

# Court Disposition Time in Brazil and in European Countries

TEMPO DO PROCESSO JUDICIAL NO BRASIL E EM PAÍSES EUROPEUS

Caio Castelliano<sup>1</sup> e Tomas Aquino Guimaraes<sup>2</sup>

## Abstract

The length of judicial proceedings is an important subject on the agenda of social researchers, policy-makers, politicians, legal practitioners, and court administrators in several countries. Whether the court disposition time in a country is reasonable or not is a matter of debate. Brazilian courts are usually perceived to be slow. This study investigates whether court delay is a real problem or merely a perception. The duration of civil cases in Brazil is measured by international standards and then compared to those in European courts. The disposition time in Brazilian first-instance courts takes 600 days, almost three times longer than the European average (232 days). In Brazilian second-instance courts, it takes 320 days, 50% longer than in Europe (215 days). However, the number of cases decided in those courts exceeds the number of new incoming cases, which means that the backlog and the disposition time in Brazilian courts are decreasing. These data are discussed in this paper and a research agenda and management recommendations are proposed later on this document.

## Keywords

Court delay; civil cases; case backlog; disposition time; clearance rate.

## Resumo

O tempo do processo judicial é um assunto relevante na agenda de pesquisadores sociais, gestores de políticas públicas, políticos, profissionais do Direito e administradores do sistema de justiça. Se o tempo de processos judiciais em países específicos deve ser considerado razoável ou não, isso permanece uma questão em aberto. Os tribunais brasileiros são percebidos como lentos. Esse estudo investiga se o atraso judicial é um problema real ou apenas uma percepção enviesada. A duração de processos cíveis no Brasil é mensurada com o uso de padrões internacionais e, então, comparada com a duração em tribunais europeus. O tempo dos processos judiciais em tribunais de primeira instância é de 600 dias, quase três vezes maior que a média na Europa (232 dias). Nos tribunais brasileiros de segunda instância, o tempo de duração (320 dias) é 50% maior que na Europa (215 dias). No entanto, o número de processos decididos nos tribunais brasileiros é maior que o número de novos casos, o que significa que o estoque de processos e o seu tempo de duração têm uma tendência de queda. Esses dados são discutidos neste artigo, e também são propostas recomendações gerenciais e uma agenda de pesquisa.

## Palavras-chave

Atraso judicial; casos cíveis; estoque de processos; tempo de julgamento; índice de atendimento à demanda.

**1** Universidade de Brasília, Brasília, Distrito Federal, Brazil  
<https://orcid.org/0000-0001-6841-8102>

**2** Universidade de Brasília, Brasília, Distrito Federal, Brazil  
<https://orcid.org/0000-0001-9261-2407>



## INTRODUCTION

Brazilian citizens believe that court delay is an issue in Brazil (FGV, 2017; AMB, 2019; CNJ, 2019). The Brazilian judicial system may be violating the constitutional rule according to which cases should be decided in a ‘reasonable time’. What constitutes a reasonable time is an open theoretical question, normally debated by legal scholars. However, what constitutes court disposition time is an empirical issue that can be measured and compared. In order to investigate whether court delay is a real problem or merely a perception, empirical studies can (1) measure court disposition time in Brazil, and (2) compare the results with other countries’.

The obstacle of court delay occurs in Asian and African countries, such as China (JIANG, 2005), India (HAZRA and MICEVSKA, 2004; CHEMIN, 2010), Nepal (GRAJZL and SILWAL, 2020) and Senegal (KONDYLIS and STEIN, 2018), in Latin American countries (BUSCAGLIA and ULEN, 1997) and in parts of Europe (BIELEN, MARNEFFE and VEREECK, 2015). European countries are substantially attentive to court disposition time. The European Convention on Human Rights, published in 1950, states that “everyone is entitled to a fair and public hearing within a **reasonable time**” (Article 6). The European Commission for the Efficiency of Justice (CEPEJ) examines court disposition time in more than 40 countries by using common statistical criteria and means of evaluation (CEPEJ, 2018). The data collected is publicly available on CEPEJ’s official website. The long tradition of CEPEJ in measuring court disposition time, the extensive and diverse list of countries measured, and the availability of data make European countries a suitable standard for comparison.

The length of cases can be measured by different methods. The Brazilian National Council of Justice (CNJ) applies the traditional method of measuring the number of days between the starting point (the day the case was brought to court) and the final point (the day the case was decided). For each of them, the number of days is calculated, and court disposition time simply means cases decided by that court in a specific period, such as a year.

Some problems may arise from this method. Firstly, excluding the large number of pending cases may end up distorting the results. Moreover, the number of days tends to increase when older cases (with longer duration) are decided. It may seem that the court performance is deteriorated, but it is, in fact, improved by removing old cases from the backlog.

To overcome this issue, CNJ uses a separate measure for the pending cases, however, it is also biased. All pending cases are considered resolved on a specific date, usually the last day of the year. Their real length is much longer, as they will run for many days or even years after the arbitrary cut-off date. Besides being biased, this ‘dual method’ (intended for decided and pending cases) increases the complexity of the analysis. It is not clear whether the court disposition time is increasing or not, considering that the length of decided cases decreases as the length of pending ones increases. It also complicates comparisons between different courts. If Court A is faster in decided cases and Court B is faster in pending cases, it is hard to say which one of them is preferable.

A statistical technique known as ‘survival analysis’ resolves some of these difficulties by considering both decided and pending cases in the same analysis (GRAJZ and ZAJC, 2017). The use of survival analysis in the field of law and economics is increasing and some studies based on this technique have been published (e.g. BIELEN *et al.*, 2016; GRAJZ and ZAJC, 2017; PROCOPIUK, 2018). The major concern of survival analysis is that it requires case-level data, which is very difficult to obtain, especially for international studies comparing different countries.

