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State – law – justice in the works of Professor Andrzej Kabat[2]

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Abstract

This article is a contribution to the biography of Professor Andrzej Kabat – a prosecutor, legal counsel, judge of the highest courts of the Republic of Poland, and a long-time academic teacher. The study discusses selected jurisprudential achievements of Professor Andrzej Kabat from the period when he held the office of a judge of the Constitutional Tribunal and the Supreme Administrative Court. Moreover, there are also references to his research on the institution of questions of law submitted to the Constitutional Tribunal, which is regarded as pioneering in the science of law, despite the fundamental changes in the political system. What marks the discussed output of Professor Kabat is both the relevance of his ideas and the great significance for the practice of application of the law.

Keywords: Constitutional Tribunal, Supreme Administrative Court, Supreme Court, prosecution, prosecutor's office, criminal law, constitutional law, administrative law, administrative procedure, judicial decisions, legal studies, jurisprudence, academic teaching.

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18 June 2024 marked the 90th birthday of Professor Andrzej Kabat, an outstanding theoretician and practitioner of administrative, constitutional, and criminal law, as well as a public prosecutor, legal counsel employed in the legal department of the Head Office of the National Bank of Poland, and a judge of the highest courts of the Republic of Poland – the Constitutional Tribunal, the Supreme Court, and the Supreme Administrative Court. It is impossible to list all of Professor Andrzej Kabat's achievements in one breath. He was – and remains – a scholarly mentor to many generations of lawyers. He supervised a number of master's theses and doctoral dissertations, co-organised the Faculty of Law and Administration at the University of Warmia and Mazury in Olsztyn, where he lectured for many years, taught at the University of Warsaw, and has been employed at the College of Law of Kozminski University since 2010. For nearly a decade, he headed the Financial Chamber of the Supreme Administrative Court and served as Vice President of that court and as Director of the Adjudication Office. Professor Andrzej Kabat has for many years been a member of the editorial board of one of the most recognised and, at the same time, oldest Polish legal periodicals – Orzecznictwo Sądów Polskich. He has received high state awards for his achievements: the Knight's Cross of the Order of Polonia Restituta and the Commander's Cross of the Order of Polonia Restituta.

Andrzej Kabat was born on 18 June 1934 in Rogoźno Wielkopolskie. He grew up in an intellectual, patriotic family in the shadow of two twin totalitarian regimes: German Nazism, and then – after the so-called "liberation" – Soviet communism. As a child, he witnessed the military campaigns of the Wehrmacht troops and the Red Army's offensive operations taking place in Poland. He received his education in the east of the country. First in Przeworsk, where he spent the years of German occupation and where he later obtained his high school diploma (1952), then in Lublin, where he studied alongside his siblings. It was there, at the Faculty of Law of the Maria Curie-Skłodowska University, established in 1949, that he received his master's degree (1956). It was also there that, as a student, he had the opportunity to meet some of the most distinguished figures of Polish legal science, such as Professor Aleksander Wolter, Andrzej Burda, and Emanuel Iserzon.

His early professional steps led him into the field of criminal law. He completed his judicial and prosecutorial training, after which – with a brief interruption for a position at the Board of the Provincial National Council in Olsztyn (as part of the so-called compulsory work placement) – he began working as a prosecutor.

His practical experience led him to inquiries of a theoretical and legal nature. When attending a seminar run by Professor Jerzy Śliwowski at the Nicolaus Copernicus University in Toruń, he developed and defended (1964) a doctoral dissertation on the institution of recidivism in Polish criminal law. Until 1985, he was employed in prosecutor's offices at various levels. During this time, he published a number of scientific papers and glosses on substantive, procedural, and executive criminal law. He continued his research in the area of recidivism. He was interested in issues concerning conditional release from serving a sentence, the essence of punishment and the principles of punishment, similar offences, or the legislative activity of the Supreme Court in the field of criminal law in the broad sense.

