

Justice and efficiency: Managing the value conflict

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* Dinâmia / ISCTE.

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Justice and efficiency: Managing the value conflict

Abstract

Presently, in Portugal, there is an incomplete network of “Julgados de Paz” (small claims courts). The government is committed to extending the network throughout the country. The goal of extending the network is constrained by budgetary considerations. Out of those constraints a conflict between the right to justice and efficiency emerges.

In this paper an approach is advanced to help manage this value conflict between justice and efficiency in setting up criteria for the extension of the network of “Julgados de Paz”.

Résumé

À présent, au Portugal, le réseau des “Julgados de Paz” (Juges de Proximité) reste incomplet. Le gouvernement veut étendre le réseau à l’ensemble du territoire national. Cet objectif est limité par des contraintes budgétaires. De là découle une tension entre le droit à la justice et la poursuite de l’efficience.

Dans cet exposé nous proposons une approche qui pourrait aider à répondre au besoin de gérer le conflit entre justice et efficience dans l’élaboration de critères pour l’extension du réseau de “Julgados de Paz” au territoire du Portugal.

INTRODUCTION

A new institutional system for conflict resolution in civil matters is in the process of being set up in Portugal under a governmental initiative. This system is based on the establishment of *Julgados de Paz*, a special kind of small claims courts whose historical roots go back to the Middle Ages. *Julgados de Paz* provide an informal, flexible and speedy means of conflict resolution, which is generally regarded as especially appropriate for claims of small size (so-called “proximity justice” – “*justiça de proximidade*”). Procedures include a form of mediation, and judgment. Referees and Judges are employed on a permanent basis.

The first *Julgados de Paz* were set up in 2002. At present, fifteen such institutions are in operation. Until now, however, the choice of location for the small claims courts has not been guided by clear or precise criteria.

The Portuguese Government has made public its intention to extend the network of these small claims courts to the national territory as a whole. The Government also expressed its intention to base the expansion of the network on well-grounded, scientifically-based criteria. For this purpose it requested ISCTE/DINÂMIA to develop a study aimed at the elaboration and justification of such criteria.

In this paper, we summarise the rationale underlying the study, as well as the model which was elaborated to guide the decision concerning the future distribution and location of the *Julgados de Paz* throughout the territory.

1. CRITERIA TO DEFINE A NETWORK OF SMALL CLAIMS

Access to justice is the main purpose for the existence of a network of small claims courts. In the Portuguese case, this principle comes directly from the country’s Constitution and its international commitments - *everyone has the right to access justice in judicial courts*. For the same reason, *everyone should have the right to access justice in small claims courts (Julgados de Paz)*.

As a corollary, the decision about the location of small claims courts must ensure an effective access for all Portuguese citizens to the small claims courts as a fundamental human right. In that way, a limited number of small claims courts solely in highly populated areas such as big cities would probably jeopardize the principle of equal rights for all citizens. Accordingly, the definition of the number of small claims courts should stand upon well-justified criteria.

Therefore, ensuring to all citizens an equal and effective access should be the first criteria to determine the location and area of influence of small claims courts in Portugal.

As a *desirable objective*, the small claims courts should have an adequate level of demand for their services. Low demand is often a result of a lack of public awareness of the existence of those services. The government should encourage and promote the utilization of small claims courts, which replace in many instances the services of judicial courts.

The second criteria to set up a network of small claims courts should be *proximity*, encompassing *visibility* and *embeddedness in the community*. In this sense, small claims courts should be distributed across the territory in a dense network. Yet, ignoring the need for a responsible financial and budgetary solution would both negatively affect the authorities' capacity to develop a network of small claims courts and undermine its legitimacy and acceptability.

The costs associated with these courts can be seen in two different dimensions. First, their budget must fit their needs but should also be as small as possible. Second, the Portuguese small claims courts operational and administrative costs are co-financed by the municipalities (*Câmaras Municipais*), though their creation is a governmental decision. So, for each small claims court there will be an agreement between the central and municipal governments.

The efficiency principle implies a perfect match between the *small claims court size* (human resources, facilities and financial means) and the real *demand* for their services. Not all municipalities have a minimum population size or the financial capacity to hold a full time staffed small claims court. Several international experiences are instructive in respect to ways of adjusting resources (physical and human) in scarcely populated regions. We should also recognize the decrease of relative resource needs due to the increase and spread of these courts throughout the whole country.

