

The transformation of the Portuguese judicial organization Between efficiency and democracy*

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Introduction

Since the late 1980s we have been witnessing a movement towards reform of the judicial system on a global scale. The nature and scope of these reforms in each country however depend on various factors. First of all, they depend on the sort of problems and bottlenecks considered to be urgent at any given moment, which in turn is strongly influenced by how these are diagnosed.¹ They also depend on the political, economic, social and cultural context of each country. In addition, in countries where the reform process mainly depends on external endorsement, the reforms tend to be selective, focusing on the sectors which, in the endorsers' perspective, better serve the purposes of economic development and good governance.²

In the central countries, especially in European countries with a civil law tradition, the reforms of the judicial system began focusing on procedural solutions and on the allocation of additional human resources and infrastructure to courts.³ Nevertheless, the exponential increase in the demand for judicial services due to transformations occurring within the State, society and the economy, whose major outcome was an explosion of debt claims, has revealed the insufficiency of such measures. This led to a growing investment in a different kind of measures that influence the demand for judicial services, such as de-judicialization and decriminalization of certain types of conduct and the creation of alternative dispute resolution procedures.⁴

In recent years, management reforms have become a major investment in several European countries.⁵ Among this type of reforms are the redefinition of territorial jurisdiction and of the

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1 For the different ways of diagnosing bottlenecks in the Portuguese justice system (*i.e.* diagnosis from a sociological, political or operational viewpoint), see B. de Sousa Santos, 'A Justiça em Portugal: diagnósticos e terapêuticas', 2004 *Revista Manifesto* 7, pp. 76-87.

2 The political agenda of several countries in Africa, Latin America and Eastern Europe include reform programmes for the judiciary which are mostly financed by international agencies such as USAID, PNUD or DANIDA. The reforms of the judicial systems are also an issue that is receiving growing attention from the World Bank, which has included them in its regional or national intervention policies.

Concerning the global reforms of the law and the courts, see B. de Sousa Santos, *Toward a New Legal Common Sense*, 2002, pp. 312-351.

3 See A. Zuckerman (ed.), *Civil Justice in Crisis – Comparative Perspectives of Civil Procedure*, 1999.

4 See, among others, *Medidas para uma boa relação custo-eficácia tomadas pelos Estados Membros para permitir uma melhor eficácia da justiça*, 2000, 23rd Conference of the European Ministers of Justice, and H. Fix-Fierro, *Courts, Justice and Efficiency*, 2003.

5 See, among others, Marco Fabri, 'Policies to enhance the quality of justice in Europe', in Marco Fabri et al. (eds.), *L'Administration de La Justice en Europe et L'Evaluation de Sa Qualité*, 2005, pp. 69-83.

judiciary's organizational structure.⁶ The uneven socio-economic development of the different parts of the territory gives rise to the need for a debate concerning a new territorial organization of justice. Although the debate on this issue focuses on different organizational solutions in each country, there is a general tendency to provide a wider concentration of the judicial institutions. The development of new communication and information technologies (NCIT), as well as the development of the road network, which has enhanced accessibility, sustains the trend of these reform processes.

As in other countries, in Portugal interest in the debate on the redefinition of territorial jurisdiction has also increased. The current Government has placed the reform of the judicial organization and the redefinition of territorial jurisdiction on the political agenda. The debate has since been initiated. Viewpoints differ widely among judges, public prosecutors and lawyers. Some are concerned that the Government's proposals imply giving a wider scope to fewer courts, which could restrict access to justice.

This article is based on the Portuguese process of reform of the judicial structure. It focuses on the main strategic goals and guidelines that, in my opinion, must give direction to this kind of reform. I am convinced that most of these principles and concerns are common to the large majority of European countries with a civil law tradition and may very well also apply to them.

The paper has the following structure: first I will provide a brief description of the Portuguese judicial system and explain some statistical data related to the demand for judicial services; second, I will explain why a territorial reorganization of first instance courts is necessary in Portugal. Finally, I will present the main strategic goals that should guide the territorial reorganization of justice.

