

Judicial coordination of human rights policy in Poland

The courts and tribunals in the name of human rights

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Abstract—Poland, as a member of international society, is responsible for the proper implementation of the international human rights acts. As a state, it has some instruments, which allow the control of the proper application of the law in the internal national system. Such instruments are the judicial authorities of all levels. These structures: courts and tribunals are responsible for proper implementation of legal assistance in the field of human rights. The courts and tribunals shall constitute a separate power and shall be independent of other branches of power.

Keywords- human rights; coordination structures; public security; international law; legal security, administration of human rights; system of human rights in Poland, human rights structures; constitutional system.

I. INTRODUCTION

In Poland, as specified in the Constitution of 1997, justice, treated as a part of human rights protection system, is exercised by courts: the Supreme Court, common courts, administrative courts and military courts. The constitutional provisions are of great importance in terms of the administration and structuring of the courts [1]. The chapter of the constitution on courts and tribunals enumerates the authorities vested with the administration of justice in Poland and covers the basic principles and institutions which are: the principle of the independence, irrevocability, immunity of judges and the principle of judicial oversight by the Supreme Court over the decisions of the other courts. That means that all general model of judicial structures is quite similar in this part of Europe [2].

Among many of typical judicial bodies, in Polish human rights system are also governmental bodies strictly related with individual rights [3]. Those extraordinary bodies of Polish human rights systems are: the office of Ombudsman (also called Commissioner for Citizens' Rights) and the office of Ombudsman for Children. First of those organs, the office of Ombudsman was established in Poland in 1988. According to the Constitution of Republic of Poland, Ombudsman shall safeguard the freedoms and rights of persons and citizens specified in the Constitution and other normative acts. He is independent in his activities, independent of other State organs and shall be accountable only to the Sejm in accordance with principles specified by statute.

As the guardian of freedom, human rights and civil rights, the Ombudsman controls and takes appropriate actions if he concludes that, due to deliberate act or omission by the authorities, organizations or institutions a breach of the principles of coexistence and social justice in respect of the implementation of human freedom and civil rights has occurred [4]. The Commissioner for Citizens' Rights shall not belong to a political party, a trade union or perform other public activities incompatible with the dignity of his office [5]. He also shall not be held criminally responsible nor deprived of liberty without prior consent. The Ombudsman shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. The scope and mode of work of the Ombudsman is specified by statute.

The office of Ombudsman for Children (also called Commissioner for Children's Rights) was established in Polish system of human rights in 2000. The Ombudsman, according to the law acts, takes steps to ensure complete and harmonious development for children with due respect for their dignity and empowerment [6]. He may apply to public authority agencies, organizations or institutions for the provision of the necessary information as well as for making available for inspection their documents, demanding that they undertake actions to the benefit of children [7]. The scope and mode of work of the Ombudsman for Children is also specified by statute.

II. ADMINISTRATION OF THE FIRST INSTANCE AND HIGH COURTS

There is a distinction among the courts and the other legal instruments in Polish judiciary system [8]. The courts shall constitute a separate power and shall be independent of other branches of power. According to the Courts General Act from 21 July 2001, common courts are: District Courts, Provincial Courts and Appeal Courts. Currently in Poland there are: 323 District Courts, 45 Provincial Courts and 11 Courts of Appeal. Courts and judges should be structured in a way that they are independent in terms of administration and association and act independent from the branches of legislative and executive [9]. Court proceedings shall have at least two stages. The structure of the judicial coordination system in the field of human rights is presented in figure 1.

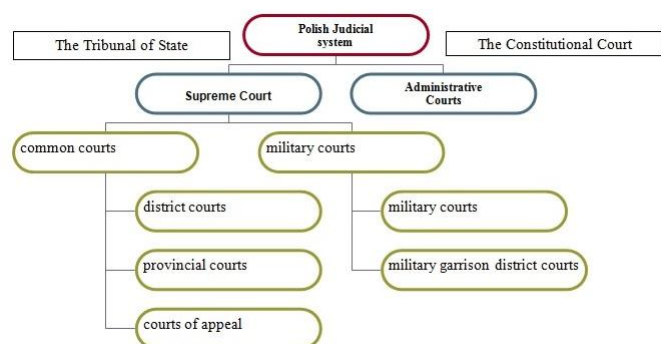


Figure 1. Polish judicial system in the field of human rights.

Districts courts resolve all matters relating to criminal, civil, family and juvenile, labor and commercial law case, which are not reserved for other courts. They have also jurisdiction in cases concerning land and property registers. Instance of appeal against decisions of the district court is the provincial court. In the Polish system of justice there is a principle that, in the first instance district court adjudicate [10]. Those courts shall implement the administration of justice concerning all matters save for those statutorily reserved to other courts.

