NSA

THE SUPREME ADMINISTRATIVE COURT OF POLAND

Annual Report 2016

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Outline of the activities of
the Supreme Administrative Court and
the Voivodship Administrative Courts
in 2016

NSA
NACZELNY SĄD ADMINISTRACYJNY
Warsaw 2017

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Foreword of the President of the Supreme Administrative Court

Prof. dr hab. Marek Zirk-Sadowski

The Constitution of the Republic of Poland of 2 April 1997 (Constitution) established the functioning of the administrative judiciary within two-tier structure, in which the administrative courts have own organizational and judicial identity. In this system the administrative courts perform their activities since 1 January 2004, being an indispensable and vital element of the democratic state ruled by law. 2017 is the year that marks 15th anniversary of the enactment of statutory acts implementing the consitutional reform of the judicial control over the legality of operation of the public administration – the act of 25 July 2002 Law on the System of Administrative Courts and the act of 30 August 2002 Law on Proceedings before Administrative Courts. The assessment of the last years of functioning of the administrative courts system confirms the accuracy and rightness of the institutional solutions adopted in the Constitution and two-instances model of administrative justice.

The indicators regarding the number of registered cases and dynamics of the settlement of these cases in 2016 by the voivodship administrative courts confirm the high efficiency of the judicial proceedings. Only slightly more than 24 % of the judgments of the first instance courts have been made subject of the judicial supervision of the Supreme Administrative Court. It should be noted that in 2016 the Supreme Administrative Court had to adjudicate the range of pending cases characterized by complex legal issues. In many cases their settlement was dependent on the judgements of the Court of Justice of European Union, especially in tax law cases.

As in previous years, the largest number of cases heard by voivodship administrative courts concerned taxes and other cash benefits (33% of total number of cases). Other cases concerned the following areas of law: public commercial law – economic activity (11%), construction law (9%), transport law (6%), social security / assistance(6%), EU-budget subsidies (4%), spatial planning law (4%), environmental law (3%), expropriation (2%), immigration, asylum and citizenship cases (1%).

In case of the Supreme Administrative Court this data slightly differ and are as follows: taxes and other cash benefits (ca. 44%), construction law (ca. 6%), EU-budget subsidies (ca. 4%), transport law (ca. 4%), spatial planning law (ca. 3%), expropriation (2,5%), social security / assistance (2%), public commercial law – economic activity (2%), environmental law (1%), immigration, asylum and citizenship cases (0,6 %).

The assesment of the jurisprudence of the administrative courts from year 2016 proves the continuity of current lines of activity, serving the expansion of the protection of rights and freedoms of individuals.

This is given expression both in judgements of voivodship administrative courts and in judgmenets and resolutions of the Supreme Administrative Court, concerning inter alia respect of constitutionally protected values and goods. However it should be emphasised that administrative courts and their case-law serve as guarantors of the idea of democratic state ruled by law, is built on two universal values both on the idea of freedom (among others, economic freedoms and rights) and the idea of duty (among others, the duty to bear public charges and levies). The administrative judges, hearing and resolving cases, have to weigh both values, referring to the jurisprudence of the Constitutional Tribunal, the European Court of Justice and the European Court of Human Rights.

In consequence the current case law of administrative courts are determined by legal norms envisaged not only in Polish Constitution but also in EU law and in European Convention of Human Rights. In 2016 Polish administrative courts continued the supranational judical dialogue, referring a number of questions to the CJEU for a preliminary ruling – in 8 cases. The Financial Chamber has referred questions concerning the interpretation of EU law to the CJEU in 6 cases and 2 other preliminary references were made by the Commercial and General Administrative Chamber.

In the jurispridence of the administrative courts in 2016, as in previous years, it can be found the deliberations concerning ensuring the conformity of legal provision relevant for the outcome of the case through the interpretation in *accordance* with the Consitution or settlement of the case by direct application of the constitutional norm.

On the other hand the adoption of the resolutions by the Supreme Administrative Court is important legal instrument to eliminate any discrepancies in case law of administrative courts and to guarantee the individuals predictable jurisprudence in similar cases and the observance of the principle of equality. In 2016 the Supreme Administrative Court adopted 16 resolutions: 7 'abstract' resolutions (6 adopted upon the request of the President of the Supreme Administrative Court and 1 on the request of the Human Rights Commisionner - Ombudsman) and 13 'concrete' resolutions (upon the request of the adjudicating panels of the administrative courts). The adopted resolutions concerned legal issues raised by the application of tax law, administrative court proceedings, construction law, self-government institutional law and gambling law.

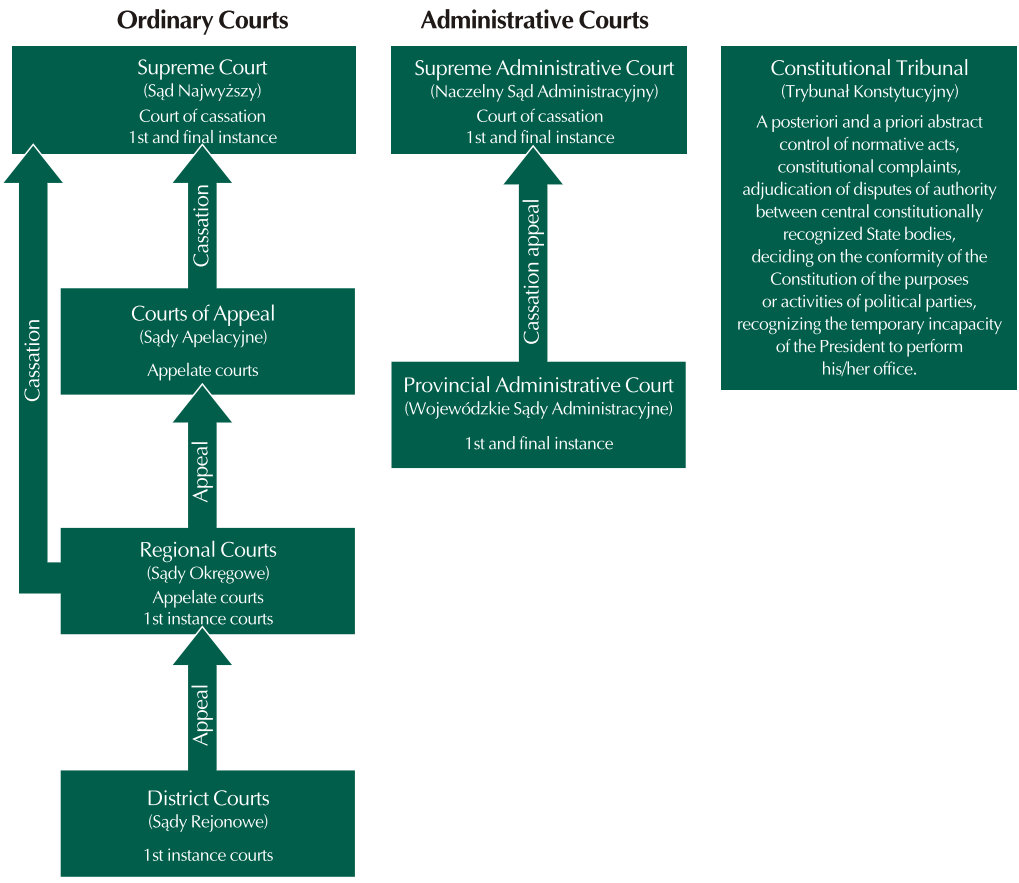
The important issue serious doubts in the jurisprudence of administrative courts and having influence on raising discrepancies are incorrect formulated legal provisions or legal vacuums. The administrative courts, by the assesment of the correctness of the application of the relevant legal norm in given case, also examine – if it is necessary, completeness of the legal rules and their constitutionality. It should be emphasised that the national legislator should observe the principles of a decent legislation, because legal provisons should be correctly formulated, precise and clear for the individuals.

The Law on Proceedings before Administrative Courts include provisions enabling disciplining the public administratuion authorities through imposing fines (on motion or ex officio) in case of infringement of constitutional and statutory law standards of the proceedings before public administration.

I would like to emphasise that from the perspective of last years since the statutory acts implementing the consitutional reform of administrative judiciary are in force and the efficiency of the judicial activities, the adopted model of the judicial review of public administration can be assesed as accurate and positive.

The average time of the settlement of the pending cases fulfill European standards. According to „EU Justice Scoreboard 2017" published by the European Commission, Poland belongs to that group of EU Member States, where the time needed to resolve administrative case before the administrative court of 1st instance is relatively short.

Court System of the Republic of Poland



Introduction

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

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

Covering matters of vital importance for the citizens – including the acts or actions of the administrative authorities and their resolutions as well as the acts or actions of the public authorities, such as economic and professional local self-governments with the jurisdiction of the administrative courts – is a reflection of the proper fulfilment of the constitutional obligation.

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

The pro-constitutional and pro-European interpretation of law in the process of its application allows for the protection of an individual's rights in a way that meets the European standards. In the jurisprudence of the administrative courts, the activity of judges in the application of the European Union law is noticeable, in particular in the rational application of the conflict-of-law principle, defined in Article 91(3) of the

Constitution, with the legal norms of the Constitution ("If this results from the agreement ratified by the Republic of Poland constituting an international organisation, the law made by it is applied directly, having priority in the event of a conflict with acts").

It is clear from the jurisprudence of the administrative courts in Poland that the CJEU has had a particular impact on the interpretation process applied by these courts. The CJEU, by its interpretations (procedure of preliminary rulings), significantly complements the content of the EU law and also indicates the most effective strategies for the interpretation of this law.

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

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

The content of the decisions shows the concern for a comprehensive explanation of the case, the widespread courts' adoption of constitutional standards, European and international law and the possibility of ensuring full legal protection of an individual, also by a pro-constitutional interpretation of the law, the option to refer a question for a preliminary ruling to the Court of Justice of the European Union, as well as the provision to ask a resolution to be adopted by an extended panel of the Supreme Administrative Court when the adjudicating panel finds that the legal issue raises serious doubts.

Act of 25 July 2002 – Law on the System of Administrative Courts, in Article 15(1) obliges the President of the Supreme Administrative Court to inform the President of the Republic of Poland and the National Council of the Judiciary on the activities of administrative courts. Every year the General Assembly of Judges of the Supreme Administrative Court, adopts – by resolution – the *Annual Information on the Activities of Administrative Courts* presented during special session of the Assembly by the President of the Court. The *Annual Information* is the execution of the above mentioned statutory provision.

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

Seats of the voivodship administrative courts

The Supreme Administrative Court of Poland
(Naczelny Sąd Administracyjny)
ul G. P. Boduena 3/5, 00-011 Warszawa

WSA in Białystok
ul. Sienkiewicza 84, 15-950 Białystok

WSA in Bydgoszcz
ul. Jana Kazimierza 5, 85-035 Bydgoszcz

WSA in Gdańsk
Al. Zwycięstwa 16/17, 80-219 Gdańsk

WSA in Gliwice
ul. Prymasa S. Wyszyńskiego 2, 44-100 Gliwice

WSA in Gorzów Wielkopolski
ul. Dąbrowskiego 13, 66-400 Gorzów Wielkopolski

WSA in Kielce
ul. Prosta 10, 25-366 Kielce

WSA in Kraków
ul. Rakowicka 10, 31-511 Kraków

WSA in Lublin
ul. M. Curie-Skłodowskiej 40, 20-029 Lublin

WSA in Łódź
ul. Piotrkowska 135, 90-434 Łódź

WSA in Olsztyn
ul. E. Plater 1, 10-562 Olsztyn

WSA in Opole
ul. Kośnego 70, 45-372 Opole

WSA in Poznań
ul. Ratajczaka 10/12, 61-815 Poznań

WSA in Rzeszów
ul. Kraszewskiego 4a, 35-016 Rzeszów

WSA in Szczecin
ul. Staromłyńska 10, 70-561 Szczecin

WSA in Warszawa
ul. Jasna 2/4 00-013 Warszawa

WSA in Warszawa Local Division in Radom
ul. Słowackiego 7, 26-600 Radom

WSA in Wrocław
ul. Św. Mikołaja 78/79, 50-126 Wrocław

I. Activities of the voivodship administrative courts

1. General remarks

In 2016, voivodship administrative courts received 70,095 complaints against the acts or actions (including) complaints requesting reopening of proceedings) and 6,597 complaints against the failure of the authorities to act and the excessive length of proceedings. In total, the courts had to hear 76,692 com plaints lodged. Compared with 2015, the number of complaints decreased by 6,837 complaints, representing 8.91% of the total complaints lodged.

There are 31,406 complaints against the acts or actions and 1,761 against the failure of the authorities to act and the excessive length of proce edings remaining from the previous period. In total, in the previous perio d, the voivodship administrative courts were obliged to hear 33,167 compla ints, which together with the compla ints lodged (76,692 complaints) gave 109,859 complaints to be heard. This represents 4,661 (4.07%) fewer complaints than in 2015. There are 30,867 complaints to be heard in the following period in total – i.e. 2,300 less than in 2015.

The voivodship administrative courts heard 72,502 comp laints against the acts or actions, of which 50,848 were dealt with during a hearin g and 21,654 *in camera*. From among the complaints settled at a hearing, the courts granted 13,215 comp laints, dismissed 34,635, rejected 400, and settled 2,598 in another way. *In camera*, 1,125 complaints were granted; 4,024 were dismissed and 13,889 were rejected. With regard to complaints against the failure of the authorities to act and the excessive

length of proceedings, the courts heard 6,490 complaints, of which 1,754 were dealt with during a hearing, and 4,736 in closed session.

In total, in 2016 the voivodship administrative courts heard 78,992 compla ints, representing 103% of the complaints lodged and 71.90% of all complaints to be heard. Compared to 2015, these ratios are higher by 5.61% and 0.86% respectively.

The Voivodship Administrative Court in Warszawa receives the highest number of complaints. In the reporting year this court received 25,090 complain ts, which constitutes 32.72% of the total number of the complaints received by the voivodship administrative courts. For example, the Voivodship Admi nistrative Court in Gliwice received 6,019 complaints, the Voivodship Adminis trative Court in Pozna – 5,511 complaints, the Voivodship Administrative Court in Kraków – 5,303 complaints and the Voivodship Administrative Court in Wroc aw – 4,932 complaints. As in 2015, the l owest number of complaints was received by the Voivodship Admin istrative Court in Opole – 1,270, Gorzów Wielkopolski – 1,761, Kielce – 1,878, Bia ystok – 2,202 and Olsztyn – 2,533.

The highest number of complaints were lodged by natural persons – 54,364. Legal entities lodged 21,789 complaints, social organisa tions – 1,312, the public prosecutor – 756, and the Human Rights Defender (Ombudsman) – 22. 18,210 attorney s representing public administration authorities, 8,099 lawyers, 10,516 solicitors, 2,619 tax advisers, 159 patent advisers, 654 public prosecutors and, in 17 cases, the Human Rights Defender (Ombudsman) participated in proceedings brought to voivodship admin istrative courts.

The voivodship administrative courts settled an average of 38.27% of the complaints against acts or other actions, as well as against the failure of the authorities to act and the excessive length of proceedings within a 3-month period. Within a period of up to 4 months, 50.01% of the complaints were processed, and up to 6 months – 69.67% of the complaints. The above figures reflect the good efficiency of proceedings before the voivodship administrative courts.

2. Control of public administration activities

In 2016, voivodship administrative courts elim inated 19.78% of decisions and other administrative activities from legal transa ctions. For comparison, in 2015 that ratio was 22.03%, in 2014 – 22.2%, in 2013 – 24.36%, in 2012 – 22.3%, and in 2011 – 22.5%.

As in previous years, most of the decisions of voivodship administrative courts were made regarding tax matters. They accounted for 28.36% of the total cases settled.

From among 20,559 of the settled complaints against acts or other actions of the tax authorities, the courts granted 4,404 complaints – i.e. 21.42% (in 2015 – 21.27% and in 2014 – 21.31%).

In the case of construction, architectural and construction administration, specialise d supervision, and fire protection, 1,305 out of 5,899 complaints (22.12%) were granted – i.e. less than in 2015 (24.12%). On the other hand, 973 out of 4,706 complaints (20.68%) were granted in cases relating to social assistance.

In addition to complaints against the acts or actions, in the reporting year the voivodship administrative courts settled 6,490 complaints against the failure of the authorities to act and the excessive length of proceedings, of which 2,137 complaints were granted (32.93%). In 2015 the courts settled 6,443 such complaints, in 2014 – 6,512, in 2013 – 5,721, and in 2012 – 4,167. This data shows that the number of complaints against the failure of the authorities to act and the excessive length of proceedings is gradually increasing.

