QUESTIONNAIRE
SEMINAR – SEPTEMBER 23th, 2014

HOW TO REDUCE THE JUDGMENT PERIOD?

1) Acceleration of trials by the procedural rules period

- **Once the petition has been introduced, is there a period during which parties (plaintiff, defendant or third parties) are expected to present their observations? If so, how is this period set?**

The proceedings before Polish administrative courts are regulated by the Act - Law on Proceedings Before Administrative Courts[1] (hereinafter referred to as „Act"). According to the regulation of the Act everyone who has a legal interest therein, a public prosecutor, the Human Rights Defender (Ombudsman), the Ombudsman for Children and a social organisation, within the scope of its statutory activity and in matters affecting legal interests of other persons, provided that it has taken part in administrative proceedings, shall be entitled to lodge a complaint. A complaint shall be lodged within 30 days from the day of service of the administrative decision (act) on the case. A complaint to an administrative court shall be lodged through the authority whose action, failure to act or protracted conduct of proceedings has been challenged. The authority, when obtaing the complaint, shall transfer the complaint to the first instance court (Voivodship Administrative Court) together with the files of the case and the response to the complaint within 30 days from the day it was lodged. In the prescribed time- frame the authority shall also enclose the reply to the complaint including the opinion of the authority on the arguments mentioned in the complaint.

In the second instance proceeding conducted by the Supreme Administrative Court, a party which has not lodged a cassation appeal, may bring to a Voivodship Administrative Court a response to the cassation appeal within 14 days from the day of delivery of the cassation appeal thereto. After the expiration of the time limit for response or after the service on the appellant of the response to the cassation appeal has been decided, the Voivodship Administrative Court shall immediately present the cassation appeal with the response and the files of the case to the Supreme Administrative Court.

[1] The Act of 30th August 2002 r. – Law on Proceedings Before Administrative Courts (Journal of Laws No 153, item 1270 as amended)".

- **What kind of penalties may a party see imposed in case of non respect of an assigned period?**

As stated above, the authority, when obtaing the complaint, shall 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. In the event that the obligations of transferring the complaint to the court have not been complied with, the court may, upon request of the complainant, order to impose on the authority a fine. The order may be issued in camera. If, despite the imposition of a fine, an authority has not transferred the complaint to the court, the court may, at the request of the complainant, hear the case on the basis of the received transcript of the complaint, provided that factual and legal state of affairs presented in the complaint does not raise reasonable doubt. Additionally, breaching the obligation of transfering the complaint to the court withing prescribed time-frame may cause the notificaction of the adjudicating panel or the president of the court to authorities competent for examination of petitions, compaints and proposals.

- **Are interventions of third parties in trial in a particular framework?**

The person who has taken part in the administrative proceeding, and has not lodged a complaint, where the outcome of the court proceedings concerns his/her legal interest, shall be a participant in that proceeding having the rights of a party. The person who has not taken part in the administrative proceeding, if the outcome of such proceedings concerns his/her legal interest, and a social organisation, in matters of other persons, if the case relates to the scope of its statutory activity, may apply to be admitted in the capacity of a participant. An order rejecting admittance to participate in the case shall be subject to interlocutory appeal. The request to participate may be submitted at any time by the above mentioned interested person, as long as the proceedings of administrative courts is completed. The proposal should comply with the requirements of the writings addressed to administrative courts. The request should present evidence and arguments determining the fact that the outcome of the proceedings of the administrative court will influence person's legal, economic and social interest.

- **Can the judge rule on a petition in the absence of a motion by the defence? If so, does the defendant dispose of the specific possibility of a plea?**

The administrative courts in Poland, as a rule, do not finally solve the case, but only assess the legality of the challenged act. As it was already stated, a complaint to a Voivodship Administrative Court shall be lodged through the authority whose action, failure to act or protracted conduct of proceedings has been challenged. This authority is obliged 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. If, despite the imposition of a fine, an authority has not transferred the complaint to the court, the court may, at the request of the complainant, hear the case on the basis of the received transcript of the complaint, provided that factual and legal state of affairs presented in the complaint does not raise reasonable doubt. But this case is rather exceptional.

In the second instance procedure, a party which has not lodged a cassation appeal, may bring to a Voivodship Administrative Court a response to the cassation appeal within 14 days from the day of delivery of the cassation appeal thereto. However, delivering a response to a cassation appeal is optional. Not delivering the response does not cause any legal effects.

