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| Study on children's involvement in judicial proceedings – contextual overview for administrative justice –Poland    July 2014 (Research carried out between July 2013 and January 2014) |



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Abbreviations

CA Competent Authority

CAP Code of Administrative Procedure, Act of 14 June 1960 (*Kodeks postępowania administracyjnego*)

CoE Council of Europe

EC European Commission

EU European Union

LoPAC Law on Proceedings before Administrative Courts, Act of 30 August 2002 (*Prawo o postępowaniu przed sądami administracyjnymi).*

LoSAC Law on the System of Administrative

# Introduction

Introduction and context

The promotion and protection of the rights of the child is one of the objectives of the EU on which the Treaty of Lisbon has put further emphasis. This report is part of a study ‘to collect data on children’s involvement in judicial proceedings in the EU’ which supports the implementation of the Commission Communication of 15 February 2011 ‘[An EU Agenda for the rights of the child’](http://ec.europa.eu/justice/fundamental-rights/rights-child/eu-agenda/index_en.htm), which identified the lack of reliable, comparable and official data on the situation of children in the Member States (MS). This deficiency is a serious obstacle to the development and implementation of evidence-based policies and is particularly evident in the context of child friendly justice and the protection of children in vulnerable situations. Making the justice system more child friendly in Europe is a key action of the EU Agenda. It is an area of high practical relevance where the EU has, under the Treaties, competences to turn the rights of the child into reality by means of EU legislation. Improved data is crucial to the framing of such legislation.

The objective of this study is:

* to establish statistics and collect data based on structural, process and outcome indicators on children involved in administrative judicial proceedings for the years 2008-2010 (and 2011 if available) for all 28 EU Member States;
* to provide a narrative overview of children's involvement in administrative judicial proceedings in the EU. The report describes the situation in each Member State as at 1 June 2012.

This report examines the safeguards in place for children involved in **administrative judicial proceedings**. The [Council of Europe Guidelines on child-friendly justice](http://www.coe.int/t/dghl/standardsetting/childjustice/publicationsavailable_en.asp) serve as a basis for the analysis of the provisions affecting children in civil judicial proceedings in each Member State.

Structure and scope

This report describes the national administrative justice system insofar as children’s involvement is concerned. The scope of this report is **limited to judicial proceedings**, which include proceedings before judicial or other authorities competent to judicially decide on the matter. The rules applicable to proceedings before administrative authorities do not fall within the scope of this study. In addition to general administrative judicial proceedings, this report reviews the safeguards in place for children in seven specific sectors:

* General rules applying to administrative judicial proceedings including judicial proceedings reviewing administrative authorities’ decisions;
* Judicial proceedings in the sector of asylum;
* Judicial proceedings in the sector of migration;
* Judicial proceedings in the sector of education;
* Judicial proceedings in the sector of health;
* Judicial proceedings in the sector of placement into care;
* Judicial proceedings in the sector of administrative sanctions;
* Judicial proceedings regarding offences committed by children below the age of criminal responsibility (MACR).

Depending on the Member State, judicial proceedings in those seven sectors may be dealt with by different courts through administrative, civil or criminal judicial proceedings. For example, in one Member State, decisions in the health sector may be dealt with by juvenile courts through civil judicial proceedings while in another Member State such decisions may be dealt with by administrative courts through administrative judicial proceedings. However, for the sake of clarity and completeness, and consistency from one country report to another, the rules applying to the judicial proceedings falling within the sectors mentioned above will be described in this administrative justice overview no matter whether they are dealt with through civil or administrative judicial proceedings.

**Chapter 1** provides an overview of the Member State’s approach to children in administrative judicial proceedings and judicial proceedings in the above sectors. It includes a description of the competent authorities and services.

**Chapter 2** of this report is divided into sections (2.1, 2.2, etc.) according to the different safeguards examined (e.g. the right to be heard, the right to information, etc.). Each of these sections is divided into subsections describing the different rules applying to children involved in those judicial proceedings. The first subsection describes the general rules applying to judicial proceedings (including judicial proceedings reviewing administrative authorities’ decisions).

**NOTE:**

**If specific rules exist for children involved in judicial proceedings in one of the seven specific sectors, e.g. asylum, migration, education, those rules will be described in further separate subsections. On the contrary, if no specific rules exist in those sectors, the general rules described in the first subsection will be the only rules described.**

According to each Member State’s legislation, there might be **cross references between civil procedural rules and administrative procedural rules**. Therefore it should be noted that:

* General rules and principles codified in a substantive or procedural law code (e.g. Civil Code, Civil Procedural Code, Judicial Code) may apply to any proceeding before any court (e.g. rules concerning procedural capacity are likely to be described in the Civil Procedural Code, however those rules also apply to administrative judicial proceedings). These general rules and principles may be supplemented by sector specific procedural or substantive rules.
* Specific sections of Civil, Civil Procedural and Judicial Code may include rules specifically regulating administrative judicial proceedings or proceedings before other authorities competent to judicially decide on the matter (e.g. Chapter X of Civil Procedural Code laying down provisions on judicial review of administrative decisions).
* Specific Administrative Code, Administrative Procedural Code or administrative procedurals laws may apply to administrative judicial proceedings or proceedings before other authorities competent to judicially decide on the matter.

The table below summarises the relevant proceedings and competent court in the sectors mentioned above. For the sake of completeness, the table includes the relevant judicial proceedings and the competent court in the field of family law and employment law, which are described in the [**overview for civil justice**](http://bookshop.europa.eu/children-in-civil-judicial-proceedings).

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| **Type of judicial proceedings and court competence per sector[[1]](#footnote-1)** | | | | | | | | | |
|  | **Contextual overview for civil justice[[2]](#footnote-2)** | **Contextual overview for civil justice** | **Contextual overview for administrative justice** | **Contextual overview for administrative justice** | **Contextual overview for administrative justice** | **Contextual overview for administrative justice** | **Contextual overview for administrative justice** | **Contextual overview for criminal justice** | **Contextual overview for criminal justice** |
| **Sectors:** | **Family** | **Employment** | **Asylum** | **Migration** | **Education** | **Health** | **Placement in care** | **Administrative sanctions** | **Offences < MACR[[3]](#footnote-3)** |
| **Type of proceeding applying in the sector** | Civil judicial proceedings | Civil judicial proceedings | Administrative judicial proceedings | Administrative judicial proceedings | Administrative judicial proceedings | Administrative judicial proceedings/  Civil judicial proceedings (in cases of admission to a psychiatric hospital | Civil judicial proceedings | Proceedings are conducted according to the Juvenile Act, which provides specific procedural rules containing elements of both civil and criminal procedure | Proceedings are conducted according to the Juvenile Act, which provides specific procedural rules containing elements of both civil and criminal procedure |
| **Competent Court(s)** | Civil or family and juvenile divisions of common courts | Civil or labour/social security divisions within the ordinary courts | Administrative courts | Administrative courts | Administrative courts | Administrative courts/ Civil or family and juvenile divisions of common courts | Civil or family and juvenile divisions of common courts | Civil or family and juvenile divisions of common courts | The family and juvenile divisions of courts |

Overview of Member State’s approach to children in administrative Judicial proceedings and specialised services dealing with such children

## Brief description of judicial system and institutions

Administrative legal system in Poland

The main sources of universally binding law in Poland are: the [Constitution](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483) (*Konstytucja*), Parliamentary laws (*ustawy*), ratified international agreements, and regulations (*rozporządzenia*). A regulation is an implementing act adopted on a legal basis provided for in a statute. All binding legal acts/agreements have to be published in *Dziennik Ustaw* (the Official Journal of Laws).

All other measures, such as resolutions (*uchwały*) - adopted by one of the chambers of the Parliament (either the *Sejm* or the Senate) and the Council of Ministers - and orders (*zarządzenia*) – which can be issued by the President, the Prime Minister or any other Minister - are part of internal law and bind only the public administration. These acts are, with some exceptions (e.g. internal acts), published in the *Monitor Polski* (the Official Gazette).

Since 1999, Poland has been divided into three administrative levels: 16 voivodships[[4]](#footnote-4) (*województwa*), 379 *poviats* (*powiaty*) and 2479 communes (*gminy*). The central government is represented by a voivod, the governor of the voidvodships (*wojewoda*), appointed by the Prime Minister and supervising the lawfulness of the activities of the voivodship council (local government authority). Poviats and communes are local government units, ruled by their respective councils elected in universal and direct elections. The executive power in poviats is vested in the office of starost (*starosta -* head of the poviat, elected by the poviat council). The executive power in communes is vested in mayors (in Poland they have different designations, depending on the size of a commune: *wójt* in village communes, *burmistrz* in towns, and *prezydent* in large cities). Mayors are elected in direct elections.

The local government authorities and the territorial authorities of the central government authority can, using the legal basis provided for in a Parliamentary law, enact local laws (*akty prawa miejscowego*) that apply in their areas of administration.

Substantive administrative law is the most complex area of Polish law, regulated by various legal acts and governing social relations associated with the administrative activities of state authorities and other entities performing administrative functions in public administration.

* + 1. **Administrative legal system and procedure before public administration authorities**

Procedures and activities conducted by public administration authorities are governed by the [Code of Administrative Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19600300168)[[5]](#footnote-5) (CAP), which applies to individualised procedures resulting in a decision[[6]](#footnote-6).

Public administration authorities, the decisions of which come within the [CAP](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19600300168), are widely defined. They include: Ministers, central government authorities, *voivods*, other local authorities of central government administration, such as tax offices and educational superintendents, local government authorities and other authorities created to solve individual matters by way of administrative decisions[[7]](#footnote-7). Some of these authorities have systemic significance, i.e. authorities created for the sole or main purposes of performing public administrative tasks. Other authorities have functional significance, e.g. public administrative tasks, which are not main tasks[[8]](#footnote-8), e.g. high school principals, university rectors or the legal professional bodies of lawyers, legal counsellors and notaries public. These functions are created for specific purposes, such as education, although their actions and decisions in individual matters are covered by rules of administrative procedure, and, at a later stage, may be appealed against in the administrative courts.

Certain acts are excluded from the scope of application of the [CAP](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19600300168), e.g. the imposition of penalties in tax cases or the hierarchic organisation of state administration.

A complaint before an administrative court may only be brought when all of the internal administrative appeals and measures before the relevant public administration authority have been exhausted and it may only concern questions of legality of an administrative decision (see below in this chapter).

According to the [CAP](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19600300168), an appeal against an administrative decision should be lodged before a superior public administration authority, although alternative appeal procedures may be governed by a particular act of substantive law.

The superior authority depends on the character of the matter and is defined in relevant substantive administrative law. The Local Government Board of Appeal(*Samorządowe Kolegium Odwoławcze*) constitutes, as a rule, a superior administrative authority in individual cases within the competence of the local government authorities unless specific provisions provide otherwise[[9]](#footnote-9).

If, in a given case, the superior public administration authority has issued a decision in the first instance, no internal appeal is available, and only a request to the authority itself, may be filed to reconsider the case.

### Judicial supervision of public administration authorities’ decisions – the system of administrative courts

Supervision of activity of public administration is performed by a two-instance administrative jurisdiction: the Supreme Administrative Court and 16 Voivodship Administrative Courts. The status and procedures of the administrative courts are regulated by the [Law on the System of Administrative Courts](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531269)[[10]](#footnote-10) (LoSAC) and the [Law on Proceedings before Administrative Courts](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270)[[11]](#footnote-11) (LoPAC). Both acts came into force on 1 January 2004.

In principle, civil and criminal courts (common courts) are not competent to consider administrative disputes ‒ unless they possess particular powers in this regard, and on the basis of special legislation, e.g. [the Social Insurance System Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19981370887) of 13 October 1998 (*Ustawa z dnia 13 października 1998 r. o systemie ubezpieczeń społecznych*), [the Public Procurement Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20072231655) of 29 January 2004 (Prawo zamówień publicznych), and [the Competition and Consumers Protection Act](http://isip.sejm.gov.pl/DetailsServlet?id=WDU20070500331) of 16 February 2007 (*Ustawa o ochronie konkurencji i konsumentów*)[[12]](#footnote-12).

Judicial-administrative proceedings can be initiated by lodging a complaint with a voivodship court or, in certain cases, by submitting a request for instituting proceedings, in general within 30 days of service of the decision in the case.

The prosecutor, the Human Right Defender or the Ombudsman for Children’s Rights may bring an action within six months of service of the decision on the individual, and in other cases, within six months from the date of entry into force of the act or taking another action justifying filing of the complaint.

However, a complaint before an administrative court may only be brought once all availableinternaladministrative appeals and measures before a public administration authority have been exhausted(see above in this chapter)..

Cases are considered in the first instance by one of the Voivodship Administrative Courts. In fact, Voivodship Administrative Courts consider all matters of administrative judicial proceedings, except in cases of exclusive jurisdiction of the Supreme Administrative Court.

The fundamental task of the administrative courts is to examine legality (conformity with the law) of activities of the public administration, meaning the review from the point of view of its conformity with the law (for example the manner in which administrative authorities interpret vague legal concepts or exercise administrative discretion[[13]](#footnote-13)).

The administrative court has no competence to examine a case on the merits.If the administrative court finds that a breach of substantive law has occurred, it may:

* quash the challenged decision/act;
* declare the decision/act null and void in part or in whole;
* declare that the decision/act has been issued in breach of law[[14]](#footnote-14).

In the event of a complaint about the failure to act by a public administration authority, or the excessive length of administrative proceedings before it, the court may give a judgement obliging the challenged authority to issue, within a specified time, a decision/act to perform, an action, or to recognise a right or an obligation arising from the law[[15]](#footnote-15). In some cases, the administrative court may also issue a judgement recognising a right or an obligation arising from the law and/or impose a fine on the public administration authority[[16]](#footnote-16).

An administrative court cannot annul an agreement reached between a private individual and a public administration authority, nor award damages to anyone who has suffered a loss as the result of an incorrect administrative decision[[17]](#footnote-17). However, if a person sustains damage in connection with an incorrect administrative decision, s/he can claim compensation in a civil court.

The Supreme Administrative Court is composed of 3 chambers: general administrative, commercial and financial. The Supreme Administrative Court, in particular:

* considers appeals against rulings of the Voivodship Administrative Courts;
* adopts resolutions aimed at clarifying legal provisions whose application has caused discrepancies in the case-law of administrative courts,
* adopts resolutions resolving legal questions raising serious doubts in a specific case before an administrative court;
* resolves jurisdictional disputes (*spory o właściwość*) between local government authorities and the Local Government Boards of Appeal or territorial authorities of central government[[18]](#footnote-18).

The administrative courts, like all other courts in Poland, may submit questions to the Constitutional Tribunal (*Trybunał Konstytucyjny*) regarding the compliance of a normative instrument with the [Constitution](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483), ratified international agreements or a Parliamentary law, if the answer to such a question would be decisive for the outcome of a case pending before a court[[19]](#footnote-19). In such a case, the administrative court suspends the proceedings pending before it *ex officio*.

Composition of the court (single judge or a panel): in principle, an administrative court adjudicates in a bench composed of three judges in both instances. A verdict is issued in the court by a full bench of the judges who took part in the adjudication. The verdict may only be issued by the judges before whom the proceedings took place immediately prior to the issue of the judgement[[20]](#footnote-20).

Parties to the proceedings before the administrative courts are: the complainant and the public administration authority whose action, failure to act or excessive length of proceedings is the subject of the complaint[[21]](#footnote-21).

Administrative courts do not hear witnesses – they examine cases on the basis of facts and evidence gathered in initial administrative proceedings. The only provision that mentions the possibility of hearing witnesses relates to a special ‘procedure in case of loss or destruction of the file’, which is not analysed in this study[[22]](#footnote-22). If the court finds that the circumstance of hearing a witness, including a child, by a public administration authority did not respect the law or any of the procedural or legal guarantees, it will refer back the case to the public administration authority to remedy the previous shortcomings.

A participant is:

* a person who participated in the initial administrative proceedings before the public administration authority, and did not lodge a complaint, is a participant with the rights of a party *ex officio*, if the outcome of the judicial proceedings concerns his/her legal interest[[23]](#footnote-23);
* a person who did not participate in the initial administrative proceedings before the public administration authority, but the outcome of the judicial proceedings concerns his/her legal interest, may also declare his/her willingness to join the judicial proceedings as a participant[[24]](#footnote-24). However, the court may refuse to allow this.

The situation of the party and the participant is equivalent, as according to the [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), all provisions relating to a party apply equally to the participants[[25]](#footnote-25).

* + 1. **Proceedings involving children in specific areas**

**Asylum, migration, visas**[[26]](#footnote-26). These areas are regulated by administrative law, and an appeal against decisions of public administration authority can be lodged with an administrative court, with the exception of a decision of a consul to refuse a visa, which is final and cannot be appealed. This exception does not apply to visas issued to family members of a citizen of the EU or EEA Member State[[27]](#footnote-27). However, the “family and guardianship court” (*sąd rodzinny i opiekuńczy)*[[28]](#footnote-28) will appoint a guardian *ad litem* for an unaccompanied child, to represent the child in the proceedings before administrative authorities, or decide on placement of the child in care;

* **Citizenship**. The [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270)does not apply in cases concerning granting of Polish citizenship by the President of Poland and the President’s consent to renounce Polish citizenship, where the President’s decisions are final[[29]](#footnote-29).The [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270) applies, as a rule, in all other cases concerning citizenship, for example in cases of confirmation of Polish citizenship or recognition as a Polish citizen, where the voivod issues a relevant decision, and the Minister of the Interior is a second-instance authority competent to examine an administrative appeal. The decision of the Minister of the Interior can subsequently be appealed to an administrative court.
* **Education**. It is regulated by administrative law. As a rule, the education superintendent (*kurator oświaty*) is a second instance administrative authority of decisions taken by a school head or a local government authority in matters of education. Subsequently a complaint against a final administrative decision/action can be lodged with a voivodship administrative court. In cases where decisions were taken by the superintendents, in the first instance, appeals can be lodged with the Minister of Education, with complaints to the administrative courts.  
    
  For example, a decision of a psychological-pedagogical counselling centre, regarding the need and the form of special education for a child with disabilities, can be appealed to the education superintendent. Subsequently, a complaint to a voivodship administrative court can be lodged. A decision to admit a child to school before attaining the compulsory education age, or to postpone the commencement of compulsory education is taken by a school head, following an opinion of a psychological-pedagogical counselling centre. A decision to grant financial aid of a social nature is taken by a local government authority, e.g. a mayor. The communes are also obliged to ensure that children with disabilities have free transport to school – if they fail to fulfil this obligation following a written notice, a complaint about the mayor’s failure to act can be lodged with the voivodship administrative court.
* **Health**.   
  Mental health care is assured by the authorities of central and local administration, as well as other institutions, created for that purpose[[30]](#footnote-30).   
  However, admission to a psychiatric hospital or a social assistance home of a person who, because of her/his intellectual/mental condition, is unable to give her/his own consent, requires permission from the “family and guardianship court” delivered according to the civil procedure.  
    
  A child can be admitted to a psychiatric hospital on written consent of the statutory representative (parents/guardians). If the admission to hospital concerns a child over 16 years old, his/her consent is also required. In the case of contradictory statements on admission to a psychiatric hospital of the person concerned and his statutory representative, permission must be given by a guardianship court[[31]](#footnote-31) according to the general rules on non-contentious civil proceedings, described in the Study to collect data on children’s involvement in civil judicial proceedings. Consequently, an appeal against the decision of the guardianship court can be lodged with a regional court.  
    
  Compulsory psychiatric examination. When a person whose behaviour indicates that due to a mental disorder, he/she may threaten to take his/her own life, or the life or another, or endanger their health, or is unable to meet his/her basic needs, may be subject to a psychiatric examination without his/her consent, and in the case of a child, without the consent of the statutory representative[[32]](#footnote-32).  
    
  As regards medical treatment, decisions concerning health insurance (in particular decisions in individual cases of the President of National Health Fund[[33]](#footnote-33)), can be complained about to a voivodship administrative court[[34]](#footnote-34).
* **Placement of children into care** (foster families, residential or institutional care)  
  A child can be placed in care on a decision of the “family and guardianship court” according to the rules of civil procedure[[35]](#footnote-35), described in the Study to collect data on children’s involvement in civil judicial proceedings. Such placement should occur only after all other forms of child support have been exhausted[[36]](#footnote-36). However, there are certain situations where the child can be placed in foster care without a prior decision of the court, i.e.:
  + in urgent situations, on request or with the consent of the child’s parents[[37]](#footnote-37);
  + in case the child was brought to the foster care facility by the Police or Border Guards[[38]](#footnote-38);
  + in case there is a direct threat to the child’s health or life, when a social worker removes the child from his/her parents[[39]](#footnote-39).

