Stuck in the Mud

Procedural Framework and Court Efficiency in Continental Systems

Jaroslaw Beldowski[*]

Kamil Jonski[**]

DRAFT VERSION – WORK IN PROGRES

Abstract: Comparative studies on procedural framework's impact on court efficiency typically focused on common law and civil law dichotomy as well as employed procedural complexity metrics similar to these provided by World Bank's "Doing Business" reports. However, since DB project has been launched in 2004, there is no empirical evidence that procedural streamlining - as measured by the report - can improve court efficiency. In this paper we argue that "procedural law efficiency" should be gauged using a different concept, namely the amount of judicial time needed to adjudicate a case under given procedural framework. Since this parameter directly shapes court efficiency (as it determines the number of judges required to handle given caseload during given time) it is conceptually straightforward and practically relevant. Four continental systems: Dutch, German, Polish and Swiss have been compared in this vein – using so called "weighted caseload" studies as a data source. Preliminary results shows that despite shared legal tradition and key principles (as described in existing studies), compared systems vary tremendously in terms of efficiency with Polish felony cases as the most striking example. This suggests that plentitude of small and often overlooked catches are quietly turning some systems inefficient. In consequence they lead to the substantial judicial time-wasting. Within policy recommendations we call for painstaking review of inefficient provisions/procedures and some internal benchmarking within the same legal tradition.

Keywords: procedural complexity, civil procedure, criminal procedure, court efficiency

Acknowledgments: This work would have never been completed without the help of: Daniela Winkler, Frans van Dijk and Frank van Tulder

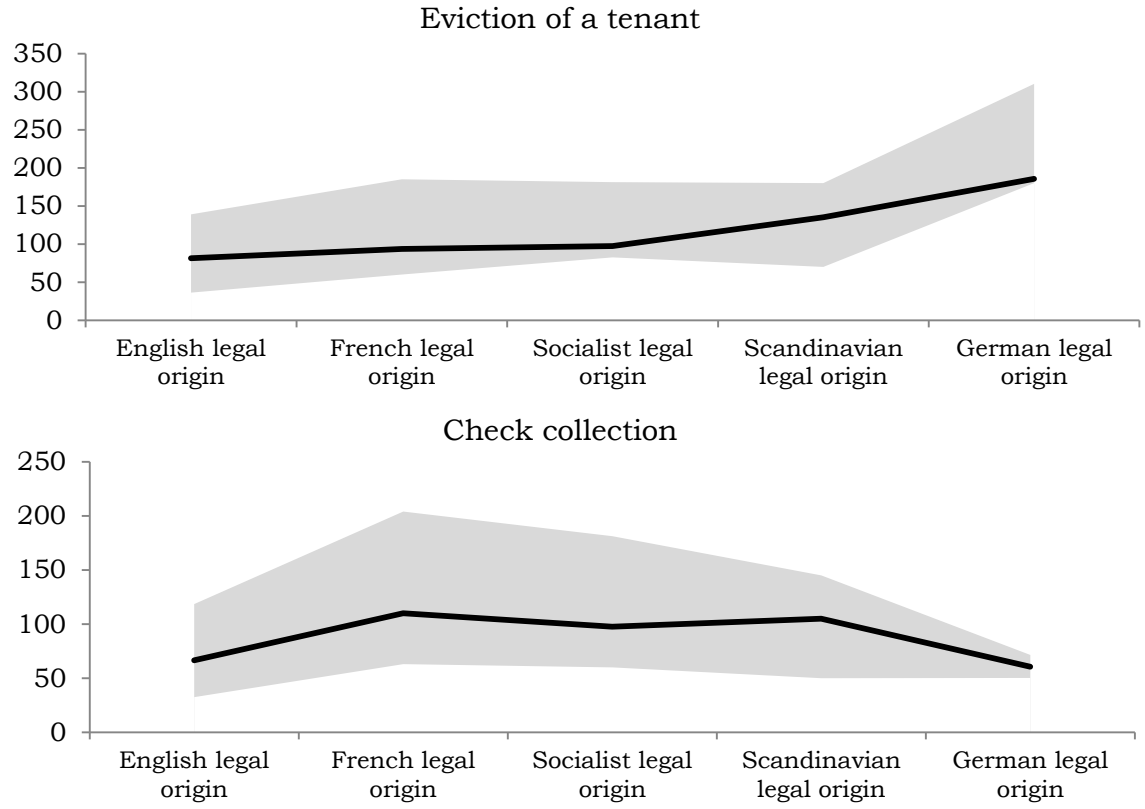
[*] Department of International Comparative Studies, Warsaw School of Economics, jbeldowski@yahoo.com

[**] The Institute Of Justice, kamil.jonski@iws.org.pl

I. Introduction

There is little doubt that procedural framework is one of the main determinants of court system efficiency. However, it seems that quantitative comparative studies in this area fail to deliver actionable policy advice. As the whole strand of literature – initiated by the seminal work of Djankov et al. (2002) – originated as an empirical test for so called *common law efficiency hypothesis*, it naturally drifted towards common law and civil law dichotomy. Thereby, substantial variance across civil law countries have been lost in the "means comparison". However, as demonstrated on the fig. 1, discrepancy within each legal family is noticeable.

Fig 1. Variance in duration of trial across legal families as measured by Djankov et al. (2002): median and 50% of typical observations (shaded).



