the *zonas eleitorais*²⁴, with different levels of detail;

q) Remuneration and travel allowances paid to civil servants and magistrates;

r) Court Resolutions.

Transparency and access to public information available through electronic portals bring with them the need for the Public Administration to adopt proactive conducts in making public information available to society (BRASIL, 2011).

According to Pine (2008, p. 475):

considering the advances of technology, we understand that e-government should not be seen only through the provision of online services, but also through the wide range of interaction and participation possibilities between government and society and the commitment to transparency on the part of governments. In other words, ICTs (Information and Communication Technologies) contain enormous democratic potential, as long as there is a political definition in the sense of popular participation and transparency, as the government can stop offering what it does not want to show, not to mention what it wants to hide²⁵ (PINHO, 2008, p. 475).

In the conception of Platt Neto, Cruz and Vieira (2006), transparency is a broader concept than advertising, as information can be public, but not relevant, reliable, timely, useful and comprehensive. "Transparency has become a fundamental value in the democracies of our time"²⁶ (ZEPEDA, 2012, p.9).

Correspondingly, O'Donnell (1998) highlights the mandatory relevance of the manager in being accountable for his/her actions with transparency, ensuring social control. Opaque transparency involves the dissemination of information that, in practice, does not reveal how institutions work. On the other hand, clear transparency concerns information access programs and practices that reveal useful and reliable information about institutional performance (ANGÉLICO, 2012).

It is observed that public entities will have to increasingly deal with transparency. It is not just a matter of complying with an existing legal regulation, but rather of

²⁴ Electoral Zones

²⁵ Translated by the authors

²⁶ Translated by the authors

adapting to technological changes, social pressures for accountability and converging towards effective social control, especially regarding digital transparency.

Digital transparency is linked to two close but distinct axis: the transparency of government management and digital information and communication technologies (ICTs). In this article, when digital transparency is discussed, it is sought to mention government experiences and initiatives in the use of the aforementioned digital devices, in order to increase and strengthen the democratic process through public transparency.

Thus, the study of digital transparency aims to understand how these digital tools are used and how information and communication technologies contribute to this insertion of the community. Understanding this interaction between government and citizens in the use of information and communication technologies is still an attempt to advance in the knowledge, and improvement of information and services made available to the public.

1.4 *Conselho Nacional de Justiça* and the transparency ranking of the Judiciary

Considering this objective the CNJ (*Conselho Nacional de Justiça*) created the ranking of Transparency of the Judiciary, established by CNJ Resolution No. 260, of September 11, 2018, which amended CNJ Resolution No. 215, of December 16, 2015, in order to be able, with objective data, to assess the degree of information that courts and councils make available to citizens.

The *Conselho Nacional de Justiça* (CNJ) is a public institution that aims to improve the work of the Brazilian judiciary system, especially regarding administrative and procedural control and transparency (CONSELHO NACIONAL DE JUSTIÇA – CNJ, 2019).

In management, it is defined the Judiciary's strategic planning, goal plans and institutional assessment programs. In providing services to citizens, it receives complaints, electronic petitions and representations against members or bodies of the Judiciary, including against its auxiliary services, offices and agencies that provide notary and registration services that act by delegation of the public or official power. In morality, it judges disciplinary proceedings, ensuring the right to a hearing, and may determine removal, availability or retirement with subsidies or earnings proportional to length of service and apply other administrative sanctions (CONSELHO NACIONAL DE JUSTIÇA – CNJ, 2019).

Finally, in the efficiency of judicial services, best practices and speed are sought, especially in the semiannual preparation and publication of a statistical report on procedural motion and other indicators relevant to jurisdictional activity throughout the country (CONSELHO NACIONAL DE JUSTIÇA – CNJ, 2019).

The *Conselho Nacional de Justiça* issued Ordinance n. 95, of June 25, 2019, to disclose the evaluation and scoring criteria to be used in the preparation of the second edition of the Judiciary Power Transparency Ranking – 2019. The Ranking, established by CNJ Resolution n. 260/2018, is held annually and seeks to value the courts and councils that stand out in providing clear and organized information. The CNJ has already carried out three editions of the ranking. The result of each edition is available on the CNJ website.

In the second edition that took place in 2019, the items under evaluation were divided into nine categories within two groups: Active Transparency (TA) and Passive Transparency (TP).

The TA criteria relate to information published on this government agency's website, such as organizational structure, citizen information service, possibility of extracting reports and whether the agency discloses, for example, data on the remuneration of public servants, pensioners and employees.

The criteria related to TP, on the other hand, concern the possibility of requesting information, availability of a searchable database and visibility of the contact phone number, for example.

