Economic value of the judiciary

A pilot study for five countries on volume, value and duration of large commercial cases

Caroline Costello, Frans van Dijk, Silvia Giorgi, Lina Griškevič,
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This open access eBook documents an empirical inquiry into the number, value and duration of large commercial court cases in five countries from different parts of Europe: Ireland, Italy, Lithuania, the Netherlands and Norway. It is an exploratory study as for each country data had to be extracted from the case registration systems of the courts. The study shows that a substantial part of economic activity is 'paralyzed' by disputes that are fought out in the courts. This has broad negative consequences for the countries in question. There are large differences in the number, value (as measured by reference to the claims) and duration of these court cases. All five judiciaries can improve their performance, to a greater or lesser degree, with Italy (volume, duration), Lithuania (volume) and the Netherlands (duration) having much to gain.

The study is of interest for its outcomes, but also from a methodological perspective, as it shows the necessity of taking the diversity of court cases into account and a method to achieve this. While the economic analysis is relatively simple and the analysis is confined to one type of dispute, the outcomes clearly show the importance of the legal/ judicial system for the economy.

The study is a co-operation of the European Network of Councils of the Judiciary and the Montaigne Centre for the Rule of Law and Administration of Justice of Utrecht University, and was co-ordinated by Frans van Dijk, professor of empirical analysis of legal systems.

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Preface

Scientific research into the relationship between the functioning of legal systems and sustainable economic growth is slowly gaining ground. The importance of the judiciary for the rule of law and social peace has been self-evident for years. It was also common knowledge that lawsuits often concern major financial interests, but it was by no means clear what that meant for the economy. This lack of knowledge increasingly becomes a problem for the judiciary, since without a view on 'return on investment', based on solid data, and given the dominance of financial-economic considerations in contemporary political systems, its budget runs the risk of slowly becoming eroded. This is worrying at a time when the challenges for judges due to rapid social changes and the need for social trust are great. Lack of knowledge also lowers the bar for governments to undermine the independence of the judiciary. The present report is an important step in gaining more insight into the relationship between justice and the economy. New to this study is that it uses case-level information from the registration systems of the courts and combines that data with detailed descriptions of the court procedures in specific cases. The report shows the need for investing in a modern judiciary that is up to its important task, and it comes not a moment too soon. The collaboration established for this research between science and the judiciary and between the judiciary of the five participating countries is promising, but more in depth empirical research is needed. We as universities should take on this challenge.

Prof. dr. Eddy Bauw
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Summary

The legal system and the judiciary that applies and enforces it have a wide-ranging impact on economic behaviour and thereby on the performance of the economy of nations, as the economic literature shows. Still, little is known about the underlying mechanisms and the extent of these effects. As a result, the recommendations from this research are often of a general nature, stressing the importance of the independence and efficiency of the judiciary. In this report, unique data is presented about the value at stake in commercial litigation for five countries from different parts of Europe. The most comprehensive comparison is possible for commercial cases with financial claims of EUR 1 million and higher, but also country comparisons are presented for a broader range of claims. Estimates of the economic effects of commercial litigation for the parties are derived from the data for the different judicial environments of these five countries.

For these five countries best practices are identified, and the direct costs to parties of procedures that do not conform to the best practice are estimated. In addition, for each country a number (6-8) of first instance and second instance commercial cases with financial claims between EUR 1 million and EUR 5 million have been described and analyzed to provide a basic insight into commercial procedures in these countries, to check the plausibility of the quantitative analysis and to analyze the causes of differences in performance. The report discusses the volume and value of cases, their duration and the use of appeal. The countries studied are Ireland, Italy, Lithuania, the Netherlands and Norway. These countries were selected to represent different judicial systems, but also the availability of data from case registration systems of the courts had to be taken into account. The ENCJ in co-operation with the University of Utrecht undertook this pilot study to explore the role of the judiciary in the economy, and the need to improve the performance of the judiciary from this perspective in Europe. While the study was confined to five countries, it is of wider relevance as the selected countries come from different traditions, and other countries that belong to these traditions can learn from the outcomes.

The main findings are the following.
1. The value at stake in commercial litigation in the courts of the five countries is substantial, relative to GDP as a measure of activity in an economy. This is the case, irrespective of the judicial system and its performance, thereby demonstrating the direct relevance of the judiciary to the economy of each of the five countries. The total value of the claims in adjudicated commercial cases above EUR 1 million is between 0.70 and 1.28 % of GDP (average of 2016, 2017 and 2018). To assess the total economic activity that is "paralyzed" by disputes of this type and magnitude in the courts, the value of all cases that are pending in court is derived from these estimates, taking into

account the time it takes to adjudicate these cases. For a stationary flow of cases, the paralyzed activities are in a range between 0.44 and 2.92% of GDP. These estimates provide a minimum estimate of the value of ongoing commercial litigation. Many cases do not have explicit financial claims, but are economically relevant. Also, smaller commercial cases are not included. In addition, this is only one category of litigation that is relevant for the economy. The major area of insolvency is not considered here, while outside civil law, many criminal and administrative cases are directly relevant to the economy as well.

2. The performance of the five judiciaries differs considerably with regard to volume and duration of commercial litigation and – to a lesser extent – the use of appeal. This permits an assessment of the costs of civil litigation relative to best practice. The analysis shows that there are large gains to be made by moving towards best practice within the five countries studied. All five judiciaries can make progress, but to a different degree, with Italy (volume, duration), Lithuania (volume) and the Netherlands (duration) having much to gain. The order of magnitude of the costs of long duration above the benchmark is estimated for Italy at EUR 1.9 billion and for the Netherlands at EUR 420 million annually. A strong business case exists to move towards the best practice. The cases that are described show in detail that divergence from best practice has to do with court resources and with the underlying principles of procedure and their practical application. For instance, the very effective, strong emphasis in Ireland and Norway on strict case management is not present in the other countries, and reflects different priorities of judges but also lawyers.

3. A fairly sharp distinction exists between systems that focus the procedure on one (sometimes long) hearing, and steer all efforts towards that hearing, and systems that allow cases to evolve ("free form") during the procedure, leaving much room to the parties, for instance, to bring new evidence. Other things being equal, the hearing-oriented systems are faster than the "free-form" systems, but may sometimes miss opportunities to shed new light on cases. In the trade-off between, what may be called, certainty and timeliness, different choices can be justified, as long as timeliness is recognized as an essential part of justice as well.

4. In all countries appeal rates are high, generally 40-50% for large cases. It is difficult to identify a best practice in this respect. For parties costs are a secondary consideration in the large cases studied here, and they often seem to appeal for tactical reasons to delay execution or to hinder the other party. In the countries studied a clear distinction exists between appeal as review and appeal as (*de facto*) retrial. Other things being equal, retrial takes longer and sometimes much longer than review. As in the previous point, there is trade-off between certainty and timeliness.

5. From a methodological point of view, it is important to note that court cases are so different that care has to be taken when using aggregate data. Differentiation on the basis of the size of disputes (here operationalized by the value of financial claims) is necessary to get a reliable description of the work of the courts, and provides the link with economic effects.

Some general conclusions can be derived from these findings. In the *first* place, the comparison of judiciaries from the perspective of the (economic) impact on society is useful. Optimization of procedures and ways of working within national confines misses opportunities to make large gains. The comparison also helps to clarify the underlying orientations and priorities in judicial systems, and their benefits and costs for society. In the *second* place, the current pilot study was confined to five countries. It would be important to extend the study to all countries of the EU. This would require an adaptation of case registration systems. In the meantime, it would be possible to classify the judiciaries of the EU by their similarities with the five countries of the pilot. In the *third* place, EU-wide investment plans to improve commercial litigation would yield a high rate of return for society, and it would improve the competitiveness of the EU.

1 Introduction

The courts are an essential part of the legal infrastructure of society and its economy. In this report we assess the importance of the courts for economic life by focusing on one main category of court cases, commercial litigation, and we examine the costs for society of current commercial litigation in different judicial systems. Criminal and administrative law are equally important, but commercial litigation provides a useful starting point. The resolution of commercial cases has an impact on the parties in the litigation themselves, but also on other economic actors in similar circumstances who can learn from the court decisions, and on the economy as a whole as the sum of all microbehaviours. In this report we will address the impact on the parties themselves. Much research has been done about economy-wide effects by means of international comparison at the macrolevel. This research will be discussed here briefly to provide necessary background. Much less attention has been given to the microlevel of court cases and parties. While the microapproach misses the (large) synergy effects that are captured by the macrostudies, this approach is less abstract, less subject to problems of attribution (such as distinguishing between court performance and public sector governance in general) and provides a concrete "business case" for improvement.

To demarcate the subject matter further, Art. 6 ECHR states that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". The different requirements that are expressed in this article, are relevant for the economy as well. In the words of the European Commission: "(A)n attractive business environment needs effective justice systems: independent, efficient, high-quality and trustworthy justice systems reduce costs for companies and attract investment" (Reding 2013). The ENCJ is devoting much effort to the independence of the judiciary (ENCJ 2018). While the independence of the judiciary has been shown to be relevant for the economy (*e.g.* Feld and Voigt 2003), this report deals exclusively with the efficiency and in particular timeliness of court procedures. In this regard, the perspective of this study is that the commercial procedures of these five countries all provide the necessary legal safeguards for a fair procedure, except for timeliness. The short description of commercial procedure in the five countries in Annex 1 as well as the case descriptions of Annex 2 illustrate this. In essence these procedures fulfil the same role but they do so with different levels of efficiency in terms of volume, duration of cases and the use of appeal. Given the equivalence of legal standards, best practices can be derived from the data with regard to efficiency. These standards can be meaningfully applied to assess the costs of falling short of these standards. Whether it is possible to move towards the best practice which emerges depends on many factors.

In the first part of the report (Chapters 3-5), we compare data on commercial cases from five jurisdictions in the EU with regard to volume and value to get a measure of the significance of the litigation for the economy. We also present data on the adjudication of these cases in terms of duration and rate of appeal . As the availability of data is an issue, the jurisdictions were selected with care, to represent different legal traditions, but also from the perspective of data availability. The countries examined are: Ireland, Italy, Lithuania, the Netherlands and Norway. Notwithstanding the precondition regarding the minimum available data set, the data is not complete for all jurisdictions. The most complete comparison is possible for cases with claims above EUR 1 million. The data is then used to derive best practices, and to estimate the costs of not conforming to these practices. We start with two two-country comparisons that allow a full(er) comparison, before turning to the comparison of the five countries. In the second part of the report (Chapter 6), we examine the procedure that was followed in 6-8 cases for each jurisdiction. This provides a rough check of the validity of the quantitative data and an analysis of the phases of the procedure in which problems occur, in particular with regard to delay, and their causes. Chapter 7 concludes the report. The Annexes are a major part of the report with Annex 1 describing relevant civil procedures in the five countries and Annex 2 describing the actual course of the proceedings in a sample of cases. We start out with a brief discussion of the economic literature.

2 Economic literature on courts and economic performance

Courts play a role in facilitating production and exchange by providing mechanisms to, for instance, enforce contracts, retrieve debts, compensate incurred damage and resolve structurally indebted actors. Judiciaries differ in their effectiveness and efficiency in delivering these mechanisms. These differences show in the costs of the courts and in the costs of litigants to prepare for and conduct cases. Efficiency extends beyond these costs. Timeliness and predictability are major aspects of efficiency. Predictable judgments reduce the need to go to court altogether, and ameliorate the consequences of lengthy procedures. A lack of predictability of judicial decisions creates financial constraints for firms and individuals that are greater the longer the uncertainty lasts. Firms and individuals need to make provisions for the costs of courts' and lawyers' fees and claims and other costs if the case is lost. These constraints may hinder consumption and investment. In the next chapters we will explore these aspects in the different conditions that exist in the five countries.

Apart from the costs for the litigants, other, indirect, costs caused by an inefficient judicial system exist. A large literature in economics has tried to understand how the functioning of courts affects economic decisions. In general, the literature finds that a more efficient judicial system promotes economic growth through a wide variety of channels.

First, a more efficient system leads to more market competition. An inefficient system weakens contract enforcement, which reduces market competition. If contracts are not enforceable by legal means, consumers and firms place a higher weight on reputation when engaging in commercial relations. That is, the trustworthiness of a firm plays a more crucial role in commercial relations if one cannot rely on the judicial system to resolve disputes. Thus, a buyer will only take part in the transaction if the seller has an established reputation. This creates barriers to entry; new firms lack the reputation that old firms in the market might have and customers stick to the firms that are already in their supply chains, and they miss emerging, (possibly) better opportunities. As a result, the market becomes more concentrated as well as inert. A concentrated market is worse for customers, since prices are usually higher and the quality of products is lower. Johnson *et al*. (2002) use evidence from post-communist countries to support this theory. Well-functioning courts raise the level of confidence that customers (producers as well as consumers) can place in new firms when engaging in new commercial relationships, as the new firms cannot get away with non-performance. This leads firms and consumers to try out new suppliers. Findings by Ippoliti, Melcarne

and Ramello (2015) support this conclusion. They show that well-performing judicial systems promote entrepreneurship, using European data.

Second, an inefficient judicial system leads to smaller firm size and lower investment. Poor contract enforceability, caused by this inefficiency, increases the risk faced when investing. Firms might not honour their contracts, so a firm that needs other firms to implement a business plan might be reluctant when deciding to invest. This reduces the investment rate. Less investment also means that firms will not grow as much as they could. Besides that, the pace of growth would be slower, as building the necessary reputation in countries with inefficient judicial systems takes time. Chemin (2012) studies a court reform in India that aimed to speed up court cases. The evidence shows that the reform led to fewer breaches of contract, encouraging investment. Laeven and Woodruff (2007) show that Mexican states with more efficient legal systems have larger firms. Also using Mexican data, Dougherty (2012) finds that this effect is more pronounced in capital-intensive industries. Evidence for European countries also exists. Kumar *et al.* (2001) use a sample of fifteen European countries and find that countries with efficient legal systems have larger firms, and Giacomelli and Menon (2012) estimate that halving the duration of civil procedures in Italy would increase firms' average size by 8-12%. They argue that greater judicial efficiency has positive effects on firms' investment decisions, their willingness to engage in relationships with new trading partners and on the cost and availability of external financing. Moreover, according to Giacomelli and Menon (2012), judicial inefficiency hinders the growth rate of firms rather than the entry rate of new firms. As discussed above, other studies find that the impact on entry rate is the main effect. As to the effect on firm size, most studies suggest that judicial inefficiency hampers the growth of firms. However, there is also limited evidence of the opposite: an inefficient judicial system might propel the growth in the size of firms. As explained, in an inefficient judicial system, firms rely on suppliers' reputation to engage in commercial relations. As reputation is fragile, firms prefer to verticalize their production chains, *i.e.* owning firms that produce in different stages of the supply chain. Messick (1999), surveying studies on judicial reforms, finds evidence that firms verticalize their production chains in inefficient systems. As argued by Giacomelli and Menon (2013), such verticalization increases the average size of firms in the economy. Since one firm covers more stages of the production chain, fewer small firms operating in each of the steps exist. This reduces the level of specialization of firms, affecting their efficiency, and creates a more concentrated market.

Third, judicial efficiency enhances credit markets. As explained, efficient judicial systems promote contract enforcement. This also includes debt enforcement. Thus, if the risk associated with lending is lower, it is expected that credit suppliers will be willing to lend more and at a lower rate of interest. Therefore, inefficiency creates credit constraints for both consumers and firms. As expected, an inefficient system

also reduces the supply of external financing, as external credit suppliers would rather lend to firms in countries where they expect to get their loan back. Using data from 48 countries, Bae and Goyal (2009) show that poor contract enforceability leads banks to reduce the amounts of their loans, shorten their loan maturities and increase their loan spread. With similar conclusions, Qian and Strahan (2007) find that better credit protection reduces interest rates and extends loan maturities, Laeven and Majnoni (2003) show that higher judicial efficiency reduces interest rate spreads and Jappelli, Paganoand, and Bianco (2005) find that Italian provinces with longer trials or larger backlogs have less available credit.

Fourth, more efficiency in courts reduces transaction costs in ways other than the direct costs described at the start of this chapter. In ill-functioning judicial systems, firms need to spend money and time to gather information about suppliers' reputation. Thus, if customers need to spend more time and/or money when engaging in transactions, new transaction costs emerge in the economy. North (1992) explains the role of institutions, including the judicial system, in minimizing transaction costs.

In addition, there are other economic decisions affected by the functioning of courts. Messick (1999) reports that long-term contracts are more prevalent in a well-functioning judicial system than short-term contracts. Also, there are effects on specific markets. For instance, courts' efficiency affects the functioning of the rental housing market. Casas-Arce and Saiz (2010) show that in a country with an inefficient judicial system, people prefer to own the houses they live in rather than rent them. Thus, the inefficiency hampers the development of a rental housing market. Using data from Spanish provinces, Mora-Sanguinetti (2012) proves that judicial inefficiency increases the share of people that own the house where they live in. A weakly developed housing market affects mainly the poorer share of the population, which usually does not have enough resources to purchase real estate.

These approaches focus on system-wide effects, and generally do not consider the actual role courts play in civil dispute resolution. In the next chapter we examine the available data on civil litigation and its costs, focussing on the five countries that participated in the pilot.

3 Existing data on civil litigation

Data on the economics of court cases are scarce. In Europe the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe systematically collects data on the legal systems of Europe. This includes the volume and duration of cases. Relevant data are given in Table 1 for the five countries that are part of the pilot.

Table 1. Volume and disposition time of incoming civil and commercial litigious cases in 2016, according to CEPEJ

	Number of first instance cases per 100 inhabitants	Disposition time in days of first instance cases	Disposition time in days of appeal cases
Ireland	2.7 (1.6)	NA	NA
Italy	2.6 (2.9)	514	993
Lithuania	4.4 (4.3)	88	103
Netherlands	0.9 (0.9)	121	NA
Norway	0.4 (0.4)	161	NA

Source: CEPEJ 2018, Figure 5.5, Table 5.8 and Table 5.17. Number of incoming cases; between brackets number of resolved cases.

While CEPEJ has also gathered some data at a more detailed level for commercial cases (employment dismissal and insolvency cases), its data are generally on an aggregate level, if available at all. As will be shown below, this level of aggregation sometimes leads to misleading outcomes, in particular due to differences between legal systems. Also, the data does not give insight into the economic interests involved. Table 1 shows that civil litigation is less frequent in Norway and the Netherlands than in the other countries. This is supported only partly by the data presented in the next chapter. More problematic are the data on the duration of cases. Our more detailed figures show, for instance, that litigation takes much more time in the Netherlands than in Norway, while the CEPEJ data suggest the opposite.

A very different approach is taken by the World Bank Doing Business indicator system that measures, what the World Bank calls, business regulations in a wide variety of countries, and focuses exclusively on economic effects.[1] It includes an indicator on the ease of enforcing contracts. The indicator is based on a questionnaire among experts about the quality of judicial processes and on an assessment of the resolution of a

1 See doingbusiness.org.

standardized commercial dispute at a specific first instance court in each country by these experts. The assessment concerns the duration and cost of litigation of this case. The case description specifies the dispute, the size of the dispute (200% of income per capita to take differences among countries in welfare level into account) and the issues that need to be sorted out in the procedure (*e.g.* hearing of expert witness). See Table 2 for the outcomes for the five countries.

Table 2. Estimated duration and costs of a standardized commercial dispute about equivalent claims in five countries in 2019, according to World Bank

	Size of equivalent claim in EUR	**Duration of court procedure in days**	**Costs as percentage of claim incl. court fees**
Ireland	100.689	560 (90)	26.9% (2.3%)
Italy	57.010	850 (270)	27.6% (3.9%)
Lithuania	28.628	280 (90)	23.6% (6%)
Netherlands	85.091	452 (62)	23.9% (5%)
Norway	140.528	340 (60)	9.9% (1,3%)

Note: third column: in brackets duration of enforcement. Fourth column: in brackets court fee.
Source: *e.g.*, https://www.doingbusiness.org/en/data/exploreeconomies/ireland#, visited 4 March 2021.

This data has inherent limitations, as it concerns one type of conflict and one type of procedure as well as expert opinion instead of measurement, while the weighing by income per capita leads to large differences in claims that are not necessarily relevant for commercial litigation. The estimates for duration come closer to our detailed figures than the data of CEPEJ. However, an estimate of total economic impact cannot be derived from these figures. To get a better understanding of civil litigation, the data of the court administrations of the five countries (see Box 1 in chapter 4) is analyzed.

4 Comparison of volume and value of commercial litigation

4.1 Volume and value of all commercial cases in the Netherlands and Norway

To assess the role of civil litigation in an economy and the economic interests involved, an overview of the cases – from very small to very large – that come before the courts is required. The size of a case is defined here by its initial financial claim, if any, and cases are classified according to the size of the claims. Such data is fully available for Norway and the Netherlands in the administrative systems of the courts, and for Italy with respect to volume of cases. The data for Norway and the Netherlands is presented in Table 3, and includes summary statistics. Figure 1 gives the available data on volume of commercial cases for all five countries. Data are three-year averages, as the volume of high value cases is small, and the financial claims in this category of cases fluctuate widely. Therefore, the claims in aggregate fluctuate over the years. The cases concerned are commercial cases, but insolvency cases were excluded, as these follow different procedures. In four panels the volume, duration, aggregate of financial claims and average financial claim per case are given for categories of value of claims and in total. Also, the volume of cases that do not have an explicit financial claim and their duration are given. The difference in size of the Netherlands and Norway economies needs to be kept in mind when examining figure 1: GDP of the Netherlands is roughly 2.1 times that of Norway.[2] The classes of claims are kept the same for both countries. As GDP per capita is higher in Norway than in the Netherlands, it might be expected, following the World Bank approach discussed in the previous chapter, that there are more large claims in Norway than in the Netherlands.

2 All GDP figures in this report are three-year average 2016, 2017 and 2018 of GDP at market prices/current prices: Eurostat. https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=nama_10_gdp&lang=en.

Box 1. Source and reliability of the data

Volume, value and duration of cases per category of claim value: the data derives from the case registration systems of the courts, for Ireland and Lithuania, in combination with case files, and are aggregates of the data on individual cases. The reliability of the data depends on the registration errors in the administrative systems. This method differs from that of CEPEJ which only uses aggregate data from the administrative systems, and which calculates, for instance, the duration of cases by dividing the total number of resolved cases in a period by the total number of incoming cases in that period (times 356, CEPEJ 2018, p. 238). In this report duration is calculated as the average of the actual duration of individual cases. For definitions see table 3.

Costs of court procedures per case per category of claim value: data on the costs of the courts per case per value category is not available from the court administrations. Some estimates are available for the Netherlands. Based on these estimates, assumptions were made for all countries. Estimates of the costs of the cases for parties such as lawyers fees are generally unavailable, and assumptions were made. The presented estimates of costs provide an insight into the order of magnitude.

There are striking differences as well as similarities between Norway and the Netherlands.

