PART I

COURT CULTURE: RULES AND IDEAS

Chapter 1.

SCALES OF JUSTICE: AN INTRODUCTION TO POLISH COURT CULTURE

Anna Piszcz[1]

I. Introductory remarks on ideas regarding law and culture

The concept of court culture is accompanied by some other important ideas regarding law and culture[2], such as legal culture, lawyers' culture, court culture, judicial culture, litigation culture, administrative culture, competition culture, etc. First, the term **"legal culture"** is part of general culture and describes attitudes about law; it refers to "those parts of general culture – customs, opinions, ways of doing and thinking – that bend social forces toward or away from the law and in particular ways"[3]. Though I in the main agree with the above–quoted Friedman's view, still I emphasise that legal culture cannot be separated from legal rules themselves[4].

1 Dr hab. Anna Piszcz, Department of Public Economic Law, Faculty of Law, University of Białystok, Poland; legal advisor.

2 And thus regarding law in context, that is, here, law in cultural context (similarly law and economics, law and politics, law and society; see J.H.H. Weiler, *The Constitution of Europe: "Do the New Clothes Have an Emperor?" and Other Essays on European Integration*, Cambridge 1999, p. 15).

3 L.M. Friedman, *The Legal System: A Social Science Perspective*, New York 1975, p. 15; L.M. Friedman, *Total Justice*, New York 1994, p. 97–98.

4 A. Piszcz, *Liability*…, *op. cit.*, p. 15.

And how about the other concepts? Beginning from the concept of the lawyers' culture, those who accept the concept of the legal culture will define the **lawyers' culture (lawyers' legal culture)** as the internal legal culture (an element of the legal culture) which influences the external legal culture, i.e. the legal culture of the general population[5]. The existence and the extent of this impact depend on the number of lawyers in society and on the lawyers' culture developments. In Poland lots of lawyers still seem to think very traditionally, e.g. thinking of criminal punishment seems to be dominated by motif of imprisonment although there are considerable alternatives in the Polish Criminal Code[6]. They do not seem to shift easily from the paradigm of retributive justice to the paradigm of restorative justice.

I consider the concept of court culture similar to the ideas of legal culture and lawyers' culture. Ostrom et al. define court culture as "the beliefs and behaviours shaping 'the way things get done' by the individuals – judges and court administrators – who have the responsibility to ensure cases are resolved fairly and expeditiously"[7]. But it would be better to describe the courts' (judges', court administrators') attitudes towards resolution of cases as **judicial culture**. Both these cultures are internal legal cultures and, therefore, elements of the legal culture (its sub–cultures). But the judicial culture consists of the values, ideologies, principles, ways of doing and thinking by the widely understood judiciary (judges and various types of assisting persons such as laypersons, recording clerks, court administrators, etc.). And the court culture is also more than this. The term **"court culture"** has a wider meaning including a combination of attitudes of various "actors" who, individually and collectively, play important roles in courts. So, also the parties', their lawyers' and some other persons' behaviours and attitudes towards courts and resolution of cases contribute to the court culture.

---

5 L.M. Friedman, *The Legal System…*, *op. cit.*, p. 223.

6 See H. Wantuła, *Polityka w uniwersum manipulacji*, [in:] J. Aksman (ed.), *Manipulacja: pedagogiczno–społeczne aspekty. Część I: Interdyscyplinarne aspekty manipulacji*, Kraków 2010, p. 77.

7 B.J. Ostrom, Ch.W. Ostrom, R.A. Hanson, M. Kleiman, *Trial Courts as Organizations*, Philadelphia 2007, p. 22.

II. Court culture in a real sense and its subjects

The following considerations are based upon two assumptions. The first is that it is possible, for the purposes of analyses, to create a classification of court cultures as: (a) **court cultures in a real sense** (attitudes and behaviours which take place in fact) and (b) **court cultures in a normative sense** (attitudes and behaviours desired by law–makers).