In any of these cases, the court must be immediately informed of the placement of the child in foster care and the court proceedings should commence without undue delay[[40]](#footnote-40).

* Treatment of children who commit acts which would be considered a criminal offence if committed by someone above the minimum age of criminal responsibility (MACR).  
  Child offenders (under 17 years old) fall within the juvenile justice system based on a specific law – [the Act on Proceedings In Juvenile Matters](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228) (the Juvenile Act)[[41]](#footnote-41) - which contains elements of both civil and criminal law.   
  Juvenile justice and the situation of child offenders are described in the Contextual overview for criminal justice.  
    
  Juvenile jurisdiction - i.e. cases related to antisocial behaviour of persons under the age of 18, as well as ‘punishable acts’[[42]](#footnote-42) committed by children between 13 and 17 years old - lies within the competence of the “family court“(departments for family and juvenile matters within the civil district courts).   
    
  The family court can apply three types of measures to child offenders: educational, corrective and therapeutic. The Act also governs the application of educational measures in cases of children under 18 who demonstrate antisocial behaviour (problem behaviour such as running away from home, truancy, using alcohol or drugs, prostitution).  
    
  An offence committed by a child under 13 old is not considered to be a ‘punishable act’, but a demonstration of antisocial behaviour. Consequently, the family court can only apply educational measures to an offender under 13.  
    
  As regards children aged under 17, no ‘punishment’ is imposed but ‘measures’ are. According to the [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228), the family court can apply three types of measures:
  + educational;
  + corrective;
  + therapeutic and educational.

When applying the appropriate measures, the court in principle does not take into account the gravity of the offence, but the personal characteristics of the child, and in particular his/her age, health, physical and intellectual development. The aim of the measure applied is not punishment, but achievement of positive changes in the personality and behaviour of the offender. However, when social rehabilitation of the child seems unlikely, and a corrective measure is applied, the nature of the offence will be taken into account.

Educational measures include:

* + a reprimand/warning,
  + an obligation to do something, such as redressing the damage, performing particular work for the benefit of the victim or local community, apologising to the victim, undertaking education or work, participating in educational or therapeutic activities, refraining from drinking alcohol or other intoxicants, refraining from staying in particular places;
  + supervision by parents or guardians, a youth or other social organisation, a workplace, or a trustworthy person;
  + supervision by a family court probation officer, e.g. a court officer for family matters;
  + placement in a foster family;
  + placement in a youth probation centre;
  + placement in a youth educational centre or another institution;
  + forfeiture of goods obtained as a result of the crime[[43]](#footnote-43).

The family court may also:

* + oblige the parents or guardians to improve the educational, living or health conditions of the child, and/or to cooperate closely with the child’s school, a psychological-educational counselling centre or a medical expert;
  + oblige the parents to redress the damage caused by the child.

The family court may applytherapeutic and educational measures where the child is diagnosed as suffering from intellectual disability, mental illness, other psychological disorders, addiction to alcohol or other intoxicating substances. In such cases, the family court may place a child in a psychiatric hospital or in another appropriate therapeutic institution. The court may also decide that only education and care is necessary and place the child in a youth educational centre. If the child is severely intellectually disabled the court may decide to place him/her in a social care home[[44]](#footnote-44).

A corrective measure – placement in a juvenile correctional facility – can be applied only when the child was between 13 and 17 years old when the offence was committed. The judge may take such a decision if this is justified by the circumstances and character of the offence and the child offender proves to be highly antisocial and it is unlikely that educational measures would lead to his social rehabilitation[[45]](#footnote-45).

* Sanctions for road traffic offences and socially harmful acts.  
  A child, under 17 years old, cannot be fined for a road traffic offence, even though, currently, a child aged 16 may obtain a driving licence to drive a car or a motorcycle, and 14 year olds may obtain a licence to drive a moped or a light motorised quad cycle. Such offences qualify as ‘punishable acts’ within the meaning of the [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228). Similarly, the socially harmful acts fall under ‘antisocial behaviour’ also dealt with under the [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228). Therefore, the procedure and measures described above will apply. It is, therefore, not correct to speak about “administrative sanctions”, placing the matter under the competence of civil (family) courts. The relevant procedures are described in the contextual overview for criminal justice.
  + 1. **Family courts (common courts)**

TheJudiciary in Poland is autonomous and independent from other powers and includes the Supreme Court, common courts, administrative courts and military courts[[46]](#footnote-46). Common courts adjudicate all matters, except those issues that are explicitly reserved for other courts. Judges are independent and subject only to the [Constitution](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483) and ordinary laws[[47]](#footnote-47). Judicial proceedings have at least two stages[[48]](#footnote-48).

Common courts are divided into[[49]](#footnote-49):

(i) district courts, created for one or more communes and adjudicating all civil cases in first instance, except those explicitly reserved for regional courts;

(ii)regional courts, created for the area of at least two district courts and acting primarily as second instance courts dealing with appeals against decisions of district courts;

(iii) courts of appeal, created for the area of at least two regional courts and primarily dealing with appeals against decisions of regional courts.

District and regional courts are further divided into: (i) civil divisions (adjudicating cases concerning civil law, family and guardianship matters and juvenile matters); and (ii) criminal divisions (adjudicating cases concerning criminal law)[[50]](#footnote-50).

In addition, other specialised divisions can be created within the courts, as provided for by the [Law on Common Courts Organisation](http://www.arslege.pl/prawo-o-ustroju-sadow-powszechnych/k41/) of 27 July 2001. In particular, in district courts family courts can be created as functionally and organisationally separate departments for adjudicating cases concerning family law and guardianship as well as juvenile matters[[51]](#footnote-51) (cases of antisocial behaviour and offences committed by children/MACR). Family courts are civil courts, dealing with matters governed, as a rule, by civil procedure and the [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228), which is a mixture of civil and criminal law.

As regards the areas covered in this study, the family court is competent to decide about placement of children in care, appointment of guardians and guardians ad litem notwithstanding the type of proceedings, as well as, as mentioned above, treatment of children below the minimum age of criminal responsibility (MACR) who have committed offences (see above in this Section).

Certain laws also refer to ‘guardianship courts’ which is a functional and procedural term; the competence of the guardianship court – dealing with family and guardianship cases – is exercised by the civil department of the district court, usually its division for family and juvenile matters

Cases decided in the first instance by a civil or family division of a district court can be appealed to the civil divisions of regional courts[[52]](#footnote-52);

* + 1. **The specialist institutions**

There are institutions empowered to initiate and assist children during, *inter alia*, administrative proceedings to protect the child’s interests. Among them, only the Ombudsman for Children’s Rights is an institution established explicitly in order to protect children’s rights and interests. There are no institutions, however, which are obliged by law to assist children during administrative judicial proceedings.

**The Ombudsman for Children’s Rights** (*Rzecznik Praw Dziecka*) is a state authority, independent from other state authorities and accountable only to Parliament, created by Article 72(4) of the Polish [Constitution](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483). The Ombudsman protects the children's rights referred to in the [Constitution](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483) of the Republic of Poland, in the [UN Convention on the Rights of the Child](http://www.ohchr.org/en/professionalinterest/pages/crc.aspx) and in other legal instruments[[53]](#footnote-53). The Ombudsman has a right, In relation to administrative and judicial-administrative proceedings, to require public authorities, organisations or institutions to submit explanations, to give information or disclose relevant files and documents, including those containing personal data, to ask for administrative proceedings to be instituted, to lodge complaints to the administrative court and to participate in those proceedings with the rights of the prosecutor or lodge a cassation complaint[[54]](#footnote-54) to the Supreme Administrative Court[[55]](#footnote-55).

**The Polish Ombudsman** (*Rzecznik Praw Obywatelskich),* also referred to in English as t**he Commissioner for Citizen’s Rights** or **the** **Human Rights Defender[[56]](#footnote-56),** is an independent state authority created for safeguarding human and civic freedoms and rights specified in the [Constitution](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483) and other legal acts. Its functioning is regulated by the [Constitution](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483)[[57]](#footnote-57) and the Act on the Human Rights Defender[[58]](#footnote-58). The Human Rights Defender may take appropriate measures, e.g. carry out investigations, issue recommendations, reports, petitions to relevant authorities to take-up legislative initiatives, lodge a cassation appeal to the Supreme Court (*Sąd Najwyższy*) or to the Supreme Administrative Court, request that legal proceedings be instituted) on a request from a citizen, an organisation, a local authority, the Children’s Rights Ombudsman or on his/her own initiative. In matters concerning children, the Human Rights Defender co-operates with the Children’s Rights Ombudsman.

In proceedings before administrative courts, the Human Rights Defender, the Ombudsman for Children’s Rights as well as a **prosecutor**, may take part in any pending proceedings and lodge a complaint, a cassation appeal, complaint and/or request reopening of the proceedings, if in their opinion the protection of the rule of law and/or human and civil rights or children’s rights so require. If they do, they have a status of a party to the proceedings[[59]](#footnote-59).

A request to the Supreme Administrative Court to declare null and void a final and binding judgement of the Voivodship Administrative Court can only be lodged by the party who suffered damage as a result of the judgement, as well by the **Prosecutor General** and the **Human Rights Defender**.

**Social organisations (NGOs),** aredefined by the [CAP](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19600300168) as including professional organisations[[60]](#footnote-60), self-government organisations[[61]](#footnote-61), cooperatives and other community organisations[[62]](#footnote-62). NGOs may participate in the proceedings in cases falling within their statutory activities, in situations provided in the law[[63]](#footnote-63). In particular, NGOs may lodge a complaint to the Voivodship Administrative Court in a case concerning the legal interests of other persons, if the case falls within the NGO’s statutory activities and it participated in the relevant administrative proceedings[[64]](#footnote-64). There exist numerous non-governmental organisations whose statutory activities include free assistance to children and their parents. The assistance may consist of legal advice, provision of information, or psychological help.

**Court custodians/Court officers for family and juvenile matters** (*kuratorzy sądowi d/s rodzinnych i nieletnich*) carry out tasks of educational, correctional, preventive and supervisory character, related to the implementation and enforcement of courts’ judgements[[65]](#footnote-65). They have the right, *inter alia*, to visit persons concerned by the proceedings in their domicile and request necessary information from persons under their supervision[[66]](#footnote-66). [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296) lays down specific competences for court custodians in family matters, e.g. the guardianship court may request the court custodian to (i) prepare an opinion about the child, and his family and school/education environment (*wywiad środowiskowy*)[[67]](#footnote-67); (ii) or to remove the child from his parents/guardians by force[[68]](#footnote-68).

## General approach towards children under administrative law: evolving capacities, best interests of the child, principle of non-discrimination

Definition of the child

In Polish law, natural persons attain full legal capacity when they reach the age of 18 (the age of maturity)[[69]](#footnote-69). Children under 13 have no legal capacity, and between 13 and 17 years of age, have limited legal capacity (meaning that they can conclude typical transactions in minor daily matters, dispose of their earnings and certain belongings[[70]](#footnote-70)).

Rules on children’s involvement in administrative judicial proceedings

The [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270) does not provide for any principles or provisions referring to children in particular. Consequently, there are no provisions relating to administrative judicial proceedings that would refer to the child’s best interests, evolving capacity or discrimination, and no definition of these concepts.

There are no rules or provisions guiding or referring to the involvement of children in administrative judicial proceedings, therefore the same rules apply to children as to adults.

However, it must be noted that, due to the specific character of Polish administrative judicial procedure – mainly written, strictly limited to the issue of conformity with law, with practically no hearing of evidence – as well as given that children under 18 have virtually no procedural rights and must always be represented by their statutory representative, the participation of a child in those proceedings is marginal or rather non-existent[[71]](#footnote-71).

Nevertheless, proceedings before administrative authorities are governed by several general principles, enumerated in a separate initial chapter of the [CAP](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19600300168), and considered to be a fundamental set of rules of conduct for public administration authorities. These principles are not just recommendations, but legal norms, and conformity with those principles of administrative actions and decisions, will also be examined by the administrative courts in cases of judicial review. Accordingly, a violation of one of these principles, by a public administrative authority, may lead, for example, to an administrative court setting aside the challenged decision. These principles are as follows[[72]](#footnote-72):

* the principle of the rule of law[[73]](#footnote-73),
* the principle of objective truth[[74]](#footnote-74),
* the principle of taking *ex officio* into account the public interest and legitimate interests of citizens [[75]](#footnote-75),
* the principle of reaffirming the citizens' trust towards state authorities[[76]](#footnote-76),
* the principle of the obligation properly and fully to inform the parties and participants of the facts and law[[77]](#footnote-77),
* the principle of the right of the parties to be heard and to participate actively in the proceedings[[78]](#footnote-78),
* the principle of explaining the legitimacy of the reasons behind the decision[[79]](#footnote-79),
* the principle of promptness and simplicity of proceedings[[80]](#footnote-80),
* the principle of amicable settlement[[81]](#footnote-81),
* the principle of written form[[82]](#footnote-82).

In light of the lack of specific provisions relating to children and/or administrative judicial proceedings, the above-mentioned principles as well as general principles of law following from the [Constitution](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483) and international standards (such as principle of a fair hearing) will apply to children and adults alike.

The Polish [Constitution](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483)ensures protection of the rights of the child[[83]](#footnote-83). Consequently, State authorities must respect those rights when performing their activities. Furthermore, the Ombudsman for Children’s Rightsis guided by the best interests of the child and takes into account that the natural environment for the child’s development is the family[[84]](#footnote-84).

The right of children to express their opinionis also granted by the [Constitution](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483) which provides that public authorities should consider and, insofar as possible, give priority to, the views of the child[[85]](#footnote-85).

All individuals, including children, enjoy the rights and freedoms guaranteed by the [Constitution](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483). Dignity is considered to be the most fundamental and absolute right of a person. As a result, public authorities are required to respect and protect the dignity of all persons[[86]](#footnote-86).

The Polish [Constitution](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483) provides for a general anti-discrimination clause stating that everyone is equal before the law and everyone has the right to equal treatment from public authorities (including courts) as well as that no-one shall be discriminated against in political, social or economic life for any reason[[87]](#footnote-87). The [Constitution](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483) also affirms gender equality in family, political, social and economic life and in particular as regards the fields of education, employment and social benefits, and provides for the equal access of every citizen to free health care services[[88]](#footnote-88). The [Act on the Implementation of Certain EU Provisions Concerning Equal Treatment](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20102541700) (*Ustawa z dnia 3 grudnia 2010 r. o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania* - the Act on Equal Treatment) transposes the equality provisions of various EU directives into Polish law, but it remains incomplete and prohibits discrimination on the grounds of age only with regard to employment, vocational training, etc.

The [Constitution](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483) also guarantees the right to have the case considered without undue delay[[89]](#footnote-89), with rights of defence[[90]](#footnote-90), and the right to compensation for unlawful acts of public authority[[91]](#footnote-91).

* 1. **Monitoring mechanisms, multidisciplinary approach and training**

Monitoring mechanisms

The Human Rights Defender may carry out investigations, issue recommendations, reports, petitions to relevant authorities for taking up legislative initiatives and may request that legal proceedings be instituted. S/he may also lodge a last resort appeal with the Supreme Court in a criminal case and may participate in constitutional complaint proceedings before the Constitutional Tribunal.

The Ombudsman for Children’s Rights, besides his powers to participate and initiate judicial and administrative proceedings in individual case, may also:

* examine each case on the spot without prior notice,
* require public authorities, organisations or institutions to submit explanations or give information, as well as to disclose relevant files and documents, including those containing personal data;
* enter into proceedings before the Constitutional Tribunal initiated on the basis of an application submitted by the Human Rights Defender or in cases of constitutional claims concerning the rights of the child and participate in such proceedings;
* request the Supreme Court to adjudicate on cases of divergence in the interpretation of law with regard to legal provisions concerning the rights of the child;
* lodge cassation or appeal against legally valid sentences on terms and under rules governed by separate provisions;
* commission studies, expert reports and opinions.

Children and parents can also complain, in specific cases, to the Ombudsman for Patients’ Rights, the Government Plenipotentiary for Equal Treatment or the Government Plenipotentiary for Disabled Persons. The functions of the two Government Plenipotentiaries include monitoring functions with regard to the implementation of legislation and policy within their competences.

Legislative acts can be subjected to constitutional control exercised by the Constitutional Tribunal. Citizens are permitted to lodge an individual constitutional complaint with the Tribunal. The complaint may only challenge the constitutionality of a normative act, upon which a final decision infringing the rights or freedoms of a complainant was based; the infringement must result from a decision issued by a court or an organ of public administration in the individual case of the complainant.

### Multidisciplinary measures ensure close cooperation between different professionals in order to obtain a comprehensive understanding of the child

Cooperation between relevant authorities

Cooperation between authorities involved in supporting a child is provided in the legislation, but it is effectuated at the stage of administrative proceedings rather than before administrative courts. However, in situations where a guardian or guardian *ad litem* is to be appointed *ex officio*, the administrative court will address the competent guardianship court.

Family courts cooperate with various authorities and social institutions working in the fields of family support and child/youth protection[[92]](#footnote-92). In guardianship and juvenile matters, the family courts are assisted by the court custodians, and they may be asked to conduct an examination of the child’s home situation and his/her family/school environment[[93]](#footnote-93).

The role of the court custodians is most important in cases involving child offenders. The family court may ask the family court probation officers to undertake appropriate actions, e.g. conducting community interviews and preparing reports which may include, *inter alia*, information about the families, environment, acquaintances, school results and conduct, in order to consider all of the circumstances of the case, including the personality and intellectual and emotional development of the child, and his/her family and social background. In order to obtain a comprehensive diagnosis of the personality of the child, the court may ask for an opinion from the family diagnostic and consultation centre ‒ such an opinion is obligatory if the court intends to place a child in an educational or correctional centre. The opinion is preceded by a complex pedagogical, psychological or medical diagnosis, and includes the centre’s recommendations regarding the most appropriate measures to be applied[[94]](#footnote-94). At the enforcement stage, the court officer is responsible for supervising the execution of the measures applied by the court, and for education and social rehabilitation processes for the child.

These procedures are governed by civil and/or juvenile law and have been described in detail in the Studies to collect data on children’s involvement in civil and criminal judicial proceedings respectively.

The Ombudsman for Children’s Rights has the right to turn to competent authorities and institutions and request them to take necessary actions, within their competences, to protect a child[[95]](#footnote-95). The competent authorities are obliged to take up cases handed over by the Ombudsman and must inform him/her, within 30 days, of the actions taken. The authorities and institutions contacted by the Ombudsman are obliged to cooperate with him/her and provide him/her with the necessary support[[96]](#footnote-96).

Professional training

All judges have completed law studies in Poland and earned a master’s degree, or an equivalent foreign qualification recognised in Poland. To become an administrative court judge, they must also have long-term experience as a judge, lawyer, legal counsellor or notary public, or have occupied a position involving the implementation or formulation of administrative law, or hold the title of doctor habilitatus or professor.

To be appointed as a judge of a Voivodship Administrative Court, a person must, *inter alia*, be over 35 and has:

* served at least eight years as a judge or prosecutor; or
* been employed for at least eight years as a lawyer, legal counsellor or notary public; or
* served ten years in public institutions, occupying positions involving the implementation or creation of administrative law; or
* been employed as a court assessor in a Voivodship Administrative Court for at least two years[[97]](#footnote-97).

To be appointed as a judge of the Supreme Administrative Court, a person must be over 40 and

* have served at least ten years as a judge or prosecutor; or
* been employed for at least ten years as a lawyer, legal counsellor or notary public[[98]](#footnote-98).

The age requirement of 40 does not apply to a judge who has served as a Voivodship Administrative Court judge for at least three years.

Judges are not removable.

The [Polish National School of the Judiciary and Public Prosecution](http://www.kssip.gov.pl/en) is responsible for initial and continuous training of judges and prosecutors.

With regard to legal counsel, in Poland there are:

* barristers/advocates (*adwokaci*), who can represent clients in both criminal and civil proceedings; and
* legal advisors (*radcy prawni*), who are specialised in civil law and their involvement in criminal procedures is substantially limited.

For the purpose of this report the two groups of lawyers will be referred to as ‘legal counsel’.

