

SELF-GOVERNMENT BOARDS OF APPEAL

ABSTRACT

The purpose of local self-government in Poland, which was reactivated in 1990, was to address the needs of the entire local community. Newly created commune authorities were also made competent to handle individual matters by means of administrative decisions. It became necessary to make the idea of the communes' independence and sovereignty go in line with the underlying standard of administrative proceedings, which is the parties' right to have their matter examined twice as to its substance. Simultaneously with local self-government, boards of appeal were created at self-government parliaments, which were meant to safeguard real protection of entities whose matters were handled in an authoritarian, unilateral manner by the commune authorities. The boards of appeal were modified by subsequent legal regulations and have been operating until the present day, though in 1994 they were renamed as self-government boards of appeal. In this paper the evolution of these bodies is presented and their linkage to local self-government is explained.

KEYWORDS: *local self-government, public administration body, principle of two instances of administrative proceedings, appellate body, collegial body, quasi-judicial body*

INTRODUCTION

When 25th anniversary of the first partly free parliamentary election since World War 2 was celebrated on 4 June 2014, there was a debate which date should be deemed as the beginning of the Third Polish Republic¹, equivalent to restoring a free democratic state in Poland. It is usually assumed that the decision taken on 29 December 1989 by vote of the last Sejm of People's Republic of Poland (the so-called Contract Sejm) that the Polish state would be called 'The Republic of Poland' again and the crowned eagle would be restored as its national emblem – in force since 1 January 1990 – was a symbolic beginning of the so-called Third Polish Republic. It is not, however, the only possible interpretation of Poland's modern history. According to various opinions, there are also other dates – significant due to the importance of related events – which can be taken as the beginning of the Third Polish Republic. They include i.a.: start of the Round Table Talks (6 February 1989), appointment of the cabinet of Tadeusz Mazowiecki (12 September 1989), passing the presidential insignia of the Second Polish Republic by the President of Poland in exile, Ryszard Kaczorowski, to President Lech Wałęsa, elected in free presidential vote and sworn on that day (22 December 1990), or the beginning of the first Sejm that came into being as a result of the first entirely free election since World War 2 (25 November 1991) – an event interpreted as discontinuance of undemocratic structures of the People's Republic of Poland.

Undoubtedly, however, it can be assumed that all major changes due to which we can call Poland a free, democratic state, were initiated by the cabinet formed by Prime Minister Tadeusz Mazowiecki, elected by the Sejm on 24 August 1989². Although this cabinet existed only until the end of 1990, it succeeded in putting an end to hyperinflation, introduced market economy, enabled the development of free media and reactivated local self-government in Poland.

Rebirth of local self-government in Poland was preceded by the Round Table Talks. The political reform work-group gave rise to the Team for Associations and Local Self-Government, and then to the Work-Group for Local Self-Government³. After the election that took place on 4 June 1989 and appointment of the cabinet of Prime Minister Tadeusz Mazowiecki, the chances for restoring local self-government in Poland became real. It finally became reality upon adopting two Acts of 8 March 1990: the Act on Local Self-Government⁴ and the

Act on amending the Constitution of the Republic of Poland (Journal of Laws No. 16, item 94, as amended). As it can be seen in the literature of the subject, reactivation of local self-government after political transformation initiated in 1989 is deemed as “one of the most important decisions taken with a view to transforming the political system of the Republic of Poland. It was a milestone in the transformation process from an authoritarian and centrally controlled state to a democratic and decentralised one” (Calzoni, p. 107).

The new model of local self-government, created by the Act of 8 March 1990, was introduced only on the commune level, without altering the structure of the supreme public administration system, designed for the purposes of a centralised state, where all the decisions were taken on a ministerial level. Self-government – which at that time was equivalent to a commune – was granted legal personality and as a legal entity was entitled to judicial protection. The communes were entrusted with performing public tasks: local tasks as well as mandated public administration tasks. The commune authorities were also empowered to handle individual matters by means of administrative decisions. A problem arose what remedies should be granted to entities whose matters were handled in an authoritarian, unilateral manner by the commune authorities in charge of administrative proceedings.

CONSEQUENCES OF THE PRINCIPLE OF TWO INSTANCES OF ADMINISTRATIVE PROCEEDINGS

According to the principle of two instances in administrative proceedings, each of the parties in proceedings is entitled to have their matter examined and settled twice – in the first and second instance (Adamiak, 1991, p. 3). The obligation to examine a matter twice entails the obligation to carry out explanatory proceedings twice⁵. A breach of this principle is considered to be a serious breach of the law, which constitutes a basis for declaring the invalidity of a decision⁶. Pursuant to Art. 78 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws no. 78, item 483), limitations of the principle of two instances may be justified only by virtue of a statute and in an explicit manner which does not give rise to any doubt, is precisely limited as to its scope and excludes any extended interpretation.

