STUDIA PRAWNICZE KUL
4 (104) 2025

Admissibility of lodging a complaint with an administrative court against a decision taken by a first instance authority

Dopuszczalność wniesienia skargi do sądu administracyjnego na decyzję wydaną przez organ w pierwszej instancji

Допустимость подачи жалобы в административный суд на решение, вынесенное органом первой инстанции

Допустимість подання скарги до адміністративного суду на рішення, винесене органом першої інстанції

PRZEMYSŁAW ZDYB
Dr., University of Szczecin
e-mail: przemyslaw.zdyb@usz.edu.pl, https://orcid.org/0000-0002-2068-4556

Abstract: This article presents issues related to the necessity of prior exhaustion of appeal measures, if they served the complainant in the proceedings before the authority competent in the case in order to effective filing of a complaint before an administrative court. The study focuses on providing an answer to the following question: whether and in what situations it is permissible to lodging a complaint to the administrative court against a decision issued by the first instance authority. Focus is also given to the issue of the legal consequences of the decision-issuing authority's and the appeal body's misclassification of the document filed as an appeal or complaint, as well as rulings of the administrative court that should be issued depending on the given case. The methods employed in this study involve an analysis of the law in force and a case study. After conducting research, it was found that provisions allowing for the possibility of challenging the decision of the first instance authority before an administrative court without the need to exhaust appeal measures available to the party are admissible, but constitute an exception to the constitutional principle of two-instance proceedings and should therefore be interpreted strictly.
Keywords: Code of Administrative Procedure, judicial review of administration, complaint with the administrative court, administrative procedure, final decision

Streszczenie: Niniejszy artykuł przedstawia zagadnienia dotyczące konieczności uprzedniego wyczerpania środków zaskarżenia, jeżeli służyły one skarżącemu w postępowaniu przed organem właściwym w sprawie w celu skutecznego wniesienia skargi do sądu administracyjnego. Opracowanie koncentruje się na udzieleniu odpowiedzi na następujące pytanie: czy i w jakich sytuacjach dopuszczalne jest wniesienie skargi do sądu administracyjnego na decyzję wydaną przez organ pierwszej instancji. Zwrócono również uwagę na kwestię konsekwencji prawnych błędnego zakwalifikowania pisma przez organ wydający decyzję oraz organ odwoławczy jako odwołanie lub skargę, a także rozstrzygnięcia sądu administracyjnego, jakie powinny zapaść w zależności od danego przypadku. W artykule posłużono się metodą dogmatyczno-prawną oraz studium przypadku. Po przeprowadzonej analizie stwierdzono, że przepisy zezwalające na możliwość zaskarżenia do sądu administracyjnego decyzji organu pierwszej instancji – bez konieczności wyczerpania przysługujących stronie środków zaskarżenia – są dopuszczalne, lecz stanowią wyjątek od konstytucyjnej zasady dwuinstancyjności, a zatem należy je interpretować w sposób ścisły.
Słowa kluczowe: Kodeks postępowania administracyjnego, postępowanie sądowoadministracyjne, skarga do sądu administracyjnego, postępowania administracyjne, decyzja ostateczna

ISSN: 1897-7146; eISSN: 2719-4264;
https://doi.org/10.31743/sp18519

Резюме: В данной статье рассматриваются вопросы, касающиеся необходимости предварительного исчерпания средств обжалования, если они были использованы истцом в ходе разбирательства в компетентном органе для эффективной подачи жалобы в административный суд. В работе сосредоточено внимание на ответе на следующий вопрос: допустимо ли и в каких ситуациях допустимо подавать жалобу в административный суд на решение, вынесенное органом первой инстанции. Также обращено внимание на вопрос о правовых последствиях ошибочной квалификации письма органом, выносящим решение, и апелляционным органом как апелляции или жалобы, а также на решения административного суда, которые должны быть приняты в зависимости от конкретного случая. В статье использованы догматико-правовой метод и метод *case-study*. После проведенного анализа было установлено, что положения, допускающие возможность обжалования в административный суд решения органа первой инстанции – без необходимости исчерпания имеющихся у стороны средств обжалования – приемлемы, но представляют собой исключение из конституционного принципа двух инстанций, и, следовательно, должны толковаться строго.
Ключевые слова: Административный процессуальный кодекс, административное судопроизводство, жалоба в административный суд, административные процедуры, окончательное решение

