



CONFERENCE OF 7 JUNE 2010

« *PREVENTING BACKLOG IN ADMINISTRATIVE JUSTICE* »

QUESTIONNAIRE ¹

One should focus on three key areas in our deliberations on speeding up the administrative justice process: techniques for limiting the number of appeals (I), techniques to speed up proceedings (II) and any criteria for evaluating court activity and the application of these criteria (III).

I. Techniques for limiting the number of appeals

- 1) Must those wishing to refer a matter to the Supreme Administrative Court be represented by a lawyer? If so, are there any dispensations to this requirement? Are there any criteria regarding the lawyer's qualifications or seniority?**

The proceedings before Polish administrative courts are regulated by the Act - Law on Proceedings Before Administrative Courts². Pursuant to Article 34 of the Act of 2002, the parties and their agencies or statutory representatives may act before the

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² The Act of 30th August 2002 r. – Law on Proceedings Before Administrative Courts (Journal of Laws No 153, item 1270 as amended), hereinafter referred to as „Act of 2002”.

court on their own or by agents. A party within the meaning of this provision is a complainant, an administration authority whose action or failure to act is being complained against, and a participant of the proceedings. Agencies of the parties are the agencies of the legal persons and organisational units which do not have legal personality, but have procedural capacity in administrative court review. Court action is taking any procedural action in relation to the case that are found necessary to carry out the proceedings. The entitlement of a party to grant power of attorney is meant to serve the exercise of the right to court.

As far as the actions taken before the voivodship administrative court (first instance court)³ are involved, the Act of 2002 not provide for an obligation to grant power of attorney. The proceedings before the Supreme Administrative Court⁴ are different. According to Article 175 of the Act of 2002, a cassation appeal should be prepared by a lawyer or legal counsel, save § 2 and 3. The provision of § 1 does not apply, when a cassation appeal is prepared by a judge, a public prosecutor, a notary public, a counsellor of the State Treasury Solicitor's General Office or a professor or doctor habilitated in legal sciences, who is a party to the proceedings or its representative or agent, or when the cassation appeal has been brought by a public prosecutor or the Commissioner for Citizens Rights (Ombudsman), or the State Treasury Solicitor's General Office (§ 2). A cassation appeal may be prepared by a tax adviser - in matters of tax obligations, and by a patent agent - in matters of industrial property (§ 3).

The expression „a cassation appeal should be prepared” should be understood as an obligation to its preparation by a professional. The preparation of the cassation appeal should be understood as its formulation and signature. Such solution is aimed at limiting the cassation to reviewing only the legal issues and allegations prepared by professionals. The introduction of an obligation to grant power of attorney is in the best interest of a party, as due to the construction of cassation appeals, preparation of a cassation appeal requires professional knowledge. Attempts of the parties to prepare their own cassation appeals in most cases would probably result in the ineffectiveness of their lodging.

³ Hereinafter also referred to as the „WSA”.

⁴ Hereinafter also referred to as the „NSA”.

In proceedings before the NSA also an interlocutory appeal seeking the dismissal of the cassation appeal should be prepared by a lawyer or legal counsel (Article 194 § 4 of the Act of 2002).

The Act of 2002 does not define the criteria of the lawyer's qualifications or professional experience; such provisions are contained respectively in: the Act - Law on the Bar⁵ (art. 65), the Act on Solicitors⁶ (art. 24), the Tax Consultancy Act⁷ (art. 6) and the Act on Patent Attorneys⁸ (art. 19). All of these acts provide similar prerequisites for practising the profession. As a rule, a person may be entered on the list of barristers, solicitors, tax advisers and patent attorneys may be noted that, if such person is of flawless character and his previous behaviour guarantees a good professional practice; fully enjoys his public rights and has full legal capacity; graduated from higher studies (in the case of tax advisers and patent attorneys degree in law is not required); completed the application and examination (in the case of tax advisers, having two years of work experience is required).

2) Is the Supreme Administrative Court's jurisdiction limited to points of law ('administrative cassation') or can it also rule as an appeals court with cognisance of points of fact?

In accordance with Article 173 § 1 of the Act of 2002 the Supreme Administrative Court hears cassation appeals against the judgements and orders concluding the proceedings in the case, issued by the voivodship administrative courts. The court may not, on its own initiative, commence any examinations in order to determine other (than presented in a cassation appeal) defects of the challenged resolution, unless the defects causing invalidity of the proceedings exist, which the court takes into account on its own

⁵ The Act of 26th May 1982 – Law on the Bar (consolidated text, Journal of Laws of 2009, No 146, item 1188 as amended).

⁶ The Act of 6th July 1982 on Solicitors (consolidated text, Journal of Laws of 2009, No 123, item 1059 as amended).

⁷ The Act of 5th July 1996 on Tax Consultancy (consolidated text, Journal of Laws of 2009, No 10, item 22 as amended).

⁸ The Act of 11th April 2001 on Patent Attorneys (consolidated text, Journal of Laws of 2009, No 10, item 1 as amended).

authority. As a result, the statutory grounds for appeal define the maximum extent of complaint consideration by the NSA, which this court may not exceed. Pursuant to Article 174 Act of 2002, a cassation appeal may be based on the following grounds: 1) the violation of substantive law caused by its misinterpretation or improper application; 2) the breach of procedural rules, if that infringement could have affected the outcome of the case. As already indicated, in accordance with Article 183 § 1 of the Act of 2002 the Supreme Administrative Court hears a case within the limits of a cassation appeal, however the court takes invalidity of the proceedings into account. The nullity of the proceedings shall occur: if making the recourse to the court was inadmissible; if the party has not have the capacity to be a party in court or procedural capacity, it has not have an agency appointed to represent it or statutory representative, or when the agent of the party has not been adequately authorised; if the proceedings already instituted before an administrative court are pending in the same case or if a valid decision has been issued in such case; if the formation of adjudicating panel has not complied with the provisions of law or if a judge disqualified by virtue of statute has taken part in the hearing of the case; if the party has been deprived of the possibility to defend his rights; if the voivodship administrative court has adjudicated in the case which falls within the jurisdiction of the Supreme Administrative Court (Article 183 § 2 of the Act of 2002).

3) Is the right of appeal to the Supreme Administrative Court an absolute right or are there limitations? If there are, under what circumstances? Provide a short summary of how your Court interprets these limitations.

The provisions of the Act of 2002 clearly indicate the persons entitled to lodge a cassation appeal against a judgement issued by voivodship administrative court or an orders concluding the proceedings. In accordance with Article 173 § 2 of the Act of 2002, a cassation appeal may be lodged by a party, a public prosecutor or the Commissioner for Citizens Rights (Ombudsman). The term of a “party” should be understood within the meaning of Article 32 of the Act of 2002, which provides that parties to a proceeding in relation to the administrative court matter include the petitioner

and the authority whose action or lack of action is a subject matter of the complaint. Furthermore, pursuant to Article 50 of the Act of 2002 a complainant (i.e. a person entitled to lodge a complaint to the voivodship administrative court) may be anyone who has a legal interest therein.

This expression means that when defining the persons entitled to lodge a complaint the statute does not use the term „party” which is associated with resolving the case in administrative proceedings. The WSA in Warsaw in its judgement dated 27th January 2007⁹ states that a person named as a party in decision, who if fact has not, however, been a party, is entitled to lodge a complaint to the administrative court. Similarly the NSA in its judgement dated 20th September 2006¹⁰ concludes that even an erroneous determination of a particular entity as a party to the proceedings by the public administration authority does not deprive this entity of its entitlement to lodge a complaint to the administrative court against the final decision issued in such proceedings to the administrative court. The legal interest within the meaning of Article 50 of the Act of 2002 exists if such legal interest is based on the provisions of the law. In most cases these would involve the provisions of the substantive law, it could, however, also be the procedural or systemic provisions. The entitlement to lodge a complaint depends on demonstrating the connection between legal interest protected in accordance with the provisions of the law and an act or action of the public administration authority. In its judgement dated 24th November 2004¹¹ the NSA concludes that the essence of the legal interest should be seen in its connection with particular legal regulation. In this judgment the court explains further that a regulation of any branch of the law (not only administrative law), may constitute grounds on which a particular entity, in a certain factual state, may request the materialization of its rights or obligations or “demand conducting a review of a certain act or action in order to protect its rights or obligations”. The WSA in Warsaw expressed a similar view, stating in its judgement dated 17th October 2006¹² that a complaint may be lodged by any entity who demonstrates a connection between its legal interest protected by the provisions of

⁹ File No. III SA 1617/02, OSP 2005, issue 11, item 128.

¹⁰ File No. I OSK 1274/05.

¹¹ File No. OSK 919/04, OSP 2005, issue 11, item 128.

¹² File No. IV SA/Wa 198/06.

substantive law and an act or action of a public administration authority. Therefore, in the WSA's opinion, a decision challenged in court may only refer to the complainant's own matter, understood as stipulated in the provisions of the administrative law possibility of materialization of the rights or obligations of the parties to an administrative relationship, the parties thereto being a public administration authority and an individual entity organizationally not subordinate to this authority¹³. It is emphasised in the jurisprudence that the legal interest is an individual, material and objectively verifiable interest and its existence finds confirmation in the factual circumstances that constitute prerequisites of application of a provision of the substantive law¹⁴.

