

Grajzl, Peter

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BEHIND THE COURTS' WALLS: EMPIRICAL INSIGHTS FROM SLOVENIA

PETER GRAJZL¹

Introduction

Courts are central institutions underpinning the capitalist market system. Economic theory has traditionally *assumed* the existence of well-functioning courts that secure property and contractual rights. It is only relatively recently, with the revival of interest in the role of institutions and governance, that the functioning of courts has received greater attention from economists (Johnson, McMillan and Woodruff 2002; Djankov et al. 2003; Shleifer 2012).

Yet empirical evidence on the performance of courts worldwide is scant. This is especially true in the context of post-socialist and developing countries, where both the use and the working of courts differ substantially from that in the more mature capitalist systems (Hendley, Murrell and Ryterman 2000; Johnson et al. 2002; Djankov et al. 2003; Pyle 2006; Lambert-Mogiliansky, Sonin and Zhuravskaya 2007; Chemin 2009). Evidence on the activity of post-socialist courts and the behavior of judges based on original court data (Murrell 2001), as opposed to indirect, survey-based evidence, is particularly scarce.

This research report summarizes empirical results and policy insights into the functioning of courts and the behavior of judges in post-socialist Slovenia. The showcased research (Dimitrova-Grajzl et al. 2012a, 2012b; Dimitrova-Grajzl, Grajzl and Zajc 2014a) draws on restricted-access, court-based data to provide one of the very first comprehensive empirically-grounded accounts of the inner workings of courts in the Central and Eastern Europe and the former Soviet Union.

Slovenia is an interesting and underexplored case for the study of judiciary. A member state of the EU since 2004, Slovenia underwent a relatively smooth economic transition, but failed to implement an effective judicial system. Court backlogs and delays, as well as judicial corruption, have been a pervasive concern. Businesses in Slovenia perceive the lack of an effective judiciary as an obstacle that is greater than the burden of high taxation, excessive regulation, and inconsistent availability of credit (Anderson, Bernstein and Gray 2005). Insights into the performance of courts and judicial decision-making in Slovenia are therefore relevant for the broader post-socialist region, as well as for those EU member states that are likewise struggling with their judicial systems (Jean and Jorry 2013).



The determinants of court output

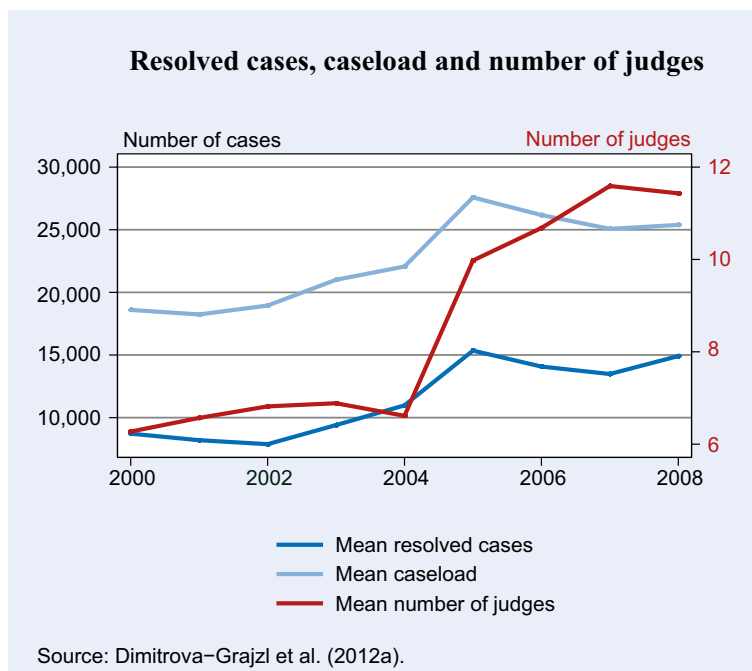
A crucial aspect of judicial efficiency (Ramello and Voigt 2012) is the ability of the court system to facilitate the resolution of disputes through the resolution of filed cases. The number of resolved cases is a purely quantitative measure of court activity. In particular, the sheer volume of resolved cases does not directly reflect on the quality of court decisions. Nevertheless, focusing on an entirely quantitative measure of court activity is appropriate in the case of legal systems where improving the ability of courts to resolve cases within a reasonable time is a high policy priority.