Анотація: У цій статті розглядаються питання щодо необхідності попереднього вичерпання засобів оскарження, якщо вони були використані позивачем у провадженні перед органом, компетентним у справі, з метою ефективного подання скарги до адміністративного суду. Дослідження зосереджується на відповіді на таке питання: чи і в яких ситуаціях допустимо подавати скаргу до адміністративного суду на рішення, винесене органом першої інстанції. Також було звернено увагу на питання правових наслідків неправильної кваліфікації заяви органом, що видав рішення, та апеляційним органом як апеляції або скарги, а також на рішення адміністративного суду, яке повинно бути ухвалене залежно від конкретного випадку. У статті використано догматично-правовий метод та аналіз конкретного випадку. Після проведеного аналізу було встановлено, що положення, які дозволяють оскаржувати в адміністративному суді рішення органу першої інстанції – без необхідності вичерпання засобів оскарження, що належать стороні – є допустимими, але становлять виняток із конституційного принципу двоінстанційності, а отже, їх слід тлумачити у вузькому розумінні.
Ключові слова: Кодекс адміністративного судочинства, адміністративне судочинство, скарга до адміністративного суду, адміністративні провадження, остаточне рішення

Introduction

In the Republic of Poland, which is a democratic state ruled by law (Article 2 of the Constitution of the Republic of Poland[1]), administrative courts are the guardians of ensuring the individual's ability to protect his rights and freedoms against unlawful actions of public administration. This is due to Article 45 (1) of the Constitution of the Republic of Poland, which guarantees everyone the right to a fair and public hearing of a case by a competent, independent and impartial court and Article 184 of the Constitution of the Republic of Poland, pursuant to which the Supreme Administrative Court and other administrative courts exercise, to the extent specified

[1] Constitution of the Republic of Poland of 2 April 1997, Journal of Laws [Dziennik Ustaw] 1997 no. 78 item 483 as amended (hereinafter: Constitution).

by law, review of the activities of public administration. This review also includes adjudication on compliance of resolutions of local government bodies and normative acts of local government administration bodies with statutes.[2]

As the Supreme Administrative Court rightly pointed out in its judgement of 6 August 2013, II FSK 2530/11.[3] the essence of judicial review of administration is to protect the freedoms and rights of individuals (entities bound by law) in relations with public administration and to build and consolidate the rule of law and standards derived from it. The basic function of the administrative judiciary is therefore to protect the subjective rights of the individual, and its adoption stems from the assumptions of the system of public administration review related to the implementation of the rule of law (Article 7 of the Constitution of the Republic of Poland).

1. Exhaustion of appeal as a requirement for effective bringing of a complaint with an administrative court

Pursuant to Article 1 (1) of the Act on the system pf administrative courts, administrative courts exercise the administration of justice by reviewing the activities of public administration, and this review, pursuant to Article 1 (2) of said act, is exercised in terms of legality. Review of public administration activities by administrative courts includes, among others, adjudication on complaints against administrative decisions. Therefore, only a claim that the contested decision was issued in breach of substantive law which affected the outcome of the case, in breach of the law giving rise to the resumption of administrative proceedings, or in other breach of the rules of procedure, if it could have had a material impact on the outcome of the case, may result in the administrative court repealing the contested act.

A substantive examination of the legality of administrative acts is possible only if a complaint against those acts is admissible, i.e. if the subject matter of the case falls within the substantive jurisdiction of a given court, the complaint is brought by an entitled entity (that is one that has the right to complain) and if the complaint meets the formal requirements and is filed in due time.

---

2 Pursuant to Article 2 of the Act of 25 July 2002 on the System of Administrative Courts (Journal of Laws 2024 item 1267), administrative courts mean the Supreme Administrative Court and voivodship administrative courts.

3 The decision is available in the Central Database of Administrative Court Decisions, hereinafter referred to as "CBOSA database" at https://orzeczenia.nsa.gov.pl/cbo/query.

One of the requirements for an effective bringing of a complaint with an administrative court is, pursuant to Article 52 (1) of the Act of 30 August 2002 Law on proceedings before administrative courts,[4] prior exhaustion of appeal measures if they have served the complainant in proceedings before the authority competent in the case, unless the complaint is filed by the prosecutor, the Commissioner for Human Rights or the Ombudsman for Children. This is a formal condition for effective filing of a complaint, since admissibility of judicial review of administration depends on the prior exhaustion of appeal measures if they have served the complainant in proceedings before the authority competent in the case.[5]

Legal commentary argues that[6] appeals are procedural institutions through which qualified entities can request that administrative decisions be verified for their cassation or reformation.

Pursuant to Article 52 (2) PBAC, exhaustion of appeal measures should be understood as a situation in which a party is not entitled to any appeal, such as a complaint, appeal or reminder, provided for by law. This enumeration is illustrative, thus if a special provision provides for a different appeal measure than those listed *expressis verbis* in PBAC, it should also be used before the complaint is filed. Stating that this premise has been met may only happen after the appeal measure has been examined by the competent public administration body. This means that filing a complaint with an administrative court should be preceded not only by filing an appropriate appeal against the decision of the first instance authority, but also by closing the administrative proceedings before the second instance authority by issuing a decision that could be the subject of a complaint with the court within the meaning of Article 3 PBAC.[7] This is a direct reference to the principle of a two-instance procedure referred to in Article 78 of the Constitution of the Republic of Poland[8] and Article 15 of the Code of Civil Procedure.[9] This principle is not absolute, but exceptions to it must be provided for by law.

