



Access to Justice through Small Claims Courts. The Urge to Update Claim Amounts

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"These are small things. They don't end poverty, they don't lift us from underdevelopment, they don't socialize the means of production and exchange, nor do they expropriate Ali Baba's caves. But, perhaps, they will trigger the joy of doing, and translate it into actions. After all, taking action in the real world and changing it, despite how small the change may be, is the only way to prove reality is transformable."

Eduardo Galeano

• Introduction

In the line of a systemic analysis of Communal Small Claims Courts in Santa Fe province, this research tries to highlight their features and relation with those fundamental rights safeguarded by our Magna Carta, and included in international treaties for human rights acknowledged by the Constitution of Argentina.

What is relevant about the analysis of the access to justice services provided by Law 13178 "Small Claims Courts in Santa Fe province" –and the new paradigms it has introduced– is that the law attempts to fulfill principles of a 'proximity justice', where justice is amiable with people and able to solve disputes between subjects in a faster, simpler, truthful and effective way but most of all, it is a justice closer to citizens.

Old Communal Courts were ruled by the Organic Law on the Judiciary (LOPJ by its Spanish acronym) and their proceedings were contained in the Civil Procedure Code of Santa Fe province. In this context, we can see that these Courts were modified by the legislation and have entered a new paradigm, which provides the old structure with new proceedings based on the theory of proximity justice. This legislation also states that a proceeding should aim at "colloquialism, simplicity, informality, immediacy, procedural speed and economy specially by safeguarding the parties' right to a defense¹".

This research focuses on the monetary limit of Communal Small Claims Courts, as determined by the Judiciary of Santa Fe province and updated by means of a Memorandum of Agreement, although it has not been updated yet due to this Supreme Court's judicial policy. We believe that the changes brought about by the new legislation have caused tension. Therefore, it becomes crucial to try and explain why legal agents and the Judiciary do not provide –either consciously or unconsciously– the necessary tools to apply it in full.

To conclude, we firmly believe that decouples in the monetary limit of Communal Small Claims Courts cause a privation of justice for vulnerable sectors. This results in a lack of compliance with the minimal standards of access to justice, safeguarded by international instruments, such as the "Brasilia Regulations", which, in turn, results in a "congested justice", a concept we use to define and contextualize the elements and features of this phenomenon.

¹ Law 13178/11 Art. 8 –Substitutes Title 8, Chapter III, Section 3 of the Commercial and Civil Procedure Code –Law 5531 and amendments, which will read as follows: "Title VIII Procedure before Communal Judges", "Art. 571/579 bis".

- **Access to Justice Acknowledged by the National Constitution and International Instruments**

Access to justice is understood within the paradigm of full access to Human Rights and citizenship rights², granted by our Constitution: its preamble acknowledges the principle of “consolidating justice”; Art. 14, which includes the rights granted to all of the Nation’s inhabitants, states the right of “petition to the authorities”; and Art. 18 states some rights named Principles of Due Process and respect for people’s rights in substantive law, which spread to every sphere of the citizens’ lives. These constitutional rights have an effective role and, since the 1994 Amendment to the Constitution, they are also supported by International Treaties with constitutional status, i.e. by the Constitutional Block and other International Treaties.

In addition, Art. 75 sub section 23 rules the so-called Positive Action Measures, which constitute an obligation of the Legislative Branch: “to legislate and foster positive action measures that actually guarantee equal opportunities and treatment, and the full enjoyment and exercise of the rights acknowledged by this Constitution and by the International Treaties of Human Rights in force, especially those regarding children, women, the elderly and the disabled...”

This is why we consider the right of access to justice as a means to claim against rights violations, which the constitutional doctrine calls “the instrumental nature of citizens’ guarantees”. It has the social role of safeguarding justice and was taken into account by constituents when translating it into laws so as to promote social peace and harmony, to achieve balance and judicial monopoly.

International Treaties as instruments for safeguarding human rights can be related, on the one hand, to human rights and economic, social and cultural rights, since they are necessary to lead a dignified life, to be able to exercise one’s civil and political rights (Art. 22 of the Universal Declaration of Human Rights). “Access to justice, on the other hand, also comprises a set of measures implemented for people to solve their conflicts and protect their rights in Court”.

Moreover, as regards access to justice, Art. 14.1 of the International Covenant on Civil and Political Rights states: “1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”³. Art. 8.1 of the American Convention on Human Rights –also known as the Pact of San José–, which is part of our Constitutional Block, states: “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and

² In this respect, we believe access to justice to be materialized in international instruments, such as the “Brasilia Regulations”. These constitute new forms of subjectivity by revealing discrimination, fragmentation and marginality. It is turning the notion of “equality”, consolidated by the modern age to tackle the most dramatic differences faced in the social world. Chapters II and III of the Brasilia Regulations gather, in a more thorough and organized manner, institutional and procedure instruments that guarantee justice to the most vulnerable sectors. The series of principles, criteria and specifications contained there do not add anything new. What we need is a Judiciary that does not wave its responsibility of controlling that guarantees become effective. From *Asumir vulnerabilidad*, Alicia Ruiz <http://www.corteidh.or.cr/tablas/r29256.pdf>, visited on 07/30/2016.

