

## ANNEX 43

- Country Report POLAND

**CONTRACT**  
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**Study on the Transparency of Costs of Civil Judicial  
Proceedings in the European Union**

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**- COUNTRY REPORT -**

**- POLAND -**

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ANNEXE 1 Questionnaire completed for the implementation of this study

## COUNTRY REPORT

*Preliminary notes*

## Introduction

Access to the court constitutes one of the core democratic standards confirmed many times by judgments of the European Court of Human Rights. Court fees, if they result in access to court becoming dependent on the financial standing of the claimant, may become an element that limits this right. In addition, insufficient information about the costs to be paid by a claimant in the course of proceedings constitutes a similar limitation of this core right.

There is no uniform European approach towards court fees, though there is a tendency that the system should be transparent and uniform, and most of all that it does not constitute hindrance to access to the justice system.

The system of court fees, however, remains closely linked to the organisation of the justice system in a given state. In practice, it seems almost impossible to establish principles that could be applied in each member state, and which would result in the unification of principles governing the determination of fees in civil court proceedings.

## Executive Summary

### 1 Summary of the mains sources of costs

Pursuant to the respective Polish regulations, the identification of all costs of civil judicial proceedings requires analysing a wide range of legal acts. However, the main sources of overall costs of civil judicial proceedings are as follows:

- COURT FEES 15%
- BAILIFF FEES 5%-7%]
- LAWYER FEES 70%

### 2 Level of transparency in the sources of costs

In general, the information concerning the amount of court fees in civil proceedings, although readily available, is insufficient. Nevertheless, the sources of court costs are not subject to the court's discretionary decision, but the rules of determination are stipulated in numerous legal acts (determined in point 1) where the most important is the Act on Court Fees. As a result, the sources of court costs may be fully identified.



### **3 Determination of the amounts of costs**

Please note that, it is difficult to determine an average amount of the average court cost of a proceeding, because it depends on the type of a proceeding and on a particular case. However, the costs of filing a claim before the courts amount between EUR 8 to EUR 26,000, which only a part (about 20 per cent) of an overall cost of a proceeding, while an average monthly salary in Poland amounts to approximately EUR 1,300.

### **4 Level of transparency in determining the actual costs**

First of all it should be emphasised that the amount of court costs is not subject to the court's discretionary decision, but the rules of determination are stipulated in numerous legal acts:

- Act dated 28 July 2005 on court fees (Journal of Laws 2005 No. 167, item 1398, with amendments),

Act dated 29 August 1997 on court bailiffs and enforcement (unified version: Journal of Laws 2006 No. 167, item 1191, with amendments),

Act dated 25 November 2004 on sworn translators (Journal of Laws 2004 No. 273 item 2702, with amendments),

Act dated 5 July 2002 on the provision of legal services by foreign lawyers (Journal of Laws 2002 No. 126 item 1069, with amendments),

Decree dated 26 October 1950 on amounts due to witness, experts and parties (Journal of Laws 1950 No. 49 item 445, with amendments),

Regulation dated 28 August 2002 on fees for legal counsel services (Journal of Laws 2002 No. 163 item 1349, with amendments),

Regulation dated 28 September 2002 on fees for advocate services (Journal of Laws 2002 No. 163 item 1348, with amendments),

Regulation dated 28 June 2004 on maximum rates of notary (Journal of Laws 2004 No. 148 item 1564, with amendments),

Regulation dated 30 November 2005 on remuneration for mediators (Journal of Laws 2005 No. 239 item 2018),

Regulation dated 10 March 2006 on fees for bailiff services (Journal of Laws 2006 No. 42 item 289),

Regulation dated 4 July 1990 on the amount of compensation due to witnesses and parties (Journal of Laws 1990 No. 48 item 284, with amendments),

Regulation dated 18 December 1975 on the costs of taking the evidence from expert opinions (Journal of Laws 1975 No. 46 item 254, with amendments),

Regulation dated 31 October 1983 on remuneration of an expert (translator) in the area of sign language (Journal of Laws 1983 No. 64 item 292), (determined in point 1)

As a general rule, a participant in the given legal proceedings is obliged to pay the amount determined in regulations before taking an action. A failure to pay, for example an initial fee, might lead to the return of a plea after an ineffective deadline for supplementation. Please note that the Act on Court Fees, except for provisional fees, provides for the following sort of fees:

- permanent fee,
- proportional fee,
- provisional fee,
- basic fee,
- final fee.

The amount of an individual fee depends on social significance, the extent of complication, the subject of the case (though not on the value of the claim in cases not related to property law). The basic fee is discharged where no proportional, provisional, permanent fee is charged.

However, it should be noted that the proportional court fees (which depend on the value of the claim) are supposed to be calculated by the claimant. If the claimant is a business entity, or if he is represented by legal counsel, advocate or patent agent and the proportional court fee has been calculated incorrectly, the claim should be returned by the court. Significantly, the final determination of court costs in a case is settled by the court in the final adjudication.

Additionally, with reference to bailiff costs it should be noted that there are no generally available sources of information on those costs. In fact, given the ambiguity of regulations concerning bailiff costs, the only effective way of obtaining information is to ask the bailiff.

Information concerning the amount of court fees can be obtained in the Bulletin of Public Information, on the civilian court's website and on the phone.