District Courts are established and abolished by the Minister of Justice after consulting the National Judicial Council. The jurisdiction of the district court is an area of one or more municipalities. In justified cases, in one municipality can be created a number of courts, and the Minister has also the possibility to establish long distance facilities [11].

The district court is divided into sections:

- Civil divisions
- Criminal divisions
- Family and juvenile divisions
- Land and property register division
- Commercial cases
- Labour law and social security divisions.

The district court enters President, Vice-Presidents and judges of the district court.

Provincial Courts are courts of law deciding both the first and second instance. Provincial Court rules as a court of first instance only in cases of crimes and certain infractions [12]. The District Court is also empowered to issue laissez-passers and the European Arrest Warrant. Instance of appeal from decisions of that Provincial Court is the Court of Appeal. In the second instance, the Provincial Court hears appeals and complaints against decisions made at first instance by the District Court. Provincial Courts shall establish and abolish the Minister of Justice after consulting the National Judicial Council by regulation. Currently in Poland there are 45 district court.

The Provincial Court is divided into sections:

- Civil divisions
- Criminal divisions
- Family and juvenile divisions
- Commercial divisions
- Labour and social security divisions
- Supervision divisions.

All the judges of courts shall be appointed by the RP Poland at the request of the National Judicial Council. Direct the courts appointed by the governors and the Minister of Justice in the financial and economic Directors and District Courts of Appeal and District Courts Financial managers - appointed by the Minister of Justice. Litigation is based on the principle of instances. Thus it is possible to correct any deficiencies are made in courts of first instance [13].

The authorities of the provincial court are the President of the Court, the General Assembly of Judges, and the Provincial Courts Board of Representatives of Judges.

The courts of appeal constitute the third tier of the common court system. They were established in 1990. The Court of Appeal decide in the second instance matters of: civil law, family and juvenile, criminal law, labour and social issues, and commercial law, an area of at least two subordinate district courts [14]. The Provincial Court is divided into three sections:

- Civil divisions
- Criminal divisions
- Labour divisions.

Appellate courts also recognize the special issues submitted to them directly by statute [15]. There are also disciplinary courts for judges. Like all other common courts are appointed and abolished by the Minister of Justice after consulting the National Judicial Council.

Court of appeal adjudges as a bench of three judges, and in serious criminal cases, as a bench of five judges. The courts of appeal enters President of the Court, the General Assembly of Judges and the Board of Representatives of Judges. The organizational structure and jurisdiction as well as procedure of the courts is specified by the statute.

As in other countries, the Polish military courts are the judiciary in particular, appropriate only for a specific type of offenders – mainly Armed Forces, and marginally to civilians. The military courts include garrison and district military courts. The military courts decide in cases of: offences committed by soldiers with the rank of major and higher, offences which in common courts are within the jurisdiction of provincial courts, offence of armed assault on a superior and collective insubordination. The Minister of National Forces is the supervisor of the military courts. Extraordinary courts or summary procedures may be established only during a time of war.

III. STRUCTURING AND ADMINISTRATION OF THE HIGH COURTS

In Poland higher justice is exercised by Tribunals: The Supreme Court (*Sąd Najwyższy*), The Supreme Administrative Court (*Naczelny Sąd Administracyjny*), The Constitutional Tribunal (*Trybunał Konstytucyjny*) and The Tribunal of State (*Trybunał Stanu*).

The Supreme Court is the ultimate judicial authority in Poland. It is the court of last resort of appeal against judgments in the lower courts and ensure the constituency of interpretation of laws of judicial practice. It also passes resolutions to clarify specific legal provisions which technically are not legally binding [16]. The Supreme Court shall exercise supervision over common and military courts regarding judgments and it also perform other activities specified in the Constitution and statutes. The First President of the Supreme Court is appointed by the President of the Republic for a 6-year term of office from amongst candidates proposed by the General Assembly of the Judges of the Supreme Court.

The authorities of the Tribunal of State are the Chief Justice of the Supreme Courts, Presidents of the Supreme Courts Chambers, General Assembly of Justices, the Assemblies of individual Chambers and the Board of Representatives of Justice. Chief Justice of the Supreme Courts and the Presidents of the Supreme Courts Chambers are appointed by the RP President at the request of the General Assembly of Justices of the Supreme Court. Chief Justice holds office for a six-year term, though he may be dismissed by Sejm upon a motion by the RP President. The judges of the Supreme Court are appointed by the RP President upon the motion of the National Judiciary Council for an indefinite period.