Regarding the performance of the information published on the internet, in the 2nd edition of the transparency ranking promoted by the CNJ, in the seven states of the North region, the *Tribunal Regional Eleitoral²⁷ do Amazonas* stood out, which fulfilled 93.44% of the items evaluated, reaching the 1st place among the Northern States, followed by the *Tribunal Regional Eleitoral do Acre* which reached a percentage of 92.65%, the *Tribunal Regional Eleitoral do Tocantins*, 90.16% and the *Tribunal Regional Eleitoral do Pará* with 86.89% compliance of the transparency requirements required by the CNJ. The Court with the lowest performance in the North region was the *Tribunal Regional Eleitoral do Amapá*, with 68.03% as shown on the CNJ website and in Table 1.

Table 1 Transparency ranking of TRE's North Region.

Northern Regional Electoral Courts	Percentage reached in the CNJ 2019 ranking evaluation
Tribunal Regional Eleitoral do Amazonas	93,44%
Tribunal Regional Eleitoral do Acre	92,65%
Tribunal Regional Eleitoral do Tocantins	90,16%
Tribunal Regional Eleitoral do Pará	86,89%
Tribunal Regional Eleitoral de Rondônia	77,87%
Tribunal Regional Eleitoral de Roraima	75,41%

²⁷ Regional Electoral Court

Tribunal Regional Eleitoral do Amapá	68,03%
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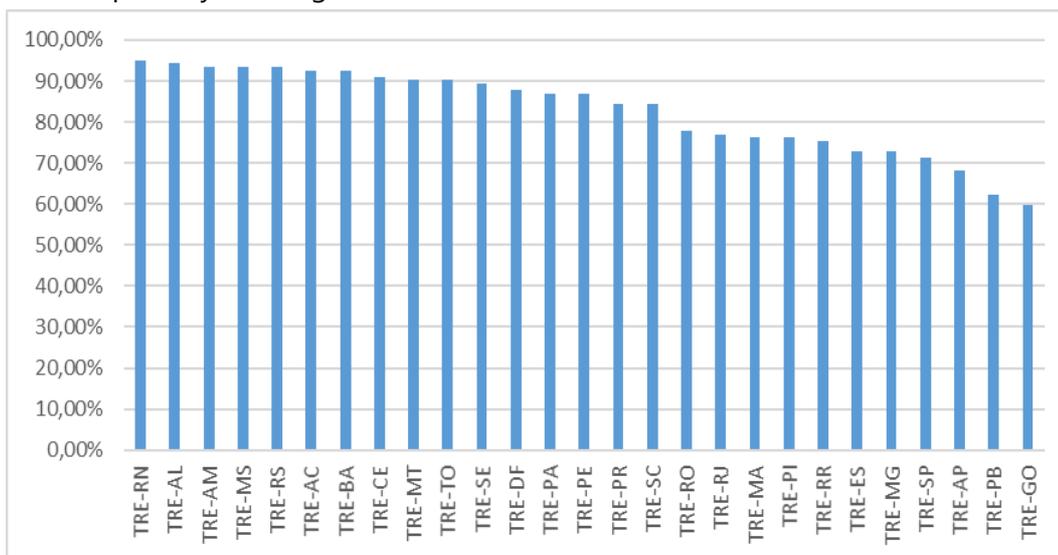
Source: Conselho Nacional de Justiça (2019). 2ª Edição do Ranking da Transparência.

The object of the research was the *Tribunal Regional Eleitoral do Tocantins*, which obtained in the 2nd Edition of the Transparency Ranking promoted by the *Conselho Nacional de Justiça* (CNJ), a percentage assessment of 90.16% among the regional electoral courts in the country.

Regarding the 27 (twenty-seven) Brazilian regional electoral courts, it is possible to graphically visualize the prominent placement of the Regional Electoral Court of Tocantins in the ranking of transparency, 2019, 2nd edition, promoted by the CNJ.

From graph 1 it is possible to see that the Electoral Justice of Tocantins (TRE-TO), is among the 10 (ten) regional electoral courts with the best evaluation in the ranking of transparency of the *Conselho Nacional de Justiça*.

Graph 1 Transparency Ranking in TRE's in 2019.



Source: Conselho Nacional de Justiça (2019). 2ª Edição do Ranking da Transparência.

