An empirical inquiry into the behavioral, cultural and operational causes of court delay in Belgium

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ABSTRACT

While the acceleration of court proceedings is a priority of the Belgian Justice department, most policy measures have so far failed to effectively reduce case disposition time. Lack of insight in the actual causes of (excessive) disposition times is often invoked for their ineffectiveness. First, this paper presents the results of an online survey among 249 Belgian lawyers which reveals that they consider calendar delays and their own behavior as the main reasons for excessive durations. Next, a unique hand-collected dataset of 238 construction cases adjudicated in 3 first instance courts is used to study how parties, judges, experts and calendar delays affect case disposition time. The results show that 40 percent of total trial duration (or 426 days) can be attributed to disputants and 23 percent to calendar delay. Although judges are responsible for 23 percent of overall disposition time, a cross-court comparison reveals that their impact is much higher due to differing interpretations of trial procedures. Finally, a preliminary analysis of the new Justice Reform Plan shows the potential impact of time limits for disputants on disposition times in Belgium.

JEL Classifications: K40, K41, K49

Keywords: court delay, case-level data, civil case disposition time, Belgium
1. Introduction

Judiciaries around the world, regardless of their seize or level of development, are in “a state of crisis” (Zuckerman 1999; Fix-Fierro 2004). Particularly, the increasing duration of litigation has spurred a growing concern among policy-makers and scholars. While most duration studies cover courts in the US (see, e.g. Spurr 1997; Heise 2000; Christensen and Szmer 2012), recent analyses extend to other judiciaries as well. Part of this empirical literature contributes to the understanding of case- and judge-characteristics affect time-to-settlement (Kessler 1996; Dimitrova-Grajzl et al. 2012; Ayuso et al. 2015) or time-to-judgment (Heise 2000; Di Vita 2012; Bielen et al. 2015). Although these factors undoubtedly influence case duration, they provide limited insight in the precise course of court proceedings. Nevertheless, the decomposition of court proceedings into various activities of each legal actor and their relative time span is of considerable relevance to policy makers looking for ways to reduce disposition time.

This paper provides an in-depth analysis of court proceedings and disposition times\(^1\) in Belgium. As one of the most prosperous\(^2\) and developed\(^3\) countries in the world, Belgium still struggles with severe court backlogs and delays building up since the seventies. The malfunctioning of the judiciary has steadily eroded public confidence. 36 percent of Belgian citizens indicates to have no confidence in the court system. This high level of distrust is in stark contrast with other Belgian institutions, such as schools (6 percent) or the police (15 percent) (Belgian High Council of Justice 2014).

The main reason for the lack of public confidence is the slowness of court proceedings: 92 percent of the Belgians indicated that trial lengths are excessive (Belgian High Council of Justice 2014). Belgium has ceaselessly been condemned by the European Court of Human Rights for violating the requirement of a trial within a reasonable time (European Court of Human Rights n.d.). Yet, there is almost no theoretical work, nor empirical evidence on (the causes of) delay in Belgian courts. Even worse, Belgian first instance courts their selves have no knowledge of the average case disposition time due to the absence of a sound IT case management system. Due to the complexity of and non-compliance with the registration process, the existing court data are dubbed highly untrustworthy by the courts themselves. Nevertheless, Belgian civil cases are an interesting case study due to the specific nature of court proceedings such as, for example, the written character of proceedings, the extensive party autonomy (e.g. parties, not courts, set trial dates) and the absence of discovery proceedings.

For the purpose of our analysis, we hand-collected a unique dataset of 238 construction cases, which frequently require expert assessments and are generally associated with prolonged disposition times. To allow for cross-court comparison, we collected our sample from 3 first instance courts of different size, but located in the same geographic jurisdiction. To gain more insight into court proceedings and the role of various actors in the overall case disposition time, we distinguish between: judges, parties and experts. First, we determine the duration of each activity in the civil procedure. Next, we calculate the time period that each party is “in control” of the case. This way, we can establish the share of judges, parties and experts in the overall disposition time of a particular case. Finally, the average duration for each actor can be computed for the entire sample. The average disposition time in our sample is 464 days. Results indicate that parties are responsible for 40 percent of overall disposition time, while judges account for 23 percent and experts for 9 percent. Interestingly, another 23 percent can be attributed to calendar delay. This means that the backlogs in first instance courts prolong the adjudication in our sample of construction cases by 107 days.

The rest of the paper is structured as follows. Section 2 presents the results of a survey amongst Belgian lawyers on the duration of first instance cases. The aim is to understand the perception of legal practitioners on the efficiency of court proceedings. The third Section describes the general course of civil proceedings in Belgium, while Section 4 focuses on the data collection methods. The methodology used to decompose the overall disposition time into relative shares of each legal actor is presented in Section 5. The results of our analyses are presented in Section 6. Finally, Section 7 discusses the impact of the latest policy proposals by the Belgian government, before presenting our conclusions in Section 8.

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\(^1\) We define disposition time as the time between the filing of a lawsuit and the termination of court proceedings by either an in-court settlement or a judge’s verdict.

\(^2\) Belgian GDP per capita is 37,857 USD. Belgium is the 16th largest economy in the world (World Bank 2014).  

\(^3\) Belgium has a Human Development Index of 0,881, positioning the country at 21 out of 187 (United Nations Development Programme 2013).
2. Lawyers’ perception on the causes of court delay

In our discussions with various legal actors in Belgium, we noticed significant differences of opinion on the root and causes of court delay. Furthermore, these varying opinions are not documented in the literature. Therefore, we carried out an online survey to gain better insight into the perceptions of lawyers on court delay. The survey was distributed via e-mail to all 10,187 lawyers of the Flemish Bar Association, of which 249 respondents completed the questionnaire. The original survey was drafted in Dutch and has been translated for the purpose of this paper.

