

BARTOSZ MAJCHRZAK*

The “International” Rule of Law in the Polish Administrative Court’s Jurisprudence

- **ABSTRACT:** *This study analyses the jurisprudence of Polish administrative courts, referring to the concept of the “international” rule of law, and thus, to the concept interpreted by the courts based on sources of law binding on Poland adopted at the supranational level (international agreements and law created by the European Union). The following jurisprudence issues emerge: 1) international and EU legal bases for the protection of the rule of law and the resulting meaning of this concept; 2) international versus national approach to the rule of law; 3) the rule of law – principle or value; 4) normative sources (national and supranational) of the general obligation of administrative courts to implement the international rule of law; 5) the order to implement it as an element determining the jurisdiction of administrative courts and the pattern of control exercised by these courts. In this context, it was stated, inter alia, that according to the jurisprudence of administrative courts, the ‘international’ rule of law primarily implies effective judicial protection of individual rights, guaranteed by independent courts, impartial and irremovable judges who have been duly appointed.*
- **KEYWORDS:** rule of law, Polish administrative courts, control over the public administration, effective judicial protection, independence of the judiciary

1. Introduction

The “international” rule of law should first be examined through the prism of the constitutional and statutory cognition of Polish administrative courts. Pursuant to the first sentence of Article 184 of the Constitution of the Republic of Poland

* Associate Professor, Department of Administrative Science and Environmental Protection, Faculty of Law and Administration, Cardinal Stefan Wyszyński University in Warsaw, Poland, b.majchrzak@uksw.edu.pl, ORCID: 0000-0001-5336-6717.



of 2 April 1997¹ (hereinafter the ‘Constitution’, ‘Fundamental Law’), the Supreme Administrative Court (hereinafter the ‘SAC’) and other administrative courts shall exercise, to the extent specified by statute, control over the performance of public administration. Pursuant to Article 1.2 of the Act of 25 July 2002, Law on the Organisation of Administrative Courts² (hereinafter the ‘LOAC’), this control is exercised – in principle – in terms of compliance with the law. Simultaneously, based on the Act of 30 August 2002, Law on the Proceedings before Administrative Courts³ (hereinafter the ‘LPAC’, in particular Article 3.2) and specific acts, there was a positive enumeration of categories of behaviour of public administration bodies (including types of their forms of operation), subject to appeal to the Voivodship Administrative Court⁴ (hereinafter the ‘VAC’) as having jurisdiction in all administrative court cases, except those expressly reserved for the SAC (Article 13.1 LPAC). In the context of the provisions of these acts, it can be stated that the control of legality conducted by administrative courts considers various types of public administration activities, from acts of applying the law to acts of enacting it, from individual acts to general acts.⁵

Considering the aforementioned, the essence and purpose of proceedings before administrative courts is to formulate the “relative phrase,” that is, a statement qualifying a specific behaviour of an administrative body (the challenged act or action, or inaction or protracted proceedings) as compliant or non-compliant with a given legal norm.⁶ To characterise these “phrases,” the reference and complementary norms are essential.⁷ The provisions included in the reference norm form the basis for the operation of the administrative court as a control authority, which includes provisions on the jurisdiction and competence of the administrative court (including criteria, premises, and conditions for its judicial activity), types of judgements, and legal consequences drawn in relation to challenged acts or actions (inaction or lengthiness of proceedings). The provisions that constitute the complementary norm, usually numerous and varied, refer to actions, inactions, or protracted proceedings by public administrative bodies subject to administrative court control.⁸ Among the elements of the reference norm, there are competence behaviours which are tantamount to using the competencies granted to public administration bodies.⁹ Therefore, the wording of the “relative phrase” also requires determining the scope and interpreting the substantive, procedural and systemic provisions that constitute the legal basis

1 Journal of Laws No. 78, item 483, as amended.

2 Journal of Laws of 2022, item 2492, as amended.

3 Journal of Laws of 2023, item 1634, as amended.

4 Majchrzak, 2022, p. 46.

5 Drachal, Jagielski and Stankiewicz, 2015, p. 50.

6 Woś, 2004, p. 263.

7 Wróblewski, 1969, pp. 5–7.

8 Borkowski, 2020, p. 68; Kamiński, 2011a, p. 23.

9 Cf. Wróblewski, 1969, p. 6.

for the contested competence behaviour of the administrative authority. They create the complementary norm, which is a model of legal operation of public administration, used by the administrative court in its control activity.¹⁰

In addition, it is noteworthy that regarding the elements of the “relative phrase” the above findings require some modification and supplementation in the context of the activities of the SAC. In principle, it is empowered to hear appeals against decisions of the VACs. Only exceptionally – if a special provision so provides – it may be competent in the first instance, to directly control the activities of administrative bodies¹¹ (and then the mechanism of “relative phrase” will be fully adequate). When the SAC acts as a court of second instance, the “reference norm” includes provisions on its jurisdiction and competence, types of judgements and legal consequences determined in relation to the contested judgements or orders of the VAC. The “complementary norm” represents two norms: 1) a norm concerning the controlled decision of the lower court, and thus the legal grounds for its issuance; 2) a norm describing the behaviour of a public administration body subject to the control of the VAC. Such a concept of the “complementary norm” results from the fact that the condition for the SAC’s assessment of the correctness of a lower court’s decision is, *inter alia*, the answer to the question whether the latter court correctly assessed the legality of the conduct of the public administration body. Therefore, the patterns of control exercised by the SAC result from the legal basis of operation not only of the lower court but also of the public administration body, whose behaviour was previously challenged and verified by the VAC.

The statement regarding the “relative phrase” assumes that the elements and the meaning of the reference and complementary norms based on which the administrative court (Supreme or Voivodship) classifies the behaviour are sufficiently defined to express such assessment.¹² Potentially, in relation to both of these norms, there may be a need to reconstruct them considering the “international” rule of law. For the purposes of this study, it is assumed that the term has the “international” attribute if the administrative court determines its meaning in the context of interpreting the provisions contained in the sources of law binding on Poland but adopted at the supranational level, in particular in international agreements or law created by international organisations, in particular the European Union (EU). Simultaneously, when analysing the jurisprudence of administrative courts, terms that are synonymous with the one indicated in the title of the article and used in Polish legal language to express the concept of “rule of law” or its essential elements, that is, “a state ruled by law”, “a democratic state of law”, “lawfulness” or “legalism” are considered.