- **Do practicable rules in terms of procedural period vary depending on whether parties are represented or not by a barrister?**

No, the terms of procedural period are the same. According to the Act, an administrative court should give useful instructions about procedural actions to parties appearing without attorney or legal counsel and advise them of legal consequences of these actions and consequences of negligence. Of course, the parties and their bodies or statutory representatives may act before the court on their own or by agents. But in case of acting without a lawyer or legal counsel, the presiding judge shall advise a party and present at the pronouncement of judgment, of the manner and time limits for bringing appellate measures.

The court, on its own authority, shall serve on a party acting without a lawyer or legal counsel, which was absent from the pronouncement of judgment because of being deprived of liberty, within a week from the pronouncement of judgment, a transcript of its operative part and shall advise the party of the time limit and manner of seeking review. If the court delivers a transcript of the operative part of a judgment issued in closed session to a party acting without a lawyer or legal counsel, it shall advise the party of the time limit and manner of bringing appellate measures.

As far as the actions taken before the first instance court are involved, the Act does not provide for an obligation to be represented by the professional. Differently, a cassation appeal should be prepared by a lawyer or legal counsel. This provision 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. A cassation appeal may be also prepared by a tax adviser - in matters of tax obligations, and by a patent agent - in matters of industrial property.

What's important, the presiding judge may for a good reason extend the court time limit, on its own motion or at the request of a party made before the expiry of the time limit, and may also shorten the court time limit at the request of a party to the proceedings.

- **Regarding expertise, are there specific rules?**

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. Exceptionally, 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. 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.

There are no legal objections against raising new arguments during the proceedings before the first instance court. 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.

With regard to raising new arguments during the proceedings before the second instance court it should, however, be noted that 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 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.

2) <u>Trial acceleration in cases of emergency</u>

- **Are there any procedures in order to shorten preliminary inquiry periods? If so, in which cases do specific procedural rules apply? Does the judge have the possibility to consider whether these rules should be applied or not?**

Mediation and simplified proceedings are perceived in the Act.

According to the mediation, at the request of the complainant or an authority, lodged before the trial has been designated, mediation proceedings may be carried out in order to clarify and consider the factual and legal circumstances of the case and to determine by the parties the manner of its settlement within the limits of the existing law. Mediation proceedings may be carried out even if the parties have not requested that such proceedings be instituted. Mediation proceedings shall be conducted by a judge or a law clerk designated by the president of the division and shall be held with the participation of the parties. The record of mediation session shall be written down to

include the positions of the parties and, in particular, arrangements made by the parties as to the manner of settlement of the case. The record shall be signed by the person carrying the mediation proceedings and by the parties. On the basis of arrangement made during the mediation proceedings, the authority shall set aside or modify the challenged act or shall made or take other action in accordance with the circumstances of the case within the limits of its own jurisdiction and competence. If the parties have made no arrangement as to the manner of settlement of the case, it shall be subject to a hearing by the court.

According to the simplified procedure, 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. The case may be heard in accordance with the simplified procedure upon request of a party if: 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 ,or 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.

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 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.

- **Is the judgement in certain litigation submitted to specific periods? If so, what is the type of litigation and the periods set? In cases of non-respect of these periods by the judge, what are the consequences for the outcome of the judgement?**

It is highly exceptional to have the specific provisions prescribing time periods to solve the case by the administrative courts. However, it happens in a few acts of law due to specific purpose of the regulation. For example in the Act of 6 September 2001 on access to Public Information and in the Act of 6 December 2006 on the principles of development policy there is 30 days prescribed to solve the case by the court and in the Act of 15 September 2000 on local referendum there is only 14 days prescribed to solve the case by the court. The above mentioned provisions do not indicate the procedural consequences of non- respecting the presented periods by judges.

- **Can a case be judged by one judge, without a public hearing, without intervention of the consultant judge or the public prosecutor and/or without a prior contradictory procedure? If so, how is the use of these**

techniques assessed? Is this choice questionable through the introduction of an appeal, a cassation or any other procedural option?

An administrative court adjudicates in a panel of three judges, unless otherwise provided by statute. An administrative court sitting in camera, adjudicates by a single judge. Elsewhere than at trial, rulings are made by the presiding judge. 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 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 n a panel of a single judge. As already stated, mediation proceedings 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 examine admissibility of complaint, cassation appeal, interlocutory appeal or petition for reopening of the proceedings, hear the complainant's claims regarding incidental matters, presented during the proceedings, adjudicate ex officio on certain incidental matters, 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, hear an interlocutory appeal against the order of a Voivodship Administrative Court, 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 and reverse its own order, if the interlocutory appeal lodged against it raises the question of nullity of the proceedings.

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 .

