

## ARTICLE

# A Right to Have One's Case Heard within a Reasonable Time before the Czech and the Polish Supreme Administrative Courts – Standards, the Reality and Proposals for the Future

Wojciech Piątek\* and Lukáš Potěšil†

The right to have one's case heard within reasonable time constitutes one component of an effective judicial protection. The aim of this paper is to establish the reasons for delays in proceedings before the Supreme Administrative Courts in the Czech Republic and in Poland, to analyze why they exist, and to formulate proposals on how the structural and procedural activity of these courts could be organized more effectively. The international and national standards as well as the Polish and the Czech standards pertaining to the right to have one's case heard within reasonable time and the reasons for unjustified delays will be examined, and the explanations for their occurrence will be provided. Proposals will then be formulated on how to make the procedures more effective. The ideas formulated are relevant in both countries for the two judicial systems, but also for other judiciaries, which also experience the same problems with system delays.

**Keywords:** administrative judiciary; effective judicial protection; access to court; legal remedies; two-instance court-proceedings

## 1. Introduction

One of the expectations formulated nowadays with regard to courts is that procedures should be timely, and cases should be determined more quickly.<sup>1</sup> Having one's case heard within a reasonable amount of time is a component of the right to be heard by the court stipulated in the European Convention for the Protection of Human Rights.<sup>2</sup> The same standard is formulated in the Constitutions of Poland<sup>3</sup> and the Czech Republic.<sup>4</sup> If the final settlement of a court dispute is delayed, it could have little or even no sense for the parties to the proceedings.

\* Professor, Institute of Administrative and Judicial Administrative Procedure, Faculty of Law and Administration, Adam Mickiewicz University in Poznań, PL. email: [wojciech.piatek@amu.edu.pl](mailto:wojciech.piatek@amu.edu.pl)

† Assistant Professor, Department of Administrative Studies and Administrative Law, Faculty of Law, Masaryk University, Brno, CZ. email: [Lukas.Potesil@law.muni.cz](mailto:Lukas.Potesil@law.muni.cz)

The article is a part of a research project no: UMO-2018/30/E/HS5/00421, financed by the National Science Centre (Poland), devoted to the appealability of administrative courts judgments.

<sup>1</sup> This phenomenon is also visible from the court's perspective. For example, in 2005, the presidents of the German Higher Administrative Courts formulated a catalogue of requirements that administrative justice should meet. One of them was reasonable time management. See Fridhelm Hufen, *Verwaltungsprozessrecht*, (CH Beck 2016) 40.

<sup>2</sup> See Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Polish Journal of Laws 1993, No. 61, Item 284 as amended, Czech Journal of Laws 1992, No. 209, Item 1992 as amended, hereinafter Convention or ECHR) and Article 47 of the EU Charter of Fundamental Rights and Freedoms (EU Journal of Laws 2007, C, 303/11 as amended, hereinafter as EU Charter). With this 'special' Article 6 is also connected (as *lex generalis*) Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 13 aims ensure effective protection of Convention rights in the member states. See more Grabenwarter Christoph, *European convention on human rights: commentary*, (CH Beck 2014) 328.

<sup>3</sup> Article 45 (1) of the Constitution of the Republic of Poland (Polish Journal of Laws 1997, No. 78, Item. 483 as amended, hereinafter PC).

<sup>4</sup> Article 38 (2) of the Charter of Fundamental Rights and Freedoms, hereinafter CZ Charter. This Charter has similar feature as a constitutional legal act, and it complements the Constitution of the Czech Republic (Czech Journal of Laws 1993, No. 1 – 1/1993 Coll itself, hereinafter CC).

There may be various reasons for delayed justice, ranging from procedural rules concerning the access to a court and courts of higher instances, to proper organization of a court's activity, to factual issues linked with the number of applications lodged to a court. The aim of this paper is to establish the reasons for delays in proceedings before the Supreme Administrative Courts (SAC)<sup>5</sup> in the Czech Republic and in Poland, to analyze why they exist, and to formulate proposals on how the structural and procedural activity of these courts could be organized more effectively. Delays before the SACs negatively influence proceedings not only at this (top) level but throughout administrative justice in general.<sup>6</sup> According to the preliminary hypothesis, the proceedings of the SACs in both countries are too time-consuming for parties—both the individuals and the public administration. At the same time, however, there is undoubtedly procedural and structural potential for organizing the activity of these courts more efficiently.

A comparative analysis of the structural and procedural position of the SACs in countries with similarly organized administrative justice, and the current delays involved in hearing cassation complaints following from the judgments of the first instance courts—which in the Czech Republic are joined with the ordinary judiciary,<sup>7</sup> and which in Poland are adjudicated in a separate division of the judiciary<sup>8</sup>—can lead to the formation of general observations and proposals on how to counteract such delays. The final outcomes, based on the jurisprudence of the SACs in the Czech Republic and in Poland, and on the ideas formulated in the doctrine of law in both countries, may prove to not only be fruitful for the analyzed judicial systems but for other judiciaries in Europe, which also experience the same problems with delays in courts systems.

The analysis is divided into four parts. In the first part, international and national standards pertaining to the right to have one's case heard within reasonable time are presented, above all with regard to the Czech and Polish systems. In the second part, the standards will be compared with the normative and factual situations with proceedings before the SACs. In the third part, the reasons for unjustified delays will be examined, and the explanations for their occurrence will be provided. In the fourth part, proposals on how to make the procedures more effective will be formulated.

## 2. Standards of effective judicial protection

### 2.1. International standards

Although the reasonable time of the procedure plays a significant role in effective judicial protection, it is not the sole component of this phenomenon. In the explanatory memorandum to the last chapter entitled 'The effectiveness of judicial review' of the Recommendation 2004(20),<sup>9</sup> the effectiveness of proceedings is treated as equivalent with the genuine protection of the citizens' rights and interests, ensuring the credibility vis-à-vis society and the efficiency of the administration itself.<sup>10</sup> Reasonable time is significant for all of these components, because all of them occur in specific, temporal circumstances. The protection of the citizens' rights should be provided in a reasonable time. Similarly, a public administrative body should be informed of the legal assessment of a case as soon as possible, in order to implement the assessment in further proceedings and to avoid similar legal and factual mistakes.<sup>11</sup>

<sup>5</sup> Hence forth as the SAC or SACs.

<sup>6</sup> Especially when the SAC (after long time) cancels a lower court's decision and the case is solved again at a court of lower instance (with the possibility of another cassation complaint).

<sup>7</sup> For more detailed discussion, see Veronika Tomoszková, Maxim Tomoszek, 'Die Verwaltungsgerichtsbarkeit in Tschechien' ;2015] 3 Osteuropa-Recht 270 or Lukáš Potěšil, 'The administrative justice in the Czech Republic – changes and expectations' (2018) XVI/4(2) Opolskie studia administracyjno-prawne 87, 91.

<sup>8</sup> Roman Hauser, Janusz Drachal, Eugeniusz Mzyk, *Dwuinstancyjne sądownictwo administracyjne. Omówienie podstawowych zasad i instytucji procesowych. Teksty aktów prawnych* (Zachodnie Centrum Organizacji 2003) 13–15, Wojciech Piątek, Andrzej Skoczyła, 'Geneza, rozwój i model sądownictwa administracyjnego w Polsce' in Roman Hauser, Zygmunt Niewiadomski, Andrzej Wróbel (eds), *System Prawa Administracyjnego. Tom 10. Sądowa kontrola administracji publicznej* (CH Beck 2016) 52–53.

