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Dismissing appeals on formal grounds: The case of the Argentine Supreme Court*

Sergio Muro,[†] Alejandro Chehtman,[‡] Jorge Silva Méndez,[§] and Nelson Amaya Durán^{**}

Abstract: High courts typically struggle to find the right balance between its error correction function and its final interpretation of constitutional clauses. The more time and resources spent in error correction limits the greater is the ability to offer improvements in constitutional interpretation. Some courts seek to streamline the appeals' process by dismissing appeals which have not complied with certain formal requirements. Our study contributes to the growing comparative literature on High Court docket management by investigating the time to case disposition of appeals with formal errors in the Argentine Supreme Court. We show that this type of appeals' dismissal has not resulted in efficient case duration or in an increase of CSJN's output. Furthermore, the multivariate analysis shows that several case characteristics, such as the appeals' subject matter or the type of formal error, affect appeal duration.

Keywords: Appeal Dismissals, Supreme Court, Docket Management, Time to Disposition, Survival Analysis, Access to Justice.

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I. INTRODUCTION

Courts are usually organized in a hierarchical way. Superior courts are generally charged with the review of decisions made by lower courts which were appealed by parties to the case. As a result, it is believed that error correction is one of the primary roles of appellate courts (Kornhauser 1995; Shavell 1995). Other roles include ensuring uniformity in the application of the law, and even law creation (Posner, 1985).

In the case of Supreme Courts, providing the ultimate interpretation of the country's constitution appears to be one of the most important functions. Nevertheless, High Courts typically struggle to find the right balance between its error correction function and its final interpretation of constitutional clauses. The more time and resources spent in error correction limits the ability to offer improvements in constitutional interpretation¹ In this context, Supreme Courts need to make difficult decisions in terms of the way in which they ought to manage their limited resources, both in terms of times and personnel.

The ability to deny certiorari is perhaps the main docket management weapon typically found in a Supreme Court's arsenal to allow them to achieve their desired balance. When such a possibility is at the High Courts' disposal, the use of a pre-established formula both facilitates the prompt dismissal of the cases the Courts deem not to merit review and the allocation of more time and resources to the study of the remaining cases.

Moreover, some courts go even further in seeking to streamline the process of appeals and improve the efficiency of their handling. For example the Supreme Court of Taiwan and the Argentine Supreme Court have the ability to dismiss appeals which have not complied with certain formal requirements (Eisenberg & Huang, 2012; Muro et al., 2016). Our study contributes to the growing literature of comparative Supreme Courts by investigating a subset of the discretionary docket of the Supreme Court of Argentina (hereinafter, CSJN),

¹ Two prominent examples can be cited on this balancing effort. Brazil incorporated provisions to generate binding precedents (*Súmula Vinculante*) and docket control techniques similar to the writ of certiorari (*Requisito da Repercussão Geral*) after the Brazilian Supreme Court received more than 160,000 appeals during 2002. See Maria A. Oliveira & Nuno Garoupa, *Stare Decisis and Certiorari Arrive to Brazil: A Comparative Law and Economics Approach*, 26 *Emory Int'l L. Rev.* 555 (2012). In India the Supreme Court received over 80,000 thousand appeals in 2014. Nevertheless, in a recent decision on the Constitutional Bench matter of *Mathai @ Joby v. George & Anr* SLP (C) No. 7105 of 2010, the Court refused to establish guidelines that would help in dismissing appeals. See Rishad Chowdhury, *The Indian Supreme Court Declines to Revisit its Docket Crisis: The Most Important Recent Order That You've Never Heard of*, Int'l Const. L. Blog, Jan. 27, 2016, at: <http://www.iconnectblog.com/2016/01/the-indian-supreme-court-declines-to-revisit-its-docket-crisis-the-most-important-recent-order-that-youve-never-heard-of/>

namely, those appeals dismissed because of formal errors. It provides significant insights as to what the underlying aims of *Acordada 4/2007* ultimately were, and the extent to which the Court achieved them.

Against what may have been envisaged, we show that the incorporation of the new formal dismissal grounds by *Acordada 4/2007* has not been sufficient to obtain efficient case duration nor to increase the CSJN's output. While on average it takes almost 320 days for an appeal to be dismissed, our multivariate analysis shows that several aspects affect appeal duration. For instance, Labor Law appeals need on average about 100 more days to be resolved. Similarly, the type of error found, namely violations related to the maximum number of pages or the maximum number of lines per page, can be associated to more delays. The duration of these types of appeal dismissals' likely affect time to case disposition of other type of appeals and could help explain the lack of output increase.

The paper proceeds as follows. Section II will introduce relevant background information on CSJN. Section III presents our main hypotheses. Section IV describes our data collection. Sections V and VI present, respectively, descriptive statistics and our main results. Section VII discusses our main results.

II. LEGAL AND INSTITUTIONAL BACKGROUND

CSJN has been the head of the Argentine judiciary since its creation in 1863.² Yet, after the 2001 economic crisis, CSJN and the judiciary in general were at the center of the legitimacy crisis that affected public offices more broadly but that had also led to CSJN's "worst crisis of credibility in its institutional history".³ CSJN was significantly renovated by the first Kirchner administration (2003-7). Since then, the new Court struggled to re-legitimize itself. Among its actions directed towards this goal, CSJN has sought to improve the efficiency and transparency of its decision-making. In 2007, the Court adopted *Acordada 4/2007* (from now on *Acordada*) as one of its key measures to streamline and facilitate appeals before it, as well as making decision-making more transparent and efficient.

Before introducing the basic tenets of *Acordada*, it is necessary to succinctly explain some basic facts about the jurisdiction of the Argentine Supreme Court. CSJN intervenes both through its ordinary jurisdiction and as the tribunal of last resort.⁴ Its ordinary jurisdiction is used for cases related to foreign ambassadors, ministers or consuls, or cases between provinces or a province and a

² The Argentine constitution's basic framework for federal jurisdiction closely follows article III, section 2 of the US constitution. Garay (1991).

³ Ruibal(2009).

⁴ When the Argentine parliament established the Supreme Court appellate jurisdiction, it followed closely the U.S. Judiciary Act of 1789.

foreign state.⁵ The Court's appellate jurisdiction⁶ includes appeals of cases decided by federal or national courts,⁷ as well as appeals from provincial supreme courts.⁸ The standard appellate jurisdiction is known as Extraordinary Appeal (*Recurso Extraordinario Federal*; hereinafter, REX) and it has three different sources. A first possibility arises when a case questions the validity of a treaty, federal law or action undertaken under color of federal authority and the local court holds against the validity of the treaty, law or the federal authority. A second alternative arises when the validity of a provincial law, decree or act has been questioned as unconstitutional or contrary to a treaty or federal law, and the provincial court decides in favor of the validity of the provincial measure. Finally, the Supreme Court may intervene when a party invokes a constitutional clause, a treaty, a law, or a grant of federal authority and the provincial court decides against the norm or privilege invoked.⁹ There is a separate kind of appellate jurisdiction known as ordinary appeals, which are reserved for cases in which the State is a party and the amount of the claim exceeds a certain figure.¹⁰ This form of appellate jurisdiction is subjected to different rules and it is not addressed in this study. CSJN vindicated quite early its authority to perform constitutional review, despite the absence of an explicit constitutional clause providing such authority.¹¹ Constitutional adjudication also followed the American model of a decentralized and concrete review. Unlike its American counterpart, however, Argentina lacks a formal doctrine of *stare decisis*.

In order to reach CSJN, the appellant needs to file a complaint –a REX– in the relevant lower court, which decides whether the appeal meets the

⁵ Argentine Constitution, Art. 117 and art. 1 of Act 48 (Organización y Competencia de los Tribunales Nacionales).

⁶ In most of these cases, the Supreme Court possess appellate jurisdiction, save for those cases concerning foreign ambassadors, ministers and consuls, and in those in which a province shall be a party, where the Court has original and exclusive jurisdiction. See article 117 of the Argentine Constitution. An unofficial English version of the constitution is available at <http://www.senado.gov.ar/web/interes/constitucion/english.php>. See, accordingly, article 1 of Law N° 48, available in Spanish at <http://www.infoleg.gov.ar/infolegInternet/anexos/115000-119999/116296/texact.htm>

⁷ Article 4 of Law N° 48, available in Spanish at <http://www.infoleg.gov.ar/infolegInternet/anexos/115000-119999/116296/texact.htm>.

⁸ Miller (manuscript on file with the authors, 133).

⁹ Article 14 of Law N° 48, available in Spanish at <http://www.infoleg.gov.ar/infolegInternet/anexos/115000-119999/116296/texact.htm>

¹⁰ Ordinary appeals before the Supreme Court have become more and more common due to the fact that the figure required to have access to the Court was established during the 1990s and has not been updated in accordance with inflation. (Anonymous interviewee)

¹¹ *Sojo, Eduardo c/ Cámara de Diputados de la Nación*, 32 Fallos 120 (1887); Miller (unpublished manuscript). The 1994 Constitution, though, provides the Court with this authority explicitly (art. 43, para. 1).

substantive and procedural requirements. If the lower court determines that all requirements are satisfied, the appeal is sent to CSJN. If the lower court believes they are not, the appeal is denied. In that case litigants may ask CSJN to hear the case through a *Recurso de Queja* (hereinafter RHE). CSJN in this case will review whether the lower court legitimately denied the appeal. Interestingly for our purposes, this two-fold way of reaching the Court has a concrete impact on the way in which the appeal is examined. Once appeals reach CSJN, they are all received and distributed by the same office (*Mesa de Entradas*). Each appeal is distributed to the Judicial Department (hereinafter, JD) specialized in the area of the appeal. This JD will conduct a preliminary assessment on the basis of the formal requirements. The specialized JD will often keep the file for internal drafting before being circulated among the justices if the appeal arrives through RHE. When the Appeal was granted by the previous Court, the specialized JD will usually distribute it among the justices, often starting by one with particular specialization in an area (to start circulation among them).¹²

The fact that CSJN has jurisdiction over a case does not guarantee that the court will arrive at a decision on the merits of the appeal. In 1990 Congress passed a reform of the Code of Civil and Commercial Procedure, which gave the Court discretion to dispose of appeals based on a lack of relevance.¹³ Since then, CSJN has routinely made use of the discretionary power to reject appeals on the grounds of insufficient lower court error or when the matters raised are either insignificant or inconsequential. In 2007, CSJN introduced *Acordada* as a formal step before proceeding to analyze any extraordinary appeal. Once an extraordinary appeal is dismissed by CSJN –on any grounds- it cannot be raised again.

Acordada stipulates a series of formal requirements each appeal must follow, among which we highlight the following ones. *Acordada* stipulates a maximum length of 40 pages for the original appeal –REX- (art. 1), and of 10 pages for the direct appeal –RHE (art.4). Further, each page should have a maximum of 26 lines, and a minimum font of 12 (art. 1).¹⁴ The appeal (both REX and RHE) should have a cover page with all the relevant information (arts. 2 and 5, respectively). The submission itself should contain specific references about the court whose decision is appealed, the facts of the case, the type of harm the decision generates for the appellant, a clear refutation of “each and every

¹² Tax Law appeals are always analyzed by the relevant JD (Secretaría Judicial no. 7). Interview A-3.

¹³ Arts 280 and 285, Código de Procedimiento Civil y Comercial de la Nación, Ley 23.774 (1990), available in Spanish at <http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16547/texact.htm#5>.

