

**Joanna Sieńczyło-Chlabicz**

Uniwersytet w Białymstoku  
(University of Białystok, Poland)  
e-mail: [sienczylo@uwb.edu.pl](mailto:sienczylo@uwb.edu.pl)

ORCID: 0000-0001-5664-6060

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## **The Jurisdiction of Administrative Courts and Common Courts in the Industrial Property Cases from a Historical Perspective**

### **ABSTRACT**

The origins of the administrative court system go back to the period of building of the system of government in the Second Republic after Poland's partitions and are associated with the establishment of the Supreme Administrative Tribunal (SAT) in 1922. Significant changes were made to the administrative court system by the Polish Constitution of April 2, 1997, which, in Article 175(1), stipulates that administrative courts – in addition to common courts and military courts – administer justice. Administrative courts are therefore a separate part of the judiciary based on a two-instance adjudication system. In this paper, the author presents the origins of the administrative court system, including the Supreme Administrative Tribunal, the Supreme Administrative Court (SAC). The author indicates the models of the administrative court system, its essence, and the role it plays in the justice system. Then she analyzes the jurisdiction of administrative courts in industrial property cases from a historical perspective. An interesting issue in this context is the existing dualism of the consideration of industrial property cases by administrative courts and by common courts. An important change that came into effect on July 1, 2020 pursuant to the Act of February 13, 2020 on amendments to the Code of Civil Procedure (CCP) was the introduction of separate proceedings in the intellectual

property cases and the establishment of the so-called IP courts (intellectual property courts), and the impact of these changes on the development of relations in terms of the jurisdiction of administrative courts and common courts.

**Key words:** Supreme Administrative Tribunal, Supreme Administrative Court, Patent Office, delimitation of competence of common and administrative courts, jurisdiction of administrative courts in the industrial property cases, IP courts

## Introduction

In accordance with Article 175 (1) of the Constitution of the Republic of Poland of April 2, 1997,<sup>1</sup> the administration of justice in the Republic of Poland is carried out by the Supreme Court, by common courts, by administrative courts and by military courts. This provision establishes a constitutional classification of all the categories of courts that operate in the Republic of Poland, and expresses the principle of the judicial administration of justice, which is crucial for THE formation of the competence of courts and of other public authorities. Importantly, the catalog of courts provided in the Constitution is enumerative and rules out the creation by law of new types of courts that do not fall into one of the categories enumerated in the provision in question.<sup>2</sup>

For the delineation of the competence of common courts and of administrative courts, the provisions of Article 184 and Article 177 of the Constitution are of key importance. Article 177 provides that common courts administer justice in all cases, except for the cases statutorily reserved for the competence of other courts. This provision leads to the presumption of competence of common courts in cases in which the competence of other courts cannot be derived from the provisions of a statute. There is no doubt, therefore, that it is to common courts that the Constitution delegates general competence in terms of the administration of justice. The competence of other courts must arise from a specific provision of a statute.<sup>3</sup>

<sup>1</sup> The Journal of Laws 1997 no. 78, item 483, as amended; hereinafter referred to as the Constitution.

<sup>2</sup> B. Naleziński, *Komentarz do art. 175*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, 2nd ed., ed. P. Tuleja, LEX/el. 2021.

<sup>3</sup> B. Adamiak, *Rozgraniczenia właściwości sądów w polskim systemie prawnym*, [in:] *Sądownictwo administracyjne gwarantem wolności i praw obywatelskich*, ed. M. Sawicka-Jezierczuk, Warszawa 2005, p. 9; M. Masternak-Kubiak, [in:] ed. M. Haczkowska, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, LexisNexis 2014, a commentary to Article 184, margin ref. 1; cf.: the judgment of the Constitutional Tribunal of February 21, 2001, P. 12/2000, OTK 2001, no. 3, item 47.

Article 184 of the Constitution governs the competence of the Supreme Administrative Court and of administrative courts by providing that the Supreme Administrative Court and other administrative courts exercise judicial review over the activities of public administration bodies to the extent specified in a statute. This review also includes adjudicating on the compliance of resolutions of local government bodies and normative acts of local government administration bodies with statutes. Statutes defining the scope of an administrative court's review are complementary to the content of the first sentence of Article 184 in a way that ensures the exercise of the right to a court through the jurisdiction of the administrative court.<sup>4</sup>

The primary function of the administrative court system is to protect the subjective rights of individuals. This results from the assumptions of the adopted system of verification of public administration in a law-abiding state, which is closely related to the implementation of the principle of the rule of law. The essence of the judicial review of administration is to protect the freedoms and rights of individuals (subjects of law) in their relations with the public administration and to build and consolidate the rule of law.<sup>5</sup>

In this paper, the discussion focuses on the origins of the administrative court system, including the Supreme Administrative Tribunal (SAT), the modern counterpart of the Supreme Administrative Court. The paper addresses the problem of delimiting the competence of courts in the Polish legal system. Also, the article indicates the models of the administrative court system, its essence, and the role it plays in the system of justice. This is followed by an analysis of the jurisdiction of administrative courts in industrial property cases from a historical perspective. An interesting issue in this context is the existing dualism of the consideration of industrial property cases by administrative courts and common courts. An important change that came into effect on July 1, 2020 pursuant to the Act of February 13, 2020 on amendments to the Code of Civil Procedure<sup>6</sup> was the introduction of separate proceedings in intellectual property cases and the establishment of the so-called IP courts (intellectual property courts), and the impact of these changes on the development of relations in terms of the jurisdiction of administrative courts and common courts.

