

## The Model of Adjudication by Administrative Courts in Poland

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DOI: 10.32353/khrife.4.2022.07 UDC 342.9

Submitted: 22.11.2022 / Reviewed: 28.11.2022 / Approved for Print: 30.11.2022 /  
Avialable online: 30.12.2022

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*This research concerns the model of judicial proceedings by Polish administrative courts. Article purpose is to analyze the administrative court in Poland, to compare it with the Ukrainian one, to investigate the effectiveness and possibilities of intervention of the administrative court in the sphere of powers of other authorities. Administrative justice in Poland consists of voivodship administrative courts, which hear cases in the first instance, and the Supreme Administrative Court as a court of second instance. The author assumed that the introduction of a mixed model of judicial practice of administrative courts effectively fulfills the main goal of administrative proceedings, which is to protect individual rights from the arbitrariness of public administration bodies. The intrusion of the administrative court into the sphere of powers of the authorities is justified by the effectiveness and efficiency of the judiciary. This allows the complainant to get a decision on the merits much faster. The mixed model of judicial practice of Polish administrative courts allows more effective implementation of the protection of individual rights. The analysis of the issue was carried out using theoretical-legal and historical-legal methods.*

**Keywords:** control over the activities of public administration; administrative courts in Poland; jurisdiction of administrative courts of Ukraine; functions of administrative proceedings; a drawback of the cassation model.

## Research Problem Formulation

Nowadays, judicial control of the activities of public administration is an element of the democratic state system and at the same time is a form of protection of individual rights<sup>1</sup>.

Administrative courts in Poland constitute a separate part of the judiciary authority, and not bodies of external control over public administration. The objectives of public administration control are different. This control is exercised only from the point of view of the public interest, consisting in ensuring the legal and purposeful operation of this administration in the name of the common good. When it comes to judicial control, its primary purpose is the administration of justice<sup>2</sup>. The administrative judiciary in Poland consists of provincial administrative courts adjudicating in the first instance and the Supreme Administrative Court as the second instance court.

Administrative courts are an authority independent and separate from other authorities (Article 173 of the Polish Constitution<sup>3</sup>), issue judgments on behalf of the Republic of Poland (Article 174 of the Constitution of the Republic of Poland) and constitute a separate division of the judiciary from the Supreme Court, common courts and military courts (Article 175 of the Constitution of the Republic of Poland). The constitutional separation of administrative courts next to the com-

mon judiciary division results from the specificity of administrative judiciary, which comes down to exercising control over the activities of public administration<sup>4</sup>.

The Supreme Administrative Court and other administrative courts, to the extent specified in the act, control the activities of public administration. This control also includes adjudicating on the compliance with statutes of resolutions of local self-government bodies and normative acts of local government administration bodies (Article 184 of the Constitution of the Republic of Poland). The constitutional regulation of the judiciary indicates that the administrative courts constitute a completely separate division of the judiciary, independent of the common, military and Supreme Court courts, which imposes on the legislator the obligation to shape the system, tasks and properties of administrative courts in such a way as to separate the administrative judiciary division from common and military courts as well as the Supreme Court<sup>5</sup>.

The exercise by administrative courts of control of the activities of public administration comes down to entrusting them with the powers that amount to eliminating illegal acts or activities from legal circulation. On the other hand, administrative courts do not provide for the performance of functions of public administration bodies consisting in

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1 Babiarz S., Dauter B., Marciniak S., Mudrecki A. *Doradca podatkowy przed sądem administracyjnym*. Warszawa, 2009. 504 p.

2 Wyrok TK z 14 czerwca 1999 r., K 11/98, OTK ZU 1999, nr 5, poz. 97.

3 Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Dz. U. Nr 78, poz. 483 ze zm. URL: <https://www.sejm.gov.pl/prawo/konst/polski/kon1.htm> (date accessed: 22.11.2022).

4 Hauser R. *Założenia reformy sądownictwa administracyjnego. Państwo i Prawo*. 1999. Z. 12. S. 22.

5 Ibid.

substantive settlement of cases <sup>6</sup>. Regulating the competence of administrative courts in Art. 184 of the Constitution of the Republic of Poland introduces the presumption of limiting the powers of common courts by indicating the subject matter of the competence of the administrative court and by referring to the regulation of the specific scope of the competence of the administrative court specified in the act <sup>7</sup>.

From the constitutional regulation used in Art. 184 of the Constitution of the Republic of Poland, the control exercised by the administrative judiciary is directed towards the protection of the objectively binding legal order. The above statement corresponds to the principle of legality expressed in Art. 1 of the Law on the System of Administrative Courts <sup>8</sup>, which is the only criterion for controlling the activities of public administration <sup>9</sup>. The content of Art. 1 § 2 of the Act on Law on the System of Administrative Courts sets out the scope, content and nature of the control powers of administrative courts by stating that administrative courts exercise control over

the contested acts and activities, taking into account their compliance with the law <sup>10</sup>.