³ International Covenant on Civil and Political Rights: Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

obligations of a civil, labor, fiscal, or any other nature⁴. On the other hand, the Statute of the Iberoamerican Judge passed by the 6th Ibero-American Summit of Presidents of Supreme Courts, held in the Canary Islands, Spain, from May 23rd to 25th 2001, in its Art. 37 reads: "Service and respect of the parties: In the context of a constitutional or democratic State of Law and in the exercise of their jurisdictional function, the judges have to go beyond the field of exercise of the said function, trying to give justice in conditions of efficiency, quality, accessibility and transparency, in respect of the dignity of the person demanding the service".

The work published by Cappelletti & Garth provides two dimensions for the concept of access to justice⁵. A normative dimension, related to the right of all citizens to stand up for their legally acknowledged rights, and a factual dimension, procedure-oriented, which should tend to ensure access to justice. The latter comprises the right to claim for protection of legally acknowledged rights through constitutional mechanisms. Competent administrative and judiciary institutions have to take part in solving the issues citizens may come across.

In this respect, International Treaties guarantees –ensure access to justice– also comprise some obligations⁶: a positive function, as it tends to remove legal, social, economic and cultural barriers that prevent a full exercise of human rights, and it provides citizens with mechanisms to safeguard their individual rights. On the other hand, there is a negative function: citizens must avoid obstructing the real and effective access to the administration of justice. Thus, the new Civil and Commercial Code has brought some innovations to private law, as its rules are based on the International Treaties for Human Rights, enabling access to justice. See Art. 1, 2 and 14 of the Civil and Commercial Code.

The "Brasilia Regulations Regarding Access to Justice for Vulnerable People" constitutes another international instrument that prompted a new approach to the access to justice. These regulations comply with the international standards for human rights, not only within the Inter-American System but also within the Universal System. Such regulations are the result of ideas from the 14th Ibero-American Summit of Presidents of Supreme Courts and Tribunals of Justice, where it was deemed necessary to put together a set of Basic Rules on the access to justice for vulnerable people, and to determine what basic features should be present to consider that a person is indeed in a vulnerable condition, where "vulnerable" applies not only in an economic sense but also from social, political and educational perspectives⁷.

4 Pact of San José, Costa Rica: Art. 8 subsection 1. Available online: https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.htm

5 Mauro Cappelletti & Bryant Garth, 1978, *El Acceso a la Justicia*. Visited on: 05/11/2017

6 Universal Declaration on Human Rights, Art. 10; American Declaration of the Rights and Duties of Man, Art. XVIII; International Covenant on Civil and Political Rights, Art. 14(1); American Convention on Human Rights, Art. 8-1. Available online 05/11/2017

7 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

8 The basic premises are exposed in the "Brasilia Regulations Regarding Access to Justice for Vulnerable People": Online 11/05/17 <http://www.osce.org/odihr/68082?download=true>

- **Monetary limit of Small Claims Courts**

Access to justice for people in a vulnerable situation plays an important role in citizens' quality of life, especially in large areas, like Santa Fe province. In addition to the impact of state legal mechanisms have on municipal capitals, where judicial services are quite limited⁸, especially regarding material and functional competence, we are much more concerned about the lack of update of the Small Claims Courts' monetary limit. This is ruled by Law 13178 in its Art. 7 –which in turns modifies Art. 124 of the LOPJ–. It reads "... it has competence over the causes stated in subsections 5) to 11) of the previous article, up to an amount equal to ten (10) *jus* ..."

Regarding the Judiciary, it is important to make a distinction between *jurisdiction* and *competence*. The former is the practical authority granted to a legal body to administer justice within a *defined* area of responsibility, and the State's power to administer justice through judicial mechanisms, which –in public service– have the purpose of realizing and stating the law through their legal action in particular causes.

The latter, on the other hand, results from the need to add more judges to solve proceedings related to social issues. Over time, it became necessary to create different organisms able to act under jurisdiction. We understand "*competence* as the functional extension of the jurisdictional power, as there is a genus-species relationship between jurisdiction and competence"⁹.

