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Pilot Resolutions as a Solution to Unify Judicial Decisions[3]

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Abstract

This paper presents the main ideas behind a new type of resolution, which, according to the proposed amendments to the Law on Proceedings before Administrative Courts, would be passed by the Supreme Administrative Court. The purpose of so-called pilot resolutions would be to prevent inconsistency in rulings concerning cases that are identical in legal and factual terms. In the concluding remarks, we underline the positive aspects of the proposed changes and argue that their incorporation into the existing system would enhance legal certainty and increase the predictability of judicial decisions.

Keywords: uniformity of judicial decisions, pilot resolutions, legal certainty, independence of judges.

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Introduction

One of the areas of interest for Professor Andrzej Kabat, both from a theoretical and practical perspective, is the realm of procedural solutions aimed at unifying judicial decisions. Aware of the legal and extra-legal difficulties that, in practice, rule out achieving complete uniformity, he has emphasised the necessity of striving for unification "in important legal matters, particularly procedural ones, that are crucial for protecting individual rights in proceedings involving the application of substantive law.[4]" When considering normative solutions for the unification of judicial decisions, the Honourable Jubilarian rightly highlights the primary importance of the system of appellate measures, followed closely by the resolution-passing activities of the Supreme Administrative Court.[5] The subject of resolutions, still highly relevant, has recently taken on a new dimension due to changes introduced within the Supreme Administrative Court aimed at streamlining administrative court proceedings.[6] One of the proposed solutions is the incorporation of a new type of resolutions, referred to as so-called pilot resolutions.

The purpose of these reflections is to discuss the proposed solutions and to consider their usefulness from the perspective of unification of judicial decisions, thereby increasing citizens' sense of legal certainty, equality of parties, and the predictability of court rulings.

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4 A. Kabat, *Uchwały Naczelnego Sądu Administracyjnego podjęte w latach 2008–2009*, ZNSA 2010, 4, pp. 9–10.

5 A. Kabat, *Uchwały Naczelnego Sądu Administracyjnego w latach 2004–2007*, ZNSA 2008, 6, pp. 9–10. The subject of uniformity of judicial decisions has already been explored by Professor Kabat in his earlier scientific undertakings. See: A. Kabat, *Instytucja pytań prawnych w TK*, Warszawa 1989.

6 For more on the proposed changes, see: J. Chlebny, *Zmiany w Prawie o postępowaniu przed sądami administracyjnymi na dwudziestolecie dwuinstancyjnego sądownictwa administracyjnego*, „Państwo i Prawo", in print. See also: A. Tarka, *Rewolucja w NSA, która skróci kolejki po sprawiedliwość. Uchwały pilotażowe i więcej spraw niejawnych to tylko kilka pomysłów na usprawnienie pracy sądu* [Revolution at the Supreme Administrative Court to shorten queues for justice. Pilot resolutions and more closed cases as some of the ideas for streamlining the court's work], "Rzeczpospolita. Prawo", 21.3.2024. Available from: https://www.rp.pl/sady-i-trybunaly/art40032391-rewolucja-w-nsa-ktora-skroci-kolejki-po-sprawiedliwosc (accessed: 21.08.2024).

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Pilot resolutions – the guiding principles of the proposed regulation

The resolutions in question have been conceived as a third type of decision, alongside concrete and abstract resolutions issued by the Supreme Administrative Court, primarily aimed at unifying judicial decisions. Considering their name alone, their goal is to guide the direction which future rulings concerning the same legal matters should follow.[7] Although each type of resolution contributes to this objective, pilot resolutions are directly connected to the identified number of cases examined by provincial courts and concerning identical legal issues, and are thus factually similar.[8] Pilot resolutions would complement the existing framework for the Supreme Administrative Court's legislative activities by enabling a rapid response to new cases that deal with the same legal issues, which could potentially lead to inconsistency in rulings. Currently, the Supreme Administrative Court does not have this capability. It becomes available only after an appeal is lodged, which in practice takes several months from the filing of the appeal with a first-instance court.[9]

