

# ANNUAL REPORT

## 2018

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Outline of activities  
of the Supreme Administrative Court  
and Voivodship Administrative Courts  
in 2018



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*Prof. dr hab.*

**MAREK  
ZIRK-SADOWSKI**

President  
of the Supreme  
Administrative Court

## FOREWORD OF THE PRESIDENT OF THE SUPREME ADMINISTRATIVE COURT

*Administrative courts, within their jurisdiction,  
provide for the protection of rights and freedoms of everyone  
in relations with the public administration,  
shaped by authoritative decisions in various areas.  
Authoritative decision-making, not based on dialogue,  
participation and consultation, favours domination.  
This inequality of parties of legal relationship ceases  
in proceedings aimed at resolving a dispute between  
an individual and public administration  
by an independent court.*

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## FOREWORD

Protecting the rights and freedoms of citizens, but also balancing individual interest with general, public and community interests is the role and sense of functioning of administrative courts today and for the following years.

As far as the judicial activity of administrative courts is concerned, it should be emphasized that last year in the voivodship administrative courts a very good efficiency of judicial activity was maintained, although in 2018 administrative courts had to face the problem of a very large number of vacancies in judicial posts and at the same time an increasing number of cases.

In the field of non-judicial activities, the scientific conference on *“Application of the European Law in Jurisprudence”* organised by the Supreme Administrative Court and attended by Prof. Koen Lenaerts, President of the Court of Justice of the European Union is worth recalling. President Lenaerts delivered an introductory lecture highlighting the core topics of the conference *“The Court of Justice and national courts: a dialogue based on mutual trust and judicial independence”*.

Similarly to previous years, in 2018 the activities of administrative judiciary focused on effective functioning of courts. It should be noted that in the past year there was a decrease (9.8%) in the number of com-



plaints lodged to the voivodship administrative courts, but at the same time the number of cassation appeals lodged to the Supreme Administrative Court increased. The number of complaints lodged in 2018 to voivodship administrative courts was 65 963, whereas in the Supreme Administrative Court the number of cassation appeals lodged was 20 229 (2 483 higher than in 2017).

**Regarding the dynamics of examination of the complaints against the acts and actions as well as the failure of the authorities to act and the excessive length of proceedings, it should be pointed out that in 2018, on average, voivodship administrative courts heard cases within 3.84 months, which means an improvement in the average rate in comparison with the previous year. In 2018 the Supreme Administrative Court heard 51.35% of all cases within 12 months.**

The above mentioned data allows a positive assessment of the functioning of administrative judiciary in the area of fulfilment of the constitutionally guaranteed right of access to a court. The time needed to resolve a case – and this is particularly important – meets European standards.

As in previous years, tax cases accounted for 24.8% of all cases heard by voivodship administrative courts. In the Supreme Administrative Court, as in previous years, the majority of cassation appeals heard also concerned taxes (36,16%).

Last year, Polish administrative courts, being at the same time EU courts, applied EU law, providing legal protection to individuals on its basis. They used the opportunity to engage in judicial dialogue with the Court of Justice of the EU by referring requests for a preliminary ruling in 6 cases, of which two were referred by the Financial Chamber of the Supreme Administrative Court, two by the Voivodship Administrative Court in Wrocław, one by the Commercial Chamber of the Supreme Ad-

ministrative Court and one by the Voivodship Administrative Court in Warsaw. Administrative courts also referred in their judgments and decisions to the European Convention on Human Rights and the case-law of the European Court of Human Rights.

In 2018, administrative courts used the possibility of direct application of the Constitution. As in previous years, they made a pro-constitutional interpretation of the law and referred to the jurisprudence of the Constitutional Tribunal.

In 2018, the Supreme Administrative Court adopted 9 resolutions, which are an important instrument to eliminate emerging discrepancies in the case-law of administrative courts and to guarantee the individuals predictable jurisprudence in similar cases and the observance of the principle of equality.

The subject of the resolutions were mainly issues concerning the scope of jurisdiction of the administrative courts, payment of court fees, access to court files, costs of stay in a nursing home covered by a local municipality, railway real estate management by the State Treasury and local government units and tax law issues pertaining to: local taxes and fees, effects of the re-examination of the goods and services tax obligation case for the interruption of the limitation period and fiscal inspection.

In conclusion, I would like to emphasise that in the past year administrative courts continued to function efficiently. In the jurisprudence of administrative courts, we continued to expand the sphere of protection of citizens' rights, using constitutional and European standards.

# COURT SYSTEM OF THE REPUBLIC OF POLAND

## ORDINARY COURTS

### SUPREME COURT

*(Sąd Najwyższy)*

Court of Cassation  
2<sup>nd</sup> and final instance

## ADMINISTRATIVE COURTS

### SUPREME ADMINISTRATIVE COURT

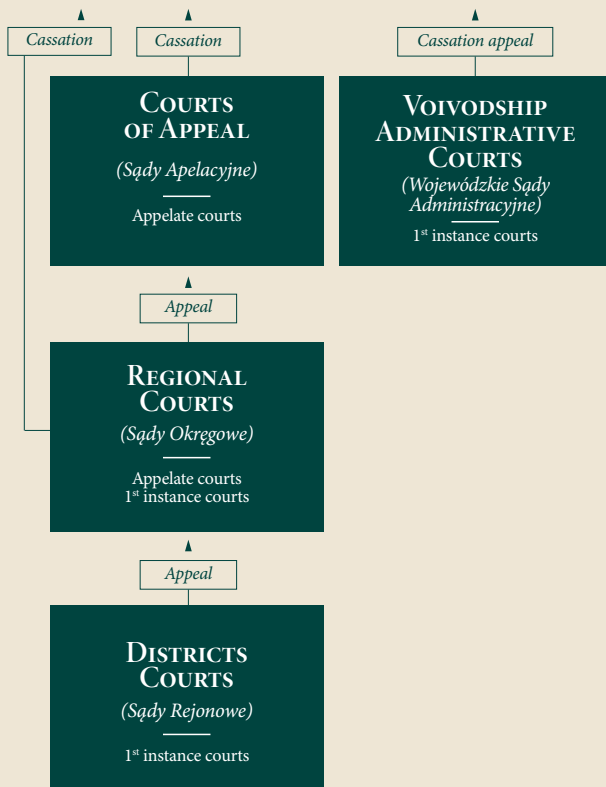
*(Naczelny Sąd Administracyjny)*

Court of Cassation  
2<sup>nd</sup> and final instance

### CONSTITUTIONAL TRIBUNAL

*(Trybunał Konstytucyjny)*

A posteriori and a priori  
abstract control of normative  
acts, constitutional complaints,  
adjudication of competence  
disputes between central  
constitutional State bodies,  
deciding on the conformity  
with the Constitution  
of the purposes or activities  
of political parties, recognizing  
the temporary incapacity  
of the President to perform  
his/her office.



# INTRODUCTION

*In 2018,  
the legislator  
entrusted  
the Supreme  
Administrative  
Court with new  
jurisdictional  
competences as  
a court of first  
and last instance.*

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

The jurisdiction of administrative courts includes cases enumerated in the provisions of the Constitution and other statutes. Pursuant to Article 184 of the Constitution, administrative courts exercise, to the extent specified by statute, control over the performance of public administration and issue rulings on the conformity of resolutions of local government authorities and normative acts of territorial level public administration bodies with statute.

As in previous years, in 2018 the Supreme Administrative Court administrators focused on guaranteeing the efficient functioning of courts. The main task was to ensure the proper operation of administrative courts both as regards case law and material aspects.

In 2018, the legislator entrusted the Supreme Administrative Court with new tasks, among them examining appeals against resolutions of

the National Council of the Judiciary concerning appointments to the post of Supreme Court judge Article 44 (1a) of the National Council of the Judiciary Act of 12 May 2011, Journal of Laws 2018, item 389, as amended), or examining complaints against decisions of electoral commissioners dividing a municipality into electoral precincts (Article 14(12) of the Electoral Code of 5 January 2011, Journal of Laws 2017, item 15, as amended).

2018 was also a year in which an IT system was being implemented in administrative courts, a process to be completed in 2019.

To put into practice citizen's right to access to public information, the Central Database of Administrative Court Judgements was updated.

An assessment of case law produced by administrative courts in the previous year shows a continued tendency to pursue established lines of case law activity with a view to extending the scope of protection of the rights of individuals. This has been reflected both in the judgements of voivodship administrative courts and in the judgements and resolutions of the SAC concerning, for example, respecting the principle of procedural justice and fiscal justice, consisting among others in limiting certain practices of fiscal authorities based on the *in dubio pro fisco* maxim (the principle of certainty of law and the principle of confidence in the state and the laws it enacts, derived from the rule of law principle, place particular emphasis on the legal and economic security of individuals), extending the right of access to court, rejecting the concept of autonomy of customs or tax law, or restoring rights wrongly revoked.

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*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 its relations with the administration in a way that meets the European standards.*

The contents of SAC rulings demonstrate the Court's care for comprehensive elucidation of the case, wide recourse to constitutional standards, European and international law, and the possibility of ensuring full legal protection of individuals by a pro-constitutional interpretation of legal provisions, recourse to the opportunity of referring ques-

*Law on  
the System  
of Administrative  
Courts 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.*

tions for a preliminary ruling to the Court of Justice of the European Union, and also the possibility of applying for a resolution to be made by an expanded panel of SAC judges in instances where the ruling panel considers that the legal question engenders serious doubts.

Article 15(1) of the Law on the System of Administrative Courts 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.

Each year the General Assembly of Judges of the Supreme Administrative Court adopts, by means of a resolution, the Annual Information on the Activities of Administrative Courts presented during a special session of the Assembly by the President of the Court. The Annual Information is the practical implementation of the above mentioned statutory provision.

**As in previous years, the activities of administrative courts were focused on guaranteeing the effective functioning of courts. Compared to 2018, a noticeable decrease (by 9.8%) of complaints filed with voivodship administrative courts and an increase of cassation appeals to the SAC could be observed.**

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.

# THE STRUCTURE OF THE SUPREME ADMINISTRATIVE COURT



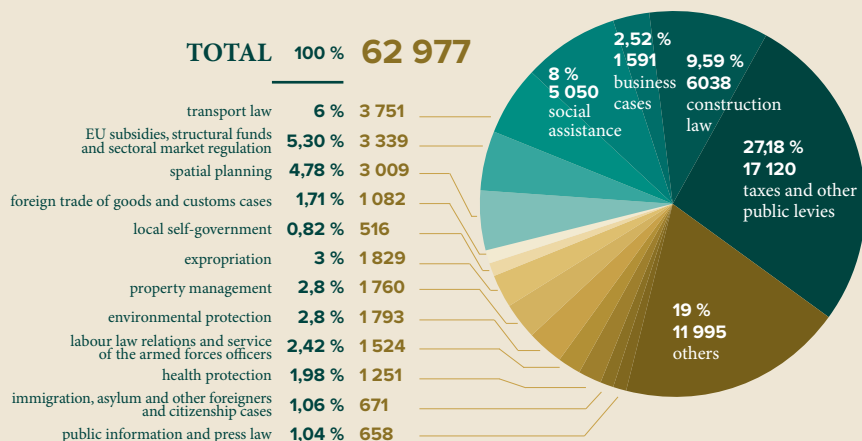
*The authorities of the Supreme Administrative Court are: the President, the General Assembly of Judges and the Board. The Supreme Administrative Court is divided in its judicial function into the Financial Chamber, the Commercial Chamber and the General Administrative Chamber.*

## COMPLAINTS\* SETTLED BY VOIVODSHIP ADMINISTRATIVE COURTS 2004-2018

YEAR	TOTAL NUMBER OF CASES TO RESOLVE <i>(Left from previous period + registered in given year)</i>	NUMBER OF CASES RESOLVED <i>(Total)</i>	CASES REMAINED FOR THE NEXT YEAR
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
2017	103 293	77 567	25 726
2018	91 689	69 315	22 374

\* All complaints including complaints against the acts, actions or failure of the authorities to act and the excessive length of proceedings.

## NUMBER OF COMPLAINTS AGAINST THE ACTS OR ACTIONS OF PUBLIC ADMINISTRATION SETTLED BY VOIVODSHIP ADMINISTRATIVE COURTS IN 2018 BY SUBJECT





## COMPLAINTS LODGED TO VOIVODSHIP ADMINISTRATIVE COURTS 2018

VOIVODSHIP ADMINISTRATIVE COURT	COMPLAINTS LODGED	
	TOTAL	
	NUMBER	%
ALL COURTS	65 963	100
BIAŁYSTOK	1 713	2,60
BYDGOSZCZ	2 562	3,88
GDAŃSK	3 311	5,02
GLIWICE	5 247	7,95
GORZÓW WLKP.	1 670	2,53
KIELCE	1 386	2,10
KRAKÓW	4 843	7,34
LUBLIN	2 822	4,28
ŁÓDŹ	3 367	5,10
OLSZTYN	1 833	2,78
OPOLE	1 107	1,68
POZNAŃ	4 743	7,19
RZESZÓW	2 827	4,29
SZCZECIN	2 573	3,90
WARSZAWA	21 989	33,34
WROCŁAW	3 970	6,02

## VOIVODSHIP ADMINISTRATIVE COURTS

NUMBER OF CASES LODGED IN 2018 BY COMPLAINANTS

Natural persons	47 564
Legal entities	17 690
Public prosecutor	1 217
Social Organisations (NGOs)	976
Commissioner for Human Rights (Ombudsman)	22
Commissioner for Children's Rights	2
Other complainants	200

# ACTIVITIES OF VOIVODSHIP ADMINISTRATIVE COURTS

## General statistics 2018

*The voivodship  
administrative  
courts heard  
in 2018  
62 217  
complaints  
against the acts  
or actions,  
of which  
40 637 were  
settled at  
a hearing.*

In 2018, voivodship administrative courts received 60 247 complaints against acts and activities of authorities and 5 716 complaints against lack of activity of authorities and excessive length of proceedings. In total, courts had to examine 65 963 complaints. Compared to 2017, the number of complaints decreased by 6 463, or 9.8% of the total figure.

23 793 complaints against acts and activities of authorities and 1 933 complaints against lack of activity of authorities and excessive length of proceedings remained for examination from the previous period. In total, courts had to examine 25 726 cases from the previous period, which added to the 65 963 cases received in 2018. This resulted in a figure of 91 689 cases, 11 064 less than in 2017. A total of 22 374 cases, or 3 352 less than in 2017, remained for examination in the next period. Voivodship administrative courts resolved 62 217 complaints against acts and activities of authorities, of which 40 637 at a hearing and 21 580 in camera. Among the complaints resolved at a hearing, 13 335 were upheld, 25 973

rejected, 410 dismissed and 919 resolved in other manner. In camera, 2 266 complaints were upheld, 6 400 rejected and 10 717 dismissed. As regards complaints against lack of activity of authorities and excessive length of proceedings, the courts resolved 6 310 complaints, of which 956 at a hearing and 5 354 in camera. In total in 2018, voivodship administrative courts resolved 68 527 complaints, or 103.89% of received complaints and 74.74% of all complaints to be examined. Compared to 2017, these percentages are, respectively, lower by 3.21% and higher by 0.35%.

**The largest number of complaints was received by the Warsaw VAC. In the reporting year, that court received 21 989 complaints, or 33.34% of all complaints filed with voivodship administrative courts.** For comparison, the Gliwice VAC received 5 247 complaints, the Kraków VAC 4 834 complaints, the Poznań VAC 4 743 complaints, and the Wrocław VAC 3 970 complaints. On the other hand, the lowest number of complaints was received by the Opole VAC (1 107), Kielce VAC (1 386), Gorzów VAC (1 670) and Białystok VAC (1 713). The highest number of complaints – 47 564 – was filed by natural persons. Legal persons filed 17 690 complaints, non-governmental organizations – 976, prosecutors – 1 217, the Commissioner for Human Rights – 22, the Commissioner for Children’s Rights – 2, and other entities – 200. Proceedings before voivodship administrative courts involved 14 802 attorneys of public administration bodies, 6 956 advocates [adwokat], 9 964 attorneys-at-law [radca prawny], 2 432 tax advisors, 194 patent attorneys, 806 prosecutors and the Commissioner for Human Rights in 2 cases.

*The highest number of complaints was lodged by natural persons - 47 564.*

On average, voivodship administrative courts resolved 44.85% complaints against acts and activities of authorities, lack of activity of authorities and excessive length of proceedings within 3 months. 59.49% cases were resolved within 4 months, and 76.74% of cases within 6 months. These figures bear witness to considerable efficiency of proceedings before voivodship administrative courts.

## Control of public administration activities

In the reporting year, voivodship administrative courts quashed 25.07% of decisions and other activities of administrative bodies. For comparison, this percentage was 22.22% in 2017, 19.78% in 2016, 22.03% in 2015, 22.2% in 2014, 24.36% in 2013, and 22.5% in 2012.

**As in previous years, the majority of decisions of voivodship administrative courts were made in tax matters, which accounted for 24.81% of all resolved cases.** Out of the 17 000 resolved complaints against acts and other activities of authorities in tax matters, 4 418, or 25.99%, were upheld (compared to 18.8% in 2017, 21.42% in 2016, and 21.27% in 2015).

