



Seminar organized by the Supreme Administrative Court of  
the Czech Republic and ACA-Europe

Limits of judicial guarantee

Brno, 9 September 2019

Answers to questionnaire: Poland



Seminar co-funded by the «Justice » program of the European Union



# ACA-Europe Seminar on Measures to Facilitate and Restrict Access to Administrative Courts

September 9, 2019

Nejvyšší správní soud Brno  
(Supreme Administrative Court Brno)

## *Questionnaire*

### **Introduction:**

The role of the administrative judiciary determines the conditions under which administrative courts work. These include the limits on the right of access to these courts, as well as the rules on such cases potentially progressing further within the judicial hierarchy. It is an area defined by an ongoing tension between two principles: the right to a fair trial that would speak in favour of opening the gates of judicial review, with the efficiency of judicial review pulling in exactly the other direction, namely of limiting access to administrative courts, in particular the higher ones.

The seminar to be held in Brno, the Czech Republic, on September 9, 2019 at the Supreme Administrative Court, follows the path opened by the seminars in Dublin and Berlin. It shares the objective of contributing to mutual understanding of the scope of judicial review of administrative cases. Consequently, it broadens and deepens the topic of access to the courts. The seminar therefore deals with the issue before the administrative judiciary as a whole, including the administrative courts of lower instances. It covers both formal and material measures which either facilitate or restrict access to the courts.

The seminar attempts to merge the principles of fair trial and efficiency. Based on shared knowledge of member states, it aims to describe the areas where the administrative judiciary should remain open to litigants and to analyse those where it may constrain its current role or, on the contrary, may exceed it. In other words, it examines the proportionality of restrictions on access to the administrative courts.

## I. The structure of the administrative judiciary

- a. Please describe briefly the structure of the administrative judiciary, i. e. how many instances your administrative judiciary (including all specialized jurisdictions, e. g. financial or social security) consists of and the relations of superiority and subordination between them, unless this information is available and up to date at the ACA-Europe webpage, Tour of Europe file.

The Polish administrative judiciary consists of regional (voivodship) administrative courts serving as courts of first instance and the Supreme Administrative Court serving as a court of second (and last) instance. In each case a cassation appeal (an ordinary, appellate measure) can be brought against the decision of the regional (voivodship) administrative court. Cassation appeals are heard by the Supreme Administrative Court - SAC (divided into three organisational units called Chambers).

- b. How many administrative courts and judges are in each of the instances? Please give numbers relevant at the end of the year 2018.

*(Note: if your administrative judiciary consists of two instances, use columns I. and II.; if it consists of more than three instances, please adjust the table. The same applies to all the tables used in this questionnaire.)*

Instance	I.	II.	III.
Name	Regional (Voivodship) Administrative Court	Supreme Administrative Court	
Number of courts	16	1	
Number of judges	476	107	

- c. How many judges are in all jurisdictions (i. e. administrative, civil and penal) altogether? Please give numbers relevant at the end of the year 2018.

There are around 10 000 judges in Poland.

**Note: In all the subsequent sections please give answers for each of the instances of the administrative judiciary, even if it is not specifically mentioned in the question.**

## II. Fees and access to the court

- a. Is access to the administrative court subject to a judicial (filing) fee? Please indicate the general principle (for exceptions see questions e., f. and g.). Answer yes/no.

Instance	I.	II.	III.
Judicial fee	Yes	Yes	

- b. If you answered *yes*, what is the amount of this fee (in euro)?

There are two kinds of filing fees: a proportional one and a fixed one.

Fixed fees fall in the range from 100 zlotys (around 23 €) to 10.000 zlotys (around 2.320 €) – depending on the subject matter of the case.

Whereas proportional fees are set as a percentage of the value of the subject matter. In cases in which the value subject matter is:

- up to 10.000 zlotys (around 2.320 €) – the fee is 4% of this value (however, not less than 100 zlotys – around 23 €)
- over 10.000 zlotys (around 2.320 €) to 50.000 zlotys (around 11.600 €) – the fee is 3% of this value (however, not less than 400 zlotys – around 93 €)
- over 50.000 zlotys (around 11.600 €) to 100.000 zlotys (around 23.200 €) – the fee is 2% of this value (however, not less than 1.500 zlotys – around 348 €)
- over 100.000 zlotys (around 23.200 €) – the fee is 1% of this value (however, no more than 100.000 zlotys – around 23.200 €).

