

SYLWIA MORAWSKA*,
PRZEMYSŁAW BANASIK**,
BEATA WOŹNIAK-JĘCHOREK***

The Handling of Business Lawsuits by Common Courts in Poland: Identification of Transaction Costs

Introduction

Everyone has the right to have their case heard without undue delay (Article 45 paragraph 1 of the Constitution of the Republic of Poland). Prompt conduct of proceedings is an order resulting from Art. 6 par. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (hereinafter referred to as the ECHR), which provides that cases heard before a court should be resolved within a reasonable time. Excessive duration of court proceedings is in violation of Art. 6 par. 1 ECHR and gives ground to lodging an individual complaint to the ECHR in Strasbourg. It also gives the aggrieved party the right to seek relevant compensation (Art. 41 ECHR). The timely handling of proceedings was taken into account by the Polish legislator, by obliging in Art. 6 of the Polish Code of Civil Procedure courts to counteract any delays in proceedings and to strive for the resolution to take place during the first hearing, provided this can be done without negatively affecting the case. The right to have one's case heard without undue delay has a normative basis. The principles of process economics and the concentration of evidence are included in the guiding principles of civil procedure, whereas excessive length is indicated as one of the shortcomings accompanying these proceedings ever since their inception. Polish

* Dr hab. Sylwia Morawska – Warsaw School of Economics, Collegium of Business Administration; e-mail: smoraw@sgh.waw.pl

** Dr hab. Przemysław Banasik – Gdańsk University of Technology, Faculty of Management and Economics; e-mail: przemyslawbanasik@tlen.pl

*** Dr hab. Beata Woźniak-Jęchorek – Poznań University of Economics and Business, Department of Macroeconomics and Development Studies; e-mail: beata.wozniak-jechorek@ue.poznan.pl

law provides for the possibility of lodging a complaint to court due to excessive length of court proceedings.¹

Formulating practical remarks allowing to increase the efficiency of court proceedings requires, first, identifying factors influencing the time of case resolution, starting from the moment it reaches the court of first instance court until issuing the second-instance judgment. The right to have one's case heard without undue delay remains in the interest of representatives of both legal and economic sciences. Lawyers point out that the speed of proceedings is not an absolute value, as it is of importance only if ensuring simultaneously the achievement of the fundamental goal of the proceedings (Flaga-Gieruszyńska 2017). Thus, the speed of examining cases (Article 6 of the Code of Civil Procedure) must not take place at the expense of the lack of explanation of circumstances relevant to their settlement in the first place (Article 3§2 of the Code of Civil Procedure). Economists, meanwhile, argue that justice delayed is justice denied. Overly long court delay is not only likely to threaten the legitimacy of a country's judicial system but can also lead to a loss in legitimacy of the political system at large. Economists expect court delay to have important economic consequences: as fewer contracts are entered into, there will be a lower division of labor and, at the end of the day, less growth and income (Voigt 2016). Thus, economists try to measure performance on various levels: the individual one, the court one, and even the national one. They analyze factors affecting the efficiency or effectiveness of the court system both on the supply and demand side. Empirical research also concerns factors that may influence judicial performance on both these ends of the spectrum. Accordingly, in this paper it was examined on the supply side how: voluntary and mandatory judge turnover between judicial districts (Guerra and Tagliapietra 2017), degrees of formality of judicial procedures (Di Vita 2010, Djankov et al. 2003), the number or organizational structure of courts (Antonelli and Grembi 2013), court size (Voigt and El Bialy 2015), incentives schemes for judges and lawyers (e.g. payment scheme, career possibilities: Choi, Gulati and Posner 2009, Lim 2013, Melcarne and Ramello 2015), judges' productivity (Christensen and Szmer 2012, Marciano and Khalil 2012), knowledge, experience – judges' seniority (Ramseyer 2012), accountability (Goelzhauser 2012), individual task-scheduling methods adopted by the judge (Coviello et al. 2009, 2014a, 2014b), judicial staffing and caseload influence courts (Dimitrova-Grajzl et al. 2012). The efficiency, effectiveness and timely handling of court proceedings were also the subject of interest in the Polish legal and economic law-analysis literature (cf. Flaga-Gieruszyńska 2017, Bełdowski et al. 2010, Joński 2016).

Summarizing the review of literature on the performance of judicial proceedings, the basic factors on the supply side of the court's functioning can be said to include (Voigt 2016):

¹ The Act of 17 June 2004 on complaints about violation of the party's right to hear the case in court proceedings without undue delay (Journal of Laws 2004, no. 179, item 1843, as amended).



- The number of judges per capita. In addition, their education, age, experience and so on are likely to play a role.
- The incentives that judges are subject to; in particular payment schemes and career possibilities.
- The number and quality of staff.
- The available technology. This is not just the number of computers, but also access to relevant decision-making collections, availability of software programs connecting judges with each other and their administration but possibly also with prosecutors, the police, prisons and so on.
- The complexity of the judicial system itself; the number of court layers, etc.
- The overall budget of the judiciary.
- The number of non-judicial tasks allocated to the judiciary (like land or firm registry as just discussed).
- The percentage of vacancies; it is not the potential number of judges that determine output but the number of judges who are actually employed and work.
- The complexity of cases filed.

The efficiency, effectiveness and smooth handling of court proceedings in business lawsuits in Poland are not, therefore, a novelty in either Polish or international economic law-analysis literature. However, a hypothesis that efficiency influences the level of transaction costs, and the subsequent conducting of a qualitative study in this area, becomes an important contribution to the discussion about the importance of the problem of transaction costs for the security of overall business trading in Poland.

Throughout this paper, we define “transaction cost” as does Douglas North, among others: “[the costs of] defining, protecting, and enforcing the property rights to goods” (North 1990, p. 28). Thus, the costs associated with litigation – especially one that goes to court – would fit within North’s concept of “enforcement costs” (North 1990, pp. 54–69). While there is disagreement among transaction cost scholars about the treatment of enforcement costs (North 1990, p. 54), we still believe that the legal costs of a court case directly or indirectly centered on a litigation are consistent with Williamson’s view of transaction costs as “the economic equivalent of friction in physical systems” (Williamson 1985, p. 19) and his definition of “ex post” contracting costs: “...[the costs of] the setup and running costs associated with the courts to which disputes are referred...” (ibidem p. 21).

Referring to the problems outlined above, the aim of the article is to identify factors influencing the transaction costs of contract enforcement on the supply side, i.e. as part of common courts’ activity, on the example of the District Court and Appeals Court in Gdańsk.

For the purpose of the article, a pilot study was conducted involving 210 court cases (lawsuits) pending before the District Court in Gdańsk in the first instance after 2009, in which the judgment was issued in 2012 (the last 210 cases) and for which the appeal was lodged to the Appeals Court in Gdańsk and the proceedings were concluded before 2013. The study attempted to answer two research questions. First, which factors influence the time of case resolution, from the moment it reaches the court of first instance up to the second-instance judgment, and second – to what



extent the level of complexity of the case is correlated with the time of its consideration. The paper is, in a way, a case study which can potentially be viewed as a prelude to further research. In addition, the study constitutes an unprecedented attempt in the Polish literature, given that it did not rely solely on statistical data on the duration of proceedings as reported by the Polish Ministry of Justice, but it examined actual business lawsuits. It was assumed in the study that the transaction costs of contract enforcement are not composed merely of the costs of court fees and legal representation, which are defined normatively, but also of the efficiency of court operations, i.e. the time necessary to exercise rights arising from the contract. Excessive duration of proceedings generates additional costs for the entrepreneur, yet such costs are rarely estimated, and even less so in Poland. However, our goal was not to determine the amount of transaction costs that arise from settling business lawsuits before courts in Poland, but to identify factors influencing their emergence.

The remainder of this paper is as follows. Section 1 discusses the empirical contributions in the literature on transaction costs and clarifies why it is important to specifically look at these costs in the context of law in action. Section 2 discusses the data and empirical strategy. Consequently, section 3 focuses on the empirical investigation. Last section concludes.

