

# BUILDING INTEROPERABILITY FOR EUROPEAN CIVIL PROCEEDINGS ONLINE

Editors

**Francesco Contini**

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Giovan Francesco Lanzara



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## Chapter 6

# CITIUS: the Electronic Payment Order Procedure in Portugal

*Paula Fernando, Conceição Gomes, Diana Fernandes*

### 1. Introduction

The present case study concerns the Portuguese experience of Citius, the system developed by the Ministry of Justice to achieve – an almost – procedural dematerialisation. The system's background, with its various stages and applications, including the one(s) that deal specifically with small civil claims, are dissected over the next pages.

After this brief introduction, section 2 presents the institutional background, offering a broad picture of the Portuguese justice system, focusing on the one hand on the entities involved in the use of ICT, and on the other on the courts from the civil jurisdiction specifically affected by the innovations. In section 3, we find the historical background of the use of ICT in civil jurisdiction, specifically addressing the regime of small civil claims. The outlined framework is followed by a description of the arrival of Citius and the system's characterization, concentrating on its various applications and latest developments. Once again, there is a special focus on its use in small claims, with the specific case of the payment order procedure. Section 4 offers a more technical approach (in a narrow sense), addressing the system's architecture. The daily functioning of Citius, with its virtues and drawbacks as experienced and perceived by actors, is the subject of section 5. In section 6, we offer a critical overview, bringing forth the most noteworthy aspects of the experience, discussing its panorama and future prospects. Finally, section 7 addresses methodological issues, section 8 is a list of acronyms and section 9 is an annex containing images such as graphics and diagrams.

The Project is coordinated by IRSIG-CNR, having CES as its Portuguese partner for the Citius case study. The Portuguese research team was comprised by Conceição Gomes, Paula Fernando and Diana Fernandes. The information provided in this chapter is based on the research work carried out from until March 2012.

## 2. Institutional Background

### 2.1. Portuguese Justice System: A Broad Picture

#### 2.1.1. Civil Jurisdiction: The Courts Affected by the Innovation

In compliance to the Constitution of the Portuguese Republic from 1976<sup>1</sup>, the national justice system is divided in two different jurisdictions: the civil (which encompasses for these desiderata also the criminal justice system), and the administrative. To this building must be added the Constitutional Court (competent in matters of legal-constitutional nature), as the highest instance concerning the fundamental text and principles, and the Court of Auditors (competent for the verification of the of public expenses' legality). Administrative and Fiscal courts profit from a different electronic system (SITAF, see also the list of acronyms at the end of the chapter), adapted to administrative proceedings, and therefore are out of the scope of the present case study. Civil jurisdiction is mainly ruled by the Act on the organization and functioning of judicial courts (LOFTJ), as well as the code of civil procedure.

On the top of the pyramid from the civil jurisdiction there is the Supreme Court of Justice, with competence on all territory as the highest instance. It is followed by five Courts of Appeal (based in the four judicial districts – Coimbra, Oporto, Lisbon, and Évora –, to which Guimarães, belonging to the Oporto jurisdiction, was added). Finally, the first instance is composed by judicial circles, and within them the district jurisdictions, where District Courts are based.

District Courts take on one of three categories, depending on the subject and value at stake: (1) courts of generic competence (general courts of law); (2) courts of specialized competence (criminal instruction, family, minors/juvenile, labour, commercial, maritime, and execution of sentences); (3) courts of specific competence (civil, criminal and mixed jurisdictions; civil courts and criminal; civil small instance courts and criminal small instance courts).

Specifically for dealing with payment order procedures, special registry services were created in 1999, with exclusive jurisdiction in the cities of Lisbon and Oporto, for their respective territorial jurisdiction. These two registries worked until the 31<sup>st</sup> of May 2008, when it was installed a general registry, with national jurisdiction over payment order procedures, called “National Desk for Payment Order Procedures” (BNI) [*Balcão Nacional de Injunções*]. BNI is today the general registry with exclusive national jurisdiction for this electronic procedure, in the terms and with the characteristics addressed below.

This building is however on the verge of change, with the implementation of structural reforms of the judiciary map. Back in 2008, after a long debate

<sup>1</sup> Articles 209 and following.

and the publication of scientific studies<sup>2</sup>, Law no. 52/2008, from the 28<sup>th</sup> of August, brought forth significant changes to LOFTJ with the introduction of a new judiciary map. This not so silent revolution entered into force on the 14<sup>th</sup> of April, 2009, in three jurisdictions: Alentejo Litoral, Grande Lisboa Noroeste and Baixo Vouga. A deep reform places the emphasis in specialisation of all sorts, introducing a brand new territorial matrix, a new model of competences (specialised courts and divisions in all territory, not only in urban centres), and a new model of court management (administrative tasks traditionally belonging to the judge president of each court are now distributed by court administrator and registrar, thus leaving judges free to exercise their technical legal competences). The new model is still being tested in said three jurisdictions, since the foreseen trial period of two years was dilated. In 2010<sup>3</sup>, it was determined that from the 1<sup>st</sup> of September, 2010, the new model would be gradually applied until it filled the whole territory on the 1<sup>st</sup> of September, 2014. In the following year, a new law<sup>4</sup> foresaw the application of the judiciary map to two new jurisdictions (Lisboa and Cova da Beira), but the process entered on permanent hiatus until early 2012, when the new Ministry of Justice announced the reform of the judiciary map would use a different matrix. However, the major purposes of specialization are maintained, now with a strong focus on concentration and centralization of services and courts.

### 2.1.2. *Entities involved in the use of ICT*

The Ministry of Justice (*rectius*, some of its agencies) has taken the lead in terms of the use of ICT in justice. As so, the Directorate-General of Justice Administration (DGAJ) [*Direção-Geral da Administração da Justiça*] developed the computer application, in close connection with the Institute of Information Technologies in Justice (ITIJ), and providing technical support to court staff users; the ITIJ is generally competent for the management and monitoring of the justice network, to issue the electronic signature cards for all court officers, and to support the users of Citius with a special telephone line; and the Directorate-General of Justice Policy (DGPJ) [*Direção-Geral da Política de Justiça*] has been monitoring the Citius project, as well as ensuring training sessions for judges and public prosecutors interested in deepening their knowledge and use of ICT. The Higher Judicial Council and the Public Prosecution General have mostly been away from these processes, taking in a more passive role, mainly in terms of consultancy. Finally, the associations of Bar Professionals (lawyers and solicitors) have been responsible for the computer

<sup>2</sup> See Santos, Boaventura de Sousa and Gomes, Conceição (coord.) (2006) *A geografia da justiça – Para um novo mapa judiciário*. Coimbra: CES/OPJ.

<sup>3</sup> Law no. 3-B/2010, from the 28<sup>th</sup> of April.

<sup>4</sup> Decree-Law no. 74/2011, from the 20<sup>th</sup> of June (rectified on the 19<sup>th</sup> of August, Rectification no. 27/2011).

applications used by said professionals in their daily practice, in order to connect with the systems provided by the ministerial agencies. In the following pages a brief overview of the entities involved will be provided.

### **Judicial Actors**

The Higher Judicial Council (CSM) [*Conselho Superior da Magistratura*] partakes some responsibilities in the use of ICT in judicial courts of the three instances. More specifically, Law no. 34/2009 gave the CSM the power to manage the data from the proceedings of all judicial courts, as well as data concerning detention and pre-trial measures involving deprivation of liberty, detention orders and arrest warrants emitted by a judge, and procedural connection of criminal proceedings simultaneously in pre-trial (instruction) and trial phases. Within these competences, those responsible for data management must specifically ensure said data, the legality of the consultation and reporting of information, compliance with the measures deemed necessary for information and data processing, and compliance with the rules of access and security of the electronic archive. In addition to these functions of data management, this entity plays an eminently consultative role, as it can indicate representatives to be commission members (see below).

The Public Prosecution General (PGR) [*Procuradoria-Geral da República*] has also a chiefly advisory role, having its representatives in commissions (see below). It too partakes responsibilities in data management, as foreseen in Law no. 34/2009. According to its regime, the PGR is responsible for managing the data concerning the criminal proceedings during the phase of investigation; as well as for the data from all other proceedings, procedures and records under the jurisdiction of the Public Prosecution; measures of provisional suspension of criminal proceedings, and procedural discharge in case of penalty waiver; procedural connection of criminal proceedings simultaneously in pre-trial (investigation) phases; and detention orders and arrest warrants emitted by a public prosecutor.

The Portuguese Bar Association (OA) [*Ordem dos Advogados*] also partook in the processes of bringing forth information technologies to the justice system, playing an essential role in what concerns the activity of its associates in an era of dematerialised proceedings. It is the OA that, through the private company Multicert (the entity operating in Portugal that provides digital certification, by means of PKI – Public Key Infrastructure), granting lawyers with the necessary digital signature that enables access to the Citius-H@bilus platform (which is needed for all forensic activities, from lodging a pleading, to consult a proceeding in digital format, or check the dates of a specific hearing). OA has also commissioned other applications to private companies: the National Information System from the Bar Association (SINOA)

[*Sistema de Informação Nacional da Ordem dos Advogados*]. It is a web-based software application, which lawyers may access through browser. SINOA is integrated with the OA Portal, giving users the ability to update, in real time, relevant information concerning their professional data and legal aid intervention. Specifically in terms of legal aid, SINOA allows lawyers to consult and confirm data from the judicial proceedings they are commissioned to; confirm data on their nomination for legal aid proceedings, in its various forms; insert data from proceedings or court hearings concerning their legal aid shifts; present requests, namely payment requests in legal aid services. In addition, SINOA connects with other services, such as the OA Portal. Its databases are integrated with the Portal, which allows for consultation and alteration of personal data of the users (lawyers, trainee lawyers and law firms), and collecting information for SINOA services. The OA Portal was specifically designed, as commission by the OA to a private company, to work as a privileged communication interface between lawyers and information systems.

The Chamber of Solicitors (CS) [*Câmara dos Solicitadores*] is responsible for the development and maintenance of the WEB solution for procedural management of the enforcement procedure, called GPESE/SISAAE (Procedural Management for the Offices of Enforcement Solicitors/Support Computer System for the Activity of the Enforcement Agent) [*Gestão Processual de Escritórios dos Solicitadores de Execução/Sistema Informático de Suporte à Atividade do Agente de Execução*]. It was commissioned to a national private company expert in business development and information, and had the support of the Ministry of Justice. This system was specifically created for procedural management, control of deadlines, documental management, management accounting, and electronic communications between intervenients within the enforcement procedure (courts, lawyers, and enforcement solicitors). The main needs within enforcement procedures to which the system responds to are: (1) electronic communication between the GPESE/SISAAE and Citius-H@bilus; (2) electronic consultation of registrations, social security and taxes; (3) electronic attachment of cars, shares, trademarks and real estate; (4) communication with lawyers by Citius, with electronic writs of notice between lawyer and enforcement agent, and vice-versa; (5) electronic edictal for writs of summons; (6) entering data in the public list of enforcement procedures; (7) electronic writs of summons of public creditors such as social security and tax administration.

### **Governmental entities: the bodies from the Ministry of Justice**

The Directorate-General of Justice Administration (DGAJ)<sup>5</sup> [*Direcção-Geral da Administração da Justiça*] is a service from the Ministry of Justice,

<sup>5</sup> The structure of the governmental entities described in this chapter is based on its legal framework at June 2012.

meant to ensure operational support to all courts<sup>6</sup>. According to its Organic Law<sup>7</sup>, to this service pertain the following competences: (1) support the Government member who is responsible in the area of Justice for the definition of the organization and management policy for the courts, as well as participating in the drafting of studies aiming to update them and to optimize the means, proposing and carrying out the appropriate measures, and collaborate with the Institute of Judicial Technologies and Computerization (ITIJ) in the implementation, operation and evolution of the information systems of the courts; (2) ensure the criminal and disobedience identification services; (3) program and carry out actions regarding the management and administration of the Justice staff, directing the activity of the court administrators and processing the remunerations for the Justice staff, judges and public prosecutors working at the courts without administrative autonomy; (4) program and carry out the initial and subsequent training actions for justice staff, as well as collaborating in the actions bestowed unto them; (5) collaborate with the Directorate-General of Justice Policy (DGPIJ) in the collection, treatment and sharing of information elements, namely statistical, concerning the courts; (6) program the needs of court facilities and collaborate with the Institute for Justice Financial Management and Infrastructures (IGFIJ) in the planning and carrying out of construction, refurbishing or maintenance works; (7) ensure the supply and maintenance of the court equipment, together with the ITIJ, and the structure of the Ministry of Justice responsible for contracting; (8) coordinate the drafting, execution and evaluation of the budget, financial and accounting management of the courts without administrative authority, as well as ensure budget preparation and management for first instance courts, judges, and public prosecutors.

DGAJ has had central core role in the development and implementation of information technologies in courts, as it was within this service that the process started. In fact, from 2001 until 2010, the team specifically committed to the introduction of information technologies to courts, creating and maintaining the needed information systems and applications, was lodged here. In that year, thanks to internal dynamics and the necessity of implementing the regime of Law no. 34/2009, from the 14<sup>th</sup> of July, concerning the (new) legal regime for the treatment of data of the justice system, said responsibilities and team moved to the Institute of Information Technologies

<sup>6</sup> The organic structure of this service can also be found in Decree-Law no. 124/2007. It is headed by a director-general, assisted by three deputy director-generals. Ordinance no. 515/2007, from the 30th of April, contains details on DGAJ's structure, and a general outline of its organic units' competences. The maximum number of said units is defined by Ordinance no. 558/2007, from the 30th of April; and their competences are defined by Order no. 12339/2007, from the 20th of June.

<sup>7</sup> Decree-Law no. 124/2007, from the 27th of April.

on Justice (ITIJ), until then only committed to maintaining databases and providing technical support. Decree-Law no. 83/2010, from the 13<sup>th</sup> of July, officialised this change, as it came to respond to specific need for urgent measures concerning: (1) the development of computer applications; (2) the protection of the physical infrastructure of the communication networks of justice; (3) and finally the implementation of audio and video communication devices for procedural needs, recording of court hearings, and electronic archive.

These measures were considered to be only feasible if by the same team that since 2001 had been completely responsible for the application of ICT to the courts. Also taking into account the need of high security standards for the coordination and enforcement of said measures, and therefore transited to the service from the Ministry of Justice specifically directed at the use of ICT.

The Institute of Information Technologies in Justice (ITIJ) [*Instituto das Tecnologias de Informação na Justiça*] is a service of the Ministry of Justice meant to provide technological support to all services of the justice system submitted to the Ministry of Justice<sup>8</sup>. It is a public institution within the indirect administration of the State, endowed with administrative autonomy and its own assets. ITIJ proceeds tasks of the Ministry of Justice, under supervision of the Minister of Justice. Since 2010<sup>9</sup>, this service succeeded DGAJ in the task of developing projects and applications of systems of computer, information and communication technologies in courts. It is specifically responsible for the study, the design, the execution, and the evaluation of plans for computerization and technological update of the activities of organs, departments and agencies included in the area of justice.

This service's mission<sup>10</sup> is specifically to: (1) ensure the permanent and complete adequacy of the information systems to the management and operation needs of the organs, services, and organs included from the area of justice, in conjunction with them; (2) ensure the management of the resources allocated to the implementation of informatics policy from the area of justice; (3) set standards and procedures for the acquisition and use of computer

<sup>8</sup> This body's organization, as defined in its Statute [Ordinance no. 521/2007, from the 30th of April, amended by Ordinance no. 990/2009, from the 8th of September], is headed by a President, and has the following core organic units: (1) the department of infrastructures and systems' administration; (2) the department of development of information systems; (3) the department of service delivery/supply; (4) the department of general administration. These core unit-departments may be subdivided in other sub-units. Each department is headed by a Director, and the sub-units by a Coordinator.

<sup>9</sup> By means of Decree-Law no. 83/2010, from the 13th of June.

