SCHEDULE 2

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AUTO-PRESENTATION

for purposes of post-PhD proceedings describing academic record and achievements and presenting an academic achievement within the meaning of art. 16.2 of the legislative Act of 14 March 2003 regarding academic degrees and titles and academic degrees and titles in the arts (2017 Journal of Laws item 1789) in reference to art. 179.2 of the legislative Act of 3 July 2018 implementing the legislative Act – The Higher Education and Science Law (2018 Journal of Laws item 1669, as amended)

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I. Introduction

In accordance with art. 18a.1 of the legislative Act of 14 March 2003 regarding academic degrees and titles and academic degrees and titles in the arts (2017 Journal of Laws item 1789) in reference to art. 179.2 of the legislative Act of 3 July 2018 implementing the legislative Act – The Higher Education and Science Law (2018 Journal of Laws item 1669, as amended) and with § 12.2.2) of the regulation concerning detailed procedures and conditions for proceedings at successive levels of PhD studies and proceedings seeking professorial titles promulgated by the Minister of Science and Higher Education on 19 January 2018 (2018 Journal of Laws item 261), I hereby submit this presentation setting out a description of my academic record and achievements and characterising an academic achievement within the meaning of art. 16.2 of the Act cited above.

II. Diplomas and academic degrees held

Doctorate in legal sciences:	Faculty of Law and Administration, Cardinal Stefan Wyszyński University, 15 December 2009, PhD thesis entitled "Legal Character of Representations and Warranties in a Limited Liability Company Share Purchase Agreement (in Light of the Freedom of Contract Principle)" (promoter: Prof Marek Michalski; reviewers: Prof Aleksander Chłopecki, Prof Andrzej Kidyba).
LLM:	Faculty of Law and Administration, University of Warsaw, 30 May 1989 (overall result: *bardzo dobry* [very good]), master's thesis entitled "The Leasing Agreement in Light of the UNIDROIT Convention of 1988" under the tutelage of Prof Jerzy Rajski.

III. Information about employment to date, and study visits, at academic entities, comments

1. Employment at academic entities

2016 – present	Teaching fellow, Cardinal Stefan Wyszyński University, Department of Private Commercial Law

2011 – 2015	Visiting lecturer, Cardinal Stefan Wyszyński University (monographic lecture: Merger and acquisition transactions in the Polish legal system; Seminar: Commercial arbitration)

2. Study visits at academic entities

2018	Visiting Scholar, Wolfson College, University of Oxford – study visit
2016 – 2017	Visiting Professor, University of Cambridge– study visit as part of the Herbert Smith Freehills Visiting Professor Scheme
2015 – 2016	Visiting Academic, University of Oxford – study visit

3. Comments

Seeing as my academic pursuits were interwoven with active practice as an attorney in what is perhaps an atypical way, some additional comments may be in order.

Beginning with my master's thesis, my interests revolved around commercial law in its international dimension and, with time, also around commercial law at the domestic level and comparative law. Seeing as my time at university commenced in mid-1980s Poland, any study of commercial law in the sense taken for granted in the English-speaking world had to assume an international aspect. Having obtained permission to pursue an individual study programme, I was able to spend some extra time at SGPiS (presently the Warsaw School of Economics, or SGH), reading subjects such as commercial law of foreign countries or techniques and organisation of foreign trade.

My master's thesis, "The Leasing Agreement in Light of the UNIDROIT Convention of 1988", was based almost in its entirety on foreign law (English language) sources.

As my master's studies drew to a close, I was planning to continue in academia, especially seeing as I found work on my master's thesis highly rewarding. Yet the epochal economic and political changes transpiring in Poland in 1989 – just as I was completing my degree – offered me a once-in-a-lifetime opportunity to not only experience first-hand everything I had hereuntil known only in theory, from books about the legal systems of countries with developed market economies, but also to play my small part in creating new legal mechanisms and institutions here on Polish soil. Once I set out down this path, I soon found myself creating the first management option scheme in Poland, structuring the first

leveraged buy-out of a Polish company, and drafting some of the first privatisation contracts. Beginning in 1990, I developed a specialisation in the contractual aspects merger and acquisition transactions, first and foremost for the private equity/venture capital segment. I have worked on over 200 such transactions.

As of 2005, my professional interests slowly, but surely began to overlap with the academic pursuits which I incurably missed. It is in 2005 that I decided to combine my practical track record with my nostalgia for academia by embarking on a doctorate. It was my considered opinion that, after the heady beginnings of capitalism in post-1989 Poland, we had arrived at a certain stabilisation, and that the time was ripe for introducing some order to Polish commercial law in the context of M&A transactions through disciplined academic reflection. In 2009, I duly presented at Cardinal Stefan Wyszyński University my PhD thesis entitled "Oświadczenia i zapewnienia w umowie sprzedaży udziałów w świetle zasady swobody umów". I note with satisfaction that the publication of my PhD set in motion an interesting polemic in Polish legal doctrine (please see the debate pursued on the pages of Przegląd Prawa Handlowego between Prof Jacek Jastrzębski and Dr Andrzej Szlęzak: J. Jastrzębski, *Oświadczenia i zapewnienia (representations and warranties) a wady oświadczenia woli* [*Representations and warranties vs defective statements of intent*], Przegląd Prawa Handlowego 2014/1; A. Szlęzak, *Kilka słów o naruszeniu oświadczeń i zapewnień (representations and warranties) – polemika* [*A few remarks on breach of representations and warranties – A polemic*], Przegląd Prawa Handlowego 2014/6; J. Jastrzębski, *Jeszcze o odpowiedzialności z tytułu zapewnień gwarancyjnych (warranties) – polemika* [*Re liability for warranties – A polemic*], Przegląd Prawa Handlowego 2014/10; A. Szlęzak, *O representations and warranties raz jeszcze – polemika* [*On representations and warranties, again – A polemic*], „Przegląd Prawa Handlowego" 2014/12; J. Jastrzębski, *Ponownie o zapewnieniach jako źródle odpowiedzialności gwarancyjnej – polemika* [*Warranties as a source of liability, again – A polemic*], Przegląd Prawa Handlowego 2015/03; A. Szlęzak, *O odpowiedzialności z tytułu representations and warranties po raz ostatni* [*On liability under representations and warranties, one last time*], Przegląd Prawa Handlowego 2015/7.)

Having successfully completed my doctorate, I began teaching at university, beginning with the monographic lecture for fourth- and fifth-year law students entitled "Transakcje akwizycji przedsiębiorstw (M&A) w systemie prawa polskiego" ["M&A transactions in the Polish legal system"]. Given that, in my legal practice, I found myself increasingly drawn to arbitration, it was only natural that this be reflected in my didactic work; in 2014, I rolled out

my seminar on commercial arbitration, and I regularly publish pieces devoted to arbitration, participate in arbitration conferences, and coach students in their preparations for the VIS Moot in Vienna.

As of 2016, I work as a teaching fellow at the Faculty of Law and Administration (Department of Private Commercial Law), leading classes in commercial law, international arbitration, and common law.

In 2015, I began preparing my next major academic publication. My general idea was to endeavour a comparative analysis of claims rooted in breach of M&A agreements. During the 2015/2016 academic year, I sojourned in Oxford as a visiting academic, brushing up on my comparative law, developing a deeper understanding of English commercial and civil law, and perfecting my grasp of international arbitration. I had the privilege of hearing, among other lecturers, Prof John Cartwright teaching "Comparative Law", Prof John Armour teaching "Law & Economics of Corporate Transactions", and Prof Daniel Awrey teaching "Law & Finance"; I also followed my own reading list at the library. The fruits of my first Oxford sojourn include my European Review of Private Law piece entitled "Mixing legal systems in Europe; the role of common law transplants (Polish law example)". Sifting through all this material, I gradually developed the idea of concentrating on the question of declaratory relief, which struck me as very interesting, yet slightly neglected by legal doctrine. I was particularly intrigued by the concept of legal interest in legal systems – including that of Poland – rooted in the Germanic tradition; for over a century, this topic had not benefitted from systematic critical analysis. Thus, the concept of legal interest, how it is framed in various legal systems, and its critical analysis from a perspective of procedural fairness became an axis for deliberations at a universal level, departing beyond the strict confines of M&A.