4 See the judgment of the Constitutional Tribunal of June 14, K. 11/98, OTK 1999, no. 5, item 97; the judgment of the Constitutional Tribunal of December 15, 1999, P. 6/99, OTK 1999, no. 7, item 164; resolution of the SAC of May 15, 2000, OPS 21/99, ONSA 2000, no. 4, item 135.

5 See: J. Trzeciński, *Sądownictwo administracyjne jako gwarant ochrony wolności i praw jednostki*, [in:] *Trzecia władza. Sądy i trybunały w Polsce*, Gdańsk 2008, pp. 128-129.

6 The Journal of Laws 2020, item 288; hereinafter: amendment to the CCP.

## The origins, the essence, and models of the administrative court system

The origins of the administrative court system go back to the period of building of the system of government in the Second Republic after the partitions of Poland. The establishment of the Supreme Administrative Court was announced in Article 73 of the Constitution of the Republic of Poland of March 17, 1921 (The March Constitution),<sup>7</sup> which stipulated that “a separate statute shall establish an administrative court system, the organization of which shall be based on the cooperation of the civic factor and the judicial factor, with the Supreme Administrative Tribunal at its head, to adjudicate on the legality of administrative acts issued by the the central government and the local and regional governments.” Thus, the Supreme Administrative Tribunal<sup>8</sup> was to stand at the head of the administrative court system established to adjudicate on the legality of administrative acts issued by both central government and local and regional government administration. The delegation under Article 73 of the March Constitution was implemented by the Sejm in the Act of August 3, 1922 on the Supreme Administrative Tribunal.<sup>9</sup> The first president of the SAT, from 1922 to 1928, was Jan Sawicki.

The outbreak of World War II interrupted the work of the SAT. In September 1939, the then President of the SAT, Bronisław Hełczyński was, together with the Polish government, evacuated to Romania, from where, via France he reached London, where he continued his scientific, social, and political activities. The president of the SAT went to London, where he became involved in the Polish government activities, including legislative work and teaching of law. After the war, there was an attempt to restore the SAT, but the Tribunal resumed its work only in 1980.

The system of administrative courts in Poland was not restored until 1980, when the Supreme Administrative Court was established. During the communist period, the review of the actions of state administrative bodies was entrusted not to an administrative court, but to the prosecutor’s office. Calls for the introduction of administrative courts to review the activities of administration and the administer justice had long awaited their implementation. The Supreme Administrative Court was established by the Act of January 31, 1980 on the Supreme Administrative Court and amending the Code of Administrative Procedure,<sup>10</sup> and started its work on September 1, 1980. The establishment of the SAC marked the implementation of the calls, which at first appeared in the 1940s, for the restoration of judicial review of administration. This review,

<sup>7</sup> The Journal of Laws 1921 no. 44, item 267.

<sup>8</sup> Hereinafter referred to as SAT.

<sup>9</sup> The Journal of Laws 1926 no. 68, item 400, as amended.

<sup>10</sup> The Journal of Laws 1980 no. 4, item 8, as amended.

like the review exercised by the SAT in the interwar period, was based on a multi-instance review model. The Supreme Administrative Court, established in 1980, has become a single-instance body operating pursuant to a statute, and therefore it is significantly affected by the new constitutional provisions. This is because this fact creates a constitutional basis for the existence of the SAC, also bringing the announcement of the introduction of at least a two-instance system of administrative courts, which was to be implemented within 5 years of the Constitution's entry into force.<sup>11</sup>

Significant changes in the organization of the system of administrative courts were introduced by the Polish Constitution of April 2, 1997, which came into force on October 17, 1997. Pursuant to Article 175 (1) of the Constitution of the Republic of Poland, administrative courts – in addition to common courts and military courts – administer justice. Administrative courts are a separate part of the judiciary that is based on a two-instance adjudication system. The adoption of a two-instance model of administrative court proceedings meant that essentially all cases falling within the competence of the SAC, with the exception of disputes regarding competence, were transferred to the newly established provincial administrative courts (PAC), which became the courts of first instance. As of January 1, 2004, the SAC's branches became provincial administrative courts.<sup>12</sup>

The system of administrative courts is one of the basic guarantees of the rule of law in a democratic state, and therefore it is legitimate to assume that without that system there is no law-abiding state.<sup>13</sup> The system of administrative courts plays a fundamental role in protecting the rights and freedoms of individuals, as well as protecting the rule of law and sets the standards of the legal culture.<sup>14</sup> This protection is particularly important in the sphere of public law in the relations between individuals and public administration bodies, which by its very nature is characterized by the sovereign position of state bodies.<sup>15</sup> The establishment of the system of administrative courts added a new dimension to the relations between individuals and the state, while ensuring the formation of a proper relationship between administration bodies and individuals.<sup>16</sup> This is evidenced by the 100-year history of Poland's system of administrative courts,

<sup>11</sup> W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, 7th ed., Lex 2013.

<sup>12</sup> J. Sieńczyło-Chlabicz, *Kontrola sądownoadministracyjna postępowań przed Urzędem Patentowym w sprawach z zakresu prawa własności przemysłowej*, [in:] *System Prawa Prywatnego. Prawo własności przemysłowej*, vol. 14C, ed. R. Skubisz, Warszawa 2017, p. 177.

