

**The Colloquium of the Association of the Councils of State
and the Supreme Administrative Jurisdictions of the European Union:**
*Consequences of incompatibility with EC law for final administrative decisions and final
judgments of administrative courts in the Member States*

1. The binding legal order in Poland contains procedural regulations which allow to revoke a final administrative decision in case if it proves contrary to Community law.

a)

1.1. The procedural means contained in the code of administrative procedure whose objective is to verify the final administrative acts, are of a general nature. However, they are universal to such extent that also enables to use them in order to eliminate decisions that are contrary to Community law from legal circulation.

1.1.1. The first of these means is the **reopening of administrative proceedings** as regulated in art. 145-152 of the code of administrative procedure.

Pursuant to art. 145 § 1 a case that was concluded by a final decision, the proceedings are reopened if: 1) the evidence on the basis of which the factual circumstances significant for the case were determined, proved false, 2) the decision was issued as a result of an offence, 3) the decision was issued by an employee or body of public administration that is subject to exclusion pursuant to art. 24, 25 and 27, 4) the party did not participate in the proceedings without its fault, 5) new factual circumstances or new evidence significant for the case, existing at the date of issuing the decision but not known to the body that issued the decision are revealed, 6) the decision was issued without obtaining the statement of another body required by the law, 7) the preliminary question was judged by the appropriate body or court in a manner different from the evaluation adopted at the moment of issuing the decision (art. 100 § 2), 8) the decision was issued on the basis of another decision or judgment of a court, that was subsequently revoked or changed.

Furthermore, pursuant to **art. 145a** § 1 it is possible to demand to reopen the proceedings also in case if the Constitutional Tribunal has adjudged that the normative act is contrary to the Constitution, to an international agreement or to the act on the basis of which the decision was issued. In such case the time limit to submit a motion for the reopening of proceedings is one month from the date of coming into force of the judgment of the Constitutional Tribunal.

The content of the quoted regulations results in the fact, that the incompatibility of a legal regulation constituting the legal basis for a final administrative act (decision) with Community law can be the basis for the reopening of administrative proceedings only in the case, if it was previously declared by a judgment of the Constitutional Tribunal. In the literature on the subject it is often doubted, whether this regulation can, basing on the principle of analogy, refer to the effects of the judgments of the EJC– cf. S. Biernat, *The influence of Community law on the revocation of final administrative decisions and final judgments of courts in the Member States*, Starawieś, 7 September 2006, typescript, p. 15.

1.1.2. The second possibility to revoke a final administrative act in the case if it proves contrary to Community law is offered by art. 154 § 1 of the code of administrative procedure. Pursuant to this regulation, a final decision, by virtue of which none of the parties has obtained a right, can be at any time revoked or changed by the body of public administration by which it was issued, or by a body of higher degree, if it is justified by the public interest or by the justified interest of the party. **The revocation or change of a decision without the consent of the party** can be applied in reference to decisions free from defects, and to decisions encumbered with defects other than qualified defects – justifying the reopening of proceedings or the determination of invalidity of the decision.

Taking into consideration the fact that under **the term – obtaining a right** from the decision all cases of interment in the legal sphere are understood, this regulation shall not have a wide scope of application, as decisions from which the parties have not obtained any rights can only include: decision of refusal for all parties of the proceedings, decisions revoking the whole of the rights previously granted to the party or stating the expiration of such right, and decisions imposing the obligation in the maximum extent accepted by the law. *(The interment of rights takes place not only on the basis of the decision granting or extending the right, stating in a binding manner the existence thereof, limiting or canceling the obligation imposed on the party or stating the lack of such obligation, but the obtained right also results from the decision imposing only a specific type of obligation or an obligation to a specific extent on the party. In such case the party obtains the right to execute only this type of obligation that has been specified in the decision).*

1.1.3. A final decision, on the basis of which a party has obtained a right, can be at any time, upon the consent of the party, revoked or changed by the body of public administration by which it was issued or by a body of higher degree, if specific regulations are not contrary

to the revocation or change of such decision and if it is justified by public interest or justified interest of the party (**art. 155**). Similarly to the case described in point 1.1.2., **the revocation or change of a decision without the consent of the party** can be applied in reference to decisions free from defects, and to decisions encumbered with defects other than qualified defects – justifying the reopening of proceedings or the determination of invalidity of the decision.

