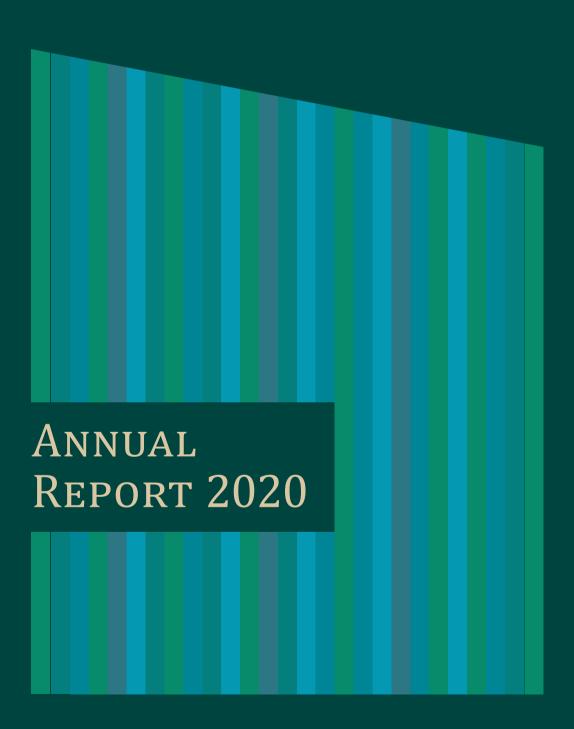
N.S.A SUPREME ADMINISTRATIVE COURT OF POLAND



Annual Report 2020

Outline of the activities of the Supreme Administrative Court and voivodship administrative courts in 2020



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Prof. dr hab. Marek Zirk-Sadowski

President of the Supreme Administrative Court "(...) the rule of law [Rechtsstaat] is inseparably linked to the institution of administrative justice - for without it there is no rule of law, and without the rule of law there is no administrative justice (...)"

(Jerzy Stefan Langrod, Zarys sądownictwa administracyjnego ze szczególnym uwzględnieniem sądownictwa administracyjnego w Polsce [Outline of administrative justice with particular reference to administrative justice in Poland], Warszawa 1925, p. 6)

FOREWORD OF THE PRESIDENT OF THE SUPREME ADMINISTRATIVE COURT

The year 2020 was a special time for the whole world and for Europe - the Member States of the European Union, their administrations, including the courts - a year marked by the COVID-19 pandemic.

The announcement by the Minister of Health in March 2020 of a state of epidemic emergency and then a state of epidemic in the territory of the Republic of Poland created an extraordinary situation. It required the management of the Supreme Administrative Court to take measures aimed, on the one hand, at counteracting the potential threat of infection of the staff of the administrative judiciary and the parties and participants in the proceedings before these courts with the SARS-CoV-2 virus and, on the other hand, at maintaining acceptable court work in pandemic conditions.

The possibility to communicate with the court electronically and to access case files in an electronic form for the parties to the proceedings before the administrative court introduced in 2019 within the process of computerization of entities performing public tasks have proved very useful in this difficult time, full of organisational challenges, as a method of communication with administrative courts. In 2020, ICT systems were expanded, enriching the software used by administrative courts with new functions, including necessary adjustments enabling introduction of the qualified electronic seals, equal in force to qualified electronic signatures.

Administrative courts, provide for the protection of rights and freedoms of everyone in 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 ceases in proceedings aimed at resolving a dispute between an individual and public administration by an independent administrative court.

In 2020, in the scope of the judicial activities of administrative courts, the inflow of cases to all 16 voivodship administrative courts decreased in comparison with 2019 and amounted to nearly over 70 thousand (68 475) cases. It means that administrative courts in Poland enjoy still citizens' trust and have the social legitimacy to continue performing their consitutional and systematic function. Despite such a still high numer of cases, in 2020, voivodship administrative courts maintained the period of examining more than 60 thousand cases amounting to, on average, between 4 and 6 months, which is one of the best results in comparison with 1st instance administrative courts in other European countries according to figures published by the European Commission in the 2021 EU Justice Scoreboard.

Whereas, the inflow of cases in the Supreme Administrative Court remains at high level. Last year, slightly over 14,000 cassation appeals were brought to the Supreme Administrative Court, which constitutes approx. 1/5 of the total number of cases that were brought to voivodship administrative courts in 2020. Slightly more than 6,000 cases were brought to the General Administrative Chamber last year, the Financial and the Commercial Chamber received respectively almost 5,000 and slightly over 3,000 cassation appeals. As in previous years, most cassation appeals concerned taxes and other monetary obligations falling under the Tax Ordinance, and the enforcement thereof. The second largest group of cassation appeals concerned construction law.

Efficiency in handling the ongoing inflow and decreasing arrears from previous years depends directly on the staffing judges' positions in administrative courts. Another year the Supreme Administrative Court and voivodship administrative court adjudicated in the non-full personal panel. In 2020, no judges were nominated by the President of the Republic of Poland to the position of the Supreme Administrative Court's judge. Moreover, only 4 voivodship administrative courts' judges and 4 court assessors were nominated. In the same year, 7 Supreme Administrative Court's judges and 29 judges serving in voivodship administrative courts retired. At the end of the reporting year 2020, 100 judge positions were taken at the Supreme Administrative Court of a limit of 127 positions, and in case of voivodship administrative courts – 430 judge positions of a limit of 483 positions, as well as 31 court

assessors' positions of a limit of 64 positions. Despite the above, the Supreme Administrative Court settled more than 15,000 cases last year, getting the current inflow under control. It should be underlined that Financial Chamber managed to not only get the inflow under control, but also to decrease the outstanding cases from previous years. These results were achieved in the highest instance of the Polish administrative judiciary with the support of voivodship administrative courts' judges delegated to adjudicate at the Supreme Administrative Court.

In 2020 administrative courts have made limited use of the European inter-court dialogue instruments by submitting requests for preliminary rulings to the CJEU. Due to the COVID-19 pandemic, restrictions, activities in the area of international contacts with transnational judicial institutions and administrative courts of the European Union Member States other than Poland (within bilateral partnerships and multilateral contacts) have been temporarily limited or suspended.

We seek to commemorate historical events that have played an important role in shaping the current model of administrative justice in Poland.

Last year marked the 40^{th} anniversary of the re-establishment of administrative justice in 1980.

The appearance on the stage of legal life of an institution which has the right to control the state administration at that time, in reality of the People's Republic of Poland, was something unexpected and extraordinary. With the reinstatement of the administrative judiciary, the party has been placed on an equal footing with the authority before the court. From the beginning of its operation, the Supreme Administrative Court has significantly emphasised that in its case-law it will be guided exclusively by the principles of law. The limited judicial review of administrative decisions at that time allowed for a critical assessment of the administrative legislation in force. The first and subsequent years of the functioning of the single-instance administrative jurisdiction had a significant impact on shaping its position in the state, regardless of the political conditions. The last, breakthrough period for the shape of the model of administrative judiciary is connected with the coming into force of the Constitution of the Republic of Poland of 2 April 1997. Thus,

the Supreme Administrative Court and other administrative courts became a separate branch of judiciary, independent from other authorities. It should be noted that the special (English) issue of the journal of the Supreme Administrative Court, "Zeszyty Naukowe Sądownictwa Administracyjnego" (Scientific Bulletin of the Administrative Courts), celebrating the $40^{\rm th}$ anniversary of the re-establishment of the administrative judiciary in Poland (1980-2020) has been prepared.

It is also worth mentioning that the Constitution of the Republic of Poland of 17 March 1921, passed 100 years ago, created the basis for the establishment of an administrative judiciary headed by the Supreme Administrative Tribunal. In 1922, we will celebrate the 100th anniversary of the establishment of the Supreme Administrative Tribunal – the institutional predecessor of our Court.

Administrative courts made in previous year all efforts to properly protect interests of the society and of an individual in relations with the public authority, by shaping and thus reinforcing trust to the broadly understood state which unifies all of us as community of citizens and civil society. Performance of the aforementioned activities is reflected in the annual information on the activity of administrative courts, which, apart from being sent to relevant public bodies, is shared with all interested parties on the website of the Supreme Administrative Court. Whereas, preparing this report in English is aimed at presenting the activity of administrative courts both, to judicial institutions in the European Union and citizens of other Member States, as well as other international organisations interested in the activity of Polish administrative courts.

INTRODUCTION

The Administrative courts, in compliance with the provisions of the Constitution and laws¹, comprise two instances. Voivodship administrative courts examine cases in first instance, whereas, the Supreme Administrative Court is the appeal court executing judicial and organisational supervision over first instance courts. Jurisdiction of administrative courts covers cases stipulated in provisions of Article 184 of the Constitution of the Republic of Poland² and laws.

In compliance with the Act – Law on the System of Administrative Courts the President of the Supreme Administrative Court informs the President of the Republic of Poland and the National Council of the Judiciary on the activity of administrative courts.³ Each year, the General Assembly of Judges of the Supreme Administrative Court passes in a form of a resolution the Information on the activity of administrative courts presented during a special meeting of the Assembly by the President of the Supreme Administrative Court. Passing such a resolution constitutes performance of the aforementioned statutory provision. This English report presents the outline of the activity of Polish administrative courts and is based on the data published in "The information on the activity of administrative courts in 2020", which includes all aspects concerning functioning and case-law of administrative courts.⁴

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.

¹ The Act of 25 July 2002 – Law on the System of Administrative Courts (Polish Journal of Laws of 2021, item 137 – consolidated text; hereinafter: Law on the System of Administrative Courts), the Act of 30 August 2002 – Law on Proceedings before Administrative Courts (Polish Journal of Laws of 2019, item 2325) and the Act of 30 August 2002 – Provisions introducing the Act – Law on the System of Administrative Courts and the Act – Law on Proceedings before Administrative Courts (Polish Journal of Laws of 2002, No. 153, item 1271, as amended). The text of the Constitution in English you will find on the website of the Polish Parliament: https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm.

² Article 184 of the Constitution of the Republic of Poland stipulates: "The Supreme Administrative Court and other administrative courts shall exercise, to the extent specified by statute, control over the performance of public administration. Such control shall also extend to judgments on the conformity to statutes of resolutions of organs of local [self-] government and normative acts of territorial organs of government administration."

Article 15 par. 1 of the Law on the System of Administrative Courts.

⁴ You can find the information on the activity of administrative courts from previous years on the website of the Supreme Administrative Court: http://nsa.gov.pl/sprawozdania-roczne.php.

COURT SYSTEM OF THE REPUBLIC OF POLAND

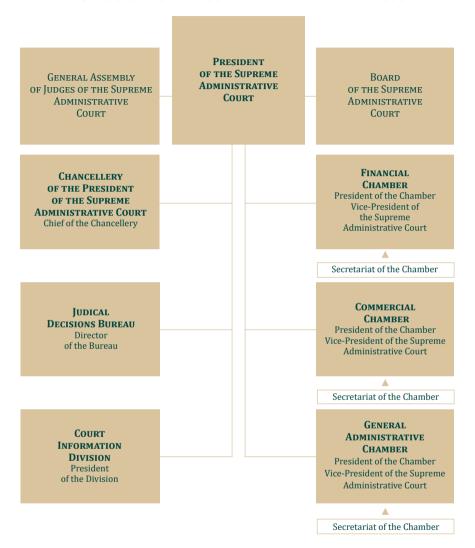
ORDINARY ADMINISTRATIVE COURTS COURTS SUPREME SUPREME Court **ADMINISTRATIVE** (Sąd Najwyższy) **COURT** (Naczelny Sąd administracyjny) Court of Cassation final instance Court of Cassation 2nd and final instance \mathbf{A} ACassation Cassation Cassation appeal VOIVODSHIP **COURTS OF APPEAL ADMINISTRATIVE COURTS** (Sądy Apelacyjne) (Wojewódzkie Sądy Administracyjne) Appelate courts 1st instance courts \blacksquare Appeal **REGIONAL COURTS** (Sądy Okręgowe) Appelate courts 1st instance courts \mathbf{A} Appeal **DISTRICTS COURTS** (Sądy Rejonowe) 1st instance courts

CONSTITUTIONAL TRIBUNAL

(Trybunał Konstytucyjny)

A posteriori and a priori
abstract control of normative
acts, constitutional complaints,
adjudication of competence
disputes between central
constitutional State bodies,
deciding on the conformity
with the Constitution of the
purposes or activities of the
political parties, recognizing
the temporary incapacity of
the President to perform his/
her office.

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 in its judicial function into the Financial Chamber, the Commercial Chamber and the General Administrative Chamber.

ACTIVITIES OF VOIVODSHIP ADMINISTRATIVE COURTS

General statistics for 2020

In 2020, voivodship administrative courts received 58,413 complaints against acts and actions.⁵ They received 10,062 complaints against the failure of the authorities to act and the excessive length of proceedings. In total, the courts received 68,475 complaints for examination. Compared to 2019, the number of complaints filed decreased by 1,752 cases, which is 2.56% of the total number of complaints received. As for complaints remaining to be examined from the previous period, 21,349 concerned the acts and actions of the authorities and 2,014 concerned their failure to act and the excessive length of proceedings. Courts had to examine 91,838 cases in total, 763 less than in 2019.

In 2020 voivodship administrative courts resolved 53 820 complaints against acts and actions of public authorities, of which 20 436 at a hearing and 33 384 in camera.

Voivodship administrative courts resolved 53,820 complaints against the acts and actions of the authorities, 20,436 of which were settled at a hearing, and 33,384 in camera. Out of the complaints resolved at a hearing, the courts upheld 7,354, rejected 12,688, dismissed 130, and resolved 264 complaints otherwise. In camera, 7,772 complaints were upheld, 14,222 rejected, and 8,672 dismissed. As regards complaints against the failure of the authorities to act and the excessive length of proceedings, the courts resolved 8,311 complaints – 132 at a hearing and 8,179 in camera. In total, the year 2020 saw voivodship administrative courts resolve 62,131 complaints, i.e., 90.74% of the complaints filed and 67.65% of all complaints to be examined, which, compared to 2019, is lower by 3.74% and 4%, respectively. The courts have 26,785 complaints to examine in the next period, which is 3,422 more than in 2019.

The largest number of complaints, i.e., 23,003, or 33.59% of all complaints filed with voivodship administrative courts, was received by the Warsaw

⁵ This figure also accounts for petitions to reopen proceedings.

VAC. The Gliwice VAC, for example, received 4,560 complaints, the Kraków VAC – 4,579, the Poznań VAC – 5,148, and the Wrocław VAC – 6,323. Just like in 2019, least complaints were filed with the Opole VAC – 857, Gorzów Wielkopolski VAC – 1,666, Kielce VAC –1,672, and Olsztyn VAC – 1,978.

The lowest number of complaints in 2020 was received by the Opole VAC (857 complaints, 1,25 % of all complaints filed with all 16 VACs).

Most of the complaints – 49,079 – were filed by natural persons. Legal persons filed 16,403 complaints, whereas non-governmental organisations – 1,205, public prosecutors – 2,892, the Commissioner for Human Rights – 51, and other entities – 242. There were 7,614 attorneys representing public administration bodies participating in proceedings before voivodship administrative courts, as well as 4,407 advocates [adwokat], 6,226 attorneys-at-law [radca prawny], 1,178 tax advisors, 53 patent attorneys, and 451 public prosecutors. The Commissioner for Human Rights was involved in 9 cases.

On average, voivodship administrative courts resolved 39.94% of complaints against the acts and other actions of the authorities, their failure to act, or the excessive length of proceedings within 3 months. Within 4 months, 53.45% of cases were resolved, and 73.71% of said complaints were resolved within 6 months. These figures testify to the considerable efficiency of the proceedings before voivodship administrative courts.

Control of public administration activities

The average duration of proceedings before VACs bear witness to considerable efficiency of Polish 1st instance administrative court proceedings.

