

ADMINISTRATIVE JUSTICE IN POLAND

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DOI: 10.21684/2412-2343-2016-3-2-124-152

This article begins with an analysis of the development of administrative justice in Poland over the last centuries. In particular, the author examines administrative jurisdiction before 1918, when Poland regained its independence, the period of the Duchy of Warsaw, the Kingdom of Poland, and the practice on Polish territory under Austrian and Prussian control. The author then moves to modern law by presenting the judicial system in Poland in general, especially the differences between the separate systems of general courts and administrative courts, and analyses the jurisdiction of voivodship (regional) administrative courts, and the basic principles of judicial and administrative proceedings. The focus of study is mainly devoted to judicial and administrative procedure, rather than an administrative process of citizens before administrative authorities regulated in a separate Code of Administrative Procedure. The article describes the role of the judge (pointing out the differences between the active role of first instance judges and the limited capabilities of the judges of the appeal) and the powers of the Supreme Court, in particular its power to adopt resolutions, which has a great importance for the unification of the jurisprudence. A brief analysis is given to class actions, which in the Polish legal system are inadmissible in court and administrative proceedings. The article provides a statistical cross-section illustrating the role of administrative jurisdiction. The author concludes with observations pointing up the progress of administrative jurisdiction in Poland, not only in the legal sense, but also in the cultural sense.

Keywords: administrative justice; administrative jurisdiction; administrative courts; principles of administrative procedure; Supreme Administrative Court of Poland; voivodship (regional) administrative court; class actions; cassation appeal.

Recommended citation: Jarosław Turłukowski, *Administrative Justice in Poland*, 3(2) BRIS Law Journal 124–152 (2016).

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1. Introduction

In every country administrative justice, or to be more precise, the administrative court system, its operation in practice, is in a sense an indicator as to the extent a society is actually a democratic and civil society. This is because in most non-democratic societies there very well may be courts of law providing minimum protection to private interests, or even to commercial interests. Even a totalitarian society cannot do without the drawing up of contracts, the preparation of wills or the semblance of property holdings. At the same time, a state in which power at any level is not controlled by the society does not need administrative justice, because the Government always knows and does what is best and cannot be restrained by anyone or anything. "In democratic countries of law, the objective of creating a mechanism for judicial control of public administration (the executive) has been and still is to provide citizens with a real protection of their rights and liberties against the activities of the State (its officials)."¹ It does not matter what model of administrative justice is selected – the Anglo-Saxon or Continental – the control functions on public administration or the executive need to be carried out.

At the moment, in Poland the administrative judiciary has strong constitutional empowerment. In accordance with Article 173 of the Constitution of the Republic of Poland, "The courts and tribunals shall constitute a separate power and shall be independent of other branches of power."² Accordingly, "the courts and tribunals shall pronounce judgments in the name of the Republic of Poland" (Art. 174 of the Constitution). The abovementioned fundamental principles of the democratic state ruled by law should be related as a whole also to the system of administrative courts,

¹ The Supreme Administrative Court, Warsaw 2010, ed. II, at 5.

² The Constitution of the Republic of Poland of 22 April 1997, 79 J. of L. 483.

which are an integral part of the justice system. Paragraph 1 of Article 175 of the Constitution states that “the administration of justice in the Republic of Poland shall be implemented by the Supreme Court, common courts, **administrative courts** and military courts.” The Polish Constitution introduces sort of a presumption of the competence of common courts in Article 177: “The common courts shall implement the administration of justice concerning all matters save for those statutorily reserved to other courts.” Quite naturally, other courts have restricted powers. Administrative courts and tribunals are no exception in this regard. The Supreme Administrative Court and other administrative courts exercise, to the extent specified by statute, control over the performance of public administration. Such control also extends to judgments on the conformity to statute of resolutions of organs of local government and normative acts of territorial organs of government administration (Art. 184 of the Constitution). Highlighting local government is not accidental. Although Poland is a unitary state and does not have any regions with special territorial or any other elements of federalism, there is local self-government. “The self-governing nature of units of local government shall be protected by the courts” (Art. 165 para. 2 of the Constitution). Apart from the possibility of violating the rights of citizens by the local government bodies, the Government may also attempt to limit the rights of the local government. The administrative courts settle jurisdictional disputes between units of local government and units of government administration (Art. 166 para. 3 of the Constitution). In addition, we have to agree that in the application of the law the authority body combines both the quality of a party, as well as the decisive arbiter on behalf of the state regarding the rights and duties of an individual. In this process, the administrative body, ruling on the legal situation of the individual, has always a dominant position. This unequal status ceases in the proceedings before the court, in proceedings in which an independent court decides the dispute between the individual and the administration.³

2. Outline of the History of Administrative Justice in Poland

The story of the early history of administrative justice in Poland leaves one uncertain in the sense of where to begin, for we can start from the introduction on the Polish lands of more modern forms of administrative justice that continue to affect even today’s legislation or we can try to trace the forms of judicial and administrative control even during the times of the royalty and gentry in Poland. What complicates the situation is the fact that in the late 18th century Poland lost its sovereignty, so virtually throughout the 19th century we should be talking about foreign influence and legislation on Polish territory. Inevitably, in different partitions

³ Speech by Professor J. Trzciński – President of the Supreme Administrative Court opening the Jubilee Session on 6 December 2005 at the Royal Castle in Warsaw, 1 [Zeszyty Naukowe Sądownictwa Administracyjnego] Scientific Papers of Administrative Justice] 8 (2006).

(into which Poland was divided) different legal systems were in force. Without denying the deep historical traditions, J. Borkowski points out the lack of continuity and uniformity of legislative solutions, which is not conducive to consolidating in legislative practice and public awareness one model of judicial administration and to providing the lasting value of the legality of public administration related to it.⁴ Considering this situation, we should pay attention only to a few select events in administrative jurisdiction before 1918, when Poland regained its independence.

Starting from 1613 the Sejm, acting as the parliament of the gentry democracy, and for the purpose of controlling the state treasury, began invoking a series of commissions which took the name Radom Commission (Komisja Radomska) from their seat in the Polish city of Radom. In 1717, the Commission transformed into a permanent Treasury Court (the so-called Radomski) that formed the treasury judiciary in relation to the debtors of the state treasury and dealt with matters concerning tax exemptions relating to natural disasters or war damage, as well as typical administrative military cases.⁵ The Court operated for forty-seven years (1717–1764). Then from 1764 until 1795 the Sejm again invoked a series of treasury commissions, whose powers were identical to those of the prior court.⁶ There is also the view in the doctrine that the origins of administrative jurisdiction in Poland should be associated with other collegial administrative and judicial bodies, such as the famous Commission of National Education (Komisja Edukacji Narodowej, 1773–1795) and the Military Commission of the Two Nations (Komisja Wojskowa Obojga Narodów, 1788–1793).⁷

After the disappearance from the map of an independent Poland at the end of the 18th century, the concept of administrative jurisdiction appears in the Constitution of the Duchy of Warsaw.⁸ It should be noted that the history of the Duchy was quite short, lasting for only seven years, from 1807 to 1815, but its influence on the further development of administrative procedure in Poland was huge. Chronologically, its development corresponds to the development of Napoleon's personal career.⁹ Moreover, the Duchy was not an independent state, but depended on the power of Napoleon. The Constitution of the Duchy introduced in Poland the French model,

⁴ J. Borkowski, *Reforma polskiego sądownictwa administracyjnego [Reform of the Polish administrative courts]*, 5 PIP 4 (2002).

⁵ Cf. Lecture of Professor, Ph.D. Janusz Borkowski, *Sądownictwo administracyjne na ziemiach polskich [Administrative jurisdiction on the Polish territory]*, 1 Scientific Papers of Administrative Justice [Zeszyty Naukowe Sądownictwa Administracyjnego] 13–14 (2006).

⁶ *Id.*, at 14.

⁷ Cf. Summary of views: W. Piątek, A. Skoczylas in: *The system of administrative law*, 10 System prawa administracyjnego [Sądowa kontrola administracji] 7 (R. Hauser, Z. Niewiadomski, A. Wróbel eds, Warsaw 2014).

⁸ 1(1) Dziennik Praw Księstwa Warszawskiego [Official Journal of the Duchy of Warsaw].

