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**ECONOMICS DEPARTMENT POLICY NOTE No. 18**

# **WHAT MAKES CIVIL JUSTICE EFFECTIVE?**

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## WHAT MAKES CIVIL JUSTICE EFFECTIVE?

### Main findings

- In several OECD countries lengthy civil proceedings can be a drag on economic activity. In the OECD area the average length 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 last more than 7 years.
- 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. Factors associated with shorter trial length include larger shares of the justice budget devoted to court computerisation, the active management of the progress of cases by courts, the systematic production of statistics at the court level, the existence of specialised commercial courts and 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).
- There is wide scope for further informatisation of court activities in OECD countries. The majority of courts in OECD countries have electronic forms, websites and electronic registers, but 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. Investments in court computerisation are related with higher productivity of judges (measured as cases solved per judge), especially in countries where computer literacy is widespread facilitating the take-up of ICT-based opportunities.
- Reducing high litigation rates through appropriate policies is a means to increase civil justice efficiency. Good quality regulation, timely and effective implementation of policies, integrity of the public sector and free negotiation of lawyers' fees (as opposed to regulation) could all be important instruments for reducing litigation. And a lower number of new litigation cases per capita – which range across countries from almost ten cases to less than one case in one hundred people – is associated with a significant reduction in the average length of trials.
- In many countries there is potential scope for reducing appeal rates, a simple measure of the predictability of court decisions. Appeal rates are lower in countries where filing an appeal is subject to obtaining permission (leave). However, as restrictions to appeal imposed by law do not explain all of the cross-country differences in appeal rates, there would seem to be scope for increasing predictability of court decisions (leading to lower appeal rates) without tightening restrictions.

## **Well-functioning judiciaries are a crucial determinant of economic performance**

1. Judicial systems serve important purposes in up-holding social values but also in determining economic performance. Well-functioning judiciaries guarantee security of property rights and enforcement of contracts. Security of property rights strengthens incentives to save and invest, by protecting returns from these activities. A good enforcement of contracts stimulates agents to enter into economic relationships, by dissuading opportunistic behaviour and reducing transaction costs. This has a positive impact on growth through various channels: it promotes competition, fosters specialisation in more innovative industries, contributes to the development of financial and credit markets and facilitates firm growth.

## **The duration of trials can be very long in some countries and impose heavy costs<sup>1</sup>**

2. A reasonable length of trials is an important characteristic of good judicial performance, together with independence and fairness of adjudication, predictability of court decisions, and accessibility to the system. Lengthy trials undermine certainty of transactions and investment returns, and impose heavy costs on firms. Moreover, the length of trials is related to other crucial measures of performance such as confidence in the justice system: OECD analyses on surveys of individuals in different countries suggest that a 10% increase in the average length of trials is associated with a decrease of around 2 percentage points in the probability to have confidence in the justice system.

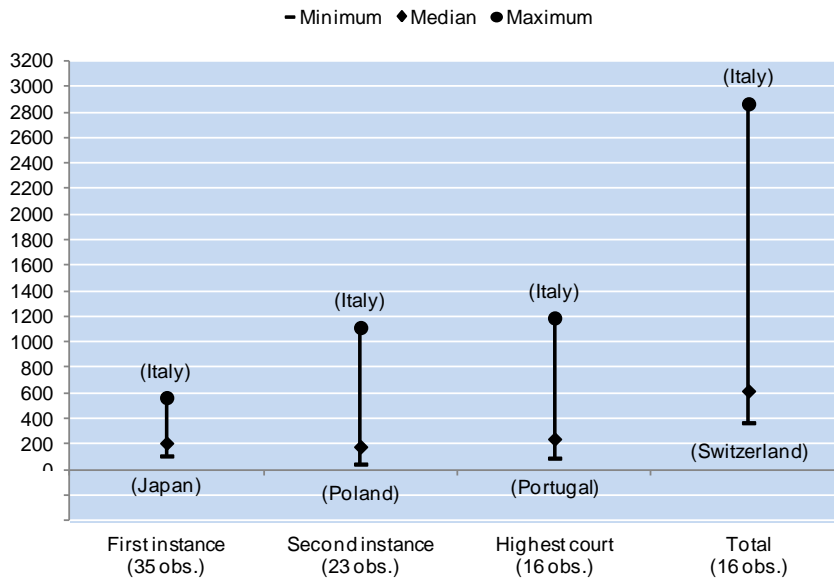
3. Cross-country differences in average trial length appear to be large, though international comparisons also reflect dissimilarities in the systems and in the way court statistics are collected in different countries. In 2010 the average length of civil proceedings in first instance in the OECD area was around 240 days, but only 107 days in Japan, the best performer. About 420 days were required in Slovenia and Portugal, and 564 days in Italy. The average length of a civil dispute going through all three instances was 788 days, ranging from 368 days in Switzerland to almost 8 years in Italy (Figure 1 and Annex Table).

