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THE STATUS OF CONTRACT ENFORCEMENT IN POLAND

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Acknowledgments

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Executive Summary

1. Overview

1. **This report aims to provide an assessment of the state of contract enforcement in Poland as of 2012**. The report is not intended to be a comprehensive assessment of all aspects of the justice sector nor should it be utilized as such.

2. **The report focuses on the analysis of the civil and commercial courts as the main venues for contract enforcement**. It studies the most critical elements of court functioning, highlights key issues that are worthy of further attention by policy makers, and formulates recommendations for immediate and mid-term reforms.

3. **The report's findings are based on data from several sources**: the Polish government, the reports of the European Commission for the Efficiency of Justice (CEPEJ), desk research by World Bank staff from Washington, DC, and interviews with local experts, judges, and government officials conducted during the Bank's two visits to Poland.

2. Main Findings and Recommendations

4. **The range of issues that affect the environment for contract enforcement in a particular country is usually broad.** Issues include: the legal environment directly related to property rights and contract law; the institutional environment covering dispute resolution; the general business environment and ways in which businesses seek to establish, create, and maintain relationships, along with the attendant services that exist to help business reduce legal, regulatory, and other risks; and alternative forms of dispute resolution that businesses may or may not seek to utilize.

5. **In each country, the way these rules, institutions, and individuals interact will be complex and different.** For example, in any country, banks involved in mass consumer lending will have different requirements and expectations in terms of contract enforcement, with bank customers ranging from a high-end bespoke manufacturer operating in a boutique section of the market, with only a few other companies able to provide the required inputs to its products, to a provincial tailor. Accordingly, in most instances, when looking at the situation in a holistic sense, the policy recommendations are likely to differ from one country or region to the next. Various efforts have been made to try to create cross-border benchmarks as a means for countries to compare their "performance" in this area. But as shown in this report, cross-border benchmarks have limitations and can form the basis of policy reforms for only so long.

6. **In Poland, demand for court services in general and first instance[1] civil and commercial courts in particular has steadily increased since the 1990s.**[2]

7. **The Polish courts are historically located in administrative centers.** Polish Courts are of various sizes, and are composed of a few layers often without apparent connection or consideration of such factors as workload, productivity, operating costs, and population served. Recently, the Ministry of Justice (MoJ) launched an organizational reform to consolidate and rationalize court organization. The current caseload of the courts consists of large numbers of smaller civil and commercial cases, mainly dealing with registrations (for businesses and immovable assets) and nondisputed uncollectible debts, which amount to more than 80 percent of the cases. This composition of the case inflow has come about because of the expansion of civil and commercial courts jurisdictions in the late 1990s to deal with numerous small case and registry cases.

8. **The existing configuration of court personnel is not optimal for dealing with this kind of case inflow.** Despite the increasing number of judges in the last five years, the caseload of Polish judges is among the highest in the region. At the same time, the number of *referendarzs*[3] per judge is still low, and judges are involved in processing cases that can be done by nonjudicial personnel, at much lower cost.

9. **In terms of judicial expenditure, Poland has been and remains a front-runner among European countries.** Yet despite some improvements, the performance of civil and commercial courts is below average compared to

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1 First instance courts are district and regional courts with original jurisdiction.

2 World Bank (2005).

3 *Referendarzs* are court officers who can be compared to *Rechtspfleger* or similar bodies in Germany, Austria, and other countries. They have specialized training, and can undertake certain judicial or quasi-judicial tasks autonomously. Their decisions can be subject to appeal.

European countries. Moreover, citizens tend to be rather disapproving in their perception of the courts.[4] This suggests that there is room for improvement, but the current level of budget spending does not seem to be enough to reverse these trends. The MoJ needs to be aware that the wide range of competencies of the civil and commercial courts and the large inflow of small, nonlitigious, and registry cases require that resources allocation and management practices be designed with the specific characteristics of the activity of Polish courts in mind.

10. **There are six main issues behind the trends of performance by the Polish civil and commercial courts**:

a. Strategic vision

b. Court organization

c. Planning for the key resources (finances and people)

d. Unintended incentives to litigate

e. Procedures

f. Access to information.

g. These main issues should be addressed by the Polish government.

11. **The table below summarizes the main areas for reform identified to date in the system, together with core recommendations**. The summary is provided for ease of reference only and should be read in conjunction with the detailed analysis set out in this report. There is a need for additional discussion, information, and fact finding to arrive at more concrete recommendations.

[4] Opinion survey of the Polish justice system conducted by IBC Group and Homo Homini (the Survey).

A Way Forward: Summary of Recommendations

	Area for reform	Recommendation

1.	Strategic vision	• Advance the development of a practical strategy for the civil and commercial courts, which sets out a clear vision and benchmarked goals.
		  • Engage all the stakeholders in the justice sector in developing this strategy.
		  • Consider international good practices and take advantage of the available tools to design the strategy for the court system (such as tools developed by International Consortium for Court Excellence and CEPEJ).
		  • Test "contractualization" or other consensus-based approaches to management as part of the new strategy.

2.	Court organization	• Continue reforms toward the consolidation of courts and specialization of courts and judges.
		  • Involve judges and other stakeholders.
		  • Improve monitoring and evaluation of impacts.
		  • Take advantage of recent good practice from other countries.

3.	Planning	• Introduce programmatic budgeting as the main approach to budgeting in justice sector.
		• Strengthen planning.
		  • Create proper links between planning and budgeting.
		  • Introduce appropriate models for forecasting workload and staffing requirements.
		• Review and adjust the performance monitoring and evaluation system (M&E).
		  • Extend M&E to the performance of individual judges and involve judges in the design.
		  • Perform regular satisfaction surveys of users.
		• Consider conducting a Justice Sector Public Expenditure Review.
		• Test contractual arrangements in managing courts and relations with stakeholders.
		• Consider using some method for estimating staffing requirements, such as a weighted workload study, to inform the human resources policy and to increase the efficiency of the expenditures and operations of the courts.
		• Consider introducing human resource policies that would allow for more flexible allocation of judges and nonjudicial staff to courts.

4.	Unintended incentives to litigate	• Carry out an analysis to understand: (i) how litigation costs may or may not be driving the usage of the courts; (ii) whether the value of litigation is a financial resource for the court system; (iii) what is the cost-benefit impact of the services provided and the resources invested and collected; and (iv) whether court operations are a potential barrier to access to justice.
		• Identify policy options to address current imbalances.
		  • Consider evaluating the filters for the e-court.
		  • Reexamine cost-shifting practices (legal amounts, interest on unpaid costs, and use of cost shifting to punish undue behavior by litigants).
		• More thoroughly assess the impact of the tax system on the behavior of litigants, as well as on the state and court budgets.
		  • Consider tax reforms such as those implemented by the Slovak and Czech governments
		  • Evaluate whether the Corporate Income Tax Act can mitigate the unnecessarily high case inflow of the courts.
		• Monitor the incentive structure, as it will be the key to avoiding future imbalances.

5.	Procedures	• Consider creating a simple assessment system of procedural rules. The system could combine the functions of both the legislative impact assessment and enforcement/compliance monitoring and evaluation. • Introduce a stricter legislative schedule. • Increase the quality of draft amendments and reduce their volume in the MoJ by improving consultations with relevant stakeholders on key policies and legislation. • Explore the potential of a contract between judges and litigants to speed up proceedings. • Consider modernizing court experts system.
6.	Access to information about the system as a whole, courts, and individual cases	• Consider publishing court decisions and national and court statistical analysis, to increase transparency and access to information. • Introduce the publication of information on foreseeable timetables of proceedings either as a legal obligation or a de facto practice.

1. Introduction

12. **Productive investment requires an environment with a reasonable level of economic and political stability, and one where property rights are reasonably secure**. Evidence in some countries, including Poland, show that entrepreneurs who believe that their property rights are secure reinvest between 14 and 40 percent more of their profits in their businesses than those uncertain about whether their rights are enforceable.[5] Property rights are more secure and more valuable when the costs and risks of transactions are low. Delays or uncertainties in the enforcement of contracts erode the value of property rights and diminish the opportunity and incentives to invest.

13. **Weakness in the business environment in Poland are exacerbated by unpredictable changes in the policy and legal framework and less than optimal performance of legal institutions, including the judiciary**, the 2004–13 World Bank *Doing Business* reports and the 2004 and 2010 Investment Climate Assessments suggest. This situation persists despite a number of reforms implemented by the government and the judiciary itself.

14. **The MoJ has requested the World Bank's assistance in analyzing contract enforcement and developing policy recommendations as to how it can be strengthened**. It was agreed that such assistance would focus on civil and commercial courts.

15. **This report grows out of the World Bank's work in this area**. After a brief description of this report's objective and methodology (chapter 2), chapter 3 examines courts in Poland, analyzing the demand for court-based services; budget and court staff allocated to operate courts; and court response. Chapter 4 focuses on some of the main factors that explain the courts' situation in Poland, and fleshes out the main findings and recommendations outlined in the executive summary.

[5] World Bank (2005).

2. Objective and Methodology

16. **The objective of this report is to provide an assessment of the state of contract enforcement in Poland and to propose short- and mid-term reforms**.

17. **This report focuses only on critical deficiencies of performance of civil and commercial courts and opportunities for measurable improvements—**unlike the 2005 report, *Poland: Legal Barriers to Contract Enforcement*, which "examined the issue of contract enforcement from beginning to end."[6] Performance is measured through responsiveness of the civil and commercial courts to demand for their main services: resolution of disputes, issuing writs of payments, and registering land and businesses.[7] The study draws on a number of complementary sources of information and expertise, including assessments by Polish and international experts, analyses of available official statistics, and existing survey data. Where it is relevant and possible, the performance of the civil and commercial courts is compared to the performance of the court systems of other European countries and/or to parallel institutions in other (comparator) countries: Austria, the Czech Republic, Estonia, Hungary, Germany, the Netherlands, and the Slovak Republic.

18. **It is important to note that the report does not assess *how* data are classified beyond responses the team received from the government of Poland**. The term "case," as reported in the data supplied to the team, is utilized throughout this report to refer to a unit of measurement, without undertaking an analysis of whether all statistics collected as being a "case" are in fact full "cases" or may simply be ancillary procedures as part of a wider case. Similarly, no analysis is made of the efficacy of data collection methods. The data supplied by Polish authorities have therefore been taken "as is."

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[6] World Bank (2005).

[7] In addition to dispute resolution, the Polish courts operate the immovable assets register and the business register (the National Court Register).

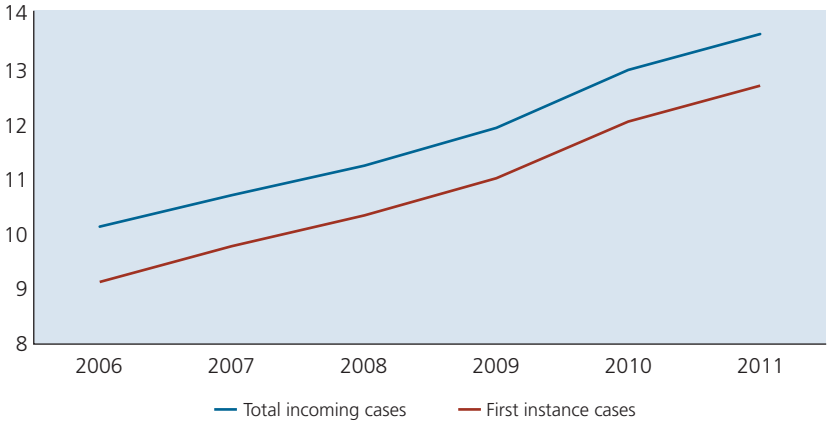
3. Courts in Poland

19. **This chapter analyzes the demand for court-based services; budget and court staff allocated to operate courts; and court response**. The analysis focuses on the commercial and civil first instance courts. It mostly covers the period from 2006 to 2010.[8] Demand for court services is measured by the inflow of cases, which include both litigious and nonlitigious civil and commercial cases. Performance of courts is measured by clearance rate, average time of disposition, and citizen perception of courts' performance. The main findings, trends, and conclusions are summarized at the end of the chapter.

3.1 Demand

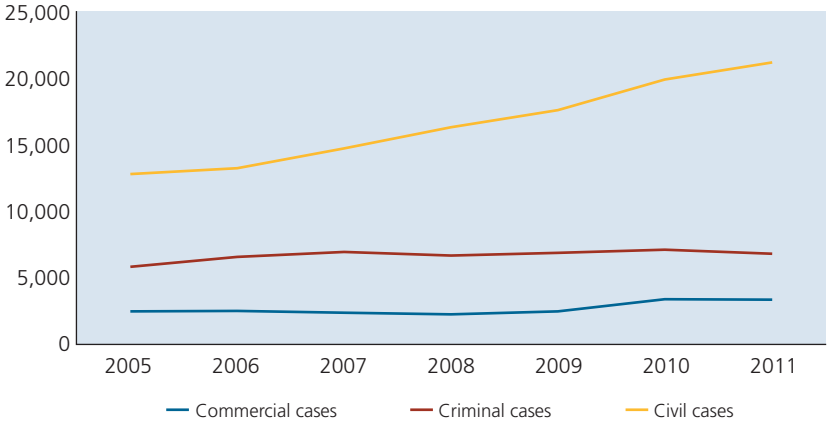
20. **Demand for court services in Poland has been steadily increasing since the 1990s**.[9] Cases brought before courts doubled from 12,617 cases per 100,000 inhabitants in 1994 to 24,930 in 2003.[10] By 2010, the influx of court cases had increased by an additional 70 percent to the level of 33,889 cases per 100,000 inhabitants.[11] Figure 1 shows the total case inflow and the case inflow into first instance Polish courts from 2006 to 2011. The inflow into first instance courts accounts for more than 90 percent of the total case inflow.

FIGURE 1 TOTAL CASE INFLOW AND INFLOW INTO FIRST INSTANCE COURTS, 2006–11 (MILLION CASES)



Source: MoJ statistics.

FIGURE 2 INFLOW OF COMMERCIAL, CRIMINAL, AND CIVIL CASES TO POLISH COURTS (ALL INSTANCES) PER 100,000 INHABITANTS, 2005–11



Source: MoJ statistics.

21. **Civil cases account for the largest share of cases (around 70 percent) and commercial cases for the smallest percentage (around 10 percent) in the Polish courts**. Civil cases per 100,000 inhabitants increased from 12,770 to 21,158 (an increase of 65 percent) between 2005 and 2011. The total number of commercial cases brought before the Polish commercial courts increased by about 42 percent over the six years up to 2011 (see figure 2).

[8] This is mainly because relevant CEPEJ statistics were available mostly for this period.

[9] World Bank (2005); MoJ statistics; and CEPEJ reports.

[10] World Bank (2005).

[11] MoJ statistics. This number includes all cases (civil, criminal, commercial, and other) in all instances.

