

POLAND

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Contents

1.	National court system	1
2.	Restrictions regarding access to justice	3
3.	Length of judicial proceedings	5
4.	Are procedures concluded within a reasonable time?	5
5.	Does provision exist for speedy resolution of particular cases?	6
6.	Is it possible to waive the right of access to a judicial body?	6
7.	Access to non-judicial procedures	7
8.	Legal aid	13
9.	Forms of satisfaction available to a vindicated party	15
10.	Adequacy of compensation	16
11.	Rules relating to the payment of legal costs	17
12.	Rules on burden of proof	20

1. National court system

Civil courts. The national judicial system examining civil cases is composed of three instances common courts, where the last one is of exceptional character:

Court of first instance (District Courts or Regional Courts, depending on the value of the claim or entrusting special jurisdiction to Regional Court. For example all cases concerning protection of personal rights are examined by the Regional Courts). The judgment of the court of first instance is subject of appeal to the court of second instance.

Court of second instance (Regional Courts or Appeal Courts, depending which court acted as a first instance court). Certain judgments (not all) may be appealed to the Supreme Court with cassation appeal. Such appeal may also be lodged by the Ombudsperson.

The Supreme Court (only examining cassation appeals).

Administrative courts. Poland has a separate structure of administrative courts, examining in general the legality of actions of the administration. There are administrative courts of two instances:

Regional Administrative Courts (examining complaints on final administrative decisions, or on negligence by the public administration)

Supreme Administrative Court (examining appeals against judgments of the Regional Administrative Court).

The special role in the Polish judicial system is played by the Constitutional Court. The Constitutional Court may be addressed both by civil courts and administrative courts through the legal question procedure. Courts may ask whether certain laws, which may be subject of their review when giving judgment, are in compliance with the Constitution. Second, final judgments of civil courts and administrative courts may be appealed with the constitutional complaint, provided that such complaint challenges the legislative or executive provisions which were the basis for issuing a certain judgment. Accordingly, the Constitutional Court exercises a typical judicial constitutional review function.

Moreover, according to Constitution (Article 79) everyone whose constitutional freedoms or rights have been infringed, has the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon basis of which a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations as specified in the Constitution. However, the right to appeal may only be asserted after all available means of legal protection have been exhausted.

This formula encompasses all constitutionally protected rights and freedoms regardless of their nature. A constitutional complaint may only be submitted in a situation in which the violation of the complainant's constitutional rights and freedoms was effected by an individual act of applying the law, in practice by a judicial decision. The decision must be final in nature, in other words, the constitutional complaint can only be submitted after the complainant had used all available appellate procedures before the universal court or the administrative court. It is not possible however to question the decision itself.

2. Restrictions regarding access to justice

In relation to discrimination cases there is no single act comprising a general ban on discrimination on all grounds and provisions are scattered across many different legal acts (although in 2007-2009 a draft Law on Equal Treatment – single anti-discrimination act – was prepared, with a number of consecutive versions).

As a result the level of protection against discrimination is uneven in a number of areas. In the field of occupation and employment the directives are generally implemented, however, the adopted solutions are not free of weak points (e.g. regarding reasonable accommodation). When it comes to legislation in the field of combating discrimination outside employment, there are, depending on interpretation, either significant gaps or provisions which are difficult to use in any court proceedings (some problems were already described above).

Gaps in the implementation of respective directives (113/2004, 43/2000) include lack of the equality body „providing independent assistance to victims of discrimination”. Common problem faced by victims of discrimination (despite their fear to raise the issue of discrimination) is lack of professional legal support even there are number of instruments and social organizations which might be of the assistance.

One of *de facto* restrictions might be no or limited access to legal aid both at pre-trial stage as well as during the trial. In administrative cases for instance right to state guaranteed legal aid does not include first two instances of the administrative proceedings (and numerous administration proceedings may concern discrimination). Right to legal aid arises only when person decides to file complaint with administrative court (after two out of court administrative instances). But reviewing administrative decision by court is limited to evaluation of its compliance with law only and not merits.

Mandatory legal representation might be also seen as restriction - the obligation to be represented before the Constitutional Tribunal, Supreme Court and the Supreme Administrative Court by a legal advisor or advocate (Article 87¹ § 1 of the Code of Civil Procedure, Article 175 § 1, Article 194 § 4 and Article 276 Act on Procedure before Administrative Court). This problem has been addressed in numerous cases. The problem concerned legal measures that could be undertaken by a person which have been refused legal aid while preparing the cassation with the Supreme Court. Legal representation before the Supreme Court is mandatory.