Volume of cases (Panel 1): most strikingly, small claims hardly reach the courts in Norway. These cases go to tribunals that are not part of the court system. In the judicial system of the Netherlands, which is more representative of the (not-common law) legal systems of Europe, the distribution of cases is extremely asymmetric with very many small cases and few large cases. As to the claims above EUR 100,000 and below EUR 100 million, the number of cases is similar in both countries, taking into account the different size of the economy. The volume of cases in the Netherlands is roughly twice that of Norway, in line with the difference in size of the economies. Above claims of EUR 5 million the data become more erratic. Very large claims above EUR 100 million are, however, much more frequent in the Netherlands than in Norway in the years studied.

Total value of claims (Panel 3): in particular as a result of the very large claims (above EUR 100 million), the total value of claims is much higher in the Netherlands than in Norway. In the Netherlands the 11 cases per year, as average over three years, account for 53% of the total value of claims at first instance courts. The total value of first instance cases is 1.2% of GDP in the Netherlands and 0.6% of GDP in Norway. Disregarding the very large claims and the small claims that generally do not go to court in Norway, total value is similar (0.33% in the Netherlands and 0.39% of GDP in Norway). It should be noted that, as follows from the Netherlands data, small claims (below EUR 1,000) are negligible in financial value, when compared with the aggregate value of all claims.

Value per case (panel 4): the average value per claim per class of value above EUR 100,000 is very similar in Norway and the Netherlands, and is always below a third of the upper limit of a class of value. Only for very large claims above EUR 100 million are there large differences .

Duration of cases (panel 2): for the Netherlands it is clear that the larger the value of the claim, the longer it takes to adjudicate. In Norway this is also the case, except for the largest cases, but the differences are much smaller, due to the absence of a vast number of small value cases. In the small claim classes the data are not comparable, as in Norway only specific small cases go to court. For claims of EUR 100,000 upwards, the duration is much shorter in Norway than in the Netherlands. On appeal this is the case, irrespective of the size of the claim. A comparison of averages for all claims is meaningless, and it is particularly misleading for these two countries. The average duration of first instance cases is 38 days in the Netherlands and 167 days in Norway. However, when only similar cases are compared, it is clear that adjudication is much faster in Norway than in the Netherlands. The data of CEPEJ, as given in Table 1, while using different definitions, suffers from this problem.

While the comparison of the Netherlands and Norway is interesting as such, it also gives some generally applicable insights. While outcomes are in many respects similar, we note significant differences due to:

- Differences between legal systems that render some comparisons meaningless. These differences concern small claims in particular. The role of the courts is much more similar when it comes to the resolution of large claims (see also Figure 1). For these disputes access to courts is not precluded by the design of the legal system, although alternative mechanisms such as arbitration exist, and their relative attractiveness may impact upon the number of cases that go to court. When comparing court systems, a meaningful comparison is easier to achieve for the large(r) cases. Nonetheless, a review of the differences between systems is always necessary.
- Differences in economic structure between countries cause differences. Differences in GDP per capita, as such, seem at least within the range of the Netherlands and Norway, to be less relevant than differences in economic structure. The Netherlands has large companies, but also hosts the headquarters of many companies whose main activities take place elsewhere. This is likely to explain the relatively high number of very large cases.[3]

3 The frequency of such cases has recently led to the establishment of a Netherlands Commercial Court (NCC) specifically for large commercial cases with international aspects.

Table 3. Commercial litigation at the courts in the Netherlands and Norway (average over 2016, 2017 and 2018) by value of initial claim

	Panel 1. Number of cases				Panel 2. Mean duration of cases in days			
	Netherlands		Norway		Netherlands		Norway	
Range of financial claims in EUR	**First instance**	**Appeal**	**First instance**	**Appeal**	**First instance**	**Appeal**	**First instance**	**Appeal**
0 < c < 1,000	268,500 (71%)	33 (1%)	106 (2%)	10 (1%)	20	386	122	56
1,000 ≤ c < 10,000	86,450 (23%)	746 (24%)	739 (16%)	89 (8%)	52	432	126	64
10,000 ≤ c < 100,000	17,360 (5%)	1,510 (48%)	2330 (50%)	485 (46%)	166	501	164	185
100,000 ≤ c < 1,000,000	2,869 (1%)	688 (22%)	1304 (28%)	377 (36%)	346	592	190	223
1,000,000 ≤ c < 5,000,000	388 (0%)	141 (4%)	176 (4%)	71 (7%)	513	661	226	266
5,000,000 ≤ c < 10,000,000	65 (0%)	20 (1%)	26 (1%)	8 (1%)	527	601	240	286
10,000.000 ≤ c < 20,000,000	27 (0%)	12 (0%)	18 (0%)	8 (1%)	478	557	260	299
20,000.000 ≤ c < 100,000,000	25 (0%)	10 (0%)	16 (0%)	7 (1%)	667	629	191	319
c ≥ 100,000,000	11 (0%)	2 (0%)	2 (0%)	2 (0%)	731	764	194	178
All financial claims	**375,694 (100%)**	**3,162 (100%)**	**4,717 (100%)**	**1,057 (100%)**	**38**	**515**	**167**	**195**
Number of cases without explicit financial claim	21.994	1.946	1.921	599	168	408	116	158
Total volume of commercial cases	**397.688**	**5.107**	**6.638**	**1.656**	**45**	**474**	**152**	**182**
Per 10,000 inhabitants	230,8	3,0	12,5	3,1				
Per GDP in B EUR	537,3	6,9	18,6	4,6				

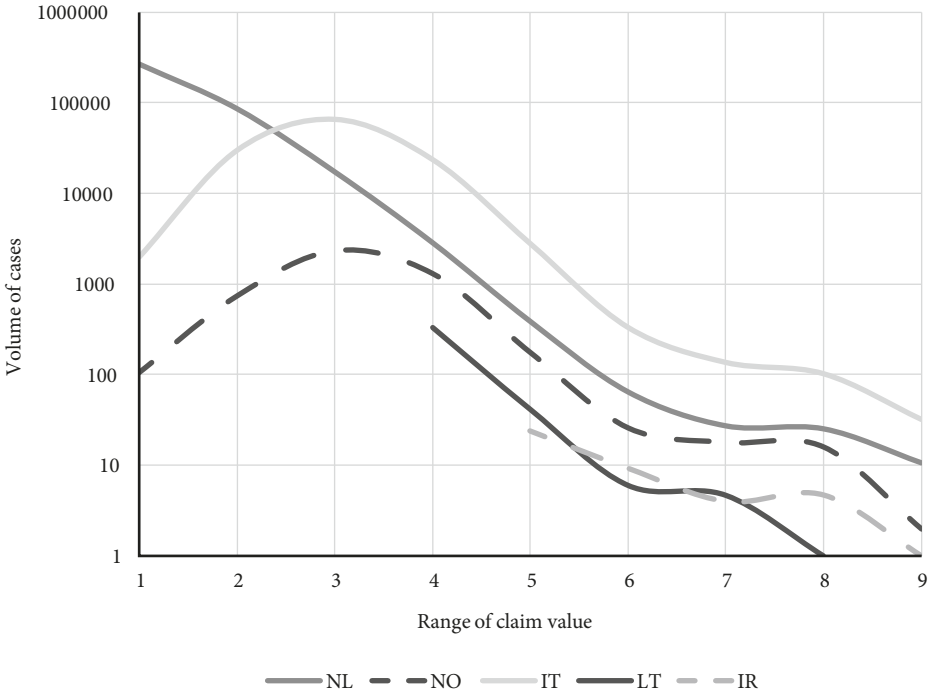
	Panel 3. Total value of claims in M EUR				Panel 4. Mean value of claim per case in EUR			
	Netherlands		Norway		Netherlands		Norway	
Range of financial claims in EUR	**First instance**	**Appeal**	**First instance**	**Appeal**	**First instance**	**Appeal**	**First instance**	**Appeal**
0 < c < 1,000	68 (1%)	0.02 (0%)	0.06 (0%)	0.006 (0%)	253	642	535	559
1,000 ≤ c < 10,000	258 (3%)	4 (0%)	4 (0%)	0.5 (0%)	2.987	5.198	4.866	5.562
10,000 ≤ c < 100,000	472 (6%)	54 (3%)	88 (4%)	18 (2%)	27.168	36.004	37.647	37.542
100,000 ≤ c < 1,000,000	801 (9%)	210 (13%)	365 (18%)	111 (11%)	279.080	305.834	279.678	294.388
1,000,000 ≤ c < 5,000,000	767 (9%)	293 (18%)	340 (17%)	135 (13%)	1.978.040	2.070.280	1.932.682	1.904.711
5,000,000 ≤ c < 10,000,000	425 (5%)	132 (8%)	178 (9%)	59 (6%)	6.571.118	6.707.150	6.859.185	7.375.834
10,000.000 ≤ c < 20,000,000	348 (4%)	163 (10%)	232 (11%)	109 (11%)	12.741.681	14.004.257	12.892.701	13.564.931
20,000.000 ≤ c < 100,000,000	878 (10%)	382 (24%)	629 (31%)	292 (28%)	34.666.200	37.006.329	39.287.413	41.691.279
c ≥ 100,000,000	4,534 (53%)	363 (23%)	213 (10%)	304 (30%)	425.103.991	217.629.718	106.250.244	152.056.054
All financial claims	**8,551 (100%)**	**1,602 (100%)**	**2,048 (100%)**	**1,028 (100%)**	**22.761**	**506.591**	**434.117**	**972.947**
As percentage of GDP	1,2	0,2	0,6	0,3				

Definitions:
1. All commercial cases that have been discharged in a year, either by judgment, settlement, withdrawal or otherwise.
2. Commercial cases are defined as all civil cases, not being family cases and not being insolvency, debt restructuring or bankruptcy cases.
3. All cases whether contested or not (with or without hearing).
4. Value of case is the (initial) claim with which the procedure was initiated.
5. Processing time in days: from the initiation of the procedure at the court to the date of withdrawal of the case or the date of the judgment.

Notes:
1. For the Netherlands six cases with exceedingly high claims of USD 50 billion were excluded (review of arbitral awards, involving Yukos and the state of Russia).
2. In the Netherlands the lower boundary for appeal is EUR 1750, which explains the small number of appeals at the lowest range of claim value.

Of the two countries, the data for the Netherlands give the broadest insight into civil litigation in a high-income economy, as disputes of all sizes are channelled through the courts, although it might be to some extent an anomaly with its relatively high number of very high value cases. Figure 1 sets out the available data on volume of cases by class of claim value. It should be noted that the logarithmic scale compresses the differences between countries with respect to small cases with financial claims. The pattern for Italy is very similar to that of Norway, and reflects how small claims procedures work there. In Italy, plaintiffs in small commercial cases can go to court, but that is generally not a viable option due to the long duration of cases. Given the systemic differences with regard to small cases, and the small percentage these cases constitute of total value (only 63 million EUR on a total of 8.5 billion EUR in the Netherlands, see Table 3), we will focus further on large cases.

Figure 1. Volume of first instance commercial court cases by class of claim value (average over 2016, 2017 and 2018).



Note: ranges of claims as in Table 3, starting from 0 < c ≤ EUR 1,000 (range 1) to c ≥ EUR 100 million (range 9). Histogram represented by smoothed lines. For Lithuania only data for claims higher than EUR 100,000 and for Ireland larger than EUR 1 million are available.
Figures are absolute numbers and are not relative to size of the economy.

4.2 Volume and value of commercial cases in Lithuania and the Netherlands

While the Netherlands and Norway have similar economies, a comparison between two more disparate economies is useful before we go to a broader comparison. For Lithuania data is available for cases with claims of EUR 100,000 and higher. In Table 4 commercial litigation in Lithuania is compared with again that in the Netherlands. The four panels are the same as before.

Volume of cases: the number of cases relative to economic activity as measured by GDP is twice as high in Lithuania as in the Netherlands. Expressed as percentage of population, the volume is smaller in Lithuania than in the Netherlands, but this measure is not very meaningful for the commercial cases concerned. In Lithuania there is more litigation in the courts. As to the composition of the claims, there were no cases in the class of very high claims above EUR 100 million in the three years considered here. The distribution of cases across the other classes is very similar.

Total value of cases: the difference between the two countries is roughly the same as for the number of cases, excluding the very large claims above EUR 100 million that did not occur in Lithuania in the period studied. Relative to GDP, total claim value is higher in Lithuania than in the Netherlands. Apart from the very large cases, the composition is again similar. Only the share of claims in the highest bracket (EUR 20 million-EUR 100 million) falls below that for the Netherlands.

Value per claim: the average value per claim in first instance is similar in both countries, with the exception of the cases between EUR 20 million and EUR 100 million, for which the claim per case is higher in Lithuania than in the Netherlands.

Table 4. Commercial litigation at the courts in the Netherlands and Lithuania for claims larger than EUR 100,000 (average over 2016, 2017 and 2018)

	Panel 1. Number of cases				Panel 2. Mean duration of cases in days			
	Netherlands		Lithuania		Netherlands		Lithuania	
Class of financial claims in EUR	**First instance**	**Appeal**	**First instance**	**Appeal**	**First instance**	**Appeal**	**First instance**	**Appeal**
100,000 ≤ c < 1,000,000	2,869 (85%)	688 (79%)	332 (86%)	123 (86%)	346	592	352	235
1,000,000 ≤ c < 5,000,000	388 (11%)	141 (16%)	41 (11%)	16 (11%)	513	661	371	260
5,000,000 ≤ c < 10,000,000	65 (2%)	20 (2%)	6 (2%)	2 (1%)	527	601	566	621
10,000.000 ≤ c < 20,000,000	27 (1%)	12 (1%)	5 (1%)	2 (2%)	478	557	226	221
20,000.000 ≤ c < 100,000,000	25 (1%)	10 (1%)	1 (0,3%)	0,3 (0,2%)	667	629	531	224
All financial claims	**3,374 (100%)**	**871 (100%)**	**385 (100%)**	**143 (100%)**	**372**	**603**	**356**	**243**
Per 10,000 inhabitants	2,0	0,5	1,4	0,5				
Per GDP in B EUR	4,6	1,2	9,1	3,4				

	Panel 3. Total value of claims in M EUR				Panel 4. Mean value of claim per case in EUR			
	Netherlands		Lithuania		Netherlands		Lithuania	
Range of financial claims in EUR	**First instance**	**Appeal**	**First instance**	**Appeal**	**First instance**	**Appeal**	**First instance**	**Appeal**
100,000 ≤ c < 1,000,000	801 (25%)	210 (18%)	93 (29%)	36 (29%)	279.080	305.834	279.130	292.908
1,000,000 ≤ c < 5,000,000	767 (24%)	293 (25%)	84 (26%)	33 (26%)	1.978.040	2.070.280	2.026.493	2.103.077
5,000,000 ≤ c < 10,000,000	425 (13%)	132 (11%)	39 (12%)	15 (12%)	6.571.118	6.707.150	6.419.382	7.283.558
10,000.000 ≤ c < 20,000,000	348 (11%)	163 (14%)	61 (19%)	32 (26%)	12.741.681	14.004.257	13.019.068	13.908.473
20,000.000 ≤ c < 100,000,000	878 (27%)	382 (32%)	47 (15%)	9 (7%)	34.666.200	37.006.329	46.877.585	26.133.524
All financial claims	**3,219 (100%)**	**1,181 (100%)**	**322 (100%)**	**125 (100%)**	**954.035**	**1.355.571**	**838.361**	**870.051**
As percentage of GDP	0,4	0,2	0,8	0,3	22,2	31,6	55,4	57,5

Note: last row: mean value of claim per case per GDP/capital

The duration of cases is similar in Lithuania and the Netherlands in first instance cases between EUR 100,000 and EUR 1 million, but in larger cases the courts in Lithuania are generally quicker. Appeals are handled much faster in Lithuania. This will be discussed further below .

To conclude, while a complete overview of commercial cases is not available, by having data about claims from EUR 100,000 and higher, a broad insight into large commercial litigation in Lithuania is possible. Despite a large difference in GDP per capita which has not been compensated for in the classes of value of claims, the composition of claims is similar in both countries, with the exception of the largest claims. Differences in GDP per capita of these countries do not seem to affect inter-company litigation except for the highest claims. Methodologically, there is no reason to adjust the value classes, for instance in the manner of Doing Business. In addition, the main finding is that commercial litigation is more frequent in Lithuania than in the Netherlands.

4.3 Volume and value of commercial cases above EUR 1 million for five countries

Turning now to the comparison of all five countries: Ireland and Italy in addition to Lithuania, the Netherlands and Norway. For Ireland and Italy, the administrative systems of the courts do not provide complete data. For Ireland, only the cases in the commercial list of the High Court could be made available. These cases have a claim value of EUR 1 million and higher. The commercial list is likely to capture a very high proportion of all commercial cases with a value of EUR 1 million or more, but it is not possible to verify this by reference to the data. As a consequence, the data for Ireland give a lower boundary of the volume of cases. For Italy the data are in principle available in its data warehouse, but the required connections between data cannot be made without extensive work by the Ministry of Justice, which was not possible for this project. As a consequence, only the volume of cases per class of claim value is known. The other variables had to be estimated. This was done by applying data about claim value presented in Table 5 for the other four countries. The figures for the other four countries are similar, but to err on the safe side the lowest figures were used.[4] As to the duration of commercial cases in Italy, the case study for Doing Business (see the introduction) was used for first instance cases, and the EU Justice Scoreboard was used for appeal. Probably by co-incidence these figures are very similar. The cases that were described for Italy provide a check (see Chapter 6, Table 10). While the first instance cases of the court of Florence are consistent with these

4 It is assumed that the mean value per case equals the mean value for the Netherlands for all value classes, except for cases > EUR 100 million, and equals the mean value for Norway for cases > EUR 100 million.

figures, other first instance cases as well as the appeal cases took much longer. The data from Doing Business and Scoreboard seem to set a lower boundary for duration. All basic data are given in Table 5.

Apart from data availability, the countries were selected from different parts of Europe, different legal systems and traditions and different levels of performance. Given these criteria, it was unavoidable that the selected countries differ very much in size and in economic structure. Again, GDP is used as measure of size for comparison.[5]

We examine first the volume and total value of adjudicated cases with claims equal to or larger than EUR 1 million. The duration of these cases is discussed in the next Chapter.

Volume of cases: the differences between the systems are great. As discussed already, the Netherlands and Norway have roughly equivalent numbers, taking the size of the economy into account. In Lithuania there are twice as many cases (in absolute terms low numbers) and in Italy thrice as many as in the Netherlands and Norway, relative to GDP. The volume of cases is very low in Ireland, but the data does not allow a firm conclusion, as the number of these cases in courts other than the Commercial Court is unknown. This number is, however, thought to be relatively low. In Italy and Lithuania many more cases go to court, relative to GDP.

Total value of cases: the differences in the total value of adjudicated claims among countries are smaller than the differences in volume. In Italy the estimated total value of claims is high, due to the large number of cases. Also, in the Netherlands the total value is high, but that is caused by a relatively large number of very large cases (EUR 100 million and larger). The presence of such large cases in the courts presupposes an economy in which such large commercial interests regularly occur, and thus conflicts about these interests can arise. This is the case in the Netherlands, but currently much less so in Lithuania.

5 See footnote 2.

Table 5. Commercial litigation at the courts about financial claims larger than 1 million EUR in five countries, three year average 2016, 2017 and 2018, administrative data in black and estimates in *italic*

Panel 1. Number of cases

	Netherlands		Norway		Lithuania		Ireland		Italy	
Range of financial claims in EUR	**First instance**	**Appeal**	**First instance**	**Appeal**	**First instance**	**Appeal**	**First instance**	**Appeal**	**First instance**	**Appeal**
1,000,000 ≤ c < 5,000,000	388 (75%)	141 (76%)	176 (74%)	71 (74%)	41 (77%)	16 (80%)	24 (56%)	3.3 (32%)	2,762 (82%)	676 (80%)
5,000,000 ≤ c < 10,000,000	65 (13%)	20 (11%)	26 (11%)	8 (8%)	6 (11%)	2 (10%)	9 (21%)	1.7 (17%)	330 (10%)	84 (10%)
10,000.000 ≤ c < 20,000,000	27 (5%)	12 (6%)	18 (8%)	8 (8%)	5 (9%)	2 (10%)	4 (9%)	2 (19%)	136 (4%)	38 (5%)
20,000.000 ≤ c < 100,000,000	25 (5%)	10 (5%)	16 (7%)	7 (7%)	1 (2%)	0.3 (1%)	5 (12%)	2.3 (22%)	102 (3%)	33 (4%)
c ≥ 100,000,000	11 (2%)	2 (1%)	2 (1%)	2 (2%)	0	0	1 (2%)	1 (10%)	32 (1%)	11 (1%)
All cases with financial claims	**516 (100%)**	**185 (100%)**	**238 (100%)**	**96 (100%)**	**53 (100%)**	**20 (100%)**	**43 (100%)**	**10 (100%)**	**3,362 (100%)**	**842 (100%)**
Per GDP in B euro	0,70	0,25	0,67	0,27	1,26	0,48	0,14	0,03	1,94	0,49
Per 10,000 inhabitants	0,30	0,11	0,45	0,18	0,19	0,07	0,09	0,02	0,56	0,14

Panel 2. Total value of claims in M EUR

	Netherlands		Norway		Lithuania		Ireland		Italy	
Range of financial claims in EUR	First instance	Appeal	First instance	Appeal	First instance	Appeal	First instance	Appeal	First instance	Appeal
1,000,000 ≤ c < 5,000,000	767 (11%)	293 (22%)	340 (21%)	135 (15%)	84 (36%)	33 (37%)	57 (10%)	8 (0%)	*5,463 (33%)*	*1,399 (26%)*
5,000,000 ≤ c < 10,000,000	425 (6%)	132 (10%)	178 (11%)	59 (7%)	39 (17%)	15 (16%)	68 (12%)	12 (1%)	*2,171 (13%)*	*566 (11%)*
10,000.000 ≤ c < 20,000,000	348 (5%)	163 (12%)	232 (15%)	109 (12%)	61 (26%)	32 (37%)	56 (10%)	27 (1%)	*1,733 (11%)*	*537 (10%)*
20,000.000 ≤ c < 100,000,000	878 (13%)	382 (29%)	629 (39%)	292 (32%)	47 (20%)	9 (10%)	173 (31%)	98 (5%)	*3,536 (22%)*	*1,234 (23%)*
c ≥ 100,000,000	4,534 (65%)	363 (27%)	213 (13%)	304 (34%)	0	0	207 (37%)	2,004 (93%)	*3,435 (21%)*	*1,622 (30%)*
All financial claims	**6,953 (100%)**	**1,333 (100%)**	**1,592 (100%)**	**899 (100%)**	**230 (100%)**	**89 (100%)**	**561 (100%)**	**2,149 (100%)**	***16,338 (100%)***	***5,357 (100%)***
All financial claims as percentage of GDP	0,94%	0,18%	0,45%	0,25%	0,54%	0,21%	0,19%	0,72%	*0,94%*	*0,31%*

