Consiglio di Stato

ACA EUROPE

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"Techniques for the protection of private subjects in contrast with public authorities: actions and remedies – liability and compliance"

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Answers to questionnaire: Poland

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SESSION I

LEGAL PROCEEDINGS THAT CAN BE BROUGHT BEFORE THE ADMINISTRATIVE COURT

1. In your legal system, which judges are competent to pronounce on disputes in which one of the parties is the public administration?

In the Polish legal system, judges of a voivodship administrative court, judges of the Supreme Administrative Court, and court assessors are competent to pronounce on these kind of disputes.

2. Which actions can be brought before the administrative court in view of the exercise of administrative powers?

The act of 30th August 2020 Law on Proceedings Before Administrative Courts (hereinafter: p.p.s.a.), highlights the following actions:

- a complaint against a decision, order or other act of public administration (Article 50 of the p.p.s.a.),
- a complaint against a lack of action or excessive length of proceedings in the cases (Articles 3 § 2 (8) and (9) of the p.p.s.a.),
- an application to resolve jurisdictional disputes between local government authorities and between self-government appellate boards, and disputes as to competence between local government authorities and government administration agencies (Article 4 of the p.p.s.a.).

3. From which sources can actions be brought before the administrative court?

In the Polish legal system, actions that are brought before the administrative judge are regulated by law, and specifically, by the p.p.s.a.

4. Which administrative decisions can be challenged?

According to the p.p.s.a., one can challenge before administrative court:

1) administrative decisions;
2) orders made in administrative proceedings, which are subject to interlocutory appeal or those concluding the proceeding, as well as orders resolving the case in its merit;
3) orders made in enforcement proceedings and proceedings to secure claims which are subject to an interlocutory appeal, with the exclusion of the orders of a creditor on the inadmissibility of the allegation made and orders dealing with the position of a creditor on the allegation made;
4) acts or actions related to public administration regarding rights or obligations under legal regulations other than acts or actions specified above,
5) written interpretations of tax law issued in individual cases, protective tax opinions and refusal to issue protective tax opinions;
6) local enactments issued by local government authorities and territorial agencies of government administration;

7) enactments issued by units of local government and their associations, other than those specified above, within the scope of public administration;
8) acts of supervision over activities of local government authorities;
9) lack of action or excessive length of proceedings;
10) matters where provisions of specific statutes provide for judicial review;
11) administrative courts also resolve jurisdictional disputes between local government authorities and between self-government appellate boards, and disputes as to competence between local government authorities and government administration agencies.

5. On the grounds of which defects can the annulment of an administrative act be requested?

The annulment of an administrative act can be the result of violation of substantive law, that has affected the outcome of the case, a violation of law which provides the basis to reopen administrative proceedings, and other breach of procedural provisions, however only if it would have substantially affected the outcome of the case. There are also grounds based on blatant violation of law (specified in Article 145 § 1 (2) the p.p.s.a.).

6. Can the judge partially annul the challenged administrative act?

The judge can partially annul an illegitimate administrative act.

7. Can the judge substitute the Administration by modifying the content of the administrative act?

In the Polish legal system, cases where it is possible for a judge to modify the content of the administrative act are listed by law.

The first category, is determined by the specificity of cases and refers to acts or actions related to public administration regarding rights or obligations under legal regulations other than administrative decisions and orders. In these kind of cases, the court may recognize in its judgment the right or obligation arising from the provisions of law (vide Article 146 § 2 of the p.p.s.a.).

The second category is strictly related to a public administrations failure to act. For instance, if the court oblige the authority to render a decision or order within a specified time limit, indicating the manner in which the case should be handled or determined and the decision or order is not rendered, the party may lodge a complaint, requesting that a decision be rendered whereby it is declared whether or not the right or obligation exists. The court can render a decision on this matter if the circumstances of the case allow (Art 145a § 1, § 3 of the p.p.s.a.). Also, when granting a complaint against failure to act or excessive length of proceedings by authorities, the court may also declare whether or not the right or obligation exists if the nature of the case as well as the facts and legal framework of the case that do not raise reasonable doubts permit (Article 149 § 1b of the p.p.s.a.).

8. When the judge annuls the challenged act, can he dictate provisions which the P.A. abide by in the review proceedings of the subject-matter of the litigation?

Yes. If, as a consequence of granting the complaint, the case is to be reconsidered by an administrative authority, the reasons for judgment should additionally include suggestions as to proceed further.

9. When do the effects of the jurisdictional annulment of an administrative act become applicable?

There is no one answer to this question, as it depends on the grounds an administrative act was found illegitimate. In some cases, granting the complaint renders the effects applicable from the date of the adoption of the act – ex tunc (vide Article 145 § 1(2) of the p.p.s.a.).