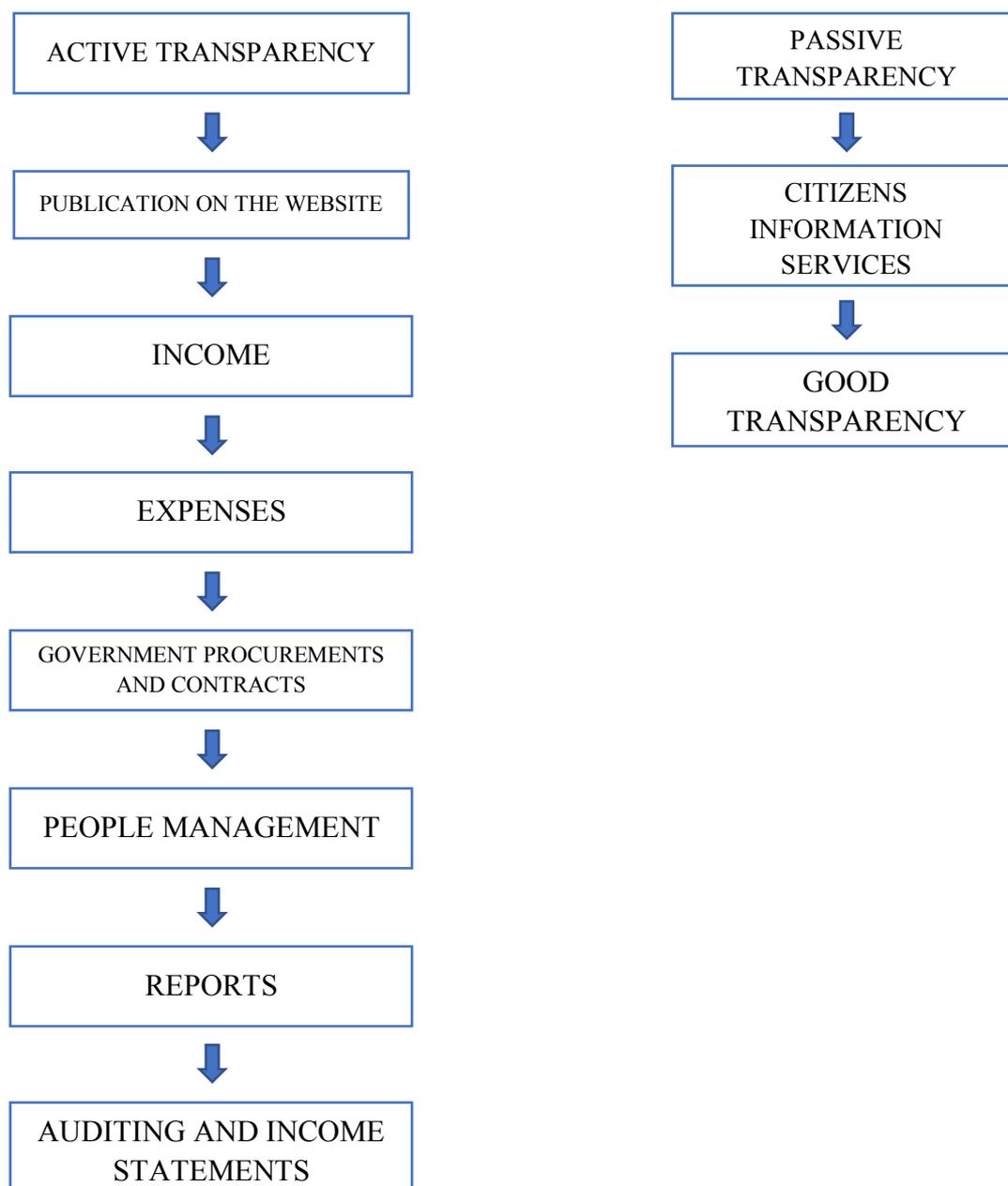
2 Methodology

This research sought to analyze the adequacy of the PT in the scope of the Electoral Justice of Tocantins and, consequently, its enhancements and improvement in the service to the community regarding the fundamental right to information. The research outline is the analysis of the *Tabela de Avaliação e Pontuação*²⁸ (TAP) established by the *Conselho Nacional de Justiça* (CNJ), in relation to the *Lei de Acesso à Informação* (LAI).

²⁸ Assessment and Score Table

In the study, the indicators that were assessed in the Active Transparency category are subdivided into seven classes. In Passive Transparency, they are subdivided into two. Therefore, our analysis is centered on the nine existing classes within the two main groups: Active Transparency and Passive Transparency, as shown in fig. 1

Figure 1 Active and Passive Transparency Classes.



