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Essays Upon Court Disposition Time in Brazil

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I dedicate this doctoral work to my wife and daughters, from whom I borrowed valuable time together for the sake of science.

Delayed justice is not justice, but qualified and manifest injustice

Rui Barbosa

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Abstract

Court delay is one of most serious problems faced by judicial systems around the world. This work explores the problem through four complementary essays. The first one analyzes court disposition time combining different but interrelated theoretical perspectives: institutional, organizational, agent-principal and game theory. The second essay examines if court delay in Brazil is a real problem or just a matter of biased perception of court users. The conclusion is that the duration of civil cases in Brazilian first instance courts is almost three times higher than in Europe. However, as the number of resolved cases is higher than the number of incoming cases, case backlog and court disposition time have a decreasing tendency. The third essay investigates which factors affect court disposition time in Brazil. The data was collected from 15 in-depth interviews with judges, prosecutors and lawyers. Content analysis generated a list of 28 factors that were clustered in three basic dimensions: institutional, jurisdictional and organizational. This essay concludes that institutional factors form two opposite phenomena named "judicial universalism" and "judicial aversion", which have a major and negative impact on court speed. Although smaller, jurisdictional factors also seem to have a negative impact on celerity. Surprisingly, most organizational factors seem to have a positive impact on the pace of cases. The last essay undertakes an empirical investigation about factors affecting the number of resolved cases in Brazilian labor courts, distinguishing between factors affecting judicial deliberation and judicial enforcement. Contrary to previous empirical research, this study found that number of judges have a substantial impact on court output and that the number of new cases brought to courts seems to have just a moderate effect on the number of resolved cases. The conclusion debates the idea that Brazilian judicial system appears to be a long and congested road where cases run around in circles.

Keywords: court delay, case duration, judicialization, procedural distance, court speed

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1 Introduction

Court delay is one of the most serious and persistent problems faced by judicial systems around the world. The fight against the delay in the resolution of judicial disputes comes from Antiquity (6th century), when Justinian approved laws with the purpose of reducing case duration (Roque, 2016). The right to reasonable duration of courts proceedings was formally prescribed by the Magna Carta of 1215, which establishes that no one will be denied or delayed the right to justice. In the 20th century, international acts such as the Universal Declaration of Human Rights and the American Convention on Human Rights established the right to a trial within a reasonable time. In Brazil, the reasonable duration of courts proceedings was introduced in the Constitution in 2004.

What constitutes a reasonable time for a judicial proceeding is an open question. On the one hand, court speed finds limits in due process, the correct legal procedures that should be followed in order to protect someone's legal rights. On the other hand, excessive delay undermines the accuracy and effectiveness of the judgement. The passage of time affects the evidence to be collected, the witnesses to be heard and the memory of the facts to be discussed (Heise, 2000). Delayed jurisdictional protection cannot be considered fair or adequate, after all, the passage of time prevents the parties from having an outcome to their litigation. Unnecessary delay in the resolution of cases may cause psychological harm to plaintiffs and defendants, both in criminal and non-criminal cases (Shuman, 2000).

A judicial system capable of resolving cases quickly and fairly is crucial for social and economic development. Long proceedings increase litigation costs, inhibits access to Justice (Buscaglia & Dakolias, 1999) and affects those who have fewer resources to support trial expenses (Galanter, 1974). Delays in resolving court cases undermine public confidence in the judicial system and disappoint those seeking compensation through legal proceedings (Heise, 2000). The problem is so serious that state responsibility for delaying the resolution

of judicial cases have been debated. Italy, for example, approved a law in 2001 (Pinto Law) providing financial compensation for damages resulting from a judicial decision taken in unreasonable time (Cammnitiello et al., 2017).

Besides being a social problem, court delay is also an economic problem. Judicial delay increases economic transactional costs, which reduces activity and retards economic development (Buscaglia & Ulen, 1997). A good judicial system is essential for allowing specific investments in physical and human capital (Castelar, 2009). In addition to the investment, the delay in resolving legal cases also affects the credit market. Slow lawsuits induce the opportunistic behavior of borrowers and the response of creditors may be reducing credit availability or increasing interest rates (Chemin, 2010). Judicial slowness also has a negative impact on price and speed of public works (Coviello et al., 2013). Economic consequences of judicial efficiency have become so important that global institutions such as the International Monetary Fund and the European Commission have payed considerable attention to that (Di Vita, 2011).

The long duration of cases is a worldwide problem. This problem occurs in Latin America (Buscaglia & Ulen, 1997) and in parts of Europe (Bielen et al., 2015), as well as in Asian and African countries, such as China (Jiang, 2005), India (Hazra & Micevska, 2004; Chemin, 2010), Nepal (Grajzl & Silwal, 2020) and Senegal (Kondylis & Stein, 2018). Given the importance of judicial services for social peace and economic development, judicial reforms have been introduced, however most countries have not succeeded in significantly reducing court delay (Bielen, et al., 2018). In India, attempts to solve the problem of court congestion have produced half-hearted results (Hazra & Micevska, 2004). The USA judicial system has undergone successive reforms since the 1950s (Priest, 1989). In 1990, the Civil Justice Reform Act (CJRA) was approved with the objective of speeding up civil proceedings in progress in the country. A rigorous study about this reform concluded that there was

progress in the management of cases, but without a direct impact on the time of judgment (Heise, 2000).

Given the intricate nature of judicial systems, it seems evident the need to consider a set of indicators in the analysis of the duration of cases (Cammnitiello et al., 2017). Models indicating the factors to predict the time of a court decision can help those who want to reduce both the time and costs associated with litigation (Dalton & Singer, 2009). Reforms based on guesswork can represent a waste of resources and lead to counter-productive results. The reversal of this situation involves conducting studies on the topic, considering that the construction of scientific knowledge can generate contributions for improvements in public policies and in practices of the administration of Justice.

The factors impacting the duration of cases are multiple and can be analyzed from different perspectives. The duration of cases is associated with the entire legal system. The complexity of the legal system, measured by the number of existing laws, may contribute to the excessive duration of civil disputes (Di Vita, 2010). The expected duration is systematically higher in countries with more formalized proceedings, as civil law countries (Djankov, 2003). Ambiguities in the civil procedure code also lengthens trial duration (Chemin, 2009). Access to court may have an impact on case duration. It seems that there is a tradeoff between the two—more access to justice will probably increase case disposition time, all else equal. In fact, empirical evidence suggest that higher caseload leads to higher levels of court congestion (Murrel, 2001).

The duration of cases is one dimension of court performance (Gomes & Guimaraes, 2013). Court performance has increasingly become the subject of empirical scrutiny. A wide range of judicial outcomes have been examined, as the number of judicial decisions (e.g., Beenstock & Haitovsky 2004; Rosales-López, 2008; Dimitrova Grajzl et al., 2012; Bełdowski et al., 2020), judicial productivity (e.g., Schneider, 2005; Dimitrova Grajzl et. al.,

2015; Gomes et al., 2016; Gomes et al., 2017), and case disposition time (e.g., Luskin & Luskin, 1986; Mitsopoulos & Pelagidis, 2007; Di Vita, 2011; Bielen et. al., 2016). However, factors impacting the duration of judicial cases remains unclear and more research on that subject is "urgently necessarily" (Berlemann & Christmann, 2020, p. 2).

Brazil seems to be an appropriate place to investigate factors affecting court disposition time. Court delay has been the most frequent complaint made to Brazilian National Council of Justice (CNJ), representing alone 68% of the complains made to the council in 2018 (CNJ, 2019). It is the dimension that most affects trust in Brazilian courts. In a research about trust in the Brazilian Judicial System, 81% of respondents stated that courts are slow or very slow (Fundação Getúlio Vargas [FGV], 2017). Judicial slowness is the first reason why people avoiding sue (Associação dos Magistrados Brasileiros [AMB], 2019). The question of the drivers of court case duration has therefore featured a prominent place in Brazilian policy discussions.

As each country has its own legal environment, factors affecting case disposition time may vary from one country to the other. Many studies about case duration have been published in Brazil, but they are usually produced in the field of Law, by legal scholars and have a theoretical perspective around the concept of reasonable duration of cases (e.g., Arruda, 2006; Hoffman, 2006; Belo, 2010; Roque, 2016). A non-legal—but still theoretical—study built an econometric model to analyze the relation between gratuity of court fees and court congestion (Arake & Gico Jr. 2014).

Two non-theoretical studies investigating the factors that impact case disposition time in Brazil should be mentioned. An empirical research investigated the impact of information technology on the time of judgment and found no significant difference between the duration of physical and electronic cases (Procopiuck, 2018); Aragão (1996) carried out a research supported by interviews to investigate factors impacting the duration of cases in the Labor

Court of the state of Espirito Santo. This later study, however, was carried out before important institutional changes in the judicial system, as the creation of the National Council of Justice in 2004 and is limited in the space (just one state) and area of law (just labor cases). As a consequence, there is a lack of knowledge about the real causes of court delay in Brazil (Roque, 2016). In other to fill in this gap, *the objective of this research is investigating which factors affect court disposition time in Brazil*. To comply with this objective, four studies were undertaken. Each study is a chapter of this dissertation, as described in Table 1.1:

Table 1.1

Classification of Studies Composing the Research

Chapter	2	3	4	5
Method	Theoretical	Empirical	Empirical	Empirical
Approach	Qualitative	Quantitative	Qualitative	Quantitative
Nature	Theoretical	Descriptive	Exploratory	Explanatory
Focus	Theoretical perspectives	International comparison	Perception of key actors	Statistical analysis
Main research question	Which theories may be applied to analyze court disposition time?	How long is court disposition time in Brazil and in other countries?	Which factors may explain court disposition time in Brazil?	Which factors affect court output in Brazil?
Results	Multidisciplinary theoretical framework	Description of court disposition time in Brazil and comparison with European countries	Dimensions, categories and factors that may explain court disposition time in Brazil	Two statistical models

Chapter two debates the phenomena of court disposition time blending four theoretical perspectives. The institutional perspective demonstrates how formal and informal legal rules frame the performance of courts and set the ground in which legal actors play. The organizational perspective debates the idea of courts as professional organizations and discusses case disposition time as one dimension of judicial performance. It is shown how celerity is a consequence of the operation of the entire judicial system, being impacted by several factors, from the rules governing access to courts to the quality of judicial decisions.

The agent-principal perspective contributes to the comprehension of individual behavior in the judicial arena, showing that judges and lawyers may have their own interests in litigation, which may affect court disposition time. Finally, game-theory is applied to analyze the strategic behavior of litigants, revealing that when parties make litigation decisions (settle, sue, appeal, etc.) they take into consideration the expected behavior of the other side.

Chapter three investigates if the general opinion about court delay in Brazil is really a fact or just a biased perception of court users. This study uses international standards to measure court disposition time in Brazil, which allows for a comparison with European countries. The comparison is focused on civil cases and distinguishes between the situation in the first and second instances. Methodological cautions taken to achieve the highest possible comparability are explained in detail. Besides measuring court disposition time, this chapter also displays performance indicators showing the tendency of court disposition time in Brazil for the next years.

Chapter four explores which are the possible factors affecting the duration of civil cases in Brazil. To achieve a comprehensive view of those factors, 15 key actors among judges, prosecutors and lawyers were interviewed. The 28 factors reported by interviewees were clustered in three dimensions: institutional, jurisdictional, and organizational. It should be noted that those dimensions have close relation to the theoretical perspectives analyzed in Chapter 2. The factors are discussed vis-à-vis with the current knowledge about court performance found in the international literature.

Chapter five conducts an inferential analysis about factors impacting the number of resolved cases in judgement and enforcement stages of judicial proceedings. Courts would have little social value if the judicial decisions could not be enforced. In fact, court users expected not just a judicial decision, but the effective repair for the violation of their rights. The researched is focused on Brazilian labor courts and combines two regression methods

(pooled Ordinary Least Squares and two-way Fixed Effects) to investigate which factors affect judgements and enforcements. The results are compared to analogous empirical research conducted in other countries.

The main thesis of this doctoral dissertation is that case disposition time is long because the procedural journey is long. Long journeys and short times are incompatible. This is a law of physics. Time is equal to distance upon speed. If the distance of the procedural journey is too long, cases will take too much time to be resolved even if judicial proceedings are fast. As the number of procedures, appeals and instances in Brazil seems to be excessive, the procedural road is long, and cases take a long time to reach a final resolution.

2 Court Disposition Time. Building a Multidisciplinary Theoretical Framework

Abstract

The factors that impact the duration of cases are multiple and can be analyzed from different perspectives. This study analyzes the problem combining four different but interrelated theoretical perspectives: institutional, organizational, agent-principal, and game theory. Each theory is useful to understands certain aspects of court disposition time. The general conclusion of this study is that the phenomena is complex and could be analyzed under a multidisciplinary theoretical approach. This approach encompasses a kind of a theoretical mosaic in which each part influences the behavior of the whole recursively.

Keywords: institution, organization, agent-principal, game theory

2.1 Introduction

The duration of judicial cases is a complex phenomenon, associated with the performance of the entire judicial system. This paper makes a theoretical debate of the phenomenon adopting four different and interrelated theoretical perspectives: institutional, organizational, agent-principal and game theory perspectives. Those perspectives are strongly interrelated and there is no clear cut between them. The concept of 'institution' is versatile, multidimensional and has been used in several disciplines including law, political science, sociology and economics, with different connotations and meanings (Engelbreckt, 2010, p. 299). According to that author, some institutionalists treat organizations as institutions and include in the definition of institutions not only social norms and culturally stabilized systems but also social entities that are capable of purposive action.

In the field of Administration of Justice, the distinction between institution and organization is even harder. Courts are so institutionalized and legitimated, in the sense that their existence and functioning are taken for granted and, in this sense, analysis of the judicial system often overlap the terms institution and organization (Guimaraes et al., 2018). This

study will distinguish between both terms, in order to enable a clear understanding of the dimensions impacting court disposition time.

Regarding to the concept of institution, this work will be based on the definition offered by Douglas North, who describes institutions as formal rules, informal constraints and the enforcement characteristics of both (North, 1993). Social, political, and economic institutions have become larger, more complex and resourceful, and more important to society. Institutions of law occupy a dominant role in contemporary life, being political actors in their own right (March & Olsen, 1984). The first step to understand the duration of judicial cases is to analyze how legal institutions impact the flow of judicial proceedings.

If institutions are the rules of the game, organizations are the players and can be defined as "groups of individuals engaged in purposive activity" (North, 1993, p. 3). Courts are the central organizations of any justice system. Low-income households and small businesses often cannot afford the relatively high costs involved in using alternative dispute resolution (ADR) mechanisms, such as mediation or arbitration (Buscaglia & Ulen, 1997). In some countries these mechanisms do not even exist (Bielen et al., 2018). Broadly speaking, private alternatives play a residual role in the resolution of conflicts (Djankov et al., 2003; Ippoliti et al., 2015).

Courts are the main organizations of dispute settlement in modern societies. Therefore, it seems appropriate to understand court disposition time from an organizational perspective. Judges are the professionals at the center of courts (Fix-Fierro, 2003; Guimaraes et. al., 2011). The individual behavior of those professionals may have a substantive impact on the duration of cases. However, due to the necessity to assure judicial independence, judges are not subjected to the traditional organizational incentives. To analyze the incentives behind the behavior of this special class of professionals, this study adopts the agent-principal theoretical perspective.

Finally, game theory is used to investigate why Repeated Players, acting as litigants, avoid to settlement and prefer to leave people bringing cases to courts. Game Theory assumes that decision-makers are rational and strategic (Osborne & Rubinstein, 1994). It seems to be an appropriate approach to investigate litigation because litigants usually take decisions based on logic—they are rational—and consider other litigant expected behavior—they are strategic.

Following this line, this article aims to build a multidisciplinary theoretical framework for the phenomenon of court disposition time. This debate aims to offer an integrative perspective and, in this sense, to contribute to future research on this topic.

2.2 Institutional Perspective

Understanding the duration of judicial cases requires an analysis of the institutions that form the legal environment of a certain society. Institutions are formal rules, informal constraints and the enforcement characteristics of both (North, 1993). Institutionalization involves the processes by which social norms and obligations reach a rule-like status in social thought and action (Meyer & Rowan,1977). They are humanly devised constraints to social and economic behavior that appear in the form of routines, rules and customs which frame human conduct and help reduce uncertainty (Engelbreckt, 2010).

Probably, the main institution in any legal system is its legal tradition. The West has two major legal traditions: common law and civil law. In common law countries, case law—published judicial decision—is of primary importance, whereas in civil law systems, codified statutes predominate (Tetley, 2000). A common law system is based on the concept of judicial precedent. Judges take an active role in shaping the law, because judicial decisions are used as a precedent for future cases. Judges rely on precedents set by previous courts decisions to interpret laws and apply them to individual cases. Civil law systems, on the other hand, rely on written statutes and other legal codes that establish legal procedures and

punishments. In a civil law system, a judge merely establishes the facts of a case and applies remedies found in the codified law.

Legal tradition has a significant influence on the central features of the judicial system, such as the role of judges and attorneys; the basic characteristics of procedure; the nature of appeal; the legal force of judgments and precedents (Fix Fierro, 2003). All these elements impact the duration of cases. Being a civil law country, for example, has a significant impact on formalism and the expected duration of cases is systematically higher in countries with more formalized proceedings (Djankov et. al., 2003). The formalistic civil law tradition may be one structural explanation for the duration of cases in countries that adopt this legal perspective.

Nevertheless, civil law countries can also adopt the legal force of precedents, especially those stablished by upper courts, aiming to decrease case duration. A Brazilian constitutional reform approved in 2004, for instance, represented a watershed toward this direction, creating a "biding precedent" that can be approved by the Brazilian Supreme Court and has mandatory force over all courts in the country.

Another basic legal institution in any country is the law. Laws are the rules approved by legislative bodies, including the constitution, codes, statutes, and specific laws. They are the highest degree of a legal institution due to their formalism, mandatory, and enforceable by definition. Access to courts, hearings, procedures, judgements, juries, and appeals are defined by the law.

Laws define access to courts in many ways. The first one is creating incentives to the parties to resolves their disputes privately. Laws may stimulate parties to share information with each other, reducing the divergent expectation about the future judgement and fostering private settlements before the lawsuit (Spier, 2005), may define that litigation costs will be paid by the loser party, discouraging low-probability-of-prevailing plaintiffs (Bar-Gill, 2005),

and may defining the level of court fees to be paid by litigants. Laws define strict guidelines for judicial proceedings and, as a consequence, are decisive to the pace of case in courts. Procedural rules lie in the center of judicial organization and are so important that court apparatus has articulated itself around the adjudicative process (Fix-Fierro, 2003). The legal process cannot be shortened by a creative judge that had as innovative idea about a new procedure. In fact, a judicial decision is legitimate only if it follows the rules of the legal process. As a consequence, to understand the duration of cases in a country, it is also necessary to understand the laws that drive the legal process of that country.

The legal process in Brazil, for instance, has an Italian origin. Most of the procedural aspects of Brazilian legal system seem to be a consequence of the Italian Civil procedural code imported to Brazil many decades ago. This phenomenon can be considered a typical example of *path dependence*, a historical institutional mechanism demonstrating that institutional choice is contingent on a historical context that has been shaped through time and is generally resistant to change (Hall & Taylor, 1996).

Formal rules are not necessarily created to be socially efficient; rather they are created to serve the interests of those with the bargaining power (North, 1990). This is particularly so for institutions which are a product of the political process, typically legal rules resulting from legislative processes (Engelbreckt, 2010).

Another institution that builds the legal environment is the legal profession. The bar is the legal profession as an institution. The term represents the line (or "bar") that separates the parts of a courtroom reserved for spectators and the lawyers participating in a trial. The number, behavior and structure of payment of lawyers may have an important influence on litigation. An association between the number of lawyers and the level of litigation was identified by empirical literature (Buonanno & Galizzi, 2014; Mora-Sanguinetti & Garoupa, 2015).

2.3 Organizational Perspective

In Max Weber's classic concept, organizations are rational means designed to achieve optimal results with minimal effort. The highest rational type of organization is bureaucracy, because of its formal and regulated application of specialized professional knowledge (Weber, 1984). A special kind of organization, the so-called professional bureaucracy includes organizations that hire highly trained specialists—called professionals—and then give them considerable autonomy so that they work relatively free not only from the administrative hierarchy but also from their colleagues (Mintzberg, 1980).

Courts constitute “professional bureaucracies” and judges are the professionals at the center of these organizations (Fix-Fierro, 2003; Guimaraes et. al., 2011). In professional bureaucracies, professionals control their own work and tend to maintain collective control of the organization's administrative apparatus (Mintzberg, 1980). Much of the formal and informal power of a professional bureaucracy rests on its operational core, clearly its fundamental part (Mintzberg, 1980). In the courts, the operational core, made up of judges and their direct support team, form the most important part of the organization.

The organizational lens frames courts as professional bureaucracies and helps to better understand the dynamics of their functioning. As organizations, courts may have their performance measured and evaluated. According to Gomes and Guimaraes (2013) judicial performance is a multidimensional concept that involves objective and subjective elements, internal and external to the Judiciary. The authors suggest the following dimensions of judicial performance: quality (subjective and internal), effectiveness (subjective and external), access and independence (objective and external), and efficiency and celerity (objective and internal). Besides being a dimension of court performance on its own, celerity may reflect variations in quality, access and efficiency of courts.

