

ADMINISTRATIVE JUSTICE IN EUROPE

- Report for Poland -

INTRODUCTION (History, purpose of the review and classification of administrative acts, definition of an administrative authority)

1. Main dates in the evolution of the review of administrative acts

Controls into the activities of administrative bodies commenced with the coming into force of the Supreme Administrative Court Act of 31 January 1980, which restored administrative jurisdiction to Poland. Pursuant to this Act, the Supreme Administrative Court became responsible for jurisdiction in cases involving complaints against administrative decisions and the inaction of administrative bodies. The Supreme Administrative Court became a specialist court, with its seat in Warsaw, and since 1981 it also has regional branches. It remained under the control of the Supreme Court, which examined extraordinary revisions of sentences and adopted resolutions on doubtful legal issues.

Major changes to this regulation were introduced by the Act of 24 May 1990 on an Amendment to the Code of Administrative Procedure. The scope of the Supreme Administrative Court now included administrative decisions issued under the proceedings regulated in the Code of Administrative Procedure and in particular administrative proceedings.

The range of administrative acts subject to judicial control was considerably expanded by means of the Supreme Administrative Court Act of 11 May 1995.

The 1997 Constitution of the Republic of Poland established the duty to introduce a system of two administrative instances within 5 years of its coming into force. On its basis, three acts were passed which provided the basis for a reform to administrative jurisdiction in Poland; these acts came into force on 1 January 2004. They are: the Act on the System of Administrative Courts, Act on Proceedings before Administrative Courts, Rules introducing the Act on the System of Administrative Courts, and Act on Proceedings before Administrative Courts. In the new structure, voivodship administrative courts have acquired

virtually the full scope of the competencies of the Supreme Administrative Court, and the new Supreme Administrative Court considers appeals against decisions by the voivodship administrative courts.

2. Purpose of the review of administrative acts

The basic task of the Supreme Administrative Court and the administrative courts is to control the legality of the activities of the public administration. This includes adjudicating on the legal compliance of resolutions adopted by territorial self-government bodies and of normative instruments passed by regional bodies of government administration. The subject of that compliance control is an adherence to the law by public administration bodies, in other words the protection of substantive law, and the result of this control – if the administrative court determines that a breach of substantive law has occurred – is the application of the legal resources envisaged by the law, e.g. the revocation of a decision. But most often, the protection of substantive law involves the protection of the normative rights of citizens which derive from the norms of substantive law and which have been breached as a result of the unlawful action of public administrative bodies. The protection of these rights was the basic purpose of creating the institution of court control into the legality of administrative activity.

The protection of civil rights is also served by additional competencies of the Supreme Administrative Court. The Supreme Administrative Court is empowered to adopt resolutions intended to clarify legal regulations whose implementation has caused discrepancies in the jurisdiction of administrative courts, as well as resolutions which contain decisions on legal issues which raise serious doubts regarding a specific administrative court case. The President of the Supreme Administrative Court may also submit a motion to the Constitutional Tribunal regarding the compliance of given legal instruments with the Constitution.

What is more, just like all other courts in Poland, the administrative courts may submit questions to the Constitutional Tribunal regarding the compliance of a normative instrument with the Constitution, ratified international agreements or a statute, if the answer to such a question will determine the outcome of a case put before a court.

3. Definition of an administrative authority

Bodies of public administration should be taken to mean ministers, central bodies of government authority, voivodes, other regional bodies of government administration (incorporated or unincorporated) acting on their own or on someone else's behalf, and other state authorities and other bodies, if they have been formed by the force of law or on the basis of agreements in order to resolve individual matters being determined by way of administrative decisions.

One may mention bodies possessing systemic significance, in other words bodies created for the sole or main purpose of performing public administrative tasks, and bodies of functional significance, for whom public administrative tasks are not the sole or main tasks, such as high schools and the legal professional bodies of lawyers, legal counsellors and notaries public.

4. Classification of administrative acts

Administrative instruments may be divided into:

- universally binding and internal instruments,
- instruments which apply to the whole territory of Poland or just a region,
- instruments issued on the basis of particular prerogatives and instruments issued on the basis of regulations which govern competencies,
- instruments regarding material administrative law, procedural law and political law.

I – ORGANIZATION AND ROLE OF THE BODIES, COMPETENT TO REVIEW ADMINISTRATIVE ACTS

A. COMPETENT BODIES

5. Non-judicial bodies competent to review administrative acts

The submission of a complaint to a court by a prosecutor or by the Commissioner for Citizens' Rights, and the possibility for them to take part in court proceedings, may be regarded as a form of control.

Furthermore, if a resolution by a body of territorial self-government or a directive by a voivode is not compliant with the law, the prosecutor asks the body that issued the resolution to amend or annul it, or submits a request to this effect to the relevant supervisory body. In the case of a resolution passed by a body of territorial self-government, the prosecutor may also apply to an administrative court to determine its legal non-compliance.

The Supreme Chamber of Control also possesses control powers. It controls the activity of government administrative bodies, Polish National Bank, state institutions and other state organisational entities from the point of view of legality, thrift, expediency purpose and honesty. It may also control the work of territorial-self-government bodies, communal institutions and other communal organisational units from the point of view of legality, thrift and honesty.

In Poland a court of arbitration cannot control administrative instruments.