In Santa Fe province, there are currently 269 communities fit to hold Small Claims Courts, which spread all over the province. However, only 60% of these courts actually have an appointed judge, where there is a judicial policy to effectively appoint the heads of judiciary circuits.¹⁰

Monetary Limit: In this respect, the Organic Law 10160 of the Judiciary, in its Art. 8 states: "To guarantee a permanent and adequate adjustment of the pecuniary amount which determines the monetary limit, this Law adopts the *jus*, which represents an amount cautiously established by the Supreme Court of Justice"¹¹.

Therefore, determining the monetary limit is the sole prerogative of the Supreme Court of Justice of Santa Fe province. This is a vital point, as that very same institution applies, by means of Memorandums, a judicial policy to the whole territory of Santa Fe province, but is also in charge of implementing such policy. In our case, this is done through Small Claims Courts, which are spread throughout the province and far away from major urban centers. That is why such provincial communities are important for the Judiciary –they are sources of power and authority, able to administer justice and provide the political organization of the province with necessary judicial instruments to prevent people from taking the law into their own hands. Thus, social harmony is strengthened and social peace becomes long-lasting.

8 Regulated by Organic Law 10160 and the Civil and Commercial Procedure Code of Santa Fe province.

9 *Diagnóstico, memoria, informe*. Review of the Judiciary of Santa Fe province. 3rd Edition, page 1. http://www.justiciasantafe.gov.ar/estadisticas/Diagnostico_memoria_informe_III_edicion.pdf. Dated on 07/26/16

10 The jurisdictional unit is the community. From it, different judicial circuits are formed (several communities together), judicial districts (several circuits together) and judicial circumscriptions (several districts together). A graphic would show the map of Santa Fe province as a series of concentric circles, spread all over the territory; some circles contained into larger ones.

Community: It represents a minimal geopolitical unit. Legally speaking, it equals a municipality.

In a community there is at least one Small Claims Courts judge (Art. 118 and subsequent Art., Law 10.160). At present, there are 257 communities (Art. 4^o Law 10160); http://www.justiciasantafe.gov.ar/estadisticas/Diagnostico_memoria_informe_III_edicion.pdf. Dated on 07/26/16

11 Rules of the Supreme Court of Justice of Santa Fe province, Memorandum 38, section 9. Dated on 09/26/2007: Communal Justice of Small Claims. <http://www.justiciasantafe.gov.ar/En>. Online 08/08/16

- **Law 13178 and Memorandums of the Supreme Court of Justice of Santa Fe Province regarding the Monetary Limit of Small Claim Courts**

In March 2011, Law 13178 was passed and meant some progress as regards the access to justice. It proclaimed celerity, no charges and an integral treatment of conflicts that were in dire need of a faster, more effective and adequate answer¹².

We believe that this long-awaited amendment to Law 13178 has been left half-way between a change in the paradigm of access to resolution of intersubjective conflicts and the old saying of Spanish Law, "It is obeyed but not fulfilled". That is to say, there is a modern law, but the monetary limit to sue is not updated, which makes law application inefficient, defective and almost invalid. Such situation led to a lack of action from legal mechanisms, as all those causes that monetary limit would embrace are actually left out of its own jurisdiction. The goal, "proximity justice", has not been achieved: quality justice, enabling adequate and fair treatment of people from small cities; a judicial centre where people's intersubjective rights are protected, eliminating the need to resort to Courts with wider competence –Circuit and District Courts– and above all, providing a more convenient place for non-formal procedures.

As we have already stated, the province lacks judges appointed to the Courts. The same has been stated by the highest Judiciary body of the province in its Memorandum of Agreement ruling the Law of Small Claims Courts, stating that there is malfunction, which is a drawback to the actual application of the law. In this regard the Ordinary Memorandum of Agreement N° 38 of July 26th 2011 states: "Currently, 98 communal Courts are empty; 112 are in charge of communal judges who are neither lawyers nor attorneys; only 46 communal judges are actual judges. This situation leads us to think that 82% of communal justice will probably face drawbacks". As regards the judicial policy to determine the monetary amount, point 5 states¹³: "Thus, and having to rule the value of the *jus* to determine the monetary limit of First Instance Courts of Santa Fe province and communal justice, this Court interprets that is pertinent to modify the current values according to the annexed chart, which is part of this decision. The values will apply when Law 13178 enters into force ..." The chart annexed to the memorandum shows the value of the *jus*, which is worth four hundred pesos (AR\$400). However, the decision has been left pending and there has been no update yet.

This Memorandum of Agreement determines the monetary limit by law, which is 10 *jus*. For Small Claims Courts it equals four thousand pesos (AR\$4000.00). Meanwhile, there have been several changes and updates to the *jus* for the rest of the jurisdictions. As an example, today, for Second District Courts, the amount is \$1383.95¹⁴, and in every memorandum of the Supreme Court of Justice of Santa Fe province the main argument has been that, as we all know, the inflation in our country is, to put it mildly, chronic".