Panel 3. Mean value of claim in EUR

	Netherlands		Norway		Lithuania		Ireland		Italy	
Range of financial claims in EUR	First instance	Appeal	First instance	Appeal	First instance	Appeal	First instance	Appeal	First instance	Appeal
1,000,000 ≤ c < 5,000,000	1.978.040	2.070.280	1.932.682	1.904.711	2.026.493	2.103.077	2.377.434	2.437.449	*1.978.040*	*2.070.280*
5,000,000 ≤ c < 10,000,000	6.571.118	6.707.150	6.859.185	7.375.834	6.419.382	7.283.558	7.258.742	7.001.881	*6.571.118*	*6.707.150*
10,000.000 ≤ c < 20,000,000	12.741.681	14.004.257	12.892.701	13.564.931	13.019.068	13.908.473	13.974.441	13.743.549	*12.741.681*	*14.004.257*
20,000.000 ≤ c < 100,000,000	34.666.200	37.006.329	39.287.413	41.691.279	46.877.585	26.133.524	36.841.679	41.837.719	*34.666.200*	*37.006.329*
c ≥ 100,000,000	425.103.991	217.629.718	106.250.244	152.056.054			207.000.000	2.004.145.023	*106.250.244*	*152.056.054*
All financial claims	**13.482.892**	**7.218.438**	**6.687.641**	**9.361.580**	**4.337.948**	**4.361.292**	**13.037.637**	**207.972.397**	***4.859.486***	***6.361.949***

Panel 4. Mean duration of cases in days

	Netherlands		Norway		Lithuania		Ireland		Italy	
Range of financial claims in EUR	**First instance**	**Appeal**	**First instance**	**Appeal**	**First instance**	**Appeal**	**First instance**	**Appeal**	**First instance**	**Appeal**
1,000,000 ≤ c < 5,000,000	513	661	226	266	371	260	277	459	*840*	*880*
5,000,000 ≤ c < 10,000,000	527	601	240	286	566	621	287	596	*840*	*880*
10,000.000 ≤ c < 20,000,000	478	557	260	299	226	221	303	577	*840*	*880*
20,000.000 ≤ c < 100,000,000	667	629	191	319	531	224	332	545	*840*	*880*
c ≥ 100,000,000	731	764	194	178			429	400	*840*	*880*
All financial claims	**525**	**647**	**227**	**272**	**383**	**290**	**291**	**517**	***840***	***880***

4.4 Value of adjudicated cases versus value at stake in commercial litigation at the courts

The data presented in Table 5 concerns the adjudicated cases in a defined period of time (yearly average of 2016, 2017 and 2018), and the average time it took to adjudicate these cases. In this table the total value of claims is therefore the value of the adjudicated cases. This does not equal the total value at stake in commercial litigation currently in the courts. Simply put, the volume of cases in court is the stock of cases at a given moment of the year, typically at the end of the year, that have not yet been resolved . This includes all cases commenced in previous years, not just those commenced in the same year. If on average cases take longer than a year to adjudicate , the volume of cases pending at the end of a year would be higher than the volume of adjudicated cases in that year. If cases in a country last less than a year, then the inverse would happen: the volume of adjudicated cases in a year would be higher than the cases pending at the end of that year. Thus, the value of all the cases currently in court is different from the value of cases adjudicated in a year. The value of cases at the courts is of interest as it approximates the economic activities that are subject to commercial disputes at the courts, and that are on hold as a result. Assuming that the flow of cases is stationary in all respects, this variable follows from the value of adjudicated cases in a year in combination with the duration of these cases. As an example, if the length of all procedures is six months, the value of the cases in court, spread out over the year, is half the value of all adjudicated cases in that year. If the duration is two years, the value of the cases in court is twice the value of adjudicated cases. Table 6 provides both variables, expressed as percentage of GDP.

Table 6. Value of adjudicated commercial cases with financial claims above EUR 1 million and value of all commercial cases in the same range at the courts, as percentage of GDP, assuming a stationary flow of cases

	Netherlands		Norway		Lithuania		Ireland		Italy	
	f.i.	**appeal**	**f.i.**	**appeal**	**f.i.**	**appeal**	**f.i.**	**appeal**	**f.i.**	**appeal**
Adjudicated cases	0,94%	0,18%	0,45%	0,25%	0,54%	0,21%	0,19%	0,72%	0,94%	0,31%
Cases in court	1,73%	0,33%	0,26%	0,18%	0,59%	0,17%	0,18%	0,81%	2,17%	0,75%

Obviously, the combination of a high volume of incoming disputes (equalling adjudicated cases by assumption in Table 6) and long duration drives up the contested and, therefore, "paralyzed" part of GDP, while short duration reduces the impact of disputes on the economy. In the Netherlands and in Italy 2-3% of GDP is contested

in the courts, while in Norway it is less than 0.5%. In the next chapter, the costs are examined of performance that deviates from this best practice.

Overall, commercial litigation in the courts amounts to 0.44-2.92% of GDP. As GDP measures added value, and not the total transactions in an economy, these percentages do not reflect the part of transactions that go so wrong that they reach the courts. The percentages do reflect the litigation that happens in the production and distribution processes that generate GDP.

It should be added that these percentages capture only the effects on the parties in disputes. It might be the case that disputes concern legal issues that are relevant for other economic actors as well, and may cause them to delay activities and/or make provisions. No data is available about this.

Secondly, it is worth emphasizing that the cases considered here all have financial claims. This implies that commercial cases without explicit financial claim are not included, while these cases generally have an economic value. Take, for instance, intellectual property disputes that focus on halting unauthorized use. The impact of including cases without a financial claim is difficult to assess. On the commercial list of the high court and at the appeal court in Ireland circa 40% of the cases do not have a financial claim. These cases take the same amount of time as the cases with claims. It seems likely that these cases are about similar economic interests as the cases with claims. Assuming this percentage applies to all countries, a mark-up of 40% is in order for both variables of Table 6.

If one wants to estimate the value embodied in all commercial litigation, financial claims below EUR 1 million need to be included. As Tables 3 and 4 show, the total value of claims in the class EUR 100,000-1,000,000 as well as EUR 10,000- 100,000 is substantial in the countries for which we have such data. Including these latter cases would lead to an increase of the total value, with 25% being the mean. It can be concluded that the percentages of Table 6 are minimum estimates of the resources at stake in civil litigation.

5 Comparison of the costs of high value litigation

5.1 Costs of large volume of high value litigation

A high volume of cases imposes costs on the courts, on the parties and on society. Italy and Lithuania have a substantially higher volume of cases than the Netherlands and Norway. To establish whether this difference leads to sizeable economic costs, we examine the case of Italy which has by far the greatest number of first instance adjudicated cases relative to GDP (1.94 vs 1.26 in Lithuania with a similar mean value per case, see Table 5). It should be emphasized that a high volume of cases may stem from a range of factors, including at least the structure of the economy, business practices, the legal/judicial system and the culture of dispute resolution. These factors are likely to be deeply ingrained and fundamental to a society, and therefore not easily amenable for change. In Chapter 2 we saw, on the other hand, that the economic structure is influenced by the judicial system, implying that there are levers for change. At least, it is of interest to know what the costs of a high level of litigation are, relative to the benchmark set by Norway and the Netherlands. In Italy a staggering 2,200 first instance cases and 400 second instance cases with claims above EUR 1 million come on top of the volume that would result if litigation was at the level of the Netherlands and Norway relative to GDP. The costs involved in the adjudication of these cases can be roughly estimated. To do this, we use the reliable data based on the administrative systems of the courts, presented so far, but this data has to be combined with the scraps of information that are available about the costs of procedures. The reliability of outcomes is of a different (lesser) order than the data on volume, value and duration of procedures, and should be used with caution.

Public sector costs: Data about these costs was not available for all five countries. In the Netherlands the costs for the judiciary of large commercial cases have been estimated at EUR 20,000 per case.[6] Applying this estimate to Italy, the costs would be in the order of EUR 52 million. Part of these costs are covered by court fees, paid by the parties, but these fees lead to redistribution of resources and can therefore be left out when assessing the welfare effects of an inefficient volume of litigation.

6 Based on an estimate made for the business case of the NCC: the integral cost price of large commercial disputes that are suitable for the NCC (with an average claim value per case of EUR 7 million) is estimated at EUR 21,316. In order to apply these data to other countries it has to be assumed that diverging levels of salaries across countries are compensated by divergence in productivity.

Box 2. Costs of court procedures for parties due to delay

Bringing cases to court has implications for the general business of the parties. Depending on the nature of the conflict, the commercial activities in dispute have to be halted, and/or uncertainty arises about legal positions (see Chapter 2). The costs of the postponement of activities, the uncertainty and the associated financial reserves that have to be withdrawn from productive purposes can be approximated at the macrolevel by multiplying the average time the court cases take with the total value of financial claims and a measure of the rate of return (for activities/projects temporarily halted during the court cases) and the cost of capital (for financial provisions in relation to court cases). See Van Dijk (2014) and Van Dijk and Teijl (1998). The rate of return on capital or – the other side of the coin – the cost of capital is difficult to choose in the current conditions. It should be noted that access to capital is often restricted for firms that are embroiled in legal disputes, and, if capital is available at all, it is more expensive for these firms, in particular if their survival is at stake. A conservative approximation of the rate of return would be to use a discount rate used by government. For instance, Norwegian regulations state that for initiatives where the government is in competition with private actors a discount rate corresponding to the market rate in which private enterprises operate, and for other government initiatives, a discount rate of 4% is to be used for an investment horizon up to 40 years. Disregarding the fact that the rate of return is likely to differ among countries, a uniform rate of 4% seems an acceptable, conservative average from different perspectives.

Costs for the parties: the costs of these cases for the parties depend partly on the way the cases would have been resolved without recourse to the courts. Assuming that going to court does not avoid other costs, only the costs of going to court need to be considered. Apart from the – here irrelevant – court fees as already mentioned, the parties spend money on lawyers and the time of their own staff,[7] as well as incurring costs due to the delay of their business activities during the court case and due to the uncertainty about the outcome of the court case.

- Lawyers' and own staff costs: again, data is not available for most countries and particularly not for ranges of claim value.[8] We have adopted the assumption that these costs amount to EUR 100,000 per party per case, while recognizing that there will be many cases where the costs are considerably higher. The direct costs would be EUR 520 million under this assumption in Italy.
- Losses due to delay, caused by court procedures: applying the method described in Box 2 for calculating the costs of court delay, the benefits depend on the total duration of court cases, but also on the nature and importance of the cases for the parties. Approximating the latter by the value of the claims, the total value of the issues at

7 See also Washington Economics Group, Inc. (WEG, 2009).

8 Following up on footnote 5, for the NCC lawyer costs have been estimated at EUR 600,000 for both parties together for the cases considered. The costs in common law, Anglo-Saxon countries were thought to be five times as high. For the range of claim value of EUR 1-5 million these estimates would be out of proportion.

stake in first instance courts would be EUR 8.5 billion and in appeal EUR 1.8 billion, leaving out the claims larger than EUR 100 million that will go to court anyway. Applying the rate of return of 4% (Box 2) and the duration of court cases in Italy as in Table 5, the costs of delay are in the order of EUR 785 million in first instance and EUR 175 million in appeal. This is a low estimate, as only the duration at court is counted, while the preparation by the plaintiff of the case for litigation is also time consuming, and can easily add six months to the delay.

The costs for parties of conducting more cases than the benchmark set by Norway and the Netherlands would amount to EUR 1.5 billion in total. As percentage of GDP, this is 0.09% for the parties in disputes and society as a whole. These costs are particularly high due to the combination of a high volume of court cases and the length of time taken to adjudicate these cases.

To conclude, the higher volume of cases than the benchmark set by Norway and the Netherlands leads to welfare losses of EUR 1.5 billion annually in Italy. This measures only the direct effects on litigants, in addition to the costs of the courts.

5.2 Performance and costs of high value commercial procedures

It is possible to measure, and thus assess, aspects of the adjudication of cases in the five countries. In particular, one can measure the duration of cases and appeal rates This part focuses on the duration of cases and appeal rates. Quality aspects such as the consistent and uniform application of the law and the predictability of judgments in general are difficult to measure directly, but may be related to volume of cases and, more indirectly, duration. Also, a relationship with appeal rates suggests itself, although appeals are frequently brought as a matter of tactics rather than as a reflection of the uncertainty of the outcome. "No-hope" appeals are brought to delay enforcement of a judgment which a defendant knows is due or to force a plaintiff who cannot wait for the appeal to be processed to settle for a lesser sum than has been found to be due to it.

In the following sections we will examine quantitatively best practices for the duration and for appeal rates in the five pilot judiciaries, and estimate the costs of performance which falls below best practice.

5.2.1 Duration

Table 5, panel 4 provides data about the duration of commercial cases. The number of large commercial cases is relatively small in all countries, even in Italy and Lithuania,

but the financial value of these cases is very high. These cases require much time and resources per case, and are complicated to manage for the judge(s), leading to long duration in several of the judicial systems studied here. Other judiciaries, in particular Norway, struggle much less with these issues. Norway is the best performer in first instance and on appeal on average and for most value classes, followed by Lithuania, which is much less consistent across value classes than Norway. Ireland is very fast in first instance, but slow on appeal in the period studied. Italy and, to a lesser degree, the Netherlands have long duration in first and second instance. Irrespective of their size, these cases take only 7.5 months on average with a spread of 6 to 8.5 months across value classes (average per class) in Norway. The benchmark is set at 8 months. Second instance cases take 9 months, with a spread of 6 to 10.5 months. While it is counterintuitive from a procedural point of view that appeal takes longer than first instance, this is also the case in Norway. A reason might be that appeal cases are more complex on average than first instance cases. Still, 8 months will be used as the best practice for appeal as well. It should be noted that, while, within the availability of data, the comparability of cases has been maximized by uniform classes of claim value, there still is the possibility that the complexity of cases differs among countries.

In second instance, differences in appeal systems play an important role. In particular, a distinction must be made between (1) systems which allow full rehearing on appeal with additional evidence adduced which was not presented in the court of first instance and (2) systems where the appeal is a review and where (normally) no new evidence is admitted, and there is no need to allow time for this in resolving the appeal. It is not surprising that appeal cases take longer in Italy and the Netherlands than in Ireland, Lithuania and Norway, where appeal is review and not retrial.

Estimate of the costs of long procedures

Table 7 gives estimates of the costs caused by the difference between the actual duration of cases and the best practice (8 months in first instance and in appeal). The costs for the parties of the delay of economic activities and uncertainty is estimated by using the method described in Box 2, and applied *mutatis mutandis* in the previous section. The costs of activities that are delayed, the prolonging of uncertainty and the associated financial reserves that have to be withdrawn from productive purposes can be approximated by multiplying the difference between the mean duration of cases in the country concerned and the benchmark, with, as before, the total value of financial claims and a measure of the rate of return/cost of capital. In addition, an increase of the costs of lawyers the longer a case takes is taken into account (see Table 7, note 2).

Table 7. Estimates of the costs of longer duration of commercial cases than the best practice (8 months)

	Netherlands		Norway		Lithuania	
Range of financial claims in EUR	**First instance**	**Appeal**	**First instance**	**Appeal**	**First instance**	**Appeal**
1,000,000 ≤ c < 5,000,000	40.046.842	23.189.082	0	586.378	2.040.668	0
5,000,000 ≤ c < 10,000,000	16.235.656	6.325.403	0	327.592	1.681.150	727.508
10,000.000 ≤ c < 20,000,000	9.995.298	6.208.902	454.915	727.423	0	0
20,000.000 ≤ c < 100,000,000	42.539.187	16.801.361	0	2.486.176	1.522.230	0
c ≥ 100,000,000	242.643.962	20.830.310	0	0	0	0
All cases with financial claims	**351.460.945**	**73.355.058**	**454.915**	**4.127.570**	**5.244.048**	**727.508**
As percentage of GDP	0,0475%	0,0099%	0,00001%	0,0001%	0,0124%	0,0017%

	Ireland		Italy	
Range of financial claims in EUR	**First instance**	**Appeal**	**First instance**	**Appeal**
1,000,000 ≤ c < 5,000,000	340.014	311.023	631.154.515	169.151.788
5,000,000 ≤ c < 10,000,000	382.205	547.633	174.556.757	48.328.078
10,000.000 ≤ c < 20,000,000	398.824	1.112.418	126.691.768	41.444.304
20,000.000 ≤ c < 100,000,000	1.745.849	3.332.471	241.082.974	89.474.347
c ≥ 100,000,000	4.235.163	34.215.377	227.563.656	114.212.386
All cases with financial claims	**7.102.056**	**39.518.923**	**1.401.049.670**	**462.610.903**
As percentage of GDP	0,0024%	0,0133%	0,0809%	0,0267%

Notes:
1. Discount rate: 4% (see Box 2).
2. Extra costs of lawyers: on top of minimum of EUR 100,000 per party, EUR 50,000 for Italy per party per case. For other judiciaries proportional with length of procedures.

The costs for Italy and the Netherlands of longer duration than the best practice in first instance and appeal procedures are large and amount annually to 0.11% of GDP for Italy and 0.06% for the Netherlands. For Lithuania and Ireland, the costs are much smaller but still sizeable and amount to 0,01% of GDP, while for Norway the costs are of course dwindling. It should be noted that these costs relate only to a subset of the commercial cases, as only claims of EUR 1 million and larger are examined. In addition, large economic interests involved in bankruptcy cases are not included here.

The question arises whether it would actually be possible to reduce the duration of procedures to the best practice in the countries concerned, and what it would cost to achieve this. The answer requires a diagnosis of the causes of court delay in each country. In the next chapter we will attempt to do this by means of a detailed analysis of representative cases. At this stage, we can conclude that, even if speeding up of procedures were solely a matter of structural court resources (which it is not), the rate of return on extra expenditure for this purpose would be very high and, more tentatively, higher than on much other government expenditure.[9] However, it should also be recognized that different choices can be made about the balance between efficiency/timeliness and justice/certainty of judgments in the sense of, for instance, the possibilities to bring evidence at any stage and to hear cases again fully in appeal, as the brief discussion of appeal systems exemplifies. However, it should not be forgotten that justice encompasses timeliness.

5.2.2 Appeal rates

Table 8 provides estimates of appeal rates for the classes of financial claims. The appeal rates are calculated simply by dividing the number of appeal cases by the number of first instance cases, using the three-year averages presented in table 5. The appeal rates in these large cases are around 40%, except for Ireland where there is a stepwise increase of the appeal rate from 18% to 50% and Italy where the appeal rate is lower, probably caused by the long duration of the procedures. It is not obvious what the best practice would be. The Irish system might be the best candidate, as appeal is selective and focusses on the largest cases. Still, an appeal rate as high as 40% or 50% suggests that appeal is primarily

9 If production capacity would be doubled structurally in Italy, this would cost EUR 84 million per year (if costs per case are EUR 20,000, as assumed). This should be compared with the direct benefits for the parties of EUR 2.2 billion. For the Netherlands the difference between the extra costs for the public sector (EUR 14 million) and the benefits for the parties (EUR 529 million) would also be huge. Obviously, these figures are only illustrative, as reducing the duration of procedures also requires procedural reform and change of culture in the legal professions. This, on the one hand, reduces the need for capacity increase and associated costs, but on the other hand, causes reduction of delay to be much more difficult to achieve than if it were solely a financial matter.

used to give one's case another try, as issues of law are not likely to occur that often. The Italian appeal rates are across the board lower, but probably for the wrong reason, and, therefore, cannot be considered to be the best practice.

Table 8. Appeal rates for claims between EUR 1 million and EUR 100 million

Range of financial claims in EUR	Netherlands	Norway	Lithuania	Ireland	Italy
1,000,000 ≤ c < 5,000,000	36%	40%	38%	14%	24%
5,000,000 ≤ c < 10,000,000	30%	31%	33%	18%	25%
10,000.000 ≤ c < 20,000,000	43%	44%	50%	50%	28%
20,000.000 ≤ c < 100,000,000	41%	44%	33%	50%	32%
All financial claims	**36%**	**40%**	**38%**	**24%**	**25%**

Note: as to very large cases (> EUR 100 million) the volume is very low and fluctuates over the years. Appeal rates calculated by dividing second instance by first instance volumes of cases do not provide a meaningful approximation. These cases need to be analyzed individually.

It might well be that among these countries no best practice can be found. To examine the financial consequences of high appeal rates, we nonetheless use Ireland as best practice, as far as the two lowest classes of claims are concerned.

Estimate of the costs of high appeal rates

A higher appeal rate than the benchmark obviously leads to more appeal cases than if the benchmark were applied. Using the same approach as in Chapter 3 (including Box 2), the costs for the parties of these extra cases can be calculated. These costs would be in the order of EUR 13 million for parties in Norway, EUR 36 million in the Netherlands, EUR 3 million in Lithuania and EUR 138 million in Italy. The costs for the judiciary itself would be relatively small, for instance EUR 6.2 million for Italy and EUR 1.9 million for the Netherlands.

Approached in this way, the reduction of appeal rates does not have much potential to reduce costs for society. If a reduction could be realized to the lowest percentage of Ireland (14%) in all classes of claims, the costs that could be saved are more substantial: EUR 25 million for parties in Norway, EUR 64 million in the Netherlands, EUR 4 million in Lithuania, EUR 6 million in Ireland and EUR 248 million in Italy. The costs for the judiciary itself are hardly affected.

5.2.3 Interaction of the volume and duration of court cases

The interaction between the volume and duration of cases is of interest. Considering first instance cases, Italy has a large number of cases and also long duration (see Table

5). Norway, at the other extreme, has few cases and short duration. The Netherlands has low volume and relatively long duration. Lithuania has many cases and short duration, while Ireland has few cases and short duration (in first instance). Tentatively, one gets the impression that duration as a rationing device (Gravell 1990) is not strongly present. The experience of Italy even suggests that long duration is a reason to go to court. This has been suggested by others as well (*e.g.*, Lorizio and Gurrieri 2013). In appeal this is less discernible in our data. Of course, these outcomes do not provide conclusive insights. It would be necessary to include more countries in the analysis. In particular, it would be interest to present the data from all European countries on the volume and duration of cases. What pattern would emerge? And would this pattern be related to court tradition or other aspects of society?

5.2.4 Conclusions based on administrative data of courts

In this analysis we have focused on the volume and value of commercial cases, their duration and the use of appeal at the courts of five countries. The data gathered about commercial litigation make the following clear.

1. Court cases are so different that care has to be taken when using aggregate data such as those – very usefully – gathered by CEPEJ. Differentiation on the basis of the size of disputes (here operationalized by the value of financial claims) is necessary to get a reliable description of the work of the courts, and provides the link with economic effects.
2. The direct interests of parties at stake in commercial litigation at the courts are substantial, relative to a measure of activity in an economy such as GDP, irrespective of the judicial system and its performance, making the judiciary directly relevant for the economy.
3. The performance of the five judiciaries differs considerably with regard to volume and duration and – to a lesser extent – the use of appeal. This allows for an estimate of costs relative to best practice. The analysis suggests that there are large gains to be made by moving towards best practice.
4. To get a more comprehensive view of the potential gains of improving civil procedure in Europe and to gain a deeper insight into the underlying mechanisms, it would be very valuable to extend this study to more, and preferably all European countries. This would shed light on, for instance, the relationship between volume and duration of cases.