Accordingly, the third criteria to set up a network of small claims courts in Portugal should be an efficient organization and management of all the network's resources.

At this point, and since we are discussing a network of small claims courts, we should define the spatial base unit for a small claims court. The combination of the two first criteria presented above supports the choice of the municipality (*concelho*) as the spatial base unit for a small claims court network aimed to cover all the country's territory.

For urban and metropolitan municipalities the *principle of one small claims court per municipality* should not raise major difficulties, namely insufficient demand for these courts services. Actually, for metropolitan municipalities the need to subdivide a court will probably arise.

Even for smaller rural municipalities the one small claims court per municipality principle would not necessarily be incompatible with good financial resources management practices: smaller facilities and part-time personnel may provide the right answer.

As we can see, the apparent value conflict between *justice* and *efficiency* might be overcome, at least partially, from our point of view, if the *efficiency criterion* prevails with respect to the organization and resources management, and the *justice criteria* prevails with respect to the definition of the spatial base unit and location of the small claims courts.

In this way, the balance between justice and efficiency would be achieved with a system where several small claims courts (from different municipalities) were grouped together for judges and referees management purposes. Therefore, judges would be assigned to one of the joint municipalities and visit the other courts of the cluster according to the needs of each court. Judges and referees agendas would be organized considering all the municipalities' needs.

With this solution, each municipality would have its own small claims court, benefiting from high visibility, proximity and local integration, and everyone would have equal access to the system, at least as long as there is no congestion.

2. CURRENT SMALL CLAIMS COURTS IN PORTUGAL

Spatial coverage, population served and processes

Presently, there are sixteen small claim courts in Portugal, but only fifteen are actually open and working. In this paper we will only refer to the first twelve small claims courts[†].

With the first twelve small claims courts there were 1.700.962 residents served of a total of 10.356.117 inhabitants, 2.250.735 with fifteen and 2.386.699 with sixteen.

TABLE N°1
Small claims courts in Portugal, year of establishment and population served

Small claims courts	Date of creation	Population served
Lisboa	21/01/2002	564 756
Seixal	01/02/2002	150 271
Oliveira do Bairro, Águeda, Anadia e Mealhada	22/01/2002	122 501
Vila Nova de Gaia	27/02/2002	288 749
Cantanhede, Mira e Montemor-o-Velho	05/04/2004	76 260
Miranda do Corvo	01/03/2004	13 069
Porto	15/04/2004	263 131
Santa Marta de Penaguião, Alijó, Murça, Peso da Régua, Sabrosa e Vila Real	01/03/2004	105 462
Tarouca, Armamar, Castro Daire, Lamego, Moimenta da Beira e Resende	01/03/2004	84 315
Terras Bouro	01/03/2004	8 350
Vila Nova de Poiares	01/03/2004	7 061
Aguiar da Beira e Trancoso	17/05/2004	17 136
Coimbra	28/12/2005	148 443
Sintra	28/12/2005	363 749
Trofa	28/12/2005	37 581
Santa Maria da Feira	28/12/2005	135 964

Source: Ministério da Justiça e Instituto Nacional de Estatística (Censo 2001).

TABLE N°2

Small claims courts in Portugal, processes received – 2002 to 2005

Small claims courts	2002	2003	2004	2005*	Total
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[†] The small claims courts of Coimbra, Sintra, Trofa e Santa Maria da Feira were created in the end of 2005. Coimbra, Sintra, Trofa started working in 2006. Though formally established, Santa Maria da Feira's *Julgado de Paz* is still not operational.

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Lisboa	119	181	449	424	1173
Seixal	87	152	281	283	803
Oliveira do Bairro, Águeda, Anadia e Mealhada	55	107	99	88	349
Vila Nova de Gaia	75	257	807	713	1852
Cantanhede, Mira e Montemor-o-Velho	-	-	175	208	383
Miranda do Corvo	-	-	37	54	91
Porto	-	-	423	792	1215
Santa Marta de Penaguião, Alijó, Murça, Peso da Régua, Sabrosa e Vila Real	-	-	90	136	226
Tarouca, Armamar, Castro Daire, Lamego, Moimenta da Beira e Resende	-	-	70	87	157
Terras Bouro	-	-	66	48	114
Vila Nova de Poiares	-	-	16	15	31
Aguiar da Beira e Trancoso	-	-	22	34	56
Total	336	697	2535	2882	6450

Source: Ministério da Justiça.