Broadly speaking, case duration is directly related to the quantity of judicial decisions. Ceteris paribus, the higher the number of judicial decisions, the lower the court disposition time. There is a long debate around the tradeoff between quantity and quality of judicial decisions. Aiming to reduce case disposition time, judges may increase the quantity of decisions, with adverse consequences to their quality. Empirical evidence about this point is mixed. While some studies point that an increase in the quantity of judicial decisions may affect the quality other studies did not detect this tradeoff.

A negative relationship between quantity and quality was detected in the United States, both in federal courts of appeals and the in Supreme Court. (Epstein et al., 2010). For these authors, collegiate bodies face the problem of "dissent aversion", i.e., diverging from colleagues has a cost, both in terms of effort and relationships. In the two instances investigated, empirical evidence demonstrates that a higher workload is associated with a lower divergence rate between the judges. Another survey showed a negative association between workload and quality (Huang, 2011). In 2002, a wave of lawsuits from the United States immigration department flooded two federal courts of appeal. The other federal courts of appeal were not affected. The two flooded courts began to reverse civil decisions from the lower court less frequently, while the reversals of the other courts remained the same.

A study in Slovenia found divergent results (Dimitrova-Grajzl et. al., 2012). Using data on appealed and overturned cases as proxies for quality of judicial decision-making, the study found that more productive judges make lower-quality decisions in local courts, but not in district courts. Some studies had found no relation between quantity and quality of judicial decisions. A study carried out in Spain collected data of civil courts in a specific region of the country, in an attempt to compare similar units (Rosales-López, 2008). The result shows a lack of relationship between the volume of decisions in each unit and its reversal rate, which would be an indication that the volume has no relation to the quality of decisions. This was

the same conclusion as a study conducted in Nepal, which found no empirical evidence that an increase in the volume of decisions would decrease the quality of judicial decisions (Grajzl & Silwal, 2020).

Access to Justice may have a direct impact on court cased case duration. If the number of new filed cases is too high, courts may not be able to keep up with judicial demand, case backlog will rise, and court disposition time will increase. Gratuity of court fees may be is a possible solution to grant court access for those who may be unable to pay for it, however, if indistinctively granted, it may lead to frivolous litigation, court congestion and court delay (Arake & Gico Jr., 2014; Gico Jr., 2014).

Efficiency of courts may or may not have an impact on case disposition time. Efficiency shows a relation between inputs and products. Efficiency improves when fewer inputs are used for the same number of products or when more products are made with the same inputs. Court efficiency is a relation between the number of judicial decisions (outputs) and the number of organizational resources—judges, servants, budget, etc. (Voigt, 2016). If court efficiency improves due to an increase in the number of decisions, court disposition time will decrease. However, if court efficiency improves just because the court is using fewer inputs, court disposition time will not be affected.

The organizational perspective also collaborates in the understanding of isomorphism among courts. Coercive isomorphism is a mechanism through which one organization exerts formal and informal pressure on other organizations leading them to become increasingly similar (DiMaggio & Powell, 1983). National Councils of Justice seem to play this role in the judicial system. Since 1946, more than 100 countries have created judicial councils, most of them in the Constitution (Garoupa & Ginsburg 2009). One of the functions performed by Councils of Justice is contributing to the professionalization and the “de-bureaucratization” of the courts (Fix-Fierro, 2003).

2.4 Principal-Agent Perspective

A traditional strict hierarchical organization perspective is not enough to analyze judicial behavior. Due to the necessity to assure judicial independence to judge, devices such as life tenure and wage irreducibility were created. However, the effort to insulate judges from significant economic incentives has not rendered judicial behavior immune to economic analysis, because judges are rational and pursue instrumental and consumption goals of the same general kind that private persons do (Posner, 1993). Besides the salary (and other financial earnings), values like reputation, prestige and reversal avoidance are also important to judges (Posner, 1993). When those values are affected, judicial behavior may be affected as well.

A broader framework to debate economic incentives in the justice system may be required and a possible alternative can be the Agency Theory, which treats judges as agents (Maskin & Tirole, 2004). An agency relationship can be defined as a contract under which one person (the principal) engage another person (the agent) to perform some service on their behalf, which involves delegating some decision-making authority to the agent (Jensen & Meckling, 1976). Economic relationships in which one party (the principal) wishes to affect the actions of another (the agent) by means of incentives are ubiquitous (Dixit, 2002).

Agency models warn that agents, unless properly selected, monitored, and rewarded, will not act in the interests of principals (Choi, 2007). The principal can limit divergences from his interest by establishing appropriate incentives for the agent and by incurring monitoring costs designed to limit the deviant activities of the agent (Jensen, 1976). If there were several agents performing similar tasks and subject to common risks, then each agent performance can be compared with that of the other to get a better estimate of his effort or skills that were not directly observable (Dixit, 1998).

As judicial cases are often assigned to judges on a random basis, the performance of judges can be compared. If judges are the agents, who may act as "principal"? This role may be performed by Judicial Councils. Judicial Councils in several European countries (France, Spain, Italy, and Portugal) participates, to a greater or lesser extent, in the selection, appointment and advancement of judges, as well as in judicial discipline (Fix-Fierro, 2003). They act as an instance of the governance of court performance and judicial behavior.

Agents acquire specialized information, and they can vary the quality and the quantity of their efforts in ways that are largely unobserved by outsiders (Dixit, 1998). The multitasking model (Holmstrom & Milgrom, 1991) shows that if an agent is given two objectives, and only one of those objectives can be measured and monitored by the principal, then the agent will shirk on the hard-to-measure objective and invest in achieving the other (Choi, 2007).

This scenario may happen in the judicial system. Courts can define quantitative targets around productivity. Monitoring the number of decisions per judges is important and easy. Nonetheless, in order to comply with this performance indicator, judges may be tempted to devote attention just to easier cases and hold back the complex ones. Acting this way, they would comply with raw judicial productivity targets, but will leave many litigants without a jurisdictional response for their disputes. Evidence of this behavior was identified in India (Hazra & Micevska, 2004), where courts are able to deal with current caseload, but are not efficient in addressing the *real* backlogs of cases pending for more than a year. The agent-principal theory seems to be a plausible explanation for judicial procrastination, for instance, when some judges avoid deciding complex cases, because those cases are time-consuming.

The quality of judicial decisions is other important aspect to be analyzed that is hard to measure and may be neglected. One possibility here is measuring the reversal rate of

judges. According to Posner (1993, p. 14), “judges don’t like to be reversed”. If a judge has a higher reversal rate than other comparable judges, this may hurt his judicial reputation. Judges might concern themselves with their long-term reputation among judicial colleagues and lawyers (Choi, 2007).

The agent-principal perspective may also be applied to understand the behavior of lawyers. Lawyers represent their clients in courts, so they are agents of litigants. As agents, lawyers have their own economic interests, which may be different of the interest of their clients. Lawyer may act to maximize their incomes at the expense of their clients, prolonging litigation and increasing legal fees (Gilson & Mnookin, 1994). To the degree that clients cannot observe lawyers’ efforts and lack legal expertise, a fee arrangement linked to lawyers’ performance may be convenient for clients and lawyers (Kaplow & Shavell, 2002). If lawyers are compensated at an hourly rate for time spent, without regard to legal outcomes, the economic incentive of the lawyer would be extending the duration of cases.

2.5 Game Theory Perspective

Game theory is a framework designed to help the understanding of decisions taken when decision-makers interact (Osborne & Rubinstein, 1994). From this interaction emerges a strategic behavior, when one person considers how a second person will behave in making a decision, and the second person does the same (Picker, 1994). The theory investigates how players should conduct themselves when each realizes that the consequences of his acts will depend in on what other players will do.

Game theory has cultivated significant advances not only in economics, but also in other branches of social science fields, as accounting, finance, marketing, political science sociology, and eventually, law (Gibbons, 1997). Game-theoretic methods to study legal problems dates at least to the early 1970s and has being growing ever since (Salam & Theodore, 1996). Game Theory seems to be especially useful to analyze litigation. The two

basic and imperative assumptions that underlie Game Theory are that decision-makers are rational and strategic (Osborne & Rubinstein, 1994). Those engaged in litigation—the litigants, their attorneys, and other interested parties—are rational and strategic (Spier, 2005). They are rational because their decisions are based on logic and they are strategic because they take into account other litigant expected behavior (e.g., if the other side will settle or not, sue or not, appeal or not).

The scientific literature upon litigation can be divided into three generations (Huang & Wu, 1992). The first generation used single-person decision theory to describe rational choices by potential litigants (e.g., Landes, 1971; Gould, 1973; Posner, 1973). The second generation explicitly considered the strategic interaction of multiple decision-makers but modeled just games of complete information, when information knowledge about other players is available to all participants (e.g., Hause, 1989). The third and most sophisticated generation of litigation studies considered games of incomplete information, postulating asymmetric information as the reason for differing beliefs over the result of a trial (e.g., P'ng, 1983; Reiganum & Wilde, 1986).

This theoretic perspective could be applied to analyze the behavior of one specific kind of litigant: the Repeated Player. While One-Shotters are those claimants who have only occasional recourse to the courts, Repeat Players engage in many similar litigations over time (Galanter, 1974). Spouses in a divorce or people involved in a car accident are examples of One-Shotters. Banks, telephone companies and government are examples of Repeated players. Typically, the Repeat Player is a larger unit and the One-Shotter is a smaller unit.

Repeated Players play Repeated Games. Repeated games models are designed to examine the logic of long-term interaction, capturing the idea that a Repeated Player will take into account the effect of his current behavior on the other players' future behavior (Osborne & Rubinstein, 1994, p. 133). Unlike in a classical game situation, which is essentially a one-

shot affair, a conflict situation usually leads to another conflict situation. Thus, in real life, when one takes action one should consider not only the immediate payoffs but also the effect that the actions may have on the other conflict situations that will occur in the future (Aumann et al., 1995).

Why out-of-the-court settlement is not the rational solution for the Repeated Player in the long run? Because he has learned that most Plaintiffs will not bring their cases to court. Besides monetary expenses, the plaintiff's litigation cost would typically include the plaintiff's personal cost of effort, time, and any other opportunity costs associated with his involvement in the lawsuit (Spier, 2005). One-Shotters' claims may be so small that the cost of judicialization surpasses any promise benefit (Galanter, 1974). Repeated Players—especially those with skilled lawyers—learn about the strategies that their opponents employ. Even if One-Shotters threat that they will sue, Repeated Players know they usually will not, so this the threat to sue is not a credible treat. In the long run, paying the judgement of few suits is better than paying all out-of-the-court settlement proposals.

Despite the incentives for litigation and the high number of cases indeed brought to courts, litigation still represents an economic advantage for Repeated Players. It is a matter of fact that some Plaintiffs will fail to sue because of the costs of litigation. Therefore, cases filed against Repeated Players are not enough to produce a deterrent effect. In this scenario, how to stimulate Repeated Players to settle instead of litigating? Depending on the country, one possible alternative would be replacing the system of compensatory damages for the system of punitive damages.

In the system of compensatory damages, the plaintiff's award is exactly equal to her damages. Compensatory damages are intended simply to pay the person who was injured and not to punish the person for their wrongdoing. The monetary award paid to plaintiff can include material and moral losses. Punitive damages are paid by a defendant found guilty of

committing an offense on top of compensatory damages. They are awarded by a court of law not to compensate injured plaintiffs but to punish defendants whose conduct is considered grossly negligent or intentional. Punitive damages are designed to punish the defendant for outrageous conduct and/or to reform or deter the defendant and others from engaging in similar conduct. Failure to impose punitive damages would result in inadequate deterrence (Polinsky & Shavell, 1998).

However, the adoption of punitive damages may cause other problem. If it is assumed that any judgment against a defendant is automatically awarded to the plaintiff, the award of punitive damage will increase the number of suits, at least at the first moment plaintiffs will be stimulated to sue, in order to earn punitive damages. It is expected that Repeated Players would learn that wrongdoing does not compensate anymore and will avoid engaging in those actions, which would reduce the number of lawsuits in the second moment. Nonetheless, it is weird arguing that in order to *decrease* the number of cases brought to courts it is necessary to firstly *increase* the number of cases brought to courts.

To surpass this puzzle, *decoupling* seems to be a reasonable solution. Decoupling means that judgment against a defendant is *not* automatically awarded to the plaintiff. The optimal decoupled scheme makes the plaintiff's award very small so that only a handful of cases are brought, and, at the same time, it makes the defendant's liability very large so that his expected future liability equals the social harm that his actions cause (Spier, 2005). Decoupling creates a strong incentive for settlement because it creates a wedge between the most that the defendant is willing to pay and the least that the plaintiff is willing to accept. In other words, decoupling creates incentives for the emergence of a bargaining zone. Decoupling liability is adopted in many American states, including Iowa and Indiana (Spier, 2005).

2.6 Conclusion

This study blends four different theoretical approaches to analyze court disposition time: institutional, organizational, agent-principal and game theory. As courts are very institutionalized organizations, it is not simple to distinguish between institutions and organizations in the field of administration of Justice. However, as demonstrated in the sections above, this distinction is possible and contribute to identify which dimension is impacting the duration of cases. Sometimes, the same problem may be a consequence of factors located in different dimensions. The excess of procedural acts, for example, may be a consequence of legal rules approved by legislative bodies —institutional perspective—or may be a consequence of procedural regulations issued by the court deciding the case—organizational perspective (Fix-Fierro, 2003).

The institutional perspective was used to analyzes some important institutions in any legal system, as the legal tradition, the laws and the bar that are present. The organizational theory debated how court disposition time may reflect the performance of multiple aspects of the judicial system, as the quality of decision, the access to Justice or judicial efficiency. It also helps to understand that organizational process as isomorphism may occur within the judicial system. The individual behavior of judges was analyzed using the agent-principal perspective and, finally, the behavior of Repeated Players was scrutinized from the game theory perspective.

Actually, the combination of different theoretical lenses allows a deeper analysis of the phenomena. However, court disposition time is so complex that other theories may be used in order to capture a wider view of the problem.

3. Court Disposition Time in Brazil and in European Countries[1]

Abstract

The length of judicial proceedings is a subject on the agenda of social researchers, policy makers, politicians, legal practitioners, and administrators of justice in different countries. If court disposition time in specific countries should be considered reasonable or delayed remains an open question. Brazilian courts are perceived as slow. This study investigates if court delay is a real problem or just a biased perception. The duration of civil cases in Brazil is measured with international standards and compared to the duration in European courts. Disposition time in Brazilian first instance courts is three times higher than the European average. In Brazilian second instance courts, disposition time is 50% higher than in Europe. However, the number of decided cases in those courts is higher than the number of new incoming cases, which means that the backlog and the disposition time in Brazilian courts have a decreasing tendency. These data are discussed, managerial recommendations and a research agenda are stated.

*Keywords***:** court delay, case duration, civil cases, disposition time, clearance rate

3.1 Introduction

Court delay seems to be a problem in Brazil. There is a perception among citizens that judicial services are slow or very slow (FGV, 2017; AMB, 2019; CNJ, 2019). The judicial system may be violating the constitutional rule that cases should be decided in a "reasonable time". What constitutes a reasonable time is an open theoretical question, frequently debated by law-and-court scholars. However, what constitutes court disposition time is an empirical issue that can be measured and compared. In order to investigate if court delay is a real problem or just a biased perception, empirical studies could (1) measure court disposition time in Brazil and (2) compare the results with other countries.

[1] Paper submitted to Direito GV journal.

The length of cases can be measured using different methods. Brazilian National Council of Justice (CNJ) uses the traditional method of measuring the number of days between a starting point (e.g., the day the case was brought to court) and a final point (e.g., the day the case was decided). For each case, the number of days is calculated, and court disposition time will be a simple mean of all cases decided by that court in the period. For example, all cases decided by a court in the year 2018. Some problems arise from this method. The first one is that the number of days increases when older cases are decided. If some court increases the number of cases decided and start to decide older cases that are in the backlog, the length of cases will increase, because older cases, with a longer duration, will be considered. As the time measured increases, the perception is that court performance deteriorates, when in fact it is just the opposite, i.e., more cases are decided.

A second problem of this method is that pending cases are not considered in the analysis. Sometimes, the number of pending cases is large and excluding then will distort the results. To overcome this problem, the CNJ uses a separated measure for the pending cases. However, this measure is also biased, because some final date is considered, as all the cases would be ended that date, usually the last day of the year. The real length of pending cases is much larger, because these cases will still take many days, sometime years, to be ended after the *cap* considered in the analysis.

Besides being biased, this *dual method* (one for cases decided and other for pending cases) increases the complexity of analysis. This method complicates comparisons of court performance over time. If the length of ended cases decreases but the length of pending cases increases, it is hard to point if court disposition time is in fact increasing or decreasing. It also complicates comparisons between different courts. If court “A” is faster in decided cases and court “B” is faster in pending cases, it is hard to say which one is faster.

A statistical technic called “survival analysis” seems to be appropriate to analyze the duration of cases, because it considers information provided by both decided and pending cases in the same analysis (Grajz & Zajc, 2017). The use of survival methods in the field of law and economics seems to be increasing and some studies using this technic have been published (e.g., Bielen et. al., 2016; Grajz & Zajc, 2017; Procopiuk, 2018). The great problem of survival analysis is that it requires case-level data, which is very difficult to obtain, especially in the context of international studies comparing different countries.

The European Commission for the Efficiency of Justice uses the “backlog index” (also known as Capelletti-Clark index) to assess court disposition time in European countries (Commission Européenne Pour L’Efficacité de la Justice—CEPEJ, 2018). This index is defined as the number of pending cases at the end of the year divided by the number of resolved cases during the year (Clark & Merryman, 1974). It indicates the number of years the system would take to resolve all pending cases (backlog) and can be interpreted as the average duration of a case in the court (Castro, 2009). Some studies show a parallel between this index and the actual procedural times per case and has proven to approximate both the median and the mean of actual duration, representing a good measure of central tendency (Buscaglia & Dakolias, 1999). Several studies have used the backlog index as a measure of case duration (e.g., Murrel, 2001; Chemin, 2009; Castro, 2009). According to the CEPEJ, this ratio “allows comparisons within the same jurisdiction over time and, with some prudence, between judicial systems in different countries” (CEPEJ, 2018, p. 238).

In order to monitor if courts are keeping up with the incoming caseload, CNJ and CEPEJ monitor the *clearance rate*, obtained by dividing the number of resolved cases by the number of incoming cases, expressed in a percentage (CNJ, 2020; CEPEJ, 2018). A clearance rate close to 100% indicates the ability of the court to resolve approximately as many cases as the number of incoming cases in the period. A clearance rate above 100% indicates the ability

of the court to resolve more cases than those received, thus reducing the number of pending cases (reducing the backlog). Finally, a clearance rate below 100% appears when the number of incoming cases is higher than the number of resolved cases, which increases the number of pending cases.

The case backlog of a court may be a consequence of several years. While the backlog index reflects the consequences of past work for court disposition time in the present, the clearance rate demonstrates the tendency of court disposition time for the future, because it shows if backlog will increase or decrease. The combination of backlog index and clearance rate reveals a general picture of the pace of cases in courts. Surprisingly, no study was found comparing the backlog index of Brazilian courts to the index of other countries. The clearance rate was used in only one cross-country study (Dakolias, 1999), but that research considered just two Brazilian cities (São Paulo and Brasília) and was produced a long time before the collection of official judicial data by the Brazilian National Council of Justice.

Due to the lack of studies comparing the duration of cases in Brazil and in other countries, it is difficult to conclude if court disposition time in Brazil could be considered delayed or not. In order to fill in this gap in the literature, the present study proposes to (1) measure court disposition time in Brazil, adopting the backlog index, (2) measure the tendency of court disposition time in Brazil, adopting the clearance rate, and (3) compare the results with the same performance indicators in European countries.

3.2 Method and Data

International comparisons upon the length of judicial proceedings are complex and inaccurate, due to differences between countries regarding to judicial organization, economic situation, demography and legal characteristics. According to CEPEJ, focusing on civil and commercial litigious cases offers a clearer picture for comparative analysis because its definition shows lower differences among states (CEPEJ, 2018). The analysis produced by

CEPEJ contemplates more than 40 countries with different judicial traditions, including civil law countries (e.g., Italy, Spain, Portugal), the same system adopted in Brazil. Considering the large number of countries analyzed by CEPEJ and the inclusion of some civil law countries, it seems reasonable to compare Brazil to European countries using civil and commercial litigious cases.

The greatest methodological challenges of this study are (1) understanding the criteria used by CEPEJ to define "civil and commercial litigious cases" and (2) reproducing these criteria in the Brazilian context. Serious flaws in any of those steps would affect the fairness of the comparison between Brazilian and European courts.

The document "Explanatory Note to the Scheme for Evaluating Judicial Systems" (CEPEJ, 2017) offers a detailed explanation of all criteria used by European Council. From that document is possible to understand that "civil and commercial litigious cases" include typical civil cases as divorces or disputes regarding contracts, typical commercial cases as bankruptcies, enforcement litigious cases, and employment dismissals (termination of employment contract at the initiative of the employer). The category does not include criminal cases, administrative cases (disputes between citizens and public authorities) and civil non-litigious cases, as business registers and land registers (duties performed by some courts in Europe).