In 2017, I spent a trimester at the University of Cambridge within the Herbert Smith Visiting Professor Scheme. I single-mindedly concentrated on declaratory relief in English law, reading extensively and attending Prof Neil Andrews' lectures on English civil procedure.

In 2018, I returned to Oxford as a visiting scholar at the invitation of Wolfson College, where I studied English case law and perused the international literature on procedural fairness.

IV. Achievement, as referred to in art. 16.2 of the legislative Act of 14 March 2003 regarding academic degrees and titles and academic degrees and titles in the arts (2017 Journal of Laws item 1789) in reference to art. 179.2 of the legislative Act of 3

July 2018 implementing the legislative Act – The Higher Education and Science Law (2018 Journal of Laws item 1669, as amended)

Title:

GESSEL -KALINOWSKA VEL KALISZ B., The Legal, Real and Converged Interest in Declaratory Relief, The Netherlands 2019 (Kluwer Law International, ISBN: 978-94-035-1244-0, ISBN e-Book: 978-94-035-1245-7, web-PDF: 978-94-035-1250-1).

Reviewers:

1. Prof Julian D.M. Lew QC, Queen Mary University of London;
2. Prof Stavros Brekoulakis, Queen Mary University of London.

Introduction

1.1. The concept of legal interest in a claim for declaratory relief in the Germanic legal family (whose members include Poland), as enshrined in art. 189 of the Polish Civil Process Code, generally did not preoccupy legal doctrine after World War II. The Swiss legal system is salient among other members of the Germanic legal family by virtue of its development in the spirit of pragmatism and flexibility, but it has not found any imitators. E. Wengerek noted in the late 1950s that, while the claim for declaratory relief stands as one of the essential questions of civil procedure, the polemics surrounding it have abated and the polemicists settled down in their entrenched views[1]. In my book, I propose considering the issue of legal interest as regulated by art. 189 of the Polish Civil Process Code (and, respectively, art. 228 of its Austrian counterpart, art. 256(1) of its German counterpart, and art. 59(2)(a) in reference to art. 88 of the Swiss one) from the perspective of procedural fairness principles. This new perspective, combined with dogmatic and comparative analysis and augmented with the results of statistical and historical study, opens the windows on what has become a closed, dusty space and enables the formulation of new conclusions. A point of departure for such localisation of the legal interest issue in a new context is provided by a verdict of the Polish Supreme Court from 30 October 1990[2]. This seemingly anodyne case, long buried in the

[1] WENGEREK E., *Powództwo o ustalenie*, Ruch Prawniczy i Ekonomiczny, 1959/1 (21), p. 1.
[2] Polish Supreme Court Judgement of 30.10.1990, I CR 649/90, Lex 158145.

records, is nothing less than a powerful lens which reveals all the shortcomings of the concept of legal interest as a prerequisite for a declaratory relief claim in Germanic legal systems.

1.2. The Declaratory Relief Norm[3] predicates admissibility of a claim for finding that a legal relationship exists (or, as the case may be, does not exist) upon existence of the claimant's legal interest in obtaining such a finding. In practice, the concept of legal interest is construed as existing only where the plaintiff, faced with the need to protect her legal sphere, may derive relief from the very finding that a legal relationship or right does, or does not, exist. The well-established corollary of this view is that legal interest does not exist where the plaintiff is already in a position to successfully lodge a claim for performance, unless the disputed legal relationship also has other implications or effects which may not be enforced via a claim for performance (not at the present point in time, or not at all). Countries following the Germanic legal tradition are remarkably uniform in hewing to this general approach in their jurisprudence as well as their legal commentary. Yet application of this approach leads to outcomes which fly in the face of the intuitive understanding of procedural fairness, and the Polish Supreme Court verdict from 30 October 1990 is remarkable for revealing the attendant problems in a nutshell.

1.3. The facts of this case, put in brief, were as follows: in 1979, the parties executed a contract for representation of the principal/investor commissioning construction of a commercial pavilion designed to house various retail and service establishments. The defendant undertook that construction shall be completed in 1982. The plaintiff subsequently argued that, as at the moment of bringing the case (1988), the defendant had not performed the works, and that defendant had applied funds remitted by plaintiff as a down payment towards construction of the pavilion contracted towards other construction projects, which resulted in the plaintiff's decision to withhold further payments in 1984. As a result of this, he ignored a number of successive calls for payment threatening rescission of the contract if the arrears are not duly cleared. The defendant declined the plaintiff's demand to release the pavilion in its then current state and to account for the costs incurred to bring it to that stage, arguing that plaintiff was in arrears and had not reacted to repeated calls to clear them on pain of having the contract rescinded. Finally, in a written notice dated 15 July 1988, the defendant notified the plaintiff that he is terminating the contract The plaintiff, in these circumstances, considered rescission by the defendant to be void and, accordingly, adopted the position that the contract continues

[3] What is collectively referred to as the Declaratory Relief Norm entitles the plaintiff to request a declaration as to a right or a legal relationship provided that he can demonstrate the existence of a legal interest.

to bind the parties and sought a declaration that legal relationship instituted by way of the original contract continues to stand. On 30 November 1989, the Voivodship Court in Warsaw dismissed the statement of claim, finding that, by virtue of discontinuing payments for the pavilion's construction in 1984, the plaintiff delayed in performing his obligations pursuant to the contract, leaving the defendant entitled to rescind the contract on the basis of art. 491 of the Polish Civil Code. The plaintiff appealed, submitting that defendant's culpable delay in performance entitles plaintiff, on the basis of the same art. 491, to rescind the contract or to demand specific performance, and that he had clung to the latter option for as long as was practicable. In the appeal, plaintiff applied for amendment of the judgement at lower instance so as to accept the claim or, alternatively, for overturning the judgement at lower instance and referring the case for renewed consideration. In considering this appeal, the Supreme Court did not take any position as to the validity of the contract's rescission – or, for that matter, as to the underlying dispute as such, simply finding that the plaintiff lacks legal interest in seeking declaratory relief in that he can readily bring a claim for performance (damages or specific performance, as the case may be), and that he should do so. Neither of the parties argued lack of legal interest, so the Supreme Court proceeded to make the relevant finding *ex officio*.

1.4. Prima facie analysis of this judgement leaves one with the lingering feeling, arising from ethical intuition and from cultivated understanding of the values which the justice system ought to uphold, that such an outcome is less than equitable. To endeavour a transposition of this feeling into concrete legal argumentation, a number of points present themselves.

1.5. First, it should be noted that the court essentially refused to rule on the merits of the case. As a result, the plaintiff, having nominally proceeded through two instances, remained stuck at his point of departure as regards his substantive claim; he still does not know whether or not the defendant's declared rescission of the contract was effective and, as a result, is largely clueless as regards any future claims on this account. There thus arises the question of what, exactly, prevented the court from ruling on the substance of the entire matter and from settling this not unreasonable dilemma of the plaintiff ? While the court did peruse the entire documentation of the case, it still considered itself unable to hand down a definitive ruling in light of the established understanding of the legal interest concept discussed in art. 189 of the Polish Civil Process Code. The court remarked that the plaintiff would have a legal interest only if he could obtain satisfaction/fulfilment of his need by the very fact of establishing that a legal relationship or a right exists. No legal interest exists where there is an alternative claim seeking

performance: enforceable damages or a specific performance. In the case at hand, the circumstances adduced by the plaintiff at first instance as well as at appeal indicated that he had several avenues of legal recourse open to him. He was also entitled to a claim for actual performance of the contract, which he in fact intended to bring. The Polish Supreme Court wrapped up by stating that the plaintiff had not demonstrated that a declaration confirming existence of a contractual relationship may afford him protection from some other violation of his legal sphere and found the application for declaratory relief inadmissible.