6. Organization of the court system and courts competent to hear disputes concerning acts of administration

Control of administrative activity is performed by two-instance administrative jurisdiction. Administrative courts are the Supreme Administrative Court and voivodship administrative courts in 16 voivodships. Cases that lie within the scope of administrative courts are considered in the first instance by the voivodship administrative courts. The Supreme Administrative Court supervises the work of the voivodship administrative courts regarding their jurisdiction under proceedings set forth in statutes, and in particular it considers appeals against adjudications issued by these courts and considers other matters that fall within the scope of the Supreme Administrative Court on the basis of other laws. The voivodship administrative courts are divided into divisions, whilst the Supreme Administrative Court consists of 3 chambers, each of which is divided into 2 divisions. There are no administrative courts with special prerogatives and the Constitutional Tribunal has no direct control over the instruments and work of the administration.

B. RULES GOVERNING THE COMPETENT BODIES

7. Origin of rules delimiting the competence of ordinary courts in the review of administrative acts

Pursuant to the Polish Constitution, control of the work of the public administration, within the scope set forth in statutes, is exercised by the Supreme Administrative Court and other administrative courts. Their status is regulated primarily by the Act of 25 July 2002 on the System of Administrative Courts (Journal of Laws no. 153, item 1269) and the Act of 30 August 2002 on Proceedings before Administrative Courts (Journal of Laws no. 153, item 1270).

In principle, the general courts are not competent to consider administrative disputes, unless they possess particular powers in this regard on the basis of special legislation, such as the Social Insurance System Act of 13 October 1998, Public Procurement Act of 29 January 2004, and Competition and Consumers Protection Act of 15 December 2000.

8. Existence and origins of specific rules related to the competence and duties of the administrative courts or tribunals

see answer 7.

C. INTERNAL ORGANIZATION AND COMPOSITION OF THE COMPETENT BODIES

9. Internal organization of the ordinary courts competent to review administrative acts

Not applicable.

10. Internal organization of the administrative courts

Administrative courts are the Supreme Administrative Court and voivodship administrative courts, created in the 16 voivodships. **The biggest voivodship administrative court – Warsaw one – has also its regional branch in Radom.**

Cases that lie within the scope of administrative courts are considered in the first instance by the voivodship administrative courts. The Supreme Administrative Court supervises the work

of the voivodship administrative courts. The voivodship administrative courts are divided into divisions, whose number depends on the voivodship (between 2 and 7 divisions). The Supreme Administrative Court is composed of 3 chambers: general administrative, commercial and financial. Each chamber is divided into 2 divisions. The Supreme Administrative Court is headed by the President of the Supreme Administrative Court, and the chambers are headed by Vice Presidents of the Supreme Administrative Court. A Voivodship Administrative Court is headed by a President of the Voivodship Administrative Court, and its divisions are headed by the President or Vice President of the Court, or by an appointed judge.

D. JUDGES

11. Status of judges who review administrative acts

Judges who control the administration are not a particular category of judges, and such judges are not subdivided into individual categories. Judges are appointed for an indefinite period by the President of the Republic on the recommendation of the National Council of the Judiciary, and are not removable. They are subject only to the Constitution and the laws.

12. Recruitment of judges in charge of review of administrative acts

The judges of administrative courts are appointed by the President of the Republic on the recommendation of the National Council of the Judiciary. **The judges of administrative courts are appointed to the post of a voivodship administrative court judge assigned to an official location (bench), or to the post of a Supreme Administrative Court judge.**

To be appointed as a judge of a voivodship administrative court, a person must:

- 1) possess Polish citizenship and enjoy full civil and civic rights,
- 2) be of unblemished character,
- 3) have completed law studies in Poland and earned a master's degree, or an equivalent foreign qualification recognised in Poland,
- 4) be medically fit to perform the duties of a judge,
- 5) be over 35 years of age,

- 6) possess a high level of knowledge of the public administration, administrative law, and other spheres of law connected with the work of public administration bodies,
- 7) have served at least eight years as a judge or prosecutor or been employed for at least eight years as a lawyer, legal counsellor or notary public; or served ten years in public institutions, occupying positions involving the implementation or creation of administrative law; or been employed as a court assessor in a voivodship administrative court for at least two years.

To be appointed as a judge of the Supreme Administrative Court, a person must be over 40 years of age and have served at least ten years as a judge or prosecutor or been employed for at least ten years as a lawyer, legal counsellor or notary public. The age requirement of 40 years does not apply to a judge who has served as a voivodship administrative court judge for at least three years.

13. Professional training of judges

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

14. Promotion of judges

The judges of administrative courts are appointed by the President of the Republic on the recommendation of the National Council of the Judiciary. **The judges of administrative courts are appointed to the post of a voivodship administrative court judge assigned to an official location (bench), or to the post of a Supreme Administrative Court judge.**

To be appointed as a judge of the Supreme Administrative Court, a person must be over 40 years of age and have served at least ten years as a judge or prosecutor or been employed for at least ten years as a lawyer, legal counsellor or notary public. The age requirement of 40 years does not apply to a judge who has served as a voivodship administrative court judge for at least three years.

15. Professional mobility of judges

Judges are not removable. The transfer of a judge to another bench or position may occur only with his consent. Transfer to another bench or position against his will may occur only by virtue of a court decision and only in those instances prescribed in statute. Where there has been a change of court system or changes to the boundaries of court districts, a judge may be allocated to another court or returned with maintenance of his full remuneration.

The President of the Supreme Administrative Court may delegate a judge of a voivodship administrative court, with his permission and for a fixed period, to perform the duties of a judge in the Supreme Administrative Court.