In regard to time limits as a possible restriction in access to court the time limits in procedures mentioned vary but generally speaking at the first glance they seem not to act as deterrents to seeking redress, they counts rather in years than months. Statute of limitation in civil matters is usually 10 years (3 years in cases of periodic services or cases related to professional activity of the party as an entrepreneur). However, this shortened 3 years period may cause serious problems. A major source of obstacles in pursuing justice before the claim becomes time-barred is the situation of dependency between a person eligible to bring the lawsuit and an obliged party. It has been observed that employees often do not seek their rights through fear of losing their jobs. As long as the employment relationship lasts, the employee is afraid of bringing claims against the employer. Short time-bar on claims for payment (3 years), when combined with the lack of legal awareness and fear of losing livelihood, may create a serious obstacle to pursuing justice¹.

As far as *actio popularis* and collective actions are concern there is no legislation in Poland providing for such a possibility. This gap constitutes a considerable restriction in pursuing justice. As far as collective actions are concern according to existing law each single lawsuit brought before the court initiates a separate court proceedings with all obligatory elements like court fees, legal representation, correspondence and communication with court, presentation of evidence etc. There is possibility for the court to decide to hear a number of related cases jointly, however it will not affect these mentioned obligatory elements of the procedure. The only practical relief for the parties (and the court itself) may result from making the process of gathering evidence (e.g. calling witnesses or obtaining documents) more time and cost efficient.

It should be however mentioned that Polish Parliament is currently working on the draft law of raising claims in collective proceedings.²

The court fees and other cost are being quite high in Poland and might be a factual restriction in pursuing justice - even they were significantly lowered in 2005. The 2005' Act reduces the filing fee from 8% to 5% of the value of the dispute, and establishes in many cases a set fee (lower than proportional). This significantly reduced the cost of access to court.³ However, as examination of particular cases has shown (see annex 1) the fear of incurring costs can turn out to be a significant factor determining whether (or to what extent) a victim decides to pursue justice.

¹ *Rozpoczęcie biegu przedawnienia roszczenia pracowniczego.* (Commentary to the Supreme Court judgment of 3 February 2009 (I PK 156/08)), *Monitor Prawa Pracy* (6), 2009.

² Rządowy projekt ustawy o dochodzeniu roszczeń w postępowaniu grupowym (document no 1829) <http://orka.sejm.gov.pl/proc6.nsf/opisy/1829.htm>.

³ The Act of 28 July 2005 on court fees in civil matters.

3. Length of judicial proceedings

The first instance of the proceedings lasted from 5 months to 3 years and 4 months.

The second instance (appellate) proceedings lasted from 4 months to 8 months.

The proceedings before the Supreme Court (when available) lasted from 9 months to 1 year and 1 year and 3 months.

The bulk of the length of proceedings lay at the first instance. Information relating to the time taken to execute the decision was not generally available. However, four cases involving enforcement proceedings of already decided cases indicated that the decision had been executed in the period of 1 month to 11 months.

4. Are procedures concluded within a reasonable time?

Poland is well known for its significant problem with length of proceedings. It is also major problem as regards access to justice. Undue length of proceedings is a violation of human rights standards per se. However, it also causes violation of other rights guaranteed in the Constitution or in domestic legislation.

The bulk of the length of proceedings lay at the first instance (the proceedings may last even to couple of years, in the analyzed cases the proceedings in first instance lasted up to 3 years and 4 months and the case is still pending).

On 17 September 2004 the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time entered into force. It lays down various legal means designed to counteract and/or redress the undue length of judicial proceedings. A party to pending proceedings may ask for the acceleration of those proceedings and/or just satisfaction for their unreasonable length.

Despite such changes in domestic remedies the problem of length of proceedings still exists. The Ministry of Justice is using different methods in order to alleviate the problem. However, due to its systemic nature the problem is difficult to resolve.

5. Does provision exist for speedy resolution of particular cases?

The Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time entered into force. It lays down various legal means designed to counteract and/or redress the undue length of judicial proceedings. A party to pending proceedings may ask for the acceleration of those proceedings and/or just satisfaction for their unreasonable length.

The Code of Civil Proceedings provides in Article 505(1)-505(14) with the possibility of expedite and simplified examination of the case. However, this special track is available in small cases, rarely in discrimination cases where the amount of evidence is important.

6. Is it possible to waive the right of access to a judicial body?

Parties of an agreement may stipulate in the contract that the case should be recognized by an arbitration court (Article 1161 of the Code of Civil Proceedings) or friendly settlement (Article 183 of the Code of Civil Proceedings).

