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Are courts to blame for delays in Belgian civil procedures?

A decomposition of case duration

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Abstract:

This paper examines the duration of 238 construction cases at three first instance courts in Belgium by composing a detailed timeline for each case. The results show that disputing parties account for 40% of overall duration, calendar delays and judges each for 23%. Despite the differences in overall duration between our three courts, the relative shares of disputing parties, judges and legal experts are nearly identical. Furthermore, we combined our quantitative results with interviews of all judges involved in our dataset and an elaborated lawyer survey. Both the quantitative and qualitative results show that the level of activism of the judges involved significantly impacts the overall duration and efficient flow of proceedings. Our results suggest that judges do have the possibility to speed up proceedings, but given the prevalence of party autonomy in Belgium, a change in mindset of many judges is necessary to ensure the effectiveness of guidelines and procedural rules that aim at accelerating court procedures.

Keywords: Case Duration; Litigation; Legal Culture; Court Delay

I. Introduction

Judiciaries around the world are faced with prolonged court proceedings (Fix-Fierro 2004, Zuckerman 1999) triggering a growing concern and increased attention from legal and economic scholars (Grajzl and Zajc 2016, Christensen and Szmer 2012, Zhou 2008). While most duration studies cover courts in the US (see, e.g. Spurr 1997, Christensen and Szmer 2012, Heise 2000), recent analyses extend to other judiciaries as well. Part of this empirical literature contributes to the understanding that case-, party- and judge- characteristics affect time-to-settlement (Dimitrova-Grajzl et al. 2012, Kessler 1996, Ayuso, Bermúdez, and Santolino 2015) and time-to-judgment (Bielen, Marneffe, and Vereeck 2015, Di Vita 2012, Heise 2000, Bielen et al. 2017).

Partly due to the lack of access to court files, there is still little known about the stages in which delays are taking place, and who is causing these delays. As a consequence, there is still little empirical work that results in evidence-based policy recommendations on how courts and judges can affect these delays. This paper fills this void by providing a framework for an in-depth analysis of court proceedings and case duration¹. By composing a timeline for court cases, we can determine the duration of each stage of the legal procedure. Furthermore, the access that we have to the detailed court files, allows us to rigorously examine the roles of various actors in the legal process. For this paper, we focus predominantly on the role and the impact of the judge on the case duration. Scholars have postulated the impact of local legal culture (Gallas 1976, Ostrom et al. 2005), which is “conceptualized as common practitioner norms governing case handling and participant behavior in a court” (Church 1982). That is, the shared norms within a court regarding how cases should be handled and the preferred pace of litigation affect legal procedures. Despite the widespread belief that something besides case characteristics influences court timeliness (Ostrom and Hanson 1999), empirical evidence is still lacking and mostly limited to differences in sentencing outcomes (see, e.g. Church 1982). As a result, insight into the underlying mechanisms between the various phases of court proceedings are still lacking in literature.

This paper exploits a dataset of construction cases in three first instance courts to reconstruct the timelines and the share of all actors in case duration. We particularly pay attention to the role of judges, which is twofold. First, judges directly affect case duration by means of their own activities, such as writing verdicts. Second, courts and judges can indirectly affect case duration via the activities of other actors, such as disputing parties and legal experts. Particularly the possible role of judges in motivating and influencing other actors to speed up proceedings is relevant since Belgian civil court proceedings are characterized by party autonomy and passive judges (European Caseflow Management Development Network 2016). We conducted in depth interviews with the judges to

gather feedback and interpretations regarding the empirical results. Finally, we conducted a survey amongst civil law lawyers to see what their perception is of the impact of judges on case duration. This approach allows us to combine the quantitative and qualitative data into a comprehensive picture of the impact of the judges on case duration. To the best of our knowledge, this is the first paper that uses the combination of quantitative and qualitative data to get insight into the (impact of judges on the) duration of court cases. Furthermore, given that a major policy reform aimed at reducing the duration of legal proceedings is being discussed at the moment, we can provide useful insights into the expected effectiveness of the policy proposal.

For the quantitative data analysis, we hand-collected data on 238 construction cases in three Belgian first instance courts. This paper focuses on Belgian courts, which still struggles with severe court backlogs and delays building up since the seventies. Even though Belgium is one of the most prosperous² and developed³ countries in the world, the malfunctioning of the judiciary has steadily eroded public confidence in the court system. About 36 percent of Belgian citizens indicates to have no confidence in the court system (Belgian High Council of Justice 2014). We opted for construction cases, since these are known in Belgium for their prolonged case duration and the relative complexity which often require legal expert assessments. To allow for cross-court comparison, we collected our sample from three first instance courts of different size, but located in the same geographic jurisdiction. To this end, a detailed timeline of each case is constructed to detect delays and to attribute the delays to the actors involved in legal proceedings. The objective is to empirically show the mechanisms through which the judges can impact the overall case duration and the behavior of other parties involved.

The rest of the paper is structured as follows. Section II describes the general course of civil proceedings in Belgium. Section III focuses on the data and methodology. The results of the survey and case analysis are presented in Section IV and V, respectively. Section VI discusses the proposal of a judicial reform and Section VII and VIII present the discussion and conclusions.

II. Civil proceedings in Belgium⁴

This section elaborates 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. The following section describes the various stages of the civil proceedings.