Voivodship administrative courts quashed on average of 28.1% decisions and other actions of public administration bodies in this reporting year, compared to 27.32% in 2019, 25.08% in 2018, 22.22% in 2017, 19.78% in 2016, 22.03% in 2015, and 22.2% in 2014.

As in previous years, most cases resolved by voivodship administrative courts – 24.20% of all cases resolved – concerned tax. Out of the 13,025 resolved complaints against the acts and other actions of the authorities in tax cases, the courts upheld 3,347 complaints, i.e. 25.70% (compared to 23.04% in 2019, 20.67% in 2018, and 18.8% in 2017).

⁶ These percentages do not add up, since each is calculated separately.

Apart from the complaints against the acts and actions of the authorities, voivodship administrative courts resolved 8,311 complaints against the failure of the authorities to act and the excessive length of proceedings, upholding 3,847 of them (46.29%). In 2019, the courts resolved 7,999 such cases, 6,310 in 2018, 6,240 in 2017, 6,490 in 2016, and 6,443 in 2015.

The courts received 4,521 complaints concerning local self-government, constituting 6.6% of all complaints filed. They resolved 3,336 complaints through a judgment, upholding 2,641, or 79.17%. In comparison, 2019 saw the courts receive 3,604 such complaints, which made up 5.13% of all complaints filed, and resolved 2,558, upholding 1,943, i.e. 75.96%. In 2018, the courts received 3,072 complaints, i.e. 4.66% of the total number of complaints filed, and resolved 2,194, upholding 1,635, i.e. 74.52%.

In 2020 the majority of decisions of VACs were made in tax matters (ca 24 % of all resolved cases).

In total, 4,462 complaints against resolutions of municipal self-governments were resolved, with 2,580 (57.82%) upheld. As for poviat self-governments, 121 complaints were received and 46 (38.02%) upheld, whereas 38 complaints concerning voivodship self-governments were received, 15 of which (39.47%) were upheld.

There were 16,018 cassation appeals filed against judgments of voivod-ship administrative court judgments, 777 were dismissed. Out of that figure, 14,494 cassation appeals (90.49%) were referred to the Supreme Administrative Court. Considering that in 2020, voivodship administrative courts resolved 62,131 complaints, the cases referred to the SAC accounted for 23.33% of all complaints against administrative acts, the failure of the authorities to act, and the excessive length of proceedings. In 2019, voivodship administrative courts referred 17,013 cassation appeals to the SAC, 20,229 in 2018, 17,661 in 2017, 20,605 in 2016, 18,641 in 2015, 18,103 in 2014, 17,089 in 2013, and 14,983 in 2012.

Achievement of agreement with the assistance of an external mediator without holding a court hearing is the main aim of mediation.

Mediation and simplified proceedings

MEDIATION PROCEEDINGS

The aim of mediation is to allow the parties to the dispute to achieve agreement with the assistance of a mediator and without holding a hearing.

The institution of mediation proceedings is regulated in Articles 115–118 of the Law on Proceedings before Administrative Courts.

As in previous years, mediation proceedings have not been applied in administrative courts in a broader manner despite being amended.⁷ In 2020, mediation proceedings were initiated in 3 cases, and 2 cases were resolved. The reason for this may be the swiftness with which cases are resolved under the standard procedure. As most cases are resolved within 6 to 12 months, potential mediation proceedings would not contribute to the speedier handling of proceedings, this being, in principle, one of the key advantages of mediation.

SIMPLIFIED PROCEEDINGS

Within simplified proceedings, the case is examined in camera by 3 judges, not bounded by any limitation in referring the case to be examined at a public hearing.

Simplified proceedings are a special kind of administrative court proceedings. In accordance with Article 119 of the Act – Law on Proceedings before Administrative Courts, cases may be examined under the simplified procedure when the administrative decision or order challenged before the administrative court is invalid or has been issued in violation of the law being the basis to reopen the proceedings, and when a party requests that the case be referred for a hearing under the simplified procedure and none of the other parties demands that a trial be conducted within 14 days of being notified about that request.

The catalogue of cases which may be examined under this procedure has been extended pursuant to the Act of 9 April 2015 amending the Act – Law on Proceedings before Administrative Courts, effective as of 15 August 2015.8 A case may be recognised under the simplified procedure if the subject matter of the complaint is a decision issued in administrative proceedings which is subject to an interlocutory appeal, a decision concluding the proceedings, a decision ruling on the merits of the case, or a decision issued in enforcement proceedings and proceedings to secure claims which is subject to an interlocutory appeal; or if the subject matter of the complaint is the failure

 $^{7\}quad Pursuant to the Act of 7 April 2017 amending the Act - Code of Administrative Proceedings and certain other acts (Polish Journal of Laws, item 935), which came into force on 1 June 2017.$

⁸ Polish Journal of Laws of 2015, item 658.

of the authorities to act or the excessive length of proceedings. As of 2017, the simplified procedure also applies for cases where the challenged administrative decision has been issued in simplified proceedings before administrative bodies. Moreover, a case may also be examined under the simplified procedure if the authority fails to pass the complaint to the court despite the imposition of a fine.

The court examining a case under this procedure is not bound by any limitations in referring the case to a public hearing. The court may do so either at the request of any party or *ex officio*, if it finds it necessary to examine the case under the standard procedure. In simplified proceedings, the case is examined in camera by three judges.

As of 2017, there has been a significant increase in the number of cases examined under this procedure. In 2020, voivodship administrative courts resolved 17,244 cases under the simplified procedure, upholding 7,953.

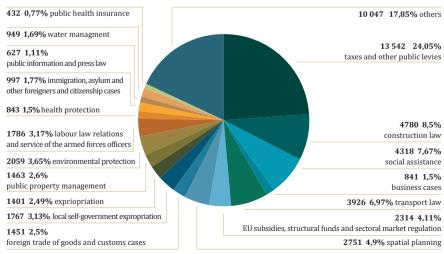
Last year saw most cases under the simplified procedure resolved in the Warsaw VAC (5,740 cases), the Wrocław VAC (1,412 cases), and the Kraków VAC (1,217 cases).

COMPLAINTS* SETTLED BY VOIVODSHIP ADMINISTRATIVE COURTS 2004-2020

| YEAR | TOTAL NUMBER OF CASES TO RE- SOLVE (left from previous+regi- stered in given year) | NUMBER OF CASES TO 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 |
| 2018 | 91 689 | 69 315 | 22 374 |
| 2019 | 92 601 | 69 238 | 23 363 |
| 2020 | 91 838 | 65 053 | 26 785 |

^{*} All complaints including complaints against the acts, actions or failure of the authorities to act and the excessive length of proceedings.

Number of Complaints against the acts or actions of public administration settled by voivodship administrative courts in 2020 by subject



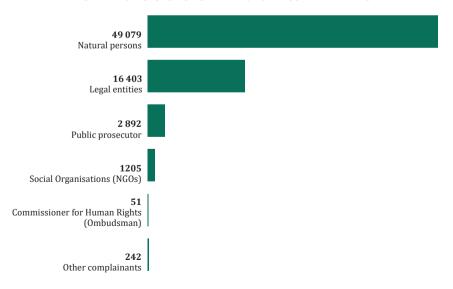
COMPLAINTS* LODGED TO VOIVODSHIP ADMINISTRATIVE COURTS IN 2020

| | COMPLAINTS LODGED | | | |
|------------------------------------|-------------------|-------|--|--|
| VOIVODSHIP ADMINISTRATIVE COURT | TOTAL | | | |
| 11211110111111112 00011 | NUMBER | % | | |
| ALL COURTS | 68 475 | 100 | | |
| BIAŁYSTOK | 2086 | 3,05 | | |
| BYDGOSZCZ | 2195 | 3,21 | | |
| GDAŃSK | 3790 | 5,53 | | |
| GLIWICE | 4560 | 6,66 | | |
| GORZÓW WLKP. | 1666 | 2,43 | | |
| KIELCE | 1672 | 2,44 | | |
| KRAKÓW | 4579 | 6,69 | | |
| LUBLIN | 2966 | 4,33 | | |
| ŁÓDŹ | 2824 | 4,12 | | |
| OLSZTYN | 1978 | 2,89 | | |
| OPOLE | 857 | 1,25 | | |
| POZNAŃ | 5148 | 7,52 | | |
| RZESZÓW | 2547 | 3,72 | | |
| SZCZECIN | 2281 | 3,33 | | |
| WARSZAWA | 23 003 | 33,59 | | |
| WROCŁAW | 6323 | 9,23 | | |

^{*}All complaints including complaints against the acts, actions or failure of the authorities to act and the excessive length of proceedings.

VOIVODSHIP ADMINISTRATIVE COURTS

Number of cases lodged in 2020 by complainants



ACTIVITIES OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court examines⁹ the remedies against decisions of voivodship administrative courts, i.e. cassation appeals and interlocutory appeals against judgments and orders; adopts resolutions aimed at clarifying legal provisions, the application of which has caused discrepancies in jurisprudence of administrative courts; adopts resolutions resolving legal questions that raise serious doubts in a specific administrative court case; settles jurisdictional disputes between local self-government authorities and self-government appeal boards as well as competence disputes between the aforesaid authorities and government administration authorities; and examines other matters within its own competence under separate laws. This includes the Act of 17 June 2004 on complaint about breach of the right to have a case examined in judicial proceedings without undue delay.¹⁰ Moreover, the SAC is also a disciplinary court in disciplinary cases concerning administrative court judges.

In 2020 the Supreme Administrative Court received 14 281 cassation appeals, 2 563 less than in previous year.

The Supreme Administrative Court consists of the Financial Chamber, the Commercial Chamber, and the General Administrative Chamber. Each Chamber supervises the case-law of voivodship administrative courts in cases that are within the competence of that Chamber, within the limits and under the procedure specified by the relevant regulations.

■ General statistics for 2020

In 2020, the SAC received 14,281 cassation appeals.¹¹ It also received 100 petitions to reopen proceedings. The Court had 28,086 cassation appeals

⁹ See Article 15 § 1 of the Law on Proceedings before Administrative Courts

¹⁰ Polish Journal of Laws, No. 179, item 1843, as amended.

¹¹ Some cassation appeals, pursuant to separate provisions, are filed directly with the SAC.

and 43 petitions to reopen proceedings remaining from the previous period. In total, the SAC had to examine 42,367 cassation appeals.

A total of 12,581 cassation appeals was resolved in 2020, with 4,129 (32.82% of the total) at a hearing, and 8,452 (67.18%) in camera. In 2,677 cases (21.28%), the SAC granted the cassation appeal, in 9,189 cases (73.04%) the SAC dismissed the appeal, and in 715 cases (5.68%) the SAC settled the case in another way.

In 2020, the number of cassation appeals filed decreased by 2,563 compared to the previous year. Most cassation appeals (10,348) were filed by the party to the proceedings other than a public administration body. Administrative bodies filed 3,775 complaints, whereas there were 158 cassation appeals brought by the administration body and the party to the proceedings other than the body. 1,948 attorneys representing public administration bodies took part in the proceedings before the SAC, as well as 572 advocates, 865 attorneys-at-law, 399 tax advisors, 29 patent attorneys, and 43 public prosecutors. The Commissioner for Human Rights was involved in 11 cases.

As in previous years, most cassation appeals (5,167) concerned taxes and other monetary obligations falling under the Tax Ordinance, and the enforcement thereof. 4,434 cassation appeals in this matter were resolved, accounting for 35.24% of all appeals examined.

Apart from cassation appeals, the SAC resolved 4,367 interlocutory appeals against the decisions (orders) of first-instance courts, upholding 690 of them (15.8% of all interlocutory appeals resolved), rejecting 3,376 (77.31%), and resolving 301 (6.89%) otherwise.

The SAC also examined 169 complaints about the breach of the right to have a case examined in judicial proceedings without undue delay. Two of these complaints (1,18%) were upheld, 74 (43.79%) were rejected, whereas 93 (55.03%) were resolved otherwise.

In 2020, the SAC resolved 57.70% of all cases within 12 months, and 78.66% within 24 months. As regards cassation appeals, 44.06% of cases were resolved within 12 months. For interlocutory appeals, 75.99% were examined within 2 months and 99.57% within 12 months.

¹² These percentages do not add up, since each is calculated separately.

Activities of the Chambers of the Supreme Administrative Court

THE FINANCIAL CHAMBER

In 2020, the Financial Chamber received 4,803 cassation appeals and 49 petitions to reopen proceedings, 37% of which (i.e. 1,774) concerned cases on value-added tax, 18% (884) on real estate tax, 16% (757) on personal income tax, and 9% (421) on corporate income tax.

In 2020, the Financial Chamber received 4 803 cassation appeals and 49 petitions for the reopening of proceedings.

Out of all cassation appeals registered in 2020, appeals against advance tax rulings issued by the minister competent for public finance amounted to over 21% of cases (1,020), whereas 16 cassation appeals were filed against advance tax rulings issued by other authorities.

The Chamber resolved 4,223 cassation appeals, with 1,896 at a hearing, and 2,327 in camera. The organisational changes implemented under Order No. 30 of the President of the Supreme Administrative Court of 28 September 2020 establishing jurisprudential divisions in the Chambers of the Supreme Administrative Courts and determining the scope of their operations caused 3,115 cases to be referred by jurisdiction to the 3rd Division of the Financial Chamber on 31 December 2020.

The Chamber also received 21 complaints against the excessive length of proceedings on the part of public administration bodies.

In 2020, the Chamber received 1,059 interlocutory appeals against the rulings of administrative courts, and resolved 990. The right to assistance was the subject matter of 2% (21) of those complaints, the stay of the challenged act or action – 20% (194), failure to comply with a deadline – 12% (118), disqualification of a judge – 1% (12), dismissal of a complaint – 23% (231), and other matters – 42% (414). 131 cases which were referred by jurisdiction to the 3rd Division of the Chamber under Order No. 30 of the President of the SAC were entered into the repertory. 72 interlocutory appeals remained unresolved at the end of 2020, which is how many cases the Chamber currently receives within two months.

In 2020, the Chamber received two competence disputes – in one case, the Chamber named the authority competent to examine the case, and

dismissed the motion in the other; five complaints about the breach of the right to have a case examined in judicial proceedings without undue delay – in one case, the Chamber upheld the complaint against the excessive length of proceedings; five motions to clarify legal provisions – the Chamber adopted four resolutions clarifying the matters, and left the matter in one case without consideration due to the failure to satisfy the prerequisites for initiating this procedure, thus leaving two such cases to be resolved in the next period; and 16 motions to declare a legally binding ruling unlawful, two of which concerned rulings of voivodship administrative courts while 14 concerned rulings of the SAC – the Chamber rejected three motions and dismissed seven.

In 2020, the ruling panels of the Chamber submitted a request for a preliminary ruling to the Court of Justice of the European Union on the interpretation of EU law pursuant to Article 267 of the Treaty on the Functioning of the European Union.¹³

Almost every ruling panel in 2020 which resolved cases at hearings or in-camera sessions with three judges featured delegated judges. Without their stable presence, it would not be possible to schedule so many hearings (268) and three-judge in-camera sessions (381).

The functioning of the Chamber underwent changes with the state of epidemic emergency announced on 14 March 2020 (pursuant to the Regulation of the Minister of Health of 13 March 2020 announcing a state of epidemic emergency on the territory of the Republic of Poland). Cancelling scheduled hearings and being unable to schedule new ones caused the judges of the Chamber to adjudicate at three-judge in-camera sessions to a much greater degree, using them to resolve not only those cases in which the parties thereto waived their right to a hearing (Article 182 § 2 of the Law on Proceedings before Administrative Courts), but also those cases where hearings were yet to be scheduled, the consideration of which at in-camera sessions was enabled pursuant to Article 15zzs⁴(1) and (3) of the Act of 2 March 2020 on special arrangements for the prevention, combating and control of COVID-19, other communicable diseases

¹³ OJ EU C 326, 26.10.2012, hereinafter referred to as "TFEU".

