

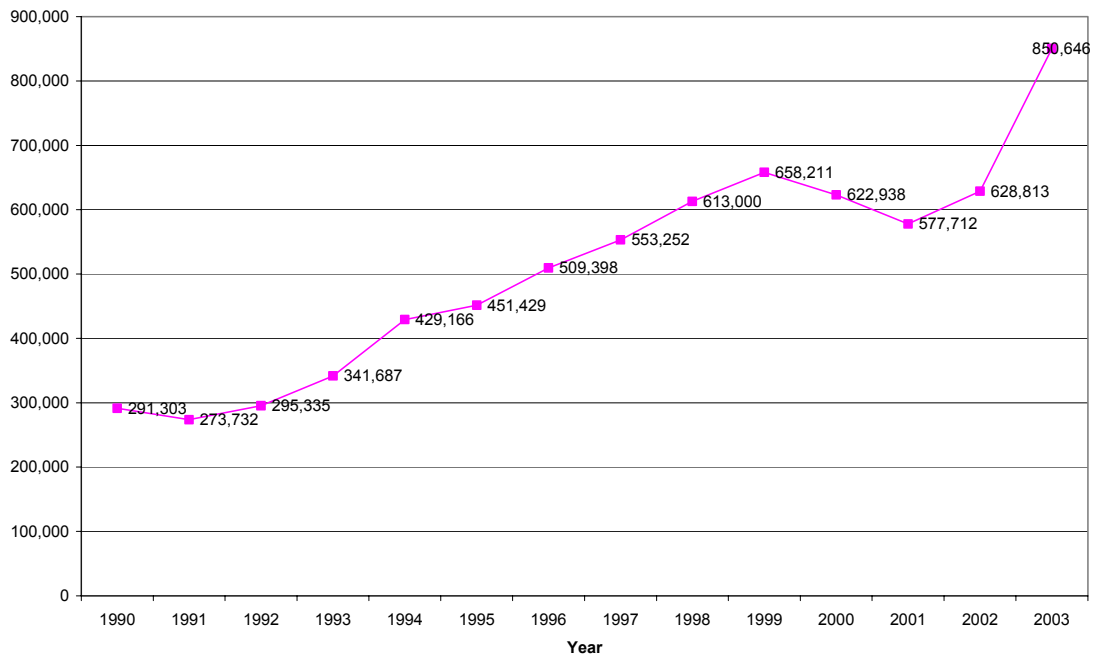
## A Proposal for the Establishment of Small Claims Courts in Chile

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The public perception of civil and commercial justice in the Chilean courts is not favorable. Common criticisms include concerns with an antiquated code that is not responsive to current demands, complex written procedures that consume seemingly infinite amounts of time and resources, and rules of evidence that are perceived as incompatible with today's digital world.

The chart below shows the increase in civil claims over recent years, which can best be described as an explosive demand:

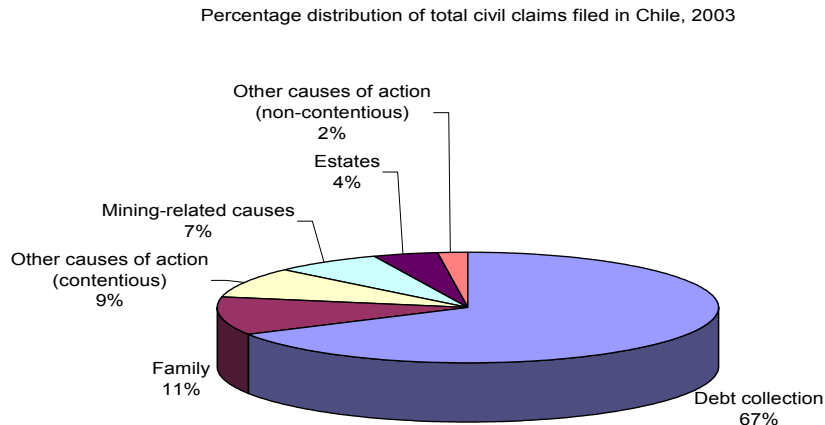
Increase in civil claims, Chile, 1990-2003



Increase in civil claims, Chile, 1990-2003.<sup>1</sup>

<sup>1</sup> JOSÉ FRANCISCO GARCÍA & FRANCISCO JAVIER LETURIA, LIBERTAD Y DESARROLLO, SERIE INFORME POLÍTICO N° 88, JUSTICIA CIVIL: UNA REFORMA PENDIENTE 11 (2005).