The primary assumption behind the regulation of this new type of resolution is its incorporation into the existing normative framework for the resolution-passing procedure, as stipulated in Section VI of the Law on Proceedings before Administrative Courts (LPBAC).[10] Provincial administrative courts are authorised to request such resolutions through a decision. Such a request is submitted to the Supreme Administrative Court, which may either adopt a resolution through one of the panels specified in Article 264 §1 of the LPBAC or refuse to adopt it under Article 267 of the LPBAC. Incorporating pilot resolutions into the provisions of Section VI of the LPBAC would extend the general binding force provided for in Article 269 §1 of the LPBAC, including the possibility for the Supreme Administrative Court to deviate from its previous position and adopt a subsequent resolution.

According to the intention of the project proponents, pilot resolutions would be adopted by the Supreme Administrative Court when identical legal issues that

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7 In dictionary terms, a 'pilot run' is a trial activity intended to test a concept, a solution. See: Słownik języka polskiego PWN https://sjp.pwn.pl/slowniki/pilota%C5%BC.html (accessed on: 22.8.2024).

8 Pilot judgements are issued by the ECHR under Rule 61 of the Rules of Court of the ECHR (OJ 1993, no. 61, item 284, as amended) when the facts indicate the existence of a structural or systemic problem or other dysfunction that may give rise to similar complaints. See also: ECHR judgement of 23.11.2023, Wałęsa v. Poland, no. 50849/21, §§ 314–332.

9 Taking into account the average 4-month period of examination of a single case by a provincial court and the 16-month waiting time for the last resort (cassation) appeal to be resolved, the Supreme Administrative Court is given the opportunity to take a position on a given legal issue after 20 months. See: *Informacja o działalności sądów administracyjnych w 2023* r., Warszawa 2024, pp. 21–22.

10 Act of 30 August 2002 – Law on Proceedings before Administrative Courts, Journal of Laws of the Republic of Poland of 2024, item 935 as amended, hereinafter: the LPBAC.

raise doubts emerge in multiple administrative court cases. The proposed regulation specifies that the court of first instance must indicate at least 10 such cases in a motion for adoption of a resolution.[11] As with existing regulations for concrete and abstract resolutions, the primary criterion for requesting a pilot resolution is the existence of issues regarding the interpretation of legal provisions rather than the factual circumstances of a case.[12] However, whereas abstract resolutions require these issues to be reflected in existing judicial decisions with divergent interpretations, pilot resolutions address concerns of a preventive nature, aiming to avert inconsistencies in administrative court rulings.[13] In other words, such inconsistencies do not necessarily need to have arisen – the adoption of a pilot resolution is intended to prevent them. Similar to concrete resolutions, pilot resolutions should be linked to a specific case, but they would address not just one case, but a defined group of cases for which they would be equally relevant.[14]

The question arises as to whether the legal problems raising significant doubts, which a first-instance court presents to the Supreme Administrative Court, must hold equal importance across all the cases listed in the decision issued. It is conceivable that some cases might involve additional issues that contribute to the legal and factual context of the case. We believe that an outright exclusion of the pilot resolution procedure in such situations would be inadvisable. Yet, for the procedure to apply, the doubt-raising legal issues lying at the core of the resolution would have to be still identical.[15] If additional legal elements would affect this core, this essence, so to speak, then the analysed regulation, drawn up for repetitive, serial cases, should not be applied. However, if these elements are merely accessory to the fundamental legal issues, there should be no obstacles to initiating the pilot procedure. In other words – the mere presence of other legal issues that do not raise doubts for the first-instance court should not exclude the utilisation of the resolution

11 This figure appears to represent a compromise between the desire to avoid initiating the resolution procedure in every single case, which would be contrary to the very idea of the pilot run, and reserving this procedure for a highly limited number of cases due to their quantity.

