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## *"Due process"*

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## Answers to questionnaire: Poland

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# Due Process

**Questionnaire for the ACA Seminar in Tallinn, 26-27 April 2018**

*This questionnaire focuses on the limiting of a person's procedural rights based on the principle of procedural economy. First and foremost, it seeks to answer the questions whether Member States have regulated the simplification of procedure in resolving certain types of administrative disputes, and where is the line drawn between effective court procedure and the protection of a person's procedural rights.*

*The principle of effective judicial protection is a general principle of European Union law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and which has also been reaffirmed by Article 47 of the Charter of fundamental rights of the European Union (joined cases C-402/05 P and C-415/05 P: Kadi, p 335; C-432/05: Unibet, p 37, and the case law referenced therein). The Court of Justice of the European Union (CJEU) has stated that the principle of effective judicial protection laid down in Article 47 of the Charter comprises various elements; in particular, the rights of the defence, the principle of equality of arms, the right of access to a tribunal and the right to be advised, defended and represented (C-199/11: European Union v. Otis NV and others, p 48).*

*On the other hand, it is the CJEU's settled case law that fundamental rights, such as respect for the rights of the defence, do not constitute unfettered prerogatives and may be restricted, provided that the restrictions in fact correspond to objectives of general interest pursued by the measure in question and that they do not involve, with regard to the objectives pursued, a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed (C-166/13: Mukarubega, p 53, and the case law referenced therein). In addition, the CJEU has stated that the principle of effective judicial protection does not only require that everyone should be able to exercise their right of access to court, but also that the administration of justice should be effective (F-3/11: Marcuccio, p 53). For instance, according to the CJEU, as long as the person can exercise their right to be heard, Article 47 of the Charter does not require an oral hearing in each case (see, for example, C-239/12 P: Abdulrahim, p 42; joined cases T-589/14 and T-772/14: Musso, p 59).*

*It follows from Article 52 subsection 3 of the Charter and the explanations relating to Article 47, that when defining the meaning and scope of the principle of effective judicial protection, it is also important to look at Article 6 of the European Convention for the Protection of Human Rights and the case law of the European Court of Human Rights (ECHR) on the topic.*

*According to Article 6 subsection 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the principle of a fair trial also includes the format of hearing a matter. According to the case law of the ECHR, a court case generally has to be reviewed in an oral hearing by at least one court instance; however, Member States can implement simplified proceedings for smaller and less complex disputes. This can serve the interests of the parties by facilitating access to justice, by reducing costs related to the proceedings and by accelerating the resolution of disputes.*

*According to ECHR case law, simplified proceedings can generally mean written proceedings, except in cases when the court deems an oral hearing to be necessary or if a party to the proceedings requests a hearing (in which case the request may be refused by the court) (see Pönka vs Estonia, No. 64160/11, p 30; on the obligation to hold a hearing see also: Göç v. Turkey [Grand Chamber], No. 36590/97, p 47, ECHR 2002-V, and the case law*

*referenced therein; Miller v. Sweden, No. 55853/00, p 29, February 8, 2005). ECHR has accepted exceptional circumstances for foregoing an oral hearing in cases where the proceedings concerned exclusively legal or highly technical questions, and which by their nature are not complex (see Koottummel v. Austria, No. 49616/06, p 19, December 10, 2009, and the case law referenced therein, Allan Jacobsson v. Sweden (no. 2), p 49; Valová, Slezák and Slezák v. Slovakia, p-s 65-68, Varela Assalino v. Portugal (dec.); Speil v. Austria (dec.), Schuler-Zgraggen v. Switzerland, p 58; Döry v. Sweden, No. 28394/95, p 41; and contrast Salomonsson v. Sweden, p-s 39-40; Jussila v. Finland [GC], No. 73053/01, p-s 41–42 and 47–48). A case can also be heard in simplified proceedings or written proceedings if the case raises no questions of fact or law which cannot be adequately resolved on the basis of the case file and the parties' written observations (see Döry v. Sweden, p 37) or if written proceedings are more effective than oral ones (Jussila v. Finland [GC], p-s 41–42 and 47–48).*