A. Stages of civil proceedings

In Belgium, court proceedings can be subdivided into three stages: the preparation stage, the fixation stage and the deliberation stage.

The preparation stage starts with the filing of a lawsuit, usually by means of a writ of summons in which the plaintiff provides a brief description of the dispute. A bailiff serves the summons and stipulates when disputing 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 disputing 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 (in the form of validated pleading calendars).

During the preparation stage, the case progresses mainly by exchanging written arguments, or ‘pleadings’. The latter are of great importance in Belgian civil proceedings, since oral pleadings during hearings solely serve to introduce the written arguments (Grubbs 2003). Written pleadings include the factual matters, a legal analysis, and the relief requested through court.

The fixation stage comprises the time till the first possible hearing at a given point in time. This information is relevant for disputing parties when drafting a pleading calendar. For example, if the first possible hearing can take place after four months, the fixation stage amounts to four months. However, part of this waiting period will be used to draft pleading calendars. Therefore, the period between the last pleading and the (first) court hearing is relevant in our analysis and is called ‘calendar delay’. This is in fact the delay caused by backlogs of the court. For example, disputing parties are drafting pleading calendars on January 1. The first possible hearing can be organized on June 1, and therefore the fixation period is five months (from January to June). If disputing parties agree to exchange pleadings from January 1 to March 1, calendar delay is three months (i.e. from March to June)

Finally, the deliberation stage is the time the judge requires to prepare his or her final judgment. This stage starts after the last court hearing (during which the judge closes the debate and takes the case into deliberation) and ends at the public pronouncement of the verdict. Normally, a written judgment is pronounced within one month and the duration of deliberation may not exceed three months. Notably, the judge is not required to take oral pleadings into account when deciding the case, which demonstrates the importance of written arguments (pleadings) in civil proceedings.

B. Pleading calendars

As discussed in the previous section, pleading calendars must be drafted to schedule pleadings and hearings. In this section we discuss the three possibilities stipulated in the Judicial Code to obtain such calendars.

First, disputing parties can submit an agreed pleading calendar, including deadlines for pleading submissions and the date of the court hearing. It is the judge who informs disputing parties about the first possible hearing date, i.e. the first suited opening in the court schedule. Subsequently, the agreed calendar is endorsed by the judge. Second, if disputing parties do not agree on a pleading calendar, the judge drafts a pleading calendar on its own motion. Disputing 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 disputing parties), the case is assigned to a specialized chamber within the court. Third, in case of mutual agreement, disputing 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, up until the moment disputing parties file a pleading calendar or request the judge to either set a pleading calendar or a trial date. 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, disputing parties can re-initiate proceedings provided that they pay the court fees again.

In case a pleading calendar is agreed upon, the hearing date is known from the beginning of proceedings. If not, disputing parties can request the judge to schedule a hearing date. At the court hearing, disputing parties or their lawyers have the opportunity to present their oral arguments.

C. Evidence and legal experts

The Judicial Code stipulates that the plaintiff must disclose 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.⁵ 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, disputing parties are free to choose the number of pleadings. Complex disputes or disputes with many disputing parties typically require more rounds. Furthermore, the time period between pleadings differs, although in basic disputes lawyers generally foresee one month to prepare a pleading.

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

Typically, expert procedures proceed as follows. After the judge appoints a legal expert, he or she decides which part of the costs must be covered by each party. After payment, the legal expert starts activities by first convoking the disputing parties, often onsite, and giving them the opportunity to clarify their point of view. Next, the legal expert investigates the evidence (e.g. a leaking roof) and finally prepares and delivers a final report to the judge, the disputing parties and their legal representatives (Lysens and Naudts, 2010).

III. Data description and methodology

A. Qualitative methodology: survey and interviews

During our initial discussions with various legal actors in Belgium, we noticed significant differences in opinion on the root and causes of court delay. Despite existing international literature (Church 1982, Gallas 1976, Ostrom et al. 2005, Steelman 1997), perceptions regarding the potential impact of the judge on the (in)efficient course of proceedings was intensely debated. Therefore, we decided to combine our quantitative duration analysis (as described below) with an elaborated qualitative analysis for the necessary context and interpretation.

First, we organized a focus group with 10 civil law lawyers and a panel of judges and court presidents from the three first instance courts involved in this project to discuss and validate the research design of our quantitative analysis and the questions of our survey. The focus groups were organized ex-ante (i.e. before the data analysis). The semi-structured discussions in the focus groups were particularly useful to clarify certain concepts and to adjust questions of our survey in the light of topic sensitivity.

After the discussion with the focus groups, we drafted a more comprehensive survey to consult a larger group of civil law lawyers in Flanders. We first ran the survey on a test group of 30 lawyers and asked respondents to evaluate the survey with respect to, for example, comprehensibility and difficulty. The original survey was drafted in Dutch and has been translated for the purpose of this paper. 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 survey was solely distributed to Flemish lawyers because our empirical case analysis is based on data derived from three courts located in the

Flanders region in Belgium. For designing the survey, we used standard 7-point Likert scales as commonly used in qualitative research.

Finally, we had ex-post interviews with our panel of judges and court president to present and discuss the results from the quantitative case analysis as well as the results from the lawyer survey. These semi-structured interviews concerned all judges involved in our civil cases as well as the presidents of the three courts. This feedback loop provided useful insights for the discussion and the critical evaluation of the results.

