

## THE MODEL OF SUPERVISION OVER ADMINISTRATIVE COURTS IN POLAND / Jan Olszanowski

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**Abstract:** *One of the most significant current discussions in Polish legal doctrine is how actions of executive powers, especially supervisory measures can affect judicial independence. It is related to basic constitutional and administrative law issues, including the separation of powers, the independence and the impartiality of the judiciary, the independence of the courts, the supervision and control, the efficiency and effectiveness of judicial protection. The analysis focuses on the dependence between the model of administrative supervision adopted in administrative justice and the efficiency of the courts, as well as their perception by the public. The study will examine supervisory measures aimed at ensuring the efficient functioning of the courts. The effectiveness of judicial review of administrative justice is essential for the protection of individuals' rights and the functioning of the state authorities in both the social and the economic sphere. From an extrajudicial point of view its significance is reflected in the influence on the judiciary, which will not only be effective in its procedural activity, but also in the level of trust and social prestige. It holds that the three arms of the state – the executive, the judiciary and the legislature – should, to a greater or lesser extent, be kept separate. That way, they are able to hold one another to account. This theory about the separation of state power went on to have a formative effect on the development of modern-day democracies. And it's this vision of the tripartite separation of state power that is essential to the EU's argument against the Polish reforms of the judiciary. The problem of supervision over administrative courts is also connected with external and internal independence of the judiciary. External independence refers to freedom from undue outside pressure, while internal independence protects individual judges from undue pressure from within the system. "Undue internal pressure" sometimes comes from court presidents and may take different forms: even where individual judges are not formally subordinate to court presidents or other authorities and may be result of attribution of workload, allocation of resources and benefits, disciplinary powers, powers of transfer and secondment, distribution of cases, etc. The aim of this paper is to examine the problem of supervision over administrative courts in legal system of Poland. The article focuses on the dependence between the model of administrative supervision and the efficiency of the courts.*

**Key words:** *supervision over courts; independence of judiciary; administrative justice.*

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## 1. INTRODUCTION

The administration of the courts, their management, and the technical aspects of their functioning, as well as the supervision of these activities, are often exercised by specific bodies which do not have to fall under the structure of judicial power (Mikuli, 2014, p. 521). In the case of administrative courts, the model of supervision is different. It is exercised by the President of the Supreme Administrative Court. Supervision may be understood as all the actions pertaining to the organisational and financial functioning of the courts (administrative supervision), or to the appellate procedures of a higher court concerning the judgment of a lower court (judicial supervision).<sup>1</sup> The aim of this paper is to examine the problem of the proper shape of the supervision over administrative courts in the Polish legal system from the theoretical point of view.

The analysis focuses on the dependence of the model of administrative supervision adopted in administrative justice on the efficiency of the courts, as well as their perception by the public. It is also essential to discuss whether this supervision is not abused by the public authorities who exercise it in order to achieve other ends than to make the activity of the courts more effective. First, it is necessary to present how the administrative courts proceed and how they are constructed. Attention also has to be paid to how the Polish doctrine defines supervision over courts. The most important problem is the separation of administrative tasks from the administration of justice. The tension that arises in this context involves, within the framework of administrative supervision, the simultaneous consideration of judicial independence and the efficiency of the court's activity, the separation of the judiciary from other authorities, and the need for its co-operation with the legislative and executive powers. It has to be pointed out that there is a distinction between administrative supervision and other forms of supervision, especially judicial supervision (exercised by the courts of higher instance as part of the established procedure) (see Łazarska, 2015, p. 327).<sup>2</sup> Finally, it is also necessary to compare the differences between the supervision of common courts and of the administrative courts, and to review this supervision.

This may sound obvious, but the courts must be accessible, and should dispense justice freely, fairly, impartially and expeditiously.<sup>3</sup> The procedures of lawsuits and the structure of the courts are a means of providing justice. The State, as a whole, should supervise proper functioning of judiciary and should not leave scope for practices or processes which may ultimately hinder or prevent the dispensation of justice. The administrative activities of courts consist in providing adequate technical, organizational and financial conditions for the courts to operate and perform their tasks, and also in ensuring the correct course of the court's internal functioning, which is directly connected with the tasks that it performs (dispensation of justice). These activities should be aimed at providing resources for the internal organisation of the courts' bodies. This should be the task of bodies and organizational units of the court.