The development of his professional and academic career occurred during the difficult era of the People's Republic of Poland. In 1985, he was appointed a judge of the Constitutional Tribunal, which was established after the establishment of the Supreme Administrative Court (1980), but still before the emergence of the institution of the Ombudsman (1987). All these bodies to some extent "escaped" the political domination of the People's Republic of Poland, thus succeeding in slightly expanding the sphere of human and civil rights stifled by the authoritarian system. Their mission, so to speak, was to alleviate the increasing social discontent, growing especially since the second half of the 1970s. The Constitutional Tribunal, based on Kelsen's concept of the hierarchical hierarchy of norms, was a kind of response of the state leaders to the crisis of governmental legitimacy which had been deepening in the decade of Edward Gierek's rule, and which culminated in the breakthrough of August 1980.[3] It is quite peculiar that the Constitutional Tribunal itself, which was never established in the free Second Polish Republic, was set up in the non-sovereign Polish People's Republic. Looking at its judicial activity from today's perspective, it is easy to see that it began the process of laying the foundations of many of the principles that were, to a significant degree, incorporated into the clause of the democratic state of law.

From 1986 onwards, the Tribunal's judicial practice shaped its basic functions. The most prominent of them was the protective function performed by eliminating hierarchical conflict of norms from the legal system at two key levels: protection of the legal system and its principles (protective function in the objective aspect) and protection of human and civil rights and freedoms (protective function in the subjective aspect).[4] Although this function could not fully develop due to the fact that the legislator did not confer a final character on the Tribunal's rulings (the

[3] Zob. H. Dębska, *Władza, symbol, prawo. Społeczne tworzenie Trybunału Konstytucyjnego*, Warszawa 2015, pp. 123–124.

[4] M. Dąbrowski, *Funkcje Trybunału Konstytucyjnego związane z hierarchiczną kontrolą konstytucyjności prawa*, Olsztyn 2015, p. 69.

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rulings could be dismissed by the Sejm after consideration), the number of restitution rulings gradually increased in subsequent years. The protective function was complemented by a signalling function, the importance of which, however, began to diminish over time. The signalling function consisted in inspiring or mobilising other state bodies to eliminate phenomena which were considered defective from the point of view of the legal system or which violated individual rights. In performing this function, the Tribunal informed the relevant authority of the occurrence of a gap in the law or a collision of norms.[5]

Andrzej Kabat contributed to the development of the functions and the shaping of the body of judicial decisions of the Constitutional Tribunal, acting as the chairman of the adjudicating panels and as the reporting judge, responsible for drafting their statements of reasons. In the ruling of 16 June 1986, ref. U 3/86,[6] the panel in which he was the reporting judge found the challenged provisions of the Regulation of the Council of Ministers of 28 October 1983 on Determining the Number of Retail Outlets Selling Alcoholic Beverages Containing More Than 4.5% Alcohol[7] to be inconsistent with the norms of the Act of 26 October 1982 on Upbringing in Sobriety and Counteracting Alcoholism.[8] The statement of reasons of the ruling included an in-depth discussion on the nature of the institution of the statutory authorisation (so-called delegation) of the Council of Ministers to issue executive acts in the form of regulations and the admissibility of the Council of Ministers's "transfers" of the power granted to it by the legislator to issue a law-making act in the form of a regulation (so-called sub-delegation) to another body. In the ruling of 5 November 1986, ref. U 5/86,[9] in turn, adopted by the full panel of judges, the Tribunal determined the incompatibility of the Regulation of the Council of Ministers of 16 September 1985 on the Detailed Principles and Procedures for Granting of Perpetual Usufruct of Land and Sale of State Property, the Costs and Settlements Related Thereto, and the Management of Sold Real Estate[10] with Article 67(2) of the Constitution of the Polish People's Republic and the relevant regulations of the Act of 29 April 1985 on Land Management and Expropriation of Real Estate.[11] The reporting judges, one of whom was Andrzej Kabat, interpreted the principle of equality of rights and the principle of interdependence of civil rights and obligations expressed in the constitutional norms, manifested e.g. in the relationship

5 *Ibidem*, pp. 86–87.
6 OTK ZU 1986, item 4.
7 Journal of Laws of the Republic of Poland of 1985, no. 10, item 37.
8 Journal of Laws of the Republic of Poland of 1984, no. 48, item 184.
9 OTK ZU 1986, item 1.
10 Journal of Laws of the Republic of Poland no. 47, item 239.
11 Journal of Laws of the Republic of Poland no. 22, item 99.