First, we elicited whether and to what extent lawyers believe trials are delayed in Belgium. More specifically, respondents were asked to pinpoint the proportion of their cases that had a longer duration than they would ‘reasonably’ have expected. In other words: what percentage of civil cases is (at some point) *delayed*, regardless of the length of the delay? In this respect, we defined delay in a broad sense, including not only intentional delay, but also unavoidable or sometimes legitimate delay.

Figure 1 shows that respondents believe that, on average, 48 percent of their caseload endures delay. Approximately half of the respondents believe that 50 percent or more of their cases are delayed. A third states that at least 70 percent of their cases are delayed. Remarkably, some lawyers indicate that almost none of their cases is delayed.

![Figure 1: Q1 - What percentage of civil cases is *delayed*, regardless of the length of the delay?](image)

Since the goal of our paper is to assess the role of legal actors in case disposition time, we additionally asked the respondents how often delays (avoidable or not) are caused by disputants, lawyers, courts or other factors (such as expert assessments). The results are displayed in Table 1.

<table>
<thead>
<tr>
<th>No. of cases delayed</th>
<th>Never</th>
<th>Rarely</th>
<th>Occasionally</th>
<th>Sometimes</th>
<th>Frequently</th>
<th>Usually</th>
<th>Always</th>
<th>No opinion</th>
<th>Average score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disputants</td>
<td>(0,42%)</td>
<td>(10,46%)</td>
<td>(18,83%)</td>
<td>(39,75%)</td>
<td>(24,69%)</td>
<td>(4,60%)</td>
<td>(0,00%)</td>
<td>(1,26%)</td>
<td>3,88</td>
</tr>
<tr>
<td>Lawyers</td>
<td>(0,00%)</td>
<td>(3,77%)</td>
<td>(15,48%)</td>
<td>(42,26%)</td>
<td>(33,05%)</td>
<td>(4,60%)</td>
<td>(0,00%)</td>
<td>(0,84%)</td>
<td>4,16</td>
</tr>
<tr>
<td>Courts</td>
<td>(0,00%)</td>
<td>(2,09%)</td>
<td>(6,28%)</td>
<td>(24,69%)</td>
<td>(38,08%)</td>
<td>(25,94%)</td>
<td>(1,67%)</td>
<td>(1,26%)</td>
<td>4,79</td>
</tr>
<tr>
<td>Others</td>
<td>(0,42%)</td>
<td>(1,26%)</td>
<td>(8,79%)</td>
<td>(26,78%)</td>
<td>(33,89%)</td>
<td>(15,48%)</td>
<td>(2,09%)</td>
<td>(11,30%)</td>
<td>4,13</td>
</tr>
</tbody>
</table>

The choices are assigned a score ranging from 1 (never) to 7 (every time).\(^5\) The lowest result (3,88) is scored disputants, although 69,04 percent still believes that they sometimes, frequently or usually cause delays. Courts have the highest score of 4,79. Remarkably, 38,08 percent of the respondents indicate that courts frequently delay proceedings and 25,94 percent

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\(^4\) The survey was solely distributed to the lawyers of the Flemish Bar Association because our empirical analysis is based on data derived from three courts located in the Flanders region in Belgium.

\(^5\) The “no opinion” answers are excluded to calculate this score, although it is possible to treat them as “neutral” answers. The latter method yields similar results.
even thinks courts usually cause delays. Furthermore, lawyers admit that they prolong proceedings themselves, although a large portion (42.26 percent) believes this only happens sometimes.

Finally, we asked lawyers how often court delay is caused by calendar delays (i.e. the waiting period till the first possible trial hearing). The results in Table 2 indicate that lawyers believe delays are often caused by excessive calendar delays. Remarkably, 15.68 percent even believes that calendar delays are always to blame for delayed proceedings. Almost two thirds of our respondents feel that calendar delays often account for the delay in proceedings.

Table 2: Q3 - How often are court delays caused by excessive calendar delays?

<table>
<thead>
<tr>
<th>Option</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Never</td>
<td>0.85%</td>
</tr>
<tr>
<td>Rarely</td>
<td>4.24%</td>
</tr>
<tr>
<td>Occasionally</td>
<td>12.29%</td>
</tr>
<tr>
<td>Sometimes</td>
<td>27.12%</td>
</tr>
<tr>
<td>Frequently</td>
<td>36.44%</td>
</tr>
<tr>
<td>Usually</td>
<td>15.68%</td>
</tr>
<tr>
<td>Every time</td>
<td>3.39%</td>
</tr>
<tr>
<td>No opinion</td>
<td></td>
</tr>
</tbody>
</table>

3. Civil proceedings in Belgium

Before discussing the empirical results, we elaborate on the nature of civil proceedings in Belgium, a country with a French civil law tradition. Important features are the written character of proceedings and the extensive party autonomy. During the preparation stage, the case progresses mainly by exchanging written documents, such as the writ of summons (the petition to initiate proceedings) and pleadings to exchange arguments. The latter are of great importance in Belgian civil proceedings, since oral pleadings at the court solely serve to introduce the written arguments (Grubbs et al. 2003). These written pleadings include the factual matters, a legal analysis, and the relief requested through court. The Belgian legal system is also characterized by the principle of strong party autonomy. In what follows, we elaborate on the course of civil proceedings, as stipulated by the Belgian Judicial Code.