22. **Inflow of civil and commercial nonlitigious[12] cases into first instance courts is close to 80 percent of their total intake, and the amount is growing.**[13] In the late 1990s, Poland expanded the jurisdiction of courts to include petty offences and land and business registrations.[14] This decision has radically altered demand for court services. As a result of this expansion, the inflow of nonlitigious cases increased by more than 50 percent from 2008 to 2010, from 5,143 to 7,865 per 100,000 inhabitants. During the same period, the number of litigious cases increased only 10 percent.[15]

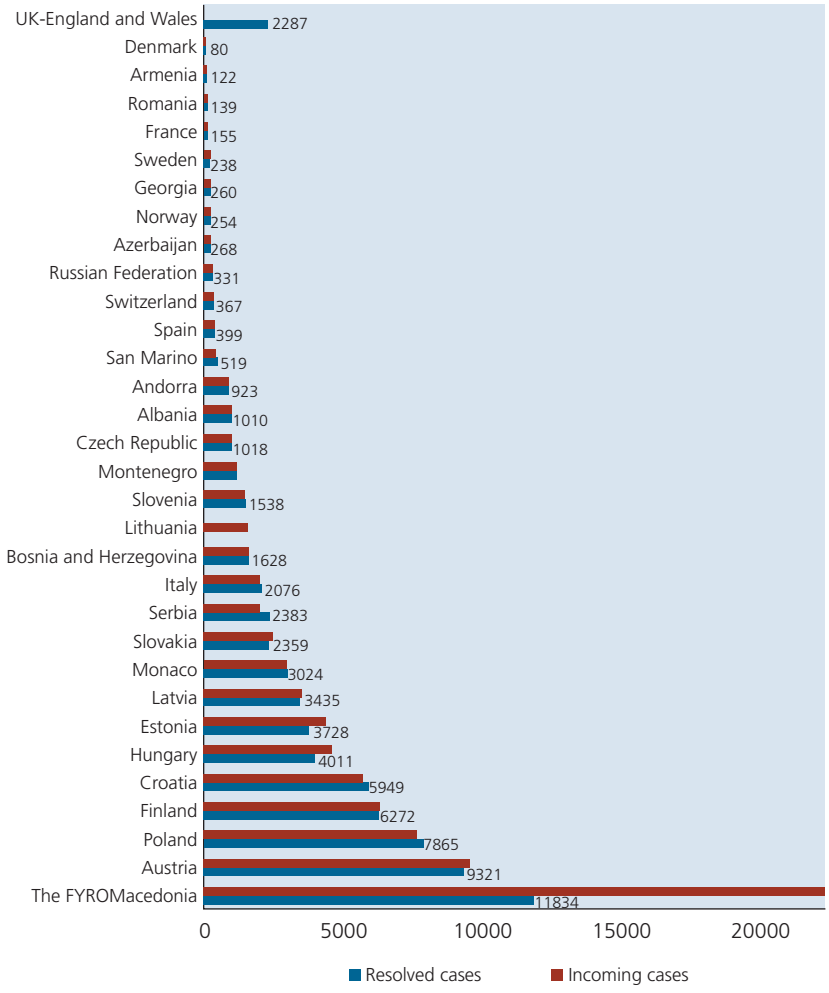
23. **Poland is currently among the countries with the highest number of nonlitigious first instance civil and commercial cases in Europe** (see figure 3). As discussed in more detail later, the growing number of nonlitigious cases has serious implications in terms of allocation of resources—both financial and human—and for court organization and management.

3.2 Budget

24. **Annual budgets allocated to the Polish courts[16] have been traditionally high compared to other countries.** When measured as a percentage of GDP per capita, court spending in Poland amounts to 0.38 percent, which is higher than the European average of 0.24 percent and the median of 0.20 percent[17] (see figure 4). Since 2004, Poland has been within the top eight countries in terms of annual budget allocated to all courts as a percentage of GDP per capita, according to CEPEJ.[18]

25. **The Polish judiciary has also experienced one of the largest increases in annual public budget allocations to courts in Europe**. From 2008 to 2010, the budget allocated to the Polish courts increased by 13.4 percent, one of the highest increases in Europe,[19] and the second largest increase among its neighbors

FIGURE 3 FIRST INSTANCE INCOMING AND RESOLVED CIVIL AND COMMERCIAL NONLITIGIOUS CASES, 2010



Source: CEPEJ Report (2012, figure 9.7).

[12] CEPEJ Report (2012, 180): The category of civil (and commercial) nonlitigious cases (including nonlitigious family cases) covers all the rest of cases decided under the chapter II of the Civil Proceedings Code that concern nonlitigious cases (such as ascertainment of the acquisition of an inheritance; cases connected with birth, marriage, and death records; declaration of a person's death; and adoption; as well a summary and injunction proceedings in money payment cases). Poland's response to the questionnaire is available online at http://www.coe.int/T/dghl/cooperation/cepej/evaluation/2012/Poland_en.pdf

[13] CEPEJ Report (2012, 180).

[14] Land registries are operated by the civil courts and include mortgage registries. Business registries are operated by commercial courts and include pledge registries (see also section 4.2 on Organization).

[15] CEPEJ Report (2012, 177).

[16] The report refers to budget allocations to all Polish courts.

[17] CEPEJ Report (2012, 28).

[18] CEPEJ Report (2010, 22) (Top 5); CEPEJ Report (2008a, 23) (Top 3); CEPEJ Report (2006, 23) (Top 7).

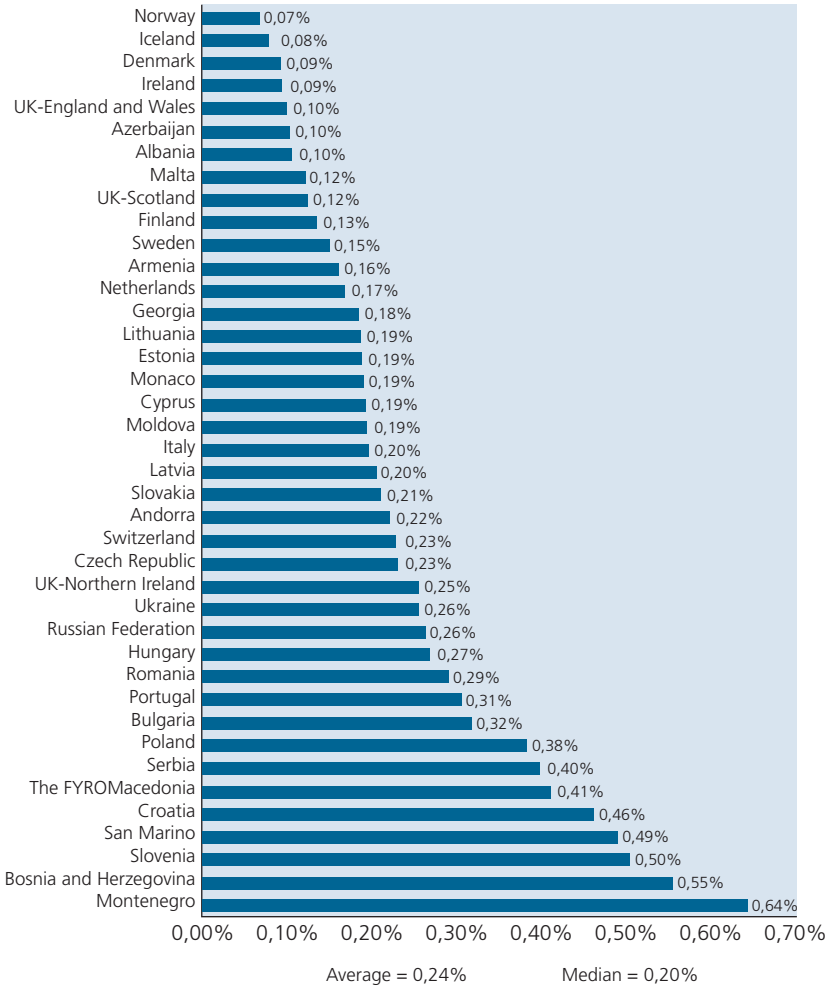
[19] The comparison might not be completely accurate because of the variation between the national currency and the euro. According to the MoJ, the 13,4% increase of the budget allocated to the Polish courts in the CEPEJ Report is mostly a result of the PLN/EUR exchange rate changes between January 2008 and January 2010, and taking into consideration exchange and inflation rates, the actual budgetary expenditures on courts in PLN increased by 4.5%.

(below only the Czech Republic).[20] Most of Poland's neighboring countries decreased their annual public budget allocated to courts: Estonia by –21.8 percent, Hungary by –9.2 percent, and the Slovak Republic by –4.3 percent[21] (see figure 5).

26. **The largest percentage of the Polish courts' budget is allocated to salaries of staff.** In 2010, Poland spent 65.5 percent of its court budget on salaries. The allocations to support innovation and reforms are low (see figure 6).

27. **The budget allocations to salaries increased between 2008 and 2010, while spending on computerization and training decreased.** The budget allocations to salaries increased as a result of a new compensation system for judges (introduced in 2009),[22] and hiring additional court personnel. According to CEPEJ, the reduction in spending on computerization and training was due to the completion of some externally financed programs (mainly by the European Union, EU). This indicates that Poland depends largely on foreign sources to finance its automation programs and judicial training[23] (see figure 6).

FIGURE 4 ANNUAL PUBLIC BUDGET ALLOCATED TO ALL COURTS AS PERCENTAGE OF GDP PER CAPITA, 2010 (PERCENT)



Source: CEPEJ Report (2012, figure 2.7).

3.3 Workforce

28. **Poland has the third highest number of judges per 100,000 inhabitants among comparator countries** (27.8 judges per 100,000 inhabitants).[24] Only the Czech Republic and Hungary have a higher number of judges per 100,000 inhabitants.

29. **The number of judges and other staff has been increasing.** The Netherlands and Poland are among the countries with the highest increase of judges between 2006 and 2010. In 2006, the number of judges per 100,000 inhabitants in Poland was around 25. Figure 7 shows evolution of number of judges between 2006 and 2010.

30. **The personnel ratio in the Polish courts has changed significantly, though unevenly, in the last few years.** In addition to judges, the court

[20] CEPEJ Report (2012, 29).

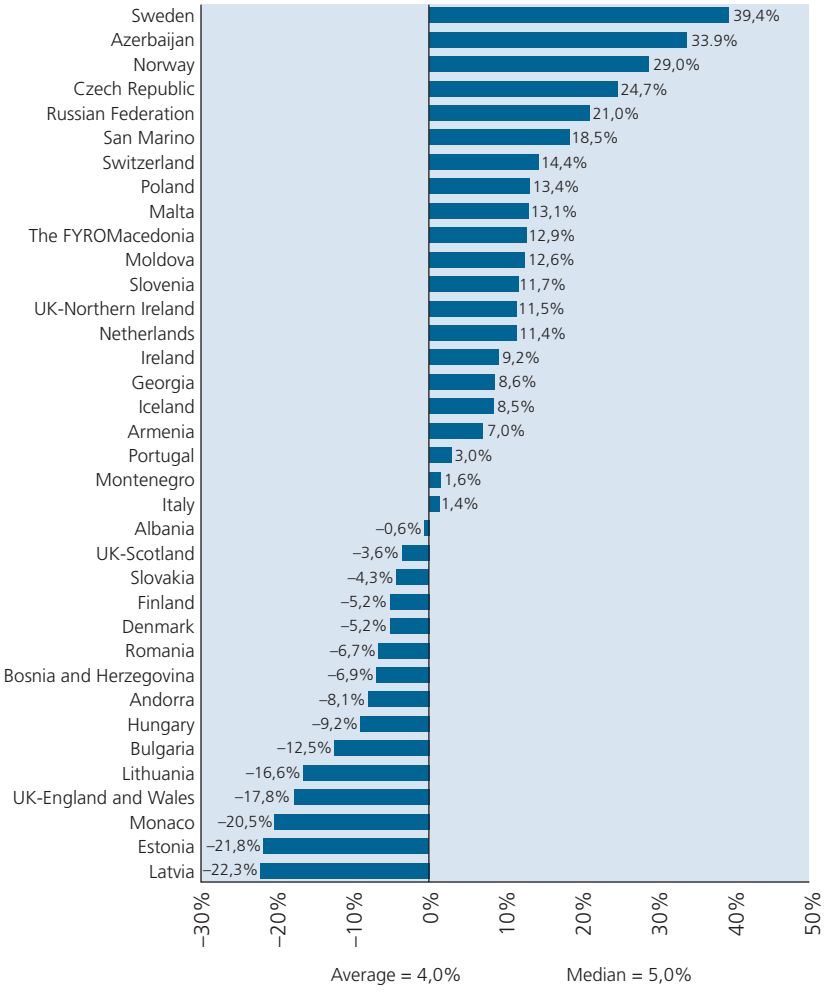
[21] CEPEJ Report (2012, 29). Data for Austria and Germany are not provided, since they are not included in CEPEJ Report 2012. The Netherlands also increased its budget by 11.4 percent between 2008 and 2010.

[22] In 2008, the percentage dedicated to judge's salaries was among the lowest in Europe (CEPEJ Report 2012, 33).

[23] According to the CEPEJ Report (2012, 34 and 38): "The computerization budget decreased because of the ongoing programs financial rates deadlines….payments for the further steps of the reform will be reflected in the next evaluation….The decrease in training and education budget is connected to the fact that since 2009 the Polish National School for Judiciary and Prosecution has been fully operational; this transferred the budgetary stress from the training performed in regional and district courts (as well as prosecution service) to the centralized training. Since judicial training is financed by the National School, the courts expenditures have decreased subsequently. Moreover since 2008 many EU financed training programs have been implemented, which has also decreased the level of training and education expenditures."

[24] This number refers to judges in general, and not to civil and commercial judges.

FIGURE 5 VARIATION IN ANNUAL BUDGET ALLOCATED TO ALL COURTS, 2008–10 (PERCENT)



Source: CEPEJ Report (2012, figure 2.8).

workforce includes *referendarzs*, court clerks, and other support staff. Poland has a total of 35,946 nonjudicial staff, of which 5.2 percent are *referendarzs*. Between 2004 and 2010,[25] the number of *referendarzs* increased from 1,175 to 1,865, the number of court clerks increased from 19,189 to 20,283, and the number of other support staff from 12,481 to 13,798.[26]

31. **Polish judges carry high caseloads compared to their peers in other countries.** The caseload of an average Polish judge in a first instance court is close to 1,500 cases per year. This compares unfavorably to judges from other comparator countries, except for Austria. In Estonia and Hungary, the annual caseload per judge is close to 500 cases. In Austria, on the other hand, it is about 2,800 cases[27] (see figure 8).

32. **Allocation of staff to Polish courts is not aligned with the inflow of cases.** As mentioned, Polish first instance civil and commercial courts are overburdened by nonlitigious cases, which should be dealt with by *referendarzs*. Figure 9 shows inconsistencies between the numbers of these cases and staff specialized in their disposition.

33. **Despite the significant inflow of first instance civil and commercial nonlitigious cases, the number of *referendarzs* is one of the lowest among comparator countries.** The number of *referendarzs* per 100,000 inhabitants is 4.8. Figure 10 shows the number of *referendarzs* as a percentage of all professional judges in Poland and comparator countries.

3.4 Court Performance

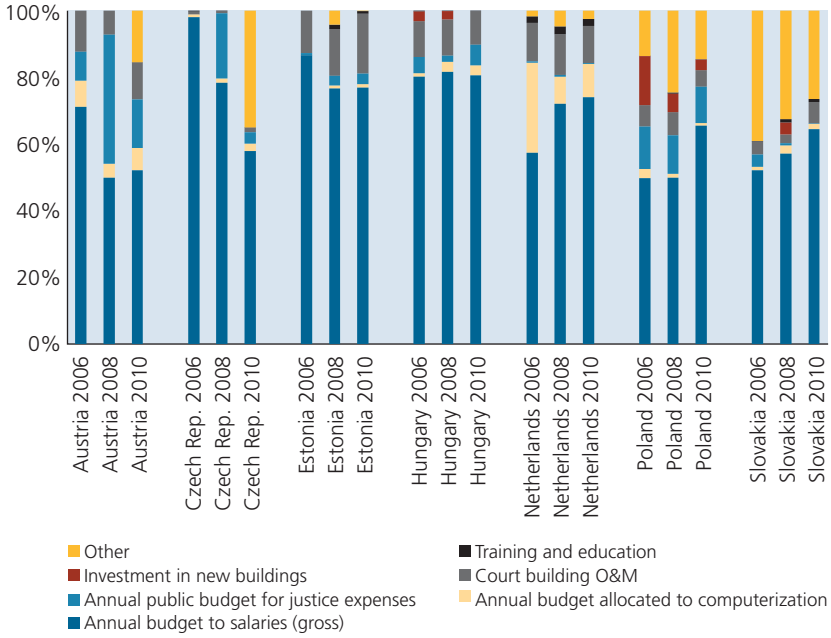
34. **Between 2006 and 2010, the clearance rate for both litigious and nonlitigious first instance civil and commercial cases was less than 100 percent.** According to CEPEJ, in 2010, the clearance rate for litigious first instance civil and commercial cases was 95 percent, and for nonlitigious cases it was 97.4 percent. The clearance rate for litigious

[25] CEPEJ Report (2006, 84); (2008a, 118); (2010, 128); (2012, 158).