The European Commission for the Efficiency of Justice uses the *backlog index* (also known as the *Capelletti-Clark index*) to assess court disposition time in European countries (CEPEJ, 2018). This index is defined as the number of pending cases at the end of the year, divided by the number of cases resolved (CLARK and MERRYMAN, 1976). It indicates the number of years the system would take to resolve all pending cases (*backlog*) and it can also be interpreted as the average length of a case in the court (CASTRO, 2009). Some studies evidence a correlation between this index and the actual procedural times per case. The index approximates both the median and the mean of actual duration, representing a consistent measure of central tendency (BUSCAGLIA and DAKOLIAS, 1999). Several studies have used the backlog index as a measure of case duration (e.g. MURRELL, 2001; CHEMIN, 2009; CASTRO, 2009). According to the CEPEJ, this ratio “allows comparisons within the same jurisdiction over time and, with some prudence, between judicial systems in different countries” (CEPEJ, 2018, p. 238).

To assess whether courts are keeping up with the incoming caseload, CNJ and CEPEJ monitor the *clearance rate*, obtained by dividing the number of decided cases by the number of incoming ones, expressed in a percentage (CNJ, 2020; CEPEJ, 2018). A clearance rate close to 100% indicates that the court resolves approximately as many cases as it enters during the period. A clearance rate above 100% indicates the ability of the court to resolve more cases than it receives, reducing the number of pending cases (*backlog*). A clearance rate below 100% means the number of incoming cases is higher than the number of decided cases, which increases the number of pending ones.

The case backlog of a court may be built up over several years, and the backlog index reflects past performance. Court disposition time is an indicator of present conditions. The clearance rate indicates future trends, as it shows whether the backlog will increase or decrease. The combination of backlog index and clearance rate reveals a general picture of the pace of cases in courts. Surprisingly, no study was found comparing the backlog index of Brazilian courts to the index of other countries. The clearance rate was uniquely used in one cross-country study (DAKOLIAS, 1999), however, the research considered only two Brazilian cities (São Paulo and Brasilia) and it was produced a long time before the collection of official judicial data by the Brazilian National Council of Justice.

Since there aren’t any studies that compare the duration of cases in Brazil to that of other countries, it is hard to know whether court disposition time in Brazil is excessive or not. To

fill in this gap in the literature, the present study (1) measures court disposition time in Brazil, using the backlog index, (2) measures the trend in court disposition time in Brazil, using the clearance rate, and (3) compares the results with the same performance indicators in European countries.

## I. METHOD AND DATA

International comparisons of the length of judicial proceedings are complex and inaccurate, due to the differences between judicial structures, economic situations, demography, and legal characteristics from one country to another. One traditional international comparison considering judicial systems from different countries is carried out by The European Commission for the Efficiency of Justice (CEPEJ). Since 2004, the commission has undertaken a regular process of evaluating the judicial systems of the Council of Europe member states. The data used by CEPEJ is provided by each country every two years. Each national correspondent answers a list of questions, using a specific collection system. All correspondents must read the explanatory notes carefully before replying to each question. This procedure promotes a common understanding and produces uniformity in the collection of data (CEPEJ, 2018). Therefore, the commission achieves data with a reasonable level of comparability between very different countries.

According to CEPEJ, focusing on civil and commercial litigious cases offers a clearer picture for comparative analysis as there are fewer differences in the definition used by different states (CEPEJ, 2018). The analysis produced by CEPEJ includes more than 40 countries with different judicial traditions, including civil law countries (e.g. Italy, Spain, Portugal), the same system adopted in Brazil. Considering the large number of countries analyzed by CEPEJ and the inclusion of some civil law countries, it seems reasonable to compare Brazil to European countries based on civil and commercial litigious cases.

The greatest methodological challenges of this study are (1) to understand the criteria used by CEPEJ to define “civil and commercial litigious cases” and (2) to apply these criteria in the Brazilian context. Serious flaws in either of those steps would affect the fairness of the comparison between Brazilian and European courts. Table 1 addresses both challenges, by displaying that CEPEJ in Europe and CNJ in Brazil adopt comparable criteria to define “civil and commercial litigious cases”.

