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Institutional conditions for judicial dialogue in Visegrad Group countries: example of administrative judiciary[1]

Tomasz Grzybowski, *SGH Warsaw School of Economics (Warsaw, Poland)*

E-mail: tomasz.grzybowski@sgh.waw.pl
https://orcid.org/0000-0002-9159-0223

Abstract
This article presents the outcomes of analysis of the conformity of public administration judicial control models in the Visegrad Group countries with the standards arising from the *Convention for the Protection of Human Rights and Fundamental Freedoms* and its derivative acts. It specifically considers whether the structure of the judiciary systems in the V4 countries that deals with administrative matters aligns with the directives contained in *Recommendation No. 20/2004 on judicial review of administrative acts.* The starting point for this analysis is the assertion that the contemporary understanding of the right to a fair trial is determined by the standards established in the European legal culture, which is largely the result of judicial dialogue. This dialogue needs the convergence of the institutional frameworks of the European judiciary structures.
Keywords: administrative judiciary, judicial dialogue, Visegrad Group (V4), European legal culture

Warunki instytucjonalne dialogu sądowego w krajach Grupy Wyszehradzkiej: przykład sądownictwa administracyjnego

Streszczenie
Niniejszy artykuł przedstawia wyniki analizy zgodności modeli sądowej kontroli administracji publicznej w państwach Grupy Wyszehradzkiej ze standardami wynikającymi z *Konwencji o ochronie praw człowieka i podstawowych wolności* oraz z aktów wobec niej pochodnych. Rozważono w szczególności następujące pytanie badawcze: czy konstrukcja systemów sądownictwa w poszczególnych

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państwach V4, zajmującego się sprawami administracyjnymi, odpowiada dyrektywom zawartym w *Rekomendacji nr 20/2004 w sprawie sądowej kontroli aktów administracyjnych?* Punkt wyjścia dla tej analizy stanowiło twierdzenie, że współczesne rozumienie prawa do sądu determinowane jest standardami ugruntowanymi w europejskiej kulturze prawnej, która w zasadniczej mierze stanowi owoc dialogu sędziowskiego. Dialog ów wymaga zaś zbliżenia ram instytucjonalnych europejskich struktur wymiaru sprawiedliwości.
Słowa kluczowe: sądownictwo administracyjne, dialog sędziowski, Grupa Wyszehradzka (V4), europejska kultura prawna

The aim of this study is to answer the question of what institutional conditions for judicial dialogue in contemporary Europe are. The analysis is limited to the Visegrad Group countries. The selection of V4 countries, i.e., the newer Member States of the European Union, is not accidental, because precisely two of them (including Poland) have faced accusations of political interference in the judiciary. Additionally, the analysis is confined to administrative judiciary. This is justified not only by the limited scope of this article, but also by the clear regulation at the international level. Namely, the basis for judicial dialogue in administrative judiciary is established in Articles 6 and 13 of the *Convention for the Protection of Human Rights and Fundamental Freedoms* and *Recommendation Rec(2004)20 of the Committee of Ministers to member states on judicial review of administrative acts* (further as: Recommendation No. 20/2004). In particular, the latter act presents detailed criteria that the structures of administrative judiciary in Europe should meet to be recognised as compliant with the standards constituting the European legal space.

Literature review

Poland's membership in broadly understood European structures, in particular being the Member State of the European Union, as well as a party to the *Convention for the Protection of Human Rights and Fundamental Freedoms* (further as: Convention) has far-reaching implications for legislative and judicial activities. The Polish legal system now contains new, previously unknown categories of systemic relations. Legal tradition shaping legal thinking dictates viewing the legal system as a hierarchical and monocentric structure operating within the boundaries of the state. Especially, the changes associated with Poland's accession to the European Union have replaced the hierarchically structured monocentric system with a multicentric order. This not only necessitates a rethinking of the traditional concept of the legal order, but also entangles it in ideological and political disputes (about sovereignty). A characteristic feature of the multicentric system is that different "decision-making centres" can, in a binding manner and independently of each other, fill the same legal space with their actions. External centres also operate in the territory of the state in the field of lawmaking and law enforcement. In such a configured, distinctly "dualistic" legal system, there are no hierarchical relations of subordination and superordination between national and international law. Therefore, in the conditions of

multicentricity of the law, the position achieved within one centre does not guarantee influence over competencies exercised within another centre (Łętowska 2005: p. 3–10). Today, the activities of the courts include the application of multiple systems of legal norms (national and international).

