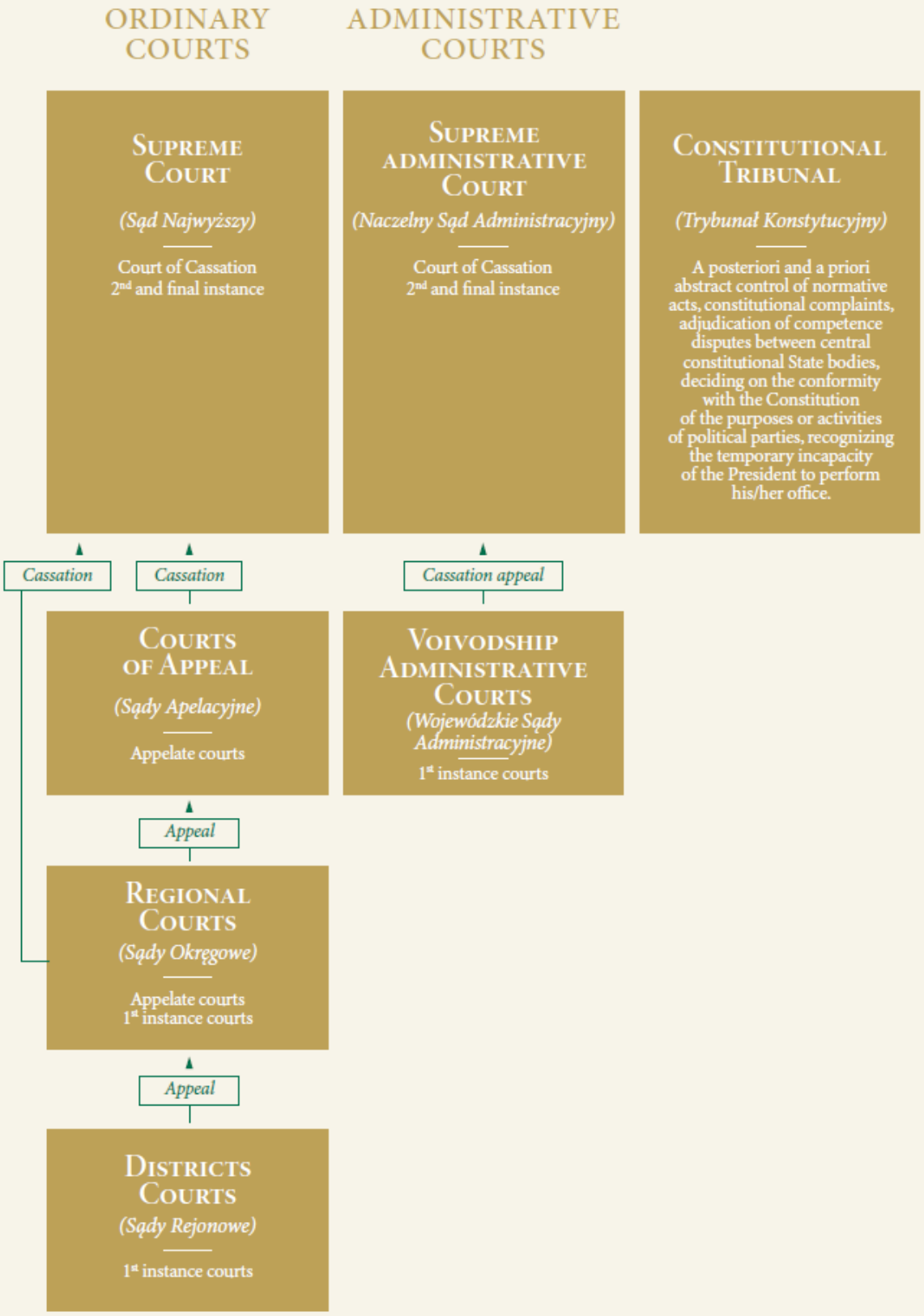
1. NATIONAL JUDICIAL ORGANISATION

1.1. General presentation of the judicial organisation and position of the administrative jurisdictional order

Administrative judiciary in Poland is one of divisions of the judiciary (a separate branch) that exists in parallel to the Constitutional Tribunal and the system of common and military courts with the Supreme Court as the highest instance. The general presentation of judicial organisation and position of the administrative jurisdiction shows the diagram below.

Court System of the Republic of Poland



1.2. Key dates in the evolution of the administrative jurisdictional order and the control of administrative acts

1980 - Restoration of administrative judiciary in Poland

- the Supreme Administrative Court (hereinafter also as the SAC) became a specialized court (since 1981 with regional branches), competent in cases involving complaints against administrative decisions and the inaction of administrative bodies; the SAC remained under the judicial supervision of the Supreme Court (the Act of 31st January 1980 on the Supreme Administrative Court - Journal of Laws of 1980, No. 4, item 8)

1990 - Amendments to the Code of Administrative Proceedings

- the scope of jurisdiction (cognition) of the SAC included administrative decisions issued under the proceedings regulated in the Code of Administrative Proceedings and in other particular administrative proceedings (the Act of 24th May 1990 amending the Act of 14th June 1960 – Code of Administrative Proceedings - Journal of Laws 1990, No. 34, item 201)

1995 - Extension of competences of the SAC

- extension of the scope of administrative acts being subject to judicial review of the SAC (the Act of 11th May 1995 on the Supreme Administrative Court - Journal of Laws of 1995, No. 74, item 368).