14,206 of the lodged complaints regarded the acts or actions of ministers, central government administrations and other supreme authorities. Out of this number, the courts settled 11,383 complaints with a decision, including 3,207 granted, which accounted for 28.17% of the granted cases in relation to the number of cases settled with a decision. For comparison, in 2015 that ratio was 32.71%, in 2014 – 35.3%, in 2013 – 37.32%, in 2012 – 35.62%, and in 2011– 36.19%.

As in previous years, the largest number of the lodged complaints (3,067) regarded the administrative acts of the Minister of Finance. Out of this number 2,569 complaints were settled by a decision, and 1,096 of these complaints were granted (42.66%).

In the case of complaints made against the administrative acts of other authorities, the number of cases settled by a decision amounted to the following: 244 out of the 1,376 settled complaints on acts of the Chief Inspector of Road Transport were granted (17.73%); 134 out of the 671 settled complaints on acts of the Chief Construction Site Inspector were granted (9.97%).

In total, 33,803 complaints against the acts or actions of local government administration authorities were lodged – i.e. 48.23% of the total number of complaints lodged against the acts or actions. Excluding data from treasury chambers, tax audit offices and customs chambers, the complaints lodged against the acts or actions of other local government administration authorities amounted to 10,867 complaints in 2016,

and 8,083 of these complaints were settled by a decision. 2,376 complaints were granted, which means that 29.40% of the decisions of these authorities were eliminated from the legal transactions. The highest number of complaints was lodged in Mazovia region (2,545), Ma opolskie region (1,304) and Wielkopolskie region (921).

In 2016, 10,860 complaints were lodged against the acts or actions of tax chambers and tax audit offices. Courts settled 7,237 complaints with a decision, and 1,366 of these complaints were granted (18.88%). For comparison, in the year 2015, voivodship administrative courts granted 24.9% of complaints against the acts or actions of the treasury chambers and tax audit offices, whereas in 2014 this was 27.3% and in 2013 30.53%. The highest number of complaints were lodged in Mazovia (2,577) and Pomerania regions (1,024).

Moreover, voivodship administrative courts received 12,076 complaints against the acts or actions of customs chambers. Courts of the first instance settled 11,142 complaints with a decision, and 1,916 of these complaints were granted (17.2% of the settled complaints).

16,377 complaints against the acts or actions of local self-government appeal boards of were lodged – i.e. 23.36% of the total number of the complaints lodged against acts or actions. Courts settled 11,723 of these complaints with a decision, and 3,555 of these complaints were granted (30.33%). For comparison, in 2015, 16,883 complaints against the acts or actions of local self-government appeal boards were lodged, in 2014 – 19,635, in 2013 – 19,308, and in 2012 – 16,217. From the presented data, it appears that the number of complaints against the decisions of the appellate boards of local government decreased in the last year, while the number of decisions of the appellate boards of local government eliminated from legal transactions is at a similar level – i.e. about 30%. The highest number of complaints were lodged in the following regions: Mazovia (2,675), including complaints against the decisions of the appellate board of local government seated in Warszawa – 1,855; Silesia (1,946), including complaints against the decisions of the local self-government appeal board seated in Katowice – 1,200; Wielkopolskie (1,592), including complaints against the decision of the local self-government appeal board seated in Pozna – 861; and Ma opolskie (1,537), including 952 complaints to be heard by local self-government appeal board seated in Kraków. On the other hand, the lowest number of complaints recorded regarded the decisions of the local self-government appeal board t seated in Skierniewice – 73 complaints, and in Suwa ki – 76 complaints.

In cases of complaints regarding local self-governments , 2,406 complaints were odged (3.14% of the total number of the complaints lodged) with the courts. 1,529 complaints were settled with a decision, and 947 of these complaints were granted (61.94%). For comparison, in 2015 the courts settled 1,788 cases, 1,078 of these complaints (60.29%) were granted, and in 2014 the courts settled 1,735 such complaints, and 985 of these complaints (56.77%) were granted.

2,082 complaints regarded commune local self-go vernments. 1,362 complaints were settled with a decision, and 849 of these complaints were granted (62.33%). From among 1,494 complaints lodged under Articles 101 and 101a of the Act of 8 March 1990 on Commune Local Government, 830 complaints were settle d with a decision, and 505 of these (60.84%) were granted. 337 complaints of the supervisory authorities against the resolutions of the commune authorities pursuant to Article 93(1) of Commune Local Self-Government Act were lodged; 320 of these complaints were settled with a decision, and 279 (87.19%) of these complaints were granted.

On the other hand, the number of complaints of the commune authorities on supervisory activities amounted to 251, and 212 of these complaints were settled by a decision, including 65 granted (30.66%). The highest number of the complaints was lodged with the Voivodship Administrative Court in Warszawa – 361, the Voivodship Administrative Court in Pozna – 230, the Voivodship Administrati ve Court in Gliwice – 199, while the lowest number of complaints was lodged with the Voivodship Administrative Court in Bia ystok – 39 and the Voivodship Administrati ve Court in Kielce – 43.

The voivodship administrative courts receive d 216 complaints concerning district self--local governments, and 116 of these complaints were settled with a decision, including 65 granted (56.03%). From among 127 complaints lodged under Articles 87 and 88 of the Act of 5 June 1998 on District Local Self-Government, 67 complaints were settled with a decision, and 40 of these (59.70%) were granted. 21 complaints of the supervisory authorities against the resolutio ns of the district authorities pursuant to Article 81(1) of District Local Government Act were lodged; 14 of these complaints were settled with a decision, and 11 (78.57%) of these complaints were granted. On the other hand, the number of complaints of the district authorities on supervisory activities amounted to 68, and 35 of these complaints were settled by a decision, including 14 granted (40%).

There were 108 complaints regarding voivodshi p local self-governments received. 51 complaints were settled with a decision, and 33 of these complaints were granted (64.71%). From among 77 complaints lodged under Articles 90 and 91 of the Act of

5 June 1998 on Voivodship Local Self-Government, 37 were settled with a decision and 28 were granted (75.68%). 11 complaints of the supervisory authori ties against the resolutions of the voivodship authorities pursuan t to Article 82c(1) of Voivodship Local Government Act were lodged; 5 of these complaints were settled with a decision, and 3 (60%) of these complaints were granted. On the other hand, 20 complaints of the voivodship authorities against supervis ory activities were lodged, 9 of these complaints were settled with a decision and 2 were granted (22.22%).

In total 2,127 complaints against the law making activities of the commune local self--governments were settled; 849 complaint s (39.92%) were granted; of the district local self-governments 190 complaints, and 65 complaints (34.21%) were granted; and on the voivodship local self-governments – 97 complaints, and 33 complaints (34.02%) were granted.

There were 20,605 cassation appeals lodged against the decisio ns of voivodship administrative courts. Out of this number, 1,296 complaints were reje cted and 19,179 were passed to the Supreme Administrative Court (93.08%). Considering that in 2016 voivodship administrative courts settled 78,992 complaints, the cases passed to the Supreme Administrative Court con stituted 24.28% of the total complaints against administrative acts and regarding the failure of the authorities to act and the excessive length of proceedings. In 2015, voivodship administ rative courts passed to the Supreme Administrative Court 18,641 complaints, in 2014 – 18,103 cassation appeals, in 2013 – 17,089, in 2012 – 14,983, in 2011– 14,381 and in 2010 – 11,574.

3. Simplified proceedings

Simplified proceedings are a special type of court administrativ e proceedings governed by Articles 119–122 of the Act of 30 August 2002 Law on Proceedings before Administrative Courts. There was a significant increa se in the number of cases heard in this procedure. This is mainly due to the extension of the catalogue of cases which may be heard in this procedure introduced by the Act of 9 April 2015 on the amendment to the Law on Proceedings before Administrative Courts,w hich came into force on 15 August 2015.

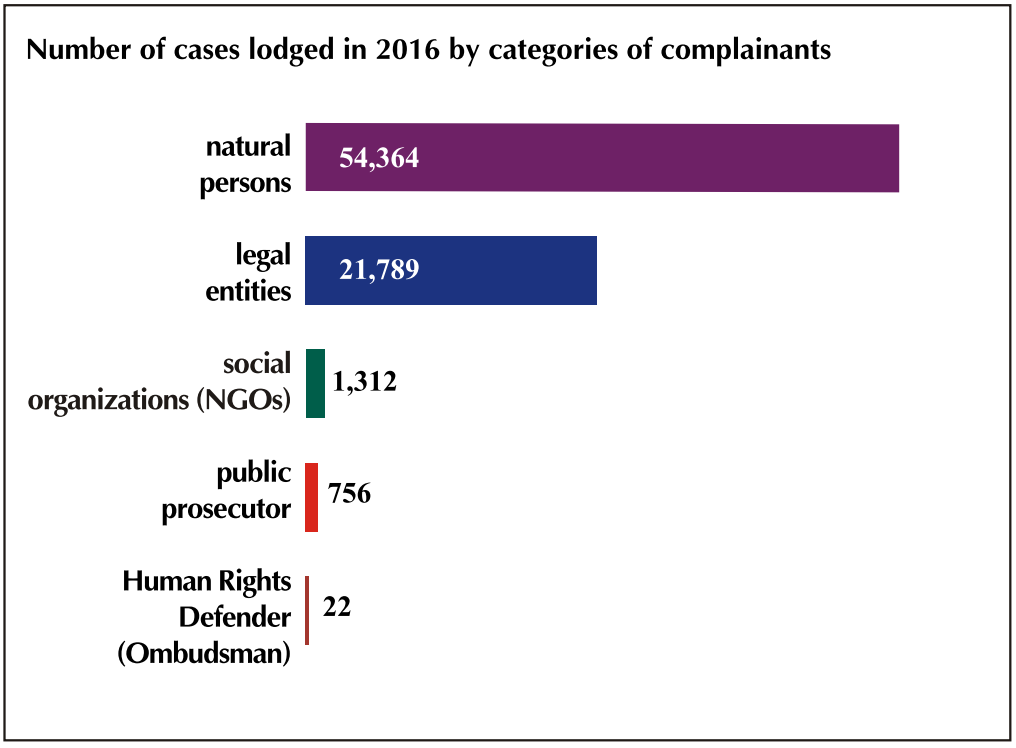
As of 15 August 2015, a case may be heard in simplified proceedings if the subject matter of the complaint is a decision issued during the administrative procee dings, which is subject to an interlocutory appeal, or when the decision is final, when the decision settles the substance of the case, and when the decision is issued in the enforcement proceedings and in proceedings to secure claims, subject to an interlocutory appeal, or if the subject of the complaint is failure to act or excessive length of

proceedings. Moreover, in accordance with Article 121 of the Law on Proceedings before Administrative Courts, a case may also be heard in simplified proceedings if the authority did not pass the complaint to the court despite the imposition of a fine (Article 55(2) of the Law on Proceedings before Administrative Courts).

The court hearing the case in this procedure is not bound by any limitation in referring the case to be heard at a hearing (Article 122 of the Law on Proceedings before Administrative Courts). The court may do so either at the request of either party or ex officio if it considers that it is necessary to hear the case as full court proceedings. Within simplified proceedings, the court hears the case *in camera* with one judge (Article 120 of the Law on Proceedings before Administrative Courts).

In 2016, there was a significant increase in the number of cases heard under this procedure. Voivodship administrative courts settled 7,440 complaints in simplified proceedings, and 2,210 of these complaints were granted.

Voivodship administrative courts

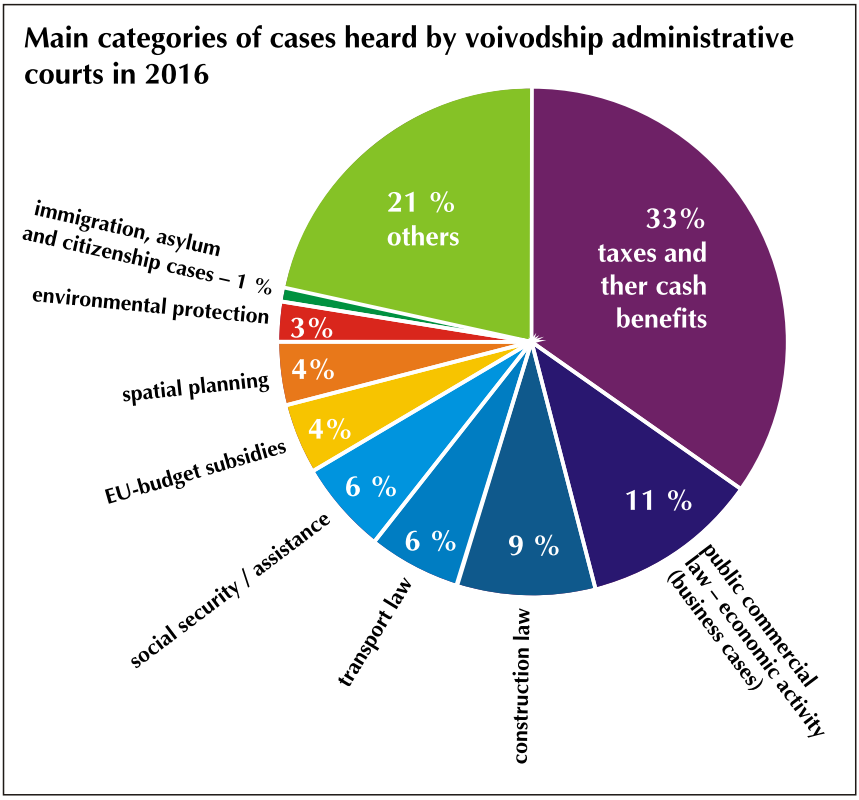


Complaints settled by voivodship administrative courts 2004–2016

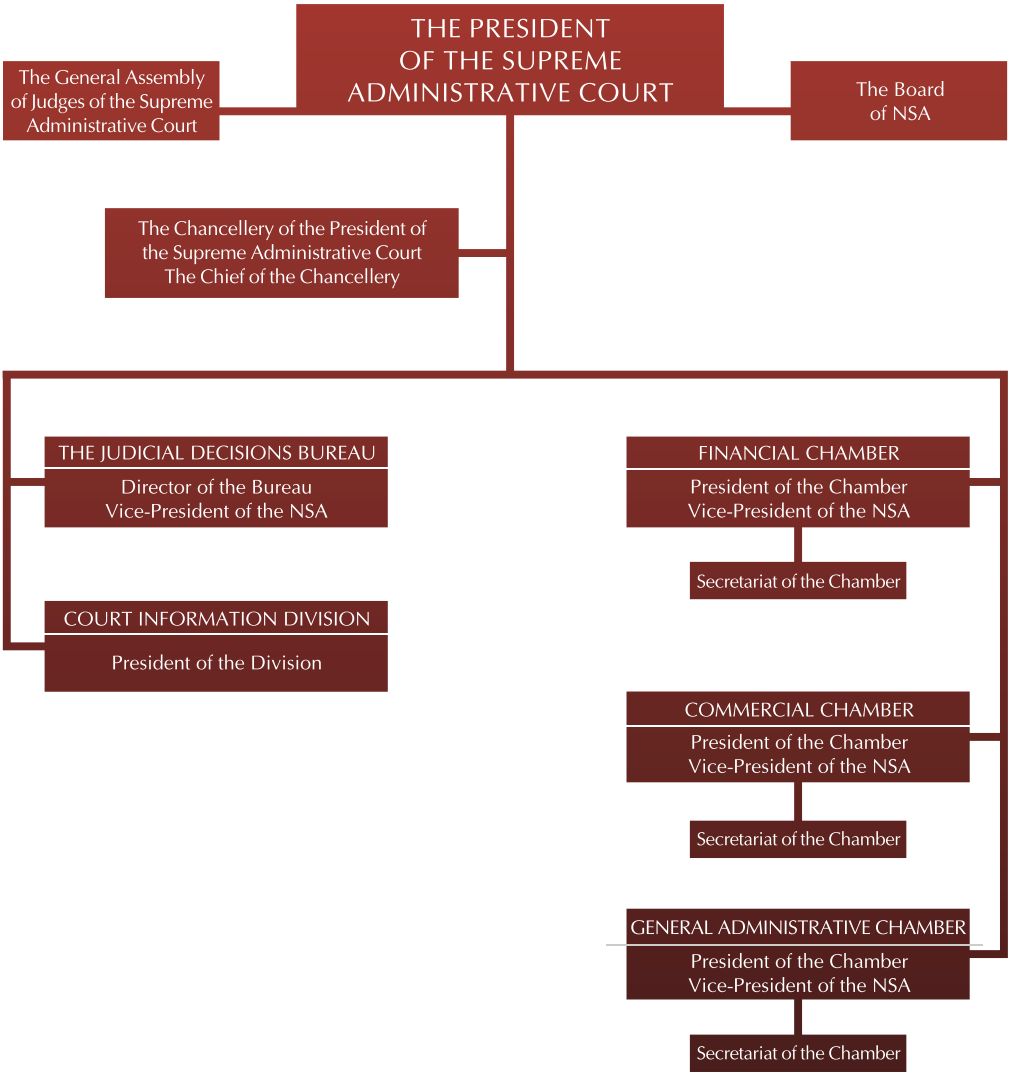
Year	Total number of cases to resolve (left from previous period + registered in given year)	Number of cases resolved	Cases remained for the next year
		Total	
2004	151 471	83 217	68 254
2005	131 163	87 383	43 780
2006	106 216	78 660	27 556
2007	86 184	66 942	19 242
2008	76 686	58 730	17 956
2009	77 058	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

