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Should Exams Conducted by Public Administration Bodies Be Subject to Judicial Review? Case of the Polish Matriculation Exam¹

- **ABSTRACT:** *The legal systems of various states establish a range of examinations conducted by public administration authorities, administrative institutions, professional self-governing bodies and other entities in public administration. However, the existence of various examinations within administrative law raises questions regarding the judicial review of such examinations. This problem appeared in Polish law, which was addressed very inconsistently; judicial review was allowed for some exams, while control over others was excluded. The article addresses the issue of judicial review of examinations in Polish administrative law, focusing on the controversial example of the matriculation examination (matura) in the context of the admissibility of challenging examination procedures before the administrative courts.*
- **KEYWORDS:** *state exams, public administration exams, judicial review, matriculation exam, university admission*

1. Introduction

The legal systems of various states establish a range of examinations conducted by public administration authorities, administrative institutions, professional self-governing bodies and other entities in public administration. Depending on the examination, its administration and assessment may either constitute the primary task of a body, specifically established for this purpose, or may be carried out

1 Acknowledgments: This work was financed by the National Science Center under Grant number 2019/33/N/HS5/02635.

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by an authority along with the performance of its main tasks and competencies. The procedures for administering and assessing such examinations are regulated by administrative law provisions. The outcome (result) of an examination generates defined consequences for the examinee, most often of a public law nature (e.g., access to subsequent levels of education, acquisition of qualifications to practice a particular profession or hold a specific position, eligibility to obtain citizenship, driving vehicles, etc.).

However, the existence of various examinations within administrative law, which are used by public administration to assess knowledge, skills or competencies and derive specific legal consequences prescribed by statutory provisions, raises questions regarding the judicial review of such examinations, regarding the correctness of the result and the legality of the examination procedures. Since the result produces legal effects for the examinee, the legal system must ensure the possibility of reviewing the actions of public administration in this area, regarding their compliance with the law, by independent courts.

The article addresses the judicial review of examinations in Polish administrative law conducted by public administration bodies or other entities in public administration, focusing on the controversial example of the matriculation examination (*matura* – one of the external examinations in the Polish education system) and the general admissibility of challenging examination procedures before the administrative courts. This has scarcely been discussed in the literature; however, it raises significant theoretical and practical challenges. Therefore, addressing it will fill an important gap in the current body of scientific knowledge. The research employs the dogmatic-legal and historical-legal methods. Additionally, it draws upon Polish case law (particularly administrative court rulings) and relevant Polish and English scholarly literature.

2. The Scope of Judicial Review of Public Administration in Poland

The substantive scope of judicial review of public administration is a matter present in several legal systems and is addressed differently across countries, depending on the prevailing model, system and the jurisdictional powers of courts overseeing administrative actions.² In judicial review models for public administration, where only specific types of administrative acts or actions, explicitly enumerated in legal provisions, are subject to review, concerns arise due to specific, atypical or entirely new and previously unknown forms of administrative actions. These actions give rise to interpretative uncertainties regarding whether they would be included or excluded in the catalogue of acts/actions subject to judicial review. These uncertainties become particularly significant when the given

2 See: Asimow, 2015, pp. 3–31; Spanou, 2020.

administrative action exerts a substantial (direct or indirect) impact on the legal situation of an individual.

In Poland, the administrative courts exercise judicial review over specific acts and actions undertaken by public administration authorities, as specified in the Act of 30 August 2002 – Law on Proceedings Before Administrative Courts.³ Notably, separate special provisions may regulate the judicial review of certain decisions or actions performed by public administration bodies. The subject-matter scope of judicial-administrative control in Poland covers various manifestations of public administration activity. These include e.g. administrative decisions and resolutions in individual cases (orders made in administrative proceedings, subject to interlocutory appeal, or those concluding the proceeding, and orders resolving the case on its merit); acts or actions other than decisions and resolutions (orders) in administrative proceedings by public administration bodies, concerning rights or obligations arising from the provisions of law; inactivity of public administration bodies and the protraction of proceedings by them; acts passed by bodies of territorial agencies of government administration, local government units and their associations and acts of supervision over activities of local government authorities.⁴

