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Globalisation in the Gavel: Unveiling the Transformation of Poland's Judiciary and the Lawyers' Perspective in the Age of Interconnectedness

Globalizacja w sądownictwie. Zmiany w polskim wymiarze sprawiedliwości z perspektywy prawników w dobie zacierania się granic

ABSTRACT

The study presents a comprehensive, scientific and research-orientated analysis of the impact of globalisation on the Polish judiciary, with a specific focus on the experiences and adaptations of Polish lawyers. It delves into the integration and challenges of applying international legal norms, particularly European Union law, within the Polish legal framework. The research methodology includes qualitative interviews and a thorough review of legislative developments, providing a methodological approach to understand the phenomenon. The report identifies the adaptation of Polish legal professionals to globalisation of law as a significant scientific problem, justifying the need for a deeper exploration of this issue. It posits the main thesis that the Polish judiciary is undergoing a transformative phase, influenced significantly by international legal principles, but faces challenges in the complete assimilation of these norms. The purpose of this research is to shed light on the nuanced process of legal globalisation within a national context, focusing on the role of legal professionals in this transition. The originality of the research lies in its detailed examination of Polish lawyers' perspectives, a relatively underexplored aspect in the existing literature. The scope of the research is both national and European Union focused, with implications for international legal studies. Its cognitive value extends beyond academic discourse, offering practical insights for legal practitioners

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and policymakers in Poland and similar jurisdictions undergoing legal globalisation. The findings contribute significantly to the understanding of the socio-legal dynamics at play in the context of global legal integration.

Keywords: globalisation; Polish judiciary; international legal principles; European Union law; lawyers

INTRODUCTION

Poland, as it moves further into the third decade of the 21st century, is becoming increasingly intertwined in the complex web of globalisation, a trend that is significantly influencing its judicial system. This shift is rooted in the country's deeper integration with other European Union member states, as well as non-EU countries and EU institutions. The Polish judiciary, in particular, is undergoing significant transformations in response to the forces of globalisation, especially due to EU integration and migration. The influx of migrants introduces fresh perspectives, cultural diversity, and a range of new economic and social challenges to the Polish legal system.[1]

This tide of globalisation and Europeanization in the judiciary leads to the incorporation and direct application of international law, predominantly that of the European Union, into the domestic legal framework. Furthermore, the jurisprudence of international courts is gaining significant traction in Poland, necessitating a multifaceted adaptation by the Polish judiciary. This adaptation encompasses not only the application and interpretation of international law, but also the technical, organisational, cultural, and psychological assimilation of international norms.[2]

Polish courts play a crucial role in the enactment and application of European and international legal norms. Specifically, common courts, including district and regional courts (Pol. *sądy okręgowe*, *sądy rejonowe*), as well as the Supreme Court, confront the challenges of globalisation every day. These challenges manifest themselves in various spheres, including the application of law (adjudication function)

[1] W. Heydebrand, *From Globalisation of Law to Law under Globalisation*, [in:] *Adapting Legal Cultures*, eds. D. Nelken, J. Feest, New York 2001, pp. 117–141; P. Kathrani, *Globalisation and Lain: The Effect of Globalisation on the Domestic Interpretation of Law*, "Jurisprudencija" 2009, vol. 116(2), pp. 115–127; M.B. Steger, *Globalization: A Very Short Introduction*, Oxford 2017, p. 109–139.

[2] A. Całus, *Europeizacja prawa prywatnego jako wartość współgrania i konkurencji porządków: międzynarodowego, „europejskiego" i krajowego*, [in:] *Wspólne wartości prawa międzynarodowego, europejskiego i krajowego*, eds. E. Cała-Wacinkiewicz, J. Menkes, J. Barcz, Warszawa 2018, pp. 3–25; J. Ciszewski, *Obrót prawny z zagranicą w sprawach cywilnych i karnych*, Warszawa 2020; M.A. Dudkowska, *Europeizacja prawa prywatnego – ku Europejskiemu Kodeksowi Cywilnemu*, [in:] *Mechanizmy integracji europejskiej*, Poznań 2015, pp. 34–42; A. Wróbel (ed.), *Stosowanie prawa Unii Europejskiej przez sądy*, vol. 1, Warszawa 2010, pp. 384–435, 468–555.

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and involvement in the auxiliary, technical, organisational, and social facets of European judicial integration.[3]

The impact of globalisation is most palpable in the core adjudicative function of the courts, carried out primarily by judges and, to a lesser extent, by court referendaries and associate judges (Pol. *referendarz sądowy*, *asesor sądu*).[4] Globalisation's influence is also evident in the auxiliary functions supporting judgment and wider administrative and organisational activities, enabling the court to operate as an organisation. This global impact is vividly observable in various practical aspects of court operations. Among the most important are:

1. Adjudication function:
   - application of international law provisions, including EU law, in judicial decisions;
   - domestic case proceedings based on foreign law;[5]
   - collaboration with the Court of Justice of the European Union tribunals in Luxembourg and the European Court of Human Rights in Strasbourg on legal matters;
   - involvement of foreign entities in court cases;
   - representation of parties by foreign lawyers;[6]
   - execution of international court judgments and foreign judgments within Poland.
2. Auxiliary function:[7]
   - evidence gathering abroad;
   - letter delivery abroad;
   - translations.
3. Administrative and organisational function:

[3] J. McIntyre, *Introduction to the Judicial Function*, [in:] *The Judicial Function: Fundamental Principles of Contemporary Judging*, Singapore 2019, pp. 23–31; idem, *The Development of Principles of Contemporary Judging*, [in:] *The Judicial Function…*, pp. 3–19; K.S. Ziegler, *The Relationship between EU Law and International Law*, SSRN Scholarly Paper, ID 2554069, Social Science Research Network, 2015.

[4] J. Maziarz, *O niektórych praktycznych problemach związanych z przywróceniem instytucji asesora sądowego*, "Kwartalnik Krajowej Szkoły Sądownictwa i Prokuratury" 2018, vol. 29(1), pp. 137–152; S. Tkacz, *Sędzia jako osoba sprawująca „wymiar sprawiedliwości"*, "Przegląd Prawa i Administracji" 2017, vol. 110, pp. 178–203.

[5] T. Ereciński, *Ogólne zagadnienia stosowania prawa obcego przez sądy*, "Problemy Prawne Handlu Zagranicznego" 1995, no. 18, p. 75–87.

[6] A. Wróbel (ed.), *op. cit.*, passim.

[7] Forum FWS, *Sędziowie łódzcy*, https://forumfws.eu/inicjatywy-lokalne/sedziowie-lodzcy (access: 15.5.2022); G. Chmiel, *Obrót zagraniczny w praktyce*, Warszawa 2021; R. Skibicki, *Międzynarodowe postępowanie cywilne*, Wrocław 2021.