<sup>9</sup> Recommendation Rec(2004)20 of the Committee of Ministers to member states on judicial review of administrative acts (Adopted by the Committee of Ministers on 15 December 2004 at the 909th meeting of the Ministers' Deputies) <[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805dba26](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805dba26)> accessed 20 December 2020.

<sup>10</sup> Point Nb 86 of the Memorandum.

<sup>11</sup> According to Article 141 (4) in fine of the Act on Procedure before Administrative Courts (Polish Journal of Laws 2019, Item. 2325 as amended, hereinafter as PPSA), if as a consequence of granting the complaint, the case is to be reconsidered by an administrative authority, the reasons for a judgment should include suggestions as to further proceedings. An administrative authority is pursuant to Article 153 PPSA bounded by these indications, which means that it has to be taken into consideration by this authority in a further assessment of a case. According to Article 78 (5) of the Code of Administrative Justice (Czech Journal of Laws 2002, No. 150, as amended, 150/2002 Coll hereinafter CAJ), if the court cancels the decision of an administrative body the court is obliged to state reasons. These reasons are binding for administrative bodies in subsequent procedures.

Time should play a crucial role in planning the course of proceedings, including a system of legal remedies—the exercise of which may delay the final outcome of a proceeding. Each state should ensure the effective activity is communicated to their authorities, bearing in mind that the mere fact that court proceedings are understood as complex phenomena does not justify a prolonged delay.<sup>12</sup> Each court procedure should be constructed in a such way that, in a concrete case, the proceedings can be settled in a reasonable time.<sup>13</sup> For example, in the case of lodging an appeal, a court of first instance should pass files to a court of second instance quickly to make it possible for the court of second instance to determine the appealed case in a reasonable time.<sup>14</sup>

The European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ) both formulated general provisions which should be taken into consideration when assessing the duration of court proceedings. In each case, the duration of the proceedings must be considered.<sup>15</sup> According to the ECtHR, the duration depends on the following criteria: significance of a case for a claimant,<sup>16</sup> complexity of a dispute,<sup>17</sup> behavior of a claimant<sup>18</sup> and public authorities.<sup>19</sup> Every delay in settling a case can be justified only in exceptional circumstances connected with the nature of a concrete case.<sup>20</sup> If there is a temporary backlog at a court, this does not entail international liability if the relevant state takes appropriate remedial action with the requisite promptness.<sup>21</sup>

It is also worth mentioning that the time during which the administrative authorities process a case has to be added to the duration of the proceedings before the administrative courts (in the first and second/supreme instance). In the sphere of public administration, a case is first reviewed by a superior administrative body, which is a typical condition for (later) judicial protection and access to the administrative courts. These two procedures are treated as a complex phenomenon in the settlement of the same case;<sup>22</sup> both administrative and court procedures have their own purpose and are not the same. For this reason, an evaluation of the proceedings in such a case should take into consideration all the administrative and judicial instances. When organizing, states should pay more attention to eliminating all possible delays at each stage of this procedure. As a result, the procedural construction of each stage in administrative and court administrative proceedings will be shaped with an awareness of its aims and with consideration of the duration of the entire proceedings.

## 2.2. National standards

Similar court standards are derived from the jurisprudence of the Czech and the Polish Constitutional Courts. The Polish Constitutional Tribunal<sup>23</sup> stresses that any aspiration to settling a case within a reasonable time cannot lead to a conflict with the establishment of the facts and procedural rights of the parties to the proceedings.<sup>24</sup> The acceleration of a procedure can concern formal requirements, but not the basic procedural rights of the parties of a concrete dispute.<sup>25</sup> This interpretation is not unanimously agreed upon in the doctrine of law, where a right to a fair and justified judgment is regarded at the same level as the right to have one's case

<sup>12</sup> *Herbolzheimer v. Germany* App no 57249/00 (ECtHR, 31 July 2003), paras 46, 48. It worth mentioning that in the Czech Republic a new rule was adopted for that reason from 1 January 2012, according to which a cassation complaint against the decision of an administrative court of first instance has to be lodged directly to the SAC. This was to limit time wasted in connection with the preparation of materials from an administrative court of first instance to the SAC, which in extreme situations took more than one year (and without any reasonable reason).

<sup>13</sup> *Sürmeli v. Germany* App no 75529/01 (ECtHR, 8 June 2006), para 129.

<sup>14</sup> Marek Antoni Nowicki, *Wokół Konwencji Europejskiej. Komentarz do Europejskiej Konwencji Praw Człowieka* (Wolters Kluwer 2013) 607.

<sup>15</sup> Christoph Grabenwarter, Katharina Pabel, *Europäische Menschenrechtskonvention. Ein studienbuch* (CH Beck 2016) 516–520; Marek Antoni Nowicki, *Wokół Konwencji Europejskiej. Komentarz do Europejskiej Konwencji Praw Człowieka* (Wolters Kluwer 2013) 604–605.

<sup>16</sup> If a final outcome has a great importance for his existence, time for solving a dispute should be shorter. See *Codarcea v. Romania* App no 3167/04 (ECtHR, 2 December 2009), para 89.

<sup>17</sup> The more complex a case is, the longer it may last. See *Metzger v. Germany* App no 37591/97 (ECtHR, 31 May 2001), para 40.

<sup>18</sup> If a delay is caused by a claimant, she or he cannot effectively question it before other public authorities and courts. As a delay is not regarded exercising legal remedies. See *Girardi v. Austria* App no 50064/99, (ECtHR, 11 Dezember 2003), para 57.

<sup>19</sup> These authorities should not be inactive in a concrete procedure or waste time for competence conflicts. See *Löffler v. Austria* App no 72159/01 (ECtHR 4 March 2004), para 56.

<sup>20</sup> Case C-185/95 *Baustahlgewebe GmbH v. Commission of the European Communities* (1988), para 46, case C-385/07 *Der Grüne Punkt – Duales System Deutschland v. Commission of the European Communities* (2009), para 182.

<sup>21</sup> *Klein v. Germany* App no 33379/96 (ECtHR, 27 July 2000), para 29.

<sup>22</sup> *Wcisło and Cabaj v. Poland* App no 49725/11 and 79950/13 (ECtHR, 8 November 2018), paras 173, 184.

<sup>23</sup> Hence forth as PCT.

<sup>24</sup> PCT 13 May 2002, case SK 32/01, OTK-A 2002/3/31, PCT 7 December 2010, case P 11/09, OTK-A 2010/10/128.

<sup>25</sup> PCT 15 April 2009, case SK 28/08, OTK-A 2009/4/48.

heard within a reasonable time, which also has a constitutional nature and shapes a public, subjective right. This right should not be perceived as less important than the right to a fair trial.<sup>26</sup> It is not accidental that the right to have a case resolved within a reasonable time is stated expressly alongside the standard of a fair trial in international and Polish law. The duration of the proceedings is a separate factor which is decisive for its effectiveness. In addition, a trial that lasts too long can be evaluated as unfair for that reason alone.