10 Cf. Kamiński, 2011a, p. 23

11 Cf. Art. 15.1, LPAC.

12 Wróblewski, 1969, p. 4.

The concept of the “international” rule of law appeared in several dozen judgements of administrative courts. Their objective scope included the control of: 1) resolutions of the National Council of the Judiciary concerning the submission (non-submission) to the President of the Republic of Poland of applications for appointment to the office of a Supreme Court judge;¹³ 2) decisions in tax matters (tax on goods and services (VAT)¹⁴ and real estate tax), in particular in the context of the existence of a prerequisite for the invalidity of administrative court proceedings in the form of an unlawful composition of the court (Article 183.2 Point 4 LPAC);¹⁵ 3) the order of the President of the District Court regarding the immediate suspension of a judge in his duties;¹⁶ 4) an act of the President of the Republic of Poland stating the date of retirement of a Supreme Court judge.¹⁷ In addition, the aforementioned concept was referred to in dissenting opinions from the judgements of administrative courts, the authors of which raised doubts about the correctness of the composition of the court examining a given case, claiming simultaneously that steps should have been taken to remove these doubts before deciding on the merits of the case.¹⁸

-
- 13 Judgements of the SAC: of May 6, 2021, case ref. II GOK 2/18 (<https://bit.ly/43VVOGP>); of May 6, 2021, case ref. II GOK 3/18 (<https://bit.ly/3N5LciD>); of May 6, 2021, case ref. II GOK 5/18 (<https://bit.ly/40Bh9T4>); of May 6, 2021, case ref. II GOK 6/18 (<https://bit.ly/40z5gwT>); of May 6, 2021, case ref. II GOK 7/18 (<https://bit.ly/3L0Rzkl>); of May 13, 2021, case ref. II GOK 4/18 (<https://bit.ly/3ApBD6z>); of September 21, 2021, case ref. II GOK 8/18 (<https://bit.ly/3N9gKUQ>); of September 21, 2021, case ref. II GOK 10/18 (<https://bit.ly/3LqKw6g>); of September 21, 2021, case ref. II GOK 11/18 (<https://bit.ly/3LatGY2>); of September 21, 2021, case ref. II GOK 12/18 (<https://bit.ly/3oCGnTE>); of September 21, 2021, case ref. II GOK 13/18 (<https://bit.ly/3H9HuRe>); of September 21, 2021, case ref. II GOK 14/18 (<https://bit.ly/40tvLxi>); of October 11, 2021, case ref. II GOK 9/18 (<https://bit.ly/3mXQ26K>); of October 11, 2021, case ref. II GOK 15/18 (<https://bit.ly/41RYIKH>); of October 11, 2021, case ref. II GOK 16/18 (<https://bit.ly/3LpwfGG>); of October 11, 2021, case ref. II GOK 17/18 (<https://bit.ly/40DH24u>); of October 11, 2021, case ref. II GOK 18/18 (<https://bit.ly/40F6ZAB>); of October 11, 2021, case ref. II GOK 19/18 (<https://bit.ly/41Qgdv1>); of October 11, 2021, case ref. II GOK 20/18 (<https://bit.ly/3N7J4H2>) (Accessed: 24 May 2023).
- 14 Judgements of the VAC in Wrocław: of February 23, 2023, case ref. I SA/Wr 342/21 (<https://bit.ly/3Ap43xv>); of February 23, 2023, case ref. I SA/Wr 500/22 (<https://bit.ly/3ApeXTT>) (Accessed: 24 May 2023).
- 15 Judgements of the SAC: of November 4, 2021, case ref. III FSK 3626/21 (<https://bit.ly/3H9kemM>); of November 4, 2021, case ref. III FSK 4104/21 (<https://bit.ly/41VV82c>) (Accessed: 24 May 2023).
- 16 Judgement of the VAC in Gdansk of December 15, 2022, case ref. III SA/Gd 1173/21 (<https://bit.ly/3VhSCL3>) (Accessed: 24 May 2023).
- 17 Judgement of the VAC in Warsaw of September 29, 2020, case ref. VI SA/Wa 309/20 (<https://bit.ly/3Ha4lfy>) (Accessed: 24 May 2023).
- 18 Dissenting opinions to the Judgements of the SAC: of December 6, 2019, case ref. I GSK 172/18 (<https://bit.ly/3L3zUZf>); of December 6, 2019, case ref. I GSK 713/19 (<https://bit.ly/3n5qJQb>); of December 6, 2019, case ref. I GSK 1504/18 (<https://bit.ly/3Hcodia>); of December 6, 2019, case ref. I GSK 1512/18 (<https://bit.ly/3ozqZr7>); dissenting opinions to the Judgements of the VAC in Warsaw: of February 19, 2020, case ref. V SA/Wa 1595/19 (<https://bit.ly/3oGiquV>); of February 19, 2020, case ref. V SA/Wa 1481/19 (<https://bit.ly/3Nhjzc>); of February 19, 2020, case ref. V SA/Wa 1353/19 (<https://bit.ly/43ZMfXh>); of February 13, 2020, case ref. V SA/Wa 1329/19 (<https://bit.ly/3n0fwR8>); of January 29, 2020, case ref. V SA/Wa 1556/19 (<https://bit.ly/3Hc6pDH>) (Accessed: 24 May 2023).

Against the background of the above research field, the primary purpose of the considerations is to characterise the contexts in which the judicature of the administrative court refers to the concept of the “international” rule of law. Initially, the directions of analysis are assumed, covering such issues as: 1) international and EU legal bases for the protection of the rule of law and the resulting meaning of this concept; 2) international versus national approach to the rule of law; 3) the rule of law – principle or value;¹⁹ 4) normative sources (national and supranational²⁰) of the general obligation of administrative courts to implement an international value or principle of rule of law; 5) the requirement to implement the “international” rule of law as an element of the reference and complementary norm. Administrative courts have addressed all these issues in their judgements, albeit with varying degrees of intensity; some of them were referred to extensively and others only briefly. Therefore, it makes it difficult to answer the question about the formation of the concept of the “international” rule of law in the Polish administrative courts’ jurisprudence.