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- engagement with the European Judicial Network;[8]
- activities of coordinators for international cooperation;[9]
- professional development in cross-border cases;
- marketing;
- information management;
- IT services;
- office management.

Although many of these globalisation phenomena in Polish courts are mandated by national and international law, others emerge from the discretionary practices of court staff. However, despite these objective influences, Polish courts appear to be somewhat oblivious to the extensive globalisation unfolding within their realm. Thus, an external perspective is imperative for a complete understanding. Such perspectives are offered by public administration bodies, non-governmental organisations and external lawyers who, while not directly involved in court operations, regularly interact with the judiciary. Due to their professional expertise and integral role in the judicial structure, these entities are well placed to provide insightful observations on the globalisation of Polish courts.

The primary objective of this study is to delineate and elucidate the extent, nature, and magnitude of the impact on the Polish justice system. A particular focus is on specific international law institutions, especially those of the European Union, and their reflection in the judicial decision-making process (adjudication function institutions), which is empirically observable. Additionally, it is crucial to assess the influence of globalisation on court auxiliary activities to the judicial function as well as administrative and organisational function, encompassing all global phenomena collectively termed as international activities or international engagements of Polish courts.

A pilot study employing structured interviews with Polish legal advisers (also called attorney-at-law or *radca prawny*)[10] and advocates (*adwokat*), complemented by a preliminary analysis of statistical data from the Polish judiciary, has led to the formulation of three initial hypotheses:[11]

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[8] European Judicial Network, https://www.ejn-crimjust.europa.eu (access: 8.4.2024); A. Weyembergh, I. Armada, C. Brière, *Competition or Cooperation? State of Play and Future Perspectives on the Relations between Europol, Eurojust and the European Judicial Network*, "New Journal of European Criminal Law" 2015, vol. 6(2), pp. 258–287.

[9] Act of 27 July 2001 – Law on the system of common courts (consolidated text, Journal of Laws 2023, item 217).

[10] Resolution no. 102/X/2018 of the National Council of Attorneys-at-Law of 22 September 2018 on the translation of the name of the legal adviser profession, the names of the legal adviser self-government, its bodies and organizational units and the name of the Legal Adviser's Office into English.

[11] Based on S. Lipiec, *The International Legal Services in Poland – Pilot Study Results*, [in:] *Prawo w 2022 roku. Studia i materiały*, eds. K. Chwedczuk, K. Łukomiak, Łódź 2022.

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1. Polish courts experience only marginal changes due to globalisation.
2. In the day-to-day operations of Polish common courts, the influence of international and globalisation aspects is becoming increasingly apparent, both in the adjudication function and in auxiliary court functions, which is noticeable by external actors but not by the majority of the court staff.
3. There is a low level of awareness among court personnel (judges and staff) about the impact of globalisation on Polish courts, and this awareness has not shown significant improvement.

METHODOLOGICAL FRAMEWORK

The study forms a segment of a larger investigation of the internationalisation of the Polish judiciary and legal services. The research spanned from 7 August 2017 to 22 January 2019 and was further supplemented between November 2020 and 20 March 2021. The methodology employed triangulation, which facilitates mutual verification, supplementation, and expansion of the results.[12]

1. Theoretical underpinnings

The research adopts an interdisciplinary approach, integrating the foundational principles of the Nordic school of legal realism, profoundly influenced by A. Hägerström's philosophical insights,[13] and augmented by E. Ehrlich's significant contributions.[14] The perspectives of the American legal realist school, particularly R. Pounds scholarship, also considerably inform the study's methodological framework.[15]

Central to the study is the observation that statutory law, commonly referred to as "the law on the books", often recedes in importance during the enforcement phase. This trend is especially pronounced in justice systems, where the practical implementation of law supersedes the statutory directives. In these scenarios, the "law in action", which signifies the socially applied legal norms, dominates over the written statutes, which become less relevant and more theoretical. The practical

[12] Detailed methodological considerations can be found in idem, *Prawnicy – międzynarodowa praktyka*, Poznań 2022; idem, *Prawnicy – międzynarodowa praktyka. Materiały dodatkowe*, Poznań 2022.

[13] P. Mindus, *A Real Mind: The Life and Work of Axel Hägerström*, Dordrecht 2009, pp. 137–171.

[14] E. Ehrlich, *Fundamental Principles of the Sociology of Law*, New Brunswick 2002, pp. 3–26, 486–507.

[15] H. Dagan, *Reconstructing American Legal Realism and Rethinking Private Law Theory*, New York 2013, pp. 14–69; R. Pound, *Law in Books and Law in Action*, "American Law Review" 1910, vol. 44, pp. 12–36.

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application of law frequently deviates from written statutes, highlighting the gap between theoretical legal frameworks and their real-world application. As a result, the statutory law becomes an idealistic blueprint overshadowed by the pragmatic realities of legal practice. This dynamic underscores a shift towards a more fluid and socially constructed form of law within courtrooms and legal practices, where the written statutes are often sidestepped.

Methodologically, the study is deeply anchored in the ethnographic tradition of analysing justice systems, drawing inspiration from B. Malinowski's seminal work in sociology and the ethnography of law.[16] A comprehensive set of research methods was used, with in-depth interviews being central to the study. This multifaceted approach positions the study within the "mixed methods" research paradigm, allowing for an intricate comparison and contrast between empirical findings from fieldwork and established national and international legal norms and frameworks. This methodological synthesis facilitates a nuanced understanding of the interplay between statutory law and its practical application within the Polish judiciary.

2. Research methods

The research specifically aimed at empirically identifiable globalisation phenomena within the Polish justice system. Theoretical aspects of globalisation, not directly experienced by lawyers or statisticians, were not within the scope of this study.

In this study, we used a triangulation of qualitative research methods (mixed methods).[17] All the methods adopted fall under the qualitative research paradigm. The primary focus of the investigation was in-depth interviews. Additionally, we employed the qualitative secondary research approach (desk research). It is crucial that the results of this research are purely qualitative and cannot be generalised to the entire population of Polish lawyers and courts. However, the observed phenomena can serve as insightful examples of the trends and behaviours within the broader justice system in Poland. The study incorporated a multi-methodological approach:

1. Semi-structured in-depth interviews (SSI). In this phase of the study, a total of 43 delegates from the district councils of the bar associations of advocates (Pol. *okręgowa rada adwokacka*) and the district councils of the bar association of attorneys-at-law (Pol. *rada okręgowej izby radców prawnych*) participated. Representation from each bar association was limited to a single individual. The methodology involved conducting face-to-face interviews, which were then recorded, transcribed, and meticulously coded and categorised. Following this, the transcriptions were translated into English. The research used tools such as Skry-

[16] B. Malinowski, *Crime and Custom in Savage Society*, New York 2018.