¹⁴ An amendment has established that Appeals should be presented in A4 type of paper. *Acordada* 38/2011.

independent argument” on which the attacked decision rests, and a “direct and clear relationship” between the federal norms invoked and the decision that has been reached (arts. 3 and 6, respectively). The RHE submission should be accompanied by copies of several parts of the file (art. 7). Finally, article 11 stipulates that failure to fulfill each and every requirement would be sanctioned by rejection of the Appeal, unless CSJN considers that that lack of fulfillment is not an insurmountable obstacle for the admissibility of the Appeal (first para, *in fine*). Article 12 clarifies that these provisions will not apply to appeals presented *in forma pauperis*.¹⁵ In order for CSJN to use *Acordada* to reject a submission, it must deliver an opinion –typically of the boilerplate type-.¹⁶ In practical terms, it means that, at the time of our study, at least four justices had to vote deciding that the submission had not met the minimal standards set forth by *Acordada*.¹⁷ Notably, this procedure is exactly the same one the Supreme Court employs in issuing opinions on the merits of cases.

III. HYPOTHESES

As this is the first study to test case duration in CSJN we had little in the way of *ex ante* beliefs. In addition, prior to this study the characteristics of appeals rejected on the basis of *Acordada* were largely unknown. Thus, a substantial part of the results we report are descriptive to enable assessment of our principal hypotheses. In this Section we present our main hypotheses.

In order to develop our initial hypotheses we start by explaining the objective nature of formal errors in the appeals process under *Acordada*. Each type of error consists of an easily determinable violation of the rules set forth in *Acordada* such as relevant number of pages, or of lines per page, or the attachment to the Appeal of specific copies of the original file. As a result, we would expect similar case duration regardless of the specific article (or articles) of *Acordada* which was found not to be complied with.

Case characteristics may also affect case duration. Appellants typically argue that the previous decision was arbitrary, that it created a federal affront,¹⁸ or

¹⁵ *Acordada* contains a model of the cover that both the initial appeal and the “queja” should follow.

¹⁶ Boilerplate opinions are also used to dismiss appeals on discretionary grounds and on lack of autonomous reasoning grounds.

¹⁷ In 2014, CSJN composition was reduced to 5 Justices. Hence, at least 3 Justices have to vote now. It should also be noted that a majority vote is reached for dismissal even if a vote provides other grounds for appeal dismissal in a separate opinion.

¹⁸ This includes the appeal possibilities described in section 2 above under article 14 of Law N° 48.

both.¹⁹ Argentine scholars frequently contend that CSJN's true role should not focus on error correction but on issuing opinions on federal affront cases.²⁰ If this is really the case, we would expect case duration to be longer in federal affront cases as CSJN may spend a more time deciding whether to use Article 11's exception to decide the case on its substance.

Thirdly, the underlying structure of CSJN may play a role too. Before Justices analyze and vote on a case, a thematic JD prepares internal memos.²¹ If any of those JDs has a higher than average workload, we would expect that the cases they handle take more time.

Finally, we would expect case duration to be affected by the level of agreement among Justices. CSJN Justices routinely abstain from voting once a majority is reached,²² essentially concealing their attitudes towards those appeals. In some instances though, one or more Justices issue a separate opinion supporting the majority, or issues a partial or total dissent. When any of this happens we would expect the case duration to be longer because more Court time would be spent on average in drafting the opinion.

IV. DATA COLLECTION AND PROCESSING

The focus of this study is on rejections of CSJN appeals' based on formal errors. CSJN publishes online every opinion it issues, along with information on case history and other background information, including the date of CSJN appeal filing. Starting in 2012, CSJN's Jurisprudence office categorized every opinion according to different criteria and it also introduced a search engine which allows looking for opinions meeting any of the pre-determined criteria. One such criterion is the outcome of the opinion. We used the search engine to find every opinion that the CSJN made based on *Acordada* during 2012, excluding pension

¹⁹ Another possibility is that the appellant invokes grave institutional consequences of the lower court opinion. These are quite rare.

²⁰ Interview A-5; A-9; A-15; A-1.

²¹ See Section II above.

²² Interview A-3.

cases.²³ That search generated 1,162 opinions. Lack of sufficient information made us discard 22 observations, leaving a working database of 1,140 opinions.²⁴

The census data provides a sound basis for assessing case duration and party capability theory. Further, the opinions we look at are significant. CSJN reports of the 8,812 cases decided during 2012 (excluding pension decisions). Therefore, the opinions we looked at represent a staggering 13 percent of the total number of cases produced by the CSJN in that period.²⁵ The practical importance of these opinions to every participant in the CSJN appeals process is evident.²⁶

The cases identified by the methods described above were coded by student research assistants. Prior to the student coding, the authors developed a template to structure the coding and a coding protocol. After review of the performance of the form, the protocol and the students in an initial set of cases, the form and the protocol were revised. The students used that revised form and protocol to code the cases, under the supervision of the authors.

To further understand CSJN work on *Acordada*, we conducted a series of interviews with key participants of the appeal's process. After developing an open ended questionnaire, we interviewed practicing lawyers with regular experience filing CSJN appeals. We interviewed Appeal Courts judges and Appeal Courts officials who routinely handle CSJN appeals. In addition, we interviewed CSJN Officials in charge of dealing with appeals and preparing internal documents. Finally, we interviewed officials from the relevant public offices in charge of litigation before CSJN, ie, the *Procuración General de la Nación*, the *Defensoría*

²³ Pension cases are somewhat particular and therefore we decided to exclude them from the analysis. Specifically, almost every pension case arises out of disputes between pensioners and the government due to lack of adjustments made to the pension amount over the years. Typically, lower courts would order the government to adjust those amounts according to a specific criterion and the government has adopted a policy which mandates its legal department to appeal each case up to the Supreme Court. Therefore, there are thousands of similar cases reaching the Supreme Court each year which don't merit much attention.

²⁴ Since the CSJN website contains all of the cases decided by the CSJN, the resulting database provides a complete picture of CSJN decisional activity on *Acordada* in the covered period. We tested the comprehensiveness of the database by comparing it with data obtained from the CSJN's secretariat. This comparison suggested that the data obtained from the CSJN website is indeed comprehensive, covering the full gamut of cases rejected based on *Acordada*. To the best of our knowledge, we assembled the first database to study CSJN appeals' rejections based on formal errors. We were not able, however to revise the whole universe of CSJN decisions in 2012 to look for possible incorrect categorizations. Nonetheless, the elevated levels of sophistication shown by the CSJN and its officials strongly suggests a high level of accuracy.

²⁵ Descriptive statistics for the year 2012 provided by the CSJN, available at http://www.pjn.gov.ar/07_estadisticas/Libros/Estadi_12/Corte_12.htm

²⁶ For instance, the prospect of appeal dismissals on formal error grounds affects the probability of private settlements.

General de la Nación, as well as the *Procuración General del Tesoro de la Nación*. After obtaining the first statistical results, we conducted a second round of interviews to better understand them. The answers obtained informed both our hypothesis design and the discussion section of this paper. A full list of interviewees who authorized us to reveal their names can be found in the Annex to this paper. To ensure greater disclosure, no proposition is explicitly attributed to any of them.

V. DESCRIPTIVE STATISTICS

During 2012 CSJN handed a total of 8,812 cases decisions on its discretionary jurisdiction, excluding pension cases.²⁷ Those cases were handled through 5024 decisions.²⁸ Similar to other High Courts, most of the decisions came in the form of appeals' dismissals. Among those dismissals, five main categories comprise almost the entire population (96 percent). The largest category of appeal dismissal is the Argentine equivalent to certiorari denied (49 percent, hereinafter *Article 280*), followed by *Acordada* dismissals (28 percent) and dismissals based on lack of autonomous argumentation (10 percent).²⁹ Furthermore, *Acordada* decisions are also the second largest category of CSJN opinions. As a result, *Acordada* case duration would have a direct impact on CSJN activity.

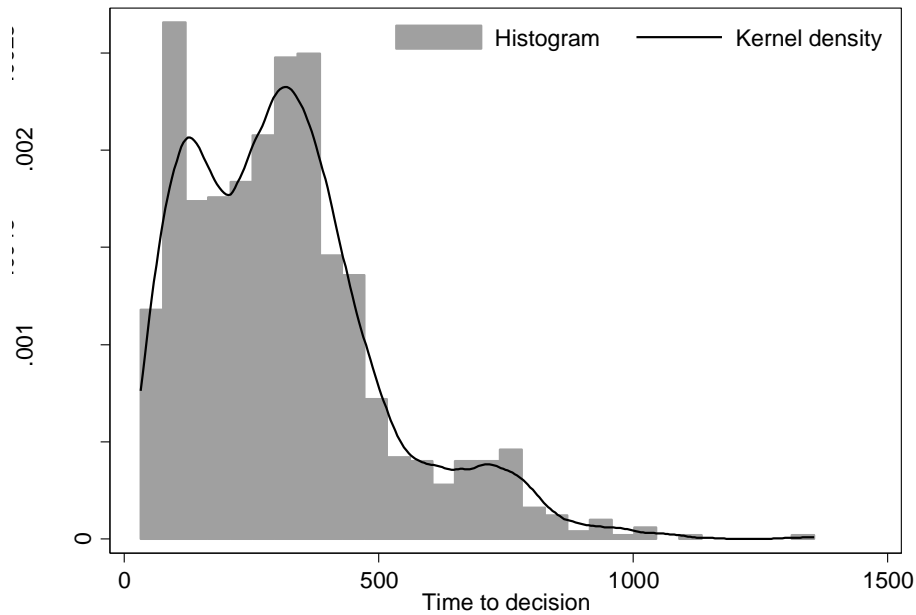
To capture case duration, we coded both the date of CSJN appeal filing and the opinion date. As these are somewhat mechanical cases, we expected the CSJN to resolve them in a rapid manner. The results, however, show the process to be fairly time consuming. The average case duration is just shy of a year (318 days, with a median of 299 days), while in the most delayed instances time to decision hovers over 3 years.

²⁷ All figures in this paragraph do not include pension law decisions. The exclusion of pension law decisions follows from the original aim of the database collected and the fact that pension law cases -consisted mostly of amount readjustments- were systematically litigated to CSJN even though the law on the subject was settled. This exclusion does not affect the results obtained.

²⁸ It is not uncommon for CSJN to decide more than one case in one opinion when there is a common factual and legal background.

²⁹ The other two main categories are lack of definitive lower court opinion (6%) and lack of fee payment (3%).