¹⁴ Polish Journal of Laws of 2020, item 433.

and related emergency situations. ¹⁵ In a few cases, hearings were held remotely using direct and simultaneous transmission of audio and video, with parties thereto being present in the buildings of the relevant voivodship administrative courts.

As for the jurisprudential activities in the Chamber, each session, judges were assigned three to six cases, depending on their complexity and the similarity of problems discussed therein. Sometimes, around a dozen or more cases were assigned to a single judge where this was possible due to the similarity of their natures. More cases were also assigned to a single judge for so-called post-resolution cases or post-CJEU judgment cases.

In the second half of 2020, the focus was on reorganising the operations of the Chamber, due to the establishment of the 3rd Division.

The 4,223 cassation appeals resolved in 2020 by the Financial Chamber have been filed by various authorised entities. Legal persons filed 1,523 appeals, natural persons – 1,289, the authorities – 1,441, whereas the Commissioner for Human Rights brought two cassation appeals. Attorneys of administrative bodies took part in the proceedings before the SAC in 1,147 cases, which makes up 60% of cases resolved in the Chamber at hearings (1,897). Advocates representing complainants and participants to the proceedings appeared in 169 cases (9%). Attorneys-at-law representing complainants and participants to the proceedings other than an administration body appeared in 316 cases (16.6%). Tax advisors who were not advocates or attorneys-at-law took part in 382 cases (20%). Public prosecutors participated in six cases (0.3%), whereas the Commissioner for Human Rights in two.

THE COMMERCIAL CHAMBER

In 2020, the Chamber received 3,196 cassation appeals and 25 petitions to reopen proceedings before the SAC. Given the large number of cases filed in previous reporting periods, the number of cases awaiting examination under cassation appeals and petitions to reopen proceedings amounted to 10,525.

¹⁵ Polish Journal of Laws of 2020, item 374, as amended, hereinafter referred to as the "COVID Act".

Cassation appeals were most often filed in cases concerning the maintenance and protection of roads and traffic, including road transport (558 cases); EU subsidies, structural funds, and the regulation of sectoral markets (508 cases); public funds, including budgets of local self-government authorities, relief for financial claims not subject to the Tax Ordinance and enforcement of such claims (473 cases); foreign trade in goods, customs duties, and protection against excessive imports of goods into the customs territory of the European Union (427 cases); excise duty (364 cases); business activities (279 cases); health insurance (154 cases); industrial property rights (83 cases); operations of pharmacies and pharmaceutical wholesalers (80 cases); prices, fees, and tariff rates not falling under symbol 611 (49 cases); authorisations to pursue specific activities and professions (49 cases); as well as post, telecommunications, radio, and television (48 cases).

In 2020, the Commercial Chamber received 3 196 cassation appeals and 25 petitions for the reopening of proceedings. Most cassation appeals falling under the subject-matter jurisdiction of the Chamber were filed against the rulings of the Warsaw VAC, with 41.30% of all appeals filed, as well as the Białystok VAC – 10.73% of all appeals filed, and the Poznań VAC – 6.41% of all appeals filed.

The vast majority of cassation appeals (79.26%) were lodged by the party to the proceedings other than the administration body. Cassation appeals against judgments of first-instance courts were filed solely by the administration body in 20.27% of the cases, whereas cases in which the appeals against the same ruling were brought by both the body and the party to the proceedings made up slightly above 0.47%, lower than 0.53% in 2019.

Administration bodies filed 648 cassation appeals in total. Out of the remaining cassation appeals, 1,314 were brought by natural persons, 1,231 by legal persons, five by non-governmental organisations, seven by public prosecutors, and one by the Commissioner for Human Rights.

The Chamber resolved 2,595 cassation appeals and 30 petitions to reopen proceedings before the SAC. Less cases were resolved than there were filed. Thus, the number of outstanding cases, i.e., unfinished cases which remain to be examined in the following reporting period, increased by 589. The decreasing trend in outstanding cases which began in 2017 therefore failed to

solidify. What contributed to that were the external circumstances related to the outbreak of the COVID-19 pandemic and the considerable reduction in staffing, with one-third of full-time equivalents for judges in the Chamber remaining vacant at the end of 2020.

Cassation appeals were primarily resolved in camera pursuant to Article 182 § 2 of the Law on Proceedings before Administrative Courts and Article 15zzs⁴(1) and (3) of the Act of 2 March 2020 on special arrangements for the prevention, combating and control of COVID-19. Hearings were held until 12 March 2020, and later on as well where the case was referred for examination at a hearing by the panel ruling in a specific case pursuant to Article 90 § 2 of the Law on Proceedings before Administrative Courts.

The hearings were attended by 604 attorneys of public administration bodies, and 249 attorneys-at-law, 143 advocates, 17 tax advisors and 29 patent attorneys representing the parties. Public prosecutors took part in nine cases.

The Chamber received 826 interlocutory appeals against rulings of first-instance courts, and had 77 appeals remaining for examination from the previous reporting period. 819 interlocutory appeals were resolved in total, leaving 84 to be examined in the following reporting period, which is how many cases the Chamber resolves within just under one and a half months.

The interlocutory appeals examined mostly concerned the dismissal of a complaint (33.46%), the stay of the challenged act or action (19.29%), the failure to comply with a deadline (8.18%), the right to assistance (2.44%), and the disqualification of a judge (1.83%).

Out of the interlocutory appeals against the dismissal of a complaint, 27.74% were legitimate, for appeals against the stay of the challenged act or action this figure was 13.29%, and for the failure to comply with a deadline – 8.96%. Two appeals concerning the right to assistance turned out to be legitimate, whereas none of the appeals on the disqualification of a judge were substantiated.

The Chamber examined 52 competence disputes. In 40 cases, the Chamber named the authority competent to resolve the case. Furthermore, 24 complaints about the breach of the right to have a case examined in judicial proceedings without undue delay were resolved; one merited upholding.

In 2020, the Chamber received six motions to declare a legally binding ruling unlawful, and resolved four of them.

THE GENERAL ADMINISTRATIVE CHAMBER

In 2020
the General
Administrative
Chamber received
6 282 cassation
appeals
and 20 petitions
for
the reopening
of proceedings.

In 2020, the Chamber received 6,282 cassation appeals against rulings of first-instance courts (compared to 7,437 in 2019) and 20 petitions to reopen proceedings (17 in 2019). The largest share of all cassation appeals filed with the Chamber in 2020 concerned cases on construction – 1,234 or 19.64% of cases, employment relationships and duty relationships of uniformed services – 673 or 10.71%, spatial management – 575 or 9.15%, and social assistance – 372 or 5.92%.

Compared to 2019, 1,155 less cassation appeals were filed and 722 less were resolved, the figures in 2019 being 7,437 and 6,508, respectively. There are 10,843 cassation appeals remaining to be examined for the next period, which is 314 more than in 2019 (10,329).

Most cassation appeals were filed by the VACs in Warsaw – 2,685, Kraków – 643, Poznań – 446, Gliwice – 378, Gdańsk – 280, Wrocław – 275, Rzeszów – 238, Łódź – 208, Szczecin – 202, Olsztyn – 187, and Lublin – 173, whereas least were filed by the VACs in Białystok – 137, Bydgoszcz – 135, Kielce – 107, Gorzów Wielkopolski – 106, and Opole – 82.

The Chamber rejected 4,342 cassation appeals in 2020 (4,835 in 2019). This figure makes up 75.27% of all cases resolved by the Chamber (74.43% in 2019).

Jurisprudential stability expressed as the ratio of cases rejected to all cases resolved in 2020 in the given VAC was highest for this type of cassation appeals in the following VACs: Gliwice – 83.51%, Lublin – 81.32%, Wrocław – 80.92%, Szczecin – 77.44%, Warsaw – 75.75%, Gdańsk – 75.35%, Łódź – 75,26%, Kielce – 74.56%, Białystok – 73.86%, Kraków – 73.80%, Rzeszów – 73.31%, Olsztyn – 71.43%, Opole – 70.70%, Poznań – 70.14%, with the Gorzów Wielkopolski VAC (66.67%) and Bydgoszcz VAC (64.24%) observing the lowest said ratios.

Out of the 6,282 cassation appeals received, most were filed by natural persons – 3,325 (52.93% of all appeals received), and legal persons – 2,758

(43.90%). Non-governmental organisations filed 150 cassation appeals (2.39%), whereas public prosecutors – 40 (0.64%). The Commissioner for Human Rights brought nine cassation appeals (0.14%).

In terms of the entity initiating the cassation proceedings, most cassation appeals were filed by the party to the proceedings other than the administration body – 4,540 (72.27% of all appeals filed). Administration bodies filed 1,651 cassation appeals (26.28%), whereas 91 cassation appeals were filed against the same ruling by both the administration body and the party to the proceedings other than the body (1.45%).

Proceedings in cases resolved by the SAC in 2020 involved 197 attorneys of public administration bodies (1,111 in 2019), and as for attorneys of complainants and parties to the proceedings – 260 advocates (1,101 in 2019) and 300 attorneys-at-law (1,394 in 2019). Public prosecutors took part in 28 cases (48 in 2019), whereas the Commissioner for Human Rights appeared in nine (22 in 2019).

In 2020, the Chamber received 2,397 interlocutory appeals against decisions (orders) of first-instance courts (compared to 2,651 in 2019). The Chamber resolved 2,415 appeals in total, which is less by 193 than in the previous year (2,608 in 2019). Up by 18 from 2019 (220), 238 interlocutory appeals remain to be examined in the next period.

Most interlocutory appeals were received from Voivodship Administrative Courts in Warsaw – 990, Kraków – 346, Poznań – 137, Gliwice – 128, Wrocław – 125, Łódź – 119, and Gdańsk – 105, and least from Voivodship Administrative Courts in Rzeszów – 96, Lublin – 75, Białystok – 70, Szczecin – 51, Olsztyn – 46, Kielce – 39, Bydgoszcz – 34, Gorzów Wielkopolski – 20, and Opole – 16. Out of the 2,397 interlocutory appeals, 1,020 concerned other decisions, 494 were filed against the stay of the challenged act, 237 were against the reinstatement of a deadline to perform a court act, 130 concerned the disqualification of a judge, and 42 were on the right to assistance.

The percentage of cases dismissed in relation to all cases resolved was 81.16% (80.37% in 2019), with the following figures in the respective VACs: Opole – 94.74%, Gorzów Wielkopolski – 91.3%, Gliwice – 89.92%, Kielce – 89.47%, Łódź – 88.97%, Lublin – 87.18%, Białystok – 86,54%, Olsztyn –

86.36%, Szczecin – 85.71%, Kraków – 84.05%, Rzeszów – 82.22%, Gdańsk – 80.58%, Poznań – 80.56%, Bydgoszcz – 80%, Warsaw – 76.79%, and Wrocław – 76.56%.

In 2020, the Chamber received i.a. 516 motions to resolve a competence or jurisdictional dispute, seven motions to name a different court to consider a motion to disqualify a judge, and eight motions concerning other cases. The Chamber resolved 475 motions, naming the authority competent to resolve the case in 367 of them, naming a different court to consider a motion to disqualify a judge in seven cases, and naming a different court to consider the case with respect to eight motions. This leaves 205 motions to be examined next year.

As for complaints against the excessive length of proceedings, 151 were filed, less by eight compared to 2019. 134 complaints were resolved, and none was upheld (63 were rejected and 71 dismissed). The Chamber has 41 complaints remaining to be examined in the next period.

Apart from that, the Chamber received 11 motions to declare a legally binding ruling unlawful. Nine motions were resolved (one was rejected, seven were dismissed, and for one, the case was closed), leaving three motions to be resolved in the next period.

The Chamber also received two motions of the President of the SAC to adopt a resolution under the abstract resolution procedure. In total, six cases were resolved – one motion of the President of the SAC, one motion of the Public Prosecutor General, and four legal questions posed by the ruling panel. The panel of seven SAC judges adopted four resolutions, left one legal question without consideration, and accepted two cases (two legal questions) for substantive consideration. One motion by the President of the SAC remains to be examined.

The Chamber also received two complaints by groups of voters against the resolution of the National Electoral Commission leaving their appeal against a decision of the returning officer without consideration. The SAC dismissed these complaints in camera.

The General Administrative Chamber received a total of 9,400 cases in 2020 (10,738 in 2019), and had 10,761 cases remaining for examination from the pre-

vious period. The Chamber resolved 8,836 cases, i.e. 47.51% of all cases (in 2019, it resolved 9,739 cases, i.e. 58.44%). This leaves 11,325 cases to be examined in the next period.

The ruling panels considered the cases at 109 hearings and 1,373 in-camera sessions, out of which 604 in-camera sessions were held with a ruling panel of three judges (in 2019, there were 419 hearings, 1,260 in-camera sessions, including 316 in-camera sessions with three-judge panels).

Out of the 8,836 cases resolved, 1,076 (12.21%) were resolved at a hearing, 7,708 (87.23%) in camera, and 49 (0.55%) were closed through an order. In 2019, 9,739 cases were resolved, including 4,435 (45.54%) at a hearing, 5,277 (54.18%) in camera, and 27 (0.28%) through an order.

Resolutions of the Supreme Administrative Court

The Supreme Administrative Court adopts resolutions aimed at clarifying legal provisions, the application of which has caused discrepancies in the jurisprudence of administrative courts, doing so at the request of the President of the SAC, the Public Prosecutor General, the Commissioner for Human Rights, the Commissioner for Small and Medium Enterprises, ¹⁶ and the Commissioner for Children's Rights. ¹⁷ The Supreme Administrative Court also adopts resolutions resolving legal questions that raise serious doubts in a specific administrative court case. ¹⁸ Each time, a substantive response to a legal question which is presented to an extended panel pursuant to Article 15 § 1(3) of the Law on Proceedings before Administrative Courts is preceded with an analysis whether the motion satisfies the criteria to initiate the resolution procedure. Jurisprudence of administrative courts on the understanding of the concepts of "discrepancy" and "serious doubts" is uniform.

Resolutions of the SAC extended panels are an important instrument to eliminate emerging discrepancies in the case-law of administrative courts and to guarantee the individuals seeking for justice predictable jurisprudence in similar cases and the observance of the principle of equality.

¹⁶ As of 30 April 2018, pursuant to the Act of 6 March 2018 – Provisions introducing the Act – Law on entrepreneurs and other acts concerning business activities (Polish Journal of Laws of 2018, item 650).

¹⁷ So-called "abstract" resolutions adopted pursuant to Article 15 § 1(2) in conjunction with Article 264 § 2 of the Law on Proceedings before Administrative Courts.

So-called "concrete" resolutions adopted pursuant to Article 15 \S 1(3) in conjunction with Article 187 \S 1 and Article 264 of the Law on Proceedings before Administrative Courts.

Abstract resolutions are adopted where there are discrepancies in the jurisprudence of administrative courts (Article 15 § 1(2) in conjunction with Article 264 § 2 of the Law on Proceedings before Administrative Courts). Discrepancies should be understood not only as differences in legal opinions expressed in case-law, but also as tendencies for certain standpoints in interpretations to become entrenched. Jurisprudential discrepancies must be real and lasting, which, in turn, implies and deepens further inconsistent application of the law. Abstract resolutions touch on specific legal doubts in the context of inconsistent jurisprudential views which are not directly related to the proceedings pending in a specific administrative court case. Descriptions of the law of the proceedings pending in a specific administrative court case.

As for "concrete" resolutions, both doctrine and jurisprudence assume that Article 187 § 1 of the Law on Proceedings before Administrative Courts refers to legal questions of particular importance. Whether such a resolution may be issued depends on satisfying both of the following prerequisites: there being a serious legal doubt in the case, and it being necessary to resolve this doubt in order to examine the cassation appeal.