4. The costs of accessing the judicial system – as proxied by an estimate of all expenses borne by the litigants in a concrete case to achieve a resolution of their dispute (court fees, expert fees, lawyers' fees) net of the possibility to receive public financial support (legal aid) – vary significantly across countries (Figure 2). With some exceptions (Slovenia), 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 3).

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<sup>1</sup> The data used in this study come primarily from a new OECD dataset and the dataset collected by the European Commission for the Efficiency of Justice (CEPEJ).

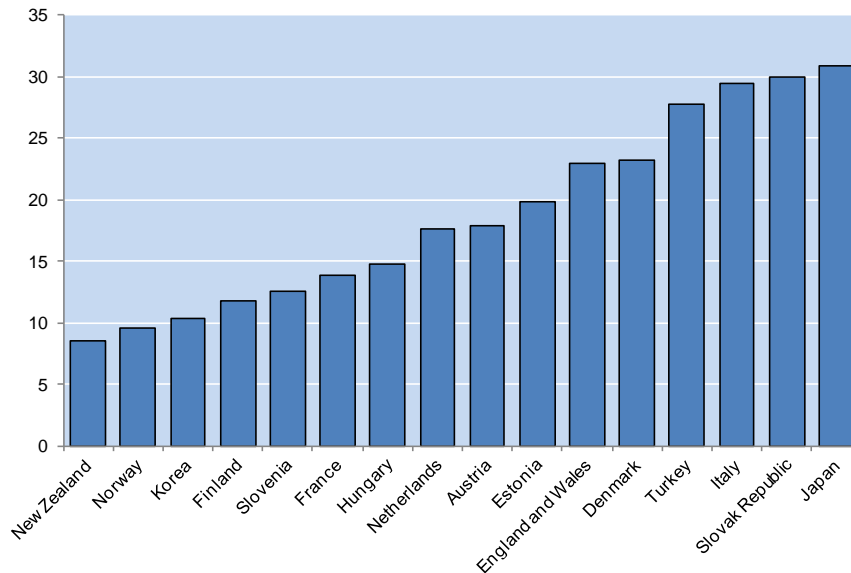
**Figure 1. Trials can be very long in several countries**  
Distribution of trial length (in days) across countries by type of instance



Note: Trial length is estimated with a formula commonly used in the literature based on incoming, pending and resolved civil justice cases:  $[(\text{Pending}_{t-1} + \text{Pending}) / (\text{Incoming}_t + \text{Resolved}_t)] * 365$ . 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 and CEPEJ.