Source: Own calculation based on Djankov et al. (2002) data

Moreover, World Bank's "*Doing Business*" indicator "*Enforcing Contracts*" – the offspring of Djankov's paper – despite bold promises, fails to deliver actionable policy advice. Subsequent editions of the report (until DB 2015) stresses procedural formalism (defined as the number of independent procedural actions required to enforce contract) as an important determinant of judicial inefficiency. It is no surprise though that reforms targeting that indicator are praised by the World Bank.[1] However, after over a decade, there is little evidence that such "procedural streamlining" can actually improve overall courts' performance.

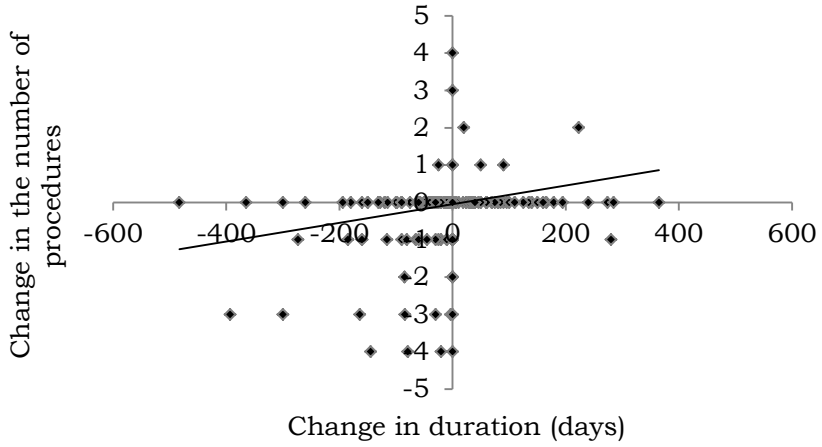
Data collected by "*Doing Business*" project reveals 11 episodes when procedural formalism increased. In 4 cases they were accompanied by increase in the duration of proceedings, in 6 cases duration remained unchanged and in one case it has decreased. Among 82 episodes when procedural formalism was reduced, in 56 cases duration remained unchanged, in 22 cases - decreased and in one case it has increased. It prompts an observation that the most likely outcome of DB driven procedural reform was disappointment which could be paradoxically sweetened by country's advance in the ranking[2].

Certainly such absence of evidence should not be interpreted as the proof that procedural framework is not shaping court system efficiency and performance. Far more straightforward explanation is that concepts and indicators employed in the abovementioned projects failed to accurately show the complex relation between them.

This paper attempts to move "*procedural formalism*" debate forward, introducing new gauge of procedural efficiency, namely typical amount of judicial time required to adjudicate case under given procedural framework.

[1] For example, one of the figures in DB 2004 was titled „*Procedural Complexity Means Delays*" and "*Simplifying Judicial Procedures*" was recommended as one of "*four types of reform* [that] *have proven successful in improving the efficiency of contract enforcement*".
[2] The fact, that World Bank itself abandoned "number of procedures" indicator after Independent Panel Review of the Doing Business report (2013) can be interpreted as unspoken admission of this fact.

Fig 2. Procedural reforms as recorded by Doing Business dataset and corresponding change in duration of proceedings.



Source: Own calculations based on Doing Business Historical data set

Unlike earlier indicators (like DB number of procedures) it is conceptually straightforward. In general it has some clear interpretation and paramount practical relevance as it directly links judicial productivity (and thus number of judges required to handle incoming cases) and aggregated performance (duration of proceeding and backlog). Thus, such new metrics was used to illustrate procedural efficiency differences between four continental jurisdictions: Germany, Netherlands, Poland and Switzerland. In order to capture these differences, so called "*weighted caseload*" studies have been utilized.

Since the focal point of this paper is the court system efficiency, it departs from the traditional way of depicting of procedural law by presentation of detailed analysis encompassing civil and commercial as well as criminal procedures. That enables better utilization of available data, given the low number of compared systems, and the infant stage of procedural frameworks efficiency assessments via "*weighted caseload*" data. For the same reason, presented analysis are descriptive and explorative in nature (statistical inferences are not meaningful).

Surprisingly, obtained preliminary results indicate that despite common legal origins and shared principles which are institutionalized in procedural laws, judicial systems vary tremendously in terms of time needed to adjudicate a case (and thereby judicial productivity). For example in Poland

which is strongly influenced by both German and French legal traditions the criminal judges are required to devote more efforts measured by time than in other compared judicial systems. This suggests that apart from legal origins, principles and general norms, which are typically analyzed in comparative studies, there are plentitude of small catches resulting in astonishing waste of judicial time. In fact it could be said that trial is simply stuck in the mud.

The rest of this paper is organized as follows: section 2 describes proposed indicator – judicial time required to handle a case – as well as its source – "*weighted caseload*" studies. Section 3 briefly depicts compared countries. Section 4 presents obtained results. Section 5 concludes and draws policy recommendations.

I. "*Weighted caseload*" studies as a source of comparative information

"*Weighted caseload*" methodology is a procedure applied by the courts' system managers to transfer court *caseload* (raw number of cases) into *workload* (amount of time it will take to dispose that caseload) which in turn is used to determine judicial staffing needs (Flango, Ostrom, 1996).

Although this methodology has been developed and popularized in the USA since sixties in the last century, it recently proliferated into some continental systems. Dutch "*Lamicie-model*" and German "*PEBB§Y-system*" are among the most successful examples (Lienhard, Kettiger, 2011).

