



**COUNTRY  
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# The Legal 500 Country Comparative Guides

## Poland

# LITIGATION

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in Poland.

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## POLAND LITIGATION



### 1. What are the main methods of resolving disputes in your jurisdiction?

In Poland disputes can generally be resolved through court or out-of-court proceedings, with court proceedings remaining predominant. The most popular out-of-court dispute resolution methods are mediation and arbitration. In both in-court and out-of-court proceedings, disputes may be resolved amicably, by reaching settlement. The number of cases resolved in out-of-court proceedings is systematically growing as this method offers parties more effective control over the proceedings, is usually more time-efficient and in some cases proves to be more cost-effective.

### 2. What are the main procedural rules governing litigation in your jurisdiction?

Fundamental procedural principles are provided for in the Constitution, while their particularization is made in the provisions of the Code of Civil Procedure. Their catalogue is open, yet the most important principles are the following:

1. openness – an examination of the case shall generally be held in public;
2. adversarial – the onus probandi lies with the parties, and the role of the court is limited to the supervision of the proceedings and issuing a judgment;
3. equality of the parties – each party is guaranteed the right to be heard and to have equal procedural measures;
4. discretionary evaluation of evidence – the court assesses the credibility and relevance of evidence according to its own judgment.

### 3. What is the structure and organisation of local courts dealing with claims in your jurisdiction? What is the final court of appeal?

The Polish common court system has three levels: (i) district courts, (ii) regional courts and (iii) the courts of appeal. These courts examine civil, commercial, intellectual, and industrial property, family and guardianship, criminal, labour, and social security law cases. The principle of two-instance applies.

1. District courts are the lowest instance and handle most cases, as a court of first instance.
2. Regional courts are superior to the district courts and their jurisdiction covers areas of several district courts. As a rule, they examine appeals against decisions of district courts but may also act as a court of first instance in certain cases provided for by law (e.g., where the value of the subject of a dispute exceeds PLN 100,000/approx. EUR 22,500).
3. The courts of appeal constitute an instance of appeal over decisions of regional courts, but under specific provisions, they act as first-instance courts, e.g., on the recognition and enforcement of an arbitral award or a settlement concluded in arbitration.

The final court of appeal in the Polish judiciary system is the Supreme Court. It oversees the judgments of common courts by reviewing extraordinary remedies and ensuring consistency in the interpretation of law and judicial practice by resolving issues of legal uncertainty.

### 4. How long does it typically take from commencing proceedings to get to trial in your jurisdiction?

The waiting time for the first hearing of a case before a civil court can range from a few months to even two years. The length of the proceedings depends on the complexity of the case and the location of the court (the waiting time for a case to be heard is longer in larger cities).

As a rule, once a statement of claim has been successfully filed and initially verified by a court on formal ground, a court orders its copy to be served to

the defendant, obliging them to file a statement of defence. This may take up to several months.

An important factor influencing the length of the court proceedings, including the waiting time for the first hearing, is the systematic increase in the number of cases brought before courts as well as staff shortages.

### **5. Are hearings held in public and are documents filed at court available to the public in your jurisdiction? Are there any exceptions?**

In civil and commercial proceedings, cases are generally held in public. However, in certain situations, the court may exclude or limit the public hearing. The exclusion of publicity is obligatory if the public hearing of a case endangers public order, morality or if it could disclose classified information protected by law. The court may also exclude public hearing upon the request of a party if circumstances constituting a trade secret could be disclosed.

The parties to the proceedings shall have unlimited access to the case files. However, in competition and consumer protection proceedings, the court, upon the request of a party or ex officio, may limit the right of other parties to review the evidence material in the case files, if its exposure could result in the disclosure of a trade secret or other secrets protected under specific regulations.

Other entities, as a rule, do not have access to the case files, but they may obtain it in special cases by justifying the need to review them.

Judgments are announced publicly.

### **6. What, if any, are the relevant limitation periods in your jurisdiction?**

Only property claims are subject to the statute of limitations. As a rule, claims related to business activities are subject to a three-year statute of limitations, while other claims (in particular consumer's claims against entrepreneurs) are subject to a six-year statute of limitations. Special provisions stipulate certain exceptions, e.g., a two-year limitation period for claims related to sales within the scope of seller's business.