Aiming to reproduce the same criteria described above, the collection of the data in Brazil included only cases filed in state and labor courts. Federal, military or electoral courts were not included because cases filed in those courts can be considered administrative under international standards. All cases in state and labor courts were considered, but criminal and tax enforcement cases were excluded. Some administrative cases filed in state courts remain in the pool, as cases filed by public servants against the state government or cases filed by citizens or companies against tax authorities, which cannot be distinguished from civil cases

due to data unavailability. This point should not be considered a serious problem because some European countries face the same difficulty, also including some administrative cases into the "civil and commercial litigious cases" category, and because those cases should represent a small fraction of the whole pool of civil and commercial cases filed in state courts.

Case disposition time in Brazilian courts will be measured using the same formula adopted by CEPEJ (2018), obtained by dividing the number of pending cases at the year by the number of resolved cases within the same year multiplied by 365 (days in a year):

$$\textit{Court Disposition Time} = \frac{\textit{Number of pending cases at the end of the year}}{\textit{Number of resolved cases during the year}} \times 365$$

Clearance rates in Brazilian courts will be measured using the same formula adopted by CEPEJ (2018), obtained by dividing the number of resolved cases by the number of incoming cases, expressed in a percentage:

$$\textit{Clearance Rate (\%)} = \frac{\textit{Resolved cases in a year}}{\textit{Incoming cases in a year}} \times 100$$

Data was downloaded from the Brazilian National Council of Justice's website[2] and considered the year 2019, the last data available. Disposition time and clearance rate of European countries were obtained from CEPEJ's website[3], considering the year 2016, the last year available.

[2] https://www.cnj.jus.br/pesquisas-judiciarias/paineis-cnj/
[3] https://www.coe.int/en/web/cepej/dynamic-database-of-european-judicial-systems/

3.3 Results and Discussion

The final dataset used in the research captures the major part of litigation in Brazil. The number of new incoming cases filed in first instance courts (15.295.613), for example, represents 63% of all new cases filed in Brazilian courts at that level.

In Brazil, cases filed in state courts may follow the common procedure or the special procedure (designed to small claims). Cases in labor courts follow just one procedure. In the first instance, cases may be in the judgement phase (when the case is not decided yet) or in the enforcement phase (when the judicial decision or an extrajudicial credit will be enforced). Considering the method described in the previous section, the disposition time and the clearance rate of civil and commercial cases in Brazilian first instance courts are shown in Table 3.1.

Table 3.1

Disposition Time and Clearance Rate of Civil and Commercial Case First Instance in Brazil

Court	Procedure	Phase	New Cases	Pending Cases	Resolved Cases	Disposition Time (days)	Clearance Rate
State Courts	Common	Judgement	5.837.356	15.045.830	7.766.410	707	133%
		Enforcement	1.838.812	6.161.576	1.728.814	1.301	94%
	Special	Judgement	3.815.940	3.892.411	4.394.600	323	115%
		Enforcement	1.173.489	1.293.854	1.170.294	404	100%
Labor Courts	Common	Judgement	1.814.400	1.243.785	2.304.063	197	127%
		Enforcement	815.616	2.416.904	924.348	954	113%
		TOTAL	**15.295.613**	**30.054.360**	**18.288.529**	**600**	**120%**

Source: prepared by the author based on CNJ data.

The disposition time of civil and commercial cases in Brazilian first instance courts is 600 days, but there is relevant variation depending on the court, the procedure and the phase of the case. The judgement of labor cases (197 days) is faster than the judgment in state courts, regardless if the judgement in the state court follows the common procedure (707 days) or the special procedure (323 days). This result is unexpected, because special

procedures concentrate small claims cases that, in thesis, are simpler to decide. The speed in the judgement of labor cases may reflect the specialization of those courts, the specific labor procedural rules or even the quantity and quality of human resources available. However, when it comes to disposition time in the enforcement phase, the special procedure (404 days) is faster in comparison to the common procedure (1.301 days) and to the enforcement in labor courts (954 days). The cap in the value of claims that follow special procedure in state courts (40x minimum wage) may facilitate the enforcement of those cases. Cases following common procedure in state courts or cases brought to labor courts have no cap.

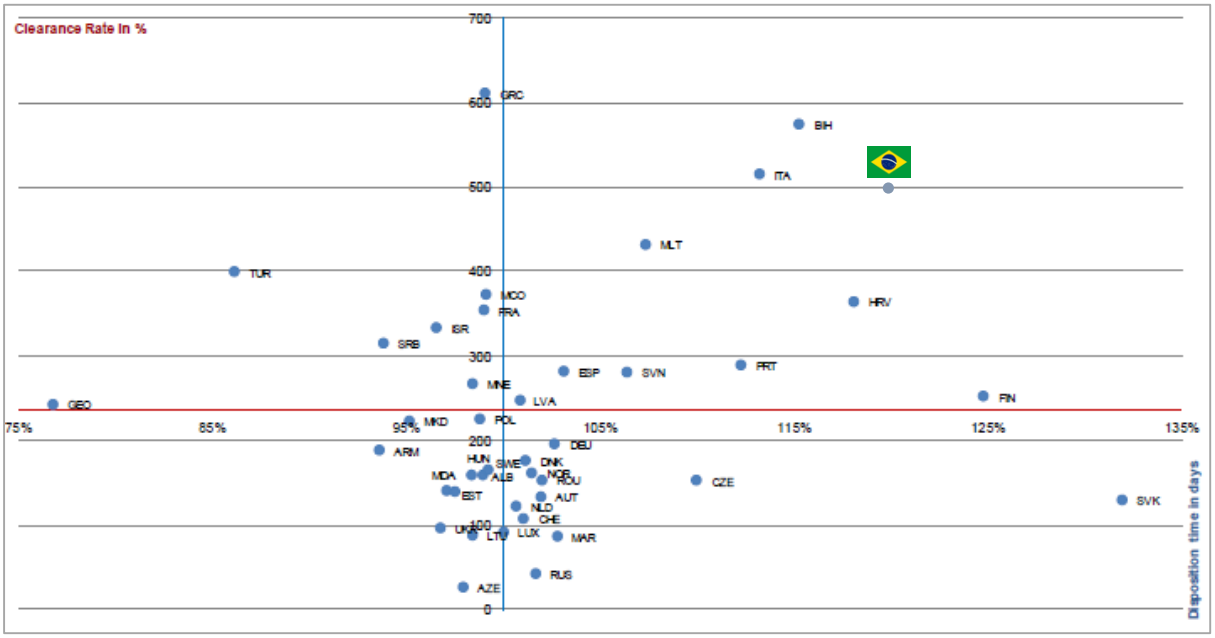
The disposition time of judgements are always smaller than the time of the respective enforcement. This phenomenon occurs in state court common procedure (707 days in judgment vs. 1.301 days in enforcement), in state court special procedure (323 days in judgment vs. 404 days in enforcement) and in labor courts (197 days in judgment vs. 954 days in enforcement).

The clearance rate of civil and commercial cases in Brazilian first instance courts is 120%. It means that first instance courts are able not just to cope with incoming cases but also to decided cases in the backlog. The clearance rates during the judgment phase should be highlighted because they all far exceed the 100% threshold (133% in state court common procedure, 115% in state court special procedure and 127% in labor courts). Nevertheless, the clearance rate during enforcements shows mixed results. While it is high in labor courts (113%), it is around the 100% threshold in state court special procedure and low in state court common procedure (94%). A specific negative note should be written about the enforcement in state court common procedure, because it has the highest disposition time (1.301 days) and the lowest clearance rate (94%) in the first instance, which means that the backlog of those cases is increasing. Tables 3 and 4 show disposition time and clearance rates of civil and commercial cases in first instance courts of Brazil and European countries.

As stated in Table 3.2, the average disposition time of civil and commercial litigious cases in Brazilian first instance courts (600 days) is significantly higher than the average in Europe (232 days). It is higher than in all European countries monitored by CEPEJ, except from Greece (610 days). On the other hand, the average clearance rate of civil and commercial litigious cases in Brazilian first instance courts (120%) is higher than almost all European countries, as shown in Table 3.3. Just Slovakia (132%) and Finland (125%) achieve higher clearance rates than Brazil. A combination of disposition time and clearance rates of civil and commercial litigious cases at first instance courts is shown in Figure 3.1, offering a complete picture of the pace of cases in Brazil when compared to European countries:

Figure 3.1

Clearance Rate vs. Disposition Time for Civil and Commercial Cases at First Instance in Europe and Brazil



Source: CEPEJ (2018), adapted by the author

Table 3.2

Disposition Time of Civil and Commercial Cases in First Instance Courts of Brazil and European Countries

Position	Country	Disposition Time (days)
1	Azerbaijan	25
2	Russian Federation	42
3	Morocco	86
4	Lithuania	88
5	Luxembourg	91
6	Ukraine	96
7	Switzerland	107
8	Netherlands	121
9	Slovakia	130
10	Austria	133
11	Estonia	139
12	Republic of Moldova	140
13	Czech Republic	153
14	Romania	153
15	Albania	159
16	Hungary	159
17	Norway	161
18	Sweden	164
19	Denmark	176
20	Armenia	188
21	Germany	196
22	North Macedonia	223
23	Poland	225
24	Georgia	242
25	Latvia	247
26	Finland	252
27	Montenegro	267
28	Slovenia	280
29	Spain	282
30	Portugal	289
31	Serbia	315
32	Israel	333
33	France	353
34	Croatia	364
35	Monaco	372
36	Turkey	399
37	Malta	432
38	Italy	514
39	Bosnia and Herzegovina	574
40	**BRAZIL**	**600**
41	Greece	610
European Average		**232**

Table 3.3

Clearance Rates of Civil and Commercial Cases in First Instance Courts of Brazil and European Countries

Position	Country	Clearance Rate
1	Slovakia	132%
2	Finland	125%
3	**BRAZIL**	**120%**
4	Croatia	118%
5	Bosnia and Herzegovina	115%
6	Italy	113%
7	Portugal	112%
8	Czech Republic	110%
9	Malta	107%
10	Slovenia	106%
11	Germany	103%
12	Spain	103%
13	Austria	102%
14	Belgium	102%
15	Norway	102%
16	Romania	102%
17	Russian Federation	102%
18	Denmark	101%
19	Latvia	101%
20	Netherlands	101%
21	Switzerland	101%
22	Luxembourg	100%
23	Albania	99%
24	France	99%
25	Greece	99%
26	Monaco	99%
27	Poland	99%
28	Sweden	99%
29	Azerbaijan	98%
30	Estonia	98%
31	Hungary	98%
32	Lithuania	98%
33	Montenegro	98%
34	Republic of Moldova	97%
35	Ukraine	97%
36	North Macedonia	95%
37	Armenia	94%
38	Serbia	94%
39	Turkey	86%
40	UK-Scotland	79%
41	Georgia	77%
42	Ireland	59%
European Average		**100%**

In state courts, second instance decisions may follow common procedure or special procedure as well. In labor courts, second instance decisions follow just one procedure. As the enforcement of cases run only in first instance, there is no division of phase (judgement or enforcement) in the second instance. Considering the method described in the previous section, the disposition time and the clearance rate of civil and commercial cases in Brazilian second instance courts are shown in Table 3.4.

The disposition time of civil and commercial cases in Brazilian second instance courts is 320 days, almost half the time in first instance courts (620 days). This result is expected because the collection of evidences in the second instance is more limited than in the first instance. Another possible reason is the absence of enforcement procedure in the second instance, an evident time-consuming phase in the first instance, as demonstrated above. Interestingly, there is little variation in disposition time among second instance courts, which are close to the mean regardless of the court and procedure.

Tables 3.5 and 3.6 state disposition time and clearance rates of civil and commercial cases in second instance courts of Brazil and European countries.

Table 3.4

Disposition Time and Clearance Rate of Civil and Commercial Cases in First Instance in Brazil

Court	Procedure	New Cases	Pending Cases	Resolved Cases	Disposition Time (days)	Clearance Rate
State Courts	Common	1.894.316	1.778.880	1.956.645	332	103%
	Special	805.881	702.283	836.884	306	104%
Labor Courts	Common	898.104	792.223	941.356	307	105%
		3.598.301	**3.273.386**	**3.734.885**	**320**	**104%**

Table 3.5

Disposition Time of Civil and Commercial Cases in Second Instance Courts of Brazil and European Countries

Position	Country	Disposition Time (days)
1	Russian Federation	31
2	Ukraine	54
3	Armenia	60
4	Czech Republic	69
5	Azerbaijan	72
6	Estonia	95
7	Slovenia	97
8	Switzerland	97
9	Republic of Moldova	100
10	Sweden	100
11	Lithuania	103
12	Poland	105
13	Turkey	109
14	North Macedonia	111
15	Portugal	114
16	Hungary	121
17	Slovakia	121
18	Latvia	124
19	Romania	131
20	Denmark	141
21	Finland	150
22	Georgia	153
23	Serbia	180
24	Spain	181
25	Germany	245
26	**BRAZIL**	**320**
27	Croatia	328
28	Monaco	435
29	Bosnia and Herzegovina	462
30	France	487
31	Luxembourg	553
32	Malta	783
33	Italy	993
34	Greece	1 149
European Average		**215**

Table 3.6

Clearance Rates of Civil and Commercial Cases in Second Instance Courts of Brazil and European Countries

Position	Country	Clearance Rate
1	Slovakia	125%
2	Finland	119%
3	Croatia	116%
4	Italy	111%
5	North Macedonia	111%
6	Belgium	110%
7	Denmark	109%
8	Estonia	106%
9	Luxembourg	106%
10	Malta	106%
11	Romania	106%
12	**BRAZIL**	**104%**
13	Armenia	103%
14	Sweden	103%
15	Czech Republic	102%
16	Switzerland	102%
17	Germany	101%
18	Lithuania	101%
19	Hungary	100%
20	Russian Federation	100%
21	Slovenia	100%
22	Ukraine	100%
23	Georgia	99%
24	Republic of Moldova	99%
25	Spain	98%
26	Monaco	97%
27	Portugal	97%
28	Latvia	96%
29	Poland	96%
30	Azerbaijan	95%
31	Bosnia and Herzegovina	95%
32	France	95%
33	Serbia	92%
34	Ireland	82%
35	Turkey	77%
36	Greece	75%
European Average		**101%**

The clearance rate of civil and commercial cases in Brazilian second instance courts is 104%. Although much lower than the clearance rate in the first instance (120%), it is still above the 100% threshold, which means that second instance courts are dealing with incoming cases and a small part of the backlog. The lower level of clearance rate is expected, as the size of the backlog is smaller. Consequently, the pressure over second instance judges to reduce the backlog is also smaller.

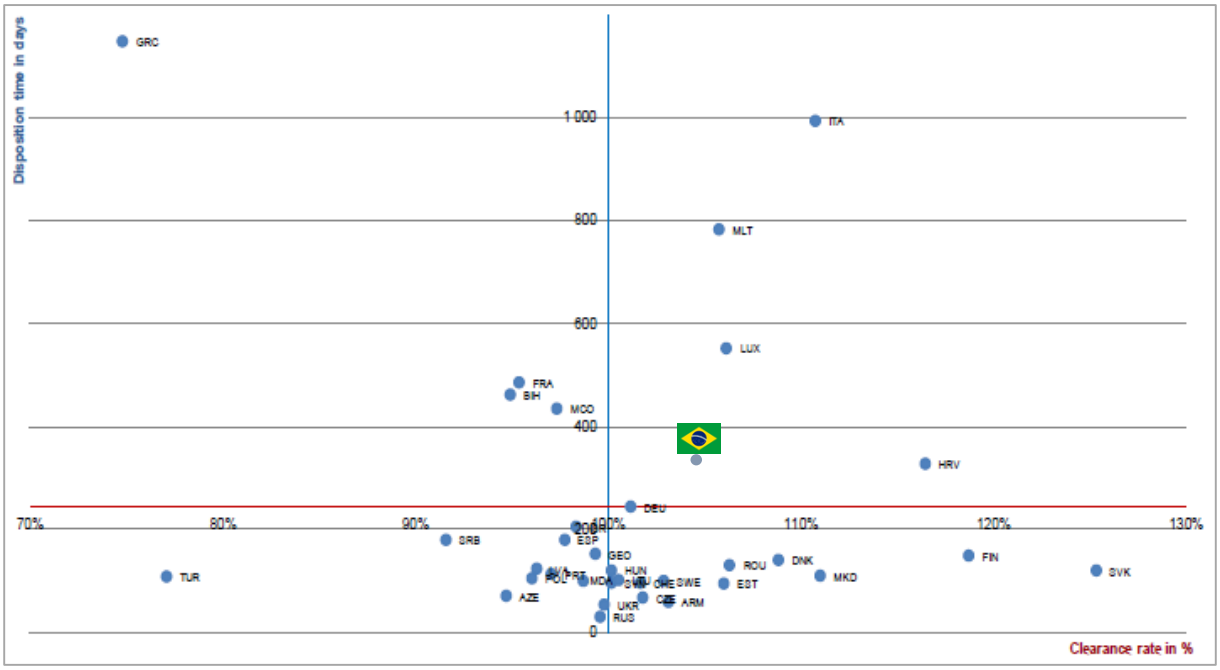
The relation between the size of the caseload and court productivity is well documented by legal empirical literature (Beenstock & Haitovsky, 2004; Dimitrova-Grajzl et. al., 2012; Gomes et al., 2017). There is little variation also in the clearance rate of second instance courts, which are all very close to the mean of 104%.

The average disposition time of civil and commercial litigious cases in Brazilian second instance courts (320 days) is almost 50% higher than the average in Europe (215 days). As demonstrated in Table 3.5, Brazilian second instance courts are slower than 25 of the 33 countries monitored by CEPEJ. The clearance rate of 140% is higher than most European countries, as shown in Table 3.6, but the position in the list (12nd place) is not so strong as the position of first instance courts (3rd position).

A combination of disposition time and clearance rates of civil and commercial litigious cases at second instance courts is shown in Figure 3.2, offering a complete picture of the pace of cases in Brazil when compared to European countries.

Figure 3.2

Clearance Rate vs. Disposition Time for Civil and Commercial Cases at Second Instance in Europe and Brazil



Source: CEPEJ (2018), adapted by the author.

3.4 Conclusion

Comparing the performance of courts from different countries is a challenging task and should be approached with caution. The legal and institutional characteristics of countries may affect the comparability of their judicial systems. This kind of study requires a thorough understanding of concepts used by different countries and plenty of quantitative data. The European Commission for the Efficiency of Justice has made a remarkable effort to assure a clear understanding of the concepts used to evaluate the judicial systems of European countries. The Brazilian National Council of Justice has conducted a distinguished work to make detailed judicial data available to the public. The efforts of these two institutions enables a proper comparison of the duration of cases between Brazilian and European courts.

Court disposition time in Brazil is significantly higher than in European countries. The situation is particularly critic in first instance courts. While disposition time of civil and

commercial litigious cases in first instance European courts is 232 days, in Brazil it is 600 days, almost three times higher. This result would put those courts in the last place among 40 countries analyzed by CEPEJ, except for Greece. Second instance Brazilian courts are also slower than their European counterparts. Even though not so problematic as first instance courts, disposition time of civil and commercial litigious cases in Brazilian second instance courts (320 days) are almost 50% higher than the European average (215 days).

This result would put Brazilian second instance courts on the last quarter of the list of European countries. Considering this international comparison, it seems reasonable to conclude that case duration in Brazil is too long. The perception of Brazilian citizens about court disposition time is not biased. Court delay is a real problem in Brazil.

However, current court disposition time reflect a backlog of cases accumulated along several years. Nowadays, Brazilian courts are not accumulating cases anymore. In fact, the number of civil and commercial decided cases is higher than the number of incoming cases. Both first and second instance courts have a clearance rate above 100%, which means that the backlog of cases is decreasing. The effort of first instance courts is especially impressive. With a clearance rate of 120%, they are quickly reducing their backlog. This effort is higher than almost all European countries. As a consequence, disposition time in Brazilian courts has a decreasing tendency.

Preserve this tendency will be a great organizational challenge to Brazilian judicial system. The backlog of cases in Brazilian courts is huge. To achieve the average of disposition time in European countries, the clearance rate in Brazil must remain well above the 100% threshold for several years. It is possible that legal actors in the judicial system get tired of keeping the clearance rate on this level for such a long time. Moreover, when the backlog starts to decrease, the pressure over judges also starts to decrease, which may hurt judicial productivity. If judicial productivity deteriorates, the number of decided cases

diminishes and the clearance rate returns to the 100% level. In this scenario, the backlog of cases will stabilize and the tendency towards a faster court disposition time will be interrupted. To avoid this sequence of events, court administrators should keep judicial productivity under close control at least until court disposition time in Brazil get close to international standards.

One point that deserves attention of policy makers is the enforcement of cases in state courts, where the number of decided cases is below the number of new cases, meaning that the backlog of those cases is increasing. Special focus should be put on the enforcement of cases following the common procedure, whose disposition time is the highest among those surveyed in this study, surpassing the symbolic limit of 1000 days. Even worst, the clearance rate of this group of cases is just 94%, which means that the backlog is growing rapidly.