### Analysis of Essential Researches and Publications

At different times, many domestic and foreign scientists turned to the study of the problem of the scope, content and nature of the control powers of the administrative courts of the state — S. Babiarczy, B. Dauter, S. Marciniak, A. Mudrecki; R. Hauser; J. Drachal, R. Hauser, E. Mzyk; W. Piątek; B. Adamiak, J. Borkowski; D. Dąbek; R. Król; J. P. Tarno, E. Frankiewicz, M. Sieniuć, M. Szewczyk, J. Wyporska; B. Banaszak, K. Wygoda; M. Szubiakowski; A. Gomułowicz; M. Masternak-Kubiak; O. M. Ключев, О. П. Угровецкий, Е. Б. Сімакова-Єфремян, І. А. Петрова; В. С. Князев; А. О. Неугодинов; Т. О. Кравчук <sup>11</sup> etc.

### Article Purpose

To analyze the administrative court in Poland, to compare it with the Ukrainian one,

- 6 Hauser R., Drachal J., Mzyk E. Dwuinstancyjne sądownictwo administracyjne : Omówienie podstawowych zasad i instytucji procesowych : Teksty aktów prawnych : Stan prawny na dzień 17 lutego 2003 r. Warszawa ; Zielona Góra, 2003. S. 52 ; Piątek W. Zakres kognicji polskiego sądu administracyjnego. *Ruch prawniczy, ekonomiczny i socjologiczny*. 2009. R. LXXI. Z. 4. S. 86. URL: [https://repozytorium.amu.edu.pl/bitstream/10593/4554/1/06\\_Wojciech\\_Piatek\\_Zakres%20kognicji%20polskiego%20s%C4%85du%20administracyjnego\\_67-76.pdf](https://repozytorium.amu.edu.pl/bitstream/10593/4554/1/06_Wojciech_Piatek_Zakres%20kognicji%20polskiego%20s%C4%85du%20administracyjnego_67-76.pdf) (date accessed: 22.11.2022).
- 7 Adamiak B., Borkowski J. Metodyka pracy sędziego w sprawach administracyjnych. Warszawa, 2015.
- 8 Ustawa z dnia 25 lipca 2002 r. – Prawo o ustroju sądów administracyjnych, Dz. U. z 2022, poz. 2492 ze zm., zwana dalej u.s.a.
- 9 Dąbek D. Prawo miejscowe. Warszawa, 2015. S. 300.
- 10 Król R. Legitymacja skargowa w postępowaniu sądowoadministracyjnym jako element wpływający na efektywność podejmowania decyzji w administracji publicznej. *Rocznik Administracji Publicznej*. 2017. No 3. S. 10. DOI 10.4467/24497800RAP.17.002.7053 (date accessed: 22.11.2022).
- 11 Князев В. С. Сутність та ознаки експертизи в адміністративному судочинстві. *Гуманітарний вісник НУК*. 2013. Вип. 6. С. 57–61. URL: <http://eir.nuos.edu.ua/xmlui/bitstream/handle/123456789/1490/Knyazev.pdf?sequence=1&isAllowed=y> (date accessed: 22.11.2022) ; Неугодинов А. О. Правовий статус адміністративного суду в Україні: адміністративно-правовий аспект : дис. ... канд. юрид. наук. Одеса, 2006 ; Кравчук Т. О. Використання спеціальних знань у формі судової експертизи в адміністративному судочинстві України : дис. ... канд. юрид. наук. Луцьк, 2016.

to investigate the effectiveness and possibilities of intervention of the administrative court in the sphere of powers of other authorities.

## Main Content Presentation

### *The essence of administrative judiciary*

The administrative judiciary in the model functioning in Poland can be characterized by indicating the following features:

- 1) administrative courts administer justice by controlling the activities of public administration, taking into account the legality criterion;
- 2) the jurisdiction of administrative courts covers the overwhelming majority of actions of public administration bodies in individual cases, regardless of their legal form and selected actions in general cases, complaints about inactivity and lengthy proceedings;
- 3) court proceedings are initiated only at the request of the entity which has a complaint card;
- 4) adopting models taken from civil proceedings, while maintaining the autonomy of administrative court proceedings;
- 5) separateness of the administrative and common judiciary division, expressed in the supervision exercised by the Supreme Court;
- 6) the principle of two-instance administrative court proceedings;
- 7) a cassation model (in principle) of administrative judiciary;
- 8) the possibility of conducting mediation and simplified proceedings;
- 9) introduction of procedural guarantees of access to court, expressed through the formalization of the complaint, the

institution of the law of assistance, statutory exemption from court costs<sup>12</sup>.