Poland, which in October 2015 elected its first single-party government since 1989, following the election victory of PiS ("Prawo i Sprawiedliwość" which translates as the "Law and Justice" party), has received internal criticism (from the lawyers' organizations) and international criticism following its introduction of new legislation, which many believe will curtail the independence of the judiciary (Biernat, 2018; Bojarski & Wejman, 2017, p. 118; Koncewicz, 2017; Starski, 2016; Żurek & Mazur, 2017). The amendments to the structure of courts in Poland have even resulted the submission of a

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<sup>1</sup> Art. 3 of the Polish Act on the System of Administrative Courts, Journal of Laws (2002).

<sup>2</sup> Poland, Constitutional Tribunal, K 45/07, OTK-A 2009/1/3 (15 January 2009).

<sup>3</sup> Art. 6.1 of the Convention on the Protection of Human Rights and Fundamental Freedoms; art. 47 Charter on the Fundamental Rights of the European Union.

proposal for a European Council decision on the determination of there being a clear risk of a serious breach by the Republic of Poland of the rule of law.<sup>4</sup> From 2015 until now, there have been many modifications to the statutes regarding the structure of the Supreme Court and the common courts.<sup>5</sup> They are also connected with the supervision exercised over the courts (Malicki, 2019, p. 270). The reforms affect the administrative judiciary to a lesser extent. However, the essence of the problem, consisting in the scope and manner of exercising supervision over the courts and judges, is the same: it relates to the effectiveness of judicial review. The proper functioning of supervision over the activity of the courts is crucial for the effectiveness of the entire legal system. Moreover, the effectiveness of judicial review and the shape of the supervision over the courts' activities are essential for the protection of individual rights and the functioning of the state authorities in both the social and the economic sphere. From an extrajudicial point of view, its significance is reflected in the influence on the judiciary, which will not only be effective in its procedural activity, but also on the level of trust and social prestige. Judicial power should aim to achieve an efficient and fair legal system (van Dijk, 2014, p. 16). When the system of supervision of the courts is complete and consistent, it will be possible to guarantee every person the fundamental right to have their case decided in a fair trial, on legal grounds only, and without any improper influence.

## 2. THE SYSTEM OF THE JUDICIARY IN POLAND

Poland is a constitutional republic formed on democratic grounds based on the principle of the separation of powers (Piotrowski, 2018, pp. 216–220).<sup>6</sup> The system of government is founded on the balance between the legislative, executive and judicial powers. The legislative power is vested in the Parliament, consisting of the lower house (Sejm) and the upper house (Senate). The executive power is vested in the President of Poland and the Council of Ministers, while the judicial power is vested in the courts and tribunals. The constitutional checks and balances constitute a mechanism which establishes mutual control between the authorities on equal level (Tremmel, 2014, p. 6). The principle of separation of powers clearly states that the legislative, executive, and judicial powers are separated, that there should be a balance between them, and that they should cooperate with each another (Sobczak, 2015, p. 82). This theory on the separation of state power came to have a formative effect on the development of modern-day democracies. Therefore, this vision of the tripartite separation of state power is essential to the EU's argument against the Polish reforms of the justice system.

The significance of this principle is not only of an organizational nature. The principle of separation of powers seeks, e.g. to protect human rights by preventing abuse of power by any authority. An element inherent to the principle of separation of powers, and to the foundation of democratic rule of law, is the principle of judicial impartiality (Uitz, 2009, p. 126). The implementation of this principle has always been pursued in democratic systems, while its abandonment has been characteristic of totalitarian and authoritarian ones.<sup>7</sup> It requires a guarantee of independence of judiciary from the political

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<sup>4</sup> COM(2017) 835, 2017/0360 (APP), Reasoned proposal in accordance with the article 7 (1) of the Treaty on European Union regarding the rule of Law in Poland: Proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law (Belgium, 2017).

<sup>5</sup> The most important is the Polish Act on the Supreme Court, Journal of Laws (2017) and Polish Act amending the Act on the National Council of the Judiciary and some other acts, Journal of Laws (2017).