Although there exist a possibility of waiving the access to judicial body and agreeing on the resolution of dispute by arbitration bodies, it is not absolute⁴. For instance it is not valid if it violates the rule of equality of parties⁵.

The verdict of the arbitrary court might be also challenged in the ordinary courts in circumstances described by law, including for instance the situation when the “verdict of the arbitral tribunal is contrary to the fundamental principles of the Republic of Polish legal order law (the public order clause)”⁶.

Other possibilities of reaching agreement like friendly settlement (Article 183 of the Code of Civil Proceedings) reached during the court procedure as a result of mediation are subject to review and approval by the court. The court may refuse an approval of settlement concluded

⁴ See Article 1161-1204 of the Code of Civil Procedure.

⁵ Article 1161, para. 2.

⁶ Article 1206 para. 2 point. 2.

before a mediator, in whole or in part, if the agreement is contrary to law or the rules of social cohabitation, or intended to circumvent the law, as well as if it is confusing or contradictory.

7. Access to non-judicial procedures

There is no equality body in Poland as provided by Article 13 of the Directive 2000/43 or Article 12 of the Directive 2004/113. There was however special Office of Government Plenipotentiary for Equal Status of Women and Man (established in 2001) which mandate was broadened in 2002 to counteract also discrimination based on race and ethnic origin, religion or belief, age and sexual orientation. But on Nov. 3rd, 2005 the Office of Plenipotentiary was abolished (it was one of the first decisions of new Government after the election in Oct. 2005). It's power was shifted to newly established (Dec. 2005) Department for Women, Family and Counteracting Discrimination within Ministry of Labour and Social Policy (MLSP) which however lacks independence and does not fulfil the roles of equality body as described by relevant directives, including providing assistance to the victims of discrimination.

The office of the Plenipotentiary (within the office of the Prime Minister) was established in September 2008.⁷ The status of the Plenipotentiary is not fully clear. It is appointed by the Prime Minister, accountable to the Prime Minister and uses the premises of the Chancellery of the Prime Minister (does not have separate budget as well). According to Ordinance it should coordinate and execute the governmental policy in regard to equal treatment. However its position is so far unclear even to government agencies, especially other organ having similar responsibilities - Department of Women, Family and Counteracting Discrimination within the Ministry of Labour and Social Policy described below.

None of the body mentioned however never had any of quasi judicial character. There are also other institutions which should be mentioned as exercising some powers of non existing "equality body": Ombudsperson (Commissioner for Civil Rights), Ministry of Internal Affairs - the National Minority Division, and Government Plenipotentiary for Disabled, within Ministry of Labour and Social Policy.

Even Ombudsperson does not have an obligation to pursue the case and is free to choose which cases to deal with. They also do not possess any competences of quasi judicial character.

⁷ <http://www.rownetraktowanie.kprm.gov.pl/>

Nevertheless, the Ombudsperson⁸ exercises some powers that might be of relevance in access to justice. According to the Constitution (Article 80) *In accordance with principles specified by the statute, everyone shall have the right to apply to the Commissioner for Civil Rights Protection for assistance in the protection of his freedoms or rights infringed by organs of public authority.*

Relevant Ombudsperson Act⁹ provides that an application is free of charge and does not require any special form (just identity of the person and subject of the case; Article 10). Ombudsperson may take up the case and carry out his own explanatory proceedings or request that the case or a part thereof be explained by relevant agencies, especially agencies involved in the supervision, prosecution and State, professional or public control (Article 11). Having examined a case, the Commissioner may *i.a.* (Article 14): initiate on behalf of the victim or join/accede any administrative, civil or penal proceedings. It may also refer the case to appropriate agency for solving it. It may also lodge cassation against each final and valid court verdict (it may also join constitutional claim).

The agency, organisation or institution to which Ombudsperson sent a motion must, without unreasonable delay and no later than within 30 days, inform the Commissioner of whatever action or view has been taken. Should the Commissioner disagree with such a view, he can approach the relevant superior entity for necessary actions. In connection with the cases examined (Article 16) the Commissioner can present to the relevant agencies, organisations and institutions opinions and conclusions aimed at ensuring efficient protection of the liberties and rights of a human and a citizen and facilitating the procedures such cases may involve. The Commissioner should collaborate with associations, civic movements or other good-will organizations for the protection of the liberties and rights of a human and a citizen (Article 17a).