Complaints lodged to voivodship administrative courts 2016

Voivodship administrative court	Complaints lodged	
	Total	
	Number	%
All courts	76 692	100
Białystok	2 202	2,87
Bydgoszcz	2 654	3,46
Gdańsk	3 878	5,06
Gliwice	6 019	7,85
Gorzów Wielkopolski	1 761	2,30
Kielce	1 878	2,45
Kraków	5 303	6,91
Lublin	4 013	5,23
Łódź	3 687	4,81
Olsztyn	2 533	3,30
Opole	1 270	1,66
Poznań	5 511	7,19
Rzeszów	3 002	3,91
Szczecin	2 959	3,86
Warszawa	25 090	32,72
Wrocław	4 932	6,43


Main categories of cases heard by voivodship administrative courts in 2016
21 % others
33% taxes and ther cash benefits
11 %
9 %
6 %
6 %
4%
4%
3%
immigration, asylum and citizenship cases – 1 %
environmental protection
spatial planning
EU-budget subsidies
social security / assistance
transport law
construction law
public commercial law – economic activity (business cases)

The structure of the Supreme Administrative Court



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

II. Activities of the Supreme Administrative Court

1.General remarks

According to Article 15(1) of the Law on Proceedings before Administrative Courts, the Supreme Administrative Court hears the means of challenge against the decisions of voivodship administrative courts – i.e. cassation appeals and interlocutory appeals against decisions and rulings, in accordance with the provisions of this law; it adopts resolutions aimed at clarifying legal provisions whose application has caused discrepancies in the jurisprudence of administrative courts; it adopts resolutions containing conclusions in legal issues that raise serious doubts in a particular court administrative case; it settles jurisdictional disputes over the jurisdiction between the authorities of local self-government units and between local self-government appeal boards and competence disputes between their authorities and government administration authorities; it hears other matters within the jurisdiction of the Supreme Administrative Court under separate laws, including pursuant to the Act of 17 June 2004 on complaint against a breach of the right of a party to hear a case in a court without undue delay. Moreover, the Supreme Administrative Court is also a disciplinary court in the disciplinary cases regarding judges of administrative courts and it hears disciplinary cases regarding judges of administrative courts (Article 41 of the Law on the System of Administrative Courts).

In 2016, the Supreme Administrative Court received 18,847 cassation appeals and 98 petitions for the reopening of proceedings. From the previous period, 25,806 complaints and 61 petitions for the reopening of proceedings remained to be heard. In total, the Supreme Administrative Court was obliged to hear 44,812 cassation appeals.

In 2016, 16,829 cassation appeals were heard in total; 14,793 complaints at a hearing (87.9% of all complaints lodged) and 2,036 (12.1%) *in camera*. The Supreme Administrative Court granted cassation appeal in 4,089 cases (24.3%), 11,271 cassation appeals were dismissed (66.97%) and 1,469 were settled in another way (8.73%).

The increase in the number of cassation appeals is noticeable. In 2016, the number of the lodged cassation appeals increased by 9.72% compared to the previous year. Since 2010, the number of lodged cassation appeals has increased by as much as 114.18%.

As in previous years, the largest number of cassation appeals concerned taxes and other cash benefits to which the tax regulations apply, and the execution of these cash benefits. In this regard, 6,784 cassation appeals were settled, which constitutes 40.31% of the total number of cassation appeals. Moreover, the Supreme Administrative Court heard 1,466 cassation appeals on tax interpretations (8.71%).

The Supreme Administrative Court also heard 153 complaints against a breach of the right of a party to hear a case in a court without undue delay, and 4 of these complaints were granted, 82 dismissed, and 67 settled otherwise.

In 2016, the Supreme Administrative Court settled 46.22% of the total number of cases within 12 months, and within 24 months – 86.93%. Regarding cassation appeals, 21.83% of cases were settled within 12 months (4.62% less than in 2015). In the case of interlocutory appeals, 91.7% are heard within 2 months, and within 12 months this rate amounts to 99.94%.

2. Activities of Chambers of the Supreme Administrative Court

2.1. The Financial Chamber

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

In 2016, the Financial Chamber received 5,803 cassation appeals and 23 petitions for the reopening of proceedings. 37% (2,144) of these complaints related to VAT, 24% (1,385) – personal income tax, and 9.4 % (545) – corporate income tax.

Among all the cassation appeals registered during this statistical period, individual interpretations issued by the minister competent for public finances accounted for 20.6% (1,195 cases). Moreover, 34 cassation appeals were lodged against individual interpretations issued by other authorities. The number of complaints on interpretation is still high. There were 8 complaints against the excessive length of procedure conducted by public administration authorities.

The Chamber settled 5,364 cassation appeals (269 more than in the previous year), including 4,754 during a hearing and 610 *in camera*.

The Chamber received 1,421 interlocutory appeals against the decisions of voivodship administrative courts. From among 1,539 settled interlocutory appeals, 25.7% (398) concerned the issues of legal aid, 13.2% (204) – withheld the execution of the contested act or action, 9.7% (150) – failure to meet the time limit, 1% (15 cases) – disqualification of a judge, 17.2% (266) – rejection of a complaint, while 32.7% (506) – interlocutory appeals referred to other issues. At the end of 2016, 176 interlocutory appeals were not heard, which represents a one and a half month receipt of such cases by the Chamber.

One competence dispute was settled. There were also 8 complaints against breach of the right of a party to hear a case in a court without undue delay settled, including 2 cases regarding the proceedings before the Supreme Administrative Court. 3 complaints were dismissed and others were ruled otherwise. The Chamber received 15 requests for clarification of legal regulations. 9 resolutions were adopted.

From among 14 complaints requesting declaring legally binding judicial decision unlawful, 2 cases concerned the decisions of voivodship administrative courts, 12 – the decision of the Supreme Administrative Court. The adjudicating panels granted one complaint, rejected 5 of them, and dismissed 1.

In 2016, the panels of the Financial Chamber made a number of questions to the CJEU for a preliminary ruling in 6 cases.

In 2016, as in previous years, the Chamber received a lot of cassation appeals, while the settlement of cases increased by 269 despite organisational problems related to the retirement of the judge and the non-completion of the recruitment procedure and

changes related to the assumption by the President of the Chamber the position of the President of the Supreme Administrative Court and the appointment of the Supreme Administrative Court judge to this position and by assuming by the Supreme Administrative Court judges the obligations causing limit to their adjudication. Consequently, a delegated judge participated in almost every adjudicating panel at a hearing; without the permanent presence of delegated judges, it would not have been possible to designate such a number of hearings (444).

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

Cassation appeals settled in 2016 by the Chamber were lodged by various eligible entities. Legal entities lodged 1,429 complaints, natural persons 2,173, and authorities 1,790. The prosecutor lodged 25 cassation appeals, while the Human Rights Defender (Ombudsman) lodged 3.

Representatives of the administration authorities participated in proceedings before the Supreme Administrative Court in 2,747 cases, which constitutes 51.21% of the cases settled at hearings. Lawyers as representatives of the complaining parties and participants in the proceedings participated in 328 cases (6.11%). Solicitors as representatives of the complaining parties and participants of the proceedings not being the administration authorities participated in 706 cases (13.16%). Tax advisers not being lawyers or solicitors participated in 752 cases (14.02%). Prosecutor participated in 21 cases (0.39%) and the Human Rights Defender (Ombudsman) in 2 cases (0.04%).

2.2. The Commercial Chamber

Cassation appeals lodged and settled in 2016

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

In 2016, the Commercial Chamber of the Supreme Administrative Court received a total of 7,161 cassation appeals, representing an increase of 18.15% in comparison to 2015 (6,061) and an almost 45% increase in comparison to 2014 (4,941). Moreover, 46 complaints requesting the reopening of proceedings were recorded (in 2015 there were 67 of these). In this way, the number of cassation appeals registered in the Commercial Chamber exceeded the number of cases both in the Financial Chamber and in the General Administrative Chamber.

Cassation appeals were most often lodged in business cases – 3,400 cassation appeals, excise tax – 1,192 cassation appeals, and EU subsidies, structural funds and sectoral market regulation – 813 cassation appeals.

The highest numbers of cassation appeals concerning the material jurisdiction of the Commercial Chamber of the Supreme Administrative Court were based on the decisions of the Voivodship Administrative Court in Warszawa – 2,101 cassation appeals, the Voivodship Administrative Court in Gliwice – 714 cassation appeals and the Voivodship Administrative Court in Wroc aw – 576 cassation appeals.

The vast majority of cases were cassation appeals lodged by a party other than the administrative authority (80.40%). In 15.75% of cases, the cassation appeal against the judgment of the court of the first instance was lodged only by the administrative authority; just over 3.85% were cases where cassation appeals against the same judgment were lodged by both the authority and the other party to the proceedings. The administrative authorities lodged 1,404 cassation appeals, 3,439 of the remaining cassation appeals came from legal entities, 1,981 from individuals, 37 from social organisations, 4 from the prosecutor and 2 from the Ombudsman.

In the Chamber, 5,183 cases of cassation appeals (i.e. 1,121 cases more than in 2015) and 62 cases initiated by the complaint requesting reopening of proceedings were settled. 88.08% of the complaints were heard at a hearing, with 11.92% of the complaints heard *in camera*.

2,571 of representatives of the public administration authorities participated in the hearings and as representatives of the parties: 1,085 solicitors, 595 lawyers, 394 tax advisers and 51 patent advisers. The prosecutor participated in 3 hearings, 2 hearings were held with the representative of the Ombudsman.

The percentage of the Voivodship Administrative Court jurisprudence stability corresponding to the ratio of the number of dismissed cassation appeals to the total number

of cases settled in the Commercial Chamber of the Supreme Administrative Court in 2016 was 60.27%. This percentage was the highest for the Voivodship Administrative Court: in Opole – 76.19%, in Szczecin – 72.89%, in Pozna – 72.56%, in ód – 69.72%, in Kraków – 65.12%, in Gliwice – 64.88%, in Rzeszów – 63.41%, in Warszawa – 61.89%; lower for the Voivodship Administrative Court: in Gda sk – 58.94%, in Wroc aw – 58.33%, in Kielce – 52.76%, in Bia ystok – 51.79%, in Olsztyn – 50.45% and in Bydgoszcz – 50.30%; and the lowest for the Voivodship Administrative Court: in Gorzów Wielkopolski – 48.53% and in Lublin – 33.02%.

During 2016 in the Commercial Chamber of the Supreme Administrative Court 3 resolutions were adopted as a result of the hearing the legal issues provided by the President of the Supreme Administrative Court pursuant to Article 36(1) and 36(2) of the Law on the System of Administrative Courts. and Article 264(2) in conjunction with Article 15(1)(2) of the Law on Proceedings before Administrative Courts These cases are discussed in a separate section of the paper.

On the other hand, no adjudicating panel submitted a request for adopting a resolution settling a legal issue raising serious doubts in a particular court administrative case under Article 15(1)(3) of the Law on Proceedings before Administrative Courts.

27 competence disputes were heard. In 19 cases, the Court indicated the authority competent to settle the case. Moreover, 12 complaints against breach of the right of a party to hear a case without undue delay were settled, none of which deserved to be granted.

3 complaints requesting declaring a legally binding decision unlawful were lodged, and 2 complaints of this nature from 2015 are still pending their hearing. In all 5 cases the complaints were rejected.

2.3. The General Administrative Chamber

Cassation appeals lodged and settled in 2016

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

In 2016, the General Administrative Chamber received 5,883 cassation appeals (6,585 in 2015) and 29 petitions for the reopening of proceedings (in 2015 – 29). In relation to the total number of cassation appeals lodged in 2016, the largest number of cassation appeals was lodged: in construction matters 1,192 – 20.26% (in 2015 1,273 – 19.33%), spatial management 608 – 10.33 % (in 2015 695 – 10.55%), expropriation 494 – 8.4% (in 2015 633 – 9.61%), social assistance 406 – 6.9% (in 2015 503 – 7.64%), public information and press law 372 – 6.32% (in 2015 540 – 8.20%), property management 377 – 6.41% (in 2015 470 – 7.14%), environmental protection and nature protection 370 – 6.29% (in 2015 407 – 6.18%), labour relations and service relations of uniformed officers 304 – 5.17% (in 2015 349 – 5.30%).

Compared to 2015 (6,585) the number of cassation appeals decreased by 702 complaints – i.e. by 10.66%, and the number of the heard cassation appeals increased by 547 cases – i.e. by 9.54% (5,735 cassation appeals were settled in 2015). 8,203 cassation appeals remained for the following period (in 2015 – 8,602).

The number of cassation appeals remaining to be settled in the following period decreased by 399 complaints – i.e. by 4.64%.

The highest number of cassation appeals came from the Voivodship Administrative Court in: Warszawa – 2,542, Kraków – 507, Pozna – 450, Wroc aw – 312, Gliwice – 311, Lublin – 249, Szczecin – 235, Gda sk – 234, ód – 222, and the lowest from the Voivodship Administrative Court in: Rzeszów – 162, Bia ystok – 149, Bydgoszcz – 126, Olsztyn – 121, Kielce – 106, Opole – 95 and Gorzów Wielkopolski – 62.

There was a decrease noted in the number of revoked decisions of the first instance courts and transferred for reconsideration in relation to the total number of cases settled by 98 cases (in 2016 – 494 cases – i.e. 7.86%; and in 2015 – 592 cases – i.e. 10.32%). On the other hand, there was an increase in the number of revoked decisions of the first instance courts and complaints heard in relation to the total number of cases settled by 257 cases (in 2016 – 965 – i.e. 15.36%; and in 2015 – 708 cases – i.e. 12.35%).

In 2016, 4,542 cassation appeals were dismissed (in 2015 – 4,038). The percentage of dismissed cassation appeals relative to the total number of settled cases was 72.30% in 2015 – 70.41%).

The jurisprudence stability percentage regarding the total number of settled cases in 2016 in a given Voivodship Administrative Court in this group of cases was the highest in the Voivodship Administrative Court in: Opole – 83.52%, Kielce – 82.99%, Rze-

szów – 75.98%, Szczecin – 75.27%, Bydgoszcz – 74.44%, Gda sk – 74.10%, Kraków – 73.70%, Warszawa – 73.25%, Gliwice – 72.86%, Bia ystok – 72.46%, Olsztyn – 71.97%; and the lowest in the Voivodship Administrative Courts in: Gorzów Wielkopolski – 68.18%, Wroc aw – 67.49%, Pozna – 66.25%, ód – 65.38% and Lublin – 62.60%.

In 2016, cassation appeals were lodged mostly by natural persons – 3,258 (in 2015 – 3,508) and by legal entities in 2,406 cases (in 2015 – 2,777). Social organisations lodged 196 cassation appeals (in 2015 – 269), prosecutors – 8 (in 2015 – 28) and the Ombudsman – 7 (in 2015 – 3).

In the proceedings before the Supreme Administrative Court in the settled cases in 2016, 1,121 representatives of public administration authorities participated (in 2015 – 993). Lawyers as attorneys for the complaining parties and participants of the proceedings participated in 1,121 cases (in 2015 – 1,001) and solicitors as attorneys for the complaining parties and participants of the proceedings – in 1,409 cases (in 2015 – in 1,217). The prosecutor participated in 57 cases (in 2015 – 28). On behalf of the Ombudsman 7 employees participated (in 2015 – a solicitor and 10 employees) in the proceedings before the Supreme Administrative Court. In one case a judge acted as an attorney for the complaining party.