1. What do we know about transaction cost in litigation?

One of the key indicators of economic freedom and the ease/difficulty of doing business is the time and costs of contract enforcement². Enforcement costs, the third and final (after search costs and bargaining costs) element of transaction costs, arise when an agreement takes time to fulfil (Cooter and Ulen 2016, p. 88–90).

Transaction costs analysis is usually applied to the broader economy. On the market for goods and services, buyers and sellers incur various costs of undertaking a transaction (Williamson 1981, Rao 2003). The parties have to search for suitable partners, inform themselves about the attributes of goods and services, and negotiate a contract. After the contract has been concluded, the buyer has to monitor the performance by the seller, and the seller has to ensure that the buyer pays the price. Transactions need some governance structure, and this is costly to set up. Legal costs and other costs to resolve disputes are textbook examples of such transaction costs (Klein 1980, Ayres and Gertner 1992, Schwartz 1992, Hadfield 1994, Katz 2005, Scott and Triantis 2006, Kostriksy 2005, Famulski 2017). Legal costs understood as the transaction costs mean the direct economic costs incurred by the parties, primarily costs associated with inspection, bargaining, enforcement, and litigation. These costs

² For example, indicators such as Starting a Business, Registering Property, Enforcing Contracts and Resolving Insolvency from the Doing Business annual reports; indicators of the first pillar The Global Competitiveness Report elaborated by the World Economic Forum (Judicial independence, Efficiency of legal framework in settling disputes, Efficiency of legal framework in challenging regs); Business costs of crime and violence, Organized crime, Reliability of police services); taking into account the functioning of courts in the global survey conducted by the World Bank and the EBRD (BEEPS), including Rule of Law components in the most popular indexes of “economic freedom”, e.g. Heritage Foundation, Freedom House, Fraser Institute.



are typically cash expenses, like attorneys' fees, or reducible to cash equivalents, like time and effort. Construed broadly, transaction costs could include the secondary costs associated with the judicial infrastructure (Rhee 2006, p. 628). According to Eggertson, the costs of monitoring and enforcing the implementation of contract are part of ex post transaction costs, in contrast to those related to the formulation of the contract, which are considered as ex ante transaction costs (Eggertson 1990, p. 14).

The transaction costs vary depending on the complexity of transaction. The careful formulation of contracts and compliance with applicable laws allow businesses to avoid most misunderstandings. However, when the contract parties cannot avoid them, the costs punishing violations of the agreement depend on the efficiency of litigations. In general, enforcement costs are low when violations of the agreement are easy to observe, and punishment is cheap to administer. It means that a good legal system and high efficiency in recognizing business cases by common courts allow to reduce both enforcement costs and transaction costs.

There is an enormous theoretical literature on how the parties in litigation choose whether to settle their case or to litigate it through a trial (see, among many others, Bebchuk 1984; Nalebuff 1987; Png 1983; Priest and Klein 1984; Reinganum and Wilder 1986; Shavell 1996; Spier 1992; Cooter and Rubinfeld 1989; Daugherty and Reinganum 2005). Within this literature, there is a general consensus that the outcome of the case will depend on the nature of the parties, i.e., their ability to overcome transaction costs, their degree of risk aversion, in sum, their relative ability to bargain for a settlement agreement or to continue the case to judgment (Ball and Kesan 2009, p. 4).

Empirical studies tend to deal with this issue more explicitly. In a review of the empirical literature on litigation, Kessler and Rubinfeld note that difficulty in discussing this literature is that the institutional and legal environments vary substantially across types of litigation. They state that “the particulars of settlement behaviour depend on the nature of the parties (firms or individuals, risk neutral or risk-averse, etc.), on the nature of the cases (large stakes, small stakes, reputation effects, etc.), and more generally on the institutional characteristics associated with the subject matter at issue” (Kessler and Rubinfeld 2004, p. 34). The time and efforts in court disputes are also important. The analysis of files in economic cases in Polish courts indicates the following important factors for the litigation transaction costs:

- duration of proceedings at first instance (detailing the time until the first hearing),
- duration of proceedings at second instance,
- possible time for reconsideration of the case at first instance,
- the analysis of actions taken by the parties in the course of the case,
- the value of the subject of the dispute (amount in controversy),
- costs of proceedings,
- complexity of the case measured by the number of volumes collected in the course of the proceedings and the number of pages justifying the judgment,
- organizational and legal form of the claimant/defendant,
- participation of an expert in the case.



The litigation transaction costs, independent of judgments made in disputes or settlements reached between parties, constitute a significant economic cost of doing business in the United States (Litigation Annual Trends Survey 2018; Litigation Cost Survey of Major Companies 2010) and in other countries (World Bank 2018). Therefore, it is worth to analyze this problem in the Polish context.

2. Data and empirical strategy

As mentioned in the introduction, to answer the formulated research questions, 210 business lawsuits (electronic writ-of-payment proceedings – EPU, writ-of-payment proceedings, enforcement proceedings, business case – GC) from the regional Appeals Court in Gdańsk were analyzed. The conducted study was qualitative, while the choice of cases subject to analysis was not random. The research method proposed as part of the study may ensure replication of the findings in the remaining courts. This is because:

1. Every court, regardless of its size and position in the judicial structure, operates on the same grounds and assumptions; it also has a similar internal structure, which consists of substantive departments and branches.
2. In every court there is the same structure of human resources: judges, referendaries, side judges, officials and service employees.
3. The training (but also access to education and knowledge) and selection of employees in every court is similar or the same (as in the case of judges and referendaries).
4. Every court has the same access to material and financial resources, and the difference in their size results solely from the size of the court (excluding appeals courts that redistribute these resources).

Given that the study was qualitative, the accuracy of the assumptions remains limited, though they arguably enable generalizing conclusions for the District Court in Gdańsk.

In order to reflect the most up-to-date legal status, as well as business and judicial practice, 210 most recent cases concluded in 2012 at first instance were selected, in which parties appealed to a higher court. This allowed to recognize the time of proceedings for business lawsuits in actual conditions, as well as to determine the waiting time for the first hearing, the duration of proceedings at first instance and second instance, the duration of proceedings in the event of appointing expert witnesses, amount in controversy and costs of proceedings. It follows from regulations that the costs of proceedings at both first and second instance correspond to 5% of the amount in controversy. The study reveals the amount in controversy that is at stake for entrepreneurs – parties to the proceedings. In the examination of individual cases, it was also determined which entrepreneurs pursue their rights before commercial courts, i.e. whether these are natural persons (individuals) running a business or legal person.