As the basic prerequisite for the change or revocation of a decision in this manner is the consent of the party, then this manner should be evaluated as not really useful in the case if the final decision, contrary to Community law, is beneficial for the party.

1.1.4. Another legal means that enables the elimination of administrative decisions and judgments encumbered by the most flagrant material or legal defects from legal circulation is the **declaration of invalidity of the decision**. Pursuant to **art. 156 § 1**, a body of public administration declares the invalidity of a decision which: 1) was issued with the violation of the regulations on jurisdiction, 2) was issued without a legal basis or with a gross violation of the law, 3) concerns a case that has already previously been adjudged by means of another final decision, 4) was directed to a person not being a party to the proceedings, 5) was unachievable on the date of issuing and its unachievability is of a permanent nature, 6) in case of its execution would result in an act prohibited under penalty, 7) is encumbered by a defect resulting in its invalidity by force of law.

This manner can be applied in order to eliminate final decisions contrary to Community law, if such incompatibility is evaluated as gross violation of the law. It is difficult to give an unequivocal answer to this question, as both in court jurisdiction and in the literature of the subject there are different opinions on this issue. The jurisdiction of the Supreme Administrative Court has expressed, among others, a view that could be useful here. According to it, one should deem as „gross” such violations of law that lead to effects that can not be accepted from the point of view of legality. However, neither the obvious violation of a specific regulation, nor even the nature of the regulation that was violated, are of a conclusive nature – sentence of 6.09.1984 r., II SA 737/84, GAP 1988, No. 18, p. 45.

This position was criticized by J. Jendrośka and B. Adamiak, *The issue of gross violation of law in administrative proceedings*, PiP 1986, No. 1, p. 66. They expressed the view, that a gross violation of the law is "a violation of a legal regulation that does not raise doubts as to its direct understanding". At the same time, it is not significant whether the violated regulation is of a material or procedural nature. The authors, in their interpretation,

emphasized the obviousness of the violation of the law, arguing that basing the notion of gross violation of the law on the social and economic effects to which it leads, is unacceptable in the view of the solutions adopted by the code of administrative procedure.

This position was argued with by A. Zieliński, in *On "gross" violation of law in the view of art. 156 of the code of administrative procedure*, PiP 1986, No. 2, p. 105-107, who argued that an obvious violation of a regulation can be absolutely insignificant for the judgment of the case. Only taking into account the consequences that such violation leads to allows to reconcile the two competing principles of procedure: the permanence of final decisions and legality.

Still another approach to the interpretation of this notion was presented by Z. Cieślak, *On "gross violation of the law" in administrative proceedings*, PiP 1986, No. 11, p. 111. In his opinion, the essence of gross violation of the law should be found in "the nature of this violation (non-gradable violation), and not in the obviousness of the violation of the law or in the evaluation of the practical consequences of the violation thereof", as he had assumed that the basic element of each norm of behavior is the determination: "who should do or omit doing what, in specific circumstances, in a specific manner, with a specified effect". Thus, a gross violation of the law takes place, if any of these elements is contradicted or missing.

