1.2. ОЦІНЮВАННЯ ЯКОСТІ ТА ЕФЕКТИВНОСТІ РОБОТИ СУДУ

Kossacki-Lytwyn K.
master of Law, Jagiellonian University

A FEW WORDS ABOUT THE EFFICIENCY OF THE POLISH JUDICIARY

Complaining about the Polish courts' unreasonable length of actions has a long tradition and history. It is difficult to say when the problem arose, because one might say that it has existed since forever. Judiciary of Poland for years has been seen as a slow and lumbering machine, of which the effects of work are unsatisfactory. A report conducted by the CBOS1 for the Polish Ombudsman in 2005 showed that opinions on the functioning of the justice system in Poland were very negative (69% of responses) including every fourth respondent (24%) claiming that it worked decidedly wrong2. A few years later, in 2011, opinion polls showed that Poles divided and the work of the judiciary 46% assessed positively and 41% negatively3. The main reason for the negative evaluation of the judiciary were dilatory actions - more than half of the dissatisfied indicated this factor (56%), followed by low effectiveness and corruption (44% each). The newest studies carried out by the CBOS confirm a negative attitude of Poles to the courts: courts' work is well assessed by only 27%, and poorly – by 46%. It is hardly surprising, since the court proceedings drag on for months and years, and the clearance rates (especially for civil and commercial cases) indicate that the courts have not kept pace with adjudicating. But the reasons for this are not obvious. Employment rates and money pumped into the judiciary and the justice system in general are among the highest in Europe. So why does this not turn into a good performance of the courts and the public opinion? Several reasons are possible.

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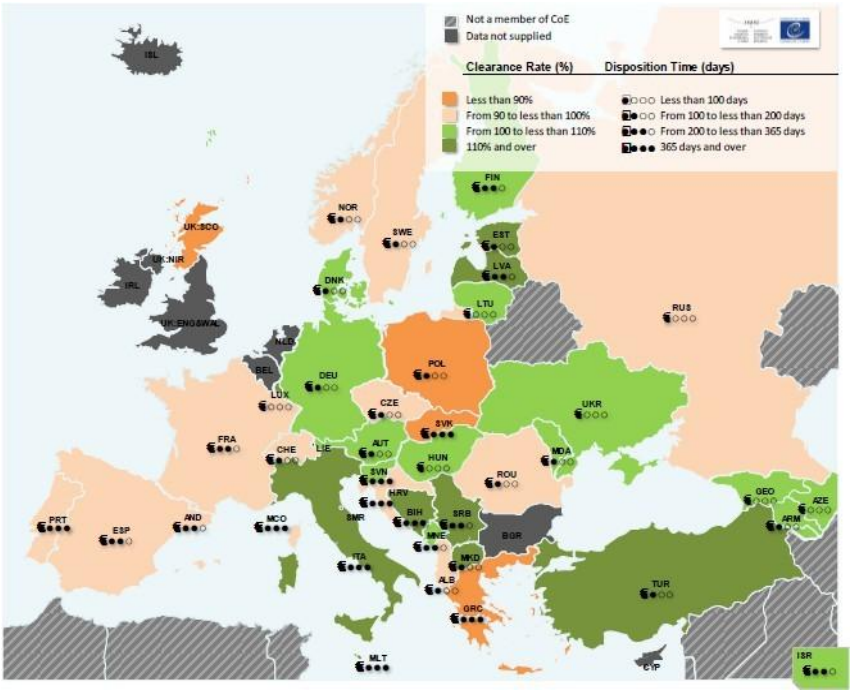
1 Centrum Badania Opinii Społecznej (CBOS) (Centre for Public Opinion Research) is a leading opinion polling institute in Poland, based in Warsaw

2 Opinie o systemie przestrzegania prawa i wymiaru sprawiedliwości Komunikat z badań CBOS, Warszawa, listopad 2005

3 Raport końcowy z badania opinii publicznej Wizerunek wymiaru sprawiedliwości, ocena reformy wymiaru sprawiedliwości, aktualny stan świadomości społecznej w zakresie alternatywnych sposobów rozwiązywania sporów oraz praw osób pokrzywdzonych przestępstwem, Warszawa, lipiec 2011 r., p.

Picture 1. Clearance Rate and Disposition Time of litigious civil (and commercial) cases in first instance courts in 2012.



