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Judicial performance and its determinants: a cross-country perspective

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Judicial performance and its determinants: a cross-country perspective

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BETTER POLICIES FOR BETTER LIVES

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Abstract / Résumé

Judicial performance and its determinants: a cross-country perspective

Well functioning judiciaries are key to economic development. Combining existing information with a newly collected dataset, the paper provides cross-country comparisons of measures of judicial performance, and investigates how cross-country differences in trial length are related to the underlying characteristics of judicial systems. There is a large cross-country variation in trial length across all instances, which appears to be related to the share of the justice budget devoted to computerisation, the systematic production of statistics the active management of the progress of cases, the presence of specialised commercial courts and the managerial responsibilities assigned to the chief judge. Good quality regulation, is associated with lower litigation, which in turn can shorten trial length. Free negotiation of lawyers' fees also appears to be associated with lower litigation.

JEL classification codes: K40; K41; D02.

Key words: judicial performance; trial length; appeal rates; accessibility; litigation; institutional characteristics of judicial systems.

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Le fonctionnement du système judiciaire et ses déterminants : une perspective internationale

Comme bien établi dans la littérature, le bon fonctionnement des systèmes judiciaires est essentiel au développement économique. En combinant l'information existante avec une nouvelle base de données, le document produit de nouveaux indicateurs qui mesurent la performance et les caractéristiques institutionnelles des systèmes judiciaires de l'OCDE. Il fournit une comparaison entre les pays sur certaines mesures de la performance des systèmes. Il examine ensuite la façon dont la durée des procédures est liée aux caractéristiques sous-jacentes des systèmes concernés. Il existe une grande variation entre les pays, en ce qui concerne la durée des procédures de toutes les instances, qui semble être liée avec la part du budget de la justice consacrée à l'informatisation, la production systématique de statistiques et la gestion active de l'avancée des dossiers par les tribunaux, la présence de tribunaux de commerce spécialisés et les responsabilités de gestion assignées au juge principal. Une réglementation de bonne qualité, réduit le recours aux procédures judiciaires, qui à son tour à un impact significatif sur la durée des procédures. La libre négociation des honoraires des avocats est associée à un moindre taux de procédures judiciaires.

Classification JEL : K40 ; K41 ; D02.
Mots clefs : fonctionnement de la justice ; durée de procès ; taux d'appel ; accessibilité ; taux de litige ; caractéristiques des systèmes judiciaires.

Judicial performance and its determinants: a cross-country perspective

Key policy messages

- In the OECD area the average length of civil proceedings is around 240 days in first instance, but in some countries a trial may require almost twice as many days to be resolved. Final disposition of cases may involve a long process of appeal before the higher courts, which in some cases can average more than 7 years.
- Appeal rates are lower in countries where filing an appeal is subject to obtaining permission (leave). However, restrictions to appeal imposed by law do not explain all of the cross-country differences in appeal rates, suggesting that there is potential scope for increasing predictability of court decisions (leading to lower appeal rates) without tightening restrictions.
- Cross-country differences in trial length appear to be related to both demand and supply factors, though the scarcity of comparable cross-country data warrants caution in the interpretation of the results in this study. More detailed and harmonised statistics on judicial system characteristics and outcomes would help better understand the factors that can promote efficiency in civil justice.
- ***On the supply side*** of the market for civil justice services, differences in trial length appear to be more related to the *structure of justice spending*, and the *structure and governance of courts* than to the sheer amount of resources devoted to justice.
  - Larger shares of the justice budget devoted to computerisation, the active management of the progress of cases by courts and the systematic production of statistics at the court level are associated with shorter trial length.
  - Investments in court computerisation also correlate with productivity of judges. The impact is larger when the degree of computer literacy in the country is higher, suggesting that such investments should be accompanied by policies aimed at ensuring that users have adequate technical endowments and skills.
  - The majority of courts in OECD countries have electronic forms, websites and electronic registers; many countries either have not yet implemented online facilities and the possibility for lawyers to follow up cases online, or have done so only in a minority of courts.
  - Trial length is shorter in countries with specialised commercial courts.
  - Systems of court governance in which the chief judge has broader managerial responsibilities (*e.g.* covering supervision of non-judge staff and administration of the budget), display lower average trial length than systems where such responsibilities are differently allocated.
- ***Looking at the demand side***, the annual litigation rate ranges from less than one case to almost ten cases in one hundred people. Good quality regulation, timely and effective implementation of policies, integrity of the public sector and control of corruption are all associated with less litigation. Likewise, countries with free negotiation of lawyers' fees, as opposed to regulation, tend to have lower litigation. A lower number of new cases per capita is associated with a significant decrease in the average length of trials.

1. Introduction

As emphasised by a large body of empirical evidence, well-functioning judiciaries are a crucial determinant of economic performance. They promote the efficient production and distribution of goods and services by securing two essential prerequisites of market economies: security of property rights and enforcement of contracts. Security of property rights gives agents incentives to save and invest, by protecting returns from these activities. A good enforcement of contracts stimulates agents to enter into economic transactions, by dissuading opportunistic behaviour and reducing transaction costs. This has a positive impact on growth through various channels: it promotes competition (Johnson, *et al.,* 2002), fosters specialisation in industries where relationship-specific investments are most important (Nunn, 2007), contributes to the development of financial and credit markets and facilitates firm growth.[1] Conversely, weak contract enforcement could lead firms to adopt inefficient technologies (for example those that minimise dependence on other firms), with detrimental effects on productivity.

However, judicial systems can suffer from inefficiencies, which may be sufficiently serious to have a negative impact on economic performance. Even though in the OECD area the average length of civil proceedings is around 240 days in first instance, in some countries a trial may require almost twice as many days to be resolved. On top of being lengthy, judicial decisions are sometimes too uncertain, inducing litigants to undergo a long process of appeal before the higher courts, which in some cases can average more than 7 years. This report suggests that, independent of the fundamental features of different legal systems (*e.g.* civil law vs. common law), such inefficiencies are related to specific characteristics that contribute to shape incentives – for courts (judges and staff) to perform efficiently and for lawyers to supply the right quantity and quality of service – and that could effectively be addressed by structural reforms.[2]

The report benchmarks the relative performance of judicial systems in the OECD area along three main dimensions: trial length, accessibility to justice services and predictability of judicial decisions. It then provides a preliminary investigation of how trial length is related to some of the underlying characteristics of the systems. Some tentative policy recommendations for reforms to raise efficiency in the civil justice area are inferred from the analysis.

The information comes primarily from a new OECD dataset. Data provided by other international institutions have been used in various parts of the analysis to extend time and country coverage, investigate aspects that are not covered by the OECD dataset, or when this was found methodologically more appropriate (a description of the data is provided in Box 1).

The report provides comparative information possibly useful for decision-makers in designing and assessing judicial reforms, in a field plagued by scarcity of cross-country data. At the same time, remaining flaws in the available data and their cross-sectional nature imposed constraints on the type of empirical analysis that could be carried out. Therefore, caution should be applied in the interpretation of the results.

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1 Kumar *et al.* (2001) find that more efficient judicial systems are associated with larger firms and that this effect is more pronounced for low capital-intensive firms. Beck *et al.* (2006) find that firm size is positively associated with institutional development (including judicial efficiency) and with the development of financial intermediaries. Similar findings have been produced in analyses exploiting within-country variations: Laeven and Woodruff (2007) and Dougherty (2012) for Mexico; García-Posada and Mora-Sanguinetti (2013) for Spain; Giacomelli and Menon (2012) for Italy. For the effect on financial market development see Bae and Goyal (2009), Qjan and Strahan (2007), Fabbri (2010); this effect has also been found exploiting the variance of judicial efficiency at the national level (Jappelli *et al.*, 2005, for Italy; Padilla *et al.*, 2007, for Spain; Shvets, 2012, for Russia, among others).

2 This distinguishes the approach from that of Djankov *et al.* (2003) that focuses on procedural formalism. Their main conclusion is that procedural formalism is detrimental to court performance and that the degree of formalism is associated with the legal origin: French law countries are the most formal, while the least so are those of common law tradition.

Box 1. Description of the data

The data used in this study come primarily from three sources: the OECD dataset, the dataset collected by the European Commission for the Efficiency of Justice (CEPEJ), and the Doing Business (DB) dataset collected by the World Bank.[1]

The **OECD dataset** is a newly collected dataset. It combines replies to an OECD questionnaire distributed to OECD member and partner countries and data from the CEPEJ survey. Overall it covers 35 legal systems of 31 OECD countries[2], Russia and South Africa. The discrepancy reflects the fact that, among the surveyed countries, the United Kingdom has a distinct legal jurisdiction for each of the sub-national entities. The OECD questionnaire collected information about: flow of cases and length of proceedings, access to court, predictability of court decisions, resources available for the judiciary, specialisation of courts, caseflow management techniques introduced in the judicial system, court accountability and models of governance, regulation of the profession (lawyers). Data refer to 2011 (2010 for countries member of the Council of Europe).

The **CEPEJ dataset** comprises (among others) data on: flow of cases, access to court, organisation of the court system, lawyers regulation. It covers the 47 Council of Europe member countries. Data are for 4 different years (2004, 2006, 2008 and 2010).

The **DB dataset** provides information on time, cost and number of procedural steps needed to resolve a specific standardised commercial dispute between two domestic businesses for a large set of economies. The data are collected through surveys completed by local litigation lawyers and judges.

1. For more details, see Palumbo et al. (2013).

2. Australia, Austria, Belgium, the Czech Republic, Denmark, England and Wales, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Northern Ireland, Norway, Poland, Portugal, Scotland, the Slovak Republic, Spain, Sweden, Switzerland and Turkey.

2. Conceptual framework

Defining judicial performance

The performance of judicial systems comprises various dimensions, including independence and fairness of adjudication. Here, the focus is mainly on trial length and on the analysis of the characteristics of judicial systems that may explain its observed cross-country variation. Ancillary analysis considers other aspects of performance: appeal rates as a proxy for predictability and private costs of litigation as a measure of accessibility.

The reason for concentrating on these dimensions is twofold. First, the fundamental motive for looking at judicial systems from an economic standpoint is to assess their ability to work as institutions that sustain the proper functioning of markets: timeliness, predictability of judicial decisions and accessibility to the service are essential properties in this respect. A timely resolution of disputes prevents firms from suffering undue costs that may hurt their competitiveness and, for small firms, even determine exit from business.[3] Trial length and predictability of decisions are key to guarantee the certainty of rules. This assures that firms can make better investment choices because they know what "rules" will apply *ex post*. A reasonable length of trial is also a prerequisite for achieving justice ("*justice delayed is justice denied*") and is generally associated with other crucial measures of performance such as confidence in the justice system. Perhaps due to this, the length of trials is inversely related to the index of confidence of individuals in the justice system reported in the World Value Survey.[4] OECD analysis suggests that a 10% increase in the length of trials is associated with around 2 percentage point decrease in the probability to have confidence in the justice system. Accessibility is influenced by the costs of using the service, which

3 Trial length is also used as a proxy for judicial efficiency in many papers on the effects of judicial performance on economic outcomes (among others, Fabbri, 2010; Giacomelli and Menon, 2012; Nunn, 2007.).

4 http://www.worldvaluessurvey.org/index_surveys.

need to be sufficiently low to avoid exclusion from the service.[5] The second reason for concentrating on these dimensions (trial length, access, predictability) is that they can be quantitatively measured and therefore lend themselves more easily to cross-country comparisons.

A demand-supply approach

The length of trials can be viewed as the result of the interaction between demand for and supply of justice. Indeed, the inability of the system to resolve in each given period a number of cases equal to that brought to court generates congestion and delays. Accordingly, factors affecting the length of trials can be grouped into two main categories, depending on whether they influence the demand for or the supply of justice (Figure 1).