Before drawing more firm conclusions, it is necessary to validate the outcomes qualitatively by examining court cases in detail. This should also clarify how judiciaries can move to best practice. In the next chapter this analysis will be presented.

6 Comparison of commercial procedures in detail

6.1 Case selection

To get a better understanding of commercial procedure in the five countries, a number of cases of varying procedural complexity and duration was selected, described and analyzed for each country. We examined, in particular, what causes differences in duration within systems and between systems. All are commercial cases with financial claims between EUR 1 and 5 million. In each judiciary there are large differences between cases. We examine 6-8 cases per country that have been resolved in 2016 or later: at a minimum three first instance and three appeal cases. Table 10 summarizes the selected cases. The appeal cases can be the follow-up of the first instance cases, but only if both the first and second instance case have been decided in 2016 or later, and data are available. To provide necessary background about commercial procedures in the five countries, short descriptions of the relevant procedures per country are enclosed in Annex 1. Annex 2 gives the case descriptions. It should be emphasized that, while the case descriptions make clear how commercial cases of similar size are processed in the courts of the five countries, within and across countries the cases differ in content and, for instance, party composition. As a consequence, the case descriptions do not present a representative overview of commercial litigation by themselves, and are not intended as such.

In selecting the cases the distribution of the duration was taken into account, as far as possible. Table 9 shows the distribution for Ireland and the Netherlands. It shows that extreme long duration occurs, and forms a substantial category in the Netherlands (and probably in many more countries). Such a case was included for the Netherlands. The data shows that litigation is a much more (time-)controlled process in Ireland than in the Netherlands.

Table 9. Distribution of the duration of commercial court cases about claims between EUR 1 million and EUR 5 million, ended in 2016-2018, number of cases as percentage of total

a. First instance courts			**b. Appeal courts**		
Duration in days	**Ireland**	**Netherlands**	**Duration in days**	**Ireland**	**Netherlands**
0 – 180	41%	22%	0 – 180	0%	15%
180 – 360	35%	26%	180 – 360	36%	10%
360 – 540	13%	19%	360 – 540	9%	21%
540 – 720	8%	11%	540 – 720	55%	18%
720 – 900	1%	7%	720 – 900	0%	12%
900 – 1,080	0%	4%	900 – 1,080	0%	8%
1,080 – 1,260	0%	3%	1,080 – 1,260	0%	6%
1,260 – 1,440	1%	2%	1,260 – 1,440	0%	4%
1,440 – 1,620	0%	1%	1,440 – 1,620	0%	2%
1,620 – 1,800	0%	1%	1,620 – 1,800	0%	1%
1,800 – 1,980	0%	1%	1,800 – 1,980	0%	1%
> 1,980	0%	4%	> 1,980	0%	2%
	100%	100%		100%	100%
Average in days	**276**	**542**	**Average in days**	**472**	**660**
Median in days	228	385	Median in days	563	560
Number 2016, 2017, 2018	71	1.021	Number 2016, 2017, 2018	11	426

Note: data for the Netherlands differs from Table 5 due to elimination of incomplete cases. Median of appeal cases for Ireland is not informative, due to the small number of cases.

All selected cases ended in a judgment. Duration is shorter, if parties reach at some stage a settlement. Settlement may have other advantages as well, and judges may actively pursue settlement. It should be noted that in Ireland the procedures were established to facilitate speedy resolution of the disputes by either a decision of the court or preferably by agreement of the parties. Still, to be able to compare all phases of procedures within and across jurisdictions, cases that were settled were left out.

Table 10. Selected and analyzed commercial cases with claims between EUR 1 million-EUR 5 million

a. First instance cases

	Claim in EUR	Dates and duration of first instance cases
Ireland		
IR-1	3,958,536	**03-08-2016 – 20-06-2018: 686 days**
IR-2	1,470,000	**27-04-2018 – 21-12-2018: 238 days**
IR-3	2,213,603	**18-07-2017 – 30-11-2017: 135 days**
IR-4	4,566,895	**11-10-2017 – 02-05-2018: 203 days**
Italy		
IT-1	2,000,000	**11-11-2016 – 14-12-2018: 763 days**
IT-2	2,000,000	**16-12-2014 – 14-04-2017: 850 days**
IT-3	2.000,000	**17-03-2016 – 29-07-2017: 499 days**
IT-4	1,650,000	**28-03-2014 – 28-06-2016: 823 days**
Lithuania		
LI-1	1,030,523	**22-05-2015 – 05-02-2018: 990 days**
LI-2	1,013.670	**06-10-2016 – 13-02-2017: 130 days**
LI-3	1,477,299	**18-02-2016 – 09-03-2017: 385 days**
The Netherlands		
NL-1	2,900,000	**30-10-2017 – 17-10-2018: 352 days**
NL-2	1,200,000	**21-09-2015 – 13-07-2016: 296 days**
NL-3	3,500,000	**03-08-2011 – 04-10-2017: 2,254 days**
NL-4	2,200,000	**24-12-2015 – 10-01-2018: 748 days**
Norway		
N-1	2,978,723	**12-04-2016 – 19-11-2018: 951 days**
N-2	1 914 893	**10-07-2019 – 09-03-2020: 243 days**
N-3	1,170,213	**27-04-2018– 07-11-2018: 194 days**
N-4	957,446	**22-12-2017 – 29-06-2018: 189 days**
N-5	1,276,596	**21-08-2015 – 19-02-2016: 182 days**
N-6	3,191,489	**06-01-2017 – 05-02-2018: 437 days**

b. Appeal cases including data about the first-instance precursors

	Claim in EUR	Dates and duration first instance	Dates and duration second instance	Total duration
Ireland				
IR-5	2,295,000	19-05-2014 – 23-01-2015 (25-02-2015) 249 days	**24-03-2015 – 12-10-2016 568 days**	817
IR-6	2,131,000	24-04-2014 – 31-07-2015 463 days	**07-10-2015 – 12-05-2017 583 days**	1,046
IR-7	2,500,000	09-07-2014 – 27-01-2015 202 days	18-03-2015 – 01-05-2017 **775 days**	977
Italy				
IT-5	5,000,000	18-01-2011 – 13-03-2015 1515 days	**15-06-2015 – 01-02-2018 962 days**	2,477
IT-6	1,300,000	14-03-2005 – 13-08-2013 3074 days	**22-10-2013 – 28-11-2016 1,133 days**	4,207
IT-7	1,000,000	07-05-2013 – 17-09-2015 863 days	**12-03-2016 – 02-10-2018 934 days**	1,797
IT-8	1,000,000	26-09-2008 – 25-04-2013 1672 days	**25-09-2013 – 10-11-2017 1,507 days**	3,179
Lithuania				
LI-1	1,030,523	**22-05-2015 – 05-02-2018 990 days See F.I.**	**07-03-2018 – 04-03-2019 362 days**	1,352
LI-2	1,013,670	**06-10-2016 – 13-02-2017 130 days See F.I.**	**14-03-2017 – 19-12-2017 280 days**	410
LI-3	1,477,299	**18-02-2016 – 09-03-2017 385 days See F.I.**	**10-04-2017 – 24-01-2018 289 days**	674
LI-4	4,529,287	03-05-2015 – 10-09-2015 130 days	**08-10-2015 – 19-01-2017 469 days**	599
LI-5	1,058,569	08-10-2014 – 12-10-2015 369 days	**12-11-2015 – 07-06-2016 208 days**	577
LI-6	3,073,731	29-10-2013 – 18-05-2015 566 days	**18-06-2015 – 21-04-2016 308 days**	874
Netherlands				
NL-5	1,683,000	04-06-2014 – 16-9-2015 469 days	**16-12-2015 – 07-08-2018 965 days**	1,434
NL-6	3,750,000	05-02-2014 – 02-03-2016 756 days	**02-06-2016 – 31-10-2017 516 days**	1,272
NL-7	4,051,337	16-04-2012 – 30-04-2014 744 days	**15-12-2014 – 07-02-2017 785 days**	1,529
Norway				
N-3	1,170,213	**27-04-2018– 07-11-2018 194 days**	**07-12-2018 – 04-04-2020 484 days**	678
N-4	957,446	**22-12-2017 – 29-06-2018 189 days**	**05-10-2018 – 10-03-2020 522 days**	711

	Claim in EUR	Dates and duration first instance	Dates and duration second instance	Total duration
N-5	1,276,596	**21-08-2015 – 19-02-2016 182 days**	**11-04-2016 – 12-06-2017 427 days**	609
N-6	3,191,489	**06-01-2017 – 19-03-2018 437 days**	**27-04-2018 –10-10-2019 531 days**	968

Note 1: in bold the cases that have been described (see Annex 2 for the case descriptions).
Note 2: for administrative reasons, several of the cases for Norway are more recent than for the other countries. This is irrelevant for the duration of the procedures.

The precursor first instance procedures of the appeal cases that are described in detail are obviously older than the described first instance cases. While the case selection is not meant to be representative, the differences in the duration of the two sets of first instance procedures are striking for Italy. The described first instance cases for Italy are from the Court of Florence. The appeal cases are from the Appeal court of Venice, and the precursor procedures took place at several courts (see Annex 2). Three of the four precursor first instance cases took dramatically longer than the cases at the Florence court. This may point to substantial differences between courts, but this is unlikely.[10] It is more likely that the excessive length of procedures has been curtailed over this period.

6.2 Analysis of case description per jurisdiction

The selected cases concern a variety of economic disputes. In the Netherlands and Lithuania cases are, in particular, about the interpretation and breach of business contracts. Some cases are among large companies, but others involve small business ventures whose survival may depend on the rapid resolution of the case. Access to capital for those small firms is an issue to tide over the time to judgment, and the case descriptions show that during the court cases several have gone bankrupt (*e.g.*, NL-1 and NL-7). In Italy most cases are about financial issues and mismanagement of companies, related to bankruptcy. In Ireland financial issues, in particular non-payment of loans concerning property, are prevalent.

We examine the procedures in these cases, in particular with regard to timeliness. The cases must be seen as concrete examples of how civil procedures work in practice.

10 Data from Doing Business show, however, that the Court of Florence does not perform well compared with the courts of most other areas in Italy, and performs at the same level as the court of Padua which is one of the courts that handled the described cases that were appealed. https://www.doingbusiness.org/en/reports/subnational-reports/italy.

While the numbers are too small to allow quantitative conclusions, they give qualitative insights in the way civil litigation takes place. See Annex 2 for the case descriptions.

There are common aspects that take time in each system, but these work out differently in judiciaries. Also, system specific aspects occur. In addition, we address the role played by court resources. We examine first the case descriptions per country, and start with examining the judiciaries that have (relatively) long procedures. In Section 6.3 the main differences between jurisdictions are discussed.

The Netherlands

First instance

Civil procedure is very flexible, and leaves much room to the parties to shape the procedure and let it evolve according to need. There is not a concentrated trial phase, and different types of hearings are possible but not mandatory. Two cases (NL-1 and NL-2) taking 352 and 296 days show a streamlined procedure. Long duration of cases (in the examples 748 (NL-4) and 2,254 days (NL-3)) has several causes:

- Repeated exchange of written statements takes time. Frequent use of counterclaims that increase the complexity of the case and augment the submitted statements: exchange of written statements can take 1.5 year, as the examples show (16 and 17 months).
- Involvement of many parties (such as impleader procedures and joinder of claims and/or parties), requiring interim judgments on motions. In the example this takes four months (NL-3).
- Planning of hearings can take long: seven and eight months in the examples.
- Taking of evidence: witnesses, and in particular expert witness involvement, can take a lot of time. In the example the appointment of an expert took thirteen months (NL-3). The report itself took 21 months, while the written submissions of the parties about the report then followed quickly in two months.

Appeal

On appeal the procedure is again flexible with the possibility of a hearing right at the start of the procedure in particular to try to settle the case, even before the grounds of appeal have been submitted. Even a simple case without complications (such as NL-6) can take 516 days. Duration depends largely (but not only) on the conduct of the parties. Causes of delay are the following.

- Long duration of the submission of the statement of grievances. The summons can be blank, and the appellant has up to three months (and sometimes longer) to specify the grounds of appeal. In the examples this took five, six and eight months. In all three cases a preliminary hearing took place before the submission of the grievances for case management and to try to settle the case, in these cases with no effect.

- Planning of a hearing: in one of the cases (NL-5) it took eleven months from the request of a hearing to the hearing itself. This happened at a court known to suffer from lack of capacity.
- Examination of witnesses takes time: in the example of NL-6 eight months. Although the Dutch legal system requires grievances to be stated in the appeal, in fact a full *de novo* review may be achieved by submitting grievances on every aspect of the judgment given in first instance. There are little or no restrictions on adducing new arguments, facts and evidence on appeal. In case NL-5 witnesses were heard in first instance and in appeal.

While legal system and tradition are dominant, insufficient court resources play a role, particularly between the waiting time when the case is ready to be tried and the actual hearing (see above appeal case NL-5). The judge has the authority to contain the procedure, but this requires strong case management which does not habitually occur. Resources also affect the available time for case management in a judiciary like that of the Netherlands that is not used to it. In the longer run strict case management is likely to be more efficient, but at the start it will consume resources.

Italy

First instance

The procedures described are similar to those in the Netherlands, but the steps tend to take much longer. A straightforward first instance case without complications can take 28 months at the court of Florence (IT-1, IT-2 and IT-4). In case IT-1 the preparatory phase took close to a year, while the waiting time for the two hearings that took place added considerably to the total duration. Case IT-3 proceeded faster (16 months), but case IT-4 took 26 months for the court to decide that it was not competent. Case IT-2 included a decision to involve a third party which led to delay, but still contained the duration to 28 months. As noted, the first instance cases that preceded the appeal cases described took much longer (see Table 10). While little information is available about these procedures, it is documented that in these cases respectively eight, twelve, three and eight hearings took place, where the procedure with three hearings was concluded in 28 months and the other cases took between 50 and 100 months. These cases are likely to have been more complex than the cases of the Florence court, but the large number of hearings in particular added significantly to the extreme length of the cases overall.

Appeal

The cases were relatively straightforward. In all four cases no preliminary investigation took place. In two of them preliminary decisions were taken on a stay of the enforceability of the first instance judgments. In one case the parties requested time to attempt to settle the case which added to the duration of the procedure (49 months). The other cases

required two or three hearings and took approximately 30 months, again pointing to long waiting times between steps.

The legislature recognized that the appeal process can constitute an obstacle to the "reasonable duration" of a civil case, and it introduced Law 83/2012 which limits the rights of parties to pursue an appeal. At the first hearing of the appeal the appeal judge can strike out the appeal on the grounds that the appellant has not made out a *prima facie* ground of appeal.

In first and second instance, court resources including administrative support are a major factor in Italy.

Ireland

First instance

The procedure is different from that in the Netherlands and Italy with a focus on working towards one hearing that may take several days. The preparation for the hearing may take a long time, as can be seen in the first case where discovery and witness statements took a year (IR-1). Also, the planning of a hearing may take a relatively long time (six months), again in IR-1. The other cases show that even with complications, such as a procedural appeal to the appeal court, the procedures are short. The cases show strong, hands-on case management, which provides a good practice. Like in Norway, but in contrast to the other judicial systems, hearings can take several days: seven days in IR-1, while in the other cases two days is the rule. Seven days is not particularly long in Irish court cases.[11] Relative long duration of cases has several causes:

- Discovery
- Delivery of witness statements
- Interim motions
- Unsuccessful attempts to serve parties

Appeal

On appeal the duration is longer than in first instance. Case management is again very hands-on and strict (see in particular IR-7). Causes of delay are in particular:

- Delivery of the judgment after the hearing: 8.5 months in case IR-5 and five months in case IR-6. This was caused by lack of capacity. There was a substantial backlog of cases on appeal when the Court of Appeal was first established in 2014. The Court was very under resourced and judges had to take on a great workload, essentially

11 The Schrems/Facebook case requesting a reference to the CJEU took five weeks of very intense oral argument and evidence of the relevant laws of the US.

sitting every day. Finding and setting a court date under these circumstances was a major cause behind the delays.
- In addition to the above, for lengthy appeals the only feasible time for writing judgments was during court vacations. Therefore, after a case was heard delays arose where it was not possible to write during Term Sittings. In more recent years, the delays have gradually decreased and with the addition of six new judges to the panel of the court, this will decrease delays further.
- Many appeals are taken by lay litigants who are not professionally represented during the proceedings. As such, the court is required to give unusually specific directions and greater leeway to the litigant to comply with the directions, in particular in regards to written submissions, extending time for such to be lodged and interim motions.

Case IR-7 concerns parties that are engaged in virtually endless litigation, and strict case management, for instance, dismissal of motions to adduce new evidence, is applied.

To conclude, delays occurred in particular in appeal and were primarily caused by lack of resources.

Lithuania

The cases show that the courts work quickly in first instance as well as in appeal, particularly – but not only – when procedures are straightforward (see LI-2, and specifically for appeal LI-4, after correction for delay due to an interfering procedure, and LI-5). As in the other jurisdictions, involvement of experts causes delay. In LI-1 the delay was 1.5 year, as a second expert report was deemed necessary. Also, involvement of many parties costs time. Unforeseen events seem to occur regularly, and strict case planning and case management seems to be difficult. Also, it seems difficult to reach final closure of cases, as parties (and others) often exhaust all procedural possibilities. Three of the case descriptions illustrate the difficulties. In LI-1 a third party (also) appealed the first instance decision. In LI-3 a motion for interim measures was introduced by a municipality that was not involved in the case so far but apparently had an interest. And after appeal and cassation, a third party that claimed it held the contested rights, asked for a renewal of the procedure (retrial), and appealed after renewal was denied. In LI-6 the procedure as such was straightforward. However, the Court of Cassation reversed the judgment of the appeal court and referred the case back to the appeal court. The appeal court in turn annulled the first instance judgment, and (eventually) the parties decided to refer the dispute to arbitration. Unlike in the other judiciaries, the authority of the courts appears sometimes to be an issue. Court resources do not seem to be a limiting factor in Lithuania. Court management plays an important role in maintaining speed in procedures, for instance, by allocating resources.

Norway

First instance
Like in Ireland, the procedure is focused on the oral hearing of the case. Oral hearings can take many days: fifteen days in N-1 in first instance and ten days in N-6 in first as well as second instance. The other cases show that a duration of two days occurs more often. Courts of first instance apply case management with a pre-trial conference to agree the timeline and other issues, such as whether court-led mediation is to take place and a review of the evidence to be presented. These procedures do not preclude complications which can lead to very long duration (see N-1). The unusually long duration of this case is due to the fact that it was part of a more complex case. N1 was transferred to Oslo District Court from another first instance court.

Appeal
Pre-trial conferences are also used in the appeal courts. Appeal cases are normally heard again in full and in practice with little specific focus on the issues appealed by the appealing party. The Dispute Act provides focus on the remaining disputed issues, but this is not reflected in the appeal courts' practice. Guidelines are now being implemented aiming at reducing the time used on appeal. As the cases illustrate, the duration is therefore often much longer in appeal than in first instance. It is striking that the duration of the cases that are described is longer than the mean duration of all appeal cases, as shown in Table 5. The case descriptions are all from the Borgarting Court of Appeal in Oslo, which is known to have capacity problems. The duration in the case descriptions reflects this fact.

6.3 Analysis of case descriptions across jurisdictions

Straightforward cases
First instance cases without complications, in particular with regard to evidence, move relatively quickly through the courts and take less than a year, except in Italy where these cases take two years. In appeal the spread in the duration is larger and court resources play a large role. This is manifest in waiting time for hearings (the Netherlands, Italy, Ireland, Norway) and time between hearing and judgment (Ireland), where the situation in Ireland has improved markedly since.

Complicated cases
Complicated cases are the stress test for systems. Focusing on first instance cases, a common cause of delay is expert evidence. In Ireland the delay is incurred upfront in the pre-trial phase. In other systems the need for expert opinion arises during the procedure. An extreme example is given in a Netherlands case where the appointment of an expert took thirteen months and the expert report 21 months. In a case in Lithuania 1.5 years

was spent on an expert report and a second report to validate the first. Witness evidence, in general, is a cause for delay in all systems. As shown for Italy, complications lead to many hearings in a case, and with scarce resources this is major cause for delay. Another source of complications are disputes about party composition. These issues are generally handled upfront, but in Lithuania interventions of third parties seem to occur frequently during the procedure or even in appeal and later on. A more technical reason for delay is interference of other procedures which may result in cases put on hold (Lithuania, Norway).

Appeal system

Whether there is appeal by way of review or (*de facto*) full retrial has a huge impact on appeal procedures, as was noted before. In Ireland and Lithuania the appeal is a review of the decision of the court at first instance. This is not the case in Italy, the Netherlands and Norway. In the Netherlands witnesses are heard in first instance, but can also be heard in appeal. Only in Lithuania appeal takes less time than first instance (Table 5). The case descriptions for Lithuania support this finding.

Streamlining of procedures

The exchange of documents is often a cumbersome and time-consuming affair, in particular when claims lead to counterclaims. Systems differ in their priorities, including the importance they attach to speed. For instance, in the Netherlands the notice of appeal can be blank, and the grounds for appeal can be submitted later, leading to at least a delay of three months and often more. In other systems, the grievances are part of the notice of appeal. This issue extends to evidence in general that in the Netherlands does not need to be supplied at the start of proceedings.

Case management

A major difference is case management. In Ireland and Norway especially the emphasis is on speed and hands-on case management. Once one goes to court in Ireland, the court takes over the planning and strict deadlines are set. Attempts to prolong procedures and complicate matters are generally disallowed. However, in Ireland complications arise if parties are not represented by lawyers. In other systems the role of the judge is less active, if not passive. While in all judiciaries full consideration of facts and arguments is essential, systems differ in the extent they allow new evidence to be brought in during the proceedings and in appeal. In judiciaries like the Netherlands great importance is attached to hearing all the facts and arguments, even if these were initially forgotten or their relevance comes to light later on, and even if this allows strategic withholding of arguments initially. This means that the balance between two aspects of justice, "certainty" and "timeliness" may be different among judiciaries.

Court resources

Limited resources play a role in four of the five judiciaries, and reduce the effectiveness of the courts, in particular by delaying proceedings. Limited resources lead to courts not having enough judges, but also to lack of administrative support staff as a result of which judges cannot work efficiently. Lack of resources shows clearest in a long time between the final hearing and the delivery of the judgment. This is frustrating for the parties, in particular when the date of judgment is uncertain and frequently postponed. It is also inefficient for the courts, as judges have to familiarize themselves with cases again, after long delay.

