NSA THE SUPREME ADMINISTRATIVE COURT OF POLAND

# Annual Report 2017

THE SUPREME
ADMINISTRATIVE COURT
OF POLAND

# Annual Report 2017

Outline of activities
of the Supreme Administrative Court
and the Voivodship Administrative Courts
in 2017

# *Contents*

*Prof. dr hab.*
Marek
Zirk-Sadowski

President
of the Supreme
Administrative Court

# Foreword of the President of the Supreme Administrative Court

*Administrative courts, within their jurisdiction,*
*provide for the protection of rights and freedoms of everyone*
*in the relations with the public administration,*
*shaped by authoritative decisions in various areas.*
*Authoritative decision-making, not based on dialogue,*
*participation and consultation, favours domination.*
*This inequality of parties of legal relationship ceases*
*in proceedings aimed at resolving a dispute between*
*an individual and public administration*
*by an independent court.*

Protecting the rights and freedoms of citizens, but also balancing individual interest with general, public and community interests is the role and sense of functioning of administrative courts today and for the following years. It was this idea that also guided the establishment of the Supreme Administrative Tribunal in 1922, whose 95th anniversary was celebrated in 2017 at the Supreme Administrative Court with a scientific conference.

The assessment of the past years of functioning of the current system of administrative judiciary confirms the accuracy of the institutional solutions adopted in the Constitution of 1997 and the model of the two-instance administrative courts introduced in 2004.

Similarly to previous years, in 2017 the activities of administrative judiciary focused on effective functioning of courts. It should be noted that in the past year, the number of complaints heard was higher than the number of complaints lodged. The number of cases heard in voivodship administrative courts was 5,206 higher than the number of cases lodged (lodged cases: 72,426), whereas in the Supreme Administrative Court the number of cassation appeals heard was 1,446 higher than the number of cassation appeals lodged (17,746 cassation appeals).

**Regarding the dynamics of examination of the complaints against the acts and actions as well as the failure of the authorities to act and the excessive length of proceedings, it should be pointed out that in 2017, on average, voivodship administrative courts heard cases within 3.95 months; 10 voivodship administrative courts heard cases within less than 3 months. In 2017, on average, the Supreme Administrative Court heard cases within 12.3 months.**

The above mentioned data allows a positive assessment of the functioning of administrative judiciary in the area of fulfilment of the constitutionally guaranteed the right of access to a court. The

time needed to resolve a case – and this is particularly important – meets European standards.

As in previous years, tax cases accounted for 29.8% of all cases heard by voivodship administrative courts. In the Supreme Administrative Court, as in previous years, the majority of cassation appeals also concerned taxes (38% of all cassation appeals).

*For the first time in years, administrative courts managed to control the complaints lodged. The number of complaints heard was higher than the number of complaints lodged.*

Last year, Polish administrative courts, being at the same time EU courts, applied EU law, providing legal protection to individuals on its basis. They used the opportunity to engage in judicial dialogue with the Court of Justice of the EU by referring requests for a preliminary ruling in 7 cases, of which 5 were referred by the Financial Chamber of the Supreme Administrative Court, and one by the Voivodship Administrative Court in Kielce and Wrocław each. Administrative courts also referred in their judgments and decisions to the European Convention on Human Rights and the case-law of the European Court of Human Rights.

In 2017, administrative courts used the possibility of direct application of the Constitution to a greater extent than in the previous year. As in previous years, they made a pro-constitutional interpretation of the law and referred to the jurisprudence of the Constitutional Tribunal. At this point, the resolution of 6 March 2017 (Case No. I FPS 7/16) is worth mentioning. In this resolution the Supreme Administrative Court referred to the principles expressed in the preamble of the Constitution.

In 2017, the Supreme Administrative Court adopted 20 resolutions, which are an important instrument to eliminate emerging discrepancies in the case-law of administrative courts and to guarantee the individuals predictable jurisprudence in similar cases and the observance of the principle of equality. The Resolution of 16 October 2017 (Case No. I FPS 1/17) is of particular importance as it states that

even a taxpayer whose case was not the subject of the proceedings within the preliminary ruling has been issued by the CJEU may request reopening of proceedings before an administrative court.

In conclusion, I would like to emphasise that in the past year of functioning of the administrative judiciary, for the first time in years, administrative courts managed to control the complaints lodged. In the jurisprudence of administrative courts, we continued to expand the sphere of protection of citizens' rights, using constitutional and European standards.

# Court System of the Republic of Poland

# INTRODUCTION

Administrative Courts, in accordance with Article 175(1) of the Constitution, implement the administration of justice.

The concern for the administration of justice in matters falling within the jurisdiction of the Supreme Administrative Court (Naczelny Sąd Administracyjny) and the voivodship administrative courts (Wojewódzkie Sądy Administracyjne) results from the need to ensure a fair hearing of the dispute between an individual and an authority, which always takes a dominant position in the process of applying the law. The essence of judicial control of the administration is the protection of the individual's freedoms and rights in its relations with the administration. In a democratic state ruled by law, both the public good and the good of the individual benefit from constitutionally guaranteed and effective legal protection. Therefore, in resolving matters, there must be proper distance and restraint, since it is impossible to prioritise one of these goods above the other a priori.

Covering matters of vital importance for the citizens – including the acts or actions of the administrative authorities and their resolutions as well as the acts or actions of the public authorities, such as economic and professional local self-governments with the juris-

diction of the administrative courts – is a reflection of the proper fulfillment of the constitutional obligation.

In the jurisprudence of the past years and of the reporting year, which are also present in the extended panels, we can find numerous examples of decisions involving the court and administrative control over this part of administrative authority. The interpretation of the constitutional presumption of the jurisdiction of the administrative courts in terms of the control over the public administration has enabled judicial control over omitted – unconsciously or deliberately – acts or actions of public administration containing elements of authority. Judicial scrutiny is necessary because empowerment may lead to arbitrariness, and therefore to the arbitrariness of decisions, while the actions of public authority must not only be legal, taken on the basis of and within the limits of law, but also fair. They are fair when they are deprived of arbitrariness – i.e. they are actions of public authority that may be reasonably explained by the factual and legal circumstances of the individual case. They show no signs of chicanery or excess.

*The pro-constitutional and pro-European interpretation of law in the process of its application allows for the protection of an individual's rights in its relations with the administration in a way that meets the European standards.*

The pro-constitutional and pro-European interpretation of law in the process of its application allows for the protection of an individual's rights in a way that meets the European standards. In the jurisprudence of the administrative courts, the activity of judges in the application of the European Union law is noticeable, in particular in the rational application of the conflict-of-law principle, defined in Article 91(3) of the Constitution, with the legal norms of the Constitution ("If this results from the agreement ratified by the Republic of Poland constituting an international organisation, the law made by it is applied directly, having priority in the event of a conflict with acts").

It is clear from the jurisprudence of the administrative courts in Poland that the CJEU has had a particular impact on the interpretation process applied by these courts. The CJEU, by its interpretations

(procedure of preliminary rulings), significantly complements the content of the EU law and also indicates the most effective strategies for the interpretation of this law.

The assessment of the jurisprudence of administrative courts of the past year points to the continuation of the current directions of jurisprudence aimed at broadening the sphere of the protection of an individual's rights. This is reflected both in the decisions of voivodship administrative courts and in the decisions and resolutions of the Supreme Administrative Court, regarding, for example, the respect for the principle of procedural justice, tax justice, including limiting the practice of tax authorities based on the principle in dubio pro fisco (the principle of legal certainty and the principle of trust in the state and its rule-making based on the principle of state ruled by law, with particular emphasis placed on the legal and economic security of an individual), extending the right of access to the court, rejection of the thesis on the autonomy of the customs or tax law, or the restoration of rights unduly deprived.

*Law on the System of Administrative Courts obliges the President of the Supreme Administrative Court to inform the President of the Republic of Poland and the National Council of the Judiciary on the activities of administrative courts.*

The jurisprudence of administrative courts invariably takes into account the standards of the values and goods protected both by the Constitution and by the EU law. The analysis of the jurisprudence of the administrative judiciary clearly indicates that every year more and more administrative courts rely on the content of the EU law, as well as on the jurisprudence of the CJEU and its interpretative strategy. Thanks to this, in cases where an EU element occurs, our administrative courts are able to conduct their affairs at a higher substantive level.

The content of the decisions shows the concern for a comprehensive explanation of the case, the widespread courts' adoption of constitutional standards, European and international law and the possibility of ensuring full legal protection of an individual, also by a pro-constitutional interpretation of the law, the option to refer a question for a preliminary ruling to the Court of Justice of the Euro-

pean Union, as well as the provision to ask a resolution to be adopted by an extended panel of the Supreme Administrative Court when the adjudicating panel finds that the legal issue raises serious doubts.

Act of 25 July 2002 – Law on the System of Administrative Courts, in Article 15(1) obliges the President of the Supreme Administrative Court to inform the President of the Republic of Poland and the National Council of the Judiciary on the activities of administrative courts.

Every year the General Assembly of Judges of the Supreme Administrative Court, adopts – by resolution – the Annual Information on the Activities of Administrative Courts presented during special session of the Assembly by the President of the Court. The Annual Information is the execution of the above mentioned statutory provision.

**Similarly to previous years, the activities of administrative courts focused on effective functioning of administrative judiciary. A slight decrease (5.9%) in the complaints received by the voivodship administrative courts and cassation appeals by the Supreme Administrative Court (5.8%) is noticeable compared to 2016.**

The present report gives an overview of the activities of Polish administrative judiciary and is based on data presented in the Annual Information on the Activities of Administrative Courts.

# ACTIVITIES OF THE VOIVODSHIP ADMINISTRATIVE COURTS

## General statistics 2017

*The voivodship administrative courts heard 71,327 complaints against the acts or actions, of which 48,687 were dealt with during a hearing.*

In 2017, voivodship administrative courts received 66,121 complaints against the acts or actions and 6,305 complaints against the failure of the authorities to act and the excessive length of proceedings. In total, the courts had to hear 72,426 complaints lodged. Compared with 2016, the number of complaints decreased by 4,266, representing 5.89% of the total complaints lodged.

There are 28,999 complaints against the acts or actions and 1,868 against the failure of the authorities to act and the excessive length of proceedings remaining from the previous period. In total, in the previous period, the voivodship administrative courts were obliged to hear 30,867 complaints, which together with the complaints lodged (72,426 complaints) gave 103,293 complaints to be heard. This represents 6,566 fewer complaints than in 2016. There are 25,726 complaints to be heard in the following period in total – i.e. 5,141 less than in 2016.

The voivodship administrative courts heard 71,327 complaints against the acts or actions, of which 48,687 were dealt with during a

hearing and 22,640 in camera. From among the complaints settled at a hearing, the courts granted 14,324 complaints, dismissed 31,973, rejected 333, and settled 2,057 in another way. In camera, 1,526 complaints were granted; 5,892 were dismissed and 12,754 were rejected. With regard to complaints against the failure of the authorities to act and the excessive length of proceedings, the courts heard 6,240 complaints, of which 994 were dealt with during a hearing, and 5,246 in closed session. In total, in 2017 the voivodship administrative courts heard 77,567 complaints, representing 107.1% of the complaints lodged and 75.09% of all complaints to be heard. Compared to 2016, these ratios are higher by 4.1% and 3.19% respectively.

**The Voivodship Administrative Court in Warsaw receives the highest number of complaints. In the reporting year this court received 23,388 complaints, which constitutes 32.29% of the total number of the complaints received by the voivodship administrative courts.** For example, the Voivodship Administrative Court in Gliwice received 5,543 complaints, the Voivodship Administrative Court in Kraków – 5,096 complaints, the Voivodship Administrative Court in Poznań – 5,068 complaints, and the Voivodship Administrative Court in Wrocław – 4,352 complaints. As in 2016, the lowest number of complaints was received by the Voivodship Administrative Court in Opole – 1,290, Gorzów Wielkopolski – 1,861, Kielce – 1,700 and Olsztyn – 2,106.

The highest number of complaints was lodged by natural persons – 55,822. Legal entities lodged 18,684 complaints, social organisations – 1,170, the public prosecutor – 858, the Human Rights Defender (Ombudsman) – 33, the Commissioner for Children's Rights – 3, and other entities – 239. 16,105 attorneys representing public administration authorities, 7,852 lawyers, 10,779 solicitors, 2,740 tax advisers, 292 patent advisers, 431 public prosecutors and, in 10 cases, the Human Rights Defender (Ombudsman) participated in proceedings brought to the voivodship administrative courts.

*The highest number of complaints was lodged by natural persons – 55,822.*

The voivodship administrative courts settled an average of 41.92% of the complaints against acts or other actions, as well as against the failure of the authorities to act and the excessive length of proceedings within a 3-month period. Within a period of up to 4 months, 56.03% of the complaints were processed, and up to 6 months – 73.20% of the complaints. The above figures reflect the good efficiency of proceedings before the voivodship administrative courts.

## Control of public administration activities

In the reporting year, the voivodship administrative courts eliminated 22.22% of challenged decisions and other administrative acts from legal transactions. For comparison, in 2016 this ratio was 19.78%, in 2015 – 22.03%, in 2014 – 22.2%, in 2013 – 24.36%, in 2012 – 22.5%, and in 2011 – 22.56%.

**As in previous years, most of the decisions of voivodship administrative courts regarded tax matters. They accounted for 29.84% of the total cases settled.** From among 21,288 of the settled complaints against acts or other actions of the tax authorities, the courts granted 4,002 complaints – i.e. 18.8% (in 2016 – 21.42%, in 2015 – 21.27% and in 2014 – 21.31%).

In addition to complaints against the acts or actions, in the reporting year the voivodship administrative courts settled 6,240 complaints against the failure of the authorities to act and the excessive length of proceedings, of which 442 complaints were granted (7.08%). In 2016, the courts settled 6,490 such complaints, in 2015 – 6,443, in 2014 – 6,512, in 2013 – 5,721, and in 2012 – 4,167. This data shows that the number of complaints against the failure of the authorities to act and the excessive length of proceedings has been gradually increasing over the past years, and currently remains at a similar level.

In cases of complaints regarding local self-governments, 2,610 complaints were lodged (3.60% of the total number of the complaints lodged) with the courts. 1,599 complaints were settled with a decision, and 1,016 of these complaints were granted (63.54%). For comparison, in 2016 the courts settled 2,406 cases (3.14%), 947 of these complaints (61.97%) were granted, in 2015 the courts settled 1,788 cases, 1,078 of these complaints (60.29%) were granted, and in 2014 the courts settled 1,735 such complaints and 985 of these complaints (56.77%) were granted.

*In the reporting year, the voivodship administrative courts eliminated 22.22% of decisions and other administrative activities from legal transactions.*

In total 2,110 complaints against the law making activities of the commune local self-governments were settled; 943 complaints (44.69%) were granted; of the district local self-governments 202 complaints, and 40 complaints (19.80%) were granted; and on the voivodship local self-governments – 139 complaints, and 33 complaints (23.74%) were granted.

There were 19,818 cassation appeals lodged against the decisions of voivodship administrative courts. Out of this number, 1,388 complaints were rejected and 17,661 were passed to the Supreme Administrative Court (89.12%). Considering that in 2017 the voivodship administrative courts settled 77,567 complaints, the cases passed to the Supreme Administrative Court constituted 22.77% of the total complaints against administrative acts and regarding the failure of the authorities to act and the excessive length of proceedings. In 2016, the voivodship administrative courts passed to the Supreme Administrative Court 20,605 cassation appeals, in 2015 – 18,641, in 2014 – 18,103, in 2013 – 17,089, in 2012 – 14,983, in 2011– 14,381 and in 2010 – 11,574.

## Simplified proceedings

**In 2017, there was a significant increase in the number of cases heard under this special type of administrative court proceedings.**

The voivodship administrative courts settled 10,281 complaints in simplified proceedings, and 2,755 of these complaints were granted. In the previous year, the largest number of cases under this procedure was heard in the Voivodship Administrative Court in Warsaw – 5,067 cases, in the Voivodship Administrative Court in Kraków – 985 cases, and in the Voivodship Administrative Court in Gliwice – 901 cases.

According to relevant provisions of the Act of 30 August 2002 Law on Proceedings before Administrative Courts a case may be heard in simplified proceedings if the subject matter of the complaint is a decision issued during the administrative proceedings, which is subject to an interlocutory appeal, or when the decision is final, when the decision settles the substance of the case, and when the decision is issued in the enforcement proceedings and in proceedings to secure claims, subject to an interlocutory appeal, or if the subject of the complaint is failure to act or excessive length of proceedings. Moreover, a case may also be heard in simplified proceedings if the authority did not pass the complaint to the court despite the imposition of a fine.