consisting in equal distribution of rights and obligations among citizens who are in a similar factual situation. It was particularly noteworthy that the so-called exclusivity of the law (decree-law) was emphasised as a principle applicable in the matter of the standardisation (determination) of the duties of citizens and other subjects of the law, i.e. exclusivity also in the sphere of mandatory obligations towards the state, both personal and material, as well as obligations in civil law relations between citizens and between citizens and the state to the extent not determined by contracts or agreements. A particularly interesting case is the Constitutional Tribunal's ruling of 26 September 1989, ref. K 3/89,[12] resulting from the Ombudsman's motion, in which the provision of Article 14(2) of the Act of 26 February 1982 on Prices[13] was found to be incompatible with Article 8(1) and Article 67(2) of the Constitution of the Polish People's Republic. The adjudicating panel once again touched upon the constitutional principle of equality in this ruling. The benchmark for the supervision of the constitutionality of the act in this case was the principle of substantive rule of law and the requirement, derived from it (as a derivative value), of the social stability of the rights guaranteed by laws and the security of citizens associated therewith. It seems reasonable to highlight the Tribunal's references to earlier judicial decisions, concerning the principle of citizens' trust in authorities and administration, which, in the legislative sphere, implies the obligation to shape the law in such a way as not to limit the freedom of citizens unless an important social or individual interest – protected under the Constitution – requires it, the obligation to grant rights to citizens with the simultaneous establishment of guarantees of these rights, the obligation to make the law consistent, clear, and comprehensible for citizens. The above claim remains fully valid and relevant. It constitutes an element of the protection of trust under the clause of the democratic state of law. The reporting judge in this case was also Andrzej Kabat, a judge of the Constitutional Tribunal.

During his time as a judge, he came up with the idea of a theoretical study of the institution of questions of law submitted to the Constitutional Tribunal, encouraged to explore it by Professor Alfons Klafkowski, President of the Constitutional Tribunal, and a fellow Constitutional Tribunal judge – Professor Kazimierz Działocha. The outcome of his research was his dissertation entitled "Instytucja pytań prawnych w Trybunale Konstytucyjnym" ["The Institution of Questions of Law in the Constitutional Tribunal"] (1989), which was the basis for obtaining the academic degree of doctor of legal sciences in the field of constitutional law at the Faculty of Law and Administration of the University of Wrocław (1991). His monograph

12 OTK ZU 1989, item 5.

13 Journal of Laws of the Republic of Poland of 1988, no. 16, item 112.

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was published in the year in which he ceased to serve as a judge of the Constitutional Tribunal. It was a pioneering conceptualisation of the institution of questions of law as one of the forms of review of the constitutionality of the law. It involved comprehensive research into the procedural and substantive legal issues of the institution of a question of law submitted to the Tribunal in the realities of a particular case. The author sought to resolve the basic problem of the answer to the question whether the normative formulation of the institution of questions of law allows the full use of this procedure in the implementation of the tasks of the Constitutional Tribunal.[14] The study abounded in bold, forward-thinking observations and research conclusions. It should be emphasised that the majority of them have been reflected in the legal order of the Third Polish Republic, which is confirmed – apart from the insightfulness and perceptiveness of the research intention of the author of the monograph – by the once-existing and now, unfortunately, disappearing dialogue between the science of law – in which general legal institutions are formed – and the lawmaker – whose task is to fine-tune detailed normative solutions. In his monograph, Andrzej Kabat criticised first and foremost the overly strict subject-matter limitations involving the exclusion of the Sejm's resolutions, normative acts of territorial bodies of state authority and administration, as well as international treaties from the oversight exercised by the Tribunal through the procedure of questions of law. He argued that the subject-mater jurisdiction of the Tribunal should encompass all normative acts. Therefore, *de lege ferenda*, consideration should be given to adopting regulations that would allow international treaties to serve as a basis for reviewing the legality of domestic legal acts. He convincingly demonstrated that depriving courts of the ability to submit questions of law was unwarranted. The baselessness of such a solution was evident, as it is the court adjudicating a specific case – not only the appellate court – that possesses full knowledge of the circumstances in which doubts regarding the compliance of a normative act with the Constitution arise. Excessive submission of questions of law could be counteracted by way of provisions introduced to allow for a preliminary review of the questions of law to be submitted to the Tribunal. According to the author, questions of law should be considered by the Tribunal in plenary sessions with the full panel present, which would have a positive impact on maintaining the coherence of constitutional judicial decisions. Furthermore, it would be advisable to advocate for a more comprehensive regulation of the binding force of the Tribunal's rulings, as well as to introduce provisions stipulating that the repeal of a normative act after proceedings have been initiated does not constitute grounds for discontinuing the case if the act under review regulates matters of human and