Initiating the procedure stipulated under Article 187 § 1 of the Law on Proceedings before Administrative Courts depends on the existence of a legal question which raises "serious doubts" as to the legal issues of particular importance for the consideration of the cassation appeal in the case wherein they arose. The prerequisite in Article 187 § 1 of the Law on Proceedings before Administrative Courts shall also be deemed satisfied if there is a discrepancy in jurisprudence of administrative courts regarding the given legal issue.²¹

Resolutions of the Supreme Administrative Court are of a "generally binding" nature, which stems from Article 269 § 1 of the Law on Proceedings before Administrative Courts.²² Administrative courts are bound by

 $_{19}$ E.g. resolution of 24 February 2020, II OPS 2/19 and the case-law invoked therein (SAC decision of 30 October 2007, II GPS 1/07).

 $_{20}$ E.g. resolution of 17 February 2020, II FPS 4/19 and the case-law invoked therein (SAC decision of 5 November 2010, II FSK 1149/09 and the resolution of seven SAC judges of 3 February 2014, II FPS 11/13).

²¹ E.g. resolutions of 22 June 2020, II OPS 5/19.

^{22 &}quot;If any panel of an administrative court examining a case does not share the view expressed in a resolution of the panel of seven judges, the whole Chamber, or the whole Supreme Administrative Court, it refers the arising legal

the resolutions in all cases where the interpreted provision is to be applied; however, they are relatively bound to do so, as there is a formal procedure that allows them to deviate from the opinions expressed in the resolutions.²³ The general binding force of abstract and concrete resolutions covers only the construal found at the outset of the resolution.²⁴ The procedure requires there to be a specific legal and factual state of affairs, i.e. a situation in which the binding force of a given SAC resolution does not allow the given ruling panel to express a different legal view from the one already expressed in the resolution, and the panel wishes to deviate from this view. The phrase "any panel of an administrative court" means that the procedure stipulated under this provision may be initiated by both a ruling panel of the SAC, and a ruling panel of a voivodship administrative court. 25 The reference contained at the end of Article 269 § 1 to Article 187 § 1 and § 2 (and the exclusion of § 3) implies that the SAC sitting in a panel of seven judges may not take a case over for examination.²⁶ In turn, the second sentence in Article 269 § 2 of the Law on Proceedings before Administrative Courts implies that the Supreme Administrative Court cannot issue a decision in which it refuses to provide an answer under this procedure. Proceedings initiated pursuant to 269 § 1 of the Law on Proceedings before Administrative Courts must end with the Court adopting a resolution resolving a correctly presented legal question.²⁷

In 2020, seven motions to adopt resolutions were received. The SAC adopted eight resolutions in total, including three under the abstract resolution procedure (one at the request of the President of the SAC and two at the request of the Public Prosecutor General). Under the procedure stipulated in Article 187 § 1 of the Law on Proceedings before Administrative Courts, the SAC adopted five resolutions.

question to be resolved by the relevant panel."

²³ See resolutions of 30 November 2020, II OPS 6/19, and 21 September 2020, II FPS 1/20.

²⁴ Resolution of 21 September 2020, II FPS 1/20.

²⁵ Resolution no. II OPS 6/19 underlines that literature shows this to be the only case where a ruling panel of a voivodship administrative court may take the initiative of adopting a resolution.

²⁶ Cf. resolution of 21 September 2020, II FPS 1/20.

²⁷ See resolution of 21 September 2020, II FPS 1/20 and II FPS 1/20.

Subject of resolutions passed in 2020

GENERAL QUESTIONS

In two cases concerning legal questions posed under the procedure stipulated in Article 269 § 1 of the Law on Proceedings before Administrative Courts, the SAC adopted resolutions in which it decided to give no consideration to the legal question.

In its resolution of 30 November 2020, II OPS 6/19, adopted under Article 269 § 1 of the Law on Proceedings before Administrative Courts, the SAC decided to leave the question posed without consideration, as the court posing the legal question was referring to the standpoint taken by the SAC in a resolution of seven judges of 19 May 2003, OPS 1/03, adopted pursuant to the Act on the Supreme Administrative Court of 1995; in turn, pursuant to Article 100 of the Act of 30 August 2002 - Provisions introducing the Act - Law on the System of Administrative Courts and the Act - Law on Proceedings before Administrative Courts²⁸, the legal assessment expressed in resolutions of the SAC issued before 1 January 2004 is not binding for voivodship administrative courts examining cases which were instigated before that day and remained unfinished before the Law on Proceedings before Administrative Courts came into force. Consequently, in order not to share the standpoint taken in an SAC resolution adopted before 1 January 2004, the ruling panel is not required to apply the procedure specified in Article 269 § 1 of the Law on Proceedings before Administrative Courts.

In its resolution of 21 September 2020, II FPS 1/20, the SAC decided to leave the question posed without consideration, as the standpoint taken in the challenged resolution issued by a panel of seven SAC judges of 9 December 2019, II FPS 3/19, was not binding as to the legal and factual state of affairs in the case considered by the requesting court. In its justification, the SAC emphasised that the essence of the regulation contained in Article 269 § 1 of the Law on Proceedings before Administrative Courts is either the confirmation of the standpoint taken in the resolution, or the provision of a contrary re-

²⁸ Polish Journal of Laws of 2002, No. 153, item 1271, as amended.

sponse. In the justification of its decision, the voivodship administrative court presented its doubts as to the binding force of the resolution, and ultimately assumed that this force also covers the justification of the resolution. The Supreme Administrative Court pointed out that the justification of the resolution has no binding force. At most, it may be of greater interpretational value given the nature of the case for which it is prepared as well as the power of authority held by the ruling panel which accepted the resolution.

The problem concerning the transformation of an existing duty relationship into an employment relationship was the subject matter of the resolution of 1 July 2019, I OPS 1/19, by the virtue of which it was decided that if a Customs and Fiscal Service officer accepts an offer of employment, and transforms the duty relationship on the day specified in the offer into an employment relationship under an employment agreement concluded for a definite or indefinite time, doing so pursuant to Article 171(1)(2) of the Act of 16 November 2016 - Provisions introducing the Act on National Revenue Administration,²⁹ the competent authority is not obliged to issue a decision ending the duty relationship. The SAC emphasised that the solution adopted by the legislator, involving the transformation of a current preparatory or permanent active duty relationship into an employment relationship does not render the Customs and Fiscal Service officer unable to enjoy recourse to administrative courts in pursuit of claims alleging the infringement of their rights and freedoms (Article 77(2) of the Polish Constitution), provided that the offer of employment is rejected within the deadline specified in law (Article 170(3) of the Provisions introducing the National Revenue Administration), or to common courts if, by accepting the offer of employment, they transform their current preparatory or permanent active duty relationship into an employment relationship.

The SAC also discussed a question whether a resolution may be adopted in camera in light of Article 15zzs⁴(2) and (3) of the COVID Act.

This is to be found in the Court's justification to its resolutions nos. II OPS 1/20 and II FPS 1/20.³⁰

²⁹ Polish Journal of Laws, item 1948, as amended, hereinafter referred to as the "Provisions introducing the National Revenue Administration."

³⁰ This question was discussed in the part concerning the application of the Constitution.

GENERAL ADMINISTRATIVE QUESTIONS

In its resolution of 22 June 2020, II OPS 5/19, the SAC decided that filing a complaint against the failure of the authorities to act after the issuance of a final decision by the public body constitutes an obstacle for the administrative court to substantively examine such a complaint as to the resolution taken under Article 149 § 1(3) of the Law on Proceedings before Administrative Courts.³¹

In its resolution of 30 November 2020, II OPS 1/20, the SAC ruled that the deadline in which an application to defer the payment of environmental fees or administrative monetary penalties specified under Article 318(1) of the Act of 27 April 2001 – Law on Environment Protection³² is a procedural deadline.

In its resolution of 24 February 2020, II OPS 2/19, the SAC ruled that in proceedings aiming at the issuance of a decision pursuant to the provision found at the end of Article 7(3) of the Act of 21 September 1997 on animal protection, ³³ a non-governmental organisation whose statutory objective is animal protection, and whose authorised representative seized an animal and notified a wójt (burgomaster, or mayor) thereof, has the status of a party within the meaning of Article 28 of the Code of Administrative Procedure.

TAX LAW QUESTIONS

In its resolution of 21 September 2020, I FPS 1/20, the SAC ruled that within the legal order applicable as of 1 January 2016, in order to effectively prolong the deadline to repay the tax difference pursuant to Article 87(2) of the Act of 11 March 2004 on value-added tax,³⁴ if a letter is served via means of electronic communication in line with Article 144 § 5 in conjunction with Article

 $^{^{31}}$ Two dissenting opinions were added to the resolution. It is worth adding that under the decision of 6 August 2019, II OSK 3732/18, and pursuant to Article 187 §1 of the Law on Proceedings before Administrative Courts, the ruling panel of the SAC referred the following legal question raising serious doubts to the panel of seven SAC judges: "Does filing a complaint against the excessive length of proceedings after the proceedings are ended and a final decision is issued constitute an obstacle for the administrative court to substantively examine such a complaint as to the resolution under Article 149 § 1(3) of the Act of 30 August 2002 – Law on Proceedings before Administrative Courts?" In its decision of 22 June 2020, OPS 3/19, the SAC decided to take the case over for examination, and in its decision of 2 September 2020, II OSK 3732/19, the SAC set aside the challenged judgment and dismissed the complaint, finding that the filing of such a complaint after the proceedings are ended may not be considered a contesting measure (Article 52 § 2 of the Law on Proceedings before Administrative Courts) which the party was able to exercise before the authority competent for the case, and the exhaustion whereof was the condition for accepting the complaint.

³² Polish Journal of Laws of 2019, item 1396, as amended.

³³ Polish Journal of Laws of 2019, item 122, as amended.

³⁴ Polish Journal of Laws of 2016, item 710, as amended.

152a of the Act of 29 August 1997 – Tax Ordinance,³⁵ it is necessary to correctly serve on the addressee the decision prolonging the repayment deadline before the deadline lapses in the form of an electronic document.

In its resolution of 7 September 2020, I FPS 2/20, the SAC ruled that a monetary consideration paid out to persons entitled under copyright by a collecting society within the meaning of Article 104(1) of the Act of 4 February 1994 on copyright and related rights³⁶ in respect of interest arising from depositing monies payable to persons entitled under copyright on bank accounts of the society can be considered a rebate (discount) specified under Article 29(4) of the Act of 11 March 2004 on value-added tax³⁷ in the wording applicable in 2008, which lowers the assessment base for VAT payable on costs of collection that constitutes the society's remuneration for the copyright management services performed for persons entitled under copyright.

In its resolution of 17 February 2020, II FPS 4/19, the SAC ruled that earnest money (advance) received on concluding a preliminary real estate sales agreement, expended for housing purposes specified in Article 21(25) of the Act of 26 July 1991 on personal income tax³⁸ is subject to an exemption specified under Article 21(1)(131) of said Act provided that, later on, the final contract is concluded, transferring the ownership of the real estate, and that the earnest money (advance) is credited towards the purchase price.

Jurisdictional and competence disputes

In 2020, the SAC received 563 motions to settle jurisdictional and competence disputes. 512 cases were resolved, and in 393 cases an authority competent to examine them was named.

Under Article 166(3) of the Constitution and Article 4 in conjunction with Article 15 § 1(4) of the Law on Proceedings before Administrative Courts, the SAC resolves jurisdictional disputes between local self-government authorities and self-government appeal boards as well as competence disputes between

³⁵ Polish Journal of Laws of 2017, item 201, as amended.

³⁶ Polish Journal of Laws of 1994, No. 24, item 83, as amended.

³⁷ Polish Journal of Laws of 2004, No. 54, item 535, as amended.

³⁸ Polish Journal of Laws of 2019, item 1387, as amended.

the aforesaid authorities and government administration authorities. It may do so with respect to a specific case where two bodies consider themselves competent to resolve the case (positive dispute) or where neither considers themselves competent (negative dispute), provided as well that the case concerns public administration, where one of the authorities in the dispute is competent. A jurisdictional dispute within the meaning of the aforementioned provisions shall be understood as a situation where at least two public administration bodies consider themselves competent to resolve a given case at the same time (positive dispute), or where each sees themselves as not enjoying the jurisdiction to do so (negative dispute).

563 applications
to resolve
competence and
jurisdictional
disputes were
lodged in 2020.
512 cases were
settled, and in
393 cases the
proper public
authority for
their settlement
was indicated.

A competence dispute may arise only with respect to a specific administrative case which is either being considered in ongoing proceedings, or with respect to which there has been a refusal to initiate proceedings. Only then it is possible to examine which of the authorities is competent to resolve the case in these very proceedings. A competence dispute within the meaning of Article 4 of the Law on Proceedings before Administrative Courts is, therefore, a dispute to determine which of the authorities has the competence to resolve an administrative case being the subject of given proceedings.

What is of fundamental significance for the SAC to name the authority competent to resolve the case, are the findings determining the subject matter of the case made by the administration bodies. This is because a competence (jurisdictional) dispute arises only where the authorities disagree on the scope of their competence with respect to one specific administrative case, there being no disagreement as to the factual and legal state of affairs. Otherwise, if there is no agreement between the authorities as to the assessment of the factual state of affairs, and as to the provisions (of substantive law) which should serve as the basis for resolving the case, the case is not one and the same. It would be difficult to talk about competence (jurisdictional) disputes where the two bodies refer, in reality, to two different cases, even though they concern the same entity. In this event, one would be dealing with an apparent competence (jurisdictional) dispute, as there would be no discrepancies as to

³⁹ See decision of 20 November 2020, I OW/148/20.

⁴⁰ Decision of 25 September 2020, II GW 12/20.

the opinions on the scope of competence of the authorities, but there would be different views on the essence of the case.⁴¹

Before examining a motion to resolve a jurisdictional or competence dispute, the SAC should verify whether the motion is properly addressed, as administrative courts are not competent to resolve all disputes. Public administration bodies involved in the disputes often seem to forget about this, only indicating the Law on Proceedings before Administrative Courts as the legal basis. In turn, the specific legal basis showing in what cases the SAC is competent to resolve the dispute, and in what cases it is a different authority that is competent, arises out of Article 22 § 1 and 2 of the Act – Code of Administrative Procedure. Construal thereof points to three groups of competence disputes falling within the jurisdiction of the SAC, i.e.: 1) disputes between local governmental administration authorities and local self-government authorities; 2) disputes between self-government appeal boards; 3) disputes between other local self-government authorities where there is no shared body of higher instance.⁴²

Where two governmental administration authorities are parties to the dispute, an administrative court is not competent to examine the case, and motions filed in such cases are dismissed.

Subject of motions in 2020

With respect to jurisdictional disputes, some of them concerned naming an authority competent to: issue a decision confirming the right of a given person to publicly funded healthcare benefits in the event of doubts as to the place of residence of that person (i.a. decisions of 29 January 2020, II GW 29/19; 18 May 2020, II GW 3/20; 18 August 2020, II GW 11/20; 1 December 2020, II GW 60/20; and 13 February 2020, II GW 38/19); issue a decision prohibiting a person from carrying out business activities entered into the register of entities running employment agencies (decisions of 17 January 2020, II GW 32/19;

Decisions of 13 March 2020, I OW 245/20, and 16 August 2020, II OW 89/20, together with case-law invoked therein (see SAC decisions of 18 December 2013, I OW 205/13; 19 March 2013, II OW 191/12; 5 April 2011, II OW 13/11; SAC decisions of 10 March 2006, II OW 84/05; 5 April 2011, II OW 13/11; and 23 August 2011, II OW 62/11; cf. SAC decisions of 24 July 2007, II OW 25/07, 22 March 2011, II OW 98/10; and 10 January 2012, II OW 150/11).