*Within simplified proceedings, the court hears the case in closed session with one judge.*

The court hearing the case in this procedure is not bound by any limitation in referring the case to be heard at a hearing. The court may do so either at the request of either party or ex officio if it considers that it is necessary to hear the case as full court proceedings. Within simplified proceedings, the court hears the case in closed session with one judge.

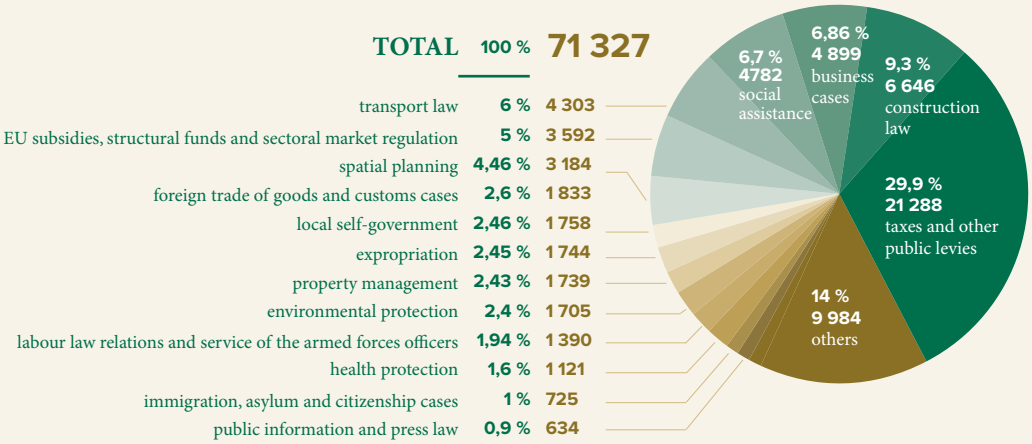
# The structure of the Supreme Administrative Court


*The authorities of the Supreme Administrative Court are: the President, the General Assembly of Judges and the Board. The Supreme Administrative Court is divided into the Financial Chamber, the Commercial Chamber and the General Administrative Chamber.*

# Complaints settled by voivodship administrative courts 2004-2017

| YEAR | TOTAL NUMBER OF CASES TO RESOLVE *(Left from previous period + registered in given year)* | NUMBER OF CASES RESOLVED *(Total)* | CASES REMAINED FOR THE NEXT YEAR |
|---|---|---|---|
| 2004 | 151 471 | 83 217 | 68 254 |
| 2005 | 131 163 | 87 383 | 43 780 |
| 2006 | 106 216 | 78 660 | 27 556 |
| 2007 | 86 184 | 66 942 | 19 242 |
| 2008 | 76 686 | 58 730 | 17 956 |
| 2009 | 77 058 | 59 500 | 17 558 |
| 2010 | 85 388 | 64 121 | 21 267 |
| 2011 | 91 118 | 69 281 | 21 837 |
| 2012 | 93 997 | 71 865 | 22 132 |
| 2013 | 103 766 | 75 696 | 28 070 |
| 2014 | 112 231 | 81 242 | 30 989 |
| 2015 | 114 520 | 81 353 | 33 167 |
| 2016 | 109 859 | 78 992 | 30 867 |
| 2017 | 103 293 | 77 567 | 25 726 |

# Number of complaints against the acts or actions of public administration heard by voivodship administrative courts in 2017 by subject

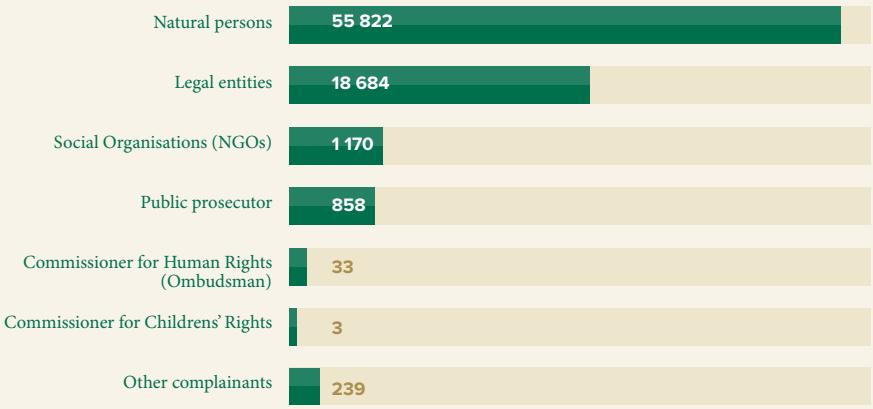


# Complaints lodged to voivodship administrative courts 2017

| VOIVODSHIP ADMINSTRATIVE COURT | COMPLAINTS LODGED | |
|---|---|---|
| | TOTAL | |
| | Number | % |
| ALL COURTS | 72 426 | 100 |
| BIAŁYSTOK | 3 025 | 4,18 |
| BYDGOSZCZ | 2 701 | 3,73 |
| GDAŃSK | 4 024 | 5,56 |
| GLIWICE | 5 543 | 7,65 |
| GORZÓW WIELK. | 1 861 | 2,57 |
| KIELCE | 1 700 | 2,35 |
| KRAKÓW | 5 096 | 7,04 |
| LUBLIN | 3 271 | 4,52 |
| ŁÓDŹ | 3 750 | 5,18 |
| OLSZTYN | 2 106 | 2,91 |
| OPOLE | 1 290 | 1,78 |
| POZNAŃ | 5 068 | 7,00 |
| RZESZÓW | 2 486 | 3,43 |
| SZCZECIN | 2 765 | 3,82 |
| WARSZAWA | 23 388 | 32,29 |
| WROCŁAW | 4 352 | 6,01 |

# Voivodship administrative courts

## Number of cases lodged in 2017 by complainants



# ACTIVITIES OF THE SUPREME ADMINISTRATIVE COURT

## General remarks

**The Supreme Administrative Court hears the means of challenge against the decisions of voivodship administrative courts** – i.e. cassation appeals and interlocutory appeals against judgments and orders, in accordance with the provisions of this law; **it adopts resolutions** aimed at clarifying legal provisions whose application has caused discrepancies in the jurisprudence of administrative courts; it adopts resolutions containing conclusions in legal issues that raise serious doubts in a particular court administrative case; **it settles jurisdictional disputes over the jurisdiction between the authorities of local self-government units** and between local self-government appeal boards and competence disputes between their authorities and government administration authorities; it hears other matters within the jurisdiction of the Supreme Administrative Court under separate laws, including the Act of 17 June 2004 on complaint against a breach of the right of a party to hear a case in a court without undue delay. **Moreover, the Supreme Administrative Court is also a disciplinary court in the disciplinary cases regarding judges of administrative courts and it hears disciplinary cases regarding judges of administrative courts.**

The Supreme Administrative Court is divided into: the Financial Chamber, the Commercial Chamber and the General Administrative Chamber. Each of the Chambers exercises, within the limits and in the manner specified by the relevant regulations, supervision over the case-law of the voivodship administrative courts in cases falling within the jurisdiction of a given Chamber.

## General statistics 2017

In 2017, the Supreme Administrative Court received 17,746 cassation appeals and 59 petitions for the reopening of proceedings. From the previous period, 27,824 complaints and 43 petitions for the reopening of proceedings remained to be heard. In total, the Supreme Administrative Court was obliged to hear 45,672 cassation appeals.

*Supreme Administrative Court was obliged to hear 45,672 cassation appeals.*

**In 2017, 19,192 cassation appeals were heard in total; 14,811 complaints at a hearing (77.17% of all complaints lodged) and 4,381 (22.83%) in camera.** The Supreme Administrative Court granted cassation appeal in 3,882 cases (20.23%), 12,984 cassation appeals were dismissed (67.65%) and 2,326 were settled in another way (12.12%). In 2017, the number of the lodged cassation appeals decreased by 1,101 compared to the previous year.

The majority of cassation appeals were lodged by a party other than the administrative authority – 13,986; the administrative authorities lodged 3,614 cassation appeals, and 146 cassation appeals came from an administrative authority and a party other than the administrative authority. 6,296 representatives of the public administration authorities, 2,306 lawyers, 3,264 solicitors, 923 tax advisers, 75 patent advisers, 73 public prosecutors and, in 7 cases, the Commissioner for Human Rights (Ombudsman) participated in proceedings brought to the Supreme Administrative Court.

As in previous years, the largest number of cassation appeals concerned taxes and other public levies to which the Tax Ordinance applies, and the execution of these levies (6,765 cassation appeals were lodged). In this regard, 7,749 cassation appeals were settled, which constitutes 40.38% of the total number of cassation appeals.

In addition to the cassation appeals, in 2017, the Supreme Administrative Court heard 6,171 interlocutory appeals against the orders of a court of first instance, of which 783 cases were granted (12.69% of reversals to all interlocutory appeals heard), in 5,233 cases the Supreme Administrative Court dismissed the complaint (84.8%), and settled 155 in another way (2.51%).

**The Supreme Administrative Court also heard 175 complaints against a breach of the right of a party to hear a case in a court without undue delay, and 8 of these complaints (4.57% of the total number of cases of this type heard) were granted, 69 dismissed (39.43%), and 98 settled otherwise (56%).**

In 2017, the Supreme Administrative Court settled 47.07% of the total number of cases within 12 months, and within 24 months – 86.03%. Regarding cassation appeals, 27.96% of cases were settled within 12 months. In the case of interlocutory appeals, 90.38% are heard within 2 months, and within 12 months this rate amounts to 99.73%.

# Activities of Chambers of the Supreme Administrative Court

## Financial Chamber

In 2016, the Financial Chamber received 6,065 cassation appeals and 10 petitions for the reopening of proceedings. 34% (2,061) of these complaints were related to VAT, 23% (1,396) – personal income tax, and 8% (492) – corporate income tax.

Among all the cassation appeals registered during this reporting period, individual interpretations issued by the minister competent for public finances accounted for more than 21% (1,315 cases). Moreover, 141 cassation appeals were lodged against individual interpretations issued by other authorities. The number of complaints on interpretation is still high.

*In 2016, the Financial Chamber received 6,065 cassation appeals and 10 petitions for the reopening of proceedings.*

The Chamber settled 6,176 cassation appeals (812 more than in the previous year), including 5,006 during a hearing and 1170 in camera. There were also 20 complaints against the excessive length of proceedings conducted by public administration authorities.

In 2017, the Chamber received 1,233 interlocutory appeals. From among 1,253 settled interlocutory appeals against the judgment of the court of the first instance, 4% (49) concerned the issues of legal aid, 17% (214) – the withheld execution of the contested act or action, 14% (173) – failure to meet the time limit, 0.6% (8 cases) – disqualification of a judge, 24% (308) – rejection of a complaint, while 40% (501) – interlocutory appeals referred to other issues. 156 interlocutory appeals were not heard, which represents a one month receipt of such cases by the Chamber.

Moreover, 4 applications to resolve competence disputes (in 1 case the application was dismissed), 30 complaints against the breach of the right of a party to hear a case in a court without undue delay, including 10 cases regarding the proceedings before the Supreme Administrative Court (none of the complaints was granted), and 9 complaints requesting declaring a legally binding decision unlawful were lodged (1 case concerned a decision of the voivodship administrative court, and 8 decisions of the Supreme Administrative Court – 10 complaints were dismissed).

In 2017, the Chamber received 13 requests for clarification of legal issues. 12 clarifying resolutions were adopted, in 2 cases the adoption

*In 2017, the Chamber received 262 complaints more than in the previous year. More cases were heard than received.*

of the resolution was refused, and 3 cases were presented to the panel of seven judges. Moreover, 5 questions for a preliminary ruling were referred to the Court of Justice of the European Union.

In 2017, the Chamber received 262 complaints more than in the previous year. More cases were heard than received. 812 cases more than in the previous year were heard.

A delegated judge participated in almost every adjudicating panel at a hearing in 2017 – without the permanent presence of delegated judges, it would not have been possible to designate such a number of hearings (476).

Regarding the organisation of judicial activity in the Financial Chamber, three to six cases were assigned to each judge at each session, depending on the degree of their complexity and the identity of the problem. When granted by the analogy of the matter, more cases were designated – i.e. even a dozen or so in a section. The assignment of more cases to a judge was also associated with cases after resolutions or judgments of the CJEU.

**Cassation appeals settled in 2017 by the Financial Chamber (6,176) were lodged by various eligible entities. Legal entities lodged 2,248 complaints, natural persons 2,193, and authorities 1,758. The public prosecutor lodged 8 cassation appeals, while the Commissioner for Human Rights (Ombudsman) did not lodge any complaint.**

In 2017, representatives of the administration authorities participated in proceedings before the Supreme Administrative Court in 2,703 cases, which constitutes 54% of the cases settled at hearings (5,006). Lawyers as representatives of the complaining parties and participants in the proceedings participated in 405 cases (8%). Solicitors as representatives of the complaining parties and participants of the proceedings not being the administration authorities participated

in 777 cases (15%). Tax advisers not being lawyers or solicitors participated in 770 cases (15%). Prosecutor participated in 24 cases (0.47%). Commissioner for Human Rights(Ombudsman) participated in 1 case.

## Commercial Chamber

In 2017, the Commercial Chamber of the Supreme Administrative Court received a total of 5,332 cassation appeals, representing a value similar to 2014 (4,941 cassation appeals) – after a 45% increase in 2015 (6,061) and further, almost 18% increase recorded in 2016 (7,161). At the same time, the number of complaints requesting the reopening of proceedings decreased compared to previous years (in 2017 – 19, in 2016 – 46, and in 2015 – 67).

*In 2017, the Commercial Chamber of the Supreme Administrative Court received a total of 5,332 cassation appeals.*

The number of cassation appeals waiting to be heard in 2017 – including complaints requesting the reopening of proceedings – was 14,836. Thus, on average, there were 570.6 cases to be heard per one judge of the Supreme Administrative Court in this Chamber.

**Cassation appeals were most often lodged in cases regarding economic activity of entities (1,968), EU subsidies, structural funds and sectoral market regulation (953), excise tax (700), maintenance and protection of roads as well as road traffic, including road transport (447), and public funds, including budgetary issues of local self-governments, reductions in repayment of financial claims to which the provisions of the Tax Ordinance do not apply and the enforcement of such claims (401 cassation appeals).**

The highest number of cassation appeals concerning the material jurisdiction of the Commercial Chamber of the Supreme Administrative Court was based on the decisions of the Voivodship Administrative Court in Warsaw (1,666), the Voivodship Administrative Court in Gliwice (617) and the Voivodship Administrative Court in Poznań (570).

The vast majority of cases were cassation appeals lodged by a par-

ty other than the administrative authority (85.54%). The percentage of cassation appeals lodged by the authority was 14.08%; just over 0.38% were cases where cassation appeals against the same judgment were lodged by both the authority and the other party to the proceedings. The administrative authorities lodged 771 cassation appeals, 2,261 of the remaining cassation appeals came from legal entities, 2,241 from individuals, 45 from social organisations, 4 from the public prosecutor and 3 from the Ombudsman, and 7 cassation appeals were lodged jointly – by individuals and legal entities, 13 social organisations and legal entities, and 7 social organisations and individuals.

In the Chamber, 6,092 cases of cassation appeals (i.e. 909 cases more than in 2016 and 2,030 more than in 2015) and 34 cases initiated by the complaint requesting reopening of proceedings were settled (a total of 6,126).

**The high ratio of cases heard, was achieved mainly thanks to the very high efficiency of work of the judges of the Supreme Administrative Court and delegated judges ruling in the Commercial Chamber and personnel supporting their work – judge assistants, managers and employees of the secretariat.** On average, in 2017, one judge of the Supreme Administrative Court heard 235.6 cases of cassation appeals in the Commercial Chamber. This allowed controlling the number of cases lodged and reducing, compared to the previous year, the number of cases of cassation appeals to be heard (8,710 cases, i.e. 775 less than in 2016).

From among the cases heard, 77.88% were heard at a hearing and 22.11% of the complaints in camera. 2,550 representatives of the public administration authorities participated in the hearings and as representatives of the parties: 975 solicitors, 757 lawyers, 153 tax advisers and 75 patent advisers. The public prosecutor participated in 3 hearings. The Ombudsman did not participate in any hearing.

The percentage of the Voivodship Administrative Court jurisprudence stability corresponding to the ratio of the number of dismissed cassation appeals to the total number of cases settled in the Chamber in 2017 was 60.72%. This percentage was the highest for the Voivodship Administrative Courts in: Łódź – 76.96%, Kraków – 76.34%, Rzeszów – 76.16%, Poznań – 72.86%, Szczecin – 70.74%, Lublin – 67.49%, Gliwice – 66.42%, Opole – 64.58%, Warsaw – 61.71%; and the lowest for the Voivodship Administrative Court: in Gdańsk – 52.84%, in Wrocław – 52.33%, in Olsztyn – 49.49%, in Gorzów Wielkopolski – 49.31%, in Kielce – 45%, in Bydgoszcz – 40.60% and in Białystok – 20.47%.