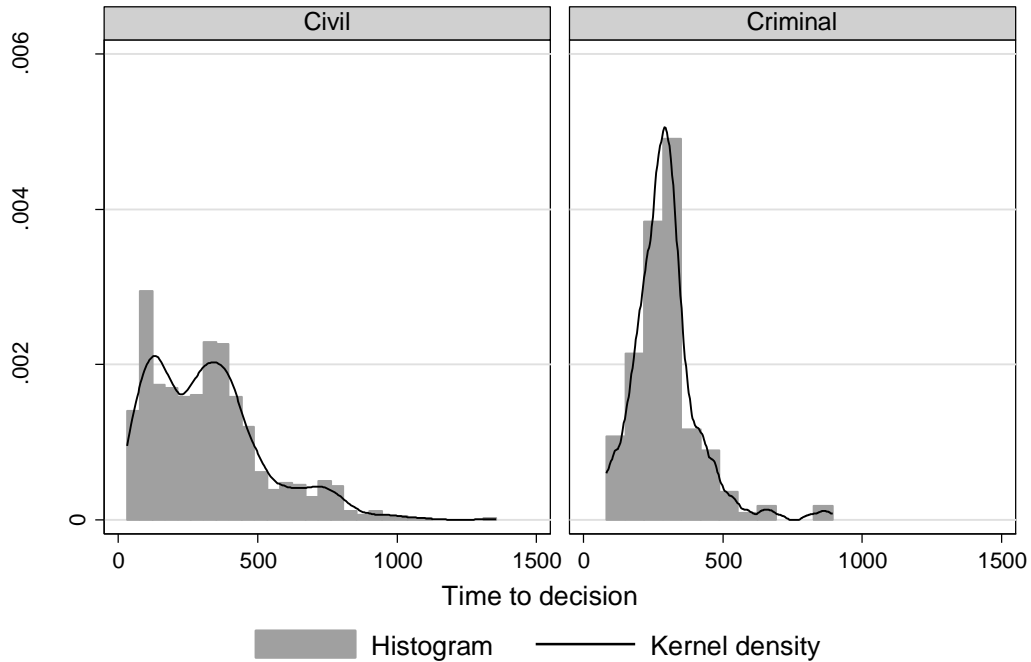
FIGURE 1
DISTRIBUTION OF CASE DURATION UNDER ACORDADA



The measures of center do not change much if we divide the sample into criminal and civil cases.³⁰ The median duration of criminal cases (292 days) is just a bit shorter than that of civil cases (303 days), but the spread is much larger in the later ones. The standard deviation for the criminal cases sample is quite large (117 days) but the one for civil cases almost doubles it (205 days). Accordingly, 25 percent of civil cases required well over a year to be resolved (425 days or more), while 5 percent of those cases lasted at least 740 days.

³⁰ Under this classification, any non-criminal case is coded as a civil case.

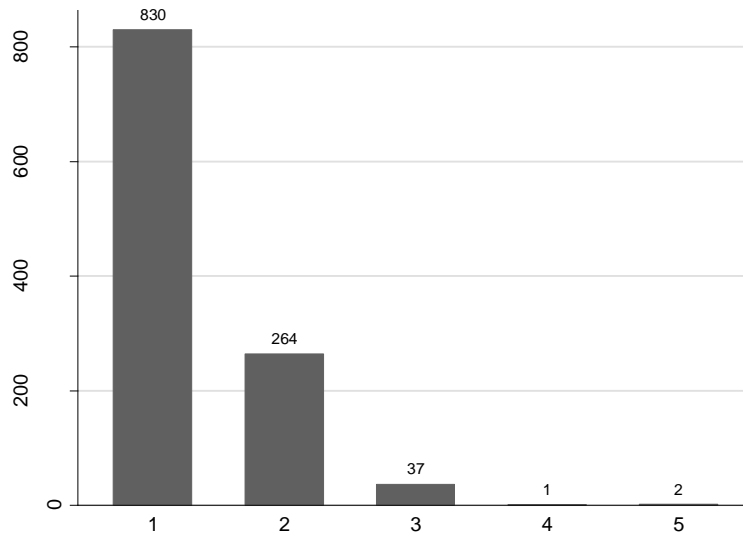
FIGURE 2
DISTRIBUTION OF CASE DURATION UNDER ACORDADA, DIVIDED BY CIVIL AND
CRIMINAL CASES



One of the early criticisms that CSJN received after passing *Acordada* was that using it could jeopardize the benefits derived from CSJN’s “teaching role.”³¹ Article 11 of *Acordada* mandates that CSJN should reject the appeal by “*merely mentioning the norm*”, ie *Acordada*. Therefore, it was feared that the use *Acordada* would lead CSJN to avoid mentioning the specific legal basis of its opinion. That concern is not supported by the evidence. By contrast, the Court seems to have been quite explicit about the specific norms of *Acordada* that was not complied with by the relevant Appeal. For each case in our database we coded, the article (s) cited by CSJN. Most of the time (73 percent of cases) CSJN cites just one article and, in our sample, up to 5 articles are cited, but only 3 times.

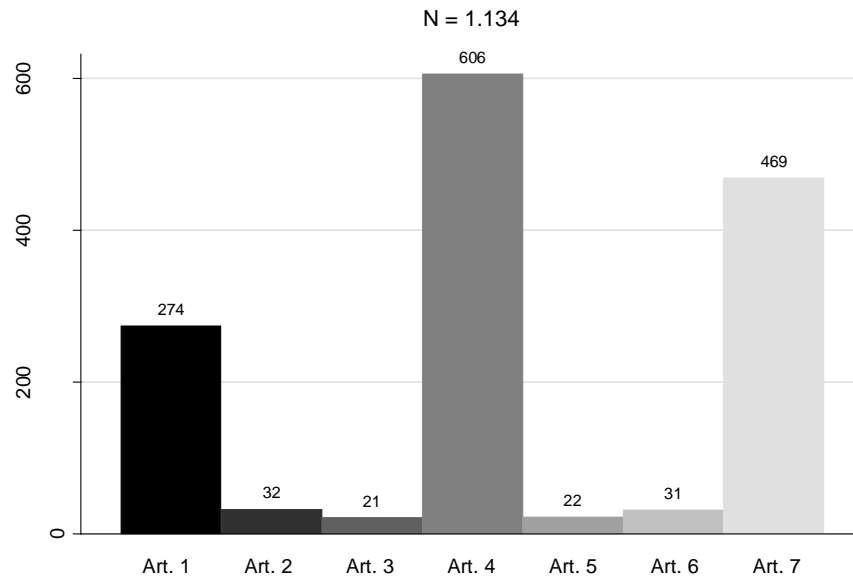
³¹ Sacristán (2009).

FIGURE 3
NUMBER OF ARTICLES CITED PER OPINION



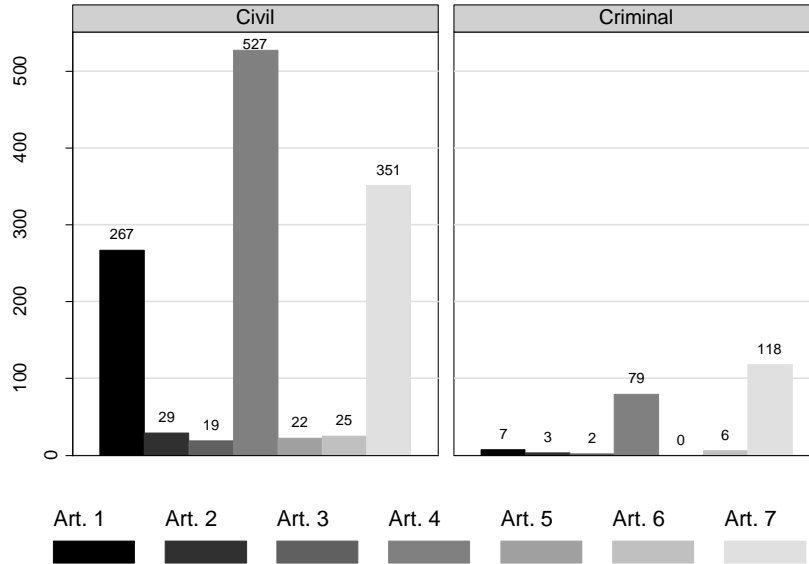
The article most frequently cited by CSJN is Article 4 (53 percent of the time), followed by Article 7 (41 percent) and Article 1 (24 percent). Articles 1 and 4 refer to the maximum page extension and to the page format for the REX and RHE respectively. Together, the violation of the maximum length and page format accounts for 71 percent of all the appeals rejected. Adding Article 7 rejections – i.e. appeals lacking copies of relevant docket documents- accounts for 95 percent of all appeal rejections based on Acordada.

FIGURE 4
FREQUENCY OF ARTICLES CITED BY CSJN



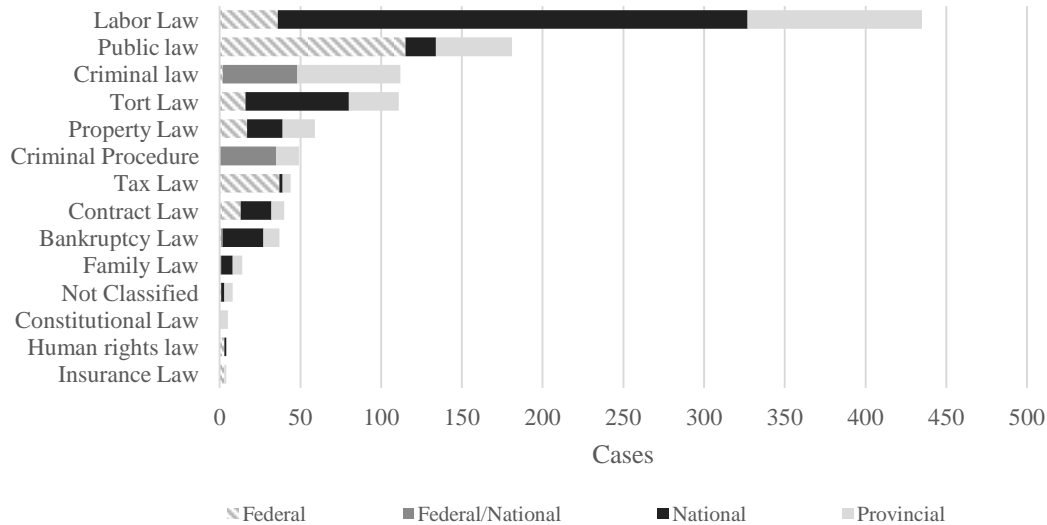
The frequency of articles cited by the CSJN varies greatly between civil and criminal cases. In civil cases the predominant error cited is from Article 4 (54 percent of the time), while in criminal cases Article 7 is cited in 71 percent of the cases.

FIGURE 5
FREQUENCY OF CITED ARTICLES, DIVIDED BY CIVIL AND CRIMINAL CASES



The frequency of decisions based on *Acordada* varied greatly depending on the substance of the case. Figure 6 reports the frequency of decisions according to our categorization of the underlying subject matter. The area of law with the largest number of cases rejected due to formal errors was Labor Law (39 percent of all cases), while Insurance Law was the area of law with the least amount of formal rejections (0.4 percent).

FIGURE 6
CASE SUBJECT AREA AND JURISDICTIONAL ORIGIN



Voting distribution varied greatly across Justices. Justices exposure to appeals depend to a large extent on an internal circulation order which differs according to subject matter specialization.³² CSJN's Justices routinely don't vote once a majority is obtained. According to interviewee A-3, at the time of our study there was an internal rule approved by the Justices which directed case circulation to stop once 4 votes were reached if the case merited a boiler plate solution (for instance, certiorari denied). Table 1 shows voting frequency by individual Justice and subject area. Four Justices -Highton, Lorenzetti, Maqueda and Petracchi-, seem to have shouldered most of the burden of *Acordada* decisions.³³ Each of these justices issued a concurring vote in at least 92 percent of the cases despite the great variation in subject area (with Justice Petracchi concurring in 98 percent of cases). At the other extreme, Justices Zaffaroni and Fayt issued concurring opinions in only 3 and 4 percent of cases respectively.