2. Legal basis and meaning of the “international” rule of law

Administrative court jurisprudence, in particular of the SAC, primarily emphasises the importance of Article 2 of the Treaty on European Union (TEU)²¹ as a source of value of the rule of law. In at least a dozen judgements, this provision is invoked in close connection with Article 19.1 of the TEU, which specifies this value, combining it with the principle of effective judicial protection of rights. According to the administrative courts referring in this respect to the views of the Court of Justice of the European Union (CJEU), the indicated general principle of EU law results from the constitutional traditions common to the Member States and was expressed in Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), adopted in Rome on 14 November 1950,²² and further confirmed in Article 47 of the Charter of Fundamental Rights of the European Union (CFREU).²³ Against this background, the “international” rule of law is reduced to ensuring that the administration of justice in the Member States and the authorities exercising it as “courts” within the meaning of EU or ECHR law – meet the requirements of effective judicial protection. One condition is maintaining the guarantee of judicial independence and impartiality. Simultaneously, the SAC identified two aspects of independence and impartiality:

19 Cf. Sulyok, 2021, p. 213.

20 Cf. Górka and Mik, 2005, pp. 17–18; Nollkaemper, 2011, pp. 11–13.

21 Official Journal of the European Union of June 7, 2016, C 202, pp. 1–388.

22 [Online]. Available at: <https://bit.ly/3N8tyuD> (Accessed: 25 May 2023); Journal of Laws of 1993, No. 61, item 284.

23 Official Journal of the European Union of June 7, 2016, C 202, pp. 389–405.

external and internal. The first implies that a given body performs its judicial tasks fully autonomously without being subject to any hierarchy or subordinate to anyone, and without receiving orders or guidelines from any source. The internal aspect of independence is functionally related to impartiality and concerns the equal distance towards the parties to the dispute and their interests, requires observation of the principle of objectivity, and prohibits any subjective interest in resolving the dispute, requiring only strict application of the law. Such conditions are guaranteed by the appropriate rules, in particular regarding the composition of the judicial body, the appointment of its members, terms of office, dismissal, and the reasons for exclusion of judges from hearing the case – the rules allowing exclusion, in the opinion of legal entities (individuals), any reasonable doubt as to the independence of this body from external factors, and neutrality with regard to the interests it faces.²⁴

Specifying the conditions of the “international” rule of law in the context of judicial independence, it is necessary for judges adjudicating in courts to have been duly appointed, based on national provisions consistent with the constitutional, convention and EU standard in force in a given state. However, it is noteworthy that in the opinion of the SAC, the correctness of this appointment ‘is not the result of defining the concept of a judge in national law, but of the actual existence of a judge’s key feature being their independence.’ Therefore, although the procedure preceding the appointment of a judge could be flawed, it does not exclude the possibility that an administrative court judge or a deputy judge meets the standards of independence, impartiality and autonomy, and thus, is a European judge within the meaning of Article 2 and 19.1 of the TEU and Article 6.1 of the TEU in conjunction with Article 47 of the CFREU and Article 6.1 of the ECHR. The condition for such an assessment is conducting the *Ástráðsson* test²⁵ and addressing the following three questions: 1) whether there was a manifest breach of the domestic law; 2) whether the breaches of the domestic law pertained to a fundamental rule of the procedure for appointing judges; 3) whether allegations were effectively reviewed and redressed by the domestic courts.²⁶

With reference to the above formulation of the requirements of the “international” rule of law, the administrative court (again referring to Article 19.1 in conjunction with Article 2 of the TEU) also draws attention to the special aspect of the external independence of judges in the form of their irremovability.

24 Judgements of the SAC: case ref. II GOK 2/18; case ref. II GOK 3/18; case ref. II GOK 4/18; case ref. II GOK 5/18; case ref. II GOK 6/18; case ref. II GOK 7/18; case ref. II GOK 8/18; case ref. II GOK 9/18; case ref. II GOK 10/18; case ref. II GOK 11/18; case ref. II GOK 12/18; case ref. II GOK 13/18; case ref. II GOK 14/18; case ref. II GOK 15/18; case ref. II GOK 16/18; case ref. II GOK 17/18; case ref. II GOK 18/18; case ref. II GOK 19/18; case ref. II GOK 20/18; similarly, Judgement of the VAC in Warsaw, case ref. VI SA/Wa 309/20.

25 Judgement of the European Court of Human Rights of December 1, 2020, case ref. 26374/18 (<https://bit.ly/445kxbU>) (Accessed: 25 May 2023).

26 Judgements of the SAC: case ref. III FSK 3626/21; case ref. III FSK 4104/21.

It assumes holding office until reaching the mandatory retirement age or the expiry of the term of office for a given function, if it is temporary. The principle of irremovability is not absolute; it may be subject to exceptions provided that it is justified by overriding and legally justified reasons. In particular, a judge may be dismissed, subject to due process, if they are unable to continue performing their functions because of incapacity or gross misconduct. Simultaneously, the requirement of independence presupposes that the provisions governing the possibility of removal from office provide the necessary guarantees for judges to avoid the risk of such a system being used for the political control of court decisions.²⁷

On similar legal grounds, Articles 2 and 19 of the TEU, Articles 6 and 13 of the ECHR, Article 47 of the CFREU, supplemented with a clear indication of Article 4.3 of the TEU, the VAC in Wroclaw derives a specific obligation of administrative courts implemented in relation to national administration bodies. Legal certainty, equality before law and the rule of law imply that an administrative body may be obliged to reconsider a case already concluded, with an administrative decision having become final because of the exhaustion of legal remedies under national law. The reason for applying this extraordinary procedure (the resumption of administrative proceedings) is to consider the interpretation of a provision of EU law relevant to the case later made by the CJEU.²⁸ Therefore, according to the administrative court, one of the conditions for the implementation of the “international” rule of law is that the national court or tax authority ensures the effectiveness and uniformity of the application of EU law.