3.1. Initiation of court proceedings

Usually, civil court proceedings start by the issuance of a writ of summons, in which the plaintiff provides a brief description of the dispute. The summons is served by a bailiff, who stipulates when parties must appear before court for the introductory hearing. At the earliest, this introductory hearing takes place eight days after the summons was served, enabling the defendant to consult a lawyer. Very basic disputes (e.g. uncontested claims) can be resolved through short proceedings, without extensive written pleadings and with instant adjudication by the judge at the introductory hearing. These short proceedings are possible in case of mutual agreement by the parties and the judge.

However, most disputes require a more extensive procedure. The introductory hearing then serves to decide on the further course of proceedings. There are three options. First, parties submit an agreed pleading calendar, including deadlines for pleading submissions and the date of the next trial hearing. It is the judge who informs parties about the first possible trial date, i.e. the first suited opening in the court schedule. Subsequently, the agreed calendar is endorsed by the judge. Second, if parties do not agree on such calendar, the judge must draft a pleading calendar on its own motion. Parties have a six week period to provide the judge with their preferences, whereupon the judge sets a binding calendar. After a calendar has been prepared (either by the judge or the parties), the case is assigned to a specialized chamber within the court. Third, in case of mutual agreement, parties can choose to put procedures on hold, e.g. because they are still negotiating or awaiting the adjudication of another legal dispute. In this case, the court is no longer involved in proceedings, until the moment parties file a pleading calendar or request the judge to either set a pleading calendar or a trial date.

3.2. Evidence and written arguments

The Judicial Code stipulates that the plaintiff must disclose his documentary evidence at the latest 8 days after the introductory hearing, while the defendant is required to do so with the filing of his first pleading. Usually, the defendant files the first pleading, since the plaintiff has already explained his grievances in the writ of summons. Subsequently, the plaintiff answers to the defendant’s arguments and finally, the defendant files a last pleading. Nonetheless, parties are free to choose the number of pleadings. Complex disputes or disputes with many parties typically require more pleading rounds.

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6 Art. 700 Judicial code
7 Art. 707 Judicial code
8 Art. 735 Judicial code
9 Art. 747 Judicial code
10 Art. 736 Judicial code
11 Still, note that parties are allowed to present new evidence at later stages.
Furthermore, the time period between pleadings differs from case to case, although in basic disputes lawyers generally foresee one month to prepare a pleading.

An important feature of the Belgian judiciary is the use of judicial experts to assemble evidence in technically complex cases (e.g. finance, medicine, architecture). At the request of one of the parties or by his own initiative, the judge may mandate an expert to advice on technical matters.15 The expert’s final report is a crucial document with a significant influence on the judge’s decision making process.

Finally, the legislator allows for written testimonies in certain circumstances, although oral evidence is prohibited in civil proceedings.

3.3. Trial hearing

In case a pleading calendar is agreed upon, the trial date is known from the beginning of proceedings. If not, parties can request the judge to schedule a trial date.13 At trial, parties or their lawyers have the opportunity to present their oral arguments.14 Notably, the judge is not required to take oral pleadings into account when deciding the case15, which demonstrates the importance of the written arguments in civil proceedings. Normally, a written judgment is pronounced within one month and according to existing civil procedural legislation the duration of deliberation may not exceed a three month period.16

4. Data description

Our analysis of the causes of prolonged trials in Belgium focuses on civil cases, in particular, construction disputes adjudicated in first instance courts of general jurisdiction. Each first instance court is subdivided into chambers to allow specialization. All disputes in our dataset are resolved in “construction chambers” and encompass (1) construction cases, (2) construction contracts including invoices related to buildings (or components, such as kitchens, painting, etc.), (3) fees and professional liability of architects and contractors, (4) damage compensation related to real estate, (5) liability related to construction cases and their chargebacks and (5) insurance law related to construction cases and their chargebacks.

The reason for selecting construction cases is twofold. First, the number of lawsuits in this industry has increased considerably over the last decade in Belgium and abroad (see, e.g. Kilian and Gibson 2005; Tazelaar and Snijders 2010). Remarkably, in one of the courts included in our study, the number of construction lawsuits increased by no less than 69 percent between 2004 and 2013. Second, construction lawsuits presumably have (one of the most) excessive trial lengths. Although statistics are lacking, the latter conclusion was clearly reached during the preparation of a Belgian bill aimed at accelerating construction lawsuits (House of Representatives, 2006; High Council of Justice, 2012).17

Since divergence in case duration among courts can be attributed to differences in procedures, workloads, management quality and available staff, we analyze cases resolved in multiple courts. We have selected three courts of different size, located in the same jurisdiction18: Antwerp, the largest court of the jurisdiction (7562 new civil cases in 2013), Hasselt, a medium-sized court (3090 new civil cases in 2013) and Tongeren, a relatively small court (2256 new civil cases in 2013).19 The selected subsamples are proportional to the total number of incoming cases: 140 cases in Antwerp, 56 in Hasselt and 42 in Tongeren. Differences between these subsamples are expected due to diverging management styles, potential economies of scale or enhanced specialization, because court management is situated at the court-level, not the jurisdiction. Furthermore, our discussions with the staff at all three courts taught that there is no reason to assume that the severity or complexity of cases differs significantly among the courts.