On the supply side, the main potential influencing factors are:

- the quantity and quality of financial and human resources devoted to justice;
- the efficiency of the production process as influenced, among other things, by the degree of task specialisation, the use of techniques for the efficient management of cases, the diffusion of information and communication technologies (ICT);
- the governance structure of the courts and the structure of incentives of the service providers, where the first specifies the distribution of authority (who has decisional power) and accountability (who is responsible for the performance) among different tasks and subjects in the organisation (the Chief judge, Chief administrative officer, or other bodies), while the second refers to the definition of performance objectives, the specific entity that sets the standards, the consequences attached to a negative performance.

Factors that in principle influence the demand for justice can be separated into those that are "internal" to the organisation and working of the justice system, and those that are "external" and related to the socio-economic environment. External factors include:

- cultural traits;
- structural characteristics of the economy, such as the stage of economic development;
- the business cycle;
- the quality and quantity of legislation.

Among internal factors the following are particularly relevant:

- the costs of accessing the service, and the rules for allocating them between the parties (fee-shifting rules);[6]
- the incentives that apply to lawyers, as shaped by the joint effect of the fee regulation, including rules on pricing transparency, and the structure of legal services;
- the diffusion of mechanisms of alternative dispute resolution (ADR);[7]

[5] At the same time costs should not be so low as to encourage frivolous litigation.

[6] Costs are in part set by public policy. However, there are limitations to the extent to which they can be used to discourage the recourse to court in situations characterised by excess demand: high costs could harm the poorest parties and hence violate the principle of equity in front of the law.

- the degree of certainty of the law, as influenced by the ability of the judiciary to guarantee uniformity in the interpretation and application of the law, making recourse to the legal system unecessary.

Finally, both the supply and the demand of judicial services are affected by procedural rules and institutional arrangements that reflect different legal origins and judicial traditions. The classification of countries according to legal origins is provided in Table A1.

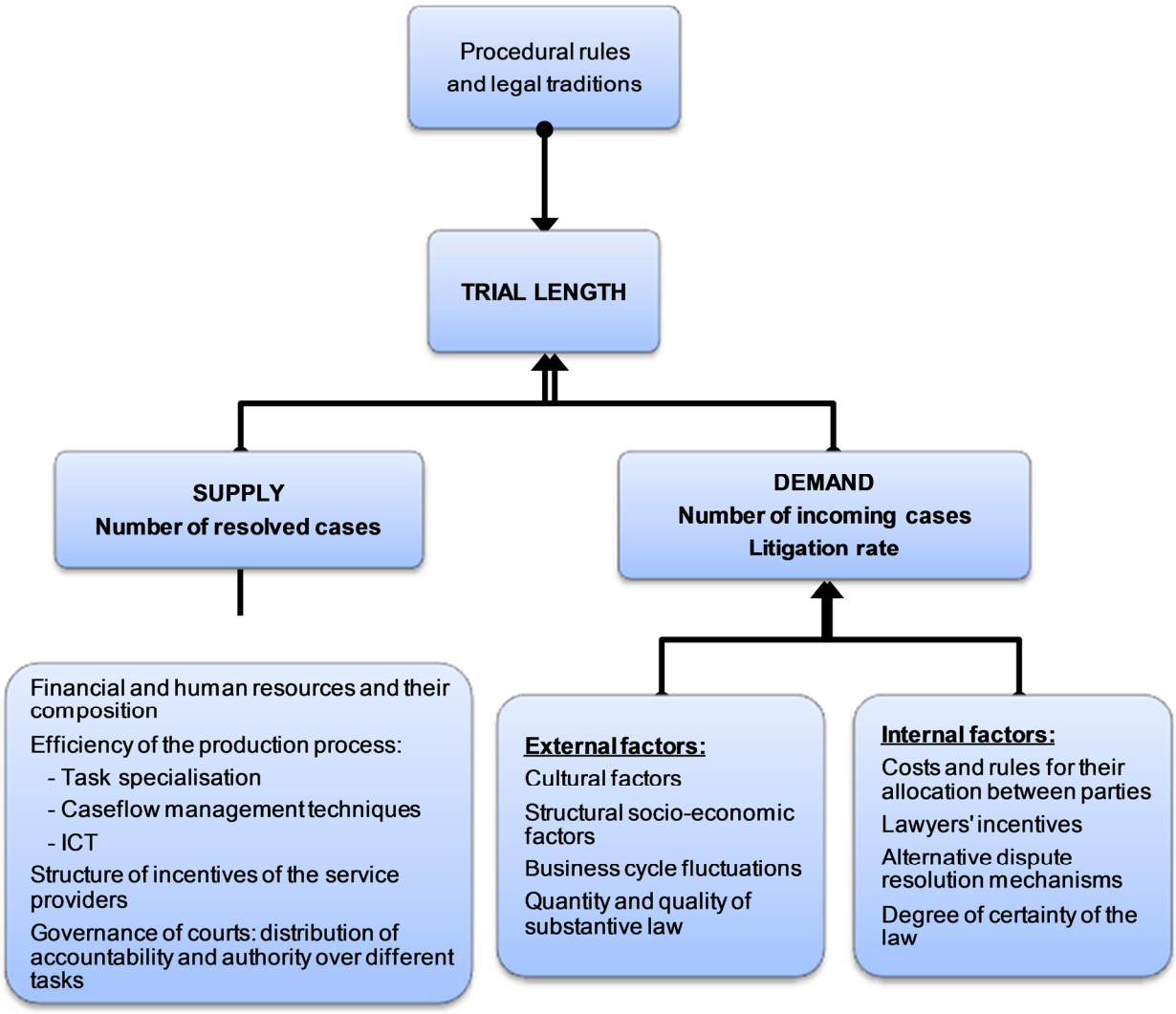
3. Comparing civil justice outcomes

Cross-country comparisons of trial lengths and appeal rates at different instances are assessed relying on official statistics on the flow of various categories of civil cases, which are then used to construct average measures of these dimensions.[8] This approach has a clear advantage in terms of generality and ability to provide an overall picture of the functioning of judicial systems. However, by averaging across different categories of cases, measures are prone to error in that they incorporate possible differences in the complexity of cases and in the way court statistics are organised across countries. A different measure of trial length is provided by the Doing Business (henceforth DB) dataset collected by the World Bank. This measure guarantees greater cross-country comparability, for it refers to a hypothetical standardised case, but suffers from other drawbacks. First, it lacks generality and is only available for the first instance. Second, it has a less objective nature, being based on survey responses provided by lawyers and judges. The cost of judicial services is a third performance indicator, in addition to trial length and appeal rates. The nature of the OECD questionnaire does not allow collecting information on the private costs of the service, which are largely dependent on the monetary value and complexity of each dispute. For this information, the analysis relies on the DB dataset, which provides data on the cost of resolving the specific case considered.

[7] ADR refers to different processes and methods of resolving disputes outside the judicial process, such as mediation, conciliation, or arbitration.

[8] Civil cases include all civil cases over matters in controversy between parties except, data permitting, administrative cases. They comprise the following sub-categories: contracts, labour, insolvency and bankruptcy, intellectual property, family, tort and personal injury, real property, social security, antitrust and competition.

Figure 1. Factors acting in the market for justice



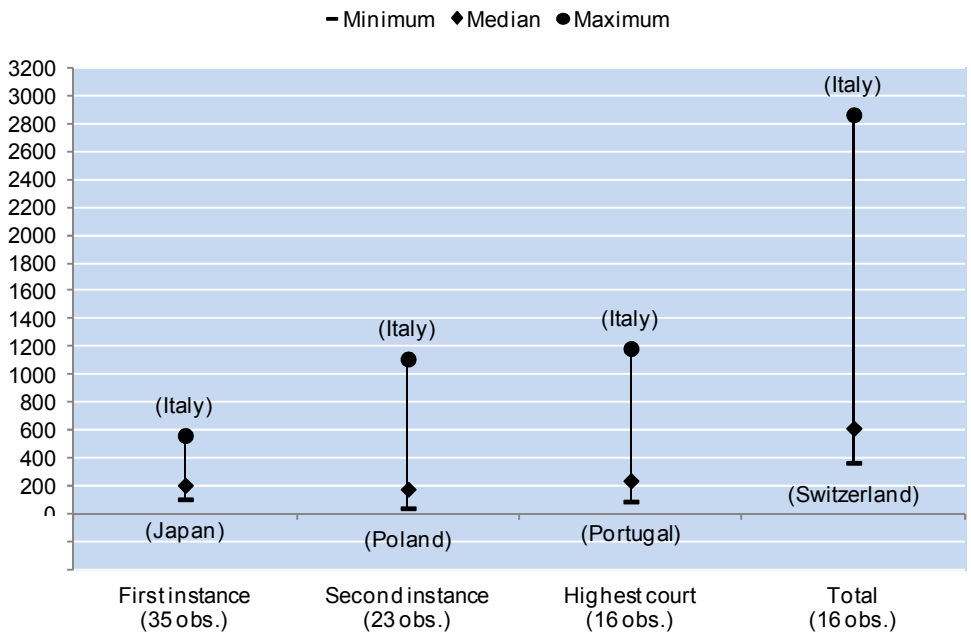
Source: OECD

Cross-country variation in trial length is large

There is a large cross-country variation in trial length across all instances (Figure 2). As reported in Table A2 the average length of first instance civil disputes is 238 days; it rises to more than 350 days in the upper decile of the distribution. On average trial length is lower in Nordic and German law systems than in common law ones; it is highest in French law systems. Data on the time it takes to solve a civil dispute that goes through all the three instances are available only for 16 countries. The average for these countries is 788 days. Cross-country variation is again fairly large: average total length is below 395 days in the first decile of the length distribution, and above 1 152 days in the last, reaching almost 8 years in Italy.

Figure 2. Trials can be very long in several countries

Distribution of trial length (in days) across countries by type of instance



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Note: Trial length is estimated with a formula commonly used in the literature: $[(Pending_{t-1}+Pending_t)/(Incoming_t+Resolved_t)]*365$ (see note to Table A2 for additional details). Each of the bars illustrates the main summary statistics of the sampled data. The diamond represents the median. The end points of the whiskers represent the minimum and the maximum values in the sample. The spacing between the main parts of the bars illustrates the degree of dispersion and skewness in the data.