---

4 Consolidated text: Journal of Laws 2024 item 935 as amended (hereinafter: PBAC).

5 Judgement of the Supreme Administrative Court of 13 October 2020, II OSK 71/20 [CBOSA database].

6 B. Adamiak, J. Borkowski, *Kodeks postępowania administracyjnego. Komentarz, rozdział 10. Odwołania*, 19th ed., Warszawa 2024 [Legalis database].

7 Judgment of the Supreme Administrative Court of February 2024, I OSK 116/13 and judgement of the Voivodship Administrative Court in Krakow of 10 December 2021, III SA/Kr 1559/21 [CBOSA database].

8 Each party shall have the right to appeal against judgments and decisions made at first stage. Exceptions to this principle and the procedure for such appeals shall be specified by statute.

9 Administrative proceedings shall be two-instance proceedings, unless a special provision provides otherwise.

The essence of the two-instance principle in administrative proceedings, pursuant to Article 15 CAP, is that the case should be examined twice and decided twice by the authorities of both instances. The proper maintenance of the principle of two-instance proceedings does not only require that two consecutive decisions be issued by the competent authorities, but also that those decisions be taken as a result of substantive proceedings carried out by each of those authorities, so that the evidence is assessed twice and all the relevant circumstances of the case[10] are examined two times too. The substantive re-examination of the substantive matter by a higher-level authority also includes verification of the correctness, i.e. legality and rightness (or only legality or only rightness), of the act of the first-instance authority and of how this authority conducts proceedings in the case.[11]

In addition, it should be noted that the condition for exhaustion of appeal measures is also met in a situation where the appeal was lodged by either party to the administrative proceedings, not necessarily the same one that subsequently filed the complaint with the administrative court.[12]

As a consequence of failure of a party to avail itself of the available remedies, including an appeal against a decision, it is inadmissible to lodge a complaint against that act with an administrative court as it is premature. Such a situation results in the court issuing a decision rejecting the complaint under Article 58 (1) (6) PBAC.[13]

Therefore, it has long been accepted by legal scholars and commentators and the judiciary that in cases where two-instance proceedings apply, an appeal at an administrative court may only concern a ruling (decision, order) issued by the authority adjudicating in the case at second instance, and thus adjudicating as a result of an appeal. The provisions of Articles 52 (1) and (2) PBAC provide for the priority of the administrative procedure for the review of administrative proceedings over judicial review. An administrative court cannot replace an appeal body and its actions must not violate the principle of two-instance administrative proceedings. As a consequence, the adoption of this rule makes it unacceptable to lodge a complaint

---

10 Judgement of the Supreme Administrative Court of 14 March 2024, III OSK 1840/22 [CBOSA database].

11 P. Kledzik, *Prawne uwarunkowania stwierdzenia nieważności decyzji w ogólnym postępowaniu administracyjnym*, Wrocław 2018, pp. 59–60 along with literature cited there.

12 M. Jagielska, A. Wiktorowska, P. Wajda, in: *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, eds. R. Hauser, M. Wierzbowski, 8th ed., Warszawa 2023 [Legalis database], Commentary on Article 52; judgement of the Supreme Administrative Court of 23 July 2009, I OSK 798/08 [CBOSA database].

13 J. Tarno, *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, Warszawa 2004, p. 116 and order of the Supreme Administrative Court of 24 January 2017, I OSK 77/17 [CBOSA database].

against a decision taken by the first instance authority.[14] The provisions of PBAC and special laws allow a number of exceptions to this requirement, which will be presented later in the article.

2. Exceptions to the requirement of exhaustion of appeal measures for conducting judicial review of administration

The first derogation from having to exhaust appeal measures is the possibility for a party to opt out of the request to have the case re-examined.

Pursuant to Article 127 (3) of the Act of 14 June 1960, the Code of Administrative Procedure,[15] no appeal shall be served against a decision taken at first instance by a minister or a self-governing board of appeal, however, a party dissatisfied with the decision may request that the matter be re-examined by that authority; the provisions on appeals against decisions apply accordingly. Pursuant to Article 52 (3) PBAC, if a party has the right to apply to the authority that has issued the decision to have the case re-examined, the party may lodge a complaint against that decision without exercising that right. However, this is an exception that applies not to all cases.[16] The right to lodge a complaint without requesting at the authority that has issued the decision that the case be re-examined is not granted to a party when the authority that has issued the decision is the minister competent for foreign affairs in matters regulated by the Act of 12 December 2013 on foreigners[17] or the consul. In these two cases, which are an exception to the exception, the full two-instance procedure must be exhausted before lodging a complaint with the administrative court. Therefore, the party has the choice to either request that the case be re-examined or to file a complaint with the administrative court straight away, without the case being heard by the second instance authority. However, it is indisputable that these are alternatives and using both at the same time is inadmissible.[18]

---

14 M. Bogusz, *Zaskarżenie decyzji administracyjnej do Naczelnego Sądu Administracyjnego*, Warszawa 1997, p. 94; order of the Voivodship Administrative Court in Poznań of 18 July 2022, II SA/Po 462/22 [CBOSA database].

