

JUDGES AND COURT SPECIALIZATION IN COMMERCIAL MATTERS-HOW IT CONTRIBUTES TO EFFICENCY OF COURTS AND QUALITY OF DECISIONS

Abstract

Author analyzes comparative experience in court specialization as it is commonly recommended as an important justice reform initiative to improve efficiency and quality of the system. The comparative experience and practice do not show clear link between specialization and successful judicial systems. Studies have shown that specialization can be helpful in improving efficiency in more complex cases that require special expertise, such as in bankruptcy, intellectual property rights or business cases. The studies also pointed some challenges. Allocation of additional resources for handling business cases can lead to the perception that a court provides preferential services to the business community, or special courts have been created when the case load did not actually justify the additional investment. In addition, judges who work on only one type of case may develop narrow expertise that may limit their focus. Author provides overview of the comparative practices related to the specialized commercial courts and variations in specialization models.

Key words: *specialization of court and judges, organization of courts, commercial cases, comparative specialization models, selection and training of judges, efficiency and quality of justice, consistency in decision-making.*

1. Introduction

Court specialization is increasingly advocated for as laws become more complex and range further into areas beyond traditional bounds. It is expected that court specialization increases efficiency of courts, expertise of judges, and quality of decisions, yet can also create special interest capture, and a two-tiered judicial system that benefits repeat users,

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potentially lowering the quality of decisions. A potential disadvantage of specialization is the reduced potential for judges to benefit from knowledge spillovers across different areas (e.g. competition and bankruptcy law). Also, specialization may introduce rigidity in the use of resources, limiting the possibility to reallocate judges from one area to another.

The debates regarding the benefits of specialization of judges and the movement towards specialization of judges in many countries may suggest that specialization of judges has more beneficial than negative effects on judges' work. However, few empirical studies have been carried out so far and the empirical evidence on the impact of specialization is limited.²

Systematic evidence on the performance of specialized courts is fairly slim; there is only fragmentary information about the actual effects of specialization. The OECD Report "What makes civil justice effective" stated that one of the factors associated with shorter trial length is existence of specialized commercial courts.³ Based on OECD data, specialization in commercial matters, as measured by the presence of specialized commercial courts or sections covering at least three commercial matters, appears to have some association with shorter trial length.⁴ According to OECD data trial length is inversely related to the indicator capturing commercial specialization, while the productivity of judges does not show any clear correlation with it. The result could be due to non-homogeneity of the specialization and the productivity measures, the former only referring to commercial cases while the latter encompassing different matters and instances.⁵

The existing cross-country evidence is indeed mixed. The impact of court specialization on performance is also analyzed in Voigt and El Bialy.⁶ Using the CEPEJ dataset, the authors find a negative correlation between court specialization, as measured by the ratio of specialized first instance courts to all first instance courts of a country, and the number of resolved cases divided by caseload. As discussed in Voigt and El Bialy, expert judges may want to be more precise regarding their area of expertise, taking more time per case, or their productivity may be negatively affected by the routine that derives from specialization.

² L. Baum, „Probing the Effects of Judicial Specialization“, *Duke Law Journal* 58/2009, 1680.

³ OECD (2013), *What makes civil justice effective?*, OECD Economics Department Policy Notes, 18 June 2013.

⁴ G. Palumbo, et al. (2013), "The Economics of Civil Justice: New Cross-country Data and Empirics", OECD Economics Department Working Papers, No. 1060, OECD Publishing.

⁵ *Ibid.*, 29.

⁶ S. Voigt, N. El Bialy, „Identifying the determinants of aggregate judicial performance: taxpayers' money well spent?“, *European Journal of Law and Economics*, Vol 41, 2/2016, 283-319.

In 2013 year, the World Bank published guidance that specifically highlights the information that is needed to determine when examining if specialization is required in particular areas, as well as the specialization model that may be most appropriate.⁷ Report concluded that there is no one preferred option and that in each specific case there is a essential to examine the potential need and demand for further specialized judicial services and to consider what would be needed to meet goals that are justified.

The European Commission for the Efficiency of Justice (CEPEJ) report on European Judicial Systems in its 2008 edition states that “specialization in courts is a growing trend among European countries”.⁸

The new 2016 Doing Business methodology introduced a new measure in the enforcing contracts indicator, the quality judicial processes index.⁹ This indicator tests whether each economy has implemented a series of good practices in the areas of court structure and processing, such as specialized courts, effective case management, court automation and alternative dispute resolution.