1997 - The Constitution of the Republic of Poland

- the Constitution established the obligation to introduce a court proceedings system of at least two stages (Article 176 and 236 of the Constitution of the Republic of Poland of 2nd April 1997 - Journal of Laws of 1997, No. 78, item 483)

2004 - Reform of administrative judiciary

- the earlier one-stage proceedings before the SAC were replaced by the two-stage proceedings based on the functioning of voivodship administrative courts (hereinafter also as the VAC or VACs) adjudicating as first-instance courts, and the SAC adjudicating as a court of appeal, exercising judicial supervision over the case-law of VACs (introduced by means of three acts of 2002: the Act of 25th July 2002 Law on the System of Administrative Courts (hereinafter also as the LSAC; the Act of 30th August 2002 Law on Proceedings before Administrative Courts (hereinafter also as the LPAC) and the Act of 30th August 2002 Provisions implementing the Act - Law on the System of Administrative Courts and the Act - Law on Proceedings before Administrative Courts)

2015 - Amendments to the procedure before administrative courts

- amendments to the procedure aimed to accelerate and improve the effectiveness of proceedings before administrative courts of both instances in particular by extending the competencies of the SAC to examine cassation appeals on their merits and by widening the reformatory competences of the courts of first instance (the Act of 9th April 2015 on the amendment of the Law on Proceedings before Administrative Courts - Journal of Laws 2015, item 658)

1.3. Criteria of competence of the administrative jurisdiction

The Constitution of the Republic of Poland entrusts the SAC and other administrative courts with the control over the functioning of public administration, which includes the hierarchy-based control over the conformity of resolutions adopted by the bodies of local governments and normative acts adopted by territorial bodies of government administration with statutory acts (Article 184). The Constitution also specifies that the resolution of jurisdictional disputes between local government and government administration bodies is to be in the remit of administrative courts (Article 166(3)).
The limits of the competences of administrative courts were encoded directly into the Constitution, although according to Article 177 of the Constitution, "the common courts shall implement the administration of justice concerning all matters save for those statutorily reserved to other courts".

The essential task of administrative judiciary is the control over actions taken by public administration in terms of their lawfulness. Proceedings before administrative courts are dominated by cassation-appeal-based adjudicating that is founded on the criterion of legality, although the scope of reformatory competences held by administrative courts has been extended since 2015.

According to Article 1 of the LSAC "Administrative courts shall administer justice through reviewing the activity of public administration and resolving disputes as to competence and jurisdiction between local government authorities, appellate boards of local government, and between these authorities and government administration authorities. The review [...] shall be performed from the point of view of conformity with law, unless otherwise provided by statute."

2. ORGANISATION OF THE ADMINISTRATIVE JURISDICTIONAL ORDER

2.1. Key founding texts

- the Act of 25th July 2002 Law on the System of Administrative Courts (Journal of Laws of 2017, item 2188 – consolidated text, as amended)

- the Act of 30th August 2002 Law on Proceedings before Administrative Courts (Journal of Laws of 2018, item 1302 - consolidated text, as amended)

- the Act of 30th August 2002 – Provisions implementing the Act - Law on the System of Administrative Courts and the Act - Law on Proceedings before Administrative Courts (Journal of Laws of 2002, No. 53, item 1271)

- the Resolution of the General Assembly of Judges of the SAC of 8th November 2010 - Rules of the internal procedure and organisation of the Supreme Administrative Court (published in *Monitor Polski* Official Gazette of the Republic of Poland of 2010, No. 86, item 1007, as amended; hereinafter as SAC Internal Procedure Rules)

- the Regulation of the President of the Republic of Poland of 5th August 2015 – Rules of the internal procedure and organisation of the voivodship administrative courts (Journal of Laws of 2015, item 1177; hereinafter as VAC Internal Procedure Rules)

2.2. Organisation and competence of the administrative jurisdiction

2.2.1. General organisation of the administrative jurisdictional order

Is administrative justice rendered by specialized courts or by specialized chambers set within jurisdictions with a general competence? Does the administrative jurisdiction include several levels of jurisdiction (first instance, appeal, cassation)? Are there specialized administrative courts?

Polish administrative courts are a separate branch of judiciary based on the functioning of sixteen VACs (one in each voivodship/region) adjudicating as first-instance courts, and the SAC adjudicating as a court of appeal, exercising judicial supervision over the case-law of VACs.

2.2.2. Internal organisation of administrative courts and composition of the bench of judges

Are administrative courts organized in chambers or divisions? Are these chambers or divisions specialized? Are there several degrees of formation of the court (single judge, collegiate panels with three, five ... judges, full court)?

Organization of administrative courts in chambers / divisions:

The VACs (courts of first instance) are divided into departments (divisions) in terms of subject matter. The number of divisions depends on the needs of the particular court.

The SAC is divided into three Chambers headed by Presidents of the Chambers (being at the same time Vice-Presidents of the SAC): the Financial Chamber, the Commercial Chamber and the General Administrative Chamber.

The Financial Chamber supervises the jurisprudence of VACs in matters of tax liabilities and other money contributions to which tax provisions and provisions on enforcement of money contributions apply.

The Commercial Chamber supervises the jurisprudence of VACs in matters of economic activity, the protection of industrial property, the budget, currencies, securities, banking, insurance, customs, prices, tariff rates and fees.

The General Administrative Chamber supervises the jurisprudence of VACs in matters of construction and construction supervision, land development, water management, protection of natural environment, agriculture, forestry, employment, system of local government, management of immovable, privatisation of property, the universal obligation of military service, internal affairs as well as prices, fees and tariff rates in connection with the above matters.

Degrees of formation of the court:

Polish law provides as a rule a panel of three judges hearing the case at trial (both in the administrative court of first and second instance). However an administrative court sitting in camera adjudicates by a single judge, unless otherwise provided by the statute (Article 16 paragraph 1 and 2 of the LPAC). Therefore in certain cases (set out in the statute) administrative court adjudicates in panel of three judges, despite hearing the case in closed session (e. g. cases heard in accordance with the simplified procedure - Article 120 of the LPAC).

Only the SAC has the competence to adjudicate in extended panels – in panels consisting of more than three judges but it is possible only within its competence to adopt the resolutions that aim to safeguard the unity of administrative court jurisprudence.
The subject of such a resolution is the clarification of legal doubts that caused disparities in the jurisprudence of the administrative courts generally or in the "concrete" case. Resolutions are adopted by the SAC by a panel of seven judges (the rule), the entire Chamber or the full panel of the SAC. The decision on which panel will be assigned to a particular case lies within the hands of the President of the SAC. However, each panel may refer a case to the next panel, i.e. the panel of seven judges may refer a question of law to be resolved by a panel of the entire Chamber and the Chamber is able to refer it to the full panel of the SAC.

If the request for the resolution was made against particular administrative court case and taking into account that extended panel of the SAC is not bound by the request and may refuse to adopt a resolution if it finds that there is no need to do so, such extended panel of seven judges may decide to hear the particular pending case itself.