As it can be seen from the above, fees (regardless of their type) fall within the range from 100 zlotys (around 23 €) to 100.000 zlotys (around 23.200 €).

- c. Is the amount of the fee in each of the instances flat or can it differ? If the amount can differ, under what conditions and how (e. g. when the petitioner is required to correct or eliminate faults in the petition, the fee rises)?

The amount of the fee might differ. In cases in which receivables are the subject of the challenge, a proportional filing fee is charged (e.g. tax cases). A fixed filing fee is charged in other cases (e.g. matters regarding concessions and permits).

The rules for determining the amount of the fee have been explained above but it must be underlined that the filing fee for a cassation appeal is **half** of the fee

paid before the court of first instance (before the regional (voivodship) administrative court). However, not less than 100 zlotys (23 €).

- d.** In what phase of the proceedings does the petitioner have to pay the fee (e. g. with the petition, after the proceedings commence, after the decision of the court is delivered)? What are the consequences of not fulfilling the duty to pay the fee?

A court fee shall be paid upon submission of a legal document subject to the fee (at the cashier's desk of a competent administrative court or to the bank account of the court).

The court can not proceed on any legal document for which the required fee has not been paid. In such an event the presiding judge shall call the person submitting the document to pay a fee within 7 days from the day of delivery of the call. After the ineffective expiry of that time limit the presiding judge shall issue a ruling on leaving the document unheard.

In case of means of appeal the consequences are different. A complaint, a cassation appeal, an interlocutory appeal and a petition for reopening of the proceedings, for which the required filing fee has not been paid despite the call, is rejected by the court.

- e.** Are any petitioners (e. g. a public authority) or areas of disputes exempt by law from the duty to pay the fee?

Yes, there are. There is no obligation to pay in certain kind of cases and certain entities are excluded from this obligation.

The exemption applies to:

1) a party challenging the action, failure to act or excessive length of proceedings by an authority in matters:

- falling within the scope of social care and social assistance,
- concerning the status of unemployed, benefits and other allowances and rights conferred on the unemployed,
- concerning occupational diseases, benefits connected with health care and rehabilitation,
- resulting from labour relations and official subordination,

- falling within the scope of social insurance,
- falling within the scope of military service,
- relating to the grant of protection to foreigners,
- relating to housing allowances;

2) a public prosecutor, the Commissioner for Human Rights (Ombudsman) and Commissioner for Children's Rights;

3) a guardian ad litem appointed for a party by the adjudicating court or by the guardianship court for a given case;

4) the party, on which the right of assistance in proceedings before an administrative court (the right of assistance) has been conferred, within the limits specified in a legally binding order conferring such a right;

5) public benefit organisations (operating pursuant to provisions on public benefit and voluntary service) in their own matters, exclusive of matters concerning the business activities of the organisations, as well as non-governmental organisations and entities listed in the Act on public benefit activity and voluntary service in their own matters concerning the implementation of the commissioned public task pursuant to the provisions on public benefit and voluntary service.

**f.** Are non-governmental organizations exempt from the duty to pay the fee?

Yes, they are (see remarks above - answer II.e).

**g.** Can a petitioner be exempt from the duty to pay the fee by decision of the court? What are the conditions for the exemption?

Yes, there is such a possibility.

The party may be granted the co-called right of assistance (*it may include exemption from court costs, in particular fees and an appointment of a lawyer – legal professional*) but only on its own request filed before initiating the proceedings or in the course of the proceedings (the request is free of charge).

The right of assistance may be granted in full (*exemption from the court costs and appointment of a lawyer*) or in part (*e.g. exemption from the court costs only or from the fees or even partial exemption from the fees*).

A party being a natural person has to prove that he/she is:

- unable to bear any costs of the proceedings – in order to grant the right of assistance in full;
- unable to bear total costs of proceedings without detriment to the necessary maintenance of himself/herself and his/her family - in order to grant the right of assistance in part.

A party being a legal person (or an organisational unit having no legal personality) has to prove that it has:

- no means to pay any costs of the proceedings – in order to grant the right of assistance in full;
- no sufficient means to pay total costs of the proceedings - in order to grant the right of assistance in part.

An application for granting the right of assistance should contain the party's declaration providing precise data on its property assets and income, and, where the application is filed by a natural person, also precise data on his/her family status and the party's declaration of not employing or not remaining in other legal relationship with a lawyer, legal counsel, tax adviser or patent agent. Declarations shall be submitted on pain of criminal liability for making a false declaration.