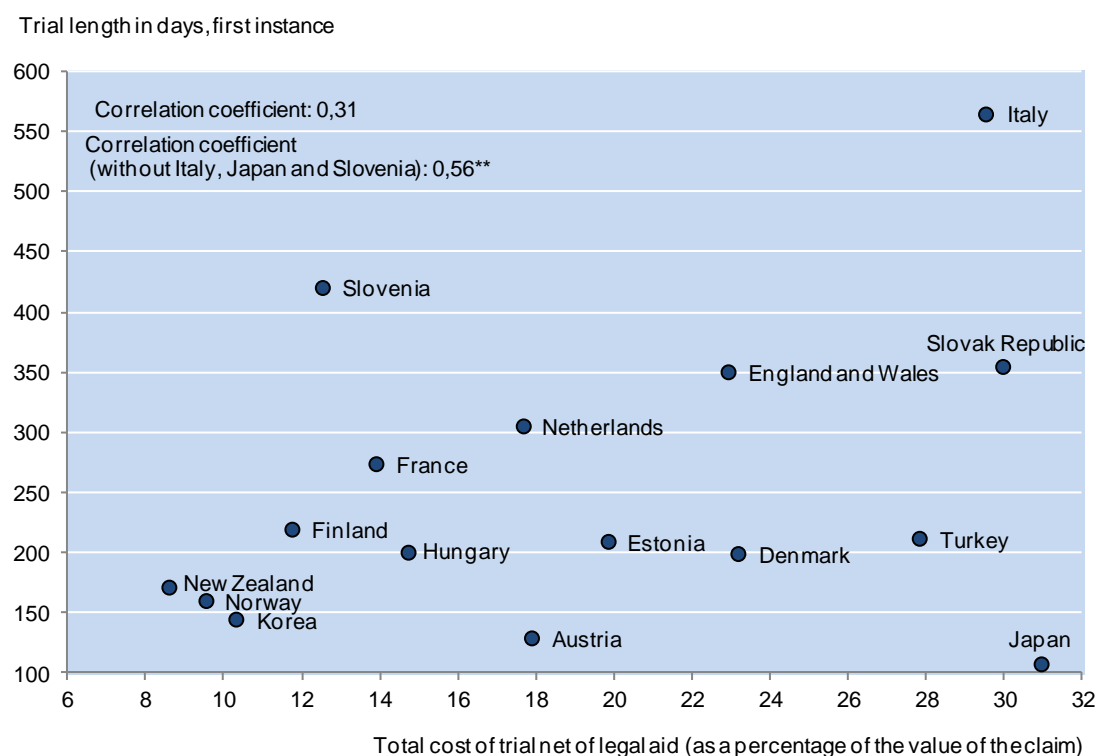
**Figure 2. Trial costs vary widely across countries**  
Trial cost net of legal aid as a percentage of the value of the claim



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.

**Figure 3. Trial costs tend to increase with trial length**



Note: Trial length is estimated with a formula commonly used in the literature based on incoming, pending and resolved civil justice cases:  $[(\text{Pending}_{t-1} + \text{Pending}_t) / (\text{Incoming}_t + \text{Resolved}_t)] * 365$ . The indicator on the x-axis is a measure of the total cost of trial net of the probability of receiving legal aid. 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.

### What are the main factors influencing trial length?

5. The length of trials can be viewed as the result of the interaction between demand and supply of judicial services. 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 judicial service.

6. *On the supply side*, some 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, and the diffusion of information and communication technologies (ICT); and the governance structure of the courts including the structure of incentives for judges and judicial staff.

7. Factors that in principle influence the *demand for judicial services* include those that are internal to the organisation and working of the justice system – such as the costs of accessing the service and the rules for allocating them among the parties (fee-shifting rules), lawyers' fee regulation and the structure of the profession (*e.g.* the number of lawyers), the diffusion of mechanisms of alternative dispute resolution (ADR), and the degree of certainty of the law – and those that are external and related to cultural factors and structural characteristics of the economies.

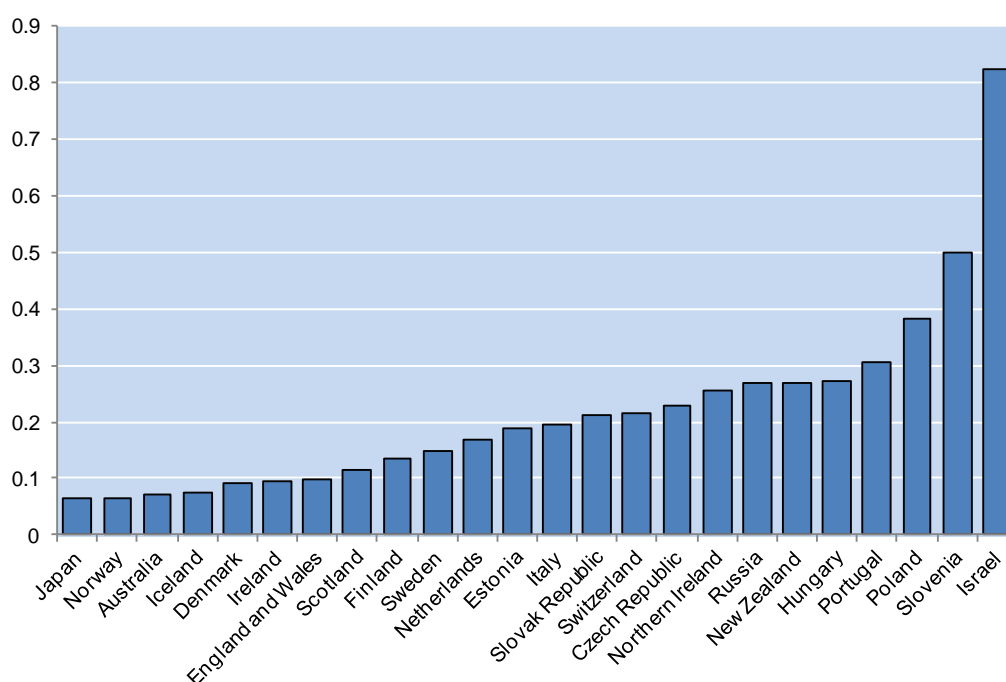
***Cross-country differences in trial length are unrelated to the sheer size of resources devoted to justice***