10. Can the judge modulate the effects over time of the ruling of annulment of an administrative act?

The p.p.s.a. does not provide for such a possibility.

11. Can the act of ordering payments for damages be proposed autonomously or must always be proposed together with other kinds of actions?

First of all, p.p.s.a. does not regulate *payment for damages*. In the Polish legal system compensation for damages – in its common understanding - is an institution typical for the Civil Code and one can claim it before civil courts. This is confirmed in Article 154 § 4 of the p.p.s.a., according to which, a person, who has suffered injury because of a lack of compliance with the court decision, shall be entitled to compensation in accordance with principles specified in the Civil Code.

With regard to the above, the p.p.s.a. makes provisions for cases, exhaustively listed by law, when the court may order that public administration *pay the complainant a sum of money*. For example, the court granting a complaint against failure to act or excessive length of proceedings (Article 149 § 2 of the p.p.s.a.) or granting a complaint against unfulfilled judgment in this matter (Article 154 § 7 of the p.p.s.a.), may order – *ex officio* or at the request of the party - that the authority pay the other party *a sum of money*. The Act then requires that *the payment* must be proposed at the same time as other actions and only in specific cases (Article 149 § 2 action against silence, Article 154 § 7).

12. In the light of what kind of behaviour is compensatory action for damages feasible when dealing with Public Administration?

The State Treasury or a local government unit or other legal person exercising administrative power is liable for damage caused by its unlawful act or omission (Article 417 § 1 of the Civil Code).

However, as mentioned above, one can claim compensation for the damage before common (civil) courts, not administrative courts.

13. Which are the different kinds of reimbursable damages?

Reimbursable damages are both material and non-material.

14. Does the omission of lodging an action of annulment result in elision or reduction of the compensatory damages?

If the damage was caused by the issuance of a final decision, its repair may be demanded after the non-compliance with the law has been found in the relevant proceedings, unless separate provisions stipulate otherwise. This also applies to cases where the final decision was issued on the basis of a normative act inconsistent with the Constitution, a ratified international agreement or an act (Article 417^1 § 2 of the Civil Code).

Similarly, if the damage was caused by failure to issue a decision, when the obligation to issue them is provided for by law, its compensation may be demanded after the non-compliance with the law has been ascertained in the relevant proceedings, unless separate provisions provide otherwise (Article 417^1 § 3 of the Civil Code).

15. In order to award compensatory damages, is proof of the responsibility of the public administration required?

No, proof is not required.

16. Can the judge convert ex officio one action into another?

No. However, considering the type of a submitted action the court will take into account the content rather than the name.

17. Is there a time limit for the compensatory action?

See reply to questions 11 and 14.

18. Can the judge rule that the administration implement an administrative act?

In specific cases (Article 145a of the p.p.s.a.) and where the circumstances of the case so justify, the court can oblige the authority to render a decision or order within a specified time limit, indicating the manner in which the case should be handled or determined, unless the determination was left to the discretion of the authority. The competent authority is obliged to notify the court of the issuing of the decision or order within seven days of the date on which they were issued. In the event of failure to notify the court, it may decide to impose a fine on the authority.

SESSION II – SPECIAL PROCEDURES

1. **Does your administration have provisions for special procedures**

Yes, The Code of Administrative Proceedings has provisions for special procedures. For instance there are: issuance of certificates (Article 217 of the Code), procedure concerning letters of dissatisfaction and proposals (Article 221 of the Code), mediation (Article 96a of the Code).

2. **What do the specialities consist of?**

The special procedures are mostly in regard to *specific subject* and they result in *different kinds of decisions* compared to ordinary regulations (for instance: a certificate – Article 217 § 1 of the Code, a notification about the manner of disposal of the letter of dissatisfaction – Article 238 of the Code, administrative settlement – Article 114), some of them are *fast-tracked, simplified procedures* (especially procedure certificate issuance – without undue delay, however not later than within 7 days – Article 217 § 3).

3. **The special rites are established:**

As mentioned above, the special procedures are mostly in regard to *specific subject*.
However, if the nature of the case allows, a case in a matter in which the ordinary proceedings have been pending before a public administration authority, may be *moved to special procedure* and conclude in settlement (Articles 96a and 114 of the Code).

4. **Does your system provide for appeals against the silence of the Administration at the request for an administrative provision presented by a private individual?**

Yes.
According to the Article 53 § 2b of the p.p.s.a. complaint against inaction or excessive duration of proceedings may be filed at any moment after submitting a reminder to the competent authority.

5. **Do the Administrations comply spontaneously with the decisions of the administrative courts?**

No such data available.

6. **In your legal system, is there a special procedure for ensuring the integral execution of the sentence**?

