

# ADMINISTRATIVE JUDICIARY IN POLAND IN SEARCH FOR FAIRNESS AND EFFICIENCY – AN OVERVIEW

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*The 2002 reform of Polish administrative judiciary introduced two – instance system of administrative courts. The main aim of the article is to analyze some of the novelties that are to ensure fairness, cohesion and effectiveness of the administrative judiciary in Poland. First parts of the article are devoted to present in brief the historical and present organization of the administrative judiciary in Poland. In the subsequent parts authors present the problem of cohesiveness of the judicature, mediatory and ‘simplified’ procedures and staffing. Referring to the available data, authors argue that new procedural tools (mediation, simplified procedures) are gradually gaining more acceptance. On the other hand, a lot has to be done to develop ADR means in the pre – trial stage and make them a popular way of administrative dispute resolution.*

**KEYWORDS:** administrative judiciary, effectiveness, mediation, administrative courts, alternative dispute resolution.

## Introduction and a short historical overview

In the Republic of Poland, as well as in many other European Countries, a system of special administrative courts has been developed. There is not any significant body of literature on Polish administrative judiciary in English, although the latest developments in the legal environment surrounding Polish administrative courts seem to be worth present<sup>1</sup>. In our article we will focus only on some interesting (in our opinion) novelties in Polish administrative judiciary that are to ensure fairness and effectiveness of the system.

Administrative judiciary in Poland has a long tradition; however, its rapid development took place after Poland has regained its independence in 1918 after the period of the partitions. The Constitution of the Republic of Poland of 17 March 1921 announced an administrative justice system including at least

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<sup>1</sup> E.g. Jagielski J., in: *Introduction to Polish Law*, Wolters Kluwer 2006; Biernat S., *Poland*, in D.J. Galligan, R.H. Langan II and Constance S. Nicandrou, *Administrative Justice in the New European Democracies*, COLPI 1989, p. 89 ff.

two instances of courts with participation of lay jurors. Such a system was not established, except in the part of Poland that was under Prussian control during the partition period where administrative courts existed at voivodeship level. Most importantly, however, the declaration of Article 73 on the Administrative Tribunal was fulfilled and the latter was established by the Act on Supreme Administrative Tribunal of 3 August 1922<sup>2</sup>. This was a special court, supreme in the sense that it was bound only by the statutes. Jurisdiction of this tribunal was of particular significance because it served as a model in the establishment of the first Polish regulations of administrative procedure in the period between two world wars<sup>3</sup>. The general administrative judiciary system, was not reactivated in the times following World War 2. According to one of the prominent Polish scholars of that time “the elimination of this institution was a result of (...) further progress of events in social and political life, as well as a state related life, which was characterised, among others, by an ever increasing domination of the administrative system over the citizen, with simultaneous propagation of a theory of the increasing participation of the working masses in state governance”<sup>4</sup>. In addition, a thesis was adopted about the lack of contradictions between the interests of the state and the individuals in a communist state<sup>5</sup>. As one scholar of that time observed, after 1945 “there were no more grounds in Poland to confront the state and the society, and consequently the *raison d’être* for the administrative court as an arbiter for solving disputes between the state and the society”<sup>6</sup> – no longer existed. No need for administrative judiciary was also justified by the establishment of national councils, general supervision of the public prosecutor office and introduction of the complaints and proposals institution<sup>7</sup>. Thus, generally in a communist state from its very beginning there was no place for the administrative adjudication and administrative judiciary.

Despite numerous earlier efforts undertaken to introduce the administrative judiciary<sup>8</sup>, it was only in 1980 when the Supreme Administrative Court (Naczelny Sąd Administracyjny – NSA) was established. The NSA used to function as the only instance court until 1 January 2004, when a new, two-instance administrative judiciary system was established, pursuant to new regulations i.e.: Law on the system of administrative courts of 25 July 2002<sup>9</sup> (hereinafter: LSAC) and Law on proceedings before administrative courts of 30 August 2002 (hereinafter: LPBAC)<sup>10</sup>, introduced by the Law on the system of administrative courts and the Act – Law on proceedings before administrative courts of 30 August 2002<sup>11</sup>. We will call this changes reshaping Polish administrative judiciary – the 2002 reform.