This discussion had an influence on the shaping of the jurisdiction policy of the Supreme Administrative Court. In the subsequent sentences it was emphasized that the declaration of invalidity of an administrative decision is a procedural means that constitutes an exception from the rule of general permanence of the final decision as stated in art. 16 § 1 of the code of administrative procedure. Due to these aspects, the declaration of invalidity of a decision can take place only in case if the existence of a cause for invalidity as specified in art. 156 § 1 is determined in an undisputable manner, and the prerequisites foreseen by art. 156 § 2 of the code do not exist – sentence of 19.05.1989, IV SA 90/89, ONSA 1989, No. 1, pos. 49. In the sentence of 21.10.1992, V SA 86/92 and 436-466/92 The Supreme Administrative Court stated, that in order to deem a violation of the law as „gross” it is necessary to simultaneously fulfill two conditions. Firstly, the content of the decision has to be obviously contradictory to the content of the legal regulation, whereas secondly the nature of the violation is of such type, that it leads to the impossibility of acceptance of such decision as an act issued by an organ of a legally governed state. (ONSA 1993, No. 1, pos. 23). This interpretation was maintained in subsequent judgments of the Supreme Administrative Court, cf. e.g. the sentence of the Supreme Administrative Court of 11.05.1994, III SA 1705/93, "Community" 1994, No. 42, p. 16.

The subsequent sentences specify the prerequisites listed hereabove in the context of specific factual states. One of the preliminary conditions for stating that a decision is obviously contradictory to the content of the legal regulation, is the determination that within the scope encompassed by this decision there existed an undisputable legal status – sentence of the Supreme Administrative Court of 18.07.1994, V SA 535/94, ONSA 1995, No. 2, pos. 91, whereas the existence of the second prerequisite should be evaluated in the view of the whole circumstances of the case, taking into account the legal consequences resulting from the general provisions of the code of administrative procedure, including the principle of intensifying the citizens' trust in the organs of state - cf. e.g. the sentence of the Supreme Administrative Court of 24 I 1994, V SA 1276, 1277/93, ONSA 1994, No. 4, pos. 166 that has been confirmed in the position of the Supreme Court expressed in the sentence of 22 XII 1994, III ARN 71/94, OSN 1995, No. 13, pos. 156. The application of directives resulting from the general principles of the code of administrative procedure in reference to decisions that violate the law in an obvious manner can take place only in exceptional circumstances, where it results undisputedly from the whole circumstances of the case, that the declaration of invalidity of the decision would violate an obviously significant interest of the party acting upon trust in such decision. Such obviously significant interest of the party occurs i.e. in the situation of the realization of an investment on the basis of a building permit issued with the violation of art. 156 § 1 code of administrative procedure, cf. e.g. the resolution of the Supreme Court of 18 XI 1993, III AZP 23/93, OSN 1994, No. 5, pos. 108.

1.2. In the **Fiscal Law**, apart from regulations of a general nature, on the 1 September 2005, such solutions were also introduced that concern exclusively the Community law.

1.2.1. The legal means of **reopening of taxation proceedings** is applicable – apart from cases specified in point 1.1.1. – if: 1) a ratified agreement on the avoidance of double taxation or another ratified international agreement, to which the Republic of Poland is a party, has an influence on the content of the issued decision; 2) the result of a closed procedure of mutual agreement or an arbitration procedure, conducted on the basis of a ratified agreement on the avoidance of double taxation or another ratified international agreement, to which the Republic of Poland is a party, has an influence on the content of the issued decision; 3) **a judgment of the European Court of Justice has an influence on the content of the issued decision** (art. 240 § 1 points 9-11 of Fiscal Law).

This last regulation adapts the Polish legal system to the situation resulting from the access of Poland to the European Union, in which the European law has become a part of the

Polish legal system. Two courts: The European Court of Justice and the Court of First Instance having its seat in Luxemburg, which, pursuant to the treaties, obtained the right to supervise the observance and appropriate application of Community law, are Community courts. The European Court of Justice and the Court of First Instance are empowered to adjudge on the basis of exclusivity of complaints, and they give answers to the preliminary questions of national courts, related to the significance and interpretation of the Community law. Thus – in the view of the quoted regulation – the judgment of the ECJ, regardless from the fact whether it was issued after or before the final fiscal decision was issued, and which has an influence on the content of such decision, constitutes the basis for the reopening of taxation proceedings. At the same time, the expression “has an influence on the content of the decision” used in this regulation should be understood in such manner, that in the view of a given judgment of the ECJ the final decision should be deemed as contrary to Community law.