On this ground, Leszek Garlicki points out, that "the classic relationship between the legislative power and the judicial power has undergone significant evolution in the last half-century. […] Today's judicial activity also involves the application of other systems of legal norms, which are superior to ordinary statutes, allowing the applicability of the ordinary statute only on the condition of its compliance with these superior systems. In the realm of domestic law, such a system has become the norms of constitutional law, which since the mid-last century […] have gradually transformed from norms of political law (remaining beyond the reach of judicial application) into systemic universal norms, determining the content and manner of applying all detailed areas of ordinary legislation. The phenomenon of the so-called constitutionalisation of detailed areas of law is, therefore, an obvious reality in all democratic states today" (Garlicki 2010: p. 8). Therefore, we can say that contemporary legal environment expresses "Zygmunt Bauman's famous metaphor of the era of legislators and the era of interpreters. In this metaphor, […] linguistic view [on legal provisions] would correspond to the choice of a 'bound image of the interpreter' who 'cedes' the entire responsibility for the contents of law to the legislator. Meanwhile, the interpretative opening of the courts […] enables them to stop being only passive reconstructors of the vision of society imposed by the remaining powers (especially the legislative) and become active actors (interpreters) of the social life." (Grzybowski 2018: p. 215; Bauman 1987). By abandoning the Montesquieu's paradigm of adjudication, judges adopt the role of users of the institutional structure who are required to make interpretative choices (Bauman 1987).

These legal conditions indicate that contemporary legal culture is characterised by the pursuit of a kind of constitutional community of values, a European multiconstitutionalism, which is based on the belief in a certain common minimum of legal culture that originated in the times of the Roman Empire (Zirk-Sadowski 2012: p. 4). This assumption has also increased the demand for what can be termed "crossing the boundaries of legal empires", i.e. between languages, doctrines, and legal systems (Jaśkiewicz 2022: p. 67–86). It can be argued that the integration of legal systems takes place both at the level of legal language (interpretive community) and at the level of legal discourse, particularly through the convergence of legal structures and institutions. This last issue has resurfaced recently in the form of a dispute over the rule of law, which has been firmly established in case law, both at the national level and by the Court of Justice of the European Union and the European Court of Human Rights. In particular, the Court of Justice has argued that each Member State should, based on Article 19(2) of the Treaty on European Union, ensure that the bodies falling within the scope of the Union law's judicial protection system meet the requirements of effective judicial protection (e.g. the judgment in case C-216/18 LM). Meanwhile, in the case law of the European Court of Human Rights, it is emphasised that it is necessary to ensure the ability of the judicial

authority to perform its function without excessive interference, thus safeguarding the principles of the rule of law and the separation of powers (e.g. the judgment in case *Xero Flor v. Poland*, Application No. 4907/18).

It follows from above considerations that the judiciary guarantees the functioning of the European community of values. As Marek Safjan notes, "the thesis of judicial power (it is sometimes said: the 20th century was the time of parliamentary power, the 21st century is the time of judicial power) is popular not only in our part of Europe, but also finds strong advocates in many countries of the old part of the continent" (Safjan 2007: p. 66). At the same time, it is essential to ensure appropriate institutional conditions that enable judges to exchange views within abovementioned framework, since at the current state of development of legal culture, questioning, in principle, the perspective of European *acquis*, goes beyond the boundaries of valid legal argumentation (Grzybowski 2024: p. 203–204). Therefore, it can be said that the contemporary understanding of the right to a fair trial is determined by compliance with the standards established within the European legal culture, which is largely the result of judicial dialogue.

The literature on comparative studies of administrative judiciary in Europe is relatively extensive. There are also available studies on the structures of administrative judiciary in the Visegrad Group countries. This naturally necessitates a selection of sources. In this regard, I have relied primarily on analyses published in the collective monographs, such as: *Reforms of administrative judiciary in young democracies* (pl. *Reformy sądowdnictwa administracyjnego w państwach młodej demokracji*, see: Krawczyk 2022) and *Structural and functional elements of administrative judiciary in selected European countries* (pl. *Elementy ustrojowo-funkcjonalne sądownictwa administracyjnego w wybranych państwach europejskich,* see: Majchrzak 2020a), as well as articles discussing the development (reforms) of administrative judiciary in the Visegrad countries (e.g. Garayová 2021).