*From among the cases heard, 77.88% were heard at a hearing and 22.11% of the complaints in camera.*

In 2017, 1,180 interlocutory appeals against the judgment of the court of the first instance were lodged, and 142 interlocutory appeals remained from the previous period. A total of 1,263 interlocutory appeals were heard, and 59 interlocutory appeals remained to be heard in the following period, which represents a value lower than in 2015 and 2016, and corresponds to the average amount of this type of cases heard in the Chamber during two weeks.

Most of the interlocutory appeals settled concerned withholding the execution of the contested act or action (23.91%), rejection of a complaint (20.74%), failure to meet the time limit (15.20%), and the issues of legal aid (7.13%). Less than 1.27% were interlocutory appeals against decisions regarding disqualification of a judge. From among the interlocutory appeals against the decisions concerning rejection of a complaint, 12.60% were justified, disqualification of a judge – 12.50%, failure to meet the time limit – 11.98%, withholding the execution of the contested act or action – 6.29%, and the issues of legal aid – 3.33%.

64 competence disputes were heard in the Commercial Chamber of the Supreme Administrative Court, i.e. over two times more than in 2016. In 50 cases, the Court indicated the authority competent to settle the case. Moreover, 62 complaints against breach of the right

*Compared to 2016 the number of cassation appeals in General Administrative Chamber decreased by 466 complaints.*

of a party to hear a case without undue delay were settled, none of which deserved to be granted. Also in this category of cases, there has been a significant increase compared to the previous year, in which 12 complaints against excessive length of proceedings were heard. From among 17 complaints requesting declaring a legally binding decision unlawful lodged in 2017 (14 more than in 2016) 15 complaints were rejected, 1 was dismissed, and 1 remained to be settle in the following reporting period.

In 2017, the Commercial Chamber adopted 2 resolutions on request of the President of the Supreme Administrative Court.

## General Administrative Chamber

In 2017, the General Administrative Chamber received 6,349 cassation appeals (5,883 in 2016) and 30 petitions for the reopening of proceedings (in 2016 – 29). In relation to the total number of cassation appeals lodged in 2017, the largest number of cassation appeals was lodged: in construction matters 1,484 – 23.37% (in 2016, 1,192 – 20.26%), spatial management 608 – 10.77% (in 2016, 608 – 10.33%), expropriation 537 – 8.46% (in 2016, 494 – 8.4%), environmental protection and nature protection 399 – 6.28% (in 2016, 370 – 6.29%), public information and press law 380 – 5.98% (in 2016, 372 – 6.32%), social assistance 375 – 5.91% (in 2016, 406 – 6.9%), property management 339 – 5.34% (in 2016, 377 – 6.41%), labour relations and service relations of uniformed officers 309 – 4.87% (in 2016, 304 – 5.17%).

Compared to 2016 (5,883), the number of cassation appeals decreased by 466 complaints – i.e. by 7.92%, and the number of cassation appeals heard increased by 656 cases – i.e. by 10.44% (6,282 cassation appeals were settled in 2016). 7,614 cassation appeals remained for the following period (in 2016 – 8,203). The number of cassation appeals remaining to be settled in the following period decreased by 589 complaints – i.e. by 7.2%.

The highest number of cassation appeals came from the Voivodship Administrative Court in: Warsaw – 2,553, Kraków – 549, Gliwice – 412, Poznań – 377, Gdańsk – 354, Wrocław – 322, Łódź – 264, Rzeszów – 261, Szczecin – 247, Lublin – 237, and the lowest from the Voivodship Administrative Court in: Opole – 161, Białystok – 150, Olsztyn – 135, Bydgoszcz – 127, Kielce – 120 and Gorzów Wielkopolski – 80.

In 2016, 5,212 cassation appeals were dismissed (in 2016 – 4,542). The percentage of dismissed cassation appeals relative to the total number of settled cases was 75.12% (in 2016 – 72.3%).

The jurisprudence stability percentage regarding the total number of settled cases in 2017 in a given voivodship administrative court in this group of cases was the highest in the Voivodship Administrative Court in: Opole – 86.15%, Gdańsk – 81.42%, Gliwice – 80.92%, Gorzów Wielkopolski – 78.21%, Łódź – 77.52%, Olsztyn – 77.27%, Bydgoszcz – 76.3%, Kielce – 76.22%, Lublin – 75.68%, Szczecin – 75.29%, Białystok – 75.25%, Kraków – 74.07%, Warsaw – 73.68%, Rzeszów – 73.24%, and the lowest in the Voivodship Administrative Courts in: Poznań – 73% and Wrocław – 71.43%.

**In 2017, cassation appeals were lodged mostly by natural persons – 3,525, i.e. 55.52% of all cassation appeals lodged (in 2016 – 3,258), and by legal entities in 2,623 cases, i.e. 41.31% (in 2016 – 2,406). Social organisations lodged 173 cassation appeals (in 2016 – 196), public prosecutors – 20 (in 2016 – 8) and the Ombudsman – 8 (in 2016 – 7).**

In the proceedings before the Supreme Administrative Court in the settled cases in 2017, 1,043 representatives of public administration authorities participated (in 2016 – 1121). Lawyers as attorneys for the complaining parties and participants of the proceedings participated in 1,144 cases (in 2016 – 1,121) and solicitors as attorneys for the

complaining parties and participants of the proceedings – in 1,512 cases (in 2016 – in 1,409). The public prosecutor participated in 46 cases (in 2016 – 57), and the Ombudsman in 6 cases (in 2016 – 7).In 2017, the Chamber received 3,636 interlocutory appeals (in 2016 – 3,622). 3,655 interlocutory appeals were heard (in 2016 – 3,551). The number of interlocutory appeals heard increased by 104, i.e. 2.93%. 240 interlocutory appeals remained to be heard in the following period (in 2016 – 259). The number of interlocutory appeals remaining to be settled in the following period decreased by 19 – i.e. 7.34%.

The highest number of interlocutory appeals came from the Voivodship Administrative Court in: Warsaw – 1,735, Kraków – 316, Poznań – 280, Gdańsk – 232, Wrocław – 215, Gliwice – 137, Lublin – 132, Rzeszów – 131, and the lowest from the Voivodship Administrative Court in: Szczecin – 88, Łódź – 85, Białystok – 64, Kielce – 60, Bydgoszcz – 58, Olsztyn – 48, Opole – 30 and Gorzów Wielkopolski – 25.

In relation to the total number of interlocutory appeals lodged, the subject of the complaints lodged included: in 1,839 cases (50.58%) – other decisions, 604 (16,8%) – decisions on the rejection of a complaint, 478 (13.15%) – decisions to withheld the execution of the contested act, 430 (11.83%) – decisions regarding the restitution of the time limit for legal action, 152 (4.18%) – decisions regarding the issues of legal aid, 133 (3.66%) – decisions regarding disqualification of a judge.

In 2017, the percentage of dismissed interlocutory appeals relative to the total number of settled cases was 84.6% (in 2016 – 84.76%).

The percentage of dismissed interlocutory appeals relative to the total number of settled cases in 2017 in a given voivodship administrative court in this group of cases was the highest in the Voivodship Administrative Court in: Gdańsk – 90.1%, Gliwice – 89.4%, Wrocław – 87.4%, Warsaw – 86.9%, Kielce – 83.3%, Szczecin – 82.3%, Poznań – 82.2%, Lublin – 81.8%, Rzeszów – 81.5%, Gorzów Wielkopolski –

80.8%, Łódź – 80%, and the lowest in the Voivodship Administrative Court in: Bydgoszcz – 78.9%, Białystok – 78.3%, Olsztyn – 77.1%, Kraków – 75.2% and Opole – 69%.

*In 2017, 116 complaints were lodged against the excessive length of proceedings.*

In 2017, 499 applications were lodged (in 2016 – 366), including 440 applications to resolve competence or jurisdictional dispute (in 2016 – 332), 51 applications to designate another court to hear the application for disqualification of judges or other cases – 3 (in 2016 – 34 and 3 other applications). 473 applications were considered (in 2016 – 345). In 274 cases, the authority competent to settle the case was indicated, of which 57 applications were dismissed and 58 were rejected. In 50 cases, another court was designated to hear the application for disqualification of judges or the case, of which 2 applications were dismissed. 35 applications were settled in another way.

In 2017, 116 complaints were lodged against the excessive length of proceedings (in 2016 – 139). 126 complaints were heard (in 2016 – 133), including 12 complaints remaining from the previous period. Compared to 2016, the number of complaints against the excessive length of proceedings lodged decreased by 23, i.e. by 16.55%. From among the complaints against the excessive length of proceedings heard, 8 complaints were granted (in 2016 – 4), 66 complaints were dismissed (in 2016 – 72), 42 complaints were rejected (in 2016 – 57), 10 complaints were settled in another way, and 2 complaints remained to be heard for the following period. The granting of a complaint against the excessive length of proceedings, depending on the party's demands, entails the recommendation for the court hearing the case to perform certain actions and granting of the appropriate monetary sum to the party. In 8 cases, the parties were awarded appropriate amounts of PLN 3,000 (PLN 60,000 in total), taking into account the type of the case, its significance for the party, the reasons for the excessive length of proceedings and the duration of the proceedings.

In the reporting period, 12 complaints requesting declaring a legally binding judical decision unlawful were lodged (in 2016 – 2). In 13 cases the complaints were rejected, including 1 complaint from the previous period.

In 2017, 9 requests for adopting a resolution were lodged: 6 requests in an abstract mode – 2 requests of the President of the Supreme Administrative Court, 2 requests of the Public Prosecutor General, 1 request of the General Counsel to the Republic of Poland, 1 request of the Commissioner for Human Rights (Ombudsman), and in 3 cases a legal issue was presented for settlement upon the request of the adjudicating panel. 7 cases were heard by the panel of seven judges, including 3 from the previous period: 2 – upon the request of the President of the Supreme Administrative Court, 1 – upon the request of the Public Prosecutor General, 1 – upon the request of the Commissioner for Human Rights (Ombudsman), and 3 legal issues presented by the adjudicating panel. 6 resolutions were adopted, in one case the adoption of the resolution was refused, in 1 case the proceedings were discontinued as a result of withdrawal of the request (in 2016, 5 cases were settled: 4 resolutions were adopted, in 1 case the adoption of the resolution was refused). There were 4 cases remaining to be settled in the following period: 1 request of the President of the Supreme Administrative Court, 1 request of the of the Commissioner for Human Rights (Ombudsman), 1 request of the Public Prosecutor General, 1 request of the General Counsel to the Republic of Poland, and 1 legal issue presented by the adjudicating panel.

*In the reporting period, 12 complaints requesting declaring a legally binding judicial decision unlawful were lodged.*

In 2017, the Chamber received a total of 10,660 cases (in 2016 – 10,057), 8,584 cases remaining to be heard from the previous period (2016 – 8,904), 11,246 cases were settled, which represents 58.44% of all cases (in 2016 – 10,377, i.e. 54.73% of all cases), and 8,584 cases remained to be heard for the following period. The ad-

judicating panels dealt with cases during 483 hearings and 1,392 in closed session (in 2016 – 526 during a hearing and 1,221 in closed session). In 2017, 11,246 cases were dealt with, of which 5,073 were dealt during a hearing and 6,159 in closed session (in 2016, 10,377 cases were dealt with, of which 5,471 during a hearing and 4,906 in closed session).

## Resolutions of the Supreme Administrative Court

The Supreme Administrative Court adopts resolutions aimed at clarifying the legal provisions whose application caused discrepancies in the jurisprudence of administrative courts, upon the request of the President of the Supreme Administrative Court, Public Prosecutor General, the General Counsel to the Republic of Poland, the Commissioner for Human Rights or the Commissioner for Children's Rights (the so-called 'abstract' resolutions), and resolutions containing conclusions in legal issues that raise serious doubts in a particular court administrative case (the so-called 'concrete' resolutions). A resolution of the Supreme Administrative Court panel of seven judges is binding in the relevant case. On the other hand, when the adjudicating panel does not agree with the position taken in the resolution adopted by the panel of the seven judges of the Supreme Administrative Court, it may apply for another resolution (see e.g. resolution of NSA of 1 February 2016, Case No. II FPS 5/15).

In 2017, 24 requests for adopting a resolution were lodged. The Supreme Administrative Court adopted 20 resolutions, including 7 resolutions in an abstract mode (5 upon the request of the President of the Supreme Administrative Court, 1 upon the request of the Commissioner for Human Rights (Ombudsman) and 1 upon the request of the Public Prosecutor General). The Supreme Administrative Court adopted 13 particular resolutions.

# Resolutions of the Supreme Administrative Court

| YEAR | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|---|---|---|
| TOLAL | 18 | 20 | 23 | 27 | 19 | 17 | 16 | 20 |
| FINANCIAL CHAMBER | 6 | 8 | 10 | 9 | 9 | 9 | 9 | 12 |
| COMMERCIAL CHAMBER | 4 | 3 | 5 | 4 | 4 | 2 | 3 | 2 |
| GENERAL ADMINISTRATIVE CHAMBER | 8 | 8 | 8 | 14 | 6 | 6 | 4 | 6 |

*The Supreme Administrative Court adopts resolutions aimed at clarifying the legal provisions whose application caused discrepancies in the jurisprudence of administrative courts, upon the request of the President of the Supreme Administrative Court, the Public Prosecutor General, the General Counsel to the Republic of Poland, the Commissioner for Human Rights (Ombudsman) or the Commissioner for Children's Rights (the so-called 'abstract' resolutions), and resolutions containing conclusions in legal issues that raise serious doubts in a particular court administrative case (the so-called 'concrete' resolutions). A resolution of the Supreme Administrative Court panel of seven judges is binding in the relevant case.*

## Subject of the resolutions 2017

In 2017, the resolutions concerned issues related to the provisions of: the administrative court proceedings, tax law, the so-called Bug River property, real property management, local referendum and charging of fees in paid parking zones.

### Administrative court proceedings

The legal provisions on proceedings before administrative courts were referred to in 3 resolutions. In the resolution of 16 October 2017, Case No. I FPS 1/17, it was determined that the basis for reopening of proceedings referred to in Article 272 § 3 of the Law on Proceedings before Administrative Courts may be a decision of the Court of Justice of the European Union, issued in the form of a question for a preliminary ruling, even if that decision was not delivered to the party bringing the complaint requesting reopening of proceedings. In the resolution of 3 July 2017, Case No. I OPS 1/17, it was determined that the prosecutor who, acting as a party pursuant to Article 8 § 1 of the Law on Proceedings before Administrative Courts, initiated the administrative court proceedings or declared participation in them in the general interest – in order to protect the law and order, cannot be charged with the costs of the administrative court proceedings. In the resolution of 5 June 2017, Case No. II GPS 1/17, the Supreme Administrative Court stated that during administrative court proceedings administrative proceedings can be initiated in order to amend, repeal, declare invalidity of an act or reopen proceedings in a decision controlled by the court, however, the public administration authority is obliged to suspend these proceedings under Article 97 § 1(4) of the Code of Administrative Proceedings until the definitive conclusion of the administrative court proceedings.

*The legal provisions on proceedings before administrative courts were referred to in 3 resolutions.*

### Tax law

The provisions of the Tax Ordinance were referred to in 4 resolutions. In the resolution of 6 November 2017, Case No. II FPS 3/17, it was determined that, pursuant to Article 24 in conjunction with

*The provisions of the Tax Ordinance were referred to in 4 resolutions.*

Article 70 § 1 of the Tax Ordinance as it reads on 1 September 2005, it is not permissible to conduct tax proceedings and decide on the amount of loss in corporate income tax for the tax year in which it was incurred when the limitation period for the tax liability for that year had expired. In the resolution of 27 March 2017, Case No. I FPS 9/16, the Supreme Administrative Court decided that Article 76 § 1 in conjunction with Article 76b § 1 of the Tax Ordinance does not provide grounds for the head of the tax office to deduct the surplus of input tax over the goods and services tax from tax liabilities which are determined by the competent authority of the local self-government unit. In the resolution of 30 January 2017, Case No. I FPS 6/16, it was recognised that the tax authority is obliged, pursuant to Article 115 § 1-5 of the Tax Ordinance, to conduct proceedings in the matter of determining the amount of tax liabilities of a dissolved civil-law partnership and ruling on the tax liability of former partners of that partnership for its arrears of taxes with the participation of all persons who were partners in the civil-law partnership in a given period. The provisions of the Tax Ordinance were also referred to in the resolution of 16 October 2017, Case No. II FPS 4/17, indicating that if the tax authority determines on the basis of Article 17(1) in conjunction with paragraph 2 of the Act of 20 November 1998 on lump-sum income tax on certain types of income received by natural persons a lump sum on unreported income, Article 68 § 2(2) of the Tax Ordinance shall apply.