## **5 Proportion of each identified cost on the overall cost of civil judicial proceedings**

On the basis of the Polish respective regulations, the overall cost of civil judicial proceedings depends on the type of given proceedings. However, please find an average proportion of costs:

- COURT FEES 15%
- BAILIFF FEES 5%-7%
- LAWYER FEES 70%
- EXPERT FEES 3%
- WITNESS COMPENSATION 3%-5%
- TRANSLATION / INTERRETATION 5%

## **6 Proportion of each identified cost on the overall volume of activity**

- COURT FEES 20%
- BAILIFF FEES 5%-10%
- LAWYER FEES 70%
- EXPERT FEES 5%
- WITNESS COMPENSATION 3%
- TRANSLATION / INTERRETATION 6%-8%

## **7 Proportion of each identified cost on the value of a disputed claim**

COURT FEES 20%-25%

BAILIFF FEES 5%-7%

LAWYER FEES 70%-80%

EXPERT FEES 7%-10%

WITNESS COMPENSATION 3%

TRANSLATION / INTERPRETATION 10%

## **8 Specificities in relation to EU cross-border disputes**

Resolving cross-border disputes includes not only costs typical for national disputes, but also those directly connected with the cross-border nature of procedure. The proceedings mentioned above demand the appointment of a defence counsel in the member state where legal action takes place, and covering additional costs connected with law advice, consultation, translations and travelling costs.

## **9 Recommendations for EU action/national action**

In order to make access to justice more available to society, it is essential to introduce new solutions to increase the level of transparency of court fees information.

Given the insufficient sources of information about court rates, it is recommended to create a court fees informational centre, which would provide up to date and complete information. We are of the opinion that passing less expensive and less formalised procedures and organising solutions would lead to unification in all member states.

## **10 Relationship between the costs of justice, the transparency in the costs of justice and access to justice**

The regulations on court fees, the transparency and lucidity of these regulations have a significant influence on access to court. Strictly regulated principles of discharging and returning costs can facilitate asserting a claim in court, by moving justice closer to society and improving the effectiveness of court proceedings.

## **11 Conclusions and recommendations**

Recent modifications to the legal acts concerning the costs of judicial proceedings have simplified the procedure for their calculation and determination. Nonetheless, the various sorts of fees to be paid, as well as the diverse methods of calculation, still make access to justice not sufficiently open. Furthermore, new obligations imposed on claimants, especially on those represented by professional representatives and on undertakings, while calculating and paying the court fees, are thought to be too severe. The procedures for calculating and paying court fees should be simplified and clarified ultimately, and more information should be provided to the public, in order to make justice more accessible to all citizens.

## Detailed Draft Report

### 1 General Questions

#### 1.1 Level of information on the transparency of fees and costs of justice

It is not easy to find opinions about the transparency of fees and costs of justice in generally available sources. There are no official questionnaires or public opinion polls. Generally, the level of reflection regarding the significance of the above issue for the social perception of the judiciary should be assessed as insufficient.

#### 1.2 Transparency perception

People asked for opinions concerning this issue for the purposes of this report focused generally on two aspects of this issue, depending on the respondent group:

- people with a legal background who have daily contact with acts of law mostly pointed to defects in regulations concerning court fees,
- people without this background firstly noted the insufficient sources of information about the fee rates, and then referred to a general perception that such costs are too high.

### **1.3 Solutions to improve transparency**

Increasing the level of availability of information about court fees would require consideration of the possibilities of introducing:

- the creation of a court fees information centre that would provide complete and competent free of charge information by telephone, e-mail and website, which would be updated regularly,
- improving and strengthening information about costs provided by the courts - increasing the availability of information by telephone and hiring personnel with better knowledge of court fees.

### **1.4 Fairness of costs**

Notwithstanding the enactment of the new Act on court fees, such costs are still too high in certain types of cases. In particular, it should be emphasised that in the case of property claims, where the value of the subject of dispute is high, initial court fees may be as high as PLN 100,000, especially given that the fee on the appeal is the same as the initial court fee.

### **1.5 Conclusions and recommendations**

First of all, all matters related to court fees must urgently be made more accessible and transparent to individuals without a legal background, especially taking into consideration a low percentage of proceedings where parties are represented by professionals. Secondly, the costs of justice that a party is charged with while initiating judicial proceedings should be better adapted to the financial capacities of society. It is recommended, that the costs of justice in the second instance are proportionally lower to those in first instance, as the procedure before a court of appeal is generally reduced.

## **2 Court fees**

### **2.1 General**

The Act on court fees in civil cases, which came into force in April 2006, slightly simplified the system of court fee calculation and charging. However, in practice the provisions of the Act are often complicated and ambiguous, which makes the individual determination of court fees by the average citizen very difficult.

The Courts in principle provide information about costs on information boards, on the Internet and by telephone, though most frequently that is information only about fees in the basic categories of cases.

Please note that, the Act on Court Fees, except for provisional fee provides for the following sort of fees:

- permanent fee,
- proportional fee,
- provisional fee,
- basic fee,
- final. fee,

The amount of the individual fee depends on the social significance, the extent of complication, the subject of a case (though not on the value of the claim in cases not related to property law). The basic fee is paid where no proportional, provisional, permanent fee is charged.

Please note that the amount of court fees borne during civil proceedings is determined on the ground of respective legal acts. It should not depend on court's discretionary decision. Nevertheless one exception is when the presiding judge is obliged to determine the amount of fees, for instance with reference to a provisional fee, which is paid while filing a suit in a property law case, when the value of the disputed claim cannot be established.