The data show that 97 of the 189 economies covered by Doing Business have a specialized commercial jurisdiction. Specialized commercial jurisdiction appears in different forms as a dedicated stand-alone court, a specialized commercial section within an existing court or specialized judges within a general civil court.¹⁰

According to 2016 Doing Business there is no clear link between commercial court specialization and contract enforcement time. Some Council of Europe countries that have strong economies, do not specialize in commercial cases and have low average days to enforce contracts (Norway ranked 10th at 280 days), Sweden and Finland (ranked 14th at 321 days and 23rd at 375 days respectively).

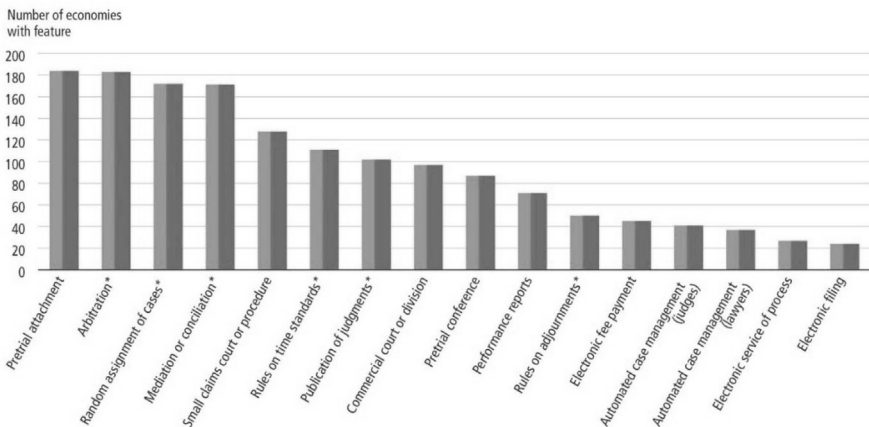
Countries results in contract enforcement show that specialized commercial jurisdiction is not sufficient measure for economic development and sustained growth. Countries that are ranking well in enforcing contract index more consistently applied good judicial practices such as availability of arbitration, pretrial conference, small claims court or procedure, effective case management including electronic case management, etc.

⁷ H. Gramckow, J. Walsh, *Developing specialized court services – International Experience and Lessons Learned*, the World Bank, 2013.

⁸ European Commission for the Efficiency of Justice (CEPEJ), *European judicial systems. Edition 2008 (data 2006): Efficiency and quality of justice*, Council of Europe 2008.

⁹ <http://www.doingbusiness.org/reports/global-reports/-/media/GLAWB/Doing%20Business/Documents/Annual-Reports/English/DB16-Chapters/DB16-What-is-Changing-in-Doing-Business.pdf>.

¹⁰ Doing Business 2016, *Measuring Regulatory Quality and Efficiency*, <http://www.doingbusiness.org/-/media/GLAWB/Doing%20Business/Documents/Annual-Reports/English/DB16-Full-Report.pdf>.



Features covered by the quality of judicial processes index and its existence evaluated economies¹¹

The density, number and types of specialized courts in the Council of Europe states varies greatly.¹² There are countries with a very low level of judicial specialization. Among the countries that do not have any specialized first instance courts the CEPEJ report lists Andorra, Bosnia and Herzegovina and Czech Republic.

2. Advantages and Limits of Specialized Courts

Specialization of judges is a subject that can be interpreted from different perspectives and which is decided taking into consideration the opportunities and specific local context.¹³ It is strongly linked to the management of the judiciary and takes various forms in various jurisdictions, such as judges specialized in a specific field, specialized departments/panels in courts, or specialized courts.

There is no international standard that firmly recommends or disapproves specialization of judges or the manner of specialization of judges. Specialization of judges means different things depending on the context. The Consultative Council of European Judges (CCJE) uses the term “specialist judge” to mean “a judge who deals with limited areas of law (e.g. criminal law, tax law, family law) or who deals with cases concerning particular factual situations in specific areas (e.g. those

¹¹ Source 2016 Doing Business.

¹² European Commission for the Efficiency of Justice (CEPEJ), European judicial systems. Edition 2014 (data 2012): Efficiency and quality of justice, Council of Europe 2014.