In another judgement, the VAC in Wroclaw, pursuant to Article 2 of the TEU in conjunction with Articles 41 and 47 of the CFREU, referred to the procedural fairness norm, the obligation to respect thereof in all proceedings in individual cases resulting from the democratic rule of law expressed, among others, in Article 2 of the TEU. In the court’s opinion, an element of procedural fairness is executed by an exhaustive justification of the decision which guarantees the individual the right to effectively challenge it and a proper instance review under the principle of two-instance proceedings and judicial review. The justification should include a clear disclosure of the reasons for the decision; provide complete information as to what elements determine the specific shape of the party’s legal situation; and thus enable the verification of the administrative body’s reasoning by the party, the higher-instance authority, and the administrative court. Simultaneously, defective justification of an administrative decision violates the right to defence, the right to an effective remedy, including the right to court access.²⁹

27 Judgement of the VAC in Warsaw, case ref. VI SA/Wa 309/20.

28 Judgement of the VAC in Wroclaw, case ref. I SA/Wr 500/22.

29 Judgement of the VAC in Wroclaw, case ref. I SA/Wr 342/21.

3. “International” versus “national” view of the rule of law

Views relating to the relationship between “international” and “national” understanding of the rule of law are rarely expressed by administrative courts. Moreover, they do not refer to this concept in its entirety, but only to one of its elements: the right to court and effective judicial protection. The opinion of the SAC concerns the value legally protected both in the Polish national legal order (Article 45.1 of the Constitution³⁰) and in the international order (Articles 6 and 13 of the ECHR) and the EU (Article 19 of the TEU and Article 47 of the CFREU). Therefore, in this respect, ‘it is impossible to perceive the existence of (any) contradiction, in particular an irremovable or even hypothetical one.’ Pursuant to Article 45.1 in conjunction with Article 77 of the Constitution, the right to a competent, independent, and impartial court is understood as: 1) the right of court access, that is, to begin a procedure before a court (independent and impartial); 2) the right to properly structured court proceedings, consistent with the requirements of fairness and transparency; 3) the right to a court judgement, that is, the right to obtain a binding court decision; and 4) the right to the appropriate shaping of the system and the position of the bodies examining cases. Article 78 of the Fundamental Law, which states that each party has the right to appeal against judgements and decisions issued in the first instance, is logically closely related to these elements. Therefore, such a remedy must be generally available and, above all, effective in the sense that it creates a real possibility – even a guarantee – of assessing the issued decision and its annulment (cassation) or change (revision). Furthermore, regarding the aforementioned fourth element of the right to court, the SAC stated that it included a court characterised by constitutional features, that is, independence. This implies that the executive and legislative authorities have no influence on the adjudication process, independence, or impartiality of judges in either internal or external aspects. The latter requires that the result of the assessment of adjudication conditions by an external observer and his/her (subjective) conviction of the independence and impartiality of the judge drawn therefrom be considered.³¹

In the opinion of the SAC, the right to court and effective judicial protection are shaped and understood similarly by the European Court of Human Rights pursuant to Article 6 of the ECHR and in EU law, in particular, since the

30 Pursuant to this provision: ‘Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.’

31 Judgements of the SAC: case ref. II GOK 2/18; case ref. II GOK 3/18; case ref. II GOK 4/18; case ref. II GOK 5/18; case ref. II GOK 6/18; case ref. II GOK 7/18; case ref. II GOK 8/18; case ref. II GOK 9/18; case ref. II GOK 10/18; case ref. II GOK 11/18; case ref. II GOK 12/18; case ref. II GOK 13/18; case ref. II GOK 14/18; case ref. II GOK 15/18; case ref. II GOK 16/18; case ref. II GOK 17/18; case ref. II GOK 18/18; case ref. II GOK 19/18; case ref. II GOK 20/18.

principle of effective judicial protection of rights (Article 19.1 of the TEU) as a general principle of EU law results primarily from the constitutional traditions common to Member States. After all, the source of its protection is justified by the same axiological foundations which must be considered evident considering the assumptions of modern civilisation culture and the legal culture of democratic states.³²

4. The “international” rule of law – principle or value

In the court-administrative jurisprudence, the term “rule of law,” in its “international” context, is associated both with the concept of principle (“the rule of law principle,”³³ “principle of a democratic state of law”³⁴), and value (“the value of the state of law,”³⁵ “the value of the rule of law”³⁶). Therefore, a question may be asked as to which concept is appropriate from the perspective of the terminology conventions adopted by the administrative courts. In the jurisprudence to date, the “principle of law” has often been understood as a general normative directive of due conduct, qualified as a consequence of distinguishing the principles and rules. According to the SAC, principles of law are an inseparable element of every legal system and constitute a content bond in the system of legal norms; that is, they serve to organise a set of norms for which an appropriate axiological justification can be found in the system of values.³⁷ Moreover, the Court claims that a legal principle is a legal norm that requires or prohibits the implementation of a specific value.³⁸ Thus, in the opinion of the administrative courts, there is a close relationship between legal principles and values. The former contains a specific pattern of behaviour based on the implementation of a certain positive – from the legislature’s perspective – state of affairs (and therefore, values). However, unlike rules (which are also referred to by administrative courts), the principles are norms commanding that something be realised to the highest degree that is actually and legally possible (optimisation commands, which can be fulfilled to different degrees).³⁹

32 Ibid.

33 E.g. Judgement of the VAC in Warsaw, case ref. VI SA/Wa 309/20.

34 E.g. Judgement of the VAC in Wrocław, case ref. I SA/Wr 342/21.

35 E.g. Judgement of the SAC, case ref. II GOK 2/18.

36 E.g. Judgement of the SAC, case ref. III FSK 4104/21.

37 E.g. Judgements of the SAC: of May 26, 2022, case ref. III OSK 1291/21 (<https://bit.ly/3oNPaSH>); of January 11, 2022, case ref. III OSK 929/21 (<https://bit.ly/3HbG5cQ>) (Accessed: 28 June 2023).