<sup>6</sup> According to art. 2 of the Konstytucja Rzeczypospolitej Polskiej [Constitution], Apr. 2, 1997 (Poland) (hereinafter 'the Polish Constitution'): "The Republic of Poland shall be a democratic state governed by the rule of law and implementing the principles of social justice."

<sup>7</sup> Poland, Constitutional Tribunal, K 11/93, OTK No. 2/1993 (9 November 1993).

influence of the legislative and executive authorities. The interdependences between state bodies results from the non-existence of an absolute organizational separation between functions, but that does not contradict the fact that each sovereign body is actually the main holder of its given function (Correia, 1993a, p. 89). Moreover, another crucial rule established by the Polish Constitution is the principle of democratic state ruled by law,<sup>8</sup> which stipulates the requirements for legal drafting – carried out by the law-giver – which are also referred to as the principles of appropriate (correct, proper) legislation, as well as the principles of the proper exercise of power by executive and judiciary.<sup>9</sup>

The sources of Polish law are divided into two categories, i.e. universally binding law and internal law. According to the current Polish Constitution of 2 April 1997, the sources of universally binding Polish law are: the Constitution itself – as the supreme law of the land, statutes, and ratified international agreements and regulations. In addition to these sources, it is necessary to mention that the acts issued by respective bodies - in the course of their operation constitute universally binding law in the territory of the relevant body that issued such acts (local law). Moreover, Poland is a Member State of the European Union, and therefore the national courts and tribunals are obliged to ensure the full application of the EU law and judicial protection of the rights of individuals under the same. The Constitution of the Republic of Poland stipulates the dual nature of the judicial authority, in that it is composed of courts and tribunals. The courts encompass the Supreme Court, common courts, administrative courts (including the Supreme Administrative Court) and military courts. As regards tribunals, the Constitution lists the Constitutional Tribunal and the Tribunal of State.

The issue of the competences of administrative courts and the essence of administrative justice exercised by these courts is covered in the Article 184 of the Polish Constitution. This provision states that administrative courts exercise, to the extent specified by statute, control over the performance of the public administration. Such control shall also extend to judgments on the conformity to statute, of resolutions issued by the local government bodies, and normative acts of territorial organs of government administration (more on the problem of control exercised by Polish administrative courts see Kmiecik, 2013).

The acts regulating the detailed competences of administrative courts which are referred to in the Constitution are, above all, the Act on the System of Administrative Courts<sup>10</sup> as amended and the Act on the Proceedings before Administrative Courts<sup>11</sup> as amended. According to the Article 3 and the following provisions of the Act on the Proceedings before Administrative Courts, these courts shall adjudicate on individual complaints brought against mainly administrative decisions or orders subject to complaint, termination of proceedings, or determining the substance of the case, as well as orders issued in executive proceedings and proceedings to secure claims, written interpretations of tax levied in individual cases. The administrative courts should also adjudicate on disputes regarding local enactments issued by local self-governments or by regional authorities of the state administration, as well as complaints concerning administration's failure to act.

In 1 January 2004, Poland introduced a two-tier system of administrative judiciary (Skoczylas & Swora, 2007). According to Article 13, § 1 of the Act on the

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<sup>8</sup> According to the art. 2 of the Polish Constitution: *"The organs of public authority shall function on the basis of, and within the limits of the law."*

<sup>9</sup> Poland, Constitutional Tribunal, P 15/05, OTK No. 11/A/2006 (12 December 2006) and Poland, Constitutional Tribunal, P 16/03, OTK No. 4/A/2004 (27 April 2004).

<sup>10</sup> Poland, Act on the System of Administrative Courts, Journal of Laws (2002).

<sup>11</sup> Poland, Act on the Proceedings before Administrative Courts, Journal of Laws (2002).

Proceedings before Administrative Courts, the voivodship courts hear – in principle – all administrative matters, except for matters reserved for the jurisdiction of the Supreme Administrative Court. Cases within the jurisdiction of administrative courts are considered in the first instance by the voivodship administrative courts. The Supreme Administrative Court supervises the work of the voivodship administrative courts. The voivodship administrative courts are divided into divisions whose number depends on the voivodship.