As regards complaints against lack of activity of authorities and excessive length of proceedings, voivodship administrative courts resolved 6 310 complaints, upholding 2 220 (35.18%) of them. In 2017, the courts resolved 6 240 such cases, compared to 6 490 in 2016, 6 443 in 2015, 6 512 in 2014 and 5 721 in 2013. This means that, in recent years, the number of complaints against lack of activity of authorities and excessive length of proceedings has grown steadily.

In response to judgments of voivodship administrative courts, 20 229 cassation appeals were filed. Out of this number, 1,213 complaints were rejected and 18 728 (93.67%) referred to the SAC. Considering that in 2018 voivodship administrative courts resolved 68 527 complaints, cases referred to the SAC accounted for 29.52% of all resolved cases concerning administrative acts, lack of activity of authorities and excessive length of proceedings. In 2017, voivodship administrative courts referred 17 661 cassation appeals to the SAC, compared to 20 605 in 2016, 18 641 in 2015, 18 103 in 2014, 17 089 in 2013, 14 983 in 2012, and 14 381 in 2011.

## Simplified proceedings

Simplified proceedings are a special kind of administrative court-proceedings. In 2018, a considerable increase of cases examined in this mode was noted. Voivodship administrative courts used it to resolve 11 007 complaints, of which 3 180 were upheld. The largest number of cases in simplified mode was examined in the Warsaw VAC (5 819), followed by Kraków VAC (950), and Gliwice VAC (809).

According to relevant provisions of the Law of 30 August 2002 on Proceedings Before Administrative Courts, a case may be examined in simplified proceedings: 1) the administrative decision or order has been affected by invalidity referred to in the Code of Administrative Proceedings or to other rules or have been issued in violation of the law which provides a basis for reopening of the proceedings; 2) a party has requested that the case be referred for a hearing in accordance with the simplified procedure, and none of the other parties has demanded, within 14 days from the notification of the filing of the request, that a trial be conducted; 3) the subject of the complaint is an order made in administrative proceedings which is subject to an interlocutory appeal or concludes the proceedings as well as an order ruling on the merits of the case and orders made in enforcement proceedings and proceedings to secure claims which are subject to an interlocutory appeal; 4) the subject of a complaint is the failure to act or excessive length of proceedings; 5) a decision has been issued in simplified proceedings before administrative bodies. Moreover, a case may also be examined in simplified proceedings if the authority did not pass the complaint to the court despite the imposition of a fine. The court examining the case in this mode is not bound by any limitation in referring the case to be examined at a hearing. The court may do so either at the request of a party or ex officio if it considers that it is necessary to examine the case in full proceedings. In simplified proceedings, the case is examined in camera by three judges”.

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*Within simplified proceedings, the case is examined in camera by three judges*

## ACTIVITIES OF THE SUPREME ADMINISTRATIVE COURT

**The Supreme Administrative Court examines the means of challenge against decisions of voivodship administrative courts** – i.e. cassation appeals and interlocutory appeals against judgements and orders, in accordance with the provisions of the Act; **adopts resolutions** aimed at clarifying legal provisions whose application has caused discrepancies in the jurisprudence of administrative courts; adopts resolutions providing conclusions in legal issues that engender serious doubts in a specific administrative court case; **settles jurisdictional disputes between authorities of local self-government units** and local self-government appeal boards, as well as competence disputes between their authorities and government administration authorities; and examines other matters within the jurisdiction of the Supreme Administrative Court under separate laws, including the Act of 17 June 2004 on Complaint Against a Breach of the Right of a Party to Have its Case Examined in Court Proceedings Without Undue Delay. **Moreover, the Supreme Administrative Court is also a disciplinary court in disciplinary cases regarding judges of administrative courts.**

The Supreme Administrative Court consists of the Financial Chamber, the Commercial Chamber and the General Administrative Chamber. Each of the Chambers exercises, within the limits and in the manner specified by the relevant regulations, supervision over the case law of voivodship administrative courts in cases falling within the jurisdiction of that Chamber.

## GENERAL STATISTICS 2018

In 2018, the Supreme Administrative Court received 20 229 cassation appeals and 67 petitions for the reopening of proceedings. 26 379 cassation appeals and 27 petitions for reopening of proceedings remained from the previous period. In total, the SAC had to examine 46 608 cassation appeals.

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*In 2018 the SAC received 20 230 cassation appeals, 2 483 more than in previous 2017 year.*

In 2018, a total of 18 897 cassation appeals were examined, of which 12 278 (64.97% of total resolved cases) at a hearing and 6 619 (35.03%) in camera. The SAC upheld 3,176 (16.81%) cassation appeals, dismissed 12 467 (65.97%) appeals and resolved 3 254 (17.22%) appeals in other manner. In 2018, the number of cassation appeals filed increased by 2 483 compared to the previous year.

The largest number of cassation appeals (14 791) was filed by a party other than an administrative body. Administrative bodies filed 5 014 complaints. Proceedings before the SAC involved 5 549 attorneys of public administration bodies, 2 137 advocates, 2 715 attorneys-at-law, 915 tax advisors, 26 patent attorneys, 95 prosecutors and the Commissioner for Human Rights in 22 cases.

As in previous years, the largest number of cassation appeals concerned taxes and other pecuniary obligations falling under the Tax Ordinance Act, and the enforcement of such obligations (6 695 complaints filed). In these matters 6 833 cassation appeals were resolved, accounting for 36.16% of all resolved appeals.

In 2018, the SAC resolved 4 959 interlocutory appeals against decisions (orders) of first instance courts, upholding 794 of them (16.01% of all interlocutory appeals), dismissing 3 898 (78.61%) and resolving 267 (5.38%) in other manner.

The SAC also examined 183 complaints against the breach of the right of a party to have its case examined in court proceedings without undue delay: 1 complaint (0.55% of all resolved complaints of this kind) was upheld, 58 (31.69%) rejected and 124 (67.76%) resolved in other manner.

In 2018, the SAC resolved 51.35% of all cases within 12 months and 80.47% of all cases within 24 months. As regards cassation appeals, 36.45% of cases were resolved within 12 months. For interlocutory appeals, 91.29% of them are resolved within 2 months and 99.62% within 12 months.

## **Activities of Chambers of the Supreme Administrative Court**

### **FINANCIAL CHAMBER**

In 2018, the Financial Chamber received 6 314 cassation appeals and 26 petitions for the reopening of proceedings, of which 39% (2 489) pertained to goods and services tax cases, 22% (1 399) to personal income tax cases and 8% (521) to corporate tax income cases.

Among all cassation appeals entered on record in this statistical period, individual interpretations issued by the minister responsible for public finance accounted for over 27% (1 541) of cases; in addition, 154 cassation appeals against individual interpretations issued by other authorities were received. The number of complaints concerning tax interpretations remains high.



The Chamber resolved 5 905 cassation appeals, of which 4 820 at a hearing and 1 085 in camera.

The Chamber also noted 23 complaints against excessive length of proceedings conducted by public administration bodies and 46 complaints against failure to perform actions required under separate regulations by the set deadline.

The Chamber received 1 243 interlocutory appeals. Out of 1 262 resolved interlocutory appeals, 1.5% (19) concerned the right to assistance, 16% (197) the stay of an act or activity appealed against, 11% (144) the failure to comply with a deadline, 1% (15) the recusation of a judge, and 43% (543) other areas. 137 interlocutory appeals, equal to one month worth of cases of this kind filed with the Chamber, remained unresolved.

2 competence disputes were resolved, in one case by naming the authority competent to examine the case.

44 complaints against the breach of the right of a party to have its case examined in court proceedings without undue delay were filed, of which 23 pertained to proceedings before the SAC. In none of the 41 resolved cases did the Chamber uphold a complaint against excessive length of proceedings. 4 complaints remained for examination in the next year.

The Chamber received 5 motions for clarification of legal regulations. Resolutions explaining legal issues were adopted in 5 cases, refused in 1 case and referred for examination by a panel of seven judges in 2 cases.

The Chamber received 10 complaints for declaring the final rulings unlawful; 3 cases concerned decisions of voivodship administrative courts and 7 cases – decisions of the SAC. The ruling panels dismissed 3 complaints and rejected 7.

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*In 2018, the Financial Chamber received 6 314 cassation appeals and 26 petitions for the reopening of proceedings.*

In 2018, the Chamber did not submit any questions to the Constitutional Tribunal, while 2 requests for preliminary ruling were referred to the Court of Justice of the European Union.

In 2018, the number of cassation appeals increased slightly. As regards the organization of case law activities in the received Chamber, the caseload of judges comprised 3-6 cases per session depending on their intricacy and the nature of the issues involved. When permitted by the similar nature of cases, a larger number was assigned, up to a dozen cases per caseload. A judge's caseload could consist of a larger number of cases if so-called post-resolution or CJEU judgment cases were involved.

Almost each panel that resolved cases at a hearing in 2018 included a delegated judge – without the constant presence of delegated judges, scheduling such a large number of hearings (595) would not be possible.

The cassation appeals resolved in 2018 were filed by various authorized entities. Legal persons submitted 2 124 appeals, natural persons 2 416 and authorities 1 145. Prosecutors filed 11 appeals, and the Commissioner for Human Rights none.

In proceedings before the SAC, attorneys of administration bodies were involved in 2 542 cases, 53% of cases resolved in the Chamber at a hearing (4 820). Advocates appeared as attorneys of complainants and participants to the proceedings in 644 cases (13%). Attorneys-at-law appeared as attorneys of complainants and participants to the proceedings other than administration bodies in 797 cases (17%). Tax advisors not being advocates or attorneys-at-law participated in 791 cases (16%). Prosecutors took part in 13 cases and the Commissioner for Human Rights in 1 case.

## **THE COMMERCIAL CHAMBER**

In 2018, the Commercial Chamber of the SAC received a total of 3 930 cassation appeals, 26.29% less than in 2017. At the same time, the

number of motions for the reopening of proceedings decreased as well (10 cases in 2018, 19 in 2017, 46 in 2016, 67 in 2015). The average number of cases initiated by cassation appeals to adjudicate by one judge was 494.

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*The average number of cases initiated by cassation appeals to adjudicate by one judge was 494.*

Cassation appeals were most often lodged in matters related to European Union subsidies, structural funds and regulation of sectoral markets (981); business activities (686); maintenance and protection of roads, road traffic, and road transport (435); public funds, including budgets of local authority units, reliefs in repayment of pecuniary obligations not subject to the provisions of the Tax Ordinance Act, and enforcement of such obligations (437); excise tax (381); health insurance (252); prices, fees and tariff rates not classified in category number 611 (144); foreign trade in goods, customs duties and protection against excessive imports of goods into the customs territory of the European Union (126); industrial property right (120); authorisations to practice specific activities and professions (109).

The largest number of cassation appeals falling under the Chamber's material jurisdiction followed from decisions of the Warsaw VAC (40.23% of all received complaints), Poznań VAC (8.25%) and Gliwice VAC (6.54%).

The majority of cassation appeals (79.28%) was lodged by a party other than an administration authority. Complaints filed solely by administration authorities accounted for 20.13% of all complaints, while in less than 0.58% of cases the cassation appeal was filed by both an administration authority and another party to the proceedings.

Administration authorities lodged a total of 840 cassation appeals, compared to 1 611 appeals lodged by natural persons, 1 430 by legal persons, 27 by non-governmental organizations, and 1 by a prosecutor. Additionally, 8 cassation appeals were lodged jointly by natural persons and legal persons, 12 complaints jointly by non-governmental organiza-

tions and legal persons, and 6 complaints by non-governmental organizations and natural persons.

The Chamber resolved 4 825 cassation appeals and 14 motions for the reopening of proceedings before the SAC. The number of resolved cases was greater than the number of cases received by the Chamber, and hence the number of cases remaining to be examined in the next reporting period decreased by nearly 1 000. The average number of cassation appeals resolved by one SAC judge in the Chamber was 188. This relatively high ratio of resolved cases was achieved primarily due to the high effectiveness of work of SAC judges and delegated judges ruling in the Chamber, as well as supporting personnel – assistants, administrators and chancery clerks.

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*In 2018, the Commercial Chamber of the SAC received a total of 3,930 cassation appeals and resolved 4 825. More cases were heard than received.*

73.14% of resolved cases were examined at a hearing, and the other 26.86% in camera. In 2017, the ratio was 77.89% to 22.11%. The percentage of cases examined without hearing is therefore gradually increasing, in line with successive amendments of the Law on Proceedings Before Administrative Courts.

Hearings were attended by 2 074 attorneys of public administration bodies and attorneys of the parties, among them 661 attorneys-at-law, 408 advocates, 124 tax advisors and 26 patent attorneys. In 8 cases, the hearings were conducted with the participation of a prosecutor. The Commissioner for Human Rights participated in 1 hearing.

In 2018, the Chamber received 937 interlocutory appeals against decisions of first instance courts; together with those remaining from the previous year, this resulted in 996 cases to be examined. In total, 914 interlocutory appeals were examined, with 82 appeals remaining to be resolved in the next period. The examined interlocutory appeals concerned mostly the stay of an act or activity appealed against (20.92%), the rejection of a complaint (19.77%), the failure to comply with a dead-

line (14.23%), the recusation of a judge (3.66%) and the right to assistance (3.14%). The SAC upheld 22.75% of interlocutory appeals against rejection of a complaint, 18% of interlocutory appeals concerning the stay of an act or activity appealed against, and 16.18% of interlocutory appeals concerning failure to comply with a deadline. None of the appeals concerning the recusation of a judge and the right to assistance were substantiated.

The Chamber examined 43 competence disputes. In 27 cases, the Court named the authority competent to resolve the case. Additionally, 55 complaints against the breach of the right of a party to have its case examined in court proceedings without undue delay were resolved, but none of them was found worthy of upholding. As for complaints concerning the recognition of final decisions as unlawful, one was upheld and three rejected.

By an order of 21 November 2018, case no. II GOK 2/18, the SAC submitted a request for preliminary ruling to the Court of Justice of the European Union.

## **THE GENERAL ADMINISTRATIVE CHAMBER**

In 2018, the Chamber received 8 277 cassation appeals (6 349 in 2017) and 31 petitions for the reopening of proceedings (30 in 2017).

Compared to 2017, the number of received cassation appeals (6 349) increased by 1 928, and the number of examined cases (6 491) decreased by 447 (compared to 6 938 cases resolved in 2017). The number of cassation appeals remaining to be resolved in the next period increased by 1 786 (7 614 in 2017 compared to 9 400 in 2018).

Out of all cassation appeals received in 2018, the most appeals were lodged in the following areas: the construction law 1 531 – 18.5% (1 484 – 23.37% in 2017), labour and service relations of uniformed officers

1 464 – 17.69% (309 – 4.87% in 2017), expropriations 711 – 8.59% (573 – 8.46% in 2017), spatial management 689 – 8.32% (684 – 10.77% in 2017), social assistance 446 – 5.39% (375 – 5.91% in 2017), nature and environmental protection 424 – 5.12% (375 – 6.28% in 2017), property management 367 – 4.43% (339 – 5.34% in 2017), public information and press law 338 – 4.08% (308 – 5.98% in 2017).

The largest number of cassation appeals was received by the VACs in Warsaw (3 166), Kraków (706), Gliwice (559), Wrocław (578), Gdańsk (473), Poznań (437), Łódź (361), Szczecin (323), Rzeszów (318), Lublin (269), Białystok (265), Bydgoszcz (208), and the smallest number in Olsztyn (189), Gorzów (164), Kielce (157) and Opole (107).

*Compared  
to 2017  
the number of  
cassation appeals  
received by  
General  
Administrative  
Chamber  
increased in  
2018 by  
1 928 appeals.*

In 2018, 5 063 cassation appeals were dismissed (5 212 in 2017). The ratio of dismissed complaints to all resolved cases was 78.08% (75.12% in 2017). In 2018, cassation appeals were filed mostly by natural persons – 4 422 or 53.43% of all appeal cases (3 525 or 55.52% in 2017) and legal persons – 3 643 or 44.01% of all appeal cases (2 623 or 41.31% in 2017). Non-governmental organizations filed 169 or 2.04% cassation appeals (173 in 2017), prosecutors – 35 or 0.42% (20 in 2017), and the Commissioner for Human Rights – 8 or 0.10% (8 in 2017).

Proceedings in cases resolved by the SAC involved 933 attorneys of public administration bodies (1 043 in 2017). Advocates appeared for the complainants and parties to the proceedings in 1,085 cases (1 144 in 2017), and attorneys-at-law in 1 257 cases (1 512 in 2017). Prosecutors appeared in 74 cases (46 in 2017), and the Commissioner for Human Rights in 20 cases (6 in 2017).

In 2018, the Chamber received 2,696 interlocutory appeals (3 636 in 2017). In total, 2 741 interlocutory appeals were examined (914 less compared to 3 655 in 2017). 195 appeals remained for examination in the next period (45 less compared to 240 in 2017).

Out of all received interlocutory appeals, the most appeals were filed in the following areas: other decisions 1 164 (43.18%), decisions to reject a complaint 545 (20.22%), decisions to stay the execution of the act appealed against 467 (17.25%), decisions concerning reinstatement of deadlines to perform court acts 379 (14.06%), decisions concerning the recusal of a judge 87 (3.23%), decisions concerning the right to assistance 56 (2.08%).