By the way, in Ukraine, in accordance with Article 19 of the Code of Administrative Procedure of Ukraine, the jurisdiction of administrative courts (subject matter jurisdiction) extends to cases in public legal disputes, in particular:

- 1) disputes of individuals or legal entities with the subject of authority regarding the appeal of his decisions (normative legal acts or individual acts), actions or inaction, except for cases when a different procedure for court proceedings is determined by law for consideration of such disputes;
- 2) disputes regarding the acceptance of citizens for public service, its completion, dismissal from public service;
- 3) disputes between subjects of power regarding the implementation of their competence in the field of management, in particular, delegated powers;
- 4) disputes that arise in connection with the conclusion, execution, termination, cancellation or invalidation of administrative agreements;
- 5) at the request of a subject of authority in the event that the right to appeal to a court to resolve a public-law dispute is granted to such a subject by law;
- 6) disputes regarding legal relations related to the election process or the referendum process; disputes between subjects of power regarding the implementation of their competence in the field of management, in particular, delegated powers;
- 7) disputes between individuals or legal entities with the administrator of public information regarding the appeal of his decisions, actions or inaction regarding access to public information;

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12 Piątek W., Skoczylas A. *Sądowa kontrola administracji / System Prawa Administracyjnego* / red. R. Hauser, Z. Niewiadomski, A. Wróbel. Warszawa, 2014. S. 52–53 ; Tarno J. P., Frankiewicz E., Sieniuc M., Szewczyk M., Wyporska J. *Sądowa kontrola administracji*. Warszawa, 2006. S. 20–21.

- 8) disputes regarding the seizure or forced alienation of property for public needs or for reasons of public necessity;
- 9) disputes regarding the appeal of decisions of attestation, competition, medical and social expert commissions and other similar bodies, the decisions of which are binding on state authorities, local self-government bodies, and other persons;
- 10) disputes regarding the formation of the composition of state bodies, local self-government bodies, the election, appointment, dismissal of their officials;
- 11) disputes of individuals or legal entities regarding the appeal of decisions, actions or inaction of the customer in legal relations that arose on the basis of Law of Ukraine *"On the Peculiarities of Procurement of Goods, Works and Services for the Guaranteed Provision of Defense Needs"* (with the exception of disputes related to the conclusion of a contract with the winner of the procurement negotiation procedure, as well as the change, termination and execution of procurement contracts);
- 12) disputes regarding the appeal of decisions, actions or inaction of state border protection bodies in cases of offenses provided for by Law of Ukraine *On the Liability of Carriers during International Passenger Transportation*;
- 13) disputes regarding the appeal of the decisions of the National Commission for Rehabilitation in legal relations arising on the basis of Law of Ukraine *On the Rehabilitation of Victims of the Repressions of the Communist Totalitarian Regime 1917-1991* <sup>13</sup>.

Let us immediately note that legal examinations in Ukraine are carried out by the Scientific and Expert Council of Law Specialists, which has more than ten collective members (prominent scientific institutions of Ukraine) and more than 70 individual members (legal scholars recognized in Ukraine and abroad, most of whom are members of the Scientific Advisory Council at the Supreme Court, are professors, academicians and doctors of legal science). Experts prepare opinions in all categories of court cases.

The task of the Scientific and Expert Council of Legal Specialists is to carry out scientific expertise on the application of national legislation, international law, the legislation of other countries, the study of legal practice problems, and the examination of contracts. Expertise in the field of law will be carried out in any field of knowledge and in all types of judicial proceedings (including cases considered in international courts, and especially in ICAC).

The scientific expert opinion of an expert in the field of law is provided on the grounds determined by the procedural legislation (Article 242 of the Code of Criminal Procedure of Ukraine, Article 108 of the Code of Civil Procedure of Ukraine, Article 112 of the Civil Code of Ukraine, Article 114 of the Code of Criminal Procedure of Ukraine). In all other cases, a scientific and legal opinion of a specialist in the field of law is provided <sup>14</sup>.

The administrative judiciary in Poland operates on the basis of a cassation model with elements of the power to adjudicate on the merits. The administrative court was not equipped with cassation and reform powers, which results in the extension of the period necessary to complete

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13 Ключев О. М., Угровецкий О. П., Сімакова-Єфремян Е. Б. та ін. Судові експертизи в адміністративному провадженні : навч. посіб. Харків, 2021. С. 15–16.

14 Експертиза у галузі права / Офіс незалежних експертиз. URL: <https://oie.com.ua/ua/expertises/ekspertiza-u-galuzi-prava> (date accessed: 22.11.2022).

the case <sup>15</sup>. The complaint initiating the administrative court proceedings ensures the fulfillment of the direct aim of the appeal, which is to overturn the action in question and its effects or to combat inaction, but the fundamental aim of the complainant will be achieved only as a result of the case being resolved by the administrative authority. Even if the administrative court exceptionally adjudicates on certain rights or obligations of the complainant, it only decides on the law, on the interpretation of the law in a specific case, and does not make decisions in the case that would be determined by the purposefulness criterion <sup>16</sup>.

As for certain examinations in the field of public law, they can be performed, for example, by Centrum Ekspertkie Unawersitetu w Białymstoku <sup>17</sup>.

Administrative courts are courts of public law whose task is to exercise control over the activities of public administration.

They do not settle the dispute between the parties and do not guarantee the procedural penalty. The function of a court of public law is perceived in the control of administration, through professional interpretation of the law, and therefore the challenged act or action is revoked, which is treated as the main result of judicial review <sup>18</sup>.

### **Functions of administrative judiciary**

The issues of the functions of administrative judiciary focus on entrusting administrative courts with tasks consisting in the administration of justice and the protection of individual rights and freedoms in relations with public administration <sup>19</sup>. The activity of an administrative court is to protect constitutional standards that define the rights of an individual <sup>20</sup>.