"Weighted caseload" study begin with delimitation of different types of cases – in line with differences in amount of work associated with their varying complexity. Then – typically via field data collection[3] – time study is carried out in order to assign weights to different types of cases.

Due to some practical reasons, the data gathering process might follow different techniques. For instance it could track sample of cases from start to

[3] Delphi methods were also employed, see Ostrom et al. (2000).

finish or alternatively to record time spent on specific case events,[4] e.g. pretrial, trial, post-trial (Tallarico S. et al., 2007). Regardless of the design of fieldwork, obtained case weights are usually expressed in time units (minutes or hours) and have clear and intuitive interpretation, namely the typical amount of judicial time required to handle given type of case. This in turn leads to the estimate of the required judicial staffing.

From the quantitative comparative law perspective, that makes "*case weights*" calculated in different jurisdictions extremely valuable source of information. Unlike average durations of cases which could be affected by courts organizational practices such as so-called a concentrated trial (day by day as in the USA) or more "piecemeal" proceedings (series of hearings separated by long period of awaiting) – "*case weights*" distill all judicial activities required by law to adjudicate a case into a single number.

Thus, some comparison between systems belonging to the same legal family (and sharing common set of principles governing the trial) might uncover the extent to which small (and typically overlooked in existing literature) differences in procedural framework determines substantial discrepancy in court efficiency. From the court efficiency perspective, the following "procedural law efficiency" proposition can be formulated: assuming that two comparable procedural frameworks "*designed to accomplish the basic tasks of finding the relevant law and applying it in an efficient and fair manner to the actual facts underlying the dispute*" (Bussani, Mattei, 2012, p. 210) differ substantially in terms of the amount of judicial time needed to adjudicate a case – while offering identical level of fairness – the one requiring more judicial time is inefficient.

[4] Which enables data collection to be shorter than average duration of the case – case weight is recalculated on the basis of typical duration and frequency of recorded events.

II. Compared procedural frameworks

III. 1. Quality of judicial systems

In line with "procedural law efficiency" proposition stated above, the departure point for further comparisons should be the level of fairness provided by each analyzed system. Unfortunately, the very concept of fairness is too ethereal to be directly measured and compared.

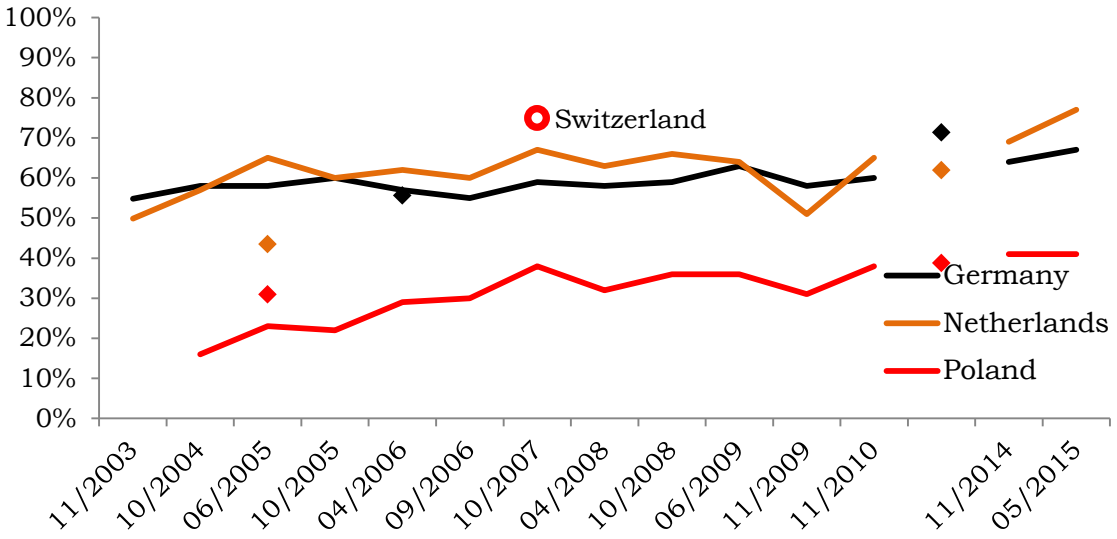
From the normative point of view, all compared systems: Germany, Netherlands, Poland and Switzerland belong to the community of developed countries committed to the liberal democracy and the rule of law. All of them are bounded by the European Convention on Human Rights – with its standard of fair trial (article 6) – and subjected themselves to the jurisdiction of the European Court of Human Rights. Except Switzerland, they all belong to the European Union (Poland joined in 2004).

Among empirical proxies of "fairness", level of trust in court system is one of the most popular (see e.g. Hough, Maffei, 2013). All compared countries except Poland are characterized by high level of trust in institutions – including court system. Figure 3 presents shares of respondents who have confidence in court system – as measured by Eurobarometer.[5] Since Eurobarometer does not encompass Switzerland, corresponding data from the World Values Survey[6] were superimposed (regrettably Switzerland have been covered only by 6th wave of WVS).

[5] Question wording: "*I would like to ask you a question about how much trust you have in certain institutions. For each of the following institutions, please tell me if you tend to trust it or tend not to trust it? Justice/ the (NATIONALITY) legal system*".

[6] Question wording: "*I am going to name a number of organizations. For each one, could you tell me how much confidence you have in them: is it a great deal of confidence, quite a lot of confidence, not very much confidence or none at all? The courts*". Answers "A great deal" and "Quite a lot" was aggregated as "Tend to trust", while "None at all" and "Not very much" as "Tend not to trust".

