

THE SUBJECT MATTER OF DISPUTES OVER COMPETENCES IN CASES NOT SUBJECT TO GENERAL ADMINISTRATIVE PROCEDURE

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Abstract. Differences in the assessment of individual authorities' competences are the cause of disputes between them. According to the categories of disputing authorities in the Polish procedure, these disputes are qualified as disputes over jurisdiction and disputes over competences. The category of authorities in dispute and the type of dispute also determine the procedure and the entity authorised to settle the dispute. The prevailing view in judicial decisions is that disputes over jurisdiction and disputes over competence can arise solely against cases pending in administrative proceedings. A review of statutory regulations and judicial decisions proves that disputes over competence of authorities are and may be initiated in cases that are subject to general administrative procedure. In view of the above, this study analyses the law in force and specific cases of such disputes. This analysis is carried out on the basis of examples of regulations and rulings, and attempts to assess them in the light of the legal measure discussed here.

Keywords: competence; jurisdiction; disputes over jurisdiction; disputes over competence; administrative procedure.

1. THE CONCEPT OF "COMPETENCE"

The literature points out that the term "competence" is used in two contexts in the study of administrative law. The first one involves a horizontal relation, where the term "competence" refers to a legal position of an authority of public administration examined in reference to the position of other authorities that operate at the same level in the hierarchy. This context presents a legal position of a given authority in relation to other authorities, not subjugated to it in a hierarchy and the use of the term "competence" effects in a presentation of how competences attributed to one administrative authority are separate from competences of other authorities. As a consequence, it is possible to settle which of the authorities of public administration may exercise a given competence [Matczak 2015, 415]. It is assumed that establishing competences serves to maintain order and specific work of administration. Where there are components making up a greater whole,

the scope of operation of these components must be separated so that the whole may operate effectively [Mazurkiewicz 1988, 73; Matczak 2015, 427]. It is also emphasized that in the context of the horizontal relation, the term “competence” is also used in reference to so-called “disputes over competence” or “disputes over jurisdiction” [Matczak 2015, 416].

The second context in which the term “competence” is used refers to a vertical relation and appears in the aspect of the relation between a given public administration authority and entities subjugated to it that include entities that are subject to administration and other bodies of administration, such as those that are subject to a supervisory relation. It is highlighted that there are discussions in this context on the relation between a public administration authority and entities subject to administration or authorities subjugated through verification to a public administration authority in a decentralised system.¹

2. COMPETENCE AND JURISDICTION

When it comes to the use of the term competence in reference to so-called “disputes over jurisdiction” and “disputes over competence”, it is also reasonable to look at the relation between the terms “competence” and “jurisdiction”. Legal writers see in as an ambiguous issue [Matczak 2015, 427]. There are views in which both these terms are treated as equal and used interchangeably, there are views that treat them completely differently and attribute different content to them, and there are still views that the term competence also covers jurisdiction [Rabska 1990, 110].

The claims that the term “competence” and “jurisdiction” are one and the same thing generally define them as a set of powers of an authority that concerns a specific scope of cases in which this authority has the right, and, usually, an obligation at the same time, to act [Wierzbowski and Wiktorowska 2019, 169; Woś 2017, 166; Chróścielewski 2002, 290; Idem 2004, 73]. In view of the above, the primary role usually goes to the term “jurisdiction”, which seems to determine both the procedural aspect of settling disputes over jurisdiction and disputes over competence, and also the procedure and consequences of violating jurisdiction in administrative proceedings.

Therefore, when it comes to “jurisdiction” – identified with the term “competence” – it is emphasized that in the aspect of the principle of the rule

¹ Both contexts presented above show similarities to other means of analysis of the term competence presented by legal scholars and commentators, in a static and dynamic approach alike. Cf. Boć 2000, 132-33.

of law formulated in Article 7 of the Polish Constitution² which reserves that each organ of public authority shall function on the basis of, and within the limits of, the law, jurisdiction must not be assumed [Sawuła 2000, 82]. This applies, i.a., to cases examined in the course of administrative proceedings³ where the said obligation also follows from Article 7 of the Code of Administrative Procedure,⁴ which also reflects the rule of law, and from Articles 19-22 CAP, which concretize this principle and which expressly reserve that public administration authorities shall observe *ex officio* their jurisdiction [Olszanowski 2018, 282].