What are the key drivers of total court output measured by the number of resolved cases? An understanding of the relative importance of the factors that affect the volume of case resolution in courts provides valuable information regarding the possible policy measures aimed at decreasing court delays.

A simple conceptual framework suggests that the number of resolved cases depends on the court's resources as proxied by the number of serving judges and the demand for court services as proxied by the court's caseload. Accordingly, a frequent policy presumption underpinning attempts to reduce court delays is that increasing judicial staffing increases court output: *ceteris paribus*, more judges should dispose more cases. Following this

¹ Washington and Lee University.

Figure 1



logic, the goal of Slovenian judicial reforms implemented around the year 2005 was to substantially increase the number of judges in the court system.

Figure 1 tracks the evolution over time of the court-level means of the number of resolved cases, caseload, and the number of judges for Slovenian local courts of first instance. The figure portrays two interesting patterns: firstly, the mean number of resolved cases closely tracks the mean caseload. Secondly, the mean number of resolved cases and the mean number of judges appear to co-evolve much less closely.

The patterns in Figure 1, of course, do not allow to draw immediate conclusions about the causal relationships (or lack thereof) between the variables of interest. To investigate causality, Dimitrova-Grajzl et al. (2012a) apply panel data methods and use an instrumental variable approach. The results suggest that, in contrast to conventional wisdom, court resources as proxied by judicial staffing do not affect total court output. Instead, the primary driving force of court output in Slovenia is demand for court services. Rather than suppressing judicial productivity due to a congestion effect, an increase in the caseload incentivizes judges to exert greater effort and resolve more cases.

Why might court output in Slovenia fail to respond to an increase in the number of judges in the judicial system? Our conjecture is that, given current judicial norms and

incentives, the incumbent judges simply decrease their work effort upon the appointment of additional judges. Any increase in the number of resolved cases due to new judicial appointments is therefore directly offset by a decrease in the number of resolved cases by the incumbent judges. Using a different empirical method, Beenstock and Haitovsky (2004) arrive at a similar conclusion in their analysis of the Israeli judiciary.

Factors shaping judicial incentives for case resolution

Recent positive theories (Posner 1993) suggest that judges are not titans striving to defend

the rule of law, but rather ordinary self-interested individuals who, much like everybody else, care about income and leisure. These conclusions from the analysis of judge-level data from Slovenian first-instance courts (Dimitrova-Grajzl et al. 2012b) echo this perspective.

What do judge-level data tell us about the factors shaping judicial incentives to resolve cases in Slovenia? Firstly, the evidence supports the life-cycle hypothesis of judicial performance. Judicial productivity measured by the total number of resolved cases initially increases and eventually (once a judge turns about 50) decreases with a judge's age. In contrast, gender and attained education are not robust predictors of judicial productivity. Given that the volume of resolved cases is deemed an important policy objective for Slovenian judiciary, the results suggest that policymakers could introduce additional incentive mechanisms for senior judges. Alternatively, policymakers could consider reducing the age of mandatory retirement.

Secondly, judicial productivity and judicial salaries are positively correlated, even when controlling for a range of judge-level characteristics, case type, and court fixed effects. While short of identifying the causal effect of judicial salaries on judicial productivity, this finding at least allows for the possibility that increasing judicial salaries in Slovenia would increase judicial productivity. Interestingly, studies for the U.S. and elsewhere do

not find a robust positive relationship between adjudicators' compensation and their productivity.

Thirdly, career concerns matter. In civil law jurisdictions, judges are civil servants with (largely) fixed salaries. Promotion therefore provides direct economic incentives. For instance, in the case of local Slovenian courts, judges who are up for promotion *ceteris paribus* tend to resolve nearly 20 percent more cases in the year preceding their promotion decision year than judges who are not up for promotion. This finding is suggestive of the possibility that judicial productivity could be increased through more consistent on-the-job monitoring.