1.2.2. The Fiscal Law also foresees extraordinary procedures as specified in points 1.1.2 and 1.1.3. (art. 253 and 253a of Fiscal Law). However, their application for the purpose of verification of final fiscal decisions contrary to Community law can take place only occasionally, due to the constraints contained in art. 253b of Fiscal Law, as, pursuant to this regulation, all manners of revocation or change of a decision are not applicable to a fiscal decision which: 1) establishes or determines the amount of fiscal obligations; 2) concerns the fiscal liability of payers or collectors; 3) concerns the fiscal liabilities of third parties; 4) specifies the amount of due interest for delay; 5) concerns the liability of the heir; 6) specifies the amount of tax return.

1.2.3. The legal means of **declaration of invalidity of a fiscal decision** was regulated in art. 247-252 of the Fiscal Law and it was based on the same prerequisites for invalidity as those specified in point 1.1.4. Thus, all remarks made there related to the possibility to apply this procedure in order to eliminate a final fiscal decision contrary to Community law from legal circulation, remain true as a whole here.

b)

1.3.1. For the **reopening of both administrative and taxation proceedings**– as a rule – the competent organ is the administrative body which issued the decision in the case in the last instance (see more in art. 150 of code of administrative procedure and art. 244 of Fiscal

Law). It is also competent in the case if the final decision was previously subject to judicial control and the complaint was dismissed with legal validity.

The jurisdiction of the Supreme Administrative Court has shown a **controversy** related to the question whether, in case if the basis for reopening refer both to the administrative decision and to the sentence of the administrative court keeping the decision in force, only the proceedings in administrative court should be reopened. W In the sentence of 3 February 1993, II SA 2449/92 (OSP 1995, No. 5, pos. 120) the Supreme Administrative Court stated that in this case the competent organ for the examination of the motion to reopen proceedings is the administrative court, whereas in the sentence of the Supreme Administrative Court of 30 September 1985, SA/Wr 358/85 (OSPiKA 1987, No. 2, pos. 27) it was stated that this fact does not constitute an obstacle for the reopening of administrative proceedings.

It seems, that one should assume the admissibility of reopening of both these types of proceedings, however on the condition, that those prerequisites for the reopening of proceedings that are the consequences of the events that occurred in the proceedings itself, should decide on which of these proceedings should be reopened in the specific case. If they are a consequence of events that occurred during administrative proceedings, then this proceedings should be reopened. However, if they are a consequence of the facts that took place during proceedings in administrative court, then these administrative proceedings in court should be reopened– cf. more W. Chróścielewski, J.P. Tarno: *On the issue of reopening of administrative and proceedings in administrative court*, ST 1996, No. 5, p. 22–27. Also according to K. Sobieralski (*The reopening of proceedings in administrative court*, Kraków 2003, p. 87) the circumstance, that an administrative court judged the case, does not *a priori* exclude the possibility of reopening of proceedings in administrative court.

1.3.2. The competent body to **change or revoke a final decision** is the body of public administration by which it was issued or a body of higher degree¹ (art. 154 and 155 of the code of administrative procedure) or the taxation body by which it was issued² (art. 253 and 253a of Fiscal Law). These organs retain their competences also in case if the final decision was appealed against to a court and the court dismissed the appeal.

¹ With the exception of self-government boards of appeal.

² This right is not granted to the self-government board of appeal.

1.3.3.1. The competent body for the declaration of invalidity of a final decision is the body of a higher degree, and in case if the decision was issued by the minister or the self-government board of appeal – this body (art. 157 of the code of administrative procedure).

1.3.3.2. The competent organ for the declaration of invalidity of a final fiscal decision is: 1) a body of higher degree; 2) the minister competent for the issues of public finances, the director of the Taxation Chamber, director of the Customs Chamber or the self-government board of appeal, if the decision was issued by this body; 3) the minister competent for the issues of public finances, if the decision was issued by the director of the taxation chamber or the director of the customs chamber, however in this case the proceedings can be instituted only *ex officio* (art. 248 § 2 of the Fiscal Law).