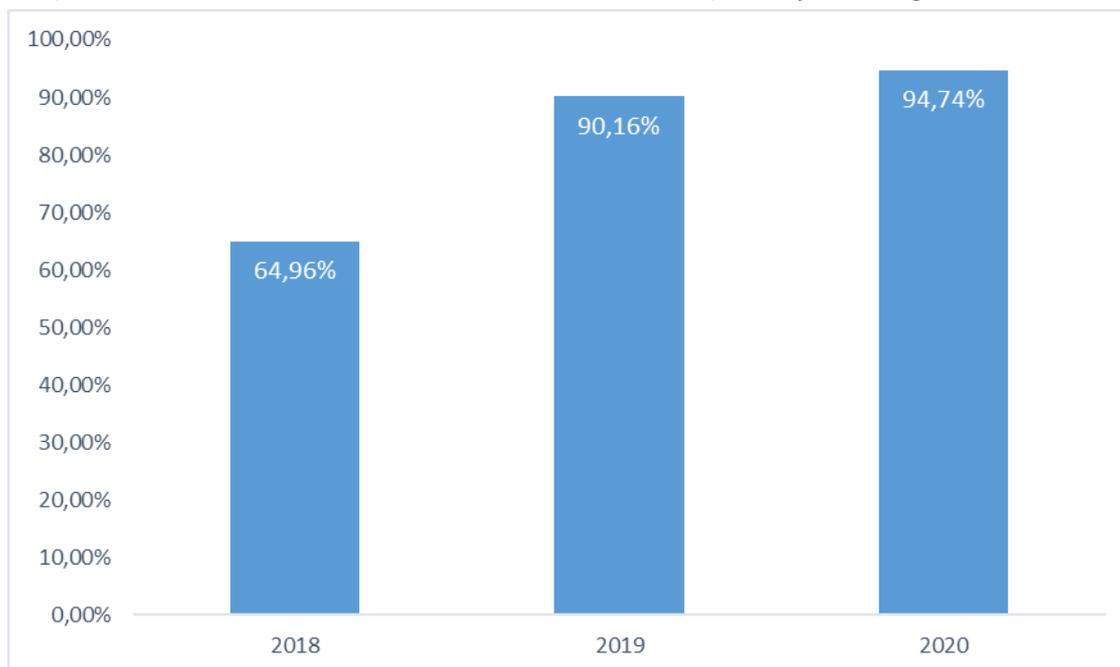
Source: Authors (2020).

In the electronic questionnaire created by the CNJ, government agencies respond within a deadline. The courts and councils received, by letter, a link and password in order to have access to the electronic questionnaire, having until July 19 to answer the

questions raised there. The information provided was analyzed by the CNJ technical team and the result occurred in September 2019.

In 2018, the transparency indicated in the CNJ questionnaire for the Electoral Justice of Tocantins was 64.96%, in the following year, 2019, which we are analyzing, the percentage observed by the CNJ was 90.16% and, finally, in the 3rd edition of the CNJ transparency ranking, in 2020, the Electoral Court of Tocantins reached 94.74% in its percentages of public transparency, as shown in Graph 2.

Graph 2 Evolution of Electoral Justice in the CNJ Transparency Ranking.



Source: Author (2020). Based on the results of the transparency/CNJ ranking.

In this context, Graph 2 points to the progressive rise of the Electoral Justice of Tocantins in the effective availability of the information conveyed, as well as the high level of transparency available to society.

The evolutionary curve of the Electoral Court of Tocantins is visible regarding the evaluation in the transparency ranking promoted by the CNJ annually. Thus, it can be seen that the Electoral Judiciary of Tocantins is increasingly moving towards not only promoting transparency in the provision of information, but, especially, providing that this information reaches every citizen and is understood in its entirety.

The purpose of this project was to map the CNJ's initiative to formulate a questionnaire addressing aspects of information in the field of Active and Passive Transparency within the *Tribunal Regional Eleitoral do Tocantins* and its advances for the benefit of the community in the search for the right to quality information.

Grade et al. (2005, p. 49) consider that "true transparency lies in the possibility for society to obtain and interpret complete, timely and reliable information about public management and conduct of public servants"²⁹, which results from the unrestricted accessibility to public data, as long as they are not under the cloak of secrecy.

Thus, based on the pressing need for the public service user to seek public information and given the difficulties encountered in this process, the following research question to be investigated was asked: how to identify and discuss the adequacy of the *Tribunal Regional Eleitoral do Tocantins* (TRE-TO) Transparency Portal (PT) to the requirements of the *Conselho Nacional de Justiça* (CNJ), regarding compliance with the requirements of Federal Law No. 12,527/2011 – *Lei de Acesso à Informação* (LAI)?

For its development, the work was divided into three stages: theoretical and practical recognition (case study) of the object of study; analysis of the Scoring and Evaluation Table (TAP) of the information published on the internet by the *Conselho Nacional de Justiça*, comparative analysis of the PT in relation to the *Lei de Acesso à Informação* (LAI); preparation of a technical proposal to support the PT, containing as appendices suggestions for improvements to the managers of public portals.

Thus, as far as the intended objectives are concerned, this research is configured as exploratory and descriptive. The Information Evaluation and Scoring Tables, provided by the CNJ on the internet, were observed and analyzed in order to verify the performance in the transparency ranking related to the *Tribunal Regional Eleitoral do Tocantins*.

As for the procedures, the work used bibliographical and documentary research. Regarding the documents that were researched, there are those available on the website of the *Conselho Nacional de Justiça*, including ordinances, resolutions and appendixes, in addition to the results of the questionnaire applied to *Tribunal Regional Eleitoral do Tocantins*.