The quantity-quality tradeoff in case resolution

In legal systems plagued by substantial backlogs of cases and long court delays, implementation of measures aimed at increasing the rate of case resolution understandably emerges as a high policy priority. However, can legal reform strive to increase judicial productivity without compromising the quality of judicial decisions? The concern is that if judges spend less time deliberating each case in order to increase their productivity, an increase in the volume of resolved cases will come at the expense of lowering the quality of judicial verdicts.

To assess whether there is a quantity-quality tradeoff in judicial decision-making in Slovenia, Dimitrova-Grajzl

et al. (2012b) examine if the more productive judges differ from their relatively less productive peers in terms of the quality of decision-making as proxied by the number of appealed cases and the number of cases overturned by a higher court.

The results, summarized in Table 1, show that an increase in judicial productivity does not lead to a drop in the quality of judicial decision-making in the case of district courts. District court judges that are on average more productive actually face fewer appeals and have fewer decisions overturned by a higher court than judges who are on average less productive. The opposite is true for local court judges. That is, in local courts there is evidence of a quantity-quality tradeoff. These results are robust to disaggregation of courts of a given type (district, local) to groups of judges specializing in the adjudication of specific legal matters (e.g., the relatively mundane enforcement cases versus the relatively complex criminal cases).

Why does the quantity-quality tradeoff exist in some (local) courts, but not in other (district) courts? Firstly, compared to local court judges, district court judges in Slovenia adjudicate cases for which the stakes for the involved parties are higher, and thus judicial decisions are likely under relatively closer scrutiny. District court judges may, therefore, rationally choose to act both (relatively) quickly and thoroughly. Conversely, judges in local courts, where the stakes for disputing parties are

Table 1

The quantity-quality tradeoff in judicial case resolution, tests of means

Panel A: Appealed cases							
	Below-average productivity			Above-average productivity			<i>p</i> -value
	No. obs.	Mean	Std. dev.	No. obs.	Mean	Std. dev.	
Local courts	177	28.59	18.71	181	36.77	23.74	0.001
District courts	103	29.32	18.61	95	24.07	20.25	0.017
Panel B: Overturned cases							
	Below-average productivity			Above-average productivity			<i>p</i> -value
	No. obs.	Mean	Std. dev.	No. obs.	Mean	Std. dev.	
Local courts	177	6.88	5.88	181	7.62	7.67	0.785
District courts	103	10.02	8.33	95	7.78	8.42	0.012

Notes: The table reports results from t-tests of the difference in the mean number of appealed (Panel A) and overturned cases (Panel B) between the group of judges with below-average productivity and the group of judges with above-average productivity; see Dimitrova-Grajzl et al. (2012b) for details.

Source: Based on data used in Dimitrova-Grajzl et al. (2012b).

lower, may rationally follow a model of adjudication that emphasizes speed of case resolution over depth. Secondly, compared to judges in local courts, district court judges in our sample possess greater experience on the bench. The absence of the quantity-quality tradeoff in district courts and the presence of the quantity-quality tradeoff in other courts may thus also be due to the observed differences in experience in case adjudication between district and local court judges.