The basic purpose of the functioning of administrative judiciary is to protect individual rights <sup>21</sup>. Control of the activities of

15 Banaszak B., Wygoda K. Funkcjonowanie sądownictwa administracyjnego w Polsce w zderzeniu z problemami współczesności – wybrane zagadnienia. *Studia Iuridica Lublinensia*. 2014. No 22. S. 169–171. URL: [https://bazhum.muzhp.pl/media/files/Studia\\_Iuridica\\_Lublinensia/Studia\\_Iuridica\\_Lublinensia-r2014-t22/Studia\\_Iuridica\\_Lublinensia-r2014-t22-s165-178/Studia\\_Iuridica\\_Lublinensia-r2014-t22-s165-178.pdf](https://bazhum.muzhp.pl/media/files/Studia_Iuridica_Lublinensia/Studia_Iuridica_Lublinensia-r2014-t22/Studia_Iuridica_Lublinensia-r2014-t22-s165-178/Studia_Iuridica_Lublinensia-r2014-t22-s165-178.pdf) (date accessed: 22.11.2022).

16 Adamiak B., Borkowski J. Postępowanie administracyjne i sądownoadministracyjne. Warszawa, 2009. S. 348.

17 Centrum Ekspertkie Unawersitetu w Białymstoku. URL: <https://centrumekspertkie.uwb.edu.pl> (date accessed: 22.11.2022).

18 Szubiakowski M. Administracyjnoprawna regulacja praw i wolności obywatelskich. Warszawa, 2017. S. 275.

19 Wiącek M. Komentarz do art. 184 Konstytucji RP / Konstytucja RP. Komentarz. Art. 87–243. T. II / red. M. Safjan, L. Bosek. Warszawa, 2016. S. 1091 ; Trzeciński J. Kształtowanie się kognicji sądów administracyjnych od 1980 do 2013 r. / Droga ku zmianom. Księga Jubileuszowa w sześćdziesiąt rocznicę urodzin Prezydenta Aleksandra Kwaśniewskiego / red. D. Waniek, K. Janik. Warszawa ; Kraków, 2014. S. 102. In the historical process of shaping the administrative judiciary, two goals of the administrative judiciary system can be distinguished. The Austrian judicial system assumed that administrative courts ensure the protection of individual public rights. On the other hand, the Prussian model focused on the protection of the binding provisions of the applicable law (subject law), and the protection of individual public rights while protecting the subject law (e.g. Izdebski H. Historia administracji. Warszawa, 2015. S. 79).

20 Gomułowicz A. Aspekt prawotwórczy sądownictwa administracyjnego. Warszawa, 2008. S. 35.

21 Hauser R. Sądownictwo administracyjne w przyszłej konstytucji. *Ruch prawniczy, ekonomiczny i socjologiczny*. 1995. R. LVII. No 2. S. 57. URL: <https://repozytorium.amu.edu.pl/bitstream/10593/16212/1/006%20ROMAN%20HAUSER.pdf> (date accessed: 22.11.2022).

public administration bodies comes down to the protection of the rights and freedoms of legal entities in relations with public administration bodies. Its aim is also to strengthen the principle of the democratic rule of law<sup>22</sup>.

The administration of justice and the performance of tasks in the field of legal protection constitute the core activities of courts, including administrative courts<sup>23</sup>. The content and scope of activity of administrative courts was indicated by the legislator in Art. 175 of the Polish Constitution by entrusting them with the administration of justice<sup>24</sup>.

The provision of Art. 184 of the Polish Constitution sets out the limits of jurisdiction and the essence of the administration of justice exercised by administrative courts<sup>25</sup> through the control of the activities of public administration bodies<sup>26</sup>, which comes down to examining whether an act or activity of a public administration body complies with formal and substantive law and whether it was undertaken by a competent public administration body<sup>27</sup>.

The solution adopted in Art. 184 and 175 of the Constitution of the Republic of

Poland also constitute the constitutional basis for the exclusive competence of administrative courts to administer justice through the control of the activities of public administration bodies. It also specifies the manner of administering justice by administrative courts in such a way that they control — and not replace — the authority in the exercise of its statutory competences<sup>28</sup>.

The role of the administrative court is to control the operation of an administrative body from the point of view of its compliance with the law. This process includes: control of the reconstruction and application by public administration bodies of procedural standards specifying the legal requirements for establishing facts, control of the legal qualification of these facts, which refers to the substantive legal grounds for administrative decisions, including control of their interpretation and application, through the prism of statutory provisions procedural defining legal requirements for the justification of an administrative decision, control of a specific method of determining the actual and legal grounds for a decision in a specific

22 Trzeciński J. Sądownictwo administracyjne jako gwarant ochrony wolności i praw jednostki. Trzecia władza sądy i trybunały w Polsce : 50 Jubileuszowym Zjeździe Katedr i Zakładów Prawa Konstytucyjnego (Gdynia, 24–26.04.2008) ; Adamiak B. Model sądownictwa administracyjnego a funkcje sądownictwa administracyjnego / Polski model sądownictwa administracyjnego / red. J. Stelmasiak, J. Niczyporuk, S. Fundowicz. Lublin, 2003. S. 21–22.