TABLE 1 – JUDICIAL DATA COMPARABILITY BETWEEN EUROPE AND BRAZIL

CRITERIA FOR DATA SELECTION	EUROPE	BRAZIL
DOES IT INCLUDE TYPICAL CIVIL AND COMMERCIAL CASES?	YES  “OTHER THAN CRIMINAL – CIVIL AND COMMERCIAL LITIGIOUS CASES” IS THE CATEGORY CONSIDERED IN THE ANALYSIS. IT INCLUDES FAMILY LAW CASES, DISPUTES REGARDING CONTRACTS, AND COMMERCIAL LAW CASES. DIVORCES AND BANKRUPTCY PROCEEDINGS ARE EXAMPLES OF CASES BELONGING TO THIS CATEGORY (CEPEJ, 2017).	YES  IN BRAZIL, CIVIL AND COMMERCIAL CASES SUCH AS FAMILY CASES, DISPUTES REGARDING CONTRACTS AND BANKRUPTCY PROCEEDINGS ARE TYPICALLY ADDRESSED BY STATE COURTS. FOR THIS REASON, DATA INCLUDED NON-CRIMINAL CASES IN STATE COURTS, LITIGATED BOTH IN COMMON AND SPECIAL PROCEDURES, AS SPECIFIED IN TABLES 2 AND 5.
DOES IT INCLUDE LABOR-RELATED CASES, ESPECIALLY EMPLOYMENT DISMISSALS (TERMINATION OF THE EMPLOYMENT CONTRACT AT THE INITIATIVE OF THE EMPLOYER)?	YES  THE CATEGORY “OTHER THAN CRIMINAL – CIVIL AND COMMERCIAL LITIGIOUS CASES” INCLUDES EMPLOYMENT DISMISSAL CASES. OTHER LABOR-RELATED CASES OF EMPLOYERS WORKING IN THE PRIVATE SECTOR ALSO BELONG TO THIS CATEGORY, AS THEY CANNOT BE CONSIDERED ADMINISTRATIVE (DISPUTES BETWEEN CITIZENS AND PUBLIC AUTHORITIES) OR CRIMINAL CASES (CEPEJ, 2017).	YES  BRAZIL HAS SPECIFIC COURTS FOR LABOR-RELATED CASES. FOR THIS REASON, DATA INCLUDED CASES LITIGATED IN LABOR COURTS, AS SPECIFIED IN TABLES 2 AND 5.
DOES IT INCLUDE ADMINISTRATIVE LAW CASES (DISPUTES BETWEEN CITIZENS AND PUBLIC AUTHORITIES)?	PARTIALLY  ADMINISTRATIVE LAW CASES ARE, IN SOME COUNTRIES, ADDRESSED BY SPECIAL ADMINISTRATIVE COURTS, WHILST IN OTHER COUNTRIES, THEY ARE HANDLED BY ORDINARY CIVIL COURTS. IF COUNTRIES HAVE SPECIAL ADMINISTRATIVE COURTS, SEPARATE ADMINISTRATIVE LAW PROCEDURES, OR ARE ABLE TO DISTINGUISH BETWEEN ADMINISTRATIVE LAW CASES AND CIVIL LAW CASES, THESE FIGURES ARE INDICATED SEPARATELY UNDER “OTHER THAN CRIMINAL – ADMINISTRATIVE LAW	PARTIALLY  ADMINISTRATIVE LAW CASES ADDRESSED BY SPECIAL ADMINISTRATIVE COURTS IN BRAZIL (SUCH AS FEDERAL AND MILITARY COURTS) ARE NOT INCLUDED IN THE ANALYSIS. TAX ENFORCEMENT CASES (WHEN THE GOVERNMENT FILES A NEW CASE TO COLLECT UNPAID TAXES) ARE ADDRESSED UNDER A SEPARATE ADMINISTRATIVE LAW PROCEDURE AND ARE RECORDED IN A SPECIFIC CATEGORY (DIFFERENT FROM NON-CRIMINAL CASES) WHICH IS NOT INCLUDED IN THE ANALYSIS. SOME ADMINISTRATIVE LAW CASES LITIGATED IN STATE COURTS

*(it continues)*

	CASES". WHEN THE DISTINCTION IS NOT POSSIBLE, CASES ARE RECORDED AS "OTHER THAN CRIMINAL – CIVIL AND COMMERCIAL LITIGIOUS CASES" (CEPEJ, 2017).	CANNOT BE DISTINGUISHED FROM CIVIL CASES AND REMAIN IN THE DATA.
DOES IT INCLUDE ENFORCEMENT CASES RELATED TO THE ABOVE ISSUES?	YES  ENFORCEMENT LITIGIOUS CASES (FOR EXAMPLE, A JUDICIAL APPEAL AGAINST DEEDS PROCESSED BY A BAILIFF) ARE INCLUDED IN THE CATEGORY "OTHER THAN CRIMINAL – CIVIL AND COMMERCIAL CASES" (CEPEJ, 2017).	YES  ENFORCEMENT CASES ADDRESSED BY BOTH STATE AND LABOR COURTS ARE INCLUDED IN THE DATA, AS SPECIFIED IN TABLES 2 AND 5.
DOES IT INCLUDE CRIMINAL CASES?	NO  CRIMINAL CASES BELONG TO A SEPARATE CATEGORY (CEPEJ, 2017) AND ARE NOT INCLUDED IN THE ANALYSIS.	NO  CRIMINAL CASES ADDRESSED BY STATE COURTS BELONG TO A SEPARATE CATEGORY AND ARE NOT INCLUDED IN THE DATA (THOSE CASES ARE NOT SPECIFIED IN TABLES 2 AND 5).
DOES IT INCLUDE REGISTRATION DUTIES, SUCH AS BUSINESS AND LAND REGISTERS (DUTIES PERFORMED BY SOME COURTS IN EUROPE)?	NO  BUSINESS REGISTERS AND LAND REGISTERS ARE CONSIDERED NON-LITIGIOUS CASES AND ARE RECORDED IN A SEPARATE CATEGORY (CEPEJ, 2017).	NO  IN BRAZIL, BUSINESS REGISTRATION AND LAND REGISTRATION ARE NOT PERFORMED BY COURTS.

Source: Developed by the authors.

The document "Explanatory Note to the Scheme for Evaluating Judicial Systems" (CEPEJ, 2017) offers a detailed explanation of all criteria used by the European Council. That document defines "civil and commercial litigious cases" to include typical civil cases, such as divorces and disputes regarding contracts; typical commercial cases, such as bankruptcies and enforcement litigious cases; and labor cases, such as employment dismissals (termination of the employment contract by initiative of the employer). Enforcement cases related to those issues are also included. The category does not include criminal cases, administrative cases (disputes between citizens and public authorities), and civil non-litigious cases, such as business and land registers (duties performed by some courts in Europe).

Aiming to apply those criteria as precisely as possible, a careful process of data collection and selection of Brazilian cases was carried out. In Brazil, civil and commercial litigious cases (such as family, contractual, and bankruptcy cases) are decided by state courts, whereas employment dismissals are decided by labor courts. Therefore, only cases filed in state and labor courts were considered. Cases filed in federal and military courts were not included, as those courts are responsible for deciding cases that are considered administrative under CEPEJ standards. Cases filed in electoral courts were also excluded as they are not civil or commercial litigious cases.

