



DISPUTE RESOLUTION IN POLAND

1st and 2nd instance proceedings before a state court

Cassation proceedings

In this brochure, **NGL Legal Dispute Resolution Team** outlines the subsequent stages of disputes that are resolved by Polish civil and commercial state courts.

We present successive steps from the filing of a statement of claims in the first-instance proceedings, through the appellate proceedings, to the cassation appeal proceedings held before the Supreme Court.

We hope that this will be helpful to get an idea on how Polish courts will proceed with our contentious matter.

If you have any questions, we are at your disposal.

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First-instance proceedings

LENGTH OF THE PROCEEDINGS: about 1-1,5 year(s) from the submission of the statement of claim

STATEMENT OF CLAIMS	STATEMENT OF DEFENCE	PRE-TRIAL HEARING	EVIDENTIARY PROCEEDINGS	RULINGS
<ul style="list-style-type: none"> Specifies the claim. Presents the facts of the case and evidence that justify the claim. Informs whether the parties have attempted to resolve the dispute amicably. Generally, in property rights cases with the amount in dispute exceeding PLN 20,000 (approx. EUR 4,400) the court fee goes to 5% of the value in dispute (but no more than PLN 200,000 /approx. EUR 44,000/). 	<ul style="list-style-type: none"> The court obliges the defendant to file a statement of defence in not less than two weeks. Failure to submit the statement of defence might (potentially) result in a default judgment (the decision in this respect remains at the discretion of the court). As a rule, the court will be obligated by the law to issue a default judgment should the defendant continue to be passive and refrain from acting at the scheduled court hearing. 	<ul style="list-style-type: none"> The purpose of the pre-trial hearing is to settle the dispute without the further trial (in particular, the parties are then encouraged to resolve the case amicably). If a dispute cannot be resolved amicably, the trial plan is prepared. It contains, among other things, the disputable issues, the evidentiary rulings, and the hearing dates. The court decides whether it is justified to set a pre-trial hearing. 	<ul style="list-style-type: none"> Means of evidence: <ul style="list-style-type: none"> textual documents (including electronic communications), witnesses' testimony, parties' testimony, expert opinions, inspection of places or objects, other means of evidence (e.g.: audio / video recordings, plans, drawings). The court might obligate a party to make an advance payment on any potential costs of the evidentiary proceedings, e.g. costs of an expert opinion. 	<ul style="list-style-type: none"> If no appeal is submitted – the first instance court ruling becomes final and binding (in order to enforce it, an enforceability clause needs to be obtained). Some judgments become immediately enforceable, even though they are not yet final and binding (the judgments with the immediate enforceability clause). As a rule, the party who loses the case bears the costs of the proceedings.



Appellate proceedings

LENGTH OF THE PROCEEDINGS: about 1 year from the submission of the appeal

APPEAL	RESPONSE TO THE APPEAL	APPEAL REVIEW	RULINGS
<ul style="list-style-type: none"> An appeal should be filed within two weeks from the day the justification was served on the appellant (if the preparation of the written justification prolongs, the appeal deadline is extended to three weeks). Generally, in property rights cases with the amount in dispute exceeding PLN 20,000 (approx. EUR 4,400) the court fee goes to 5% of the value in dispute (but no more than PLN 200,000 /approx. EUR 44,000/). 	<ul style="list-style-type: none"> The other parties can file a response to appeal within two weeks from the day of the service of the appeal. The appellate court can disregard any new facts and evidence if a party could have brought them during the proceedings before the first instance court unless the need to bring them arose at a later stage. The appellate court resolves the dispute on the basis of the materials gathered in the course of the proceedings in the first instance and in the appellate proceedings. 	<ul style="list-style-type: none"> The appellate court resolves the merits of the case within the frames of the appeal; however, the court always verifies the possible invalidity of the proceedings within the appealed scope. The court may decide on an appeal in camera (without the parties' presence) if it is not necessary to set a hearing. The hearing is set if a party requested that in the appeal or in the response to the appeal (unless the statement of claim or appeal has been withdrawn or the proceedings turn out to be invalid). 	<ul style="list-style-type: none"> The appellate court usually: <ul style="list-style-type: none"> upholds the decision, amends the decision, or revokes the decision and remands the case for its reexamination by a court of first instance. The ruling as to the merits of the case rendered by the appellate court is final. As a rule, the party who loses the case bears the costs of the proceedings. If a party may suffer irreparable damage as a result of the execution of a ruling, the court may, at a request of the party, suspend the execution of its ruling until the cassation proceedings are completed.