In the procedural aspect discussed, jurisdiction understood like this outlines a given authority's legal capacity to conduct administrative proceedings [ibid.; Chróścielewski 2002, 67; *Idem* 2004, 73], which is defined as a set of premises that determine the capacity to take procedural steps in administrative proceedings [Adamiak 2022, 145; Martysz 2000, 47].

There are three basic kinds of jurisdiction in general that define the foundation of a specific competence of an authority. They are: territorial jurisdiction, substantive jurisdiction and functional jurisdiction, also called jurisdiction relating to instance [Wierzbowski and Wiktorowska 2017, 38]. Territorial jurisdiction specifies which authority is competent to settle a given matter from the point of view of territorial reach of its operation. Substantive jurisdiction covers the administration authority's competence to take decisions in specific categories of cases. Functional jurisdiction, in turn, defines the instance competent to settle a given case [Wierzbowski and Wiktorowska 2019, 162-85; Niczyporuk 2001, 346-47; Wajda 2020, 201].

3. DISPUTES OVER JURISDICTION AND DISPUTES OVER COMPETENCE

Legal scholars and commentators point out that disputes over jurisdiction in general, including those between bodies of local government units and bodies of central administration, arise due to the different assessment of the scope of competence of these bodies stipulated in the law (in turn, if these competences are to be exercised by examining and settling cases in administrative proceedings, that is by application of norms of administrative law through issuing acts that concretize its norms, administrative

² Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended.

³ Judgement of the Polish Supreme Court of 29 May 1991, ref. no. III ARN 17/91, Lex no. 10902.

⁴ Act of 14 June 1960, the Code of Administrative Procedure, Journal of Laws of 2023, item 775 as amended [hereinafter: CAP].

decisions, it applies then to the scope of jurisdiction). Therefore, the reasons for these disputes arising include but are not limited to imprecise or incomplete regulations in this regard what give rise to differences in interpretation in practice [Woś 2016, 152-53].

The established line of judicial decisions and legal scholarship uniformly point out that a dispute over jurisdiction may be defined as an objectively existing legal situation in which there are differences of opinion among public administration authorities as to the scope of their operation, including most of all as to their authorisation to examine and settle the same administrative case; at that, we may claim that cases are the same when entities involved in them, their subject matter and their basis in law and in facts are identical [Defecińska 2000, 101-102; Skoczylas 2008, 18-21].⁵

The literature emphasises that a dispute over jurisdiction and a dispute over competence that arises in connection with initiating and conducting administrative proceedings (complexity of the case) is a positive dispute, while one that arises due to ineffectiveness of the claim to initiate administrative proceedings is a negative dispute [Zimmermann 1989, 50-51]. These two categories of disputes, that is positive and negative, are most frequently classified in legal writings so as to mean that a positive dispute occurs where two public administration authorities recognize themselves at the same time as competent to examine and settle a case. On the other hand, a negative dispute, predominant in practice, occurs where two or more public administration authorities deem themselves not competent to handle a given case [Woś 2016, 156].

When it comes to a formal separation of disputes over jurisdiction and disputes over competence it needs to be pointed out that the essence of this division – in light of the CAP regulation – was based on the categories of bodies that may be in dispute with each other. Namely, it is assumed that a dispute over jurisdiction will involve different opinions on authorisation to examine and settle the same case that occurred between public administration authorities that fall under the same systemic pillar of administration (central or local administration). On the other hand, a dispute over competence is understood as a difference in this kind of opinion that occurs between local government authorities and central administration authorities [ibid., 156-57]. Given the above aspect, in many instances legal scholars and commentators and judicial decisions offer comments on the question of disputes over different opinions of authorities as to their authorisation to examine a given case and such comments may be applied in parallel to both categories of disputes.

⁵ Order of the Polish Supreme Administrative Court (SAC) of 23 December 2023, ref. no. II GW 104/23, CNOSA.