23 Wyrok TK z 8 maja 2014, U 9/13, OTK ZU 5A/2014, poz. 51.

24 Masternak-Kubiak M. Komentarz do art. 1 ustawy o ustroju sądów administracyjnych / Kuczyński T., Masternak-Kubiak M. Prawo o ustroju sądów administracyjnych. Komentarz. Warszawa, 2009. S. 12.

25 Hauser R., Kabat A. Właściwość sądów administracyjnych. *Ruch prawniczy, ekonomiczny i socjologiczny*. 2004. R. LXVI. Z. 2. S. 25. URL: [http://repozytorium.amu.edu.pl:8080/bitstream/10593/6710/1/02\\_R\\_Hauser\\_A\\_Kabat\\_W\\_a\\_ciwo\\_\\_%20s\\_d%C3%B3w%20administracyjnych\\_25-34.pdf](http://repozytorium.amu.edu.pl:8080/bitstream/10593/6710/1/02_R_Hauser_A_Kabat_W_a_ciwo__%20s_d%C3%B3w%20administracyjnych_25-34.pdf) (date accessed: 22.11.2022).

26 Ibid ; Hauser R. Przekształcenia modelu polskiego sądownictwa administracyjnego. *Forum Iuridicum*. 2002. Z. 1. S. 96–98.

27 Hauser R. Założenia reformy ... .

28 Woś T. Reforma sądownictwa administracyjnego – projekty dalekie od ideału. *Państwo i Prawo*. 2001. Z. 7. S. 31–32.

case <sup>29</sup>. Control actions of administrative courts must be undertaken in an individual case, directed to a designated entity and refer to the rights and obligations of this entity. The right or obligation to which a given act (activity) relates is defined in the provisions of generally applicable law <sup>30</sup>. The control exercised by administrative courts is performed on three levels: assessment of the compliance of an act or activities of a public administration body with substantive law; compliance with the legally required procedure; respect of the competence rules <sup>31</sup>.

The administrative court controls the activities of the public administration body by eliminating from legal transactions their decisions that are inconsistent with the law, as well as arbitrary decisions that are lawful <sup>32</sup>.

Exercising control within the meaning of Art. 1 of the Law on the System of Administrative Courts means some kind of secondary actions of the court towards the actions of administrative bodies <sup>33</sup>. The administrative court controls the ways and methods of applying the law by the public administration body during the proceedings aimed at ending the administrative case. The administrative court does not evaluate the effectiveness or purposefulness of actions taken by public administration <sup>34</sup>.

### ***Polish model of administrative judiciary***

The doctrine points to the presence in Europe of two administrative judiciary systems — the cassation model and the so-called full adjudication <sup>35</sup>. It should be emphasized that nowadays in Europe there are no models of adjudication by administrative courts only on the merits and only on cassation. The substantive judicial powers are combined with the powers of a cassation appeal, leaving the administrative courts with a wider catalog of cassation powers <sup>36</sup>.

Assuming the variety of judicial models of administrative courts, it should be emphasized that they are all oriented towards the implementation of the right of access to a court, which will provide individuals with the opportunity to present their arguments and defend their interests in a dispute with a public administration body. Therefore, the proceedings before the administrative court are aimed at guaranteeing the individual's rights and ensuring protection against illegal actions of public administration bodies <sup>37</sup>.

The discussion on the model of adjudication by Polish administrative courts was swept for the first time during the work on the reform of the administrative judiciary, which resulted in the Acts of 2002 on the system of administrative courts the

29 Wyrok NSA z 22 czerwca 2018 r., I OSK 629/17, CBOSA.

30 Zięty J. J. Glosa do uchwały siedmiu sędziów Naczelnego Sądu Administracyjnego z 25 listopada 2013 r., (I OPS 12/13). *Samorząd Terytorialny*. 2014. Nr 12. S. 86 ; Uchwała NSA z 8 listopada 1999 r., OPS 12/99, ONSA 2000/2, poz. 47.

31 Wyrok NSA z 26 stycznia 2006 r., I GSK 1421/05, CBOSA.

32 Gomulowicz A. Op. cit.

33 Wyrok WSA w Gliwicach z 4 lipca 2018 r., II SA/Gl 331/18.

34 Gomulowicz A. Op. cit. S. 40.

35 Kmiecik Z. *Postępowanie administracyjne i sądownoadministracyjne a prawo europejskie*. Warszawa, 2009. S. 103.

36 Piątek W. *Nowe kompetencje do merytorycznego orzekania przez sądy administracyjne. Państwo i Prawo*. 2017. Z. 1. S. 21.

37 Piątek W., Skoczylas A. Op. cit. S. 56—57.

Law on Proceedings Before Administrative Courts<sup>38</sup>, and the act, which included provisions introducing the act on the organization of administrative courts and the Law on Proceedings Before Administrative Courts<sup>39</sup>. Another discussion on the competences of the administrative judiciary was related to the amendment to the Law on Proceedings Before Administrative Courts by the Act of 9 April 2015 amending the act - the Law on Proceedings Before Administrative Courts<sup>40</sup>.