¹³ R.C. Dreyfuss, „Forums of the Future: the Role of Specialized Courts in Resolving Business Disputes“, *Brooklyn Law Review* 61, 1/1995, 1-44.

relating to social, economic or family law)".¹⁴

Various studies and legal opinions of specialized bodies acknowledge the fact of specialization of judges and seem to suggest that it became a reality in particular due to complexity of legislation and the need to adapt to these changes.¹⁵ Nevertheless, CCJE has stressed the fact that "all judges, whether generalist and specialist, must be expert in the art of judging. Judges have the know-how to analyze and appraise the facts and the law and to take decisions in a wide range of fields. To do this they must have a broad knowledge of legal institutions and principles".¹⁶

Proposals for specialized courts generally argue that specialized courts have three advantages:

- improved efficiency - diverting a class of cases to specialized courts will take some of the burden of growing caseloads off the shoulders of general courts;
- higher quality - a specialist judiciary will enhance the quality of decisions, particularly in complex areas of law;
- uniformity of case law - creating a single court with exclusive jurisdiction over particular areas of the law will enhance uniformity in those areas.¹⁷

¹⁴ Para 5 of the Opinion (2012) No. 15 of the Consultative Council of European Judges on the specialization of judges, adopted at the 13th plenary meeting of the CCJE (Paris, 5-6 November 2012). In the CCJE's questionnaire that was used for drafting the Opinion (2012) No. 15, the following specializations were identified as examples common in many European countries: Family courts, Juvenile courts, Administrative courts/councils of state, Immigration/Asylum courts, Courts of public finances, Military Courts, Tax Courts, Labor/social courts, Courts for agricultural contracts, Consumers' claims courts, Small claims courts, Courts for wills and inheritances, Patent/copyrights/trademark courts, Commercial courts, Bankruptcy courts, Courts for land disputes, Cours d'arbitrage, Serious crimes courts/courts of assize, Courts for the supervision of criminal investigations (e.g. authorizing arrest, wire-tapping etc.), Courts for the supervision of criminal enforcement and custody in penitentiaries. European Union law stipulates the creation of specialist chambers or courts in specific legal fields such as Community trademarks and Community designs.

¹⁵ See for example: p. 8 and 28, Opinion (2012) No. 15 of CCJE; A similar conclusion stems from the article – S. V. Damle, „Specialize the Judge, Not the Court: A Lesson from the German Constitutional Court“, *Virginia Law Review*, Vol. 91, 5/Sep. 2005, 1267-1311, <http://www.jstor.org/stable/3649438>. The author included a powerful statement of a US federal judge: "Judge Henry Friendly noted shortly after leaving the practice of law to join the bench: Whereas it was not unreasonable to expect a judge to be truly learned in a body of law that Blackstone compressed into 2400 pages, it is altogether absurd to expect any single judge to vie with an assemblage of law professors in the gamut of subjects, ranging from accounting, administrative law and admiralty to water rights, wills and world law, that may come before his court." (1268-1269. Note: the article refers to the practice of US Court of Appeals for the Federal Circuit, which included generalist judges).

¹⁶ CCJE Opinion No 15 assessed advantages of judge's specialization in para 24.

¹⁷ CCJE Opinion No 15 assessed advantages of judge's specialization in para 8-13.

Arguably, these gains are established through greater experience and skill level of judges due to specializing. Judges may select into these courts due to their higher ability and interest in these areas of law, and they gain further experience in the subject matter over time. Judges quickly become experts in the field as they focus on their specialization. In turn, this expertise potentially fosters greater efficiency in deciding cases and greater effectiveness in reaching high-quality decisions. Importantly, even if a judge has no prior experience in the field of their court's work, due to specialization, they gain expertise in their field quicker than judges on a generalist court. By doing so, they likely increase the efficiency and effectiveness with which cases are decided.

There are also some arguments that specialization can have negative effects.¹⁸ Issues arising from increased reliance on specialized courts include judicial tunnel-vision, judicial capture by special interests, and the formation of a two-tiered judiciary. Judicial tunnel-vision is the phenomenon that occurs when a judge focuses on one area of law, becoming unaware of legal changes outside of their field, which may potentially impact their cases. Secondly, an issue with specialization may be that judges have a greater chance of capture by special interests. Individuals and groups have a greater incentive to seek influence over a specialized court in their field, which has a greater impact on their interests, than over a generalist court. Another issue with increased judicial specialization is the potential creation of a two-tiered system where those interests that are frequent users of the court gain an advantage through repeat player status.

