Dagmara Gut

Abstract of the doctoral dissertation entitled:

Substantive decisions of administrative courts as a manifestation of the evolution of judicial protection of human rights

The institution of substantive adjudication by administrative courts is currently a subject of interest of both Polish and European doctrine on judicial control of public administration. Statements concerning the matter at hand, however, are not of a comprehensive nature, taking into account all aspects of this adjudicatory formula. At the same time, up till now this issue has not, in principle, been studied from the point of view of human rights protection. In particular, Polish literature on the subject lacks a monographic study that would consider the issue of substantive adjudication by administrative courts against the background of transformations concerning the functions of administrative courts and the role of the right to an administrative court. The aim of this dissertation was to fill this gap and to open the field for further discussion on the future shape of the adjudicatory powers of administrative courts.

The rationale for undertaking this research from the perspective specified above has also been, on the one hand, the observation of changes currently taking place in European countries and in the context of regulations of international systems of human rights protection with regard to the perception of the role of administrative courts and the function currently performed by the right to an administrative court, which are primarily aimed at protecting individual rights and freedoms. On the other hand, it has been constituted by the increasingly noticeable tendency to expand the adjudicatory competences of administrative courts in Europe in the direction of giving these courts ever broader powers to make substantive decisions. The existence of these two momentous phenomena is not, as has been assumed, accidental, and gives rise to the need to consider the relationship between them and to answer the questions of what they consist of and what they lead to.

The principal thesis of the dissertation, as already mentioned by its title, is an assumption that substantive decisions of administrative courts constitute a manifestation of the development of judicial protection of human rights. Thus, the thesis comprised the supposition that a relation between the indicated tendencies exists and that it takes a directional course, in the sense that contemporary views on the role of administrative courts and the function of the right to an administrative court, which is primarily the protection of individual rights and freedoms, begin

to determine also the manner of adjudication by these courts, which, in turn, increasingly takes on the form of substantive judgements.

This thesis has been verified by considering five research areas, each corresponding to a relevant chapter.

Chapter one, entitled: “Judicial review of public administration as a guarantee for the protection of human rights" aims at demonstrating that judicial control of public administration, as such, is a guarantee for the protection of human rights. Within its framework, the concept of the rule of law and the idea of judicial control of administration that grew out of it are first presented, which made it possible to establish that judicial control of administration is a contemporary norm in every country based on law. The principal functions of judicial control of administration are then discussed against the background of historical and contemporary views, on the basis of which it has been demonstrated that currently, in doctrine and jurisprudence, protective function towards the rights and freedoms of individuals is seen as the leading role of these courts. Guided by this finding, the role of the administrative judiciary is presented, in turn, from two perspectives. The first is related to the demonstration that currently, in the context of human rights doctrine, the regulations of international human rights protection systems and on constitutional grounds, the right to access to a court also comprises the right to an administrative court, which means that it should be assessed in the context of the guarantees arising from international and constitutional acts concerning the right to a court, as discussed in this chapter. The second perspective, in turn, deals with the role of administrative courts as guarantors of the protection of other rights and freedoms that may be violated by public administration bodies in the course of applying the law. Within such framework, attention has also been paid to the contribution of administrative courts to the expansion of the protection of individual rights, which essentially occurs as a result of the interpretation of the law in the context of guarantees of respect for individual rights and freedoms. The purpose of considering the perspectives indicated has been, firstly, to demonstrate that both the right to an administrative court and its role as a guarantor of the protection of human rights can be fulfilled to varying degrees, and secondly, to signal that this degree depends on a number of factors, one of which is the manner in which decisions are taken by administrative courts.

The subject matter of the second chapter entitled: "International and EU standards of judicial control of public administration and their development trends" aims at developing the considerations concerning the requirements arising from the right to a court in the context of international and EU regulations, by way of discussing only the standards specific to judicial control of public administration. The objective of presenting the considerations in question

was to show the development trends taking place in this respect and to answer the question whether there is an international standard with regard to the model of adjudication by administrative courts.

In the third chapter, entitled: “Adjudication models of administrative courts in Europe and their development trends”, in order to complete the picture of contemporary standards related to the adjudication formulas of administrative courts, adjudication models currently existing in European countries are discussed and systematised. In this respect, the development trends that are currently taking place are also shown and the variety of forms in which administrative courts can take decisions - other than cassation - is reviewed.

The fourth chapter, entitled: "The adjudicatory model of Polish administrative courts" is entirely devoted to regulations related to the Polish adjudicatory model, within which the competence of domestic administrative courts to adjudicate on the merits is presented most extensively. The reason for a separate discussion of Polish regulations is, firstly, due to the fact that this model is of the most important from the point of view of the development of Polish doctrine, and its consideration in the context of trends in other European countries is certainly an added value to the research conducted in this area. Secondly, it has been justified by the fact that interesting processes are currently taking place in the Polish system, which, on the one hand, reflect those from other European countries, while, on the other hand, are peculiar only to the Polish legal system.

The fifth chapter: "Dilemmas arising from the adoption of a given model of adjudication", firstly presents the problems associated with the functioning of the model of cassation adjudication, which also implied a diagnosis of the reasons why this model is currently supplemented by competence to make substantive decisions, or replaced by a model of substantive adjudication. Secondly, it discussed the dilemmas related to substantive adjudication, which arise, in particular, in connection with the introduction of substantive adjudication competences into systems that have been historically based on the model of cassation adjudication. Thirdly, these models are reviewed from the point of view of their effectiveness in ensuring the protection of individual rights and freedoms.

The conclusion summarises the considerations made and provides a positive answer to the principal research question. It is has, therefore, been demonstrated that substantive decisions of administrative courts today should be perceived as a manifestation of the evolution of the judicial protection of human rights; the manner of implementation of the resulting conclusions has also been discussed.

The above considerations have been carried out using a variety of research methods. First of all, in the field of logico-linguistic exegesis of legal texts, the formal-dogmatic method has been applied, within which also systemic, functional, and purposive interpretation has been used. This type of analysis is extensively supplemented with the views of representatives of doctrine, presenting their own views in their relevant context (theoretical-legal method). Due to the subject matter and numerous references to regulations of European countries, a comparative method has frequently been used in this thesis. The historical-descriptive method has also been often used, especially in the context of demonstration of the evolution of certain legal phenomena and institutions. The methods of axiological study of law have also been extensively used, especially to the extent in which aspects of jurisprudence models of administrative courts are considered from the point of view of the value of protection of individual rights and freedoms. The method of sociological study of law has also been of significance, especially in the context of considering the issue of the so-called social sense of justice.

Keywords: judicial control of administration, administrative judiciary, adjudication model of administrative courts, cassation adjudication model, substantive adjudication model, substantive decisions of administrative courts.