⁴² Decision of 23 January 2020, II FW 3/19, II GW 17/20 and II GW 58/20.

29 September 2020, II GW 19/20; and 29 September 2020, II GW 20/20); examine a case concerning the execution of a punitive measure involving a ban on driving motor vehicles in road traffic (e.g. decision of 24 January 2020, I OW 207/19); issue a decision imposing an obligation to perform an environmental review (decision of 28 February 2020, II OW 168/19); amend a decision permitting the collection or processing of waste pursuant to the Act of 14 December 2012 on waste (decisions of 6 February 2020, II OW 138/19 and II OW 139/19), and issue such a permit (decisions of 25 February 2020, II OW 160/19, II OW 151/19, and II OW 141/19); issue a decision ordering the removal of waste (decisions of 10 March 2020, II OW 171/19 and II OW 163/19), or determine that the permit has expired (decision of 18 August 2020, II OW 48/20).

As regards cases concerning competence disputes, some, as in previous years, concerned naming the authority competent to examine an appeal against a decision of a governmental administration authority requiring the repayment of unduly collected family benefits (e.g. decisions of 17 December 2020, I OW 115/20-118/20); naming the authority to examine a case to revoke a decision approving the building design for and permitting the construction of a wind power plant (decision of 17 November 2020, II OW 151/20); and, also as in previous years, resolving interpretation doubts concerning the introduction as of 1 January 2018 of the new structure of water administration authorities pursuant to the Act of 20 July 2017 - Water Law. 43 Examining a competence dispute to name the authority competent to consider an appeal against the naming of the authority competent to examine a motion to transfer water licenses, the SAC determined that the regulation concerning the transfer of a water license was introduced with the Act of 20 July 2018 amending the Act - Water Law and certain other acts⁴⁴ and came into force on 20 September 2018. The SAC did not share the view expressed in jurisprudence that where provisions concerning the jurisdiction of public administration bodies are amended, the authority competent to consider a case should be the one authorised to handle a certain type of cases in accordance with the currently applicable provisions on the scope of its operations, unless specific provisions

⁴³ Polish Journal of Laws of 2018, item 2268, hereinafter referred to as the "Water Law".

⁴⁴ Polish Journal of Laws of 2018, item 1722.

state otherwise. The SAC indicated that provisions cannot be construed in isolation from the systemic provisions which introduce changes in the structure of public administration, since it is necessary, at the same time, to satisfy the obligation arising from Article 19 of the Code of Administrative Procedure on the observance of subject-matter jurisdiction on the part of public administration bodies at all stages of the administrative procedure. Article 542(6) of the Act – Water Law of 2017, pursuant to which starosts were obliged to draft lists of employees of poviat starosties implementing the tasks of starosts specified in the provisions of 2001 Water Law and deliver them to the minister competent for water management until the entry into force of the 2017 Water Law, implies that employees of poviat starosties featured in those lists became, by virtue of the law, employees of "Polish Waters", or Wody Polskie (Article 542(9) of the Act – Water Law of 2017). This means that starosts still function within the system of public administration authorities; however, they have lost the competence to issue water licenses, and the employees dealing with this type of cases became employees of Wody Polskie (decision of 16 September 2020, II OW 102/20, and SAC case-law invoked therein).

Complaint against the breach of the right of a party to have its case examined in judicial proceedings without undue delay

Pursuant to Article 2(1) of the Act of 17 June 2004 on complaint against the breach of the right of a party to have its case examined in an investigation conducted or supervised by a prosecutor and in judicial proceedings without undue delay,⁴⁵ a party may file a complaint to determine a breach of its right to have the case examined without undue delay in the proceedings being the subject matter of the complaint provided that the proceedings aiming at the issuance of a ruling concluding the proceedings in the case take longer than necessary to clarify significant factual or legal circumstances or longer than necessary to resolve an enforcement case or other case concerning

⁴⁵ Polish Journal of Laws of 2018, item 75, hereinafter referred to as "the Act on the Complaint."

the execution of a court ruling (the excessive length of proceedings). The letter containing the complaint must satisfy the requirements specified in Article 6 of that Act. These are requirements stipulated for all pleadings in the case (Article 6(1) of the Act) as well as requirements concerning the very measure, i.e. the demand to declare the excessive length of the proceedings being the subject matter of the complaint, and the provision of circumstances justifying that demand (Article 6(2) of the Act on the Complaint). Furthermore, in line with Article 17(1) of the Act, the complaint against the excessive length of proceedings is subject to a fixed fee of PLN 200.00. Failure to satisfy the requirements specified in Article 6(2) of the Act on the Complaint obliges the court to dismiss the complaint without calling on the party to remove the defects (Article 9(1) of the Act on the Complaint).

The SAC hears complaints against excessive length of proceedings before all administrative courts.

A complaint to determine the excessive length of proceedings before an administrative court may be upheld if there are grounds to assume that the action or omission of the court caused a breach of the party's right to have the case examined without undue delay (Article 1(1) of the Act on the Complaint). It is therefore necessary to determine that there has been a delay in the judicial proceedings (the excessive length of proceedings), and that the delay has been undue. In line with Article 2 of the Act, undue delay arises where the proceedings take longer than necessary, taking into account the assessment of the timeliness and correctness of court acts, as well as the parties' behaviours – especially the behaviours of the complainant. This assessment may not be in isolation from the court's obligation to examine all cases filed without undue delay, respecting the principle of examining the cases in the order they are received, and considering the provisions obliging the court to examine some types of cases within statutory deadlines. The Act does not state directly how much time to resolve a case should be considered an undue delay. However, Article 14 of the Act hints at that, stating the complainant may file a new complaint in the same case after 12 months. The case-law of the SAC indicates that the legislator has deemed

⁴⁶ Decision of 23 December 2020, II FPP 9/19.

⁴⁷ Decisions of 17 November 2020, II OPP 11/20; 6 November 2020, II FPP 4/20; 23 September 2020, II FPP 3/20; 10 March 2020, II FPP 15/19; 10 January 2020, II FPP 13/19 and 14/19; 16 January 2020, I GPP 26/19; 11 March 2020, I GPP 2/20; 17 April 2020, I GPP 4/20; 6 August 2020, I GPP 7/20; and 7 October 2020, I GPP 10/20.

excessively lengthy proceedings to take more than 12 months. However, if proceedings take more than 12 months, this does not mean automatically that the proceedings are excessively lengthy within the meaning of the Act. Findings of fact in a given case are also, after all, of importance.⁴⁸

The aim of the complaint is to implement the right to fair trial expressed in Article 45(1) of the Constitution of the Republic of Poland. Under the provision of Article 5(1) of the Act on the Complaint, a complaint shall be filed while the proceedings in the case are ongoing. This means that complaints against the excessive length of proceedings are admissible only during the conduct of proceedings being the subject matter of the complaint, as the fundamental purpose of such complaints against the excessive length of proceedings is to remedy that state and cause the pending case to be resolved. The provisions of the Act on the Complaint serve as a measure to exercise the constitutional right to have one's case heard without undue delay, the right to have the case filed with the court examined. They do not serve as an appellate measure of sorts, thanks to which a party may initiate proceedings in a case. The complaint is an ad hoc intervention against the unduly excessive length of judicial proceedings. It is therefore a legal measure enforcing the hearing of the case by the court. Most of all, its function is to force a swift consideration of the case. A complaint against the excessive length of proceedings is to ensure a speedy reaction to the ongoing delay in court acts; therefore, it serves its role only when it is filed while the proceedings are ongoing.⁴⁹

In 2020, the SAC received 35 complaints against the breach of the right of a party to have its case examined in judicial proceedings before the SAC and 142 such complaints with respect to proceedings before voivodship administrative courts. With respect to the complaints concerning the SAC filed for 37 resolved cases, none were upheld; in turn, with respect to voivodship administrative court, 2 complaints were upheld out of all complaints filed for 132 cases, and the sum of PLN 2,250.00 awarded concerned the Warsaw VAC.

Decision of 24 July 2020, I OPP 45/20 and the case-law invoked therein (cf. decisions of 7 March 2014, II OPP 14/14; 25 July 2013, II OPP 25/13; 19 August 2011, II OPP 27/11; 3 October 2014, I OPP 101/14), decisions of 23 December 2020, II FPP 9/19; 30 January 2020, II FPP 19/19; and 25 August 2020, II GPP 5/20.

⁴⁹ Decisions of 25 May 2020, I GPP 5/20; and 28 April 2020, I GPP 1/20 and the case-law invoked therein (decision of 20 January 2012, I OPP 84/11; cf. SAC decision of 21 July 2011, I OPP 50/11; 16 June 2008, II OPP 19/08).

Motion to declare a legally binding ruling unlawful

In 2020 the SAC received 33 motions for a declaration of a legally binding court decision unlawful: 20 regarding SAC decisions and 13 VACs decisions. Pursuant to Article 285a § 1 of the Law on Proceedings before Administrative Courts, a motion to declare a legally binding ruling unlawful may be filed against a legally binding ruling of a voivodship administrative court where its issuance causes a party to suffer damage, and amending or setting it aside under other legal measures to which the party is entitled was and is impossible.

The bases on which individuals or other entities can file a motion to declare a legally binding ruling unlawful have been restricted under Polish law (2nd sentence of Article 285d of the Law on Proceedings before Administrative Courts), as allegations against findings of fact or the assessment of evidence are excluded. Therefore, such a complaint may not be grounded on allegations concerning findings of fact or the assessment of evidence, and especially on the allegation that the circumstances necessary to apply a provision of substantive law have not been determined. The question of evaluating reliability and evidentiary weight is at the discretion of the court which may not be subject to review under a motion filed pursuant to Article 285a of the Law on Proceedings before Administrative Courts. This is because the interpretation of rules of law of the European Union does not cover the assessment of the factual state of affairs and findings of fact made by domestic authorities⁵⁰. Grounding the motion to declare a ruling unlawful on the allegation that the ruling violates Article 47 of the Charter of Fundamental Rights of the European Union⁵¹ and Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms is a basis for dismissing the motion, as Article 47 of the CFR on its own may not constitute the basis for the motion to declare an SAC ruling unlawful. The allegation that the provisions of the Charter have been violated may only be raised if provisions of EU law other than the Charter are or should be applicable in the case. Article 51(1) of the Charter implies that the rights and rules specified therein are applicable for the Member States only when they are implementing Union law. The alle-

⁵⁰ Judgment of 21 January 2020, II FNP 8/19.

OJ EU C 83, 30.03.2010, p. 389. Hereinafter referred to as "CFR" or "Charter".

gation regarding the violation of Article 13 of the Convention does not concern a violation of rules of law of the European Union within the meaning of Article 285a § 3 in conjunction with Article 285e § 1(3) of the Law on Proceedings before Administrative Courts, as the Convention does not form part of the legal order of the EU and is not a Union act.⁵².

The motion is not another instance-related appellate measure, and the rulings of the SAC are final from the moment they are issued, and, as a rule, are non-appealable.⁵³ Article 285a § 3 of the Law on Proceedings before Administrative Courts stipulates that the motion to declare a ruling unlawful may not be filed against SAC rulings, unless the unlawfulness results from a gross violation of the rules of law of the European Union. A motion to declare a SAC ruling unlawful must concern the rules of law of the European Union, and the unlawfulness must be of an aggravated nature, i.e. a gross violation of the law. A violation of the rules of law of the European Union must therefore concern a specific rule of law which was or should be applied in a given case, and this must be a gross violation of such a rule⁵⁴.

In 2020, the Court received 20 motions to declare a legally binding ruling of the SAC unlawful. 13 cases were resolved, three out of which were rejected, and ten dismissed. As for rulings of voivodship administrative courts, 13 motions were received. Nine cases were resolved, one out of which was rejected, and eight dismissed.

⁵² Decision of 20 February 2020, I ONP 6/19 and CJEU case-law invoked therein (judgments of 24 April 2012 in case C-571/10 – *Kamberaj*, EU:C:2012:233; 26 February 2013 in case C-617/10 – *Åkerberg Fransson*, EU:C:2013:105, para 44; 15 February 2016 in case C-601/15 – PPU, N., EU:C:2016:84, para 45; and 20 March 2018 in case C-537/16 – *Garlsson Real Estate and others*, EU:C:2018:193, para 24).

⁵³ Judgment of 28 January 2020, II FNP 9/19.

⁵⁴ Judgment of 7 July 2020, I FNP 10/19, I ONP 4/20 and I ONP 5/20.

CASSATION APPEALS SETTLED BY THE SUPREME ADMINISTRATIVE COURT 2004-2020

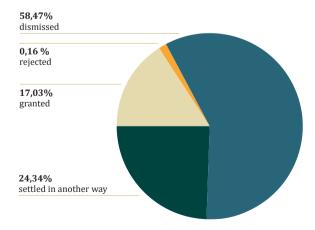
| YEAR | TOTAL NUMBER OF CASES TO RESOLVE (Left from previous period + registered in given year) | NUMBER OF CASES RESOLVED (Total) | CASES REMAINED FOR THE NEXT PERIOD |
|------|--|-------------------------------------|---------------------------------------|
| 2004 | 6 167 | 2 918 | 3 249 |
| 2005 | 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 | 26 379 |
| 2018 | 46 608 | 18 959 | 27 649 |
| 2019 | 44 493 | 16 407 | 28 086 |
| 2020 | 42 367 | 15 717 | 26 650 |

NUMBER OF CASSATION APPEALS SETTLED IN 2020 BY THE SUPREME ADMINISTRATIVE COURT

(by the outcome of the case brought)



3826 settled in another way 9189 dismissed 2677 granted 25 rejected



RESOLUTIONS OF THE SUPREME ADMINISTRATIVE COURT 2010-2020

| YEAR | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
|--------------------------------------|------|------|------|------|------|------|------|------|------|------|------|
| TOTAL | 18 | 20 | 23 | 27 | 19 | 17 | 16 | 20 | 9 | 6 | 8 |
| FINANCIAL CHAMBER | 6 | 8 | 10 | 9 | 9 | 9 | 9 | 12 | 5 | 3 | 4 |
| COMMERCIAL CHAMBER | 4 | 3 | 5 | 4 | 4 | 2 | 3 | 2 | 0 | 0 | 0 |
| GENERAL ADMINISTRATIVE CHAMBER | 8 | 9 | 8 | 14 | 6 | 6 | 4 | 6 | 4 | 3 | 4 |

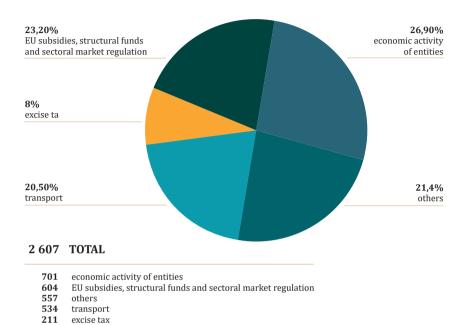
The Supreme Administrative Court adopts resolutions aimed at clarifying the legal provisions whose application caused discrepancies in the jurisprudence of administrative courts, upon the request of the President of the Supreme Administrative Court, the Public Prosecutor General, the General Counsel to the Republic of Poland, the Commissioner for Human Rights (Ombudsman) or the Commissioner for Small and Medium Entrepreneurs, 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 panel of seven SAC judges is binding in the relevant case.

