

JuWiLi - Justice Without Litigation



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Executive Summary - Economic Analysis

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Executive Summary

Legal certainty, an implicit feature of a well-functioning socio-economic environment, is ensured via a well-defined legal framework as well as execution of the law by the legal professionals. Non-litigious legal proceedings that are usually determined within the existing legal structure constitute an important aspect of Civil Law legal systems. Usually, the Courts and Judges play the role of the impartial executer of the Law of the Land. How this work is done, and the efficiency of this process defines the level of Legal Certainty in an economy.

In Hexagonale countries (except Slovenia), the Civil Law Notaries (Notaries) perform duties as Court Commissioners in case of Succession cases as well as in some non-litigious cases. From an economic point of view, this can be seen as outsourcing certain duties of the court, or in other words saving public resources in certain private transactions.

Law being the basis of civilisation, it is extremely important to see whether this outsourcing results in efficiency gains without affecting the level of Legal Certainty. Thus, this project begins the vital task of examining the situation in terms of available data as well as the existing legal framework in the six Hexagonale countries to develop a structure that can contribute to the measurement of efficiency, accessibility and quality parameters for the outsourced areas of law.

The main objective of the project was to study the non-contentious legal procedures and processes that are in place in the Hexagonale countries and the role of the Notaries in these procedures. The economic section of the project focused its attention specifically on the socio-economic impact of Civil Law Notaries carrying out some of the court functions in the countries under observation. As it is well known, the traditional role of Civil law Notaries in non-contentious legal process can be summarised as follows:

- Draft legal instruments that simultaneously take into account the intention of the concerned individual or individuals (entities) as well as the legal requirements for the specific purpose.
- Authenticate legal instruments after making sure the legality of the document, which then becomes legally enforceable.

- The civil law notary also acts as a public repository of legal instruments and document that he or she authenticates.

The specific characteristics of neutrality and enforceability again reinforces the view that the Civil Law Notaries have the legal authority to execute non-contentious legal proceedings in an orderly manner. In this sense, the role of the Notaries in Austria, Czechia, Croatia, Hungary and Slovakia as court commissioner emphasizes the importance of the Notaries in non-contentious proceedings. However, there has been no study carried out, so far, to specifically measure the impact of outsourcing court functions to Notaries in non-contentious legal proceedings.

The JuWili project, conceptualized and executed through collaboration between professionals and academics from a multidisciplinary background has endeavoured to fill this vacuum. Since the project partners are the Hexagonale countries with extensive legal transaction between them, and with one country, namely Slovenia being the only one where notaries don't act as court commissioners, it was decided early on to use Slovenia as a benchmark for assessing the socio-economic impact of outsourcing some court functions to Notaries.

It should be noted here that since succession proceedings are one of the most common cases among the Hexagonale countries where data was available and Notaries (except in Slovenia) acted as court commissioners, we will pay special attention to the succession cases. Furthermore, keeping in mind that even among the Hexagonale countries there exists many differences in terms of income, legal network etc. we proceeded to examine the characteristics of legal services network in European nations and the relative place the Hexagonale countries occupied within the European scene.

Chapter 2 examines the existing legal infrastructure in some of the European countries in terms of public and private expenditure on legal services as well as supply of legal services. Expenditure on Law Courts from the government determines the state of public legal services that depends on the number of legal and non-legal staff in courts and their competency, the equipment at their disposal and the network of physical court houses at the disposal of the citizens. Hexagonale countries do not present any common feature that can distinguish them from the other European nations as the variables in question are distributed across the range with Slovenia at highest level within the

Hexagonale countries in case of per capita public expenditure on law courts. Access to unbiased legal services in terms of number inhabitants per first instance courts and notary offices across Europe was also examined in this chapter which stressed the differences that exist within Europe.

The data concerning the number of cases in courts and with the notaries is rather difficult to assess as the classification and definition of cases varies from country to country and is usually not within the scope of the task of the analysts. We have used publicly available CEPEJ data extensively throughout the report, and keeping in mind the comments of countries in the CEPEJ¹ data files we have used the number of civil cases (defined as other than criminal cases (OTC)) to provide a glimpse into the demand for legal service in non-criminal areas. In order to account for variations over time, we have taken the average over 5 observations for 5 years. According to the data, the number of OTC per 100 inhabitants varies widely with numbers in Austria and Slovenia being the highest among the Hexagonale countries.