<sup>10</sup> As defined by Decree-Law no. 130/2007, from the 27th of April, and amended by Decree-Law no. 83/2010.



equipment; (4) manage the communication network of justice, ensuring its safety and operation, and promoting the unification of methods and processes; (5) promote the development and articulation of the strategic plan of information systems in the area of justice, taking into account technological developments, and global training needs; (6) coordinate and advise on the preparation of investment projects in the field of computing and communications from the organs, departments and agencies of the Ministry of Justice, as well as monitor their implementation; (7) build and maintain databases of information in the area of justice, including the ones of access; (8) provide services to departments of Public Administration, public companies or private entities, based on appropriate contractual agreements that determine, among other issues, performance levels and counterparts; (9) perform the functions of electronic accreditation body within the Ministry of Justice, in accordance with the laws and regulations of the State's electronic certification system; (10) since 2010, ensure the development of the computer applications necessary to the procedure, and the management of the justice system, including the necessary analyses, implementation and support.

The Directorate-General of Justice Policies (DGPJ) [*Direcção-Geral da Política de Justiça*] is a central service of the Ministry of Justice. DGPJ's mission and attributions are defined in the Organic Law of the Ministry of Justice [Decree-Law no. 206/2006, from the 27th of October], and its organic regime can be found in Decree-Law no. 123/2007, from the 27th of April.

Specifically concerning the use of information technologies in justice, this entity's role is: (1) ensure the collection, use, treatment and analysis of statistical information from the justice system and promote the dissemination of those results, within the national statistical system; (2) develop, together with the Institute of Justice Statistics and Informatics, a system of indicators of activity and performance to support the definition, monitoring and evaluation of policies and strategic plans in the area of justice; (3) develop, together with the Institute of Justice Statistics and Informatics, models and other predictive methodologies appropriate for drawing up scenarios that allow the definition of policies and strategic plans in the area of justice.

The Institute of Justice Statistics and Informatics (IGFIJ) (*Instituto de Gestão Financeira e de Infra-Estruturas da Justiça*) is a public institute from the indirect state administration, submitted to the Ministry of Justice, with administrative and budgetary autonomy, and its own assets. It was created by the new Organic Law of the Ministry of Justice<sup>11</sup>. As seen above, together with DGPJ, within these matters this Institute is committed to develop a system of indicators of activity and performance to support the definition, mon-

<sup>11</sup> Decree-Law no. 206/2006.

itoring and evaluation of policies and strategic plans in the area of justice; as well as models and other predictive methodologies appropriate for drawing up scenarios that allow the definition of policies and strategic plans in the area of justice.

### **Special Advisory Commissions**

The Coordinating Commission for the Management of Data Relating to the Judicial System [*Comissão para a Coordenação da Gestão dos Dados Referentes ao Sistema Judicial*] was created by means of Law no. 34/2009 [on the legal regime of data relating to the judicial system], albeit it has not to date officially met and ensued its duties.

This entity's role pertains: (1) to ensure the coordinated exercise of the competences for managing said data; (2) to promote and monitor the system security audits; (3) to define guidelines and recommendations on the safety requirements of the system, by taking into account the priorities for application development, the possibilities for technical implementation and available financial resources; (4) to create and maintain an updated register of the technicians who perform the physical operations of data and treatment management; (5) to immediately report the violation of the provisions of this law to the competent authorities for the establishment of the appropriate criminal or disciplinary proceedings.

It is headed by a President, who is designated by the Parliament among personalities of considerable merit, and composed by representatives indicated by (1) the Higher Judicial Council, the Higher Council for the Administrative and Fiscal Courts, and the Public Prosecution General (two per entity, one having technical competence and experience in administrating systems); (2) the Board for Monitoring Peace Courts, and the Bureau for Alternative Dispute Resolution (one per each entity, with technical competence and experience in administrating systems); (3) and the Parliament, the ITIJ, and the DGAJ (two per each entity). The representatives indicated by the Higher Judicial Council, the Higher Council for the Administrative and Fiscal Courts, the Public Prosecution General, the Board for Monitoring Peace Courts, and the Bureau for Alternative Dispute Resolution, are granted full access to the premises and physical infrastructures that support data treatment, as well as the data collected.

The Commission for Monitoring the Citius Plus Project was created by Order no. 11387/2010, from the 13th of July, from the Minister of Justice. It is composed by the secretary of state for justice and judiciary modernization, who presides to the commission; a representative of the Higher Judicial Council, the Public Prosecution General, the Bar Association, the Chamber of Solicitors and DGAJ, the president of the directive board of ITIJ, and the project coordinator. The president may request the participation of representa-

tives of associations or trade unions of judicial users, as well as experts who may provide valid inputs.

This entity is specifically assigned to: (1) accompany the transition process of the attributions related to the development of projects, applications and systems for the use of information technologies in justice, from DGAJ to ITIJ; (2) debate and evaluate the strategic lines of the Citius Plus Project; (3) pronounce on the priorities of the project; (4) monitor the quality indicators; (5) ensure the verification of functional requirements, validation of the functional documentation, and acceptance of the technical components; (6) propose to the Minister of Justice measures aiming at an effective solution for organizational, financial, or strategic issues arisen during the project completion.

### **Other entities involved**

As well as the advisory role they partake on these matters, the Higher Council for the Administrative and Fiscal Courts, the Board for Monitoring Peace Courts, and the Bureau for Alternative Dispute Resolution are responsible for the management of data concerning proceedings from administrative and fiscal court, peace court proceedings, and proceedings from public ADR systems, respectively.

At a different level of action, there is also the Commission for the Efficacy of the Enforcement Procedure (CPEE) [*Comissão para a Eficácia das Execuções*], an independent evaluating organ created in 2009, that since January 2012 gained further competence: gaining access to Citius and SISAAE, this entity intends to pursue further judicial dematerialization and electronic procedures, its evaluations aiming at a stronger transparency, swiftness and efficiency of all judicial actors involved in the enforcement procedure.

### **Power assignment: the outline**

From this broad picture, it can be said that the Government holds the monopoly of ICT implementation in justice; outsourcing of any sort is rare and most times avoided by ministerial bodies. That is most visible in the development and implementation of ICT innovations: these competences are shared – overlapped, for some years – between DGAJ and ITIJ, with the first holding most decisive power; the latter took over those powers in the past few years, in addition to its traditional central hardware maintenance tasks, while the first keeps being responsible for court hardware and other ICT equipment. Training is kept under the wing of DGPI, whom, mostly supported by IGFIJ, also develops and implement systems of indicators, models and other methodologies, in order to elaborate scenarios for the definition of various policies for the area of justice, including the implementation of ICT.

Monitoring and system control are legally distributed between governmental bodies (DGPI and DGAJ) and professional bodies (Higher Judicial Council and Public Prosecution General), although the latter keep in practice

an advisory role that appears to dilute the weight of the judicial actors' intervention in the policies that affect and determine the judiciary and their own activity. In addition, these entities keep stronghold on the management of judicial data that concerns their professionals' activity – also notice the Coordinating Commission for the Management of Data Relating to the Judicial System, though created in 2009, has yet to start its monitoring activity.

Support systems and platforms for the intervention of Bar professionals, which are exclusively non-state judicial actors in the Portuguese justice system, are also dealt by the respective coordinating bodies – Bar Association and Chamber of Solicitors, for which private entities have been commissioned to provide ICT services. Unlike what happens in the ministerial bodies, these associations of Bar professionals rely on market intervention for development and maintenance of their auxiliary systems/platforms and electronic signatures, though maintaining tight control and responsibility over the providing companies and their products.

It has been argued by judicial officers that a stronger intervention by the Higher Judicial Council and Public Prosecution General is needed, mostly in what concerns development and management of the systems directly related to the powers of judges and public prosecutors in judicial procedure. Such strengthening would mean a shift in nature, in terms of being a direct and permanent intervention (not merely advisory), together with the ministerial bodies that are nowadays monopolists; and would encompass the choice of the system itself, access and control over the system's structure, and application development<sup>12</sup>. Nonetheless, different perceptions also arise from other sources, from ministerial bodies to judicial officers (namely their respective trade union associations), considering that these organs already take a flagrant passive role in the current state of affairs.

### **3. The project background, The development strategy and the history of the project**

#### *3.1. ICT in the Civil Jurisdiction*

##### *3.1.1. ICT in the justice system: strategic outline*

It was back in 1987, with the XI Constitutional Government (1987-1991), that the use of ICT in justice was first mentioned in a governmental programme: in order to “reduce the distance between justice and citizens”, a stat-

<sup>12</sup> Pereira, Joel Timóteo Ramos (2010) A criação e gestão do sistema informático dos Tribunais na computação das Tecnologias da Informação, Proceedings of the “VII Encontro Anual do Conselho Superior da Magistratura”. [http://www.csm.org.pt/ficheiros/eventos/7encontrocsmj\\_oelpereira.pdf](http://www.csm.org.pt/ficheiros/eventos/7encontrocsmj_oelpereira.pdf). Accessed 30 March 2012.

ed major goal of this legislature was to “modernize courts, substantiating a growing need in terms of judiciary or management ICT”, leading to the extension of computer equipment to court of law, enabling current access to databases, and the use of computer applications for procedural and statistic management. The following government (1991-1995) gave continuity to these *desiderata*, stating the application of ICT in the justice system as a cardinal course of action. For instance, during those 4 years it was aimed to conclude the installation of audio recording systems in all courts across the country.

The cabinet from the XIII Constitutional Government (1995-1999) was more generalist in its purposes, stating a purpose of “endowing courts with human and material resources, and technology that allows an effective regulation of the citizens’ needs” in its 4-year programme, corresponding to a period of little visible legal changes in what concerned ICT and the judiciary. These purposes were solidified over the next tenure (XIV Constitutional Government, 1999-2002), an obvious turning point in governmental policies for the judiciary, at least in what concerns technological progress. This new ministerial office envisaged complementing and boosting “the ongoing process, guaranteeing judicial officers may use ICT on their daily practice”. It was during this period that first procedural management tools were developed by ministerial services. By means of an exhaustive programme of application of ICT to the judiciary also guaranteed “the installation of networks in 80% of all courts of law by the years 2000, with a full coverage in 2001, when a complete network, encompassing all public services connected to the Ministry of Justice, [was] expected”.

This route of technological progress was continued by the XV Constitutional Government (2002-2004), with the Ministry of Justice aiming to reinforce judiciary capacity with measures such as “the development and completion of ICT application to courts of law, and their network connection – between courts and between courts and the other systems from the justice sector”. These intents were followed over the next tenure (XVI Constitutional Government, 2004-2005), whose governmental programme for the area of justice stated a desire for a reinforcement of the justice system, with the prosecution of the measures pointed out by the previous cabinet.

The XVII Constitutional Government (2005-2009) sought an intensive use of ICT in justice, bringing forth definitive measures to dematerialize procedures, intending to speed up tasks and a better management on the whole. Purposes were such as a progressive procedural dematerialization and respective training for all judicial officers, as well as intensive use of (cheaper) “high-tech communication devices” for and between justice services, and an easier access to legal resources online. During this period of time, Citius-H@bilus was extended to all courts of law and all Citius applications were fully activated, thus providing the civil justice system with a long sought electronic procedure.

Extending the electronic procedure to the superior courts, as well as further broadening the use of ICT in justice (i.e. replacing existing analogic and paper communication and recordings, adopting judicial sales and electronic management tools, etc.), was the stated purpose of the ministerial office that followed (XVIII Constitutional Government, 2009-2011).

The current cabinet's (XIX Constitutional Government, 2011-...) resolve is similar, addressing the issue with an intent to improve information systems and management systems "to improve efficiency, reduce costs and avoid waste", aiming at "making the use of ICT [in justice] correspond to a principle of unification.

As a reform to take place together with the implementation of the judiciary map, in 2013, this tenure published the Action Plan for Justice in the Information Society<sup>13</sup>, which poses as a major purpose to install a sole platform for all judiciary, thus terminating all systems currently active, such as Citius, H@bilus and SITAF. This new platform will include an integrated system for case management, which will allow further control of the judicial officers' activity, such as foreseeing the time needed for a certain procedure, or knowing at all times how many cases each actor has assigned and their procedural phase.

The Action Plan for Justice in the Information Society specifically states as aims for this tenure: develop an ICT architecture for justice that ensures the foundation for application development, including a platform of reference data on companies and citizens, a repository of documents, video and audio common to all the institutions of justice and a set of norms on the development of computer applications for justice; update and develop, according to the drawn architectural model, the procedural management system integrated in courts, offering support to all taken activities (not just administrative, but also on the full register of multiple interventions in court involving all actors). This action aims at greater control of the respective "productive" process, thus increasing predictability and compliance with procedural deadlines. Furthermore, the ICT system for procedural management should allow associating to each procedural intervention the tools necessary to its completion, such as auxiliary components (v.g. integrated timetables and agendas), and access to legislation and case law databases and other sources of knowledge and information sharing; review the metadata associated with the procedures, to ensure the same point of view in all, thus achieving effective transparency and efficiency the activity of all legal actors involved; updating, in accordance with the designed model architecture, the mechanisms linking the applications of institutions of justice and state agencies that need to interact with the courts, as well as with other legal professionals; create a platform of courts' analytical information systems with the use of indicators to timely identifying constraints and allow their control before there is significant impact; up-

<sup>13</sup> Order no. 1617/2011, from 29th of November.



date the means of access to court applications in what concerns hardware and other communication equipment, in order to ensure better usability of information systems, thus increasing citizens' levels of efficiency, efficacy and satisfaction; ensure safe and remote access by judicial actor to courts' systems; redesign the legal aid model within this new architecture; promote, with the intervention of the private sector, a platform for ADR that is integrated in the courts' systems, by means of an electronic platform for online mediation services; increase the use of the citizen card as a mechanism for authentication and citizen access to the justice ICT systems.

### 3.1.2. *The First Steps: a light legal background intertwined with the development of the first applications (gpcível and h@bilus)*

The use of new technologies in judicial acts was firstly addressed back in 1995, with an amendment brought to the Code of Civil Procedure<sup>14</sup>: “[t]he chapter on pleadings – one of the most marked by the erosion of time and the application of new technologies to forensic activity – deserved significant amendments, reformulating numerous solutions of the current Code, in order to prevent the maintenance of unnecessary or disproportionate formalisms, thus operating a real progress in simplifying and streamlining the causes”<sup>15</sup>. In the following year, a new amendment came to “allow the use of electronics for the treatment and completion of any act or pleading, as long as rules concerning protection of personal data are respected and their use is mentioned.”<sup>16</sup>

Nonetheless, it was only in 1999 the Act on the organization and functioning of judicial courts<sup>17</sup> was amended with an item on the use of information technology, stating “[i]nformation technology will be used to treat data related to judicial courts management and procedure, in accordance to constitutional and legal provisions in force.”<sup>18</sup>

After this, consecration of the use of information technologies in judicial courts came step by step. The following year, the possibility of lawyers to present pleadings in digital form and using of certified e-mail addresses for their delivery was added: “for the practice of pleadings by the parties, presentation of the pleadings and allegations and counter-pleadings in electronic form is foreseen, accompanied by a copy on paper, which will act as a backup and certification tampering scanned into the text and documents that are not scanned. The parties may also play such acts by fax or e-mail, valid as of the date of the practice even of his expedition, which is possible even outside the opening hours of the courts and is expected however the obligation of

<sup>14</sup> Decree-Law no. 329-A/95, from the 12<sup>th</sup> of December.

<sup>15</sup> Preamble.

<sup>16</sup> Article 138, no. 5, from the Decree-Law no. 180/96, from the 25<sup>th</sup> of September.

<sup>17</sup> Law no. 3/99, from the 13<sup>th</sup> January.

<sup>18</sup> Article 132.

*sending, within five days of the digital or the backup, respectively, accompanied by the documents that have not been sent. Given the need for adaptation of legal professionals and the full computerization of the courts, it is foreseen in transitional provision that pleadings, appeal allegations and counter-allegations, in electronic form shall only be mandatory from the 1st of January 2003, and is optional from the date of entry into force of said law, whether for such pleadings, or for any other procedural steps that must be practiced in written form, thus eliminating the need to merge the duplicate copies, when pleadings are submitted in digital format.”*<sup>19</sup>. Presentation of pleadings by e-mail<sup>20</sup>, and the compulsory presentation of pleadings, appeal allegations and counter-allegations in digital format, in addition to a copy on paper<sup>21</sup>, were specifically foreseen<sup>22</sup>.