Source: OECD, CEPEJ and World Bank

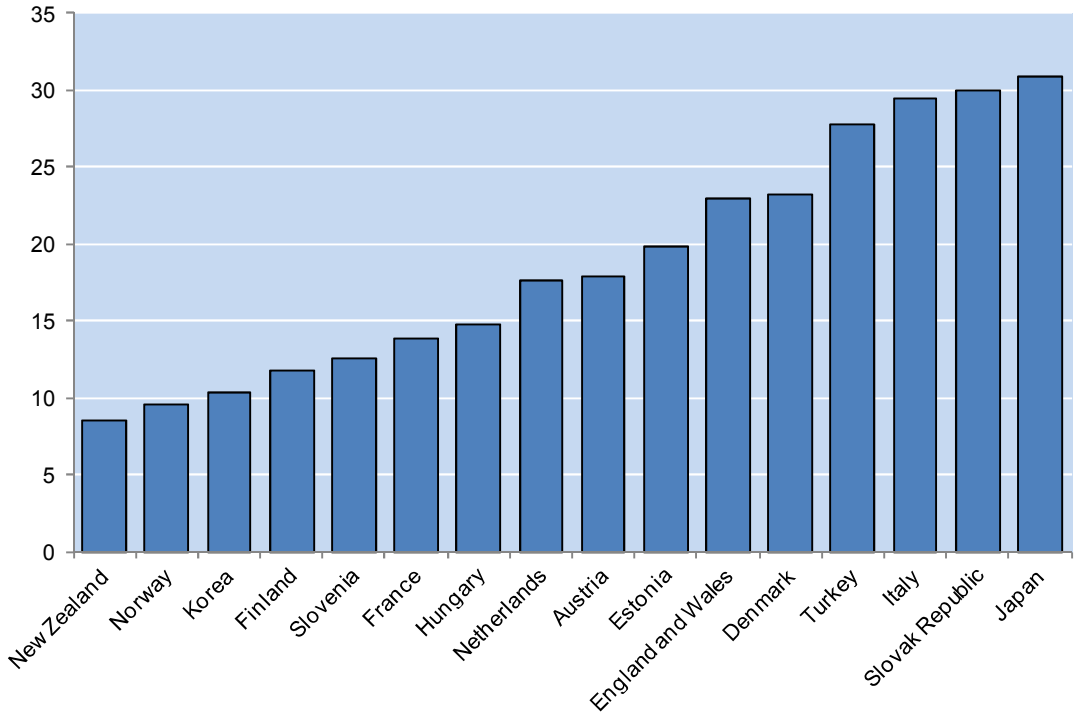
Systems characterised by lengthy trials tend to be less accessible

The accessibility of judicial systems can be evaluated along three main dimensions: informational, geographical, and financial. While the development of communication and information technologies has weakened the access constraints related to the first two dimensions, financial accessibility remains a key issue. Financial access constraints relate to the costs borne by the litigants to achieve a resolution of their dispute through the court system (court fees, expert fees, lawyers' fees). However, these costs must be evaluated in combination with the availability of public financial support to litigation (legal aid) and other instruments aimed at easing possible liquidity constraints faced by the litigants, such as arrangements under which the lawyer is entitled to payment only in case of victory (*e.g.* contingency fees) or the possibility to resort to external investors to finance the court proceedings (*e.g.* third-party financing). Due to lack of data on the actual diffusion of contingency fees and third-party financing, accessibility to court has here been assessed using an indicator for total private costs that only considers the cost of trial and the probability of receiving legal aid in each country. Figure 3 reports the

values of the indicator for some OECD countries. A higher value of the indicator denotes a lower degree of accessibility, once accounting for the contribution of legal aid.

Figure 3. Trial costs vary widely across countries

Trial cost net of legal aid as a percentage of the value of the claim



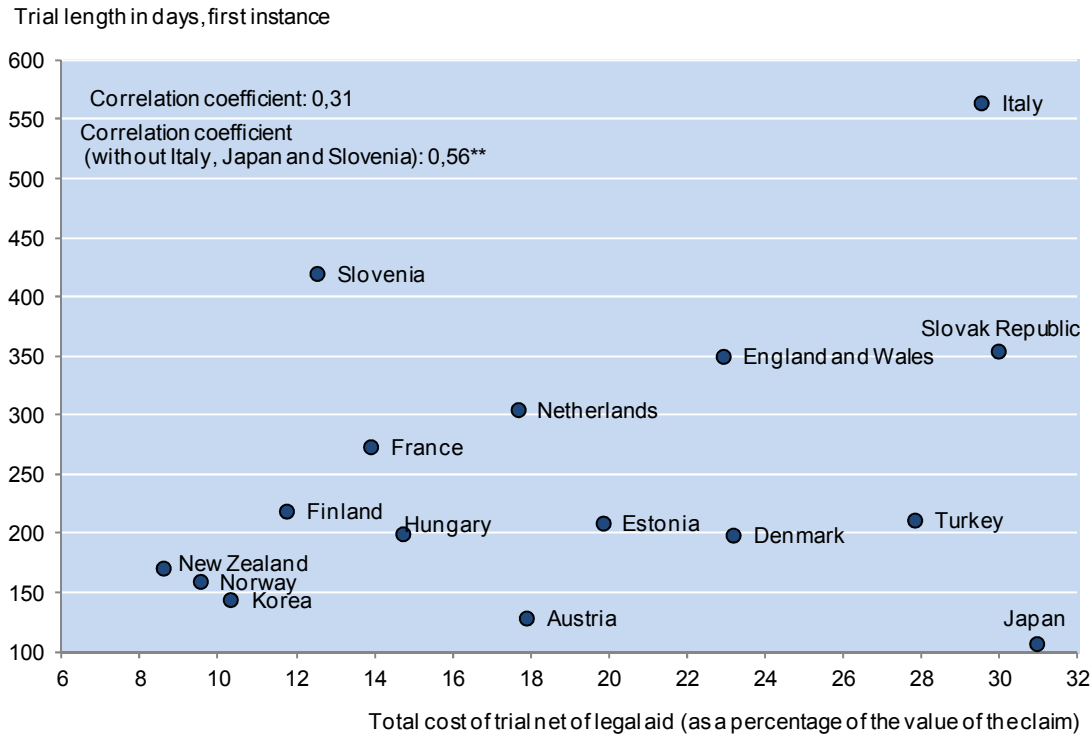
StatLink http://dx.doi.org/10.1787/888932855734

Note: The indicator is constructed as the total private cost of trial discounted by the expected probability of receiving legal aid, which is assumed to reset trial costs to zero. The cost of trial (as a percentage of the value of the claim, which is assumed to be equivalent to 200% of income per capita in the country) is taken from the World Bank Doing Business database and encompasses three different types of costs necessary to resolve a specific commercial dispute: court fees, enforcement costs and average lawyers' fees. The reduced number of observations is due to data availability.

Source: OECD, CEPEJ and World Bank.

As a general trend, systems characterised by lengthy trials tend to be more costly, suggesting that a reasonable trial length is an important condition for the accessibility of the judicial system (Figure 4). However, there are exceptions, such as Japan where costs are estimated to be high and yet trial length is relatively low, or Slovenia where the reverse appears to be true.

Figure 4. Trial costs tend to increase with trial length



StatLink http://dx.doi.org/10.1787/888932855753

Note: Trial length is estimated with a formula commonly used in the literature: $[(Pending_{t-1}+Pending_t)/(Incoming_t+Resolved)]*365$. The indicator on the x-axis is constructed as the total private cost of trial discounted by the expected probability of receiving legal aid, which is assumed to reset trial costs to zero. The cost of trial (as a percentage of the value of the claim, which is assumed to be equivalent to 200% of income per capita in the country) is taken from the World Bank Doing Business database and encompasses three different types of costs necessary to resolve a specific commercial dispute: court fees, enforcement costs and average lawyers' fees. The reduced number of observations is due to data availability.

Source: OECD, CEPEJ and World Bank

Restrictions to appeal only partly explain differences in appeal rates

Predictability of court decisions, that is, the possibility to predict *ex ante* how the law will be applied by the court, is extremely important from an economic perspective. It guarantees the certainty of the law and enables economic agents to anticipate the potential legal consequences of their actions. The latter in turn is key to making correct decisions. The predictability of court rulings is influenced by the uniformity in the application of the law, *i.e.* the equal treatment of similar disputes, and the ease with which court decisions can be accessed and known.

Although measuring predictability *per se* is difficult, some information on this dimension can be inferred from appeal rates before higher instances. The argument relies on the existence of a relationship between appeal and reversal rates, according to which the likelihood that an appeal is filed is maximum when the expectation of the parties about the probability of a reversal by the higher court is close to 50%, and is low when such probability is either very low or very high.[9]

[9] The probability that a decision is appealed depends on how much the parties are uncertain about the expected outcome of litigation before the higher court. Appeals will occur when this uncertainty is high. Indeed, since litigation is costly, if the parties can predict with sufficient certainty the outcome of litigation, it will be in their interest to reach an out of court settlement and save on litigation costs.

As most countries do not produce statistics on actual appeal rates, these have been estimated in two ways. First, appeal rates have been calculated in each period as the ratio of incoming cases in the higher instance to resolved cases in the lower instance in the previous period. Figure 5, Panel A displays the results for appeals before the second instance courts. Common law countries generally exhibit lower appeal rates, and cross-country dispersion of appeal rates is also higher in other legal systems.

One disadvantage of the simple measure of appeal rates is that it does not take into account that in countries where predictability of court decisions is high, only complex cases are brought to court, which are also those more likely to be appealed. This circumstance may result in appeal rates being higher precisely in those countries where the predictability of court decisions is higher. To overcome this problem, a second measure of appeal rates has been constructed, in which the number of incoming cases before the second instance is related to the number of potential disputes in the country, as *proxied* by the population. As shown in Figure 5, Panel B, when using this measure, the estimated performance of countries with low litigation rates (Nordic and common law countries) improves relative to that of the countries with high litigation rates (French law).

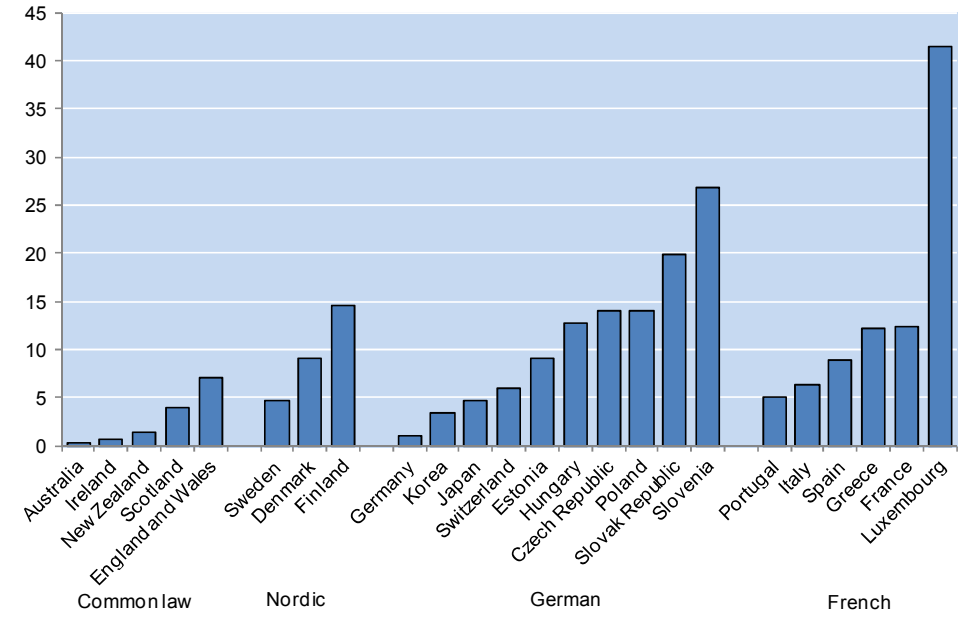
Differences in appeal rates across countries may be partly explained by restrictions to appeal. These can take two forms: the possibility to file an appeal is either limited to cases with a monetary value of the claim above a given threshold (monetary restrictions), or it is subject to obtaining permission from the lower or the appellate court (leave to appeal). Monetary restrictions are more common in German and French law countries, while restrictions based on leave to appeal are more frequent in common and Nordic law countries (Table 1).

Figure 6 reports the distribution of the appeal rates as a percentage of population by different types of restrictions before the second instance court. Restrictions to appeal reduce the average and the cross-country variance of appeal rates. The reduction is significant in the case of restrictions based on leave to appeal. On the contrary, the impact of monetary restrictions is not statistically significant. Interestingly, with the exclusion of restrictions based on leave to appeal, there is wide cross-country variation in appeal rates at all levels. Thus, restrictions explain part but not all of the cross-country differences in appeal rates, leaving potential scope for increasing predictability of court decisions (*i.e.* lower appeal rates) without increasing the strength of restrictions (Palumbo *et al.,* 2013).