### **2.2 Cost of bringing an action to the courts**

According to a general principle, a fee should be paid upon filing a pleading. In general, the costs of bringing an action to the court depend on the type of proceedings. Please note the following costs of filing a claim before court:



## 1 Family Law

- (i) Divorce - EUR 155 to be paid by the claimant
- (ii) Children Custody Right - no fees when it pertains to the deprivation of parental authority, a fixed fee of EUR 10 otherwise, to be paid by the claimant when the case is filed,
- Alimony - no fees.

## 2 Labour Law

- (i) Work Accidents - fixed fee of EUR 10 only in case of appeals, unless the value of the subject of dispute exceeds EUR 13,000, to be paid by the claimant when the case is filed
- (ii) Redundancies - fixed fee of EUR 10 only in case of appeals, to be paid by the claimant when the case is filed.

## 3 Commercial Law

- (i) Payment for a commercial or services agreement - in principle 5% of the value of the subject of dispute, but not less than EUR 8 and not more than EUR 26,000 to be paid by the claimant when the case is filed
- (ii) Litigation between associates - in the majority of cases - a fixed fee of EUR 520 to be paid by the claimant when the case is filed
- Mandates and agents - in principle, 5% of the value of the subject of dispute, but not less than EUR 8 and not more than EUR 26,000 to be paid by the claimant when the case is filed.

## 4 Civil Law

- (i) Consumer Protection - no filing fees when it pertains to the declaration that the provisions of an agreement are prohibited, in other matters in principle 5% of the value of the subject of dispute, but not less than EUR 8 and not more than EUR 26,000, to be paid by the claimant when the case is filed
- (ii) Liability - in principle 5% of the value of the subject of dispute, but not less than EUR 8 and not more than EUR 26,000, to be paid by the claimant when the case is filed.

## 5 Property Law

(i) Lease - in principle 5% of the value of the subject of dispute, but not less than EUR 8 and not more than EUR 26,000 to be paid by the claimant when the case is filed

(ii) Ownership and co-ownership - fixed fee at different rates in different cases, to be paid by the claimant when the case is filed.

## 6 Civil status

Fixed fee or basic fee depending on the type of case, to be paid by the claimant when the case is filed.

## 7 Others

In non-litigation cases, most frequently a fixed fee, in litigation, most often a relative fee of 5% of the value of the subject of dispute, but not less than EUR 8 and not more than EUR 26,000, to be paid by the claimant when the case is filed

### 2.3 Other proceedings costs

Other costs related with court proceedings include a clerical fee that is mainly based on simple principles for issuing copies (EUR 0.25 per page) or certified copies (EUR 1.5 per page) of documents filed with the case files, and moreover, the amounts due to witnesses, expert translators/interpreters and the parties, as described below.

### 2.4 Costs of legal recourses (Appeals...)

Please note that, in principle, the fee for appeal is the same as for the first instance. This rule concerns all types of appeals (appeal, complaint; cassation complaint and complaint for the declaration that a valid judgment is unlawful).

### 2.5 Costs of ADR

The Polish system consists of two large ADR mechanisms ADR operating based on the structures of Commercial Inspection: local entities of CI that conduct mediation, and 35 arbitration consumer courts at the CI, which have a general

multi-sector character. Moreover, in Poland there are six other, sector-based, bodies that resolve consumer disputes.

At present there are two ADR systems that have been notified to the ADR Base of the European Commission. These are: the Banking Arbitrator and the Insurance Ombudsman - both institutions belong to the FIN-NET.

There are also various mediation centres.

The costs of mediation proceedings are basically low. The mediator's fee for mediation proceedings in civil cases, instituted on the basis of the court referral, and mediator's reimbursable expenses are set out under the Regulation of the Minister of Justice dated 30 November 2005 on remuneration for mediators and reimbursable expenses in civil proceedings (J. L. from 2005 no. 239 item 2018)

Arbitration may be more expensive and its price depends on the system chosen. The proceedings before the Arbitration Consumer Court at the CI are free of charge, but the parties have to cover the costs of appointing an expert or ordering an expert's study. That fee is reimbursed to the party that wins the case. In the case of proceedings before the Arbitration Consumer Court at the Office of Electronic Communications (UKE, former URTiP) the fee is approximately €20. Filing an application for the institution of proceedings before the Banking Arbitrator requires a fee of €8, though when the value of the subject of dispute does not exceed €8 the fee is reduced to €4. The institution of proceedings before the Insurance Ombudsman may cost approximately €3 (the value of the subject of dispute cannot be less than €250). In matters in which the value of the subject of dispute cannot be established, the fee is determined by the arbitrator. It cannot be less than €20 if the dispute is examined by one arbitrator, or €80 when a dispute is examined by a panel of three arbitrators.

A good source of information about ADR costs is the European Consumer Centres existing in the EU states. The principles of calculating the fee and expenses of the mediator arising from the Regulation referred to in this clause are simple and enable the amount to be calculated individually and easily.

## **2.6 Costs of legal aid proceedings**

Generally, one may obtain exemption from all court fees in all kinds of cases; financial standing of the party constitutes the grounds for exemption. Exemption from court fees does not automatically discharge from obligation to reimburse the

costs of the opponent in the event of losing in the dispute. Partial exemption from court fees may consist in incurring only percentage or fractional part of costs or just specific amount. This calculation may also consist in granting an exemption from some part of the claim or just some specified claims vindicated jointly. These claims, or their part, are defined through the judge decision. In case of a favourable decision, an attorney in fact has a right to collect the sum, due to him in virtue of his salary and refund of expenses, from the amount awarded from the opponent for the benefit of the entity. In case of favourable decision for the entity, the trial costs are refundable for the opponent.