1. A brief description of the Portuguese judicial system

The territory of Portugal is divided into four judicial districts, whose centres are in Lisbon, Oporto, Coimbra and Évora. These judicial districts are divided into a further 58 judicial circuits. Judicial circuits can comprise one county (such as the Lisbon judicial circuit) or several counties. The law establishes that there are 233 counties.⁷

The Constitution and the law establish that the following courts shall be part of the Portuguese judicial system: the Constitutional Court, the Supreme Court of Justice, judicial courts of first and second instance, the Administrative Supreme Court, administrative courts of first and second instance, the Court of Auditors, arbitration tribunals, and justices of the peace.

The courts of first instance (administrative matters are dealt with in the separate administrative court hierarchy) are organized according to subject matter (specialized courts and special courts), territory, the value of the claims brought to court and procedure. The law provides for the creation of specialized and special courts in a specific county (for both civil and criminal

6 These kinds of the reforms have been carried out in countries like the Netherlands, Sweden and Norway. See P. Albers, *Territorial competencies of courts: some experiences of the Netherlands and developments in Europe*, 2005; D. Chemla, *Territorial Jurisdiction*, 2003, European Commission For the Efficiency of Justice (CEPEJ); J. Commaille, *Territoires de justice – Une sociologie politique de la carte judiciaire*, 2000.

7 For a detailed description of the Portuguese judicial system, see Conceição Gomes, 'Assignment of cases to the courts and within the courts in Portugal', in P. Langbroek & M. Fabri (eds.), *Case Assignment to Courts and within Courts: a comparative study in seven countries*, 2004, Study Group on Management and Delivery of Justice (EGPA).

cases and according to the kind of procedure and the value of the action), when the number of cases or the complexity of the subject matter so requires.⁸

Specialized courts may have territorial jurisdiction over more than one county or over more than one judicial circuit. In special circumstances, a judge may be appointed to more than one county court. The courts of specialized jurisdiction are: criminal investigation courts; family and juvenile courts; labour courts; commercial courts; maritime courts; and judgment-execution courts. Some counties, especially those of the larger cities have all of these courts, such as Lisbon and Oporto. Other have only some of them. Coimbra, for example, does not have *Tribunais de Pequena Instância Cível* and *Tribunais de Pequena Instância Criminal*. Therefore, cases that should be decided by those courts are instead decided by the *Juízos Cíveis* and *Juízos Criminais*.

Most counties in Portugal do not have any of the courts mentioned above (the so-called specialized and special courts). Therefore, all cases, both criminal and civil, are decided by the county courts (*tribunais de comarca*) These *tribunais de comarca* are courts of general jurisdiction that are competent to decide on all cases not submitted by law to another court.

2. The demand for adjudication

The Portuguese courts, like in the early 1990s, are still mostly preoccupied with *low intensity* disputes,⁹ a large number of ‘false disputes’ and with ‘mass’ criminality consisting of crimes such as driving without a licence, driving under the influence of alcohol or issuing uncovered cheques. In the period 2000-2004, civil litigation represented on average 83% of all cases brought before the courts. This percentage can be broken down as follows: 53% civil cases (consisting of 29% executions and 24% declaratory actions); 26% injunctions; and 3% child custody actions. Criminal cases represent 18% of the caseload. With different relative weight attached to cases, civil litigation (consisting of the total of declaratory actions and executions) prevails in almost all counties.

Portuguese courts are still overused when it comes to debt claims, which largely dominate civil litigation, especially in large urban conglomerations, mostly in Lisbon and Oporto. In the period 2000-2004, debt claims made up 60% of the caseload. In Lisbon and Oporto this percentage rose up to 85 and 73.5% respectively. In most cases, the value of such claims is only minor. For instance, 50% of the declaratory actions in debt claims represent a value of less than 1,000 euros (in Lisbon, 66%) and an average of 35.4% represent a value less than 500 euros.