The basic task of the Supreme Administrative Court and the administrative courts is to control the legality of the activities of the public administration (Turlukowski, 2016, p. 126). This includes adjudicating on compliance of resolutions adopted by local self-government bodies and of normative instruments passed by the regional bodies of government administration with law. The subject of this compliance control is the adherence to the law by public administration bodies, in other words, the protection of substantive law, and the result of this control – if the administrative court determines that a breach of substantive law has occurred – is the application of the legal reliefs e. g. revocation of a decision. Most often, however, the protection of substantive law involves the protection of normative rights of citizens which derive from the norms of substantive law, and which have been breached as a result of an unlawful action of public administrative bodies. The administrative court is a court of cassation which investigates whether an act or deed of an administrative body complies with the provisions of law. If the court decides that the act or deed does not comply with the law, it rescinds it or declares it void. When delivering a judgement, the court performs a legal assessment of the act and provides guidelines regarding application of law in a given individual case, or declares previous decision subject to appeal, ineffective. This brings the administrative court's role to a close, and the case is referred to the administrative bodies which are to take further action. This is the result of the principle of separation of powers. In the Polish legal system, there is the rule that a court judgement should not deprive the administration of its discretionary powers (Kmieciak, 2012, pp. 3–5; see also Correia, 1993b, p. 89; Jansen, 2005, p. 54) If the administrative court controls the legality of administrative decisions, generally, this cannot result in depriving the administration of the essence of the material function that it wields. The case then will go back to the administrative authority.

### 3. LEGAL GUARANTEES OF THE INDEPENDENCE OF THE JUDICIARY AND IMPARTIALITY OF THE ADMINISTRATIVE COURTS IN THE CONTEXT OF THE SUPERVISORY CONTROL OVER JUDICIARY

One of the most significant discussions currently taking place in the Polish legal doctrine is how supervision can affect judicial independence (Mikuli, 2014, p. 522). This is related to basic issues in constitutional and administrative law, including: separation of powers, independence and the impartiality of the judiciary, independence of the courts, supervision and control, and efficiency of judicial protection.

The principle of judicial independence entails the independence of each individual judge at exercise of his adjudicating functions. In their decision making, judges should be independent, impartial and able to act without any and all restrictions, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary. Hierarchical judicial organization should not undermine individual independence of judges. However, it might be possible that the supervisory authority has influence on the judges, especially within its capacity to introduce incentive measures or disciplinary measures (the capacity to initiate disciplinary proceedings). Sometimes, it pointed out, that the independence of individual judges and the independence of the

judiciary are separate matters, and there is need to distinguish judicial autonomy from the independence of individual judges (Kosař, 2017, p. 120). However, it is also clear that the fundamental right to an effective remedy enshrined therein means, *inter alia*, that everyone is entitled to a fair hearing by an independent and impartial tribunal. This is the most important task for the judiciary and legislative powers.

The Polish Constitutional Tribunal clearly stated that all cases shall be considered before the competent, impartial, and independent courts specified in the Constitution. The independence and impartiality of courts and judges are closely related to each other. The independence of the courts refers, above all, to the organizational and operational separateness of the judiciary from the other organs of public authority, in order to guarantee full autonomy thereof in terms of consideration of cases and adjudication. In turn, the independence of judges means that judges shall act solely on the basis of the law, in accordance with their conscience and personal convictions. Several elements are connected with the notion of independence: impartiality with regard to participants in proceedings, the independence of judges from non-judicial bodies, the independence of judges from authorities and other judicial bodies, independence from political influence nature, as well as the internal independence of a judge.<sup>12</sup> In fact, the principle of separation of powers should ensure judges a degree of protection against interference with their exercise of judicial power, including interference by fellow judges and other authorities.

The basic regulation concerning independence and impartiality of courts is set out in the Article 45 paragraph 1 of the Constitution of the Republic of Poland. This regulation establishes the individual's right to a fair and public hearing. The right to have a case examined by an independent and impartial court is expressed in the Article 6 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and in the Article 14 paragraph 1 of the International Pact on Civil and Political Rights. With the term 'independence of judges', emphasis is placed on judges not being dependent on factors outside of legal requirements when it comes to their judicial activity. The independence of judges, including the independence of the judges of the Tribunal, comprises numerous elements, namely:

- 1) impartiality towards the participants in proceedings;
- 2) independence from non-judicial authorities (institutions);
- 3) judge's autonomy in his/her relations with other branches of government and other judicial bodies;
- 4) independence from political factors;
- 5) the intrinsic independence of judges.