Such a reform was indispensable, because article 176 unit 1 of the Constitution of the Republic of Poland (1997) states that court proceedings shall have at least two stages (i.e. the system of administrative

<sup>2</sup> [http://www.nsa.gov.pl/index\\_eng.html](http://www.nsa.gov.pl/index_eng.html)

<sup>3</sup> Malec D., *Z dziejów Najwyższego Trybunału Administracyjnego 1922-1939. Uchylenie zaskarżonych decyzji administracyjnych z powodów formalnych*, in: *Szkice z dziejów ustroju i prawa. Poświęcone pamięci Ireny Malinowskiej-Kwiatkowskiej*, Kwiecień M., Małecki M. (eds.), Kraków 1997, p. 131;

<sup>4</sup> Dawidowicz W., *W sprawie sądownictwa administracyjnego*, Państwo i Prawo 1956, vol. 12, p. 1044, see also Wyrzykowski M., *Sądownictwo administracyjne w PRL*, Warsaw 1983, p. 33.

<sup>5</sup> Janowicz Z., *Nowe prawo procesowe w sferze administracji publicznej*, Ruch Prawniczy Ekonomiczny i Socjologiczny 1996, vol. 1, p. 26;

<sup>6</sup> Morawski W., *Zagadnienie kontroli administracji*, Państwo i Prawo 1947, vol. 1, p. 61.

<sup>7</sup> For a critical analysis: Litwin J., *Problematyka sądownictwa administracyjnego. Zagadnienia organizacji i procedury*, Nowe Prawo 1956, No. 10, pp. 7-8.

<sup>8</sup> see e.g. Litwin J., *idem*, p. 3 ff; Dawidowicz W., *W sprawie sądownictwa administracyjnego*, Państwo i Prawo 1956, vol. 12, p. 1046

<sup>9</sup> The Act of 25<sup>th</sup> July 2002 Law on the System of Administrative Courts (Journal of Laws of 20<sup>th</sup> September 2002 No 153, item 1269, as later amended)

<sup>10</sup> The Act of 30<sup>th</sup> August 2002 Law On Proceedings In Administrative Courts (Journal of Laws of 20<sup>th</sup> September 2002 No 153, item 1270, as later amended)

<sup>11</sup> The Act of 30 August 2002 Regulations that introduce an act – Law on administrative court system and Act - Law on proceedings before administrative courts, Journal of Laws of 2002, No 153, item 1271 as later amended

courts, and the court administrative proceedings)<sup>12</sup>. The other norms of the Constitution of the Republic of Poland indicate that administrative courts run the jurisdiction as a separate part of the judicial authority. These courts have been introduced to control the operation of public administration. According to Article 184 of Polish Constitution such control shall also extend to judgments regarding the conformity resolutions adopted by organs of local government and normative acts of territorial organs of government administration with the provisions of the statute. It must be added that the judiciary model adopted in the Polish Constitution distinguishes between two mutually independent judiciary divisions: one covering common courts and military courts (headed by the Supreme Court) and one covering administrative courts<sup>13</sup>.