* From January to October.

Small claims courts' supply and demand analysis

The analysis of the supply and demand of the small claims courts presented is based on statistical data analysis and on interviews carried out with judges and referees in all the first twelve small claims courts.

Territorial coverage

The small claims courts territorial jurisdiction is defined by law (art. 3º of Law n.º 78/2001). In Portugal, small claims courts may cover one municipality (*concelho*), groupings of municipalities (*agrupamento de concelhos*), one sub-municipality (*freguesia*) or groupings of sub-municipalities (*agrupamento de freguesias*).

The law also stipulates that small claims court headquarters must be located in the municipality or sub-municipality for which they were exclusively created. For both cases, the law considers the existence of a small claims court with the same territorial coverage as the cluster itself. But the law does not define the criteria for that choice.

For larger cities, the municipality (*concelho*) has been the usual option. However in Lisboa and Seixal the first courts were established at the sub-municipality level. In rural areas courts were established either in single municipalities or groupings of municipalities. Groupings of contiguous municipalities with low demographic density have been the government's choice to overcome the probable low demand from a single municipality.

For the majority of the clusters of municipalities or sub-municipalities, *access points*[‡] (*postos de atendimento*) have been located in the municipalities other than the one possessing the headquarter. The others, Trancoso, Mira e Montemor-o-Velho, have *delegations*[§].

Small claims courts and municipal authorities

The municipal tradition and philosophy, as well as practical considerations, explain the special kind of relationship between the central and the municipal authorities that characterises the *Julgados de Paz* system. The central government and municipal authorities share the management and the costs of these courts. Nevertheless, existing experience shows the importance of clearly separating the municipal government and small claims courts services, facilities and personnel. This requirement is drawn from the principle of *separation of powers*, but also from the need to convey an independent image of the small claims courts.

Types of processes

The types of processes dealt with by the small claims courts provide evidence of a “dual” country: “urban” (and even “metropolitan”) and “rural”.

In the “urban” small claims courts of Lisboa, Porto, and Vila Nova de Gaia e Seixal disputes arising from condominiums prevail, whereas in the “rural” courts, the majority of cases relate to land property rights. We should note that the latter disputes are more time consuming, both for judges and referees.

Mediation

The effective use of mediation is a cornerstone of “proximity justice” (*justiça de proximidade*). Accordingly to available information, a high percentage of processes are solved through mediation.

Referees have had a central role in most small claims courts, particularly in less complex affairs such as those concerning debt recovery and condominiums.

Therefore, the arguments for and against mediation are directly linked to the promotion of the small claims courts.

[‡] Access points (*postos de atendimento*) are basically information desks and mailboxes of the courts located in another municipality.

[§] *Delegations* (*delegações*), in addition to fulfilling the functions of accesses points, may also host all court procedures.

Small claims courts and common judicial courts

The Portuguese Constitution refers to the small claims courts as a type of court. But the institution's principles and rules differ from those of common judicial courts. Since their primary goal is the access to justice and only after that a way to ease the workings of the (over)burdened *court system*, there are no *reasons of principle* to decrease the small claims courts' territorial jurisdiction and location to the common courts map. Consequently, there should be a small claims court in every municipality, regardless of the existence of a common court in that municipality.

Additionally, we should refer to the articulation between the *two systems*. As far as we can evaluate, the relation between the small claims courts and the common courts lies on their competences. Small claims courts' demand would of course increase if their coincident competences were exclusive. Obviously, this option would also benefit the common courts by decreasing their workload.

Small claims courts, lawyers and common courts' judges

Apparently, the introduction of these small claims courts was not well accepted by lawyers. But today it is normal to see lawyers representing clients in small claims courts, mainly in land property processes. Currently, in many places lawyers even recommend to their clients to make use of the small claims courts services.

The behaviour of common court judges has not been uniform. In some interviews, reference was made to the fact that some judges regularly forward processes to small claims courts.

Small claims courts advertisement

Small claims courts' demand is directly linked to awareness about them among citizens. For that reason, small claims courts should be advertised.