B. Quantitative methodology: Case analysis

Selection of the cases

There is almost no theoretical work, nor empirical evidence on (the causes of) delay in Belgian courts. Even worse, Belgian first instance courts themselves have no knowledge of the average case duration due to the absence of a sound IT case management system. For the purpose of this paper, we were granted confidential access to all paper court files (consisting of writs of summons, pleadings, verdicts, etc.), enabling us to reconstruct a detailed timeline of each case. For the latter purpose, we developed a detailed case duration decomposition approach, which will be detailed in the next section.

Our empirical analysis focuses on civil cases, and more 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” that 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. Tazelaar and Snijders 2010, Kilian and Gibson 2005). 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 reached during the preparation of a Belgian bill aimed at accelerating construction lawsuits (House of Representatives 2006, High Council of Justice 2012).⁶

For the purpose of our analysis, we have selected three courts of different size, located in the same jurisdiction⁷: Antwerp, the largest court of the jurisdiction (7,562 new civil cases in 2013), Hasselt, a medium-sized court (3,090 new civil cases in 2013) and Tongeren, a relatively small court (2,256 new civil cases in 2013).⁸ The selected subsamples are proportional to the total number of incoming

cases in each court: 140 cases in Antwerp, 56 in Hasselt and 42 in Tongeren. Our sample consists of claims filed between October 1, 2007 and February 24, 2014 and resolved by March 24, 2014. This observation window ensures a sample that is fully subject to two major reforms in September, 2007. These reforms were aimed at accelerating assessments by legal experts⁹ and case preparation by disputing parties¹⁰. Furthermore, these cases were not influenced by the organizational reform of the Belgian judiciary in April 2014. During our observation window, no major reforms affecting construction cases were carried out.

Our focus group with the relevant judges and presidents of the three courts learned that there is no reason to assume that the severity or complexity of cases differs significantly among the courts, which was also confirmed by the lawyers (pleading cases in the three courts) of our focus group. Therefore, potential differences between these subsamples could be attributed due to diverging management styles (Martin and Maron 1991), potential economies of scale (Pedraja-Chaparro and Salinas-Jiménez 1996) and enhanced specialization (Voigt 2012), since court management is situated at the court-level and not the jurisdiction. To verify to what extent caseloads differ across these three courts, table 1 gives an overview of the absolute caseload¹¹ of construction cases as well as the average caseload per judge (measured in FTE).

[Table 1 here]

It becomes apparent from panel A in table 1 that over the years the absolute caseload in Antwerp is 5 to 8 times higher compared to Tongeren and 2 to 4 times higher than Hasselt.¹² 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. Since there is only one construction judge in Hasselt and Tongeren, the caseload per judge does not differ from the absolute caseload. However, in Antwerp, the number of judges available for construction cases varies over the years between 3 and 4 full time equivalents. Panel B in table 1 shows that the caseload per judge is always the highest in Hasselt (over the years on average 632 cases per judge), followed by Antwerp (507 cases per judge) and Tongeren (294 cases per judge). In Antwerp, the caseload between the three judges working on construction cases is also comparable over time.

Methodology

In the next sections, we elaborate on the methodology used in the empirical case analysis to construct a detailed timeline for all case. Our decomposition method was validated by our focus group of judges and court personnel as well as our focus group of lawyers. The methodology for

decomposing the duration is complex due to the specific nature of Belgian civil proceedings. There is no one straightforward order in which the various steps in the proceedings occur and it is not possible to outline the ‘standard’ flow of proceedings in these cases. As mentioned above, we generally have the preparation stage, the fixation stage and the deliberation stage in all cases, but the duration and the sequence of events within these stages varies significantly from case to case. For instance, 95% of all cases face a calendar delay in the beginning (i.e. a waiting period before the introductory hearing). Afterwards, 16% of these cases go to the civil registry, 19% go to the disputing parties, 56% go to the judge and 6% immediately end. Of the 56% going to the judge there are again various different flows of proceedings: some go to the parties afterward, some go to the civil registry, some cases come to an end, some go to the legal expert, and so on. Therefore, it is not feasible to detail ‘the average’ flow of proceedings in these cases.

For our analysis, we distinguish between 3 categories of actors: courts, disputing parties and external actors. The following paragraphs elaborate the methodological approach used to decompose case duration and allocate time periods to different actors. Since our primary focus is on the impact of judges, we need a detailed analysis of the duration of other steps in the process as well to find out if the judges can impact other actors.

The courts

We distinguish between two actors (the judge and civil registry) and one activity (the calendar delay) when analyzing the behavior of the courts themselves.

First, we take into account the time a *judge* needs to decide on a dispute and draft (interlocutory) judgments. Interlocutory judgments are used, *inter alia*, to appoint legal experts and to validate or impose procedure calendars.

The *civil registry* also has an impact on the course of proceedings, since it processes all communication between the court and (external) parties such as legal experts and disputing parties. More specifically, we account for the time necessary for notifications, since most procedures can only be continued afterwards. For example, a legal expert can only start his work after receiving the formal notification regarding his or her 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 disputing parties).