Some role in accessing justice might be also played by the trade unions. Person discriminated in the labour relations may seek advice and help from the trade union. Trade Union may try to solve the problem in the informal way using its contacts with the representative or employer itself. Trade unions in the labour and social security matters may also initiate formal proceedings in the name of an employee. Trade union representative may represent an employee in such proceedings (out of court and in court). Trade Unions employ, contract or collaborate with lawyers who assist their members.

⁸ www.brpo.gov.pl

⁹ Act on Commissioner for Civil Rights (1987).

The conciliation commission. An employee before initiating court proceedings may demand initiating of the mediation procedure in front of Commission. Labour Code provides for possibility of establishment of Conciliation Commission for solving individual labour disputes (Article 244-258). The Commission shall be formed together by an employer and trade union unit at the work place (Article 244). The agreement reached before the conciliation commission should be voluntarily implemented by the employer. If the employer opposes this and does not put the agreement into operation, the agreement can be executed in accordance with civil procedure.¹⁰

National Labour Inspectorate (NLI)¹¹. NLI and its regional branches (Regional Labour Inspectorate) provide free of charge legal advice on labour matters and provisions of occupational safety and health regulations. They might be contacted by phone, in person or in written form. There is also lot of information, including guidebooks on the NLI website. Every employee may file a complaint within the system of NLI.

Labour Inspectors may execute a control at any work place and at any time. Labour Inspector may send a warning (statement) to an employer. In the case of breach of law revealed during the control they may issue an administrative decision demanding to eliminate the identified irregularities. They may also fine an employer with financial fine or lodge complaint for fining in a court.

According to Code of Civil Procedure Labour Inspector may also initiate in the name of an employee or accede court proceedings (but only in cases for establishment of the existence of employment relationship; Article 631). In other cases however Labour Inspector may represent employee in a court (for instance in a case of compensation for unequal treatment of an employee by an employer; Article 465). Measures taken by labour inspectors are binding however the employer may challenge them in administrative courts.

In the context of discrimination cases it is important to note that there are certain possibilities under Polish law to make mediation, but mediation is not conducted by the equality body; as mentioned above, there is not such a specialised body in the sense of Article 13 of the Racial Equality Directive (RED).

¹⁰ Article 255.1 Labour Code.

¹¹ www.pip.gov.pl/html/en/html/index.htm

In the category of cases concerning “equal treatment, fight against racism, discrimination and xenophobia” the number of cases which were dealt by the relevant unit of the Ombudsperson office, the Department of Ethnic and National Minorities, were:

Year	Number of cases
2000	2
2001	4
2002	13
2003	7
2004	1
2005	4, all initiated by individual complaints
2006	3, all initiated by individual complaints
2007	5, all initiated by individual complaints
2008	4, all initiated by individual complaints

The numbers in the table comprise individual complaints, complaints of ethnic and national minorities organization as well as cases initiated by the Department on its own motion (e.g. on the ground of information from the media).

The Department has no legal possibility to introduce cases before courts and to provide legal assistance in such cases. Therefore, no statistics on the amount of compensation are available.

During last three years the Department intervened in the following sample cases:

in the physical separation of Roma children in the primary school in Maszkowice (Gmina Łącko)
– by the creation of separate pupils groups;

mediation with representatives from local society in the conflict resulting from the establishment of Roma people on the territory of Jazowsko (Gmina Łącko);

intervention in the Polish News Agency (PAP) concerning the regular publication of criminals with Roma nationality;

intervention with the Police Inspector General (*Komendant Główny Policji*) in cases of devastation of Jewish cemeteries;

intervention in cases of offensive, anti-Semite inscriptions on walls and buildings;

intervention in cases concerning the condition of employment of football players originating from Africa in Polish sport clubs;

local inspections on the conditions of education of Roma children and creation of mixed classes (comprising Polish and Roma pupils).

Possibilities to seek non-judicial redress are still limited – mostly due to the lack of trust in such procedures. Although Polish law provides for different types of mediation or arbitration, such procedures are rarely used in cases of individuals.

The Constitution of the Republic of Poland does not foresee particular sanctions for breaching the right to equal treatment by public authorities.

At present in Poland people who seek remedy for discriminatory treatment with regard to race or ethnic origin have recourse to following types of legal action:

Law action against the employer,

General civil law action against the discriminating person or entity

Criminal actions in case of hate speech,

Minor offences actions before borough courts,

Alternative remedies with the use of laws protecting consumers.