Source: CEPEJ Report on European judicial systems – Edition 2014 (2012 data): *Efficiency and quality of justice.*

Comparing to other European countries, Poland has a great amount of judges. As a report of the European Commission for the Efficiency of Justice (CEPEJ) shows, in 2012 in Poland there was over 26 judges per 100 000 inhabitants[4]. It is an astronomic number, taking into account that for example in France there was around 10 judges for this amount of inhabitants and in Great Britain barely over 5 judges. Why then does Poland not have one of the fastest adjudicating system? One of the possible reasons is that since the judges do not earn as much money as their European colleagues (only around 2 times more than the avarage national salary) they are tempted by other functions. Apart from the function of adjudicating there are multiple other functions in courts – administrative ones. Judges receive a duty allowance if they perform functions of a president of the court, vice-president of the court, president of the division (over a dozen of divisions can exist in one court) and such an additional duty allowance is very attractive. The function ot the president of the division can be held for a maximum of 3 years[5], when it comes to a president/vice-president of the court – from 4 to 6 years[6]. Since those posts are very rotational and there are a lot of them – a

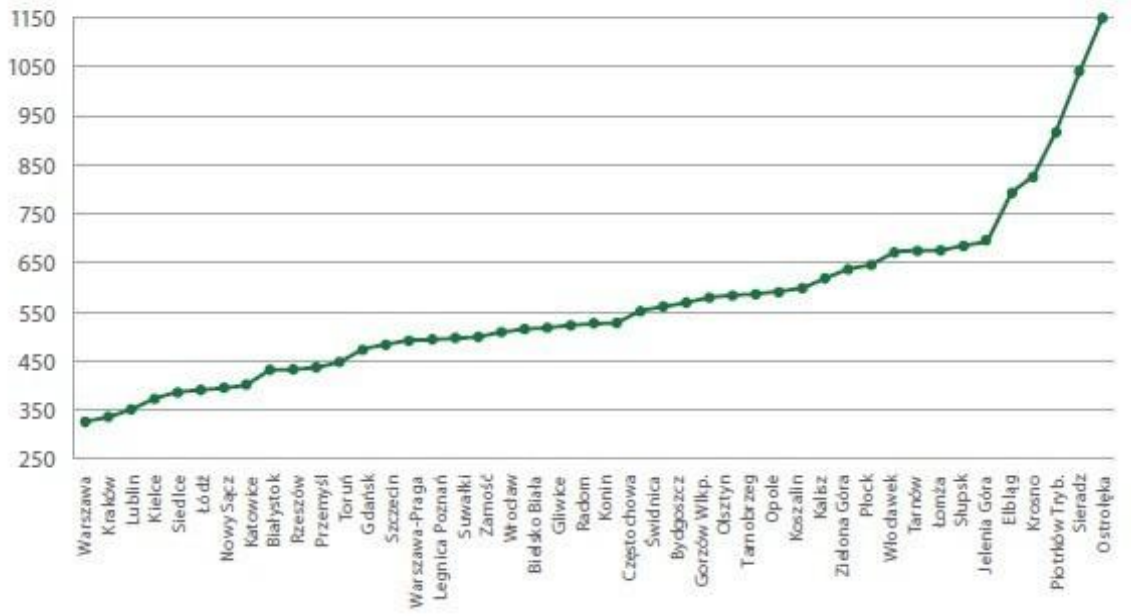
4 CEPEJ Report on European judicial systems – Edition 2014 (2012 data): *Efficiency and quality of justice*, p.157

5 Article 11 § 3a of the Law - Ustawa z dnia 27 lipca 2001 r. - Prawo o ustroju sądów powszechnych

6 Article 26 § 2 of the Law - Ustawa z dnia 27 lipca 2001 r. - Prawo o ustroju sądów powszechnych high percentage of judges do not only adjudicate but have

multiple duties connected with them. Also a big amount of judges cooperate with the Ministry of Justice and when they are in Warsaw they do not work for their courts. Even though there are judge's assistants (around 1 for 3 judges) and court referendaries**,** it does not prevent backlogs. In this constellation the judge is perceived as a clerk**,** whose duty is not only to issue decisions but also to cope with organisation, management and superintendence. An interesting and a negative phenomenon from the poinf of view of efficiency of adjudication is a very varied workload of different courts. Differences in numbers of cases to handle by one judge in different types of courts are huge. For example, in 2009 in criminal divisions of regional courts the workload varied from 77 and 479 cases per year[7]. The graph below shows numbers of cases sumbitted to district courts that accrue to one judge who does not perform administrative functions.

Picture 2. The number of cases assigned to one judge who only adjudicates.



Source: ***Efektywność polskiego sądownictwa w świetle badań międzynarodowych i krajowych J.Bełdowski, M.Ciżkowicz, D. Sześciło, Forum Obywatelskiego Rozwoju, Helsińska Fundacja Praw Człowieka, Warszawa 2010 r.***

What is interesting, the lowest workload per one judge occured in courts that were inundated by the amount of submitted cases (Warsaw, Cracow, Lublin) and the highest in courts which had relatively small amount of new cases[8]. This shows that the problem lays not in small courts being deluged by thousands of cases but in the fact, that in such courts too many judges have to combine two functions – adjudicating and administrating, in comparison to judges that only adjudicate.