In all the interviews a unanimous opinion was expressed in this respect: the small claims courts advertisement is currently "mouth to mouth". Reference was made in this respect to a "street" factor in bigger cities.

In smaller cities, the advertisement of small claims courts is also undertaken by the judges themselves within their social involvement in the community. There, advertising actions are being carried out in collaboration with the municipal government, police departments, fire departments, schools and local radios and newspapers.

The large majority of small claims courts' judges would agree with a national marketing campaign, when a countrywide network is set up.

3. THE DECISION SUPPORT MODEL

In order to define scenarios for a network of small claims courts which implements the previously mentioned, general principles, a decision support model, based in the Operations Research (OR) "location problems" family, is suggested.

Location models cover a large family of problems consisting of determining the optimal location for services, such as common interest services (e.g. schools and hospitals) or obnoxious services (e.g. dumps and sewer treatment facilities). The definition of the optimal location depends on a set of criteria to be defined. These criteria can be of a physical, social, or economical nature.

Aiming at the definition of the mathematical model - variables, constraints and objective(s) – two main research steps were carried out.

In the first step, the goal was to identify the dimensions which could be translated into quantitative data. This information should be able to encapsulate satisfactorily the relationships between the variables. Different types of data related to the problem were gathered:

- Current small claims courts supplied data - demand evolution, types of processes, process length of time, cost structure, efficiency ratios, etc.
- Geographic, social and economic data, from the entire national territory, capable to explain differences of demand for small claims courts.
- Geographic distance between municipal chief towns, population and economic features.
- Common courts network data – quantity and types of processes and amount of processes transferable to small claims courts.

Because some of the data was not sufficiently detailed and up-to-date to estimate all the demand components with high confidence, some of the data was abandoned, resulting in a

concentration on less generic but more reliable and detailed data. The options will be explained later in this paper.

In the second step, where the model was defined, the following issues were analysed:

- Which spatial units to consider.
- The demand generated by those spatial units.
- The model's static or dynamic nature.
- The objectives of the model.

The results of that analysis will be detailed in the following sections.

Which spatial units?

Three distinct possibilities were considered for the definition of the network's spatial units: jurisdiction (*comarca*), municipality (*concelho*) and sub-municipality (*freguesia*). These three possibilities could be used as the smallest unity and aggregated with other unities of the same level, when a unit did not generate enough demand or did not have enough financial resources.

In the current Portuguese judicial map, the base spatial unit is the jurisdiction. Although highly coincident with municipalities, the jurisdictions are in some cases sets of municipalities or sub-municipalities. Since small claims courts comprise in fact a specific justice system, with its own objectives, including proximity to citizens, the municipality seems to be a better choice than the jurisdiction.

Currently, there are 308 municipalities in Portugal – 278 in the mainland, 19 in the Azores Islands and 11 in the Madeira Islands – and 4251 sub-municipalities. In municipalities and sub-municipalities, the rule for geographic, demographic, economic and social features is diversity. This justifies the division of municipalities into rural, urban and metropolitan for analytical purposes.

Rural municipalities normally have smaller demographic and economic dimensions, and sometimes their population is older than urban and metropolitan municipalities. Therefore, as the development of critical mass to have a small claims court is more difficult in rural municipalities, in these cases the aggregation of municipalities in respect to the allocation of human resources seems to be a possible solution.

In urban and metropolitan municipalities, composed by the majority of the medium and big cities and diffused urban areas, particularly in the North and Centre Littoral, we can find many varied specific dynamics, particularly in metropolitan municipalities (simultaneously, there are very small sub-municipalities, mainly historical downtowns, and large sub-municipalities, sometimes bigger than some other municipalities). In these cases, the sub-municipality could be a possible solution. In this way, the analysis could be undertaken at the level below the municipality level.

But there is another practical reason to choose the municipality as the spatial base unit. The current municipal legal competencies framework (Law n° 159/99, of September 14th, and Law n° 169/99, of September 18th) as well as the inter-municipal communities and metropolitan areas legal competencies framework (Laws n° 10 and 11, of May 13th, 2003), both consider the possibility of setting up institutional conditions to implement initiatives like the small claims courts. It is therefore sensible to keep this “door” open for agents to decide what could be the best institutional structure.

For all these reasons, the municipality should be spatial base unit for the development of a network of small claims courts. Whenever necessary, the municipality can be aggregated to other municipalities or “divided” into sub-municipalities.