The relatively high burden of debt claims weighing on the civil litigation process reveals that corporations (mostly financial or commercial companies) represent the bulk of plaintiffs in the civil judicial system. Between 2000 and 2004, 74.2% of all civil cases were brought by corporations. In Lisbon and in Oporto, the corporations’ share in the caseload rose up to 92.8% and 87.6% respectively.

8 There are six types of courts that are both specialized and special:

1) *Varas Cíveis*: these courts generally decide on civil cases (therefore they are specialized) when the value of the case represents over 14,963.94 Euro (therefore they are, special courts);

2) *Varas Criminais*: these courts decide on criminal cases (and are, therefore, specialized) when the trial should be held before a tribunal of 3 judges, or involves a jury (therefore they are special courts);

3) *Juízos Cíveis*: these courts decide on civil cases when its value is between 14,963.94 and 3,740.98 Euro;

4) *Juízos Criminais*: these courts decide on criminal cases when the trial should be made by only one judge;

5) *Tribunais de Pequena Instância Cível*: these courts decide on civil cases when their value is under 3,740.98 Euro;

6) *Tribunais de Pequena Instância Criminal*: these courts decide on criminal cases that follow a special procedure (misdemeanours).

9 Low intensity disputes are disputes in which the courts are used instrumentally for certification purposes only. See B. de Sousa Santos *et al.*, *Os tribunais nas sociedades contemporâneas – o caso português*, 1996, p. 157.

A large number of these debt actions are initiated by ‘repeat players’ (such as cable television operators, cellular phone companies, insurance companies, banks and consumer credit companies), *i.e.* litigants that repeatedly engage the courts for similar disputes. Their demand for judicial courts is quite selective and focuses on frequent litigation against sporadic partners; that is, on debt collection, mainly where the debtors are individuals or less economically powerful corporations. Over the past few years, new ‘repeat players’, such as for instance cellular phone companies and cable television operators, have emerged. This means courts are being intensively utilised by institutions that have the economic capacity to manage their litigation in a rational manner.

The type of offences that commonly reach trial is, as mentioned before, dominated by crimes that include misdemeanours and crimes of medium seriousness, part of which are what is termed ‘mass’ criminality (such as driving without a valid driving licence and driving under the influence of alcohol). These two types of crime and the crime of issuing an uncovered cheque represented in total about 40% of the offences to reach trial in the period 2000-2004. Road traffic offences dominate in the counties, except for in Lisbon and Oporto, where the crime of issuing an uncovered cheque is the most common by 31% and 36% respectively. Crimes such as corruption, trafficking and environmental crimes, are only residually expressed in the statistics in most counties. Nevertheless, the social perception is that actual criminality is much higher than what is expressed through the judicial system. Some of the crime so perceived is part of the more serious crime which cannot be analysed from a quantitative perspective. This type of crime requires special responses from the judicial system, which in the current organization of the justice system are not fully forthcoming.

3. Reasons for the territorial reorganization of Portuguese courts

In my opinion, there are three main reasons to discuss the current model of territorial organization of the Portuguese courts. The first one is that the structure of the judicial organization, which dates back to the 19th century, has never taken into account the political, social and economic transformations that have occurred since. The only relevant changes made in this existing framework of judicial organization were those required by the Portuguese democratization process in the mid-1970s.¹⁰ Reforms in the organization of the justice system have mainly had the purpose of responding to the exponential growth of the demand for judicial courts, initially through the allocation of more human and material resources and a simplification of the procedures coupled with de-judicialization, and, more recently, through the reinforcement of the computerization of the courts. None of these reforms implied any modification to the organizational model of the justice system.