The right to have a case processed without undue delay also represents an important part of the right to a fair trial, and this is connected to the requirement that a procedure should be processed within a reasonable time. When assessing the reasonableness of the length of proceedings before the courts, the Constitutional Court of the Czech Republic (CCC)<sup>27</sup> examines: a) the length of the court procedure, b) the attitude of the participants and c) the complexity of the case.<sup>28</sup> According to the CCC, delays can be caused by both subjective and objective factors.<sup>29</sup> It falls upon the state to ensure that there are no delays in procedures.<sup>30</sup> Each case of possible delay has to be considered on an independent basis.<sup>31</sup> However, the CCC specifically (and generally) stated that the length of 3 years in administrative justice is disproportionate without considering the reasons for such a long duration.<sup>32</sup> For example, the CCC has stated that the purpose of settling cases without undue delay has to reflect and take into account the concrete circumstances of the parties, such as their state of health.<sup>33</sup>

### 3. The reality of the effective judicial protection before the Czech and the Polish SACs

#### 3.1. Administrative justice in the Czech Republic and in Poland: more similarities than differences

As mentioned in the introduction, the administrative judiciaries in the Czech Republic and in Poland are similar in structural and procedural terms, making a comparative analysis justified. In both countries, the existence of the administrative judiciary is guaranteed in the Constitution or is a constitutional feature.

The basis for the Czech administrative judiciary is provided in Article 36(1) and 2 CZ Charter, and in Article 90 of the Czech Constitution (CC). The Constitution stipulates the general task for all types of courts, which is the protection of rights. Article 36(1–2) of the CZ Charter contains the general provision which guarantees access to the courts (Paragraph 1) and access to administrative justice (Paragraph 2). The structure of the administrative justice partly derives itself from Article 91(1) of the CC. The SAC is expressly mentioned in this article. The CCC played a very important role in the legal regulation of administrative justice. According to its decision,<sup>34</sup> the previous legal regulation that had been in effect from 1992 to 2002 was abolished, because it was considered to be unconstitutional. As a result, Parliament was forced to adopt a new legal regulation, which is still in force today (Code of Administrative Justice (CAJ) since 1 January 2003). The organization of administrative justice is also partly influenced by the CC and by the reasoning of the previously mentioned decision of the CCC. This decision strongly criticized the lack of a superior court body in the previous system of administrative justice. From the Constitution we may conclude that the SAC is the head of administrative justice.<sup>35</sup> Due to the fact that administrative courts are at the first level of the ordinary courts, the SAC has very limited power over the system of administrative justice itself, and its position mainly concerns the power to decide on cassation complaints and to review the rulings of lower administrative courts. It is worth mentioning that a cassation complaint is 'only' an extraordinary remedial measure. This solution is provided by the CAJ and does not derive itself from the Constitution. Pursuant to Article 90 of the CC, the

<sup>26</sup> Sławomir Pilipiec, 'Teoretyczno-prawne aspekty zasady prawa do sądu' (2000) *Annales UMCS sectio G* 230, Paweł Grzegorzczak, Karol Weitz, 'Komentarz do art. 45' in Marek Safjan, Leszek Bosek (eds), *Konstytucja RP. Tom I. Komentarz. Art. 1–86* (CH Beck 2016) 1147–1148.

<sup>27</sup> Hence forth as CCC.

<sup>28</sup> CCC 10 March 1998, case I ÚS 345/96, N 34/10 SbNU 223.

<sup>29</sup> CCC 10 July 1997, case III ÚS 70/97, N 96/8 SbNU 37.

<sup>30</sup> CCC 12 January 1999, case I ÚS 209/98, N 2/13 SbNU 7.

<sup>31</sup> CCC 30 March 1999, case IV ÚS 274/98, <<https://nalus.usoud.cz/Search/ResultDetail.aspx?id=32458&pos=1&cnt=1&typ=result>> accessed 9 December 2020.

<sup>32</sup> CCC 12 July 2006, case IV ÚS 208/04, N 133/42 SbNU 65.

<sup>33</sup> CCC 29 January 2019, case IV ÚS 3892/18 <<https://nalus.usoud.cz/Search/ResultDetail.aspx?id=105577&pos=1&cnt=1&typ=result>> accessed 9 December 2020. In this case, administrative justice that was not able to ensure a swift procedure just in this individual and sensitive case was strongly criticized.

<sup>34</sup> CCC 27 June 2001, case PI ÚS 16/99, N 96/22 SbNU 329.

<sup>35</sup> See also Article 12 CAJ.

administrative courts emphasize that rather than control public administration, they 'just' protect the rights affected by public administration.<sup>36</sup>

In the Polish Constitution (PC), the administrative judiciary is listed in Article 175(1), among other branches of courts. With regard to the structure and proceedings before administrative courts, Article 176(1) PC is worth mentioning, since it states that court proceedings are at least two-instance. This article was a source of the obligation to create two levels of administrative justice.<sup>37</sup> For the Polish Constitutional Tribunal (PCT), and to some extent the doctrine of law, it is also perceived as a source and a standard of two-instance court proceedings in each case.<sup>38</sup> In Article 184 PC, it is stressed that the role of the SAC and other administrative courts is to exercise control over the public administration in the scope specified in the statute. According to Article 1(2) of the Act on the Structure of Administrative Courts,<sup>39</sup> the criterion for the court's control is the legality of the activity of the public administration.<sup>40</sup>

The functions performed by administrative courts are similar in both countries: they are focused on the protection of individuals from the unlawful activity of public administration and the protection of the principle of the rule of law.<sup>41</sup> These functions are realized with the cassation adjudication competences of the administrative courts, which are associated with the understanding of the term 'control over public administration'.<sup>42</sup> The merits-oriented adjudication competences are present in both countries incidentally, and are addressed in the doctrine of law exceptionally.<sup>43</sup>

While in the Czech Republic there are no administrative courts that are separate from the ordinary judiciary, in Poland the whole system of administrative justice is structurally separate from the other branches of courts. An important similarity is found in the position of the SACs, which are separated from the other courts of higher instance responsible for the examination of legal remedies from judgments of the first instance courts and for the uniformity of jurisprudence in administrative cases. In Poland, the SAC resolves jurisdictional disputes between local government authorities and between self-government appellate boards.<sup>44</sup> This court is also equipped with the competence to hear complaints against a violation of a party's right to have their case heard by an administrative court within a reasonable time.<sup>45</sup>

<sup>36</sup> For more detailed discussion, see Lukáš Potěšil, 'The administrative justice in the Czech Republic – changes and expectations' (2018) XVI/4(2) *Opolskie studia administracyjno-prawne* 87–89.

<sup>37</sup> Before the PCT came into force, administrative justice in Poland was one-instanced. For more detailed discussion, see R Roman Hauser, Janusz Drachal, Eugeniusz Mzyk, *Dwuinstancyjne sądownictwo administracyjne. Omówienie podstawowych zasad i instytucji procesowych. Teksty aktów prawnych* (Zachodnie Centrum Organizacji 2003) 49–51.

<sup>38</sup> PCT 20 September 2006, case SK 63/05, OTK-A 2006/8/108, PCT 8 April 2014, case SK 22/11, OTK-A 2014/4/37. See also Leszek Garlicki, 'Komentarz do art. 176' in Leszek Garlicki (eds), *Konstytucja RP. Komentarz*, (Wydawnictwo Sejmowe 2005) 2–3.

<sup>39</sup> Journal of Laws 2019, Item 2169 as amended, hereinafter as PUSA.

<sup>40</sup> The criterion of legality is understood in the broad sense, not only as being in accordance with the law written in statutes, but also with the all values derived from the system of law. See Dawid Gregorczyk, *Legalność jako kryterium sądowej kontroli decyzji administracyjnych* (Wolters Kluwer 2018) 24–25.