4. PROCEDURES FOR SETTLING DISPUTES OVER JURISDICTION AND DISPUTES OVER COMPETENCE

The procedure for settling disputes over jurisdiction and disputes over competence is reflected in CAP regulations and in the regulations on procedures in administrative courts.⁶ The literature points out that the fact that a dispute over jurisdiction or a dispute over competence arises in connection with the initiation and conducting of administrative proceedings advocates that measures for settling disputes over jurisdiction and to some extent disputes over competence should be included under CAP regulations [Żukowski 2012, 33; Krzykowski 2010, 27].

Pursuant to Article 1(3) CAP in connection with Article 1(1) and (2) CAP, the Code of Administrative Procedure regulates, i.a., the proceedings in matters involving disputes between authorities of units of self-government and government administration authorities over authority and competence and between other state authorities and before other entities where they are appointed to handle individual matters settled by way of administrative decisions or handled tacitly.

Article 22(1) CAP lists authorities competent to settle disputes over jurisdiction between individual categories of public administration bodies. Article 22(1)(1) CAP reserves, however, that in the case of disputes over jurisdiction between authorities of units of self-government, in the event of absence of a superior authority competent for both of them, the dispute is settled by an administrative court.

Pursuant to Article 22(2) CAP, disputes between authorities of units of self-government and government administration authorities regarding the scope of their powers shall be resolved by an administrative court. Pursuant to Article 22(3) CAP, the application to have the dispute resolved by the administrative court may be submitted by: 1) the party; 2) an authority of the unit of self-government or other public administration authority being in dispute; 3) the minister responsible for public administration matters; 4) the minister responsible for justice or the General Public Prosecutor and 5) the Commissioner for Human Rights.

Legal scholars and commentators emphasise that proceedings in settling disputes over jurisdiction have an accessory character towards general administrative proceedings referred to in Article 1(1) and (2) CAP [Gołaszewski and Wąsowski 2020, 48]. These proceedings do not decide with authority about the rights or obligations of individually designated addressees that do not fall organization-wise under the body that issues the decision,

⁶ Act of 30 August 2002, Law on proceedings before administrative courts, Journal of Laws of 2023, item 1634 as amended [hereinafter: PBAC].

but the procedure and rules specified in Article 22 CAP serve as a basis to determine which authority is competent to issue a decision in a specific individual case [Borkowski and Krawczyk 2017, 97].

In turn, pursuant to Article 4 PBAC, administrative courts settle disputes over jurisdiction between bodies of local government units and between self-governing appeals bodies, unless a separate act provides otherwise, and disputes over competence between bodies of these units and central administration bodies.

In Article 15(1) PBAC the legislator specifies that disputes referred to in Article 4 of this act are settled by the Supreme Administrative Court. Article 15(2) also reserves that settlement of disputes referred to in Article 4 PBAC shall be done with application of provisions on proceedings before a voivodeship administrative court, though disputes referred to in Article 4 PBAC are settled by the Supreme Administrative Court, upon a request, by an order, in the panel of three judges in a closed session, by establishing the authority competent to settle the case.

5. DISPUTES OVER COMPETENCE COVERED BY ADMINISTRATIVE PROCEEDINGS

As signalled before, legal scholars and commentators point out that inclusion in the CAP regulation of measures to settle disputes over jurisdiction and disputes over competence results from the fact that such disputes arise due to initiation and conducting of administrative proceedings. Decisions of administrative courts also note - in the context of regulation of Article 1(3) CAP - that this provision entails that regulations of this code on settling disputes over jurisdiction and disputes over competence refer only to proceedings in individual matters settled by administrative decisions. This, in turn, leads to a conclusion that this provision may be applied only where there is a dispute between bodies of public administration as to their having or not having the jurisdiction (competence) in individual matters settled by an administrative decision in which proceedings regulated by CAP are pending.⁷

At that, judicial decisions point out that a possible dispute (over jurisdiction or over competence) cannot be abstract and cannot concern interpretation of provisions of the law, and a dispute over jurisdiction may arise only in connection to an individual matter which exists in fact and in which the proceedings are carried out.⁸ The condition for settling a dispute over

⁷ See Order of the Polish Supreme Administrative Court of 5 June 2014, ref. no. II FW 3/14, CBOSA.

