9. An Introduction to Polish Legal Culture

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1. Introduction[1]

1.1 A changing legal culture

The attempt to describe Polish legal culture at this very moment is a demanding task. From 1997 to 2015, its crucial elements remained more or less stable. Currently, it is a legal culture undergoing changes. After the elections of 2015, the ruling party (PiS) implemented many legal reforms, which have divided society and have been perceived differently by various groups. The relevant question for this contribution is whether these changes happen at the surface or are affecting deeper levels of law referring to Sunde's and Tuori's model of a legal sea.[2] On the surface level, one can easily determine the effect of political and legal changes by monitoring the tremendous amount of legislative amendments. Looking closer, it can be observed that at least some changes are driven by a change in deeper levels of the legal sea, impacting ideas and expectations of law. Whether they (will) affect the middle level of the unwritten general principles of law (guiding the application of law by lawyers) or reach the bottom level (of fundamental values) is more difficult to assess. Due to deep social division, their final direction is still not carved in stone. The engagement of EU institutions and careful monitoring by the international community and increasing resistance in Poland itself, are factors which have to be taken into account as well. Despite these challenges, this chapter will attempt to present the Polish legal culture and evaluate some aspects of recent changes.

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2 See Jørn Øyrehagen Sunde', 'Managing the Unmanageable – An Essay Concerning Legal Culture as an Analytical Tool' in this volume, chapter 2, 27.

1.2 The geographic, economic and social framework

The Republic of Poland is a unitary state located in Central Europe.[3] It is the ninth largest country in Europe in terms of the size of administrative territory and the sixth largest in the European Union in terms of population size (over 38 million people).[4] Its largest city and capital is Warsaw. Poland is the sixth largest EU economy and one of the most rapidly growing ones.[5] Its complicated political history has contributed to the fact that the Polish legal system, owing to its centuries-long experience of interweaving and mixing of various legal cultures, is a unique mosaic of solutions and institutions originating from different systems and cultures. The Polish legal identity, perhaps more so than any other in Europe, is strongly Europeanized.

When the Kingdom of Poland, founded during the reign of Bolesław I the Brave (992–1025), cemented its longstanding political association with the Grand Duchy of Lithuania by signing the Union of Lublin in 1569, the Polish-Lithuanian Commonwealth (or "the Republic of Two Nations") was established. It was one of the largest and most populous states in the Europe of the 16th and 17th century with a particularly liberal political system, which adopted the first written national constitution in Europe.[6] The partitioning of the country by the neighbouring states at the end of the 18th century sealed the loss of prosperity and prominence[7] and even the creation of the Duchy of Warsaw (1807–1815) under the French protectorate did not change this. However, this was also a time when many of the legal institutions that left a lasting mark on the Polish legal culture were established, e.g. stock exchange, a common court system, legal frameworks for commercial partnerships and companies, unrestricted ownership, and divorce.[8] Poland only gained political independence in 1918, but lost it again in 1939

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3 Lonnie Johnson, *Central Europe: Enemies, Neighbours, Friends* (Oxford University Press 2011).

4 Cf. 'Concise Statistical Yearbook of Poland', *Central Statistical Office* 2018.

5 'The World Factbook', *Central Intelligence Agency*, available at https://www.cia.gov/library/publications/the-world-factbook/rankorder/2001rank.html; 'How Poland Became Europe's Most Dynamic Economy', *Bloomberg Businessweek*, available at https://multishoring.info/market-news/bloomberg-businessweek-%E2%80%9Ehow-poland-became-europes-most-dynamic-economy%E2%80%9D/. Cf. as well: 'Human Development Reports', *United Nations Development Programme*, available at http://hdr.undp.org/en/2018-update. All links accessed 15 November 2019.

6 Norman Davies, *Europe: A History* (Pimlico 1997) 554; Piotr S. Wandycz, *The price of freedom: a history of East Central Europe from the Middle Ages to the present* (Psychology Press 2001) 66.

7 Jerzy Jedlicki, *Jakiej cywilizacji Polacy potrzebują. Studia z dziejów polskiej idei i wyobraźni XIX wieku* (WAB – CIS 2002) 94.

8 More e.g.: Anna Klimaszewska, 'The Reception of the French Commercial Code in Nineteenth-Century Polish Territories – A Hollow Legal Shell' in Anna Klimaszewska and Michał Gałędek (eds), *Modernization, National Identity and Legal Instrumentalism: Studies in Comparative Legal History*, I (Brill 2019); Anna Klimaszewska, 'The Application of the 1807 French Commercial Code in Polish Territories: An Attempt to Establish an Anonymous Partnership in Lublin' in Marju Luts-Sootak and Frank L. Schäfer (eds), *Recht und Wirtschaft in Stadt und Land* (Peter Lang 2020) 89–109; Anna Klimaszewska, 'La responsabilité civile des associés des sociétés commerciales dans le droit polonais – les influences de la culture juridique française et les influences des autres cultures' in Zbigniew Hajn and Dagmara Skupień (eds), *La responsabilité civile en France et en Pologne* (WUŁ 2016); Katarzyna Sójka-Zielińska, *Kodeks Napoleona. Historia i współczesność* (LexisNexis 2008); Piotr Z. Pomianowski, *Rozwód w XIX wieku na centralnych ziemiach polskich. Praktyka stosowania Kodeksu Napoleona w latach 1808–1852* (Campidoglio 2018).

when World War II started and Poland was divided between Germany and the Soviet Union. In 1947, the Polish People's Republic was established as a satellite state under Soviet influence.[9] In 1989, Poland re-established itself as a presidential democratic republic.

2. Conflict Resolution

2.1 Introduction

In Poland, legal conflicts are solved either by mediating them or (more often) in courts of justice. We will start by looking at alternative forms of conflict resolution and their impact on the legal culture before focusing on judicial conflict resolution.

2.2 Alternative Dispute Resolution (ADR)

Recent attempts of the legislature, sociologists, and lawyers to popularize and strengthen the instruments of ADR (mainly mediation) have not been successful in Poland. Consequently, extra-judicial forms of conflict resolution have not yet affected Poland's legal culture on a deeper level. Recently, the reformers have strengthened the competencies of judges when referring cases to mediation, aiming to increase the number of mediations considerably.[10]

Some sociologists and lawyers have indicated that the reason why it is so difficult to convince the citizens to use mediation might be a very low level of social trust, ranging from 18 % (2002) to 23 % (2016).[11] Citizens do not trust one another.[12] This level of confidence has been one of the lowest in Europe for many years.[13] The lack of trust also affects mediation, its confidentiality and effectiveness, since the citizens trust neither the intentions of the other party participating in the mediation procedure nor the mediator's impartiality or professionalism.[14] Except for the situations when citizens have opposed political power, the culture of social cooperation in Poland has traditionally been underdeveloped. Since the Polish people regained freedom from the communist regime, individualism has been promoted, while support for the development of civil

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9 Cf. Rafał Mańko, 'Demons of the Past? Legal Survivals of the Socialist Legal Tradition in Contemporary Polish Private Law' in Rafał Mańko, Cosmin Sebastian Cercel and Adam Sulikowski (eds), *Law and Critique in Central Europe: Questioning the Past, Resisting the Present* (Counterpress 2016).

10 Justification of the draft of the Code of Civil Procedure Amendment Act, version of 25 September 2018, 17–18, 28.

11 CBOS research communication no. 18/2016, available at www.cbos.pl.

12 Henryk Domański, 'Zaufanie między ludźmi' in Paweł B. Sztabiński, Franciszek Sztabiński (eds), *Polska – Europa. Wyniki Europejskiego Sondażu Społecznego 2002–2012* (IFIS PAN 2014) 8–17.

13 In 2002 it was the lowest in Europe, in 2016 Poles took the 4th place in the distrust ranking in Europe – results of a European public poll; available at https:// europeansocialsurvey.org. Cf. Paweł B. Sztabiński, Franciszek Sztabiński (eds), *Polska – Europa. Wyniki Europejskiego Sondażu Społecznego 2002–2016/2017* (IFIS PAN 2018).

14 Tadeusz Ereciński (ed), *Kodeks postępowania cywilnego. Komentarz* (Wolters Kluwer 2009) 523–525; Andrzej Marciniak (ed), *Kodeks postępowania cywilnego. Tom I (art. 1–205) Komentarz* (C.H. Beck 2019) 1140–1141.

society has been neglected. And thus participation in the formation of a new legal culture as a building block of social capital has been neglected as well.[15]

Another reason for the reluctance towards ADR might be the low level of experience with non-professional judges and informal procedures. This consolidated in the Polish legal culture the scheme of resolving legal matters in a formalised way, using professional courts of justice. Strikingly, the latest reforms mainly consist of strengthening the judges' procedural tools to overcome the parties' lack of trust in the settlement.[16]

The third reason for the failure to use mediation has a contemporary source. Those representing a public body or private company in such negotiations restrain from using settlements to avoid being held responsible for having sacrificed their employer's interests when entering into a compromise.[17]

2.3 Judicial conflict resolution

The most important mechanisms of conflict resolution are therefore organised in the court system that consists of ordinary and military courts under the supervision of the Supreme Court.[18] Administrative courts form a separate branch of the judiciary in Poland. The Constitutional Tribunal holds a special position in this court-structure:[19]

15 Monika Dorota Adamczyk, 'Kapitał społeczny czynnikiem konstytutywnym współczesnego ładu społeczno-gospodarczego' (2015) 2 *Roczniki Nauk Społecznych* 201; Ireneusz Krzemiński, 'Społeczeństwo obywatelskie i symbole wspólnoty' in Marek Drogosz (ed), *jak Polacy przegrywają? Jak Polacy wygrywają?* (GWP 2005).

16 Code of Civil Procedure Amendment Act of 4 July 2019; Dz. U. 2019; 1469.

17 See multiple conference lectures: *How to resolve a difficult economic dispute amicably*, Gdańsk 19 October 2018; *Marine economy dispute resolution specifics,* Gdańsk 6 July 2019; *Trade secret and compliance. Mediation in the labour law and business,* Gdańsk 23 May 2019; available at www.pcaim.org.pl.

18 For the purpose of this section, military courts are of minor interest and will not be discussed in detail.

19 From a formal point of view, the Constitution also provides for the existence of the Tribunal of State, but in practice it does not function. Cf. Zbigniew Landau and Bronisława Skrzeszewska, *Sprawa Gabriela Czechowicza przed Trybunałem Stanu – wybór dokumentów* (PWN 1961).

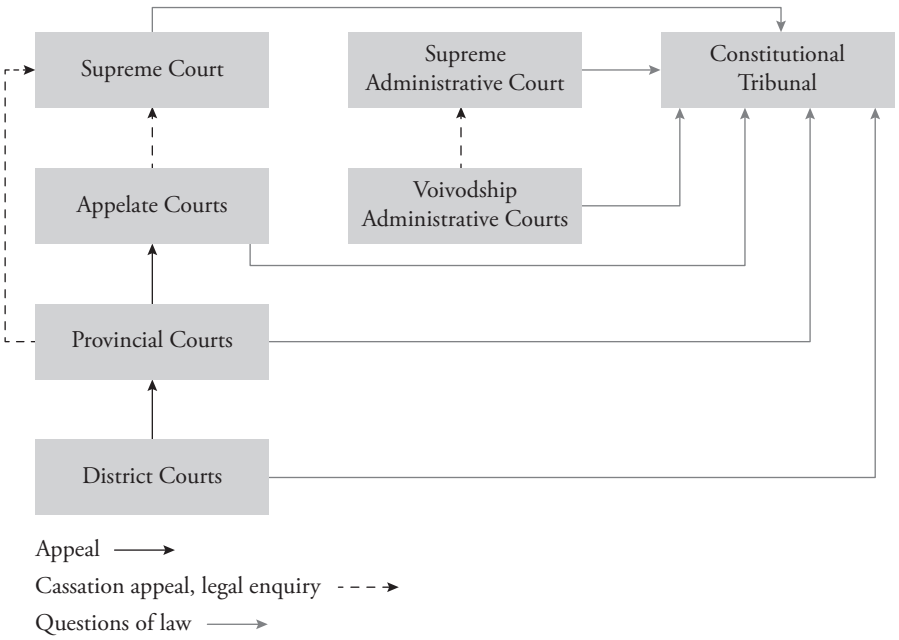

Fig. 1 The Polish Court System.

2.4 Ordinary courts

Art. 177 of Chapter VIII of the Polish Constitution of 2 April 1997 provides for the principle of presumed competence of ordinary courts: "The common courts[20] shall implement the administration of justice concerning all matters save for those statutorily reserved to other courts." Thus, they have the general competence to resolve all cases except for those vested in other special courts, such as administrative or military ones. These courts decide, among other things, on cases concerning criminal, civil, family, and juvenile law, commercial law, and labour and social security law. They also maintain land and mortgage registers.

The system of ordinary courts includes the district (*sądy rejonowe*), provincial (*sądy okręgowe*), and appellate courts (*sądy apelacyjne*). The jurisdiction of district courts usually covers an area of several communes.[21] The jurisdiction of provincial courts covers an area of several district courts and the appellate courts' jurisdiction covers a territory of at least two provincial courts. Currently there are 318 district courts, 45 provincial courts, and 11 appellate courts in Poland.[22] The Supreme Court supervises them. However, this

20 This term is used in the official translation of the Constitution of the Republic of Poland of 2 April 1997 – Dz. U. 1997, 78, 483, available at https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm. However, we stick to the terminology recommended by the European Commission, see https://e-justice.europa.eu/content_ordinary_courts-18-en.do.

21 The commune (*gmina*) – the basic unit of the administrative division of Poland.

22 'Statistical Yearbook of the Republic of Poland', Warsaw 2018, 162–163.

court is not regarded as part of the ordinary judiciary system.[23] As a rule, there is just one level of appeal.[24]

In 2018, there were 6,356 judges in district courts in total, 2,515 in provincial courts and 426 in appellate courts.[25] According to Table 3 (Appendix below), the number of judges on all levels has been reduced rather considerably in recent years. As we will explain in more detail below, this is one of the changes on the surface level, which might impact the legal culture on deeper levels.

The general rule is that district courts are courts of the first instance, and they handle most cases.[26] Provincial courts function as both first and second instance courts, handling more serious or complicated cases and appeals from district courts. However, this division is not very clear. Among other examples, provincial courts adjudicate in the first instance in cases: concerning property claims exceeding a value of PLN 75,000 (over EUR 17,160) with some exceptions,[27] concerning claims in respect of press law and certain non-property claims, and regarding preventing and countering unfair competition or compensation for damages caused by a final judgment contrary to law.[28] They also adjudicate cases concerning felonies and some misdemeanours specified by the law (e.g., money laundering,[29] euthanasia killing,[30] solicitation to and assistance in suicide[31]).[32] Also contrary to the general rule, provincial courts are courts of first instance in social security law cases,[33] which results in those courts having a higher number of proceedings than in the district courts.[34] The jurisdiction of district courts in social security matters is limited to a few specific types of cases.[35] Appellate courts are the second instance courts, handling appeals from provincial courts.

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23 Cf. inter alia: Bogusław Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz* (C.H. Beck 2009) 780; Dariusz Dudek (ed), *Zasady Ustroju III Rzeczypospolitej Polskiej* (Wolters Kluwer 2009) 247; Beata Stępień-Załucka, *Sprawowanie wymiaru sprawiedliwości przez Sąd Najwyższy w Polsce* (C.H. Beck 2016); Bogumił Szmulik, *Pozycja ustrojowa Sądu Najwyższego w Rzeczypospolitej Polskiej* (C.H. Beck 2008); Tadeusz Wiśniewski, *Przebieg procesu cywilnego* (Wolters Kluwer 2013) 17.

24 Andrzej Bałaban, 'Prawna pozycja władzy sądowniczej w III RP (ze szczególnym uwzględnieniem sądownictwa powszechnego)' in Ewa Gdulewicz, Wojciech Orłowski, Sławomir Patyra (eds), *25 lat transformacji ustrojowej w Polsce i w Europie Środkowo-Wschodniej* (WUMCS 2015) 211–222.

25 Data of the Statistical Information Management Department of the Ministry of Justice.

26 See Appendix, Table 1, below.

27 E.g. alimony cases, establishing separate property during marriage, infringement of possession. Cf. Art. 17, point 4 of the Act of 17 November 1964 (Code of Civil Procedure, hereinafter: CCP); Dz. U. [*Dziennik Ustaw* – Journal of Laws] 2018, 1360 as amended.

28 Art. 17 of the CCP.

29 Art. 299 of the Act of 6 June 1997 (Penal Code, hereinafter: PC); Dz. U. 2018, 1600 as amended.

30 Ibid Art. 150 § 1.

31 Ibid Art. 151.

32 Art. 25 § 1 of the Act of 6 June 1997 (Code of Penal Procedure, hereinafter: CPP); Dz. U. 2018, 1987 as amended. It is also the provincial court that issues safe-conducts (Art. 281 CPP) and the European Arrest Warrant (Art. 607a CPP).

33 Art. 477^8 § 1 of the CCP.

34 See Appendix, Table 1, below.

35 Art. 477^8 § 2 of the CCP.

Court proceedings have become increasingly longer in recent years, particularly in the second instance.[36] This rather dramatic development can be observed in many areas (criminal law is the least affected).[37] This is not only due to the enormous number of incoming cases every year (ca. 14–15 million).[38] but also caused by a broad competence in the ordinary courts and a small amount of cases settled through ADR. In addition, to judges handling too many cases, they have many additional office duties. Relatively low participation of professional representatives in court proceedings cause delays too, since parties without such an assistance often cannot act efficiently.

All ordinary courts are divided into specialised units (*wydziały*). Each district court contains at least one civil, criminal, family and juvenile division, as well as a land and mortgage registers unit. In some district courts, such as in Gdynia or Gdańsk-North, one can find two or even more units of the abovementioned types and then they can be even more specialised, since separate units adjudicate in e.g. litigious and non-litigious civil cases. However, other types of specialisation can be introduced as well; it depends on the needs of the court. In addition, some district courts have established specialised units for labour and social security as well as commercial law.

Each provincial court contains specialised units concerned with civil, criminal, labour and social security law. Sometimes there are several civil or criminal units, according to the specific needs of the region. Appeals and first instance cases are dealt with in separate units. In many provincial courts one can also find specialised units exclusively concerned with penitentiaries and supervision over execution of penal decisions. Some provincial courts also have commercial chambers. Finally, the Warsaw provincial court holds additional highly specialized units such as a division keeping a register of political parties, Competition and Consumer Protection Courts as well as a Community Trademark and Design Court.

Interestingly, when looking at the appellate courts, we can see a somewhat lesser degree of institutional specialisation. Each appellate court has civil, criminal, as well as labour and social security units. In some appellate courts, more than one civil unit has been established.

Considering the degree of professionalisation and specialisation of the ordinary courts, one has to take into account the composition of the judging bodies. As a very general rule, a single professional judge rules in the first instance.[39] On the second level, a panel of three professional judges is the rule.[40] However, the highly professionalised system of conflict resolution has some exceptions.[41] In Poland the lay judges, together with professional judges, are members of adjudication panels of first instance courts

36 More: Olga M. Piaskowska, Piotr F. Piesiewicz (eds), *Przewlekłość postępowania sądowego* (Wolters Kluwer 2018).

37 See Appendix, Table 2, below.

38 See Appendix, Table 1, below.

39 Art. 47 § 1 of the CCP; Art. 28 § 1 of the CPP.

40 Art. 367 § 3 of the CCP; Art. 29 § 1 of the CPP.

41 Cf. Art. 47 § 4 of the CCP; Art. 28 § 3-4 and Art. 29 § 2 and Art. 544 § 1 of the CPP.

in a narrowly defined group of civil and criminal cases.[42] In civil cases, lay judges are present e.g. in some labour law cases and cases involving damages in case of mobbing, as well as in some family law cases, including divorce and separation. In criminal cases, adjudicating panels with lay judges adjudicate in cases involving accusation of a felony, i.e. acts punishable by more than three years' imprisonment.