A large proportion of these claims are debt-collection actions. Between 1990 and 1997, debt-collection actions represented 75% of all adversarial civil proceedings.<sup>2</sup> The following graph demonstrates that debt-collection actions accounted for 67% of all civil causes in 2003:



Distribution of civil claims, Chile, 2003.<sup>3</sup>

The civil courts primarily dedicate their time to resolving administrative matters, whose objective it is to enforce the fulfillment of a financial obligation. The majority of the cases deal with administrative judgments and preliminary matters involving financial institutions seeking the payment of a debt.<sup>4</sup> A sample of debt collection causes of action indicated that 72.6% of claimants were a financial institution or corporation.<sup>5</sup> Non-contentious matters constituted an average of 15% of civil claims from 1995-2003, a substantial percentage of total claims.<sup>6</sup>

<sup>2</sup> Juan Enrique Vargas, Carlos Peña & Jorge Correa, eds., *El Rol del Estado y el Mercado en la Justicia*, 42 CUADERNOS DE ANÁLISIS JURÍDICO, UNIVERSIDAD DIEGO PORTALES (2001).

<sup>3</sup> JOSÉ FRANCISCO GARCÍA & FRANCISCO JAVIER LETURIA, LIBERTAD Y DESARROLLO, SERIE INFORME POLÍTICO N° 88, JUSTICIA CIVIL: UNA REFORMA PENDIENTE 14 (2005).

<sup>4</sup> RAFAEL MERY NIETO, UNIVERSIDAD DIEGO PORTALES, CENTRO DE INVESTIGACIÓN Y DESARROLLO EMPRESARIAL (CEDIEM), DOCUMENTO DE TRABAJO N° 7, UNA APROXIMACIÓN TEÓRICA Y EMPÍRICA A LA LITIGACIÓN CIVIL EN CHILE (2003).

<sup>5</sup> Juan Enrique Vargas, Carlos Peña & Jorge Correa, eds., *El Rol del Estado y el Mercado en la Justicia*, 42 CUADERNOS DE ANÁLISIS JURÍDICO, UNIVERSIDAD DIEGO PORTALES (2001).

<sup>6</sup> JOSÉ FRANCISCO GARCÍA & FRANCISCO JAVIER LETURIA, LIBERTAD Y DESARROLLO, SERIE INFORME POLÍTICO N° 88, JUSTICIA CIVIL: UNA REFORMA PENDIENTE 15 (2005).

Citizens perceive it as unreasonable to enter the justice system to collect a small sum of money before a court that could easily take months or years to effectively respond to the request. These delays are explained in various studies that show the number of cases that enter the system every year that are not resolved, increasing the number of pending causes for the following year, culminating in an endemic backlog in the resolution of conflicts.

A priority of the democratic governments since 1990, related to justice, has been to meet the expectations of society with respect to the *Poder Judicial* based on findings that 82.8% of the citizens described the system as inefficient, discriminatory of the poor, arbitrary and slow.<sup>7</sup> Another problem that lies in the current allocation or designation of jurisdiction is that, for the ordinary citizen, it is difficult to know where a particular claim or demand should be presented. The necessity of establishing criteria making it more simple and clear to determine the jurisdiction of the courts is critical.

The development of small claims courts in Chile will allow specialization and simplification in causes involving smaller sums of money. Provisions allowing pro-se representation in small claims courts and the implementation of mandatory mediation in those courts will aid in more streamlined procedures, within a system more accessible by the people. To increase access further, online filings should be considered along with any small claims court development.

By means of an example, the Small Claims Courts in the State of Florida, of the United States, were developed to implement the simple, speedy and inexpensive trial of civil actions in county courts in which the demand or value of property involved does not exceed \$5,000 exclusive of costs, interest, and attorneys' fees.<sup>8</sup>

Florida's \$5,000 small claims limit corresponds to a statewide 2003 per capita income of \$30,446,<sup>9</sup> or, 16.4% of the state's per capita income. Chile, with a per capita income of \$4,360 in 2003,<sup>10</sup> suggests a small claims limit of \$715.04, or 16.4% of the country's per capita income.