## **2.7 Costs of fast track proceedings**

In case being a subject to fast track proceedings the fixed fee is collected, according to value of the subject of dispute. It's an amount from 8 EUR to 80 EUR.

## **2.8 Costs of Group actions proceedings**

Joint participants cover the costs connected with the proceeding in equal parts. However court may decide that they will reimburse the costs properly to their participation in the proceeding.

## **2.9 Payment**

Court fees may be paid directly at the court cashier's desk, by bank transfer or in stamps (up to a maximum value of PLN 1,500). Mainly for technical reasons, it is not possible to pay by credit card at the Court. The method of the fee payment provided in the secondary regulations to the Act on court fees constitutes another source of impediment. The average citizen is unaware when the court fee transfer should be made, according to which exchange rate any amount in foreign currency should be converted, how to describe the transfer document, and that the calculated court fee must be rounded up to the nearest whole zloty.

## **2.10 E-justice**

Discussions about advantages arising from the share of electronic means of communication are more and more present, though no specific projects to that extent have been created yet.

### **2.11 Impact of the number of hearings on costs**

It should be noted that there are no statutory limits as to the number of hearings, though the court should aim at limiting the number of hearings and if possible the court should resolve the case during the first hearing. As a result, the number of hearings definitely is one of significant factors of costs. There is no doubt that a larger number of hearings increases the costs related with proceedings (lawyer's fee, expenses of the parties, witnesses and experts).

### **2.12 Transcription costs**

There is definitely a lack of information as to which documents should be submitted in original, and which may be submitted in certified copies or copies, and when a copy may be certified as a true copy of the original by an advocate or legal counsel, and when exclusively by the notary.

In general, the transcription costs are calculated by the number of pages of the document. Usually the payment is made just before the transcription.

### **2.13 Conclusions and recommendations**

As has been already pointed out, the costs of judicial proceedings are still insufficiently adjusted to the financial capacities of individuals. The introduction of e-justice might not only facilitate filing law suits, but also help to cut costs and make justice more accessible. That would surely provoke a significant increase in the number of cases brought before court, and that factor has to be taken into consideration while modifying the legal regulations. Legal requirements related to the payment of court fees are, in some part, too restrictive. Consequently, sanctions for the non-observance of these requirements, especially in appeals, are exaggerated. In many cases, sanctions of the inadmissibility of a lawsuit firmly end a party's right to have its demand examined by a court. The vagueness of legal

requirements for submitting documents, in copies and in originals, in connection with legal limitation periods for introducing evidence, might constitute another factor restricting access to justice to the individuals.

### **3 Lawyers' consulting and representation fees**

#### **3.1 General**

It should be noted that the party may act by itself in every type of case. However, it is obliged to recourse to a lawyer in proceedings conducted before the Supreme Court.

Please note that the Polish legal system does not provide any regulation determining the lawyer's fee. The prices for legal services are calculated between a lawyer and his client. However, there are regulations specifying rates for calculating the reimbursement of lawyers' fees to the winning party, and for calculating remuneration for attorneys ex officio:

Regulation dated 28 September 2002 on fees for advocate services (Journal of Laws 2002 No.163 item 1348, with amendments),

Regulation dated 28 August 2002 on fees of legal counsel services (Journal of Laws 2002 No. 163 item 1349, with amendments),

Please note that the principles of professional ethics exclude the possibility of calculating the lawyer's fee depending on the case's decision (contingency fees).

#### **3.2 Fees depending on the nature of the litigation**

In practice, fees depend on the nature of litigation. However, the final lawyer's fees depend also on experience and position of a given lawyer. In general, the highest average costs of lawyer's fees apply to commercial law proceedings (from EUR 500 to EUR 26,000)

#### **3.3 Fees depending on the type of lawsuit or proceedings**

The type of proceedings does not have major impact on the attorney's fee.

### **3.4 Fees depending on the value of the claim**

A high value of the subject of dispute involves higher attorney's rates, though this is not a rule.

### **3.5 Fees depending on the jurisdiction**

In practice, there are no significant differences between fees for legal services provided within different jurisdiction. Therefore, the lawyer's fees for services in ADR institutions, Appellate Courts or Supreme Court are similar (up to EUR 6,000).

### **3.6 Legal aid cases**

The costs of legal aid compose of appointing of attorney in fact and trial costs. In case of a favorable decision, an attorney in fact has a right to collect the sum, due to him in virtue of his salary and refund of expenses, from the amount awarded from the opponent for the benefit of the entity. In case of favorable decision for the entity, the trial costs are refundable for the opponent.

### **3.7 Contingency fees**

Polish law does not provide for contingency fees. In addition, the rules of conduct of the Polish Bar Association do not permit contingency fees.

### **3.8 Payment**

The method of payment depends only on individual arrangements with a client. Attorneys often charge their fees in stages (for advice, for drafting and submitting a pleading, for the first instance, etc.). Large law firms most often propose hourly rates payable on the basis of a monthly invoice.

### 3.8.1 Retainer

Charging retainers is not a rule, though it is a more frequent practice at large law firms in complex cases with a high value, which require the involvement of several people.