15 Consolidated text: Journal of Laws 2024 item 572 as amended (hereinafter: CAP).

16 It should be noted that in order for this exception to be used, neither party can request that the case be re-examined. One party need only submit such a request, and complaints of the other parties will also be examined as requests to have the case re-examined, cf. Articles 54a (1) and (2) PBAC.

17 Consolidated text: Journal of Laws 2023 item 519 as amended.

18 Judgement of the Voivodship Administrative Court in Gliwice of 8 November 2021, III SA/Gl 807/21 [CBOSA database].

The second situation that allows an appeal to the court against a decision of a first instance authority is when the first instance authority issues a decision and opts out of providing reasoning for it because the party's demands were complied with in full (Article 127 (1a) CAP). This does not apply, however, to decisions settling disputed interests of the parties and decisions issued as a result of an appeal (Article 107 (4) CAP).

Since such a decision is final by virtue of the law, it means that it can be subject to judicial review of administrative proceedings, even to examine whether the authority has indeed complied with the demands of the party in full and not, for example, in part.[19] Otherwise, the parties would not be able to challenge decisions of administrative authorities. However, in order for such a review to take place, the administrative court must learn the authority's motives. Therefore, pursuant to Article 54 (2a) PBAC, within 30 days from the date of receipt of the complaint and before submitting the case files to the court, the authority must draw up its reasoning for the contested decision if it opted out of issuing the reasoning because the party's demands were complied with fully. The reasoning for the decision is essential for the court to be able to properly assess the decision given by the authority. Without knowing the position of the authority containing a reference to all relevant elements (premises) underlying the decision in the case, this is not possible. The absence of reasoning for a ruling regarding basic elements provided for in Article 107 (3) CAP makes it impossible for the court to assess the contested decision in terms of legality.[20] One of the basic principles developed in the practice of administrative courts is still in force. It lays down that an administrative court does not have the competence to take over an administrative case as such to settle it finally and decide on its substance. It does not act as a substitute to or replace a public administration authority in the performance of the tasks entrusted to it.[21]

Therefore, if the first instance authority has made an incorrect interpretation and has found that it has grounds for not drawing up the reasoning for its decision since it complies with the demands of the party in their entirety, then, after lodging such a complaint, the administrative court should, based on Article 145 (1) (1) (c)

19 Judgment of the Voivodship Administrative Court in Bydgoszcz of 16 January 2024, I SA/Bd 594/23 and judgement of the Voivodship Administrative Court in Lublin of 15 February 2024, III SA/Lu 601/23 [CBOSA database].

20 Judgement of the Voivodship Administrative Court in Gliwice of 14 February 2024, III SA/Gl 632/23 [CBOSA database].

21 Judgement of the Supreme Administrative Court of 20 February 2013, II GSK 77/11 [CBOSA database].

PBAC, allow the complaint and annul the contested decision;[22] this defect may even justify the court's annulment of the entire decision pursuant to Article 145 (1) (2) PBAC on the ground that the contested decision was issued in gross breach of law.[23]

However, there are still doubts where the first instance authority has legitimately resigned from providing reasoning for its decision due to the party's demands being complied with in their entirety (i.e. decision issued under Article 107 (4) CAP), and the party has nevertheless lodged an appeal. The question remains of whether the first instance authority or the appeal body has the legal possibility to classify such a document differently, in particular as a complaint. After all, administrative courts present a common view in the established line of their decisions that it is the content of the document, not its form or name, that determines its meaning.[24] This was the situation in which the Voivodship Administrative Court in Poznań found itself in. In one of the cases, the first instance authority held that a document a party called an appeal against its decision is a complaint with the Voivodship Administrative Court in Poznań against that decision and sent it to that court together with the case file. The court, finding that it was not a complaint but an appeal against this decision, returned the documents to the first-instance authority which then sent them to the appeal body. The court did so because the applicant clearly indicated that her document was an appeal against the decision. Consequently, the appeal body, pursuant to Article 134 CAP, declared, by way of an order, the appeal inadmissible. Since such a decision is final and closes the proceedings in the case, it may be complained against at an administrative court, and thus the correctness of the given decision may be subject to judicial review.[25] Legal scholars and commentators hold a similar view. One must agree that any document challenging the decision under Article 127 (1a) CAP submitted through the authority that issued it, should: "be qualified as a complaint in court unless the duly informed party declares that the sole purpose of the action taken is to initiate an instance review."[26] If the appeal body makes an incorrect interpretation and recognizes the complaint as an appeal,