2. The competent bodies for the case of revocation of a final administrative decision are obliged to eliminate it from legal circulation, if, in the course of the proceedings the existence of a prerequisite that conditions the reopening of proceedings or the declaration of invalidity is determined. Thus, the decision in such case is of a bound, not of a discretion-based nature, whereas the extraordinary procedures of revoking or changing a final decision are based on administrative discretion. It is worth adding, that in the jurisdiction of the Supreme Administrative Court the dominant view is that the body handling the case basing on administrative discretion is obliged to resolve the case according to the demands of the citizen, as long as public interest is not an obstacle to that, or as it does not exceed the competences of the body resulting from the rights and means assigned to it - cf. sentence of the Supreme Administrative Court of 11.06.1981 (SA 820/81), ONSA 1981, z. 1, pos. 57; cf. also the *gloss* of J. Łętowski to this sentence OSP 1982, No. 1-2, pos. 22.

However, it should also be noted, that the supervisory modes of proceedings (points 1.1. and 1.2.) are, as a rule, subject to institution on demand of the party or *ex officio*. In the first case, the date of institution of the proceedings is the date of delivery of the demand to the body of public administration, whereas in the case of institution of proceedings *ex officio* the initiative lies on the part of this body, which means that it is not obliged to institute the proceedings of verification, even if it possesses the knowledge about the fact that the given final decision is encumbered by a defect resulting in its revocation.

3. In the Polish legal system there exists a dependence between the type of incompatibility of the final administrative act with the Community law and the mode of proceedings that can be applied in order to revoke it. Regardless of the reason why this act

was considered contrary to the Community law, only the extraordinary modes of revoking or changing the final decision can be applied. These circumstances are also insignificant for taking the complaint into consideration by the voivodship administrative court, however the type of violation determined by the court can be decisive for the sanction applied (revocation of the decision appealed against, or the declaration of its invalidity).

3.1. The manner of the reopening of proceedings due to the cause specified in art. 240 § 1 (1) of the Fiscal Law shall be applicable in the circumstances, if, already after the issuing of the administrative act the ECJ issues a judgment that interprets the Community law in a different manner.

3.2. The incompatibility of a regulation of national law, constituting the basis for the administrative decision, with the Community law, can be the basis for the reopening of administrative proceedings (art. 145a of the code of administrative procedure) or the proceedings in administrative court (art. 272 of the Regulations of Proceedings in Administrative Court), if it is judged by the Constitutional Tribunal.

3.3. The circumstances, that the act was issued by a national body of administration with the violation of Community law or without taking into consideration the jurisdiction of the ECJ can be understood as gross violation of the law in the view of art. 156 § 1 of the code of administrative procedure or art. 247 § 1 of the Fiscal Law, and thus constitute a basis for the declaration of invalidity of the decision.

4. A final administrative decision that is contrary to Community law can be revoked both as a result of a) the challenging of the given decision by a party in the mode of administrative proceedings; and b) the decision being appealed against to administrative court.

Ad a) In my opinion, basing on the currently binding legal regulations the highest chances for the achievement of the intended result will be offered by submitting a motion to reopen taxation proceedings basing on art. 240 § 1 (11) of the Fiscal Law. Firstly, it will be relatively easy to show in this procedure, that the judgment of the European Court of Justice has an influence on the content of the previously issued final decision. Secondly, this regulation refers exclusively to Community law, constituting a solid legal basis for the issuing of a decision in the case, for the body that conducts the proceedings. As it has been shown by the practice of operation of the administration so far, its bodies usually act in a protective manner (all doubts arising in the legal regulations are, as a rule, settled to the disadvantage of the party). Thus, if the prerequisite for the revocation of a decision (e.g. incompatibility with

Community law as a gross violation of the law) should be achieved by means of system interpretation, the administrative body will avoid it.