As a consequence, five years have passed by since Small Claims Courts were established and there has not been any adjustment in the value of the *jus* yet. Vulnerable people cannot

¹² Dr. Juan Pablo Vuegen: M.A Thesis on Conflict Resolution and Mediation: 2014, p. 22. Fundación Universitaria Iberoamericana (FUNIBER) 2014.-

¹³ "5. Finally, Law 13178 has introduced some changes to Art. 112 and 121 of Law 10160 as regards Courts of First Instance and Small Claims monetary limit by establishing 60 and 10 *jus* respectively. Likewise, among its transitory regulations, Art. 13 states that "before this Law is enforced, the Supreme Court of Justice must rule all those aspects essential to Small Claims Courts, and specially, it must pass a Memorandum of Agreement to adjust the value of the *jus* so that Small Claims Courts material competence be balanced and the present Law be in force". Observe that, besides the legal empowerment, Law 10160 in its Art. 8 confer on Body the power to establish the value of the *jus*, as it has already been done on several occasions."

¹⁴ The amount of the *jus*
http://www.cajaforense.com/index.php?action=portal/show&ssnId_session=355&id_section=148&mnuId_parent=2, modified in 2012, 2013, 2014, 2015. The last update in 2016 established the amount of \$1383.95.-

actually resort to this institution due to its insignificant monetary limit, except for extraordinary situations as referred to in material competence (Art. 123 LOPJ).

In "*Jornadas Rosarinas sobre la implementación de la Ley Nº13.178* (Rosario Sessions on the implementation of Law Nº 13178), organized by the Chair of Procedural Law at the School of Law of the National University of Rosario, MA Andrea Meroi¹⁵ pointed out that "Small Claims Courts nowadays are very few...", and added that "There should be a Small Claims Court in each District of the municipal capital; that said, in the ones that already exist, no judge has been appointed yet. In the 315 cities that have a communal government ruled by Law Nº 2439 and its amendments, there are still vacant judge positions and, as a result we could say that they constitute a structural flaw..." This was confirmed by the Supreme Court of Justice of Santa Fe province, as stated above.

A way of analyzing the opposing viewpoints is by following and studying the files that entered the Second District Courts of Rosario during a one year period but had to be sent to Small Claims Courts, ruled by the Commercial and Civil Procedure Code of Santa Fe (Arts. 571 and 579 bis). According to the current monetary limit, only twenty (20) files a year go through this process. The rest, an average of two or three causes a year in the entire province. We do not consider that this low number is the result of a lack of conflictive situations in their territorial competence. The small monetary limit causes the inability to solve these conflicts by quantifying them.¹⁶

- **Monetary Limit of the Communal Courts in Comparative Law**

Before dealing in depth with the monetary limits other countries have set regarding communal justice, first we must make clear some judiciary terms provided by the law on how to solve intersubjective disputes. It is important to try and find solutions for disputes, to discourage violent self-defense and people taking the law into their own hands and, in general, to sort out the conflicts taking place in a violent society without sufficient legal means and a safeguard for subjective rights.

This way of implementing a "proximity justice" must be accompanied by a judicial policy that accounts for the administrative elements of justice, for example, monetary limit updates.

- **Brazil:** the 1988 Federal Constitution acknowledges Special Civil Courts that were ruled by Law 9099 in 1995. It has allowed lay Judges and established the Courts competence in minor causes labeled as: a. Those whose value do not exceed forty minimum wages¹⁷; b. Those submitted to summary trial under the Civil Procedure Code; c. Eviction to own usage; d. Possession actions on real state whose value does not exceed forty minimum wages –this is an attempt to simplify the process in order to broaden access to justice.

This kind of justice actually develops an "instrumental and compulsory micro system, aimed at a faster and more effective use of the law". It was an attempt to rescue the legitimacy of the judiciary, which was seriously damaged by the judicial crisis. It also was an urgent response to the saturation of the hierarchical mechanism of conflict-solving and to the need of a justice negotiated among the different parties.¹⁸

15 Jornadas Rosarinas sobre la implementación de la Ley Nº13.178, organized by the Chair of Procedural Law at the School of Law, National University of Rosario.

16 Data gathered from the Court of Rosario and Small Claims Courts of Rosario, checked through the Report III *Diagnóstico, memoria y del Poder Judicial de la Provincia de Santa Fe*, http://www.justiciasantafe.gov.ar/estadisticas/Diagnostico-memoria_informe_III_edicion.pdf. Dated on 07/26/16.

17 At first, the monetary limit represented 20 minimum wages. As this way of solving intersubjective disputes was so effective, the amount was increased to 40 minimum wages. At present, the conversion represents R\$750, compared to our country, it would be \$35,000: this is the monetary limit of Brazilian Small Claims Courts.