Note that between 2001 and 2017,[43] promotion of a judge was based on professional experience and merits alone. For many years, promotion to a higher judicial post required a judge to have previously held a post for several years in a lower court. This meant that judges in the highest courts had been gaining experience in stages and their work had been evaluated several times. The reform of 2017 changed the situation drastically. Even a district court judge can now be appointed to the Supreme Court.[44] Although the candidate is evaluated by judges, at the last stage decision is up to the National Council of the Judiciary, a body dominated by politicians. Moreover, it has become possible to perform the duties of a judge on the basis of delegation. The Minister of Justice, who is at the same time the Prosecutor General, can *ad hoc* appoint judges at each level of the court hierarchy. These procedural reforms concerning appointment and delegation are used to position judges loyal to the government in the higher courts. In this way, although the Minister of Justice has claimed that the reform of the courts has the purpose to democratize the judiciary and eliminate the judicial elite, he has created a new elite of judges, directly subordinate to and more seriously dependent on the Minister.

2.5 The Supreme Court

The Supreme Court has traditionally been at the top of the system of ordinary and special courts. However, the 1997 Constitution limited its role, transferring judicial supervision over administrative courts from the Supreme Court to the Supreme Administrative Court.

The primary duty of the Supreme Court is to exercise judicial supervision over ordinary and military courts.[45] It is the obligation of the Supreme Court to ensure compliance with the law and uniformity of judgment in those courts,[46] which guarantees a high level of legal certainty. The Supreme Court exercises its power in two ways. First, it reviews legal remedies against court rulings. The most common one is the cassation appeal against final and binding judgments, which can be filed only under certain circumstances. For example, it cannot be filed in civil cases where the value of the claim is less than appr. EUR 10,000, in alimony and support cases, divorces, tenancy rent,

42 Cf. Art. 47 § 2 of the CCP, Art. 28 § 2 of the CPP, Art. 7 § 2 of the of the PC. List of cases heard with the participation of lay judges cf. Artur Rycak (ed), *Metodyka pracy ławnika* (C.H. Beck 2011) 6 ff.

43 Act of 27 July 2001 – Law on the organisational structure of ordinary courts; Dz. U. 2001, 98, 1070.

44 Art. 64 and 77 of the Act of 12 July 2017; Dz. U. 2017, 1452.

45 Art. 183 para. 1 of the Constitution.

46 Art. 1 point 1 of the Supreme Court Act of 8 December 2017; Dz. U. 2019, 825.

for infringement of possession and many other cases that concern e.g. the family law, inheritance law or labour and social security law.[47] An appeal must also be filed within a short time limit.[48] This restriction aims to prevent destabilization of rulings on the lower level and thus warrants legal certainty.

An extraordinary appeal has recently been added to the catalogue of legal remedies.[49] This remedy is available when a ruling cannot be changed or revoked in any other procedure and when constitutional principles or human/civil rights or freedoms granted in the Constitution have been violated. An extraordinary appeal may be filed on the grounds of alleged misapplication of the law or erroneous factual finding. The time limit in such cases is generally longer than in case of cassation appeal.[50]

Second, in association with exercising supervision over ordinary and military courts, the Supreme Court may on request give an authoritative opinion concerning an interpretative question of general importance (legal enquiry). This happens when a court of second instance reviewing an appeal in an individual case comes across a legal issue that raises major doubts or requires a fundamental interpretation of a legal act.[51] A response is given in the form of a ruling passed by a panel of three or seven judges of the Supreme Court, and the ruling is binding on the court that reviews the specific case concerned, but not *erga omnes*.[52] However, because of the authority of the Supreme Court, judges in other courts frequently take such rulings into account. There were, e.g., a total of 142 legal enquiries submitted by the lower courts to the Supreme Court in 2018, and 152 in 2017.[53]

The Supreme Court may also comment on legal issues acting on its own initiative (when reviewing a cassation appeal) or on the initiative of one of the Presidents of the Supreme Court or competent state authorities, requesting the Supreme Court to rule on contradicting interpretations and opinions in the case law in an abstract procedure.[54] The latter requires a panel of seven judges. Under certain conditions, an entire chamber or joint chambers or even the whole Supreme Court (full panel) is involved. When these rulings become legal principles, they are regarded binding for Supreme Court judges.[55]

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47 Cf. Art. 398^2 and 519^1 of the CCP. Limitations in criminal cases, cf.: Art. 523 and 439 of the CPP.

48 One month (criminal cases) or two months (civil cases) for the parties. Public authorities entitled to file a cassation appeal, like the Minister of Justice – Public Prosecutor General, Ombudsman, or Children's Ombudsman have a longer time limit. Art. 524 of the CPP and Art. 398^5 of the CCP.

49 Cf. Tadeusz Wiśniewski (ed), *Skarga nadzwyczajna w świetle systemu środków zaskarżenia w postępowaniu cywilnym* (Wolters Kluwer 2019).

50 Five years as a rule and when a cassation appeal was filed – one year from the judgment. Art. 89 § 3 of the Supreme Court Act. Moreover, under interim regulations, for the period of three years from the entry into force of the new regulations, an extraordinary appeal can be filed against every final and binding ruling issued in the last 21 years (after 17 September 1997). Ibid Art. 115 § 1. The Extraordinary Control and Public Affairs Chamber has been constituted to adjudicate these cases.

51 Art. 390 § 1 of the CCP and Art. 441 § 1 of CPP.

52 Art. 77 § 1 of the Supreme Court Act.

53 'Information of the Supreme Court activities in 2018', Warsaw 2019, available at www.sn.pl on p. 6.

54 Art. 82 and 83 of the Supreme Court Act.

55 The way a ruling receives the status of a legal principle is described in detail below, in the section on norm production.

However, they may be amended by a new ruling of a body at least of the same size or the whole Supreme Court.[56] In addition, the Constitution entrusts the Supreme Court to determine the validity of elections and national referendums.[57]

The function and organizational structure of the Supreme Court were reformed in late 2017.[58] However, the changes were challenged before the Court of Justice of the European Union (CJEU). Therefore, it is not yet possible to determine which of them will be maintained.[59] Currently, the Supreme Court has five chambers: Civil, Criminal, Labour Law and Social Insurance, Extraordinary Control and Public Affairs, and Disciplinary.[60] The last two are newly established entities. The adjudicating panels of the first three consist of only professional judges and the last two consist of both professional judges and lay judges, but professional judges constitute a majority of their respective panels.

Most controversial is the extensive autonomy granted to the Disciplinary Chamber and the reduced competences of the First President of the Supreme Court with respect to that Chamber, which disrupt the uniform structure of the Supreme Court. This chamber continues its work despite the fact that the method of appointing its members as well since the status and form of the new disciplinary procedure have been heavily criticized.[61] In addition, opponents of the reform emphasise that this new chamber is under the direct influence of the Minister of Justice – Public Prosecutor General.[62]

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56 Art. 83 to 88 of the Supreme Court Act.

57 Art. 101, 125 para. 4, and 129 of the Constitution.

58 The first President of the Supreme Court Małgorzata Gersdorf expressed her criticism of the reform proposals in Grzegorz Borkowski (ed) *Granice niezawisłości sędziów i niezależności sądów?* (KRS 2016) 15–20.

59 According to the European Commission, the principles of the EU's rule of law were also violated. The act was amended after Poland lost the case before the CJEU. In particular, the First President of the Supreme Court and the other judges of the Supreme Court and Supreme Administrative Court were allowed to stay in office until the end of the term provided for in the Constitution (the new provisions also concern the judges of the latter court), whereas, according to the earlier version of the new provisions, due to the reduced retirement age, 1/3 of judges would have to resign in the middle of their term of office, as well as the First President of the Supreme Court, despite the fact that her term of office is explicitly defined by the Constitution (Art. 183 par. 3). Cf.: CJEU order of 19 October 2018, 15 November and 17 December 2018, respectively, CJEU judgment of 24 June 2019, C619/18, European Commission v. Poland; available at http://curia.europa.eu/juris/documents.jsf?oqp=&for=&mat=or&lgrec=pl&jge=&td=%3BALL&jur=C%2CT%2CF&num=C-619%252F18&page=1&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=2644767 accessed 6 November 2019.

60 Art. 3 of the Supreme Court Act.

61 More in: Mirosław Granat, *Prawo konstytucyjne. Pytania i odpowiedzi* (Wolters Kluwer 2019) 411–413.

62 See n 59. Most members of the Chamber were public prosecutors, and they were appointed even though the Supreme Administrative Court ordered the appointment procedure to be suspended for the time of reviewing appeals filed against the procedure. Cf. also the influence of the Prosecutor's Office on judges' independence in case of Romania in CJEU: C-355/19 *Asociația "Forumul Judecătorilor din România" and Others*; Case C-127/19 *Asociația "Forumul Judecătorilor Din România" and Asociația Mișcarea Pentru Apărarea Statutului Procurorilor*; Case C-83/19 *Asociația "Forumul Judecătorilor Din România"*.

The recent changes concerning the Supreme Court in Poland have not only affected the domestic legal culture[63] but also resonate to the entire European Union. The European Commission and the CJEU reacted quickly to those changes, claiming to detect a violation of fundamental democratic principles such as the separation of powers, the independence of courts, and the rule of law.[64]

2.6 The Constitutional Tribunal

The Polish Constitutional Tribunal is a uniform body (no chambers) consisting of 15 judges, elected by the lower house of the Polish parliament (the Sejm) for a nine-year term.[65] This is an individual appointment, which means that the term of office of each judge is counted separately. The Constitution does not specify any requirements for the appointment of Constitutional Tribunal judges. "Distinguished legal knowledge" is sufficient.[66] However, precise regulation is established at the statutory level. According to Art. 3 of the Act on the Constitutional Tribunal, a candidate must have the same qualifications required for a Supreme Court or Supreme Administrative Court judge.[67] In practice, many judges of the Constitutional Tribunal are professors of law.

Constitutional Tribunal judges are elected by an absolute majority of votes in the Sejm.[68] The election has to take place in the term in which the mandate of the current judge of the Constitutional Tribunal expires.[69] An additional precondition is that the candidate's vow has been accepted by President of the Republic of Poland. These provisions of a mere formal character have proven to be problematic in the current crisis as they have been applied to prevent certain candidates to take office and to replace them by candidates favoured by the ruling party.

The functions of the Constitutional Tribunal are determined by the Constitution: 1) it controls the conformity of the lower ranking legal norms to higher ranking legal instruments, especially with the Constitution (including obligations arising from international treatises);[70] a special procedure for this review is the examination of constitutional complaints,[71] 2) it resolves competence disputes between central constitutional

63 Jakub Kościerzyński (ed), 'Justice under pressure – repressions as a means of attempting to take control over the judiciary and the prosecution in Poland. Years 2015–2019', available at https://www.iustitia.pl/images/pliki/raport2020/Raport_EN.pdf accessed 1 April 2020.

64 Fortunately, there was no situation similar to that in Hungary, where many judges, including the First President of the Supreme Court, were removed from office following reduction of the retirement age. That case was reviewed by the ECtHR only a few years after the law was amended, which is why the ruling of the ECHR did not influence the new regulations governing the court system in Hungary. See *Baka v Hungary* App no 20261/12 (ECtHR, 23 June 2016).

65 Art. 194 para. 1 of the Constitution.

66 Ibid.

67 Art. 3 of the Act on the Constitutional Tribunal.

68 Art. 31 para. 1 of the Sejm regulation.

69 Judgment of the Constitutional Tribunal of 3 December 2015, K 34/15.

70 Art. 188 points 1–3, art. 122 para. 3 and 4, art. 133 para. 2 of the Constitution.

71 Ibid Art. 79 and Art. 188 point 5.

organs of the state,[72] 3) it decides on the conformity to the Constitution of the purposes or activities of political parties,[73] and 4) it recognizes the temporary incapacity of the President to exercise his duties.[74]

The norm control is primarily of *a posteriori* nature, and it applies to normative instruments (legislation) that have already been enacted, are in force or are still in the *vacatio legis* period. Exceptionally, the review may have a preventive nature – *a priori*, and the only organ authorized to initiate such a procedure is the President of the Republic of Poland. The Tribunal does not rule on local legislation, nor does it rule on "vertical" competence disputes because it is not necessary due to the unitary structure of the state.[75]

The Constitutional Tribunal does not act on its own initiative but only on a motion. Some state-organs have the general authority to make application to the Constitutional Tribunal – e.g., the President, Marshals of the Sejm and Senate, the First President of the Supreme Court, the President of the Supreme Administrative Court, the Prosecutor-General (who is also the Minister of Justice), and the Ombudsman.[76] In some cases, the authority arises from the fact that the case falls within the applicant's scope of activity.[77]

However, some case proceedings are also initiated by individual subjects. Anyone who holds that he or she has received a verdict based on a provision which, in the applicant's opinion, is unconstitutional, has a right to a constitutional complaint.[78] The courts are also empowered to initiate constitutional review.[79]

From a systemic perspective, the constitution establishes the Constitutional Tribunal as a part of the judiciary, but functionally it is separated from the hierarchically-organised courts of justice.[80] The independent status of the Constitutional Tribunal is a distinguishing feature having important consequences for its judgments. According

72 Ibid Art. 189.

73 Ibid Art. 188 point 4.

74 Ibid Art. 131 para. 1.

75 Local government bodies may initiate proceedings before the Tribunal in the procedure of abstract review of norms, if the normative act concerns matters that fall within their scope of activity, however they are not allowed to lodge a constitutional complaint.

76 The entitled are also: the Prime Minister, the President of the Supreme Chamber of Control, as well as groups of 50 deputies or 30 senators, which in practice give the opposition access to initiation of review by the Constitutional Tribunal (Art. 191 para. 1 point 1 of the Constitution).

77 Ibid Art. 191 para. 1 point 2–5. E.g., in matters of the judiciary, the National Council for the Judiciary can file a motion, and in trade-related matters, national trade union bodies can do so as well, while in matters of freedom of religion, Churches and religious associations have the right to file motions.

78 The subject of the complaint may only be an allegation of non-compliance with the Constitution of a normative act on the basis of which a decision violating the applicant's rights was issued. The complaint may be directed only against the legal norm (and not e.g. the interpretation of the provision adopted in the process of applying the law), according to the narrow concept of the complaint adopted by the creators of the Constitution. For more, see Leszek Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu* (Wolters Kluwer 2019) 412 ff.

79 Art. 193 of the Constitution. For an overview over the case load of the Polish Constitutional Tribunal, see Appendix, Table 4.

80 Pursuant to Chapter XX of the Polish Constitution, the judicial authority in Poland consists of two segments: the first are the courts constituting a hierarchical system of ordinary and specialised courts, and the second segment consists of two tribunals (Constitutional Tribunal and Tribunal of State) acting independently, in other words these tribunals are not part of the system of appeal and thus not part of the court system.

to Art. 190 para. 1 all its rulings are universally binding and final.[81] They have to be published immediately in the Journal of Laws or other proper official publication.[82] The unique status of the Tribunal between the legislative and the judicial branch of law, has been regarded as necessary to safeguard the constitutional order from short-term infringements by any parliamentary majority. It manifests the supremacy of the Constitution as a framework for the Polish legal culture.[83]

When the Tribunal was established in the 1980s, its importance was rather limited because the Sejm could block the effects of its rulings with a 2/3 majority. The existing restrictions were removed by the Constitution of 2 April 1997, followed by the Constitutional Tribunal Act of 1 August 1997, and its position was strengthened. After 18 years of stable functioning[84], the contemporary political changes have impacted its function and status tremendously. In 2015, the parliamentary majority of the old Sejm appointed some new judges for the Constitutional Tribunal. After the election, the new Sejm appointed different judges. The Venice Commission considered that to be unconstitutional.[85] Furthermore, the new President of the Republic of Poland did not accept the oath from judges elected by the previous Sejm, but only from judges who were elected by the new Sejm. Such and similar decisions by the President are constantly subject of controversy.[86] In addition, between 2015 and 2016 new provisions regarding the Constitutional Tribunal were enacted seven times. Some of them were very controversial.[87] The Tribunal itself found some of these amendments unconstitutional,[88] but the parliamentary majority questioned this assessment. Despite explicit constitutional instruction, these judgments were not published and the majority in Parliament treated them as "non-existing". The final character of the Tribunal's judgments and the principle of judicial review were thus informally challenged. Due to heavy criticism from the EU,

81 The verdicts of the Tribunal are therefore not subject to further appeal to any authority. See more: Piotr Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku* (Wydawnictwo Liber 2008) 369.

82 Art. 190 para. 2 of the Constitution.

83 Cf. Monika Florczak-Wątor, *Horyzontalny wymiar praw konstytucyjnych* (WUJ 2014).

84 More: Marta Derlatka, Leszek Garlicki, Marcin Wiącek, *Na straży państwa prawa. Trzydzieści lat orzecznictwa Trybunału Konstytucyjnego* (Wolters Kluwer 2016).

85 In its opinion of March 2016, the Commission stated, among others, that "the current conflict over the composition of the Constitutional Tribunal originated from the actions of the previous Sejm" and that "both the previous and the present majorities of the Sejm have taken unconstitutional actions". See 'Opinion on Amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland adopted by the Venice Commission at its 106th Plenary Session (Venice, 11–12 March 2016)' 21–22.

86 The Constitutional Tribunal in its previous composition concluded that the President had violated the regulations (judgment of the Constitutional Tribunal of 3 December 2015, K 34/1), in its new composition it decided that this activity was lawful (judgment of the Constitutional Tribunal of 24 October 2017, K 1/17).

87 Cf. Ewa Łętowska and Aneta Wiewiórowska-Domagalska, 'A '*Good*' *Change in the Polish Constitutional Tribunal*?' (2016) 1 *Osteuropa Recht* 79.

88 K 47/15.

the Venice Commission[89], and many lawyers in Poland, the newly introduced provisions were partly changed to give an impression that the situation has normalized.[90]

Questioning the Tribunal's constitutional status and function, and above all its justification, have had a serious effect on the Polish legal culture, and this could indicate that the relationship between law and politics is about to change.[91] Politicians of the ruling party explicitly stated that they had to establish some new rules for the functioning of the Constitutional Tribunal and appoint new judges, because they want the Constitutional Tribunal to interpret the Constitution differently than it did before. According to them, this is necessary to guarantee the freedom of the parliamentary majority in realizing the sovereign's will, and not the will of judges or parliamentary opposition.[92] The practical application of this argument has limited the independence of the Constitutional Tribunal and indicates that the legislative and executive authorities are no longer willing to fully respect the rule of law.

Introducing to the legal discourse the idea that the will of a simple majority of voters takes precedence over the Constitution indicates that populist notions and instrumental treatment of important legal institutions have already impacted the Polish legal culture on a deep level.[93] There has not yet been a profound change in the bottom level of the legal sea in Poland, but the mere fact of challenging the supremacy of fundamental constitutional principles shows a new dimension of the phenomenon. Marginalization, or even annihilation[94] of the Constitutional Tribunal was crucial for the government, since the Tribunal had the power to block unconstitutional reforms. The dramatic changes on the surface level may indicate an underlying change of ideas and expectations of law. Only the future will show to what extent they will change the institutional and intellectual structures of the Polish legal culture.