<sup>41</sup> Jan Paweł Tarno, 'Sądowa kontrola administracji publicznej, jej geneza i funkcje – pojęcia ogólne' in Jan Paweł Tarno (eds), *Sądowa kontrola administracji publicznej. Podręcznik akademicki* (Europejska Wyższa Szkoła Prawa i Administracji 2006) 24–30, Tadeusz Woś, 'Funkcje postępowania sądownoadministracyjnego' in Tadeusz Woś (eds), *Postępowanie sądownoadministracyjne* (Wolters Kluwer 2017) 45–48. See article 2 CAJ or Josef Macur, *Správní soudnictví a jeho uplatnění v současné době* (Masarykova univerzita 1992) 7–17 or Michal Mazanec, *Správní soudnictví* (Linde 1996) 13–22. From older, but still strongly inspiring literature, see Karel Čížek, *Obrys řízení správního* (Jindřicha Mercyho sklad 1888) 80–91.

<sup>42</sup> In the Polish doctrine of law there is the opinion that an administrative court can only control public administration and not change its decisions. In that case, an administrative court would take over the responsibility for exercising executive power. See Roman Hauser, 'Konstytucyjny model polskiego sądownictwa administracyjnego' in Jerzy Stelmasiak, Janusz Niczyporuk, Sławomir Fundowicz (eds), *Polski model sądownictwa administracyjnego* (Verba 2003) 146–147. This cassation principle is typical for administrative justice in CZ, from its roots in 1876 till today. See more on this issue in Emil Hácha, 'Nejvyšší správní soud' in *Slovník československého práva veřejného* (Polygrafia 1932) 827–855. As of today, administrative courts emphasize that protection of rights affected by public administration is more important than control over the public administration, see the footnote 36.

<sup>43</sup> In the Czech Republic, it is possible for the administrative court to moderate administrative sanction in case of inappropriateness, see Article 78 (2) CAJ, or Pavel Mates, 'Moderační právo správních soudů' (2012) 17 *Právní rozhledy*, 598–600. From the point of view of Poland, see more in Wojciech Piątek, Andrzej Skoczylas, 'Kasacyjny czy merytoryczny model orzekania – kwestia zmiany modelu sądowej kontroli decyzji administracyjnych' (2019) 1 *Państwo i Prawo*, 31–32.

<sup>44</sup> Article 4 PPSA. For more detailed discussion, see A. Skoczylas, *Rozstrzyganie sporów kompetencyjnych i o właściwość przez NSA* (Lexis Nexis 2008) 18–43.

<sup>45</sup> Article 4 (3) the Act of 17 June 2004 on a complaint against a violation of a party's right to have their case heard in preparatory proceedings conducted or supervised by the prosecutor and court proceedings without undue delay (Journal of Laws 2018, Item 75 as amended).



In the Czech Republic, the SAC has broad competence, and not only in the sphere of administrative justice. This may represent one of the possible reasons for delay, as will be mentioned later. The SAC mostly has the competence to deal with cassation complaints against a decision of an administrative court of the first instance.<sup>46</sup> The only way that the SAC may directly influence the decision of administrative court of first instance is through their power to decide on a cassation complaint. On the one hand, the SAC also resolves disputes between local/self-government units (its bodies) and the state administration, and on the other hand, solves disputes between central administrative bodies.<sup>47</sup> Apart from this, the SAC also has the power to (*ex post*) supervise the legality of the election<sup>48</sup> (at the state level; at the 'lower level' it is the task for administrative courts of first instance) and also (not only) to cancel a political party.<sup>49</sup> The SAC is also a specific disciplinary court (from 2008) for all judges (not just administrative ones), public prosecutors as well as bailiffs/executors.<sup>50</sup> In the Czech Republic, the SAC is also equipped with the competence to hear complaints against a violation of a party's right to have their case heard by an administrative court within a reasonable time.<sup>51</sup> The competences of the Czech SAC are broader than the competences of the Polish SAC, which is not responsible for the adjudication of electoral disputes<sup>52</sup> and disciplinary cases which fall outside the jurisdiction of the administrative judiciary system.<sup>53</sup>

In both countries, the SACs, as courts located at the top of the administrative justice hierarchy, also have additional characteristic competences which should be exercised effectively. There is no doubt that overloading the courts with cassation complaints makes these additional responsibilities harder to fulfill.

In terms of the legal remedies which can be lodged to the SACs from the judgments of the first-instance courts, these are named cassation complaints in both countries (CZ: kasační stížnost; PL: skarga kasacyjna). There are significant procedural similarities between the two SACs, which means there is broad access to the courts of last instance in both countries (**Figure 1**).

| <b>The Cassation Complaint (CC)</b>   |   |
|---|---|
| <b>Poland</b>   | <b>Czech Republic</b>   |
| Ordinary remedy   | Extraordinary remedy  |
| Obligatory representation by a legal attorney.  |   |
| Exhaustive list of reasons for lodging which are broad and do not present any obstacles with an access to the SAC. The reasons usually do not have any connection with public interest but are rather connected with the individual case. |   |
| Time for lodging is 30 days after the delivery of a written justification of the lower court's decision.  | Time for lodging is 2 weeks after the delivery of the lower court's decision. |
| The CC is lodged through the voivodship administrative court.   | The CC is lodged directly to the SAC.   |
| The CC is exercised rather at trial before a panel of three judges than in camera by one judge  |   |
| If the CC is justified, the SAC can quash the lower court's decision. In limited and rather procedural cases, the SAC can solve the case instead of the court of first instance.  |   |

**Figure 1:** Comparison of the cassation complaints.

<sup>46</sup> Article 12 (1) and Articles 102 to 110 CAJ.

<sup>47</sup> Article 97 (1) and 4 CAJ.

<sup>48</sup> Articles 88 to 91 CAJ.

<sup>49</sup> Articles 94 to 96 CAJ.

<sup>50</sup> See Article 3 of the Act on Proceedings in the matters of Judges, Prosecutors and Bailiffs (Czech Journal of Laws 2002, No. 7, as amended, 7/2002 Coll.).

<sup>51</sup> See Article 174a of the Act of Justice and Judges (Czech Journal of Laws 2002, No. 6, as amended, 6/2002 Coll.).

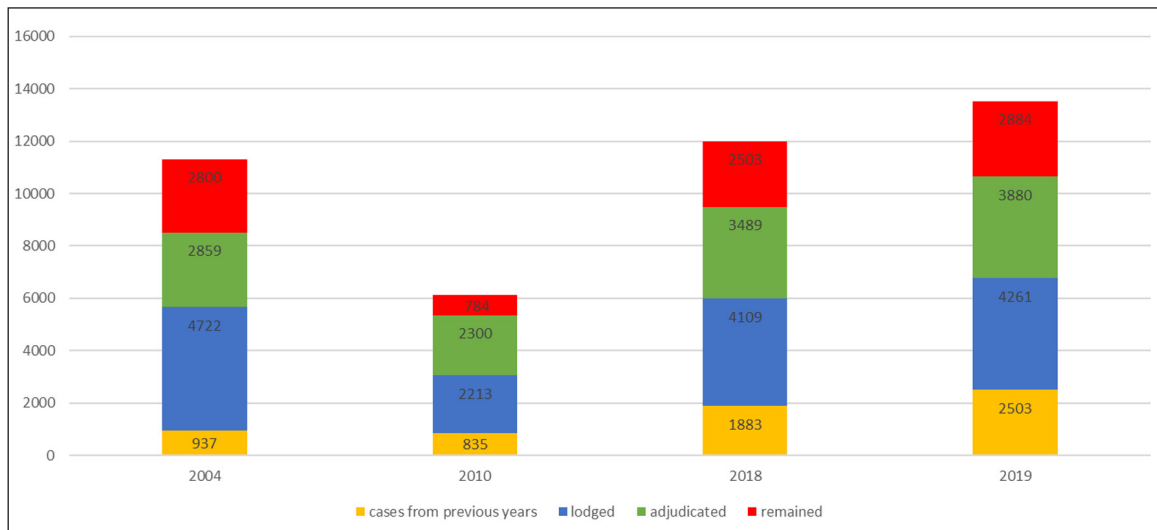
<sup>52</sup> The Highest Court in Poland is responsible for solving such disputes. See Article 1.3 of the Act on the Highest Court (Polish Journal of Laws 2019, No. 825 as amended). The ordinary courts are responsible for the votes to local government. See the Articles 392–398 of the Electoral Code (Polish Journal of Laws 2019, No. 684 as amended).