The Supreme Court is divided as followed into four chambers:

- Civil Law chamber
- Chamber of Administrative, Labour and Social Security Law
- Criminal Law Chamber
- Military Chamber

Supreme Administrative Court is a judicial body of last resort in administrative cases. It deals with all appeals from lower administrative courts [17]. The Supreme Administrative Court exercise, to the extent specified by statute, control over the performance of public administration. Such control shall also extend to judgments on the conformity to statute of resolutions of organs of local government and normative acts of territorial organs of government administration. The authorities of The President of The Supreme Administrative Court, The General Assembly of Judges and The Council of Judges [18]. The Supreme Administrative Court is divided as followed into three chambers:

- Financial Chamber
- Economic Chamber and General Administrative Chamber

- Chamber of Administrative, Labour and Social Security Law

According to the Constitution and the Supreme Administrative Court Act, The President of Supreme Administrative Court is nominated for 6 years by the RP President as one of two candidates designated by The General Assembly of Judges. These two candidates are chosen from all the judges of Supreme Administrative Court. The Vice-presidents of Supreme Administrative Court are also nominated and dismissed by the President of Poland. They direct the work within each Chamber.

The Constitutional Tribunal is separate from the courts, an independent, constitutional body of the state. It was set up in 1985, but became independent after changes of 1989 [19]. According to the Constitution Tribunal is as judicial body established to resolve disputes on the constitutionality of the activities of state institutions. It settles disputes as to delimitation of powers between the central constitutional authorities of the state and its main task is to supervise the compliance of statutory law with the Constitution. The Constitutional Tribunal shall adjudicate regarding the following matters: the conformity of statutes and international agreements to the Constitution; the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute; the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes; the conformity to the Constitution of the purposes or activities of political parties; complaints concerning constitutional infringements [20]. The Tribunal also settle disputes over authority between central constitutional organs of the State.

According to the Constitutional Tribunal Act, it consists of fifteen members chosen by the Sejm on individual nine years term. Members cannot be re-elected. Judge of the Court may be the person having the qualifications required for appointment of a judge of the Supreme Court or the Supreme Administrative Court, including the condition of at least 10 years of seniority as a judge or a prosecutor or exercise for at least 10 years of occupation of the lawyer or notary. The Tribunal judges are independent, they enjoy immunity and are barred from entering politics [21]. The authorities of the Tribunal of State are the President and Vice-President.

Independence of the Court provides primarily non-elect a judge for another term and tenure of the position during the term of office. The President and Vice-President of the Court are appointed by the RP President between the two candidates presented to each of these positions by the General Assembly of Judges of the Court. Depending on the type of cases the Constitutional Court decides: in a full composition, composed of five judges or composed of three judges. Judgments of the Tribunal are universally binding and final [22].

Tribunal of State, is the constitutional authority of the judiciary, whose main task is to enforce accountability of the supreme and state officials for violation of the Constitution or other legislative acts. The following persons may be responsible before the Tribunal of State:

- RP President

- The Prime Minister and Ministers
- President of the national Bank of Poland
- President of the Supreme Audit and Inspection Board
- Commander-in-Chief of the Armed Forces
- Heads of central offices
- Acting ministers or heads of central authorities
- Members of the National Broadcasting Board
- Deputies to the Sejm and senators

Tribunal of State consists of sixteen members elected by the Sejm for the duration of his term, including two vice-chairman, also elected by the Sejm and the RP President, and the Chief Justice is ex officio the President of the Supreme Court. Both Vice-President and at least half the members of the Court must have a qualified referee. The authorities of the Tribunal of State are the lower adjudging panel and the upper adjudging panel. The lower adjudging panel consists of the presiding judge and four members, and the upper panel consists of the presiding judge and six members. According to the Constitution the members of the Tribunal are independent.

They are covered by a formal immunity and inviolability of the privilege. None of the members of the Tribunal cannot be criminally held nor deprived of liberty without the consent of the Court [23]. Members of the Court nor cannot be detained or arrested, except when they were caught red-handed and their detention is necessary for the good of the investigation. In this case, the detention must be immediately informed the President of the Court of the State, which may require the immediate release of the detained person. The organization of the Tribunal of State, as well as the mode of proceedings before it, is specified by statute.

CONCLUSION

Access to justice is incontestably recognized as a fundamental human right [24]. In European systems of human rights, both in the legal system of the Council of Europe, as well as in the system of the European Union, this right includes two aspects: judicial procedure and the organization of the judiciary. This, the second aspect of the right means that the courts and judges should be structured in a way that they are independent in terms of administration and association and act independent from the branches of legislative and executive. In Polish national law, as in any other legal system, respect and protection of human rights can be guaranteed only by the availability of effective judicial remedies [25].