12 This is due to the peculiarities of justice exercised by administration courts, which are courts of law – and not of fact. Nevertheless, closely similar or the same factual circumstances will generally be necessary for identical substantive legal issues to be resolved.

13 A. Skoczylas stresses that abstract resolutions do not have a preventive nature. See: A. Skoczylas, *Działalność uchwałodawcza NSA*, Warszawa 2004, p. 121.

14 The question of law submitted by a provincial court may not be of an exclusively abstract nature, i.e. detached from the realities of a specific administrative court case. With regard to a specific resolution, see: R. Hauser, A. Kabat, *Uchwały NSA w nowych regulacjach procesowych*, "Państwo i Prawo" 2004, 2, pp. 27–28.

15 In practice, there may be a number of such issues, or there may be only one. The use of the singular or plural number does not determine anything in this matter.

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procedure.[16] Still, if these issues are so distinct that there is no substantive connection between the cases, the validity of adopting a pilot resolution would certainly be questionable.[17] Differences of a subjective nature are less problematic and should not stand in the way of the adoption of a pilot resolution[18] provided that they do not modify the content of the legal issue that raised doubts and led to the request for a pilot resolution or if they do not directly concern the legal issue in question.

It cannot be ruled out that in the normative area where the disputed legal issues have arisen, there is already an established body of judicial decisions of administrative courts – including of the Supreme Administrative Court.[19] The existence of at least two conflicting rulings is a prerequisite for adopting an abstract resolution, but not a concrete one.[20] A lack of consistency would be an additional argument for adopting a pilot resolution if identified early in administrative court proceedings across at least ten cases. Conversely, the absence of inconsistency could argue against adopting a pilot resolution.[21] Such circumstances, however, should not automatically favour or disfavour a pilot resolution.[22] Drawing general conclusions on this matter would be too far-reaching, failing to account for the specificity of the cases that initiated the resolution procedure and the existing judicial decisions, including its degree of alignment with these cases.

A key distinction between an abstract and a pilot resolution lies in the number of cases in which discrepancies have arisen or may arise. While the legislator did not set a bottom limit for abstract resolutions,[23] a clear minimum threshold of ten

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16 If other issues had resulted in different rulings in cases covered by the pilot resolution, then it would have been necessary to explain the reason for the differences in the reasoning of the individual cases.

17 It is difficult to indicate here a limit which would be applicable in every case. Therefore, leaving the decision on the initiation of the resolution procedure to the court dealing with a specific range of cases is the most appropriate solution.

18 By way of example, the mere change of the complaining parties in serial cases does not affect the legal perception of such cases, including the complexity of the legal issues involved.

19 In the same way, in the case of specific resolutions, the existence of court rulings concerning a given matter does not constitute an independent reason for their adoption. See: A. Skoczylas, *Działalność uchwałodawcza NSA*, Warszawa 2004, p. 102.

20 As explained by A. Skoczylas, divergent judicial decisions are not, in the light of Article 187 § 1 of the LPBAC, an independent reason for the initiation of the resolution procedure, which can only raise serious legal doubts. See: A. Skoczylas, *op. cit*., p. 102.

21 However, as argued by R. Hauser and A. Kabat, the uniformity of judicial decisions is not an obstacle to adopting a resolution in a situation where the previous interpretation is challenged by the entity requesting the resolution. See: R. Hauser, A. Kabat, *Uchwały NSA (zagadnienia wybrane)*, „Państwo i Prawo" 1999, 1, p. 12.

22 Uniformity of judicial decisions treated in absolute terms may impede the development of the law. See: R. Hauser, A. Kabat, *Uchwały NSA w nowych regulacjach procesowych*, „Państwo i Prawo" 2004, 2, p. 26. In the same way, non-uniformity does not automatically mean the emergence of questionable legal issues.