The independence of judges is not only their right but also a constitutional obligation, whereas the protection of judge's independence is a constitutional obligation of the legislator and the organs of judicial administration.<sup>13</sup>

Traditionally, also the Venice Commission distinguished between the external and internal independence of the judiciary. External independence refers to freedom from undue outside pressure, while internal independence protects individual judges from undue pressure from within the system. "Undue internal pressure" sometimes comes from court presidents and may take different forms: even where individual judges are not formally subordinate to court presidents, other powers (attribution of workload, allocation of resources and benefits, disciplinary powers, powers of transfer and secondment, distribution of cases, etc.) may be easily abused. The borderline between internal and external independence may become blurred when the appointment of court presidents is

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<sup>12</sup> Poland, Constitutional Tribunal, SK 7/06, OTK-A No. 9/2007/9 (24 October 2007).

<sup>13</sup> Poland, Constitutional Tribunal, K 3/98, OTK ZU No. 4/1998 (24 June 1998).

politicized. It is thus important to examine what powers court presidents have vis-à-vis ordinary judges, and how those presidents are appointed, dismissed, etc., i.e. whether they themselves enjoy sufficient independence from the executive and the legislature.<sup>14</sup>

#### 4. ADMINISTRATIVE SUPERVISION OVER ADMINISTRATIVE COURTS

The administrative activities of courts are contained consist in providing adequate technical-and-organizational conditions as well as financial conditions for the courts to operate and perform their tasks, and also in ensuring the correct course of the court's internal functioning, which is directly connected with the tasks it performs. These activities should be aimed at providing financial resources for the operation of an internal court office, and to ensure its proper course, it is connected with proper shape of organizational units of the court.

In turn, supervision itself is one of the central institutions of administrative law. The manner of its exercise, the types of measures and supervisory activities are among the basic issues in the study of systemic and procedural law. Supervision does not represent an institution typical for the judiciary. The problem is how to transpose the norms of administrative law into the field of supervision over judiciary (Banaszak, 2014, p. 6). There are views judicial independence must be absolute, with no interference from any external source. These rely on the importance of judicial independence and the (apparently) existing contradiction between judicial independence and any review of judge's actions and claim that no external reviewing mechanism should be maintained to handle this matter. According to this understanding, even matters of judicial administration must be handled by and within the judicial system itself (Shetreet, 1984, p. 979).

The supervisory measures applied to the courts are not as intense as in the case of administrative authorities, which are based on hierarchical structure and vertical subordination. Given the sensitive nature of the issue, the concept of supervision must be used carefully and appropriately in relation to the administrative practice of the courts and, possibly, it could be replaced with a different legal structure, including, for example, the management scheme.

In the European jurisprudence, supervision is primarily associated with administration – including the management of budget allocations, external administrative practices, and proper formal procedures, whereas adjudication (legal judgments and precedents, material accuracy) remains largely outside the scope of supervision. Thus, here supervisory control constitutes, in principle, a kind of retrospective control, as it does in central administration (Lienhard, 2009b, p. 3). The model of administrative supervision over the judiciary is functionally linked with the principles of legal certainty legal security, the protection of citizens' trust in the State and its laws, and appropriate legislation.<sup>15</sup> The model of administrative supervision of the courts and judges is one of the factors affecting the qualification of the state and its assessment in terms of the implementation of democratic standards and the rule of law. The legal regulation of such supervision corresponds with the level of trust which the courts enjoy in the society. The courts, which are bodies of personal and material resources, must have their own administration. In any case, administrative supervision

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<sup>14</sup> Report of the Venice Commission on the independence of the judicial system, Part I: the independence of judges, CDL-AD(2010)004, Study No. 494 / 2008, p. 12 (2010).

<sup>15</sup> Poland, Constitutional Tribunal, Kp 3/09, OTK ZU No. 9/A/2009 (28 October 2009); Poland, Constitutional Tribunal, K 23/09, OTK ZU No. 2/A/2011 (3 March 2011) and Poland, Constitutional Tribunal, P 49/13, OTK ZU No. 7/A/2014 (29 July 2014).

should not enter the judicial area. It is thus justified to pose a question whether the judicial sphere can be separated from the administrative activities of the courts and, in the broader context, from the sphere of executive and legislative powers. Moreover, in the Article 178 of the Polish Constitution of 1997, it is clearly stated that judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes.