Actions are commenced by the filing of a statement of claim in concise form, which informs the defendant of the basis and the amount of the claim. A fee must be

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<sup>7</sup> JUSTICIA Y MARGINALIDAD: PERCEPCIÓN DE LOS POBRES (Jorge Correa Sutil & Luis Barros Lezaeta eds., 1993).

<sup>8</sup> Fla. Sm. Cl. R., 7.010 (a),(b).

<sup>9</sup> U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, available at [www.bea.doc.gov/bea/regional/spi/](http://www.bea.doc.gov/bea/regional/spi/).

<sup>10</sup> World Bank, *World Development Indicators*, available at [www.devdata.worldbank.org/data-query/](http://www.devdata.worldbank.org/data-query/).

paid for each claim filed. If the claim is based on a written document, a copy or the material part thereof is attached to the statement of the claim.<sup>11</sup> The defendant(s) is/are then served, the defendant must then file an answer within a specified period. Otherwise, a default judgment (lien) is entered.

For process and venue, a summons is required, entitled "Notice to Appear," stating the time and place of hearing. This summons must be served on the defendant. The summons or notice to appear informs the defendant of the defendant's right of venue. Venue may be determined by, depending on the nature of the suit: where the contract was entered into; if the suit is on an unsecured promissory note, where the note is signed or where the maker resides; if the suit is to recover property or to foreclose a lien, where the property is located; where the event giving rise to the suit occurred; where any one or more of the defendants sued reside; any location agreed to in a contract; and in an action for money due, if there is no agreement as to where suit may be filed, where payment is to be made.<sup>12</sup> A copy of the statement of claim is served with the Notice to Appear.

The Notice to Appear specifies that the initial appearance shall be for a pretrial conference. The initial pretrial conference is set by the clerk for not more than 50 days from the date of filing of the action. Mandatory mediation is a part of small claims courts and occurs as part of the pretrial conference. With the goal of avoiding adversarial proceedings, the parties are instructed to consider: the simplification of issues; the necessity or desirability of obtaining admissions of amendments to the pleadings; the possibility of obtaining admissions of fact and of documents that avoid unnecessary proof; the limitations on the number of witnesses; the possibilities of settlement; and other matters as the court, in its discretion, deems necessary.<sup>13</sup> Any agreements reached as a result of small claims mediation are written in the form of a stipulation, entered as an order of the court. Between 75 and 80 % of all small claims are resolved during the mandatory mediation. The trial date, if required, is set for no more than 60 days from the date of the pretrial conference.

With the creation of Small Claims Courts in Florida, disposition time for claims filed has been reduced and access to the courts has been greatly increased. The

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<sup>11</sup> Fla. Sm. Cl. R., 7.050 (a) (1).

<sup>12</sup> Fla. Sm. Cl. R., 7.060, (a).

<sup>13</sup> Fla. Sm. Cl. R., 7.090, (a,b).

following graph demonstrates the number of Small Claims filed and disposed of during the fiscal year 2003-2004:

***Florida Small Claims Court Filings and Dispositions, July 2003 to June 2004***<sup>14</sup>

Cases Filed	231,912
Dismissed Before Hearing	54,590
Dismissed After Hearing	64,775
Disposed by Default	34,453
Disposed by Judge (No Trial)	67,930
Disposed by Non-Jury	4,734
Disposed by Jury	107
Disposed by Other	10,730
Total Disposed	237,319
Cases Reopened	64,770

In the case of Chile, the existing *Juzgados de Policía Local* provide an ideal venue for the establishment of small claims courts.

Of a similar nature, collection on checks written with insufficient funds is done through the State Attorney's Office in Florida and is a different procedure because it is a criminal, not a civil, proceeding. "Check Diversion" is a program to redeem worthless checks after complaints are filed by giving the check-writer an opportunity to make restitution. This is done outside of county courts in Florida, because it is criminal, but could be a more simplified procedure through the *Ministerio Publico* in Chile.

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<sup>14</sup> Florida Office of the States Court Administrator FY 2003-2004 Statistical Reference Guide, 8-16.