The principle of two instances applies to any kind of administrative proceedings carried out pursuant to the Act of 14 June 1960 “Code of Administrative Procedure” (consolidated text: Journal of Laws No. 267/2013, item 267), or the Act of 29 August 1997 “Tax Ordinance Act” (consolidated text: Journal of Laws of 2012, item 749). From the point of view of this principle, it is not important before which body of public administration the proceedings are pending. Thus, the principle of two instances should also apply to administrative proceedings pending before self-government authorities. As a result, during their work on the act on local self-government, the lawmakers faced the problem how to connect the principle of the commune’s independence with the principle of two instances in administrative proceedings. If province governors were to be entrusted with powers to supervise judicial decisions rendered by commune bodies (such a solution was adopted in case of mandated tasks), this would be in contravention of the declared principle of independence of local self-government. Since at that time the commune was the only unit of local self-government, it was impossible to transfer powers of supervision of judicial decisions to bodies remaining outside the structure of the government administration but performing tasks related to the same. In the original draft of the Act on Self-Government prepared by the Senate it was assumed that administrative decisions issued by a commune head (town or city mayor) on matters included in the commune’s own tasks shall be appealed against to the board of appeal appointed by the commune’s board (Art. 19 section 2 item 4 of the draft). However, this concept was opposed because of the allegation that it could not be guaranteed that decision-making panels appointed from among the board members would possess necessary expertise, and that a risk would arise of making the citizens and their matters dependent on self-government policies. Such circumstances gave rise to the idea of separate bodies falling without the scope of government administration and having exclusive powers to adjudicate in matters related to tasks performed by the communes. Such bodies were called boards of appeal at self-government parliaments⁷.

BOARDS OF APPEAL AT SELF-GOVERNMENT PARLIAMENTS

The Act on Local Self-Government of 8 March 1990 adopted a solution according to which administrative decisions rendered by a commune governor

or by a mayor (city mayor) in matters pertaining to the commune's tasks could be appealed against to a board of appeal at a self-government parliament. The Act refers to this authority only in three articles. It was stipulated that they would render decisions in panels made up of three persons. The costs of their activities were borne by self-government parliaments (which existed until 31 December 1998). Thus, these costs were indirectly incurred by communes, which made their contributions on a *pro rata* basis, depending on the number of inhabitants of a given commune. Self-government parliaments were also made competent to define the detailed principles of the board's operation in the adopted regulations, to decide on matters related to the number and appointment of board members, appointment of board chairpersons, preparation of documents for sessions, manner of appointment of decision-making bodies, preparation of decisions, signing administrative decisions.

As of 27 May 1990, pursuant to the amending act of 24 May 1990 (Journal of Laws No. 34, item 201), regulations related to the newly-established public administration bodies were also added to the Code of Administrative Procedure. These regulations pertained to the status of boards of appeal at self-government parliaments and special characteristics of the procedure of dealing with these bodies (Art. 5 § 2 item 3 and 6, Art. 22 § 1 item 1, Art. 27 § 3, Art. 27a § 2 and Art. 150 § 2 and § 3 of the Code of Administrative Procedure).

New public administration bodies created in 1990, i.e. boards of appeal at self-government parliaments were different from other bodies specified by provisions of the law in regard to their scope of activity, tasks, power and obligations. The status of the boards of appeal and their decision-making panels in the State structure and their activity were assessed to be analogous to the legal status of courts and adjudicating panels. The boards of appeal at self-government parliaments were quasi-judicial bodies.

AMENDMENTS INTRODUCED BY THE ACT ON SELF-GOVERNMENT BOARDS OF APPEAL

The situation where the legal status and activity of the boards of appeal were regulated by only a few provisions of the Act on Local Self-Government and of the Code of Administrative Procedure lasted for four years. On

12 October 1994, the Polish Parliament adopted the Act on Self-Government Boards of Appeal which entered into force on 6 December 1994 (Journal of Laws No. 122, item 593, consolidated text: Journal of Laws No. 79/2001, item 856, as amended). The legal status of the boards of appeal pursuant to the provisions of this Act was not considerably modified. Self-government boards of appeal were described as higher-level bodies within the meaning of the Code of Administrative Procedure in individual administrative matters settled by commune bodies, with exception of matters pertaining to mandated tasks related to the government administration, performed by communes pursuant to statutes or agreements made with public administration bodies. Self-government boards of appeal were defined as bodies competent for handling appeals against administrative decisions, complaints against lower-level decisions, requests for revival of proceedings or for the declaration of the invalidity of a decision, and handling complaints and petitions in specific proceedings.

The basic task of the boards of appeal was to carry out widely understood higher-instance inspection and out-of-instance supervision of the activity performed by commune bodies in individual matters related to public administration, except for mandated government administration tasks.

At the same time, the boards of appeal were granted powers to adjudicate – under principles specified in separate acts – also in matters other than individual administrative matters which are handled by commune bodies as their own tasks. Pursuant to a separate statute, the boards of appeal could adjudicate in civil matters. As of 8 December 1994, self-government boards of appeal were granted competence to examine property disputes between the owner of real estate and the perpetual usufructuary of this real estate concerning the amount of the annual usufruct rent⁸.