Legal counsel also has the obligation, periodically, to develop his/her professional skills. These obligations are regulated by their relevant codes of conduct, which establish general rules concerning legal counsel’s professional development. However, there is no particular reference to training concerning child-related issues. The content of training is usually decided on yearly basis[[99]](#footnote-99). Legal advisors participate in training organised by the Training Centre for Legal Advisors (*Centrum Szkolenia Ustawicznego Radców Prawnych*). The schedule for training organised by the Centre for 2013 does not explicitly include issues concerning the situation of children in civil judicial proceedings. As regards barristers, relevant training is usually organised by national or regional bar councils, but they can also participate in training or seminars organised by other institutions for example NGOs (such training is usually open also to other legal professions).

Interaction between different judicial proceedings

Regarding administrative proceedings, they do not overlap with civil or criminal proceedings. In terms of proceedings - not substantial law since administrative and civil issues are generally separate, there may be cases of conflict of jurisdiction or situations where an administrative decision will have an effect on private (civil) relations.

The [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270) sometimes refers to the [Civil Code](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640160093) and [the Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296) with regard to certain terms/procedural rules used in administrative proceedings, such as definitions and time-limits, rules for the delivery of summons, rules concerning proxies, and procedures concerning taking evidence from documents.

Compensation claims based on the judgement of an administrative court can be brought to the civil court according to the civil judicial procedure.

If, in the course of proceedings before administrative authorities or an administrative court it becomes necessary to appoint a guardian *ad litem* to represent the child, or to place the child in care, the decision will be taken by a guardianship court according to the provisions of family law, on request of the authority/court.

Finally, in some cases, an administrative decision may be reviewed by a civil court instead of an administrative one (e.g. in cases of consumer protection, telecommunication law, energy law).

Vetting

As regards vetting of the professionals, the performance of advocates’ duties is supervised by the Bar councils[[100]](#footnote-100). A similar requirement is laid down for legal advisors. The activities of the court custodians/court officers for family matters are supervised by regional court custodians[[101]](#footnote-101).

Complaints about non-judicial actions of judges and activities of the courts

Parties and participants may complain, to the presidents of the voivodship administrative courts, about the actions of administrative courts and judges that do not constitute judicial activities, e.g. the behaviour of a judge or organisational problems, or to the President of the Supreme Administrative Court when the complaint concerns presidents of voivodship courts.

Disciplinary responsibility of judges

Judges of administrative courts are independent in the exercise of their duties and are subject only to the provisions of the Constitution and statutes[[102]](#footnote-102).

A judge is disciplinarily-liable for misconduct ‒ including the flagrant violation of the provisions of law and for offending the dignity of the office[[103]](#footnote-103). The Supreme Administrative Court is the disciplinary court in cases concerning judges of administrative courts, (in a bench composed of three judges in the first instance, and seven judges – in the second instance)[[104]](#footnote-104).

Disciplinary sanctions include[[105]](#footnote-105):

* a warning;
* a reprimand;
* dismissal from the function held;
* reassignment to another place of service;
* dismissal from office.

Child-friendly justice in administrative judicial proceedings

## The child as an actor in administrative judicial proceedings

### General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities’ decisions in the sectors of asylum, migration, education, health, administrative sanctions and offences below the MACR.

The general procedural rules described below apply to the sectors of asylum, migration, education and health. Civil procedural rules apply to the sector of placement into care. Such rules are described in a separate subparagraph below.

Treatment of children below the MACR who have committed offences, road traffic offences and socially harmful acts – which cannot be considered as “administrative sanctions”, fall under the competence of the family courts according to the procedural rules set out in the [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228) and described in the contextual overview for criminal justice. See [Section 1](#_Overview_of_Member) for more information.

***The child as a plaintiff/defendant/subject of proceedings***

Parties to the proceedings before the administrative courts are: the complainant and the public administration authority whose action, failure to act or excessive length of proceedings is the subject of the complaint[[106]](#footnote-106), without using the term plaintiff and defendant. In the Polish system, they are both referred to as “party”. Furthermore, any person whose legal interest can be affected by the outcome of the judicial proceedings may join the proceedings as a participant. The situation of the party and the participant is equivalent, as, according to the [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), all provisions relating to a party apply equally to the participants.

In administrative judicial proceedings, every natural or legal person can be a party to the proceedings before an administrative court (capacity of being a party to court proceedings - *zdolność sądowa*)[[107]](#footnote-107). However, only persons with full legal capacity to act – in general, person who have reached the age of 18 – have the capacity to perform actions in court proceedings (procedural capacity – *zdolność procesowa*[[108]](#footnote-108)). This includes lodging a complaint against an administrative act.

Therefore, a child (as any person that does not have procedural capacity) can only act in administrative judicial proceedings through his/her legal representative[[109]](#footnote-109). The law does not provide for any possibility for a court or a judge to waive this requirement. The right to legal representation and assistance is further discussed in [Section 2.6](#_Right_to_legal).

However, the court may permit a person not having procedural capacity to perform an action on provisional basis, provided that the action will be approved by the legal representative before the date set by the court. In situations where a guardian or guardian *ad litem* should be appointed *ex officio*, the court will address the competent guardianship court. If these shortcomings cannot be remedied or they have not been remedied within the time limit, the court will annul the proceedings to the extent that they were affected by the shortcomings in question[[110]](#footnote-110).

A natural person who has limited legal capacity has also procedural capacity in matters arising from legal actions that this person is authorised to perform on his/her own[[111]](#footnote-111). In theory, this provision could apply to a child between 13 and 17 years old, who is authorised to perform small transactions of daily life. Nevertheless, this theoretical possibility seems to have little significance in practice, given the character of the proceedings before administrative courts (in particular the fact that submissions to the court are strictly limited to legal arguments). Likewise, it is difficult to provide an example of a matter that would meet these criteria and qualify for administrative judicial proceedings[[112]](#footnote-112).

When the child reaches 18, he/she acquires full legal and procedural capacity and can act in the proceedings on his/her own behalf.

***The child as a witness***

Administrative courts do not hear witnesses – they examine the case on the facts and evidence gathered in the initial administrative proceedings.

Consequently, a child will never appear in the administrative judicial proceedings in the role of a witness.

* + 1. **Procedural rules applicable to children involved in proceedings for placement into care**

***The child as a plaintiff/defendant/witness/subject of proceedings***

The general procedural rules described above do not apply in proceedings relating to placement of children in care, which belong to the competence of the family and guardianship courts that are civil courts governed by civil procedure rules.

In child protection cases, anyone, who learns about an incident that would justify the initiation of civil judicial proceedings on the court’s own initiative, is obliged to inform the guardianship court about it. This duty is imposed, primarily, on courts, prosecutors, notaries, debt collectors, the local and central administration, the police, educational institutions, social services, organisations, and institutions involved in providing services for persons with mental disabilities[[113]](#footnote-113).

Local self-government (*jednostki samorzadu terytorialnego*) and governmental bodies *(organy administracji rzadowej*) are obliged to support families who face difficulties in raising their children and to organise foster care[[114]](#footnote-114). If a social welfare centre learns about a family having problems (e.g. cases of child neglect or cases where the child has problems at school), a representative of a social welfare centre carries out an investigation on the family (*wywiad środowiskowy*). If, after having analysed the family situation, it is deemed necessary, the family is provided with a family assistant. In order to protect the right to family, including children’s rights, the assistant has the right to inform all relevant public authorities (including civil courts) about the situation of the family. The child can be also placed in a day-care facility (*placówka wsparcia dziennego*). The stay of the child in such facility is voluntary, unless he/she is placed there upon a decision of a guardianship court[[115]](#footnote-115).

A child can be placed in **foster care** (*piecza zastępcza*) only upon a decision of the guardianship court. However, in urgent cases, the child can be placed in a foster care facility upon the request of his/her parents or with their consent. The court will be informed immediately about such placement, by a head of the county (*starosta*)[[116]](#footnote-116). If there is a direct threat to the health or life of the child due to domestic violence, a social security worker has the right to take the child from his/her family and place him/her with a member of his/her family, or in a foster care facility. The social worker is obliged to inform the guardianship court, within 24 hours, about the removal of the child from the child’s family. The parents have the right to contest the decision of removing the child from their residence. In this case, the guardianship court will deal with the parents’ complaint within 24 hours from the submission of the complaint. If the court finds that the removal of the child was unjustified, it will order his/her immediate return to his/her parents[[117]](#footnote-117).

In cases of domestic violence, the victim can turn to the civil court to have the abusive member expelled from the family residence[[118]](#footnote-118). In this case, the rules of non-contentious civil judicial proceedings apply[[119]](#footnote-119). In addition, persons who are witnesses of domestic violence should inform the Police, prosecutor or other organisations involved in the fight against violence in the family environment[[120]](#footnote-120).

The guardianship court can initiate proceedings on its own initiative in any case where it deems it necessary[[121]](#footnote-121).

* 1. **Provision of information**

### General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities’ decisions in the sectors of asylum, migration, education and health.

The general procedural rules described below apply to the sectors of asylum, migration, education and health. Civil procedural rules apply to the sector of placement into care. Such rules are described in a separate subparagraph below.

Treatment of children below the MACR who have committed offences, road traffic offences and socially harmful acts – which cannot be considered as “administrative sanctions”, fall under the competence of family courts, according to the procedural rules set out in the [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228) and described in the contextual overview for criminal justice. See [Section 1](#_Overview_of_Member) for more information.

***The child as a plaintiff/defendant/subject of proceedings***

Parties to the proceedings before the administrative courts are: the complainant and the public administration authority whose action, failure to act or excessive length of proceedings is the subject of the complaint[[122]](#footnote-122), using the term plaintiff and defendant. In the Polish system they are both referred to as “party”. Furthermore, any person whose legal interest can be affected by the outcome of the judicial proceedings may join the proceedings as a participant. The situation of the party and the participant is equivalent, as according to the [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270) all provisions relating to a party equally apply to the participants.

Proceedings before public administration authorities

As a result of the particularity of administrative judicial proceedings, the essential rights and interests of the child are decided in the proceedings before a public administration authority and not before the administrative court.

According to the general rules of administrative procedure before public administration authorities, the authorities are obliged properly and fully to inform the parties of the facts and law which may affect the determination of their rights and obligations that are the subject of the procedure. Public administration authorities must ensure that the parties and other persons participating in the proceedings do not sustain damage because of ignorance of the law, and to this end, they must provide all the necessary explanations and guidance[[123]](#footnote-123).

Furthermore, relevant specific substantial administrative law provides more specific rules with regard to children. For example, [the Act on Family Support and Foster Care System](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20111490887) guarantees that the individuality of the child, the child’s right to information and expression of opinion, in matters that concern her/him, are taken into account, according to her/his age and degree of maturity[[124]](#footnote-124).

There exist numerous NGOs and websites providing information about substantial and procedural rights in administrative procedures, for example targeting immigrants and refugees[[125]](#footnote-125), or parents of children with disabilities[[126]](#footnote-126). Depending on the subject, some of them provide information in simplified, more accessible language.

Administrative judicial proceedings

The law regulating administrative judicial proceedings does not provide for any specific rules with regard to the child and therefore the following general framework applies both to children and adults.

It is noted, however, that children practically never participate in these proceedings, and the matter is examined only on points of law. The child is represented by his/her legal representative or a legal counsel, who will receive all the information provided by law and will be served with judicial documents. Therefore, there is no risk that they will receive different information to that provided to their parents/guardians.

There is no legal requirement to inform children who are parties to administrative judicial proceedings about support services and/or organisations that can provide them with assistance. However, judicial administrative proceedings are subsequent to administrative proceedings before public administration authorities, and several institutions and NGOs, such as the Ombudsman for Children’s Rights or the NGO Committee for Protection of Children’s Rights (*Komitet Ochrony Praw Dziecka*) provide information and support in this earlier stage. According to the interviewed stakeholders[[127]](#footnote-127), who provide such assistance, it is very rare for them to represent or support the child at the judicial stage. This is either because the proceedings with their participation usually result in a decision favourable to the child at the administrative stage, or because at the judicial stage parties are often represented by lawyers. Furthermore, due to the character of the judicial proceedings, no support other than legal advice is necessary and, in any event, the administrative court examines any administrative shortcomings *ex officio.*

If the parties/participants in the proceedings are not represented by a lawyer, the administrative court is obliged to give them the necessary guidance concerning procedural steps and actions and inform them of the legal consequences of such actions as well as of the consequences of their negligence/inaction[[128]](#footnote-128).

**T**here are no specific provisions regarding provision of information in a child-friendly manner, as in practice the administrative court will never address the child directly, and all relevant information will be provided to the person acting in the proceedings on the child’s behalf (parents/guardians or procedural representatives). It is therefore for them to pass the information to child, if necessary, in an adequate way.

**Access to documents.** Parties to the proceedings have access to the case-file, they have the right to view the file and obtain duplicates, copies or extracts from the file[[129]](#footnote-129).

**Delivery of the judgement and providing reasons for the judgement.** The judgement is announced at the hearing, even when the parties are absent. The judgement is announced by reading its operative part, after which the judge-rapporteur or the presiding judge explains orally the principal reasons for the judgement. The judge may refrain from explaining the reasons if the case has been examined behind closed doors[[130]](#footnote-130).

A written reason for the judgement should be prepared *ex officio* within fourteen days from the date of announcement of the judgement or signing a judgement delivered *in camera*. If the complaint has been dismissed, the written reasons are prepared only on request of the party, submitted within 7 days from the announcement of the judgement[[131]](#footnote-131).

The reasons for the judgement should contain a summary of the case, allegations raised in the complaint, the positions of other parties, the legal basis for the ruling and its explanation. If as a result of the complaint the case will be reconsidered by the administrative authority, the reasons should also provide indications with regard to further proceedings[[132]](#footnote-132).

**Information about court rulings and methods of appeal/Service of judgements and decisions.** The court will serve the judgement or decision *ex officio* on the parties/participants, without their having to request it, if the ruling was issued at a session *in camera*, or can be subject to further appeal[[133]](#footnote-133).

In addition, if the court upheld the party’s complaint, the judgement will be served on the party *ex officio* together with the written reasons[[134]](#footnote-134), as well as in all other cases where the written reasons were prepared *ex officio*. In such cases, the judgement is served on all parties. If the written reasons were prepared on request, the judgement with the reasons is served only on the requesting party (that is if the court dismissed the complaint)[[135]](#footnote-135).

If the parties were not present at the hearing at which the court announced the judgement, they can obtain the information about the ruling at the court’s registry by telephone[[136]](#footnote-136).

The presiding judge will instruct a party acting without a lawyer, who is present during the announcement of the judgement, about deadlines for lodging an appeal and how to lodge an appeal. When the operative part of the judgement delivered in session *in camera* is served on a party acting without a lawyer, the court informs the party about deadlines and how to lodge an appeal[[137]](#footnote-137).

When a further appeal is available against a decision, the decision is served with written reasons. If the party acts without a lawyer, the decision should also be accompanied by instructions concerning admissibility, deadline and how to lodge an appeal.[[138]](#footnote-138)

If the party is a natural person, s/he will be personally served with summons and court rulings. If the party does not have procedural capacity, the service will be made on her/his legal representative. If a procedural representative (proxy)[[139]](#footnote-139) or a person authorised to receive the court correspondence has been appointed, service is made on those persons[[140]](#footnote-140).

**Parties/participant residing abroad.** If a party residesabroad and has not appointed a procedural representative domiciled in Poland, he/she is obliged to appoint, at the same time as lodging a complaint, a person who is domiciled in Poland as authorised to receive the court correspondence. If he/she fails to do that, the court will summon the party to remedy the shortcoming within two months from the service of the summons. Otherwise, the court will reject the complaint[[141]](#footnote-141).

If it arises from the complaint that a participant in the proceedings is domiciled abroad, the court, while serving a copy of the complaint on him, notifies him/her of the obligation to appoint a representative domiciled in Poland for the purpose of service of court summons and correspondence. The participant must do so within two months from the date of receipt of the notification. In the event of failure to comply with this obligation, all court correspondences will be filed with the case records and will be deemed served[[142]](#footnote-142).

The above-mentioned rules will not apply if an international agreement, to which Poland is a party, provides otherwise[[143]](#footnote-143).

The proxy or the person authorised to receive the court correspondence will receive all the relevant information on behalf of the party/participant residing abroad. There are no specific provisions or special arrangement concerning children.

***The child as a witness***

Administrative courts do not hear witnesses – they examine the case on the basis of facts and evidence gathered in initial administrative proceedings.

Consequently, a child will never appear in the administrative judicial proceedings in the role of witness.

* + 1. **Procedural rules applicable to children involved in proceedings for placement into care**

***The child as a plaintiff/defendant/witness/subject of proceedings***

The general procedural rules, described above, do not apply in proceedings relating to placement of children in care, which belong to the competence of the family and guardianship courts, i.e. civil courts governed by civil procedural rules.

Regarding foster care cases, the [Act on Family Support and Foster Care System](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20111490887) provides for the right of the child to be informed about issues that concern him/her, according to the child’s age and level of development[[144]](#footnote-144).

There are no specific rules requiring the courts to provide specific instruction/advice to children involved in civil judicial proceedings. Children under 18 years, who are party to civil proceedings, must be represented by legal representatives who will receive the subpoenas, notifications and other pleadings on behalf of the children. If the child has more than one lawyer, only one of them can accept the documents[[145]](#footnote-145). Since children are not informed in their own right about issues concerning the proceedings they are involved in, there is no risk that they will receive different information to that provided to their parents/legal representative(s).

Judges can provide, parties and participants to the proceedings who are not represented by a lawyer, with the necessary instructions concerning subsequent procedural steps, when this is justified[[146]](#footnote-146). In addition, during the hearing, the presiding judge can provide the parties with the necessary advice and may also indicate the need for appointing a legal counsel[[147]](#footnote-147).

Children are rarely present in courtrooms in civil judicial proceedings. However, if a child below 18 years old is present in the courtroom, the judge is not required to provide the child with specific advice or information. In practice, the child will be represented by his/her parents/legal representative and consequently, they will receive the relevant instructions/advice of the court.

There is no requirement to inform children involved in civil judicial proceedings about remedies for violation of their rights. If a party/participant to the civil judicial proceedings, child or adult, wants to challenge the court’s judgement, the issuing court must provide the party with a justification for its decision[[148]](#footnote-148). If the party is not represented by a legal counsel, he/she should be informed about the admissibility, time and manner of the appeal[[149]](#footnote-149). However, with regard to children, such information is provided to their parents/legal representatives. Children are not informed about the possibility of having recourse to non-judicial (alternative) proceedings. Furthermore, it is the child’s legal representative who decides whether or not to pursue available remedies on behalf of the child.

In civil procedure, there are no specific rules regarding the communication of court judgements to children. Court rulings are pronounced by the judge in open court sessions, by reading the operative part of the judgement. Subsequently, the judge presents, orally, the main arguments underpinning the decision. However, if the case was dealt with *in camera,* the judge may refrain from providing this explanation[[150]](#footnote-150). No special rules exist concerning the communication of the decision to a child who is present in the courtroom. As a rule, if a child below 18 years of age is a party/participant to the proceedings, his/her legal representative will be informed about the judgement. The written reasons for the judgement are issued upon the request of the party.

* 1. **Protection of the child’s private and family life**

### General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities’ decisions in the sectors of asylum, migration, education and health.

The general procedural rules described below apply to the sectors of asylum, migration, education and health. Civil procedural rules apply to the sector of placement into care. Such rules are described in a separate subparagraph below.

Treatment of children below the MACR who have committed offences, road traffic offences and socially harmful acts – which cannot be considered as “administrative sanctions”, fall under the competence of family courts according to the procedural rules set out in the [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228) and described in the contextual overview for criminal justice. See [Section 1](#_Overview_of_Member) for more information.

***The child as a plaintiff/defendant/subject of proceedings***

Parties to the proceedings before the administrative courts are: the complainant and the public administration authority whose action, failure to act or excessive length of proceedings is the subject of the complaint[[151]](#footnote-151), without using the term plaintiff and defendant. In the Polish system, they are both referred to as “party”. Furthermore, any person whose legal interest can be affected by the outcome of the judicial proceedings may join the proceedings as a participant. The situation of the party and the participant is equivalent, as according to the [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270) all provisions relating to a party apply equally to the participants.

According to the [Constitution](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483), ‘Everyone has the right to legal protection of his private and family life, of his honour and good reputation, and to make decisions about his personal life’[[152]](#footnote-152). This principle is realised in the judicial administrative proceedings through the provisions described in this Section. As the law regulating administrative judicial proceedings does not provide for any specific rules with regard to the child, the following general framework applies both to children and adults.

Exception to public character of proceedings

In principle, court proceedings are open to the public. Apart from the parties and persons summoned by the court, only persons over the age of 18 may enter the courtroom. Only summoned persons can participate in a session *in camera*[[153]](#footnote-153).