<sup>53</sup> The disciplinary disputes are adjudicated separately in each branch of the courts. For example, see Articles 107–133a the Act on the Structure of Ordinary Courts (Polish Journal of Laws 2019, No. 52 as amended).

A lack of substantial or procedural limitations leads to the conclusion that, in almost all cases, it is possible to lodge a cassation complaint to the SAC in both countries. As a result, these courts are burdened by many unresolved cases which await settlement for many months.<sup>54</sup>

### 3.2. The Czech Republic

The statistics show that cassation complaints usually represent about 80% to 90% of all cases that are lodged to the SAC. Due to the new legal regulation, it first became possible to lodge a cassation complaint in 2003. The year 2004 is the first year for which statistics<sup>55</sup> from the whole year are available (**Figure 2**).



**Figure 2:** Caseload of the Czech Supreme Administrative Court.

Based on the presented statistics of the Czech Republic, we may conclude that the amount of cassation complaints decreased at first. The year 2010 had the lowest number of cassation complaints. Since 2016, the number of cassation complaints increased. On the other hand, the work capacity of the SAC remains the same – with about 3,000–4,000 cassation complaints solved per year and also with the same number of judges (30–35 judges).

### 3.3. Poland

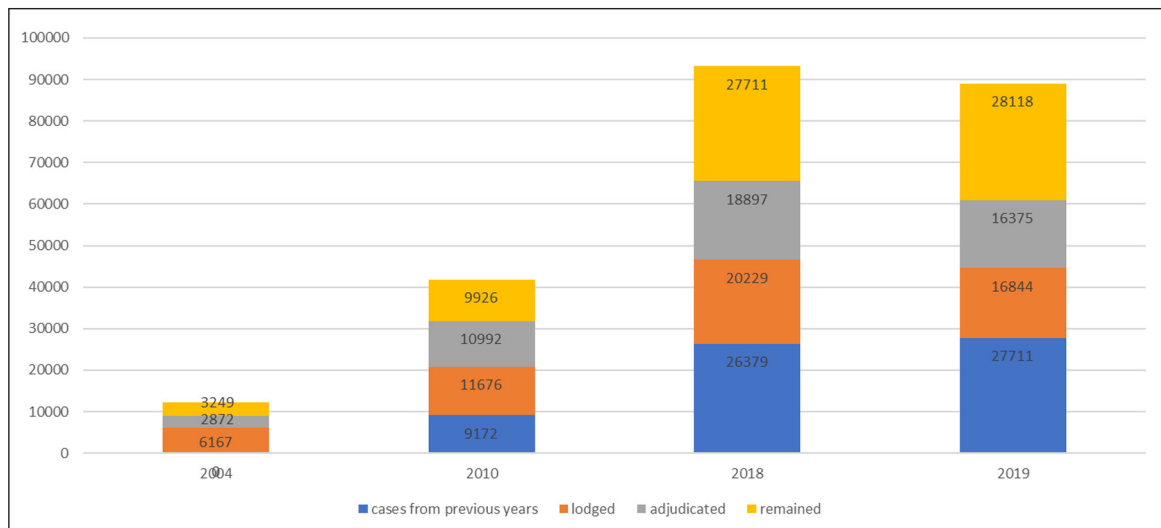
Focusing on the same time periods as in the case of the CAJ, it is worth mentioning that 2004 was the first year in which the administrative courts functioned in the two-instance system and with procedural rules, which still have binding force today (**Figure 3**).<sup>56</sup>

The presented statistics lead to several conclusions. Firstly, from 2004 through 2018, the number of new cassation complaints more than tripled, from 6,167 to 20,229. Secondly, although the number of solved disputes increased, the number of remaining cassation complaints increased, from 3,249 in 2004, to 28,118 in 2019. The last number is greater than the total amount of cassation complaints lodged in 2019, which were resolved in the same year. Thirdly, the increased number of judges, from 64 in 2004 to 107 in 2019, was not a sufficient solution for the increased number of unresolved cassation complaints.

<sup>54</sup> In December 2019, the Polish SAC heard in camera cases lodged to this court approximately 18–30 months ago. See <<http://orzeczenia.nsa.gov.pl/doc/9B462AB5B6>> accessed 29 December 2019. In the Czech Republic, the length of the procedure before the SAC is more than 200 days on average, according to the President of the SAC and his statement to the Parliamentary committee. See <<https://www.ceska-justice.cz/2020/01/soudci-nss-chteli-presvedcit-zakonodarce-nutnosti-zmeny-zakona-prisli-jen-tri-poslanci/>> accessed 30 December 2020.

<sup>55</sup> The statistics are available here <<http://www.nssoud.cz/main2Col.aspx?cls=Statistika&menu=190>> accessed 9 December 2020.

<sup>56</sup> For more about the history of Polish administrative justice, see Agnieszka Krawczyk, 'Ewolucja, ustrój i podstawowe założenia funkcjonowania sądownictwa administracyjnego w Polsce' in Zbigniew Kmiecik (eds), *Polskie sądownictwo administracyjne – zarys systemu* (CH Beck 2017) 22–49.



**Figure 3:** Caseload of the Polish Supreme Administrative Court.

### 3.4. Reasons for delays in the proceedings before the SACs in CR and in PL

The statistical information shows that there is a real problem with the SAC resolving disputes within a reasonable time both in the Czech Republic and Poland, which goes hand-in-hand with the number of cases, or the number of cases that remain unresolved a year.<sup>57</sup> What are the reasons for this situation?

The first reason is the increasing number of cassation complaints lodged to the SAC. When comparing 2004 and 2008 in the Czech Republic, while the total amount was the same, the situation in 2004 was quite specific and the amount of cassation complaints was half that in future years. The real problem is that, since 2016, the number of new cassation complaints has been increasing, doubling from 2010.<sup>58</sup> In Poland the number of cassation complaints more than tripled in the years 2004 to 2018. This tendency would not have such negative effects if there was a system that offered a selection of cassation remedies in both countries. This would mean that those remedies, which are not linked with special values, could be eliminated from hearings both for public and private interests.<sup>59</sup> A limitation of access to the highest administrative courts would make their activity more reasonable and would improve the system. These courts should be focused on selected areas that are important from the development of jurisprudence in terms of its quality and uniformity. Yet, why have such limitations not been introduced?

In the Czech Republic, the answer is connected with the features of the cassation complaint itself. The current legal regulation does not contain any measure that could limit the high number of cassation complaints, but rather allows a cassation complaint to be lodged in (nearly) every case—even for very straightforward ones. From this we can conclude that cassation complaints are very commonly used in practice. Even though the instrument of so-called ‘inadmissibility’ has functioned in legal regulation since 2005, with regard to asylum cases, we can see there is a general reluctance to limit access to the SAC.