23 Two judgements in which the same legal issue is resolved differently are therefore sufficient to give rise to a discrepancy.

cases applies to pilot resolutions, where these cases must involve identical legal issues that raise doubts and are central to the resolution. Given that the requesting party is a provincial administrative court, these cases must be pending before that court and closely interconnected. It would be difficult to accept a situation where one court refers to cases pending before another court without access to their files, thus being unable to fully determine whether identical legal issues raising doubts have actually arisen in them. Furthermore, it is unclear how a resolution adopted by the Supreme Administrative Court would affect cases examined by a court that did not request its adoption. In such a situation, one can speak of so-called general binding force under Article 269 §1 of the LPBAC, but not of specific (individual) binding force.

What makes the above different from specific resolutions is the omission of the qualifier "serious" in relation to the issues raised in questions of law submitted to the Supreme Administrative Court. This approach is commendable and should not be interpreted as an opportunity to submit a question of law in every case, regardless of its complexity. As with abstract resolutions, it is difficult to clearly determine the degree of seriousness of legal doubts that, objectively, should translate into divergent interpretations of the same legal provision. It should be emphasised that the mere stipulation that the doubts must pertain to legal issues gives them significance. In the case of a pilot resolution, the court requesting its adoption should demonstrate that the application of a given provision could lead to divergent outcomes by citing competing interpretations of the applicable regulation to support this claim.[24] Furthermore, the fact that such differences arise in two or more recurring cases makes them significant, as they may result in differing judgements – a situation that, for understandable reasons, should not occur. The decision to adopt a pilot resolution rests with the Supreme Administrative Court, which, when evaluating the complexity of the legal issue to be resolved, must not lose sight of the possible consequences associated with divergent adjudication.

As previously noted, proceedings concerning the adoption of a pilot resolution have been incorporated into the procedural framework of Chapter VI of the Act on Proceedings Before Administrative Courts (LPBAC). This means that the Supreme Administrative Court will make its decision in the form of a resolution. Regardless of the debate on whether a resolution is a type of ruling,[25] it should

[24] When requesting the adoption of a resolution, the adjudicating panel should refer both to the facts of the cases examined and to the provisions which are the source of doubts, demonstrating at the same time why it is necessary to clarify them. See: R. Hauser, A. Kabat, *Uchwały NSA (zagadnienia wybrane)*, „Państwo i Prawo" 1999, 1, p. 13.

[25] See more: A. Skoczylas, *Działalność uchwałodawcza NSA*, Warszawa 2004, pp. 187–189 and the literature cited therein.

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include the required elements specified in Article 138 of the LPBAC,[26], as well as the reasoning referred to in Article 268 of the LPBAC. Under Article 267 of the LPBAC, the Supreme Administrative Court is authorised to refuse to adopt a resolution. However, if a resolution is adopted, Article 269 § 1 of the LPBAC stipulates that it will have general binding force. This means that in all cases involving the same legal issue, the adjudicating panels of first-instance courts and the Supreme Administrative Court will be obligated to apply the interpretation adopted by the Supreme Administrative Court in the resolution. However, in cases listed by the first-instance court in the motion for the adoption of a pilot resolution, the binding effect will also be individual. In other words, the provincial court will not have the authority to apply an interpretation different from the one adopted by the Supreme Administrative Court and will lack any instrument to avoid the binding effect. Accepting a contrary view would negate the purpose of pilot resolutions, as the court requesting the resolution could then disregard it.

A different situation arises in cases not covered by the motion for a pilot resolution, whether pending before the requesting court or other provincial courts. In such instances, the binding effect will be general, not individual (specific). However, if subsequent cases are a continuation of the same series, involving the same parties and their representatives, it is difficult to accept that the adopted resolution could be contested under the procedure specified in Article 269 § 1 of the LPBAC. In our view, such cases would involve an extension of the individual binding effect over these matters. Nonetheless, unlike cases covered by the motion for a pilot resolution, the first-instance court would need to determine whether the facts justify extending the legal view expressed in the pilot resolution over the case at hand.