7 J.Bełdowski, M.Ciżkowicz, D. Sześciło, *Efektywność polskiego sądownictwa w świetle badań międzynarodowych i krajowych*, Forum Obywatelskiego Rozwoju, Helsińska Fundacja Praw Człowieka, Warszawa 2010 r., p. 9

8 J.Bełdowski, M.Ciżkowicz, D. Sześciło, *Efektywność polskiego sądownictwa w świetle badań międzynarodowych i krajowych*, Forum Obywatelskiego Rozwoju, Helsińska Fundacja Praw Człowieka, Warszawa 2010 r., p. 10

A great amount of cases submitted to courts is a result of the society's poor consience of the fact that most of them could be easily solved by other forms of dispute resolutions: arbitration, mediation, conciliation. An avarage Pole has nearly no knowledge about arbitration courts. Very few parties that sign a contract think of including an arbitration clause, since it is not popular. It is not popular because most people mistakenly think that arbitration is only for huge companies and that it is expensive – a vicious circle. A study conducted by the Ministry of Justice in the frames of the programme "Human capital 2007 - 2008" showed that only half of the respondents have heard before about alternative dispute resolutions and only about every forth has heard of arbitration[9]. 57 % of respondents would prefer going to court than to a mediator. Only 19 % of the respondents who have previously heard of alternative dispute resolutions would use the services of a mediator. What is more, the poll showed that mediation was often confused with other terms such as "media", "meditation" and "aviation"[10].

It is true that there are no legal frameworks for the wholeness of proceedings and judges do not need to worry if the proceeding takes long. Nevertheless they are not free of supervision when it comes to efficiency of adjudicating. Efficatious adjudication is one of the elements of the judge's ethos and a tardiness either resulting from negligence or purposefulness, may be subject to a disciplinary proceeding. Delays in issuing reasons for judgements or widespread postponements can result in disciplinary punishments and in extreme cases even in losing office[11]. But usually this is not the judge who drags the case, but the parties of the proceeding themselves. Any lawyer who wants to prorogue a case can skillfully make use of the Polish procedural law, so that the proceeding will not move on for several months. The biggest range of possibilities exists in the evidentiary proceeding. If an expert is appointed to conduct expertise, the case will usually take 6 months more than without this evidence; if more of them are appointed – even a year more must be added. A party can ask not to perform any actions without their or their lawyer's presence and then not appear in the court. In a criminal proceeding a motion to read out loud all the case files is possible, too. There are lots of possibilities and unfortunately it is hard to get rid of them and not to limit the legitimate rights of the parties.

Finally, we must remember that the problem is not invisible to the government and there have been some good reforms that helped to partially relieve the courts. The electronic proceeding for civil pecuniary claims (including commercial and labour claims) introduced in 2010 was an excellent idea. The claimant communicates with the court (namely the Regional Court in

9 A.Rękas, *Mediacja w polityce ministerstwa sprawiedliwości* [in:] "Mediacja w praktyce wymiaru sprawiedliwości"

10 Interview with the Minister of Justice Krzysztof Kwiatkowski [in:] *Nigdy, zawsze, nieprawda, dość, koniec*

11 See cases of The Supreme Court - the Disciplinary Court, signatures: SNO 58/14 and SNO 27/15.

Lublin) exclusively electronically through a system dedicated to the electronic writ of payment proceedings. This type of an optional proceeding is cheaper and already quite popular. By the October 2011, around 2 000 000 lawsuits have been lodged in the e-court, and in around 1 600 000 cases there have been issued payment orders. Another electronic novelty is the electronic land registry. Now nobody needs to go to a building of the court to look through their immovable's documents, they are accessible online for those having the numbers of the property. Unfortunately in 2011 only 22% of respondents have heard about of this possibility, and only 11% have taken advantage of it[12]. Another great step towards relieving the courts was made by creating a possibility of declaring inheritance by a notary public. Usually succesion cases are incontestable and there is no need to involve a judge and to interrogate witnesses in front of the court. When there is a joint motion of all or several inheritors (and all inheritors are known) a notary is competent to issue a statement of inheritance.

To sum up, there has been a lot done to fight tardiness of the judicary but still there is a lot to do. Reducing the amount of additional administrative functions would definitely help to manage the overall court workload. Changes in the procedural law would have influence too, but one needs to remember that they must not limit the principles of a fair trial. Lastly, the society should be better informed about extrajudicial possibilities of resolving conflicts.

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2011 r., p. 653/2010 Perspektywy wymiaru sprawiedliwości

7. *Efektywność polskiego sądownictwa w świetle badań międzynarodowych i krajowych J.Bełdowski, M.Ciżkowicz, D. Sześciło, Forum Obywatelskiego Rozwoju, Helsińska Fundacja Praw Człowieka, Warszawa 2010 r. https://www.for.org.pl/upload/Nowy_Wymiar_Sprawiedliwosci/sady_raport2_popr1.pdf*
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