The existence of legal interest in lodging a complaint is subject to the administrative court review. The court may not, to that effect, base solely on the determinations made by public administration authorities which have adjudicated in both instances¹⁵. In examination of the procedural mandate of a party, all objective and subjective aspects of the term "party" should be considered. In the case of the objective aspect, the fact of submitting a request to carry out a review of particular administrative act in terms of its compliance with the law by a party should be taken into account, while in the subjective meaning a party to the court proceedings is a person who has been a party to administrative proceedings. For assessment whether the relevant entity is a party in accordance with Article 50 § 1 of the Act of 2002 it is necessary that both aspects are jointly fulfilled¹⁶.

4) Are there any penalties for abuse of appeals (e.g. fines for rash or persecutory appeals)? If so, are they applied at the request of the respondent or by the court as a matter of course?

No. Such regulation does not exist in the Polish model of the complaint to administrative court.

¹³ See also: judgement of the WSA in Warsaw dated 29th June 2007, I SA/Wa 603/07.

¹⁴ See the NSA judgement dated 17th April 2007, I OSK 755/06.

¹⁵ See the NSA judgement dated 30th January 2007, II OSK 247/06.

¹⁶ See order of the WSA in Warsaw dated 8th June 2006, II SA/Wa 355/06.

5) Does the procedure respect the principle of the right to be heard? Are reasons provided for the decision? Is the session heard by several judges or just one?

Does the procedure respect the principle of the right to be heard?

Polish administrative court procedure respect the principle of the party's right to be heard. This right is the indispensable part of the right to court, both within the meaning of the European Convention on the Protection of Human Rights and Fundamental Freedoms, and the Polish Constitution¹⁷.

Unless a specific provision provides otherwise, court sessions shall be public, and the decision-making court shall hear cases at trial. (Article 90 § 1 of the Act of 2002).

In accordance with the Article 106 of the Act of 2002, after the case is called, the trial begins with the report of the judge who presents in brief, on the basis of files, the state of the case, taking into account in particular the charges of the complaint (§ 1). After the report is submitted, the parties – first the complainant, followed by an authority –present orally their claims and conclusions and shall give explanations (§ 2). The court may, on its own motion or at the request of the parties, request additional documentary proof, if this is necessary to resolve substantial doubts and will not extend excessively the proceedings on the case. (§ 3). The court considers commonly known facts, even if they are not invoked by the parties (§ 4). Failure by parties or their agents to attend a trial does not stay the hearing of the case (Article 107 of the Act of 2002). As already emphasized, the administrative courts do not issue final decisions in heard case, but only assess the legality of the challenged act, wherein the courts are not bound by the limits nor the motions of the complaint. Exactly this systemic function of administrative courts justifies the provision of Article 107 of the Act of 2002, under which a failure by parties or their agents to attend a trial does not stay the hearing of the case. This provision, however, respects the party's right to participate in the trial as it may apply only if a party or its agent had been notified of the date of the trial in accordance with the

¹⁷ Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483, as amended), hereinafter referred to as the „Constitution of the RP”.

provisions of the law and independently decided not to attend. The legislator adopts a fiction of sorts in so understood will of the parties. Impropriety of notifying either party or its excused absence, while willing to attend the trial, stays the hearing of the case. There are situations in which the trial must be adjourned. The trial is adjourned if the court has found impropriety in notification of either party or if absence of a party or his agent has been caused by an extraordinary circumstances or other impediments known to the court which may not be overcome, unless the other party or his agent seek the hearing of the case in their absence (Article 109 of the Act of 2002). Pursuant to Article 110 of the Act of 2002 the trial is adjourned, if the court has decided to notify of the pending court proceedings the persons who have not yet participated in the case in the capacity of a party.

Are reasons provided for the decision?

In accordance with Article 132 of the Act of 2002, the court resolves the case by a judgment. The court issues a judgment upon the closure of the trial (Article 133 § 1 of the Act of 2002). The court is bound by the judgment rendered from the moment of its pronouncement and, if the judgment has been rendered in closed session – from the signing of the operative part of the judgment (Article 144 of the Act of 2002).

On principle, the reasons for judgment [of the 1st instance court - the WSA] are given by the operation of law within 14 days from the day of pronouncement of the judgment (during the trial) or signing of the operative part of the judgment (issued in camera) (Article 141 § 1 of the Act of 2002), save for the cases, in which the complaint has been dismissed. In the latter situation reasons for judgment are given at the request of a party filed within seven days from the day of pronouncement of the judgment or delivery of the operative part of the judgment. In such case the court has 14 days from the day of filing the request to formulate the reasons for judgment (Article 141 § 2 of the Act of 2002).

A copy of judgment with reasons given by the operation of law is served on each of the parties in cases, in which the complaint has been granted (Article 142 § 2 of the Act of 2002), in cases, in which the complaint has been dismissed, a copy of the judgment with reasons given is served only on that party which has filed the request. In

the latter category of cases obtaining the reasons for judgment is of fundamental importance for the feasibility of formulating a cassation appeal.

Reasons for judgment should include provision of a brief picture of the state of the case, the charges of the complaint, the positions taken by other parties, the legal basis of the determination and its explanation, as well as the suggestions for an authority as to further proceeding (if as a consequence of granting the complaint, the case is to be reconsidered by an administrative authority) (Article 141 § 4 of the Act of 2002).

In the case of the NSA, the reasons for the Court's judgment are always formulated on the Court's own authority (not upon request of a party) within 30 days (Article 193 of the Act of 2002).

Is the session heard by several judges or just one?

Pursuant to Article 16 § 1 of the Act of 2002 unless otherwise provided by statute, an administrative court adjudicates in a panel of three judges, subject to § 2 and § 3. In accordance with § 2 of this provision, an administrative court sitting in camera, adjudicates by a single judge. Elsewhere than at trial, however, the rulings are made by the presiding judge (§ 3). The principle expressed in this provision is that the administrative court, in both first and second instance, in open trials and sessions adjudicates in a panel of three professional judges. The exceptions from this rule are stipulated in both Act of 2002 and other statutes. An administrative court sitting in camera, adjudicates by a single judge, unless the statute provides otherwise. The Act of 2002 provides such exception in Article 22. In accordance with this provision, the disqualification of a judge is decided in camera, but by a panel of three judges. The simplified procedure (Article 120 of the Act of 2002) before the voivodship administrative court is conducted by a single judge. It should be therefore noted that in the simplified procedure a substantial hearing of the case may be conducted and a judgement issued by the court in a panel of a single judge. Mediation proceedings (Article 116 § 2 Act of 2002) before the WSA are also conducted by a single judge or a law clerk.

On the other hand, Article 187 § 3 of the Act of 2002 allows the possibility of referring an issue to be resolved by a panel of seven judges. Such situation may occur

as a result of application of Article 187 § 3 of the Act of 2002: „If a legal issue causing serious doubts arises in the course of hearing of a cassation appeal, the Supreme Administrative Court may adjourn the hearing of the case and refer that issue to be resolved by a panel of seven judges of that Court”. In such case the NSA usually adopts a resolution¹⁸, which designates a panel of three judges hearing the case. The panel of seven judges may, however, decide to take over the hearing of the case and, in such situation, this panel issues a judgement.

6) Do appeals have to go through an admission or authorisation procedure before being brought before the Supreme Administrative Court? If so, describe the procedure and the main conditions that would lead to an appeal being refused admission or authorisation ('leave of appeal').

A cassation appeal lies to the NSA against a judgment or an order concluding proceedings issued by the 1st instance court (the WSA), unless a special provision provides otherwise (Article 173 § 1 of the Act of 2002). A cassation appeal may be lodged by a party, a public prosecutor or the Commissioner for Citizens Rights (Ombudsman) after the copy of a decision with reasons given has been served on them (§ 2). A cassation appeal may be made on the following grounds:

- 1) the violation of substantive law caused by its misinterpretation or improper application;
- 2) the breach of procedural rules, if that infringement could have affected the outcome of the case (Article 174 of the Act of 2002).

As already mentioned above (see question No. I.1), pursuant to Article 175 § 1 of the Act of 2002, a cassation appeal should be prepared by a lawyer or legal counsel, save § 2 and 3. The provision of § 1 does not apply, when a cassation appeal is prepared by a judge, a public prosecutor, a notary public, a counsellor of the State Treasury Solicitor's General Office or a professor or doctor habilitated in legal sciences, who is a party to the proceedings or its representative or agent, or when the cassation appeal has been brought by a public prosecutor or the Commissioner for Citizens Rights

¹⁸ Pursuant to Article 15. § 1 of the Act of 2002.

(Ombudsman), or the State Treasury Solicitor's General Office (§ 2). A cassation appeal may be prepared by a tax adviser - in matters of tax obligations, and by a patent agent - in matters of industrial property (§ 3). The expression „a cassation appeal should be prepared” should be understood as an obligation to its preparation by a professional. The preparation of the cassation appeal should be understood as its formulation and signature, therefore a party may lodge a cassation appeal and act in the proceedings it has initiated. Such solution is aimed at limiting the cassation to reviewing only the legal issues and allegations prepared by professionals. The introduction of an obligation to grant power of attorney is in the interest of a party, in spite of an impression it may make. Due to the construction of cassation appeals, preparation of a cassation appeal requires professional knowledge. Attempts of the parties to prepare their own cassation appeals in most cases would probably result in the ineffectiveness of their lodging.

A cassation appeal is lodged with the court which has issued the judgment or order challenged in the NSA. The WSA examines only the formal aspects of a cassation appeal, and not its substantial aspects (merits). (Article 177 § 1 of the Act of 2002).