Polish administrative courts, pursuant to legal provisions, adjudicate exclusively based on the criterion of legality.⁵ Therefore, in every case brought before an administrative court, the determination of whether a particular public administration activity can be subject to judicial review is of key importance. This often raises interpretative doubts, especially in the case of atypical or novel forms of public administration activity. In practice, such interpretative challenges frequently arise concerning ‘acts or actions other than decisions and resolutions (orders) taken in administrative proceedings by public administration bodies, concerning rights or obligations arising from the provisions of law’. This category encompasses a range of highly diverse public administration activities, which are interpreted primarily through case law. Furthermore, this issue arises in the context of judicial review of various examinations because the conduct of public administration authorities can have a diverse and often legally atypical character. For instance, if the examination result is not determined through an administrative decision in an individual case, rather through a series (or sequence) of material-technical actions, questions arise regarding whether the specific examination actions or the final action (establishing the result) can be classified as ‘other acts or actions’. Consequently, doubts emerge as to whether any element of the examination procedure would fall within the scope of judicial review by administrative courts.

3 Journal of Laws of 2002, No. 153, item 1270 with further amendments.

4 Gut, 2024, pp. 1–16; Lemańska, 2017; Skoczylas and Swora, 2007, pp. 116–125.

5 For more about a model of judicial review of public administration in Poland, see: Gut, 2024, pp. 1–16; Szyszka, 2022, pp. 134–148; Wiącek, 2021, pp. 526–539.

The issue of the legal regulation of examinations and the examination-related activities of public administration bodies is not new and, in the coming decades, it may gain greater significance. However, the judicial review of procedures for conducting and assessing examinations administered by public administration bodies, which carry public-law implications, has become highly problematic and controversial in Poland, primarily due to the matriculation (*matura*) exam. The admissibility of challenging the *matura* in administrative courts has sparked a significant controversy in legal scholarship and judicial case law. It has become a major issue in administrative and educational law for individuals seeking admission to higher education and raised broader questions about systemic and unified solutions for judicial review of all state (public) examinations under Polish law, particularly when they can produce legal effects for examinees.

3. The Significance of the Matriculation Examination in Poland

For a comprehensive discussion of the admissibility of judicial complaints regarding the correctness of the matriculation exam results, it is necessary to outline its role in Poland, educationally and legally. Although the secondary school leaving examination exists in many countries, especially in Europe, it can play completely different roles. In Poland, the matriculation exam is part of a broader examination system. It is one of the so-called external examinations in education,⁶ which, since 2005 (due to the 1999 reform),⁷ have been conducted and assessed by examination boards independent of schools and students. These examinations are administered using standardised nationwide examination sheets and assessment criteria under double anonymity, ensuring result comparability and objectivity.⁸ Moreover, uniform standards for conducting examinations allow the results to provide informational or educational insights (e.g., the quality of education provided by different schools)⁹ and legal consequences for individual examinees, such as using the results as a recruitment tool for higher education.¹⁰

This function of external examinations is strongly evident in the *matura*. This examination is taken by graduates. The *matura* is optional, can be taken multiple times (annually) and has no bearing on the completion of secondary education. However, its result determines access to higher education, as it is, in the

6 See: Kellaghan and Greaney, 2020; Kellaghan and Madaus, 2003; Kierznowski, 2021, pp. 35–72.

7 See: West and Crighton, 1999, pp. 271–289; Jakubowski et al., 2010; Jakubowski, 2015; Jakubowski et al., 2016, pp. 557–572.

8 Jakubowski, 2015; Jakubowski et al., 2016, pp. 557–572; Jakubowski, 2021; Kierznowski, 2024, pp. 151–170.

9 See: Hesse-Gawęda, 2016, pp. 418–423.

10 For more about models and functions of external examinations systems, see: Kellaghan and Madaus, 2003; Kellaghan and Greaney, 2020.

majority of cases, the only legally permissible criterion for selecting candidates for university admission. Passing the *matura* is a prerequisite for enrolling in a university; however, when the number of applicants exceeds the number of available spots, the best scores in additional (advanced) subjects of the *matura* become crucial.