Limitation of judicial specialization is the fact that it makes easier for litigants to gain the benefits of repeat player status in a court.¹⁹ There is concern, that since actors involved in the litigation of cases handled by specialized courts tend to be a small group in each jurisdiction, judges will become very familiar with these actors, resulting in more informal and potentially preferential engagement, thus increasing the danger of corruption.²⁰

The evidence that does exist shows that effects of specialization are not straightforward.²¹ OECD assessed how trial length is related to some of the underlying characteristics of the systems:²² the amount of financial resources allocated to justice and some characteristics of the

¹⁸ CCJE Opinion No 15 assessed limits and dangers of judge's specialization in para 14-22.

¹⁹ L. Baum, „Probing the Effects of Judicial Specialization“, *Duke Law Journal* 58/2009, 1667–84.

²⁰ High perception of corruption was a reason for abolishment of economic courts in Moldova in 2012. More in *Specialization of judges and feasibility of creating administrative courts in the Republic of Moldova*, Legal Resource Centre from Moldova, 2014.

²¹ H. Gramckow, J. Walsh, *Developing specialized court services – International Experience and Lessons Learned*, the World Bank 2013, 6-7.

²² G. Palumbo, et al. (2013), 25.

production structure of judicial services (composition of resources, task specialization, diffusion of case flow management techniques and ICT, the governance structure of the courts). It is clear that court specialization cannot have positive impact if system is not functional.

Inevitably, the impact of judicial specialization depends on the conditions under which generalist and specialized courts operate. The actual effects of giving jurisdiction over a field to a specialized court will depend on variables such as the mechanisms for selection of judges, the technicality of their work, the substantive and procedural legal rules that govern the court, the configuration of interest groups in the field, and focused and systematic training prepared. As a result, the relationship between specialization and the outputs that courts produce is highly complex. Notably, if specialization can improve judges' efficiency and effectiveness in deciding cases, these effects would likely increase with the difficulty of the cases. It is further possible that judicial specialization might ease the pressure of heavy caseloads on judges simply by enhancing efficiency, but, because these gains in efficiency from specialization are assumed rather than measured, it is uncertain how substantial those gains actually are. Improvements in judicial efficiency and quality due to specialization then are inevitably dependent on the needs and context surrounding the courts and cannot be assumed to exist in all cases.

Specialization can only be justified if it promotes the administration of justice and if it proves preferable in order to ensure the quality of both the proceedings and the judicial decisions.²³ If states introduce specialization of judges, the basic requirements should be met: specialist courts and judges must meet all fair trial requirements set out in art. 6 of the European Convention on Human Rights (ECHR); the creation of specialist chambers or courts must be strictly regulated, both generalist and specialist judges must provide the same safeguards and quality; special procedures for specialist courts should be avoided unless they respond to the needs which led to setting up the respective court (e.g. specific rules for examining cases involving children); all courts should enjoy the same conditions in terms of resources.²⁴

3. The Different Models of Specialized Courts and Judges

The practice in Europe regarding specialization of judges varies. It includes setting up specialist chambers within existing courts or creating specialized courts. Specialization of judges may also be done

²³ Para 30, Opinion (2012) No. 15, CCJE.

²⁴ Para 29-36, Opinion (2012) No. 15, CCJE.

in an informal way, with judges in the court taking a particular interest in certain areas of law in which they eventually become “experts”. Empirical studies have shown that even in countries with a strong belief in the value and desirability of the generalist judge, judges in practice tend to specialize in certain areas. For example, when judges sit together in a panel, certain judges may more often than others write the opinion for specific types of cases.²⁵

In most European countries commercial courts are specialized courts which handle cases related to commerce, traders and companies. However, there are significant differences between commercial courts in European countries in relation to the organization and jurisdiction. In some countries there are commercial courts in each province or district while in others there are just one or two commercial courts for whole country. The structure of chambers in most countries is mixed of professional judges and lay judges who are practitioners in business, but in France judges are only business people. Commercial courts have jurisdiction for commercial disputes or bankruptcy (Denmark) but in some countries they also have competences to deal with disputes related to industrial and intellectual property (Austria).