*Simplified proceedings in the context of this questionnaire mean special arrangements in administrative court procedure (a type of procedure) that allow for the court proceedings to be carried out in a simpler or faster manner than usual (shortened proceedings, accelerated proceedings, simple proceedings or any other special arrangements for resolving an administrative case in administrative court). Simplified proceedings, their prerequisites and nature are dealt with in part A of this questionnaire. It must be noted that in part A of the questionnaire, simplified proceedings do not include written proceedings without any other simplification, nor limitations of the right to appeal. The possibilities for resolving administrative cases in written proceedings will be dealt with in part B of the questionnaire, which also briefly touches upon the possibility of conducting a hearing via videoconferencing.*

*If simplified proceedings do not exist as a separate type of procedure in administrative courts in your country, when answering please do consider whether there are other, specific possibilities to make procedures more effective in certain ways (for example, exceptions in taking the minutes, procedural deadlines, format requirements, delivering the procedural documents, pre-trial proceedings, the formatting of a decision, the court panel, holding an oral hearing, etc.).*

# Part A

### Efficiency of Court Proceedings (at the Expense of Procedural Guarantees)

**1. Simplified proceedings**

Does your administrative procedural law provide for the possibility of resolving administrative cases in simplified proceedings: on the level of the highest administrative court and/or in lower administrative courts? (YES/NO)

- If NO, then are there any other possibilities for simplifying administrative court procedures (are there exceptions in, for example, taking the minutes, procedural deadlines, format requirements, delivering the procedural documents, pre-trial proceedings, the formatting of a decision, the court panel, holding an oral hearing, etc.)? Have there been discussions about the creation of simplified proceedings as a separate type of procedure? What are the main positions on the issue?

- <u>If YES, please answer questions 2–4.</u>

GENERAL REMARKS

I. First and foremost, it needs to be pointed out that the Act of 30 August 2002 – Law on Proceedings before Administrative Courts (consolidated text, Journal of Laws [Dz. U.] of 2017, item 1369 as amended, hereinafter referred to as the LPAC), which is a basic legal act that regulates proceedings before administrative courts, provides for the rule under which cases are to be examined during a hearing (in public) in a panel of three judges (Article 10, Article 90(1) and Article 16(1) of the LPAC). The LPAC, therefore, provides a party to administrative court proceedings with the possibility of being heard both before the first-instance court (voivodship administrative court) and the second-instance court (the Supreme Administrative Court). At the same time, it should be emphasised that a cassation-based adjudicating model is adopted by administrative courts in Poland and the scope of evidence procedures is limited. An administrative court may, either *ex officio* or at the request of the parties, accept additional documentary evidence, provided that this is necessary to resolve substantial doubts and will not extend excessively the proceedings on the case (Article 106(3) of the LPAC). II. Given a broad definition of simplified proceedings as adopted for the purposes of this questionnaire, this procedure may be discussed in the context of Polish law with respect to three scenarios, which will constitute the basis for providing answers to the questions in this questionnaire.

1. The first scenario covers a solution explicitly defined by the legislator as simplified proceedings. This refers exclusively to proceedings before the first-instance court and has no impact whatsoever on the process of hearing a case before the Supreme Administrative Court. An adjudicating panel is not changed (a case is heard by three judges). The difference between this scenario and general rules of proceedings consists in that a case may be heard *in camera*, and it may be attended only by persons summoned (Article 95(2) of the LPAC), and there is no requirement of keeping records (Article 100(2) of the LPAC). In accordance with Article 119 and 121 of the LPAC, a case may be heard within such a (simplified) mode in the following circumstances:

- if a decision or order under scrutiny has been affected by invalidity or has been issued in violation of the law which provides a basis for reopening of the proceedings (Article 119(1) of the LPAC);

- if a party has requested that the case be referred to be heard within a simplified mode, and none of the other parties has demanded, within 14 days from the notification of the filing of the request, that a trial be conducted (Article 119(2) of the LPAC);

- if an order made in administrative proceedings which is subject to an interlocutory appeal or concludes the proceedings as well as an order ruling on the merits of the case and

an order made in enforcement proceedings and proceedings to secure claims which is subject to an interlocutory appeal is the subject of the complaint (Article 119(3) of the LPAC);

- if the failure to act or excessive length of proceedings is the subject of the complaint (Article 119(4) of the LPAC);

- if an administrative decision has been issued in simplified proceedings provided for in the Code of Administrative Proceedings (Article 119(5) of the LPAC);

- if an administrative authority failed to forward the complaint in spite of being awarded a fine for that reason, and the court, at the request of the complainant, hears the case on the basis of a submitted copy of the complaint (provided that factual and legal circumstances of the case as presented in the complaint raise no reasonable doubts) (Article 121 of the LPAC).