## 3.9 **Conclusions and recommendations**

The rates for calculating the lawyers' reimbursement fees are, in many cases, totally inadequate to the sums that the client is charged with by his lawyer. As a result, a party obtaining gain and cause, is, in fact, obliged to cover a majority of legal aid fees, as his adversary will be charged only the legal reimbursement costs. It is however understandable that the situation of an adversary obliged to bear the costs of judicial proceedings, including the costs of legal aid, might not differentiate and depend on the excessive legal aid rates of some lawyers. Nonetheless, the courts might, at their own initiative, charge a losing party with legal aid costs of a party, multiplied up to six times, based on the difficulty of particular proceedings. Unfortunately, such costs are hardly ever granted by the courts.

## 4 **Bailiff fees**

### 4.1 **General**

It should be noted that the main role of the bailiff during judicial proceedings is to secure the claim. In the post proceeding stage, the bailiff is obliged to undertake the relevant intervention as the creditor obtains the enforcement clause to the judgment by the court.

Nevertheless, regulations on bailiff costs are among the least clear. The types of such costs are also varied: retainers, fees for services or per hour of work. There are no generally available sources of information about such costs. Due to the



ambiguity of regulations, the only effective way of obtaining such information is by direct question addressed to a bailiff.

## **4.2 Ante judgment**

Prior to the judicial proceedings, the bailiff's intervention involves mainly the security of the claim on the basis of the court decision issued at the request of the party. The fees depend on the security method, and this to be specified by the party in the application filed with the court. In order to initiate the enforcement of pecuniary performance, a proportional fee depending on the value of the performance, is charged, or a permanent fee in non-pecuniary performance cases.

## **4.3 During proceedings**

Security of the claim may also be requested during proceedings. During the procedure of enforcement, the bailiff is entitled to receive a retainer from the party that put the motion forward, before undertaking any action. Retainers are paid to cover costs that include: expert's remuneration, costs of advertisements, transport, shipment, insurance, seizure movables, information, delivery and the bailiff's actions exercised outside the bailiff's section. The bailiff also charges a permanent fee for inventory and property record, creditor's introduction into the possession, sealing and seal removal, taking part in elimination of debtor's resistance.

## **4.4 Post proceedings**

After proceedings, the bailiff's intervention is aimed at the satisfaction of the claim on the basis of the enforcement title with an execution clause attached to it, submitted by the creditor.

## **4.5 Legal aid cases**

If an entity is provided with legal aid it should cover all types of proceedings also enforcement of court decisions.

## **4.6 Payment**

The costs of enforcement are covered from enforced monies, or the bailiff calls on the debtor to pay such costs. A failure to pay initiating fees can result in returning the motion or refusing to take any action, after the ineffective deadline for supplementation.

### **4.6.1 Retainer**

A retainer towards the costs of the bailiff's intervention is required mainly in proceedings concerning security.

## **4.7 Conclusions and recommendations**

Bailiff fees are the least transparent and least clear among all the costs of judicial proceedings. A party assisted by a bailiff, whose assistance is compulsory for the enforcement of judgments, can never be sure of the final costs to be paid. The clarification and transparency of costs of judicial proceedings should be initially applied to bailiff fees.

## **5 Expert**

### **5.1 General**

The assumption around the establishment of the lists of court accredited experts was their openness and general availability. In the meantime, not all courts provide the list of experts on their website, also not all of them want to provide access (in court) to the full list of experts with contact data (address, telephone numbers). There is no generally available information source regarding matters in which the expert's opinion is necessary or material for the resolution of a case.

## **5.2 Fees**

Information about rates of experts appointed by the court may be found almost only in acts of law.

The prices of private expert studies are published on websites of certain organisations of experts in a given area of specialty. An expert's remuneration is reduced when the study has been performed defectively, not in conformity with the court's instructions or with unjustified delay. Moreover, an expert is entitled to receive travel, overnight remuneration and for appearance in the court, in the event of not using the service provided.

## **5.3 Payment**

The court awards the fee and reimbursement of expenses to the expert after the expert's study has been completed, on the basis of rates specified in regulations. The amount of the expert's fee for the work performed is determined taking into account the required qualifications, time and effort required to render the opinion, and the amount of expenses necessary to perform the service - on the basis of an invoice/ bill submitted.

### **5.3.1 Retainer**

The court may oblige the party requesting the admission of evidence based on an expert opinion to pay a retainer in an amount and within the time specified by the court.

#### **5.4 Legal aid cases**

Expenses related with the participation of experts and witnesses in the case are basically not covered by legal aid.

#### **5.5 Reimbursement of experts' fees**

The losing party may be under an obligation to reimburse the costs relating to the participation of an expert in the case, in compliance with the principle of responsibility for the result of the case.

#### **5.6 Practical questions**

A person entered on the list kept by the Chairman of the District Court is a court accredited expert. However, the court may admit any expert specified by the party as a court accredited expert, who has specialised knowledge in a given field, and not only accredited experts.

#### **5.7 Conclusions and recommendations**

There is insufficient information provided to the parties to judicial proceedings concerning accredited experts and their fees. General recommendations on the need to improve the level of transparency of court fees fully refer to the expert fees. An increasing number of cases where the assistance of an expert becomes necessary does not affect the number of experts to be appointed. In many cases, the information provided by an appointed expert is inexact, insufficient, or irrelevant. As a result, the expert's role is often doubled. There are still insufficient experts able to assist at judicial proceedings relating to very specific matters. Furthermore, the parties have no influence over the appointment of an expert, as in most of cases the list is not transparent.