Next to the judge and the civil registry, we also account for *calendar delay* in two ways. First, 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 disputing parties finalized exchanging pleadings and are awaiting the first trial hearing. Second, 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 backlogs.

Figure 1 summarizes the activities of court actors.

[Figure 1 here]

The disputing parties

Disputing parties (and their lawyers) involved in lawsuits indisputably affect trial length. We distinguish between three activities. First, we account for the time needed to *prepare pleadings*, measured by the period between the filing of the pleading calendar and the last pleading.

Second, disputing parties are responsible for the periods of inertia when *procedures are put on hold*. It is possible that proceedings are put on hold longer than three years and caused the court to drop the case (see section II). Whenever the plaintiff subsequently re-initiates proceedings, the period between the removal of the case from the docket and the new filing is also attributed to disputing parties.

Third, disputing parties are accountable for the waiting period between hearings whenever they request *postponements*.

Figure 2 summarizes the activities concerning the disputing parties.

[Figure 2 here]

External actors

The adjudication of construction disputes often requires the involvement of a *legal expert*. The time between his or her appointment and the filing of the final report (or cancellation of the expertise) is attributed to “legal expert”. So, the total time necessary to finalize the expert examination is taken into account.

Judges can also suggest mediation to the disputing parties. Therefore, we not only register the time spent by legal 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 3 summarizes the activities of the external actors.

[Figure 3 here]

IV. Qualitative results: lawyer survey

To get more detailed insight into lawyers' perception concerning the duration of and delays in civil litigation, we conducted an online survey. The survey was completed by 249 respondents.

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.¹³ In this respect, we defined delay in a broad sense, including not only intentional delay, but also unavoidable or sometimes legitimate delay. Respondents believe that, on average, 48 percent of their caseload endures delay. Approximately half of the respondents believes that 50 percent or more of their cases is delayed. A third states that at least 70 percent of their cases is delayed. Figure 4 shows the distribution of lawyers' answers.

[Figure 4 here]

Since the goal of our paper is to assess the role of legal actors in case duration, we additionally asked the respondents how often delays (avoidable or not) are caused by disputing parties, lawyers, courts and other factors (such as expert assessments). Table 2 shows the results.

[Table 2 here]

The choices are assigned a score ranging from 1 (never) to 7 (every time).¹⁴ The lowest result (3.88) is scored disputing parties, 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 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.

Additionally, 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 3 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 the respondents feels that calendar delays often account for the excessive duration in proceedings.

[Table 3 here]

Furthermore, we asked lawyers to indicate to what extent they perceive differences in first instance courts regarding: the overall duration of court proceedings, the duration of the legal expert assessments, the quality of the judgments and the level of activism of the courts during legal expert assessments. 63% of respondents indicated that there are rather large or large differences in the overall duration of the court proceedings in first instance courts in Flanders. Respectively 35% and 21% of the respondents indicated that the duration of the expert assessments differs strongly or very strongly between first instance courts. Concerning the quality of the verdicts, almost 60% of the respondents indicated that (rather) large differences exist. Lawyers also recognize the differences in the level of activism of the courts in following up on the timeliness of the expert assessments.

[Table 4 here]

We also asked respondents to indicate their opinion on the involvement of the judge during the expert assessment. 46% of the lawyers indicated to be very strongly or strongly in favor of an active judge. Only 17% indicated to be very strongly or strongly in favor of party autonomy where the judge only intervenes in the expert phase on request of one of the parties. For the respondents that indicated to be in favor of the active judge, we presented a follow up question on the nature of the judge activism. During our focus group with judges it became clear that there are multiple models for actively following up on expert assessments. In the first instance court of Antwerp, they have established a unit within the court administration where civil servants check the proceedings of the expert and provide the necessary reminders for deadlines. In the court of Hasselt, the construction judge does the follow up himself. For each construction case, he periodically organizes meetings with the expert and the disputing parties. This forces the legal expert to appear before the judge periodically and could incentivize the legal expert to work more efficiently. Lawyers reacted in positively to both options, however, the follow-up by the judge was slightly preferred (see table 5).

[Table 5 here]

Summarized, the survey indicates that lawyers mainly attribute the delays to the courts. More than 52 percent of the respondents indicates that calendar delays are usually or always endured in their cases. However, the perceptions of lawyers do not necessarily have to match the actual causes of delay. For example, Ostrom and Hanson (1999) showed that prosecutors and defense attorneys disagree about the possible causes of delay, such as the hypothesized role of plea bargaining in delays. Furthermore, perceptions (regardless of whose perception it is) are always subjective. Therefore, we now use our unique dataset of civil cases to empirically examine the share of judges, disputing parties

and legal experts in overall case duration. The results will reveal whether discrepancies exist between lawyers' perceived causes of delays and results from the data analysis.

V. Quantitative results: case analysis

A. Case duration

The average case duration of the construction cases in our sample is 741 days in Tongeren, 571 in Hasselt and 355 in Antwerp. Since there are more cases with considerable trial length in Tongeren and Hasselt, the median time is less diverging: 456 days in Tongeren, 374 in Hasselt and 304 days in Antwerp. Figure 5 shows the distribution of total case duration. 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 duration of 33 percent of the cases exceeds 1,000 days and 17 percent even 1,500 days. In Antwerp, on the contrary, only 6 percent of the cases was not resolved within 1,000 days. Hasselt is situated in between the other two courts: 20 percent of the cases is not resolved within 1,000 days.