Furthermore, the court will decide *ex officio* to conduct all or part of the proceedings behind closed doors, if holding a public hearing threatens morality, national security or public order, or when classified information might be disclosed[[154]](#footnote-154).At the request of the party, the court will decide to hold a session behind closed doors, when this is necessary in order to protect a party’s private life or other important private interests[[155]](#footnote-155).

Only the following persons may be present at a session behind closed doors: the parties, their parents/guardians, legal representatives (lawyer, proxy), a prosecutor, and two persons of trust for each party[[156]](#footnote-156).

The final ruling is announced in public. However, the judge may refrain from explaining the reasons for the judgement orally if the case has been examined behind closed doors[[157]](#footnote-157).

Access to case-files and personal data

Parties to the proceedings have access to the case-file, they have the right to view the file and obtain duplicates, copies or extracts from the file[[158]](#footnote-158). Presidents of the court departments may authorise persons who are not parties to the proceedings to view the files if they demonstrate a legitimate necessity to do so[[159]](#footnote-159) (that is they must have reasonable interest, which will be assessed by the President of the court on a case-by-case basis).

Publication of court rulings and protection of personal data

All judgements of the voivodship administrative courts and the Supreme Administrative Court are published in the internet Central Database of Administrative Courts’ Case-law ([*Centralna Baza Orzeczeń Sądów Administracyjnych*](http://orzeczenia.nsa.gov.pl/cbo/query)).

The right of access to public information, provided in the [Constitution](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483) of Poland[[160]](#footnote-160), covers the activities of the judiciary. According to the [Act of 6 September 2001 on access to public information](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20011121198)[[161]](#footnote-161), public information constitutes any message relating to public matters, created by widely understood public authorities, or institutions fulfilling public functions, which includes judicial authorities. The content of court case law is therefore subject to the rules governing access to public information[[162]](#footnote-162).

The courts are also obliged to comply with the provisions of the [Act on the protection of personal data](http://isip.sejm.gov.pl/DetailsServlet?id=WDU19971330883)[[163]](#footnote-163). The Act does not contain provisions explicitly referring to children but states that everyone has the right to the protection of their personal data and that processing of such data (including making the information available to the public) is allowed only in situations set out in the Act, in the public interest, in the interest of the person whose personal data is to be processed or in the interest of third persons[[164]](#footnote-164).

According to the [Act on the protection of personal data](http://isip.sejm.gov.pl/DetailsServlet?id=WDU19971330883), personal data means any information relating to an identified or identifiable natural person[[165]](#footnote-165), that is any data making it possible to identify a person, such as names, surnames, geographical names, etc. The court is considered as a controller of such data and thus is obliged to guarantee their protection and that they are not made available to unauthorised persons[[166]](#footnote-166). Such data is removed from the content of the judgement before publication[[167]](#footnote-167). In the practice of administrative courts, secretarial staff rewrite the reasons for the judgement, and prepare a ‘redacted version’ of the ruling intended for publication by deleting relevant personal data[[168]](#footnote-168).

The processing of information on judgements issued in judicial and administrative proceedings or information revealing a person’s race, religion, state of health, genetic code, data regarding his/her addictions, sexual life is prohibited[[169]](#footnote-169). Exceptions to this rule include following situations[[170]](#footnote-170):

* the person concerned consents to the processing in writing;
* the processing concerns data which are necessary to pursue claims before the court;
* the processing of data is carried out in order to protect the person’s state of health;
* processing of data takes place by a party (participant) to the proceedings in order to implement the rights and obligations arising from a court judgement;
* the processing relates to data which have been made public by the subject of the data.

Every person has the right to control the processing of his/her personal data, in particular to be informed about persons who receive such data or about the aim and scope of data processing[[171]](#footnote-171). In certain cases, the person whose personal data is being processed can request the data controller (as the case may be, the court) to cease such processing[[172]](#footnote-172). Since children below 18 years old do not have full capacity to act or do not have procedural capacity, these requests may be submitted on their behalf by their parents/guardians.

No provisions explicitly protecting the child’s private and family data in administrative judicial proceedings have been identified. However, the above-mentioned legal obligations, whereby persons other than parties to the proceedings cannot access case-files unless they have proved a legitimate interest and obtained the authorisation of the president of the court’s department, ensure that the child’s personal data are not randomly disclosed or made available to the public.

Sanctions and remedies for the infringement of privacy rights

No child-specific provisions have been identified. The [Act on the protection of personal data](http://isip.sejm.gov.pl/DetailsServlet?id=WDU19971330883) sets forth numerous criminal measures, primarily applicable to controllers of personal data who illegally allow the processing of data[[173]](#footnote-173). In addition, an infringement of privacy rights can also be considered as a violation of personal rights within the meaning of the [Civil Code](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640160093). In the latter case, the person whose privacy has been breached can claim compensation in civil proceedings[[174]](#footnote-174). Since, in general, children under 18 do not have full legal capacity and procedural capacity, legal actions will be taken on their behalf by their legal representative (parents/guardians).

Obligation of confidentiality

Legal counsels are obliged to abide by the rules of confidentiality. They must keep confidential all information they became aware of when giving legal advice and cannot be released from their confidentiality obligation unless the information concerns money laundering or financing of terrorism[[175]](#footnote-175). Social workers are required not to reveal any information they gather in the course of their work, unless this would be contrary to the best interests of the person concerned or his/her family[[176]](#footnote-176).

***The child as a witness***

Administrative courts do not hear witnesses – they examine the case on the basis of facts and evidence gathered in initial administrative proceedings.

Consequently, a child will never appear in the administrative judicial proceedings in the role of witness.

* + 1. **Procedural rules applicable to children involved in proceedings for placement into care**

***The child as a plaintiff/defendant/witness/subject of proceedings***

The general procedural rules, described above, do not apply in proceedings related to placement of children in care that belong to the competence of the family and guardianship courts, i.e. civil courts governed by civil procedure rules.

In general, court sessions in Poland are open to the public. However, only adults, aged18 years and over, can attend public hearings. The president of a division of the court adjudicating the case is primarily responsible for the protection of personal data of children and adults involved in civil judicial proceedings. More specifically, he/she is competent to grant permission, to persons who are not parties/participants to the proceedings, to access the court files.

Case records are available only in the presence of a court employee and upon presenting an identity document[[177]](#footnote-177).

The role of the presiding judge is extremely important for the protection of children’s privacy as he/she decides on the admissibility of documents and evidence that are eventually included in the case file[[178]](#footnote-178).

No provisions specifically protecting the child’s personal and family data in civil judicial proceedings, have been identified. However, the above-mentioned legal obligations, according to which persons, other than parties and participants to the proceedings, cannot access case files unless they have obtained authorisation, ensure that the child’s personal data is not randomly disclosed or made available to the public.

The [Act on the protection of personal data](http://isip.sejm.gov.pl/DetailsServlet?id=WDU19971330883) – which transposes Directive 95/46/EC into the Polish legal order, sets general rules concerning the protection of personal data and is also applicable to data contained in court files[[179]](#footnote-179).

## Protection from harm during proceedings and interviews and ensuring a child friendly process

### General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities’ decisions in the sectors of asylum, migration, education and health.

The general procedural rules described below apply to the sectors of asylum, migration, education and health. Civil procedural rules apply to the sector of placement into care. Such rules are described in a separate subparagraph below.

Treatment of children below the MACR who have committed offences, road traffic offences and socially harmful acts – which cannot be considered as “administrative sanctions”, fall under the competence of family courts according to the procedural rules set out in the [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228) and are described in the contextual overview for criminal justice. See [Section 1](#_Overview_of_Member) for more information.

***The child as a plaintiff/defendant/subject of proceedings***

Parties to the proceedings before the administrative courts are: the complainant and the public administration authority whose action, failure to act or excessive length of proceedings is the subject of the complaint[[180]](#footnote-180), without using the term plaintiff and defendant. In the Polish system they are both referred to as “party”. Furthermore, any person whose legal interest can be affected by the outcome of the judicial proceedings may join the proceedings as a participant. The situation of the party and the participant is equivalent, as according to the [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270) all provisions relating to a party equally apply to the participants.

There are no child-specific provisions, therefore, the same rules apply to children as to adults.

The administrative court should take actions in order to settle the matter quickly and should endeavour to resolve it at the first session[[181]](#footnote-181).

A remedy against excessive length of proceedings is provided by the [Act on complaints about a violation of a party’s right to have the case considered without undue delay](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20041791843)[[182]](#footnote-182).The complaint should be lodged before the Supreme Administrative Court, if the complaint concerns proceedings pending before a voivodship court.

Cases brought to the court are examined in the order of their introduction, unless a specific provision provides otherwise. In justified cases, the president of the court may order that a case be examined out of order[[183]](#footnote-183). In practice, these are never cases relating to children, but rather to major economic entities (for example tax cases)[[184]](#footnote-184).

The character of Polish administrative judicial procedure differs substantially from that in civil or criminal matters in that the procedure is mainly written, strictly limited to the issue of conformity with law, with practically no examination of evidence. In particular, administrative courts do not hear witnesses – they examine the case on the basis of facts and evidence gathered in initial administrative proceedings. The court may take evidence contained in documents, on request of a party, if this is necessary for the case and will not prolong the proceedings[[185]](#footnote-185)exceptionally. The subject-matter of the proceedings is purely legal/procedural and in principle does not relate to sensitive issues[[186]](#footnote-186).

In addition,a child can only act in administrative judicial proceedings through his/her legal representative[[187]](#footnote-187) and only persons over 18 may be present in the courtroom[[188]](#footnote-188).

All this means that children virtually never participate in these proceedings[[189]](#footnote-189).

Consequently, there are no rules aiming at protection of children in administrative judicial proceedings, as there are no situations which would require such protection.

There are no specific provisions regarding provision of information or guidance in a child-friendly manner, as in practice the administrative court will never address the child directly, and all relevant information will be provided to the person acting in the proceedings on the child’s behalf (parents/guardians or procedural representatives). If the parties/participants in the proceedings are not represented by a lawyer, the administrative court is obliged to give them the necessary guidance concerning procedural steps and actions and inform them of the legal consequences of such actions as well as of the consequences of their negligence/inaction[[190]](#footnote-190).

***The child as a witness***

Administrative courts do not hear witnesses – they examine the case on the basis of facts and evidence gathered in initial administrative proceedings.

Consequently, a child will never appear in the administrative judicial proceedings in the role of witness.

* + 1. **Procedural rules applicable to children involved in proceedings for placement into care**

***The child as a plaintiff/defendant/witness/subject of proceedings***

Placement of children into care, including protective and interim measures fall under the competence of the family and guardianship courts, i.e. civil courts governed by civil procedure rules.

Normally, a child can be placed in foster care only upon the decision of the guardianship court. However, in urgent cases, the child can be placed in a foster care facility upon the request of his/her parent, or with their consent. The court will be informed immediately about such placement, by a head of the county (*starosta*)[[191]](#footnote-191). If there is a direct threat to the health or life of the child due to domestic violence, a social security worker has the right to take the child from his/her family and place him/her with a child’s close relative or in a foster care facility. The social worker is obliged to inform the guardianship court about the removal of the child from the child’s family within 24 hours. Parents have the right to contest the decision removing their child from their care. In this case, the guardianship court will deal with the parents’ complaint within 24 hours from the submission of the complaint. If the court finds that the removal of the child was unjustified, it will order his/her immediate return to his/her parents[[192]](#footnote-192).

Judges should try to prevent lengthy trials and strive to decide on the case at the first hearing, unless this would be detrimental to the settlement of the case[[193]](#footnote-193). If a court learns that a child has been placed in foster care without the court’s prior consent, it will commence proceedings without undue delay[[194]](#footnote-194).

In urgent cases, the family and guardianship court can issue, on its own initiative, all necessary measures, even those concerning persons who do not fall under the court’s territorial and/or material jurisdiction[[195]](#footnote-195). Any party or participant to the proceedings can request the court to order measures to secure his/her claim if the claim and the legal interest of the party is deemed sufficiently substantiated[[196]](#footnote-196). Such measures can be ordered by the court both before and during the proceedings[[197]](#footnote-197). In the case of child parties/participants, the relevant claims are, in principle, submitted by their parents/legal representatives.

Before the guardianship court takes a decision concerning adoption, it requests an opinion from the adoption centre, as well as from other authorities, if this is in the child’s best interests[[198]](#footnote-198).

The judge can decide to hold *in camera* proceedings if adjudication of the case in public would threaten the public order, public morals, or if protected information could be disclosed[[199]](#footnote-199). The judge can also decide to hold *in camera* proceedings on the request of a party to the proceedings if details of family life will be discussed during the hearing[[200]](#footnote-200).

When the civil court decides to hear the child in contentious and non-contentious proceedings, he/she must be heard outside the courtroom[[201]](#footnote-201), although, this rule is not explicitly foreseen for child witnesses. There are no specific rules concerning the place where the child is to be heard. The NGO *No one’s children* (*Dzieci Niczyje*) in cooperation with the Ministry of Justice, have developed [standards](http://ms.gov.pl/pl/dzialalnosc/przeciwdzialanie-przemocy-wobec-dzieci/przyjazne-przesluchanie-dziecka/) concerning the conditions that ‘friendly interview rooms’ (*przyjazne pokoje przesłuchań*) or ‘blue rooms’ have to meet. Although the standards are predominantly directed at hearing children as witnesses in criminal proceedings, they could be also followed by judges and specialists in civil judicial proceedings. In practice, due to financial constraints, courts are frequently not equipped with separate rooms where children can be heard. Consequently, children are heard in the privacy of the judges’ chambers[[202]](#footnote-202).

Practice shows that courts try to avoid the presence of children in courtrooms and prefer to request professionals, (such as experts from the Diagnostic and Consultation Family Centre – *Rodzinny Ośrodek Diagnostyczno-Konsultacyjny*), to prepare an opinion about the child and his/her family environment. This examination is usually carried out at the centre, where a certain level of comfort and privacy is ensured. In these centres, children are heard and examined by professional psychologists. If the court is satisfied by the experts’ opinion and concludes that it sufficiently represents the child’s family situation, and the child’s views and needs, it will refrain from summoning the child to the court. However, depending on the circumstances of the case, the court may conclude that the presence of the child in the court and direct hearing is necessary. In these cases, the court should ensure the best interests of the child when the child is present in the court[[203]](#footnote-203).

* 1. **Right to be heard and to participate in administrative judicial proceedings**

### General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities’ decisions in the sectors of asylum, migration, education and health.

The general procedural rules described below apply to the sectors of asylum, migration, education and health. Civil procedural rules apply to the sector of placement into care. Such rules are described in a separate subparagraph below.

Treatment of children below the MACR who have committed offences, road traffic offences and socially harmful acts – which cannot be considered as “administrative sanctions”, fall under the competence of family courts according to the procedural rules set out in the [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228) and described in the contextual overview for criminal justice. See [Section 1](#_Overview_of_Member) for more information.

***The child as a plaintiff/defendant/subject of proceedings***

Parties to the proceedings before the administrative courts are: the complainant and the public administration authority whose action, failure to act or excessive length of proceedings is the subject of the complaint[[204]](#footnote-204), without using the term plaintiff and defendant. In the Polish system they are both referred to as “party”. Furthermore, any person whose legal interest can be affected by the outcome of the judicial proceedings may join the proceedings as a participant. The situation of the party and the participant is equivalent, as according to the [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270) all provisions relating to a party equally apply to the participants.

There are no child specific provisions, therefore the general framework applies both to children and adults.

Therefore, a child (as with any person that does not have procedural capacity) can only act in administrative judicial proceedings through his/her legal representative[[205]](#footnote-205). The law does not provide for any possibility for a court or a judge to waive this requirement[[206]](#footnote-206).

The administrative judicial procedure is principally written and strictly limited to the issue of legality of administrative actions. The administrative courts do not gather evidence and do not hear witnesses – they examine the case on the basis of facts and evidence gathered in initial administrative proceedings. Therefore, there are no situations where a child would or could be heard orally by the court[[207]](#footnote-207).

The court may take evidence contained in documents, on request of a party, if this is necessary for the case and will not prolong the proceedings[[208]](#footnote-208) exceptionally.

Consequently, there are no provisions expressly allowing children to enforce their legal rights in proceedings – they can make all requests and make all relevant procedural steps they are entitled to as parties/participants to the proceedings via their parents/guardians or legal counsellors.

The parties may submit their statements and conclusions during the proceedings, mainly in writing but also during a hearing[[209]](#footnote-209). When the case is called, the court verifies the presence and briefly presents the case and the allegations contained in the complaint. Subsequently the court gives the floor to the parties, who may submit their claims, complaints and requests, and provide the legal basis for their statements. The parties may also provide explanations by answering the court's questions[[210]](#footnote-210).

Since, in general, children under 18 do not have full legal capacity and procedural capacity to act, their legal representatives will take actions on their behalf. This includes any statements the child might wish to submit to the court. It is emphasised though, that in administrative judicial proceedings, only the question of legality of the administrative decision is examined, and there is, in general, no need to submit any statements concerning the factual situation or emotional aspect of the case.

Since the administrative court never hears children, there are no provisions regarding services aimed at supporting the child’s right to be heard. Although there is no obligation to be represented by a qualified lawyer in proceedings before a voivodship administrative court, legal aid may be granted to a party on request made before the beginning of, or in the course of, the proceedings. The request is free from court fees[[211]](#footnote-211). Legal aid takes the form of an exemption from court fees and/or the assistance of a court-appointed legal counsel, a tax advisor or a patent attorney[[212]](#footnote-212).

There are no provisions regarding appointment of an interpreter or a translator in administrative judicial proceedings. However, the remuneration of a translator constitutes expenses[[213]](#footnote-213), which are part of court costs[[214]](#footnote-214).

***The child as a witness***

Administrative courts do not hear witnesses – they examine the case on the basis of facts and evidence gathered in initial administrative proceedings.

Consequently, a child will never appear in the administrative judicial proceedings in the role of witness.

* + 1. **Procedural rules applicable to children involved in proceedings for placement into care**

***The child as a plaintiff/defendant/witness/subject of proceedings***

Placement of children in care falls under the competence of the family and guardianship courts that are civil courts governed by civil procedure rules.

As a rule, children below 18 years of age cannot participate in contentious civil judicial proceedings in their own right but must be represented by legal representatives. In non-contentious proceedings, children below 13 years of age cannot take legal actions in their own name and must have legal representatives. Children between 13 and 17 years of age, inclusive, have procedural rights in certain cases and, arguably, can act without a legal representative only in proceedings before the family court acting as the guardianship court, i.e. in cases concerning parental responsibility, guardianship, and adoption. In practice, in non-contentious proceedings, children, regardless of their age, are represented by legal representatives.

Regarding foster care cases, the [Act on Family Support and Foster Care System](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20111490887) provides the right of children to express their opinions about issues that concern them – according to the child’s age and level of development[[215]](#footnote-215).

* 1. **Right to legal counsel, legal assistance and representation**

### General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities’ decisions in the sectors of asylum, migration, education and health.

The general procedural rules described below apply to the sectors of asylum, migration, education and health. Civil procedural rules apply to the sector of placement into care. Such rules are described in a separate subparagraph below.

Treatment of children below the MACR who have committed offences, road traffic offences and socially harmful acts – which cannot be considered as “administrative sanctions”, fall under the competence of family courts according to the procedural rules set out in the [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228) and described in the contextual overview for criminal justice. See [Section 1](#_Overview_of_Member) for more information.

***The child as a plaintiff/defendant/subject of proceedings***

Parties to the proceedings before the administrative courts are: the complainant and the public administration authority whose action, failure to act or excessive length of proceedings is the subject of the complaint[[216]](#footnote-216), without using the term plaintiff and defendant. In the Polish system they are both referred to as “party”. Furthermore, any person whose legal interest can be affected by the outcome of the judicial proceedings may join the proceedings as a participant. The situation of the party and the participant is equivalent, as according to the [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270) all provisions relating to a party equally apply to the participants.

There are no child specific provisions, therefore the general framework applies both to children and adults.

Procedural representation

A child (as any person that does not have procedural capacity) can only act in administrative judicial proceedings through his/her legal representative (parents/guardians)[[217]](#footnote-217).

For a party without procedural capacity, who does not have a legal representative, the court appoints a guardian *ad litem* (*kurator*) at the request of the opposing party, if that party initiates an urgent application against the other [[218]](#footnote-218).

The guardianship court is competent to monitor the quality of service provided by guardians *ad litem* to children involved in judicial proceedings[[219]](#footnote-219).