In state courts, all the non-criminal cases were considered, including the enforcement ones. However, tax enforcement cases (when the government files a case to collect unpaid taxes) were not included due to their administrative characteristics. Some other administrative cases filed in state courts remained in the pool, such as those filed by public servants against the state government or cases filed by citizens or companies against the tax authorities, as the available data is not enough to distinguish them from civil cases. This is not a serious concern, as some European countries face the same difficulty in including some administrative cases in the “civil and commercial litigious cases” category,<sup>1</sup> which affects a relatively small number of cases filed in Brazilian state courts.

All cases were considered in labor courts, including enforcement ones. Brazilian labor courts decide employment dismissals as well as other cases regarding professional relations between employees and employers, including moral damage or non-payment by employers. Although these cases are decided by labor courts in Brazil, they belong to the general category of “civil and commercial litigious cases” according to CEPEJ criteria and are included in the pool of cases analyzed.

Case disposition time in Brazilian courts was measured by the same formula adopted by CEPEJ (CEPEJ, 2018), obtained by dividing the number of pending cases at the end of the year by the number of decided cases within the same year, multiplied by 365 (days in a year):

$$\text{Court Disposition Time} = \frac{\text{Number of pending cases at the end of the year}}{\text{Number of decided cases during the year}} \times 365$$

...

1 CEPEJ argues that countries may be not able to distinguish between administrative and civil cases. “Administrative law cases are in some countries addressed by special administrative courts or tribunals, whilst in other countries, they are handled by the ordinary civil courts. If countries have special administrative courts/tribunals or separate administrative law procedures or are in any way able to distinguish between administrative law cases and civil law cases, these figures are indicated separately under administrative law cases” (CEPEJ, 2017, p. 20).

Clearance rates in Brazilian courts were also measured by the same formula adopted by CEPEJ (CEPEJ, 2018), obtained by dividing the number of decided cases by the number of incoming cases, expressed in a percentage:

$$\text{Clearance Rate (\%)} = \frac{\text{Decided cases in a year}}{\text{Incoming cases in a year}} \times 100$$

The Brazilian data was downloaded from the Brazilian National Council of Justice website<sup>2</sup> and covered the year 2019, the last available data at the time the research was carried out. Disposition time and clearance rate of European countries were obtained from CEPEJ website<sup>3</sup> and covered the year 2016, the last year available.

## 2. RESULTS AND DISCUSSION

The final dataset used in the research captures the majority of litigation in Brazil. The number of new incoming cases filed in first-instance courts (15,295,613) represents 63% of all new cases filed in Brazilian courts at that level.

In Brazil, cases filed in state courts may follow the common procedure or the special procedure (designed for small claims). There is a similar division in labor courts, however, the data provided by the National Council of Justice about labor courts does not make such a distinction, so all cases are reported in a combined group ('all procedures'). In the first-instance, cases may be in the judgment phase (when the case is not decided yet) or in the enforcement phase (when the judicial decision or an extrajudicial credit will be enforced). Considering the method described in the previous section, the disposition time and the clearance rate of civil and commercial cases in Brazilian first-instance courts are displayed in Table 2.

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<sup>2</sup> Available at: <https://www.cnj.jus.br/pesquisas-judiciarias/paineis-cnj/>.

<sup>3</sup> Available at: <https://www.coe.int/en/web/cepej/dynamic-database-of-european-judicial-systems/>.



TABLE 2 – **DISPOSITION TIME AND CLEARANCE RATE OF CIVIL AND COMMERCIAL CASES AT FIRST-INSTANCE COURTS IN BRAZIL**

COURT	PROCEDURE	PHASE	NEW CASES	PENDING CASES	DECIDED CASES	DISPOSITION TIME (DAYS)	CLEARANCE RATE	
STATE COURTS	COMMON	JUDGMENT	5,837,356	15,045,830	7,766,410	707	133%	
		ENFORCEMENT	1,838,812	6,161,576	1,728,814	1,301	94%	
	SPECIAL	JUDGMENT	3,815,940	3,892,411	4,394,600	323	115%	
		ENFORCEMENT	1,173,489	1,293,854	1,170,294	404	100%	
	LABOR COURTS	ALL PROCEDURES	JUDGMENT	1,814,400	1,243,785	2,304,063	197	127%
			ENFORCEMENT	815,616	2,416,904	924,348	954	113%
TOTAL		15,295,613	30,054,360	18,288,529	600	120%		

Source: Prepared by the authors based on CNJ data.

The disposition time of civil and commercial cases in Brazilian first-instance courts is 600 days, however, there is significant variation depending on the court, the procedure, and the phase of the case. The judgment of labor cases (197 days) is faster than the judgment in state courts, whether the judgment in the state court follows the common procedure (707 days) or the special procedure (323 days). Such a result is unexpected, considering that special procedures in state courts involve small claim cases which, in theory, are simpler to decide. The pace in the judgment of labor cases may reflect the specialization of those courts, the specific procedural rules for labor cases, or even the quantity and quality of available human resources. However, when it comes to disposition time in the enforcement phase, the special procedure (404 days) is faster than the common procedure (1,301 days) and the enforcement in labor courts (954 days). The maximum value of claims that follow the special procedure in state courts (40 times the minimum wage) may facilitate the enforcement of those cases. Cases following common procedure in state courts or cases brought to labor courts may be of any value.

The disposition time of judgments is always shorter than the time of the respective enforcement. This phenomenon occurs in state court common procedure (707 days in judgment vs. 1,301 days in enforcement), in state court special procedure (323 days in judgment vs. 404 days in enforcement), and labor courts (197 days in judgment vs. 954 days in enforcement).

The clearance rate of civil and commercial cases in Brazilian first-instance courts is 120%. It means that not only are first-instance courts coping with incoming cases, but also deciding cases in the backlog. The clearance rates during the judgment phase exceed the 100% threshold (133% in state court common procedure, 115% in state court special procedure, and 127% in labor courts). However, the clearance rates for enforcement are mixed. While they are high in labor courts (113%), they are around the 100% threshold in state court special procedure and low in state court common procedure (94%). There is a particular concern regarding the enforcement in state court common procedure, as it presents the highest disposition time (1,301 days) and the lowest clearance rate (94%) in the first-instance, which means that the backlog of those cases is increasing.

