



Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.

Association des Conseils d'Etat et des Juridictions administratives suprêmes de l'Union européenne a.i.s.b.l.



Council of State of Belgium

**Association of the Councils of State and the Supreme
Administrative Jurisdictions of the European Union
With the collaboration of the Council of State of Belgium**

**Increasing the efficiency of the
Supreme Administrative Courts' powers**

POLAND

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ISSUE 1: The ‘administrative loop’, or the power to rectify the legality of an administrative decision

Question 1: In your country’s legal system do you know of a mechanism laid down in the constitution, in law or in regulation, or borne out of established case-law, that confers on an administrative court, in the course of proceedings, the power to rectify a flaw in a disputed decision rather than have that decision quashed and proceedings reopened? If so, what does this power consists of? How it is organised?

In the Polish legal system the administrative courts do not possess the means to rectify the legality of contested administrative decision similar to the „administrative loop” concept prescribed in Dutch law.

The power to quash a decision which gives doubts to its legality is generally considered a sufficient measure of judicial review.

However, many scholars point out that the present system applicable in Poland is incomplete. It seems that introduction of a mean similar to the ‘administrative loop’ would be beneficial in improving the effectiveness of judicial review of, especially in hard cases. However, there are no plans to introduce such measure in the nearest future.

As a side note it is important to mention that the idea of an ‘interlocutory judgement’ is also foreign to the Polish legal system.

Question 2: Can the administrative court itself exercise its power to rectify a flawed decision and itself rectify the infringement that has been identified (power to reverse decisions)?

The Polish administrative courts have not the power to reverse decision (to rectify a flawed decision). The administrative court quashing the decision can

only provide the authority with a legal appraisal and recommendations (instructions) that should be followed when issuing a new decision in administrative case.

According to Article 141 § 4 *in fine* and Article 153 of Act of 30th August 2002 – Law on proceedings before administrative courts (hereinafter referred to as “Law on proceedings”; Journal of Laws of 20th September 2002, No 152, item 1270; with further amendments):

- 1) “[...] the reasons should additionally include recommendations as to further proceedings”.
- 2) “Legal appraisal and recommendations as to further proceedings expressed in a court’s judgment shall be binding upon that court and an authority whose action or failure to act has been challenged”.

Question 3: How is the action to quash affected if the decision involving an infringement is rectified? Is the appeal still valid? Must or can the rectified decision be disputed in another appeal? How do the proceedings continue once to court decides to exercise or has exercised its power to rectify a flawed decision? Explain your answer.

As stated in previous answer, Polish administrative courts cannot rectify a flawed decision by the way of a judgment. However, the administrative body is empowered to issue a new decision on its own motion.

Article 54 § 3 of Law on proceedings states:

“The authority whose action or failure to act has been challenged, may within the scope of its jurisdiction grant the complaint in whole before the day the trial begins.”

If the ‘new’ decision is issued, the appeal against the ‘old’ decision is no longer valid and the court issues an order on discontinuance of the proceedings. The claimant (plaintiff) may bring an appeal against the ‘new’ decision, and it can be then a subject to a judicial review.

Question 4: What are your experiences of the administrative court having such a power to rectify? Is it implemented successfully?

Not applicable to Polish system (see answers 1-3 above).

Question 5: Does your court hear appeals against that are rectified in this way and, if so, how are such appeals dealt with?

Not applicable to Polish system (see answers 1-3 above).

ISSUE II: Power to award compensation and action for annulment.

Question 1: Are you familiar with the system of compensation as an alternative to annulment?

In the Polish legal system there is no action for compensation that can be brought as an alternative to an action for annulment of administrative decision.

Question 2: What is the extent of the compensation and how it is calculated

Not applicable (See answer II.1 above)

Question 3: What is the impact of penalising an unlawful decision by awarding compensation on the decision itself?

Not applicable (see answer II.1 above)

Question 4: Does your court have the power to settle compensation for the damage caused by the unlawful decision it has previously annulled? If so, is this an exclusive power or is that power also granted to other courts?

The Polish administrative courts do not have power to settle compensation for the damage caused by the unlawful decision it has previously annulled.

However, according to Article 154 § 4 of Law on proceedings:

„A person who has suffered injury because of a lack of compliance with the court judgment, shall be entitled to compensation in accordance with principles specified in the Civil Code.”

Article 154 § 5 of Law on proceedings states :

„A compensation referred to in § 4, shall be paid by an authority which has failed to comply with the court’s judgment. If the authority has not paid the compensation within 3 months from the filing of a claim for compensation, the entitled entity may bring action to a common court.”

It is the common (civil) court that decides on the damages in the situation described above. However it remains only a possibility, as up-to-date there haven’t been any cases brought on the basis of above-mentioned provisions.

Question 5: What is the extent of the compensation and how it is calculated?

See answer II.4 above.

ISSUE III: The effectiveness of enforcement of the rulings of administrative courts.

Question 1: Do the administrative courts in your country have the means to ensure actual implementation of their rulings and judgements by the authorities?

The Polish administrative courts do not have any legal means to ensure actual (direct) implementation of their judgments by the authorities. The authority can only be ordered to pay a fine for a damage if it fails to enforce the court's judgement. **However, a judgement ordering a fine can be issued only if the claimant brings a separate action.**

According to Article 154 § 1 and 2 of Law on proceedings:

“In the event that 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, a party may, upon prior call to a competent authority for compliance with the judgment or for settlement of the case, bring a complaint in this respect and request that a fine be imposed on that authority.

In case referred to in § 1 above, the Court may additionally adjudicate on whether there exist or not a right or obligation, if this is allowed by the nature of the case and non-litigious circumstances of its factual and legal status.” (declaratory judgements).

Such declaratory judgements are not issued in practice.

Question 2: Do the administrative courts have the power to order the authority to enforce their rulings and judgements (power of injunction)

As a rule, in the Polish system of administrative jurisdiction there is no institution of the court injunction. If the authority does not enforce the court's judgement, the claimant may bring a separate action against the authority (complaint against failure to act).

According to Article 149 of Law on proceedings:

“The Court, granting the complaint against failure to act by authorities in respect of matters specified in Article 3 § 2 (1) through (4a), shall oblige an authority to issue an act within specified time limit or to perform an action, or to declare or recognise the right or obligation resulting from provisions of law.”

However, it can be assumed that the recommendations in the meaning of the Article 141 § 4 of Law on proceedings are “hidden” or more weak forms of injunction. These recommendations are not included in the sentence of judgment, but only in the reasons of grounds. There is no legal schedule of preparing the recommendations to further proceedings. They are binding upon that court and authority.

Question 3: Have all your country's administrative courts been granted this power of injunction?

Not applicable. The special measure described in answer to previous question (complaint against failure to act) is decided by the administrative courts of first instance.

Question 4: Can your country's administrative courts sentence the offending authority to pay a penalty or fine?

The court can sentence the offending authority to pay a fine, only if the claimant successfully raises a separate claim (see answer III.1)

Question 5: What happens where the authority has enforced the ruling or judgment but this enforcement is not in line with the authority of res judicata?

The described situation is not likely to happen in the Polish legal system.