### **Administrative judiciary in Poland – the state of art**

The structure of administrative courts today is two-instance and consists of voivodship administrative courts as courts of the lower instance, and the Supreme Administrative Court as a court of the upper instance<sup>14</sup>. The Supreme Administrative Court supervises the operation of voivodship administrative courts as regards adjudication in a mode specified by relevant acts, and, in particular, hears appeals against judgments of those courts. There are 16 administrative courts of the lower instance and one Supreme Administrative Court, which has its seat in Warsaw. The Supreme Administrative Court is divided into three chambers: the Financial Chamber, the Commercial Chamber and the General Administrative Chamber. The Financial Chamber exercises supervision over the judicature of voivodship administrative courts in issues of tax liabilities and other money contributions to which tax provisions and provisions on execution of money contributions apply. The Commercial Chamber exercises supervision over the judicature of voivodship administrative courts in issues of economic activity, protection of industrial property, budget, currency, securities, banking, insurance, customs, prices, tariff rates and fees. Furthermore, the General Administrative Chamber exercises supervision over the judicature of voivodship administrative courts in the matters not listed, in particular those concerning construction and supervision of construction projects, land development, water management, natural environment conservation, agriculture, forestry, employment, system of local government, real estates management, privatisation of property, compulsory military service, internal affairs, as well as prices, fees and tariff rates, provided that they are connected with matters falling within the scope of competence of the Chamber. Each chamber is managed by a vice-president designated to perform that function by the President of the Supreme Administrative Court.

An important feature of Polish administrative judiciary is its independence. The President of the Republic of Poland, upon the request of the National Council of the Judiciary, appoints the judges of administrative courts. Currently the Supreme Administrative Court counts 75 judges and there are 406 judges sitting in voivodship administrative courts. The administrative courts judges exercise their functions independently and are subjected only to the Constitution and other relevant statutes. Requirements imposed on candidates who wish to work as judges in administrative courts are very high. First of all, there is an age requirement (at least 40 years of age to apply for a position of a judge in the Supreme Administrative Court, and 35 years of age for voivodship administrative courts), the required experience in the profession and appropriate qualifications to hear administrative cases<sup>15</sup>.

<sup>12</sup> see article 236 par. 2 of the Constitution of the Republic of Poland; R. Hauser, *Konstytucyjny model polskiego sądownictwa administracyjnego* in: *Polski model sądownictwa administracyjnego*, Stelmasiak J., Niczyporuk J., Fundowicz S., (eds.), Lublin 2003, p. 143, Hauser R., *Założenia reformy sądownictwa administracyjnego*, Państwo i Prawo 1999, vol. 12, p. 21.

<sup>13</sup> Constitution of the Republic of Poland in English is available at: <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

<sup>14</sup> In Polish language: Naczelny Sąd Administracyjny (NSA) and Wojewódzki Sąd Administracyjny (WSA).

<sup>15</sup> Borkowski J., *Reforma polskiego sądownictwa administracyjnego*, Państwo i Prawo 2002, vol. 5, p. 7.

According to Article 185 of the Constitution of the Republic of Poland, the President of the Supreme Administrative Court is appointed by the President of the Republic for a 6-year term of office from amongst candidates proposed by the General Assembly of the Judges of the Supreme Administrative Court. An important feature related to independence of administrative courts *vis a vis* the executive power is the right of the President of the Supreme Administrative Court to set up the draft budget for those courts, which is later included in the draft state budget.

### **Jurisdiction of administrative courts**

The issue of particular importance is the problem of “substantial jurisdiction” of administrative courts and the problem of separation of the competences of common courts and administrative courts. The scope of the jurisdiction of administrative judiciary is defined in the Constitution. The administrative courts exercise control over the performance of public administration. As a consequence, issues regarding the process of supervision over the operation of public administration fall within the jurisdiction of the administrative courts. Consequently, the jurisdiction in issues resulting from the operation of public administration, depends on whether the court proceedings are to comprise controlling operation of the administration, or trying a case turned over to competencies of the court for its ultimate settlement<sup>16</sup>.