This legal framework<sup>23</sup> was revoked soon after, and replaced (in 2003)<sup>24</sup> by one that foresaw, “*in a more realistic fashion*”<sup>25</sup> that dematerialization could not be compulsory at such a stage; its rules (concerning presentation of pleadings by e-mail and the form of these pleadings presented to the court) took a step back and were accepted as “*possibilities*”, rather than “*realities*” (*ibidem*), as the legislator had too greedily advanced three years before. Concretization on the use of e-mail for the presentation of pleadings and for writs of notice was introduced the following year<sup>26</sup>.

However, practice had been running ahead underneath these somewhat slow legal developments. In fact, the implementation of ICT owes more to common practice than to written law, and specifically to the action of court clerks and registrars, within the jurisdiction of the Ministry of Justice. In the meantime, it was the administrative and fiscal jurisdiction that took decisive steps towards an accomplished use of information techniques, aiming at a fully-electronic procedure<sup>27</sup>.

<sup>19</sup> Preamble of Decree-Law no. 183/2000, from the 10<sup>th</sup> of August.

<sup>20</sup> Amended article 143, no. 4, from the Code of Civil Procedure.

<sup>21</sup> Amended article 150, no. 1, from the Code of Civil Procedure.

<sup>22</sup> More detailed reglamentation was introduced by Ordinance no. 1178-E/2000, from the 15<sup>th</sup> of December, and afterwards Ordinance no. 8-A/2001, from the 3<sup>rd</sup> of January.

<sup>23</sup> Decree-Law no. 183/2000, from the 10<sup>th</sup> of August.

<sup>24</sup> Decree-Law no. 324/2003, from the 27<sup>th</sup> of December. Came to amend the code of civil procedure. It ruled on the presentation of pleadings by e-mail (amended articles 260-A, 254, and 229-A, from the Code of Civil Procedure), and the form of pleadings presented to the court (amended articles 150 and 152, from the Code of Civil Procedure).

<sup>25</sup> Lameiras, Luís Filipe Brites (2008) A informatização na justiça cível, in Brito, Rita (co-ord.) Novos Rumos da Justiça Cível. Braga: CEJUR, p 119.

<sup>26</sup> By Ordinance no. 337-A/2004, from the 31<sup>st</sup> of March, followed and revoked by Ordinance no. 642/2004, from the 16<sup>th</sup> of June.

<sup>27</sup> Decree-Law no. 325/2003, from the 29<sup>th</sup> of December, introduced electronic procedure



Back in 1999, when no relevant legal developments on this matter were to be expected any time soon, a group of court clerks and registrars started a project called GPCível (from “Gestão Processual Cível”, *Civil Procedural Management*). This was indeed the first attempt to use information technology for case management, and the direct ancestor of electronic procedure and dematerialization processes in Portugal. The GPCível Project was sponsored and flourished within DGAJ, resulting in the birth of the application named H@bilus. This new case management tool was then used in registries of both civil and criminal competence courts. Using the technology available at the time, each court worked on its own, much like an island, as the application was client-server, supported by modems and telephone lines.

Working ahead of legal developments, H@bilus was being applied to a growing number of courts, under the aegis of DGAJ, until it covered all civil and criminal courts by 2005. By then, technology had evolved immensely, and modems had been replaced by local servers. Still, each court was isolated, as there was no network.

### 3.1.3. *Major Step Forward: The Arrival of Citius*

#### **The Background of an Electronic Procedure: A Quest for Dematerialisation**

The ancestor of the dematerialized procedures was H@bilus, when court clerks became able to make writs of notice directly in the platform, but a concrete procedural dematerialization only became real with Citius, which finally allowed the actual electronic lodging of a proceeding.

A larger legislative step was finally taken in the year of 2006. Mirroring the outline drafted in the law on the organization and functioning of judicial courts, a norm specifically concerning electronic procedure was finally added to the Code of Civil Procedure in 2006<sup>28</sup>: “*Procedure takes place electronically in the terms defined by ordinance from the member of the government responsible for the area of justice; procedural rules concerning acts from judges, public prosecutors and judicial offices shall be adapted when necessary*”<sup>29</sup>.

Citius was announced in the following year by means of a brand new Law<sup>30</sup>, with the legislator now offering a platform which could now host elec-

in administrative and fiscal courts (see article 4). It was later regulated by Ordinance no. 1417/2003, from the 30<sup>th</sup> of December, concerning the brand new Sitaf, an electronic system adapted to the administrative proceeding. It was this article 4, from Decree-Law no. 325/2003 (more precisely, its no. 1) that inspired said article 138-A, as we may see below.

<sup>28</sup> Law no. 14/2006, from the 26<sup>th</sup> of April.

<sup>29</sup> Article no. 138-A.

<sup>30</sup> Complementing the regime of Law no. 14/2006, ground-breaking Ordinance no. 593/2007, from the 14<sup>th</sup> of May, introduced the platform Citius.

tronic pleadings of judges and public prosecutors. A year later, the code of civil procedure was amended<sup>31</sup>, dictating that “*electronic procedure guarantees its own integrity, authenticity and inviolability*”.

In the meantime, the formulation of the Law on the organization and functioning of judicial courts was maintained throughout various amendments, to be completed nearly 10 years later<sup>32</sup>: it was only after these specifications within the code of civil procedure that the law on the organization and functioning of judicial courts was adapted in what concerned electronic procedure. This more detailed enunciation within the law on the organization and functioning of judicial courts<sup>33</sup> specifically reads: “*1 – Information technology is used for the treatment of data related to judicial courts management, procedure, and archive. 2 – Procedure takes place electronically in the terms defined by ordinance from the member of the government responsible for the area of justice; procedural rules concerning acts from judges, public prosecutors and judicial offices shall be adapted when necessary. 3 – Said ordinance shall regulate, among other issues: a) presentation of pleadings and documents; b) file assignment; c) electronic pleading by judges, public prosecutors and court officials; d) acts, pleadings, minutes and procedural terms that may not exist in paper*”<sup>34</sup>.

In fact, the legal implementation of the *desiderata* present in Law no. 14/2006 came only two years later: in order to fill the legislative gap, the Ministry of Justice<sup>35</sup> introduced the regulation of several aspects of electronic procedure in first instance courts, by means of the new system Citius<sup>36</sup>. This Ordinance no. 114/2008 specifically came to regulate on<sup>37</sup> the presentation of

<sup>31</sup> Decree-Law no. 303/2007, from the 24<sup>th</sup> of August, added a no. 2 to article 138-A, from the Code of Civil Procedure. This norm’s entry into force was then subjected to the publication of the foreseen Ordinance from the Ministry of Justice, as specifically ruled in the no. 2 from article 11, of Decree-Law no. 303/2007. The Decree-Law was subjected to Rectification no. 99/2007, from the 23<sup>rd</sup> of October, which however did not bring any alteration to these specific norms. Therefore its transitory norms (article 8, especially its no. 1) maintained alive, when needed, the dispositions altered or revoked until the publication of that ordinance.

<sup>32</sup> Law no. 52/2008, from the 28<sup>th</sup> of August.

<sup>33</sup> A brand new article 159 came to replace former article 132, thus complementing its broad formulation. Notice how the no. 2 of this new article 159, of the law on the organization and functioning of judicial courts, paraphrases article 138-A, of the code of civil procedure, as amended by Law no. 14/2006.

<sup>34</sup> Article 159.

<sup>35</sup> Ministerial Ordinance no. 114/2008, from the 6<sup>th</sup> of February, from the Ministry of Justice.

<sup>36</sup> It has subsequently been altered by Ordinances no. 457/2008, from the 20<sup>th</sup> of June; no. 1538/2008, from the 30<sup>th</sup> of December; no. 195-A/2010, from the 8<sup>th</sup> of April; and no. 471/2010, from the 8<sup>th</sup> of July.

<sup>37</sup> In the sequence of what had been earlier stipulated in article 11, no. 2, of Decree-Law no. 303/2007.

pleadings<sup>38</sup>; compulsory copies<sup>39</sup>; publicity of the procedure<sup>40</sup>; electronic case assignment<sup>41</sup>; publication of said electronic case assignment<sup>42</sup>; electronic writs of notice<sup>43</sup>; proof of court fees payment<sup>44</sup>.

It therefore specifically regulates several aspects<sup>45</sup>, as stated in article no. 1: (1) electronic presentation of pleadings and documents<sup>46</sup>; (2) proof of court fees payment and/or legal aid admittance<sup>47</sup>; (3) designation of the enforce-

<sup>38</sup> In accordance to article 150, as seen in articles 1a) and 3, both from said Ordinance.

<sup>39</sup> In accordance to article 152, as seen in article 3b), from said Ordinance.

<sup>40</sup> In accordance to article 167, as seen in article 22, from said Ordinance.

<sup>41</sup> In accordance to article 209-A, as seen in articles 1d) and 15, both from said Ordinance.

<sup>42</sup> In accordance to article 219, as seen in article 16, from said Ordinance.

<sup>43</sup> In accordance to articles 254, no. 1, and 260, as seen in articles 1a), 21-A, 21-B, and 21-C, all from said Ordinance.

<sup>44</sup> In accordance to article 486-A, indirectly addressed by article 8; scope, as foreseen in article 2.

<sup>45</sup> This Ordinance is structured in accordance to said purposes: (1) an initial chapter of general provisions outlines its object and scope. It was introduced by the original Ordinance no. 114/2008, and subsequently amended by Ordinances no. 457/2008, 1538/2008, 195-A/2010, and 471/2010; (2) a second chapter addresses the presentation of pleadings and documents, which includes electronic presentation of pleadings and documents, Citius user registration, dispositions concerning forms and annexes, and pleadings' specifications, designation of enforcement agents, and appeals. It was introduced by Ordinance no. 114/2008 and amended by Ordinances no. 457/2008, 1538/2008, 195-A/2010, and 471/2010; (3) a comparatively diminute third chapter concerns electronic file assignment, and refusal of electronic pleadings. The latter was included by Ordinance no. 471/2010, and the former by Ordinance no. 114/2008 and subsequently amended by Ordinance no. 195-A/2010. This chapter also addresses the publication of daily file assignment, as introduced by Ordinance no. 114/2008; (4) a fourth chapter ascertains proceedings by judges, public prosecutors and court officials, which includes specifications of security, access to public services' data, and signatures of parties, their legal representatives, or witnesses. It was introduced by Ordinance no. 114/2008 and amended by Ordinances no. 457/2008 and no. 195-A/2010; (5) a fifth chapter thoroughly regulates electronic notifications, by means of three articles introduced by Ordinance no. 1538/2008; (6) a sixth chapter consists of an article establishing the consultation of judicial proceedings by lawyers and solicitors. It was present in the original version, Ordinance no. 114/2008, and amended by Ordinance no. 1538/2008; (7) a seventh chapter, entitled "organization of the proceeding", presents an article that ascertains which pleadings and documents must exist both in electronic and physical form. This article was introduced by Ordinance no. 114/2008 and amended by Ordinances no. 457/2008, 1538/2008, and 471/2010; (8) an eighth chapter deals with the communications between courts, emission of judicial certificates included. It was introduced by Ordinance no. 114/2008 and amended by Ordinance no. 1538/2008; (9) finally, ninth and a tenth chapters address issues specifically concerning courts for post-sentencing follow-up, and administrative and fiscal courts (i.e. their electronic platform SITAF), respectively.

<sup>46</sup> In accordance to article 150, no. 1, 3 and 4, and article 810, both from the Code of Civil Procedure), appealing including (in accordance to articles 688, 691, 691-B, 721, 763, and 771, all from the Code of Civil Procedure.

<sup>47</sup> In accordance to article 150-A, no. 3, and article 467, no. 4, both from the Portuguese Code of Civil Procedure.

ment agent in charge of the writ of summons<sup>48</sup>; (4) electronic case assignment<sup>49</sup>; (5) electronic writs of notice<sup>50</sup>; (6) electronic pleading by judges, public prosecutors, and court staff; consultation of proceedings<sup>51</sup>; (7) within an execution of penalties' procedure, electronic presentation of pleadings and documents, electronic file assignment, electronic pleading by judges, public prosecutors and court staff, electronic writs of notice and communications<sup>52</sup>.

As such, regulation of the Citius system in terms of technology and operability are extremely light, as these norms focus on the work of the registry, i.e. mostly procedural terms. Still, further legal production came to conform the regime, such as amendments to the legal regime of court fees<sup>53</sup>, that became another decisive step, as seen in further detail in section 5. In addition, the dematerialised lodging of pleadings became compulsory for lawyers and solicitors<sup>54</sup>. Finally, new legislation concerning the transmission and protection of judicial data<sup>55</sup> was introduced in 2009, and came to offer the needed data protection framework; it also presented new key entities and re-defined the competences of others.

### **Citius System: Characterization**

Ordinance no. 593/2007, from the 14<sup>th</sup> of May, following the needs defined in Decree-Law no. 130/2007, finally introduced Citius, arguably the greatest breakthrough application for the fully-dematerialised electronic procedure.

The project named *Citius* – meaning *faster* in Latin – was specifically developed by the Ministry of Justice with the same team of registrars and court clerks under the aegis of DG AJ, and currently inserted in ITIJ, that created and developed H@bilus. As said before, this new system is a further development of H@bilus, aiming at a procedural dematerialisation, by treating electronically all information belonging to the proceeding, thus reducing their physical form to a minimum. It is therefore composed by several applications, data-

<sup>48</sup> In accordance to article 467, no. 1, g.) 7, and 8, from the Portuguese Code of Civil Procedure.

<sup>49</sup> As foreseen in articles 209-A, 211, 213, 214, and 219, all from the Portuguese Code of Civil Procedure.

<sup>50</sup> In accordance to article 254, no. 2, article 258, no. 2, and article 260-A, all from the Code of Civil Procedure.

<sup>51</sup> In accordance to article 167, no. 1 and 3, from the Code of Civil Procedure.

<sup>52</sup> In accordance to Book II, from the Code on the execution of penalties and custodial sentences.

<sup>53</sup> Such as Decree-Law no. 34/2008, from the 26<sup>th</sup> of February.

<sup>54</sup> Decree-Law no. 34/2008, from the 26<sup>th</sup> of February, which entered into force on the 5<sup>th</sup> of January, 2009. For further operational detail, see section 5.

<sup>55</sup> Law no. 34/2009, from the 14<sup>th</sup> of July.

bases and services that communicate with each other: computer applications for public prosecutors, and judges and court staff, as well as for lawyers and solicitors, complement each other in order to achieve full electronic pleading. Over the next pages we will offer a schematic overview of their objectives and possibilities<sup>56</sup>.

**H@bilus** is a component of the Citius system used by court clerks and registrars, in courts, to manage the acts of registries, such as reception and distribution of pleadings, file management, registration and archive.

**Citius-Judges** and **Citius-Public Prosecution**, as their names suggest, are the two versions of H@bilus used by judges and by public prosecutors, respectively. More specifically, **Citius-Judges** is a work tool that intends to reduce bureaucracy and provide for better management tools for judicial courts. With said desiderata in mind, this application was specifically created to enable judges to: (1) make sentences, court orders and other judicial decisions directly in the application, with no need of previous writing said decisions in the paper proceeding; (2) sign sentences, court orders and other judicial decisions with electronic signatures, by means of a card (smartcard) associated to a PIN code, with no need of signing said decisions in the paper proceeding; (3) receive and send the proceedings electronically to the registry, with no circulation of the paper proceeding; (4) immediately know all procedures assigned to them and at what stage they are. Similarly, **Citius-Public Prosecution** is adapted to activities of their officers, thus allowing them to: (1) make and sign court orders, with no need of printing them; (2) receive and send the proceedings electronically to the registry, with no circulation of the paper proceeding; (3) organise and manage the titular officer's own proceedings; (4) electronic connection between the public prosecution, police forces, and courts; (5) conduct electronically national inquiries concerning defendants.