Pursuant to the Act of 12 October 1994, self-government boards of appeal were granted some powers of supervision and inspection: they became competent to request necessary information and documents connected with commune bodies' activity, to request access to documentation connected with handling of matters subject to the board's decision and to issue signalling decisions (Art. 19 section 2 item 1, Art. 19 section 2 item 2 and Art. 20 of the Act on Self-Government Boards of Appeal). The latter could

be issued by the board's chairperson in case where material irregularities in work carried out by a commune body were found, for instance in case of failures to settle matters within the statutory time limit, decisions being issued by a body without the required authorisation, or failures to transfer appeals to a higher-instance body.

Self-government boards of appeal were granted two supplementary competencies: firstly, the right to turn to the Supreme Administrative Court or to the Constitutional Tribunal with a legal question the answer to which had an impact on the decision on the examined matter (Art. 22 section 1 of the Act on Self-Government Boards of Appeal); and secondly, the right to turn to the Constitution Tribunal for the statement of conformity of a legislative act with the Constitution, or of another normative act with the Constitution or with a legislative act⁹. In practice, these powers made it possible to unify the decision-making system of forty-nine boards of appeal¹⁰, which did not have a common body of higher instance. However, pursuant to the amendment of the Act on Self-Government Boards of Appeal dated 18 December 1998, the above-mentioned powers were revoked.

The self-government boards of appeal, according to provisions of the Act of 12 October 1994, were described as public administrative bodies having a special status in the Polish system of public administration bodies (Tarno, p. 125; Korzeniowska, p. 339–341). Their competence was limited to rendering decisions exclusively in individual matters related to public administration. The power to inspect and supervise which was granted to the boards had only a supplementary function which aimed at supporting effective and correct adjudication. As public administration bodies defined as such by the provisions of the 1960 Code, self-government boards of appeal were not granted the powers specific to administrative bodies. The boards' tasks did not include planning and enactment of universally binding normative acts, direct organisation of actions aimed at satisfying collective public needs or enforcement of public legal obligations. Self-government boards of appeal were shaped as bodies of higher instance with respect to commune bodies, but at the same time they did not have a higher status in the structure of public administration. The boards and commune bodies, which were independent of each other, were only connected

by procedural dependencies. The decisions rendered by the boards were binding for commune bodies only in those matters in relation to which these decisions were taken. The boards' decisions did not have any impact on shaping the strategies and methods of resolving particular tasks performed by communes. The performance by the boards of their basic functions could impact the shape of decisions rendered by commune bodies in individual matters.

While specifying the structure and status of the self-government boards of appeal, the Act of 12 October 1994 included also precise regulations on the status of decision-making panels and of the chairpersons of the boards. High requirements were specified for both board chairpersons and numerary members. The entities empowered to elect the boards' chairpersons were self-government parliaments, which had to take decisions in a secret vote. The competence to select and present candidates for board members (both numerary and supernumerary ones) was granted to the board chairpersons.

The bodies entitled to dismiss a numerary member or a chairperson of a board were the self-government parliaments. A numerary member or a chairperson of a board could be removed due to at least one of the following three reasons: if they are convicted with a final sentence for an offence committed due to culpable reasons, if they lose Polish citizenship or the right to exercise civic rights, or if they are repeatedly found to be in default of performance of their obligations or they perform their obligations improperly. A dismissed person had the right to file a complaint to the Supreme Administrative Court.

The question of removal of a numerary member of a self-government board of appeal was regulated by the Act of 12 October 1994, which guaranteed stability of employment for numerary members.

Under the new legal regulations, the boards were explicitly named State budget units and made subject to the financial management principles contained in the Budget Law¹¹. The expenditure of the self-government boards of appeal was financed from the State budget, and the boards, in turn, were obliged to contribute their income to the State budget. As a result, the boards became financially independent of the self-government parliaments. The self-government parliaments could no longer impact the boards' decisions through financial restrictions.

CONSEQUENCES OF THE REFORM OF PUBLIC ADMINISTRATION IN POLAND IN 1998

As of 1 January 1999, another reform of Polish public administration was put into effect as an enactment of the provisions of the Constitution of 2 April 1997. Major changes implemented as of that date related to the territorial division of the country as well as de-centralisation and de-concentration of public administration tasks. The first task was completed by introducing a new, three-tier territorial division of the country, creating local self-government on the district and province level¹², and placing most existing special administrative bodies under the common leadership of a province and district governor. 308 country districts and 65 township districts were created, the number of communes was not changed¹³. On the regional level, 16 provinces were created, with an average number of residents of ca. 2.4 million. Creation of local self-government was in fact implementation of commitments contained in the European Charter of Self-Government.

De-centralisation and de-concentration of public administration tasks was implemented by means of a new distribution of competences between public and self-government administration as well as between particular tiers of the fundamental territorial division of the country. A further step was the reorganisation of local administration, including transfer of necessary organisation units as well as movable and immovable property from public administration to local self-government, the government officers being taken over by a new employer, organisation of unified administration on the level of a province, and a modification of the public finance system consisting in an increase of the share of local self-government in public expenditure.