8. There is no apparent link between total public spending for justice (as a share of GDP) and the performance of the systems in the data assembled by the OECD: countries with similar spending ratios display very different trial lengths. For instance, Italy, the Slovak Republic, Switzerland and the Czech Republic all allocate around 0.2% of GDP to court budgets, but, while in Switzerland and the Czech Republic the average trial duration is around 130 days, it is 2.7 times larger in the Slovak Republic and even 4 times larger in Italy (Figure 4).

***Larger shares of the justice budget devoted to computerisation are associated with better judicial performance***

9. Systems devoting a larger share of the justice budget to ICT investment display on average shorter trial length, as well as higher productivity of judges (number of cases disposed of by each judge). The link with productivity is stronger when computer literacy is widespread in the population, ensuring a better take-up of ICT-based facilities: moving from a share of people with basic computer skills of 33% to one of 54%, the responsiveness of judges' productivity to investment in informatisation increases by four times. Thus, investments in computerisation and policies aimed at spreading out computer skills would seem to be complementary vis-à-vis this measure of justice productivity.

**Figure 4. Budget allocated to courts as a percentage of GDP**



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 allocation of tasks related to the functioning of the judiciary between the public judicial system and the private sector.

Source: OECD and CEPEJ.

***Better performance is also supported by active caseload management and the systematic production of statistics***

10. A court system with a good degree of informatisation is essential for the development of so-called caseload management techniques that allow for a smoother functioning of courts. Caseload

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 analysis, the early identification of long or otherwise potentially problematic cases in first instance appears to be associated with shorter trial lengths.

11. An important condition for the implementation of caseflow management techniques is the systematic collection of detailed statistics on case flows, 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 shorter in systems with a higher production of statistics.

#### ***Task specialisation is associated with shorter trial length***

12. Subject matter specialisation enables 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. But a potential disadvantage of specialisation is the reduced potential for judges to benefit from knowledge spillovers across different areas (*e.g.* competition and bankruptcy law). Also, specialisation may introduce rigidity in the use of resources, limiting the possibility to reallocate judges from one area to another. Nonetheless, based on OECD data, specialisation in commercial matters – as measured by the presence of specialised commercial courts or sections covering at least three commercial matters – appears to have some association with shorter trial length.

13. 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. In the countries covered by OECD data, each professional judge has on average 1.6 legal assistants. 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). The availability of assistance seems to be associated with shorter trial length across all countries.

#### ***Systems in which the chief judge has broader managerial responsibilities also display shorter trial length***

14. The governance structure of courts is a key determinant of performance, since it is the main channel through which incentive schemes can be designed and implemented. An important dimension in this respect is the allocation of responsibilities over jurisdictional and managerial tasks. Jurisdictional tasks are those functional to the adjudicative function *strictu sensu* (rendering and writing judgments) and, hence, are performed by judges. Managerial tasks relate to: the organisation and supervision of judges (*e.g.* office hours, presence in court, case management, hearings calendar); the organisation, supervision and appointment of quasi-judicial officers and administrative staff; the administration of the budget. According to OECD data, countries differ with regard to the delegation of responsibilities over managerial tasks. Some countries (Hungary, Finland, the Czech Republic, Australia, Korea, Germany) assign most of the responsibilities to the Chief judge and an external Body (such as a public agency or a judicial council). This regime appears to be associated with lower average trial length. In other countries (England and Wales, Ireland, Spain, the Slovak Republic, Greece), responsibilities over these tasks lie mainly with a distinct non-judge manager – the Chief administrative officer – and an external Body. In still other countries accountability and authority over most of the tasks are jointly assigned to the Chief judge and the Chief administrative officer, with some of them (Denmark, Poland, Switzerland, Scotland, Slovenia, Sweden) giving predominance to the Chief Judge and others to the Chief administrative officer (Italy, New Zealand, South Africa). Finally, there are countries that display a higher dispersion of responsibilities (the Netherlands, Portugal, Belgium, Mexico, France).