The second assumption is that there are **several groups (types) of subjects that structure court culture in a real sense**: (1) courts (judges, laypersons, court administrators, etc.), (2) parties' lawyers, (3) parties, witnesses and so on. The mixture of cultures that make up the court culture in a real sense is complex. Within courts themselves, there is, first, the above–mentioned judicial culture. Closely linked to this is the culture of lawyers of the parties (in particular the culture of public prosecutors who can be considered lawyers of the State as one of the litigants, which is the case in regard to criminal prosecutions). These are the cultures of professionals. They are very similar and both derive from the culture of training in law. Lawyers have a culture and a style in common; legal style and vocabulary, words and phrases bind and unite the profession, protect professional cohesion and prestige[8]. It raises for our consideration the question whether the court culture is the elite culture. If we consider the culture of parties to proceedings and witnesses ("peoples' culture", non–elite culture) as part of the court culture, then we might see Polish courts as a battleground for conflicting cultures. But the one thing linking all of them together is the fact that they seem to be dominated by the vision of an archetypal court characterised with adversariness, "winner takes all" decisions and other "rituals".

Court culture in a real sense manifests itself through aspects of the justice administration such as: (1) **actual efficiency (or at least effectiveness) of courts**, (2) **providing real access to justice**, (3) **real procedural and substantive fairness**. In short, if we (including the weakest "actors" such as consumers and SMEs) had a quick dispute resolution, easy access to justice, fair and consistent case law, then the

8 L.M. Friedman, *The Legal System*…, *op. cit.*, p. 263.

court culture could be perceived as high. These are the most important prerequisites for high level of the court culture of the twenty–first century.

First, I would like to present the public opinion about courts and administration of justice with respect to these three aspects of the justice administration. Unfortunately, nowadays there is an emerging risk that public opinion is influenced negatively about courts due to a "tabloidisation" of the news which involves the sensationalisation and simplification of material regarding, e.g., judges' mistakes (on the media publicity of the court proceedings see Part III Chapter 3 by Z. Zawadzka). Regarding the above–mentioned three aspects of the justice administration, the opinion research of 2011 shows that[9]:

1) nearly half of respondents (46%) were satisfied with the justice administration and 41% of respondents were dissatisfied therewith; reasons for dissatisfaction were, amongst others, the following:
   a) slowness of justice administration (56% of those dissatisfied) and low effectiveness (44%),
   b) unfair case law (30%),
   c) insufficient protection of injured persons (21%),
   d) high costs of activities of the justice system (15%),
2) over half of respondents (56%) were satisfied with access to justice, while 31% of respondents said that they were dissatisfied therewith; reasons for dissatisfaction were, amongst others, the following:
   a) too high court fees and costs (31% of those dissatisfied),
   b) bureaucracy and slowness of proceedings (29%) and long time limits (16%).

Let's take the first of above–mentioned aspects of the justice administration, i.e. **actual efficiency or effectiveness of courts**. Efficiency and effectiveness are notions that economics is primarily concerned with. In business terms, while efficiency is the ratio of the

9 TNS OBOP, *Raport końcowy z badania opinii publicznej.Wizerunek wymiaru sprawiedliwości, ocena reformy wymiaru sprawiedliwości, aktualny stan świadomości społecznej w zakresie alternatywnych sposobów rozwiązywania sporów oraz praw osób pokrzywdzonych przestępstwem*, Warszawa 2011, p. 14–16, 20.

output to the input into a given system and deals with one's skilfulness in avoiding the wasting of effort and time, effectiveness is related to the system's objectives rather than the costs of their realisation[10]. Business entities that can produce items quickly and inexpensively are more successful than those that cannot. And business entities expect the courts to "produce" decisions quickly and – as a result – inexpensively (for more see Part II Chapter 5 by E. Pankiewicz, in this volume). In business, time is money. Long lasting court proceedings – even if finally a business entity wins the many–year battle – may make this entity go into bankruptcy. In such a case, court victory may leave a bitter taste. Thus, time is of the essence. Certainly, business models cannot be literally applied to the justice policy and to assessing the performance of judiciary. But on the other hand, failing to understand business needs by law–maker and/or courts can have disastrous results. And if law–making (legislators) or judging (judiciary) has always been someone's only job, it is typical that he/she is not businessly inclined.