1.6. Secondly, the court engaged in an advisory sort of exercise: it worked out and valuated all possible reliefs which the claimant could seek in the circumstances of the case. In dismissing the relief, the court considered such an outcome to be the most favourable to the plaintiff from among all the others. The Supreme Court justified sending the plaintiff off to pursue another round of litigation by declaring that "*the need of protecting the plaintiff's legal sphere is more far-reaching than anything which he might hope for from a ruling by this court. Furthermore, pursuing this protection by way of an injunctive relief suit is more straightforward, in that it consummates the demand for establishing existence of a legal relationship, which – in an injunctive relief suit – is addressed by the court based on the prerequisites*". In order to arrive at such a conclusion, the court should have compared at least three possible courses of action: undecided, decided to the benefit of the plaintiff, or decided to the benefit of the defendant. The first of these assumes dragging the plaintiff through two instances without winning any closure on the merits, leaving the plaintiff with precious little idea as to the final outcome, only to start afresh, bringing a claim for injunctive relief before another court hearing this claim from the very beginning. The second scenario which should have been considered by the court at least in theory: the court at second instance rules on principle, finding the contract's rescission by the defendant to have been effective, thus closing the matter. The third scenario, finally, would entail the court ruling for the plaintiff, finding defendant's rescission to have been ineffective, whereupon the plaintiff could bring another suit, seeking injunctive relief. The difference (from scenario one) would be that a court hearing this new claim would be bound by the Supreme Court's finding on principle and, thus, would have its work scaled down for it in that it would only be called upon to elaborate on the details of the specific performance enjoined. As a side note, the parties could, conceivably, have taken such an outcome as encouragement to settle without further recourse to the courts, negotiating the scope of the performance on their own or through the good offices of a mediator. Comparing these three scenarios, one can't help but wonder about the bases adopted by the Supreme Court

in weighing each one. It would seem obvious that scenarios 2 and 3 are patently more favourable from the perspective of the plaintiff. Moreover, scenarios 2 and 3 would clearly be better from the perspective of economies of the legal process – dismissal of the claim for declaratory relief was bound to be more taxing for the justice system, generating an entirely new pile of work for the courts.

1.7. Thirdly, the Supreme Court objectified the interests and needs of the plaintiff to the maximum extent possible. The Supreme Court remarked that the plaintiff will have a legal interest only if, faced with the necessity of protecting his legal sphere, he may obtain satisfaction from the very finding that a legal relationship exists or does not exist. In the realities of the case at hand, the subjective need of the plaintiff lay in obtaining certainty as to whether or not the defendant continues to be bound by the contract for construction works and then in proceeding accordingly, also as regard deciding whether it is best to compel the defendant to perform his obligations under this contract or to claim for damages, presumably through some form of dialogue. The Supreme Court, meanwhile, chose to regard the needs of the plaintiff from the perspective of objectified criteria, focusing on what the hypothetical plaintiff ought to want rather than what the actual plaintiff wants in the given case.

1.8. Fourthly, existence of a legal interest is deemed to be a substantive prerequisite for ruling on a claim based on art. 189 of the Polish Civil Process Code and, as such, falls to be considered on an *ex officio* basis, whatever the stage of the proceedings. In the above case, the Supreme Court – absence of any signals from the party or from the court of lower instance notwithstanding – classified the needs of the plaintiff of its own accord, without inquiring as to what the party concerned might have to say on this point (no mean surprise for the parties).

1.9 Finally, while the Supreme Court dismissed the appeal in its entirety, it shied away from ruling on the procedural costs to the benefit of the counterparty, justifying this in terms of some vague notion of general fairness. The reasoning for the Supreme Court decision states that "*[we have] taken into account the reasons for which the appeal has been dismissed, in particular the fact that the plaintiff has been sent back upon the path of litigation in the quest for injunctive relief, concluding that, seeing as the plaintiff has already shouldered some of the costs entailed in his appeal before this court, considerations of fairness militate against burdening him with further expenditure in general and against enjoining him to reimburse the defendant's legal fees in this appeal in particular*". This amounts to a jarring inconsistency. On the one hand, the defendant has been compelled to retain counsel and, generally, to commit

resources to legal proceedings which, given the outcome, were unfounded but, on the other, the Supreme Court refuses to award to the defendant reimbursement of these costs. This lack of cohesion suggests that even the Supreme Court itself intuitively harboured some doubts as to this ruling in its ethical aspect, escaping into creative judgement or even subversion, as the case may be[4].

1. Basic study objectives and hypotheses

The nature of the questions and doubts arising with respect to the case described above required examination of the legal interest issue in the context of procedural justice.

I set out by adopting the working thesis that the legal interest constitutes an element of procedure (in the broad sense of the term). The very question of legal interest entails a species of procedural prejudgement, this irrespectively of whether legal interest is classified as a substantive law prerequisite or a procedural one, of whether it will lead to eventual dismissal of the declaratory relief claim or to its outright rejection without considering its merits. The decision concerning legal interest is a preliminary stage, prefiguring the hearing of the case as such. It is not decisive in the process of deciding whether the given right or legal relationship exists or does not exist (or, to put this differently, it does not offer guidance as to how the case should be decided), but it is referred to in deciding whether there exists, in the first place, a possibility of requesting the actual finding or establishment (it serves to answer the question of whether the case should be decided at all)[5]. Within such a cognitive framework, the legal interest becomes an element of procedure, and it is open to deliberation as to whether the universally adopted components of interpretation of the legal interest concept meet the criteria of procedural fairness – whether they do not restrict the fundamental right to have one's case heard before an impartial court. As E. Wengerek[6] (following A. Wach) rightly points out, the claim for declaratory relief is a litmus test for the righteousness and utility of concepts such as the right to voice a complaint.

Adopting as my point of departure the analysed jurisprudence and basing on certain legal intuitions (which, in themselves, are the product of a lifelong study of the law in theory and in practice), I formulated the hypothesis that the interpretation of the legal interest (as referred to in the Declaratory Relief Norm) generally accepted in jurisprudence and in legal doctrine fails

[4] ZAJADŁO J., *Sumienie Sędziego,* Ruch Prawniczy, Ekonomiczny i Socjologiczny LXXIX/4/2017, p. 36
[5] Polish Supreme Court judgement of 18.6.2009, II CSK 33/09, OSNC-ZD 2010, no. B, item 47.
[6] WENGEREK E., *Powództwo o ustalenie*, Ruch Prawniczy i Ekonomiczny, 1959/1 (21), p. 2.

to meet the criteria of procedural justice and of the right to trial. In a point worth emphasising, I refer to practical construction of the statutory concept, and not to the statute itself – the general wording of the legislation remains open to different interpretations. This prevailing construction leads to a state of affairs where, on the one hand, the concept of legal interest is somewhat unclear and evades understanding and, on the other, is excessively restrictive. This excessive restrictiveness might be expected to cause a disproportionately high percentage of dismissals of claims for declaratory relief as compared to other claims brought in civil proceedings.

Another presumption which I adopted was that some components of the legal interest concept, including in particular the subsidiarity rule, do not arise from the immanent nature of legal interest, so they are not subject to intuitive understanding by the participants to the proceedings. In order to rebut or confirm this hypothesis, I analysed the legal system of the United Kingdom, where the institution of declaratory relief makes no reference to the concept of legal interest. On the one hand, English law, being as it is a common law system, hails from an entirely different legal tradition, but on the other – jokes about current politics aside – it is part of the legal system of the European Union. This analysis is performed in chapter 3. In chapter 4, meanwhile, I analysed awards of international arbitration tribunals. I found that, in the international arbitration context, questions about the limits of intuition were even more fascinating in that, here, the expectation is that interpretations and rulings might rise above the technical minutiae of this or that domestic legal order.

In light of the practical needs of modern legal practice in general, and of the usefulness of declaratory relief claims as an instrument conducive to non-invasive dispute resolution in particular, this issue calls for renewed analysis and redefinition in line with the procedural justice principles.