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89 It clearly emphasized that "the Amendments of 22 December 2015, affecting the efficiency of the Constitutional Tribunal, would have endangered not only the rule of law, but also the functioning of the democratic system […]. They […] could lead to a serious slow-down of the activity of the Tribunal and could make it ineffective as a guardian of the Constitution". See 'Opinion on Amendments' (n 85) 24.

90 Since 2017, three acts regulate the organization and proceedings of the Tribunal and the status of its justices. Two acts of 30 November 2016: on the organization and procedure before the Constitutional Tribunal (Dz. U. 2019, 125) and on the status of judges of the Constitutional Tribunal (Dz. U. 2018, 1422), which, together with the Act of 13 December 2016 – Introductory provisions (to both of these acts; Dz. U. 2018, 849) determined the current shape of applicable provisions on the Constitutional Tribunal.

91 Cf. Grażyna Skąpska, 'Znieważający konstytucjonalizm i konstytucjonalizm znieważony. Refleksja socjologiczna na temat kryzysu liberalno-demokratycznego konstytucjonalizmu w Europie pokomunistycznej' (2018) 7/1 *Filozofia Publiczna i Edukacja Demokratyczna* 276–301.

92 Jarosław Kaczyński, the leader of the PiS party, clearly stated: "I am deeply convinced that the Tribunal (…) was to be that point, a kind of bastion [of opposition – AK, AM, SK] that could destroy all of our attempts to introduce reforms (…) not only in the administration of justice or in the media, but also such changes as PLN 500 per child" – statement in Radio Maryja, www.dziennik.pl accessed 31 December 2015.

93 Cf. the feuilleton of Ewa Łętowska under the title 'Tyranny of majority/Dictate of minority?', available at http://konstytucyjny.pl/tyrania-wiekszosci-dyktat-mniejszosci/ accessed 15 November 2019.

94 This term regarding the Polish Constitutional Tribunal was coined by Jacek Zaleśny, see 'Защита доминирующей роли конституции и разделение власти – спор о методах создания права в современных государствах' (2018) 48 *Political Science Studies* 79–80.

2.7 Administrative courts

This branch is based on sixteen voivodship administrative courts (*wojewódzkie sądy administracyjne*) – one in each voivodship (province) – adjudicating as first-instance courts, and the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) adjudicating as a court of appeal, exercising judicial supervision over the case law of the voivodship administrative courts.

In 1997, the Constitution had already established the obligation to introduce a court proceedings system with at least two stages.[95] However, it was not until 2004, that the earlier one-stage proceedings before the Supreme Administrative Court were replaced by the two-stage proceedings based on the functioning of voivodship administrative courts and the Supreme Administrative Court as a court of appeal.[96]

The voivodship administrative courts are divided into divisions in terms of subject matter. The number of divisions depends on the needs of the particular court. Usually two to four were created, with the exception of the Warsaw voivodship administrative court with eight divisions.

The Supreme Administrative Court is divided into three Chambers: the Financial Chamber, the Commercial Chamber, and the General Administrative Chamber.[97] Each of the Chambers exercises supervision over the case law of voivodship administrative courts in cases falling within the jurisdiction of that Chamber.[98]

The essential task of the administrative judiciary is the control over acts/actions taken by the public administration in terms of their lawfulness. It includes the hierarchy-based control over the conformity of resolutions adopted by the bodies of local governments and normative acts adopted by the territorial bodies of government administration with statutory acts as well.[99]

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95 Art. 176 para. 1 ("Court proceedings shall have at least two stages.") and Art. 236 para. 2 ("Statutes bringing Article 176 para. 1 into effect, to the extent relevant to proceedings before administrative courts, shall be adopted before the end of 5 years from the day on which the Constitution comes into force. The provisions relating to extraordinary review of judgments by the Supreme Administrative Court shall remain in effect until the entry into force of such statutes.") of the Constitution.

96 It was introduced by means of three acts of 2002: the Act of 25 July – Law on the System of Administrative Courts (hereinafter also as the LSAC), Dz. U. 2017, 2188 as amended; the Act of 30 August – Law on Proceedings before Administrative Courts (hereinafter also as the LPAC), Dz. U. 2018, 1302 as amended; and the Act of 30 August – Provisions implementing the Act – Law on the System of Administrative Courts and the Act – Law on Proceedings before Administrative Courts, Dz. U. 2002, 53, 1271.

97 Art. 39 § 1 of the LSAC.

98 Ibid Art. 39 § 2–4.

99 Art. 184 of the Constitution: "The Supreme Administrative Court and other administrative courts shall exercise, to the extent specified by the statute, control over the performance of public administration. Such control shall also extend to judgments on the conformity to the statute of resolutions of organs of local government and normative acts of territorial organs of government administration."

In the administrative courts, only professional judges, either as single judges[100] or as collective panels[101] adjudicate on both levels.[102] To become a judge of a voivodship administrative court, the candidate must not only complete law studies and earn a Master's of Law degree, but have a proper professional experience.[103] Layman participation is only allowed in mediation proceedings. Mediation procedures are provided for in the first instance.[104] Their purpose is to allow the parties to reach an agreement without conducting a hearing. However, this procedure, despite the latest amendments,[105] is getting increasingly unpopular. In 2018, just six cases were opened, and one was settled.[106] This can be explained by the speed and efficiency of examining cases in the ordinary mode. The voivodship administrative courts handled complaints within 3.95 months on average in 2017, and within 3.84 months in 2018.[107] The Supreme Administrative Court heard cases within an average of 12.3 months in 2017[108] and within 12 months in 2018.[109]

3. Norm Production

3.1 Introduction

Poland is a parliamentary republic with a parliamentary cabinet system. The executive authorities are the President of the Republic of Poland and the Council of Ministers heading the respective administrative bodies. The legislative body is the parliament that consists of two houses: Sejm (the lower house) and Senat (the upper house). The Parliament's main task is to produce legal norms. It has the exclusive authority to issue

100 Art. 16 § 2 of the LPAC.

101 Ibid Art. 16 § 1.

102 Ibid Art. 120. More about other exceptions: Zbigniew Kmieciak (ed), *Polskie sądownictwo administracyjne – zarys systemu* (C.H. Beck 2017) 176. In certain cases, a panel of seven judges, an entire chamber or a full panel of Supreme Administrative Court has to be gathered. See Art. 264 § 1 of the LPAC. The latter has happened only once. Cf. Resolution of the Supreme Administrative Court of 26 October 2009 – I OPS 10/09.

103 At least eight years as a judge, prosecutor, advocate, attorney-at-law or notary public; or ten years in public institutions, occupying positions involving the implementation or creation of administrative law. Art. 6 § 1 of the LSAC.

104 Is it regulated by articles 115–118 of the LPAC. More about the impact of the recommendations of the Committee of Ministers of the Council of Europe No. R (2001) 9 of 5 September 2001 on alternatives to litigation between administrative authorities and private parties: justification of the draft law of 22 October 2001, *Druk Sejmowy nr 19 Sejm IV kadencji*, 73–74.

105 Introduced by means of the Act of 7 April 2017 amending the act – Code of Administrative Procedure and some other acts (Dz.U. 2017, 935), which entered into force on 1 June 2017.

106 See Appendix, Table 8.

107 The Supreme Administrative Court of Poland, 'Annual Report 2017. Outline of activities of the Supreme Administrative Court and the Voivodship Administrative Courts in 2017' 8. The Supreme Administrative Court of Poland, 'Annual Report 2018. Outline of activities of the Supreme Administrative Court and the Voivodship Administrative Courts in 2018' 9.

108 The Supreme Administrative Court of Poland, 'Annual Report 2017' (n 107) 8.

109 The Supreme Administrative Court of Poland, 'Annual Report 2018' (n 107) 9.

ordinary acts and acts amending the Constitution.[110] However, in extraordinary circumstances such as being under martial law, but not in cases of state of emergency or natural disaster, Chapter XI of the Constitution allows the President to produce emergency regulations having the force of an act. However, so far there has not been a need to apply these provisions.

Since Poland is not a federal state, the Parliament has a very wide competence to regulate any area of social life as far as the constitution expressly limits the general competence to legislate on a specific topic. Some issues, such as the state budget, civic freedoms, rights and duties as well as other matters addressed directly by the Constitution, are mandatorily regulated by an Act as statutory matters.

Apart from Acts, another type of universally applicable written norms issued in Poland are regulations. They may be issued only by the bodies that are competent to do so pursuant to the Constitution, namely: the President,[111] the Council of Ministers,[112] the Prime Minister,[113] the ministers in charge of specific divisions of the government administration and chairs of certain committees[114], and the National Broadcasting Council (*Krajowa Rada Radiofonii i Telewizji*).[115] This list is exhaustive; no other body has the authority to issue regulations.[116] Regulations must always be implementing instruments, i.e. they may only be issued pursuant to statutory authorization that determines who may issue a regulation, on what matter and within which scope.[117] Local legal enactments issued by local government bodies and regional bodies of the central government administration must also be based on a competence given by a higher ranking norm, such as an Act of Parliament.[118]

Traditionally, the prevailing legislative technique was to produce systematically coherent codifications covering broader fields of law, such as civil or criminal law. However, codes do not have a special position within the legal hierarchy – formally, they are Acts of Parliament. For lawyers trying to find an answer to a specific legal question, searching for a legislative basis for a claim in these codes will nevertheless often be a starting point, and they do play important role in arranging the contents of the legal system. Many fields are covered by codified law. Examples are the Civil Code,[119] the

110 Changing the constitution requires a very complicated procedure provided for in Art. 235 of the Constitution. Since the entry into force of the current Constitution, i.e., since 1997, no act amending the Constitution has been passed.

111 Art. 142 para. 1.

112 Art. 146 para. 4 point 2.

113 Art. 148 para. 3.

114 Art. 149 para. 2 and 3.

115 Art. 213 para. 2.

116 In particular, entrusting certain tasks to a given body on the basis of the Constitution is not a premise for assuming that it can issue regulations for the purpose of carrying out these tasks, unless such a competence is expressly stipulated in the Constitution (Cf.: This was explicitly confirmed by the Constitutional Tribunal in its judgment of 2000, K 25/99).

117 Art. 92 of the Constitution.

118 Ibid Art. 94.

119 Act of 23 April 1964 (hereinafter: CC); Dz. U. 2019, 1145, as amended.

Family and Guardianship Code,[120] the Commercial Companies Code[121], the Labour Code[122], the Criminal Code[123], the Code of Offences[124], the Maritime Code,[125] as well as codes governing various kinds of procedures: the Code of Civil Procedure,[126] the Code of Criminal Procedure,[127] the Offences Procedure Code,[128] or the Code of Administrative Procedure.[129] However, Poland does not have a code governing the substantial administrative law. This field is rather covered by various other legal instruments.

The norms contained in over a dozen codes, as well as in other acts, often have a general and abstract character. However, there are also many legal instruments of a very detailed and highly technical character. As a rule, regulations that implement an Act are detailed. Consequently, the ideal of norm production is a mixture of general and highly abstract norms, specified by more technical legislation of lower rank. Taking into account that legislation is recognized as the only formal source of law in Poland, statutory law has to fulfil different functions and the different legal instruments are regarded as being suitable to the respective tasks.

Accordingly, custom and customary law are not listed in the Polish Constitution among the sources of law. Custom is, however, invoked a number of times in the Civil Code, which stipulates that "an act in law shall not only cause the consequences expressed in it but also those which result from, among other things, established customs",[130] or that "a declaration of intent shall be construed in a manner required by principles of social life and established customs, taking into account the circumstances in which it was made."[131] Custom is considered as a certain pattern of attitudes or behavior, determining the effects of legal acts or the content of declarations of will. An example are customs that exist among entrepreneurs. However, customary norms cannot repeal compulsory legal rules. In case of dispositive norms, custom can be treated as a criterion according to which the parties may, contrary to the indicated provision, establish and shape rights and obligations.[132]

In Poland, legal scholars do not play a special role in the production of norms. They may participate in norm production, if they are members of competent bodies, e.g. Parliament or Council of Ministers. However, no formal authoritative weight is attached

120 Act of 25 February 1964; Dz. U. 2019, 303, as amended.
121 Act of 15 September 2000; Dz. U. 2019, 505, as amended.
122 Act of 26 June 1974; Dz. U. 2019, 1040, as amended.
123 Act of 6 June 1997; Dz. U. 2019, 1950.
124 Act of 20 May 1971; Dz. U. 2019, 821, as amended.
125 Act of 18 September 2001; Dz. U. 2018, 2175.
126 Act of 17 November 1964; Dz. U. 2019, 1460, as amended.
127 Act of 6 June 1997; Dz. U. 2019, 150, as amended.
128 Act of 24 August 2001; Dz. U. 2019, 1120, as amended.
129 Act of 14 June 1960; Dz. U. 2019, 60, as amended.
130 Art. 56 of the CC.
131 Ibid Art. 65. Another example from the area of the civil law is Art. 69 of the CC: "If according to the custom established in the given circumstances or according to the content of an offer, it is not required that the other party's declaration on the acceptance of an offer reach the party making the offer, in particular where the party making the offer demands immediate performance of the contract, the contract shall become effective if the other party sets about performing it in an appropriate time; otherwise the offer shall cease to be binding."
132 E.g. Art. 394 of the CC.

to their opinion or interpretation, e.g. in commentaries to normative instruments or on judicial decisions. If they manage to influence the decisions of a legislative body, it is only by virtue of their intellectual authority and not due to the institutional position in academia. Legal science has a much greater impact on judicial decisions. Judges sometimes rely on and expressly quote doctrinal views established in academia in order to justify a specific argumentation or outcome.[133] Hence, the impact of legal scholars can be said to be only remote or indirect.

3.2 Judges as norm producers or controllers and interpreters?

From a formal point of view, judges' decisions are not regarded a source of law in the Polish legal culture. The main task of a judge is to apply the norms of legally binding statutory law. The obligation to apply relevant legislation has just one exception: when the judge is convinced that the provision is unconstitutional. In this case, he or she may initiate judicial review by bringing the question to the Constitutional Tribunal. When the Constitutional Tribunal finds a norm unconstitutional, it is no longer binding and cannot be the basis for other judgments in other courts. Furthermore, even earlier judgments based on an unconstitutional norm can be reviewed in a special procedure.[134] Obviously, the Constitutional Tribunal is not the only court that interprets statutes, but it is essential to emphasis that only its rulings are binding *erga omnes*. Verdicts of other courts including the Supreme Court and Supreme Administrative Court are not universally binding as a rule.[135] It should be added that in the years 1989–1997, the Constitutional Tribunal had the competence to issue general legal interpretations of statutes, but this prerogative was revoked by the current Constitution. Yet, since many judgments were delivered throughout this period, the legally binding judgments of courts and decisions issued by public authorities based on the Tribunal's interpretation were upheld.[136] Despite lacking a formal competence to issue general legal interpretations after 1997, in practice the Tribunal often delivered interpretations which *de facto* became as binding as the judgment itself.

The Supreme Court has the competence to settle legal enquiries submitted by the courts as well as to decide on divergences in the interpretations of law found in the decisions of ordinary courts, military courts, and the Supreme Court itself. In the event

133 71.8 % of judges pointed out the direct impact of legal scholarship on their own judgments – national survey in 2015–2016. Anna Machnikowska, *O niezawisłości sędziów i niezależności sądów w trudnych czasach. Wymiar sprawiedliwości w pułapce sprawności* (Wolters Kluwer 2018) 474; Iwona Rzucidło-Grochowska, Mateusz Grochowski (eds), *Uzasadnienia decyzji stosowania prawa* (Wolters Kluwer 2015); Maciej Wojciechowski, 'Sądowy dyskurs interpretacyjny dotyczący wykładni rozszerzającej' in Mikołaj Hermann and Sebastian Sykuna (eds), *Wykładnia prawa. Tradycje i perspektywy* (C.H. Beck 2016) 275–294; Ewa Łętowska and Krzysztof Sobczak, *Rzeźbienie państwa prawa. 20 lat później* (Wolters Kluwer 2012) 141–167, 340–341; Tomasz Gizbert-Studnicki, 'Prawda sądowa w postępowaniu cywilnym' (2009) 7 *Państwo i Prawo* 5.

134 E.g. Art. 401^1 of the CCP or Art. 145a of the Code of Administrative Procedure.

135 See below.

136 Art. 188 point 3 of the Constitution.

of legal issues that arouse serious doubts or cause divergences in case law, the case may be referred for examination by an expanded panel of this court: a panel of seven justices, an entire Supreme Court chamber, joint Supreme Court chambers, or the whole Supreme Court (full panel).[137] The ruling of the first type of panel may become a so-called legal principle when the judges of this panel decide to inscribe it to the book of legal principles. The rulings of the three latter types of panels automatically become legal principles.[138] Legal principles are, however, only binding upon all the judicial panels of the Supreme Court (and the lower court in a given case), and derogation from such a principle is only possible by way of adopting a new one.

The Supreme Administrative Court as well is competent to adopt rulings aiming to eliminate diverging interpretations by lower administrative courts and to determine questions of law that arouse serious doubts in a specific administrative court case. The Supreme Administrative Court can either provide abstract or concrete norm control and interpretation. The goal is to ensure the consistency of administrative court decisions. Both abstract and concrete rulings of a panel of seven justices, an entire Supreme Administrative Court chamber, or the whole Supreme Administrative Court (full panel) are binding in all administrative proceedings.[139]

The Supreme Administrative Court has no opinion-making or advisory competences of assisting the executive with legal advice, comparable to those enjoyed by the Council of State in France or in Belgium. In the course of the legislative process, it is treated on a par with the institutions that must be consulted as part of the general process of law-making.[140] Beyond that, the Supreme Administrative Court has no distinguished role in the production of administrative norms.

Moreover, the established procedure in Poland is that judgments of the Constitutional Tribunal, the Supreme Court, the Supreme Administrative Court, and of appellate courts are published, along with their justifications.[141] Judgments of the Constitutional Tribunal are published in the official journal and on its website.[142] Judgments of the

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137 In 2018, there were a total 143 for example, and in 2017, 152 legal enquiries submitted by lower courts to the Supreme Court. In 2018, no rulings of the entire chamber or joint chambers, or all members of the Supreme Court were issued, only a few verdicts of seven judges were issued, but none of them received the rank of a legal principle. Cf. Article 390 of the Code of Civil Procedure and Article 441 of the Code of Penal Procedure, but also in the abstract procedure (Article 83 of the Act on the Supreme Court) – at the request of the First President of the Supreme Court, the Ombudsman, the Prosecutor General, and some other bodies may result in a legal principle.

138 Art. 87. § 1 of the Act on the Supreme Court of 8 December 2017; Dz. U. 2018, 5 as amended, consistent with Art. 61 § 6 of the Act on the Supreme Court of 23 November 2002, Dz. U. 2016, 1254 as amended.

139 Art. 269 of the LPAC. Cf. Tadeusz Woś, Hanna Knysiak-Sudyka and Marta Romańska (eds), *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz* (Wolters Kluwer 2016) 1265 ff.

140 Resolution no. 190 of the Council of Ministers of 29 October 2013; Monitor Polski (hereinafter: MP) 2013, 979; Resolution of the Sejm of the Republic of Poland of 30 July 1992 – Standing Orders of the Sejm of the Republic of Poland, MP 2012, 32 as amended; resolution of the Senate of the Republic of Poland of 23 November 1990 – Standing Orders of the Senate of the Republic of Poland, MP 2002, 54, 741 as amended.