The Minister of Justice, at the motion of the President of the Supreme Administrative Court, may delegate an appeal court or district court judge, with his permission and for a fixed period, to perform the duties of an administrative court judge.

Judicial officials may also occupy positions in the state administration.

E. ROLE OF THE COMPETENT BODIES

16. Available kinds of recourse against administrative acts

A complaint about the activities of the administration is made by filing a complaint with a voivodship court or, in certain cases, by submitting an application for the instigation of proceedings. Before administrative proceedings may begin, all the means of appeal in administrative proceedings must have been exhausted. The court examines the activities of the administration from the point of view of its conformity with the law; it possesses the powers of appeal, and has no authority to consider a case on its substance. The court may reject the complaint if it determines that no breach of the law has occurred. If it does determine that a breach of the law has occurred, it will annul a decision that has been complained against, or

declare it void in the case of a manifest breach of the law, or determine that the decision was issued in breach of the law. In the event of a complaint about the passiveness of a body of authority, the court may pass a judgment obliging the authority to remedy its lack of activity.

An administrative court cannot annul an agreement reached between a private individual and an administrative body, nor award damages to anyone who has suffered a loss as a result of a faulty administrative decision. A court may, however, impose a public penalty upon the administrative body, notify a higher-level body of the faulty work of the body that issued the faulty decision, or consider the case on behalf of a public administrative body.

17. Existence of mechanisms for the delivery of a preliminary ruling apart from the procedure under the Article 234 of the EC Treaty

The prejudicial procedures that exist in the system of administrative jurisdiction are: the referral by a court of a question of law to the Constitutional Tribunal as to the conformity of a given legal instrument with the Constitution, ratified international agreements, or a statute. In such a case, the administrative court suspends the proceedings taking place before it *ex officio*.

Likewise, a court may suspend proceedings if the decision on a case depends on the outcome of other administrative or court-administrative proceedings in progress, or proceedings before the Constitutional Tribunal. This also applies in a case that involves a legal issue that raises serious doubts, being considered by a resolution of the Supreme Administrative Court in a bench of seven judges, an entire Chamber or a full bench.

18. Advisory functions of the competent bodies

Administrative bodies do not perform advisory functions vis-a-vis the executive or the legislature.

19. Organization of the judicial and advisory functions of the competent bodies

Not applicable.

F. ALLOCATION OF DUTIES AND RELATIONSHIP BETWEEN THE COMPETENT BODIES

20. Role of the supreme courts in ensuring the uniform application and interpretation of law

The President of the Supreme Administrative Court may refer a question of law to the Constitutional Tribunal as to the conformity of a normative act with the Constitution, ratified international agreements or statute. In addition, any court may refer a question of law to the Constitutional Tribunal as to the conformity of a normative act with the Constitution, ratified international agreements or statute, if the answer to such a question of law will determine an issue currently before a court.

The Supreme Administrative Court may also adopt a resolution amending a decision on legal issues that raise serious doubts in a given administrative case.

A legal assessment and guidelines regarding further proceedings expressed in court adjudication are binding upon the court or authority whose action or inaction was the subject of the complaint. Furthermore, if a decision of a court of first instance is quashed by the Supreme Administrative Court, the court of first instance is bound by the Supreme Administrative Court's legal interpretation of the matter.

II – JUDICIAL REVIEW OF ADMINISTRATIVE ACTS

A. ACCESS TO JUSTICE

21. Preconditions of access to the courts

The basic condition for permitting the submission of a complaint to an administrative court is that the means of appeal must have been exhausted, if the complainant had recourse to such means during proceedings before the relevant body. The exhaustion of means of appeal is

understood as a situation where a party has no further means of appeal envisaged in the law, such as a complaint, appeal or request for a reconsideration of his case, at his disposal.

However, a prosecutor and the Polish *Ombudsman* are exempt from this requirement. If a party has no recourse to resources of appeal in a case that is the subject of the complaint, a complaint against acts or deeds may be submitted after the relevant body has been requested in writing to remedy its breach of the law. Such a request may be considered an extraordinary legal resource, for it need not lead to a re-examination of the act or deed that was committed, and its purpose is the creation of an additional possibility for a body to revise its own actions.

22. Right to bring a case before the court

A complaint may be submitted to a court by anyone (both a natural and a legal person) who has a legal interest in doing so. Whether an individual possesses a protected legal interest in a given case is determined by the provisions of the law. A complaint is filed to a voivodship administrative court as a result of a breach of the complainant's legal interests.

The prosecutor and the Commissioner for Citizens' Rights constitute a separate category of complainants; in administrative court proceedings, they can act having the rights of a party.

A social organisation is also entitled to submit a complaint regarding the legal interests of other persons, if the case falls within its statutory activity and the organisation has taken part in administrative proceedings.

Furthermore, other entities entitled by law to submit a complaint may do so, such as a commune (*gmina*), inter-commune association, district (*powiat*) or self-governing voivodship.

23. Admissibility conditions

The basic condition for submitting a complaint to an administrative court is the possession of a legal interest in doing so. Therefore the complainant must disclose that he has a legal interest in the performance of a judicial control into the legal conformity of a specific act or deed, as well as a legal interest in making the act or deed conform to the provisions of law.

A further essential condition for court action is that the means of appeal in administrative proceedings must have been exhausted, the complaint must be filed within the statutory time-limits, and it must be filed via the body whose action or inaction is the subject of the complaint and which is obliged to convey the matter to the court within 30 days.