Article 18^{3d} of the Labour Code provides that a person who was the subject of discriminatory treatment by the employer is entitled to indemnity not lower than the minimum wage defined in separate laws [it is 1276 PLZ = approx. 275 EURO]. The upper limit for indemnity has been not provided in the law. The duty of the employer to counteract any form of discrimination in employment is specified in Article 94 point 2b of the Labour Code¹². On the one hand, the employer has to restrain from any discriminatory action, and non-compliance with this duty justifies dissolution of the contract by the employee without the prior notice – though it is a very dubious remedy in particular in the times of economic crisis. On the other hand, the employee has

¹² The employer is also obliged to take care that the relationships at work reflect the principles of social relations (Article 94 point 10).

the action for damage every time the employer breaches any of the provisions regarding equal treatment in employment (Article 11³ and Chapter IIa of the Labour Code). Article 18^{2b} shifts the burden of proof to the employer, stating that the employer has to show objective reasons, which justified unequal treatment such as refusal of employment or dismissal¹³, setting unfavourable conditions of employment, including remuneration¹⁴, omission by promotion or by granting benefits related to employment, omission in typical participation in vocational training and the like. All the employer has to do in such a case is to file a suit describing in what way s/he was treated less favourably. Importantly, persons suing for damage against the employer are exempted from court fees as a privilege of a weaker party. All claims based on the Labour Code can be raised by the employee as the injured person, social organization or the labour inspector.¹⁵

Under Polish laws all possible remedies relating to the employment are equally applicable to the civil servants. Their legal status is usually regulated by special laws on certain type of profession. Under Article 5 of the Labour Code, its provisions are applicable to the extent certain issues are not regulated by specific acts. Since specific acts on employment in certain civil servants' professions (e.g. judges, prosecutors, officers of governmental administration, policemen, etc.) do not contain any provisions on equal treatment, the Labour Code is applicable in this respect. It means that the victim of discrimination may start any discrimination claims on the basis of general provision of the Labour Code (including discrimination in recruitment or discrimination in graduation to higher posts).

Alternative remedies provided in non-judicial procedures relate to two institutional bodies: the President of the Office of Competition and Consumers' Protection and the National Council of Radio Broadcasting and Television.

The existing law equips the President of the Office of Competition and Consumers' Protection with the competence to impose fines on the entrepreneurs who breach the collective interests of consumers (potentially every consumer can be their victim) and to prohibit a certain practice. As a collective interest should be understood also the interest to be treated equally with any members of the society notwithstanding one's racial or ethnic origin, even though it seems to be an individual case of discrimination.

¹³ In case when the employee is dismissed due to her or his racial or ethnical characteristics, such person is additionally protected on the basis of Labour Code provisions regarding unlawful dismissal (Article 44, 45 and 50).

¹⁴ In case the discriminatory treatment concerned lowering the employee's wage, the employee can file an action for declaratory judgment on the particular content of the employment relation, establishing the adequate remuneration.

¹⁵ Article 462 of the Civil Procedure Code.

Furthermore, also the National Council of Radio Broadcasting and Television can impose fines for broadcasters who are in breach of particular duties concerning prohibition of discrimination on the basis of race and ethnic origin¹⁶. These duties include securing that advertisement and the content of programmes and other transmissions are not discriminatory.

8. Legal aid

Under the Polish legal aid system, attorneys grouped in two legal professions - advocates and legal advisers - represent the indigent in court proceedings as *ex officio* counsel. There is no pre-litigation or out of court legal aid or legal advice scheme¹⁷.

As far as out of court or pre trial legal aid is concerned there are no general schemes but there is number of possibilities of receiving legal aid in the form of information, guidelines or advice delivered by social workers or NGOs activists, sometimes lawyers, civil servants. However this is not systematic, rather incidental, and depends on the place of leaving and determination of those in need (in big cities there are several possibilities while in smaller towns and villages there are quite often no possibilities). Additionally institutions delivering information or advice specialise in certain areas and do not cover all fields of law.

In this respect, one should also mention legal clinics established at Polish universities, where legal aid is provided by students of law faculties working in “legal clinics”. Law students are providing basic legal information and assistance for poor persons, under the supervision of academic teachers. Legal clinics' operation and establishment of new ones is supported by the Foundation of Legal Clinics in Poland¹⁸. Legal clinics are acting in almost all law schools in 18 different cities. Legal clinics provide regular legal aid, in discrimination cases, however their role is mainly informatory, students provide help in preparing legal documentation (e.g. motions, complaints in civil, administrative proceedings, complaints to the European Court of Human Rights). Legal assistance in discrimination cases is also provided occasionally by minorities' organizations. However, legal assistance is not their main activity (which is rather informatory) and depends of the obtained grants.