2.2.3. Do administrative courts have advisory powers (advice to the administration, government, parliament, etc.)?

The Polish Supreme Administrative Court has no advisory competence comparable with advisory functions of Councils of State of e.g. France, Belgium or Netherlands.

In the legislative process, the SAC is treated on the same basis as other specific public entities that should be consulted in the general process of drafting legislation. The legal grounds for the SAC's participation in the legislative process are the provisions of the resolution of the Council of Ministers No 190 of 29 October 2013 – the Council of Ministers' Rules of Procedure, as well as the provisions of the resolution of the Sejm of the Republic of Poland of 30 July 1992 – Standing Orders of the Sejm of the Republic of Poland and the resolution of the Senate of the Republic of Poland of 23 November 1990 – Standing Orders of the Senate of the Republic of Poland. The Council of Ministers' Rules of Procedure introduce the division of the consultations into two separate processes: 1) as part of the public consultations, the draft act is presented to social organisations or other interested entities or institutions whose opinion is welcomed due to the subject matter of the draft act; 2) as part of an opinion soliciting process, the draft act is sent to specific entities, if such a requirement arises under separate legal regulations or if the draft act applies to the functioning of such entities (it is sent, for instance, to the Supreme Administrative Court, Supreme Court of the Republic of Poland, National Council of the Judiciary).

The SAC is able to express its views in legislative process related to issues of status and the organisation of the judiciary, procedural laws, *etc.* It usually takes the form of a written opinion on draft law, issued by the President of the Court.

If needed, and in certain circumstances, the representatives of the President of the SAC take part as guests in the consensus conferences organised by the respective ministries and in the meetings of Sejm or Senate committees during the legislative proceedings related to draft laws concerning or affecting the scope of jurisdiction or powers of the administrative judiciary.

2.2.4. Tools and documentary resources available to judges

All administrative judges have their own private access to commercial case-law databases: Lex (publishing house: Wolters Kluwer) or Legalis (publishing house: C.H. Beck). They also have (as every Polish citizen) access to several databases operated by different institutions, i.e. Ministry of Justice (http://orzeczenia.ms.gov.pl/), Supreme Court and the SAC.
The SAC maintains the Central Database of the Jurisprudence of Administrative Courts (http://orzeczenia.nsa.gov.pl/), consisting of anonymized versions of judgments and decisions of administrative judiciary, as well as an internal Central Database of Case-law and Information on cases, that is accessible i.a. for every administrative judge. In the internal database a selected case-law of the Court of Justice of the European Union and the European Court of Human Rights is also published.

When it comes to documentary resources, it should be highlighted that a special organizational unit exists within the SAC – the Judicial Decisions Bureau. It's role is to give research support in the work of the SAC. 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. The research work of the Judicial Decisions Bureau – its studies, opinions and other publications are also available for administrative judges through internal database.

Judges can also have access to exchange of the legal information on administrative judiciary in Europe i.a. within the framework of ACA Forum – Forum of the Association of Councils of State and Supreme Administrative Jurisdictions of the European Union through the special unit: Domestic & Foreign Relations, created within the Chancellery of the President of the SAC and responsible for international relations between the Supreme Administrative Court and other domestic, foreign and international courts, public institutions and organizations and for the exchange of administrative judges in Poland within international, European and bilateral judicial exchange programmes.

2.3. Status of administrative judges

How is the recruitment of judges organised (competitive exam, political appointment, peer election…)? What are their statutory guarantees while in office, particularly in terms of independence?

The recruitment of administrative judges is organized as an open competition for all lawyers that meet certain requirements.

According to the Article 6 of the LSAC to be appointed as a judge of a VAC, a person must:
1) possess Polish citizenship and enjoy full civil and civic rights,
2) be of a flawless character,

3) have completed law studies in Poland and earned a Master's of Law degree, or an equivalent foreign qualification recognised in Poland,
4) be medically fit to perform the duties of a judge,
5) be over 35 years of age,
6) possess a high level of knowledge of the public administration, administrative law, and other spheres of law connected with the work of public administration bodies,
7) have served at least eight years as a judge or prosecutor or been employed for at least eight years as a lawyer, legal counsel or notary public; or served ten years in public institutions, occupying positions involving the implementation or creation of administrative law; or been employed as a court assessor in a voivodship administrative court for at least two years.

To be appointed as a judge of the SAC, a person must fulfil the requirements pointed out above in points 1-4 and 6, be over 40 years of age and have served at least ten years as a judge or prosecutor or been employed for at least ten years a lawyer, legal counsel or notary public. The age requirement of 40 years does not apply to a judge who has served as a VAC judge for at least three years (Article 7 of the LSAC).

The process of recruitment starts with an announcement of the President of the SAC about a vacant judge's position(s) in a certain court (published in an Official Journal of the Republic of Poland *Monitor Polski*). The candidate has to complete a special entry form and file it with other documents attached (documents confirming achievements, experience and the ability to perform the office). Then the candidate is being assessed by an auditing judge (on the basis of the given documentation) and by governing bodies of the court (the Board of the court and the General Assembly of the court) giving their opinions (by voting) after a self-presentation of the candidate before those bodies.

The candidate is subsequently evaluated by the National Council of Judiciary (a special constitutional body consisting of the representatives of the three branches of power; hereinafter as NCJ). The NCJ elects candidates who, in its opinion, offer the highest guarantees for the proper exercise of the judicial authority. The Council assesses candidates for judges in two stages: 1) in the first stage, the candidates undergo the assessment by a team appointed from among the members of the NCJ; 2) in the second stage, taking place at a plenary meeting, the candidates undergo the assessment by all members of the NCJ who vote for the best candidates. At the plenary meeting, the NCJ adopts a resolution referring to all candidates in the procedure. As regards some of them, the NCJ lodges a motion to the President of the Republic of Poland to appointed them.

The final step belongs to the President of the Republic of Poland. According to Article 179 of Polish Constitution judges are appointed by the President of the Republic on the motion of the NCJ.

The "court assessor" is the legal institution comparable with German "Richter auf Probe" – "judge on probation", whose appointment takes place with the intention that he / she would be appointed / employed later in his/her lifetime as a judge for an indefinite period of time.