⁹ Cf. J. Bardach, B. Leśnodorski, M. Pietrzak, *Historia państwa i prawa polskiego [The History of the Polish State and Law Warsaw]* 353 (1976).

which undoubtedly survived the short-lived political entity of the Duchy. First of all, it introduced the Council of State (Rada Stanu;¹⁰ the *Consiel d'Etat* in France) as the court of appeal, and just as in France prefectural councils were established, which were the courts of first instance.¹¹ It should be emphasized that, despite the introduction of the French model, there was no possibility of its complete reception, for there were far-reaching differences in comparison to the French practice. Often, well-designed French structures did not fit the Polish reality. According to Article 14 of the Constitution, the Council of State consisted of the king, a viceroy or president appointed by the king and ministers. However, Article 16 stipulated, too, that the Council comprised four registrars who dealt with administrative matters, whereas the Council “gives judgments, as the Court of Cassation”.¹² Jankiewicz notes, “In the first instance the Council adjudicated in disputes on agreements concluded by the ministers themselves for the needs of the entire country.”¹³ In addition, the Constitution obliged the Council to deal with issues concerning conflicts of jurisdiction between the courts and other administrative bodies.¹⁴

After doing away with the Duchy of Warsaw and the organization of the so-called Polish Kingdom, combined with the Russian Empire, the Council of State should have still operated. Article 73 of the Constitutional Act of the Polish Kingdom of 27 November 1815 virtually did not mention its powers in the sphere of administrative justice, apart from the right to adjudicate in competence disputes.¹⁵ Against this background, the disputes as to the future of administrative courts began.¹⁶ Nevertheless, from 1816 to 1822 the administrative jurisdiction on behalf of the Council of State was carried out by [the] Delegation of Administration, a supreme administrative court adjudicating as the second and final instance of appeal from the judgements of the administrative courts exercised by the prefectural council and the provincial committees.¹⁷

¹⁰ 1(1) *Dziennik Praw Księstwa Warszawskiego* [Official Journal of the Duchy of Warsaw], Arts. 14–18.

¹¹ W. Piątek, A. Skoczylas in: 10 *System prawa administracyjnego, Sądowa kontrola administracji* [The system of administrative law, Judicial review of the administration] 8 (R. Hauser, Z. Niewiadomski, A. Wróbel eds, Warsaw 2014).

¹² 1(1) *Dziennik Praw Księstwa Warszawskiego* [Official Journal of the Duchy of Warsaw], Arts. 14–18.

¹³ A. Jankiewicz in: *XXV-lecie Naczelnego Sądu Administracyjnego na tle dziejów sądownictwa administracyjnego w Polsce* [35th anniversary of the Supreme Administrative Court on the background of the history of administrative courts in Poland] 18 (Warsaw 2005).

¹⁴ 1(1) *Dziennik Praw Księstwa Warszawskiego* [Official Journal of the Duchy of Warsaw], Art. 17.

¹⁵ 1(1) *Dziennik Praw Królestwa Polskiego* [Official Journal of the Polish Kingdom], Art. 42.

¹⁶ Cf. Lecture of Professor, Ph.D. Janusz Borkowski, *Sądownictwo administracyjne na ziemiach polskich* [Administrative jurisdiction on the Polish territory], 1 *Scientific Papers of Administrative Justice* [Zeszyty Naukowe Sądownictwa Administracyjnego] 16 (2006).

¹⁷ A. Jankiewicz in: *XXV-lecie Naczelnego Sądu Administracyjnego na tle dziejów sądownictwa administracyjnego w Polsce* [35th anniversary of the Supreme Administrative Court on the background of the history of administrative courts in Poland] 19 (Warsaw 2005).

In 1822, the Delegation of Administration was closed down, and thereafter the judicial and administrative functions again were performed by the Council of State, until 1842, when its competence as a body of second instance was passed to the general meeting of the 9th and 10th Warsaw departments of the Governing Senate.¹⁸ Despite the inclusion of the departments in the judicial system of the Russian Empire, until their liquidation the departments were located in Warsaw, adjudicated in accordance with Polish law and procedures, had Polish judges, and experienced a relationship with the Senate ruling in St. Petersburg that was minimal.¹⁹

Within the Prussian partition of Poland, three instances of judicial and administrative proceedings were introduced based on laws enacted between 1872 and 1883:

- district departments as the first instance;
- district administrative courts as the second, but sometimes as the first instance (Bezirksverwaltungsgerichte); and
- the Higher Administrative Court in Berlin (Oberverwaltungsgericht) as the third instance, composed of professionals, and without a citizen factor.²⁰

On most of the Polish territory occupied by the Austro-Hungarian Empire, Austrian legislation was introduced, and on a small part Hungarian legislation. Without a doubt, the greatest influence on future Polish law was the operation of the Administrative Court with its headquarters in Vienna, which is an example of one-instance administrative jurisdiction. The strong influence of Austrian practice on Poland after regaining its independence in 1918 can partly be explained by the fact that almost 10 percent of the judges of the Court in Vienna at the turn of the 19th century were Poles.²¹

After the declaration of independence by Poland in 1918 it was not possible to immediately create a native administrative jurisdiction, so for the needs of the time models inherited from the systems of foreign invaders were modified. Still and all, this state of affairs was considered a transition that could not be reconciled with the need for creating the legal system of an independent nation.

¹⁸ W. Piątek, A. Skoczylas in: *System prawa administracyjnego [The system of administrative law]*, 10 *Sądowa kontrola administracji [Judicial review of the administration]* 8 (R. Hauser, Z. Niewiadomski, A. Wróbel eds, Warsaw 2014).

¹⁹ A. Jankiewicz in: *XXV-lecie Naczelnego Sądu Administracyjnego na tle dziejów sądownictwa administracyjnego w Polsce [35th anniversary of the Supreme Administrative Court on the background of the history of administrative courts in Poland]* 19 (Warsaw 2005).

²⁰ W. Piątek, A. Skoczylas in: *System prawa administracyjnego [The system of administrative law]*, 10 *Sądowa kontrola administracji [Judicial review of the administration]* (R. Hauser, Z. Niewiadomski, A. Wróbel eds, Warsaw 2014).

²¹ Lecture of Professor, Ph.D. Janusz Borkowski, *Sądownictwo administracyjne na ziemiach polskich [Administrative jurisdiction on the Polish territory]*, 1 *Zeszyty Naukowe Sądownictwa Administracyjnego [Scientific Papers of Administrative Justice]* 16 (2006).

After the adoption of the so-called March Constitution, of 17 March 1921, the problem of a constitutional judiciary took on new meaning. Article 73 of this Constitution²² provided that a separate bill should create administrative courts whose organization would be based on the cooperation of (lay persons) citizens and (professionals) judges, culminating in a Supreme Administrative Court, and which should adjudicate on the legality of administrative acts in the sphere of state and local government. This constitutional statement was implemented by the Act of 3 August 1922 on the High Administrative Tribunal.²³ According to the provision of the first sentence of Article 1 of the Act, for adjudicating on the legality of orders and decisions falling within the administration of the Government, and local government, a Supreme Administrative Court was created. At the same time, the second clause of Article 1 specified that as to the establishment of lower-level administrative courts with the participation of the civil factor, the Supreme Administrative Court, as the only instance of judicial review, would recognize complaints on the adjudications and judgments issued in the last instance by the administrative authorities of the central or local government, as long as this action did not exclude rights in respect of submitting a complaint. The Supreme Administrative Court had no right to examine the validity of laws duly announced. The literature indicates that, as a rule, the Austrian system was adopted.²⁴ The above-described model referred primarily to the former Austrian and Russian districts, while in the former Prussian district lower instance courts were maintained, although the Supreme Administrative Court had competence with regard to the issues of this district as well. The wording of the law indicated that such a one-instance model was considered a transitional state; however, up until the outbreak of World War II in 1939 there were no fundamental changes in the judicial system (though the new Constitution of 1935 did not even refer to the need for a two-instance system). Perhaps here we should mention the creation in 1935 of the Invalid Administrative Court as a special court to the Supreme Administrative Court. This Court was a temporary solution established to relieve the Supreme Administrative Court of such cases (i.e. cases on providing for military invalids, payment for their pensions, etc.).

According to Article 3 of the pre-war Act on the High Administrative Tribunal, the Supreme Administrative Court did not adjudicate on matters within the jurisdiction of general courts or special courts, regarding appointment to public offices and positions, unless it came to violations stipulated in the Act for the filling of positions or the nomination of candidates, matters relating to the representation of the state and citizens against states and foreign authorities, and in matters relating to military

²² 44 J. of L., item 267.

²³ 67 J. of L., item 600.