Data collection was based on the results of the questionnaire applied by the *Conselho Nacional de Justiça* (CNJ), since it involves obtaining data from a secondary source.

The choice for the Content Analysis method was justified by the interpretive nature of this work. Through this method, we sought to understand whether the application of the questionnaire applied by the CNJ, regarding the assessment of the 9 (nine) Classes within two main groups, Active Transparency and Passive Transparency, allows a mapping of deficiencies and produces subsidies for the construction of improvements

²⁹ Translated by the authors

on the website of the *Tribunal Regional Eleitoral do Tocantins* regarding the transparency ranking.

The work was based on a documental universe – a questionnaire applied by the CNJ to the Judiciary – therefore, observed at first (closed grid), in which the system of categories is provided and the elements are distributed in the best possible way. The categories under analysis concern Active Transparency and Passive Transparency. In our work, elements are the classes that make up each of the transparency species.

Finally, the research carried out had a qualitative approach. The emphasis was to observe and analyze the stage of implementation of the Active and Passive Transparency categories in the scope of Electoral Justice, based on the LAI.

As for what was proposed, the research had an exploratory and descriptive character. Exploratory as there is no work that would approach the aforementioned study in the sphere of Electoral Justice. It is descriptive because it configures the description of institutional phenomena related to public transparency, without the intention of interfering with or modifying them.

The means that were used in the research constitute, simultaneously that this is a field, documentary and bibliographic research. It is field research because it involves an empirical study carried out through the Electoral Justice website in obtaining primary data. It is documentary, as institutional documents were accessed, both from the Electoral Court and from the CNJ.

It is also considered a bibliographical study, since it involves theoretical foundation and assumptions of the themes discussed in the research. It is worth noting, according to Martins and Theóphilo (2009), bibliographic research involves the collection of references in written media or in others, such as books, periodicals, etc. Meanwhile, the documentary research looks for material that has not been edited, such as reports.

3 Analysis of the results of the questionnaire applied by the CNJ regarding Active Transparency (TA)

The results obtained from the application of the CNJ questionnaire to the Classes that make up the Active Transparency (TA) demonstrate that some critical points in the application of the LAI were not met, in addition to not observing the provision of information in a proactive, spontaneous way, placed on the website of the Electoral Justice, as shown in Table 2.

Table 2 Nonconformities detected by the CNJ in the Classes that make up the Active Transparency.

Active Transparency (TA) Classes	CNJ question	TRE-TO substantiation	TRE-TO argument
Publication on the website	Does the site have a mechanism that makes it possible to monitor the respective administrative procedures and processes that do not fall under the secrecy hypotheses?	None	The Court presents a link that allows the creation of a register to access the SEI system. However, to perform the login creation, there is the following information: "ATTENTION! Registration for individuals who have demands in ADMINISTRATIVE PROCESSES at the institution." Therefore, the institution does not allow the monitoring of its administrative processes to any individual or legal entity, but only to those who have demands in the institution.
Publication on the website	Does the institutional portal allow the extraction of reports in various electronic formats, preferably open, and non-proprietary, such as spreadsheets and text (CSV, RTF), in order to facilitate the analysis of information?	None	Although the institution makes the data available in PDF, this data has not yet been perceived in an open format (RTF, CSV, etc.).
Expenses	Does the agency publish on the website the list of contractors, with the respective amounts paid in the last three years, except for confidential ones, under the terms of the law?	http://www.tr.e-t.o.jus.br/transparencia/licitacoes/licitacoes-e-contratos	It does not contain the respective amounts paid. Accessed on 07/30/2019, at 2:32 pm.
Government procurements and contracts	-----	-----	-----

People management	The institution publishes appendix VI of Resolution CNJ n. 102/2009 ?	http://www.trf1.jus.br/transparencia/recursos-humanos-e-remuneracoes/anexo-iv-relacao-de-empregados-das-empresas-contratadas/anexo-iv-relacao-de-empregados-das-empresas-contratadas	Information not located on the link provided (accessed on 08/09/2019)
Reports	-----	-----	-----
Audit and income statements	Does TRE-TO present an Annual Audit Plan?	http://www.trf1.jus.br/transparencia/planos-de-auditoria-interna/auditoria-interna-cia/planos-de-auditoria-interna	Accessed on 07/26/2019, at 4:12 pm. Not located at the address given.

Source: Author (2020), with adaptations to the result presented by the CNJ.

Regarding the hypothesis that the website has a mechanism that allows the monitoring of administrative procedures and processes that do not fall under the hypotheses of secrecy, it is necessary that the Electoral Court, in order to provide greater transparency to its processes, enables the effective monitoring of its administrative processes to any individual or legal entity and not just those who have demands in the body, as informed.