After all, the purpose of a pilot resolution is not to substitute the first-instance court in adjudicating a case. In other words, the Supreme Administrative Court's task is to clarify legal issues that are substantively identical and raise doubts, not to resolve specific administrative court cases on behalf of first-instance courts. Adopting a resolution should not be automatically regarded as transferring the burden of adjudicating the administrative court case to the Supreme Administrative Court. It cannot be ruled out that the legal issue resolved in the pilot resolution does not fully exhaust the legal matters arising in a given case. Even if this were the case, the Supreme Administrative Court should still limit itself to clarifying the legal doubts addressed in the question, leaving the first-instance court with the task of determining the legality of the challenged act or omission of the public administration authority. Moreover, although a pilot resolution may significantly guide the adjudication, its adoption does not preclude the termination of first-instance

[26] *Ibidem*, p. 190.

proceedings in the event of occurrence of the conditions specified in Article 60 of the LPBAC or Article 161 of the LPBAC, or the rejection of the complaint due to the emergence of a negative procedural prerequisite after the resolution is adopted.[27]

Rationale for the proposed regulation

Looking at the procedural regulation briefly outlined above, one can discern its resemblance to a mechanism that emerged years ago before regional administrative courts, which involved refraining from adjudication until a case involving the same legal issue had been resolved by the Supreme Administrative Court. Although this practice was curtailed by the Supreme Administrative Court due to the absence of grounds for suspending proceedings as outlined in Article 125 §1 point 1 of the LPBAC,[28] it nonetheless highlighted a procedural need to limit the passage of identical cases through two instances of administrative judiciary.[29] Such a situation poses a threat both to the parties, who remain uncertain about their legal situation, and to the courts, which are burdened with having to examine the same cases multiple times. Adopting a new type of resolution (pilot resolution) could mitigate this risk. First-instance courts would gain an additional tool for promptly resolving legal uncertainties arising in a given case.[30] The reasoning of first-instance court judgements could also be simplified by referring to the legal analysis provided in the adopted resolution. It would be expected – and desirable – that Article 111 §2 of the LPBAC be applied more frequently, which would contribute to faster resolution of cases. While a pilot resolution would not eliminate a party's right to file a last resort (cassation) appeal, it could nevertheless reduce the number of appeal measures utilised in cases where the outcome would be predictable for the parties.[31] Furthermore, the NSA would be bound by the content of a pilot resolution, contributing to the stability of jurisprudence. Departures from the adopted position, initiated under the procedure outlined in Article 269 §1 of the LPBAC, would likely be rare.

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27 One such example is that it may concern improper representation of a commercial law company (Article 58 § 1(5) of the LPBAC).

28 Resolution of the Supreme Administrative Court of 24.11.2008, ref. II FPS 4/08, ONSAiWSA 2009/4/62.

29 To this day, the Supreme Administrative Court tends to assign legally and factually identical cases to a single adjudicating panel, in order to e.g. avoid discrepancies in the judicial decisions issued.

30 It would be advisable to propose that pilot resolutions be taken by the Supreme Administrative Court outside the order of receipt. Otherwise, the waiting period could negate the benefits of establishing the new resolution procedure.

31 This remark applies both to the complaining party and to the authority, which sometimes lodges last resort (cassation) appeals only as a matter of principle, in order to exhaust the legal remedies available in a given case.