[17] C. Teddlie, A. Tashakkori, *Foundations of Mixed Methods Research: Integrating Quantitative and Qualitative Approaches in the Social and Behavioral Sciences*, Thousand Oaks 2008.

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Bot[18] and Atlas.ti software,[19] underscoring its commitment to a purely qualitative research approach. The indices in the graphs were set in relative values to 100% based on the number of indications occurring in interviews with lawyers. S. Kvale's interview methodology was used.[20]

The nature of this research is fundamentally inductive; it seeks to uncover reality as perceived through the perspectives of the sources, in this case, the interviewees. Consequently, it aims to elucidate the empirical reality as experienced by the participants, rather than to assert an objective reality.

2. Qualitative secondary research. This part of the study was anchored in a thorough analysis of statistical data related to international matters within the Polish judiciary. Key sources of these data included the Polish Ministry of Justice,[21] the Central Statistical Office,[22] the Council of Europe,[23] and Eurostat.[24] Complementing this statistical analysis, the research also delved into the examination of EU legal acts and their implementing legislation, employing the legal functional method as a crucial tool.[25] Furthermore, a detailed content analysis of the literature pertinent to the subject was performed. These methodologies were aligned with the qualitative secondary research techniques highlighted in the work of C. Largan and T. Morris,[26] thereby ensuring a comprehensive and methodologically sound approach to the research. This multi-dimensional strategy was instrumental in providing a nuanced understanding of the legal landscape within the context of the EU and Polish judiciary.

3. Data storage and access

All source data have been meticulously stored for future reference and use, detailed in a comprehensive report prepared for the entire study.[27] Participants consented to participate in the study and to have their statements recorded. The

[18] SkryBot, https://skrybot.pl (access: 10.4.2024).

[19] ATLAS.ti, https://atlasti.com (access: 5.5.2022).

[20] S. Kvale, *Prowadzenie wywiadów*, Warszawa 2012; S. Kvale, S. Brinkmann, *InterViews: Learning the Craft of Qualitative Research Interviewing*, Thousand Oaks–London–New Delhi 2009.

[21] Informator Statystyczny Wymiaru Sprawiedliwości, https://isws.ms.gov.pl/pl/baza-statystyczna (access: 18.4.2021).

[22] Główny Urząd Statystyczny, https://stat.gov.pl (access: 9.4.2024).

[23] Council of Europe, *Dynamic Database of European Judicial Systems*, https://www.coe.int/en/web/cepej/dynamic-database-of-european-judicial-systems (access: 18.4.2024).

[24] Eurostat, https://ec.europa.eu/eurostat/data/database (access: 18.4.2021).

[25] D. Kędzierski, *Metodologia i paradygmat polskich szczegółowych nauk prawnych*, "Transformacje Prawa Prywatnego" 2018, no. 3, p. 34–46.

[26] C. Largan, T. Morris, *Qualitative Secondary Research: A Step-By-Step Guide*, London 2019, pp. 121–141.

[27] S. Lipiec, *Prawnicy – międzynarodowa praktyka…*; idem, *Prawnicy – międzynarodowa praktyka. Materiały…*

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study, particularly the survey conducted using the SSI method, was supervised by professors from the Pedagogical University of Krakow and Jagiellonian University.

4. Terminology and conceptual clarifications

Several key terms recur in the research report, including "international turnover", "legal transactions with foreign countries", "international elements", "foreign affairs", "international affairs", and "international cooperation". The abbreviations *Oz* and *Kop* signify lists of international cases in civil and criminal courts, respectively.[28] Despite theoretical distinctions, their practical overlap suggests that they should be treated synonymously.

5. Demographics of the participants

An equal number of legal advisers (attorneys-at-law, Pol. *radcowie prawni*) and advocates (22 and 21, respectively) participated, representing all professional lawyers' associations in Poland. Participants were evenly distributed throughout the country. The sample consisted predominantly of men (59%), reflecting the broader demographic trend in the Polish legal profession. The age range of 30–50 years was the most represented, aligning with the most professionally active group in the Polish legal sector.[29] All lawyers in the study were bilingual, with English being the dominant language (62%), followed by Russian (29%).[30]

INTERNATIONAL CASES IN THE POLISH JUDICIARY SYSTEM

The cases with international elements play a pivotal role in signifying the extent of the judiciary's internationalisation in the contemporary legal landscape of Poland. Legal professionals, including advocates, attorneys-at-law and court employees, often immediately refer to specific international mechanisms such as

[28] § 385 and § 456 of the Order of the Minister of Justice of 19 June 2019 on the organisation and scope of activities of court secretariats and other departments of court administration (Journal of Laws of the Ministry of Justice 2019, item 138).

[29] Cf. S. Lipiec, *Polish Lawyers in Face of Globalisation: Socio-Legal Overview*, Poznan 2022.

[30] Cf. J. Cholewa, *Jak język polski i francuski odzwierciedla wzajemne postrzeganie Polaków i Francuzów?*, [in:] *Anglosasi, Francuzi i Polacy. Wzajemny wizerunek dawniej i dziś*, eds. P. Guzowski, M. Kamecka, Białystok 2005; K. Kloc, *Język obcy a praca w zawodzie prawnika*, https://www.golden-line.pl/grupy/Przedsiebiorcy_biznesmeni/prawo/jezyk-obcy-a-praca-w-zawodzie-prawnika,1770622 (access: 16.4.2024); I. Wysmułek, O. Oleksiyenko, *Strukturalne zróżnicowanie znajomości języków obcych. Wybrane wyniki Polskiego Badania Panelowego POLPAN 1988–2013*, Warszawa 2015.

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the European Arrest Warrant (EAW)[31] and the service of correspondence abroad upon hearing this term. This inclination points to the familiarity and prevalence of these types of international legal institutions within the legal community, reflecting a focused understanding of foreign affairs as the application of specific procedures under international and EU law and the execution of auxiliary judicial acts deriving from a mix of international and domestic law.[32]

The scope of these cases extends beyond the use of direct legal instruments to encompass the technical execution of a variety of procedures, including those that originate from foreign jurisdictions or are aimed at international audiences. This comprehensive view encompasses not only the direct application of legal instruments, but also the administrative, management, and developmental aspects associated with the execution of international law.

1. Integration of international law instruments into Polish legal systems

The Polish legal order integrates international law instruments either by transposing EU laws directly or through their direct application within the domestic legal framework. Key instruments in this domain, especially in the realm of international criminal law, include the EAW,[33] the European Investigation Order (EIO),[34] extradition procedures, and international arrest warrants issued from outside the EU.[35] The civil side of international procedures is also gaining prominence, notably through mechanisms like the European Payment Order (EPO) and small claims procedure[36] as well as the European Enforcement Order (EEO),[37] which play an increasingly important role in cross-border civil litigation.