3. Resolutions of the Supreme Administrative Court - unifying jurisprudence of administrative courts

3.1. General remarks

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 Attorney-General, the Human Rights Defender (Ombudsman) or the Ombudsman for Children (the so-called abstract resolutions based on Article 15(1)(2) in conjunction with Article 264(2) of the Law on Proceedings before Administrative Courts), and resolutions containing conclusions in legal issues that raise serious doubts in a particular court administrative case (the so-called particular resolutions based on Article 15(1)(3) in conjunction with Article 187(1) and Article 264 of of the Law on Proceedings before Administrative Courts). According to Article 187(2) of the Law on Proceedings before Administrative Courts a resolution of the Supreme Administrative Court panel of seven judges is binding in the relevant case. On the other hand, when the adjudicating panel does not agree with the position taken in the resolution adopted by the panel of the seven judges of the Supreme Administrative Court, it may apply for a resolution pur-

suant to Article 269(1) of the Law on Proceedings before Administrative Courts (see e.g. resolution of NSA of 1 February 2016, Case No. II FPS 5/15).

In 2016, 22 requests for adopting a resolution were lodged. The Supreme Administrative Court adopted 16 resolutions, including 7 resolutions in an abstract mode (6 upon the request of the President of the Supreme Administrative Court and 1 upon the request of the Human Rights Defender (Ombudsman)). The Supreme Administrative Court adopted 9 resolutions pursuant to Article 187(1) of of the Law on Proceedings before Administrative Courts.

3.2. Statistics

Years	2010	2011	2012	2013	2014	2015	2016
Total	18	20	23	27	19	17	16
Financial Chamber	6	8	10	9	9	9	9
Commercial Chamber	4	3	5	4	4	2	3
General Administrative Chamber	8	8	8	14	6	6	4

3.3. Subject of the resolutions

In 2016, the legislative activity concerned issues related to the provisions of the court administrative and administrative proceedings, tax law, construction law, local self governmental institutional law and the law on gambling.

3.3.1. Administrative proceedings and administrative court proceedings

The legal provisions on proceedings before administrative courts were referred to in 4 resolutions. These referred to: the jurisdiction of administrative courts (Article 3(2)(2) of the Law on Proceedings before Administrative Courts) in matters of reviewing the decisions on extending the time limit for the return of the tax difference (the resolution of 24 October 2016, Case No. I FPS 2/16); the possibility of bringing a complaint to an administrative court against the action referred to in Article 3(2)(4) of the Law on Proceedings before Administrative Courts at the earliest the day after the date of filing the call to remove the law violation (the resolution of 27 June 2016, Case No.I FPS 1/16); collection of the proportional fee on the complaint against the decision to establish compensation for the expropriation of a property issued pursuant to Article 129 (5) of the Act on Real Estate Management (the resolution of 3 October 2016, Case No. I OPS

1/16) and dismissal of the complaining party pursuant to Article 239(1)(e) of the Law on Proceedings before Administrative Courts from the obligation to pay court costs in a case resulting from complaints against the decisions of enforcement authorities issued in the course of administrative execution of executive orders issued by authorities of the [State] Social Insurance Company (ZUS) or the [State] Farmers' Social Security Fund (KRUS) (the resolution of 23 May 2016, Case No. II GPS 2/15).

The provisions of the administrative proceedings were referred to in a resolution deciding on the exclusion of applying of the provisions of Article 24(1)(5 in conjunction with Article 27(1) of the Code of Administrative Proceedings) to a member of the province board acting as managing authority within the meaning of Article 5(2) of the Act of 6 December 2006 on the Principles of Development Policy, participating in proceedings following the submission of a request for judicial review referred to in Article 207 (12) of the Act of 27 August 2009 on public finance , in the version applicable when it participated in the adoption of the appealed decision (the resolution of 5 December 2016, II GPS 2/16).

3.3.2. Tax law

The provisions of the Tax Ordinance were referred to in a resolution of 23 May 2016 , Case No. II FPS 6/15, in which it was decided that: "Article 68(1) of the cited law does not apply to the decision on the liability of the heirs provided for in Article 100 of the Act of 29 August 1997 – Tax Ordinance" . In the reasons of the resolution, the Supreme Administrative Court stated, inter alia, that since the tax decisions referred to in Article 100(1) – 100(2a) of the Tax Ordinance do not establish and do not create tax liabilities or obligations of heirs, it cannot be assumed that the provisions of Article 68(1) of the Tax Ordinance apply to this decision. In the opinion of the Supreme Administrative Court, the decision referred to in Article 100 of the Tax Ordinance, does not create legal relations for their heirs, does not create itself any duties and it does not give them any powers.

The resolution of 24 October 2016, Case No. I FPS 3/16 regarded the provisions of the Act on the Goods and Services Tax in conjunction with the Tax Ordinance, and in this resolution it was stated that "In case of extension of the time limit for the return on the tax difference in connection with the verification pursuant the second sentence of Article 87(2) of the Act of 11 March 2004 on the Goods and Services Tax as part of the verifying activities referred to in Section V of the Act of 29 August 1997, the Tax Ordinance, it is not possible to request from the tax payer's counterparts conducting business activity to submit documents to verify their correctness and accuracy". In the reasons the Supreme Administrative Court referred to Article 274c(1) of the Tax Ordi-

nance, from which it follows that the authority may undertake activities involving the taxpayer's counterparts only "in connection with tax proceedings or tax audits" conducted at the taxpayer's. In the interpretation of Article 274c of the Tax Ordinance, because there is no definition of a counterpart in this provision and in other provisions of the Tax Ordinance, Article 13b(2) of the Act of 28 September 1991 on Fiscal Control may be helpful, according to which all entities running a business activity, participating in the supply of the same goods or service, both as suppliers and purchasers participating directly or indirectly in the supply of the goods or service are considered counterparts of the controlled entity. Only the entities that cooperate with an audited taxpayer within the scope of control and who run a business activity during the period of control of the taxable person may be subject to a cross-audit.

The provisions of the Act on Corporate Income Tax were referred to in 2 resolutions. In the resolution of 26 June 2016, Case No. II FPS 1/16, the Supreme Administrative Court determined that "Changing the lessor by divesting and acquiring by another entity the subject of the ongoing leasing agreement does not justify verifying this contract only on that basis, pursuant to Article 17a(1) and 17a(2) and Article 17b(1) of the Act of 15 February 1992 on Corporate Income Tax in the version in force before 1 January 2013". In the reasons the Supreme Administrative Court stated, inter alia, that the transfer of ownership of the object (object of lease) during the term of the lease agreement results in the change of an entity being a contracting party to such an agreement. The buyer enters into the lease relationship in the place of the financing party. In relation to the contents of the agreement, which is of legal significance for both civil and tax law, it is not possible, in the case of the purchase of a leased asset during the lease agreement, to refer to a "new agreement" as the contents of the agreement remain unchanged.

In the resolution of 1 February 2016, Case No. II FPS 5/15, it was decided that "In view of Article 7(2) and Article 15(1) and Article 16(1)(40) and Article 15(4g) of the Act of 15 February 1992 on Corporate Income Tax, awards and bonuses paid to employees from income after income tax may constitute taxpayers' tax deductible expenses in the corporate income tax in the month of their payment". It should be added that the legal issue was presented to the panel of seven judges of the Supreme Administrative Court under Article 269(1) of the Law on Proceedings before Administrative Courts, as the asking Court did not share the position presented in the resolution of 22 June 2015, II FPS 3/15. The Supreme Administrative Court stated that there is no reason to change the position presented in the resolution of 22 June 2015, Case No. II FPS 3/15. According to the Supreme Administrative Court, bonuses and awards are undoubtedly income from the employment relationship referred to in Article 12(1) of the Act of 26 July 1991 on Personal Income Tax.

For this category of receivables the legislator in Corporate Income Tax Act envisages a special way of determining the moment of accounting them as tax deductible expenses. According to Article 15(4g) of Corporate Income Tax Act, the receivables due to the titles referred to in Article 12(1) and 12(6) of Personal Income Tax Act, constitute ax deductible expenses in the month for which they are due, provided they have been paid or made available within the deadline resulting from the labour law, agreement or other legal relationship between the parties.

The provisions of the Act on Personal Income Tax were referred to in 2 resolutions. In the resolution of 6 June 2016, Case No. II FPS 2/16, the Supreme Administrative Court stated, "Interest for late payment of the price for disposed shares should be included in revenues from other sources referred to in Article 10(1)(9) in conjunction with Article 20(1) of the Act on Personal Income Tax".In the resolution of 19 December 2016, Case No. II FPS 4/16 it was assumed that "In the legal state in force until 30 June 2016, the last day of the deadline for transferring the advances referred to in Article 38(1) of the Act of 26 July 1991 on Personal Income Tax is understood as the day of obtaining the means referred to in Article 33(3)(3) of the Act of 27 August 1997 on Occupational and Social Rehabilitation and Employment of Disabled Persons, in the case of advances on personal income tax collected by the payer". The reasons given in the resolution of the Supreme Administrative Court stressed, inter alia, that the provision of Article 33(3)(3) of the Act on Occupational and Social Rehabilitation and Employment of Disabled Persons cannot be interpreted as the unambiguous intention of the legislator to transfer funds as soon as possible in order to finance the rehabilitation business on the grounds that it serves socially useful purposes.

3.3.3. Construction Law

The legal provisions of the construction law were referred to in 2 resolutions.

In the resolution of 3 October 2016 (Case No. II OPS 1/16), it was decided that "The provisions of Article 50(1)(2) or 50(1)(4) in fine of the Act of 7 July 1994 – Construction Law in fine, may apply to construction works and construction objects which do not require a building permit and are not subject to the notification requirement". In the reasons given in the resolution, the Supreme Administrative Court justified the need to meet the basic requirements regarding construction objects determ ined in Appendix I to the Regulation of the European Parliament and of the Council (EU) No. 305/2011 of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC , and supervision over the compliance with construction law provisions, in particula r over the compliance of land use zoning with local spatial management plans (Article 14(8) of the Act of

27 March 2003 on Planning and Spatial Management) and other values, the national legislator, in Article 81(1)(1)(a) and 81(1)(1)(e) of the Construction Law, entrusted to the authorities of architectural and construction administration and construction supervision. The authorities of the construction supervision hold competence to control and to issue demolition orders.

In the resolution of 16 February 2016, Case No. II OPS 4/15 the Supreme Administrative Court decided: "A decision imposing an obligation to present an expert opinion on the technical condition of a construction object or part thereof, issued pursuant to Article 62(3) in conjunction with Article 81c(2) and 81c(3) of the Act of 7 July 1994 – Construction Law (...), after having been subjected to inspection of that object, is subject to an interlocutory appeal". In the reasons of the resolution, after analysing the provisions of the Construction Law, the Supreme Administrative Court assumed that the basis to impose upon the owner or the manager of a construction object the obligation to submit an expert opinion on the technical condition of the object or part thereof results not only from Article 62(3) of the Construction Law, but also from Article 81c(2) of this act. This obligation must be imposed in the form of a decision that may be the subject to an interlocutory appeal. In the case of the imposition of the obligation to present a technical expert opinion with reference only to Article 62(3) of the Construction Law, it is to be assumed that there is an error as to the legal basis of the decision, since in the essence the only basis is Article 81c(2) of the Construction Law, which causes that such a decision, regardless the instruction included therein, is subject to a an interlocutory appeal under Article 81c(3) of the Construction Law.

3.3.4. Local self-government institutional law

The Supreme Administrative Court in 2 resolutions referred to the issue of competences of the executive authorities of a local self-government.

In the resolution of 19 December 2016, Case No. II FPS 3/16, adopted upon the request of the President of the Supreme Administrative Court, it was assumed that: "1. In matters of charges for municipal waste management, Article 6q(1) of the Law of 13 September 1996 on the Maintenance of Cleanliness and Order in Communes excludes the application of Article 39(4) of the Act of 8 March 1990 on Commune Local Self-Government. 2. The interpretation made in the resolution is binding from the date of its adoption". Justifying the decision included in point 1, the Supreme Administrative Court indicated that in cases of charges for municipal waste management – based on the referral included in Article 6q(1) of the Act on the Maintenance of Cleanliness and Order in Communes ab initio – the provisions of the Tax Ordinance apply, and "the powers of the tax authorities are vested in the mayor, and when the inter-com-

munal union takes over the tasks of the comm une referred to in Article 3(2) of the Act on the Maintenance of Cleanli ness and Order in Communes, in term s of the scope of fees for municipal waste mana gement, which constitute the income of the inter-communal union – in the administratio n of the inter-communal union". According to the Supreme Administrative Court, the fact that the legislator uses a quali fier to distinguish the type of cases subject to – because of the applied refer ral – settlement pursuant to the provisions of the Tax Ordinanc e, requires Article 6q(1) of the Act on the Maintenance of Cleanliness and Order in Com munes to be noted as lex specialis in relation to Article 39(4) of Commune Loc al Self-Government Act. The clear definition in the first regulation of the circle of entities with the pow ers of the tax authorities must therefore be treated as limiting the discretion of the com munal councils, designated by the provisions of Article 39(4) of Commu ne Local Self-Government Act. The separate indication of the mayor (and under certain con ditions, also of the board of an inter-communal union) as competent entities in that category of cases should be under stood as the expression by the legislator of the will to implem ent the principle of exclusive competence. Referring to point 2 of the decisio n, the Supreme Administrative Court indicated that the interpretation adopted in the resolution is binding from th e date of its adoption. The impact of the interp retation on the future raises the respon sibility of the communal councils to change the adopted resolutio ns within a reasonable time, in order to take into account the position of the Suprem e Administrative Court.

In the resolution of 16 February 2016, Case No . I OPS 2/15 it was decided that "A district has got no entitlement to bring proce edings as a party in respect of determining the amount of compensation from the district for the real estate taken over for a public road which became the prope rty of the district if the decision is made by a staroste based on Article 12(4a) in conjunc tion with Article 11a(1) of the Act of 10 April 2003 on Special Terms for the Preparatio n and Implementation of Publi c Road Investments and Article 38(1) of the Act of 5 June 1998 on District Local Self-G overnment". In the reasons of the resolution, refer ring to the competence of a staroste to issue a decision on the subject of legal issues, the Supreme Ad ministrative Court noted that the staroste's competence relates to matters belonging to the jurisdict ion of the district and in those cases the staroste acts as a district autho rity (Article 38(1) of the Act on District Local Self-Government), including matters fal ling within the scope of the district's activity as governmental tasks performed by the district (Artic le 4(4) of the Act on District Local Self-Government).

Pursuant to Article 12(4a) in conjun ction with Article 11a(1) of the act of 10 April 2003 on Special Terms for the Preparatio n and Implementation of Publi c Road Investments, the decision determining the amount of compensatio n for real estate that became the

property of the district on the basis of the decision of the staroste to authorise the implementation of road investment in respect of a district road, is made by the staroste. This is a matter of public administration, which belongs to the jurisdiction of the district within the meaning of Article 38(1) of the Act on District Local Self-Government. Where the competence in these matters were entrusted to the staroste who performs the task of the district, then the district board headed by the staroste may not question the decision of the staroste on the same matter. Consequently, in such a case, the district cannot rely on the fact that the proceedings concern its legal interest and be a party to the proceedings as the burden of payment is to be imposed on the district. In a democratic state of law, the interpretation of law according to which a local self-government unit, implementing the entrusted public administration tasks through its authorities, is empowered to unilaterally shape the legal situation of its independent entities first and then is entitled to lodge appeals against the decisions taken by these authorities is unacceptable.

3.3.5. Gambling

In the resolution of 16 May 2016, Case No. II GPS 1/16, the Supreme Administrative Court decided: "1. Article 89(1)(2) of the Act of 19 November 2009 on Gambling is not a technical regulation within the meaning of Article 1(11) of the Directive 98/34/EC of the European Parliament and the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulation whose project should be forwarded to the European Commission in accordance with the first paragraph of Article 8(1) of that Directive and may constitute a basis for the imposition of a fine for infringing the provisions of the Gambling Act, and for the reconstruction of the marks of administrative tort referred to in that provision and its applicability in cases of the imposition of a fine, lack of notice and the technical within the meaning of the Directive 98/34/EC nature of Article 14(1) of this act are insignificant. 2. A person organising gaming machines games outside of a casino, regardless of whether it is licensed or licensed – from 14 July 2011, also the notification or registration of a gaming machine or gaming device is subject to a fine referred to in Article 89(1)(2) of the Gambling Act".

Referring to question 1 in the petitum of a legal question, the Supreme Administrative Court stated that Article 89(1)(2) of the Gambling Act establishes a sanction for illegal activities, and the assessment of this nonconformity is made on the basis of other normative norms. The applicability or the necessity of refusing to apply this provision is determined by the circumstances of the particular case and the statement in which that provision occurs within the framework of the construction of the legal standard referring to the actual state, which means that it may in principle constitute the legal basis for the imposition of a fine for breaching the provisions of the Gambling Act.