In the analysis of the questionnaire applied by the CNJ in the 2nd edition of the 2019 transparency ranking, it was found that the institutional portal of this Specialized

Court did not allow the extraction of reports in various electronic formats, even though the institution makes the data available in PDF, even so, this data was not noticed in open format (RTF, CSV, etc.) and not proprietary³⁰.

Regarding the Expense class, the Electoral Court of Tocantins published the list of contractors on the website, however, the amounts paid in the last three years were not found.

On what concerns People Management, the information about the employees of contracted companies working in the Electoral Court was not found in the link provided by this Specialized Court.

As for Auditing and Income statements, it was observed that the electronic address provided by the Electoral Court was unable to locate the information related to the Annual Audit Plan of this Electoral Region by the CNJ. It appears that the information made available to the questioning body (CNJ) was not of quality.

Bento (2015, p. 169) states that "quality public information is that recorded in duly filed public documents, and that is, to that extent, endowed with context, traceability and proof value"³¹. Thus, it was not possible for the CNJ to track the desired document to confirm its veracity.

Thus, the CNJ questionnaire pointed out the existence of 05 (five) critical points in the analysis of the Active Transparency category. Two related to the Publication Class on the website, in addition to the Expenses, People Management and Audit and Income statements Classes, which pointed to a critical point in each of them. No inconsistency was observed regarding the Government procurements and Contracts and Reports Classes.

4 Analysis of the results of the questionnaire applied by the CNJ regarding Passive Transparency (TP)

For the Passive Transparency category, the questionnaire applied by the CNJ pointed to 08 (eight) critical points. All inconsistencies verified occurred only in the Good Practices of Transparency Class, as described in Table 3.

³⁰ "Reports in open electronic format, not proprietary, are considered to be documents produced and made available in a widely known format that allow for easy analysis and unrestricted use of information" (CNJ, 2019).

³¹ Translated by the authors

Table 3 Nonconformities detected by the CNJ in the Classes that make up the Passive Transparency.

Passive Transparency (TP) Classes	CNJ question	TRE-TO substantiation	TRE-TO argument
Citizen Information Services (SIC)	-----	-----	-----
Good Transparency Practices	Does the website contain the Agenda of the Committee meetings and the respective results and minutes?	http://www.tre-to.jus.br/o-tre/planejamento-e-gestao/comite-gestor-de-planejamento-estrategico-e-governanca-da-tecnologia-da-informacao-e-comunicacao-2013-cogetic	Minutes on the indicated link refer solely to the Management Committee for Strategic Planning and Governance of Information and Communication Technology. Accessed on 01/08 - 15:07h
Good Transparency Practices	Does the court/council use a Brazilian sign language interpreter in all public demonstrations?	No	
Good Transparency Practices	Does the court/council use subtitles in all public demonstrations?	No	
Good Transparency Practices	Does the court/council use audio description in all public demonstrations?	No	
Good Transparency Practices	Does the court use accessible language communication in all public demonstrations?	No	
Good Transparency Practices	Has the court announced the formation of the Electronic Registry of Experts and Technical or Scientific Bodies on the world wide web or newspaper and consulted universities, entities, bodies and class	No	

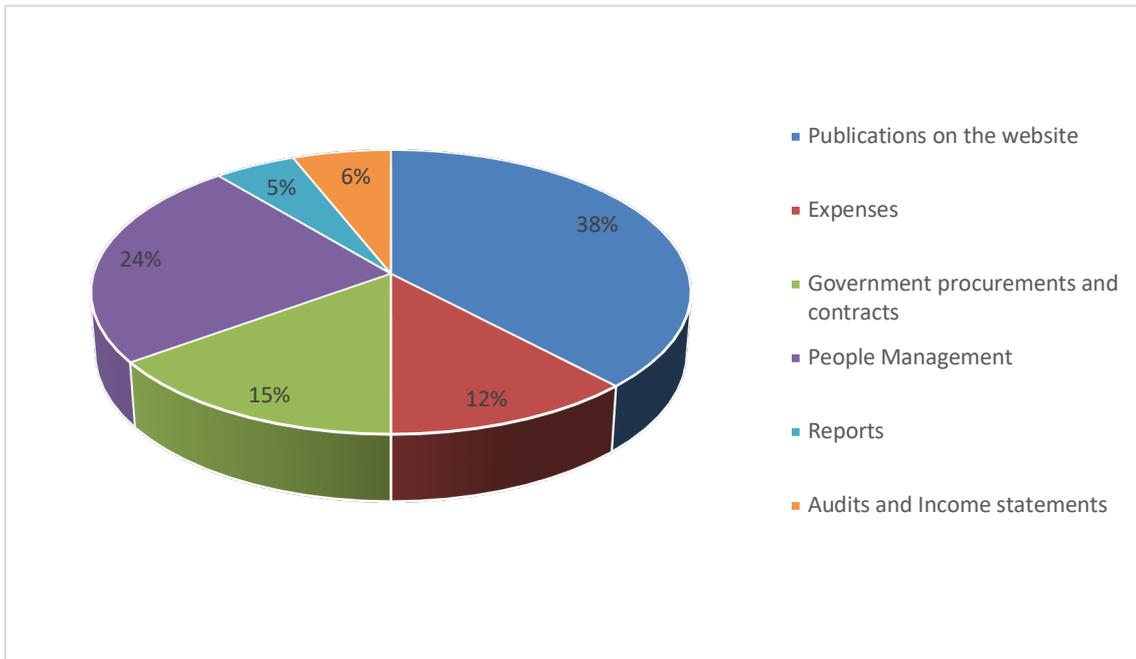
	councils, the Public Ministry, the Public Defender's Office and the Order of Brazilian Lawyers for the formation of that register?		
Good Transparency Practices	Has the court published an announcement setting out the requirements and documents to be submitted by professionals and bodies interested in the Electronic Registry of Experts and Technical or Scientific Bodies?	No	
Good Transparency Practices	Does the court publish on the internet the list of professionals or bodies registered in the Electronic Registry of Experts and Technical or Scientific Bodies?	No	

