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Information technology and time of judgment in specialized courts: What is the impact of changing from physical to electronic processing?

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ABSTRACT

The application of information and communication technologies and management strategies to ensure reasonable court times in different legal contexts presents a significant challenge. This article compares the duration of 62,157 tax enforcement cases filed by public and private organizations in the traditional manner and in a fully electronic system in an attempt to clarify some of the reasons for congestion, because the stakes are high: in Brazil approximately US\$ 415.1 billion pertaining to the federal government are disputed in 3.6 million of these cases. No significant difference was found between the duration of physical and electronic cases, and physical cases are occasionally swifter than electronic cases; consequently, the solutions to this congestion will depend on actions by the legal system, managers and judges, and litigant strategies.

1. Introduction

Judicial systems are normally institutionalized by constitutional rules, and through political and administrative organization strategies at different instances constitute a pillar of the modern state. Maintaining a politically and socially legitimate judiciary depends on its ability to efficiently and effectively resolve disputes; swift and effective decisions are crucial to establishing social, political, and economic balance sustained by each society's group of legal standards.

Historically, the judiciary has granted judges special competency and authority to interpret public values woven into legal texts, expressing their decisions through formalized processes to resolve conflicts (Procopiuck, 2013). In the exercise of these functions, the tension between demands for fair decisions and speedy resolution occurs at the intersection between the political system and the judicial system, a space where we can seek an efficient and effective legal process through management strategies and the use of technology. In this space, management of the variable “time” becomes fundamental.

Factors such as legislation (Hultqvist, 1997; Wenzel, 2007), efficiency and agility of court workflows (Ostrom & Hanson, 2007), and technology (Agrifoglio, Metallo, & Lepore, 2016; Freeman, 2005) have been important to understand a country's capacity to levy taxes (Tohamy, 1999; Weers, 2016). Similarly, imbalances between these factors can indicate unfairness among taxpayers; some citizens and businesses pay their taxes on time, while others take advantage of inefficiency and indefinitely postpone their debts, or simply do not pay them (Ajufe, 2008; Feld, Frey, & Torgler, 2006; Khanfor & Elwazani,

2013). This may lead to a taxation system that punishes “good” taxpayers, reduces financial investment in public policies, and distorts free competition between firms in the market.

Within this context, the purpose of this article is to assess the duration of tax enforcement actions filed by public and private organizations, comparing the time of judgment in traditional physical cases with cases processed in a fully electronic system. We examine procedural movements in federal courts of first instance in one Brazilian state to determine whether processing time there differs between cases filed by private agents and public institutions, between electronic and physical cases, and between cases filed by direct and indirect public administrations. We also analyze the current state of development and implementation of electronic systems, their general operating characteristics, and performance indicators for specialized judicial activities related to tax enforcement in Brazil.

In the following sections, we present the theoretical and conceptual basis that will be used to understand and analyze the different dimensions of trial time, alternative organizational design and the possibilities for specialization in legal proceedings, as well as the technologies used in court proceedings.

2. Time in legal proceedings

Broadly, judicial activities involve organizations and individuals who seek swift, secure jurisdictional services to defend individual and collective rights. This has led to the need to identify and remove procedural bottlenecks that lead to unnecessary delays in procedural

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formalities (Dijk & Dumbrava, 2013). In general, the challenge is to make the time of justice more closely match the useful time of exercising citizenship (Ferreira & Pedroso, 1997).

Some studies have assessed the allocation of tangible resources such as machines, equipment, and operational methods as instruments to support the judicial decision-making process (Falavigna, Ippoliti, Manello, & Ramello, 2015), while others have discussed how to develop and organize intangible decision-making processes to guarantee justice, respect, and fairness (Santos, 2005; Wenzel, 2007). There is also renewed interest from the citizen's perspective to understand what is determined in these decisions (Sen, 2013) and to assess what is needed for the public to understand and to fulfill these decisions more naturally (Fink & Koller, 2012; Warren, 2014).

When these three perspectives are combined, the courts naturally appear as complex organizations that cannot be merely fast, efficient, and intelligent: they must also be fair and understandable to the citizens who use them (Burke, 2003). This requires administrative and research approaches that consider productivity, efficiency, and speed (Stanfield, 1998) as conditions for obtaining justice, respect, and fairness, as well as understanding of judicial processes to balance speed and quality (Fauvrelle & Almeida, 2016; Young & Singer, 2013).

Part of this understanding involves comparing the periods of time specified in the legal codes and the actual time needed to resolve specific cases with the speed of organizational processes, indicating each society's ability to enforce agreements, maintain order, and enforce rights within a reasonable time (Ribeiro, Machado, & Silva, 2012). This indicator involves three aspects related to time: the actual length of the cases, duration of the organizational flow, and the intentions of the actors involved.