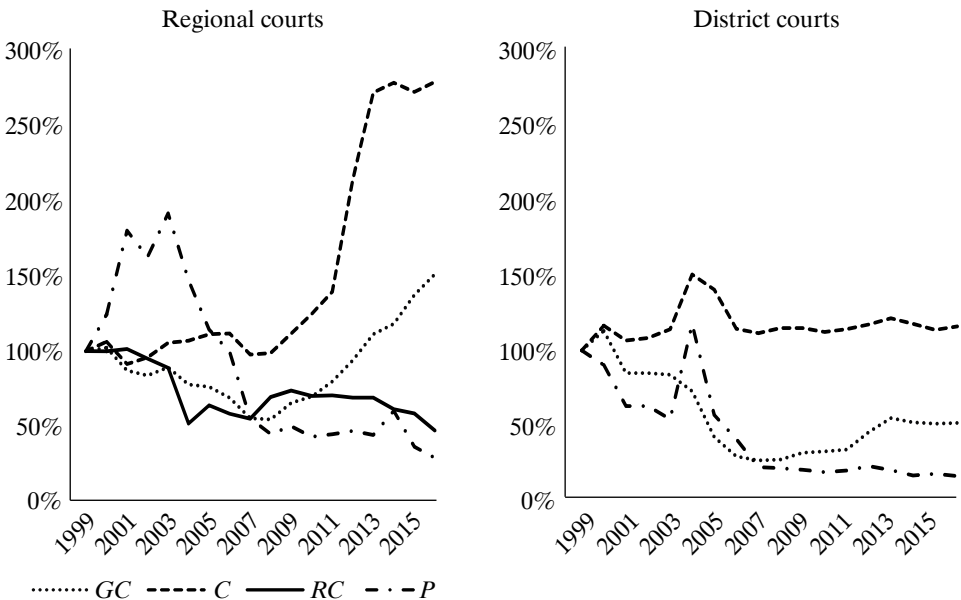
3. Empirical examination

3.1. Business lawsuit proceedings in light of statistical data

The number of registered business lawsuits – compared to other civil-law cases – is marked by unique dynamics. While the number of civil disputes between natural persons (*C*) – despite a one-time doubling in 2010–12 (which could be due to the introduction of EPU – electronic writ-of-payment proceedings) – is characterized by high stability, whereas family (*RC*) and employee (*P*) lawsuits show a clear downward trend. Last but not least, the number of registered business lawsuits (*GC*) has been subject to large fluctuations. Between 1999 and 2007, it dropped significantly (almost by half in regional courts, and by 70% in district courts), to increase again at a similar pace from 2008 onwards. Figure 1 illustrates the dynamics of changes in the number of registered first-instance civil cases whose parties were entrepreneurs and where the dispute concerned their economic activity³ – hereinafter referred to as business lawsuits.

Figure 1

Changes in the number of registered first-instance lawsuit cases in regional and district courts in 1999–2016 (1999 = 100%)



Source: Case files by legal departments in common courts for 2001–2016, <https://isws.ms.gov.pl/pl/baza-statystyczna> (retrieved 12.06.2017).

³ The concept of business lawsuit is defined in Art. 2.1. of the Act of 24 May 1989 on the Consideration of Business Lawsuits by Courts (consolidated text of the Journal of Laws 2016, item 723); S. Morawska, P. Banasik, K. Joński, grant report of the National Science Center (NCN) “Ocena poziomu rzeczywistej



This raises the question of the reasons for changes in the number of registered cases of this category – and possibly their (at least interval) forecasting. This is of particular practical importance for the process of managing the structure of commercial courts – implemented by the Polish Minister of Justice⁴. If the number of registered cases is subject to significant and cyclical fluctuations, decisions justified in light of the current scenario may turn out to be wrong in the near future. A periodical decrease in the number of registered cases may lead to an excessive shrinking of the structure, which then will not be able to cope with the subsequent increase. On the other hand, in a situation of periodic growth, there may be a tendency to expand the structure excessively. Understanding the dynamics of fluctuations in the number of registered business lawsuits and their causes will help to avoid such mistakes. Interestingly, while the number of registered business lawsuits with the amount in controversy exceeding 75,000 PLN (and therefore examined by regional courts) stabilized after 2014, the number of registered cases with lower amounts has been constantly on the rise. This increase seems difficult to explain in the context of an economic upturn. A natural point of departure for determining the number of registered business lawsuits is to conduct a historical analysis.

Due to structural changes introduced in Poland in the 1990s (related to political changes), a decision was made to narrow the analysis down to the period from 1997 to 2016. In that time, many different factors could influence the number of registered business lawsuits. Some resulted from the legislator’s informed decisions. In 2006, a new Act on Court Costs in Civil Cases came into effect⁵, which reduced the fees incurred in business lawsuits from 5–8%⁶ to 5% of the amount in controversy. It is also safe to assume that the number of registered business lawsuits will reflect changes taking place in the economy, e.g. an increase in the number of business entities or business cycles, along with the accompanying changes in the financial condition of enterprises.

A serious issue concerning court proceedings, including the handling of business lawsuits, is their excessive duration. Figure 2 illustrates the total amount of damages (compensation) awarded due to overly long court delays, which should be classified as transaction costs arising from contract enforcement.

ochrony praw wierzycieli w Polsce w latach 2004–2012 – koszty transakcyjne dochodzenia prawa z umów” [“Assessment of the level of actual protection of creditors’ rights in Poland in 2004–2012 – transaction costs of contract enforcement”], contract number UMO-2013/09 B/HS4/03605.

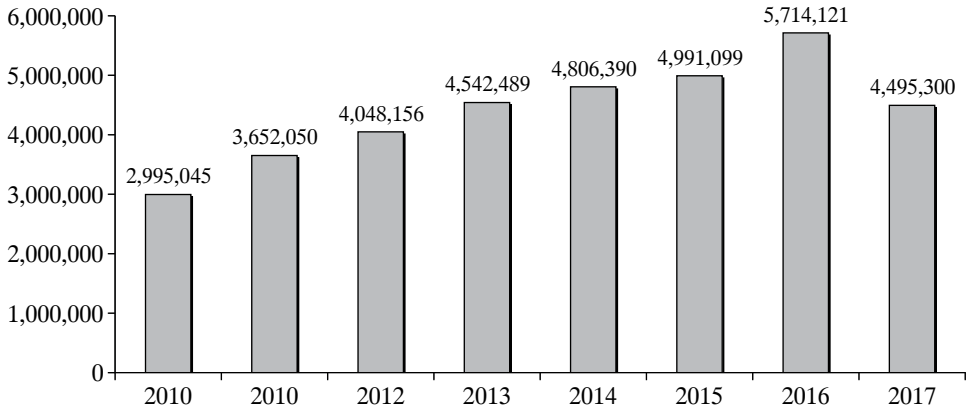
⁴ Based on Art. 20 § 3 of the Act of 27 July 2001 on the System of Common Courts (consolidated text of the Journal of Laws 2016, item 2062, as amended) and Art. 24 of the Act of 4 September 1997 on Government Administration Departments (consolidated text in the Journal of Laws 2016, item 543, as amended).

⁵ The Act of 28 July 2005 on Court Costs in Civil Cases (Journal of Laws 2016, item 623, as amended).

⁶ Regulation of the Minister of Justice of 17 December 1996 on determining the amount of entries in civil cases (Journal of Laws 1996, no. 154, item 753, as amended) established a “step” relative fee of 5–8% of the amount in controversy (the fee was degressive, while the rate decreased along with the increase in amount in controversy).



Figure 2
Total amount of damages awarded for undue delays
in cases heard before appeals courts and district courts in 2010–2017 (PLN)



Source: Statistical Department of Management Information, Department of Strategy and European Funds of the Polish Ministry of Justice, Warsaw 2018.

3.2. Court records analysis

An analysis of research results indicates that 36% of the analyzed lawsuits were appeals against the payment order issued under writ-of-payment proceedings, while another 13% – charges against the payment order issued under writ-of-payment proceedings. Of the examined cases, three constituted an objection against the payment order issued in EPU – electronic writ-of-payment proceedings (appeals were filed in all). This means that one of the parties already participated in a hearing before a commercial court (for issuing an order for payment) and was able to persuade the judge to their case. The other party, in turn, did not agree with this decision and appeared in court as part of legal proceedings (*GC*). In what concerns these lawsuits, enforcing claims included two proceedings – payment-order or writ-of-payment, as well as procedural (in the two-instance cases analyzed). Another 30% were lawsuits filed for payment, which were not previously considered by the court in payment-order or writ-of-payment proceedings. The remaining 21% comprised other types of cases (e.g. for establishing the non-existence of a resolution or for protection of the rights to trademarks and the principles of fair competition).

Half of the typical cases concerned amounts in controversy within the range of 130,000–360,000 PLN (average 858,000 PLN, median 175,000 PLN). The largest sum in the analyzed sample was PLN 34 million⁷. It can be seen, then, that there is a significant skewness in the distribution of amount in controversy. The median value of the court fee was 7,800 PLN (median 4.5% of amount in controversy – a value consistent with the five-percent relative tax referred to in the Act on Court Costs).

⁷ In two of the cases, amount in controversy was expressed in a foreign currency: CHF and EUR.