22 Judgement of the Voivodship Administrative Court in Lublin of 22 February 2024, III SA/Lu 595/23 [CBOSA database].

23 J.G. Firlus, *Selektywna redukcja administracyjnego toku instancji*, Palestra 2024, no. 10, p. 88.

24 Judgement of the Voivodship Administrative Court in Szczecin of 9 October 2019, II SA/Sz 365/19 [CBOSA database].

25 Judgement of the Voivodship Administrative Court in Poznań of 11 February 2025, III SA/Po 601/24 [CBOSA database].

26 J.G. Firlus, *Selektywna redukcja*…, p. 81.

it commits a gross violation of law, since it makes a substantive examination of the appeal against the final decision in the administrative course of the instance.[27]

In order for the administrative decision of the first instance authority to be a final ruling, it is not sufficient that it should be a decision that complies with the party's demands in their entirety. If the first instance authority fully complies with such demands, but does not refrain from providing reasoning for the decision (although it was entitled to do so under Article 107 (4)), the party will be entitled to an appeal and not a complaint with the administrative court.[28]

At this point, it should be noted that challengeability at an administrative court of a decision issued by the first instance authority does not apply when all parties have renounced their right of appeal. In such a scenario, an appeal at a court is inadmissible,[29] because, in the light of Article 127a (2) CAP, on the date of service to the public administration of a statement on the waiver of the right to appeal by the last party to the proceedings, the decision becomes not only final, but also non-appealable. Naturally, since only the party who is entitled to lodge an appeal may waive this right, it is inadmissible that the effects of this declaration should affect the procedural rights of parties who have not made such a declaration.[30]

The third exception under the subjective criterion is a situation when the complaint against the decision of the first instance authority is filed by one of the entities with a special status, enumerated in Article 52 (1) PBAC. Under this provision, a complaint may be lodged after appeal measures have been exhausted if they served the complaintant in proceedings before the competent authority, unless the complaint is lodged by the prosecutor, the Commissioner for Human Rights or the Ombudsman for Children.[31] As legal scholars and commentators assume, compliance with the requirement that the prosecutor (and other entities stipulated in this act[32]) should lodge a complaint with the administrative court regarding having to exhaust the course of the administrative instance and that these entities must observe the time limit for

---

27 Judgement of the Voivodship Administrative Court in Łódź of 8 July 2022, III SA/Łd 122/24 [CBOSA database].

28 A. Golęba, in: *Kodeks postępowania administracyjnego. Komentarz*, ed. H. Knysiak-Sudyka, Warszawa 2023, p. 933.

29 Z. Kmieciak, in: *Kodeks postępowania administracyjnego. Komentarz*, eds. J. Wegner, M. Wojtuń, Z. Kmieciak, Warszawa 2023, p. 770.

30 Judgement of the Supreme Administrative Court of 22 March 2022, III OSK 923/21 [CBOSA database].

31 These entities have a formal standing to lodge a complaint, as opposed to the complainants who base their legitimacy on the legal interest, that is, those who have a substantive legitimacy. M. Jagielska, A. Wiktorowska, P. Wajda, in: *Prawo o postępowaniu przed sądami…*, eds. R. Hauser, M. Wierzbowski, Commentary on Article 50.

32 A. Kabat, in: *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, eds. B. Dauter, M. Niezgódka-Medek, A. Kabat, Warszawa 2024, p. 229.

lodging a complaint, depends on whether or not they have previously participated in administrative proceedings in the capacity of a party. In this respect, reference should be made to the Resolution of 7 judges of the Supreme Administrative Court of 10 April 2006, I OPS 6/05, according to which the obligation to exhaust appeal measures in administrative proceedings before bringing a complaint against the administrative decision referred to […] currently in Article 52 (1) PBAC applies to the prosecutor who took part in administrative proceedings. It should therefore be noted that excluding the public prosecutor from the condition of admissibility of the complaint through exhaustion of appeal measures and establishment of a longer time limit for filing the complaint only applies if the public prosecutor did not participate in the administrative proceedings as a party. Pursuant to Article 188 CAP, the prosecutor enjoys the rights of the party.

A fourth group of cases where an appeal against an administrative decision to an administrative court does not have to be preceded by exhaustion of appeal measures comprises exceptions stipulated in special rules. For instance, under Article 6 (4) of the Act of 14 October 1994 on self-governing boards of appeal,[33] a decision to dismiss the president of the self-governing body, together with reasoning, shall be served on the person concerned. This dismissal decision may be complained against at the administrative court within 14 days of its service. The lodging of the complaint suspends the dismissal. A similar solution concerns an appeal at the court against the decision to dismiss the president of a regional chamber of audit (Article 16a (3) of the Act of 7 October 1992 on regional chambers of audit).[34] It should be noted that in both of these cases the laws explicitly exclude the application of Article 52 PBAC (cf. Article 6 (5) of the Act on self-governing boards of appeal and Article 16a (4) of the Act on regional chambers of audit).