If a cassation appeal in the WSA's is inadmissible for formal reasons, the court rejects such cassation appeal (Article 178 of the Act of 2002). Such rejection may be complained against to the NSA.

A cassation appeal should meet the requirements prescribed for a procedural document in court proceedings (Articles 46 and 47 of the Act of 2002) and include a designation of the challenged decision with indication whether it has been challenged in whole or in part, quotation of the grounds for cassation with reasons therefore, and the request for reversal or modification of the decision indicating the scope of reversal or modification sought (Article 176 of the Act of 2002).

A cassation appeal is rejected on the following grounds:

- a) its lodging after expiration of the time limit (the time limit 30 days from the day of service on the party of the copy of the decision of the 1st instance court with reasons given);
- b) a failure to correct deficiencies within the prescribed time limit (a party has only 7 days to correct the deficiencies from being summoned to do so; t

may only correct the inconsistencies with the requirements specified in Articles 46 and 47 of the Act of 2002);

c) an inadmissibility of the cassation appeal.

A cassation appeal is inadmissible, if:

- a) it has not been prepared by a person entitled thereto (see Article 175 of the Act of 2002);
- b) it has been lodged by a person who is not a party to the proceedings;
- c) it has been lodged prematurely, i.e. prior to the service on the party of the copy of the decision of the 1st instance court with reasons given;
- d) it has been lodged against the 1st instance court decision, against which no appellate measure lies (e.g. an order on deferring the trial);
- e) fails to meet the requirements specified in Article 176 of the Act of 2002.

Therefore, fulfilling the formal requirements constitutes the criteria for admissibility (or inadmissibility).

The institution of leave to appeal does not exist in the model of cassation appeal in administrative court proceedings, unlike the prerequisites for receiving cassations for hearing by the Supreme court in civil cases, where one of the decisive criteria is a presence in the case a complaint refers to of a significant legal issue and the need for interpretation of the legal provisions which raise serious doubts or cause inconsistencies in court decisions (Article 398 [9] of the Act of 17 November 1964 – Code of Civil Procedure¹⁹).

II. Techniques to speed up proceedings

¹⁹ The Act of 17 November 1964 – Code of Civil Procedure, Journal of Laws No. 43, item 296, as amended; hereinafter also referred to as the „Kpc”.

- 1) Are there accelerated procedures for emergency situations (apart from proceedings for interim relief, which do not issue preliminary rulings on the merits of the case)? If so, describe the main conditions (whether these are adversary procedures, the reasoning behind the decision, whether the session is heard by one or more judges, whether the advisory body – if there is one – is involved, whether there is an investigation, whether there is a hearing, shorter deadlines for submitting documents or statements, etc.).**

A regulation with respect to the simplified procedure has been included in the Act Law on Proceedings Before Administrative Courts (Articles 119 – 122 of the Act of 2002). The simplified procedure constitutes a particular form of the proceedings before administrative courts. The provisions on simplified procedure are an exception from the public nature principle (Article 45 of the Constitution of the RP and Article 10 of the Act of 2002), the hearing cases at trial principle (Article 90 § 1 of the Act of 2002) and from the principle of an administrative court adjudicating in a panel of three judges (Article 16 § 1 of the Act of 2002).

The case may be heard in accordance with the simplified procedure ex officio or upon request of a party. The case may be heard in accordance with the simplified procedure ex officio if the decision or order has been affected by invalidity, or have been issued in violation of the law which provides a basis for reopening of the proceedings (Article 119 item 1 of the Act of 2002).

The case may be heard in accordance with the simplified procedure upon request of a party if:

- 1) a party has requested that the case be referred for a hearing in accordance with the simplified procedure, 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 item 2 of the Act of 2002),

2) a complainant request the hearing of the case on the basis of the received copy of the complaint, provided that factual and legal state of affairs presented in the complaint does not raise reasonable doubt (Article 121 of the Act of 2002).

Each of the above grounds is of an optional nature. A sole person entitled to make a decision on hearing the case in accordance with the simplified procedure is the judge-rapporteur.

The court hears cases in accordance with the simplified procedure in camera, by a single judge. If any doubts as to the possibility of hearing the case in accordance with the simplified procedure occur in the course of session held in camera, the court, pursuant to Article 122 of the Act of 2002 may refer – by virtue of an order - such case to be heard at a trial. In the simplified procedure the court resolves the case with a judgement, and a judgement issued in accordance with the simplified procedure is subject to a cassation appeal pursuant to the general provisions.

It should be emphasized that in principle there are no legal objections to the application of interim relief in a simplified procedure (e.g., suspending the execution of an administrative decision). However, several special laws in Polish legal system provide for reduced time limits for hearing complaints by the administrative court and the time limits for hearing cassation appeals by the NSA. At the same time, such regulations at times introduce restrictions regarding the application of interim relief. As an example can serve the provisions of the Act on investments in the liquefied natural gas (LNG) re-gasification terminal in Świnoujście²⁰, which provide that the Voivodship Administrative Court shall hear the complaint within 30 days of receipt of the file with a response to the complaint, and the time limit for hearing a cassation appeal arising from the investment relating to the terminal is 2 months from its lodging. Furthermore, in this case the provisions on interim relief (i.e., request for suspending the execution) do not apply.

²⁰ See Article 35 of the Act of 24th April 2009 on investments in the liquefied natural gas (LNG) re-gasification terminal in Świnoujście, Journal of Laws, No 84, item 700.

2) Are there accelerated procedures for appeals that are clearly founded, unfounded or inadmissible? If so, refer to the questions listed under II.1.

Certain simplification of procedural rules exists in court review of challenge admissibility in administrative court proceedings. If the preliminary review of challenge admissibility carried out by the president of a voivodship administrative court shows lack of any of the admissibility prerequisites in a strict sense, as defined in Article 58 § 1 and 2 of the Act of 2002, the court sitting in camera shall dismiss the complaint. Similarly, the cassation appeal shall be rejected by the court sitting in camera if it has lodged after the expiration of the time limit, the deficiencies of the cassation appeal have not been corrected within the prescribed time limit or it is inadmissible for other reasons (Articles 178 and 180 of the Act of 2002).

3) Are there accelerated procedures for cases that should be straightforward? If so, refer to the questions listed under II.1.

A simplified procedure may be applied to this type of cases, however such procedure is not obligatory (see the answer to question II.1).

4) Other than for proceedings for interim relief that do not issue preliminary rulings on the merits of the case, are there sessions where appeals are heard by a single judge and if so, for what kinds of cases? Can this single judge refer the case to be heard in a session presided over by several judges?

In accordance with Article 16 § 1 of the Act of 2002, an administrative court adjudicates in a panel of three judges, subject to § 2 and § 3, unless otherwise provided by statute. Pursuant to § 2 of this provision, an administrative court sitting in camera, adjudicates by a single judge. Elsewhere than at trial, rulings are made by the presiding judge (§ 3). A principle expressed in this provision is that the administrative court, in both first and second instance, in open trials and sessions adjudicates in a panel of three professional judges. The exceptions from this rule are stipulated in both Act of

2002 and other statutes. The simplified procedure (Article 120 of the Act of 2002) before the voivodship administrative court is conducted by a single judge. It should be therefore noted that in the simplified procedure a substantial hearing of the case may be conducted and a judgement issued by the court on a panel of a single judge. Mediation proceedings (Article 116 § 2 Act of 2002) before the voivodship administrative court are also conducted by a single judge or a law clerk.

Certain categories of cases may be referred for hearing in camera. The court sitting in camera may:

- a) examine admissibility of complaint, cassation appeal, interlocutory appeal or petition for reopening of the proceedings;
- b) hear the complainant's claims regarding incidental matters, presented during the proceedings;
- c) adjudicate ex officio on certain incidental matters;
- d) in extraordinary cases hear a complaint, an interlocutory appeal or a cassation appeal in terms of merits.

As far as the latter of aforementioned categories is concerned, the court sitting in camera may:

- hear the case in terms of merits and issue a judgment in accordance with the simplified procedure (Article 120 and Article 133 § 1 of the Act of 2002);
- hear an interlocutory appeal against the order of a voivodship administrative court (Article 197 § 1 of the Act of 2002);
- hear a cassation appeal which is grounded exclusively on the breach of procedural rules, and the party which has lodged the cassation appeal, abandons the trial, and the other parties have not sought the holding of a trial (Article 182 § 2 of the Act of 2002)
- reverse its own order, if the interlocutory appeal lodged against it raises the question of nullity of the proceedings (Article 195 § 2 of the Act of 2002).

The court may refer the case for hearing in open court and may designate a trial also when the case is to be heard in camera (Article 90 § 2 of the Act of 2002).

5) Can the obligation to provide grounds be relaxed? (e.g. relaxation of the obligation to respond to all arguments or statements; grounds provided simply by referring to the relevant provisions, etc.)

Court's obligation to respond to the charges of the complainant varies depending on the instance of the court hearing the complaint.

As far as the proceedings before the first instance court – the Voivodship Administrative Court – are concerned, in accordance with Article 134 § 1 of the Act of 2002 the court adjudicates within the limits of particular case, not being, however, bound by the charges and demands of the complaint as well as the legal basis referred to.