Every fifth respondent was a natural person running a business – these persons accounted for as much as one-third of the plaintiffs in the sample. On the other hand, considering the structure of business organizations, a conclusion can be drawn that individuals have a much lower probability of participating in a dispute than legal persons. The most important group in terms of the form of legal organization were limited companies, which accounted for 48% of defendants and 39% of plaintiffs. In only 11 cases examined, two natural persons conducting business activity were involved in a business lawsuit. In 43 cases (20%), a natural person sued a limited company (of which 6 concerned corporate governance – e.g. annulment of resolutions). In 38% of the cases, both parties to the dispute were limited companies.

The number of hearings required to resolve the case in the first instance was on average 4,5 (median 4), whereas half of the typical rulings fell within the range of 2–6 hearings.

Appointment of expert evidence (a methodological assumption of the *Doing Business* report) was observed in 24% of the cases. In addition, it might be worth adding that the comprehensive examination of expert witnesses in court proceedings, carried out by the Polish Institute of Justice, concluded that these experts were appointed in every fifth business lawsuit heard before regional courts. However, in the examined sample there were cases where more than one expert witness was appointed (up to 4). The average waiting period for expert opinion in a case, in which at least one such opinion was prepared, was 6.7 months (median 4 months, half of the typical values within the range of 3–8 months).

An analysis of the duration of proceedings should take into account the following four key stages:

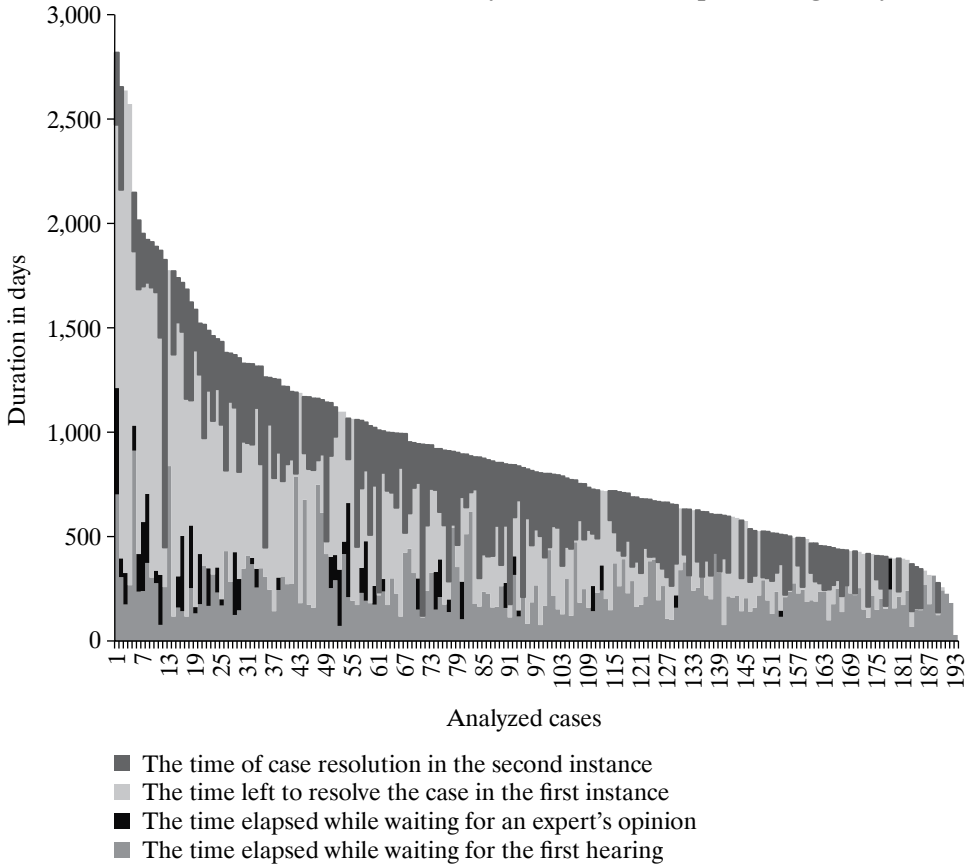
- (1) waiting for the first hearing,
- (2) waiting time for expert opinion (if applies),
- (3) the time of examining the case between the first hearing and the judgment,
- (4) waiting time for a decision in the second instance.

The time of legal proceedings is synthetically illustrated in Figure 3 and Table 1. It turns out that the waiting time for the first hearing (mainly depending on the caseload in a given court) was relatively stable in the examined sample, ranging from 157 to 280 days in half of the typical cases (average 243, median 215). Also, the waiting time for expert opinion – in cases where expert evidence was admitted – was not the primary reason for the delay (the team conducting the study of expert witnesses at IWS came to the same conclusions). Furthermore, the duration of appellate proceedings remained relatively stable throughout the study sample – in half of the typical cases it did not go beyond the range of 215–357 days (average 312, median 274). Knowing that, in 2015–2016, almost one in four judgments issued by district courts in business lawsuits was appealed against, which can be considered an important factor determining the total time of claim collection.

It turns out, however, that the basic determinant of the duration of the proceedings is the stage between the first hearing and the delivery of the first-instance judgment, which in turn depends on the load of hearings (resulting from case



Figure 3
Duration of substantively concluded court proceedings (days)



Source: own elaboration based on the conducted case-file study.

Table 1
Duration of substantively concluded court proceedings (days)

	Waiting time for the first hearing	Waiting time for expert opinion*	Remaining time to examine the case at the first instance	Examination time at the second instance
25th percentile	157	–	96	215
75th percentile	280	–	509	357
Median	215	–	236	274
Average	243	37	365	313

* No positional measures due to the small number of cases in which expert evidence was admitted.

Source: own elaboration based on the conducted case-file study.



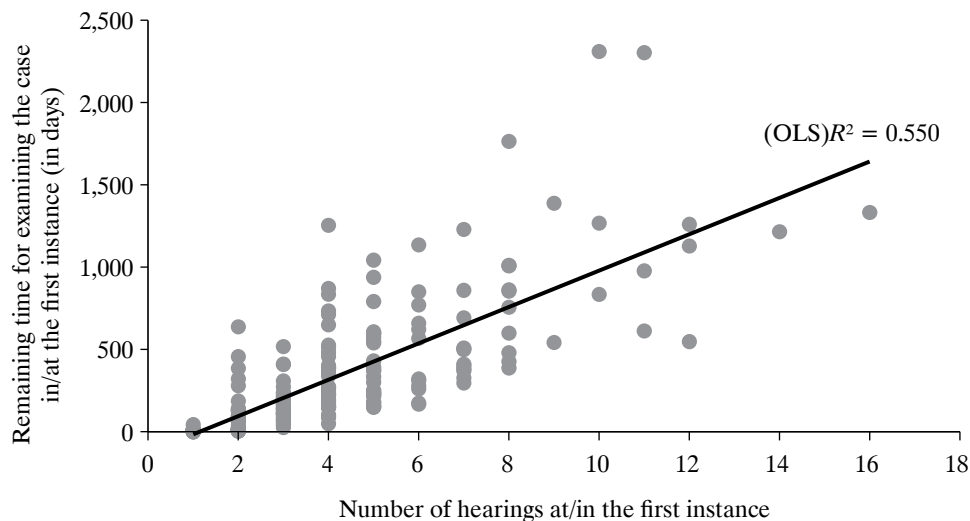
complexity and parties' legal strategy) and the time between them (resulting from the workload of judges adjudicating in a given court) – see Figure 4.

As already indicated, the typical number of hearings required to conclude the case fell within the range of 2–6, meaning that judges need – assuming the trial may last up to several hours – no more than tens of hours of work⁸. This leads to the conclusion that while the proceedings in the analyzed cases could last several hundred days, the judge's working time necessary to hear the case never exceeded a few days.

At this point it is worth citing the results of the report *Analysis of workload and development of labor standards for all professional groups in the judiciary*, commissioned by the Polish Ministry of Justice⁹, which suggests that resolving a case in a district court requires an average of 9 hours 6 minutes and 29 seconds of the judge's work.

Figure 4

Correlation between duration of substantively concluded proceedings (days) and number of hearings



Source: own elaboration based on the conducted case-file study.