³² There are two exceptions to the circulation order by subject area. Justices Maqueda and Petracchi opted out of this circulation scheme and review each appeal, regardless of its subject matter.

³³ This information, of course, doesn't speak to the total amount of opinions issued by each Justice. It is quite possible that the Justices who voted less in *Acordada* opinions voted more in other type of opinions.

TABLE 1
FREQUENCY OF VOTING BY INDIVIDUAL JUSTICE IN EACH SUBJECT AREA

| Subject Area | Argibay | Fayt | Highton | Lorenzetti | Maqueda | Petracchi | Zaffaroni | # of cases per Area |
|---------------------------|---------|------|---------|------------|---------|-----------|-----------|---------------------|
| Bankruptcy Law | 0 | 1 | 38 | 37 | 34 | 38 | 0 | 38 |
| Labor Law | 37 | 5 | 433 | 435 | 436 | 440 | 8 | 443 |
| Property Law | 9 | 5 | 56 | 60 | 54 | 59 | 0 | 60 |
| Public law | 139 | 11 | 163 | 178 | 176 | 187 | 3 | 193 |
| Tax Law | 26 | 4 | 32 | 36 | 40 | 44 | 1 | 44 |
| Tort Law | 24 | 4 | 115 | 110 | 108 | 110 | 2 | 115 |
| Constitutional Law | 0 | 0 | 4 | 5 | 5 | 5 | 1 | 5 |
| Contract Law | 9 | 2 | 37 | 39 | 39 | 42 | 0 | 42 |
| Criminal law | 78 | 7 | 95 | 76 | 99 | 113 | 16 | 115 |
| Criminal Procedure | 37 | 5 | 40 | 38 | 45 | 50 | 6 | 52 |
| Family Law | 1 | 1 | 14 | 15 | 15 | 16 | 0 | 16 |
| Human Rights Law | 2 | 1 | 5 | 4 | 5 | 4 | 1 | 5 |
| Insurance Law | 0 | 0 | 4 | 4 | 4 | 4 | 0 | 4 |
| N/C | 1 | 0 | 7 | 7 | 7 | 7 | 0 | 7 |
| Total concurring opinions | 363 | 46 | 1,043 | 1,044 | 1,067 | 1,119 | 38 | |
| Total opinions | 370 | 46 | 1075 | 1049 | 1114 | 1121 | 115 | 1139 |

VI. RESULTS

A. Case duration analysis

1. Type and number of errors cited

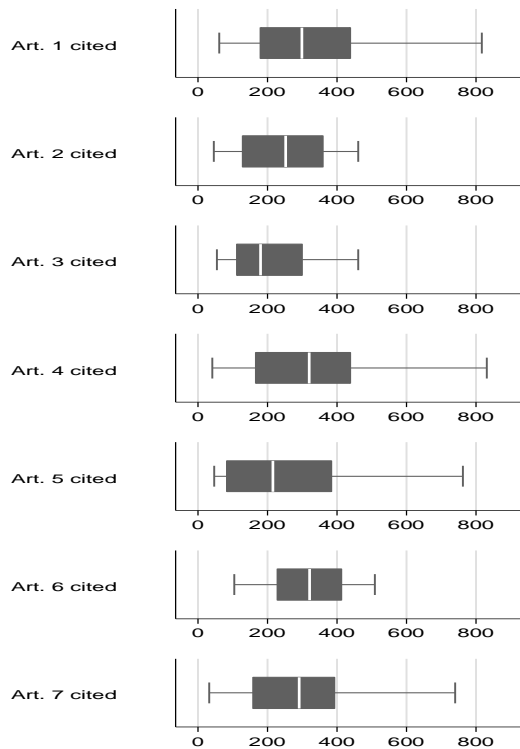
As explained above, a main focus of this paper is to analyze the effects different types of formal errors have in the duration of a case. Figure 7 presents the duration of cases for rejections based on each article of *Acordada*. The longest lasting cases are those rejected under article 6 (345 days), article 4 (340 days) or article 1 (336 days). Article 6 cases last close to a month longer than the average case. The cases which last the least are those rejected under articles 3 and 2³⁴ (92

³⁴ Article 3 cases refer to a hoist of criteria including specific references about the court whose decision is appealed, the facts of the case, the type of harm the decision generates for the appellant, a clear refutation of “each and every independent argument” on which the attacked

and 69 days faster than the average case, respectively). Article 7 cases are resolved on average 14 days faster than the average case.

The results are somewhat puzzling as verifying compliance with more *substantive* requirements of *Acordada* –such as refutation of each independent argument made by the inferior court- takes less time than checking purely *formal* errors –such as verifying the number of lines per page-. In addition, the variation in duration among cases being rejected due to similar reasons –such as under articles 3 and 6- defies our initial intuitions. This is especially perplexing as article 6 asks the court to verify only a subset of the requirements needed under article 3, but the later rejections take on average 119 fewer days.

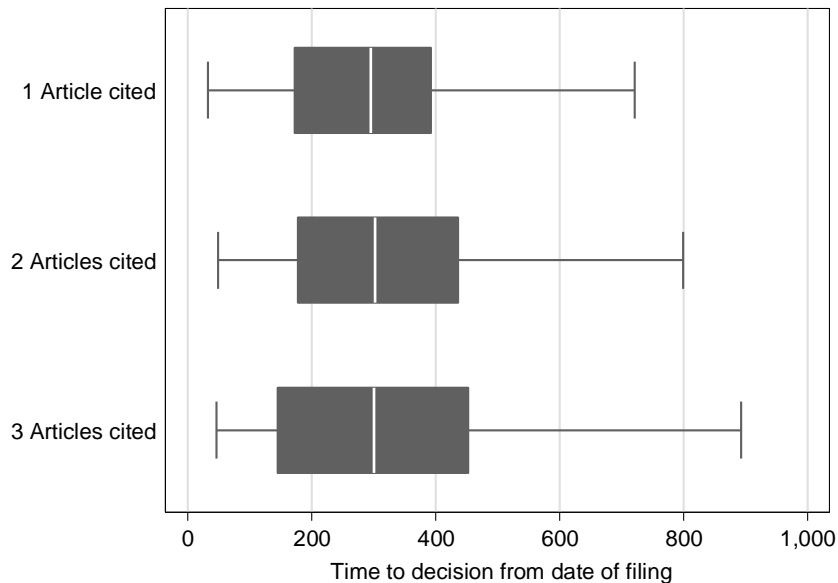
FIGURE 7
CASE DURATION ACCORDING TO ERROR TYPE



decision rests, and a “direct and clear relationship” between the federal norms invoked and the decision that has been reached. Article 2 refers to the requirements that the front page of the appeal must have.

Case duration is also affected by the number of articles cited while rejecting a case. Figure 8 reports case duration according to the number of articles cited by CSJN. Besides the three total cases which have 4 or 5 articles cited, cases are resolved the fastest when CSJN cites the violation of just one article (on average 7 days faster than the mean case). Cases where CSJN cites the violation of two or three articles take on average close to a month more (27 and 29 more days, respectively) to be resolved.

FIGURE 8
CASE DURATION DEPENDING ON THE NUMBER OF ARTICLES CITED AS VIOLATION*

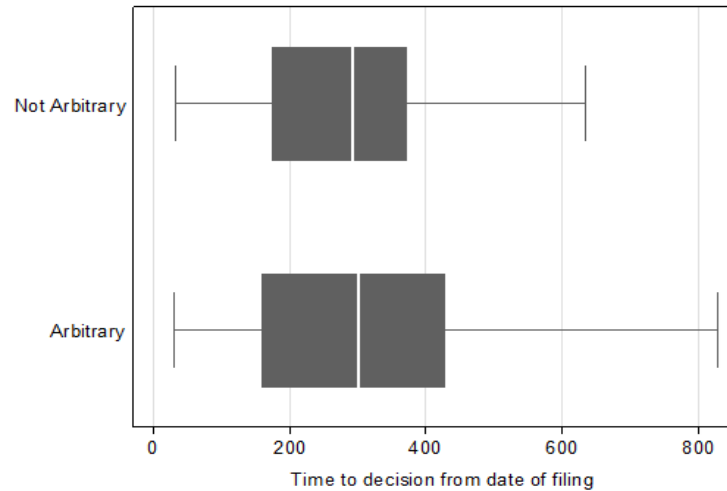


*One (1) case cited 4 articles and two (2) cases cited 5 articles

2. Case characteristics: type of claim, jurisdictional origin and appellant status

In addition to the type of errors, case characteristics may affect case duration. One such characteristic is the type of claim raised for appeal. Figure 9 presents case duration when appeals claimed the lower court decision was arbitrary. Federal affront cases, those where arbitrariness was not claimed, have an average duration of 305 days (13 days shorter than the overall mean case) while arbitrary decision cases take on average 325 days to be resolved (just 7 days over the mean).

FIGURE 9
CASE DURATION AND CLAIM TYPE



Several interviewees mentioned the importance of article 11’s exception to prevent unjust outcomes.³⁵ Whenever the appellants are individuals, we expected CSJN to respond by spending more time trying to establish whether the application of article 11 is necessary as a way to prevent structural differences among litigants from affecting case outcome. When only individuals appeal, case duration is slightly longer than average (6 days longer than the mean). The small difference in case duration observed suggests that CSJN pays little or no special attention to that subset of cases.³⁶

The previous conclusion remains even after modifying appellant specification and considering cases with and without individuals as appellants. The average duration of cases with individual appellants drops to an average of 314 days while the average duration of cases without individual appellants increases to 339 days. Furthermore, when the state is the appellant CSJN averages 353 days (35 days above the mean) to reject a case.

3. CSJN’s internal organization

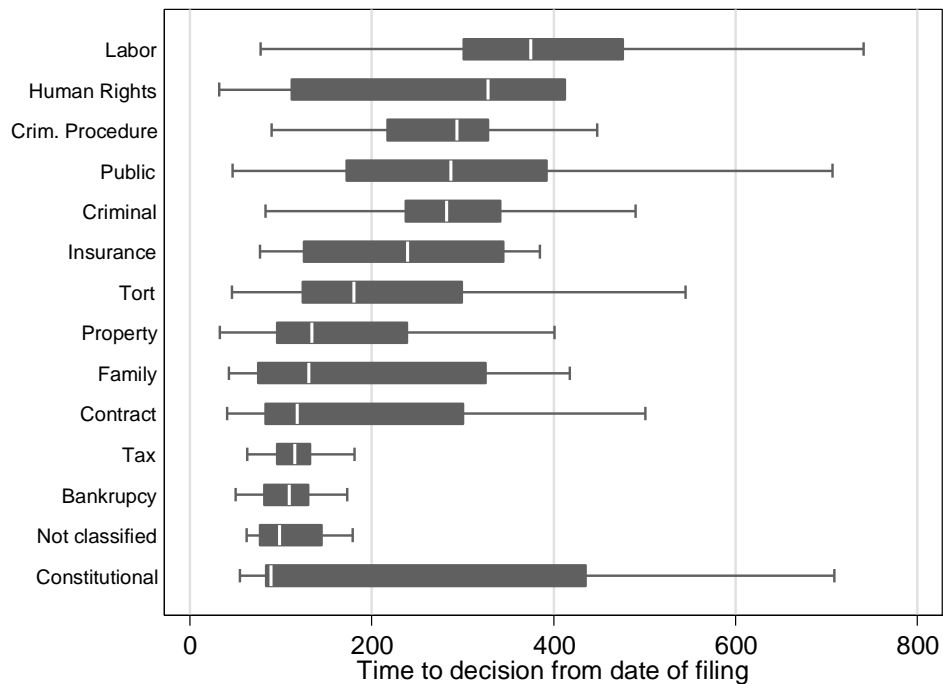
CSJN’s internal division of “thematic” JDs may affect case duration. For one, each JD has significant procedural discretion in terms of handling cases internally and organizing its work, before they are distributed to the Justices. Furthermore, each one deals with specific areas of the law which has significant impact on the

³⁵ Interview A-3; A-6; A-13; A-14.