Parties and their legal representatives can act in the proceedings in person or by proxy. A proxy of the party can be a legal counsel (a barrister or a legal advisor), as well as another complainant or participant in the proceedings, parents, spouse, siblings or descendants of a party, persons in an adoption relationship with the party, and other professionals (such as a tax advisor or patent attorney in specific cases)[[220]](#footnote-220).

There is no obligation to be represented by a qualified lawyer in proceedings before a voivodship administrative court. Only a cassation complaint or an appeal against a rejection of a cassation complaint, submitted to the Supreme Administrative Court must be prepared by a qualified lawyer, unless the means of appeal are prepared by a judge, a prosecutor, a notary public, a professor or a habilitated doctor of laws, who are the party or the party’s representative or a proxy. Furthermore, the obligation of legal presentation does not apply when the cassation complaint is lodged by a prosecutor, the Human Rights Defender or the Ombudsman for Children’s Rights[[221]](#footnote-221).

Legal aid

Legal aid may be granted to a party on request made before the beginning of, or in the course of, the proceedings. The request is free from court fees[[222]](#footnote-222).

Legal aid granted before or during examination proceedings covers enforcement proceedings as well[[223]](#footnote-223).

Legal aid takes the form of an exemption from court fees and/or the assistance of a court-appointed legal counsel, a tax advisor or a patent attorney[[224]](#footnote-224).

In her/his request for legal aid a party may indicate a particular lawyer, tax adviser or patent attorney. In that case, as far as possible and in consultation with the designated lawyer, the relevant Bar Council, the Chamber of Legal Advisors, the National Council of Tax Consultants or the National Council of Patent Attorneys will appoint the person identified by the party[[225]](#footnote-225).

As children under 18 do not have full legal capacity or procedural capacity[[226]](#footnote-226), all legal actions taken by them will be considered void[[227]](#footnote-227). Children between 13 and 17 included, have limited legal capacity and can enter into minor agreements of daily life – granting the power of attorney to a legal counsel goes beyond this kind of agreements. Therefore, a child cannot appoint a lawyer or request legal aid in his/her own name and this right must be exercised on behalf of the child by his/her legal representative(s). However, in the realm of administrative judicial proceedings it is rather uncommon for children to interact with a legal counsel.

Similarly, children under 18 cannot waive their right to legal assistance. This right can be waived only by the child’s legal representative who appointed the legal counsel/requested legal aid.

The scope/extent of legal aid granted may be full or partial[[228]](#footnote-228).

* full legal aid covers both exemption from court fees and assistance of a court-appointed legal professional;
* partial legal aid means that:
  + the party has been released only from court fees and expenses; or
  + the party has been released only from either court fees (in whole or in part) or expenses; or
  + the party has received the assistance of a legal professional but without being exempted from court fees.

Full legal aid can be granted to a natural person who demonstrates that s/he cannot afford to pay any costs of proceedings whatsoever. Partial legal aid can be granted to a person who shows that s/he is unable to bear the full costs of the proceedings, without prejudice to his/her necessary maintenance and that if his/her family[[229]](#footnote-229).

Legal aid may be withdrawn, in whole or in part, if it turns out that the circumstances under which it was granted did not exist or ceased to exist[[230]](#footnote-230).

The request for legal aid is considered by the voivodship administrative court before which the proceedings are pending. The court’s decision in this matter can be appealed against. The right to legal aid cannot be granted to a party whose complaint is manifestly unfounded.

Legal assistance (appointed or hired) does not deprive a party of the right to participate actively in the proceedings. A party, who participates in a hearing with her /his legal counsel, may immediately rectify or revoke his/her statements. If the party is dissatisfied with the actions/conduct of the lawyer, s/she may terminate the instruction of that lawyer or ask for the assistance of someone else.

***The child as a witness***

Administrative courts do not hear witnesses – they examine the case on the basis of facts and evidence gathered in initial administrative proceedings.

Consequently, a child will never appear in the administrative judicial proceedings in the role of witness.

* + 1. **Procedural rules applicable to children involved in proceedings for placement into care**

***The child as a plaintiff/defendant/witness/subject of proceedings***

Placement of children into care falls under the competence of the family and guardianship courts, which are civil courts governed by civil procedure rules.

Children below 18 years of age do not have the right to choose their own legal counsel, in their own name. This right is exercised on their behalf by their legal representatives. Consequently, children do not have the right to waive their right to legal assistance, which can be waived only by the child’s legal representative who appointed the legal counsel. However, parents should exercise parental authority in the best interests of the child and should hear the child and take into account his/her reasonable wishes before making important decisions concerning him/her[[231]](#footnote-231).

Representation by a lawyer is mandatory only before the Supreme Court.

With regard to the **conflict of interests** between the child and his/her parents, neither of the parents can represent the child in the following situations:

* in legal actions where children under their parental authority are opposing parties;
* in legal actions concerning the child and one of the parents or his his/her spouse, unless the legal action concerns the delivery of financial benefits to the child or the provision of means of support (e.g. child support) due by the other parent[[232]](#footnote-232).

In the above cases, the guardianship court will appoint a guardian *ad litem* to represent the child and defend his/her rights.

In addition, if the court concludes that there is a conflict of interests between the child and his/her parents in cases other than those specified above, e.g. in family law disputes, or cases concerning parental responsibility or contacts, the court can also appoint a guardian *ad litem* to defend the child’s interests[[233]](#footnote-233).

**Free legal assistance** can be provided to the party/participant to proceedings if requested and if the party/participant is exempted from court fees[[234]](#footnote-234) or, although not exempted from courts fees, is not able to cover the remuneration of a legal counsel without prejudice to his/her necessary maintenance and that of his/her family[[235]](#footnote-235). In the case of children, it is the family income that is taken into account[[236]](#footnote-236). The court will accept the request if it considers the participation of the legal counsel in the proceedings as necessary[[237]](#footnote-237). The relevant request is exercised on behalf of children by their legal representatives, except for the few cases where children can act as plaintiffs in their own right.

* 1. **Restrictions on liberty**

### Procedural rules applicable to children involved in proceedings relating to children below the MACR who have committed offences and applicable to road traffic offences and socially harmful acts – which cannot be considered as “administrative sanctions”

***The child as a plaintiff/defendant/subject of proceedings***

Restriction of liberty, personal detention or any other means of penal character cannot be imposed by a public administration authority or an administrative court.

Treatment of children below the MACR, road traffic offences and socially harmful acts – which cannot be considered ’administrative sanctions’, fall under the competence of family courts, according to the procedural rules set out in the [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228) and described in the contextual overview for criminal justice.

Children under 17 cannot be deprived of liberty by criminal courts since, as a rule, they are not criminally liable.

With regard to child offenders between 13 and 17 years old, the family court, which is a civil court, may decide according to the [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228), to place a child in a juvenile correctional facility. This is not considered as criminal deprivation of liberty. When a child who commits an offence is under 13 years old, only educational measures can be applied, with no form of deprivation of liberty[[238]](#footnote-238).

If necessary, due to the circumstances of the case, the Police may arrest a child and place him/her in the Police emergency youth shelter, but only when there is a reasonable suspicion that the child has committed an offence, and there is reason to believe that he/she might go into hiding, or destroy evidence, or where his/her identity cannot be established[[239]](#footnote-239). See [Section 1](#_Overview_of_Member) for more information and the Study to collect data on children’s involvement in criminal judicial proceedings.

***The child as a witness***

Rules concerning restrictions on liberty do not apply to child witnesses – especially those relating to children committing a criminal offence below the age of MACR and applicable to road traffic offences and socially harmful acts – which cannot be considered as administrative sanctions and fall under the competence of family courts according to the procedural rules set out in the [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228). See [Section 1](#_Overview_of_Member) for more information.

* + 1. **Procedural rules applicable to children involved in migration and asylum proceedings**

***The child as a plaintiff/defendant/subject of proceedings***

Legal provisions referring to the situation of children in asylum and migration proceedings are very scarce and rudimentary[[240]](#footnote-240). Different rules apply depending on whether or not the child is accompanied and whether or not he/she can qualify as an asylum seeker. The [Act on Aliens](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281175) covers issues concerning all categories of foreigners, while the [Aliens Protection Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281176) provides specific regulations for asylum seekers[[241]](#footnote-241)).

Apprehension

The Police or the Border Guards can detain an irregular migrant child up to 48h, during which they must request the **district court (criminal division)** to decide on placement of the child in a guarded centre for foreigners, or under arrest for the purpose of expulsion (deportation arrest). The grounds for detention are specified in the legislation, i.e. detention being necessary to ensure the effectiveness of the expulsion proceedings, ([Act on Aliens](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281175))[[242]](#footnote-242). The court must issue a relevant decision within 24h[[243]](#footnote-243). It must be noted that the Code of Criminal Procedure applies to relevant procedures in the scope that are not regulated by the Act on Aliens.

Detention

In a case of an unaccompanied child, the Border Guards receiving the application for refugee status from a child will immediately submit a request to a family and guardianship court for appointment of a guardian ad litem to represent the child in the asylum procedure and place the child in foster care[[244]](#footnote-244).

Unaccompanied children seeking asylum may not be detained in a guarded centre or held under deportation arrest[[245]](#footnote-245). Such children should be accommodated in a care-educational centre.

Detention of unaccompanied children, who have not applied for asylum, in a guarded centre is not explicitly prohibited – provided they are kept in a separate part of the centre to avoid any contact with adult residents of the centre[[246]](#footnote-246). Nevertheless, the authority who has arrested a child, e.g. the Police or Border Guards, may already request the competent court to place the child in a care-educational centre instead[[247]](#footnote-247). In practice, unaccompanied children, regardless of whether or not they have filed an asylum claim, are usually accommodated in a special unit of the WarsawChildren's Home[[248]](#footnote-248). The conditions of stay in the establishment are much better than those of centres for foreigners. The children staying in a children's home are subject to compulsory education and have access to vocational education[[249]](#footnote-249).

Migrant children, who are accompanied by parents or guardians, may be placed in a guarded centre for foreigners, usually in a family unit with their parents/family members[[250]](#footnote-250).

Unaccompanied children and families with children may not be placed under deportation arrest[[251]](#footnote-251)

Polish legislation also provides measures for alternatives to detention,i.e.other than placement into care for unaccompanied children, such as restrictions of residence and requirements of regular reporting to authorities. However, there is no explicit obligation to use the detention as a last resort.

Grounds for detention

According to the [Act on Aliens](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281175)[[252]](#footnote-252), a foreign child shall be placed in a guarded centre if:

* it is necessary to ensure the effectiveness of the proceedings on expulsion or withdrawal of the permit to settle;
* there is a well-founded fear that a foreign child will attempt to evade the execution of the decision on expulsion or on withdrawal of the permit to settle;
* he/she crossed or has attempted to illegally cross the border.

Under the [Aliens Protection Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281176)[[253]](#footnote-253), an asylum seeker cannot be detained unless it is necessary to:

* establish their identity;
* prevent abuse in proceedings for granting the refugee status;
* prevent a threat to other people's safety, health, life or property;
* protect the defence or safety of the state and public order;

or:

* he/she has illegally crossed or attempted to cross the border;
* his/her behaviour, or behaviour of the person on whose behalf the application is made, poses a threat for the safety, health or life of other foreigners staying in the refugee centre, or for the employees of the centre.

Families with children are subject to the general rules of release from detention centres as stipulated in the [Act on Aliens](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281175). They can be released by the court if the detention seriously threatens the life or health of a family member. This premise is applied restrictively by the courts. The best interests of the child are not taken into consideration[[254]](#footnote-254).

Competent courts for detention decisions and appeals

A migrant child can only be placed in a guarded centre or under deportation arrest based on a court decision[[255]](#footnote-255). Migrant children must be informed by the court in a language they understand, about their rights and the details for the decision[[256]](#footnote-256). The decision is taken by the district court (criminal division), which will apply the Code of Criminal Procedure in areas not regulated by the [Act on Aliens](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281175).

The district court decision on placement in a guarded centre can be appealed to the regional court (criminal division) within 7 days of receiving the order[[257]](#footnote-257).

Detained migrant children are not granted legal counsel free of charge. However, legal assistance is often provided by NGOs[[258]](#footnote-258). Unaccompanied children are represented in the asylum procedure by a guardian ad litem appointed by the ‘family and guardianship court’.

There is no automatic judicial or administrative review of the legality of detention. Immigration legislation though, explicitly provides the right to compensation for unlawful detention[[259]](#footnote-259).

There is also the possibility to request release any time during the stay in the guarded centre, on the grounds that[[260]](#footnote-260):

* the reasons justifying the application of those measures cease to exist;
* detention in the guarded centre may cause a serious threat to life or health;
* the decision on expulsion has been reversed or invalidated;
* International protection or the permit for tolerated stay has been granted.

Length of detention

The initial detention order can be issued by the court for a period up to 90 days[[261]](#footnote-261). The order can be prolonged to a maximum of 12 months. Asylum seekers can be detained for a period of 30-60 days, and can be prolonged to 90 days in particular circumstances. The average length of detention in guarded centres in 2010 was 59 days[[262]](#footnote-262).

***The child as a witness***

No rules concerning restrictions on liberty apply to child witnesses in migration and asylum proceedings.

* 1. **Remedies or compensation exist for violation of rights and failure to act**

### General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities’ decisions in the sectors of asylum, migration, education and health.

The general procedural rules described below apply to the sectors of asylum, migration, education and health. Civil procedural rules apply to the sector of placement into care. Such rules are described in a separate subparagraph below.

Treatment of children below the MACR who have committed offences, road traffic offences and socially harmful acts – which cannot be considered as “administrative sanctions”, fall under the competence of family courts, according to the procedural rules set out in the [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228) and are described in the contextual overview for criminal justice. See [Section 1](#_Overview_of_Member) for more information.

***The child as a plaintiff/defendant/subject of proceedings***

Parties to the proceedings before the administrative courts are: the complainant and the public administration authority whose action, failure to act or excessive length of proceedings is the subject of the complaint[[263]](#footnote-263), without using the term plaintiff and defendant. In the Polish system they are both referred to as “party”. Furthermore, any person whose legal interest can be affected by the outcome of the judicial proceedings may join the proceedings as a participant. The situation of the party and the participant is equivalent, as according to the [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270) all provisions relating to a party equally apply to the participants.

There are no child-specific provisions, therefore, the general framework applies both to children and adults. As children do not have procedural capacity, they can only act through their legal representative[[264]](#footnote-264).

Appeals

The party can appeal - lodge a cassation complaint to the Supreme Administrative Court- against any judgement given by the Voivodship Administrative Court.

S/he can also appeal (complain) against certain decisions:

* terminating the proceedings in the case, for example, the decision to discontinue the proceedings, the decision to reject the complaint;
* decisions other than terminating the case, if the law provides for the possibility to appeal against it, such as the decision dismissing the request for exclusion of a judge[[265]](#footnote-265).

A prosecutor, the Human Rights Defender or the Ombudsman for Children may also lodge a cassation complaint.

**The grounds for a cassation complaint** are:

* violation of substantive law by its erroneous interpretation or misuse;
* violation of the rules of procedure, if the violation could have a significant impact on the outcome of the case[[266]](#footnote-266) (for example, the court admitted as evidence the documents produced by the administrative authority, but refused similar evidence submitted by another party).

There are no provisions allowing or prohibiting the child’s legal representative from making submissions instead of the child without his/her consent and/or appeal without the child's consent. However, parents and guardians should exercise parental authority in the best interests of the child and should hear the child and take into account his/her reasonable wishes before making important decisions concerning the child[[267]](#footnote-267).

Complaints about non-judicial actions of judges and activities of the courts

Parties and participants may also complain about actions of administrative courts and judges (actions that do not constitute judicial activity, such as the behaviour of the judge, organisational problems etc.) to the Presidents of the voivodship administrative courts or the President of the Supreme Administrative Court (if the complaint concerns a president of a voivodship court).

Compensation

A party who sustained damage is entitled to compensation from the public administration authority, which issued the challenged decision when[[268]](#footnote-268):

* the court quashed the contested decision and the public administration authority obliged to reconsider the matter discontinued the proceedings;
* the court declared the act/action null and void, or established a legal obstacle preventing the annulment of the act.

To obtain compensation, a party must bring an action before a civil court. A final and binding court ruling constitutes a deed of execution, to which an enforceability clause is provided by a regional court (civil).

The final judgement of the administrative court is binding on all parties, in particular the public administration authority. Therefore, if the authority in question fails to abide by the judgement, for example fails to issue a decision indicated by the court, the party can claim compensation for failure to execute the court decision (damages for non-performance) if s/he has suffered damage as a result of this failure[[269]](#footnote-269).

The party should first apply for compensation to the relevant public administration authority. If, within three months, the public administration authority will not pay the compensation, the entitled party may bring the claim damages before a civil court[[270]](#footnote-270).

The limitation period is ten years from the date on which the claim falls due[[271]](#footnote-271) (general rules apply).

***The child as a witness***

No specific rules with regard to child witnesses have been identified.

* + 1. **Procedural rules applicable to children involved in proceedings for placement into care**

***The child as a plaintiff/defendant/witness/subject of proceedings***

Placement of children into care falls under the competence of the family and guardianship courts, which are civil courts governed by civil procedure rules.

Childcare authorities can, in certain circumstances, appeal decisions involving children, regardless of their role in the proceedings. The Prosecutor General, the Ombudsman and the Children’s Ombudsman can file an appeal in cassation against judgements of second instance courts, and they have a much longer deadline to do so, i.e. six months instead of two[[272]](#footnote-272). However, the filing of the cassation by the party prevents the Ombudsman from filing for the same remedy[[273]](#footnote-273). Representatives of NGOs, in a limited number of cases (mainly concerning child support, see [Section 3.4.)](#_Protection_from_harm), can commence proceedings, or join a pending procedure, until the last hearing in the second instance. They can also file an appeal if they act as secondary interveners (*interwenient uboczny*), in which case, their procedural acts cannot contradict actions and statements taken by the party on behalf of which the intervener acts. Prosecutors can appeal every decision for which an appeal is admissible, including in cases involving children[[274]](#footnote-274).

Damages caused by actions and/or omissions of public authorities can be compensated according to the general rules of the Civil Code[[275]](#footnote-275). There are no child-specific provisions, hence the general rules applicable to adults also apply to children. In this respect, there are two types of redress, i.e. restitution (*restitutio in integrum*) and pecuniary compensation. The choice of redress belongs to the victim. However, if restitution is impossible, or exceptionally difficult, only pecuniary compensation can be awarded[[276]](#footnote-276). If public authorities have violated the child’s rights, the claim must be brought by his/her parents/legal representative, who will act on his/her behalf during the civil judicial proceedings.

* 1. **Legal costs**

### General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities’ decisions in the sectors of asylum, migration, education and health.

The general procedural rules described below apply to the sectors of asylum, migration, education and health. Civil procedural rules apply to the sector of placement into care. Such rules are described in a separate subparagraph below.

Treatment of children below the MACR who have committed offences, road traffic offences and socially harmful acts – which cannot be considered as “administrative sanctions”, fall under the competence of family courts according to the procedural rules set out in the [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228) and described in the contextual overview for criminal justice. See [Section 1](#_Overview_of_Member) for more information.

***The child as a plaintiff/defendant/subject of proceedings***

Parties to proceedings before the administrative courts are: the complainant and the public administration authority whose action, failure to act or excessive length of proceedings is the subject of the complaint[[277]](#footnote-277), without using the term plaintiff and defendant. In the Polish system they are both referred to as “party”. The situation of each party is equivalent, according to the [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270).

There are no child-specific provisions, therefore the general framework applies both to children and adults.

Court costs include court fees and reimbursement of expenses[[278]](#footnote-278). The following persons are exempt from paying the court fees[[279]](#footnote-279):

* the complainant in cases concerning, in particular: social care; social security; status and benefits for the unemployed; occupational diseases, health services and rehabilitation benefits; labour relations and official relations;
* the prosecutor, the Human Rights Defender and the Ombudsman for Children‘s Rights;
* the guardian *ad litem* appointed by the court or the guardianship court for the given case;
* a party who was granted legal aid.

In principle, the parties bear the costs of their involvement in a case[[280]](#footnote-280). A court may award legal aid to a party, if the party applies for it prior to or during proceedings, which may include exemption from part or all court costs[[281]](#footnote-281).

The scope/extent of the granted legal aid may be full or partial[[282]](#footnote-282):

* full legal aid covers both exemption from court fees and assistance of a court-appointed legal professional;
* partial legal aid means that:
  + the party has been released only from court fees and expenses; or
  + the party has been released only from either court fees (in whole or in part) or expenses; or
  + the party has received assistance of a legal professional but without being exempted from court fees.