As a result of arrangement of the organisational system of public administration in Poland and its territorial background, functions were divided between particular government and local self-government segments, and many public tasks were transferred to local self-government.

The status of the self-government boards of appeal was strengthened in the period of the administrative reform by means of regulations of the Act of 18 December 1998 on amending the Act on Self-Government Boards of Appeal (Journal of Laws No. 162, item 1124). The amendment entered into force

on 1 January 1999. On that date, the self-government parliaments ceased to exist. Now, the person entitled to appoint the chairperson deputy chairperson and numerary members of a board is the Prime Minister. When developing regulations on the employment of the boards' members, the lawmakers relied on solutions specified in the Act on the System of Common Courts.

For the administration authorities to be efficient, it is necessary to correctly select the persons who possess adequate competencies. Even ancient Romans were aware of that (Łach, Józefów 2013, p. 166; Sitek, p. 339–348). Also Polish lawmakers adopting the legal act providing for comprehensive regulation of legal basis of activity of self-government boards of appeal, as of 12 October 1994 precisely defined the requirements that must be fulfilled by candidates for decision-making members and the chairperson of the board. Under the current legal conditions, board members must meet the criteria specified by the Act on Self-Government Boards of Appeal, successfully pass the verification process conducted by a verification team and be positively assessed by the general assembly of the board, and finally, be appointed by the Prime Minister.

Both the board chairperson and numerary decision-making members must meet high requirements. They must be Polish citizens and have the right to exercise full civic rights, have a Masters degree in Law or Administration, and have a high level of legal expertise and professional experience in the field of public administration. A candidate for the board chairperson and numerary member is not eligible when he or she has been convicted with a final sentence for an offence committed due to culpable reasons.

The person entitled to present candidates for board members (both numerary and supernumerary ones) is the chairperson of a given board. In this way the chairpersons of the boards are allowed to implement their own concept of creating a professional team. This power has been additionally strengthened by granting the chairperson with an exclusive right to submit an application for appointment or removal of a deputy chairperson to the Prime Minister. But the final entity which appoints the board members is the Prime Minister, who acts upon request of a board chairperson. Such a request can be filed after the general assembly have expressed their opinion adopted in a

secret vote by the majority of the votes cast, and in a panel of at least half of the assembly members.

Under the current legal conditions, the chairperson of a board may be appointed exclusively from among numerary members of the board. This requirement is also valid for the appointment of the deputy chairperson. However, a possibility to enter the competition for the chairperson's position is not limited to the members of this particular board. As a result, the general assembly is able to choose candidates with the best qualifications. Such a regulation is in conformity with provisions of Art. 65 of the Constitution, which provide for the right to a free choice of workplace and formally safeguard the availability of posts in public bodies. The general assembly of a board selects candidates for the chairperson of this board in a secret vote by the absolute majority of the votes cast. The assembly is obliged to select two candidates. The selected candidates must obtain the greatest number of votes respectively. The Prime Minister appoints the chairperson of the board from among the two candidates selected by the general assembly of this board.

Since 1 January 1999, the board's general assembly has been granted considerable powers and a large extent of independence. The members of a given board have a considerable impact on the selection of candidates who will be then presented to the Prime Minister. Nonetheless, it is the Prime Minister who chooses the chairperson from among a limited number of candidates and commences employment relationship with the chairman of a board who in turn commences and terminates employment relationship with numerary members.

Supernumerary members, who are also selected by the Prime Minister upon request of the board chairperson submitted following the opinion of the general assembly adopted in a secret vote, are not bound by any employment contract. They are entitled to a lump-sum remuneration, the amount of which depends on the number of matters prepared and carried out by them. They are also remunerated for the preparation of matters, participation in the general assembly sessions and for representing the board before the administrative court.

Numerary members are appointed for an indefinite period of time, while supernumerary ones – for the period of six years, with the provision that a half

of them is selected every three years. A numerary board member is appointed to the post of chairperson for the period of six years. The term of office starts on the day the chairperson is appointed by the Prime Minister. When the term of office has lapsed the chairperson continues to perform his or her functions by the time a new chairperson is appointed.

The amendments to the Act on Self-Government Boards of Appeal, introduced pursuant to the Act of 18 December 1998, also relate to the question of the removal of the board chairperson or numerary member. The entity empowered to remove the chairperson is the Prime Minister and his or her decision may be appealed against by the removed person by filing a complaint to an administrative court within fourteen days of the date the decision about the removal was delivered. Filing of such a complaint entails the legal effect of the suspension of removal. However, the court is obliged to set the date of proceedings with this respect within 30 days of the date the complaint was filed at the latest. The deputy chairperson of a self-government board of appeal can also be removed by the Prime Minister. The removal is only possible in case of the circumstances enumerated in the Act and only according to the principles specified in this Act. Enumeration of prerequisites for removal of board chairperson and members, definition of the manner of removal and – in case of the board chairperson – a possibility of filing a complaint to the Supreme Administrative Court against the decision on their removal were designed to safeguard stability of the employment relationships of the decision-making members of the discussed body.