[26] These numbers refer to the categorization by the CEPEJ Questionnaire: (i) Referendarzs (category 1–*Rechtspfleger*, or similar bodies, with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal); (ii) Court clerks (category 2–Nonjudge staff whose task is to assist the judges: preparing case files, providing assistance during the hearing, recording court proceedings, and helping to draft the decisions, such as registrars); and (iii) Other support staff (category 3–Staff in charge of different administrative tasks and of the management of the courts: human resources management, material and equipment management, including computer systems, financial and budgetary management, training management; and category 4–Technical staff). In CEPEJ Report 2012, there is a break down for another category (5): Other Judge Staff. According to the MoJ, this category includes assistants of judges, whose role is strictly connected with the judge's judicial function (such as preparation of judgment and justification drafts); they do not perform any administrative tasks. As there is no such category 5 in previous CEPEJ reports, for 2010, this number has been included under "other support staff."

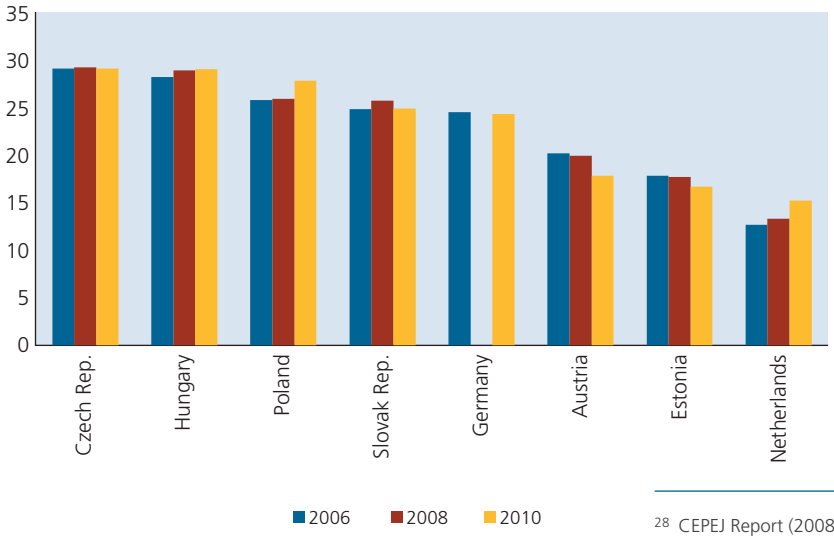
[27] The numbers must be treated with caution because of differences in determining "case" and "judge." In Poland and Austria, for instance, case category includes registrations. Also, these numbers include all first instance cases, and not only civil and commercial cases.

FIGURE 6 COURTS' BUDGET ALLOCATIONS IN COMPARATOR COUNTRIES, 2006–10 (PERCENT)



Source: Authors' compilations based on CEPEJ Reports (2008a, 2010, 2012).

FIGURE 7 NUMBER OF JUDGES PER 100,000 INHABITANTS, 2006, 2008, AND 2010



Source: Authors' compilations based on CEPEJ Report (2008a, 2010, 2012).

cases has decreased by 2 percent since 2006. During the same period, the clearance rate for nonlitigious cases has improved by 2.6 percent.[28] Poland is the only country among the comparator countries that has a clearance rate for both litigious and nonlitigious cases below 100 percent (see figure 11).

35. **The land and business registries outperform other sections of civil and commercial courts. Their clearance rate is above 100 percent.** The clearance rate for the land and business registries in 2010 were 105.2 percent and 100.7 percent, respectively. They both improved between 2006 and 2010.[29]

36. **The average disposition time[30] for non-litigious cases improved between 2006 and 2010, from 74 days to 33 days**. **According to the *Doing Business* reports, the time it takes to enforce a contract was reduced in Poland from 980 to 685 days between 2006 and 2012**.[31] The average disposition time for first instance civil and commercial litigious cases, however, increased from 143 days in 2006 to 180 days in 2010, according to CEPEJ.[32] The difference between the *Doing Business* and CEPEJ measures is a result of distinct methodologies they use to measure disposition time.[33]

37. **Public opinion regarding the Polish courts is not very positive.** In February 2009, the MoJ commissioned the IBC Group and Homo Homini to conduct an opinion survey of the Polish justice system (the Survey). According to the Survey, 44 percent of participants regarded the justice system in Poland in negative or rather negative terms, compared to 37 percent who had a positive or rather positive opinion on the justice

28 CEPEJ Report (2008a, 137); (2010, 147); (2012, 182).

29 CEPEJ Report (2012, 186).

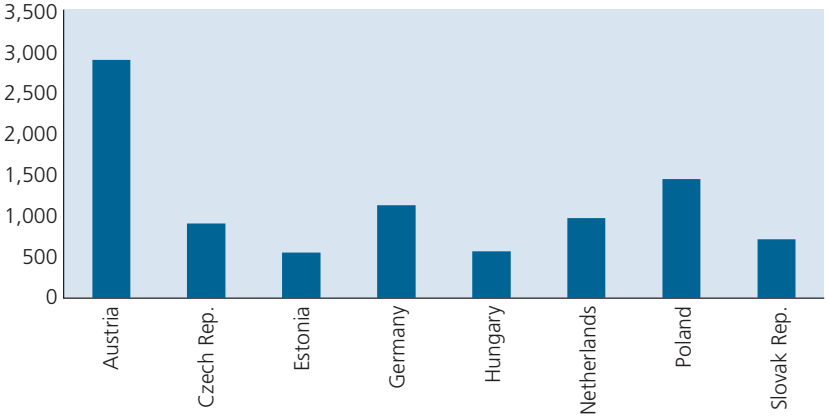
30 The calculated average disposition time measures how quickly the judicial system (or a court) disposes of received cases. It determines the number of days that are necessary to resolve the cases pending in first instance courts. For a detailed explanation of the methodology to calculate disposition time, see CEPEJ Report (2012, 169).

31 *Doing Business*, *Poland: Economy Profile 2013* (World Bank 2012).

32 CEPEJ Report (2012, 183); and CEPEJ Report (2008a, 148).

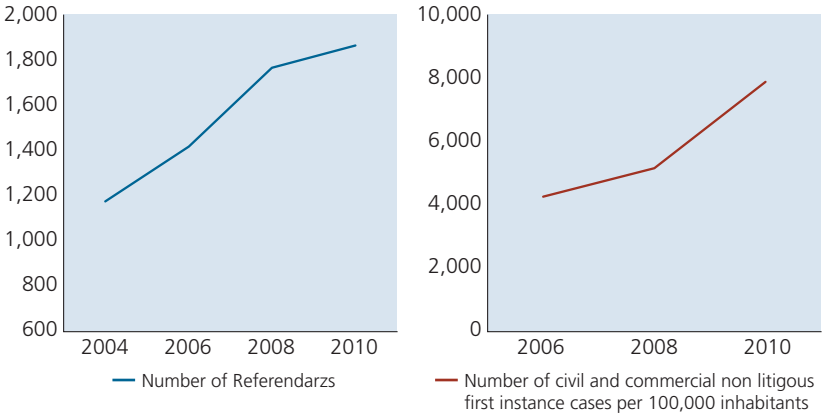
33 A complete description of *Doing Business* methodology is available at http://www.doingbusiness.org/methodology. A description of the CEPEJ methodology can be found at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp.

FIGURE 8 CASES PER FIRST INSTANCE JUDGES IN POLAND AND COMPARATOR COUNTRIES, 2010



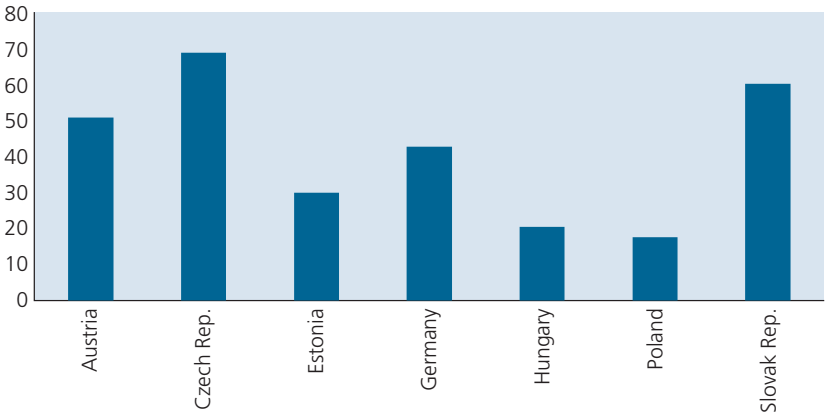
Source: Authors' compilations based on CEPEJ Report (2012).

FIGURE 9 NUMBER OF *REFERENDARZS* AND FIRST INSTANCE NONLITIGIOUS CIVIL AND COMMERCIAL CASES, 2006–10



Source: Authors' compilations based on CEPEJ Report (2006, 2008a, 2010, 2012).

FIGURE 10 NUMBER OF *REFERENDARZS* AS PERCENTAGE OF PROFESSIONAL JUDGES (PERCENT)



Source: Authors' compilations based on CEPEJ Report (2012).

system.[34] The key determinants of the respondents' perception included: (i) incompetence (69.3 percent of respondents); (ii) bias/lack of impartiality (65 percent of respondents); (iii) low efficiency (63.7 percent of respondents); (iv) high costs (63.5 percent of respondents); and (v) slow process (57.2 percent of respondents).[35] The Survey shows that less than 10 percent of participants have full confidence in courts, while more than 20 percent of participants do not trust the courts (see figure 12).[36] However, despite the less than perfect performance of Polish courts, Polish businesses do use the courts to resolve disputes. These patterns suggest that the courts do not lack legitimacy, and furthermore, that there is a great demand for the rule of law and great societal pressure to reform the judiciary in Poland.

3.5 Main Trends

38. **Poland remains a frontrunner among European countries in terms of judicial expenditure**.

39. **The pattern of first instance civil and commercial courts continues to be one of large numbers of smaller mostly nonlitigious cases (80 percent), most of which involve uncollectible debts. In addition, the system deals with a huge number of registration cases.** While the number of incoming criminal cases has remained relatively constant, the volume of commercial and especially civil cases has been steadily growing. Nonlitigious cases have outpaced litigious ones and are slowly pushing the courts' traditional business—resolution of disputes—to the system's periphery.

[34] 2009 survey conducted by IBC Group and Homo Homini, and commissioned by the MoJ (the Survey), 10.

[35] The Survey, 11.

[36] The Survey, 18.

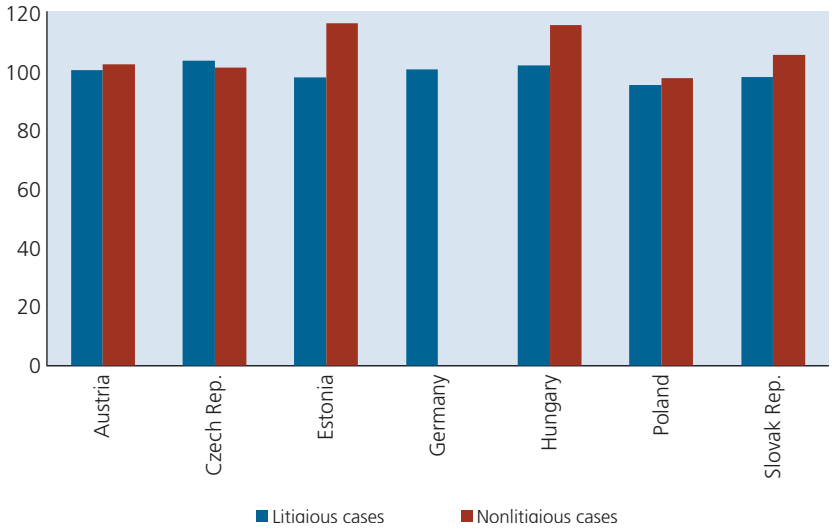
40. **The composition of court workforce—a higher number of judges and very low number of *referendarzs*—adds to the problem**. Judges process cases and carry tasks that can and should, be dealt with by nonjudicial personnel at much lower cost. Therefore, it should not come as a surprise that Polish judges carry one of the highest caseloads in the region.

41. **Only limited resources (from the budget) are spent to develop the courts.** In last few years, Poland has had one of the lowest budget allocations for computerization and training. These reforms seem to depend on foreign (mainly EU) financing, which complicates planning, coordination, and sustainability.

42. **The performance of the Polish first instance civil and commercial courts is medium at best, if compared to the performance of courts in other countries** (see figure 13). Clearance rate has been below 100 percent for some time; consequently, the case backlog has been growing. The average time for disposing of litigious cases has been increasing. This also appears to be negatively affecting citizens' perception of the justice system.

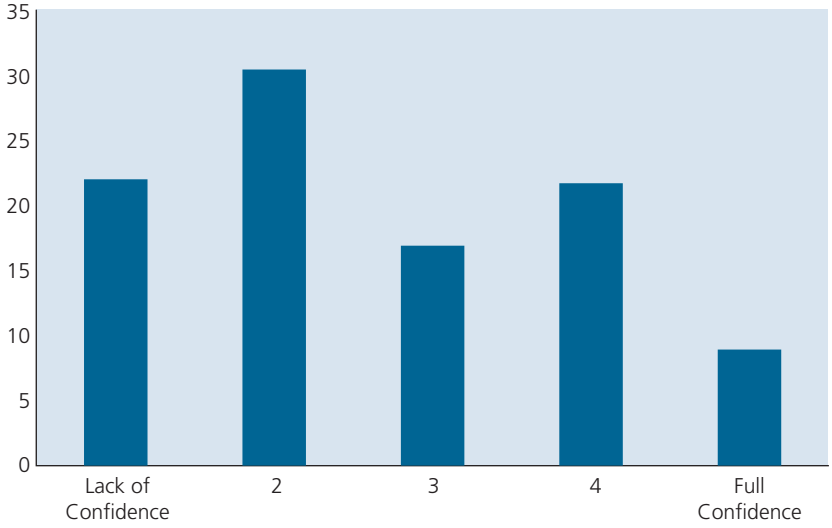
43. **Increased budget spending does not seem to be enough to reverse negative trends.** The Polish judicial system has a big inflow of smaller and registry cases, mainly because of the wide competences (original as well as derivative) of the civil and commercial courts. This requires that resources allocation, the composition of budget expenditures, and management practices are designed acknowledging the specific characteristics of Polish courts activity.

FIGURE 11 CLEARANCE RATES FOR LITIGIOUS AND NONLITIGIOUS FIRST INSTANCE CIVIL AND COMMERCIAL CASES, 2010 (PERCENT)



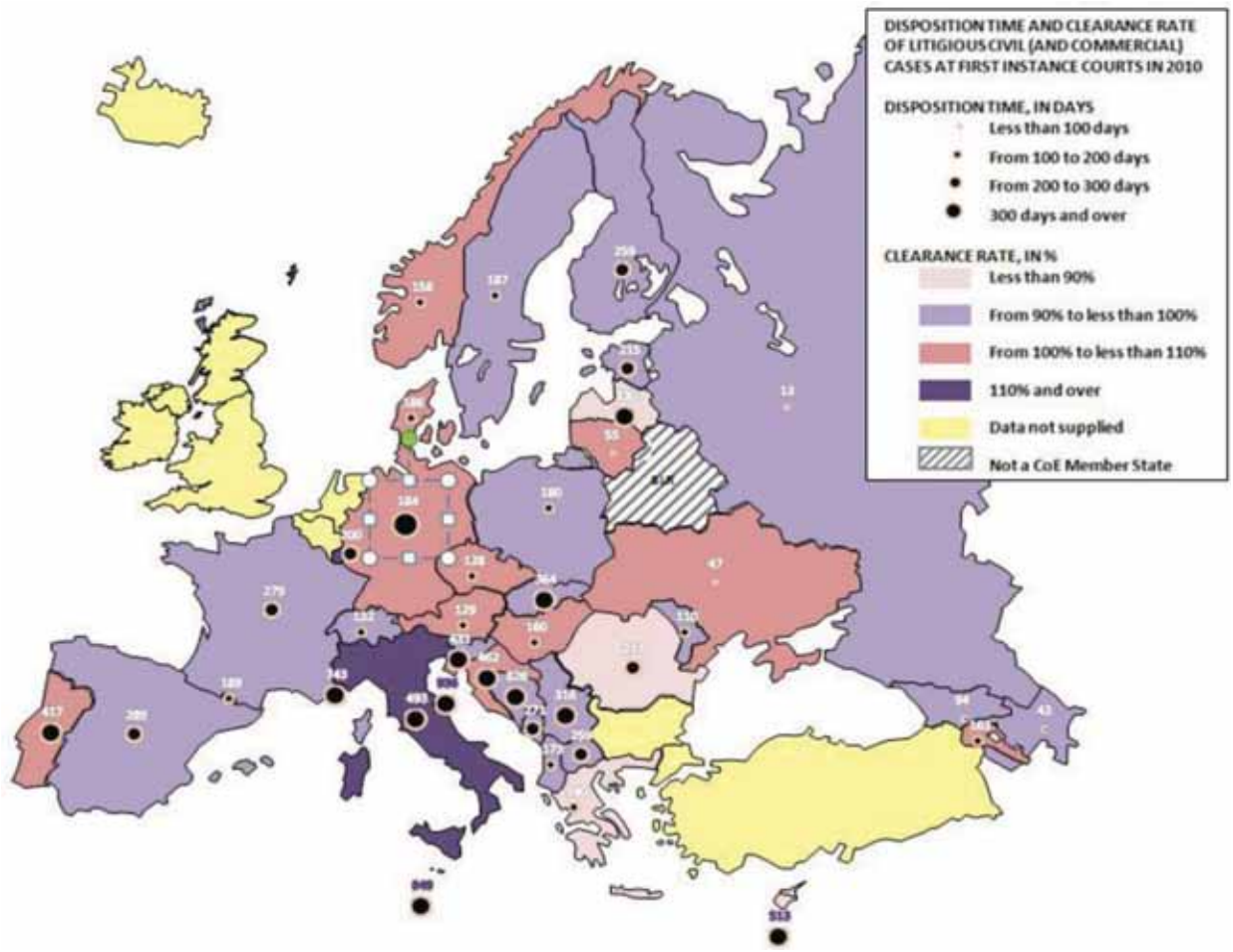
Source: Authors' compilations based on CEPEJ Report (2012).