Full legal aid can be granted to a natural person who demonstrates that s/he cannot afford to pay any costs of proceedings whatsoever. Partial legal aid can be granted to a person who shows that s/he is unable to bear the full costs of the proceedings, without prejudice to his/her necessary maintenance and that if his/her family[[283]](#footnote-283). The legal aid may be withdrawn, in whole or in part, if it turns out that the circumstances under which it was granted did not exist or ceased to exist[[284]](#footnote-284).

The granting of legal aid does not exempt the parties from the obligation to reimburse the costs of proceedings if such an obligation arises from other provisions[[285]](#footnote-285).

If the court upheld the complaint, the complainant can claim the reimbursement of necessary costs of proceedings from the relevant public administration authority[[286]](#footnote-286).

***The child as a witness***

No specific rules with regard to child witnesses have been identified.

* + 1. **Procedural rules applicable to children involved in proceedings for placement into care**

***The child as a plaintiff/defendant/witness/subject of proceedings***

Placement of children in care falls under the competence of the family and guardianship courts, which are civil courts governed by civil procedure rules.

In civil proceedings, a party can be fully or partially exempted from paying the legal costs if he/she submits a statement confirming that he/she is not able to pay them without prejudice to him/her and his/her family[[287]](#footnote-287). However, exemption from the legal costs does not exempt the party/participant from paying the legal costs of the other party[[288]](#footnote-288). No special rules concerning children involved in civil judicial proceedings have been identified. If a child below 18 years of age is a party/participant to proceedings, his/her legal representative will apply for exemption on behalf of the child.

Children who are subjects of the relevant civil judicial proceedings are not required to pay legal costs. Furthermore, in certain cases concerning children, parties/participants are exempt from paying court fees. This is the case in the following instances: (i) application for the recognition of the child; (ii) application for giving a new name to a child; (iii) application for adoption; (iv) application for removing the child from his/her parents’/guardian’s care and placing him/her in foster care; (v) in relation to pleading/procedural documents submitted to the guardianship court in compliance with an obligation under law or imposed by the court[[289]](#footnote-289).

* 1. **Enforcement of administrative court judgements**

### General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities’ decisions in the sectors of asylum, migration, education and health.

The general procedural rules described below apply to the sectors of asylum, migration, education and health. Civil procedural rules apply to the sector of placement into care. Such rules are described in a separate subparagraph below.

Treatment of children below the MACR who have committed offences, road traffic offences and socially harmful acts – which cannot be considered as “administrative sanctions”, fall under the competence of family courts according to the procedural rules set out in the [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228) and described in the contextual overview for criminal justice. See [Section 1](#_Overview_of_Member) for more information.

***The child as a plaintiff/defendant/witness/subject of proceedings***

Parties to the proceedings before the administrative courts are: the complainant and the public administration authority whose action, failure to act or excessive length of proceedings is the subject of the complaint[[290]](#footnote-290), without using the term plaintiff and defendant. In the Polish system they are both referred to as “party”. Furthermore, any person whose legal interest can be affected by the outcome of the judicial proceedings may join the proceedings as a participant. The situation of the party and the participant is equivalent, as according to the [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270) all provisions relating to a party equally apply to the participants.

There are no child-specific provisions, therefore the general framework applies both to children and adults.

When the ruling of the first instance court becomes final, the court returns the administrative file of the case to the relevant authority together with a copy of the ruling accompanied by a statement of its legitimacy.

The time-limit to deal with the case by the administrative authority starts running from the moment of service of the case-files. The time limit will depend on the character of the case and is specified in substantial administrative laws (usually 30 days)[[291]](#footnote-291).

In the event of failure to comply with the judgement of the court by the administrative authority, the party, after prior written notice to the competent authority, may bring a complaint to the administrative court, and request the court to impose a fine on the authority[[292]](#footnote-292).

If the authority in question fails to abide by the judgement, for example fails to issue a decision indicated by the court, the party can claim compensation for failure to execute the court decision (damages for non-performance) if s/he has suffered damage as a result of this failure[[293]](#footnote-293).

If the parties/participants in the proceedings are not represented by a lawyer, the administrative court is obliged to give them the necessary guidance concerning procedural steps and actions and inform them of the legal consequences of such actions as well as of the consequences of their negligence/inaction[[294]](#footnote-294). There are no specific provisions regarding provision of information in a child-friendly manner, as in practice the administrative court will never address the child directly[[295]](#footnote-295)

* + 1. **Procedural rules applicable to children involved in proceedings for placement into care**

***The child as a plaintiff/defendant/witness/subject of proceedings***

Placement of children in care falls under the competence of the family and guardianship courts, which are civil courts governed by civil procedure rules.

Certain court judgements, in cases where the child is the subject of the dispute, are immediately enforceable. More specifically, decisions of the guardianship court are effective and enforceable the moment they are announced, and if they have not been announced, the moment they are issued[[296]](#footnote-296). However, this rule is subject to several exemptions. Decisions in cases regarding awards, limitations, suspensions, termination of parental authority, and contacts with children, are enforceable only after the judgement has obtained the force of *res judicata*[[297]](#footnote-297). Similarly, decisions of the guardianship court concerning adoption[[298]](#footnote-298) are effective only after the judgement has obtained the force of *res judicata*. Judgements awarding alimony are immediately enforceable[[299]](#footnote-299).

Certain measures to protect the child from harm, which may incur during enforcement proceedings, have been identified. If the person, who is obliged by the guardianship court to return a child under his/her parental responsibility or guardianship, does not comply with the decision of the court, the court will, on the request of the person entitled to the child’s custody, order a court custodian to take the child from that person by force[[300]](#footnote-300). However, in the course of removing the child, the court custodian should do everything in order to ensure that the best interests of the child are protected and, in particular, to guarantee that the child does not suffer any physical or psychological damage[[301]](#footnote-301).

Conclusions

Overview of Member State’s approach to children in administrative judicial proceedings and specialised services dealing with such children

Supervision of the activities of public administration bodies in Poland is performed by the two-instance administrative jurisdiction: the Supreme Administrative Court and 16 Voivodship Administrative Courts. The status and procedures of administrative courts are regulated by the [Law on the System of Administrative Courts](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531269) and the [Law on Proceedings before Administrative Courts](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270).Regulations on administrative judicial proceedings do not apply to matters concerning the placement of children in care, child offenders, or citizenship.

In Polish law, natural persons attain full legal capacity when they reach the age of 18. The [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270) does not provide for any principles or provisions referring to children in particular. Consequently, there are no provisions relating to administrative judicial proceedings that would refer to the child’s best interests, evolving capacity or discrimination, and no definition of these concepts.However, the Constitution ensures protection of the rights and freedoms of the childThe main monitoring authorities are the Ombudsman for Children’s Rights that among other competence also has a right, in relation to administrative and judicial-administrative proceedings, to require public authorities, organisations or institutions to submit explanations, to give information or disclose relevant files and documents. The Ombudsman for Children’s Rights can also lodge complaints to the administrative court.The Human Rights Defender may carry out investigations, issue recommendations, reports and petitions to relevant authorities for taking up legislative initiatives and may request that legal proceedings are instituted.

Children and parents can also complain, in specific cases, to the Ombudsman for Patients’ Rights, the Government Plenipotentiary for Equal Treatment or the Government Plenipotentiary for Disabled Persons. Judges and legal counsels do not receive any specific training on issues concerning the situation of children in judicial proceedings in addition to the general judicial training. As regards vetting of the professionals, the performance of advocates’ duties is supervised by the Bar councils. A similar requirement is laid down for legal advisors. Activities of the court custodians/court officers for family matters are supervised by regional court custodians.

The child as an actor in administrative judicial proceedings

The [Law on Proceedings before Administrative Courts](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270) does not provide for any principles or provisions referring to children in particular. Consequently, there are no provisions relating to the administrative judicial proceedings that would refer to the child’s best interests, evolving capacity or discrimination, and no definition of these concepts. However, general principles of law will apply to children and adults alike.

Furthermore, a child (as any person without procedural capacity) can only act in administrative judicial proceedings through his/her legal representative (parents/guardians). The law does not provide for any possibility for a court or judge to waive this requirement.

There are no specific provisions relating to asylum, migration, education, health, and placement of children in care, children committing offences below the age of MACR or administrative sanctions. The general rules apply to all proceedings before administrative courts, notwithstanding the nature of the proceedings (i.e. asylum, migration, health, education, etc.), with the exception of matters relating to placement of children in care and treatment of child offenders which fall under the competence of family courts (civil).

Provision of information

The law regulating administrative judicial proceedings does not provide for any specific rules with regard to the child and therefore the general framework applies both to children and adults.There is no legal requirement to inform children who are parties to administrative judicial proceedings about support services and/or organisations that can provide them with assistance. There are no specific provisions regarding provision of information in a child-friendly manner. Similarly, there are no child specific rules with regard to access to documents, delivery of the judgement and providing reasons for the judgement, information about court rulings and methods of appeal or service of judgements and decisions.

Protection of the child’s private and family life

There are no specific rules with regard to the right to protection of private and family life of the child. In principle, court proceedings are open to the public. Apart from the parties and persons summoned by the court, only persons over 18 may enter the courtroom. Furthermore, the court will decide *ex officio* to conduct all or part of the proceedings behind closed doors, if holding a public hearing threatens morality, national security or public order, or when classified information might be disclosed. Only the following persons may be present at a session behind closed doors: the parties, their parents/guardians, legal representatives (lawyer, proxy), a prosecutor, and two persons of trust for each party.

The [Act on the protection of personal data](http://isip.sejm.gov.pl/DetailsServlet?id=WDU19971330883) does not contain provisions explicitly referring to children but states that everyone has the right to the protection of their personal data and that processing of such data (including making the information available to the public) is allowed only in situations set out in the Act, in the public interest, in the interest of the person whose personal data is to be processed or in the interest of third persons.

Every person has the right to control the processing of his/her personal data, in particular to be informed about persons who receive such data or about the aim and scope of data processing. Since children below 18 years old do not have full capacity to act or procedural capacity, these requests may be submitted on their behalf by their parents/guardians. The Act on the protection of personal data sets forth numerous criminal measures, primarily applicable to controllers of personal data who illegally allow the processing of data.

Legal counsel are obliged to abide by the rules of confidentiality. They must keep confidential all information they became aware of when giving legal advice and cannot be released from their confidentiality obligation unless the information concerns money laundering or financing of terrorism. Social workers are required not to reveal any information they gather in the course of their work, unless this would be contrary to the best interests of the person concerned or his/her family.

Protection from harm during proceedings and interviews and ensuring a child friendly process

There are no child-specific provisions with regard to protection from harm. Therefore the same general rules applying to children also apply to adults. The administrative court should take actions in order to settle the matter quickly and should endeavour to resolve it at the first session. The procedure in administrative judicial proceedings is mainly written, strictly limited to the issue of conformity with law, with no examination of evidence. In particular, administrative courts do not hear witnesses and they examine the case on the basis of facts and evidence gathered in initial administrative proceedings. All this means that children virtually never participate in these proceedings. Consequently, there are no rules aiming at protection of children in administrative judicial proceedings, as there are no situations which would require such protection.

Right to be heard and to participate in administrative judicial proceedings

The administrative judicial procedure is principally written and strictly limited to the issue of legality of administrative actions. The administrative courts do not gather evidence and do not hear witnesses. Therefore, there are no situations where a child would or could be heard orally by the court. Moreover, since, in general, children under 18 do not have full legal capacity and procedural capacity to act, their legal representatives will take actions on their behalf. This includes any statements the child might wish to submit to the court. However, in administrative judicial proceedings, only the question of legality of the administrative decision is examined, and there is, in general, no need to submit any statements concerning the factual situation or emotional aspect of the case. Since the administrative court never hears children, there are no provisions regarding services aimed at supporting the child’s right to be heard

Right to legal counsel, legal assistance and representation

A child can only act in administrative judicial proceedings through his/her legal representative.

For a party without procedural capacity, who does not have a legal representative, the court appoints a guardian *ad litem*. There is no obligation to be represented by a qualified lawyer before a Voivodship administrative court. However, a cassation complaint or an appeal against a rejection of a cassation complaint, submitted to the Supreme Administrative Court must be prepared by a qualified lawyer. Legal aid may be granted to a party. As children under 18 do not have full legal capacity or procedural capacity, all legal actions taken by them will be considered void. Therefore, a child cannot appoint a lawyer or request legal aid in his/her own name and this right must be exercised on behalf of the child by his/her legal representative(s). However, in the realm of administrative judicial proceedings it is rather uncommon for children to interact with legal counsel.

Restrictions on liberty

Restriction of liberty, personal detention or any other means of penal character cannot be imposed by a public administration authority or an administrative court. Measures restricting liberty can be imposed by the family court according to the procedures set out in the Juvenile Act and described in the Overview for criminal justice, if a child commits a criminal offence. If the child is between 13 and 17 years old, the court may decide to place them in a juvenile correctional facility. If the child is under 13 years old only educational measures can be applied, with no form of deprivation of liberty.

Such measure can also be imposed in in the context of asylum and migration proceedings. In this case the Police or the Border Guards can detain an irregular migrant child up to 48 hours, during which they must request the district court (criminal division) to decide on placement of the child in a guarded centre for foreigners, or under arrest for the purpose of expulsion (deportation arrest).

Unaccompanied children seeking asylum may not be detained in a guarded centre or held under deportation arrest. Such children should be accommodated in a care-educational centre. Detention of unaccompanied children, who have not applied for asylum, in a guarded centre is not explicitly prohibited – provided they are kept in a separate part of the centre to avoid any contact with adult residents of the centre.

Migrant children, who are accompanied by parents or guardians, may be placed in a guarded centre for foreigners, usually in a family unit with their parents/family members. Unaccompanied children and families with children may not be placed under deportation arrest. . Alternatives to detention, i.e. other than placement into care for unaccompanied children, such as restrictions of residence and requirements of regular reporting to authorities exist. However, there is no explicit obligation to use detention as a last resort.

A migrant child can only be placed in a guarded centre or under deportation arrest based on a decision taken by the district court (criminal division), which will apply the Code of Criminal Procedure in areas not regulated by the Act on Aliens.

The district court decision on placement in a guarded centre can be appealed to the regional court (criminal division) within seven days of receiving the order.

The initial detention order can be issued by the court for a period up to 90 days. The order can be prolonged to a maximum of 12 months.

Remedies or compensation exist for violation of rights and failure to act

The party can appeal - lodge a cassation complaint to the Supreme Administrative Court against any judgement given by the Voivodship Administrative Court. A prosecutor, the Human Rights Defender or the Ombudsman for Children may also lodge a cassation complaint. There are no provisions allowing or prohibiting the child’s legal representative from making submissions instead of the child without his/her consent and/or appeal without the child's consent. However, parents and guardians should exercise parental authority in the best interests of the child and should hear the child and take into account his/her reasonable wishes before making important decisions concerning the child. In some cases, a party who sustained damage is entitled to compensation from the public administration authority, which issued the challenged decision.

Legal costs

There are no child-specific provisions with regard to legal costs. Court costs include court fees and reimbursement of expenses. With regard to cases involving children the guardian *ad litem* appointed by the court or the guardianship court for the given case is exempt from paying the court fees. In principle, the parties bear the costs of their involvement in a case. A court may award legal aid to a party, if the party applies for it prior to or during proceedings, which may include exemption from part or all court costs. Full legal aid can be granted to a natural person who demonstrates that s/he cannot afford to pay any costs of proceedings whatsoever. Partial legal aid can be granted to a person who shows that s/he is unable to bear the full costs of the proceedings, without prejudice to his/her necessary maintenance and that if his/her family.

Enforcement of administrative court judgements

There are no child-specific provisions with regard to enforcement of administrative court decisions.

There are no specific provisions regarding provision of information in a child-friendly manner, as in practice the administrative court will never address the child directly.

Strengths and gaps

There are no rules or provisions guiding or referring to the involvement of children in administrative judicial proceedings, which at first glance may appear to be a gap. However, one must bear in mind that the character of Polish administrative judicial procedure is unique and differs substantially from civil or criminal procedure: the procedure is mainly written and strictly limited to the issue of conformity with the law. The child never acts in the proceedings on his/her behalf but must be represented by his/her legal representative (parents/guardians). Furthermore, the child never appears in administrative courts as a witness, since administrative courts do not take evidence and in particular, do not hear witnesses.

Accordingly, there are no specific rules governing the protection of children in administrative judicial proceedings, and it seems that there are no situations which would require such protection.

In a certain way, the fact that the participation of a child in administrative judicial proceedings is virtually non-existent actually serves the purpose of protecting children from harm. At the same time, the child’s procedural and material rights are guaranteed under the general framework applicable to adults (except that those rights will be applied to his/her representative). Consequently, the child has a right to information, a right to legal aid and exemption from court fees, as well as a right to compensation for a wrongful administrative decision/action or for failure to execute the administrative court’s judgement by the public administration authority. Furthermore, in addition to available legal aid, the administrative court examines any administrative shortcomings *ex officio.*

Likewise, the interviewed stakeholders did not consider the lack of explicit child-related provisions as a gap – those stakeholders who have a statutory right to assist children/their legal representatives in the proceedings before administrative courts admitted that actually it is very rare for them to support the child at this stage. This is either because the proceedings with their participation usually result in a decision favourable to child at the stage before public administrative authority, or because at the judicial stage, parties are usually represented by qualified lawyers and do not need additional assistance.

1. List of legislation

The Act of 9 June 2011 on Family Support and Foster Care System (*ustawa o wspieraniu rodziny i systemie pieczy zastępczej*)

Resolution of the General Assembly of the Judges of the Supreme Administrative Court of 8 November 2010 on internal rules of procedure of the Supreme Administrative Court, (*Uchwała Zgromadzenia Ogólnego Sędziów Naczelnego Sądu Administracyjnego z dnia 8 listopada 2010 r. w sprawie regulaminu wewnętrznego urzędowania Naczelnego Sądu Administracyjnego*)

The Act of 2 April 2009 on Polish citizenship *(Ustawa z dnia 2 kwietnia 2009 r. o obywatelstwie polskim*)

The Act of 14 July 2006 on entry into the Polish territory, stay and departure from the territory nationals of Member States of the European Union and members of their families (*Ustawa z dnia 14 lipca 2006 r. o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej i członków ich rodzin*)

The Act of 27 August 2004 on health care services financed from public funds*(Ustawa z dnia 27 sierpnia 2004 r. o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych*)

The Act of 17 June 2004 on complaints about a violation of a party’s right to have the case considered without undue delay (*Ustawa z dnia 17 czerwca 2004 r. o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*)

The Act of 12 March 2004 on Social Assistance (*ustawa o pomocy społecznej*)

Regulation of the Council of Ministers of 16 December 2003 on the amount and detailed rules for collecting fees in proceedings before administrative courts (*Rozporządzenie Rady Ministrów z dnia 16 grudnia 2003 r. w sprawie wysokości oraz szczegółowych zasad pobierania wpisu w postępowaniu przed sądami administracyjnymi*)

Regulation of the President of the Republic of Poland of 18 September 2003 on Internal rules of procedure of voivodship administrative courts (*Rozporządzenie Prezydenta Rzeczypospolitej Polskiej z dnia 18 września 2003r. - Regulamin wewnętrznego urzędowania wojewódzkich sądów administracyjnych*)

The Act on Aliens of 13 June 2003 and the Act on granting protection to aliens within the territory of the Republic of Poland (*Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej*)

The Law on Proceedings before Administrative Courts, Act of 30 August 2002 (*Prawo o postępowaniu przed sądami administracyjnymi*)

The Law on the System of Administrative Courts, Act of 25 July 2002 (*Prawo o ustroju sądów administracyjnych*)

The Act of 6 September 2001 on access to public information (*Ustawa z dnia 6 września 2001 roku o dostępie do informacji publiczne*j)

The Act of 27 July 2001 - Law on Common Courts Organisation (*Ustawa z dnia 27 lipca 2001 - Prawo o ustroju sądów powszechnych*).

The Act of 6 January 2000 on the Ombudsman for Children’s Rights (*ustawa o Rzeczniku Praw Dziecka*)

The Act of 29 August 1997 on the Protection of Personal Data (*Ustawa z dnia 29 sierpnia 1997 r. o ochronie danych osobowych*)

Constitution of the Republic of Poland of 2 April 1997 (*Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997*)

The Act of 12 October 1994 on Local Government Boards of Appeal (*Ustawa z dnia 12 października 1994r. o samorządowych kolegiach odwoławczyc*h)

The Act of 19 August 1994 on Mental Health Protection (*Ustawa z dnia 19 sierpnia 1994 r. o ochronie zdrowia psychicznego*)

The Act of 15 July 1987 on the Human Rights Defender (*Ustawa o Rzeczniku Praw Obywatelskich*).