⁸ Cf. Order of the Polish Supreme Administrative Court of 17 January 2023, ref. no. III OW

competence by pointing to the body competent to handle the case is a claim that differences in interpretation of bodies against the competence regulation are real (not apparent), timely (not potential) and specific (not abstract).⁹

Therefore, if a request for settling a dispute over competence (jurisdiction) is abstract, detached in its content from a specific case, such a request must be deemed inadmissible in the understanding of Article 58(1)(6) in connection with Article 64(3) PBAC. On the other hand, inadmissibility of the request must in consequence lead to a dismissal of the request for settling a dispute over jurisdiction.¹⁰

It is also pointed out in judicial decisions that when settling a dispute over competence, the Supreme Administrative Court points to a specific body competent to examine a given case. Therefore, if an organ that files a request for settling a dispute over competence does not formulate this request against a specific case in which the dispute arose, the SAC cannot examine this request as to its substance because the court's ruling that settles the dispute over competence cannot be abstract, devoid of a reference to a specific case.¹¹

The occurrence of disputes over jurisdiction or over competence must at the same time be preceded by a precise, thorough and detailed establishment of the state of facts and of law in a given case. Absence of such findings means that a request for settling the dispute must be deemed premature, which is a basis for dismissal.¹²

6. DISPUTES OVER COMPETENCE NOT COVERED BY ADMINISTRATIVE PROCEEDINGS

Provisions of the CAP and PBAC pertaining to the procedure of settling disputes over jurisdiction and disputes over competence, given the location, scope and manner of regulation, including their compatibility, are not only confirmation, but an actual expression of affiliation of such disputes with the course of general administrative proceedings. This relationship is interpreted at that in quite a narrow and detailed scope. As emphasized

31/22, CBOSA.

⁹ See Order of the Polish Supreme Administrative Court of 7 December 2023, ref. no. II GW 104/23, CBOSA.

¹⁰ See orders of the Supreme Administrative Court of 21 October 2008, ref. no. II OW 48/08; of 12 August 2005, ref. no. II OW 25/05 and of 7 January 2009, ref. no. I OW 188/08, CBOSA.

¹¹ Cf. Order of the Polish Supreme Administrative Court of 12 August 2005, ref. no. II OW 25/05, CBOSA.

¹² See Order of the Polish Supreme Administrative Court of 2 March 2018, ref. no. II OW 292/17, CBOSA.

by the Supreme Administrative Court, a dispute over competence (over jurisdiction) in the understanding of Article 22(2) CAP may only pertain to cases in which the subject involves settlement of an individual administrative case by way of a decision. For this reason, examination of a dispute over establishing a body competent to examine a complaint filed under proceedings for complaints and requests (Section II CAP) does not fall under the capacity of the Supreme Administrative Court.¹³

In the aspect of the material scope of disputes over jurisdiction, the Supreme Administrative Court in one of its rulings even assumed that disputes over jurisdiction between bodies of local government and local bodies of central administration, in connection with the regulation of Article 22(2) CAP, may apply only to individual cases that these bodies are competent for and that are settled by way of an administrative decision.¹⁴

Despite the emphasis in judicial decisions given to this relationship between the institution of a dispute and administrative proceedings, legal scholars and commentators point out that the claim quoted above is not correct [Woś 2016, 154] and by no means entails that disputes over jurisdiction or disputes over competence in other cases that public administration authorities are competent to cannot arise. It is reserved at that, though, that disputes over jurisdiction in cases other than those individual that are settled by way of a decision are regulated by separate provisions [Przybysz 2021, 138].

Moreover, legal scholarship emphasises that Article 22 CAP – reserving that the SAC should settle disputes over jurisdiction somehow as the last option – applies also to all disputes in cases in which the CAP is applied directly and exclusively, and, moreover, in cases where these provisions are applied respectively or as supplementary norms in the scope in which other statutes do not regulate questions of settling disputes at all or regulate them differently [Woś 2016, 154-55]. Article 18 of the Law on enforcement proceedings in administration¹⁵ is given as an example here, which refers to an appropriate application of CAP provisions, emphasising at that that rulings in the legal form of an administrative decision are not given at all in such proceedings [Defecińska 2000, 101; Woś 2016, 155].