FIGURE 12 CONFIDENCE IN THE POLISH JUSTICE SYSTEM, 2009 (PERCENT OF RESPONDENTS)



Source: 2009 survey conducted by IBC Group and Homo Homini, and commissioned by the MoJ (the Survey).

FIGURE 13 DISPOSITION TIME AND CLEARANCE RATES OF LITIGIOUS CASES IN FIRST INSTANCE CIVIL AND COMMERCIAL COURTS, 2010



Source: CEPEJ Report (2012, figure 9.13).

4. Factors Underlying these Trends and Possible Solutions

44. This chapter analyzes in further detail some of the main causes behind the decline in performance of civil and commercial courts in Poland, as identified through data analysis and discussions with stakeholders. The report reviews matters of strategic vision; planning for and allocation of resources; organization of courts; the incentives to litigate; litigation procedures; and access to information. In addition to describing the issues that may need improvement, the report presents recommendations to guide some reforms in the court system, pointing out to examples of practices and reforms that have worked in other countries.

4.1 Strategic Vision

45. **There is no clear and participatory strategy for establishing the sector's objectives and directing effective and efficient use of resources to achieve them.** The MoJ and stakeholders acknowledged a lack of strategy and the negative impact it has on the Polish justice sector. In March 2012, the MoJ created a Department of Strategy and Deregulation. Since its creation, the Department has held a workshop (in July 2012) with stakeholders to discuss the approach to the strategy, and created working groups for various topics such as structure of courts, judicial careers, court management, and the scope of jurisdiction to carry out analytical work. However, more must be done. Judges who were interviewed for the report and/or who participated in a related workshop in October 2012 had little or no knowledge about this MoJ plan. Judges stressed the importance of their involvement in preparing the strategy.

46. **The absence of a strategy has not stopped various actors from pursuing or advocating reforms they consider necessary or useful.** Various reforms have been implemented in the last few years, but the reforms do not reflect a process that is driven by a clear direction toward shared objectives, an analysis of the impact or comprehensiveness of the reforms, and an assessment of support by stakeholders. Even more importantly, they are not fully aligned with key societal objectives and programs.

47. **The absence of an overarching strategy could lead individual programs and projects to waste invested resources**. For instance, in 2009, a new system of competitive merit-based recruitment in the judiciary was introduced. This system invites judges and professionals other than judges to apply and compete for judge positions. The new system is a positive change, as it expands a pool of candidates for a judgeship and brings more diversity in terms of knowledge and experience to the Polish judiciary. However, the introduction of the intensive (lengthy and costly) sequence of training of law graduates[37] in parallel to the above reform could undermine the purpose of the new recruitment system. New training is designated for new law school graduates only. The exclusivity of new training imposes an access barrier to a career as a judge for other legal professionals. In addition, by increasing the length of the mandatory judicial training to 60 months, the new system reduces the flexibility of hiring judges. Some observers already argue that the new recruitment system has not worked as expected, pointing mostly to the length of the overall recruitment process and the unequal chances for success of legal professionals who do not participate in the state-subsidized comprehensive training organized by the judiciary (see section 4.3.b on human resources).

48. **The high numbers of civil procedure law amendments signals an absence of strategy and a lack of alignment of policy and legislative work concerning certain critical goals and policies.** Other examples are the perpetual and piecemeal reforms of the commercial and civil procedures, with dubious results. Since 2002, the Civil Procedural Code (the Code) has been amended 118 times (close to one change per month). Most of the reforms claim to support the business environment by speeding up and simplifying the process. Legal concepts and solutions introduced in these amendments, however, often have an opposite effect. For instance, in 2002, businesses complained about the rigidity of formal prerequisites for initiating

[37] Recent law graduates join the National Judiciary School for 60 months of training: 12 months for the general internship; 30 months for a judicial internship; and 18 months for practice as a *referendarz*. After successfully completing this five-year program, candidates can be nominated as judges. If candidates decide to stop the training and leave the school, however, they are required to repay the costs incurred by the school. The extent to which such mechanism is being implemented has not been assessed.

accelerated procedures because these prerequisites resulted in an endless circle of filing and refilling applications.[38] Driven by the needs of the judiciary, but ignoring businesses' potential to respond efficiently, the prerequisites failed to meet the original objective of the reforms, which was to simplify procedures for businesses.[39]

A Way Forward

49. **A clear strategy would allow the court system to contribute to the overall improvement of the country.** The first step for developing a strategy is to set goals for the court system that address two main questions. First, how will courts contribute to the overall economic and societal goals in the country, such as supporting business and encouraging growth: for example, by supporting a more efficient and less costly process of resolving disputes; by reducing the costs of collecting unpaid debts; by speeding up the operation of registries, and/or by improving citizen's perceptions of public institutions? Second, how will the performance targets necessary to achieve those goals be established: for example, through a *x* percent improvement in the clearance rates of registries, litigious and nonlitigious cases, a *y* percent reduction in average disposition time, and a *z* percent increase of citizens/users that have a positive opinion of the courts?

50. **It is essential that this strategy engage all the stakeholders in the justice sector.** In particular, in the case of civil and commercial courts, commercial judges, lawyers, and users (businesses) should be consulted, and their recommendations should be taken into account. Experiences from other countries have shown that ownership of and support for the reform process among stakeholders is essential for the success and sustainability of any reforms. For example, ownership of reforms in the Dutch judiciary in the late 1990s and early 2000s was key to building trust among stakeholders. This trust was critical for the success and sustainability of those reforms.[40]

51. **The MoJ should consider international good practices and take advantage of available tools to design the strategy for the court system.** Here are a few examples:

- United Kingdom: *Justice for Business, Ministry of Justice Supporting Business and Encouraging Growth*, 2012 (UK Ministry of Justice).[41]
- United States: *Mission First…..Linking Strategy to Success, Human Capital Strategic Plan 2007–2012* (U.S. Department of Justice).[42]
- United States (state of Connecticut): Strategic Plan for the Connecticut Judicial Branch, Public Service and Trust Commission.[43]
- European Commission for the Efficiency of Justice: CEPEJ's tool to analyze the quality of justice systems developed by the Working Group on the quality of justice (CEPEJ-GT-QUAL).[44]
- International best practice*:* The International Framework for Court Excellence developed by the International Consortium for Court Excellence (see box 1).[45]

52. **The MoJ should consider introducing "contractualization" as part of the new strategy.** The process of drafting a new strategy can be a timely opportunity to introduce this concept, which has the potential to reshape the way the justice system operates. The term "contractualization" refers to a process for exchanging views to achieve common objectives: to a new style of relations based on dialogue, trust, and consensus, rather than authority. On the one hand, players in the judicial system (those in charge of the courts and the registry, and professionals—lawyers, bailiffs, and solicitors—as well as users' associations) should be engaged in the dialogue regarding the targets and standards of the court.[46] On the other hand, courts can conclude target-based contracts with MoJ, aimed at obtaining resources in exchange for a commitment to achieve certain objectives. The goal is to enable the courts to improve their performance while meeting certain efficiency standards by adapting the resources allocated to them.[47]

53. **Mechanisms such as target-based contracts will introduce accountability mechanisms, while preserving judges' independence through the negotiation of such agreements**. It will also increase ownership of the actors involved in the court system, leading to better performance. This will imply a significant structural change, shifting from a pyramid-like administration to one based on networks, and from a supervisory to a participatory approach.[48] Therefore, starting by implementing pilot programs conducted

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38 World Bank (2005, 61).

39 Conference on the Future of the Polish Judiciary, the Institute of Public Affairs, Warsaw, September 2002.

40 Decker, Mohlen, and Varela (2011).

41 More information is available at http://www.justice.gov.uk/downloads/publications/corporate-reports/MoJ/2012/justice-for-business.pdf.

42 More information is available at www.justice.gov/jmd/ps/missionfirst.pdf.

43 More information is available at www.jud.ct.gov.

44 More information is available online at https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1702393&SecMode=1&DocId=1281474&Usage=2.

45 More information is available online at http://www.courtexcellence.com. The International Consortium consist of groups and organizations from Europe, Asia, Australia, and the United States.

46 Gaboriau (2003)

47 Lhuillier (2010).

48 Gaboriau (2003).

BOX 1 THE INTERNATIONAL FRAMEWORK FOR COURT EXCELLENCE (IFCE)

The first step in the journey toward court excellence involves an assessment of how the court is currently performing. Undertaking an assessment allows the court to identify those areas where attention may be required and to set a benchmark against which the court itself can measure its subsequent progress. The International Consortium for Court Excellence incorporates a self-assessment tool, which allows a court to undertake its own assessment of its performance against the seven areas for court excellence.[a] Having completed the self-assessment questionnaire, the court will have identified the areas where improvement is required. Some courts may choose to concentrate their efforts in discrete areas, while others may proceed with a full court review and reform. In either case, prioritizing court issues is highly recommended. This will allow the reform process to focus on specific performance areas over a period of time. It is essential for court leadership to ensure that the process for planning for improvement provides ample opportunity for judicial officers, court employees, and the court's professional partners to be consulted and involved. The assessment will have identified a range of issues for the court to address in developing an improvement or action plan, such as:

- Does the court have a vision statement and/or a mission statement expressing the court's fundamental values and purposes? If not, this is the place to start because implementation of the Framework depends upon the court having articulated values.
- What are the deficiencies in the court's management, operations, and services and why do they need to be improved?
- What issues can and must be addressed quickly and in the short term? What issues call for more intermediate or long-term planning?
- What changes in procedures or practices does the court plan to institute?
- Whose support and cooperation is most relevant in making these potential changes (such as attorneys, prosecutor's office, and other government agencies)?
- What resources will be needed to successfully institute those changes (such as funding for additional personnel or equipment; cooperation of attorneys who practice in the court; cooperation of the other judges in the court; effective communication with other components of the judicial system)? How will the court obtain those resources? What sources of support can the court draw on?
- What resistance to the plan or obstacles may be encountered? How might this resistance or these obstacles best be overcome?
- What is the time schedule for instituting the changes?
- How will the court evaluate the success of the changes? What information will the court need for this evaluation? Who will collect the information and how will it be analyzed? Will an outside consultant be needed to develop measurement tools and analyze results?

Source: International Consortium for Court Excellence.
[a] (1) Court Management and Leadership; (2) Court Policies; (3) Human, Material and Financial Resources; (4) Court Proceedings; (5) Client Needs and Satisfaction; (6) Affordable and Accessible Court Services; and (7) Public Trust and Confidence. See http://www.courtexcellence.com/pdf/IFCE-Framework-v12.

by motivated court presidents and staff would be essential for success. Target-based contracts between authorities have been used in Belgium, England, France, the Netherlands, and Wales (see box 2 for an example from France).[49]

4.2 Organization

54. **This section is concerned with the Polish court map,**[50] particularly commercial courts**.** Issues discussed include number, locations, and size of the commercial courts. The discussion concentrates on the European context and trends and impacts of the recent organizational reforms on the performance of the commercial courts.

55. **Poland has 365 first instance courts of general jurisdiction and 28 specialized courts sited in 705 geographical locations.**[51] The number of first instance courts has not changed much since 2006, while the number of physical locations has increased by 15. This places Poland among the 15 European countries with a rate between one to two first instance courts per 100,000 inhabitants. The majority of European countries (19 countries) have less than one court

[49] For a further explanation of the concept and implementation in these countries see Lhuillier (2010).

[50] A diagrammatic representation of a country showing jurisdiction, size, and location of courts.

[51] Overall, Poland has a three-tier common court system: there are 321 district courts, 45 regional courts, and 11 courts of appeal. Within the courts, there are separate divisions for particular types of disputes. Each court has criminal and civil division. Some courts also have family, labor, social, mortgage, and commercial divisions. The commercial courts can be territorially detached from their "mother courts." Currently, there are about 120 district commercial courts operating within the jurisdiction of 321 district common courts. Poland has 347 land and mortgage registration courts, 21 business register courts, and 10 pledge register courts.

BOX 2 PERFORMANCE CONTRACTS IN FRENCH ADMINISTRATIVE COURTS

The supreme administrative court in France—the Council of State (Conseil d'Etat)—and other administrative jurisdictions developed New Public Management (NPM)-based approaches earlier than other courts and had been implementing a performance-based system since 2002. One of the tools used was contract management between the administrative appellate courts and the Council: that is, agreements on performance and resource targets (*contrats d'objectifs et de moyens*).

The overall work program of this jurisdiction was broken down at the appellate court level and the specific objectives were agreed between these courts and the Council of State. With minimal increases in the number of judges and staff, the objectives of reducing delay and controlling the caseload have been largely achieved, together with clear efficiency gains. In addition, after 2000 the French administrative jurisdiction has reduced the average delay to more than 13 months by 2007 in the case of the appellate courts and slightly more for first instance courts. The agreed backlog targets were reached in 2007, while the structure of the backlog also improved. Indeed, the number of cases pending for two or more years decreased from 44 percent in 2002 to 10 percent at the end of 2007. The productivity per judge has also increased. The baseline was 88 cases disposed of per judge in 2002. The objective for 2007 was 98, and the actual result was 106.

Source: Decker, Mohlen, and Varela (2011).

per 100 000 inhabitants.[52] Figure 14 compares the number of first instance courts (legal entities) in European countries.

56. **Between 2008 and 2011, the MoJ reduced the number of commercial divisions in the smallest courts, from 33 to 21. As a result, the number of commercial judges dropped from about 218 to 197.** By the end of 2011, 12 regional and 14 district commercial divisions were merged with their parallels in neighboring courts. There are also plans to consolidate the commercial divisions of two Warsaw first instance courts into one commercial justice center, which will house both district commercial courts (with 86 judges, 88 *referendarzs*, and 283 support staff) and regional commercial courts (with 64 judges, 1 *referendarz*, and 83 support staff). It is estimated that 10 percent of the district and 20 percent of the regional case load will flow into the center.

57. **The Polish court map was drafted in 2001, mirroring the administrative and territorial organization of the country. Since then, Poland has been trying to appropriate its court map following inflow of cases.** Many ad hoc changes have been made to achieve this objective, but have yielded rather mixed results. As of 2008, the court map was complex and difficult to navigate or manage. The structure of the smaller courts was too fragmented. Often specialized units, including commercial divisions, were not justified by a sufficient workload.