The provisions of the Act on the taxation of goods and services were referred to in 3 resolutions. In the resolution of 30 January 2017, Case No. I FPS 5/16, it was settled that in a case regarding tax on goods and services, dissolution of a civil-law partnership after an appeal is lodged results in the necessity to discontinue the appeal proceedings pursuant to Article 233 § 1(3) of the Tax Ordinance. In the resolution of 6 March 2017, Case No. I FPS 8/16, the Supreme Administrative Court decided that Article 15(1) in conjunction with paragraph 2 of the Act on the Goods and Services Tax applies to the

court bailiff whose status results from the Act of 29 August 1997 on court bailiffs and execution, because the bailiff performs activities not in the form of a body governed by public law, but an independent economic activity, carried out as part of a freelance profession, and therefore he is not entitled to the exemption provided for in Article 15(6) of the Act on the taxation of goods and services and Article 13(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. However, in the resolution of 11 December 2017, Case No. I FPS 2/17, the Supreme Administrative Court referred to the VAT on services consisting in the reconstruction and extension of the Baltic Sea bank protection and decided that in the position in law in force in 2011 and 2012, services consisting in the reconstruction and extension of the Baltic Sea bank protection serving to preserve the existing sea coasts in a non-deteriorated condition and protect them against further destruction were services related to the protection of the marine environment, to which tax rate of 0% provided for in Article 83(1)(11) of the Act of 11 March 2004 on the taxation of goods and services applied.

*The provisions of the Act on the Goods and Services Tax were referred to in 3 resolutions.*

In the resolution of 15 May 2017, Case No. II FPS 2/17, the Supreme Administrative Court ruled that for the purposes of imposing personal income tax for the transfer for valuable consideration of real property and property rights referred to in Article 10(1)(8) (a)-(c) of the Act of 26 July 1991 on Personal Income Tax acquired by a spouse as a result of inheritance, the date of their acquisition or construction within the meaning of this provision is the day of acquisition (construction) of this real property and property rights to the joint property of the spouses.

With regard to the Act of 9 September 2000 on the tax on civil-law transactions, in the resolution of 15 May 2017, Case No. II FPS 1/17, the Supreme Administrative Court decided that in the position in law in force from 1 January 2009, tax on civil-law transactions shall be imposed, pursuant to Article 1(3)(3) in conjunction with para-

graph 1(1)(k) of the Act on the tax on civil-law transactions, legal transactions consisting in the amendment of the articles of association, involving the transformation of a joint-stock company into an unlimited company.

In the matter of whether the property tax is payable by the partners in a civil-law partnership or by the civil-law partnership, in the resolution of 13 March 2017, Case No. II FPS 5/16, the Supreme Administrative Court ruled that in the light of Article 3(1) of the Act of 12 January 1991 on local taxes and charges, the property tax is payable by the partners of the civil-law partnership, not by the civil-law partnership.

In the resolution of 6 March 2017, Case No. I FPS 7/16, the Supreme Administrative Court ruled that in the position in law in force from 30 July 2010 to 28 February 2017, the General Inspector of Fiscal Control could, pursuant to Article 10(3) in conjunction with paragraph of 1 of the Act of 28 September 1991 on fiscal control, grant the Deputy Director of the Fiscal Control Department in the Ministry of Finance authorisation to appoint the director of the fiscal control office competent to initiate and conduct inspection proceedings, also outside the territorial jurisdiction of the director of athe fiscal control office, pursuant to Article 10(2)(11) of this Act.

### Issues concerning the so-called Bug River property, road investments, real property management, construction law, local referendum and charging in paid parking zones were reffered to in 6 resolutions

In the resolution of 9 October 2017, Case No. I OPS 3/17, the Supreme Administrative Court ruled that submission of a request for confirmation of the right to compensation by the entitled person within the period specified in Article 5(1) of the Act of 8 July 2005 on exercising the right to compensation arising from leaving immovable property outside the present borders of the Republic of

Poland results in the initiation of administrative proceedings also in relation to all other entitled persons within the meaning of Article 3 of this Act.

In the resolution of 27 February 2017, Case No. II OPS 2/16, the Supreme Administrative Court recognised that, pursuant to Article 11f(3) of the Act of 10 April 2003 on specific rules of preparation and realisation of investments in the scope of national roads, delivery of a notification of the decision permitting the realisation of a road investment to the current owner or perpetual usufructuary to the address indicated in the real property cadastre does not exclude in relation to these people the effects of the notification of the decision by way of a public announcement referred to in Article 49 of the Code of Administrative Proceedings.

*Issues concerning the so-called Bug River property, road investments, real property management, construction law, local referendum and charging in paid parking zones were reffered to in 6 resolutions.*

In the resolution of 27 February 2017, Case No. I OPS 2/16, the Supreme Administrative Court ruled that the property held by Polish State Railways without a documented right, in the manner specified in Article 38(2) of the Act of 29 April 1985 on land management and expropriation of real property, means that on 27 May 1990 this property belonged to the national councils and basic local state administration authorities within the meaning of Article 5(1) of the Act of 10 May 1990 – Provisions introducing the act on local self-government, the act on self-government employees.

In the resolution of 27 February 2017, Case No. II OPS 3/16, the Supreme Administrative Court stated that in the case when the decision on land development conditions allows for the location of a single-family house with a wall without window or door openings towards the border with the neighbouring construction plot directly at this border, it is necessary to meet the conditions set out in § 12(3) of regulation of the Minister of Infrastructure of 12 April 2002 on technical conditions which buildings and their location should meet. The Supreme Administrative Court referred to the provisions on lo-

cal referendum in the resolution of 11 December 2017, Case No. II OPS 2/17, deciding that support of a resident of a local self-government unit for an application for a local referendum requires all data mentioned in Article 14(4) of the Act of 15 September 2000 on the local referendum to be included on the support sheet, confirmed with a handwritten signature.

In the resolution of 9 October 2017, Case No. II GPS 2/17, the Supreme Administrative Court stated that, in accordance with Article 13b(1) in conjunction with Article 13(1)(1) of the Act of 21 March 1985 on public roads, the fee for parking vehicles on public roads in the paid parking zone is collected from the public road user only for parking in a designated place.

### Rights of individuals in disputes with public administration

The resolutions adopted in 2017 raised important substantive issues regarding rights of individuals in disputes with a public administration authority. They indicate the need for administrative courts to make a pro-constitutional and pro-EU interpretation of legal provisions in accordance with European human rights standards. The principle of in dubio pro tributario was taken into account in these resolutions.

**The resolution determining that the CJEU ruling issued as a part of question referred for a preliminary ruling, even if this ruling is not delivered to the party bringing the complaint requesting the reopening of proceedings, may be the basis for the reopening of proceedings referred to in Article 272 § 3 of the Law on Proceedings before Administrative Courts, is of great importance for the protection of the rights of individual** (Case No. I FPS 1/17). From this point of view, the resolution stating that the prosecutor who, acting as a party pursuant to Article 8 § 1 of the Law on Proceedings before Administrative Courts, initiated the administrative court proceedings or declared participation in them in the general interest – in order to

protect the law and order, cannot be charged with the costs of the administrative court proceedings, is also of special importance (Case No. I OPS 1/17). In relation to protection, equal for everyone, regarding property rights and the right of succession guaranteed in the Constitution (Article 64(2) of the Constitution), the resolution concerning the so-called Bug River property is of great importance, as in its reasons the Supreme Administrative Court emphasised that the right to compensation is of a uniform nature, hence it is unacceptable to differentiate the situation of individual heirs. The administrative authority should determine ex officio who is entitled to the right of the party and ensure that each of them is notified, and the person entitled should then express individual will to participate in the proceedings (Case No. I OPS 3/17). Regarding the application of a zero VAT rate to services related to the construction of wing dams, sea cataracts and beach engineering, the Supreme Administrative Court ruled in favour of the taxpayer justifying that, since the protection of the marine environment is not defined in any act or directive, it cannot be said that the seashore is outside marine environment (Case No. I FPS 1/17). Deciding that the loss expires similarly to tax obligations, the Supreme Administrative Court pointed out that since the Tax Ordinance does not provide for specific regulations regarding the expiration of loss, Article 70 of the Tax Ordinance concerning the expiration of tax obligations should apply. According to the Supreme Administrative Court, different interpretation would be contrary to the Constitution (Case No. II FPS 3/17).

## Conclusions

The above-presented activity of the Supreme Administrative Court allows eliminating the discrepancies (contradictions) in the jurisprudence of administrative courts resulting mainly from ambiguity of legal regulations, legislative omissions or lack of intertemporal rules, as the Supreme Administrative Court points out in the reasons of the resolutions. **The adopted resolutions protect also the individual rights guaranteed by the Constitution.**

# Jurisdictional and competence disputes

## General remarks

In 2017, 514 applications to resolve competence and jurisdictional disputes were lodged. 479 cases were settled, and in 327 cases the proper authority for their settlement was indicated.

According to Article 166(3) of the Constitution, competence disputes between the organs of local self-governments and government administration are settled by administrative courts. Settling jurisdictional and competence disputes between local government authorities and appellate boards of local government, unless otherwise provided for in a separate law, and competence disputes between authorities of such authorities and government administration authorities, remaining within the scope of the competence of the Supreme Administrative Court, refers to situations in which at least two administrative authorities at the same time consider themselves to be competent to deal with a specific matter (positive dispute), or they consider themselves to be inadequate to deal with it (negative dispute) (see e.g. decision of 26 October 2016, Case No. II OW 48/16).

The condition for the Supreme Administrative Court to issue a substantive judgment in this regard is the existence of a jurisdictional or a competence dispute in the legal sense. The court controls the activities of the public administration to the extent specified in the Act – Law on Proceedings before Administrative Courts. On the other hand, an administrative court has no jurisdiction to hear common complaints concerning the critique of proper performance of tasks by the competent authorities or their employees or to assess the correctness of the complaint procedure conducted in accordance with the provisions of Chapter VIII of the Code of Administrative Proceedings (see decision of 28 October 2016, II GW 21/16).

When the provisions referring to the competence of public administrations change, the authority responsible for reopening of proceedings should be an authority that is competent to deal with a particular type of case according to the current provisions of its scope of action, since with the succession of the powers of one authority to the other we deal with the authority that has issued a decision in the last instance (see decision of 9 November 2016, Case No. II OW 55/16).

## Subject of disputes

Resolving the negative competence dispute between the District Inspector of Building Supervision and the Voivode as to which from these authorities is competent to issue the decision referred to in Article 71c § 1 of the Act of 17 June 1966 on enforcement proceedings in administration, that is, the decision on payment of the fine in instalments to force fulfilment of the non-pecuniary obligation, the Supreme Administrative Court found that none of these authorities is competent to issue the above-mentioned decision. According to the Supreme Administrative Court, the comparison of Article 124 § 1 and Article 71c § 1 of the Act on enforcement proceedings in administration permits the conclusion that the competent authority should be the one having competence to seek enforcement of monetary claims. The authority which has special competence to seek enforcement of monetary claims is defined in Article 19 of the Act on enforcement proceedings in administration, that is, as a rule, it is the head of the tax office (decision of 19 January 2017, Case No. II FW 2/16).

*In 2017, 514 applications to resolve competence and jurisdictional disputes were lodged. 479 cases were settled, and in 327 cases the proper authority for their settlement was indicated.*

In the matter of carrying out recovery of payment of the disciplinary penalty imposed by the Municipal Police, the Supreme Administrative Court found that the authority competent to deal with the matter is the Mayor of the City, indicating that the Communal (Municipal) Police, thus also its officers imposing the disciplinary penalty, do not act on their own behalf, but perform their tasks as part of authorisation of the commune head, the mayor. Therefore, the commune head, the mayor is the authority of the commune (city) authorised to deter-

*The condition for the Supreme Administrative Court to issue a substantive judgment in this regard is the existence of a jurisdictional or a competence dispute in the legal sense.*

mine monetary claims by imposing disciplinary penalties (decisions of: 28 June 2017, Cases No. II GW 16/17 and II GW 17/17).

Referring to the dispute, the subject matter of which was to indicate the authority competent to decide on compensation, pursuant to Article 19(1) of the Act of 25 February 1958 on regulating the legal status of property administered by the State, for the free of charge seizure by the State Treasury of real property taken over for the State by the ruling of the Minister of National Defence of May 1963, issued under the Act of 1958, supplemented by the decision of the Minister of National Defence of February 1964, giving former owners the right to submit an application for compensation if the seized real property was personal property, as defined in Article 19(1) of the Act, the Supreme Administrative Court indicated the Voivode as the competent authority to examine the application for determining and granting the above-mentioned compensation. Justifying its decision, the Supreme Administrative Court decided that the reference in Article 19(2) ab initio of the above-mentioned Act to the proper application of the rules and procedure applicable to the expropriation of real property does not include determination of the authority competent for compensation referred to in paragraph 1 of this provision, as the competent authority is indicated in paragraph 2. The Act of 1958 is still applicable, and only the Board of the Voivodship National Council indicated in the aforementioned provision does not exist in the structure of public administration bodies. However, in order to determine who took over the competence of the above-mentioned authority, it is not appropriate to reach for solutions included in the Act on real property management, as Article 19(2) does not refer to other acts in the matter of the competent authority. According to the Supreme Administrative Court, Article 53 of the Act of 22 March 1990 on territorial bodies of general government administration indicates that the competence of voivods are widened to tasks and competences set out by law which so far have been the responsibility of voivodship national councils and territorial bodies of government

administration with general competence and specific competence (voivodship), if these tasks and competences were not transferred, in separate acts, to local self-government bodies or other bodies. The above-mentioned Act, as of 1 January 1999, was replaced by the Act of 5 June 1998 on central government administration in voivodships, which in turn expired with the entry into force (on 1 April 2009) of the Act of 23 January 2009 on voivode and government administration in voivodships. According to Article 3(1)(5) of this Act, a voivode is a government administration body in a voivodship whose competence includes all matters related to government administration in a voivodship which are not reserved in separate acts to the competence of other bodies of this administration. In its conclusion, the Supreme Administrative Court stated that since Article 19(2) of the Act of 1958 still in force gives competence to determine compensation for real property seized by the State to the board of the voivodship national council and this competence has not been transferred to any other body, it should be assumed that currently the body competent to determine compensation is the voivode (decision of 23 May 2017, Case No. I OW 12/17, also decision of 30 March 2012, Case No. I OW 1/12).

## Conclusion

Examples, referring to issues related to the performance by the Supreme Administrative Court of the competence to resolve competence and jurisdictional disputes, show the numerous problems that public administration authorities face when exercising their powers. The decisions of the Supreme Administrative Court in this regard facilitate settling the cases by the authorities on one hand, and protect the principles of legality on the other.

# Complaint against the breach of the right of a party to hear a case in a court without undue delay

## Legal basis

Based on Article 2 of the Act of 17 June 2004 on a complaint regarding the breach of the right of a party to hear a case in preparatory proceedings conducted or supervised by the prosecutor and in court proceedings without undue delay a party may file a complaint requesting a declaration that in the proceedings which the complaint relates to, its right to be heard without undue delay was violated if the proceedings take longer than necessary to clarify the factual and legal matters which are relevant to the settlement of the case or longer than necessary to handle the enforcement case or any other regarding the enforcement of the court decision (excessive length of proceedings). Article 4(3) of the act referred to hereinabove specifies the jurisdiction of the Supreme Administrative Court to hear complaints against excessive length of proceedings before a voivodship administrative court or the Supreme Administrative Court. The complaint should be heard within 2 months of its lodging.

## Statistics 2017

In 2017, 51 complaints were lodged against the excessive length of proceedings before the Supreme Administrative Court, along with 168 complaints against the excessive length of proceedings before the voivodship administrative courts. With regard to complaints regarding the Supreme Administrative Court, from among 47 settled complaints 7 were dismissed, and 40 were settled in another way. Regarding complaints against the excessive length of proceedings before the voivodship administrative courts, from among a total of 175 complains handled – 8 complaints were granted, 69 were dismissed, 98 were settled in another way. The sum of PLN 60,000 regarded the Voivodship Administrative Court in Gdańsk (PLN 51,000),

the Voivodship Administrative Court in Warsaw (PLN 6,000), and the Voivodship Administrative Court in Kraków (PLN 3,000).

*The Supreme Administrative Court hears complaints against excessive length of proceedings before a voivodship administrative court or the Supreme Administrative Court.*

## The reasons for rejecting the complaints

In 2017 case law the reasons for rejecting the complaints were, inter alia, failure to pay the entry (decisions of 21 December 2017, Cases No. II GPP 47/17, 48/17, 49/17, 50/17), failure to specify the circumstances justifying the request for stating that the excessive length of proceedings occurred (decisions of: 10 February 2017, Case No. II FPP 1/17; 8 March 2017, Case No. II GPP 6/17, and 23 March 2017, Case No. II GPP 8/17), their filing after the end of the proceedings (e.g., decisions of 21 December 2017, Cases No. I OPP 65/17 and 67/17; 23 February 2017, Cases No. II GPP 1/17 and II GPP 2/17) or before a year had expired since the previous complaint was lodged (e.g., decision of 14 December 2017, Case No. II FPP 32/17). The complaint is also rejected if the applicant fails to document the right to represent the complainant association (decision of 9 March 2017, Case No. I OPP 6/17).