There are also available analyses that refer to European standards of individual rights protection in administrative law, such as: *The Principle of Effective Legal Protection in Administrative Law* (Szente, Lachmayer 2017). However, it is also worth considering still relevant, older publications by Polish domestic authors, such as: *European models of administrative judiciary* (pl. *Europejskie modele sądownictwa administracyjnego*, see: Kmieciak 2006), *Administrative judiciary in Europe* (pl. *Sądownictwo administracyjne w Europie*, see: Izdebski 2007).

Materials and methods

To answer the question about the institutional conditions for judicial dialogue in Europe, the basic assumptions of administrative judiciary resulting from Recommendation No. 20/2004 will be presented. Subsequently, the fundamental organisational and procedural principles governing the activities of administrative courts in the V4 countries will be discussed. This will allow for an assessment of the compliance of these systems with the standards derived from the Convention. Hence, the analysis is essentially dogmatic in its nature. It assumes gaining knowledge through the attempt to systematise information about the legal

systems (their elements being the subject of the study) and reconstructing the relationships between norms, in particular the relevant national law regulations and the Recommendation No. 20/2004 (Wróblewski 1990: p. 35). This method can be described as characterising the paradigm of legal sciences within the European cultural circle. In other words, continental legal dogmatics has a positivist nature: it includes the concept of the sovereign, assumes that law has a systematic character, and the objects of analysis are norms rather than regularities in the behaviour of citizens, officials, etc. (Leszczyński 2010: p. 119). Thus, the analysis is both qualitative and foremost descriptive in nature (Woleński 1985: p. 83–92).

Standards of administrative judiciary in Europe

There are many administrative judicial structures in Europe and the solutions in this regard are far from uniform. However, they have one thing in common. All have been created to protect freedom, fundamental rights, thus to protect citizen from abuse of power by public authorities. The *Convention for the Protection of Human Rights and Fundamental Freedoms* sets standards for the effective legal protection in administrative law matters in articles 6 and 13. Article 6 of the Convention provides that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". Article 13 of the Convention states, in turn, that "everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity".

"From a Convention perspective, strengthening of legal protection at national level is a demand for at least two reasons: First, it is well in line with the principle of subsidiarity, which underlies the whole Convention machinery. According to the principle of subsidiarity, the State concerned should have the opportunity first to wipe out the consequences of a Convention violation. This is so because the national authorities are usually better equipped to do that, compared to the judges in Strasbourg. [...] Secondly, strengthening national remedies is also in the Court's own interest. National systems where the legal protection is deficient lead to hundreds and thousands of applications being lodged with the Court in Strasbourg. It is common knowledge that the long-term functioning of the Court mainly depends on the improvement of the legal protection at the national level." (Breuer 2017: p. 54).

For this reason, the aforementioned Article 6 of the Convention, along with the relevant case-law of the European Court of Human Rights concerning administrative disputes, has served as the basis for the development of Council of Europe's *Recommendation No. 20/2004 on judicial review of administrative acts*. The latter soft law act states in its recitals that protection of the rights and interests of individuals is an essential element of the system of protection of human rights. In further provisions, the recommendation outlines a series of instrumental standards with respect to the fundamental principle of effective legal protection in administrative law matters. Therefore, they can be interpreted as minimal requirements of judicial review in administrative matters.

Especially, according to this act, all administrative acts should be subject to judicial review. The court "should be able to review any violation of the law, including lack of competence, procedural impropriety and abuse of power" (Recommendation Rec(2004)20: Part B, Principle 1.b). "Judicial review should be available at least to natural and legal persons in respect of administrative acts that directly affect their rights or interests" (Principle 2.a). "Natural and legal persons may be required to exhaust remedies provided by national law before having recourse to judicial review. The length of the procedure for seeking such remedies should not be excessive" (Principle 2.b), and "the cost of access to judicial review should not be such as to discourage applications. Legal aid should be available to persons lacking the necessary financial resources where the interests of justice require it" (Principle 2.d). The Court may be "an administrative tribunal or part of the ordinary court system" (Principle 3.b), but it should be impartial and it must respect adversary principle, so to hear both sides with equality of arms between the parties to the proceedings.

"The proceedings should be adversarial in nature" (Recommendation Rec(2004)20: Part B, Principle 4.d). "Each party should be given an opportunity to present his or her case without being placed at a disadvantage", hence "there should be equality of arms between the parties to the proceedings" (Principle 4.b). For this reason, i.e. impartiality, "judgment should be pronounced in public" (Principle 4.g), and "reasons should be given for the judgment. Tribunals should indicate with sufficient clarity the grounds on which they base their decisions" (Principle 4.h). "The time within which the tribunal takes its decision should be reasonable in the light of the complexity of each case and of the procedural steps or postponements attributable to the parties, while respecting the adversary principle" (Principle 4.a).[2] "The decision of the tribunal that reviews an administrative act should, at least in important cases, be also subject to appeal to a higher tribunal" (Principle 4.i).