58. **Since 2008, the Polish courts have embraced this organizational challenge through consolidation of commercial departments**. Consolidation was meant to allow for the higher inflow of cases, which in turn would justify specialized divisions and judges. **Furthermore, Poland opted for a concentration of accelerated proceedings in one court (an e-court).**

59. **The 2001 design of the Polish court map led to the creation of very small and very big courts.**[53] **But international experience is that the size of courts influences their performance.** Although smaller courts operate at higher cost than courts with more staff, they normally have better case resolution times. There is no universal formula for the optimal size of a court.[54] Countries adopt different strategies. Two unrelated projects looking into the optimal size of courts done in very different countries (Sweden and the Slovak Republic), using different approaches and addressing different problems, came to the same conclusion: the court should not be smaller than nine or ten judges[55] to be able to work effectively. The Swedish project also concludes that there are no limits as to how large the courts

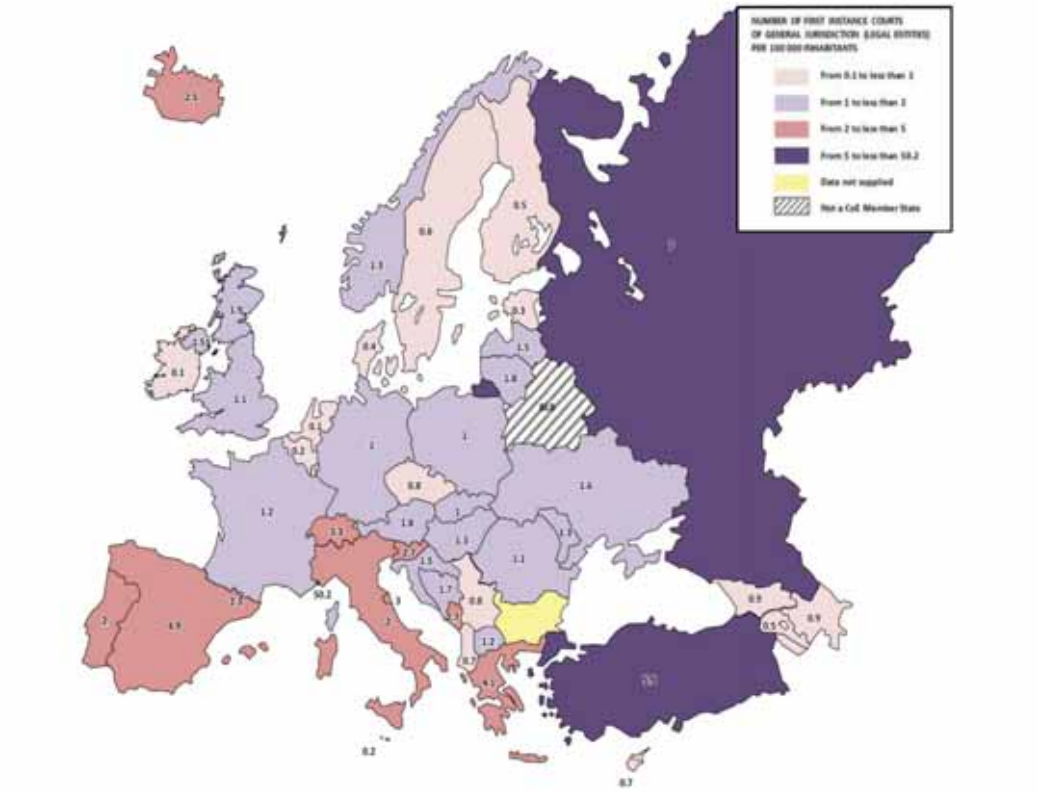
[52] CEPEJ Report (2012, 100). *First instance courts of general jurisdiction (legal entities)*: "These courts deal with all issues that are not attributed to specialized courts based on the nature of the case. *All courts considered as geographical locations*: These are premises or court buildings where judicial hearings take place. If there are several court buildings in the same city, they must be taken into account. The figures include the locations for first instance courts of general jurisdiction and first instance specialized courts, as well as the locations for High Courts and/or Supreme Courts. The term "geographical location" can be misleading, as these data count, for example, courts based in the same street as being in different geographical locations."

[53] The smallest first instance courts have four judge positions; the biggest one has 137.

[54] For models of determining court size, see Noam (1980).

[55] In the Slovak Republic, the numbers were later increased to 13–15 judges in the first instance court and 40 judges in the second instance courts. World Bank (2005).

FIGURE 14 NUMBER OF FIRST INSTANCE COURTS OF GENERAL JURISDICTION (LEGAL ENTITIES) PER 100,000 INHABITANTS, EUROPE, 2010



Source: CEPEJ Report (2012, figure 5.2).

should be.[56] In both instances, the chief reason for the minimal size of courts was securing sufficient case inflow to justify the specialization of judges and court staff, at least in the basic legal fields such as criminal, administrative, and civil law.[57]

A Way Forward

60. **The analysis of the most recent trend in Europe shows a shift from court organizations focused on geographic location to court organizations focused on functionality—**mostly judicial specialization. The specialization may involve specialization among courts and judges, but also division of responsibilities between judges and nonjudicial staff. The precondition of specialization is sufficient volume of cases.

61. **The CEPEJ Report 2012 indicates an increase in the number of countries with less than one court per 100,000 inhabitants** (19 countries in 2010, compared to 11 countries in 2008) and a decrease in the number of countries with one to two courts per 100,000 inhabitants (15 countries in 2010, compared to 24 countries in 2008). During the same period, 23 European countries decreased the number of geographic locations of courts. The highest decrease was observed in Serbia and Finland (more than a 30 percent reduction).[58] It is safe to conclude that European countries are on a trajectory toward more consolidated courts.

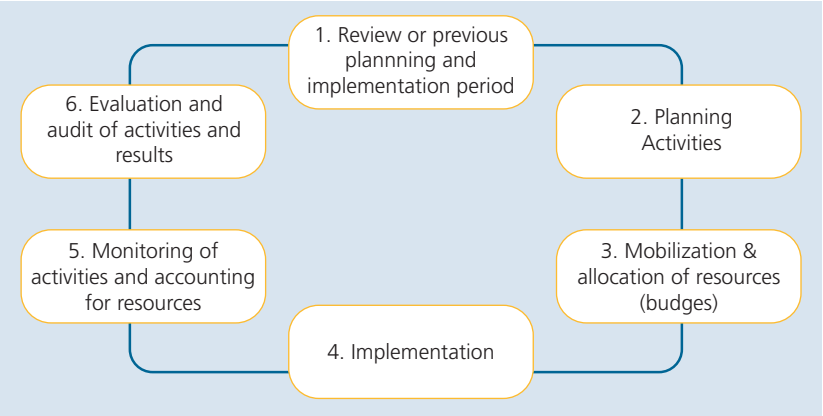
[56] This conclusion, however, should be treated with caution as other research argue that there are limits to how big courts should be. See, for example, Van der Torre et al. (2007).

[57] In the Slovak Republic, the reform relates also to the new case management and internal organization of the courts. Internal organization is based on case management teams and random assignment of cases.

[58] CEPEJ Report (2012). The countries that reduced geographic locations of courts include: Armenia, Azerbaijan, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Georgia, Iceland, Ireland, Italy, Luxemburg, Malta, the Netherlands, Norway, Portugal, Serbia, Slovenia, Sweden, Switzerland, and the United Kingdom.

62. **A number of factors may explain and influence this trend, among them the scope, type, and complexity of cases; litigation patterns; and availability of technology.** There are many approaches for dealing with the new organizational challenges. The Netherlands, France, and Germany, are following three different approaches: (i) concentration of cases in one or more courts, on the basis of legal provision or a contract among courts regarding exclusive competence to deal with a special category of cases; (ii) allocation of specialized judges to different courts; and (iii) cooperation among courts.[59]

FIGURE 15 TYPICAL PLANNING AND BUDGETING CYCLE



Source: Lister (1996).

63. **Polish reforms are congruent with European trends. Future reforms in Poland should continue to build on the results and benefits of past reform efforts**. **They should take advantage of recent methodologies and international experience.** They also should be based on a comprehensive research of reforms impacts. Consultations with stakeholders—judges, legal professionals, and businesses—should take place from the beginning to the end of reforms, and should extend to a monitoring and evaluation phase. This should become the norm. Justice leaders should also remember that "more may not be better" and choose their interventions as to organization of the judiciary carefully. "Back and forth" reforms—such as reversing changes before realizing their benefits—should be avoided, as these reforms are costly, often counterproductive, difficult for court staff to absorb, and a challenging adjustment for court users.

4.3 Planning for Resources

64. **This section analyses budgeting and management of human resources (HR).** This analysis is not exhaustive; it centers on those aspects of budgeting and HR management that underline the challenges identified in the chapter 3, "Courts in Poland." The section on budget is concerned with the relationship between planning and budgeting and preconditions for and potential benefits of programmatic budgeting. The section on HR management tackles the flexibility to deploy court staff according to demand for court services.

4.3.a. Budget

65. **Good planning for budget and personnel (and other inputs, outputs, and outcomes) is critical in face of restricted resources and ambitious reforms necessary to put the system on the path of a solid sustainable performance.** They are a part of court management and responsibility of MoJ, the National Judicial Council,[60] and courts. Figure 15 shows a typical planning and budgeting cycle.

66. **In Poland, the judicial budget is protected through a budgetary law and influenced by rules on judicial remuneration**. The budget includes four separate budget envelopes: one for the MoJ and the common and military courts; one for the Supreme Court; one for the Constitutional Court; and one for the administrative courts. In this model, the MoJ is responsible for preparing a general budget framework and providing necessary inputs for its own expenditures and the expenditures for the centrally managed projects.[61]

67. **The MoJ prepares two budget frameworks.**[62] The first framework is based on inputs, the budget history, and sometimes, anticipated developments. The second framework includes performance targets.[63] The basic idea of this

[59] Mak (2008).

[60] The National Judicial Council (NJC), together with the MoJ, is the governing body of the courts (the NJC's duty is personnel management of judges). More specifically, the NCJC nominates, appoints and reassigns judges to the courts, and it comments on the policies pertaining to professional conduct, training, and examination of apprentices.

[61] World Bank (2005); and MoJ.

[62] Interviews with the members of the Budget Division of MoJ.

[63] The targets for the 2011 budget for Common Courts were: (i) achieving the level of benefits for judges defined by the law (remunerations); (ii) ensuring access to justice (justice services); (iii) delivering judgments in criminal, civil, and commercial matters in a timely manner (sentencing); (iv) creating conditions and infrastructure conducive to performance of courts (organizational and technical conditions for courts); (v) securing payments of state liabilities (state liabilities); (vi) modernizing court organization and improving access to justice (computerization); (vii) operating the information system and improving access to justice (O&M costs of information systems); and (viii) improving access to justice (computerization).

approach is to combine the information inputs with data about system performance. If fully implemented, it allows the outputs and the impact achieved through the input provided to be measured, and thus address any mismatch between resource allocation and performance.

68. **In reality, the MoJ and courts use the first approach, historic budgeting.** The reason is quite obvious. The implementation of program budgeting requires: a solid and clear planning process; a system for measurement of output of the courts; and a change in mentality and shift of focus toward performance. Ideally, program budgeting links forecasted demand for services (such as case inflow), performance goals, measurable targets, and budgeting. It also is connected with the individual performance management goals, so human resources management is aligned with the system's overall objectives.[64] Finally, program budgeting requires a relatively robust indicator set and reliable performance data.

69. **None of the above systems are fully operational in Poland.** From interviews with those who are involved in the budgeting process, other MoJ staff, and judges, it appears that forecasting of workload and workforce is a sporadic and unreliable exercise; the performance system is weak and does not extend to individual performance; and the information base for both forecasting and performance monitoring and evaluation is insufficient. It also appears that the indicators/targets are developed without an active involvement of the judiciary.[65] The potential lack of ownership of those being measured, however, bears the risk of them "gaming" the system when the measuring takes place, which is then likely to undermine the reliability of data and ultimately the effectiveness of implementation.

70. **Other countries in the region and around the world have developed workload and workforce measurements that provide a more objective basis for resource allocations.**[66] The example from the Netherlands described in box 3 is an effective budgeting system that includes the prerequisites described in this section.

BOX 3 PERFORMANCE BUDGETING IN THE NETHERLANDS

A performance budgeting approach was introduced in the Dutch judiciary in 2005. The aim was to improve efficiency and equity of resource allocation among courts, and enhance the transparency and accountability of the judicial system. The new approach is based on a workload analysis and requires a robust monitoring system in place in all courts. During budget negotiations, the Judicial Council and the Ministry of Justice agree on an annual caseload for the next budget year, on which basis the allocations for the court system are made. The budgeting model is based on estimates of average time for groups of cases in categories and estimated cost of processing each group of cases.

The "price" per case is agreed every three years between the Ministry of Justice and the Council and covers the cost of operations and maintenance, including personnel. The average time to process each case is estimated on the basis of a detailed time measurement survey conducted every three years. Information on the number of cases is produced every quarter. An equalization account covers the difference between the agreed and actual number of cases at the end of the year. For example, courts that have processed more cases than planned can access additional funds from the equalization account up to a certain limit, while courts that "underproduce" in terms of number of cases must transfer the "unused" or "excess" funds to this account.

The new performance budgeting system provides incentives for improved performance in terms of speed of completion of cases. Its prerequisites are a robust benchmarking system, a detailed monitoring system, and an overall public financial management system based on program budgeting underpinned by agreed and monitorable indicators of performance. However, some observers, especially judges, have expressed reservations that this system's emphasis on cost and speed could compromise the quality of decisions.

Source: World Bank (2008).

A Way Forward

71. **Programmatic budgeting should become the main approach to budgeting in the justice sector.** Members of the judiciary at different levels could be more actively involved in the planning and budgeting process to increase ownership. Although consensus-building between the MoJ and the judiciary on performance measurements may constitute a significant upfront investment, Poland should consider this option to ensure successful implementation of the program budgeting approach.

64 Gramckow (2012).

65 For examples of indicators, see Webber (2005).

66 For example, in Austria, Germany or New Zealand. For more details on workload forecasting, see New Zealand Ministry of Justice (2012); on workforce forecasting, see Justizministerium Baden-Württemberg (2002).

72. **Planning should be improved and linked with budgeting. It should include forecasting future workload and the need for workforce.** This would allow Poland to overcome several problems: (i) the inability of a one-year budget horizon to address strategic resource allocations effectively; (ii) fragmentation of the budget process in ways that prevent discussion on trade-offs; and (iii) lack of discipline and credibility in budget implementation.[67] In addition, it will help the MoJ in the effective implementation of program budgeting.

73. **The MoJ should review and adjust its performance monitoring and evaluation system.** The new system should extend to individual performance and should be based on consensus of stakeholders, particularly judges. It should also include regular satisfaction surveys of users.

74. **The MoJ should consider conducting a Justice Sector Public Expenditure Review.** The review would help the MoJ understand what areas are "under-resourced" or "over- resourced," linking planning and budgeting in the justice sector to allocate and use available resources in a way that promotes better performance of the courts and makes better use of public resources. The analysis would also cover the revenue structure of the system through court fees and other sources. It should identify clear policy options for improving resource allocation throughout the judicial system in order to achieve set goals.

75. **Contractualized initiatives at various levels may contribute to better implementation of program budgeting.** In order for the various actors in the judicial system to get used to the spirit of the program budgeting and the measurement of results, it may be an option for the MoJ to launch a small competition for initiatives aimed at improvements, where additional budget is provided for the achievement of results based on innovative ideas developed and implemented at the local level.

76. **At the project level, the planning process should be improved, and stakeholders should be involved in the planning process, leveraging their skills and knowledge.** This will entail clearly defining the goals of the project, as well as their implications in terms of cost, schedule, and scope for the entire completion of the project. A detailed plan for how and by whom the project will be supported during the maintenance and operations period will also need to be developed.

4.3.b. Human Resources

77. **Court productivity depends in part on the flexibility to deploy judges and court staff.** The history of the Polish judiciary offers several example of crisis due to sudden increases of cases and inability to deploy staff who would handle them.[68] The crisis in Polish courts in the 1990s exposed the inflexibility of the system, which still persists. These inflexibilities include: (i) the time it takes to become a full-fledged judge (recently training for judges was expanded to a sixty-month intensive training program); (ii) the length of selection and appointment process for becoming a judge; and (iii) the fact that the judges and the support staff (at least some of them) cannot be moved as needed among the courts.