[31] L. Klimek, *European Arrest Warrant*, Cham 2014.

[32] For more, see T. Rafaraci, R. Belfiore (eds.), *EU Criminal Justice: Fundamental Rights, Transnational Proceedings and the European Public Prosecutor's Office*, New York 2018; A. Wróbel (ed.), *op. cit*.

[33] L. Klimek, *op. cit*.

[34] M.A. Biasiotti, F. Turchi, *European Investigation Order: Where the Law Meets the Technology*, Cham 2023.

[35] A. Grzelak (ed.), *Europejskie prawo karne*, Warszawa 2012, pp. 404–672; M. Kusak, *Postępowanie karne w sprawach międzynarodowych. Podręcznik praktyczny*, Warszawa 2017, pp. 78–238.

[36] M. Mellone, *Legal Interoperability in Europe: An Assessment of the European Payment Order and the European Small Claims Procedure*, [in:] *The Circulation of Agency in e-Justice: Interoperability and Infrastructures for European Transborder Judicial Proceedings*, eds. F. Contini, G.F. Lanzara, Dordrecht 2014, pp. 245–263.

[37] M. Zilinsky, *Abolishing Exequatur in the European Union: The European Enforcement Order*, "Netherlands International Law Review" 2006, vol. 53(3), pp. 472–490.

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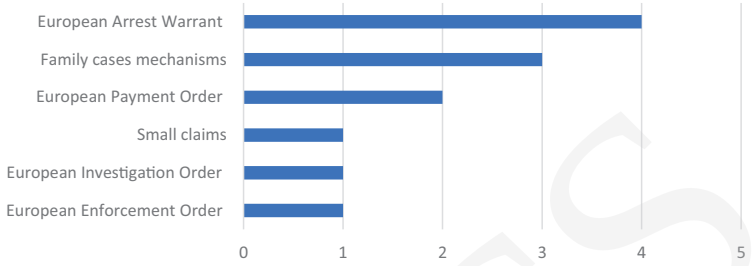


Figure 1. The popularity of international law institutions used in Polish courts according to participated lawyers (popularity index: 0 – no popularity, 5 – very high popularity)

Source: Author's own elaboration.

This diversity of international judicial activities is extensive and multifaceted, covering a wide range of actions such as international correspondence delivery,[38] execution of judgments across borders, the collection of overseas evidence, and the application of family law procedures in international contexts.[39] The complexity of the problem of the various foreign turnover institutions is perhaps best illustrated by this opinion from a Warsaw lawyer: "In my day-to-day practice, the integration of tools like the EAW into Poland's legal system has proven problematic. For example, differences in legal interpretations between Polish courts and EU directives often lead to delays in extradition cases. Similarly, the EPO, while conceptually beneficial for cross-border disputes, faces hurdles in enforcement due to varying national laws. These discrepancies create a legal limbo, which impacts both the efficiency and fairness of judicial proceedings in international contexts. It is a well-intentioned system, but in reality, it is fraught with practical challenges that hinder our ability to deliver swift and consistent justice".

The breadth and complexity of these *Oz* affairs lead to a convergence of various case categories in everyday legal practice, presenting challenges in the segmented analysis and application of international law, judicial support activities in international relations, and other related tasks.

2. Perceptions and proficiencies in handling international cases

The frequency and manner in which foreign affairs within the Polish judiciary are of notable interest. Such cases are relatively rare, and when they do occur, there is a general trend among legal practitioners to restrict their scope and impact.

[38] P. Domagała, A. Semeniuk, *Prawo międzynarodowe w przepisach wykonawczych do prawa o ustroju sądów powszechnych*, "Kwartalnik Krajowej Szkoły Sądownictwa i Prokuratury" 2020, vol. 39(3), pp. 56–63.

[39] A. Wróbel (ed.), *op. cit.*, pp. 372–535.

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This approach is attributed to a perceived lack of expertise among Polish judges and court officials in using specific instruments of international law effectively and in the auxiliary execution of foreign judicial elements. This difficult situation is brilliantly observed by a legal adviser from Wroclaw: "In the Polish courts and legal practice, we are facing a significant challenge with international cases, largely due to a skills gap among judges, court staff, and us legal advisers. This lack of expertise in international and EU law is evident in the way we handle cases with foreign elements, like processing overseas evidence or understanding foreign legal nuances. These cases often take much longer than domestic ones, not just due to procedural differences, but because of a fundamental lack of training and competence in international legal frameworks. Judges and court officials often struggle with the nuances of applying EU law instruments, and this inexperience leads to delays and inefficiencies. For lawyers, navigating these cases becomes a balancing act of managing long timelines and uncertain outcomes. The root of the problem is clear: there is an urgent need for comprehensive training in international law for all legal professionals in Poland. Without this, our ability to deliver swift and just outcomes in international legal matters remains severely compromised".

Bar representatives have observed that including a foreign element in a case, typically involving the delivery of correspondence or evidence abroad, can significantly prolong legal proceedings, sometimes by up to four times the usual duration. Furthermore, when these foreign elements involve locations outside the European Union, there is a heightened risk of indefinite suspension or discontinuation of the case, raising concerns about potential procedural abuses and inefficiencies in the legal system.

3. Regional discrepancies in international case handling

The presence and management of international cases in different regions in Poland vary substantially. In regional courts, such cases are exceedingly rare and often go unnoticed or unacknowledged. This contrasts with the situation in district courts and courts of appeal (Pol. *sądy apelacyjne*), where a slight increase in the handling of international cases is observed. This is largely due to their broader competence in executing international law instruments, including the EAW, and managing judicial auxiliary activities such as cross-border maintenance enforcement.

The practice of adapting or disregarding international legal elements in regional courts, commonly referred to as "polonising", is a significant issue. This tendency leads to these international aspects often being missed or inadequately addressed by attorneys, court staff and judges. Consequently, such cases lack proper recognition and treatment. There is a prevalent inclination among judges and court personnel to interpret foreign cases through a domestic lens, often resulting in misclassification and incorrect jurisdiction decisions. An advocate from Gliwice mentions that:

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"This practice of our Silesian courts, often we call polonising, where international aspects are adapted or disregarded, poses a serious challenge. This approach leads to misclassification and incorrect court decisions, as judges and court staff tend to view foreign cases through a domestic lens. The attorneys are also part of this problem, sometimes hesitating to pursue minor civil claims in these courts due to the high costs and complexities involved".

Moreover, the reluctance of lawyers to pursue minor civil claims in regional courts, including cases under the categories of small claims, the EPO and the EEO, is notable. The prohibitive costs associated with these legal proceedings, along with the complexities of enforcing foreign judgments, act as deterrents to the routine handling of foreign matters in these courts. This situation highlights a critical challenge in the regional court system: the effective integration and application of international legal principles is often overshadowed by a dominant domestic legal framework.