In Poland, the answer is based on the above-mentioned strict interpretation of the principle of the two-instance court-proceedings, which should be assured in proceedings before all branches of the courts.<sup>60</sup> A sign of this tendency is the jurisprudence of the PCT on the basis of civil and court-administrative procedures.

<sup>57</sup> It should be noted that the same problem (at the same time) is faced by other SAC in Europe, especially the Disposition/Duration Time, which is worsening in Latvia, Spain, or Slovakia and remains a problem in Italy. See Table 5.37 and data between 2010 and 2016 in European Judicial Systems Efficiency and quality of justice, CEPEJ studies No. 26, 292–294. See <<https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c>> accessed 1 October 2020.

<sup>58</sup> This situation did not change in 2019. There were 4,261 new cassation complaints lodged to the SAC, together with the 2,503 that remained from previous years. In 2019 the SAC was able to adjudicate on 3,880 cases, so 2,884 cassation complaints remained for the year 2020. This amount alone would be enough for the SAC for the whole year without any newly lodged cassation complaints. See <[http://www.nssoud.cz/Main2col.aspx?cls=StatistikaNewAll&data=1&stato\\_id=4&year=2019&menu=190](http://www.nssoud.cz/Main2col.aspx?cls=StatistikaNewAll&data=1&stato_id=4&year=2019&menu=190)> accessed 3 December 2020.

<sup>59</sup> Such systems where a petitioner has to obtain special ‘leave for appeal’ function in Scandinavian countries. See P.H. Lindblom, The role of the Supreme Courts in Scandinavia, *Scandinavian Studies in Law* 200, nb 39, p. 363–366. About the limitations in Austria, which are regulated in the Austrian Constitution see Ronald Faber, *Verwaltungsgerichtsbarkeit. Kommentar* (Verlag Österreich 2013) 88–106.

<sup>60</sup> PCT 12 June 2002, case no. P 13/01, OTK ZU 2002/A/4, PCC 19 February 2003, case no. P 11/02, OTK ZU 2003/A/2.



When focusing on the basis of legal remedies in the simplified civil procedure, which is limited to the gross violation of law, the PCT stated that the scope of the review of the judgment of a first instance court should not be extremely narrow. The competence of the legislator to create a system of legal remedies should not ignore the principle of two-instance court proceedings.<sup>61</sup> This principle is fulfilled if a party of the proceedings has the broad ability to question the judgment of a first instance court.<sup>62</sup> According to the PCT, the right to two-instance court proceedings should not be limited by the inadequate professionalism of a legal attorney in the preparation of a cassation complaint. This excessive formalism has a direct effect on the party's right to two-instance court proceedings.<sup>63</sup> On the one hand, the jurisprudence of the PCT did not exclude the possibility of limiting the principle of two-instance court proceedings. On the other hand, the regulations in civil and court-administrative procedure were evaluated to be too formal and excessive. For the PCT, real access to the second instance court without overly strict procedural limitations is the highest value.

In the doctrine of Polish law, proposals to limit access to the SAC were formulated.<sup>64</sup> The statements of the PCT had a negative impact on the process of amendment. Instead of this proposal, a statute was passed in 2015,<sup>65</sup> which changed the procedural framework of proceedings before the SAC, such as broadening the possibility of the SAC to hear cases in private, or reducing classical cassation adjudication competence in favor of reformatory judgments.<sup>66</sup> The amendments contributed to a more effective process before the SAC. Nevertheless, broad access to the SAC was not questioned.

In addition to the procedural reasons for delays in proceedings before the SACs, what needs to be addressed is the question about the organizational sources of the SACs' structure, which could make their activity more efficient in both countries.

In the Czech Republic, the main problem is the inadequate model of administrative justice itself, which generates other disadvantages. The administrative courts of first instance are part of the ordinary courts, and the SAC has no power over the organizational matters or administrative disputes heard in this branch of the judiciary. In the Czech Republic, there are about 3,000 judges, but only 120 of them work in administrative justice. There are also great differences between administrative courts of first instance in terms of the number of judges, number of cases, etc. The second problem is the number of cases resolved in the first instance, and this goes hand in hand with the medium length of time for a procedure, which is about 2 years.<sup>67</sup> From this point of view, the 'problems' at the level of the SAC are 'only' the tip of the iceberg. Therefore, we can see some attempts to address such problems. The first concerns administrative justice itself and its future, from the organizational point of view. Here it is evident that this model has reached its limits and needs changes. The second concerns the delays before the SAC and access to the SAC itself. In 2018, an amendment of the CAJ was put to Parliament to extend the so-called 'inadmissibility' of cassation complaint from asylum cases to all possible cases where the cassation complaint does not significantly extend/transcend the specific interests of the complaint itself. However, nothing has happened with this proposal to date.<sup>68</sup> It should be mentioned that this proposal is not accepted by all the judges (including those at the SAC), the doctrine or

<sup>61</sup> PCT 13 January 2004, case no. SK 10/03, OTK-A 2004/1/2.

<sup>62</sup> PCT 20 September 2006, case no. SK 63/05, OTK-A 2006/8/108.

<sup>63</sup> PCT 20 May 2008, case P 18/07, OTK-A 2008/4/61, PCC 8 April 2014, case SK 22/11, OTK-A 2014/4/37.

<sup>64</sup> One of them was prepared in the form of a normative regulation. As a result of this proposal, a cassation complaint would be dismissed because of an obvious lack of cassation basis or abuse of the right to a complaint to the SAC. From an order of the SAC issued by one judge, parties would bring a remedy to the SAC before a panel of three judges. For more detailed discussion, see Zbigniew Kmiecik, 'Projekt regulacji prawnej dotyczącej wstępnego badania skargi kasacyjnej w postępowaniu przed NSA' (2012) 2 Europejski Przegląd Sądowy 4.

<sup>65</sup> The Act of 9 April 2015 on the amendment of the Law on Procedure before the Administrative Courts (Polish Journal of Laws 2015, Item 658).

<sup>66</sup> For more detailed discussion, see Roman Hauser, Wojciech Piątek, Andrzej Skoczylas, 'Środki odwoławcze w postępowaniu sądoadministracyjnym w świetle ustawy nowelizującej z 9 kwietnia 2015 r. – analiza najistotniejszych zmian' (2015) 4 Zeszyty Naukowe Sądownictwa Administracyjnego 9–21.

<sup>67</sup> On average, the length in first instance was 440 days in 2018. See <[https://www.justice.cz/documents/12681/719244/Ceske\\_soudnictvi\\_2018\\_vyrocní\\_stat\\_zprava.pdf/7a0eb503-6fd7-4b70-b31f-882398651520](https://www.justice.cz/documents/12681/719244/Ceske_soudnictvi_2018_vyrocní_stat_zprava.pdf/7a0eb503-6fd7-4b70-b31f-882398651520)> accessed 3 December 2020.

<sup>68</sup> On 15 January 2020, the SAC was visited by the Ministry of Justice and the Prime Minister, both of whom declared that they would help the SAC with the large amount of cases by supporting this amendment in Parliament. See <[http://www.nssoud.cz/Ministryne-spravedlnosti-podpori-novelu-zakona-ktera-by-odlehčila-Nejvyššimu-správnímu-soudu/art/30746?tre\\_id=205](http://www.nssoud.cz/Ministryne-spravedlnosti-podpori-novelu-zakona-ktera-by-odlehčila-Nejvyššimu-správnímu-soudu/art/30746?tre_id=205)> accessed 3 February 2020. However, the day after this visit, a special seminar devoted to this issue was held in the Parliament, but out of the 200 Members of Parliament, only 3 of them participated. For a more detailed discussion, see <<https://www.ceska-justice.cz/2020/01/soudci-nss-chteli-presvedcit-zakonodarce-nutnosti-zmeny-zakona-prisli-jen-tri-poslanci/>> accessed 3 December 2020.

legal professionals. The CC is afraid that, after such a limitation, it will more frequently be asked to provide legal protection instead of the SAC (as already happened in the 1990s).