Our sample consists of claims filed from October 1, 2007 till February 24, 2014 and resolved by March 24, 2014. This observation window ensures a sample that is subject to two major reforms in September, 2007. These reforms were aimed

12 Art. 962 Judicial code
13 Art. 750 Judicial code
14 Art. 758 Judicial code
15 Art. 756bis Judicial code
16 Art. 770 Judicial code
17 This conclusion was based on statements by experts, bars and judges on the one hand and the considerable amount of complaints filed at the High Council of Justice with regard to the excessive duration of expert assessments in construction cases on the other.
18 There are 5 ressorts in Belgium.
19 These courts are located in Flanders, the Dutch-speaking region in Northern Belgium.
at accelerating assessments by experts\textsuperscript{20} and case preparation by disputants\textsuperscript{21}. Furthermore, these cases were not influenced by the organizational reform of the Belgian judiciary in April 2014. During our observation window, no other major reforms affecting construction cases were carried out.

5. Methodology
We were granted confidential access to all court files (consisting of writs of summons, pleadings, verdicts, etc.), enabling us to reconstruct a detailed timeline of the course of proceedings for each case. Simultaneously, a detailed analysis of the procedural documents revealed which actor was in control of the case at a certain moment. We distinguish 3 categories of actors: courts, disputants and external actors. The following Sections elaborate the methodological approach used to decompose case disposition time and allocate time periods to different actors.

5.1. The courts
In our decomposition of disposition time, we distinguish between two actors from the court system (the judge and civil registry) and one activity (the calendar delay).

In our analysis, we take into account the time of a judge needed to decide on a dispute and draft (interlocutory)\textsuperscript{22} judgments. Since 2007, procedural law states that the deliberation on a judgment cannot exceed one month (although compliance is not enforced). As discussed in Section 2, the judge must draft a pleading calendar on his own initiative when parties neglect or refuse to do so. Parties have 6 weeks to express their preferences, whereupon the judge sets a binding calendar. Consequently, the judge faces a waiting period\textsuperscript{23} that he cannot reduce by working harder on the case.

The civil registry also has an impact on the course of proceedings, since it processes all communication between the court and (external) parties. We analyze primarily the time necessary for notifications, since most procedures can only be continued afterwards. For example, an expert can only start his work after receiving the formal notification regarding his appointment. Therefore, the time periods allocated to the civil registry mainly consist of waiting periods (e.g. time between the pronouncement of a judgment and its notification to the disputants or other parties).

Next to the judge and the civil registry, we also account for calendar delay. One way in which courts affect disposition times are the delays caused by backlogs. In our analysis, we look at the elapsed time between the last pleading and the actual trial hearing. This time period will be referred to as “calendar delay”, since it represents the waiting period in which disputants ended exchanging pleadings and are awaiting the first trial hearing at the court. Another form of calendar delay is the time span between the filing of the lawsuit and the introductory hearing. Since the introductory hearing can only take place at the earliest 8 days after the summons was served, this time period is a consequence of procedural rules rather than backlogged courts. If, however, this period exceeds 8 days, this could indicate that there are backlogs. Figure 2 summarizes the actors and time spans due to court activities.

Figure 2: Activities and time spans of court actors.


\textsuperscript{21} The Act of April 26, 2007 concerning the amendment of the Judicial Code to tackle court delay, publication on June 12, 2007 (Wet van 26 april 2007 tot wijziging van het Gerechtelijk Wetboek met het oog op het bestrijden van de gerechtelijke achterstand, B.S. 12/6/2007).

\textsuperscript{22} Interlocutory judgments are used to appoint experts, to validate or impose procedure calendars, etc.

\textsuperscript{23} The waiting period is six weeks at the most, depending on the speediness by which parties reveal their preferences.
5.2. The disputants

Parties (and their lawyers) involved in the lawsuit indisputably affect trial length. For instance, they need sufficient time to prepare pleadings. The period between the filing of the pleading calendar and the last pleading is attributed to the parties, while the time elapsed from the last pleading to the trial date is assigned to calendar delay. As opposed to the surveys discussed in Section 2, the empirical case analysis does not allow us to differentiate between disputants and lawyers.

When no calendar was filed at the introductory hearing and procedures were put on hold, parties can request a trial date as soon as they want to restart procedures. However, when procedures have been put on hold for three years, the court can decide to drop the case. The latter measure was introduced by the legislator in 1993 to deal with the enormous amount of passive cases pending in the courts. After a case has been dropped, parties can re-initiate proceedings provided that they pay the court fees again. Naturally, in our calculations these periods of inertia are attributed to the parties. Finally, disputants can postpone hearings. Then, the duration of the postponement is attributed to disputants. Figure 3 summarizes the activities concerning the parties.

Figure 3: Activities and time spans of disputants

5.3. External actors

The adjudication of construction disputes often requires the involvement of an expert. The time between his appointment and the filing of his final report (or cancellation of the expertise) is attributed to “expert”. So, the total time necessary to finalize the expert examination is taken into account. Although delays during the expertise stage can be caused by the disputants or the courts, their causes cannot be deducted from court documents.

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24 Article 730 § 2 a) Civil Code.
Judges can also suggest mediation to the disputants. Therefore, we not only register the time spent by judicial experts, but also by mediators. Its application, however, is very limited in practice as the empirical results will show. When a mediator is appointed, we take into account the entire mediation procedure: from appointment to finalization (either a settlement or the resumption of court proceedings).

Finally, we include a category “other external actors”. For example, some cases require the interference of a Public Prosecutor, the Chamber of Architects or the Bar Association. Since these requests for advice occur only sporadically, we clustered these actors in the category “others”. Figure 4 summarizes the activities of the external actors.

Figure 4: Activities and time spans of external actors.