<sup>13</sup> J. Zimmermann, *Aksjomaty prawa administracyjnego*, Warszawa 2013, p. 244.

<sup>14</sup> M. Kowalski, *Rola i pozycja sędziego sądu administracyjnego*, [in:] *Metodyka pracy w sądach administracyjnych*, eds. R. Hauser, J. Drachal, Warszawa 2015, p. 17.

<sup>15</sup> J. Trzciniński, *Sądownictwo administracyjne jako gwarant ochrony wolności i praw jednostki*, [in:] *Trzecia władza, sądy, trybunały w Polsce*, ed. A. Szmyt, Gdańsk 2008, p. 129.

<sup>16</sup> For more information, see, among others, H. Izdebski, *Historia administracji*, Warszawa 2001, pp. 77ff.

starting with the SAT, established in 1922 and operating continuously until 1939, through the SAC (since 1980), which was reactivated with the first attempts at democratization, to the current two-instance system of administrative courts with provincial administrative courts and the SAC (since 2004).<sup>17</sup>

According to the provisions of the Constitution, the two-instance nature of administrative court proceedings has become one of the standards for the judicial review of administration. According to Article 236 (2) of the Constitution, statutes implementing the principle of two-instance administrative court proceedings were to be enacted before the expiration of the period of 5 years from the date of entering into force of the Constitution, i.e. by 2002. Until then, the legal status set at first by the Act of January 31, 1980 on the Supreme Administrative Court and amending the Code of Administrative Procedure, and then by the provisions of the Act of May 11, 1995 on the Supreme Administrative Court was in force.<sup>18</sup>

The constitutional requirement concerning the two-instance administrative court proceedings was fulfilled on January 1, 2004, when two statutes introducing the two-instance adjudication came into force, i.e. the Act of July 25, 2002 on the organization of administrative courts<sup>19</sup> and the Act of August 30, 2002 on proceedings before administrative courts<sup>20</sup>. The most important changes concerned the introduction of the two-instance proceedings before administrative courts, the exclusion of administrative courts from the judicial supervision of the Supreme Court, as well as the introduction of provisions regulating issues related to their organization and proceedings before these courts.

The system of administrative courts takes various forms in different member states of the European Union. Individual EU member states have the right to independently shape the organization, structure, model, and adjudicatory powers of administrative courts.<sup>21</sup> The Judicial review of administrative acts can be entrusted to completely independent special courts, as is the case in Poland, or placed under the jurisdiction of common courts, as in English-speaking

<sup>17</sup> D. Dąbek, *Sądownictwo administracyjne jako wtórny prawodawca negatywny a konstytucyjny standard ochrony wolności i praw jednostki przed nielegalnym stanowieniem prawa*, [in:] *Wolności i prawa człowieka i obywatela w orzecznictwie sądów administracyjnych. Księga Jubileuszowa na 100-lecie utworzenia Najwyższego Trybunału Administracyjnego*, ed. J. Chlebny, Warszawa 2022, p. 392.

<sup>18</sup> The Journal of Laws 1995 no. 74, item 368, as amended.

<sup>19</sup> Consolidated text: the Journal of Laws 2022, item 2492, as amended; hereinafter referred to as AOAC.

<sup>20</sup> Consolidated text: the Journal of Laws 2022, item 329, as amended; hereinafter referred to as APBAC.

<sup>21</sup> Z. Kmieciak, *Postępowanie administracyjne i sądownictwo administracyjne a prawo europejskie*, Warsaw 2009, p. 24; A. Wróbel, *Autonomia proceduralna państw członkowskich, zasada efektywności i zasada efektywnej ochrony sądowej w prawie Unii Europejskiej*, „RPEiS” 2005, no. 1, p. 35; M. Kowalski, *Rola i pozycja sędziego*, p. 22.

countries, Norway, Iceland, Hungary, and Malta. In some countries, such as France, Germany, and Sweden, the system of administrative courts has a three-instance structure. However, most European countries, including Poland, have a two-instance system of administrative courts.<sup>22</sup>

Administrative courts administer justice primarily by reviewing the activities of public administration bodies. Article 1 (2) of the AOAC sets forth the basic principle of administrative courts' review function, namely that unless specific statutory provisions stipulate otherwise, such a review is exercised in terms of compliance with the law. This means that the administration of justice exercised by administrative courts is the judicial review of the compliance with law (legality) of the activities of public administration.

The jurisdiction of administrative courts includes the decisions and rulings of the Patent Office<sup>23</sup> issued in industrial property cases. The Provincial Administrative Court (PAC) in Warsaw, as a court of the first instance, is competent to consider complaints filed against the decisions of the Patent Office.

### **The introduction and development of the jurisdiction of administrative courts in industrial property cases**

It should be emphasized that before the entry into force of the Act of June 30, 2000 – Industrial Property Law,<sup>24</sup> i.e., before August 22, 2001, in cases involving industrial property rights, the decisions of the Polish Patent Office were subject to the judicial review to a very limited extent. In the period when the SAT existed, until October 1, 1962, the fundamental legal act governing industrial property protection was the Regulation of the President of the Republic of Poland of March 22, 1928 on the protection of inventions, designs, and trademarks.<sup>25</sup> However, on October 1, 1962, the Act of May 31, 1962 – the Invention Law – came into force.<sup>26</sup> In Article 121, that act provided for appeals against decisions and rulings issued by the Patent Office. Appeals against decisions and complaints against rulings of the PO were considered by the Appeals Board operating at the Patent Office. The Appeals Board made its decisions in collective bodies with the participation of representatives of trade unions and technical associations. The Appeals Board received appeals against the PO's decisions made in dispute proceedings. When cases were heard by the Appeals Board at the Patent Office, the collective bodies

<sup>22</sup> Cf.: H. Izdebski, *Sądownictwo administracyjne w Europie*, „ZNSA” 2007, no. 4, p. 136.