2. The second scenario covers situations in which it is acceptable to hear a case during an *in camera* session by the second-instance court (however, the legislator did not refer to such circumstances by using the term 'simplified proceedings'). Pursuant to Article 182(1) and (3) of the LPAC, the Supreme Administrative Court may hear *in camera*, in a one-judge panel, a cassation appeal against an order of the voivodship administrative court closing the proceedings. Additionally, the court of appeal is required to hear a case *in camera* in a panel of three judges, if a party who filed a cassation appeal has waived its right to a hearing and the remaining parties did not request the hearing within fourteen days of being served the cassation appeal (Article 182(2) and (3) of the LPAC).

3. The third scenario of proceedings bearing resemblance to simplified proceedings is so-called proceedings based on the objection against an administrative decision, introduced to the LPAC on 1 June 2017. These are special proceedings that envisage submitting a special measure of appeal, being an objection, instead of a complaint. The objection may be lodged exclusively against a cassation decision issued by an appeal public administration authority that does not resolve the merits of the case. Such a decision repeals a decision issued by a first-instance administrative authority in its entirety and results in the case being forwarded for reconsideration by the same authority due to the fact that the original decision has been issued in breach of procedural regulations and the scope of the case that needs to be clarified has a significant impact on the outcome (Article 64a of the LPAC). Exceptions from the general rules of proceedings consist here not only in that the case is heard *in camera*, but they apply also to:

- the time-limit for appealing (a party has 14 days of being served a decision to file an objection, and not 30 days as in ordinary proceedings – Article 64c(1) of the LPAC),

- the time-limit for forwarding the case file by the administrative authority to the court (the authority has 14 days to do so and not 30 days as in ordinary proceedings – Article 64c(4) of the LPAC),

- the fact that an administrative authority is not required to respond to the objection,

- the time-limit for hearing the objection (the court is required to hear the objection within 30 days of receipt thereof, while in ordinary proceedings there is no similar time-limit – Article 64d(1) of the LPAC),

- a group of persons entitled to take part in proceedings (the group is limited to a party and an administrative authority, since the legal provision on participants does not apply to the objection-based proceedings – Article 64b(3) of the LPAC),

- scope of examination (the court only verifies whether there were any grounds for issuing a cassation decision and is not required to examine the entirety of the case, contrary to ordinary proceedings – Article 64e of the LPAC).

Additionally, the special rules applicable to objection-based proceedings apply also to the stage of proceedings before the Supreme Administrative Court. If an objection is dismissed by the voivodship administrative court, the Supreme Administrative Court is required to hear the cassation appeal against such a judgment *in camera* in a panel of one judge within 30 days of its receipt (Article 182a and Article 182(2a) and (3) of the LPAC). If the objection is granted by the voivodship administrative court, it is impossible to file a cassation appeal to the Supreme Administrative Court.

III. Irrespective of the above, it should be mentioned that the LPAC provides for a number of solutions aiming at streamlining the proceedings and making them faster. To illustrate this, the following may be mentioned:

· no requirement of a party's attendance at a hearing (as a rule, failure by a party to attend a hearing does not preclude the possibility of hearing the case and pronouncing a judgment – Article 107 and Article 139(2) of the LPAC);

· no requirement of individual arrangements and notifications issued by the court regarding the proceedings and actions taken with regard to so-called participants having the rights of a party (persons who participated in administrative proceedings, but have not lodged a complaint, while the outcome of the court proceedings concerns their legal interest – Article 33(1a) of the LPAC);

· reasons for a judgment dismissing a complaint are prepared exclusively at the request of a party (Article 141(2) of the LPAC);

· majority of pleadings are required to be served directly between legal representatives (and not through the court – Article 66(1) of the LPAC);

· self-revision (it is possible for an administrative authority to grant a complaint or objection, or for a voivodship administrative court to grant a cassation appeal or an interlocutory appeal, even before the competent court hears such means of appeal – Article 54(3), Article 64c(5), Article 179a, Article 195(2) of the LPAC).