CASSATION APPEALS 2020 BY THE COURT OF ORIGIN

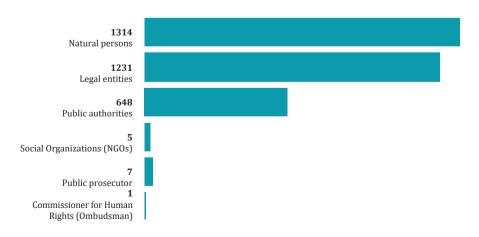
| VOIVODSHIP ADMINISTRATIVE COURT (S) | TOTAL NUMBER OF CASSATION APPEALS LODGED | % OF ALL REGISTERED CASES | TOTAL NUMBER OF CASSATION APPEALS SETTLED |
|---|--|------------------------------|---|
| ALL COURTS | 14 281 | 100 | 15 717 |
| BIAŁYSTOK | 656 | 4,59 | 437 |
| BYDGOSZCZ | 418 | 2,93 | 495 |
| GDAŃSK | 967 | 6,77 | 1301 |
| GLIWICE | 995 | 6,97 | 1321 |
| GORZÓW WLKP. | 379 | 2,65 | 509 |
| KIELCE | 204 | 1,43 | 288 |
| KRAKÓW | 966 | 6,76 | 1012 |
| LUBLIN | 513 | 3,59 | 571 |
| ŁÓDŹ | 711 | 4,98 | 903 |
| OLSZTYN | 496 | 3,47 | 470 |
| OPOLE | 206 | 1,44 | 317 |
| POZNAŃ | 959 | 6,72 | 1080 |
| RZESZÓW | 468 | 3,28 | 483 |
| SZCZECIN | 660 | 4,62 | 858 |
| WARSZAWA | 5 086 | 35,61 | 4 632 |
| WROCŁAW | 597 | 4,18 | 1040 |

COMMERCIAL CHAMBER

NUMBER OF CASSATION APPEALS SETTLED IN 2020 BY SUBJECT

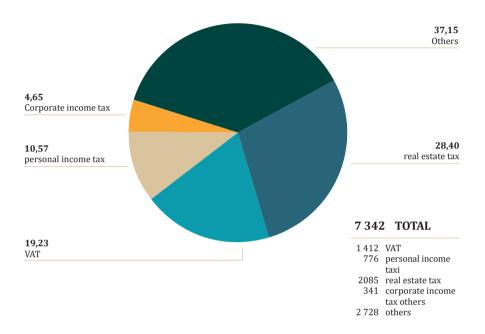


NUMBER OF CASSATION APPEALS BROUGHT BEFORE THE COMMERCIAL CHAMBER IN 2020 BY COMPLAINANTS

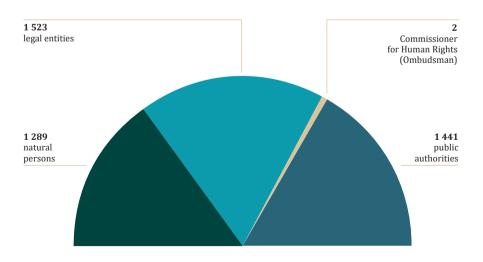


FINANCIAL CHAMBER

Number of Cassation Appeals Settled in 2020 by Subject

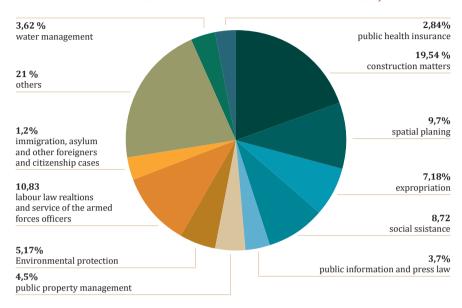


number of cassation appeals settled at a hearing and in camera by the financial chamber in 2020 by complainants*



GENERAL ADMINISTRATIVE CHAMBER

NUMBER OF CASSATION APPEALS SETTLED IN 2020 BY SUBJECT



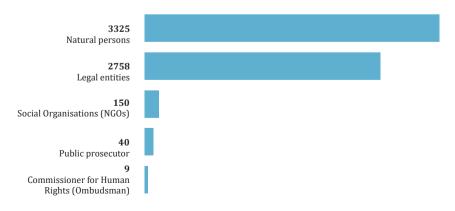
5 768 TOTAL

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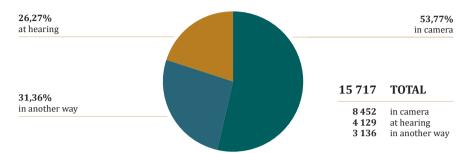
| 1 127 | construction matters | 298 | environmental protection |
|-------|----------------------|-----|--|
| 560 | spatial plannig | 625 | labour law relations and service of the armed forces officers |
| 414 | expropriation | | immigration, asylum and other foreigners and citizenship cases |
| 503 | social assistance | | water management |
| 0.40 | | -0, | water management |

213 public information and press law 164 public health insurance 259 public property management 1211 others

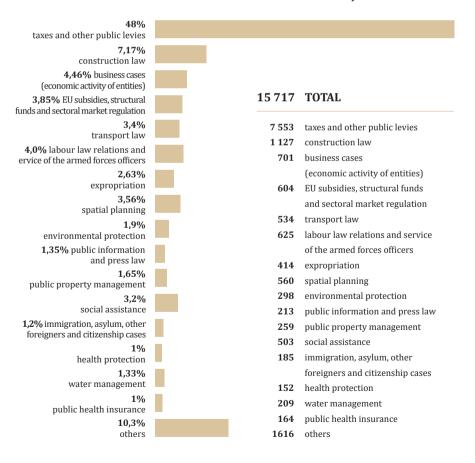
NUMBER OF CASSATION APPEALS BROUGHT BEFORE THE GENERAL ADMINISTRATIVE CHAMBER IN 2020 BY COMPLAINANTS



NUMBER OF CASSATION APPEALS SETTLED BY THE SUPREME ADMINISTRATIVE COURT IN 2020 BY MODE OF PROCEDURE



Number of cassation appeals settled by the Supreme Administrative Court in 2020 by subject



CASSATION APPEALS 2020 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 | 28 086 | 14 281 | 15 717 | 26 650 |
| GENERAL ADMINISTRATIVE CHAMBER | 10 329 | 6 282 | 5 768 | 10 843 |
| FINANCIAL CHAMBER | 10 462 | 4 803 | 7 342 | 7 923 |
| COMMERCIAL CHAMBER | 7 295 | 3 196 | 2 607 | 7 884 |

Number of references for a preliminary ruling of the Court of Justice of the European Union referred by the Polish administrative courts per year

| Year | Supreme AdministrativeCourt | Voivodship Administrative Courts | TOTAL |
|------------------|--------------------------------|-------------------------------------|-------|
| 2005 | - | 1 | 1 |
| 2006 | - | 2 | 2 |
| 2007 | 1 | 3 | 4 |
| 2008 | 2 | 1 | 3 |
| 2009 | 4 | 1 | 5 |
| 2010 | 5 | 4 | 9 |
| 2011 | 3 | - | 3 |
| 2012 | 5 | 2 | 7 |
| 2013 | 7 | 1 | 8 |
| 2014 | 2 | 3 | 5 |
| 2015 | 5 | - | 5 |
| 2016 | 8 | - | 8 |
| 2017 | 5 | 2 | 7 |
| 2018 | 3 | 3 | 6 |
| 2019 | 5 | 3 | 8 |
| 2020 | 3 | 3 | 6 |
| TOTAL 2005 -2020 | 58 | 29 | 87 |

APPLICATION OF EUROPEAN LAW BY THE POLISH ADMINISTRATIVE COURTS

Jurisprudence of administrative courts touches upon questions of European Union law in cases concerning indirect tax (including value-added tax and excise duty) as well as income tax, tax on civil law transactions, real estate tax, customs law, road and air transport, environmental protection and spatial management, construction, sanitary, veterinary, and pharmaceutical supervision, access to public information, social security, games and parimutuel betting, agricultural law and financial aid from EU funds, as well as in cases concerning foreigners, technical inspection and standardisation, and industrial property.

Administrative courts referred to the CJEU case-law in in order to determine the relevance of a given EU law applicable to the pending case.

European Union law is invoked by administrative courts in both judgments and decisions they issue, and in the resolutions adopted by the SAC with a pro-EU interpretation of domestic law provisions. The principle stipulated in Article 91 of the Constitution of the Republic of Poland (direct application of international and EU law and precedence thereof over statutes in the event of conflict of laws) was adhered to.

Jurisprudence of administrative courts has referred to the case-law of the Court of Justice of the European Union⁵⁵ to determine the relevance of a specific EU law applicable in a given case. Administrative courts have also referred to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms⁵⁶ and to the case-law of the European Court of Human Rights.⁵⁷ In particular, the references related to cases concerning the guarantee of the right to fair trail (including the right to an effective remedy, the principle of *non bis in idem*, and the right to assistance), the protection of

⁵⁵ Hereinafter referred to as "CJEU".

⁵⁶ Convention for the Protection of Human Rights and Fundamental Freedoms adopted in Rome on 4 November 1950 (Polish Journal of Laws of 1993, No. 61, item 284, as amended), hereinafter referred to as "The European Convention" or "ECHR".

⁵⁷ Hereinafter referred to as "ECtHR".

the right to property, and to cases concerning foreigners. ECtHR rulings have been invoked in the justifications of rulings issued by administrative courts as subsidiary argumentation, that is, an additional justification of the constitutional standards applied.

Administrative courts have invoked the CFR as part of subsidiary argumentation, i.e. to show that specific rights and freedoms of individuals are protected and guaranteed not only in the Constitution of the Republic of Poland or the ECHR, but also within the legal order of the Union (evidencing a multi-centric structure of the current legal order). These references concerned, in particular, the right to fair trial, the right to good administration, and the principle of proportionality.

In its broad sense, EU law was also used in the process of interpreting Polish law. As in previous years, administrative courts have availed themselves of the right to request preliminary rulings from the CJEU concerning the interpretation of Union law.

■ Requests for preliminary rulings to the CJEU

Polish In 2020, Polish administrative courts submitted six requests for preliminary rulings to the CJEU pursuant to Article 267 TFEU. Three decisions in that matter were issued by the ruling panels of the SAC, while the Kraków VAC, Szczecin VAC, and Warsaw VAC issued one decision each.

In its decision of 18 June 2020 in case I SA/Sz 61/20, the VAC in Szczecin referred the following question to the CJEU: "Is the national authorities' interpretation of the definition of 'permanent pasture' – set out in Article 2(c) of Commission Regulation (EC) No 1120/2009 of 29 October 2009 laying down detailed rules for the implementation of the single payment scheme provided for in Title III of Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers (OJ 2009 L 316, p. 1)⁵⁸ – as meaning that the natural periodic flooding of meadows and pastures situated in

In 2020, Polish administrative courts made the reference for the CJEU preliminary ruling in 6 cases.

⁵⁸ OJ EU L 316, 2.12.2009, p. 1

a special environmental protection zone (Natura 2000 Area; Ińsko Landscape Park) makes those areas of land subject to 'crop rotation', resulting in an interruption of the period of five years (or more) of not being subject to that 'crop rotation', with the result that it also constitutes a ground for withdrawing or reducing agri-environmental payments to the farmer, as well as further financial consequences connected with the interruption of the continuity of the five-year period for the implementation of an agri-environmental programme, correct?".

In its decision of 30 June 2020 in case I FSK 1785/17, the SAC referred the following question to the CJEU: "Do Article 41 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax⁵⁹ and the principles of proportionality and neutrality preclude the application, in a situation such as that at issue in the main proceedings, of a national provision such as Article 25(2) of the Ustawa z dnia 11 marca 2004 r. o podatku od towarów i usług (Law of 11 March 2004 on Value Added Tax)⁶⁰ to an intra-Community acquisition of goods by a taxable person — if that acquisition has already been taxed in the territory of the Member State in which dispatch ends, by the persons acquiring the goods from that taxable person — where it has been established that the taxable person's actions did not involve any tax fraud, but that they were the result of an incorrect designation of supplies in chain transactions and that that taxable person's Polish VAT identification number was provided for the purposes of a domestic rather than an intra-Community supply?".

In its decision of 22 July 2020 in case I FSK 2024/17, the SAC referred the following questions to the CJEU: "1. Must the provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1, as amended)⁶¹, in particular Articles 9, 295 and 296, be interpreted as precluding a national practice laid down in Article 15(4) and (5) of the Ustawa z dnia 11 marca 2004 r. o podatku od towarów i usług (Law of 11 March 2004 on the tax on goods and services) (Journal of Laws [Dz. U.] of 2011, No 177, item 1054, as amended)⁶², which excludes the option of treating as separate VAT taxable persons spouses who engage in

⁵⁹ OJ EU L 347, 11.12.2006, p. 1, as amended.

⁶⁰ Polish Journal of Laws of 2011, No. 177, item 1054, as amended.

⁶¹ OJ EU L 347, 11.12.2006, p. 1, as amended.

⁶² Polish Journal of Laws of 2011, No. 177, item 1054, as amended.

agricultural activity within an agricultural holding using their marital joint property? 2. Is it relevant to the answer to the first question that, according to national practice, if one spouse opts to tax his or her business on the basis of general VAT rules, the other spouse ceases to be a flat-rate farmer? 3. Is it relevant to the answer to the first question that it is possible to clearly distinguish between the assets used independently and autonomously by each spouse for the purposes of the business activity concerned?".

In its decision of 9 September 2020 in case VI SA/Wa 235/20, the VAC in Warsaw referred the following questions to the CJEU: "1. Does Article 34 TFEU preclude national legislation under which a parallel import licence is to expire after one year from the expiry of the marketing authorisation for the reference medicinal product? 2. In the light of Articles 34 and 36 TFEU, may a national authority adopt a decision of a declaratory nature to the effect that a marketing authorisation for a medicinal product in connection with parallel import is to expire automatically, solely on the ground that the period laid down by law has expired, as from the date on which the marketing authorisation for the reference medicinal product expired, without examining the reasons for the expiry of [the marketing authorisation for] that product or other requirements referred to in Article 36 TFEU relating to the protection of the health and life of humans? 3. Is the fact that parallel importers are exempt from the obligation to submit periodic safety reports, and the authority consequently has no current data on the benefit/risk of pharmacotherapy, sufficient to adopt a decision of a declaratory nature to the effect that a marketing authorisation for a medicinal product in connection with parallel import is to expire?".

In its decision of 27 October 2020 in case I FSK 67/18, the SAC referred the following question to the CJEU: "Must Article 135(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax⁶³ be interpreted as meaning that the exemption which that provision provides for in respect of transactions concerning the granting and the negotiation of credit and the management of credit is applicable to the subparticipation agreement described in the main proceedings?".

⁶³ OJ EU L 347, 11.12.2006, p. 1, as amended.

In its decision of 9 December 2020 in case III SA/Kr 1217/19, the VAC in Kraków referred the following question to the CJEU: "Must Article 21(1) in conjunction with Article 20(2)(a) of the Treaty on the Functioning of the European Union, in conjunction with Article 7, Article 21(1) and Article 24(2) of the Charter of Fundamental Rights of the European Union be understood as precluding the authorities of a Member State from denying a minor being a national of that state the transcription of their birth certificate issued in a different Member State, which is necessary to obtain an identity document of the Member State of which the minor is a national, because the domestic law of that state does not stipulate for same-sex parenthood, and the certificate specifies individuals of the same sex as parents?".

Furthermore, pursuant to Article 107 of the Rules of Procedure of the Court of Justice, for the sake of the wellbeing of the minor, who remains without protection in the form of the right to freedom of movement and residence within the territory of the Member States, and the protection of their private and family life, the VAC in Kraków also requested that the case be dealt with under an urgent procedure.

PRELIMINARY RULINGS ISSUED IN RESPONSE TO QUESTIONS FROM POLISH ADMINISTRATIVE COURTS

In its judgment of 7 May 2020 in case C-547/18 – Dong Yang Electronics⁶⁴ in response to the request for a preliminary ruling of the VAC in Wrocław,⁶⁵ the Court of Justice ruled: "Article 44 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2008/8/EC of 12 February 2008, and Article 11(1) and Article 22(1) of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112, must be interpreted as meaning that the existence, in the territory of a Member State, of a fixed establishment of a company established in a non-Member State may not be inferred by a supplier of services from the mere fact that that company has a subsidiary there, and that supplier is not required to

In 2020 the Polish administrative courts received 3 CJEU preliminary rulings in response to questions referred in previous years.