Applications shall be lodged on an official form in accordance with the prescribed pattern.

- h.** Under what conditions is the fee returned to the petitioner (e. g. in case of the withdrawal of the petition)? Is the fee returned in full or partially?

The court returns to the party the whole filing fee paid for:

- 1) a letter that is rejected or withdrawn before the date of the commencement of a hearing,
- 2) an interlocutory appeal against an order concerning the imposition of the penalty of a fine, if the interlocutory appeal has been granted.

- i.** May a petitioner be required to pay a deposit before the proceedings commence? If you answered *yes*, please explain under what conditions.

No, the petitioner is not required to pay a deposit before the proceedings commence.

- j.** Are frivolous petitions penalized? Please explain how and under what conditions.

No, frivolous petitions are not penalized.

- k. Finally, is there any analysis (based on empirical studies or just your personal assessment) of the correlation between the amount of the fees payable within your system of administrative justice and the degree of any incentive or dissuasive effect those fees have on petitioners (in general or particular groups thereof) bringing or not bringing an action?

Based on personal assessment it can be assumed that a potential correlation between the amount of the due fee and an incentive or dissuasive effect exists. Although we do not know any accurate analyzes showing such correlation in details, it seems that higher fees may contribute to more rational use of appeal measures.

### **III.Costs of proceedings**

- a. Can the court adjudicate the compensation of costs of proceedings to the participant? If you answered *yes*, please explain under what conditions?

Yes, the court can adjudicate the compensation of costs of proceedings. Detailed rules concerning court's decisions in that matter are presented below (answer III.b).

- b. Can the court adjudicate the compensation of costs of proceedings to the public authority? If you answered *yes*, please explain under what conditions? In particular, are there any cases/situations where by default, the costs incurred by the public authorities are not recoverable, even if the (private) petitioner was not successful (and, following the normal rule that costs follow the event, a costs order should normally be awarded in favour of the public authority)?

Return of costs of proceedings between the parties – general rules

#### First instance

If the court of the first instance has granted the complaint, the complainant (petitioner) is entitled to claim from the public authority (which has issued the challenged act) reimbursement of the costs of proceedings indispensable for appropriate pursuit of his/her rights.

There are no legal grounds to reimburse the costs of proceedings to the public authority when the complaint is dismissed.

Second instance (Supreme Administrative Court)

The court can adjudicate the compensation of costs of proceedings to the public authority or to the complainant - petitioner depending on the result of the case - this is called the principle of responsibility for the outcome of the proceedings.

The party which has filed a cassation appeal is entitled to claim the indispensable costs of the cassation proceedings incurred by it:

- 1) from the public authority – if the judgment of the court of the first instance dismissing the complaint has been reversed in result of granting the cassation appeal;
- 2) from the complainant – if the judgment of the court of the first instance granting the complaint has been reversed in result of granting the cassation appeal.

If the cassation appeal has been dismissed, the party which has filed a cassation appeal is obliged to reimburse the indispensable costs of the cassation proceedings incurred by:

- 1) the public authority – if the cassation appeal has been filed against the judgment of the court of the first instance dismissing the complaint;
- 2) the complainant – if the cassation appeal has been filed against the judgment of the court of the first instance granting the complaint.

- c. Can the court decide not to adjudicate the compensation of costs of proceedings, although the conditions described in answer to question a. are fulfilled? If you answered *yes*, please explain under what conditions?

Yes, it is possible.

In both instances a principle of cost moderation applies. That means that the court may, in justified cases, decide not to order that the costs of proceedings be reimbursed in whole or in part, especially in the event that the complaint was granted in part that is disproportionate in respect of the value involved in litigation determined in order to collect a filing fee (this solution applies accordingly when deciding on cassation appeals).

Additionally the SAC is entitled to refrain from awarding reimbursement of costs of the cassation proceedings in whole or in part in particularly justified cases.

- d. Are there any specific areas of administrative law where different rules to those discussed in this section apply? What areas are those and how and why do the rules applicable therein differ?

Yes, there are. There are no legal grounds for adjudicating the compensation of costs of proceedings in competence disputes between public authorities - disputes between local government authorities and between self-government appellate boards, as well as disputes between local government authorities and government administration agencies (these kind of cases are decided only by the SAC).