Universities cannot conduct entrance examinations in subjects covered by the *matura* (it covers almost all the subjects taught in general schools). Therefore, there is no other way to obtain higher education than passing the exam. Consequently, the *matura* is important in realising the constitutional right to education (at the higher level). This is especially true in highly competitive elite metropolitan universities and less competitive regional public universities (only in their tax-based or tuition-free modes of study), where strict meritocratic criteria (based on the *matura*) are used to select the best candidates.¹¹ However, it is expected that, due to demographic reasons, the significance of the *matura* may decline, prompting the state to adopt a different public policy regarding university admissions.¹² Regardless of the potential change in the significance of the *matura* in the future, currently, its results and the correctness of the procedure of their determination carry significant educational and legal implications.¹³

4. Judicial Review of the Matriculation Examination

As noted, the current model of the *matura* has been in place since 2005. A few years after its introduction, the issue of judicial review over its administration gained significant importance, particularly concerning the correctness of the assessment rules. The admissibility of judicial review of the *matura* is tied to incorrect assessment practices, which have escalated over the years, sparking social controversy. The report of the Supreme Audit Office (NIK), published in 2015, was a breakthrough event in the official ‘disclosure’ of the incorrect assessment of matriculation exams in Poland. The audit revealed that, in 2009-2013, exam paper access was granted to 40,266 high school graduates, while 10,065 were reassessed on grounds of graduate petitions. The results were changed in 2,596 cases, that is, 25.8% of the exams being reassessed were assessed incorrectly by the first examiner.¹⁴

This issue was further compounded as the regulations did not provide for an administrative appeal mechanism regarding the results. All the result changes were made without a clear legal basis, based on ‘good practises’. Literature has noted that the persistence of inaccurate assessment of *matura* in Poland was, among

11 Kwiek, 2013, pp. 553–576.

12 Kwiek, 2014, pp. 266–280.

13 Kierznowski, 2024, pp. 151–170; Kierznowski, 2025, pp. 125–126.

14 Najwyższa Izba Kontroli, 2015.

other factors, attributable to the absence of a reliable administrative procedure for challenging the results.¹⁵ Hence, such a possibility was introduced into Polish law in 2016. However, before this change, due to the lack of an administrative appeal process before examination boards, these cases were resolved through complaints submitted to administrative courts, which determined whether such matters fell within their jurisdiction, as the law did not directly regulate this issue.

In the initial years, the case law of administrative courts regarding the admissibility of complaints against *matura* results or other acts or actions of examination committees (e.g., invalidation of the examination) was inconsistent. While a predominant line of case law rejected the possibility of such judicial review, isolated judgments, albeit only from provincial administrative courts, allowed for judicial oversight of the *matura*. The prevailing line of case law rejecting judicial review of the *matura* evolved into an almost uniform view. Most judgments excluding judicial review of the *matura* became a strong reference point for adjudicating panels in subsequent cases of this nature.¹⁶

In the rulings that form this case law, the administrative courts, when addressing the legal status of the procedure for conducting and assessing the *matura* and the related actions and acts, stated:

‘The *matura* examination constitutes a form of assessment of the level of general education, checking knowledge and skills established in the standards of requirements underlying the conduct of the *matura* examination, as specified in separate regulations. This means that the *matura* examination is a form of committee-based assessment of the general education level of secondary school graduates in subjects defined by the regulations. The *matura* score is solely the result of checking the knowledge of the examined person by determining the correctness of the answers provided. When the examination board determines the result of the written part of the exam, it merely confirms a specific factual state, to which it has no direct influence, and establishes the number of correct answers. It thus does not create any legal relationship. As a result, it must be concluded that the points obtained in individual subjects are not issued within the administrative procedure and are not administrative decisions. The *matura* certificate itself also does not constitute an administrative decision, as it is not an authoritative determination of the rights and obligations of the party’.¹⁷

Similarly, the Supreme Administrative Court ruled:

‘The action of determining the result of the *matura* examination (conducting the examination) and the result itself, as they merely confirm a specific factual state, do not constitute an administrative decision

15 Kierznowski, 2023, pp. 88–89.

16 See: Tobor and Zeifert, 2018, pp. 191–204.

17 Judgment of the Provincial Administrative Court in Gorzów Wielkopolski of April 25, 2012, II SA/Go 213/12.

or an authoritative determination of the rights and obligations of the party, and are not subject to administrative court review [...] When the regional examination board determines the *matura* exam score, it does not make an authoritative decision about granting a specific right. It does not create a new legal relationship but rather assesses knowledge and skills'.¹⁸