Future cross-country studies about court disposition time could focus on specific classes of civil cases. Labor cases seems to be an interesting class to be analyzed, considering that they are decided by specific courts in Brazil, that labor procedural laws in Brazil have recently been reformed and that CEPEJ has an explicit classification for those cases. Comparative research about the duration of cases could also center attention on other areas of law, as criminal or administrative cases, which follow distinct procedural rules and may present results very different of those presented in this study. As this study have evaluated only courts of first and second instance, a comparison of disposition time in superior courts may also represent a research opportunity.

4 Factors affecting Court Disposition Time in Brazil: Perception of Key Actors

Abstract

The duration of judicial cases is a complex phenomenon, associated to delay and court performance and could be analyzed from different perspectives. This paper aims to describe and discuss factors affecting disposition time of civil cases from the viewpoint of judges, prosecutors, and lawyers, named key actors. The data was collected from 15 in-depth interviews. Content analysis generated a list of 28 factors affecting the duration of civil cases. Those factors were clustered in three basic dimensions: institutional, jurisdictional and organizational. The paper concludes that institutional factors form two opposite phenomena named "judicial universalism" and "judicial aversion", which have a major and negative impact on court speed. Although smaller, jurisdictional factors also seem to have a negative impact on celerity. Surprisingly, most organizational factors seem to have a positive impact on the pace of cases. These data are discussed, managerial recommendations and a research agenda are stated.

Keywords: case duration, judicialization, judicial universalism, judicial aversion

4.1 Introduction

There is a growing awareness that a judiciary capable of resolving cases quickly and fairly is an important prerequisite for social and economic development. Delays in resolving court cases undermine public confidence in the judicial system and disappoint those seeking compensation through legal proceedings (Heise, 2000). Judicial delay increases retards economic development (Buscaglia & Ulen, 1997) and have a negative effect on investments (Castelar, 2009), on the credit market (Chemin, 2010) and on price and delivery speed of public works (Coviello et al., 2013).

Different countries face court congestion and delay. This problem occurs in Latin America (Buscaglia & Ulen, 1997) and in parts of Europe (Bielen et al., 2015), as well as in

Asian and African countries (Jiang, 2005; Hazra & Micevska, 2004; Chemin, 2010; Kondylis & Stein, 2018; Grajzl & Silwal, 2020). Judicial reforms aiming to reduce case duration have been introduced, however most countries have not succeeded on this matter (Bielen, et al., 2018).

The factors impacting case dura are multiple and can be analyzed from different perspectives. The expected duration is systematically higher in countries with more formalized proceedings, as civil law countries (Djankov, 2003). Ambiguities in the civil procedure code also lengthens trial duration (Chemin, 2009). Empirical evidence suggest that higher caseload leads to higher levels of congestion (Murrel, 2001). The amount of human resources allocated in courts appear to have an impact on judicial speed. Court congestion may be reduced depending on the number of judges (Hazra & Micevska, 2004; Dalton & Singer, 2009) and the number of judicial employees (Mitsopoulos & Pelagidis, 2007).

Factors impacting the duration of judicial cases remains unclear and more research on that subject is "urgently necessarily" (Berlemann & Christmann, 2020, p. 2). In order to fill in this gap, this study aims to describe and discuss factors affecting court disposition time in a civil law country, from the viewpoint of judges, prosecutors, and lawyers. The focus of the investigation was the duration of civil cases in federal and state courts in Brazil. Court delay represented 68% of the complains made to Brazilian National Council of Justice in 2018 (CNJ, 2019) and it is the first reason why people avoiding sue in the country (AMB, 2019). Therefore, Brazil seems to be an appropriate place to investigate factors affecting court disposition time.

4.2 Method and Data

The research was undertaken between 2019 and 2020. Data was collected through in-depth interviews with 15 key actors of the Brazilian judicial system about factors affecting the duration of judicial cases. To be a key actor, the respondent must comply with two

criteria. The first one is to be a judge, a prosecutor, or a lawyer. Judicial cases form a triangular relation, with two sides in a dispute and a third element that decides the case. It can be said that lawyers, prosecutors, and judges are the main actors forming this triangle. The second criterion is having some connection with the administration of justice, for instance, large experience, academic work or professional position connected to this issue.

Of the 15 respondents, eight were judges (federal and state judges who work in first and second instances of Brazilian courts), five were lawyers (public and private lawyers) and two prosecutors (one federal prosecutor and one state prosecutor); thirteen were men and two were women. The interviewed worked in all regions of Brazil, their average age was 47 years; the youngest was 34 years old and the oldest was 60 years old. The average length of the interviewees' careers was 21 years, ranging from 10 to 37 years. The average length of the interviews was 55 minutes; the shortest took 32 minutes to complete and the longest, 93 minutes. As the interviews were being taken, answers started to become repetitive. The last three respondents repeated almost the same answers given during the previous interviews, adding little new information to the list of factors affecting the duration of cases. At that moment, it was considered that a saturation point was reached.

All the interviews were recorded and transcribed. They were analyzed using content analysis techniques, in two stages: identification of the structure of each interview, and analysis of the transversal and common issues along the interviews (Bardin, 2011). The first stage was identifying the factors described by the respondents in each interview. Then, a list of factors from all interviews was built. In the second stage those factors were grouped into categories and these into dimensions. For example, the factor "low litigation costs" was allocated in the category "legal factor", which belongs to the "institutional dimension". The main results related to each dimension are presented and discussed below.

4.3 Institutional Dimension

The institutional dimension encompasses legal, cultural, and social factors. Legal factors were considered as those directly related to the law. Some legal rules seem to foster the judicialization of disputes, generating court congestion. One legal issue connected to judicialization can be defined as “low deterrence”, the low capacity of the legal system to punish wrong behavior appropriately, generating a deterrent effect and avoiding the emergence of disputes. Some respondents explained that litigation represents an economic advantage for large litigants. As commented by interviewee 1: “For large litigants, litigation is cheap. They prefer to commit a borderline conduct, perhaps violating user rights, because they know that not everyone will sue.”

Large litigants are defined in the literature as Repeated Players who engage in many similar litigations over time while One-Shotters have only occasional recourse to the courts (Galanter, 1974). Cases filed against Repeated Players are not enough to produce a deterrent effect: just part of the plaintiffs bring their cases to courts and the value of judgement in those cases are limited to compensate the plaintiffs for their damages (system of compensatory damages), instead of punishing the wrong behavior of defendants (system of punitive damages). While Brazilian civil law adopts the system of compensatory damages, the United States adopts the system of punitive damages. About this issue, respondent 6 stated: “I would suggest the adoption of punitive damages against large litigants … Punishment must be higher than the benefit from the irregularity, otherwise it becomes a stimulus.” This suggestion is consistent with the law and economic literature, according to which failure to impose punitive damages would result in inadequate deterrence (Polinsky & Shavell, 1998). Due to low deterrence, large litigants insist on misbehavior and many disputes are brought to courts.

A second legal factor, also connected to judicialization, is the "judicial enforcement of tax cases". A significant amount of judicial litigation is intended to collect tax debts. Federal, state and municipal governments bring tax cases to courts, in order to combat tax evasion. Brazilian tax authorities do not have powers to promote debtor's patrimonial constriction directly. After administrative procedures to collect the debt, they must bring the case to the courts. Interviewee 11 commented this point: "Instead of a judge freezing assets, a tax authority should do that administratively. If the debtor does not agree, he bring the case to court … It is so in most countries. Few countries are like Brazil". The same respondent explains that other Brazilian officers have the power to conduct patrimonial constriction and even patrimonial destruction in other situations:

> Tax auditors may detain goods during import and export procedures, environmental auditors may arrest and burn tractors in the forest, sanitary inspectors may close restaurants. When it comes to tax enforcement, all constrictions must be ordered by a judge. Why?

Administrative enforcement of tax cases requires legal reforms, but those reforms face the resistance of many actors. Respondent 11 reveals:

> Courts resist because they do not want to transfer this power to the Executive; lawyers do not want to lose lawsuits in which they … collect fees; and debtors … want a long time-consuming process, which they can monitor to make an asset redirection.

A third legal factor is the "lack of private discovery". Discovery is a pre-trial procedure in which each party can obtain evidence from the other party or from non-parties. While in some countries discovery does not go much beyond facilitating voluntary exchanges, in other countries there are laws that require litigants to disclose information (Spier, 2005). The laws of procedure in the United States permit each side in a dispute to submit questions that the other side must answer before the trial begins, interview the other

side's witnesses under oath, requisition documents, and inspect physical objects in dispute (Cooter & Rubinfeld, 1994). As parties are required to collect evidence before bringing the case to the court, procedural steps to collect evidence during the trial are reduced or even eliminated, which decreases the duration of cases. Suggesting the adopting of discovery in Brazil, respondent 6 commented:

> You can make lawyers get in touch with each other. They would limit the scope of the claim, bring the legal controversial issue and require just the controversial evidence. We should not obligate the taxpayer to spend on mediation rooms and collection of uncontroversial evidence.

Besides reducing procedural steps during the judgement, discovery also stimulates private conciliation. In fact, if parties always have the opportunity to voluntarily settle their dispute out of court instead of resorting to litigation, why they go to court? A possible reason is that parties usually have divergent expectations about judgement. While plaintiffs tend to overestimate the expected judgment at trial, defendants tend to underestimate it (Bar-Gill, 2005). Trial will occur when the plaintiff is sufficiently more optimistic about winning than the defendant believes he should be (Kaplow & Shavell, 2002). When the parties are both optimistic, at least one of them is uninformed.

Revealing information to correct the other side's false optimism increases settlements and decreases trials (Cooter & Rubinfeld, 1994). As much information is acquired and comes to be shared by the opposing sides, beliefs of the two sides tend to be similar (Kaplow & Shavell, 2002). In the United States, the vast majority of cases that are filed ultimately settle before trial and countless others are settled before a case is filed at all (Spier, 2005). Respondent 12 commented this point: “Why are there so many agreements in US? Because the model was made that way. The parties are required to switch evidence in pre-procedural stage. There is an incentive to conciliation. There are conflicts, but they are not judicialized”.

In Brazil, there is a lack of legal provisions about legal discovery. One side is not obligated to disclose information to the other side prior to judicial litigation. Interviewee 13 clarify the origin of the problem: “The number of times the parties speak before the sentence may be extended ad eternum. Why? Because the Italian concept of *parlare primo* (speak first, prove later). Our procedural code comes from the Italian code of 1930”. Interrogatories, depositions, requisition documents, and permission to enter land are official procedures that require a judicial order to be executed. Without those instruments, parties are not stimulated to solve their disputes directly. On the contrary, they are forced to bring their cases to the court. Optimistic parties judicialize the dispute and courts have an obligation to foster conciliation between them (conciliation hearing became mandatory in Brazil in 2016). This obligation seems to make sense, as any conciliation made at the beginning of the lawsuit will spare time of litigants and judges. However, without enough information, the chances of conciliation at this stage are low. Most conciliations fail and cases are submitted to judicial decision.

Information sharing will decrease but not eliminate divergent expectations between parties. Even after information sharing, it is possible that parties will not perfectly agree on the judgement probability. If the divergence is not so high, litigation costs may avoid judicialization. However, litigation costs in Brazil seem to be low. “Low litigation costs” was one of the legal factors most reported by interviewees. The cost of court fees and the cost of the lawyer of the other side (if the plaintiff loses the case) depend on the legal rule that allocates those costs between parties. Under American rule each party bears just her own costs and under British rule the loser at trial bears also the winner’s costs (Bar-Gill, 2005). The adverse consequences of losing a case are more severe under the British rule because the loser will pay not just his own costs, but also the costs of the other side.

All Brazilian cases brought to Small Claims Courts are free of charge, regardless of the wealth of litigants. In 2018, 30% of new cases in State Justice and 63% of new cases in Federal Justice were filed in these courts (CNJ, 2019). In ordinary procedure, some actions are also free and people with insufficient resources have gratuitous justice. In 2018, 30% of cases closed in the State Justice and 36% of cases in Federal Justice of Brazil were classified as gratuitous justice (CNJ, 2019).

As costs are eliminated, any litigation represents just possible benefits to the plaintiff. Respondent 8 explains this point: “You have almost universal gratuity. The party does not pay costs, does not pay attorney's fees or other expenses. People litigate without fear of defeat”. Rich people or large companies may use judicial services for free. One interesting example is brought by respondent 11: “Companies do not use ordinary procedure in tax cases. To avoid paying litigation costs, they use a Writ of Mandamus against the chief of the Internal Revenue Service. When you have no cost or risk, why don't you try?”. The opinion of respondents seems to confirm a hypothesis raised by theoretical studies in Brazil, which proposed that indistinctively granted gratuitous justice may lead to overuse of courts and judicial slowness (Arake & Gico Jr., 2014; Gico Jr., 2014).

One possible reason to explain why Brazilian legal system is so generous with those who want to bring a case to courts may be found in the recent history of the country. During the period 1964–1985, Brazilians lived under a dictatorship and some rights were restricted. Interviewee 7 speculates that dictatorship provoked “a kind of trauma that no one can be victim of governmental arbitrariness. So now the judicial system will have to serve everyone.” According to him, this trauma led to court congestion and judicial delay. The same respondent explains that all these conditions favoring litigation seem to benefit middle and upper classes citizens but are unable to guarantee access to courts for the poor people:

> Judicial gratuity did not solve the problem of access to justice for the poor. If you plot the addresses of litigation in São Paulo city, it is all in the center, the richer part. In poor neighborhoods there is a jurisdictional blackout, nobody sues anyone. There, they resolve their problems by themselves.

The "Brazilian Labor reform" implemented at the end of 2017 offer a piece of evidence that changes in the allocation of litigation costs may reduce judicialization. The reform changed the rule of litigation costs: before the reform, each side supported his own litigation costs and after, the loser supports litigation costs of both sides. This change seems to have been decisive to the reduction in the number of new labor cases filed per year in first instance labor courts, which has dropped from 2.648.463 to 1.748.074, from 2017 to 2018 (CNJ, 2019).

The private decision of litigants to invest time and money in a lawsuit are not generally aligned with the interests of the society (Shavell, 1997). The judicial system is an expensive social institution, raising the question of whether the amount of litigation is socially appropriate. In some circumstances, the plaintiff will litigate too often while in others he will not litigate often enough (Spier, 2005). In general, plaintiffs will sue when the benefits of litigation are higher than the expected costs (Shavell, 1982). However, when a plaintiff contemplates litigation, he considers only his own costs; he does not take into account the defendant's costs or the state's costs that his suit will engender (Kaplow and Shavell, 2002). Parties involved in litigation do not bear all the costs of a trial—the salaries of judges and judicial assistants, the forgone value of juror time, or implicit rent of court buildings. As plaintiffs consider just their own private costs, they may litigate too often.

In contrast, the plaintiff does not recognize as a benefit to himself the social benefit of suit, its deterrent effect on the behavior of injurers. Even if a lawsuit would be convenient to punish some wrong behavior, the plaintiff will not bring a suit if his benefit is lower than his

cost. This would justify the state's supporting litigation because plaintiffs may be not litigating enough (Kaplow & Shavell, 2002). Due to fundamental differences between private and social incentives to use the legal system, the level of litigation in a country can either be socially excessive or insufficient (Shavell, 1997).

The interviewees suggest that the level of litigation in Brazil is socially excessive. The external selectivity of cases is the ability of the judicial system to select cases considered relevant from a social point of view (Fix Fierro, 2003). Due to low deterrence, judicial enforcement of tax cases, lack of private discovery and low litigation costs, the external selectivity of cases in Brazil is inappropriate. Brazilian legal system also seems to have problems in the internal selectivity of cases. Internal selectivity is the ability to select which judicial decisions should be revised by a higher court (Fix Fierro, 2003).

The interviewees suggest that the level of litigation in Brazil is socially excessive. Low deterrence, judicial enforcement of tax cases, lack of private discovery and low litigation costs are legal factors that induce judicialization. The external selectivity of cases is the ability of the judicial system to select cases considered relevant from a social point of view (Fix Fierro, 2003). Brazilian legal system seems to be unable to select which disputes should be brought by courts.

According to most respondents, the "number, nature and effect of appeals" are inappropriate. Interviewee 7 states that "we have a multitude of appeals in which the debtor can delay the end of the case, avoiding payment and liability for his obligations". Although the new Brazilian civil procedural code represented an advance, the number of appeals is still high. According to interviewee 11, "even after the reform, we still have 1000 appeal possibilities". Some respondents explained that the country legal system has four instances and advocated the idea that all judicial decisions must become res judicata in the second instance. For respondent 6, there is no contradiction between this idea and the protection of

procedural rights of litigants. He explained that in Italy and in the United States, countries with very different legal traditions, cases became res judicata in the second instance.

Besides the number, the nature and the effect of appeals were stated as problems to the flow of cases. One of the factors impacting the rate of appeal in a judicial system is the nature of the appeal, which can be a right of the appellant, normally at a first level court, or a discretionary appeal, when a latter court has the power to choose which appeals will be decided (Fix-Fierro, 2003). In Brazil, all appeals are a right of the appellant. No court has discretion to choose which appeals deserve revision. Any case may reach the Brazilian Supreme Court, including private disputes filed in Small Claims Courts. Respondent 11 commented this issue: “You may always bring your case to the Supreme Court. You just need to claim a constitutional issue. It is very easy to eternalize a discussion”.

The effect of appeals is also a problem. If an appeal is filed, the effects of the original judicial decision are immediately suspended. As first instance judicial decisions do not have immediate effects, lawyers do not take them seriously: “A lawyer friend of mine says that the case starts just after the sentence” (interviewee 14). The inappropriate design of the appeal process has consequences for the enforcement of judicial decisions as well. According to respondent 10: “The legal mechanisms and appeals made available to the parties is a factor that contributes significantly to a delay during the enforcement phase”.

Two legal factors described by interviewees are especially related to the time to enforce legal decisions. A first problem is treating the enforcement phase almost as a brand-new second case. Brazilian civil procedural system has an Italian origin, where the enforcement of a judicial decision is a second case. Interviewee 13 elucidates this topic: “The Italian model was created in the 20s/30s by Chiovenda. He idealized the idea of satisfied demand and resisted demand. So, we have a bi-procedural process, with all the imaginable vicissitudes of a second process”.

Many discussions seem to emerge during the enforcement phase because they were not addressed during the judgement phase. Judicial decisions in ordinary procedure do not need to be liquid, i.e., they do not need to express how much one side need to pay to the other side. Respondent 10 analyzed this matter: “In the ordinary procedure, you have many debates in the enforcement phase because judges do not liquidate their decisions during the judgement phase. This problem does not happen in the special procedure, where judges must pronounce liquid sentences”. A similar problem seems to happen in collective actions. The interviewee 1 stated:

> The individual particularities do not appear during the judgement of a collective action. When execution begins and calculations need to be made, new questions arise, and a very broad cognition is reopened. The enforcement becomes a new case, discussing a lot of issues.

Another legal factor impacting the time to enforce judicial decisions is the “debtor protection”. Brazilian legislation has some rules to protect specific assets. If a family lives in his own house, it is considered a “family property” and creditors cannot use this property during enforcement procedures, regardless of its value. According to respondent 2, courts give a benevolent interpretation to this rule:

> The property and the goods that cover it are considered family assets, regardless of their quantity or sumptuousness. If you are a debtor and have an 85-inch LED television, you will not lose it, even if your creditor has no television at his home. If you have an apartment of 5 or 10 million reais at the seaside, you do not lose it because it is the apartment where you live (Respondent 2).

Besides family property, other assets are also protected. The salary of debtors cannot be pledged to pay debts, even if the salary of the debtor is much higher than the salary of the creditor. Deposits in savings accounts cannot be frozen up to a limit. Interviewee 8 explains

that those rules disappoints parties who seek the judicial system, including the small creditors:

> We should reduce the protection of debtors. If you have up to R$ 40,000 deposited in a savings account, you will not lose it. Faced with situations like this, we often frustrate the satisfaction of small credits of under-paid parts.

Many cultural factors were appointed by the interviewees. The first one is the "Culture of Litigation" that seems to be present in Brazilian society. A culture of litigation means that all disputes are brought to the judicial system, including very small day-to-day conflicts. Respond 8 states: "There is a judicialization of all matters of life. Today neighborly fights, disagreements in the workplace … traffic discussions, relationships in social networks, all those matters may be brought to courts." This behavior would reflect an immature society, unable to solve their disputes without a judge. According to interviewee 1, "There is a culture of litigation. This perhaps reflects an infant society that wants a judge deciding several issues in his life, such as moral damages because a person was excluded from a WhatsApp group".

The "Culture of Delay" was also mentioned by respondents and appear to be spread throughout society. Some judicial actors think that the long duration of cases is a fact of life and take court delay for granted. "Courts think that delay is normal" (respondent 5). The culture of delay is also present in the behavior of litigants. Respondent 6 explains that some litigants seem not to be committed to a quickly solution to the case: "There is no hurry. It's not fancy to be in a hurry. The parties act as if they had a lot of money." Interviewee 15 think that the culture of delay is changing in Brazil and describes the practice of conciliation that was started in the state legal office he manages: "In 2018 we signed 3 or 4 agreements. In 2019 we created the Chamber of Conciliations, by law. In 2019 we made 300 agreements. In 2020, even with the COVID crisis, we reached 700 agreements until July."