After the entry into force of the Act of 9 April 2015, Poland has a mixed model of judicial competences of administrative courts, with a predominance of cassation powers<sup>41</sup>. By the Act of 9 April 2015, administrative courts were allowed to make substantive decisions in cases in exceptional circumstances<sup>42</sup>. However, until the amendment to the Act on Proceedings before Administrative Courts by the Act of 9 April 2015, the cassation model of adjudication was in force.

Due to the cassation model of adjudication in the Polish administrative judiciary, until the date of entry into force of the Act of 9 April 2015, the views of the doctrine relating to the cassation model of adjudication should be presented

first. The most intensive exchange of arguments on the essence of the cassation model of adjudication took place in the period preceding the adoption of the package of laws reforming the administrative judiciary.

The judicial powers of administrative courts, exclusively of a cassation nature, faced criticism due to the juggling of the case between the authority and the administrative court without its substantive and final conclusion<sup>43</sup>.

An important element of *administrative judiciary* is the indication of the type of activity undertaken by courts of an *administrative* nature, being a response to the specificity and needs of administrative law. The concept of the judiciary includes activities consisting in resolving disputes and, consequently, making substantive decisions, based on a statutorily specified model of proceedings. Thus, the concept of *administrative judiciary* focuses on a special court that influences the substantively correct functioning of public administration bodies<sup>44</sup>.

R. Hauser noticed that enabling administrative courts to deal with administrative matters in terms of the content would be incompatible with their control function

38 Ustawa z dnia 30 sierpnia 2002 r. – Prawo o postępowaniu przed sądami administracyjnymi, Dz. U. Nr 153, poz. 1270.

39 Ustawa z dnia 30 sierpnia 2002 r. Przepisy wprowadzające ustawę – ustawę – Prawo o ustroju sądów administracyjnych oraz ustawę - Prawo o postępowaniu przed sądami administracyjnymi, Dz. U. Nr 153, poz. 1271 ze zm.

40 Dz. U. z 2015 r., poz. 658, zwana ustawą z 9 kwietnia 2015 r.

41 Piątek W. Nowe kompetencje ... S. 22.

42 Miemiec M. Dylematy sądowej kontroli administracji. Antywartości w prawie administracyjnym : VI Krakowsko-Wrocławskie Spotkanie Naukowe Administratywistów / red. A. Błaś. Warszawa, 2016. S. 414–427.

43 Pietrasz P. Reformacyjne orzekanie przez wojewódzkie sądy administracyjne w przypadku sądowej kontroli decyzji i postanowień — uwagi de lege ferenda / Z zagadnień prawa rolnego, cywilnego i samorządu terytorialnego. Księga jubileuszowa Profesora Stanisława Prutisa / red. J. Bieluk, A. Doliwa, A. Malarewicz-Jakubów, T. Mróz. Białystok, 2012. S. 814.

44 Zimmermann J. Z podstawowych zagadnień sądownictwa administracyjnego / Sądownictwo administracyjne gwarantem wolności i praw obywatelskich 1980-2005. Warszawa, 2005. S. 492.

indicated in Art. 184 of the Polish Constitution<sup>45</sup>. T. Woś pointed to the provision of Art. 184 of the Polish Constitution as the basis for the administration of justice by administrative courts by controlling the activities of public administration. The administration of justice by administrative courts comes down to controlling, not replacing public administration in the exercise of its statutory powers. Therefore, it seems impossible to equip the administrative court with the powers to deal with substantive matters<sup>46</sup>.

Administrative courts control the activity of public administration bodies, examining acts or actions taken by a public administration body for compliance with the law. Enabling administrative courts to hear a case substantively would lead to replacing public administration bodies in the performance of entrusted tasks. Taking into account the principle of the separation of powers, it is not possible to replace public administration in exercising its competences provided for by law, and thus enter the sphere of executive power<sup>47</sup>.

Until the entry into force of the Act of 9 April 2015, administrative courts resolved substantively a court-administrative case in the instances specified in Art. 15 § 2, Art. 146 § 2, Art. 154 § 2 and Art. 297 of the Law on Proceedings Before Administrative Courts. In other cases, when the complaint was granted by the administrative court, the case was re-examined by the public administration body, which was bound by the legal assessment and indications as to fur-

ther proceedings, formulated in the justification of the judgment. Thus, the legal dispute between the parties did not end with the issuance of a court decision<sup>48</sup>.

The Supreme Administrative Court could adjudicate on the merits of the case by applying the solution provided for in Art. 188 of the Law on Proceedings before Administrative Courts, according to the content of which, if there are no violations of the provisions of the procedure that could have a significant impact on the outcome of the case, and there is only a violation of substantive law, the Supreme Administrative Court may revoke the appealed judgment and examine the complaint. In this case, the Supreme Administrative Court adjudicates on the basis of the facts adopted in the judgment under appeal.

Conferring competence on the court of second instance (in principle acting as a cassation court) to adjudicate on reformation was justified by the implementation of the principle of procedural economy. The court-administrative case with only the charge of infringement of substantive law will be re-examined by the court of second instance<sup>49</sup>.

A significant disadvantage of the cassation model of adjudication by administrative courts is, above all, the extension of the time necessary for the final, substantive settlement of the case<sup>50</sup>.