- e. How does the court determine the amount of the costs of legal representation as a part of compensation of costs? Is it defined by a tariff (in that case describe the principal method of calculation), or is it based on a price stipulated between an attorney and his client (in that case describe also whether there is any limitation)?

The costs of legal representation are defined by tariff (minimum rate) depending on:

- the type of the case (cases in which receivables are subject of the challenge the salary depends on the value subject matter; in other types of cases - in which no value subject matter can be specified - provisions stipulate the amount of the due salary)

For example: in cases in which value subject matter is over 5.000 zlotys to 10.000 zlotys the attorney's salary is 1.800 zlotys;

- scope of actions taken by the attorney;
- the instance of the court.

#### **IV. Representation**

- a. Does a party have to be represented by a legal professional? Answer yes/no.

Instance	I.	II.	III.
<b>Representation of petitioner</b>	No	Yes/No Cassation appeal has to be prepared by a legal professional but there is no such an obligation while submitting other procedural documents or while taking part in a hearing before the Supreme Administrative Court	
<b>Representation of opposing party</b>	No	Yes/No (see remarks above)	

- b. Does your legal order provide free legal aid for participants (e. g. representation appointed at the request of a participant)?

Yes. It does.

See remarks concerning right of assistance – answer II.g

- c. What are the forms and conditions of free legal aid? Please explain for all instances.

Conditions for granting free legal aid are presented above (answer II.g) and apply to both instances.

The right of assistance may include appointment of a lawyer, a legal counsel, a tax adviser (in tax cases) or a patent agent (industrial property cases). Such an appointment is tantamount to granting the power of attorney.

The court requests a competent circuit bar council, council of a circuit chamber of legal advisors, National Council of Tax Advisers or the National Council of Patent Agents to appoint a lawyer, legal advisor, tax advisor or patent agent, serving the order granting the right of assistance. In the event that an attorney is to be appointed after a decision that is subject to a cassation appeal has been rendered, the court notifies the competent council thereof.

The competent council, within fourteen days from receipt of the order, appoints an attorney and promptly notifies the attorney and the court thereof. The notification submitted by a competent council to the court includes the name and surname of the appointed attorney as well as his/her address for service. In the event that an attorney is appointed after a decision that is subject to a cassation appeal has been rendered, the competent council promptly informs the court about the date on which the attorney has been notified that he/she has been appointed.

If, in the request, the party has designated a lawyer, legal counsel, tax adviser or patent agent, an appropriate council appoints the lawyer, legal counsel, tax adviser or patent agent designated by the party, within its capabilities and in consultation with the designated lawyer, legal counsel, tax adviser or patent agent.

- d. Is there any connection between exemption from the duty to pay the judicial fee and the right to free legal aid?

No, there is not. In cases in which the party is exempt from the duty to pay (according to law), legal aid is not granted automatically. The party has to make a request and prove the conditions for receiving the right of assistance (appointing an attorney).

## V. Exclusions and immunities

*(Note: If you answer yes to any question in this section, please provide details.)*

- a. Are there any mandatory steps after the public authority delivers its final decision and prior to filing a petition to an administrative court (e. g. mediation)?

No, there are no mandatory steps.

- b.** Are there any final administrative acts of a public authority which are not reviewable at all?

It was decided in the case-law that the power of the President of the Republic of Poland regarding appointment of judges (refusal to appoint) is not subject to the control (judicial review) exercised by administrative courts – because such an act is not an administrative act.

Until 22 May 2019 the SAC was entitled to hear the appeals against resolutions of the National Council of Judiciary regarding the submission of the application for the appointment for the post of judge of the Supreme Court to the President of the Republic (deciding upon the conformity of the contested resolution with the law). A new law has been introduced which excluded the possibility of appeal in such cases.

- c.** Is there any particular public authority whose administrative acts are not subject to judicial review (e. g. acts of a head of state)?

See answer V.b regarding the President of the Republic of Poland and the National Council of Judiciary.

- d.** Are there any final acts of a public authority which are reviewable by a (state or other) authority other than the administrative court?

Yes, there are.

Civil courts settle disputes concerning compensation of material and non-material damage caused by the unlawful administrative act of public authority. Taking into account the fact that administrative courts exercise control over legality of acts (and in principle do not have substantive competence), some cases have been entrusted to common courts, which are entitled to hear the case and its final settlement (e.g. common courts hear appeals from decisions of the President of the Office of Competition and Consumer Protection, appeals from decisions of the President of the Office of Electronic Communications).