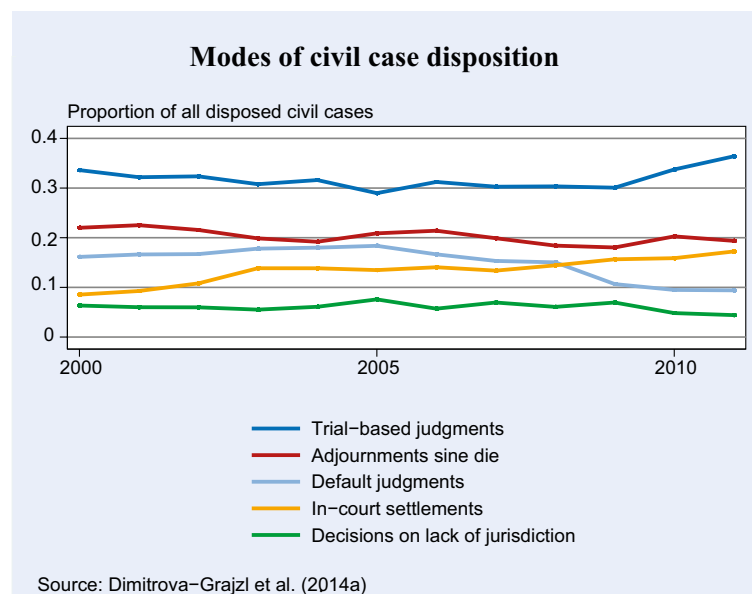
Modes of case disposition

The resolution of disputes through trial is a fundamental function performed by courts. Yet not all cases filed at a court end up being resolved through trial. Based on data from U.S. courts (Kritzer 1987; Galanter 2004), for example, a very modest proportion of state and federal civil court cases (five percent or less according to some estimates) are resolved through trial. The majority of civil cases are settled through other, non-trial modes of disposition such as settlement, abandonment, or dismissal, thereby saving disputing parties litigation and other trial-related costs.

At the macro level, an understanding of the magnitude of changes in the incidence of specific court outcomes over time enhances the general predictability of the legal system, an important attribute of a country's institutions typically believed to be lacking in emerging-market countries. At the micro level, empirically grounded information on modes of civil case disposition is valuable because it serves as a basis for existing and potential dispute parties and lawyers to form expectations about the possible outcomes of legal disputes. Moreover, data on the structure of modes of civil case disposition sheds light on the role of judges in the legal process beyond their involvement in trials. Cases disposed via abandonment, dismissal or settlement, for instance, require significantly less judicial effort and resources than the relatively more time-consuming trials.

What are the basic patterns in modes of civil case disposition in Slovenia? Figure 2 presents the time series of the court-level mean of the proportion of civil cases dis-

Figure 2

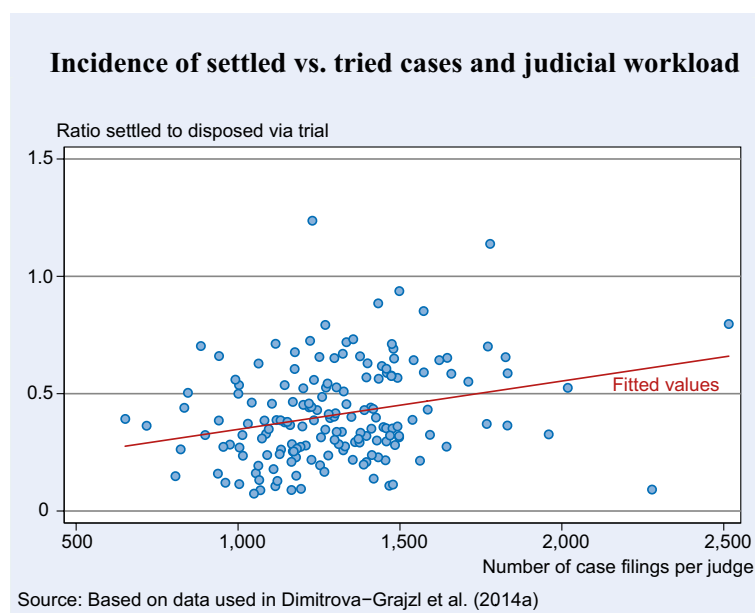


posed via each of the five most prevalent modes of civil case disposition. During the 2000–2011 period, there was a decrease in the mean proportion of civil cases disposed via default judgment, adjournment sine die, and decision on lack of jurisdiction. Characterizing the second decade after the start of post-socialist transition in Slovenia, these patterns may reflect an overall increase in the disputing parties' familiarity with the procedural aspects of court-based dispute resolution.

The average proportion of civil cases settled in-court increased steadily (from about eight percent in the year 2000 to above 17 percent in the year 2011). In-court settlement has, thus, become a more prevalent mode of civil case disposition both in absolute and in relative terms. One plausible explanation for this trend is a gradual increase in access to court-endorsed mediation, which facilitates in-court settlement.