Keeping in view the divergent characteristics in legal expenditure as well as supply and demand for legal services, chapter 3 proceeds to show the resolution rate of succession cases in relation to other cases in the individual Hexagonale countries. Here we examine the data pertaining to the activities carried out by the courts as well as the Notaries in the Hexagonal countries only so that we can focus on the publicly available data from the CEPEJ database, geographical location data of the Notary offices and the courts along with the data collected by through the questionnaire to present a comparative analysis of the case flow situation in the Hexagonale countries.

In Chapter 4, we present the data collected through our survey² as well as data from the Austrian Ministry of Justice and publicly available CEPEJ data to compare the effect of notary acting as court commissioner.

¹ We would like to thank CEPEJ statistics team for initial clarifications and would like to reiterate that the data should be considered along with the disclaimer provided at the end of the report.

² We would like to thank the Chamber of Notaries on the Hexagonale countries for diligent attention to details in collecting the data. A special thanks to the Austrian Chamber of Notaries for arranging an electronic survey as well as assistance in collecting data from the Austrian Ministry of Justice.

The process for succession cases as collected from the survey stands as follows:

- Slovenia is the only country in the Hexagonale where the Notaries do not act as court commissioners. So, all the stages of the process, 1. Receipt of the case, 2. Processing of the case, 3. Delivery of decision on the case, are carried out by the responsible court.
- In Hungary and Croatia, Notaries, acting as court commissioners, carry out all the 3 tasks. (Full data on Hungarian Succession proceeding were not available)
- In Czechia and Slovakia, the Notaries, while acting as court commissioners, are responsible for 2nd and 3rd stages of the process.
- In Austria, the Notaries act as court commissioners, but only deal with the middle section of the process; the first (receipt of the cases) and the last (delivery of decision) are dealt with by the respective courts.

Thus, it should be evident that similar cases should take least amount of time in Slovenia, Croatia and Hungary, and in Austria it should be the highest. This is due to the loss of time in handing over the cases from one legal entity to another as most of the succession proceedings are done on paper files takes time.

However, it was seen that the average disposition time (uses in this analysis as one of the main indicators of efficiency) is the lowest in Croatia and the highest in Slovenia even though succession cases per 100 inhabitants in Slovenia is the lowest and in Croatia the highest. As we have seen in the chapter 4, the data from Czechia and Slovakia may have included lingering succession cases resulting in higher disposition time. Individual data from Notary offices and districts further helped to identify the bottlenecks in the process.

As far as the quality element is concerned, it was also shown in the country-based analysis that the rate of appeals for succession cases was higher relative to other than criminal case only in Slovenia, where as it was significantly lower in all other Hexagonale countries. This implies a quality distinction among the Hexagonale countries.

For accessibility, we used detailed information on the mapping from local authority units to the corresponding court district, notary district and notary. We

could see that the average number of citizens a notary is responsible for is substantially smaller than the one in the context of court districts. This finding is based on the fact that notarial offices are, in most cases, well spread in the country in terms of distance as well as in terms of the number of inhabitants in the various regions.

Acknowledgment: In this study we have extensively used publicly available CEPEJ data and Research Publications by CEPEJ. We have followed the protocol provided below to best of our knowledge.

Protocol CEPEJ public data

CEPEJ public data can be used only under certain circumstances:

- *to fully comply with the methodology adopted and followed by the CEPEJ for the drafting of its report “European judicial systems – CEPEJ Evaluation Report”, namely to use the data in connection with the comments submitted by the CEPEJ national correspondents for each question (specific comment and general comment);*
- *to mention that the CEPEJ is the source of these data;*
- *if the CEPEJ data is presented jointly with data from other sources, including in same tables or graphs, clearly identify the data from the CEPEJ;*
- *if these data are used within analyses, the text below should be mentioned:
“The information and positions presented in this study/publication are those of the authors and do not necessary reflect the official position of the CEPEJ. In this study, the CEPEJ is only one of the data sources used, and the CEPEJ does not guarantee the accuracy of the analyses, opinions and/or conclusions of this study/publication. Neither the CEPEJ nor any person acting on behalf of the CEPEJ can be held responsible for any use that might be made of the information contained therein.”*

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