Ad b) From the normative point of view it should be sufficient to appeal against the final administrative decision that is contrary to Community law, to the administrative court of first instance. However, one cannot exclude cases, in which it will be necessary to exhaust all means of judicial review. The judgments of administrative courts in cases imposing a fine for the breach of regulations concerning the time of work of drivers leads to the conclusion, that a situation may occur, where not all judgments will correctly evaluate the existing legal status. As a consequence, it is not excluded, that the establishment of an appropriate judgment policy can take the Supreme Administrative Court some time.

5. In all cases in which the extraordinary administrative proceedings can be instituted also *ex officio*, raising the question of violation of Community law by a party, in the course of such proceedings, is not significant for the admissibility of revocation of the final administrative decision contrary to Community law.

On the other hand, in all cases, where the cause for the revocation of the final administrative decision is its incompatibility with Community law (cf. e.g. art. 240 § 1 (1) of the Fiscal Law) the failure of a party to include the basis for reopening in the demand addressed to the body is treated by part of the doctrine as a basis for the issuing of the decision refusing to reopen the proceedings (art. 243 § 3 of Fiscal Law) – B. Gruszczyński in: S. Babiarz, B. Dauter, B. Gruszczyński, R. Hauser, A. Kabat, M. Niezgódka-Medek, *Fiscal law. A commentary*, Warsaw 2004, p. 622; other view: B. Adamiak w: B. Adamiak, J. Borkowski, R. Mastalski, J. Zubrzycki, *Fiscal Law*, Wrocław 2004, p.815-817.

Furthermore, the reopening of judicial proceedings is a procedural means that is guarded by strict orders (art. 279 of the Regulations of Proceedings in Administrative Court). The extraordinary nature of the legal means, which is the motion for the reopening of proceedings, directed against a valid judgment leads to the fact that the revival of the status prior to the issuing of the judgment can take place only due to causes presented in the act and specified as causes for reopening. Motions basing on violations that do not constitute a statutory basis for reopening, on the other hand, will be rejected. The given basis for reopening should contain the quotation and a clear specification, which of the bases listed in arts. 271–273 justify the reopening of proceedings in the given case. At the same time, it is not sufficient to limit the basis to quoting the regulation pointing to the basis for the reopening of proceedings and presenting the course of the proceedings so far– cf. the statement of the Supreme

Administrative Court of 24 February 2006, II OZ 95/06, unpublished. It should be thus consequently assumed, that failure to refer to the incompatibility with the Community law as stated by the Constitutional Tribunal is significant for the admissibility of the motion for the reopening of proceedings.

6. Pursuant to art. 134 § 1 of the Regulations of Proceedings in Administrative Court³ **the administrative court of first instance** adjudges within the scope of the given case, although it is not bound by the objections and conclusions of the complaint and by the quoted legal basis. Not being tied by the constraints of the complaint, the court is obliged to take into consideration *ex officio* (**the principle of officiality**) all violations of the law, as well as all regulations, including the regulations of Community law, which should be applied in the examined case, regardless of the demands and objections raised in the complaint. **Not being tied by the constraints of the complaint** means, that the court has the right, as well as it is obliged to evaluate the compatibility with the law of the administrative decision appealed against, even if the given objection was not raised in the complaint. At the same time, it is not restrained by the manner of formulating the complaint, by the arguments used, nor by the raised conclusions, objections and demands. This view does not raise even the slightest doubts also in the jurisdiction of the Supreme Administrative Court after 1 January 2004 – cf. e.g. the sentence of the Supreme Administrative Court of 27 July 2004, OSK 628/04 (LEX No. 183144). To sum up, it should be stated that the Voivodship Administrative Court should examine, *ex officio*, whether the administrative body did not violate the Community law while issuing the decision.

Nevertheless, it should be remembered that the plaintiff can make the subject of the complaint a specific act or action from the scope of public administration, as a whole, or in part. The subject of appeal specified in the complaint in such manner at the same establishes the constraints for the case examined in court. Thus, the court cannot make the subject of its examination this part of the decision in which it had not been appealed against, as within this scope the proceedings in administrative court were not instituted.