In 2018, the Chamber received 512 motions (499 in 2017), including 476 motions to resolve a competence or jurisdiction dispute (440 in 2017), 25 motions to designate another court to examine a motion for the recusal of a judge (51 in 2017), and 11 motions in other matters (3 in 2017). 501 motions were examined (473 in 2017). The authority competent to handle the matter was designated in 364 cases, with 57 motions dismissed and 36 rejected. In 10 cases another court was designated to examine a motion for the recusal of a judge or a case. 41 motions were resolved in other manner.

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*In 2018,  
167 complaints  
against the  
excessive length  
of proceedings  
were lodged.*

In 2018, 167 complaints for excessive length of proceedings were received, including 4 petitions for the reopening of proceedings (116 in 2017). Compared to 2017, the number of new complaints for excessive length of proceedings increased by 51. 156 complaints were examined (126 in 2017), including complaints remaining from the previous period. Out of the examined complaints for excessive length of proceedings, 1 complaint was upheld (8 in 2017), 55 complaints were dismissed (66 in 2017), 151 complaints were rejected (42 in 2017), and 13 complaints remained for settlement in the next period. Upholding a complaint for excessive length of proceedings involves, depending on the demands of the complaining party, instructing the court examining the case to perform specific acts and award a specific amount of money to the party. In one case a party was awarded the amount of PLN 2 000 considering the nature of the case, its importance for the party and the duration of proceedings.

In the reporting period, 13 motions concerning for a declaration of a legally binding judicial decision unlawful were received (12 in 2017). 10 of these complaints were resolved, including 2 dismissed complaints and 8 rejected complaints, with 3 complaints remaining to be resolved in the next period. In 2018, the Chamber received 3 motions of the Commissioner for Human Rights to adopt a resolution in abstract mode. The SAC panel of seven judges resolved 5 cases, including 2 motions of the Commissioner for Human Rights and 3 motions from the previous period – 1 motion of the Public Prosecutor General, 1 of the Commissioner for Human Rights and 1 legal question posed by a ruling panel.

Resolutions were adopted in 4 cases and refused in 1 case (in 2017, 8 cases were resolved, with resolutions adopted in 6 cases, refused in 1 case and proceedings discontinued due to a withdrawn motion in 1 case).

Motions of the President of the General Counsel to the Republic of Poland and the Commissioner for Human Rights remained for settlement in the next period.

In 2018, 16 complaints against resolutions of the State Electoral Commission dividing municipalities into electoral precincts were received. 16 complaints were resolved, of which 6 were dismissed, 3 rejected and 7 resolved in other manner.

In 2018, the Chamber received a total of 11 761 cases (10 660 in 2017), with 7 998 cases remaining to be resolved from the previous period (8 584 in 2017). 9 997 or 58.44% of cases were resolved (11 246 in 2017), and 9 762 remained for hearings in the next period. Adjudicating panels examined cases at 379 hearings and in 1 307 closed sessions (compared to respectively 483 and 1,392 in 2017). Out of the 9 997 resolved cases, 3 968 (39.69%) went on hearing and 6 018 (60.20%) remained in camera.



## Resolutions of the Supreme Administrative Court

The Supreme Administrative Court adopts resolutions aimed at clarifying the legal provisions whose application caused discrepancies in the jurisprudence of administrative courts, on request of the President of the SAC, Prosecutor General, the General Counsel to the Republic of Poland, the Commissioner for Human Rights, the Commissioner for Small and Medium Entrepreneurs, the Commissioner for Children's Rights (so-called "abstract" resolutions), and resolutions containing conclusions in legal issues that engender serious doubts in a particular administrative court case (so-called "concrete" resolutions). A resolution of the SAC panel of seven judges is binding in the relevant case. On the other hand, when the ruling panel does not agree with the position taken in the resolution adopted by the panel of seven judges of the SAC, it may apply for another resolution (see e.g. the SAC resolution of 1 February 2016, case no. II FPS 5/15).

In 2018, 8 motions to adopt resolutions were received. The SAC adopted a total of 9 resolutions, including 3 in abstract mode (2 on the motion of the Commissioner for Human Rights and 1 on the motion of the Prosecutor General). 6 resolutions were adopted pursuant to Article 187(1) of the Law on Proceedings Before Administrative Courts (concrete mode), and refused for 2 motions (case no. I OPS 6/17 and I FPS 2/18).

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*Resolutions of the SAC enlarged panels are an important instrument to eliminate emerging discrepancies in the case-law of administrative courts and to guarantee the individuals predictable jurisprudence in similar cases and the observance of the principle of equality.*

## RESOLUTIONS OF THE SUPREME ADMINISTRATIVE COURT

YEAR	2010	2011	2012	2013	2014	2015	2016	2017	2018
TOTAL	18	20	23	27	19	17	16	20	9
FINANCIAL CHAMBER	6	8	10	9	9	9	9	12	5
COMMERCIAL CHAMBER	4	3	5	4	4	2	3	2	0
GENERAL ADMINISTRATIVE CHAMBER	8	8	8	14	6	6	4	6	4

*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 Public Prosecutor General, the General Counsel to the Republic of Poland, the Commissioner for Human Rights (Ombudsman) or the Commissioner for Small and Medium Entrepreneurs, the Commissioner for Children's Rights (the so-called 'abstract' resolutions), and resolutions containing conclusions in legal issues that raise serious doubts in a particular court administrative case (the so-called 'concrete' resolutions). A resolution of the Supreme Administrative Court panel of seven judges is binding in the relevant case.*

## **SUBJECTS OF RESOLUTIONS IN 2018**

The resolutions adopted in 2018 concerned issues failing under the jurisdiction of administrative courts, payment of court fees, administrative proceedings, the manner of enforcing reimbursement of costs of staying in a nursing home which were covered vicariously by the commune, the status of real estate held by a PKP [Polish State Railways] enterprise without a right documented in the manner provided for in Article 38(2) of the 1985 Land Management Act, as well as tax issues: the Local Taxes and Fees Act, the provisions of the Tax Ordinance Act concerning the suspension of statute of limitation, and provisions of the Fiscal Control Act.

### **Jurisdiction of administrative courts**

In resolution I OPS 2/18 of 17 December 2018, adopted on the motion of the Commissioner for Human Rights, the SAC stated that a decision of the local government board of appeals concerning refusal to reinstate a deadline to submit a motion to determine that an update of the annual fee for perpetual usufruct of land real estate is unjustified or is justified in another amount, issued pursuant to Article 59(1) of the Code of Administrative Proceedings in connection with Articles 78(2) and 79(7) of the Real Estate Management Act of 21 August 1997 (Journal of Laws 2018, item 121, as amended) is subject to appeal to an administrative court.

### **Payment of court fees**

In resolution I FPS 3/17 of 22 January 2018, initiated by a legal question of a ruling panel, the SAC stated that if a court fee is paid to the account of the competent administrative court pursuant to Article 219 of the Act on Proceedings Before Administrative Courts through a domestic payment institution in the meaning of the Payment Services Act of 19 August 2011 (Journal of Laws 2016, item 1572, as amended), the date on which such funds are transferred to the institution or its agent is considered as the

date of paying the fee, provided that the court's bank account is credited with the due amount.

### **Access to court files**

In resolution I OPS 1/18 of 8 October 2018, initiated by the motion of the Commissioner for Human Rights with the participation of a prosecutor of the National Prosecutor Office, the SAC stated that the act of making case files available to a party pursuant to Article 73(1) of the Code of Administrative Proceedings encompasses the possibility of making a copy of documentation found in the case files on request of the party, insofar as permitted by technical and organizational capabilities of the authority.

### **Costs of stay in a nursing home covered by a municipality**

In resolution I OPS 7/17 of 11 June 2018, initiated by the motion of a prosecutor of the State Prosecutor Office with the participation of the Commissioner for Human Rights, the SAC stated that the duty of the persons named in Article 61(1)(2) of the Social Welfare Act of 12 March 2004 (Journal of Laws 2017, item 1769, as amended) to cover the fees for the stay in a nursing home of a person placed therein, and the consequent decision to reimburse costs vicariously covered by a municipality pursuant to Article 104(3) in connection with Article 61(3) of the Act, must be first assigned to concrete individuals, commencing from the date on which the duty arose, with respect to each person obliged by means of an administrative decision determining the fee, which is issued pursuant to Article 59(1) in connection with Article 61(1) and (2) of the Act or in an agreement concluded pursuant to Article 103(2) in connection with Article 61(1) and (2) and Article 64 of the Social Welfare Act.

### **Real estate management by the State Treasury and local government units**

As regards real estate management and the exercise of local government entitlements concerning the ownership of land, particular impor-

tance must be attached to resolution I OPS 5/17 of 26 February 2018, in which the SAC decided in practice that holding real estate by the Polish State Railways (PKP) enterprise without a right documented in the manner provided for in Article 38(2) of the 1985 Land Management Act (Journal of Laws 1985, no. 22, item 99, as amended) means that such real estate belonged as of 27 May 1990 to state councils and basic level local government administration authorities (in the meaning of Article 5(1) of the Provisions Introducing the Local Government Act and Local Government Employees Act – Journal of Laws no. 32, item 191, as amended), and was subject to transfer to municipal ownership by operation of law.

### **Tax law**

In resolution II FPS 1/18 of 24 September 2018, initiated by a legal question of a adjudicating panel, the SAC stated that in the legal environment in effect until 31 December 2015 the provision of Article 3(5) of the Local Taxes and Fees Act of 12 January 1991 (Journal of Laws 2014, item 849, as amended) is applicable also if the same entity owns two or more premises whose ownership grants a share in real estate.

In resolution I FPS 1/18 of 18 June 2018, the SAC stated that notification to the taxpayer pursuant to Article 70c of the Tax Ordinance - Act of 29 August 1997 (Journal of Laws of 2015, item 613, as amended) informing that on a date specified as to a particular day, as a result of the prerequisite of Article 70(6) item 1 of the Tax Ordinance, the period of limitation of the taxpayer's tax liability for the specified settlement period was suspended is sufficient to state that the period of limitation of the liability under Article 70(6) item 1 of the aforementioned Act was suspended.

In resolution I FPS 5/17 of 26 February 2018, the SAC stated that quashing a final decision determining a goods and services tax obligation and referring the case for reexamination destroys the material effect of using an enforcement measure in the form of suspension of the statute of limitations pursuant to Article 70(4) of the TOA.

### **Fiscal inspection**

In resolution I FPS 6/17 of 28 February 2018, initiated by a legal question of a ruling panel, the SAC stated that in light of Article 26(1) of the Fiscal Control Act of 26 September 1991 (Journal of Laws 2011, no. 41, item 214, as amended), in the legal environment in effect in 2014, for an entity without a seat in Poland which was a registered goods and services taxpayer in Poland as of the date of commencing the proceedings but ceased to be one before the proceedings were completed, the authority competent to examine its appeal from a decision of the director of a fiscal inspection authority is the Fiscal Chamber director having jurisdiction according to the seat of the taxpayer.

### **Rights of individuals in disputes with public administration**

Resolutions adopted in 2018 touched upon important substantive issues concerning the rights of individuals in disputes with public administration authorities. One can find there suggestions directing administrative courts to use pro-constitutional and pro-EU interpretation of law in accordance with European human rights protection standards.

In the justification to resolution I OPS 2/18 which decided that an administrative court is competent to check the decision of a local government board of appeals refusing to reinstate the deadline for a perpetual usufructuary to file a motion concerning the update of the annual fee for perpetual usufruct, issued pursuant to Article 59(1) of the Code of Administrative Proceedings, the SAC, having regard to judicial decisions of the Constitutional Tribunal and legal doctrine, pointed out that the institution of administrative courts was introduced to protect subject rights of individuals against defective acts of public administration bodies. Accordingly, it is necessary to use pro-constitutional interpretation to guarantee effective protection against defective behaviours of public administration bodies to parties of the proceedings.

In the justification to resolution I FPS 5/17 the SAC, having reference to legal literature, stated that a situation in which a breach of law by state authorities resulted in consequences favourable for the state and unfavourable for the taxpayer, namely a longer period to enforce the performance of an obligation, would be contrary to the rule of law principle found in Article 2 of the Constitution of the Republic of Poland. Assuming that the effect of suspended statute of limitations is destroyed solely as a result of discontinuing enforcement proceedings and does not result from merely quashing a final decision would lead to differentiating the legal situation of taxpayers based on their assets, a conclusion not supported by provisions of law and contrary to Article 2, Article 32(1) and Article 84 of the Constitution of the Republic of Poland. The situation of taxpayers should be differentiated solely based on legal circumstances relevant for determining tax obligations and their amounts, and not the existence of assets which can be used to enforce the tax.

## **Conclusions**

Resolutions adopted by the SAC allow eliminating discrepancies in decisions of administrative courts that result mostly from lack of clarity in legal provisions or legislative omissions, since pursuant to Article 269(1) of the Law on Proceedings Before Administrative Courts positions taken in a SAC resolution are indirectly binding for all ruling panels of administrative courts. The general binding nature of the resolution means that administrative courts are bound by it in all cases in which the interpreted provision is to be applied. A court ruling in a case involving a legal issue already settled by a resolution cannot express a view other than formulated by the SAC in the resolution, unless a motion for so-called overriding resolution is filed. Decisions set out in resolutions protect the rights of individuals guaranteed by the Constitution.

## Jurisdictional disputes and competence disputes

### GENERAL REMARKS

In 2018, the SAC received 523 motions for resolving disputes concerning court jurisdiction and competence disputes. 515 of these motions were resolved, and in 374 cases the authority competent to examine the case was named.

According to Article 166(3) of the Constitution, competence disputes between local self-government authorities and government administration authorities are settled by administrative courts. Settling jurisdictional and competence disputes between local government authorities and local government boards of appeal, unless otherwise provided for in a separate law, and competence disputes between bodies of such authorities and government administration authorities, remaining within the scope of competence of the Supreme Administrative Court, refers to situations in which at least two administrative authorities simultaneously consider themselves to be competent (positive dispute) or incompetent (negative dispute) to deal with a specific matter (see e.g. the order of 26 October 2016, case no. II OW 48/16).

The Supreme Administrative Court may issue a substantive judgement in this regard if a jurisdictional or a competence dispute in the legal sense exists. The court controls the activities of the public administration to the extent specified in the Act 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 8 of the Code of Administrative Proceedings (cf. the order of 28 October 2016, case no. II GW 21/16).



When provisions referring to the competences of public administration authorities 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 due to 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 (cf. the order of 9 November 2016, case no. II OW 55/16).

### NEGATIVE AND POSITIVE DISPUTES

As regards competence disputes, an example of positive dispute is the order II FW 1/18 of 9 May 2018, resolving a case in which both a city president and a municipality head considered themselves territorially competent to accept the returns for and settle the vehicle tax. Both authorities derived their competence from Article 9(7) of the Local Taxes and Fees Act. In the opinion of the SAC, to resolve the dispute it was essential to determine the locality in which the means of transport subject to taxation were found.

While resolving a negative dispute, the SAC named the municipality head as the authority competent to examine a motion to determine the right to attendance allowance. In the opinion of the SAC, pursuant to Article 23(2) of the Family Benefits Act of 28 November 2003 (Journal of Laws 2017, item 1952, as amended), the motion is filed with the municipality or town hall office competent with respect to the domicile of the person filing the motion, while Article 3(11) of the same Act stipulates that, whenever the Act refers to a competent authority, this means the municipality head, town mayor or city president competent with respect to the domicile of the person applying for or receiving a family benefit. The Family Benefits Act does not define the meaning of “domicile”, however pursuant to Article 25 of the Civil Code the domicile of a natural person is the locality in which that person resides with the intention to remain there permanently. To assume that person resides in a specific locality, it is necessary to determine the existence of two prerequisites, namely the

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*523 applications to resolve competence and jurisdictional disputes were lodged. 515 cases were settled, and in 374 cases the proper authority for their settlement was indicated.*

place of residence and the intention to remain there permanently, both of which must be met jointly. In the examined case, both prerequisites were indeed met (the order of 8 November 2018, case no. I OW 172/18).

### **SUBJECTS OF DISPUTES IN 2018**

A number of competence disputes concerned Water Law Act provisions. This was a consequence of the Water Law Act of 20 July 2017 (Journal of Laws 2017, item 1566, as amended) entering into force as of 1 January 2018. The act established a new structure of water administration authorities, and some of its temporary provisions concerning authority competences raise interpretation doubts.

Competence disputes also concerned the following cases: reopening of proceedings concluded with a decision declaring an expropriation decision as illegal; approval of a geological works programme; location of a gas network connection on a road lane; location of a telecommunications connection on a road lane; examining a motion to agree and consent for the location of a water mains connection; determining an increased fee for mineral extraction; determining an operating fee for mineral extraction without the required concession; co-funding rehabilitation treatments from means of the State Fund for the Rehabilitation of Disabled Persons; division of enforcement costs into instalments; conducting enforcement proceedings on the basis of a writ of execution; carrying out the collection activities of the obligation to pay a fine; paying an equivalent for excluding land from agricultural production and forest cultivation; urging the beneficiary to issue a decision determining the amount to be returned from EU budget means; waiver of legal representation costs; examining a motion for reexamination of a case ended with a decision of the General Director for Roads and Motorways in the matter of imposing a pecuniary penalty for road lane occupation; change of details in a license to conduct road transport as a goods shipment agent; determining the entitlement to healthcare benefits financed from public funds.