Administrative courts in Poland deal with plethora of different acts enlisted in Article 3 and 4 LPBAC, including complaints against: administrative decisions; orders made in administrative proceedings, which are the subject to interlocutory appeal or those concluding the proceeding, as well as orders resolving the case in its merit; orders made in enforcement proceedings or proceedings to secure claims, which are subject to interlocutory appeal; acts or actions, other than decisions and orders made in administrative proceedings, made within the area of public administration concerning the rights or obligations ensuing from the provisions of law; local enactments issued by local government authorities and territorial agencies of government administration; enactments issued by units of local government and their associations, in respect of matters falling within the scope of public administration; acts of supervision over activities of local government authorities; or failure to act by the agencies. Administrative courts also resolve jurisdictional disputes between local government authorities and between self-government appellate boards, unless a separate statute provides otherwise, and also resolves the disputes as to competence between local government authorities and government administrative agencies. Article 5 LPBAC excludes from the jurisdiction of administrative courts matters such as these: 1) ensuing from organisational superiority or subordination in relations between public administration authorities, 2) ensuing from official submission of subordinates to superiors, 3) relating to refusal to appoint to an office or to designate to perform a function in public administration authorities, unless such an obligation of appointment or designation ensues from the provision of law. Historically, looking at the ever - growing catalogue of acts falling under the jurisdiction of administrative courts, some scholars warn that the balance of judicial protection and efficiency is upset (e.g. Z. Kmieciak). Although the argument for limiting the scope of judicial protection by the administrative courts in Poland is sound, the idea of limiting the number of acts falling under review of these courts, has never been put on stage. On the other hand, it is argued that a broad range of acts falling under judicial review gives better and a more complete legal protection in a democratic state ruled by law<sup>17</sup>.

<sup>16</sup> Hauser R., Drachal J., Mzyk E., *Dwuinstancyjne sądownictwo administracyjne*, Warszawa – Zielona Góra 2003, p. 20.

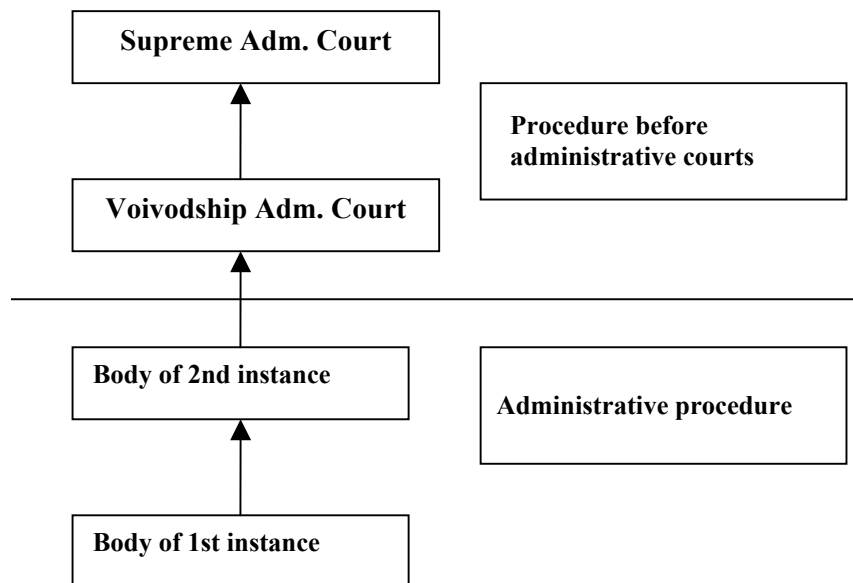
<sup>17</sup> The idea of state ruled by law (*rechtstaat prinzip*) is expressed in the Article 2 of the Constitution of the Republic of Poland: *The Republic of Poland shall be a democratic state ruled by law (...)*.

### Lodging a complaint

The fundamental role of administrative courts in Poland is simply to consider the legality of acts in question. The court cannot replace administrative decisions which it has annulled with its own views on substantial matters in issue. In this respect the court's role is not a role of co-administrator but a mere comptroller of the legality of acts issued by administrative agencies.

The right of lodging a complaint to the voivodship administrative courts is available to any person who has a legal interest therein, a public prosecutor, the Commissioner for Citizen's Rights (Ombudsman) and so called "societal organisations" (basically: NGOs) within the scope of its statutory activity and in matters concerning legal interests of other persons, provided such an organisation has participated in administrative proceedings. Opening the administrative trial for NGOs can be seen as an expression of the democratization of the trial, but granting them access to a trial needs careful pre - examination<sup>18</sup>. In the recent history of administrative judicature there have been examples of abusing the right to access by green NGOs looking for financial compensation from other parties involved for the withdrawal from the process. It should not be regarded as general argument against participation of NGOs in the trial, but, once again, the emphasize must be put on the careful pre - examination before granting access to the trial.