From 1 October 1989 to 3 May 2012 Article 479[16] ccp. stipulated that in commercial cases the court should endeavour to give a judgment within three months from the date of filing a lawsuit (however, matters relating to the conclusion, amendment and termination of the agreement and the determination of its contents were to be recognised first). As everyone knew, and as statistics have shown, frequently this provision was ignored; non–binding time limit was often extended. The average time for a litigious commercial case[11] resolved by a district court was 9.2 months in 2011. But after 2011 two factors have given a new spin to this story. First, as of 3 May 2012 the quoted provision was repealed together with all other provisions regarding special proceedings in commercial cases[12]. Currently we have not got special proceedings in commercial cases or the non–binding time limit for a single case. A solid

10 A. Piszcz, *Sankcje w polskim prawie antymonopolowym*, Białystok 2013, p. 64.

11 From filing a lawsuit to the moment when a judgment becomes final. See Ministerstwo Sprawiedliwości, Departament Organizacyjny, Wydział Statystyki, *Informacja statystyczna o ewidencji spraw i orzecznictwie w sądach powszechnych oraz o więziennictwie. Cz. VII. Sprawygospodarcze w 2011 r.*, Warszawa 2012, p. 6.

12 For more see, i.a., A. Piszcz, *Still–unpopular Sanctions: The Private Antitrust Enforcement Developments in Poland after the 2008 White Paper*, Yearbook of Antitrust and Regulatory Studies 2012, No. 5(7), p. 72.

body of data[13] strongly indicates that without them the proceedings in commercial cases are getting even longer; the average time for a litigious case resolved by a district court was 9.69 months in 2012. Second, a new system for delivering court correspondence came into effect on 1 January 2014 which will probably result in even longer delays in court proceedings although without the courts' fault[14].

But that is not the point. The point is the justice administration seems not to keep with the today's "I want it now" culture (fast food culture). And the level of patience connected therewith is low not only in business. Younger generations seem to think: "How you value my time will be used as evidence in determining how you value me"[15]. But an archetypal court culture is not about valuing the time of proceedings' participants. Sometimes, even decent persons seem to be afraid of going to court as witnesses because it takes too much time. It is typical that even if the judge does not care to isolate witnesses from one another, a dozen or so witnesses are summoned to appear in court at the same appointed time in the morning. As a result, some of them spend the whole day waiting in the unfriendly marble corridor. There is an even bigger problem with how to spend the waiting time if we are summoned to the court built in suburban areas (such a location is not rare nowadays in Poland).

It seems that there are two considerable examples of a prompt case resolution in Poland. First, we have the so–called 24–hour courts to tackle, i.a., stadium hooligans. However, the name "24–hour courts" is just a "trade name" for accelerated criminal proceedings which may

13 See Ministerstwo Sprawiedliwości, Departament Sądów, Organizacji i Analiz Wymiaru Sprawiedliwości, Wydział Statystyki i Analiz Wymiaru Sprawiedliwości, *Informacja statystyczna o ewidencji spraw i orzecznictwie w sądach powszechnych oraz o więziennictwie. Cz. VII. Sprawygospodarcze w 2012 r.*, Warszawa 2013, p. 10.

14 The Polish Post (*Poczta Polska*) which used to deliver mail for courts and prosecutors' offices was replaced by the Polish Mail Group (*Polska Grupa Pocztowa*). As for now, not only is the correspondence delivered late, but also it is delivered in a damaged state. See New Poland Express, *Court mail not getting through*, http://www.newpolandexpress.pl/polish_news_story–6264–court_mail_not_getting_through.php (1 February 2014).