Similar opinions were held by the courts regarding the recognition of examination activities and the determination of the result as “acts or actions other than decisions and resolutions (orders) taken in administrative proceedings by public administration bodies, concerning rights or obligations arising from the provisions of law”. For example, the case law stated:

‘It cannot be considered that the grade awarded for the *matura* exam is issued within administrative proceedings, as the *matura* certificate itself does not constitute an administrative decision in the above-mentioned sense. This characteristic of the assessment determines that it cannot be regarded as an action within public administration. [...] An act or action must concern a right or obligation arising from the provisions of law. Therefore, it is necessary to relate such an act or action to a provision of law that is generally applicable and defines the right or obligation. This means that there must be a close link between the legal provision defining the right or obligation and the act or action concerning such a right or obligation. The *matura* assessment, as well as the *matura* certificate, do not fall within the scope of this concept and do not constitute an act of a public-law nature. Since the assessment in the *matura* exam does not constitute an administrative decision or an action within the scope of public administration, it follows that the refusal to amend the score, apart from the lack of normative regulation allowing for the change of the assessment, cannot be considered an administrative decision. The issue of determining the grade from the *matura* exam, as not subject to administrative jurisdiction, simultaneously prevents the administrative court from controlling any letters or statements made by the regional examination board regarding the grades obtained in the *matura* exam’.¹⁹

After several years, all interpretative doubts were resolved through an amendment to the law, which explicitly closed the judicial route in *matura*-related matters.

18 Judgment of the Supreme Administrative Court of September 12, 2012, I OSK 1901/12.

19 Judgment of the Provincial Administrative Court in Warsaw of 28.07.2006, I SA/Wa 2027/05.

The regulations provided that the examination result was final and could not be appealed before the administrative court. Hence, the interpretation of judicial rulings was ‘transferred’ into the content of the law. Notably, this rule applies to the matriculation exam and all other external examinations, such as the vocational exam or the eighth-grade exam. While this approach is inconsistent, it does not have as drastic legal consequences as other exams. This is because its results do not significantly impact examinees’ access to further education and the realisation of their constitutional right to education. An analogous view has been consolidated in case law regarding the examination result, the actions determining it and other examination-related decisions, such as the decision to invalidate the *matura*. This went through all court instances, all the way to the Polish Constitutional Tribunal. In 2015, the Constitutional Tribunal made a controversial (five *votum separatum*) ruling in which it found that the inability to appeal the invalidation of the exam to an administrative court was consistent with the Constitution of the Republic of Poland.²⁰

In 2016, a new administrative appeal procedure was introduced, establishing the Examination Arbitration Board to provide examinees with the opportunity to contest their results (only within the framework of the administrative appeal process) in cases of suspected errors by examiners appointed by the examination board.²¹ However, to ensure a coherent and self-contained system, the decisions issued within the administrative appeal procedure concerning *matura* results (like the original results) were not subject to review by administrative courts. To eliminate any future interpretative ambiguities, the procedure for verifying the correctness of the results was accompanied by provisions which explicitly closed all judicial recourse in such matters, analogous to the initial examination results. The inadmissibility of judicial review by the Examination Arbitration Board was later confirmed in case law.²²

Hence, the *matura* in Poland (including all decisions and resolutions regarding its administration and assessment, such as exam admission, result determination, consideration of appeals against results and invalidation of the exam) remains outside the jurisdiction of Polish administrative courts. This is a practical application of the principle that ‘everyone has the right to access the courts, but not in all kinds of cases’. For nearly a decade, individuals have had the right to request a review of their examination papers by the relevant examination board and, subsequently, to appeal the review results to the Examination Arbitration Board. However, there is no judicial recourse if they believe that the public

20 Judgment of the Constitutional Tribunal of June 22, 2015, SK 29/13; see also: Jackowski, 2017, p. 58.

21 Kierznowski, 2025; Kierznowski, 2023, pp. 41–52.

22 Decision of the Supreme Administrative Court of 26 November 2019, I OSK 1346/19.

administration bodies (examination boards) violated the law while conducting and assessing their *matura*. This is strongly criticised in legal academic literature.²³