38 E.g. Judgements of the VAC in: Poznań of December 2, 2021, case ref. II SA/Po 236/21 (<https://bit.ly/3Avd7Rq>); Cracow of January 26, 2021, case ref. III SA/Kr 966/20 (<https://bit.ly/3LaD9hF>) (Accessed: 28 June 2023).

39 Cf. Alexy, 2000, p. 295.

Considering the aforementioned, the following conclusion is correct: if we reasonably assume that the rule of law in general or in its individual manifestations (e.g. independence of judges, independence of the judiciary, availability of judicial exercise of rights, legal legitimacy of actions taken) is a certain state of affairs positively qualified by the legislature (national, international, EU), it can appear both as a value in law and as an element of the legal principle. Thus, referring only to the catalogue of future, present or past “states of affairs” approved by the legislature, administrative courts should use the concept of ‘the value of state of law’ or ‘the value of the rule of law.’ If one wished to emphasise the imperative of striving for the realisation of these states, then it is appropriate to refer to “the rule of law principle” or “the principle of state of law,” which – according to R. McCorquodale – does not refer to the concept of “all-or-nothing,” but is relative. Its observance is measured by the degree to which its addressees comply with its individual elements, with the aim of fulfilling them all the time,⁴⁰ thus striving for a specific *optimum*.

5. General sources of the obligation of administrative courts to implement the “international” rule of law

The authorisation and obligation of administrative courts to implement the “international” rule of law results from the provisions of national law,⁴¹ preceded by the Constitution. This circumstance was also clearly indicated in the jurisprudence of administrative courts, in particular by referring to the constitutional concept of sources of generally applicable law (which include, *inter alia* – ratified international agreements that are also binding on administrative courts). According to the SAC, by establishing the integration clause (Article 90.1 of the Constitution⁴²)⁴³ and Article 91 of the Constitution, the constitutional legislature clearly and unequivocally sought to define the relationship of national law, including its openness and favourable attitude, to the systems of international and EU law. This was done by constitutionalising the *pacta sunt servanda* principle (Article 9 of the Constitution⁴⁴) which is imperative under international law; the principle (order) of pro-contractual and pro-EU interpretations of law; the principle of direct application and the primacy of an international agreement ratified with prior consent expressed in a statute (Articles 91.1 and 91.2 of the Constitution); and the

⁴⁰ McCorquodale, 2016, p. 304.

⁴¹ Cf. Nollkaemper, 2011, p. 44.

⁴² Pursuant to this provision: ‘The Republic of Poland may, by virtue of international agreements, delegate to an international organisation or international institution the competence of organs of State authority in relation to certain matters.’

⁴³ Cf. e.g. Balicki, 2022, p. 123.

⁴⁴ Pursuant to this provision: ‘The Republic of Poland shall respect international law binding upon it.’

principle of direct effect and priority of application of EU law (Article 91.3 of the Constitution⁴⁵).⁴⁶

In the opinion of the SAC, a rational constitutional legislature had to consider (and has considered) the dynamics, continuous “creating” and openness of the EU legal order, and the special position of the case law of the CJEU, which is the source of law and the validity of the fundamental principles of EU law. In this context, the Court also noted the exclusive and binding jurisdiction of the CJEU in disputes over the content and validity of EU law, justified by the need to ensure its effectiveness of EU law and uniformity of application. The constitutional legislature could not ignore the consequences of the integration processes in which Poland participated before the adoption of Fundamental Law and those related to the functions of the jurisprudence of the European Court of Human Rights. It has an *erga omnes* effect, considering its persuasive value for state members of the international community, their laws, and national practice.⁴⁷

An important element of the analysis of administrative courts is the attitude towards the issue of supranational sources and justification of the obligation of these courts to implement the rule of law in the Polish legal order. In this regard, the beginning point may be the evident statement that Polish administrative courts are EU courts in the functional sense, applying EU law with all consequences. In particular, they are required to assume such functions based on the principle of the direct effects of this law. With this principle, the SAC combines it with the principle of primacy of EU law (granting priority in its application, also in relation to the norms of the Constitution), which in turn aims to ensure the effectiveness of this law. In particular, the principle of effectiveness found in Article 4.3 of the TEU requires ensuring the effective protection of subjective rights under EU law. Moreover, the CJEU jurisprudence cited by administrative courts demonstrates that the courts of Member States (and therefore also Polish administrative courts) are obliged to guarantee such protection. Thus, the principle of effectiveness serves to specify the obligations of national courts deciding on the case with the “European shadow,” in particular the obligation to interpret national law in accordance with EU law. This obligation is a consequence of the supremacy of EU law, and for failure to comply with it, the Member States are exposed to liability for damages. Therefore, another principle that forces the necessity of the (effective) application of EU law is the principle of state liability for damage. Its implementation depends

45 Pursuant to this provision: ‘If an agreement, ratified by the Republic of Poland, establishing an international organisation so provides, the laws established by it shall be applied directly and have precedence in the event of a conflict of laws.’

46 Judgements of the SAC: case ref. II GOK 2/18; case ref. II GOK 3/18; case ref. II GOK 4/18; case ref. II GOK 5/18; case ref. II GOK 6/18; case ref. II GOK 7/18; case ref. II GOK 8/18; case ref. II GOK 9/18; case ref. II GOK 10/18; case ref. II GOK 11/18; case ref. II GOK 12/18; case ref. II GOK 13/18; case ref. II GOK 14/18; case ref. II GOK 15/18; case ref. II GOK 16/18; case ref. II GOK 17/18; case ref. II GOK 18/18; case ref. II GOK 19/18; case ref. II GOK 20/18.