The reason for dismissing the complaint is that the proceedings did not breach the right of a party to hear a case without undue delay (cf. decision of 9 November 2017, Case No. II OPP 38/17 and the jurisprudence of the Supreme Administrative Court).

# Cassation appeals settled by the Supreme Administrative Court 2004-2017

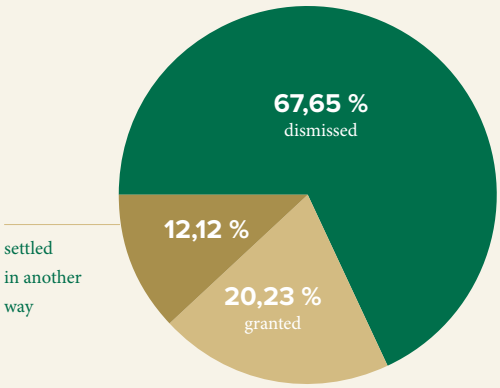
| YEAR | TOTAL NUMBER OF CASES TO RESOLVE *(Left from previous period + registered in given year)* | NUMBER OF CASES RESOLVED *(Total)* | CASES REMAINED FOR THE NEXT YEAR |
|---|---|---|---|
| 2004 | 6 167 | 2 918 | 3 249 |
| 2005 | 12 798 | 6 535 | 6 263 |
| 2006 | 16 700 | 8 788 | 7 912 |
| 2007 | 17 342 | 9 347 | 7 995 |
| 2008 | 18 114 | 9 389 | 8 725 |
| 2009 | 19 185 | 10 013 | 9 172 |
| 2010 | 20 848 | 10 922 | 9 926 |
| 2011 | 24 592 | 11 352 | 13 243 |
| 2012 | 28 260 | 12 276 | 15 984 |
| 2013 | 32 764 | 13 493 | 19 271 |
| 2014 | 37 058 | 14 994 | 22 064 |
| 2015 | 40 698 | 14 892 | 25 806 |
| 2016 | 44 653 | 16 829 | 27 824 |
| 2017 | 45 570 | 19 192 | 26 378 |

# Number of cassation appeals heard in 2017 by the Supreme Administrative Court

(by the outcome of the case brought)

**19 192** TOTAL

**3 882** granted
**12 984** dismissed
**2 326** settled in another way

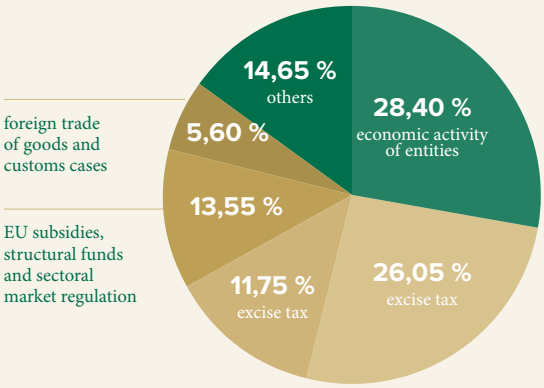


# Cassation appeals 2017 by the court of origin

| YEAR | COMPLAINTS LODGED | | |
|---|---|---|---|
| | TOTAL | % OF ALL REGISTER CASES | TOTAL |
| ALL COURT | 17 746 | 100 | 19 192 |
| BIAŁYSTOK | 541 | 3,05 | 631 |
| BYDGOSZCZ | 444 | 2,50 | 566 |
| GDAŃSK | 1 054 | 5,94 | 1 059 |
| GLIWICE | 1 669 | 9,40 | 1 594 |
| GORZÓW WIELK. | 395 | 2,23 | 449 |
| KIELCE | 392 | 2,21 | 362 |
| KRAKÓW | 1 158 | 6,53 | 1 144 |
| LUBLIN | 799 | 4,50 | 903 |
| ŁÓDŹ | 920 | 5,18 | 1 039 |
| OLSZTYN | 457 | 2,58 | 500 |
| OPOLE | 451 | 2,54 | 404 |
| POZNAŃ | 1 313 | 7,40 | 1 702 |
| RZESZÓW | 524 | 3,52 | 572 |
| SZCZECIN | 791 | 4,46 | 836 |
| WARSZAWA | 5 403 | 30,45 | 6 045 |
| WROCŁAW | 1 335 | 7,52 | 1 386 |

# Commercial Chamber

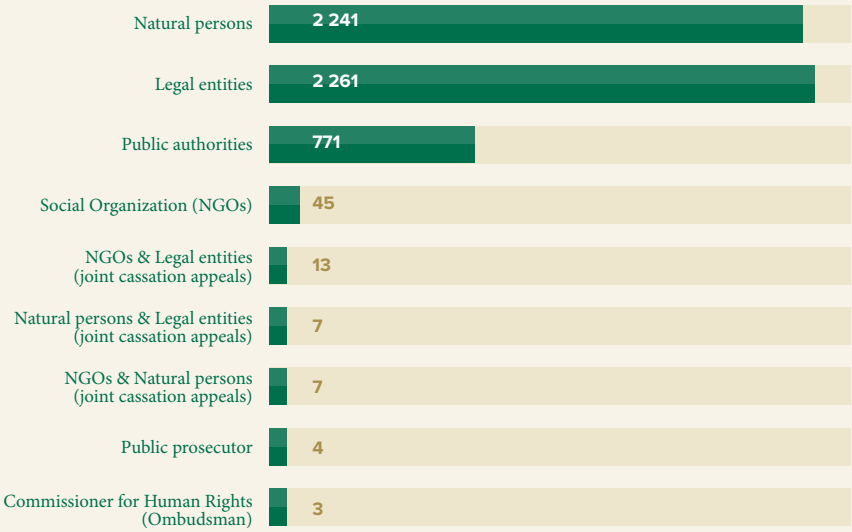
## NUMBER OF CASSATION APPEALS SETTLED IN 2017 BY SUBJECT




**6 092** TOTAL

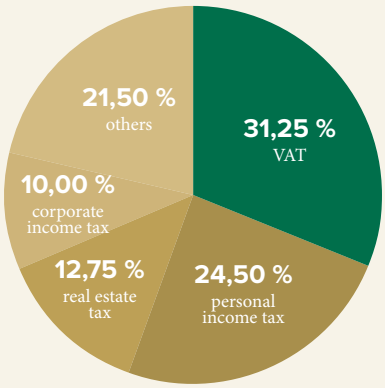
- **1 728** economic activity of entities
- **1 587** excise tax
- **825** EU subsidies, structural funds and sectoral market regulation
- **716** transport
- **345** foreign trade of goods and customs cases
- **891** others

## NUMBER OF CASSATION APPEALS BROUGHT BEFORE COMMERCIAL CHAMBER IN 2017 BY COMPLAINANTS



# Financial Chamber

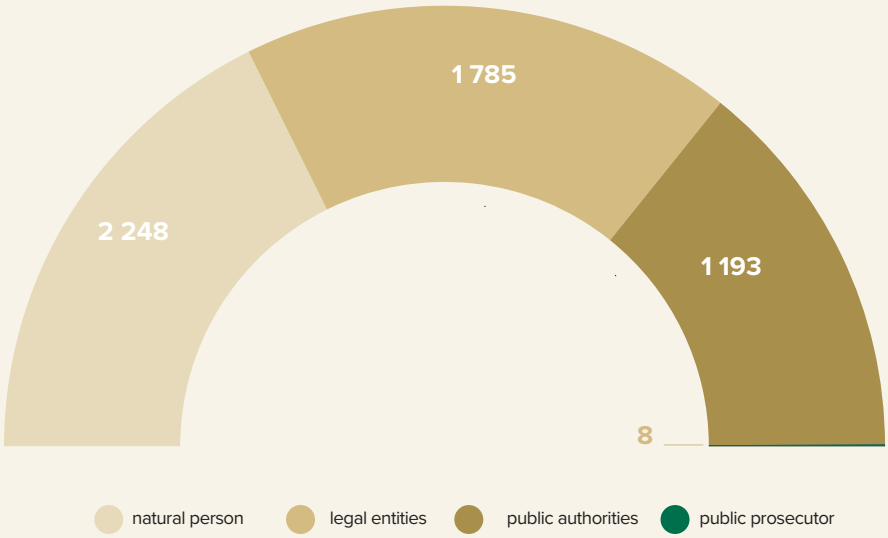
## NUMBER OF CASSATION APPEALS SETTLED IN 2017 BY SUBJECT




**6 167** TOTAL

| | |
|---|---|
| **1 929** | VAT |
| **1 511** | personal income tax |
| **788** | real estate tax |
| **612** | corporate income tax |
| **1 327** | others |

## NUMBER OF CASSATION APPEALS SETTLED BY FINANCIAL CHAMBER IN 2017 OF COMPLAINANTS

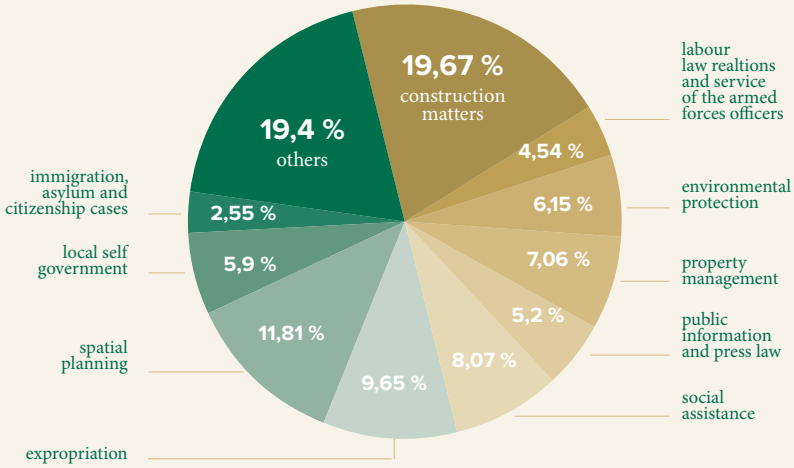


# General Administrative Chamber

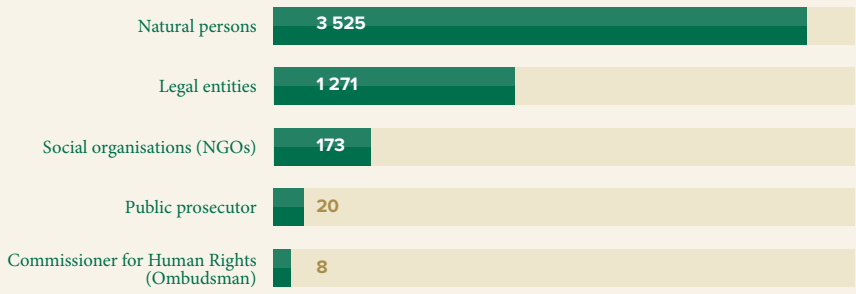
## NUMBER OF CASSATION APPEALS SETTLED IN 2017 BY SUBJECT

**6 938** TOTAL

**1 365** construction matters
**820** spatial plannig
**669** expropriation
**560** social assistance
**361** public information and press law
**490** property management
**427** environmental protection
**315** labour law relations and service of the armed forces officers
**410** local self government
**177** immigration, asylum and citizenship cases
**1 344** others




## NUMBER OF CASSATION APPEALS BROUGHT BEFORE GENERAL ADMINISTRATIVE CHAMBER IN 2017 BY COMPLAINANTS



# ACTIVITIES OF CHAMBERS OF THE SUPREME ADMINISTRATIVE COURT

### FINANCIAL CHAMBER

| | |
|---|---|
| number of cases left over from the previous period | 9 717 |
| number of registered cases | 5 803 |
| total number of cases to resolve | 15 520 |
| number of cases resolved | 5 364 |
| % of total number of cases to resolve | 34,56 |
| number of cases remained to decide for the next period | 10 156 |

### COMMERCIAL CHAMBER

| | |
|---|---|
| number of cases left over from the previous period | 7 487 |
| number of registered cases | 7 161 |
| total number of cases to resolve | 14 648 |
| number of cases resolved | 5 183 |
| % of total number of cases to resolve | 35,38 |
| number of cases remained to decide for the next period | 9 465 |

### GENERAL ADMINISTRATIVE CHAMBER

| | |
|---|---|
| number of cases left over from the previous period | 8 602 |
| number of registered cases | 5 883 |
| total number of cases to resolve | 14 485 |
| number of cases resolved | 6 282 |
| % of total number of cases to resolve | 43,37 |
| number of cases remained to decide for the next period | 8 203 |

# Cassation appeals 2017 by Chambers of the Supreme Administrative court

| Chamber of the Supreme Administrative Court | *Number of cases left over from the previous period* | *cases registered* | *cases resolved* | *cases remainded to decide for the next period* |
|---|---|---|---|---|
| TOTAL | 27 824 | 17 746 | 19 192 | 26 378 |
| GENERAL ADMINISTRATIVE CHAMBER | 8 203 | 6 349 | 6 938 | 7 614 |
| FINANCIAL CHMABER | 10 156 | 6 065 | 6 167 | 10 059 |
| COMMERCIAL CHAMBER | 9 465 | 5 332 | 6 092 | 8 705 |

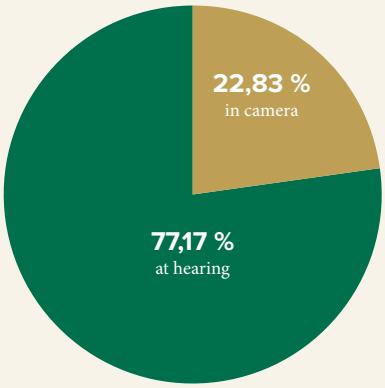
*The Financial Chamber settled 6,176 cassation appeals (812 more than in the previous year), including 5,006 at a hearing and 1170 in camera.*

*In Commercial Chamber from among the cases heard, 77.88% were heard at a hearing and 22.11% of the complaints in camera.*

*In General Administrative Chamber in 2017, 11,246 cases were dealt with, of which 5,073 (45,20 %) were dealt during a hearing and 6,159 (54, 80%) in camera.*

# Activities of the Supreme Administrative Court

## Number of cassation appeals heard by Supreme Administrative Court by mode of procedure in 2017

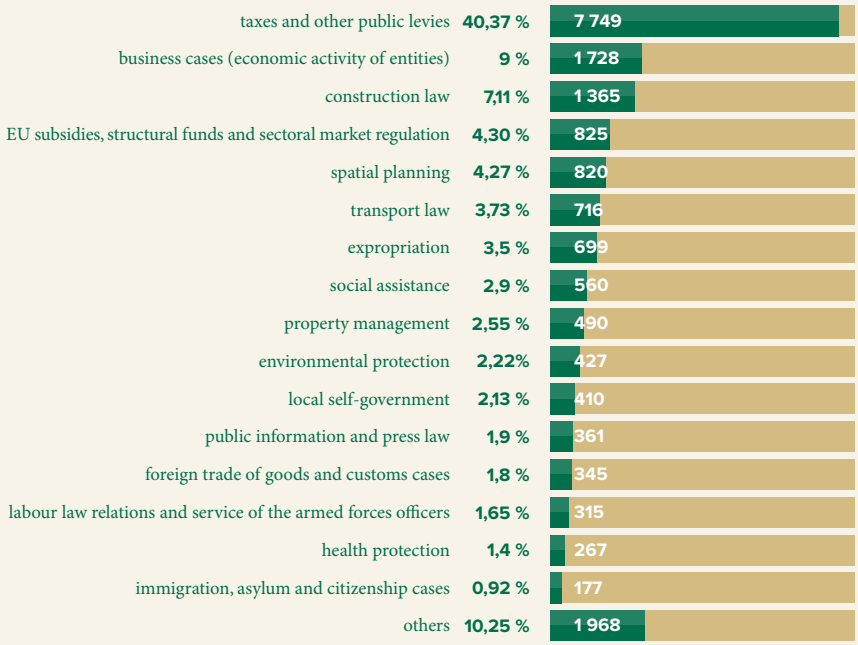



**19 192** TOTAL

**4 381** at hearing
**811** in camera

## Number of cassation appeals settled by Supreme Administrative Court in 2017 by subject

TOTAL **100 %** **19 192**



# APPLICATION OF EUROPEAN UNION LAW AND THE EUROPEAN CONVENTION OF HUMAN RIGHTS BY THE ADMINISTRATIVE COURTS

## General remarks

In the jurisprudence of administrative courts, as in previous years, the EU law issues primarily arise in the recognition of indirect tax matters (including tax on goods and services), as well as in the field of income tax, real property tax, customs law, road transport and air transport, environmental protection and spatial management, property management, construction, sanitary supervision, veterinary supervision and pharmaceutical supervision, personal data protection, access to public information, social security, games and mutual wagering, agricultural law and financial aid from the EU funds, as well as in cases of foreigners, technical inspection and standardisation and industrial property.