The model that specific country selected depends on the underlying problem that it aims to address as well as local circumstances. The higher the number of cases that require special treatment, be it in the form of judicial expertise, processes, or services, the greater the need for more comprehensive specialization and the higher the justification for investing in it.

Distinction regarding specialization of judges is important since any generalization about the effects of specialization apply more accurately to some forms of specialization than to others.²⁶ The Assessment of comparator jurisdictions shows that we can distinct three specialization models based on comprehensiveness: a) specialized separate court; b) specialized court department within a court; c) mixed models.

According to CCJE, the most widespread means of achieving specialization is by the creation of specialist chambers or departments.²⁷ This can be achieved often by means of internal court rules. Specialist courts in commercial cases do not appear to be among the most widespread specialist courts in Europe, although many countries have specialized commercial jurisdiction courts.

²⁵ See E. K. Cheng, „The Myth of the Generalist judge“, *Stanford Law Review*, vol. 61 2008.

²⁶ L. Baum, „Probing the Effects of Judicial Specialization“, *Duke Law Journal* 58/2009, 1673-1675.

²⁷ CCJE Opinion No. 15, para 42.

3.1. Specialized separate court

Specialized separate courts can be organizationally part of the jurisdiction's general court system or a separate hierarchy of specialized courts that may include distinct specialized appeals courts. This form of specialization requires division of work among courts, which operate as several branches of jurisdiction that have separate appellate instances and form a separate pyramid of hierarchical institutions, eventually meeting (or not) with other branches of jurisdiction at the top level (the level of 'supreme' court).

These courts may be established either to provide better response on differences in the procedural codes (commercial vs civil procedural rules), or because administrative processes and internal court rules have been adjusted to better address the special needs of the cases the courts handle.²⁸ The idea of specialization, namely, does not only suggest that there is a special institution or individual that is best suited to deal with a special type of case, but also that there may be special methods and ways how different cases should be treated. If these methods are regulated and prescribed by law, they may grow into special procedural codes that will have to be applied in different type of cases.

Specialization into several branches of jurisdiction also assumes that the users of the courts know about it, and that they are required to address the appropriate court, facing risks that their case will otherwise be dismissed due to the lack of jurisdiction.

The essence of specialization is in the engagement of "specialized judges and their assisting staff", who have knowledge in specific areas and successfully passed specialized trainings.²⁹

European countries that have specialized commercial court(s) are: Belgium, Croatia, Denmark, France, Finland, Montenegro and Serbia. However, competence and organization of commercial courts differ from country to country.

In Belgium, commercial courts will always hear disputes between traders. Apart from this general jurisdiction, the Commercial Court has its special jurisdiction determined according to the nature of disputes even where the parties are not traders: disputes between managers, directors and third parties in companies; bankruptcy; all judicial reorganization procedures of companies; maritime and fluvial disputes; Intellectual and industrial property disputes (trademarks, patents, protection of plant varieties, topographies, designs); also, Commercial Court serves as an appellate court for certain decisions of the Justice of Peace (Civil

²⁸ H. Gramckow, J. Walsh, *Developing specialized court services – International Experience and Lessons Learned*, the World Bank 2013, 10.

²⁹ Central European and Eurasian Law Initiative, *Specialized Courts: A Concept Paper*; 1996, 1.

magistrate's Court).³⁰

Similar competences have commercial courts in Croatia: disputes between corporations and entrepreneurs and disputes between other whose registered activity is commerce and trade; disputes between members of corporations; proposals related to establishment and cease of corporations; keep Register for corporations; conduct the procedure of recognition of foreign decisions and arbitral decisions; bankruptcy; maritime disputes and disputes related to aviation law; disputes related to intellectual and industrial property; disputes related to unfair competition.³¹

In France Commercial courts handle business litigations, summary proceedings, and insolvencies. The French Code of Commerce determines competences of Tribunals of Commerce: disputes between traders and credit institutions; disputes related to commercial companies; and disputes related to commercial acts between all persons (traders and non-traders).³²

Composition of commercial courts chambers is different from country to country. In some countries only professional judges are sitting in the panels, in some countries only lay judges experienced in business sector and in some countries panels are composed of professional and lay judges.