***On the demand side, reducing litigation rates would significantly improve civil justice performance***

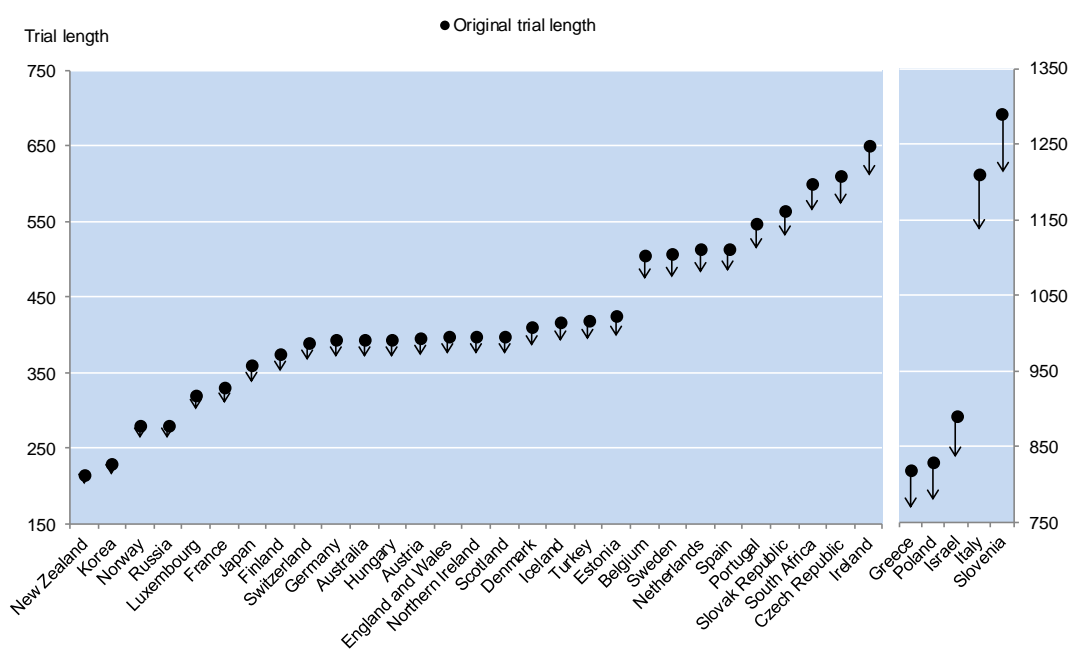
15. Litigation rates (*i.e.* the ratio of the number of new civil cases commenced in a given year to population or GDP) vary considerably across countries, ranging from 0.3 cases in one hundred people in Finland to around four in Italy, Greece, Spain and Czech Republic, and up to almost 10 cases in Russia. Higher litigation is correlated with longer trial length, as illustrated in Figure 5, which shows the estimated reduction in trial length associated with a 20% decrease in the litigation rate. The estimates imply that if the litigation rate in Italy decreased to the OECD average level (corresponding to a reduction of 35%), average trial length would decrease by 10%.

***Good quality regulation, effective implementation of policies, and integrity of the public sector are important instruments for reducing litigation***

16. 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. The empirical relevance of these factors for litigation finds support in OECD analysis based on 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 reduction in litigation, also taking into account legal origins and differences in GDP.<sup>2</sup>

**Figure 5. Reducing litigation rates would shorten trial length**

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



Source: Palumbo, G., G. Giupponi, L. Nunziata and J. Mora-Sanguinetti (2013), "Judicial Performance and its Determinants: A Cross-Country Perspective", OECD Economic Policy Paper No. 5.

<sup>2</sup> Legal origins indicate whether the legal system is based on British common law, or French, German, or Nordic civil law. Common law countries includes: Australia, England and Wales, Ireland, Israel, New Zealand, Northern Ireland, Scotland, and South Africa; French law countries include: Belgium, France, Greece, Italy, Luxemburg, Mexico, the Netherlands, Portugal, Spain, Turkey; German law countries include: Austria, the Czech Republic, Estonia, Germany, Hungary, Japan, Korea, Poland, the Slovak Republic, Slovenia, and Switzerland; Nordic law countries include: Denmark, Finland, Iceland, Norway, and Sweden. Former socialist law includes Russia.