³⁶ In unreported results we also tested case duration depending on appellant gender. We found no difference in mean duration.

number of cases they receive. In addition to being the area with the highest number of *Acordada* opinions, Labor Law cases take the longest to be resolved with an average duration of 418 days (100 days slower than the mean). At the other end of the spectrum, Tax Law cases are rejected in only 137 days on average (a staggering 183 days faster than the mean case).

FIGURE 10
DURATION BY CASE SUBJECT AREA



In order to explore the differences in case duration given each underlying subject matter, we looked at the different workloads of each JD. As mentioned in section II, each case is assigned to a specialized JD for preliminary drafting. Based on our subject matter coding, we assigned cases to the specialized JD we expected to handle them. Table A-1 in the Annex shows these results.

Table 2 reports the data on the amount of cases decided with the involvement of each JD in 2012, excluding Pension Law cases.³⁷ In addition, it reports the number of cases decided according to *Acordada* with the involvement

³⁷ This exclusion doesn't affect our findings as Pension Law cases are dealt with by JD N° 2.

of each JD and the total number of law clerks working in each JD.³⁸ Based on the information provided by CSJN's website, JD N° 6 –in charge of Labor Law appeals- has a total of 9 law clerks, a figure that is just above the mean. The average number of cases each law clerk had to handle in JD N° 6 (relative to the total number of Labor Law opinions issued in 2012) was 142 for 2012.³⁹ This is 21 cases (13 percent) less on average than the mean amount per specialized JD and 62 cases less (38 percent) on average than the amount each JD N° 3 clerk had to handle (this is especially noticeable given that *Acordada* criminal cases are on average 120 days shorter than Labor Law ones). These results are robust to changes in our comparison frame.⁴⁰

TABLE 2
WORKLOAD BY JUDICIAL DEPARTMENT

| Judicial Department | # of cases decided by <i>Acordada</i> | # of Opinions issued in '12 | Total # of clerks by Judicial Department | # of opinions issued in 2012 per clerk |
|---------------------|---------------------------------------|-----------------------------|--|--|
| JD N° 1 | 57 | 955 | 5 | 191 |
| JD N° 2 | 121 | 1,026 | 12 | 86 |
| JD N° 3 | 116 | 1,857 | 9 | 206 |
| JD N° 4 | 180 | 1,865 | 10 | 187 |
| JD N° 5 | 5 | 330 | 2 | 165 |
| JD N° 6 | 434 | 1,280 | 9 | 142 |
| JD N° 7 | 92 | 1,499 | 9 | 167 |

It is worth noting that CSJN expressed at the beginning of 2012 concern about case congestion on the 2 areas of law which we found to have the longest lasting case duration.⁴¹ Indeed, in February of 2012 CSJN enacted *Acordada 1* which mandated a redistribution of tasks among specialized JDs.⁴² As a result of *Acordada 1*, Human Rights Law cases were moved from JD N° 6 (otherwise dealing with Labor Law) to JD N° 5. It is possible then that the extended duration that we observe both in Labor Law and Human Rights Law cases is due to a backlog of previously accumulated appeals. Nevertheless, Muro et al. (2016)

³⁸ This information is based on information available from CSJN website.

³⁹ Here we assume that each law clerk handles independently a certain number of cases. This may not be the case.

⁴⁰ For instance, if we were to compare the average number of cases worked by each law clerk in JD N° 6 relative to the stock of Labor Law cases at the end of 2011 plus the total number of newly filed Labor Law cases in 2012, we see similar results. The average for all specialized JDs is 348 cases while the number for JD N° 6 is 319.

⁴¹ Interview A-3.

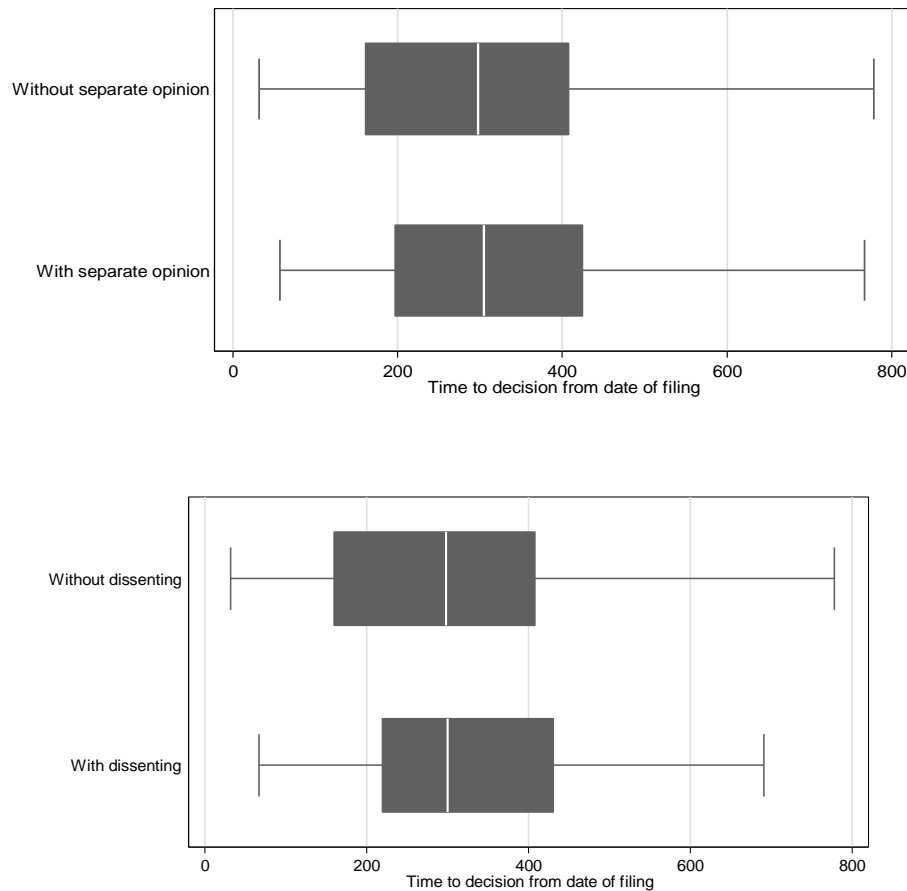
⁴² *Acordada 1/12*, available online at <http://www.csjn.gov.ar/docus/documentos/verdoc.jsp>

report that the backlog of cases of JD N° 6 at the end of 2011 was smaller than that of JDs N° 3 and N° 4, suggesting that other causes were at play.

4. Justices level of agreement

We expected cases with dissenting or separate opinions to take longer to be resolved because Justices would need to spend more time on the case. Both type of cases take longer to be resolved than the average case. Nonetheless, the difference from the mean is quite small, with separate opinions averaging 327 days for cases and dissenting opinions averaging 334 days.

FIGURE 11
CASE DURATION BY LEVEL OF AGREEMENT



The total number of opinions with some degree of dissent is interesting in itself. The objective nature of *Acordada* rules would suggest little, if any, room for disagreement. Nonetheless, 5 years after the implementation of *Acordada*, 10 percent of the opinions issued under its guise merited differences in opinion among the Justices.⁴³ Even though not every dissent or separate opinion was based in different interpretations of *Acordada* -for instance, some dissenting opinions asked for the opinion of the *Procurador General de la Nacion*-, its full implementation seems to continue to be a work in progress. Interestingly, more than half of the cases with dissenting or separate opinions are criminal cases, representing 39 percent of all the criminal dismissals on *Acordada* grounds. The later figure greatly exceeds the 15 percent figure we observed in the whole population. Disagreement seems the largest when criminal cases arise.

5. Survival Analysis

The duration of cases can be summarized through parametric and non-parametric survival analysis, which frames the time to occurrence of an event, in order to identify what case characteristics make it more or less likely that a case is decided sooner or later. Let us define T as the random variable that represents this non-negative time span in days, where $f(t)$ represents the probability density of T , $F(t) = P[T \leq t]$ the cumulative distribution up to day t and $S(t) = P[T > t]$ depicts the survival function - the probability of a case remaining undecided at time t . Also, let $h(t) = \frac{f(t)}{S(t)}$ be the hazard function that describes the instantaneous rate at which a case is decided at any point in time, or the rate at which the risk of a case remaining undecided accumulates through time.⁴⁴

Based on these definitions, we computed Kaplan-Meier survival estimates for the 1,134 cases for which date data could be recovered from the case file.⁴⁵ This estimator multiplies the successive probabilities of a case being decided at a certain point of time with any previous probability computed, over small time intervals, to get $\hat{S}_t = \prod_{t_i < t} \frac{u_i - d}{u_i}$, where u_i is the number of cases undecided at the beginning of the analysis (i.e. all cases) and d the number of cases decided at each point in time. With these estimates, Figure 12 depicts the survival probability for criminal and civil cases. The probability of criminal cases being decided is higher than civil cases up to a point close to 280 days, where both equal 55 percent, and afterwards the trend reverts: criminal cases become relatively more likely to be resolved by the Supreme Court. Also, criminal cases

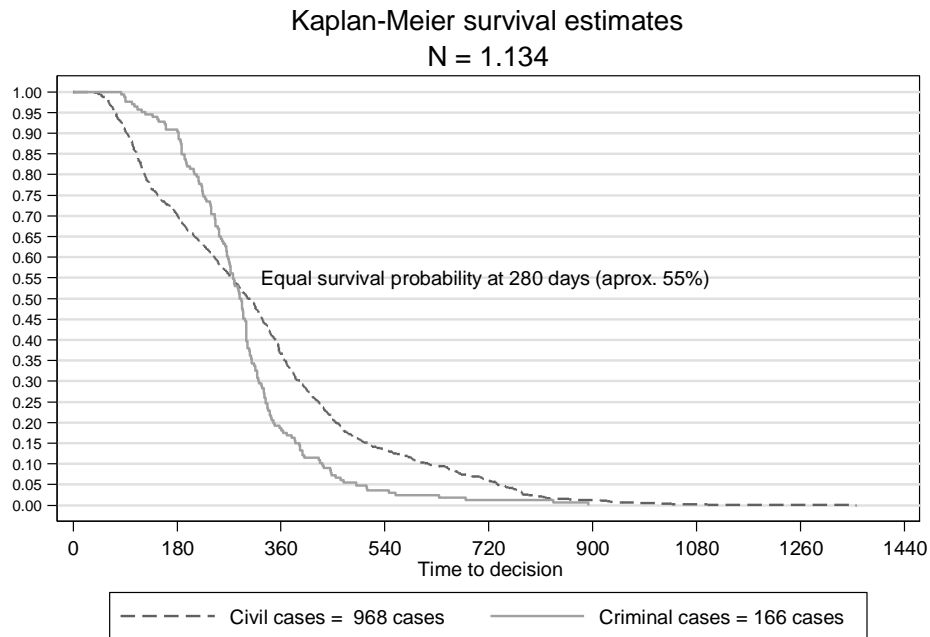
⁴³ It should be noted that the bulk of separate and dissenting opinions come from three Justices: Zaffaroni (45%), Maqueda (28%) and Highton (19%).