Cassation proceedings

LENGTH OF THE PROCEEDINGS: about 1-1,5 year(s) from the day of the cassation appeal

CASSATION APPEAL

- A cassation appeal must prove that the court has violated:
 - substantive law by its wrongful interpretation, or by its inappropriate application, or
 - the rules of procedure, if such a breach might have had a significant impact on the outcome of the dispute.
- A cassation appeal must be prepared by an advocate or a legal adviser and be submitted within two months from the day the justification of the ruling of the appellate court was served on the party.
- In general, the right to file a cassation appeal is limited to cases in which the value of the dispute goes to at least PLN 50,000 /EUR 12,000/).
- Generally, in property rights cases the court fee goes to 5% of the value in dispute (but no more than PLN 200,000 /approx. EUR 44,000/).

RESPONSE TO A CASSATION APPEAL

- The opposing party can respond to the submitted cassation appeal within two weeks from the day the cassation appeal was served on it.
- In each case the Supreme Court can refer to the General Prosecutor for its standpoint on the case, who should then respond within 30 days.
- The parties can address their comments to the General Prosecutor's response within 14 days, but no later than on the day of the hearing.

PRELIMINARY ACCEPTANCE PROCEEDINGS

- A cassation appeal can be reviewed by the Supreme Court only if it presents:
 1. a significant legal issue (either regarding substantive law, or the rules of procedure),
 2. a legal issue that requires clarification by the Supreme Court in order to avoid any doubts or discrepancies in the case law,
 3. the proceedings can be considered invalid, or
 4. the cassation appeal is manifestly justified (e.g. an obvious violation of a substantive law or a procedural rule has occurred which undoubtedness does not even require further investigation).
- In the situation where none of the cassation reasons have occurred, the cassation appeal will be rejected before its merits are reviewed by the Supreme Court.
- These strict requirements lead to a situation where many cassation appeals are not admitted for review regarding their merits, and only those chosen by the Supreme Court go further.
- When a cassation appeal is not admitted to go further, three quarters of the court fee (minus PLN 30 /approx. EUR 7/ of the minimum fee) is returned to the party.

Cassation proceedings

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REVIEW OF CASSATION GROUNDS

- The Supreme Court must base its opinion on the factual findings made by the courts of first and second instances. No new evidence can be presented during the proceedings before the Supreme Court.
- The Supreme Court reviews the cassation appeal within the scope of, and on the grounds for the cassation appeal; however, the Supreme Court should automatically also consider any possible invalidity of the proceedings within the scope of the cassation appeal.
- If the cassation appeal reveals legal issues which pose major doubts, the Supreme Court can adjourn the adjudication of a case and refer the issue to be resolved by an extended panel of the Supreme Court judges.

RULINGS

- The Supreme Court can find the cassation appeal justified or unjustified.
- In cases where the Supreme Court considers a cassation appeal to be justified, it sets aside the ruling in question in full, or in part, and forwards the case to be heard anew to a court of first or second instance.
- In cases where the violation of substantive law is manifestly justified and the cassation appeal is not based on the violation of the rules of procedure (or the Supreme Court finds the claims of such violation to be unjustified), the Supreme Court can also modify the ruling in question and resolve the substance of the matter.
- In cases where the Supreme Court considers a cassation appeal to be unjustified, it dismisses the cassation appeal.
- The Supreme Court can also dismiss the cassation appeal if the outcome of the dispute, though wrongfully justified, in actuality complies with the law.
- The court to which a case has been referred for its reexamination is bound by the Supreme Court's interpretation of the law in that particular case.
- As a rule, the party who loses the dispute bears the costs of the cassation proceedings.

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