**The European Union law** (hereinafter: the EU law or Union law or – if an act came into effect before the Treaty of Lisbon – the Community law) **is quoted by administrative courts in both judgments and decisions, and in the resolutions adopted by the Supreme Administrative Court.**

When considering the EU Law cases (cases with an EU or Community element), administrative courts referred to both the primary and secondary EU law. They quoted the European standards and, above all, the obligation of a pro-union interpretation of national law (coherent interpretation), and priority to the EU law and international agreements ratified with the consent expressed in an act. They also used the possibility of direct application of the regulations and directives.

*Administrative courts referred to the jurisprudence of the Court of Justice of European Union to determine the relevance of a given EU law applicable to the case, and to assess the applicability of the EU law to the cases in question.*

Administrative courts also referred to the jurisprudence of the Court of Justice of European Union (hereinafter: the CJEU). The purpose of this reference to the EU jurisprudence was to determine the relevance of a given EU law applicable to the case, and to assess the applicability of the EU law to the cases in question.

The jurisprudence of the administrative courts also referred to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR) and to the jurisprudence of the European Court of Human Rights (hereinafter: the ECtHR). References were made in particular in cases relating to the guarantee of the right to a court (including effective means of challenge, ne bis in idem prohibition, legal aid), protection of property rights and in cases involving foreigners. The decisions of the ECtHR were referred to in the reasons of administrative court decisions as a subsidiary argumentation – i.e. as an additional justification for the constitutional standards applied.

Administrative courts also referred to the Charter of Fundamental Rights of the European Union (hereinafter: the CFREU) as part of the subsidiary arguments – i.e. in order to indicate that certain rights and freedoms of individuals are protected and guaranteed not only in the Constitution of the Republic of Poland or in the ECHR, but also within the EU legal system (which manifests the multi-centric structure of the current legal order). These references concerned in

*In 2017, Polish administrative courts referred to the CJEU with questions for a preliminary ruling in 7 cases.*

particular the right to a court, the right to good administration and the principle of proportionality (in the context of negative legal consequences for the individual).

Administrative courts also referred to Article 51 of the Charter of Fundamental Rights concerning the scope of its application, in order to determine whether the CFREU may be referred to and applied in a given case. The Supreme Administrative Court emphasised that, given the content of Article 51 of the CFREU, in both the doctrine and the jurisprudence, the necessity to apply the provisions of the Charter by the Member States when exercising EU law is assumed. Therefore, the CFREU applies only if other provisions of the EU law may apply.

# Requests for preliminary rulings to CJEU and enforcement of preliminary rulings

## Questions referred for a preliminary ruling

In 2017, Polish administrative courts referred to the CJEU with questions for a preliminary ruling in 7 cases. In these set, 5 questions for a preliminary ruling were referred by the Financial Chamber of the Supreme Administrative Court, and by the voivodship administrative courts in Kielce and in Wrocław – one questions each.

With decision of 16 February 2017 in case No. I FSK 831/15 (CJEU case No. C-422/17 Skarpa Travel), the Supreme Administrative Court referred to the CJEU with the following questions: *"1. Must Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ EU of 2006 No. L 347, p. 1; hereinafter referred to as Directive 2006/112/EC) be interpreted as meaning that tax becomes chargeable on payments on account received by a taxable*

*person supplying tourist services, which are taxed under the special scheme for travel agents provided for in Articles 306 to 310 of Directive 2006/112/EC, at the time defined in Article 65 of Directive 2006/112/EC 306? 2. If the answer to the first question is in the affirmative, must Article 65 of Directive 2006/112/EC be interpreted as meaning that, for taxation purposes, a payment on account received by a taxable person supplying tourist services, taxed under the special scheme for travel agents provided for in Articles 306 to 310 of Directive 2006/112/EC, is reduced by the cost referred to in Article 308 of Directive 2006/112/EC actually incurred by the taxable person up to the time when he receives the payment on account?"*

With decision of 22 March 2017 in case No. I FSK 1048/15 (CJEU case No. C-421/17 Polfarmex), the Supreme Administrative Court referred to the CJEU with the following question: *"Does the transfer by a public limited company of immovable property to a shareholder in connection with the redemption of its shares constitute a transaction that is subject to value added tax in accordance with Article 2(1)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ EU of 2006 No. L 347, p. 1)?"*

*With decision of 23 October 2017 in case No. I FSK 2084/15, the Supreme Administrative Court referred to the CJEU with the following question: "Do Article 168 of Directive 2006/112/EC of the Council of 28 November 2006 on the common system of value added tax (OJ L 2006, No. 347/1, as amended) and the principles of neutrality and proportionality not oppose regulations such as those included in Article 88(1)(4) of the Act of 11 March 2004 on the Goods and Services Tax (Dz.U. of 2011, No. 177, item 1054, as amended; currently Dz.U. of 2017, item 1221, as amended), according to which a reduction of the amount or a refund of the difference in tax due does not apply to the accommodation and gastronomic services purchased by the taxpayer, with the exception of the purchase of ready meals for passengers by taxpayers providing passenger transport services, also when*

*these regulations were introduced to the Act on the basis of Article 17(6) of the sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ L of 1977 No. 145/1, as amended)?"*

With decision of 23 November 2017 in case No. I FSK 63/16, the Supreme Administrative Court referred to the CJEU with the following question: *"Does the term referred to in Article 135(1)(b) of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L of 2006, 347, p. 1) include activities consisting in providing fuel cards and negotiating, financing and clearing the purchase of fuel using these cards, or can such complex actions be considered as chain transactions whose primary purpose is fuel delivery?"*

With decision of 28 November 2017 in case No. I FSK 65/16, the Supreme Administrative Court referred to the CJEU with the following question: *"If in the situation in which the parties to the transaction agreed that for the payment of remuneration for construction or construction and assembly works, it is necessary to get the approval of the ordering party for them in the acceptance report of these works, the supply of the service referred to in Article 63 of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ of 2006, No. L347, p. 1, as amended) under such a transaction occurs: – when the construction or construction and assembly works are actually performed, or – when performance of these works is approved by the contracting party, expressed in the acceptance report?"*

In addition, with decision of 10 July 2017 in case No. I SA/Wr 123/17 (CJEU case No. C-566/17 Związek Gmin Zagłębia Miedziowego), the Voivodship Administrative Court in Wrocław referred to the CJEU with the following question: *"Do Article 168(a) of Council*

*Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ EU of 11 December 2006 No. L 347, p. 1, as amended; hereinafter: Directive 2006/112/EC) and the principle of VAT neutrality contradict the national practice according to which a full right to deduct input tax related to the purchase of goods and services used both for the purposes of taxpayers' transactions falling within the scope of VAT (taxed and exempt) and outside the scope of VAT, due to the lack of methods and criteria for the division of input tax amounts with reference to the above-mentioned types of transactions in the national act?"*

With decision of 12 October 2017 in case No. II SA/Ke 337/17, the Voivodship Administrative Court in Kielce referred to the CJEU with the following questions: *"1. Must Article 1(1)(f) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification) – OJ EU L of 2015, 241.1, be interpreted as meaning that the 'technical regulations,' whose draft should be communicated to the Commission in accordance with Article 5(1) of this Directive, include the statutory provision introducing the restriction on the location of wind farms by establishing their minimum distance from a residential building or mixed-use building, which includes a residential function, as equal to or greater than ten times the height of wind farms measured from ground level to the highest point of the structure, including technical elements, in particular the rotor with blades; 2. Must Article 15(2)(a) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L of 2006, 376.36) be interpreted as meaning that the laws which make access to a service activity or the exercise of it subject to compliance with territorial restriction, in particular in the form of a minimum geographical distance between providers, of which the Member State notifies the Commission in accordance with Article 15(7) of this*

*Directive, include the statutory provision introducing the restriction on the location of wind farms by establishing their minimum distance from a residential building or mixed-use building, which includes a residential function, as equal to or greater than ten times the height of wind farms measured from the ground level to the highest point of the structure, including technical elements, in particular the rotor with blades; 3. Must provisions of Article 3(1)(1) and Article 13(1)(1) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L of 2009, 140.1, as amended) be interpreted as precluding the regulation of the national law introducing the restriction on the location of wind farms by establishing their minimum distance from a residential building or a mixed-use building, which includes a residential function, as equal to or greater than ten times the height of wind farm measured from the ground level to the highest point of the structure, including technical elements, in particular the rotor with blades?"*

## Preliminary rulings in response to questions from the Polish administrative courts

In judgment of 18 January 2017 in case C-37/16 Minister Finansów v SAWP, in response to a question referred for a preliminary ruling submitted by the Supreme Administrative Court, the Court of Justice decided: *"Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, must be interpreted as meaning that holders of reproduction rights do not make a supply of services, within the meaning of that directive, to producers and importers of blank media and of recording and reproduction devices on whom organisations collectively managing copyright and related rights levy on behalf of those right holders, but in their own name, fees in respect of the sale of those devices and media."*

In judgment of 11 May 2017 in case C-36/16 Minister Finansów v Posnania Investment SA, in response to a question referred for a preliminary ruling submitted by the Supreme Administrative Court, the Court of Justice decided: *"Articles 2(1)(a) and 14(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the transfer of ownership of immovable property by a person subject to value added tax, for the benefit of the State Treasury or a local authority of a Member State, occurring, as in the main proceedings, in payment of tax arrears, does not constitute a supply of goods for consideration that is subject to value added tax."*

In judgment of 21 September 2017 in case C-605/15 Minister Finansów v Aviva Towarzystwo Ubezpieczeń na Życie S.A. w Warszawie, in response to a question referred for a preliminary ruling submitted by the Supreme Administrative Court, the Court of Justice decided: *"Article 132(1)(f) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted to the effect that the exemption provided for in that provision relates only to independent groups of persons whose members carry on an activity in the public interest referred to in Article 132 of that directive and that, therefore, the services supplied by independent groups of persons whose members carry on an economic activity in the area of insurance, which does not constitute such an activity in the public interest, are not entitled to that exemption."*

In judgment of 9 November 2017 in case C-37/16 Minister Finansów v AZ, in response to a question referred for a preliminary ruling submitted by the Supreme Administrative Court, the Court of Justice decided: *"Article 98 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that it does not preclude – provided that the principle of fiscal neutrality is complied with, which is for the referring court to ascertain – national legislation, such as that at issue in the*

*main proceedings, which makes the application of the reduced VAT rate to fresh pastry goods and cakes depend solely on the criterion of their 'best-before date' or their 'use-by date'."*

In judgment of 16 November 2017 in case C-308/16 Kozuba Premium Selection sp. z o.o. v Dyrektor Izby Skarbowej w Warszawie, in response to a question referred for a preliminary ruling submitted by the Supreme Administrative Court, the Court of Justice decided: *„Articles 12(1)(a) and 135(1)(j) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding a national law, such as that at issue in the main proceedings, which makes the VAT exemption on the supply of buildings subject to the condition that the first occupation thereof arises in the context of a taxable transaction. The same provisions must be interpreted as not precluding such a national law from making that exemption subject to the condition, in the case of the 'upgrade' of an existing building, that the costs incurred have not exceeded 30% of the initial value thereof, provided that that concept of 'upgrade' is interpreted in the same way as that of 'conversion' in Article 12(2) of Directive 2006/112, namely as meaning that the building concerned must have been subject to substantial modifications intended to modify the use or alter considerably the conditions of occupation."*

In judgment of 13 December 2017 in case C-403/16 Soufiane El Hassani v Minister Spraw Zagranicznych, in response to a question referred for a preliminary ruling submitted by the Supreme Administrative Court, the Court of Justice decided: *"Article 32(3) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas, as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013, in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that it requires Member States to provide*

*for a judicial appeal procedure against decisions refusing visas, the procedural rules for which are a matter for the legal order of each Member State in accordance with the principles of equivalence and effectiveness. Those proceedings must, at a certain stage of the proceedings, guarantee a judicial appeal."*

In judgment of 20 December 2017 in case C-500/16 Caterpillar Financial Services Sp. z o.o., in response to a question referred for a preliminary ruling submitted by the Supreme Administrative Court, the Court of Justice decided: *"The principles of equivalence and effectiveness, read in the light of Article 4(3) of the TEU, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which allows a request for a refund of the overpayment of VAT to be refused where that request was submitted by the taxable person after the expiry of the five-year limitation period although the Court held, after the expiry of that period, that the payment of the VAT which is the subject of that request for a refund was not payable."*

## Enforcement of the CJEU rulings

Following the issuance of preliminary rulings by the CJEU in 2017, the Supreme Administrative Court resumed the suspended proceedings in cases in which it had previously referred for preliminary rulings, as well as in other cases where the suspension was justified by a previous question for preliminary ruling to the Court. In addition, administrative courts referred to the justification of the CJEU in settling cases whose result was dependent on the Court's response and in cases analogous to those where the question were submitted.

On 1 September 2017, the Supreme Administrative Court issued a judgment in case I FSK 864/14 as a result of resumption of previously suspended proceedings. The proceedings were resumed after the judgment in case C-36/16 Posnania Investment, in which the

*Administrative courts referred to the justification of the CJEU in settling cases whose result was dependent on the Court's response and in cases analogous to those where the question were submitted.*

Court responded to the question for a preliminary ruling of the Supreme Administrative Court. When deciding in this case, the Supreme Administrative Court referred to the judgment in Case C-36/16, in which the Court ruled that "Articles 2(1)(a) and 14(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the transfer of ownership of immovable property by a person subject to value added tax, for the benefit of the State Treasury or a local authority of a Member State, occurring, as in the main proceedings, in payment of tax arrears, does not constitute a supply of goods for consideration that is subject to value added tax." The Court emphasised that "it follows from the Court's case-law that the purpose of that provision is to ensure equal treatment as between a taxable person who applies goods for his own private use or for that of his staff, on the one hand, and a final consumer who acquires goods of the same type, on the other (see, to that effect, judgment of 17 July 2014, BCR Leasing IFN, C-438/13, EU:C:2014:2093, paragraph 23 and the case-law cited)." In the light of the presented considerations from the judgment of the CJEU, it was found that the transfer of ownership of immovable property at the company's request to the local self-government unit (commune) in exchange for arrears with betterment levy (which are tax arrears) is not subject to the tax on goods and services. However, if VAT on the above goods or parts thereof was fully or partly deductible, such a transfer should be treated as a supply of goods for consideration, pursuant to Article 16 of the VAT Directive. For these reasons, the Supreme Administrative Court dismissed the cassation appeal.

An example of a ruling in which the Supreme Administrative Court settled the case in the enlarged composition of seven judges following a preliminary ruling issued by the CJEU is the judgment of the Supreme Administrative Court of 26 June 2017, case No. I FSK 1718/13. When deciding in the case, the Supreme Administrative Court took into account judgment of the Court in Case C-37/16

Stowarzyszenie Artystów Wykonawców Utworów Muzycznych i Słowno-Muzycznych SAWP. The Court decided that in the light of Article 5(1)(1), Article 8 (1) and (2a) and Article 30(3) of the Act of 11 March 2004 on the Goods and Services Tax (Dz. U. of 2011, No. 177, item 1054, as amended) fees charged by collective management organisations within the meaning of Article 104(1) of the Act of 4 February 1994 on copyright and related rights (Dz. U. of 1994, No. 24, item 83, as amended) from producers and importers of tape recorders, video recorders and other similar devices, as well as blank carriers do not constitute payment for services provided and therefore are not subject to tax on goods and services.

In turn, in judgments of 23 November 2017, case No. I FSK 312/16, and of 8 December 2017, case No. I FSK 567/16, the SAC referred to the judgment of the CJEU of 16 November 2017 in case No. C-308/16 Kozuba Premium Selection sp. z o.o., issued in response to a question for a preliminary ruling referred by the SAC in case No. I FSK 1573/14. In particular, in judgment in case No. I FSK 312/16 the SAC, assessing the decision of the court of first instance, took into account the CJEU's interpretation of the concept of "first occupation" and admitted that Article 2(14) of the Act on VAT is an incorrect implementation of the relevant provisions of Directive 112 to the domestic legal order; the Court also referred to the CJ's argumentation regarding the interpretation of the term "conversion" included in Article 12(2) of Directive 112, in the context of the interpretation of the concept of "improvement" of a building or structure used in the Act on VAT in connection with the possibility of applying a tax exemption.

