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Understanding modes of civil case disposition: Evidence from Slovenian courts

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ABSTRACT

Dimitrova-Grajzl, Valentina, Grajzl, Peter, and Zajc, Katarina—Understanding modes of civil case disposition: Evidence from Slovenian courts

We contribute to the scant empirical literature on the functioning of courts in the post-socialist world by analyzing civil case disposition in Slovenia. We first characterize basic empirical patterns in modes of civil case disposition in Slovenian local courts. We then examine court-level determinants of the incidence of in-court settlements versus trial-based judgments. Consistent with the theory that both judges and disputing parties take into account their respective private benefits and costs when choosing their preferred mode of case disposition, we find evidence that the incidence of in-court settlements versus trial-based judgments increases with the number of all case filings per judge. Thus, court resources and demand for court services influence not only total court output, as previously established in the literature, but also how cases are disposed of. *Journal of Comparative Economics* xxx (xx) (2014) xxx–xxx. Department of Economics and Business, Virginia Military Institute, Lexington, VA 24450, USA; The Williams School, Washington and Lee University, Lexington, VA 24450, USA; Faculty of Law, University of Ljubljana, 1000 Ljubljana, Slovenia.

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1. Introduction

Given the, by now, widespread agreement about the overall importance of institutions for economic outcomes and development, comparative economics has turned its focus to contrasting the effectiveness of different institutional arrangements underpinning a social order (see, e.g., Djankov et al., 2003b; Grajzl and Murrell, 2007). Among the distinct alternatives along a society's "institutional possibilities frontier" (Djankov et al., 2003b), courts have a prominent place in the practice of institutional design and reform.

Economic theory has traditionally taken the existence of well-functioning courts for granted (see, e.g., Coase, 1960). It is only relatively recently that the role and performance of courts has received greater attention from economists (see, e.g., Johnson et al., 2002; Glaeser and Shleifer, 2002, 2003; Djankov et al., 2003a). Yet empirical evidence on the functioning of

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courts worldwide is scarce. This is especially true in the context of post-socialist countries where both the use and the functioning of courts differ substantially from that in the more mature capitalist systems (see, e.g., Hendley et al., 2000; Hendley, 2004, 2012; Pyle, 2006; Djankov et al., 2003a; Lambert-Mogiliansky et al., 2007). Evidence on the activity of post-socialist courts based on original court data (see Murrell, 2001; Dimitrova-Grajzl et al., 2012a, 2012b), as opposed to indirect, survey-based evidence (e.g., Hendley et al., 2000; Johnson et al., 2002; Djankov et al., 2003a; Pyle, 2006), is particularly sparse. The dearth of rigorous empirical analyses of the functioning of courts in the post-socialist region stands in stark contrast with the comparatively voluminous body of empirical research on firm behavior in transition (see, e.g., Djankov and Murrell, 2002; Brown et al., 2006; Murrell, 2005).

Taking a step toward filling this gap in the literature, we draw on court data from post-socialist Slovenia to empirically examine the patterns in, and determinants of, civil case disposition during the second and third decade after the start of transition. We shed light on questions such as: How do courts dispose civil cases in a post-socialist legal system? How prevalent are the specific modes of civil case disposition, such as trial-based judgments and in-court settlements? What factors influence how courts terminate civil cases?

The resolution of disputes through trial is a fundamental function performed by courts (Hadfield, 2004: 706). Yet not all disputes end up in court and not all cases filed at a court end up being resolved through trial. Based on data from US courts, for example, a very modest proportion of state and federal civil court cases—5% or less according to some estimates—are resolved through trial (Galanter, 2004; Hadfield, 2004). The majority of civil cases are disposed through other, non-trial modes of disposition such as settlement, abandonment, or dismissal, thereby saving disputing parties litigation and other trial-related costs.

Aside from data on US courts and a few other common-law jurisdictions (see, e.g., Galanter, 2004; Hadfield, 2004; Kritzer, 2004), hardly anything is known about modes of civil case disposition worldwide and in particular in the post-socialist world. In this regard, Slovenia is an interesting and unexplored case. A member state of the European Union since 2004, Slovenia has, in comparison with other post-socialist countries, experienced a relatively smooth transition to a market economy. However, the country has been struggling with implementing an effective system of courts. Case backlogs and delays have been a persistent concern and incremental reforms have had at best limited impact (see, e.g., Zajc, 2011; Dimitrova-Grajzl et al., 2012a).

We first provide a comprehensive empirical characterization of modes of civil case disposition in Slovenian local courts of first instance. At the macro level, an understanding of the magnitude of changes in the incidence of specific court outcomes over time is indicative of the general predictability of the legal system, an important attribute of a country's institutions (see, e.g., Hayek, 1960) typically believed to be lacking in post-socialist countries such as Slovenia. 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 possible outcomes of legal disputes (Kritzer, 2004; Hadfield, 2004). 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.

We then conduct an econometric analysis of court-level determinants of modes of civil case disposition. Specifically, we examine the role of court resources and demand for court services, which might influence modes of civil case disposition (Galanter, 2004: 500–505). All else equal, an increase in total case filings for a given number of serving judges increases judicial workload, which in principle should extend the expected duration of case resolution. We hypothesize that an increase in total case filings per judge *ceteris paribus* increases the attractiveness of settlements relative to trials in the process of adjudication of a civil dispute for both the ruling judges and the involved disputing parties. Court resources and the demand for court services may therefore affect not only total case dispositions (see, e.g., Dimitrova-Grajzl et al., 2012a), but also *how* courts dispose cases. Yet, there currently exists no study empirically evaluating the impact of court resources and the demand for court services on the structure of modes of civil case disposition and, in particular, on the balance between two most prevalent, and in terms of required resources diametrically opposite, modes of civil case disposition: trial-based rulings and in-court settlements.

To test our hypotheses, we use a panel dataset of Slovenian local courts of first instance for the time period from 2000 to 2011. Our findings suggest that court resources and the demand for court services do indeed shape the structure of modes of civil case disposition. Holding all else equal, the ratio of civil cases settled in-court to civil cases resolved through trial-based judgment, as hypothesized, increases with total case filings in a subsample of large local courts and decreases with the number of judges in the subsample of medium-sized local courts. These results are robust and, in the case of medium-sized local courts, economically significant. In contrast, we do not find any effect of total court filings and judicial staffing in small local courts. We offer several plausible explanations for these results.

Our analysis bears on the general debates about institution-building during post-socialist transition and the role that financial resources play in shaping institutional performance. In contrast to many other transition countries, which opted for shock therapy (see, e.g., Murrell, 1993), Slovenia's path to reform was distinctly slow (see, e.g., Sustersic, 2009). Yet the ensuing Slovenian gradualist approach did not emphasize institution-building, which was an essential aspect of the strategy stressed by those taking an evolutionary approach (Murrell, 1992). During the early years of transition, much like in other transition countries, the policymakers' focus was on macroeconomic stabilization and privatization. Even though weaknesses of the judicial system had been noted (see, e.g., Gray and Stiblar, 1993), reform of the courts was not on the reformers' agenda (see, e.g., Pleskovic and Sachs, 1994). This policy perspective resonated with early academic views that

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