## CONCLUSIONS

The above examples, referring to issues related to the SAC's exercise of its prerogative to resolve competence and jurisdictional disputes, highlight the numerous problems that public administration authorities face when exercising their powers. The decisions of the Supreme Administrative Court in this regard facilitate the resolution of cases by the authorities on one hand and protect the principles of legality on the other.

## Complaint against the breach of the right of a party to have its case examined in court without undue delay

### LEGAL BASIS

Based on Article 2 of the Act of 17 June 2004 on a complaint regarding the breach of the right of a party to have its case examined in preparatory proceedings conducted or supervised by the prosecutor and in court proceedings without undue delay, a party may file a complaint requesting a declaration that in the proceedings which the complaint relates to, its right to have its case examined without undue delay was violated if the proceedings take longer than necessary to clarify the factual and legal matters which are relevant to the settlement of the case or longer than necessary to handle the enforcement case or any other procedure regarding the enforcement of the court decision (excessive length of proceedings). Article 4(3) of the Act referred to above names the SAC as competent to examine complaints against the excessive length of proceedings before a voivodship administrative court or the SAC. The complaint should be heard within 2 months from the date of filing.

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*The SAC hears complaints against excessive length of proceedings before a voivodship administrative court or the Supreme Administrative Court.*

## **2018 STATISTICAL DATA**

In 2018, the SAC received 61 complaints for excessive length of proceedings before the SAC and 200 complaints for excessive length of proceedings before voivodship administrative courts. None of the complaints pertaining to the SAC were upheld, while in case of voivodship administrative courts one complaint, against the Warsaw VAC, was upheld and the amount of PLN 2,000 awarded.

## **THE REASONS FOR REJECTING THE COMPLAINTS**

In 2018 case law the reasons for rejecting the complaints were, among others: the failure of a party to take account of interlocutory proceedings resulting in lack of excessive length of proceedings, determination that no excessive length existed, or filing the complaint prematurely.

The reasons for dismissing the complaint developed in case law in 2018 were, among others: filing a complaint against excessive length of proceedings after their completion, repeated filing of a complaint against excessive length of proceedings before the lapse of 12 months from examination of the previous complaint, filing a complaint not recognized by statute, failure to cite circumstances supporting the claim, inadmissibility of complaint against excessive length of proceedings pending before the SAC, filing a complaint after completion of the proceedings with a final decision, not being a party to the proceedings.

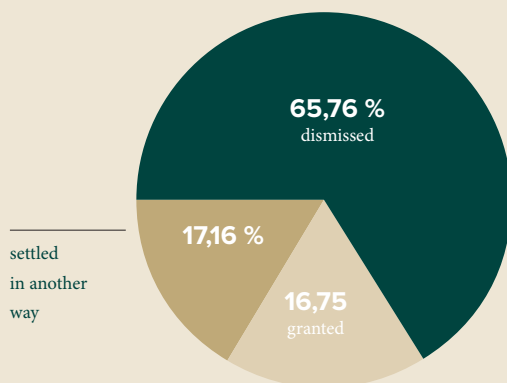
## CASSATION APPEALS SETTLED BY THE SUPREME ADMINISTRATIVE COURT 2004-2018

YEAR	TOTAL NUMBER OF CASES TO RESOLVE <i>(Left from previous period + registered in given year)</i>	NUMBER OF CASES RESOLVED <i>(Total)</i>	CASES REMAINED FOR THE NEXT YEAR
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
2017	45 570	19 192	26 379
2018	46 608	18 959	27 649

## NUMBER OF CASSATION APPEALS HEARD IN 2018 BY THE SUPREME ADMINISTRATIVE COURT (by the outcome of the case brought)

**18 959** TOTAL

**3 176** granted  
**12 467** dismissed  
**3 254** settled  
in another  
way

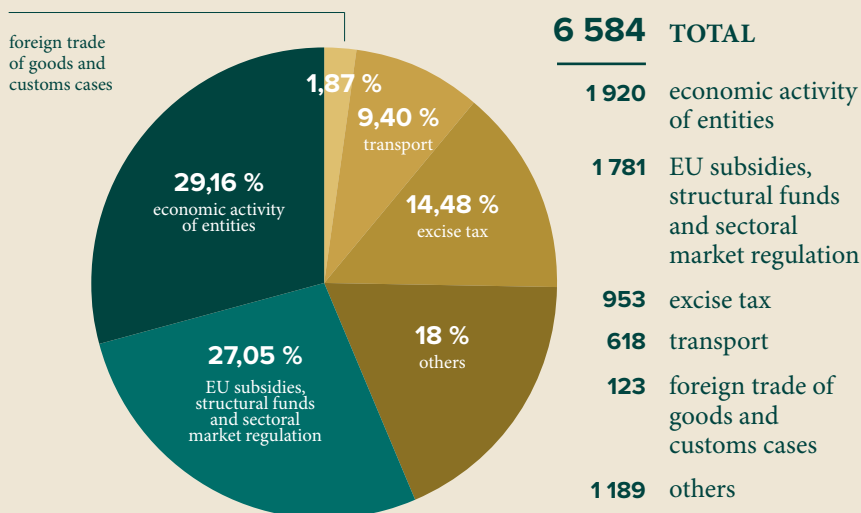


## CASSATION APPEALS 2018 BY THE COURT OF ORIGIN

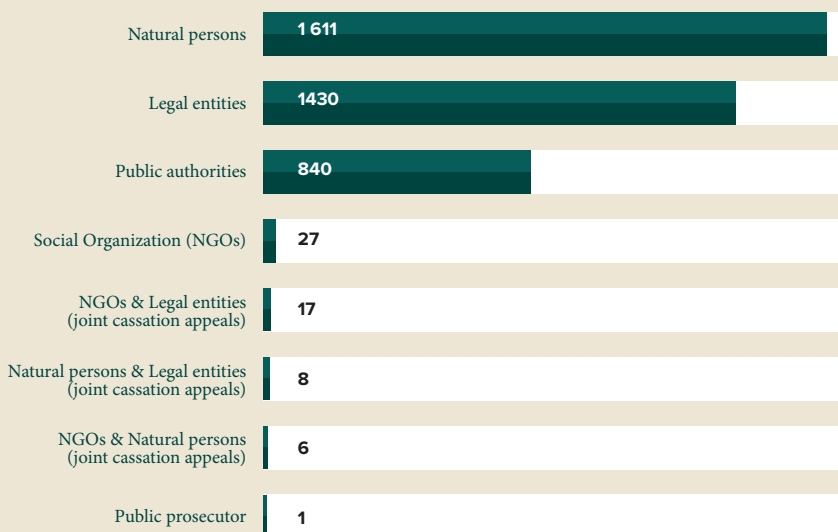
VOIVODSHIP ADMINISTRATIVE COURT (S)	TOTAL NUMBER OF CASSATION APPEALS LODGED	% OF ALL REGISTERED CASES	TOTAL NUMBER OF CASSATION APPEALS SETTLED
ALL COURTS	20 229	100	18 959
BIAŁYSTOK	699	3,46	650
BYDGOSZCZ	638	3,15	567
GDAŃSK	1 147	5,67	1059
GLIWICE	1 483	7,33	1 715
GORZÓW WLKP.	523	2,59	504
KIELCE	378	1,87	421
KRAKÓW	1 198	5,92	1 108
LUBLIN	832	4,11	836
ŁÓDŹ	1 108	5,48	1 018
OLSZTYN	523	2,59	508
OPOLE	321	1,59	328
POZNAŃ	1299	6,42	1 435
RZESZÓW	649	3,21	647
SZCZECIN	822	4,06	1 014
WARSZAWA	7 349	36,33	5 847
WROCŁAW	1 260	6,23	1 302

# COMMERCIAL CHAMBER

## NUMBER OF CASSATION APPEALS SETTLED IN 2018 BY SUBJECT

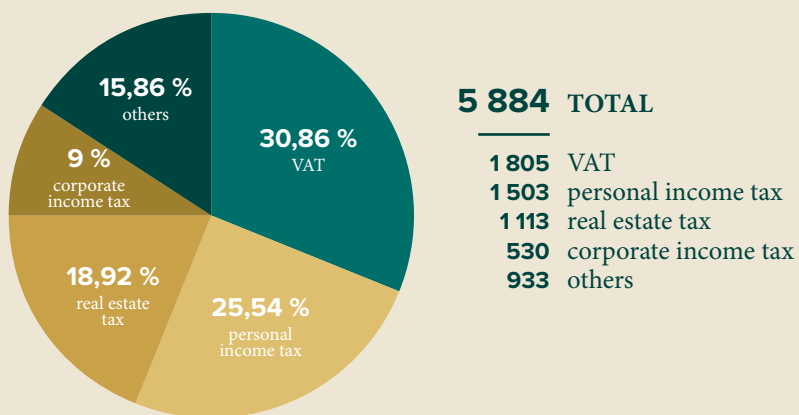


## NUMBER OF CASSATION APPEALS BROUGHT BEFORE COMMERCIAL CHAMBER IN 2018 BY COMPLAINANTS

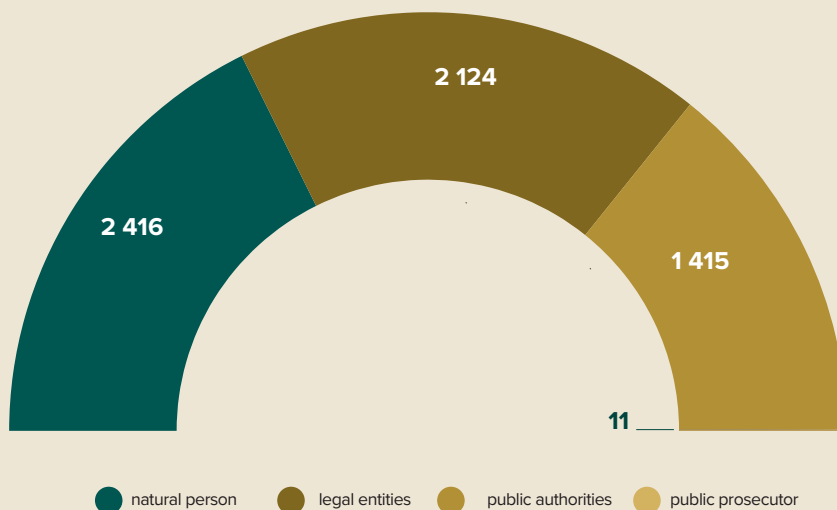


## FINANCIAL CHAMBER

### NUMBER OF CASSATION APPEALS SETTLED IN 2018 BY SUBJECT



### NUMBER OF CASSATION APPEALS SETTLED BY FINANCIAL CHAMBER IN 2018 BY COMPLAINANTS



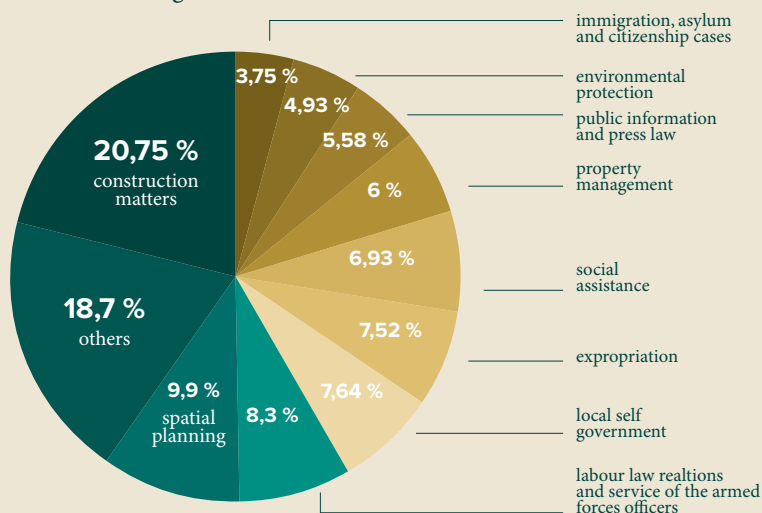


# GENERAL ADMINISTRATIVE CHAMBER

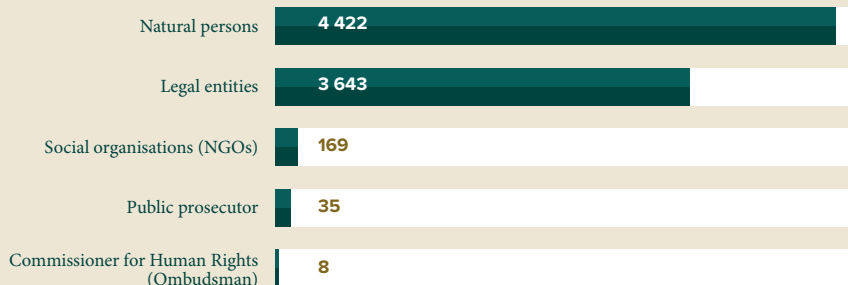
## NUMBER OF CASSATION APPEALS SETTLED IN 2018 BY SUBJECT

### 6 491 TOTAL

<b>1 347</b>	construction matters	<b>320</b>	environmental protection
<b>643</b>	spatial planning	<b>538</b>	labour law relations and service of the armed forces officers
<b>488</b>	expropriation	<b>496</b>	local self government
<b>450</b>	social assistance	<b>243</b>	immigration, asylum and other foreigners and citizenship cases
<b>362</b>	public information and press law	<b>1 214</b>	others
<b>390</b>	property management		

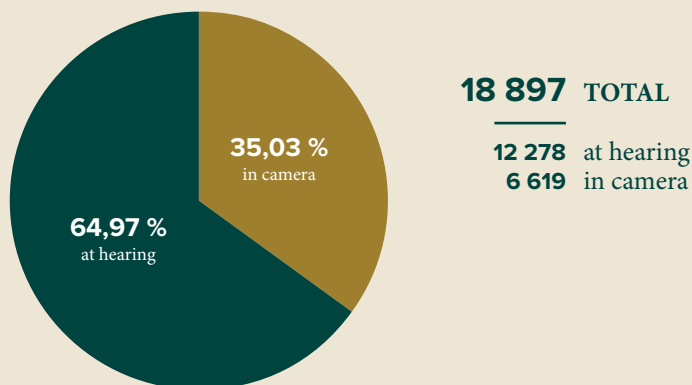


## NUMBER OF CASSATION APPEALS BROUGHT BEFORE GENERAL ADMINISTRATIVE CHAMBER IN 2018 BY COMPLAINANTS

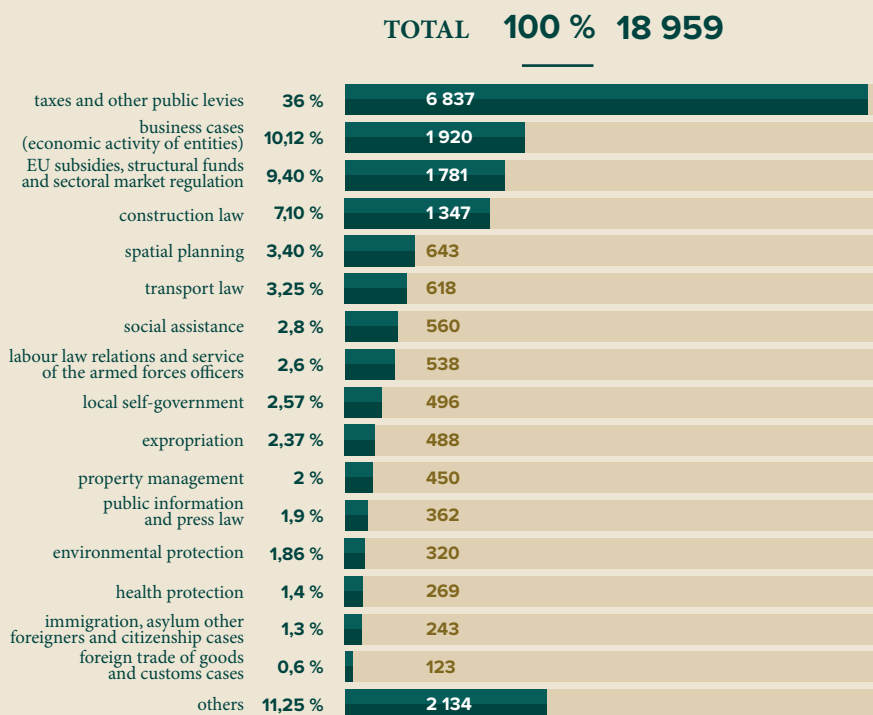


# ACTIVITIES OF THE SUPREME ADMINISTRATIVE COURT

## NUMBER OF CASSATION APPEALS HEARD BY SUPREME ADMINISTRATIVE COURT BY MODE OF PROCEDURE IN 2018



## NUMBER OF CASSATION APPEALS SETTLED BY SUPREME ADMINISTRATIVE COURT IN 2018 BY SUBJECT



## CASSATION APPEALS 2018 BY CHAMBERS OF THE SUPREME ADMINISTRATIVE COURT

CHAMBER OF THE SUPREME ADMINISTRATIVE COURT	<i>Number of cases left over from the previous period</i>	<i>cases registered</i>	<i>cases resolved</i>	<i>cases remained to decide for the next period</i>
TOTAL	26 378	20 230	18 959	27 649
GENERAL ADMINISTRATIVE CHAMBER	7 614	8 277	6 491	9 400
FINANCIAL CHAMBER	10 060	6 314	5 884	10 490
COMMERCIAL CHAMBER	8 750	5 638	6 584	7 759

## NUMBER OF REFERENCES FOR A PRELIMINARY RULING OF THE COURT OF JUSTICE OF THE EUROPEAN UNION REFERRED BY POLISH ADMINISTRATIVE COURTS PER YEAR

YEAR	SUPREME ADMINISTRATIVE COURT	VOIVODSHIP ADMINISTRATIVE COURTS	TOTAL
2005	–	1	1
2006	–	2	2
2007	1	3	4
2008	2	1	3
2009	4	1	5
2010	5	4	9
2011	3	–	3
2012	5	2	7
2013	7	1	8
2014	2	3	5
2015	5	–	5
2016	8	–	8
2017	5	2	7
2018	3	3	6
TOTAL 2005 -2018	50	23	73

## APPLICATION OF EUROPEAN UNION LAW AND THE EUROPEAN CONVENTION OF HUMAN RIGHTS BY POLISH ADMINISTRATIVE COURTS

In the jurisprudence of administrative courts, as in previous years, the EU law issues arose in cases regarding indirect tax matters (including tax on goods and services and excise duty), as well as income tax, real estate tax, customs law, road and air transport, environmental protection and property management, construction, sanitary, veterinary and pharmaceutical supervision, access to public information, social security, games and mutual wagering, agricultural law and financial aid from EU funds, as well as in cases of foreigners, technical inspection and standardisation and industrial property.