The second reason why the territorial organization of the judicial system needs discussing lies in the outcome of the transformations in society and in the economy. Portuguese society has undergone considerable changes over the past few decades. Some of these have had strong repercussions on the judicial system. In fact, the quantitative and qualitative changes in the structure of the demand for judicial courts since the mid-1980s (brought about both by the intensification of the demand concerning traditional disputes, such as that caused by the dramatic growth of debt claims brought by corporations against individuals, and by increasing demand in new fields of litigation); the greater visibility of certain types of crime (economic crime,

¹⁰ In the late 1980s, an attempt was made to create circuit courts with wider territorial jurisdiction, which was however unsuccessful.

trafficking of human beings, drugs and weapons); the mediatization of justice; the globalization of law; the deepening of societal differences; the emergence of new public risks in various domains; and the economic demands in respect of the functioning of the justice system are all changes which, among other things, force a re-thinking of the structure of the justice system.

These transformations alter the social context in which the judicial institutions function nationwide. However, not all counties and courts throughout the national territory are affected in the same way. The great heterogeneity of social and economic development processes in the territory has given rise to deep socio-economic and demographic asymmetries in Portugal. The areas that attract most of the population are those which reveal greater economic dynamism or greater specialization in the industry and services sectors. The main manifestations of such processes are widely known: intense inter-regional movements; a rural exodus; the growth of extended peri-urban areas, mostly in the Lisbon area; an increase in regional asymmetries; the intensification of the process of territorial metropolization; and the growth of urban intensity in small and medium-sized towns.

The consolidation of such tendencies has accentuated the contrast between the coastal areas and the interior and between rural and urban spaces. This is reflected by a strong decrease in the number of residents in the rural areas coupled with the resulting expansion of the urban centres. The demographic dynamics that occurred are based on two complementary tendencies: the depopulation of vast rural areas and the urbanization of the population. In 2001, $\frac{3}{4}$ of the resident population was concentrated in areas with predominant urban characteristics.

The different territorial development dynamics have also caused deep asymmetries in the demand for judicial courts, thus creating what is referred to as multiple 'judicial countries' within the same country. The volume of the local/regional demand for judicial courts shows a close relationship with the population density. With strict rules for the territorial jurisdiction of the courts, the demand for judicial courts has followed the dynamics of the territorial concentration of the population and of the economic sectors, revealing a clear juxtaposition between the areas of greater socio-economic development and the intensity of the demand for judicial courts. The courts located in smaller-scale urban centres, especially in the country's interior of the country, have been losing case volume.

Comparing the early 1990s with the average over the period 2000-2004, about 170 county courts have registered a decrease in the number of cases brought, while between 2000 and 2004, 40 county courts witnessed a decrease in the number of cases brought. This reduced caseload is also attributable to other factors, especially to legislative reforms, which withdrew from the courts some of the cases formerly actionable before them, and by the creation of new counties, which affected the demand in the adjoining counties. However, the transformation was mostly induced by the socio-economic and demographic dynamics described. Nowadays, most of the county courts deal with an annual average of cases brought of under 1,000 (54%, 123 counties), with 32% (73 counties) dealing with an average number of cases of under 500. From the 233 counties, only 26 list an average number of cases brought that is over 5,000, and 10 of these, corresponding to 4% of the counties, of over 10,000.¹¹

These asymmetries and the heterogeneity of the 'judicial country', not only in respect of the volume of the demand, but also in respect of the nature of the litigation, demand a thorough re-thinking of the current model of judicial territorial organization. The new model must provide

11 Source of the statistical data: Department of Planning of the Ministry of Justice.

a differentiated judicial framework, which takes into account not only the volume and the nature of the litigation, but also the social and economic characteristics of such localities and regions.