Appeals at the administrative court without the need to lodge an appeal or a request to have the case case re-examined are also allowed for certain decisions of the Polish Financial Supervision Authority (e.g. Article 6c (6); Article 141a (5); Article 144 (5) and Article 147 (3) of the Banking Law Act of 29 August 1997[35]) or for specific decisions on objections to entry on the Minister of Justice's list of attorneys-at-law or advocates or trainee attorneys-at-law or trainee advocates in matters regulated by the acts of professional self-governing bodies (e.g. Article 31^2 (2) of the Act of 6 July 1982 on attorneys-at-law[36] or Article 69a (2) of the Act on advocates[37]). The

33 Consolidated text: Journal of Laws 2018 item 570.
34 Consolidated text: Journal of Laws 2025 item 7.
35 Consolidated text: Journal of Laws 2024 item 1646.
36 Consolidated text: Journal of Laws 2024 item 499.
37 Consolidated text: Journal of Laws 2024 item 1564.

decision of the Minister of Justice may be appealed at the administrative court by the person concerned or by the self-governing body within 30 days from the date of service of the decision.

An even more modified situation is presented in provisions indicating that decisions of certain bodies given at first instance are not subject to an appeal at a higher level authority, nor even to a complaint with an administrative court, but that that they are subject to appeal, objection or litigation before a common court. For example, pursuant to Article 477[9] CAP and Article 83 (2) of the Act of 13 October 1998 on the social insurance system, decisions of the Social Insurance Institution may be appealed at the competent court within the time limit and under the terms set out in the Act of 17 November 1964 – Code of Civil Procedure.[38] Another example are hybrid proceedings, where at first instance administrative decisions are issued by specialised public administration bodies, such as the President of the Office of Competition and Consumer Protection, the President of the Energy Regulatory Office, the President of the Office of Electronic Communications, the President of the Rail Transport Office**,** or regulatory bodies in matters related to the regulation of the water and sewage market, while appeals are examined by the Regional Court in Warsaw – the Competition and Consumer Protection Court (cf. Article 479[28], Article 479[46], Article 479[57], Article 479[68], Article 479[79] CAP).

It should be noted that in the above cases, it was the legislator who decided *ex lege* that the administrative instance does not stipulate appeal measures, but immediately a complaint with the administrative court.

Conclusions

The analysis of the provisions that allow lodging of a complaint with an administrative court against a decision of a first instance body shows that the Polish legal order features a number of exceptions to the principle of two-instance administrative proceedings. In assessing the *ratio legis* of waiving the obligation to exhaust appeal measures in respect of a complaint against an administrative decision, the following observations should be raised.

The analysis clearly shows that the most questionable exception, according to legal commentary, is the amended Article 127 (1a) CAP, pursuant to which: "The decision issued at first instance, for which the authority has resigned from providing

38 Consolidated text: Journal of Laws 2024 item 1568.

reasoning because it complied with the demands of the party in their entirety shall be final."[39] As indicated in the explanatory memorandum to the draft act: "It should be borne in mind, however, that where the authority issuing the decision fully complies with the demands of the party the latter has no interest in bringing an appeal against such a decision. At the same time – importantly – the party will still have the opportunity to bring about the annulment of such a decision through judicial review of administration. Thanks to this amendment, in order for this decision to become final, the party receiving a decision complying with their demands will not have to wait until the deadline for appeal has expired or take additional steps to effectively declare the waiver of the right to appeal."[40]

The above-mentioned reasons for the introduced regulation seem to be rational, because it is difficult to argue with a situation in which one party obtains a decision fully consistent with their demands and expectations, and therefore would like to be able to immediately proceed with the exercise of the right obtained. At the same time, however, this solution means that in a number of situations the standards resulting from the principle of two-instance proceedings and of ensuring full procedural justice to all parties may be violated.

In the course of the works on the amendment to the CAP, the National Representation of Self-Governing Boards of Appeal (KRSKO) held rightly that the omission of a party to the proceedings, while complying with the demands of the parties involved in the proceedings in full and refraining from providing reasoning for the decision,[41] will deprive that party of the possibility of appeal. Therefore, the only measure left for them will be to submit a request for resumption of proceedings. However, it should be remembered that each extraordinary procedure is subject to formal restrictions, such as the need to keep the time limit for submitting such a request (one month after learning about the decision – Article 148 (2) CAP). It may mean that such a request is not examined in terms of its essence for formal reasons. Administrative authorities, for various reasons, often find it difficult to correctly determine the circle of persons who have the status of party to administrative proceedings. For this reason, there should be *de lege ferenda* suggestions that

39 Act of 26 January 2023 amending acts in order to eliminate unnecessary administrative and legal barriers, Journal of Laws item 803.

