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PRESIDENT
OF THE SUPREME ADMINISTRATIVE COURT

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Madame President, Distinguished Guests, Judges

Thank you for inviting me to speak during this year's Assembly of Judges of the Supreme Court. Every year, this Assembly is a good opportunity to exchange thoughts and opinions on the matters important for the position of the judiciary and case-law in our country.

This year, two dimensions of work performed by the Constitutional Tribunal, the Supreme Court and the Supreme Administrative Court, as well as by judicial bodies reporting to them are particularly visible.

The first one is the cooperation of these courts in the performance of duties entrusted to the third power in Poland, namely the application of Article 10 of the Constitution of the Republic of Poland. At this level, courts take part in the exercising of power in Poland in a similar manner as the bodies of legislative and executive powers, although their activity takes different forms as they mainly act through the arguments of the rule-of-law state presented in opinions, resolutions of assemblies and participation in a widely understood legal discourse. A particular role is played here by the National Council of the Judiciary, which represents judges directly before other powers.

The second aspect is case-law, in which the independence of courts and judges serves mainly to protect the rights of individuals. From this perspective, it is essential to preserve

the coherence of case-law in all of these courts. If the protection of individual rights is exercised by the three courts and judicial bodies reporting to them respectively, it is not an easy task to achieve such coherence, and a significant dialogue is necessary between, for instance, the Supreme Court and the Supreme Administrative Court.

As a rule, during the Assemblies we focused on the second dimension of the relationship, namely the cooperation in terms of case-law. Last year, however, became exceptional since in the face of the constitutional crisis related to the separation of powers, activities of the three courts aimed at ensuring a proper position of courts within the distribution of powers became increasingly important given the dispute over the role of the Constitutional Tribunal. Public appearances of the First President of the Supreme Court played an important role in constructing legal arguments to justify the protection of the existing concept of the Constitutional Tribunal and the state of law. It should be emphasised that the Supreme Court and courts cooperating with it referred to legal arguments and defended themselves against being involved in political disputes, which I perceive as a proof of maturity and independence of our legal culture. Undoubtedly, this culture is marked by the prevalent Kelsen-inspired vision of "a guard of the Constitution", in which the Constitution does not envisage any control of other powers over the Constitutional Tribunal, even in the event of procedural or substantial and legal doubts that may be raised by the case-law of the Tribunal. The only method to move away from this concept is by changing the Constitution itself.

The same view has been expressed recently in Poland by the President of the Court of Justice of the European Union during the meeting in the Supreme Administrative Court attended by the presidents of the three courts. I wish to reiterate that administrative courts are bound in their decisions by the rulings of the CJEU regarding the enforcement of the EU law in Poland, which is why the opinion of the CJEU is of paramount importance for them.

We cannot, however, forget even this year about the second dimension of our cooperation, namely the case-law dialogue observable in the rulings of the Supreme Court and the Supreme Administrative Court. During the Reporting Meeting of the Supreme Administrative Court, the First President of the Supreme Court kindly emphasised this dimension of cooperation.

The fact that both courts use the case-law meets the constitutional standards for the protection of individuals' rights by courts. The competences of both courts were specified in the Constitution, which in Article 177 clearly indicates that common courts are competent to hear all cases which are not statutorily reserved to other courts, while Article 184 provides for the scope of competence of the Supreme Administrative Court and other administrative courts. Doubts regarding court competences are raised occasionally in cases where the boundary between public law and private law is fuzzy.

In such cases, before proceeding to the substantive examination of the case, administrative courts analyse their competence and in the case of any discrepancies, they use such an opportunity to apply for adopting a resolution. It should be mentioned that several judgments of the Constitutional Tribunal in the matter of the courts' scope of competence were issued in response to a legal question submitted by an administrative court. Also a series of resolutions adopted by the Supreme Court refer to similar matters, for instance, the resolution of 22 June 2008, III CZP 44/08 and other resolutions of the Supreme Court and judgments of the Constitutional Tribunal quoted therein. It was clearly indicated there that the division of competence between the executive and the judicial power is rooted in the constitutional division of tasks among public authorities, and the predictability of the protection of rights enjoyed by individuals is an element of a concept in which the state is based on law and not on the will of authorities (Article 2 of the Constitution).

Administrative courts already have rich case-law on the scope of courts' competences for cases where the boundary between public and private law is not clear. In each of such cases, the courts, taking into account the regulations included in Article 177 and 184 of the Constitution of the Republic of Poland, indicate that the basic law does not allow them to infer the right of administrative courts to hear a case of a particular type. Wide understanding of a civil case is adopted in the case-law, and situations in which the event that caused legal effects is not a legal act, tort or unjust enrichment, but an administrative act or any other ruling causing effects in the area of civil law are also perceived as civil cases.

I would like to say a few words about the interpretation of regulations on the access to public information. This topic raises no doubts in the case-law of administrative courts. It is assumed that as long as according to Article 61 of the Constitution the principle of the right to be informed is a constitutional right, any statutory acts regulating the manner of accessing information should be interpreted in a manner than ensures that citizens, other persons and entities have wide powers in this regard and any exceptions should be interpreted in a narrow manner. The case-law of administrative courts often uses the wide notion of "public information" and "public matter". Public information is also any message generated by widely understood public authorities and people holding public functions, as well as any other entities that exercise such power. Therefore, any message generated [by] or referring to public authorities, as well as generated [by] or referring to other entities that serve public functions, to the extent relating to their exercise of public tasks, is public information.

In the judgments of the Supreme Administrative Court of 30 September 2015, I OSK 2039/14 and of 13 April 2016, I OSK 2781/14, it was decided that the agreements on the

publication of rulings of the Supreme Court and information on the mode, quantity and amounts spent on it constitute public information within the meaning of Article 1(1) of the Act on the access to public information. This view raises no interpretation doubts.

It is therefore unjustified to claim that administrative courts are excessively liberal in granting access to public information and that overly open access to public information, taking into consideration the interest of citizens, may cause specific threats to the state and its bodies.

When issuing a ruling in a specific case, administrative courts resort to subsumption. In this process of allocating factual circumstances to a given legal norm, they apply a pro-constitutional interpretation of a legal provision by taking into account also the case-law of the Constitutional Tribunal and the Supreme Court. In the case recalled, the Supreme Administrative Court quoted the position of the Supreme Court regarding the nature of agreements concluded under civil law by local government units as expressed in the judgment of 8 November 2012, I CSK 190/12, in which the Supreme Court decided that the disclosure of names and surnames of people entering into agreements with such entities does not infringe the right to privacy of such people as referred to in Article 5(2) of the Act on access to public information. It cannot be ruled out, however, that in a situation in which providing access to public information could cause a threat to the state, administrative courts would take this aspect into consideration.

In conclusion, I would like to emphasise again that for administrative courts, the case-law of the Supreme Court is very important, which is proven by the fact that it is often quoted in the statements of reasons to judgments and resolutions of the Supreme Administrative Court. I believe that the dialogue between the Supreme Court and the Supreme

Administrative Court based on the existing highest substantive standards is a permanent and constant value.

Please accept my congratulations on the effort you made during the last year. The results of performance of the Supreme Court presented in the Information about the activity of the Supreme Court in 2015 command respect.

Thank you for your attention.

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