Pursuant to art. 190 of the Regulations of Proceedings in Administrative Court the Voivodship Administrative Court that is re-examining the case, is tied by the interpretation of the law of the Supreme Administrative Court as expressed in the

³ Act of 30 August, 2002, on the Regulations of Proceedings in Administrative Courts (Journal of Laws, No. 153, pos. 1270, amended).

sentence of cassation. However, this regulation should be interpreted in the light of the requirements of Community law. The binding nature of the legal interpretation expressed in the sentence of cassation issued by the Supreme Administrative Court is not absolute. In cases concerning the legality of administrative decisions, which require an interpretation of the European law, the Voivodship Administrative Court has a nearly unlimited right to address legal questions to the ECJ. It can not use this right only in the situation if the Supreme Administrative Court had previously, during the course of proceedings in the same case, addressed an identical legal question to the ECJ. In any case, the interpretation of Community law expressed in the sentence of ECJ has a benefit of priority over the interpretation expressed in the sentence of cassation issued by the Supreme Administrative Court - *see sentence in the case 166/73, Rheinmuhlen-Dusseldorf p. Einfuhr- und Vorratsstelle fur Getreide und Futtermittel, ECR 1974, s. 33.*

7. Apart from the cases of invalidity of proceedings, the Supreme Administrative Court as a court of second instance examines the case within the constraints of the claim for cassation, determined by the **basis** adopted in it (and not the justification thereof), specifying both the type of violation of the law that is alleged to the judgment appealed against, and its scope - cf. sentence of the Supreme Administrative Court of 24 May 2006, II FSK 923/05, „Fiscal Jurisdiction” 2007, No. 1, p. 86. Thus, within the scope specified in art. 183 § 1 sentence 1 of the Regulations of Proceedings in Administrative Court, the binding principle during the proceedings in the Supreme Administrative Court is the **principle of limited cognition** of this court, which means, that the Supreme Administrative Court takes into consideration the violation of the Community law only as a result of the allegation being correctly worded in the claim for cassation.

The catalogue of reasons for invalidity of proceedings as contained in art. 183 § 2 of the Regulations of Proceedings in Administrative Court does not include the possibility to take the Community law into consideration *ex officio*.

8. As it was proven hereabove (cf. point 1) the dismissal of the appeal against an administrative decision does not constitute an obstacle for the revocation of this act due to its incompatibility with Community law in some of the extraordinary modes of administrative (taxation) proceedings.

9. Yes. Valid judgments of administrative courts can be revoked due to reasons specified in arts. 172 and 270-274 of the Regulations of Proceedings in Administrative Court, however the reopening of court proceedings can take place only upon the motion of a party. As a rule, these regulations could not concern the effects of the incompatibility with the law for court judgments - cf. S. Biernat, *The influence of community law on revocation ...*, p. 16. However, I would not exclude the possibility to apply, *per analogiam*, art. 272, provided that the violation of Community law was previously stated by a judgment of the Constitutional Tribunal.

10. The judgments of the ECJ (Kuhne, i-21 Germany) are interpreted by the Supreme Administrative Court as the acceptance of the principle of procedural autonomy of the Member States by the ECJ. Nevertheless, one can see the need to introduce new, national procedural means in order to guarantee the effectiveness of Community law.

11. Polish procedural regulations in the scope of administrative proceedings, and in particular taxation proceedings and the appeal against administrative decisions to court comply with the principles of equivalence and effectiveness, in the meaning that the ECJ has assigned to these terms. At the same time, it seems obvious for me, that the term “gross violation of the law” as specified in art. 156 § 1 of the code of administrative procedure refers also to Community law. The basic legal means that provides an equally beneficial possibility to revoke a final administrative decision contrary to Community law as the possibility related to similar circumstances arising on the grounds of the national law is the appeal to the administrative court. At the same time it is a legal means which does not excessively hinder the execution of the rights resulting from the Community legal system.