It is only by the amendment of the Act on Self-Government Boards of Appeal of 18 December 1998 that the lawmakers provided for the possibility of instituting disciplinary proceedings for the board members. Both numerary and supernumerary board members are subject to disciplinary liability (Art. 16a and Art. 16d of the Act on Self-Government Boards of Appeal).

Disciplinary committees may decide to impose a disciplinary penalty on a board member, such as an admonition, reprimand, reprimand with warning or exclusion from the board. However, actions taken by these committees depend on the intentions of the chairperson because the first instance disciplinary committee initiates disciplinary proceedings only upon

request of the latter. It means that even though the board's chairperson before his/her appointment is and after removal may be the board's member, no disciplinary proceedings may be initiated against him/her during the term of his/her office. This guarantee is not enjoyed by the deputy chairperson.

Regulations on disciplinary liability of board members were designed similarly to analogical ones, applicable in case of legal (barrister and solicitor) legal corporations, judges of common courts and public prosecutors.

Pursuant to the principle of objective truth and the principle of inducing citizens' reliance on public authorities (Art. 8 of the Code of Administrative Procedure), as well as the principle of inducing citizens' reliance on tax bodies (Art. 121 § 1 of the Tax Ordinance Act), the provisions of the Act on Self-Government Boards of Appeal prohibit to join the membership in a board with the function of a Sejm deputy or senator, town councillor, or with membership in an executive body of local self-government entities, or with employment in a commune, district or province marshal office, or with membership in a regional accounting chamber board. Numerary board members are additionally prohibited from being employed as judges or public prosecutors and from being employed in a body of public administration in the same province. Both the board chairpersons and numerary members must not be members of any political party or be involved in any political activity. These prohibitions are supposed not only to guarantee impartiality of board members, but also to restrict the possibilities of impacting the boards' decisions by professional, community or local groups. It may be assumed that the limitations of rights and freedoms of decision-making board members aim at assuring that parties in administrative proceedings will have their matters settled objectively and at creating additional elements of the boards' independence. As a consequence, the legal status of numerary members of the self-government boards of appeal is similar to that of judges of common courts.

Pursuant to Art. 21 of the Act on Self-Government Boards of Appeal, members of the boards' decision-making panels are bound exclusively with generally applicable law when adjudicating. The decisions taken by self-government boards of appeal are reviewed by an administrative court in the scope, manner and under principles specified in the provisions of the 2002

Acts¹⁴. The purpose of this review is to safeguard that a citizen is able to enforce his/her right to have his/her matter examined by court. This right results from Art. 14 of the International Covenant on Civil and Political Rights, Art. 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms and Art. 45 of the Constitution of the Republic of Poland, under which every citizen has a right to have their matter examined in a fair and overt (public) manner, within a reasonable deadline, by a competent, impartial, independent and statutorily established court of justice.

Judicial review exercised by administrative courts is made only with regard to the decisions' legality, unless the act on Polish administrative courts provides otherwise. The legal assessment expressed in the court's decision is binding in a given matter for this court, for the board of appeal whose activity, omission or excessive length of proceedings were the subject of the complaint, and for every adjudicating authority involved in a given matter until it is finally settled, unless the legal status is altered in a way which makes the legal opinion no longer valid.

SELF-GOVERNMENT BOARDS OF APPEAL AS COURTS IN STATU NASCENDI

The amendment of the Act on Self-Government Boards of Appeal dated 18 December 1998 resulted in making the status of numerary members of self-government boards of appeal similar to that of judges of common courts. Furthermore, some amendments were introduced in the Act of 12 October 1994, which seem to relate only to notions, whereas their literal interpretation may lead to a conclusion that the boards were transformed into courts *in statu nascendi*. One example may be replacement the notion "chairperson" with the notion "president". The purpose of this amendment was probably to create necessary grounds for readdressing and implementing the concept of the reform of the administrative court system, linked with the reform of administrative proceedings. This concept was prepared by the team appointed by the Institute of Public Affairs and presented on 23 February 1999. Between 1980 and 2003, a one-instance administrative court existed in Poland – the Supreme Administrative Court. In the Constitution of 2 April 1997 it was

stipulated that within 5 years as of its entering into force, a two-instance system of administrative courts should be operating in Poland.

The intention of the authors of the first reform design of administrative court system¹⁵ was not so much to remodel self-government boards of appeal as first instance administrative courts, as to convert both numerary and supernumerary board members into judges of a first instance administrative court. The concept was based on a basic assumption of creating “a model of the administration court system where the court would also act as an appellate body”¹⁶. The authors supported resignation from the appeal administrative procedure and replaced it with protection secured by a two-instance administrative court system¹⁷.