Source: Authors (2020), with adjustments. *Ranking da transparência, 2019*. Respostas do TRE-TO ao questionário do CNJ.

5 Comparative analysis between Active Transparency (TA) x Passive Transparency (TP)

For the Active Transparency Category, 86 (eighty-six) questions were applied by the CNJ to TRE-TO, being 33 (thirty-three) questions related to Publication on the website, 10 (ten) related to Expense, 13 (thirteen) to Government procurements and Contracts, 21 (twenty-one) questions dealing with People Management, 04 (four) relating to Reports and 05 (five) concerning Auditing and Income statements, graphically arranged in percentage terms like this:

Graph 3 Active Transparency in Percentage.



Source: Authors (2020). Resultado em percentual da Transparência Ativa no *ranking* da transparência 2019, 2ª edição.

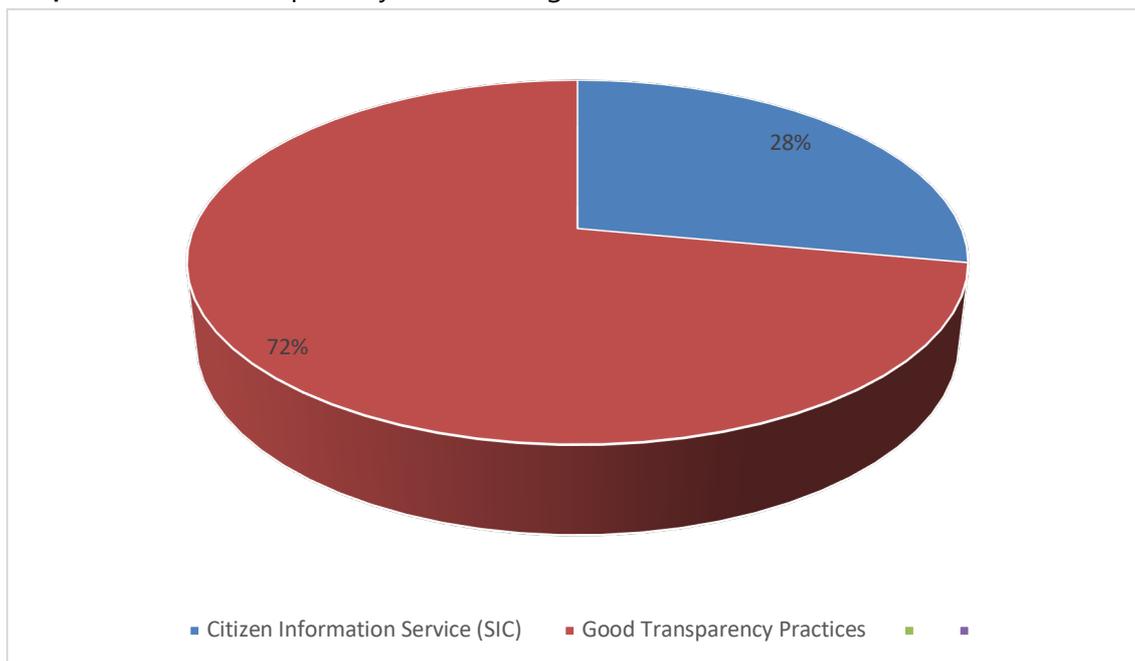
It can be perceived in Active Transparency (TA) that the number of questions presented by the CNJ to the Publication Class on the website corresponds to 38% of the questions formulated for the TA, which denotes a significant concern of the questioning body (CNJ) in dealing with that TRE-TO make available, as much as possible, its publications on the website, providing maximum transparency.

Relevant percentage can also be seen in the People Management Class. It is observed that 24% of the questions formulated by the CNJ demonstrate the importance of providing information relevant to the staff of the Electoral Judiciary.