78. **Poland does not have a consistent instrument to estimate court staffing needs.** Its estimates rely on inflow of cases. However, Poland has not conducted a weighted case load assessment, which would take into consideration the tasks and time required to dispose of cases. These assessments normally inform decision makers about how much court staff time is required to handle each type of case to disposition, and the amount of time available to court personnel to handle cases.[69] In combination with an estimate of case inflow, weighted case load assessments provide a basis on which staffing needs can be analyzed in an accurate and balanced manner.

79. **Forecasting future case workload and staffing needs should not be based only on current procedures and staffing arrangements; it should factor in assumptions about future reforms and their impact on both case workload and staffing needs.** The 2008–11 consolidation of commercial divisions in the district and regional courts can be used to explain why. As discussed in section 4.2 on organization, between 2008 and 2011, the MoJ dissolved 12 commercial divisions in regional courts and 14 in district courts. The purpose of the consolidation was to secure a higher inflow of commercial cases in order for the courts to capitalize on economies of scale and specialization. One of the unintended outcomes of the reform, however, was the decline in the number of commercial judges from 221 to 197 during that period. Many judges and staff simply refused to be transferred to their "new" courts and instead opted to change their specialization. This occurred during the considerable increase in the number of commercial cases. Figure 16 shows that during this time, the clearance rate of commercial courts (including the e-court) decreased, while case backlog of commercial cases increased. Though, the e-court appears to have driven this development since its introduction in 2009, according to

[67] Lister (1996).

[68] In 1996, because of the inflexible rules, the court leaders were unable to fill 10 percent of judges' positions in the appellate courts, and about 12 percent in the regional courts. In 1999, these numbers increased to 44 percent and more than 32 percent. Chamber of Audit of Poland (2001).

[69] For a more comprehensive discussion and explanation of this and other methods, see Gramckow, (2012).

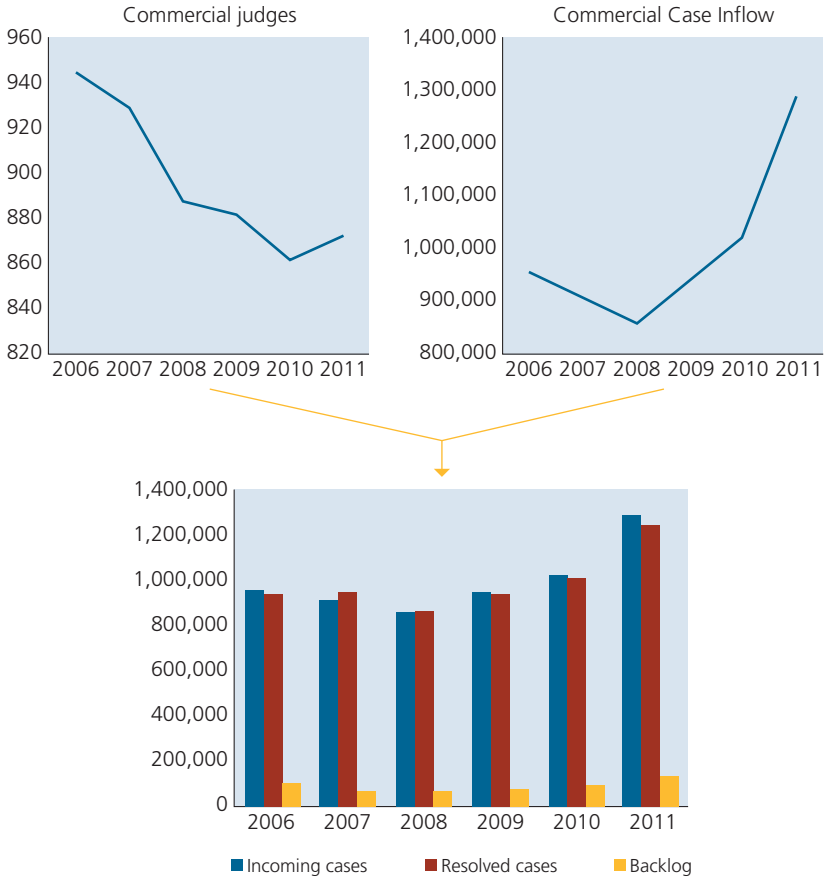
figure 17, it is also evident that the decrease in the number of judges due to reorganization of courts was also contributing factor.

80. **Staffing needs assessment could be the basis for a future HR Strategy. The HR strategy should articulate immediate and medium-term staffing goals (including consideration of a sector strategy) and practical steps for achieving them.** Both documents should help the MoJ and courts address such issues as the imbalance between cases and staff allocated across instances to process them (see figure 18), and the difficulty in hiring and retention of judges and staff in bigger cities.

Way Forward

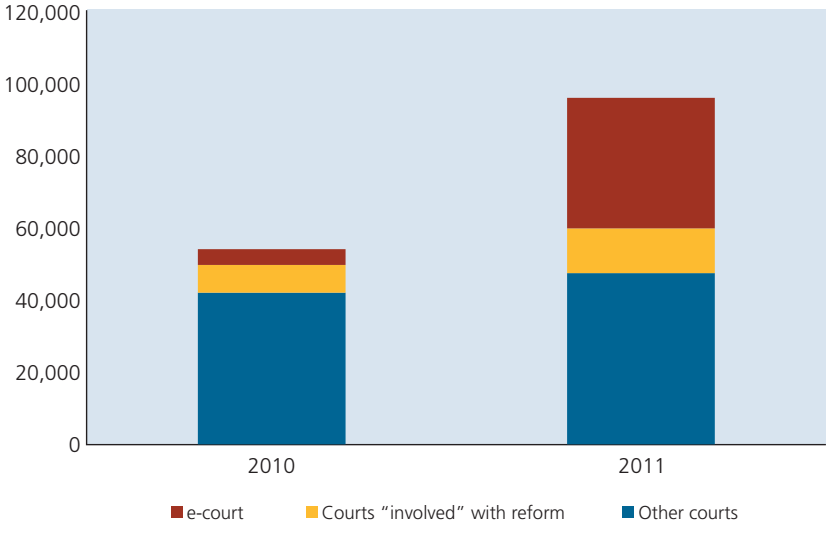
81. **The MoJ could consider using some method for estimating staffing requirements, such as a weighted workload study, to inform its human resources policy and to increase the efficiency in the expenditures and operations of the courts.** Informed by such reviews, the MoJ should then consider preparing HR policies and an HR strategy that would help the MoJ balance the distribution of cases and HR needs.[70] A more strategic and

FIGURE 16 NUMBERS OF COMMERCIAL JUDGES, COMMERCIAL CASE INFLOW, AND PERFORMANCE OF COMMERCIAL COURTS IN POLAND, 2005–11



Source: MoJ statistics.

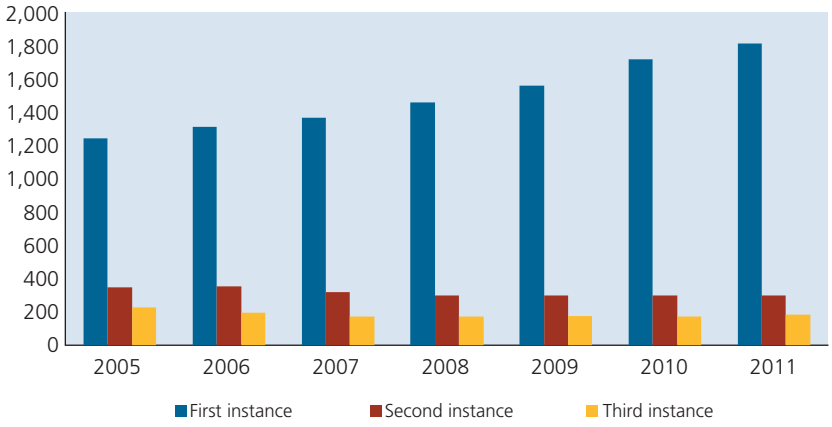
FIGURE 17 BREAKDOWN OF CASE BACKLOG IN COMMERCIAL COURTS, 2010 AND 2011



Source: MoJ statistics.

[70] A hypothetical calculation of costs associated for the use of judges for nonjudicial tasks could be made, as follows. Assume that judges and court staff work 220 days and 1,760 hours per year (which is the case in the United States; see Gramckow 2012). Gross annual salary of first instance judges is €20,736 (according to CEPEJ Report 2012), which is €11.78 per hour. Assume that the salary of court administrative staff is one-third that of judges, or €3.9 per hour. If these hourly rates are multiplied over half of the annual working hours (those that would have been dedicated by judges to deal with administrative tasks), that results in 880 hours, or €10,366 per judge and €3,432 per court staff. This means that the difference, €6,934, is the amount that is "lost" annually per judge if judges spend half their time carrying out administrative tasks. If that amount is multiplied by the number of judges in Poland (10,625, according to CEPEJ Report 2012), the Polish

FIGURE 18 CASE INFLOWS PER JUDGE BY INSTANCES IN POLAND, 2005–11



Source: MoJ statistics.

systemic approach to HRM is necessary in order for the judiciary to be able to overcome the organizational and management challenges that arise from the principle of immovability[71] and unwillingness of judges to relocate stemming from a principle of immovability of judges.

82. **The MoJ and courts should consider HR policies and laws that would allow for more flexible allocation of judges and nonjudicial staff to courts.** In its quest for more elastic rules for managing court staff, the MoJ can draw on good practice from other countries. For example, in the Netherlands, judges are substitute judges in all the other courts of the same level of that to which they have been appointed. If there is a need due to high caseload, the head of a court with a high caseload can arrange with the head of one with low caseload to receive judges to hear cases in his/her court. Several courts have agreements for such exchange of judges among courts.[72] In the Netherlands, a so-called "flying brigade" consists of a group of lawyers working as court clerks. Similar systems of flying brigades have been put in place in Italy and Portugal. In Austria, the newly appointed judges working for the superior appeals court can be temporarily assigned to the district courts in their jurisdiction when and where needed. Two percent of judges are under such arrangement. In Quebec, Canada, judges regularly travel from court to court to alleviate caseload.[73]

4.4 Unintended Incentives to Litigate

83. **The inflow of cases could be managed more effectively to enable the system to focus on cases it ought to deal with.** It seems that in Poland two important factors are incentivizing people to use the courts, even when the use of the courts may seem either disproportionate or not the most effective way to resolve a dispute or obtain the payment of a debt. These factors are relatively low litigation costs and certain tax incentives, and are analyzed in the sections below.

4.4.a. Litigation Costs

84. **In Poland, litigation costs are relatively low.** According to the annual *Doing Business* reports, the cost of contract enforcement (composed of court costs, enforcement costs, and average attorney fees)[74] in Poland is one of the lowest among the comparator countries[75] (see figure 19). In 2011, it was 12 percent of the claims. By 2012, however, the costs of enforcing contracts had increased by 58 percent to 19 percent of the claim. In fact, Poland is the only country to have experienced such an increase among comparator countries. However, court fees in particular have not increased (the increase has occurred in attorneys' fees). Poland is still among the countries where the costs of using the court system are cheapest.

85. **The low cost of litigation is likely to be one of the reasons for the relatively high volume of court filings, of some appeals, and ultimately for lengthier proceedings.** Court fees depend on the value of the dispute; court fees, however, cannot exceed the maximum cap (Zl100,000). For instance, interviewed lawyers reported an increased number of appeals in cases involving high value claims where court fees reach the maximum threshold.

court system could save €73,673,750 per year through a more efficient distribution of tasks among personnel.

[71] The principle of immovability guarantees judges' impartiality and independence by limiting possibilities of their removal from cases or courts.

[72] Fabri and Langbroek (2007).

[73] World Bank (2005).

[74] The *Doing Business* reports record cost as a percentage of the claim, assumed to be equivalent to 200 percent of income per capita. No bribes are recorded. Three types of costs are recorded: court costs, enforcement costs, and average attorney fees. Court costs include all court costs and expert fees that the seller (plaintiff) must advance to the court, regardless of the final cost to seller. Expert fees, if required by law or commonly used in practice, are included in court costs. Enforcement costs are all costs that the seller (plaintiff) must advance to enforce the judgment through a public sale of the buyer's (defendant's) movable assets, regardless of the final cost to seller. Average attorney fees are the fees that the seller (plaintiff) must advance to a local attorney to represent the seller in the standardized case. More detailed information available online at *Doing Business* web site at http://www.doingbusiness.org.

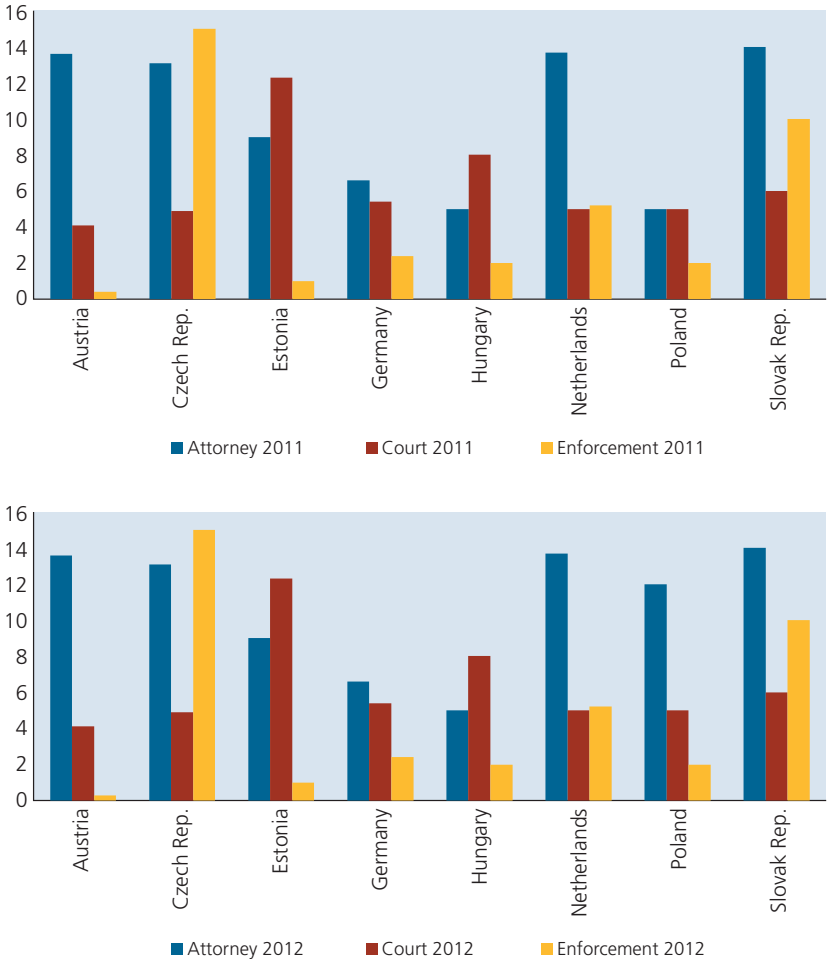
[75] The comparator countries includes, arranged from low to high: Germany (14.4 percent); Hungary (15 percent); Austria (18 percent); Estonia (22.3 percent); the Netherlands (23.9 percent); Czech Republic (33 percent) and the Slovak Republic (34 percent).

Judges reported that lawyers and litigants tended to file competing/counter claims of high value to avoid payment of court fees and therefore delaying the court proceeding.

86. **The new e-court further reduces the costs of filing certain types of cases.** The e-court was established in 2009 to deal with writs of payment and speed up the process of debt collection claims. Since its establishment, the e-court has processed millions of claims—small and big, since there is no amount cap on the cases that can be filed before the e-court—through an accelerated and simplified process. If contested by the debtor or rejected by the e-court, a case filed in the e-court is redirected to a conventional court (see figure 20).