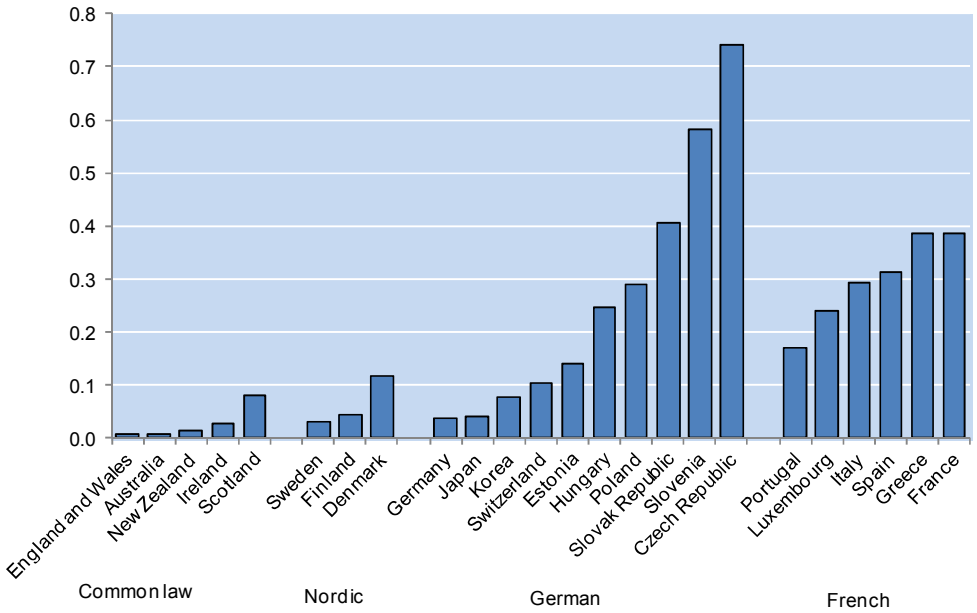
The impact of the restrictions on the average and cross-country variance of appeal rates before the Highest court is similar to that observed for the second instance (Palumbo *et al.,* 2013).

Figure 5. Appeal rates differ significantly across countries and legal origins

A. Cases appealed before the second instance as a percentage of cases resolved in first instance



B. Cases appealed before the second instance as a percentage of population



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Note: The appeal rate in Panel A is estimated as the ratio of incoming civil cases in second instance to resolved civil cases in first instance in the previous period. The appeal rate in Panel B is estimated as the ratio of incoming civil cases in second instance to population. Included countries are those for which data are available and jurisdiction is reasonably homogeneous. Countries are grouped by legal origins, indicating whether the legal system is based on British common law, or French, German, or Nordic civil law.

Source: OECD and CEPEJ.

Table 1. Most countries restrict the possibility to file an appeal

Restrictions to appeal by legal origin, number of countries by type of restriction

	Restrictions to appeal before the second instance			
Legal origin	None	Monetary	Leave to appeal	Total
Common law	2	0	5	7
French	1	6	0	7
German	5	3	1	9
Nordic	0	1	2	3
Total	8	10	8	26

	Restrictions to appeal before the highest court			
Legal origin	None	Monetary	Leave to appeal	Total
Common law	2	0	5	7
French	2	1	0	3
German	1	3	2	6
Nordic	0	0	2	2
Total	6	4	8	18

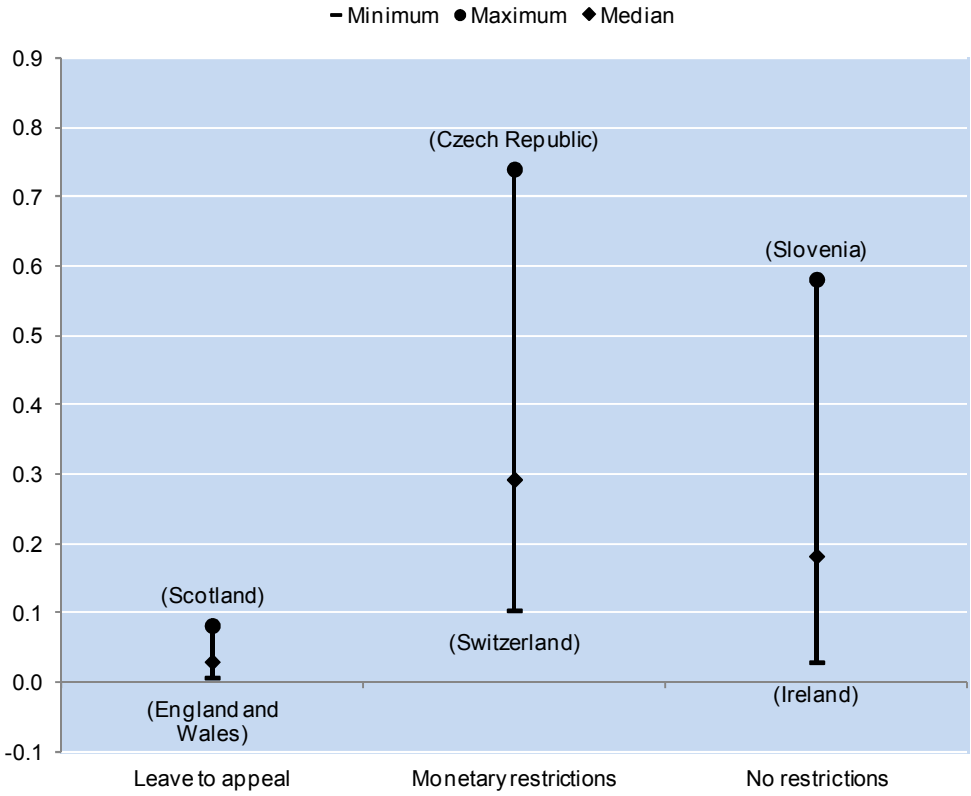
StatLink http://dx.doi.org/10.1787/888932855962

Note: Monetary restrictions refer to systems in which the right to appeal is limited to cases with a monetary value of the claim above a given threshold. Leave to appeal refers to systems in which the appellant must seek and obtain the permission of the lower or appellate court before he/she can start the appeal. See Table A1 for the classification of countries according to legal origins.

Source: OECD

Figure 6. Restrictions to appeal explain only part of the cross-country differences in appeal rates

Cases appealed before the second instance as a percentage of population by type of restrictions



StatLink http://dx.doi.org/10.1787/888932855791

Note: The chart displays the appeal rate before the second instance by type of restriction (see note to Figure 2 for details on how to interpret the bars). The appeal rate is estimated as the ratio of incoming civil cases in second instance to population. The first plot refers to countries where filing an appeal is subject to obtaining leave from the lower or the appellate court (Leave to appeal), the second plot refers to countries where filing an appeal is limited to cases with a monetary value of the claim above a given threshold (Monetary restrictions), the third plot refers to countries where no restrictions apply (No restrictions). Differences in the distributions of appeal rates without restrictions and with monetary restrictions are not statistically significant. Included countries are those for which data are available and jurisdiction is reasonably homogeneous.

Source: OECD and CEPEJ

4. What influences trial length?

As illustrated in Figure 1, some characteristics of judicial systems can explain cross-country differences in trial length by influencing either the supply or the demand for justice. They are analysed in turn in this section.

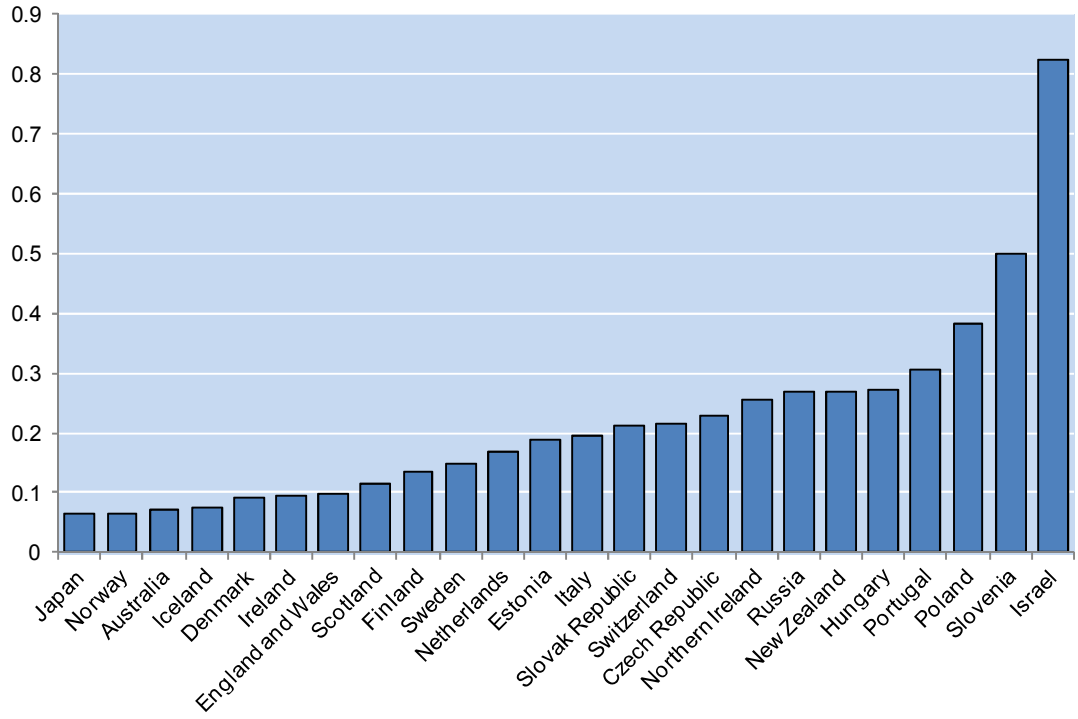
Supply side factors

Cross-country differences in trial length do not appear related to the amount of resources devoted to justice

Consistent with previous research (Buscaglia and Dakolias, 1999, Rosales-López, 2008, Cross and Donelson, 2010, Voigt and El Bialy, 2012), there is no apparent link between the budget allocated to justice and the performance of the systems in the data assembled by the OECD. Figure 7 displays the amount of

financial resources devoted to the functioning of courts as a percentage of GDP across OECD countries. Israel, Slovenia and Poland allocate the largest shares of GDP to justice, and Japan, Norway and Australia the lowest. Countries with similar budgets (as a percentage of GDP) display very different trial lengths. For instance, Italy, the Slovak Republic, Switzerland and the Czech Republic all allocate around 0.2% of GDP to the courts' budget, but, while in Switzerland and the Czech Republic the average trial duration is around 130 days (OECD measure), it is 2.7 times larger in the Slovak Republic and even 4 times larger in Italy.

Figure 7. Budget allocated to courts as a percentage of GDP



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Note: The budget includes the amount of financial resources allocated to all courts, excluding resources for legal aid and public prosecution services. The bar height displays the ratio of budget to GDP, in percent. Cross-country comparisons of judicial budgets may be affected by differences in the distribution of tasks related to the functioning of the judiciary between the public judicial system and the private sector.

Source: OECD and CEPEJ.