24. Time limits to apply to the courts

A complaint to a voivodship administrative court is filed within thirty days from the date on which the complainant received a decision in his case. If a party has no recourse to means of appeal in administrative proceedings, the complaint is filed within thirty days from the date on which a reply was delivered from the body in response to a demand to remedy the breach of the law, and if the body failed to issue a reply, within sixty days of the date on which the demand to remedy the breach of the law was issued.

The prosecutor or Polish *Ombudsman* may submit a complaint within six months of the date on which a party to an individual case received a reply, and in other cases within six months of the date on which the act or deed which justified the complaint came into effect. This deadline does not apply to the submission of complaints concerning local legal acts by units of territorial self-government and local government administrative bodies.

A complaint of cassation is filed within thirty days of the date on which the party received a copy of the adjudication, with justification. This deadline for the submission of a complaint of cassation is also binding upon the prosecutor and the Polish *Ombudsman*. But if no adjudication is served to the party, the prosecutor and the Polish *Ombudsman* may, within thirty days of issue of the adjudication, request a justification of the adjudication and submit a complaint of cassation within thirty days of receipt of a copy of the adjudication with justification.

A complaint to the Supreme Administrative Court against a decision is filed within seven days of the receipt of the decision.

If a party fails to submit a complaint in time through no fault of its own, the court will, at the party's request, decide to restore the deadline. A restoration of deadline is not permissible if

this causes negative consequences for the parties in court proceedings. There is a right of appeal against a restoration of deadline or against a refusal to do so.

25. Administrative acts excluded from judicial review

The enormity of a case is not a factor that determines justification for administrative court control. The administrative courts control the work of the administration in all the cases envisaged in the Act on proceedings before administrative courts and in others acts of law.

The administrative courts are not competent in the following matters:

- 1) matters regarding organisational hierarchy in relationships between public administrative bodies;
- 2) matters regarding official rank between supervisors and underlings;
- 3) as refusal to promote or appoint someone to a position in public administrative bodies, unless there is a legal duty of such promotion or appointment,
- 4) visas issued by consuls.

26. Screening procedures

The procedure for the examination of complaints by a voivodship administrative court with respect to its permissibility and the existence of the prerequisites to reject them may be regarded as a form of preliminary control into complaints. This may be done by the court at an open session, or *in camera* by means of a decision.

A voivodship administrative court may also reject a complaint of cassation that was submitted after the timelit set by law or was impermissible for other reasons, as well as a complaint of cassation whose shortcomings were not corrected by a party within the required deadline.

Furthermore, the Supreme Administrative Court may reject a complaint of cassation or refer it back to the voivodship administrative court if the complaint was subject to rejection by a court of I instance. In such a case, a decision on rejection is reached *in camera* by a single judge.

So far, the procedure for rejecting a complaint or complaint of cassation has not been the subject of an investigation regarding compliance with international and European law.

27. Form of application

A complaint to a voivodship administrative court must, first of all, fulfil the conditions set forth in the court correspondence related to the proceedings, in other words it should contain the name of the court to which it is addressed, the names of the parties and their statutory representatives and attorneys, a description of the type of correspondence, the background to the application, the signature of the party or his statutory representative or attorney, a list of enclosures and, as the first correspondence in the case – a statement of the home address or, if there is no home address, the address for correspondence or the registered seat of the parties and their statutory representatives and attorneys, and the subject of the case. The complaint should also contain: a description of the decision or other act of deed being complained against, the name of the body whose action or inaction is being complained against, and a description of the breach of law or breach of legal interests.

A power of attorney should be attached to the complaint, if it is submitted by an attorney who did not submit a power of attorney previously.

A complaint of cassation should fulfil the conditions set forth in the court correspondence related to the proceedings and contain a description of the adjudication that is being complained against, with an indication whether the adjudication is being appealed against in whole or in part, a statement of the basis for the cassation with justification, and a request to annul or amend the adjudication, with an indication of the extent of the required annulment or amendment.

28. Possibility of bringing proceedings via information technologies

A complaint in electronic form, in the form of an e-mail, appears permissible if it is furnished with an electronic signature verified by means of a valid security certificate. In such a situation, the electronic signature would be deemed to have the same legal effect as a

handwritten signature. However, the recognition of complaints in this form would necessitate the introduction of solutions to check the authenticity of the electronic signature.

29. Court fees

A court fee in the form of a permanent or relative entry is levied on correspondence initiating proceedings before an administrative court, i.e. complaints, complaints of cassation and requests to renew proceedings. A relative entry is levied in cases where the subject of the complaint is a pecuniary debt. In other cases, a permanent entry is made. The court fee should be paid when the correspondence is submitted to the court, wither in cash or by bank transfer to the account of the relevant court.

30. Compulsory representation

There is no obligation to have a legal representative in proceedings before a court of I instance. Only a complaint of cassation or an appeal against a rejection of a complaint of cassation, submitted to the Supreme Administrative Court, must be prepared by a lawyer or a legal counsellor. However, this obligation does not apply if these, means of appeal are prepared by a judge, prosecutor, notary public, professor or *doctor habilitatus* who are a party to proceedings or a representative or attorney thereto, or if the appeal is submitted by a prosecutor or by the Polish *Ombudsman*.

31. Legal aid

Legal aid takes the form of an exemption from court fees or the appointment of a lawyer, legal counsellor, tax advisor or patent attorney. Legal aid is granted to a party either to a full extent or partial extent. Legal aid is granted to a natural person to a full extent if he demonstrates that he cannot afford to pay any costs of proceedings whatsoever, and to a partial extent if he demonstrates that he cannot afford to pay some of the costs of the proceedings without affecting his financial existence and that of his family.