**Citius.Net** (lodging of pleadings and documents) is a web application that allows legal representatives such as lawyers and solicitors to lodge their pleadings, as well as consult the state of the procedures they are related to. This system makes the use of pleadings in paper needless, "which is seen as a great breakthrough in reducing bureaucracy in the connection between legal representative and court"<sup>57</sup>. Furthermore, common citizens may use the application to access public information concerning the justice system, namely publicity of sales and bankruptcies. This work tool specifically allows its users (lawyers and solicitors) to use the internet to: (1) lodge pleadings and other documents; (2) know the results of the distribution; (3) consult proceedings

<sup>56</sup> For further detail concerning technical issues, see section 4 and 5.

<sup>57</sup> Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. 30 March 2012, p. 25.

and related court hearings; (4) follow the status of their due payments within legal aid action.

**TribNet**, also called **Citius-Public Access**, is the application that offers information of compulsory publication to the general public, by means of direct access to the central databases of the Citius system, or of local court databases. The information at stake specifically concerns issues such as public lists of case assignment, publicity of sales, and publicity of insolvency, public court sessions, edictal writ of summons, or addresses and contacts of courts.

As well as these applications that allow a direct interaction with different types of users, the Citius system also enables communication with other information systems from external entities. For instance, requesting or providing information from entities such as the Central Department of Investigation and Criminal Action (DCIAP), the BNI, the Directorate-General for Social Reinsertion (DGRS), or police forces, thus allowing Citius to both request and receive information in a quick and integrated way, from each one's information systems<sup>58</sup>.

H@bilus, Citius-Judges and Citius-Public Prosecution use VB6, an outdated technology (by now discontinued by Microsoft), whilst Citius.Net and TribNet are developed in .NET<sup>59</sup>. The latter were also created by members of the same team that created the others.

H@bilus, Citius-Judges and Citius-Public Prosecution function at a local level, with a local server, in all courts of the civil jurisdiction. These servers are then connected in web, through a circuit. Unlike the others, Citius.Net is not local by its own nature, it has a central database. Thanks to the Law on the protection of data<sup>60</sup>, there was the legal background to create a central database, with the headline of the proceeding. This headline contains the basic data of each proceeding, such as court, serial number, and name of the pleading parts. The complete proceeding is lodged at the local server of each court, to which the lawyer accesses through Citius WEB, which then connects the user to the local court server. The central database is currently lodged – physically – at ITIJ, but until 2007 there was a central server lodged at a court in Évora, under care of two court clerks of the DGAJ team. The displacement of hardware and databases to the ITIJ implied a cost of 150.000 € in various equipment, back in 2007. As for the local database of each court, they are usually physically lodged at the building of the respective court. However,

<sup>58</sup> Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. 30 March 2012, p. 26.

<sup>59</sup> See section 4 and 5 for further detail concerning technical issues.

<sup>60</sup> Law no. 34/2009.

since some were not in the best environmental conditions, a few are currently physically lodged at ITIJ, but maintaining their autonomy and work logic (server-client), still “belonging” to the court itself. There are plans of complete centralization of the hardware at ITIJ, though maintaining each database’s local control and autonomy.

Citius-Judges and Citius-Public Prosecution became operational in July 2007, but its use only became compulsory from the 5th of January 2009 on. To prepare for these ground-breaking changes in the judicial actors’ activity, throughout the year of 2008, laptops and digital certificates were assigned to judges and public prosecutors, and DGPI gave intensive training courses to all. These courses were decentralised (i.e. across the territory, and not only in Lisbon), and for them a team of 112 instructors was assembled, with DGPI hiring 80 extra staff members to fulfil this task.

A commissioned third-party audit: in 2009, an audit to the Citius system was commissioned by the ITIJ to a private national company, Critical Software. The results of this audit were presented in a report from the same year, and from them a reformed and updated version of Citius was created: the platform Citius Plus<sup>61</sup>.

The audit took place in three analytical vectors: security, architecture and technology, and performance. The areas under analysis were application, infrastructural and IT procedures, concerning both Citius-Web and Citius-H@bilus.

In short, the applications that use less recent technology (as said above, H@bilus, Citius-Judges Citius-and Public Prosecution are in VB6) have revealed in general more problems in all areas under analysis than the others. On account of said fact, the latter were implemented with a three-layer architecture (i.e. presentation, business and data layers). Still, the older applications present fewer problems than the others when it comes to sheer performance<sup>62</sup>.

From the information available for the audit, Citius-Web applications have less architectural problems, though both reveal similar security problems. As for IT Procedures, there were revealed more disconformities in the local component (Citius-H@bilus) than in the central component (Citius-Web). The audit report highlights said disconformities are mostly grounded on lack of formalism in its implementation: for instance, there were detected severe prob-

<sup>61</sup> See section 4 and 5 for further detail concerning technical issues.

<sup>62</sup> Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. Accessed 30 March 2012, p. 21-22.



lems with the passwords, due to a lack of strict rules for the attribution and use of passwords. That being said, during the audit, an exercise to explore password vulnerability resulted in the discovery of 53% of all passwords of lawyers and solicitors in two hours, using only tools of easy access (i.e. retrieved *in loco* from the internet). According to the report, 90% of these passwords have less than 9 characters, “which does simplify its discovery”<sup>63</sup>.

A core recommendation that emerged from the audit was an update to the architecture and technologies of the Citius applications that use VB6: H@bilus, Citius-Judges and Citius-Public Prosecution. Critical Software highlights that this technology was made available by Microsoft since 1999, but the support ceased in April 2008, “which means technical updates, correction of vulnerabilities, or service packs of any sort were not, and will not, be available in the future” by Microsoft, as well as “technical articles or support tools for the technology”<sup>64</sup>. Furthermore, the supplemental report<sup>65</sup> (Critical Software, 2010) highlighted the severity of the situation, taking into account the growing risks for the system as a whole, “as the other support technologies, such as the operative systems, will keep evolving”. Other benefits would be to provide for several improvements, such as “the need of a better structuring and compartmentations of projects according to said needs”, and “the need for better internal documentation of the code (module headlines and their routines)”<sup>66</sup>. The final report thus recommended “the migration of the software now existing in Visual Basic 6 to technologies supported by the seller”<sup>67</sup>).

The problems of Citius-Web are considered easier to solve, since its architecture is based on a more evolved model and technologies; the lacks of Citius-H@bilus may be considered “more serious”, especially taking into account the data at stake. Nonetheless, Critical Software reckons the latter are

<sup>63</sup> Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. Accessed 30 March 2012, p. 22.

<sup>64</sup> Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. Accessed 30 March 2012, p. 25.

<sup>65</sup> Critical Software (2010) ACitius. Relatório de Auditoria – Aditamento. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-2010-RPT-02371-aditamento-auditoria-acitius.pdf>. Accessed 30 March 2012.

<sup>66</sup> Critical Software (2010) ACitius. Relatório de Auditoria – Aditamento. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-2010-RPT-02371-aditamento-auditoria-acitius.pdf>. Accessed 30 March 2012, p. 53.

<sup>67</sup> Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. Accessed 30 March 2012, p. 49.



more difficult to access from the outside than Citius-Web, “which limits the probability of such threats to actually occur”<sup>68</sup>.

In spite of these findings, the audit was not shy to underline several positive aspects of the Citius system, namely the historical work that took place; the system as an undisputed “motor of change” for the dematerialisation; and the general gains in productivity it allows, as well as the rise of speediness in the justice system globally considered<sup>69</sup>.

**Citius Plus:** after this audit, Citius was subjected to a reformulation, conducted by the team of Critical Software together with the DGAJ-ITIJ team. The project’s name is *Citius Plus*. Its main objectives were to correct security issues pointed out in the audit, and evolve in the technology, from VB6 to VisualBasic.NET. This process also enabled the documentation of the application and, indirectly, also made knowledge less restrict. Some problems were unable to be solved, as they are structural in their nature, related with the very architecture of H@bilus<sup>70</sup>.

Ministerial Order no. 11388/2010, from the Minister of Justice, legally introduced Citius Plus, stating its objectives: (1) reformulation of the technological infrastructure of the Citius platform, ensuring an efficient response to requests from various types of users, both in its ability to evolve and in supporting legal changes; (2) adequate levels of quality, control and security in access to procedural information, and the guarantee of audits to ensure their access and actions; (3) homogenization of environments and technological solutions, in order to pursue synergies in the use of the platform; (4) introduction of practices, tools and procedures that will allow to support development activities and to increase service levels and quality management in a subsequent evolution of the platform; (5) raising the level of knowledge about the system, through the description of its core functionalities and its behavior, and the specification of tests that should serve to support the validation and acceptance of any evolutionary solutions.

This normative also states that an essential condition for this technological consolidation is the transition, from DGAJ to ITIJ, of functions related to the development of projects, applications and systems relating to information and communication technologies within the activity of the courts and the justice system<sup>71</sup>.

<sup>68</sup> Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. Accessed 30 March 2012, p. 23.

<sup>69</sup> Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. Accessed 30 March 2012, p. 23.

<sup>70</sup> As seen in detail in section 5.

<sup>71</sup> Through Ministerial Order no. 10.471/2010, as seen above.

Citius Plus is currently at use in two courts, after a period of pre-tests conducted with a restricted number of judges in simulated proceedings. The two courts are the Court of Appeal of Coimbra – providing a second instance experience –, and the District Court of Figueira da Foz – a coastal town near Coimbra which has a workload considered to be average and therefore appropriate for a first instance try-out. The migration of the code, from VB6 to Visual Basic.NET, was in charge of Critical Software. The changes are solely related to software, and as so the functionalities remain the same, with virtually no visible changes to the user accustomed to Citius.

As for future evolutions of Citius beyond Citius Plus, some constraints were highlighted during fieldwork. In short: a limited team working at ITIJ; a still working obsolete technology (VB6); stumbling blocks in terms of decision power to alter and improve the system.

### 3.1.4. *Small Claims*

Dealing with small claims has been traditionally interwoven with the use of information technology in courts. As so, Decree-Law no. 269/98, from the 1<sup>st</sup> of September, is undoubtedly a landmark both for the use of ICT in courts and to dealing with small civil claims in a simplified way. This ground-breaking law<sup>72</sup> specifically deals with small claims and payment order procedures for debts originated by contracts. The main target upon its publication was to speed up small claims litigation. For such purpose, its regime gathered up previous legislative initiatives concerning both small civil claims procedures and payment order procedures, now further developed with the use of ICT, especially for the latter. These new procedures came to offer an extremely simplified *iter processualis*, in addition to the ones already foreseen in the code of civil procedure, for claims worth up to first instance courts' jurisdiction value (a limit which was later amended), and based in consumer contracts or other commercial transactions, where proof is simple and document-based, and statements of objection rare. The focus of this study is the payment order procedure, and therefore the next pages will provide an overview of its evolution.

<sup>72</sup> It has subsequently been amended/republished by a series of diplomas: Rectification no. 16-A/98, from the 30<sup>th</sup> of September; Decree-Law no. 383/99, from the 23<sup>rd</sup> of September; Decree-Law no. 183/2000, from the 10<sup>th</sup> of August; Decree-Law no. 323/2001, from the 17<sup>th</sup> of December; Decree-Law no. 32/2003, from the 17<sup>th</sup> of February; Decree-Law no. 38/2003, from the 8<sup>th</sup> of March; Decree-Law no. 324/2003, from the 27<sup>th</sup> of December; Rectification no. 26/2004, from the 24<sup>th</sup> of February; Decree-Law no. 107/2005, from the 1<sup>st</sup> of July; Rectification no. 63/2005, from the 19<sup>th</sup> of August; Law no. 14/2006, from the 26<sup>th</sup> of April; Decree-Law no. 303/2007, from the 24<sup>th</sup> of August; Law no. 67-A/2007, from the 31<sup>st</sup> of December; Decree-Law no. 34/2008, from the 26<sup>th</sup> of February; and Decree-Law no. 226/2008, from the 20<sup>th</sup> of November.

### The Payment Order Procedure: Legal Background

The payment order procedure had been introduced back in 1993<sup>73</sup>, as a quick and swift way of recovering debts, most of them unobjected. Until 1998, its use had been reduced, but this new regime specifically intended to increase demand, for which procedural simplification and, not to be underestimated, reduced court fees concurred: *“The intention is now to encourage the use of payment order procedures, in particular the possibilities offered by modern computer technology to the treatment and removal of procedural obstacles doctrine opposed to Decree-Law no. 404/93 (...). At the same time its jurisdiction value is raised up to the equivalent of the courts of first instance, there is a significant reduction of court fees payable by the applicant, despite the time already elapsed on its setting, in January 1994.”*<sup>74</sup>.

Procedural Characteristic: the payment order procedure, as created in 1993, consists of a simplified pre-judicial procedure that allows for a swift enforceable title, without the intervention of a jurisdictional organ (in the case of unchallenged claims). It is a specific mechanism for the collection of debts arising from unpaid bills. As said above, its *iter processualis* is extremely simplified: (1) by filling in a form and paying a court fee (initially, a court fee stamp) the creditor requires the notification of the debtor to pay, under penalty of said payment order becoming an enforceable title; (2) the debtor may present a defense, by means of a statement of objection. In the case of unchallenged claims, there is no intervention of jurisdictional organs; otherwise, as well as when it is impossible to notify the debtor, the proceeding is presented to a judge; (3) after the writ of notice takes place, if the debtor does not pay the debt or does not present a statement of objection in due time, the payment order procedure form becomes enforceable, by gaining the nature of an enforceable title with the intervention of the court registrar; (4) if the debtor presents a statement of objection, a trial takes place in 30 days, and the final ruling from the judge shall become enforceable.

<sup>73</sup> By means of Decree-Law no. 404/93, from the 10<sup>th</sup> of December.

<sup>74</sup> Preamble of Decree-Law no. 269/98. Coincidentally, article 19, on court fees, stipulated in 1998: “Article 19, no. 1 – Court fees. Presentation of the payment order procedure’s form requires immediate payment of court fees through appropriate stamp, of model approved by Ordinance from the Minister of Justice, valued at 4.000 Portuguese escudos or 7.000 Portuguese escudos, when the procedure has a value equal to or greater than half the jurisdiction of first instance courts, respectively.” The basic regime of Decree-Law no. 269/98 was subsequently amended and republished by Decree-Law no. 107/2005, from the 1<sup>st</sup> of July, almost immediately amended by Rectification no. 63/2005, from the 10<sup>th</sup> of August. Its regime entered into force in 15.09.2005, bringing significant changes to payment order procedures, as seen below.

**Jurisdiction Value:** in terms of jurisdiction value, this procedure started off with a maximum of 1.870,49 €, this limit was raised to 3.740,98 € in 1998<sup>75</sup> and to 14.963,94 € in 2005<sup>76</sup>. In 2007, the jurisdiction limit value was rounded to 15.000 €. A big breakthrough came in 2003, with the Decree-Law<sup>77</sup> that transposed Directive 2000/35/EC, of the European Parliament and of the Council, of 29 June 2000, on combating late payment in commercial transactions. According to it, debts from commercial transactions<sup>78</sup> could be claimed by means of a payment order procedure regardless of its value.

**Use of ICT in the Payment Order Procedure:** unlike what happened with H@bilus, the development of the application and the legal framework walked side by side: Decree-Law no. 107/2005 specifically introduced the use of information technologies to this procedure (in addition to an enlargement of competence, as seen above). It was finally consecrated by means of electronic communication: the presentation of the payment order procedure's form could be – optionally – electronic. After the 15<sup>th</sup> of September of 2005, the creditor could also be contacted by the court via e-mail. The court registrar could create an enforcement title by opposing his/her electronic signature. The Ministry of Justice came to regulate the presentation of the form, which could be either in paper or electronic document<sup>79</sup>. The format and content ("the form") of said electronic document would be later defined by the Ministry of Justice (DGAJ), and released on its website at [www.tribunaisnet.mj.pt](http://www.tribunaisnet.mj.pt).