¹⁶ Article 53 of the Act of 29.12.1992 on the National Council of Radio Broadcasting (*Ustawa o Krajowej Radzie Radiofonii i Telewizji*) as amended. The fines shall not exceed 50% of the yearly fee established for using the frequency or if the broadcaster pays no fee, up to 10% of the yearly revenue for the last tax year.

¹⁷ With the exception of pre-litigation legal advice granted to the citizens of other European Union states as described below.

¹⁸ For further information please refer to web page: http://www.fupp.org.pl/index_eng.php

Poland is also quite exceptional as regards the cooperation of lawyers with NGOs in providing legal aid on a pro bono basis. Especially two NGOs are taking advantage of possibilities of such cooperation – the Helsinki Foundation for Human Rights and the Pro Bono Centre (Centrum Pro Bono) acting within the capacity of the Polish Foundation for Legal Clinics. The Helsinki Foundation for Human Rights started 5 years ago the Strategic Litigation Program, which aims towards achieving important and precedent court judgment. The litigation of cases is supported by pro bono lawyers, both working in big international law firms and individual lawyers. Some of the cases litigated within this program were precedent anti-discrimination cases, which changed significantly reality in a given area. *Centrum Pro Bono*, on the other hand, is a typical clearinghouse. Its role is to connect pro bono lawyers with NGOs wishing to receive such aid. Centrum Pro Bono managed to establish a significant reputation in the Polish NGOs and law firms' market and succeeded in contacting number of entities. Some of the legal aid provided concerned access to justice issues.

In all court procedures there is a possibility for a claimant of receiving waiver from court cost and legal aid lawyer (paid by the state). There are 5 different systems which slightly differ (different procedures apply before administrative, civil and criminal courts, before Constitutional Tribunal and in trans-border disputes). Generally speaking one should filled appropriate motion for waiver of court cost and/or appointment of the legal aid lawyer and describe his/her financial situation (in some procedures relevant forms should be filled, in others general motion).

According to Civil Procedure Code and Law on court costs in civil matters some persons in some types of cases are automatically released from all court costs (for instance in affiliation and claims connected, maintenance, unfair conditions in consumer agreements, in employment and social benefits cases, etc.).

A person is obliged to submit a statement containing detailed data about his/her family situation, property and income.

The court grants the *ex officio* lawyer, “if it finds the participation of a lawyer necessary in the case”. It is the judge presiding in the case who decides to grant the *ex officio* attorney – a judge's impartiality in this issue may be questioned. There are no objective criteria – like level of income – that would automatically impose the appointment of lawyer, it is always discretionary decision of the court (however refusal may be challenged in the court of second instance).

According to the commentaries and jurisprudence, those criteria include legal or factual complexity of the case as assessed by the court, and helplessness of the applicant. The “need” to involve an attorney may also stem from principles of an adversarial trial system when one party is assisted by an attorney and the other is not. Finally it is up to the court to decide whether the “Statement about family status, property, income and means for living” is adequate and provide enough information. Court may decide applicant to provide additional information or to start additional proceedings in order to clarify the financial situation of applicant.

In administrative procedure there is no legal aid available during first two administrative instances. The situation changes when the case is being tried in administrative courts.

In reality access to legal aid in non-criminal cases is very limited and legal aid is granted in less than 1% cases. Not only the courts grant very rarely legal aid but the quality of free legal aid is doubtful. There is a lack of legal aid at the pre-court stage, which is an important burden in discrimination cases, where the first legal advice is very important. Legal aid remains costly in Poland because of the small amount of lawyers which are able to act in courts.

As far as assistance to victims of discrimination is concerned, there are no public bodies, neither publicly founded NGOs specialized in providing legal assistance nor court representation in Poland. In general powers given to the institutions, such as the Ombudsperson, the Joint Committee of the Government and Ethnic and National Minorities, the Government Plenipotentiary for Equal Treatment, are not sufficient to ensure effective protection from racial or ethnic discrimination.

9. Forms of satisfaction available to a vindicated party

According to the Civil Code the vindicated party may claim compensation for material damages (Article 415), restitution and just satisfaction for moral damages (Article 445 and 448).

It is also possible to claim from defendant apologies or payment of a sum for a special social purpose. Apology may be of different character. Usually it is a publication in the press. In general courts in ordering apology try to seek the balance between nature and character of violation of personal rights and the reparatory character of apologies.