Close connected to the culture of delay is the “Culture of Irresponsibility”, according to which people transfer the responsibility for the delay to someone else. The behavior of avoiding working or having responsibility over procedures was stated by interviewee 3:

> Someone needs to digitalize printed cases. The prosecutor’s office alleges that this is a rule created by the court and sends the case to the court. The court says that the prosecutor’s office is the plaintiff interested in the case and sends the case back.

Another cultural reason appointed by respondents is the “Culture of Formalism”. Many actors in the judicial system are used to bureaucratic procedures. According to the interviewee 1, “the legal system encourages freedom of forms, but the formalistic culture of legal operators—including the judge—complicates the search for practical solutions”. A revealing example of this cultural problem was described by respondent 4, who explained that some time ago, judicial decisions were followed by mandates written by court assistants. Nowadays, there is no need to this mandate because the judicial decision itself is considered a mandate. However, especially in small towns, court assistants insist on producing the mandate.

A very important and commented issue can be described as the “Culture of Nonconformity”, according to which people never agree with a third-party decision, even when this third party is a judge. “If the judicial decision is not favorable to the party, his lawyer simply appeal to the next instance. This is the most important factor to explain the duration of cases in Brazil.” (respondent 5). According to interviewee 6, this resistance to follow rules and orders is generalized in the society: “There is a distrust in the state. We do not accept orders given by an authority, even if this authority is legitimized by the constitution. In Latin America we are refractory to any authority.” The resistance described here is based in good faith. People resist because they think they should have won the case.

However, there is a kind of resistance based on bad faith. It is the “Culture of Trickery”, when the losing party knows that judicial decision is correct, but still try to avoid the consequences of a lawsuit. Those parties start to play “procedural games.” One typical behavior connected to the culture of trickery is avoiding judicial notification. According to respondent 3: “Defendants evade subpoenas and hearings, witnesses evade hearings. The judge imposes fines on the witnesses and notify the witnesses again. Them, they appear in court, crying desperately, asking the judge to cancel the fine”. Parties and lawyers play with procedural rules in order to maintain some previous situation. According to Respondent 6:

> We have lawyers who don't lose the lawsuit because the lawsuit never ends. It's a catchphrase: “I may not win, but if I don't win, the case never ends.” This is a way to keep his client in possession of land, a way of procrastinating a payment.”

Social factors also emerged during the research, as “the number of lawyers” in Brazil. Lawyers are experts on the law and should weigh their options carefully, helping their clients to make prudent decisions in litigation. This could be true specially under contingent fees, where the attorney receives a percentage of the judgment but receives nothing if the case is lost. A fee arrangement linked to lawyers’ performance imposes risk on lawyers (Kaplow & Shavell, 2002). Through the contingent fee, it is expected that attorneys will pursue only cases that are more likely to win (Spier, 2005). However, where the number of lawyers is too high, the cost of lawyers tends to decrease, and lawyers will assume more risk, accepting cases with low chances of winning. In this scenario, lawyers would stop to act as a filter to frivolous suits and would become an actor to promote them. In the face of this competitive legal market, lawyers in Brazil seem to accept working under contingent fees and plaintiffs have no costs with lawyers. Many respondents alluded to the connection between the number of lawyers and the number of lawsuits in Brazil. This opinion resonates with other studies, which found evidence that an increase in the number of lawyers is associated with an increase

in court litigation in Italy (Buonanno & Galizzi, 2014) and in Spain (Mora-Sanguinetti & Garoupa, 2015).

The "legal education" in Brazil also seems to favor judicial litigation, provoking court delay. According to some respondents, law schools do not teach students how to seek a consensual solution. They are not trained for conciliation, mediation, arbitration, and negotiation. "We were trained to litigate. We are trained to fight." (Respondent 1). One interviewee sad that this scenario is changing. "You have to change the culture of legal actors since college. A new resolution of the National Council of Education determines that conciliation is a compulsory class in the curricula of law schools" (Respondent 4).

A final social factor that impact the enforcement of judicial decisions is the low income of some defendants. According to respondent 1: "There are people with chronic financial situation, who have no assets". There are even more melancholic situations. According to respondent 9, paying a debt may affect the nutritional necessity of some litigants: "He will prioritize eating. He will not stop eating to pay a bill." Table 4.1 summarizes factors belonging to the institutional dimension.

4.4 Jurisdictional Dimension

The jurisdictional dimension is internal to the courts, linked to the exercise of the legal function, to the way that judicial cases are decided. The jurisdictional dimension reveals how the work conducted by judges may impact the duration of cases. The jurisdictional factors reported by the respondents were divided in three categories: jurisprudential instability, decisional procrastination, and judicial benevolence.

Jurisprudential instability occurs when judges do not follow precedents established by superior courts (vertical instability) or when superior courts do not follow their own precedents (horizontal instability). The operation with binding precedents demands knowledge of decisional technics and concepts that Brazilian judges, formed in civil law

tradition, are not familiar with (Barroso, 2016). According to interviewee 2, “we have a problem in Brazil with this shift to a system based on precedents. We do not have a culture of working with precedents yet”. One aspect about this learning process is that superior courts, when deciding a precedent, do not explore and address all divergences present in the case. Due to this incomplete precedent formation, litigants continue to bring cases to courts and to appeal: “superior courts must produce precedents with solid arguments. It is not making a 300-page judgment. It may be 10 pages, but it needs to have important arguments.” (respondent 2). This perception is in line with Berlemann and Christmann (2020) results. Based on German 576 first instance court rulings, these authors confirm that when prior court decisions are cited the length of trials is shorter.

Table 4.1

Institutional Factors Affecting Court Disposition Time

Category	Factor	Effect:		
		Before the Case (Judicialization)	**During the Case (Judgement)**	**After the Case (Enforcement)**
Legal	Low Deterrence	X		
	Judicial Enforcement of Tax Cases	X		
	Lack of Private Discovery	X	X	
	Low Litigation Costs	X	X	X
	Number, Nature and Effect of Appeals		X	X
	Enforcement as a second case			X
	Debtor Protection			X
Cultural	Culture of Litigation	X		
	Culture of Nonconformity	X	X	X
	Culture of Trickery	X	X	X
	Culture of Delay		X	X
	Culture of Irresponsibility		X	X
	Culture of Formalism		X	X
Social	Number of Lawyers	X	X	X
	Legal Education	X	X	X
	Low Income			X

Another jurisdictional category impacting the duration of cases is decisional procrastination, a phenomenon that occurs in all instances of the judicial system, for different reasons. Decisional procrastination is reflected in the judgment of "repetitive cases in Superior Courts", which seem to be especially harmful. According to interviewee 1: "Sometimes issues of immense repercussion are judicialized, superior courts suspend those cases, but do not decided the dispute even after several months. Those issues should be decided quickly. It would make a huge difference."

The "avoidance of polemic or complex cases" is also related to decisional procrastination. Judges use conciliation hearings as an instrument to postpone decisions, even if the judge knows that this conciliation hearing has no chance of success. One extreme example was described by interviewee 3: "In a case filed in 2014, 8 conciliation hearings were designated, none with final conciliation. The judge asks the parties for information and reschedules a new conciliation hearing. The case stops. He does not judge and blames the parties." Another instrument used by judges to postpone decisions is sending the case to the judicial calculation sector or to the parties in circumstances when those steps are unnecessary. About this topic, respondent 12 stated that "legal conflicts must be decided by the judge, but he doesn't decide. He produces acts (sends them to the accounting department, to the other party) and goes on. My perception is that it's not just insecurity, it's laziness."

Judges are rational and pursue economic goals of the same general kind and in the same general way that private persons do, so in considering how much time to allocate to judging, the rational judge will consider the negative impact on his leisure (Posner, 1993). As complex cases are time-consuming, judges have an economic incentive to avoid judging those cases. The multitasking model (Holmstrom & Milgrom, 1991) shows that if an agent is given two objectives—say, quality and productivity—, and only one of those objectives can be measured and monitored, then the agent will shirk on the hard-to-measure objective and

invest in achieving the other (Choi, 2007). The National Council of Justice establishes a number of goals for courts (CNJ, 2020). According to Goal 2, courts must decide certain percentage of old cases. Respondent 6 explained that this goal is not able to address the problem and described strategies used by judges: “According to goal 2, judges must decide 80% of the cases filed in 2016. They do not decide the other 20% because they are complex. Instead of judging a complex case from 2000, they could decide 5 repetitive cases”.

The behavior of courts that allow or even incentive the delay is defined as “Judicial benevolence”. One aspect of judicial benevolence is the resistance to impose penalties, as commented by respondent 9:

> Judges are still very resistant to impose penalties. They realize that some appeals are filed with the unique purpose of delaying the case, but they still do not apply the penalties, not even after the new provisions established in the procedural code.

The benevolent interpretation of procedural rules was commented by respondent 14:

> The new procedural code brought an exhaustive list of the hypotheses for instrumental appeal. What did the Superior Court of Justice? The court decided that the list is not exhaustive, that those hypotheses are just examples, that the appeal may be used when something can cause damage.

Defensive jurisprudence was described as the behavior of superior courts in using formalistic barriers to dismiss appeals. Contrary to the other factors, defensive jurisprudence has positive consequences for the pace of courts. As appeals are dismissed, cases end earlier. Commenting this point, interviewee 12 stated: “There is a survival behavior of the higher courts in creating more filters than those provided by law, in order to reduce the volume of cases. It is the jurisprudential defense”. Judicial benevolence and defensive jurisprudence are diametrically opposed. Legal interpretation is too soft in the first, and too hard in the later. Factors belonging to the jurisdictional dimension are stated in Table 4.2.

Table 4.2

Jurisdictional Factors Affecting Court Disposition Time

Category	Factor	Effect		
		Before the Case (Judicialization)	**During the Case (Judgement)**	**After the Case (Enforcement)**
Jurisprudential Instability	Vertical and Horizontal	X	X	X
Decisional Procrastination	Repetitive cases in Superior Courts		X	X
	Avoidance of complex/polemic cases		X	X
Judicial benevolence	Penalty aversion		X	X
	Interpretation of appeal's rules		X	X
Defensive Jurisprudence	Restriction of appeals in Superior Courts		X	X

4.5 Organizational Dimension

The organizational dimension discusses factors related to the internal structure of courts as bureaucratic organizations. Factors regarding the organizational dimension were divided in three categories: human resources, technology, and management factors.

Regarding to human resources, no respondent has complained about the quantity and quality of judges or judicial assistants in federal courts. However, the circumstances are different at state courts. One first problem in state courts is the quantity of judges. As the number of state judges is low, they must respond for multiple offices, as detailed by a state judge:

> When the National Council of Justice asks why do you have a case for more than 100 days, you explain that you are responsible for two or three judicial offices. I do not provide a satisfactory jurisdiction in neither of them (interviewee 10).

However, according to most of the respondents, the main problem related to human resources in state courts seem to be a deficit in the quantity and the quality of judicial assistants. About this problem, respondent 1 stated: “Sometimes there are just two judicial assistants in the office, and they come from the local city hall, they are not professional judicial assistants”.

Respondents repeatedly cited technology as one important factor to explain the duration of cases in Brazil, involving both software and hardware issues. The development of electronic systems to control the flow of cases through the courts was appointed as decisive to reduce case disposition time. Interviewee 2 explained that the system automatized many procedures, reducing the "dead time" of the cases, those moments that consume time but do not generate value to the judicial decision. The use of technology is fostered by the National Council of Justice, which choose one standard electronic system to be used by courts. Courts are forming a community of development and tools developed by one court may be easily exported to other courts. Interviewee 14 commented this point: "The state court of Rondonia developed an AI tool. The federal court in Sao Paulo took this tool and made a robot able to read cases and propose a draft of a decision".

Courts also have invested in technology during enforcement proceedings. Powerful technological tools are used to locate and confiscate debtors' assets. Nowadays, a single judicial command is enough to confiscate capital deposited in bank accounts. According to respondent 8: "By filling in a simple electronic form, you block all banking accounts in 48 hours. You have access to the most liquid asset to satisfy any type of obligation, which is money, at low cost and high efficiency". Another system cited by interviewees is designed to identify the ownership of automobiles and to block their transference to other people.

Although powerful, some electronic systems are very time-consuming, as a system created to detect if the debtor has assets in the name of another person. Other systems are still in an early stage of development, as a system to locate and block the transference of buildings and other real estate properties. Some judges seem to have difficulties to manage technological tools or to resist the idea that part of his job has a digital component. This behavior may have a negative impact on the duration of cases, as explained by respondent 9:

> I do not know if by accommodation or because they have trouble operating the systems, but some judges are not making a proper use of them (technological tools). They should use those tools to shorten the duration of cases, but they resist. So, enforcement proceedings get locked.

Some interviewees posed very interesting questions about the role of courts during the enforcement phase. According to them, locating debtors and assets is not a jurisdictional function. They argue that this function should be done by the parties who are interested in the success of the enforcement and that the time of judges and judicial assistants could have been used to perform jurisdictional activities. Respondent 6 expresses his concerns about this point: “I don't understand why the judge, who should be deciding cases, would spend time doing a collection activity. I could sit and search the systems. But I could be deciding another case”. In common law countries not just the location of assets but also the constriction of assets is done by private companies. Respondent 13 explains: “Common law models do not consider the execution phase. If you owe $ 1,000, the lender can use administrative means. There are companies in the US specialized in constricting assets. Finding the guy's car, sealing the car.”

Hardware and infrastructure of communication seem to have different impact on Brazilian federal and state courts. While federal courts seem to have reasonable IT infrastructure, state courts face some problems. A state judge (respondent 6) described the situation:

> I type the name and wait, type the Social Security Number and wait. If I used my cell phone, I would type everything, hit enter and then send. These short breaks respond for more than 40% of my time using the system and I only work using the system.

Performance indicators and the control of judicial activity were the most important management factors cited during the research. Many respondents emphasized the importance

of the performance indicators and targets defined by the National Council of Justice. Some judges have mentioned the tools to control caseload and duration of cases in judicial offices. Respondent 2 revealed that “we are developing a Business Intelligence Panel called ‘Management at your Fingertips’. This panel gives access to several indicators, such as the average case processing time, processes stopped at “x” days, number of processes per issue/matter”. It seems that those targets really influence the behavior of judges. According to interviewee 5 “the judge is under constant pressure from the National Council of Justice. That Council is the ‘sword of Damocles’ with the Court, and the Court with the judge. The judge is stressed about those goals”. According to respondent 2:

> Every month we follow the targets. It was difficult to reach the goal last month because the number of new cases filed was higher than usual. The team had to work twice as hard, so that we could reach the goal.

A state judge (respondent 6) showed how he was aware of his performance targets: “I know exactly how my goals are … The Comptroller’s Office puts them on the intranet and has a giant screen where he tracks all offices with graphics. Big Brother, so to speak”.

The pivotal role played by the National Council of Justice (CNJ) should be highlighted. The CNJ seems to promote coercive isomorphism on courts. Coercive isomorphism is a mechanism through which one organization exerts formal and informal pressure on other organizations leading them to become increasingly similar (DiMaggio & Powell, 1983). Due to CNJ’s pressure, Brazilian courts are using similar electronic systems and similar performance indicators and targets. Factors belonging to the organizational dimension are summarized in Table 4.3.

Table 4.3

Organizational Factors Affecting Court Disposition Time

Category	Factor	Effect: Before the case (Judicialization)	During the case (Judgement)	After the case (Enforcement)
Human Resources	Quantity and quality of judges		X	X
	Quantity and quality of assistants		X	X
Technology	Software		X	X
	Hardware and infrastructure		X	X
Management	Performance indicators		X	X
	Control		X	X

4.6 Conclusion

This paper investigated factors affecting court dispositional time in civil cases in Brazil. Research data generated a list of 28 factors related to the phenomenon, clustered in three basic dimensions: institutional, organizational, and jurisdictional. These results, although related do one country, push the knowledge upon the theme, contributing to improvements in policies and strategies about administration of justice. In countries facing similar problems, politicians and policy makers should adopt a comprehensive perspective, including reforms that addresses issues aggregated in the different dimensions debated above, with a special focus on institutional factors.

Institutional factors (legal, cultural and social) seem to play a major role before the case (judicialization), during the case (judgement) and after the case (enforcement). The institutional design of Brazilian judicial system generates a phenomenon that can be defined as “judicial universalism”, the idea that Brazilian courts should decide all universe of disputes that arise in society and to perform a universe of duties that go beyond the classic jurisdictional functions.

Brazilian judicial system seems to have low ability to select cases considered relevant from a social point of view (low external selectivity of cases). The culture of litigation

present in the society combined with high number of lawyers promote de phenomena of judicialization. Instead of filtering which disputes are relevant, legal rules simply eliminate litigation costs and risks. In this sense, judicial litigation represents just possible benefits to the plaintiff, which have strong economic incentives to bring any suit for courts, including frivolous suits. As a consequence, too many disputes are judicialized. For each of those cases, courts must perform duties that are not restricted to deciding the dispute (low selectivity of duties). Among duties that have low or no relation with jurisdictional functions are responsibilities as collecting evidence, locating debtors and assets, and enforcing tax cases.

Besides the institutional factors enclosed in the concept of judicial universalism, other institutional factors seem to form the phenomena of *judicial aversion*, the fear or resistance to comply with judicial decisions. Litigants have many opportunities to challenge judicial decisions. The legal system has multiple appeals in multiple instances, all appeals are a right of the appellant and no court has discretionary power to decide which cases deserve revision, not even Brazilian Supreme Court (low internal selectivity of cases). Some parties resist in good faith, because they think they should have won the case (Culture of Nonconformity). However, there is a kind of resistance based on bad faith, when the losing party knows that judicial decision is correct, but still try to avoid its enforcement (Culture of Trickery). This trickery behavior is reinforced by legal rules and judicial benevolence that protect the debtors from patrimonial constriction. Judicial aversion is also characterized by the low capacity of the system to punish wrong behavior appropriately (lack of punitive damage), which would generate a deterrent effect and avoid the emergence of disputes.

Judicial universalism and judicial aversion are opposite phenomena. On the one hand, a universe of cases and duties should be handled by courts. Society seem to trust in the judicial system. On the other hand, judicial decisions are challenged, and many barriers are created to make judicial decisions effective. Society seem to distrust the judicial system. This

paradox transformed the judicial system in a *pachyderm*, a system that is too large and too slow, unable to handle cases in a timely fashion. Both judicial universalism and judicial aversion are institutional phenomena. Institutional factors seem to have the most negative impact on court celerity.

Although smaller, jurisdictional factors also seem to increase case disposition time. It appears that Brazilian courts have not yet learned how to operate a system of binding precedents, causing jurisprudential instability. This instability can be either vertical, when judges do not follow precedents defined by superior courts, or horizontal, when the court do not follow its own precedent. Judicial procrastination, the resistance of judges to decide polemic or complex cases, seems to have a limited effect on case disposition time, because it seems restricted to some judges or to some specific cases.

In contrast with institutional and jurisdictional factors, the organizational factors seem to have a positive impact on the pace of cases. The research points out that federal and state courts are in different stages of organizational development. While technological infrastructure, the quantity of judges and the quantity and quality of judicial assistants were appointed as problems in state courts, they were not appointed as problems in federal courts. However, organizational differences between courts seem to be reducing due to the work promoted by the National Council of Justice, which created national performance indicators and encouraged an expansion in the use of electronic systems.

Future studies may focus on comparative analysis including countries that follow both civil law and common law approaches. Another research opportunity may be collecting the perception of the users of the judicial system, as citizens, businesses, and government. Finally, a quantitative approach to investigate the duration of cases may be also useful to achieve results that could be generalized to a large number of countries.

5 Factors Affecting Judgements and Enforcements: Evidence from Brazilian Labor Courts

Abstract

Court performance has increasingly become the object of empirical research, but factors impacting the enforcement of judicial decisions have not been explored yet. Judicial decisions would have little social value if they were not enforced. This study investigates which factors impact the number of resolved cases in the judgement and in the enforcement stages of Brazilian first instance labor courts. Two regression techniques are applied (Ordinary Least Squares and Fixed Effects) and their results are compared and discussed. On the one hand, it was found that the impact of pending cases on court output seems to be much higher in the enforcement stage than in the judgement stage. On the other hand, it was found that the impact of technology on the number of resolved cases is small but significant during the judgement stage but non-significant in the enforcement stage. Contrary to previous empirical research, this study found that number of judges have a substantial impact on court output, at least as strong as the impact of caseload. The number of new cases brought to courts seems to have just a moderate effect on the number of resolved cases. The public policy implications of these findings are debated.

*Keywords***:** court output, judgement, enforcement, caseload, judges

5.1 Introduction

The performance of courts has an important impact on economic and social development. For this reason, judicial performance has increasingly become the subject of empirical scrutiny. Some studies focused on the court level in order to explain which factors impact court output as a whole (e.g., Beenstock & Haitovsky 2004, Rosales-López 2008; Dimitrova Grajzl et al. 2012; Dimitrova-Grajzl et. al., 2016). Other studies have investigated if factors affecting court output vary with some type of court office, as civil, criminal or

mixed offices (Gomes et al., 2017), or according to case procedural category, as cases requiring full-trial or just simplified procedures (Bełdowski et al., 2020). So far, however, no attention has been paid to the distinction between factors affecting judicial deliberation and judicial enforcement.