The European Union law is quoted by administrative courts in both judgements and orders, and in the resolutions adopted by the Supreme Administrative Court in an enlarged panel.

When considering EU Law cases (cases with an EU or Community element), administrative courts referred to both primary and secondary EU law. They quoted European standards and, above all, the obligation of a pro-community interpretation of national law (consistent interpre-

tation), as well as the priority of EU law and international agreements ratified with the consent expressed in an act. The courts also took advantage of the possibility of direct application of the regulations and directives.

Administrative courts also referred to the jurisprudence of the Court of Justice of European Union (hereinafter the CJEU). The purpose of this reference to the EU jurisprudence was to determine the relevance of a specific EU law applicable to the case, and to assess the applicability of EU law to the cases in question.

The case law of administrative courts also referred to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ECtHR) and to the jurisprudence of the European Court of Human Rights (hereinafter ECtHR). References were made in particular in cases relating to the guarantee of the right to resource to court (including effective means of challenge, ne bis in idem prohibition, legal aid), protection of property rights and in cases involving foreigners. Decisions of the ECHR were referred to in the justifications of administrative court decisions as subsidiary arguments – i.e. as additional justification for the constitutional standards applied.

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*Administrative courts referred to the case-law of the CJEU to determine the relevance of a given EU law applicable to the case, and to assess the applicability of the EU law to the cases in question.*

Administrative courts also referred to the Charter of Fundamental Rights of the European Union (hereinafter CFREU) 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 Constitution of the Republic of Poland or in the ECHR, but also within the EU legal system (which manifests the multi-centric structure of the current legal order). These references concerned in particular the right to recourse to court, the right to good administration, and the principle of proportionality.

## Requests for preliminary rulings to the CJEU and enforcement of preliminary rulings

### QUESTIONS REFERRED FOR A PRELIMINARY RULING

In 2018, Polish administrative courts submitted requests for preliminary rulings to the CJEU in 6 cases. Of this number, 3 orders to submit a request for preliminary ruling were issued by SAC adjudicating panels, 2 orders by the Wrocław VAC and 1 order by the Warsaw VAC.

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*In 2018, Polish administrative courts referred to the CJEU for a preliminary ruling in 6 cases.*

By the order of 18 April 2018 in case VI SA/Wa 2256/17 (CJEU case no. C-387/18 *Delfarma*), the Warsaw VAC referred to the CJEU for preliminary ruling the following question: *“Does EU law, including without limitation Article 34 and Article 36 of the Treaty on the Functioning of the European Union, preclude national legislation whereby the marketing authorisation in a Member State for a medicinal product imported in parallel cannot be granted quite simply because the medicinal product imported in parallel has been authorised in the Member State of export as a generic medicinal product, namely on the basis of an abridged dossier, whereas in the Member State of import this medicinal product has been authorised as a reference medicinal product, namely on the basis of a full dossier, and the authorisation is refused without examining whether both products are essentially therapeutically identical and without the national authority applying — despite this being possible — for documentation to the appropriate authority in the Member State of export?”*

By the order of 25 April 2018 in case I SA/Wr 257/18 (CJEU case no. C-491/18 *Mennica Wrocławska*), the Wrocław VAC referred to the CJEU for preliminary ruling the following question: *“Do the provisions of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, p.1), and in particular its Article 168, Article 178 subpoint (a), Article 226(6) and the VAT system principles, in*

*particular the tax neutrality and proportionality principles, do not oppose a national practice that refuses the right to deduct VAT from invoices on which the incorrect type of goods is indicated, even though during explanatory proceedings (prior to issuing a decision) the taxpayer presented all necessary explanations and source documents confirming the existence and specific characteristics of the goods being the object of the transaction, which have subsequently been accepted by the tax authority, and even if the existence of fiscal fraud is not stated?”*

By the order of 6 June 2018 in case I SA/Wr 286/18 (CJEU case no. C-547/18 *Dong Yang Electronics*), the Wrocław VAC referred to the CJEU for preliminary ruling the following questions: “1. *Can it be inferred, from the mere fact that a company established outside the European Union has a subsidiary in the territory of Poland, that a fixed establishment exists in Poland within the meaning of Article 44 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) and Article 11(1) of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (transformed version: OJ 2011 L 77, p. 1 et seq.)?* 2. *If the first question is answered in the negative, is a third party required to examine contractual relationships between a company established outside the European Union and its subsidiary in order to determine whether the former company has a fixed establishment in Poland?”*

By the order of 19 June 2018 in case I FSK 126/18 (CJEU case no. C-653/18 *Unitel*), the SAC referred to the CJEU for preliminary ruling the following questions: „1) *In the light of Article 146(1)(a) and (b) and Article 131 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) and of the principles of taxation of consumption, neutrality and proportionality, should the correct national practice be to apply an exemption with the right to deduct (which in Poland means application of a 0 % rate) in each*

*case where both of the following conditions are met: (a) the goods have been exported to an unidentified recipient outside the European Union; and (b) there is clear evidence that the goods have left the territory of the European Union, and this is not disputed? 2) Do the provisions of Article 146(1)(a) and (b) and Article 131 of Directive 2006/112/EC and the principles of taxation of consumption, neutrality and proportionality preclude a national practice whereby it is assumed that no supply of goods has taken place in the case where the goods have been indubitably exported outside the territory of the European Union, and following their exportation the tax authorities establish in the course of their investigation that the person actually acquiring the goods was not the entity to whom the taxable person issued the invoice documenting the supply, but was another entity unidentified by the authorities, as a result of which the authorities refuse to exempt such a transaction from tax with the right to deduct (which in Poland means application of a 0 % rate)? 3) In the light of Article 146(1)(a) and (b) and Article 131 of Directive 2006/112/EC and of the principles of taxation of consumption, neutrality and proportionality, should the correct national practice be to apply the domestic rate to the supply of goods where there is clear evidence that the goods have left the territory of the European Union, but the authorities, in the absence of an identified recipient, conclude that no supply of goods has taken place, or should it rather be assumed that no taxable transaction for VAT purposes has taken place at all in those circumstances and therefore that the taxable person is not entitled to deduct input VAT on the purchase of the exported goods under Article 168 of Directive 2006/112/EC?”*

By the order of 21 November 2018 in case II GOK 2/18 (CJEU case no. C-824/18 *Krajowa Rada Sądownictwa*), the SAC referred to the CJEU for preliminary ruling the following questions: “1) Whether Article 2 in connection with Article 4(3), third sentence, Article 6(1) and Article 19(1) of the TEU and in connection with Article 47 of the CFR, Article 9(1) of Council Directive 2000/78/EC, and Article 267(3) of the TFEU should be interpreted so that the rule of law principle and the right to effective legal



*remedy and effective court protection is violated when the national legislature, granting the right to appeal to court in individual cases that concern fulfilling the office of a judge of the last instance court of the Member State (Supreme Court), makes the validity and effectiveness of resolutions made in the qualification process that precedes submitting the petition to appoint a person to fulfil the office a judge of said court dependent on not appealing the resolution made in the matter of joint review and evaluation of all Supreme Court candidates by all parties to the qualification proceedings, which also include a candidate not interested in appealing against said resolution, that is a candidate who is the subject of a petition to fulfil the office, which in consequence: - annuls the effect of the means of appeal and the ability of the competent court to stage a genuine review of the course of said qualification proceedings? - and in the situation where the scope of these proceedings does also extend to those positions of Supreme Court judges to whom a new, lower retirement age has been applied, without leaving the decision to take advantage of this age solely in the hands of the interested judge and considering the principle of irremovability of judges – and if it is considered that the judge suffered an injury because of this – does this also not affect the scope and outcome of the judicial review of said qualification proceedings? 2) Whether Article 2 in connection with Article 4(3), third sentence, and Article 6(1) of the TEU in connection with Article 15(1) and Article 20 in connection with Article 21(1) and Article 52(1) of the CPR in connection with Article 2 subpoint (a) and Article 3(1) subpoint (a) of Council Directive 2000/78/EC and Article 267(3) of the TFEU should be interpreted so that a violation of the rule of law principle, equal treatment principle and equal and identical access to public service principle – namely fulfilling the office a Supreme Court judge – occurs in a situation when, while establishing in individual cases concerning the fulfilment of the office of a judge of said court the right to appeal to the competent court, appointment to a vacant Supreme Court judge position may, as a result of the validity formula described in the first question, take place without the competent court reviewing the course of said qualification proceedings – provided that such review is initiated – and the lack of such solution,*

*violating the right to effective legal means, violates the right of equal access to public service and does not meet the objectives of general interest, and whether the situation in which a Member State authority supposed to guard the autonomy of courts and independence of judges (the National Council of the Judiciary), before which proceedings are pending in a matter concerning fulfilling the office of a Supreme Court Judge, is established so that members of the judiciary sitting in the authority are elected by the legislative does not violate the system of checks and balances?”*

By the order of 6 December 2018 in case I FSK 2261/15, the SAC referred to the CJEU for preliminary ruling the following questions: „1) *Do the provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ EU 2006, L347, p. 1), in particular Article 90(2) of that directive, considering the principles of tax neutrality and proportionality, allow for restriction of the ability to lower the tax base to be introduced in national legislation in case of partial or complete default on payment due to a specific tax status of the debtor and creditor? 2) In particular, does European Union law prevent the establishment in national law of a regulation that allows taking advantage of a “bad debt relief” provided that, as of the date of performing the service/delivery of goods and as of the date preceding the filing of an amended tax return with the intention to take advantage of the relief: - the debtor is not undergoing insolvency proceedings or liquidation? - the creditor and the debtor are registered as active VAT taxpayers?”*

### **PRELIMINARY RULINGS IN RESPONSE TO QUESTIONS FROM POLISH ADMINISTRATIVE COURTS**

In a judgment of 28 February 2018, in case C-307/16 *Pieńkowski*, answering the request for preliminary ruling referred by the SAC (SAC order of 27 January 2016 in case I FSK 1398/14), the CJEU stated: “*Article 131, Article 146(1)(b) and Articles 147 and 273 of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national legislation under which,*

*in the context of a supply of goods for export to be carried in the personal luggage of travellers, the vendor, a taxable person, must have attained a minimum level of turnover in the preceding tax year, or have concluded an agreement with a person authorised to refund VAT to travellers, where the mere failure to meet those conditions results in the definitive loss for the vendor of the exemption in relation to that supply.”*

In a judgment of 13 June 2018 in case C-665/16 *Gmina Wrocław*, answering the request for preliminary ruling referred by the SAC (SAC order of 14 September 2016 in case I FSK 1857/13), the CJEU stated: „Article 2(1)(a) and Article 14(2)(a) of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a transfer of ownership of immovable property belonging to a taxable person for VAT purposes to the Public Treasury of a Member State, carried out in accordance with the law and in return for a payment of compensation, constitutes a transaction subject to VAT in a situation, such as that at issue in the main proceedings, where the same person simultaneously represents the expropriating authority and the municipality that is the subject of the expropriation and where the latter continues the practical management of the relevant property, even if the payment of compensation has been made only by means of an internal accounting transfer within the budget of the municipality.”

In a judgment of 28 February 2018, in case C-30/17 *Kompania Piwowarska*, answering the request for preliminary ruling referred by the SAC (SAC order of 19 October 2016 in case I GSK 588/15), the CJEU stated: „Article 3(1) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages must be interpreted as meaning that, in order to determine the basis of assessment for flavoured beers according to the Plato scale, the dry extract of the original wort must be taken into consideration but not the aromatic substances or sugar syrup added after the completion of fermentation.”

In a judgment of 28 February 2018, in case C-421/17 *Polfarmex*, answering the request for preliminary ruling referred by the SAC (SAC order of 22 March 2016 in case I FSK 1048/15), the CJEU stated: : „Article 2(1)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the transfer by a limited company to one of its shareholders of the ownership of immovable property, made, as is the one at issue in the main proceedings, as consideration for the buy-back, by that limited company, under a mechanism for the redemption of shares provided for in national legislation, of shares held in its share capital by that shareholder, constitutes a supply of goods for consideration subject to value added tax provided that that immovable property is used in the economic activity of that limited company.”.

In a judgment of 25 July 2018, in case C-140/17 *Gmina Ryjewo*, answering the request for preliminary ruling referred by the SAC (SAC order of 22 December 2016 in case I FSK 972/15), the CJEU stated: „Articles 167, 168 and 184 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and the principle of the neutrality of value added tax must be interpreted as not precluding a body governed by public law from being entitled to a right to adjustment of deductions of value added tax paid on immovable property acquired as capital goods in a situation, such as that at issue in the main proceedings, where, at the time of the acquisition of those goods, first, they could, by their very nature, be used both for taxable activities and for non-taxable activities but were initially used for non-taxable activities, and second, that public body had not expressly stated its intention to use those goods for a taxable activity but had also not excluded the possibility that they might be used for such a purpose, so long as it follows from an assessment of all the factual circumstances, which it is for the referring court to carry out, that the condition laid down by Article 168 of Directive 2006/112, according to which the taxable person must have acted as a taxable person at the time when it made that acquisition, is satisfied.”.

In a judgment of 13 December 2018, in case C-491/18 *Mennica Wroclawska*, answering the request for preliminary ruling referred by the SAC (SAC order of 25 April 2018 in case I SA/Wr 257/18), the CJEU stated: „Article 168 subpoint (a), Article 178 subpoint (a) and Article 226 of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, amended by Council Directive 2014/45/WE of 13 July 2010, should be interpreted as precluding national tax authorities from refusing to the taxpayer the right to deduct due or paid value added tax solely for the reason that the issued invoices contain an error concerning the designation of goods being the object of respective transactions, also when the taxpayer, prior to the issuing of the relevant decision by tax authorities presented documents and explanations and source documents necessary to determine the actual object of these transactions and confirming that they had indeed been made.”.

In a judgment of 19 December 2018, in case C-422/17 *Skarpa Travel*, answering the request for preliminary ruling referred by the SAC (SAC order of 16 February 2018 in case I FSK 831/15), the CJEU stated: „1) Articles 65 and 306 to 310 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, must be interpreted as meaning that, when a travel agent, subject to the special scheme laid down in Articles 306 to 310 of that directive, receives a payment on account for tourist services which it will provide to the traveller, the value added tax (VAT) is chargeable, in accordance with that Article 65, on receipt of that payment on account, provided that, at that time, the tourist services to be supplied are precisely designated. Article 308 of Directive 2006/112, as amended by Directive 2010/45, must be interpreted as meaning that the margin of the travel agent, and, consequently, its taxable amount, corresponds to the difference between the total amount, exclusive of value added tax (VAT), to be paid by the traveller and the actual input cost incurred by the travel agent in respect of supplies of goods and services provided by other taxable persons, in so far as those transactions are for the direct benefit of the traveller.

*When the amount of the payment on account corresponds to the total price of the tourist service or to a significant part of that price, and the travel agent has not yet incurred any actual cost, or has incurred only a limited part of the individual total cost of that service, or even when the individual actual cost of the trip incurred by the travel agent cannot be determined at the time when the payment on account is made, the profit margin can be determined on the basis of an estimate of the total actual cost which it will ultimately have to incur. For the purpose of such an estimate, the travel agent must take into account, where relevant, the costs which it has already actually incurred at the time of receipt of the payment on account. For the purpose of the calculation of the margin, the estimated total actual cost is deducted from the total price of the trip and the taxable amount for VAT to be paid at the time of receipt of the payment on account is obtained by multiplying the amount of that payment on account by the percentage corresponding to the part of the total cost of the trip that the estimated profit margin, thus determined, represents.”*

## **ENFORCEMENT OF CJEU RULINGS**

Following the issuance of preliminary rulings by the CJEU in 2018, the SAC resumed the suspended proceedings in cases in which it had previously referred for preliminary rulings, as well as in other cases where the suspension was justified by a previous motion for preliminary ruling to the CJEU. In addition, administrative courts referred to the justification of the CJEU in settling cases whose result was dependent on CJEU’s response and in cases analogous to those in which the question was submitted.