It is also quite common to claim – as a way of compensation – payment of a special amount of money for the indicated social purpose (e.g. for activity of a certain NGO, for charity etc.). In such a case the defendant has to pay the ordered sum to such NGO. This mechanism has many positive functions. First, it provides some NGOs with additional money. Second, if judgment is given in high-profile case, it promotes activity of the NGOs to which the money is paid. Third, it may promote the value-oriented approach of the plaintiff, who may show that he / she is not interested in enriching himself/herself but is suing for the sake of public interest or honour. In Polish practice, money awarded to NGOs vary usually between 10,000 PLN (approx. 4,000 euro) and 100,000 PLN (approx. 40,000 euro).

10. Adequacy of compensation

According to the Civil Code the amount of compensation corresponds to the material damage (the amount of compensation may be provided in an agreement). The amount of just satisfaction reflects the moral suffering of the victim. The aim of compensation is providing redress for the injury. Compensation has both a deterrent and punitive effect.

Due to the fact that there are no established lines of jurisprudence regarding compensation, one cannot say with clarity whether the compensation usually awarded in discrimination cases is adequate. The general trend is, however, that amounts in personal rights' protection cases steadily, but slowly, grow.

Compensation awarded for “moral loss” or “suffering” which resulted from for instance discrimination are rather low, there is no tradition of valuing this type of damages and methods of its calculation base on different assumptions used by judges, Supreme Court rulings give only general guidelines (taking into consideration living conditions of the party and average standard of life as well as level of economic development of the state¹⁹). The law however leaves to judges lots of discretion stating that about “adjudicating an adequate amount”²⁰ for moral loss and suffering and this judicial independence in decision making is also endorsed by the Supreme Court which leaves compensation awarded solely for the discretion of particular courts.²¹

¹⁹ See e.g. Supreme Court Judgment of 29 May 2008 (II CSK 78/2008); Supreme Court Judgment of 12 July 2002 (V CKN 1114/2000)

²⁰ Article 455 of the Civil Code

²¹ Supreme Court Judgment of 4 February 2008 (III KK 349/2007)

The Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time, in its amendment on 1 May, 2009,²² implemented an increase of the amount of compensation in case of lengthy proceedings, which now varies from 2,000 PLN (approx. 500 euro) to 20,000 PLN (approx. 5,000 euro), whereas under the old law the possible compensation varied from 0 PLN to 10,000 PLN (approx. 2,500 euro).

11. Rules relating to the payment of legal costs

According to Article 2 par. 2 of the Act on Legal Costs in Civil Cases²³ each side pays their own costs. Article 98 of the Code of Civil Procedure permits the ordering of payment of costs by the losing party in certain circumstances. In general in discrimination cases, even if winning the case participants were to cover legal costs.

According to Article 199 of the Act on Proceedings before Administrative Courts and Article 262 of the Code of Administrative Procedure each side pays for their own costs.

In general, in civil, administrative and criminal proceedings the financial risk lays with the party which loses the proceedings.

Therefore, in non-discrimination cases, the discrimination victim, while lodging a civil or administrative complaint, has to member about the risk of bearing the costs of the proceedings. In specific circumstances a party which does not possess means to lodge a civil, administrative complaint or to hire a professional representation may ask for an exemption of court fees and an ex officio legal aid.

The participants while lodging a civil complaint is required to pay a certain amount for the introduction of the claim before civil court²⁴. The sum to be paid depends, is proportional on the value of the complaint. The costs of civil proceedings are composed of: the cost of legal representation, court fees, costs of travel to court hearings and the eventual loses in income. Such

²² *Ustawa z dnia 20 lutego 2009 r. o zmianie ustawy o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*, Dziennik Ustaw [Journal of Laws] No. 61, item 498, available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20090610498>

²³ *Ustawa o kosztach sądowych w sprawach cywilnych z dnia 28 lipca 2005 r.* Dzennik Ustaw [Official Journal] 2005 Nr 167 poz. 126.

²⁴ Articles 10-18 of the Act on Court Fees of 28 July 2005 (*Ustawa z dnia 28 lipca 2005 r. o kosztach sądowych*), Dziennik Ustaw [Journal of Laws] No. 167, item 1398, as amended.

costs have to be paid by the losing participant²⁵. The civil procedure does not require in any case a mandatory legal representation. The *ex officio* legal aid may be granted to participants that have been exempted from court costs in whole or in part. The exemption from court fees may be granted *ex officio* or upon motion of participant in the proceedings. Participants applying for exemption from court fees are obliged to adequately document their financial situation, and thus provide not only a statement on their financial situation, but also evidence in support. In such a situation the expenses are temporarily borne by the State Treasury. The participant losing the case may be required to cover costs of proceedings and costs of legal representation (*ex officio* or not)²⁶.