Tables 3 and 4 show the disposition time and clearance rates of civil and commercial cases in first-instance courts of Brazil and European countries.

**TABLE 3 – DISPOSITION TIME OF CIVIL AND COMMERCIAL CASES AT FIRST-INSTANCE COURTS IN BRAZIL AND EUROPEAN COUNTRIES**

<b>POSITION</b>	<b>COUNTRY</b>	<b>DISPOSITION TIME (DAYS)</b>
1	AZERBAIJAN	25
2	RUSSIAN FEDERATION	42
3	MOROCCO	86
4	LITHUANIA	88
5	LUXEMBOURG	91
6	UKRAINE	96
7	SWITZERLAND	107
8	NETHERLANDS	121
9	SLOVAKIA	130
10	AUSTRIA	133
11	ESTONIA	139
12	REPUBLIC OF MOLDOVA	140
13	CZECH REPUBLIC	153
14	ROMANIA	153
15	ALBANIA	159

*(it continues)*

16	HUNGARY	159
17	NORWAY	161
18	SWEDEN	164
19	DENMARK	176
20	ARMENIA	188
21	GERMANY	196
22	NORTH MACEDONIA	223
23	POLAND	225
24	GEORGIA	242
25	LATVIA	247
26	FINLAND	252
27	MONTENEGRO	267
28	SLOVENIA	280
29	SPAIN	282
30	PORTUGAL	289
31	SERBIA	315
32	ISRAEL	333
33	FRANCE	353
34	CROATIA	364
35	MONACO	372
36	TURKEY	399
37	MALTA	432
38	ITALY	514
39	BOSNIA AND HERZEGOVINA	574
<b>40</b>	<b>BRAZIL</b>	<b>600</b>
41	GREECE	610
	<b>EUROPEAN AVERAGE</b>	<b>232</b>

Source: Developed by the authors.

TABLE 4 – CLEARANCE RATES OF CIVIL AND COMMERCIAL CASES AT FIRST-INSTANCE COURTS IN BRAZIL AND EUROPEAN COUNTRIES

POSITION	COUNTRY	CLEARANCE RATE
1	SLOVAKIA	132%
2	FINLAND	125%
<b>3</b>	<b>BRAZIL</b>	<b>120%</b>
4	CROATIA	118%
5	BOSNIA AND HERZEGOVINA	115%
6	ITALY	113%
7	PORTUGAL	112%
8	CZECH REPUBLIC	110%
9	MALTA	107%
10	SLOVENIA	106%
11	GERMANY	103%
12	SPAIN	103%
13	AUSTRIA	102%
14	BELGIUM	102%
15	NORWAY	102%
16	ROMANIA	102%
17	RUSSIAN FEDERATION	102%
18	DENMARK	101%
19	LATVIA	101%
20	NETHERLANDS	101%
21	SWITZERLAND	101%

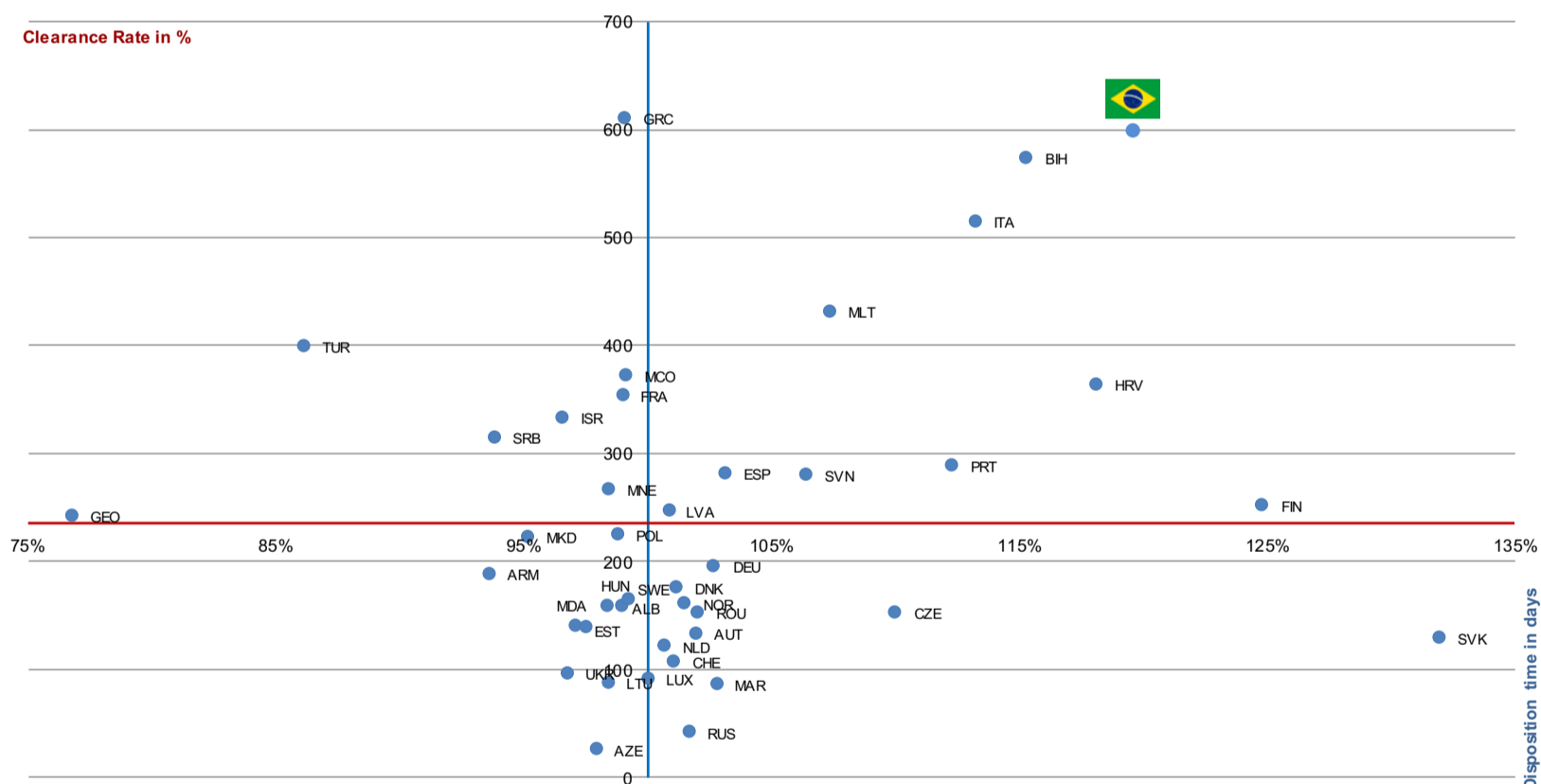
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22	LUXEMBOURG	100%
23	ALBANIA	99%
24	FRANCE	99%
25	GREECE	99%
26	MONACO	99%
27	POLAND	99%
28	SWEDEN	99%
29	AZERBAIJAN	98%
30	ESTONIA	98%
31	HUNGARY	98%
32	LITHUANIA	98%
33	MONTENEGRO	98%
34	REPUBLIC OF MOLDOVA	97%
35	UKRAINE	97%
36	NORTH MACEDONIA	95%
37	ARMENIA	94%
38	SERBIA	94%
39	TURKEY	86%
40	UK-SCOTLAND	79%
41	GEORGIA	77%
42	IRELAND	59%
	<b>EUROPEAN AVERAGE</b>	<b>100%</b>