Last but not least: "If a tribunal finds that an administrative act is unlawful, it should have the powers necessary to redress the situation so that it is in accordance with the law. In particular, it should be competent at least to quash (delete, annul) the administrative decision and if necessary to refer the case back to the administrative authority to take a new decision that complies with the judgment. It should also be competent to require of the administrative authority, where appropriate, the performance of a duty" (Recommendation Rec(2004)20: Part B, Principle 5.a). Also court should have jurisdiction to award costs of the proceedings and compensation in appropriate cases (Principle 5.b).

As we can see, Articles 6 and 13 of the Convention, as well as Recommendation No. 20/2004, express in general the idea of fair trial. This concerns also *acquis Communautaire*, since it should not be forgotten, that effective protection of an individual provided by administrative judiciary is also stressed in the case law of the Court of Justice of the European Union in accordance to provisions of the *Charter of Fundamental Rights of the European Union* (e.g. in the judgment in case C-556/17 *Alekszij Torubarov*). Therefore,

[2] This principle is also expressed in the well-known phrase: "Justice delayed is justice denied".

the question about judicial control of administration is a reflection of the question about judicial power, its scope, and place in a democratic state (Kowalski 2018: p. 433–460). In other words, the compliance of judicial review with the standards set forth in *ius commune*, especially in the Convention, reflects the rule of law, and it is the litmus test of a democratic state.

Judicial review of administrative cases in V4 countries

It is worth examining, in this context, the institutional frameworks concerning administrative judiciary in the individual Visegrad Group countries. Below, the basic principles of each V4 jurisdiction will be discussed.

In Czech Republic, the constitutional basis for the administrative judiciary is succinctly articulated – its requirement arises from art. 36, par. 2 of the *Charter of Fundamental Rights and Freedoms*, which states that anyone who claims that their rights have been restricted by a decision of a public administration body may seek a judicial review of the legality of such a decision, unless otherwise provided by law. Review of decisions affecting fundamental rights and freedoms cannot be excluded from the jurisdiction of the court. The obligation to establish the Supreme Administrative Court arose from the art. 91 of the Constitution of the Czech Republic. The basic principles of proceedings before this court are outlined in the Czech Code of Administrative Procedure. In this country the administrative judiciary is formally separated from the general judiciary only through the institution of the Supreme Administrative Court. At lower instance, administrative judiciary functions are performed by administrative divisions of general courts at the district level (Kandalec 2022: p. 76–77).

Typical proceedings before an administrative court involve complaints against decisions (resolutions) of administrative bodies. The review of administrative decisions in the first instance is usually conducted by collegiate panel of three professional judges (in some cases – by single judge) from the district court. Another type of proceeding includes complaints against administrative inaction and actions against unlawful interference by administrative body. The parties to the proceedings are the complainant – the person whose public subjective rights have been infringed by the decision, and the administrative body – typically the second-instance administrative body. A complaint against a decision must be filed within two months of the delivery of the last (usually second-instance) decision of the administrative body. Judicial review is strictly confined to the made allegations, and the administrative court cannot review any allegations submitted after the expiration of this two-month period. The court may conduct evidentiary proceedings. In ruling on the matter, however, it can only annul the challenged decision and only in exceptional cases modify it – for example, in the case of fines, which the court can mitigate. District courts exercising judicial review of administrative actions are generally obliged to hold a hearing. An exception applies if both the complainant and the authority declare that they do not request a hearing. If neither party submits such a request within two weeks of receiving the summons

to the hearing, it is assumed that they do not object to adjudicating the case without a hearing. The judgment of the district court in an administrative case becomes final upon delivery to the parties (Kandalec 2022: p. 77–78).

A cassation complaint can be filed against a final judgment of the district court with the Supreme Administrative Court. However, the scope of the cassation complaint is generally limited by the subsidiary nature of this legal remedy – no new allegations can be raised that could have been raised in the original complaint within the two-month filing period but were not. Although the cassation complaint is formally an extraordinary legal remedy, the reality is different. The interpretation of the grounds for cassation has evolved since the Supreme Administrative Court decided that the cassation complaint is essentially a classical appellate remedy against first-instance judgments of district courts in administrative matters (Kandalec 2022: p. 79–80). There is a possibility of refusing to admit the complaint on the grounds of "inadmissibility" for cassation complaints against minor judgments by a single judge (Kandalec 2022: p. 80–81). It is worth noting that the Supreme Administrative Court in the Czech Republic also adjudicates disciplinary cases against judges, prosecutors, and bailiffs, decides on the dissolution of political parties, and handles matters related to electoral law (Kandalec 2022: p. 82–83).