⁶⁴ ECLI:EU:C:2020:350.

⁶⁵ Decision of the VAC in Wrocław of 6 June 2018, I SA/Wr 286/18.

inquire, for the purposes of such an assessment, into contractual relationships between the two entities."

In its judgment of 28 May 2020 in case C-727/17 - ECO-WIND Construction⁶⁶ in response to the request for a preliminary ruling of the VAC in Kielce, 67 the Court of Justice ruled: "1) 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 must be interpreted as meaning that the requirement that the installation of a wind turbine is subject to compliance with the condition of a minimum distance between it and buildings with a residential function does not constitute a technical regulation which must be notified under Article 5 of that directive, provided that that requirement does not lead to a purely marginal use of wind generators, which it is for the referring court to determine. 2) 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 must be interpreted as meaning that legislation which makes the installation of a wind turbine subject to compliance with the condition of a minimum distance between that wind turbine and buildings with a residential function cannot be categorised as rules which make access to, or exercise of, a service activity subject toa territorial limit in the form, in particular, of limits fixed according to a minimum distance between service providers, which the Member States must notify to the European Commission in accordance with Article 15(7) of that directive. 3) The first subparagraph of Article 3(1) and the first subparagraph of Article 13(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, as amended by Directive (EU) 2015/1513 of the European Parliament and of the Council of 9 September 2015 must be interpreted as not precluding legislation which makes the installation of a wind turbine subject to compliance with the condition of a minimum distance between that wind

⁶⁶ ECLI:EU:C:2020:393.

⁶⁷ Decision of the Kielce VAC of 12 October 2017, II SA/Ke 337/17.

turbine and buildings with a residential function, provided that that legislation is necessary and proportionate in the light of the mandatory national overall target of the Member State concerned, which it is for the referring court to determine."

In its judgment of 15 October 2020 in case C-335/19 – E.⁶⁸ in response to the request for a preliminary ruling of the SAC,⁶⁹ the Court of Justice ruled: "Article 90 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national legislation which makes the reduction of the taxable amount for the purposes of value added tax (VAT) subject to the condition that, on the day of delivery of the goods or provision of the services and on the day preceding that on which the adjusted tax return seeking that reduction is filed, the debtor is registered as a taxable person for the purposes of VAT and is not the subject of insolvency or winding-up proceedings, and that, on the day preceding the date of filing of the adjusted tax return, the creditor is itself still registered as a taxable person for the purposes of VAT."

Enforcement of preliminary rulings

As a result of the preliminary rulings issued by the CJEU in 2020, administrative courts resumed the proceed ings suspended in the cases wherein they previously requested the preliminary rulings,⁷⁰ as well as in other cases, the suspension of which was justified by the requests for preliminary rulings previously submitted to the Court.⁷¹ Administrative courts invoked the argumentation that the CJEU included in its rulings in examining both the cases, the resolution of which depended on the response of the Court,

⁶⁸ ECLI:EU:C:2020:829.

⁶⁹ Decision of the SAC of 6 December 2018, I FSK 2261/15.

⁷⁰ In its decision of 9 June 2020 in case I SA/Wr 286/18, the VAC in Wrocław resumed the suspended proceedings due to the issuance by the Court of Justice of a preliminary ruling in case C-547/18. In its decision of 27 October 2020 in case II SA/Ke 337/17, the VAC in Kielce resumed the suspended proceedings due to the issuance by the Court of Justice of a judgment in case C-727/17. By virtue of an SAC decision of 15 December 2020, given the issuance by the Court of Justice of a judgment in case C-335/19, suspended proceedings in case I FSK 2261/15 were resumed.

⁷¹ See SAC decision of 19 June 2020 on the resumption of suspended proceedings in case II OSK 70/18 due to the issuance by the Court of Justice of a judgment in case C-727/17 – *ECO-WIND Construction;* SAC decision of 30 December 2020 on the resumption of suspended proceedings in case I FSK 1073/17 *due to* the issuance by the Court of Justice of a judgment in case C-335/19 – E.

and the cases analogous to those wherein the requests for preliminary rulings were submitted.⁷²

In case I SA/Wr 286/18 (judgment of 10 September 2020), wherein the VAC in Wrocław previously referred questions to the CJEU, the decisions of the tax authorities of both instances were repealed, as it was deemed that these tax authorities unfoundedly denied the complainant the right to apply a preferential tax rate. This case was resolved based on the interpretation by the CJEU of Article 44 of Directive 2006/112/EC and Article 11(1) of Implementing Regulation (EU) No 282/2011.

Similarly, the VAC in Kielce resolved case II SA/Ke 337/17 on 27 October 2020, wherein it previously requested a preliminary ruling from the CJEU, referring questions on restrictions concerning land-based wind power plants. The judgment of the CJEU of 28 May 2020 in case C-727/17 – *ECO-WIND Construction* formulates criteria for assessing the nature and results of the Polish Act of 20 May 2016 on investments concerning wind power plants. Within the legal order applicable in Poland, and thus within the review of legality of the administrative decisions challenged, the VAC in Kielce repealed the decisions of the bodies of both instances, leaving to them (per their jurisdiction) the substantive consideration of the case using the guidelines arising from the CJEU ruling.

Refusal to submit a request for a preliminary ruling

In 2020, administrative courts refused to refer questions to the CJEU per the requests of the parties when they deemed that the legal question arising in the case did not raise doubts and did not require the use of the procedure stipulated in Article 267 TFEU (*acte clair*), or that the question had been sufficiently clarified in existing CJEU case-law (*acte éclairé*).⁷³

 $^{^{72}}$ See e.g. judgments of the VAC in Gliwice of 28 July 2020, I SA/Gl 141/20; and 6 October 2020, I SA/Gl 1401/19 (in both cases, the court referred to the preliminary ruling in case C-547/18); SAC judgment of 17 November 2020, II OSK 70/18 (the interpretation provided by the CJEU in the case C-727/17 being of considerable significance for resolving this case).

 $^{^{73}\}quad \text{See i.a. justifications of SAC judgments of 20 January 2020, IFSK 1695/17; and 25 August 2020, II GSK 514/18.}$

The SAC deemed unsubstantiated the allegations in cassation appeals that Article 267 TFEU had been violated through an actual prohibited substitution of the competence of a domestic court to request a preliminary ruling from the CIEU with a different prejudication, i.e. the abstract resolution adopted by the panel of seven SAC judges of 16 May 2016, II GPS 1/16. In this resolution, the SAC ruled that Article 89(1)(2) of the Act of 19 November 2009 on gambling games⁷⁴ was not a technical regulation within the meaning of Article 1(11) of Directive 98/34/EC,75 the draft of which should be communicated to the European Commission under the first subparagraph of Article 8(1) of said Directive, and might have constituted a basis for the imposition of a monetary penalty for the violation of the Act on gambling games. The resolution did not violate Article 267 TFEU, as the subject matter of interpretation was a provision of Polish law on gambling games. Apart from that, ruling by resolution, the domestic court was bound by paragraph 40 of the judgment of the CJEU of 19 July 2012 in joined cases C-213/11, C-214/11 and C-217/11 - Fortuna and others⁷⁶ which was issued in response to the request for a preliminary ruling from the VAC in Gdańsk. The Court emphasised in that judgment that findings on the factual nature of domestic provisions of such kind as the provisions on gambling games fall within the competence of the domestic court. The SAC also pointed out that since 1 May 2004, i.e., the date of accession of the Republic of Poland to the European Union, the SAC has also been a Union court, and so it may resolve questions concerning the application or interpretation of Union law. Judicial review in the legal order of the European Union is exercised by both the CJEU and the domestic courts of Member States which jointly respect Union law, as confirmed by the CJEU in, among other rulings, the judgment of 27 February 2018 in case C-64/16 - Associação Sindical dos Juízes Portugueses. 77 That judgment shows that to the extent that a domestic court may rule on questions concerning the application or interpretation of EU law, the Member State concerned must ensure that that court meets the re-

⁷⁴ Polish Journal of Laws of 2015, item 612, as amended.

⁷⁵ Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (0] L 204, 21.7.1998, p. 37).

⁷⁶ ECLI:EU:C:2012:495.

⁷⁷ ECLI:EU:C:2018:117.

quirements essential to effective judicial protection, in accordance with the second subparagraph of Article 19(1) TEU (para 40 in conjunction with para 38 of the justification of the judgment).⁷⁸

Similarly, the SAC considered unfounded the request to refer a question to the CJEU in the case resolved by virtue of the judgment of 11 February 2020, II OSK 1330/17. In that case, the ruling panel, bound by the conclusion contained in the resolution of 2 December 2019, II OPS 1/19,⁷⁹ pointed out that no concrete rule of law of the European Union, the interpretation or declaration of which would be necessary to resolve the case, was applicable in these specific proceedings. In the belief of the SAC, the justification of resolution II OPS 1/19 comprehensively considers the question of whether it is admissible to register in Polish civil status records that a child's parents are two people of the same sex, based on the values and principles that arise from the Polish Constitution, international law, and EU law. The justification also features a thorough explanation of the provisions of domestic law in the context of CJEU case-law.

 $^{^{78}}$ See SAC judgments of 17 November 2020, II GSK 4198/17; 27 November 2020, II GSK 3773/17; also SAC judgment of 24 November 2020, II GSK 4103/17.

⁷⁹ The panel of seven SAC judges ruled: "Article 104(5) and 107(3) of the Act of 28 November 2014 – Law on civil status records (Polish Journal of Laws of 2014, item 1741, as amended) in conjunction with Article 7 of the Act of 4 February 2011 – Private international law (Polish Journal of Laws of 2015, item 1792) does not allow a foreign birth certificate of a child to be transcribed if persons of the same sex are entered as parents therein."

NON-JUDICIAL ACTIVITIES OF THE ADMINISTRATIVE COURTS

GENERAL QUESTIONS

The duties of the President of the SAC regarding supervision over the judicial and organisational activities of administrative courts mostly arise from the systemic Act - Law on the System of Administrative Courts and secondary legislation, including the Regulation of the President of the Republic of Poland of 18 September 2003 on the detailed procedure for the supervision over the administrative activities of voivodship administrative courts and the Regulation of the President of the Republic of Poland of 4 July 2020 - Rules of Procedure of the Supreme Administrative Court.80 The latter regulation, issued by the President of the Republic of Poland after consulting the College of the Supreme Administrative Court, substituted as of 7 July 2020 the resolution of the General Assembly of SAC Judges of 8 November 2010 on the internal rules of procedure of the SAC, which had been applicable for almost a decade. 81 In implementing the statutory authorisation specified in Article 47 § 1(1) of the Law on the System of Administrative Courts and pursuant to § 25(1) of the newly adopted Rules of Procedure, the Board of the Supreme Administrative Court has specified, by means of a resolution, the distribution of duties in the Supreme Administrative Court, and laid out the detailed rules for assigning cases to the respective judges.82

The President of the SAC exercises judicial supervision through the Judicial Decisions Bureau, whereas the duties related to establishing the conditions for the efficient functioning of administrative courts, especially in matters of finance, human resources, administration, and economy, are performed through the Chancellery of the President of the SAC. Duties related, among

The President of the SAC exercises hierarchical judicial supervision through the Judicial Decisions Bureau whereas in terms of establishing the conditions for efficient functioning of administrative courts is supported by the Chancellery of the President.

⁸⁰ Polish Journal of Laws, item 1202, hereinafter referred to as the "Rules of Procedure."

⁸¹ Monitor Polski, No. 86, item 1007.

⁸² Resolution of the Board of the Supreme Administrative Court of 10 September 2020 on the distribution of duties and detailed rules for assigning cases to the respective judges in the Supreme Administrative Court.

other things, to informing parties about their cases, making public information on the activities of the SAC available, compiling statistics and handling other cases are performed, pursuant to § 3 of the Rules of Procedure, by the Court Information Division.

Judicial Decisions Bureau

The Judicial
Decisions Bureau
performs tasks
related to
carrying out
activities by the
President of the
SAC regarding
the efficiency
of court
proceedings
and case-law of
administrative
courts.

The Judicial Decisions Bureau of the SAC employs judges and specialists in various fields of law, including persons with an academic background. The Judicial Decisions Bureau performs duties related to the exercise by the President of the SAC of activities regarding the efficiency of court proceedings and jurisprudence of administrative courts. The detailed supervisory activities of the President of the SAC over the administrative activities of the courts performed at the Judicial Decisions Bureau are stipulated by the provisions of the Regulation of the President of the Republic of Poland of 18 September 2003 on the detailed procedure for the supervision over the administrative activities of voivodship administrative courts. Bureau are laid out in the Rules of Procedure as well as in the orders of the President of the SAC regulating the scope of competence of each division and team in the Bureau.

Apart from so-called inspection-problem divisions, the following divisions function within the structure of the Judicial Decisions Bureau: the Division of Collection and Publication of Case-Law of Administrative Courts, and the Division of European Law, as well as the following teams: Collection and Publication of Case-Law of European Courts Team, Personal Data Protection Team, and Economic Analysis Team.

With respect to supervisory activities related to eliminating discrepancies in the jurisprudence of administrative courts, the Judicial Decisions Bureau analyses rulings of voivodship administrative courts and the SAC on an ongoing basis. If discrepancies in case-law arise, the Bureau presents the Pres-

⁸³ Polish Journal of Laws, No. 169, item 1645.

ident of the SAC with the relevant motions. The Bureau also verifies whether the requests of various entities submitted to the President of the SAC to file an application with the Constitutional Court under Article 191(1)(1) of the Constitution of the Republic of Poland are reasonable. The Judicial Decisions Bureau furthermore prepares opinions on draft laws sent to the President of the SAC.

In 2020, the Judicial Decisions Bureau analysed the rulings of the SAC and of voivodship administrative courts as to the application and interpretation of the Constitution of the Republic of Poland, Community law, and international agreements, as to the consideration of the case-law of the Constitutional Court, the Court of Justice of the European Union, and the European Court of Human Rights, and as to the proper application of SAC resolutions. Jurisprudence of administrative courts was analysed also as to whether it is kept uniform.

Another subject matter of the analyses of the Bureau were the material violations of the law and the circumstances contributing to them, including the violations of the statutory principle of being bound by the legal assessment expressed in a judgment, committed by administration bodies, as well as the failure to act and the excessive length of administrative proceedings, as indicated by the ruling panels in their signalling decisions. Analyses also covered dissenting opinions of judges in particular cases, i.a. in the context of their influence on the uniformity of case-law.

Discrepancies found in case-law constitute the basis for recommendations to discuss the given question during judicial deliberations as well as, under specific conditions, for the preparation of a draft abstract question referred by the President of the SAC to an extended panel of SAC judges to adopt a resolution aimed at clarifying the legal provisions, the application of which has caused discrepancies in the jurisprudence of administrative courts,⁸⁴ or a draft application of the President of the SAC to the Constitutional Court pursuant to Article 191(1)(1) of the Constitution of the Republic of Poland. In 2020, the Bureau received three requests that the President

 $_{84}$ Pursuant to Article 15 $\$ 1(2) in conjunction with Article 264 $\$ 2 of the Law on Proceedings before Administrative Courts.

of the SAC make application to the Constitutional Court; however, analysis thereof did not confirm the doubts as to whether the provisions specified were inconsistent with the Constitution, and as such the requests were not upheld. In turn, two motions of the President of the SAC were drafted to have questions considered by extended panels of SAC judges to adopt resolutions clarifying legal provisions. In that time, the Bureau received 14 requests that the President of the SAC move for the adoption of a resolution by the extended panels of the SAC, or for the quashing of administrative court rulings. After analysis, one request was upheld, one remains to be examined, and as for the rest, there were no grounds to move for the adoption of a resolution by an extended panel of SAC judges.