Judicial coordination of human rights policy in Poland, similarly to other national systems in Central Europe, is based on a multilevel structure, which ensures the implementation of legal assistance in the field of human rights [26]. When a rights are violated or damages are caused, access to justice is of fundamental importance for the injured individual and it is an essential component of the rule of law and democracy.

REFERENCES

- [1] M. J. Perry, Toward a Theory of Human Rights, in: "Religion, Law, Courts", Cambridge 2007, pp. 7-12.
- [2] R. Maruste, Human and Citizen's Rights within the Jurisdiction of the National Court of Estonia, in: "Constitutional Courts in Central and Eastern European Countries in the period of transformation. Materiały konferencyjne", A. Rzepliński (ed.), Warsaw 1995, pp. 92-96.
- [3] B. Banaszak, The concept of individual rights in Poland", in: "Polish constitutionalism a reader, P. Korzec, J. Urbaniak, M. Wyrzykowski (eds.), Warsaw 2011, pp. 157-158.
- [4] R. K. Tabaszewski, Judicial coordination of EU Policy in Polish perspective, „Consensus”, 2012, vol. 16, pp. 10-20.
- [5] B. Gronowska, Polski ombudsman a ochrona praw człowieka w sprawach karnych”, in: „Zeszyty Naukowe UMK”, sectio XXXIII”, vol. 1993.
- [6] T. Zieliński, The International Covenants on Human Rights in the Practice of the Polish Ombudsman, in: "Polish International Law" vol. 22, pp. 7-26.
- [7] W. Pawlik, The church and its critics - the spell of the Polish ombudsman, in: "Polish Sociological Review" 1995, vol. 1, pp. 31-45.
- [8] R. K. Tabaszewski, Struktura prawniczych samorządów zaufania publicznego na przykładzie samorządu adwokatów i radców prawnych, in: „Administracja i prawo administracyjne w kontekście ochrony praw człowieka”, I. Rzućło (ed.), Lublin 2012, pp. 303-321.
- [9] D. Dudek (ed.), Zasady ustroju III Rzeczypospolitej Polskiej, Warsaw 2009.
- [10] E. Łętowska, Courts and tribunals under the 1997 Constitution, Warsaw 2011, pp. 375-404.
- [11] Z. Szcząska, Minister sprawiedliwości jako uczestnik procesu legislacyjnego z perspektywy historycznej, in: „Stud. Mat. TK” 2000, vol. 12 pp. 71-80.
- [12] A. Ziegert Klaus, Crime and Stuff. The Effective Relevant Environment of Courts of First Instance, Cracow 1992, pp. 437-477.
- [13] G. M. Kowalski, Sąd Apelacyjny w Krakowie. Księga jubileuszowa, Warszawa 2010, pp. 74-86.
- [14] L. Garlicki, Social Rights in the Judicature of the Constitutional Court in Poland, Warsaw 1995, pp. 123-128.
- [15] M. Korcyl-Wolska, Family Courts in Poland Adjudicating in Juvenile Cases, in: "Arch. Iur. Crac." 2009, vol. 42, pp. 141-164.
- [16] K. Pałeczki, A. Peczenik, Legal Research in Dynamic Society. A Polish-Swedish Research Project, Kraków 2000, pp. 183-188.
- [17] S. Włodyka, The Functions of the Supreme Courts: A study in Comparative Law, in: "Arch. Iur. Crac.", 1970, vol. 3, pp. 129-147.
- [18] H. Knysiak-Molczyk, T. Woś, Administrative Courts - Five Years after the Reform, in: "Arch. Iur. Crac. 2009", vol. 42, pp. 57-76.
- [19] A. M. Świątkowski, M. Wujczyk, The Future of Labour Courts in Poland, in: "Arch. Iur. Crac." 2009, vol. 42, pp. 77-102.
- [20] Z. Czeszejko-Sochacki, The constitutional complaint in Polish law, in: "Polish constitutionalism a reader", P. Korzec, J. Urbaniak, M. Wyrzykowski (eds.), Warsaw 2011, pp. 429-466.
- [21] D. Dudek, Prawo konstytucyjne w zarysie. Wybór źródeł, Lublin 2002, pp. 42-44.
- [22] M. Wyrzykowski, La réforme du Tribunal Constitutionnel Polonais, in: "Droit Pol. Con." 1997, vol. 1/4, s. 85-98.
- [23] A. Świątkowski, M. Zak, The Future of Criminal Courts in Poland, in: "Arch. Iur. Crac." 2009, vol. 42, pp. 103-117.
- [24] C. Harlow, Access to justice as a human right, in: „The EU and Human Rights”, P. Alston (ed.), Oxford 1999.
- [25] F. Francioni (ed.), Access to Justice as a Human Right, Oxford 2007.
- [26] D. Robertson, A Dictionary of Human Rights, London 1997.