The Voivodship Administrative Court is obliged to adjudicate on the case on the basis of the entirety factual circumstances and legal provisions applicable to the case. The court regards the charges of the complaint solely as a non-binding information on defectiveness of the decision. The actual factors that determine – on a legal level – the scope of review of the administrative court should be seen in the prerequisite for challenging the acts and actions (or failures to act) of the public administration authorities, defined in Article 1 § 2 of the Act Law on the System of Administrative Courts (Journal of Laws No 153, item 1269, as amended, hereinafter also referred to as the „Pusa”). On this level, conformity with law serves as limits within which the complaint is heard.

The cassation appeal to the NSA (last instance court) on the other hand, in accordance with the adopted model of the jurisdiction, defines the limits of hearing cases by this court. In accordance with Article 183 § 1 of the Act of 2002 the Supreme Administrative Court hears a case within the limits of a cassation appeal, however the court takes invalidity of the proceedings into account (see also the answer to question II.1).

The issue, whether the Supreme Administrative Court has an obligation to respond to all charges made in the cassation appeal, has been the subject matter of the resolution of the full panel of the NSA of 26th October 2009 r. (file No. I OPS 10/09). In this resolution the NSA judged that citing legal grounds for cassation, understood as

indicating particular regulations, which – in the view of the person lodging the appeal – have been violated by the voivodship administrative court, pursuant to Article 174 items 1 and 2 and Article 183 § 1 of the Act of 2002 imposes an obligation upon the Supreme Administrative Court to respond to all charges made in the grounds for cassation. An obligation to provide grounds for challenge may not, however, be relaxed.

6) Is it possible to conduct procedures entirely in writing, with no need for a hearing?

On principle, court sessions are public, and the decision-making court shall hear cases at trial (Article 90 § 1 of the Act of 2002). Exceptions from this principle have been set forth in the provisions of the Act of 2002 and special statutes.

Conducting the entirety of the proceedings without hearing a case at trial is possible in accordance with the simplified procedure (see the answer to question II.1).

In addition, the proceedings before the last instance court (the NSA) without hearing a case at trial are possible, if a cassation appeal is grounded exclusively on Article 174 item 2 of the Act of 2002, and the party which has lodged the cassation appeal, abandons the trial, and the other parties, within the statutory time limit, have not sought the holding of a trial (Article 182 § 2 of the Act of 2002).

An exception from the general principle of hearing cases at trial may also be derived from special statutes. In accordance with the Act on Protection of Classified Information²¹ an administrative court sitting in camera hears, among others, a complaint against a refusal to issue a security clearance and a complaint against a Prime Minister order stating an inadmissibility of appeal and failure to comply with the time limit for appealing against the refusal to issue a security clearance (Article 43k.1 of the Act on Protection of Classified Information). The Supreme Administrative Court sitting in camera also hears cassation appeals in the aforementioned cases (Article 48ł of the Act on Protection of Classified Information).

²¹ The Act of 22nd January 1999 on Protection of Classified Information Journal of Laws of 1999, No 153, item 95 as amended

7) Can any party not cooperating with the procedure be penalised?

In the event an authority fails to comply with court order issued in the course of the proceedings and in relation to determination of the case, the court may order to impose a fine upon that authority.

A fine may be imposed in following situations:

- on an authority whose action or failure to act has been challenged, and who has failed to transfer the complaint to the court together with the files of the case and the response to the complaint within 30 days from the day it was lodged (Article 55 § 1 of the Act of 2002);
- upon request of the complainant, in the event of non-compliance with the judgment granting the complaint against failure to act or in the event of failure to act by an authority after the judgment setting aside or declaring invalidity of an act or action (Article 154 § 1 of the Act of 2002);
- on a person, a public administration agency or an institution named in the application and those known to the court officially, who have failed to comply with summons to lodge officially certified copies of documents in their possession or to declare they do not possess them (Article 293 of the Act of 2002).

In addition, in the event that substantial violations of law or about circumstances affecting their occurrence have been ascertained in the course of hearing of the case, an adjudicating panel of the court may inform appropriate agencies, or their superior bodies, in the form of an order, about such irregularities (Article 155 of the Act of 2002).

A person, who has sustained damage as a result of failure to comply with court's decision, has a claim for compensation in accordance with the principles set forth in the Civil Code²². These principles are regulated in Article 417 § 1 and 2 of the k.c., which formulate the general principle of liability for damages arising from illegal action or failure

²² The Act of 23 April 1964 – Civil Code, Journal of Laws No. 16, item 93, as amended; hereinafter also referred to as the „k.c.”.

to act with use of public authority and in Article 417 § 3 of the k.c., which provides that liable for such damage is the State Treasury or a local administration agency, or any other legal person who exercises public authority by law, however, if the tasks of exercising public authority have been delegated to a local administration agency or a different legal person by means of an agreement, the performer of such tasks and the delegating local administration agency or the State Treasury are jointly and severally liable for inflicted damages.

In addition, during the trial the administrative court may apply a number of measures to a person who is in breach of dignity, peace or order of the court proceedings within the scope of the so-called 'session policing'. The measures available to the court are: a warning, a penalty for breach of order in the amount of double lowest salary and an imprisonment for up to seven days. Following an ineffective warning of a person participating in the proceedings the presiding judge may expel such person from the court room (Article 48 §1 of the Act on the System of Common Courts²³ in connection with Article 29 of the Pusa).

8) Do judges raising legal arguments of the court's own motion always have to order deliberations to be begun again or do they have to authorise the parties to submit new conclusions?

On principle, opening a new trial is not necessary. The case once closed may be opened de novo by the court (Article 133 § 2 of the Act of 2002), and the trial should be opened de novo if substantial circumstances have come into light just after its closure (§ 3).

It is noted in the literature that the provision commented here does not specify events in which the court may reopen a closed trial. Since the regulation of Article 133 § 2 and 3 of the Act of 2002 undoubtedly concerns exceptional circumstances, it should be assumed that in such event that the court's decision should result from the important

²³ The Act of 27th July 2001 on the System of Common Courts, Journal of Laws No. 98, item 1070, as amended; hereinafter also referred to as the „Usp”.

reasons. It must be stressed that may solely concern the reasons that have become apparent only after closing the trial.

Also worth emphasizing is the fact that in accordance with the adopted model of administrative jurisdiction, the scope of cognition of the Supreme Administrative Court is limited to the charges made by the complainant in a cassation appeal. On principle, therefore, the Supreme Administrative Court is not entitled to raise additional arguments *ex officio*, save for the event of invalidity of the proceedings (Article 183 §1 of the Act of 2002).

9) Does the procedure allow the deadlines for submitting statements and documents to be shortened?

Pursuant to the regulations in force, the presiding judge may shorten the court time limit (e.g. for submitting the power of attorney or approving the actions of a person acting without the power of attorney by the party) solely at the request of a party to the proceedings (Article 84 of the Act of 2002).

Article 91 of the Act of 2002 introduces a special possibility of shortening the time limit for delivering a notification for the court session from seven to three days in urgent cases.

10) Does the procedure allow the appeal, the statements, written submissions and the documents to be submitted electronically?

Provisions of the Act of 2002 contain a fragmentary regulation on the use of new technologies. Electronic communication issues are primarily dealt with in Article 47 § 2 of the Act of 2002 regarding procedural documents and Article 65 § 3 of the Act of 2002 governing the service of documents.

In accordance with Article 47 of the Act of 2002, a procedural document of a party should be appended with copies thereof and copies of enclosures to be served on the parties and, additionally, if the enclosures have not been submitted in original – one copy of each enclosure to court files. A copy may also include a certified photocopy or

certified electronic mail printouts. The Article 47 § 2 of the Act of 2002 does not, however, imply that the facsimile transmission or electronic mail is equivalent to a document in administrative court proceedings.

A document may be served by facsimile or electronic mail. In such case, the confirmation of data transmission constitutes the proof of service. Service of documents by facsimile transmission or electronic mail is possible if the party at least implicitly indicated such service method, for example giving the fax number or Internet address. De lege ferenda the possibility of wider use of electronic communication in Act of 2002 should be considered.

In the event of sending a document by facsimile transmission or electronic mail, such document is deemed submitted on the day of confirmation of receipt in the form of an annotation made by an authorised employee (cf. order of the SN dated 29th January 2003, I CZ 192/02, OSNC 2004, No. 4, item 64).

With regard to admissibility of a secure electronic signature in administrative court proceedings it should be explained that pursuant to Article 5 item 1 of the Act of 18 September 2007 on Electronic Signature (Journal of Laws No 130, item 1450 as amended) secure electronic signature verified with qualified certificate has legal effect set forth by the Act, if made during the period of validity of this certificate. The concept of electronic signatures does not occur at all in the provisions of the Act Law on Proceedings Before Administrative Courts.

It should also be mentioned that in accordance with Article 2 item of the Act of 17 February 2005 on Computerisation of Activity of Entities Executing Public Tasks (Journal of Laws No 64, item 565 as amended), the provisions of this Act do not apply to administrative courts in administrative court proceedings. As a result, the administrative courts do not have an obligation to use electronic certificates mentioned in cited Act of 18 September 2007 on Electronic Signature in their correspondence. The effectiveness of a document submitted by a party necessitates its handwritten signature, as only such signature fulfils the requirements of Article 46 § 1 item 4 of the Act of 2002.

11) Must statements, written submissions and documents be submitted in strict accordance with the deadlines, with the case being inadmissible if they are not submitted in time? If so, are there any exceptions to this rule?