IV. Finally, it needs to be emphasised that certain exceptions from the general rules of administrative court proceedings aiming at streamlining the proceedings are also provided for in special statutory acts. Modifications included therein consist mainly in shortening the time-limit for lodging a complaint (or a cassation appeal) and imposing an obligation on the court to hear a complaint (or a cassation appeal) within a period specified. These solutions have been envisaged, among others, with regard to:

- proceedings regarding the access to public information (Article 21 of the Act of 6 September 2001 on the Access to Public Information – consolidated text, Journal of Laws [Dz. U.] of 2016, item 1764),

- cases concerning a negative assessment of a project proposed by an applicant applying for funds under the development policy (Article 30c and Article 30d of the Act of 6 December 2006 on the Rules of Implementing the Development Policy – consolidated text, Journal of Laws [Dz. U.] of 2017, item 1376 as amended),

- cases concerning a local referendum (Article 20(1) and (2), Article 26(1) and (2) of the Act of 15 September 2000 on a Local Referendum – consolidated text, Journal of Laws [Dz. U.] of 2016, item 400 as amended),

- the event of dismissal of the president of the local government board of appeal (Article 6(4) of the Act of 12 October 1994 on Local Government Board of Appeals – consolidated text, Journal of Laws [Dz. U.] of 2015, item 1659 as amended).

**2. Prerequisites of simplified proceedings**

**2.1** To hear a case in simplified proceedings, is the prerequisite:

a. that the dispute is in a specific area of law? Please specify which areas (for example, minor traffic violations, administrative fees, aliens' cases, extradition *etc.*);
- see examples of cases listed in point IV of the general remarks

b. a minor infringement? Please specify criteria for which infringements are considered minor (for example, is the breach of law in question of a low priority or is the amount of the claim small; is it characterised by a monetary limit and if so, what is it?). If possible, please submit the legal definition of a minor infringement or a small claim, as well as examples or definitions from case law;

c. that the solution to the case is clear and obvious;
- see remarks included in the first indent of point II.1 (decisions affected by invalidity or grounds for reopening the proceedings) – it may be concluded that violations of procedures are obvious and evident, which is why this type of cases should be heard within simplified proceedings. Such a solution, however, is

criticised in legal theory as it is argued that decisions and orders affected by the most serious, qualified defects should not be heard within simplified proceedings

- see remarks included in the sixth indent of point II.1

d. something else (please specify)?
- the will of the parties to the proceedings (see remarks included in the second indent of point II.1 and in point II.2)

- continuation of simplified proceedings initiated before public administration authorities (see the fifth indent of point II.1) – given that the regulations regarding the simplified proceedings were introduced to the Code of Administrative Proceedings as of 1 June 2017, it is currently impossible to provide a list of cases that will be heard by public administration authorities in this mode, and consequently, will be dealt with simplified proceedings by the first-instance administrative court, because the legislator has envisaged that cases will be forwarded to be heard by public administration authorities within simplified proceedings provided that this is stipulated in special provisions

- inheritance litigations in which factual circumstances raise no major doubts (see remarks included in the third indent of point II.1, e.g. complaint against a decision on the inadmissibility of the interlocutory appeal; a complaint against a decision on the costs of enforcement proceedings)

- the nature of the case that calls for swift decisions – slowness of public administration authorities (see remarks included in the fourth indent of point II.1, i.e. cases concerning failure to act and excessive length of proceedings)

- a form of the decision issued by the voivodship administrative court, i.e. orders closing the proceedings (see remarks in point II.2) – this type of rulings issued by voivodship administrative courts includes decisions closing the proceedings before the first-instance court without deciding on the merits of the case (e.g. an order to reject a complaint in some circumstances provided for in a statutory act, an order to discontinue the suspended proceedings, an order to reject a complaint to reopen the proceedings)

- a cassation decision issued by a public administration authority (that does not decide on the merits of the case) – see remarks included in point II.3

**2.2** Have the possibilities of hearing a case in simplified proceedings been exhaustively defined in law or is it case law instead that has a decisive role in whether it is used (for example, a discretionary decision)?