7 Discussion

Based on current economic research, Chapter 2 summarized a wide range of economic effects of a more or less efficient legal and judicial system. An efficient system leads to higher economic growth than an inefficient system through more competition, more investment, lower risk and larger availability of capital. The benefits of investing in the judicial system are potentially huge but difficult to quantify as these benefits follow from a complex chain of causal relations. To simplify matters, in this study we focused on the economic impact of the performance of the courts on the parties in large commercial cases, differentiated by size of financial claims. We examined the volume of commercial litigation, the duration thereof and the use of appeal in five judiciaries. It was shown that the value of the claims in adjudicated commercial cases above EUR 1 million is between 0.7% to 1.2% of GDP, and derived from that, the value of the claims in all pending cases at the courts of this type and magnitude is between 0.44% and 2.92% of GDP. This is a conservative estimate as economically relevant cases without an explicit financial claim are not included. It should also be noted that the commercial cases with claims larger than EUR 1 million are only a part of one category of litigation that is relevant for the economy. For instance, insolvency cases were not included. The implication is that a substantial part of the activities in these economies is subject to litigation.

It was also established that the functioning of the five judiciaries differs very much with regard to volume and duration of commercial litigation and – to a lesser extent – the use of appeal. As a substantial part of economic activity is litigated, it can be expected that the differences in judicial performance lead to large economic effects. The quantitative analysis shows that there are indeed large gains to be made by moving towards best practice within the five countries studied. All five judiciaries can make progress, but to a different degree, with Italy (volume, duration), Lithuania (volume) and the Netherlands (duration) having much to gain. The order of magnitude of the costs for parties of long duration above the benchmark is estimated for Italy at EUR 1.9 billion and for the Netherlands at EUR 420 million annually.

The method used to arrive at these estimates focuses, apart from the direct costs of litigation, on the costs of delay of economic activities and prolonged uncertainty caused by (lengthy) court procedures. By applying a common rate of return to the value at stake in court litigation, approximated by the total value of initial financial claims, estimates are made of the costs of going to court, for varying length of procedures. This method implies a generalization of a large range of specific effects of court delay, and is, of course, a severe simplification. Further research is needed, for instance by the economic sector, to get a more detailed insight in effects and costs. Also, it should be considered to differentiate the analysis by taking national economic conditions more

into account. As mentioned above, our analysis captures the costs for the parties only. The estimate of the impact on economic actors other than the parties themselves would provide the link between the current estimates of costs and the economy wide effects, described in Chapter 2, but this is beyond the scope of the current study.

Despite these limitations, a strong business case exists for judiciaries to move towards the best practice. The cases that were described show in detail that divergence from best practice has to do with court resources and with procedures and their application. For instance, the strong emphasis in Ireland and Norway on strict case management is not present in the other countries, and reflects different priorities of judges, but also of lawyers and parties. However, lack of resources can extinguish any advantage of a focus on strict case management, as is shown by the data of Ireland on appeal.

The case descriptions show a fairly sharp distinction between systems that focus in the procedure on one (sometimes long) hearing and steer all efforts towards that hearing, and systems that allow cases to evolve ("free form") during the procedure, leaving much room to the parties, for instance, to bring new evidence. Other things being equal, the hearing-oriented systems are faster than the "free-form" systems. These hearings often take much more time, and as such require more time from judges, which is (partly) compensated by fewer procedural steps.

The "free-form" systems generally allow parties to bring new evidence and/or to amend claims not only during the pre-trial phase, but also at trial. While hearing-oriented systems permit the introduction of new arguments and evidence after the pretrial phase, this is usually strictly controlled and may be disallowed Allowing new information to emerge during the trial may lead to higher certainty in the ultimate decision and a stronger conviction that justice has been done. If so, a trade-off between certainty and timeliness would arise, which could explain why countries have "free-form" systems in the first place, apart from tradition. However, whether both types of systems actually lead to different outcomes in this respect, is an empirical question that cannot be answered on the basis of current knowledge, in particular considering that systems differ in the opportunities for tactical manoeuvring of the parties and their lawyers, for instance, by withholding information at the start of the procedure. In contrast, the differences in timeliness are clear.

In all countries appeal rates are high, generally 40%-50% for large cases. It is difficult to identify a best practice in this respect. For parties litigation costs are a secondary consideration in the large cases studie d here, an,d they often appeal for tactical reasons to delay execution or to obstruct the other party. In the countries studied a clear distinction exists between appeal as review and appeal as (*de facto*) retrial. Other things

being equal, retrial takes (much) longer than review. As in the previous point, there is a trade-off between thoroughness and timeliness.

The quantitative data together with the case descriptions show that large benefits can be achieved by moving towards best practice, and that this is feasible, in particular with regard to the duration of cases. While a reduction of the volume of cases cannot be directly achieved, timeliness can be addressed directly, and it is likely to have substantial indirect effects by reducing the benefits for parties to litigate just to gain time. It requires sufficient resources to be devoted to the judiciary and the willingness and means to address procedures and working practices.

Some general conclusions can be derived from these findings. In the *first* place, the comparison of judiciaries from the perspective of the (economic) impact on society is useful. Optimization of procedures and ways of working within national confines misses opportunities to make large gains. The comparison also helps to clarify the underlying orientations and priorities in judicial systems, and their benefits and costs for society. In the *second* place, the current pilot study was confined to five judiciaries. It would be important to extend the study to all countries of the EU. This would require an adaptation of case registration systems in many countries. In the meantime, it would be possible to classify all judiciaries of the EU by their similarities with the five countries of the pilot. In the *third* place, EU-wide investment plans to improve commercial litigation would yield a high rate of return for society, and it would improve the competitiveness of the EU.

References

Bae, K.H. and V.K. Goyal (2009), "Creditor Rights, Enforcement, and Bank Loans", *Journal of Finance*, 64(2), 823-860.

Caponi, R. (2016), "The performance of the Italian civil justice system", *The Italian Law Journal,* 2(1), 15-17.

Casas-Arce, P. and A. Sais (2010), "Owning *versus* Renting: Do Courts Matter?", *Journal of Law and Economics*, 53(1), 137-165.

CEPEJ (2018), *European judicial systems: efficiency and quality of justice*, CEPEJ Studies 26.

Chemin, M., (2012), "Does Court Speed Shape Economic Activity? Evidence from a Court Reform in India", *Journal of Law, Economics, & Organisation*, 28(3), 460-485.

Dijk, F. van (2014), "Improved performance of the Netherlands Judiciary: assessment of the gains for society", *International Journal for Court Administration*, 6, 1-17.

Dijk, F. van and R. Teijl (1998), *Rechtspraak en rechtshandhaving: maatschappelijke effecten van verbetering,* Ministerie van Justitie, Werkgroep Effecten Rechtspraak.

Dougherty, S. (2012), *Legal Reform, Contract Enforcement and Firm Size in Mexico*, mimeo.

Feld, L.P. and S. Voigt (2003), "Economic growth and judicial independence: cross-country evidence using a new set of indicators", *European Journal of Political Economy*, 19, 497-527.

Giacomelli, S. and C. Menon (2012), *Firm Size and Judicial Efficiency in Italy: Evidence from the Neighbour's Tribunal*, Temi di discussione (Working Papers) No. 898.

Giacomelli, S. and C. Menon (2013), *Firm size and judicial efficiency: evidence from the neighbour's court*, Bank of Italy Temi di Discussione (Working Papers) No. 898.

Gravell, H. (1990), "Rationing trial by waiting: welfare implication", *International Review of Law and economics,* 10, 255-270.

Ippoliti, R., Melcarne, A. and G.B. Ramello (2015), "Judicial efficiency and entrepreneurs' expectations on the reliability of European legal systems", *European Journal of Law and Economics*, 40(1), 75-94.

Jappelli, T., M. Pagano and M. Bianco (2005), "Courts and Banks: Effects of Judicial Enforcement on Credit Markets", *Journal of Money, Credit, and Banking*, 37(2), 223-244.

Johnson, S., J. McMillan and C. Woodroof (2002), "Courts and Relational Contracts", *Journal of Law, Economics and Organisation,* 18, 221-277.

Kumar, B., R. Rajan and L. Zingales (2001), *What Determines Firm's Size*, NBER Working Paper 7208.

Laeven, L. and G. Majnoni (2003), *Does judicial efficiency lower the cost of credit?*, The World Bank.

Laeven, L. and C. Woodruff (2007), "The Quality of the Legal System, Firm Ownership and Firm Size", *The Review of Economics and Statistics*, 89, 601-614.

Lorenzani, D. and F. Lucidi (2014), *The economic impact of civil justice reform*. Economic Papers, 539, European Commission.

Lorizio, M. and A.R. Gurrieri (2014), "Efficiency of justice and economic systems. Innovation and Society 2013 Conference, IES 2013", *Procedia Economics and Finance* 17, 104-122.

Messick, R.E. (1999), "Judicial reform and economic development: a survey of the issues", *The World Bank Research Observer*, 14(1), 117-136.

Mora-Sanguinetti, J.S. (2012), "Is Judicial Inefficacy Increasing the Weight of the House Property Market in Spain? Evidence at the Local Level", *SERIEs, Journal of the Spanish Economic Association* 3(3), 339-365.

North, D.C. (1992), *Transaction costs, institutions, and economic performance,* San Francisco, CA: ICS Press, 13-15.

Qian, J. and P. Strahan (2007), "How Law and Institutions Shape Financial Contracts: The Case of Bank Loans", *Journal of Finance*, 62(6), 2803-2834.

Reding, V. (2013), *Civil justice at the service of citizens and business*, Speech 25-10-2013, https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_13_857.

Washington Economics Group Inc. (2009), *The Economic Impacts of Delays in Civil Trials in Florida's State Courts Due to Under-Funding*, Prepared for The Florida Bar.

Annex 1 Description of civil procedure in five countries, relevant for the case study

Content per country

General information

First instance
- Brief description/overview of the system, in relation with the cases.
- Initiation of the case
- Pre-trial proceedings including discovery / exchange of evidence, and preparation
- Trial, focusing on the broad rules, including possibilities of late involvement of witnesses or experts
- Delivery of decision, specifying time limits

Appeal
- Appeal: nature of the appeal and specific rules
- Initiation of the case
- Pre-trial proceedings including discovery / exchange of evidence, and preparation
- Trial, focusing on the broad rules, including possibilities of late involvement of witnesses or experts
- Delivery of decision, specifying time limits

IRELAND

1. General information

In Ireland the courts of first instance are the District Court (claims up to EUR 15,000), the Circuit Court (claims up to EUR 60,000) and the High Court which has full, unlimited jurisdiction. The procedures are governed by the rules of court applicable to each of the courts; in the case of the High Court these are the Rules of the Superior Courts 1986 as amended. The usual procedure is for exchange of pleadings followed by an oral hearing before a single judge, though there are summary procedures for some claims which do not require oral evidence. The judgment may be given orally at the conclusion of the hearing or the trial judge may reserve the decision and deliver a written

judgment later. There is a Commercial List of the High Court which was established to try commercial cases claiming in excess of EUR 1,000,000. These cases are subject to rigorous case management and a fast track procedure. Parties may apply to be admitted into the Commercial List once they have instituted the proceedings in the High Court. There is a right to appeal all decisions of the High Court, including those made during the course of the proceedings, to the Court of Appeal, which sits as panels of three judges. Appeals to the Court of Appeal are by way of review, not a rehearing of the trial of first instance. The Constitution provides that the decisions of the Court of Appeal are final unless the Supreme Court gives leave to appeal. It does so if the case involves an issue of exceptional importance and it is in the public interest that it should hear the appeal. It is also possible in cases of this kind to appeal directly from the decision of the High Court to the Supreme Court, bypassing the Court of Appeal. Corporate entities must have legal representation. All other parties (natural persons) may represent themselves or be represented in all courts up to and including the Supreme Court. In the following the procedure for cases on the Commercial List of the High Court in Dublin is described. These are the cases that are the subject of this study.

2. Initiation of the case

The plaintiff issues the originating document of claim in the Central Office of the High Court in Dublin and serves it on the other parties, either their solicitor or personally.

3. Pre-trial proceedings

If any party wants to enter the case into the Commercial List of the High Court, he brings an application for admission. This may be done at the same time as the initiation of the case as discussed under 1 or shortly thereafter.

A hearing of application for entry into the Commercial List is held. If admitted into the list, the court will treat the hearing as the first directions hearing and fix the time for the exchange of pleadings and requests for discovery (disclosure) of documents. The court will fix the date for a further directions hearing and for the hearing of any motions (applications) which may be necessary.

If there are disputes regarding the particulars of the claim, counterclaim or defence, or if there is a dispute about the discovery of documents, the court will hear the application and make a ruling. If the dispute is particularly complex, the court will give directions as to the exchange of written submissions in advance of the hearing of the application.

If there is to be discovery, the court will fix the time for making discovery or confirm the time agreed by the parties.

At a further directions hearing the court will fix the time for the exchange of witness statements, the preparation of a book of core documents and the exchange of written submissions, which all must occur in advance of the trial date. If there are expert witnesses, they may be directed to prepare a document setting out the points on which they agree and on which they disagree. The court will also fix the date and the time allowed for the trial.

The judge assigned to try the case is furnished with the documents in advance so that the judge is familiar with the facts as alleged, the statements of evidence and the issues.

4. Trial

Trials are by plenary hearing, that is, witnesses give their evidence orally under oath. The witnesses usually adopt their witness statements, with any corrections they wish to make, as their direct evidence and then they are cross-examined by counsel for the other party. At the end of cross-examination, they are re-examined by their own counsel. Re-examination is confined to issues raised on cross-examination and may not raise new issues not previously covered. The judge is free to ask his or her own questions. Sometimes witness statements are admitted by agreement of the parties and there is no oral evidence given.

Some trials are conducted solely on affidavit evidence, all of which will be read by the judge in advance. The trial then is largely confined to legal argument by reference to the affidavits.

At the trial, the parties usually agree to admit the documents in the core book or attached to witness statements without further proof.

Parties are not permitted to rely on witnesses, including expert witnesses, who have not previously provided witness statements in accordance with the directions of the court under point 6.

5. Delivering the decision

At the end of the trial the judge usually reserves judgment. When the judge is ready to give judgment the parties are notified and they attend in court. A synopsis of the

judgment is delivered in open court and the matter is listed for hearing a short time later to finalize the form of the order and to decide the issue of costs.

6. Initiating an appeal

The parties (normally) have 28 days from the date of the perfection (drawing) of the order to appeal to the Court of Appeal.

7. Pre-trial proceedings on appeal

Shortly after an appeal is received it is listed for directions, usually within a few weeks. The judge gives directions for the delivery of books of appeal and the exchange of written submissions.

The appeal is a review of the decision at first instance, not a rehearing. The appeal is based on the findings of fact of the trial judge. The parties may refer to a transcript of the evidence, the witness statements and the documents relied upon at the trial. No new evidence may be adduced and arguments not raised in the court of first instance may not be raised, save in exceptional circumstances. This means that there are no directions relating to the furnishing of evidence

After the directions have been complied with the appeal is given a hearing date.

8. Trial on appeal

The parties are given a limited fixed time to address the court on the points they have raised in the notice of appeal and the written submissions. Most appeals do not take more than a day; often they are listed for one or two hours.

The court usually reserves judgment. When the court is ready to deliver judgment the parties are notified and they attend court. A synopsis of the judgment is delivered in open court and the matter is listed for hearing a short time later to finalize the form of the order and to decide the issue of costs.

Digital Audio Recording (DAR): Digital Audio Recording or DAR is technology used by the Irish Courts which records what is said during proceedings in a courtroom. The recordings are used to confirm what was said at the hearing. A written transcript of the recording can be produced after the case has been heard. This transcript may be

required for an appeal, to enable the judges to know what was said in the lower courts. Recordings and transcripts of recordings may be relied upon as the record of court proceedings in the course of the administration of justice in accordance with Rules of Court.

ITALY

1. The civil jurisdiction

Jurisdiction in civil proceedings is exercised by ordinary judges, namely Justices of the Peace, Tribunals (one judge sitting alone or collegial sitting in limited cases), Courts of Appeal and the Court of Cassation, though there are exceptions to this general provision. The jurisdiction of the Justices of the Peace and of Tribunals depends upon the subject matter and value of the case. The place of residence of the defendant (the registered office in the case of companies) determines where the case is to be tried. In each capital of the Italian Regions (except from the Valle d'Aosta Region), there is a special division of the Tribunal and of the Court of Appeal. This special division is composed by expert judges specialized in commercial law, and is competent to hear cases or appeals related to company matters, public procurement contracts with EU relevance and intellectual property, according to the ordinary civil procedure outlined within the Civil Procedure Code. The special division sits in a panel of three judges.

2. First instance proceedings

Italian civil procedure is based on the rules on standing (the so-called "principle of the demand": legal action must be commenced by the right holder, who must be legally represented), on the burden of proof and on the principle of adversarial proceedings. There are also summary and other special procedures.

Civil proceedings start with the plaintiff notifying a writ of summons to the defendant to appear before the Tribunal at a hearing date set by the plaintiff. For some special proceedings a petition is first deposited in the registry of the Tribunal and is subsequently notified to the defendant together with the order of the Tribunal setting the date of the hearing. The defendant (who must also be assisted by a lawyer) must enter his appearance no later than twenty days before the hearing date. At the first hearing, the judge sets the time for the exchange of the pleadings. The subsequent hearings are dedicated to the evaluation of the admissibility and the acquisition of the evidence indicated by the parties on whom the burden of proof rests (the cases in which the investigating judge can direct the acquisition of evidence of his own motion is limited).

Once the preliminary phase is over, the judge sets the hearing in which the parties must outline their conclusions before him within the limits of the pleadings, and this is done by the lodgement in the court registry of final submissions and replies between the parties. The proceeding ends with the delivery of the judgment, which is a provisionally enforceable decision between the parties.

The delivery of the judgment varies depending on whether the court is composed by a single judge or is a collegial court. If the court is collegial, once the preliminary phase has been completed, the investigating judge will refer the case to the panel for deliberation and the decision will be deposited in the registry within sixty days from the deadline for the filing of the final submissions and replies or, if there is an oral discussion, within sixty days from the end of this phase. At the time of finalizing their conclusions, each party may request that the case be discussed orally before the court and this request must be reiterated at the expiry of the deadline for the lodgement of the final replies to the court registry. The president of the court sets the hearing for the oral discussion to be held within sixty days. At the hearing, after the report of the investigating judge, the parties are admitted to the discussion.

In cases heard by a single judge after the conclusions of the parties have been outlined and the final submissions and replies have been lodged, the judge deposits the decision within thirty days from the deadline for the replies (decision following a written discussion). If one of the parties requests it, the judge arranges for the exchange of submissions and sets a date for the oral discussion hearing not later than thirty days from the expiry of the deadline for the deposit of the aforementioned submissions; the decision is filed within the thirty days following the discussion hearing (decision following oral discussion).

In less complex cases, the single judge can shorten these deadlines for deliberation and after the oral submissions give judgment at the end of the discussion, reading in open court the operative part of decision and the concise motivation; in this case the judgment is published with the signing of the minutes that contain it and is immediately deposited in the registry (so-called judgment in the minutes with contextual reasons). The losing party may challenge the decision. Otherwise, the judgment becomes irrevocable (so-called *res judicata*).

3. The appeal

The relevant legal remedies are the appeal and the appeal before the Court of Cassation.

An appeal against a judgment of the Justice of the Peace must be brought before the Tribunal, whereas an appeal against a judgment of the Tribunal must be lodged before

the Court of Appeal (the special division of the Court of Appeal, in the case of an appeal against a judgment of the special division of the Tribunal in commercial law matters outlined above) within thirty days from the notification of the decision (short term) or six months from its publication (long term). The appeal is based on the so-called "devolving effect", namely that the appellate jurisdiction can decide both the merits (for example, a wrong evaluation of the evidence) and an alleged formal or procedural defect of the decision at first instance, but is limited to the grounds of appeal raised by the appellant.

The appeal normally starts with a summons and the respondent must file an appearance. It is not usually possible to admit new evidence or raise new arguments on appeal, save in exceptional circumstances.

Generally, an appeal requires several hearings, depending on the degree of complexity of the issues. In the first oral hearing the court considers the submissions of the parties and the possible suspension of the enforceability of the first instance decision. The court may decide the following issues: a) whether to hold the appeal inadmissible (in the event that it is considered it has no prospects of being accepted); b) the decision, immediately or at a date of the next hearing; c) the exceptional preliminary renewal of the investigation; d) the subsequent hearing for the clarification of the parties' conclusions, in which the judge invites the parties to clarify the conclusions and arranges for the exchange of the final submissions and the replies. The judgment must be deposited in the registry within sixty days from the deadline for the deposit of the final replies.

The appeal proceedings conclude with a decision that replaces the one issued in the first instance and that can be appealed by cassation solely on a point of law.

LITHUANIA

1. General information

Lithuanian civil procedures are ruled by the Code of Civil Procedure (which came into effect on 1 January 2003). First instance courts comprise twelve District Courts (claims up to EUR 40,000) and five Region Courts (claims over EUR 40,000). Second instance for reviewing judgments of District Courts are Region Courts. Court of Appeal (1) is second instance for reviewing judgments of Region Courts when they render judgments as first instance court. Supreme Court (1) is third instance. A case is filed at the court of residence of the defendant.

2. Initiation and representation

Plaintiffs and defendants are not required to be represented by an attorney-at-law in first and second instance cases. They are, however, entitled to be represented by an attorney. On an appeal, the appellant must refer not only to the factual but also to the legal arguments, so parties are nearly always represented by an attorney. Parties must be represented by an attorney-at-law at the third instance. Generally, the court consist of one judge in first instance. But the court president can convene a three judges panel for extremely complex cases.

3. Procedures in first instance courts

Plaintiff shall bring a claim before the court which shall solve the question of its admissibility within ten days. Afterwards the court summons the defendant to respond to the claim and sets a time limit (from fourteen up until sixty days) for response. In all cases the answer must be in writing.

After receipt of the answer the court can either decide to hold an oral pre-trial hearing or decide on an written rebuttal of the answer by the plaintiff and a surrebuttal by the defendant. The court may use this oral pre-trial hearing to ask for missing information and to try for a settlement. It should be noted that the law stipulates the obligation for the persons involved in the case to submit to the court all available evidence and explanations that are relevant to the case, as well as to provide evidence which they cannot present to the court, together with the circumstances preventing the parties from doing so and to formulate their claims and assertions to the court. At the end of the pre-trial stage, the law provides for restrictions on parties to submit new evidence, clarification of requirements and amendments. If the applications of the persons involved in the court proceedings could have been submitted earlier, the court may reject them if the satisfaction of these requests will delay the decision in the case. After pre-trial proceedings the case is appointed for public oral hearing. There is no specific time limit within the Code of Civil Procedure for the case to be heard. Usually, the oral hearing takes place within a period of one to two months.

However, if the case has not been dealt with for more than one year, the court administration requests the judge to explain the reasons for the delay.

4. Delivering judgment

After the public hearing the case is set for judgment. The law makes it very clear that the court must give judgment within twenty days.