18 This is why Special Courts in Brazil were so criticized; since their implementation, they were pointed out as "second-class justice". Some scholars, such as Dr. Joel Dias Figueira Júnior, opposed these views by stating that "Special Courts cannot be considered a "second-class justice", as they do not reveal any aspect in discredit. On the contrary, the range of 40 minimum wages stated by the legislator constitutes a procedural success which calls the attention of every social class, especially if we bear in mind that the Brazilian per

The material competence of such Courts is extremely important since they receive causes with a monetary limit of up to 40 minimum wages, taking into account that the minimum wage in Brazil is R\$ 880¹⁹ (AR\$ 164,032). This would be the monetary limit of Brazilian Special Civil Courts. In Brazil, 42% of all litigations go through Special Civil Courts, where people can present their claims within a faster more efficient system, closer to their needs. There are 10,534 Special State Courts and 213 Special Federal Courts. Only 20 years have passed since this kind of court was established.²⁰

- **United States:** The Small Claims Courts monetary limit is ruled by the "Small Claims Courts Procedure". Justice in the USA is made up of the Federal Justice, the Judicial Branch of the federal government, which operates under the Constitution and Federal Law; and the State and Territorial Justice, belonging to each State and ruled by each State and Territorial Constitution. Most of the litigations in the USA are solved by State or Territorial Justice, as they are in charge of most of the jurisdictions such as family, civil or criminal matters.

Federal Justice is mainly in charge of constitutional affairs, international treaties and disputes between member States. State or Territorial Courts and especially "County Courts" are in charge of most of the claims that interest us. The minimum monetary limit of these Courts ranges from US\$ 3000 to US\$ 10,000 in some cases. For example, the minimum amount allowed in the State of New York is US\$ 5,000, the same as in Florida²¹. In Minnesota, however, the limit is US\$7,500 and US\$ 10,000 in California.

- **Europe:** The European Small Claims Procedure, with transboundary competence, has a limit of €2,000. This represents an advance for litigations within the European Union. Spanish small claims procedures are carried out through a special process called "oral trial" and its monetary limit is €6,000. In Great Britain, the minimum monetary limit of the so-called "small claims tracks" is €10,000.²²
- **Colombia:** The Justice of the Peace takes causes of up to 100 minimum wages. As counterpart, in our province, the competence is 10 *jus*, which the Supreme Court of Justice of Santa Fe province determined in \$400 through a Memorandum of Agreement. At the time, Small Claims Courts have a monetary limit of \$4,000. It equals 50% of the minimum wage if we compare it to the countries analyzed, which use such measurement unit.

The judicial policies examined in the examples above provide a significant monetary limit, which ensures access to justice and intersubjective conflict resolution. Therefore, it brings about a decentralization of judicial activity, meaning that citizens can realize their claims in a closer judicial center, in an easier and more efficient way. The opposite would be to adopt a "proximity justice" façade with judicial policies that prevent the access to justice for vulnerable sectors of society.

capita income is approximately three thousand dollars. Above all, this new way of doing justice is a legislative breakthrough with a strong constitutional origin that fulfill citizens' old longings, in particular those of the poorest, who long a justice able to act in a simpler, easier, safer and more economic manner, thus eradicating unwanted litigations. <http://www.oas.org/juridico/spanish/ajusti7.htm> (04/30/2016)

19 Information gathered from the Brazilian Ministry of Employment on 06/25/2016: <http://salariominimovital.com.ar/salario-minimo-brasil-2014.html>

20 *Jornadas sobre Justicia Comunitaria en la Provincia de Santa Fe* (Sessions on Communal Justice in Santa Fe province). College of Law, National University of Rosario (UNR), September 25th 2015. The sessions were organized by the Center of Procedure Studies and Chair "C" of Procedure Law I, at the College of Law, UNR.

21 Florida Small Claims Rules: Rule 7.010. - 7.330., rule 7.310. - 7.350" (2013), available on: [http://www.floridabar.org/TFB/TFBResources.nsf/0/5E3D51AF15EE8DCD85256B29004BFA62/\\$FILE/Small%20Claims.pdf](http://www.floridabar.org/TFB/TFBResources.nsf/0/5E3D51AF15EE8DCD85256B29004BFA62/$FILE/Small%20Claims.pdf), recovered on 6/6/16

22 OSVALDO AGUSTÍN MARCÓN *Justicia de paz y juridicidad del conflicto comunitario* http://www.saii.gob.ar/doctrina/dacf040003-marcon-justicia_paz_juridicidad_conflicto.htm?bsrc=ci Visited on 09/05/2015.