## Refusal to refer the request for a preliminary ruling

The administrative court refused to refer a question for preliminary ruling to the CJEU, requested by the party, as it recognised that the legal issue in the case raises no doubts and thus does not require the procedure provided for in Article 267 of the TFEU (the so-called

acte clair) or is sufficiently explained in the current case-law of the CJEU (the so-called acte éclairé) (see e.g. SAC judgments: 19 January 2017 r., Case No. II GSK 5388/16; 1 November 2017, Case No. I GSK 37/16; 20 November 2017 r., Case No. II GSK 2860/17; 22 November 2017, Case No. II FSK 3165/17).

## Suspension of the proceedings on the basis of the question referred for a preliminary ruling

In connection with the question for a preliminary ruling referred in a given case, the court proceedings were suspended. Administrative courts also suspended the proceedings in cases other than those in which the question for a preliminary ruling was referred, due to the fact that an issue raised in the question was analogous to the legal problem in the case under consideration. According to Article 125 § 1(1) of the Law on Proceedings before Administrative Courts, the court may suspend the proceedings ex officio, if the settlement of the case depends on the result of another administrative, administrative court or court proceedings, before the Constitutional Tribunal or before the Court of Justice of the European Union. The issue of preliminary ruling assumes the existence of a close connection between the case heard in the proceedings before the administrative court and the issue being the subject of the preliminary ruling proceedings. The connection of both proceedings must be real and direct. Therefore, the justification of the decision to suspend must indicate such a connection between the case being heard and the case pending before the CJEU, that is, to what extent the question referred by another court to the CJEU will affect the decision in this case before the administrative court (see order of the SAC of 30 August 2017 r., Case No I FSK 210/17, in which the Court decided to suspend the proceedings because the previus preliminary question of the Voivodship Administrative Court in Wrocław, Case No I SA/Wr 123/17).

## Conclusions

Administrative courts have referred to the European law and jurisprudence (i.e. primarily to the European Union law, but also to the ECHR) and have assessed the legality of decisions and other administrative settlements taking into account the EU regulations and the Polish law implementing the EU law. The European law was also used in the process of interpreting the Polish law.

**Similarly to the previous years, administrative courts have been given the opportunity to refer questions for a preliminary ruling concerning interpretation of the EU law in 7 cases. Administrative courts have also referred in their case-law the standards of protection of human rights and fundamental rights defined in the ECHR and in the CFREU.**

Here, of great importance is the resolution of the Supreme Administrative Court of 16 October 2017, which determines: **"The basis for the resumption of the proceedings referred to in Article 272 § 3 of the Act of 30 August 2002 the Law on Proceedings before Administrative Courts... may be a decision of the Court of Justice of the European Union, issued as part of a question referred for a preliminary ruling, even if this decision was not delivered to the party bringing the complaint requesting reopening of proceedings."** The reasons of the resolution provide arguments for accepting the right of an individual to reopen court proceedings due to the fact that a legally binding decision is against the EU law, regardless of whether such a decision was delivered to the party. They are as follows: (a) provision of an effective remedy for the exercise of the rights of an individual to take all possible actions by state authorities to eliminate decisions incompatible with the EU law; (b) the possibility of appropriate use of the procedure existing in national law (reopening of court proceedings due to a subsequent judgment of the Constitutional Tribunal), and showing similarity with the objectives, nature and effects of judgments issued under preliminary

ruling proceedings; (c) a guarantee of equal treatment of individuals, irrespective of whether a question for a preliminary ruling was referred in their case; d) ensuring the possibility of challenging final judgments of administrative courts to implement the principle of effectiveness of judgments of the Court of Justice; (e) the use of a single procedural measure enabling the exercise of rights derived from the EU law, irrespective of whether in cases to which the Tax Ordinance or of the Code of Administrative Proceedings applies; (f) making the possibility of challenging a decision incompatible with the EU law subject to the exhaustion of appeals in administrative proceedings; (g) minimising the risk of actions for damages against the State for decisions incompatible with the EU law."

# NON-JUDICIAL ACTIVITIES OF THE ADMINISTRATIVE COURTS

## General remarks

Duties of the President of the Supreme Administrative Court in the filed of hierarchical judicial and organizational activities of administrative courts are regulated in the Law on the System of Administrative Courts, executive acts, i.a. regulation of the President of the Republic of Poland of 18 September 2003 on detailed procedures for the supervision of administrative activities of voivodship administrative courts and the resolution Rules of the internal procedure and organisation of the Supreme Administrative Court adopted by the General Assembly of Judges of the Supreme Administrative Court on 8 November 2010.

**The President of the Supreme Administrative Court exercises the hierarchical judicial supervision through the Judicial Decisions Bureau, while the tasks related to the creating the conditions for the efficient functioning of administrative courts, in particular in matters of finance, human resources, administration and economy, the President of the Court performs through the Chancellery of the President.** Tasks concerning providing of public information,

information regarding the competences of administrative courts and the status of cases provides the Court Information Division.

*The Judicial Decisions Bureau analyses decisions of the voivodship administrative courts and the Supreme Administrative Court on a regular basis.*

## Judicial Decisions Bureau

The Judicial Decisions Bureau performs tasks related to carrying out activities by the President of the Supreme Administrative Court regarding the efficiency of court proceedings and jurisprudence of administrative courts. In the area of supervisory activities related to the consistency of jurisprudence of administrative courts, the Judicial Decisions Bureau analyses decisions of the voivodship administrative courts and the Supreme Administrative Court on a regular basis. In the event of discrepancies in the case-law, appropriate conclusions are presented to the President of the Supreme Administrative Court. It also examines the legitimacy of requests of various entities to the President of the Supreme Administrative Court to submit an application, pursuant to Article 191(1)(1) of the Constitution of the Republic of Poland, to the Constitutional Tribunal. The Judicial Decisions Bureau also prepares opinions on draft legal acts sent to the President of the Supreme Administrative Court.

**In 2017, the Economic Analysis Team was established in the Bureau, dealing, among others, with the preparation of analytical studies on the economic and financial issues of various legal institutions regulated in material and procedural law, which appear in the course of hearing cases before administrative courts.**

## Chancellery of the President of the Supreme Administrative Court

The Chancellery of the President of the Supreme Administrative Court provides conditions for the efficient operation of the adminis-

trative judiciary, particularly in terms of financing, human resources, administrative and economic matters. Performing the above mentioned general tasks, the Chancellery took in 2017 the appropriate actions for ensuring the proper functioning of the administrative courts, in particular: the adequate office, technical and IT equipments. The Chancellery carried out also investment tasks related to securing the appropriate conditions of the premises of the administrative courts and in the scope of implementation of the IT system for administrative court proceedings.

There were also the tasks of the Chancellery relating to the organization of the international cooperation of the administrative courts, including the exchange of experience in jurisprudence and the dissemination of knowledge about the administrative judiciary. It would not be possible to carry out the above mentioned activities without proper financial security of the administrative judicature remaining within the scope of the priority tasks of the Chancellery.

## Court Information Division

*The Court Information Division informs parties regarding the competences of administrative courts and the status of cases dealt with by the Court, provides public information about the activities of the Court and media services to the Supreme Administrative Court and its President.*

In 2017, activities of the Division focused – as so far – in particular on: informing parties and interested persons regarding the competences of administrative courts and the status of cases dealt with by the Court, and making the relevant case files available, providing public information about the activities of the Court, dealing with petitions, complaints and motions, providing media services to the Supreme Administrative Court and its President, compiling court statistics, supervising the Central Base of Judgments and Information on Cases, and performing other activities related to this Base, as well as managing the work related to editing the website of the Supreme Administrative Court and the Public Information Bulletin. Pursuant to the provisions of the Act of 29 August 1997 on personal data protection, the information security controller was function-

ing in the Court Information Division. In addition, employees of the CID actively participated in the popularising activities, inter alia, through the co-organisation of the "Long Night of Museums" in the Supreme Administrative Court and the action "Lesson in court."

# International cooperation of the Supreme Administrative Court

## Introduction

*The Supreme Administrative Court maintains regular international contact with the highest administrative courts in Europe and in the world.*

The Supreme Administrative Court maintains regular international contact with the highest administrative courts in Europe and in the world. The court is a member of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (ACA-Europe) and the International Association of Supreme Administrative Jurisdictions (IASAJ). Both associations organise conferences on the current issues regarding the functioning of the administrative judiciary and exchange programs for judges. Administrative court judges also participate in the work of the Association of European Administrative Judges (AEAJ) and improve their professional qualifications by taking part in seminars and internships organised by the European Judicial Training Network (EJTN).

The Court maintained partnership contacts with the Academy of European Law (ERA) based in Trier – a public foundation supported by the European Union, whose objective is to disseminate knowledge about European law through the organisation of training, conferences, study visits, language courses and through didactic publications.

In 2017 the Supreme Administrative Court maintained relations with the Federal Administrative Court of the Federal Republic of Germany and the Supreme Administrative Court of the Republic of Lithuania.

International activities in the field of exchange of experience related to jurisprudence are also carried out by the voivodship administrative courts.

## ACA-Europe

In March 2017, the Vice-President of the Supreme Administrative Court – the President of the General Administrative Chamber attended a seminar on the issues of administrative sanctions, organised in Ljubljana by the ACA-Europe in cooperation with the Administrative Chamber of the Supreme Court of Slovenia.

The President of the Supreme Administrative Court together with the President of the General Administrative Chamber took part in the annual General Assembly and the seminar of the ACA-Europe entitled "Better regulation" organised in May 2017 in the Hague in cooperation with the Council of State of the Kingdom of the Netherlands.

**In September 2017, a seminar entitled "Public order, national security and rights of third-country nationals in cases concerning immigration and citizenship," organised by the ACA-Europe and the Supreme Administrative Court, with the participation of the Voivodship Administrative Court in Kraków, was held in Kraków.**

The President of the General Administrative Chamber acted as the Treasurer in the Board of the ACA-Europe and in this capacity participated in the meetings of this Board in 2017. He also participated in the meetings of the working group in Brussels dealing with work on the EU Justice Scoreboard 2017 and development of a questionnaire on this subject.

As part of membership in the ACA-Europe, the Supreme Administrative Court publishes selected judgments with the element of European law in the JuriFast database and constantly updates materials in English concerning Polish administrative judicature

published on the association's website, as well as actively participates in the exchange of information on legal issues related to the remit of administrative judiciary at the discussion forum of the ACA-Europe.

## IASAJ

In September 2017, the President of the General Administrative Chamber participated in a seminar "Electronic access to the Courts," organised by the IASAJ in cooperation with the Council of State of the Italian Republic, and represented the Supreme Administrative Court, which is a member of the Management Committee, at the Board meeting of the IASAJ.

## AEAJ

As part of cooperation with the AEAJ, representatives of the Supreme Administrative Court and the Voivodship Administrative Court in Gliwice took part in a seminar on administrative cooperation in tax matters, organised by the AEAJ (Tax Section) and European Commission (Directorate-General for Taxation and Customs Union) in cooperation with the Supreme Court of the Republic of Slovenia.

In turn, the President of the AEAJ – judge of the Administrative Court in Vienna, took part in a Polish-Ukrainian seminar "The Reforms of Supreme Judiciary in Poland and in Ukraine," organised by the Supreme Administrative Court, and delivered a paper "Models of Supreme Courts in Europe – their role in consistency of jurisprudence and political position."

## EJTN

In 2017, the Supreme Administrative Court implemented the Agreement with the European Justice Training Network signed in November 2016 as part of which judges of Polish administrative courts took part in training projects organised by the EJTN – seminars and internships and study visits.

Judges of the Supreme Administrative Chamber of the Supreme Administrative Court made study visits to the European Court of Human Rights in Strasbourg, and judge of the Financial Chamber made a study visit to the Court of Justice of the European Union in Luxembourg.

Two judges of the Financial Chamber of the Supreme Administrative Court served internships with: the Supreme Administrative Court of Portugal and the Supreme Administrative Court of the Kingdom of Sweden.

At the turn of June and July 2017, judge Adriana Andonie of the Court of Appeal in Târgu Mureș (Romania) was staying in the Supreme Administrative Court as part of the programme for the exchange of judges of administrative courts organised by the EJTN. The visit included meetings with the Vice-Presidents of the Supreme Administrative Court – the Director of the Judicial Decisions Bureau and the President of the Commercial Chamber, the management of the Voivodship Administrative Court in Warsaw, participation in hearings before the Supreme Administrative Court and the Voivodship Administrative Court, working meetings with judges of the Voivodship Administrative Court in Warsaw and visits to the Supreme Court, the National Council of the Judiciary, the Office of the Commissioner for Human Rights, the Office for Foreigners, and the European Border and Coast Guard Agency (FRONTEX). Judge Andonie also gave a lecture on administrative judiciary in Romania to judges, judge assistants and legal specialists of the Supreme Administrative Court.

*Within the EJTN Exchange Programme three foreign administrative judges were staying in the Supreme Administrative Court.*

At the turn of September and October 2017, judge Renate Trenz from the Administrative Court of the Saarland in Saarlouis (Germany) – judge liaison officer of the European Asylum Support Office (EASO) in this court – was serving an internship with the Supreme Administrative Court and the Voivodship Administrative Court in

Gdańsk. The internship in the Supreme Administrative Court included meetings with the President of the General Administrative Chamber, the Deputy Director of the Judicial Decisions Bureau, the management of the Voivodship Administrative Court in Warsaw, participation in hearings in the Supreme Administrative Court and the Voivodship Administrative Court, as well as working meetings in the Office of the Commissioner for Human Rights, the National Council of the Judiciary, the Refugee Council, and the European Border and Coast Guard Agency (FRONTEX). The visit of the German judge to the Voivodship Administrative Court in Gdańsk included meetings with the President of the Voivodship Administrative Court and the President of the Court Information Division and participation in hearings before the Voivodship Administrative Court in Gdańsk and the Regional Court in Gdańsk. Judge Trenz also delivered a lecture on administrative judiciary in Germany and Poland to judges, assessors, referendaries and judge assistants of the Voivodship Administrative Court.

In December 2017, judge Pierre Sanson from the Administrative Court in Lille (France) was serving a specialist internship in the field of asylum and refugee law with the Supreme Administrative Court. In addition to visits to the General Administrative Chamber of the Supreme Administrative Court and the Voivodship Administrative Court in Warsaw and participation in hearings before the Supreme Administrative Court and the Voivodship Administrative Court, the internship included visits to the European Border and Coast Guard Agency (FRONTEX), the Office of the Commissioner for Human Rights, the Representation of the United Nations High Commissioner for Refugees in Poland, the Office for Foreigners, the Refugee Council, and the Helsinki Foundation for Human Rights.

Also as part of cooperation with the EJTN and the National School of Judiciary and Public Prosecution, in June, September and October, groups of judges and public prosecutors from Bulgaria,

Spain, the Netherlands, France, Lithuania, Germany, Portugal, Romania, Sweden, Hungary and Italy, staying in Poland as part of a programme of internship exchange for judges, visited the Supreme Administrative Court.

## ERA

As part of cooperation with the Academy of European Law (ERA), in 2017, the Supreme Administrative Court co-organised with the ERA the seminar "Court proceedings in the matter of violation of EU water legislation."

In October 2017, judge from the General Administrative Chamber of the Supreme Administrative Court represented the Polish administrative judiciary on behalf of the President of the Supreme Administrative Court during the jubilee congress "The authority of EU law – Do we still believe in it?," organised in Trier (Germany) on the 25th anniversary of the ERA.

## Activity of the judges within other judicial associations and fora

Apart from the activity of the Supreme Administrative Court as part of membership in the European and international associations, the participation of judges in transnational activities should also be noted.

In **January 2017**, the President of the General Administrative Chamber of the Supreme Administrative Court, acting as the national coordinator for contacts with the European Asylum Support Office, participated in the annual co-ordination meeting of the EASO, organised at the seat of the Office in Valetta, Malta.

In **January 2017**, three judges of the Financial Chamber of the Supreme Administrative Court took part as lecturers in the international scientific conference in Kiev on "AntiBEPS regulations in

Ukraine and EU", organised by the Taras Shevchenko National University of Kiev and the Ukrainian Tax Advisers Association. Polish judges presented papers on theoretical and practical aspects of tax avoidance; the controversy over the introduction of a provision to the Polish tax system on the prevention of tax avoidance and economic interpretation as a way of strengthening the tax system.

Also in **January 2017**, judge of the Financial Chamber of the Supreme Administrative Court represented Polish administrative judiciary on behalf of the President of the Supreme Administrative Court during the formal inauguration of another judicial year of the European Court of Human Rights in Strasbourg. The judge also took part in the seminar on the asylum law accompanying the inauguration entitled "The principle of non-refoulement as an institution of international law and the role of the judiciary in its implementation".

In **March 2017**, the President of the General Administrative Chamber took part in the celebrations of the sixtieth anniversary of signing the Treaty of Rome, which were held at the seat of the Court of Justice of the European Union in Luxembourg, and the Forum of judges and public prosecutors "The network of EU justice: guarantee of a high-quality system of justice" organised on this occasion.