Judicial deliberation and judicial enforcement seem to have different natures. In judicial deliberation, the judge hears parties and witnesses, analyzes evidences brought by both sides and the norms applicable to the case. At this stage, substantive legal analysis is done, and the goal is to reach a judicial decision. In judicial enforcement, the goal is to enforce the judicial decision. Courts take procedural and administrative steps – sometimes using and supervising structures of the Executive branch—to make the judicial decision effective, like imposing restrictions on debtor's assets and freezing checking accounts. The resources, skills and conditions necessary to reach a judicial decision may be different from those affecting its enforcement.

Courts would have little social and economic value if their decisions were not enforced. Enforcement is particularly important as a primary economic function of the courts (Fix-Fierro, 2003). Deficiencies in court enforcement affect firms access to finance and investments (Ponticelli & Alencar, 2016), impact how firms organize production (Boehm and Oberfield, 2018), and postpone the delivery of public works (Coviello et. al., 2013). According to the European Court of Human Rights—ECRH, States have a positive obligation to organize a system to enforce judicial decisions and this system should be effective both in law and in practice (ECHR, 2019). The non-enforcement of court decisions is the second main reason cited by applicants before the ECHR regarding the Article 6 of European

Convention of Human Rights[4] and many European countries have established mechanisms to avoid the non-enforcement of judicial decisions (CEPEJ, 2018).

Although non-negligible empirical research has been carried out on court performance (Voigt, 2016), factors impacting specific procedural stages (judgement or enforcement) remain unexplored. Empirical studies addressing this question may provide subsidies to more refined court administration strategies. To fill in this gap in the literature, this research investigates which factors impact the number of cases ended both in the judgement stage and in the enforcement stage.

Brazilian labor courts offer a proper research opportunity to this kind of investigation. First, the Brazilian judicial system has separate and distinct procedural stages for the judgment of cases and for the enforcement of judicial decisions. This distinction enables the collection of data directly related to each stage. Second, Brazilian labor courts are fully specialized in issue and all enforcements follow the same procedure. Any research finding may be directly related to this type of case and enforcement procedure. Other kind of Brazilian courts, as state and federal courts, for example, have jurisdiction over many different issues (e.g., civil, criminal, tax) and enforcements follow different procedures (civil, criminal and tax cases have their own enforcement procedure), which could blur the analysis.

The contribution of this paper to the existing literature is three-fold. First, it distinguishes court performance by procedural stage (judgement and enforcement), a dimension that has not been explored by empirical studies yet. Second, it is focused on labor courts, one type of court that was barely analyzed by previous studies investigating determinants of court output. Third, it investigates court output in Brazil, a developing Latin America continental country. Despite the growing literature on judicial performance, rigorous

[4] Article 6: In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law…

research on court efficiency in developing countries remains scarce (Voigt, 2016). Previous international publication on this topic was concentrated in Europe and Asia, as papers analyzing court output in Spain (Rosales-López 2008), Slovenia (Dimitrova Grajzl et al. 2012), Bulgaria (Dimitrova-Grajzl et. al., 2016), Poland (Bełdowski et al., 2020), Israel (Beenstock & Haitovsky, 2004) and Nepal (Grajzl & Silwal, 2020). Moreover, Brazilian population (208 million inhabitants) and geographical area (8.5 million of Km^2) are higher than all those countries together. The effect of explanatory variables in a country with these characteristics may be different from those found in previous studies, as court administration face higher and more complex managerial challenges. Analyzing court output in other parts of the world and in continental countries would enrich current knowledge about court performance.

5.2 Theoretical Background

A wide range of explanatory variables have been examined by empirical studies in order to explain court performance in general and court output in particular. Among those exploratory variables, court caseload, the number of judges, the number of judicial assistants, expenses in technology and budgetary issues have been specially examined.

Court caseload seems to have a strong relation with judicial output. Studies suggest a positive impact of caseload on court output, but the size of the impact has some variation. A study undertaken in Israel showed that the number of decided cases per judge varies directly (approx. one-to-one) with the caseload per judge (Beenstock & Haitovsky, 2004). In Slovenian first instance courts, after controlling for endogeneity problems, researchers detected that a 10% increase in judicial caseload produces a more than 17.6% increase in the volume of decided cases (Dimitrova-Grajzl et al., 2012). An analogous investigation concluded that case disposition in Bulgarian courts is primarily driven by demand for court

services (approx. one-to-one) in both large and small district courts (Dimitrova-Grajzl et al., 2016).

In other countries, the effect of caseload on court production was lower. In Nepal, it was found that a 10% increase in court's caseload leads to an 8.8–9.2% increase in the volume of resolved cases (Grajzl & Silwal, 2020). In Spain, a 10% increase in workload of first instance courts produces a 3% increase in judicial output (Rosales-Lopez, 2008). In Brazil the impact of caseload on the number of decisions depends on the specialization of the judicial office (Gomes et al., 2017). In that country, a 10% increase in caseload produces an increase of 3.5% in criminal offices, of 0.8% in civil offices and of 6.1% in mixed offices.

Almost all studies cited above analyzed the impact of *caseload* on court output, considering caseload as the *sum* of new cases filed and pending cases. Surprisingly, only Beenstock and Haitovsky (2004) and Bełdowski et al., (2020) have investigated the specific effects of new cases and pending cases on court output. In other words, the precise impact of new cases on court output as well as the precise impact of pending cases on court output are questions barely addressed by empirical literature. Disentangling these factors allows a deeper understanding of the impact of court demand on court supply.

In the Beenstock and Haitovsky (2004) study both variables (new cases and pending cases) had a significant impact on court output, but the effect of the number of new cases filed during the year was much stronger (between 0.741 and 0.932 depending on the court) than the impact of pending cases at the beginning of the year (between –0.014 and 0.155 depending on the court). After using instrumental variables to address reverse causality, Bełdowski et al. (2020) found that an increase of 10% in the number of new cases produces a 7.5% increase in the total number of decided cases, a result that remains strong regardless of case category (full-trial, writ-of-payment and non-litigious cases). In this study, pending

cases have no impact on the total number of judicial decisions, having a substantial and significant impact just in the very limited group of non-litigious cases.

The impact of the number of judges on court output was studied by several scholars. Intuition says that increasing the number of judges would increase the number of judicial decisions, however, empirical studies have challenged this view. A groundbreaking study done in Israel showed that the number of case decisions is independent of the number of judges serving in a court (Beenstock & Haitovsky, 2004). According to the authors, incumbent judges decide fewer cases when new judges are appointed because caseload pressure (caseload per judge) decreases. The productivity of judges is endogenous to such an extent that changes in the number of judges are offset by countervailing changes in productivity, such that "the total dispositions by court are not sensitive to the size of the bench" (Beenstock & Haitovsky, 2004, p. 365).

A study aiming to evaluate the impact of judges on court output undertaken in Slovenia raised important methodological questions (Dimitrova-Grajzl et al., 2012). An increase in the number of judges have a significant but small effect in the number of decided cases when Pooled Ordinary Least Square (OLS) and Fixed Effects (FE) approaches were used. However, when the authors applied an instrumental variable approach to address possible reverse causality between both judicial staffing and caseload on the one hand and the number of resolved cases on the other, the significance of the effect of judges on judicial output disappeared. Researchers found a more complex phenomena in Bulgaria. While the number of judges does not impact the number of judicial decisions in large district courts, it has a (modest) positive effect in small district courts even after reverse causality issues are addressed (Dimitrova-Grajzl et al., 2016). Also using instrumental variables, a study in Poland found no effect of judges on court output of commercial courts, except for full trials, in which a 10% increase in the number of judges produces a 3% increase in the number of decided cases (Bełdowski et al., 2020).

Empirical studies usually find a positive effect of support staff on judicial performance. The size of the staff in civil first instance courts seems to have some impact on court output in Spain, where an increase of 10% in the size of judicial employees produces a 6.2% increase in judicial output (Rosalez-Lopez, 2008). In Greece, it was found evidence, especially among court of appeals and higher civil courts of first degree, that when the ratio of employees to total cases introduced worsens, the time needed to dispose cases also worsens (Mitsopoulos & Pelagidis, 2007). In Brazil, a research using panel data from Brazilian State Courts found a positive and statistically significant relationship between the number of assistants and court productivity (Gomes et al., 2016).

It is at least curious that empirical research point to a positive impact of the number of judicial assistants on court performance while the impact of the number of judges seems to be non-significant or very limited. One possible explanation for that may be the use of different and perhaps more rigorous methodology to measure the impact of judges. Studies about the impact of judicial assistants on court performance have not addressed the issue of reverse causality, for example. The apparent contradiction between the impact of judicial assistants and judges on judicial performance point to the need of more meticulous empirical analysis on the subject.

The impact of technology on court performance is less studied and more controversial. Theoretically, technological improvements should enhance court performance because they boost the ability to manage the caseload, to write opinions and to search reported cases on-line. In a research undertaken in Argentina and Venezuela, it was found that the higher the use of technology, the faster the case disposition time is (Buscaglia & Ulen, 1997). Assessing the impact of information technology on the efficiency and quality of justice has been one of the tasks entrusted to the European Commission for the Efficiency of Justice (CEPEJ, 2018). The use of technology had no significant effect on the number of

resolved cases in a research done in 27 countries in Europe (Deyneli, 2012). This lack of impact was confirmed by an official study that "notably highlighted the lack of a clear correlation between the level of financial investment in IT and the efficiency indicators" in the European countries (CEPEJ, 2018, p. 211). Only one study involving European countries found a statistically significant effect of technology budget on court performance, but the effect was small in magnitude (Lorenzani & Ludici, 2014).

The budget of the court is another variable that received some attention from those researching judicial performance. A research using data from 47 European countries concluded that budget has a highly significantly negative impact on court resolution rate (Voigt & El-Bialy, 2014). According to the authors, "more money does not necessarily buy a better—or more efficient—judiciary" (p. 300). This is the same conclusion reached by Buscaglia and Dakolias (1999), to whom adding general resources to the budget does not affect case disposition time. These authors, however, found that an increase in investment (capital budget resources) has the effect of increasing the proportion of disposals per employee and judge, and thereby reducing the time to disposition.

5.3 Data and Method

This research is focused on the Brazilian labor courts, one of the five segments of Brazilian judicial system (other segments are state courts, federal courts, electoral courts and military courts). Labor courts are responsible for deciding all cases involving labor relations, including cases filed against private persons, business, and governments. Usually labor cases are filed by employees demanding payments from their former employers, but it also includes cases requiring moral damages connected to labor relations and decision on strikes. Brazil has 27 states and 24 labor courts. Each court is responsible for decisions in first and second instance. The Superior Labor Court is the third instance, which may be accessed to discuss legal issues, but not factual matters.

Labor courts represent an important part of the Brazilian judicial system. In the first instance, there are 3.077 labor judges, which corresponds to 19.8% of first instance judges in the country (CNJ, 2020). Brazilian labor relations are highly judicialized. In 2019, a total of 1.814.400 new cases were filed in labor courts (CNJ, 2020), which means a ratio of 0.86 new cases per 100 inhabitants. This ratio is higher than in all the 30 European countries that reported specific data about labor cases to the European Commission for the Efficiency of Justice (CEPEJ, 2018). According to the CEPEJ, in 2016 the level of new labor cases per 100 inhabitants was lower than 0.1 in 23 European countries and the country with the highest rate was Serbia, with 0.47 new cases per 100 inhabitants.

When a new labor case is filed, it is decided by a labor office in the first instance. If parties do not agree with this first instance judgement, cases may be appealed until reaching a final judgement. If the final judicial decision favors the employee, the employer should make a voluntary payment. When voluntary payment is not made, judicial enforcement proceedings are initiated before the first instance labor office that originally decided the case. At this moment, labor judges may order different patrimonial constrictions, freezing debtor's assets such as checking accounts, automobiles, or real estate properties (enforcement proceedings are conducted exclusively by first instance offices). In 2019, a total of BRL 3.7 billion (approximately USD 0.6 billion) in voluntary payments were made after judgements in the first instance and BRL 12.5 billion (approximately. USD 2.3 billion) were payed after enforcement proceedings (Tribunal Superior do Trabalho [TST], 2020).

All the data was collected from the public dataset of the National Council of Justice (CNJ) covering an eight-year period, from 2012 to 2019. The data was collected from all 24 labor courts, resulting in 192 court-year observations. The collection of data about new cases (filed during the year), resolved cases (cases ended during the year) and pending cases (as

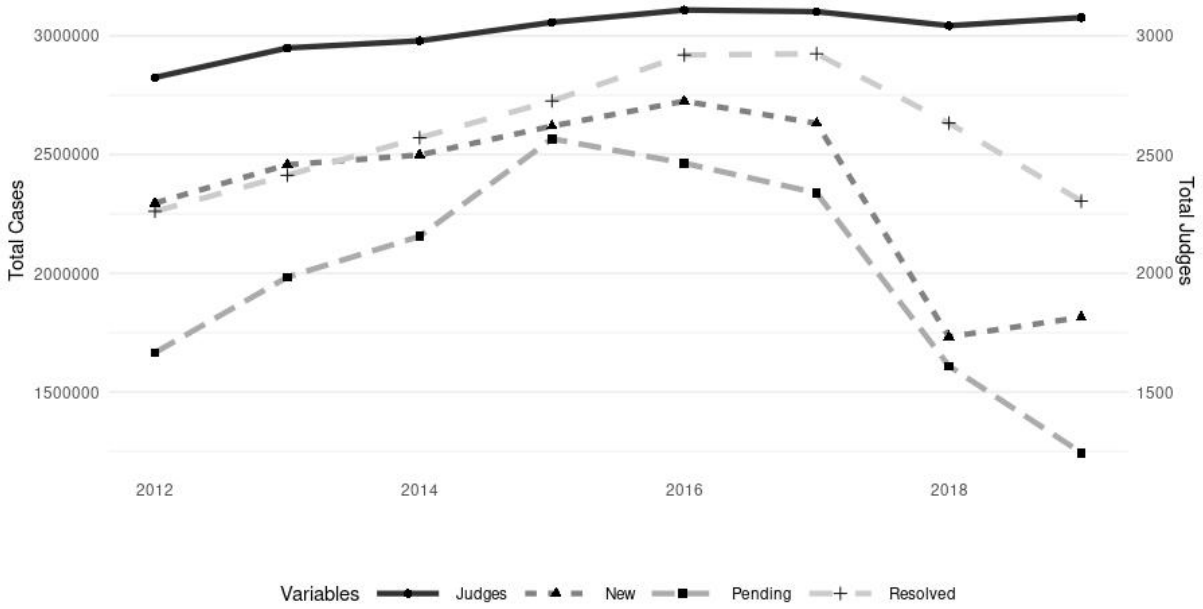
recorded at the end of the year) was done by procedural stage (judgment and enforcement), specifically in the first instance.

Data about the number of judges and legal assistants refers only to those who work directly in the first instance, considering the number at the end of each year in each court. Legal assistants are permanent public civil servants graduated in law whose primary duty is to assist judges in writing the draft of judicial decisions. The data did not allow a measurement of the exact time judges and legal assistants spent on cases of different stages. Therefore, data on the number of judges and legal assistants working at first instance labor offices was used, the same approach applied by Bełdowski et al. (2020). Spending on acquisitions in technology, on the maintenance of technological infrastructure, and on investments in general were collected by labor court (first and second instance combined). It is supposed that those three variables are strongly connected to the first instance, as 85% of the judges and 82% of pending cases are concentrated on this level.

Data related to the judgement stage is presented in Figure 5.1.

Figure 5.1

New, Pending, and Resolved Labor Cases in the Judgement Stage

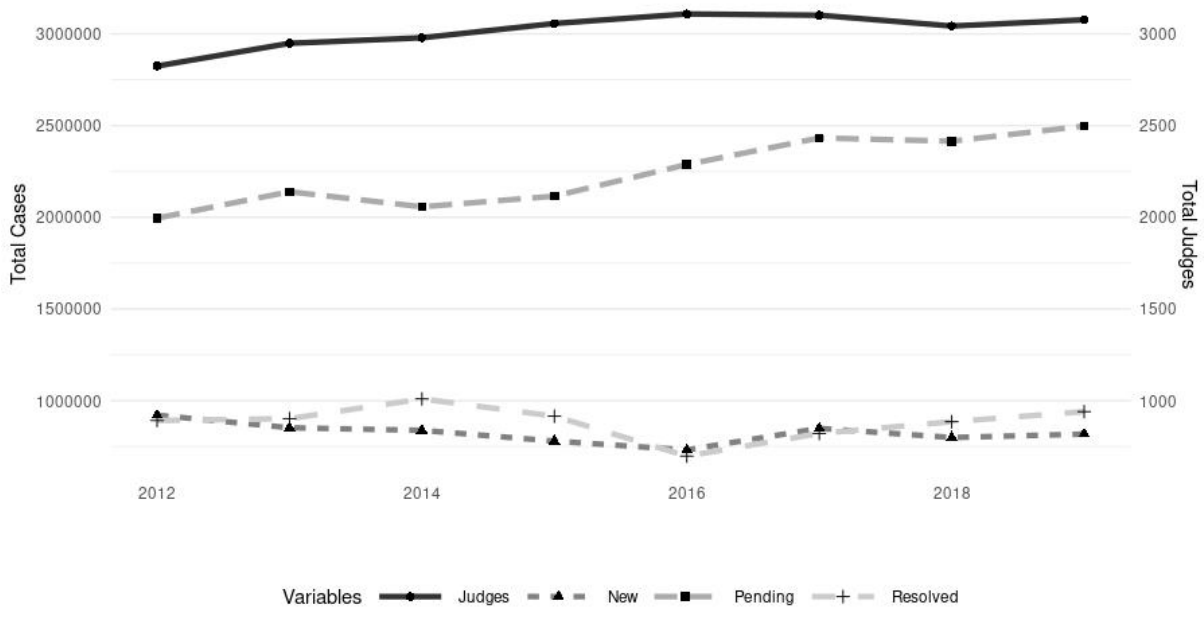


All variables show an upward trend until 2015. Due to a legal reform implemented at the end of 2017, the number of new cases filed faced a sharp decrease, falling from 2.6 million cases in 2017 to 1.7 million cases in 2018. In this year, the difference between the number of resolved cases and the number of new cases was the highest in the historical series, causing an intense decrease in the backlog (number of pending cases).

Data related to the enforcement stage is presented in Figure 5.2. Contrary to the judgment phase, the number of new cases, resolved cases and pending cases in the enforcement stage was not affected by the labor legal reform. In the enforcement stage, the level of pending cases is much higher than the level of new or resolved cases, which are very close to each other and relatively stable along the period. Figure 5.3 illustrates the data of all first instance cases, combining judgement and enforcement stages. As the volume of cases in the judgement stage is higher than the volume in the enforcement stage, the trajectory of new, pending and resolved cases in Figure 5.3 is similar to the one present in Figure 5.1.

Figure 5.2

New, Pending, and Resolved Labor Cases in the Enforcement Stage



The panel structure of the data is similar to the one adopted by Beenstock and Haitovsky (2004) and by Dimitrova Grajzl et al. (2012). The unit of observation is a court in a given year. Table 5.1 gives precise definitions to the variables tested in the analysis and Table 5.2 presents the descriptive statistics.