The above claim was also reflected in judicial decisions,¹⁶ and the Supreme Administrative Court went even further when it comes to interpre-

¹³ See Order of the Polish Supreme Administrative Court of 18 February 2005, ref. no. OW 166/04, CBOSA.

¹⁴ See Order of the Polish Supreme Administrative Court of 16 January 1995, ref. no. I SA 40/95, CBOSA.

¹⁵ Act of 17 June 1966 on enforcement proceedings in administration, Journal of Laws of 2023 item 2505 as amended.

¹⁶ See Order of the Polish Supreme Administrative Court of 20 September 2007, ref. no. II GW

tation of the subjective scope of disputes over jurisdiction and disputes over competence assuming that Article 4 PBAC may also be applied in cases in which acts and steps enumerated in Article 3(2)(4) are made and which concern a right or an obligation resulting from provisions of the law.¹⁷

When it comes to the possibility of application of provisions on settling disputed over jurisdiction to proceedings in which decisions or orders under CAP are not issued, but to which provisions of the CAP are applied respectively, it is reasonable to refer to the example from court decisions, though through which the suitable possibility may only be inferred indirectly.

When it comes to examination of disputes over jurisdiction which arose between units of self-government that have seats in different voivodeship, the Supreme Administrative Court, deeming itself not competent to settle the dispute, pointed out that since the dispute concerned assistance granted under an individual integration programme, that is assistance referred to in Article 20(1) of Social Assistance Act,¹⁸ it may be assumed that it concerned a task that belongs to central administration. The Supreme Administrative Court then pointed out that given that poviats whose bodies are also in dispute are parts of different voivodeships and that the case that the dispute concerned falls under the commune's tasks relating to central administration, it had to be stated that, pursuant to Article 22(1)(4) CAP, it is the minister competent for public administration matters that is competent to settle this dispute.¹⁹

Assistance granted to third-country nationals as part on an individual integration programme do indeed fall under tasks of central administration pursuant to Article 20(1)(1) of the Social Assistance Act. These tasks are not, however, implemented in the legal form of an administrative decision. Legal scholars and commentators assume that individual programmes of integration are most similar to an agreement in their nature [Miształ 2013, 359-60]. However, pursuant to Article 14 of the Social Assistance Act, for cases not regulated under the SSA, provisions of CAP are applied unless the statute provides otherwise. Thus, one could assume that a relevant application of CAP, even though the procedure regulated by provisions of this code does not apply in establishing an individual integration programme, could also include, respectively, measures for settling disputes over jurisdiction. However, it would seem that the absence of a reservation about a relevant

3/07, CBOSA.

¹⁷ Order of the Polish Supreme Administrative Court of 14 December 2005, II OW 60/05, CBOSA.

¹⁸ Social Assistance Act of 12 March 2004, Journal of Laws of 2023, item 901 as amended [hereinafter: PBAC].

¹⁹ Order of the Polish Supreme Administrative Court of 19 October 2023, ref. no. I OW 64/23, CBOSA.

application of CAP provisions towards the entire act (because relevant reservations are sometimes put in place for individual parts of the normative act, e.g. chapter) would make settling of a dispute under the CAP inadmissible.

When it comes to the previously presented positions of the Supreme Administrative Court, including one that excludes the option for the court to settle disputes arising in the course of proceedings for complaints and requests, a conclusion comes to the fore that disputes over jurisdiction or disputes over competence may be the subject of examination by an administrative court if they arise in the course of proceedings - not only administrative - in which acts or steps are made which may be appealed against at the administrative court in the scope specified in Article 3(2) and 3(2a) PBAC or in special rules. While admittedly the individual integration programmes referred to would have been breaking out from the rule, because they fall within the scope of tasks attributed to central administration disputes relating to them were anyway excluded from the scope of examination of cases carried out by administrative courts. This breakout would have inevitably caused a discrepancy in the question of uniformity of CAP and PBAC regulation of procedures for settling disputes.

Irrespective of the above, there are disputes in the practice of operation of bodies of administration that in other aspects also seem to break the previously presented models of procedure and rules concerning the subject-matter aspect of admissibility of examination of such kinds of disputes.