Given the high labour intensity of judicial services, all countries generally devote the largest share of the justice budget to gross salaries, 65% on average, with the share reaching 77% in French law countries (Table 2). Common law systems appear to be less labour intensive, as they also display the lowest number of judges per 100 000 inhabitants (around 5 compared with a cross-country average of 16) and invest the largest share of budget in informatisation (6% compared to an average 4%).[10]

Table 2. Allocation of the public budget for justice across spending categories

Data expressed as a percentage of the budget

	Salaries	Informatisation	Justice expences	Operating costs	Real estate	Training & Education	Other
Czech Republic	58.0	2.1	3.5	1.3	0.0	0.0	35.1
Denmark	68.5	7.9	0.0	15.4	-	0.9	7.3
England and Wales	60.7	2.5	5.4	20.1	0.1	0.1	11.1
Estonia	77.0	1.0	3.1	18.0	-	0.8	0.1
Finland	76.0	4.9	3.3	13.0	0.0	-	2.8
Hungary	80.7	2.9	6.2	10.1	-	0.1	0.0
Iceland	-	1.7	-	-	-	-	-
Ireland	35.6	3.7	0.1	12.1	38.4	0.8	9.3
Israel	67.9	5.6	4.9	10.5	6.8	0.7	3.5
Italy	74.5	1.9	10.4	8.8	-	0.0	4.3
Japan	61.1	1.8	4.7	0.6	1.7	2.5	27.5
Netherlands	74.1	9.9	0.4	11.1	0.0	2.1	2.5
New Zealand	50.7	9.7	17.2	13.6	-	0.4	8.5
Northern Ireland	56.3	12.0	2.9	28.4	-	0.4	-
Norway	63.4	3.6	0.0	22.4	0.8	1.2	8.5
Poland	65.5	0.8	10.9	5.1	3.1	0.2	14.5
Portugal	81.2	2.0	5.2	7.3	0.0	4.3	-
Russia	64.0	3.4	0.4	6.4	7.8	0.3	17.7
Scotland	39.8	2.9	5.7	19.3	6.8	0.1	25.4
Slovak Republic	64.5	1.5	0.2	6.4	0.0	1.0	26.4
Slovenia	70.8	2.3	21.3	4.3	0.6	0.7	0.0
Sweden	70.7	2.4	-	14.0	-	1.2	12.7
Switzerland	77.2	4.2	9.6	6.5	0.8	0.4	1.3
Common Law	51.8	6.1	6.0	17.3	13.0	0.4	11.6
French	76.6	4.6	5.3	9.1	0.0	2.1	3.4
German	69.4	2.1	7.4	6.5	1.0	0.7	13.1
Nordic	69.7	4.1	1.1	16.2	0.4	1.1	7.8
Former socialist	64.0	3.4	0.4	6.4	7.8	0.3	17.7
Mean	65.4	3.9	5.5	11.6	4.5	0.9	10.9

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Note: The table illustrates the allocation of court budget across budgetary items. The budget is computed as the amount of financial resources allocated to all courts, excluding resources for legal aid and public prosecution services. The missing values are actually included in the residual category "Other" as they could not be separated out (except for Iceland). The table includes total averages and averages by legal origin. The share of budget allocated to ICT may under-estimate the effective amount of resources devoted to ICT for it does not include co-financing by supranational bodies (*e.g.* EU structural funds). See Table A1 for the classification of countries according to legal origins.
Source: OECD and CEPEJ

[10] These figures refer to professional judges working full time and on an occasional basis (*i.e.* not performing their duty on a permanent basis but being fully paid for their function as judges). They do not include "non-professional judges" such as lay judges, judges of peace, "juges consulaires", etc.

Spending on computerisation is associated with better judicial performance…

Systems devoting a larger share of the budget to ICT investment display on average shorter trial length (DB measure[11]). The productivity of judges, proxied by the number of cases disposed of by each judge, is also higher in countries that spend more of the budget on ICT (Figure 8, Panel A). The impact on productivity is larger when the degree of computer literacy (as proxied by the share of people with basic computer skills in the population) in the country is higher (Figure 8, Panel B). Moving from the 25th to the 75th percentile of the ICT literacy distribution across countries[12], the responsiveness of judges' productivity to investment in informatisation would increase by four times. Thus, investments in computerisation and policies aimed at increasing the computer literacy of the population would seem to be complementary vis-à-vis this measure of justice productivity.

… which is supported by the active management of the progress of cases and the systematic production of statistics…

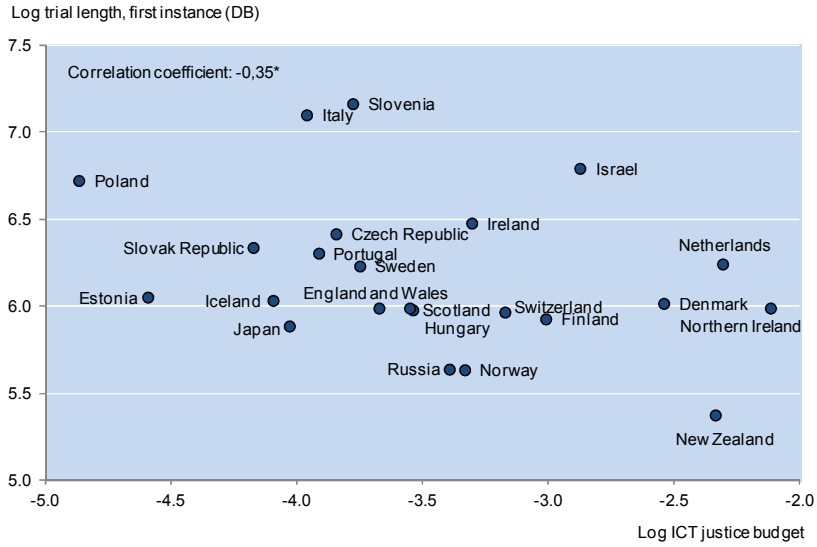
A court system with a good degree of informatisation is essential for the development of a whole set of instruments – so-called caseflow management techniques – that allow for a smoother functioning of courts and have beneficial effects on the performance of the systems. Caseflow management broadly indicates the set of actions that a court can take to monitor the progress of cases and to make sure that they are managed efficiently. It includes for example the monitoring and enforcement of deadlines, the screening of cases for the selection of an appropriate dispute resolution track, and the early identification of potentially problematic cases. Among the different caseflow management techniques covered in the OECD survey, the early identification of long or otherwise potentially problematic cases in first instance appears to be associated with shorter trial lengths (Figure 9).

[11] The use of the World Bank Doing Business indicator of trial length in this part of the analysis was found methodologically more appropriate given the greater cross-country comparability of this measure, which does not incorporate differences in the composition of case flows across judicial systems.

[12] Corresponding to 33% (Czech Republic) and 54% (Germany) of computer users in the population, respectively.

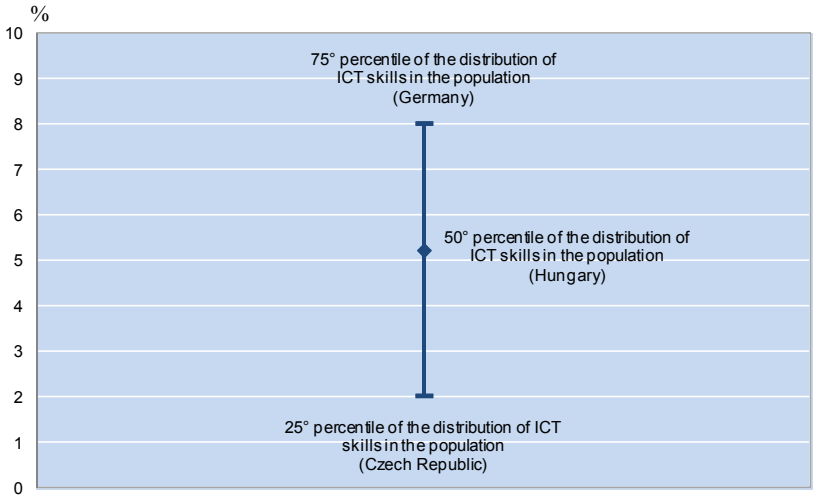
Figure 8. ICT take up is associated with better judicial performance

A. The ICT share of the justice budget is inversely related to trial length



B. The responsiveness of judges' productivity to a 10% increase in the ICT budget share increases with computer literacy

Percentage increase in productivity at different levels of ICT skills



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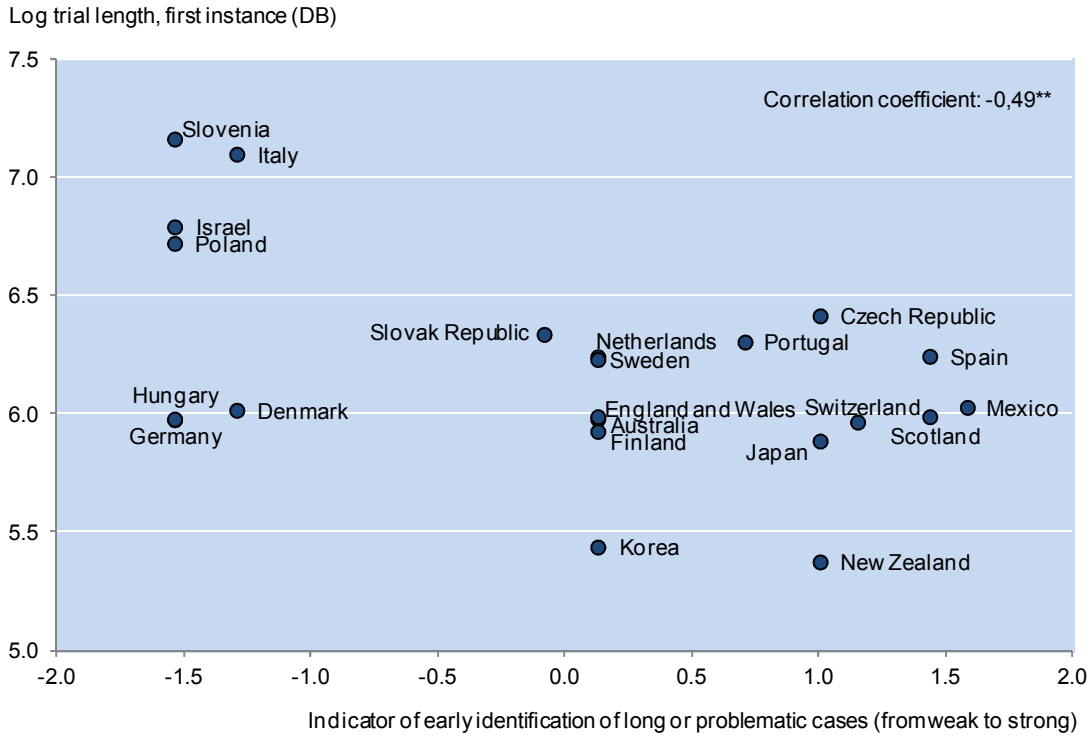
Note: In Panel A the share of the justice budget allocated to informatisation (ICT justice budget) is computed as the ratio of annual public budget allocated to computerisation to the public budget allocated to the functioning of the courts (excluding financial resources devoted to legal aid and public prosecution services). Trial length is taken from the World Bank Doing Business. The share of budget allocated to ICT may under-estimate the effective amount of resources devoted to ICT for it does not include co-financing by supranational bodies (*e.g.* EU structural funds). In Panel B the productivity of judges is defined as the ratio of resolved civil cases across all instances to the total number of judges. The chart illustrates the effect of a 10% increase in the share of budget devoted to informatisation on the productivity of judges. The effect is different depending on the average ICT skill endowment in the population. Specifically the increase in the productivity of judges would be of a 2.04% for a country at the first quartile of the distribution of ICT skills in the population, a 5.23% increase for a country at the median and a 8.02% for a country at the third quartile.

Source: Panel A: OECD, CEPEJ and World Bank; Panel B: Palumbo *et al.* (2013).

Figure 9. Caseflow management is associated with shorter trial length

Trial length and the ability to identify early long or problematic cases



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Note: The variable on the x-axis represents a factor (obtained through principal component analysis) that strongly correlates with the early identification of long or otherwise potentially problematic cases in first instance. Trial length is taken from the World Bank Doing Business.