Figure 5 shows the structure of the examined cases by amount in controversy (using to this end a logarithmic scale)

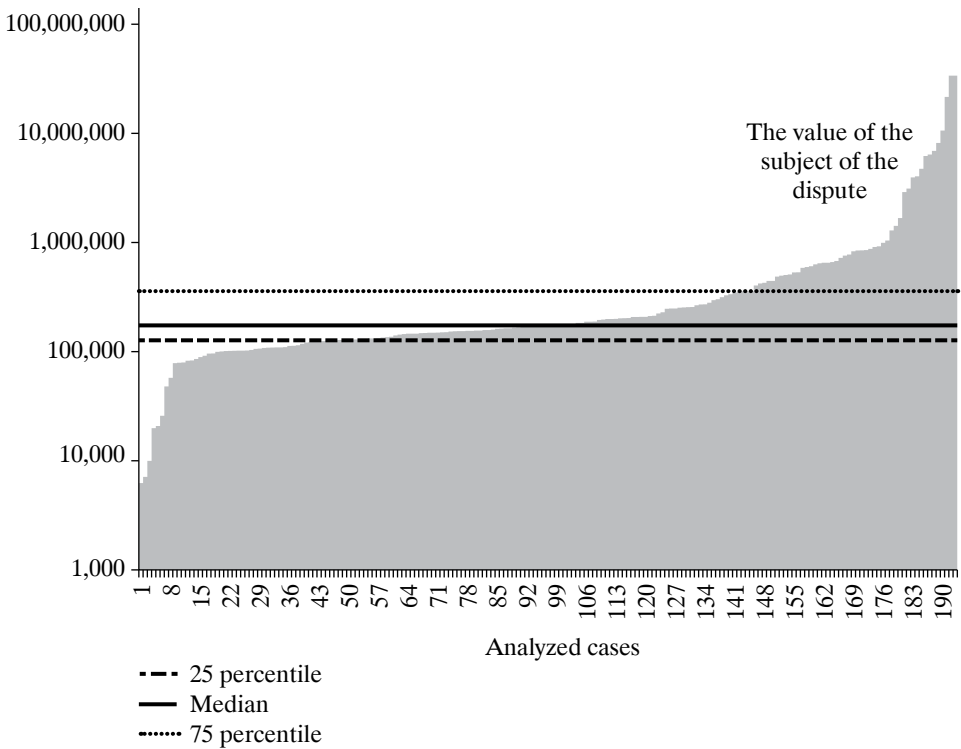
Interestingly, there is a small number of lawsuits whose amount in controversy does not exceed 100,000 PLN. In the context of a significant share of cases in which at least one of the parties was a natural person conducting business activity, it is curious to compare them with lawsuits where the parties were companies. As shown in the graph below, for disputes for less than PLN 1 million the disparities were very small. This is reflected in the median amount in controversy, which

⁸ This, of course, needs to be extended by the time to analyze the files and develop the justification for the judgment (11–20 pages in half of the typical cases).

⁹ Cf. <http://kurator.webd.pl/wp-content/uploads/2014/01/Raport-Podsumowuj%C4%85cy-Zadania-4.pdf>



Figure 5
Case structure by amount in controversy (PLN)



Source: own elaboration based on the conducted case-file study.

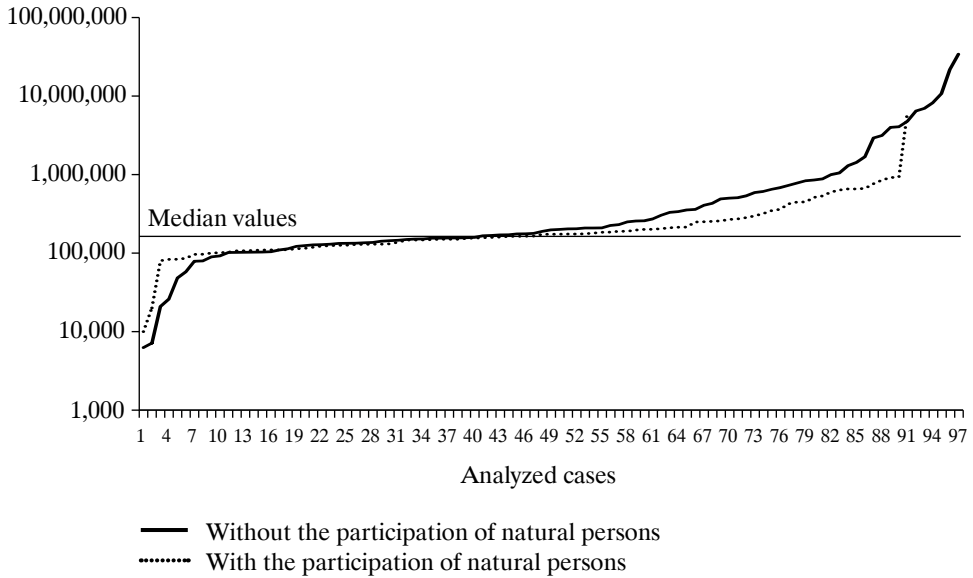
was 164,400 PLN for lawsuits involving natural persons conducting business activity, and 197,800 PLN for lawsuits without the participation of natural persons. Business lawsuits whose amount in controversy was greater than PLN 1 million applied almost exclusively to companies (Figure 6).

It turns out that amount in controversy seems to have a certain influence on the manner of pursuing one's claim in court – in the sense of applying non-contentious (payment-order or writ-of-payment) and contentious proceedings (Figure 7). While the median amount in controversy is almost equal in both cases (171,000 and 176,000 PLN, respectively), the 75th percentile for each of them is 258,000 and 519,000 PLN, respectively.

What is important from the point of view of potential determinants of the efficiency of proceedings, there seems to be no strong correlation between the number of hearings in a given case and the amount in controversy (Figure 8). This conclusion is consistent with the opinions of lawyers, indicating that it is the legal complexity rather than the disputed sum that is the basic determinant of the workload and duration of court proceedings. It can be curious, therefore, why two cases with typical amounts in controversy may require from 2 to 8 hearings.

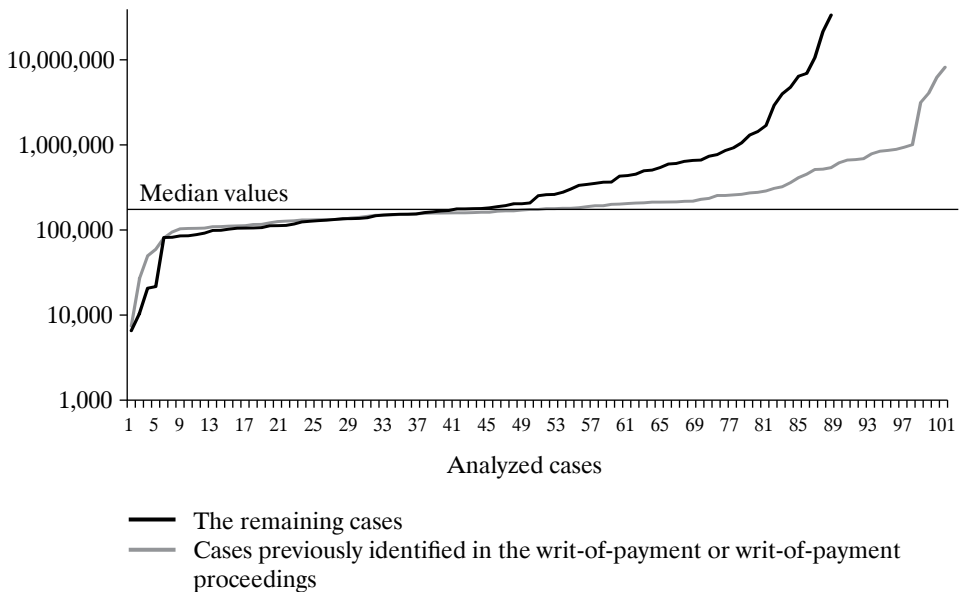


Figure 6
Amount in controversy and the organizational and legal form of parties to the pending proceedings (PLN)



Source: own elaboration based on the conducted case-file study.