[Figure 5 here]

B. Analysis of relative shares of actors

Based on the methodology described in section III, we reconstruct the timeline of all of our cases and decompose the overall case duration 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 6, which shows the aggregated results for the three courts (average case duration is 464 days) as well as for each of the three courts separately.

[Figure 6 here]

Notably, disputing parties determine overall case duration by no less than 40 percent. Calendar delays and judges each account for 23 percent of overall case duration, while time spent by the civil registry is limited to 3 percent. 9 percent of total case duration is due to the assessments by legal experts, who were hired in 29 percent of all cases. A mediator was only appointed in some of the cases in Hasselt. Only 2 percent of total case duration 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.

Given the difference in average case duration, it is notable that the shares of the different actors are comparable in the three courts. One of the court presidents argued that based on these results there

appears to be a certain balance in the relative shares of each of the actors and that an invisible hand is guiding the actors in this balance. However, this invisible hand probably reflects the judge behavior. This means that the judge not only directly impacts his own duration, but also the duration of other actors involved. We illustrate this with an example. The judge in Tongeren is in favor of party autonomy and feels that parties should be in control of proceedings. The judge always grants the approval of requests for expert assessments and this is reflected in the overall duration. This increases the judge time (because he needs to draft an interlocutory verdict), but also disputing parties' time (they need to exchange pleadings for the installment of the expert and exchange information with the legal expert). The judge also plays no active role in following up the legal expert causing the duration of the expert assessment to increase a well.

Table 6 provides more detailed results with not only the mean share of each legal actor, but also the median, standard deviation, minimum and maximum. Due to the fact that certain activities are non-existent in a number of cases, medians are for most legal actors lower than the averages. Only the shares of disputants are higher compared to the average counterparts.

[Table 6 here]

The results above comprise the entire dataset. However, it is also relevant to examine the cases with the longest duration. We have selected the top ten cases with the longest duration. The average duration of these cases is 1899 days and seven of them were handled in Tongeren, two in Hasselt and one in Antwerp. The relative share of each actor in the ten slowest cases in the dataset are included in appendix A. It becomes clear that the time used by parties is the main cause of the very long duration in these cases, since more than 55% of the total time can be attributed to disputing parties. In three cases, the share of disputing parties is even 80% or more. This result is not surprising, since a lack of judge activism enables parties that benefit from delay to prolong procedures. The judges in these cases only account for 8% of total duration and the experts for 21%. However, given the long overall duration, the 8% that the judge is in control of the case still represents 155 days. When looking at the specific course of proceedings, these cases transfer on average more than 15 times between the various actors. This means that the case for instance goes from the disputing parties to the judge, back to the disputing parties, than to an expert, than to the judge, etc. The most complex case shifts between the actors 25 times and has a duration of 2186 days (nearly six years).

C. Analysis of absolute shares

Figure 6 showed the relative shares of each actor in total case duration and revealed that the results of the three separate courts are very comparable. Remarkably, there is little variation in the shares of

the various actors. However, the actual time (in days) spent by all legal actors differs significantly between courts due to major differences in average case duration. It follows that if the time spent by one actor increases, the other actors appear to need more time as well. This underlines the hypothesis that judges not only directly impact duration by their own time consumption, but also by indirectly impacting the overall speediness of other actors within the legal process. Instead of shares, we now discuss the average time span of each actor in absolute numbers (i.e. in days).

Table 7 reveals that the time spent on a case is much higher in Tongeren than in Antwerp for each actor with exception of the civil registry. The results for Hasselt are always in between the other two courts. For example, disputing parties spend on average 375 days on construction cases in Tongeren, 269 days in Hasselt and 174 days in Antwerp.

[Table 7 here]

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

D. The role of disputing parties, judges, calendar delays and legal experts

Disputing parties

Our empirical results suggest that disputing parties determine, on average, 40 percent (or 227 days) of total case duration, which partly stems from the substantial party autonomy in Belgian civil court procedures. As shown in Figure 2, we distinguished between four¹⁵ activities of the disputing parties. The time spent by disputing parties on a case consists almost exclusively of the time necessary to prepare pleadings (i.e. case preparation); on average 165 days. As mentioned, disputing parties can determine the procedural calendar without interference of the judge.

Besides the preparation of pleadings, disputing parties cause delays (although to a lesser extent) by postponing hearings, with an average of 26 days per case. Also, procedures are put on hold on average 36 days per case. However, note that these two activities (postponing hearings and putting procedures on hold) do not occur in every case. For example, when we look at the duration of on hold procedures only in those cases where it occurs, the average amounts to no less than 275 days.

Our results revealed that the share of disputing parties amounts, on average, to 174 days in Antwerp, 229 days in Hasselt and 375 days in Tongeren. These discrepancies partly reflect the differences in judge style. Those courts with judges that take on a more active role and restrict party autonomy (i.e. Antwerp and to some extent Hasselt), are associated with shorter disputing party activities. A more detailed analysis reveals 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). Our interviews with the judges helped indicate the potential reasons for these discrepancies. Part of the explanation lies in a different legal culture, which is often considered as an important aspect of court delay (Steelman 1997). In Antwerp and Hasselt, 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. Therefore, effective policy measures could consist of either encouraging judges to restrict party autonomy (e.g. via judicial training) or to allow disputing parties to put procedures on hold only in exceptional cases (e.g. in case of mutual consent).