Country	Professional judges	Lay judges	Mix
Belgium			
Croatia			
Denmark			
France			
Finland			
Montenegro			
Serbia			

3.2. Specialized court department within a court

Specialized judges may work within specialized court department or unit within the court of general jurisdiction. The division of tasks in the particular court may be invisible for the court users, as they will only be required to approach the territorially competent court, while the distribution of the cases to “specialized” department or unit within the court will be done internally, as a matter of administrative assignment of internal routine within that court.

A specialized court department of an existing court may be established with less formality than by special legislation (if that is legally

³⁰ http://ec.europa.eu/civiljustice/org_justice/org_justice_bel_fr_2c.pdf and article 574 of Commercial Code of Belgium

³¹ <http://www.zakon.hr/z/134/Zakon-o-parni%C4%8Dnom-postupku> .

³² Article L.721-3, French Commercial Code.

possible), sometimes only by administrative direction or by rules adopted by the court itself.

A court department of this kind can have several judges, staff members, and courtrooms assigned to it. It may also have a separate building. Judges may be allocated to a special department either indefinitely or as needed to meet temporary specialization needs.

The good example of the use of specialized departments is Amsterdam's Companies and Business Court as an independent section of the Court of Appeal in Amsterdam. The Companies and Business Court does not address all company law issues. The cases are heard by chambers consisting of five people, three of them are professional specialized judges. The other two have financial experience as an auditor, a businessman or a labor union official depending on the issue in the case of question.³³ One of the issues that is seen as disadvantage of the Netherlands system is the fact that the Court of Cassation as court of general jurisdiction has oversight and can set aside the decisions of the Companies and Business Court.

Special departments can be a highly flexible way of pursuing specialization without significantly greater administrative effort and costs. In Europe, this model is increasingly used, but tend to require a more formal approach, which may mean a change in the law pertaining to courts, and sometimes even a change in the procedural code.³⁴

The specialized court departments require engagement of specialized staff. The experience from the Netherlands shows that having the judicial assistants working together in teams can be a major advantage because it allows for specialization.³⁵ The judicial assistants are assigned to one department, not to a particular judge. In this way judicial assistants are inclined to specialize in one branch of the law, and they also contribute to the department jurisprudence uniformity. In addition, working in teams may be seen as way to avoid situation that judicial assistants working for one judge focus too much on adjusting to the specific preferences of the particular judge.

Ireland also applied model of specialized commercial departments. The Ireland's High Court has a commercial division which is exclusively

³³ M. J. Kroeze, *The Companies and Business Court as Specialized Court*, <https://www.oecd.org/daf/ca/corporategovernanceprinciples/37188740.pdf>.

³⁴ H. Gramckow, J. Walsh, *Developing specialized court services – International Experience and Lessons Learned*, the World Bank 2013, 11.

³⁵ See for details Exploratory study on the position of: Judicial Assistants and Media Spokespersons in selected Council of Europe member states, report by Marco Fabri, September 2013, Joint Programme between the European Union and the Council of Europe on „Strengthening the Court Management System in Turkey” (JP COMASYT).

hears commercial disputes of high value and all intellectual property right cases. Judges in Commercial Court cases manage the litigation and impose short deadlines, allowing the court to fast-track disputes.³⁶

3.3. Mixed models

Each country decides what model of specialization would be beneficial and effective to specific country circumstances. In adjusting specialization models to the country needs some countries developed mixed – establishment of one or several specialized courts and establishment of several specialized court departments.

In Austria only the state's capital, Vienna has specialized civil courts for commercial cases, District Court for Commercial Matters (*Bezirksgericht für Handelssachen*) and the Vienna Commercial Court (*Handelsgericht Wien*), which has the status of a regional court. In all other districts, commercial cases are heard by the courts of ordinary jurisdictions, more precisely by the commercial departments (*Handelssenate*) within the courts of ordinary jurisdiction.

Commercial chambers are composed of three judges: two professional judges and one commercially experienced lay judge. The lay judges work on a voluntary basis and are assigned to work on cases together with professional judges. They form a panel and take joint decisions together with the professional judges.³⁷

Provincial Court of Appeal is a second instance court, for appeals against decisions of commercial courts. Chambers in the appellate courts are composed of three professional judges but when hearing a commercial case, one of the professional judges is replaced by an expert lay judge.³⁸ The highest court of appeal is the Supreme Court (*Oberster Gerichtshof*) in Vienna.