Source: OECD, CEPEJ and World Bank

An important condition for the implementation of caseflow management techniques is the systematic collection of detailed statistics on case flows (incoming, pending, resolved cases), trial length, judges' workload and other operational dimensions. Recording data on the functioning of courts on a regular basis allows soundly monitoring and managing the performance of judges and staff. With some exceptions (England and Wales, Slovenia), trial length appears to be lower in systems with a higher production of statistics (Figure 10), as measured by an indicator increasing in the number of statistics produced across all instances.[13]

... though information technologies in justice are unequally used across countries

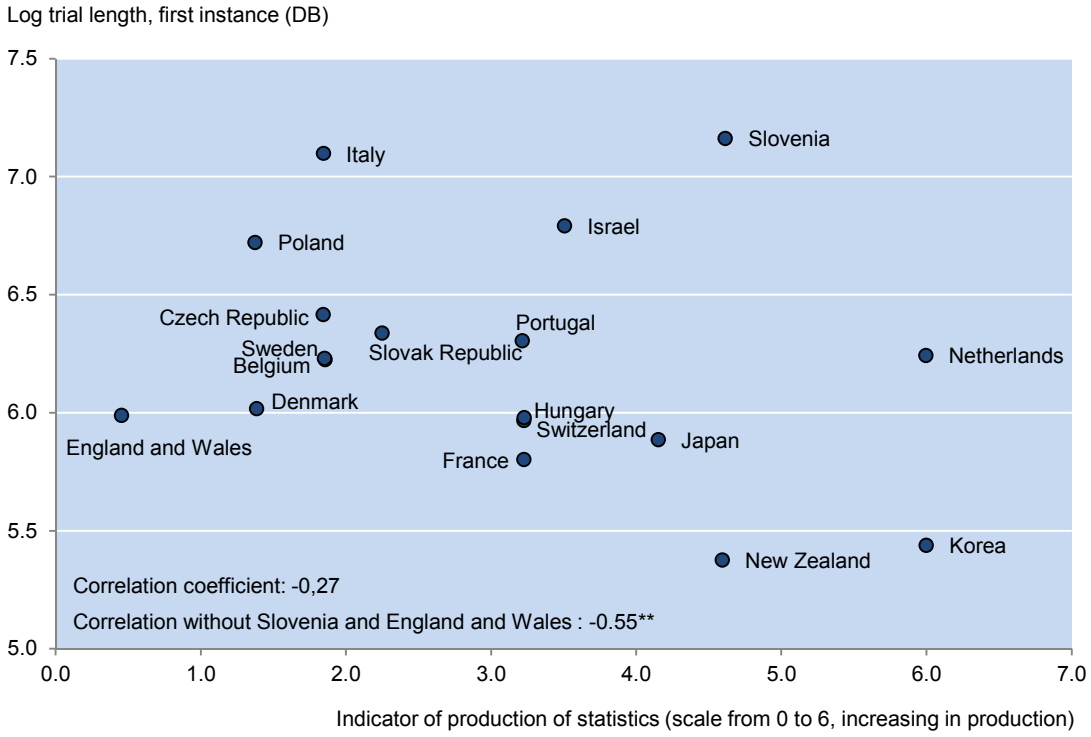
The majority of courts in OECD countries appear to have some form of information technology management of judicial services, but the scope of ICT applications is very uneven. Electronic communication and technologies for the exchange of information within the courts and their environment may serve many purposes, from automating court processes to increasing the flow of information and facilitating communication between courts and lawyers, to enhancing transparency and

[13] The types of statistics examined are: incoming cases by case type, type of plaintiff/defendant, and monetary value of the claim; clearance rates by case type; pending cases and backlogs by case type; average length of proceedings by case type and stage of proceeding; average number of hearings by case type; average number and length of adjournments by case type; resolved cases by method of disposition; percentage of appeals; judges' workload.

accessibility of judicial services. The availability of these technologies is synthesised by means of an indicator measuring the percentage of courts in the country that have adopted them and which is therefore increasing in the implementation of several ICT applications (Figure 11).

Figure 10. Trial length tends to be lower in countries with good justice statistics

Trial length and production of different kinds of statistics



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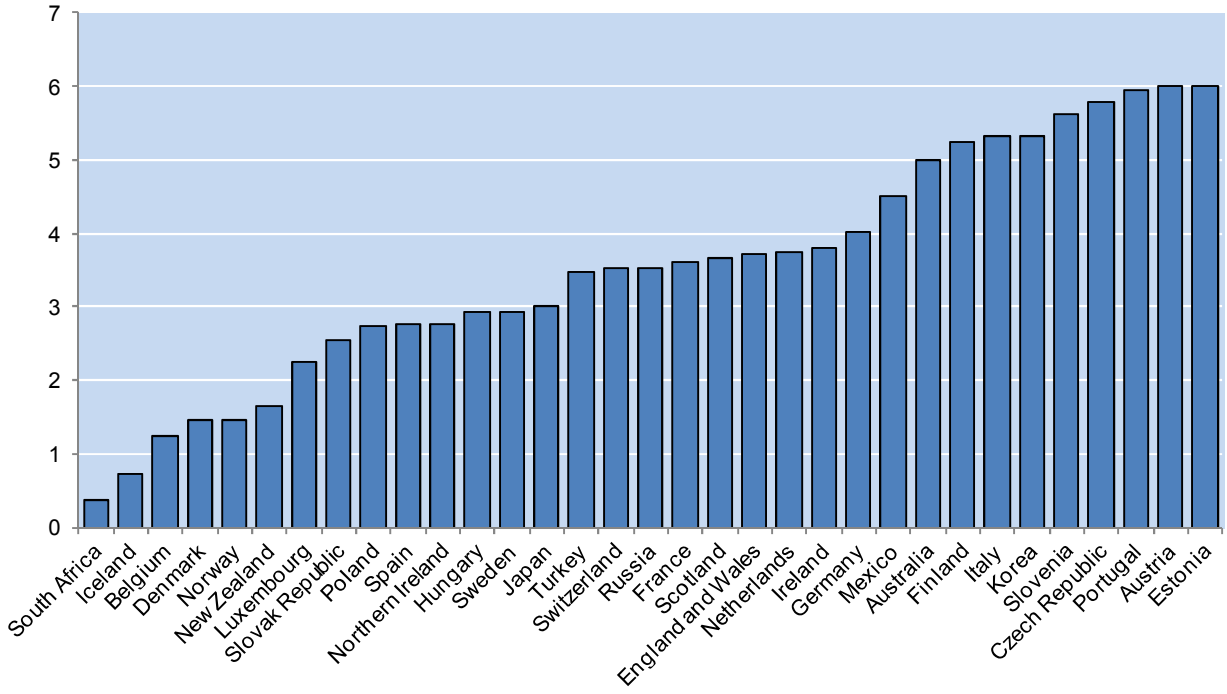
Note: The indicator of production of statistics is a weighted average of three sub-indicators, one for each instance. The sub-indicators increase in the number of statistics produced in the specific instance. The types of statistics examined are: incoming cases by case type, type of plaintiff/defendant, and monetary value of the claim; clearance rates by case type; pending cases and backlogs by case type; average length of proceedings by case type and stage of proceeding; average number of hearings by case type; average number and length of adjournments by case type; resolved cases by method of disposition; percentage of appeals; judges' workload. Trial length is taken from the World Bank Doing Business. The reduced number of observations is due to data availability.

Source: OECD, CEPEJ and World Bank

1. While electronic forms, websites and electronic registers are widespread, many countries either have not yet implemented online facilities and the possibility for lawyers to follow up cases online or have done so only in a minority of courts. In particular, electronic processing of small claims, electronic processing of undisputed debt recovery and electronic submission of claims are rarely available. Thus, there seems to be scope for more ICT diffusion, given its potential benefits for civil justice effectiveness (Buscaglia and Dakolias, 1999).

Figure 11. Use of information and communication technologies in justice is uneven across countries

Scale from 0 to 6, increasing in degree of implementation of ICT



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Note: The indicator is the simple average of eight sub-indicators measuring the adoption by the courts of different technologies of electronic communication and exchange of information with their environment (electronic web forms, website, follow-up of cases online, electronic registers, electronic processing of small claims, electronic processing of undisputed debt recovery, electronic submission of claims, and videoconferencing).

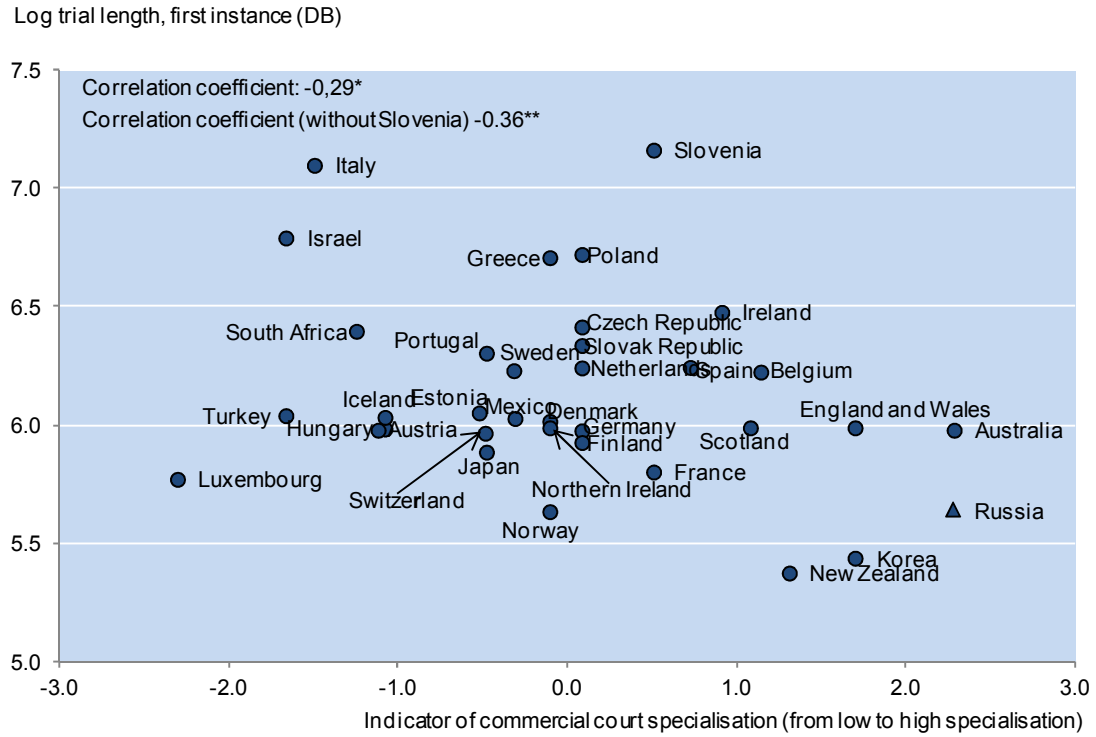
Source: OECD and CEPEJ

Court specialisation is associated with shorter trial length

Task specialisation is often advocated as a major performance-enhancing factor (World Bank, 2012). The argument is that specialisation enhances court efficiency by allowing judges to acquire detailed knowledge of a given area of law and of the issues that may arise in the related disputes. Furthermore, it favours a more efficient organisation of the work and is likely to guarantee better consistency of decisions. A potential disadvantage of specialisation is the inability for judges to benefit from knowledge spillovers. Also, specialisation may introduce rigidity in the use of resources, limiting the possibility to reallocate judges from one area to another. Specialisation can be achieved both "vertically" and "horizontally". One example of vertical specialisation is the creation of a two-tier first instance court system with lower courts dealing with lower-value cases and higher courts treating more complex cases. Horizontal specialisation refers, instead, to the existence of courts, sections or judges specialised in specific matters. A different kind of specialisation is related to the presence of non-judge staff providing legal assistance to judges. Legal assistance may enhance performance by freeing judges from lower-skill tasks (legal research, drafting of memoranda, case preparation and management), enabling them to concentrate only on adjudication.