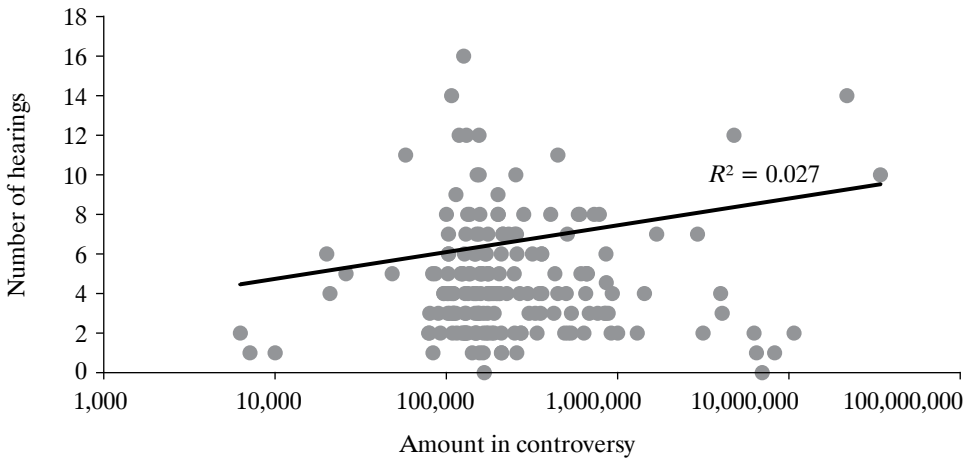
Figure 7
Type of business lawsuit proceedings and amount in controversy



Source: own elaboration based on the conducted case-file study.



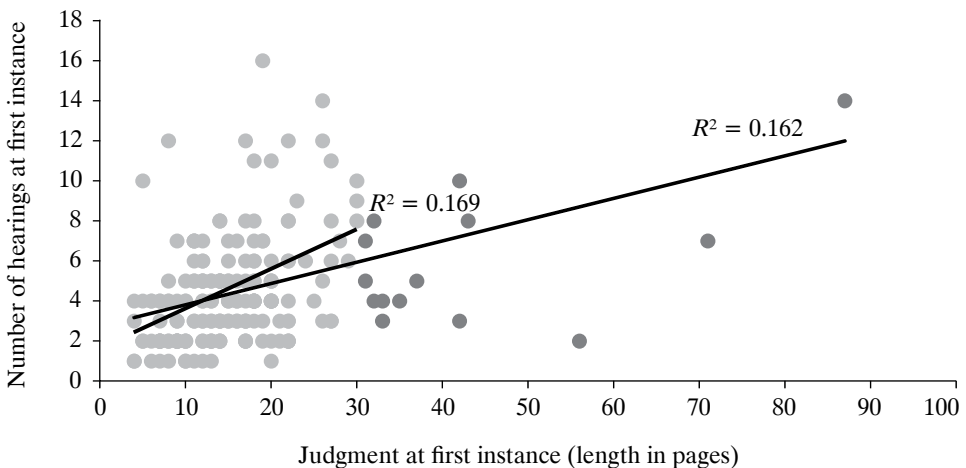
Figure 8
Number of hearings and amount in controversy



Source: own elaboration based on the conducted case-file study.

The volume of the judgment justification may be a better approximation of the legal and factual complexity of a case (explaining also the larger number of hearings and simultaneously the longer duration of the proceedings) (Figure 9). Indeed, as illustrated by the graph below, this factor accounts for more than 15% of the variability in the number of hearings in a case (OLS). This result does not refer to atypical observations – cases with unusually long justifications (from 30 to even 90 pages).

Figure 9
Number of court hearings and length of judgment justification

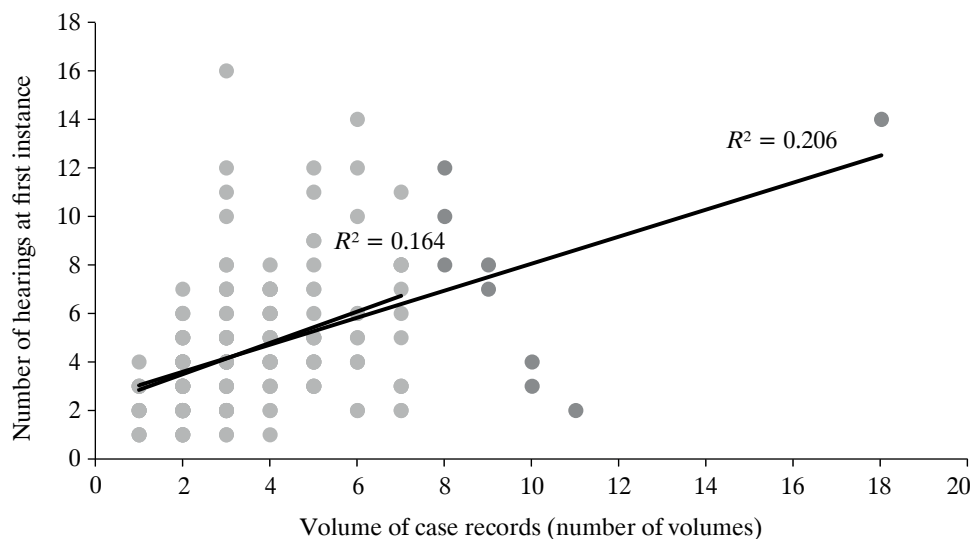


Source: own elaboration based on the conducted case-file study.



An equally important source of information about the case’s level of complexity – and thus providing the explanation for the number of hearings – turns out to be the volume of case records (Figure 10).

Figure 10
Number of court hearings and volume of case records



Source: own elaboration based on the conducted case-file study.

In the case of claims for payment (79% of cases examined), the judgment issued by the court with the enforcement clause is the necessary stage to refer the matter for enforced debt collection (bailiff case).

Concluding remarks

The study of 201 case files from business lawsuit proceedings enabled us to identify the factors influencing the efficiency of handling commercial cases by common courts. These include: duration of first-instance proceedings (especially the waiting time for the first hearing), duration of second-instance proceedings, the time to reexamine the case at first instance, parties’ activity in the course of the case, amount in controversy, costs of proceedings, case complexity measured by the number of volumes accumulated throughout the proceedings and the number of pages of judgment justification, the organizational and legal form of the plaintiff/defendant, and the participation of expert witnesses. Parties’ activity refers, among others, to the number of procedural documents submitted to the files of proceedings.

A preliminary analysis of the findings reveals that the basic determinant of the duration of proceedings is the stage falling between the first hearing and the delivering of the judgment in the first instance, which in turn depends on the number of hearings (resulting from case complexity and parties' strategy) and the time between them (resulting from the workload of judges adjudicating in a given court). The study shows that the number of hearings necessary to conclude the case at first instance is within the range of 2–6. One hearing can last a maximum of several hours, meaning that judges spend no more than tens of hours of work examining a specific case¹⁰. This leads to the conclusion that while the proceedings in the analyzed cases can last several hundred days, the judge's working time necessary to hear the case never exceeds a few days. The time necessary to consider the appeal is another factor affecting the efficiency of business proceedings. In this scenario, the study indicated a relative stability of the time needed for resolving business lawsuits as part of appellate proceedings.

The conducted research is preliminary, but it provides the basis for formulating further research questions. It would be interesting to find out to what extent the time necessary to claim justice in courts points to the weakness of the judiciary and to what extent it is synonymous with “bad law” (excess of legal regulations, their variability, ambiguity of wording). International studies on the efficiency of judicial systems, as mentioned at the outset of this paper, indicate that extensive court proceedings and unclear provisions affect the performance of judges, and therefore of courts themselves. In our research, we focused on one court procedure only, making it all the more puzzling why the same procedure and the same type of cases require a different time to be heard. Reasons for this may be sought in the very way judges manage cases or in the activity of disputing parties.

The duration of case resolution is therefore the basic factor affecting the level of transaction costs of the enforcement of contracts concluded between entrepreneurs in business matters. These are non-market costs included in the category of ex-post costs, whose amount – although difficult to estimate exactly – may hinder overall business trading in Poland. For this reason, it seems crucial to recognize any factors that can increase these costs.