**Competent *fora* and ways of presentation:** the competent *fora* to present the forms and the ways of presenting them are intertwined, and therefore their evolution is presented as one. In terms of territorial competence, the creditor may choose to present the payment order procedure in the registry of the court from (1) the place of performance of the underlying obligation, (2) or the place of the debtor's address<sup>80</sup>. This means the district courts or, more accurately, their registries, are the competent forum to lodge the action, and the same applies if in that territorial circumscription there are courts of special-

<sup>75</sup> Decree-Law no. 269/98.

<sup>76</sup> Decree-Law no. 197/2005.

<sup>77</sup> Decree-Law no. 32/2003, from the 17<sup>th</sup> of February.

<sup>78</sup> Defined as "transactions between undertakings or between undertakings and public authorities which lead to the delivery of goods or the provision of services for remuneration" – article 2, of the Directive.

<sup>79</sup> Ordinance no. 809/2005, from the 9<sup>th</sup> of September.

<sup>80</sup> Article 8, no. 1, of the Annex from Decree-Law no. 269/98.

ized competence or specific competence<sup>81</sup>. This will be the competent forum in case there is a statement of objection and the proceeding becomes judicial, as well as the place to deliver the form.

In 1999, the Ministry of Justice created special registry services with exclusive jurisdiction for payment order procedures in Lisbon and Oporto, for their respective territorial jurisdiction<sup>82</sup>. Almost a decade later, a general registry was installed<sup>83</sup>, with national jurisdiction over payment order procedures<sup>84</sup>, called “National Desk for Payment Order Procedures” (BNI) [*Balcão Nacional de Injunções*]. Oporto and Lisbon registries worked until the 31<sup>st</sup> of May, 2008<sup>85</sup>. BNI is today the general registry with exclusive national jurisdiction for this electronic procedure. It is located in Oporto and only receives forms electronically – it receives directly those that are sent over the Internet, and indirectly those that are delivered in registries over the country, since the information of those forms is introduced in the computer application where it is received. Still, whenever the creditor presents a statement of objection, the proceeding is presented to a judge and gains judicial nature, following the rules of the small civil claims procedure<sup>86</sup>; in such case, the court territorially competent may be one of the two previously addressed.

At first, the form could only be personally presented in paper, or sent by fax or regular mail in that format, at the competent registries referred above<sup>87</sup>. Later on<sup>88</sup>, it became also presentable in electronic file (cd, cd-rom, floppy disk, pen-drive) at the same registries, as well as the now extinct registries with exclusive jurisdiction for payment order procedures in Lisbon and Oporto, and today BNI. However, the form may only be delivered in person or by regular mail in these formats (paper and electronic) when the creditor is not represented by a lawyer or solicitor. In fact, in 2008<sup>89</sup>, the electronic delivery via Citius became compulsory for lawyers and solicitors. The BNI is always the competent forum for the procedure. Thus all information on the *iter*

<sup>81</sup> No. 2, of said normative. For further detail, see section 1.

<sup>82</sup> Ordinance no. 433/99, from the 16<sup>th</sup> of June.

<sup>83</sup> Ordinance no. 433/99 was later amended (overruled, rather) by Ordinance no. 220-A/2008, from the 4<sup>th</sup> of March (in compliance to article 8, no. 4, of the Annex of Decree-law no. 169/98).

<sup>84</sup> See article 3.

<sup>85</sup> See article 4.

<sup>86</sup> Also ruled by Decree-Law no. 269/98.

<sup>87</sup> The registry of the court from the place where the underlying obligation should have taken place, or the place of the debtor's address), in accordance to Decree-law no. 269/98 (article 8 of the Annex).

<sup>88</sup> By means of article 1, of Ordinance no. 809/2005, from the 9<sup>th</sup> of September.

<sup>89</sup> By means of Decree-Law no. 34/2008, from the 26<sup>th</sup> of February, which amended article 19, no. 1, of the Annex of Decree-Law no. 269/98.

*processualis* became accessible online, by the Citius platform, in a way that the enforceable title within may also be created, and used electronically if needed.

### **The BNI platform: *Citius-Small Claims Procedure***

Citius-Small Claims Procedure allows lodging a small claim procedure request, payment of court fees and electronic procedure for that specific registry (BNI) since 2008. It specifically was developed by a team from court clerks and registrars within the DGPJ-ITIJ in order to: (1) lodge the request electronically through the internet, at the website <http://citius.tribunaisnet.mj.pt>, by form or computer file; (2) electronic payment of court fees by ATM or home banking; (3) full electronic procedure of the payment order by BNI; (4) electronic remittance of the payment order to the competent court, if a statement of objection is lodged by the debtor; (5) send warnings by e-mails to the creditor, in order to fully accompany the procedure; (6) creation of an enforceable title that makes it possible to start an enforcement procedure.

The electronic application working at this registry is in VBNet format. The development team, formed by court clerks, was also different from the H@bilus one, though under the wing of DGAJ and afterwards ITIJ. It is different from Citius-H@bilus, even though both interact. It has a centralised server, a specific application for writs of notice, and to deal exclusively with the electronic procedure. Citius-Small Claims Procedure connects to Citius-Web to allow lawyers to lodge payment order procedures, and access the virtual proceeding. It also connects with Citius-H@bilus when a statement of objection is lodged, and when it transits to an enforcement procedure. Connection also takes place with other entities and services, as seen in the following section.

## **4. The configuration of the system**

The Citius system is a product of many years of work from a team of registrars/court clerks under the aegis of the Ministry of Justice – more accurately, of DGAJ-ITIJ. It is also maintained by the Ministry of Justice, with the central server and database lodged at ITIJ, and the local ones at the respective courts – as said above, in a few cases, the server is physically lodged at ITIJ, though truly belonging to the respective court. Management and maintenance are also responsibilities of the bodies from the Ministry of Justice. The intervention of public entities such as the Bar Association or the Chamber of Solicitors is mostly restricted to the activity (more accurately, their *interaction* with Citius) of their professionals. Private entities have been hired by all these public entities to provide specific services, though in the case of the

Ministerial bodies their intervention has been reduced, thus strategically avoiding any dependence from private third parties.

The system's development was somewhat *sui generis*, as being a step ahead any legal framework. Finally, in 2007, Decree-Law no. 130/2007 cleared the path to the publication of Ordinance no. 593/2007, which finally introduced Citius to the civil justice system. Common civil procedure did not experience relevant changes with the arrival and consecration of ICT. The exception is the payment order procedure's regime, whose latest legal (*rectius*, procedural) amendments are tightly interwoven with the development of electronic tools and the creation of a sole forum (BNI) with a specific Citius application to deal with the procedure. In fact, the application's development team was deeply involved in the procedural novelties, thus truly adapting one to another.

But what does the system truly look like? Over the next pages we will try to offer a technical overview of its components, strengths, weaknesses, and future possibilities. Due to some restraints in accessing detailed technical information, this section is based on data collected and provided by Critical Software during the commissioned 2009 audit of the Citius system<sup>90</sup>. We therefore follow closely their final report. For further technical detail, see Critical Software, 2009: section 5<sup>91</sup>.

As seen above, a major contingency of Citius-H@bilus revolves around the use of Visual Basic 6 (VB6) for H@bilus and synchronisation services, since this technology has been discontinued by Microsoft: since April 2008 there were no more technical updates, vulnerability updates, or service packs of any kind, nor technical articles or support tools to support the technology. Therefore, the number of tools and libraries from sources other than Microsoft is also reduced, and the reduced interest in the user community substantiates in a reduced amount of technical information, such as tutorials, on the technology. This panorama made the audit company first and foremost recommend the migration of the existent software from VB6 to Visual Basic 2005 or Visual Basic.NET – the technology used for Citius Plus.

The Citius system is supported by the justice communication network, with contact points with external entities, whether to support some functionality, or for the use of certain actors, such as lawyers and solicitors. In addition to the applications described in the previous section, there are synchronization services that transfer information between the central services and the courts.

<sup>90</sup> Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. Accessed 30 March 2012, p. 22.

<sup>91</sup> Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. 30 March 2012, Accessed 30 March 2012. section 5.



#### 4.1. *H@bilus*

As said before (see section 3), the *H@bilus* application has a two-level architecture. It is therefore composed by two essential parts: (1) a client application, which implements the functional requirements and all the functionalities required to the presentation of contents and functionalities; (2) a management system database (SGBD<sup>92</sup>) that implements the support for the functionalities of creation, reading, updating, and data removal in a relational and structured way.

In this architecture, the *H@bilus* applications (one for each workspace) connect to a SGBD at the court (implemented in MS SQL Server 2005), to perform SQL queries in a database. As the audit highlighted, in this kind of architecture, the business application is installed at the specific user's workplace, although there may be administrator restrictions. Sensitive information circulates in the network path between workplace and respective database servers.

To exemplify how operations occur in the application *H@bilus*, Critical Software shows how three common operations occur: (1) login, (2) listing a profile, and (3) creating a proceeding. The process occurs as follows: (1) login: when a user fulfils the credentials to enter the system, a request by *H@bilus* to the court's database is executed, in order to determine if said user has the necessary credentials to login; (2) listing a profile: when a user requests a listing of his/her profile, *H@bilus* issues a SQL request to the local database, in order to determine if said user has the necessary permissions; if yes, a new SQL request to the database is issued, in order to transfer the profile data, which are then shown to this user; (3) creating a proceeding: when a user intends to create a new proceeding, he/she executes said functionality in the *H@bilus* application, which then determines if this user has the necessary permissions.

In the audit, Critical Software pointed out as its main strength the fact that this is a thick list application, which improves interactivity with the final user, since all interactions at graphic interface level are local. On the other hand, the control of the application that manages the business logic by the final user is a source of concern: the user may inspect and alter the application, although not easily, and this possibility becomes even more difficult if quick wins<sup>93</sup> are implemented. Another frailty concerns the connection of *H@bilus* to the SGBD, which occurs by remote web authentication. This implies that the authentication credentials at SGBD (such as code and configuration files) are present, freely or not, on the side of *H@bilus*, and can thus be controlled by the user.

<sup>92</sup> From the portuguese "sistema de gestão de base de dados".

<sup>93</sup> These were presented during the 2009 audit.



The main recommendation for H@bilus, as referred in the previous section (see section on Citius Plus), Critical Software suggested implementing three-level architecture. In three-level architecture the application is separated in three distinct levels: (1) presentation level (displays information connected to the services offered by the application; communicates with the application level to collect data and invoke actions); (2) application level (controls the application's functionality and does the logical processes to satisfy business requirements; communicates with the data level to insert, update, remove, and read information); (3) data level (consists mostly of database servers; all information is stored and maintained here; relations between data entities are usually established here).

Specifically for H@bilus, such a change would imply, according to the study from Critical Software, the maintenance of the SGBD, but H@bilus would be divided in two components: (1) *an application server*, for the application level – implementing the business rules, especially activities of security such as authentication, authorization and audit; (2) a *client application*, for the presentation level – which could be implemented with a *thin client*, making requests to the application server whenever the required operations are requested by the user, or with a simple browser that presents HTML pages served by the application server. The presentation application would be available at the users' workplace, whilst the application server would be available at the courts' infrastructure. Local SGBD would be withdrawn from the general access through the justice network, and only reachable by their court services.

With these changes, ICT technicians consider there would be an increase of security, since the attack surface of the SGBD is reduced, and maintenance, scalability, and software update production would be facilitated. For instance, the three operations analysed above would occur very differently in three-level architecture: (1) login (when a user fulfils the credentials to enter the system, a request by the H@bilus user to the court's application server is executed, in order to determine if said user has the necessary credentials to login; the application server communicates, by SQL with the SGBD to determine if the credentials are valid); (2) listing a profile (when a user requests a listing of his/her profile, H@bilus client application issues a request to the application server to request profile data; the application server communicates with the SGBD, in order to determine if said user has the necessary permissions; if yes, a new request to the SGBD is issued and the profile data is transferred to the H@bilus client application, which then shows the profile data to this user); (3) creating a proceeding (similar in both architectures).

#### 4.2. Central services: Citius.Net and TribNet

Central services are used by legal representatives (lawyers and solicitors) to send pleadings (with 3MB or less) and to access information from the pro-

ceedings by the internet. This action spares these actors of sending said documents in paper. For said actions, (1) these actors access **Citius.Net** (which has the role of an application server in this specific situation), where the operations necessary to send and to access pleadings, among other documents, are made available. Citius.Net then (2a) connects directly to the central SGBD to save/store sent pleadings, (2b) or connects to the court's SGBD for direct access and consultation. (3) Pleadings submitted through Citius.Net are saved in the central server, and afterwards are synchronised to the court of destination (as seen below). (4) Common citizens may also use the application **Trib-Net** (also working as an application server) to access public information concerning the justice system (e.g. public sales and bankruptcies) In this case, a connection to the SGBD is established to retrieve the information when the citizen accesses the application.

As said before (see section 2), unlike H@bilus, this is a three-level architecture, which elevates their security levels in what concerns access to information. Nonetheless, both applications still present a few drawbacks, according to the results of the 2009 audit: (1) both Citius.Net and TribNet are exposed to the internet and access the central SGBD for various actions, which implies that when application is compromised, such as an attack by *SQL injection*, the central server itself is immediately compromised as well, thus causing a generalised fail of Citius functionalities; (2) Citius.Net accesses directly to the courts SGBD to download files, which implies that if the application is compromised, the local SGBD at the court may also be compromised, which may spread to the whole court.

With this scenery in mind, the auditing company offered some specific solution. Considering most issues arise from the fact that the application server of Citius.Net directly accesses each court's SGBD, Critical Software suggested two new database servers, related by replication schemes. These would be natively supported by MS SQL Server 2005. Then TribNet and Citius.Net will only connect to the copy and never the central server. This proposition specifically connects to the ones considering synchronisation of information, as addressed below. The global outline of this new architecture can be better perceived with this image.

#### 4.3. *Synchronisation of information*

The users of H@bilus send requests using the application when they need to make asynchronous requests to other entities. These are kept in the SGBD of the specific court, and marked to be sent to the respective entity, such as a different court. In order to send said requests, there are periodical synchronisation services, which connect directly to the SGBD at stake (using SQL instructions) and transfer the necessary data. The headlines of the proceedings are also periodically synchronised to the Citius central server. The same

method is used to transfer pleadings inserted in the system by the Citius.Net portal, to their destination courts.

This audit has shown that the main strength at this level was that the communication between entities does take place (enabling flows of business information, such as headlines and data from proceedings, or information requests, between courts, centralised and with other entities), and is almost immediate, controlled, and possible to be audited. Nonetheless, the fact that the synchronisation services access directly the intervening SGBD may create a few disadvantages, such as (1) the existence of a *tight coupling*<sup>94</sup>; (2) the impossibility of establishing rules of business in data access, or high level mechanisms inherent to the same access, such as controlling permissions, and auditing operations – thus, if a sole component is compromised, the whole information system that supports Citius is easily compromised. Before these flaws, Critical Software proposed an architecture for the synchronisation between courts, and between courts and the central server. For instance, in order to reduce the level of connection between the components, thus achieving a loose coupling, an interface mediating the connections of the synchronising servers to the SGBD could be introduced.

According to the audit company, with this change, synchronization servers are always forced to use a known and well-defined at a Web Services server, interface every time they intend to access a data source. This allows (1) the introduction of an application layer (at the level of business rules) in the interconnection with entities such as the court and the central server; (2) and the introduction of mechanisms for control, authentication, and audit of relevant operations.

#### 4.4. *Communication*

##### 4.4.1. *Connections of H@bilus to other systems*

Since the users of H@bilus (court clerks and registrars) often need to communicate with entities external to their court, they use the functionalities that initiate communications with other entities in the following (4) manners: (1) direct connection to Web Services made available by other entities (such as the Chamber of Solicitors); (2) connection to Web Services made available by other entities by a central gateway of Web Services (such as the Bar Association); (3) connection to central Web Services (such as national researches); (4) direct connection to the central server (by SQL).