[14] A. Kabat, *Instytucja pytań prawnych w Trybunale Konstytucyjnym*, Warszawa 1989, pp. 5–6.

citizen rights, freedoms, or obligations. Anticipating future systemic solutions, he emphasized the need to define the temporal scope of questions of law and to extend the Tribunal's review to include "pre-constitutional" normative acts. Such a measure would address the issue of future cases being decided on the basis of normative acts that raise constitutional concerns.[15]

The above propositions were essentially upheld in a subsequent work on constitutional law, entitled "Pytania prawne do Trybunału Konstytucyjnego" ["Questions of Law to the Constitutional Tribunal"] (1995). The need to update the research was justified by the new (systemic and political transformation), but at the same time complex legal state, which in practice hindered the implementation of the institution of questions of law. On the date of publication of the aforementioned monograph, this institution functioned in the conditions of a dispersed, incoherent system of constitutional norms, as it consisted in total of the regulations of the constitutional act of 17 October 1992 on the mutual relations between the legislative and executive institutions of the Republic of Poland and on local self-government,[16] the upheld provisions of the Constitution of the Polish People's Republic of 1952 and the norms of the constitutional act of 23 April 1992 on the procedure for the preparation and adoption of the Constitution of the Republic of Poland.[17] Such legal conditions made it necessary to check whether the constitutional norms in force constituted a criterion guaranteeing a proper of the examined normative acts, i.e. a review which sufficiently took into account the norms and values resulting from the principles introduced by virtue of the 1989 amendment of the Constitution of the Polish People's Republic, as well as the changes in the normative state in this respect that followed in later years. More specifically, it was about the verification of the constitutionality of normative acts subject to the review of the Tribunal and the determination of the impact of the procedure of questions of law on the formation of a pro-constitutional interpretation of the law.[18] The analysis offered in the monograph did not entirely prove the claim that the existing system of constitutional norms allows for the full use of the procedure of questions of law in achieving the goals of the Constitutional Tribunal. Nevertheless, like its predecessor, the dissertation now under consideration also contained a number of insights and observations well ahead of the state of research at the time.

By way of a decision of the President of the Republic of Poland of 12 March 1992, Andrzej Kabat was appointed as a judge of the Supreme Administrative Court,

15 *Ibidem*, pp. 264–279.

16 Journal of Laws of the Republic of Poland of 1992, no. 84, item 426.

17 Journal of Laws of the Republic of Poland of 1992, no. 67, item 336.

18 A. Kabat, *Pytania prawne do Trybunału Konstytucyjnego*, Białystok 1995, pp. 10–11.

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which at the time was a single-instance court with regional branches and subject to judicial oversight by the Supreme Court. During this time, he participated in the work of a team led by the then-President of the Supreme Administrative Court, Professor Roman Hauser, to prepare a reform of judicial administrative review. The reform aimed to implement constitutional directives and incorporate a two--instance administrative court model into the legal system. At the Supreme Administrative Court, he was both a judge and simultaneously held managerial positions until the reform came into effect in 2004. This reform fulfilled the provisions of the 1997 Constitution of the Republic of Poland regarding the establishment of a two--instance administrative court system. On June 18, 2004, Andrzej Kabat retired.

While serving as a judge of the Supreme Administrative Court, Andrzej Kabat chaired judicial panels, frequently acted as a reporting judge, and in the case of resolutions issued by the Court, also served as a co-reporting judge. The Supreme Administrative Court judicial panels he was a member of issued numerous rulings significant not only for the specific individual cases being adjudicated, but also for shaping judicial practice and even establishing entire lines of jurisprudence. Some of these decisions were – and continue to be – cited as authoritative arguments in judicial reasoning. Among them is the judgement of the Supreme Administrative Court of 27 April 1992, ref. III SA 1838/91,[19] which held that an administrative body's response to a complaint filed with an administrative court cannot "supplement" the contested decision by including considerations and findings that, pursuant to Article 107 § 3 of the Act of 14 June 1960 – Code of Administrative Procedure[20] should be part of the decision's factual and legal justification. The same ruling explained that one of the most fundamental principles of administrative proceedings is the principle of objective truth. Consequently, any legally significant fact can be proven using all lawful evidence. Establishing, without a clear legal basis, that certain facts may only be proven with specifically prescribed evidence contravenes Article 75 of the Code of Administrative Procedure and should not be permitted. This judgement paved the way for a series of rulings concerning the interpretation of procedural issues. Another noteworthy decision in this regard is the judgement of 21 October 1992, ref. V SA 86/92,[21] where it was held that gross violation of the law under Article 156 § 1 item 2 of the Code of Administrative Procedure occurs when the content of a decision is in clear and evident contradiction with the law, and the nature of the violation renders the decision unacceptable as an act issued by a body of a state of law. The judgement also emphasised

