

JuWiLi - Justice Without Litigation



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Conclusion: Policy Recommendations

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Conclusion: Policy Recommendations

Economica as part of the Economic Working Group conducted this economic study with the aim to shed light on the role of civil law notaries in non-contentious legal proceedings when the notary acts as court commissioner. The Hexagonale countries, with the exception of Slovenia, have notaries acting as court Commissioners in various non-contentious legal proceedings, succession proceedings being the most common among them. The goal was to view this transfer of responsibility as the outsourcing of legal services from the public sector (i.e., law courts) to the private sector (i.e., notaries). Before drawing any viable conclusion and policy implications, we have to note the two most important underlying assumptions:

- Civil law notaries act with neutrality and without prejudice which is similar to the law courts;
- The monetary cost of the service in question to the private individual is either the same when it is delivered by the court or the notary, or the payment by the private individual to the notary is less than the payment to the court. This assumption is necessary since we do not have consistent data on the prices of different services.

Even when the court fee was lower, it should be noted that the law courts are financed by taxes implying that the economy as a whole pays for the cases handled. Succession cases are non-contentious and are cases specific to private individuals regarding private benefits. Thus, besides the fee that the individual pays the court or the notary, the court logistics and infrastructure are public property, and availing services of the court in private cases amount to the whole society paying collectively for the benefit of private individuals. This is specifically true since civil law notaries, by definition, act with impartiality and can carry out non-contentious cases with equal objectivity.

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The information obligation according to the General Data Protection Regulation is met with the following data protection declaration (www.notar.at/oenk-dse). If requested, the text of the policy will be sent to you by mail.

Project partners: Chambers of Notaries of Austria, Croatia, Czechia, Slovakia & Slovenia, University of Vienna & Graz, Economic Research Institute Economica, Council of Notaries of the European Union (CNUe). Friends of the project: Chambers of Notaries of Hungary, Italy, Alsace/France, Austrian & Czech Ministry of Justice.

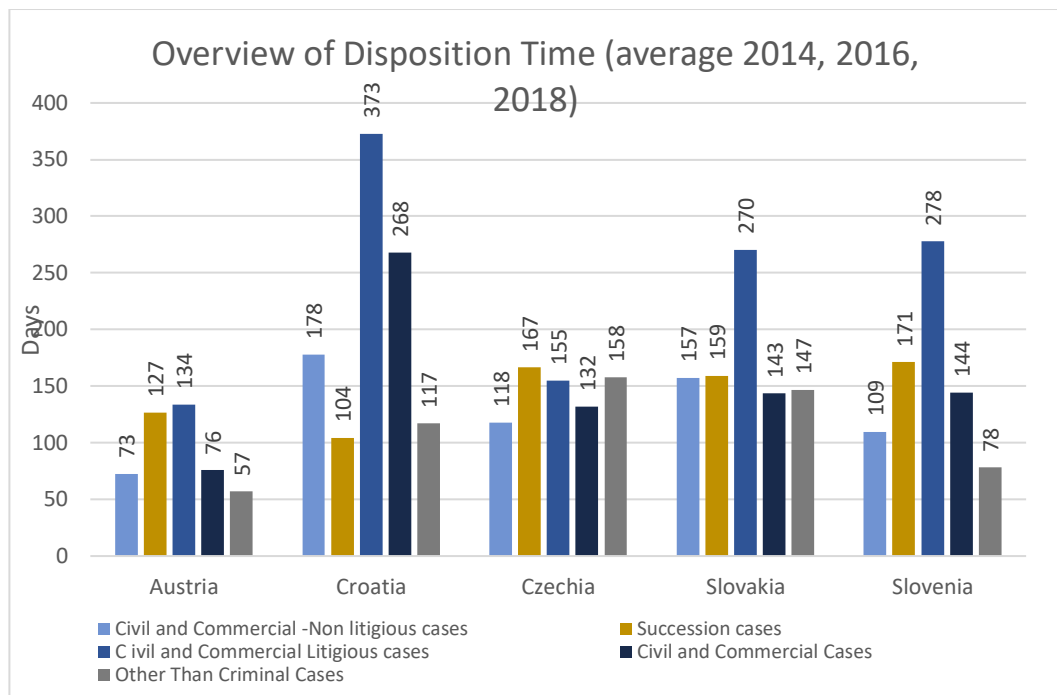
We have collected the data from the Chambers of notaries in the Hexagonale countries on various processes and tasks of the notaries where they act as court commissioners. We have also compiled data on public and private spending on legal services. The purchasing power parity-adjusted public expenditure on law courts per capita, as well as the percentage of public expenditure directed towards law courts were the highest in Slovenia among the Hexagonale countries in 2018. Correspondingly, the density of courts in relation to inhabitants was the highest in Slovenia. Private expenditure per capita, which is positively correlated to GDP per capita, was the highest in Austria.

For consistency, we have only used succession cases to draw conclusions. The process as collected from the survey stands as follows:

- Slovenia is the only country within the Hexagonale countries where 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 decisions 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 proceedings were not available.)
- In Czechia and Slovakia, the notaries, while acting as court commissioners, are responsible for the 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) sections are dealt with by courts.

Though commenting on the judicial processes is not within the scope of this study, it can be inferred that similar cases should take the least amount of time in Slovenia, Croatia and Hungary, whereas 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 which takes time.

However, as can be seen in the following diagram, the average disposition time (used 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 are least frequent and vice versa in Croatia . As we have commented in the report, the data from Czechia and Slovakia may have included lingering succession cases resulting in higher disposition time.



Similarly, it was also shown in the country-specific analysis that the rate of appeals for succession cases were higher relative to other than criminal cases only in Slovenia, whereas it was significantly lower in all other Hexagonale countries. This implies a quality distinction among the Hexagonale countries.

Accessibility analysis has shown that the distribution of notary districts provides a comparatively higher level of access to legal services in Croatia and Austria among the Hexagonale countries.

Keeping in mind all the comparative statistics that we have examined in the study and the hurdles faced in terms of data, one can conclude with a few observations and some opportunities for improvement in certain areas:

1. An overall picture arises from the study to suggest that, at least in the area of succession cases, the notaries deliver decisions faster. Whether this can lead to more responsibility in the hands of notaries is a matter of judicial policy. From the statistical point of view, if the capacity allows for it, expanding the notarial responsibility to other non-contentious cases may reduce disposition time in those non-contentious cases.
2. In Croatia, where the succession cases are completely handled by notaries, disposition time is the lowest implying that a move towards expanding the involvement of the notaries in Austria to the stage one and three of the succession cases may result in gains in efficiency by reducing the transaction costs across different stages.
3. As far as the data collection was concerned, even with substantial support from the Chambers of the notaries, it was difficult to get distinct numbers that are well defined in terms of year of receipt and year of resolution.
4. The definition of types of cases should be uniform among all counties so as to be able to compare the efficiency and quality parameters correctly.
5. As we have noted from the discussions with the chambers, the succession proceedings are usually carried out through paper file transactions. The introduction of a digital form of communication and transaction between clients, notaries and courts will substantially improve the time factor in the efficiency area.
6. The digital transfer of files between notary offices in different districts may be used to clear backlogs in certain countries or districts.

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