15 Differences in time perception are defined by generations and also by geography and ethnic origin. Americans and Northern Europeans are psychologically stressed in Latin American and Mediterranean contexts because they often perceive members of these cultures as responding slowly and hence not valuing their time. See D. Cannon, *The Postmodern Work Ethic*, [in:] G. Mulgan (ed.), *Life After Politics*, London 1997, p. 42.

last longer than 24 hours (even approximately 14 days in a trial stage). Public authorities have wanted to demonstrate how efficient they are chasing stadium hooligans and how much they care for the safety of "normal citizens". But for several first years of the existence of the ccrp. provisions on accelerated criminal proceedings, Article 517i ccrp. stated that an accused had to be represented by a defence counsel; if he did not choose one, then the court would choose an *ex officio* defence counsel for him/her. The State paid for such compulsory defence by an *ex officio* defence counsel. In fact, proceedings of this type were not so often undertaken against stadium hooligans; probably, the most frequent defendants were drunk drivers. Those proceedings with compulsory defence cost a lot and taxpayers could not understand why the Treasury should pay for legal services to defend, e.g., a drunk driver who certainly could afford to hire a lawyer but did not have to do this because under Article 517i ccrp. he/she was provided with a lawyer free of charge. Moreover, a defendant could not conclude the so–called settlement with the public prosecutor. Fortunately, the criticised framework of legislation was amended and the current fast track is not so absurd and does not generate such a huge cost for the Treasury.

Second, from 1 January 2012 we have had the characteristic product of modern culture in the form of a 24–hour company (a limited liability company registered within one day of receipt of an application filed online).Within the first fifteen months of the existence of statutory provisions thereon 5 274 such companies were registered by the Polish registry courts[16]. However, the total number of the Polish limited liability companies[17] has increased by 21,741 in 2012. So, it is possible then that the above–mentioned piece of "judicial fast food" is not tasty enough for business.

As easily can be seen from the above, two issues important for efficiency of justice appeared between the lines. The first is consensual (or alternative) dispute resolution and the second is technology that can

16 Ministerstwo Sprawiedliwości, *Już ponad 5 tys. spółek z o.o. zarejestrowanych w trybie S24*, http://ms.gov.pl/pl/informacje/news,4887,juz–ponad–5–tys–spolek–z–oo–zarejestrowanych–w.html (31 January 2014).

17 See Główny Urząd Statystyczny, *Zmiany strukturalne grup podmiotów gospodarki narodowej w rejestrze REGON, 2012 r.*, Warszawa 2013, p. 33.

deliver huge improvements in the justice administration. I will return to the issue of ADR later. And as to the new courtroom technologies I would like to refer you to Part III Chapters 1 and 2 by – respectively – A. Bieliński and M. Dziemianowicz who present fears, needs, expectations connected with the new courtroom technologies and the reality (in particular from a judge's perspective). It needs to be emphasised here, however, that fortunately the need for diffusion of innovation in courts has been recognised by the State. More and more courts and/or judges have started to record the so–called e–protocol (e–minutes), put their decisions on the Internet and use a judicial Intranet. It is possible for documents to arrive in courts in an electronic form (with secure digital signatures). All this should help to increase the pace of court proceedings. Now we are going to see how particular courts manage the innovations. Failing to do so and being quite clueless about technologies that are able to revolutionise the justice administration, they will further contribute to the non–innovatory court culture as opposed to the culture of the "high–tech" courts. The technology of the knowledge age means the opportunities to courts; many judges understand this. Each generation of judges is being shaped by the communication technologies and media with which it is brought up (television, telephones, fax, computers, e-mail communication, etc.). Luckily for innovations, the old cadres (described in Chapter 2 of this Part by A. Czarnota) that were brought up with television, telephones and fax have been already replaced almost entirely with the new generation of judges.