Judges

In our sample, the share of judges is on average 23 percent, or 57 days. This number seems modest since the surveyed lawyers believe that courts are mostly to blame for delays. Given that judges in construction cases often prepare interlocutory verdicts and given that the reference time for the final verdict is 30 days, judges appear to take their decisions in quite a timely matter. Furthermore, as discussed in Section II, the judge must draft a pleading calendar (in the form of an interlocutory verdict) on his own initiative when disputing parties neglect or refuse to do so. Disputing parties have 6 weeks to express their preferences, whereupon the judge sets a binding calendar. Consequently, in this case the judge faces a waiting period that he cannot reduce by working harder on the case.

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 detailed analysis 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 and Hasselt compared to 1.7 decisions per case in Antwerp. The reasons for this difference in the number of decisions were discussed by the judges in our panel. First, the court of Tongeren and Hasselt invoke more legal experts, which requires an interlocutory verdict to appoint the legal expert. Second, while most disputing parties in Antwerp submit a pleading calendar themselves, the judge calendar is more frequently used in Tongeren. The judges in Antwerp stimulate disputing parties to draft their own calendar.

Calendar delay

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 survey, lawyers indicated that court delays are to a large extent caused by excessive calendar delays (see Table 3). Our empirical results show that 23 percent, or 73 days, of total case duration consists of calendar delays. This finding suggest that average case duration can substantially be reduced, since calendar delay can be avoided.

This is in stark contrast with the shares of judges and disputing parties, who will always need at least some time to prepare verdicts and pleadings, respectively.

Calendar delays account for 116 days (Tongeren), 89 days (Hasselt) and 55 days (Antwerp) of total case duration. These differences cannot be attributed to caseloads, since Table 1 shows that Tongeren has the lowest caseload, while Antwerp has the highest. We should note that the judge in Tongeren can be asked to take up non-construction cases if the caseload for construction cases is too low.

Legal expert

In our sample, the share of legal experts in total case duration is on average 9 percent, or 96 days. Whenever a legal expert assessment actually takes place (which is not in each case), the average duration amounts to 332 days. Hence, even after the 2007 civil reforms aimed at accelerating expert assessments, the duration of these activities are still considerable. Possible reasons for prolonged expert assessments, as appeared from the case files and our focus groups, are the complexity of disputes, disputing parties desisting from providing documentary evidence, the caseload of the legal expert and the unavailability of disputing parties to organize on site visits.

VI. Judicial reform

The excessive duration of trials is a longstanding problem for the Belgian court system. Early 2015, the Belgian Minister of Justice put forward an ambitious plan to tackle excessive case duration by determining the optimal duration of various stages in court proceedings. However, policymakers stated that the impact of the proposal cannot be evaluated due to a lack of reliable data on the duration of Belgian civil cases. Based on our unique dataset, we will pursue a partial and descriptive ex ante evaluation of the new policy proposal.

As discussed in Section II, civil proceedings have 3 stages: preparation stage, fixation stage and deliberation stage. The first part of the preparation stage is the time span between the filing of the lawsuit and the introductory hearing, and is required to be at least 8 days. The average time span is somewhat higher in Tongeren (11 days) and more than twice as high in Hasselt (19 days) and Antwerp (17 days).

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. Only in case of ‘extraordinary’ circumstances does the new proposal foresee an opportunity to change the timing of the binding calendar. A closer look at our court files shows that

disputing parties now spend on average 187 (Tongeren), 152 (Hasselt) and 138 (Antwerp) days on exchanging pleadings, which is considerably more than three months.

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 maximum fixation period of four months is included in our proposal. In Antwerp, the average fixation period for construction cases amounts to nine months (+125% above the norm), compared to five months in Hasselt. This shows that in Antwerp the relative backlog is more substantive and significant 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 disputing 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, disputing 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. As we discussed before, only part of the fixation stage is true delay. In other words, 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 minus the preparation stage of the disputing 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 disputing 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 it assumes a maximum fixation period of 4 months and no more than 3 months for exchanging pleadings. Notably, no actual delay then exists in Hasselt.

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 on average 46 days. Currently, Belgian legislation foresees an optimal time span of 30 days for judge deliberation (this is however not strictly 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. The prolonged deliberation stage in Tongeren cannot be explained by a higher workload since the average caseload per judge is the lowest in Tongeren (see table 1). 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. Based on our interviews with the judges, we found a more realistic explanation of the prolonged judge deliberation in Tongeren. In the time span of our analysis, the judge handling construction cases in Tongeren has changed multiple times, as opposed to the other two courts. This impedes judge specialization and could (at least partly) account for the difference in the deliberation stage.

The results are summarized in Table 8.

[Table 8 here]

Based on our empirical results and the interviews with the judges and court presidents, we learned that the effectiveness of the new policy proposal in reducing delays and trial duration depends strongly on the compliance of the judges. This means the extent to which judges in the various courts will uphold and enforce time limits on other actors and themselves.

