

18. Statistical data on the use of the Internet by the elderly: CBOS, *Komunikat z badań, Korzystanie z internetu w 2022 roku*, No. 77/2022: 41% of respondents aged 65-74 use the Internet, and only 22% aged 75 and over. Source: <https://www.gov.pl/web/dostepnosc-cyfrowa/monitoring-2022-r>, accessed on 20.05.2023.
19. Unfortunately, in recent months there have been exceptions to this principle and the requirement to use e-forms, e.g. with regard to entrepreneurs and the PUE ZUS portal.

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THE LOCAL GOVERNMENT APPEAL COURTS AS AN ELEMENT OF THE PUBLIC ADMINISTRATION CONTROL SYSTEM – SYSTEMIC AND PROCEDURAL ASPECTS

Local government appeal courts appeared in the Polish system of public administration bodies in connection with the reactivation of local government in Poland in 1990. In view of the separation of some public authority tasks and their assignment to communes, the legislator decided to create new administrative bodies that were established to exercise instance control over administrative rulings in individual public administration cases belonging to the jurisdiction of local government units. The establishment of the courts was thus dictated by the necessity to apply the principle of two-tier administrative proceedings.¹ This is because local government appeal courts are organs of a higher level, within the meaning of the provisions of the Code of Administrative Procedure² and the General Tax Regulations Act³ of 29 August 1997 in individual cases that fall within the scope of public administration and belong to the competence of local government units unless specific provisions provide otherwise.⁴ Acting as appeal bodies, they are not limited to reviewing the validity of the charges raised in the appeal against the decision of the authority,⁵ but they review the entire administrative case, aiming to resolve it on its merits.⁶ These courts not only hear appeals and complaints, but also rule in extraordinary administrative modes. Moreover, it should be noted that these courts are also competent to hear appeals against their own decisions (i.e. non-devolutive appeals).⁷ This is because there is no authority that acts as a higher level authority in relation to such courts. A decision issued at first instance by a court may therefore be appealed to the same court that issued it. However, the members of the court who issued the appealed decision cannot participate in the proceedings (and thus the principle of impartiality of the proceedings is observed).⁸ In addition, courts also adjudicate on other matters under the rules set out in separate laws.⁹ On the basis of a separate act, the local government appeal courts, obtained the competence to adjudicate in civil cases and

conduct proceedings in cases of updating of annual fees for perpetual usufruct of landed property of the State Treasury or commune.¹⁰

The literature emphasises the unique, specific character of the courts, as the scope of their competences is basically limited to adjudicatory functions.¹¹ The local government appeal courts do not carry out public tasks typical of other administrative bodies.¹² They do not fit typical classifications, because they do not fit into the dichotomous division into government and local government administration.¹³ The name of the courts may suggest that they are organs of local government units, but in fact they are not. It is true that in Article 5 § 2 of the Code of Administrative Procedure they are included among the organs of local government units, but such a classification has been applied only for the purposes of administrative proceedings. From the point of view of the constitutional provisions, they cannot be regarded as such bodies. Moreover, in Article 5 § 2(6) of the Code of Administrative Procedure itself the legislator emphasised the separateness of the court, using the phrase "and furthermore" after listing other bodies classified as organs of local government units.¹⁴ Such a classification on the grounds of the Code of Administrative Proceedings results from the function played by the courts, i.e. organs of a higher level in relation to the organs of local government units.

The local government appeal courts are state budgetary units.¹⁵ They act on behalf of and for the account of the state and their activities are financed from the state budget. Supervision over the administrative activities of the courts is exercised by the President of the Council of Ministers, who may entrust its exercise to the minister in charge of public administration.¹⁶ It should be emphasised that supervision is aimed at ensuring the efficient performance of tasks assigned to the courts. The supervision exercised cannot affect the manner in which the courts resolve cases, i.e. the adjudicatory activity of the courts (it is the administrative courts that control the decisions of the local government appeal courts), nor can it encroach on, for example, the competences of the disciplinary boards. Financial control of the court is also not exercised within the framework of this supervision. Such control is exercised by the Supreme Chamber of Control.¹⁷

It is often emphasised in the literature that local government appeal courts are bodies that are fundamentally different from other public administration bodies. Due to their similarities to the systemic solutions of the judiciary, they are referred to as *quasi-judicial* bodies.¹⁸ This character is determined in particular by the guarantee of their members' independence in adjudication.¹⁹ This independence results, on the one hand, from the fact that no public administration body has any influence on the way in which the courts decide cases. On the other hand, members are guaranteed independence of adjudication from the court bodies (the court bodies are the president of the court and the general assembly). The president of the court cannot give an official instruction to a member of the court on how to handle a case,²⁰ his official authority is related to the organisation and order of work, including the appointment of adjudication panels. On the other hand, he or she may not influence the way in which the panel decides. The legislator has also guaranteed members of the court employment protection. The dismissal of a member may take place in cases strictly specified by the Act and this is done by a decision of the President of the Council of Ministers.²¹ In performing their adjudicatory functions,

the members of the court are therefore independent of other public administration bodies, as well as the bodies of the court itself. In the Act on Local Government Appeal Courts, it is explicitly indicated that, when adjudicating, members of the court are bound only by the provisions of universally binding law.²²

The *quasi-judicial* nature of the courts can also be referred to in terms of the manner in which the body reaches its decisions, i.e. in a collegial manner²³ through three-member panels. The court issues decisions after a closed deliberation of the panel, including discussion and voting on the decision. The case is presented by a member of the court designated as its rapporteur. Decisions are taken by majority vote. A member of the ruling panel may not abstain from voting and a member who has been voted down has the right to submit a dissenting opinion when signing the decision, stating reasons in writing within seven days of the deliberation. Decisions of the court shall be signed by all members of the panel, including the member who was voted out.²⁴