Legal aid may also be granted to a legal person, as well as an entity devoid of legal personality, to a full extent if he demonstrates that he cannot afford to pay any costs of proceedings whatsoever, or to a partial extent if he demonstrates that he has insufficient resources to cover the full cost of the proceedings.

An application for legal aid is considered by the voivodship administrative court before which proceedings are taking place or are due to take place. There is a right of appeal against the court's decision in this matter.

32. Fine for abusive or unjustified applications

No penalties are envisaged for incorrect or unjustified applications.

B. MAIN TRIAL

33. Fundamental principles of the main trial

The basic principles in administrative court proceedings are:

- the principle of the right to an administrative court,
- the principle of two instances of administrative court proceedings,
- the principle of the faculty of disposal in administrative court proceedings,
- the principle of the adversary trial system in administrative court proceedings,
- the principle of the openness of administrative court proceedings,
- the principle of assistance for the parties to administrative court proceedings,
- the principle of the equality of the parties to administrative court proceedings.

The source of the principles in administrative court proceedings are both Polish law, especially the Constitution of the Republic of Poland, and the Act on Proceedings Before Administrative Courts and the Convention on the Protection of Human Rights and Fundamental Freedoms.

34. Judicial impartiality

The principle of impartiality in court proceedings is enshrined in the Constitution. The institution of the exclusion of judges is an important guarantee of this principle. A judge may be excluded *ex lege* or upon application.

A judge is excluded *ex lege* in the following cases:

- 1) cases in which he is a party or maintains such a legal relationship towards one of the parties that the outcome of the case would affect his rights or duties;
- 2) cases involving his spouse, relatives or kinsmen in direct line, lateral relatives up to the fourth degree, and lateral kinsmen up to the second degree;
- 3) persons connected to him by virtue of adoption, care or tutelage;
- 4) cases in which he was or remains an attorney to one of the parties;
- 5) cases in which he has rendered legal services to one of the parties or any other services in connection with the case;
- 6) cases in which he has taken part in the handing down of the adjudication that is being complained against, as well as in cases determining the validity of a given legal instrument which he prepared or took part in preparing, as well as in cases in which he took part as a prosecutor;
- 7) cases in which he has taken part involving the activity of public administrative bodies.

The reasons for exclusion continue upon the termination marriage, adoption, care or tutelage.

A judge who has taken part in the issue of an adjudication covered by an appeal to renew proceedings may not adjudicate on this appeal.

Furthermore, a court excludes a judge at his own request or at the request of a party if the kind of relationship exists between the judge and the party or his attorney that might cast doubts upon the judge's impartiality.

35. Possibility to rely on the new legal arguments in the course of proceedings

After submitting a complaint during proceedings before a court of the I instance, the complainant may elaborate on both the legal basis and the statement of reasons for the complaint. The **voivodship administrative court** decides within the limits of a given case, and is not bound by the charges and motions of the complaint, or by the cited legal basis. However, a different principle applies in proceedings before the Supreme Administrative Court. This court is bound by the limits of the complaint of cassation, and considers ex officio only the invalidity of the proceedings. Following submission of complaint of cassation, the party may only provide a new statement of reasons for the cassation.

36. Persons allowed to intervene during the main hearing

The parties to an administrative court case are the complainant and the body whose action or inaction is the subject of the complaint. A party who has taken part in administrative proceedings and has not submitted a complaint, but whose legal interests are affected by the outcome of the court proceedings, is a participant to the proceedings having the same rights as a party. **Participation may also be claimed by a person who has not taken part in administrative proceedings, if the results of the proceedings concern his legal interests. A social organisation may take part in proceedings also if the case falls within the scope of its statutory activity.**

37. Existence and role of the representative of the State (“ministère public”) in administrative cases

The prosecutor or Polish *Ombudsman* may participate in any proceedings and submit a complaint, complaint of cassation, appeal, or request to renew proceedings, if in their opinion this is necessary in order to safeguard the rule of law or civic and civil rights. In such a case, they are entitled to the rights of a party.

38. Existence of an institution or a person with a role analogous to the French «Commissaire du gouvernement »

See answer 37.

39. Termination of court proceedings before the final judgment

A court issues a decision on the termination of proceedings when:

- 1) the complainant has effectively withdrawn his complaint;
- 2) in the event of the death of a party, if the subject of the proceedings relates solely to the rights and duties of the deceased person, unless a person whose legal interests are connected with the outcome of the proceedings applies for participation therein;
- 3) if the proceedings have become groundless for other reasons.

40. Role of the court registry in serving procedural documents

Correspondence reaching a court is directed by the director of the secretariat to the head of the division, who issues an instruction on how to proceed with the correspondence. Case correspondence and conclusions are not sent to the parties unless such an instruction is issued.

41. Duty to provide evidence

Public administration body in administrative proceedings has to collect and consider all evidences of the case. In general the court is not conducting the evidence proceedings. Only exceptionally, the court acting *ex officio* or at the request of the party, can conduct the supplement evidence proceedings on documents. That's possible only when such proceedings are necessary for clarifying serious doubts and will not cause excessive extending of court's proceedings.