In the literature, supervisory control has three different definitions. The narrow definition restricts supervisory control to aspects of the formal adherence to proper administrative procedures, including budget management. The medium position goes a step further and includes the examination of trends in adjudication, as well as, the appraisal of legislative success and effectiveness (with a view to amending the law), and also inquiries in the case of gross infringements of the law or violations of procedures (e. g. delays). A broad definition of the concept would, in addition, involve enhanced rights to information (in particular the obligation to provide information about court judgments and rulings, and would not in principle exclude the material study of court judgments) (Lienhard, 2009b, p. 2). The Polish Constitutional Tribunal explains the meaning of supervision as management and organizational activity connected with the jurisdictional acts of a court. The court's administrative activity involves the activities which are necessary to ensure the proper and continuous functioning of the court. It is clearly stated that court administration should make it possible for courts and judges to actually fulfil their tasks (Lienhard & Kettiger, 2017, p. 9).

The judicial administrative activities *sensu stricto* also comprise a certain degree matters concerning the personal issues of both judges and the court clerks, and the regulatory activities executed during the course of a trial, or otherwise directly connected with adjudication. The supervision over the courts may also be understood as administrative activity and administrative supervision consisting of assessing the due course of office work, checking and applying orders and instructions by the court's administration bodies, monitoring the performance of judges' and other court staff duties, as well as analysing the jurisprudence of the court (see Mikuli, 2014, p. 532).<sup>16</sup> The problem of supervision over the courts is also connected with the external and internal independence of judiciary, especially in the sphere of judicial power only the court enjoys the discretion to act (Gudowski, 1994, p. 32; Lienhard, 2009a).

In the legal doctrine, there is a great deal of difference between administrative and judicial supervision. Administrative supervision covers issues connected with the financial and administrative activity of courts, as well as any other issues concerning efficient consideration of cases and proper execution of judgements. This means that the supervisory power regarding administrative matters should not interfere with judicial independence the wording of judgements and decisions, whose correctness may be examined only according to the procedure stipulated by law (Kiener, 2001, p. 301). It should be noted that courts often have to adjudicate on conflicts between individual rights and the State, and this relationship is imperilled when the State takes control over judicial functions. An incorrect model of supervision over the courts enables the legislative and executive powers to interfere in a severe and extensive manner in the administration of justice, and thereby poses a grave threat to judicial independence as a key element of the rule of law.

The Supreme Court shall exercise judicial supervision over common and military courts regarding judgments (Article 183, paragraph 1 of the Polish Constitution) (Gudowski, 2015, pp. 15–19). The administrative supervision of common courts in

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<sup>16</sup> Poland, Constitutional Tribunal, K 45/07, OTK-A 2009/1/3 (15 January 2009).



accordance with the Article 9 of the Act on the System of Common Courts<sup>17</sup> as amended is exercised by the Minister of Justice, judges seconded to the Ministry, as well as the presidents of the courts and thus the executive branch. The Minister of Justice's supervision of the courts' administrative activity has a long tradition in Poland. It also existed before World War II under the Constitutions of 1921 and 1935 (Mikuli, 2017, p. 13). The current legislation increases the powers of the Minister of Justice related to the internal organization of the courts, to the appointment and dismissal of the presidents and deputy presidents of the courts, and extends the competences of the Minister of Justice in the areas of promotion and discipline. The competence of the Minister of Justice regarding the administrative supervision over the courts is justified by referring to the general position of the Ministry of Justice in the legal system (Mikuli, 2014, p. 525). It is emphasized that not all the activities of the courts involve the dispensation of justice, because there are many activities which are related to the organizational or administrative aspects of the courts' activities. The problem, first of all, lies in the ambiguous wording of the statutory regulations, which makes it difficult to clearly distinguish administrative tasks in a strict sense from duties connected with the dispensation of justice. However, many scholars and judges in Poland claim that the administrative activity of the common courts should rather be controlled by judicial bodies especially by the First President of the Supreme Court (Celej, 2007; Żackiewicz-Zborska, 2008; Zawiaślak, Sawko, & Bujak, 2009, pp. 833 – 837).