Again, the point of departure for my analysis was Polish jurisprudence. I adopted the general assumption that, given the German pedigree of the legal norm embodied in art. 189 of the Polish Civil Process Code, it is reasonable to expect that jurisprudence and doctrine will follow broadly similar interpretations of the legal interest concept, with the result that any problems in reconciling legal interest with procedural justice principles will likewise be similar. This hypothesis is explored in chapter 2 of the book. By expanding my analysis to include other national jurisdictions, I was able to draw on jurisprudence and legal doctrine of other centres of legal thought from the same general tradition, thus benefiting from a better perspective.

2. Methodology

The publication presented here is of an interdisciplinary character. Its creation was informed by the needs of commercial entities as regards non-invasive means of resolving disputes which arise in the course of their business dealings. As I considered the central questions of the book, I wove together themes from the realms of civil procedure, arbitration, legal theory, business law and comparative law as a distinct academic discipline. As a result, my exploration of the compatibility of the legal interest in declaratory relief with the right to trial and with procedural justice principles required the application of various methods: dogmatic analysis, comparative analysis, historical analysis, statistical analysis and the case file study method.

Applying the comparative and historical methods, I retraced the development of the legal interest concept in Germanic legal culture (to which Poland also belongs), identifying its stated and implicit objectives and following its practical and theoretical evolution.

My comparative analysis of Germanic legal systems comprised Germany, Austria, Switzerland and Poland[7]. I have had the advantage of input from accomplished representatives of these four jurisdictions, whom I invited to describe the characteristics and application of declaratory relief in their domestic legal systems in reference to a list of questions which I had prepared. These questions were also discussed during a special one-day workshop which I organised in Poland, in the course of which I confronted the participants with the main theses of my publication. My participants/contributors each wrote a report on declaratory relief in their jurisdiction; these are included in my book in the form of annexes. This segment has morphed into something close to a standalone comparative law project in its own right.

I also used the comparative method to juxtapose legal practice and doctrine of the Germanic tradition with the UK system (which, much like other common law jurisdictions, does not employ legal interest as a prerequisite for declaratory relief claims). I devoted my study visit at Cambridge to a study of English doctrine; my time at Wolfson College, Oxford,

[7] My cooperating authors: Joanna Kisielińska-Garncarek (Poland), PhD candidate at the Faculty of Law, Nicolaus Copernicus University in Toruń; Ulrich Kopetzki (Austria), guest lecturer at the University of Vienna; Dr Nino Sievi LLM (Switzerland), author of the PhD thesis "Die negativen Feststellungsklagen des schweizerischen Rechts im Anwendungsbereich des Lugano-Übereinkommens [Negative declaratory actions under the Lugano Convention]; Tobias Strecker (Germany), Managing Director, Research Institute for Legal Practice Humboldt-Universität zu Berlin; Alicja Zielińska-Eisen (Germany), International Dispute Resolution (IDR) Programme Coordinator LL.M, Humboldt-Universität zu Berlin.

meanwhile, was used to identify approximately 100 cases by English courts of relevance to my work.

I used the statistical and comparative methods and archival study to analyse normative and non-normative intuitions observed in international arbitration practice relevant to assessing compatibility of the legal interest concept with procedural fairness principles and the right to a trial. My study encompassed over 100 arbitration awards; I conducted this part of my research at the seat of the International Court of Arbitration at the International Chamber of Commerce in Paris.

The statistical method has also stood me in good stead in analysing declaratory relief practice as reflected in Polish Ministry of Justice data. Statistical insights into the conduct of the litigants and of the courts were necessary to confirm, or refute, my initial hypothesis regarding excessive restrictiveness and unpredictability of declaratory relief practice. Details of this statistical exercise and its outcomes have been published in the Przegląd Prawa Handlowego article already cited and are included in my monograph.[8]

Dogmatic analysis serves as the basic study method and, as such, is present throughout my book. That said, it is predominant in the final sections, which analyse the very principle of the right to trial and of procedural justice as well as the essence of legal interest on the linguistic, teleological and systemic levels.

3. Choice of language – English.

My choice of English as the language of my publication was informed by a number of considerations. The work discussed here is very much from the realm of international comparative law, and it concerns common law, Continental law and international business arbitration alike. Moreover, a large part of the sources on which I relied in writing my book were English-language ones.

English being as it is the lingua franca of modern comparative law, its choice enables debate of the author's conclusion and ideas on a much broader, international scale. This is just as well, seeing as the relevance of issues associated with defining the legal interest is by no means limited to Polish law. In fact, such issues arise also on the international scale, especially

[8] GESSEL-KALINOWSKA VEL KALISZ B., Pojęcie interesu prawnego w powództwie o ustalenie a prawo do sądu – wprowadzenie do dyskusji. Analiza badań statystycznych, Przegląd Prawa Handlowego, 2019/1 (317).

within the Germanic legal tradition (in which, once again, art. 189 of the Polish Civil Process Code is rooted) and in international arbitration. This international aspect of the issues raised in the book was duly noted by reviewers of the publisher, and it was one of the considerations motivating the decision on publication.

Last but not least, the choice of English for the publication makes it possible to trot the achievements of Polish legal doctrine in the subjects discussed in the book out before a wider international audience.

It is for these reasons that I decided to publish my book in English.

4. Structure and contents of the monograph

The structure of the monograph is as follows.

Chapter 1 comprises an introduction and presents the general premises and structure of the book.

Chapter 2 presents a comparative analysis of the legal interest concept in the context of declaratory relief claims in four national systems – those of Austria, Germany, Poland and Switzerland. The claim for declaratory relief was first devised in 1879 in Germany; since that time, the essential nature of declaratory relief in German law has remained unaltered, and has provided inspiration for other systems of the Germanic legal tradition. An exception is posed by Switzerland, which presents an interesting example of an evolution towards a more pragmatic approach to the question of legal interest – to wit the fact that Swiss legal usage eschews the adjective "legal" when discussing the interest of a plaintiff in obtaining a declaration. Importantly, Chapter 2 does not endeavour an exhaustive, detailed description of these four national jurisdictions[9]; rather, it presents a synoptic description of the model legal interest concept in the broadly understood Germanic legal tradition (based on comparative analysis), which will then become the object of analysis from a procedural justice perspective in chapter 5. In this spirit, I have identified the following components of the **legal interest model** in the Germanic tradition:

[9] This is left to the additional country reports prepared by my cooperating authors and enclosed at the end of my book - please see item 3 above.

- Essentially legal nature of the interest of the plaintiff, to the exclusion of non-legal interests (e.g. economic interest);
- Objective character of the interest of the plaintiff;
- Existence of a dispute between the parties;
- Uncertainty as to rights or legal relationships (as opposed to uncertainty as to the facts of the case);
- The uncertainty is unacceptable to the parties;
- Definitive conclusion of the dispute by way of the declaratory judgement;
- Unavailability of other avenues of legal recourse, in particular of a claim for injunctive relief (the subsidiarity principle);
- Protection of the defendant's interests in the event of a negative claim for declaratory relief.

In **chapter 3**, the comparative exercise becomes more complex, with the Germanic model juxtaposed with UK law. On the one hand, England maintains the archetypal common law system; on the other hand, it belongs to the broader European Union system. In English law, much like in the Germanic systems, declaratory relief is regulated by way of a statutory instrument rather than by precedent. Yet while the Germanic model mandates demonstrating a legal interest as a prerequisite for a declaratory relief claim, the English statute does not lay down any restrictions for the judges. Thus, juxtaposition of the Germanic model with the English one provided an interesting study perspective for assessing the differences in practical operation of declaratory relief in a system where the courts enjoy broad discretion and in one where the entire exercise is subject to legal interest defined and limited by statute. That said, operation of *stare decisis* has given rise to certain criteria which act to limit the discretion of the courts. To facilitate discussion and comparison within my book, I have dubbed this body of restrictions shaped by English case law real interest. Its defining characteristics essentially come down to two categories: a) utility / usefulness of the declaration sought, which b) shall be fair to both parties to the proceedings. Real interest is very much a pragmatic consideration, as opposed to the dogmatic approach followed by the courts in Continental jurisdictions.