The limitation period starts to run on the day the claim becomes due and ends at the end of the calendar year in which the period expires. As an exception, if the limitation period is less than two years, it expires on the day the limitation period prescribed by law has ended.

Limitation periods shall not be shortened or extended but may be interrupted or suspended in certain situations defined by law. Interruption of the limitation period means that the period is counted anew from the moment of interruption (e.g., when a claim is acknowledged or when an action is taken in court aimed at satisfying the claim). On the other hand, suspension of the limitation period means that the period does not run for a specific duration (e.g., in cases where the claimant is unable to pursue the claim in court due to force majeure).

### **7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?**

Regulations do not impose any specific requirements on a plaintiff before bringing an action. However, the formal requirement for a statement of claim is to provide the court with information on attempts at mediation or other out-of-court dispute resolution and, if such attempts have not been made, to explain the reasons for not doing so. The failure to use an out-of-court dispute resolution method does not impact the possibility to proceed with the case.

### **8. How are proceedings commenced in your jurisdiction? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?**

In general, civil proceedings are initiated by a given party (claimant or applicant). In certain cases, proceedings may be initiated by other entities (e.g. public prosecutor, Polish Commissioner for Human Rights, NGO) or ex officio.

As a rule, a pleading initiating proceedings is served on other parties or participants by a court.

If serving a first pleading on a defendant who is a natural person has been unsuccessful, a court may impose an obligation on a plaintiff to serve a copy of the pleading through a bailiff.

If, due to the plaintiff's failure to provide an address of the defendant within the time limit set by the court, the case cannot progress, the court may also suspend proceedings.

If a party, whose place of residence is unknown, is to be served with a statement of claim or any other writ of summons, service may also be effected by a conservator

appointed by the court at the request of a concerned party.

With regard to entities subject to entry in the Register of Entrepreneurs kept by the National Court Register (i.a. partnerships and companies), if serving a first pleading to an address disclosed in that register is unsuccessful due to non-disclosure of a change of the address for service, a pleading shall be left in case files with effect of service.

### **9. How does the court determine whether it has jurisdiction over a claim in your jurisdiction?**

The court verifies its jurisdiction *ex officio* based on the materials in the case files and provisions of legal acts (national law, EU law, international agreements) or prorogation agreements. Lack of domestic jurisdiction should be considered in each stage of the proceedings and would result in rejecting a statement of claim. However, if domestic jurisdiction existed at the time of the commencement of the proceedings, it continues to apply even if the grounds for it cease to exist.

Furthermore, if a case is brought before a common court concerning a dispute covered by an arbitration clause, the court will reject a statement of claim upon a defendant's objection raised before disputing the merits of the case.

According to the general rule, cases heard in the contentious proceedings fall under domestic jurisdiction if the defendant has its domicile or habitual residence or seat in Poland. Under the special rules, a Polish court also has jurisdiction when a case concerns, i.e.:

1. a contractual obligation that has been performed or was to be performed in Poland;
2. a non-contractual obligation that has arisen in Poland;
3. a claim for property rights if a defendant has property in Poland.

In certain cases (e.g., rights in rem over real property in Poland) Polish courts have exclusive jurisdiction.

### **10. How does the court determine which law governs the claims in your jurisdiction?**

As a rule, if parties have made a choice of applicable law, this choice is binding on the court. In case of lack of such a choice, the court determines the applicable law based on the conflict rules of private international law – following the hierarchy of legal acts resulting from the

Constitution. Thus, the EU law and ratified international agreements will take precedence over norms arising from Polish laws.

The court determines applicable law based on the EU law, i.e., the European Parliament and Council Regulations Rome I and II, regulating a jurisdiction of law for contractual and non-contractual relations. Generally, if such a dispute is brought before a Polish common court, the court must determine and apply foreign law *ex officio*, according to applicable regulations. For this purpose, the court may ask the Minister of Justice for the text of this law and an explanation of foreign judicial practice or may consult experts.