5. Appeal

Any party that does not agree with the judgment given can submit an appeal within thirty days. Procedure is similar to the first instance (*e.g.* the court of first instance sends the appeal to the other party, sets a deadline of twenty days for the submission of written comments, and sends the prepared case to the appeal court). Generally, for the hearing of the appeal the appellate court consists of three judges. In small cases and on issues confined to procedural matters, the court consists of one judge. There is a limited appeal model in Lithuania, which means that only a review of the judgment is performed by the appellate court (on both facts and law application), but not a re-examination of the whole case. Only in exceptional situations new evidence is considered.

Written procedure is the norm in the higher court. Only if the parties request an oral hearing and the request is granted by the Judges' Panel will an appeal be conducted with oral procedures. The time limit within which the panel of judges is required to hear appeals is not provided by law. However, the date of the hearing is appointed by the President of the Court or by the President of the Civil Cases Division, thus ensuring timely proceedings and preventing them from being delayed. After an appeal hearing, the law provides for a 30-day time limit to give judgment.

After an appeal, the judgment is final and must be enforced.

6. Third instance

The law provides for the right of the parties to the cassation procedure within a period of three months. But only the Supreme Court itself decides which complaints to admit to this procedure.

THE NETHERLANDS

1. General information

Dutch civil procedures are ruled by the Code of Civil Procedure (1828, last major amendment in 2019 with regard to oral proceedings).

Competent courts are District Courts (11) in first instance, Courts of Appeal (4) in second instance and the Supreme Court in third instance. A case is filed at the court of residence of the defendant. In small claims (up to EUR 25.000) and in cases regarding labour law and tenancy law plaintiff and defendant do not need representation by an attorney-at-law. They are, however, entitled to let themselves be represented. In all other cases both parties need legal representation.

The court may consist of one or three judges. The court decides its composition and may alter this during the trial if it finds it appropriate to do so.

2. Procedure in first instance courts

A procedure is started with the summoning by the plaintiff of the defendant. In the summons the plaintiff must state:
- His claims (*petitum*);
- The facts on which his claims are based;
- The evidence he can provide.

The plaintiff may also state the legal basis of his demands, though he is not obliged to do so.

After receipt of the summons the defendant may inform the court whether or not he wishes to defend the claims. If so, the defendant is granted a period of six weeks for his answer to the summons. This period may be extended by the court by one or more periods of six weeks upon request. In small claims the answer can be oral; in other cases the answer is in writing. Any line of defence the defendant wishes to bring forward must be asserted in this answer.

After receipt of the answer the court will decide on an oral hearing, unless it finds the case at hand unsuitable for an oral hearing at that stage, in which case the court may decide on a written rebuttal of the answer by the plaintiff and a surrebuttal by the defendant. This decision is given in an interim judgment. In over 95% of all cases the court decides on an oral hearing. However, the higher the claim, the more often a

written rebuttal and surrebuttal are granted. In large claims (*i.e.* over EUR 1,000,000) these written briefs are more common. An oral hearing takes place within a period of several months, depending on the capacity of the court and any backlog.

At this oral hearing, which in general is a public hearing, parties have the opportunity to make oral submissions. The court may use the hearing to make a request for any missing information, to try for a settlement and discuss with parties the further procedural steps to be taken. At the hearing witnesses and experts may be heard.

After the hearing, quite often the case is set for judgment. Normally a period of six weeks is determined, but once again, backlog often may make postponement necessary. This judgment may be final for the instance at hand, but it may also be an interim judgment, for example, if the court finds proof of evidence necessary, the plaintiff, defendant or both will be instructed to provide that proof.

Proof may be given by the hearing of witnesses, providing documents or by an expert report. Both parties have in all circumstances the right to make submissions on the provisions of proof.

A plaintiff or defendant that has not been given the opportunity to attend an oral hearing may request an oral plea.

After the submissions upon the provisions of proof or after the pleas, once again the case is set for judgment.

3. Appeal

Any party that does not agree with the judgment given by the first instance court can address the court of appeal. The court consists of three judges, unless otherwise decided.

The summons must be brought within three months after the judgment in first instance. The appellant must specify his grievances against the first instance judgment. The procedure is fairly similar to that in first instance.

The court of appeal decides on the theses posed in appeal and documents provided by the parties that have appeared in court, amongst which the first instance file. The court of appeal may also hear witnesses.

Although an appeal formally suspends any given judgment in first instance, courts in first instance may find their rulings executable without suspension and they most often

do so. The party which executes an executable first instance judgment therefore acts legitimately, but does so at the risk the judgment of the court of first instance is nullified by the court of appeal.

4. Cassation

The party appealing the judgment of the court of appeal may address the Supreme Court for cassation. The aim of cassation is to promote legal uniformity and the development of law. The court examines whether a lower court observed proper application of the law in reaching its decision. At this stage, the facts of the case as established by the lower court are no longer subject to discussion.
The Supreme Court has its own rules of procedure. The procedure is most often only in writing.

NORWAY

1. General information

The ordinary Norwegian courts consist of sixty first instance courts, six courts of appeal and the Supreme Court. The total annual number of incoming cases to the first instance courts is approximately 15,000. The Norwegian judiciary has a relatively low level of specialization, and the number of incoming cases includes both family cases and administrative cases. In civil commercial litigious cases the role of the judge is first and foremost to ensure that the judicial proceedings are swift and of high quality. Judges are not supposed to be experts of material law – the attorneys are the main providers of material case law to assist the court in reaching its decision.

All civil cases start in the first instance courts, regardless of the complexity and value of the dispute. The low number, however, is a result of several civil conflict resolution mechanisms outside the ordinary courts. In particular: in each municipality there are Municipal Conciliation Boards. These boards are regulated by the Courts Act, and they solve approximately 100,000 cases each year.[12] The scope of these boards was further enhanced in 2018 by making the boards themselves subject to claims for reinstatement of default judgments. This note will not go into further details about these Boards.

12 The Municipal Conciliation Boards saw a significant increase of incoming cases in 2018 related to claims for damages from passengers following delays in air traffic, but they hardly affect the ordinary courts. In comparison, these cases led to significant increase of incoming cases to the ordinary Danish courts in 2018.

There are also several other tribunals and boards, both private and public, established to solve civil disputes within their sector.

There are filtering mechanisms both between first and second instance, but especially between the courts of appeal and the Supreme Court. The Appeals Committee of the Supreme Courts allows very few cases to enter the Supreme Court for full hearing.

The Dispute Act 2005 entered into force on 1 January 2008, and is applicable to all civil cases and to all instances, including the Municipal Conciliation Boards.

As a final introductory remark, civil cases now follow digital procedures.

2. First instance procedure

General procedure (Dispute Act Chapter 9)

Initiation of civil litigation	Dispute Act Section 9-2 Writ of Summons.
Written reply	Dispute Act Section 9-3 (deadline three weeks)
Swift and efficient case management	Dispute Act Section 9-4 and onwards. Case preparatory meeting between the judge and attorneys. Aim: defining and streamlining the processing of the case, setting deadlines and the date for main hearing. Discussing in-court mediation procedures (2019 cases to mediation in 2018) Active case management is a key component in civil proceedings and highly emphasized in the Dispute Act.
Main hearing	Principle of orality, concentrated hearing.
Judgment	Within 6 months after writ of summons, and judgment within two weeks after closing of main trial.
Court composition	One professional judge. Parties may request two lay judges.

Small claims procedure	*Dispute Act Chapter 10* Value NOK 125,000 (EUR 13,299 or less. Cheaper and simplified procedure. Judgment within three months (Section 10-4). Legal fees are limited.
3. Court of Appeal proceedings	*Dispute Act Part IV Chapter 29*
General deadline for appeal	One month (Dispute Act Section 29-5). Notice of appeal and reply (three weeks deadline)
Leave of appeal and refusal	Section 29-13. Monetary value of the appeal (NOK 125,000), refusal if the court finds it clear that the appeal will not succeed)
General procedure as in first instance	The appellate procedure basically follows the procedure of the first instance courts when it comes to case management (preparatory meeting, in-court mediation etc.)
Court composition:	Three professional judges. Two lay judges may be appointed.
4. Supreme court proceedings	
Deadline for appeal	One month
Court of appeal judgments	With few exceptions, appeal from court of appeal judgments. In exceptional cases, parties may be allowed to appeal directly to the Supreme Court from the first instance courts.
Appeals Committee	Allows only 10% of appeals to enter (52 cases of 416 incoming cases were allowed in 2018). This reflects the role of the Supreme Court as precedent court as opposed to Cassation court.
Grounds for appeal	No limitations related to monetary value of the dispute. The case must have significance outside the result of the particular case.
Composition	Three Justices in the Appeals Committee. Five Justices in chamber, Grand Chamber and Plenary.

Annex 2 Case descriptions

IRELAND

Case IR-1 HIGH COURT – FIRST INSTANCE

Sheehan v. Talos Capital Ltd 2016/7062 P

Initiation of the case

This case was initiated on 3/8/2016. The case concerned the rescission of a settlement agreement executed between the plaintiff and the defendant. The plaintiff claimed the defendant concealed facts and wrongfully misrepresented facts in the negotiations resulting in losses for the plaintiff.

Pre-trial proceedings

- 10/10/2016 – Application to enter the proceedings into the Commercial List and application for directions by the court for the exchange of pleadings. The case was admitted into the commercial list and the court gave directions for the exchange of pleadings.
    i. The defendant's request for further particulars of the plaintiff's statement of claim to be delivered by 24/10/16.
    ii. The Plaintiff to reply to the request for particulars by 07/11/16.
    iii. The plaintiff's request for further particulars of the defence (and counterclaim) by 12/12/16.
    iv. The defendant to reply to the plaintiff's notice for particulars by 09/01/17.
    v. Plaintiff to deliver a reply (if any) and defence to counterclaim (if any) by 30/01/17.
    vi. Each party to deliver its request for voluntary discovery of documents by 13/02/17.
    vii. Each party to reply to request for voluntary discovery of documents by 20/02/17.
    viii. Application for further case management directions by the court (and any motions the parties wish to bring) – 06/03/17.
    - Defendant informed the court that it intended to issue a motion seeking an order that security for costs be furnished by the plaintiff. The court directed that the motion should be issued returnable before the court on 17/10/16.

- 17/10/2016 – Application seeking order for security of costs was adjourned for hearing to 10/11/20116.
- 10/11/2016 – Application seeking order for security for costs refused .
- 28/08/2017 – Court gave further case management directions.
  - Directions:
    i. Delivery of affidavits of discovery of documents – 06/06/17.
    ii. Applications concerning discovery returnable to – 03/07/17.
    iii. Delivery of plaintiff's witness statements – 01/09/17.
    iv. Delivery of defendant's witness statements – 29/09/17.
    v. Plaintiff's written legal submissions – 04/10/17.
    vi. Defendant's written legal submissions – 13/10/17.
    vii. For hearing – 24/10/2017, for five days.
- 13/10/2017 – Case listed before the court for case management
  - Both parties have agreed to vacate hearing date of 24/10/17 for further directions from court.
  - Directions made permitting agreed amendments to the written submissions of the parties.
  - Case listed for hearing – 10/04/18.

Trial

- Case heard 10/04/2018, 11/04/2018, 12/04/2018, 17/04/2018, 18/04/2018 20/04/2018, 24/04/2018 (seven days).
  - Judgment reserved on seventh day.

Delivery of decision

- 20/06/2018 – Judgment given. Plaintiff's claim dismissed and the plaintiff was ordered to pay to the defendant the costs of the proceedings.
- From date of initiation to date of judgment – 686 days.
- Value of the claim – EUR 3,958,536.

Case IR-2 HIGH COURT – FIRST INSTANCE

AIB Plc v. Burke & Anor 2018/3759 P

Initiation of the case

- This case was initiated on 27/04/2018. The Plaintiff was seeking a declaration that two separate voluntary transfers of land constituted conveyances made with the intention of defrauding the Plaintiff.

Pre-trial proceedings

- 11/06/2018 – Court ordered substituted service of the summons on the second named defendant as there had been three unsuccessful attempts to serve second named defendant.
- 23/07/2018 – Case entered into Commercial List
  - o Ordered
    1. Plaintiffs deliver statement of claim by close of business.
    2. Notice for particulars on the statement of claim to be delivered within two weeks.
    3. Replies to notice of particulars two weeks thereafter.
    4. Defence to be delivered by 3/09/2018.
    5. Parties exchange letters of request for voluntary discovery of documents by 17/09/ 2018.
    6. Responses to the requests for discovery of documents by 1/10/2018
    7. Any applications to court to be issued by 8/10/2018 returnable before the court on 22/10/ 2018.
    8. The plaintiff granted permission to apply for judgment in default of appearance and/or defence as against the first named defendant and for judgment in default of defence against the second named defendant on 22/10/2018.
- 08/10/2018
  - o Commercial List
  - o Ordered
    1. Second named defendant's time for delivery of a defence extended by two weeks.
    2. First named defendant's time for entry of an appearance extended by two weeks.
    3. Directions given regarding service of documents upon first named defendant.

- 22/10/2018
  - o Judgment in default of appearance against the first named defendant granted.
- 14/11/2018 – Court Of Appeal
  - o Appealed order made on 22/10/2018 – failed and was struck out.
- 20/12/2018
  - o Date for hearing on 21/12/2018.

Trial

- 21/12/2018
  - o Hearing and judgment given.

Delivery of decision

- 21/12/2018 – Commercial full hearing and judgment delivered. Held, both conveyances void and of no legal effect.
- From date of initiation to date of judgment – 238 days.
- Value of the claim – EUR 1,470,000.

Case IR-3 HIGH COURT – FIRST INSTANCE

Keeneland Association Inc v. Emerald Equine Limited & Anor 2017/1350 S

Initiation of the case

- This case was initiated on 18/07/2017. The case concerned the enforcement of a default judgment handed down against the defendants in the Circuit Court of Kentucky, USA, as a valid and enforceable judgment in the Irish jurisdiction. The defendants had not yet made any payment of the sum ordered.

Pre-trial proceedings

- 31/07/2017 – Entered into Commercial List.
  - o Directions:
    - Defendants to deliver replying affidavit by 04/09/2017.
    - Plaintiff to deliver a supplemental affidavit by 25/09/2017.
    - Plaintiff to deliver written legal submissions by 09/10/2017.
    - Defendants to deliver written legal submissions by 23/10/2017.
    - Hearing date fixed for 30/11/2017 – allotted one day.

Trial

- 30/11/2017 – Full hearing.

Delivery of decision

- 30/11/2017 – Commercial full hearing and Judgment delivered. Held, the plaintiff to recover against the defendants jointly and severally the sum owed.
- From date of initiation to date of judgment – 135 days.
- Value of the claim – EUR 2,213,603.62.

Case IR-4 HIGH COURT – FIRST INSTANCE

Promontoria [GEM] DAC v. Ciaran Redmond T/A The Norc Partnership & Ors 2017/2260 S

Initiation of the case

- This case was initiated on 11/10/2017. The plaintiff sued for repayment of a loan granted to the defendants. The purpose of the loan facility was to fund equity release of partners in their business, cover costs of construction work, and finance professional and arrangement fees.

Pre-trial proceedings

- 05/02/2018 – Entered into Commercial List.
  - o Proceedings adjourned for one week to 12/02/2018 to allow parties to agree directions.
- 12/02/2018 – Directions:
  - o The defendants to deliver a replying affidavit in three weeks.
  - o The plaintiff to deliver a replying affidavit two weeks after.
  - o The plaintiff to deliver its written legal submissions by 9/4/2018.
  - o The defendants to deliver their written legal submissions by 23/4/2018.
  - o Hearing date fixed for 25/4/2018.

Trial

- 25/04/2018 – At hearing, day 1:
  - First and second named defendants not present although had been served and were aware of proceedings.
  - Adjourned to following day, 26/04/2018.
- 26/04/2018 – At hearing, day 2:
  - No attendance of first and second named defendants. The trial proceeded in their absence.
  - The court reserved judgment.

Delivery of decision

- 02/05/2018 – Judgment delivered. The sum borrowed was not disputed and no credible defence was provided, therefore judgment granted in favour of plaintiff.
- From date of initiation to date of judgment – 203 days.
- Value of the claim – EUR 4,566,895.

Case IR-5 COURT OF APPEAL

Globe Entertainment Limited & Anor v. The Pub Pool Limited & Ors [2016] IECA 272

Nature of the appeal and specific rules

- This appeal was against a High Court order on 25/02/2015 dismissing the plaintiffs' claim for specific performance of an alleged contract for the sale of premises and consequential claims.
- The parties (normally) have 28 days from the date of the perfection (writing up) of the High Court order to appeal to the Court of Appeal; the order was perfected on 26/02/2015.

Initiation of the case

- The notice of appeal was filed on 24/03/2015.

Pre-trial proceedings

- On 01/05/2015 directions were given and a hearing date was fixed for 28/01/2016. The written submissions of the appellants were to be delivered within twelve weeks

and the written submissions of the respondents in reply were to be delivered within twelve weeks. Books of Appeal were to be lodged by 18/12/2015.
- On 05/06/2015, the respondent brought an application for security for the costs of the appeal. The application was heard on 19/06/2015 and security was ordered to be provided.
- Between 28/10/2015 and 25/01/2016 various documents were lodged by both the respondents and appellants; these included, submissions, transcripts, witness statements, core pleadings, book of authorities etc.

Trial

- The appeal was heard on 28/01/2016, and judgment was reserved.

Delivery of decision

- 12/10/2016 – Judgment delivered. The appeal was dismissed.
- From date of initiation to date of judgment – 568 days.
- Value of the claim – EUR 2,295,000.

Note: First Instance – High Court

- Date of plenary summons – 19/05/2014.
- Date of judgment – 23/01/2015.
- From date of initiation to date of judgment – 249 days.

Case IR-6 COURT OF APPEAL

Reynolds v. Altomoravia Holdings Ltd & Ors [2017] IECA 157

Nature of the appeal and specific rules

- The High Court case concerned the specific performance of an agreement for lease of a premises with the intended lease being supported by personal guarantees. However, the case was settled; subsequently, the transaction was not completed and proceedings were commenced with the plaintiff (the defendant in the first case) suing for an order for specific performance of the terms of settlement of the first proceedings.
- On 31/07/2015 the High Court awarded damages in lieu of specific performance. The plaintiff appealed.

- The parties (normally) have 28 days from the date of the perfection of the High Court order to appeal to the Court of Appeal; the order was perfected on 10/09/ 2015.

Initiation of the case

- The notice of appeal was initiated on 07/10/ 2015.

Pre-trial proceedings

- 04/12/15 – Notice of Appeal and directions given
  - Grounds of appeal in the notice of appeal were not proper, identifying specific grounds.
  - Appellant must prepare a set of focused, specific and legally permissible grounds by 22/01/2016.
  - If respondent is objecting to the new grounds they may inform the appellant in writing but no response from the respondent for the court is required.
  - A book of core extracts from the transcripts to be lodged with the books of appeal.
  - Provisional hearing date fixed on 20/12/2016 with duration of two days.
  - Adjourned to 29/01/2016.
- 11/01/16 – Case management
  - Application to grant a stay for a period of three weeks on the order of the High Court dated the 18/12/2015.
  - Application to be issued and served within 1 week to be listed for hearing on 01/02/2016.
  - Replying affidavit to be filed and served one week (25/01/2016).
  - Any further affidavit from the appellant to be filed and served by close of business on Wednesday 27/01/2016.
- 29/01/16 – Directions
  - Submissions from appellant – twelve weeks.
  - Submissions from respondent – twelve weeks thereafter.
  - Hearing date – 20/12/2016 (previously fixed). Duration - two days.
  - Books of Appeal to be lodged four weeks in advance of the hearing date.
  - Application listed for 01/02/2016 to be adjourned to 15/02/2016 at 11 o'clock on application of the parties – may be able to resolve the issue.
- 15/02/16 – Application
  - Application for stay settled – by consent, ordered that the Order of the High Court dated 18/12/2015 be vacated.
- 29/07/16 – Case Management
  - Ordered that unless the Appellant's submissions are filed and served by the 12/08/16 the appeal shall stand struck out.
  - Submissions from respondent - twelve weeks thereafter.

Trial

- The case was heard on 20/12/16 and adjourned to 21/12/16 for continued hearing. Judgment was reserved.

Delivery of decision

- 12/05/17 – Judgment was delivered. The appeal was dismissed.
- From date of initiation to date of judgment – 583 days.
- Value of claim – EUR 2,131,000.

Note: First Instance – High Court

- Date of plenary summons – 24/04/2014.
- Date of judgment –31/07/2015.
- From date of initiation to date of judgment – 463 days.

Case IR-7 COURT OF APPEAL

Superwood Holdings Plc v. Sun Alliance [2017] IECA 76

Nature of the appeal and specific rules

- This case originated in 1987 over an insurance claim made by the plaintiff which the defendant insurance company repudiated on the grounds of fraud. The plaintiff brought proceedings in the High Court seeking damages for wrongful repudiation which was rejected and various appeals and re-trials then ensued. A second case was taken by the plaintiff in 2014 claiming damages against the defendants for breach of contract and damages for negligence, negligent misstatement, misrepresentation, "procuring judgments and orders of the court by fraud" and the wrongful imposition of an injunction restraining the dissipation of assets.
- This appeal was against the judgment of the High Court on 27/01/2015 dismissing the plaintiff's case on the grounds that it disclosed no cause of action, and was an abuse of process.
- The parties (normally) have 28 days from the date of the perfection of the High Court order to appeal to the Court of Appeal; the order was perfected on 20/02/2015.

Initiation of the case

- The notice of appeal was filed on 18/03/2015.

Pre-trial proceedings

- 15/05/2015 – Directions given
  - o Submissions from appellant to be filed in ten weeks and a draft index to the book of appeal to be served on respondent in this time. The grounds of appeal (originally 61) were to be reconsidered and refocused to set out no more than ten revised grounds in submissions.
  - o Submissions from respondent given twelve weeks thereafter.
  - o Books of appeal to be lodged 21 days in advance of the hearing date.
  - o Hearing date was fixed for 17/02/2016.
- 24/07/2015 – Case Management
  - o Application to extend time to file and serve submissions granted – eight weeks from date.
- 16/09/2015-16/12/2015 – Various documents lodged by appellants and respondents.
- 08/12/2015 – Application by appellant to adduce further evidence.
- 18/12/2015 – *Ex tempore* judgment given refusing the application.
- 08/1/2016 – second application by appellant to adduce further evidence.
- 29/01/2016 – *Ex tempore* judgment given refusing motion.
- 05/02/2016 – Case management.

Trial

- The case was heard on 17/02/2016 and judgment was reserved.

Delivery of decision

- 01/05/2017 – Judgment was delivered. The appeal was dismissed.
- From date of initiation to date of judgment – 775 days.
- Value of the claim – EUR 2,500,000.

Note: First Instance – High Court

- Date of plenary summons – 09/07/2014.
- Date of Judgment – 27/01/2015.
- From date of initiation to date of judgment – 202 days.