The conducted analysis points to the necessity of further research in the area of transaction costs. The next stage, following the selection of complex cases, seems to be providing a reasonable answer to the question as to why lawsuits with the same degree of complexity require a different amount of time to be resolved. The final result of the initiated research should be the development of standards for handling particular types of lawsuits, depending on the complexity of the case, as this could reduce the unpredictability of transaction costs associated with contract enforcement.

Received: 25 June 2018

Revised version: 15 March 2019

¹⁰ This, of course, needs to be extended by the time needed to analyze the files and develop the justification for the judgment (11–20 pages in half of the typical cases).



Bibliography

- Antonelli M.A., Grembi W., *A Microeconomic Model of the Demand of Civil Justice: Is One Institutional Context Better than Another?* “European Journal of Law and Economics” 2013, no. 36.
- Ayres I., Gertner R., *Strategic Contractual Inefficiency and the Optimal Choice of Legal Rules*, “The Yale Law Journal” 1992, no. 101(4).
- Bebchuk L.A., *Litigation and Settlement under Imperfect Information*, “RAND Journal of Economics” 1984, no. 15(404).
- Beldowski J., Ciżkowicz M., Sześciło D., *Efektywność polskiego sądownictwa w świetle badań międzynarodowych i krajowych*, FOR Helsińska Fundacja Praw Człowieka, Warszawa 2010 (Effectiveness of the Polish Judiciary in the Light of International and National Research, FOR Helsinki Foundation for Human Rights, Warsaw 2010).
- Case files by legal departments in common courts for 2001–2016*, <https://isws.ms.gov.pl/pl/baza-statystyczna/> (accessed 12.06.2017).
- Choi S.J., Mitu Gulati G., Posner E.A., *Are Judges Overpaid? A Skeptical Response to the Judicial Salary Debate*, “Journal of Legal Analysis, Justice System Journal” 2009, no. 1(75).
- Christensen R.K., Szmer J., *Examining the Efficiency of the U.S. Courts of Appeals: Pathologies and Prescriptions*, “International Review of Law and Economics” 2012, no. 32.
- Cooter R.D., Rubinfeld D.L., *Legal Disputes and their Resolution*, “Journal of Economic Literature” 1989, no. 37(1067).
- Cooter R., Ulen T., *Law & Economics*, Berkeley Law Books, Berkeley Law Scholarship Repository 2016, <https://scholarship.law.berkeley.edu/books/2/>
- Coviello D., Ichino A., Persico N., *Giudici in Affanno*, “Annuario di diritto comparato e studi legislative”, Naples: Edizioni Scientifiche Italiane, Naples 2009.
- Coviello D., Ichino A., Persico N., *The Inefficiency of Worker Time Use*, “Journal of the European Economic Association” 2014a, no. 13(5).
- Coviello D., Ichino A., Persico N., *Time Allocation and Task Juggling*, “American Economic Review” 2014b, no. 104.
- Daugherty A.F., Reinganum J.F., *Economic Theories of Settlement Bargaining*, Working Paper 05-W08, Department of Economics, Vanderbilt University, 2005.
- Di Vita G., *Production of Laws and Delays in Court Decisions*, “International Review of Law and Economics” 2010, no. 30(3).
- Dimitrova-Grajzl V., Grajzl P., Slavov A., Zajc K., *Courts in a Transition Economy: Case Disposition and the Quantity-Quality Tradeoff in Bulgaria*, “Economic Systems” 2016, no. 40(1).
- Djankov S., La Porta R., Lopez-de Silanes F., Shleifer A., *Courts*, “The Quarterly Journal of Economics” 2003, no. 118(2).
- Eggertsson T., *Economic Behavior and Institutions*, Cambridge Surveys of Economic Literature, Cambridge University Press, Cambridge 1990.
- Famulski L., *Selected Legal Aspects of Transaction Costs*, “Journal of Finance and Financial Law” 2017, no. 1(13).
- Flaga-Gieruszyńska K., *Szybkość, sprawność i efektywność postępowania cywilnego – zagadnienia podstawowe*, Zeszyty Naukowe KUL 2017, no. 3(239), (Speed, Efficiency and Effectiveness of Civil Proceedings – Basic Issues, Working Papers KUL 2017, no. 3(239)).



- Goelzhauser G., *Accountability and Judicial Performance: Evidence from Case Dispositions*, “Justice System Journal” 2012, no. 33.
- Guerra A., Tagliapietra C., *Does Judge Turnover Affect Judicial Performance? Evidence from Italian Court Records*, “Justice System Journal” 2017, no. 38(1), DOI: 10.1080/0098261X.2016.1209448.
- Hadfield G., *Judicial Competence and the Interpretation of Incomplete Contracts*, “Journal of Legal Studies” 1994, no. 23.
- Joński K., *Efektywność sądownictwa powszechnego – podstawowe problemy*, Instytut Wymiaru Sprawiedliwości, Warszawa 2016 (Efficiency of General Courts – Basic Problems, Institute of Justice, Warsaw 2016).
- Katz A., *The Potential Demise of Another Natural Monopoly: Rethinking the Collective Administration of Performing Rights*, “Journal of Competition Law and Economics” 2005, no. 1(3).
- Kessler D.P., Rubinfeld D.L., *Empirical Study of the Civil Justice System*, Working Paper 10825, NBER, 2004.
- Klein B., *Transaction Cost Determinants of “Unfair” Contractual Arrangements*, “The American Economic Review” 1980, no. 70(2), Papers and Proceedings of the Ninety-Second Annual Meeting of the American Economic Association, May 1980.
- Kostritsky J.P., *Introduction – Incomplete Contracts: Judicial Responses, Transactional Planning, and Litigation Strategies*, Symposium, Faculty Publications 2005, no. 132, https://scholarlycommons.law.case.edu/faculty_publications/132
- Lim C.S., *Preferences and Incentives of Appointed and Elected Public Officials: Evidence from State Trial Court Judges*, “American Economic Review” 2013, no. 103.
- Litigation Annual Trends Survey. Perspectives from Corporate Counsel*, Norton Rose Fulbright 2018, <http://www.nortonrosefulbright.com/files/20181105–2018-litigation-trends-annual-survey-pdf-171297.pdf>
- Litigation Cost Survey of Major Companies*, Statement Submitted by Lawyers for Civil Justice, Civil Justice Reform Group, U.S. Chamber Institute for Legal Reform, Conference on Civil Litigation, Duke Law School, 2010 https://www.uscourts.gov/sites/default/files/litigation_cost_survey_of_major_companies_0.pdf.
- Marciano A., Khalil E.L., *Optimization, Path Dependence and the Law: Can Judges Promote Efficiency?* “International Review of Law and Economics” 2012, no. 32.
- Melcarne A., Ramello G., *Judicial Independence, Judges’ Incentives and Efficiency*, “Review of Law and Economics” 2015, no. 11(2).
- Nalebuff, B., *Credible Pretrial Negotiation*, “RAND Journal of Economics” 1987, no. 18(198).
- North D.C., *Institutions, Institutional Change and Economic Performance*, Cambridge University Press, Cambridge 1990.
- Png I., *Strategic Behavior in Suit, Settlement and Trial*, “Bell Journal of Economics” 1983, no. 14(539).
- Polish Ministry of Justice*, <http://kurator.webd.pl/wp-content/uploads/2014/01/Raport-Podsumowuj%C4%85cy-Zadania-4.pdf>
- Priest G.L., Klein B., *The Selection of Disputes for Litigation*, “Journal of Legal Studies” 1984 no. 13(1).
- Ramseyer J.M., *Sex Bias in the Japanese Courts*, in: *Empirical Studies of Judicial Systems*, ed. K.C. Huang, Academia Sinica, Taipei 2007, p. 197–218.
- Rao P.K., *The Economics of Transaction Costs; Theory, Methods, and Applications*, Palgrave MacMillan, New York 2003.