No. When granting the complaint the *court obliges the authority* to render a decision or order *within a specified time limit indicating the manner in which the case should be handled or determined, unless the determination was left to the discretion of the authority.* The competent authority *notifies* the court of the issuing of the decision or order within seven

days from the date on which they were issued. In the event of failure to notify the court, it may decide to *impose a fine* on the authority (Article 145a of the p.p.s.a.).

7. **Are the judge's decisions which are not of the last resort immediately enforceable?**

No. Pursuant to Article 168 of the p.p.s.a., a judgment of an administrative court of the first instance becomes final if there is no appeal against it. The execution of an administrative court judgment takes place after it becomes final.

8. **Following the annulment of a decision characterized by discretionary power, the interested party is forced to challenge each of the ulterior negative decisions which have been deemed illegitimate by dint of defects which are different to those identified by the judge or, in alternative, are there certain mechanisms of "reduction" of the aforesaid discretionary power which ensure the definition of the litigation once and for all?**

The discretionary power of the administration cannot be limited by the court in the judgment granting a complaint. In the Polish legal system administrative courts are competent to decide on legal compliance only, and this judgment can be based on strict legal premises provided in acts of law. The discretionary field Polish legislator left for the competence of the administration authority and shaped it in substantial law.

The legal assessment and indications as to the further course of action presented in a court decision are binding on the authorities whose action, failure to act or excessive length of proceedings was the subject of the complaint (Article 153 of the p.p.s.a.), so they can not repeat the same defects – identified already by the court - in the next rendered decision.

SESSION III – PRECAUTIONARY MEASURES

1. **Does the proposition of an appeal automatically suspend the effectiveness of the administrative act?**

No. What is more, in the Polish legal system the general rule is that even lodging of the complaint against an administrative act to the administrative court does not entail automatic suspension of the act.

2. **In your legal system, are precautionary measures provided for?**

Yes. In the Polish legal system the complainant can request the issuance of an order staying the execution of an act or action.

3. What kinds of decisions can the judge apply as a precautionary measure?

The court can issue an order staying in whole or in part the execution of an act or action (Article 61 § 3 of the p.p.s.a.).

4. What are the conditions for the acceptance of a precautionary request?

There are two alternative kinds of premises the complainant ought to show to make his or her request acceptable for the court. They are both generic in order for them to apply in all kinds of cases before the administrative courts. The first of them is danger of serious damage and the second is danger of consequences that are difficult to reverse (Article 61 § 3 of the p.p.s.a.).

5. Can the judge force the petitioner to pay bail?

No. The p.p.s.a. does not provide for bail at all.

6. Are precautionary measures generic?

Yes, an order of staying the execution has general application and can be applied to all types of litigation.

The only exceptions are: provisions of local enactments which have come into force and cases in which a specific statute or nature of the act (for instance decision on refusal) excludes the staying of their execution (Article 61 § 3 of the p.p.s.a.).

7. Can a precautionary request be introduced autonomously before the presentation of the main trial proceedings (*ante causam*)?

There is no possibility of obtaining precautionary measure ante causam. According to the Polish procedure, one can submit the request at the earliest with lodging the complaint (Article 61 § 2 of the p.p.s.a.).

However, the complaint is submitted to the court through the authority which action is the subject of the complaint. Before lodging the complaint to the court with the case files, the authority can itself – on the request of complainant - issue an order staying the execution of an act or action.

8. In the event of cautionary request *ante causam*, does the precautionary decision of the judge lose effectiveness?

See reply to question 7.

What is important, is that any orders staying the act or action, may be modified or reversed at any time by the court if the circumstances have changed.

9. When dealing with the precautionary request, does your legal system provide for specific procedure?

Yes, after the complaint has been transferred to the court, the court may, at the request of the complainant, issue an order staying in whole or in part the execution of an act or action. There is fast-track procedure in closed sessions.

10. Is the precautionary decision taken unilaterally or collegiately?

The order is taken unilaterally.

11. During the discussion of the precautionary request, can the judge directly define the judgement on the merit?

No.

12. Can precautionary measures be challenged before the Supreme Court?

Yes, one can appeal to the Supreme Administrative Court from the orders dealing with both - staying or refusal of staying the execution of the decision, order, another act or action (Article 194 § 1(2) of the p.p.s.a.).

13. Can the Supreme Administrative Court, as a precautionary measure, suspend the judgments on the merit of a lower level?

There is no such precautionary measure in the p.p.s.a.

14. On average, how many precautionary decisions are taken every year by the Supreme Court in comparision to the overall number of decisions taken?

About 500 precautionary decisions in comparison to the overall number of decisions in the 2020 which is over 15.000.