Similar situation is in Switzerland, where the cantons of Aargau, Bern, St Gallen and Zurich have each established a Commercial court (*Handelsgericht*) to deal with national and international commercial disputes in the first instance. In other cantons court of general jurisdiction are competent for commercial disputes.³⁹

Among 4 commercial courts in Switzerland, the Commercial Court of the Canton of Zurich is the most important due to Zurich's position

³⁶ *Study on Specialized IPR Courts*, Joint project of the International Intellectual and United States Patent and Trademark Office, Property Institute and 2012, <http://iipi.org/wp-content/uploads/2012/05/Study-on-Specialized-IPR-Courts.pdf>.

³⁷ https://www.justiz.gv.at/web2013/file/8ab4ac8322985dd501229ce2e2d80091.de.0/broschuere_oesterr_justiz_en_download.pdf.

³⁸ N. Foster, *Austrian legal system and laws*, 2003, 37.

³⁹ <http://www.homburger.ch/fileadmin/publications/RESCUE.pdf>.

in national and international commerce. One of the reasons of its good reputation is its composition. Each case is heard by a panel consisting of professional judges and lay judges, specialized experts in the relevant business sector. It is currently composed of 8 professional judges and 70 lay judges who work in 10 chambers.⁴⁰ Chambers are composed of two professional judges of the High Court and three lay judges. Lay judges are from: banks and insurance companies, audit and trust services, construction and architecture, chemicals, pharmaceuticals and health, mechanical and electrical industries, patent invention, overseas and wholesale trade as well as freight forwarding, textile industry and trade and other various industries.

The appeal against the decision of commercial courts in Switzerland can be submitted to Federal Supreme Court which serves as an appellate court. Also, some cantons have introduced a Cassation Court to handle appeals which are not eligible for appeal to Federal Supreme Court which generally reviews applications of federal law.⁴¹

4. Conclusion

Specialization of judges and courts are an increasing trend across the globe, driven in large part by the growing complexity of the law and rising demands for faster and better court services. Some international indicators, such as the World Bank's Doing Business Report, recognize that special commercial courts tend to be beneficial to addressing the needs of the business community and give extra points to countries with such courts. There is no unified model of court specialization in commercial matters: some countries established specialized courts in one or several larger jurisdiction where the case load justified it, other established across the entire country, while other opted for specialized chambers within the court of general jurisdiction.

This article has attempted to outline comparative practices and impact of court specialization on efficiency and quality of justice services. However, there is no clear link that shows correlation between specialization and improvement of clearance rate and disposition time.

⁴⁰ <http://www.gerichte-zh.ch/organisation/handelsgericht/aufgaben.html> .

⁴¹ http://www.bakermckenzie.com/files/Uploads/Documents/Global%20Dispute%20Resolution/Dispute%20Resolution%20Around%20the%20World/dratw_switzerland.pdf .

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SPECIJALIZACIJA SUDIJA I SUDOVA U PRIVREDNOJ MATERIJI – DOPRINOS EFIKASNOSTI SUDOVA I KVALITETU ODLUKA

Rezime

Autor analizira uporedna iskustva u specijalizaciji sudova, s obzirom da se specijalizacija često preporučuje kao važna reformska mera koja unapređuje efikasnost i kvalitet pravosuđa. Uporedna iskustva i praksa ne pokazuju jasnu vezu između specijalizacije i uspešnog pravosudnog sistema. Studije pokazuju da specijalizacija može doprineti unapređenju efikasnosti u složenijim predmetima koji zahtevaju posebna znanja, kao što su stečajni, intelektualna svojina ili poslovno pravo. Studije ukazuju i na određene izazove. Ulaganje dodatnih resursa za rešavanje privrednih predmeta može da stvori percepciju da se poslovnoj zajednici daje preferencijalni tretman ili da su osnovani specijalizovani sudovi u slučajevima kada obim posla ne opravdava dodatna ulaganja. Pored toga, sudije koje rade na samo jednoj vrsti predmeta mogu da razviju usku specijalnost koja može da ograniči njihov fokus. Autor daje i pregled uporedne prakse specijalizovanih privrednih sudova i razlike u modelima specijalizacije.

Ključne reči: specijalizacija sudova i sudija, uređenje sudova, privredni predmeti, uporedni modeli specijalizacije, izbor i obuka sudija, efikasnost i kvalitet pravosuđa, ujednačena sudska praksa.