But does the technology also mean the threats to the court culture "actors"? First, it seems to me that trends of technocratisation, specialisation and managerialism may tend to further marginalise the now "little–used" lay persons (on their role see Part II Chapter 2 by D. Kużelewski). Second, there is a risk that the costs and complexities of the new technologies may threaten the equality of arms between prosecution and defence with the result that the defence may be unable to explore and expose the defects in the prosecution's construction of events[18] (on the equality of arms see Part II Chapter 1 by C. Kulesza). Last

18 See the presentation of Clive Walker at 14th BILETA Conference: "CYBERSPACE 1999: Crime, Criminal Justice and the Internet", p. 10.

but not least, the fact that the Internet makes the law and court decisions available to the "normal" citizen may build the latter's enormous self–confidence (to his/her detriment) and increase the belief that the roles of the lawyer (if any) do not include the demonstration of legal texts and dispute resolution but only the legal risk assessment.

The above examples regarding time and technologies show how society is changing and how (to what extent) this implies for how court proceedings are organised, i.e. what steps are taken to keep up with changes in society and its culture. The law–maker introduces legislation (court culture in a normative sense) aimed at specific purposes such as increasing efficiency of courts and sometimes it can be seen from the very beginning that some solutions are going to be counter–efficient. And sometimes only the practice reveals inefficiencies in the existing solutions. Perhaps, it is a naive instrumentalism to see legislation as having a specific purpose against which efficiency can be measured. However, we know the law–maker's purposes "flagged" during the legislative process and we can find statistical data in favour or against certain hypotheses regarding the results of existing solutions.

One of the statistical data that still makes me amazed is the overall budget of the Polish justice system which in 2010 was as high as 0.85% of general government expenditure compared to an EU average of 0.44% (while at the same time in Denmark, Ireland and United Kingdom it was only around 0.15% of general government expenditure)[19]. Low expenditure on the Polish justice system is a myth. As regards human resources, Poland had 27.8 full–time professional judges per 100,000 inhabitants, compared to an EU average of 18.9 (Austria – 17.8, Ireland – 3.2, United Kingdom – 3.6, Sweden – 11.5)[20]. It should, however, be remembered that the Polish court system caseload is twice as bad as an EU average[21]. Having such expenditure and human resources, Polish courts should be the number one dispute resolvers in Europe. And, indeed, efficiency of the Polish justice system is assessed much better

19 E. Dubois, Ch. Schurrer, M. Velicogna, *The functioning of judicial systems and the situation of the economy in the European Union Member States. Report prepared for the European Commission (Directorate General Justice)*, Strasbourg 2013, p. 119, 267, 414, 567.

20 *Ibid*, p. 29, 267, 414, 547, 567.

21 *Ibid*, p. 427.

than in the report for 2008. But two factors have a direct impact on such a good assessment. First, the Polish data were compared with the results from the other EU member states and the EU averages were "spoiled" by the results of some Mediterranean countries. Second, the civil or commercial case disposition time as long as 180 days[22] is "so short" also because of the fact that the average is forced down by some typically short disposition times of non–litigious civil and commercial cases. In fact, in many litigious civil and commercial cases the court efficiency is not adequate. Furthermore, judges make mistakes. It is nothing new; the justice system strongly based on the human factor was never error–free. But it seems that now the Supreme Court is changing attitude to judges' mistakes. A Polish judge who summoned a defendant to jail in spite of the previous suspension of the sentence execution (the defendant spent 35 days in jail) was considered free of disciplinary liability for his mistake. His mistake was assessed as being of minor significance. The Supreme Court took into account mitigating circumstances consisting in the fact the judge (similarly to most judges in our country) was given an "excessive" workload[23].

Poland has been touched by the influences of a crisis. It has been not only a crisis in the economy but also almost a crisis in everything, including a crisis in the judiciary and in law enforcement. But it seems that the real values of the court culture should survive times of the crisis and even grow stronger. The crisis should be also an opportunity for development. But how could the caseload and – as a result – expenditure be decreased? It is worth noting here that, e.g., the adoption of the Act 17 December 2009 on the Pursuit of Claims in Group Proceedings[24], was motivated by reasons such as, amongst others, improving the administration of justice and judicial economy, relieving courts of the obligation to hear multiple factually similar cases with different plaintiffs and reducing court costs (for more details I would like to refer you to my Chapter titled "Has class–action culture already hit Poland?" contained in the second volume in the series on law and culture "Court Culture

22 *Ibid*, p. 417.
23 Judgment of the Supreme Court of 15 June 2011, SNO 23/11, LEX No. 1288825.
24 Journal of Laws No. 7, item 44.