Justifying the decision in point 2 of the resolution, the Supreme Administrative Court pointed out that the functions of Article 89(1)(2) of the Gambling Act as a rule penalising the violation of the rules of organising and managing gaming machines specified in the technical provision of Article 14(1), the project of which was not notified to the European Commission, do not express themselves in repression and retaliation as a response to their violation, but they themselves seek the restitution of unpaid dues and gaming tax and thereby offset the losses of the state budget incurred in connection with illegal gambling. This argument assumes that Article 139(1) of the Gambling Act, providing for the flat-rate taxation of low stake gaming machines, on the basis of the purpose of the regulation contained in that provision, also carries out functions that must be assessed as inherent. While performing fiscal functions, it cannot be considered a technical provision within the meaning of the Transparent Directive, the project of which should be forwarded to the European Commission in accordance with the first paragraph of Article 8(1) of that directive.

Justifying the decision regarding point 3 of the legal question, the Supreme Administrative Court pointed out that Article 89(1)(2) penalises behaviour that violates the rules governing where gaming machines are organised, and not the behaviour that violates the terms that condition the entry into the business of gambling and then running a business of organising gambling, including gaming machines. Therefore, Article 89(1)(2) of the Gambling Act shows that it is addressed to anyone who, in the manner described therein, and therefore contradicting the law, arranges gambling on gaming machines. Both, an entity holding a licence or a permit and an entity with no such documents, are subject to fines for organising gambling on gaming machines outside a casino. Only the fact that the gaming machine was used for gambling outside a casino becomes essential. Therefore, it is important to bear in mind that an entity organising a game is any entity that organises a gambling game, including a gaming machine game (Article 4(2) of the Gambling Act), regardless of whether it is objectively capable to meet one of the conditions for obtaining the licence (permit) in the form of an appropriate, statutory legal form of conducted regulated activity.

3.3.6. Rights of the individuals in a dispute with public administration

In resolutions adopted in 2016 important substantive issues were raised regarding the rights of an individual in a dispute with a public administration authority. There are references to the need for administrative courts to use pro-constitutional and pro-European law interpretation in line with the European standards of human rights protection.

Deciding on the possibility of applying the provisions on the suspension of construction works performed in such a way as to pose a threat to the safety of persons or property or the environment, and issuance of a decision ordering corrective actions on

construction works and construction objects which do not require a building permit and are not subject to notification, the Supreme Administrative Court in resolution of 3 October 2016, Case No. II OPS 1/16 stated that this decision would provide the possibility to control compliance with the spatial order by the building supervisory authorities. The Supreme Administrative Court referred to the provisions of Articles 59(1) 59(3) of the Act of 27 March 2003 on Planning and Spatial Management, defining the competence of the commune authorities in the case of changing the spatial management if there is no local plan. In the opinion of the Supreme Administrative Court, when the pro-constitution interpretation of Article 59(3) of Planning and Spatial Management Act is applied, it is not possible to presume that a rationally operating legislator excludes from any inspection of compliance a change in spatial management not requiring a building permit with the findings of the local management plan, and on the other hand created the legal possibility of such an inspection in the case of construction works requiring a building permit or notification, or changes in the use of a building or part thereof requiring notification, or only a change in the spatial management in an area not covered by the local plan.

By deciding on the deadline for the transfer of collected advances to personal income tax to the Company Fund for Rehabilitation of Disabled Persons, referred to in Article 33(3)(3) of the Act on Personal Income Tax, the Supreme Administrative Court in resolution of 19 December 2016 (Case No. II FPS 4/16) stated that the lack of clear and precise regulations concerning the deadline for transferring the advances on personal income tax to the ZFRON also gives grounds for using the principle of in dubio pro tributario while interpreting these. Moreover, the Supreme Administrative Court indicated that this rule, even before its introduction into the legal system (before 1 January 2016), in the jurisprudence of administrative courts (see: resolutions of 17 November 2014, Case No. II FPS 3/14 and II FPS 4/14) was derived from the constitutional principles of a democratic state ruled by law (Article 2 of the Constitution) and the statutory regulation of tax law (Article 48 and Article 217 of the Constitution).

Stating in the resolution of 19 December 2016 (Case No. II FPS 3/16) that the interpretation made in the resolution is binding from the date of its adoption, the Supreme Administrative Court justified that with the need to respect the principle of trust to a state and its authorities. This trust is recognised as a value, which in a democratic state is subject to constitutional protection.

Deciding in the resolution of 5 December 2016 (Case No. II GPS 2/16) that the exemption, governed by Articles 24 and 27 of the Code of Administrative Proceedings, does not apply to a member of the province board as a managing authority within the mea-

ning of the Act of 6 December 2006 on the Principles of Development Policy, from hearing the case as a result of a petition for the reopening of proceedings (Article 127(3) of the Code of Administrative Proceedings), whose subject matter was the decision under Article 207(12) of the Act of 27 August 2009 on Public Finance regarding the reimbursement of funds from the EU budget for the implementation of programmes financed by these funds, if such funds were misused or used in violation of the procedures provided for in Article 184 of u.f.p., or were unduly collected or in an excessive amount, the Supreme Administrative Court pointed out that although the basic value of the procedural justice is the right guaranteed in Article 78 of the Constitution, the application of the provisions of the Code of Administrative Proceedings specifying this constitutional standard would lead to the loss of the ability to adjudicate by the managing authority. In the jurisprudence of the Constitutional Tribunal it is emphasised that in such a situation it is always necessary to examine whether it is possible at all to apply the exemption referred to in Article 24(1)(5) of the Code of Administrative Proceedings (see judgment of the Constitutional Tribunal of 15 December 2008, Case No. P 57/07).

3.4. Conclusion

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

4. Jurisdictional disputes and competence disputes

4.1. General remarks

According to Article 166(3) of the Constitution, competence disputes between the organs of local self-governments and government administration are settled by administrative courts. Settling jurisdictional and competence disputes between local government authorities and appellate boards of local government, unless otherwise provided for in a separate law, and competence disputes between authorities of such authorities and government administration authorities, remaining within the scope of the competence of the Supreme Administrative Court under Article 15(1)(4) in conjunction with Article 4 of the Law on Proceedings before Administrative Courts, refers to situations in which at least two administrative authorities at the same time consider themselves to be competent to deal with a specific matter (positive dispute), or they consider themselves to be inadequate to deal with it (negative dispute) (see e.g. decision of 26 October 2016, Case No. II OW 48/16).

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

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

4.2. Subject of the disputes

The subject of the dispute, in the majority of cases, concerned the indication of the authority competent to hear the case regarding benefits from the social assistance (see e.g. decision of 30 December 2016, Case No. I OW 154/16), the indication of the authority competent to hear the case regarding payment of dues for storage of a vehicle removed from the road which is not registered in any of the Member States of the European Union in a guarded car park run by the entrepreneur involved (seee.g. decision of 28 July 2016, Case No. I OW 74/16; the location of an investment on a road (see e.g. decision of: 20 January 2016, Case No. II GW 31/15); the indication of the authority competent to consider the application to authorise the location of a slip-road from a public road (see e.g. decision of 20 October 2016, I OW 146/16) and competence disputes and jurisdictional disputes arising from the provisions of the acts in terms of the act of 18 July 2001 – Water Law (see e.g. decision of 12 April 2016, Case No. II OW 2/16), environmental protection and construction law.

Among the cases for resolving a competence dispute, one can distinguish a group of cases created mainly under the provisions of the Act of 26 March 1982 on Land Consolidation and Exchange, regarding the situation in which the qualification of the higher-level authority has changed and the transitional provisions do not indicate which authority should carry out the reopening of proceedings or to hear the means of challenge in that proceeding against the decision of the previous competent authority. In these cases, the following jurisprudence was maintained: on the date of entry

into force of the Act of 30 August 2013 on the amendment of the Act on Land Consolidation and Exchange – i.e. 16 October 2013 – the provisio n of Article 3(1) of the Act - on Land Consolidation and Exch ange applied, in which it was again pointed out that - the higher authority within the meani ng of the Code of Administrative Proceed ings in relation to a staroste in matters of this scope (i.e. the consolida tion and post-consolidation management) is the governor (see decision of 19 October 2016, II OW 27/16).

In a jurisdictional dispute betwee n the President of the Capital City of Warszawa and the Local Government Appeal Board in Warszawa for the transfer to its benefit the decision of the Board, which revoked the dec ision of the President of the City refusing to determine the conditions of develo pment and management of the land and determining the conditions of develop ment and the detailed rules of land developme nt, the Supreme Administrative Court pointed to the jurisdiction of the local gove rnment appeal board, assuming that the autho rity that determined by a decision the terms of development (Article 59(1) of the Act on Planning and Spatial Managemen t) is a competent authority for its transfer under Arti cle 63(5) of the Act on Planning and Spatial Management (see decision of 12 April 2016, Case No. II OW 12/16).

In a competence dispute betwee n the Mayor and the Regional Director of Enviro nmental Protection for issuing a decision on environmental cond itions for a project consisting in the change of non-State Trea sury forest property into agricultu ral use, the Supreme Administrative Court recognised the jurisdi ction of the competent local regional director of environmental protection (see decision of 16 Febru ary 2016, Case No. II OW 139/15). In a case concerning the determina tion of the authority competent to hear the application regarding exc essive noise level in a residential unit, the Supreme Administrative Court pointed to the locally competent Distric t Inspector of Building Supervision (see decision of 17 November 2016, Case No. II OW 56/16). While on issuing a decision on environmen tal conditions for the project titled: Expan sion of Motorway Service Area, the Supreme Administrative Court pointed to the Regional Director for Environmental Protection as the competent auth ority in the case, based on Article 75(1)(1)(h) of the Act of 3 October 2008 on the Provis ion of Information about the Environment and its Prote ction, Public Participation in the Environmental Protection and Environmental Impact Assessment (see decision of 12 April 2016, Case No. II OW 9/16).

Regarding the indication of the autho rity competent to confirm the right to health care services financed from public funds, the Supreme Administrative Court expressed the view that, pursuant to Article 54(1) of the Act on Health Benefit s Financed from Public Funds, the decision confirming the beneficiary's right to health care servic es is issued

by the mayor of the commune proper for the place of residence of the beneficia ry(-ies). When the beneficiary is currently not resid ing in the place of permanent residence and it is impossible to determine the place where they are resid ing, according to Article 21(1)(3) and 21(2) of the Code of Administrativ e Proceedings, the case falls within the competence of the authority com petent for the place where the event causing the initiation of the proceedings took place, or if no such locatio n was established, to the authority competent for the area of the ródmi e cie district in the capital city of Warszawa (see decision of 27 October 2016, Case No. II GW 26/16).

4.3. Conclusion

In 2016, the Supreme Administrat ive Court had 432 applications to consider (360 we - re lodged and 72 remained from the previous perio d) to resolve competence and jurisdictional disputes. 338 cases were settled, and in 228 cases the proper authority for their settlement was indicated. As a reason for dismissing an application, the Supreme Administrative Court most often points out lack of precision in the formulation of the subject matter of the dispute. In the jurisprude nce of the Supreme Administrative Court it is assumed that the subject matter of a jurisdictional or a compete nce dispute should be precise enough to determine the case to be heard (see deci sion of 24 August 2016, Case No. II FW 1/16).

Examples, referring to issues related to the performance by the Supreme Admin istrative Court of the competence referred to in Article 166(3) of the Constitution, show the numerous problems that pub lic administration authorities face when exercising their powers. The decisions of the Supreme Adm inistrative Court in this regard facilitate settling the cases by the authorities on one hand, and protect the princip les of legality on the other.

5. A complaint against the breach of the right of a party to hear a case in a court without undue delay

Based on Article 2 of the Act of 17 June 2004 on a complaint regarding the breach of the right of a party to hear a case in preparatory proceedings conduc ted or supervised by the prosecutor and in court proceedin gs without undue delay a party may file a omplaint requesting a declaration that in the proceedings which the complai nt relates to, its right to be heard without undue delay was violated if the proceedi ngs take longer than necessary to clarify the factual and legal matters wh ich are relevant to the settlement of the case or longer than necessary to handle the enfo rcement case or any other regarding the enforcement of the court decision (excessive length of proc eed-

ings). Article 4(3) of the act referred to herein above specifies the jurisdiction of the Supreme Administrative Court to hear complaints against excessive length of proceedings before a voivodship administrative court or the Supreme Administrative Court. The complaint should be heard within 2 months of its lodging.

In 2016, 19 complaints were lodged against the excessive length of proceedings before the Supreme Administrative Court along with 138 complaints against the excessive length of proceedings before the voivodship administrative courts.

With regard to complaints regarding the Supreme Administrative Court, from among 17 settled complaints 1 was granted with a monetary sum of PLN 3,000, 15 were dismissed, and 1 was settled in another way.

Regarding complaints against the excessive length of proceedings before voivodship administrative courts, 136 of these complaints were settled, 3 of them were granted, 67 were dismissed, and 66 complaints were settled in another way. The sum of PLN 6,000 regarded the Voivodship Administrative Court in Krakow (PLN 4,000) and the Voivodship Administrative Court in Warszawa (PLN 2,000).

The reasons for rejecting the complaints were, inter alia, their filing after the end of the proceedings or before a year had expired since the previous complaint was lodged, or failing to clear the entry from the compl aint. It has consistently been accepted that a complaint against the excessive length of court proceedings may be lodged in the course of the proceedings (Article 5 of the Act), which means that the action is inadmissible and is subject to rejection if, prior to its filing, the case has been legally completed (see e.g. decision of 28 April 2016, Case No. II GPP 4/16). A complaint claiming that in the proceedings, to which the complaint refers, undue delay occurred, is to be lodged in the course of the proceedings (see e.g. decision of 2 February 2016, Case No. II FPP 2/16). The complaint is subject to rejection if the conditions set out in Article 6(2)(1) and (2) of the act referred to hereinabove were not met i.e. they did not include a claim to state that any excessive length of proceedings occurred or the circumstances justifying the claim were not quoted. Failure to specify the circumstances justifying the request for stating that the excessive length of proceedings occurred makes it impossible to assess the court's actions (see e.g. decision of NSA of 20 May 2016, Case No. II FPP 6/16.

The reason for dismissing the complaint is that the proceedings did not breach the right of a party to hear a case without undue delay. Failure to obtain information from the voivodship administrative court within two months does not constitute grounds

for considering the excessive length of proceedings (see decision of 29 January 2016, Case No. II FPP 1/16). It is not possible to talk about a breach of the right of a party to hear a case without undue delay when the court has taken all the steps necessary to enable the appointment of the hearing and the waiting time for hearing the case is related to the number of cases involved and the application of the rule of hearing the cases in accordance with the order of their filing, taking into account the provided exceptions (see e.g. decision of 18 March 2016, Case No. II FPP 4/16). In order to grant the complaint, it is necessary not only to establish that the court has delayed the proceedings, but also that the delay is undue (see e.g. decision of 31 March 2016, Case numer II GPP 5/15).