The recognition of the local government appeal court as a *quasi-judicial* body is also supported by the fact that a member of the court cannot be punished without the ruling of a disciplinary committee, which consists of three full-time members.²⁵ The president of the local government appeal courts cannot impose disciplinary penalties himself. Disciplinary cases are decided by: in the first instance – the disciplinary committee of the court; in the second instance – the disciplinary committee at the National Representation of Local Government Appeal Courts.²⁶

It should also be emphasised that, analogous to judges, the legislator sets high requirements for members of the court serving indefinitely²⁷ (i.e. the requirement to have a university degree in law or administration, to demonstrate a high level of legal knowledge, professional experience, not to have been convicted of an intentional crime). Such members are appointed for an indefinite period of time by the President of the Council of Ministers upon the proposal of the president of the court, submitted after obtaining the opinion of the general assembly of the court, adopted by secret ballot, by a majority of votes, in the presence of at least half of its composition.²⁸ In addition to members with no definite term, there are also fixed-term members of the court who must have a university degree, but it does not have to be a law or administrative degree.²⁹ The above solution allows for persons with knowledge in many fields and a variety of professional experience (which is important in view of the very wide range of administrative cases decided by the court)³⁰ to participate in adjudication. Fixed-term members, unlike members for indefinite time, are appointed for 6 years.³¹ In addition, a fixed-term member cannot chair the assembly. The literature indicates that fixed-term members fulfil a similar role to jurors in courts.³²

It should be noted that serving as a member comes with a number of restrictions. Both membership for indefinite and definite time may not be combined with the mandate of a deputy, senator, councillor or membership of an executive body of a local government unit; employment in a municipality office, starost's office or marshal's office; membership of a court of a regional chamber of auditors. Membership for indefinite time may also not be combined with employment as a judge, court assessor and prosecutor, as well as with employment in the same province in state administration.³³ In addition, members of the court for indefinite

time are bound by prohibitions on business, political activities and restrictions on additional employment.

In the light of the above considerations, the thesis that courts are non-standard organs of public administration in the structure of public administration bodies, to which the legislator, when performing the adjudicating function, ensured independence of adjudication (both in the external and internal aspect), should be regarded as accurate. The aforementioned independence in adjudication, making decisions in three-person panels, high qualification requirements for members, as well as prohibitions on combining the function of a court member with other functions lead to an unambiguous conclusion that the legislator has succeeded in creating a professional, impartial appellate body that fully guarantees due implementation of the two-tier principle.

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2. Article 1(1) of the Code of Administrative Procedure of 14 June 1960, Journal of Laws of 2022, item 2000 as amended (hereinafter referred to as the "Code of Administrative Procedure").
3. Journal of Laws 2022, item 2651 (hereinafter: "O.p.")
4. Article 1(1) of the Act of 12 October 1994 on self-government courts of appeal, Journal of Laws 2018, item 570 (hereinafter: "Act on Local Government Appeal Courts").
5. See the judgment of the NSA of 9.10.1992, V SA 137/92, ONSA 1993/1, item 22; see also Kielkowski, T. (2004) *Sprawa administracyjna*, Warsaw, p. 132; Woś, T., Zimmermann, J. (1989) 'Głosa do uchwały SN z 23.09.1986 r., III AZP 11/86', PiP 1989/8, p. 147.
6. Judgment of the NSA of 10.12.2002, II SA 738/01, LEX no. 77127; judgment of the WSA in Łódź of 11.04.2014, III SA/Łd 239/14, CBOSA.
7. Pursuant to Article 127 § 3 of the Code of Administrative Procedure, a decision issued at first instance by a minister or a local government appeal court may not be appealed against; however, a party dissatisfied with the decision may apply to that body for a reconsideration of the case; the provisions on appeals against decisions shall apply mutatis mutandis to that application.
8. Article 27 § 1a of the Code of Civil Procedure.
9. Article 1(2) of the Act on Local Government Appeal Courts.
10. Within the framework of these proceedings, the courts primarily seek to settle the matter amicably. However, if no settlement is reached between the parties before the court, the court issues a ruling, which may be challenged with an objection, and the issue of updating the fee will then be dealt with by the common court. See Articles 78-80 of the Real Estate Management Act of 21 August 1997, Journal of Laws 2023, item 344.
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13. *Ibid*, p. 130.

14. *I bidem*, pp. 118-119. Dolnicki, B. 'Pozycja samorządowych kolegiów odwoławczych w systemie samorządzie terytorialnego', *Casus* 2004, no. 33, p. 33.
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20. *I bid*, pp. 47-48.
21. Article 7(6) of the Act on Local Government Appeal Courts.
22. Article 21(1) of the Act on Local Government Appeal Courts.
23. Skibiński, A. *Pozycja...*, p. 122.
24. Article 17 of the Act on Local Government Appeal Courts.
25. Skibiński, A. *Pozycja...*, pp. 123-124.
26. Articles 16a-16c of the Act on Local Government Appeal Courts.
27. Article 7 of the Act on Local Government Appeal Courts.
28. Article 7(2) of the Act on Local Government Appeal Courts.
29. Article 7(1a) of the Act on Local Government Appeal Courts.
30. When appointing fixed-term members without legal or administrative training, their qualifications are taken into consideration.
31. Article 7(7) of the Act on Local Government Appeal Courts.
32. Kaczorkiewicz, R. (2016) 'Status zawodowy członka etatowego samorządowego kolegium odwoławczego' [in:] *Samorządowe kolegia odwoławcze w systemie administracji publicznej*, ed. Bucholski, R., Jaśkiewicz, J., Mikos-Sitek, A., Warsaw, pp. 25-26.
33. Article 9 of the Act on Local Government Appeal Courts.