40 Explanatory memorandum to the draft act amending acts in order to eliminate unnecessary administrative and legal barriers, The Polish Sejm of the ninth term, Paper no. 2628, p. 18, https://orka.sejm.gov.pl/Druki9ka.nsf/0/684DD198D054FBB9C12588CA00371F60/%24File/2628.pdf [access: 25.03.2025].

41 Letter of the National Representation of Local Self-Governing Boards of Appeal of 7 November 2022, KRS/42/052/22, p. 3, https://orka.sejm.gov.pl/Druki9ka.nsf/0/4FDB5D77AB0FC999C1258904004BF4CE/%24File/2628-005.pdf [access: 25.03.2025].

this provision be repealed. KRSKO also pointed to the issue of the lack of equality between the scope of review of the decision by the appeal body and the limits of judicial review of administration.[42]

Legal scholars rightly point out that an argument to leave the option to bring actions to a court compensates for the deprivation of a party's right of appeal. It should be borne in mind that administrative courts exercise review over the activities of public administration solely on the basis of the criterion of legality, without addressing any other criteria. However, the appeal body cannot limit itself to examining the legality of a decision contested by a party, but it should also examine that decision from the point of view of the fairness and purpose of the decision. Therefore, we are dealing with no identical standards of legal protection[43] in this situation. In its judgement of 11 May 2004, K 4/03, the Constitutional Tribunal held that "an interpretation of the right referred to in Article 78 of the Constitution which would lead to recognition that a complaint with the administrative court is a "materially equivalent" correlative of an appeal against a decision of a first-instance authority" must also be firmly rejected.

This will be particularly evident in situations where the authority enjoys administrative discretion. Judicial review of discretionary decisions is restricted, since administrative courts can only inspect the compliance of such decisions with statutory criteria setting limits for this discretion. Administrative discretion means granting a certain discretionary power to a public authority by substantive law. Such a range of discretionary power does not prove, however, acceptance of unrestricted freedom and arbitrariness of action.[44] Administrative discretion means that the public administration authority has the power to issue a positive or negative decision for the party. However, this choice must be preceded by the correct finding of facts and inference based on the principles of logical reasoning and life experience.[45] The decision-making of the authority exercising its power to issue a decision under administrative discretion is limited by general principles of administrative procedure, in particular the criterion of taking into account the public interest and the legitimate interest of citizens, set out in Article 7 CAP. Therefore, a discretionary

---

42 Ibidem, p. 4.

43 H. Knysiak-Sudyka, *Ograniczenia prawa do wniesienia odwołania – czy ustawodawca zmierza w kierunku względności zasady dwuinstancyjności postępowania administracyjnego?*, in: *Uczniowie jednego Mistrza. Klasyczne instytucje postępowania administracyjnego w dobie przemian. Księga jubileuszowa Profesorów Wojciecha Chróścielewskiego i Jana Pawła Tarno*, ed. A. Krawczyk, Łódź 2024, p. 295.

44 Judgement of the Supreme Administrative Court of 21 January 2014, II GSK 1632/12 [CBOSA database].

45 Judgement of the Supreme Administrative Court of 27 September 2013, III OSK 442/13 [CBOSA database].

decision should properly balance the interests of the opposing parties – the interest of the citizen with the public interest, while being guided by the proportionality of taking into account both types of interests.[46]

Therefore, some legal scholars and commentators believe that Article 127 (1a) is unconstitutional, because the right to appeal a non-final administrative decision is a constitutional right of man, and its general limitation does not pass the test of proportionality.[47]

Next, it should be noted that the provision of Article 54 (2a) PBAC does not stipulate whether the reasoning drawn up as a result of the submission of the complaint should be served on the party.[48] This means that the party may only read the reasoning for such a decision by looking at the case file in the seat of the authority or in the administrative court, which will not necessarily be located in the place of the seat of the authority issuing the decision, let alone the place of residence or seat of the party. Another option provides for accessing the case file kept in electronic form (Article 12a (5) PBAC) via the Administrative Courts Acts Portal, which may be difficult for persons not using electronic means of communication. Therefore, a *de lege ferenda* postulate should be raised that while maintaining the institution in question, Article 54 (2a) PBAC should be amended to include a provision requiring that the authority serve the party with reasoning for its decision.