Cassation appeals settled by Supreme Administrative Court 2004–2016

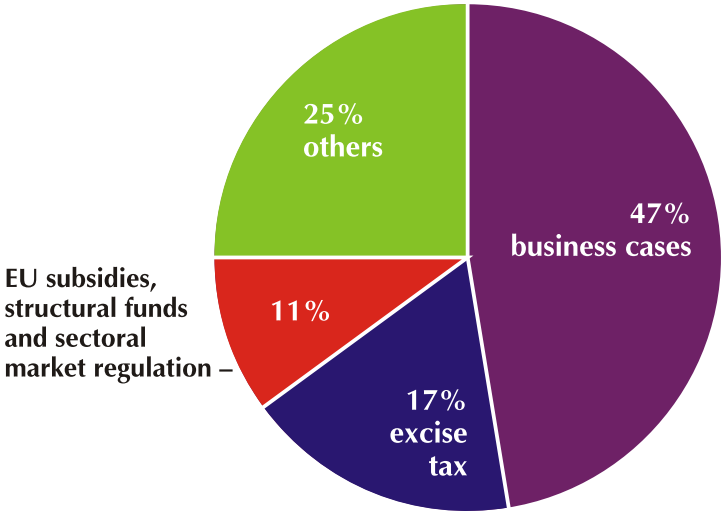
Year	Total number of cases to resolve (left from previous period + registered in given year)	Number of cases resolved	Cases remained for the next year
		Total	
2004	6 167	2 918	3 249
2005	12 798	6 535	6 263
2006	16 700	8 788	7 912
2007	17 342	9 347	7 995
2008	18 114	9 389	8 725
2009	19 185	10 013	9 172
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

Commercial Chamber

Number of cassation appeals lodged in 2016 by main categories:

Total: 7 161

3 400 – business cases
1 192 – excise tax
813 – EU subsidies, structural funds and sectoral market regulation
1 756 – others



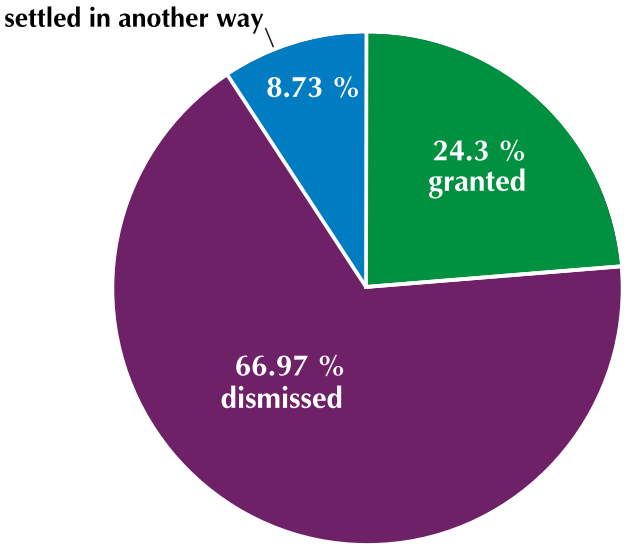
Cassation appeals 2016 (by the court of origin)

Seat of the voivodship administrative court	Cases registered		Number of cases resolved
	Total	% of all registered cases	Total
All courts	18 847	100	16 829
Białystok	703	3,73	568
Bydgoszcz	644	3,42	524
Gdańsk	1 045	5,54	867
Gliwice	1 614	8,56	1 386
Gorzów Wielkopolski	469	2,49	349
Kielce	450	2,39	365
Kraków	1 114	5,91	1 129
Lublin	818	4,34	671
Łódź	1 079	5,73	927
Olsztyn	671	3,56	578
Opole	331	1,76	317
Poznań	1 367	7,25	1 218
Rzeszów	654	3,47	500
Szczecin	918	4,87	699
Warszawa	5 581	29,61	5 455
Wrocław	1 389	7,37	1 276

Number of cassation appeals heard in 2016 by Supreme Administrative Court (by the outcome of the case brought)

Total: 16 829

4 089 – granted
11 271 – dismissed
1 469 – settled in another way



Cassation appeals settled by Supreme Administrative Court 2004–2016

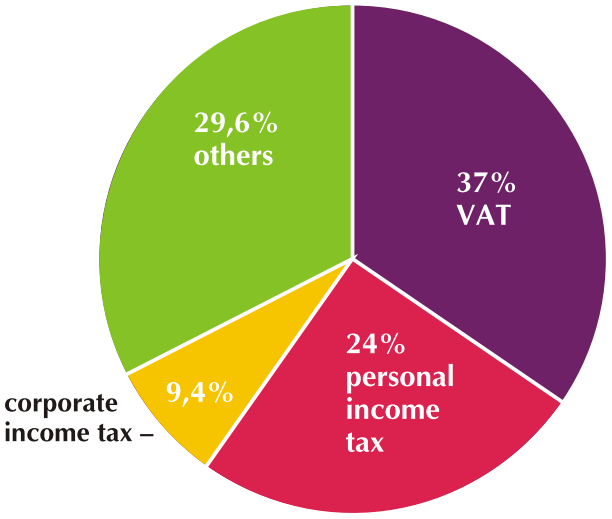
Year	Total number of cases to resolve (left from previous period + registered in given year)	Number of cases resolved	Cases remained for the next year
		Total	
2004	6 167	2 918	3 249
2005	12 798	6 535	6 263
2006	16 700	8 788	7 912
2007	17 342	9 347	7 995
2008	18 114	9 389	8 725
2009	19 185	10 013	9 172
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

Financial Chamber

Number of cassation appeals lodged by main categories:

Total: 5 803

2 144 – VAT
1 385 – personal income tax
545 – corporate income tax
1 729 – others



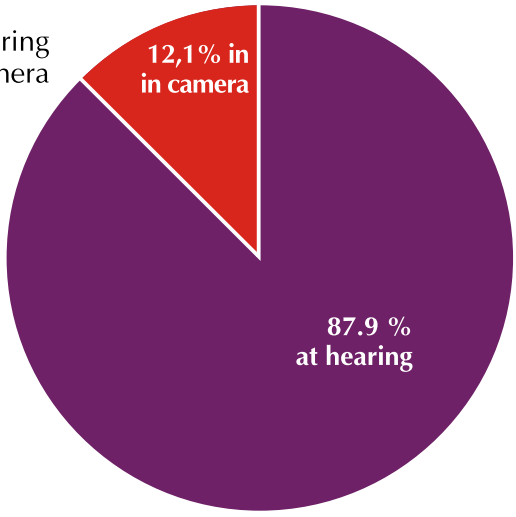
Cassation appeals 2016
by Chambers of the Supreme Administrative Court

Chamber of the Supreme Administrative Court	Number of cases left over from the previous period	Cases registered	Cases resolved	Cases remained to decide for the next period
Total	25 806	18 847	16 829	27 824
General Administrative Chamber	8 602	5 883	6 282	8 203
Financial Chamber	9 717	5 803	5 364	10 156
Commercial Chamber	7 487	7 161	5 183	9 465

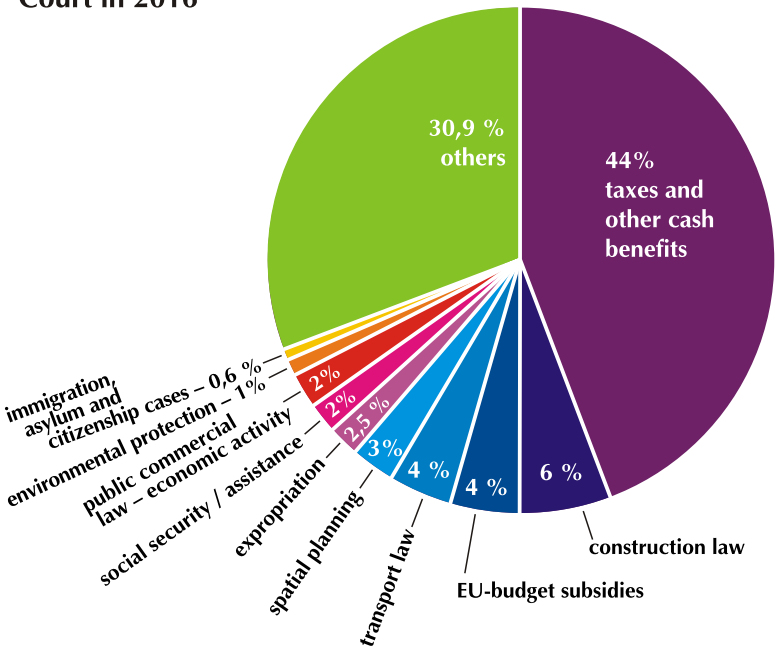
Number of cassation appeals heard by Supreme Administrative Court (by mode of procedure)

Total: 16 829

14 793 – at hearing
2 136 – in camera



Main categories of cases heard by Supreme Administrative Court in 2016

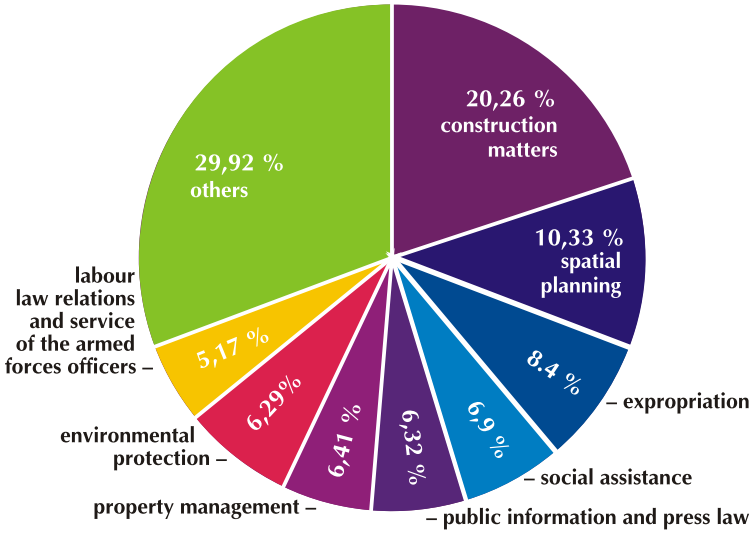


General Administrative Chamber

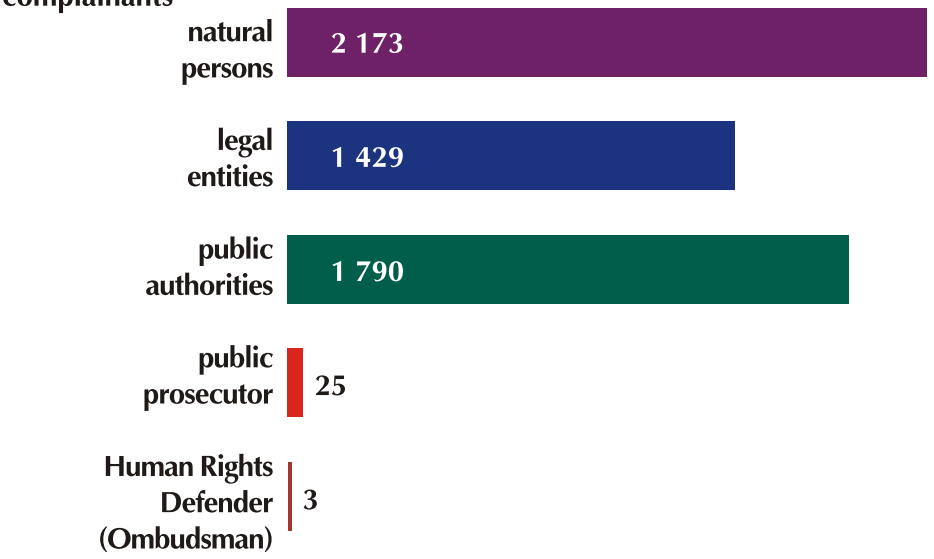
Number of filed cassation appeals in 2016 by main categories:

Total: 5 883

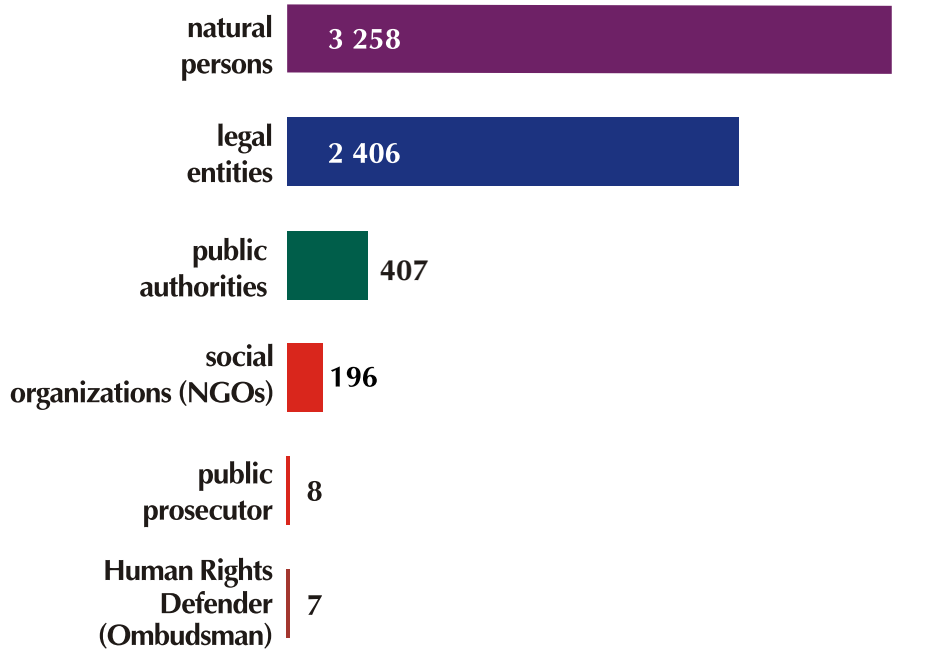
1 192 – construction matters
608 – spatial planning
494 – expropriation
406 – social assistance
372 – public information and press law
377 – property management
370 – environmental protection
304 – labour law relations and service of the armed forces officers
1 760 – others



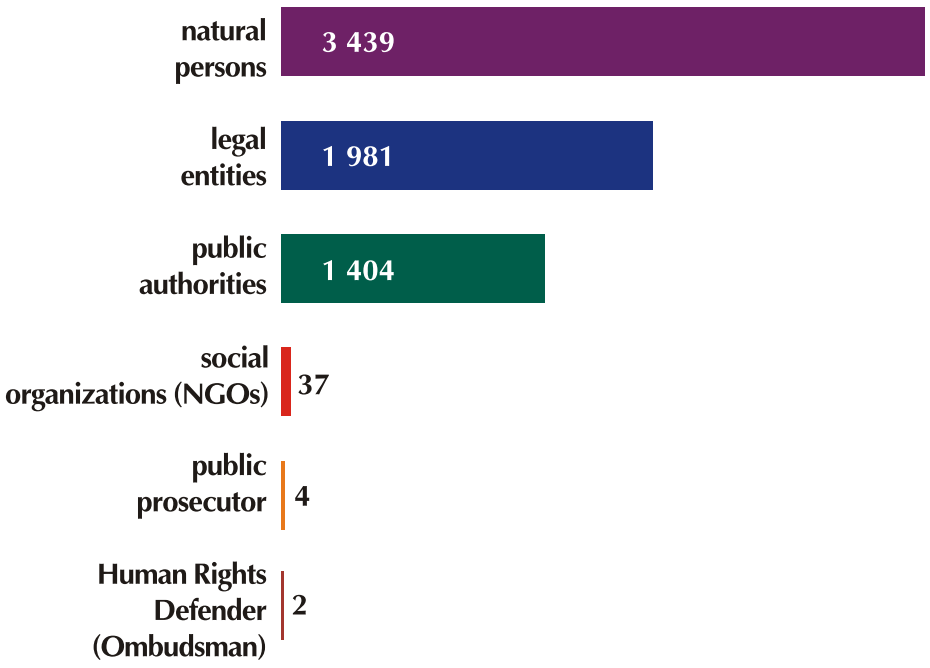
Number of cases heard by Financial Chamber in 2016 by categories of complainants

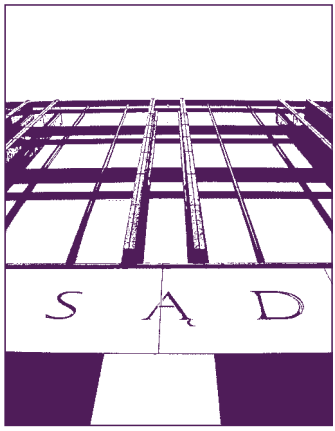


Number of cases heard by General Administrative Chamber in 2016 by categories of complainants



Number of cases heard by Commercial Chamber in 2016 by categories of complainants





III. Application of European Union law and the European Convention of Human Rights by the administrative courts

1. General remarks

In the jurisprudence of Polish administrative courts, as in previous years, the EU law issues primarily arise in the recognition of indirect tax matters, including, but not limited to tax on goods and services (see e.g. judgment of WSA in Gdańsk of 5 January 2016, Case No. I SA/Gd 1556/15) and excise tax (see e.g. judgment of WSA in Gliwice of 7 March 2016, Case No. III SA/Gl 2492/15), as well as in the field of income tax (see e.g. judgment of WSA in Wrocław of 13 April 2016, Case No. I SA/Wr 1967/15), tax on civil law transactions (see e.g. judgment of WSA in Łódź of 14 January 2016, Case No. I SA/Łd 1409/15), customs law (see e.g. judgment of WSA in Warszawa of 15 January 2016, Case No. V SA/Wa 666/15), road transport (see e.g. judgment of WSA in Gorzów Wielkopolski of 7 April 2016, Case No. II SA/Go 134/16) and air transport (see e.g. judgment of WSA in Warszawa of 2 March 2016, Case No. VII SA/Wa 1220/15), environmental protection (see e.g. judgment of WSA in Lublin of 12 February 2016, Case No. II SA/Lu 550/15) and spatial management (see e.g. judgment of WSA in Łódź of 12 January 2016 r., Case No. II SA/Łd 953/15), sanitary supervision (see e.g. judgment of WSA in Opole of 22 March 2016, Case No. II SA/Op 521/15), veterinary supervision (see e.g. judgment of WSA in Bydgoszcz of 14 December 2016, Case No. II SA/Bd 903/16) and pharmaceutical supervision (see e.g. judgment of WSA in Warszawa of 22 March 2016, Case No. VI SA/Wa 745/15), personal data protection (see e.g. judgment of WSA in Warszawa of 21 July 2016, Case No. II SA/Wa 113/16),access to public information (see e.g. judgment of WSA in Cracow of 16 December 2016, Case No. II SA/Kr 1397/16), social security (see e.g. judgment of WSA in Szczecin of 18 May 2016, Case No. II SA/Sz 1310/15, games and mutual wagering (see e.g.

judgment of WSA in Opole of 29 December 2016, Case No. I SA/Op 559/16), agricultural law and financial aid from the EU funds (see e.g. judgment of WSA in Wrocaw of 18 March 2016, Case No. III SA/Wr 1136/15), as well as in cases of foreigners (see e.g. judgment of WSA in Warszawa of 2 February 2016, Case No. IV SA/Wa 2040/15) and industrial property (see e.g. judgment of WSA in Warszawa of 19 April 2016, Case No. VI SA/Wa 1266/15).