Source: Developed by the authors.

As evidenced in Table 3, the average disposition time of civil and commercial litigious cases in Brazilian first-instance courts (600 days) is significantly higher than the average in Europe (232 days). It is also higher than in all European countries monitored by CEPEJ, except for Greece (610 days). On the other hand, as displayed in Table 4, the average clearance rate of civil and commercial litigious cases in Brazilian first-instance courts (120%) is higher than in almost all European countries. Only Slovakia (132%) and Finland (125%) achieve higher clearance rates than Brazil. A combination of disposition time and clearance rates of civil and commercial litigious cases at first-instance courts is shown in Figure 1, offering a complete background of the pace of cases in Brazil in comparison to European countries.

FIGURE 1 – CLEARANCE RATE VS. DISPOSITION TIME FOR CIVIL AND COMMERCIAL CASES AT FIRST-INSTANCE COURTS IN EUROPE AND BRAZIL



Source: CEPEJ (2018), adapted by the authors.

In Brazilian state courts, second-instance decisions may follow both common or special procedures. In Brazilian second-instance labor courts, there is a similar division, however, data provided by the National Council of Justice does not make such distinction, so all cases are reported in a combined group ('all procedures'). As the enforcement of cases is only applied in the first-instance, there is no division of phase (judgment or enforcement) in the second-instance. Considering the method described in the previous section, the disposition

time and the clearance rates of civil and commercial cases in Brazilian second-instance courts are shown in Table 5.

TABLE 5 – **DISPOSITION TIME AND CLEARANCE RATE OF CIVIL AND COMMERCIAL CASES AT SECOND-INSTANCE COURTS IN BRAZIL**

COURT	PROCEDURE	NEW CASES	PENDING CASES	RESOLVED CASES	DISPOSITION TIME (DAYS)	CLEARANCE RATE
STATE COURTS	COMMON	1,894,316	1,778,880	1,956,645	332	103%
	SPECIAL	805,881	702,283	836,884	306	104%
LABOR COURTS	ALL PROCEDURES	898,104	792,223	941,356	307	105%
		<b>3,598,301</b>	<b>3,273,386</b>	<b>3,734,885</b>	<b>320</b>	<b>104%</b>

Source: Developed by the authors based on CNJ data.

The disposition time of civil and commercial cases in Brazilian second-instance courts consists of 320 days, almost half of the time in first-instance courts (620 days). This result is expected considering that the collection of evidence in the second-instance takes less time than in the first-instance. Another possible reason is the absence of an enforcement procedure in the second-instance, resulting in an evidently time-consuming phase in the first-instance, as demonstrated above.

Tables 6 and 7 highlight disposition time and clearance rates of civil and commercial cases in second-instance courts of Brazil and European countries, evidencing a Brazilian clearance rate of around 104%. Although much lower compared to the clearance rate in the first-instance (120%), it is still above the 100% threshold, which means that second-instance courts are dealing with incoming cases and a reduced part of the backlog. The lower clearance rate is expected assuming that the backlog is smaller. Consequently, the pressure over second-instance judges to reduce the backlog is also smaller. It is also possible to evidence little variation in the clearance rates of second-instance courts, which are very close to the mean of 104%.

The average disposition time of civil and commercial litigious cases in Brazilian second-instance courts (320 days) is almost 50% higher than the average in Europe (215 days). As shown in Table 6, Brazilian second-instance courts are slower than 25 of the 33 countries monitored by CEPEJ. The clearance rate of 104% is higher than most European countries, as

indicated in Table 6, however, the position in the list (12<sup>th</sup> place) is not so consistent as the position of first-instance courts (3<sup>rd</sup> position).