Another model of supervisory control was set up in the branch of administrative courts. The Supreme Administrative Court exercises supervision (both judicial and administrative) over voivodship administrative courts. This is of great importance because the administrative courts cannot be in any way dependent on the government administration. These courts control the legality of administrative authorities' activities. Additionally, the administrative courts are not supervised by the Supreme Court. It is necessary to raise the question of legitimacy of maintaining two distinctly different models of court supervision (over common courts and administrative courts), and of compliance with the Constitution and international law.

## 5. THE SUPERVISORY COMPETENCES OF THE PRESIDENT OF THE SUPREME ADMINISTRATIVE COURT

The supervision of the administrative courts is exercised by the President of the Supreme Administrative Court, as provided for in the Article 12 of the Act on the System of Administrative Courts.<sup>18</sup> However, the President of the Supreme Administrative Court may assign specific activities of court administration to the judges and may authorize them to manage particular affairs on his behalf. It is clearly stated in the Act on the System of administrative courts that the judges of the administrative courts and court assessors, within the exercise of their office, shall be independent and subjected only to the Constitution and statutes. This means that administrative supervisory activities cannot encroach on an area in which judges and court assessors are independent (Oleszko, 1988, p. 29).

Firstly, administrative supervision may rely on the financial resources of the administrative courts. The consequence of the autonomous regulation of the supervision of administrative courts is that the President of the Supreme Administrative Court equips the authorities with the power to draw up the revenue project and expenditure budget of the Supreme Administrative Court, which includes the revenue and expenditures of

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<sup>17</sup> Poland, Act on the System of Common Courts, Journal of Laws (2001).

<sup>18</sup> Poland, Act on the System of Administrative Courts, Journal of Laws (2002).

voivodship administrative courts. Activities associated with the supervision of the administrative courts may also be connected with access to activities of the courts. For example, the President of the Supreme Administrative Court, the president of a voivodship administrative court and other persons appointed to direct and supervise administrative activity have the right of access to activities of an appropriate voivodship court or they may attend a trial held in camera and may demand explanation and elimination of irregularities (Kuczyński & Masternak-Kubiak, 2009, p. 199). The President of the Supreme Administrative Court and the president of a voivodship administrative court may annul **administrative rulings** which are not in conformity with the law. It is necessary to emphasize that exercising this kind of competence cannot encroach into the judgements' merits.

Within the scope of measures of supervision over the administrative activities of voivodship administrative courts, the President of the Supreme Administrative Court may order an inspection or general inspection in the court (Kuczyński & Masternak-Kubiak, 2009, pp. 202–203). In the event that irregularities have been found in respect of the effectiveness of the court proceedings, the President of the Supreme Administrative Court and the president of a voivodship administrative court may point out such irregularities and may demand that their consequences be eliminated. Moreover, the President of the Supreme Administrative Court shall establish the principles of clerical work in all administrative courts.

The President of the Supreme Administrative Court also has many competences connected with the structure of the administrative courts and their management. For example, a voivodship administrative court is divided into divisions created and dissolved by the President of the Supreme Administrative Court. Moreover, s/he defines the number of judges, vice-presidents of the court and court assessors at the voivodship administrative court and appoints a president and a vice-president in a voivodship administrative court after seeking the opinion of the general assembly of that court. The President of the Supreme Administrative Court is the Chairperson of the General Assembly and of the Board of the Supreme Administrative Court. These bodies are very important in the process of assessing the candidates for Supreme Administrative Court judges.

A measure connected with judicial supervision is the possibility of the President of the Supreme Administrative Court to apply to the Supreme Administrative Court for adoption of a resolution explaining legal regulations whose application has caused a divergence of jurisprudence between administrative courts (Skoczylas, 2004, p. 225).

As can be seen from the catalogue of statutory competences, the power of the President of the Supreme Administrative Court, in terms of judiciary and administrative supervision, are wide. The manner in which the directive of separation between the administrative and judicial supervision is implemented largely depends on the personal qualities of the people holding supervisory posts, because the judicial and administrative functions of the President of Supreme Administrative Court cannot be unambiguously separated. In my opinion, there is no doubt that this body, free of political pressure, may exercise these powers in a manner consistent with the Constitution. The competences of the President of Supreme Administrative Court do not interfere with court proceedings. The purpose of these powers is only to ensure the right course of a lawsuit or the proper organization of a given court. The shape of the administrative supervision is also in line with the principle of separation of powers.