From the point of view of the Czech SAC itself, it is necessary to mention that, in 2014, the division into social security and financial (and tax) affairs at the SAC was abandoned. This division into two chambers of the SAC had led to the specialization of judges and panels of judges. Since 2014,<sup>69</sup> there has been no specialization at the level of the SAC, which may be one reason for the delays. Lack of specialization is also a problem of the administrative courts of the first instance. Even the legal regulation contains rules that would support such specialization. However, with such a small number of judges, it is very difficult to implement such specialization.

From the statistical data, it is clear that the judges in the Polish SAC settled many more disputes in 2018 than they did in 2004. One of the reasons for this is the participation of one judge from the Voivodship Administrative Court in almost each three-judge panel in the SAC.<sup>70</sup> Thanks to this practice, it is possible to construct more panels in the SAC. The possibility of participating in adjudication at the level of the SAC is significant for the judges from the courts of first instance, both for their professional careers and for the quality of jurisprudence at the first instance level. The other reason is the increase of cases solved by the judges in the SAC. In other words, the judges of the SAC will be able to resolve more cases during one session.

When focusing on organizational matters, the practice of combining similar cases for adjudication and assigning these cases to one panel is also worth mentioning.<sup>71</sup> In practice, in Poland, this process depends on the activity of the court's presiding department judge. This is a useful tool for increasing the number of disputes resolved by one panel during the same session. In this situation, the settlement of cases is more economic, because similar disputes are heard together. In the Czech Republic, each case at the SAC belongs to a specific judge and court panel, according to the schedule. Even if the legal regulation enabled cases to be combined,<sup>72</sup> there are limitations because it must be the same thing/decision and it is not possible to combine similar cases.

#### 4. Proposals for more effective judicial protection

The presented statistical data and reasons for delays lead to proposals on how to make the proceedings before the SACs and the whole system of administrative justice in the Czech Republic and in Poland more effective, while still taking into account the requirements coming from (not only) the ECHR and national constitutional environment.

The first proposal is connected with increasing limitations on access to the SACs. In the Czech Republic, such a solution has been applied and practiced since 2005, but only in terms of cassation complaints in the sphere of asylum and international protection. The claimant must formulate their cassation complaint in such way that it is evident that there is a real and important reason for the SAC to deal with it. The legal regulation expressly stipulates the condition<sup>73</sup> that such a cassation complaint should significantly extend/transcend the specific interest of the complaint. If not, the SAC will reject it, reasoning that similar complaints had already been solved in other previous cases and that the SAC would decide in the same way. Such a solution is only based on the fact that there had been a previous case and solution. This legal regulation also contains the rule that the SAC may reject such a cassation complaint without reasoning. In our view, this solution is unconstitutional. In practice, the SAC gives reasons for such a decision. This approach of extending 'inadmissibility' is one possible solution.<sup>74</sup> We must include a more convenient solution, namely, limiting the reasons for cassation complaints or the restriction of cases where it is possible to lodge a cassation complaint. This solution respects the cassation complaint as a kind of extraordinary remedy.

<sup>69</sup> SAC 27 November 2013, case S 4/2013-2/3, available <[http://www.nssoud.cz/dokumenty/usneseni\\_plena\\_o\\_zruseni\\_kolegii.pdf](http://www.nssoud.cz/dokumenty/usneseni_plena_o_zruseni_kolegii.pdf)> accessed 3 December 2020.

<sup>70</sup> The competence for a delegation of a judge from the voivodship administrative court to the SAC, according to Article 13 (1) of the PUSA, is entrusted to the President of the SAC, upon the consent of a delegated judge. In 2019, 87 judges from the voivodship administrative courts were delegated to the SAC. In January 2020, only 71 judges from the first instance courts adjudicated in the SAC in panels of three judges.

<sup>71</sup> According to Article 111 (1–2) PPSA, the court is obliged to hear joint disputes if they are subject to one complaint. The court may order individual cases to be combined if they are connected with each other. The combination is not obligatory for all similar cases.

<sup>72</sup> Article 39 CAJ.

<sup>73</sup> Article 104a CAJ.

<sup>74</sup> According to the Article 4.i. Recommendation Rec(2004)20, at least in important cases, a court's decision to review should be subject to appeal to a higher tribunal.

In Poland, this proposal can automatically be treated as being in contradiction with the principle of two-instance court proceedings and the above-mentioned interpretation by the PCT.<sup>75</sup> It is worth mentioning that this conception is not unanimously approved by all representatives of the doctrine.<sup>76</sup> Independently of the interpretation of Article 176 paragraph 1 PCT, there is a place for a discussion about the current system of two-instance administrative court proceedings. At least in terms of procedural matters, a complaint could not have a devolutive nature or be adjudicated by another court of first instance.<sup>77</sup> It would also be beneficial to analyze the possibility of dismissing a cassation complaint by the court of first instance due to a lack of real cassation basis. If this order is reviewable by the SAC, then the control of a case by a court of a higher instance would be still present. The SAC would verify if the cassation is really groundless from the point of its sense and the justification of the first-instance court, but not the content of the whole dispute.

The second proposal is linked with abandoning the general hearing of the disputes by the SAC in camera. Parties of the proceedings should only have a guaranteed right to present their reasons before a court during a public hearing. This right is manifested in the proceedings before the first instance courts.<sup>78</sup> In a court of a second instance, this right could be limited to selected cases which would be determined through a reference to some special circumstances presented in a cassation complaint or a court's assessment. In the courts of the second and last instance, which are the SACs in the Czech Republic and Poland, where the disputes are limited only to normative considerations, a public hearing frequently leads to prolonging the time taken for dispute resolution.<sup>79</sup> The Polish SAC is limited to hearing cases for which the cassation basis can be formulated prior to lodging this remedy.<sup>80</sup> It is not possible to formulate a new basis during a public hearing. The Czech SAC usually deals with cassation complaints without an oral hearing because the cassation complaint is an extraordinary remedy and there is no possibility of formulating a new basis in procedure,<sup>81</sup> as they also do in Poland.

The third proposal is a postulate for less complicated cases to be heard by one judge instead of a panel of three judges. Although the settlement of a case by three judges can be more professional than when only one judge considers the case, this presumption should not be generalized. The legislator in each country should make reasonable use of their judicial resources, taking into consideration all disputes and time limits for their determination. Therefore, abandoning the requirement that the general settlement of cassation complaints must be performed by three judges in proceedings before the Polish SAC will prove to be beneficial.<sup>82</sup> This could also be a possible solution in the Czech Republic. For example, many cases are resolved by the administrative court of first instance with only one judge, rather than a panel of three judges.<sup>83</sup>

There are also organizational matters which can be taken into consideration for reducing the number of unsolved cassation complaints. The most urgent matter in Poland is the 21 judge positions in the SAC that had not been filled by the end of 2019.<sup>84</sup> The authority responsible for initiating the appointment process for a new position in the SAC is the President of the SAC.<sup>85</sup> His restraint may be connected with the intention to avoid nominating new judges whose nomination could be evaluated as being in violation of European

<sup>75</sup> See the footnotes 25 and 26.