### ***Free negotiation of lawyers' fees, as opposed to regulation, is associated with lower litigation***

17. 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 also respond to their incentives as shaped, among other things, by fee regulation. Lawyers' fees may be freely negotiated between lawyers and clients, or regulated by professional associations or by law. Of 35 countries for which information is available, 29% have freely negotiated fees, 40% have fees regulated by law and 31% have fees regulated by the bar association. On average, a regime of freely negotiated fees is characterised by lower litigation as compared with a regime of regulated fees (by the law or the bar), with 0.9 cases in one hundred people versus 2.9, also taking into account legal origin. The relationship could be explained by the fact that the pressure exercised by competition among lawyers constrains their potential rents, thereby reducing the number of cases that the lawyers may find profitable to bring to court (rather than settle).

### **Appeal rates, a simple measure of the predictability of court decisions, differ widely across countries**

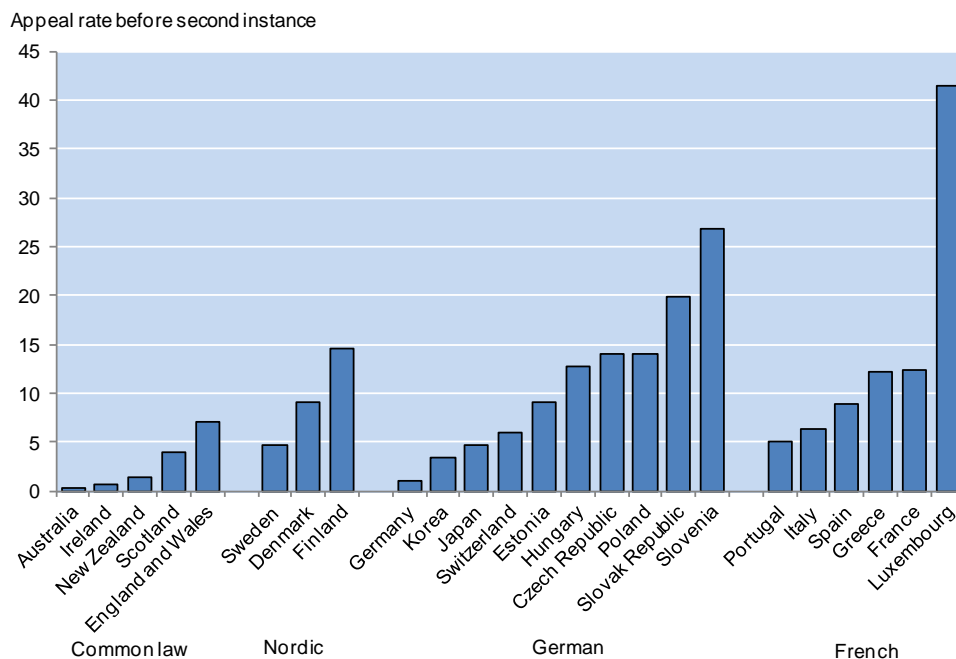
18. Predictability of court decisions, that is, the possibility to predict *ex ante* how the law will be applied by the court, is extremely important from an economic perspective. It provides legal certainty and enables economic agents to form expectations about the potential legal and economic consequences of their actions. Predictability of court decisions also influences choices on whether to initiate litigation or appeal judicial outcomes. Measuring predictability *per se* is difficult, but some information can be inferred from appeal rates before higher instances. Generally common-law countries exhibit lower appeal rates (both as a percentage of cases resolved in first instance and of population), and cross-country dispersion of appeal rates is also higher in other legal systems (Figure 6).

19. Cross-country differences in appeal rates may be explained by restrictions imposed by law. The possibility to file an appeal can be limited to cases with a monetary value of the claim above a given threshold (monetary restrictions), or 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. Restrictions based on leave to appeal reduce significantly the average and cross-country variation of appeal rates (Figure 7). On the contrary, the impact of monetary restrictions is not statistically significant.