141 Cf. the website of the appellate court in Wrocław: http://orzeczenia.wroclaw.sa.gov.pl/ accessed 30 November 2019.

142 Judgments of the Constitutional Tribunal are published in Journal of Laws of the Republic of Poland (*Dziennik Ustaw Rzeczypospolitej Polskiej*) or in the official journal Monitor Polski and on the official website of Constitutional Tribunal: http://otkzu.trybunal.gov.pl/accessed 30 November 2019

Supreme Court or the Supreme Administrative Court are published in special official collections and on their websites as well.[143] Despite their lack of formal force as a source of law, in practice, courts of lower instances, state organs, and the general public use them as guidelines due to their inherent institutional and intellectual authority.

Due to the ongoing constitutional crisis in Poland, some legal scholars and judges have suggested that the presumption of constitutionality of issued legislation no longer holds.[144] This presumption was adequate under circumstances in which an independent Constitutional Tribunal functioned. The presumption of constitutionality is based on the idea that an independent Constitutional Tribunal forces the Parliament to restrain its legislative activities to meet the constitutional requirements. This is supposed to guarantee a decent quality of legislation. These claims were criticized by the current President of the Constitutional Tribunal, Julia Przyłębska, who holds that the preconditions of the presumption are met because the Constitutional Tribunal, in her view, is still independent.[145] Nevertheless, in the current situation it has been suggested that judges should apply the Constitution directly: an act should be presumed constitutional unless it is challenged by the courts based on Art. 8 para. 2 of the Constitution.[146] The right to perform judicial review is not a new competence of judges, since Article 8 has been in place since 1997, but it has never been used before. Despite these signals, practicing

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143 Judgments of the Supreme Administrative Court are published in the official collection entitled *Orzecznictwo Naczelnego Sądu Administracyjnego i wojewódzkich sądów administracyjnych*, but are available as well at http://www.nsa.gov.pl/baza-orzeczen.php. Some important Supreme Court judgments are published in special official collections, however, many of them are available at http://www.sn.pl/orzecznictwo/SitePages/Baza_orzeczen.aspx. Both links accessed 30 November 2019.

144 E.g. Marcin Matczak, 'Dlaczego w Polsce nie obowiązuje już tradycyjne domniemanie konstytucyjności?', available at https://marcinmatczak.pl/index.php/2018/07/08/dlaczego-w-polsce-nie-obowiazuje-juz-tradycyjne-domniemanie-konstytucyjnosci/. Cf. also statements of Tomasz Pietrzykowski, 'Domniemanie konstytucyjności', available at https://www.academia.edu/20133667/Domniemanie_konstytucyjno%C5%9Bci. Both links accessed 6 November 2019. Cf. as well the opinion of A. Grabowski in '*Domniemanie konstytucyjności i reguła* lex superior *(w ujęciu argumentacyjnym kontroli konstytucyjności prawa)*', speech delivered at the conference: Pierwsze Krakowskie Sympozjum Konstytucyjne: *O problemach wykładni Konstytucji RP*, 7 October 2017. Cf. as well Aleksandra Dębowska and Monika Florczak-Wątor, 'Domniemanie konstytucyjności ustawy w świetle orzecznictwa Trybunału Konstytucyjnego', (2017) 2 *Przegląd Konstytucyjny* 5, 19 ff.

145 Cf. Interview with Julia Przyłębska to TVP INFO, available at https://www.tvp.info/37943917/prezes-tk-kwestionowanie-konstytucyjnosci-ustaw-prowadzi-do-anarchii accessed 6 November 2019.

146 Judges have signaled adopting such a course of action, among others in connection with the amendment of the Act on Public Gatherings, limiting the citizen's rights to gather in public, adopted in December 2016 and effective since the spring of 2017. Pursuant to this amendment, no other gatherings may take place at the time and place of gatherings organized by state authorities. Judge Waldemar Żurek, spokesman of the National Council of the Judiciary, openly stated (e.g., in an interview given to TVN24) that he would apply the Constitution directly in his judgments. Judge Łukasz Biliński invoked superiority of the Constitution over traffic regulations in his judgment acquitting a group of people who protested in front of the Sejm in December 2016, when the Speaker of the Sejm, a member of the ruling party, deprived the parliamentary opposition of the possibility to participate in voting on the Budget Act. Yet Judge Biliński does not replace acts with the Constitution; he simply organizes his arguments according to the constitutional order while applying statutory provisions. The most recent example (though connected with the direct application of a CJEU judgment) is the case of Judge Paweł Juszczyszyn, adjudicating in the provincial court in Olsztyn, who referred to the judgment of the CJEU of 19 November 2019 in his case regarding Poland, and for this reason was suspended as a judge, something that took place on 29 November 2019.

judges seem to be reluctant to make use of it, despite announcements that they may start doing so.[147]

4. Ideal of Justice

Polish legal culture is characterized by a very positivistic approach with a strong focus on the written sources of law. Another feature is the diverse origin of the content of the norms of positive law. They combine the achievements of distinguished European legal scholars with original Polish legal thought. The perception of law and justice in society is a particular kind of combination of trying to realise and protect the idea of individual freedom with the desire and expectation that daily life shall be regulated by a system of formalized norms, providing for both predictability and legal certainty. These factors determine the attitude of the majority of the Polish people towards law and justice and towards legal principles and institutions. This attitude is closely related not only to the formal catalogue of norms, which was discussed earlier, but also to the evolution of the Polish legal system.

Poland's loss of independence at the end of the 18th century led to the transition from a reality that was uncodified, particularistic and largely based on customary law, to externally imposed laws and codes, which were indeed often perceived as modern – especially in the case of German, French, and Austrian law – but at the same time seen as foreign to the local legal culture.[148] This was also the reason why the laws received were initially applied with great reluctance.[149] In addition, the authorities of the states that annexed the Polish territories further strengthened formalized solutions and limited social initiatives in order to exercise as much control as possible. Economic problems proved equally important for the Polish legal culture. Many developments, especially in commercial and contract law, took place with some delay compared to other central European countries. Restrictions on civil rights and liberties, enforced by the occupying powers, weakened not only the domestic capital but also the wider implementation of the principles of market liberalism into the legal order.

After Poland regained independence in 1918, restoration of national sovereignty required the establishment of unified legal institutions and the enactment of new substantive law. In the eyes of contemporary politicians and lawyers, this process demanded manifestation in the form of formalised and positive regulation. The need for new legislation was also caused by the demand to harmonise the fragmented legislation in the

147 Judges statements at the Extraordinary Congress of Judges Warsaw, 4 September 2016, own unpublished documentation. Cf. Krzysztof Sobczak, 'Gdy państwo prawa jest zagrożone, trzeba odwoływać się do konstytucji – „Sędzia a Konstytucja. Kryzys sadownictwa konstytucyjnego a rozproszona kontrola zgodności prawa z Konstytucją", konferencja w Katowicach, 3.03.2017 r.' (2017) 2 *Krajowa Rada Sądownictwa* 98 ff.

148 For more see: Juliusz Bardach and Monika Senkowska-Gluck (eds), *Historia państwa i prawa Polski. Od rozbiorów do uwłaszczenia* (PWN 1981) III. More about Polish legal culture up until the 18th century: Wacław Uruszczak, *Historia państwa i prawa polskiego, tom I* (966–1795) (Wolters Kuwer 2015).

149 Michał Gałędek and Anna Klimaszewska, 'A Controversial Transplant? Debate over the Adaptation of the Napoleonic Code on the Polish Territories in the Early 19th Century' (2018) 11 *Journal of Civil Law Studies* 269.

different parts of what had become the new Poland. At that time, some argued that an official recognition of custom as a source of law could cause obstacles in unifying the law and creating one legal system.[150] As in Germany in the 19th century, harmonizing the law was regarded a necessary precondition for social, political and economic integration. Representatives of the Polish legal academia, who were internationally educated and understood the new needs, implemented several spectacular reforms of the law.[151] Due to the very short period of independence (1919–1939), however, it was impossible to establish organizational and institutional preconditions and social attitudes in order to develop the Polish legal culture more holistically. The result was a widely fragmented tessellation of elements of different origin and ideological background.

The lost war in 1939 and the two parallel occupations – German and Soviet – lasting until 1945, reintroduced and facilitated the very formalistic attitude to law, especially when applying foreign law. The formal independence, which Poland regained after the end of the Second World War, contained no real sovereignty either. Poland entered the sphere of influence of the USSR and of the Soviet concept of state and law. This situation lasted for 45 years. Although a complete transfer of the communist legal ideology and system, which was alien to the Polish mentality, did not take place at that time, Poland's legal system and society were again under very strong pressure exerted by solutions typical of an authoritarian state. The development of a civil society and free economy was blocked once again and both were subordinated to central planning. As a consequence, the common experience with the law was still stigmatized by formalized procedures, casuistic content of norms, and their official interpretation.[152]

As a result of these circumstances, even though in the 19th and 20th centuries Poland was governed by very different ideologies and political systems, their common feature was the sometimes unofficial connection with the doctrine of legal positivism, in its version dating back to the 19th century.[153] This conception of law was very useful for both the foreign states that ruled over Poland's territory in the 19th century and to Polish governments, which in the second half of the 20th century conducted a legal policy that corresponded to the rules of an authoritarian ideology. The long experience of several generations that law is to be understood in terms of the aforementioned classical legal positivism still affects Polish legal thinking in the 21st century.[154] This stagnation took place despite the fact that Polish legal scholars were aware of the evolution of this doc-

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150 Stanisław Wróblewski, *Komentarz do Kodeksu Handlowego części I (art. 1–13)* (Leon Frommer 1935) 11; Cf. Tadeusz Dziurzyński, 'Prawo zwyczajowe w przyszłej ustawie handlowej' (1929) 1–12 *Czasopismo Prawnicze i Ekonomiczne* 356; Leonard Górnicki, 'Przewodnie konstrukcje i pojęcia Kodeksu handlowego z 1934 roku' (2015) CI *Przegląd Prawa i Administracji* 75.

151 Leonard Górnicki, 'Kodyfikacja prawa prywatnego' in Marek Safjan (ed), *System Prawa Prywatnego* (C.H. Beck 2012) I.

152 For more, see Adam Lityński, *Historia prawa Polski Ludowej* (LexisNexis 2013).

153 Including Jellinek's views. Jarosław Kostrubiec, *Nauka o państwie w myśli Georga Jellinka* (WUMCS 2015) 10; A. Peretiakowicz, *Państwo współczesne* (ZZKiW 1928) 2–16.

154 Artur Kozak, *Myślenia analityczne w nauce prawa i praktyce prawniczej* (WUW 2010) 70–71; Jolanta Jabłońska-Bonca, *O szkolnictwie wyższym i kształceniu prawników* (WIWS 2020) 37–39, 211, 243.

trine (including: neo-positivism, Hart v Fuller debate, Hart v Dworkin, and R. Alexy's theory).[155]

The history of the Polish legal system also explains the attachment to a "culture of codes". First, the codes brought into the Polish territory were used to modernize the outdated legal system. Then, work on 'national' codes was considered a manifestation of national legal identity and an expression of autonomy. When Poland entered the sphere of influence of the communist ideology, the use of codes was not abandoned. The new codes, created in the 1960s, resembled to some extent the content and principles of the old codes, which were in force in the years 1919–1939. This was a result of the efforts of the Polish jurisprudence to preserve the identity of the Polish legal tradition in the socialist state.[156] On the other hand, the political authorities encapsulated them with many lower-order acts, through which they relativized the principles set forth in the codes. It also deprived the courts of hearing many civil cases and entrusted them to out-of-court bodies that mainly applied no-codex norms, often not complying with the content of the codes. In this way, although some traditional institutions were present in the legal order – e.g., courts and codes – in practice they did not play a crucial role in the legal system.

The centuries-old political perturbations were also an obstacle to stabilization of the justice system. This was accompanied by a lack of confidence in the courts, which is strongly rooted in the Polish legal culture. The feudal, non-uniform, and customary system of the Commonwealth was frequently perceived as unpredictable and arbitrary.[157] The changes introduced by the legislator in the 19th century, even though they often

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155 Rafał Mańko, *W stronę krytycznej filozofii orzekania. Polityczność, etyka, legitymizacja* (WUŁ 2018); Maciej Pichlak, *Refleksyjność prawa. Od teorii społecznej do strategii regulacji i z powrotem* (WUŁ) 2019; Tomasz Barankiewicz, 'Inkluzywny pozytywizm prawniczy (geneza, rozwój, główne idee)' (2010) 1 *Państwo i Prawo* 10–24; Andrzej Grabowski, 'Inkluzyjny pozytywizm prawniczy (uwagi do aktualnej dyskusji)' (2011) 11 *Państwo i Prawo* 18–31; Jerzy Zajadło, 'Pięćdziesiąta rocznica debaty Hart-Fuller' (2008) 7 *Państwo i Prawo* 5–19; Tomasz Pietrzykowski, ' "Miękki" pozytywizm i spór o regułę uznania' in Jerzy Stelmach (ed), *Studia z filozofii prawa* (WUJ 2001) 97–121; Jolanta Jabłońska-Bonca, 'Wymiar sprawiedliwości a przemiany kultury prawnej w Europie' in Witold Morawski (ed), *Powiązania zewnętrzne. Modernizacja Polski* (Wolters Kluwer 2012) 296–313; Robert Alexy, 'W obronie niepozytywistycznej koncepcji prawa' (1993) 11–12 *Państwo i Prawo* 34–49, Herbert L.A. Hart, *Pojęcie prawa* Jan Woleński (trans) (PWN 1998), Jerzy Zajadło, *Przyszłość dziedzictwa: Robert Alexy, Ralf Dreier, Jürgen Habermas, Otfried Höffe, Arthur Kaufmann, Niklas Luhmann, Ota Weinberger: portrety filozofów prawa* (Arche 2008).

156 For more see: Adam Lityński, *Pół wieku kodyfikacji w Polsce. Wybrane zagadnienia (1919–1969)* (WSZiNS 2001); Witold Czachórski, 'Przebieg prac nad kodyfikacją prawa cywilnego PRL' (1970) *Studia Prawnicze* 26; Anna Stawarska-Rippel, *Elementy prywatne i publiczne w procesie cywilnym w świetle prac kodyfikacyjnych w Polsce (1918–1964). Studium historycznoprawne* (WUŚ 2015); Anna Machnikowska, *Prawo własności w Polsce w latach 1944–1981. Studium historycznoprawne* (WUG 2010); Anna Moszyńska, *Geneza prawa spadkowego w polskim kodeksie cywilnym z 1964 r.* (WNUMK 2019).

157 Cf. Jędrzej Kitowicz, *Opis obyczajów za panowania Augusta III (*Roman Pollak (ed), Zakł. im. Ossolińskich 2003), I, 205–225; Marcin Matuszewicz, *Diariusz życia mego (*Bohdan Królikowski and Zofia Zielińska (eds) PIW 1986), I–II, passim; Stanislas Auguste, *Mémoires* (Anna Grześkowiak-Krwawicz and Dominique Triaire (eds) IES – SHLP 2012), 41–46, 222, 267–268; Jerzy Michalski, *Studia nad reformą sądownictwa i prawa sądowego w XVIII w.* (Zakł. im. Ossolińskich 1958) I, 15–187; Zbigniew Naworski, *Szlachecki wymiar sprawiedliwości w Prusach Królewskich (1454–1772). Organizacja i funkcjonowanie* (WNUMK 2004); Adam Moniuszko, *Mazowieckie sądy ziemskie. Organizacja-funkcjonowanie-postępowanie* (Campidoglio 2013) 62, 130–140, 160–175.

involved reforms of the judiciary, simultaneously introduced new, alien types of courts, instances, and procedures.[158] The judges were often foreigners or Poles associated with the authority of another state. In the 20 years of the interbellum period, overcoming the habits adopted by generation of lawyers, including the new judges could hardly be achieved. In addition, during the period of the Polish People's Republic, the justice system did not enjoy public confidence. The population perceived it instead as a system that served exclusively the political goals of the communist party.

The type of norms that were dominant in the legal system, the form of their regulation, and the tasks assigned to institutions of the justice system by the executive branch of government also affected the underlying principles of court proceedings. In addition, they determined the predominant ideal of law and justice in the Polish legal culture. The political authorities expected judges to strictly apply legal norms. When the communist system was introduced, Polish lawyers were still educated in accordance with the theory of legal positivism, because this doctrine required judges to strictly apply the rules. This ensured that the political power, which had created these provisions, had full control over the legal system. As a result, several generations of judges focused on the linguistic interpretation of laws, regarding law more as *lex* than *ius*. Therefore, non-professional judges were absent in the Polish court system. Moreover, the practice of out-of-court dispute resolution, e.g. through mediation and economic arbitration, was not strengthened. Consequently, in Poland throughout the 20th century there were no favorable conditions for the development of sources of law other than statutory law and the corresponding methods of interpreting law.

These intellectual and institutional preconditions facilitated a perception of judges who functioned more like court clerks. Judges themselves sometimes even share this view because of the rigid legislative framework. In addition, the very heavy workload prevents them from a broader and more creative interpretation of law. As a result, they cannot always provide solutions based on thoroughly balancing the considerations of individual justice and legal certainty. In a fast-changing and complex socio-economic reality they are instead forced to apply law in compliance with the letter of the law. Surveys have shown that only approximately 25 % of them regard maximization of usefulness for the parties the most important objective of court proceedings. Approximately 20 % regard a speedy solution as being the highest objective. No more than 13 % indicate that benefits for the society as a whole should be the main objective of conflict resolution.[159]

What is more, a majority of citizens today still perceive law as a command of state power, understood as a formalized, impersonal institution, and not as a result of social

158 For more, cf. Bardach and Senkowska-Gluck (eds) (1981) (n 148); Artur Korobowicz, *Sądownictwo Królestwa Polskiego 1876–1915* (UMCS 1995); Stanisław Płaza, *Historia prawa w Polsce na tle porównawczym, cz. 2, Polska pod zaborami* (Księgarnia Akademicka 2002); Władyław Sobociński, *Historia ustroju i prawa Księstwa Warszawskiego* (PWN 1964); Anna Klimaszewska, 'Commercial judiciary on the Polish territories in the 19th century – a repackaged French product or a mock-up?' (2019) *Revista da Faculdade de Direito da Universidade Federal de Minas Gerais*, special issue, Cristina Vano, Heikki Pihlajamäki and Ricardo Sontag (eds), 97.

159 Sociological research on a representative national sample of judges – Machnikowska (2018) (n 133) 482. This also applies to judges in criminal departments.

dialogue. Law is expected to provide legal security identified with the sense of certainty and equality before the law (strong egalitarian beliefs), and in recent years this is combined with the expectation of severe punishment for perpetrators of crimes and the demand for swift judgments in civil cases. As a consequence, courts composed of professional judges are still perceived as institutions that are best suited to achieve these objectives. The lack of confidence in the courts does not impede this point of view.

Not before the 1990's, were the preconditions finally met for an unrestricted development of the Polish legal culture. However, the long experience of several generations, who lived under rules that hindered the promotion of values that are necessary to establish and maintain a liberal democracy and the rule of law as fundamental for law and justice, had deeply affected ideas and expectations to law in society. Despite the change of the political system, a part of the political class and of the legal community had the expectation that in a liberal democracy, there is no need to internalize consciously and purposely the rule of law through education, dialogue, and everyday practice.[160] They assumed that the general legal awareness would develop automatically, along with other socio-economic changes. However, the correctness of this assumption seems rather questionable in the light of recent events.