In a judgment of 10 May 2018, I FSK 1398/14, issued following the judgment in case C-307/16 *Pieńkowski*, the SAC reminded that the essence of the dispute focused on whether Polish regulations establishing criteria for making VAT tax refunds to travellers were compliant with European law, and in particular whether making such a refund might be made dependent on the condition of the taxpayer achieving a turnover of PLN

400,000 in the previous tax year or concluding an agreement with the authorized entity – Article 127(6) of the Goods and Services Tax Act of 11 March 2014. The CJEU emphasised that *“neither Article 146(1)(b) nor Article 147 of the VAT Directive provides for a condition that the taxable person must have attained a minimum level of turnover during the preceding tax year or, if that condition is not met, concluded an agreement with a person authorised to refund VAT in order for the export exemption provided for in Article 146(1)(b) to be applicable”*. The CJEU stated that the conditions provided for in Article 147 of Directive 2006/112 apply solely to purchasers of disputed goods and have no bearing on vendors of those goods (points 27-29 of the judgment). In addition, the Court considered that using such criteria is not necessary in order to attain the objective of preventing tax avoidance and evasion (points 32-39 of the judgment). In connection with the above, the regulation found in Article 127(6) of the Goods and Services Tax is not compliant with European Union law. In light of the principles of primacy and sincere cooperation expressed in Article 4(3) of the TEU, the authorities of a Member State are obliged to remove violations of European Union law, and a national court judge is obliged to refuse the application of national law regulations which are contrary to European Union law. Based on the above, the SAC stated that the arguments concerning compliance of VAT refund rules listed in Article 127(6) and 127(8) of the Goods and Services Tax Act with the principle of tax neutrality and proportionality and the provisions of Directive 2006/112, advanced by the first instance court, are contrary to the binding interpretation of European law resulting from the Court’s judgment.

In a judgment of 13 September 2018, I GSK 588/15, the SAC considered the CJEU judgment of 17 May 2018 in case C-30/17 *Kompania Piwowarska*. The legal dilemma in the case pending before the SAC was related to determining the basis for taxation of flavoured beers with excise tax using the Plato gravity scale. Citing the interpretation of Article 3(1) of Council Directive 92/83 made by the CJEU, the SAC stated that Article 68(3) and (4) of the 2004 Excise Tax Act and section 1 of the regulation of



the Minister of Finance of 31 March 2004 on the manner of determining the base of taxation of beer should be interpreted to mean that when determining the basis for taxation of flavoured beers according to the Plato gravity scale one should consider the dry wort extract but not the aromatic substances and sugar syrup which are added after fermentation. On this basis, the SAC dismissed the cassation appeal of a customs authority, in which the main allegation concerned violating Article 68(3) and (4) of the Excise Tax Act and section 1 of the regulation of the Minister of Finance of 31 March 2004 through their erroneous interpretation which assumed that the dry wort extract in the final product, i.e. aromatic (flavoured, sugared) beer should be calculated on the basis of the alcohol content and actual wort content less the wort content added during production in the form of flavour syrups, while the provisions on determining the basis for taxation of beer cited above do not allow deducting the amount of wort added, i.e. resulting from adding a flavour additive in the form of a syrup after fermentation, from actual wort while calculating the excise tax.

In a judgment of 26 September 2018, I FSK 1094/15, the SAC considered that the CJEU judgment of 13 June 2018 in case C-665/16 *Gmina Wrocław* does not directly resolve the legal issues being the object of a petition to grant an individual interpretation in the matter of exchanging land owned by the State Treasury and the municipality. In the opinion of the SAC, based on Article 2(1)(a) and Article 14(2)(a) of Council Directive 2006/112/EC which were the subject of the question referred for preliminary ruling, *“there exists a clear delineation between the delivery of goods consisting of transferring the right of ownership to a good in return for compensation, following an order issued by or on behalf of a public authority or by operation of law, and a delivery of goods consisting in an exchange of these goods. In the former situation, the community legislator focuses on the civil law aspect, specifically the ‘transfer of the right of ownership.’ In the latter, this aspect is ambivalent. It is only necessary to ‘transfer of right to dispose of tangible property as owner.’ The economic aspect, peculiar for the value added tax, is therefore essential. Accordingly, it is the economic ownership*



*of a specific good that must be transferred.*” The SAC noted that identical regulations exist in other domestic provisions which have been properly implemented in that respect. Pursuant to Article 7(1)(1) of the Goods and Services Tax Act *“the supply of goods is understood as a transfer of the right of ownership of goods following an order of a public authority or an entity acting on behalf of such authority or transfer of the right of ownership of goods by operation of law in return for payment of compensation”* and the Article 7(1) of the Goods and Services Act states that the supply of goods means “the transfer of the right to dispose of goods as owner”. As regards the exchange transaction involving real estate owned by the State Treasury and an urban municipality, the same entity, that is the city president (as the executive authority of a county-level municipality), appears on both sides of the transaction, but in different roles: in case of real estate owned by the Kraków municipality as the owner, and in case of real estate belonging to the State Treasury stock as the entity managing such real estate on behalf of the State Treasury and representing the owner. Accordingly, an exchange of real estate consisting in transferring them to, respectively, the stock of the State Treasury or the municipality consists in the transfer of economic ownership in the meaning of Article 7(1) of the Goods and Services Tax Act. Consequently, an exchange of such real estate constitutes supply for consideration in the meaning of Article 5(1)(1) of the Goods and Services Tax Act.

In a judgment of 17 October 2018, I FSK 972/15, the SAC considered as essential the position of the CJEU found in judgment of 25 July 2018 in case C-140/17 *Gmina Ryjewo*, which answered the question previously referred for preliminary ruling. The essence of the dispute was reduced to whether the complaining municipality acted as a VAT taxpayer when delivering the goods, considering that the disputed capital goods were initially allocated to a non-taxable activity, and subsequently to a taxable activity. As noted in the CJEU judgment, resolving this issue requires considering all the circumstances of the case, including the nature of the goods concerned and the period which elapsed between the acquisition of the

goods and their use for the purposes of the taxable person's economic activity (points 37 and 38 of the judgment and the decisions cited there). In the opinion of the SAC, both cited circumstances speak in favour of considering that the municipality acted as a taxpayer since the acquisition of the property. As noted by the CJEU, *"although a clear and express declaration of the intention to use the goods for economic purposes at the time of their acquisition may suffice for a finding that the goods were acquired by the taxable person acting as such, the absence of such a declaration does not exclude the possibility that such an intention may be conveyed implicitly"* (point 47 of the judgment). In addition, the SAC followed the CJEU guidelines and confirmed another circumstance in favour of recognizing that the complaining party acted as a VAT taxpayer when acquiring capital goods, i.e. *"the municipality, at the time of the acquisition of the immovable property acquired as capital goods at issue in the main proceedings, acted under the same conditions as a natural person wishing to commission the construction of a building, without relying, for that purpose, on the prerogatives of public authorities"* (point 41 of the judgment). *"Likewise, the fact that, well before the supply and acquisition of the immovable property at issue in the main proceedings, the municipality was already registered as a taxable person for the purposes of VAT is evidence to that effect"* (point 50 of the judgment). Consequently, considering the interpretation of Articles 167, 168 and 184 of Council Directive 2006/12/EC, the SAC stated that Article 86(1) in connection with Article 15(1) and (2), Article 91(1)-(6) and Article 91(7) of the Goods and Services Tax Act should be interpreted as follows: if, when purchasing capital goods in the form of immovable property which could by its very nature be used for purposes of both taxable and non-taxable activity, a public authority that already has taxpayer status did not expressly state its intention to allocate the property to taxable activities, but neither did exclude the possibility that they might be used for that purpose, or initially used such property for the purposes of non-taxable activities and subsequently changed its use, allocating part of it to taxable activities, will be entitled to adjust and deduct the tax charged under those regulations.

In consequence of the CJEU judgment of 9 November 2017 in case C-499/16 AZ, in which it was ruled as follows: *“Article 98 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that it does not preclude — provided that the principle of fiscal neutrality is complied with, which is for the referring court to ascertain — national legislation, such as that at issue in the main proceedings, which makes the application of the reduced VAT rate to fresh pastry goods and cakes depend solely on the criterion of their ‘best-before date’ or their ‘use-by date’.*”, the SAC in its judgment of 19 June 2018, I FSK 2078/14, taking into account CJEU’s position as regards interpreting Article 98 of Council Directive 2006/12/EC, considered as correct the first instance court position that approved the opinion of the authority which in an individual tax interpretation stated that Polish regulations concerning the issue of applying reduced tax rates for foodstuffs (fresh pastry goods and cakes) with different use-by-date are compliant with community regulations. There was another issue which required explanation according to the CJEU’s position: whether the national regulation violated the fiscal neutrality principle which prohibits unequal treatment of similar and competitive goods and services as far as the VAT tax is concerned. CJEU reminded that *“as regards the assessment of the similarity of the goods or services concerned (...) account must be taken primarily of the point of view of an average consumer. Goods or services are similar where they have similar characteristics and meet the same needs from the point of view of consumers, the test being whether their use is comparable, and where the differences between them do not have a significant influence on the decision of the average consumer to use one or other of those goods or services”* (point 31 of the judgment). In such circumstances, the Court emphasised, it is therefore a matter for the referring court to make a specific assessment whether the fact that the expiry date is fixed in such a way that the shelf life does not exceed 45 days (or 14 days in the case examined by SAC) is determinative from the point of view of the average Polish consumer when choosing pastry goods and cakes (points 32 and 33 of the judgment). In this respect, however, the SAC shared the position ex-

pressed in the SAC judgment of 25 January 2018, I FSK 1155/11, in which it was stated that, taking into account procedural autonomy of member states, it should be noted that CJEU's suggestion that the referring court should assess the preferences of consumers purchasing pastry goods does not mean that such assessment is to be made by the SAC or VAC, which as a rule does not conduct proceedings to take evidence. In the Polish fiscal procedure, proceedings to take evidence are conducted by tax authorities and thus conducting such proceedings is their duty. This is because the preferences of consumers purchasing pastry goods and cakes do not raise doubts concerning law, but require answering the question whether actual circumstances relevant for the proper application of law are met. As noted by the Court with respect to assessing the conditions of observing the principle of neutrality in the present case, due to the procedural limitations binding the SAC as a national court, it has no possibility of conducting the suggested assessment without violating the domestic legal order. In the conclusion, the SAC stated that the interpretation of community law made by the CJEU in the judgment answering the prejudicial question of the referring court is binding for the latter, and that CJEU recommendations addressed to that court as regards making appropriate determinations to correctly apply community law are binding insofar as they can be implemented by the referring court within the bounds of its jurisdiction set forth in the domestic constitutional order, taking into account procedural autonomy of member states.

In the order of 19 February 2018, II OSK 1346/16, issued in consequence of CJEU judgment of 13 December 2017 in case C-403/16 *El Hassani* initiated by a SAC request for preliminary ruling (SAC order of 28 June 2016, II OSK 1346/16), in which the CJEU ruled that: *“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, as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as*

*meaning that it requires Member States to provide for an appeal procedure against decisions refusing visas, the procedural rules for which are a matter for the legal order of each Member State in accordance with the principles of equivalence and effectiveness. Those proceedings must, at a certain stage of the proceedings, guarantee a judicial appeal”*, the SAC quashed the first instance court decision that rejected, due to lack of administrative court jurisdiction, a complaint against the consul’s decision refusing to issue a Schengen visa. In the opinion of the SAC, due to the CJEU’s judgment in the examined case, the application of Article 5(4) of the Law Proceedings Before Administrative Courts Act should have been excluded. The SAC reminded that European law forms part of domestic legal order, and if there is a conflict between European and domestic norms regulating the same subject, then due to the principles of direct effect, primacy and effectiveness Article 32(3) of the Visa Code has precedence before domestic norms pursuant to Article 91(3) of the Constitution. In the opinion of the SAC, no grounds therefore existed for the first instance court to reject the complaint filed against the consul’s refusal to issue a Schengen visa due to lack of administrative court jurisdiction.

## CONCLUSIONS

Administrative courts have referred to the European law and CJEU case law as well as to ECHR acquis, including ECtHR case law, and have assessed the legality of decisions and other administrative resolutions taking into account European regulations and Polish provisions implementing European legislation. European law in the wider sense was also used in the process of interpreting Polish law.

As to the previous years, administrative courts have had the opportunity to submit questions to the CJEU for preliminary rulings concerning interpretation of European law in 6 cases.

# NON-JUDICIAL ACTIVITIES OF THE ADMINISTRATIVE COURTS

## General remarks

Duties of the President of the SAC in the domain of hierarchical judicial and organizational activities of administrative courts are regulated in the Law on the System of Administrative Courts, secondary legislation, including the 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 a resolution entitled “Rules of the internal procedure and organisation of the Supreme Administrative Court”, adopted by the General Assembly of Judges of the SAC on 8 November 2010.

The President of the SAC exercises the hierarchical judicial supervision through the Judicial Decisions Bureau, while the tasks related to establishing the conditions for efficient functioning of administrative courts, in particular in matters of finance, human resources, administration and economy, are performed by the Chancellery of the President. Tasks concerning providing public information, information regarding

the competences of administrative courts and the status of cases are performed by the Court Information Division.

## Judicial Decisions Bureau

The Judicial Decisions Bureau performs tasks related to carrying out activities by the President of the SAC regarding the efficiency of court proceedings and jurisprudence of administrative courts. In the area of supervisory activities related to the consistency of jurisprudence of administrative courts, the Judicial Decisions Bureau analyses decisions of the voivodship administrative courts and the Supreme Administrative Court on a regular basis. In the event of discrepancies in case law, appropriate conclusions are presented to the President of the Supreme Administrative Court. The Bureau also examines the legitimacy of requests of various entities to the President of the Supreme Administrative Court to submit an application to the Constitutional Tribunal. The Judicial Decisions Bureau also prepares opinions on draft legal acts sent to the President of the Supreme Administrative Court. Within the Judicial Decisions Bureau, the Economic Analysis Team has been established in 2017, dealing with, among others, analytical studies concerning economic and financial issues of various legal institutions regulated in material and procedural law, which arise in the course of examining cases before administrative courts.

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*The Judicial Decisions Bureau analyses decisions of the voivodship administrative courts and the Supreme Administrative Court on a regular basis.*

## Chancellery of the President of the Supreme Administrative Court

The Chancellery of the President of the SAC provides conditions for the efficient operation of administrative judiciary, particularly in terms of financing, human resources, administration and economic matters. While performing the above mentioned general tasks, the Chancellery undertook in 2018 the appropriate actions for ensuring the proper functioning of administrative courts, in particular adequate office, technical

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*The Chancellery of the President of the Supreme Administrative Court provides conditions for the efficient operation of the administrative judiciary.*

and IT equipment. The Chancellery also carried out investment tasks related to ensuring the appropriate conditions of administrative court premises and tasks in the scope of implementation of the IT system for administrative court proceedings.

## Court Information Division

In 2018, activities of the Division have so far focused in particular on informing parties and interested persons on the competences of administrative courts and the status of cases dealt with by the Court, making the relevant case files available, providing public information about the activities of the Court, dealing with petitions, complaints and motions, providing media services to the SAC and its President, compiling court statistics, supervising the Central Database of Administrative Court Judgments and performing other activities related thereto, as well as managing the maintenance of the SAC website and its Public Information Bulletin.

The Division supervised the carrying out of similar tasks in voivodship administrative courts. The Division also performed the obligation resulting from the Stamp Duty Act (Journal of Laws 2018, item 1044) by notifying the relevant tax authority about instances in which the proof of paying stamp duty on documents confirming the granting of a power of attorney or commercial power of attorney as well as their copies and extracts was not submitted. Within the Division a data protection officer has been appointed due to the entry into force of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ EU L119, p. 1, so-called GDPR). In addition, the SAC CID took part in promotional activities of the Court, among others by co-organizing the “Long Night of Museums at

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*The Court Information Division informs parties about the competences of administrative courts and the status of cases dealt with by the Court, provides public information about the activities of the Court and media services to the Supreme Administrative Court and its President.*



the Supreme Administrative Court”, the “A Courtroom Lesson” action and a number of other meetings with school and university students (in 2018, 29 such meetings took place).

## International cooperation of the Supreme Administrative Court

### INTRODUCTION

The SAC maintains regular international contact with the highest administrative courts in Europe and over 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 current issues concerning the functioning of administrative judiciary and exchange programmes 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).

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*The Supreme Administrative Court maintains regular international contact with the highest administrative courts in Europe and in the world.*

As in 2017, the SAC also cooperated with the European Asylum Support Office (EASO) in a study visit programme for administrative court judges ruling in refugee matters.