The Act of 26 October 1982 on proceedings in juvenile matters (*Ustawa z dnia 26 października 1982 r. o postępowaniu w sprawach nieletnich*).

The Law on legal advisors/counsels of 7 July 1982 (*Ustawa o radcach prawnych z dnia 6 lipca 1982 r*.)

The Law on Advocates’ Profession of 26 May 1982 (*Prawo o adwokaturze - Ustawa z dnia 26 maja 1982 r*)

Code of Civil Procedure of 17 November 1964 (*Kodeks postępowania cywilnego - Ustawa z dnia 17 listopada 1964 r.)*

Civil Code of 23 April 1964 (*Kodeks cywilny - Ustawa z dnia 23 kwietnia 1964 r*.)

Family and Guardianship Code of 25 February 1964 (*Kodeks rodzinny i opiekuńczy*)

Code of Administrative Procedure, Act of 14 June 1960 (*Kodeks postępowania administracyjnego*)

1. This table provides an indicative summary of competent courts and relevant proceedings. However, please check [Section 1](#Section1) for a complete overview of the competent courts or sections/divisions within the competent courts. [↑](#footnote-ref-1)
2. This study on Children’s involvement in judicial proceedings is composed of three contextual overviews i.e. contextual overview for criminal justice, contextual overview for civil justice, contextual overview for administrative justice. The rules applying to judicial proceedings in the sectors of family and employment are described in the contextual overview for civil justice. [↑](#footnote-ref-2)
3. (MACR) Minimum Age of Criminal Responsibility – see [Table 3.1 of the EU Summary of contextual overviews on children's involvement in criminal judicial proceedings](http://bookshop.europa.eu/en/summary-of-contextual-overviews-on-children-s-involvement-in-criminal-judicial-proceedings-in-the-28-member-states-of-the-european-union-pbDS0313659/related/?PublicationKey=DS0313659&CatalogCategoryID=WTQKABsteF0AAAEjKpEY4e5L) on MACR in EU28 as at 1 June 2012. [↑](#footnote-ref-3)
4. The voivodship, or province (as translated by some dictionaries) (in Polish, województwo) has been a high-level administrative subdivision of Poland since the 14th century. The Polish local government reforms adopted in 1998 created 16 new voivodships which replaced 49 former voivodships that had existed from 1 July 1975. [↑](#footnote-ref-4)
5. [Code of Administrative Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19600300168), Act of 14 June 1960 (*Kodeks postępowania administracyjnego*). [↑](#footnote-ref-5)
6. [Code of Administrative Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19600300168), Article 1. [↑](#footnote-ref-6)
7. [Code of Administrative Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19600300168), Articles 1 and 5. [↑](#footnote-ref-7)
8. [ACA Europe](http://www.aca-europe.eu/en/eurtour/eurtour_en.lasso?page=detail&countryid=20) [↑](#footnote-ref-8)
9. The Act of 12 October 1994 on Local Government Boards of Appeal (*Ustawa z dnia 12 października 1994r. o samorządowych kolegiach odwoławczych*). [↑](#footnote-ref-9)
10. The Act of 25 July 2002 – [Law on the System of Administrative Courts](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531269) (*Prawo o ustroju sądów administracyjnych*). [↑](#footnote-ref-10)
11. The Act of 30 August 2002 – [Law on Proceedings before Administrative Courts](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270) (*Prawo o postępowaniu przed sądami administracyjnymi*). [↑](#footnote-ref-11)
12. [ACA Europe](http://www.aca-europe.eu/en/eurtour/eurtour_en.lasso?page=detail&countryid=20). [↑](#footnote-ref-12)
13. [ACA Europe](http://www.aca-europe.eu/en/eurtour/eurtour_en.lasso?page=detail&countryid=20). [↑](#footnote-ref-13)
14. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 145. [↑](#footnote-ref-14)
15. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s.149. [↑](#footnote-ref-15)
16. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 146-154. [↑](#footnote-ref-16)
17. [ACA Europe](http://www.aca-europe.eu/en/eurtour/eurtour_en.lasso?page=detail&countryid=20). [↑](#footnote-ref-17)
18. The [Law on Proceedings before Administrative Courts](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 15. [↑](#footnote-ref-18)
19. [ACA Europe](http://www.aca-europe.eu/en/eurtour/eurtour_en.lasso?page=detail&countryid=20). [↑](#footnote-ref-19)
20. [ACA Europe](http://www.aca-europe.eu/en/eurtour/eurtour_en.lasso?page=detail&countryid=20). [↑](#footnote-ref-20)
21. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 32. [↑](#footnote-ref-21)
22. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s 288. [↑](#footnote-ref-22)
23. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 33(1). [↑](#footnote-ref-23)
24. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 33(2). [↑](#footnote-ref-24)
25. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 12. [↑](#footnote-ref-25)
26. Regulated mainly by [the Act on Aliens](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281175) of 13 June 2003 (*Ustawa o cudzoziemcach*) and [the Act on granting protection to aliens within the territory of the Republic of Poland](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281176) of 13 June 2003 (*Ustawa o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej*), as well as the [Act on entry into the Polish territory, stay and departure from the territory nationals of Member States of the European Union and members of their families](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20061441043) of 14 July 2006 (*Ustawa o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej i członków ich rodzin*). [↑](#footnote-ref-26)
27. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 5. [↑](#footnote-ref-27)
28. The “family court” is a separate organisational unit of the district court dealing with family and juvenile matters; it is usually the family court that carries out the role of the “guardianship court” ‒ which is a functional and procedural term. In this study the term “family court” or the “family and guardianship court” will be used, depending on the context. [↑](#footnote-ref-28)
29. The [Act of 2 April 2009 on Polish citizenship](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20120000161)(*Ustawa z dnia 2 kwietnia 2009 r. o obywatelstwie polskim*), s. 10. [↑](#footnote-ref-29)
30. The [Act on Mental Health Protection](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19941110535) of 19 August 1994 (*Ustawa z dnia 19 sierpnia 1994 r. o ochronie zdrowia psychicznego*), s. 1. [↑](#footnote-ref-30)
31. The [Act on Mental Health Protection](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19941110535), s. 22. [↑](#footnote-ref-31)
32. The [Act on Mental Health Protection](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19941110535), s. 21. [↑](#footnote-ref-32)
33. The National Health Fund (*Narodowy Fundusz Zrowia - NFZ*) is an authority governed by the Act of 27 August 2004 on health care services financed from public funds. The Fund manages the funds from the mandatory health insurance contributions; it finances health services provided to the insured and refunds the cost of medication. [↑](#footnote-ref-33)
34. The [Act of 27 August 2004 on health care services financed from public funds](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20042102135)(*Ustawa z dnia 27 sierpnia 2004 r. o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych*). [↑](#footnote-ref-34)
35. [The Act on Family Support and Foster Care System](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20111490887), Article 35(1). [↑](#footnote-ref-35)
36. [The Family and Guardianship Code](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640090059) (*Kodeks rodzinny i opiekuńczy*), Article 1123. [↑](#footnote-ref-36)
37. [The Act on Family Support and Foster Care System](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20111490887), Article 35(2). [↑](#footnote-ref-37)
38. [The Act on Family Support and Foster Care System](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20111490887), Article 58(1). [↑](#footnote-ref-38)
39. [The Act on Domestic Violence](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20051801493), Article 12a. [↑](#footnote-ref-39)
40. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 5791. [↑](#footnote-ref-40)
41. The [Act of 26 October 1982 on proceedings in juvenile matters](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228) (*Ustawa. o postępowaniu w sprawach nieletnich*). [↑](#footnote-ref-41)
42. ‘Punishable acts’ are defined by the Juvenile Act as including criminal and fiscal offences, as well as certain petty offences. [↑](#footnote-ref-42)
43. The [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228), s. 6. [↑](#footnote-ref-43)
44. The [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228), s. 12. [↑](#footnote-ref-44)
45. Further details regarding the situation of child offenders are provided in the report relating to the criminal phase of the study. [↑](#footnote-ref-45)
46. [The Constitution of the Republic of Poland](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483), Article 175. [↑](#footnote-ref-46)
47. [The Constitution of the Republic of Poland](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483), Article 178. [↑](#footnote-ref-47)
48. [The Constitution of the Republic of Poland](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483), Article 176. [↑](#footnote-ref-48)
49. [Act of 27 July 2001](http://www.arslege.pl/prawo-o-ustroju-sadow-powszechnych/k41/) on Common Courts Organisation, s. 12. [↑](#footnote-ref-49)
50. [Act of 27 July 2001](http://www.arslege.pl/prawo-o-ustroju-sadow-powszechnych/k41/) on Common Courts Organisation, ss. 12 and 16. [↑](#footnote-ref-50)
51. [Act of 27 July 2001](http://www.arslege.pl/prawo-o-ustroju-sadow-powszechnych/k41/) on Common Courts Organisation, s. 12 § 1a (1). [↑](#footnote-ref-51)
52. [, Act of 27 July 2001](http://www.arslege.pl/prawo-o-ustroju-sadow-powszechnych/k41/) on Common Courts Organisation, s. 16, as amended by an Act of 30 August 2013 (entered into force on 2 January 2014); it is noted that until 2 January 2014 appeals in cases examined by family courts and concerning a child who was subject to corrective measures, were dealt with by a criminal division of regional courts. [↑](#footnote-ref-52)
53. The [Act on the Ombudsman for Children’s Rights](http://www.brpd.gov.pl/detail.php?recid=52) (*ustawa o Rzeczniku Praw Dziecka*) of 6 January 2000, s. 1. [↑](#footnote-ref-53)
54. A cassation complaint or its extraordinary remedy; the grounds for a cassation complaint to the Supreme Administrative Court may only concern legality of the judgment of the voivodship administrative court, that is: a violation of substantive law by its erroneous interpretation or misuse; or a violation of the rules of procedure, if the violation could have a significant impact on the outcome of the case (see [Section 2.8.](#Remedies or compensation exist for violation of rights and failure to act (who, what, why?))). [↑](#footnote-ref-54)
55. The [Act on the Ombudsman for Children’s Rights](http://www.brpd.gov.pl/detail.php?recid=52), s. 10. [↑](#footnote-ref-55)
56. The term used on the [official website](http://www.brpo.gov.pl/en) of the ombudsman and used further in this study. [↑](#footnote-ref-56)
57. Article 80. [↑](#footnote-ref-57)
58. Act of 15 July 1987 on the Human Rights Defender (*Ustawa o Rzeczniku Praw Obywatelskich*). [↑](#footnote-ref-58)
59. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 8. [↑](#footnote-ref-59)
60. For example, trade unions. [↑](#footnote-ref-60)
61. For example trade or merchant guilds, Bar Council, etc. [↑](#footnote-ref-61)
62. Foundations, associations, etc, [↑](#footnote-ref-62)
63. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 9. [↑](#footnote-ref-63)
64. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 50. [↑](#footnote-ref-64)
65. [The Act on court custodians](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20010981071), Article 1. [↑](#footnote-ref-65)
66. [The Act on court custodians](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20010981071), Article 9. [↑](#footnote-ref-66)
67. [The Constitution of the Republic of Poland](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483), Article 5701. [↑](#footnote-ref-67)
68. [The Constitution of the Republic of Poland](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483), Article 5986. [↑](#footnote-ref-68)
69. [The Civil Code](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640160093), Articles 10,11. [↑](#footnote-ref-69)
70. [The Civil Code](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640160093), Articles. 12-22. [↑](#footnote-ref-70)
71. The opinion expressed by all stakeholders interviewed (judges, NGOs, Children’s Ombudsman). [↑](#footnote-ref-71)
72. [CAP](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19600300168), ss. 6-16. [↑](#footnote-ref-72)
73. Public administration authorities must act on the basis of universally binding law. Thus, a preamble of a normative act, resolutions or orders of the Prime Minister, for example, cannot constitute a legal basis for an administrative decision. [↑](#footnote-ref-73)
74. Public administration authorities are obliged to take all necessary steps accurately to elucidate the facts and are obliged to gather and examine all the evidence in an exhaustive manner. This principle is achieved, among others, through a right actively to participate in the proceedings. [↑](#footnote-ref-74)
75. An administrative authority is obliged to resolve the matter, having regard to the public interest and the legitimate interests of citizens (i.e. that is supported by a legal norm established for the protection of these interests). The authority conducting the proceedings has a duty to identify the two interests and in case of conflict in a particular case, the authority shall aim to reconcile (balance) the interests. [↑](#footnote-ref-75)
76. Public administration authorities should conduct the proceedings in a way that raises confidence in public authority. This principle implies a number of rules such as the principle of predictability of administrative decisions; the prohibition of abuse of power; the principle of proportionality; the principle of equality of the parties; the principle of honesty and courtesy. [↑](#footnote-ref-76)
77. A public authority must make sure that the parties to administrative proceedings know and understand the relevant facts and law, which may affect the determination of their rights and obligations that are subject of administrative proceedings. The authorities also ensure that parties and other participants do not suffer damage because of ignorance of the law - to this end, the authority must provide the necessary explanations and guidance. This principle is reflected in the provisions requiring the authority to indicate in the summons the legal consequences of non-compliance with the summons; to give information about the consequences of failure to remedy shortcomings of the complaint; to give information about the admissibility and procedure of an appeal against administrative decisions, etc.

    Incorrect information in an administrative decision as to the right of appeal or complaint to an administrative court or to lodge a clam with a civil court cannot prejudice the party that has complied with this instruction.