- **“Congested Justice” and Access to Communal Justice in Santa Fe Province. The Impact on Citizens’ life: Comparative Charts**

The drawbacks faced by the people of Santa Fe regarding the access to quality justice are not caused by lack of judicial or legislative structures. The fact is that the existing structures lack the corresponding monetary limit acting as judicial support, which will allow actual claim amounts to be weighted in a constantly changing society.

Such situation can be characterized as a “congested justice”²³ in terms of privation of access to justice. First, we should clarify the concept “congested justice”. It was coined by the Brazilian jurist Watanabe Kazuo²⁴ and it is applied to the discussion and debate of the question “Are there sectors in the Santa Fe society which do not succeed in accessing to justice so as to safeguard their intersubjective rights?”

As regards the existence of a judicial mechanism able to give a response to society, the answer can be affirmative or negative. However, we must first analyze the conceptualizations of the elements we are studying. We shall start by analyzing broader options rather than normative dimensions so we can find answers to the initial question, which, as we know, concerns law agents.

Depriving vulnerable sectors of society from the access to justice can be seen as a strict economic equation. The cost of the process itself is greater than the rights at stake. There are two aspects to consider: on the one hand, the rights to be safeguarded and, on the other hand, the costs of setting in motion the judicial mechanism, either Small Claims Courts or Common Courts from major cities in District or Circuit Courts.

However, we consider them as two sides of the same coin, because there is a lack of knowledge about the protection of intersubjective rights and the means to effectively safeguard them, which constitutes a socio-cultural issue.

The situation can be briefly explained: the more complex the judicial mechanisms of the State, the greater the privation of justice. It is proportional, as the more obstacles citizens come across in their way to a real and truthful access to justice, the faster they dismiss their claims.

In the assessment, we must have in mind the “value” at stake for the subjects and if it represents an amount they are willing to accept to cover the judicial charges. We may present a current example: when cell phone companies make an invoicing mistake, which in general does not exceed 5% to 7% of the total cost (\$3 to \$5), no user would care to initiate litigation to safeguard a well known constitutional right, consumers’ right (Art. 42), since the amount assigned to it is much lower than the cost the judicial mechanism would charge to put forward any claim. In the judicial sphere, it is well known that initiating legal actions is much more expensive than what could be the amount claimed.

Therefore, we are facing a “congested justice” as Small Claims Courts have not resorted to the possibility of claims through consumers and users associations (Law 24240 Consumer Protection Law, Art. 52)²⁵; although the damages caused are real and they should be

23 Contents and concepts can be traced from MA Rodrigo Uprimny’s research. Professor at the College of Law, Colombia National University. *JUECES DE PAZ Y JUSTICIA INFORMAL: UNA APROXIMACION CONCEPTUAL A SUS POTENCIALIDADES Y LIMITACIONES*. Visited on 12/15/2015 http://www.dejusticia.org/files/r2_actividades_recursos/fi_name_recurso.51.pdf

24 WATANABE, Kazuo. *Filosofia e características básicas do Guisado Especial de Pequenas Causas*. In: Watanabe, Kazuo (coord.). *Juizado especial de pequenas causas*. São Paulo: Ed. Revista dos Tribunais, 1985. Recovered on 02/26/2016

25 Art. 52/56, Law 24240 modified by Law 26361, Art. 55. Legitimacy. Users and consumers’ associations constituted as legal persons acknowledged by authority are legitimized to act when consumers or users’ interests are affected or threatened, without prejudice

considered by the communal justice. We should bear in mind that people living far from judicial centers leave their rights in hands of monopolies or oligopolies, leading to a privation of justice and real judicial protection.

From this analysis and in PhD. Guibourg's words on judicial actions²⁶: "There are diverse circumstances and they all should be cautiously considered. We must remember that for a single cause circumstances are infinite, so we should choose those we consider relevant, but which ones? And, on the other hand, the word "cautiously" does not mean anything if it does not refer to any mental process. What is such a process? Maybe it is unconscious; is it possible to find it out with the corresponding use of introspection? If we settle ourselves for ignoring that operation, is not that what we call arbitrariness? There may be a more rational and simpler solution, although psychologically painful. It is about admitting that many of the concepts we employ, which lack measuring elements, have the meanings and shades of meanings we provide them. If we acknowledge such subjectivity, the reasons we expose – which are always present in our minds, even when we are not immediately aware of them – may be dismantled and transformed by a concrete practice; once they are exposed, they can be compared, debated and even agreed upon".

Law 13178 "Small Claims Courts", introduced as the solution to broaden the judicial state apparatus, is insufficient by itself, as it does not provide an adequate treatment to help eradicating "congested justice" from Santa Fe society.