This English **real interest model** has the following characteristics:

- Lack of legal character – real interest has a practical character;

- Two key components of the plaintiff's interest: practical utility (useful purpose) of the declaration for the parties and no infringement of the fairness principles vis a vis the parties;
- Lack of prerequisite character – the question of whether or not the plaintiff has an interest is addressed after the case has been considered on its merits;
- Broad scope of matters which lend themselves to declarations, including rights, legal relationships, claims, facts and legal principles;
- High level of subjectivity;
- No subsidiarity principle;
- The public interest taken as tantamount to real interest.

In **chapter 4,** I analyse international arbitration practice in an effort to describe the approach adopted to the question of the legal interest by arbitrators and the definition used for these purposes. At risk of sounding trite: international arbitration is anational in character, in the sense that it proceeds in detachment from hard-and-fast civil procedure rules. The arbitrators are free to rely on legal intuition abstracted from doctrine and jurisprudence. My consideration of this issue proceeded in two stages. First, I studied arbitral awards in cases involving breach of contract in merger and acquisition transactions. This analysis led to the conclusion that most tribunals do not look to legal interest as a basis for declaratory relief but cut straight to the chase, focusing on the object of the declaration sought and, thus, on the merits of the case. Of the 16 declaratory awards I reviewed, only in one did the arbitrators consider legal interest as a prerequisite. In the second stage, I analysed any and all declaratory awards – whatever the substantive object of the dispute – which took questions of legal interest into account. The results of my analysis confirm that the arbitration tribunals defined legal interest in a very intuitive way and in an anational spirit – considerably more liberally than doctrine and judicature in the Germanic legal family. This point applies especially to a pronounced disregard for the subsidiarity rule, which assumed such decisive importance in the Polish Supreme Court from 1990 discussed at the outset.

This model manifesting itself in arbitration practice is referred to by me as converged interest (or *interes mieszany* in Polish-language contexts). Its defining traits include:

- An anational, intuitive approach;
- Prerequisite character;
- Legal interest components similar to real interest;

- No subsidiarity principle;
- Circumspection in formulating claims and in wording declaratory words.

Chapter 5 presents a critical analysis of the concept of legal interest, with the study perspective formulated in terms of the procedural justice principle and the right to a trial. It is here that I propose a redefinition of this concept in the *de lege lata* as well as *de lege ferenda* spheres, as discussed below.

5. Study results and conclusions

Procedural justice principles significant to the object of the analysis. In light of the hypotheses presented under item IV.1 above, it was necessary, in the first order of sequence, to specify exactly what elements of the procedural justice principles and of the right to trial are relevant in assessing compatibility of legal interest with these principles. It should be borne in mind that not every restriction of a court's powers to rule on the merits of a dispute necessarily amounts to violating the right to a fair trial. Accordingly, I adopted the premise that, first, the concept of legal interest shall meet the requirements of procedural fairness if its designates have been defined to a level of clarity and detail which renders them readily prehensible to the intended recipients of this message, i.e. to the parties; and second, that the concept of legal interest should be cohesive within the system of law as a whole with its defining principles – first and foremost with the civil procedure – and consistent with its logic, values, and objectives (thus guaranteeing foreseeability). The main goal of restricting the right to trial through enforcement of the legal interest prerequisite was one of economy – the desire to keep the number of cases coming before the courts within reasonable bounds. Such a restriction – proceeding to the third premise – ought to be commensurate with actual, on-the-ground needs and may not be excessively restrictive; the right to trial and procedural fairness deserve to be accorded greater weight than the economics of legal process, and any harmonisation or optimisation must take this point into account.

Values and objectives of the legal system. Regulation of declaratory claims and of the legal interest as such ought to be concordant with the objectives which the law of civil procedure sets for itself and with the values which it seeks to uphold. These would include, much like the legal system as a whole, the right to a fair trial and the principles of procedural justice. The objective of civil process is to achieve utmost realisation of individual civil rights in a time- and cost-efficient manner. Of the values developed in European law over the past few decades, one

of the foremost concerns non-invasiveness of disputes, and the obvious corollary is that measures conducive towards this end are at a premium. And a declaratory award is very much a useful tool in amicable resolution of disputes. When interpreting the concept of legal interest, which constitutes a practical restriction on the possibility of obtaining declaratory award, due heed should be had for these overarching values.

The prevailing interpretation of legal interest is unfair in that it contravenes normative and non-normative intuition, resulting in unpredictability. The postulate of predictability in legal regulation is associated with normative and non-normative (intuitive) expectations of those to whom the regulation is addressed[10]. At the normative level, users of the legal system may, basing on their normative intuitions, reasonably expect that availability of declaratory relief will be as broad as possible (considering that declaratory claims are an avenue of recourse concordant with the systemic values of fostering amicable / non-invasive means of dispute resolution and utmost realisation of individual civil rights). The basic point that the expectations of users of the legal system are at odds with what this system has to offer in terms of declaratory relief finds eloquent confirmation in my statistical research performed in 2018 on the basis of Polish Ministry of Justice data[11]. These indicate that an average of 8 out of 9 claims for declaratory relief at first instance have been dismissed or rejected. To consider civil statements of claim as a whole, only 3 out of 10 claims were dismissed or rejected. Extrapolating the results of analysis of appellate court judgements, one arrives at the conclusion that roughly half of the dismissed claims received the thumbs-down due to lack of legal interest. These statistical results confirm that, as it now stands, regulation of legal interest is insufficiently clear, which renders it unpredictable to the user and counterintuitive.

In turn, analysis of arbitral awards (issued as they are outside the constraints of any specific national legal order) confirms that, in accordance with non-normative intuitions, demonstration of a legal interest is required in a very loose form, if at all.

Where legal regulations are in alignment with normative and non-normative intuitions, the law becomes more predictable and is better understood. This, in turn, leads to higher identification

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[10] GALLIGAN D.J., *Due Process and Fair Procedures. A Study of Administrative Procedures*, Oxford 1996, p. 56-62.

[11] GESSEL-KALINOWSKA VEL KALISZ B., Pojęcie interesu prawnego w powództwie o ustalenie a prawo do sądu – wprowadzenie do dyskusji. Analiza badań statystycznych, Przegląd Prawa Handlowego, 2019/1 (317), p. 11-20.

with the regulation and higher respect for the legislature and to a higher perception of fairness – public interest goals in their own right.

Interpretation **of the legal interest is unfair due to illogical linguistic construction, leading to excessive restrictiveness, lack of clarity and unpredictability.**

The general construction is that the plaintiff must have a legal interest, as opposed to a non-legal interest (economic, practical or societal). Linguistic analysis of the relevant Polish statutory norm, as set out in art. 189 of the Polish Civil Process Code, leads to the conclusion that any claim for a declaration which has as its object a right or a legal relationship should pass the legal interest test. If, however, this same statutory norm is interpreted from the perspective of its goal, one finds that the interest of a party in civil proceedings is invariably practical (and, most usually, economic), i.e. non-legal. Parties to civil law dealing engage in various acts in law in pursuit of specific practical objectives, and it is these objectives rather than the act in law per se which constitutes their true objective. To wit, the Swiss legislature has shunned the adjective "legal" in favour of "actual" in describing the interest of the plaintiff. In practice, where the interest of the plaintiff is, through excessive restrictiveness or simply as a result of error or misapprehension, classified as non-legal, the plaintiff has the proverbial door to a declaratory claim shut in his face. The long and short of such a state of affairs is that the right to trial is being unduly restricted.