<sup>23</sup> Hereinafter also referred to as PO.

<sup>24</sup> Consolidated text: the Journal of Laws 2021, item 324, as amended; hereinafter referred to as IPL.

<sup>25</sup> The Journal of Laws 1928 no. 39, item 384, as amended.

<sup>26</sup> The Journal of Laws 1962 no. 33, item 156; hereinafter referred to as 1962 IL.

were presided over by judges appointed by the First President of the Supreme Court from among the judges of that court (Article 124 (2)).

Similarly, the Act of October 19, 1972 on inventions<sup>27</sup> provided for the possibility of appeals against the decisions and rulings of the Patent Office to the so-called Appeals Board operating at the Patent Office. Thus, the like the 1962 IL, the Act on invention provided for two-instance proceedings before the PO. According to Article 115 (1) of the IL, appeals against decisions of the Patent Office and complaints against its rulings issued primarily through litigation were considered by the Board of Appeals at the Patent Office. The of the Appeals Board was in Warsaw. The chairmen of the Appeals Board were judges selected by the First President of the Supreme Court from among the judges of that Court (Article 116 (2) of the IL). The Appeals Board's adjudicating panels were composed of the chairman – a judge of the Supreme Court – and two members: an employee of the Patent Office and a member of a social organization involved in the promotion of inventions.<sup>28</sup> The composition could not include persons who participated in the issuance of the challenged ruling.<sup>29</sup>

The 1972 Invention Law also introduced the right to file for an extraordinary review, which was only available to certain entities. In case of any final decision of the Patent Office and of the Appeals Board terminating the proceedings in a case that grossly violates the law, the following strictly defined entities had the right to the extraordinary review: the President of the Patent Office, the First President of the Supreme Court, and the Attorney General of the Republic of Poland<sup>30</sup>. In 1987, the Commissioner for Human Rights (Article 117 of the IL) was added to the list of entities entitled to file for an extraordinary review.<sup>31</sup>

With the entry into force of the Act of June 30, 2000 – the Industrial Property Law<sup>32</sup> on August 22, 2001, by virtue of Article 326 (1) of the IPL, the Act on invention became invalid and the Appeals Board at the PO ceased to function. The following legal acts were also repealed: the Act of January 31, 1985 on trademarks,<sup>33</sup> the Act of October 30, 1992 on the protection of the topography of integrated circuits,<sup>34</sup> the acts governing the tasks and organization of the Patent Office of the Republic of Poland, and the Regulation of the Council of Ministers of January 29, 1963 on the protection of decorative designs.<sup>35</sup>

<sup>27</sup> The Journal of Laws 1993 no. 26, item 117, as amended; hereinafter referred to as IL.

<sup>28</sup> A. Kisielewicz, *Własność przemysłowa w orzecznictwie sądów administracyjnych*, „ZNSA” 2010, no. 5-6, p. 207.

<sup>29</sup> A. Szewc, *Urząd Patentowy RP i postępowania przed tym Urzędem*, „SPP” 2009, no. 3-4, p. 17.

<sup>30</sup> A. Kisielewicz, op. cit., p. 207.

<sup>31</sup> More information can be found in S. Lizer, A. Szewc, *Rewizja nadzwyczajna od decyzji i postanowień Urzędu Patentowego i Komisji Odwoławczej*, „PiP” 1974, book 4.

<sup>32</sup> The Journal of Laws 2001 no. 49, item 508.

<sup>33</sup> The Journal of Laws 1985 no. 5, item 17, as amended.

<sup>34</sup> The Journal of Laws 1992 no. 100, item 498, as amended.

<sup>35</sup> The Journal of Laws 1963 no. 36, item 161; see: T. Żyznowski, *Niektóre aspekty drogi sądowej w sprawach z zakresu własności przemysłowej*, „PS” 2002, no. 9, pp. 3ff.

As it was clear from the justification of the bill of the Industrial Property Law, in matters related to the decisions and rulings made by the Patent Office, it was assumed – in accordance with the Code of Administrative Procedure (Article 127 (3)) in conjunction with Article 5 (2) (4) and Article 144) – that these decisions and rulings are final. However, a dissatisfied party may request the Patent Office to reconsider the case. Articles 253-254 regulate in detail the procedure for such a reconsideration by the Appeals Board of the Patent Office, by a panel of several experts, which was modeled on the practice in place at such institutions as the European Patent Office. The decisions and rulings of the Patent Office could be appealed by way of a complaint to the Supreme Administrative Court, which was an adoption of the usual existing model of the judicial review of administration bodies. In disputed cases, on the other hand, the requirement for the judicial review of decisions was to be implemented by the establishment of a Patent Court at the Provincial Court in Warsaw, with the Patent Office remaining the first instance authority. This required abandoning the participation of provincial court judges in adjudication before the Patent Office in the first instance, since appeals and complaints would also be heard by those judges.<sup>36</sup>

### **The duality of the jurisdiction in industrial property cases by administrative and common courts before and after July 1, 2020**