As some authors pointed out, this creates a paradox. The *matura* is evidence in the university recruitment process (an administrative procedure). However, the possibility of reviewing the legality of this evidence has been excluded. Meanwhile, as P. Dańczak indicated, judicial review in this area is possible, as it concerns the assessment of the correctness of the examination, rather than the court engaging in substantive review of the answers provided in the examination paper.²⁴ Furthermore, the issue of judicial control over the administration and the constitutional right to a court encompasses various forms of public administration activities in education, as emphasised in the literature.²⁵ Therefore, this issue extends beyond external exams (*matura*).

5. Other State Examinations in the Polish Legal System and Their Judicial Review

The lack of judicial review of the Polish matriculation exam results, although significant due to the examination's considerable legal and educational importance and the systemic issue of frequent grading errors, prompts reflection on a broader issue – the judicial review of all examinations conducted and assessed by public administration bodies. The results of such examinations often determine critical matters, such as eligibility for further education, the right to practice a particular profession, the ability to hold specific positions or roles and the acquisition of other public-law entitlements. Within the Polish legal system, alongside external examinations in education, the following examinations can be considered: a) Professional qualification examinations (e.g., for medical doctors or tax advisors); b) Entrance examinations for specific professional education (e.g., entrance exams for attorney or judicial apprenticeships); c) Civil service examinations (e.g., the examination concluding preparatory service in the Civil Service or for local government employees); d) Entrance examinations for higher education (conducted in exceptional cases as a substitute for the *matura*); e) Examinations during education (e.g., exams during university studies or classification exams in schools); f) Examinations for granting scientific degrees and titles (e.g., PhD examinations); g) Physical or fitness tests (e.g., for service in uniformed agencies); h) Examinations granting driving privileges and language competency assessments (e.g., for

23 Jakubowski, 2011, pp. 62–70; Króliczek, 2016, pp. 397–406; Kierznowski, 2016, pp. 33–46; Bąkowski and Kornberger-Sokolowska, 2017, pp. 154–158; Flisek, 2017, pp. 201–207; Kierznowski, 2023, pp. 55–62; Kierznowski, 2023, pp. 41–52.

24 Dańczak, 2015, p. 236.

25 Salachna and Ostrowska, 2023, pp. 125–150.

citizenship purposes); i) Examinations authorising individuals to sit on boards of state-owned companies.

This enumeration is merely illustrative and highlights that examinations are a widespread form of public administration activity. They are not limited to education and affect a wide range of citizens' rights and obligations across domains.

In the Polish legal system, the regulation of all examinations conducted by public authorities is fragmented. Various examinations are established by individual laws (acts) within administrative law, tailored to its specific branches. In some cases, they are established by executive acts or internal regulations. Furthermore, in addition to the variety of examinations, there is a significant divergence in the procedures for conducting and assessing them. There are no uniform provisions for all examinations conducted by public authorities. Hence, the Polish administrative law establishes separate legal regulations for the conduct of each examination. At most, a group of related examinations may be regulated, either in whole or in part, by common provisions, particularly when they are governed by the same statute (e.g., external examinations in Polish education, regulated by the Education System Act).²⁶

The lack of unified legal foundations for conducting and assessing state exams in Poland is due to the lack of uniform regulation for their judicial review. In some cases, the legislator explicitly allows an appeal to the administrative court (e.g., on the resolution regarding the bar exam results), while in others it is excluded (e.g., in the case of the *matura*). In several cases, this issue is not regulated at all (e.g., exams conducted during university studies; recent case law has allowed judicial review of the conformity of the exam procedures with the syllabus if failure to pass was the basis for a student's removal from the university).²⁷

However, if the admissibility of an appeal to the court regarding a particular exam is not explicitly regulated, the dilemma of whether such exams should be subjected to judicial review comes down to the assessment of whether specific examination activities were 'other acts or actions...'. In such cases, the admissibility of subjecting the exams, not directly regulated by legal provisions, to judicial review is then decided by administrative courts in case law – so strongly that one might even speak not only of legal interpretation but rather judicial law-making. In practice, in some cases, the courts decide on the admissibility of the judicial path. The example of the *matura* shows that views developed in jurisprudence are subsequently transferred to statutory law and adopted by the legislator.