The current functionalities of H@bilus allow its users to access other entities in a fast and dematerialised way, but the 2009 audit found a few draw-

<sup>94</sup> I.e. the components that deal with data are strongly connected to them, as there is no defined interface that enables both parts to evolve separately with no need of synchronised updates/changes.

backs: (1) H@bilus accesses entities external to the court in the four said manners, which are very different, therefore, it is more difficult to establish policies of security or communication interfaces; (2) it is also difficult to implement security policies in the servers of external entities (e.g. to limit the IPs that can connect to the servers); (3) as seen before, establishing direct connections to the central SGBD involves the risk of compromising the whole info form the central server when the H@bilus application is compromised in a sole workplace; (4) it is difficult to centrally audit and control individual access of workplaces to external systems, since said connections are established directly from workplace to the external entity's server.

The auditing company suggested a unified model of access to external entities instead. Such a model is based on the mediation of communications by a central server of Web Services. To make a request to an external entity, H@bilus connects to the Web Services' central server to initiate the request, by the application server installed at the respective court. The central server then forwards the request to the entity of destiny, invoking the service at stake. This option is considered to be most advantageous by Critical Software, namely in terms of security, since: (1) communications from the H@bilus client (at the user's workplace) are restricted to the application server of each specific court; (2) the application server only communicates directly with the central server, hence it is not needed to know technical information from other entities; (3) external entities only need to receive external communications initiated from the central server, which reduces the surface of potential attacks to said servers.

#### 4.4.2. *Communication from external entities to Citius*

Communication for the exchange of information is frequent between external entities and Citius. Critical Software points out the three main ways of access of external entities to Citius: (1) access of an external entity to a web service of bankruptcies, through the internet; (2) access of the Chamber of Solicitors to a database (GatewayCS) lodged in the central SGBD; (3) access of criminal police forces to the Web Service, to lodge official reports. When the access is through a Web Service (internal or external through the internet), said services access the central SGBD to read and write the needed information.

As outlined in the audit report from 2009<sup>95</sup>, the integration of entities external to Citius enables a better interaction between entities for exchanging information on justice with the use of ICT. Notwithstanding, since entities external to the justice system access directly the central SGBD to read and write

<sup>95</sup> Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. Accessed 30 March 2012, p. 40 and ss.

information, if their software is compromised, the central SGBD may also be compromised. On the other hand, some external entities connect by internet to Web Services that access directly the central SGBD, which implies that, if the Web Service is compromised, the central server may also be immediately compromised, thus causing a generalised failure of some functionalities of the Citius system. In order to contain the control that external entities have of Citius, and also unify the access to the system, Critical Software suggested a new architecture, where all interactions would occur with the access of Web Services at central level. This would, nonetheless, imply a distinction between internal (from the justice network) and external accesses (by internet) to the Citius system. For that, a specific model was suggested: (1) internal access would be served by a Web Services server connected to the central server, in accordance to the previously said; (2) external access would be made available at a specific server (which would be exclusive, and different from the latter) connected to a replica of the central SGBD (once again, as addressed in the section of central services – Citius.Net and TribNet.

#### 4.5. Software updates

Citius is in constant update, so there is a system that distributes updates for new software versions, as in: (1) binary applications from H@bilus; (2) binary applications from synchronising services; (3) reference data; (4) sample documents. When the development team finishes a new software version, they put it in a windows share at an update server, to be distributed in the justice network, and simultaneously it updates a database lodged at the central SGBD with the last reference data. When the *SincGlobal.exe* service is executed (periodically) at the central servers, the most recent reference data are installed at the central database (*H@bilusGlobal*), and the *SincLocal* service (at each court) also updates their database with the latest reference data. The periodic service *SincLocal.exe* also has the task of downloading the last updates (binaries and auxiliary files) to a local repository from each court, for internal distribution. Finally, when users access the application, H@bilus checks for software updates at the court's repository, and downloads them to that workplace, thus completing the update process.

Software updates are indeed fast and easy for all intervenients, and since the update takes place at two levels (central/court) reduces congestion in comparison to a distribution centralised in a sole server. Still, some flaws were detected during the audit, such as (1) if the software distribution fails, the system may become completely or partially unavailable; (2) if the updates of binaries and database data are unsynchronised, the same may occur; (3) when various users at the same court initialize the update process simultaneously there a major traffic load on local network, and taking into account the court staff's strict work schedules this is likely to occur quite often.

In order to counteract the increased traffic load on local network, Critical Software suggested: (1) to make sure the network infrastructure is adapted to additional traffic load during the update times; (2) to implement a more *granulous* update system for H@bilus, which implies checking the software version at module level, instead of application level – thus a user would only need to make a specific update when a modulus was executed, and therefore distributing the update load for a wider period of time, and reducing traffic load (always making sure there is an analysis of any dependency between used modules our libraries); (3) to use utilities for compression of executable code, in order to reduce the size of executable files before they are compacted by generic utilities and transmitted by the network infrastructure; (4) to set the system software update policies to take place at a different time from the user's start-up system, or even at different periods during the day, in defined groups, thus reducing the traffic load on the network during the common update time. The audit nonetheless company highlighted that said changes will not be necessary if the general changes of architecture for H@bilus (a three-level architecture, with the inherent characteristics) are accepted.

## 5. The functioning of the system

### 5.1. *How to File a Payment Order Procedure*

The payment order procedure was conceived as a specific mechanism for the collection of debts arising from unpaid bills. It consists of a simplified pre-judicial procedure that allows for a swift enforceable title, without the intervention of a jurisdictional organ (in the case of unchallenged claims).

As mentioned before, the payment order procedure is limited to money claims up until 15.000 € for non-commercial transactions and has no value limitation for debts from commercial transactions<sup>96</sup>. A payment order can only be filled in paper when the creditor is not represented by a lawyer or solicitor. When the creditor is represented by a lawyer or solicitor, it is compulsory to deliver it electronically, via Citius.

The Citius is, thus, only accessible to the legal professionals. Lawyers can access Citius through a web portal (<http://citius.tribunaisnet.mj.pt>), using their user ID (professional email address) and password, and lodge the request electronically through the internet, at the website, by form or computer file. The recognition of the users is made through the digital certification, done by

<sup>96</sup> Defined as “transactions between undertakings or between undertakings and public authorities which lead to the delivery of goods or the provision of services for remuneration” – article 2, of the Directive.

means of PKI (Public Key Infrastructure), granting lawyers with the necessary digital signature that enables access to the Citius-H@bilus platform.

The user can file one single claim for an unlimited number of unpaid bills and can also file one single claim against more than one debtor. The user must indicate the name, address and fiscal number of the debtor, the type and reference of the unpaid bills that justify the request, the date of issuance, the maturity and the amount in debt, stating also the amount of interest due, and the competent court in case of statement of objection by the debtor. The amount of interests can be automatically calculated in the electronic form. In this phase and as long as debtor does not a defense, by means of a statement of objection, the user does not submit any documents supporting the claim.

With the delivery of the electronic form, the platform generates a unique identifying number, which allows for electronic payment of court fees by ATM or home banking. As seen below, the court fees in substantially lower than in traditional procedural cases.

By filling in this electronic form the creditor requests BNI to notify the debtor to pay, under penalty of said payment order becoming an enforceable title.

The procedure of the payment order by the BNI is fully electronic. Only the writ of notice to the debtor is sent by regular post. All notifications for lawyers are issued by email. If no objection is stated by the debtor, i.e in the case of unchallenged claims, an enforceable title that makes it possible to start an enforcement procedure is created, with absolutely no intervention of a judge.

If a statement of objection is lodged by the debtor or if it is not possible to notify the debtor, the proceeding must be presented to a judge and there is an electronic remittance of the payment order to the competent court. The statement of objection can be delivered either by paper, email or via Citius. Nonetheless, the statement of objection can only be lodged via Citius if the debtor is represented by a lawyer, since the platform is only accessible for legal professionals.

Once the electronic remittance of the payment order to the competent court occurs, a new judicial case is created. Thus, lawyers are no longer obliged to communicate with the court electronically. If they choose to do so, they will benefit from a reduction of the court fees (see below), will be able to track all the proceedings and will be notified by the court in the platform. If not, they are able to communicate with the court by paper, fax, email or regular mail. In short, only if both parts of the case (debtor and creditor) are represented by lawyers and only if both lawyers choose to communicate with the court electronically does the procedure, after the statement of objection, remain fully electronic.



## 5.2. Development Strategy and Incentives

In what concerns the use of ICT, the payment order procedure profits from a definitive advantage when compared to the standard civil procedure, and criminal procedure as well. Since its legal regime was modified simultaneously with ICT innovations, and with the direct intervention of the DGAJ-ITIJ team of development, its framework is remarkably – legally – accurate and adapted to the “tasks” of each actor (court clerk, registrar, lawyer) plays within.

The simplicity and speediness of this procedure poses as a true incentive to its use; nonetheless, the Government’s general strategy to attract plaintiffs and lawyers to the use of ICT was mostly monetary, i.e. by means of court fees. Not only fees for payment order procedures are substantially lower than for common civil procedures, the use of ICT started to be awarded with significant reductions.

This approach was used by the Ministry of Justice throughout different tenures to promote the payment order procedure, and also to convince lawyers to prefer electronic pleadings in all civil claims, thus promoting a global use of electronic pleadings and electronic procedure.

It was Decree-Law no. 324/2003, from the 27th of December, that introduced reductions to court fees on account of ICT use – thus changing a regime that was unaltered in such matters since 1996<sup>97</sup>. An amended article 15 came to foresee, in its no. 1, a reduction of 1/10, offered to parts lodging all pleadings electronically (“by e-mail or other means of electronic transmission”, stated the norm).

But it was the new Regulation of Court Fees<sup>98</sup>, from 2008, which brought definitive changes to the regime. This new diploma maintained the incentives to the use of electronic lodging, offering reduced value fees to users.

For procedures starting after the 20th of April 2009, when a pleading party lodges the first (or only) pleading electronically (i.e. using the recently introduced Citius), the court fee could be reduced in 25% (ie. due payment of 75% from whole value)<sup>99</sup>. In the end of the procedure, if the pleading party lodged all pleadings electronically, 1/3 of the value paid was converted in prepayment of charges<sup>100</sup>. Nonetheless, in the situations where the electronic pleading is compulsory<sup>101</sup>, the discount foreseen in article 6, no. 3, from the Regulation of Court Fees, will not take place.

<sup>97</sup> Decree-Law no. 224-A/96, from the 26th of November.

<sup>98</sup> Introduced by Decree-Law no. 34/2008, from the 26th of February.

<sup>99</sup> This discount occurred in obedience to Decree-Law no. 34/2008, from the 26th of February, with the amendments from Law no. 64-A/2008, from the 31st of December (article 156), and the Regulation of Court Fees (article 6, no. 3).

<sup>100</sup> As stipulated in Ordinance no. 1417/2003, from the 30th of December (article 22, no. 5).

<sup>101</sup> As regulated by Law no. 64-A/2008, from the 31st of December.



This general reduction took place when an alternative to electronic pleading existed<sup>102</sup>; in the other cases, such an incentive naturally ceases to be needed. The cases at stake comprised (1) the lodging of a payment order procedure pleading<sup>103</sup>, and (2) the lodging of an enforcement procedure pleading<sup>104</sup>, in both cases when the parties were legally represented.

On the other hand, the payment order procedure regime possesses specific regulation on this subject matter. As a matter of fact, in the case of payment order procedures, when the request was lodged electronically by the legal representative of the creditor party, the court fee value had a 50% reduction, as stipulated in article 6, no. 4, from the Regulation of Court Fees.

To have an idea of the values at stake, the payment order procedure is subjected to the following court fees, in accordance to articles 6, no.s 3 and 4, from the Regulation of Court Fees: (1) for values up to € 5,000, a fee of ½ uc (unit of account for court fees)<sup>105</sup>; (2) for values from € 5,000.01 to € 15,000, a fee of 1 uc; (3) for values higher than € 15,000.01, a fee of 1 ½ uc.

Summing up, the Regulation of Court Fees foresaw that (1) for general civil claims the part lodging a pleading by electronic means would automatically benefit from a 25% value reduction; furthermore, if all pleadings were lodged electronically, 1/3 of the paid fee was considered prepayment of charges; (2) specifically for payment order procedures, electronic lodging would imply a reduction of 50%; in case the proceeding became a small civil claim procedure (in the terms seen in section 2), the paid value would be discounted.

<sup>102</sup> See Law no. 64-A/2008, from the 31<sup>st</sup> of December.

<sup>103</sup> See articles 810, no. s 10 and 11, from the Code of Civil Procedure, with the amendments provided by Decree-Law no. 226/2008, from the 20<sup>th</sup> of November, and articles 2 and 3, from Ordinance no. 331-B/2009, from the 30<sup>th</sup> of March – which entered into force in the 31<sup>st</sup> of May 2009 and applied to procedures starting from said date. Notice how these norms basically transpose to the code of civil procedure article 3, no. s 1 and 4, from Decree-Law no. 200/2003, from the 10<sup>th</sup> of September, which was then revoked by article 21, §d), of Decree-Law no. 226/2008. Article 810, Code of Civil Procedure. Enforcement procedure pleading [...] Parts nominating a legal representative must lodge the enforcement pleading electronically, as defined in the previous paragraph. 11 - The party that, being subjected to lodging the enforcement pleading electronically, submits the pleading in paper is subjected to a fine, valued at ½ uc, unless states and proves the just impediment, in accordance with article 146.

<sup>104</sup> Submitting the payment procedure pleading when the creditor has a legal representative (see article 19, from the Annex to Decree-Law no. 269/98, from the 1<sup>st</sup> of March, with the amendments of article 10, from Decree-Law no. 34/2008, from the 26<sup>th</sup> of February. Article 19, lodging the payment procedure pleading, 1 - A lawyer or solicitor lodging a payment order procedure must do so electronically. 2 - The creditor, represented by a lawyer or solicitor, who fails to comply with the provisions of the preceding paragraph, is subjected to the immediate payment of a fine of ½ uc, unless states and proves the just impediment, in accordance with article 146. from the Code of Civil Procedure.

<sup>105</sup> “UC” is the acronym of the “unit of account” for court fees. Conventionally ¼ of the legal minimum wage, it is updated every three years, and is currently set at € 102.

Over the last couple of years, with the daily use of Citius – now virtually compulsory for all legal actors –, *stimula* for external use became less and less important. Recently, Decree-Law no. 52/2011, from the 13th of April, which amended the Regulation of Court Fees, came to significantly reduce the aforementioned benefits: (1) for civil procedures starting after the 13th of May 2011, only a part lodging all pleadings electronically benefits from a discount of 10%, and not 25% as before, on due court fees; (2) the reduction of 50% foreseen for payment order procedures is also eliminated for such procedures after that date. If the pleading part from a civil claim procedure lodges a subsequent pleading in paper after being granted reduced court fees for that proceeding, immediately loses the right to the discount and must pay back its value, being subjected to sanctions (i.e., a fine of between 1 uc and 5 uc) in case of violation of such rule.

In what specifically concerns the payment order procedure, since the use of Citius-BNI became compulsory for lawyers, further incentives to the use of ICT became virtually useless – hence the recent end to the reduction of court fees by the use of electronic pleading.

Also notice how the introduction of the 50% court fee reduction (April 2009) came *after* electronic pleading became compulsory for lawyers and Citius-BNI was introduced (March 2008), in what appears to be a somewhat misplaced strategy. One may say that, for payment order procedures, the strongest incentives for its use, as said above, are its (1) speediness (there is a pre-judicial procedure that avoids judicial intervention; if there is no opposition from the debtor, an enforcement title is created in a very short waiting time), (2) procedural simplification (there is a user-friendly pleading form that is filled in directly in the Citius-BNI platform), (3) and reduced court fees in comparison to civil procedure – even without reductions.

The factor of procedural simplification, connected to the use of an electronic platform and a fully-dematerialised procedure, appears to be of high importance to users: the effect of this governmental strategy is evident in the demand of payment order procedures, with an accentuated growth tendency in 2008, coinciding with the installation of Citius-BNI (and not with the introduction of a 50% court fee reduction, which started in April 2009). Comparing the former payment order procedure application to Citius-BNI, a major upgrade is evident, as the former was deemed “inaccurate” and “outdated” by its users: in the words of another interviewee, “it was definitely frozen in time”.