Demand generated by the considered spatial units

The demand directed at small claims courts comprises a *real demand* and a *potential demand*. *Real demand* might be inferred from the experimental first years’ period. *Potential demand* - the future demand for small claims courts services - depends on a set of uncertain factors and political or policy decisions. This *potential demand* may be divided in *detoured demand* - processes transferred from judicial courts - and *contained demand* - disputes not entered in small claims courts, because these courts are not known by the general public, or in judicial courts, because citizens may think that legal processes are excessively time demanding to be concluded.

Justice statistics can give us good insights into *potential demand*, although one should take into account that the exclusively legal competences of small claims courts, in relation to judicial courts, may be altered in the future.

Excluding Lisboa and Porto, the two largest Portuguese cities, there is a relatively strong correlation between the number of processes in jurisdiction courts (*comarca*) and the size of population (see Figure 1). A similar correlation can be seen in the current small claims

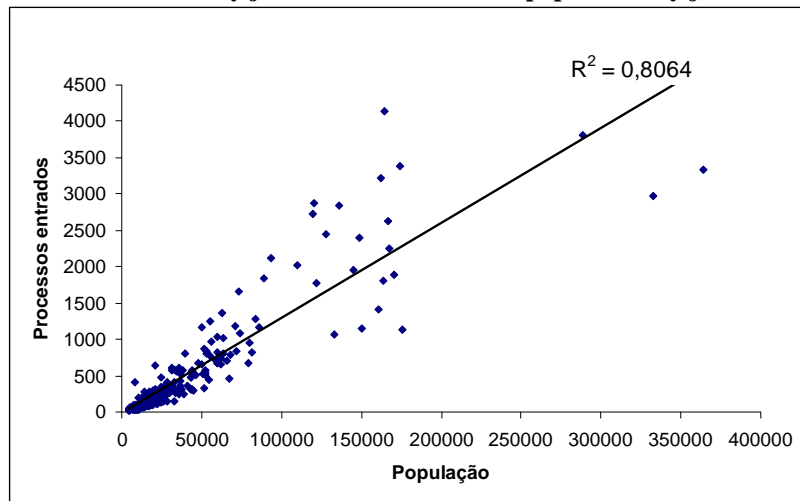
courts. These results might suggest that population size could be used as a *proxy* variable for a first demand estimate. But, of course, to determine the necessary number of judges for small claims courts that *proxy* variable has to be adjusted to the municipality characteristics.

The demand estimates and the number of judges for small claims courts was based on a classification of the municipalities into three types: “rural”, “urban” or “metropolitan” which took into account both size and density of population in the municipalities.

From the experimental period, we can see that the “proximity” factor is stronger in “rural” municipalities than in “urban” or “metropolitan” municipalities. Therefore, “rural” municipalities give rise to greater processes/population ratios than the other types of municipalities.

Due to differences in the processes’ nature across types of municipality, different processes per year per judge ratios were estimated with a lower ratio for “rural” municipalities and a higher one for metropolitan municipalities and an intermediate one for “urban” municipalities. Applying these criteria, one can estimate the need for about 150 judges for mainland Portugal and 9 judges for the two archipelagos.

FIGURE N°1
Processes received by jurisdiction vs Resident population by jurisdiction



Source: Ministério da Justiça/GPLP (for processes);
Instituto Nacional de Estatística (Censo 2001) (for population).

Model's static or dynamic nature

Dynamic location models consider locating services given a pre-defined planning horizon.

Demand dynamics and budget constraints call for development that takes into account time varying effects. In our setting, the ground implementation of the solution depends on the agreement between central and local authorities. Whenever, at any given moment, one or more of these agreements fail, the dynamic solution becomes useless.

Consequently, a different three-step-approach was adopted. First, a static location model is defined in such a way that the space units are clustered in an optimal way. Then, a priority between clusters is established. Finally, for each cluster, human resource requirements are quantified.

The proposed location model

The location model proposed in this paper uses the geographical distances weighted by the unit's size population as a proxy of accessibility as the criterion to be optimized.

The model also includes an efficiency criterion which establishes a minimum threshold for the demand. It ensures a minimum level for the return, on the capital investment.