Regarding Government procurements and Contracts, it is noticed that 15% of the questions formulated by the CNJ demonstrate a clear concern with making information available and clear to the community, as they relate to public spending. Last, and not least, are the Expenses, Audit and Income statements and Report Classes with the respective percentages of 12%, 6% and 5%. Such Classes, even with a smaller number of items, retain significant importance in the content of the questions formulated by the way they were addressed and evidenced concerning effective transparency.

For the Passive Transparency Category, 50 (fifty) questions were applied by the CNJ to TRE-TO, 14 (fourteen) of which were related to the Citizen Information Service (SIC) and 36 (thirty-six) related to Good Transparency Practices. graphically in percentage terms like this:

Graph 4 Passive Transparency in Percentage.



Source: Authors (2020). Resultado em percentual da Transparência Passiva no *ranking* da transparência 2019, 2ª edição.

From a comparative analysis, we can infer that:

- a) the questions applied by the CNJ in the TA correspond to 63.23%, while the TP to 36.7%. It is evident, therefore, that there were more questions about TA than about TP.
- b) It can be observed that even with MORE questions applied by the CNJ for TA, there were LESS critical points subject to adjustment in relation to TP.
- c) On the other hand, even though TP had LESS questions asked by the CNJ, there were MORE critical points that could be adjusted regarding maximum transparency on the Electoral Justice website.
- d) Of the questions applied by the CNJ regarding TA, it can be seen that only 5.81% had inconsistencies in their responses by the Electoral Court.
- e) Of the questions applied by the CNJ regarding TP, it is observed that 16% had some type of non-compliance.
- f) Thus, it appears that there is a need to promote a greater adjustment to the TP category by the *Tribunal Regional Eleitoral do Tocantins*, as they present more inconsistencies than the TA.

6 Conclusion

This research aimed to verify the level of Active and Passive Transparency, of the *Tribunal Regional Eleitoral do Tocantins*, regarding the questionnaire applied by the *Conselho Nacional de Justiça* in its second edition, 2019.

An evolution of the transparency of TRE-TO is observed in compliance with the *Lei de Acesso à Informação* through the adjustments required by the *Conselho Nacional de Justiça*.

Additionally, one of the great challenges of this work is related to the effective use, by citizens, of social participation tools made available by state entities, in order to encourage the use of electronic portals more and more, pointing out their gaps so that the process information improvement is carried out, so that citizens have concrete conditions to actively participate in government actions and to positively interfere in the decision-making process and in the formation of management in the governmental sphere, ensuring respect for fundamental rights and strengthening public management.

Thus, for further research, interaction with citizens is suggested in order to understand if the website is known and actually used. In addition, suggestions can be obtained from the population so that the website can become more accessible.

Finally, the study intended to contribute to the discussions around the annual evaluations carried out by the CNJ regarding the ranking of transparency in the sphere of the courts and, in particular, in the effective application of the LAI in the information made available by the Electoral to the community.

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RESUMO:

O arcabouço da Justiça Eleitoral está firmado na Constituição Federal e na Lei de Acesso à Informação (LAI). Deste modo, o trabalho questiona se o Portal da Transparência (PT) da Justiça Eleitoral tocaninense apresenta transparência nas informações que ficam à disposição do cidadão e se é de fácil compreensão o conteúdo da informação pesquisada pelo usuário. O trabalho utilizou-se de pesquisa bibliográfica e documental. A coleta de dados foi baseada nos resultados do questionário aplicado pelo CNJ. A escolha pelo método da Análise de Conteúdo se deu pela própria natureza interpretativa deste trabalho. Os resultados demonstram que a política de visibilidade implantada pelo TRE-TO tem se mostrado eficaz e eficiente, porém, ainda há possíveis aprimoramentos.

PALAVRAS-CHAVES: Justiça Eleitoral; Lei de Acesso à Informação; Transparência; Portal da Transparência.

RESUMEN:

El marco de la Justicia Electoral está establecido en la Constitución Federal y en la Ley de Acceso a la Información (LAI). Así, el trabajo cuestiona si el Portal de Transparencia (PT) del Tribunal Electoral de Tocantins presenta la información que el ciudadano efectivamente busca y si el contenido de la información buscada por el usuario es de fácil comprensión. El trabajo utilizó investigación bibliográfica y documental. La recolección de datos se basó en los resultados del cuestionario aplicado por el CNJ. La elección del método de análisis de contenido se debió a la naturaleza interpretativa de este trabajo. Los resultados demuestran que la política de visibilidad implementada por TRE-TO ha demostrado ser efectiva y eficiente, además de presentar posibles mejoras.

PALABRAS-CLAVES: Justicia electoral; Ley de Acceso a la Información; Transparencia; Portal de transparencia.