Part and parcel of this legal vs non-legal dilemma in classifying legal interest is comprised in establishing exactly what is constituted in the right or legal relationship which the declaration is to concern. As they describe the concept of the right in the context of the object of declaratory relief, jurisprudence and doctrine generally fail to take into account that, from the perspective of subjective rights, there exist two types of facts – facts which, consequent to a certain legal convention, are rarefied into a component of a subjective right or a legal relationship, and facts *tout court*, not infused with such deeper meaning (*brute facts,* to adopt the language of J. Searl). The former constitute a psycho-physical element of an act in law. In the Germanic legal tradition, this distinction is not recognised, with the result that claims for declarations concerning any and all facts tend to be dismissed. Such an interpretation is overly restrictive, unclear, and internally incohesive, and it often leads to contradictory outcomes. For instance, claims which concern a declaration that a contract has been duly rescinded are often dismissed on the grounds that such a declaration, if granted, would refer to a fact; at the same time, a finding of invalidity with respect to the very same contract is recognised as declaration of a

legal relationship. Polish legal doctrine and jurisprudence have developed the interesting practice of applying art. 189 of the Polish Civil Process Code on an extrapolatory basis, stretching it to cover also "facts creating rights", but this is not a uniform view.

Interpretation of the **legal interest is unfair on account of the incohesive teleological and systemic construction, which leads to excessive restrictiveness, lack of clarity, and unpredictability.**

A claim for declaratory relief is a means of legal recourse which has the objective, much like the entire civil process system, of safeguarding and realising subjective civil rights. The legal interest as such is not an immanent part of the claim for declaratory relief. There are, in fact, legal systems and institutions which do not require establishment of a legal interest; these include English law, international arbitration practice, and – within the realm of Polish law – class action lawsuits. Beginning with the original German legislation in the late nineteenth century, the rationale informing introduction of the legal interest requirement lay in keeping a lid on the number of cases coming before the courts. Such a *ratio legis* requires far-reaching caution in interpretation, lest the restrictions entailed in it are allowed to get out of hand.

Declaratory relief is one of the three basic types of claim available in Germanic civil process, alongside injunctive relief and amendment or termination of a legal relationship. Lord Woolf, the noted English judge, was quite right in stating that there is nothing in the claim for declaratory relief which militates in favour of some sort of special safeguards. Quite to the contrary, the non-invasive character of declaratory relief renders it a "safer" tool than other means of recourse. Care must be taken not only to avoid abuse of declaratory relief or inundation of the courts with frivolous claims for declarations, but also to prevent unjustified rejection or refusal of declaratory relief claims.[12] Systemic analysis vindicates this observation in the context of the modern justice system, but the prevailing concept of legal interest has not kept abreast of developments. Declaratory relief continues to be viewed as a somehow "inferior" claim.

In fact, legal interest is an important component of declaratory relief, of injunctive relief and of amendment or termination of a legal relationship alike. A plaintiff who lacks legal interest may not seek legal protection before the courts. Insofar as, in the case of claims for injunctive relief and for amendment / termination, legal interest is well-nigh taken for granted,

[12] Lord WOOLF, WOOLF J., *Zamir & Woolf: The Declaratory Judgment*, London 2011, p. 130.

its valid existence implied by the very fact of lodging the claim, in the case of declaratory relief legal interest becomes the object of separate consideration. The plaintiff faces a difficult hurdle in this respect, what with the lack of clarity of the very concept of legal interest and the element of unpredictability in its application.

The legal interest is highly objective, and it is detached from the actual interests (needs) of the plaintiff. This objective element – which is especially pronounced in the case of Polish law – remains at odds with the basic principles of civil law, whereunder performance is generally associated with satisfying the individualised need of the creditor[13]. Thus, it may be argued that the strong objective emphasis in construing the legal interest prevents achievement of a basic goal of civil procedure – that of utmost realisation of individual civil right arising from substantive law.

Taken farther, this emphasis on the objective in construing the legal interest may affect the very finding that there exists between the parties a dispute as to the import of the declaration sought. In the case of a claim for injunctive relief, the very fact that a statement of claim has been filed with the courts is admitted as attesting to the existence of a dispute, this irrespectively of the conduct of the defendant (e.g. his acknowledgement and acceptance of the claim). In the case of a claim for a declaration, meanwhile, more is needed.

Focus on the objective aspect of the legal interest has led to adoption of the subsidiarity rule. I posit that neither one of the other are justified in light of literal or systemic construction of the legal norm regulating declaratory relief. Under the subsidiarity principle, a plaintiff is deemed not to have legal interest in a case where his need can be addressed more efficaciously by other means of legal recourse. There was a time when this was associated with the claim for performance, the reasoning being that, if the plaintiff can cite a violation of his rights in claiming performance, a mere declaration of violation was objectively ineffective, in that the plaintiff's needs ran farter and a mere declaration did precious little to address them. Eventually, subsidiarity came to be applied also to other means of legal recourse, also beyond the scope of civil process, if the court took the view that such means present not necessarily a better, but even a comparable means of pursuing plaintiff's claims. Such a take on the legal interest is problematic on a number of counts. Firstly, it casts the judge in the role of a paternal figure pontificating on the best course of action for the plaintiff, this on the basis not of the plaintiff's

[13] MACHNIKOWSKI P., *Swoboda umów według art. 353 1 KC, Konstrukcja prawna*, Warsaw 2005, p. 78.

actual needs in the given case, but the imagined needs of a hypothetical plaintiff in an idealised world. Secondly, it operates on the assumption that the claim for declaratory relief is inherently inferior to other types of claims – glossing over the fact that each type of claim serves a slightly different purpose and constitutes a legal institution on par with the others. Thirdly, the logic of the system is flouted if claims for declaratory relief are disallowed in a situation where a more far-reaching claim for performance extends; such manner of going contravenes the principle *a maiori ad minus* without the statutory authority that any such departure requires.

Demonstrating legal interest as a prerequisite for a claim for declaration has little to do with the essence of this claim, as made abundantly clear by analysis of English law and of international arbitration practice. Even the Germanic legal systems offer examples of specific regulations which omit the legal interest prerequisite (in the case of Polish legislation, these would include declarations in class actions lawsuits[14] and resolutions at commercial companies[15]). The limitations imposed on pursuing claims for declaratory relief have led to the emergence of institutions geared at securing a declaration while circumventing this requirement, to wit the claim (unchallenged by legal doctrine and regularly seen in practice) for payment of only a small portion of the amount sought so as to secure a ruling as to liability in principle.

As already mentioned, introduction of the legal interest prerequisite was originally informed by a perceived need to protect the courts from being inundated with claims for declarations (once such claims became possible in late nineteenth century Germany). Over the intervening hundred years plus, scant to none evidence has been offered that this dreaded flood of cases cold actually materialise. Quite the opposite, in fact – the study results which I discuss (item IV.3) put the number of claims for declaratory relief at less than 0.5% of all statements of claim brought before the civil courts. Even if one were to assume that the present status quo – obtuse formulation of the legal interest requirement and inconsistencies in its application – has the effect of suppressing claims which would be forthcoming in more propitious circumstances, any increase in similar claims which might be observed if these difficulties were removed could hardly be such as to swamp the justice apparatus. What's more, it can be argued that one of the take-aways from analysis of the case described under item IV.1 is that stubbornly clinging to the subsidiarity principle as an element of the legal interest test only leads the courts

[14] Legislative Act of 17 December 2009 regarding pursuit of claims in group proceedings (2010 Journal of Laws No. 7, item. 44).
[15] Art. 252 of the Polish Commercial Companies and Partnerships Code.

to double down and to expend additional effort if another claim for performance is brought – or to justice denied if the plaintiff is effectively discouraged from persevering with his case. It also merits emphasis that, being as we are in the twenty-first century, the spectacle of a father figure in judicial robes instructing a hapless plaintiff on what lies in his best interests sits uneasily with the results of studies indicating that, for the most part, litigants tend to be rational actors (to cite only Herbert A. Simon[16], a major authority in this field).

To summarise, the prevailing construction of the concept of "legal interest" as a prerequisite for a declaratory relief claim does not meet the criteria of procedural justice and of right to a fair trial. It contravenes such systemic values as equal protection of the rights of plaintiff and defendant and resolution of the dispute with due regard for considerations of economy (but also of modernity and of non-invasiveness). The interpretation of the legal interest concept is overly restrictive – the plaintiff is viewed as an objective entity in separation from his actual needs, leading to contrived, technocratic application of the subsidiarity rule. The plaintiff's right to seek a declaration – and, consequently, to a fair trial – is further impinged upon by skewed construction of the plaintiff's interests in terms of the legal interest vs non-legal interest opposition and of the essence of a right or a legal relationship in a theoretical take on subjective rights.