Defining:

I: set of all possible locations

J: set of populations under consideration

P: number of clusters

D_{ij} : geographical road distances between locations i and j

Pop_j : population of location j

MaxUnit: maximum number of locations at each cluster

MinNum: minimum level of demand at each cluster

and binary decision variables:

$$y_{ij} = \begin{cases} 1, & \text{if a population in point } j \text{ is served by a service} \\ & \text{implemented in point } i \\ 0, & \text{otherwise} \end{cases}, \forall i \neq j$$

$$y_{ii} = \begin{cases} 1, & \text{if a service is implemented in point } i \\ 0, & \text{otherwise} \end{cases}$$

the proposed model is formulated as follows:

$$\text{Min} \quad \sum_{i=1}^I \sum_{j=1}^J \text{Pop}_j D_{ij} Y_{ij} \quad (1.0)$$

$$\text{s.a} \quad \sum_{i=1}^I y_{ij} = 1, \quad j = 1, \dots, J \quad (1.1)$$

$$\sum_{i=1}^I y_{ii} = P \quad (1.2)$$

$$\sum_{j=1}^J y_{ij} \leq \text{MaxCon}, \quad i = 1, \dots, I \quad (1.3)$$

$$\sum_{j=1}^J \text{Pop}_j y_{ij} \geq \text{NumMin}, \quad i = 1, \dots, I \quad (1.4)$$

$$y_{ij} \in \{0,1\} \quad i = 1, \dots, I, j = 1, \dots, J \quad (1.5)$$

Constraint (1.1) stipulates that each population is assigned to one small claim court and constraint (1.2) ensures that only P clusters will be defined. The additional constraints (1.3) and (1.4) guarantee that solutions provided by the model respect the maximum number of locations (MaxUnit) and the minimum level of demand (MinNum). Constraints (1.5) are integrality constraints.

By removing the additional constraints (1.3 and 1.4), our mathematical formulation reduces to the P-Median Problem.

This model may be run with different parameters thus allowing the generation of alternative scenarios for the clustering of municipalities.

Defining clusters priority

Budgets constraints do not allow the implementation of the whole network of small courts at once. Thus, we set rigorous criteria that yield a ranking of the clusters. This ranking will indicate the level of importance of each cluster in comparison to the others.

Two different and opposite criteria were chosen: demand level and coverage level.

The first criterion – demand level – evaluates the amount of processes transferable to a small claim court. This criteria was decomposed in three sub-criteria: number of inhabitants (according to statistical data 2001); the amount of finished processes from justice courts that could have been sent to small claim courts (according to statistical data 2003); and the rate of pending processes in judicial courts.

The second criterion – coverage level – measures accessibility to justice courts and was defined, for each space unit, as

$$\text{Number of inhabitants} \times \text{road distance}$$

A Pareto ranking of clusters which avoid the ad hoc manipulation of weights was implemented. This ranking is based in the following notion of dominance:

“Given two objects of choice, A and B, we say that A dominates B if, for all criteria, objective values in B are better or equal than in A, and for at least one criteria, objective value in B is better than in A.”

Using this definition, clusters are ranked according to an iterative procedure, which removes from the current set of clusters, all clusters which are not dominated by others. Beginning with the whole set, the first set of removed clusters receives rank 1, the second set rank 2 and so on.

CONCLUSION

This research aimed at supporting policy decision-making concerning the extension of the network of small claims courts throughout the entire Portuguese territory. It led to the conclusion that the conflict between access to justice and efficiency in the allocation of public financial resources could be managed if physical infrastructures and human resources are decoupled instead of tied to each other. The proposal advanced envisages the establishment of comparatively light physical infrastructures in all municipalities (thus favouring proximity and access to justice), and the allocation of human resources to clusters of municipalities (thus favouring efficiency).

The implementation of this general approach led to a clustering of municipalities, a ranking of those clusters in respect to priority, and to an estimate of the number of judges required for each cluster. For the clustering, a location model was developed and ran generating scenarios for the network. For the ranking of the clusters, a Pareto method was employed.

The scenarios generated vary from 136 to 146 municipality clusters, with the complete network requiring from 155 to 163 judges. The ranking led to a number of priority levels that ranges from 14 to 18. Priority levels are well balanced in respect to the features of the municipalities (rural, urban, and metropolitan).

Currently discussion with the decision-makers is underway, having in mind the opening up of the public debate on the extension of small claims network issue.

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