Citizens have a strong expectation that the state and courts will act in accordance with the principles of social justice, despite the fact that positive law is expected to provide legal security. The main aspects of social justice are the absence of privileges in the legal system and state interventionism in the sphere of equal access to material goods, as well as access to free legal assistance for Polish citizens. Populists especially argue that except from the constitutionally guaranteed rights and freedoms, justice is determined by what the majority considers right and fair. The paradox is that, although the sense of belonging to a larger community is emphasized in relation to the concept of justice, in practice many citizens employ individualistic attitudes, which in turn have their basis in the lack of the joint activities strengthening the social legal awareness mentioned above. Moreover, the persistent mistrust concerns not only judges, but other citizens as well.[161] Therefore, social justice is more often associated with the expectation that state institutions operate more efficiently than solutions developed during social activities undertaken by citizens themselves or their various communities.[162]

A majority of judges also share the opinion that an important reason for social, political and legal tensions is caused by a lack of interest in the common good (93 %) and that the legal system should use the institution of mediation more frequently (88 %). Therefore, they seem to acknowledge the deficiencies of classical legal positivism. Furthermore, when asked about handling civil disobedience, more than 75 % declare that in their judgments they would act according to their conscience, 31 % would apply

160 Tadeusz Ereciński, 'O uwarunkowaniach, potrzebie oraz zakresie nowego kodeksu postępowania cywilnego' (2010) 1 *Polski Proces Cywilny*; Ewa Łętowska, 'Prawo w „płynnej rzeczywistości"' (2014) 3 *Państwo i Prawo* 1.

161 It has an impact on the very low rate of out-of-court proceedings. Cf. Conflict Resolution in this Chapter.

162 This is why it is so strongly expected, for example, that the legal system should severely punish criminals, rather than include further elements of rehabilitation.

extraordinary leniency, and 24.5 % would apply only the law in force, while 30 % would consider referring problematic provisions to the assessment of the Constitutional Tribunal.[163]

During recent years, Poland's political culture has once again changed dramatically. Politicians who declared "returning courts to citizens", including stricter and advocating for more severe punishment of criminals and stronger procedural protection for certain groups of civil cases, have already twice secured their victory in the parliamentary elections (2015, 2019). Currently, the ruling party (PiS) achieves its goals by formally increasing administrative influence over the courts and the legislative process. They are also critical to the idea of social negotiation and debate, claiming instead that the will of the parliamentary majority has priority over other liberal and pluralistic values.[164] Using terminology, which confirms that at least part of society has the goal to strengthen 'justice' and values such as legal security and democracy. By carrying out certain surface-reforms highly attractive for their voters, in fact at the deeper levels of legal culture, these changes might cause the opposite effect and weaken institutions and principles that are supposed to provide substantive justice. This applies particularly to the guarantee of fair legal treatment for those disagreeing with the ruling party.

Note that legal certainty and predictability are to be ensured primarily by legislative acts; case law is not regarded an instrument to safeguard a sufficient degree of legal security. On the other hand, legal acts in Poland, as everywhere else, require interpretation. The role of the Supreme Court and the Supreme Administrative Court is to provide uniform interpretations, thus indirectly contributing to predictable outcomes. In addition, their task is to develop the law in order to provide verdicts that hold a predictable solution for the future as well. The very positivistic approach is applied even by the Courts (see below) and does not allow for a considerable impact of equity and fairness.

The Constitutional Tribunal, whose basic task is to conduct judicial review, i.e., to decide on the compliance of lower-order acts with higher-order acts and especially with the Constitution of 2 April 1997, also used to contribute to maintain legal certainty. However, it is supposed to provide a value-based type of legal certainty. The concept of "constitution" cannot be limited only to its written text. Indeed, its content is determined not only in specifically expressed norms, but also in principles and values that are much less expressly stated in the Constitution and require judicial clarification. Some of them open up the system of positive law towards natural law and other external normative systems (e.g., Christian values). The Constitution therefore serves, on the one hand, as a point of reference for the control of constitutionality, and on the other hand, it is subject to a constant process of clarification in constitutional jurisprudence. The most typical example, but not the only one, is the evolution of case law on the interpretation of the principle of a democratic law-abiding state (Art. 2). From the very beginning, the Constitutional Tribunal has shown a tendency to treat it more broadly. It is understood as the collective expression of many principles and rules of a more detailed nature which,

163 Machnikowska (2018) (n 133) 487–492.
164 Machnikowska (2018) (n 133) 350–401.

although not explicitly enshrined in the Constitution, are derived indirectly from it.[165] An indispensable aspect of this set of principles is that legislation needs to be adopted by following a proper/decent procedure.[166] Equally important are the principles of proportionality and necessity as a precondition for any restriction of citizens' rights. The extent to which those unwritten principles can be said to have impacted the ideal of justice on a deeper level seems questionable. The ongoing political crisis may give an opportunity to verify the sustainability of the Constitutional Tribunal's *acquis*, particularly regarding the rule of law. Ordinary judges who would decide to apply the Constitution directly, bypassing some of the controversial provisions of the ordinary laws, might act as guardians of these principles.

Under such circumstances, the lawyers' perception of their own obligations towards the Constitution and towards the principles of protection of citizens' rights and freedoms might help to change the ideal of justice. Polish lawyers have recently directed public attention towards the importance of a functioning legal system, including but not limited to guarantees of legal certainty and predictability. History has witnessed how easily fundamental rights can be eliminated in the name of the people (or rather a majority). In such a situation the ability to warrant legal security by other elements of the legal system and the informal legal culture becomes highly important. However, even if resistance has been offered by the legal community (in the middle layer of the legal sea), the future of what will be the ideal of justice in Poland highly depends on which group manages to convince a majority of people of their interpretation of what the ideal justice should be based on: the tyranny of the majority or the values of the liberal democratic Constitution of 1997. Regardless of the outcome, one thing seems rather clear: the political crises triggered a discourse concerning the fundamental values and the perception of justice in Poland.

5. Legal Method

The legal method in the Polish legal culture is closely linked to a formalized catalogue of the sources of law contained in Chapter III of the Constitution.[167] Universally binding sources of law are the Constitution, statutes, ratified international agreements and regulations (in the following legal instruments).[168] The Constitution identifies not only formal sources of law, but also the principles for producing legal instruments.[169] Statutory law is organized into a hierarchical system, with the Constitution on top and all

165 E.g. judgment of the Constitutional Tribunal of 4 June 2013, P 43/11. Mirosław Granat, 'Trybunał Konstytucyjny. Osiągnięcie czy zadanie?' in Andrzej Szmyt (ed), *Trzecia władza: sądy i trybunały w Polsce: materiały Jubileuszowego L Ogólnopolskiego Zjazdu Katedr i Zakładów Prawa Konstytucyjnego, Gdynia, 24–26 kwietnia 2008 roku* (WUG 2008) 23–41.

166 See their review in the resolution of the seven judges of the Supreme Administrative Court of 12 March 2001, OPS 14/00, ONSA 2001/3, item 101).

167 Chapter III of the Constitution, Art. 87–94.

168 Art. 87 para. 1.

169 Art. 87–94 of the Constitution.

the other legal instruments subordinate to it. The application of law is highly formalistic since the Polish legal method is based on a doctrine of legal positivism. Accordingly, legal claims need a basis in a statutory provision.[170] However, the limitations to positivism following from the Radbruch's Formula have been widely accepted in legal theory.[171]

The Polish legal system is only to a very limited extent open to other non-formalized normative systems.[172] Customary law as such is not recognised as a source of law. On the other hand, a custom can be a foundation for rights and obligations under certain conditions. In order for that to happen, the custom has to be explicitly provided for by a norm in the statutory law (the norm in the statutory law should use the term "custom"). There are less than twenty such norms in the Polish legal order.[173] Nor do the provisions of the statutory law contain many general clauses that would enable using more diversified legal methods.[174] Procedural regulations sometimes enable courts to apply the principle of equity, but this only concerns the right of the court to increase or limit the scope of legal protection provided by the law.[175] In other words, equity is not decisive as to whether the court will consider or reject a claim in a particular case at all, because this depends only on the content of the statutory law.

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170 The preamble of the Constitution speaks of justice and pursuant to Art. 45 para. 1, citizens have a right to have their cases fairly reviewed, however these concepts are not directly linked to the sources of law or its interpretation. The concept of justice (*iustitia*) used in the Constitution is not synonymous with the concept of equity (*aequitas)*. Cf. e.g. judgments of the Constitutional Tribunal of 27 June 1995, K 4/94; of 22 December 1997, K2/97; of 5 July 2010, P 31/09.

171 In Poland, the popularity of the academic analysis of Gustav Radbruch's Formula and the consequences of his approach to the contemporary legislation and case law may be attributed to J. Zajadło's publications. This is also due to the fact that, in the Polish legal system from before the political transformation in 1989, the law was very oppressive in some cases even though it aspired, undeservedly, to legality, taking advantage of the non-existence of a constitutional tribunal and the very limited independence of courts; Jerzy Zajadło, *Dziedzictwo przeszłości. Gustaw Radbruch: portret filozofa, prawnika, polityka i humanisty* (Arche 2007); idem, 'Formuła "Gesetz und Recht"' (2002) 1 *Ius et Lex* 39.

172 Cf. Bartosz Wojciechowski, 'Rozstrzyganie tzw. trudnych przypadków poprzez odwołanie się do odpowiedzialności moralnej' (2004) 70 *Studia Prawno-Ekonomiczne* 4; Marek Safjan, *Wyzwania dla państwa prawa* (Wolters Kluwer 2007) 204.

173 Cf. examples in given in the section on Norm Production.

174 Cf.: Zbigniew Radwański and Maciej Zieliński, 'Klauzule generalne w prawie prywatnym' in Marek Safjan (ed), *System Prawa Prywatnego, t. 1: Prawo cywilne – część ogólna* (C.H. Beck 2007) 335 ff; Agnieszka Choduń, Andrzej Gomułowicz and Andrzej Skoczylas, *Klauzule generalne i zwroty niedookreślone w prawie podatkowym i administracyjnym. Wybrane zagadnienia teoretyczne i orzecznicze* (Wolters Kluwer 2013); Tadeusz Zieliński, 'Klauzule generalne w nowym porządku konstytucyjnym' (1997) 11–12 *Państwo i Prawo* 134 ff.; Alina Wypych-Żywicka, 'Prawa podmiotowe w prawie pracy' in Krzysztof Wojciech Baran (ed), *Zarys systemu prawa pracy, t. 1: Część ogólna prawa pracy* (Wolters Kluwer 2017) 1359–1399; Leszek Leszczyński and Grzegorz Maroń, 'Pojęcie i treść zasad prawa i generalnych klauzul odsyłających. Uwagi porównawcze' (2013) 60/1 *Annales UMCS. Sectio G* 82 ff.; Tadeusz Zieliński, 'Klauzule generalne w procesie karnym' in Janina Czapska, Andrzej Gaberle, Andrzej Światłowski and Andrzej Zoll (eds), *Zasady procesu karnego wobec wyzwań współczesności. Księga ku czci Profesora Stanisława Waltosia* (PWN 2000) 786; Marian Zdyb and Jerzy Stelmasiak, *Zasady ogólne Kodeksu postępowania administracyjnego. Orzecznictwo Naczelnego Sądu Administracyjnego z komentarzem* (Lublin 1992) 47; Adam Szot, 'Klauzula generalna jako ponadgałęziowa konstrukcja systemu prawa' (2016) 63/2 *Annales UMCS. Sectio G* 291.

175 E.g. Art. 417^2 of the CC. Cf. also: Anna Drywa, *Odpowiedzialność odszkodowawcza za wydanie niezgodnej z prawem decyzji podatkowej* (Wolters Kluwer 2014) 28.

Legal argumentation is strongly influenced by the way judges argue their decisions. Legal practitioners apply the same type of reasoning when interpreting statutory law, and also when advising clients. This is because the vast majority of conflicts are resolved in courts (cf. Conflict Resolution). As judges predominantly use grammatical interpretation of legislation (simple legal syllogism), there is a high probability that the legal practitioners argue based on the same principles. For this reason, in view of a possible litigation, lawyers who negotiate contracts or advise clients on other matters, try to take into account interpretations of legal provisions applied by the courts.[176]

Since legal acts in Poland are of a very diverse nature, with norms that are sometimes very general and abstract and sometimes detailed and meticulous, literal analysis is sometimes not sufficient and a broader toolkit for interpretation is required. The judgments of the highest courts enjoy special authority, despite the fact that there is no theory of precedent in Poland and case law is not considered as a formal source of law by the Constitution.[177] From a formal point of view, judgments of the Supreme Court and the Supreme Administrative Court are binding only in the given case, unless they have received the status of a legal principle (cf. the section on Norm Production). However, even then, the Supreme Administrative Court's interpretation is binding only in all administrative proceedings and the Supreme Court's rulings are binding for the lower court in the particular case and the Supreme Court itself. Nevertheless, judges and other lawyers, in practice being familiar with these rulings, interpret a given provision in other cases in accordance with the methodological approach used by the Supreme Court.[178]

Case law, therefore, is considered in practice as a subsidiary source of law, which serves the purpose of finding a solution where it is impossible to conclude based on the wording of the pertinent provisions.[179] Lawyers pay less attention to other sources of legal knowledge, such as legal doctrine or legislative materials (preparatory works). However, in a court case the opinions of legal scholars with an eminent reputation in the field of law can be decisive. Furthermore, using non-legal scholarly opinions has

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176 Therefore, databases with rulings occupy the second place (after databases with provisions of statutory law) in the statistics of using individual elements of legal information. In every legal profession they are a basic work tool. See Marcin Kokoszczyński and Grzegorz Wierczyński, *System informacji prawnej w pracy sędziego* (Wolters Kluwer 2011) 81.

177 Among the many judgments that assume the significance grounded in earlier court decisions, it is worth pointing out characteristic statements such as "in the jurisprudence of the Supreme Administrative Court, the application of the provision […] has been checked many times and currently the interpretation of this provision does not cause any doubts", judgment of the Supreme Administrative Court of 31 May 2000, I SA/Gd 102/98; "interpretation should be sought in court decisions", judgment of the voivodship administrative court in Opole of 4 April 2004, I SA/Wr 3918/01; "the explanations provided are consistent with the grounded case law of the Supreme Administrative Court", judgment of the voivodship administrative court in Warsaw of 16 June 2004, III SA 528/03. More: Agnieszka Bielska-Brodziak, *Interpretacja tekstu prawnego na podstawie orzecznictwa podatkowego* (Wolters Kluwer 2009) 81 ff.

178 In publications intended for judges regarding the methodology of their work, not only legal institutions are discussed, but the case law of the Supreme Court, which has shaped judicial practice, is strongly taken into account. Cf. Henryk Pietrzykowski, *Metodyka pracy sędziego w sprawach cywilnych* (Wolters Kluwer 2014).

179 Piotr Tuleja, 'Źródła prawa' in Paweł Sarnecki (ed), *Prawo konstytucyjne RP* (C.H. Beck 2014) 57; Józef Frąckowiak, 'Orzecznictwo i doktryna jako źródło prawa prywatnego' (2018) 112 *Przegląd Prawa i Administracji* 47.

been recommended when an evaluation of another area of knowledge is necessary to apply/interpret a specific legal solution.[180] Then, there is justification to use specialist opinions, such as court expert opinions, e.g. medical doctors witnessing on the state of mind of a person.[181]

Doctrinal interpretations of law including new concepts advocated by legal scholars gain significance only when the Supreme Court, the Supreme Administrative Court, or the Constitutional Tribunal refer to them in their rulings.[182] As an example, the high impact of John Rawls's concept of justice in Polish legal culture can be noticed, because the Constitutional Tribunal has referred to it several times.[183]

Despite the fact that the interest in the acquis of legal science has increased recently, a significant part of it still awaits wider application. This applies to the development of reasoning used in jurisprudence, which consists of applying logic, analysis, argumentation, and hermeneutics. In 2006, leading advocates of this trend, J. Stelmach and B. Brożek, proposed a paradigm of the jurisprudence model that dynamically incorporates various old and new fields of knowledge.[184] This gives an opportunity to adequately respond to the phenomenon of contemporary law, which requires research in the field of linguistics, sociology, psychology, and axiology, as well as a coherent application of these methods.[185] Scientific research aimed at analysing the interpretation applied in judicial

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180 Maciej Zieliński, *Wykładnia prawa. Zasady – reguły – wskazówki* (Wolters Kluwer 2017) 299.

181 Olgierd Bogucki, 'Perspektywy rozwinięcia normatywnego ujęcia wykładni funkcjonalnej' in Mikołaj Hermann and Sebastian Sykuna (eds), *Wykładnia prawa. Tradycje i perspektywy* (C.H. Beck 2016) 218–219.

182 Marcin Romanowicz, 'Utrwalona linia orzecznicza jako argument z (własnego) autorytetu sądowego' in Tomasz Giaro (ed) *Rola orzecznictwa w systemie prawa* (Wolters Kluwer 2016) 173–200; Safjan (2007) (n 172) 15; Jadwiga Potrzeszcz, *Idea prawa w orzecznictwie polskiego Trybunału Konstytucyjnego* (Towarzystwo Naukowe KUL 2007); Granat, (2008) (n 165) 23–40. Cf also Piotr Tuleja, *Wyroki interpretacyjne Trybunału Konstytucyjnego* (Ars boni et aequi 2016); Florczak-Wątor (2014) (n 83).

183 Cf. Judgment of 22 December 1997, K 2/97, in which the Constitutional Tribunal emphasized that Rawl's concept of distributive social justice should be implemented in labour relations: „All social values—liberty and opportunity, income and wealth, and the social bases of self-respect—are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage."; John Rawls, *A Theory of Justice. Revised Edition* (Harvard University Press 1999) 54; Polish edition was cited by the Constitutional Tribunal: John Rawls, *Teoria sprawiedliwości* Maciej Panufik, Jarosław Pasek, Adam Romaniuk (trans) (PWN 1994) 89. The same reference was used in judgment of 2 December 2008, P 48/07. Cf. also judgment of 9 June 2003, SK 5/03, in which no specific publication of Rawl's was cited, just his authority was used by judge Marian Zdyb in his dissenting opinion: „As truth in knowledge systems – John Rawls used to say – so is justice first virtue of social institutions."

184 Jerzy Stelmach and Bartosz Brożek, *Metody prawnicze* (Wolters Kluwer 2006). English version: idem, *Methods of Legal Reasoning* (Springer 2006).

185 According to Ewa Łętowska: "First of all, the court must note the problem that requires interpretation. Contrary to what is commonly thought, for the court the need for interpretation is not a matter of ambiguity or lack of precision of the text, but above all an axiological matter. The beginning of the whole process takes place in sensitivity, which makes it possible to realize that there is an "interpretation deficit". The judge notices that the interpretation usually used so far is "bad", and this axiological discomfort becomes an impulse for interpretive searches. That is why – at least when it comes to interpretive innovation – progress is made not so much with hard cases as with axiological cases." See Ewa Łętowska, 'Boska sztuka interpretacji' in Adam Łopatka, Barbara Kunicka-Michalska and Stefan Kiewlicz (eds), *Prawo, społeczeństwo, jednostka. Księga jubileuszowa dedykowana Profesorowi Leszkowi Kubickiemu* (INP PAN 2003) 30.

decisions should also be noticed.[186] This helps in identifying developmental tendencies in the Polish legal system, and also forms the basis for a postulate, which is increasingly supported in legal science, that lawyers should make use of different forms of argumentation to a greater extent,[187] putting more emphasis on functional interpretation.[188] This applies to the recognition of so-called hard cases, which lawyers more frequently use even in courts of lower levels.[189] In recent years, this point of view has gradually found acceptance among judges who are slowly beginning to expand the scope of their legal reasoning. This, in turn, helps to transfer new theories to the application of law. This development is still in its early stages, but a new dynamic can be observed. Consequently, it can be expected that the legal method will become more heteronomic and open to new approaches.