**TABLE 6 – DISPOSITION TIME OF CIVIL AND COMMERCIAL CASES AT SECOND-INSTANCE COURTS IN BRAZIL AND EUROPEAN COUNTRIES**

<b>POSITION</b>	<b>COUNTRY</b>	<b>DISPOSITION TIME (DAYS)</b>
1	RUSSIAN FEDERATION	31
2	UKRAINE	54
3	ARMENIA	60
4	CZECH REPUBLIC	69
5	AZERBAIJAN	72
6	ESTONIA	95
7	SLOVENIA	97
8	SWITZERLAND	97
9	REPUBLIC OF MOLDOVA	100
10	SWEDEN	100
11	LITHUANIA	103
12	POLAND	105
13	TURKEY	109
14	NORTH MACEDONIA	111
15	PORTUGAL	114
16	HUNGARY	121
17	SLOVAKIA	121
18	LATVIA	124
19	ROMANIA	131

*(it continues)*



20	DENMARK	141
21	FINLAND	150
22	GEORGIA	153
23	SERBIA	180
24	SPAIN	181
25	GERMANY	245
<b>26</b>	<b>BRAZIL</b>	<b>320</b>
27	CROATIA	328
28	MONACO	435
29	BOSNIA AND HERZEGOVINA	462
30	FRANCE	487
31	LUXEMBOURG	553
32	MALTA	783
33	ITALY	993
34	GREECE	1 149
	<b>EUROPEAN AVERAGE</b>	<b>215</b>

Source: Developed by the authors.

**TABLE 7 – CLEARANCE RATES OF CIVIL AND COMMERCIAL CASES AT SECOND-INSTANCE COURTS IN BRAZIL AND EUROPEAN COUNTRIES**

<b>POSITION</b>	<b>COUNTRY</b>	<b>CLEARANCE RATE</b>
1	SLOVAKIA	125%
2	FINLAND	119%
3	CROATIA	116%

*(it continues)*

4	ITALY	111%
5	NORTH MACEDONIA	111%
6	BELGIUM	110%
7	DENMARK	109%
8	ESTONIA	106%
9	LUXEMBOURG	106%
10	MALTA	106%
11	ROMANIA	106%
<b>12</b>	<b>BRAZIL</b>	<b>104%</b>
13	ARMENIA	103%
14	SWEDEN	103%
15	CZECH REPUBLIC	102%
16	SWITZERLAND	102%
17	GERMANY	101%
18	LITHUANIA	101%
19	HUNGARY	100%
20	RUSSIAN FEDERATION	100%
21	SLOVENIA	100%
22	UKRAINE	100%
23	GEORGIA	99%
24	REPUBLIC OF MOLDOVA	99%
25	SPAIN	98%
26	MONACO	97%
27	PORTUGAL	97%