According to the Article 6a of the LSAC to be appointed as a court assessor a person must:
1) be over 30 years of age,
2) possess Polish citizenship and enjoy full civil and civic rights,
3) be of a flawless character,
4) have completed law studies in Poland and earned a Master's of Law degree, or an equivalent foreign qualification recognised in Poland
5) be medically fit to perform the duties of a judge,

6) possess a high level of knowledge of the public administration, administrative law, and other spheres of law connected with the work of public administration bodies,
7) have served (has been employed or in service) as judge, prosecutor or president, vice-president, senior counsel or counsel of the general prosecutor's office, or have performed for at least four years the profession of attorney, legal counsel or notary public, or served occupying in public institutions positions connected with application or making of administrative law.

The application for the position of court assessor shall be submitted to the president of the appropriate VAC (there are no court assessors in the SAC), who - after confirming that the candidate complies with the appropriate conditions and requirements - transfers the application to the President of the SAC. The President of the SAC, after the consultation with the court board, shall present the application to the position of court assessor to the National Council of the Judiciary together with the evaluation of qualifications.

The court assessors are appointed by the President of the Republic on the recommendation of the National Council of the Judiciary, for the period of five years with designation of the official location (seat) of a court assessor in the VAC.

The most important guarantees of independence of judges are set out in the Polish Constitution. According to Article 178 and 179 of the Polish Constitution, judges, within the exercise of their office, are independent and subject only to the Constitution and statutes. Judges should be provided with appropriate conditions for work and granted remuneration consistent with the dignity of their office and the scope of their duties. A judge shall not belong to a political party, a trade union or perform public activities incompatible with the principles of independence of the courts and judges. Judges are appointed for an indefinite period.

Another guarantee of the independence is that judges are also not removable. Removal of a judge to another bench or position against his will, may only occur by virtue of a court judgment and only in those instances prescribed in statute. Where there has been a reorganization of the court system or changes to the boundaries of court districts, a judge may be allocated to another court or retired with maintenance of his full remuneration (Article 180 para. 1, 2 and 5 of the Constitution).

According to Polish legislation the possibility to transfer a judge to another place of service without his/her consent is an exception and is allowed:
- as a disciplinary measure;
- as a consequence of reorganization of the court system (cancellation of the post caused by a change in courts organization, cancellation of a given court or branch division or a transfer of the seat of a given court;
- as a consequence of family relationships between judges (persons related by direct affinity or lineal consanguinity or by adoption, spouses or siblings shall not be judges in the same court division).

Judges also enjoy immunities. A judge shall not, without prior consent granted by a court specified by statute, be held criminally responsible nor deprived of liberty. A judge shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. The president of the competent local court shall be forthwith notified of any such detention and may order an immediate release of the person detained (Article 181 of the Polish Constitution).

It should be noted that the legal basis of independence of court assessors are set only in the LSAC (not in the Constitution). According to Article 4 of the LSAC judges of administrative courts and court assessors shall be independent and subject only to the Constitution and statues.

3. PROCEDURAL RULES BEFORE ADMINISTRATIVE COURTS

3.1. Types of plea

What kind of petition may applicants file before administrative courts? May applicants only request the invalidation of an administrative act? May administrative courts rule on compensatory claims?

Proceedings before administrative courts may be initiated upon a complaint or an application (a motion). Whilst the latter plays a rather marginal role (e.g. an application/motion instigates competence disputes between public authorities), lodging a complaint is the way to challenge an act or an action of public administration.

Court proceedings may be exceptionally initiated ex officio in case of proceedings aimed to restore lost or damaged case files. Despite this plurality in the forms in which one can initiate court proceedings, the most prevalent is the former, which serves the fundamental goal of administrative litigation, i.e. the protection of individuals against any illegal acts of public authorities.

Court proceedings begin from the date upon which the complaint is lodged. The complaint must be lodged through the intermediary of the public authority whose act is to be challenged.

When the complaint is lodged, the public authority may, if it is justified, change their decision or pass the complaint with the case files to the court.

According to Article 52 of the LPAC, a complaint may be lodged after the exhaustion of the means of review which have lied with the complainant in proceedings before an authority competent in the matter, unless the complaint is being lodged by a public prosecutor, the Human Rights Defender (Ombudsman) or the Ombudsman for Children. Exhausting appeal measures means a situation in which a party no longer has any appeal measure, such as complaint, appeal or reminder as envisaged by the act, at its disposal. If a party has the right to apply for reconsideration to the body who issued a decision, the party may appeal against the decision without exercising the aforementioned right.

There are no special requirements for the grounds of complaint lodged to voivoidship administrative court (differently in comparison with the cassation appeal).

The types of requests raised by complainant depend on subject of the complaint. As far as decisions and orders of public authorities are concerned, the complainant may ask for:
- setting aside the challenged act in whole or in part;
- finding that the act is invalid in whole or in part or that it was issued in violation of law (if there are grounds for it);
- imposing an obligation on the competent authority to render a decision or order handling the case in a specific manner within a specified time limit.

The VAC hears the case within its limits but is not bound by the charges, requests and the legal basis raised in the complaint (Article 134 para. 1 of the LPAC), while the SAC hears the case within the limits of the cassation appeal (Article 183 of LPAC).

As a rule the administrative courts may issue only cassatory rulings regarding challenged administrative decisions, i.e. either uphold (by dismissing the complaint) or set aside the contested act in whole or in part. Individuals (applicants) may seek protection from administrative courts, but one cannot expect that administrative courts will replace the public administration. Such a narrow scope of the jurisdiction of administrative courts has a source in the constitutional principle of the separation and balancing of powers.

The administrative court, when reviewing the challenged decision or other act, is obliged to adjudicate whether the public authority violated binding law to such a degree that it affected the outcome of the case. Such a control must be undertaken in three parts in order to evaluate whether: (1) the challenged decision violates substantive binding provisions; (2) rules of procedure were observed during the whole proceedings; and (3) the public authority acted within its competences and jurisdiction.

Moreover the administrative court when adjudicating the cases is obliged to take into consideration solely the law and facts pertaining to the case in question, correlating to the date of the issued decision (the „*tempus regit actum*" principle).