The defectiveness of the cassation model of adjudication by administrative courts may be limited by transferring to administrative courts the competences of a public

45 Hauser R. Założenia reformy ... . S. 23 ; Powyższe stanowisko zostało również zaakceptowane w orzecznictwie sądów administracyjnych. Zob. wyrok WSA w Gliwicach z 4 lipca 2018 r., II SA/Gl 331/18.

46 Woś T. Op. cit.

47 Masternak-Kubiak M. Komentarz do art. 184 Konstytucji RP / Konstytucja Rzeczypospolitej Polskiej. Komentarz / red. M. Haczkowska. 2014.

48 Piątek W. Powaga rzeczy osądzonej wyroku sądu administracyjnego. Warszawa, 2015. S. 4.

49 Prawo o postępowaniu przed sądami administracyjnymi / red. R. Hauser, M. Wierzbowski. Warszawa, 2011. S. 620.

50 Kmiecik Z. Op. cit. S. 105.

administration body for substantive handling of cases<sup>51</sup>.

The next stage of the discussion on the model of adjudication by administrative courts is closely related to the work on the Act of April 9, 2015, which significantly amended the provisions constituting the basis for adjudication by administrative courts.

Equipping administrative courts with the power to adjudicate on reform is closely related to the principle of separation of powers. While enabling the administrative court to resolve a case on the merits, the judge should be equipped with instruments for determining the facts of the case<sup>52</sup>. Therefore, the administrative court has a double obligation — to examine the case, taking into account the criterion of legality, and in the event of a violation of formal law, to conduct evidence proceedings to the necessary extent (at the same time as provided for in the legal norm) and to issue an appropriate substantive judgment.

By the Act of 9 April 2015, the provision of Art. 145 of the Law on Proceedings Before Administrative Courts was amended by adding § 3<sup>53</sup> and adding a new provision of Art. 145a of the Law on Proceedings Before Administrative Courts<sup>54</sup>. New procedural solutions give administrative courts the right to discontinue administrative proceedings (Article 145 § 3 of the Law on Proceedings Before Administrative Courts) and substantive adjudication in an administrative court case (Article 145a Law on proceedings before administrative courts). In the case of application of Art. 145 § 3 of the Law on Proceedings Before Administrative Courts, a court judgment replaces a decision in a case of a public administration body only in a situation where the court finds that the contested decision or order is illegal and at the same time there are grounds for discontinuing the administrative procedure<sup>55</sup>. The solution provided for in Art. 145 § 3 is a form of implementation of the principle of providing

51 Bogusz M. Charakter kompetencji sądu administracyjnego a zasada podziału władzy. *Gdańskie Studia Prawnicze*. 2014. T. XXXI. S. 30. URL: [https://prawo.ug.edu.pl/sites/default/files/\\_nodes/strona-pia/33461/files/3\\_charakter\\_kompetencji\\_sadu\\_administracyjnego.pdf](https://prawo.ug.edu.pl/sites/default/files/_nodes/strona-pia/33461/files/3_charakter_kompetencji_sadu_administracyjnego.pdf) (date accessed: 22.11.2022).

52 Piątek W., Skoczylas A. Op. cit. S. 57.

53 Art. 145 § 3 of the Law on Proceedings Before Administrative Courts. received the following wording: "In the case referred to in § 1 items 1 and 2, the court, stating the grounds for discontinuation of the administrative proceedings, at the same time discontinues the proceedings".

54 The content of the provision of art. 145a is as follows: § 1 In the case referred to in Art. 145 § 1 point 1a or point 2, if it is justified by the circumstances of the case, the court obliges the authority to issue a decision or order within a specified period, indicating the manner of settling the case or its resolution, unless the decision is left to the discretion of the authority. § 2 The competent authority shall notify the court of issuing the decision or order referred to in § 1 within 7 days from the date of issue. If the court is not notified, it may decide to impose a fine on the authority in the amount specified in Art. 154 § 6. The order may be issued in closed session. § 3 in the event of failure to issue the decision or order referred to in § 1, within the time limit specified by the court, a party may file a complaint, requesting a denial stating the existence or non-existence of a right or obligation. The court will issue a ruling on this subject, if the circumstances of the case allow it. As a result of examining the complaint, the court determines whether the failure to issue the decision or order was in gross violation of the law, and may also, ex officio or at the request of a party, impose a fine on the authority in the amount specified in Art. 154 § 6 or order the authority to pay the complainant a sum of up to half of the amount specified in Art. 154 § 6.

55 Kabat A. Komentarz do art. 145 / Prawo o postępowaniu przed sądami administracyjnymi. Komentarz / red. B. Dauter, A. Kabat, M. Niezgódka-Medek. Warszawa, 2016. S. 632.

administrative courts with limited power to issue decisions replacing administrative acts or ordering the authority to issue a decision with a specific content. The judgment of the administrative court, using the option provided for in Art. 145 § 3 of the Law on Proceedings Before Administrative Courts, will settle the administrative case without the need to re-engage the public administration body in the proceedings, the effect of which is the decision to discontinue the administrative proceedings<sup>56</sup>.