19 CDACJ.

20 Journal of Laws of the Republic of Poland of 1960 no. 30, item 168 as amended.

21 CDACJ.

that an authority declaring a decision invalid due to gross legal violations must explicitly demonstrate which specific provision was violated and explain why the violation is considered gross. In the judgement of 11 May 1993, ref. V SA 2360--2364/92,[22] the panel ruled that when a customs authority fulfils its obligation under Article 77 § 4 of the Code of Administrative Procedure,[23] it must do so in time to allow the party, before the decision is issued, to take a stance on the facts known to the authority ex officio and express their opinion on the evidence and materials collected as well as on the demands presented (in line with Article 10 § 1 of the Code of Administrative Procedure). Among the body of rulings in the issuance of which he participated, decisions marked by dynamic and pro-constitutional interpretation stand out in particular. This approach involved applying constitutional norms, principles, and axiological assumptions alongside other normative acts to ensure the optimal realisation of human and citizen rights and obligations set forth in constitutional norms. For instance, in the judgement of 12 December 1992, ref. V SA 966/92,[24] it was held that when interpreting Chapter 3 of the Act of 23 December 1988 on Economic Activity,[25] focusing on the provisions concerning the issuance of permits to conduct economic activity and on the provisions of the Act of 28 December 1989 – Customs Law,[26] which regulate said matter, interpretations should always aim to implement Article 6 of the Constitution. If multiple interpretations are possible, those reflecting this constitutional provision to the fullest extent should be chosen. Another notable decision from this category is the judgement of 19 October 1993 (case no. V SA 250/93),[27] in which the Supreme Administrative Court ruled that the right to fair and just proceedings, due to its essential role in ensuring citizens' rights and freedoms, falls under the principle of the state of law (Article 1 of the Constitution[28]). In a state governed by the rule of law, not only must procedural norms be clear, precise, and consistent with other principles inherent in such a state, but they must also be applied correctly and strictly in practice – especially those that define the procedural rights of participants in proceedings. Another decision that is interesting in this context is the judgement of 18 July 1994, ref. V SA 535/94,[29] where the panel held that in light of the prerequisite for declaring an administrative

22 CDACJ.

23 According to this provision, facts known to the authority ex officio must be communicated to the party.

24 CDACJ.

25 Journal of Laws of the Republic of Poland no. 41, item 324 as amended.

26 Journal of Laws of the Republic of Poland no. 75, item 445 as amended.

27 CDACJ.

28 Maintained in force by the constitutional act of 17 October 1992 on the mutual relations between the legislative and executive institutions of the Republic of Poland and on local self-government.