In Polish system the administrative courts are not competent to rule on compensatory claims. The proceedings concerning the administrative decision is conducted in administrative court, whereas the proceedings for compensation takes place in common court, which is bound by previously made arrangements, referring to the incompatibility with the law of the final administrative act (decision of the administrative court).

3.2. Emergency procedures

Are there any emergency procedures available before administrative courts? In the affirmative, do they cover the whole field of administrative law or do they concern only specific areas of administrative action (individual freedoms, public procurement, etc.)?

Generally the LPAC does not establish special emergency procedures regarding certain categories of cases and does not regulate the duration of administrative court proceedings, except the proceedings based on the objection against an administrative decision, introduced to the LPAC on 1 June 2017.

These are special proceedings that envisage submitting a special measure of appeal, being an objection, instead of a complaint. The objection may be lodged exclusively against a cassation decision issued by an appeal public administration authority that does not resolve the merits of the case. Such a decision repeals a decision issued by a first-instance administrative authority in its entirety and results in the case being forwarded for reconsideration by the same authority due to the fact that the original decision has been issued in breach of procedural regulations and the scope of the case that needs to be clarified has a significant impact on the outcome (Article 64a of the LPAC).

Exceptions from the general rules of proceedings regarding time limit to hear the case (or in fact the lack of thereof) apply to:
- the time-limit for hearing the objection by the VAC - the court is required to hear the objection within 30 days of receipt thereof, while in ordinary proceedings there is no similar time-limit (Article 64d(1) of the LPAC);

- the time limit for hearing the cassation appeal against a judgment of VAC dismissing an objection to the decision by the SAC – the court is required to hear the cassation appeal within 30 days of receipt thereof (Article 182a of the LPAC).

The President of the Chamber of the SAC in justified circumstances may decide to hear a certain case or specific category of cases beyond the order of their influence, after prior consultation with the presidents of the divisions within the Chamber (§ 42 (5) of the SAC Internal Procedure Rules).

In case of the VACs according to § 32(1) of the VAC Internal Procedure Rules, the cases brought to the court are decided at the hearing according to their order of influence, unless the special provision provides otherwise. However the President of the VAC in justified circumstances may decide to hear a certain case or specific category of cases beyond the order of their influence (§ 32(3) of the VAC Internal Procedure Rules).

Notwithstanding the above, there are few special statutory provisions which determine the maximum time of examination of a case in court proceeding in particular situations (e.g. Article 11 of the Law of 17th June 2004 on a complaint about breach of a party's right to have a case examined in an investigation conducted or supervised by a prosecutor and in judicial proceedings without undue delay - Journal of Laws 2018, item 75, consolidated text, as amended), Article 30c and 30d of the Act of 6th December 2006 on the Principles of Development Policy - Journal of Laws 2018, item 1307, consolidated text, as amended), or Article 20 (2) of the Act of 15th September 2000 on Local Referendum - Journal of Laws 2016, item 400, consolidated text, as amended).

The time for the administrative court to issue a decision (from the moment of filing the complaint) provided for in these special statutory provisions range between 2 weeks and 2 months.

The most restrictive time limit has been lately introduced by the statutory amendments within the field of election law (Article 6 of the Act of 15th June 2018 amending the Act - Election Code and certain other Acts – Journal of Laws 2018, item 1349). The introduced time limit for hearing the complaints against certain orders of the National Election Commission by the SAC is only 5 days of receipt thereof.

3.3. Procedural principles before administrative courts

What are the rules governing the conduct of litigation before administrative courts? What are the guarantees offered to litigants? What are the principles governing the relationship between judges and litigants?

There are two types of rules which can be distinguished: the general rules applicable to court proceedings, and *strictly* procedural rules typical of administrative court proceedings.

The first group includes: the rule under which proceedings are two-instance proceedings; the rule of legality (under which cases are examined in terms of their compliance with law), the rule of effectiveness of proceedings (economy of proceedings), the rule of providing legal aid to the parties that are not represented by a professional attorney (the court is required to provide guidance on procedural actions and to issue notices on legal effects of such acts or failure to act), the rule of access to a fair trial (including the right to be relieved from court fees and having the

attorney appointed *ex officio*) and the rule of adversarial system (proceedings are initiated only at the request of a party and it is impossible to initiate administrative court proceedings *ex officio*, except for the proceedings aimed to restore lost or damaged case files).

The second category of rules includes: the rule of equality of parties, the rule of disposition (it is admissible for a party to withdraw its complain and a cassation appeal), the rule of priority of having the case settled in proceedings before a public administration authority (it is possible to bring action only after the proceedings before public administration authorities are closed); the rule of material truth (it is required that the court assess evidence and explanatory actions taken by the authority as well as correctness of using evidence to deal with the case in accordance with the rule of material truth), the rule of adjudicating according to the *status quo* as of the date of performing the act or action complained against (it is necessary to examine the legality of the contested act, irrespective of the content of claims included in the complaint) and the rule of being bound by the limits of a cassation appeal (the Supreme Administrative Court is required to examine the contested judgment exclusively in the limits of claim's grounds made by the party).

The most important guarantees offered to litigants are:
1) prohibition of *reformatio in peius* (does not apply: if the court finds that there has been a serious violation of law resulting in the declaration of invalidity of the challenged act or action; if a written interpretation of provisions of tax law is challenged);
2) no obligation to reimburse the costs of proceedings to the authority when the complaint is being dismissed;
3) interim measures - the possibility of requiring the suspension of the execution of the challenged administrative act;
4) possibility to request for reinstatement of the time limit;
5) the right of assistance granted on the request of the party (it includes exemption from court costs and appointment of a lawyer, legal counsel, tax adviser or patent agent);
6) obligation of the court to provide the parties to a proceeding that are not represented by a lawyer, legal advisor, tax advisor or patent agent with necessary information on procedural steps and the consequences of their omissions;
7) right to appeal against judicial decisions of the court of first instance (VAC)

When it comes to the principles governing the relationship between judges and litigants the LPAC specifies circumstances, which disqualify the judge from performing his/her office by operation of the mentioned Act, i.e. legal relationship to a party, relationship by blood or by marriage, by adoption, by custody etc.