Fig 3. Share of respondents who have confidence in court system [Eurobarometer – lines; WVS – markers]



Source: Eurobarometer (line), World Values Survey (markers)

To broaden the scope of evaluation, the World Justice Project Rule of Law Index[7] have been employed. This index builds upon households and expert surveys[8] to assess the level of the rule of law in different areas (it is much more detailed than competing metrics like World Bank's "*Worldwide Governance Indicators*").

Tab. 1.WJP Rule of Law Index scores for compared countries

	Germany	Netherlands	Poland
Factor 7: Civil Justice	0,82	0,86	0,65
7.1 People have access to affordable civil justice	0,68	0,72	0,60
7.2 Civil justice is free of discrimination	0,83	0,92	0,77
7.3 Civil justice is free of corruption	0,89	0,95	0,79
7.4 Civil justice is free of improper government influence	0,88	0,92	0,77
7.5 Civil justice is not subject to unreasonable delays	0,75	0,76	0,35
7.6. Civil justice is effectively enforced	0,88	0,90	0,58
7.7 ADRs are accessible, impartial, and effective	0,87	0,84	0,72
Factor 8: Criminal Justice	0,76	0,75	0,74
8.1 Criminal investigation system is effective	0,58	0,50	0,79

[7] http://worldjusticeproject.org/
[8] See details on the Index construction:
http://worldjusticeproject.org/sites/default/files/roli_tov.pdf

8.2 Criminal adjudication system is timely and effective	0,69	0,65	0,64
8.3 Correctional system is effective in reducing criminal behavior	0,80	0,79	0,66
8.4 Criminal system is free of discrimination	0,68	0,72	0,69
8.5 Criminal system is free of corruption	0,88	0,88	0,76
8.6 Criminal system is free of improper government influence	0,87	0,89	0,92
8.7. Due process of law and rights of the accused	0,83	0,82	0,71

Source: World Justice Project Rule of Law Index 2015

Summing up, there are good reasons to expect that Germany, Netherlands and Switzerland exemplify well-functioning, high quality judiciaries. Among compared countries only Poland seems to lag behind this benchmark.

III.2. Legal origins and procedural complexity

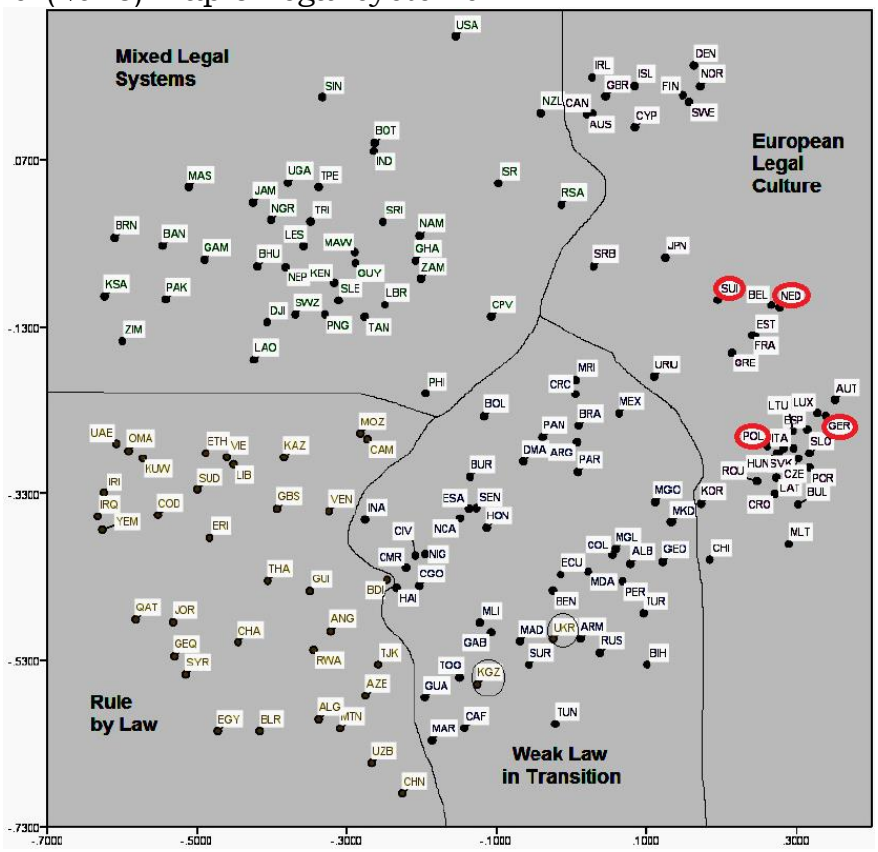
All analyzed jurisdictions belong to the continental, civil law tradition. Djankov et al. (2002) attributed Switzerland[9] (and obviously Germany) to the German legal origin, while the Netherlands to the French one as well as Poland to the Socialist one. However, La Porta et al., (2007) classified Poland only to German legal origin. Also Elgar Encyclopedia of Comparative Law (Smits, 2012, p. 548) noted that "*with the exception of communist period, the Polish legal system has remained under the strong influence of both French and German legal traditions, although it would now be qualified as belonging to the family of former communist countries".* The same source pointed out that to the certain degree, German civil code (BGB) influenced also the Dutch system.