However, a lack of statutory regulation and leaving this issue solely to the interpretation of case law leads to a significant systemic inconsistency, as the case

26 Act of September 7 1997 on the education system, Journal of Laws of 1991, No. 95, item 425 with further amendments.

27 Judgment of the Provincial Administrative Court in Cracow of December 3, 2024, III SA/Kr 1372/24.

law is not uniform, treating various exams differently, even though they have an analogous (public law) nature. Legally, this causes exams with an analogous character to be treated differently; some are subjected to judicial review, while others are excluded. This systemic inconsistency is deeply perplexing, given that all such examinations share certain common features. These examinations are conducted and assessed within the administrative law framework by competent public administrative authorities or other bodies entrusted by law or under administrative agreements for the performance of public administration duties (e.g., professional self-governing bodies). Furthermore, their results directly or indirectly produce legal consequences for the examinee. Thus, each examination is an authoritative, unilateral and doubly binding act or action of public administration, sharing analogous characteristics and deserving of analogous treatment within a legal system.

Moreover, every examinee prepares for the examination with the trust that it will be conducted and assessed in accordance with legal provisions (the principle of trust in the state and its laws). Consequently, the examinee, like in any other action of public administration, has the right to expect that, in the event of any violation, judicial protection of their rights will be available. Individuals have the right to expect consistency from the legislature; thus, examinations should be subject to judicial review (based on the criterion of legality), regardless of the type of examination or the administrative authority conducting it.

However, despite the persistence of this issue, no objective criteria have been established to resolve the dilemma of which state examinations should be subject to judicial review. At present, subjecting or excluding a given examination from judicial oversight is likely a matter of coincidence or the prevailing opinions or sentiments within the judiciary or legislative bodies at the time of enacting specific provisions. The differing objectives of the examinations (such as professional examinations for attorneys and external examinations within the education system) do not constitute a sufficient argument for differentiation. Each examination enables an individual, directly and concretely, to exercise certain constitutional rights and freedoms. Consequently, what is of primary importance is the fact that the examination directly affects the individual's legal situation; hence, it should be subject to judicial review. The social significance of the legal effects of an examination and its nature and purpose should be of secondary importance.

However, the cause of such disparate treatment of examinations within the legal system may lie in practical and organisational concerns, such as the potential volume of cases that could burden the courts. Perhaps this is why mass examinations in Poland, such as nationwide external educational exams conducted simultaneously for a large number of individuals, are excluded from judicial review. Nonetheless, Polish legislators have no issue permitting judicial oversight for niche exams, which involve relatively few participants or are not

concentrated within a specific timeframe (such as those qualifying individuals for regulated professions, e.g., legal professions). Hence, while such subjective and inconsistent exclusions of certain exams are unacceptable theoretically and constitutionally, they might reflect the practical reality.

6. The Usefulness of Judicial Control of Exams in Practice

Beyond the legal admissibility of judicial review of examinations, there remains the issue of the practical utility of such a review due to the duration of judicial procedures. This problem is evident in the case of every secondary-school-leaving examination, Polish *matura*, or university entrance exams. Candidates taking these exams often aim to use the results immediately after passing to begin their university studies in October of the same year (in Poland, the results are announced in July, followed by the university admission process). This maintains the continuity of the educational process, which translates into earlier entry into the labour market, obtaining professional qualifications sooner or contributing to pension schemes for a longer period. Thus, the lack of judicial review, beyond impairing the right to education, may have repercussions on the implementation of a broader spectrum of social, economic and cultural rights.²⁸

In this context, a multi-year judicial procedure (first the provincial administrative court and then the Supreme Administrative Court) means that, for individuals, a judgment, even if favourable, will not be optimal for their legal and educational interests due to the passage of time. The candidate would have enough time during this period to retake the exam multiple times to improve their score to the level necessary for admission to a particular program. This would render the judicial review illusory and useless, as the court would be reviewing the legality of a result that could have already changed several times in subsequent examinations. Similar problems arising from the duration of judicial procedures may occur in the case of any state exam.