Specialisation in commercial matters – as measured by a synthetic indicator that is positively correlated with the presence of specialised commercial courts or sections covering at least three commercial matters – appears to have some association with shorter trial length (Figure 12).[14]

Figure 12. Commercial court specialisation and trial length



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Note: The indicator for commercial court specialisation is a factor obtained through principal component analysis (PCA). The factor positively correlates with the existence of commercial courts or sections covering at least three commercial matters. Trial length is taken from the World Bank Doing Business and refers specifically to a commercial dispute.

Source: OECD, CEPEJ and World Bank

As concerns the availability of legal assistance to judges, each professional judge has on average 1.6 legal assistants in the countries covered by the OECD questionnaire. This ratio tends to be higher in common and German law countries (2.2 and 2.0 respectively), and lower in Nordic law ones (0.6). As reported in Table 3, which shows the average length of trials by type of legal assistance to judges, the availability of assistance is always associated with shorter trial length.

[14] The impact of court specialisation on performance is also analysed in Voigt and El Bialy (2012). Using the CEPEJ dataset, the authors find that court specialisation, as measured by the ratio of specialised first instance courts to all first instance courts of a country, is inversely related to the number of resolved cases divided by caseload. Using data from a sample of Spanish family courts in the region of Madrid, Garoupa *et al.* (2010) do not find conclusive evidence that specialised family courts are faster than regular ones. Conversely, Marchesi (2003) shows that increasing the average size of Italian courts would enhance their productivity, mainly as a result of increased judges' specialisation.

Table 3. The availability of assistance to judges is associated with shorter trial length

Average trial length in days by type of assistance

	Trial length in days by type of legal assistance available to judges Type of legal assistance		
Availability of assistance	Legal research	Case preparation and management	Drafting of memoranda, orders and opinions
No assistance to judges	578	613	541
Assistance to judges	524	517	534

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Note: Cells display country averages of the Doing Business trial length by availability and type of legal assistance.

Source: OECD, CEPEJ and World Bank

Managerial responsibilities for the chief judge are associated with lower trial length

As for any type of organisation, the governance structure of judicial systems is a critical element for performance, since it is the main channel through which incentive schemes can be designed and implemented for a better functioning of the organisation itself. The governance structure can be assessed along several dimensions. An important one, which is specific to the administration of courts and can be analysed using replies to the OECD questionnaire, is related to the allocation of responsibilities over managerial and jurisdictional tasks inside the court. Jurisdictional tasks are those functional to the adjudicative function *strictu sensu* (rendering and writing judgments) and, hence, are performed by judges. Managerial tasks can be grouped into three broad categories: organisation and supervision of judges (*e.g.* office hours, presence in court, case management, and hearings calendar); organisation, supervision and appointment of quasi-judicial officers and administrative staff; administration of the budget. Responsibilities over these managerial tasks can be either combined with jurisdictional tasks in the hands of the "Chief judge" or assigned to a distinct non-judge manager (a "Chief administrative officer"). In turn, this officer can either be fully responsible for these tasks or share responsibilities with the chief judge. Also, they can be assigned to a different "Body" (such as a public agency or a judicial council).[15]

The OECD survey shows that countries differ with regard to the delegation of accountability (who is the subject responsible for the performance related to the task) and authority (who is the subject with decisional power over the specific task) over managerial tasks (organisation and supervision of quasi-judicial officers and administrative staff, and administration of the budget).[16] Different governance regimes are associated with different average trial lengths (Table 4). The regime associated with the best performance appears to be the one in which the Chief judge has broader management responsibilities.

[15] "Chief judge" is used as a general term to refer to a judge designated to the management of the court, who takes up leadership and organisational responsibilities. "Chief administrative officer" refers on general terms to a subject – non-judge – appointed to an exclusively managerial position.

[16] By contrast the organisation and the supervision of judges' activity tend to be prerogatives of the chief judge,

Table 4. Governance regimes and trial length

Governance regimes	Country	Trial length (in days)
Authority and accountability to Chief judge and external Body	Hungary, Finland, Czech Republic, Australia, Korea, Germany	400
More dispersed authority and accountability	The Netherlands, Portugal, Belgium, Mexico, France	462
Authority and accountability to Chief administrative officer and external Body	England and Wales, Ireland, Spain, Slovak Republic, Greece	590
Authority and accountability jointly to Chief judge and Chief administrative officer with Chief judge	Denmark, Poland, Switzerland, Scotland, Slovenia, Sweden	638
Authority and accountability jointly to Chief judge and Chief administrative officer with Chief administrative officer predominance	Italy, New Zealand, South Africa	675

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Note: Groups are ordered by average trial length in first instance. Regimes of court governance are identified by the distribution of authority and accountability over a set of managerial tasks falling within the broad categories of: organisation and supervision of judges, organisation and supervision of quasi-judicial officers and administrative staff and their appointment, budget administration. The distribution can take different configurations, depending on the subject with authority or accountability: the Chief judge, the Chief administrative officer, jointly the Chief judge and the Chief administrative officer, an external Body.

Source: OECD

Demand side factors

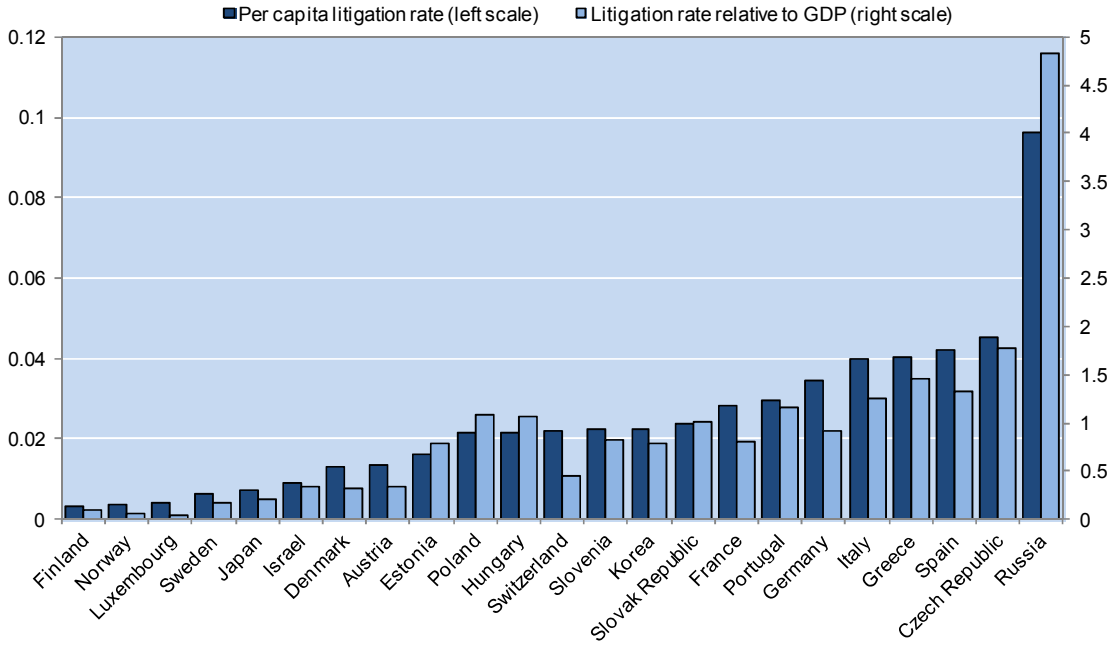
An increase in litigation is associated with a significant increase in trial length

The demand for justice services can be proxied by litigation rates (defined as the ratio of the number of new civil cases commenced in a given year to population or GDP), which vary considerably across countries (Figure 13). An increase in litigation implies that courts are faced with a larger amount of cases to be solved. The increase in workload is likely to generate congestion and hence to lengthen the duration of trials, if the supply of justice does not adjust accordingly. The empirical analysis confirms this conjecture, as shown in Figure 14, which illustrates the estimated reduction in trial length due to a hypothetical 20% decrease in the litigation rate.

Aside from possible measurement and accounting issues, and as discussed in the context of Figure 1, cross-country differences in litigation rates can be related to factors that are "internal" to the organisation and the working of the justice system (costs of accessing the service, lawyers' fees, ADR mechanisms) and factors that are "external" and related to cultural and structural characteristics of the economies (*e.g.* their productive structure or the efficiency and integrity of the public administration).

Figure 13. Some countries tend to litigate more in court than others

Civil litigation rates



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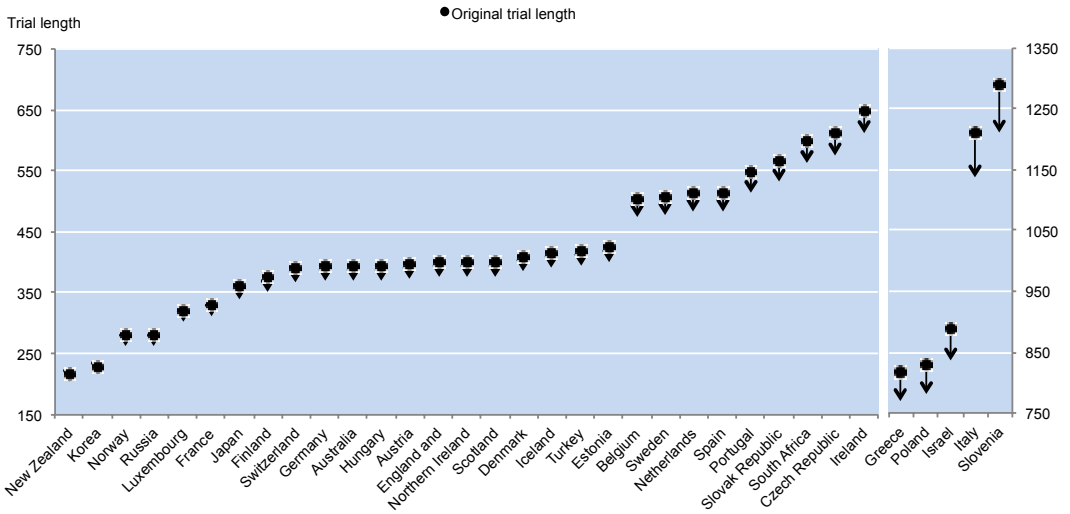
Note: The civil litigation rate is defined as the ratio of the number of new civil cases commenced in a given year to the population (per capita litigation rate) or to GDP (in PPP current US dollar).

Source: OECD and CEPEJ

Figure 14. Reducing litigation rates would shorten trial length

Shortening of trial length (in days) resulting from a 20% reduction in per capita litigation



StatLink http://dx.doi.org/10.1787/888932855943

Note: The civil litigation rate is defined as the ratio of the number of new civil cases commenced in a given year to the population (per capita litigation rate) or to GDP (in PPP current US dollar).

Source: Palumbo *et al.* (2013)

Litigation reflects government effectiveness and integrity, as well as regulatory quality

Good-quality regulation and a timely and effective implementation of policies reduce the likelihood of conflicts both between private parties, and between the State and the private sector. By reducing the transparency and certainty of the business environment, the presence of corruption can have an opposite influence on the frequency of disputes. Palumbo *et al.* (2013) provides empirical evidence of the relevance of these factors for litigation using the World Bank indicators of government effectiveness, regulatory quality and integrity of the public administration. For all three indicators, improvements in the scoring are associated with significant reductions in litigation.