42. Form of the hearing

In principle, court proceedings are open. Apart from the parties and summoned persons, only adults may enter the courtroom. Only summoned witnesses have access to proceedings *in camera*. The court decides *ex officio* whether the entire proceedings should be held *in camera* or just a part thereof, if holding the proceedings in public might endanger morals, state security or the public order, and also if details that are a state or official secret might be divulged. At the request of a party, a court orders proceedings to be held *in camera* if this is required in order to protect a party's private life or other important private interest. The following may be present during proceedings *in camera*: the parties, their statutory representatives and attorneys, the prosecutor, and the confidantes, two for each party.

After the judge has delivered his report, first the complainant and then the administrative body submit their demands and conclusions and provide explanations orally. They may also indicate the legal and factual basis for their demands and conclusions. The presiding judge allows the parties to speak according to the order of priority he has given them.

43. Judicial deliberation

Before delivering judgment, a court holds a consultation behind closed doors. It should be held immediately after the proceedings have closed. The members of the adjudicating bench and the recording clerk are present at this consultation, unless the presiding judge considers the recording clerk's presence to be superfluous. A judge who has taken part in the adjudication on the case is not excluded from this consultation. The consultation and the voting on the outcome of the case are secret, and no exemption is allowed. The consultation includes a discussion, a vote on the verdict to be handed down and on the fundamental reasons behind the decision, and the recording of the verdict in writing.

The presiding judge collects the votes of the judges, beginning with the judge with the shortest length of service as an administrative court judge, and himself casts the last vote. The judge rapporteur, if appointed, votes first. A verdict is passed by a majority of votes. A judge who voted against the majority may submit a *votum separatum* and is obliged to justify it in writing before signing it. A *votum separatum* may concern the same statement of reasons. The filing of a *votum separatum* is publicly announced, and if the member of the adjudicating bench who has submitted a *votum separatum* agrees to the disclosure of his name, his name is also disclosed. The verdict is signed by the entire adjudicating bench.

C. JUDGMENT

44. Grounds for the judgment

The statement of reasons for a verdict should contain a concise description of the case, the claims raised the opinions of the remaining parties, the legal basis for the decision, and a justification thereof. If, following a consideration of the complaint, the case is to be reconsidered by the administrative court, the statement of reasons should also contain instructions regarding further proceedings. The statement of reasons should also include an indication of the binding provisions and its significance and interpretation in relation to the case in question. The Supreme Administrative Court justifies all its decisions *ex officio*. The Voivodship Administrative Court only justifies *ex officio* those judgements in which a complaint has been recognised.

45. Applicable national and international legal norms

The most frequently cited legal instruments in verdicts are: the Act of 30 August 2002 on Proceedings Before Administrative Courts (Journal of Laws no. 153, item 1270); the Regulation of the Council of Ministers of 16 December 2003 on the amount and detailed rules for collecting charges in proceedings before administrative courts (Journal of Laws no. 221, item 2193); the Constitution of the Republic of Poland; the jurisdiction of the administrative courts; and, as of 1 May 2004, Community law.

46. Criteria and methods of judicial review

In principle, an administrative court is a court of cassation which investigates the compliance with the provisions of law of an act or deed by an administrative body. If the court decides that the act or deed does not comply with the law, it rescinds it or declares it void. When delivering judgement, the court performs a legal assessment of the act and provides guidelines regarding an application of the law in a given individual case, or states that the decision that was complained against is ineffective. This brings the administrative court's role to a close, and the case reverts to the administrative bodies, who take further action.

Therefore, the administrative court merely investigates questions to the facts of law on the basis of the factual status established by an administrative body. *Ex officio* or at the request of the parties, the court may conduct additional evidence from the documents, if this is necessary in order to clarify major doubts and will not unduly prolong the proceedings. Neither the scope of the administrative court's control powers nor the criteria for the controls performed by the court provide the basis on which to assess the expediency of the consideration of the case by the administrative body.

47. Distribution of legal costs

In principle, the parties bear the costs of their involvement in a case. A court may award legal aid to a party, if the party applies for it prior to or during proceedings. Legal aid takes the form of an exemption from court fees or the appointment of a lawyer, legal counsellor, tax advisor or patent spokesman. Legal aid is granted to a party either to a full extent or partial extent. Full legal aid consists of an exemption from court fees or the appointment of a lawyer,

legal counsellor, tax advisor or patent spokesman. Partial legal aid consists only of an exemption from court fees in whole or in part, or only from court fees and expenses, or only the appointment of a lawyer, legal counsellor, tax advisor or patent spokesman. Partial exemption from fees or charges may involve release from the duty to pay a fraction of these costs or a specific sum thereof.

48. Composition of the court (single judge or a panel)

In principle, an administrative court adjudicates in a bench composed of three judges in both instances. A verdict is issued by the court in a full bench of the judges who took part in the adjudication. The verdict may be issued only by the judges before whom the proceedings took place immediately prior to the issue of the judgement.

49. Dissenting opinions

A judge who voted against the majority may, when signing the sentence, provide a *votum separatum* and is obliged to justify this opinion in writing before signing it. A *votum separatum* may concern the same statement of reasons. The filing of a *votum separatum* is publicly announced, and if the member of the adjudicating bench who has submitted a *votum separatum* agrees to the disclosure of his name, his name is also disclosed. The verdict is signed by the entire adjudicating bench, in other words also by the judge who submitted a *votum separatum*.

