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Efficiency of judicial conciliation activities in French courts: Evidence from a bad-output Data Envelopment Analysis (DEA) framework

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IMPORTANT NOTE: Abstracts should not exceed 400 words and should cover all the sections below. Proposals that do not include all the required elements (objectives, methodology and expected results) or that are not sent by the deadline will not be considered for evaluation!

TITLE: Efficiency of judicial conciliation activities in French courts: Evidence from a bad-output Data Envelopment Analysis (DEA) framework
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ABSTRACT

RATIONALE AND OBJECTIVES: The purpose of this article is to evaluate the performance of judicial conciliation. Conciliation is an Alternative Dispute Resolution (ADR) that may occur during a trial or out of the court. It is a step proposed to disputants to foster negotiation instead of long and costly litigations in civil, commercial or rural cases. The specificity of this device is that it is a delegation of judges' duty to voluntary citizens, who want to take part to the functioning of the judicial system. Conciliators are volunteers and receive no payment for their services even though the activity is regulated.

Considering that France experiences important delays in courts proceedings (ranked 20th among 25 countries; CEPEJ-EU Justice Scoreboard, 2018), policy makers expectations have implemented services delivery and administrative and organizational innovations related to conciliation (Judicial Map Reform, 2008; Law of Modernization of Justice; 2016; 2018-2022 Justice Programming Bill). Despite the call from French Government and European Commission for Efficiency of Justice for performance metrics, the issue of the efficiency of ADR remains relatively unexplored.

The purpose of this article is to propose performance metrics to evaluate the conciliation activity, to assess its contribution to the overall efficiency of courts and to identify the factors that affect

courts' performance.

METHODOLOGY:

Based on yearly data of the 447 French first instance courts from 2003 to 2018, we investigate the performance of conciliation in two stages. In a first stage, we introduce a DEA bad-output framework to assess the efficiency of the courts' ADRs. The efficiency metric may be defined as the ability of the court at simultaneously maximizing the settlement and minimizing the delay incurred by the cases while considering the means available. The duration is viewed as a negative externality of the settlement to minimize, while maximizing the settlement rate.

In the second stage, we estimate, with the Simar and Wilson (2011) bootstrapped truncated regression, the role of conciliators and courts characteristics on the efficiency of the conciliation activity. Furthermore, we estimate the relation between the efficiency of the ADR and the settlement rates and duration of the first instance court.

EXPECTED RESULTS:

Results provide evidence of the ability of efficiency metrics at evaluating justice in their contradictory objective functions: minimizing delays and appeal while maximizing settlement rates. We observe that duration of the trial is negatively associated with conciliation efficiency. We also note that the gender, the experience of conciliator and its previous occupation (especially retired CEO) are strong determinants of efficiency.