The Court also maintained partnership contacts with the Academy of European Law (ERA) based in Trier (Germany) – a public foundation supported by the European Union, whose objective is to disseminate knowledge about European law by means of organizing training, conferences, study visits and language courses and through educational publications.

In 2018, the SAC maintained relations with the Federal Administrative Court of the Federal Republic of Germany, the Council of State of

France, the Supreme Administrative Court of the Czech Republic, the Supreme Administrative Court of the Republic of Lithuania and the Supreme Court of the Slovak Republic.

The SAC organized in **March 2018** an international scientific conference for SAC, Supreme Court and Constitutional Tribunal assistants entitled “Application of European law in Jurisprudence”, with the participation of foreign guests: President of the Court of Justice of the European Union Professor Koen Lenaerts, Advocate General at the Court of Justice Professor Maciej Szpunar and General Court judge Professor Nina Półtorak. At the conference, the President of the CJEU delivered the introductory lecture entitled “The Court of Justice and national courts: a dialogue based on mutual trust and judicial independence”.

In **October 2018**, a delegation of administrative judges (including Supreme Court judges) from Bulgaria came for a study visit to the Warsaw VAC and the SAC as part of the study visits programme for administrative court judges ruling in refugee matters, which was organized by the European Asylum Support Office (EASO).

A working visit was also paid to the SAC by a delegation of the Hungarian Ministry of Justice headed by the director of the Special Cases Analysis Division.

In **October 2018**, the SAC received a delegation of judges from the High People’s Court and Intermediate People’s Court in Shanghai, China, headed by the President of the First Intermediate People’s Court in Shanghai.

## **ACA-EUROPE**

In 2018, judges and court officials took part in seminars and working groups. The Vice-President of the SAC – The President of the General Administrative Chamber and the Head of the Domestic and Foreign Relations Team at the Chancellery of the President of the SAC attended

the annual General Meeting of ACA-Europe and a colloquium at the Chancellery of the President of the SAC entitled „An Exploration of Technology and the Law” organized in **May 2018** in The Hague in co-operation with the Council of State of the Kingdom of Netherlands.

In **October 2018**, the Head of the Domestic and Foreign Relations Team at the Chancellery of the President of the SAC, participated in the “Right to Fair Court Trial” seminar organized in Tallinn at the Chancellery of the President of the SAC in cooperation with the Estonian Supreme Court.

In turn, in **December 2018** the Vice-President of the SAC – the President of the General Administrative Chamber attended the “ReNEUAL I. Administrative law in the European Union. Single Case decision-making” seminar organized in Cologne in cooperation with the Federal Administrative Court of the Federal Republic of Germany and the Cologne Administrative Court.

As a member of ACA-Europe, the SAC publishes selected decisions involving European law in the JuriFast database and provides ongoing English-language updates on the Polish administrative courts system on the “Tour of Europe” tab at the association’s website. The SAC also participates actively in exchanging information on legal issues related to the jurisdiction of administrative courts at the ACA-Europe discussion forum.

The Vice-President of the SAC – The President of the General Administrative Chamber acts as the treasurer in the ACA-Europe Management Board and in this role participated in 2018 in ACA-Europe Management Board meetings (**in May and September 2018**). He also took part in a working group meeting in Brussels dealing with comparative, cross-sectional studies on the quality of judicial decisions made by supreme administrative courts (**December 2018**) for the purposes of compiling the European Commission’s Justice Scoreboard.

## IASAJ

The President of the SAC and the Head of the Domestic and Foreign Relations Team attended the meeting of the IASAJ Management Committee (Paris, **26 November 2018**).

## AEAJ

As part of cooperation with the AEAJ, a SAC judge – the Head of the European Law Division in the Judicial Decisions Bureau and two other SAC judges ruling in the Financial Chamber took part (as speakers) in the **October 2018** seminar on “Intra Community Supplies and Triangular Transactions” organised by AEAJ – Working Group Taxation in cooperation with the Supreme Administrative Court of Portugal. Polish judges presented papers on proof of transportation and the discretionary power of administrative judges.

## EJTN

In 2018, the SAC implemented the Agreement with the European Judicial Training Network signed in November 2016, under which judges of Polish administrative courts took part in training projects – seminars, internships and study visits – organised by the EJTN.

In **March 2018**, the Head of the Domestic and Foreign Relations Team at the Chancellery of the President of the SAC attended a meeting of contact persons of member and partner institutions of the EJTN in Zagreb.

In **May 2018**, as part of the administrative judges exchange programme organized by EJTN, a specialized SAC internship concerning asylum and refugee law was attended by Ciaran White, member of the International Protection Appeals Tribunal in Dublin, Republic of Ireland. The visit included meetings with the Vice-President of the SAC – President of the General Administrative Chamber, Deputy President

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*Within  
the EJTN  
Exchange  
Programme  
nine foreign  
administrative  
judges were  
staying in 2018  
in the Supreme  
Administrative  
Court.*

of the 1<sup>st</sup> Division of the General Administrative Chamber, head of the 1<sup>st</sup> Division of the SAC Judicial Decisions Bureau, Vice-President of the Warsaw VAC and President of the 4<sup>th</sup> Division of the Warsaw VAC and other VAC judges, participation in court hearings before the SAC and VAC, as well as visits at the European Border and Coast Guard Agency (FRONTEX), the Office of the Commissioner for Human Rights, the United Nations High Commissioner for Refugees Representation in Poland, the Office for Foreigners, the Refugee Council, and the Helsinki Human Rights Foundation.

In **June 2018**, in turn, a specialized SAC internship on asylum and refugee law at the SAC was attended by Hubert Delesalle, judge of the Administrative Court of Appeals in Nantes and the National Court for Asylum in Paris, France. The internship, besides meetings with the Vice-President of the 2<sup>nd</sup> Division of the General Administrative Chamber, Vice-Presidents of the VAC, and President of the 4<sup>th</sup> Division of the Warsaw VAC Chamber, involved participation in hearings before the SAC and Warsaw VAC, working meetings with SAC and VAC judges and visits at the European Border and Coast Guard Agency (FRONTEX), the Office of the Commissioner for Human Rights, the United Nations High Commissioner for Refugees Representation in Poland, the Office for Foreigners, the Refugee Council, the Office for Foreigners' Centre for women and children in Warszawa-Targówek, and the Helsinki Foundation for Human Rights.

In early **July 2018** a specialized refugee law internship was also attended by Dr. Eva Wendler from the Federal Administrative Court in Vienna, Graz outpost, Austria. The SAC internship involved meetings with the SAC Vice-President – President of the General Administrative Chamber, Deputy President of the Warsaw VAC, and President of the 4<sup>th</sup> Division of the VAC, participation in hearings before the VAC and a working meeting with a judge of the 7<sup>th</sup> Division of the VAC, as well as visits at the Office of Commissioner for Human Rights, the Helsin-

ki Foundation for Human Rights, the United Nations High Commissioner for Refugees Representation in Poland, the Office for Foreigners, the Refugee Council, the Office for Foreigners' Centre for women and children in Warszawa-Targówek, and the European Border and Coast Guard Agency (FRONTEX).

In the second half of **September 2018**, a general EJTN internship was attended in the SAC and in Kraków by Hristina Yurukova, a first instance administrative court judge in Pazardzhik, Bulgaria. The SAC internship schedule included meetings with the President of the 2<sup>nd</sup> Division of the Financial Chamber and judges adjudicating in the Chamber, Heads of 3<sup>rd</sup> and 4<sup>th</sup> Division of the SAC Judicial Decisions Bureau, Vice-Presidents of the Warsaw VAC, participation in court hearings before the SAC and VAC, and visits to the Supreme Court, Office for the Commissioner of Human Rights, and the Helsinki Foundation for Human Rights, as well as a meeting with a representative of the National School of the Judiciary and Public Prosecution. In turn, the Bulgarian judge's internship at the Kraków VAC included meetings with the President of the VAC, working meetings with VAC judges, participation in court hearings and visits to the Kraków Court of Appeals, Kraków Regional Court, Zakopane District Court and the seat of the National School of the Judiciary and Public Prosecution.

Also in the second half of **September 2018**, a specialized SAC internship on asylum and refugee law was attended by Eva Wiglinski, first instance court judge at the Minden Administrative Court in North Rhine-Westphalia, Germany. The visit included meetings with the Vice-President of the SAC – President of the General Administrative Chamber, Deputy Director of the 1<sup>st</sup> Division of the SAC Judicial Decisions Bureau, President of the Warsaw VAC and Deputy President of 4<sup>th</sup> Division of the Warsaw VAC, participation in court hearings before the SAC and VAC, and visits at the Office of the Commissioner for Human Rights, the United Nations High Commissioner for Refugees Rep-

resentation in Poland, the Office for Foreigners, the Refugee Council, the Office for Foreigners' Centre for women and children in Warszawa-Targówek, and the Helsinki Human Rights Foundation.

In **October 2018**, a SAC internship was attended by Jutta Schild, presiding judge of the Chamber in the Administrative Court in Darmstadt (first instance court) in Hessen (Germany). This specialized internship on refugee law included, besides meetings with the Vice-President of the SAC, the President of the General Administrative Chamber, the President and Vice-President of the Warsaw VAC, other Warsaw VAC judges, the SAC Disciplinary Commissioner, and the Head of the 1<sup>st</sup> Division of the SAC Judicial Decisions Bureau and participation in court hearings before the 4<sup>th</sup> Division of the Warsaw VAC, also visits at the Office of the Commissioner for Human Rights, the Helsinki Foundation for Human Rights, the United Nations High Commissioner for Refugees Representation in Poland, the Office for Foreigners, the Refugee Council, the Office for Foreigners' Centre for women and children in Warszawa-Targówek, and a meeting with a representative of the National School of the Judiciary and Public Prosecution.

In the second half of **October 2018**, a general internship in the SAC and in the Gdańsk VAC was attended by Luis Miguel Blanco Dominguez, judge of the High Court of Justice of Castile and León (court of appeals) in Spain. The SAC internship schedule in Warsaw included meetings with the Vice-President of the SAC – President of the Commercial Chamber, the Vice-President of the Warsaw VAC, Deputy Director of the SAC Judicial Decisions Bureau, participation in court hearings before the SAC and VAC, and visits to the Supreme Court, Office of the Commissioner for Human Rights, Public Prosecution Office, Public Procurment Office and National Appeals Chamber, Office for Protection of Competition and Consumers and the Supreme Audit Office. Further, the Spanish judge's internship at the Gdańsk VAC included meetings with the President of the VAC and President of the Court Information Division, working meet-

ings with VAC judges, participation in court hearings and visits at the Gdańsk Court of Appeals and the Gdańsk Regional Court. Judge Blanco also delivered a lecture on administrative courts in Spain for judges, court referendaries and assistants of judges of the Gdańsk VAC.

In **November 2018**, in turn, a general SAC internship was attended by Ilse Bouter, a first instance court administrative judge in Rotterdam, the Netherlands. As part of the internship, she met with the Deputy President of the SAC – President of the General Administrative Chamber and the Vice-President of the Warsaw VAC, participated in court hearings before the SAC and VAC, learnt about the tasks of the SAC Financial Chamber and SAC Judicial Decisions Bureau, and paid a visit to the Office of the Commissioner for Human Rights, the United Nations High Commissioner for Refugees Representation in Poland, the Office for Foreigners, the Refugee Council, and the Helsinki Human Rights Foundation.

In **December 2018**, SAC hosted the last EJTN judges exchange programme intern in the previous year, Luca Lamberti, a judge of the Council of State of the Republic of Italy. The schedule of this general internship included meetings with Presidents of the 1<sup>st</sup> and 2<sup>nd</sup> Division of the SAC Financial Chamber, Deputy President of the Court Information Division, Deputy Director of the SAC Judicial Decisions Bureau, President and Vice-President of the Warsaw VAC, as well as visits to the Office of the Commissioner for Human Rights, the Warsaw Regional Prosecutor Office and meetings with representatives of the National School of Judiciary and Public Prosecution.

Also as part of cooperation with the EJTN and the National School of Judiciary and Public Prosecution, in **June, September and October 2018** groups of judges and public prosecutors from Austria, Bulgaria, France, Germany, Hungary, the Netherlands, Italy, Lithuania, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden, staying in Poland as part of a programme of internship exchange for judges, visited the SAC.



## EASO

In **October 2018**, as part of the EASO programme of study visits for judges of administrative courts adjudicating in refugee matters, the SAC and Warsaw VAC hosted a group of Bulgarian judges from the Bulgarian Supreme Administrative Court and the Haskovo Administrative Court. The visit schedule included meetings with the SAC Vice-President – President of the General Administrative Chamber who is the National Contact Point for EASO contacts, President of the 4<sup>th</sup> Division of Warsaw VAC, a high-level official at EASO's Division of Courts and Tribunals, Department of Asylum Support, participation in court hearings before the SAC and Warsaw VAC, as well as visits at the European Border and Coast Guard Agency (FRONTEX), Office of the Commissioner for Human Rights, the Office for Foreigners, and a meeting with a representative of the Refugee Council.

Subjects discussed during the meetings included issues related to Polish asylum regulations, decisions of Polish administrative courts in matters of refugees and foreigners, jurisdiction and proceedings before the SAC and VAC, and the operation of EASO's network of cooperation with members of courts and tribunals. The guests also briefed representatives of Polish administrative courts on domestic legal solutions and Bulgarian judicial decisions concerning refugee law.

## ERA

As part of cooperation with the Academy of European Law (ERA), in **June 2018** the SAC organised jointly with the ERA the seminar “How to Handle Court Proceedings Invoking Non-Compliance with EU Environmental Assessment Law – Focus on EIA and SEA Directives”, supported as part of the “Cooperation with National Judges in the field of Environmental Law” programme of the European Union. The seminar was designed to provide the participants with an overview of both the EU legislation (EIA and SEA directives) and the most recent related CJEU

case law on European environmental assessment law. The Warsaw workshop was attended by, among others, speakers and judges from Austria, Bulgaria, Croatia, Greece, Germany, Hungary, Italy, Latvia, Poland, Portugal, Romania, Slovakia, Spain, Sweden and the United Kingdom.

In **October 2018**, in turn, a judge from the General Administrative Chamber of the SAC - Head of the 4<sup>th</sup> Division of the Judicial Decisions Bureau of the SAC represented the Polish administrative judiciary, taking part in the seminar “Data Protection in the Judiciary. New EU rules and best practice in the Member States”, organized jointly by ERA and the Supreme Court of Justice of the Republic of Austria.

### **THE SUPERIOR COURTS NETWORK (SCN)**

In **June 2018**, the Head of the Domestic and Foreign Relations Team at the Chancellery of the President of the SAC participated in the Contact Persons Forum of the Superior Courts Network organized in Strasbourg at the seat of the ECHR.

During SAC’s participation in the SCN, answers were provided to surveys sent by the ECtHR Research and Library Division, and studies and messages concerning ECtHR decisions and submitted through SCN distributed among judges.

### **ACTIVITY OF SAC JUDGES AND OTHER MEMBERS OF THE JUDICIARY IN OTHER JUDICIAL ASSOCIATIONS AND FORA**

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

In **January 2018**, the President of the General Administrative Chamber of the SAC, acting as the national contact point with the European Asylum Support Office, attended the Annual Coordination and Planning Meeting organized by the EASO in Valletta (Malta).

Also in **January 2018**, a judge from the Financial Chamber of the Supreme Administrative Court represented the Polish administrative judiciary on behalf of the President of the Supreme Administrative Court during the formal inauguration of another judicial year of the European Court of Human Rights in Strasbourg. The judge also took part in the seminar entitled “The authority of the judiciary”, which accompanied the inauguration.

In **February 2018**, judges from the Financial Chamber of the SAC participated as guest speakers in the „Abuse of rights in tax legal relations” 2<sup>nd</sup> International Conference organized in Kiev by the All-Ukrainian Association of Administrative Judges, Taras Shevchenko National University of Kyiv and Ukrainian Tax Advisers Association, presenting papers on the instruments available in Polish tax law to combat tax evasion.

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*The representatives of the Supreme Administrative Court took part in the important events organised by the European Courts, academia and judicial fora and associations.*

Also in **February 2018**, a Warsaw VAC judge delegated to the SAC participated in the works of the Access to Justice Task Force under the Åarhus convention on access to justice and access to environmental information, organized in Geneva by the United Nations Economic Commission for Europe.

In **May 2018**, a SAC judge and Vice-President of the Kraków VAC participated in a seminar on mediation in administrative courts, organized in Bucharest by the Association des Ombudsmans et Médiateurs de la Francophonie (AOMF).

In **June 2018**, the Vice-President of the SAC and President of the General Administrative Chamber participated in the 10<sup>th</sup> World Con-

gress of the International Association of Constitutional Law in Seoul. During a judges panel at the fourth plenary session of the Congress, the Vice-President of the SAC delivered a lecture entitled “The right to an effective judicial protection in immigration and asylum cases from a national judge’s perspective”.

In **September 2018**, in turn, the Vice-President of the SAC – President of the General Administrative Chamber participated in workshops and a conference entitled “The Right to Effective Judicial Protection under EU Asylum Law”, organized in Catania by the European Branch of the International Association of Refugee & Migration Judges (IARMJ) and Scuola Superiore Delia Magistratura (SSM) with the participation of the European Asylum Support Office (EASO) and the United Nations High Commissioner for Refugees (UNHCR).