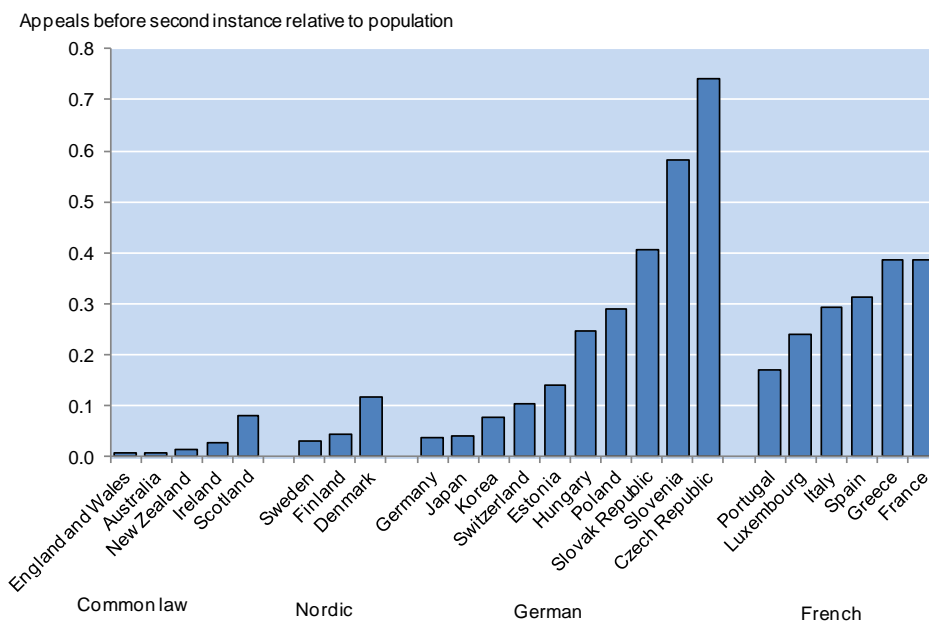
20. Interestingly, wide cross-country differences in appeal rates persist even among countries sharing the same type of restrictions. Since restrictions do not explain all of the cross-country differences in appeal rates, there would seem to be scope for increasing predictability of court decisions (leading to lower appeal rates) without tightening restrictions.

**Figure 6. 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**



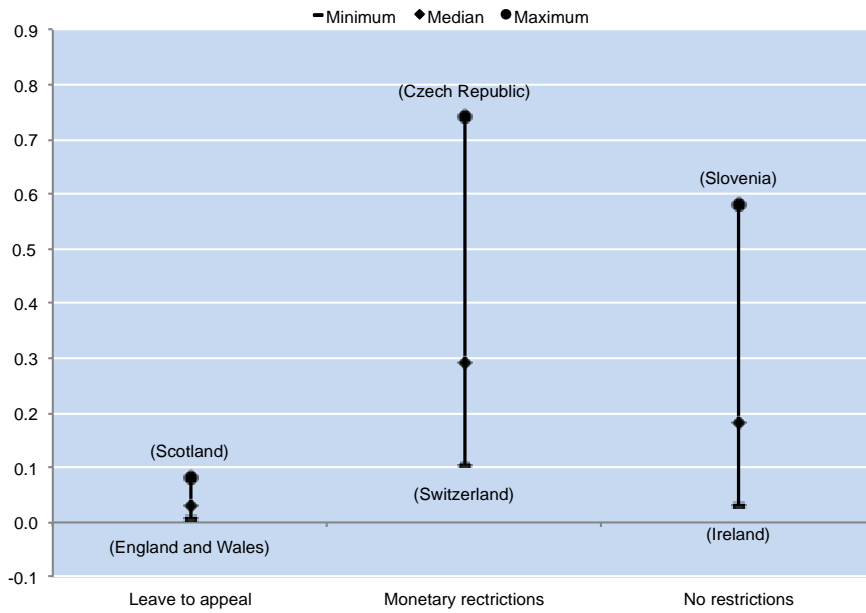
**B. Cases appealed before the second instance as a percentage of population**



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.

**Figure 7. 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



Note: The chart displays the appeal rate before the second instance by type of restriction (see note to Figure 1 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.

## ANNEX TABLE

### 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

Note: In columns 1-4 trial length is estimated with a formula commonly used in the literature:  $(\text{Pending}_{i,t-1} + \text{Pending}_{i,t}) / (\text{Incoming}_{i,t} + \text{Resolved}_{i,t}) * 365$ . 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 DB length (marked by an asterisk). Total length is the sum of trial length across the three instances (available for 16 countries). The DB length (column 4) refers to a hypothetical standardised commercial case in first instance. The table includes total averages and averages by legal origin. See footnote 2 for the classification of countries according to legal origin.

Source: OECD, CEPEJ and World Bank.

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