– Conciliation Culture or Litigation Culture?"[25]). The above–mentioned Act was passed long before publishing[26] the Communication from the EU Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Towards a European Horizontal Framework for Collective Redress"[27] and the EU Commission Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law (which took place in 2013)[28]. European Union seems to learn some lessons from the United States and teach member states the culture of togetherness (which is not typical in Poland; I would rather say that we have a culture of individualism here). But the institution of group action as the mix of global and local approach – in most European countries (that have it) – is not as efficient as its American counterpart. When we reach the point of asking whether it is going to be a legal McWorld on both sides of the Atlantic[29], we cannot underestimate the fact that there is a gulf between the court cultures of the U.S.A. and Continental Europe; here, I would like to refer you to Chapters contained in the second volume in the series on law and culture "Court Culture – Conciliation Culture or Litigation Culture?"[30] written by the American colleagues. As A. Franze indicated, settlements occur in some ninety–eight percent of American class action cases. In Poland it is impossible. A defendant who loses the case is obliged to pay to a plaintiff the single damages, interest and reasonable costs. But if there was any type of multiple damages, say, American–like treble damages, and a defendant still opposed to settling a group case, he/she could be considered crazy. However, while in the United States there are categories of cases in which successful private parties are awarded multiple damages plus reimbursement of reasonable attorney fees, in Poland this motivating factor in the form of multiple damages does not exist. There will always be some differences between

25 Forthcoming.
26 So, we cannot say that the Polish Parliament wanted to introduce these solutions because the European Commission wanted them to want.
27 COM/2013/0401 final.
28 C(2013) 3539/3.
29 On McWorld see B.R. Barber, *Jihad vs. McWorld*, New York 2011, p. 11.
30 Forthcoming.

both cultures and a gulf between them will not be bridged even if the differences are to be reduced to some extent.

Over the last years the group actions have begun to attract notice in Poland. But they are not a method of decreasing the caseload and expenditure. As such a method, I propose the approach which requires a major shift in attitudes towards pre–trial dispute resolution. This approach is substantiated by the concern to prevent court litigation and costs of almost all "actors" connected therewith. We have consensual forms of dispute resolution in Poland (as regards substantial and important topic of consensual forms of dispute resolution and its advantages, I would like to refer you to Part III Chapter 4 by M. Skrodzka and to the second volume in the series on law and culture "Court Culture – Conciliation Culture or Litigation Culture?"; with regard to East–Scandinavian countries see Chapter 4 of this Part by L. Ervo). But we rarely use them. For many years our court culture has been the culture of conflict where after a judgment the conflicted parties are conflicted to the same extent as before a judgment (however, sometimes one of them is more satisfied than the other). Disputes are caused by cultural factors, and more specifically by disturbance of interpersonal relationships. Currently we are attempting to build the culture of compromise in order to make both conflicted parties satisfied, eliminate the conflict and fix their interpersonal relationships. The story worth mentioning here is that last December one of the judges in the local court used to say: "Dear Parties, it is Christmas time, it is time of forgiving, you are going to have a settlement". Each method can work sometimes.

What we need now, first of all, is to rethink the role of lawyers therein. Compared to other EU member states, Poland has a low number of lawyers and those who are in place do not care for pre–trial dispute resolution. Their only activity that can be associated with attempts for pre–trial dispute resolution is sending a final demand for payment to a debtor. Then they go to the court. Ireland has – per 100,000 inhabitants – 238.6 lawyers and only 3.2 judges, United Kingdom – 299.1 lawyers and 3.6 judges, Poland – 77.1 lawyers and 27.8 judges. The number of judges seems inversely associated with the number of lawyers and it seems that, above all, what we need is a new balance therein. Where lawyers are dispute resolvers who resolve disputes quickly and without

much involvement of the judiciary, there is no need to extend human resources within the justice system. The Polish dispute resolution should move from the courts towards more flexible, smaller–scale activities in the form of ADR. And lawyers themselves should be the "advocates" for these developments and be willing to be more open about the settlements. What is important here is a solid analysis of chances for success and of expected balance of costs and benefits for the client (and not only for the lawyer). On the other hand, Polish legal provisions on ADR should be ultimately amended. A special committee should be appointed and recommend changes, especially with regard to mediation.