ITALY

Case IT-1 ORDINARY COURT OF FIRST INSTANCE OF FLORENCE

Ambrogini Massimo v. Biella Leasing Spa

R. G.: 2016: 11951

Initiation of the case

- The case was initiated by a writ of summons registered on 27/07/2016. The plaintiff sued the defendant for damages of EUR 2,000,000 as compensation for wrongfully registering a mortgage disproportionate to the value of the claim. The defendant contested the case fully.

The proceeding took place as follows

- 22/01/2016 – Proceedings issued by the plaintiff.
- 11/11/2016 – Defence served by the defendant.
- 27/12/2016 – Judge fixes the date for the first hearing.
- 20/07/2017 – Submissions by the parties. Judge rules the case must proceed to a hearing.
- 18/09/2017-07/11/2017 – The judge directs the parties to file briefs (written submissions referring to the evidence) on certain terms.
- 27/03/2018 – Date for oral hearing fixed by the judge.
- 14/12/2018 – Hearing before judge. The parties submit their concluding written submissions after the hearing and the judge refuses the relief and orders the plaintiff to pay costs to the defendant.

Delivery of decision

- 14/12/2018 – Judgment delivered.
- From date of initiation to date of judgment – 870 days.
- Value of the claim– EUR 2,000,000.

Case IT-2 ORDINARY COURT OF FIRST INSTANCE OF FLORENCE

Massimo Manetti v. Libero Mannucci Curator[13] Of The Failure Flam Srl

R. G.: 2014: 19188

Initiation of the case

- Summons issued on 16/12/2014. The plaintiff sued for damages of EUR 2,000,000 for negligence in the performance of his duties as a trustee. This resulted in the prosecuting authorities opening a criminal proceeding for fraudulent bankruptcy and documentary bankruptcy and related proceedings on his behalf to the detriment of the plaintiff. The defendant opposed the application on the grounds that it was unfounded and counterclaimed for EUR 100,000 as compensation for reckless litigation.

The proceeding took place as follows

- 16/12/2014 – The plaintiff issued the proceedings.
- 26/02/2015 – Judge fixes the date for the first hearing.
- 15/06/2015 – Court proceedings against the defendant. The defendant seeks leave to sue a third party. It is granted three months to do so.
- 23/06/2015 – Adjournment of the hearing to allow for the proceedings against the third party.
- 27/11/2015 – The third party proceedings are issued.
- 15/12/2015 – First hearing: at the request of the parties, the judge sets time limits for written submissions and to present evidence.
- 17/12/2015-08/03/2016 – Filing witness statements of the parties.
- 18/05/2016 – The judge disallows the testimonial evidence and the testimony of the technical expert appointed by the court, considers the case ready for the final hearing, and fixes the date for final arguments.
- 14/12/2016 – The parties are given time to file concluding submissions and the judge reserves judgment
- 12/02/2017-06/03/2017 – Concluding submissions of the parties filed in accordance with the directions of the court.
- 14/04/2017 – Judgment delivered rejecting the plaintiff's application and ordering the plaintiff to pay the costs of the litigation to the defendant and the third party. The defendant's counterclaim for damages is rejected.

13 Insolvency administrator.

Delivery of decision

- 14/04/2017 –- Judgment delivered.
- From date of initiation to date of judgment – 850 days.
- Value of the claim – EUR 2,000,000.

Case IT-3 ORDINARY COURT OF FIRST INSTANCE OF FLORENCE

Failure Financial Society Il Gioiello Srl v. Roberto Innocenti

R.G.: 2016: 4128

Initiation of the case

- This case was initiated by a writ of summons issued on 17/03/2016 by the curator of the plaintiff. He sued the defendant, the former sole director of the company, for damages amounting to EUR 2,000,000 for alleged bad management of the company, described in detail in the summons.
  The defendant did not appear and did not defend the claim.

The proceeding took place as follows

- 17/03/2016 – Proceedings issued.
- 21/06/2016 – Judge fixes the date for the first hearing.
- 12/14/2016 – First hearing: the judge gives judgment in default of appearance by the defendant, and sets new hearing date to consider written submissions to be filed by the plaintiff.
- 13/01/2017-13/02/2017 – Filing of the plaintiff's submissions in accordance with the directions of the judge.
- 10/05/2017 – The plaintiff's case is closed and the judge fixes a hearing date for concluding submissions by the plaintiff.
- 11/05/2017 – The judge reserves judgment.
- 05/31/2017 – Closing submissions filed as directed by the court.
- 28/07/2017 – Judgment granting the application of the plaintiff and ordering the defendant to pay EUR 3,320,140.27 as damages and to pay the plaintiff its costs.

Delivery of decisions

- 28/07/2017 – Judgment delivered.
- From date of initiation to date of judgment – 499 days.
- Value of the claim – EUR 2,000,000.

Case IT-4: ORDINARY COURT OF FIRST INSTANCE OF FLORENCE

Brand To Be (Formerly Giving Europe Italia Srl) v. Giving Europe BV

R. G.: 2014: 5196

Initiation of the case

- This case was initiated with a writ of summons, issued on 28/03/2014. The plaintiff sued the defendant for damages for breach of competition law and for infringement of its brand "Brand to Be" for a provisional amount of EUR 1,300,000.
- The defendant objected to the jurisdiction of the Florence Business Court and contested the claim in full.

The proceeding took place as follows

- 28/03/2014 – Summons issued.
- 29/04/2014 – Judge fixes the date of the first hearing.
- 27/10/2014 – Legal proceedings against the defendant.
- 18/11/2014 – First hearing. Directions given to the parties for filing briefs.
- 10/12/2014-12/01/2015 – Ffiling of the parties' briefs in accordance with the directions of the judge.
- 20/01/2015 – The parties make oral submissions supplementing their written submissions and the judge fixes a date to hear concluding submissions.
- 10/01/2015 – The parties closing submissions and the judge reserves judgment.
- 24/11/2015-18/12/2015 – The parties file concluding written submissions in accordance with the directions of the judge.
- 28/06/2016 – Court rules that it does not have jurisdiction to try the case and orders the plaintiff to pay the defendant the costs.

Delivery of decision

- 28/06/2016 – Judgment delivered.
- From date of initiation to date of judgment – 823 days.
- Value of the claim – EUR 1,650,000.

Case IT-5 Court of Appeal of Venice, First civil section

G.O. and F.B. v. F.lli Basson s.r.l.

Nature of the Appeal

- Liability action against the directors.

First instance procedure

- 18/01/2011 – The case commenced in the Court of First Instance in the Court of Vicenza.
- The directors were accused of having depleted the company's assets, selling assets to a third party at a price much lower than their market value. The case was settled through technical office consultancy. Eight hearings were held before the court reserved judgment.
- 13/03/2015 – The claim was allowed in part with the directors being ordered to pay damages of EUR 4,761,904,75 plus legal costs on 13/03/2015.

Appeal

Initiation of the Appeal Case

- 15/06/2015 – Judgment of the Court of First Instance appealed by the plaintiff.

Appeal procedure

- 18/06/2015 – Appeal filed In the appeal proceedings: no preliminary investigation was carried out and two hearings were held.
- At the first hearing the appellant applied for a stay on the order of the court of first instance but this was refused.
- At the second hearing the parties filed their written submissions. The Court gave directions for the exchange of the final submissions and of their responses.

Delivery of decision

- 01/02/2018 – Judgment delivered. The appeal was rejected and the decision of the court of first instance affirmed.
- From date of initiation to date of judgment – 962 days.
- Value of the claim – EUR 5,000,000.

Note: First Instance Court

- Date of summons – 18/1/2011.
- Date of judgment – 13/3/2015.
- From date of initiation to date of judgment – 1,515 days.

Case IT-6 Court of Appeal of Venice, First civil section

S&R s.r.l. v. G.D.B. and V.G.

Nature of appeal

- Action to terminate the contract for the sale of company shares and repayment of the consideration.

First instance procedures

- 14/03/2005 – the case began in March 2005 before the Court of Padua.
- The purchaser complained that the value of the shares did not correspond to the value guaranteed by the transferor, since the company had failed to write down the value of certain assets which had wrongly been entered in the balance sheet at an inflated value.
- Twelve hearings were held before the court reserved judgment. The evidence of witnesses as to fact and expert evidence was taken. The claim of the plaintiff was rejected on the grounds that the plaintiff had lost the right to the guarantee.
- 13/08/2013 – Judgment of the Court of First Instance.

Appeal

Initiation of the appeal

- 22/10/2013 – The Court of First Instance judgment was appealed by the plaintiff.

Appeal procedure

- In the appeal proceedings no preliminary investigation was carried out.
- Three hearings were held.
- The parties discussed preliminary issues at the first hearing.
- The second hearing was adjourned and at the third hearing the parties presented their closing submissions.

- The Court gave directions for the filing of concluding submissions and replies and reserved judgment

Delivery of Decision

- 28/11/2016 – Judgment delivered refusing the appeal and affirming the order of the Court of First Instance.
- From date of initiation to date of judgment – 1,133 days.
- Value of the case – EUR 1,300,000.

Note: First Instance Court

- Date of summons – 14/03/2005.
- Date of judgment – 13/08/2013.
- From date of initiation to date of judgment – 3,074 days.

Case IT-7 Court of Appeal of Venice, First civil section

S.A., C.L. and S.G. v. Banca San Giorgio

Nature of appeal

- Appeal against an injunction and order upholding a bank guarantee.

First instance proceedings

- 07/05/2013 – The lawsuit began in May 2013 before the Court of Vicenza.
- In March 2013 the bank obtained an injunction against the plaintiffs. The plaintiffs, the guarantors of a debtor of the bank, contested the injunction. They alleged that the bank ought not to have extended further loans to the debtor at a time when his financial situation had deteriorated to such an extent as to jeopardize the repayment of the loans.
- Three hearings were held before the court reserved judgment.
- 17/09/2015 – The Court of First Instance upheld the injunction and the guarantee.

Appeal

Initiation of the appeal

- 12/03/2016 – The decision of the Court of First Instance was appealed by the plaintiff.

Appeal procedure

- In the appeal proceedings, no preliminary investigation was carried out.
- Three hearings were held.
- The first hearing concerned a stay on the order of the Court of First Instance.
- At the second hearing the principal debtor was heard.
- At the third hearing the parties made their closing submissions. The court fixed the time for the parties to file concluding written submissions and replies. The court reserved judgment.

Delivery of Decision

- 02/10/2018 – Judgment was delivered and the appeal was rejected and the decision of the Court of First Instance affirmed.
- From date of initiation to date of judgment – 934 days.
- Value of the claim – EUR 1,000,000.

Note: First Instance Court

- Date of summons – 07/05/2013.
- Date of judgment – 17/09/2015.
- From date of initiation to date of judgment – 863 days.

Case IT-8 Court of Appeal of Venice, First civil section

B.L. v. B.F.

Nature of appeal

- Action to annul a beneficial ownership agreement in respect of company shares.

First instance proceedings

- 26/09/2008 – the proceedings began in Court of First Instance in September 2008 before the Court of Venice.
- According to the claimants, the will of the transferor was vitiated by error or fraud.
- Eight hearings were held to hear witnesses before the court reserved judgment.
- Judgment was given on 25/04/2013. The claim of the plaintiff was not accepted by the Court and the plaintiff was ordered to pay damages and costs.

Appeal

Initiation of the appeal

- 25/09/2013 – The decision of the Court of First Instance was appealed by the plaintiff.

Appeal procedure

- The decision was appealed on 25/09/2013.
- In the appeal proceedings, no preliminary investigation was carried out.
- Four hearings were held.
- At the first hearing the parties referred to the content of their respective proceedings.
- The second hearing was adjourned to allow the parties to try to reach a conciliation agreement.
- The case was not settled, and the third hearing was adjourned to allow the parties to file their concluding submissions.
- At the fourth hearing the parties presented their respective conclusions. The Court directed the exchange of the concluding submissions and replies and reserved judgment.

Delivery of decision

- 10/11/ 2017 – The Court rejected the appeal and affirmed the decision of the Court of First Instance.
- From date of initiation to date of judgment – 1,507 days.
- Value of the claim – EUR 1,000,000.

Note: First Instance Court

- Date of summons – 26/09/2008.
- Date of judgment – 25/04/2013.
- From date of initiation to date of judgment – 1,672 days.

LITHUANIA

Case LI-1 KAUNAS REGIONAL COURT – FIRST INSTANCE

"Ikea Industry Lietuva" UAB v. "Bioprojektas" UAB & "Gjensidige" AB (Case No. e2-206-436/2018)

Initiation of the case

- This case was initiated on 22/05/2015. The plaintiff sued the defendants jointly for improperly preparing the technical design for the reconstruction of an industrial building and in managing the construction work. The second defendant was sued as the insurer of the first defendant.

Pre-trial proceedings

- 27/05/2015 – Court summoned the defendants to respond to the claim and set a time limit for response.
- 30/06/2015 – Written defence of the first defendant was received.
- 03/07/2015 – Written defence of the second defendant was received.
- 03/07/2015 – Court directed a written pre-trial procedure (*i.e.*, it directed written responses to each party's pleading).
- 07/08/2015 – The court directed the case should proceed by public oral hearing on 15/9/2015.
- 21/08/2015 – The date for the oral hearing was adjourned to 13/10/ 2015 due to the non-availability of advocates on the original date fixed by the court.

Trial

- 13/10/2015 – The plaintiff applied to admit expert evidence (forensics) and so the oral hearing was adjourned.
- 03/11/2015 – The case was suspended until the forensics report was produced to the court.
- 20/06/2016 – Forensic report was submitted. The case was reopened and a new date for the oral hearing was fixed.
- 30/09/2016 – Oral hearing was adjourned to facilitated attempted settlement by the parties. In the event the case did not settle, the parties sought leave to cross-examine the expert.
- 14/12/2016 – Oral hearing. Expert is cross-examined.
- 01/02/2017 – Oral hearing. Litigants requested a second expert report (forensics re-examination).

- 16/03/2017 – Second expert report was allowed by the court. The case was suspended pending the submission of the report to the court.
- 18/05/2017 – Second expert report submitted. The case procedure was reopened.
- 04/09/2017 – Oral hearing.
- Adjourned until 26/09/2017–
- 19/09/2017 – An amended civil claim was received from plaintiff.
- 17/11/2017 – Oral hearing on 16/11/2017; another revised civil claim was received from plaintiff. At this stage, the plaintiff may submit an amended claim only with the permission of the court. Court allowed that action.
- Adjourned because of the lack of time for defendants to submit revised defences.
- 28/11/2017 – Interim Motions. The plaintiff applied for orders to seize real estate, movable property, funds or other property belonging to the defendant UAB Bioprojektas up to the amount of EUR 378 192.51.
  - o Decision – motion was rejected.
- 01/12/2017 – Defendants filed their revised defenses.
- 08/12/2017 – The oral hearing concluded. Judgment fixed for 08/01/2018.
- 08/01/2018 – The court reopened the case to obtain further clarification from the parties on quantum.
- 19/01/2018 – Oral hearing. Judgment fixed for 05/02/2018.

Delivery of decision

- 05/02/2018 – Judgment delivered. The claim was allowed in part against the second defendant, the insurer which was ordered to pay the plaintiff EUR 544,973.62 in damages and EUR 16,756.18 in costs.
- From date of initiation to date of judgment – 991 days.
- Value of the claim – EUR 1,030,523.

Appeal

- 07/03/2018 – Appeal was received from the second defendant, the insurer.
- 08/03/2018 – Appeal was received from third party, "Ekspertika" UAB. In this case, apart from the plaintiff and the defendant, joint stock companies "Ekspertika" and "Regdema" participated as third parties without self-standing claims. "Ekspertika" did not present evidence in this particular trial.
- 12/03/2018 – Two appeals were filed in the case. One appeal was filed by the defendant (insurance company) "Gjensidige" and second one was filed by join stock company "Ekspertika in the case. Both appeals were sent by the court of first instance to the respondents and all the other parties involved in the case, namely the plaintiff, the second defendant, and one other joint stock company ("Regdema"), the third party in the case. These parties have the right to submit their response to the appeals. The

respondents were given twenty days to respond to the appeals, which they complied with.
- 06/04/2018 – Case was sent to Lithuanian Court of Appeal (second instance court).
- 16/01/2019 – Judges' panel was composed.
- 29/01/2019 – Hearing in written form.
- Judgment was fixed for 28/02/2019.
- 28/02/2019 – Judgment postponed until 04/03/2019 due to the absence of one of the members of the panel.

Delivery of decision

- 04/03/2019 – Judgment delivered. Appeal was allowed in part. The amount of damages awarded to the defendant was reduced to EUR 314,606.13 and the costs of the proceedings to EUR 8,734.94.
- From date of initiation to date of judgment – 333 days.

Case LI-2 VILNIUS REGIONAL COURT – FIRST INSTANCE

"Kovilis"UAB v. "Idėjų brokeris"UAB (Case No. e2-1245-656/2017)

Initiation of the case

- This case was initiated on 06/10/2016. The plaintiff sued defendant to recover EUR1,013,670 transferred to the defendant for management and administration.

Pre-trial proceedings

- Interim motions:
  - o 10/10/2016 decision – motion was rejected.
  - o 14/10/2016 decision – motion was granted.

  The plaintiff filed, along with the claim (06/10/2016), a request for interim measures to secure his claims – a lien on the defendant's property within the limits of the monetary claim. The defendant was not on notice of this request (motion). This is allowed by law and is at the discretion of the judge. The resolution of the request did not lengthen the duration of the case. It is noted that the decisions on applications for interim measures will in principle *never* affect the duration of the case, since they are dealt with in parallel with the main proceedings. In the event of an appeal against the order for interim relief, only that part of the case is referred to the court of appeal and the main proceedings are not suspended and the case continues.

- 11/10/2016 – Court summoned the defendant and set time limit for delivery of a defence.
- 28/10/2016 – Written defence delivered.
- 04/11/2016 – Court directed an oral pre-trial hearing. The court may use this oral pre-trial hearing to ask the parties for information it believes is missing and to explore settlement.
- 14/11/2016 – Oral pre-trial hearing.
- Second oral pre-trial hearing directed to take place on 21/12/2016.
- 21/12/2016 – Second oral pre-trial hearing. Preparation for the main hearing was completed and the court proceeded to hold the oral hearing of the substantial case on the same day. The court has the right, with the consent of the parties, to start the main hearing immediately after the pre-trial hearing.

Trial

- 21/12/2016 – First oral hearing. Litigants and witnesses cross-examined.
- 23/01/2017 – The oral hearing was resumed, because the court was unable to finish the case at the first hearing. Case concluded. Judgment was fixed for 13/02/2017.

Delivery of decision

- 13/02/2017 – Judgment delivered. The claim was allowed in full.
- From date of initiation to date of judgment – 130 days.
- Value of the claim – EUR 1,013,670.

Appeal

- 14/03/2017 – Appeal was received from defendant.
- 15/03/2017 – Court of First Instance sent appeal to plaintiff and set a deadline of twenty days for response to the appeal.
- 13/04/2017 – Case was sent to Lithuanian Court of Appeal (second instance court).
- 23/10/2017 – Judges' panel was composed.
- 14/11/2017 – Hearing in written form. Judgment fixed for 19/12/2017.

Delivery of decision

- 19/12/2017 – Decision delivered. Appeal was refused. Judgment of first instance court was upheld.
- From date of initiation to date of judgment – 280 days.

Case LI-3 VILNIUS REGIONAL COURT – FIRST INSTANCE

"Construction ACE" BUAB represented by the bankruptcy administrator "Bankroto administravimo ir restruktūrizavimo centras" UAB v. "Finiens" UAB (Case No. e2-2087-852/2017)

Initiation of the case

- This case was initiated on 18/02/2016. The plaintiff sued defendant seeking the return of a deposit of EUR 1,477,299 paid in relation to the sale of land which was completed by the defendant.

Pre-trial proceedings

- Interim motions. The plaintiff filed, along with the claim (18/02/2016), a request for interim measures to secure his claims – a lien on the defendant's property within the limits of the monetary claim.
  - 24/02/2016 – Decision – motion was granted.
  - 06/03/2016 – A separate summons by the defendant was received.
  - 14/03/2016 – The time limit of fourteen days was set for the plaintiff to deliver the response to the separate summons.
  - 29/03/2016 – The response of the plaintiff was received and was sent to the court of appeal.
  - 26/05/2016 – The court of appeal decided to leave the decision of the first instance court unchanged.
  - 14/10/2016 – Decision – motion was granted.
- 24/02/2016 – Court summoned the defendant and set time limit of twenty days to deliver a defence.
- 21/03/2016 – Defence delivered.
  The court directed a written hearing and set fourteen days for plaintiff's reply and fourteen days from the delivery of the reply for the defendant's rejoinder.
- 23/03/2016 – The court sent the defence to plaintiff and set fourteen days for reply.
- 06/04/2016 – Reply delivered.
- 08/04/2016 – The court notified the defendant to deliver its rejoinder in fourteen days.
  - 14/04/2016 – The request to join the case as third party was received (AB "Swedbank"). The Code of Civil Procedure allows parties to intervene in ongoing proceedings if they believe that a future judgment will affect their rights and obligations. However, the court has a discretion whether or not to allow them to intervene.
  - 15/04/2016 – The request was denied.

- 15/04/2016 – The court decided to accept the request to include "LNTV" UAB as third party without independent claim (request presented in reply).
- 06/05/2016 – The defendant's rejoinder to the reply of LNTV was delivered.
- 09/05/2016 – The court decided that the preparatory stage was concluded and set the date of the oral hearing; also ordered the third party to deliver evidence (ten days after the motion was received). Essentially, the third party has the same rights and obligations as the plaintiff and the defendant. This includes the burden of proof.

Trial

- 25/08/2016 – First oral hearing. Litigants examination; the court decided to set the time limit to clarify the reliefs sought in the claim and to postpone the hearing, reminded parties of the possibility of settlement.
- 07/12/2016 – The second oral hearing, the hearing was postponed, the plaintiff was obliged to deliver additional evidence; the court decided to examine witnesses.
- 17/02/2017 – The third oral hearing, including examination of witnesses. Adoption and pronouncement of court decision was reserved to 09/03/2017.

Interim motions

- 28/11/2016 – The motion for interim measures by the municipality was received (to annul the arrest of the property).
- 07/02/2017 – The motion was granted; the court decided to seize the proceeds of sale of the property for public needs.

Delivery of decision

- 09/03/2017 – Judgment delivered. The claim was granted in full.
- From date of initiation to date of judgment – 385 days.
- Value of the claim – EUR 1,477,299.

Appeal

- 10/04/2017 – Appeal was received from the defendant.
- 13/04/2017 – The court of first instance sent the appeal to the plaintiff and set a time limit of twenty days to submit the response.
- 04/05/2017 – The response was received.
- 08/05/2017 – The case was sent to the Court of Appeal.
- 21/12/2017 – The judge reporter was assigned.
- 22/12/2017 – The panel of three judges was composed and the time for a written hearing was set (09/01/2018).

- 09/01/2018 – The court changed the plaintiff to "Nikosparta", as this company had bought the claim against the defendant for the rights at issue from the original plaintiff. The court delayed its decision until 24/01/2018.