The cases which are to be dealt with within simplified proceedings are strictly specified by legal regulations. It should be noted, however, that applying the simplified proceedings is not, as a rule, mandatory (apart from the situation in which a party makes a request in this regard and the other parties have not objected to this request during the proceedings before the Supreme Administrative Court – see remarks in point II.2, and in the case of filing an objection against a decision – see remarks included in point II.3). This means that each time it is the court that decides if a given case is to be proceeded with within such a procedure (in practice, the decision is made by the chairpersons of adjudicating departments who refer such cases to *in camera* sessions – see Article 62(3) of the LPAC, which is also applicable to proceedings before the Supreme Administrative Court, pursuant to the reference

made in Article 193 of the LPAC; Paragraph 32(2) of the Internal Regulations on the Functioning of Voivodship Administrative Courts and Paragraph 21(4) of the Internal Regulations on the Functioning of the Supreme Administrative Court).

**2.3** Can the court use simplified proceedings regardless of whether the parties to the proceedings agree to it?

As it may be concluded from the general remarks, whether or not a case is heard within simplified proceedings does not usually depend on the consent of the parties to the proceedings.

**2.4** Can a person appeal the implementation of simplified proceedings separately from the final court decision?

The LPAC does not provide for the possibility of lodging a separate complaint against a decision to forward the case to be heard within simplified proceedings.

**2.5** Can simplified proceedings be carried over into general procedure and *vice versa*?

Yes, it can; in any of circumstances described in point II, the LPAC authorises the court to forward the case to be heard at a hearing (Article 122, Article 64d(2), Article 90(2) in conjunction with Article 193 of the LPAC). It is questionable, however, whether such a possibility may be exercised when the Supreme Administrative Court hears a cassation appeal in which a party has waived its right to a hearing and the other parties have not requested such a hearing (as mentioned above, it is then mandatory to hear the case *in camera*).
Also, there are no obstacles preventing the president of the department or the designated judge from forwarding the cases forwarded to a hearing to *in camera* sessions (Article 62(3) of the LPAC), as long as there are statutory grounds to do so (admissibility of such an action should be, however, always assessed, for instance, in the context of the rule of swift proceedings, being the objective of simplified proceedings; for example, it could not be considered appropriate to forward the case to simplified proceedings after the commencement of the hearing).

## 3. Nature of simplified proceedings

**3.1** Which rules of administrative court procedure are mandatory in simplified proceedings (for example, hearing the parties, general principles of administrative court procedure, *etc.*)?

In simplified proceedings, both the general rules applicable to court proceedings, and *strictly* procedural rules typical of administrative court proceedings are applied (with the exceptions specified below in point 3.2). The first group includes: the rule under which proceedings are two-instance proceedings; the rule of legality (under which cases are examined in terms of their compliance with law), the rule of effectiveness of proceedings (economy of proceedings), the rule of providing legal aid to the parties that are not represented by a professional attorney (the court is required to provide guidance on procedural actions and to issue notices on legal effects of such acts or failure to act), the rule of access to a fair trial (including the right to be relieved from court fees and having the attorney appointed *ex officio*) and the rule of adversarial system (proceedings are initiated only at the request of a party and it is impossible to initiate administrative court proceedings *ex officio*). The second category of rules includes: the rule of equality of parties, the rule of disposition (it is admissible for a party to withdraw its complain and a cassation appeal), the rule of priority of having

the case settled in proceedings before a public administration authority (it is possible to bring action only after the proceedings before public administration authorities are closed); the rule of material truth (it is required that the court assess evidence and explanatory actions taken by the authority as well as correctness of using evidence to deal with the case in accordance with the rule of material truth), the rule of adjudicating according to the *status quo* as of the date of performing the act or action complained against (it is necessary to examine the legality of the contested act, irrespective of the content of claims included in the complaint) and the rule of being bound by the limits of a cassation appeal (the Supreme Administrative Court is required to examine the contested judgment exclusively in the limits of claim's grounds made by the party).