This concerns disputes that arise against the regulation of Article 25(5) of the Family Benefits Act,²⁰ which lays down that upon learning of the change of a place of residence of a person who has been granted a family benefit, the currently competent authority transfers the decision along with the case file to the authority competent for the new place of residence so that it may administer this benefit further. This provision proceeds to stipulate that the authority competent due to the beneficiary's new place of residence implements the decision they have received without having to issue a new one and is competent to revoke it, change it or to establish and claim back benefits paid unduly if the circumstances have changed or if new circumstances have emerged that may affect the individual's right to benefits. Article 3(11) FBA, in turn, regulates the legal definition of a competent authority. Pursuant to this provision, whenever the FBA talks about a competent authority, this shall mean a commune head, a mayor or a president of the city competent due to the place of residence of a person requesting or receiving a family benefit.

²⁰ Act of 28 November 2003 on family benefits, Journal of Laws of 2024, item 323 as amended [hereinafter: FBA].

Therefore, the content of Article 25(5) in connection with Article 3(11) FBA means that it regulates the question of jurisdiction of an authority for implementing a public task related to exercising rights resulting from a final decision issued by a different organ – territorially competent on the date of issuing of the decision – due to the change of the place of residence of the person entitled. There are often disputes between authorities with regard to this provision as to the validity of transferring the case file so that the designated authority should continue providing this benefit. The disputes focus, for example, on doubts as to the circumstances of the place of residence or that the change is relatively short-term, not permanent.

It needs to be noticed, that, as a rule, no administrative proceedings are pending in the case associated with issuing a decision (referred to in Article 25(5) FBA) to grant family benefits, save for the possibility to initiate procedures for verification of the final decision. A final decision is assumed to have been issued already and this provision is to specify the organ that will be obliged to ensure correct realization of rights that result from the decision that has not yet been fully exercised [Lisowski and Ostapski 2023, 540].

The measure adopted in Article 25(5) FBA undoubtedly shows a special character. On the one hand, the competence granted to the competent body in this provision refers to the implementation of rights resulting from the already established relationship under substantive law, and this refers to the past. We may add here that the concept of a competent authority used above is not based on procedural regulations, but on a statutory definition of this term. In turn, this definition – by referring to the criterion of the place of residence through repetition of the CAP regulation when it comes to rules to establish territorial jurisdiction – thus allows for the designation of an authority that will be responsible for taking over the decision for its further implementation.

On the other hand, when it comes to competence, Article 25(5) FBA includes the same future-facing measures. It reserves that the authority competent for the new place of residence of the entitled persons will at the same time become competent to revoke or change this decision and to establish and claim unduly paid benefits if there are premises to initiate or conduct such proceedings. Legal scholars and commentators point out that this regulation covers succession of certain competence pertaining to taking decisions associated with the granting of a decision that has been accepted for implementation [ibid., 540-41]. It will be possible to exercise these competences, thus they will be updated, though only in the event of initiation of proceedings. Therefore, this provision determines for the future at the same time the question of jurisdiction of the body that has taken over

the decision for implementation, in the scope of specific provisions that may, but do not have to, be initiated.

As a consequence, there is no basis to believe that where a given authority took over for implementation a final decision that grants family benefits there would be any other proceedings pending resulting from the mere fact of such a transfer.

Given the above, a question comes to the fore: where there is a discrepancy between two bodies as to which of them, in the context of Article 25(5) FBA, will be responsible for implementing rights resulting from the final decision (which will at the same time determine the question of the possible future jurisdiction of one of these bodies in the context of designated categories of administrative proceedings) will there be a dispute over jurisdiction in the meaning of Article 22(1) CAP? In the case above, the condition referred to by legal scholars and commentators and in judicial decisions that an individual case must be brought before a court in the meaning of Article 1(1)(1) CAP will not be met.

Perhaps one may also consider – in light of the views presented above – whether in this case the question of resolving disputes is regulated by a separate provision or whether provisions of the Code of Administrative Procedure should be applied respectively. However, it is difficult to try to find measures in Article 25(5) FBA that are separate from those under the CAP and PBAC when it comes to settling disputes. One should rather consider the question of having to apply CAP provisions appropriately, since in the context of the definition of a competent authority adopted in Article 3(11) FBA the legislator relied on the premise of establishing jurisdiction adopted in administrative procedure, and the regulation of Article 25(5) FBA itself concerns a case closed with a final decision in which the procedure regulated in the Code of Administrative Procedure is applied.