The necessary condition for lodging a complaint is exhaustion by the complainant of the means of review in the proceedings before an administrative body ("administrative procedure" - in the table below), unless the complaint is lodged by the public prosecutor or the Ombudsman. A model way of "seeking administrative justice" is presented in the table below. The Code of Administrative Procedure (as a general act) and/or special procedural laws (e.g. Tax Ordinance) are applied to the proceedings before administrative agencies (typically bodies of 1<sup>st</sup> and 2<sup>nd</sup> instance) and the legislation we look at (LPBAC, LSAC) are applied to the proceedings before administrative courts.



The complaint shall be lodged within 30 days from the day of service of the determination of the case on the complainant (the time limit extends to 6 months when a prosecutor or Ombudsman lodge a complaint).

<sup>18</sup> Skoczylas A., Swora M, *Udział organizacji społecznych w postępowaniu administracyjnym*, Administracja. Teoria - Dydaktyka - Praktyka 3/2006.

A complaint is lodged to the court *via* an administrative agency whose action, or failure to act has been challenged. The complaint is not a particularly formalised means of review, as it only has to meet the requirements of a letter in court proceedings. In addition it should contain: 1) designation of the challenged administrative decision, order, or another act or action, 2) the identity of the authority involved (the activity or inactivity of which the complaint concerns); 3) specification of the breach of law or legal interest. Consequently the complaint may be prepared by personally by the party concerned, without assistance of a lawyer. When a complaint is lodged the administrative agency is under obligation to turn it over to the court with relevant files and to prepare a response within a period of 30 days from the date of its lodging. The authority analyses the possibility of granting the complaint in whole (so-called “self-inspection procedure”). In the event when the authority fails to turn over to the court the complaint along with relevant files, upon request of the complainant, the court may order a fine on that authority. Every year ca. 63,000 complaints are lodged to administrative courts (data from 2005), of which ca. 17,500 are taken into consideration (the court reverses, certifies nullity or inconsistency with the law of the appealed act on activity), while the remaining ones are dismissed (a small number of proceedings are remitted as a result of eg. withdrawal of complaint).

Pursuant to the general principle of payments in the judiciary system, the parties shall bear the costs connected with their participation in the case, unless a specific provision provides otherwise. Court’s costs include *inter alia* court fees, which comprise a filing fee and a processing fee. According to Articles 230 § 1 and 2 LPBAC, a filing fee, either proportional or fixed, shall be charged on letters initiating proceedings of a given instance<sup>19</sup>. The obligation of paying the fee, which may be perceived as onerous and impeding the parties in their pursuing their legal interests (even though it is moderated by the possibility of obtaining exemption from court costs through the right of assistance, “poor law”) plays a very important social and educational role *inter alia* by counteracting barratry, harassment of the opponent, fictional proceedings etc.<sup>20</sup>. Cassation appeals are available against judgements of the court of the first instance (sentences and orders). Annually ca. 9500 cassation appeals and ca. 5600 interlocutory appeals are filed (data from 2005). It ought to be borne in mind that only 1 in each 5 cassation appeals and every 6th interlocutory appeals are taken into consideration. A considerable part of cassation appeals is dismissed because of failure to conform to the extremely extensive formal requirements. The cassation appeal may be based on strictly defined grounds, namely: 1) the violation of substantial law – due to erroneous interpretation or incorrect application of law, and 2) the breach of procedural regulations, if that infringement could have seriously affected the outcome of a particular case. The cassation appeal cannot be based on any irregularity in the proceedings, but only on the infringements that could possibly affect the decision content. It requires proving that the first instance court made an erroneous interpretation of the law or has incorrectly applied the substantial law regulation, as well as proving that the court has violated procedural regulations. Mere determination of the aforementioned grounds would not always lead to grant a cassation appeal. A cassation appeal is a very formalised procedure and the LPBAC requires that the application is drafted by a professional. The absence of any of the elements required in LPBAC leads to a dismissal of the application, without further call for correction or amendment of the letter of cassation appeal.