In principle, an action in court proceedings taken by a party after the time limit has expired is without legal effect. The party may request the reinstatement of the time limit for taking an action, if it has inculpably failed to effect. A letter containing a request to reinstate the time limit should be filed within 7 days from the date of termination of the reason for failure to comply with the time limit.

A failure to comply with the time limit in administrative court proceedings occurs if a party has failed to take certain action within statutory time limit or the time limit ordered by the court.

Taking an action by a party after the time limit renders such action ineffective. Pursuant to Article 49 of the Act of 2002, a result of failure to comply with the time limit of seven days with regards to completing or correcting a document is leaving such document unheard. A failure to comply with the time limit for lodging a cassation appeal, an interlocutory appeal or a petition for reopening of the proceedings results in its rejection, if on the other hand, a failure to comply with the time limit concerns a request which does not initiate court proceedings, for example a fourteen days time limit for filing a request for supplementation of the judgment, such failure to comply with the time limit shall result in dismissal of such request. An action taken prior to commencement of a certain time limit, for example filing a request for giving reasons for the judgment prior to its pronouncement.

Reinstatement of the time limit for taking an action in court proceedings depends on existence of the positive prerequisites, which enable the reinstatement of the time limit, and negative prerequisites, which render the reinstatement of the time limit inadmissible.

Only the procedural time limits are subject to reinstatement. Not subject to reinstatement are the time limits of the substantive law, and the instructive time limits, which in most cases apply to court actions.

A positive prerequisite of reinstatement of the time limit is the party's inculpability in failing to comply with the time limit. The criterion of inculpability as a prerequisite reinstating the time limit for taking an action in court proceedings is associated with an obligation to exercise due diligence in taking such action (as expressed in the NSA judgement dated 11th February 2003, II SA 4162/01, Legal Monitor 2003, No. 8, p. 340).

Party's inculpability in failing to comply with the time limit occurs solely in the event when the party has not been able to remove the reason for failure using the party's best efforts possible under the circumstances (the order of the NSA dated 2nd October 2002, Legal Monitor 2002, No. 23, p. 1059).

The time limit may be reinstated upon request of the party.

A decision on reinstatement of the time limit lies with the court, notwithstanding the type of concerned time limit – statutory or ordered by the court; in the latter event also notwithstanding, who has determined this time limit – the court or presiding judge. The assessment of inculpability in failing to comply with the time limit lies with the court. Such assessment should take all circumstances of the case into account. An order reinstating the time limit or refusing the reinstatement of the time limit is subject to interlocutory appeal.

12) Is there a limit to the number of statements or written submissions that may be submitted? Can additional statements or written submissions and documents be submitted?

In court proceedings the documents submitted by the parties mainly include certain motions and statements of the parties. The conditions below apply to documents submitted by all participants of the proceedings, both to administration authorities and to other participating entities.

Procedural document submitted by a party should include a list of enclosures, for example documents referred to by a party in proceedings. In such event, these documents should be enclosed in the form of original or duplicate. A party which, in its procedural document, makes reference to a document and has not submitted an original

document, only its copy, may be obliged to submit, upon request of the court, the original document before the trial.

One should also remember that a procedural document should be appended with copies thereof and copies of enclosures to be served on the parties. This means, that the document should be appended with the number sets of copies of the document and its enclosures corresponding to the number of parties to given proceedings.

During the trial, after the report is submitted, the parties – first the complainant, followed by an authority – have the floor. The presiding judge gives floor to other participants of the proceedings in an order the judge determines. The complainant's statements must contain claims and motions of the complaint, unless the complainant modifies his complaint during the trial. If necessary, for example in relation to questions asked by members of the adjudicating panel or the other party, the parties give explanations. Furthermore, the parties may cite the factual and legal grounds to justify their claims and motions.

Parties' statements may be limited to supporting submitted procedural document and the claims and motions therein contained. There is no obligation to respond to statements of the other party. However, voicing a response to statements of the other party is not prohibited.

On principle, it is not possible to conduct the hearing of evidence before the administrative court, which bases its review of legality on the evidentiary material gathered in the proceedings before the administrative authority who has issued the challenged decision (Article 133 § 1 of the Act of 2002). An exception from this principle exists, mentioned in Article 106 § 3 of the Act of 2002. Pursuant to this provision, the court may, on its own motion or at the request of the parties, request additional documentary proof. Conducting the hearing of evidence (admitting documentary proof) has the form of an order issued during the trial and is entered into the record without writing a separate sentence, as it is not subject to interlocutory appeal. The order is pronounced and does not require reasons. Admitting documentary proof, the court should indicate which circumstances should be determined therein. To the hearing of evidence mentioned in Article 106 § 3 of the Act of 2002 the provisions of the Kpc apply respectively. In accordance with these provisions, the documents may be classified as

official – Article 244 § 1 of the Kpc (formulated in the prescribed form by the competent authorities within their competence), constituting a proof of the matter such document officially certifies, and private – Article 245 of the Kpc, constituting a proof that the person who signed the document had made a statement contained therein.

Evidentiary witness hearing may not be conducted in proceedings before the administrative courts.

Additional documentary proof may be carried out if two conditions are jointly fulfilled: 1) it is necessary to resolve substantial doubts: 2) it will not extend excessively the proceedings on the case.

Additional documentary proof must be carried out if without the relevant document the resolution of substantial doubts existing in the case is not possible.

It is beyond doubt that the scope of cognition of an administrative court, limited to the review of legality of the challenged act, excludes this court's ability to make factual determinations which could support adjudicating on the case in terms of substance, this does not, however, mean that the factual circumstances of the case may not be included within the scope of evidentiary hearing. The very substance of evidentiary hearing implicates that such hearing refers to factual determinations and not to the legal grounds for the decision on an administrative matter. The discussed prerequisite of evidentiary hearing admissibility in proceedings before the administrative court should therefore be understood in terms of material competence of administrative court and its systemic function of executing justice through the review of activity of public administration authorities. In other words, admissibility of clarification of substantial doubts must be assessed within the context of particular case and having regard to the circumstances that affect the content of its settlement.

An excessive extension of the proceedings on the case should be understood as a necessity to adjourn the trial. Therefore, the legislator allowed a possibility to take evidence from a document without carrying out a trial. In accordance with Article 113 § 2 of the Act of 2002, additional evidence may be taken from documents known to the parties, after the trial has been closed, if the court has found that carrying out a trial on that evidence is unnecessary.

The NSA referred to the substance of evidentiary hearing in its judgement dated 6th October 2005 (II GSK 164/05, ONSAiWSA 2006, No. 2, item 45). The court stated that requesting additional documentary proof by the administrative court (Article 106 § 3 of the Act of 2002) shall be permissible in the situation, where the requested (or admitted *ex officio*) proof remains in connection with the review of legality of the challenged act. The purpose of the proceedings is not making new determination of the facts of the administrative matter, but an assessment, whether the authorities competent in this matter have determined the facts in accordance with the rules applicable in administrative procedure and subsequently - whether the authorities correctly applied the provisions of substantial law to made determinations.

Article 106 § 3 of the Act of 2002 sets the strict limits of using new evidence in administrative court proceedings. The provision implicates that not any proof may be admitted in proceedings, but only documentary proof, where it should be additional, meaning a proof, which has not been presented and assessed in administrative proceedings concluded with the challenged decision. The provision implicates further that admitting documentary proof constitutes the court's entitlement, not its obligation. Therefore, should such proof be offered by the party to administrative court proceedings, court's setting the decision aside without hearing such evidence may not be viewed as breach of procedural provisions, and indeed an important breach that substantially affects the outcome of the case (the NSA judgement dated 12 January 2005, OSK 1595/04, not published).

The provision does not, therefore, concern the situation, where the court reviews the compliance with the law of an administrative decision issued on the basis of documents already presented in the case in administrative proceedings, but the possibility of admitting new evidence as additional proof by the court.

Evidentiary hearing consists in reading the content of the document by the court and the parties and is carried out in such a manner, that during the trial the court views the document, presents it to the parties and notes it in the file. The parties are entitled to voice remarks and statements with regard to the heard evidence.

Hearing of evidence before the administrative court and, consequently, making determinations of the facts by the court is permitted to the extent justified by the

purposes of administrative proceedings and should enable the court to make determinations which will constitute the basis for assessment of legality of the challenged decision. This means that the court indeed may not make determinations that might serve resolving the matter, which has been handled with the challenged decision, in terms of substance. If a necessity occurs to make determinations that are to serve resolving the matter in terms of substance, the court should set the challenged decision aside and advise the authority, to what extent the authority should correct the evidentiary procedure (so states the NSA in its judgement dated 7th February 2001, V SA 671/00, Lex No. 50129). From Article 106 § 3 of the Act of 2002 follows that the first instance court does not have an obligation to ex officio carry out the proceedings aimed at securing documentary proof (the NSA judgement dated 23rd November 2005, I FSK 260/05, not published).

After each of the parties attending the trial has spoken, the presiding judge shall close the trial if the court decides that the case has been sufficiently clarified. While deciding that the case has been sufficiently clarified the court should have regard to the principle of economy of the proceedings expressed in Article 7 of the Act of 2002.

On principle, closing the trial concludes the hearing phase of the proceedings before issuing a substantial decision. In exceptional situations the additional may be taken after the trial has been closed. This may take place subject to fulfilling two conditions. Firstly, it concerns solely the evidence from documents known to the parties, which means that the party may comment on the evidence before closing the trial, even though the evidence is not present in the case file. Secondly, the court finds that carrying out of a trial on that evidence is unnecessary. Such situation occurs if in the court's opinion viewing the relevant document by the adjudicating panel is necessary to correctly adjudicate. In most cases this would involve an official document held in a different file.