6. Results
The average disposition time of the construction cases included in our sample is 464 days. Based on the methodology described above, we reconstruct the timeline for all of our cases and decompose the overall disposition time into activities assigned to the various legal actors. Subsequently, we calculate the average time assigned to each activity across all cases. These results are visualized in Figure 5. The first diagram shows the integrated results for the three courts, while the diagrams below distinguish between cases adjudicated in Antwerp, Hasselt and Tongeren.
Figure 5: Share (in %) of actors in overall disposition time

<table>
<thead>
<tr>
<th></th>
<th>Discounts</th>
<th>Trial delay</th>
<th>Judge</th>
<th>Expert</th>
<th>Civil Registry</th>
<th>Mediation</th>
</tr>
</thead>
<tbody>
<tr>
<td>All courts</td>
<td>40</td>
<td>23</td>
<td>23</td>
<td>9</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Antwerp</td>
<td>41</td>
<td>23</td>
<td>22</td>
<td>10</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Hasselt</td>
<td>35</td>
<td>26</td>
<td>20</td>
<td>7</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>Tongeren</td>
<td>42</td>
<td>21</td>
<td>25</td>
<td>10</td>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>
Notably, parties determine overall case disposition time for no less than 40 percent. This result partly stems from the substantial party autonomy in Belgian civil court procedures. As mentioned, parties can determine the procedural calendar without interference of the judge. The time spent by parties on a case consists almost exclusively of the time necessary to prepare pleadings and, to a lesser extent, of postponements of hearings. The former depends on several factors such as the factual and legal complexity of the dispute, the caseload of the lawyers involved, the use of delaying strategies, etc. Although our data analysis enables us to examine the time spent on a case by disputants, it is not possible to establish the actual reasons for prolonged activities. Nevertheless, the result that 40 percent of the disposition time depends on the behavior of disputants indicates that courts have only limited control over a considerable proportion of the duration of lawsuits.

Nearly 50 percent of case disposition time is determined by actors of the courts. Calendar delays are a major cause of delay in Belgium. Many courts claim to have an insufficient number of judges, resulting in backlogs and belated trial dates. In our sample, calendar delays and judges each account for 23 percent of overall disposition time, while time spent by the civil registry is limited to 3 percent. These findings suggest that the average case duration can substantially be reduced, since calendar delay can be avoided. In contrast, judges will always need some time to prepare their verdicts. To evaluate judgement time, the optimal duration must be known, but which is likely to differ from case to case.

9 percent of total disposition time is due to the assessments by experts, who were hired in 29 percent of all cases. Typically, expert procedures proceed as follows. After the judge appoints an expert, he decides which part of his costs must be covered by each party. After payment, the expert will start his activities by first convoking the disputants, often onsite, and giving them the opportunity to clarify their point of view. Next, he will investigate the evidence (e.g. a leaking roof) and finally, he prepares and delivers his final report to the judge, the parties and their legal representatives (Lysens and Naudts, 2010). Possible reasons for prolonged expert assessments are, among others, the complexity of disputes, parties desisting from providing documentary evidence, the caseload of the expert and the unavailability of parties to organize site visit.

A mediator was only appointed in some of the cases in Hasselt. Hence, only 2 percent of total disposition time can be attributed to mediation procedures at the aggregate level. Our “other” category was negligible small (less than 0,5 percent on the aggregate level) and is therefore not included in the diagrams.

The diagrams in Figure 5 reveal that the results of the three separate courts are robust. Apparently, there is little variation in the proportion of time spent by the various actors during court proceedings. However, the actual time (in days) spent by all legal actors differs significantly between courts due to major differences in average case duration: 741 days in Tongeren, 571 in Hasselt and 355 in Antwerp. Nevertheless, it seems that there are more cases with considerable trial length in Tongeren and Hasselt and hence the median time is less diverging: 456 days in Tongeren, 374 in Hasselt and 304 days in Antwerp. Figure 6 shows the distribution of total disposition time in. Approximately 55 percent of all cases is resolved within 500 days in Tongeren, 63 percent in Hasselt and 75 percent in Antwerp. In Tongeren, the disposition time of 33 percent of the cases exceed 1000 days and 17 percent even 1500 days. In Antwerp, only 6 percent of the cases was not resolved within 1000 days. Hasselt is situated in between the other two courts: 20 percent of the cases is not resolved within 1000 days.

Figure 6: Distribution of total disposition time in Antwerp, Hasselt and Tongeren

Given that there is little variation in the shares of the various actors between the three courts, it is surprising that the disposition times differ significantly. It follows that if the time spent by one actor increases, the other actors appear to need more time as well. Instead of shares, Table 3 shows the average time span of each actor in days. It reveals that the time spent on a case is much higher in Tongeren than in Antwerp for each actor with the exception of the civil registry. The results for Hasselt are always in between the other two courts. For example, parties spend on average 375 days on construction cases in Tongeren, 269 days in Hasselt and 174 days in Antwerp.
Table 3: Time (in days) spent by actors in overall disposition time

<table>
<thead>
<tr>
<th></th>
<th>Antwerp</th>
<th>Hasselt</th>
<th>Tongeren</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disputants</td>
<td>Mean</td>
<td>St.dev.</td>
<td>Min.</td>
</tr>
<tr>
<td>Calendar delay</td>
<td>55</td>
<td>53</td>
<td>8</td>
</tr>
<tr>
<td>Judge</td>
<td>43</td>
<td>36</td>
<td>0</td>
</tr>
<tr>
<td>Expert</td>
<td>67</td>
<td>162</td>
<td>0</td>
</tr>
<tr>
<td>Civil registry</td>
<td>17</td>
<td>25</td>
<td>0</td>
</tr>
<tr>
<td>Mediator</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total disp. time</td>
<td>355</td>
<td>324</td>
<td>14</td>
</tr>
</tbody>
</table>

One reason that explains the difference between Tongeren and Antwerp is the fact that more cases are put on hold in Tongeren (24 percent compared to 10 percent in Antwerp). Moreover, the duration of inertia is longer in Tongeren (on average 341 days) compared to Antwerp (on average 212 days). The question then remains why parties are more likely to put procedures on hold in Tongeren. Part of the explanation lies in a different legal culture. In Antwerp, the judges allow procedures to be put on hold only in case of mutual consent. In Tongeren, on the contrary, the request of one party suffices.