<sup>19</sup> Decision of NSA dated 31 August 2005, II OZ 662/05, not published; Trela A., Swora M., *Koszty w postępowaniach administracyjnych i sądownoadministracyjnych*, Beck 2007 (not yet published).

<sup>20</sup> Hauser R., Skoczylas A., *Sądownictwo administracyjne i postępowanie sądownoadministracyjne*, in: Leoński Z., *Zarys prawa administracyjnego*, Warszawa 2006, p. 350.

## **Supreme Administrative Court's resolutions as an answer to the problem of the coherence of judiciary**

Probably the most important problem of the administrative judiciary in Poland concerns the lack of coherence of judicial decisions of administrative courts. Regarding fighting the disparities in administrative judiciary, the regulations of the new two-staged procedure have assured more effective control of the judiciary within the system of administrative judiciary. However, they have failed to eliminate completely the problem of the lack of judiciary's coherence and the consequent lack of certainty in the application of the law. For this reason, the system of resolutions of the Supreme Administrative Court was introduced. According to Art. 15 § 1 points 2 and 3 LPBAC the basic role of is as following:

- 1) explanation of legal provisions whose application has caused differences in the judiciary of administrative courts,
- 2) solution of legal issues raising considerable doubts in respect of a particular administrative court matter.

Adjudicating panels of administrative courts (voivodship administrative courts and the Supreme Administrative Court) are bound by these resolutions. These resolutions are adopted by the Supreme Administrative Court in a panel of seven judges, by an entire Chamber or by the full panel of the Supreme Administrative Court. Pursuant to art 269 LPBAC: "if any panel of the administrative court hearing the case do not share the position taken in the resolution by seven judges, by a panel of the entire Chamber, or by the full panel of the Supreme Administrative Court, it shall submit the arising legal issue for resolution by an appropriate Supreme Administrative Court panel". Such rule ensures the stability of resolutions. The initiative to apply for adopting the motion is not available to every party of the trial. The application may only come from the President of the Supreme Court, the Public Prosecutor General and Ombudsman.

The views expressed by the Supreme Administrative Court's in resolutions bind legally only administrative courts are, which means that these views do not formally bind administrative agencies, parties and other participants of court and administrative proceedings. Despite, it ought to be borne in mind that activities of the parties that efforts made to obtain court judgement contradictory to such an interpretation tends to remain ineffective as a rule. The reason is simple: administrative agencies use to accept the legal view expressed in resolution issued by the Supreme Administrative Court. The determining factor in this case would be first of all the apprehension of the fate of one's judgement, in the event of a recourse as a consequence of introduced legal remedies, and naturally, the authority of the Supreme Administrative Court and the weight of arguments contained in the justification (arguments) of a resolution. Thus, even if resolutions issued by the Supreme Administrative Court are not formally binding for administrative organs or the citizens, they create a kind of a factual precedent, not binding, but having force<sup>21</sup>. The main objective of resolutions is to assure coherence of the judiciary, and consequently - certainty and more harmonised enforcement of legal rules by administrative courts. Looking at the Supreme Administrative Court's resolutions, one can argue that they create precedents, though it must be emphasized that they are issued within the area of interpretation of law and cannot create new legal rules.

### **Mediatory and 'simplified' procedures. Administrative judge as a manager of the case.**

Establishment of the new administrative court system meant introducing new organisational and procedural tools aimed at making the administrative trial more efficient. The Supreme Administrative Court president holds superior powers over all administrative courts in respect to judiciary administration. First of all, those functions concern issues connected with the creation of

<sup>21</sup> Skoczylas A., *Działalność uchwałodawcza Naczelnego Sądu Administracyjnego*, Warszawa 2004, p. 223.

conditions for efficient functioning of the courts (staff, financial, technical and management issues). He or she is also responsible for supervision of the efficiency of court's performance.