13) Is it compulsory to submit a summary statement closing the written submissions?

No.

14) Once the investigation has been closed, is it possible to submit new documents, written submissions or written observations at the last minute?

See the answer to question II.12.

Closing the trial concludes the hearing phase of the proceedings before issuing a substantial decision. In exceptional situations the additional may be taken after the trial has been closed. This may take place subject to fulfilling two conditions. Firstly, it concerns solely the evidence from documents known to the parties, which means that the party may comment on the evidence before closing the trial, even though the evidence is not present in the case file. Secondly, the court finds that carrying out of a trial on that evidence is unnecessary. Such situation occurs if in the court's opinion viewing the relevant document by the adjudicating panel is necessary to correctly adjudicate. In most cases this would involve an official document held in a different file.

15) Can new arguments be raised during the procedure?

There are no legal objections against raising new arguments during the proceedings before the first instance court. Article 106 § 3 of the Act of 2002 sets the strict limits of using new evidence in administrative court proceedings. The provision implicates that not any proof may be admitted in proceedings, but only documentary proof, where it should be additional, meaning a proof, which has not been presented and assessed in administrative proceedings concluded with the challenged decision. The provision implicates further that admitting documentary proof constitutes the court's entitlement, not its obligation. Therefore, should such proof be offered by the party to administrative court proceedings, court's setting the decision aside without hearing such evidence may not be viewed as breach of procedural provisions, and indeed an important breach that substantially affects the outcome of the case (the NSA judgement dated 12 January 2005, OSK 1595/04, not published).

With regard to raising new arguments during the proceedings before the second instance court it should, however, be noted that due to the provision of Article 183 § 1, second sentence, of the Act of 2002, the parties may not present other grounds for cassation (arguments) than the ones cited in the cassation appeal itself, but they may present new justification to these grounds. Presentation of new justification to the grounds for cassation appeal mentioned in of Article 183 § 1 of the Act of 2002 may therefore consist in raising new or changed argumentation to support them, including citing the opinions expressed in the jurisprudence or doctrine. It may not, however, be expressed in adding further provisions justifying the grounds for cassation, as an exact indication of violated provisions belongs to the grounds for cassation, not their justification.

16) Can new arguments be raised on appeal?

This question should be answered in the affirmative. However, one should bear in mind that defining the grounds for cassation, the legislator has indicated that the addressee of an allegation of violation of the law, both substantial and procedural provisions thereof, may only be a first instance court. Naming the provisions breached by an administrative authority does not constitute satisfying an obligation to provide the grounds for cassation. For the subject of review in cassation proceedings is the court's judgement, not an administrative decision, or any other administrative act.

17) Are there appeal channels for accelerating the course of the procedure or applying a penalty for exceeding 'reasonable time', in accordance with the judgement in the case of Kudla v. Poland, delivered on 26 October 2000 by the European Court of Human Rights?

Pursuant to Article 2 item 1 of the Act of 17 June 2004 on Complaint against an Infringement of the Right of a Party to Hearing the Case in the Court Proceedings Without Undue Delay (Journal of Laws No 179, item 1843), a party may lodge a

complaint demanding a determination that in the proceedings subject to such complaint an infringement of the party's right to hearing the case without undue delay took place, if the proceedings continue for a period longer than necessary to determine these legal and factual circumstances, which are essential to adjudicate on the case, or for a period longer than required to conclude an enforcement matter or a different matter regarding an enforcement of judicial decision (protraction of proceedings).

The provisions of the Act enable a party to lodge a complaint against protraction of proceedings and obtaining compensation from the State Treasury and decision ordering taking appropriate action by the court, which hears the case in terms of substance. The Supreme Administrative Court in a panel of three judges is competent to hear complaints against protraction of proceedings.

In October 2009 an amendment to the Act of 17 June 2004 on Complaint against an Infringement of the Right of a Party to Hearing the Case in the Court Proceedings Without Undue Delay came into force. During the few years of the aforementioned regulation's validity the common courts received thousands of complaints against an infringement of the right of a party to hearing the case in court without undue delay. For example, in the year 2005 alone the common courts received a total of 4515 complaints, 1001 of which were granted and in only 643 financial compensations ordered.

In the year 2006 the NSA heard a total of 221 complaints (193 complaints received, 28 complaints remained from the previous period, which in total amounts to 221 complaints). The General Administrative Chamber heard 193 complaints, in case of 23 of which a complaint against protraction of proceedings before voivodship administrative court was granted, and in 19 of them the party's demand was met and financial amount granted (the highest granted amount reached PLN 6000). In the Financial Chamber 13 complaints were settled, including two cases concerning proceedings before the NSA. One complaint was granted, however without compensation. Four complaints were dismissed and remaining ones resolved otherwise.

In the year 2007 the NSA heard a total of 11 complaints against protraction of proceedings before the NSA and 88 complaints against protraction of proceedings

before voivodship administrative courts. Among settled cases, granted were 2 complaints against protraction of proceedings before the NSA with financial penalties payable by the State Treasury in total amount of PLN 2.000, and 25 complaints against protraction of proceedings before voivodship administrative courts with financial penalties payable by the State Treasury in total amount of PLN 18.300, including PLN 12.000 penalty for protraction of proceedings before the WSA in Kraków, PLN 2.000 – WSA in Opole, PLN 1.000 each - WSA in Rzeszów, Szczecin and Warsaw, PLN 800 - WSA in Kielce and PLN 500 - WSA in Łódź. In comparison to previous year, the intake of complaints decreased significantly, as well as the number of granted complaints. It indicates an improvement in dynamics of hearing the cases.

The most common reason for dismissing complaints against protraction of proceedings was the determination that there were no grounds for alleging the court's delay of proceedings, as only short period had passed from instituting court proceedings and the court actions were taken without undue delay. On the other hand, the most common reason for rejecting complaints against protraction of proceedings was lodging the complaint after conclusion of proceedings in the case, failure to pay the fee or lodging another complaint before 12 months has passed from legally valid dismissal of previous complaint against protraction of proceedings.

The above statistics show the practice of the Act's application, which leads to the conclusion that analysing the prerequisites of extending the proceedings without justified delay the courts rarely grant complaints, and even less often apply the compensative measure of appropriate financial amount.

The amendment of provisions on hearing cases concerning unjustified protraction of proceedings has been aimed primarily at adjusting Polish legislation to the standards of the European Court's of Human Rights jurisprudence. It is worth emphasising that even though the complainants had taken advantage of the possibility to lodge a complaint against protraction of proceedings, European Court of Human Rights in its judgements in the case of Tur vs Poland (judgement dated 23th October 2007, complaint No. 21695/05) and the case of Woźniak vs Poland (judgement dated 13th

November 2007, complaint No. 25728/05) did not deem the regulation of 17 June 2004 an effective remedy before national authorities within the meaning of Article 13 of the European Convention on Human Rights.

The amended Act provides in Article 1 that the apart from action or failure to act on the part of the court or bailiff, subject to complaint are also overly time-consuming actions of the prosecutor who carries out or supervises preparatory proceedings. Article of the amended Act of 17 June 2004 indicates the prerequisites the court should take into account while hearing the complaint, namely the nature of the case and adjudicated matters, the level of its factual and legal complexity, its importance to the complainant and behaviour of other parties.

It should be predicted that the last amendment will increase the effectiveness of the Act on complaint against protraction of proceedings primarily by reducing the number of complaints that are lodged by the Polish citizens to the European Court of Human Rights. As a result, the amounts of compensations and other costs that burden the state budget will decrease. Above all, however, the legislator has raised the standards of citizen's right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court, which is granted in Article 45 of the Constitution of the RP.

18) What does the court understand by 'reasonable time' for a hearing within the meaning of Article 6 of the European Convention on Human Rights? If applicable, mention some cases where sanctions were applied because a hearing did not take place in reasonable time.

In accordance with the provisions of the Act of 17 June 2004 on Complaint against an Infringement of the Right of a Party to Hearing the Case in the Court Proceedings Without Undue Delay (including the right to carrying out and completing enforcement proceedings without undue delay), protraction of proceedings occurs, if the proceedings continue for a period longer than necessary to determine these legal and factual

circumstances, which are essential to adjudicate on the case, or for a period longer than required to conclude an enforcement matter or a different matter regarding an enforcement of judicial decision. In each case, subject to review are timeliness and correctness of the actions taken by the court in order to issue a decision on the case in terms of its substance, having regard to the nature of the case and adjudicated matters, the level of its factual and legal complexity and its importance to the party who lodged the complaint.

Thus, in the Polish legal system the assessment, whether the proceedings remain within a reasonable period, should be carried out, similarly to the assessment conducted by the European Court of Human Rights, on the basis of the following criteria: complexity of the case, its importance to the complainant, the complainant's behaviour, the court's behaviour. Polish adjudicating panels accentuate that each of the above criteria should be examined separately, and subsequently the cumulative result of these examinations assessed. Each review is being carried out giving regard to the special circumstances of particular case.