The *Charter of Fundamental Rights and Freedoms*, adopted under Czechoslovakia, is still in force in Slovakia as the basis for judicial review, along with the Slovak Constitution. Hence, administrative court proceedings are regarded as one of the guarantees for the protection of fundamental human rights and freedoms, as well as for protecting the rights and legitimate interests of participants in administrative proceedings. Until 2023 Slovakia has not established a separate administrative judiciary, entrusting these functions to the ordinary courts. Cases were heard in the first instance by regional courts, unless otherwise provided by law.

As a rule, administrative court proceedings were also single-instance, and an appeal against an administrative court's decision was inadmissible, except for exceptions provided for by law. These allowed for the possibility of filing a cassation complaint with the Supreme Court against a regional court's decision, provided that a complaint solely against the evidence is inadmissible (Walczuk 2020: p. 152–154, 172).

This legal status changed in stages, carried out in 2021 and 2023, respectively. The reform brought the establishment of three new first-instance administrative courts – the Administrative Court in Bratislava, the Administrative Court in Banská Bystrica, and the Administrative Court in Košice. The new administrative first instance courts started operating on 1 June 2023. With that, the reform of the administrative judiciary in Slovakia ended. At the top of the system of administrative courts is the Supreme Administrative Court, which was established earlier and has been operating since 1 August 2021. As a result of these reforms, the administrative court system in Slovakia has become two-instance. Thus, at present, the Slovak system resembles the Polish solution, i.e., separate administrative courts have been introduced with a new, separate supreme court at the head. It is worth noting that the aforementioned reform required an amendment to the Slovak Constitution. Among other things, the purpose of this systemic reform

introducing a specialised administrative judiciary was to follow the recommendations of the Council of Europe, thereby creating a system that has the potential to meet the need for an effective administrative judiciary (Garayová 2021: p. 25, 28–29).

As a rule, jurisdiction in administrative matters includes in Slovakia the cases arising from complaints or other remedies against decisions, interventions (unlawful actions by public authorities that do not take the form of decisions or individual acts), inactivity in the field of public administration. Courts decide on the legality of decisions and actions of public authorities and provide protection against unlawful interference or action by public authorities, in electoral matters, in matters of referenda, political parties and movements, as well as in other cases prescribed by law (Walczuk 2020: p. 153–154).

Administrative court proceedings can only be initiated based on a motion. The administrative court hears cases publicly. Public access can be excluded only in cases provided for by law. The judgment must always be announced publicly. The administrative court is obligated to arrange the sequence of procedural steps in such a way that the proceedings before it are quick and economical. Any person (natural or legal) who claims that their rights or legally protected interests have been violated or directly restricted by a decision of a public administration body, an act of a public administration body, inaction by a public administration body, or other interference by a public administration body can be a party to the proceedings.

The public administration body operates as the defendant. Persons who were parties in the administrative proceeding or who, due to an inseparable community of rights and obligations with the plaintiff or the parties to the administrative proceedings, will be affected by the court's decision also hold the status of a party to the proceedings. Administrative court proceedings are oral if provided for by law. In administrative court proceedings, the parties have equal status. The parties are obliged to present their assertions and perform actions within the deadlines set by the administrative court. The administrative court bases its decisions on the factual situation established by the administrative body, but it may also conduct necessary evidence to examine the legality of the contested decision/measure or to determine the matter at hand. Public administration bodies are bound by the judgments of administrative courts in the given case. Administrative court proceedings are also functionally linked to the exercise of prosecutorial supervision over the legality of actions by public administration bodies based on a specific regulation. Exceptionally, the administrative court does not provide protection for the rights or legally protected interests of a person (natural or legal) if the submitted application indicates an obvious abuse of rights (Walczuk 2020: p. 162–163). As a rule, the judgment of the administrative court is enforceable upon the expiry of the deadline for fulfilling the obligation specified in the ruling by the court, otherwise with its validity (Walczuk 2020: p. 170–171).