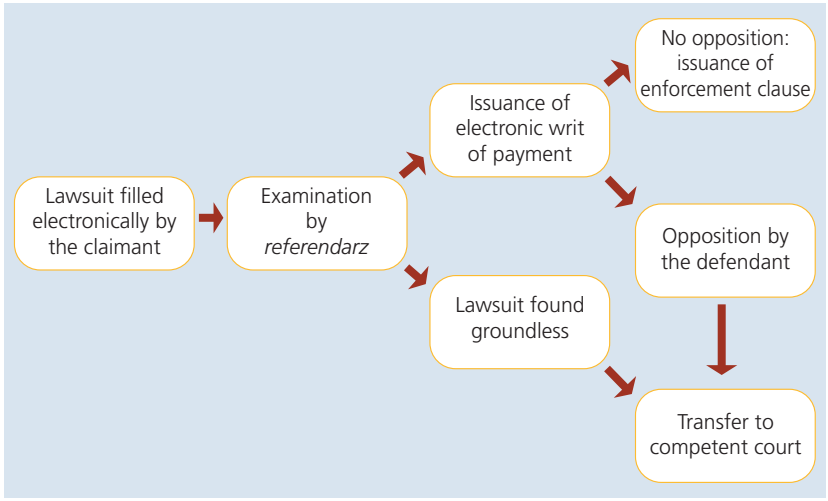
87. **The low cost of filing sets strong incentives for the use of the e-court.** The cost of filing a writ of payment in the e-court is 25 percent that of filing it in the conventional court.[76] Initially, this measure may have been designed to promote the use of the e-court in its start-up phase. Today, the reason why the fees of the e-court are much lower than that of conventional courts may be less obvious. Litigants have become aware of the existing incentives. As there is no cap in the value of the cases that can be filed in the e-court, while opposing and redirecting a case to a conventional court does not result into an additional court fee, there is an incentive for litigants to file their case in the e-court, even if the claimant knows that the defendant is going to oppose[77] and that the

FIGURE 19 CONTRACT ENFORCEMENT COSTS AMONG COMPARATOR COUNTRIES, 2011–12 (PERCENT OF THE CLAIM)



Source: Doing Business 2012, 2013.

FIGURE 20 FLOWCHART OF THE E-COURT

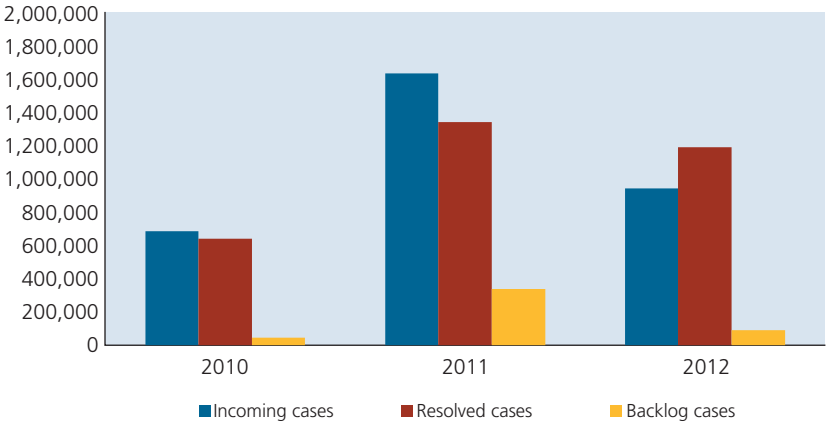


Source: World Bank analysis.

[76] Art. 19 of the Law on Costs of Civil Cases stipulates that the cost of filing a writ of payment in the e-court is 25 percent that of filing it in the conventional courts. There is no provision that would impose on any party a duty to pay the additional 75 percent of the fee if case is transferred to conventional courts.

[77] The e-court was not designed for these cases, but to process the high amount of uncontested debt collection.

FIGURE 21 INCOMING, RESOLVED, AND BACKLOG CASES IN THE E-COURT, 2010, 2011, AND MID-2012



Source: MoJ statistics (data for 2012 are limited to the period from January to June).
Note: The figure does not disaggregate by types of jurisdiction.

case will be directed to the conventional court. The claimant saves 75 percent of the costs.[78]

88. **As a consequence, the case inflow in the e-court is increasing steadily and steeply** (see figure 21). Interviews with debt collection companies and other stakeholders suggest that there are many cases processed by the e-court that remain unopposed, although the claims are actually not founded or subject to the statute of limitations. When it comes to utility bills and the like, a significant number of people tend to comply with payment orders they receive from the e-court, although they may not owe anything. At the same time, it appears that this outlet is hugely popular with banks, and factoring, debt collection, and utility companies. Access to justice considerations may therefore not adequately justify the incentives set by the low costs to use the e-court.

89. **The impact of a recent increase in attorney fees on case inflow remains uncertain.** As the increase referred to in the most recent *Doing Business* report (World Bank 2012) refers to 2012, it is impossible to assess at this point if this will have an impact on case inflow. Yet taking into account Polish cost shifting rules and practices, it does not seem likely that such an increase will significantly reduce litigation rates. In Poland, the minimum attorneys' legal fees for which a successful party is entitled to reimbursement from the losing party are regulated by the ordinance on advocates' fees and the ordinance on legal Counsels' fees (Zl60 if the amount in dispute is below Zl500, to Zl7, 200 if the amount in dispute is Zl200, 000 or above). The fees may be increased by up to six times depending on the complexity of the matter, as well as the workload required of the lawyer and his or her contribution to the settlement of the case. Yet the value of the recoverable fees must not exceed the value of the claim itself. According to interviewed lawyers, attorney costs incurred by the parties are much higher than the minimum fees stipulated by these ordinances; therefore, the losing party will never reimburse the full costs of litigation.

90. **Moreover, unpaid litigation costs do not accrue interests in Poland.** It is one of only three countries in Europe (the Czech Republic and Ukraine are the others), where unpaid litigation costs do not accrue interest.[79] The losing party will not be charged any interest for late payment of any, already low, costs. At the same time, the team was told that judges do not seem to sufficiently sanction dilatory behavior during court proceedings. This is not due to a lack of legal provisions, because the law would allow them to do that. The combination of these two factors can therefore incentivize certain actors to litigate while they know perfectly that they have little chances to win the case.

4.4.b. Tax Incentives

91. **The 2005 Report found that tax incentives were a significant driver for creditors to file cases**.[80] Indeed, more than half of the Polish small and medium enterprises (SMEs) in the 2005 National Bank of Poland survey said that tax incentives were a key reason for filing cases in court.

[78] According to the information received from judges, nowadays, any claim "for a monetary payment" can be filed in the e-court. Art. 498 of the Code of Civil Procedure is directly applied for electronic procedure and stipulates that "writ of payment may be issued if the plaintiff indicates a claim for a monetary payment." This definition is too broad, and allows a claimant to file, for example, a claim regarding a breach of contract that translates into a pecuniary payment. Such case is not supposed to be filed before the e-court (designed for debt collections) so it will be redirected to the conventional court. Yet the claimant would have saved three-quarters of court fees.

[79] Lovells (2010, 6).

[80] The 2005 Report (text box 5, 40) noted: "Among the millions of cases handled by the Polish courts every year are some that do not even involve a dispute. In many cases, it may be evident to the creditor that the debt will never be collected. The costs to the creditor in such a situation exceed the value of the debt, since the creditor may have already paid profit taxes on revenue that was never received. The creditor can get a refund on the taxes, but not without proof that the debt is uncollectible. With a profit tax rate of 19 percent, the value to the creditor of being able to get a refund on the taxes paid can be considerable. More than half of the Polish firms in the spring 2005 National Bank of Poland survey said that this tax incentive is a key reason for filing cases in court."

Based on the available statistics, it was not possible to accurately assess the extent to which these tax incentives impact the inflow of cases. However, interviews with tax offices and businesses confirm that these findings remain valid today.

92. **Creditors file a petition in court knowing perfectly that the debt they seemingly try to enforce through the courts will never be collected.** The reason for this behavior—which at first sight may appear irrational—is a provision in the Corporate Income Tax Law[81] that allows obtaining a refund of profit taxes paid on revenues that do not materialize, such as a receivable that will never be paid. In principle, the creditor needs to prove that the debt is not collectible. Based on interviews, it is safe to say that this provision seems to be well known to businesses that end up filing cases just to obtain this proof.[82] However, it is difficult to ascertain the exact number of cases filed due to this tax incentive.

93. **A little known legal provision remains ineffective in addressing this practice.** In fact, an exception to the general rule that the creditor needs to prove that the debt is not collectible is provided for in the same article.[83] In order to document that a receivable is not collectible, it would be sufficient for the taxpayer to substantiate in a report to the tax authorities "that the expected costs of proceedings and enforcement of receivables are equal to or higher than the amount of receivables."

94. **The reasons for this provision to apparently remain unused are somewhat uncertain.** Interviews with the bar association and judges seem to indicate that this exception may not be widely known. Another reason may be that the application in practice by the tax authorities makes it difficult for businesses to claim this exception, and that the transaction costs of filing a case may therefore be lower than those of claiming the exception. It is possible that the requirements are too strict or that practice is inconsistent among different tax authorities, so that businesses go the safer way of filing.[84]

A Way Forward

95. **Low litigation costs in Poland seem to create an imbalance between access to justice, on the one hand, and the need for the system to make the best possible use of public resources, on the other hand.** The good thing about low litigation costs is that they make it easier to access the courts. However, this access comes at a cost to everybody when the system is clogged by a significant number of cases that can better be dealt with by other mechanisms. Cases of lower value typically absorb a disproportionate amount of public resources compared to what is at stake.[85]

96. **In terms of inflow management, the goal therefore should not be to make access to justice as cheap as possible.** Costs can be used to incentivize potential litigants to make use of other dispute resolution mechanisms. When setting incentives through the cost of accessing the system, the monetary value of a claim can be one consideration, but it should not be the only one. Certain types of cases of low monetary value may have significant societal implications. The decision may therefore be justified to keep them within the courts instead of diverting them to other dispute resolution mechanisms. Also, costs affect potential court users differently depending on their income level. The inflow should be managed in a way that ensures that those cases and those users that need to go to court can reach the court, while other cases are diverted from the court system.

97. **Regarding litigation costs, the MoJ and courts should consider carrying out an analysis of the incentive structure.** This analysis should distinguish between different types of litigation, categories of claims, the value of the claim, and so forth, and should be combined with a survey of court users and legal service providers. It should thus provide an empirically based understanding of the following aspects: (i) how litigation costs may or may not be driving the usage of the courts; (ii) their value as a financial resource for the court system; (iii) the cost-benefit of the services provided and the resources invested and collected; and (iv) the role of the cost structure as a potential barrier to access to justice.

98. **Clear policy options should be identified based on this analysis to address current imbalances.** In particular, the MoJ and courts should reconsider the rationale behind the reduced court fee of the e-court, and review the requirements for certain types of cases to be filed in the e-court to avoid that it is just used as a detour before the case reaches the conventional court for the sole reason of saving court fees. Also, the minimum amounts regulating cost shifting may benefit from a review. Establishing interest on unpaid court fees and promoting the effective sanctioning of dilatory behavior of litigants may be other venues worth exploring.

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[81] Article 16 of the Corporate Income Tax Law.

[82] With a profit tax rate of 19 percent, the value to the creditor of being able to get a refund on the taxes paid can be considerable. Additional costs of litigation are at least 12 percent.

[83] Article 16, Section 2, Nr. 3 of the Corporate Income Tax Law.

[84] The Ministry of Finance explained that there is no obligation for taxpayers to report the amount of such write-offs in a tax form and that it is therefore impossible for them to answer the question about application of the exception in practice.

[85] The reforms under Lord Woolf in the United Kingdom identified the principle of proportionality as useful guidance to strike an appropriate balance between access to justice and the need to make good use of public resources. For details, see Decker, Möhlen, and Varela (2011, 58–59).

99. **Regarding tax incentives, it is advisable to assess more thoroughly the impact of the tax system on the behavior of litigants and the state and court budgets.** In addition to an empirical analysis of the actual practice, the implications for the state and court budgets could be part of a judicial public expenditure and institutional review to identify clear policy options and forecast their potential impact.

100. **Tax reforms such as the ones implemented by the Slovak and Czech Republics may inspire solutions for Poland.** In the Slovak Republic, receivables six to nine months overdue are 50 percent tax-deductible, and in the Czech Republic tax on that revenue is not paid until cash is received.

101. **A proper use of the Corporate Income Tax Act provision could unload the courts from an unnecessarily high case inflow.** In particular, it may be worth considering disseminating the existence and description of the tax mechanism provided by Article 16, Section 2, Point 3 of the Corporate Income Tax Law among the legal and business community. In addition, its implementation by the tax authorities needs to be analyzed and monitored. The right incentives to encourage use of this provision as an alternative to filing claims to obtain the declaration of a debt as uncollectible has the potential to save creditors time and money. It can also help unburden the courts from this type of case and enable them to focus their resources on other types of cases.

102. **Monitoring the incentive structure will be key to avoiding future imbalances.** Such a monitoring mechanism, with indicators and regularly updated statistical data, can be established based on the in-depth analysis. This mechanism should be focusing on the key aspects of the incentive structure driving litigation and be actively used by those in charge of taking corrective action.

103. **Regulatory impact assessments of legal and regulatory changes potentially affecting the cost structure and other incentives driving litigation should complement the monitoring mechanism.** Since the monitoring mechanism and its data are by nature somewhat backward-looking, it is useful to combine it with forward-looking mechanisms. They could be part of regular forecasts, such as of caseload development, but should also be integrated in the process of legal and regulatory drafting. The empirically based evaluation of the impact of changes to the incentive structure should be an integrated part of this drafting process whenever possible.

4.5 Procedures

104. This section analyzes two issues: legislative practices regarding civil procedural code; and the current design of commercial proceedings. This analysis is important because of the relevance and significance of these procedures for fair and efficient litigations, and because of a shared sentiment among legal professionals that frequent changes of procedures create an environment of uncertainty in their operations.

4.5.a. Legislative Practices

105. **In Poland, frequent changes to the Civil Procedural Code have created an environment of uncertainty for legal professionals**. As one of the experienced litigators who was interviewed for this report stated: "From a practical point of view, the most important thing is that the decision makers stick to their legal doctrine and subsequent rules long enough to learn whether it works or not." As noted, since 2002 the Polish Civil Procedural Code (the Code) has been amended 118 times (close to 1 change per month). During the same period, the Constitutional Tribunal has ruled 65 times on issues regarding the constitutionality of the Code. In 25 cases, the Code has been changed as a result of these decisions.

106. **Procedural uncertainty has a negative effect on the performance of the courts.** While at times legislative changes can be a boon to legal professionals, changes that are too frequent make legal professionals' roles quite difficult. An unpredictable legal environment makes it problematic to formulate and pursue good litigation strategies. Judges complain that as a result of frequent changes, they must apply different procedural regulations to concurrent cases. This, of course, raises the overall costs of litigation and time of disposition, and may contribute to case inflow and case backlog.

107. **Two observations about the legislative process could be made based on the discussions with stakeholders. One is that the impacts of amendments are not sufficiently analyzed before and monitored after enactment. The second is that the consultative process does not involve all important stakeholders**. The discussions with legal professionals on the latest amendment of the Code, which became effective in May 2012, revealed that while judges were well informed about the changes and their potential impact, lawyers, with some exceptions, were not. Some judges (such as in the Warsaw court) expressed high expectations that the amendment will improve the speed and quality of processes, while others (such as in the Krakow court) were convinced that these changes are likely to have negative impacts on their work. Both assumptions could be correct

because the changes may have different impacts on these courts. Also, some judges acknowledged the lack of direction and consistency of some legal changes and the absence of comprehensive consultations during the legislative process. Judges and legal practitioners stressed that they have the most comprehensive knowledge about how laws work in real life and therefore their participation in the process is essential.

A Way Forward

108. **In Poland, there is a tendency to produce a legislative draft without thorough consideration of policies the law should implement, the impacts and their distribution among stakeholders, and how enforcement of the draft law can be monitored and evaluated**. Although these considerations may not fall completely under the MoJ's prerogative, the MoJ could consider some policies to overcome these pitfalls.

- **The MoJ could consider creating a simple assessment system of court-related civil procedures.** The system could combine both functions: legislative assessment and enforcement/compliance monitoring and evaluation. Courts obviously should play a critical role in designing and operating the system.
- **The MoJ could also consider introducing a stricter legislative schedule.** A possible solution to avoid constant legislative changes of procedures could be to agree on setting up one specific date in the year when amendments can enter into force.
- **Finally, the MoJ should improve consultations with relevant stakeholders on key policies and legislation** in order to increase the quality of draft amendments and reduce their volume.