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Reflecting on the potential drawbacks of introducing a new type of resolution, one might question its necessity given the existing, extensive body of judicial decisions of the Supreme Administrative Court and the two-instance judicial process, which should effectively address inconsistencies. Moreover, do the current regulations governing the Supreme Administrative Court's resolution-passing activity actually fail to meet the expectations associated with pilot resolutions? Firstly, the body of judicial decisions is not always very extensive in every area. Due to its extensiveness and ongoing evolution, administrative law sometimes encompasses fields where neither judicial decisions nor views of legal scholars and commentators have been established, or where legislative changes have made prior analyses obsolete. Secondly, existing judicial decisions are not always consolidated or consistent.[32] Thirdly, pilot resolutions are intended for areas where existing types of resolutions are not utilised, serving primarily as a preventive measure against potential inconsistencies. Incorporating this new type of resolution into the existing regulatory framework promotes conciseness while providing both the Supreme Administrative Court and the parties the convenience of applying well-established regulations that have been in place for over 20 years and are reinforced by a rich body of judicial decisions already issued. In our opinion, there can never be too many reflections on how to unify judicial practices and decisions. We do realise that introducing yet another type of resolutions will not make judicial decisions entirely consistent overnight. Nevertheless, the new provisions could catalyse a broader effort to achieve uniformity in judicial decisions.

The current regulations on the Supreme Administrative Court's resolutions are sometimes criticised for allegedly encroaching upon judicial independence.[33] In our view, these regulations should be interpreted as a compromise between independence and consistency[34] – two values essential for the proper functioning of the judiciary. Considering that a regional administrative court would be the body authorised to request a pilot resolution, it is difficult to argue, from that court's

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32 Unfortunately, it is not consistent or uniform in many matters. An example can be the issue of participation of social organisations in proceedings requiring society/citizens participation. See: W. Piątek, K. Maćkowiak, *Glosa do wyroku NSA z 7.3.2023 r., III OSK 1909/21*, ZNSA 2024, 2, pp. 143–144.

33 P. Ochmann, *Uchwały NSA w świetle konstytucyjnej zasady niezawisłości sędziów oraz ich podległości tylko Konstytucji i ustawom*, „Przegląd Prawa Publicznego" 2017, 2, p. 38. Cf. J. Leszczyński, *Legitymizacja instytucji ujednolicających orzecznictwo sądowe*, [in]: S. Waltoś (ed.), *Jednolitość orzecznictwa w sprawach karnych*, Kraków 1998, pp. 44–45. Legal scholars and commentators draw attention also to the law-making elements of resolutions. See: T. Grzybowski, *Zagadnienie prawotwórstwa sędziowskiego a instytucja uchwał NSA*, ZNSA 2009, 6, pp. 59–60.

34 The observation made by W. Sanetra about the close connection between judicial independence and the creative and open attitude of judges towards the law and its interpretation remains valid and relevant. See: W. Sanetra, *O pojęciu jednolitości orzecznictwa sądowego oraz sposobach jego zapewnienia*, „Przegląd Sądowy" 2007, 6, p. 23.

point of view, that such a resolution would infringe upon judicial independence. The decision to initiate the resolution procedure lies with the court itself. For the parties, it is also more comprehensible when a case is resolved in accordance with an adopted pilot resolution rather than through divergent rulings in legally and factually identical cases. It seems to be a cliché to say that identical cases should be resolved identically, and similar cases should be resolved in a similar manner. A situation where one identical case is dismissed while another is upheld is entirely incomprehensible, sometimes leading to suspicions of bias – or even corruption. Emphasising the fact that such cases were resolved entirely independently by a provincial court does not meet with the approval of the parties, the public in the courtroom, or the broader public opinion.

Another question that arises is why the Supreme Administrative Court's adjudicating panel is not empowered to adopt pilot resolutions. For concrete resolutions, it is the Supreme Administrative Court that, under Article 187 §1 of the LPBAC, is authorised to initiate the resolution procedure. Similarly, in the case of abstract resolutions, the President of the Supreme Administrative Court is among those empowered to submit a motion for the adoption of a resolution under Article 264 § 2 of the LPBAC. It can be assumed that the originators of the proposal envisioned pilot resolutions as a tool for unifying judicial decisions at an early stage of administrative court proceedings. Empowering the Supreme Administrative Court to adopt pilot resolutions would not hinder this objective. Actually, it would provide an additional opportunity to unify the judicial decisions issued where a significant number of legally and factually identical cases are identified at the second-instance stage. Whether the Supreme Administrative Court adjudicating panel would actually use this procedure remains an open question, depending on whether the court is granted this tool. Pilot resolutions in the proposed form would uniquely exclude the Supreme Administrative Court from initiating the resolution procedure.