There are at least two reasons that support this statement: on the one hand, in connection with the territory and monetary limit in our province: judicial building infrastructure and human resources. On the other hand, the overflow of some jurisdictions, which have delayed causes in major judicial centers: the response from justice to people is neither efficient nor fast.

If we analyze the issue from the point of view that considers new Small Claims Courts as a trigger, fruitful for new judicial jurisdiction as they offer a proximity justice, this means a legislative breakthrough, mainly normative, which gathers citizens' desires, especially those of the least favored and most vulnerable, who need a simpler, faster, safer and more economic justice. Such justice should be oral, simple, informal and fast, while showing procedural speed and economy, and the parties' right to a defense.²⁷ It should be able to eradicate undesired congested litigiousness. "In other words, it is a mechanism able to broaden the fair access to justice."²⁸

In this sense, the procedural order in force by Law 13178 aims at tackling small conflicts, to give an answer to their little monetary value and to apply objective law in the best possible way. To sum up, a technical and rapid justice to solve disputes of small amounts:

to their intervention. This is stipulated in the 2nd paragraph, Article 58th of this Law. Legal actions started to defend collective rights are free of charge.

²⁶ Guibourg, Ricardo A. *Los misterios del buen cubero*, published in LA LEY 05/31/2016, 05/31/2016, 1 – Online quote: AR/DOC/1484/2016)

²⁷ Law 13178, Art. 8 Amendments to the Commercial and Procedure Civil Code, Art. 572: principles to be considered during the process of small claims.

²⁸ JOSÉ RENATO NALINI: *Juzgados Especiales en el Brasil*, on: <http://www.oas.org/juridico/spanish/ajusti7.htm> - Recovered on 07/04/16

Chart 1:Jurisdictional Activity of Small Claims Courts in 2013, according to Law 13178²⁹

Jurisdictional Activity by Court	Total	Average
Civil causes	825	3
Causes entered by judicial mediation	4211	16
Audiencias	3680	14
Judgments	797	3
Court orders	6029	24
Notices	40.320	158
Certifications	415.950	1625
Horse races ³⁰	109	0
Interventions/Public Registry of Commerce	233	1
Total Jurisdictional Activity	472.154	1844

Chart 2:

Total Jurisdictional Activity, 2005-2013

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013
Civil Causes	7334	6781	6727	7739	4153	6029	1756	1635	825
Causes entered by judicial mediation	3369	4084	5692	6274	1957	5285	1768	1138	4211
Audiencias	7814	6917	7348	7843	6799	7642	4024	3370	3680
Sentences	2732	2912	3590	4441	617	1940	371	699	797
Court Orders	12.212	9726	11.026	8783	7309	9312	7641	6990	6029
Notifications	37.653	36.550	36.216	36.158	42.368	45.675	41.781	41.560	40.320
Certifications	462.803	677.118	560.427	508.553	618.305	540.739	509.097	407.909	415.950
Horse races	483	289	340	205	384	168	191	179	109
Interventions/Public Registry of Commerce	369	314	329	233	424	268	270	322	233
Jurisdictional Activity	534.769	744.691	631.695	580.229	682.316	617.058	566.899	463.802	472.154

29 Informe III, *Diagnostico, memoria y del Poder Judicial de la Provincia de Santa Fe*, page 140/145 on: http://www.justiciasantafe.gov.ar/estadisticas/Diagnostico_memoria_informe_III_edicion.pdf 07/26/16

30 TN: In Santa Fe province all horse races (*carreras cuadreras*) are under control of a Justice of the Peace from the jurisdiction concerned. Law 4.414 of Santa Fe province.

Thus, as regards Small Claims Courts, we can observe (according to the data published by the provincial Judiciary) that the jurisdictional practice has been reduced in the province, regardless of the benefits brought about by Law 13178. Therefore, it is an interesting fact that, with the old system, in 2005 the Courts of Peace had 7,334 civil causes entering the judicial mechanism. With the approval and functioning of Small Claims Courts, there were 825 civil causes in 2013. Currently, the annual average of causes is 3, when in 2005 the average was 27. Judicial notifications are the only category that has grown steadily. In 2005 there were 37,653 and in 2013 40,320. We may be tempted to conclude that access to justice has been reduced and has decreased with the new system, but this claim cannot be considered completely accurate without a deeper analysis. Although we understand that the new regulations have changed the way in which people access to justice, the judicial policy was the real discouraging cause, since it has not updated the monetary limit of Small Claims Courts according to the economic situation of the country. In 2011, when this Law was passed and implemented, the monetary limit of Small Claims Courts was 10 *jus*, where each *jus* equaled AR\$400. It was universal enough as it covered a great number of situations, which gave a real solution to the problem of access to justice.