Irrespective of those reasons, the court disqualifies the judge either at his/her own request or at the request of a party, if there exists a circumstance of such a kind that would give rise to justified doubts as to his/her impartiality in the case. The party (litigant) may lodge a motion to disqualify a judge in writing or orally to the records of proceedings, even if she/he has joined the trial (in such a case the party has to substantiate that the reason for disqualification has occurred or has become known to it at later time). Until the determination of the case for disqualification of the judge, he/she may perform only actions of utmost urgency. The judge should give an explanation concerning the circumstances raised in the motion. The judge should always notify to the court the existence of any grounds of his/her disqualification and refrain from participation in the case.

3.4. Reference standards for the control exercised by administrative judges

In relation to which norm (regulations, laws, international conventions, constitution ...) do administrative judges control administrative acts? Are they competent to control the conformity of laws and regulations with the Constitution (constitutional judicial review)? Are they competent to control the conformity of laws and regulations with international treaties (judicial review of international law)?

Administrative courts control the legality of challenged administrative acts in relation to all sources of universally binding law of the Republic of Poland: the Constitution, statutes, ratified international agreements (conventions, treaties) and regulations, as well as enactments of local law.
It should be underlined that Polish administrative courts are from the date of Poland's accession to the European Union at the same time European courts, which pursue the obligations of applying the EU law arising from the said legislation and of providing legal protection to individuals pursuant to the norms provided for in the EU law. It means in practice that the challenged administrative decisions or acts are controlled also in relation to binding acts of European Union law.

The Constitution entrusts the SAC and other administrative courts with the control over the functioning of public administration, which includes the hierarchy-based control over the conformity of resolutions adopted by the bodies of local governments and normative acts adopted by territorial bodies of government administration with statutory acts (Article 184).

The competence to control the constitutionality of other laws belongs to the Constitutional Tribunal. In case of constitutional doubts concerning provisions applicable in the case being heard before the court, administrative court may refer a question of law to the Constitutional Tribunal as to the conformity of a normative act to the Constitution, ratified international agreements or statute (Article 193). The decision taken by the Constitutional Tribunal – as the outcome of the question referred by the administrative court - on the constitutionality of the relevant legal norms has the "*erga omnes*" effect.

Constitutional judicial review - dispersed control of constitutional compliance (with an "*inter partes*" effect) is currently under discussion.

Pursuant to the theory adopted in administrative judiciary (based on the tradition of independent application of the basic law dating back to 1980s), the courts may apply the Constitution themselves, which is explicitly provided for in its Article 8(2). In the light of the principle of direct application of the Constitution envisaged by the quoted provision, courts are required to make "pro-Constitutional interpretation", which may be exemplified not only by the application of a legal provision in line with Constitutional provisions, but also by disregard of unconstitutional regulations. In the past, the possibility of refusing to apply a legal regulation due to its non-compliance with the Constitution in a given case was allowed only in several cases:
- in the case of regulations of rank lower than statutory acts – administrative courts confirmed this competence on numerous occasions by indicating that judges in their administration of justice are bound exclusively by the Constitution and statutory acts (Article 178(1) of the Constitution);
- in the case of so-called evident unconstitutionality, when the provisions of a statutory act and the Constitution which are compared relate to the same subject matter and they are contradictory;
- in the case of so-called secondary unconstitutionality that exists whenever a provision adopted prior to the entry into force of the Constitution does not comply in terms of its content with the applicable Constitution;

- in the case when the legislator introduced a regulation identical to a norm in respect of which the Constitutional Tribunal has already expressed its opinion by means of a judgement;
- in the case of statutory provisions that include solutions considered unconstitutional by the Constitutional Tribunal in the context of other (similar) provisions.

3.5. Scope and nature of administrative judicial review

May administrative judges control all acts taken by the administration? Are certain acts exempted from this control?

According to Articles 3(2) of the LPAC, the administrative courts control the activities of the public administration and adjudicate on complaints made against:
1) administrative decisions;
2) orders made in administrative proceedings, which are subject to interlocutory appeal or those concluding the proceeding, as well as orders resolving the case in its merit;
3) orders made in enforcement proceedings and proceedings to secure claims which are subject to an interlocutory appeal, with the exclusion of the orders of a creditor on the inadmissibility of the allegation made and orders dealing with the position of a creditor on the allegation made;
4) acts or actions related to public administration regarding rights or obligations under legal regulations other than acts or actions specified in points 1–3, excluding acts or activities taken within administrative proceedings specified in the Act of 14th June 1960 – Code of Administrative Proceedings (Journal of Laws of 2016, item 23, 868, 996, 1579, 2138 and of 2017, item 935)), proceedings specified in sections IV, V and VI of the Act of 29th August 1997 – Tax Ordinance (Journal of Laws of 2018, item 800 as amended), proceedings referred to in section V in chapter 1 of the Act of 16th November 2016 on the National Tax Administration (Journal of Laws 2018, item 508, 650, 723, 1000 and 1039) and proceedings to which the provisions of the quoted acts apply;
5) written interpretations of tax law regulations issued in individual cases, protective tax opinions and refusal to issue protective tax opinions;
6) local enactments issued by local government authorities and territorial agencies of government administration;
7) enactments issued by units of local government and their associations, other than those specified in point 6, in respect of matters falling within the scope of public administration;
8) acts of supervision over activities of local government authorities;
9) lack of action or excessive length of proceedings in the cases referred to in points 1–4 or excessive length of proceedings in the case referred to in point 5;
10) lack of action or excessive length of proceedings in cases relating to acts or actions other than the acts or actions referred to in points 1–3, falling within the scope of public administration and relating to the rights or obligations arising from the provisions of law, taken in the course of the administrative proceedings referred to in the Code of administrative proceedings of June 14th 1960 and proceedings referred to in sections IV, V and VI of the Tax Ordinance Act of August 29th 1997 as well as proceedings to which the provisions of the above mentioned Acts apply.

Additionally, administrative courts issue rulings in appeals against decisions issued under Article 138 (2) of the Act of 14th June 1960 – Code of Administrative Proceedings (Article 3 (2a) of the LPAC).