⁴⁴ Cleves (2010).

⁴⁵ This accounts for 99% of the population of cases retrieved

are highly unlikely to remain within the Supreme Court after a year, given that the probability of continuing unresolved drops below 10 percent after 432 days; conversely, civil cases only reach a 10 percent probability of continuing unresolved after 615 days, over 180 days relative to criminal cases.

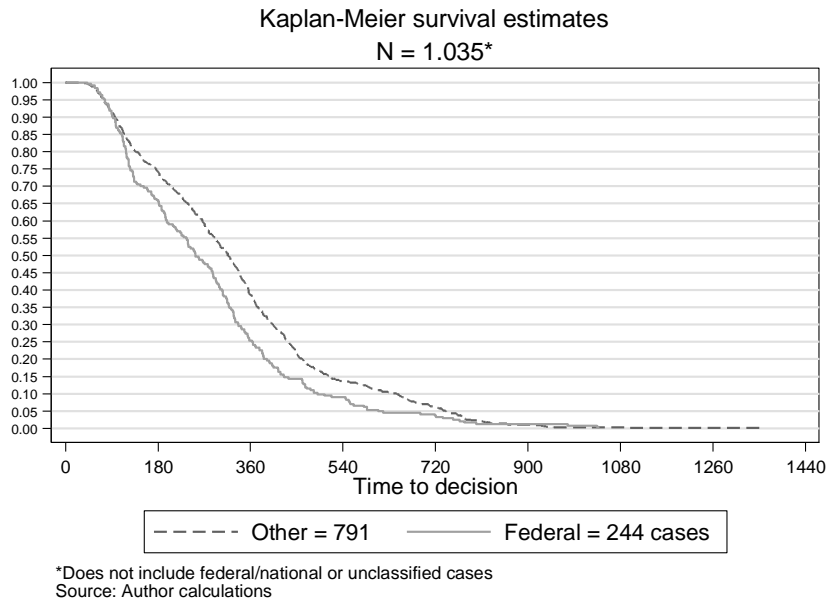
FIGURE 12
DURATION OF CRIMINAL AND CIVIL CASES



Source: Author calculations

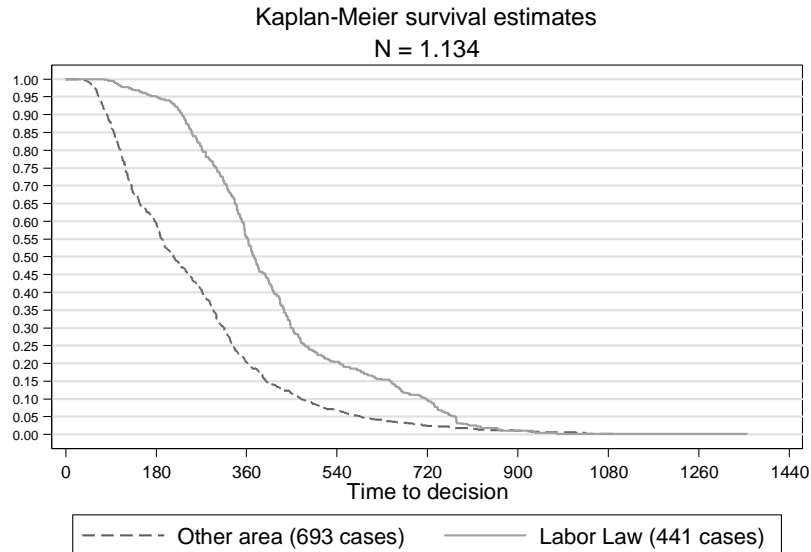
Case duration is also related to where the case originated from, be it a federal, provincial or national court. From our estimates, cases that reach the Supreme Court from a federal court have a lower probability of remaining on the roster: on average, the probability for a federal case to be resolved in time is 2 percent higher at any point in time than a case originated in another court (Figure 13).

FIGURE 13
DURATION OF CASES COMING FROM FEDERAL OR OTHER COURTS



Case duration also varies significantly among subject areas. Particularly, cases involving labor law have a low expectation of being promptly decided by the Supreme Court. While a non-labor cases has a probability of remaining undecided after six months of 60 percent, a labor case has a 95 percent probability of remaining on the roster by that time; after a year, the survival probability for non-labor civil cases and labor cases drops proportionally, around 40 percent, but labor remains at 55 percent by the end of the first year on the roster.

FIGURE 14
LABOR VS NON-LABOR CASES



Source: Author calculations

To summarize these results, a parametric model was developed to synthesize some qualitative comparisons over case duration, particularly over *Acordada* articles, jurisdictional origin and subject matter. For this, we assume that T follows a lognormal distribution assumption, such that $Y = \log T = \alpha + \sigma W$, where W is the standard normal distribution. This assumption is grounded on the non-linear path of the survival functions, as shown for civil vs criminal cases, and statistical tests on the parameters of the more general Gamma distribution estimates.⁴⁶

From the results of the model, depicted in detail in Table 3 below, time to decision is mostly affected by the area of the law the case relates to, as well as some characteristics of the appellants. The statistical effects related to the particular articles from *Acordada* cited as errors diminishes when controlling for area of the law and the characteristics of appellants: only Article 1 is associated

⁴⁶ Following Cleves (2010) p. 277-279, we tested several hypothesis on the Gamma estimation to determine the best distribution assumption for the model. First, we tested the null hypothesis $H_0: \kappa = 1$ to test for Weibull distribution and could reject it at a 99% confidence level ($\chi^2(1) = 105.76$). Second, we tested the null joint hypothesis $H_0: \kappa = \ln(\sigma) = 1$ to test for the exponential distribution and rejected it at 99% confidence level ($\chi^2(2) = 8,865.68$). Finally we tested the null hypothesis $H_0: \kappa = 0$ to test for lognormal distribution and could not reject the hypothesis ($\chi^2(1) = 0.22$); therefore, we estimated the model assuming time follows a lognormal distribution.

with a longer duration, as compared to when any other article is cited, by 28 days on average, and the effect remains significant at the 95 percent confidence level. Neither the source of the case, the type or gender of appellants or a REX seem to affect duration in a statistically significant way. Cases involving labor or public law are more likely than others to be decided at a later point by 92 and 36 days respectively, as compared to overall the median time, while tort law cases are more likely to be resolved sooner by 36 days. The dynamics of criminal with respect to civil cases, as suggested by Figure 12, involves a trend reversion after 280 days: criminal cases last longer unresolved up to this point in time, given the higher survival probability vis-a-vis civil cases, but then the probability of survival decreases at a faster pace, making criminal cases much more likely to be decided in comparison to civil cases. Finally, these results are robust across distributional assumptions for the parametric specification, as detailed in Table 4.

TABLE 3
PARAMETRIC MODEL FOR CASE DURATIONS

| Dependent variable: Time to decision t | Specification | | | | |
|--|----------------------|-----------|-----------|-----------|-----------|
| Independent variables: | (1) | (2) | (3) | (4) | (5) |
| <i>Articled cited as formal errors (Base: Other article cited)</i> | | | | | |
| =1 if Art 1 cited | 0.136* | 0.163** | 0.169** | 0.126** | 0.093** |
| =1 if Art 2 cited | -0.174 | -0.19 | -0.202 | -0.137 | -0.069 |
| =1 if Art 3 cited | -0.329* | -0.344* | -0.335* | -0.207 | -0.038 |
| =1 if Art 4 cited | 0.108* | 0.086 | 0.089 | 0.032 | -0.002 |
| =1 if Art 5 cited | -0.23 | -0.218 | -0.24 | -0.242 | -0.139 |
| =1 if Art 6 cited | 0.178* | 0.163 | 0.158 | 0.035 | 0.077 |
| =1 if Art 7 cited | -0.018 | -0.033 | -0.028 | -0.009 | -0.038 |
| <i>Source of case</i> | | | | | |
| =1 if case came from federal court | | -0.191*** | -0.168** | 0.05 | 0.03 |
| =1 if case came from provincial court | | -0.008 | -0.03 | 0.081 | 0.045 |
| <i>Appellant type and gender</i> | | | | | |
| =1 if all appellants are individuals | | | 0.118* | 0.116** | 0.021 |
| =1 if all appellants are female | | | -0.073 | -0.055 | 0.03 |
| <i>Extraordinary Appeal</i> | | | | | |
| =1 if Recurso Extraordinario Federal (REX) | | | | 0.000 | 0.034 |
| <i>Civil subtypes areas dummies (Base: Civil =0)</i> | | | | | |
| =1 if case subject is Labor Law | | | | 0.666*** | 0.309*** |
| =1 if case subject is Public Law | | | | 0.231*** | 0.120** |
| =1 if case subject is Tort Law | | | | -0.434*** | -0.127* |
| <i>Criminal (Base: Civil =0, Time < 280 days)</i> | | | | | |
| =1 if case subject is Criminal Law or Criminal Procedure Law | | | | | 0.499*** |
| =1 if time is equal or longer than 280 days | | | | | 1.023*** |
| =1 if case subject is Criminal Law or Criminal Procedure Law and time is equal or longer than 280 days | | | | | -0.466*** |
| Constant | 5.487*** | 5.543*** | 5.478*** | 5.149*** | 4.795*** |
| Ln(σ) | -0.411*** | -0.418*** | -0.421*** | -0.552*** | -1.023*** |
| Observations | 1,134 | 1,134 | 1,134 | 1,134 | 1,134 |
| Log-Likelihood | -1,143 | -1,136 | -1,132 | -983 | -449 |
| Akaike Information Criteria (AIC) | 2,304 | 2,293 | 2,290 | 1,999 | 939 |
| Bayesian Information Criteria (BIC) | 2,349 | 2,349 | 2,356 | 2,085 | 1,039 |