Accordingly, principles of legal interpretation and their impact on legal methods have gained attention in recent years. This is the result of an increasing interest in legal methodology, which is facilitated by the internationalisation and globalisation of law, and the challenges this development has for judges and practitioners alike. The other reason is the judicial law reform enacted in Poland between 2015 and 2019, which has contributed to restructure the balance of powers in Poland. Prior to these reforms, the grammatical/linguistic interpretation was predominant. This is in line with the principles of legal positivism and its attitude to the text as a binding command by the legislature. If the outcome of such interpretation was unequivocal, ordinary courts could refer the case to the Constitutional Tribunal or, less frequently, to the Supreme Court, to replace the strict grammatical interpretation with a more functional one.

New methodological discussions, particularly concerning the way the Constitution and decisions by the Constitutional Tribunal should be treated, have also initiated a deeper reflection process regarding the need for institutional guarantees. The question arising is how to interpret not only the Constitution but other legal instruments as well, and what kind of methodology could be used to oppose or support the new populist policy in Poland. If the purpose of applying the law is to realise fundamental constitutional values instead of relativizing them, institutional and intellectual changes are inevitable.

6. Professionalisation

The degree of legal professionalisation in Poland is generally high. This is the result of the following factors: the path of legal education, the additional mandatory (with minor exceptions) apprenticeships required to practice and the system of central exams at different stages. Equally important is the mandatory affiliation of lawyers to corporations,

186 See Wojciechowski (2016) (n 133) 286–294.

187 Jerzy Stelmach, *Kodeks argumentacyjny dla prawników* (Zakamycze 2003); Katarzyna Budzyńska, *Logika a argumentacja,* available at http://www.calculemus.org/neumann/odczyty/budzynska.doc accessed 6 November 2019.

188 Mikołaj Hermann and Sebastian Sykuna (eds), *Wykładnia prawa. Tradycje i perspektywy* (C.H. Beck 2016).

189 Marcin Matczak, *Summa iniuria. O błędzie formalizmu w stosowaniu prawa* (WN Scholar 2007).

who monitor the way they conduct their profession and provide additional education. As mentioned before, lay judges are rarely used.

Admission to legal studies is possible only based on the results of national examinations held at the end of secondary education at the premises of secondary schools. Universities do not organize entrance exams. The majority of law students – about 82 % – study at state universities.[190] In 2019, an average of 3.43 persons applied for one available college place.[191] Currently, 40,500 law students are enrolled at Polish universities.[192] The legal studies are uniform master's studies lasting five years (there is no division into bachelor's and master's studies).

Universities have a relatively wide autonomy. They determine the content of the curricula and decide on their internal organization. They also conduct personnel policy by announcing competitions for vacancies. External experts provide evaluation of the education at universities. This evaluation takes place cyclically – once every few years. Each field of study, including legal studies, is subject to the assessment of the Polish Accreditation Commission (*Polska Komisja Akredytacyjna*). This institution operates on similar principles as accreditation institutions in other countries.[193] Polish universities are also members of international or EU organizations dedicated to the quality of education (e.g. EUCEN).

The main purpose of education in law faculties is to combine theory and practice. Students are prepared for independent professional activities and for active participation in the development of legal culture. Many assessments and teaching activities are dedicated to case studies. Students are required not only to know central Acts of legislation, but also to interpret them and combine legal knowledge with knowledge in the field of economics, politics, sociology and psychology. In most study programmes, around 50 % to 70 % of all subjects are compulsory, including logic, philosophy, Roman law, international law and EU legislation.[194] Constitutional, criminal, civil, financial, commercial and labour law are also compulsory.[195] Elective courses concern narrow branches of law or are very specialized. Increased importance is attached to shaping law students' ethical attitude. They become familiar with the ethics of individual legal professions and general

190 Data published by the Central Statistical Office (*Główny Urząd Statystyczny*): https://stat.gov.pl/obszary-tematyczne/edukacja/edukacja/szkoly-wyzsze-i-ich-finanse-w-2018-roku,2,15.html accessed 6 November 2019.

191 See https://www.rp.pl/Rankingi/306179997-Ranking-Wydzialow-Prawa-2019, data from the Information Processing Center of the National Research Institute (*Ośrodek Przetwarzania Informacji Państwowego Instytutu Badawczego*), accessed 6 November 2019.

192 See n 190.

193 More: Act of 20 July 2018 – Law on Higher Education and Science (Dz. U. 2018, 1668, as amended); Statute of the Polish Accreditation Commission; Annex to Resolution No. 4/2018 of the Polish Accreditation Commission of 13 December 2018 (consolidated text including changes introduced by the resolution of the Polish Accreditation Commission of 18 February 2019 No. 1/2019).

194 Cf. e.g. the programme of legal studies at the Jagiellonian University: https://wpia.uj.edu.pl/prawo/program-i-plan-studiow; at the University of Warsaw: http://strony.wpia.uw.edu.pl/zarzadzeniauchwaly/files/2017/02/Zal_1.pdf; and at the University of Gdańsk: https://prawo.ug.edu.pl/jesli_studiujesz/studenci/programy_studiow/program_studiow_-_prawo. All links accessed 6 November 2019.

195 Ibid.

principles, e.g., the CCBE Code of Conduct. Currently many universities particularly emphasize the role of the Constitution and its interpretation.

The legal education can be continued with an apprenticeship (*aplikacja*) that prepares law graduates for specific legal professions. Admission to the apprenticeship as well as its termination requires passing an additional state exam and passing this exam is difficult. There are usually about 8.5 persons who apply for one place at the judicial and prosecutor's apprenticeship (the number of places is determined in advance). In 2019, the success rate of examinations for other apprenticeships was as follows: 55 % for attorneys-at-law, advocates and notaries, and 29 % for bailiffs.[196] Apprenticeships for advocates, attorneys-at-law,[197] judges, and prosecutors last three years, for notaries 3.5 years, and for bailiffs two years. Completing the apprenticeship and passing the exams is necessary to practice as an advocate, attorney-at-law, notary, prosecutor, judge, or bailiff.

Legal corporations running their apprenticeships in centers located in many places in the country are in charge of the preparation to practice specific legal professions. An exception applies for education of judges and prosecutors. Common elements are entrance and final exams organized by the Ministry of Justice.[198] During the apprenticeships, theoretical knowledge is still required, but devoted to practical vocational training. The trainee remains under the supervision of his or her patron. Trainees are authorized to handle certain legal tasks already during apprenticeships.[199]

In Poland, advocates and attorneys-at-law provide legal services. Advocates may run their law firms themselves or with the participation of several advocates or with the participation of both advocates and attorneys-at-law. These law firms may operate in various legal forms – also as commercial law companies. State institutions or businesses are not allowed to employ advocates. Attorneys-at-law, who previously had a limited scope of competence compared to advocates,[200] can now plead in courts in any case, just like advocates do (civil, family law, criminal, and administrative law cases). What makes them different from advocates is that they are not restricted to conducting their business activity independently by running a law firm, but they may also be employed

196 See https://gov.pl/web/sprawiedliwosc/wstepne-wyniki-egzaminow-na-aplikacje-prawnicze-w-2019-r accessed 6 November 2019.

197 Up until October 2018, the official guideline was to translate *radca prawny* as a legal counsellor or legal adviser. Last year, however, the National Council of Legal Counsellors decided that this term does not reflect the scope of their competences and resolved that "attorney-at-law" will be more fitting, especially in light of the fact that there now exists a para-legal profession of legal adviser (*doradca prawny*, see below).

198 Act of 26 May 1982 Law on the Advocates' Profession (Dz. U 2019, 1513 as amended), Act of 6 July 1982 on Attorneys-at-Law (Dz. U. 2019, 730, as amended); Act of 23 January 2009 on the National School of the Judiciary and Prosecution Service (Dz. U. 2019, 1042); Act of 14 February 1991 Law on Notaries (Dz. U. 2019, 540 as amended); Act of 22 March 2018 on Court Bailiffs (Dz. U. 2019, 55 as amended).

199 For instance, after six months of apprenticeship, a trainee advocate may substitute an advocate at court, before organs of law enforcement, state authorities, self-government bodies and other institutions with the exception of the Supreme Court, Supreme Administrative Court, Constitutional Tribunal and Tribunal of State.

200 The existing division between advocates and attorneys-at-laws is currently deemed artificial and has mostly historical significance. In the 1960s, when Poland was a socialist country, legal counsellors (attorneys-at-law) were appointed to provide legal services to state enterprises, which was their domain until the end of the 1980s.

under a contract of employment in public institutions and private entities to provide legal services.

Notaries and bailiffs, on the other hand, have a complicated legal status. They also run their own firms and act as entrepreneurs by making a living from client fees, but at the same time they have the powers of public officials because they act on behalf of the state. This means that they are subordinate to both their own corporations and the supervision of Minister of Justice – Prosecutor General. In 2018, the government had significantly reduced the independence of bailiffs by thoroughly regulating this profession.[201]

A unique aspect regarding Poland is the career path of professional judges. The education of future judges is centralized and takes place in the National School of Judiciary and Public Prosecution (*Krajowa Szkoła Sądownictwa i Prokuratury*), which is a centralized institution responsible for the initial and continuous training of the judiciary and prosecution staff in Poland. Successfully passing the difficult exam gives the right to apply for a position of a judge, so the profession is open to candidates who have turned 29. The candidate does not need to have practical experience. This is different from many countries, where taking office as a judge is the crowning achievement of a legal career. The education in the judicial apprenticeship includes knowledge of EU case law and legislation. Those who wants to become a judge have to apply for an assessor position (trainee judge). Assessors perform the duties of a judge and have nearly the same competences.[202] After three years, they can apply for promotion to judge. The application requires that their work is evaluated positively. In voivodship administrative courts, two years of experience as a trainee judge is sufficient; however, an age limit (over 30 years) and several years of experience in one of the legal professions is required to become a trainee judge of a voivodship administrative court.[203] If their work is assessed positively, the trainee judge is appointed a judge by the President of the Republic of Poland.[204]

The institution of trainee judges is controversial. The main objection is that they are not truly independent, because they are not only supervised by other judges but also assessed by the National Council of Judiciary, which is partly controlled by politicians, including the Minister of Justice. Due to these concerns, the institution of a trainee judge was removed from the Polish legal system for several years;[205] however, it was restored in 2017. Trainee judges now represent less than 7 % of the total number of judges, but this figure will soon increase to around 10 %.[206]

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201 See n 198.

202 Their competences do not only cover cases involving decisions on pre-trial detention and the handling of complaints against decisions not to open an investigation. Art. 2 § 1 of the Act of 27 July 2001 on the organizational structure of common courts; Dz.U. 2019, 52, as amended.

203 Art. 6 § 1 and Art. 6a § 1 LSAC.

204 Ibid Art. 106xa § 1-2.

205 After the judgment of the Constitutional Tribunal of 24 October 2007, which came into effect on 5 May 2009.

206 Own calculations based on announcements of the President of the Republic of Poland, see https://prezydent.pl/aktualnosc/nominacje accessed 6 November 2019.

The National Council of the Judiciary plays an important role in the appointment procedure. Before the reform of the judiciary in 2017, the Council came from elections held by judges themselves for the most part. Currently, it is elected by the Sejm by a simple majority of votes. As a result, the Council members are elected according to the will of the Prosecutor General – the Minister of Justice. Such a combination of competences in one person's hands raises objections and constitutional concerns. According to some representatives of the legal community and the European Commission, the current rules of electing the National Council of Judiciary violate the guarantees of the independence of judges, which is why this case was reviewed by the CJEU.[207] The CJEU found the Polish Supreme Court competent to assess this issue, at the same time providing interpretative guidelines. According the latest verdict of the Supreme Court, the Council in its current composition is not an impartial body, independent of the legislative and executive authorities.[208]

Judges and trainee judges, but also advocates, attorneys-at-law, notaries and bailiffs are subject to new rules on disciplinary liability which were introduced in 2018.[209] At that time, a new Disciplinary Chamber in the Supreme Court was established to act as a court of second instance and to rule on disciplinary matters concerning all persons practicing legal professions. Reformers claim that legal corporations have failed to properly perform control over the profession. The same was said about the internal control mechanisms for judges. Therefore, their competences had to be limited and transferred to the new institution. According to some lawyers and the European Commission, the procedure of appointing judges in the Disciplinary Chamber of the Supreme Court, as well as the new rules on disciplinary proceedings, lack transparency and allow the informal influence of politicians on this procedure. The character of the Disciplinary Chamber was questioned by the CJEU as well.[210]

Another way to acquire the right to perform the legal professions of a judge, a prosecutor, an advocate and an attorney-at-law is by obtaining the academic degree of a habilitated doctor of law or the title of a professor of law.[211] The two latter do not require an apprenticeship or passing the professional exams. Researchers with a PhD in legal science have the same privilege if they have previously performed some practical legal activities.[212] However, if the Doctor of Law has only scientific experience, he is exempt from legal apprenticeship, but he must pass a professional examination.[213]

Universities have the final decision on awarding a degree of doctor and habilitated doctor. However, a state institution, the Council of Scientific Excellence that consists of 141 members elected in nationwide secret elections by all scientists from various fields, including law, conducts the assessment procedure for habilitated doctors and law

207 The decision was issued on November 19, 2019. C-585/18, C 624/18 and 625/18.

208 Cf. Judgment of the Supreme Court of 5 December 2019, III PO 7/18.

209 Act of 8 December 2017 on the Supreme Court, Dz. U. 2019, 825, as amended.

210 See n 207.

211 E.g., Art. 25 para. 1 point 1 of the Act on Attorneys-at-Law.

212 E.g., ibid Art. 25 para. 1 point 5.

213 E.g., ibid Art. 25 para. 2.

professors. After the assessment of the candidate by the scientific council, the receipt of the highest academic title depends on the decision of the President of the Republic of Poland. Some presidents have refused to appoint certain candidates without justifying their decision. This issue was the subject of a legal dispute, which was settled by Polish courts. They considered that the President has a wide discretion.[214] He must reject appointing a person who has not received positive scientific reviews but may block the scientific promotion of a particular person for other reasons as well. This competence is regarded by some as a violation of the autonomy of the scientific community.

Alumni of faculties of law who graduated but did not complete any of the aforementioned apprenticeships or did not pass the final exam, may offer legal services as so-called legal advisers. This is a fairly new profession, which emerged following the Constitutional Tribunal's judgment issued on 26 November 2003. Here the Constitutional Tribunal stated that people with diplomas in law may conduct a private legal practice and that this may be justified by the interests of those social groups that cannot afford the highly-specialized services offered by advocates and attorneys-at-law.[215] Advisers may provide advice and draft letters; they can represent their clients in administrative proceedings (but not before administrative courts).[216]

Direct participation of citizens in the administration of justice does not have strong roots in the Constitution.[217] It only states that this matter is "provided for in a statute".[218] In Poland, lay judges co-judge in adjudication panels of first instance courts in a narrowly defined group of civil and criminal cases.[219] According to some scholars, the lack of lay judges in the judiciary has contributed to the low confidence in courts.[220]

Since 2019, certain procedures before the Supreme Court contain lay participation.[221] Before the last judiciary reform, the rule was that the most experienced judges and professors of law ruled in the Supreme Court. Now laymen participate (constituting a minority of the adjudicating panel) in disciplinary proceedings conducted against judges and representatives of other legal professions by the Disciplinary Chamber of the

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214 *Per analogiam* to the inaction when appointing judges. Cf. Resolutions of the Supreme Administrative Court of 7 December 2017 – I OSK 857/17 and I OSK 858/17, as well as the Constitutional Tribunal's judgment of 5 June 2012, K 18/09.

215 Judgment of the Constitutional Tribunal of 22 November 2016, SK 22/02.

216 For other competencies see: Art. 87 para. 1 and Art. 87 para. 3,4,5,6 of the CCP.

217 Art. 182 of the Constitution.

218 Art. 182 of the Constitution.

219 In civil cases, lay judges are present e.g. in some labour law cases and cases involving damages in case of mobbing, as well as in some family law cases, including divorce and separation. In criminal cases, adjudicating panels with lay judges adjudicate in cases involving accusation of a felony, i.e., acts punishable by more than three years' imprisonment. Cf. Art. 7. § 2 of the PC. List of cases heard with the participation of lay judges cf. Rycak (ed) (2011) (n 42) 6 ff.

220 See e.g. Wojciech Zalewski, 'Why do people need courts? Adjudicating in the times of the trust crisis' in Anna Machnikowska (ed), *The Legitimation of Judicial Power* (Wyd. UG 2016) 213 ff.; Ryszard A. Stefański, 'Składy sądu w postępowaniu karnym' in Jolanta Jakubowska-Hara, Celina Nowak and Jan Skupiński (eds), *Reforma prawa karnego, propozycje i komentarze. Księga pamiątkowa Profesor Barbary Kunickiej-Michaskiej* (Scholar 2008) 435.

221 Act of 8 December 2017 on the Supreme Court.

Supreme Court,[222] and in considering a new legal remedy – the so-called extraordinary complaint.

In the explanatory note to this amendment, the reformers claimed that the new institution would help to remove unfair judgments. Ordinary citizens represented by lay judges would be a necessary precondition for that.[223] The reform was promoted under the slogan of democratization of the judiciary.[224] According to the official government policy, lawyers and their self-governments have become an elite that does not serve the general public.

In practice, however, the new regulations have not transferred significant power to the public. The actual purpose of the changes in the court system was to limit the independence of courts and judges. Particularly problematic is that the new competences were not transferred directly to citizens, but allowed politicians, including the Minister of Justice – the Prosecutor General to increase political influence. This critical opinion was shared by the vast majority of the representatives of the legal and scientific community, including Prof. E. Łętowska, F. Zoll, J. Zajadło, L. Garlicki, M. Matczak, R. Piotrowski,[225] as well as by deans and councils of many law faculties.[226]

To conclude, the degree of professionalisation in the Polish legal culture is high, even though there are some minor exceptions, concerning, among other things, legal advisors and lay judge participation in courts. Current political and legal changes are unlikely to change that. Even if the outcome is still open, these changes have triggered a discussion on the relationship between legal culture, principles of professional education of lawyers and the political status of courts and legal actors. Some of these reforms became the subject of CJEU rulings in 2019 and might even influence the European legal culture if they serve as role model for reforms in other countries.

7. Internationalisation

7.1 Dualistic or monistic approach?

As mentioned in the introduction, the Polish legal culture developed for centuries under the influence of foreign laws. Attempting to create the necessary legal terminology for a

222 Ibid Art. 59 § 1.

223 Cf. Paper no. 2003, Draft Act on the Supreme Court presented by the President of the Republic of Poland; paper no. 2071, Report of the Justice and Human Rights Committee on the draft law on the Supreme Court presented by the President of the Republic of Poland; paper no. 2071-A, Additional report of the Justice and Human Rights Committee on the draft law on the Supreme Court presented by the President of the Republic of Poland.

224 Ibid.

225 Including statements in the media by Prof. E. Łętowska, Prof. F. Zoll, Prof. J. Zajadło and Prof. M. Matczak (an interview for the online edition of *Die Welt* of 10 July 2019). More: Granat (2019) (n 61) 400–405, 422–425; Ryszard Piotrowski, 'The issue of the legitimation of the judicial power in a democratic state ruled by law', and Grzegorz Ławnikowicz, 'Judicial ethics in the time of the systemic transformation', both in Anna Machnikowska (ed), *The Legitimation of Judicial Power* (Wyd. UG 2016) 11–30, 85–102; Machnikowska (2018) (n 133).