The third reason that justifies the territorial reorganization of justice is that the current model of judicial organization and the general reforms introduced in the judicial system have not been able to grant an effective, efficient and high-quality standards response to the demand for judicial courts. Over the past ten years, some important changes have been made to the judicial system in Portugal. Those changes can be divided into three main groups of reforms: reforms aiming at de-judicialization and decriminalization of certain types of conduct and at the creation of alternative modes of dispute resolution, procedural reforms and organizational reforms.¹²

Concerning the first group, there has been a reformist tendency to expand the number of cases that can be resolved by alternative modes of dispute resolution, especially with the implementation of the institution of the justice of the peace (*Julgados de Paz*)¹³ (16 in total) and the reinforcement of mediation. Traditionally, civil and commercial disputes could already be resolved by arbitration (institutional or *ad hoc*). Arbitration and mediation have since evolved towards other areas, such as family disputes and, more recently, labour litigation¹⁴ and the trying of misdemeanours.¹⁵ Although the tendency for legal reform in this direction is strong, the relative share of these alternative modes of dispute resolution in the effective resolution of social litigation is not yet significant.

In 2003, one of the most far-reaching reforms in the civil judicial system concerned the action for execution. A new legal profession (*solicitador de execução*) was introduced that reduced the intervention of judges in such proceedings.

The de-judicialization of the mutual consent divorce and the decriminalization of the issuing of an uncovered cheque up to a certain amount have also had a major impact on the demand for judicial courts.

However, the most relevant changes have been the procedural reforms, aiming at simpler and faster civil and criminal procedures. An example of these reforms is the creation and, afterwards, widening, of the special declaratory procedure, in order to obtain a faster judgment. To simplify debt recovery, an injunction procedure was created in 1993.

In criminal procedure, the purpose of the reforms has also been the simplification of the process related to minor crimes, with the introduction of special procedures: a summary and a very summary procedure (introduced in 1987) and a shortened procedure (introduced in 1995).

A third kind of reforms is related to the organization and administration of justice. Over the past ten years, the tendency had been to increase the number of both human and material resources available in the judicial system, coupled with investments in new technologies. Where the organization of the judiciary is concerned, the main changes concern the creation of specialized courts, especially in the area of family law, and specific courts. Considering the importance of debt recovery in civil litigation and minor crimes, small claims courts were created in Lisbon and Oporto.

12 See M. Manuel Leitão Marques *et al.*, 'The Portuguese System of Civil Procedure', in A. Zuckerman (ed.), *Civil Justice in Crisis – Comparative Perspectives of Civil Procedure*, 1999, pp. 413-441.

13 The justices of the peace are non-judicial courts which can decide on low value civil disputes (*e.g.* disputes emerging from condominium rights and duties), and on civil compensations resulting from misdemeanours. However, they are not competent to decide on family disputes, torts and labour cases.

14 Labour mediation is a very recent phenomenon that became possible through a protocol signed between the Ministry of Justice and several trade unions in December 2006. It includes labour disputes that do not concern industrial accidents or the refusal of rights. Labour mediation is not mandatory and implies the agreement of both the employee and the employer.

15 Criminal mediation has not yet come into force in Portugal. However, the current Government has presented to Parliament a proposal which provides for the possibility of mediation in case of misdemeanours.

With all of these reforms, the question that arises is the following: why did some of those reforms have such little positive impact? And why did some even have a negative impact? In fact, even though there has not been any dramatic deterioration in the functioning of the Portuguese justice system in recent years, the truth is that there has not been a significant improvement regarding efficiency, effectiveness and quality either. In fact, the average duration of proceedings has increased. In most counties, the judicial system remains unable to respond to the demand swiftly, leading to high numbers of pending cases in several courts, mostly in the courts of the large urban centres.¹⁶

The quality of the response of the judicial system cannot be measured only by the volume of pending cases. Nevertheless, the swiftness of the judicial response to the demand from society is an essential component of its quality. The increase in the amount of cases pending in court indicates a pattern of inefficiency in the judicial system that cannot be altered only by measures acting upon the demand. It requires other interventions, namely of a procedural nature, that are able to make the procedures less bureaucratic and, most of all, measures that allow for a profound change in the management of courts. One of the major problems faced by the Portuguese courts is that of management inabilities. The reform of the judicial organization may be an excellent way to introduce changes in the management of human and material resources and of judicial cases.