Also Siems (2016)- who attempted to create new taxonomy of legal systems, based on network analysis - suggests quite close proximity of Polish and German systems. Surprisingly, it also suggests that Swiss system is closed

[9] This point is reinforced, taking into account that Canton Basel-Stadt analyzed in this study is German language one.

to Dutch – and that both drifted towards French, rather than German one – see fig. 4.

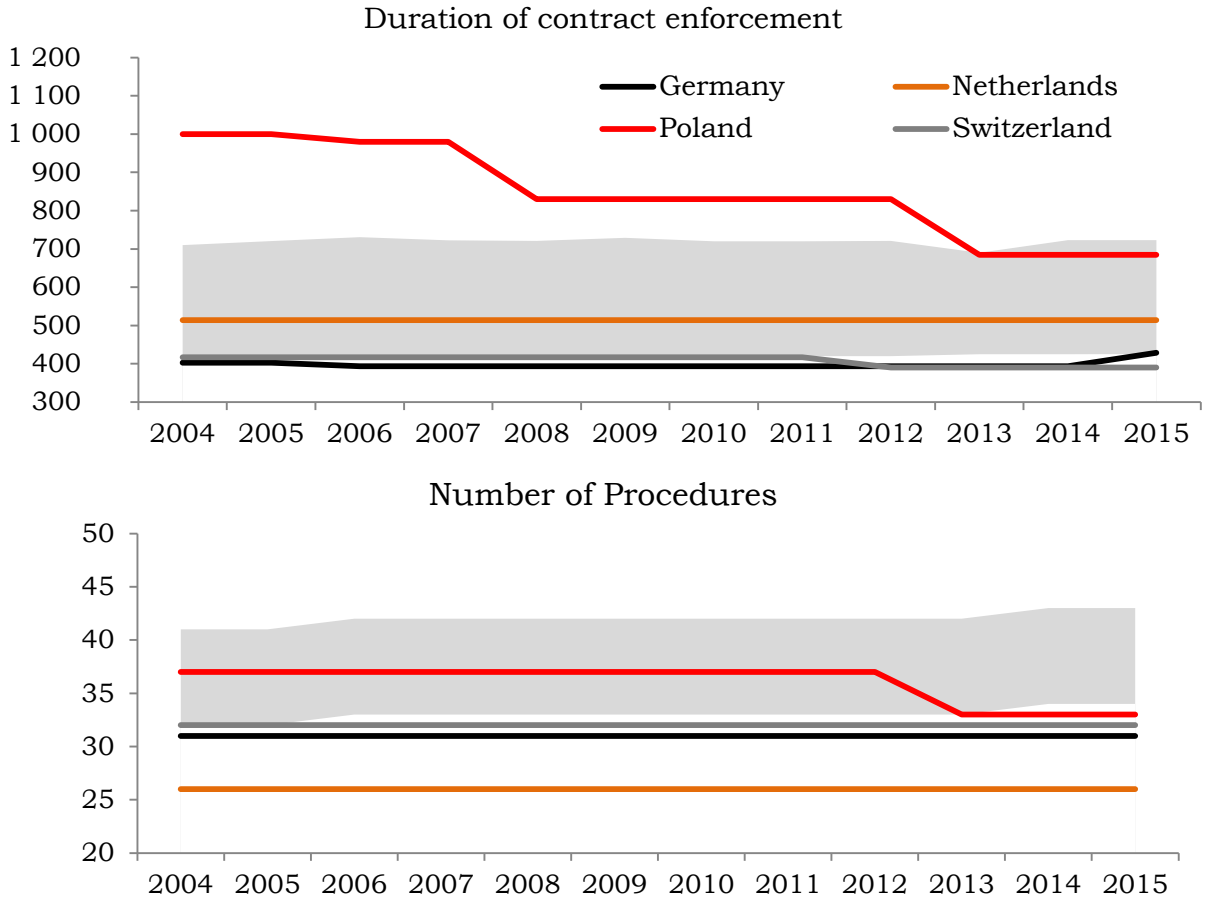
Fig 4. Siems' (2016) map of legal systems



Source: Siems (2016), p. 22.

The bottom line is that at least Polish and German – as well as Dutch and Swiss – procedures can be considered as comparable in our further analysis. Figure 5 presents procedural complexity of these systems, as well as duration of contract enforcement, as measured by the Doing Business reports.

Fig. 5. Procedural complexity and contract enforcement duration as recorded by "*Doing Business*" Project [shaded area represents 50% of typical observations]



Source: Doing Business Historical data set

The above figure could be interpreted that except Poland, compared systems consequently exhibited low procedural formalism (number of procedures in bottom quartile). Moreover, since DB 2013 Poland also jumped on the bandwagon. In terms of proceedings duration, Germany and Switzerland can be regarded as benchmarks, the Netherlands as above average and Poland as newcomer to the "typical" club.

The alternative source of comparative court performance data is CEPEJ (2014). Compiling official statistics submitted by the Council of Europe member states, it provides data on the length of proceedings for litigious divorce cases, employment dismissal, robberies and intentional homicides see tab. 2).

Tab. 2.CEPEJ (2014) data on duration of selected court proceedings

	litigious divorce	employment dismissal	insolvency	robbery	intentional homicide
Germany	-	64	-	-	-
Netherlands	-	-	-	-	-
Poland	183	214	83	-	-
Switzerland	272	-	54	-	-

Source: *CEPEJ (2012, p. 234)*

The bottom line is that available quantitative indicators gauge all four compared jurisdictions as not excessively formalized (DB "number of procedures" in bottom quartile) and rather quick. Polish system seems to be characterized as the slowest among them, but still in the "typical" range (judging by worldwide perspective).