## **6 Translation and interpretation**

### **6.1 General**

Information about the costs in relation to translation and interpretation is the most readily available and generally known. To a large extent this is due to: 1) the common nature of using translation/ interpretation services, not only as part of litigation, 2) good access to information about the prices of such services.

### **6.2 Translation fees**

The costs of sworn translations are calculated per page, and the rates are specified on the basis of an agreement between the translator and the client.

In the case of translations requested by the court, prosecutor's office or administrative body, rates provided in the Minister's regulation are applied.

### **6.3 Interpretation fees**

As above, and the interpreter's fee is calculated for each started hour of work.

### **6.4 Payment**

A translator/interpreter appointed by the court is entitled to reimbursement for travel expenses, other necessary expenses related with appearance in court, and the fee for services performed. The principles of calculating the reimbursement of expenses are unfortunately complicated and difficult for individual determination by the party because of the low transparency of regulations and the need to refer to several acts of law. The translator/interpreter is entitled to receive travel and overnight reimbursement for appearance in the court in the event of not using the service provided. The amount due is determined and awarded by the court or divisional official.

#### 6.4.1 Retainer

As in the case of other expenses, theoretically the party may be under an obligation to pay a retainer towards the expenses related with the participation of the translator/interpreter in the case.

### 6.5 Practical questions

In principle, the party is under an obligation to provide a translation of a document made in a foreign language at the court's request. In practice, however, in order to accelerate the proceedings a document should be submitted together with a sworn translation as the court will usually ask for a translation. This is not only due to the lack of understanding of foreign language documents by the court, but also relates to the fact that a document prepared in a foreign language often constitutes evidence in the case and each party, as well as potential experts, not only the court, should be able to read the translation of such a document.

### 6.6 Legal aid cases

Legal aid basically does not cover translation/interpreting costs.

### 6.7 Reimbursement

The costs of translations/interpreting constitute a part of expenses that may be subject to reimbursement by the party that loses the case.

### 6.8 Conclusions and recommendations

These court fees are basically transparent and are, in general, not considered as an obstacle to access to justice. The wide range of sworn translators available as well as the clear and reasonable translation fees allow a party to the judicial proceedings to easily obtain a translation of a document. In course of judicial proceedings translations are often performed by certified translators without major

delays. Contrary to the opinions provided by experts, the need to submit a sworn translation does not unnecessarily slow down the procedure.

## **7 Witness Compensation**

### **7.1 General**

A witness appointed by the court shall be entitled, as with an interpreter, to the reimbursement of travel expenses, other necessary expenses related with the appearance in the court and the fee for the service provided. The principles of calculating the reimbursement of expenses are unfortunately complicated and difficult to determine by the party because of the low transparency of regulations and the need to refer to several acts of law.

### **7.2 Fees**

The amount of working days lost is calculated on a daily basis, the amount of various costs (travel, accommodation...) at rates that constitute specific percentage of a per diem as for a business trip of government administration staff in Poland.

### **7.3 Payment**

It is the court that decides about the reimbursement of expenses and the amount on the basis of rates arising from regulations. Reimbursement, however, is as in the case of the expert and translator/interpreter, upon the request of the witness, submitted in writing or orally into the minutes of the hearing, not later than within three days after the action is performed.

Witnesses are entitled to receive reimbursement for their appearance in the court, despite not being questioned. The judge can reimburse costs incurred by an escort on account of the witness's state of health, if not able to reach the court without this person's attention.

## **7.4 Practical questions**

Basically any individual may be a witness, subject to exceptions provided in the Code of Civil Procedure. It is also possible to hear a witness abroad by the Consulate and Court by way of legal assistance.

## **7.5 Conclusions and recommendations**

As with the bailiff fees, the witness reimbursement fees are extremely unclear and vague. It is hardly ever possible to predetermine and foresee the real costs of appointing a witness, taking into consideration travel and accommodation expenses. Legal regulations in force provide a number of detailed criteria that the expenses of a witness have to be matched in order to be set off. Regulations concerning the reimbursement of expenses borne by a witness are rather severe, and their non observance might cost a witness the right to be reimbursed. It is recommended that witnesses are more clearly instructed on the procedure of reimbursement beforehand.

# **8 Pledges and security deposits**

## **8.1 General**

Pledges and security deposits are rarely applied, most often there are with two types of security deposit:

1. Exercising a decision about providing security may be made dependent on making security deposit by the holder of rights to secure the claims of the obligor arising from the exercise of the decision about security.
2. A claimant - foreigner - may be obliged to pay a security deposit, at the defendant's request, to secure the litigation costs.

## **8.2 Fees**



The court shall specify the amount of a security deposit given the probable amount of expenses to be borne by the defendant.

### **8.3 Payment**

The security deposit shall be paid to the court's account. It shall be reimbursable after the decision beneficial for the party which submitted security deposit becomes final and valid.

### **8.4 Practical questions**

A security deposit submitted by a foreign claimant shall be a good measure for securing the defendant's claims where the claimant does not conduct business activities and does not have any assets in the defendant's country.