Robust standard errors
Legend: * p<0.1; ** p<0.05; *** p<0.01

TABLE 4
ROBUSTNESS FOR CASE DURATION MODEL

| Dependent variable: Time to decision t Independent variables: | Assumed parametric distribution | | | | | |
|--|---------------------------------|------------|-----------|--------------|-----------|-----------|
| | Exponential | Weibull | Lognormal | Log-logistic | Gompertz | Gamma |
| <i>Articled cited as formal errors (Base: Other article cited)</i> | | | | | | |
| =1 if Art 1 cited | -0.080* | -0.161 | 0.093** | 0.099** | -0.119 | 0.092** |
| =1 if Art 2 cited | 0.06 | 0.131 | -0.069 | -0.077 | 0.2 | -0.068 |
| =1 if Art 3 cited | 0.047 | 0.186 | -0.038 | -0.018 | 0.118 | -0.039 |
| =1 if Art 4 cited | -0.009 | -0.063 | -0.002 | 0.007 | -0.103 | 0 |
| =1 if Art 5 cited | 0.1 | 0.187 | -0.139 | -0.117 | 0.188 | -0.134 |
| =1 if Art 6 cited | -0.087 | -0.434 | 0.077 | 0.053 | -0.36 | 0.078 |
| =1 if Art 7 cited | 0.04 | 0.131 | -0.038 | -0.026 | 0.12 | -0.038 |
| <i>Source of case</i> | | | | | | |
| =1 if case came from federal court | -0.021 | 0.011 | 0.03 | 0.037 | 0.041 | 0.029 |
| =1 if case came from provincial court | -0.044 | -0.07 | 0.045 | 0.057* | 0.047 | 0.045 |
| <i>Appellant type and gender</i> | | | | | | |
| =1 if all appellants are individuals | -0.023 | -0.102 | 0.021 | 0.018 | -0.154* | 0.022 |
| =1 if all appellants are female | -0.028 | -0.065 | 0.03 | 0.016 | -0.026 | 0.03 |
| <i>Extraordinary Appeal</i> | | | | | | |
| =1 if Recurso Extraordinario Federal (REX) | -0.038 | -0.105 | 0.034 | 0.035 | 0.003 | 0.035 |
| <i>Civil subtypes areas dummies (Base: Civil =0)</i> | | | | | | |
| =1 if case subject is Labor Law | -0.265*** | -0.533*** | 0.306*** | 0.326*** | -0.250* | 0.301*** |
| =1 if case subject is Public Law | -0.096* | -0.152 | 0.120** | 0.133** | 0.016 | 0.117** |
| =1 if case subject is Tort Law | 0.181** | 0.723*** | -0.128* | -0.156** | 0.301* | -0.135* |
| <i>Criminal (Base: Civil =0, Time < 280 days)</i> | | | | | | |
| =1 if case subject is Criminal Law or Criminal Procedure Law | -0.437*** | -0.942*** | 0.499*** | 0.513*** | -0.523*** | 0.492*** |
| =1 if time is equal or longer than 280 days | -1.012*** | -2.995*** | 1.023*** | 0.957*** | -2.242*** | 1.021*** |
| =1 if case subject is Criminal Law or Criminal Procedure Law and time is equal or longer than 280 days | 0.468*** | 1.383*** | -0.466*** | -0.459*** | 1.144*** | -0.466*** |
| Constant | -4.895*** | -14.709*** | 4.795*** | 4.808*** | -5.334*** | 4.808*** |
| Ln(p) for Weibull estimate | | 1.067*** | | | | |
| Ln(sigma) for Lognormal and Gamma estimates | | | -1.023*** | | | -1.023*** |
| Ln(Gamma) for Log-logistic estimate | | | | -1.592*** | | |
| Gamma for Gompertz estimates | | | | | 0.005*** | |
| Kappa for Gamma estimate | | | | | | 0.043 |
| Observations | 1,134 | 1,134 | 1,134 | 1,134 | 1,134 | 1,134 |
| Log-Likelihood | -1,207 | -516 | -449 | -454 | -800 | -449 |
| Akaike Information Criteria (AIC) | 2,451 | 1,071 | 939 | 948 | 1,640 | 940 |
| Bayesian Information Criteria (BIC) | 2,547 | 1,172 | 1,039 | 1,049 | 1,740 | 1,046 |

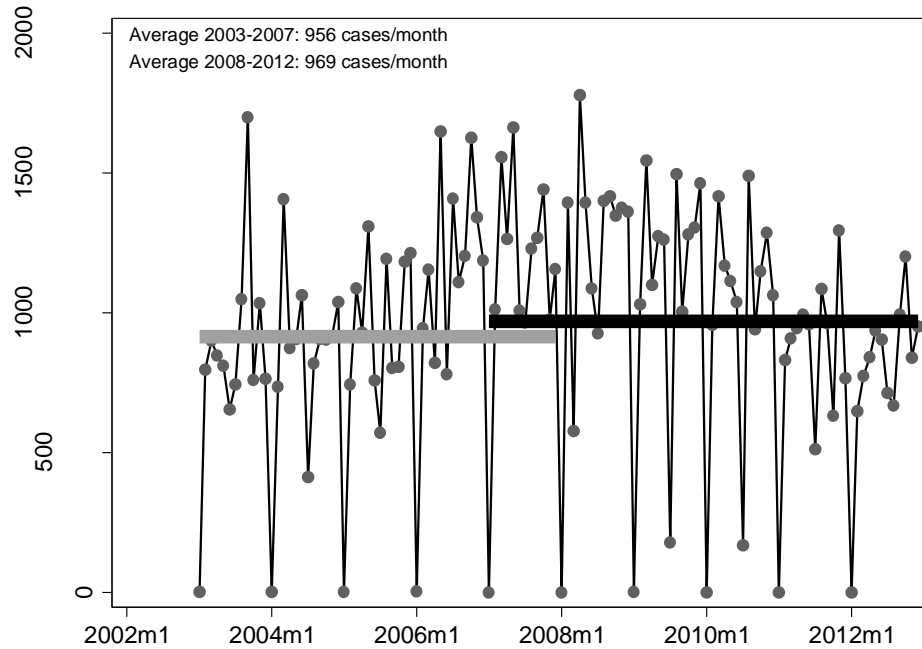
Robust standard errors

Legend: * p<0.1; ** p<0.05; *** p<0.01

B. The effects of Acordada's introduction on CSJN's docket

Once *Acordada* was introduced, new tasks were created within CSJN. At the same time, the number of cases was supposed to be handled much faster, given the relative simplicity of the tasks created. As a result, we expected an increase in the number of CSJN total decisions given that *Acordada* decisions would require less CSJN involvement. Figure 15 presents exploratory data on the number of cases decided by CSJN each month from January 2002 until December 2012. We do not observe an increase after the enactment of *Acordada*. The average number of cases decided each month in the year before its enactment was 1162. In the first year of *Acordada*'s life, the average number of cases decided declined to 1103.

FIGURE 15
CASES DECIDED PER MONTH IN THE PERIOD 2003-12



VII. DISCUSSION

A. Case duration

Our main findings concern case duration. Chief among those results is the average case length. We expected *Acordada* decisions to be resolved in a speedy manner as procedural dismissals are believed to be an efficient way to dispose of a case.⁴⁷ One interviewee went as far as to suggest that those cases should last no more than 45 days.⁴⁸ Nevertheless, it took CSJN on average just under 320 days to decide them. When we asked about this figure, most interviewees seemed astonished by its magnitude. The common explanation we received was that CSJN analyzes fully each and every appeal, regardless of formal errors, and that internal processes leading to decisions take time.⁴⁹ Although we believe that

⁴⁷ Eisenberg and Huang (2012).

⁴⁸ Interview A-3.

⁴⁹ An interviewee with a more cynical view suggested that case duration reflects a bureaucratic need for self-justification. Interview A-5. Perhaps not surprisingly given the nature of *Acordada* 4 appeals, none of our interviewees mentioned strategic maneuvering as the reason for

there's some validity to this claim, we still believe case duration to be excessive. In the only other jurisdiction that we know of where a Supreme Court dismisses appeals on formal grounds, i.e. Taiwan, the average dismissal time is 22 percent (70 days) faster.⁵⁰ Further, as appeals are analyzed in a seriatim manner in each specialized JD⁵¹ the prolonged case duration likely delays the treatment of other – perhaps more important- appeals. Similarly, the prolonged case duration could help explain the lack of CSJN increased output.

CSJN's internal organization proved to have the largest impact on case duration. The difference in mean case duration among areas of laws at each extreme of our census approached 300 days. We believe that case congestion in specialized JD N° 6 at the beginning of 2012 explains in large part the observed differences.⁵² Nevertheless, even after case redistribution at the beginning of 2012, specialized JD N° 6 was involved during 2012 in 225 less total decisions than during 2011. In order to explain this fact, one interviewee mentioned that it is common for many Labor Law appeals to reach CSJN on similar grounds. In these cases, it is only after a leading case is decided that other cases will follow suit.⁵³ Hence, Labor Law case duration may also reflect this fact. While we are sympathetic to this argument, it seems a bit odd from a policy perspective that appeals failing to comply with *Acordada* would be delayed for this reason.⁵⁴

B. Acordada's goals and effects

The widespread view shared among our interviewees is that CSJN will never dismiss a case on formal grounds if the underlying injustice merits review or if CSJN “cares” about the underlying legal problem.⁵⁵ To support this view, several

the lengthy average case duration. On strategic management of case duration by CSJN, see Kapiszewski (2006).

⁵⁰ The average dismissal length is reported from Eisenberg & Huang (2012) and covers the period 1996-2008. Even if we believed that the average case duration numbers for Labor Law and Human Rights Law cases resulted of an spurious congestion and we omitted them, the average case duration in Argentina would still compare unfavorably to its Taiwanese counter-part by a total of 16 days. Pushing the comparison further, if we restricted the analysis to the last 5 years on which Eisenberg and Huang report data, the difference would be much larger. In those five years average case duration dropped to 206 days, 35 percent faster than in Argentina.

⁵¹ The seriatim way of managing appeals in each specialized JD was confirmed by several interviewees.

⁵² One interviewee suggested this was the reason for the increased duration in Labor Law cases. Interview A-3.

⁵³ Interview A-13.

⁵⁴ It is possible though that an appeal containing formal errors is purposely delayed if CSJN has yet to set the relevant precedent and CSJN wants to leave open the possibility of using *Acordada's* exception to assure consistent results among similar cases.

⁵⁵ For instance, Interview A-18. This view also confirms that our interviewees see CSJN's function as incorporating both case based and issue based adjudication.

interviewees noted that a discovery of formal errors does not preclude further appeal analysis by CSJN. Nevertheless, the internal memo generated by the specialized JD is “more laconic” when formal errors are present.⁵⁶ This structure suggests that cases containing egregious injustices would not be affected by *Acordada* but “hearable” cases would be. Furthermore, for appeals lacking relevant docket copies CSJN usually cannot complete its preliminary analysis due to insufficient information. These cases may also allow for more error in the case selection process. This is especially true since a Justice’s annual workload may allow just a few minutes to review any given petition.⁵⁷ The results obtained in Criminal Law, an area where CSJN is relatively less likely to use *Acordada*, seem to confirm the effect. While 71 percent of all *Acordada* criminal cases are rejected for lack of relevant docket copies only 56 percent of all *Acordada* criminal cases containing dissent or separate opinions are rejected for lack of docket copies. Hence, *Acordada* has generated a new balance favoring access by litigants supported by specialized lawyers.⁵⁸

This finding is important because it incorporates docket management techniques into discussions of party success in developing countries. While several studies have confirmed the main tenets of party capability theory in the US,⁵⁹ a few studies have found that Supreme Courts in other countries can actually favor weaker parties -either for strategic or ideological reasons-.⁶⁰ Nevertheless, those studies don’t focus on case dismissals.⁶¹ Kastellec and Lax have shown that not accounting for case dismissals can distort findings about the effects of case characteristics on outcomes.⁶² Our results suggest that docket management techniques may also affect case outcome results of previous studies, as well as the ability of even the most willing ideological courts to offset resource differences among litigants.

⁵⁶ Interview A-3; A-6. One interviewee illustrated this point by saying that *Acordada* is the certiorari of certiorari. Interview A-3.

⁵⁷ Interview A-13. For instance, if the appeal doesn’t bring a copy of the lower court opinion or a copy of the REX practical reasons lead CSJN officials to work only with the available scant and unverifiable information.