As the 20th century drew to a close the existence of legal "weariness" (claim–unconsciousness, being shy about litigation) came into view in Poland[31]. Average consumers have never been very enthusiastic about going to court to sue an undertaking with "deep pockets". Important elements of such legal "weariness" have usually been unwillingness to assert rights, apathy to the violation of the law and a fairly considerable fear of involvement in legal proceedings. Perhaps consumers have been uninformed about their rights, they have been afraid of "costs" in the form of their own time and effort as well as a negative reaction of the defendant, they have been afraid that litigation could go against them or they have not believed in the triumph of "truth" (truth which is increasingly formal whereas material truth is more frequentlysubordinate to formal truth). But it is changing now. There is being created the Western–like claiming (compensation) culture (in Polish *kultura roszczeniowa*), the culture of complaint, in Poland. In particular insurers are faced with increasing claims for damages. It is fostered by the fact that our society gets wealthier, we live longer, legal services are more and more accessible and, last but not least, we have group actions in place. Provided that the number of lawyers is going to increase, it will be better for the justice administration if they contribute to employing ADR techniques and not to the claiming culture.

31 C. Wiener, *Inflacja przepisów prawa i jej konsekwencje*, [in:] J. Łętowski, W. Sokolewicz (eds.), *Państwo, prawo, obywatel: zbiór studiów dla uczczenia 60–lecia urodzin i 40–lecia pracy naukowej profesora Adama Łopatki*, Wrocław 1989, p. 437.

III. Court culture as the idea including the organisational culture of courts

Organisations have their own cultures. Is court culture the organisational culture of courts? Organisational culture is defined in literature as reflecting the way those in organisation think and act as they carry out their tasks; it must flow directly from the organisation's values and ethos (beliefs of those who work in an organisation)[32]. So, the organisational culture of courts is very close to the notion of the judicial culture. As such it is included in the notion of court culture.

In literature there were identified four ways of changing the culture of an organisation, i.e., through: (1) contagion (transmission of values from one entity to another); (2) coaching; (3) learning; (4) coercion (pressure)[33]. Let's now apply this simple model to the Polish courts. This will show how effective the four influences may be in bringing about changes in Polish court culture.

Contagion occurs when individuals or groups move in, or are brought in, to enable an organisation to absorb the culture of the organisations from which they come. We can see contagion in international courts such as ECHR. Judges coming from different cultures may bring their own cultural accents into the court. However, as regards national courts, their judges do not migrate to the other countries to work in courts in different societies. On the other hand, even if judges migrate between different regions of Poland, such migration does not influence the court culture as the cultural differences between the courts in, e.g., Masovia and Lower Silesia are not discernible.

Coaching occurs when an organisation's management decides that the culture must be changed and they may bring in experts to identify what changes in culture are needed and to find ways of achieving. It seems that the Ministry of Justice having considered themselves as the courts management has tried to use a specific type of coaching in the form of "Strategy for Justice 2020" which is going to be signed by the Minister

32 D. Hague, *Transforming the Dinosaurs*, [in:] G. Mulgan (ed.), *Life After Politics*, London 1997, p. 112.

33 *Ibid*, p. 113.

of Justice and the General Public Prosecutor on 5 February 2014. The Ministry of Justice has pretended to attempt a substantial cultural change in the form of the Strategy, but the draft Strategy prepared by experts of the Ministry of Justice drew sharp criticism from judges[34]. Judges said that most of the "changes" being presented in the draft Strategy already exist and, thus, the Strategy is a set of propaganda slogans.