### **8.5 Conclusions and recommendations**

Recent modifications to the Civil Procedure Code have clarified and unified the procedure for making deposits. Security deposits play an important role in securing a party's claims. The procedure for reimbursing a deposit is relatively simple and constitutes, for a party submitting it, the possibility of accelerating the judicial proceedings underway, and, from the other side, for a party demanding a deposit, a guarantee of the rapid reimbursement of costs incurred during such proceedings, provided it wins the trial. The sum deposited on the court's account does not bear interest.

## **9 Court decisions**

### **9.1 Cost of notification**

The preparation and announcement of a decision does not lead to the parties incurring any expenses. The party does not pay the fees if it applies for a decision together with justification within seven days from its issuance.

## **9.2 Cost of obtaining an authenticated decision**

All certified extracts/ copies from court files are subject to a uniform clerical fee of PLN 6 per one page of the document. An office payment/fee is paid in order to receive: certificated copies, extracts, excerpts, copy of ruling with an ascertainment of validity or feasibility and other certificates. The payment mentioned is also connected with copies of the mortgage register. Apart from the above, PLN 1 per page is paid for copies of other documents that are placed in court files.

## **10 Legal aid**

### **10.1 General**

There are discussions concerning a draft act on free of charge legal aid. The proposal pertains to the regulation of principles, terms and conditions and procedures for granting free of charge legal aid by the State, in Poland, to individuals who, because of their financial or personal situation, are unable to individually defend their rights and interests. Legal aid shall be provided by entities selected in open competitions according to principles set out under the act or, in the case of NGOs whose statutory objective is to provide free of charge legal assistance, on the basis of agreements with such organisations.

Currently the Civil Code, as well as the Act on court fees, set out principles regarding the partial or complete waiver of court fees, as well as receiving the appointment of an attorney ex officio.

### **10.2 Conditions of grant**

Exemption from court fees may be requested by an individual who submits a statement that he/she is unable to cover them without detriment to the support necessary for himself/herself and the family. The court may also grant exemption from court fees to a business entity if it has demonstrated that it does not have sufficient means to pay such costs. The costs of legal aid, incurred by the State Treasury, include regulated fees and essential, substantiated expenses

### **10.3 Strings attached**

A natural person may demand the exemption from court fees, after making a declaration, that it's unable to bear them without detriment to necessary maintenance for itself and a family. A statement, covering detailed data on family situation, assets, income , regular source of income of a person applying for the exemption from court fees, should be also made and attached to the application for exemption from court fees.

### **10.4 Practical questions**

Legal aid is available for Polish nationals, citizens of all EU Member States and all natural persons that legal place of residence in one of EU Member States. A natural person can benefit from legal aid providing that he cannot afford the costs of legal proceeding without harm to his or his family maintenance. Legal person can benefit from legal aid if it has no recourses to afford the proceeding. When all these conditions are satisfied the court can rule that applicant is entitled to assistance. Legal aid can be obtained in all civil cases including: family matters, employment and social cases.

### **10.5 Conclusions and recommendations**

It is still too difficult to obtain a waiver of court fees, or receive an appointment of an attorney ex officio. An individual submitting such a demand is obliged to fill out a detailed questionnaire in order to persuade the court that s/he is not able to bear these costs without prejudice to his/herself or his/her family. It is far more

difficult to obtain even a partial waiver of court fees by legal entities. In proceedings before the Supreme Court, however, where in civil matters, a party has to be assisted by a professional representative who is exclusively authorised to prepare and submit a cassation complaint, the appointment of an attorney ex officio is more often granted. As a court examining a demand for a waiver of court fees and a demand to appoint an attorney ex officio is provided exclusively with information by the claimant him/herself, often without any evidence, waivers are sometimes granted unjustly, and in other cases unfairly refused.

## **11 Personal experience**

In my long-term legal practice, as an advocate and as a Partner of the Warsaw Office of the Gide Loyrette Nouel, I was participating in a numerous civil judicial proceedings requiring implementation of all respective court cost regulations.

In reference to cross-border issues, I have not been confronted with the case where the costs of justice were too expensive for my clients. Also, I have not been unable to evaluate clearly the costs of justice.

## **12 Case studies**

In all the case studies described in the Questionnaire, it was possible to give a specific amount of the initial court fees. However, as for all the other costs it is possible to give only approximate costs. Each case requires an individual approach, sometimes there is a need to translate only one document, and sometimes a few hundred pages; no witnesses may be appointed or the court may admit the appointment of up to a dozen witnesses; and a similar situation applies to experts and security of the claim. Basically, in case of a cross border proceeding, such costs are higher only because of additional expenses consisting in translations/interpreting, potential travel and accommodation costs, etc. The rates of court fees remain the same.

In all the case studies that were specified, it is possible to apply ADR. However, in the case of family and marital cases (parental authority, divorce and separation) it

is not possible to proceed before arbitration court, though mediation ending in a settlement is possible. Moreover, if it is the court that refers to mediation, after settlement is entered into before the mediator in the result of such mediation, the parties obtain the reimbursement of  $\frac{3}{4}$  of the fee paid on the pleading instituting the proceedings in the first instance.