Administrative judiciary in Hungary remained separate between 2013 and 2020. Currently, administrative court proceedings have separate regulations; however, in many aspects, the provisions of civil procedure are subsidiarily applied. Additionally, as of 1 April 2020, administrative courts were abolished, and since then, in administrative cases, first-instance

rulings are made by 8 (general) county courts with territorial jurisdiction. Judicial review of administration in Hungary is carried out by two-instance courts: the county courts with administrative chambers as the first instance in the vast majority of cases, and – in cases prescribed by law – by the Curia (hu. *Kúria*). The Curia decides in the second instance and in all revision cases (Barsi-Fodor 2022: p. 58–59).

Only professional judges adjudicate in administrative cases. As a rule, a panel of three professional judges decides in the court, but singularly in cases provided for by law, such as cases involving appeals against administrative acts undertaken in two-instance proceedings, or cases where the value of the dispute (payment obligation) does not exceed ten million forints. However, this system is flexible, and the court composition can be altered in both directions: if the case is straightforward factually and legally, the panel may decide during an initial hearing that the court will adjudicate it singularly – by one of the panel members. Conversely, in complex cases, a single-judge court may decide before the trial that it will be adjudicated by a panel. On the other hand, the Curia usually issues judgments with a panel of three judges, but particularly complex cases or those of significant societal importance may be heard by an enlarged panel of five judges (Barsi-Fodor 2022: p. 59–60).

The subject of disputes in administrative court proceedings is the legality of administrative actions, which is a comprehensive term encompassing actions and inactions of administrative bodies aimed at altering legal statuses regulated by administrative law or resulting in infringements of subjective rights. The normative concept of an administrative act is very broad, and during legal proceedings, a large number of administrative acts and inactions can undergo legal scrutiny. The statutory definition of administrative authority is also broad, encompassing not only classical bodies of state administration, but also e.g. municipal legislative bodies and other public entities or higher education institutions. The principle is that the complainant can be a person whose rights or legitimate interests have been directly infringed by administrative actions. A complaint is filed against the administrative body that issued the challenged administrative act. In the case of decisions made in multi-instance proceedings, the complaint must be filed against the administrative body that acted in the final instance. The primary task of the court is to ensure effective legal protection against violations of the law by administrative actions, based on justified requests. The equality of arms is ensured by the provision that the court must allow parties to access all documents, statements, and evidence submitted during the proceedings for examination and response (Barsi-Fodor 2022: p. 61–63).

Proceedings before the administrative court are oral, if provided for by law. The court schedules the hearing within 60 days from the date the complaint is received. It should be noted that if the complainant does not appear at the requested hearing, the court can, in the absence of opposition from the opposing party, dismiss the proceedings. The burden of proof in administrative court proceedings generally rests with the complainant, who must demonstrate that the administrative act is contrary to the law. Nevertheless, the scope of evidentiary procedures is broadly defined. The complainant

can utilize various forms of evidence, including witness testimonies, expert opinions, documents, audio and visual recordings, and other material evidence (Barsi-Fodor 2022: p. 65–67).

An appeal can be lodged against the first-instance court's judgment if not stipulated otherwise by law. The appeal should clearly indicate the provision of the law or the Curia's ruling, with which the contested judgment is incompatible, or deviates from the published Curia rulings. Hungarian procedure also includes extraordinary legal remedies, such as revision, and an appeal for re-opening of proceedings. Once the judgment becomes final on the next day, it becomes enforceable (Barsi-Fodor 2022: p. 68–69).

The Polish model of the judiciary is based on the separation of two autonomous and independent sectors: one consisting of general and military courts with the Supreme Court at the helm, and the other comprising administrative courts, with the Supreme Administrative Court as the highest judicial authority. In administrative cases, voivodship administrative courts serve as the first-instance courts, while the Supreme Administrative Court handles second-instance appeals. The control of public administration is understood as legality control. Administrative activities encompass various individual acts affecting individuals, as well as acts of local government units, other self-government acts, supervision acts over self-government units, and normative acts of territorial government authorities. The Supreme Administrative Court also settles disputes over jurisdiction between local government bodies, self-government appeal boards, and between these bodies and governmental administration authorities. Inaction of the administration or delays in action may also be subject to complaint.

While the general rule is for administrative cases to be adjudicated by administrative courts, the Constitution allows that in justified cases, the legislature may assign the adjudication of administrative matters to general courts. This is the case, for example, in matters related to social security. The right to administrative judicial proceedings is enshrined in the Polish Constitution and constitutes a fundamental right, meaning that the Constitution guarantees the entitlement of every individual (natural or legal person, as well as other entities) to subject the actions of public administration to judicial review. The Constitution also guarantees the two-instance nature of administrative judicial proceedings (Majchrzak 2020: p. 181–187).