There are two basic systems for the adjudication of intellectual property cases: 1) a system in which cases concerning infringement and invalidation of a right are decided in a single proceeding, and 2) a system in which cases concerning infringement and invalidation of a right are decided by different courts or authorities in different proceedings. The first system has a formula for concentration on the adjudication of cases concerning infringement and invalidation, while the second system is based on a duality in the adjudication of these cases. In some countries, including France, Italy, Finland, Sweden, the Netherlands, and the United Kingdom, patent invalidation cases can be heard by the same court that adjudicates infringement cases.<sup>37</sup>

In Poland, there is a dualistic system for the adjudication of industrial property law cases.<sup>38</sup> According to the law in force before July 1, 2020, some cases were adjudicated by the Patent Office, while the review of the decisions issued

<sup>36</sup> J. Sieńczyło-Chlabicz, *Kontrola sądownoadministracyjna...*, p. 181.

<sup>37</sup> A. Adamczak, M. Kruk, *Perspektywy utworzenia sądu ds. własności intelektualnej w Polsce – obecne realia*, [in:] *Aktualne wyzwania prawa własności intelektualnej i prawa konkurencji. Księga pamiątkowa dedykowana Profesorowi Michałowi du Vallowi*, Warszawa 2015, pp. 36-37.

<sup>38</sup> See, among others: M. du Vall, *Prawo patentowe*, Warszawa 2008, pp. 395ff; P. Grzegorzczuk, *Jurysdykcja krajowa w sprawach z zakresu prawa własności przemysłowej*, Warszawa 2007, pp. 95ff.

in this regard was and still is exercised by the PAC in Warsaw. On the other hand, before July 1, 2020, some cases were adjudicated in civil proceedings according to the general principles by common courts and by the Supreme Court.<sup>39</sup>

The jurisdiction of administrative courts in industrial property rights cases before and after July 1, 2020 has not changed, so the judicial review of the decisions and rulings of the Patent Office continues to be exercised by the PAC in Warsaw. As stated by the SAC in its case law, this means that the local competence of provincial administrative courts is determined by the seat of the public administration body, or of the body of the entity that performs the outsourced functions of the public administration, whose activity or inaction is the subject of the complaint.<sup>40</sup> Due to the fact that the Patent Office is located in Warsaw, and due to the unique nature of the cases, the PAC in Warsaw has the jurisdiction to hear complaints against the decisions and rulings issued by the Patent Office.<sup>41</sup> This applies to the decisions and rulings issued in application and registration proceedings (Article 248 of the IPL), the proceedings concerning objections to trademark applications (Article 248 in conjunction with Article 152<sup>22</sup> (1) of the IPL), and dispute proceedings for the invalidation of industrial property rights (Article 257 of the IPL). As stipulated in the above-mentioned regulations, the parties are entitled to file complaints to an administrative court against decisions and rulings. The review exercised by the PAC in Warsaw also includes the decisions and rulings issued in proceedings concerning the expiry of industrial property rights. The instance-based review of the rulings issued in industrial property cases by the PAC in Warsaw is exercised by the SAC, with adjudication of such cases falling within the jurisdiction of the Chamber of Commerce.

The PAC in Warsaw reviews cases adjudicated in dispute proceedings before the Patent Office. According to Article 255 (1) of the IPL, these are cases concerning: 1) the invalidation of a patent, a supplementary protection right, a protection right, or a right in registration; 1<sup>1</sup>) the invalidation of a European patent granted in accordance with the procedure set forth in the European Patent Convention; 1<sup>2</sup>) the invalidation of recognition in the territory of the Republic of Poland of the protection of an international trademark; 1<sup>3</sup>) the limitation of a patent during the patent invalidation proceedings; 2) the establishment of an expiration of a patent for an invention relating to biological material or its use, in the case specified in Article 90 (1) (4); 2<sup>1</sup>) the establishment of an expiration of a supplementary protection right, in the cases specified in Article 75<sup>6</sup> (3); 3) the

39 A. Jakubecki, *Dochodzenie roszczeń z zakresu prawa własności przemysłowej w postępowaniu cywilnym*, [in:] *System Prawa Prywatnego, Prawo własności przemysłowej*, vol. 14C, ed. R. Skubisz, Warsaw 2017, p. 601.

40 The Rulings of the SAC of: February 3, 2012, I OZ 49/12, Legalis; November 3, 2011, I OZ 812/11, Legalis.

41 J. Sieńczyło-Chlabicz, *Kontrola sądownoadministracyjna...*, p. 187.

establishment of an expiration of a protection right for a trademark, in the cases specified in Article 169; 3<sup>1</sup>) the establishment of an expiration in the territory of the Republic of Poland of the protection of an international trademark in the cases specified in Article 169; 3<sup>2</sup>) the invalidation of recognition in the territory of the Republic of Poland of the protection of an international industrial design; 4) the establishment of an expiry of a right in registration of a geographical indication, in the case specified in Article 192 (1); 5) the establishment of an expiry of a right in registration of a topography, in the cases specified in Article 221 (2); 6) the granting of a compulsory license for the use of an invention, utility model, industrial design, or topography; 6<sup>1</sup>) the granting of a compulsory license for the use of an invention for which a patent has been granted in accordance with the procedure set forth in the European Patent Convention; 7) the change of a decision to grant a compulsory license; 8) the establishment of lack of grounds for changing the conditions for the use of a geographical indication, in the case specified in Article 188 (3).