To help improving the execution of the right to a fair trial in a reasonable time (see: Article 6 § 1 of the ECHR), the procedural rules modelled on Italian *Pinto act* were introduced to offer the possibility of lodging a complaint to the court in respect of excessively long proceedings<sup>22</sup>. This particular type of an appeal means that aims at counteracting excessively long proceedings while they are ongoing<sup>23</sup>. Furthermore, supervision over the deadline for a case tried in administrative courts is effected by the Jurisprudence Office of Supreme Administrative Court which applies appropriate inspections and control in the event of ascertained infringements.

One of quite recent and significant streams in Polish administrative justice jurisprudence is the research on alternative dispute resolution (ADR), that refers mostly to the developments of European and Common law ADR movement as well as to domestic developments<sup>24</sup>. This wide interest in the ADR means among Polish jurisprudence (not only administrative, but also criminal and civil lawyers advocate for the regulation of ADR tools) may be explained as an answer to the crisis that affects the effectiveness of justice. In Poland, as well as in other countries, ADR offers possible solution to the problem of access to justice caused by following phenomena:

- 1) the volume of disputes brought before courts is increasing,
- 2) the proceedings are becoming more lengthy, and
- 3) the costs incurred by such proceedings are increasing<sup>25</sup>.

ADR can be defined as an "out-of-court" dispute resolution processes conducted by a neutral third party<sup>26</sup>. In this paper we concentrate on specific "in-court" mediatory procedure leaving aside other "out-of-court" and pre-trial ADR means.

The mediatory procedure shall counteract excessively long proceedings before administrative courts. This procedure offers the possibility of finding common understanding between the complainant and the administrative agency which had issued the challenged act, and is not obligatory. The natural limitation of the scope of the mediation in the Polish legal system is the principle of legality, allowing the administrative agency to act only on the basis of, and within the limits of, the law (article 7 of the Constitution of the Republic of Poland). The Polish system of mediation introduced by the regulations reforming administrative judiciary provides for the internal type of mediation conducted by a judge or a law clerk. The reason to introduce such a model was the relative weakness of the ADR movement and impossibility to develop organizational background for the mediation<sup>27</sup>.

The agenda for mediation may be set up both at the request of the complainant or the authority and *ex officio* by the court, despite the absence of an application from the party concerned. The main aim of mediation proceedings in Poland is to explain whether the administrative agency has violated the law, (and if it has) what kind of violation it was; what are the consequences of this violation and what should be done by the agency to correct its performance<sup>28</sup>. Thus the outcome of the mediation

<sup>22</sup> More on Italian *Pinto Act* in the ECHR case *Apicella v. Italy* (2006).

<sup>23</sup> Resolution of the Supreme Court dated 17 November 2004, III SPP 42/04, OSNP 2005, No. 5, item 71.

<sup>24</sup> E.g. Kmiecik Z., *Postępowanie mediacyjne i uproszczone*, Państwo i Prawo 10/2003; Kmiecik Z., *Mediacja i koncyliacja w prawie administracyjnym*, Zakamycze 2004; Jankowski J., *La conciliation et la mediation en droit polonais*, in *Rapport polonais. Presentes Au seizieme congres international de droit compare*, 14-20 juillet 2002.

<sup>25</sup> E.g. EC Commission Green Paper on alternative dispute resolution in civil and commercial law, Brussels, 19.04.2002, COM(2002) 196 final.

<sup>26</sup> *Idem*.

<sup>27</sup> Kmiecik Z., *Mediacja i koncyliacja w prawie administracyjnym*, Zakamycze 2004, p. 171.