4. Urban centres as hubs for international cases

The landscape of legal proceedings in Poland, especially in Warsaw and other major cities, is marked by a notable prevalence of cases involving international elements. This trend is reflective of the economic configuration of these urban centres, which are hubs for multinational corporations and international business activities. In these locales, district courts, and in particular those in Warsaw, are tasked with an increased volume of international legal cases. This is largely due to the presence of dedicated centres for coordinating foreign affairs and the courts' inherent jurisdiction in specific types of international cases.[40]

District Court in Warsaw stands out for its expertise in managing cases with overseas aspects. This expertise is attributed to several factors: Warsaw's status as the capital city, the concentration of foreign legal professionals in the area, and the proximity of the Supreme Court. A similar pattern is observed in other urban centres such as Wroclaw and Poznan, where the incidence of cases involving foreign affairs correlates with the level of foreign investment, migration trends, and the number of foreign lawyers practising in these cities.[41]

[40] Regulation of the Ministry of Justice of 28 January 2002 on specific court actions in international civil and criminal proceedings in international relations (consolidated text, Journal of Laws 2014, item 1657).

[41] S. Lipiec, *Polish Lawyers…*, pp. 45–49.

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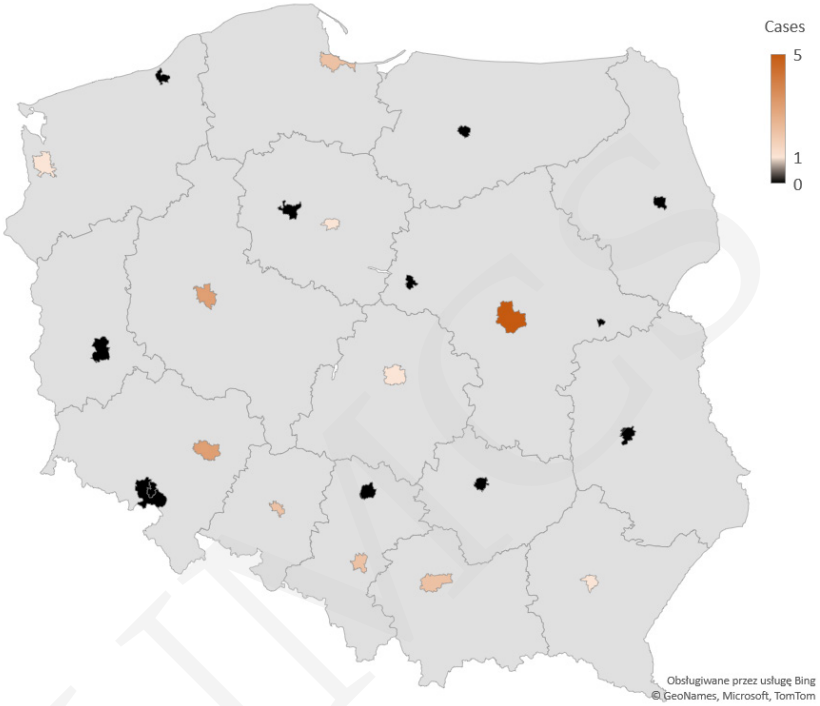


Figure 2. Number of cases with international elements in Polish courts according to surveyed lawyers (case volume index: 0 – no cases, 5 – many cases)

Source: Author's own elaboration.

The consensus among Polish legal professionals indicates that the majority of foreign-involved cases are predominantly situated in Warsaw and several other large cities. This distribution is seen as a direct consequence of the reduced scale and impact of economic activities in the more regional areas of Poland. International corporations tend to establish their headquarters in the capital, positioning Warsaw as a focal point for international economic dealings, including corporate offices, headquarters, and major law firms. Consequently, regional and district courts in Warsaw (Regional Court for the Capital City of Warsaw and District Court in Warsaw) are the primary venues for international legal transactions and are designated as the default jurisdiction for certain international cases.[42] These courts are also the central locations for litigation involving competition and consumer protection,

[42] See Regulation of the Ministry of Justice of 28 January 2002 on specific court actions in international civil and criminal proceedings in international relations (consolidated text, Journal of Laws 2014, item 1657).

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industrial property, patent disputes, and significant international arbitrations.[43] Factors like Warsaw's demographic size, its capital city status, the higher concentration of foreign legal experts, and the operation of the Supreme Court significantly influence this concentration of international cases.[44] Warsaw advocates perfectly know the position of the Polish capital and present their opinion in this manner: "As a Warsaw-based advocate, I have observed that the handling cases with international elements is largely confined to our city. This is hardly surprising given that Warsaw is the centre of most international corporations in Poland. Our courts are swamped with these cases, dealing with everything from corporate disputes to complex international arbitrations. This centralisation in Warsaw, though beneficial for us in the capital, reveals a stark imbalance. In my opinion, this is not just about economic activities; it is also about the legal expertise and resources concentrated here. We have the Supreme Court, a vast pool of legal talent, and the infrastructure to handle these complex international cases, which is not the case for regional areas. Frankly, this creates a sort of legal inequality in Poland. Cases that should be commonplace across the country are instead rarities outside of major cities. While this might be good for business in Warsaw, it is a sign of a wider problem in our legal systems ability to deal with international matters uniformly".

Although district courts in other regional cities, such as Wroclaw and Poznan, also encounter international cases, Polish lawyers observe that these instances are less frequent and significant than those in Warsaw.[45] However, the nature of cases in these districts mirrors that in Warsaw, barring matters unique to the capital city. For example, regions like Wroclaw and Poznan exhibit a slightly higher number of foreign affairs cases, a trend linked to the volume of foreign investment and migration, as well as the presence of a larger community of foreign lawyers. However, in most of Poland's courts, particularly those located in smaller regions and non-regional cities, *Oz* cases are rare or even non-existent, often going unnoticed by local jurists. In these regions, international legal matters are so infrequent that they scarcely register on the radar of Polish legal professionals.

[43] M. Błachucki, *Sądownictwo antymonopolowe w Polsce – historia i ustrój*, Warszawa 2011, pp. 11–17; K. Chlabicz, *Postępowanie sporne przed Urzędem Patentowym w przedmiocie unieważnienia praw własności przemysłowej*, "Zeszyty Prawnicze" 2017, vol. 17(3), pp. 205–208; P. Nowaczyk, *Perspektywy rozwoju sądownictwa polubownego w Polsce*, "ADR Arbitraż i Mediacja" 2009, no. 1, pp. 145–149.

[44] Krajowy Rejestr Adwokatów i Aplikantów Adwokackich, https://rejestradwokatow.pl/adwokat/ewidencja (access: 10.4.2024); K. Puchalska, *Zróżnicowanie polskich regionów w aspekcie bezpośrednich inwestycji zagranicznych*, "Zeszyty Naukowe Wyższej Szkoły Ekonomiczno-Społecznej w Ostrołęce" 2016, no. 21; Rejestr radców prawnych, https://rejestrradcow.pl (access: 10.4.2024).