47 Ibid.

on the possibility of holding a Member State liable for a breach of EU law in a situation where the subjective rights of an individual (e.g. the right to an effective remedy before a tribunal) have been violated, causing damage.⁴⁸

Administrative courts recognise that one of the vital foundations of the EU legal order as a supranational system is the principle of the supremacy of EU law.⁴⁹ In essence, the provisions of national law must not undermine the unity and effectiveness of EU law.⁵⁰ Consequently, in the event an infringement is found in any of this law's provisions which imposes a clear and precise obligation on Member States to produce a given result, national courts should, if necessary, refrain from applying the provisions of national law causing that infringement.⁵¹

Simultaneously, according to the administrative courts, the principle of primacy of EU law does not conflict with the principle of supremacy of the Constitution (Article 8.1. of the Fundamental Law⁵²). The principle of primacy is implemented at the level of applying the law, not at the level of its binding force, and therefore, at the level of the horizontal, content-related, but not hierarchical, conflict of the norms of national and EU law. The competence to derogate from a norm of internal law which does not correspond to a norm of EU law is the exclusive domain of Member States' constitutional orders. In such a situation, the sovereign Polish constitutional legislature retains the right to independently decide on the method of resolving such a contradiction, considering the advisability of a possible amendment to the Constitution itself. Thus, the irremovable contradiction between constitutional and EU norms cannot be resolved in the Polish legal system by recognising the supremacy of the EU norm over the constitutional norm; nor could it lead to the loss of the binding force of a constitutional norm and its replacement by an EU norm or limit the scope of application of this norm to an area not covered by the regulation of EU law.⁵³

Moreover, in the opinion of the SAC, which refers to the judgement of the Constitutional Court,⁵⁴ one can only speak of a hypothetical conflict between the EU's legal order and constitutional regulations. This is owing to the fact that considering the common assumptions of the legal culture of democratic states, these norms have essentially the same axiological grounds for their validity. The

48 Judgements of the SAC: case ref. III FSK 3626/21; case ref. III FSK 4104/21.

49 Cf. Koch, 2005, p. 201.

50 Judgement of the VAC in Wroclaw, case ref. I SA/Wr 500/22.

51 Ibid.

52 Pursuant to this provision: 'The Constitution shall be the supreme law of the Republic of Poland.'

53 Judgements of the SAC: case ref. II GOK 2/18; case ref. II GOK 3/18; case ref. II GOK 4/18; case ref. II GOK 5/18; case ref. II GOK 6/18; case ref. II GOK 7/18; case ref. II GOK 8/18; case ref. II GOK 9/18; case ref. II GOK 10/18; case ref. II GOK 11/18; case ref. II GOK 12/18; case ref. II GOK 13/18; case ref. II GOK 14/18; case ref. II GOK 15/18; case ref. II GOK 16/18; case ref. II GOK 17/18; case ref. II GOK 18/18; case ref. II GOK 19/18; case ref. II GOK 20/18.

54 Judgement of the Constitutional Court of May 11, 2005, case ref. K 18/04 (OTK ZU no 5/A/2005, item 49).

viability of this assumption should be sought in the consequences of Articles 2 and 4.3 of the TEU, and Article 9 of the Constitution.⁵⁵

However, administrative courts do not address the issue of supranational legal grounds for implementing the rule of law derived from other sources of convention law binding upon Poland (i.e. other than the EU treaties, which apply in particular to the ECHR).⁵⁶ Therefore, they limit themselves to the aforementioned sources of obligation arising from the Constitution.

6. The requirement to implement the “international” rule of law as an element of the reference and complementary norms

It appears evident to conclude that the order to implement the “international” rule of law (as a legal principle) addressed to the administrative court may be important for reconstructing “complementary norms.” This is confirmed by analysing the judgements of the administrative courts. Patterns of legal action, referred by the VAC and the SAC to the controlled legal acts of public administration bodies or judgements of a lower court, were indeed subject to determination considering the principle of the (“international”) rule of law, or rather its individual elements identified in Section 2 of this paper. Therefore, the relevant “complementary norms” included the following requirements resulting from the above principle of EU and international law: 1) the composition of the VAC adjudicating on the case is in accordance with the law, including the judges participating in it are independent, unbiased and impartial (Article 183.2 Point 4 of the LPAC in conjunction with Article 6.1 of the ECHR, Articles 2, 6.1-3 and 19.1 of the TEU and Article 47 of the CFREU);⁵⁷ 2) the act of the President of the Republic of Poland stating the date of retirement of a Supreme Court judge does not interfere with the principle of irremovability of judges (Article 19.1 in conjunction with Article 2 of the TEU);⁵⁸ 3) the resolution of the National Council of the Judiciary concerning the submission (failure to submit) to the President of the Republic of an application for appointment to the office of a judge of the Supreme Court guarantees the independence of these judges (Article 19.1 in conjunction with Article 2 of the TEU and Article 47 of the CFREU);⁵⁹ 4) the order of the President of the Regional Court regarding the immediate suspension of a judge in his duties does not undermine the independence, impartiality and irremovability of the judge (Articles 19.1 and

55 See Footnote 53.

56 For more on this, see Nollkaemper, 2011, pp. 11, 35–44.

57 Judgements of the SAC: case ref. III FSK 3626/21; case ref. III FSK 4104/21.

58 Judgement of the VAC in Warsaw, case ref. VI SA/Wa 309/20.

59 Judgements of the SAC: case ref. II GOK 6/18; case ref. II GOK 7/18; case ref. II GOK 10/18; case ref. II GOK 18/18.

4.3 in conjunction with Article 2 of the TEU);⁶⁰ 5) the tax administration authority resumes the proceedings concluded with the final decision to ensure compliance of the case with the CJEU judgement (Article 240.1 Point 11 and Article 245.1 Point 1 of the Act of 29 August 1997 – Tax Code (hereinafter the TC),⁶¹ in conjunction with Articles 4.3, 2 and 19.1 of the TEU);⁶² 6) the administrative decision of the tax authority contains exhaustive factual and legal justification, guaranteeing the right to defence, the right to an effective remedy, including the right to court (Article 210.1 Point 6 and Article 210.4 TC in conjunction with Article 2 of the TEU, Articles 41 and 47 of the CFREU).⁶³

