

# **Application of EU law in Polish courts**

**Ten years of experience and a long way to go**

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# The role of the Court of Justice of the European Union

- Right of any court to refer a question concerning interpretation.
- Duty of courts of last resort.
- There are also questions concerning validity of EU law, less common.

# Statistics for Poland

- There are ca. 380 common courts.
- As well as 16 + 1 administrative courts.
- E.g. in 2012 there were 14 milion new cases registered (acc. to the Ministry of Justice).
- Polish Instytut Wymiaru Sprawiedliwości registers in total 17 preliminary questions referred by all common courts together over the period of 10 years.
- Meanwhile the administrative courts referred 50 questions.

# Statistics for Europe

- According to the official statistics by the CJEU:
- In the year 2011 alone Belgium courts made 34 references.
- Bulgarian courts made 22.
- Spanish courts (similar country size) made 27.
- And German courts made 83.
- (Polish courts made 11 and this was a very good year).

# Why so shy?

- Judges' answer: time (one year or more).
- Triviality of proceedings vs its length.

# For instance

- There is a dispute between an emptor and a vendor for payment of the price.
- The issue is quite obvious, the price should be paid.
- The vendor denies that Polish courts have jurisdiction, relying in this respect on a prorogation agreement.
- The prorogation clause was inserted in all invoices issued by the emptor and paid without protest by the emptor.
- This agreement, the argument goes, is in accordance with Brussels Ibis EU regulation, with

# Not so shy after all?

- Legal questions (referred to the Supreme Court by courts of second instance only):
  - In 2014: 166.
  - In 2013: 194.
- (Source: the Supreme Court report to the Parliament)
- However, the waiting time is a few months only (plus a disruption of proceedings).

# Other hypotheses

- J. Sadomski:
- Lack of knowledge of EU law among judges (IMHO dubious).
- Lack of counsels' and *amici curiae* initiative.
- Lack of understanding that there is a duty to refer.



# Thank you!

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