In its order dated 27th November 2009 (file No. I OPP 56/09) the NSA dismissed a complaint against protraction of proceedings. The NSA emphasized that a complaint demanding the determination that the protraction of proceedings occurred during the proceedings before voivodship administrative court may be granted if the grounds exist to determine that as a result of an action taken by the court or lack of such action the right of a party to hearing the case in the court proceedings without undue delay has been infringed (Article 1 item 1 of the Act of 17 June 2004 on Complaint against an Infringement of the Right of a Party to Hearing the Case in the Court Proceedings Without Undue Delay). In the Courts opinion, it was necessary to establish that a delay in court proceedings had occurred (protraction of proceedings) and that the delay in court proceedings had been due/undue. Pursuant to Article 2 of the Act, undue delay occurs, if the proceedings continue for a period longer than necessary to conclude them, taking into account an assessment of timeliness and correctness of the actions taken by the court, as well as the behaviour of the parties, in particular the party who alleges the protraction of proceedings. The Court indicated that this assessment may not be separated from the court's obligation to hear all cases lodged to court without undue

delay, with preserving the principle of examining the cases in order of their lodging and having regard to the provisions which order to hear certain types of cases within statutory time limits.

In the NSA view, in the given case the protraction of proceedings could not be alleged to the court, as particular actions had been undertaken correctly and without undue delay. The analysis of the court record showed that the discussed case had been instituted in the year 2001 and concluded in the first instance court proceedings in the year 2009. This undoubtedly long period of waiting for the case to be heard, however, did not result from errors or sluggishness of the court, but was related to the actions taken by the participant of the proceedings. At each stage of the proceedings she filed motions for excluding the judges adjudicating on the case and interlocutory appeals against all court orders issues in the course of the proceedings, even against those not subject to an interlocutory appeal. This behaviour of the party to the proceedings constituted a sole reason for such an extensive period of court proceedings. The analysis of the court record proved unequivocally that the Voivodship Court in Warsaw, following the directive derived from Article 7 of the Act of 30th August 2002 r. – Law on Proceedings Before Administrative Courts (Journal of Laws No 153, item 1270 as amended), aimed to settle the case at the first sitting, the participant, however, during or directly before each trial filed numerous formal motions the Court was obliged to hear. The participant undoubtedly protracted hearing of the case on her own initiative, abusing the institution of excluding the judge.

Taking into account all circumstances of the case, in the Supreme Administrative Court's assessment all actions taken by the Court in the course of the proceedings were carried out within reasonable time limits, without infringement of the efficiency of the proceedings principle.

In its order dated 27th November 2009 (file No. I OPP 56/09) the NSA emphasized that the Act does not directly specify the length of the period of waiting for the case to be heard that should be deemed an undue delay. Certain indication is, however, derived from Article 14 of the Act, which provides that another complaint against protraction of proceedings with reference to the same case may be lodged after

12 months. This means that the legislator deemed protracted the proceedings that continue for over 12 months.

In its order dated 27th January 2007 (file No. I OPP 136/06) the Supreme Administrative Court determined the protraction of proceedings before the Voivodship Court in Kraków [Cracow]. In this case, the complaint against protraction of proceedings before the Voivodship Court in Kraków was lodged with reference to the complaint against failure to act of the District Attorney of Kraków Śródmieście Zachód in relation to allowing access to public information, and contained a claim for compensation in the amount of PLN 10.000 and demands to hear the case of complaint against the District Attorney within 30 days and to hear the request for exemption from court costs.

In accordance with Article 21 item 2 of the Act dated 6th September 2001 on Access to Public Information (Journal of Laws No 112, item 1198 as amended) cited by the complainant, in the proceedings on making public information available a complaint is heard within 30 days of receiving the file together with the response to the complaint. This provision imposes an obligation on the administrative court to hear the complaint within specified time limit, the provision, however, should be understood in such a manner that the court hears the complaint within this time limit unless the circumstances occur that render hearing the complaint impossible. These circumstances include correcting formal deficiencies of the complaint and a requirement of prior filing fee payment and, in the event the party has submitted an application for the right of assistance, a valid order on this application. Having regard that a complaint in the proceedings on making public information should be heard within 30 days of receiving the file together with the response to the complaint, also the application for the right of assistance should be considered as swiftly as possible, since only after it has been considered the complaint may be heard.

The Court emphasised that since the Act specifies a time limit of 30 days to hear a complaint, under the circumstances of this case it should be stated that such a lengthy consideration of the application for the right of assistance (in particular the period of three months that have passed from the issue of the ruling on delivery of a copy of the order dated 22nd June 2006) infringed the right of a party to hearing the case in the

court proceedings without undue delay within the meaning of Article 2 of the cited Act of 17 June 2004. Therefore, even though hearing the case was impossible due to considering the application for the right of assistance, the right of the complainant to hearing his complaint without undue delay within the time limit defined in the Act was infringed due to the lengthy period of proceedings with regard to granting the right of assistance. Therefore, the Supreme Administrative Court on the basis of Article 12 paragraph 2 of the cited Act of 17 June 2004 determined that protraction of proceedings occurred in this case.

In its order dated 14th September 2007 (file No. I OPP 17/07) the Supreme Administrative Court determined the protraction of proceedings before the Supreme Court and awarded a specified amount to the complainant from the State Treasury – the Supreme Court.

The case file showed that the complaint together with the case file and response to the complaint had been transferred by the administrative authority to the Voivodship Administrative Court in Opole in November 2005. In its judgement dated 26 June 2006 the WSA in Opole set aside the challenged order. The complaining Company lodged a cassation appeal against this judgement through the first instance Court on 26th August 2006 (date of the postal stamp). This cassation appeal was received by the Supreme Administrative Court on 18th September 2006. On 21st August 2007 (date of the postal stamp) the complaining Company lodged a complaint against protraction of proceedings. By ruling of the President of the Department of the NSA dated 29th August 2007 the trial date was set on 19th October 2007.

The Supreme Administrative Court indicated it necessary to determine, whether the delay in court proceedings had occurred (protraction of proceedings) and whether the delay in court proceedings had been undue. The Court emphasised that this assessment may not be separated from the court's obligation to hear all cases lodged to court without undue delay, with preserving the principle of examining the cases in order of their lodging and having regard to the provisions which order to hear certain types of cases within statutory time limits.

Pursuant to the provision of § 39 paragraph 1 of the resolution of the General Assembly of the Judges of the Supreme Administrative Court of 9th February 2004 on internal regulations of operation of the Supreme Administrative Court (Legal Monitor No. 11, item 176), the cases lodged to court are examined in order of their lodging, unless a specific provision provides otherwise. The principle of examining the cases in order of their lodging means that the case lodged later may not be heard (the trial date may not be set) before hearing the cases lodged to court beforehand. The number of cases lodged to court constitutes a reason for waiting for setting the trial date. The grounds exist, however, for earlier hearing of cases, derived either directly from the provisions of the Act, which specify the time limits for hearing cases by the court, or from the provisions, which regulate the mode of proceedings that enables examining cases out of turn. This is of particular importance for the cases, in which the level of factual and legal complexity is not high, and their legal nature and importance to the party supports their swifter hearing. Such possibilities are enabled by ruling on examining the case out of turn, if the party has presented reasons that justify examining the case out of turn (§ 39 paragraph of the cited resolution).

According to the above argumentation, the Complainant's right to hearing the case without undue delay has been infringed, as the proceedings from cassation appeal have been carried out since August 2006 and have not yet been concluded. The fact that in the considered case the Complainant has not requested examining the case out of turn, thus not exhausting the remedies that enable swifter examination of the case without a necessity to wait for its examination in order of lodging, may not itself change the assessment, according to which protraction of proceedings has occurred. It should be noted that after the WSA in Opole had transferred the complaint together with the case file in September 2006, the case waited for the trial date to be set until August 2007. Such a long period of waiting waited for the trial date to be set justifies the conclusion that in this case an infringement of the right of the Complainant to hearing her complaint without undue delay occurred, within the meaning of Article 2 of the act, even though the reason for delay was a large number of cases waiting to be considered.

That being the case, the Supreme Administrative Court, granting the cassation appeal, determined that in these proceedings the protraction of proceedings (Article 12

paragraph 2 of the Act) occurred and awarded a specified amount to the complainant from the State Treasury – the Supreme Court. In determining the amount awarded for protraction of proceedings, the court had regard for the time of proceedings, subject matter of the case, but also the fact that the Complainant has not requested examining the case out of turn and that the trial date has already been set.

III. Performance criteria

1) Are there quantitative and qualitative criteria for measuring the ‘performance’ of court activity? What is the judicial value of these criteria and what body issued them?

In administrative courts the statistics are conducted (in monthly, bi-quarterly and annual cycles) that allow the review of performance of both all judges of particular courts (the WSA and the NSA) and each judge separately. The basic purpose of the court statistics is gathering data that show current activity of administrative courts in terms of numbers, understood mainly as the number of cases to be handled during the given reporting period, the number of cases actually handled during that period and the number of remaining cases. Such statistics, in particular the NSA statistics, may also serve the purpose of controlling the quality of the WSA jurisprudence, for example through showing the manner in which the appellate measures received by the NSA and lodged against the judgements of the first instance courts have been settled. Also possible is the assessment of efficiency of particular judges and courts in terms of timeliness of handling the cases, timeliness of formulating reasons, and timeliness of inter-instance circulation of cases.