VII. Discussion

During our interviews with the judges and court presidents we focused on potential drivers of differences and similarities in the results presented above. The first topic that was debated was the local legal culture. Although the three courts are part of the same geographic district and are just forty miles apart from each other, a different local culture was noticeable in the construction chambers in the three courts. Our construction judges indicated to be able to establish their own way of operating and that the court presidents gave them significant degrees of freedom in doing so. In Antwerp, the three judges indicated to have streamlined their way of operating, and this clearly shows in the results. Although the judges are different in age and gender, case duration does not differ significantly between the three judges.

The judges and presidents involved in our focus group and interviews touted two main reasons for the discrepancies in the durations between the courts: (1) the level of active case management and (2) the enforcement of deadlines. Active case management refers to the effective division of labor between court staff and the judges and also the competences and tools judges need for case management (European Caseflow Management Development Network 2016). We discussed with judges the division of labor between the judge and the civil registry. Most of the judges were satisfied with the current division in their court, however, some differences existed in practices between the courts. In Antwerp, a special unit has been established within the civil registry to take up the active follow up of the legal experts. The two other courts indicated that such a unit was not possible in their courts due to a lack of economies of scale. Regarding the enforcement of deadlines, we noticed that

the judges also differ. In Antwerp and Hasselt the courts enforce the deadlines more strictly than in Tongeren.

The impact of the differences in case management and the enforcement of deadlines becomes very clear when examining the expert assessments in detail. The 2007 reform on the expert assessment had the objective to give the judge more power to limit the excessive duration of these assessments. However, we notice three main differences between the courts regarding the application of this reform. First, there is a difference in the way of appointing the legal expert. In Tongeren and Hasselt the judge asks disputing parties to exchange pleadings after the request for an expert assessment. In these pleadings, disputing parties argument why a legal expert is needed or not. In Antwerp, by contrast, this discussion takes place orally at the introductory hearing, thus saving months exchanging pleadings. Therefore, there is no need for an exchange in pleadings or a separate hearing.

Second, the judges had different opinions on the actual necessity of a legal expert. The judge in Tongeren (who uses more legal experts) indicated that he believed that experts were vital in many cases and he always granted permission to involve a legal expert if one of the parties requested it. He agreed that there is no reason to assume that the complexity of the cases in Tongeren was different than the complexity of the cases in the other courts. The judges from Hasselt and Antwerp indicated that they believed that too many experts were being appointed and thus causing unnecessary delay. We noticed from our case analysis that the judges in Antwerp regularly refused requests for legal experts.

Third, the duration of legal expert assessment differs: 142 days (Tongeren), 87 days (Hasselt) and 67 days (Antwerp) of total case duration. It should be noted that these figures reflect the average time of a legal expert assessment *over all cases*. However, the proportion of cases in which a legal 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 whenever it takes place. In Tongeren, expert assessments take on average 397 days, compared to 299 days in Hasselt and 243 days in Antwerp. It follows that legal experts seem to finalize their assessment faster in Antwerp. Again, this result stems from a different approach by the judges, which is also confirmed by the interviews as well as our lawyer survey. In Antwerp, legal experts' deadlines are strictly enforced. When the deadline has passed, the court will ask the legal 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 a legal expert does not need to justify a delay unless disputing parties signal a problem of delay.

So we can clearly see that the level of active case management and the enforcement of deadlines has a significant effect on the overall duration of construction cases. The case management however

is also dependent on the availability of competences and tools. The Belgian judicial system is known for the lack of IT systems and data. Judges in Hasselt and Tongeren indicated that they have no information on their own performance (e.g. the duration of a case, the number of cases pending, etc.), let alone case management software. In Antwerp, there were some useful IT tools to support the civil registry, which provides the judge with more information and useful statistics. The IT programs were developed in house. The court of Antwerp won the European Commission for the Efficiency of Justice Crystal Scales of Justice prize in 2012 for their follow-up of judicial expertises. The judges acknowledge the need of a central expert registry in which the performance of the legal expert can be monitored and providing the judges with more options for competition among legal experts than is currently the case.

During the interviews we also discussed the new policy proposal of the minister of justice (which is outlined in section VI) to impose strict deadlines. The opinions of the judges on the necessity and the effectiveness of the new reform diverged based on their current level of activism. Logically, the judges that proclaimed to be in favor of an active judge were more receptive to the new policy proposal. The judges indicated that they would await detailed clarification on the proposal and further guidelines on how to proceed with the proposal if implemented. They worry, however, that passive judges will fail to enforce deadlines so that the effectiveness of the new regulation will be negligible in some courts.

In sum, discrepancies in case duration between courts are to a large extent a consequence of different judge styles. Therefore, introducing policy measures (for example implementing deadlines) will not suffice. The perception of certain judges that judges should be passive and adherent to party autonomy, needs to be addressed. One way of doing so, is focusing on active management styles in judicial trainings. Furthermore, empirical evidence such as provided by this study, can help to convince judges that they *can* have an impact on case duration. Our survey results even demonstrate that lawyers are in favor of more active judges. Finally, judges need to have access to sound (IT-) tools that enable an efficient way of monitoring different actors, such as legal experts.

VIII. Conclusion

Although the literature on the duration of court proceedings is gradually expanding, this paper fills a void in the literature by an in-depth analysis of case duration based on detailed court files. By composing a timeline for court cases, we can measure exactly the duration of each stage of the legal proceedings but also rigorously examine the roles of various actors in the legal process. We focus predominantly on the role and the impact of judges on the overall case duration. Although the importance of modern court administration and legal culture has been discussed in existing literature,

there is no empirical evidence that demonstrates the importance of the role of judges regarding the length of civil proceedings.