- Reinganum J., Wilder L., *Settlement, Litigation and the Allocation of Litigation Costs*, “RAND Journal of Economics” 1986, no. 17(557).
- Rhee R.J., *A Price Theory of Legal Bargaining: An Inquiry into the Selection of Settlement and Litigation under Uncertainty*, “Emory Law Journal” 2006, no. 56, <http://scholarship.law.ufl.edu/facultypub/494>
- Schwartz A., *Legal Contract Theories and Incomplete Contracts*, in: *Contract Economics*, L. Werin, H. Wijkander (eds.), Cambridge 1992, p. 76–108.
- Scott R.E., Triantis G.G., *Anticipating Litigation in Contract Design*, “Yale Law Journal” 2006, no. 115(4).
- Shavell S., *Any Frequency of Plaintiff Victory is Possible*, “Journal of Legal Studies” 1996, no. 25(493).
- Spier K.E., *The Dynamics of Pretrial Negotiation*, “Review of Economic Studies” 1992, no. 59(93).
- The Act of 17 June 2004, *The Law on Complaints about Violation of the Party’s Right to Hear the Case in Court Proceedings without Undue Delay* (Journal of Laws 2004, no. 179, item 1843, as amended).
- The Act of February 28, 2003, *The Bankruptcy and Reorganization Law* (Journal of Laws 2003, no. 60, item 535, as amended).
- The Act of July 27, 2001, *The Law on the System of Common Courts* (consolidated text from 2016, item 2062, as amended).
- The Act of July 28, 2005, *The Court Costs in Civil Matters* (consolidated text from 2016, item 623, as amended).
- The Act of November 17, 1964, *The Code of Civil Procedure* (consolidated text, Journal of Laws 2016, item 1822).
- The Act of September 4, 1997, *The Government Administration Departments* (consolidated text from 2016, item 543, as amended).
- Voigt S., *Determinants of Judicial Efficiency: A Survey*, “European Journal of Law and Economics” 2016, no. 42(2), DOI: 10.1007/s10657-016-9531-6.
- Voigt S., El Bialy N., *Identifying the Determinants of Judicial Performance: Taxpayers’ Money Well Spent?* “European Journal of Law and Economics” 2015, no. 41(2). doi:10.1007/s10657-014-9474-8.
- Williamson O.E., *The Economic Institutions of Capitalism*, Macmillan, New York 1985.
- Williamson O.E., *The Economics of Organization: The Transaction Cost Approach*, “American Journal of Sociology” 1981, no. 87(3).
- World Bank 2018, <http://www.doingbusiness.org>

PRAKTYKA DZIAŁANIA SĄDÓW POWSZECHNYCH W SPRAWACH GOSPODARCZYCH W POLSCE – IDENTYFIKACJA KOSZTÓW TRANSAKCYJNYCH

Streszczenie

Celem artykułu jest identyfikacja czynników mających wpływ na koszty transakcyjne dochodzenia praw z umów pomiędzy przedsiębiorcami w sprawach gospodarczych. Na potrzeby artykułu przeprowadzono pilotażowe badanie 210 spraw sądowych zawisłych przed Sądem Okręgowym w Gdańsku w pierwszej instancji po 2009 r., w których wyrok wydano



w 2012 r. (ostatnie 210 spraw) a od wyroku wniesiono apelację do Sądu Apelacyjnego w Gdańsku i zakończono postępowanie przed 2013 r. Badanie miało charakter studium przypadku, którego celem była identyfikacja czynników mających wpływ na koszty transakcyjne dochodzenia praw z umów po stronie podażowej, czyli w ramach działania sądów. Na koszty transakcyjne dochodzenia praw z umów składają się nie tylko koszty opłaty sądowej i zastępstwa procesowego, określone normatywnie, ale także – co jest oczywiste – czas niezbędny do wyegzekwowania praw wynikających z umowy. W badaniu podjęto próbę odpowiedzi na dwa pytania badawcze. Po pierwsze, które z czynników mają wpływ na czas rozpoznania sprawy, począwszy od jej wpływu do sądu pierwszej instancji aż do wydania wyroku w drugiej instancji, a po drugie – na ile poziom złożoności sprawy przekłada się na czas rozpoznania sprawy. Wyniki badań pozwoliły na wstępne wyselekcjonowanie podstawowych czynników identyfikujących poziom skomplikowania sprawy. Autorzy artykułu przyjęli, że należą do nich: liczba tomów zgromadzonych w trakcie rozpoznania sprawy, liczba rozpraw oraz liczba stron uzasadnienia wyroku w pierwszej i drugiej instancji.

Słowa kluczowe: koszty transakcyjne, sąd powszechny, prawo umów, prawo cywilne, proces sądowy

JEL: D23, K12, K15, K41

THE HANDLING OF BUSINESS LAWSUITS BY COMMON COURTS IN POLAND: IDENTIFICATION OF TRANSACTION COSTS

Abstract

The aim of the article is to identify factors influencing the transaction costs of the enforcement of contracts concluded between entrepreneurs in business matters. For the purpose of the article, a pilot study was conducted involving 210 court cases pending before the District Court in Gdańsk in the first instance after 2009, in which the judgment was issued in 2012 (the last 210 cases) and for which the appeal was lodged to the Appeals Court in Gdańsk and the proceedings were concluded before 2013. The conducted case study was to identify factors influencing the transaction costs of contractual rights on the supply side, i.e. as part of court activity. Transaction costs of contract enforcement include not only the costs of court fees and legal representation, which are defined normatively, but also – and what is obvious – the time necessary to exercise rights under the contract. The study attempted to answer two research questions. First, which factors influence the time of consideration of the case, from the moment it reaches the court of first instance up to the second-instance judgment, and second – to what extent the level of complexity of the case is correlated with the time of its examination. The results enabled preselecting the basic factors that identify the level of complexity of the case. It was assumed in this article that they include: the number of volumes accumulated throughout the examination of the case, the number of hearings, and the number of pages of justification of the first- and second-instance judgment.

Keywords: transaction costs, common court, contract law, civil law, litigation process

JEL: D23, K12, K15, K41



ПРАКТИКА ПОЛЬСКИХ СУДОВ ОБЩЕЙ ЮРИСДИКЦИИ В ВОПРОСАХ ПРЕДПРИНИМАТЕЛЬСКОЙ ДЕЯТЕЛЬНОСТИ – ИДЕНТИФИКАЦИЯ ТРАНЗАКЦИОННЫХ ИЗДЕРЖЕК

Резюме

Целью статьи является идентификация факторов, имеющих влияние на транзакционные издержки при судебных спорах между хозяйствующими субъектами. Для нужд статьи было проведено пилотажное исследование 210-ти судебных дел, рассматриваемых Окружным судом в Гданьске в первой инстанции после 2009 г., заключение по которым было дано в 2012 г. (210 последних дел). По данным делам была внесена апелляция в Апелляционный суд в Гданьске, а производство было завершено до 2013 г. Исследование имело характер изучения кейса, целью которого была идентификация факторов, имеющих влияние на транзакционные издержки судебных разбирательств субъекта-продавца. В транзакционные издержки по судебным разбирательствам относительно выполнения хозяйственных договоров входят не только издержки по судебному взносу и оплата представителей на процессе, которые установлены свыше, но и, что очевидно, время, необходимое для выполнения прав, вытекающих из договоров. В статье была предпринята попытка ответить на два исследовательских вопроса. Во-первых, какие факторы имеют влияние на время рассмотрения дела, начиная с его поступления в суд первой инстанции вплоть до вынесения приговора во второй инстанции, а во-вторых – насколько уровень сложности дела влияет на время судебного производства. Результаты исследований позволили предварительно выделить основные факторы, определяющие уровень сложности дела. По мнению авторов статьи это: количество томов, собранных в ходе изучения дела, количество заседаний, а также количество страниц обоснования приговора в первой и второй инстанции.

Ключевые слова: транзакционные издержки, суд общей юрисдикции, договорное право, гражданское право, судебный процесс

JEL: D23, K12, K15, K41