4.5.b. Procedural Design

109. **In Poland, around 80 percent of cases are processed through accelerated procedures**. There are two basic types of commercial procedures in Poland. Trials, whether regular or simplified, are reserved for disputed claims. Accelerated proceedings (admonition and writ of payment) serve for undisputed claims, and are designed to be fast and cheap. In Poland, a plaintiff, by reason of legal prerequisites, makes the initial choice in the process. The defendant has some means to reverse the plaintiff's choice, but ultimately, especially in admonition cases, the judge decides the type of trial to be undertaken, depending on its anticipated complexity. This is somehow different from countries such as Austria and the Netherlands, where the choice belongs strictly to the plaintiff.[86]

110. **Poland is one of the countries with higher number of procedures to enforce a contract among comparative countries. This seems to be having an impact on the length of proceedings.** Formal procedures matter for the length of contract enforcement. According to the latest *Doing Business* report, Poland, Estonia, and Hungary were the countries with a higher number of procedures to enforce a contract in 2012 (table 1). Despite a remarkable improvement in this indicator in 2012, Poland is still the country with lengthiest contract enforcement among comparator countries.[87]

111. **Poland has the highest number of procedures and lengthiest times in the trial and judgment stage of the proceedings of the comparator countries.** The *Doing Business* report groups the procedures of the contract enforcement in three major stages: "filing and service," "trial and judgment," and "enforcement of judgment."[88] Poland, with 19 procedures, has the highest number of procedures for the "trial and judgment" stage, followed by Estonia (see table 2).[89] This stage in Poland is also the lengthiest among comparative countries (480 days), which suggests that "trial and judgment" is one of the stages where Poland is underperforming when compared to other countries.

112. **Court experts seem to be one of the elements that are contributing to delays in the "trial and judgment" stage in Poland.** According to the 2005 report,

[86] World Bank (2005, 59).

[87] World Bank (2012).

[88] A complete description of the methodology is available online at http://www.doingbusiness.org/methodology.

[89] In some cases, *Doing Business* reduces the total number of procedures if certain conditions exist (for example, if specialized courts exist). Therefore, the addition of the number of these procedures may be somewhat higher than the number shown in table 1.

Table 1 Contract Enforcement (Procedures, Time and Cost) in Comparator Countries, 2012

	Austria	Czech Rep.	Estonia	Germany	Hungary	Netherlands	Poland	Slovak Rep.
Number of procedures	25	27	35	30	35	26	33	32
Time (days)	397	611	425	394	395	514	685	545
Cost (% of debt)	18	33	22.3	14.4	15	23.9	19	30

Source: *Doing Business 2013*.

Table 2 Contract Enforcement by Stages (Procedures/Time) in Comparator Countries, 2012

	Austria	Czech. Rep	Estonia	Germany	Hungary	Netherlands	Poland	Slovak Rep.
Filing and service	5/30	5/88	9/30	7/29	5/60	5/10	5/60	6/70
Trial and judgment	11/277	14/410	18/320	17/310	15/245	13/442	19/480	15/365
Enforcement of judgment	11/90	9/113	8/75	8/55	16/90	8/62	10/145	12/110

Source: Doing Business 2013.

judges and lawyers reported that the use of experts by the courts in Poland was excessive, too costly, and time-consuming. Interviews with stakeholders conducted for this report confirmed that this continues to be an issue. The length of the "trial and judgment" stage in Poland, where one of the stages concerns court experts, seems to confirm that the problem with court experts is negatively affecting the performance of courts in Poland. Interviews also confirm the validity of the finding presented in 2005: "The underlying cause of the problem can be found in regulation, including the obsolete selection rules; strictly regulated fees which do not correspond to market prices; and the judges' complete discretion in managing this institution. In some instances, unhealthy practices of judges exacerbate the problem" (World Bank 2005, 66). All these factors suggest that Poland needs to reform the regulation and management of courts experts.

A Way Forward

113. **The application of contractualization can also be explored in the context of the proceedings.** The concept of contractualization within the proceeding refers to a shift from the authority-based approach in favor of one aiming for consensus in the relations of the parties and court personnel during the proceeding.[90] To our knowledge, the approach has been used in Poland as well, in addition to Bosnia and Herzegovina, France, Germany, Sweden, and Switzerland.[91] It is a very flexible concept, which may not necessarily require legislative changes of proceedings. One example of this is the "contract in *Limine litis.*" It consists of the practice whereby, before the hearing, judges present their understanding of the case to the lawyers so that the lawyers may draw attention to any possible difficulties. Through the use of this mechanism, the proceeding can be less formal, more efficient, and smoother, as it allows the proceedings to be focused on points that really pose a problem and assures the parties that the hearing will be meaningful from their standpoint.[92]

114. **The MoJ should consider modernizing the court experts system**. As suggested in 2005, a radical alternative of reform would be to allow parties to introduce their experts and reserve court-appointed experts only for resolving differences. Other mechanisms to improve the performance of court experts could also be considered. For example, in Austria, experts are obliged to notify the court two weeks before the deadline if they feel they may not meet the deadline. The court then has the authority to dismiss the expert and designate another expert who would be able to deliver the opinion at an earlier time.[93] Another measure is to set up a follow-up service of court experts. Such mechanism, established by the Regional Court of Antwerp, won the Crystal Scales of Justice Prize for innovative court practices in 2012, organized by the Council of Europe and the European Commission (see box 4). This follow-up service centralizes the coordination and control of the court expert procedure (dealing with correspondence, controlling for delays in the issuance of reports, centralizing data about experts, and the like), which has led to better quality and higher satisfaction with courts experts' work.

4.6 Access to Information

115. This section focuses on access to information within the court system in Poland. This element is analyzed because it has an impact on the performance of the courts, but also on their legitimacy and perception by the citizenry.

116. **There seems to be a weak knowledge about the justice sector in Poland** (see figure 22). As noted (in section 3.4 on court performance), a majority of respondents participating in the 2009 Survey expressed a negative opinion about courts and the justice system more broadly. About 47 percent of the participants of the Survey also said that their knowledge about the justice system is weak. When asked what kind of information would be useful for improving their ability to navigate the system, the Survey participants pointed to the following: (i) clearly

[90] The context here is very different from that of the dialogue described in Section 4i, where various bodies acting in the public interest agree on the judicial service's public management.

[91] Lhuillier (2010, 30).

[92] Lhuillier (2010, 30).

[93] World Bank (2005).

written laws; (ii) legal and practical legal advice and legal forms; and (iii) practical information about the functioning/organization of the judiciary, such as location, jurisdiction, and/or responsibilities and working schedule.[94]

117. **Surveys of users or legal professionals are a rarity in Poland and, if conducted, their results do not inform policy decisions.** Information regarding the extent of court users' satisfaction (and trust) in the courts and court personnel (judges and staff) are relevant tools for the assessment of the quality of judicial systems. According to CEPEJ Report 2012, 33 countries indicated that they use such surveys aimed at court users or legal professionals. Fifteen countries do not.[95] To our knowledge, the MoJ of Poland has conducted one users' satisfaction survey (in February 2009) in the last five years. Poland is among the 21 European countries that conduct surveys only occasionally, while 19 countries conduct surveys on a regular basis. Austria conducts regular and occasional surveys at the national and court levels, and Estonia, Hungary, and the Netherlands conduct surveys regularly. The remaining comparator countries (the Czech Republic and the Slovak Republic) did not perform users' surveys between 2008 and 2010.

118. **Communication between the MoJ and the courts is sporadic and partial, at best.** Users' understanding of the system and its performance is a precondition for their trust, which in turn is the key guarantor of judicial independence. It is also a key element of the court accountability structure, which motivates better performance of courts. The government, including the MoJ, has established databases, where some information is available about the system, its functions and organization, laws, legal

BOX 4 BELGIUM: FOLLOW-UP SERVICE OF COURT EXPERTS IN THE REGIONAL COURT OF ANTWERP

The follow-up service of court experts (*Service de Suivi des Expertises*, SSE) was established in the Regional Court of Antwerp to improve the quality of court experts and reduce potential delays during the proceedings.

The follow-up service of court experts is formed by a judge, a court clerk (*Greffier*), and two members of the civil clerkship. The service:

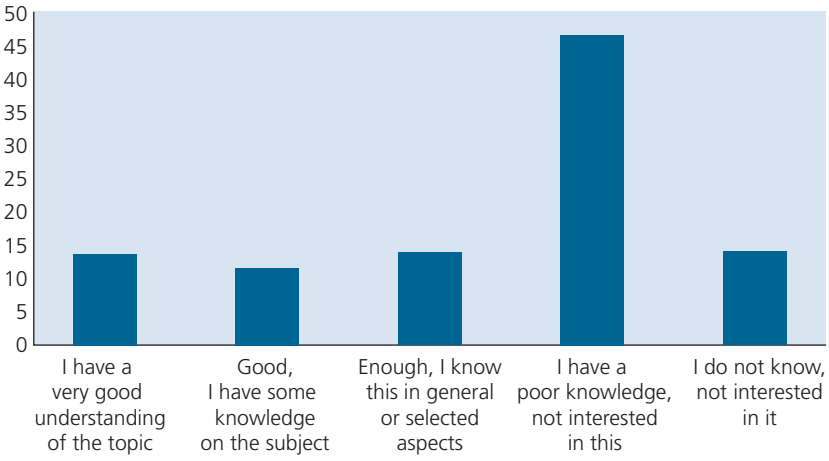
- Offers a personalized service to court experts and parties
- Deals regularly with the correspondence regarding experts
- Controls the delays in the issuance of the expert reports
- Enters data in the electronic system
- Centralizes data regarding court experts.

Among other successes, the service so far has achieved:

- More strict oversight of courts experts work
- A limited duration—no more than 5 to 7 years (no file out of control)
- More expeditious payment of experts
- Uniformity in the proceeding and the judgments
- Increase in the inflow of cases regarding construction in the Court of Antwerp
- Increased satisfaction of experts and legal professionals
- Increased legal certainty regarding expert statements.

Source: CEPEJ website.
Note: More information is available at http://www.coe.int/t/dghl/cooperation/cepej/events/EDCJ/cristal/default_en.asp.

FIGURE 22 KNOWLEDGE ABOUT THE POLISH JUSTICE SYSTEM (PERCENT OF RESPONDENTS)



Source: The Survey.

[94] The Survey, p. 19.
[95] CEPEJ Report (2012, 93).

documents, and case law.[96] Court statistics (clearance rates, number of court personnel, case inflow, number of appeals, and the like) are not published, however. Most courts do not publish their decisions.

119. **Information about foreseeable timetables for proceedings (regarding specific cases), which would allow users to adjust their expectations is not yet available.** The Polish courts do not have an obligation to provide such information to litigants or other users. By 2010, the courts of 12 European countries did have this obligation, including Hungary and Latvia (for criminal cases). At least two other European countries provide this information without being legally required to do so. In addition, Romania and Serbia have ongoing reforms that will include this obligation.[97]

120. **Poland does not follow international good practices on time management, which includes important access to information elements.**[98] CEPEJ's Guidelines for Judicial Time Management include the following guidelines: (i) the users of the justice system should be involved in the time management of judicial proceedings; (ii) the users should be informed and, where appropriate, consulted on every relevant aspect that influences the length of proceedings; (iii) the length of proceedings should be foreseeable as much as possible; and (iv) the general statistical and other data on the length of proceedings, in particular types of cases, should be available to the general public.[99]

A Way Forward

121. **The MoJ and courts should provide users and public with more timely information about the justice system that is easier to understand.** In addition to laws, legal texts, and forms, which are already available, information, should include statistics illustrating court performance.

122. **In addition, the legal information system should allow public access to court rulings.** For example, the Slovak Republic made all court rulings accessible on the Internet in May 2012. The objective of this radical step was to improve the quality of service by increasing accountability of courts and judges. Court decisions that are available on the Internet do not include personal information about litigants, defendants, or other participants.[100]

123. **The MoJ should consider introducing information about foreseeable time frames of proceedings,** as a legal obligation or as a de facto practice. Introduction of this obligation would dramatically expand litigants' rights and would directly increase confidence in the courts. Other countries have already implemented such reforms. For example, Latvia has an electronic service called "track court proceedings," which is free of charge and available online. One can follow any Latvian legal procedure online, and information is provided, notably on the scheduled hearings.[101]

124. **The reform would require the introduction of time standards**. Countries such as Denmark, Finland (the Rovaniemi Court Quality Project), the Netherlands (Court Quality Project), and the United States (the American Bar Association and the Conference of State Court Administrators) have put in place time standard practices. A successful approach requires: (i) an assessment of the current situation with respect to time frames; (ii) some consensus as to a reasonable time standard; (iii) the setting of a goal (percentage of procedures in compliance with the standard); and (iv) a monitoring mechanism to assess to what extent the objective is achieved. This kind of initiative would be a very important motivator for effective and speedier proceedings.

125. **The improvement of the transparency of the justice system and likelihood of time frames can achieved through different initiatives and instruments.** The Turkish example of text messaging about judicial inquiries is one example of the many judiciaries across the globe that are innovating in their communications with the public (see box 6).

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[96] See the Legal Texts Database website at www.sejm.gov.pl, and the Case Law of Higher Courts website at www.sn.pl. Other documents and legal forms are available online at www.ms.gov.pl.

[97] CEPEJ Report (2012, 84).

[98] The hierarchical system that functions in many courts in Poland does not favor this method of administering justice. Judges are often bound to follow written suggestions of courts' presidents on how to manage the case (such as how many witnesses to summon, how many hearings to schedule for one day, and how often they should be planned).

[99] CEPEJ (2008b).

[100] Slovak court decisions are available online at http://www.rozhodnutia.sk

[101] CEPEJ Report (2012, 84).

BOX 5 USERS AND STAFF SURVEYS AS A COURT MANAGEMENT TOOL IN THE DUTCH JUDICIARY

"The Judiciary in the 21st Century" project in the Netherlands covered a number of small initiatives, pilot projects, and experiments, including structural analysis, initiated and financed by the Dutch national government. Two principles drove this process: safeguarding judicial independence, and assuring judicial quality. The strategies included focusing on knowledge management, training programs, improvement of internal and external communications, and application of the latest ICT technologies. The reform process aimed at changing all levels of the judiciary through the introduction of a performance-oriented funding system and the redesign of the organizational structure of the Dutch judicial administration.

As part of this reform process, a comprehensive quality control system for all courts in the Netherlands (Rechtspraa) was developed. The system is designed to outline the judicial functions at the court and circuit level and can be used to compare quality between various courts and circuits. Every other year, each court is required to conduct a court-wide review based upon the INK (Instituut Nederlandse Kwaliteit) procedure, the Dutch equivalent of the European Foundation for Quality Management (EFQM). The court's management team analyzes the progress of improvements based on the INK-standards. Once every four years, the courts are also obliged to conduct a survey on how users perceive the court's services. Within the same four-year cycle, the courts must evaluate staff satisfaction with their workplace, which includes their jobs, the court's organization, and the management team.

The ground-breaking elements of this system are peer reviews. Peer review, a professional consultation among colleagues, is designed for individuals and intended to create a more open culture of exchange within the court system. Judges can use this instrument to evaluate, discuss, and improve their own performance. The process focuses on the judge's interactions with the parties to the procedures, behavioral aspects, and the quality of the judge's decisions.

Source: World Bank (2011).

BOX 6 THE UYAP SHORT MESSAGE SERVICE (SMS) INFORMATION SYSTEM INTURKEY

The SMS messages judicial information system provides an outstanding service for citizens and lawyers that enables them to receive SMS messages containing legal information such as ongoing cases, dates of court hearings, the last change in the case, and suits or department claims against them. They can be instantly informed by SMS about any kind of legal event related to them, without going to courts. A cooperation agreement that makes it possible to send SMS to the concerning parties' mobile phones has been signed with the GSM[a] operators establishing this system. This system aims to automatically inform all related parties of cases when any legal event, data, or announcement (which has to be sent to parties) is issued by the judicial units, such as courts, public prosecutor offices, and enforcement offices. Sending a SMS does not replace official notification. Nonetheless, it provides information to the parties so that they can take necessary measures in time without delay in order to prevent loss of legal rights.

Source: Ministry of Justice of Turkey.
Note: More information is available at http://www.sms.uyap.gov.tr/english/
[a] Global System for Mobile Communications, originally Groupe Spécial Mobil

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