226 Cf. Interview with Prof. J. Pisuliński: https://www.prawo.pl/prawnicy-sady/prof-pisulinski-po-skardze-nadzwyczajnej-niepewnosc-prawa,75048.html accessed 6 November 2019.

modern nation in the 19th century, Polish legal scholars and the legislator were inspired by the conceptual frameworks of France and Germany. In the first years of the new Millennium, new sources of inspiration were more international and supranational, particularly EU-law.

In terms of the relationship between international law and national law in Poland, some scholars have indicated that, "the dualistic approach, [although] in a less orthodox and more moderate manner, still better reflects the relationship between the international law and national law" in Poland.[227] Consequently, not all norms of international law become automatically part of the domestic legal order; however, the norms contained in ratified international agreements are a part. Hence the classic, Heinrich Triepel's dualism,[228] which does not assume points of contact and even excludes a collision of national and international law, does not reflect the state of affairs. On the other hand, it would be difficult to say that the Polish Constitution affirms pure monism. Nevertheless, it considerably incorporates international legal norms as directly applicable.

The opening up of the Polish legal system to international law has expressly been embraced in the Constitution of the Republic of Poland. In the very first chapter, in Art. 9, we find one of the principles of fundamental significance (a metarule) for the relationship between national and international law: "The Republic of Poland shall respect international law binding upon it".[229] Of all the constitutional provisions concerning international law, this is one of the most significant. The applied formula is broader than the principle of *pacta sunt servanda*, since this provision addresses all the sources of international law, not only international treaties but also generally recognized principles of international law and international customary law.[230] Thus, the constitutional legislator consciously decided that the system of law governing the territory of the Republic of Poland will comprise components of different origins. National and international law are supposed to coexist, based on mutually amiable interpretation and cooperation.[231] Accordingly, such a system can be called multicentric.[232]

In terms of international treaties, one can group them into three categories: treaties which are signed by competent bodies of the executive branch, treaties that have to be

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227 Andrzej Wasilkowski, 'Prawo krajowe – prawo wspólnotowe – prawo międzynarodowe. Zagadnienia wstępne' in Maria Kruk (ed), *Prawo międzynarodowe i wspólnotowe w wewnętrznym porządku prawnym* (Wydawnictwo Sejmowe 1997) 15.

228 Heinrich Triepel, *Völkerrecht und Landesrecht* (Verlag von C.L. Hirschfeld 1899).

229 Official translation of the Polish Constitution. See https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm.

230 Jan Boć (ed), *Konstytucje Rzeczpospolitej oraz komentarz do Konstytucji RP z 1997 roku* (Kolonia Limited 1998) 157. Cf. Renata Szafarz, 'Międzynarodowy porządek prawny i jego odbicie w polskim prawie konstytucyjnym' in Maria Kruk (ed), *Prawo międzynarodowe i wspólnotowe w wewnętrznym porządku prawnym* (Wydawnictwo Sejmowe 1997) 19 and 24; Krzysztof Wójtowicz, 'Art. 9' in Marek Safjan and Leszek Bosek (eds), *Konstytucja RP. Komentarz* I (C.H. Beck 2016) 325; Małgorzata Masternak-Kubiak, *Umowa międzynarodowa w prawie konstytucyjnym* (PWN 1997) 200. Garlicki (2019) (n 78) 160.

231 Cf. Judgment of the Constitutional Tribunal of 11 May 2005, K 18/04.

232 Cf. Ewa Łętowska, 'Multicentryczność współczesnego systemu prawa i jej konsekwencje' (2005) 4 *Państwo i Prawo* 3–10.

ratified by the President[233] and those that have to be approved by Parliament before the President can ratify them. According to Chapter III of the Constitution, a so called approving act is only required for exactly specified types of international treaties, such as e.g. the North Atlantic Treaty.[234] The Constitution thus provides rules regulating the incorporation of international law and grants the Parliament a right to participate in the decision-making process concerning the scope of the international obligations of the State. The Constitution requires even stricter procedures before ratification when sovereign competences shall be transferred by virtue of international treaty. The leading example is the Treaty of Accession of Poland to the EU (16 April 2003, Athens). Passing such an approving act requires a qualified majority vote in both chambers of Parliament[235] or nationwide referendum. Upon ratification and publication of a treaty,[236] and under this very condition,[237] the provisions of the treaty become directly binding law. There is, therefore, a strong implication towards the monistic approach.

The division into ratified and non-ratified treaties is crucial because it determines the legal effectiveness of treaties in the domestic legal order. Although a non-ratified treaty cannot confer rights to individuals or impose obligations on them, it obviously binds the state in external relations, and it falls within the scope of Art. 9 of the Polish Constitution and sometimes – depending on its subject matter – requires implementation in national law.[238]

All ratified international treaties may contain provisions that are the source of generally applicable law; such provisions are part of the domestic legal order and are directly applicable. However, their position in the legal system differs depending on the ratification procedure applied, i.e., whether or not they were approved by the Parliament.

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233 Art. 133 para. 1 point 1 of the Constitution.

234 Ibid Art. 89 para. 1. The approving act is required for treaties concerning: 1) peace, alliance, political pacts or military pacts; 2) civic freedoms, rights and obligations provided for in the Constitution; 3) membership of the Republic of Poland in an international organization; 4) major financial liabilities of the State; 5) matters governed by an act or for which the Constitution requires an act (Article 89 (1) of the Constitution). All the other international treaties do not require an approving act (however, the Sejm must be notified by the Prime Minister. Cf. Art. 89 para. 2).

235 Two-thirds in the presence of at least half of the statutory number of members of each chamber. Cf. Art. 90 para. 2 of the Constitution.

236 Cf. Judgment of the Constitutional Tribunal of 19 December 2002, K 33/02.

237 Cf. Judgment of the Constitutional Tribunal of 3 December 2009, K 8/09.

238 Anna Wyrozumska, *Umowy międzynarodowe: teoria i praktyka* (Wyd. PiPG 2006) 601; Małgorzata Masternak-Kubiak, *Przestrzeganie prawa międzynarodowego w świetle Konstytucji Rzeczypospolitej Polskiej* (Wolters Kluwer 2003) 203. Cf. also judgment of the Constitutional Tribunal of 19 December 2002, K 33/02. One of the methods of implementing the provisions of non-ratified treaties is the reference contained in the Constitution or in an Act of Parliament. E.g., the Supreme Administrative Court in a judgment of 26 August 1999 (V SA 708/99) granted the rights arising from the Geneva Convention of 28 July 1951 regarding refugee status (which, according to the Supreme Administrative Court, is a non-ratified treaty, however still binding upon Poland), the rank of constitutional rights, due to the reference to binding international treaties included in Art. 56 para. 2 of the Polish Constitution. According to Małgorzata Masternak-Kubiak, these norms should be directly applied in the internal legal circulation and do not require any additional (transforming) actions, see *Odesłania do prawa międzynarodowego w Konstytucji RP* (PiEBC 2013) 163.

Treaties ratified based on a consent expressed in an approving act have, by virtue of the Constitution, precedence over national Acts.[239]

The Constitution lacks explicit provisions determining the place of treaties ratified without a prior approving act. Legal scholars assume that such treaties can neither be superior to an Act of Parliament, nor have force equal to such an Act.[240] If such a treaty, based exclusively on the approval by the executive branch, had the force equal to an Act, it could amend or even abolish provisions of earlier Acts.[241] This would be regarded a violation of the Constitution's principle of separation of powers. Thus, treaties ratified without a prior approving act may, on the one hand, constitute a source of generally applicable law but, on the other hand, they are considered to be of lower rank than Acts of Parliament.[242]

7.2 Poland and the EU

Poland, being a Member State of the European Union since 2004, is bound by the same principles for applying EU law as all the other Member States: direct effect of EU law in the Member States, the primacy of EU law over domestic law in case of a conflict of norms and the obligation to contribute to interpret national law in accordance to EU law. Furthermore, Art. 91 para. 1 and 2 of the Polish Constitution states that EU treaties constitute part of the domestic legal order, are directly applicable (if possible), and have precedence over Acts of Parliament (and other sources of domestic law). In terms of the secondary law, Art. 91 para. 3 explicitly states that if this ensues from a treaty constituting an international organization ratified by the Republic of Poland, then the law established by it is applied directly, taking precedence in the case of conflict of laws.[243] In practice, there are no doubts in case of regulations, since they apply directly and constitute an independent legal basis for administrative and court decisions.[244] The question is rather what happens if the Polish government or Parliament does not or incorrectly implements a directive. If the deadline for implementing the directive has expired, and the legal norm can be precisely and unconditionally identified, this norm can be invoked by citizens against the state as failing to implement the directive correctly.[245] Detailed analysis of these issues, however, is beyond of the purpose of this section.

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239 Art. 91 para. 2 of the Constitution. Cf. also Judgment of the Constitutional Tribunal of 4 March 2008, SK 3/07.

240 *A contrario* to Art. 91 para. 2. Cf. Garlicki (2019) (n 78) 164. Bogusław Banaszak, *Prawo konstytucyjne* (C.H. Beck 2004) 146. Cf. Art. 188 para. 2–3 of the Constitution.

241 Garlicki (2019) (n 78) 164.

242 Ibid.

243 Cf. e.g. judgments of ECJ in Case 14/83 *Von Colson and Kamann* [1984] ECR 1891; and Case C-106/89 *Marleasing* [1990] ECR I–4135 as well.

244 Cf. Judgment of the Constitutional Tribunal of 10 February 2015, SK 50/13.

245 Cf. e.g. ECJ judgments in the following cases: Case C-8/81 *Becker vs. Finanzamt Munster-Innenstadt* [1982] ECR 53; Case C-102/79 *European Commission v. Belgium* [1980] ECR 1473; Case C-41/74 *Van Duyn* [1974] ECR 1337; Case C-6/90 and C-9/90 *Francovich and others* [1991] ECR I-5357.

7.3 Principles of international law and international customary law

Insofar as international treaties are broadly discussed in the Polish Constitution, other sources of international law are not treated expressly, although the abovementioned Art. 9 of the Constitution explicitly states that the Republic of Poland observes the international law that is binding upon it. This metarule should be applied to all the sources of international law, not only international treaties but also generally recognized principles of international law and international customary law.[246] As L. Garlicki states, this does not *per se* include these norms in the domestic legal order, since the Polish Constitution provides for the inclusion of only some types of international treaties.[247] According to W. Sokolewicz, the rule expressed in Art. 9 has, however, a higher place in the internal hierarchy of constitutional norms and principles than the provisions of Chapter III – *Sources of Law*.[248] Consequently, one could assume that a judge, who is subject to the Constitution,[249] could apply Art. 9, if he/she states that Poland is bound by a specific norm of customary international law.[250] Furthermore, as B. Banaszak emphasised, generally recognized principles of international law and international customary law should have precedence over Act of Parliament, even if the Constitution lacks explicit provisions determining the place.[251]

From this provision follows also a duty to interpret the provisions of all Polish law as far as possible in accordance with Poland's international obligations.[252]

The binding force of judgments of the European Court of Human Rights in Strasbourg is also recognised in Polish law. The Helsinki Foundation for Human Rights has repeatedly pointed out backlogs concerning the implementation of the Courts rul-

246 See n 230.

247 Garlicki (2019) (n 78) 161.

248 Cf. Wojciech Sokolewicz, 'Artykuł 235' in Leszek Garlicki (ed), *Konstytucja Rzeczypospolitej Polskiej. Komentarz* II (Wyd. Sejmowe 2001) 16.

249 Art. 178 of the Constitution.

250 Anna Wyrozumska, 'Prawo międzynarodowe oraz prawo Unii Europejskiej a konstytucyjny system źródeł prawa' in Krzysztof Wójtowicz (ed), *Otwarcie Konstytucji RP na prawo międzynarodowe i procesy integracyjne* (Wyd. Sejmowe 2006) 39. Cf. resolution of the Supreme Court of 11 January 2000 (I PKN 562/99).

251 Banaszak (2004) (n 240) 149–150.

252 As it was emphasized in the opinion of the Advisory Legal Committee to the Minister of Foreign Affairs of 21 May 1999, resolutions of international organizations, after having met all the procedures required to obtain binding force in relation to the Republic of Poland, may be considered binding upon authorities of the Republic of Poland not only on the basis of effect of an international legal action, but also pursuant to Art. 9 of the Constitution of 1997. Private opinion cited after Andrzej Wasilkowski, 'Przestrzeganie prawa międzynarodowego (art. 9 Konstytucji RP)' in Krzysztof Wójtowicz (ed), *Otwarcie Konstytucji RP na prawo międzynarodowe i procesy integracyjne* (Wyd. Sejmowe 2006) 16. Cf. Wójtowicz (2016) (n 230) 332. In a judgment of 16 November 2011 (SK 45/09), the Constitutional Tribunal clearly emphasized that although the Constitution of the Republic of Poland has been clearly guaranteed the status of the highest law of the Republic of Poland, this regulation is accompanied by the "order to respect and favorable attitude towards properly shaped and binding regulations of international law in the territory of the Republic of Poland (Article 9 of the Constitution)." Cf. Also: Ewa Łętowska, 'A my w Krakowie wiemy swoje…' *Polityka* 23 May 1998; Andrzej Bałaban, 'Czy sędzia podlega umowie międzynarodowej', *Rzeczpospolita* 1 June 1998.

ings.[253] However in the last 19 years, e.g. the penal and civil procedure was amended several times, in order to comply with the ECtHR's interpretation of the ECHR.

7.4 Impact of Globalisation

Globalization has also impacted the Polish legal culture. For example, optional instruments devised by expert groups, such as the Principles of European Contract Law (PECL) or Principles of European Insurance Contract Law (PEICL) may be applied if the parties to the contract so choose. In respect of the latter, however, some legal scholars assume that they can serve as a point of reference for the reforms of the Civil Code.[254] INCOTERMS, created by the International Chamber of Commerce (ICC) in Paris, play a special role in relationships between entrepreneurs.[255] Direct references to INCOTERMS are contained in many different legal acts.[256] Also ordinary and administrative courts and the Superior Court invoke them.[257] FIDIC (Fr. *Fédération Internationale des Ingénieurs-Conseils*) standards are becoming increasingly popular and are used both in the public and private sectors. FIDIC contractual terms are used in Poland by way of incorporation into individual contracts. They are applied by public ordering parties in the system of public tenders, by international parties and financing banks, in highway investments, in contracts signed by the General Directorate for National Roads and Motorways, and in infrastructure projects financed by international institutions.[258] The national legal culture has consequently been impacted by and has to handle challenges of legal pluralism.

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253 E.g. in a letter to the Speaker of the Sejm dated 20 January 2012.

254 Ewa Łętowska, 'Prawo zobowiązań a system prawa' in Ewa Łętowska (ed), *Prawo zobowiązań – część ogólna* (C.H. Beck 2006) 68–70; Dariusz Fuchs, 'Insurance Restatement jako europejski instrument opcjonalny służący regulacji umowy ubezpieczenia' (2010) Nr. 9 (2) *Rozprawy Ubezpieczeniowe* 126; Dariusz Fuchs, 'Nowelizacja kodeksu cywilnego w zakresie wybranych przepisów ogólnych o umowie ubezpieczenia w świetle przepisów ogólnych o umowie ubezpieczenia w świetle prac Project Group on a Restatement European Insurance Contract Law' (2007) 7–8 *Wiadomości Ubezpieczeniowe*.

255 It is established that they give rise to legal consequences stipulated in Art. 56 of the Civil Code, which states that "an act in law shall not only produce the consequences expressed in it but also those which result from, among others, established customs" and in Art. 65 of the CC: "§ 1. A declaration of intent shall be construed in such a manner as required by principles of community coexistence and established customs, with account of the circumstances in which it was made, § 2. When contracts are concerned, the concurrent intention of the parties and the purpose of the contract shall rather be examined than its literal wording."

256 Cf. Regulation of the Minister of Finance of 22 April 2004 on the detailed requirements that a customs declaration must satisfy (Dz. U. 2014, 94, 902); Ordinance of the Director General of State Forests no. 64 of 16 September 2015 on the rules applicable to the sale of timber at the State Forests National Forest Holding (B.I.LP. 2015, 10(274)).

257 Cf. Judgment of the Appellate Court in Szczecin of 23 December 2014 (I Aca 461/14); Judgment of the SC of 29 June 2010 (III CSK 255/09); Judgment of the Supreme Administrative Court of 22 June 2010 (I FSK 1114/09) and of 16 October 2014 (I GSK 1071/13); Judgment of the voivodship administrative court in Poznań of 30 July 2009 (I SA/Po 331/09); Judgment of the voivodship administrative court in Warsaw of 5 May 2009 (III SA/Wa 3448/08).

258 Janusz A. Strzępka and Wojciech Wyrzykowski, *'FIDIC* a umowa o roboty budowlane w Kodeksie cywilnym – wybrane problemy. Ogólna charakterystyka warunków kontraktowych *FIDIC'* in Joanna Kruczalak-Jankowska (ed), *Wpływ europeizacji prawa na instytucje prawa handlowego* (LexisNexis 2013) 402–411.

7.5 Mobilization of comparative law

Comparative law is recognised as an important field of law and has traditionally played an important role in Poland since the 19th century. The literature of the subject is permeated with references to doctrinal views, legal solutions and case law of other countries; currently it would be difficult to find an academic dissertation devoid of a comparative perspective.

Occasionally, the legislator applies such an approach. As an example, it may be pointed out that, as follows from the preparatory work to the 2016 tax ordinance, great emphasis was put on comparing legal mechanisms established in other countries.[259] Moreover, the Codification Commission of Maritime Law has analysed and used international case law besides regulations (mainly of the IMO and of the EU) and Polish judicial decisions. Direct references to these documents appear in preparatory works or opinions drafted by CCML members for the Commission's needs. The Maritime Policy of the Republic of Poland, adopted in 2015 by resolution 33/2015 of the Council of Ministers as a document providing guidelines for the Polish legislator concerning regulation of maritime law, contains references to the output of numerous global and regional organizations and forums.[260]

As regards Polish courts, the Constitutional Tribunal and the Supreme Courts traditionally refer to "external" examples frequently in their decisions. For example in its resolution of 20 July 2006, the Supreme Court analysed the position of the Irish High Court and of the Belgian Court of Cassation (the case concerned the European Arrest Warrant).[261] In its judgment of 2 June 2015, the Constitutional Tribunal found provisions of the 1991 Act on Labour Unions unconstitutional and incompliant with international agreements in respect of limiting freedom of association, based on a complaint submitted by the All Poland Alliance of Trade Unions, which invoked the opinion of the ILO Committee.[262] Another interesting example is the justification of the judgment issued by the Voivodeship Court in Łódź on 29 January 1997. The court invoked Protocol no. 6 to the European Convention on Human Rights, abolishing the death penalty in times of peace, which Poland had not ratified before 2000. Accordingly, comparative observations are sometimes utilised as an inspiration for both the legislator and the courts when developing the law.

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259 Cf: Edward Juchniewicz, 'Общие принципы противодействия уклонению от уплаты налогов на примере Польши' in Anna Drywa, Jolanta Gliniecka, Edward Juchniewicz and Tomasz Sowiński (eds), *Prawo finansowe wobec wyzwań XXI wieku* (CeDeWu 2015).

260 See https://mgm.gov.pl/wp-content/uploads/2016/01/Polityka-morska-Rzeczypospolitej-Polskiej_uchw._Nr_33_RM_z_17_03_2015.pdf accessed 6 November 2019.