The solution provided for in Art. 145a of the Law on Proceedings before Administrative Courts gives administrative courts the right to substantively settle a case in which the subject of the appeal is a decision or order, which is an exception to the cassation model of administrative judiciary<sup>57</sup>. It also aims to grant the court the power to oblige the authority to issue a decision or order on the indicated resolution, within the time limit specified by the court. If the circumstances of the case justify issuing the above ruling, the court is obliged not only to repeal the challenged act, but also to indicate a binding way of settling the case or its decision. The court may not exercise its right to resolve the matter on the merits in a situation where the provisions leave the decision to the discretion of the authority<sup>58</sup>.

The solutions introduced in Art. 145 § 3 and in Art. 145a of the Law on proceedings before administrative courts correspond to the principles of procedural economy and are in line with the European tendency to provide an administrative court with the

possibility of substantive adjudication<sup>59</sup>, thus departing from the cassation model of administrative judiciary. The provisions of Art. 145 and 145a of the Law on Proceedings before Administrative Courts Law on Proceedings before Administrative Courts emerges a quasi-substantive model of adjudication by an administrative court introduced to the Polish system of administrative courts, with a predominance of cassation decisions. It should also be noted that adjudication on the merits is excluded in the event that discretionary acts are subject to judicial review<sup>60</sup>.

The introduction of substantive adjudication powers into the Polish model of administrative judiciary entails certain consequences in terms of the enforcement of a court decision. Judgment discontinuing administrative proceedings pursuant to Art. 145 § 3 of the Law on Proceedings Before Administrative Courts, causes that the public administration body is not obliged to take any procedural steps. Z. Kmiecik rightly notices that the phrase *the court obliges the authority to issue a decision or order within a specified period, indicating the manner of settling the matter or its resolution* included in Art. 145a § 1 of the Law on Proceedings before Administrative Courts does not lead to a risk of abuse of substantive powers to adjudicate. The solution provided for in Art. 145a § 1 of the Law on proceedings before administrative courts affects the judicial independence of the body to a lesser extent than Art. 138 § 4 of the CCP, imposing an obligation to issue a decision with specific content<sup>61</sup>.

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56 Druk sejmowy 1633.

57 Kabat A. Op. cit. S. 633 ; Szustakiewicz P. Komentarz do art. 145a / Prawo o postępowaniu przed sądami administracyjnymi. Komentarz / red. A. Skoczylas, P. Szustakiewicz. Warszawa, 2016. S. 261.

58 Druk sejmowy 1633.

59 Ibid.

60 Miemiec M. Op. cit.

61 Kmiecik Z. O merytorycznym orzekaniu przez sądy administracyjne raz jeszcze. Gdańskich Studiów Prawniczych – Przeglądu Orzecznictwa. 2015. Z. 4. S. 23.

## Conclusions

When analyzing the essence of adjudication models by administrative courts, a conclusion emerges that the models of cassation, reform and mixed adjudication are aimed at achieving the goal set before an administrative court by protecting an individual against illegal or arbitrary actions of public administration bodies. Regardless of the model of adjudication adopted by administrative courts, each of them meets the standards provided for in Recommendation Rec 20/2004 on judicial review of administrative acts <sup>62</sup>. The breach by the administrative court into the domain of the authority's powers is justified by the effectiveness and efficiency of the proceedings. It allows the complainant to obtain a substantive decision on the case much faster. The mixed model of jurisprudence of Polish administrative courts allows for a more effective implementation of the protection of individual rights.

### **Модель судового розгляду адміністративними судами в Польщі** *Анна Шишка*

*Це дослідження стосується моделі судового розгляду польськими адміністративними судами. Мета роботи: проаналізувати адміністративне судочинство у Польщі, порівняти його з українським, дослідити ефективність і можливості втручання адміністративного суду у сферу повноважень інших органів влади. Адміністративне судочинство в Польщі здійснюють воєводські адміністративні суди, які розглядають справи в першій інстанції, і Верховний адміністративний суд як суд другої інстанції. Авторка виходила з того, що запровадження змішаної моделі судової практики адміністративних судів збільшує ефективність вико-*

*нання основної мети адміністративного судочинства, яка полягає у захисті прав особи від свавілля органів публічної адміністрації. Втручання адміністративного суду до сфери повноважень владних органів виправдано дієвістю та ефективністю судочинства, адже дає змогу скаргникам значно швидше отримати рішення по суті. Змішана модель судової практики польських адміністративних судів дає змогу ефективніше реалізовувати захист прав особи. Аналіз питання здійснено з використанням теоретико-правового та історико-правового методів.*

**Ключові слова:** контроль за діяльністю публічної адміністрації; адміністративні суди в Польщі; юрисдикція адміністративних судів України; функції адміністративного судочинства; недоліки касаційної моделі.

## Funding

This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

## Disclaimer

The funders had no role in the study design, data collection and analysis, decision to publish, or preparation of the manuscript.

## Contributors

The author contributed solely to the intellectual discussion underlying this paper, case-law exploration, writing and editing, and accept responsibility for the content and interpretation.

## Declaration of Competing Interest

The author declare that they have no conflict of interest.

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