A second reason is the fact that judges in Tongeren (and Hasselt) ask parties to exchange pleadings after the request for an expert assessment. In these pleadings, parties argument why an expert is needed or not. In Antwerp, by contrast, this discussion takes place orally at the introductory hearing, thus saving months exchanging pleadings.

The expert assessments account for 142 days (Tongeren), 87 days (Hasselt) and 67 days (Antwerp) of total disposition time. It should be noted, however that these Figures reflect the average time of an expert assessment over all cases. However, the proportion of cases in which an expert was actually assigned, varies: 21 percent in Antwerp, 32 in Hasselt and 36 in Tongeren. In order to compare the expert duration, we should simply consider the average duration. In Tongeren, expert assessments take on average 397 days, compared to 299 days in Hasselt and 243 days in Antwerp. It follows that experts seem to finalize their assessment faster in Antwerp. Again, this results from a different approach by the judges. In Antwerp, experts’ deadlines are strictly enforced. When the deadline has passed, the court will ask the expert to deliver his final report or to formally request a prolongation. The court in Tongeren, however, adheres more to party autonomy which implies that an expert does not need to justify a delay unless disputants signal a problem of delay. Additionally, the proactive role of the judge in Antwerp explains why relatively less experts are appointed, compared to Tongeren and Hasselt. During the case analysis, we found that the Antwerp judge regularly denies an expert assessment, in spite of the formal request by the disputants. In Tongeren and to a lesser extent Hasselt, however, our case analysis taught that the judge almost automatically appoints an expert when one of the parties asks for it.

The average time spent on the case by judges lays bare yet another considerable difference between the courts: 93 days in Tongeren, 81 days in Hasselt and 43 days in Antwerp. However, a data study reveals that this is not exclusively a consequence of slower judges. For example, the average deliberation time of a judge for the final verdict is 46 days in Tongeren, 33 days in Hasselt and 30 days in Antwerp. The difference rather stems from the number of decisions per case: 2,3 in Tongeren, compared to 1,7 decisions per case in Antwerp. Moreover, the reason is twofold. First, the court of Tongeren invokes more experts, which requires an interlocutory verdict (to appoint the expert). Second, while most parties in Antwerp prefer to submit a pleading calendar themselves, the judge calendar is more frequently used in Tongeren. Hence, judges in Antwerp presumably stimulate parties to draft their own calendar. The former explanation seems to apply to Hasselt as well, in contrast to the latter.

The Figure included in the appendix illustrates the distribution of the time spent by each actor in our construction cases resolved in the courts of Antwerp, Hasselt and Tongeren.

7. Discussion

The excessive duration of trials is a longstanding problem for the Belgian court system. For more than a decade, policy makers recognize it as one of the major challenges facing the Belgian judiciary. Nevertheless, effective policy solutions remain scarce. Early 2015, the Belgian government put forward an ambitious plan for the modernization of the judiciary, aptly called the Justice Plan. The policy brief clearly defines the main objective of tackling the excessive disposition times by determining the
optimal duration of various stages in court proceedings (see Table 4). However, the government recognizes that the impact of its proposal cannot be evaluated due to a lack of reliable data on the duration of Belgian first instance cases. Based on our unique dataset, we will pursue a partial evaluation of the new policy proposals in this paragraph.

Figure 5 showed the decomposed disposition time and established the relative shares of each actor. But the data can be further exploited to compute the average duration of each procedural stage. In Belgium, court proceedings are usually subdivided into three stages: the preparation stage, the fixation period and the deliberation stage. Normally, the preparation stage encompasses the exchange of pleadings. For the purpose of our analysis, however, we have separated the preparation stage into two parts: the time span between the filing of the lawsuit and the introductory hearing and between the latter and the end of the pleadings. The fixation period comprises the time to the first possible hearing. This is in fact the ‘delay’ caused by backlogs of the court. For example, if on January 1 the first possible hearing can be organized on April 1, the fixation period is three months. Without backlogs, the judge could hypothetically organize a trial hearing the next day. Finally, the deliberation stage is the time required for the judge to prepare his judgment.

In our analysis of the new plan, we do not include the expert and mediator stages since the policy proposals provide no information about their optimal duration. In other words, we examine the stages that are covered by the proposals or for clear standards already exist. The results of our comparison are presented in Table 4.

Table 4: Stages of court proceedings: government policy proposal and current court practices

| Stage 1.1: Filing of lawsuit – Introductory hearing | Proposal – (baseline) | Tongeren | Hasselt | Antwerp |
| Stage 1.2: Introductory hearing – end of pleadings | 8 | 11 | 19 | 17 |
| 90 | 187 | 152 | 138 |
| Stage 2: Fixation period | 120 | N/A* | 150 | 270 |
| Stage 3: Judge deliberation | 30 | 46 | 33 | 30 |
| Total | 248 | 354 | 455 |

*The court of Tongeren could not provide information on the duration of the fixation period

The minimum required time span between the filing of the lawsuit and the introductory hearing in the policy proposal is eight days. The average time span is more than twice as high in Hasselt (19 days) and Antwerp (17 days), but the deviation is relatively small in absolute numbers.