III.3. Court system structure and employed "*weighted caseload*" studies

In general the German court system is organized in three-tier structure. Local court (*Amtsgerichte*) is the court of first instance in civil disputes – if the value of claim does not exceed 5 000 € threshold – and in minor criminal offences (up to four years in prison). Otherwise, the district court (*Landgerichte*) is the court of first instance. Depending on the first instance court, the appeal will go to the district court (if started in local court) or to the court of appeal (*Oberlandesgerichte*, if lodged in the regional court). Case weights utilized in this study have been taken from "PEBB§Y" (*Personalbedarfsberechnungs-system*) version 2014[10]. They are reported for particular types of cases and aggregated to the wider categories (quite comparable with Polish ones), and expressed in minutes.

The Dutch court system is also organized in three-tier structure. Sub-district court (*Sector Kanton*) is the court of first instance in commercial disputes - if

10 https://www.neuerichter.de/fileadmin/user_upload/bundesvorstand/pdfs/PEBBSY_2015-04-10_Hauptband.pdf

the value of a claim does not exceed 25 000 € threshold – and in minor criminal offences. Otherwise, the district court (*Rechtbank*) is the court of first instance. Appeals are adjudicated by the court of appeal (*Gerechtshof*).[11] Case weights utilized in this study have been taken from from "Lamicie-model" version 2014. They are reported for particular types of cases, and expressed in minutes.

The cantonal court system of Basel-Stadt in Switzerland, examined in this comparison, has two tier structure. Hence first instance civil courts (*Zivilgericht*) and criminal courts (*Strafgericht*) deal with civil and criminal cases regardless value of claim or seriousness of offense. Appeals are adjudicated by the court of appeal (*Appealationsgericht*). Case weights utilized in this study have been published as (Lienhard et al. 2015)[12]. They have been calculated for particular types of cases[13], and expressed in hours (rounded to 30 minutes).

The Polish common courts system is organized in three-tier structure. District court (*sąd rejonowy*) is the court of first instance in civil and commercial disputes - if the value of claim does not exceed 18 500 €[14](75 000 PLN) threshold – as well as in criminal cases – excluding felonies. Otherwise, the regional court (*sąd okręgowy*) is the court of first instance. Depending on the first instance court, the appeal will go to a regional court (if started in district court) or to court of appeal (if started in regional court). Case weights have been obtained from the preliminary study commissioned by the Ministry of Justice.[15] Data have been collected during 2012-13 period – before the major criminal procedure reform that attempted to move Poland towards more adversarial framework (reform, modeled on common law systems, have been introduced in 2013, and justified mainly on the grounds

[11] Or Trade and Industry Appeals Tribunal (*College van Beroepvoor het bedrijfsleven*).
[12] www.pd.bs.ch/dms/pd/download/Schlussbericht.pdf
[13] If less than 30 cases of given type have been recorded – weight have been marked as "not statistically valid".
[14] Average exchange rate over 2000-2015 = 4,0545PLN/€
[15] http://kurator.webd.pl/wp-content/uploads/2014/01/Raport-Podsumowuj%C4%85cy-Zadania-4.pdf

of improving court efficiency[16]). Notable characteristics distinguishing this study from others employed in this comparison are:

(i) high level of aggregation (e.g. "*civil litigious case in the district court*" – without differentiating subject matters), and

(ii) ridiculously high degree of "precision" – weights are reported with the accuracy of seconds.

These features rise some doubts about methodological quality of weights. However, since this study focuses on orders of magnitude (dozens of hours rather than minutes and seconds), they can be neglected.

III. Results

Tables 3 to 5 present the results of comparisons, respectively for civil, commercial and criminal cases. Since Polish "*case weights*" are the most aggregated ones (and German are available in similar level of aggregation), in order to facilitate the meaningful comparisons they served as a benchmark against which other systems were compared.

At this point, two important methodological caveats have to be made:

i) level of case weights aggregation, as well as their accuracy differs substantially across the countries (thus requires careful analysis of the closest-matching categories of cases), and
ii) neither weights were intended to serve comparative purposes, thus they lack any confidence intervals or other measures of uncertainty (thus statistically valid inference is impossible, and conclusions rely on common sense comparisons of the orders of magnitude).

[16] The widely presented, ultimate goal of the reform was to short average duration of criminal trials by one third.

Since the idea of using such data in comparative studies of procedural law efficiency is a unique contribution of this paper, we believe that abovementioned problems will be mitigated during its development. However, even in its current – infant stage – it seems that collected data can support some (actionable) conclusions.

First and foremost, it turns out that despite common legal origin and shared legal principles, analyzed systems can differ substantially in their procedural efficiency as measured by the typical amount of judicial time needed to adjudicate comparable case categories.

The most vivid example of such difference is Polish criminal procedure (pre-2013 reform) – requiring judge to devote far more effort than in any other compared procedural framework[17].

Crucially, comparisons presented in section III.1. hardly led to the conclusion that it translates into some better quality of judicial decisions. If any conclusion can be meaningfully drawn from collected data, it is rather the opposite one.

In other areas, compared systems also differ noticeably in terms of efficiency as defined as above. However, the differences are much less pronounced (Dutch system appears to be the gold standard).