29 CDACJ.

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decision invalid – as set forth in Article 156 § 1 item 2 of the Code of Administrative Procedure – requiring subjects of law to comply with norms they had no opportunity to learn about, and applying – in the event they are found to have violated these regulations – all the consequences of non-compliance contradicts the principle of a democratic state of law (Article 1 of the Constitution), especially when the conduct of such subjects of law was in keeping with the previous legal state of affairs they believed was still binding. The rulings in the issuance of which Andrzej Kabat was involved also reflect the importance of grammatical interpretation, in addition to the direct application of the Constitution. This is grounded in the recognition of the traditional view of legal interpretation and, more specifically, in the fact that language is the basis of communication, which means that linguistic considerations should play a primary role in the process of (re)constructing norms and interpreting legal texts. A good example is the judgement of 7 February 1994, ref. V SA 966/92.[30] It concluded with a statement that the content of the provision of Article 21(1) of the Act of 24 January 1991 on Combatants and Certain Persons Who Are the Victims of Wartime and Post-War Repression,[31] and in particular the phrase "has Polish citizenship or had it during the period of activity" means that the rights provided for in the Act are also granted to a person who has Polish citizenship even if they did not have such citizenship during the period of repression. In doing so, the panel explained that the cited provision was clearly formulated and contains unambiguous terms. Therefore, the attempt to limit its scope by referring to the preamble (which does not contain strictly normative content) is misguided, especially as the conclusions thus derived are clearly at odds with those arrived at through grammatical interpretation. Shortly before his retirement, Andrzej Kabat adjudicated under the Act of 30 August 2002 – Law on Proceedings Before Administrative Courts, which had just come into effect. Hence, the early judgements were essentially precedent-setting in nature, as they defined emerging approaches to interpreting the provisions of this normative act. Some legal issues, particularly those arising from the application in reformed administrative court proceedings of provisions governing last resort appeals in civil proceedings, were examined by two-instance administrative courts for the first time. In this context, one noteworthy judgement is that of 25 May 2004, ref. FSK 81/04,[32] where it was held that an allegation based on Article 174 item 2 of the Law on Proceedings Before Administrative Courts must be an allegation against a court judgement rather than a tax authority's decision. On the other hand, it was argued that Article 27 of the

30 CDACJ.

31 Journal of Laws of the Republic of Poland no. 17, item 75 as amended.

32 CDACJ.

Act of 11 May 1995 on the Supreme Administrative Court[33] may not serve as an independent basis for a last resort appeal under Article 174 item 2 of said Law. Similarly, in the judgement of 7 June 2004, ref. FSK 131/04,[34] the panel dealt with the admissibility of modifying the statutory grounds for last resort appeal (so-called second grounds for appeal) after the appeal had been filed, holding that Article 183 § 1 of the Law on Proceedings Before Administrative Courts permits referring to new justifications for the second grounds formulated in the appeal, but does not permit referring to new second grounds for appeal with justification. In another judgement, dated 5 May 2004, ref. FSK 5/04,[35] the panel found that for a claim based on Article 174 item 2 to be justified, it must be shown that the procedural defect shaped or affected the content of the challenged ruling. All of the judgements cited above have become well-established in the judicial practice of administrative courts.

As already mentioned, Andrzej Kabat participated in the resolution-making activities of the Supreme Administrative Court. The reasoning in the resolutions to which he contributed as both the reporting judge and a co-reporting judge is marked by brevity of form, precision of content, and a notably well-structured argumentation. They clearly demonstrate, especially when viewed from today's perspective, that complex legal issues can be presented in a manner that is both very clear and synthetic. The resolutions in question were issued prior to the reform of administrative courts, in panels of five judges (for resolutions prompted by questions of law) and seven judges (for resolutions adopted at the request of the adjudicating panel, submitted to the president of the Supreme Administrative Court due to significant legal doubts arising in a case). They addressed a wide variety of issues. These include resolutions clarifying legal doubts that arose in the broadly defined area of administrative procedures (including proceedings before administrative courts, enforcement proceedings in administrative matters, and tax proceedings) as well as in the realm of tax law. The first category is where the resolution of 8 July 1997, ref. FPS 5/97,[36] belongs and according to which a debtor has the right to appeal to a tax chamber against a decision by a branch of the Social Insurance Institution issued under Article 34(2) of the Act of 17 June 1966, on Enforcement Proceedings in Administration.[37] In another resolution, dated 4 May 1998, ref. FPS 2/98,[38] the Supreme Administrative Court determined that the provision of Article 139 of the Code of Administrative Procedure does not apply when a first-instance

33 Journal of Laws of the Republic of Poland no. 74, item 368 as amended.
34 CDACJ.
35 CDACJ.
36 CDACJ.
37 Journal of Laws of the Republic of Poland of 1991, no. 36, item 161 as amended.
38 CDACJ.