All the above make for a strong argument in favour of a redefinition of the concept of legal interest for the purpose of declaratory relief. Whether the interest of the plaintiff in the given case is a legal or a non-legal one ought to be a derivative of the object of the declaration, and this object – the right or legal relationship in question – ought to be approached widely, with objective right theory taken into account. The existence of a dispute between the parties should be considered in subjective terms, with the very fact of bringing a statement of claim deemed sufficient testimony to its existence (as, indeed, is the case for other kinds of claims). Other elements used in constructing the legal interest excessively restrict this concept in the context of the right to a trial.

The change posited in my book could, conceivably, be precipitated without actual legislative amendment, in that the legal interest as we know it is a product of legal doctrine and of judicial practice. At the same time, it should be noted that the present interpretation has well

[16] SIMON H.A., *Models of Bounded Rationality, vol. 2*, Cambridge 1982.

over 100 years going for it, and jettisoning it altogether may be impossible – certainly not from one day to the next.

In the event that any statutory amendments in this regard were mooted, the legislature and legal authorities would do well to consider whether legal interest as a prerequisite which must be separately proven should not be dropped. By discontinuing the legal interest prerequisite, declaratory relief would be put on an equal footing (at least in this procedural aspect) with other kinds of claims. Alternatively, the concept of "interest" might be retained in the wording of the statute, but without the confusing qualifier "legal"; this would be reasonable insofar as, where a plaintiff seeks a declaration with respect to a right or a legal relationship which, for at least for the moment being, do not cover him, a needs-based test of some sort is called for.

V. Other academic and research achievements subsequent to completion of PhD

My academic pursuits subsequent to completion of my PhD were concentrated on a number of overlapping fields. This, as it were, multidisciplinary approach followed by me in the book described above has served me well also in other publications and studies. I have been keeping up my lifelong fascination with **comparative law**, both as an academic discipline in its own right and as a study method. In this area, my greatest success lay in drawing up a discussion of the influence of common law on Continental law during my study visit to Oxford in 2016-2017. This yielded the article *Mixing legal systems in Europe; the role of common law transplants (Polish law example) published in* the European Review of Private Law (4- 2017) in which I demonstrate how the juridical DNA of Continental law deriving from codified Roman law has been extensively reordered and enriched by common law elements – not only through historical change at the legislative level or through harmonisation within the European Union, but primarily at the grassroots level, through transplant and adoption of contractual templates by practitioners. This has resulted in a curious bottom-to-top dynamic, with commercial usage gradually coming to be reflected in legislative amendments and, more importantly, in new perceptions of legal mechanisms and institutions already operating in Continental legal systems. I continued this theme in two subsequent publications, *O przydatności wyodrębnienia w ramach prawa handlowego dyscypliny „prawo finansów przedsiębiorstw" (corporate finance law)* [*On the utility of distinguishing 'corporate finance law' as a discipline within the realm of commercial law*] (M. Pazdan, M. Jagielska, E. Rott-Pietrzyk, M. Szpunar (ed.), *Rozprawy z Prawa Prywatnego. Księga jubileuszowa dedykowana Profesorowi Wojciechowi Popiołkowi* [*Essays on private law. Jubilee volume dedicated to Prof*

Wojciech Popiołek], Wolters Kluwer, Warsaw 2017); and *Common law v. civil law – czy to koniec sporu w obszarze praktyki kontraktowej? (zarys problemu)* [*Common law v. civil law – Is this the end of the dispute in the realm of contract practice ? (An outline of the problem)* (A. Olejniczak, T. Sójka (ed.), *Societates et obligationes – tradycja, współczesność, przyszłość. Księga jubileuszowa Profesora Jacka Napierały* [*Societates et obligationes – Tradition, modernity, future. Jubilee volume for Prof Jacek Napierała*] Wydawnictwo Naukowe UAM, Poznań 2018).

Much of my post-PhD research and publications dealt with domestic and international **business arbitration**. I wrote about the confidentiality principle in commercial arbitration: *Postrzeganie zwyczajów odnoszących się do obowiązku zachowania poufności w arbitrażu* [*Perceptions of confidentiality duty customs in arbitration*] (E-Przegląd Arbitrażowy, no. 2-3 (10-11)/2012); *Podstawa normatywna zasady poufności w polskim arbitrażu handlowym* [*Normative basis of the confidentiality principle in Polish commercial arbitration*] (Przegląd Prawa Handlowego, 2013/1 (245)); interim measures (*Evolution of interim measures as an example of the judicalisation of 21st century international commercial arbitration* (in:) B. Gessel-Kalinowska vel Kalisz, *The challenges and the future of commercial and investment arbitration. Liber Amicorum Professor Jerzy Rajski,* Warsaw 2015, arbitrability of disputes for exclusion of a shareholder in a limited liability company (co-author Kisielińska-Garncarek J., *Zdatność arbitrażowa sporu dotyczącego wyłączenia wspólnika ze spółki z o.o. – glosa do postanowienia Sądu Apelacyjnego w Katowicach z 15.12.2016 r., V ACz 1309/16* [*Arbitrability of a dispute concerning exclusion of a shareholder from a limited liability company – Comments to the judgement...*], Glosa, 2019/1 (171)), the legal form of the arbitration agreement (*Zastrzeżenie formy pisemnej dla umowy o arbitraż jako zastrzeżenie formy pisemnej dla celów dowodowych* [*Reservation of the written form for an arbitration agreement as reservation of the legal form for evidentiary purposes*], Państwo i Prawo, 2015/12 (838)), and *functus officio* issues (*UNCITRAL Model Law: Composition of the Arbitration Tribunal Re-considering the Case upon Setting Aside of the Original Arbitration,* Journal of International Arbitration, 2017/1 (34); *Uchylenie wyroku arbitrażowego a skład sądu polubownego w przypadku ponownego rozpoznania sprawy* [*Overturning of an arbitration judgement and the composition of the ADR tribunal in the event of renewed consideration of the case*] (in:) B. Jelonek-Jarco, R. Kos, J. Zawadzka (ed.), *Usus Magister Est Optimus. Rozprawy prawnicze ofiarowane Profesorowi Andrzejowi Kubasowi* [*Legal essays in tribute to Prof Andrzej Kubas*], CH Beck, Warsaw 2016). I also worked to diagnose the current condition of arbitration law and called for

changes within the research project Konkurencyjność Arbitrażu (described in detail in Schedule 3 item II.G.1. of Wniosek habilitacyjny): Błaszczak Ł. et al., *Diagnoza Arbitrażu. Funkcjonowanie prawa o arbitrażu i kierunki postulowanych zmian* [*Diagnosis of arbitration. Operation of arbitration law and tropes of postultaed changes*], Wrocław 2014 (I coordinated work on this publication and served as its editor); and *Biała Księga. Propozycje zmian legislacyjnych mających na celu ulepszenie ram prawnych sądownictwa polubownego w Polsce* [*White paper. Proposals re legislative changes to improve the legal framework for ADR in Poland*], Warsaw-Katowice-Kraków-Wrocław-Poznań 2014 – co-edited with M. Zachariasiewicz (I was also a member of the study team). I also wrote about the new Brussels I Regulation - *Projekt Parlamentu Europejskiego dotyczący Rozporządzenia Bruksela I – powrót do ery sprzed West Tankers?* [*The European Parliament draft re Brussels I – A return to the pre-West Tankers era ?*] , E-Przegląd Arbitrażowy no. 4 (7)/2011 and provided editing and commentary to the rules of the Lewiatan Court of Arbitration - *Postępowanie przed sądem polubownym. Komentarz do Regulaminu Sądu Arbitrażowego przy Konfederacji Lewiatan* [*Proceedings before an ADR tribunal. Commentary to the rules of the Lewiatan Court of Arbitration*], Wolters Kluwer, Warsaw 2016.