4. The main strategic goals of the territorial reorganization of justice

4.1. Reaffirmation and promotion of the citizens' access to the law and the courts

This is one of the constitutionally enshrined rights that is central to the judicial system. The State establishes a system of access to the law and to the courts, the aim of which is to encourage all citizens to get to know, claim, or defend their rights, regardless of their economic, social or cultural situation. According to the Portuguese Constitution, this right takes on three different forms: legal information, legal consultation and legal aid.

Firstly, any reforms of the judicial system must not only never restrict these rights, but, moreover, seek to enhance them. In this sense, the reform of the map of the judiciary by providing a judicial reorganization of the territory must also attempt to eliminate asymmetries and social, economic and cultural constraints, for example by promoting awareness of these rights and affirming the possibility of claiming them (for instance, through the establishment of public offices for legal consultation), or by promoting the use of the courts by the citizens. The reform must not, therefore, aggravate the costs of litigation, especially not for citizens. On the contrary, the reform should promote greater access to justice in areas that, until now, have proven to be struggling with serious accessibility constraints, mostly of a geographical nature. Access in conflicts related to family and juveniles is a paradigmatic example, as such cases are heard in centralized courts that are located in the judicial circuit town. Our proposals for reform envisage a multipurpose network for justice services which would include judicial courts and services such as front offices with hearing rooms, and the implementation of an itinerant justice system. I think that these would be innovations with great potential to promote access to the law and to the courts.

¹⁶ According to the official Portuguese statistics on justice, in 2004, the number of pending cases in the Portuguese courts was over 1,400,000 and, in 2006, grew to about 1,500,000. The number of pending cases tends to increase in nearly all counties, even in those where only a small number of cases are habitually brought.

Secondly, if we consider the right to access to justice, we have to think of a new paradigm of the public policy of justice, which is not too dependent on the courts. The courts of law are, indeed, a major source of public justice, but not the only source. The current consensus is that courts cannot decide all cases and that alternative modes of dispute resolution play an important role in access to justice. However, courts should not, as is still the case in Portugal, be so intensely preoccupied with ‘mass’ litigation, or with cases in which there is no real dispute, or cases whose major plaintiffs are corporations and usually ‘repeat players’. The courts must refocus on ‘real disputes’, on *high intensity cases*, independent of the nature of the plaintiff, in response to serious criminality and in the promotion of citizens’ rights. For that, the judicial reforms should be conducted with a view to establishing an integrated system of dispute resolution. Alternative modes of dispute resolution (like mediation, arbitration, justices of the peace) are constantly referred to in speeches on the reform of the judicial system. However, in Portugal attempts towards more alternative dispute resolution have so far been of little effect.

4.2. Enhancing the quality of justice

In Portugal, the debate concerning the judicial reforms continues to be highly dominated by issues related to quantity: pending proceedings and delays. Nevertheless, the quality of the judicial system is also more and more becoming a matter for debate in several countries and in international forums. This subject can be viewed from several angles, which range from efficiency and effectiveness to access, the relationship with the citizen and the quality of sentences. The arising of highly complex cases in the new social context of justice provides a serious challenge to the judicial courts.

In order to live up to this challenge it is necessary to create differentiated judicial organizations for hearing cases. The complexity of disputes varies and therefore requires from the judicial system a varied response. Therefore, prior to any reform process, it is fundamental to acknowledge fully the volume and nature of the litigation. The solutions for judicial reorganization accordingly proposed shall seek to respond efficiently to different types of litigation. The reorganization of the justice system must distinguish between different levels of complexity of litigation, not only aiming at improved effectiveness, efficiency and quality, but also at promoting that courts are also seized of other matters coming under the heading of high intensity litigation.

4.3. The increase of efficiency, effectiveness and transparency of the judicial system

As previously mentioned, the judicial system keeps revealing strong deficits of efficiency and effectiveness, whose main symptoms are the high level of pending cases and the delays.