Delivery of decision

- 24/01/2018 – Judgment delivered. The Court of Appeal refused the appeal.
- From date of initiation to date of judgment – 289 days.

Cassation

- 13/04/2018 – The cassation appeal received in the Supreme Court from the defendant "Finiens" UAB. A party who wishes to appeal to the Supreme Court must obtain leave to appeal from the Supreme Court. This means that the Supreme Court itself, after becoming aware of the appeal in cassation and without asking any other parties to the case for response to the cassation appeal, decides whether there is a basis for initiating cassation proceedings.
- 20/04/2018 – Leave to bring the cassation appeal was refused by the selection panel.

Renewal

The Code of Civil Procedure provides for an extraordinary stage of the proceedings, *i.e.*, process renewal. This means that even after the judgment has come into force, the proceedings in the case may be reopened if circumstances defined by procedural law apply

- 18/03/2019 – The request for renewal of the process by OOO "Arenda-centr" was received by the first instance court. This applicant had not participated in the proceedings to date. It requested that the proceedings be reopened on the ground that the rights and obligations of that undertaking were also the subject of the judgment. In short, it claimed that it had already bought the rights to claim against the defendant from the third party "LNTV" at the time of the proceedings, and that it was the party who should have participated in the proceedings.
- 27/03/2019 – The notification was sent to plaintiff of the request to renew the proceedings. It was given fourteen days to respond. It was informed that the case was listed for hearing on 21/05/2019.
- 03/05/2019 – The plaintiff's response was delivered.
- 21/05/2019 – Oral hearing, the court fixed 28/05/2019 as the date for judgment.
- 28/05/2019 – Judgment delivered refusing the renewal.
- 12/06/2019 – Appeal against this decision was received.
- 14/06/2019 – The court notified the parties of the appeal and set a time limit of fourteen days to deliver responses to the appeal.

- 25/06/2019 – The "Nikosparta" response was received.
- 26/06/2019 – The defendant's response was received.
- 14/11/2019 – Decision delivered. The Court of Appeal refused the appeal.

Case LI-4 LITHUANIAN COURT OF APPEAL

"Energijos parkas" RUAB v. VsI "Šiaulių regiono atliekų tvarkymo centras" (public entity) (Case No. e2A-353-196/2017)

Summary of case at first instance

- Plaintiff sued for damages arising out of a gas recovery project where the amount of gas recovered was less that that specified in a public procurement – investment project. Claim was dismissed by first instance court.
- Initiation of the case – 03/05/2015.
- Delivery of decision – 10/09/2015.
- From date of initiation to date of judgment – 130 days.
- Value of claim – EUR 4,529,287.

Initiation of the appeal

- Actions of first instance court:
  - 08/10/2015 – Appeal was received from plaintiff.
  - 09/10/2015 – Court of First Instance sent appeal to defendant and set a deadline of twenty days for the delivery of the response to the appeal.
  - 05/11/2015 – Case was sent to Lithuanian Court of Appeal (second instance court).

Trial at appeal court

- 05/11/2015 – Case with appeal was received by appeal court.
- 17/03/2016 – Judges' panel was composed.
- 12/04/2016 – Hearing in written form. Case proceedings were suspended while another civil case that challenged the terms of the contract was resolved.
- 21/11/2016 – The case procedure was reopened.
- 20/12/2016 –Hearing in written form. Judgment fixed for 19/01/2017.

Delivery of decision

- 19/01/2017 – Judgment delivered. Appeal was refused. Judgment of first instance court was upheld by Court of Appeal.
- From date of initiation to date of judgment – 469 days.

Case LI-5 LITHUANIAN COURT OF APPEAL

A.K. & A.V. (natural persons) v. DNB bankas AB (Case No. 2A-494-798/2016)

Summary of case at first instance

- Plaintiffs sought a declaration that certain contracts of surety were invalid on the grounds they had entered into the contract under a mistake. Claim was dismissed by first instance court
- Initiation of the case – 08/10/2014.
- Delivery of decision – 12/10/2015.
- From date of initiation to date of judgment – 370 days.
- Value of claim – EUR 1,058,569.

Initiation of the appeal

- Actions of first instance court:
  - 12/11/2015 – Appeal was received from plaintiffs.
  - 18/11/2015 – Court of First Instance sent appeal to defendant and set a deadline of twenty days for the delivery of a response.
  - 11/01/2016 – Case was sent to Lithuanian Court of Appeal (second instance court).

Trial at appeal court

- 12/01/2016 – Case with appeal was received at the second instance court.
- 12/05/2016 – Judges' panel was composed.
- 07/06/2016 – Hearing in written form. Case concluded.

Delivery of decision

- 07/06/2016 – Decision delivered. Appeal was refused. Judgment of first instance court was upheld by Court of Appeal.
- From date of initiation to date of judgment – 208 days.

Case LI-6 LITHUANIAN COURT OF APPEAL

Ūkio bankas BAB v. Alumina d.o.o. Zvornik (Case No. 2A-199-823/2016)

Summary of case at first instance

- Plaintiff claimed for debt of EUR 3,073,731 on the basis of a factoring agreement between the plaintiff and "Kauno tiekimas" BAB. Claim was granted in full by the first instance court.
- Initiation of the case – 29/10/2013.
- Delivery of decision – 18/05/2015.
- From date of initiation to date of judgment – 566 days.
- Value of the claim – EUR 3,073,731.

Initiation of the appeal

- Actions of first instance court:
  - 18/06/2015 – The appeal was received from plaintiffs.
  - 25/06/2015 – The first instance court set the time limit to eliminate defects in the form of the appeal. The law requires a strict form of appeal. If the complaint does not conform to that form, the court shall by order set a time limit for the rectification of the defect in the appeal. The most common issue is that the appellant does not pay the statutory stamp duty on the complaint.
  - 10/07/2015 – The first instance court accepted the arguments on the appeal against the decision regarding defects in the appeal delivered and reversed its decision and accepted the appeal.
  - 13/07/2015 – The documents were sent to defendants and time limit of twenty days set for responses.
  - 04/08/2015 – Two responses received.
  - 05/08/2015 – Responses received.
  - 06/08/2015 – The case was sent to the Court of Appeal.

Trial at appeal court

- 14/08/2015 – Was received by the Court of Appeal.
- 19/02/2016 – Judge rapporteur was appointed. Appeal is heard by a panel of three judges. One of them is rapporteur. He/she prepare the case for hearing and writes the judgment.
- 22/02/2016 – The panel of judges was composed.
- 22/03/2016 – Hearing in written form. Judgment was reserved and the court set the date to deliver its decision.

Delivery of decision

- 21/04/2016 – Appeal refused and judgment of the court of first instance upheld.
- From date of initiation to date of judgment – 308 days.

Sequel: cassation

- 01/07/2016 – The cassation appeal received.
- 07/07/2016 – Leave to bring the cassation claim was granted.
- 05/08/2016 – The application for joining the cassation appeal was received and accepted.
- 08/08/2016 – The responses to the cassation appeal received and accepted.
- 10/11/2016 – The panel of judges was composed and the date of hearing in written form was set.
- 07/12/2016 – Written hearing. The decision was reserved. The court set date for decision delivering.
- 29/12/2016 – Judgment delivered reversing the judgment in full and remitting the case to the court of appeal to be reheard.

Appeal (II)

- 04/01/2017– The case was remitted to the Court of Appeal.
- 24/01/2017 – The written hearing. The hearing was adjourned to allow the parties to deliver evidence (to until 20/02/2017).
- 21/02/2017 – The hearing was finished and the court set the date to deliver its decision.
- 20/03/2017 – The Court of Appeal reversed the judgment of the Court of First Instance but did not consider the case further on the basis that the court concluded that the parties had agreed to refer the dispute to arbitration.

THE NETHERLANDS

Case NL-1 COURT OF FIRST INSTANCE OF AMSTERDAM

IKEA Beheer BV v. Van Dinten Beheer BV

ECLI:NL:RBAMS:2018:7381

Initiation of the case

- This case was initiated on 30/10/2017 by the summons by the plaintiff. IKEA had plans to develop a department store in Leiderdorp and had to acquire land. IKEA terminated the purchase agreement, because the seller was not able to deliver the land in the agreed condition, and demanded the return of the purchase sum of EUR 2,900,000.

Pre-trial proceedings

- 14/02/2018 – Written reply by defendant to summons in the claim and summons by the defendant in a counterclaim.
- 23/05/2018 – Interim judgment ordering a hearing to discuss the case, in order to adduce additional information and to attempt settlement.
- 14/07/2018 – Written reply by plaintiff in counterclaim.

Trial

- 16/08/2018 – A hearing as ordered on 23/05/18, no settlement achieved .
- 04/09/2018 – Notification by IKEA that Van Dinten (the defendant) had filed for bankruptcy and was no longer defending the claim. Requesting judgment.

Delivery of decision

- 17/10/2018 – Judgment delivered.
- From date of initiation to date of judgment – 352 days.
- Value of the claim – EUR 2,900,000.

Case NL-2 FIRST INSTANCE COURT ROTTERDAM

Aquaduct N57 BV v. HDI-Gerling verzekeringen NV and Liberty Mutual Insurance Europe Limited

ECLI:NL:RBROT:2016:5431

Initiation of the case

- This case was initiated on 21/9/ 2015 by summons on behalf of the plaintiff, Aquaduct. The case concerned the interpretation of an insurance contract concerning professional liability.

Pre-trial proceedings

- 13/01/2016 – Written reply by defendant in claim.
- 10/02/2016 – Interim judgment, ordering a hearing to discuss the case in order to adduce additional information and to attempt settlement.
- 21/04/2016 – Letter of the court with questions.
- 20/05/2016 – Letter of one of the parties with answers, followed by more communications.

Trial

- 06/06/2016 – Hearing to discuss the case, no settlement reached.

Delivery of decision

- 13/07/2016 – Judgment delivered.
- From date of initiation to date of judgment – 296 days.
- Value of the claim – EUR 1,200,000.

Case NL-3 COURT OF FIRST INSTANCE UTRECHT/CENTRAL NETHERLANDS

BAM v. TRANSMATE RECYCLING BV and TEREX DEMAG GMBH

ECLI:NL:RBMNE:2017:5059

Initiation of the case

- This case was initiated by summons on behalf of the plaintiff BAM on 3/08/ 2011. The case concerned the crash of a construction crane which caused damage to a building and personal injury.

Pre-trial proceedings

- 29/11/2011 – Motion for impleader.
- 04/01/2012 – Answer on motion.
- 14/03/2012 – Interim judgment on motion.
- 25/04/2012 – Reply by the defendant in claim and summons by the defendant in counterclaim.
- 03/10/2012 – Rejoinder by plaintiff in claim and reply by the plaintiff in counterclaim.
- 09/01/2013 – Reply by the defendant to the rejoinder in claim and rejoinder by defendant in counterclaim.
- 03/10/2012 and 09/01/2013 – Amendment and increase of claim.
- 18/09/2013 – Exchange of written statements of case complete.

Trial

- 22/05/2014 – Hearing oral closing arguments.
- 09/07/2014 – Interim judgment that an expert report is necessary and allows parties to present their views on the expert.
- 19/08/2015 – Appointment of an expert.
- 16/05/2017 – Presentation of report of the expert to the court.
- 12/07/2017 – Written submissions of the parties on the findings of the court appointed expert.

Delivery of decision

- 04/10/2017 – judgment delivered.
- From date of initiation to date of judgment – 2,254 days.
- Value of the claim – EUR 3,500,000.

Note: in the same procedure, related impleader cases were adjudicated.

Case NL-4 COURT OF FIRST INSTANCE ROTTERDAM

Ballast Nedam Infra Zuid West BV v. BP Raffinaderij BV

ECLI:NL:RBROT:2018:220

Initiation of the case

- This case was initiated on 24/12/2015 by summons on behalf of the plaintiff, Ballast Nedam. The case concerned the settlement of outstanding payments regarding a water purification plant for a BP oil refinery, raising a host of factual and legal questions.

Pre-trial proceedings

- 06/04/2016 – Reply by defendant in claim and summons by defendant in counterclaim.
- 31/08/2016 – Rejoinder by plaintiff in claim and reply by plaintiff in counterclaim.
- 04/01/2017 –Reply to rejoinder by defendant in claim and rejoinder by defendant in counterclaim.
- 29/03/2017 – Reply to rejoinder by plaintiff in counterclaim.
- 28/04/2017 – Submission of further documents for final hearing.

Trial

- 21/11/2017 – Hearing closing oral arguments.
- Letters to the court by the lawyers of the parties re minutes.

Delivery of decision

- 10/01/2018 – Judgment delivered.
- From date of initiation to date of judgment – 748 days.
- Value of the claim – EUR 2,200,000.

Case NL-5 COURT OF APPEAL DEN BOSCH

Weterings v. VDL

ECLI:GHSHE:2018:3338

Nature of the appeal

- Dispute about contract provisions regarding the remuneration of an expert for the acquisition of subsidies.

Initiation of the appeal

- The appeal was initiated by summons on or before 16/12/2015. The case was first brought before the Court of Appeal on 5/1/2016.

Pre-trial

- 16/02/2016 – Interim judgment ordering a hearing for early case management/ settlement.
- 23/03/2016 – Preliminary hearing for case management and attempt of settlement.
- 31/05/2016 – Statement of grievances (grounds for appeal).
- 12/07/2016 – Statement of answer by defence.
- 23/08/2016 – Determination of date for hearing.

Trial

- 19/06/2017 – Hearing: oral closing arguments.
- 22/08/2017 – Interim judgment allowing new evidence.
- 07/12/2017 – Examination of witnesses summoned by the defendant on appeal.
- 01/-03/2018 – Examination of witnesses summoned by appellant.
- 03/-04/2018 – Submission of defendant about witness testimony.
- 01/-05/2018 – Reply to submission by appellant.

Delivery of decision

- 07/08/2018 – Judgment was delivered.
- From date of initiation to date of judgment – 965 days.
- Value of claim – EUR 1,683,000.

Note: First Instance court

- Date of summons – 04/06/2014.
- Date of judgment – 16/09/2015.
- From date of initiation to date of judgment: 469 days.

Case NL-6 COURT OF APPEAL AMSTERDAM

An. v. - NIP holding BV et al.

ECLI:GHAMS:2017:4418

Nature of the appeal

- The first instance case concerned whether a milestone condition was met in a contract about the purchase of a new medical application and the company concerned.

Initiation of the case

- The appeal was initiated by summons on 2/06/2016.

Pre-trial proceedings

- 02/08/2016 – interim judgment ordering a hearing of the case for early case management/settlement.
- 08/11/2016 – Hearing of the case.
- 31/01/2017 – Statement of grievances
- 11/04/2017 – Statement of answer by defence.

Trial

- 18/07/2017 – Hearing closing oral arguments.

Delivery of decision

- 31/10/2017 – Judgment was delivered.
- From date of initiation to date of judgment – 516 days.
- Value of the claim – EUR 3,750,000.

Note: First Instance Court

- Date of summons – 05/02/2014.
- Date of judgment – 02/03/2016.
- From date of initiation to date of judgment – 756 days.

Case NL-7 COURT OF APPEAL DEN HAAG

Gemeente Rijswijk v. Modulus Projectontwikkeling B.V. and six other parties

GHDHA:2017:208

Nature of the appeal

- The first instance case concerned the interpretation of the contract for the purchase of land for the purpose of construction of an office building. The office building proved to be much larger than initially foreseen. The municipality claimed, based on the contract, that the price at which it sold the land must be increased to reflect the increase in size of the building constructed. The project developer disagreed that the contract allowed for this increase in the purchase price.

Initiation of the case

- The appeal was initiated on 15/12/ 2014.

Pre-trial proceedings including discovery/exchange of evidence, and preparation

- 15/03/2015 – Suspension of the proceedings against three defendants in view of their bankruptcy.
- 24/03/2015 – Order for a hearing of the case for case management and attempt at settlement.
- 02/06/2015 and 11/09/2015 – Hearing of the case with attempt at settlement.
- 05/07/2016 – Statement of grievances.
- 19/06/2016 – Procedural decision: forfeiture of the right of four defendants to provide statement of answer.
- 05/07/1016 and 07/11/2016 – Defendants' lawyers stepped down twice and were replaced by other lawyers.

Trial

- 01/12/2016 – Hearing final oral arguments.

Delivery of decision

- 07/02/2017 – Judgment was delivered.
- From date of initiation to date of judgment – 785 days.
- Value of the claim – EUR 4,051,337.

Note: First Instance – Court of Den Haag

– Date of summons – 16/04/2012.
– Date of judgment – 30/04/2014.
– From date of initiation to date of judgment – 744 days.

NORWAY

Case N-1 OSLO DISTRICT COURT

Bertel O Steen Østfold AS v. PricewaterhouseCoopers AS /Hans Petter Vestby

Initiation of the case

- The case was initiated on 12/04/2016 (writ of summons submitted to Sarpsborg District Court). The case concerned a claim for compensation from the company auditor.
- The case was subsequently transferred to Oslo City Court.

Pre-trial proceedings

- Pre-trial conference held on 12/07/2017.

Trial

- The court heard the case over fifteen days starting on 01/10/2018.

Delivery of decision

- 19/11/2018 – judgment first instance delivered. The claim against the auditors was rejected. Bertel O Steen Østfold AS was ordered to pay costs amounting to EUR 744,680.
- From date of initiation to date of judgment – 951 days.
- Value of the claim – EUR 2,978,723.

No appeal

Case N-2 OSLO DISTRICT COURT

Uniface B.V. v. CGI Norge AS

Initiation of the case

- The case was initiated on 10/07/2019. It concerned the interpretation of a license agreement – a dispute regarding license fees, including a request for interlocutory decision.

Pre-trial proceedings

- Pre-trial conference held on 13/01/2020.

Trial

- The court heard the case over four days starting on F11/02/2020.

Delivery of decision

- 09/03/2020 – Judgment delivered. CGI Norge AS ordered to pay Uniface B.V. EUR 2,074,468 plus costs amounting to EUR 21,277, relating to the interlocutory decision only.
- From date of initiation to date of judgment – 243 days.
- Value of claim – EUR 1,914,893. The claim was later increased.

Appeal to Borgarting Court of Appeal

The appeal was submitted on 20/04/2020. The case was settled on 19/05/2020.

Case N-3 OSLO DISTRICT COURT

PRE Utsikten v. Bkg AS

Initiation of the case

- The case was initiated on 27/04/2018. It concerned a claim for damages due to the cancellation of a contract.

Pre-trial proceedings

- Pre-trial conference held on05/09/2018.

Trial

- The court heard the case over two days, 24/10/2018 and 25/10/2018.

Delivery of decision

- 07/11/2018 – Judgment first instance delivered. PRE Utsikten AS ordered to pay BKG AS EUR 851,106 plus costs amounting to EUR 27,181.
- From date of initiation to date of judgment – 194 days.
- Value of claim – EUR 1,170,213.

Appeal: Borgarting Court of Appeal

Initiation of the case

- Submitted on 07/12/2018.

Pre-trial proceedings

- Pre-trial conference held on 21/02/2019.

Trial

- The Court of Appeal heard the case over two days on 12/03/2020 and 13/03/ 2020.

Delivery of decision

- 04/04/2020 – Judgment delivered. The first instance decision was upheld by the Court of Appeal, and PRE Utsikten AS was ordered to pay costs to BKP AS amounting to EUR 27,393.
- From date of initiation of appeal to date of judgment – 484 days.

Case N-4 OSLO DISTRICT COURT

SV Betong AS v. Leithe & Christiansen AS

Initiation of the case

- The case was initiated on 22/12/2017. It was a contract law dispute, concerning the termination of a construction contract and a claim for compensation.

Pre-trial proceedings

- Pre-trial conference held on 04/04/2018.

Trial

- The court heard the case over three days from 23/05/2018 to 25/05/2018.

Delivery of decision

- 29/06/2018 – Judgment first instance delivered. Leithe & Christiansen AS was ordered to pay SV. Betong AS EUR 232,978 plus costs amounting to EUR 62,192.
- From date of initiation to date of judgment – 189 days.
- Value of claim – EUR 957,446.

Appeal: Borgarting Court of Appeal

Initiation of the case

- The appeal was submitted on 05/10/ 2018.

Pre-trial proceedings

Pre-trial conference held 26/11/ 2018.

Trial

- The appeal was heard over five days from 27/01/2020 to 31/01/2020.

Delivery of decision

- 10/03/2020 – Judgment delivered. Leithe & Christiansen AS was ordered to pay to SV Betong AS EUR 430,932 plus EUR 168,440 for both instances.
- Appeal to the Supreme Court was denied.
- From date of initiation of appeal to date of judgment – 522 days.

Case N-5 OSLO DISTRICT COURT

Ree Minerals AS v. Norman Finans AS

Initiation of the case

- The case was initiated on 21/08/2015. Contract law dispute relating to fulfillment of an agreement to subscribe for shares.

Pre-trial proceedings

- The pretrial conference was held on 28/10/2015.

Trial

- The court heard the case on 25/01/2016 and 26/01/2016.

Delivery of decision

- 19/02/2016 – Judgment first instance delivered. The claim was dismissed. Ree Minerals was ordered to pay costs amounting to EUR 41,588.
- From date of initiation to date of judgment – 182 days.
- Value of claim – EUR 1,276,596.

Appeal: Borgarting Court of Appeal

Initiation of the case

- The appeal was submitted on 11/04/2016.

Pre-trial proceedings

- The pre-trial conference held on 13/06/2016.

Trial

- The appeal was heard by the appeal court over two days, 23/05/2017 and 24/05/2017.

Delivery of decision

- 12/06/2017 – Judgment delivered. The appeal court upheld the first instance decision. Ree Minerals AS was ordered to pay costs amounting to EUR 33,923.
- From date of initiation of appeal to date of judgment – 427 days.

Case N-6 OSLO DISTRICT COURT

Coop Sørvest SA, Invest Sør AS, Caarl Berg v. Olav Thon Eiendomsselskap ASA

Initiation of the case

- The case was initiated on 6/01/2017. Interpretation of a share sales agreement – dispute regarding final contract sum.

Pre-trial proceedings

- The pre-trial conference was held on 23/08/2017

Trial

- The case was heard over ten days from 23/01/2018 to 05/02/2018.

Delivery of decision

- 19/03/2018 – Judgment delivered. The claim was dismissed. The plaintiffs ordered to pay costs amounting to EUR 59,701.
- From date of initiation to date of judgment – 395 days.
- Value of the claim – EUR 3,191,489.

Appeal: Borgarting Court of Appeal

Initiation of the case

- The appeal was submitted on 27/04/ 2018.

Pre-trial proceedings

- Pre-trial conference held on 24/09/2018.

Trial

- The appeal was heard over eleven days from 17/09/2019 until 27/09/2019.

Delivery of decision

- 10/10/2019 – Judgment delivered. The Court of Appeal upheld the decision of the first instance court and Invest Sør AS, Coop Sørvest SA and Carl Berg were ordered pay to costs amounting to EUR 192,979.
- From date of initiation of appeal to date of judgment – 531 days.