The second part of the first stage is the time between the introductory hearing and the end of the pleadings. The goal of the government is to significantly simplify this stage by imposing a binding pleading calendar with a fixed time span of three months instead of the current system of party autonomy or judge ratification. Only in case of ‘extraordinary’ circumstances does the new proposal foresee an opportunity to change the binding calendar. The goal is to induce parties (and their lawyers) to expedite the exchange of pleadings and to prevent tactical delays as much as possible. These standardized pleading calendars would not only accelerate the preparation of the case, but also limit the involvement of the judge.

A closer look at our court files shows that disputants spend on average 187 (Tongeren), 152 (Hasselt) and 138 (Antwerp) days on exchanging pleadings. Consequently, the aforementioned proposal will substantially reduce the duration of the latter activity. In Tongeren, this duration would be cut in half, compared to a decrease of 69 percent in Hasselt and 53 percent in Antwerp.

Next, we take a look at the second stage, the fixation period. According to the Belgian High Council of Justice a court endures ‘delay’ if the fixation period exceeds four months. Therefore, the optimal fixation period of four months is included in our proposal. In Antwerp, the average fixation period for our cases amounts to nine months (+125% above the proposal), compared to five months in Hasselt. This shows that in Antwerp the relative backlog is more substantive and significant.

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improvements will have to be made to effectively cut the fixation period by five months. Unfortunately, the court of Tongeren was not able to provide us statistics on the fixation period.

However, the fixation period cannot entirely be dubbed a “waiting period” for parties, since they will (at least partly) make ‘use’ of this period to exchange pleadings in preparation of the case. In the hypothetical case that no backlogs would be present, parties would still require some time in between the introductory hearing and the actual trial hearing for preparing the case. Therefore, classifying the entire period between the two hearings as ‘delay’ would be a misrepresentation of reality. However, if we notice that the exchange of pleadings takes up less time than the fixation period (as is the case in Antwerp), the remainder of the fixation period can surely be described as ‘actual delay’. Therefore, in Antwerp the actual average delay (fixation period – the preparation stage of the parties) is 4.4 months or 132 days. Currently, Belgian legislation already states that there should be at least one month between the exchange of the final pleading and the trial hearing to give parties sufficient time to examine the final pleadings in detail. The new policy proposal would follow this reasoning and keep in place one month of actual delay since they assume an optimal fixation period of 4 months and a maximum of 3 months for exchanging pleadings. Notably, no actual delay exists in Hasselt since the pleading stage and fixation period both amount to 150 days.

Looking at the third stage of court proceedings, we find that the deliberation of the judge on the final verdict takes on average 30 days in Antwerp and 33 days in Hasselt. Interestingly, the deliberation of the judge in Tongeren requires 53 percent more time. This could indicate that Tongeren is faced with a higher workload compared to Hasselt and Antwerp. Currently, Belgian legislation foresees an optimal time span of 30 days for judge deliberation (this is however not enforced), which will be maintained in the new policy proposal, meaning that Tongeren has to reduce its deliberation time by over 50%. The question arises what causes these differences in judge deliberation time between our three courts. Although the goal of this paper is not to examine the potential causes for differences in judge deliberation, we take a look at the construction caseloads to see whether this could account for some of the discrepancies. One could imagine that the workload of the construction judge in Tongeren is higher, resulting in a prolonged deliberation stage. Therefore, Table 6 gives an overview of the absolute caseload26 of construction cases as well as the average caseload per judge.

<table>
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<tr>
<th>Construction caseload</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
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<tbody>
<tr>
<td>Absolute caseload Antwerp</td>
<td>1279</td>
<td>1503</td>
<td>1766</td>
<td>1967</td>
<td>2118</td>
<td>2023</td>
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<tr>
<td>Absolute caseload Hasselt</td>
<td>541</td>
<td>607</td>
<td>745</td>
<td>701</td>
<td>602</td>
<td>597</td>
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<tr>
<td>Absolute caseload Tongeren</td>
<td>245</td>
<td>258</td>
<td>359</td>
<td>359</td>
<td>286</td>
<td>257</td>
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<tr>
<td>Caseload per judge Antwerp</td>
<td>365</td>
<td>429</td>
<td>505</td>
<td>562</td>
<td>605</td>
<td>578</td>
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<tr>
<td>Caseload per judge Hasselt</td>
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<td>607</td>
<td>745</td>
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<td>359</td>
<td>286</td>
<td>257</td>
</tr>
</tbody>
</table>

It becomes apparent from Table 6 that over the years the absolute caseload in Antwerp is 5 to 7 times higher compared to Tongeren and 2 to 3 times higher than Hasselt. The caseload of construction cases in Hasselt is about twice the volume of the caseload in Tongeren. Furthermore, we see a strong increase in caseload in Antwerp over time, while in Hasselt and Tongeren the increase in cases is only present before 2012.

Subsequently, we should also look at the average caseload per judge (measured in FTE) handling construction cases. In Antwerp, the number of judges available for construction cases varies over the years between 3 and 4 full time equivalents. In Hasselt and Tongeren there is only one construction judge (i.e. 1 FTE). Apparently, the prolonged deliberation stage in Tongeren cannot be explained by a higher workload since the average caseload per judge is the lowest in Tongeren. Remarkably, the judge in Hasselt faces a caseload twice the magnitude of Tongeren and only needs 33 days to reach a verdict. Comparing the caseload and number of judges between Hasselt and Antwerp shows that the average caseload per judge is quite similar. Another explanation of the prolonged judge deliberation in Tongeren could be the fact that the judge handling construction cases has changed multiple times in the time span of our analysis, as opposed to the other two courts. This impedes judge specialization and could (at least partly) account for the difference in the deliberation stage.