### **11. In what circumstances, if any, can claims be disposed of without a full trial in your jurisdiction?**

As a rule, the plaintiff's claims are heard after an evidentiary hearing and a trial. There are certain exceptions to this rule:

1. When the case is examined in separate proceedings provided for by the Code of Civil Procedure (order for payment proceedings, writ for payment proceedings or electronic writ for payment proceedings). In such cases, the court may issue an order for payment based on a statement of claim and documents submitted with it. In the event of such an order being challenged by a defendant, the court must conduct a full evidentiary hearing and trial.
2. If the content of a statement of claim and attachments thereto, as well as the circumstances of a case, show that the claim is manifestly unfounded. In such a case, the court may dismiss the statement of claim in a closed session without serving a defendant with it and/or considering applications contained in it.
3. When a defendant has not filed a statement of defence within the prescribed time limit, has been unable to appear at the hearing, or despite appearing, has failed to participate in the hearing, the court may issue a default judgment.

### **12. What, if any, are the main types of interim remedies available in your jurisdiction?**

In any civil case subject to a judicial review, an entitled

party may request an injunction. Conditions for granting an injunction are: (i) substantiation of a claim and (ii) legal interest in granting the injunction (i.e. a situation when an absence of an injunction would prevent or significantly hinder the enforcement of a judgment). An injunction may be granted either before the commencement of proceedings or in their course.

An entitled party may request an injunction for both pecuniary and non-pecuniary claims. In the case of pecuniary claims, there is a closed catalogue of injunction methods, including i.a.: (i) seizure of movable property, remuneration for work, claims from a bank account or other claim or property right; (ii) setting a compulsory mortgage. As for non-pecuniary claims, the court shall grant security as it deems appropriate to the circumstances.

### **13. After a claim has been commenced, what written documents must (or can) the parties submit in your jurisdiction? What is the usual timetable?**

There is no catalogue of written documents any party must submit in the course of a trial. To support their position, parties can submit any documents and other evidences they deem useful.

After filing a statement of claim, a court summons a defendant to file a statement of defence within a specified period, not shorter than two weeks. In complex cases, a court may order an exchange of pleadings by parties, determining the order of their submission, deadlines and circumstances to be clarified.

In Polish civil procedure the rule of evidence preclusion applies, based on which the court may oblige a party to invoke all statements and evidence in a given pleading, within a certain deadline and, under the sanction of losing the right to invoke them later.

This rule applies in particular if a court schedules a preliminary hearing. In such a case, a party can make statements and bring evidence until the approval of a hearing schedule. After its approval, such statements and evidence may be disregarded by the court.

Said rule is even stricter in commercial proceedings, in which a plaintiff is required to raise all statements and evidence in a statement of claim, while a defendant – in a statement of defence. Statements and evidence invoked at a later stage are disregarded, unless a party substantiates that their earlier invocation was not possible or that the need to invoke them arose later and then proceeds to invoke them within a two-week

deadline.

### **14. What, if any, are the rules for disclosure of documents in your jurisdiction? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?**

In principle, the burden of proof lies on a party that derives legal consequences from them. Consequently, a party decides which documents it wishes to disclose during proceedings.

As an exception, the court may order a party or any other person to present a document in his/her possession, constituting evidence of a fact significant for the resolution of a case. The holder of a document may refuse to provide that document in circumstances provided for by law, i.a. if the document includes classified information or its disclosure would expose them or a person close to them to criminal liability or financial damage.

### **15. How is witness evidence dealt with in your jurisdiction (and in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?**

Witness testimony may be given either orally during a hearing or provided in writing, depending on a court's decision. When issuing a decision to admit witness evidence, a court should specify a mode of testimony (oral or written) and facts to be proven by this evidence.

When a witness testifies orally at a hearing, he/she should first answer the court's questions and only then parties are allowed to ask questions, within the limits of evidence thesis.

Witness evidence is significantly limited in commercial proceedings, as it has a subsidiary role to documentary evidence. This means that it may be admitted by the court only if, after exhausting other means of evidence or in the absence thereof, there remain unexplained facts which are significant to the resolution of a case.

Witnesses may only be heard during court proceedings. Depositions are not allowed.