- e.** Are there any cases which are reviewed by the administrative courts other than review of administrative acts of a public authority (e. g. review of elections, dissolution of a political party)?

Yes, there are.

The SAC resolves competence disputes between public authorities – disputes between local government authorities and between self-government appellate boards, as well as disputes between local government authorities and government administration agencies. The SAC is also a disciplinary court in cases involving judges and court assessors of administrative courts. According to the Polish Constitution the control exercised by administrative courts extends to judgments on the conformity to statutes of resolutions of organs of local government and normative acts of territorial organs of government administration.

Administrative courts also deal with cases regarding lack of action of the public authorities and excessive length of proceedings, as well as other cases specified in statutes (e.g. the SAC hears complaints for the protraction of judicial proceedings, as well as complaints against orders of the National Election Commission regarding determination of boundaries of electoral constituencies; administrative courts exercise control over negative assessment of a project proposed by an applicant applying for funds under the development policy).

Administrative courts do not review the validity of the elections and dissolution of a political party.

## VI. Selection by lower and higher jurisdictions

- a. Do the administrative courts have power to select cases? Answer yes/no.

Instance	I.	II.	III.
Power to select cases	No	No	

- b. If you answered *yes*, under what conditions can they select cases? Are there any objective criteria stated in the legislation/case law of the court or is the selection a matter of full discretion?

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- c. Is the power to select cases restricted to certain fields of law? Please give details.

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- d.** Does the court have power to select cases that fall under administrative criminal law? If it does, are the conditions for selection the same as in others fields of law? Please give details.

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- e.** Please specify who selects the cases to be heard and how. Is there a special judicial panel or case selection procedure for that purpose? Is that procedure only a matter for the higher jurisdiction that will ultimately hear the case, or do the lower courts also somehow participate in that selection?

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- f.** If the court decides to select/not to select a case, is it obliged to notify a petitioner? If it is, does it deliver a formal decision (e. g. rejects the petition) or does it notify a petitioner by an “informal” letter?

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- g.** Is the court obliged to give reasons when it decides not to select a case?

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- h.** If a lower court decides not to select its own case, is the decision reviewable by a higher court? Please give details.

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- i. Does a lower court have power to select cases of a higher court? If it does, is its selection reviewable by a higher court? Please give details.

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- j. Does a judge determine the order of the cases to decide?

No, judges do not decide upon this matter.

The general rule is that cases are being heard in order of their registration except for:

- cases with a fixed time limits for a final decision (e.g. while hearing certain kind of election cases by the Supreme Administrative Court or while considering an objection to a decision submitted to the regional administrative court - a special type of appeal measure not being a complaint);
- a group of cases listed in the internal procedure of the Supreme Administrative Court (e.g. cases concerning international protection or social care and social assistance)
- cases in which the President of the Court (in the regional/voivodship administrative court) or the President of the Chamber (in the Supreme Administrative Court) decided to do so.

## VII. Other measures

- a. Does your legal order have other measures which simplify or restrict access to the courts? Please explain.

Solutions regarding administrative judiciary in Poland provide a broad access to the court. In addition to the aforementioned solutions (the right of assistance, exemption from court fees, lack of obligation to have a representative in proceedings before the court of first instance, lack of selection of cases), a wide range of entities entitled to initiate the proceedings should be mentioned. According to the law everyone who has a legal interest therein, a public prosecutor, the Commissioner for Human Rights (Ombudsman), the Commissioner for Children's Rights and a social organisation, within the scope of its statutory activity and in matters affecting

legal interests of other persons, provided that it has taken part in administrative proceedings, shall be entitled to lodge a complaint.

## VIII. Statistics

- a. Please give exact numbers of case load and number of cases decided for the years 2016, 2017 and 2018 in each of the instances of the administrative judiciary (including all specialized jurisdictions, e. g. financial or social security).

Instance	I.	II.	III.
<b>Case load 2016</b>	76 692	18 847 cassation appeals	
<b>Cases decided 2016</b>	78 992	16 829 cassation appeals	
<b>Case load 2017</b>	72 426	17 746 cassation appeals	
<b>Cases decided 2017</b>	77 567	19 192 cassation appeals	
<b>Case load 2018</b>	65 963	20 229 cassation appeals	
<b>Cases decided 2018</b>	69 315	18 959 cassation appeals	