The indicated cases led to the conclusion that the legal grounds for the implementation of the “international” rule of law were co-applied with national provisions. This included, first, situations of the interpretative co-application, comprising the determination of a legal norm by the administrative court, considering both national regulations and sources of international or EU law (both of these components co-created the legal norm).⁶⁴ Second, co-applicability was merely “decorative”⁶⁵ when the court referred to the source of the “international” rule of law in the justification of the judgement, although in fact the national law provided a sufficient basis for settling the case.⁶⁶ In addition, in one of its judgements, the administrative court stated that the national act was inconsistent with Article 19.1, in conjunction with Article 2 of the TEU.⁶⁷ This infringement had to result in the court’s obligation to disregard the relevant national regulations, and thus, recognise the illegality of the act of the public administration body issued on their basis being inconsistent with the standard of correctness constructed based on EU regulations.⁶⁸

In the analysed judgements of the administrative courts, the allegations regarding the violation of the “international” rule of law were considered at the request of the complainants⁶⁹ (which is clear owing to the nature of the administrative court proceedings), and *ex officio*.⁷⁰ The latter situation in the proceedings before the VAC is a consequence of the fact that this court is not bound by the allegations and requests of the complaint or the legal basis invoked (Article 134.1 of the LPAC).⁷¹ This necessitates a full examination of the lawfulness of the

60 Judgement of the VAC in Gdansk, case ref. III SA/Gd 1173/21.

61 Journal of Laws of 2023, item 2383.

62 Judgement of the VAC in Wroclaw, case ref. I SA/Wr 500/22.

63 Judgement of the VAC in Wroclaw, case ref. I SA/Wr 342/21.

64 In particular Judgements of the SAC: case ref. III FSK 3626/21; case ref. III FSK 4104/21.

65 Cf. Działocha, 2007, p. 45.

66 E.g. Judgement of the VAC in Wroclaw, case ref. I SA/Wr 342/21.

67 Judgement of the VAC in Warsaw, case ref. VI SA/Wa 309/20.

68 Cf. Kamiński, 2011b, pp. 22–24.

69 E.g. Judgement of the SAC, case ref. II GOK 6/18.

70 E.g. Judgement of the VAC in Wroclaw, case ref. I SA/Wr 342/21; Judgements of the SAC: case ref. III FSK 3626/21; case ref. III FSK 4104/21.

71 Wróbel, 2010, p. 485.

challenged conduct of public administration bodies.⁷² The SAC’s competence is regulated differently. It investigates the case within the cassation appeal, however, *ex officio* considering the invalidity of the proceedings (Article 183.1 of the LPAC). Therefore, that court cannot take the place of a party and specify the pleas in the complaint or their reasons.⁷³ Nevertheless, in case ref. III FSK 3626/21 and case ref. III FSK 4104/21, the SAC applied an exception to this rule and *ex officio* verified the ground for invalidity specified in Article 183.2 Point 4 of the LPAC (contradiction of the composition of the adjudicating court with the law) in connection with the allegation of violation of the “international” rule of law.

The “international” rule of law was also an element determining the content of the reference norm specifying the jurisdiction of the administrative court. In one case, Articles 2 and 4.3 of the TEU, Article 47 of the CFREU, and Article 6.1 of the ECHR were invoked as arguments in favour of resolving doubts as to the inclusion of the order of the President of the Regional Court regarding the immediate suspension of a judge in his duties under judicial-administrative control⁷⁴ (this was the co-application of interpretation of national, international, and EU regulations). In another case, Article 19.1, in conjunction with Article 2 of the TEU, in the interpretation of the CJEU presented in the judgement of 2 March 2021 case ref. C-824/18,⁷⁵ became the basis for the SAC’s omission of a national act inconsistent with these provisions, which excluded the admissibility of judicial review of resolutions of the National Council of the Judiciary regarding the submission to the President of the Republic of Poland of an application for appointment to the office of a judge of the Supreme Court.⁷⁶ In both cases, the administrative court *ex officio* considered the order to implement the “international” rule of law. This obligation resulted from Article 58.1 Point 1 of the LPAC, pursuant to which the court rejects the complaint if the case does not fall within the jurisdiction of the administrative court. ‘This means that before examining the complaint on its merits, the administrative court *ex officio* first examines its admissibility. The court determines whether one of the grounds for rejecting the complaint, enumerated in Article 58.1 of the LPAC, is found’.⁷⁷ The equivalent of this regulation in relation to matters

72 E.g. Judgement of the SAC of February 28, 2023, case ref. III OSK 1994/22 (<https://bit.ly/3AQo3ZW>) (Accessed: 19 July 2023).

73 Wróbel, 2010, pp. 485–486.

74 Judgement of the VAC in Gdansk, case ref. III SA/Gd 1173/21.

75 [Online]. Available at: <https://bit.ly/3HXJraa> (Accessed: 19 July 2023).

76 Judgements of the SAC: case ref. II GOK 2/18; case ref. II GOK 3/18; case ref. II GOK 4/18; case ref. II GOK 5/18; case ref. II GOK 6/18; case ref. II GOK 7/18; case ref. II GOK 8/18; case ref. II GOK 9/18; case ref. II GOK 10/18; case ref. II GOK 11/18; case ref. II GOK 12/18; case ref. II GOK 13/18; case ref. II GOK 14/18; case ref. II GOK 15/18; case ref. II GOK 16/18; case ref. II GOK 17/18; case ref. II GOK 18/18; case ref. II GOK 19/18; case ref. II GOK 20/18. For a critique of this SAC’s view, see Judgement of the Constitutional Court of October 7, 2021, case ref. K 3/21 (OTK ZU no A/2022, item 65).