²⁴ Lecture of Professor, Ph.D. Janusz Borkowski, *Sądownictwo administracyjne na ziemiach polskich [Administrative jurisdiction on the Polish territory]*, 1 Zeszyty Naukowe Sądownictwa Administracyjnego [Scientific Papers of Administrative Justice] 17 (2006).

operations, the system of military force and mobilization, with the exception of matters of supply and supplement of the army, and in disciplinary matters.

After the end of World War II and in the beginning of the years of the socialist changes in Poland, administrative jurisdiction was not revived. In the course of the next thirty-five years ideas and projects were submitted, but the Government did not see the point in setting limitations for itself. It was only on 31 January 1980 with the Law on the Supreme Administrative Court amending the Act that the Code of Administrative Procedure was passed.²⁵ Here, we probably cannot speak of a continuation, but rather a new stage of administrative judiciary in Poland. The enactment of this law is the beginning of a new stage, which actually still persists today. It is of little significance that the contemporary start has its roots back in socialist times, although in the initial period the competence of the courts was quite limited. In fact, the Supreme Administrative Court began its operations on 1 September 1980. Article 1 of the Act bringing to life the Supreme Administrative Court specified that it operate in Warsaw and city branches created for one or more provinces. This wording actually indicated that it was a one-instance court, although having city branches. The Court had jurisdiction over complaints against administrative decisions and procedures laid down in the Code of Administrative Procedure and other regulations. The newly created Court was supervised by the Supreme Court. In accordance with § 1 of Article 196 of the Code of Administrative Procedure, in the former wording, the decision of the state administration may be appealed to an administrative court because of its illegality. It should be stressed that the local government had not yet been reactivated. In turn, § 2 of Article 196 of the Code exhaustively lists the decisions that could be appealed, e.g. in matters of construction works, prices, public roads, expropriation of real estate, employment and social affairs, among others. In other words, the Act did not provide for a general clause on the right of appeal against an administrative decision in principle, but provided a list of decisions against which the appeal was allowed. This was a sign of the mistrust the authorities had towards administrative jurisdiction.

Actions could be brought by a party, a social organization, which participated in the administrative proceedings, or by a public prosecutor (Art. 197 of the Code of Administrative Procedure). What is interesting is that the complaint to the administrative court was not brought directly, but rather through the state administration, which issued the contested decision in the last instance. The administration authority was obliged to pass the complaint to the Court.

Only in 1990 were there significant changes, consisting primarily in the introduction of a general clause. According to the amended § 1 of Article 196 of the Code of Administrative Procedure, the decision of the state administrative body could be appealed to an administrative court on the grounds of its illegality. The approach

²⁵ 4 J. of L., item 8.

and the scope of the control had clearly changed, and challenging any administrative decision now happened as a rule. Only in § 4 of Article 196 did the Code provide for exceptions to the general clause, or situations where it was not possible to challenge an administrative decision. The list of exceptions had an exhaustive nature. Despite the changes it was obvious that this would not end the evolution of administrative jurisdiction in Poland. For at this time, after the events of 1989, the state entered into a phase of economic and political transformation.

The next step in reform was the adoption on 11 May 1995 of the comprehensive Act on the Supreme Administrative Court, which entered into force on 1 October 1995.²⁶ The Act can be called comprehensive because it regulated the organization of the Supreme Administrative Court, its jurisdiction and its scope, as well as court proceedings. The provisions concerning judicial and administrative proceedings were excluded from the Code of Administrative Procedure. Nevertheless, the Court was still a single instance, since Article 2 stated that the Court acted in Warsaw and in city branches of the Court created for one or more provinces, so consequently the city branches of the Court could not be considered separate courts of first instance. The Supreme Administrative Court was divided into chambers and, finally, withdrawn from accepting complaints presented to the Court through intermediary bodies: an authorized entity would now submit a complaint directly to the Court.

The adoption of the new Constitution of the Republic of Poland of 2 April 1997,²⁷ which entered into force on 17 October of the same year, was a stimulus for subsequent changes in administrative jurisdiction. In the introduction to this study we partially mentioned the provisions of the Constitution on administrative jurisdiction, but the wording of Article 176 of the Constitution is worth mentioning, in particular: "Court proceedings shall have at least two stages." The same article also states that: "The organizational structure and jurisdiction as well as procedure of the courts shall be specified by statute." In addition, in accordance with Article 185 of the Constitution, "The President of the Supreme Administrative Court shall be appointed by the President of the Republic for a 6-year term of office from among candidates proposed by the General Assembly of the Judges of the Supreme Administrative Court." In Chapter XIII, Final and Transitional Provisions, Article 236 paragraph 2 states:

Statutes bringing Article 176 paragraph 1 into effect, to the extent relevant to proceedings before administrative courts, shall be adopted before the end of 5 years from the day on which the Constitution comes into force. The provisions relating to extraordinary review of judgements by the Supreme Administrative Court shall remain in effect until the entry into force of such statutes.

Thus, after the adoption of the Constitution, the work on new laws that actually determine the shape of today's administrative jurisdiction in Poland started. After

²⁶ 74 J. of L., item 368.

²⁷ 78 J. of L., item 483.

a wide debate in many legal groups the drafts were submitted to the Chancellery of the President of the Republic of Poland. On 22 October 2001, the President submitted a draft to the Parliament (more precisely to the Sejm, the lower house of the Polish Parliament). The first Act – the Law on the System of Administrative Courts – was adopted by the Sejm on 25 July 2002, the Act on Proceedings before Administrative Courts and the Act on Proceedings before Administrative Courts, Rules (implementing regulations) introducing the Act on Proceedings before Administrative Courts were adopted on 30 August 2002. All three acts reforming administrative jurisdiction in Poland entered into force on 1 January 2004.²⁸ From that moment the era of two-instance administrative proceedings began in Poland.

3. System of Administrative Courts and Judges in Poland

First of all it should be mentioned that in Poland, in the light of the Constitution, the judiciary consists of two separate branches or hierarchies of courts:

- courts of general jurisdiction and military courts headed by the Supreme Court, and
- administrative courts headed by the Supreme Administrative Court.

The structure of administrative courts consists of voivodship²⁹ (regional) administrative trial courts, established to consider all court-administrative cases not reserved for the Supreme Administrative Court, and the Supreme Administrative Court, established to consider appeals against the judgments of the voivodship administrative courts. A Provincial Administrative Court is formed for each province or for a number of provinces. Thus in contrast with the general judiciary, there are no district courts. Sixteen voivodship administrative courts exist in Poland.

Immediately it should be noted that the supreme supervision over the administrative activity of the administrative courts is exercised by the President of the Supreme Administrative Court.³⁰ This is of great importance because the administrative court cannot in the slightest way be dependent on the government administration. Additionally, the administrative courts are not supervised by the Supreme Court. On the other hand, courts of general jurisdiction in the field of administration (not as to adjudication) are supervised by the Ministry of Justice.

The Supreme Administrative Court consists of the President of the Supreme Administrative Court, vice-presidents and judges. The bodies of the Supreme

²⁸ 153 J. of L., items 1268, 1270, 1271.

²⁹ Voivodship (*województwo*) – in practice a region, the largest unit of territorial division. The most basic unit is the *gmina* (commune), and Poland also has a 'middle' unit, equivalent to a county – *powiat*, which encompasses several communes. Poland does not have any autonomous regions.

³⁰ Law on the System of Administrative Courts, 25 July 2002, Consolidated text, J. of L. (2014), item 1647, as amended, Art. 12.

Administrative Court are the President of the Supreme Administrative Court, the General Assembly of the Judges of the Supreme Administrative Court, and the College of the Supreme Administrative Court. The Supreme Administrative Court is divided into the Financial Chamber, the Commercial Chamber, and the Administrative Chamber. Each chamber is headed by a vice-president appointed by the President of the Supreme Administrative Court.