The European Union law is quoted by administrative courts in both the judgments and the decisions, and in the resolutions adopted by the Supreme Administrative Court (see e.g. resolutions of 16 May, Case No. II GPS 1/16; 23 May 2016, Case Numer II GPS 2/15; 24 October 2016, Case No. I FPS2/16).

When considering the EU Law cases, administrative courts referred to both the primary and secondary EU law. They quoted the European stan-dards and, above all, the obligation of a pro-union interpretation of national law (coherent interpretation), and priority to the EU law and international agreements. They also used the possibility of the direct application of the regulations and directives.

Administrative courts also referred to the jurisprudence of the Court of Justice of European Union (CJEU) in order to determine the relevance of the given EU law applicable to the case, and to assess the applicability of the EU law to the cases in question.

The jurisprudence of the administrative courts also referred to the provi-sions of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and to the jurisprudence of the European Court of Human Rights (EctHR). References took place in particular in cases relating to the guarantee of the right to a court (including effective means of challenge, ne bis in idem prohibition, legal aid – see e.g. decision of 31 May 2016, case No. II OZ 539/16; judgment of 6 July 2016, Case No. I OSK 2367/14), protection of property rights (see e.g. judgment of 21 January 2016, Case No. II OSK 1214/14) and in cases involving foreigners (see e.g. judgments of: 2 February 2016, Case No. II OSK 1328/14; 20 March 2016 r., Case No. II OSK 1807/14).

The decisions of the ECtHR were referred to in the reasons of administrative court decisions as a subsidiary argumentation – i.e. as an additional justification for the constitutional standards applied.

Administrative courts also referred to the Charter of Fundamental Rights of the European Union (CFRUE) as part of the subsidiary arguments – i.e. in order to indicate that

certain rights and freedoms of individuals are protected and guaranteed not only in the RP Constitution or in the ECHR, but also within the EU legal system (which manifests the multi-centralstructure of the current legal order). These references concerned in particular the right to a court (see e.g. judgment of 30 March 2016, Case No. I FSK 1948/14), the right to good administration (see e.g. judgment of 13 January 2016, Case No. I OSK 2236/15) and the principle of proportionality (in the context of negative legal consequences for the individual – see e.g. judgments of: 24 May 2016, Case Numer II OSK 2261/14; 20 October 2016, Case No. I GSK 47/15).

Administrative courts also referred to Article 51 of the Charter of Fundamental Rights concerning the scope of its application, in order to determine whether a CFRUE may be referred to and applied in a given case (see: decision of 2 February 2016 r., Case No. II ONP 7/15; judgment of 24 May 2016 r., II OSK 2261/14). The Supreme Administrative Court emphasised that, given the content of Article 51 of the CFRUE, in both the doctrine and the jurisprudence, the necessity to apply the provisions of the Charter by the Member States when exercising EU law is assumed. Therefore, the CFRUE applies only if other provisions of the EU law may apply.

2. Requests for preliminary rulings to CJEU and enforcement of preliminary rulings

2.1. Questions referred for a preliminary ruling

In 2016, the Polish administrative courts referred to the CJEU with questions for a preliminary ruling in 8 cases. In these set, 6 questions for a preliminary ruling were referred by the Financial Chamber of the Supreme Administrative Court and the other by the General Administrative Chamber and the Commercial Chamber:

Decision of 27 January 2016, Case No. I FSK 1398/14 (CJEU Case No C-307/16 *Pie - kowski*):
"Must Articles 146(1)(b), 147, 131 and 273 of Council of 28 November 2006 on the common system of value added tax be interpreted as precluding national legislation which excludes application of the exemption to a taxable person who does not satisfy the condition relating to attainment of the relevant turnover ceiling for the previous tax year and who also has not concluded an agreement with a person authorised to refund tax to travellers?"

Decision of 23 February 2016, Case No I FSK 1573/14 (CJEU Case No C-308/16 *Kozuba Premium Selection*):
"Must Article 135(1)(j) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax be interpreted as precluding a national provision (Article 43(1) (10) of the Ustawa o podatku od towarów i usług [Law on the tax on

goods and services] of 11 March 2004 [Dz. U. No. 54, item 535, as amended; 'the Law on VAT']) under which the supply of buildings, civil engineering works or parts thereof is exempt from VAT save where: (a) the supply is made within the framework of the first occupation or prior to the first occupation, (b) the period between the first occupation and the supply of the building, civil engineering works or parts thereof was shorter than 2 years, insofar as point 14 of Article 2 of the Law on VAT defines first occupation as release for use of buildings, civil engineering works or parts thereof, in performance of taxable activities, to the first customer or user, following their: (a) erection or (b) upgrade, if the expenditure incurred for the upgrade, as defined in the regulations on income tax, constituted at least 30% of the initial value?"

Decision of 19 May 2016, Case No I FSK 224/15 (CJEU Case No C-500/16 *Caterpillar Financial Services*):
"Having regard to the interpretation of the Court of Justice in its judgment of 17 January 2013 in Case C-224/11, BG Leasing sp. z o.o. v Dyrektor Izby Skarbowej w Warszawie, do the principles of effectiveness, sincere cooperation and equivalence expressed in Article 4(3) of the Treaty on European Union or any other principle laid down in EU law, preclude, in the field of value added tax, national legislation or a national practice which precludes the refund of overpayment resulting from the collection of VAT contrary to EU law where, as a result of the action of the national authorities, an individual was unable to exercise his or her rights until after the limitation period for the tax liability had expired?"

Decision of 16 June 2016, Case No I FSK 2078/14 (CJEU Case No C-499/16 *AZ*):
"Does the fact of making the rate of taxation for pastry goods and cakes depend solely on the criterion of the 'use-by date' and the 'best-before date', as in the case of those goods in Article 41(2) of the Ustawa o podatku od towarów i usług (Law on tax on goods and services) of 11 March [2004] (Dziennik Ustaw of 2011, No. 177, item 1054, as amended), in conjunction with Heading 32 of Annex 3 to that law, infringe the principle of VAT neutrality and the prohibition of unequal treatment of goods within the meaning of Article 98(1) and (2) of Council of 28 November 2006 on the common system of value added tax?"

Decision of 28 June 2016, Case No II OSK 1346/16 (CJEU Case No C-403/16 *El Hassani*):
"Must Article 32(3) of Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), having regard to recital 29 of the Visa Code and the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union be interpreted as requiring the Member States to guarantee an effective remedy (appeal) before a court of law?"

Decision of 14 September 2016, Case No I FSK 1857/13 (CJEU Case No C-665/16 *Wrocław commune*):
"Does the transfer, pursuant to the law, of the ownership of immovable property owned by a municipality to the State Treasury in return for payment of compensation, in the case where, under the rules of national law, that immovable property continues to be managed by the mayor of the municipality, who is simultaneously the representative of the State Treasury and the executive body of the municipality, constitute a taxable transaction within the meaning of Article 14(2)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax? In answering that question, is it significant whether the compensation paid to the municipality consists of an actual payment or is a mere internal accounting transfer within the municipal budget?"

Decision of 19 October 2016, Case No I GSK 588/15 (CJEU Case No. C-30/17 *Kompania Piwowarska*):
"In the light of Article 3(1) and the objectives of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages, in the determination of the basis of assessment for flavoured beers using the Plato scale, must the extract resulting from the flavourings added following the completion of fermentation be added to the real extract of the finished product or is the extract resulting from the added substances to be disregarded?"

Decision of 22 December 2016, Case No I FSK 972/15 (CJEU Case No. C-140/17 *Szef Krajowej Administracji Skarbowej v Gmina Ryjewo*):
"1. In the light of Articles 167, 168 and 184 et seq. of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and the principle of neutrality, does a municipality have the right to deduct (by effecting an adjustment) input tax on its investment expenditure in the case where:
– in the initial period after production (acquisition), the capital goods were used for the purposes of a non-taxable area of activity (in connection with the municipality's performance of the tasks of a public authority within its area of responsibility); and
– the use to which the capital goods are put has changed and they will in future be used by the municipality also to carry out taxable transactions?;
2. Is it relevant to the answer to the first question that, at the time when the capital goods were produced or acquired, the municipality's intention to use those goods in future to carry out taxable transactions was not indicated clearly? 3. Is it relevant to the answer to the first question that the capital goods will be used for the purpose of carrying out both taxable and non-taxable transactions (in connection with the performance of the tasks of a public authority) and that it is not possible to ascribe specific investment expenditure to one of the abovementioned transaction categories?"

2.2. Preliminary rulings in response to questions from the Polish administrative courts

In the judgment of 17 March 2016 in case C-40/15, *the Minister of Finance against Aspiro S.A., formerly BRE Ubezpieczenia Sp. z o.o.*, in response to a question referred for a preliminary ruling submitted by the Supreme Administrative Court (decision of 19 November 2014, Case No. I FSK 1563/13), the CJEU decided: "Article 135(1)(a) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that claims settlement services, such as those at issue in the main proceedings, provided by a third party in the name and on behalf of an insurance company, do not fall within the exemption laid down by that provision."

In the judgment of 2 June 2016 in case C-418/14 *ROZ- WIT*, in response to a question referred for a preliminary ruling by the Voivodship Administrative Court in Wroc aw (decison of 4 June 2014, case No. I SA/Wr 562/14) the CJEU decided: "Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, as amended by Council Directive 2004/75/EC of 29 April 2004, and the principle of proportionality must be interpreted as: not precluding national legislation under which sellers of heating fuel are required to submit, within a prescribed time limit, a monthly list of statements from purchasers that the products purchased are for heating purposes, and precluding national legislation under which, if a list of statements from purchasers is not submitted within a prescribed time limit, the excise duty applicable for motor fuels is applied to the heating fuel sold, even though it has been found that the intended use of that product for heating purposes is not in doubt."

In the judgment of 16 June 2016 in case C-229/15, *the Minister of Finance against Jan Mateusiak*, in response to a question referred for a preliminary ruling submitted by the Supreme Administrative Court (decision of 5 February 2015, Case No. I FSK 255/14), the Court of Justice decided: "Article 18(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2009/162/EU of 22 December 2009, must be interpreted as meaning that, when a taxable person ceases to carry out a taxable economic activity, the retention of goods by that taxable person, where valued added tax on such goods became deductible upon their acquisition, can be treated as a supply of goods for consideration and be subject to value added tax if the adjustment period laid down in Article 187 of Directive 2006/112, as amended by Directive 2009/162, has passed."

In the order of 21 June 2016 in case C-393/15 *the Director of the Tax Chamber in Kraków against ESET spol.S.r.o. sp. z o.o. branch in Poland* , in response to a question referred for a preliminary ruling submitted by the Supreme Administrative Court (decision of 27 May 2015, Case No. I FSK 544/14), the CJEU decided: "Article 168 and Article 169(a) of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax should be interpreted in a way that a branch of a company established in another Member State which has been registered in a Member State for payment of the value added tax purposes and which mainly performs non-taxable internal transactions to the benefit of that company, and occasionally taxable transactions in the Member State of its registration, has the right to deduct the tax charged in the latter country, imposed on goods and services used for taxable transaction purposes of the said company performed in another Member State in which that company is established."

In the judgment of 14 July 2016 in case C-406/14 *Wroc aw-City with district rights against the Minister for Infrastructure and Development*, in response to a question referred for a preliminary ruling submitted by the Voivodship Administrative Court in Warszawa (decision of 3 June 2014, Case No. V SA/Wa 14/14) , the CJEU decided: "1) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, as amended by Commission Regulation (EC) No. 2083/2005 of 19 December 2005 , must be interpreted as meaning that a contracting authority is not authorised to require, by a stipulation in the tender specifications of a public works contract , that the future contractor of that contract perform with its own resources a certain percentage of the works covered by that contract. 2) Article 98 of Council Regulation (EC) No. 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No. 1260/1999, read in conjunction with Article 2(7) of that regulation, must be interpreted as meaning that the fact that a contracting authority imposed a requirement, in the context of a public works contract relating to a project receiving EU financial aid, that the future contractor perform by means of its own resources at least 25% of those works, in infringement of Directive 2004/18, constitutes an 'irregularity' within the meaning of Article 2(7) of that regulation, justifying the need to apply a financial correction under Article 98 thereof, in so far as it cannot be excluded that that infringement had an impact on the budget of the Fund at issue. The amount of that correction must be calculated by taking into account all of the specific circumstances which are relevant in the light of the criteria referred to in the first paragraph of Article 98(2) of that regulation, namely the nature and gravity of the irregularity and the resulting financial loss to the Fund concerned."

2.3. Enforcement of the CJEU rulings

As a result of the issuance by the CJEU preliminary rulings in 2016, administrative courts resumed the suspended proceedings in the cases in which they had previously referred for a preliminary ruling, and also referred to the CJEU's justification in settling cases analogous to those where the questions were submitted to the CJEU. An example is the judgment of the Supreme Administrative Court of 20 October 2016, Case No. I GSK 1074/14, issued after the judgment of the CJEU in case C-418/14 by reference to the question referred for a preliminary ruling. According to the NSA, questioning the right to apply excise duty exemptions solely because of the failure to provide a statement on the amount and manner of energy consumption within the prescribed time limit constitutes an overly restrictive action to the party and infringes the principle of proportionality, derived from the Community (EU) rules. Such an action should be considered inadequate to achieve the objectives set out in the Energy Directive 2003/96/EC – i.e. to prevent tax evasion and abuse. The obligation to respect the general principles, including proportionality, extends, according to the settled jurisprudence of the CJEU, to the sphere of implementation of the EU law, irrespective of the degree of discretion it envisages.

According to the judgment in case C-418/14, where the CJEU indicated that the effect of the taxpayer's breach of formal conditions, which results in contesting the right to apply a reduced rate of excise duty when it is beyond doubt that the taxpayer who has consumed excise goods for the purposes granting such a reduced rate provided for by national law is non-compliant with the principle of proportionality, the Supreme Administrative Court *per analogiam* stated that "although the judgment referred to fuel oils, the interpretation of the principle of proportionality in this judgment applies in the present case. (...) Failure to submit documents within the time limit does not allow for automatic deprivation of the taxpayer of the right to apply a reduced rate, assuming that both the general scheme and the purpose of Directive 2003/96 are based on the principle, according to which energy products are taxable according to their actual use. According to Article 2 (...) of the Treaty signed on 16 April 2003 in Athens (...), a Member State is bound: firstly – by the provisions of the founding Treaties (primary Community law), secondly – by acts adopted by the EU institutions (secondary Community law), and thirdly – by the interpretation and application of the Community law resulting from the CJEU jurisprudence. All these elements that make up the Community law, binding even before the date of accession, are referred to as the acquis communautaire". For these reasons, the Supreme Administrative Court revoked the appealed judgment and referred the case back for review (analogously it was decided in the judgment of 9 November 2016, Case No. I GSK 281/15).

2.4. Suspension of the procedure on the basis of the question referred for a preliminary ruling

As a result of the question referred for a preliminary ruling in the case, court proceedings were suspended as well as other proceedings beca use the problem raised in the question was analogous to the legal issue in the case in question (Article 125(1)(1) of the Law on Proceedings before Administ rative Courts). The question of a preliminary ruling assumes the existence of a close connection betw een a case being heard in the proceedings before an administrative court and a matter being the subject of a preliminary ruling. The relationship between the se two proceedings must be real, true, actual and direct. It should therefore be stated in the reasons for the decision to suspend such a connection between the case in question and the case pending befo re the CJEU (see decision of 27 July 2016, Case No. II GZ 742/16).