**3.2** Which general rules of administrative court procedure do not need to be followed in simplified proceedings (are there exceptions, for example, in taking the minutes, procedural deadlines, format requirements, delivering the procedural documents, pre-trial proceedings, the formatting of a decision, the court panel, holding an oral hearing, public announcement *etc.*)?

Simplified proceedings as described above constitute an exception to the rule of the openness of proceedings (under which cases are heard during hearings). Given the fact that in simplified proceedings a case is heard *in camera*:

- the court, as a rule, is not required to prepare records of such a sitting (unless any person summoned to appear was heard or other procedural actions were taken – see Paragraph 51(3) of the Internal Regulations of the Functioning of the Voivodship Administrative Court and Paragraph 67(3) of the Internal Regulations of the Functioning of the Supreme Administrative Court; also, an official note is to be written down of an *in camera* session, if no judicial decision has been made – see Article 100(2) of the LPAC);

- the sitting may be attended only by those who were summoned to appear (Article 95(2) of the LPAC);

- a judgment rendered *in camera* is immediately made publicly available at the registry of the court for a period of fourteen days, which means that the judgment is not pronounced (Article 139(5) of the LPAC);

- in some cases, a ruling that closes the proceedings has a form of an order (see the situation described in the second sentence of point II.2 of the general remarks);

- sometimes the court adjudicates in a panel of one judge (see the situation described in the second sentence of point II.2 of the general remarks)

In the case of proceedings initiated as a result of an objection being lodged against an administrative decision (Article 64a of the LPAC), the court's obligation to examine the entirety of the case and to take into account any infringements of law observed as well as the rule under which proceedings are two-instance proceedings are also limited (see remarks in point II.3).

**3.3** Are there differences in using simplified proceedings across the court instances?

As it may be concluded from the general remarks, it is necessary to distinguish between simplified proceedings before first-instance and second-instance courts.

With the exception of the proceedings based on the objection against an administrative decision (point II.3), the simplified mode applied in proceedings before the Supreme Administrative Court (point II.2) does not constitute the continuation of the simplified proceedings pending before the voivodship administrative court (point II.1).

**3.4** What are the limitations on the right to appeal in case of simplified proceedings? Can an administrative case that is resolved in simplified proceedings be appealed up to the highest instance? If there are differences compared to general procedure, please describe how a case for which simplified proceedings are used moves through the court system (for example, the appeal might be submitted directly to the highest court, etc.).

A case heard within simplified proceedings before the first-instance court (point II.1) is subject to a cassation appeal to be filed with the Supreme Administrative Court under generally applicable rules. Therefore, there is no distinction in this regard with general proceedings.

There is a difference, however, with regard to the possibility of lodging a complaint in the case of proceedings initiated by the objection against an administrative decision. No party is entitled to lodge a cassation appeal with the Supreme Administrative Court if the objection is granted by the first-instance court (point II.3).

**3.5** In simplified proceedings, can a court issue a judgment without the statement of reasons? (YES/NO)

Both in simplified proceedings pending before the first-instance court (point II.1) and in proceedings based on the objection (point II.3), the general rule applies under which only the judgments granting a complaint (or objection, respectively) are to be justified *ex officio*. When a complaint is dismissed, the reasons for a judgment are prepared at the request of a party filed within an appropriate time-limit (Article 141(1) and (2) of the LPAC). For any rulings issued by the Supreme Administrative Court, reasons are provided *ex officio* (without the obligation for a party to make a request in this regard – Article 193 of the LPAC).

- If NO, then why is such a possibility not provided?