    If the party is represented by a qualified lawyer, the obligation of the public administration to provide information is narrower than when the party acts alone in the proceedings. [↑](#footnote-ref-77)
78. Public administration authorities should ensure that the parties can actively participate in every stage of the proceedings, and before issuing the decision, allow the parties to express their opinions on the evidence gathered and material and submitted claims. [↑](#footnote-ref-78)
79. The administrative authority should explain to the parties the reasons leading to the decision, in order to encourage the parties to implement the decision without the need for coercive enforcement. [↑](#footnote-ref-79)
80. Public authorities should act thoroughly and quickly, using the simplest possible means leading to the settlement of the case. Matters which do not require the collection of evidence, information or clarification, should be dealt with immediately. This principle is without prejudice to the provisions on time-limits etc. [↑](#footnote-ref-80)
81. Cases involving parties with conflicting interests can be resolved by way of an agreement (friendly settlement) drawn up before a public authority. A public authority should encourage disputing parties to reach an agreement. [↑](#footnote-ref-81)
82. Matters in administrative proceedings should be dealt with in writing or in the form of an electronic document, and a hearing or treating the case orally is exceptional, and must be in the interest of the parties and not precluded by law. In such situations, the content and relevant motives of such a way of resolving the case should be recorded in the file in the minutes or an annotation signed by the party. [↑](#footnote-ref-82)
83. [The Constitution of the Republic of Poland](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483), Article 72. [↑](#footnote-ref-83)
84. [The Act on the Ombudsman for Children’s Rights](http://www.brpd.gov.pl/detail.php?recid=52), s. 1(3). [↑](#footnote-ref-84)
85. [The Constitution of the Republic of Poland](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483), Article 72(3). [↑](#footnote-ref-85)
86. [The Constitution of the Republic of Poland](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483), Article 30. [↑](#footnote-ref-86)
87. [The Constitution of the Republic of Poland](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483), Article 32. [↑](#footnote-ref-87)
88. [The Constitution of the Republic of Poland](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483), Articles 33 and 68. [↑](#footnote-ref-88)
89. [The Constitution of the Republic of Poland](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483), Article 45. [↑](#footnote-ref-89)
90. [The Constitution of the Republic of Poland](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483), Article 42(2). [↑](#footnote-ref-90)
91. [The Constitution of the Republic of Poland](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483), Article 77. [↑](#footnote-ref-91)
92. [The Regulation of the Minister of Justice establishing the rules for the functioning of general courts](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20070380249), § 205. [↑](#footnote-ref-92)
93. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 5701. [↑](#footnote-ref-93)
94. The [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228), s 24, 25. [↑](#footnote-ref-94)
95. [The Act on the Ombudsman for Children’s Rights](http://www.brpd.gov.pl/detail.php?recid=52), Article 10a. [↑](#footnote-ref-95)
96. [The Act on the Ombudsman for Children’s Rights](http://www.brpd.gov.pl/detail.php?recid=52), Articles 10a and 10b. [↑](#footnote-ref-96)
97. The [Law on the System of Administrative Courts](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531269), Act of 25 July 2002 (Prawo *o ustroju sądów administracyjnych*), s 6. [↑](#footnote-ref-97)
98. The [Law on the System of Administrative Courts](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531269), s.7. [↑](#footnote-ref-98)
99. See the Resolution of the National Bar Council [on the requirement of continuous professional development](http://www.nra.pl/nra.php?id=215&rtnl=1). [↑](#footnote-ref-99)
100. [The Statue on the scope of activities and rules on reimbursement of inspectors](http://www.nra.pl/nra.php?id=260&rtnl=1), § 1. [↑](#footnote-ref-100)
101. [Response of the State Secretary in the Ministry of Justice to a parliamentary question concerning vetting of court custodians in family matters](http://orka2.sejm.gov.pl/IZ6.nsf/main/5320160A); [The Act on court custodians](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20010981071), s. 35 (2). [↑](#footnote-ref-101)
102. The [Law on the System of Administrative Courts](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531269), s. 4. [↑](#footnote-ref-102)
103. [Law on Common Courts Organisation, Act of 27 July 2001](http://www.arslege.pl/prawo-o-ustroju-sadow-powszechnych/k41/), s. 107. [↑](#footnote-ref-103)
104. The [Law on the System of Administrative Courts](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531269), ss. 9 and 48. [↑](#footnote-ref-104)
105. [Law on Common Courts Organisation, Act of 27 July 2001](http://www.arslege.pl/prawo-o-ustroju-sadow-powszechnych/k41/), s. 109. [↑](#footnote-ref-105)
106. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 32. [↑](#footnote-ref-106)
107. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 25. [↑](#footnote-ref-107)
108. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 26(1). [↑](#footnote-ref-108)
109. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 27. [↑](#footnote-ref-109)
110. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 31. [↑](#footnote-ref-110)
111. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 26(2). [↑](#footnote-ref-111)
112. Information collected through stakeholder consultation (court, NGO, Children’s Ombudsman). [↑](#footnote-ref-112)
113. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 572. [↑](#footnote-ref-113)
114. [The Act on Family Support and Foster Care System](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20111490887), s. 3 § 1. [↑](#footnote-ref-114)
115. [The Act on Family Support and Foster Care System](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20111490887), s. 23 § 3. [↑](#footnote-ref-115)
116. [The Act on Family Support and Foster Care System](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20111490887), s. 35 § 2. [↑](#footnote-ref-116)
117. [The Act on Domestic Violence](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20051801493), s. 12b § 3. [↑](#footnote-ref-117)
118. [The Act on Domestic Violence](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20051801493), s. 11A. [↑](#footnote-ref-118)
119. [The Act on Domestic Violence](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20051801493), s. 11.a § 2. [↑](#footnote-ref-119)
120. [The Act on Domestic Violence](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20051801493), s. 12 § 2. [↑](#footnote-ref-120)
121. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), s. 570. [↑](#footnote-ref-121)
122. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 32. [↑](#footnote-ref-122)
123. [CAP](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19600300168), Article 9. [↑](#footnote-ref-123)
124. S. 4. of [the Act on Family Support and Foster Care System](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20111490887) of 9 June 2011 (*Ustawa o wspieraniu rodziny i systemie pieczy zastępczej*). [↑](#footnote-ref-124)
125. [Legal Assistance for Refugees and Migrants – Helsinki Foundation for Human Rights Program](http://programy.hfhr.pl/uchodzcy/); [IOM Poland Information portal for migrants – Migrant Info.pl)](http://www.migrant.info.pl); [The Polish Migration Forum Foundation (PFM)](http://www.forummigracyjne.org); [The Halina Nieć Legal Aid Centre](http://www.pomocprawna.org). [↑](#footnote-ref-125)
126. [The Government Plenipotentiary for Persons with Disabilities](http://www.niepelnosprawni.gov.pl); [Association for Children and Youth with Physical Disabilities "Rainbow" (“*Tęcza*”)](http://www.tecza.org.pl); [Foundation for Children „Help on Time”](http://dzieciom.pl/english); [Information Portal for People with Disabilities and Their Carers of the Foundation for Children](http://www.fundacjadzieciom.pl); [Foundation for Children with Disabilities "Child's Smile"](http://www.usmiechdziecka.com.pl); [Foundation for Children with Disabilities “Donate a Smile”](file:///\\milieu-srv\data\Projects\1479.12%20%20Children%20in%20Judicial%20Proceedings\5.%20Working%20Documents\Administrative%20Phase\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\KGMZS9WV\ww.podarujusmiech.org); [Foundation for the Blind and Disabled Persons “You can Help”](file:///\\milieu-srv\data\Projects\1479.12%20%20Children%20in%20Judicial%20Proceedings\5.%20Working%20Documents\Administrative%20Phase\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\KGMZS9WV\Foundation%20for%20the%20Blind%20and%20Disabled%20Persons%20). [↑](#footnote-ref-126)
127. Information collected through stakeholder consultation (NGOs, Children’s Ombudsman). [↑](#footnote-ref-127)
128. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 6. [↑](#footnote-ref-128)
129. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s 12a. [↑](#footnote-ref-129)
130. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s.139. [↑](#footnote-ref-130)
131. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s.141(1) and (2). [↑](#footnote-ref-131)
132. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 141(3). [↑](#footnote-ref-132)
133. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 139, 142, 163. [↑](#footnote-ref-133)
134. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 142. [↑](#footnote-ref-134)
135. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), ss. 141 and 142. [↑](#footnote-ref-135)
136. [*Obywatel w postępowaniu sądowoadministracyjnym*](http://ms.gov.pl/Data/Files/_public/prawa_i_obowiazki/post_sad/obywatel-w-post-sadowoadm-calosc.pdf)(The citizen in administrative judicial proceedings), booklet published by the Ministry of Justice. [↑](#footnote-ref-136)
137. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 140(1) and (3). [↑](#footnote-ref-137)
138. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s .163(2). [↑](#footnote-ref-138)
139. Legal representative for the purpose of litigation (see [Section 2.6](#Right to legal counsel, legal assistance and representation) for details). [↑](#footnote-ref-139)
140. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 67. [↑](#footnote-ref-140)
141. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 299(1). [↑](#footnote-ref-141)
142. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 299(3). [↑](#footnote-ref-142)
143. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 299(5). For example the [Convention on Mutual Administrative Assistance in Tax Matters](http://conventions.coe.int/Treaty/EN/Treaties/PDF/Polish/127-Polish.pdf) of 25 January 1988, or the [Convention on mutual assistance and cooperation between customs administrations](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1998:024:0001:0022:EN:PDF) of 18 December 1997. [↑](#footnote-ref-143)
144. [The Act on Family Support and Foster Care System](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20111490887), s. 4 § 8. [↑](#footnote-ref-144)
145. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 141. [↑](#footnote-ref-145)
146. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 5. [↑](#footnote-ref-146)
147. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 212 § 2. [↑](#footnote-ref-147)
148. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 328 in conjunction with Article 369 § 1. [↑](#footnote-ref-148)
149. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 327. [↑](#footnote-ref-149)
150. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 326 § 2 and 3. [↑](#footnote-ref-150)
151. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 32. [↑](#footnote-ref-151)
152. [The Constitution of the Republic of Poland](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483), Article 47. [↑](#footnote-ref-152)
153. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 95. [↑](#footnote-ref-153)
154. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 96(1). [↑](#footnote-ref-154)
155. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 96(2). [↑](#footnote-ref-155)
156. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s 97. [↑](#footnote-ref-156)
157. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s.139. [↑](#footnote-ref-157)
158. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s 12a. [↑](#footnote-ref-158)
159. [Regulation of the President of the Republic of Poland of 18 September 2003 on Internal rules of procedure of voivodship administrative courts](http://www.nsa.gov.pl/index.php/pol/BIP/Regulacje-prawne/Regulaminy/Regulamin-wewnętrznego-urzędowania-wojewódzkich-sądów-administracyjnych) (*Rozporządzenie Prezydenta Rzeczypospolitej Polskiej z dnia 18 września 2003r. - Regulamin wewnętrznego urzędowania wojewódzkich sądów administracyjnych*), s. 21; [Resolution of the General Assembly of the Judges of the Supreme Administrative Court of 8 November 2010 on internal rules of procedure of the Supreme Administrative Court](http://www.nsa.gov.pl/index.php/pol/BIP/Regulacje-prawne/Regulaminy/Regulamin-wewnętrznego-urzędowania-Naczelnego-Sądu-Administracyjnego), (*Uchwała Zgromadzenia Ogólnego Sędziów Naczelnego Sądu Administracyjnego z dnia 8 listopada 2010 r. w sprawie regulaminu wewnętrznego urzędowania Naczelnego Sądu Administracyjnego*), s.21. [↑](#footnote-ref-159)
160. [The Constitution of the Republic of Poland](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483), Article 61. [↑](#footnote-ref-160)
161. The [Act of 6 September 2001 on access to public information](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20011121198) (*Ustawa z dnia 6 września 2001 roku o dostępie do informacji publiczne*j), s. 1. [↑](#footnote-ref-161)
162. [*Raport „Publiczna dostępność orzeczeń sądowych”*](http://www.for.org.pl/upload/File/raporty/RaportPublicznadostepnoscorzeczensadowychFINAL.pdf) (Report on ‘Public access to judicial decisions’). [↑](#footnote-ref-162)
163. The [Act of 29 August 1997 on the Protection of Personal Data](http://isip.sejm.gov.pl/DetailsServlet?id=WDU19971330883) (*Ustawa z dnia 29 sierpnia 1997 r. o ochronie danych osobowych*). [↑](#footnote-ref-163)
164. The [Act on the protection of personal data](http://isip.sejm.gov.pl/DetailsServlet?id=WDU19971330883), s. 1. [↑](#footnote-ref-164)
165. The [Act on the protection of personal data](http://isip.sejm.gov.pl/DetailsServlet?id=WDU19971330883), s. 6. [↑](#footnote-ref-165)
166. The [Act on the protection of personal data](http://isip.sejm.gov.pl/DetailsServlet?id=WDU19971330883), s. 36. [↑](#footnote-ref-166)
167. Information collected through stakeholder consultation (judges). [↑](#footnote-ref-167)
168. “[*Raport Publiczna dostępność orzeczeń sądowych”*](http://www.for.org.pl/upload/File/raporty/RaportPublicznadostepnoscorzeczensadowychFINAL.pdf) (Report on ‘Public access to judicial decisions’). [↑](#footnote-ref-168)
169. The [Act on the protection of personal data](http://isip.sejm.gov.pl/DetailsServlet?id=WDU19971330883), s. 27. [↑](#footnote-ref-169)
170. The [Act on the protection of personal data](http://isip.sejm.gov.pl/DetailsServlet?id=WDU19971330883), s. 27. [↑](#footnote-ref-170)
171. The [Act on the protection of personal data](http://isip.sejm.gov.pl/DetailsServlet?id=WDU19971330883), s. 32(1). [↑](#footnote-ref-171)
172. The [Act on the protection of personal data](http://isip.sejm.gov.pl/DetailsServlet?id=WDU19971330883), s. 32(2). [↑](#footnote-ref-172)
173. The [Act on the protection of personal data](http://isip.sejm.gov.pl/DetailsServlet?id=WDU19971330883), s. 49- 54a. [↑](#footnote-ref-173)
174. [Civil Code](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640160093), Article 23-24. [↑](#footnote-ref-174)
175. [The Law on Advocacy](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820160124), s. 6; [The Law on legal counsels](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20100100065&min=1), s. 3. [↑](#footnote-ref-175)
176. [The Act on Social Assistance](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20040640593), Article 119(2) point 5); [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 137. [↑](#footnote-ref-176)
177. [The Regulation of the Minister of Justice establishing the rules for the functioning of general courts](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20070380249), Article 92 § 1. [↑](#footnote-ref-177)
178. Information collected through stakeholder interview (the court). [↑](#footnote-ref-178)
179. The [Act on the protection of personal data](http://isip.sejm.gov.pl/DetailsServlet?id=WDU19971330883), Article 2 § 2. [↑](#footnote-ref-179)
180. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 32. [↑](#footnote-ref-180)
181. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 7. [↑](#footnote-ref-181)
182. The [Act of 17 June 2004 on complaints about a violation of a party’s right to have the case considered without undue delay](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20041791843) (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*). [↑](#footnote-ref-182)
183. [Regulation of the President of the Republic of Poland of 18 September 2003 on Internal rules of procedure of voivodship administrative courts](http://www.nsa.gov.pl/index.php/pol/BIP/Regulacje-prawne/Regulaminy/Regulamin-wewnętrznego-urzędowania-wojewódzkich-sądów-administracyjnych) (*Rozporządzenie Prezydenta Rzeczypospolitej Polskiej z dnia 18 września 2003r. - Regulamin wewnętrznego urzędowania wojewódzkich sądów administracyjnych*), s. 31. [↑](#footnote-ref-183)
184. Information collected through stakeholder consultation (judge). [↑](#footnote-ref-184)
185. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 106. [↑](#footnote-ref-185)
186. If it does, then rather indirectly, for example if a decision concerns immigration, or alimonies for public guarantee fund, but in any event only legal arguments will be raised before the court, and not the substance of the case. [↑](#footnote-ref-186)
187. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 27. [↑](#footnote-ref-187)
188. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 95. [↑](#footnote-ref-188)
189. Information collected through stakeholder consultation (judges, NGO, Children’s Ombudsman). [↑](#footnote-ref-189)
190. [[LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270)](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 6. See [Section 2.2](#Provision of information) of this study. [↑](#footnote-ref-190)
191. [The Act on Family Support and Foster Care System](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20111490887), Article 35 § 2. [↑](#footnote-ref-191)
192. [The Act on Domestic Violence](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20051801493), Article 12b § 3. [↑](#footnote-ref-192)
193. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 6. [↑](#footnote-ref-193)
194. [The Civil Procedural Code](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 579 § 1. [↑](#footnote-ref-194)
195. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 569(2). [↑](#footnote-ref-195)
196. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 730¹(1). [↑](#footnote-ref-196)
197. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 730(2). [↑](#footnote-ref-197)
198. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 586 § 4. [↑](#footnote-ref-198)
199. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 153 § 1. [↑](#footnote-ref-199)
200. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 153 § 2. [↑](#footnote-ref-200)
201. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Articles 2161 and 567. [↑](#footnote-ref-201)
202. Information collected through stakeholder interview (the court and NGO). [↑](#footnote-ref-202)
203. Information collected through stakeholder consultation (the court). [↑](#footnote-ref-203)
204. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 32. [↑](#footnote-ref-204)
205. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 27. [↑](#footnote-ref-205)
206. For more details on the roles and methods in which a child can act in administrative judicial proceedings see [Section 2.1](#The child as an actor in administrative judicial proceedings) of this report. [↑](#footnote-ref-206)
207. Information collected through stakeholder consultation (judges, NGOs, Children’s Ombudsman). [↑](#footnote-ref-207)
208. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 106. [↑](#footnote-ref-208)
209. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s 45, 104. [↑](#footnote-ref-209)
210. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 106. [↑](#footnote-ref-210)
211. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 243(1). [↑](#footnote-ref-211)
212. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 244(1). For more details see [Sections 2.6](#Right to legal counsel, legal assistance and representation) and [2.9](#Legal Costs) of this study. [↑](#footnote-ref-212)
213. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s 213. [↑](#footnote-ref-213)
214. See Section [2.9](#_Toc346714798). [↑](#footnote-ref-214)
215. [The Act on Family Support and Foster Care System](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20111490887), s. 4 § 8. [↑](#footnote-ref-215)
216. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 32. [↑](#footnote-ref-216)
217. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 27. [↑](#footnote-ref-217)
218. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 30. [↑](#footnote-ref-218)
219. The [Family and Guardianship Code](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640090059) (*Kodeks rodzinny i opiekuńczy*), Articles 145-185. [↑](#footnote-ref-219)
220. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 35. [↑](#footnote-ref-220)
221. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 175. [↑](#footnote-ref-221)
222. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 243(1). [↑](#footnote-ref-222)
223. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 243(2). [↑](#footnote-ref-223)
224. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 244(1). [↑](#footnote-ref-224)
225. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 244(3). [↑](#footnote-ref-225)
226. [The Civil Code](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640160093), Article 11. [↑](#footnote-ref-226)
227. [The Civil Code](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640160093), Article 14. [↑](#footnote-ref-227)
228. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 245. [↑](#footnote-ref-228)
229. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 246. [↑](#footnote-ref-229)
230. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 249. [↑](#footnote-ref-230)
231. [The Family and Guardianship Code](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640090059), Article 95 § 3 and 4. [↑](#footnote-ref-231)
232. [The Family and Guardianship Code](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640090059), Article 98 § 2. [↑](#footnote-ref-232)
233. [The Family and Guardianship Code](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640090059), Article 99. [↑](#footnote-ref-233)
234. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 117 § 1. [↑](#footnote-ref-234)
235. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 117 § 2. [↑](#footnote-ref-235)
236. [The law on legal costs in civil proceedings](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20051671398), Article 109 § 2. [↑](#footnote-ref-236)
237. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 117§ 5. [↑](#footnote-ref-237)
238. See [Section 1](#Overview of Member State’s approach to children in administrative judicial proceedings and specialised services dealing with such children) of this report for more details, including the criminal part of the study. [↑](#footnote-ref-238)
239. [Juvenile Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19820350228), s. 40(1); [Regulation of the Minister of Interior and Administration on detailed principles of stay of minors in the police emergency centres for children of 21 January 2002](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20020100104) (*Rozporządzenie Ministra Spraw Wewnętrznych i Administracji w sprawie szczegółowych zasad pobytu nieletnich w policyjnych izbach dziecka*). [↑](#footnote-ref-239)
240. Note that a new draft Aliens Act is currently discussed in the Parliament, which envisages, among others, prohibition of detention of all minor under 13 years old. [↑](#footnote-ref-240)
241. [The Act on Aliens](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281175) of 13 June 2003 (*Ustawa o cudzoziemcach*) and [the Act on granting protection to aliens within the territory of the Republic of Poland](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281176) of 13 June 2003 (*Ustawa o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej*), further referred to as the *Aliens Protection Act*. [↑](#footnote-ref-241)
242. [the Act on Aliens](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281175), s. 102. [↑](#footnote-ref-242)
243. J. Bialas (Helsinki Foundation for Human Rights). [*Detention of irregular migrants in Poland*](http://fra.europa.eu/fraWebsite/frc2011/docs/detention-presentation-HR.pdf), 2011. [↑](#footnote-ref-243)
244. [the website of the Office for Foreigners](http://www.udsc.gov.pl/PROVISION,OF,CARE,FOR,UNACCOMPANIED,MINORS,1756.html). [↑](#footnote-ref-244)
245. [the Aliens Protection Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281176), s. 88(2) and ss. 61(1) and (2). [↑](#footnote-ref-245)
246. [the Act on Aliens](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281175), s. 115. [↑](#footnote-ref-246)
247. [Act on Aliens](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281175), s 101a(1). [↑](#footnote-ref-247)
248. [Global Detention Project, Poland Detention Profile](http://www.globaldetentionproject.org/fileadmin/docs/Poland_Detention_Profile_2013.pdf); [the website of the Office for Foreigners](http://www.udsc.gov.pl/PROVISION,OF,CARE,FOR,UNACCOMPANIED,MINORS,1756.html). [↑](#footnote-ref-248)
249. [website of the Office for Foreigners](http://www.udsc.gov.pl/PROVISION,OF,CARE,FOR,UNACCOMPANIED,MINORS,1756.html). [↑](#footnote-ref-249)
250. [Act on Aliens](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281175), s. 115(2). [↑](#footnote-ref-250)
251. J. Bialas (Helsinki Foundation for Human Rights), [*Detention of irregular migrants in Poland*](http://fra.europa.eu/fraWebsite/frc2011/docs/detention-presentation-HR.pdf), 2011; [Global Detention Project, Poland Detention Profile](http://www.globaldetentionproject.org/fileadmin/docs/Poland_Detention_Profile_2013.pdf). [↑](#footnote-ref-251)
252. [Act on Aliens](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281175), s. 102. [↑](#footnote-ref-252)
253. [Aliens Protection Act](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281176), s. 87. [↑](#footnote-ref-253)
254. Halina Niec Legal Aid Center (HNLAC) (*Centrum Pomocy Prawnej im. Haliny Nieć*), [*Detention of migrant children in Poland. Report on implementation of international and domestic standards concerning detention of migrant children*](http://www.pomocprawna.org/images/stories/pomoc_uchodcom/report_detention_HNLAC.pdf), 2011 [↑](#footnote-ref-254)
255. [Act on Aliens](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281175), article 111(1) [↑](#footnote-ref-255)
256. [Act on Aliens](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281175), s. 105(2) [↑](#footnote-ref-256)
257. [Act on Aliens](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281175), s. 106. [↑](#footnote-ref-257)
258. [Global Detention Project, Poland Detention Profile](http://www.globaldetentionproject.org/fileadmin/docs/Poland_Detention_Profile_2013.pdf). [↑](#footnote-ref-258)
259. [Global Detention Project, Poland Detention Profile](http://www.globaldetentionproject.org/fileadmin/docs/Poland_Detention_Profile_2013.pdf); [the Act on Aliens](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281175), ss. 117(1) and 108. [↑](#footnote-ref-259)
260. J. Bialas (Helsinki Foundation for Human Rights), [*Detention of irregular migrants in Poland*](http://fra.europa.eu/fraWebsite/frc2011/docs/detention-presentation-HR.pdf), 2011. [↑](#footnote-ref-260)
261. [Act on Aliens](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20031281175), s. 106. [↑](#footnote-ref-261)
262. [Global Detention Project, Poland Detention Profile](http://www.globaldetentionproject.org/fileadmin/docs/Poland_Detention_Profile_2013.pdf). [↑](#footnote-ref-262)
263. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 32. [↑](#footnote-ref-263)
264. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 27. [↑](#footnote-ref-264)
265. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 173, 174. [↑](#footnote-ref-265)
266. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 174. [↑](#footnote-ref-266)
267. [The Family and Guardianship Code](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640090059) (*Kodeks rodzinny i opiekuńczy*), Article 95 § 3 and 4. [↑](#footnote-ref-267)
268. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 287. [↑](#footnote-ref-268)
269. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 154. [↑](#footnote-ref-269)
270. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 154. [↑](#footnote-ref-270)
271. [The Civil Code](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640160093), Articles 118, 120, 125. [↑](#footnote-ref-271)
272. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 398 § 2. [↑](#footnote-ref-272)
273. [The Civil Procedural Code](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 398. [↑](#footnote-ref-273)
274. [The Civil Procedural Code](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 60. [↑](#footnote-ref-274)
275. [The Civil Code](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640160093), Article 417. [↑](#footnote-ref-275)
276. [The Civil Code](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640160093), Article 363. [↑](#footnote-ref-276)
277. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 32. [↑](#footnote-ref-277)
278. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 211. [↑](#footnote-ref-278)
279. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 239. [↑](#footnote-ref-279)
280. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 199. [↑](#footnote-ref-280)
281. See [Section 2.6](#Right to legal counsel, legal assistance and representation). [↑](#footnote-ref-281)
282. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 245. [↑](#footnote-ref-282)
283. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 246. [↑](#footnote-ref-283)
284. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 249. [↑](#footnote-ref-284)
285. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 248. [↑](#footnote-ref-285)
286. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 200. [↑](#footnote-ref-286)
287. [The law on legal costs in civil proceedings](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20051671398), s. 102. [↑](#footnote-ref-287)
288. [The law on legal costs in civil proceedings](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20051671398), s. 108. [↑](#footnote-ref-288)
289. [The law on legal costs in civil proceedings](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20051671398), s. 95. [↑](#footnote-ref-289)
290. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 32. [↑](#footnote-ref-290)
291. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 286. [↑](#footnote-ref-291)
292. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 154(1). [↑](#footnote-ref-292)
293. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 154. [↑](#footnote-ref-293)
294. [LoPAC](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531270), s. 6. [↑](#footnote-ref-294)
295. See [Section 2.2](#Provision of information). [↑](#footnote-ref-295)
296. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 578 §1. [↑](#footnote-ref-296)
297. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 579. [↑](#footnote-ref-297)
298. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 588. [↑](#footnote-ref-298)
299. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 333. [↑](#footnote-ref-299)
300. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 5986. [↑](#footnote-ref-300)
301. [The Code of Civil Procedure](http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296), Article 598. [↑](#footnote-ref-301)