### **16. Is expert evidence permitted in your**

**jurisdiction? If so, how is it dealt with (and in particular, are experts appointed by the court or the parties, and what duties do they owe)?**

Expert evidence is permitted in Polish civil procedure. A prerequisite for admitting such evidence is a need to clarify issues requiring special knowledge. A court may admit expert evidence at the request of a party or ex officio. When submitting a motion for expert evidence, a party may propose a specific person or institute with an expertise in a field covered by its motion. However, a court is not bound by it.

An opinion may be presented both orally and in writing, which is left to the court's discretion. In certain proceedings, particularly commercial ones, expert evidence is often important to the outcome of a case.

Parties are entitled to raise objections to experts' opinions and ask additional questions. If an opinion does not sufficiently clarify issues being the subject of that opinion, a court may request supplementary opinions or its clarification orally or in writing or ask another expert for a new opinion.

**17. Can final and interim decisions be appealed in your jurisdiction? If so, to which court(s) and within what timescale?**

The civil procedure establishes remedies divided into ordinary (against non-final judgments and decisions) and extraordinary (against final judgments and decisions).

Ordinary remedies are a complaint and an appeal.

A complaint may be lodged against: (i) decisions of a court of first instance (other than a judgment) ending the proceedings and (ii) other decisions specified in the Code of Civil Procedure. Depending on the decision appealed, a complaint may be decided by a higher-level court or the same court composed of different judges. The deadline for lodging a complaint is one week from the date of service of a decision along with a written justification.

An appeal may be lodged against a judgment or certain other decisions of a court. It is decided by the higher-level court. The deadline for an appeal is two weeks from the date of service of the judgment with a written justification.

The primary extraordinary remedy is a special appeal (cassation appeal) to the Supreme Court against the final and non-appealable judgment of the court of

second instance or a decision rejecting a statement of claim or discontinuing proceedings. This special appeal may be filed with the Supreme Court in certain cases, e.g. in property rights cases where the amount in appeal is not less than PLN 50,000 and its examination depends on fulfilling additional criteria.

**18. What are the rules governing enforcement of foreign judgments in your jurisdiction?**

The issue of enforceability of foreign courts' judgments is complex. The answer differs depending on whether the judgment originates from an EU state (in which case the rules of the EU law apply and, in principle, such judgments are easily enforceable in Poland) or from a state outside the EU (in which case reference should be made to bilateral or multilateral international agreements). If a case does not fall within the scope of EU regulations and there is no relevant bilateral or multilateral agreement, Polish regulations apply.

If a judgment is issued by a foreign court from a non-EU member state and in the absence of a bilateral or multilateral international agreement providing for specific rules of its acknowledgment, its enforceability in Poland requires prior declaration by the Polish court regarding its enforceability.

**19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side in your jurisdiction?**

In principle, at the request of an opposite party, the party losing the trial is obliged to reimburse an opposing party for litigation costs necessary for the pursuit of rights or defence. Such obligation exists even if a losing party was exempted from paying court costs during the proceedings.

Depending on the outcome of a case, a court may determine principles of bearing court costs by parties in a different manner, in particular by their respective reduction or dividing them between the parties. A court may even impose all costs on the winning party if a defendant has given no reason to bring an action and admitted a claim in the first procedural action. In particularly justified cases, a court may also order a losing party to pay only part of costs or not charge them at all (based on principles of equity).

Parties are required to reimburse only the necessary

litigation costs, including legal representation costs, court fees, witness and expert witness costs, etc. In practice, due to certain procedural rules, the costs of professional attorneys are recoverable only to a certain extent.

## 20. What, if any, are the collective redress (e.g. class action) mechanisms in your jurisdiction?

Polish law allows the possibility of pursuing claims in class action proceedings. However, this option applies to certain types of claims only, i.e.:

1. liability for damage caused by a hazardous product;
2. torts;
3. liability for non-performance or improper performance of a contractual obligation;
4. unjust enrichment;
5. consumer protection claims.

Initiating a class action is possible when at least ten individuals are pursuing claims of one type and based on the same factual grounds. In a case of monetary claims, class actions are only allowed if the amount of each group member's claim (or sub-group, which may be created for the purpose of unification of claims) is uniform, i.e. claim of the same amount is pursued by each group (or sub-group) member.