- <u>If YES</u>, then:

  a. what kind of information does that judgment have to contain?
  A ruling (without reasons) is composed of an operative part that should include: designation of the court, first and last names of judges, recording clerk, as well as public prosecutor who has participated in the case (if any), the date and place of the hearing of the case and of rendering the judgment, the name of the complainant, the subject-matter of the complaint and the determination of the case made by the court (Article 138 of the LPAC).

  b. do the parties to the proceedings have the right to demand for the judgment to be supplemented with the statement of reasons?
  Yes, they do (see remarks in point 3.5 above)

**4. Simplified proceedings in court practice**

**4.1** What is the share of cases resolved in simplified proceedings out of all resolved cases? (%)

The data from 2016 show that 7,440 complaints were heard within simplified proceedings (point II.1), which accounts for 9.42% of all cases dealt with during this period. It should be noted that the share of the cases heard in such a manner increased significantly due to the extension, in 2015, of the list of cases that may be forwarded to be heard within simplified proceedings (earlier, in 2004–2015, the share of cases heard within simplified proceedings in the total number of cases heard was between 0.06% and 2.14%).

In 2016, 2,036 cassation appeals examined by the Supreme Administrative Court, which accounts for 12.1%, were heard *in camera* (point II.2).

There are no data on proceedings based on the objection against an administrative decision (point II.3), since this concept was introduced on 1 June 2017.

**4.2** Has the case law in your country pointed to any problems related to simplified proceedings, and if it has, what kinds of problems were they? Please give up to 3 examples.

The jurisprudence of administrative courts touched mainly upon the subject of the autonomy of courts' decisions on forwarding cases to be heard within simplified proceedings and upon issues related to the possibility of forwarding the case to be heard at a hearing. It was emphasised, among others, that the hearing within simplified proceedings of a complaint against a contestable order issued by an administrative authority does not depend on the party's request in this regard, and therefore the case is forwarded to be heard within such a mode *ex officio.* It was also noted that the request of a party to have the case heard at a hearing is not binding for the court (see, for instance, the following judgments: Judgment of the Voivodship Administrative Court in Cracow of 26 July 2017, Case File III SA/Kr 643/17 and Judgment of the Voivodship Administrative Court in Gdańsk of 22 March 2017, Case File I SA/Gd 1705/16). Another topic considered was the issue of legality of forwarding the case already pending under general proceedings to be heard within simplified proceedings. In one of its judgments, the Supreme Administrative Court held that if the case had been already heard at a hearing and was not sufficiently clarified, there were no grounds to hear it *in camera* within simplified proceedings (judgment of the Supreme Administrative Court of 3 July 2008, Case File II OSK 754/07).

It may be also assumed that in the nearest future courts will often adjudicate in the matters of objections against administrative decisions as many doubts are voiced in legal theory in respect of this measure (for instance, reservations are raised by the fact that it is impossible to contest a judgment granting such an objection).

# Part B

### Right to Public Hearing

**1.** Are there any types of administrative cases or any court instances in which only oral proceedings are allowed (i.e. written proceedings are prohibited)?

Polish administrative court procedures do not envisage such cases.

**2.** Under which circumstances may cases be resolved in written proceedings? Can the justification be, for example:

a. exclusively legal questions;
b. highly technical questions;
c. the case raises no questions of fact or law that cannot be adequately resolved on the basis of the case file and the parties' written observations;
d. other bases, for example at the request of one of the parties to the proceedings?

Not applicable.
The LPAC do not provide for any written procedures within the meaning assumed in the introduction to this questionnaire.

**3.** Can oral proceedings also be carried out via videoconferencing (i.e. in a manner where either a party to the proceedings or their representative or counsel can be in a different place during the hearing and carry out procedural acts in real time, through an audiovisual transmission)? (YES/NO)

No, they cannot.

- <u>If NO, then has the creation of such a possibility been discussed? What were the main positions on the issue?</u>

The matter of admissibility of 'remote' court administrative proceedings is currently a subject of wider discussions.

- If YES, then:

a. what are the legal limitations (for example, in which kinds of cases is it not permitted)?
b. have the risks of videoconferencing and the protection of a person's rights been discussed? What were the main positions on the issue?

4. Can oral proceedings also be carried out outside the court-room (in prison, hospital *etc*)? In which circumstances is this possible?

Yes, there is such a possibility, but in practice it is not applied given the limited scope of evidence proceedings carried out by administrative courts (see remarks in point I). Pursuant to Article 94 of the LPAC, court sessions are held in the courthouse, and outside it only when court actions must be carried out in another place or when holding of a session outside the courthouse facilitates the conduct of the case or contributes considerably to cost saving.