<sup>28</sup> According to article 115 § 1 LPBAC mediation proceedings may be carried out in order to clarify and consider the factual and legal circumstances of the case and to determine by the parties the manner of its settlement within the limits of existing law.



can be self – correction of an administrative act by the agency. Being more accurate; according to the article 117 § 1 LPBAC: “on the basis of the arrangement made during the mediation proceedings, the authority shall set aside or modify the challenged act or shall make or take other action in accordance with the circumstances of the case within the limits of its own jurisdiction and competence”. If the parties have not made any arrangements, the case is subjected to further court’s proceedings. On the other hand, a mere explanation to the claimant that the complaint is based on some false premises, may lead to the withdrawal of a complaint.

Looking at the data from 2005 we can see that only approximately 406 mediation proceedings were held in that year, and agreement was reached in 233 cases (57,3%). Comparing these data with the number of successful mediation proceedings in 2004 (25%), one can say that the role of this institution is gradually increasing. It seems that the basic reason for still a relatively low percentage in Polish system of court and administrative proceedings is the absence of will of the parties to come to an agreement with the opponent during the trial. In particular, administrative bodies are apprehensive and fear being suspected of corruption when an agreement is reached with the other party in such de-formalized proceedings. It is interesting that the mediatory procedure is most popular in tax law and public finance cases where the initiative most often originates on the part of the court or an agency. Our explanation of this phenomenon is that specialized agencies operating in quite “homogenous” legal environment are more willing to enter into mediatory arrangements.

The LPBAC also introduced a so-called “simplified procedure” which is an interesting instrument enabling to shorten considerably the procedure before the court. The general aim of this procedure is to set aside flagrant violations of law made by administrative agencies without cumbersome proceedings. According to Article 119 LPBAC the case may be heard in simplified procedure if the decision or order has been affected by invalidity or has been issued in violation of the law which provides a basis for reopening of the proceedings. The simplified procedure is voluntary – the precondition of hearing the case is a request from a party. Such a request does not bind the court to instigate it, but leaves the decision with court which, after consideration, shall decide whether there is a reason to commence the procedure. Considering different aims and character of these two proceedings, it must be noted that the simplified procedure is a relatively more popular means of solving the case than mediation. According to the statistics, 1378 complaints were directed to the simplified procedure (i.e. 1.5% of the total number of the recognised cases). Out of this number 874 (63.4%) complaints were finally resolved. The data collected in 2005 (comparing to the year 2004) show a growing role of this way of adjudication before voivodship administrative courts, which is also showing good adaptation to the existing system.

One of the novelties recently introduced in the organisation of the courts is the possibility of hiring auxiliary staff. Thus, some judicial functions in the voivodship administrative court may be now entrusted to court assessors, and, in a limited scope, also to law clerks (mainly with respect to mediation proceedings). To help speeding up the hearing of cases in administrative courts, apart from typically administrative staff (e.g. secretaries), judge assistants may also be employed. As highly qualified lawyers, judge assistants prepare draft adjudication and reasoning, and handle issues related to the court’s administration matters. Hiring auxiliary staff means that the judges are no longer overburdened with less important, sometimes merely administrative issues and may focus on their core functions (as such of a “judge as a manager of the trial”). It should be emphasised though, that hiring specialized auxiliary staff has indeed proved an effective solution leading to more rational division of work in the courts.

### **Concluding remarks**

Our short analysis of the Polish administrative judiciary system may support the view expressed by scholars and practising lawyers that the 2002 reform have been successful and resulted in the

shortening and simplifying proceedings before the courts, making them more accurate, fair (mostly by introducing two stages of the administrative trial) and cohesive, even if not every aspect of the reform has worked perfectly from the very beginning.

The mediation and the simplified procedure, aiming at the shortening and simplification of the trial are gradually gaining acceptance. However, the problem of mediation in Poland is deeper and should be considered through the prism of the still relatively low level of development of the ADR culture and pre-trial mediatory and conciliatory tools. And yet, although the mediation and conciliation cannot fully replace the traditional means of adjudication, a lot has to be done to make ADR means more popular way of resolving conflicts between the administration and the citizen. In our view, apart from introducing new mediatory tools and reviewing existing ones, emphasize must be put on the popularization of ADR means, with a hope of resolving as many conflicts as it is possible in the pre-trial stage.

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