⁵⁸ Such a balance is consistent with findings elsewhere. For the United States Supreme Court, see Lazarus (2009) (where he shows that while the number of cases heard by the United States Supreme Court has declined by half since 1980, expert advocates participation in petitions granted plenary review has increased by an order of magnitude in the same period –from 5.8% in 1980 to 55.5% in 2008).

⁵⁹ Wheeler et al (1987); Songer and Sheehan (1992)

⁶⁰ Haynie (1994); Dotan (1999).

⁶¹ For an exception focusing in the Taiwanese Supreme Court, see Chen, Huang and Lin (2014).

⁶² Kastellec and Lax (2008).

The new access to justice balance leads to question what CSJN was trying to achieve with *Acordada*, especially since it was enacted without prior consultation with Bar associations or lower courts.⁶³ A first common answer we received was that CSJN had been receiving poorly constructed appeals, many of them unnecessarily long and largely abusing the copy-paste function.⁶⁴ Hence, *Acordada* looked to reign in a situation where appeals were disrupting CSJN daily operations. Even though we believe that there is some truth to this explanation, it fails to explain why CSJN imposed a stern sanction to informal appeals.⁶⁵ As a matter of fact, CSJN work could also have been facilitated if appellants were given a short period of time to amend their mistakes, as it is, for instance, provided by Section 14.5 of the Rules of the Supreme Court of the United States.⁶⁶

A second type of response we received involved CSJN docket management.⁶⁷ In the years leading to *Acordada*, CSJN had been flooded with appeals.⁶⁸ Two were the main drivers behind the large number of appeals. First, the economic crisis of 2001 led to tens of thousands of appeals claiming confiscation of individuals' bank deposits.⁶⁹ Second, CSJN's new composition shifted its approach in many social rights issues towards a more progressive view.⁷⁰ As a result, lots of cases reached the court. By late 2006, these led CSJN justices to believe that the size of their docket was limiting their ability to accomplish their tasks as the ultimate guardians of the Constitution.

CSJN took several measures to bring down its docket size to more manageable levels. First, in December of 2006 -8 months ahead of *Acordada*'s enactment- CSJN decided in *Massa* to uphold the conversion of dollar deposits

⁶³ Interview A-5. The absence of prior consultation is in stark contrast to several reforms CSJN undertook after the 2001-2 crisis, suggested by a coalition of NGOs. Upon this exchange, CSJN adopted the disclosure of the circulation of case files among the different justices (*Acordada* 35/2003), the publication in full text of its relevant verdicts (*Acordada* 37/2003) and decided that any meeting between litigants and justices must take place in the presence of the counterpart (*Acordada* 7/2004). Ruibal (2009).

⁶⁴ One interviewee mentioned the case of an appeal 800 pages long. Interview A-6.

⁶⁵ Before the enactment of *Acordada*, CSJN clerks would ask appellants to remediate any failure to comply with the existing appeal requirements. Interview A-18.

⁶⁶ The rule mandates the Supreme Court Clerk to return the petition with a letter indicating its deficiency. A corrected petition can then be filed within 60 days. This is especially relevant since a couple of interviewees mentioned that the US rules served as inspiration for *Acordada*. Interviews A-6; A-3.

⁶⁷ For instance, Interview A-9.

⁶⁸ During the 2002-06 period, CSJN received on average more than 25000 appeals.

⁶⁹ One interviewee estimated the number of appeals in CSJN to have reached 250000. Interview A-3.

⁷⁰ Interview A-15. For a similar claim, see Valentin Thury-Cornejo (2011).

into rescheduled pesos deposits at the official rate determined by decree 214/2002 –the key issue concerning the large mass of cases arising from the 2001 crisis.⁷¹ In itself, this decision cleared the way to solve thousands of similar appeals that had been waiting in the Court.⁷² Second, CSJN enacted *Acordada 2* in February of 2007 increasing 5 fold the deposit amount required to file an appeal.⁷³ This is important since currency depreciation after the crisis had lowered the deposit amount from the equivalent of u\$ 1000 to around u\$300. Third, CSJN Justices were becoming increasingly worried that their progressive decisions had signaled to lawyers that CSJN would review almost any lower court decision. This was especially problematic since it was recognized that many criticisms surfaced when CSJN decided non-constitutional issues.⁷⁴ Hence, CSJN decided to limit their review of appeals based on arbitrary decisions to clearly egregious ones. Finally, CSJN approved new requirements to file petitions with *Acordada*. These requirements provided CSJN a way to limit its docket through a mechanism deemed objective and technical.⁷⁵ The docket management explanation suggests a more complex scenario and points toward a set of policies taken to address the congestion problem. Nonetheless, it falls short of explaining why CSJN needed *Acordada* in the first place, as it could have already dismissed those cases without it under *Article 280*.⁷⁶

We believe, by contrast, there are two additional reasons for the enactment of *Acordada*. First, CSJN seems to have wanted lawyers to take the appeal work –and therefore CSJN’s own work- more seriously. According to one of our interviewees, a Justice argued that appeals needed to pass a “minimum sufficiency test” in order to merit review.⁷⁷ Otherwise no professional fees would be awarded. Second, there was an implied legitimacy goal achieved. Put differently, CSJN seems to be using *Acordada* strategically to establish a wedge between dismissals. On the one hand, whenever CSJN denies certiorari based on its discretionary powers, any injustice that remains falls on the CSJN itself for not

⁷¹ *Massa, Juan Agustín v. Poder Ejecutivo Nacional – Decreto No. 1.570/01 / amparo*, J.A. (2007-I-187).

⁷² In fact, it is in December of 2006 that we start to see a decline in the number of appeals filed to CSJN.

⁷³ *Acordada 2/2007*, available online at <http://www.infoleg.gov.ar/infolegInternet/anexos/125000-129999/125009/norma.htm>.

⁷⁴ Interview A-15.

⁷⁵ In more colloquial terms, an anonymous interviewee referred to *Acordada* rules as “booby traps”.

⁷⁶ Interview A-13.

⁷⁷ Interview A-15.

reviewing the case.⁷⁸ On the other hand, if a case is dismissed under *Acordada*, any injustice that remains falls on the intervening lawyers who do not follow clearly established rules. Considering CSJN's recent history –i.e. the legitimacy crisis suffered during the 1990s⁷⁹–, it seems plausible that the legitimacy goal played an important role.⁸⁰ To the extent that this interpretation is correct, it helps explain CSJN *acceptance* of the high ratio of *Acordada* usage.⁸¹

Understanding *Acordada*'s goals also helps to make sense of its observed effects. Consistent with the docket management explanation the total number of appeals filed with CSJN decreased after the enactment of *Acordada*, continuing a sharp decrease trend which started a year earlier.⁸² At the same time, the total number of decisions remained largely stable after the enactment of *Acordada*. This result is more puzzling as we expected that, as a result of *Acordada*, the CSJN would be able to issue a greater number of decisions. We explored three alternative explanations for this result. First, we asked our interviewees whether CSJN granted certiorari in a higher percentage of cases post-*Acordada*. Second, we inquired whether the quality of opinions had improved. Finally, we asked whether *Acordada* rejections take the same amount of time as other rejections. None of our interviewees believed that the amount of cases granted certiorari had increased *post-Acordada*⁸³ nor that the quality of the opinions had improved. In addition, only a couple of interviewees believed that CSJN decreased case duration *post-Acordada*, while several others believed it remained the same.⁸⁴

⁷⁸ This proposition was suggested also by Fontana (2011), who argued that it was an excessive use of its discretionary powers what led the Russian Constitutional Court to very low approval ratings in the early 1990's.

⁷⁹ Kapiszewski (2006).

⁸⁰ On the issue of Supreme Court legitimacy and procedural fairness, see Baird (2001) (finding that it is the belief among West Germans that procedures are supposed to be neutral and legalistic which leads to perceptions of Federal Constitutional Court legitimacy).

⁸¹ Interview A-3.

⁸² After a peak in number of appeals filed in 2005 –totaling a staggering 31234 excluding pension law cases–, the number of appeals filed steadily declines until 2009 where it stabilizes at around 9000 extraordinary appeals per year. It is likely that the decrease in the number of appeals filed started as a result of fewer cases remaining undecided concerning the forced conversion of bank US dollar deposits into Argentine pesos deposits.

⁸³ This suggests that CSJN reversal rates have not been affected by the enactment of *Acordada*.

⁸⁴ One interviewee even suggested that all the decisions that use a prescribed formula (such as under Article 280, *Acordada* or lack of autonomous reasoning) take the same amount of time to be decided. Interview A-13.

Overall, the duration results and the qualitative information we gathered suggest that CSJN has yet to take full advantage of *Acordada*'s possibilities.⁸⁵

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⁸⁵ Interestingly, Eisenberg and Huang (2012) found that the introduction of more discretionary powers in Taiwan –permitting to solve the cases faster- didn't lead to more opinions be issued either.

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ANNEX: FIGURES AND TABLES

TABLE A-1
NUMBER OF DECISIONS BY SUBJECT AREA

| 9,5 | Total amount of cases with each sub area | Specialized Judicial Department |
|--------------------|---|------------------------------------|
| Constitutional Law | 5 | 4 |
| Property Law | 56 | 7 |
| Family Law | 15 | 2 |
| Bankruptcy Law | 19 | 1 |
| Criminal Law | 76 | 3 |
| Criminal Procedure | 40 | 3 |
| International Law | 0 | N/C |
| Human rights Law | 5 | 5 |
| Contract Law | 38 | 1 |
| Insurance Law | 4 | 2 |
| Tax Law | 36 | 7 |
| Tort Law | 102 | 2 |
| Labour Law | 434 | 6 |
| Public Law | 175 | 4 |

TABLE A-2
LIST OF INTERVIEWEES*

| Name | Position |
|------------------------|--|
| Abritta, Cristian | Secretario - Corte Suprema de Justicia de la Nación |
| Álvarez Tuñón, Eduardo | Fiscal General - Cámara Nacional del Trabajo |
| Blanco, Hernán | Secretario - Sala IV, Cámara Federal de Casación Penal |
| Canevari, Esteban | Secretario - Corte Suprema de Justicia de la Nación |
| Erbín, Juan | Sub-Director Nacional de Asuntos Judiciales de Procuración del Tesoro de la Nación |
| Ferro, Lautaro D. | Partner - Pérez Alati, Grondona, Benites, Arntsen & Martínez de Hoz (h) |
| Garay, Alberto F. | Partner - Carrió & Garay Abogados |
| García Vior, Andrea | Secretaria - Sala II, de la Cámara Nacional de Apelaciones del Trabajo |
| Giménez, María Inés | Partner - Bulit Goñi & Tarsitano |
| Hockl, María Cecilia | Secretaria Letrada - Corte Suprema de Justicia de la Nación |
| Incera, Luis M. | Partner - Pérez Alati, Grondona, Benites, Arntsen & Martínez de Hoz (h) |
| Kiper, Claudio | Juez – Sala H, Cámara Nacional de Apelaciones en lo Civil |
| Mairal, Hector A. | Partner - Marval, O'Farrell & Mairal |
| Marra, Macarena | Secretaria - Sala II de la Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal |
| Navarro, Marcelo | Secretario Letrado - Corte Suprema de Justicia de la Nación |
| Tarsitano, Alberto | Partner - Bulit Goñi & Tarsitano |
| Veramendi, Enrique V. | Partner - Marval, O'Farrell & Mairal |

* This list does not include individuals who have requested to remain anonymous.