In **May 2017**, two representatives of the Supreme Administrative Court took part in the Multilateral Trainee Programme for Judges of Administrative Courts and Members of the Judiciary, organised by the German Foundation for International Legal Cooperation and the Union of German Administrative Judges, including participation in seminars, the all-German conference of administrative judges "Leipzig Dialogue in Administrative Judiciary" organised in the Federal Administrative Court in Leipzig, and internship in the Administrative Court and Higher Administrative Court of Land Schleswig-Holstein.

In **June 2017**, the President of the General Administrative Chamber participated in the workshops organised by the European Chapter of the International Association of Refugee Law Judges (IARLJ) held at the European Academy in Berlin.

In **September 2017**, the President of the General Administrative Chamber took part in a meeting of representatives of the highest national courts of the EU concerning the project called "European Union Judicial Network," organised by the Court of Justice of the European Union in Luxembourg. The project "European Union Judicial Network" aims to create a special internet platform including case-law of the Court of Justice of the European Union, national case-law of relevance to the EU law and information on application of the international and EU law.

Also in **September 2017**, judge of the Supreme Administrative Court participated in the XVI International Scientific Conference held in Vilnius on the optimisation of organisation and legal solutions concerning public revenues and expenditures in social interest, during which he gave a lecture on "The principles of proportionality in VAT law." The meeting was organised by the by the University of Białystok – Faculty of Economics and Computer Science in Vilnius and the Centre for Information and Research Organisation in Public Finance and Tax Law of Central and Eastern European Countries.

*The representatives of the Supreme Administrative Court took part in the important events organised by the European Courts (CJEU, ECtHR).*

The President of the General Administrative Chamber along with the judge of the Voivodship Administrative Court in Warsaw participated in the international conference organised in Belgrade in **September 2017** by the Organisation for Security and Co-operation in Europe (Mission to Serbia) devoted to "Organisations and Competences of Administrative Judiciary".

Also in **September 2017**, the conference "Climate Change and the Judiciary", organised by the European Union Forum of Judges for the

Environment (EUFJE), was held in the Merton College of the University of Oxford. At the conference, Polish administrative judiciary was represented by a judge of the General Administrative Chamber of the Supreme Administrative Court, a member of the EUFJE Board and a judge of the Voivodship Administrative Court in Warsaw.

## Bilateral cooperation of the SAC

*Federal Administrative Court of Germany*

The partnership with the Federal Administrative Court was initiated by a visit of the German delegation to the Supreme Administrative Court and a joint judicial Polish-German seminar in November 2015, whose successive editions are to be held every two years alternately in Poland and in Germany. One of the established forms of cooperation is also the exchange of judges. Cooperation with the FAC in 2017 had the form of an exchange of judges and a Polish-German seminars.

In April 2017, judge Prof. Dr. Harald Dörig – Vice-Presiding Judge of the First Senate of the Federal Administrative Court in Leipzig and Honorary Professor of the Friedrich-Schiller University in Jena, served judge internship with the Supreme Administrative Court and the Voivodship Administrative Court in Kraków. The programme included meetings with the President of the Supreme Administrative Court and the Vice-President of the Supreme Administrative Court – Presidents of the General Administrative Chamber and the President of the Voivodship Administrative Court in Kraków, visits to the General Administrative Chamber of the Supreme Administrative Court and the Voivodship Administrative Courts in Warsaw and Kraków, as well as visits to the Supreme Court, the National Council of the Judiciary, the Office of the Commissioner for Human Rights, the Office for Foreigners and the European Border and Coast Guard Agency (FRONTEX). During the internship, judge Dörig gave several lectures on administrative justice in Germany for judges and employees of the Supreme

Administrative Court and the Voivodship Administrative Court in Kraków, and – under the patronage of the President of the Supreme Administrative Court and the Ambassador of the Federal Republic of Germany to Poland – at the School of German Law of the University of Warsaw and the Jagiellonian University in Kraków.

In turn, in September 2017, at the invitation of Prof. Dr. Dr. h.c. Klaus Rennert, President of the Federal Administrative Court, delegation from the Supreme Administrative Court along with the Presidents of the Voivodship Administrative Courts in Gliwice, Kraków, Poznań, Warsaw and Wrocław visited the Federal Administrative Court in Leipzig. Participants from the German side included judges of the FSA and the Presidents of Higher Administrative Courts of Berlin-Brandenburg, Lower Saxony and Thuringia as well as the President of the Administrative Court in Dresden. The programme of the visit included a Polish-German seminar during which Polish and German judges presented papers on the following subjects: "Administrative judiciary and separation of powers", "Large size undertakings as the subject of proceedings before administrative court", and "Supreme court as an appeal court".

***Supreme Administrative Court of Lithuania***

As part of contacts with the Supreme Administrative Court of the Republic of Lithuania, at the invitation of the President of the Lithuanian Court, Gintaras Kryževičius, the delegation of the Supreme Administrative Court visited the Supreme Administrative Court of Lithuania. The visit included, apart from meetings in the Lithuanian Supreme Administrative Court, a visit to the Constitutional Court of Lithuania. The subject of the talks was the position in the political system, competences and organisational structure of administrative courts of both countries, as well as issues related to the computerisation of administrative court proceedings in Poland and Lithuania. The meetings were also attended by the President of the Vilnius Regional Administrative Court and the President of the Voivodship Administrative Court in Białystok. The purpose of the visit of the Polish delegation was to es-

tablish closer cooperation at the level of both Lithuanian and Polish supreme administrative courts, and courts of first instance.

## Visits of foreign delegations

In **January 2017**, delegation from the Council for the Judiciary of the Kingdom of the Netherlands, led by judge Frits Bakker – Chairman of the Council for the Judiciary, member of the Executive Board of the European Network of Councils for the Judiciary (ENCJ), visited the Supreme Administrative Court.

*Numerious high court judges and academics representing various Euroepan countries paid in 2017 visits to the Supreme Administrative Court.*

In **March 2017**, the Supreme Administrative Court received a visit of delegation from the High Council of Justice of Ukraine, led by Igor Benedysiuk – Chairman of the Council.

Also in **March 2017**, a delegation from the Ministry of Justice of Ukraine, led by Ivan Lishchyna – Government Plenipotentiary for proceedings before the European Court of Human Rights, was received by the Supreme Administrative Court. The subject of the meeting were practical aspects of enforcement of judgments of the ECtHR in both countries, in particular cooperation of national institutions in this area and the issue of enforcement of judgments of administrative courts in Poland and Ukraine by public administration authorities.

In **April 2017**, the Supreme Administrative Court received a delegation of academics from the Faculty of Law of the China University of Political Science and Law in Beijing, composed of: Huang Yongqing, Ding Peng, Chen Xu, and Wang Dan, which was staying in Poland at the invitation of the Faculty of Law and Administration of the University of Warsaw.

In **May 2017**, a delegation of the Judicial Council of the Slovak Republic, led by judge of the Supreme Court, Jana Bajánková – President of the Council, visited the Supreme Administrative Court.

Also in **May 2017,** the Supreme Administrative Court received a delegation of the Judicial Council of the Republic of Armenia, led by Arman Mkrtumyan – President of the Cassation Court, Chairman of the Council, staying in Poland at the invitation of the National Council of the Judiciary.

In **November 2017**, the Supreme Administrative Court hosted a delegation of judges of supreme courts of Ukraine and academics from the Taras Shevchenko National University of Kiev. The visit to the Supreme Administrative Court included a meeting with the Vice-President of the Court – Director of the Judicial Decisions Bureau, and a Polish-Ukrainian seminar of administrative judges on "The Reforms of Supreme Judiciary in Poland and in Ukraine," with the participation of the Vice-President of the Supreme Administrative Court – Director of the Judicial Decisions Bureau, judges – heads of divisions of the Judicial Decisions Bureau, judges and officials of the Supreme Administrative Court. The subject of the seminar were the historical aspects of the establishment of administrative courts in Ukraine, constitutional status of administrative justice in Ukraine, the model of cassation proceedings in the Ukrainian judiciary, the main features of judicial reform in Poland, and models of supreme courts. In addition, new procedural instruments in the Ukrainian Code of Administrative Judiciary of 2017, recent changes in the Ukrainian administrative judiciary in the field of dispute settlement in tax matters, reform of procedural institutions in the Polish administrative court proceedings of 2015 and the status of a supreme court judge were discussed. The stay in Poland also included a visit to the Law Clinic of the Faculty of Law and Administration of University of Łódź and the Voivodship Administrative Court in Łódź.

In **December 2017**, a group of judges from Macedonia and Serbia was staying in the Supreme Administrative Court and the Voivodship Administrative Court in Warsaw as a part of programme of

study visits for refugee law judges of administrative courts, organised by the European Asylum Support Office (EASO). The visit included meetings with the President of the General Administrative Chamber and the national coordinator for contacts with the EASO, the President of the 2nd Division of the General Administrative Chamber, the President of the 4th Division of the Voivodship Administrative Court in Warsaw and a lawyer from the Department of Asylum Support of the EASO. The subject of the meetings were issues related to Polish regulations on asylum, the jurisprudence of Polish administrative courts in cases of refugees and foreigners, jurisdiction and proceedings before the Supreme Administrative Court and the Voivodship Administrative Court, and the activity of the EASO cooperation network with members of courts and tribunals. The judges also paid a visit to the Office of the Commissioner for Human Rights, the Office for Foreigners and had the opportunity to meet with a member of the Refugee Council. In addition, a visit was made to the European Border and Coast Guard Agency (FRONTEX).

## International activities of the voivodship administrative courts

In 2017, the voivodship administrative courts also maintained international contacts with administrative courts in Europe and welcomed delegations of judges from other Member States.

In **June 2017**, Dagmar Merz, Vice-President of the Higher Administrative Court of Berlin-Brandenburg, and Dr. Peter Chvosta, judge of the Federal Administrative Court in Vienna, paid a visit to the Voivodship Administrative Court in Warsaw. In October 2017, the Warsaw Court received the visit of judges of the Higher Administrative Court of Berlin-Brandenburg, Rudolf Becker and Gregor Nocon, and judge of the Federal Administrative Court in Vienna, Barbara Weiss. Both visits included participation in train-

ing conference for judges of the Voivodship Administrative Court in Warsaw, organised by the WSA in Warsaw, with the participation of the judges of the Supreme Administrative Court.

In **June 2017,** the President of the Voivodship Administrative Court in Warsaw along with the judge of the Voivodship Administrative Court in Warsaw and the President of the Voivodship Administrative Court in Poznań took part in the 25th anniversary of the establishment of the Constitutional Court of the Land of Brandenburg.

In **September 2017**, the President of the Voivodship Administrative Court in Warsaw together with this Court in Warsaw paid a visit to the Supreme Administrative Court of Austria in Vienna, the Federal Administrative Court (Verwaltungsgerichtshof), and the Federal Finance Court. In the Administrative Court, the delegation was received by the President of the Court – Prof. Rudolf Thienel and his colleagues. The subject of the discussion was the scope and mode of the review procedure in administrative court proceedings, including problems resulting from the substantive adjudication by the Austrian administrative courts. On the other hand, during the visit to the Federal Finance Court, the discussion centred on the similarities and differences in administrative court proceedings in Poland and Austria, with particular focus on the reform of the administrative judiciary in Austria of 2012. The delegation also had the opportunity to participate in the asylum hearing as an audience. The delegation also met with the President of the Federal Financial Court – Dr. Daniel Moser, and the judges of this court.

*In 2017, the voivodship administrative courts also maintained international contacts with administrative courts in Europe and welcomed delegations of judges from other Member States.*

In **December 2017**, the Voivodship Administrative Court in Warsaw received a delegation of administrative judges from the Republic of Macedonia and the Republic of Serbia staying in Poland as part of a programme of study visits for judges of administrative courts ruling on refugee matters, organised by the European Asylum Support Office (EASO).

The management of the Voivodship Administrative Court in Warsaw also received visits of judges from Romania, Germany and France staying in Warsaw as part of exchange programmes for judges, organised by the European Judicial Training Network (EJTN).

In **April 2017,** the Voivodship Administrative Court in Kraków received judge Prof. Harald Dörig for a one week internship as part of bilateral cooperation between the Supreme Administrative Court and the Federal Administrative Court of Germany.

In **September 2017**, the President of the Voivodship Administrative Court in Kraków took part in the leave ceremony of the former President of the Higher Administrative Court of Thuringia, Prof. Dr. Hartmut Schwan, and the assumption of this office by Dr. Klaus Hinkel.

Moreover, in **September 2017**, the Voivodship Administrative Court in Kraków was the co-organiser of the seminar "Public order, national security and rights of third-country nationals in cases concerning immigration and citizenship," organised by the ACA-Europe and the Supreme Administrative Court.

In turn, in **October 2017**, the judge of the Voivodship Administrative Court in Kraków went on an internship to the Administrative Tribunal of the Region Friuli-Venezia Giulia in Trieste (Italy).

In **September 2017**, a delegation of the Higher Administrative Court of Berlin-Brandenburg, led by the President of this Court, Joachim Bucheister, was staying in the Voivodship Administrative Court in Poznań. The subject of the meeting were issues related to building proper relations between a judge and a citizen, the culture of the judge's work; administrative supervision of the president of the court and the head of the department over court proceedings, and legal issues of restitution of expropriated property. Polish and German judges presented papers devoted to this issue.

In **October 2017**, the Voivodship Administrative Court in Poznań received a delegation of judges from courts of the Land of Lower Saxony: the Higher Administrative Court, the Constitutional Court, the Administrative Court in Lüneburg, and the Social Court in Lüneburg. The delegation was lead by Dr. Thomas Smollich – President of the Higher Administrative Court, and Dr. Herwig van Nieuwland – President of the Constitutional Court. The following issues were discussed during the meeting: building proper relations between a judge and a citizen, the culture of the judge's work, administrative supervision of the president of the court and the head of the department over court proceedings, and the issues of restitution of expropriated property.

In **November 2017**, a delegation of judges from the Lower Saxon Financial Court in Hanover, led by Hartmut Pust, President of this Court, paid a visit to the Voivodship Administrative Court in Poznań. Topics discussed during the meeting were of a general nature – building proper relations between a judge and a citizen and the judge's work culture, but also specific, concerning the special procedure in matters related to EU funds, taxation of employees working abroad in Poland and Germany, and selected aspects of the CJEU case-law regarding child benefits in cross-border terms.

In **January 2017**, the President of the Voivodship Administrative Court in Wrocław and the President of the Voivodship Administrative Court in Gliwice took part in the leave ceremony of Prof. Dr. Claus Lambrecht, the former President of the Fiscal Court of Berlin and Brandenburg, and the introduction of the new President of this Court – Prof. Dr. Thomas Stapperfend, organised in Cottbus.

In **June 2017**, the President of the Voivodship Administrative Court in Wrocław and the President of the Voivodship Administrative Court in Gliwice, together with a delegation of judges from both Courts, participated in the international French-German-Pol-

ish conference of financial courts, organised by the Fiscal Court of the Land of Berlin and Brandenburg. As part of the above-mentioned conference, judge of the Voivodship Administrative Court in Wrocław delivered a paper entitled "Protection of good faith in the deduction of turnover tax included in the receipts of suppliers."

In **October 2017**, President of the Higher Administrative Court of Saxony, Erich Künzler, paid a visit to the Voivodship Administrative Court in Wrocław.

As part of the programme of the exchange of judges organised by the ACA-Europe association, in **September 2017,** judge of the Voivodship Administrative Court in Gliwice went on an internship to the Supreme Administrative Court (Verwaltungsgerichtshof) of Austria. Judge of the Voivodship Administrative Court in Gliwice also went on an internship to the Court of Justice of the European Union in Luxembourg in **October 2017**.

In **January 2017**, judge of the Voivodship Administrative Court in Gliwice took part in the workshop "Contribution of the EU Charter of Fundamental Rights to effective judicial protection" organised in Parma by the University of Parma and the Centre for Judicial Cooperation of the European University Institute in Florence, in cooperation with the EJTN.

In **March 2017**, judge of the Voivodship Administrative Court in Gliwice and judge of the Voivodship Administrative Court in Olsztyn participated in training on personal data protection and the right to privacy organised by the EJTN at the Centre for Studies in Lisbon. In **November 2017**, judge of the Voivodship Administrative Court in Olsztyn took part in the training in the field of asylum law organised by the EJTN at the Judicial Training Academy in Stockholm.

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Przemysław Florjanowicz-Błachut
Marta Kulikowska

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SUPREME ADMINISTRATIVE COURT
OF POLAND

G. P. Boduena 3/5, 00-011 Warsaw, Poland
phone + 48 22 551 60 00
**www.nsa.gov.pl**