Figure 5.3

New, Pending and Resolved Labor Cases in the First Instance

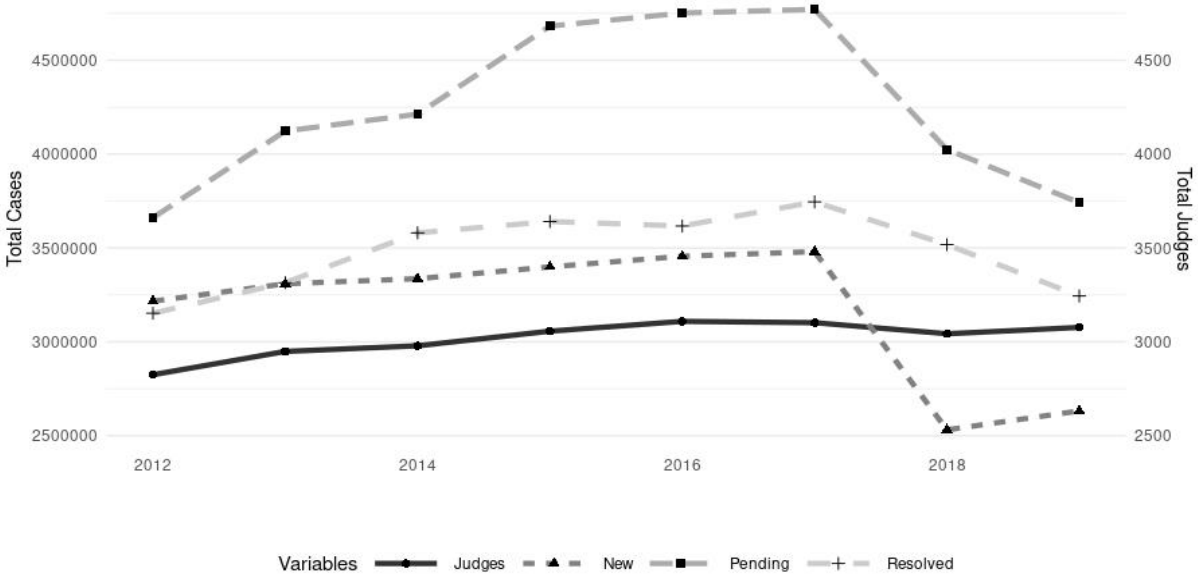


Table 5.1

Variables Description

Variable	Type	Description
Resolved	Dependent	Number of cases ended during the year
New/judge	Independent	Number of new cases filed during the year per judge
Pending/judge	Independent	Number of pending cases at the beginning of the year per judge
Judges	Independent	Number of judges
Staff/judge	Independent	Number of legal assistants per judge
Tech/judge	Independent	Total expenses with technology (acquisition + maintenance) per judge
Capital/judge	Independent	Total expenses in capital resources per judge

Table 5.2

Summary Statistics

Statistic	N	Mean	St. Dev.	Min	Max
Resolved Cases					
Judgement	192	108 080.2	117 085.5	18 330	622 891
Enforcement	192	36 783.3	42 028.3	1 925	265 749
All	192	144 863.5	152 605.6	23 895	740 816
New Cases / Judge					
Judgement	192	728.0	195.3	315.0	1 212.2
Enforcement	192	256.7	92.2	94.7	758.8
All	192	984.7	246.0	459.9	1 885.2
Pending Cases / Judge					
Judgement	192	572.1	276.1	73.7	1 321.0
Enforcement	192	711.5	305.5	76.3	1 680.6
All	192	1 283.6	481.3	433.2	2 529.4
Judges	192	125.7	106.6	22	525
Staff / Judge	192	7.2	1.1	4.3	10.2
Tech / Judge	192	68 817.0	40 086.6	3 621.5	294 446.0
Capital / Judge	192	169 226.2	241 043.7	1 525.9	2 003 182.0

All the variables were transformed with (natural) logs to smooth out the effect of size differences among courts and to estimate how much a fixed percentage change in an independent variable would impact court output, the same procedure adopted by similar investigations (e.g., Beenstock & Haitovsky, 2004; Rosales-Lopez, 2008; Dimitrova-Grajzl et. al., 2012). Data investigation was conducted through two regression methods. The traditional pooled Ordinary Least Square (OLS) regression provides a first estimation and controls for year fixed effects. As the independent variables may be correlated with some unobserved court-level characteristic, causing pooled OLS to be biased, an estimation based on two-way fixed effects (FE) was applied, controlling for year and court fixed effects. This is the same approach used by other studies (Dimitrova-Grajzl et. al., 2012) to address the problem.

Aiming to check if the statistical design described above was appropriate for this study, an array of assumptions was tested. To verify the convenience of using the fixed effects model in addition to the OLS model, two tests were run: the Lagrange Multiplier Test – (Breusch-Pagan) for balanced panels (p-value = 0.0003486) and the F test for two-ways

effects (p-value < 2.2e-16). Both rejected the null hypothesis of no panel effect. To verify if the two-way fixed effects model is more suitable than individual effects, other two tests were applied: F test for individual effects. (p-value = 1.09e-06) and Lagrange Multiplier Test-time effects (Breush-Pagan) (p-value < 2.2e-16). Both tests suggest significant time-fixed effects, not just individual fixed effects. For the hypothesis of cross-sectional dependence, the Pesaran CD test for cross-sectional dependence in panels was applied. With the p-value of 0.1369, the null hypothesis of cross-sectional dependence was rejected. The homoskedasticity is the null hypothesis of the Studentized Breusch-Pagan test. With a p-value of 0.5583, it was not rejected.

Finally, the VIF (Variance Inflation Factors) quantifies the severity of multicollinearity. If VIF is calculated with all independent variables in absolute number, i.e., with no division by number of judges, there is some indication of multicollinearity (New Cases: 14.97; Pending Cases: 7.34; Staff: 13.00; Tech: 2.76; Capital: 1.50). However, if all these variables are normalized by the number of judges, the VIF of each variable reach an appropriate level (New Cases: 1.38; Pending Cases: 1.33; Staff: 1.37; Tech: 1.45; Capital: 1.31; Judges: 1.37). Accordingly, independent variables were normalized by the number of judges (expect for the number of judges itself). Equation 1 shows the pooled OLS model and Equation 2 shows the Fixed Effect model:

$$ln\,(Resolved_{it}) = \alpha + \beta_1\, ln(New_{it}/Judge_{it}) + \beta_2\, ln(Pending_{it}/Judge_{it}) + \beta_3\, ln(Judges_{it}) + \beta_4\, ln(Staff_{it}/Judge_{it}) + \beta_5\, ln(Tech_{it}/Judge_{it}) + \beta_6\, ln(Capital_{it}/Judge_{it}) + \gamma_t + \varepsilon_{it} \quad (1)$$

$$ln\,(Resolved_{it}) = \alpha + \beta_1\, ln(New_{it}/Judge_{it}) + \beta_2\, ln(Pending_{it}/Judge_{it}) + \beta_3\, ln(Judges_{it}) + \beta_4\, ln(Staff_{it}/Judge_{it}) + \beta_5\, ln(Tech_{it}/Judge_{it}) + \beta_6\, ln(Capital_{it}/Judge_{it}) + \gamma_t + \mu_i + \varepsilon_{it} \quad (2)$$

In Equation 1, $i = 1, 2, ..., 24$ identifies the court; $t = 1, 2, ..., 8$ identifies the time period (between 2012 and 2019); the year dummies γ_t control for any unobservable factors that influence the number of resolved cases of all labor courts but vary across years, such as reform of the judicial system; ε_i is the error term. The description of Equation 1 applies for Equation 2, which also has a court fixed effects μ_i controlling for all court-level, time-invariant factors that may affect court output.

5.4 Results and Discussion

The coefficients of Equations 1 and 2 were estimated for all labor cases combined, as well as separately for judgement and enforcement. This distinction is key to investigating differences between the impact of explanatory variables on the number of resolved cases. Table 5.3 reports the results of both pooled OLS model (Equation 1) and FE model (Equation 2) described in the previous section**.**

Table 5.3

Regression Results — Pooled OLS and Two-way Fixed Effects

Dependent Variable: Log Resolved Cases

	OLS			**Fixed Effects**		
	Judgement	**Enforcement**	**All**	**Judgement**	**Enforcement**	**All**
New Cases / Judge	0.647***	0.695***	0.681***	0.649***	0.701***	0.586***
	(0.040)	(0.073)	(0.041)	(0.105)	(0.091)	(0.093)
Pending Cases / Judge	0.139***	0.261***	0.193***	0.080***	0.302***	0.125***
	(0.021)	(0.049)	(0.025)	(0.029)	(0.085)	(0.045)
Judges	1.021***	1.042***	1.028***	0.868***	0.782*	0.795***
	(0.016)	(0.031)	(0.015)	(0.192)	(0.424)	(0.189)
Staff/Judge	0.011	0.142	0.058	-0.154	0.081	-0.091
	(0.077)	(0.156)	(0.071)	(0.094)	(0.222)	(0.090)
Tech/Judge	0.037*	0.082**	0.042**	0.032*	-0.025	0.016
	(0.020)	(0.040)	(0.018)	(0.019)	(0.045)	(0.018)
Capital/Judge	0.008	-0.017	-0.001	-0.005	-0.010	-0.008
	(0.011)	(0.021)	(0.010)	(0.010)	(0.023)	(0.009)
Observations	192	192	192	192	192	192
R^2	0.975	0.907	0.978	0.277	0.324	0.251
F Statistic	1,201.95***	300.44***	1,393.81***	9.89***	12.38***	8.65***
	(df = 6; 185)	(df = 6; 185)	(df = 6; 185)	(df = 6; 155)	(df = 6; 155)	(df = 6; 155)

Note: *p < 0.1; **p < 0.05; ***p < 0.01. Numbers in parentheses denote standard errors.

The result of the OLS model suggest that number of judges have a strong impact on the number of resolved cases in Brazilian labor courts. Table 13 shows a relation of one-to-one between the number of judges and the number of resolved cases, regardless of the procedural stage. The impact of new cases per judge on the number of resolved cases is high, producing similar impacts on both procedural stages. If the number of new cases increases 10%, the number of resolved cases would increase 6.47% in the judgement stage and 6.95% in the enforcement stage. The impact of pending cases per judge on the number of resolved cases is lower and depend on the procedural stage. A 10% in the number of pending cases would increase the number of judgements in 1.39%, and the number of enforcements in 2.61%. The number of judicial staff per judge and the investment in capital per judge were not significant. However, expenses with technology per judge had a small but significant positive effect on the number of resolved cases, especially on the enforcement stage.

The FE model show some different results. The impact of the number of judges on the number of resolved cases remains high and significant, but the coefficients are slightly lower than in the pooled OLS model. While the impact of the new cases per judge was similar across both models, the impact of pending cases per judge has decreased in the judgement stage and increased in the enforcement stage. It should be noted how the impact of pending cases is noticeably higher in the enforcement stage (0.302) than in the judgement stage (0.080), which shows the importance of segregating the data between those two different procedural stages.

As explained in the previous section, FE models are able to address some endogeneity problems. Accordingly, FE models were considered less biased than OLS models by previous empirical literature (e.g., Dimitrova-Grajzl et al., 2012; Bełdowski et al., 2020). For this reason and aiming to promote the highest possible comparability across different studies, the following comments compare the results of FE models found in this study with the results of

FE models found in previous studies (without court-specific time trends). Besides that, the following comparisons will consider just studies that used panel data and included the number of judges and caseload in the regression model, the same empirical strategy applied in this research.

The impact of the number of judges on the number of resolved cases found by this study is much stronger than the impact found by analogous previous research. If the number of judges in Brazilian first instance courts increases 10%, the number of resolved cases would increase 7.95% in general, 8.68% in the judgment stage and 7.82% in the enforcement stage (the impact in the enforcement stage is significant just under the 0.10 level). Some earlier studies concluded that the number of judges produces low impact on court output, i.e., increasing the number of judges in 10% would increase court output in 2% or less (Dimitrova-Grajzl et al., 2012; Grajzl & Silwal, 2020; Bełdowski et al., 2020). Other studies concluded that increasing the number of judges would produces no impact at all (Beenstock & Haitovsky, 2004; Dimitrova-Grajzl et al., 2016). Table 5.4 makes clear how the results found in this study are different from the results found in precedent studies.

One of the few studies that found some relation between number of judges and court output was undertaken in Nepal (Grajzl & Silwal, 2020), where an increase of 10% in the number of judges would lead to an increase in 1.9% in the number of resolved cases. According to the authors, this result may reflect the exceptional scarcity of court resources in the country, where any additional judge would produce a moderate impact on court output. Brazilian courts face exactly the opposite situation of their Nepalese counterparts in terms of courts resources. Brazilian judicial system consumes 1.3% of the country's GDP, more expensive than several countries, as German courts (0.32% of GDP), Italian courts (0.19% of GDP) or American courts (0.14% of GDP) (Da Ros, 2015). Even in this resource-abundant

scenario, increasing the number of judges seems to produce a major impact on the number of resolved cases.

Table 5.4

Impact of Judges on The Number of Resolved Cases in Brazil and Other Selected Countries (Two-way Fixed Effects—FE)

Study	Country and Court	Impact of Judges - FE
This Study	**Brazil** (first-instance labor courts)	
	All cases	0.795*** (0.189)
	Judgement stage	0.868*** (0.192)
	Enforcement stage	0.782* (0.424)
Beenstock & Haitovsky (2004)	**Israel**	
	High Court	− 0.21** (0.137)
	District Court	0.033** (0.057)
	Magistrate Court	0.129** (0.044)
Dimitrova-Grajzl et al. (2012)	**Slovenia**	
	District courts	− 0.07 (0.10)
	Local courts	0.13* (0.06)
Dimitrova-Grajzl et al. (2016)	**Bulgaria**	
	Large district courts	0.0479 (0.0754)
	Small district courts	0.0295 (0.0326)
Grajzl & Silwal (2020)	**Nepal**	
	District courts	0.1896*** (0.0883)
	Poland (first-instance commercial courts)	
Bełdowski et al. (2020)	All cases	0.059*** (0.02)
	Cases requiring full trial	0.20*** (0.03)
	Writ-of-payment	0.025 (0.02)
	Non litigious cases	− 0.014 (0.13)

Note: *p < 0.1; **p < 0.05; ***p < 0.01. Numbers in parentheses denote standard errors.

Contrary to previous studies, which concluded that caseload was the main factor impacting the number of resolved cases, this research points that the number of judges is at least as important as the caseload for court output. This study confirms the general idea that variations in the caseload produces an important effect on court output. Table 5.5 compares the results found in this study to the findings of analogous previous studies.

Table 5.5

Impact of Caseload on The Number of Resolved Cases in Brazil and Other Selected Countries (Two-way Fixed Effects—FE)

Study	Country and Court	New	Pending	Caseload
This Study	**Brazil** (labor courts)			
	All cases	0.586*** (0.093)	0.125*** (0.045)	-
	Judgement stage	0.649*** (0.105)	0.080*** (0.029)	-
	Enforcement stage	0.701*** (0.091)	0.302*** (0.085)	-
Beenstock & Haitovsky (2004)	**Israel**			
	High Court	0.932** (0.072)	0.0056** (0.018)	-
	District Court	0.805** (0.035)	0.155** (0.026)	-
	Magistrate Court	0.741** (0.042)	0.125** (0.026)	-
Dimitrova-Grajzl et al. (2012)	**Slovenia**			
	District courts	-	-	1.06*** (0.09)
	Local courts	-	-	0.60*** (0.09)
Dimitrova-Grajzl et al. (2016)	**Bulgaria**			
	Large district courts	-	-	1.0264*** (0.0370)
	Small district courts	-	-	1.0049*** (0.0237)
Grajzl & Silwal (2020)	**Nepal**			
	District courts	-	-	1.0072*** (0.0883)
Bełdowski et al. (2020)	**Poland** (commercial courts)			
	All cases	0.94*** (0.04)	0.035*** (0.01)	-
	Cases with full trial	0.76*** (0.03)	0.080*** (0.02)	-
	Writ-of-payment	0.96*** (0.03)	0.040*** (0.01)	-
	Non litigious cases	0.57*** (0.05)	0.50*** (0.04)	-

Note: *p < 0.1; **p < 0.05; ***p < 0.01. Numbers in parentheses denote standard errors.

Some studies analyzed how caseload as a whole (combination of new cases and pending cases) may impact court output (Dimitrova-Grajzl et al., 2012; Dimitrova-Grajzl et al., 2016; Grajzl & Silwal, 2020). Those studies found a significative relation of one-to-one between variations in the caseload and variations in the number of resolved cases, pointing that caseload has a prevailing impact on the output of the courts surveyed. The impact of caseload in small courts in Slovenia also has a significant and strong impact on the number of resolved cases, but the size of the effect is relatively lower (0.60).

Two studies investigated the specific impact of new cases and pending cases on the number of resolved cases (Beenstock & Haitovsky, 2004; Bełdowski et al., 2020). The combination of the coefficients of new cases and pending cases is approximately unity, "implying that completions are almost proportionate to the caseload" (Beenstock &

Haitovsky, 2004, p. 364). The results found by Bełdowski et al., (2020) are astonishingly similar. Those two studies coincide in another aspect. They point that, in fact, the dominant factor impacting court output is the number of new cases, because the size of the impact of this variable (between 0.741 and 0.96) is multiple times higher than the size of the number of pending cases (between 0.0056 and 0.155)[5]. In view of the five studies described above, it can be said that court output would vary directly with the caseload and specifically with the number of new cases brought to court.

The underlying explanation for this phenomenon is that judges react to economic incentives in the same way everybody does (Posner, 1993). If the pressure (caseload per judge) increases, judicial productivity increases. If pressure decreases, judicial productivity decreases. "The positive association between productivity and caseload holds both when the system is expanding and when it is contracting" (Beenstock & Haitovsky, 2004, p. 360). Considering that (i) court output would vary almost directly with the number of new cases filed and (ii) this relation holds true when the system is expanding or contracting, one might conclude that any reforms reducing court demand would probably have few or even no effect on court backlog. As the number of new cases filed would decrease, pressure over judges (caseload per judge) would decrease. As a consequence, judges would resolve a lower number of cases and the backlog would be barely touched. The reaction of judges to workload would undermine the expected positive consequences of the legal reform.

However, it seems that Brazilian first instance labor courts are less driven by judicial demand than courts in other countries. The impact of new cases brought to courts, captured by the number of new cases in the judgement phase (0.649), is lower than the impact found in

[5] One exception may be the similar impact of new cases (0.57) and pending cases (0.50) in non-litigious cases in Poland (Bełdowski et al., 2020). However, considering that those cases are not typical judicial cases, in the sense that there is no dispute to be resolved, and that they represent just 0.07% of the cases in the study, those cases were not considered in this analysis.

previous studies investigating this phenomenon. This point may have important public policy implications. It means that the number of judgements in Brazilian first instance labor courts is not so sensitive to variations in the number of new cases filed. In this scenario, legal reforms designed to reduce court demand would have a real impact on case backlog, reducing court congestion and case disposition time.

The Brazilian legal reform implemented in the end of 2017 seems to reflect this scenario. As shown in Figure 3, the number of new cases brought to court decreased 34% after the reform, falling from 2.6 million cases in 2017 to 1.7 million cases in 2018. In the same period, the number of resolved cases in the judgement stage felt just 10%, from 2.9 million to 2.6 million. The numbers per judge are even more clear. While caseload pressure in the judgment stage (number of new filed cases per judge) felt 32.9%, judicial productivity (number of judgements per judge) felt just 8.2%.

Contrary to law and economics approach that judges would use this time for leisure (Posner, 1993) and to the previous empirical studies suggesting that judicial productivity would have fallen approximately in the same proportion of court demand, most of extra time that judges spared after the reform was used to address the case backlog. Indeed, the number of pending cases in the judgement stage fell from 2.3 million at the end of 2017 to 1.6 million at the end of 2018, i.e., a backlog reduction of 31% in just one year, a remarkable achievement.

The five studies debated above and shown in tables 14 and 15 have not tested the impact of judicial staff on court output. As described in section 3, past empirical studies found a positive influence of the number of judicial staff on court performance. One more time the findings of the present research are contrary to previous empirical results. The impact of the number of judicial staff on the number of resolved cases was non-significant in all tested scenarios (judgement stage, enforcement stage and all cases), regardless of the

method adopted (OLS or FE). As studies investigating the impact of judicial staff on court performance have adopted different methods, accurate comparisons as those made to the number of judges and caseload are not possible.

The impact of technology on court output was small but significant in the judgement stage. According to the FE model, a 10% increase in technology expenses per judge would increase the number of resolved cases in 0.32%. Nonetheless, the result is non-significant in the enforcement stage and in first instance cases in general. This small or non-existent effect of technology on court performance is similar to the results detailed in section 3. One possible explanation for this trend could be that expenses made in technology in one specific year have consequences just sometime later. Expenses with software, computers and IT infrastructure may take some years to reach the work done by judges and judicial staff. Other possible reason for the lack of relation between those variables is that technology may foster productivity, on the one hand, but it also increases access to courts and the facilitates the file of appeals on the other hand, which may cause court congestion. The net result of technology for court disposition time is dubious.

Finally, the impact of expenses in capital resources on the number of resolved cases was null in all tested scenarios (judgement stage, enforcement stage and all cases), regardless of the method adopted (OLS or FE). This result confirms the general idea that the size of the budget has little or no relation with court output, as debated in section 3. It is important to emphasize that the variable tested was investment in capital, the only kind of budgetary expenses with some previous empirical evidence of effect on court performance (Buscaglia & Dakolias, 1999). Nevertheless, even this carefully crafted variable tested in the present study seems to have no impact on court output.

5.5 Conclusions and Recommendations

The main goal of the current study was to determine which factors affect the number of resolved cases in the judgment stage and in the enforcement stage of judicial proceedings on labor courts. Court output is only one of many judicial performance dimensions. The quality of judicial decision or the legitimacy that courts have in society are examples of dimensions that are not captured by the number of resolved cases. However, it is still a very important dimension. Those who bring disputes to court expect a judicial decision for their case, and the number of decisions taken by courts is directly connected to this expectancy. In fact, court users expected not just a judicial decision. They want an effective repair for the violation of their rights. In this sense, analysis of factors affecting the enforcement of judicial decisions are necessary. Despite the importance of the topic, a systematic understanding of which factors impact the enforcement of judicial decisions was still lacking.

Distinguishing the judgement stage from the enforcement stage have shown to be a useful approach. Some explanatory variables have distinct impact depending on those stages. Perhaps the most visible difference relates to the impact of pending cases, whose impact on the number of resolved cases is much stronger in the enforcement stage than in the judgement stage. Investment on technology has shown small but significative effect on the judgment stage but not on the enforcement stage.

Beyond filling a gap in the literature, this study challenges previous published studies on the same topic. On those studies, caseload was the dominant variable and the impact of the number of judges on the court output was low or null. Findings of the present study reveals that the impact of the number of judges is substantial and at least as high as the impact of caseload. Furthermore, the impact of new cases on the number of cases ended is slightly smaller than the impact found by previous studies. This point raises an important issue to the design of public policies involving courts. It suggests that policies designed to reduce the

number of cases may have a real effect on the size of case backlog and on court disposition time, as seems to be the case in Brazilian labor courts. This conclusion encourages policy makers and court administrators to explore the reduction of judicial demand as a possible solution to the problem of court congestion.