The concept presented by the Institute of Public Affairs – even though it was submitted in the form of a bill to the Sejm – has never developed into binding law. The Parliament adopted 3 acts¹⁸ on the basis of the bills sent to the Sejm on 30 May 2001 by the President of Poland. The concept of the administrative court system reform presented in these bills was drawn up by a team appointed in 1999 by the President of the Supreme Administrative Court. The basic assumption behind this solution was that introducing a two-instance court procedure does not justify resignation from a two-instance administrative procedure. These procedures are in fact mutually autonomous: each of them should provide for a possibility of appeal to the second instance, both in the administrative and in the court system, whereas a right to file complaints on decisions in administrative proceedings, i.e. appealing to a higher administrative authority, is a constitutional right, a remedy designed to protect rights and freedoms, arising from Art. 78 of the Constitution. Since 1 January 2004, 16 province administrative courts have been operating in Poland and the Supreme Administrative Court as the second-instance court. In the new legal status, existence of self-government boards of appeal is no longer threatened.

LINKAGE BETWEEN SELF-GOVERNMENT BOARDS OF APPEAL AND LOCAL SELF-GOVERNMENT

In the period between creation of boards of appeal at self-government parliaments and entry into force of the Act on Self-Government Boards

of Appeal of 12 October 1994, the linkage of the board to self-government was obvious. These bodies were created pursuant to the Act on Local Self-Government of 8 March 1990, the principles governing their activity were laid down by three regulations of this act along with provisions of the Code of Administrative Procedure. Board members were appointed by self-government parliaments which also decided on the number of members of particular boards. These bodies, even though they acted without express legal authorisation, laid down the principles of the boards' operation in their regulations, and first of all financed their activity from contributions made by communes of a given province. It was highlighted in the literature that links of the boards with self-government parliaments turned the boards into an element of the self-government structure (Borkowski, p. 19).

When the Act on Self-Government Boards of Appeal was adopted – in Art. 3 of which they were expressly defined as state budget entities – a doubt arose whether they have not lost their self-government nature. Also the employment relationship of board members indicates that these bodies in fact cannot be classified as self-government administration. Pursuant to Art. 1 of the Act of 22 March 1990 on Self-Government Officers (Journal of Laws No. 21, item 124, as amended), and currently Art. 2 of the Act of 21 November 2008 on Self-Government Officers (consolidated text: Journal of Laws of 2014, item 1202), numerary members of self-government boards of appeal are entitled to a status of a self-government officer. It is only by virtue of Art. 16 item 2 of the Act on Self-Government Boards of Appeal that in matters related to their employment relationship not regulated in this act, the provisions of the Act on Self-Government Officers shall apply respectively¹⁹.

When the Act on Self-Government Boards of Appeal was amended on 18 December 1998, regulations were introduced which could lead to final destruction of the concept of self-government boards of appeal as self-government bodies. Legal solutions which made the board a body clearly belonging to the self-government structure were abolished. The competence to determine the composition of self-government boards of appeal was transferred from the self-government parliament (which ceased to exist as a legal entity) to the Prime Minister – a supreme public administration authority, supervising

i.a. local self-government. As a consequence, a personal link between the boards of appeal and self-government authorities, existing since 1990, was broken. As of 1 January 1999, the boards lost their power to examine common complaints related to tasks or activity of management boards or their presidents, which abolished the link with the structure of local self-government. The term 'self-government' in relation to the self-government boards of appeal became an empty word (Borkowski, p. 24).

According to some positions which can be found in the literature of the subject, there are no grounds for counting self-government boards of appeal among local self-government authorities²⁰. They are not bodies of any local community, and the term 'self-government' only means that these authorities examine matters falling under competence of self-government authorities²¹. There is no organisational connection whatsoever to local self-government, as the boards are not subordinated to self-government authorities. In spite of the fact that the regulations were amended, the Supreme Administrative Court in its decision of 30 June 1999 described the board as a local self-government authority which is structurally independent from public administration bodies²², and in its decision of 1 June 2000 – as a local self-government entity's body²³.

The nature of self-government boards of appeal was not expressly defined in procedural regulations either. In the legal definition of a 'local self-government entity's body', included in Art. 5 § 2 item 6 of the Code of Administrative Procedure, the boards were listed next to i.a. commune authorities, district authorities or chief officers of the inspection and guard services. It cannot be disregarded, however, that in the above-mentioned regulation the lawmakers differentiated between self-government boards of appeal and other enumerated entities using the word 'further'. Thus the boards were distinguished, and some emphasis was placed on their unjustifiable inclusion under local self-government entities' bodies, made only for the purposes of administrative proceedings. However, in some other procedural provisions included in the same legal act (e.g. in Art. 17 item 1, Art. 22 § 1 item 4 of the Code of Administrative Procedure) the boards were not included under the category of a 'local self-government entity's body'²⁴.