[45] Cf. Informator Statystyczny Wymiaru Sprawiedliwości, *op. cit*.

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5. The prominence of the European Arrest Warrant

The EAW stands out as a significant element in the realm of *Oz* cases. Its application is a familiar process for Polish legal practitioners, noted for its efficiency and correctness.[46] However, there is a notable gap in awareness of the execution of EAWs abroad, including extradition procedures and the potential implications for human rights for detainees. A lawyer from Gdansk detailed his experience: "I have had an EAW case more than once. It is done quickly and efficiently. People are brought in by airplanes. For this, transport planes of the Polish army are used. Once a week, it flies all over Europe and this flight takes 14–15 hours, because it travels to all capitals and collects those arrested and detained. Then, after the arrest, it is time to appear again in court for the purpose of pretrial detention, then it is time to possibly cooperate with the court, possibly 3.3.5. [Article 335 of the Polish Criminal Procedure Code[47]], so as to remove the premises that formed the basis of this arrest, although it is a very limited possibility. But then we are sure that there is a high probability that he will be in hiding. So, rather, these are very rare situations where there is an EAW and the court would refrain from applying further pre-trial detention, but theoretically it is possible. I have had matters where they brought people into Poland. And there is a kind of struggle whether I have to be only responsible for what happened, extradition, or give up the speciality rule and abandon the case. There have been a few such cases where such doubts have been raised. We usually have extraditions from public defenders, and I don't really deal with that".

This statement reflects the operational aspects of the EAW process, but also underscores the complexity and potential challenges in its final stages.

6. Family law international elements

The sphere of international family law is a prevalent focus amongst legal professionals; nevertheless, a unified legal entity analogous to the EAW is conspicuously absent in this domain. Consequently, family-related issues within an international context warrant a descriptive exploration. Legal practitioners recognise that the paramount international facets in family law include the enforcement of child support payments across borders and cases of parental abduction. The supplementary

[46] T. Gardocka, *Europejski Nakaz Aresztowania. Praktyka stosowania europejskiego nakazu aresztowania w Polsce jako państwie wydającym*, Warszawa 2011; P. Hofmański (ed.), *Europejski nakaz aresztowania w teorii i praktyce państw członkowskich Unii Europejskiej*, Warszawa 2008; L. Klimek, *op. cit.*; Helsińska Fundacja Praw Człowieka, *Praktyka stosowania europejskiego nakazu aresztowania w Polsce jako państwie wydającym. Raport krajowy*, 2018, https://archiwum.hfhr.pl/wp-content/uploads/2018/07/ENA_PL.pdf (access: 9.4.2024).

[47] Act of 6 June 1997 – Criminal Procedure Code (consolidated text, Journal of Laws 2020, item 30).

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judicial management of family-related matters is of notable importance. These encompass background investigations conducted overseas, the integration of foreign court rulings in cases pertaining to parental rights and child welfare, the collaboration with international family support agencies, and the transnational delivery of legal documents. Issues such as divorce, the acknowledgement and partitioning of spousal joint assets, and the implementation of domestic judgments in foreign jurisdictions concerning family affairs are less emphasised.[48] An illustrative case from Katowice can be cited: "There is a mother with a child, she stays in Poland, and the father, by whom maintenance is to be paid, is abroad. And then it happens that an authority is needed to carry out the enforcement somewhere abroad, because it has to be there, the authority has to find someone there, to get the debtor and check what he has".

Legal representatives underscore the critical role that court staff, excluding judges, in these processes. However, the sheer volume and complexity of such cases have led legal experts to contend that the bureaucratic efficiency in handling these matters is diminishing.

7. International legal procedures

The application and awareness of international legal instruments among judges, court staff, and legal practitioners is noticeably limited. These entities, which are central in the administration of justice, often exhibit a propensity to favour national legal frameworks over their international counterparts. This preference significantly influences the operational dynamics within courts, particularly when dealing with cross-border legal matters.

A critical observation among legal professionals is the infrequency with which instruments such as the EIO,[49] small claims procedures, the EEO, and the EPO are used.[50] More so, the process of recognising and enforcing foreign judgments in Poland, as well as abroad, is approached with considerable caution.[51]

Lawyers participating in the research underline that judges and court staff, who are at the forefront of interpreting and applying these international instruments, often display a reluctance to engage with them, citing complexities and unfamiliarity. Consequently, courts tend to substitute these international mechanisms with more

[48] J. Gołaczyński, W. Popiołek (eds.), *Kolizyjne i procesowe aspekty prawa rodzinnego*, Warszawa 2019; J. Ignaczewski, W. Maciejko, M. Romańska, M. Karcz, *Alimenty. Komentarz*, Warszawa 2016, pp. 493–587.

[49] A. Król, *Europejski nakaz dochodzeniowy jako kompleksowy instrument współpracy w sprawach karnych w Unii Europejskiej*, "Rocznik Administracji Publicznej" 2019, vol. 5, pp. 125–146.

[50] Cf. M. Mellone, *op. cit.*, pp. 246–262.

[51] K. Piasecki, *Zarys sądowego prawa procesowego Unii Europejskiej*, Warszawa 2009, pp. 247–269.

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familiar provisions of national law. This approach is particularly evident in matters involving small claims where the cost and complexity of international procedures outweigh the benefits. Legal experts, including those from Szczecin and Krakow, describe their practical experiences: "I have never encountered anything like this. If someone has a small cross-border claim and has to go to court with this claim, he has to find a lawyer who will do it, he has to translate the documents with a sworn translator; he usually gives up on it, because the costs of initiating this procedure are greater than the amount due. And you cannot be sure that you will get these funds back. The only thing that actually happens is the EEO, stating that the writ of execution is suitable for execution in another country of the European Union, but this is due to the fact that some people moved their centre of life and property there. If there are any court decisions against them that cannot be enforced for these reasons, then courts issue EEO certificates and have no problem with that. But it is difficult to have a problem with this, because it is a non-contentious procedure on the official form, so everyone is able to master it".

From the point of view of advocates and legal advisers in Poland, the emergence of international issues is predominantly observed in criminal court cases, with a lower frequency in civil and family law cases. Notably, international components in court proceedings related to commercial matters are scarcely acknowledged or discussed. This oversight in recognising international elements within commercial law cases stems from the commonplace presence of non-national elements in these contexts. Commercial cases often involve foreign parties, international documents, or overseas receivables. Similarly, in non-litigious proceedings, it is not uncommon to encounter foreign partners or shareholders. The regularity of these foreign elements has led to their normalisation within the Polish legal system, where they are treated as standard, equivalent to domestic Polish elements.