## 21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings in your jurisdiction?

The Code of Civil Procedure provides for situations in which a third party may join one of the parties to the proceedings (secondary intervention), as well as situations in which: (i) a third party brings an action against both parties (primary intervention), (ii) in the course of the trial, a third party joins the proceedings, replacing the existing plaintiff or defendant, (iii) a public prosecutor, NGO, or other entity with similar powers joins proceedings on specific terms.

Secondary intervention means that a third party may, at any stage of the case until closure of the hearing at second instance, join one of the parties to proceedings, if it has a legal interest in the case being decided in favour of the party concerned. Each party may object to the secondary intervention; if the court finds that the third party has no legal interest, it will not be allowed to participate in proceedings.

In general, two or more proceedings may be combined for joint examination and/or determination. Combination is possible if both cases are pending before the same court and:

1. the cases relate to each other (e.g. the combination is justified by the need to perform the same evidences or the determination of one of them affects the other); or
2. could have been covered by a single lawsuit (in particular involve claims against the same defendant).

There are specific circumstances, in which a court is obliged to combine cases for joint consideration.

## 22. Are third parties allowed to fund litigation in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Litigation funding is not regulated by Polish law, but it is permissible.

Such a solution is currently rare (not as popular as in other countries), but we are presently seeing an increase in its significance. There are several specialised investment funds on the Polish market which provide litigation financing services.

A third party who funds proceedings is not liable for costs incurred by a party to proceedings unless it has voluntarily assumed obligations in this respect.

## 23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction?

The COVID-19 pandemic significantly affected court proceedings in Poland. Particularly in its first phase, the pandemic led to significant procedural delays due to the fact that for a certain period no hearings were held, and there were no effective legal solutions allowing for remote conduct of proceedings.

In light of this situation, the legislator introduced the possibility of remote court hearings, which are widely scheduled now. Moreover, other solutions positively influencing the speed of proceedings have also been introduced (e.g. the catalogue of situations in which courts may decide cases in closed session has been expanded). Courts have also started to widely use some

already functioning solutions aimed at speeding up the proceedings (e.g. conducting witness evidences in writing instead of at a hearing).

#### **24. What is the main advantage and the main disadvantage of litigating international commercial disputes in your jurisdiction?**

The main advantage of litigating international commercial disputes in Poland, compared to other EU countries, is the relatively low cost of proceedings. Nonetheless, the interests of parties are adequately protected by law, court judgments are appealable, and judgments are enforceable by law in other EU countries.

The disadvantages of litigating international commercial disputes before Polish common courts are the total length of the proceedings until final verdict and the need to conduct the entirety of the proceedings in Polish.

Generally, these disadvantages do not apply to alternative dispute resolution methods, which are increasingly popular in Poland. As a rule, arbitration proceedings are shorter than the proceedings before common courts and can be conducted in English.

#### **25. What is the most likely growth area for commercial disputes in your jurisdiction for the next 5 years?**

In recent years, as a result of the COVID-19 pandemic and the war in Ukraine, the prices of construction materials have increased significantly and supply chains have been disrupted. As a result, many construction

projects have not been performed on time (or even could not have been performed at all), and continuation of such works became unprofitable for the contractors and deteriorated their financial standings, which has led to many disputes.

In the next 5 years, the number of such disputes will likely increase. In particular, we expect more disputes concerning: (i) valorisation of remuneration initiated by contractors and (ii) payment of liquidated damages for delays in construction works initiated by investors.

#### **26. What, if any, will be the impact of technology on commercial litigation in your jurisdiction in the next 5 years?**

Technology has already impacted commercial litigation in Poland, and in the next 5 years, this trend is likely to continue.

During the COVID-19 pandemic, courts started holding hearings remotely and this change seems to have become permanent.

It is also likely that within 5 years, parties to civil proceedings will be corresponding with the court and file pleadings electronically, through a web portal. Currently, there exist some court web portals, although they can only be used for serving court pleadings to parties and informing them on the conduct of the proceedings and actions taken.

Finally, the rapid development of artificial intelligence may significantly contribute to the improvement of litigation lawyers' work, especially in the area of mass litigation.



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