It is worth noting that these questions did not trigger any doubts for the Supreme Administrative Court which had already been settling disputes that arose against Article 25(5) FBA based on regulations of Article 4 PBAC in connection with Article 22(1)(1) CAP. In one such case the Supreme Administrative Court first explained (relying on Article 22(1)(1) CAP) that the dispute between bodies of local government units that do not share a superior authority is not a dispute over jurisdiction settled by an administrative court. It then pointed out that in these circumstances the case concerned a negative dispute over jurisdiction because neither of the bodies in dispute considered themselves competent to further implement decisions issued by one of these bodies in cases of granting family benefits

with supplements.²¹ Therefore, it was the question of jurisdiction for further implementation of the decision that was considered the object of dispute.

In general, the way the Supreme Administrative Court acted deserves credit. It is because two bodies received a clear stance on the question in doubt and in dispute associated with the implementation of a public task, which was significant in the public and individual dimension alike. However, this means that the criteria that are the basis of admissibility of examining these disputes become ambiguous. In these cases, the Supreme Administrative Court was competent to settle the dispute only because the disputing bodies did not share a superior authority, pursuant to Article 22(1)(1) CAP. Nevertheless, how are administration authorities supposed to act in similar situations if there is no such absence? One cannot accept that the competence of the Supreme Administrative Court in this case was realised only under Article 4 PBAC because in connection with Article 1(1)(3) CAP provisions of this Code when it comes to examining such disputes did not apply here. The Supreme Administrative Court should then be competent for all such disputes, but this Court reserved that this case was its to examine only because there were no shared superior authorities for the disputing bodies.

CONCLUSIONS

The question of competence to handle a given case by administration authorities is an essential systemic, procedural and substantive factor. The consequences of violating provisions on jurisdiction, especially in administrative proceedings as a decision may be declared invalid, are essential in as much that none of the bodies would wish to take action in violation of such regulation. Implementation of certain tasks by administration authorities may involve significant costs, which is why they are often determined to launch procedures that make it possible to state that there is no basis for them to be attributed competence to handle a given matter. When such disputes arise in connection with cases brought before a court and examined under general administrative proceedings, then in the light of Article 1(1)(3) and Article 22 CAP and Article 4 and Article 15 PBAC admissibility and the procedural aspect of such disputes do not cause much difficulty. The abundant line of judicial decisions may prove helpful here. However, the positions presented in them may trigger doubts when it comes to disputes that arise not in cases examined under administrative procedure,

²¹ See Order of the Polish Supreme Administrative Court of 9 November 2023, ref. no. I OW 141/23, CBOSA. Cf. also Order of the Polish Supreme Administrative Court of 20 April 2023, ref. no. I OW 138/22, CBOSA.

but those that concern public tasks for which the question of the entity responsible for their implementation may be not unequivocal or disputed. Since they are not handled under the administrative procedure, formally, in the context of the wording of Article 1(1)(3) in connection with Article 1 and 2 CAP, the procedure for examining disputes over jurisdiction regulated in this Code should not apply either. The above may concern, however, different kinds of tasks that may rest with bodies, e.g. necessary to be carried out in crisis situations or in situations involving maintenance of public roads. In such situations, these bodies may be left with an unresolved problem and the form of handling the case and interpretation of provisions done against a given regulation may turn out to be the determining factor for the question of whether there will be a basis to examine them within a given category of disputes. Looking from the point of view of operation of administration bodies, it is difficult to find a clear and convincing explanation to a situation where it is admissible to settle a dispute over jurisdiction under CAP for cases handled in the form of an agreement (by application of relevant CAP regulations), but at the same time such a procedure is excluded for complaints and requests regulated under CAP. Perhaps the question of the personal and material scope and procedures for settling disputes over jurisdiction and disputes over competence should be at least analysed given the changing regulations, including forms in which administration operates and increasingly dynamically changing social relations; even if only in terms of existing rules for conducting such proceedings.

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