

The Supreme Administrative Court of Poland

The Supreme Administrative Court in Warsaw was created by the 31 January 1980 Law and started activities on 31 August 1980. Presently it operates under the 11 May 1995 Law on the Supreme Administrative Court (Dz. U. Nr 74, 368). The Supreme Administrative Court examines decisions in cases involving the following challenges: administrative decisions; certain intermediary acts issued during administrative proceedings; other public administration acts or activities and resolutions concerning activities of commune authorities. On the basis of Art 21 of the 1995 Law, the Supreme Administrative Court reviews the actions of administrative bodies for their conformity with the law. The term "conformity with the law" includes the review of the interpretation of vague legal concepts on the part of administrative organs or the manner in which administrative discretion is exercised.

The administrative judiciary operates at present as a one instance - the Supreme Administrative Court. Such a structure does not match the present stipulation in the Constitution in Art. 176 point 1: Court proceedings shall consist of least two instances. Thus the Constitution includes also Art. 236 point 2: Laws bringing Article 176 point 1 into effect, to the extent relevant to proceedings before administrative courts, shall be adopted before the end of 5 years from the day on which the Constitution comes into force. The provisions relating to extraordinary revision against the Supreme Administrative Court decisions shall remain in effect until the entry into force of such laws.

On 1 January 2004 come into force regulations reorganizing the administrative judiciary: the 25 July 2002 Law on administrative courts (Dz. U. Nr 153, 1269) and the 30 August 2002 Law on proceeding before administrative courts (Dz. U. Nr 153, 1270). Those regulations bring into effect the rule of two instances court proceedings concerning challenges against acts and activities of administrative bodies. The case will be examined in the first instance by the provincial administrative courts. Decisions of those courts can be appealed to the Supreme Administrative Courts. Adding one instance shall not make longer the period of proceedings, taking for granted that only 12 - 15 % of the decisions will be appealed

The new regulations do not alter the method of exercising control and the scope of the court's review. Presently the Supreme Administrative Court (in the future the administrative courts) hands down decisions in cases involving the following challenges: (1) administrative decisions; (2) certain intermediary acts issued during administrative proceedings; (3) decisions issued in executory proceedings subject to appeal; (4) public administration acts or activities other than those specified in items 1-3 regarding the rights or obligations directly resulting from legal norms; (5) such resolutions of commune authorities as constitute commune ordinances and such acts of

local government administration bodies as have the force of regulations in local law; and (6) supervisory acts over the activities of local government organs. In addition, the court hears complaints against the inactivity of administrative bodies in the cases specified in items 1-4.

Presently the Supreme Administrative Court (and in the future all the administrative courts) reviews the actions of administrative bodies for their conformity with the law. The term "conformity with the law" here is broadly understood in juridical practice; it includes, among other things, the review of the interpretation of vague legal concepts on the part of administrative organs or the manner in which administrative discretion is exercised. Decisions of the Supreme Administrative Court acknowledging the appropriateness of a challenge have an invalidating effect, i. e., they overturn or pronounce invalid the challenged acts of administrative organs. Only in very exceptional cases does the court hand down a decision resolving a case on its merits.

Presently the Supreme Administrative Court functions in Warsaw and 11 local centers. There are 284 judges employed in the Court. The preparing reorganization will change the present 11 local centers into 16 courts of the first instance and will also change the number of judges. It will not change immediately, but according to the current plans there will be in the provincial administrative courts 400 judges, and in the Supreme Administrative Court - 50 judges. In future the number of judges will double, what shall cause reducing the period of proceeding (presently the average period of proceeding before the Supreme Administrative Court lasts 14).

The new regulation changed the method of challenging the final administrative decisions. The challenge will be filled before the administrative body (not directly before the Court). It shall

shorten the preparations for the first activity concerning the case. Correspondence with parties, collecting and completing the files - it will be all eliminated.

The Law on proceeding before administrative courts changed also the method of making up the grounds for the decisions - the decision dismissing the challenge will be grounded only when demanded -- not *ex officio*.