We believe it is appropriate that the decision to initiate the new resolution procedure has been entrusted to first-instance courts. Pilot resolutions pertain to cases already pending, and the legal issues they raise are not abstract. Even for concrete resolutions, however, parties can only submit non-binding requests to the Supreme Administrative Court for their adoption.[35] The administrative court conducting the proceedings retains full control over them, having comprehensive knowledge of the complaints and appeals filed and ongoing cases. Granting parties the right to initiate the resolution procedure could extend the duration of proceedings and,

[35] As explained by A. Skoczylas, parties and participants acting as parties are allowed to request the court to perform any action. If a motion is not binding upon the court, there is no obligation to rule on it separately. See more: A. Skoczylas, *Moc wiążąca uchwał NSA a prawa jednostki*, [in:] J. Filipek (ed.), *Jednostka w demokratycznym państwie prawa*, Bielsko-Biała 2003, p. 603.

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in extreme cases, serve as a tool for procedural obstruction. This does not mean that parties should be excluded from presenting their positions during the resolution procedure before the Supreme Administrative Court. Since a resolution will shape the future decision in a case, parties should be informed by the provincial court of the submission of a motion to adopt a resolution and subsequently be allowed to present their stance before the Supreme Administrative Court. Although adopting a resolution is not equivalent to resolving a specific administrative case, hearing the parties – whether in writing or orally during a public hearing – could not only give the Supreme Administrative Court a more comprehensive understanding of the normative material, but also assure the parties that their concerns are not being decided without their involvement.

In our opinion, public administrative authorities conducting administrative proceedings should not be granted the right to request pilot resolutions.[36] At first glance, one might argue that this could resolve legal uncertainties at an even earlier stage of case examination. However, this argument is unconvincing due to the structural independence of administrative proceedings and administrative court proceedings. An administrative authority should not address the Supreme Administrative Court with legal questions that would then bind it. Moreover, granting such competence to administrative authorities could lead to uncontrolled submission of questions of law to the Supreme Administrative Court, which is primarily a supervisory court overseeing the judicial practices of provincial courts. An excessive number of resolutions could result in inconsistencies in the judicial decisions issued, which could be especially problematic when they concern decisions intended to eliminate discrepancies.

Another risk associated with pilot resolutions is the potential for exempting first-instance courts from responsibility for their decisions. This would be a genuine concern if a provincial court phrased its questions in a way that directly addressed the resolution of specific cases, and the Supreme Administrative Court, in adopting a resolution, exceeded its role as a body tasked with resolving substantively identical legal issues.[37] Even in such a situation, however, the first-instance court would

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[36] A. Kabat pointed out that the institution of resolutions containing answers to questions of law submitted by self-government appeal courts was regulated under Article 18(2) and Article 50 of the Act on the Supreme Administrative Court of 1995 (Journal of Laws of the Republic of Poland of 1995, no. 74, item 368 as amended) and Article 22(2-5) of the Act on Self-Government Appeal Courts of 1994 (Journal of Laws of the Republic of Poland of 1994, no. 79, item 856 as amended). In the period from 1.10.1995 to 31.12.2003, self-government appeal courts submitted 339 questions of law to the Supreme Administrative Court. The Supreme Administrative Court adopted 178 resolutions, refusing to answer in the remaining cases. See: A. Kabat, *Rola NSA w kształtowaniu jednolitego orzecznictwa sądów administracyjnych*, ZNSA 2010, 5/6, pp. 195–196.