In the current legal status, it shall be said that self-government boards of appeal are in fact specialised, independently adjudicating administrative authorities, and their only task (except for the exception resulting from Art. 1 item 2 of the Act on Self-Government Boards of Appeal) – due to the fact that they are higher level bodies in relation to local self-government authorities – consists in examination of administrative matters, in line with the principle expressed in Art. 171 item 1 of Polish Constitution²⁵. Self-government boards of appeal are deemed to be ‘administrative tribunals’²⁶ or quasi-judicial bodies²⁷. What distinguishes them from other Polish public administration bodies is i.a. the principle of collegial adjudication, warranties of independence from self-government authorities, statutorily defined qualifications which are required from candidates for board chairpersons and members, as well as design of characteristics and competencies of these authorities.

CONCLUSIONS

Created by the Act of 8 March 1990, and then described in detail by the Act of 12 October 1994, the boards of appeal have been operating until the present day, after being renamed as self-government boards of appeal, but still in the same number of 49. Their function has been to safeguard the right of the parties to administrative proceedings conducted by local self-government entities’ bodies of all levels (commune, district, self-government province) to have individual administrative matters (settled by means of administrative decisions) examined twice as to their substance. Self-government boards of appeal are therefore a permanent element of the structure of Polish public administration the genesis of which is related to political transformation introduced in 1990.

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Act of 29 April 1985 on the Constitutional Tribunal (consolidated text: Journal of Laws No. 109/1991, item 470, as amended).

Act of 22 March 1990 on Self-Government Officers (Journal of Laws No. 21, item 124, as amended).

Act of 8 March 1990 on Local Self-Government; since 1 January 1999, the title has been: “Act on Commune Self-Government” (consolidated text: Journal of Laws of 2013, item 594, as amended).

Act of 8 March 1990 on amending the Constitution of the Republic of Poland (Journal of Laws No. 16, item 94, as amended).

Act of 24 May 1990 on amending the Code of Administrative Procedure (Journal of Laws No. 34, item 201).

Act of 5 January 1991 “Budget Law” (consolidated text: Journal of Laws No. 72/1993, item 344, as amended).

Act of 12 October 1994 on Self-Government Boards of Appeal (Journal of Laws No. 122, item 593, consolidated text: Journal of Laws No. 79/2001, item 856, as amended).

Act of 21 October 1994 on amending the Act on Land Management and Real Property Expropriation (Journal of Laws No. 123, item 601).

Act of 2 April 1997 “Constitution of the Republic of Poland” (Journal of Laws No. 78, item 483).

Act of 21 August 1997 “Real Property Management Act” (consolidated text: Journal of Laws of 2014, item 518, as amended).

Act of 29 August 1997 “Tax Ordinance Act” (consolidated text: Journal of Laws of 2012, item 749, as amended).

Act of 5 June 1998 on District Self-Government (consolidated text: Journal of Laws of 2013, item 595, as amended).

Act of 5 June 1998 on Province Self-Government (consolidated text: Journal of Laws of 2013, item 596, as amended).

Act of 18 December 1998 on amending the Act on Self-Government Boards of Appeal (Journal of Laws No. 162, item 1124).

Act of 25 July 2002 “Law on the System of Administrative Courts”, Journal of Laws No. 153, item 1269, as amended.

Act of 30 August 2002 “Law on Proceedings at Administrative Courts” (consolidated text: Journal of Laws of 2012, item 270, as amended).

Act of 30 August 2002 – Implementing Regulations to the Law on the System of Administrative Courts and to the Law on Proceedings at Administrative Courts, Journal of Laws No. 153, item 1271, as amended.

Act of 21 November 2008 on Self-Government Officers (consolidated text: Journal of Laws of 2014, item 1202).

International Covenant on Civil and Political Rights.

Convention for the Protection of Human Rights and Fundamental Freedoms.

Endnotes

- ¹ ‘Third Polish Republic’ (Polish abbreviation: III RP) is a name used in the preamble to the Constitution of the Republic of Poland of 2 April 1997 as a reference to the Polish state after fundamental political transformations which have occurred since 1989. Official name of the state is: ‘the Republic of Poland’.
- ² When the appointment of the government of Tadeusz Mazowiecki was voted in the Sejm, 405 out of 415 deputies present cast the “for” vote.
- ³ *Protokół końcowy grupy roboczej „Okrągłego Stołu”, „Rada Narodowa” 1989, no. 27/28, p. 10.*
- ⁴ Since 1 January 1999, the title of the Act has been: “Act on Commune Self-Government” (consolidated text: Journal of Laws of 2013, item 594, as amended).
- ⁵ Sentence of the Supreme Administrative Court of 12 November 1992, V SA 721/92, ONSA 1992, no. 3–4, item 95.
- ⁶ Sentence of the Supreme Administrative Court of 10 April 1989, II SA 1198/88, ONSA 1989, no. 1, item 36.
- ⁷ More on the subject of the genesis of the boards: J. Stępień, *Samorząd a państwo, „Samorząd Terytorialny”, 1–2, p. 91–92.*
- ⁸ Art. 43a and Art. 43f of the Act of 29 April 1985 on Land Management and Real Property Expropriation (consolidated text: Journal of Laws No. 30/1991, item

127) in their wording as in the Act of 21 October 1994 on amending the Act on Land Management and Real Property Expropriation (Journal of Laws No. 123, item 601). currently these are Articles 78–80 of the Act of 21 August 1997 “Real Property Management Act” (consolidated text: Journal of Laws of 2014, item 518, as amended).