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

The Court

Within the annual work schedule of the Judicial Decisions Bureau, employees prepare analytical studies on selected jurisprudential questions concerning cognition of administrative courts.

In 2020, the Judicial Decisions Bureau provided 45 opinions for draft acts of law as well as legislative opinions, submitting observations on such draft acts as the Act on special arrangements for the prevention, combating and control of COVID-19, other communicable diseases and related emergency situations; the Act amending the Act on local fees and taxes; and the Act amending acts in order to automate the processing of certain issues handled by the National Revenue Administration.

Court Information Division

In 2020, the Court Information Division of the Supreme Administrative Court (CID SAC) mostly performed duties arising from the Rules of Procedure especially consisting in informing parties and stakeholders about the jurisdiction of administrative courts and the status of cases handled at the Court, making case files available for perusal, making public information concerning the activities of the Court available, handling cases arising from petitions, complaints and motions, ensuring media coverage for the SAC and the President of the Court, compiling court statistics, supervising the Central Database of Administrative Court Judgments (CBOIS) and perform-

ing other activities related thereto, as well as managing the maintenance of the SAC website and its Public Information Bulletin.

Pursuant to § 9(5) of the Rules of Procedure, CID SAC supervised the performance of similar tasks in voivodship administrative courts. The Division also fulfilled the obligation arising from Article 11(2) of the Act on stamp duty⁸⁵ by informing the relevant tax authorities about cases of failure to file the proof of payment of stamp duties on documents attesting to powers of attorney or proxies granted as well as copies and extracts thereof.

Due to the epidemic situation, the activities of the Division in 2020 regarding direct and personal contact with stakeholders were limited, which in turn translated to more remote contact.

The Chancellery of the President of the Supreme Administrative Court

The duties falling within the scope of operations of the Chancellery of the President of the SAC involve establishing the conditions for the efficient functioning of administrative courts – the Supreme Administrative Court and voivodship administrative courts – especially in matters of finance, human resources, administration, and economy.

The Chancellery of the President of the SAC consists of the following divisions: the Organisational-Legal Division, the Division for Judges, Court Assessors and Referendaries, the General and Personal Matters Division, the Administrative-Economic Division, the Financial-Budgetary Division, the IT Division, and the Technique and Investment Division.

The Organisational-Legal Division comprises the Cabinet Team of the President established in June 2019 (in lieu of the Domestic and Foreign Relations Team functioning in 2016–2019), and the Library and Publication Team.

The Chancellery of the President of the Supreme Administrative Court provides conditions for the efficient operation of the administrative judiciary, both SAC and VACs, within their judicial and non-judicial activities.

⁸⁵ Act of 16 November 2006 on stamp duty (Polish Journal of Laws of 2020, item 1546).

ORGANISATIONAL ACTIVITIES RELATED TO THE DECLARATION OF THE COVID-19 STATE OF EPIDEMIC

The state of epidemic declared last year caused the Chancellery of the President of the SAC to face new additional tasks apart from the duties indicated hereinabove, which, in particular, involved having to maintain the effective functioning of the Court in these extraordinary circumstances, and ensuring that the judges and employees of the Court as well as all parties to the proceedings before the Supreme Administrative Court enjoy all protective means against SARS-CoV-2 infection. Practically, this came down to drafting appropriate internal regulation, guidelines and information based on the legal state of affairs which depended on the developments in the pandemic, extending the IT systems of the Court, and supplementing computer resources as well as other IT tools enabling the remote performance of duties, protecting Court employees and premises in terms of the sanitary regime, and supplying the courtrooms with adequate technical equipment.

In February 2020, even before the state of epidemic emergency and the state of epidemic was declared on the territory of the Republic of Poland due to SARS-CoV-2 infections, by the virtue of generally applicable law, the Chancellery of the President of the SAC had started the works to ensure adequate protection for the judges and employees of the Court against the potential risk of being infected with the SARS-CoV-2 coronavirus at the workplace, laying down adequate preparatory and preventive measures and monitoring the announcements and information of the relevant sanitary and epidemiological authorities. It was then that it was decided that the Court would be equipped with hand sanitisers, sanitary facilities would have visual instructions showing the right way to wash hands, cleaning services would be ordered to disinfect door handles and other fixtures in particular, and protective masks would be bought for those who would manifest symptoms corresponding to those of being infected with the coronavirus.

Following the COVID Act and the declaration of the state of epidemic emergency in the whole state, pursuant to an order of the President of the

SAC which took into account the Guidelines of the Minister of Justice and the Chief Sanitary Inspector of 18 May 2020 for the functioning of courts during the SARS-CoV-2 epidemic in Poland, specific executive activities concerning the SAC and voivodship administrative courts were taken immediately, their purpose being, on the one hand, preventing the potential threat of infecting the administrative judiciary staff as well as parties and participants to the proceedings before these courts with the SARS-CoV-2 coronavirus, and, on the other hand, maintaining the operations of the administrative courts admissible in the applicable pandemic circumstances. Thirteen such internal regulations issued in the reporting period, which were adequately correlated with the generally applicable laws in conformity with the epidemic emergency in Poland declared by the relevant authorities, were also the basis for restricting or temporarily suspending the examination of cases at hearings which, at the same time, was offset with an adequate increase in cases examined at in-camera sessions pursuant to the relevant provisions.

Relevant activities were performed in pursuit of the abovementioned purposes in three general areas:

- organisation-wise arranging for some of the staff to work in a remote, shift-based or rotation system, and adjusting the working schedule of assistants to that of the judges who, by statute, organise their own working time due to their task-based working time;
- 2) providing the relevant protective and preventive sanitary and epidemiological measures at administrative courts (providing hand sanitisers, masks, and protective gloves, ensuring non-contact temperature measurements for all people entering the court premises, designating zones for stakeholders to move about, providing technical safeguards for hearings by using transparent screens to separate the stands for the parties and ruling panels, ensuring audio-visual service and transmission of the hearings on screens mounted in front of the courtrooms, ozonising or disinfecting the courtrooms, files reading rooms and passageways, disinfecting banisters and door handles in office rooms, allowing employees to be tested for COVID-19, etc.);

3) adding new functions to the software used by administrative courts, allowing the system existing in the judiciary sphere to develop in terms of electronic communications with particular account taken of safety requirements, and remote participation in hearings, enabling this function to be technically implemented via voivodship administrative courts competent for the place of one's residence.

Guided by the prerequisites for ensuring optimal working conditions to achieve the best jurisprudential results possible, the Supreme Administrative Court provided all judges and assistants with:

- the possibility to communicate electronically with registries of procedural divisions, ensuring access of staff to documentation maintained in these organisational units;
- the electronic access to procedural documentation via the EZD PUW electronic documentation management system and the PASSA administrative court case file website;
- remote access to legal information systems.

Moreover, the SAC provided all judges with qualified electronic signatures, ensured they were able to directly communicate by electronic means with judges ruling in court cases and that these cases were considered using information technologies and tools at in-camera sessions, and also allowed electronic communication and contact between judges and their assistants in court cases.

Regardless of their orders, throughout the whole reporting period, the President of the SAC directly coordinated the operations of all voivod-ship administrative courts through systematic videoconferences with presidents thereof, regularly (every other week as a rule) discussing questions of judicial efficiency, effective implementation of safety systems for court employees during the pandemic, and maintaining the efficiency of court activities.

The efforts described hereinabove translated to the continued high judicial efficiency of the SAC with sustained high numbers of cases filed – over 2,000 more than in 2019. This caused the number of outstanding cases for the SAC to decrease by almost 1,500. In turn, the operational mechanisms that were

adequately implemented in voivodship administrative courts and adopted by the virtue of orders of the President of the SAC caused these courts to consider over 65,000 cases within the average period for all voivodship administrative courts of five months, shorter by a month than the six months that had been adopted by these courts as a benchmark period for examining cases before the outbreak of the pandemic. It is also worth adding here that the total number of cases filed with voivodship administrative courts remains consistently high. In 2020, it amounted to almost 70,000 cases, up by around 3,000 compared to 2018 (67,000), and less by around a thousand compared to 2019 (71,000).

ACTIVITIES CONCERNING THE COMPUTERISATION OF ADMINISTRATIVE COURT PROCEEDINGS

In consultation with the Podlaskie Voivodship Office in Białystok which developed the EZD PUW electronic documentation management system adopted for the administrative judiciary, necessary adjustments were made to the system to allow qualified electronic seals, equal in force to qualified electronic signatures, to be affixed to procedural documents, copies thereof, and attachments thereto in court proceedings, as well as to rulings served by the courts in the form of electronic documents. As assumed, this institution was implemented in the first quarter of 2021.

Further works were carried out to add two new functions to the PASSA administrative court case file website. One allows maintaining electronic repertories of cases examined by the SAC. Efforts to introduce electronic repertories in voivodship administrative courts are currently being completed. The other, apart from the already provided access to court files, will allow access to electronic administrative case files transferred to voivodship administrative courts together with responses to the complaints in 2021.

In the area of information technology, the Chancellery of the President of the SAC performed duties aimed at establishing the right conditions for the efficient ruling and functioning of the administrative judiciary. These, in particular, involved ensuring the right ruling and administrative panels, and providing optimal conditions as to the premises as well as the necessary office, technical, and IT equipment.

INVESTMENT ACTIVITIES

As regards investment activities, renovation and restoration works were completed in the VAC in Olsztyn, which involved the renovation of the façade of the historic building that serves as the premises for the Court. Investment works were also carried out in the Gdańsk VAC and Lublin VAC.

As in the previous years, all administrative courts were additionally provided with the lacking office and technical equipment, and had IT infrastructure modernised to the extent necessary for the implementation of further system modifications related to the computerisation of administrative court proceedings.

ACTIVITIES TO ENSURE JUDICIAL EFFICIENCY OF ADMINISTRATIVE COURTS

To ensure adequate judicial efficiency of administrative courts, necessary procedures were launched, aimed at ensuring that vacant judicial posts would be filled. In 2020, the President of the Republic of Poland nominated four voivod-ship administrative court judges and four court assessors. Seven judges of the Supreme Administrative Court, six judges of the Supreme Administrative Court ruling in voivodship administrative courts, and 23 judges of voivodship administrative courts retired. As at 31 December 2020, out of the 127 judge positions in the SAC, 100 were taken, whereas in voivodship administrative courts, there were 430 out of 465 positions taken for judges, and 31 out of 82 for court assessors. As regards the remaining vacancies, relevant procedures were implemented, involving, among other things, the publication of relevant announcements covering all vacant positions.

EFFORTS TO IMPLEMENT THE RIGHT TO JURIDICAL INFORMATION

In the past year, the Chancellery of the President of the SAC performed duties related to providing widespread access to juridical information. In consulta-

tion with the Library Board, the collection at the SAC Library was updated and expanded. To the extent possible given the requirements of the sanitary regime, the collection of the SAC Library was available for advocates, attorneys-at-law, students, parties and participants to court proceedings, and other stakeholders. Knowledge about law was also disseminated through the publication of journals and scientific papers.

In order to improve the quality of work performed by the courts and respective judges, and to guard the uniformity of jurisprudence, the number of rulings made available in the Central Database of Administrative Court Judgments was systematically increased (with 2,263 thousand rulings collected at CBOIS as at 31 December 2020).

Making effective the citizens' right to information, the collection of anonymised administrative court rulings published online was continuously expanded. As at the end of the year, there were 1,850 thousand rulings made available this way. In 2020, the online judgment database was visited over 3 million times, with 16.5 million views for all rulings in total.

Court maintains regular international (bilateral and multilateral) contacts with the highest administrative courts in Europe and in the world, CJEU and ECtHR as well as associations of administrative judges and European institutions and judicial networks.

The Supreme Administrative

International cooperation of the Supreme Administrative Court

The SAC maintains regular international contact with the highest administrative courts in Europe and over the world. The Court is a member of the Association of 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 seminars and conferences concerning current questions on the functioning of the administrative judiciary as well as exchange programmes for judges. The SAC also belongs to the Superior Courts Network of the European Court of Human Rights in Strasbourg – SCN, and the Judicial Network of the European Union (*Réseau Judiciaire de l'Union Européenne – RJUE*) attached to the Court of Justice of the European Union. Judges of administrative courts also participate in the works of the Association of European Administrative Judges – AEAJ, and improve their

professional qualifications through seminars, internships, and study visits organised by the European Judicial Training Network – EJTN. Furthermore, the SAC also participates in shaping legal administrative standards of the EU, collaborating with the EJTN in organising internships in Poland for foreign administrative court judges.

Due to the restrictions caused by the COVID-19 pandemic, the international part of the SAC's activities was limited and temporarily suspended in 2020.

In 2020, due to the state of epidemic, the ability of the SAC to take initiatives directed at the development of international relations within the scope and of the nature pursued so far was significantly limited. Many international events planned for 2020 that representatives of the Polish administrative judiciary were supposed to attend were either cancelled or postponed to 2021. Despite the restrictions, working contact was maintained with both courts of other EU Member States, and supranational organisations. The few in-house internships held in September and October 2020 were organised subject to compliance with sanitary restrictions aimed at preventing the potential threat of SARS-CoV-2 infection.

On 31 January 2020, the Vice-President of the SAC – the President of the General Administrative Chamber represented the Polish administrative judiciary on behalf of the President of the SAC during the official opening of another judicial year of the European Court of Human Rights in Strasbourg. The Vice-President took part in the official session of the Court with the President of the ECtHR and in the seminar organised for that occasion, titled "The European Convention on Human Rights: living instrument at 70."

In January 2020, as part of contacts with the European Asylum Support Office – EASO, the Vice-President of the SAC – the President of the General Administrative Chamber participated in the annual meeting of National Coordinators for Contact of Courts and Judges in immigration and asylum cases, which was devoted to discussing the activities of the Office in 2019, as well as the activities programmed for 2020. Due to the restrictions introduced later in the year because of the pandemic, Polish administrative court judges ruling in cases concerning refugees and administrative court officers were able to take part in training and seminars organised by the Office only by remote means.

At the beginning of 2020, even before the state of epidemic was declared in Poland and Germany, a delegation of the SAC paid study visits to the Lower Saxony Higher Administrative Court in Lüneburg (*Niedersächsisches Oberverwaltungsgericht*) and the Administrative Court in Braunschweig (*Verwaltungsgericht Braunschweig*) to exchange experience in computerising administrative court proceedings in the Polish and German judiciary.

Between September and October 2020, as part of the bilateral cooperation between the SAC and the Federal Administrative Court of Germany in Leipzig (*Bundesverwaltungsgericht*), the Supreme Administrative Court as well as the voivodship administrative courts in Gdańsk, Kraków, and Warsaw held internships for a judge of the Third Senate of the Federal Administrative Court competent, *inter alia* for cases concerning health protection law, transport law, and rail transport law. The internship was organised as part of the bilateral cooperation between the Supreme Administrative Court and the Federal Administrative Court of Germany.

In turn, within the Agreement with the European Judicial Training Network concluded in November 2016, general internships at the Supreme Administrative Court and the Voivodship Administrative Court in Kraków were held for a judge of the Administrative Court in Bremen (*Verwaltungsgericht Bremen*), and a judge of the tax court in Lisbon (*Tribunal Tributário de Lisboa*). In the same period, a judge of the VAC in Kraków took part in a specialised internship at the Finance Court in Münster (*Finanzgericht Münster*), while a judge of the VAC in Gliwice had the internship at the Administrative Court (*Verwaltungsgericht Kassel*) and Finance Court in Kassel (*Hessisches Finanzgericht in Kassel*).

Due to the state of epidemic, no foreign delegations visited the SAC since March 2020 until the end of year, and, conversely, representatives of the SAC have not visited courts of other Member States and international tribunals.

It was also not possible for voivodship administrative courts to pursue the international cooperation they have been enjoying so far.

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