The system of judicial control of public administration is based on the principle of appeal, where the initiation of proceedings is based on a complaint filed by a dissatisfied party challenging an administrative act, intervention, administrative inaction, or delays in administrative proceedings. In principle, anyone with a legal interest has the right to file a complaint, i.e., any entity able to demand the specification of their rights or obligations under specific legal provisions (usually substantive law) and request the scrutiny of a specific act or action to protect their rights or obligations. Generally, a complaint is lodged after exhausting the available appeal mechanisms, provided they served the complainant in the proceedings before the competent authority, unless specified otherwise by law (an exception is, for instance, when a complaint is filed by a prosecutor).

The complaint procedure is not highly formalised, and the court of first instance is obliged to examine the case in its entirety without being bound by the claims and statements made in the complaint. It is customary for cases to be heard through an oral, public hearing. The purpose of the hearing is to resolve the case in a given instance based on the evidence provided. This principle is closely tied to the constitutional principle of the transparency of judicial proceedings. However, this principle is subject to certain restrictions in specific cases based on the need for expedited proceedings and procedural efficiency, both at the level of voivodship administrative courts and before the Supreme Administrative Court. The equality of parties in administrative judicial proceedings is ensured through the possibility of granting legal assistance from a public attorney, exemption from court fees, and the obligation for the court to inform unrepresented litigants about their rights and obligations. As a general rule, the evidentiary process in administrative courts is limited to documentary evidence necessary to clarify significant factual circumstances without unnecessarily prolonging the proceedings. Typically, cases before administrative courts are adjudicated based on evidence in the administrative case files. As a rule, the judgment is announced publicly.

A cassation complaint can be lodged with the Supreme Administrative Court against a first-instance judgment. Unlike a complaint before a first-instance court, a cassation is a highly formalised legal action that must be prepared by a professional attorney. The Supreme Administrative Court is bound by the allegations and requests made in the cassation complaint. There is also the possibility of challenging a final judgment through a motion for reopening the proceedings. Additionally, a party may request a determination of the illegality of a final judgment. This particular form of review does not annul the final judgment. However, if the judgment is found to be illegal, the party may claim compensation for the harm caused by the judgment. In general, it is challenging to categorise judgments of administrative courts (both substantive and cassation) as directly enforceable in the traditional sense. Therefore, enforceability is analysed within a broader framework, as a requirement to take various actions to align with the administrative court's decision regarding the controlled act, action, inaction, or administrative delays. In this context, a prominent trend within administrative judicial procedures, which has gained momentum in recent years and was reflected in the 2015 amendment, is the broadening of authorities for substantive judgments by administrative courts. However, it is noted that reformatory judgments in administrative courts are applied exceptionally. European law does not generally mandate granting administrative courts the authority to replace an administrative decision with its judgment. Such authority is reserved only when a case is returned to the court, and the contested decision contradicts a prior ruling in the same case (Chlebny, Piątek 2021: p. 23–25).

For now, Polish administrative courts exercise abovementioned tool very carefully, mostly in pathological situations, in which public authorities do not comply with recommendations resulting from previously issued court decisions, and also in uncomplicated cases, in which both the factual and legal status is clear. The number of such rulings did not exceed several dozen sentences and you have to know that we

have this possibility since 2015. There remains a visible tendency to treat adjudicative competencies of a substantive nature as a sort of *ultima ratio*, reserved for exceptional situations (Sarnowiec-Cisłak 2023: p. 28–30).

Conclusions

The systems of judicial control over public administration in the Visegrad Group countries are diverse. Currently, the Polish and the Slovak models provide for a separate structure of administrative courts. However, it is worth noting that in Slovakia, the reform introducing the full separation of the administrative judiciary was completed recently, last year. In addition, in Poland the Constitution allows the legislature to assign certain categories of administrative cases to ordinary courts. In the other two jurisdictions, the control of public administration is either entirely entrusted to ordinary courts (Hungary), or a mixed model is adopted, based on the jurisdiction of general courts at the first instance and judicial supervision by a specialised administrative court in the second instance (Czech Republic).