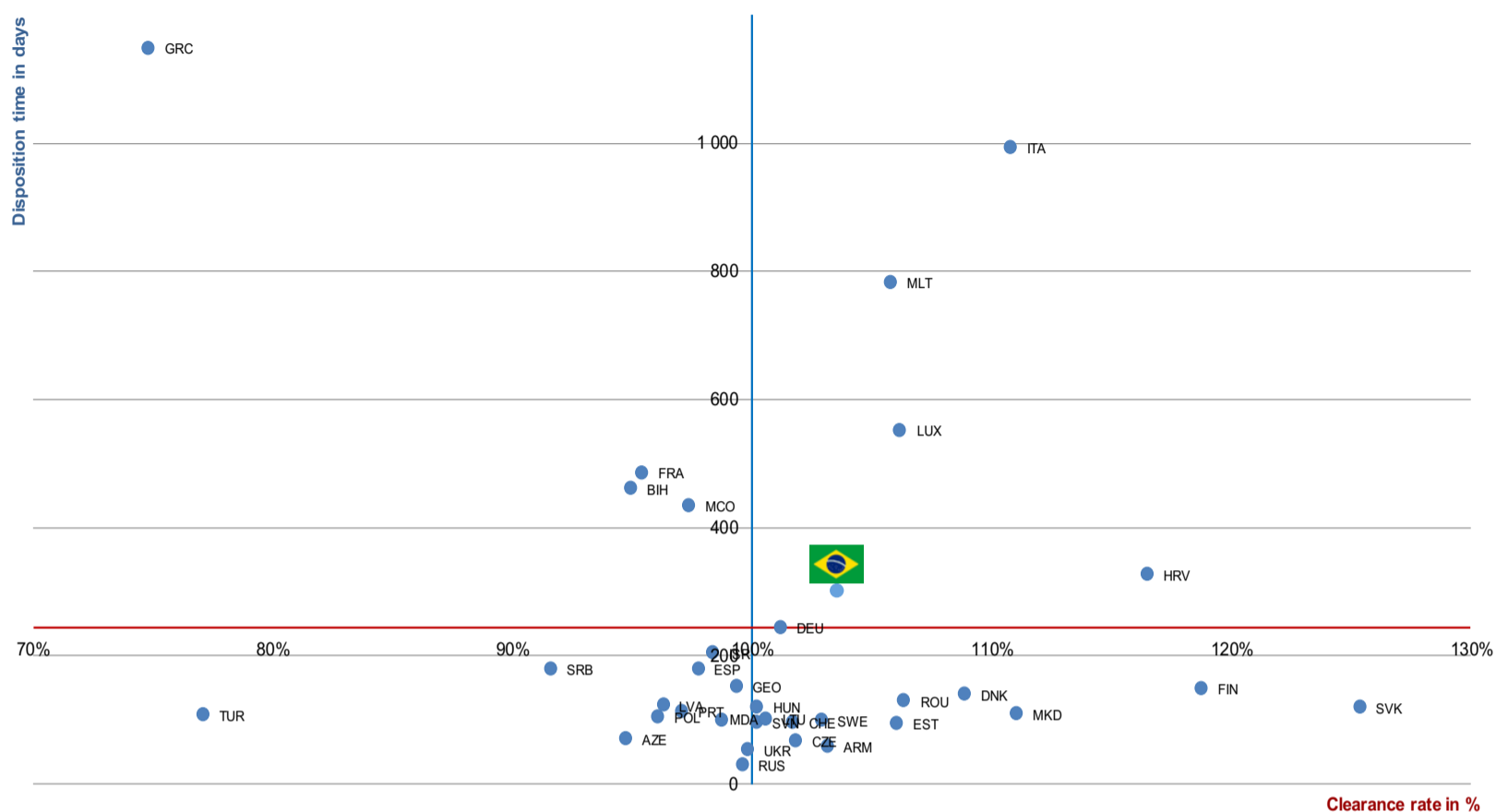
*(it continues)*

28	LATVIA	96%
29	POLAND	96%
30	AZERBAIJAN	95%
31	BOSNIA AND HERZEGOVINA	95%
32	FRANCE	95%
33	SERBIA	92%
34	IRELAND	82%
35	TURKEY	77%
36	GREECE	75%
	EUROPEAN AVERAGE	101%

Source: Developed by the authors.

A combination of disposition time and clearance rates of civil and commercial litigious cases at second-instance courts is introduced in Figure 2, providing a more complete scenario of the pace of cases in Brazil in comparison to European countries.

FIGURE 2 – CLEARANCE RATE VS. DISPOSITION TIME FOR CIVIL AND COMMERCIAL CASES AT SECOND-INSTANCE COURTS IN EUROPE AND BRAZIL



Source: CEPEJ (2018), adapted by the authors.

## CONCLUSIONS AND RECOMMENDATIONS

Comparing the performance of courts from different countries is a challenging task and should be carefully approached. The legal and institutional characteristics of countries may affect the comparability of their judicial systems. This type of study requires a thorough understanding of the concepts used by different countries and plenty of quantitative data. The European Commission for the Efficiency of Justice has made remarkable efforts to ensure a clear understanding of the concepts used to evaluate the judicial systems of European countries. The Brazilian National Council of Justice has conducted distinguished work to properly deliver detailed judicial data to the public. The efforts of both organizations enabled a consistent comparison of the duration of cases in Brazilian and European courts.

Broadly speaking, court disposition time in Brazil is significantly higher than in European countries. The situation is particularly critical in first-instance courts. While disposition time in civil and commercial litigious cases in first-instance European courts consists of 232 days, in Brazil, it is almost three times higher (600 days). This result would put those courts in the last place among 40 countries analyzed by CEPEJ, except for Greece. Second-instance Brazilian courts are also slower than their European counterparts. Though less

problematic than first-instance courts, the disposition time of civil and commercial litigious cases in Brazilian second-instance courts (320 days) is almost 50% higher than the European average (215 days). This result would put Brazilian second-instance courts in the last quartile of European countries. Considering this international comparison, it seems reasonable to conclude that case duration in Brazil is significantly long. The perception of Brazilian citizens about court disposition time is accurate. Court delay is a real issue in Brazil.

However, current court disposition times reflect a backlog of cases over several years. Currently, Brazilian courts are not accumulating cases. In fact, more civil and commercial cases are decided compared to the number of incoming cases. Both first and second-instance courts have clearance rates above 100%, which means that the backlog of cases is actually decreasing. The effort of first-instance courts is impressive. Considering its clearance rate of 120%, it is possible to state that these courts are quickly reducing their backlog. Such a scenario is higher than in almost all European countries. The disposition time in Brazilian courts is on a downward path.

Maintaining this trend will result in a great challenge to the Brazilian judicial system considering that the backlog of cases in Brazilian courts is huge. To achieve the average of disposition time in European countries, the clearance rate in Brazil must remain above the 100% threshold for several years. The legal agents in the judicial system may end up struggling to keep the clearance rate at this level for such a long time. Moreover, the pressure on judges will decrease by the time the backlog also starts decreasing, which usually reduces judicial productivity (BEENSTOCK and HAITOVSKY, 2004; DIMITROVA-GRAJZL *et al.*, 2012; GOMES, GUIMARAES and AKUTSU, 2017).

If judicial productivity declines, the number of decided cases diminishes and the clearance rate returns to a 100% level. In this scenario, the backlog of cases will stabilize and the trend toward faster court disposition times will end. To avoid this sequence of events, court administrators must control judicial productivity carefully, at least until court disposition times in Brazil get close to international standards. Quantitative goals defined by the Brazilian National Council of Justice may delay this possible decrease in judicial productivity. In fact, the first goal defined for each Brazilian court is to keep the clearance rate above 100% (CNJ, 2021). Questions such as if, when, and how much the lower pressure on judges will affect the clearance rate is an empirical issue that may be addressed by future research.

Another primary focus of Brazilian policy-makers is the enforcement of cases in state courts, where the number of decided cases is below the number of new cases, which means that the backlog is increasing. It is possible to evidence a special emphasis on the enforcement of cases following common procedure, whose disposition time is the highest among those surveyed in this study, surpassing the symbolic limit of 1,000 days. The clearance rate of this group is only 94%, which means that the backlog is growing rapidly. It would also be interesting to prospectively investigate the reason why the enforcement of cases in state courts is so challenging.

Future cross-country studies about court disposition time could focus on specific classes of civil cases. Comparative research about the duration of cases could also center attention on other legal fields, such as criminal or administrative cases, following distinct procedural rules that may produce different results from those previously studied. As this study has only evaluated courts of first and second-instance, a comparison of disposition time in superior courts may also be considered a topic for future research.

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*Caio Castelliano*

PHD IN ADMINISTRATION FROM UNIVERSIDADE DE BRASÍLIA,  
BRASÍLIA, BRAZIL.

*caio.castelliano@hotmail.com*



*Tomas Aquino Guimaraes*

PHD IN SOCIOLOGY FROM UNIVERSIDADE DE SÃO PAULO, SÃO  
PAULO, BRAZIL.

*tomas.aquino.guimaraes@gmail.com*