This is supported by the fact that the protracted nature of Polish judicial procedures is a significant issue, long recognised and extensively discussed in academic literature. J. Lemańska pointed out that in practice, the deadlines for issuing administrative courts' decisions in Poland were considerably long, especially before the Supreme Administrative Court. Poland has constantly been among the countries with the greatest number of complaints concerning the excessive length of judicial proceedings. In the Polish legal system, there are, for certain categories of cases, deadlines for setting the date for a trial or hearing by the court. However, for several cases, such deadlines do not exist. This is because of the principle that

²⁸ For more information on the incorporation process of the social, economic and cultural rights into the Polish legal system, see: Czepek, 2025, pp. 60–61.

a case before an administrative court should conclude as swiftly as possible.²⁹ If judicial review of state examinations, particularly in education, is to be meaningful, it would be necessary to establish a ‘fast-track procedure’ dedicated to such cases. However, it is doubtful that the Polish legislator would adopt such a solution, as there are numerous other categories of cases in which the introduction of an expedited judicial review could be justified on similar grounds.

7. Conclusion

The issue of judicial review of exams conducted by public administrative authorities, outlined in this article, is about the protection of citizens’ legal positions and the realisation of the right to a court. Since the legal status of an individual depends on the result of an exam, the legality of the exam (both conduct and assessment) cannot be excluded from judicial review. This is an authoritative and unilateral action by an administrative body, which, although not always as an administrative act, affects the legal position of the individual taking the exam, who, based on the result, would pursue certain legal or factual interests. Therefore, the individual has the right to expect that, in a democratic state governed by law, these exams will be conducted in accordance with the law, like any other action of public administration, and, in the event of a violation, the individual will obtain legal protection before the court.

However, the lack of judicial review indicates complete discretion in the application of exam regulations by public authorities. This leads to the illusory nature of the obligation of public authorities to act based on and within the limits of the law. However, since there is no court overseeing the administrative actions, the duty to act in accordance with the law is impossible to execute. This contradicts the fundamental constitutional principles and violates the principle of a democratic state governed by law and of legality, leading to a ‘circumvention’ of the right to a court and good administration.³⁰ This represents a breach in a system where the actions of public administration bodies should be subject to independent judicial oversight whenever they affect the legal position of an individual. This is part of a broader issue, which is the scope of judicial review of public power.³¹ The literature notes that ‘a broad range of acts falling under judicial review gives better and a more complete legal protection in a democratic state ruled by law’.³²

However, concerns about the role of administrative courts in reviewing exams in fields where judges lack specialised knowledge (such as technical,

29 Lemańska, 2017.

30 For a broader context, see Wrońska and Dubowski, 2023, pp. 221–243.

31 See: Jackowski, 2017, p. 58.

32 Skoczylas and Swora, 2007, pp. 116–125.

medical or professional expertise in a specific area) are unfounded. This is because judicial review is consistent with the model of the Polish administrative judiciary. Hence, the review is based solely on the criterion of legality, instead of the substantive assessment of exams from areas of knowledge. Therefore, within the current model, the review of such exams is feasible and would not require any systemic reforms. Based on these considerations, one can conclude that acts and actions related to exams, in cases where exams produce or may produce legal consequences for the examinees, should be subject to judicial review following the model prevailing in the legal order of the respective state. Although such a solution entails certain risks (for instance, the potential overburdening of administrative courts with a large number of complaints or the inflation of examination results by administrative bodies and examiners fearing judicial proceedings), it appears necessary considering the standards of a democratic state governed by the rule of law.

Nevertheless, a question remains regarding the procedural framework under which this review should be carried out. On the one hand, depending on the procedure for conducting and assessing the exam, the acts and actions related to the exam could be regarded as an administrative decision or 'other act or action...'. On the other hand, considering the increasingly prevalent and expanding exam-related activities of public administration in a knowledge-based society, a new category of administrative actions may emerge and be regulated. These actions would not be administrative decisions or 'other acts or actions' currently subject to judicial review. Such actions by administrative bodies, involving the assessment of knowledge or skills through exams established by administrative law, would result in statements of knowledge (as opposed to statements of intent, typical of classic administrative acts), which should be subject to judicial review. Regardless of the chosen model, such reviews should be exercised by the administrative courts based on the criterion of legality, irrespective of the existence of an administrative path to challenge the exam result.

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