[37] As A. Kabat points out, exceeding the framework of the question posed would mean resolving the legal issues in question on the initiative of the Supreme Administrative Court adopting a resolution,

still be obligated to issue a judgement against which neither party could file a last resort (cassation) appeal. Furthermore, the decision to initiate the pilot procedure would remain with the provincial court. If the court determined that no legal issue requiring clarification had arisen in a case, it would be obliged to independently resolve all issues. The Supreme Administrative Court's resolution should assist the first-instance court in issuing a judgement without depriving it of its competence to decide specific cases. As with other types of resolutions, the application of the new form thereof should be exceptional.

A further concern that can be raised regarding the proposed regulation is whether the pilot procedure might hinder the development of judicial practice. n our view, each resolution adopted contributes to the development of the existing body of judicial decisions, containing robust reasoning[38] that can be further expanded in judicial decisions and views of legal scholars and commentators.[39] The adoption of a resolution does not preclude ongoing reflection on the decision, as explicitly provided for in Article 269 § 1 of the LPBAC. Resolutions are the subject of heated discussions among judges during training sessions and various seminars. Their in-depth reasoning also has cognitive and educational value, which is important for both practical and academic discourse.

Conclusion

We are firmly convinced that the uniformity of judicial decisions is a value that should be protected and reinforced. While achieving absolute uniformity is neither realistic nor desirable, the current state reveals a significant degree of inconsistency, particularly in certain areas of administrative court rulings.[40] Legal scholars and commentators rightly stress that the uniformity of administrative court decisions

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i.e. following a procedure which is not provided for under the LPBAC. See: A. Kabat, *Uchwały Naczelnego Sądu Administracyjnego w latach 2004–2007*, ZNSA 2008, 6, p. 12.

38 A characteristic feature of the arguments offered in resolutions is the tendency to make references to the outcomes of linguistic and extra-linguistic interpretation. See more: W. Piątek, *Wykładnia funkcjonalna w orzecznictwie sądów administracyjnych*, RPEiS 2012, 1, pp. 27–34.

39 Most of the resolutions have received considerable attention among glossarists. By way of example, 4 glosses have been drawn up to the Supreme Administrative Court resolution of 13.01.2014, ref. II GPS 3/13, ONSAiWSA 2014/4/55.

40 The reasons for this are multifaceted and go beyond the scope of the discussion offered in this study. In addition to the internal organisation of the Supreme Administrative Court, the sheer volume and complex nature of administrative law and increasingly sloppy legislation play a significant role. And there is no doubt that "various paths may lead from a legal provision to a resolution." See: Z. Tobor, *To do a great right, do a little wrong – rzecz o sędziowskich kłamstewkach*, „Przegląd Podatkowy" 2015, 6, p. 15.

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should be greater than that seen in civil proceedings.[41] Introducing pilot resolutions could provide an additional tool for effectively counteracting inconsistency and enhancing the quality of legal interpretation. Furthermore, these resolutions have the potential to expedite court proceedings, whether by simplifying the drafting of justifications or more frequently consolidating cases for joint consideration and resolution following the issuance of a resolution.

While the procedure for adopting pilot resolutions would mirror that applicable to abstract and specific resolutions, the conditions under which they would be issued would be different. In this sense, pilot resolutions would complement existing types of resolutions. The preconditions for their adoption would not compete, with but rather complement one another.

We do not view the planned regulations as a threat to judicial independence, as the Supreme Administrative Court's encroachments on the role of first-instance courts, or as a hindrance to the development of judicial practices. On the contrary – pilot resolutions could contribute to their advancement. One issue that we think requires serious consideration is broadening the range of entities authorised to initiate the resolution procedure to include the Supreme Administrative Court.

Finally, we would like to highlight – once again – the need to initiate the legislative work on the proposed legal regulation. The starting point for its preparation was the recognition of a genuine demand for a mechanism to standardise and unify judicial decisions issued in repetitive cases. Although it is impossible to predict precisely how pilot resolutions would function in judicial practice, it is by all means reasonable to give citizens the opportunity to receive consistent decisions in legally and factually identical cases and to offer courts a new procedural tool to pursue this goal effectively.

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