All jurisdictions ensure judicial impartiality (particularly through the institution of exclusion of the judge). Administrative cases in all these jurisdictions are generally adjudicated by professional judges, often in collegial panels. In all V4 judicial control systems, the scope of review is broadly defined to include not only various forms of administrative action but also inaction, and special categories of cases, such as electoral law (e.g. Czech Republic) or review of local legislation (e.g. Poland). Legal protection is provided not only for individuals, but also for legal entities and other organisational units. The concept of an authority is broadly understood and refers to structures authorised to exert authoritative influence over individual rights. In each jurisdiction, the judicial review is based on the principle of complaint (and proceedings are adversarial), although the boundaries of this review differ. Polish and Slovak courts have the broadest competencies, as they review all circumstances of the case *ex officio* in the first instance, inspecting the legality of actions or inaction by administrative bodies. Conversely, in the Czech Republic and Hungary, administrative courts are bound by the assertions made by the complainant.

The scope of evidentiary actions that courts may undertake also varies, ranging from relatively broad (e.g. Hungary) to exceptional (e.g. Poland). The judicial models differ in terms of the judicial competencies of the courts. Generally, however, it can be accepted that all are based on a cassation-reformatory model. Differences mainly relate to the extent of the authority to replace the administrative body's action with a court decision.

In each jurisdiction, judicial-administrative proceedings are, with few exceptions, public, and judgments are usually announced publicly. As of 2021, all V4 countries have established a two-instance administrative judiciary. The most recent was Slovakia, where until 1 August 2021, proceedings were mainly single-instance, with cassation admissible only in exceptional cases.

It should be noted that none of the solutions outlined above in the framework are excluded by the provisions of Recommendation No. 20/2004. As mentioned, this

act lays down a comprehensive framework to ensure that judicial review processes in administrative law are effective and fair. The principles outlined therein aim to guarantee that the judicial review of administrative acts is conducted in a manner that respects the rule of law, protects individual rights, and maintains public trust in the judicial system.

The discussed judicial models conform *prima facie* to principles such as the independence and impartiality of the court, access to justice, effective remedies, timeliness, the obligation to give reasoning for decisions, transparency, and equality of arms. The indicated soft law explicitly allows for the adjudication of administrative cases by both specialised administrative courts and general courts, thereby preserving the right to judicial review. Recommendation No. 20/2004 does not specify whether administrative judicial proceedings must be two-instance or whether it is necessary to ensure the possibility of replacing the administrative body's action with a court judgment.

However, it is essential to recognise that the interpretation of both the Convention and the norms derived from it (including Recommendation No. 20/2004) are significantly influenced by the case law of the European Court of Human Rights (Hauser, Sawczyn 2022: p. 20–22). For instance, in the judgment of *Potocka and Others v. Poland* (Application No. 33776/96), the Court assessed the compliance of the Polish model of judicial control of public administration with art. 6 of the Convention, considering aspects of the scope of cognition of Polish administrative courts and the criteria adopted for review. Judgments of the ECHR are regarded as part of the *acquis*, because it is practically impossible to apply the Convention without referring to case law. As noted by the Constitutional Tribunal in its judgment of 18 October 2004 (P 8/04, OTK ZU-A 2004, No. 9, item 92): "Respect for Poland's international obligations and care for the coherence of the legal order (shaped by both internal law and, to the constitutionally permitted extent, by international agreements and international law) require that there be no discrepancies between the content of provisions, legal principles, standards shaped by various centres of adjudication on the validity of law, and the bodies applying and interpreting the law. […] The courts applying the law should resolve the doubts arising before them in a manner that enables fidelity to constitutional principles and the standards of protection of individual rights indicated by the European Court of Human Rights."

An analysis of the consistency of judicial practice with the standards resulting from the Convention and Recommendation No. 20/2004, however, requires a separate study (Chmielarz-Grochal, Kalisz 2020: p. 76–77).

Tomasz Grzybowski – Ph.D. in Law, Assistant Professor at the SGH Warsaw School of Economics. Author of scientific publications on legal theory, economic analysis of law, European law, system and proceedings before administrative courts, as well as financial and tax law. He combines his academic work with legal practice by adjudicating in the tax department of the Voivodship Administrative Court in Warsaw.

Tomasz Grzybowski – doktor nauk prawnych, adiunkt w Szkole Głównej Handlowej w Warszawie. Autor kilkudziesięciu publikacji naukowych z zakresu teorii prawa, ekonomicznej analizy prawa, prawa europejskiego, ustroju i postępowania przed sądami administracyjnymi oraz prawa finansowego i podatkowego. Pracę naukową łączy z praktyką prawniczą orzekając w wydziale podatkowym Wojewódzkiego Sądu Administracyjnego w Warszawie.

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