In addition to investigate an under explored but important aspect of court performance (enforcement of judicial decisions) and to show findings that challenge the current knowledge about factors affecting court output, this research also contributes to the literature adding information about a Latin America continental country as Brazil, where factors affecting court performance may be different of the factors affecting comparatively smaller judicial systems.

Probably the main limitation of the present research was not applying an instrumental variables approach. The two-way fixed effect model used to run the regression analysis was able to solve some endogeneity issues, but not the reserve causality that would be addressed if instrumental variables were used. Future research on this theme may explore factors affecting court output depending on the legal issue being discussed, as civil, criminal, tax or administrative matters.

6. Conclusion

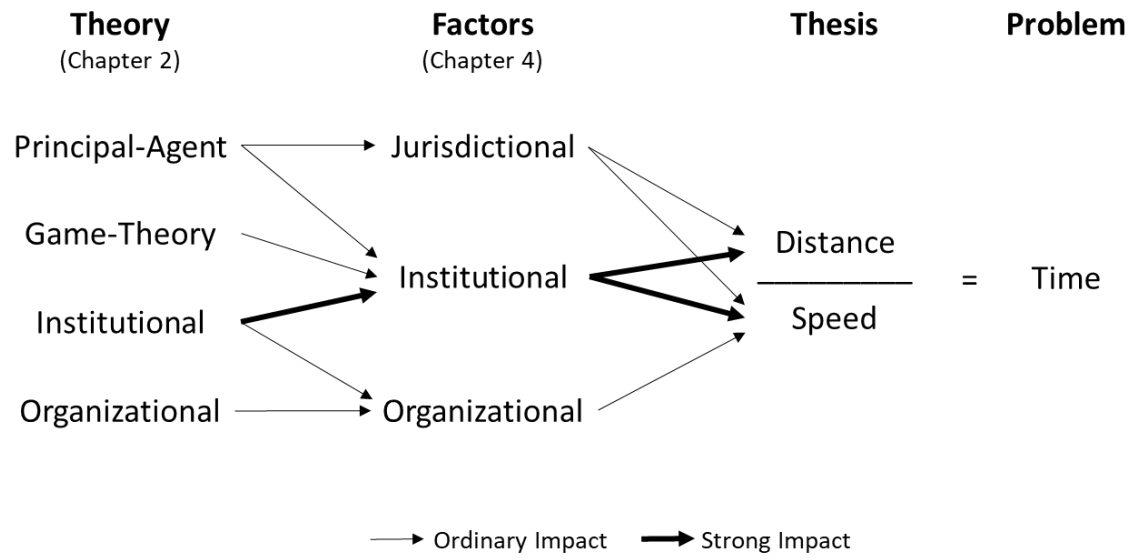
The main objective of this work was to investigate factors affecting court disposition time in Brazil. To comply with this objective, four studies were undertaken. Chapter 2 analyzed court disposition time blending four theoretical perspectives: institutional, organizational, agent-principal and game theory. Chapter 3 confirmed that court delay in Brazil is a real problem. The duration of civil cases in Brazil is almost three times higher than in Europe in the first instance and 50% higher than in Europe in the second instance. Chapter 4 explored which factors impact court disposition time in Brazil. After interviewees with judges, prosecutors, and lawyers, a list of 28 factors was clustered in three basic dimensions: institutional, jurisdictional, and organizational. Finally, Chapter 5 brought an empirical analysis of some organizational factors, exploring which factors impact the number of court decisions.

Chapter 3 and 5 have one specific and important connection. Chapter 3 points that court disposition time in Brazil is higher than in European countries, but also shows that it has a decreasing tendency, because the clearance rate is above 100%, i.e., the number of cases decided is higher than the number of new filed cases. As a consequence, court backlog is reducing. However, the clearance rate in the enforcement phase is always lower than the clearance rate in the judgement stage, regardless of the type of court (state or labor) or the type of procedure (common or special). The clearance rate of enforcements is 100% for cases following special procedure and 94% for cases following common procedure, which means that the backlog of enforcements is stable or even increasing. As a consequence, court disposition time of those cases are increasing. For this reason, exploring factors that impact the number of enforcements is relevant. This is exactly the focus of Chapter 5, which found that variations in the number of new filed enforcements, the number of pending enforcements and the number of judges has a positive, significant and strong effect on the number of enforcements resolved.

Chapter 2 and 4 are strongly interrelated. The theoretical perspectives debated in the former may be applied to analyze the factors affecting court disposition time listed in the later. Those factors are closely connected to the thesis of this work. The thesis has a mathematical inspiration: time is equal to distance upon speed. The factors listed in Chapter 4 may be connected to the procedural distance, to the speed of proceedings or to both. This framework of analysis is shown in Figure 6.1.

Figure 6.1

Framework of Analysis



The principal-agent theory may be used to explain the behavior of judges and lawyers. The self-interest of judges is the underlying explanation to many jurisdictional factors listed in Chapter 4, as the procrastination in deciding complex and polemic cases, which are time-consuming. This judicial behavior reduces court speed. The self-interest of lawyers also may be explained by the principal-agent theory. The culture of litigation and the culture of non-conformity may reflect self-interested lawyers, which have economic incentives to initiate and insist on judicial litigation even when this is not the best option for the parties they represent. On the one hand, the behavior of lawyers increases court congestion, reducing

court speed. On the other hand, it makes the procedural journey longer, increasing procedural distance.

Game theory debated the behavior of litigants, notably the behavior of repeated players. Repeated players are usually rational and their behavior may be a consequence of the institutional arena in which they play. One of the main institutional features of the litigation arena in Brazil is the low deterrence debated in Chapter 4. The lack of punitive damages in Brazil seems to work as an incentive for repeated players insisting on misbehavior. As a consequence, many cases are brought to courts, causing court congestion and reducing court speed.

It is evident that the organizational theory offers an appropriate background to analyze organizational factors. Courts are organizations and the way organizational resources are used may be crucial to court disposition time. Surprisingly, organizational resources seem to be well managed by courts. The pivotal role played by the Brazilian National Council of Justice should be stressed. The council has defined performance indicators and performance targets for courts, and promoted the development of an advanced software for the management of judicial activities. Those initiatives fostered the classic administrative functions of planning, organization and control among courts. It is worth noting that Brazilian courts usually have enough human and financial resources. Except for specific state courts, it seems that the quantity and the quality of judges and judicial staff are not a problem. The financial needs of the judicial system represent a significant part of public budget and courts have high degree of autonomy to administer their budgets. In other words, organizational factors seem to contribute to faster resolution of cases, increasing the speed of courts.

The institutional theory has a strong relation with institutional factors and those institutional factors have a strong relation with both procedural distance and the speed of proceedings. Most institutional factors debated in Chapter 4 may be analyzed through

institutional lenses. Special attention should be paid to the legal system. The legal system is the most important legal institution in any country. Besides being formal and enforceable by definition, laws regulate the most important aspects of court performance, as access to courts, hearings, procedures, judgements, juries, and appeals.

The historical institutionalism and its concept of *path dependence* seem to provide a broad theoretical explanation to court delay in Brazil. Brazilian procedural code has an Italian origin and this fact seem to be decisive to explain some factors clustered in the legal category, as the number of appeals, the enforcement as a second case and the lack of private discovery. It seems not to be a coincidence that Brazil and Italy have high court disposition time. As shown in Chapter 3, both countries are ranked in the last positions when compared to European countries. In a ranking of court disposition time in first instance courts, while Italy is ranked in the 38th position (514 days), Brazil is ranked the 40th position (600 days).

Legal factors have a strong impact on the speed of court proceedings. Brazilian laws seem to promote court congestion. As many cases are brought to court, the speed of court proceedings is low. Disputes between private parties are a fact of life. Due to the public costs involved in the use of courts are high, legal systems around the world are designed to stimulate the direct resolution of conflict between parties. The use of courts should be the last option. Actually, solving conflicts without a judicial decision should be the way or at least the better way to healthy social relations in democratic societies and with a high stage of development in a civilizing process. However, Brazilian legal system seems to be designed to promote judicial litigation. Judicial litigation occurs when the minimum amount that the plaintiff would accept as a settlement (expected gain from trial, net of litigation costs) is higher than the maximum amount that the defendant would pay. In this situation, there is no settlement range. In Brazil, the legal system is not designed to create a settlement range between litigants.

First, there are no institutional incentives for information sharing before cases are brought to courts. All discovery and disclosure procedures – as interrogatories or depositions - are reserved to public judges and depend on the use of courts. Parties are forced to use the judicial system to obtain information from the other side. Without information from the other side, parties keep their natural optimism about the result of the judgement and decide to litigate in court.

Second, litigation costs are low. Even after information sharing, some divergence between parties about judgement is natural. An additional incentive must be created to encourage direct resolution of private disputes. The typical economic incentive is the cost of judicialization. When the divergence is low and the cost is high, parties will prefer to resolve their disputes privately, in order to avoid litigation costs. However, litigation costs in Brazil are so low that are unable to avoid litigation even when divergence between parties is negligible. In fact, litigation costs are zero in many situations. Many procedures are free *ex lege*, i.e., they are free due to a legal mandate, regardless of the plaintiff's income. Even wealthy citizens and companies use the judicial system with no cost. If there is no cost and no risk, judicial litigation represents just possible economic benefits to the plaintiff, a perfect scenario not just for the plaintiffs, but also for the excessive number of lawyers in the country.

Besides those problems, another legal factor contributes to the congestion of Brazilian courts: the enforcement of tax cases, which represented 20% of new filed cases and almost 40% of pending cases in 2019 (CNJ, 2020). Those cases are filed by tax agencies that try to force debtors to pay tax debts. As tax authorities lack the powers to conduct patrimonial constrictions directly, they are forced to use judicial services to collect tax debts, increasing court congestion and delay. Tax authorities in other countries and other administrative authorities in Brazil have powers to promote patrimonial constriction. Extending this

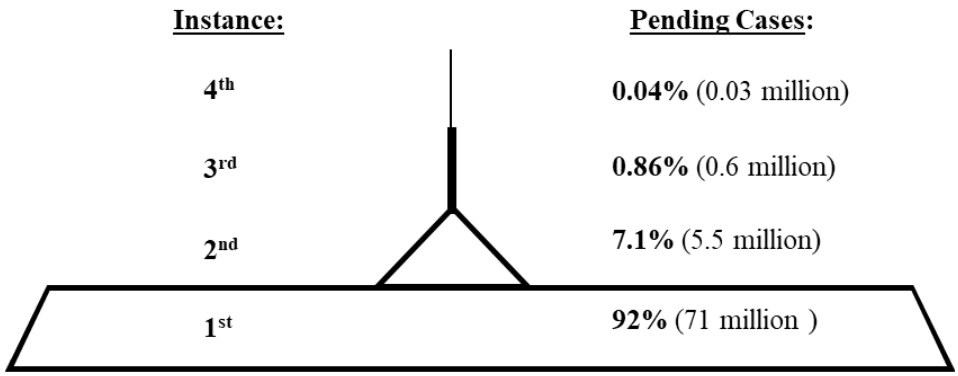
possibility to Brazilian tax authorities would have a substantial effect on the reduction of court congestion.

Legal factors have a strong impact on procedural distance. As the distance of the procedural road is too long, cases take too much time to be resolved. The most notable and publicly debated factor about the length of judicial proceedings is the number of instances in Brazil. Brazilian judicial system has four instances. Any case may reach Brazilian Supreme Court, including small claims. Moreover, cases reach upper courts and come back to the first instance multiple times. Preliminary decisions, main decisions and enforcement decisions may be appealed in innumerable occasions. Multiple instances may be accessed several times along the case. Brazilian procedural rode is not straight. As a consequence, lawsuits do not follow a straight line and seem to run around circles within the judicial system. Brazilian procedural system is a long and winding road.

There is an intense debate in Brazil about the idea of resolving cases in the second instance, eliminating the time spent in the third and fourth instances. Whereas this may be considered a rational step to shorten the length of cases in the country, it should be clear that just a small part of cases is concentrated in those instances. Among the 77 million cases pending of resolution in Brazilian courts in 2019, less than 1 million were in the third and fourth instances (CNJ, 2020), as shown in Figure 6.2:

Figure 6.2

Pending Cases per Instance in Brazilian Judicial System



Source: created by the author using data from CNJ (2020) and STF (2020).

The most important focus of court reform in Brazil should be the first instance, which concentrates 92% of pending cases in Brazil. Moreover, court disposition time in the first instance is higher than in other instances and three times higher than in Europe, showing that this instance has great potential to be improved. However, the solution of simply "eliminating" the instance, as proposed to the third and to the fourth instances, is not feasible in relation to the first instance. As cases start in the first instance, it cannot be avoided. So, how to reduce the time spent in the first instance?

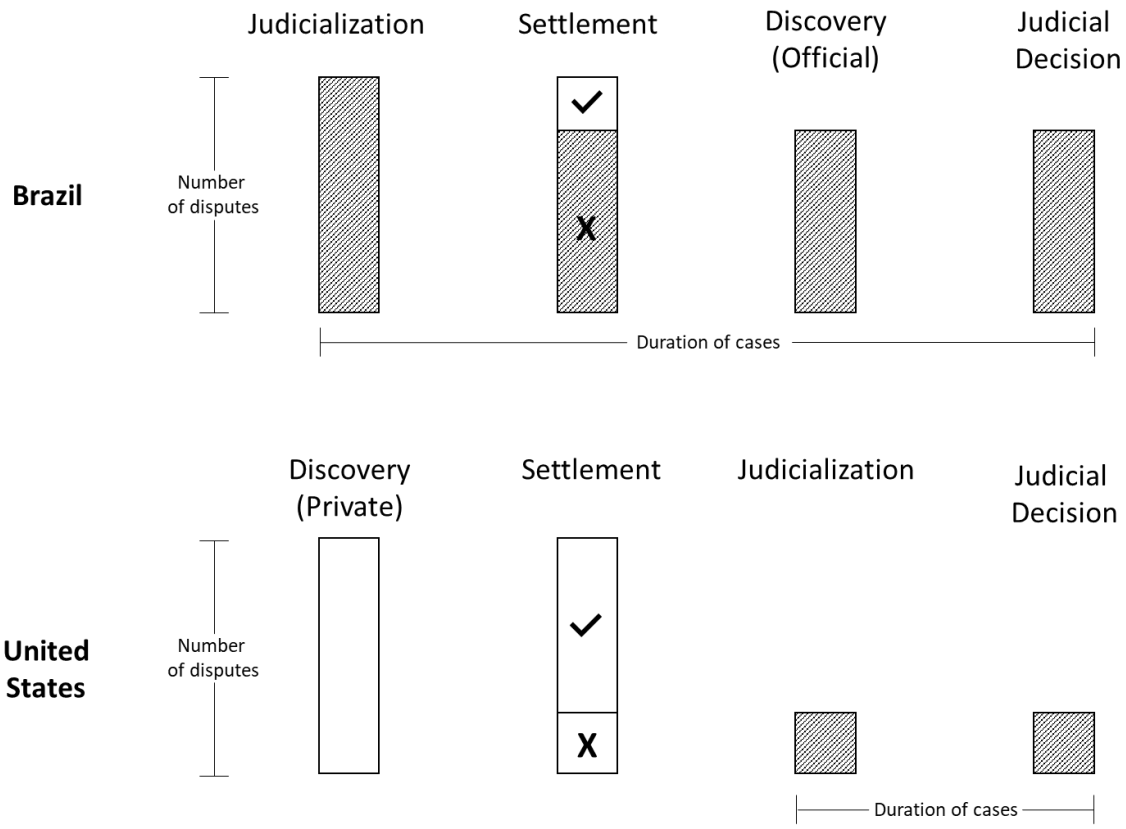
The essential improvement seems to be eliminating or at least drastically reducing obligations that go beyond the classic jurisdictional functions. Judicial obligations in the first instance range from writing down petitions (in Small Claims Courts) to locating debtor's assets during enforcement proceedings. Nevertheless, no obligation seems to be more harmful to case disposition time than the judicial collection of evidence (discovery). Evidence should be collected by the parties, as in the United States, where lawyers have powers to requisition documents, submit questions that the other side must answer before the trial begins and interview the other side's witnesses under oath (Cooter & Rubinfeld, 1994). As parties are required to collect evidence before bringing the case to the court, procedural steps to collect evidence during the trial are reduced or even eliminated, decreasing the duration of cases. In other words, the collection of evidence should be conducted privately, before case, and not by the judge, during the case.

Besides reducing the length of procedural road in the first instance, private discovery would also reduce the number of cases brought to courts. There is no reason to believe that the number of disputes that arise society in Brazil should be higher than in the United States. The difference is that in the United States parties collect evidence before the case, reducing asymmetry of information between opposite sides, which reduces natural optimism and increases the chances of settlement. In addition to that, parties are stimulated to make private

settlements before judicialization to avoid litigation costs. As a consequence, a small part of private disputes is judicialized (Spier, 2005). In Brazil, the first step is the judicialization. As debated above, parties do not have powers to collect evidence and are forced to file a suit. Right after judicialization, and before the collection of evidence, courts try to foster settlement between parties. However, at this stage, parties are still optimistic, and the chances of settlement are low. Figure 6.3 compare the situation in Brazil and in the United States:

Figure 6.3

Sequence of Legal Acts in Brazil and United States



The number of lawyers was appointed by interviewees of this research as part of the problem. However, they may be part of the solution. Brazil has 1.1 million lawyers (OAB, 2020) and just 18 000 judges (CNJ, 2020). As disputes will continue to arise, it is evident that they should be firstly filtered by lawyers. If Brazilian lawyers had powers to help their clients

to collect evidence and conduct discovery, parties would have access to more information before judicial litigation. The reduction in information asymmetry between both sides would make parties more realistic about the judgments, increasing the chances of private settlements before judicialization.

Due to legal factors, Brazilian procedural distance is long also during the enforcement stage, the last part of a case. Several procedures are necessary to enforce judicial decisions because legal protections of debtor's assets are rampant. According to Brazilian Civil Procedure Code, savings accounts may not be frozen up to a limit, salaries cannot be constricted, family properties are protected by law and even TV screens and computers are considered "family" assets. All those protections work as barriers embarrassing the collection of the debt and postponing the resolution of cases.

A panoramic conclusion of the research may be that court disposition time is a complex phenomenon associated with the design of the entire legal system. Factors affecting court delay are multiple ones. One way to describe the problem is using an image. Brazilian judicial system may be described as a long and congested road, where the cases run around in circles. *This thesis proposes that court delay in Brazil is a consequence of long procedural distances and low speed of proceedings.*

The rationalization of judicial procedures and the reduction of court demand require legal reforms. Brazilian legal reforms implemented during the first two decades of the twentieth century represented important steps to improve judicial performance but were not enough to address the problem of court delay in Brazil. More sophisticated legal reforms are necessary. The analysis made in this doctoral dissertation contributes to the design of carefully crafted legal reforms.

There is a huge space for future research about factors affecting court disposition time in Brazil. Some of the reasons debated along this work may be empirically explored. One

possibility is investigating if court demand in Brazil is higher than in other countries, for instance, verifying the level of internal selectivity of cases along the instances. For example, the proportion of cases appealed from the first to the second instances in Brazil may be higher or lower than in other countries. This work has shown that increasing the number of judges may have a relevant impact on the number of decided cases. However, considering that the budget of Brazilian Judicial System is already large, it seems relevant to contrast the number of judges per inhabitant in Brazil and in other judicial systems, aiming to understand if the quantity of judges here is appropriate or not.

One interesting and under explored research avenue seems to be scrutinizing the effect of legal reforms in Brazil. For example, the Brazilian Civil Procedural Code was reformulated in 2015. It is possible that some effects of the code on the performance of courts may be empirically tested. Finally, it should be said that knowledge about the performance of criminal courts is scarce. All the essays debated in this doctoral dissertation focused on non-criminal cases. Considering that legal actors, courts and procedural rules related to non-criminal cases are significantly different from those related to criminal cases, investigations focused on this last group would be very innovative.

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Appendix

Interview Script

- Introduce yourself to the interviewee and inform that the research is related to a Doctoral Degree in Administration (UnB).
- State the objective: describe which factors which factors affect court disposition time in Brazil.
- Inform that there are no right or wrong answers. What matters is the interviewee's perception.
- Guarantee the anonymity of respondents: the answers will be analyzed in an aggregate way.
- Ask permission to record the interview.
- Inform that the interview will last approximately 30 minutes.

Questions

- In your view, which factors may have an influence, positive or negative, on court disposition time?
- Do you notice any factors related to Brazilian cultural, social and legal conditions that affect court disposition time?
- Which factors impact the time of enforcement proceedings?
- How is your work controlled? Which people, departments or offices control your work from a quantitative and qualitative points of view?
- In your view, which measures could be taken to reduce court disposition time?
- In your view, which measures could be taken to reduce the time of enforcement proceedings?

- We are reaching the end of our interview. Please feel free to report any fact or variable that, in your opinion, influences the length of court proceedings and the time for the enforcement of court decisions that were not covered in the previous questions.
- Now some final questions about your profile, which will be used only to identify trends in responses (and never to identify survey participants). Which is your profession, age, position, length of service, and region of origin?