I recently found myself devoting more attention to **investment arbitration** issues, writing on the role of precedent in investment arbitration (together with Dr Konrad Czech - *The Role of Precedent in Investment Treaty Arbitration* (in:) B. Legum (ed.), *Investment Treaty Arbitration Review*, London 2018) and on validity of investment treaties within the European Union – an article on this topic, likewise co-written with Dr Konrad Czech, is presently awaiting publication in Zeszyty Prawnicze UKSW- *Uwagi na temat decyzji trybunału arbitrażowego w sprawie Vattenfall AB and others v. Federal Republic of Germany z 31 sierpnia 2018 r. co do znaczenia sprawy Achmea* [*Comments to the arbitral decision in Vattenfall AB and others v. Federal Republic of Germany of 31 August 2018 as regards significance of the Achmea case*]. I spoke on *The future of the intra-EU ECT framework after Achmea: Vattenfall and its impact on investment arbitrations in the oil & gas sector* during the panel entitled *Biggest challenges for oil and gas arbitration* during the III Oxford Symposium on Comparative International Commercial Arbitration, 2018.

In the realm of commercial law, I continued my work on **mergers and acquisitions** topics, both as lecturer (leading classes at the Faculty of Law of Cardinal Stefan Wyszyński University) and as author: *Wpływ nowej regulacji rękojmi przy sprzedaży (art. 5561 k.c.) na definicję wady fizycznej prawa udziałowego – uwagi w świetle zmian kodeksu cywilnego*

wprowadzonych ustawą z 30.05.2014 r. o prawach konsumenta [*Impact of the new statutory warrant at sale regulation on the definition of the physical defect of a share right – Comments in light to amendments of the Polish Civil Code implemented by way of the legislative Act regarding consumer rights*] (Przegląd Prawa Handlowego, 2015/12); *A Defect of the Enterprise as a Defect of a Share – One of the Dilemmas of M&A Transactions (Polish law perspective)* (C. Cascante, A. Spahlinger, S. Wilske (ed.), *Global Wisdom on Business Transactions, International Law and Dispute Resolution. Festschrift für Gerhard Wegen zum 65. Geburststag*, CH Beck, Munich 2015). These pursuits often involved questions concerning resolution of corporate disputes, also with respect to M&A. In 2016, during an academic conference organised by the Civil Process Department of the Faculty of Law, Administration and Economics of the University of Wrocław, *Postępowanie cywilne w dobie przemian* [*Civil procedure in an era of change*], I spoke on *Powództwo o ustalenie na kanwie umów fuzji i przejęć (M&A)* [*Declaratory relief claim in the context of M&A agreements*]. Beginning in 2010, I organise a bi-annual international conference in Warsaw, *Dispute Resolution in M&A Transactions. Tactics, Challenges, Defences,* nominated for the OGEMID award; I formulated the original idea, and I continue to prepare the substantive programme for the consecutive iterations – in fact, it is in the context of this conference that I first began to explore issues relating to declaratory relief which, in time, became the subject of my monograph (described above).

VI. Academic and research achievements prior to completion of PhD

Before my PhD, my academic and research activities revolved primarily around M&A transactions and arbitration.

A selection of articles: *Dopuszczalność zapisu na sąd polubowny* [*Admissibiity of arbitration clauses*] (with Robert Niczyporuk, Rzeczpospolita, 06 February 1998) *Najeźdźcy wciąż w akcji. Jak uczciwie się bronić przed wrogim przejęciem* [*Raiders keep up the pressure. How to mount a fair defence against a hostile take-over*](with Paweł Matusiak, Agata Krasuska, Parkiet, 16-18 November 2002), *Miarkowanie kar umiarkowanie potrzebne. Dyskusja nad nowym kształtem kodeksu cywilnego* [*Moderation of penaltes moderately necessary. Debate on a new Civil Code*] (Rzeczpospolita, 13 July 2005), *Bezstronność i niezależność arbitra: co to znaczy* [*Impartiality and independence of an arbitrator: What does this mean ?*](Rzeczpospolita, 28 March 2007), *Nie we wszystkich sprawach arbitraż jest korzystny* [*Arbitration isn't always advantageous*] (Gazeta Prawna, 11 September 2007), *Fuzje i przejęcia: nie kupuj kota w worku*

[*M&A: Look before you buy*] (Prawo w firmie 2008 – supplement to Harvard Business Review Polska*), Kilka uwag w przedmiocie konfliktu interesów w przypadku arbitrów pochodzących z wieloosobowych kancelarii prawnych* [*A few remarks re conflict of interest in the case of arbitrators from large law firms*] (Pieckowski S., Szumański A., Tynel A., Nowaczyk P. (ed.) *Międzynarodowy i krajowy arbitraż handlowy u progu XXI wieku. Księga pamiątkowa dedykowana dr hab. Tadeuszowi Szurskiemu,* Warsaw 2008), *Udział kapitałowy w spółce z o.o. jako prawo podmiotowe* [*Capitla share in a limited liability company as an objective right*] (Przegląd Prawa Handlowego 2008/5), *Przyczynek do rozważań na temat odrębności postępowania dowodowego w sprawach rozstrzyganych przez sądy polubowne* [*Distinct nature of evidentiary proceedings in cases decided by ADR tribunals – Preliminary remarks*] (Kwartalnik ADR, 2009/1).

I attended numerous academic and thematic conferences, including.:

1. Arbitration Workshops – a series of five workshops for arbitrators and in-house lawyers organised by the Lewiatan Court of Arbitration (project coordinator, speaker), Warsaw, 2007–2008.
2. XVIII Economic Forum. Debate: *Umowy Inwestycyjne a Arbitraż: Siła Napędowa Reform czy Naruszenie Suwerenności* [*Investment treaties and arbitration: Driving force of reform, or violation of sovereignty ?*] (speaker), Krynica Zdrój, 2008.
3. *3rd Annual CEE Private Equity Forum.* Panel: *Financing Transactions in the New Credit Environment*, Vienna, 2009.
4. *CEE Private Equity Forum.* Panel: *Liability Issues in PE Fund Transaction*, London, 2009.

In 2009-2010, I provided the initial idea and current coordination for the project entitled "*Promocja polubownych metod rozwiązywania konfliktów gospodarczych*", ["*Promotion of ADR in business conflicts*"] co-financed by the European Union within the European Social Fund and implemented by the Lewiatan Court of Arbitration. In this context, we commenced implementation of the programme "7 Steps of Arbitration" within which we prepared a manual for businesspeople and entrepreneurs in which we explain the basic concepts of arbitration, and we held a number of training sessions and presentations to promote arbitration among the Polish business community. We also organised the first edition of the "Dispute Resolution in M&A Transactions" conference, which I organised at the conceptual and substantive levels.

VII. Future plans

I plan to continue research in the topics hereuntil pursued. The first of these would be comparative law; having thoroughly explored the Germanic and common law systems, I now plan to analyse legal systems hailing from the French tradition (systemic bases of French private law, commercial law, and M&A issues, replete with potential claims in this area) – tentatively timed for 2020. Armed with this new knowledge, I will be better placed to embark on a comprehensive treatment of claims arising from breach of obligations assumed in M&A transactions in their comparative dimension. I hope to share some of these insights with students at Cardinal Stefan Wyszyński University in the context of my comparative law classes. The comparative approach, whether as a standalone discipline or as a study tool, is invaluable in research and didactic processes alike. It has been said at the founding congress in Paris that "he who knows only his own law does not know his law"[17], and this statement has lost none of its currency or its fundamental wisdom. Alas, Polish academia seems to have been on a substandard diet in terms of comparative law, and I would like to do something towards remedying these shortcomings. I also intend to pursue my interests in commercial arbitration and commercial law.

Warszawa, dnia 19 kwietnia 2019 roku

Beata Gessel-Kalinowska vel Kalisz

[17] BRODECKI Z. (in:) Z. Brodecki, M. Konopacka, A. Brodecka-Chamera, *Komparatystyka kultur prawnych*, Warsaw 2010, p. 15.