Until July 1, 2020, cases involving civil-law claims related to industrial property protection that were not within the jurisdiction of other authorities were adjudicated by common courts and the Supreme Court in civil proceedings according to general rules, subject to Article 257 of the IPL. From July 1, 2020, according to Article 283 of the IPL, cases concerning civil-law claims related to industrial property protection are resolved in separate intellectual property proceedings, unless the competence of another body or other proceedings is provided for.<sup>42</sup>

The list of cases adjudicated in civil-law proceedings before and after July 1, 2020 remained the same and is still only exemplary in nature. Article 284 of the IPL contains an open catalog of cases falling within the jurisdiction of common courts and civil courts. In particular, there are cases concerning: 1) the establishment of the authorship of an invention design; 2) the establishment of the right to a patent, a protective right, or a right under registration; 3) the remuneration for the use of an invention design; 4) the remuneration for the use of an invention, a utility model, or a topography for state purposes; 5) the remuneration for the transfer to the State Treasury of the right to a patent or a protection right for a secret invention or a secret utility model, respectively; 6) the infringement of a patent, a supplementary protection right, a protection right, or a right in registration; 7) the assertion of the right to use an invention, a utility model, or an industrial design in the cases specified in Articles 71 and 75 of the IPL; 8) the establishment of the right to use in local activities a mark

<sup>42</sup> J. Sieńczyło-Chlabicz, *Kilka uwag o powództwie wzajemnym w postępowaniu w sprawach własności intelektualnej*, [in:] *In varietate concordia. Księga jubileuszowa Profesora Ryszarda Skubisza*, eds. E. Całka, A. Jakubecki, M. Nazar, A. Niewęglowski, R. Poździk, Warszawa 2022, pp. 238-239.

registered as a trademark in favor of another person; 9) the establishment of the right to use a geographical indication; 10) the establishment of a loss of the right to use a geographical indication; 11) the transfer of a patent, a protection right for a utility model, or a right in registration of an industrial design or a topography, obtained by an unauthorized person; 12) the transfer of a protection right for a trademark in the case specified in Article 161 of the IPL.

## IP courts in separate proceedings in intellectual property cases

By this amendment to the CCP, the legislature created specialized divisions within common courts: intellectual property courts (IP courts), with jurisdiction over such cases. The adjudication of intellectual property cases was entrusted to IP courts, which are divisions set up in some regional courts as courts of first instance, and in selected courts of appeal as courts of second instance. On the other hand, the consideration of complaints filed against the decisions of the Patent Office concerning industrial property rights was left to administrative courts. In addition, Division IVg titled “Proceedings in intellectual property cases,” which includes Articles 479<sup>89</sup> to 479<sup>129</sup>, was added to the Code of Civil Procedure in Part One, Book One, Title VII.

Thus, as of July 1, 2020, the broadly defined intellectual property cases referred to in Article 479<sup>89</sup> of the CCP fall under the jurisdiction of regional courts (Article 479<sup>90</sup> (1) of the Code of Civil Procedure), regardless of the value of the subject matter of the dispute. This provision is a special regulation in relation to Article 17 of the CCP. The entry into force of the amendment to the CCP involved repealing the provisions of Article 17 (2 and 4<sup>3</sup>) of the CCP, which stipulated that the jurisdiction of regional courts included cases concerning the protection of copyrights and related rights, as well as those concerning inventions, utility models, industrial designs, trademarks, geographical indications, and topographies of integrated circuits, as well as the protection of other rights in intangible property and the prevention and suppression of unfair competition.<sup>43</sup>

Pursuant to the Regulation of the Minister of Justice of June 29, 2020 on transferring to certain regional courts the jurisdiction in intellectual property cases from the competence of other regional courts,<sup>44</sup> as of July 1, 2020, the jurisdiction in intellectual property cases was transferred to the following five regional courts: 1) the Regional Court in Gdańsk; 2) the Regional Court in

43 O. M. Piaskowska (ed.), *Kodeks postępowania cywilnego. Prawo procesowe. Komentarz aktualizowany*, LEX/el. 2022, margin ref. no. 1.

44 The Journal of Laws 2020, item 1152.

Katowice; 3) the Regional Court in Lublin; 4) the Regional Court in Poznań; and 5) the Regional Court in Warsaw. Intellectual property divisions were established in these five regional courts, which are competent to adjudicate intellectual property cases with a broad range of subject matters, as defined by the legislature in Article 479<sup>89</sup> of the CCP.

The Regional Court in Warsaw serves as a “technical” intellectual property court that specializes in particular in industrial property rights to technical solutions, which, given their complexity, would be conducive to the efficiency and speed of the proceedings.<sup>45</sup> The legislature provided for an expanded subject matter competence of the Regional Court in Warsaw for the most important and complex intellectual property cases, assuming the “technical” function of that court. That court has exclusive jurisdiction over intellectual property cases involving software, inventions, utility models, topographies of integrated circuits, plant varieties, and business secrets of a technical nature (Article 479<sup>90</sup> (2) of the CCP). At the same time, the separate court that had been in operation for many years, was closed, i.e., the XXII Division of the Regional Court in Warsaw – the European Union Trademark and Community Design Court, which adjudicated cases involving EU trademarks and community industrial designs on an exclusive basis. Currently, these cases fall under the jurisdiction of the five designated regional courts.