Unless a specific provision provides otherwise, court sessions shall be public, and the decision-making court shall hear cases at trial.

On the other hand, Article 187 § 3 of the Act 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: „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 resolution, 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.

3) <u>Acceleration of the definitive ruling on the litigation</u>

- **Are the possibilities of a plea against jurisdictional decisions uniform or variable according to the kind of dispute or to its importance?**

What are the reasons justifying that a dispute cannot benefit from the possibilities of a plea as others?

The administrative courts in Poland solve the cases on the basis of uniform complaints addressed to the courts of first instance (Voivodship Administrative Courts) and cassation appeals addressed to the Supreme Administrative Court. It is precisely stated in the Act that 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 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. 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.

- **In case of annulment of the contested jurisdictional decision, does the judge of appeal or of cassation have the possibility or the obligation to solve the content of the dispute? In order to do this, does he/she have the possibility of ordering further measures of inquiry?**

In Poland, as already emphasized, the administrative courts assess the legality of the challenged act.

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.

According to the Article of the Act, if there have been no breach of procedural rules that may have considerably affected the outcome of the case, but only a violation of substantive law has occurred, the Supreme Administrative Court may reverse the challenged judicial decision and hear the complaint. In such event the Court shall base its decision on the facts as they have been established in the challenged judgment.

4) <u>Mechanisms for compensating the effects of the incompressible duration of jurisdictional procedures</u>

- **Are there any procedures allowing one judge or a college of judges to take the measures esteemed necessary in order to safeguard the**

interests of the parties pending the judgement on the content? Do these rules apply uniformly in the event of appeal or cassation?

On principle, the lodging of the complaint shall not stay the execution of an act or action. Where the complaint has been lodged against an [administrative] decision or an order – the authority which has issued the decision or order, may suspend, on its own motion or at the request of the complainant, their execution in whole or in part, unless there are grounds which in administrative proceedings makes the decision or order immediately enforceable or where specific statute excludes staying of their execution or against other acts or actions in the field of public administration concerning the rights or obligations resulting from legal provisions – the competent authority may, on its own motion or at the request of the complainant, stay the execution of an act or action in whole or in part, or against resolutions by agencies of local government units and their associations, as well as acts of territorial agencies of government administration – the competent authority may, on its own motion or at the request of the complainant, stay the execution of a resolution or an act in whole or in part, except for provisions of local enactments which have come into force.

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, if there is danger of serious damage or hardly reversible consequences, except for provisions of local enactments which have come into force, unless a specific statute excludes the staying of their execution. A refusal to stay the execution of an act or action by the authority shall not preclude the complainant from applying to the court. This shall apply also to acts issued or taken in all proceedings carried out within the limits of the same case. Orders staying the act or action may be modified or reversed at any time by the court if the circumstances have changed. Moreover, the orders may be issued by the court sitting *in camera*. The staying of the execution of an act or action shall expire if the court has issued a decision concluding the proceedings in the first instance.

This institution applies uniformly in the event of appeal or cassation.

- **Do procedural rules allow one judge or a college of judges to pronounce judgment in a case, provisionally and rapidly, without this requiring a procedure for pronouncement on the content?**

Refering to the pronouncing judgment in a case, according to the Act, it was already mentioned that the court shall resolve the case by a judgment upon the closure of the trial on the basis of files of the case. A judgment may be issued only in closed session in simplified proceedings or if so provided by statute. The court shall resolve the matter within the limits of a given case, but shall not however be bound by the charges and demands of the complaint as well as the legal basis referred to. Moreover, a judgment may be issued only by those judges before whom the trial immediately preceding the issuing of a judgment has been held. The judgment shall be pronounced at the session at which the hearing has been closed. However, in a complex case, the court may defer a judgment for no longer than 14 days. In its order deferring it, the court should set the time limit for pronouncement of the judgment and announce it immediately after the closure of the trial. This time limit may be extended once for a period of not more than seven days. Pronouncement of a judgment shall be in a public session. Absence of parties shall not stay the pronouncement. If the pronouncement has been adjourned, it may be made by the

presiding judge alone or by one of the judges from the adjudicating panel. Pronouncement of judgment shall be made by reading of its operative part. During the pronouncement of a judgment, all present, except for the court, should stand. After the pronouncement of the operative part, the presiding judge or a judge-rapporteur shall present orally the principal reasons for the determination, he/she may, however, omit to do so if the case has been heard behind closed door. A transcript of the operative part of a judgment issued *in camera* shall be served on the parties, when, by the operation of law, no reason for the judgment is drawn up. So, the answer to the question shall be negative.