From the point of view of sentencing in administrative courts, the most vital role is played by judges and court assessors, whom the Act on the System of Administrative Courts guarantees independence in the exercise of their offices. In accordance with §§ 1 and 2 of Article 5 of the Act, the judges of administrative courts are appointed by the President of the Republic of Poland, at the request of the National Council for the Judiciary. The judges of administrative courts are appointed to the position of regional administrative court judge, with the appointment place (seat) of the judge, or as a judge of the Supreme Administrative Court.³¹

Article 6 of the Act states that a person may be appointed judge of a voivodship (regional) administrative court who meets the following requirements:

- 1) has Polish citizenship and enjoys full rights as a citizen;
- 2) is of good character;
- 3) has completed a higher law studies program in Poland and obtained a Master's degree or foreign degree recognized in Poland;
- 4) is able, i.e. in good health, to perform the duties of a judge;
- 5) has attained the age of 35;
- 6) is distinguished by a high level of knowledge in the field of public administration and administrative law and other areas of law relating to the operation of public administration bodies; and
- 7) has remained for least eight years a judge, prosecutor, president, vice-president, senior counsel or counsel in the offices of the Attorney General of the Treasury, or at least for eight years has practiced as an advocate, legal counsel or notary public, or for ten years has remained in government positions related to the use or creation of administrative law and worked as an assessor in the provincial administrative court for at least two years.

However, the requirements of this section do not apply to people with the title of professor or the academic degree of Doktor habilitowany in law³² (not an ordinary Ph.D. in law). In addition, in exceptional cases, the President of the Republic of Poland, at the request of the National Council for the Judiciary, may appoint a candidate to the post of a judge, despite shorter periods of remaining in the positions mentioned

³¹ Law on the System of Administrative Courts, 25 July 2002, Consolidated text, J. of L. (2014), item 1647, as amended.

³² Doktor habilitowany – recommended by a fully qualified faculty board and granted by the Central Commission for Academic Titles and Degrees. Doctor of law (Ph.D. in law) is granted by a fully qualified faculty board. Doktor habilitowany (dr hab.) is a post-doctoral degree.

in point 7 or in practice as an advocate, legal counsel or notary public (Note: the same requirements, except points 5 and 7, apply to court assessors).³³

A person appointed to a Supreme Administrative Court position must be one who:

- 1) has Polish citizenship and enjoys full rights as a citizen;
- 2) is of good character;
- 3) has completed a higher law studies program in Poland and obtained a Master's degree or foreign degree recognized in Poland;
- 4) is able, i.e. in good health, to perform the duties of a judge;
- 5) is distinguished by a high level of knowledge in the field of public administration and administrative law and other areas of law relating to the operation of public administration bodies; and
- 6) is at least 40 years of age and has remained at least for ten years a judge, prosecutor, president, vice-president, senior counsel or counsel in the offices of the Attorney General of the Treasury, or at least has practiced for ten years as a lawyer, solicitor or notary public. The requirement of 40 years of age does not apply to a judge who for least three years has remained a judge of a provincial administrative court.³⁴

However, the requirements of this section do not apply to people with the title of professor or the academic degree of Ph.D. in law. In addition, in exceptional cases, the President of the Republic of Poland, at the request of the National Council for the Judiciary, may appoint a candidate to the post of judge, despite shorter periods of remaining in the positions mentioned in point 6 or in practice as an advocate, legal counsel or notary public.

With regard to the assessors, we immediately should mention that the institution of the assessor in the Polish judiciary has undergone an evolution, especially when it comes to the common courts. In short, the court assessor can be described as a probationary judge.

The Constitutional Court in its judgment of 24 October 2007³⁵ found that the delegation of the judicial duties of judges to assessors violated the Constitution. Although the legislation on the common jurisdiction courts of law was found unconstitutional, the literature reveals the view that entrusting the assessor with the duties of a judge in the provincial administrative court has a similar nature, as in the district courts, and therefore under the Constitution the performance of judicial duties by the assessors on the basis set out in the provisions governing the organization and proceedings of administrative courts must be regarded as allowed, up to the time specified by the Constitutional Court of an eighteen-

³³ Law on the System of Administrative Courts, 25 July 2002, Consolidated text, J. of L. (2014), item 1647, as amended.

³⁴ Law on the System of Administrative Courts, 25 July 2002, Consolidated text, J. of L. (2014), item 1647, as amended, Art. 7.

³⁵ SK 7/06 (OTK-A ZU 2007, No. 9, item 108).

month deferment period.³⁶ The Constitutional Court may specify a different date for the end of the binding force of a normative act. Although this view aroused controversy in the doctrine, due to differences between the general jurisdiction courts and administrative courts (different methods of appointing the assessor), the institution of assessor was practically dead in respect of the administrative judiciary. As a result of amendments to the legislation, which came into force on 1 January 2016, the legislator attempted to restore this institution. This was not about an unconstitutional action, as Section 6.1 of the Court's ruling indicated that in the ruling on the unconstitutionality the Constitutional Court did not rule out the possibility of the existence of the institution of assessor – it only questioned its prescriptive form, taking into account entrusting (by the Minister of Justice, and therefore the representative of the executive) assessors with rulings, i.e. the performance of the constitutional functions of the judiciary, without the necessary constitutional guarantees of independence enjoyed by judges.

After the reform, the present situation is that the assessors are appointed by the President of the Republic of Poland, at the request of the National Council for the Judiciary. Court assessors are appointed for five-year terms, with the appointment place (office) of the assessor in the provincial administrative court.³⁷ In addition to the basic requirements common for judges and assessors, as mentioned above, the assessor must have at least four years work experience as a judge, prosecutor or president, vice-president, senior counsel or counsel in the offices of the Attorney General of the Treasury or have practiced for at least four years as an advocate, legal counsel or notary public, or remained for six years in government positions related to the use or creation of administrative law. Traditionally, in the Polish legal system such requirements of work or occupation positions do not concern people with the academic title of professor or the academic degree of Doktor habilitowany in law.

According to Article 10 of the Act on the System of Administrative Courts, apart from the judges and the assessors, the administrative courts employ senior court registrars, court registrars, senior assistants of judges, assistants of judges, clerks, and other employees of the court.

4. Scope of Administrative Jurisdiction

First of all, it should be noted that in the Polish legal system the Code of Administrative Proceedings is in force, which, despite the name, cannot be used as a procedural law regulating the procedure itself before administrative courts. The Code of Administrative Proceedings governs the proceedings before competent public administration

³⁶ M. Masternak-Kubiak in: T. Kuczyński, M. Masternak-Kubiak, *The Law on Administrative Courts (Prawo o ustroju sądów administracyjnych)*, Commentary to Art. 4.

³⁷ *Law on the System of Administrative Courts*, 25 July 2002, Consolidated text, J. of L. (2014), item 1647, as amended, Art. 5.

authorities (not administrative courts) in individual cases to be determined by way of administrative decisions. Also, the Code should be applicable in cases before other state authorities and other entities appointed to decide on cases mentioned above by operation of law or on the basis of agreements. The Code of Administrative Proceedings also governs the proceedings regarding letters of dissatisfaction and proposals before state authorities, authorities of units of self-government, and before the bodies of social organizations.³⁸ In other words, it is primarily about the relationship between the authority body and the person in the issuing of individual decisions affecting that person. Poland (for a country with a socialist past) has a fairly long tradition of the codification of administrative proceedings. Comparing administrative law and court administrative law we can conclude the following:

These two areas of law supplement each other; the former serves to implement the substantive law in issuing individual administrative decisions, while the latter aims to control the compliance of administrative rulings with the law. The purpose of the law on court - administrative proceedings is not to implement the substantive law, but to monitor how the substantive law is being implemented.³⁹

Therefore, court and administrative proceedings are regulated by the Law on Proceedings before Administrative Courts, rather than by the Code of Administrative Proceedings.

As mentioned above, cases within the jurisdiction of the administrative courts are addressed at the first instance by voivodship administrative courts. The Supreme Administrative Court exercises supervision over the activities of voivodship administrative courts regarding judgments in the manner prescribed by the law, and in particular considers the appeals from the decisions of those courts and adopts resolutions clarifying legal issues.⁴⁰ Thus, the administrative courts serve justice by the control over the operation of public administration and the settlement of conflicts of competence and jurisdiction between local government bodies and local government appeals boards, and between those authorities and the authorities of the government administration.⁴¹ According to § 2 Article 3 of the Law on Proceedings before Administrative Courts, the control over the activities of the public administration by administrative courts includes adjudicating on complaints relating to:

- administrative decisions;
- decisions issued in administrative proceedings, which can be appealed against or which terminate the proceedings, as well as the decisions concluding the case on the merits;

³⁸ Code of Administrative Procedure of 14 June 1960, Consolidated text, J. of L. (2016), item 23.

³⁹ M. Bińkowska, A. Chełchowski, R.A. Walawender, *The Code of Administrative Proceedings XI* (Warsaw 2010).

⁴⁰ Law on the System of Administrative Courts, 25 July 2002, Consolidated text, J. of L. (2014), item 1647, as amended, Art. 3.