26 Caseload of a certain year t is measured by the sum of the incoming cases in t and the pending cases of previous years.
8. Conclusion

Since the nineties, Belgian ministers of Justice have pointed to the excessive duration of trials as one of the most alarming problems facing the judiciary. Still, effective and coherent policy measures to reduce the disposition time remain scarce. One of the main reasons often put forward for the ineffectiveness of existing policies is the lack of high quality data on the duration of (certain stages of) court proceedings. This inability of courts to provide trustworthy data stems from both the lack of an adequate IT management system for case registration (the current system is still MS-DOS operated) as well as the diverging registration methods of the civil registry staff. In our discussions with legal actors, we noticed that no consensus emerged concerning the determinants of the excessive trial durations. Therefore, we conducted a survey among lawyers to elicit their perception on the occurrence of delays during court proceedings. A majority of respondents indicates that half of their caseload experiences a more than ‘reasonable’ expected disposition time. A third of our respondents even indicates that this was the case for 70 percent of their caseload. Not surprisingly, lawyers mainly attribute the delays to the courts and more than 52 percent of the respondents indicates that calendar delays are usually or always endured in their cases. Surprisingly, lawyers indicate that they frequently or usually are responsible for delays in more than 40 percent of their cases.

Naturally, the perceptions of lawyers cannot provide sufficient insights into the causes of delay. Therefore, this paper assesses the disposition time in Belgian construction cases for three first instance courts by exploiting a unique hand-collected dataset of 238 construction cases resolved between 2008 and 2014. Although these courts are part of the same jurisdictional resort, they have separate management and operating cultures and differ in size. However, the complexity of the cases handled in each court is comparable.

The average disposition time of our sample of construction cases amounts to 426 days. This number strongly differs between our three courts: Antwerp 355 days, Hasselt 571 days and Tongeren 741 days. We examined the relative proportion of which each legal actor (parties, judge, civil registry and experts) was in control of the case. Surprisingly, we find that the relative shares are quite similar between all three courts. In our sample, parties on average account for 40 percent of total disposition time, judges for 23 percent and experts for 9 percent. Finally, we see that the average calendar delay takes up almost 23 percent (i.e. 107 days) of overall disposition time. However, due to the discrepancy in disposition times, the average time spent on a case is much higher for each actor in Tongeren than in Antwerp (and to a lesser extent Hasselt). For example, the mean of the calendar delay in Tongeren amounts to 117 days compared to 91 and 55 in respectively Hasselt and Antwerp.

After analyzing the overall disposition time, we look into some potential causes for the differences among the courts. Discussions with the judges and the court presidents revealed that the customs of the judges in our three courts differ significantly. For instance: in Tongeren, procedures are put on hold at request of one of the parties, while in Antwerp mutual consent of all parties is required. We see that in Tongeren 24 percent of the cases are put on hold, while this is only 10 percent in Antwerp. Furthermore, in Tongeren and Hasselt the request for the appointment of an expert occurs by exchanging written pleadings, while in Antwerp this request has to be made (orally) at the introductory hearing and is settled instantly. Additionally, in Antwerp judges regularly deny a request for the appointment of an expert, while this is rarely the case in Tongeren and Hasselt. In 36 and 32 percent of our cases from Tongeren and Hasselt an expert was appointed, compared to 21 percent in Antwerp. The duration of the expert assessments is monitored more strictly by the court in Antwerp, which accounts for significantly shorter durations of this stage of the case.

Our results also show that the total time the judge is active in a case strongly differs between our three courts. In Tongeren this amounts to 91 days versus 81 days in Hasselt and 43 days in Antwerp. The main reason is that the judge in Tongeren renders more interlocutory judgements, for instance for the appointment of an expert. When looking at the duration of the deliberation on the final verdict, we notice that the judge in Tongeren requires on average 46 days compared to 30 days in Antwerp and 33 days in Hasselt. Remarkably, the caseload per judge is lower in Tongeren and can thus not account for the prolonged deliberation. Since we have no information on the quality of the verdicts of the various courts, we cannot assess whether the quality of verdicts from Tongeren is superior.

In conclusion, we clearly see that although three courts operate under the same legal procedural rules, the implementation or interpretation of these rules strongly differs even between neighboring courts operating in the same jurisdiction. In Tongeren, where the (sole) judge responsible for adjudicating construction cases has changed multiple times between 2008 and 2014, less experience and consistency is present and parties are granted a higher autonomy during the resolution of the case (leading to higher disposition times). Although the judge is only ‘in control’ of the case in 23 percent of the overall disposition time, our cross-court comparison indicates that their impact on the duration of other stages of the case disposition should not be underestimated.
Finally, we discuss a proposal of the current Belgian minister of Justice to tackle disposition times. One of the main ideas in this proposal is to put in place a binding deadline of three months for the exchange of pleadings. As shown above, this could have a significant impact on the total overall disposition time. However, the overall effectiveness of the proposal will be determined by the extent to which judges are legally required to strictly enforce these time limits. In the past, many legally binding have not been enforced and therefore proved to be rather ineffective.
## 9. Appendix

<table>
<thead>
<tr>
<th></th>
<th>Antwerp</th>
<th>Hasselt</th>
<th>Tongeren</th>
</tr>
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</tbody>
</table>
10. References

Bill amending the Judicial Code on expert assessments, House of Representatives, 2005-2006, 51-2540/001


World Bank. (2014). World Development Indicators.