One may say that, since the use of ICT was by then compulsory for lawyers, and they are the main source of pleadings, a use incentive by court fees’ discount was undoubtedly less important than the other benefits. Effects in the demand is not visible in the figures: the high growth felt in 2008 fell back in 2009, and has been descending since that year, even if maintaining high demand figures.

### 5.3. *Impact of Citius on Users (Roles and Satisfaction)*

The implementation of an electronic procedure brought significant changes to the daily practice of all judicial actors, and is patent in the everyday life of a court of law, after an initial period adaptation. Both positive and negative aspects of Citius were at the time more extreme, as the habituation process was still taking place.

In what concerns the courts of law (in this case, meaning judges and public prosecutors), the use of Citius became compulsory after around one year of trial, when intensive training courses were offered to those officers. Unlike what happened to court clerks, which were not offered such possibility; however, these officers had the advantage of having an application exclusively designed for their activity, which offers them, in addition, an array of example-forms for the various acts to be undertaken, as well as an area for continuous training and problem-solving (*H@bilândia*).

Several positive aspects were immediately highlighted by users, of which the most unanimous were: (1) a simplified control of pending procedures waiting a decision, and a timely action on procedural acts by the registry; (2) a simplification of the work at the registry; (3) a simplification of the access to procedural acts by lawyers<sup>106</sup>.

As major pitfalls, security issues and work form adaptations were the highest source of concerns back in 2009. The Judges' Association denounced that, six months after Citius-Judges became compulsory, several judges reported health problems (posture, vision), which users directly connected to the systematic use of Citius (which meant using the computer almost all time), and 79% of consulted judges considered there was an increase (up to 114% in some cases) in the time spent with daily tasks; this increase was mostly due to inadequate equipment, slow actions (due to excess traffic, or the more prosaic multiplication of actions to fulfil a task otherwise simple. For instance, the case of an electronic signature, for which five different actions must take place, instead of a simple – handmade – gesture<sup>107</sup>.

In terms of security<sup>108</sup>, 60% of the judges consulted by their trade union association back in 2009 did not trust Citius in terms of liability and security<sup>109</sup>.

<sup>106</sup> ASJP (2009) Primeiros Seis Meses de Utilização do Citius. Inquérito de Avaliação à Funcionalidade e Eficiência. Relatório Preliminar. [http://72.29.69.19/~ejal/images/stories/arquivos/artigos/relatorio\\_preliminar\\_citius.pdf](http://72.29.69.19/~ejal/images/stories/arquivos/artigos/relatorio_preliminar_citius.pdf). Accessed 30 March 2012.

<sup>107</sup> ASJP (2009) Primeiros Seis Meses de Utilização do Citius. Inquérito de Avaliação à Funcionalidade e Eficiência. Relatório Preliminar. [http://72.29.69.19/~ejal/images/stories/arquivos/artigos/relatorio\\_preliminar\\_citius.pdf](http://72.29.69.19/~ejal/images/stories/arquivos/artigos/relatorio_preliminar_citius.pdf). Accessed 30 March 2012.

<sup>108</sup> For technical detail on the subject of security, see section 4.

<sup>109</sup> ASJP (2009) Primeiros Seis Meses de Utilização do Citius. Inquérito de Avaliação à Funcionalidade e Eficiência. Relatório Preliminar. [http://72.29.69.19/~ejal/images/stories/arquivos/artigos/relatorio\\_preliminar\\_citius.pdf](http://72.29.69.19/~ejal/images/stories/arquivos/artigos/relatorio_preliminar_citius.pdf). Accessed 30 March 2012.

However, the High Judicial Council (Communication no. 2/2009) and the Public Prosecution Office (Communication from the 2<sup>nd</sup> of March, 2009) considered the system to be “safe enough”, having both entities cooperated with the Ministry of Justice and being provided guarantees deemed as sufficient; and the Bar Association officially highlighted “[the Bar itself] guarantees the safety of the system, ensuring it is not possible to alter pleadings by anyone without said changes being thoroughly registered”<sup>110</sup>.

In spite of common worries about security still existing among users, it appears the responsible entities officially maintain their trust in the system; minor breach reports conveyed by professional associations and media, and a bluntly negative audit in terms of security<sup>111</sup> (Critical Software, 2009 and 2010<sup>112</sup>) are overlooked as light and unavoidable in all systems, especially considering civil procedure is by nature public.

A few of the current conception problems that affect the users’ daily practice are maintained since the introduction in 2009, such as (1) difficulties in consulting the dematerialised proceeding (i.e. opening several pdf documents is considered by some to more complicated than browse a sole paper file); (2) impossibility of consulting the proceeding during trial audiences; (3) impossibility of working in Citius outside the court premises (i.e. taking work home to deal with more complex cases with added time is now impossible); (4) an incipient word processor (that does not allow complex formatting, footnotes, grammar and spell check, among other flaws); (5) not so timely technical support<sup>113</sup>.

<sup>110</sup> OA. (2009.) Ordem garante segurança do Citius. Boletim da Ordem dos Advoga, no. 51. Lisbon: Ordem dos Advogados (pp. 12-14).

<sup>111</sup> Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. Accessed 30 March 2012, and Critical Software (2010) ACitius. Relatório de Auditoria – Aditamento. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-2010-RPT-02371-aditamento-auditoria-acitius.pdf>. Accessed 30 March 2012.

<sup>112</sup> See section 5.

<sup>113</sup> For further detail, see published stances and evaluation reports such as ASJP (2009) Primeiros Seis Meses de Utilização do Citius. Inquérito de Avaliação à Funcionalidade e Eficiência. Relatório Preliminar. [http://72.29.69.19/~ejal/images/stories/arquivos/artigos/relatorio\\_preliminar\\_citius.pdf](http://72.29.69.19/~ejal/images/stories/arquivos/artigos/relatorio_preliminar_citius.pdf). Accessed 30 March 2012; OA. (2009.) Ordem garante segurança do Citius. Boletim da Ordem dos Advoga, no. 51. Lisbon: Ordem dos Advogados (pp. 12-14); Vidal, R. M., J. F. e Cunha, M. P. Monteiro, J. P. Faria, L. Amaral, P. C. Henriques and P. Gomes et al. (2009.) Relatório final comparativo e valorativo sobre os métodos de trabalho resultantes da introdução do processo electrónico do projecto Citius e da utilização das aplicações informáticas Citius e Habilus. Oporto: FEUP/ITIJ; Pereira, J., R. Timóteo. R (2010.) ‘A criação e gestão do sistema informático dos Tribunais na computação das Tecnologias da Informação.’ Proceedings of the “VII Encontro Anual do Conselho Superior da Magistratura”. [http://www.csm.org.pt/ficheiros/eventos/7encontroscsm\\_joelpereira.pdf](http://www.csm.org.pt/ficheiros/eventos/7encontroscsm_joelpereira.pdf), Accessed 30 March 2012; Marçal, A. (2011.) ‘Informatização da “Justiça”’. Proceedings of the ‘Conferência informatização da justiça: problemas e soluções’. Sintra: SFJ (fac simile).

On a more technical level, it was also noticed that the Citius applications were not fully communicating with one another, creating several difficulties in everyday practice, such as: (1) feeble import-export of data (in terms of court fees, for instance); (2) the judge/public prosecutor unable to know if his/her order is actually enacted by the registry; (3) the judge/public prosecutor unable to know when the proceeding was last accessed and altered; (4) the judge/public prosecutor does not qualify his/her own pleading or judicial order, and so the qualification by the court clerk may be incorrect – if this possibility existed in their Citius application, the court clerk would be freed from this task, and the possibility of flawed classification would be eliminated<sup>114</sup>.

### 5.3.1. *Changes in daily activity*

Changes in daily tasks undergone by the different actors can be classified as: (1) automation – tasks that no longer require human intervention; (2) process reshaping – procedural flow from the tasks operated by different actors is altered by new functionalities of the system; (3) redistribution of competences and intervention – task distribution altered by new functionalities of the system.

As evaluated in a mid-2009 diagnosis process (demanded by the DGPIJ to a private consultant), Citius had a high impact in terms of redistribution of competences in what concerns the starting pleading and subsequent pleadings (excluding trial); a similar degree of changes was observed in terms of automation and process reshaping for the same procedural moments. The trial phase was one where Citius had lowest impact, mostly because it does not involve much written documents; nonetheless, light changes in terms of automation and process reshaping were still detected<sup>115</sup>.

In terms of timesaving characteristics, this evaluation detected a net gain of up to 19 days per procedure. Most was saved between phases and tasks, by reducing waiting time while one task is completed and the following started; in terms of beneficiaries, the majority of time gain was profited by court clerks, while both pleading parts and judges experienced added time for most of their tasks<sup>116</sup>. This evaluation meets the dissatisfaction in terms of new

<sup>114</sup> For further detail, see for instance Marçal, A. (2011.) ‘Informatização da “Justiça”’. Proceedings of the ‘Conferência informatização da justiça: problemas e soluções’. Sintra: SFJ (fac simile) and Vidal, R. M., J. F. e Cunha, M. P. Monteiro, J. P. Faria, L. Amaral, P. C. Henriques and P. Gomes et al. (2009.) Relatório final comparativo e valorativo sobre os métodos de trabalho resultantes da introdução do processo electrónico do projecto Citius e da utilização das aplicações informáticas Citius e Habilus. Oporto: FEUP/ITIJ.

<sup>115</sup> KPMG (2009) Diagnóstico à eficiência e eficácia processual nos tribunais judiciais antes e após implementação do suporte electrónico [http://72.29.69.19/~ejal/images/stories/arquivos/artigos/KPMG\\_Diagnostico.pdf](http://72.29.69.19/~ejal/images/stories/arquivos/artigos/KPMG_Diagnostico.pdf). Accessed 30 March 2012.

<sup>116</sup> For further detail, see KPMG (2009) Diagnóstico à eficiência e eficácia processual nos

time-consuming tasks that was conveyed by judges, as reported above, and shows how the system was truly developed with the work of the registry as matrix.

Applications were indeed designed *by* and *for* court clerks and registrars. As a drawback, this design makes Citius-Judges and Citius-Public Prosecution less adapted to these professionals' activities. During fieldwork, the dissatisfaction of some actors was noted, which consider that the applications, as based on H@bilus, are still more appropriate to the work of the registry than to the work of the judge and the public prosecutor. Nonetheless, some functionalities have more recently been adapted to the judges and public prosecutors' activities, in accordance to a series of requests and suggestions collected by the Ministry of Justice. These opinions were collected either through the contacts of the Citius helpdesk and direct contact "with hundreds of judges and public prosecutors" [ministerial communication].

Since the implementation of Citius, practice in some registries has been showing an evolution towards specialisation, profiting both from the use of ICT in an increasingly dematerialised process, and the surrounding climate of change. Court clerks from a registry observed during fieldwork divided tasks among them, so that one individual or a small group will deal specifically with one, or few, similar acts – thus specialising in specific tasks. In this registry, teams specialised in precise acts (e.g. writs of summons and writs of notice, trials, etc.) operate a strict protocol of sequential actions, and the final result is a more efficient registry, resembling an assembly line of administrative and procedural acts that make a judicial proceeding. Nonetheless, said changes are not widely spread. Furthermore, they are not grounded on legal norms: not only these registries walk ahead of the others, they run ahead of written law, thus making their practice *de facto* admirable but in practice not legally grounded.

All acts are made within the digital proceeding lodged in the Citius platform. In principle, both proceedings – digital and conventional/paper – are equal, one and the same: (electronic) pleadings and other procedural documents are printed; authentic documentation added as proof is scanned. Still, some minor administrative acts (such as re-schedulings) are considered by various actors to be unnecessary in paper, thus making the digital version more complete. This practice, unveiled during fieldwork, is not homogenous, though.

The decision (*to print or not to print*) belongs to each judicial actor, although the Ministry of Justice (DGAJ-ITIJ) suggests that the following documents only exist in the digital proceeding: minor pleadings and other docu-



mentation, related to work at the registry and similar doings, delivered by lawyers through the Citius platform; minor judicial orders related to work at the registry and similar doings, delivered by judges and public prosecutors; acts of court clerks that do not request the signature of the parties, legal representatives, or third persons. The aim is that the paper proceeding becomes smaller, containing only the major pleadings and documents with odd formats/objects that cannot be digitalised, as well as the pleadings and documents considered to be most important for the judge's decision. A major goal is that the paper proceeding becomes easier to use, with coloured markers that indicate the most important pleadings of the proceeding<sup>117</sup>.

Another finding was that since some actors do not fully trust ICT, there is a practice – more common in the first years – of having everything in paper form “just in case something happens”, i.e. in an attempt to protect both the information within the proceeding and the solid proof of one's own actions and work.

Furthermore, since parties need a paper proceeding to consult, when not accompanied by a lawyer, a total “dematerialisation” appears to be yet distant. During fieldwork, a solution for this specific matter was advanced: to provide a computer screen at the attending area so that parties are able to consult the digital proceeding *in loco*.

## 6. Discussion and Evaluation

The Portuguese case poses as an example of a process led and controlled by the executive, with ministerial bodies holding the monopoly of ICT implementation in justice. The judiciary keeps either an advisory (Higher Judicial Council and Public Prosecution General) and/or an instrumental role in what concerns judicial data and, in the case of Bar Professionals, the applications necessary for their actors' activity. An actual strengthening of the Higher Judicial Council and Public Prosecution General's intervention is still a controversial topic. Intervention of external entities, especially private, is scarce and carefully measured; it mostly poses as an option for the associations of Bar professionals, and within the *accessory* systems from lawyers and solicitors.

While H@bilus has not encountered visible resistance from court clerks and registrars, the same cannot be said about the Citius applications for judges and public prosecutors. The first were created and developed by the same professionals that were meant to use it, which poses as a strong advantage in terms of both adequacy and accession. In terms of daily use, Citius-Judges and

<sup>117</sup> The markers follow the matrix shown in the annex.

Citius-Public Prosecution appear to be less adapted to these professionals' activities than Citius-H@bilus, but the feebleness of participation of representatives of these professional bodies cannot be negligible in their process of acceptance/mistrust. Security concerns and consequent mistrust also appear to be current among judges and public prosecutors, mostly in the beginning, but still with occasional outbursts. Nonetheless, their High Councils, together with the Bar Association, kept a supportive and trustworthy position towards Citius.

The different degree of participation of the various judicial actors in the building of ICT tools to the justice systems seems to play a significant role on the implementation of such tools by their users. Since the H@bilus was specifically addressed and conceived by court clerks it had an undisputed acceptance among them. The lack of participation of judges and public prosecutors led to, at least initially, to its rejection. Lawyers, on the other hand, as mentioned before, were "forced" to adapt to the new circumstances, mainly through the benefits in court fees.

Another criticism concerning the low participation in building the system to be pointed out relates to the limited exchange of information on the technological functioning of the system. This resulted in an excessive reliance of a small team of experts to perform all the technological updates needed.

Still, the benefits brought by Citius, directly and indirectly, in terms of efficiency and effectiveness of the judicial procedure appear to be currently indisputable.

Developing the payment order procedure shows how a purpose of functional simplification resulted in a solid system. The payment order procedure poses as an example of functional simplification within the Portuguese civil justice system, at various levels. Back in the 90s, "solely" on account of a simplified procedure: a non-jurisdictional nature (up until there is no opposition to the claim) and a reduced *iter processualis* that provides an enforcement title on a short period of time; more recently, the installation of the BNI simplified the jurisdictional building of competences with clear benefits for all intervenients, thus providing for both centralization and staff specialization. Such an evolution was made possible by the ductility of its legal framework, whose last amendments have been made simultaneously and in direct connection to Citius-BNI, and by the same development team. This integrated development process originated a set of procedural rules and a computer application that work as true symbionts, all made real in a tailored registry.

With Citius, as well as its ancestors GPCível and H@bilus, technological developments came before the actual legal change – at first even in spite of no legal change. H@bilus was installed in all registries by 2005, but the Citius system itself, from which Citius-H@bilus is a core application, was only legally introduced two years later. The absence of a pre-existing insti-



tutional and legal framework did not seem to cause major contingencies, mostly due to the centralization of competences in ministerial bodies; however, the recent clarification of the competence distribution between DGAJ and ITIJ, strengthening the latter's role, made decision-making and actual implementation swifter. Light legal provisions in what concerns system specifications, on the other hand, mean that adaptations and reforms are not bared by an over-specific framework. As for the absence of an adapted set of procedural norms, it seems that the case of civil procedure is somewhat of a blunder, with a feasible set of amendments in order to simplify the *iter processualis* of its various forms of process that did not take place. Further profiting from dematerialization, in terms of procedural simplification, is the case of the payment order procedure, but not traditional forms of process.