50. Public pronouncement and notification of the judgment

A verdict is announced at an open session. The absence of the parties does not prevent the delivery of the verdict. If the announcement of the verdict was postponed, it may be announced by the presiding judge or one of the members of the adjudicating bench. A verdict is announced by reading the sentence. After the sentence has been read, the president or judge rapporteur states the reasons for the decision orally, but may refrain from doing so if the verdict was decided upon behind closed doors. **A justification of the verdict is prepared ex officio only when court considers the claim. When the claim is dismissed a justification is prepared on the request of interested party.**

D. EFFECTS AND EXECUTION OF JUDGMENT

51. Authority of the judgment. *Res judicata, stare decisis*

A court verdict is binding if there is no recourse of appeal against it. A lawful verdict is binding upon not just the parties and the court which issued it, but also upon other courts and other state authorities, and also other persons, if the provisions of law states so. A binding judgement is a *res iudicata* only in respect of that which was the subject of the decision regarding the complaint.

52. Powers of the court in limiting the effects of judgment in time

The effects of a verdict cannot be limited in time.

53. Right to the execution of judgment

Execution is governed by two separate regulations. The first of them is laid down in the Code of Civil Procedure. Pursuant to this Code, a valid court verdict is a deed of execution, to which an enforceability clause is provided by the regional court competent for the debtor. If the area of jurisdiction cannot be determined, the enforceability clause is provided by the regional court in whose area the execution is to be performed, and if the creditor intends to undertake execution abroad – by the regional court in whose area the deed of execution was drawn up. A deed of execution furnished with an enforceability clause is an executive instrument, providing the basis for execution carried out under the terms of the Code of Civil Procedure.

A second procedure is envisaged by the Act on Execution Proceedings in the Administration. Administrative execution is applied to obligations stemming from the decisions of the relevant bodies or - with regard to the government administration and units of territorial self-government – execution is applicable directly from the letter of the law, unless court execution proceedings are required for these duties on the basis of specific legal regulations.

Furthermore, if an administrative body declines to abide by the decision of a court reached during proceedings and in connection with the consideration of a case, the court may impose a penalty on that body.

54. Recent efforts to reduce the length of court proceedings

Protection against protraction of a case is envisaged in the Act of 17 June 2004 on complaints about a breach of a party's right to have his case considered without undue delay. It regulates the principles and manner in which to consider the complaint of a party whose right to have his case considered without undue delay has been breached as a result of the action or inaction of a court. According to this act, a party may submit a complaint to determine that in the proceedings in question, his right to have his case considered without undue delay has been breached, if the proceedings are taking longer than the amount of time necessary to determine the legal and factual circumstances that are important for determining on the outcome of the case, or longer than the amount of time necessary to arrange execution or the performance of a different court verdict (protraction of proceedings).

E. REMEDIES

55. Sharing out of competencies between the lower courts and the supreme courts

Administrative jurisdiction consists of two stages. The administrative courts exercise control over the activities of public administration and resolve disputes regarding competencies between units of territorial self-government and between self-government bodies of appeal. Voivodship administrative courts, being courts of I instance, consider all administrative matters, except for those reserved for the exclusive jurisdiction of the Supreme Administrative Court.

The Supreme Administrative Court:

- 1) considers appeals against the judgments of voivodship administrative courts in accordance with the terms of the statute;
- 2) adopts resolutions intended to clarify legal provisions whose implementation has caused discrepancies in the jurisdiction of administrative courts;

- 3) adopts resolutions containing a decision on legal matters that raise serious doubts in a specific court administrative matter;
- 4) resolves disputes regarding competencies between units of territorial self-government and between self-government bodies of appeal;
- 5) considers other matters belonging to the scope of the Supreme Administrative Court on the basis of separate statutes.

56. Recourse against judgments

The Supreme Administrative Court is an administrative court of II instance. A party dissatisfied with a verdict or decision issued by a voivodship administrative court can submit a complaint of cassation to the Supreme Administrative Court. A complaint of cassation may be based on the following basis: a breach of substantive law through faulty interpretation or incorrect implementation thereof; and a breach of the provisions on the proceedings, if this might have affected their outcome. In cases envisaged in the statute, it is also possible to submit a complaint against an order by a Voivodship Administrative Court. The Supreme Administrative Court will consider the matter within the confines of a complain of cassation, but shall consider the invalidity of the proceedings *ex officio*. The control of the adjudications of a voivodship administrative court concerns only their compliance with the law.

F. EMERGENCY AND SUMMARY PROCEEDINGS / APPLICATIONS FOR INTERIM RELIEF

57. Existence of emergency and/or summary proceedings

A court may consider a case under simplified proceedings *in camera*, in a bench composed of a single judge. This is only permissible in proceedings before an administrative court of the I instance. A case may be considered under simplified proceedings if:

- 1) the decision was made void or was issued in breach of the law, providing a basis on which to renew proceedings;
- 2) a party applies to have its case considered under simplified proceedings, and within fourteen days of the notification of the application no other party demands that the proceedings take place;

3) if a body of authority has not submitted a complaint to a court despite the imposition of a penalty, on the demand of the complainant and on the basis of a submitted description of the complaint, if the factual and legal status presented in the complaint do not raise justified doubts.

Temporary injunctions do not occur in administrative proceedings.

58. Requests eligible for the emergency and/or summary proceedings

Not applicable.

59. Kinds of summary proceedings

Not applicable.

III – NON-JUDICIAL SETTLEMENT OF ADMINISTRATIVE DISPUTES

60. Role of administrative authorities in the settlement of administrative disputes

Administrative disputes are resolved by administrative bodies that act in accordance with the provisions of the Code of Administrative Procedure. These bodies guard the rule of law and take all the steps necessary to carefully clarify the state of affairs and resolve the issue, with regard to the social interests and the justified interests of citizens.