[17] Analysis of aggregated data from criminal divisions of Polish regional courts support the claim that "case weight" exceeding 100 hours is correct and consistent with court-level data on the number of resolutions per judge (see Jonski, Mankowski, 2014).

Tab. 3. Civil (citizen vs. citizen or business vs. citizen) litigious cases

Case description		Court	"case weight" Poland (2012-13) [*hrs:min:sec*]	Germany (*PEBB§Y-system)*	Netherlands (*Lamicie-model*)	Switzerland (Basel-Stadt)
Civil trial, value of claim below 18 500 €[18]	First instance	Adjudicated by single judge in the District Court[19]	4:57:40	5:20		Inheritance: 12:30 Property law: 1:00 Leasing & renting: 6:00 Eviction: 1:00 Marriage protection mechanism: 2:00
	Second instance	Adjudicated by three judges in the Regional Court[20]	13:07:50	4:33		Obligations (including rent): 9:30 Family & Inheritance: 8:00 Others:13:00
Civil trial, value of claim exceeding 18 500 € and divorces (*60% of caseload*)	First instance	Adjudicated by single judge in the Regional Court	11:32:35	8:59	Divorce: 2:25	Inheritance: 12:30 Property law: 1:00 Leasing & renting: 6:00 Eviction: 1:00 Marriage protection mechanism: 2:00
	Second instance	Adjudicated by three judges in the Court of Appeal	13:19:08	10:27	Divorce: 14:10	Obligations (including rent): 9:30 Family & Inheritance: 8:00 Others:13:00

[18] Art. 17. 4. Code of Civil Procedure of Nov 17th 1964.; 75 000 PLN.: average exchange rate over 2000-2015 = 4,0545PLN/€
[19] Art. 47 Code of Civil Procedure of Nov 17th 1964. Case might be adjudicated by three judges, in case of exceptional complexity
[20] Art. 367 Code of Civil Procedure of Nov 17th 1964

Tab. 4. Commercial (business vs. business) litigious cases

Case description		Court	"case weight" Poland (2012-13) [*hrs:min:sec*]	Germany (*PEBB§Y-system)*	Netherlands (*Lamicie-model*)	Switzerland (Basel-Stadt)
Commercial trial, value of claim below 18 500 €[21]	First instance	Adjudicated by single judge in the District Court[22]	7:39:43		2:40[23]	
	Second instance	Adjudicated by three judges in the Regional Court[24]	11:52:16			
Commercial trial, value of claim exceeding 18 500 €	First instance	Adjudicated by single judge in the Regional Court	9:06:29		22:53[19]	

[21] Art. 17. 4. Code of Civil Procedure of Nov 17th 1964.; 75 000 PLN.: average exchange rate over 2000-2015 = 4,0545PLN/€
[22] Art. 47 Code of Civil Procedure of Nov 17th 1964. Case might be adjudicated by three judges, in case of exceptional complexity
[23] Weighted (by number of cases) average of separate weights for "adjudication in litigious commercial case" and "adjudication in litigious commercial case, with special investigation" in Kanton (value of claim does not exceed 25 000 €)
[24] Art. 367 Code of Civil Procedure of Nov 17th 1964

Tab. 5. Criminal trial cases

Case description		Court	"case weight" Poland (2012-13) [*hrs:min:sec*]	Germany (*PEBBSY-system)*	Netherlands (*Lamicie-model*)	Switzerland (Basel-Stadt)
Misdemeanor case (*e.g. traffic offences like drunk driving, home violence, theft, fraud*)	First instance	Adjudicated by 1 judge in the District Court[25]	10:05:57	9:18	00:04[26]	Offenses against property: 18:30 Traffic offenses: 5:30
	Second instance	Adjudicated by 3 judges in the Regional Court[27]	13:58:56	10:43	00:30	Traffic offenses: 4:00
Felony case (*e.g. robbery, rape, murder*)	First instance	Adjudicated by 1 professional judge and two lay judges in the Regional Court[28]	102:04:32	46:12	05:10[29]	Homicide 36:30 offenses that endanger life:15:30 Sexual offenses: 12:30 Drug crimes: 18:30
	Second instance	Adjudicated by 3 judges in the Court of Appeal[30]	18:12:00	1:51	10:40	offenses that endanger life: 11:00 Sexual offences: 11:00

[25] Art. 28 Code of Criminal Procedure of Jun 6th 1997. Case might be adjudicated by a professional judge and two lay judges, or even three professional judges, in case of exceptional complexity

[26]Weighted (by number of cases) average of separate weights for "Adjudication minor offense", "Decision about objection to administrative handling of minor traffic offense" and "Decision about means of coercion after administrative handling of minor traffic offense"

[27] Art. 29 Code of Criminal Procedure of Jun 6th 1997.

[28] Art. 28 Code of Criminal Procedure of Jun 6th 1997. For cases involving offences for which the law provides for the punishment of life imprisonment: two professional judges and three lay judges

[29]Weighted (by number of cases) average of separate weights for"Adjudication by court of 3 judges (most severe crime cases)", "elaboration appeal in 3 judge court cases" and "Adjudication by single judges (crime cases)"

[30] Art. 29 Code of Criminal Procedure of Jun 6th 1997. Appellations against the decision adjudicating the penalty of life imprisonment: five judges

Other intriguing finding relate to the extent to which three tier structures translates into procedural simplification and - at the end of the day - efficiency gains. In case of civil procedures, three tier systems typically require much lower amount of judicial time, to adjudicate first instance claim in lower courts (thus, with lower monetary value). In case of Germany (5 000 € threshold) it was 5:20 to 9 hours, in case of Poland (18 500 € threshold) - 5 to 11:30 hours (surprisingly similar). Dutch system illustrates the very same feature in case of commercial cases (2:40 to 22:53 hours). Thus one might be surprised, that in case of Polish commercial procedure, the difference (and thus efficiency gain in lower courts) virtually disappears (7:40 to 9:06 hours).