Another detrimental aspect of adding Article 127 (1a) CAP is the introduction of additional confusion, which will most affect the parties of administrative proceedings themselves. In the event that, due to the incorrect classification by the first instance authority of its decision as final and inclusion in it an incorrect instruction that the party has the right to lodge a complaint at a court, filing this complaint will result in its rejection. The party will then be able to submit a request for reinstating the deadline for lodging an appeal (Article 58 and Article 59 CAP), while the time limit for submitting this request (Article 58 (2) CAP) will start to run for the party from the date of service of the order rejecting the complaint.[49] Therefore, instead

---

46 Judgement of the Supreme Administrative Court of 22 June 2012, III OSK 182/12 [CBOSA database].

47 A. Wróbel, in: *Komentarz aktualizowany do Kodeksu postępowania administracyjnego*, eds. M. Jaśkowska, M. Wilbrandt-Gotowicz, A. Wróbel, 2025 [LEX database], Commentary to Article 127, thesis 3; M. Szałęga, *Odstąpienie od uzasadnienia decyzji przez organ administracyjny z powodu uwzględnienia w całości żądania strony jako przejaw ograniczenia prawa do odwołania*, Zeszyty Naukowe Sądownictwa Administracyjnego 2024, no. 5, p. 51.

48 I. Fisz, K. Rokicka-Murszewska, *Ostateczność decyzji, od której uzasadnienia organ odstąpił z powodu uwzględnienia w całości żądania strony – uwagi na tle nowego art. 127 § 1a Kodeksu postępowania administracyjnego*, Zeszyty Naukowe Sądownictwa Administracyjnego 2024, no. 5, p. 39.

49 Order of the Voivodship Administrative Court in Gorzów Wielkopolski of 24 November 2024, II SA/Go 431/24 [CBOSA database].

of speeding up the whole process of obtaining a final and non-appealable decision, the introduced amendment may not only fail to achieve the assumed effect in some cases, but also result in an extension of the administrative procedure due to the premature launch of the judicial review procedure.

The financial aspect cannot be overlooked in this analysis either. Submission of a complaint with the administrative court requires the payment of a fee and failing to do so causes the complaint with be rejected (Article 220 (3) PBAC). In turn, administrative proceedings are generally cost-free when it comes to the mere lodging of an appeal.

To sum up, it must be stated that any provision allowing an appeal against a decision of a first-instance authority at the administrative court without the need to exhaust the remedies available to the party must be interpreted strictly (*exceptiones non sunt extendendae*).

Translated by Agnieszka Kotula-Empringham

Bibliography

Adamiak B., Borkowski J., *Kodeks postępowania administracyjnego. Komentarz, rozdział 10. Odwołania*, 19th ed., Warszawa 2024 [Legalis database].

Bogusz M., *Zaskarżenie decyzji administracyjnej do Naczelnego Sądu Administracyjnego*, Warszawa 1997.

Firlus J.G., *Selektywna redukcja administracyjnego toku instancji*, Palestra 2024, no. 10, DOI: 10.54383/0031-0344.2024.10.7.

Fisz I., Rokicka-Murszewska K., *Ostateczność decyzji, od której uzasadnienia organ odstąpił z powodu uwzględnienia w całości żądania strony – uwagi na tle nowego art. 127 § 1a Kodeksu postępowania administracyjnego*, Zeszyty Naukowe Sądownictwa Administracyjnego 2024, no. 5.

Golęba A., in: *Kodeks postępowania administracyjnego. Komentarz*, ed. H. Knysiak-Sudyka, Warszawa 2023.

Jagielska M., Wiktorowska A., Wajda P., in: *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, eds. R. Hauser, M. Wierzbowski [Legalis database], Commentary on Article 50.

Jagielska M., Wiktorowska A., Wajda P., in: *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, eds. R. Hauser, M. Wierzbowski, 8th ed., Warszawa 2023 [Legalis database], Commentary on Article 52.

Kabat A., in: *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, eds. B. Dauter, M. Niezgódka-Medek, A. Kabat, Warszawa 2024.

Kledzik P., *Prawne uwarunkowania stwierdzenia nieważności decyzji w ogólnym postępowaniu administracyjnym*, Wrocław 2018.

Kmieciak Z., in: *Kodeks postępowania administracyjnego. Komentarz*, eds. J. Wegner, M. Wojtuń, Z. Kmieciak, Warszawa 2023.

Knysiak-Sudyka H., *Ograniczenia prawa do wniesienia odwołania – czy ustawodawca zmierza w kierunku względności zasady dwuinstancyjności postępowania administracyjnego?*, in: *Uczniowie jednego Mistrza. Klasyczne instytucje postępowania administracyjnego w dobie przemian. Księga jubileuszowa Profesorów Wojciecha Chróścielewskiego i Jana Pawła Tarno*, ed. A. Krawczyk, Łódź 2024.

Szałęga M., *Odstąpienie od uzasadnienia decyzji przez organ administracyjny z powodu uwzględnienia w całości żądania strony jako przejaw ograniczenia prawa do odwołania*, Zeszyty Naukowe Sądownictwa Administracyjnego 2024, no. 5.

Tarno J., *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, Warszawa 2004.

Wróbel A., in: *Komentarz aktualizowany do Kodeksu postępowania administracyjnego*, eds. M. Jaśkowska, M. Wilbrandt-Gotowicz, A. Wróbel, 2025 [LEX database], Commentary on Article 127.