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authority examines a case following a reverse and remand decision issued by an appellate authority pursuant to Article 138(2) of the Code of Administrative Procedure. In light of the resolution of 27 June 2000, ref. FPS 12/99,[39] a final decision issued pursuant to Article 155 of the Code of Administrative Procedure, amending a decision previously appealed to the Supreme Administrative Court, may be considered a decision issued "within the boundaries of the case" within the meaning of Article 29 of the Act of May 11 on the Supreme Administrative Court.[40] In the resolution of 22 April 2002, ref. FPS 5/02,[41] in turn, the panel determined that the extension of the deadline for the refund of a value-added tax difference under Article 21(6), second sentence, of the Act of 8 January 1993 on on the Tax on Goods and Services and on the Excise Tax[42] occurs as part of verification activities in the form of a decision which, as an act resolving the essence of the subject matter, is subject to appeal to the Supreme Administrative Court and must include factual and legal reasoning (pursuant to Article 217 § 2 of the Tax Ordinance Act). Moreover, according to the resolution of 15 May 2000, ref. OPS 1/00,[43] the provision of Article 40(1) of the Act of 11 May 1995 on the Supreme Administrative Court does not serves as a basis for withholding the implementation of a resolution of a municipal council, which constitutes a regulation that is generally binding on the territory of a municipality (municipal regulations), appealed under Article 101 of the Act of 8 March 1990 on municipal government.[44] When it comes to tax law, a resolution that deserves special attention is the resolution of 28 December 1995, ref. VI SA 21/95,[45] where it was determined that the buildings and land owned by an entity conducting business activity may be considered as facilities listed in Article 5(1)(2) and (5)(a) of the Act of 12 January 1991 on Local Taxes and Fees[46] also when they were not used for said business activity in the tax year. Another significant resolution was that of 29 November1999, ref. FPK 4/99,[47] where the panel held that an underground mine working is subject to property tax under Article 3(1)(2) of the abovementioned Act of 12 January 1991 on Local Taxes and Fees. The resolution of 1 July 2002, ref. FPK 2/02,[48] was concluded by a claim that whether a summer house qualifies as a residential building under Article 5(1)(1) of the Act on Local

39 CDACJ.
40 Journal of Laws of the Republic of Poland no. 74, item 368 as amended.
41 CDACJ.
42 Journal of Laws of the Republic of Poland no. 11, item 50 as amended.
43 CDACJ.
44 Journal of Laws of the Republic of Poland of 1996, no. 13, item 74 as amended.
45 CDACJ.
46 Journal of Laws of the Republic of Poland no. 9, item 31 as amended.
47 CDACJ.
48 CDACJ.

Taxes and Fees depends on whether it serves to meet the basic housing needs of its owner and their close relatives. It should be emphasised that, in addition to the qualities already mentioned, the above resolutions were always adopted taking into account the right to a fair trial, the right to due process, and the fullest possible realisation of human and civil rights enshrined in the constitutional order (within the boundaries marked by the normative rights granted).

Despite his numerous duties resulting from his position at the Supreme Administrative Court, Andrzej Kabat has remained – and continues to remain – an active teacher. He also continues to conduct scientific research. While working at the Supreme Administrative Court, he continued to pursue his research interests from his time as a judge of the Constitutional Tribunal; he published a number of texts in scientific periodicals and collective works dealing with the problems of the application of the Constitution in judicial-administrative rulings and with the questions of law and motions submitted by the Supreme Administrative Court to the Constitutional Tribunal. His output contains also an independent research current covering procedural administrative law. This category of publications includes studies on court-administrative and administrative procedures such as, among others, the legislative activity of the Supreme Administrative Court, the impact of the Supreme Administrative Court's judicial decisions on the uniformity of judicial practice, the institution of self-revision, the jurisdiction of administrative courts, the procedural position of the Ombudsman in proceedings before administrative courts, but also the interpretation of individual provisions of tax law in court rulings or administrative rulings subject to appeals to an administrative court. Particularly noteworthy are the commentaries to the following laws: the Law on Proceedings before Administrative Courts and the Tax Ordinance, co-authored by Professor Andrzej Kabat.[49] They are regularly updated and belong to the canon of legal literature on administrative law. They continue to remain valuable sources of knowledge to many legal theorists and practitioners. This is evidenced by the fact that these publications are cited frequently both in legal literature and in judicial decisions. Thus, Professor Andrzej Kabat's contributions have become firmly embedded in the achievements of the most distinguished Polish legal scholars.

[49] The latest editions of these studies: B. Dauter, A. Kabat, M. Niezgódka-Medek, *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, 9th edition, Wolters Kluwer Warszawa 2024; S. Babiarz, B.Dauter, W. Gurba, R. Hauser, A. Kabat, M. Niezgódka-Medek, A. Olesińska, J. Rudowski, *Ordynacja podatkowa. Komentarz*, 12th edition, Warszawa 2024.

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