

**Author: Bartosz Rymkiewicz**

**Title: Consideration of commercial cases**

**Thesis supervisor: dr. hab. Radosław Flejszar**

**Associate thesis supervisor: dr. Małgorzata Malczyk**

**Key words:** commercial cases, commercial judiciary, commercial litigation, model of commercial judiciary, recognition of commercial cases

**Abstract:**

The dissertation is an attempt to take an original, i.e. different from the prevailing doctrine, look at the problem of recognition of commercial cases. Its essence does not come down to an uncritical acceptance of the current legislation, but is based on it as a basis for formulating *de lege ferenda* postulates, the implementation of which will lead to the improvement of the currently functioning model of recognition of commercial cases through its necessary modification.

Based on the conducted review of the literature on the subject and judicial decisions, this dissertation puts forward the following main theses:

- 1) *commercial cases in Poland are recognized in many diverse proceedings, which is not conducive to the quality and efficiency of their resolution;*
- 2) *the Polish commercial court system is highly inefficient and requires significant organizational and procedural changes.*

In order to demonstrate the truth of the above main theses, the following specific theses were formulated:

- 1) *the duration of proceedings under which commercial cases are recognized in Poland is longer than in other countries;*
- 2) *the duration of proceedings under which commercial cases are recognized in Poland is prolonged;*
- 3) *there is a very broad catalog of diverse cases classified as commercial cases;*
- 4) *the multiplicity of proceedings in which commercial cases are recognized hinders citizens' access to a fair settlement.*

In an effort to demonstrate the truth of the specific theses put forward, and thus the main theses, it is necessary to define the main purpose of this study and its specific objectives. The main objective of the study is *to present and compare procedural solutions for the recognition of commercial cases in Poland, as well as to present a proposal for a modified model of commercial judiciary, enabling the rapid and efficient recognition of commercial cases.*

In pursuit of the main objective, the following specific objectives have been defined:

- 1) *to make a historical-legal analysis of procedural solutions in the field of recognition of commercial cases;*
- 2) *to make a legal-comparative analysis of procedural solutions for the recognition of commercial cases in selected European countries;*
- 3) *to define the concept of commercial case;*
- 4) *to identify the most significant problems of commercial judiciary in Poland;*
- 5) *to analyze the efficiency of the recognition of commercial cases in Poland in relation to other civil cases and in comparison with selected European countries;*
- 6) *to present the most important elements of the proceedings under which commercial cases are recognized in Poland;*
- 7) *to develop a proposal for a modified model of commercial judiciary.*

In realizing the established specific objectives, and thus the main objectives, research methods characteristic of the social sciences were used, i.e. literature analysis, jurisprudence analysis, legal normative acts analysis, historical-legal analysis, legal-comparative analysis.

The dissertation consists of an introduction, four chapters and a conclusion.

The introduction provides an introduction to the subject matter of this dissertation, including defining the main theses and specific theses, setting the main objectives and specific objectives, and indicating the research methods used to achieve them.

In the first chapter, a presentation of the most important issues related to proceedings in commercial cases is made. The historical outline of the formation of procedural regulations for the recognition of commercial cases was discussed, the concept of a commercial case was defined, and the characteristics of a commercial court were presented. There was also an analysis of selected European legal systems in terms of procedural and organizational solutions related to the recognition of commercial cases. An analysis was also made of the average times of proceedings, within which commercial cases are recognized, in selected European countries. The obtained results of the research conducted in Chapter One form the basis for further considerations.

The second chapter focuses on the regulations functioning in the Polish legal system on the recognition of commercial cases. Based on the analysis of normative acts, views of representatives of the doctrine of civil procedure and jurisprudence, the proceedings under which commercial cases are recognized were characterized. Due to the scope of this work, the focus was on the specific institutions and procedural solutions that distinguish the different types of these proceedings. The focus was on the most important problems that arise in the practice of recognition and adjudication of commercial cases. Particular analysis was given to

the separate proceedings in commercial cases reinstated in 2019, the discussion of which will provide a starting point for the formulation of conclusions and postulates *de lege ferenda*. On the other hand, other proceedings, i.e. "ordinary" litigation, non-litigation proceedings, clause proceedings, anti-enforcement actions, and bankruptcy and restructuring proceedings, are presented to a limited extent. The main focus is on the issue of the types of commercial cases cognizable in the various proceedings, their subject and object scope, jurisdiction and court composition, as well as the procedural solutions characteristic of them.

The third chapter compiles the commercial cases and proceedings in which they are recognized, discussed in the earlier chapters. These compilations take into account the diversity of the above-mentioned cases and proceedings, among other things, due to the following criteria of their heterogeneity: commercial cases are the subject of the court's procedural actions at different stages of civil court proceedings; commercial cases are recognized in different modes; the application of the general provisions normalizing procedural proceedings in the various types of proceedings in commercial cases; statutory guarantees for the implementation of the postulate of speed of proceedings.

The fourth chapter - based on the considerations carried out in the earlier part of the dissertation - formulates the position on the necessity of introducing such a model for the recognition of commercial cases, in which the efficiency and speed of the proceedings will not be realized at the expense of limiting the right to a court and at the expense of obtaining an accurate decision in the case. This is because the right to an appropriately shaped (fair) court procedure is one of the elements of the right to a court arising from Article 45(1) and (2) of the Constitution of the Republic of Poland - in addition to the right of access to a court and the right to a court judgment.