<sup>76</sup> According to a contrary opinion, Article 176 (1) PCT has only a structural nature and does not force a legislator to implement the two-instance principle in each dispute. For a more detailed discussion, see Paweł Grzegorzczak, 'Komentarz do art. 176' in M. Safjan, L. Bosek (eds), *Konstytucja RP. Tom II. Komentarz. Art. 87-243* (CH Beck 2016) 978–989.

<sup>77</sup> This kind of amendment was introduced to the Polish Civil Procedure in 2019. See Article 394(1a) of the Act of 4 July 2019 on an amendment of the Code of Civil Procedure and other statutes (Journal of Laws 2019, Item 1469).

<sup>78</sup> In the jurisprudence of the ECtHR, a less strict standard for oral hearings applies before appellate courts than at the first instance level. See *Döry v. Sweden* App no. 28394/95 (ECtHR, 12 November 2002), para. 37, *Miller v. Sweden* App no. 55853/00, para 30.

<sup>79</sup> This is clearly visible in proceedings before the Polish SAC. If all parties waive the right to hear a case in camera, in accordance with Article 182 (2) PPSA, and the SAC resolves the case in private, then a judgment is passed approximately four-six months after lodging a cassation appeal. If one or both parties want to have a public hearing, then they have to wait 24 months.

<sup>80</sup> The SAC takes into consideration ex officio only the basis of the invalidity of the proceedings. See Article 183 (1–2) PPSA.

<sup>81</sup> Article 109 (5) CAJ.

<sup>82</sup> Article 182 (3) PPSA. An exception from this rule concerns cassation complaints against orders which are determined in panels composed of a single judge. See Article 182 § 3 PPSA.

<sup>83</sup> See Article 31 (1–2) CAJ.

<sup>84</sup> According to the decree of the President of the Republic Poland from 10 October 2019 on the number of judges and vice-presidents in the SAC (Journal of Laws 2019, item 1980), there are 127 judge positions in the SAC. In reality, only 106 positions had been filled at the end of 2019. See the official list of the judges of the SAC <<http://www.nsa.gov.pl/sedziowie-nsa.php>> accessed 29 December 2020.

<sup>85</sup> See Article 49 PUSA.

Unition (EU) law.<sup>86</sup> The suspension of appointments does not have a positive impact on the effectiveness of proceedings before the SAC.

The other organizational matter is the possible application of new technologies to expedite administrative justice in the Czech Republic and Poland. In the Czech Republic, paper files are still used in administrative procedures and administrative justice. Such files must be delivered to the courts, which usually takes a few weeks and makes it impossible for other people to work with this file until they have it in hand. A solution here might be the adoption of electronic versions for cassation complaints of limited length (but not only). In many cases, the cassation complaints are very long, making it is not possible to read them quickly to understand what happened.<sup>87</sup> The electronization of justice may be a good step, but it must not be the only one.

In Poland, this process is, like in the Czech Republic, only just beginning to be implemented and concerns electronic communication with administrative justice and case files in electronic form.<sup>88</sup> Electronic measures could be useful tools for expediting the whole procedure before the administrative courts, including improving the algorithms which can assist or even supplement a judge's decisions in uncomplicated cases. It would be also beneficial for the internal organization of the courts if all information about similar disputes, which have to be or should be adjudicated together, were available.

The last issue is the court fee and the amount of money that must be paid to the SAC. In the Czech Republic this fee has not changed since 2011; in Poland, the fee is the same as it was in 2003.

For both countries, it is worth considering whether the SAC may address the above-mentioned problems without a change in the legal regulations. The solution should focus on the length of the reasoning and how the reasons for the decision of the SAC should be expressed. Unfortunately, the decisions of the SAC are usually quite long, since they include a lot of (academic) information, which is often not essential.

## 5. Conclusions

The right to have one's case heard within reasonable time constitutes one component of effective judicial protection. The analysis has shown that there is a problem with this requirement in Czech and Polish administrative justice systems. Proceedings before the SACs last too long and do not guarantee judicial protection at the time when it is necessary. However, there is a potential in both countries for reorganizing the procedural and structural activity of the SACs so that they can operate in a more timely and effective manner.

In Europe, there are administrative justice systems that are slower than those of the Czech Republic and Poland.<sup>89</sup> However, this is not a reason for shying away from necessary reforms. From an economic and social point of view, delays in the adjudication by administrative courts have negative effects for individuals and for public administrations. There are additional extensive consequences for the functioning of whole states, and for their evaluation by foreign investors. We cannot afford to maintain an ineffective system of administrative justice in the Czech Republic, Poland and countries in the middle of Europe in the midst of rapid economic development. Administrative justice is closely connected with everyday life, which is also a reason why administrative justice should be available to all in a reasonable time.

Some of the proposals, especially those of a procedural nature, connected with hearing of cases in camera or in private, before a panel of three judges or just one judge, or concerning limitations on access to the SACs, may be perceived as a general limitation of the individual's rights. However, this statement is not justified, because these rights have already been limited by the ineffective protection provided by the courts. Approval of the current situation will lead to their persistence, which from the point of view of the protection of individual rights, cannot be accepted.

<sup>86</sup> Cases C-585/18, C-624/18 and C-625/18 *A.K. v. Krajowa Rada Sądownictwa, CP and DO v. Sąd Najwyższy* (2019), paras. 130–171.

<sup>87</sup> Such a solution was also discussed at the conference held in Brno in the Czech Republic on 9 September 2019. For more details see in <<http://www.aca-europe.eu/index.php/en/evenements-en/746-brno-9-september-2019-seminar-measures-to-facilitate-and-restrict-access-to-administrative-courts>> accessed 14 December 2020.

<sup>88</sup> See Article 4 of the Act of 10 January 2014 on an amendment to the Act on the Electronic Activity of Authorities Fulfilling Public Tasks and the amendment of other statutes (Polish Journal of Laws 2014, Item 143 as amended), which came into force on 31 May 2019. This process is better developed in other countries. E.g., using the website of the Council of State in Rome, the professional agents can verify the current state for all disputes in which they represent a party, both for courts of first instance and the Council of State. See <<https://www.giustizia-amministrativa.it/web/guest/portale-avvocato>> accessed 29 December 2019.

<sup>89</sup> See the report prepared by the European Commission for the Efficiency of Justice from 2016, entitled *European Judicial Systems. Efficiency and Quality of Justice*. CEPEJ studies No. 26, 283–285.

## Competing Interests

Neither Lukas nor I don't have competing interests composed with the submitted paper. We prepared it without any influences from religion or gender organizations. It is a scientific text about some phenomena which are common for the Czech and the Polish administrative judiciaries. Nobody made on us any pressure and from our side, we didn't feel it. We are scientists who are free in our research.

**How to cite this article:** Wojciech Piątek and Lukáš Potěšil, 'A Right to Have One's Case Heard within a Reasonable Time before the Czech and the Polish Supreme Administrative Courts – Standards, the Reality and Proposals for the Future' (2021) 17(1) *Utrecht Law Review* pp. 20-32. DOI: <https://doi.org/10.36633/ulr.586>

**Published:** 26 May 2021

**Copyright:** © 2020 The Author(s). This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC-BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited. See <http://creativecommons.org/licenses/by/4.0/>.



*Utrecht Law Review* is a peer-reviewed open access journal published by Utrecht University School of Law.

**OPEN ACCESS** The Open Access icon, which is a stylized padlock with an open keyhole.