Also in **September 2018**, a Warsaw VAC Judge delegated to the SAC and Head of the Economic Analyses Team of the SAC Judicial Decisions Bureau participated in an international scientific conference entitled “Currency, Taxes and Other Institutes of Financial Law in the Year of the 100th Anniversary of the Founding of Czechoslovakia,” held in Prague by the Chair of Financial Law and Financial Science at the Faculty of Law of the Charles University in Prague.

In **October 2018**, the Vice-President of the SAC – President of the General Administrative Chamber participated in a conference summarizing the international training project entitled “Roadmap to European Effective Justice (Re-Jus): Judicial Training Ensuring Effective Redress to Fundamental Rights Violations”, co-funded under the Justice Programme of the European Union (JUST/2015/JTRA/AG/EJTR/8703).

Also in **October 2018**, a specialist in the SAC Domestic and Foreign Relations Team participated in a conference on challenges facing

modern law libraries, organized by the Court of Justice of the European Union in Luxembourg.

In **November 2018**, a conference entitled “Training and Specialisation in Environmental Law” organised by the EU Forum of Judges for the Environment (EUFJE) was held in Sofia, in which the Polish administrative judiciary was represented by two SAC judges adjudicating in the General Administrative Chamber.

Also in **November 2018**, two SAC judges adjudicating in the Financial Chamber participated in a forum for first and second instance court judges of European Union member states organized by the Court of Justice of the European Union in Luxembourg.

In turn, the Vice-President of the SAC – President of the General Administrative Chamber participated, also in **November 2018**, in the “High Level Judicial Roundtable with CJEU, ECtHR and IARLJ-Europe” conference organized in Luxembourg by the European Asylum Support Office (EASO), where he delivered a lecture entitled “Push-backs at the land border.”

In **November 2018**, the chief specialist at the Domestic and Foreign Relations Team at the Chancellery of the President of the SAC attended a training workshop entitled “Qualification for purposes of international protection”, organized by EASO in Valletta (Malta).

In turn, a SAC Financial Chamber judge represented the Polish judiciary in **November 2018** at the “Effectiveness of justice systems” conference organized in Vienna by the Austrian Presidency of the Council of the European Union and by the European Commission – Directorate-General for Justice and Consumers.

## BILATERAL COOPERATION OF THE SAC

### *Federal Administrative Court of Germany*

*In 2018 the Supreme Administrative Court of Poland strengthened its partnership contacts with counterparts in France, Germany, Lithuania and Slovakia.*

The partnership with the Federal Administrative Court was initiated by a visit of the German delegation to the Supreme Administrative Court and a joint judicial Polish-German seminar in **November 2015**, with successive editions to be held every two years alternately in Poland and in Germany. One of the established forms of cooperation is also the exchange of judges. Cooperation with the FAC in 2018 had the form of an exchange of judges.

In **September 2018**, the SAC organized the internship of Dr. Stefan Langer, judge of the First Military Forces Senate of the Federal Administrative Court in Leipzig. The schedule included meetings with judges of the General Administrative Chamber and SAC Judicial Decisions Bureau and the President, Vice-President and judges of the Warsaw VAC, as well as visits at the Office of the Commissioner for Human Rights, the Penal Chamber of the Supreme Court, Department of National Defence of the Supreme Audit Office, Helsinki Human Rights Foundation, and a meeting with a representative of the National School of the Judiciary and Public Prosecution.

Also in **September 2018**, following an invitation of the President of the Federal Administrative Court Professor Klaus Rennert, a Warsaw VAC judge delegated for adjudicating in the SAC Financial Chamber undertook an internship at the FAC in Leipzig. The internship schedule involved meetings with the President of the FAC, President of the Seventh FAC Senate, judges of the Second, Seventh and Eighth FAC Senate, a visit in the first instance administrative court in Leipzig, participation in a court hearing before the Fifth FAC Senate, and a meeting with court mediators.

### *Council of State of France*

As a continuation of Polish-French contacts initiated a few years ago, in 2018 SAC judges – the President of the Wrocław VAC, Vice-President of the Kraków VAC and Head of the Domestic and Foreign Relations Team at the Chancellery of the President of the SAC undertook an internship at the Council of State of France in Paris.

A SAC judge – President of the Wrocław VAC undertook in **March 2018** an internship, whose schedule included meetings with the chairmen and state councillors of the Second and Ninth Chamber of the Disputes Division, meetings with the chairmen and member of the Administrative Chamber and Financial Chamber of the Public Works Division, participation in public hearings of the Disputes Division and deliberations of both Chambers of the Division, participation in a hearing of the Financial Division and the Council General Meeting, and a visit to the Council's Reporting and Study Division.

In turn, a SAC judge – Vice-President of the Kraków VAC and the Head of the Domestic and Foreign Relations Team at the Chancellery of the President of the SAC undertook in **October 2018** an internship that included meetings with Council of State members from the First, Second and Fourth Chamber of the Disputes Division, participation in public hearings of the Disputes Division and deliberations of the Ninth and Tenth Chambers of that section, a meeting with the Head of Cabinet supervising the secretariat of the International Association of Supreme Administrative Jurisdictions (IASAJ), meetings at the Centre for Research and Dissemination of Judicial Decisions, the Information and Communication Directorate, and the Council's Reporting and Study Division.

### *Supreme Administrative Court of the Czech Republic*

As a continuation of relations initiated in 2012, in **May 2018** Hradec Králové hosted the seventh meeting of the Polish-Czech working group of administrative court judges led by the President of the Czech SAC Josef Baxa and Vice-Presidents of the SAC – the Director of the Judicial Decisions Bureau and the President of the Commercial Chamber. On the Polish side, the meeting was attended by both SAC and VAC judges.

The topics discussed included changes of procedural provisions related to public administration in the Czech Republic, issues concerning relationships between the Czech Supreme Administrative Court and Constitutional Court and efforts to establish a Supreme Council of the Judiciary in the Czech Republic, Czech regulations and judicial decisions pertaining to the protection of personal data, protection of classified information and to higher education, changes in the Polish judiciary system, ongoing changes of administrative and administrative court procedures, and the issues concerning abuse of tax law and tightening of the tax system in Poland and the European Union.

### *Supreme Administrative Court of Lithuania*

As part of contacts with the Supreme Administrative Court of the Republic of Lithuania, following an invitation of the President of the SAC, in **June 2018** a visit was paid to the SAC by a delegation of the Lithuanian SAC led by its President Gintaras Kryževičius. The schedule of meetings included, besides meetings at the SAC, visits to the Warsaw and Kielce Voivodship Administrative Courts.

Discussions concerned the competences and manner of operation of administrative courts in Poland and Lithuania, the efficiency of proceedings before administrative courts, recent reforms of procedural institutions in administrative and administrative court proceedings, as well as the organization and practical aspects of an administrative



judge's work. The Lithuanian guests were also briefed on the history and specific nature of administrative court proceedings in Poland.

The meetings were also attended by the President of the Vilnius Regional Administrative Court and the President of the Voivodship Administrative Court in Białystok. The purpose of the visit of the Lithuanian delegation was to continue closer cooperation at the level of both Lithuanian and Polish supreme administrative courts and first instance courts.

### ***Supreme Court of Slovak Republic***

In **May 2018** a visit was paid to the SAC by a delegation of the Supreme Court of the Slovak Republic, led by its President Ms. Daniela Švecová. The visit's schedule included a seminar on the constitutional position, competences, organizational structure and functioning of the administrative judiciary in Poland and Slovakia, with the participation of the President of the SAC, SAC judges, members of the Judicial Decisions Bureau and legal specialists from the Judicial Decisions Bureau, the Court Information Division and the Chancellery of the President of the SAC.

The seminar's agenda included the following issues: systemic changes in the administration of justice in Poland, with a particular focus on the administrative judiciary, the issue of pro-constitutional interpretation of law in case law of administrative courts and reforms of administrative and administrative court proceedings; the constitutional position, structure, organization and competences of the Slovak Supreme Court, in particular its Administrative Chamber, legal issues arising from current case law, as well as legal instruments safeguarding the unity of administrative court jurisprudence used in both national jurisdictions.

## VISITS OF FOREIGN DELEGATIONS TO THE SAC

*High court judges, students, academics and representatives of ministries representing various European and Asian countries paid in 2018 visits to the Supreme Administrative Court.*

Besides the visits of Slovak and Lithuanian delegations that took place as part of SAC bilateral contacts and group visits following collaboration with ETJN and EASO, the SAC also hosted delegations from China, France, Vietnam and Hungary.

In **March 2018**, the SAC received a group of students from the François Rabelais University in Tours led by Professor Patrick Baleynaud, the Republic of Poland Honorary Consul in Tours and Joint Director of the School of French Law at the University of Łódź. The delegation stayed in Poland as part of collaboration with Polish universities – the Faculty of Law and Administration of the University of Łódź and the Centre for Studies in Local Government and Development of the University of Warsaw. Discussions at the meeting involved the practical aspects of judiciary work and SAC activities and an outline of the constitutional and statutory provisions related to administrative courts in Poland.

In **April 2018**, in turn, the SAC was visited by a group of students from the Faculty of Law of the Beijing China University of Political Science and Law together with academic supervisors and University of Warsaw students. At the meeting, the guests were shortly briefed on constitutional and statutory provisions related to administrative courts in Poland and learned about the practical aspects of judicial work and SAC activities.

In **May 2018**, the SAC received a delegation of the Hungarian Ministry of Justice officials led by Dr. Barnabás Hajas, director of the Special Cases Analysis Department. The main topic of the talks, in view of the administrative courts reform currently underway in Hungary, was the position of administrative courts in the system, their structure and manner of operation, with particular emphasis on the supervision exercised by the President of the SAC over administrative courts. Other

discussed issues included the manner of appointing candidates to administrative court judge positions, the method of choosing presidents and vice-presidents of administrative courts, and the training available to administrative judges. The material jurisdiction of administrative courts, the division of cases between administrative and common courts, and cases reserved to the SAC were also debated.

In **August 2018**, the SAC received representatives of the Vietnamese Academy of Sciences: Prof. Nguyen Duc Minh, Director of the State and Law Institute at the Vietnamese Social Sciences University, and Nguyen Tien Duc, LL.M., together with their hosts from the Institute of Legal Sciences of the Polish Academy of Sciences, for the purpose of presenting some general aspects of the operation of administrative courts in Poland.

In **October 2018**, the SAC received a delegation of judges from the High People's Court in Shanghai and Intermediate People's Court in Shanghai led by judge Huang Xiangqing, the President of the First Intermediate People's Court in Shanghai. During the visit, practical aspects of a judge's work and SAC activities were presented, including the Court's involvement in educational activities. In addition, the outlines of the constitutional and statutory regulations concerning administrative courts in Poland and the manner of operation of judiciary police officials were presented.

## **International cooperation of the Voivodship Administrative Courts**

In 2018, the voivodship administrative courts also maintained international contacts with administrative courts in Europe and welcomed delegations of judges from other Member States. Warsaw and Białystok judges participated in **2018** in judge internships organized by EJTN in, respectively, Spain and Italy.

*In 2018, the voivodship administrative courts maintained international contacts with administrative courts in Europe and welcomed judges from other EU Member States.*

In **March 2018**, a delegation of judges of the Gliwice Voivodship Administrative Court, led by the Court's President who is also a SAC judge, made a study visit to the Federal Financial Court and Federal Administrative Court in Vienna. The visit took place as part of partner contacts between Gliwice VAC judges and the umbrella Association of Austrian Administrative Judges (Verwaltungsrichter-Vereinigung, VRV). The Polish delegation was received by the President of the Federal Financial Court Dr. Daniela Moser and the Vice-President of the Federal Administrative Court Dr. Michael Sachs. During the meetings, both the organisation and functioning of Austrian courts as well as legal provisions regarding administrative court proceedings were presented. The similarities and differences in provisions regulating the nature of and proceedings before administrative courts in Austria and Poland were also discussed.

Also in **March 2018**, a Kraków VAC judge participated in an "Asylum law in the EU" seminar organized by the European Judicial Training Network (EJTN) in Helsinki.

In another instance in **March 2018**, a Kraków VAC judge made a study visit to the European Court of Human Rights in Strasbourg.

In **April 2018**, the Wrocław VAC, together with the Faculty of Law, Administration and Economy of the Wrocław University, organized a court competition for students of Central and Eastern Europe law faculties, entitled "Central and Eastern European Moot Court Competition", with the participation of CJEU Advocates General Eleanor Sharpston and Michal Bobek and CJEU judges Alexander Kornezov (Bulgaria), Jan Passer (Czech Republic) and Krystyna Kowalik-Bańczyk (Poland).

Also in **April 2018**, the Kraków VAC was visited by a group of German law students from the Bavarian town of Würzburg, who were briefed on

the foundations of administrative court activities in Poland and participated in court hearings before the 1<sup>st</sup> Division of the Kraków court.

In turn, the Warsaw VAC, also in **April 2018**, was visited by a group of students and lecturers from Kazakhstan, Russia and Georgia undertaking an internship at the Faculty of Law and Administration of the University of Warsaw. The visit's schedule included a lecture on administrative courts in Poland and participation in court hearings before the Warsaw court.

In **May 2018**, the Wrocław VAC organized a Polish-German-French training conference with the participation of judges from the Wrocław VAC, Higher Administrative Court of Saxony, Financial Court of Berlin-Brandenburg and the Montreuil Administrative Tribunal. Foreign guests who acted as lecturers included judges Erich Künzler, President of the Higher Administrative Court of Saxony, and Dr. Thomas Pastor ("Ban on diesel vehicle traffic and protection of environment by administrative courts – is it an alienation of law?"), Prof. Dr. Thomas Stapperfend, President of the Financial Court of Berlin-Brandenburg ("Deduction of turnover tax included in supplier accounts"), and Guillaume Thobaty ("Rules of refunding VAT (to taxpayers without a seat in the refunding member state) and the margin of discretion of member states and domestic judges"). Polish judges delivered lectures on environmental conditions of the investment process and the current legal status of renewable energy generation in Poland.

In turn, the management of the VAC in Warsaw received in **May, June, July, September, October, November and December 2018** visits of judges from Austria, Bulgaria, France, Germany, Ireland, Italy, the Netherlands and Spain who stayed in Warsaw within EJTN exchange programme as regards general internships and special asylum and refugee law internships.

In **May 2018**, the President and Vice-President of the Kraków VAC paid a return visit to the Budapest Capital Regional Court. The Polish delegation presented topics related to the organization and operations of administrative courts in Poland and was briefed on the organization of administrative courts in Hungary and a design to transform these courts into separate and special institutions.

In **July 2018**, the Kraków VAC hosted a group of German law students from Lübeck and a group of law students and district court employees from Offenburg (Baden-Württemberg). The visit's schedule included a presentation on the basics of administrative courts in Poland and participation in court hearings before the Kraków VAC.

In **September 2018**, the Kraków VAC organized a one-week internship for Hristina Yurukova, judge of the Pazardzhik Administrative Court in Bulgaria, as part of the EJTN adjudicating exchange programme.

In **September 2018**, the Białystok VAC was visited by judges of Lithuanian administrative courts: the Lithuanian SAC judge Veslava Ruskan and a delegation of the Vilnius Regional Administrative Court headed by the Court's President Jolanta Malijauskienė. The visit's schedule included meetings with VAC judges, court referendaries and assistants, participation in a court hearing and visits to the Białystok District Court and the Białystok University, including its Faculty of Law. During the visit, a collaboration agreement was concluded between the Białystok VAC and the Vilnius Regional Administrative Court to exchange experiences and promote knowledge about the activities of both institutions.

In **October 2018**, the Kielce VAC delegation led by the President of the Court delegated as a SAC judge came to Vilnius following the invitation of the Vilnius Regional Administrative Court's President Jolanta Malijauskienė to meet representatives of the Lithuanian administrative judiciary.

Also in **October 2018**, a Kraków VAC judge participated in a VAT tax workshop entitled “Recent CJEU VAT case law” organized in Bari, Italy, by the European Commission (Directorate General for Taxation and Customs Union).

In **October 2018**, the Gdańsk VAC organized a one-week internship for Luis Miguel Blanco Dominguez, judge of the High Court of Justice of Castile and León (court of appeals) in Spain as part of the EJTN judge exchanges programme.

In **October 2018**, the Warsaw VAC hosted a delegation of Bulgarian administrative judges who visited Poland within the European Asylum Support Office (ESCO) programme of study visits for judges of administrative courts adjudicating in refugee matters.

Also in **October 2018**, the Warsaw VAC organized an international conference of administrative court judges entitled “Internal organization of first instance administrative courts in Poland, Germany and Austria”, with the participation of judges from the Higher Administrative Court of Berlin-Brandenburg and the Federal Administrative Court in Vienna.

At the “Independence of the judiciary – Germany and Poland compared” conference, organized in **October 2018** in Cottbus by the Centre of Law and Administrative Sciences at the Brandenburg University of Technology and the Polish-German Research Centre of Public Law and Environmental Protection of the BUT in Cottbus and the University of Wrocław, a judge of the 7<sup>th</sup> Division of the Warsaw VAC delivered a lecture entitled “Changes in the Polish judicial system in 2015-2018”.

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