IV. Conclusions and policy recommendation

This paper attempted to introduce new gauge of procedural law efficiency - namely the amount of judicial time needed to adjudicate a case under given procedural law - in order to assess to what extend procedural law determines cross-country differences in court efficiency. In this vein, it introduces “case weights” (developed by the courts’ system managers to determine allocation of judges) as a data source for quantitative comparative legal studies.

Preliminary results reported herein encompassed four continental systems: Dutch, German, Polish and Swiss (Basel-Stadt canton). They indicate that despite broad similarities discussed in the comparative law literature, they sometimes differ substantially in terms of efficiency (and sometimes not, which also may be intriguing). Polish criminal procedure is the most striking example of a drift towards inefficiency - it typically requires over hundred

hours of judicial time to adjudicate felony case (as compared with over 5 in Netherlands, 46 in Germany and 13-37 in Switzerland).[31]

Moreover, data for commercial cases suggest that potential benefits of three tier court structure are not fully achieved – simplified procedure in lower level courts (cases with smaller monetary value) is far from workable improvement in court efficiency (smaller claim requires over 85% of judicial time required to resolve complex one, as compared with 11% in the Netherlands, and even with 43% in Polish civil cases or 59% in German civil cases).

Given the low number of compared systems, as well as infant stage of comparisons of procedural frameworks efficiency using "*weighted caseload*" data – presented analysis are descriptive and explorative in nature (statistical inferences would not be meaningful). Hopefully, later applications of this promising source of information will be much more sophisticated.

Despite that, some actionable policy recommendations can be formulated upon these preliminary results. Painstaking inspection of the procedural laws in order to identify bottlenecks and inefficient rules should be carried out in inefficient systems. Also critical overview of supposedly implemented procedural innovations – such as simplified procedure for smaller claims – should be routinely performed, in order to verify whether they are genuinely contributing to the improvement of court system efficiency.

Moreover, in order to transplant efficient solutions, one should rather focus on benchmarks within the same legal tradition instead of looking overseas. Since legal community is rather conservative – solutions borrowed from well-known judicial systems, sharing common principles and cultural background – seems more likely to be successfully implemented. Since efficiency across continental systems tends to vary tremendously, it is still substantial room for improvement within such legal tradition.

[31] Conclusion consistent with anecdotal evidence on Polish criminal procedure inefficiency – for example the court's obligation to hear 15 thousand witnesses (repeating roughly the same story, depicted also in the collected financial documentation) in a Madoff-style fraudulent investment scheme case.

Experience of Polish attempt to shift criminal procedure towards more adversarial model[32] as well as similar Italian reform of 1989 (described in detail by Boari, 1997) illustrates this point.

Last, but not least, determinants of such discrepancies across supposedly similar (and systematically "improved") systems, undoubtedly remain interesting (and practically relevant) area for further exploration.

[32] Legislated in 2013, came into force in mid-2015.

References

Boari N. (1997) *On the Efficiency of Penal Systems: Several Lessons from the Italian Experience*, International Review of Law and Economics 17 pp.115-126

Bussani M., Mattei U. (2012) *The Cambridge Companion to Comparative Law*

CEPEJ (2014) *European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice*

Djankov S., La Porta R., Lopez-de-Silanes F., Shleifer A. (2002) *Courts: the Lex Mundi Project*; NBER Working Paper No. 8890

Flango V., Ostrom B.(1996)*Assessing the Need for Judges and Court Support Staff*, National Center for State Courts

Hough M.,Maffei S. (2013). *Trust in justice: Thinking about legitimacy*, European Society of Criminology newsletter

Jonski K., Mankowski D. (2014) *Is Sky the Limit? Revisiting 'Exogenous Productivity of Judges' Argument*; International Journal for Court Administration; Volume: 6, Issue: 2

La Porta R., Lopez-de-Silanes F., Shleifer A. (2007) *The Economic Consequences Of Legal Origins*, NBER Working Paper 13608

Lienhard A., Kettiger D.(2011) *Research on the caseload management of courts: methodological questions*, Utrecht Law Review, Volume 7, Issue 1

Lienhard A., Kettiger D., Uster H., Winkler D. (2015) *GeschäftslastsowieAufbau- und Ablauforganisation der Gerichte und der StaatsanwaltschaftimKanton Basel-Stadt*

Ostrom et al. (2000) F*lorida Delphi-based Weighted Caseload Project Final Report*, National Center for State Courts

Siems M. (2016) *Varieties of Legal Systems: Towards a New Global Taxonomy*, Journal of Institutional Economics, forthcoming

Smits J. (2012) *Elgar Encyclopedia of Comparative Law*, 2nd Edition

Tallarico S. et al,. (2007) *Tennessee Trial Courts Judicial Weighted Caseload Study*, Final Report, National Center for State Courts

World Bank (2003) *Doing Business 2004 Understanding regulations*