3. Conclusions

Administrative courts have referred to the European law and jurisprudence of the CJEU and ECtHR and have assessed the legality of decisions and other admi nistrative settlements taking into account the EU regulations and the Polish law imple menting the EU law. The European law was also used in the process of interpreting the Polish law.

In 2016 administrative courts have been give n the opportunity to refere a number of questions to the CJEU for a preliminary ruling concernin g interpretation of the EU law in 8 cases. Last year only the Supreme Administrative Court exer cised the powers envisaged under Article 267 TFEU. Adminis trative courts have also referred to and acted in line with the standards of protection of human rights and fundament al rights defined in the ECHR and in the CFRUE.

IV. Non-judicial activities of the administrative courts

1. General remarks

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

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

2. Judicial Decisions Bureau

In the 2016 the Judicial Decisions Bureau oversaw the quality of jurisprudence and the efficiency of proceedings in administrative courts. In order to achieve these objectives it undertook analyses, conducted inspections of the voivodship administrative courts and presented proposed solutions.

It is divided into seven divisions (units). The divisions 1st to 5th are analysis and inspection divisions and are divided in terms of the subject matter. The other two divisions are: the 6th Division (Case-law Collection and Publication Division) and the 7th Division – European Law Division.

Each inspection & research division within its jurisdiction performed tasks related to: analyzing of jurisprudence of administrative courts; preparing of the applications of the President of the NSA to Constitutional Tribunal and the applications of the President of the NSA in order to explain legal provisions whose application has caused differences in jurisprudence of administrative courts or applications on declaring the judgement of administrative court invalid; preparing annual information about the activity of the administrative courts and on the problems of functioning of public administration resulting from cases heard by administrative courts; performing the activities of supervision over the administrative activities of voivodship administrative courts.

The 6th Division – Administrative courts Case-law collection and publication division performed tasks related i.a. to: collecting of decisions of administrative courts and issuing of the official collection of decisions of administrative courts.

The 7th Division – the European Law Division performed the tasks in relation i.a. to: collecting and analyzing of the EU law provisions, jurisprudence of the CJEU and ECtHR in the scope falling within the jurisdiction of administrative courts and analyzing of jurisprudence of administrative courts in cases, where European law is applicable.

3. Chancellery of the President of the Supreme Administrative Court

The Chancellery of the President of the Supreme Administrative Court provides conditions for the efficient operation of the administrative judiciary, particularly in terms of financing, human resources, administrative and economic matters. Performing the above mentioned general tasks, the Chancellery took in 2016 the appropriate actions for ensuring the proper functioning of the administrative courts, in particular: the adequate office, technical and IT equipments. The Chancellery carried out also investment tasks related to securing the appropriate conditions of the premises of the administrative courts and in the scope of implementation of the IT system for administrative court proceedings.

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

4. Court Information Division

In 2016 the Court Information Division maintained to carry on it's activities. The Division informed parties and interested persons regarding the competences of administrative courts and the status of cases dealt with by the Supreme Administrative Court and makes available the relevant case files. The Department also performed the task of providing public information about the activities of the Court, dealt with petitions, complaints and motions, as well as compiles court statistics. The Court Information Division also provided media services to the Supreme Administrative Court and its President.

The Division is led by the president of the division – a judge who is also the spokesman of the Court.

5. International cooperation of the Supreme Administrative Court

5.1. Introduction

The Supreme Administrative Court maintains regular international contact with the highest administrative courts in Europe and in the world. The court is a member of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (ACA-Europe) and the International Association of Supreme Administrative Jurisdictions (IASAJ). Both associations organise conferences on the current issues regarding the functioning of the administrative judiciary and exchange programs

for judges. Administrative court judges also participate in the work of the Association of European Administrative Judges (AEAJ) and improve their professional qualifications by taking part in seminars and internships organised by the European Judicial Training Network (EJTN). In 2016 the Supreme Administrative Court maintained relations with the Supreme Administrative Court of the Czech Republic, the Federal Administrative Court of the Federal Republic of Germany and the Supreme Administrative Court of the Republic of Lithuania.

5.2. Activity within the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (ACA-Europe)

The President and Vice-President of the Supreme Administrative Court – the President of the General Administrative Chamber took part in the General Assembly and the 25th ACA-Europe Colloquium entitled "Share or protect? Administrative courts between Scylla of freedom of information and Charybdis of privacy", organised in Prague in co-operation with the Supreme Administrative Court of the Czech Republic.

In 2016 the Supreme Administrative Court judges and the judicial specialists and assistants participated in seminars and working groups: in April in the ACA-Europe seminar organised in Vilnius in co-operation with the Supreme Administrative Court of Lithuania entitled "Protecting legitimate expectations in administrative law and EU law", and in November in the seminar organised in Hague entitled "Procedure for addressing questions referred for a preliminary ruling".

The Vice-President of the Supreme Administrative Court – the President of the General Administrative Chamber acts as a treasurer in the ACA-Europe Management Board and in this capacity he attended the ACA-Europe Management Board meetings (in May and November). He also participated in the working group meetings in Brussels (July, October and December 2016) dealing with, inter alia, the issue of ensuring the uniformity of the jurisprudence of administrative courts.

As part of the ACA-Europe judges exchange program, a judge from the Voivodship Administrative Court in Olsztyn completed her training at the Supreme Administrative Court of Finland in Helsinki at the turn of September and October 2016. The training programme included, inter alia, meetings with the President and judges of the Finnish Supreme Administrative Court, visit to the National Office of Legal Aid and the Administrative Court in Helsinki, the Commercial Court, the Ministry of Justice and the Supreme Court.

5.3. Activity within the International Association of Supreme Administrative Jurisdictions (IASAJ)

The Vice-President of the Supreme Administrative Court the President of the General Administrative Chamber and the judge of the Financial Chamber of the Supreme Administrative Court represented the Supreme Administrative Court at the 12th IASAJ Congress on "Alternative Dispute Resolution in Administrative Matters", organised in Istanbul in May 2016 in co-operation with the Turkish State Council .

As part of the IASAJ-financed international exchange of administrative judges, Dr Vishnu Varunyou, Chairman of the Department of Budgetary and Financial Disciplinary of the Supreme Administrative Court (currently Dr Varunyou is the Vice-President of the Court), and a member of the National Council of Administrative Judges of Thailand, visited the Supreme Administrative Court at the turn of October and November 2016. The training included meetings with the Supreme Administrative Court management, the Provincial Administrative Courts in Kraków and Warszawa, as well as taking part in hearings before the Supreme Administrative Court and the Voivodship Administrative Court. Judge Varunyou delivered a lecture to judges, judges assistants and legal specialists on administrative justice in Thailand. The visit also included meetings at the Supreme Court, National Council of Judiciary and the Office of the Commissioner for Human Rights. Within the same exchange programme, the judge of the Financial Chamber of the Supreme Administrative Court visited Thailand at the turn of November and December. The programme of the visit included trips to adminis trative courts and meetings, inter alia, with the President of the Constitutional Court, the Commissioner for Human Rights and the judges of the Supreme Court.

5.4. Activity within the Association of European Administrative Judges (AEAJ)

As part of the co-operation with the AEAJ Association, at the headquarters of the Supreme Administrative Court in October 2016, a seminar on tax law organised by the AEAJ and the European Commission Directorate General for Taxation and Customs Union (DG TAXUD) was held within the AEAJ Working Group on Taxes. The seminar covered issues related to: tax evasion taking into account the jurisprudence of the Court of Justice of the European Union (CJEU) and the courts of the Member States on the example of the jurisprudence of the Swedish, Lithuanian and British administrative courts and the Council of State of Greece, relations between criminal and administrative proceedings in the context of tax avoidance, discriminatory taxation of the results of investment funds for pension and life insurance companies, and the rules for the formulation of questions referred for a preliminary ruling by national courts to the CJEU. Among the speakers there was also head of the European Law Division of Judicial Decisions Bureau who delivered the paper "Avoiding taxation as a problem of interpretation of the law".

5.5. Activity within the European Justice Training Network (EJTN)

In June 2016 the Secretary General of the EJTN judge Wojciech Postulski paid a visit to the Supreme Administrative Court.

During that visit, with the participation of the Vice-President of the Supreme Administrative Court the Director of the Office of the Jurisprudence and the Head of the National and International Cooperation Team, the rules regarding the future co-operation, inter alia, of the programme of exchange of judges and trainings dedicated to judges of administrative courts within the training project "Administrative Law", were discussed. In November 2016, an Agreement between the Supreme Administrative Court and the EJTN regulating the co-operation between the two institutions was signed.

At the turn of August and September, the Judge Dominique Reinhorn the President of the Chamber and the Vice-President of the Administrative Court in Marseille, was present at the Supreme Administrative Court, thanks to the EJTN exchange programmes for judges of administrative courts. The visit included meetings with the Supreme Administrative Court management, the Voivodship Administrative Court in Warszawa, as well as taking part in hearings before the Supreme Administrative Court and the Voivodship Administrative Court. The Judge delivered a lecture to judges, judge assistants and legal specialists of the Supreme Administrative Court on administrative justice in France. The visit also included meetings at the Supreme Court, National Council of Judiciary, Refugee Council and the Office of Commissioner for Human Rights. The French judge also made a brief visit to the Constitutional Tribunal.

5.6. Bilateral contacts of the Supreme Administrative Court

Supreme Administrative Court of the Czech Republic

The Supreme Administrative Court has maintained contacts with the Czech Supreme Administrative Court *(Nejvyšší správní soud eské republiky)* for several years in the form of annual meetings involving the Polish-Czech working group of judges of administrative courts. In 2016, a group meeting organised in co-operation with Voivodship Administrative Court in October in Wroc aw was devoted to the abuse of the right to court on the example of tax matters, judicial review of Presidential acts, trends in acse law concerning electoral law and asylum law, court mediation and changes in administrative court proceedings increasing the effectiveness of judicial review over the public administration. The presidents of the two Supreme Administrative Courts – Dr Josef Baxa and Prof. dr hab. Marek Zirk-Sadowski – chaired the meeting. During the conference a publication entitled "Administrative judiciary in Poland and the Czech Republic. Selected issues discussed within the Polish-Czech co-operation of judges of administrative courts in 2012–2015" was presented.

Federal Administrative Court of Germany

The partnership with the Federal Administrative Court *(Bundesverwaltungsgericht)* was initiated by a visit of the German delegation to the Supreme Administrative Court and a joint judicial Polish-German seminar in November 2015. As part of the co-operation with the Federal Administrative Court in December 2016, the judges delegated to the Supreme Administrative Court – i.e. a judge from the Provincial Administrative Court in Kraków and a judge from the Voivodship Administrative Court in Pozna , paid a study visit, including meetings with the President of the Court Prof. Dr. Klaus Rennert, President of 4. Senate Prof. Dr. Rüdiger Rubel and the judges, participated in pre-sessional deliberations and hearings, and in the seminar on the current jurisprudence of the Federal Administrative Court on local government and public aid from the EU budget.

Supreme Administrative Court of Lithuania

As part of contacts with the Supreme Administrative Court of the Republic of Lithuania *(Lietuvos vyriausiasis administracinis teismas)*, the President of the Supreme Administrative Court took part – at the invitation of the President of the Lithuanian Court, Prof. Irmantas Jarukaitis in the international scientific conference "Administrative Courts for the Protection of Human Rights", organised on the occasion of the celebration of the fifteen anniversary of founding of that Supreme Administrative Court, delivering a paper on "Institutional relations between the administrative courts and the common courts and the Supreme Court on the example of protecting the right of access to public information".

5.7. Activity of the Supreme Administrative Court judges within other judicial associations and European fora

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

The Vice-President of the Supreme Administrative Court – the President of the General Administrative Chamber, in April 2016, participated in the first meeting of a working group set up by the European Asylum Support Office (EASO), taking the position of its coordinator, along with a British judge. In October 2016, he represented the Supreme Administrative Court, taking part in the REDIAL workshop and the conference on the legal and judicial implementation of the 2008/115/EC Return Directive, organised by the Migration Policy Centre, the Centre for Judicial Cooperation of the European University Institute (EUI) in Florence and the Odysseus Academic Network.

In May 2016, the head of the European Law Division of Judicial Decisions Bureau of the NSA represented the Court delivering a paper entitled "Judicial Justification as a

Restriction of the Decision of the Administrative Court Judge" at an international conference for "Effective Justice: Challenges and Priorities for Administrative Courts", held on the occasion of the 5th anniversary of the Section of Administrative Courts of the Lithuanian Judicial Association, the 25th anniversary of the Lithuanian Institute of Law and the 375 anniversary of the Faculty of Law of the Vilnius University. Furthermore, in May the head of the European Law Division together with the judge of the Financial Chamber of the Court participated in the 19th Annual International Conference of the Judiciary, organised, inter alia, by the Law School of the University of Michigan, taking part as a panellist in the session on "Transparency and Judicial Reasons". The head of this Division together with the judge of the General Administrative Chamber also participated in "Forum of Judges and Prosecutors of the Member States of the European Union" organised by the CJEU in November 2016.

5.8. Visits of foreign delegations to the Supreme Administrative Court

In May 2016 a delegation of the Supreme Court of the Slovak Republic *(Najvyšší súd Slovenskej republiky)*, chaired by the President of the Supreme Court, Daniela Svecova, paid a visit to the Supreme Administrative Court.

In June 2016 the President of the CJEU, Prof. Koen Lenaerts, visiting Poland in order to participate in the debate "The situation of the judiciary in Poland and in Europe", together with the delegation paid a visit to the President of the Supreme Administrative Court.

In June 2016 a delegation of administrative judges from Mongolia under the leadership of Tungalag Chuluun – the Judge of the Administrative Chamber of Mongolia's Supreme Administrative Court – paid a visit to the Supreme Administrative Court and to the Voivodship Administrative Court in Pozna , Gorzów Wielkopolski and Kraków.

Also in June 2016, a delegation of judges and academic staff from Turkey led by Judge Alpaslan Azapagasi – Director General of the Department for Development Strategy at the Ministry of Justice – paid a visit. The visit to the Supreme Administrative Court included a meeting with the President of the Supreme Administrative Court and a seminar on the constitutional position, competences, organisational structure and mode of functioning of the Turkish and Polish administrative judiciary. The visit to Poland also included an engagement at the Law Clinic of the Faculty of Law and Administration of the University of ód and the Voivodship Administrative Court in ód .

In November 2016 a delegation of the Supreme Council of the Judiciary of Portugal (*Conselho Superior da Magistratura)*, chaired by Mario Belo Morgado – Vice-President of the Council paid a visit to the Supreme Administrative Court.

6. International activities of the Voivodship (Regional) Administrative Courts

In 2016, the Voivodship Administrative Courts also maintained international contacts with administrative courts in Europe and welcomed delegations of judges from other Member States.

Joachim Buchheister, President of the Higher Administrative Court *(Oberverwaltungsgericht Berlin-Brandenburg)* of Berlin and Brandenburg (Germany), and Dr Peter Chvosta, judge of the Federal Administrative Court *(Bundesverwaltungsgericht)* in Vienna (Austria), visited the Voivodship Administrative Court in Warszawa in October 2016. The visit included participation in the training conference of the judges of the Court with the participation of the Supreme Administrative Court judges. The Austrian judge gave a lecture on "Reform of the administrative justice system in Austria in practice".

In October 2016, the Voivodship Administrative Court in Warszawa also welcomed a delegation of judges of the Association of Judges of Administrative Courts of land Brandenburg *(Vereinigung der Verwaltungsrichterinnen und Verwaltungsrichter des Landes Brandenburg)*, who hear the cases on international protection to refugees. The delegation was led by Wilfried Kirkes – the President of the Association and the Presiding Judge at Potsdam Administrative Court *(Verwaltungsgericht Potsdam)*. The programme included a visit to the Reception Centre for Refugees in Dębak, an overview of the court and administrative proceedings in Poland and with the conditions of work regarding the Voivodship Administrative Court in Warszawa, and the meeting with representatives of the Polish UNHCR office in Warszawa.

The delegation of Voivodship Administrative Court in Poznań in June 2016 was invited by the Lower Saxony Higher Administrative Court (*Niedersächsisches Oberverwaltungsgericht)* to visit the Oldenburg Administrative Court (*Verwaltungsgericht Oldenburg)*. The meeting included a seminar on wind energy law issues and a visit to a wind farm in Westerholt.

In September 2016 judges from Germany, the Netherlands, Italy, Spain, Portugal and Romania – participants in the international exchange of traineeships of the EJTN "Judicial Authorities Exchange Programme" project – paid a visit to the Voivodship Administrative Court in Białystok.

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