This situation has given rise to the mainly functional operation of the system which is mostly based on routine and a tendency towards quantitative productivity with the ‘litigation volume’ indicator as the point of reference and no special consideration given to the nature of the litigation. It is, for instance, frequently advocated that an exact number of cases be defined per judge (workload) without any specification as to the type of case. A rational reorganization of justice that is able to distinguish cases based on their nature and complexity would not only increase the efficiency and the efficacy of the justice system, but also its transparency, allowing for a more qualitative evaluation of its functional performance.

4.4. Reinforcement of the management of the judicial system

There seems to be quite general consensus that the deficit of organization, management and planning in the Portuguese judicial system is responsible for most of the inefficiency and

inefficacy of its functional development. Therefore, it is fundamental to implement urgent measures in order to alter the work methods, to provide a better and more efficient management of human and material resources and better communication between courts and other complementary justice services.¹⁷

The introduction of such measures will require the definition of wider territorial boundaries beyond those of the counties, which will offer the benefits of scale. In this way it will become possible, for instance, to define policies for the flexible employment of human resources, to create auxiliary services to the functioning of justice (technical support, probation services, etc.) or to define case allocation rules according to the nature, the complexity and the specificity of cases.

5. Related strategic reforms

In addition to these guidelines and goals, other reforms, which are also of strategic importance for the judicial system, can be perceived as significant for the success of the territorial reorganization of justice.

5.1. Computerization of the judicial system and its network

The new communication and information technologies (NCIT) present an enormous potential for transforming the judicial administration system where the administration and management of justice (more productivity, efficiency and cost reduction), the transformation of the daily practice of judicial actors and the promotion of access to the law and to the courts are concerned. The NCIT enable an increased circulation of information which has a highly positive effect on the information and communication management within the judicial system, as well as allow closer and more transparent access to information relevant to the exercise of rights. It is nowadays recognized that the NCIT have a fundamental role in the interface between courts and the general public. The model of the judicial map which I support implies an integrated system of computerization which makes it possible, for instance, that the citizen may obtain information or deliver documents concerning his/her case at a front office.

5.2. New procedural paradigms, both in civil and criminal law

Among judicial agents, there appears to be consensus about the idea of a new paradigm of procedure, which is less complex and less bureaucratic, and, as a consequence, less prone to causing delays and more adequate to the expectation of citizens. This new paradigm of procedure is mostly determined by the principles of oral hearing, swiftness and simplification. The rules of procedure must also distinguish between on the one hand high intensity and low intensity litigation and on the other hand between minor crimes and more serious criminality. For instance, in the case of criminal justice, it is fundamental that new measures be implemented that allow for the wider use (in some cases, the compulsory use) of the mechanisms of expediency and consensus.

¹⁷ See Conceição Gomes (coord.), *Como gerir os tribunais? Análise comparada de modelos de gestão e organização dos tribunais*, 2006, Permanent Observatory of the Portuguese Justice, Centre of Social Studies, Coimbra, and *A Administração e Gestão da Justiça: Análise comparada das tendências de reforma*, 2001.

5.3. *New model for training and appointment (which would have territorial boundaries as a reference point) of magistrates and court clerks*

The recruitment and the initial and continuous training of magistrates occupy a central position in any project for the reform of the justice system, aiming not only to increase efficiency, but also to improve the quality of justice and to create a new judicial culture. One of the essential components of any future structural reform of the judicial system is the manner of training and appointment of judges and public prosecutors. The preference for differentiated treatment of the different types of litigation as advocated in our proposals for reform requires a larger investment in continuous training, as well as in specialized training. It also implies a change in the current models of career organization and appointment, which are mostly based on criteria which focus on the length and classification of service and not on the technical preparation and the suitability of the candidate's profile in view of the tasks to be performed. This is especially important in the specialized jurisdictions, such as for example family and juvenile courts. The lack of specialized training of the judicial actors contributes to the tendency towards feeble judicial judgment in the more complex or more specific cases, which in turn contributes to the erosion of the legitimacy of courts as mechanisms for the resolution of legal disputes.