Case duration, as explained by Ferreira and Pedroso (1997), is related to the time considered reasonable or necessary to defend the rights of the parties involved in disputes, and is a political-legislative matter. Duration of the organizational flow is related to procedural implementation within the judicial structure to solidify cases and support decisions based on organizational strategies and technologies; this aspect involves technology and management, where human creativity can identify resources, plan courses of action, and develop and control means to act swiftly and safely at the different stages of court proceedings. Finally, the intentions of the actors, whether involved directly or indirectly in disputes, are where individual and corporate activities to defend interests not strictly related to formal acts of justice are shaped; this is the world of political and organizational cultures, and actors who strategically accelerate or postpone processes to strengthen or weaken judicial decisions, thus fostering their private interests.

With these particularities of judicial proceedings in mind, judicial organizations are characterized by how they function on a broad scale, with a high degree of complexity, and by the way in which their management depends on multi-rationalities (Fiss, 1983). These individual characteristics come into contact with attempts to resolve practical problems, indicating the need to understand the logic of how administrative and jurisdictional activities function from interdisciplinary perspectives (Eicher & Schedler, 2012; Procopiuck, 2014); this is especially seen in the use of technology, adoption of strategic management, and specialization of trial activities (Kesan & Ball, 2011).

3. Organizational trial specialization

In nations such as the Brazilian federation, strategies for administering justice have generally involved differences in the organizational settings adopted, weaknesses in implementation, changes in public policies, and scarce data on results achieved (Fei, 2014; Landoni, 2007). Legal systems are consequently forced to rethink their structures and strategies for jurisdictional provision in relation to social and political changes, which is reflected in the need for innovations related to administrative organization (Fiss, 1983) and how trial activities are conducted (Anleu & Mack, 2007; Baar, 1999).

These efforts toward innovation are seen in reorganization strategies such as the creation of specialized criminal, tax, military, and business trial units, as well as units addressing bankruptcy, children and minors, family, mental health, gambling, prostitution, inventories, multidisciplinary community causes, patents, etc. (Kesan & Ball, 2011; Sung, 2008).

Although the specialization of judicial activities is quite common, the specifics may differ significantly from court to court, and its influence and usefulness depend on the existing structure and judges' degree of familiarity with the issues presented. While specialization has yielded benefits (developing and optimizing human capital to resolve specific issues, generating predictable and uniform case law, and improved efficiency in procedural flows), some critics claim that judges in these specialized units are more susceptible to political and economic influences, and that these units make it easier for interest groups to function and may even impact the shaping of the legal system itself (Kesan & Ball, 2011; Sung, 2008).

In the case of Brazil, for example, despite the recognition that this strategy will not be accepted without criticism, the specialization of justice has been seen as a reflection of increased deepening of the branches of human knowledge, which greatly complicates maintenance of a unified model of common justice (Martins Filho, 1999). In this sense, the National Council of Justice (which considers that specialization may lead to more appropriate and accurate decisions) has recommended the creation of specialized courts, for example, for issues involving money laundering and crimes against the national financial system, children and adolescents, the right to health, tax foreclosures, etc.

4. Technology in judicial administration

Like specialization, new information and communications technologies (ICTs) also offer possibilities for improving the administration of justice (Freitas & Medeiros, 2015; Friedman, 2007). These include the application of solutions built on information technologies, which usually revise organizational structures and the traditional process of dispute resolution (Dijk & Dumbrava, 2013). These solutions have been rapidly applied in different judicial systems, with implementation varying widely according to each country's legal culture and strategies. Legislation prohibits certain types of technology in some countries and encourages them in others (Hunter, 2012), with solutions ranging from the use of simple videoconferencing (Dumoulin & Licoppe, 2016) to "cyber courts" (Freeman, 2005; Ponte, 2002; Stanfield, 1998), involving simple electronic controls for creating and locating documents as well as fully electronic processes and judgments.

On a smaller scale, different degrees of automated data processing have been an integral component of daily court function in various contexts for decades. Countless systems for managing procedural flows have appeared and improved efficiency by accelerating flows, generating statistics, numerous reports, and indexing cases (Kelly & Tastle, 2004; Wood Jr., 1995); on the other hand, they increase the risk that trial activities will more quickly adjust to the flow determinants, the computerized systems, and the information they generate rather than to the needs and substantive details which are specific to each case judged.

Combined with cost-cutting efforts and positive impacts on quality in the courts, the introduction of new technologies has been viewed as promising because of faster information flows, greater accessibility by litigants, and expanded jurisdictions of the trial units. The growth of these technologies has removed the geographic distance separating citizens and the courts, with the physical presence of trial participants (including witnesses and experts) becoming less important while videoconferencing grows, providing direct communication between the judicial system and the parties involved (Borkowski, 2004; Dijk & Dumbrava, 2013).

Although economies of scale and expansion of accessibility to justice can be beneficial to society, they create new risks that decisions will be

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