Our research approach is threefold. First, we exploit a dataset of 238 construction cases in three Belgian first instance courts to reconstruct the timelines and the share of all actors in the case duration. Second, we did in depth interviews with the judges to gather feedback and interpretations. Finally, we conducted a survey amongst 249 civil law lawyers to see what their perception is on the impact of judges and courts on case duration.

Our case analysis shows that disputing parties determine overall case duration for no less than 40 percent. Calendar delays and judges each account for 23 percent of overall case duration, while time spent by the civil registry is limited to 3 percent. Nearly 9 percent of total case duration is due to the assessments by legal experts, who were hired in 29 percent of all cases. Although the actual time (in days) spent by all legal actors differs significantly between courts due to major differences in average case duration, the relative shares of each actor in legal proceedings are strikingly similar between our three courts. It follows that if the time spent by one actor increases, the other actors appear to need more time as well. This underlines the hypothesis that judges not only directly impact duration by their own time consumption, but also by indirectly impacting the overall speediness of other actors within the legal process. This finding is in line with existing literature of legal culture, which states that shared norms within a court regarding how cases should be handled and the preferred pace of litigation affect legal procedures.

During our interviews with the court personnel we noticed that the main reason for the difference in average duration between the three courts is the judge style and/or court culture. In Antwerp, the court president discussed a common way of working among the three construction judges and this shows in the results. The average duration of cases handled by each judge is nearly identical. In our two smaller courts, Hasselt and Tongeren, there is only one construction judge. These judges can determine their own way of working and their own management style is affecting case duration. The judge in Tongeren strongly views that disputing parties are in charge of procedures and the judge has a less active role. In contrast, the judge in Hasselt has a completely different view and feels that the judge should have an active role during legal proceedings. All of the judges involved in our dataset agreed that sharing best practices (e.g. a more thorough evaluation of legal expert necessity, as is the case in Antwerp) can accelerate court procedures even without intervention of policymakers.

One of the most striking and significant differences between the active and less active judges is the involvement of legal experts and the duration of these assessments. First, there is a difference in the frequency of appointment of legal experts. The active judges in Antwerp orally discuss the potential need for a legal expert at the introductory hearing. Therefore, there is no need for an exchange in

pleadings or a separate hearing. Second, the judges had different opinions on the actual necessity of legal experts. The judge in Tongeren always granted permission to appoint a legal expert if one of the disputing parties requested it, whereas the judges in Hasselt and Antwerp evaluate the necessity of a legal expert and therefore regularly deny requests. Third, the differences in the duration of legal expert assessments between the three courts is a result of different management styles. This is also confirmed by the interview as well as our lawyer survey. Our survey indicated that lawyers strongly favor a more active role of the court in legal expert assessment.

The Belgian Minister of Justice has put forward an ambitious plan to tackle excessive case duration by determining the optimal duration of various stages in court proceedings. Based on our data analysis and the interviews with the court personnel, we learned that the effectiveness of the new policy proposal in reducing delays and trial duration depends strongly on the compliance of the judges. This means the extent to which judges in the various courts will uphold and enforce these time limits on other actors and themselves. During the interviews, we noticed that the opinions of the judges on the necessity of the proposal diverged based on their current performance. The judges that are in favor of an active judge were more receptive to the new policy proposal.

The results presented in this paper are not easily extrapolated to other judiciaries, since they can differ in terms of legal procedures, extent of party autonomy (which is very prevalent in Belgium but not in most countries), court delays, legal culture, lawyer remuneration, judge caseload, etc. Therefore, more empirical research is necessary to examine to which extent these findings are applicable in other courts and judiciaries.

FOOTNOTES

1. We define case duration 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).
4. This section draws on various parts of the Belgian Judicial Code.
5. Still, note that disputing parties are allowed to present new evidence at later stages.
6. 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.
7. There are 5 *ressorts* in Belgium.
8. These courts are located in Flanders, the Dutch-speaking region in Northern Belgium.
9. The Act of May 15, 2007 concerning the amendment of the Judicial Code on the expert assessment and on the restoration of article 509quater of the Criminal Code, publication on August 22th 2007 (*Wet van 15 mei 2007 tot wijziging van het Gerechtelijk Wetboek betreffende het deskundigenonderzoek en tot herstel van artikel 509quater van het Strafwetboek*, B.S. 22/08/2007).
10. 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).
11. Caseload of a certain year t is measured by the sum of the incoming cases in t and the pending cases of previous years.
12. Caseloads can differ for several reasons. First, courts have no case management and therefore cannot monitor the caseload of judges. Second, a particular court might attach more importance to (the timeliness resolution of) construction cases, and therefore make more judges available for the resolution of these cases. Third, the availability of resources (and thus number of judges) significantly differs, since we have courts of different sizes.
13. In other words: what percentage of civil cases is (at some point) *delayed*, regardless of the length of the delay?
14. 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.
15. However, the fourth activity did not occur in our sample: in none of the cases included in our sample, the lawsuit was put on hold, dropped by the court, and re-initiated afterwards.

IX. References

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