⁴¹ Law on the System of Administrative Courts, 25 July 2002, Consolidated text, J. of L. (2014), item 1647, as amended, Art. 1.

– decisions issued in enforcement proceedings and proceedings to secure claims, which are subject to appeal, with the exception of the decisions of a creditor on the inadmissibility of a submitted claim, and decisions the object of which is the position of the creditor on the claim submitted;

– written interpretations of the tax law issued in individual cases, advance protective tax decisions, and the refusal to issue such decision;

– acts of local law of the local government bodies and local organs of government administration;

– acts of supervision over the activities of local government bodies; and

– failure to act or excessive length of proceedings.

It should be noted that the administrative courts are not competent to decide on the following cases:

– those resulting from organizational superiority and subordination in relations between public administration bodies;

– those resulting from the dependence between supervisors and their subordinates;

– refusal to appoint for positions or appointment to serve in public administration bodies, unless the obligation of nomination or appointment is stipulated by the law;

– visas issued by consuls (in principle); and

– authorization to cross the national borders as part of the local border traffic issued by consuls.⁴²

5. Powers of the Supreme Administrative Court

The Supreme Administrative Court recognizes appeals on decisions of the voivodship administrative courts. These include cassation appeals and complaints. Cassation appeal can be exercised for judgments issued by the voivodship administrative courts or decisions terminating the case. The basis for the cassation appeal may be a violation of substantive law by its erroneous interpretation or incorrect interpretation or application of proceedings provisions if the defect could affect the outcome of the case.⁴³ The literature is dominated by the view that the cassation appeal in court and administrative proceedings, unlike proceedings before courts in civil and criminal cases, is the ordinary means of appeal.⁴⁴ The decisions of the Supreme Administrative Court are not subject to cassation appeal or any other means of appeal. As mentioned above, the Supreme Court is not a court of a higher level for the Supreme Administrative Court. Additionally, the Supreme Administrative

⁴² Law on Proceedings before Administrative Courts of 30 August 2012, J. of L. (2016), item 718, Art. 5.

⁴³ Law on Proceedings before Administrative Courts of 30 August 2012, J. of L. (2016), item 718, Art. 174.

⁴⁴ M. Niezgódka-Medek in: B. Dauter, A. Kabat, M. Niezgódka-Medek, *Prawo o postępowaniu przed sądami administracyjnymi, Komentarz* [Law on proceedings before administrative courts, Commentary] 741 (Warsaw 2016).

Court is in no way a part of the common judiciary. Cassation appeal to the Supreme Administrative Court can be brought by a party, a prosecutor, the Ombudsman or the Ombudsman for Children after being served with a copy of the judgment along with the justification.⁴⁵ Thus, in the current legal environment the cassation appeal is not an extraordinary revision, as was the case with a one-instance court and administrative proceedings.

The complaint, as a second means of appeal, applies explicitly to decisions and orders mentioned in the Act (i.e. the Law on Proceedings before Administrative Courts). It is a means for stay of judgment and with relatively devolutive effect, and it also exhibits characteristics of a means for rehearing.⁴⁶

For the unification of judicial practice, the power of the Supreme Administrative Court to adopt two types of resolutions is of great importance:

- resolutions aimed at clarifying legal provisions, the use of which caused a divergence in the case law of administrative courts; and
- resolutions including decisions on legal issues raising serious doubts in a particular court and administrative case.⁴⁷

In Polish literature, the first resolutions are called abstract resolutions and the second are called concrete resolutions. We must agree that the ability to adopt such resolutions complements the supervisory powers of the Supreme Administrative Court which it has in relation to the courts of first instance.⁴⁸ Each of these resolutions, although at different levels, aims at unifying the case law of the court and administrative judicature.

A concrete resolution occurs in the situation where in the recognition of a cassation appeal a legal issue emerges that raises serious doubts. The Supreme Administrative Court may adjourn the proceedings and submit the issue to be resolved by a panel of seven judges of the Court. The resolution by the panel of seven judges is binding in the case;⁴⁹ there is no possibility that the panel ruled otherwise in a similar case; there is no possibility of the use of the so-called 'breaking method', i.e. a means by which to break the force of a resolution (this will be discussed below). As described in the literature, the exclusive competence to act in this regard lies in the Supreme Administrative Court's recognizing the cassation appeal.⁵⁰ Neither the parties nor the

⁴⁵ Law on Proceedings before Administrative Courts of 30 August 2012, J. of L. (2016), item 718, Art. 173.

⁴⁶ W. Piątek in: A. Skoczylas, P. Szustakiewicz, *Prawo o postępowaniu przed sądami administracyjnymi, Komentarz* [Law on proceedings before administrative courts, Commentary] 361 (Warsaw 2016).

⁴⁷ Law on Proceedings before Administrative Courts of 30 August 2012, J. of L. (2016), item 718, Art. 15.

⁴⁸ W. Sawczyn in: A. Skoczylas, P. Szustakiewicz, *Prawo o postępowaniu przed sądami administracyjnymi, Komentarz* [Law on proceedings before administrative courts, Commentary] 33 (Warsaw 2016).

⁴⁹ Law on Proceedings before Administrative Courts of 30 August 2012, J. of L. (2016), item 718, Art. 187.

⁵⁰ W. Piątek in: A. Skoczylas, P. Szustakiewicz, *Prawo o postępowaniu przed sądami administracyjnymi, Komentarz* [Law on proceedings before administrative courts, Commentary] 348 (Warsaw 2016).

regional administrative courts have such powers. These resolutions are adopted by seven-judge panels; however, the seven-judge panel may – in the form of a decision – pass the legal issue to be resolved to the full chamber, and the chamber may pass it to the full panel of the Supreme Administrative Court. This primarily regards more complicated cases or cases of a greater systemic importance.

Abstract resolutions, on the other hand, are adopted by the Supreme Administrative Court at the request of the President of the Supreme Administrative Court, the Attorney General, the Ombudsman or the Ombudsman for Children. The President of the Supreme Administrative Court refers the application to the panel composed of seven judges, the entire chamber or the full panel of the Court.⁵¹ Resolutions (concrete and abstract), upon their announcement, bind the administrative courts (at all levels) in all unsettled cases in which the interpreted provision could be applied.⁵² Of course, the Supreme Administrative Court may – in the form of a decision – refuse to adopt a resolution, especially when there is no need to clarify doubts.

It is clear that there is no basis for treating resolutions as sources of law which are generally applicable, because resolutions are not binding for courts of general jurisdiction, but only for administrative courts. In the Polish legal system, a precedent is not a source of law, but in relation to the resolutions we can find the term ‘factual precedent’ in the literature. The validity of resolutions is not absolute; it is possible to break the force of a resolution. According to Article 269 of the Law on Proceedings before Administrative Courts, if any panel of the administrative court (which may be a court of any instance) recognizes that the case does not share the view expressed in the resolution of seven judges, the whole chamber or the full Supreme Administrative Court, it refers the resulting legal issue to be resolved by an appropriate panel. This applies to both abstract and concrete resolutions. In such a situation, the panel of seven judges, the chamber or the full panel of the Supreme Administrative Court will adopt another resolution. If the panel of a chamber of the Court, in explaining the legal issue, does not share the view expressed in the resolution of another chamber, it refers this issue to be resolved by the full panel of the Supreme Administrative Court. The new resolution may endorse the previous one, or quite the reverse – it may break the resolution. In this way courts can depart from the previously expressed position. The new resolution is absolutely binding in respect of the specific case in relation to which the challenged resolution was adopted. However, even if the resolution ‘stays’, other courts in relation to other cases may try to challenge the resolution in the same manner. After a certain time, some resolutions may grow even to the rank of principles in specific cases.

⁵¹ Law on Proceedings before Administrative Courts of 30 August 2012, J. of L. (2016), item 718, Art. 264.

⁵² A. Skoczylas in: A. Skoczylas, P. Szustakiewicz, *Prawo o postępowaniu przed sądami administracyjnymi, Komentarz* [Law on proceedings before administrative courts, Commentary] 468 (Warsaw 2016).