There are some exclusions from the jurisdiction of the administrative courts (Article 5 of the LPAC). They have no competence in following matters:
1) ensuing from organisational superiority or subordination in relations between public administration authorities; 2) ensuing from official submission of subordinates to superiors; 3) relating to refusal to appoint for an office or to designate to perform a function in public administration authorities, unless such obligation of appointment or designation ensues from the provision of law; 4) relating to visas issued by consuls, except certain particular types of visas; 5) relating to local border traffic permits issued by consuls.

Which degree of control is used by administrative judges? Does this degree of control vary according to the nature of the challenged act and/or the margin of appreciation left to the administration?

The limits of the control of the challenged decision / act is determined by the level of jurisdiction: the limits of judicial review performed by the SAC differ from the legal position of the court of first instance (VAC).

In case of the voivodship administrative courts, according to article 134 (1) of the LPAC, the court shall determine a case within its limits while not being bound by the charges and requests of the complaint and the legal basis invoked. In consequence the court of first instance proves the legality of challenged administrative act (decision) in unlimited manner (generally).

However if the subject of the complaint is a written interpretation of the provisions of tax law issued in an individual case, a protective tax opinion or a refusal to issue a protective tax opinion (it can be grounded only on the allegation of an infringement of procedural provisions, erroneous interpretation or erroneous assessment as to the application of a provision of substantive law), the court is bound by the charges of the complaint and the legal basis relied on (Article 57a of the LPAC).

In case of the SAC (second and last instance), according to Article 183 (1) of the LPAC, the SAC hears the case within the limits of the cassation appeal, however, it takes into account - on its own authority (*ex officio*) – invalidity of the proceedings. Due to Article 183 (2) the invalidity (nullity) of the proceedings occurs**:**
1) if making the recourse to the court was inadmissible;
2) if the party has not had the capacity to be a party in court or procedural capacity, it has not had a body appointed to represent it or statutory representative, or when the agent of the party has not been adequately authorised;
3) if the proceedings already initiated before an administrative court are pending in the same case or if a legally binding decision has been issued in such case;
4) if the formation of adjudicating panel has not complied with the provisions of law or if a judge disqualified by virtue of statute has taken part in the hearing of the case;
5) if the party has been deprived of the possibility to defend his/her rights;
6) if the VAC has adjudicated in the case which falls within the jurisdiction of the SAC.

In case of discretionary administrative acts the administrative court controls the legality of the issued decisions taking into account the jurisdiction to render them, procedure, form of act, excess of authorizations, not acting in accordance with the legal prescribed aim (proportionality, discrimination).

In judicial practice it can be observed that there are no more important differences in case of judicial review (control) of mandatory and discretionary administrative decisions. Also the criterion of expediency (not only criterion of legality) is permitted if such criterion emanates from the legal regulations empowering the authority to issue discretionary decisions. It can be also observed that administrative courts in Poland expand the review capacity to ensure compliance with the law, also in case of verification of correctness of the discretionary decisions.

3.6. Dissident opinions

When judges disagree with a ruling, are they allowed to express a dissenting opinion? In the affirmative, may they express it in all cases?

If judges disagree with a ruling, they are allowed to express a dissenting opinion (in all cases). According to Article 137 (2) and (3) of the LPAC, a judge who, in the course of voting, has not agreed with the majority, may, when signing the operative part of a judgment (*rubrum* and *tenor*), submit a dissenting opinion and he/she shall be obligated to present reasons for that in writing before signing the reasoning. A dissenting opinion may also relate to the reasoning of the judgment alone. The fact that a dissenting opinion has been submitted shall be made public, as well as the name of a member of the adjudicating panel, who has submitted a dissenting opinion, upon his/her consent.

3.7. Alternative methods of dispute resolution

Are there alternative dispute resolution methods? Please specify.

Articles 115-118 of the LPAC regulate the mediation proceedings before administrative courts.

Mediation proceedings may be carried out, at the request of the complainant or an authority, lodged before the trial has been designated, in order to clarify and consider the factual and legal circumstances of the case and to determine by the parties the manner of its settlement within the limits of the existing law. Mediation proceedings may be carried out even if the parties have not requested that such proceedings be initiated.

Mediation proceedings can be conducted by a mediator appointed by the parties or by the court.

A mediator may be a natural person who has full capacity to perform acts in law and enjoys full public rights, in particular a mediator included in the list of mediators or the list of institutions and persons entitled to conduct mediation proceedings kept by the president of the regional common court. He / she should stay impartial in conducting mediation and immediately reveal the circumstances which could have raised doubts about the mediator's impartiality, including circumstances referred to in Article 18 of the LPAC (prerequisites of the disqualification of judge from performing his/her office).

A mediator is entitled to access the case file and receive true copies, copies or extracts from the file, unless a party within a week of the date of publishing or receiving the order forwarding the case for mediation refuses to authorise the mediator to access the case file.

Mediation proceedings are not open. Unless the parties decide otherwise, a mediator, the parties and other participants to the mediation proceedings are required to keep confidential any facts that have been learned by them in connection with the mediation. Settlement proposals, disclosed facts or statements made within mediation proceedings may not be used after such proceedings are concluded, with the exception of arrangements included in the mediation proceedings protocol.

A mediator is entitled to receive remuneration and reimbursement of costs related to the mediation, unless the mediator agreed to conduct the mediation without remuneration. The remuneration and reimbursement of costs related to the mediation shall be covered by the parties.

The remuneration payable to a mediator for conducting mediation proceedings and the mediator's costs to be reimbursed, is specified in the regulation of the minister responsible for public administration.

A mediator drafts a protocol from mediation proceedings and immediately submits its copy to the parties and the court before which the proceedings are pending.

On the basis of arrangement made during the mediation proceedings, the authority shall set aside or modify the challenged act or shall made or take other action in accordance with the circumstances of the case within the limits of its own jurisdiction and competence. If the parties have made no arrangement as to the manner of settlement of the case, it is the subject to a hearing by the court.

It is possible to lodge a complaint against an act issued on the basis of arrangements made during the mediation proceedings to a VAC within 30 days from the day of delivery of the act or from the conclusion or taking of an action. The complaint shall be heard by the court jointly with a complaint lodged in the case against the act or action on which mediation proceedings have been conducted.