The participant may lodge a motion to be exempted from costs related to the introduction of the claim. In numerous cases the lack of exemption from court fees that have to be heard while introducing the claim to civil courts prevents the participants of continuing the proceedings. This issue constituted subject of numerous complaints to the European Court of Human Rights. The Court found that when the court fees are so high, that the applicant is forced to desist from pursuing his claim before civil court, this constitutes a breach of the right of art. 6 par. 1 of the Convention, access to court. The Court referred to the fact that restrictions which are of a purely financial nature and which, as in the present case, are completely unrelated to the merits of an appeal or its prospects of success, should be subject to a particularly rigorous scrutiny from the point of view of the interests of justice²⁷. The Court also observes that under Polish law an exemption from payment of court fees can at any time be revoked by the courts if the basis thereof has ceased to exist. Allowing the applicant to proceed with his claim at the initial phase of the proceedings would not therefore have prevented the Polish courts from collecting court fees if at some further stage his financial situation had improved²⁸

The burden of criminal proceedings is mostly carried by the accused who is found guilty. If victims of discrimination intervene in the proceedings as “private” participants, then costs of their participation in proceedings would also be carried by the offender who is found guilty. Please note that the decision on costs is made by the court upon the issuance of the judgment (and until that time they are covered by the State Treasury). The costs have to be paid to the State

²⁵ Article 98 § 1 of the Civil Procedure Code.

²⁶ Art. 98 § 1-3 of the Code of Civil Procedure.

²⁷ Please refer to *Podbielski and PPU Polpure v. Poland* (application No 39199/08), par. 65-67; *Palewski v. Poland* (application No 32971/03), par. 65.

²⁸ Please refer to judgment in the case of *Kreuz v. Poland* (application No 28249/95), par. 63-65.

Treasury²⁹. If the accused does not possess sufficient means to hire an attorney/legal advisor of his own choice he / she may apply to the court for appointment of an *ex officio* defendant. Costs of *ex officio* aid are covered by the State Treasury. If the accused is found guilty, he may be charged with legal aid costs. In practice, it happens quite rarely. Rules governing legal aid in criminal proceedings are applicable not only to accused, but also to persons acting as private prosecutors or auxiliary prosecutors (e.g. victims of a crime). Therefore, persons acting in this capacity may also apply for legal aid³⁰.

In administrative cases the participant is required to bear the costs which have resulted from the participant guilt or the costs which were carried by the organ because of the participant special request, motion which is not part of the routine proceedings. The participant is also required to cover costs of the travels effectuated by witnesses and the remuneration of experts³¹. The participant initiating proceedings before administrative courts is obliged to cover some initial costs related to the lodging of a motion and the court fees when loosing the proceedings. However, the procedure before administrative courts does not require in any case a mandatory legal representation, which generates costs. The representation may be effectuated by an attorney/legal advisor but also by broadly understood members of family (siblings)³². The procedure before administrative courts provide for the possibility to obtain so called right to aid (*prawo pomocy*). The right to aid may be granted upon the participant motion. The right to aid consist of an exemption (total or partial) from court fees and the appointment of an attorney / legal advisor, patent agent or tax advisor. The total right to aid (exemption from court fees and appointment of legal representative) is granted when the participant is unable to bear any costs of the proceedings. The partly right to aid (exemption from part of the court fees or appointment of legal representative) is granted to participants which have demonstrated that proceedings would influence his/her material situation. The same rules are applicable to participants being legal entities.

²⁹ Art. 626 and 627 of the Code of Criminal Proceedings.

³⁰ Art. 87, 88, 77 and 78 of the Code Criminal Procedure.

³¹ Art. 262 – 264 of the Code of Administrative Proceedings.

³² Art. 35 of the Act on Procedure before Administrative Courts.

12. Rules on burden of proof

Labour Code³³ introduces the principle of shifting the burden of proof in discrimination cases, allows disproportional treatment only if it is justified by a legitimate aim and when the means of achieving that aim are appropriate and necessary. Among the prohibited discrimination grounds covered by the Labour Code are race and ethnic origin.

³³ Article 11³ of the Labour Code, Chapter IIa 'Equal treatment in employment' (Art. 18^{3A} - Art. 18^{3e}) of the Labour Code.