6. Fundamental Principles

The issue of the court and administrative proceedings is arguable in the Polish science of law. Although a part of the rules recognized as principles was expressed explicitly in the Act on the System of Administrative Law, there are divergences, because no statutory list of principles is stated in one specific article. The literature also notes that some proponents of the doctrine emphasize the elements of the system characteristic of the court and administrative proceedings, some put more weight on procedural matters related to the course of the proceedings, and still others, apart from the procedural matters, try to highlight the place of judicial control of the administration in the Polish justice system.⁵³ For our purposes, it should be useful to review the classification provided in Volume 10 of the System of Administrative Law (System Prawa Administracyjnego),⁵⁴ which is one of the most significant studies of law and administrative procedure and the courts and administrative proceedings. It should be emphasized, however, that this is only a presentation of the views, shared by others, of one legal scientist.

- I. Basic or general principles, whose role is not limited to court and administrative proceedings: these are often constitutional principles or related to human rights.
 - a. The principle of two instances
 - b. The principle of legality

This rule stems directly from the Constitution of the Republic of Poland, as in accordance with Article 7, “The organs of public authority shall function on the basis of, and within the limits of, the law,” while Article 184 stipulates that, “The Supreme Administrative Court and other administrative courts shall exercise, to the extent specified by statute, control over the performance of public administration.” Therefore, the supervision of administrative courts is based on only one criterion – the legality, which is widely understood as compliance with the law, and the courts may not also use other criteria, such as the integrity, economic viability or appropriateness.⁵⁵

- c. The principle of legal assistance to the parties

According to Article 6 of the Law on Proceedings before Administrative Courts, “[I]n ... [the] event of a justified need the administrative court shall provide the parties appearing in the case without a lawyer, legal counsel, tax advisor or patent attorney

⁵³ J.P. Tarno in: System prawa administracyjnego [The system of administrative law], 10 Sądowa kontrola administracji [Judicial review of the administration] 207–208 (R. Hauser, Z. Niewiadomski, A. Wróbel eds, Warsaw 2014).

⁵⁴ J.P. Tarno in: System prawa administracyjnego [The System of Administrative Law], 10 Sądowa kontrola administracji [Judicial review of the administration] 7 (R. Hauser, Z. Niewiadomski, A. Wróbel eds, Warsaw 2014).

⁵⁵ P. Szustakiewicz in: A. Skoczylas, P. Szustakiewicz, Prawo o postępowaniu przed sądami administracyjnymi, Komentarz [Law on proceedings before administrative courts, Commentary] 3 (Warsaw 2016).

the necessary instruction as to the procedural actions and the consequences of their negligence.” There are a number of detailed rules governing the granting of assistance by the court in a particular case. The Supreme Administrative Court in its decision of 7 September 2011 pointed out that the “required guidance, referred to in article 6 of the proceedings before the administrative courts, is the guidance of the court, without which a party not using legal assistance would not have an influence on the ongoing case and therefore could not exercise its rights ... This does not mean, however, that the court is obliged to instruct the party in detail for any possible behavior or warn the party against not caring for the party’s own interests and recommend such actions, which every adult and thrifty man takes on their own based on their own life experiences.”⁵⁶

d. The principle of procedural economy (speed)

According to Article 7 of the Law on Proceedings before Administrative Courts, the administrative court should take action in order to quickly decide on the case and seek its settlement. Actually, from this article arises the principle of concentration of evidence. The presiding judge should prepare the material in such a way that the case could be addressed during one hearing, after which a substantive decision could be made.⁵⁷ Without a doubt, the length of proceedings (not only in the case of the court and administrative proceedings) is a huge problem assuming the proportions of a social problem, arousing the particular interest of citizens. Polish legislation in a comprehensive manner regulated the institution of the complaint on the length of proceedings by enacting a separate Act of 17 June 2004 on complaints on the violation of the right to hear the case in preparatory proceedings conducted or supervised by the prosecutor and the judicial proceedings without undue delay.⁵⁸ Article 4 of the Act states that if the complaint concerns the excessive length of the proceedings before the voivodship administrative court or the Supreme Administrative Court, the court competent to hear it will be the Supreme Administrative Court.

e. The principle of openness

This principle stems from the above-cited provisions of the Constitution (Art. 45 para. 1, Art. 184) and the international obligations of Poland. The principle also has constitutional legitimacy, as Article 45 of the Constitution stipulates that everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial, and independent court and exceptions to the public nature of hearings may be made for reasons of morality, state security, public order or protection of the private life of a party, or other important private interest.

⁵⁶ The Supreme Administrative Court decision of 7 September 2011, I OZ 649/11.

⁵⁷ P. Szustakiewicz in: A. Skoczylas, P. Szustakiewicz, *Prawo o postępowaniu przed sądami administracyjnymi, Komentarz* [Law on proceedings before administrative courts, Commentary] 15 (Warsaw 2016).

⁵⁸ 179 J. of L., item 1843, as amended.

Judgments shall be announced publicly. Of course, there is the possibility of holding the hearing or any part thereof behind closed doors if the public hearing of the case threatens morality, state security or public order, and if classified information could be disclosed during the hearing. In addition, a party may request a closed session because of the protection of private life or other important private interest (cf. Art. 96 of the Law on Proceedings before Administrative Courts). In fact, this is in regards to the exclusion of openness to the public, not to the party. Additionally, each party may invite two persons of trust, despite the fact that the meeting is held behind closed doors, e.g. for the sake of minors.

f. The principle of access to the court

Apart from constitutional aspects and ratified international agreements, this principle is understood in the doctrine as the right to a fair trial, and is composed of the following elements:

- the guarantee of access to a court;
- the authority conducting the proceedings has all the qualities of a court;
- ensuring and compliance with relevant procedures;
- the effectiveness of the enforcement of judgments of the court.⁵⁹

g. The adversarial principle

At present, this principle is present in procedures in a large number of countries. Examples of the application of this principle may include court and administrative proceedings that are initiated on a complaint by an authorized entity (not *ex officio*) and that the recognition of the case by the Supreme Administrative Court generally takes place within the complaint submitted.

II. Principles included in the second group, which are strictly procedural principles, specific to the proceedings before the administrative courts:

- a. The principle of equality of parties.
- b. The principle of availability.
- c. The principle of the primacy of settling the case in the administrative proceedings.
- d. The principle of material truth.
- e. The principle of adjudicating in accordance with the state prevailing at the date of adoption of the contested act or actions.
- f. The principle of not being bound by the limits of the complaint (here the principle of formality is manifested, as opposed to the adversarial principle), although the court is bound by the limits of the case. The appeal to the Supreme Administrative Court mentioned above is different. In other words, in the administrative judiciary in various instances there are adjacent and mutually exclusive principles in particular cases.

⁵⁹ This is adopted by J.P. Tarno with reference to other authors in: *System prawa administracyjnego [The system of administrative law]*, 10 *Sądowa kontrola administracji [Judicial review of the administration]* 7 (R. Hauser, Z. Niewiadomski, A. Wróbel eds., Warsaw 2014).

- g. The principle of being bound by the legal assessment expressed in the final judgment of the court.⁶⁰

7. Class Actions

Poland and many European countries have enacted changes to legislation introducing the hitherto unknown institution of the class action lawsuit. However, the special Act of 17 December 2009 on pursuing claims in group proceedings⁶¹ regulates only civil proceedings in cases in which there are claims of one type, with at least ten people, based on the same factual basis. The Act is applicable in cases concerning claims for the protection of consumers in respect of liability for damage caused by dangerous products, and tort, with the exception of claims for protection of personal rights. In other words, it is about civil proceedings held in general jurisdiction courts. The institution of class action lawsuits in its own sense does not apply to the administrative court and administrative proceedings.

At the same time, it should be emphasized that Article 51 of the Law on Proceedings before Administrative Courts stipulates that several authorized persons may bring an action in one case and act as the applicants if their complaints concern the same decision, ruling or any other act or action, or failure to act, of a body or the length of proceedings. Such participation takes place only on the side of the applicants. Just as in civil proceedings, the participation may have a formal or a material nature.⁶² The material participation occurs when in one case there is a commonality of rights and obligations of the participants. However, if the subject of the dispute is claims or liabilities of the same type, then we are dealing with formal participation.⁶³

8. Statistics

A look at the statistical data relating to administrative jurisdiction is not only interesting, but also desirable in light of the obligations imposed on jurisdiction in the Act. According to Article 7 of the Law on Proceedings before Administrative Courts, the administrative court should take action in order to quickly decide on the case and seek to decide on it during the first hearing. At the same time, making statistical

⁶⁰ J.P.Tarno in: System prawa administracyjnego [The system of administrative law], 10 Sądowa kontrola administracji [Judicial review of the administration] 208 (R. Hauser, Z. Niewiadomski, A. Wróbel eds, Warsaw 2014).