With respect to particular administrative courts relevant data contain information on the number of positions of judges (in total), actual presence of judges in each reporting period (taking into account and deducting their days of excused absence e.g. due to delegation to adjudicate in a different court, annual leave, sick leave, trainings, etc.) and indicate the arithmetical mean of number of cases to be settled by a single

judge (by actual staffing). The number of cases settled by a single judge (by actual staffing) is calculated using the same method. Therefore, on that basis it is possible to define the criteria of adjudicating efficiency of the courts in terms of numbers (by comparing the courts to each other), i.e. the load of received cases and the number of settled ones. It is also possible to calculate the arithmetical mean of number of settled cases for a single judge (by actual staffing). Using this data, the adjudicating efficiency of particular judges can also be determined.

It should be further noted that the aforementioned data are gathered and processed by the Department of Court Information of the NSA on the basis of statistical reports sent by the voivodship administrative courts and the Chambers of the NSA (cf. actual tables of monthly, bi-quarterly and annual statistical staffing reports). The collected data, after preliminary processing, are subsequently forwarded to the Court authorities and presented to the Judicial Decisions Bureau in order to be used in the works on review of quality of administrative jurisdiction activity.

2) Are there statistical data on the average length of proceedings in the Supreme Administrative Court and the average length of a procedure from the court of first instance to the final decision by the Supreme Administrative Court?

The NSA has the data, based on which it is possible to ascertain the amount of cases concluded at respective stages of administrative court proceedings (first or second instance). It is therefore possible to precisely determine the number of cases settled by the WSA (legally invalid) and by the NSA (legally valid) within particular time, for example between 6 months and one year from the date the case has been received by the given court to the date of adjudicating the case in the given instance (see tables of bi-quarterly and annual reports of the WSA – Section 5 and 6, the NSA – Section 8 and 9). The aforementioned data are prepared in bi-quarterly and annual cycles. Furthermore, it should be noted that due to the fact that the data contain two values (i.e. time period and number of concluded cases), calculating the simple arithmetical mean (mean susceptible to extreme tendencies) on their basis is not possible. In order

to determine the average time of waiting for the determination of the case it is therefore necessary to refer to the concept of mode, i.e. the value that occurs the most frequently in the analysed sample (here: the period in which the largest number of cases has been settled) or to other statistical tools.

The NSA does, however, conduct the precise statistics that monitor the time required to settle the case from the date of its receipt by the WSA until its legally valid and final settlement, i.e. one that concludes the case definitively [this concerns, among others, the situation where the decision of the Supreme Administrative Court (where an appellate measure has been lodged) does not remand the case to the WSA for re-examination]. Although it is possible to compare the data on the timeliness of settling cases by the WSA and the NSA (respectively Sections 5 and 6 / 8 and 9) and on the timeliness of the so-called inter-instance circulation (bi-quarterly and annual NSA reports - Section 8 and 9), the data thus obtained, however, will be affected by a substantial degree of statistical error.

It should be added off-handedly, that currently in preparation are statistical reports that could clarify the obtained statistical data referring to the discussed area. Possible changes, if they are accepted and implemented, will be in force from the reporting period covering the year 2010.

3) Are there significant differences in the length of procedures depending on the nature of the case?

On principle, the administrative courts (both the WSA and the NSA) examine the cases in order of their receipt by the court (cf. § 31 paragraph 1 of the regulation of the President of the Republic of Poland dated 18th September 2003 on Internal Regulations of Operation of the Voivodship Administrative Courts and § 39 paragraph 1 of the resolution of the General Assembly of the Judges of the Supreme Administrative Court of 9th February 2004 on Internal Regulations of Operation of the Supreme Administrative Court). The general principle demands therefore that each case (initiated by the complaint lodged to the WSA or cassation appeal lodged to the NSA) should be

included in the court calendar (have a trial date set) in order of its receipt, regardless of the complexity of the matter it concerns. This principle is indeed being observed and the exceptions therefrom are established by the legal provisions setting forth the instructive time limits for examining particular types of cases (for example concerning subsidies for EU projects – e.g. Article 30c of the Act of 6th December 2006 on the Principles of Development Policy, consolidated text, Journal of Laws of 2009, No 84, item 712) or result from decisions of the President of the WSA or the President of the relevant Chamber of the NSA.

A situation may not be excluded where on reasonable grounds the case is examined out of turn, for example due to the necessity to carry out an in-depth preliminary conference (in particular in cases concerning several matters of similar kind – customs or telecommunication matters). The complexity of the case also affects the date of its conclusion, as it may result in an order deferring a judgment for no longer than 21 days – Article 139 § 1 of the Act of 2002.

4) During proceedings, are lower courts authorised to request the Supreme Administrative Court's opinion on a new point of law in the aim of guaranteeing judicial security and preventing an influx of disputes?

Generally speaking, they are not. The legislator has not equipped the first instance administrative courts with general, unlimited competence to refer the questions of law (prejudicial questions) to the NSA. If an administrative court has doubts as to the conformity to the Constitution of a normative act applicable to the examined case (and the judgement in such case depends on the interpretation of this act), pursuant to Article 193 of the Constitution of the RP the court may refer a question of law to the Constitutional Tribunal²⁴. As indicated above, the adjudicating panels of the NSA may request a legal issue significant for the case and related to inconsistencies in existing jurisprudence of the administrative courts be resolved, thereby initiating the resolution adopting procedure of the NSA (see answer to question 5 in fine and footnote No. 18).

²⁴ In accordance with Article 193 of the Constitution of the RP.

The sole situation in resolution adopting activity of the NSA where the resolution adopting procedure may be initiated by the order of the first instance court – the WSA – is stipulated in Article 269 § 1 of the Act of 2002.

In accordance with Article 269 § 1 of the Act of 2002, if any panel of the administrative court hearing the case does not share the position taken in the resolution by seven judges, by a panel of the entire Chamber or by the full panel of the Supreme Administrative Court, it shall submit the arising legal issue for resolution by an appropriate panel. The interpretation of the expression “any panel of the administrative court” includes the adjudicating panel of the WSA. In the examined case, the first instance court shall be bound by the NSA resolution adopted on its initiative.

5) What is the ratio between the number of judges in the Supreme Administrative Court and the number of cases settled each year?

The table below shows the ratio between the number of judges in the Supreme Administrative Court (after reform) and the number of cases settled in the following years.

Year	Number of judges	Type of cases and number of settlements					
		CA	IA	J	PP	QP	Total
2004	65	2.918	1.554	174	104	2	7.670
2005	74	6.535	5.607	381	371	16	12.910
2006	75	8.788	5.451	208	211	17	14.675
2007	75	9.409	4.202	257	99	29	13.996
2008	84	9.451	4.225	327	82	26	14.111

2009	85	8.705	3.608	247	95	37	12.692
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Table explanation:

1. In the column "Number of Judges" the status as on 31st December of the relevant year has been included,
2. CA – cassation appeal (see Article 173 of the Act of 2002); IA – interlocutory appeal see Article 194 § 1 of the Act of 2002); J – jurisdictional disputes / disputes as to competence (see Article 4 in connection with Article 15 § 1 item 4 of the Act of 2002); PP – complaints against protraction of proceedings; QP – question of law posed by an adjudicating panel (see Article 264 of the Act of 2002 in connection with Article 15 § 1 items 2 and 3 of the Act of 2002).
3. The columns CA, IA and J also include the cases concerning reopening of particular proceedings (see Article 270 of the Act of 2002).
4. Figures for 2009 cover the period from 01.01. to 30.12.2009.

6) What is the ratio between the number of judges and the number of assistants?

In accordance with the status as on 7th January 2010, 89 judges adjudicated in the Supreme Administrative Court. In turn, 93 persons were employed as assistants to the judges.

7) Are there specialised judges within the Supreme Administrative Court who only deal with a certain kind of cases? Does this specialisation have a basis in law or is it a result of internal work distribution?

Pursuant to Article 39 § 1 of the Pusa, the NSA is divided into: the Financial Chamber, the Commercial Chamber and the General Administrative Chamber.

The Financial Chamber adjudicates in matters of tax liabilities and other money contributions to which tax provisions and provisions on execution of money contributions apply (Article 39 § 2 of the Pusa).

In turn, the Commercial Chamber adjudicates in matters of economic activity, the protection of industrial property, the budget, currencies, securities, banking, insurance, customs, prices, tariff rates and fees, except for fees payable in respect of matters falling within the scope of competence of the General Administrative Chamber (Article 39 § 3 of the Pusa).

The General Administrative Chamber is competent in matters not falling within the scope of competence of the Financial or Commercial Chamber, particularly in matters of construction and construction supervision, land development, water management, protection of natural environment, agriculture, forestry, employment, system of local government, management of immovable, privatisation of property, the universal obligation of military service, internal affairs, as well as prices, fees and tariff rates, provided that they are connected with matters falling within the scope of competence of the General Administrative Chamber (Article 39 § 4 of the Pusa).

Each of the NSA Chambers exercises, in matters falling within the scope of its competence, supervision over the jurisdiction of the first instance courts (the WSA).

In practice, such division results in the specialisation of the judges of the NSA in the areas falling within the scope of competence of the Chamber, in which they adjudicate. Furthermore, by way of ruling of the President of the NSA, two judicial divisions have been established. The judges of each Chamber adjudicate in matters which under the Act fall within the scope of competence of this Chamber. Therefore, for example a particular judge of the Commercial Chamber does not adjudicate solely and exclusively in matters of industrial property, nor a judge of the General Administrative Chamber only in matters of protection of natural environment. It is possible to change of affiliation of the judge to particular Chamber permanently or through delegation for a specified period.

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