- ⁹ Regulation of Art. 22 section 2 in relation to Art. 22 section 1 of the Act of 29 April 1985 on the Constitutional Tribunal (consolidated text: Journal of Laws No. 109/1991, item 470, as amended). The boards were deprived of this right under the Act of 18 December 1998 amending the Act on Self-Government Boards of Appeal (Journal of Laws No. 162, item 1124).
- ¹⁰ At that time Poland was divided into 49 provinces, a board of appeal had its seat in every province capital as the second instance body competent to examine remedies against individual administrative acts issued by commune entities from a given province.
- ¹¹ At that time it was the Act of 5 January 1991 “Budget Law” (consolidated text: Journal of Laws No. 72/1993, item 344, as amended).
- ¹² Act of 5 June 1998 on District Self-Government (consolidated text: Journal of Laws of 2013, item 595, as amended); Act of 5 June 1998 on Province Self-Government (consolidated text: Journal of Laws of 2013, item 596, as amended).
- ¹³ In 1998 there were 2489 communes, including 305 municipalities, 11 Warsaw communes, 567 urban-rural communes and 1606 rural communes.
- ¹⁴ Act of 25 July 2002 “Law on the System of Administrative Courts”, Journal of Laws No. 153, item 1269, as amended; Act of 30 August 2002 “Law on Proceedings at Administrative Courts”, consolidated text: Journal of Laws of 2012, item 270, as amended; Act of 30 August 2002 – Implementing Regulations to the Law on the System of Administrative Courts and to the Law on Proceedings at Administrative Courts, Journal of Laws No. 153, item 1271, as amended.
- ¹⁵ *Projekt ustawy o ustroju i właściwości sądów administracyjnych*. W: D.R. Kijowski, J. Płoskonka, S. Prutis, S. Srocki, M. Stec, *Model ustrojowy sądownictwa administracyjnego. Raport Programu Reformy Administracji Publicznej*, Warszawa 1999.
- ¹⁶ D.R. Kijowski, J. Płoskonka, S. Prutis, S. Srocki, M. Stec, *Model ustrojowy sądownictwa administracyjnego. Raport Programu Reformy Administracji Publicznej*, Warszawa 1999, p. 6.
- ¹⁷ *Ibidem*, p. 7. See also D.R. Kijowski (red.), *Dwuinstancyjne sądownictwo administracyjne. Raport Programu Reformy Administracji Publicznej*, Warszawa 2000, p. 8.
- ¹⁸ See endnote 14.

- ¹⁹ More on this subject see: A. Korzeniowska, *Postępowanie przed samorządowym kolegium odwoławczym*, Zakamycze 2002, p. 263–265.
- ²⁰ B. Adamiak, *Wpływ koncepcji ustrojowych na instytucje procesowego prawa administracyjnego*. W: E. Ura (red.), *Jednostka wobec działań administracji publicznej*, Rzeszów 2001, p. 17.
- ²¹ M. Kulesza, *Czy będzie rewizja nadzwyczajna*, „Rzeczpospolita” 1999, no. 216, p. C4.
- ²² I SA 633/99, „Samorząd Terytorialny” 2000, no. 7–8, p. 145–151.
- ²³ III RN 179/99, OSN 2001, no. 9, item 294.
- ²⁴ More on this subject: A. Korzeniowska, *Postępowanie...*, op. cit., p. 260–261.
- ²⁵ M. Kulesza, *Wprowadzenie*. W: *Samorząd terytorialny. Teksty jednolite*, Warszawa 1997, p. 12; M. Kulesza, *Administracja publiczna. Zagadnienia ogólne*, Warszawa 1998, p. 28.
- ²⁶ M. Kulesza, *W sprawie reformy terytorialnej*, „Samorząd Terytorialny” 1991, no. 7–8, p. 47–54; M. Kulesza, *Czy będzie rewizja...*, op. cit., p. C4; D.R. Kijowski (red.), *Dwuinstancyjne sądownictwo administracyjne. Raport Programu Reformy Administracji Publicznej*, Warszawa 2000, p. 12.
- ²⁷ J.P. Tarno, *Samorządowe kolegia odwoławcze jako...*, op. cit., p. 126; B. Adamiak, J. Borkowski, *Instytucje prawne sądowej ochrony samodzielności gminy*, „Samorząd Terytorialny” 1992, no. 1–2, p. 44; L. Żukowski, *Kolegia odwoławcze (uwagi w sprawie ustroju i funkcjonowania)*, „Samorząd Terytorialny” 1992, no. 1–2, p. 37–38; C. Martysz, *Kolegia odwoławcze przy sejmikach samorządowych – zagadnienia wybrane*, „Samorząd Terytorialny” 1991, no. 11–12, p. 32.