261 I KZP 21/06, OSNKW 2006, 9, 77.

262 K 1/13.

8. Conclusions

The phenomenon that has been taking place since the majority of seats in Polish Parliament was won in the 2015 election by the PiS party and their coalition partners is called abused constitutionalism.[263] In contrast to abusive constitutionalism, which consists in making use of mechanisms of constitutional amendment to erode the democratic order[264], the former manifests itself in introducing fundamental constitutional changes under ordinary laws in the absence of respect for the Constitution and the values expressed in it.

Consequently, by introducing changes, which theoretically are supposed to occur only on the surface of a legal sea, the government aims to (and in fact it does) affect its deeper layers. A parliamentary majority obtained by the PiS party is not enough to change the Constitution, however it allows them to pass every Act. As a consequence, it led to a number of fundamental reforms, including the annihilation of the Constitutional Tribunal, the subordination of the prosecutor's office and the courts to the political control, and the limitation of the self-government competencies, attempt to subordinate non-governmental organizations to political control, transformation of the public media into government agency and the right of assembly limitations. On the night of March 28, 2020, under the guise of fighting the Covid-19 pandemic, unconstitutional changes in electoral law were passed as well. These reforms are accompanied by ignorance of the current Constitution or by selective and instrumental reference to it (constitutional nihilism).[265]

Constitutional nihilism may lead to legal chaos, the first symptoms of which are already being felt in Polish legal culture. Legal acts which do not comply with the constitutional provisions or values expressed therein are adopted. They are also questioned at the European level. As a result, chaos then affects the middle level of the legal sea, because it permeates the processes of law application and touches the unwritten general principles of law guiding the application of law by lawyers. Judgments based on the Constitution and those based on Acts omitting it are issued, so there is a possibility for courts to issue contradictory and unpredictable judgments. As a result, legal certainty and predictability are endangered.

When analyzing Polish legal culture, it is worth remembering that, as Grażyna Skąpska noted, the fundamental system changes we experienced at the end of the last century were not through a bloody revolution and not as a result of the implementation of the ideas of philosophers, but by dint of social movements, citizens' initiatives, as well as through the use of law. The so-called peaceful revolution, not only in Poland but also in other countries of Central and Eastern Europe, therefore often took the form of

263 Skąpska (2018) (n 91).

264 Such a change is made while remaining faithful to the formal procedures for amending the constitution, and on the basis of democratic legitimacy, i.e. the support of a sufficient part of the electorate (constitutional majority) and its representation in the parliament. More: David Landau, 'Abusive Constitutionalism' (2013) 47/1 *UC Davis Law Review* 189–260. Landau gives among others Hungarian example.

265 Skąpska (2018) (n 91) 287 ff.

a "legal revolution", which meant the use of existing law by major actors of change to carry out essentially revolutionary political changes.[266] For several decades, these values seemed to have taken root in Polish legal culture and formed the bottom of a legal sea. The result of constitutional nihilism, however, is also a new version of the negative constitutional consensus consisting in the withdrawal of part of society from participation in the public sphere, failure to act in defense of the constitution and the rule of law in exchange for measurable benefits that the ruling party dispenses.[267] Polish society is admittedly currently extremely polarized, and the PiS party was enough to support the victory in the parliamentary elections in 2015 with just over 18 % of the total electorate.[268] However, if a considerable part of society agrees to violate fundamental values, the question arises whether these values really became fundamental during the "legal revolution" carried out a few decades ago.

The contemporary Polish Legal Culture	
Institutional structure	
Conflict resolution	*Norm production*
Two hierarchies of courts: ordinary/military courts under the supervision of the Supreme Court and administrative courts with the Supreme Administrative Court on the top. Special position of the Constitutional Tribunal. Extra-judicial forms of conflict resolution on a very low level. High authority in fact of the judgments of the highest courts, but no theory of *stare decisis*.	Law-making on the state, regional and supranational level by the EU, local government and regional bodies of the central government or state legislator. Legislation is recognized as the only formal source of law, however it may lose its binding force after an Constitutional Tribunal judgment. Exposed factual, but not formal position of codes. In addition, many other legal acts and instruments as well. No special role for legal scholars. Marginal references to custom. No theory of legal precedent. Norm interpretation produced by the Supreme Administrative Court binding in administrative proceedings.

266 Ibid, 277.

267 Grażyna Skąpska, *From 'Civil Society' to 'Europe'. A Sociological Study on Constitutionalism after Communism* (Brill 2011) 76. In Poland the phenomenon of "exchange of elites" is taking place. In practice it means that prestigious and lucrative positions in state administration, public media, nationalized banks and state-owned companies are filled based on political rather than substantive criteria, often based on family connections. In particular, positions in the managing and supervisory boards of state-owned companies are important. They make it possible to transfer profits from these companies to enterprises important for the government, including social programmes, as well as propaganda activities that are to ensure the favor of the electorate. Skąpska (2018) (n 91) 289.

268 37,58 % with an election turnout of 50,92 %.

Intellectual structure			
Ideal of justice	*Legal method*	*Professionalisation*	*Internationalisation*
Predictability and legal certainty safeguarded by the system of positive law combined with the protection of individual freedom, protected by courts composed of professional judges, despite increasing decline in confidence in courts and law.	Predominant positivistic approach in its classical form. Judicial interpretation traditionally focused mainly on the wording of legal acts respecting the authority of the highest courts and their interpretation of legal norms. However, the presumption of constitutionality of statutory law is being challenged. Courts' interpretation influences on lawyers' actions and advices as majority of cases are resolved in courts. Concepts of academia gains significance only if courts refer to them.	High degree of professionalisation, with minor exceptions, concerning legal advisors and lay judges. Long path of legal education, the additional mandatory (with minor exceptions) apprenticeships required to practice and the system of central exams at different stages. Mandatory affiliation of lawyers to corporations. Low level of practical experience needed to become a judge. Recent strengthening of the influence of the Minister of Justice on the system of judiciary and professional responsibility of lawyers.	Traditionally high degree of internationalisation. Polish legal system is neither a pure dualist system nor a pure monist one. Positive approach to international law emphasized in the Constitution with sector monistic for international law that originates from ratified international treaties. One of the highest number of cases among the complaints submitted to ECtHR relative to population size from Poland indicating that fundamental rights protection by the national judiciary is perceived as insufficient.

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10. Appendix

Table 1 Number of cases in ordinary courts in Poland:[269]

TYPES OF CASES BY LAW AREAS AND TYPES OF COURTS	INCOMING				
	2014	2015	2016	2017	2018
TOTAL	**14 649 495**	**15 156 076**	**14 910 884**	**15 782 479**	**15 049 054**
CRIMINAL CASES	**2 793 577**	**2 749 558**	**2 537 287**	**2 458 013**	**2 321 762**
Appellate courts	34 741	33 965	32 063	34 736	37 629
Provincial courts	380 913	371 978	354 002	368 815	364 406
District courts	2 377 923	2 343 615	2 151 222	2 54 462	1 919 727
CIVIL CASES	**9 856 760**	**10 378 225**	**10 378 421**	**11 127 035**	**10 764 222**
Appellate courts	41 183	43 681	44 166	46 061	43 221
Provincial courts	329 009	331 320	349 788	350 215	350 614
District courts	9 486 568	10 003 224	9 984 467	10 730 759	10 370 387
LABOUR LAW CASES	**156 572**	**105 728**	**82 102**	**71 911**	**127 926**
Appellate courts	1 076	1 000	994	955	1 052
Provincial courts	16 247	15 026	13 635	11 997	11 586
District courts	139 249	89 702	67 473	58 959	115 288
SOCIAL SECURITY LAW CASES	**213 015**	**192 612**	**175 751**	**154 588**	**173 513**
Appellate courts	24 982	25 938	23 700	21 362	22 800
Provincial courts	146 867	124 636	117 083	100 302	118 500
District courts	38 166	42 038	34 968	32 924	32 213
COMMERCIAL CASES	**1 629 571**	**1 729 953**	**1 737 323**	**1 970 932**	**1 661 631**
Appellate courts	14 150	10 751	11 505	11 479	13 126
Provincial courts	59 868	59 405	65 571	67 963	70 963
District courts	1 551 754	1 657 179	1 657 690	1 890 363	1 576 506
Cases in CCPC*	3 617	2 409	2 327	938	843
Cases in CTDC**	182	209	230	189	193

269 This table was prepared based on the data published by the Ministry of Justice in the annual statistical reports from the years 2014–2018, available at https://isws.ms.gov.pl/pl/baza-statystyczna/ accessed 22 November 2019.

TYPES OF CASES BY LAW AREAS AND TYPES OF COURTS	RESOLVED				
	2014	2015	2016	2017	2018
TOTAL	**14 848 936**	**15 101 482**	**14 192 052**	**15 835 956**	**14 914 999**
CRIMINAL CASES	**2 804 323**	**2 748 222**	**2 581 724**	**2 465 111**	**2 319 524**
Appellate courts	34 473	34 100	32 310	34 448	36 745
Provincial courts	382 723	375 441	352 597	366 690	361 745
District courts	2 387 036	2 338 681	2 196 817	2 063 973	1 921 034
CIVIL CASES	**10 030 243**	**10 321 768**	**9 708 373**	**11 206 617**	**10 648 531**
Appellate courts	38 971	41 287	42 190	44 371	43 871
Provincial courts	322 668	333 658	341 591	339 473	331 793
District courts	9 668 604	9 946 823	9 324 592	10 822 773	10 272 867
LABOUR LAW CASES	**141 000**	**124 368**	**88 129**	**74 622**	**124 182**
Appellate courts	1 009	997	937	948	1 129
Provincial courts	16 085	15 241	13 871	12 146	11 275
District courts	123 906	108 130	73 321	61 528	111 778
SOCIAL SECURITY LAW CASES	**203 886**	**202 698**	**191 279**	**165 587**	**149 374**
Appellate courts	29 070	24 806	24 948	21 815	21 883
Provincial courts	138 505	141 140	127 493	108 309	96 082
District courts	36 311	36 752	38 838	35 463	31 409
COMMERCIAL CASES	**1 669 575**	**1 704 426**	**1 622 547**	**1 924 019**	**1 673 388**
Appellate courts	11 508	11 636	12 434	15 117	9 297
Provincial courts	57 406	58 185	63 011	66 895	65 713
District courts	1 569 103	1 631 374	1544 698	1 840 083	1 596 705
Cases in CCPC*	31 338	3 045	2 181	1 734	1 492
Cases in CTDC**	170	186	223	190	181

TYPES OF CASES BY LAW AREAS AND TYPES OF COURTS	PENDING				
	2014	2015	2016	2017	2018
TOTAL	**2 244 765**	**2 299 497**	**3 018 336**	**2 964 885**	**3 098 944**
CRIMINAL CASES	**440 706**	**441 929**	**397 502**	**390 407**	**392 650**
Appellate courts	2 814	2 677	2 430	2 718	3 602
Provincial courts	39 786	36 323	37 728	39 854	42 515
District courts	393 106	402 929	357 344	347 835	346 533
CIVIL CASES	**1 408 463**	**1 464 878**	**2 134 926**	**2 055 358**	**2 171 054**
Appellate courts	9 395	11 787	13 763	15 452	14 802
Provincial courts	130 747	128 349	136 545	147 291	166 112
District courts	1 268 321	1 324 742	1 984 618	1 892 615	1 990 140
LABOUR LAW CASES	**58 061**	**40 422**	**34 396**	**31 685**	**35 429**
Appellate courts	297	300	357	364	287
Provincial courts	4 151	3 936	3 701	3 552	3 863
District courts	54 613	36 186	30 338	27 769	31 279
SOCIAL SECURITY LAW CASES	**123 865**	**113 781**	**98 253**	**87 255**	**111 394**
Appellate courts	15 205	16 337	15 089	14 636	15 553
Provincial courts	87 145	70 642	60 232	52 226	74 644
District courts	21 515	26 802	22 932	20 393	21 197
COMMERCIAL CASES	**212 670**	**238 487**	**353 259**	**400 180**	**388 417**
Appellate courts	5 539	4 654	3 723	84	3 913
Provincial courts	21 541	22 761	25 321	26 390	31 640
District courts	182 504	208 599	321 589	371 877	351 672
Cases in CCPC*	3 031	2 395	2 541	1 745	1096
Cases in CTDC**	55	78	85	84	96

* Competition and Consumer Protection Court

** Community Trademark and Designs Court

Table 2 Duration of court proceedings before ordinary courts (in months):[270]

		2012		2013		2014		2015		2016		2017		2018	
I INSTANCE	**TYPES OF CASES**	**DC**	**PC**	**DC**	**PC**	**DC**	**PC**	**DC**	**PC**	**DC**	**PC**	**DC**	**PC**	**DC**	**PC**
	Criminal cases	3.3	9.2	3.3	9.5	3.4	9.8	3.5	10.3	3.6	8.8	3.3	7.6	3.4	7.7
	Civil cases	4.3	6.8	3.9	6.9	4.7	7.4	4.0	7.7	4.6	7.3	5.7	7.5	5.5	7.8
	Social security law cases	7.4	7.3	7.8	8.0	8.5	8.4	9.1	9.2	10.3	9.6	10.9	8.9	10.7	8.8
	Labour law cases	6.3	9.9	7.0	10.4	6.9	11.0	8.4	14.0	9.4	13.3	9.5	13.7	8.7	12.4
	Commercial cases	4.0	5.9	4.1	5.4	4.6	7.9	4.5	9.0	5.6	8.7	6.5	9.2	6.7	9.0
II INSTANCE		**PC**	**AC**	**PC**	**AC**	**PC**	**AC**	**PC**	**AC**	**PC**	**AC**	**PC**	**AC**	**PC**	**AC**
	Criminal cases	2.2	1.9	2.4	2.0	2.6	2.3	2.6	2.4	2.7	2.8	2.9	3.0	3.0	3.6
	Civil cases	3.0	3.5	3.8	4.3	4.0	5.1	4.2	6.6	4.9	8.1	4.8	9.5	5.2	10.5
	Social security law cases	2.9	6.0	3.1	7.3	3.4	9.0	3.9	9.9	5.0	9.9	4.1	11.1	4.2	11.2
	Labour law cases	2.7	4.7	3.4	4.5	3.8	5.1	4.1	7.4	5.5	8.0	3.9	8.3	3.9	10.3
	Commercial cases	2.8	4.4	3.5	5.0	3.7	5.9	3.6	7.7	4.9	9.1	4.6	10.4	5.6	10.4

Table 3 Number of judges in ordinary courts in the given years:[271]

Type of courts	**2012**	**2015**	**2018**
Appellate courts	497	495	426
Provincial courts	2714	2783	2515
District courts	6694	6658	6356

270 Data of the Statistical Information Management Department of the Ministry of Justice. DC – district courts; PC – provincial courts; AC – appellate courts.

271 Data of the Statistical Information Management Department of the Ministry of Justice.

Table 4 Caseload of the Constitutional Tribunal:[272]

Number of judgments		**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**
Norm review	A priori	4	5	0	5	1	2	2
	A posteriori: – abstract	42	34	44	50	46	48	40
	– concrete	3	9	15	13	15	20	19
Constitutional complaints	Total	168	184	200	181	195	210	224
	Accepted	5	18	25	26	27	28	50
Competence disputes		0	0	0	0	0	0	0
Political parties		0	0	1	0	0	1	0
Incapacity of the president to discharge the duties of office		0	0	0	0	0	0	0
Number of judgments		**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**
Norm review	A priori	3	1	0	1	8	4	3
	A posteriori: – abstract	51	50	44	44	38	33	37
	– concrete	26	34	40	53	60	46	39
Constitutional complaints	Total	220	294	309	405	321	351	358
	Accepted	53	59	57	64	49	30	36
Competence disputes		0	0	0	1[273]	1	0	0
Political parties		0	0	3	0	0	2	1
Incapacity of the president to discharge the duties of office		0	0	0	0	0	0	0
Number of judgments		**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**
Norm review	A priori	2	2	0	2	3	2	1
	A posteriori: – abstract	30	33	37	48	15	10	14
	– concrete	44	40	12	78	21	9	3
Constitutional complaints	Total	320	331	375	408	61	234	185
	Accepted	47	45	22	45	31	12	18
Competence disputes		0	0	0	0	0	1	0
Political parties		0	0	0	0	0	0	0
Incapacity of the president to discharge the duties of office		0	0	0	0	0	0	0

272 Prepared by Lech Garlicki on the basis of the *Informacja o istotnych problemach wynikających z działalności i orzecznictwa Trybunału Konstytucyjnego* [Information regarding significant problems resulting from the work and judgments of the Constitutional Tribunal"] reports, and for 2016, 2017, and 2018 on the basis of his own calculations. The *Informacja* report for 2016 was submitted to the Sejm with delay – on 21 February 2018, for 2017 – on 19 December 2018, and for 2018 it has not been submitted. Cf. Garlicki (2019) (n 78) 420–421. Ordinarily *Informacja* reports were published in the spring of the following calendar year.

273 The proceedings were discontinued – the Constitutional Tribunal refused to hear the case of a competence dispute.

Table 5 Complaints settled by voivodship administrative courts 2004–2018:[274]

YEAR	TOTAL NUMBER OF CASES TO RESOLVE (left from previous period + registered in given year)	NUMBER OF CASES RESOLVED (total)	CASES REMAINED FOR THE NEXT YEAR
2004	151,471	83,217	68,254
2005	131,163	87,383	43,780
2006	106,216	78,660	27,556
2007	86,184	66,942	19,242
2008	76,686	58,730	17,956
2009	77,058	59,500	17,558
2010	85,388	64,121	21,267
2011	91,118	69,281	21,837
2012	93,997	71,865	22,132
2013	103,766	75,696	28,070
2014	112,231	81,242	30,989
2015	114,520	81,353	33,167
2016	109,859	78,992	30,867
2017	103,293	77,567	25,726
2018	91,689	69,315	22,374

274 This table, as well as Table 5, 6 and 7, were prepared based on the data published by the Supreme Administrative Court in the annual reports presenting its activities and the activities of the voivodship administrative courts from the years 2004–2018, available at available at http://www.nsa.gov.pl/sprawozdania-roczne.php accessed 22 December 2019.

Table 6 Cassation appeals settled by the Supreme Administrative Court 2004–2018:

YEAR	TOTAL NUMBER OF CASES TO RESOLVE (left from previous period + registered in given year)	NUMBER OF CASES RESOLVED (total)	CASES REMAINED FOR THE NEXT YEAR
2004	6,167	2,918	3,249
2005	12,798	6,535	6,263
2006	16,700	8,788	7,912
2007	17,342	9,347	7,995
2008	18,114	9,389	8,725
2009	19,185	10,013	9,172
2010	20,848	10,922	9,926
2011	24,592	11,352	13,243
2012	28,260	12,276	15,984
2013	32,764	13,493	19,271
2014	37,058	14,994	22,064
2015	40,698	14,892	25,806
2016	44,653	16,829	27,824
2017	45,570	19,192	26,379
2018	46,608	18,959	27,649

Table 7 Rulings of the Supreme Administrative Court:

YEAR	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
TOTAL	1	14	12	19	18	38	18	20	23	27	19	17	16	20	9
FINANCIAL CHAMBER	1	7	4	5	3	20	6	8	10	9	9	9	9	12	5
COMMERCIAL CHAMBER	0	0	1	11	7	6	4	3	5	4	4	2	3	2	0
GENERAL ADMINISTRATIVE CHAMBER	0	7	7	3	8	11	8	8	8	14	6	6	4	6	4
FULL PANEL OF THE SUPREME ADMINISTRATIVE COURT	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0

Table 8 The number of mediations in administrative proceedings in 2004–2018:

YEAR	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
OPENED CASES	679	204	172	87	36	21	11	23	25	8	10	8	8	1	6
SETTLED CASES	170	117	66	17	16	3	2	8	4	5	4	1	0	0	1