Learning is the most desirable way of changing a culture. Are Polish courts learning organisations? They successfully have begun to be, in particular due to the establishment of the National School of Judiciary and Public Prosecution. On the other hand, they should be teaching organisations[35].

But above all, coercion matters. Coercion (pressure) takes the form of legislation here. It should be noted that the court culture is a relative concept, not only depending on various values and attitudes to courts and resolution of cases, but also being shaped by the laws introduced to govern resolution of cases and organisation of courts. The court culture is influenced by both non–legal (social) rules and legislation. The first ones fill empty spaces (gaps) between legal rules. The court culture cannot be separated from legal rules. Although one cannot ignore the impact of developments in values (as well as the impact of various constitutional, economic, political and social factors in the environment in which courts operate) on court cultures, legislation and its enforcement can be understood as the primary factor determining court culture understood as attitudes of various "actors". Let's take as an example of legal rules determining the vision of an archetypal court the legal provisions on court dress and chain with eagle head, situations when proceedings' participants must not sit, etc. When introducing the laws that govern resolution of cases and organisation of courts (court culture in normative sense) law–maker "extorts" a particular culture

34 Stowarzyszenie Sędziów Polskich IUSTITIA, *Opinia "Iustitii" na temat "Strategii systemu wymiaru sprawiedliwości na lata 2014–2020"*, http://www.iustitia.pl/index.php/opinie/792–opinia–iustitii–na–temat–strategii–systemu–wymiaru–sprawiedliwosci–na–lata–2014–2020 (27 January 2014).

35 Similarly to an administrative agency that is obliged to conduct its proceedings in such a way that they have an effect on knowledge and legal culture of citizens; see judgment of the Constitutional Tribunal of 7 July 2009, K 13/08, LEX No. 504061.

(court culture in real sense) from courts or at least encourages them thereto.

However, courts are subject to a range of influences and pressures whose character is determined by the cultures of those who initiated the pressures. For instance, draft legislation is usually prepared by the Government or – to be more precise – the Minister of Justice. But a typical legislative track includes the MP filter. But the Government seems to have appetite for influencing the judiciary on their own. Perhaps that is why the Minister prepared a soft law in the form of "Strategy for Justice 2020". As M. Dąbrowski emphasises in Part II Chapter 3 of this volume, in the world where we have the three public powers separated and the essence of the system is the independence of the judiciary towards the other public powers, in fact the judicial system is quite dependent on politics and politicians.This, in turn, threatens to approximate a system of value priorities of judiciary to a system of value priorities of executive. In such an environment, the distinct values of judiciary are becoming even more essential. However, improvements in the justice administration and the court culture are not possible without legislation, no matter how many strategies or other soft–law documents the Minister of Justice adopted. If courts are to meet challenges of the twenty–first century, they need coercion (legislation) which recognises the needs and nature of innovation.

IV. Concluding remarks

The problems of justice administration and law enforcement can be examined from a cultural analysis of law perspective. Such an analysis can provide input into the theory of court culture, which is of cultural and interdisciplinary nature.

This chapter is concerned with questions about the Polish court culture in real sense as well as aims to give an insight into some aspects of court culture as the idea including the organisational culture of courts. The subject matter of this chapter is so vast that it would be pointless to attempt to deal with it comprehensively and it would be overconfident to pretend to provide a final answer to the questions on the current Polish

court culture. Therefore, this chapter is not an exhaustive description but a focused summary and discussion. It studies, in particular, some new trends which seem to affect the court culture in real sense. To sum up, the court culture may change through all four above–mentioned influences, but especially through coercion (legislation). Thus, law–maker should focus also on a more cultural approach to law, a systemic view of law which grasps how law and culture (here, court culture) interrelate. Third, in particular topics of technology and ADR techniques can be explored as new trends related to court culture. Last but not least, the court culture can be accepted as an interesting concept that raises questions how it has come to take its present form in Poland, the strengths and weaknesses of current *status quo*, and how improvements might be made.