The situation is worse in the case of verification of valid court judgments contrary to the Community law, as the reopening of proceedings in administrative court on the basis of the provisions of art. 272 of the Regulations of Proceedings in Administrative Court is, first of all, doubtful (cf. point 9), and apart from that, it will not always meet the requirements implied by the principle of effectiveness. Thus, within this scope the introduction of a new legal means for the legal regulation of such proceedings would be needed.

12. In my opinion, the interpretation of the national law applied by the Supreme Administrative Court is compliant with Community law. The bodies of public administration are bound by the legal evaluation expressed in the sentence of the administrative court

pursuant to the provisions of art. 153 of the Regulations of Proceedings in Administrative Court Thus, the judicial interpretation of the regulations applicable in the case limits the scope of discretion assigned to the administrative bodies.

13.1.1. The time limit for submitting the motion to reopen the administrative and taxation proceedings due to reasons specified in art. 145a of the code of administrative procedure and 240 § 1 point 8 of the Fiscal Law is one month from the date of entry into force of the sentence issued by the Constitutional Tribunal, whereas the possibility to reopen taxation proceedings due to the reason specified in art. 240 § 1 (11) of the Fiscal Law is not constrained by any time limit.

13.1.2. The revocation or change of a final decision basing on the principles described in points 1.1.2, 1.1.3. and 1.2.2. is not constrained by any time limit.

13.1.3. The declaration of invalidity of a decision in the administrative proceedings is not constrained by any time limit. However, the possibility to declare the invalidity of a fiscal decision is limited to a period of five years, which starts at the moment of delivering the decision (art. 249 § 1 (1) of the Fiscal Law).

13.2. The petition to reopen the proceedings in administrative court due to reasons specified in art. 272 of the Regulations of Proceedings in Administrative Court is submitted within one month from the date of entry into force of the sentence issued by the Constitutional Tribunal.

13.3. The prerequisite that the person concerned should file a complaint to the administrative body immediately after becoming aware of the decision of the ECJ should have general application, as all sentences of the ECJ that interfere with the procedural autonomy of a Member State have to be examined in the context of their possible consequences for the safety of legal circulation. The possibility to refer to the sentence of the ECJ at any time could lead to administrative paralysis.

14. The issue of the state liability for damages resulting from the actions by the organs of the state that infringe the law has been regulated in the Civil Code. Pursuant to art. 417 of the Civil Code, the State Treasury, or a unit of territorial self-government, or another legal person exercising their functions by virtue of law is liable for the damages caused by unlawful action or failure to act while exercising public authority. If the exercising of tasks belonging to the scope of public authority was delegated, on the basis of an agreement, to a unit of territorial self-government or to another legal person, the joint and several liability for the damages

caused is borne by the agent and the delegating unit of territorial self-government or the State Treasury. Art. 417¹ § 2 states: „If the damage was caused by issuing a valid sentence or a final decision, one can demand the repair of this damage after the determination, in the course of appropriate proceedings, of the incompatibility with the law of such decisions. This refers also to the case, if the valid statement or the final decision were issued on the basis of a normative act that is contrary to the Constitution, a ratified international agreement or act”.

This regulation implies unanimously that these proceedings cannot be conducted paralelly, as there exists a strict sequence of time between the proceedings concerning the revocation of a final administrative decision and the proceedings for damages. First, in the first proceedings a final decision (sentence of court) has to be issued, declaring the incompatibility with the law of a valid sentence or of the final decision that had caused the damages, in order to be able to claim the compensation for damages. Thanks to that, the primary prerequisite for the state liability for damages (action or failure to act contrary to the law, including Community law) is determined during the proceedings, whose subject is the elimination of the valid act that is contrary to the law, from the legal circulation. The proceedings concerning the revocation of a final administrative decision can be conducted as an extraordinary mode of administrative proceedings, or proceedings in administrative court , whereas the proceedings for compensation takes place in common court, which is bound by previously made arrangements, referring to the incompatibility with the law of the final administrative act.