On the other hand, according to the Regulation of the Minister of Justice of June 29, 2020 on the transfer to certain courts of appeal jurisdiction in intellectual property cases from the jurisdiction or part of the areas of competence of other courts of appeal,<sup>46</sup> two courts of appeal were designated to adjudicate intellectual property cases in the second instance: 1) the Court of Appeals in Poznań and 2) the Court of Appeals in Warsaw. These two courts of appeal adjudicate, among other cases, intellectual property cases and cases involving the protection of EU trademarks and community designs. On the other hand, no changes have been made to the Supreme Court’s jurisdiction, which means that cassation appeals in intellectual property cases may be filed according to general rules.<sup>47</sup>

The explanatory memorandum for the draft amendment of February 13, 2020<sup>48</sup> indicates that the legislature’s goal was to strive to extend the scope of jurisdiction of the specialized intellectual property courts to the broadest possible category of cases, including those involving rights traditionally not classified as

45 Explanatory memorandum of the amendment of February 13, 2020, Parliamentary Print no. 45, Sejm of the 9th term of office, p. 4.

46 The Journal Laws of 2020, item 1151

47 J. Sieńczyło-Chlabicz, *Kognicja sądów administracyjnych i sądów własności intelektualnej (sądów IP) w sprawach dotyczących praw własności przemysłowej po 1 lipca 2020 r.*, [in:] *Ius est ars boni et aequi. Studia ofiarowane Profesorowi Romanowi Hauserowi Sędziemu Naczelnemu Sądu Administracyjnego*, „ZNSA” 2021, special issue, pp. 484-486.

48 9th term of office, Parliamentary Print no. 45.

intellectual property rights (e.g. personal rights subject to commercialization, such as image). This trend is in line with the content of recital 2 of the preamble of Directive 2004/48/EC, which states that the protection of intellectual property is intended to enable the inventor or creator to obtain legitimate benefits from his or her invention or work, and should enable the widest possible dissemination of works, ideas, and new *know-how*.

Intellectual property cases are divided into two categories: 1) cases concerning the protection of copyrights and related rights, the protection of industrial property rights, and the protection of other rights to intangible property, and 2) cases included in this category within the meaning of Division IVg that have been separated for the purpose of regulating the subject matters of cases covered by separate proceedings in intellectual property cases. The second group includes cases concerning: 1) the prevention and suppression of unfair competition; 2) the protection of personal rights insofar as it relates to the use of personal property to customize, advertise, or promote an entrepreneur, goods, or services; 3) the protection of personal rights in connection with scientific or inventive activities.

The legislature has introduced into the Code of Civil Procedure the following special procedural instruments that apply in all intellectual property cases: securing of evidence (Articles 479<sup>96</sup> to 479<sup>105</sup>), disclosure or release of evidence (Articles 479<sup>106</sup> to 479<sup>111</sup>), and request for release of information (Articles 479<sup>112</sup> to 479<sup>121</sup>).<sup>49</sup> This was the result of the delayed much wider implementation of Directive 2004/48/EC of the European Parliament and of the Council of April 29, 2004 on the enforcement of intellectual property rights.<sup>50</sup> before July 1, 2020, requests for securing claims and evidence, as well as information claims, were regulated by various legal acts, i.e. the Industrial Property Law,<sup>51</sup> the Act on copyrights and related rights,<sup>52</sup> the Act on legal protection of plants,<sup>53</sup> and the Act on protection of databases.<sup>54</sup> On the other hand, with the February 13, 2020 amendment to the CCP, the provisions of Article 286<sup>1</sup> of the IPL, Article 80 of the ACR, Article 36b of the ALPP, and Article 11a of the APDB were amended to read that cases involving civil law claims related to the protection of industrial property, the protection of copyrights and related rights, the protection of the

49 More information can be found in M. Dziurda, *Postępowanie w sprawach własności intelektualnej z perspektywy systemowej*, „PS” 2020, no. 10, pp. 5-23.

50 OJ EU L 157, p. 45; hereinafter: Directive 2004/48/EC.

51 Art. 286<sup>1</sup> of the IPL.

52 Article 80 of the Act of February 4, 1994 on copyrights and related rights (consolidated text: the Journal of Laws 2022, item 2509); hereinafter: ACR.

53 Article 36b of the Act of June 26, 2003 on the legal protection of plants (consolidated text: the Journal of Laws 2018, item 432, as amended); hereinafter: ALPP.

54 Article 11a of the Act of July 27, 2001 on the protection of databases (consolidated text: the Journal of Laws 2021, item 386); hereinafter referred to as APDB.

exclusive right of the breeder, and the protection of databases, which do not fall within the competence of other authorities, requests for securing evidence, disclosure or release of evidence, and provision of information are adjudicated by a court in intellectual property proceedings. This is a positive change, because, firstly, it was reasonable to introduce uniform procedural instruments to make it easier for the plaintiff to prove claims in this category of cases, and secondly, the partial regulations that were previously in effect in cases involving copyrights, the Act on the protection of databases, the Act on the legal protection of plant varieties, and the Industrial Property Law were not exhaustive and made their correct and consistent application difficult in practice.<sup>55</sup>

## Conclusions

In the Polish legal system, the dualism in the adjudication of cases involving industrial property rights has a long tradition. To an important extent, this duality is a continuation of the laws previously in force in the invention law. In my opinion, this dualism does not cause problems that complicate legal protection and make it difficult to pursue claims. In general, in the practice of the application of law by courts, there are no difficulties related to the jurisdiction of administrative courts and the so-called IP courts. Verdicts, i.e. decisions or rulings issued in proceedings before the Patent Office, are subject to review by the Provincial Administrative Court in Warsaw. On the other hand, the broadly defined intellectual property cases referred to in Article 479<sup>89</sup> of the CCP, as well as the cases indicated in Article 284 of the IPL, are resolved in separate intellectual property proceedings regulated in Articles 479<sup>89</sup> to Article 479<sup>97</sup> of the CCP.