This trend highlights a notable aspect of the Polish judiciary's approach to international law. Judges and court staff, who are integral to the application and interpretation of legal principles, often regard these international elements as routine aspects of legal proceedings. This perspective results in a certain level of desensitisation towards the unique challenges and nuances that international cases might present. Consequently, there is a tendency within courts to apply national legal frameworks to cases involving international elements, potentially overlooking the specificities and requirements of international law. A corporate lawyer (a German-Polish attorney-at-law) from Wroclaw exemplifies this situation so perfectly: "In the realm of commercial law here in Poland, what's really fascinating is how international elements have become, let's say, part of the furniture. In our daily grind, we're constantly dealing with foreign companies, navigating international contracts, and juggling cross-border deals. It's become so commonplace that, honestly, there's a bit of a blind spot in our system. We tend to treat these global aspects as if they're just another day at the office, the same as any local case. But

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here's the catch – this approach can lead us to miss the unique challenges that come with international law. So, as lawyers, we've got to be on our toes. It's about making sure we're not just applying Polish law by rote but also weaving in the nuances of international regulations. It's crucial, especially when you're knee-deep in a complex international commercial case. We've got to strike that balance – keep our local expertise sharp while also being savvy about the international playing field".

Moreover, administrative law cases, which generally fall outside the purview of common courts, rarely feature foreign elements. This absence further underscores the limited scope of international legal considerations within certain sectors of the Polish legal system. The judiciary's approach to international elements in commercial and administrative law reflects a broader trend of prioritising national law frameworks, potentially at the expense of fully engaging with the complexities and opportunities presented by international legal instruments. A legal adviser working in Krakow specialising in administrative and administrative court procedure law describes the phenomenon in this way: "In my experience, administrative procedure and administrative court law tend to sideline international elements. This limited involvement of international law in administrative matters is a clear indication of a broader trend in which the national law framework is given priority. There is simply no place for international elements in administrative cases and administrative courts! There is no need to include EU and international procedures in administrative courts. In any case, the procedure is unlikely to allow for this".

The Polish legal system, as seen through the practices of courts and legal professionals, demonstrates a nuanced approach to international legal elements. While these elements are routinely incorporated into commercial cases, there is a notable lack of specialised attention or recognition given to them, reflecting a broader tendency to default to national legal solutions in the face of international legal complexities.

8. Statistical representation

The data provided by Polish courts to the Ministry of Justice are primarily derived from court registers.[52] While providing a quantitative overview, these records often fail to encapsulate the empirical realities of legal proceedings. Ideally, this data should emanate from specialised registers for international cases, known as the *Oz* and *Kop* lists. These registers are intended to be maintained across all judicial and prosecutorial offices, encompassing every facet of foreign affairs, from comprehensive cases to ancillary court activities like correspondence delivery.

[52] Informator Statystyczny Wymiaru Sprawiedliwości, *op. cit*.

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However, the process of updating these registers with new cases and activities lacks standardisation, leaving court staff to rely on their discretion.[53] This *ad hoc* approach can lead to significant omissions, including entire cases conducted abroad, technical aspects (such as service or requests for international legal aid), and procedural elements (such as witness testimonies or the involvement of foreign parties). The absence of clear guidelines, compounded by the plethora of court registers, often results in incomplete or haphazard record keeping. Today, while Polish courts predominantly use electronic registers, the *Oz* and *Kop* registers typically persist in traditional formats. The courts' reliance on Currenda information systems further complicates this scenario.[54] These systems are limited in their ability to recognise international elements, identifying only a handful of international affairs activities (such as small claims, the EEO, and maintenance obligations).[55] For the myriad of cases with an international dimension, this system fails to acknowledge their global nature.[56]

As a result, the statistics relayed to the Ministry only represent a fraction of foreign affairs cases, or they are limited to specific institutions and scenarios. Therefore, these figures are not only imprecise but also sporadic. Nationally, ministerial data on international legal matters, particularly pertaining to the EAW, are compiled annually. However, there is a glaring absence of data on other international legal procedures and instruments. It appears that within the Polish judicial landscape, the EAW is the only EU law institution firmly established and universally recognised by legal professionals and the public as integral to international legal proceedings. Over recent years, the application and enforcement of the EAW by Polish courts have remained consistent, exemplifying the successful integration of Poland's judiciary with EU law and the institutions of the European Union. The EAW stands as a symbol of the globalisation of legal processes in Poland, underscoring the importance of ongoing implementation and participation in broader integration efforts. Regrettably, it remains the only procedure that has been fully assimilated into the Polish judiciary. Official statistics from the Ministry of Justice, along with those from the Central Statistical Office, the Council of Europe, and Eurostat, remain silent on other aspects of globalisation and international procedures, reflecting a significant gap in the recognition and integration of global legal processes within the Polish judicial system.

[53] Order of the Minister of Justice of 19 June 2019 on the organisation and scope of activities of court secretariats and other departments of court administration (Journal of Laws of the Ministry of Justice 2019, item 138).

[54] Currenda, https://www.currenda.pl (access: 31.5.2021).

[55] M. Ślęzak, *Regulacje ułatwiające dochodzenie roszczeń cywilnych na obszarze rynku wewnętrznego Unii Europejskiej*, "Gdańskie Studia Międzynarodowe" 2017, vol. 15(1–2), pp. 196–202.

[56] Ministerstwo Sprawiedliwości, *Sprawozdanie MS-KOM 23*, Warszawa 2019, pp. 9–10.

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9. Judicial system flaws

The lawyers who participated in the survey, drawing on their extensive experience within the judicial system, compiled a comprehensive catalogue identifying a range of issues perceived in Polish courts, particularly among court staff and judges, regarding the application of international and European Union law in routine judicial proceedings. The insights provided by these legal practitioners uncover a pervasive array of problems and deficiencies within the framework of the Polish judiciary.

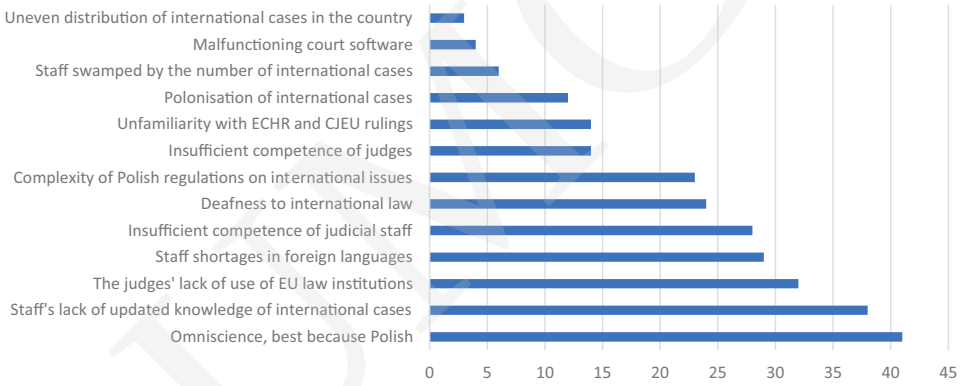


Figure 3. Main problems of Polish courts in international elements by lawyers surveyed (aggregated number of indications in interviews)

Source: Author's own elaboration.