As time passed and up to the present, this equation has not changed. The competence regarding the setting in motion of the judicial mechanism of Small Claims Courts can be said to be "*quanti minoris*" for any kind of claim. We can see that most of the work of the communal Courts is focused on judicial notifications and Court orders: both of them together represent the greatest number of processing in Courts. One of the elements that makes jurisdictional activity clear is the number of judgments Small Claims Courts have passed. In 2005, 2,732 judgments were passed whereas in 2013, only 797 were passed with the new system, which reveals a slope in judicial functioning.

To summarize, we may agree or disagree on whether vulnerable sectors of society have real access to justice or, to be more specific, whether their access to the judicial apparatus is guaranteed. What we cannot deny is that the regulation has not covered some issues regarding the state of law, such as subjective rights, which were the reason and cause giving birth to this regulation. Moreover, there is a branch of individual rights, called collective rights, that are quite recent and affect many individuals who are not under jurisdictional safeguard, which reveals a congested justice in Santa Fe. We are interested in triggering a debate and revealing the crisis of the paradigms and knowledge rooted in our doctrine. Thus, new research can be done to ratify or rectify our point of view. It is possible to think of a change in paradigm, in order to abandon normality in favor of a new regulation of congested justice and the idea of creating a new paradigm together.³¹

We believe it was useful to discuss this issue, which is significant to every person living in Santa Fe province. We look forward to seeing the Supreme Court of Justice of Santa Fe updating the monetary limit of Small Claims Courts, as a consequence of Law 13178.

31 "Thomas Kuhn explained how sciences develop. Scientists describe and explain phenomena with knowledge and from the point of view available at a particular time in history. That is how they come to the conclusions to formulate theories. In this way, what Kuhn called 'normal science' is created: similar phenomena can be explained through the chosen procedures. A paradigm is understood as a 'constellation of beliefs, values and techniques, etc., shared by the members of a given community' (Kuhn, 2006, p. 269). Moreover, 'a paradigm is what the members of a scientific community share, and inversely, a scientific community is the people who share a paradigm' (Kuhn, 2006, p. 271). As time goes by, some phenomena that cannot be explained through the current paradigm appear: anomalies. At some point in time, the scientific community comes up with a new explanation, tool or proceeding, which is able to apprehend the reality and include the anomalies. This shows that the old paradigm has stopped working and lost consensus within the community. There is a crisis, which causes to abandonment of the old paradigm and the new one is adopted. This latter becomes dominant and the new "normal science". This is how new cycles are created: normal science; anomalies; crisis, and normal science again. 'The successive transition from a paradigm to another by means of a revolution is the usual development pattern of mature sciences' (Kuhn, 2006, p. 36)". Luis E. Sprovieri and Jorge E Beade, *Nueva Gestión Judicial*, page 22. http://www.saij.gob.ar/docs-f/ediciones/libros/Nueva_gestion_judicial.pdf

- **Conclusion**

The purpose of our research was to discuss the need to broaden the access to justice by means of an instrument able to update the monetary limit of Small Claims Courts. It all depends on the Supreme Court of Justice, according to the regulations of the judicial and the mechanisms contained in the 2011 regulation. This would guarantee that the most vulnerable have a renewed access to an instrument that was created aiming at a real service of justice, simpler, easier, more participative for all citizens, so as to achieve a faster and more efficient way of reaching solutions to intersubjective conflicts.

We think that the delay in monetary limit updates for Small Claims Courts leads to minimize this kind of judicial competence. Therefore, we believe the whole functioning of the system is affected, which causes a “congested justice” and prevents vulnerable sectors of society from accessing justice.

To conclude, our total adhesion to the proximity justice becomes clear, as it represents a justice closer to citizens, easier to be explained *per se*, without tedious formalities, as PhD. Rodolfo Vigo stated³²: “Law as a whole addresses citizens and authorities (including judges), so in the framework of Constitutional Law, authors such as Peter Häberle have claimed ‘Going from a society closed by interprets to an interpretation made by and for an open society’. As regards the democratic legitimacy of judges, he has claimed argumentative legitimacy, since judges legitimize themselves politically by providing the reasons society would give if there was a dialogical and rational community, bearing a constitutional mind”.

When we talk about a “closer” justice, we mean a more comprehensive and understanding approach to the conflicts that may arise in a community. We expect that the Supreme Court of Justice soon updates the monetary limit of Small Claims Courts, so that the mechanisms provided by it can be set forth, thus eradicating a damaging congested justice.

32 Dr. Rodolfo Vigo, 2012. *Comentarios al Capítulo 1 del Título Preliminar. En Análisis del proyecto de nuevo Código Civil y Comercial*, page 66. Available on: <http://bibliotecadigital.uca.edu.ar/repositorio/contribuciones/comentarios-titulo-preliminar-vigo.pdf>. Visited on 25/08/2016).

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