## 6. CONCLUSION

There is widespread conviction that the reforms of the judiciary in Poland should be implemented to improve the quality of the due process of law and the efficiency of justice as a whole. It is also obvious that court administration and proper supervision over judiciary have direct influence on the quality of court performance and on the quality of justice being the essential outcome thereof. The quality work in courts is measured by performance of courts, public services, and the quality of justice (Simonis, 2019). However, the transformation of the system of administration of justice should pay more attention to building of ethical consensus and responsibility, rather than to institutional and staff changes (Bobek, 2010, p. 251). Supervision of the judiciary is not limited exclusively to administration, but also, in a narrow sense, concerned with judgments and rulings. Supervisory authority may have some influence on the judges. For example, the influence may consist in the participation of the supervisory body in the process of judges' promotion, or potential capacity to initiate disciplinary proceedings. It is obvious that it is impossible to create a supervisory body which would be completely independent of any other bodies. This is necessitated by the need to establish the selection procedure of members of such a body, and to create a supervisory body over the existent supervisory authorities. In other words, someone has to choose the members of a supervisory body. Notwithstanding the foregoing, the supervisory body should be independent from the executive branch of the State, which always seeks to influence the judiciary. This is particularly important in the case of administrative judiciary, which is established to control the activities of the state administration bodies.

In relation to supervisory control over the courts, further restrictions arise as a result of judicial independence. It must be assumed that the basic principle is that supervision is primarily concerned with administration, including the management of budget allocations, whereas adjudication is largely outside the scope of supervision. Supervision thus constitutes, in principle, a kind of retrospective control, as it does in central administration. It has to be emphasized that Poland is a parliamentary republic where the separation of powers is one of the most important principles regulating the system (Banaszak, 2017, p. 570). Even before the current parliamentary term, the administrative supervision of the Minister of Justice was criticized both in the legal doctrine and by the association of judges. This is why the system of the supervision adopted by the President of the Supreme Administrative Courts (who is always a judge) has to be assessed more positively than supervision adopted by the Minister of Justice over the common courts ('Warszawski Oddział "Iustitii" w sprawie dobrych praktyk nadzorczych.', 2013).

Judicial review in individual cases should be conducted by an independent authority which is separate from the legislature and the executive. Separation of powers implies that each of the branches of government should be vested with substantive powers that correspond with its nature. What is more, each of the three branches of government ought to have a certain minimum of exclusive competence that would determine the nature of a given branch.<sup>19</sup> Attention should be given to the independence of individual judges irrespective of the model of court administration in which they operate, as such strategy is more resistant to abuse of the constitution (Kosař, 2017, p. 98). The independence of the courts and judges from politicians is at the heart of the normative importance of independent courts within the rule of law (Popova, 2012, pp. 139–145). The internal pressure of supervisory bodies can be as dangerous as the pressure from the bodies of the executive or even legislative branches. The exercise of

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<sup>19</sup> Poland, Constitutional Tribunal, K 34/15 (3 December 2015).

supervisory power often escapes additional control and may be abused. The most important issue of administrative supervision is that the less political factors influence the judiciary, the better it is able to protect the rights of an individual through independent courts and independent judges. The scope of competence in the field of administrative supervision over the administrative courts falls within the definition proposed above. Moreover, the exercise of supervision over this branch of the courts by a judicial factor (not related to the executive) does not raise any doubts regarding the system (related to the separation of state powers).

This is the reason why the scientific assessment of administrative supervision over the administrative courts (conducted by the President of the Supreme Administrative Court) can be assessed positively, as opposed to the model of administrative supervision over common courts. Administrative courts are more independent in this respect, and apart from the practice and current political turmoil, from the theoretical point of view, it can be concluded that there is a separation of the judicial and executive powers from the executive. *De lege ferenda*, various possibilities arise in this connection. Supervision over the common courts may be exercised by the Supreme Court. Then this court would be equipped with competences in the field of administrative and judicial supervision over the common courts.

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