If no complaint has been lodged against an act or action issued or taken on the basis of arrangements made during the mediation proceedings, or the complaint lodged has been dismissed, the court shall discontinue the proceedings in the case on which mediation proceedings have been conducted.

3.8. Digitised procedures

Is there a specific digital procedure for the submission of claims?

No, not yet.
Currently the digitised access to the administrative courts is limited only to some proceedings concerning access to public information and submitting letters of complaint to public authority in connection with the performance of its prescribed duties (it should be highlighted, that such a complaint is not an ordinary remedy (appeal), is not a legal measure to contest an individual administrative decision and the citizen does not have to have a legal interest to submit such a complaint). The electronic documents can be submitted to the Supreme Administrative Court via: the electronic document carrier (DVD, CD, USB) or using electronic incoming correspondence box located on ePUAP - the Polish electronic platform for public administration services.

The relevant legal provisions allowing electronic access to the administrative courts were introduced by the Act of 10th January 2014 amending the Act on the Informatization of Activity of Entities performing Public Tasks as well as certain other acts (Journal of Laws of 2014, item 183). This Act amended also the LPAC. The relevant provisions regulating electronic access to the Polish administrative courts will enter into force on 31 May 2019.

4. EFFECTS AND EXECUTION OF JUDGMENTS

4.1. Powers of administrative judges

May judges amend administrative acts by substituting their own analysis to that of the administration or may they only invalidate them? May they compel the administration to act in a specific way (power of injunction, penalties)?

The general idea of the Polish administrative judiciary is that administrative courts do not replace the public administration in its decision-making process. The decisions of public authorities can not be supersede by court judgments. For this reason proceedings before administrative courts are dominated by cassation-appeal-based adjudicating.

As a rule the court, granting the complaint against an administrative decision or order, sets aside the challenged act in whole or in part. If, as a consequence of granting the complaint, the case is to be reconsidered by an administrative authority, the reasons should in particular include suggestions as to further proceeding. The legal assessment and indications as to the further course of action presented in a decision (judgment) rendered by a court shall be binding on the authorities whose action, failure to act or excessive length of proceedings was the subject of the complaint as well as on courts, unless the provisions of law have been amended. Failure to apply the legal assessment and indications of the court is an incorrect enforcement of the judgment and may be ground for challenging an administrative decision before administrative court but can not result in imposing a fine.

Since 2015 administrative courts have been given - in exceptional situations - powers to determine the actual way of handling the case by the relevant body. According to the new Article 145a of the LPAC, when the circumstances of the case so justify, the court shall oblige the authority to render a decision or order within a specified time limit, indicating the manner in which the case should be handled or determined, unless the determination was left to the discretion of the authority. The competent authority shall notify the court of the issuing of the decision or order within seven days from the date on which they were issued. In the event of failure to notify the court, it may decide to impose a fine on the authority in the amount specified by the statute. Should the decision or order not be rendered within the time limit specified by the court, the party may lodge a complaint, requesting that a decision be rendered whereby it is declared whether or not the right or obligation exists. The court shall render a decision on this matter if the circumstances of the case allow. As a result of the examination of a complaint, the court shall state whether or not the failure to issue a decision or order took place in blatant violation of law and may also, on its own authority or at the request of the party, impose a fine on the authority in the amount specified in the statute or order that the authority pay the complainant a sum specified in the statute.

It should be noticed that the forms of judgments differ depending on the object of complaint (e.g. when granting a complaint against failure to act or excessive length of proceedings, the court may not only oblige the authority to issue the act or perform the action but also decide to impose a fine on the authority or order that the authority pay the complainant a certain sum).

4.2. Impact and authority of administrative judgements

To whom do decisions rendered by administrative judges apply (absolute effect – erga omnes - of res judicata, relative effect of res judicata)? What criterion is used to choose between these two options?

A legally binding judgment (judicial decision) binds not only the parties and court which has issued it, but also other courts and state authorities**.** A legally binding judgment shall have the force of *res judicata* only on that what in relation with the complaint has constituted the subject of the determination.

4.3. Appeals

May rulings of administrative courts be challenged? What is the time limit for appeal? Before which authorities / jurisdictions can these rulings be challenged?

The Constitution guarantees the right of any individual to have their case heard twice by courts. The LPAC regulates all the legal means through which a party can challenge an administrative court's ruling. The type of court ruling determines the applicable legal means through which one can challenge it. In every kind of case all judgments and certain types of orders concluding the proceedings in the case rendered by the VACs, may be contested with a cassation appeal. The other orders indicated in the statutes may be challenged through an interlocutory appeal.

The cassation appeal is an ordinary legal mean, but its availability is limited by a variety of legal requirements.
First, a cassation appeal must be made on one of the following grounds:
1) a violation of substantive law caused by its misinterpretation or improper application; or
2) a breach of procedural rules, if that infringement could have affected the outcome of the case.

Secondly, the cassation appeal should be prepared by a professional legal representative, for example an advocate, legal adviser, tax adviser (only in tax law matters) or a patent agent (only in intellectual property).

Thirdly, it should meet the requirements prescribed for a letter lodged by a party and include:
(1) a reference to the challenged decision and information on whether it is challenged in its entirety or in part; (2) citation of the grounds for cassation and their justification; (3) a request that a decision be annulled or modified, together with the indication of the scope of the requested annulment or modification; 4) a request that it be heard at a hearing or a declaration on the waiver of a hearing.

Moreover the cassation appeal should be lodged with the court that has issued the challenged judgment or order, within 30 days from the date upon which the party was served with a transcript of the judicial decision with the reasons given.

Since 2015 courts of first instance have been provided with self-inspection powers. Currently, if, after the filing of a cassation appeal and before its submission to the SAC, the administrative

court finds grounds for determining the invalidity of the proceedings or if it determines that the grounds of the cassation appeal are obviously justified, it is obliged to repeal the judgment on its own and to re-examine the case during the same session (while maintaining the possibility to submit a cassation appeal against the new judgement issued in such manner).

Judgements of the SAC are final and legally binding. Therefore they can not be challenged in the ordinary course of the proceedings and may only be contested in extraordinary proceedings (e.g. within reopening of proceedings).