Case n° 1

Case Study	Court			Appeals			ADR	
	Initial court fees	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option open for this type of case?	Costs
Case A	EUR 155	EUR 8 - 80	around EUR 26	EUR 155	--		YES	<p>With respect to mediation:            In cases concerning property rights mediator's fee is 1 % of the value of the subject of dispute, however, not less than EUR 8 and not more than EUR 260 for the entire mediation proceedings.</p> <p>In cases concerning non-property rights mediator's fee for the first mediation session, conducted within the time for mediation specified by the court, amounts to EUR 16, and per each following session – EUR 7.</p> <p>If the court authorized the mediator to examine the case files, the fee for entire proceedings, referred to in clause 1 and 2, shall be increased by 10%.</p> <p>Evidenced and necessary expenses of the mediator shall be subject to reimbursement.</p> <p>Reimbursement of <math>\frac{3}{4}</math> of initial fees if a compromise is signed</p>
Case B			EUR 52 – 520	EUR 155				

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Case Study	Lawyer		Bailiff			Expert	
	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
Case A	NO	Advice concerning divorce case – Eur 52- 78 per hour, Drafting divorce suit – EUR 130 - 260;	--	--	--	--	--
Case B	NO	representation before the court from EUR 520 even up to EUR 5,200.					

Case	Witness compensation		Pledge or security		Other fees	
	Are witnesses compensated ?	Cost	Does this exist and when and how is it used ?	Cost	Description	Cost
Case A	YES	EUR 16 - 130	--		copies correspondence etc.	about EUR 13
Case B	YES	EUR 16 - 130			copies correspondence etc.	about EUR 52

Case n° 2

Case Study	Court			Appeals			ADR	
	Initial court fees	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option open for this type of case?	Costs
Case A	EUR 26	around EUR 26	around EUR 26	EUR 26	--		YES	as in case no. 1
Case B	EUR 26	around EUR 26	mainly translations EUR 52 - 520	EUR 26	--			

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Case Study	Lawyer		Bailiff			Expert	
	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
Case A	NO	EUR 520 – 5,200	--	--	--	--	--
Case B	NO						

Case	Witness compensation		Pledge or security		Other fees	
	Are witnesses compensated ?	Cost	Does this exist and when and how is it used ?	Cost	Description	Cost
Case A	YES	EUR 16 - 130	--		copies correspondence etc.	about EUR 13
Case B	YES	EUR 16 - 130	--		copies correspondence etc.	about EUR 52

Case n° 3

Case Study	Court			Appeals			ADR	
	Initial court fees	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option open for this type of case?	Costs
Case A	--	Around EUR 8 - 80	around EUR 26	--	--		YES	As in case no. 1
Case B	--	Around EUR 8 - 80	mainly translations EUR 52 -	--	--			

			520				
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Case Study	Lawyer		Bailiff			Expert	
	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
Case A	NO	EUR 520 – 5,200.	NO	2% of the claimed value	Up to 15 – 20% of the claimed value	Up to	Up to
Case B	NO		NO				

Case	Witness compensation		Pledge or security		Other fees	
	Are witnesses compensated ?	Cost	Does this exist and when and how is it used ?	Cost	Description	Cost
Case A	YES	EUR 16 - 130	--		copies correspondence etc.	about EUR 13
Case B	YES	EUR 16 - 130	--		copies correspondence etc.	about EUR 52

#### Case n° 4

Case Study	Court			Appeals			ADR	
	Initial court fees	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option open for this type of case?	Costs
Case A	5% of EUR 20,000.00 to be paid in PLN	around EUR 8 - 80	around EUR 130	5% of EUR 20,000.00 to be paid in PLN	--	EUR 13	YES	As in case 1 + with respect to arbitration proceedings – costs depend on the type of arbitration court.
Case B	EUR 160	around EUR 8 - 80	mainly transla	5% of EUR	--			



			tions EUR 130 750	20,000. 00 to be paid in PLN				
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Case Study	Lawyer		Bailiff			Expert	
	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
Case A	NO	PLN 4,000 PLN until PLN 20,000.	NO	around 2% of EUR 20,000	until 15% of EUR 20,000	NO	Until EUR 520
Case B	NO						

Case	Witness compensation		Pledge or security		Other fees	
	Are witnesses compensated ?	Cost	Does this exist and when and how is it used ?	Cost	Description	Cost
Case A	YES	EUR 16 - 130	as described in this questionnaire		copies correspondence	about EUR 13
Case B	YES	EUR 16 - 130			copies correspondence	about EUR 52

#### Case n° 5

Case Study	Court			Appeals			ADR	
	Initial court fees	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option open for this type of case?	Costs
Case A	5% of the value of the claimed compensation, no more than EUR 260,000	EUR 8 - 130		5% of the value of the claimed compensation, no more than EUR 260,000	--	EUR 13	YES	As in case 1 + with respect to arbitration proceedings – costs depend on the type of arbitration court.

<b>Case B</b>	5% of the value of the claimed compensation, no more than EUR 260,000	EUR 8 - 130	mainly translations	5% of the value of the claimed compensation, no more than EUR 260,000	--			
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<b>Case Study</b>	<b>Lawyer</b>		<b>Bailiff</b>			<b>Expert</b>	
	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
<b>Case A</b>	NO	EUR 1,000 - 10,000	--	--	--	--	--
<b>Case B</b>	NO						

<b>Case</b>	<b>Witness compensation</b>		<b>Pledge or security</b>		<b>Other fees</b>	
	Are witnesses compensated ?	Cost	Does this exist and when and how is it used ?	Cost	Description	Cost
<b>Case A</b>	YES	EUR 16 - 130	as described in this questionnaire		copies correspondence etc.	about EUR 13
<b>Case B</b>	YES	EUR 16 - 130			copies correspondence etc.	about EUR 52