In terms of development, the Citius system, as it currently exists, does not have much room to evolve due to technological constrictions, since it is based on an outdated technology. Nonetheless, Citius Plus came to respond to such contingency, and could be expanded to all courts from the civil jurisdiction. A common platform for the judiciary, as foreseen in the Action Plan for Justice in the Information Society, however, poses as a more realistic future for ICT systems in justice. Either way, in terms of institutional and normative framework, current legislation seems permeable enough to (allow) change. It has been proven in the past that technological evolution does not actually need to be preceded by a – strong – building of specific ruling institutions and laws. Norms describing how the system must operate are not detailed, which may also give latitude to further changes.

## 7. Method

The Portuguese team carried out the research through a combination of qualitative and quantitative methods, in accordance to the outlined methodological framework, here adapted to national specificities. The starting point was the collection and study of literature, comprising relevant doctrine and studies (national and international) and legislation (national and European). This documental analysis was deepened by means of collection and statistical treatment of data concerning the payment order procedure's use, several interviews to key actors (including ministerial officers, court clerks, registrars, judges and public prosecutors), registry observation, and a focus group with experts (gathering practitioners, academics and researchers).

## 8. Acronyms

BNI	Balcão Nacional de Injunções	National Desk for Payment Order Procedures
Citius	Programa de Gestão Processual de terceira geração	Third generation Procedural Management Program
Citius BNI	Aplicação para o Balcão Nacional de Injunções	Computer application for civil small claims procedure
Citius Plus	Programa de Gestão Processual de terceira geração	Fourth generation Procedural Management Program
Citius-H@bilus	Aplicação para funcionários judiciais	Computer application for court staff
Citius-Judges	Aplicação para magistrados judiciais	Computer application for judges
Citius-Net	Aplicação para advogados e solicitadores	Computer application for lawyers and solicitors
Citius-Public Prosecution	Aplicação para magistrados do Ministério Público	Computer application for public prosecutors
CPEE	Comissão para a Eficácia das Execuções	Commission for the Efficacy of the Enforcement Procedure
CS	Câmara dos Solicitadores	Chamber of Solicitors
CSM	Conselho Superior da Magistratura	Higher Judicial Council
DGAJ	Direcção-Geral de Administração da Justiça	Directorate-General of Justice Administration
DGPJ	Direcção-Geral da Política de Justiça	Directorate-General of Justice Policies
GPCível	Programa de Gestão Processual Civil de primeira geração	First generation Civil Procedural Management Program
GPESE/SISAAE	Gestão Processual de Escritórios dos Solicitadores de Execução/Sistema Informático de Suporte à Actividade do Agente de Execução	Procedural Management for the Offices of Enforcement Solicitors/Support Computer System for the Activity of the Enforcement Agent
H@bilus	Programa de Gestão Processual de segunda geração	Second generation Procedural Management Program
ICT	Tecnologias de Informação e Comunicação	Information and Communication Technology
IGFIJ	Instituto de Gestão Financeira e de Infra-Estruturas da Justiça	Institute of Justice Statistics and Informatics
ITIJ	Instituto das Tecnologias de Informação na Justiça	Institute of Information Technologies in Justice

LOFTJ	Lei de Organização e Funcionamento dos Tribunais Judiciais	Act on the organization and functioning of judicial courts
OA	Ordem dos Advogados	Bar Association
PGR	Procuradoria-Geral da República	Public Prosecution General
SGBD	Sistema de Gestão de Base de Dados	Management system database
SINOA	Sistema de Informação Nacional da Ordem dos Advogados	National Information System from the Bar Association
SITAF	Sistema de Informação dos Tribunais Administrativos e Fiscais	Procedural Management Program for Administrative and Tax Courts
TribNet	Aplicação complementar de acesso ao público	Complementary application for access to the general public

## 9. Annex

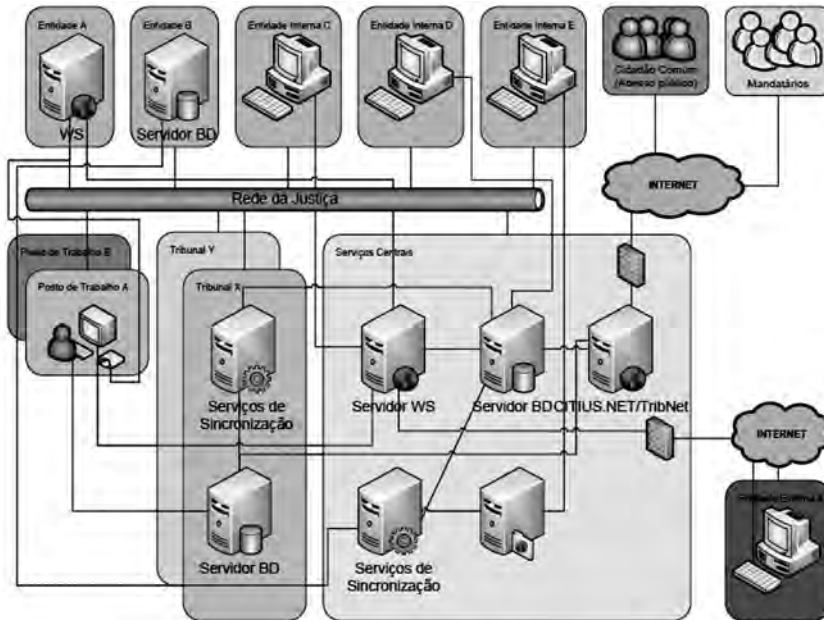
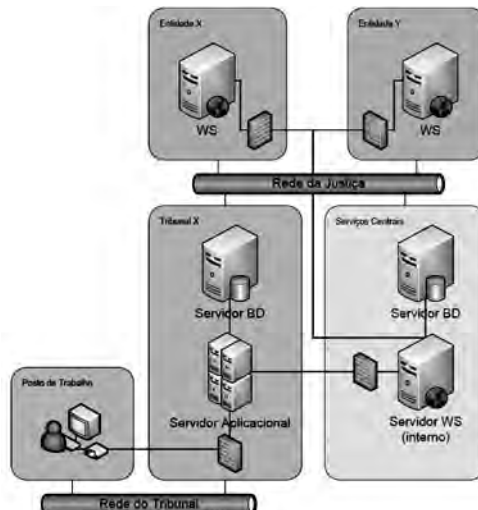
### 9.1. Section 1

#### *Power assignment: the outline (1&2)*

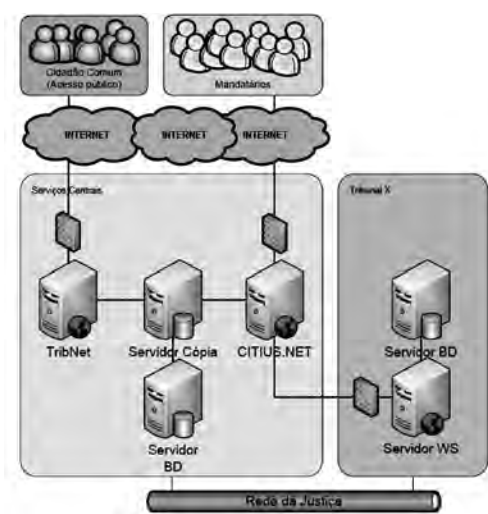
broad policy conception	development	implementation and enforcement	management and supervision	advisory	judicial data management	training	auxiliary systems
DGPJ IGFJ	DGAJ ITU	DGAJ ITU	CSM PGR DGPJ CCGDRSJ CAPCP	CSM PGR OA CSM CCGDRSJ CAPCP	CSM PGR DGPJ CCGDRSJ	DGPJ	OA CS

executive	DGAJ		development	implementation and enforcement	management and supervision				
	ITU		development	implementation and enforcement					
	DGPJ	broad policy conception			management and supervision		judicial data management	training	
	IGRG	broad policy conception							
judiciary	CSM				management and supervision	advisory	judicial data management		
	PGR				management and supervision	advisory	judicial data management		
	OA					advisory			auxiliary systems
	CS					advisory			auxiliary systems
advisory commissions	CAPCP				management and supervision	advisory			
	CCGDRSJ				management and supervision	advisory	judicial data management		

## 9.2. Section 2

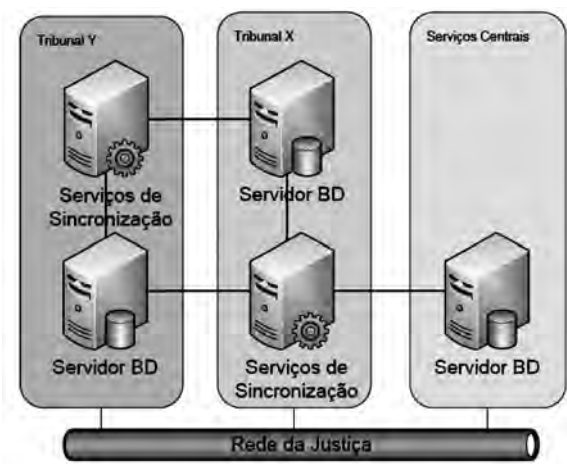
*Citius system: outline**Critical Software, 2009: 33**Use of central services**Critical Software, 2009: 42*

Central services: suggested 3-level architecture



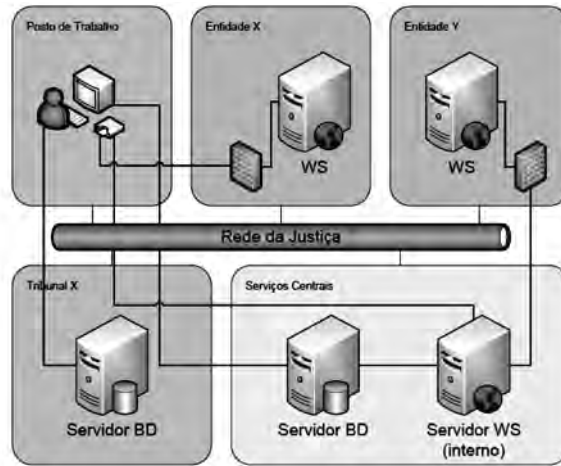
Critical Software, 2009: 45

Synchronisation of information



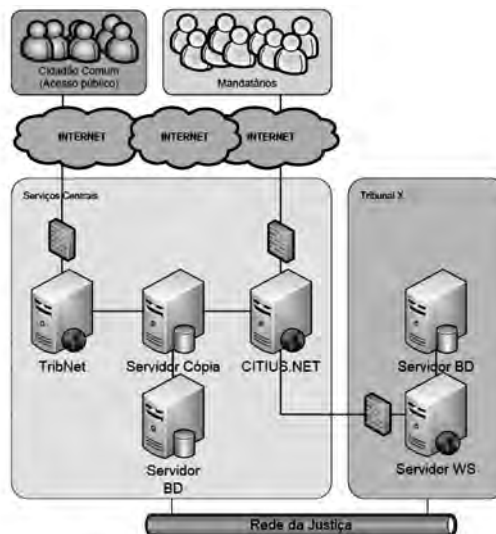
Critical Software, 2009: 39

*Communication between H@bilus and other systems*



*Critical Software, 2009: 41*

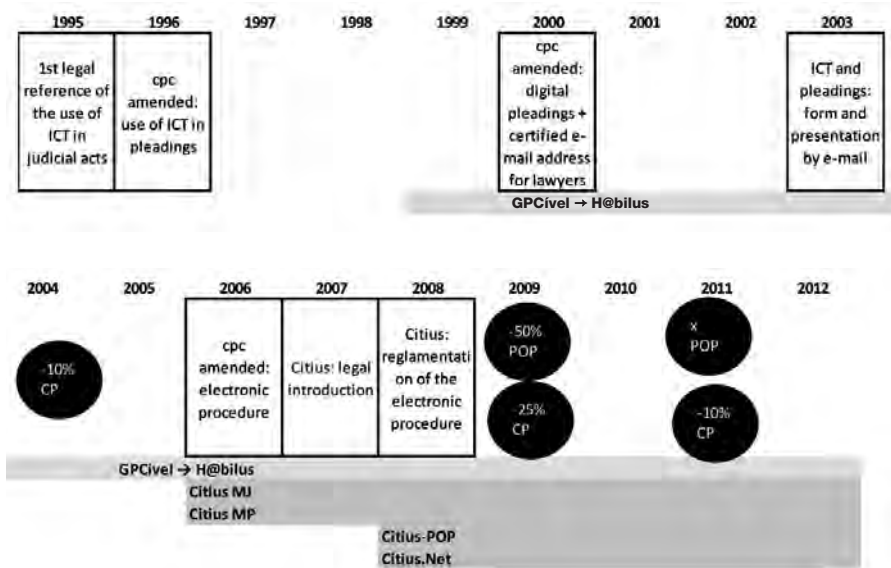
*Communication between external entities and H@bilus*



*Critical Software, 2009: 46*



## 9.3. Section 3

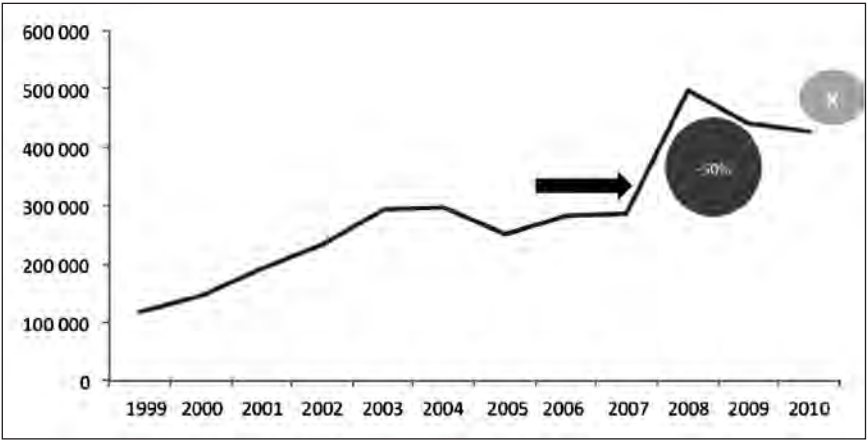
*Legal and technological evolution (w/ court fees' incentives)*



*Entered Payment Order Procedures*  
*National Figures, Period 1999-2010*<sup>118</sup>

year	entered
1999	118.173
2000	146.802
2001	190.511
2002	232.564
2003	293.958
2004	298.382
2005	252.019
2006	283.406
2007	285.021
2008	498.153
2009	441.901
2010	427.134
total	3.468.024















*Entered Payment Order Procedures*  
*National Figures, Period 1999-2010 (w/ Citius-POP + court fees)*<sup>119</sup>



<sup>118</sup> Source: official statistical data from the Ministry of Justice (DGPJ), available at <http://www.siej.dgpj.mj.pt/>.

<sup>119</sup> Source: official statistical data from the Ministry of Justice (DGPJ), available at <http://www.siej.dgpj.mj.pt/>.

*Proceeding markers: general matrix*

<b>Designação do separador</b>	<b>Cor</b>
Petição/Requerimento Inicial	
Contestação/Oposição	
Réplica/Resposta	
Tréplica/ Articulado Superveniente	
Despacho Saneador	
Actas (Audiências Preliminar e Julgamento, Conferências e Assembleias)	
Acórdão/Sentença/Saneador Sentença/Despacho Homologatório/Decisão de incidente ou medidas cautelares	
Desistência/Transacção/Acordo	
Relatório Pericial/Social/do Administrador de Insolvência	
Auto de Penhora/Arresto/Arrolamento/Relação de bens	
Adjudicação/Consignação de Rendimentos/Venda	
Alegações de Recurso	
Mapa de Partilha	
Declarações de cabeça de casal	
Plano de Insolvência	