In contrast, the mean proportion of civil cases resolved through trial-based judgment as the overall most frequent mode of civil case disposition does not exhibit a clear trend. The mean proportion of civil cases disposed through trial-based judgment decreased from a little less than 34 percent in the year 2000 to about 30 percent in the year 2009; after 2009, the proportion of trial-based judgments again increased, to above 36 percent in the year 2011. In Slovenian local courts, trial-based judgments hence represent a much more significant proportion of civil case dispositions than they do in the courts in the U.S. and other common-law jurisdictions.

Figure 3



Moreover, in Slovenian local courts, trial-based judgments as a proportion of civil case dispositions do not appear to be decreasing, as observed in the U.S. courts in recent decades (Galanter 2004).

Incidence of trials versus settlements

Trials and settlements together account for a substantial proportion of all civil case dispositions and, at the same time, represent polar extremes among the modes of civil case disposition. Trials usually take longer and are associated with higher private and social costs of adjudication than settlements. Accordingly, trial-based case resolutions and settlements have attracted the most attention in the literature on this topic out of all the different modes of civil case disposition (Hadfield 2004; Eisenberg and Lanvers 2009; Priest and Klein 1984).

Do court resources, as proxied by the number of serving judges, and the demand for court services, as proxied by the number of all court case filings, influence the incidence of trials versus settlements, and if so how? Dimitrova-Grajzl et al. (2014) hypothesize that judicial modes of case disposition are biased against trial-based judgments (i.e. toward settlements) in courts with fewer serving judges or more total (civil and criminal) case filings, *ceteris paribus*. The argument is based on the well-known notion that judges *ceteris paribus* tend to prefer settlements since “settlements are the courts’ automatic washer-dryers” (Langbein 2012, 560). At the same time,

the pecuniary and non-pecuniary costs incurred by the disputing parties are typically higher in the event of a trial than in the event of a settlement. Hence, holding all else (including judicial incentives) constant, filing parties should also be relatively more willing to settle a dispute when workload per judge at a court increases (and, thus, the estimated time to trial-based ruling is longer).

The pattern in Figure 3, depicting the sample of large local courts in Slovenia, is consistent with the above hypothesis, as is the evidence based on the use of more rigorous econometric methods aimed at addressing endogeneity

concerns (see Dimitrova-Grajzl et al. 2014a). Court resources and the demand for court services may therefore affect not only total court output (i.e. the number of resolved cases), but also *how* cases are disposed of. Specifically, additional resources made available to resource starved courts can curb the extent to which an increase in the incidence of settlements is merely a socially sub-optimal response of disputing parties and judges to an increase in court caseload pressure. Because different modes of civil case disposition entail different social and private costs, the findings in Dimitrova-Grajzl et al. (2014a) point to a new set of considerations that need to be taken into account when contemplating the reform of a country’s judicial system.

Conclusion

Well-functioning courts are necessary for large impersonal markets to flourish. The successful reform of a country’s judicial system requires an empirically-grounded understanding of the performance of courts and the behavior of judges. Evidence based on Slovenian court-level data illuminates the impact that court resources and demand for court services exert on the volume of court output and the modes through which courts dispose cases. Judge-level evidence further highlights how judge demographics, compensation, and career concerns affect judicial productivity, as well as when judicial decision-making may be subject to a quantity-quality tradeoff.

In contrast to the analysis of firm-level data, scholars of post-socialist and developing countries have devoted hardly any effort to the collection and analysis of court data to date. In addition to the exploration of court-level and judge-level data from other emerging market economies, one further fruitful avenue for future research constitutes the study of court-based *case-level* data. Careful examination of the micro-level determinants of adjudicatory outcomes - such as when parties choose to settle rather than pursue trial and which party prevails if a case is tried (Dimitrova-Grajzl, Grajzl and Zajc 2014b) - promises to reveal further interesting insights into the behavior of judges and litigants in the post-socialist world and beyond.

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