Two new institution set in the Law on proceeding before administrative courts shall make the proceeding before administrative court faster and more efficient: the mediatory proceeding and the simplified proceeding. According to Art 115 the mediatory proceeding can be started on application of each party to the provincial court, field before appointment the date of hearing. The purpose of this proceeding is to explain and consider all facts and legal circumstances of the case and to settle by the parties the way of solving this case. According to those settlements the administrative body annuls or alters the contested decision or undertakes another activity taking into consideration the circumstances of the case, in the filed of its own competence. If the parties do not settle the way of solving the case, the challenge will be examined by the court (art. 117).

If the conditions for examining the case in the simplified proceeding are fulfilled, the case may be examined during not-public hearing before one judge (Art. 120). The case is examined in the simplified proceeding, when the challenged administrative decision

is invalid or when there is ground for renewal the administrative proceeding or when the administrative body has not sent the challenge to the court and the party demands the exercising the case. The case may be also examined in the simplified proceeding, when one of the parties demands it and other parties will not oppose. We may expect a frequent using the simplified proceeding in the practice, because from our previous experience appears, that there are many cases in which the administrative decisions are invalid.

Poland is not one of the member states of the European Union and thus the Polish courts cannot make preliminary references to the European Court of Justice (ECJ) under Art. 234 EC (no presently in Poland valid regulation does not stipulate such a possibility). Taking for granted that after Poland's accession to the EU Polish courts will use this opportunity, we would like to get acquainted with the procedure concerning the preliminary references.

Problems concerning this procedure have been presented in the report prepared by the judges of the Supreme Administrative Court: Prof. Irena Wiszniewska and Prof. Stanislaw Biernat for the 18th Colloquium "Preliminary reference to the Court of Justice of the European Communities", in Helsinki, May 2002.

The Polish legal system envisages the possibility to present legal questions to the Constitutional Tribunal. In pursuance of the Constitution any court may refer to the Constitutional Tribunal a legal question concerning the compatibility of a legal act with the Constitution, ratified international agreements or laws, when the decision in case pending before that court could be affected by the answer to this question. According to Art. 66 of the Law on the Constitutional Tribunal it is bound by the limits of the legal question. Thus, the extent of the examined contents of a legal act is determined by the complainant in his formulation of the plea. Nevertheless, legal commentators highlight the issue that the Tribunal should examine whether the contents of the act do not prejudice the rights and freedoms of an individual.

The institution of referring legal questions also exists within the Supreme Administrative Court itself. According to Art. 49 of the Law on the Supreme Administrative Court an adjudicating panel may apply to the President of the Court to examine the case in a panel of seven judges, in view of essential legal doubts raised in the case. This provision also indicates that the adjudicating panel may ask the President to clarify legal doubts by a panel of seven judges, a chamber or combined chambers.

The new regulations regarding the administrative judiciary do not alter the principle that all courts have right to refer the legal questions to the Constitutional Tribunal. This competence will rest both with the administrative courts of the first instance and the Supreme Administrative Court.

The Law on the proceedings before administrative courts stipulates that the Supreme Administrative Court will pass the resolutions aimed at clarifying the legal provisions whose application resulted in diverging decisions in the administrative courts. The initiative to take such resolutions will rest with the President of the Supreme Administrative Court. The Supreme Administrative Court will pass resolution providing solution to the legal questions

raising serious doubts in a specific case. The initiative to formulate such a resolution could come from any adjudicating panel of the Supreme Administrative Court considering the appeal. The Supreme Administrative Court may refuse taking up a resolution when it considers that there is no need to resolve doubts. When any of the adjudicating panel of the Supreme Administrative Court does not share the views expressed in the resolution, it will have the right to request reconsideration of the resolution.

In the Law on the proceeding before the administrative courts there is a general provision that a court (both the administrative courts of first instance and the Supreme Administrative Court) can *ex officio* suspend the proceedings when the decision in the case depends on the outcome of other pending administrative proceedings, proceedings before an administrative court, before another court or the Constitutional Tribunal. It seems that nothing can prevent the assumption that such "that court proceeding" covers also the proceedings before the ECJ. This provision could be just interpreted as language enabling the Polish administrative courts of first instance and the Supreme Administrative Court to refer the questions to the ECJ under Art. 234 EC after the accession of Poland to the European Union.