⁶¹ J. of L., 18 January (2010).

⁶² A. Kabat, Commentary to Article 51 of the Law on proceedings before administrative courts (Lex 2013).

⁶³ Cf. M. Sieradzka in: A. Skoczylas, P. Prawo o postępowaniu przed sądami administracyjnymi, Komentarz Szustakiewicz [Law on proceedings before administrative courts, Commentary] 112 (Warsaw 2016).

comparisons or drawing conclusions is often difficult owing to the relatively significant changes in the scope and structure of administrative jurisdiction. It is methodologically erroneous to compare, for example, the number of outstanding cases from 1985 with the number of such cases from 1995 or 2005, because in the socialist days the competence of the Supreme Administrative Court was limited, and after 1990, despite the strong extension of the powers, there still were no two-instance proceedings. In addition, this comparison cannot be made, because the small number of judges before 1990 cannot be compared with the number of judges in 2000.

In this situation, it seems advisable to compare statistics from selected years of three periods of operation of the administrative jurisdiction in Poland:

- since its revival to 1990, the so-called socialist period,
- from 1990 to 2004, after the extension of competence, and
- the current period of two-instance proceedings.

In 1981, which was the first complete year of operation of the Supreme Administrative Court (court cases had been filed throughout 1980 as well), there was a clear tendency to increase the number of cases brought literally every month. In 1981, a total of 7,926 cases of various nature were submitted. Back then cases were divided into so-called procedural and non-litigious cases. The procedural cases concerned complaints against administrative decisions or failure to act by state administration bodies in cases settled by a decision, and in turn the non-litigious cases related to the activities of these bodies in other legal forms than the decisions or activities of the bodies and organizational units not included in the state administration apparatus.⁶⁴ The Supreme Administrative Court did not have jurisdiction to deal with non-litigious complaints; moreover, the procedural complaints in 1981 already constituted 83.2% of all cases, and non-litigious complaints only 16.8%. This was only a matter of the lack of adequate information of citizens about the characteristics and scope of activity of administrative jurisdiction.⁶⁵

In 1982, the number of complaints to the courts increased by about one-third. In the procedural method 8,829 cases were brought. This number does not include the filing of judicial documents subject to settlement in the non-litigious method, mainly by referring them to the competent authorities and providing the interested parties with explanations.⁶⁶ In terms of their nature, complaints related to public utilities and housing (33.6%), agriculture and forestry (25.4%), construction (13.7%), tax and

⁶⁴ Naczelny Sąd Administracyjny, Sprawozdanie z działalności NSA za okres 1981 r. [The Supreme Administrative Court, the Report on the activity of the Supreme Administrative Court for the period of 1981] 4 (Warsaw 1982).

⁶⁵ Naczelny Sąd Administracyjny, Sprawozdanie z działalności NSA za okres 1981 r. [The Supreme Administrative Court, the Report on the activity of the Supreme Administrative Court for the period of 1981] 4–5 (Warsaw 1982).

⁶⁶ Naczelny Sąd Administracyjny, Sprawozdanie z działalności NSA za okres 1982 r. [The Supreme Administrative Court, the Report on the activity of the Supreme Administrative Court for the period of 1982] 2 (Warsaw 1983).

customs duties (12.2%), employment and social affairs (1.3%), health and social care (1.2%), crafts and services (0.9%), and environmental protection (0.8%).⁶⁷

The upward trend persisted almost to the time of the collapse of the socialist system, but between 1988 and 1990 the number of cases was slightly lower, yet already in 1991 it was higher by a quarter.⁶⁸ Such fluctuations can be explained by political changes.

Table 1. Complaints received by the Supreme Administrative Court and their settlement between 1989 and 1991⁶⁹

Year	Cases remaining from the previous year	Complaints received	Cases settled	Remaining cases for the next year
1989	4,672	13,722	14,881	3,513
1990	3,513	12,504	13,304	2,713
1991	2,713	15,575	14,732	3,556

In subsequent years there has been a dramatic increase in the number of cases, as well as the backlog. At the same time, it cannot be stated statistically that the cases left for the next year were overdue, as they could have been brought even during the previous year.

Table 2. Complaints received by the Supreme Administrative Court and their settlement between 1992 and 1994⁷⁰

Year	Cases remaining from the previous year	Complaints received	Cases settled	Remaining cases for the next year
1992	3,556	24,336	18,851	9,041
1993	9,041	30,278	23,144	16,175
1994	16,175	34,344	29,892	20,627

⁶⁷ Naczelny Sąd Administracyjny, Sprawozdanie z działalności NSA za okres 1982 r. [The Supreme Administrative Court, the Report on the activity of the Supreme Administrative Court for the period of 1982] 4 (Warsaw 1983).

⁶⁸ R. Hauser in: XXV-lecie Naczelnego Sądu Administracyjnego na tle dziejów sądownictwa administracyjnego w Polsce [35th anniversary of the Supreme Administrative Court on the background of the history of administrative courts in Poland] 48 (Warsaw 2005).

⁶⁹ Table 1 is a modification by the author of the table in the report on the activities of the Supreme Administrative Court for 1991: Naczelny Sąd Administracyjny, Informacja o działalności NSA w roku 1991 [The Supreme Administrative Court, information about the activities of the Supreme Administrative Court in 1991] (Warsaw 1992), Table 1.

⁷⁰ Table 2 is a modification of the table in the report on the activities of the Supreme Administrative Court for 1994: The Supreme Administrative Court, information about the activities of the Supreme Administrative Court in 1994, (Warsaw 1995), Table 1.

The year 2003 – the last year of the operation of the Supreme Administrative Court as a one-instance court before the reform of administrative jurisdiction – closed with the submission of 69,011 complaints.⁷¹

After the introduction of the two-instance proceedings, we should focus primarily on the filing of cases to the voivodship administrative courts as the courts of first instance. For example, in 2005 all the operating voivodship administrative courts received 62,909 complaints, while as much as 96.53% were complaints on acts and other activities, while only 3.47% were complaints on the failure to act by an authority. At the same time, the Supreme Administrative Court settled 6,535 cassation appeals, and for the subsequent year 6,263 remained.⁷²

In 2015, all voivodship administrative courts received 83,529 complaints.⁷³

Table 3. Complaints against acts and other actions and failure to act, and excessive length of proceedings of authorities settled by voivodship administrative courts between 2004 and 2015⁷⁴

Year	Number of cases to consider in total (remaining + filed)	Cases settled	Remaining cases for the next year
2004	151,471	83,217	68,254
2005	131,163	87,383	43,780
2006	106,216	78,660	27,556
2007	86,184	66,942	19,242
2008	76,686	58,730	17,956
2009	77,058	59,500	17,558
2010	85,388	64,121	21,267
2011	91,118	69,281	21,837
2012	93,997	71,865	22,132
2013	103,766	75,969	28,070
2014	112,231	81,242	30,989
2015	114,520	81,353	33,167

⁷¹ R. Hauser in: XXV-lecie Naczelnego Sądu Administracyjnego na tle dziejów sądownictwa administracyjnego w Polsce [35th anniversary of the Supreme Administrative Court on the background of the history of administrative courts in Poland] 48 (Warsaw 2005).

⁷² Naczelny Sąd Administracyjny, Informacja o działalności sądów administracyjnych w 2005 roku [The Supreme Administrative Court, information about the activities of the administrative courts in 2005] (Warsaw 2006), Table I, Table X.

⁷³ Naczelny Sąd Administracyjny, Informacja o działalności sądów administracyjnych w 2015 roku [The Supreme Administrative Court, information about the activities of the administrative courts in 2015] 311 (Warsaw 2016).

⁷⁴ Naczelny Sąd Administracyjny, Informacja o działalności sądów administracyjnych w 2015 roku [The Supreme Administrative Court, information about the activities of the administrative courts in 2015] 316 (Warsaw 2016).