The scope of challenges confronting the Polish judiciary in cases involving international elements is both extensive and varied, attributable to a multitude of distinct characteristics and factors. Polish advocates and legal advisers have identified only a subset of these issues. Nevertheless, addressing these deficiencies is imperative for the enhancement of the Polish judicial system. Such improvements are crucial not only to accommodate migrants and foreign businesses but also to foster closer collaboration with other nations, especially those within the European Union. This advancement is essential to align the judiciary with the evolving global legal landscape and to ensure equitable and efficient legal processes for all parties involved.

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CONCLUSIONS

The Polish justice system approaches the changes brought about by globalisation with a cautious optimism, particularly those changes instigated through the law and institutions of the European Union. Polish advocates and legal advisers underscore that foreign affairs are scarcely noticeable in courtrooms, with their impact barely felt by lawyers and their clients. The notable exception here is the EAW, emblematic of the globalisation of the Polish judiciary and its integration with the European Union. However, this lack of visibility does not imply a stagnation in globalisation. In fact, Polish courts are engaging with procedures introduced by international or national law concerning external relations, although their visibility and impact remain limited. As the utilisation of the EAW exemplifies, the landscape is poised to evolve with the deepening integration of Poland's judiciary into global frameworks.

The initial hypothesis posited that "Polish courts are experiencing only marginal changes due to globalization" is substantially confirmed. Despite the integration of EU and international court case ideas into the Polish legal system, these adaptations have not markedly altered the general function of Polish courts. Awareness of these new elements and their practical implementation remains virtually invisible in the day-to-day operations of judges and courts, with the EAW being a notable exception. In terms of the EAWs usage, the second hypothesis is also cautiously affirmed, indicating that observable changes are confined largely to this area. This trend is consistent in most Polish courts, with some exceptions in larger provincial cities.

The awareness among court staff and judges about the existence and practical application of international law institutions is worryingly low and shows no signs of improvement. The lack of targeted training, workshops, conferences, and adequate preparation during court apprenticeships has resulted in a judiciary largely unfamiliar with global legal procedures. Polish courts, burdened with numerous responsibilities and a significant caseload, struggle to incorporate both the formal and informal elements of globalisation. Additional challenges, such as the complexity of international matters, language barriers, insufficient support from public authorities, and a general lack of motivation and necessity, contribute to this minimal awareness. Therefore, the third posted hypothesis seems to be also confirmed.

Recent years have witnessed a regression in Poland's integration with European and global structures. Changes in the Polish constitutional system, diminishing trust in and the practice of using international mechanisms, coupled with the absence of structural reforms within the judiciary, are impeding the adoption of international legal processes. Lawyers point out that competencies, staffing shortages and limited communication between Polish judges, court employees, and institutions of the European Union and other countries hinder the utilization of international mechanisms in Polish judicial practice. Without comprehensive reforms in legal

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education, court procedures, and international case management, the potential for globalisation in Polish courts will remain unfulfilled, exacerbating the alienation from European and international structures.

Looking ahead, while the number of institutions of international law and international practices is expected to increase, their visibility and application within Polish courts will likely remain minimal. The prevailing reservations, apprehension, and communication challenges among court staff will only deepen the judiciary's detachment from Europeanization and globalisation processes. Even with new EU solutions at different levels, it is improbable that Polish legal practice will undergo significant changes in the short term.

The study's findings indicate that external factors, such as migration movements and capital flows, may not immediately prompt Polish judges to recognise the necessity of employing globalisation mechanisms in routine judicial practice. A proactive and conscious approach, grounded in experience and competence, is required rather than a passive reception of spontaneous elements.

However, there is reason for optimism. With increasing migration, the need to employ international procedures is anticipated to grow and eventually becoming an integral part of court operations. This phenomenon is already observable in commercial law practice, where international elements, though numerous, go unnoticed due to their routine nature. The Europeanization and further globalisation of the Polish judiciary are expected to accelerate in the coming years, leading to a norm in which Polish courts routinely utilise the full range of institutions introduced by European Union law.

The journey towards a fully globalised Polish judiciary is underway, although at a cautious pace. It is expected that in the near future, the practice of using international law and cooperation will become commonplace, mirroring the evolution seen in other aspects of legal practice. This evolution will be pivotal in ensuring that the Polish judiciary remains responsive and adaptable to the ever-changing landscape of international law and relations.

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ABSTRAKT

W opracowaniu przedstawiono kompleksową, naukową i badawczą analizę wpływu globalizacji na polskie sądownictwo, ze szczególnym uwzględnieniem doświadczeń i możliwości adaptacyjnych polskich prawników. Badanie dotyczyło integracji i wyzwań związanych ze stosowaniem międzynarodowych norm prawnych, w szczególności prawa Unii Europejskiej, w polskich ramach prawnych. Metodologia badania obejmowała wywiady jakościowe i szczegółowy przegląd zmian legislacyjnych, zapewniając metodologiczne podejście do zrozumienia tego zjawiska. W raporcie zidentyfikowano adaptację polskich prawników do globalizacji prawa jako istotny problem naukowy, uzasadniający potrzebę głębszej eksploracji tego zagadnienia. Postawiono główną tezę, że polskie sądownictwo przechodzi fazę transformacji, na którą znaczący wpływ mają międzynarodowe zasady prawne, ale stoi przed wyzwaniami związanymi z pełną asymilacją tych norm. Celem badania było rzucenie światła na zniuansowany proces globalizacji prawa w kontekście krajowym, koncentrując się na roli prawników w tej transformacji. Oryginalność badania polega na szczegółowej eksploracji perspektyw polskich prawników, co jest stosunkowo mało rozpoznanym aspektem w istniejącej literaturze. Zakres

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badania był zarówno krajowy, jak i skoncentrowany na Unii Europejskiej, z uwzględnieniem wpływu na międzynarodowe studia prawnicze. Jego wartość poznawcza wykracza poza dyskurs akademicki, oferuje bowiem praktyczne spostrzeżenia dla praktyków prawa i decydentów w Polsce oraz w podobnych systemach prawnych przechodzących proces globalizacji prawa. Wyniki badania wnoszą istotny wkład w zrozumienie dynamiki społeczno-prawnej w kontekście globalnej integracji prawnej.

Słowa kluczowe: globalizacja; polskie sądownictwo; międzynarodowe zasady prawne; prawo Unii Europejskiej; prawnicy

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