These bodies see to it that the parties to proceedings and other participants therein suffer no harm through an ignorance of the law, and ensure the parties of active involvement in every stage of the proceedings. Administrative proceedings occur in two instances. Administrative court proceedings may be initiated only after all the means of appeal have been exhausted, if the complainant had recourse to such resources during proceedings before the relevant court.

61. Role of independent non-judicial bodies in the settlement of administrative disputes

Administrative disputes cannot be considered by independent bodies.

It is possible to hold mediation proceedings, presided over by a judge or court referee. Such proceedings are held at the request of a complainant or body of authority, submitted prior to the start of the court case. The purpose of these proceedings is to clarify and consider the factual and legal circumstances of the case and lead the parties to agree on ways of resolving the dispute within the confines of binding law. On the basis of the decisions agreed upon in the mediation proceedings, an administrative body annuls or amends the act that was complained against, or takes other actions appropriate to the circumstances of the case and within the limits of its competencies.

62. Alternative dispute resolution

In Poland, administrative disputes cannot be resolved by a court of arbitration.

IV – ADMINISTRATION OF JUSTICE AND STATISTIC DATA

A. FINANCIAL RESOURCES MADE AVAILABLE FOR THE REVIEW OF ADMINISTRATIVE ACTS

63. Proportion of the State budget allocated to the administration of justice

Pursuant to the budget law of 2009, state budgetary expenditures are fixed at no more than PLN 300 097 811 000 of which PLN 9 258 012 000 has been allocated to the judiciary. The administrative jurisdiction (Supreme Administrative Court and 16 voivodship administrative courts) has received PLN 360 378 000.

64. Total number of magistrates and judges

There are about 8600 judges in Polish legal system. There are no magistrates in our court system.

65. Percentage of judges assigned to the review of administrative acts

There are 85 judges in Supreme Administrative Court and 518 judges working in voivodship administrative courts in Poland. The total number of judges in Poland is slightly higher than 10 000.

66. Number of assistants of judges

Administrative court judges use the services of assistants. Assistants have higher legal education in the field of law. Some of them are trainee barristers. It is planned to provide an individual assistant for each administrative judge. As for now some judges of voivodship administrative courts still have to share an assistant. In the Supreme Administrative Court in general the goal was reached and number of assistants equals the number of judges. There are 85 assistants employed by the Supreme Administrative Court.

67. Documentary resources

The Supreme Administrative Court has a library containing collections of legal documents, periodicals and textbooks on every branch of law, especially administrative law, and press reviews.

68. Access to information technologies

Every employee at the Supreme Administrative Court has a computer, with suitable software with which to edit texts and manage documentation, legal databases and Internet access. The Supreme Administrative Court also has an internal information system on the subject of cases dealt with. Thanks to this, information can be transferred between individual Court's departments, and statistics can be kept.

69. Websites of courts and other competent bodies

The administrative courts and most administrative bodies have their own websites. The most important ones are:

www.nsa.gov.pl
<http://www.bialystok.wsa.gov.pl/>
<http://www.wsa-bydgoszcz.pl/>
<http://www.wsa.gdansk.pl/>
<http://www.wsa.gliwice.pl/>
<http://www.krakow.wsa.gov.pl/>
<http://www.wsa.lublin.pl/>
<http://www.lodz.wsa.gov.pl/>
<http://www.wsa.olsztyn.pl/>
<http://bip.opole.wsa.gov.pl/>
<http://www.wsa.poznan.pl/>
<http://bip.rzeszow.wsa.gov.pl/>
<http://www.bip.szczecin.wsa.gov.pl/>
<http://bip.warszawa.wsa.gov.pl/>
<http://www.wsa.wroc.pl/>
<http://www.sn.pl/>
<http://www.krs.pl/>
<http://www.trybunal.gov.pl/>
<http://www.uprp.pl/>

B. OTHER STATISTICS

70. Number of new applications registered every year

71. Number of cases heard every year by the courts or other competent bodies

72. Number of pending cases

73. Average time taken between the lodging of a claim and a judgment

2008	Number of cases accepted	Number of cases resolved	Cases pending	Average duration of a case
Supreme Administrative Court	10 119 (plus 7 995 left over from the previous period)	9389	18114	12 months

Voivodship Administrative Courts	57544 (plus 19242 others left over from the previous period)	58730	76686	3 – 6 months
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74. Percentage and rate of the annulment of administrative acts decisions by the lower courts

Voivodship administrative courts in 2008 had annulled 24% of administrative decisions claimed. In years 2007 and 2006 these numbers were 25% and 30% respectively.

75. The volume of litigation per field

Claims filled in the Supreme Administrative Court in 2008:

- Cases concerning foreigners: 36 cases – 0,36 % of new applications
- Cases concerning taxes: 4368 cases – 43,17 % of new applications
- Cases concerning urban planning: 440 cases – 4,35 % of new applications
- Cases concerning architecture: 844 cases – 8,34 % of new applications
- Cases concerning customs duties: 1133 cases – 11,2 % of new applications
- Cases concerning public roads and railway: 573 cases – 5,66 % of new applications

C. ECONOMICS OF ADMINISTRATIVE JUSTICE

76. Studies or works concerning the influence of judicial decisions against the administrative authorities on public budgets

No data available.