Table 4. Cassation appeals settled by the Supreme Administrative Court between 2004 and 2015⁷⁵

Year	Number of cases to consider in total (remaining + filed)	Cases settled	Remaining cases for the next year
2004	6,167	2,918	3,249
2005	12,798	6,535	6,263
2006	16,700	8,788	7,912
2007	17,342	9,347	7,995
2008	18,114	9,389	8,725
2009	19,185	10,013	9,172
2010	20,848	10,922	9,926
2011	24,595	11,352	13,243
2012	28,260	12,276	15,984
2013	32,764	13,493	19,271
2014	37,058	14,994	22,064
2015	40,698	14,892	25,806

Analyzing the above data, we can talk about a certain stabilization of the judiciary after the reforms, and the constantly increasing number of cases and the resulting pressure on administrative jurisdiction. Inevitably, the length of proceedings has become a systemic problem which, however, is being fought. The literature has reported a moderate success in this field: "It should be noted in this context that in 1999, proceedings before an administrative court lasted an average of 42 months, in 2003 it was 36 months, in 2006 about 11 months and in 2009 proceedings before provincial administrative courts last only three to six months."⁷⁶ Once again it must be emphasized that the comparison of one-instance proceedings with the practice of provincial courts of first instance, for example from 2009, is a methodological error.

9. Role of the Judge – a Note

The role of the judge can be described at various levels, including the purely administrative level, and even the systemic and political levels when it comes to, for instance, the presidents of the various administrative courts or the President of the Supreme Administrative Court. However, at this point we would like to draw attention, only briefly, to the differences in the powers of the judge concerning the handling

⁷⁵ Naczelny Sąd Administracyjny, Informacja o działalności sądów administracyjnych w 2015 roku [The Supreme Administrative Court, information about the activities of the administrative courts in 2015] 339 (Warsaw 2016).

⁷⁶ A. Skoczylas in: Handbook of Polish Law 401 (W. Dajczak, A.J. Szwarc, P. Wiliński eds, Poznań 2011).

of complaints in the Regional Administrative Court and the cassation appeal in the Supreme Administrative Court. In § 1 of Article 134 of the Law on Proceedings before Administrative Courts there is the stipulation that the court decides within the limits of the case without being bound, however, with the accusations and motions of the complaint and established legal basis. From this rule there are exceptions, which are discussed below. In one of the judgments of the Supreme Administrative Court it was pointed out that from the settled jurisprudence it turns out that not being bound by the limits of a complaint does not mean that the court may make the subject of its considerations and assessments all aspects of the complaint, regardless of the content of the contested act or activity. This means, though, that the court has the right and even the duty to assess the legality of the contested administrative act even if the objection was not raised in the complaint. And in this regard the court is not bound by the wording of the complaint, arguments used, nor motions filed, objections or requests. So, even omitting the considerations regarding unjustified allegations in the justification for the judgment is not a violation of administrative court proceedings.⁷⁷ At the same time, the activism of the court in this regard cannot be understood in the sense that the voivodship administrative court will control a particular administrative act not at all involved in the case. The case law also shows that the recognition of the limits of the voivodship administrative court determines the administrative case, the content and the scope of which are determined by the standards of the substantive law.⁷⁸

On the other hand, the limits of the administrative court case are determined by the administrative court relationship subject to settlement by the particular decision which was subject to appeal (an act or activity).⁷⁹ The binding nature of a decision by a court of first also consists in the fact that the court delivers a judgment on the basis of the case file, that is, the evidence collected. The complaint to the administrative court is filed through the body whose action, failure to act or excessive length of proceedings is the subject of the complaint. Accordingly, this body will forward the complaint to the court along with the complete and ordered case file, and answer to the complaint within thirty days of its receipt (Art. 54 of the Law on Proceedings before Administrative Courts). Starting from 11 February 2017, the complaint in the form of an electronic document will be submitted to the electronic delivery mailbox of that authority.⁸⁰

From the above-described principle of not binding the voivodship administrative court with the allegations and motions of the complaint there is a statutory exception:

⁷⁷ Judgment of the Supreme Administrative Court in Warsaw on 14 February 2013, II GSK 1113/12.

⁷⁸ Judgment of the Supreme Administrative Court in Warsaw on 14 February 2013, II GSK 1113/12.

⁷⁹ P. Szustakiewicz in: A. Skoczylas P. Szustakiewicz, *Prawo o postępowaniu przed sądami administracyjnymi, Komentarz* [Law on proceedings before administrative courts, Commentary] 244 (Warsaw 2016).

⁸⁰ Article 54 § 1a added by the Act of 10 January 2014 (J. of L. (2014), item 183), which enters into force on 11 February 2017.

a complaint on a written interpretation of tax law issued in an individual case, advance protective tax decisions and the refusal to issue such decision may be based solely on the grounds of the violation of proceedings, an error of interpretation or incorrect assessment as to the application of a rule of substantive law. The Administrative Court is bound by the allegations of the complaint and established legal basis (Art. 57a of the Law on Proceedings before Administrative Courts). We should also point out the realization of the *reformationis in peius* prohibition in Polish law: the court may not issue a judgment against the applicant unless it finds a violation of the law resulting in the annulment of the contested act or acts (§2 of Article 134 of the Law on Proceedings before Administrative Courts).

A completely different situation exists with respect to consideration of a cassation appeal by the Supreme Administrative Court. The Court hears the case within the limits of cassation appeal; however, it takes into consideration *ex officio* the elements that made the proceedings in front of the lower court null and void. Parties may cite new justifications for the basis of cassation (§ 1 of Art. 183 of the Law on Proceedings before Administrative Courts). The invalidity of proceedings occurs in very specific situations (for example, if the judicial path was inadmissible), and in the remaining situations the Court cannot go beyond the limits of cassation. If the applicant has indicated a specific provision of substantive or procedural law which allegedly was violated, the Court cannot examine whether or not it violated another provision even if the collected material demonstrates this.⁸¹ Of course, such a rule is not absolute. With a resolution by a panel of seven judges the Supreme Administrative Court has decided that in a situation in which after the lodging the cassation appeal by the party the Constitutional Court ruled on the unconstitutionality of a normative act on the basis of which a decision is under appeal, if the unconstitutional provision was not indicated in the grounds of cassation, the Supreme Administrative Court should directly apply the provisions of the Constitution (Art. 190 paras. 1 and 4 of the Constitution of Poland) and take into account that the judgment of the Court is not bound by the limits of the cassation appeal.⁸² The established constitutional norms stipulate that the “judgements of the Constitutional Tribunal shall be of universally binding application and shall be final” and a judgement of the Constitutional Tribunal on the non-conformity to the Constitution, an international agreement or statute, of a normative act on the basis of which a legally effective judgement of a court, a final administrative decision or settlement of other matters was issued, shall be a basis for reopening proceedings, or for quashing the decision or other settlement in a manner and on principles specified in provisions applicable to the given proceedings.

⁸¹ B. Dauter in: B. Dauter, A. Kabat, M. Niezgodka-Medek, *Prawo o postępowaniu przed sądami administracyjnymi, Komentarz* [Law on proceedings before administrative courts, Commentary] 828–829 (Warsaw 2016).

⁸² Resolution by the panel of seven judges of 7 December 2009. OPS 9/09, ONSA WSA 2010, No. 2, item 16.

10. Cultural Observations

After many years of operation of administrative jurisdiction in Poland, we can definitely say that it has become not only a part of the Polish legal tradition, but something more in society. Administrative jurisdiction entirely contradicts the *Princeps legibus absolutus est* principle, not creating an absolute control mechanism of power, which would not be possible, but giving practical tools for the control of administration activities. In fact, the activity of administrative courts stripped away once and forever the assumption that public power is infallible. Actually, the increase in administrative jurisdiction of the courts, especially the changes in the political and systemic turning point of 1989, can be considered one example of the democratization of the society, and the recognition as demagoguery the belief that the Government always knows and does what is best. The citizen has got the right to stand on the same level with the authority in matters concerning him.

Additionally, the following observations can be made:

- The adoption of the current two-tier model of administrative jurisdiction should be regarded as successful and corresponding to Polish realities.

- In Polish society, there is no vital political force that proposes the abolition or substantial reduction of the jurisdiction of administrative courts. In the current political situation of acute conflict with the Constitutional Court, the constitutional and general judiciary receives far more criticism.

- The criticism of administrative jurisdiction is present in the public discourse, but it is more about the problems in the style of the excessive length of proceedings, among other things, than about the fundamental negation of the very idea of administrative justice. This does not mean that larger systemic changes are impossible.

- Appealing against decisions or failure to act by broadly understood administration does not raise any surprise and is considered a normal practice.

- No evidence exists of the authorities' actions aimed at the violation of the independence of judges and exerting pressure on them.

- Abolition of the judicial supervision by the Supreme Court on the administrative courts and equipping administrative jurisdiction with its own procedure should be considered successful.

In a sense, we can speak of the existence of a separate culture of administrative jurisdiction.

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