No relationship emerges between private costs of trial and litigation

Turning to the internal factors, the private costs of trial are an obvious candidate for explaining litigation rates, with higher costs expected to lower litigation. However, no clear association emerges between the DB measure of trial costs and litigation rates. A possible explanation is that the DB indicator measures *total* private costs, including lawyers' fees. Total costs are influenced by the length of trials and hence may be difficult to predict *ex ante*, *i.e.* at the stage in which the decision of bringing the case to court is taken. The absence of a clear relationship between trial costs and litigation may also be due to the influence of other factors such as the regulation and structure (hourly-rate, flat-rate, contingent fee) of lawyers' fees or the rules allocating trial costs between the parties (fee-shifting rules).

As regards the latter, a distinction is often made between the American and the British fee-shifting rule. Under the American rule, each litigant pays its own costs; conversely, under the British rule costs are fully borne by the losing party. In between these two, there are arrangements under which only a fraction of the costs is borne by the losing party ("halfway" rule). The British rule is claimed to induce better litigation decisions, by filtering out non-meritorious cases.[17]According to OECD data, the British rule is the most widely adopted across countries (23% of respondents to the survey). A "halfway rule" applies in 7% of the countries, while the American rule is in force in 7% of them. In the remaining systems, either more than one rule can apply or the judge has discretion on the allocation of costs between parties, or both (Table 5). The absence for many countries of a definite rule makes it difficult to empirically investigate the relationship with litigation.

Free negotiation of lawyers' fees is associated with lower litigation

In the market for legal services the client is usually less well informed about the nature of legal problems and their remedies than the lawyer. One implication of this is that the decision of whether to bring a dispute to court is often effectively taken by the lawyer. In taking this decision, lawyers respond also to their incentives as shaped by the joint effect of the fee regulation – including rules on pricing transparency – and the organisation of the supply of legal services.[18] Lawyers' fees may be freely negotiated between lawyers and clients, or regulated by professional associations or by law. The OECD dataset provides information on fee regulation for 35 countries. 29% of them declared to have freely negotiated fees, 40% to have fees regulated by law and 31% to have fees regulated by the bar association (Table 5). Analysis suggests that the transition from a regime of regulated fees (by the law or the bar) to a regime of freely negotiated fees could be associated with a considerable reduction

[17] Shavell (1982) shows that the British rule encourages the litigation of cases with relatively small claims but an *ex-ante* relatively high probability of victory, while the American rule that of cases with relatively larger claims but a lower probability of victory.

[18] Differences in definitions and classifications of legal profession across countries made it difficult to investigate the correlation between litigation and the supply of legal services (number of lawyers over population). However, a positive and causal relationship between the number of lawyers and the level of litigation has been found in analyses exploiting within-country variations (Carmignani and Giacomelli, 2010; and Buonanno and Galizzi, 2010 for Italy; and Ginsburg and Hoefker, 2006, for Japan).

Table 5. Fee-shifting rules and regulation of lawyers' fees by country

	Fee-shifting rule					Regulation of lawyers' fees		
	British rule	"Halfway" rule	American rule	Discretion of the judge	Usual practice*	Freely negotiated	Regulated by bar	Regulated by law
Australia				x		x		
Austria	x*							x
Belgium		x*		x	Halfway			x
Czech Republic	x			x	British			x
Denmark				x				x
England and Wales	x	x			British		x	
Estonia		x*				x		
Finland	x						x	
France		x*		x	Halfway		x	
Germany	x							x
Greece	x*							x
Hungary	x*			x	British	x		
Iceland								x
Ireland				x				x
Israel				x		x		
Italy		x		x	Halfway			x
Japan			x				x	
Korea				x		x		
Luxembourg		x*					x	
Mexico				x		x		
Netherlands		x*	x*	x	Halfway or American		x	
New Zealand				x		x		
Northern Ireland							x	
Norway						x		
Poland	x			x				x
Portugal			x				x	
Russia							x	
Scotland				x		x		
Slovak Republic	x			x	British			x
Slovenia	x							x
South Africa				x				x
Spain	x					x		
Sweden	x		x		British		x	
Switzerland	x							x
Turkey							x	

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Note: Under the American rule, each litigant pays its own costs; under the British rule costs are fully borne by the losing party; under the "Halfway" rule only a fraction of the costs is borne by the losing party. "Discretion of the judge" indicates that the judge has discretion on the allocation of costs between parties. For judicial systems in which different fee-shifting rules apply or the judge has discretion on the allocation of costs, the usual practice has been retrieved, where possible, from various online sources. Information marked by an asterisk was not provided in the answers to the questionnaire, and has been reconstructed from various online sources.

Source: OECD and CEPEJ

in litigation (Palumbo *et al.*, 2013).[19] The relationship could be explained by the fact that the pressure exercised by market competition constraints rents for lawyers, thereby reducing the number of cases that they may find profitable to bring to court (rather than settle).

Other factors potentially influencing the demand for justice

Cross-country variations in the demand for justice could also be explained by other factors for which cross-country comparable information is still lacking. For instance, litigation is clearly influenced by the quantity and quality of the substantive law. First, regulatory systems differ in the scope assigned to the judiciary in the implementation and interpretation of legal provisions. Some countries rely more on rules while others assign a more active role to the courts (labour market regulation is an example in this respect). Thus, cross-country differences in litigation are also likely to reflect the impact of the existing regulation. Within the same regulatory framework, litigation is also affected by the clarity of legislation. A complex, opaque and inconsistent legislation generates uncertainty, which in turn produces litigation. Policies aimed at improving the clarity of legislation can be important instruments to reduce court congestion.

Litigation is also likely to be influenced by the availability of procedures to resolve disputes outside the court system, such as mechanisms of alternative dispute resolution (ADR).[20] Because such mechanisms are often administered by private bodies, it is difficult to collect data on the number of cases resolved through ADR or the cost of ADR procedures relative to that of court proceedings. Data based on country estimates of the percentage of domestic commercial disputes resolved through arbitration (as opposed to going to court) and the relative costs of this procedure are available for only 8 countries. Based on this information, there seems to be no relationship between the use of arbitration and its costs. While the costs of arbitration are lower or comparable to that of court proceedings in 7 of the 8 respondent countries, in just 3 of them the percentage of domestic commercial disputes resolved through arbitration is above 20%; in the remaining 4 the same percentage is below 5%. For mediation, the costs are lower or comparable to those of court proceedings in 8 of the 9 respondent countries. Still, in 6 of them the percentage of domestic commercial disputes that are resolved through mediation is very low (below 5%). While these figures should be taken with extreme caution, they seem to suggest that other factors are more important than costs in inducing economic agents to resort to ADR mechanisms. Adequate regulation, incentives for lawyers to encourage their clients to use these instruments, and measures to improve information on their availability and potential advantages are possible candidates.

5. Conclusion

The paper provides new cross-country evidence on the characteristics of judicial systems and analyses systematically the factors that may help explaining differences in performance, especially trial length. The analysis suggests that measures that are likely to reduce trial length can differ depending on whether poor performance originates from inappropriate incentives on the demand or the supply side. Among the countries with the lengthiest trials, some display high litigation rates (*e.g.* Greece, Italy and the Czech Republic), while others (*e.g.* the Slovak Republic, Slovenia, Poland and Israel) have litigation rates comparable to those of the best performers. In this second group of countries, priority could be given to policies increasing the capacity of the system to meet the demand for justice, such as raising investments in computerisation (especially in Poland and Slovak Republic), adopting more advanced caseflow management techniques (Slovenia, Poland and Israel), or enhancing the degree of court specialisation (Israel or South Africa). Conversely, in countries displaying high litigation rates (*e.g.* Greece, Italy and Czech Republic), policies could be primarily aimed at reducing the number of disputes resolved through the court system. This goal can be achieved through measures affecting the working of the justice system (in this respect the analysis emphasised the importance of lawyers' fees regulation), but also through more general measures aimed at enhancing the effectiveness and transparency of public policies, for instance in

[19] In particular, moving from a regime of regulated fees to a regime of freely negotiated fees is associated with a decrease in litigation from 2.9 to 0.9 cases in one hundred people, also after controlling for legal origins.

[20] Alternative dispute resolution mechanisms are of two types: *i)* methods for resolving disputes outside of the official judicial mechanisms, and *ii)* informal methods attached to or pendant to official judicial mechanisms. The OECD questionnaire concentrated on the former. Questions were asked with reference to arbitration and mediation/conciliation.

the design and implementation of laws and regulations. Nonetheless, there is scope for improvements also on the supply side, for instance expanding the use of caseflow management techniques (*e.g.* in Italy).

The scarcity of comparable data limits the scope of the analysis and is a major obstacle to empirical analyses of judicial systems. Importantly, much analysis in this report is of necessity confined to cross-country correlations which raises issues about the causal link behind the findings. Data limitations reflect large differences in the systems, but also dissimilarities in the way court statistics are collected across countries. The production of harmonised official statistics on judicial system characteristics and outcomes, including trial length and costs, would be desirable for exploring the factors that can promote efficiency in civil justice. The benefits that would arise in terms of greater transparency and better-informed policy choices in the judicial area, with the related gains in economic performance, could well outweigh the costs.

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ANNEX TABLES

Table A1. Classification of national legal systems into major legal origins

Legal origin	Countries
Common law	Australia, England and Wales, Ireland, Israel, New Zealand, Northern Ireland, Scotland, South Africa
French	Belgium, France, Greece, Italy, Luxembourg, Mexico, the Netherlands, Portugal, Spain, Turkey
German	Austria, Czech Republic, Estonia, Germany, Hungary, Japan, Korea, Poland, Slovak Republic, Slovenia, Switzerland
Nordic	Denmark, Finland, Iceland, Norway, Sweden
Former socialist	Russia

Source: Djankov *et al.* (2007)

Table A2. Measures of trial length

Number of days

Country	Trial length 1st instance	Trial length 2nd instance	Trial length highest court	Total trial length	Trial length Doing Business
Australia	192	287			395
Austria	129				397
Belgium*	233				505
Czech Republic	135	77	313	524	611
Denmark	199	127			410
England and Wales	350				399
Estonia	209	121	92	422	425
Finland	219	221	168	609	375
France	274	343	333	950	331
Germany	200	207			394
Greece	155	272			819
Hungary	200	111	142	454	395
Iceland*	211				417
Ireland*	270				650
Israel	294	359			890
Italy	564	1113	1188	2866	1210
Japan	107	114	146	368	360
Korea	144	179	255	579	230
Luxembourg	262	555			321
Mexico	342				415
Netherlands	305				514
New Zealand	171	191	286	648	216
Northern Ireland*	206				399
Norway	160				280
Poland	167	43			830
Portugal	425	120	90	635	547
Russia*	176				281
Scotland*	206	350	350	906	399
Slovak Republic	354	76	194	624	565
Slovenia	420	103	831	1354	1290
South Africa*	258				600
Spain	272	189	316	778	515
Sweden	186	117	225	528	508
Switzerland	131	142	95	368	390
Turkey*	212				420
Common Law	243	297	318	777	494
French	304	432	482	1307	560
German	200	117	259	587	535
Nordic	195	155	197	568	398
Former socialist	176				281
Mean	238	236	314	788	506

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Note: In columns 1-4 trial length is estimated with a formula commonly used in the literature: $[(Pending_{t-1}+Pending_t)/(Incoming_t+Resolved_t)]*365$. Where information on the number of pending cases was not available but the country was able to provide information on the actual length, the latter was used (England and Wales, Mexico, New Zealand and the Netherlands). For the first instance only, for those countries for which neither the estimated nor the actual length was available, length has been calculated imputing the predicted value of the regression of the estimated length on the Doing Business length (marked by an asterisk). Total length is the sum of trial length across the three instances (available for 16 countries). The Doing Business length (column 4) refers to a hypothetical standardised commercial case in first instance. The table includes total averages and averages by legal origin. See Table A1 for the classification of countries according to legal origins.

Source: OECD, CEPEJ and World Bank