The appointment of magistrates and court clerks should have the territorial scope as a reference point, not a specific court.

5.4. *Evaluation of the judicial system*

As mentioned above, the massive increase in litigation, mostly 'mass' litigation, aggravated the tendency for evaluating court performance and court actors in terms of quantitative productivity. This leads to the kind of judicial performance which is based on routines, is increasingly selective in terms of the efficiency with which it can respond to the demand for judicial courts, and tends to avoid cases and legal fields which require more complex, innovative or controversial decisions.

In democratic societies, the judicial organization, like other State organizations, must be subject to a process of external evaluation and must give account of its performance. The creation of indicators and quality patterns which allow the evaluation of the judicial system is a subject that is currently being debated in several European countries - a debate which Portugal must take an active part in.¹⁸

6. Conclusion

Reforms of the judicial system are on the political agenda in many countries. However, although the movement toward reform is a universal movement, the kind of efforts and measures developed in each country may vary depending on diverging factors.

In Europe, especially in countries with a civil law tradition, the reforms of the judicial system began to focus on procedural solutions and on the allocation of more human resources and infrastructure to courts. Nevertheless, the exponential increase in the demand for judicial courts which was the result of transformations occurring within the State, in society and in the economy and whose major outcome was an explosion of debt claims, has revealed the insufficiency of such measures. This led to a growing investment in other types of measures that

¹⁸ See Marco Fabri *et al.* (eds.), *L'Administration de la Justice en Europe et L'Évaluation de Sa Qualité*, 2005, and B. Ostrom & R.A. Hanson, *Efficiency, Timeless and Quality: A New Perspective from Nine State Criminal Trial Courts*, 1999.

influence the demand for judicial courts, such as de-judicialization and the decriminalization of certain types of conduct and the creation of alternative modes of dispute resolution.

More recently, reforms of the management of the administration of justice have become a major investment. The redefinition of territorial jurisdiction and of the judiciary's organizational structure became important issues in the debate as a result of various factors, especially the uneven socio-economic development of different parts of the Portuguese territory.

The redefinition of the justice territories and of the judicial organization structure is now a central issue in the debate concerning the justice administration system in several European countries where reforms or discussions of the territorial organization of justice are taking place. The Portuguese Government has also included the reform of the judicial organization on the political agenda. This type of reform intends to achieve objectives such as the rationalization of costs with infrastructures and resources which have proven to be unnecessary due to the uneven socio-economic development of different parts of the territory, in addition to objectives of effectiveness, efficiency and the quality of the administration of justice.

The reforms of the territorial organization of justice do not solve by themselves all the bottlenecks and problems faced by the judicial system. Nevertheless, if these reforms were to be incorporated in a wider strategic agenda of reforms, they may not only positively contribute to the resolution of such problems and bottlenecks, but also boost the strategic reform process for the whole of the judicial system.

The territorial reorganization of justice is a complex reform, both as to the definition of the model to be followed, and as to its completion. The reform must attempt to achieve a more adequate balance between the division of judicial tasks in the organization and the territorial socio-economic and demographic dynamics and the evolvement of the number of cases brought, pending and disposed of.

The reform must also permit that the restructuring of the justice system as a whole is effectuated in such a way as to allow an effective and efficient response, whether this concerns the new sociological profile of the courts' performance (quantitative and qualitative changes in the type of litigation, globalization and the new frontiers of the law, economic demands made of the functioning of the justice system, new types of criminality, corruption, the mediatization of justice, increased tension between political powers and judicial powers), or whether it concerns the new social context of justice arising out of factors such as the deepening of societal differences, increased cultural and religious diversity and the emergence of new public risks in the fields of the environment, health, and the NCIT.

However, most of all, its main goal must be to seek the better quality, efficiency and effectiveness of and wider access to the law and to justice, thus allowing for the re-centring of the courts' functions on high intensity disputes, on the response to serious crime and on the promotion and defence of citizens' rights. These must be the main guidelines of the reform.