The fact that proceedings in intellectual property cases were regulated in the CCP, rather than enacting a separate piece of legislation, should be viewed positively. This is all the more justified because the provisions of the CCP are directly applicable in these cases, with the exception of those that apply *mutatis mutandis*. What is also worthy of approval is the introduction by the legislature in the amendments to the CCP of specific procedural instruments that enable and facilitate the effective enforcement of claims by plaintiffs. The introduction of uniform procedural instruments in separate proceedings in all intellectual property cases and the entrusting of their application to specialized judicial units is also a manifestation of a broader implementation of the provisions of Directive 2004/48/EC in the national legal system than before.

<sup>55</sup> E. Stefańska, [in:] *Kodeks postępowania cywilnego. Komentarz aktualizowany*, ed. R. Manowska, vol. II, LEX/el. 2022, commentary to Article 479<sup>89</sup>, margin ref. 10.

Some doubts are raised by the adoption by the Polish legislature of a model that has no equivalent in other EU member states and involves separation in five regional courts and two courts of appeal of divisions for the adjudication of intellectual property cases with a broad range of subject matters – this is undoubtedly an unusual solution. It seems that perhaps it would be reasonable to establish a single specialized intellectual property court and the Regional Court in Warsaw could play this role. This would make all the more sense, since specialized intellectual property courts operate in Germany, Switzerland, the United Kingdom, Portugal, as well as Russia and Ukraine, among other countries. In those countries, either a specialized intellectual property court or a specialized patent court has been established. In Portugal, for example, an Intellectual Property Tribunal was established in connection with the enactment of the Act of June 24, 2010 on the establishment of a court of competent jurisdiction in intellectual property cases and a court of competent jurisdiction in competition cases. In Russia, on the other hand, an Intellectual Property Court was established under the Act of December 8, 2011 on the establishment of an intellectual property arbitration court system. Specialized patent courts have been established in Germany and Switzerland. The German specialized patent court was established by the Act of March 23, 1961 on the amendment and unification of industrial property law. In Switzerland, a Federal Patent Court was established pursuant to the Act of March 20, 2009 on a Federal Patent Court.<sup>56</sup>

Such a specialized intellectual property court or patent court could be the Regional Court in Warsaw, which according to the current laws serves the role of the so-called technical court with extended subject matter competence in intellectual property cases.

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<sup>56</sup> Explanatory memorandum of the amendment of February 13, 2020, Parliamentary Print no. 45, Sejm of the 9th term of office, pp. 7-8.

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## SUMMARY

### **The Jurisdiction of Administrative Courts and Common Courts in the Industrial Property Cases from a Historical Perspective**

The system of administrative courts is one of the basic guarantees of the rule of law in a democratic state, and therefore it is legitimate to assume that without that system there is no law-abiding state. The origins of the administrative court system go back to the period of building of the system of government in the Second Republic after the partitions of Poland and are associated with the establishment of the Supreme Administrative Tribunal (SAT) in 1922. Significant changes were made to the administrative court system by the Polish Constitution of April 2, 1997, which, in Article 175(1), stipulates that administrative courts – in addition to common courts and military courts – administer justice. Administrative courts are therefore a separate part of the judiciary based on a two-instance adjudication system. It should be emphasized that before the entry into force of the Act of June 30, 2000 – Industrial Property Law, i.e., before August 22, 2001, in cases involving industrial property rights, the decisions of the Polish Patent Office were subject to the judicial review to a very limited extent. The Act of October 19, 1972 on invention regulated two-instance proceedings before the Patent Office, as it provided for the possibility of appeals against the decisions and rulings of that body to the so-called Appeals Board. The 1972 Invention Law also introduced the right to file for an extraordinary review, which was only available to certain entities. In the Polish legal system, there is a dualism in the adjudication of industrial property cases by administrative courts and by common courts. Some cases have been adjudicated by the Patent Office, while the review of the decisions issued in this regard was and still is exercised by the PAC in Warsaw. This applies to decisions and rulings issued in application and registration proceedings (Article 248 of the IPL), proceedings concerning objections to trademark applications (Article 248 in conjunction with Article 152<sup>22</sup> (1) of the IPL), and dispute proceedings for the invalidation of industrial property rights (Article 257 of the IPL). As it was stipulated in the above-mentioned regulations, the parties are entitled to file complains to an administrative court against decisions and rulings. The review exercised by the PAC in Warsaw also includes the decisions and rulings issued in proceedings concerning the expiry of industrial property rights. Instance-based review of the rulings issued in industrial property cases by the PAC in Warsaw is exercised by the SAC, with the adjudication of such cases falling within the jurisdiction of the Chamber of Commerce. An important change that came into effect on July 1, 2020 pursuant to the Act of February 13, 2020 on the amendments to the Code of Civil Procedure was the introduction of separate proceedings in intellectual property cases and the establishment of the so-called IP courts (intellectual property courts), and the impact of these changes on the development of relations in terms of the jurisdiction of administrative courts and common courts.