77 E.g. Order of the SAC of November 23, 2022, case ref. I GSK 1756/22 (<https://bit.ly/3HyAa1D>) (Accessed: 19 July 2023).

related to resolutions of the National Council of the Judiciary was Article 398.2.⁶ of the Act of 17 November 1964: Civil Procedure Code.⁷⁸

It can be marginally mentioned that an indirect reference to the concept of the “international” rule of law in the context of reference norm also occurred in the resolution of the SAC of 3 April 2023 case ref. I FPS 3/22.⁷⁹ However, this was without explicit reference to this concept and only through the prism of one of its elements, that is, the independence and impartiality of the judge, invoked in connection with Article 19.1 of the TEU, Article 47 of the CFREU, and Article 6.1 of the ECHR. The Court merely stated that these provisions constituted the *ratio legis* of Article 5a of the LOAC (the individual test of a judge’s independence) and Article 19 of the LPAC (the exclusion of a judge owing to doubts about his impartiality). The indicated element of the “international” rule of law had no interpretive significance for the said resolution, and did not affect the result of the interpretation of the aforementioned domestic provisions adopted by the Court, as there was no need for it in this situation. However, such pro-EU and pro-international interpretations of these provisions may be necessary, as indicated in the literature on this subject.⁸⁰

7. Conclusions

In legal literature, the notion of the rule of law is often explained (at the “international” or “national” level) through the prism of constituent sub-principles, the catalogues of which differ among authors.⁸¹ Similarly, the jurisprudence of Polish administrative courts has not adopted a comprehensive definition of the “international” rule of law, focusing on individual cases on only some of its elements. These elements were as follows: effective judicial protection,⁸² correct procedure of judges’ appointment, irremovability of judges, ensuring the effectiveness and uniformity of the application of EU law by the national court and tax authorities, and procedural fairness, with particular emphasis on exhaustive justification of administrative decisions. Owing to the frequency of references, the fundamental importance of those judgements is attributed to the sub-principle of effective judicial protection of the rights of the individual, guaranteed by the independence of the courts and the independence and impartiality of judges (Article 2 in conjunction with Article 19.1 of the TEU, Articles 6 and 13 of the ECHR, and Article 47 of

78 Journal of Laws of 2023, item 1550, as amended. Cf. e.g. Judgement of the SAC, case ref. II GOK 2/18.

79 I FPS 3/22 – Uchwała NSA [Online]. Available at: <https://bit.ly/3PkBnOl> (Accessed: 27 November 2023).

80 Roszkiewicz, 2022, pp. 80–82, 94.

81 Cf. e.g. Kmiecik, 2016, p. 25; Lord Bingham, 2007, pp. 69–82; Nollkaemper, 2011, pp. 3–6; Pech, 2010, pp. 373–374; Raz, 1979, pp. 214–218; Watts, 1993, pp. 26–36.

82 Cf. Chlebny, 2022, pp. 29–30.

the CFREU). Moreover, in the literature, this aspect of the ‘international’ rule of law is particularly exposed.⁸³

Administrative courts in the conceptual context present an integrative, not confrontational approach, striving to agree on the content of the international and national meaning of the rule of law, emphasising the lack of even a hypothetical contradiction between the values derived from these two orders – supranational and national. Based on the jurisprudence of administrative courts, depending on the semantic context, one can speak of both “value” and “principle” of the rule of law.

The order to implement this “value” or “principle” results both from national sources – in particular the Constitution, which is open and favourable towards international and EU law systems – and from EU sources – in particular the principle of direct applicability and the principle of primacy of EU law. In particular, according to administrative courts, the latter principle does not conflict with the principle of supremacy of the Polish Constitution, and the conflict between the EU legal order and constitutional regulation is only hypothetical.

The “international” rule of law is important for determining the content of the complementary and reference norms in the mechanism of formulating by the administrative court of the “relative phrase.” In such cases, the interpretations of national, international, and EU provisions often co-apply. However, sometimes, administrative courts find that the provisions of a national act are inconsistent with EU law and the rule of law derived from it, and omit conflicting national regulations. Oftentimes, in the analysed judgements, the order for the administrative court to implement the “international” rule of law was *ex officio* considered, which proves the active role of these courts in the pursuit of ‘universalisation’ of their jurisprudence.

For the time being, it remains difficult to discuss a coherent concept of the “international” rule of law based on the jurisprudence of Polish administrative courts. After all, we examine it based on many judgements that use this concept in specific cases for the purposes of their resolution by administrative courts’ adjudicating panels of different compositions (simultaneously, with the lack of interpretative resolutions of the SAC seeking to unify jurisprudence in this regard). However, one can risk formulating a statement about the beginning of the formation of the above concept because of the absence of jurisprudence disputes at the level of individual contexts in which administrative courts have so far referred to the principle or value of the “international” rule of law.

83 Cf. Kochenov, 2018, p. 187.

Bibliography

- Alexy, R. (2000) 'On the Structure of Legal Principles', *Ratio Juris*, (13)3, pp. 294–304; <https://doi.org/10.1111/1467-9337.00157>.
- Balicki, R. (2022) 'Klauzula integracyjna w Konstytucji RP', *Wrocławsko-Lwowskie Zeszyty Prawnicze*, 2022/13, pp. 121–130 [Online]. Available at: <https://bit.ly/3oMkgKH> (Accessed: 26 May 2023).
- Borkowski, J. (2020) 'Wykonywanie wymiaru sprawiedliwości przez kontrolę działalności administracji publicznej' in Adamiak, B., Borkowski, J. (eds.) *Metodyka pracy sędziego w sprawach administracyjnych*, Warsaw: Wolters Kluwer Polska, pp. 53–71.
- Chlebny, J. (2022) 'Sądownictwo administracyjne w Polsce z perspektywy art. 47 KPP', *Europejski Przegląd Sądowy*, 2022/10, pp. 29–34.
- Drachal, J., Jagielski, J., Stankiewicz, R. (2015) 'Komentarz do art. 3' in Hauser, R., Wierzbowski, M. (eds.) *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*. Warsaw: C.H. Beck, pp. 49–80.
- Działocha, K. (2007) 'Komentarz do art. 8' in Garlicki, L. (ed.) *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom V*. Warsaw: Wydawnictwo Sejmowe, pp. 1–55.
- Górka, M., Mik, C. (2005) 'Sądy polskie jako sądy Unii Europejskiej (na tle doświadczeń przedakcesyjnych)', *Kwartalnik Prawa Publicznego*, (5)4, pp. 7–53.
- Kamiński, M. (2011a) 'Konstruowanie wzorca legalności decyzji administracyjnej na podstawie prawa UE przez polskie sądy administracyjne (cz. I)', *Europejski Przegląd Sądowy*, 2011/4, pp. 22–27.
- Kamiński, M. (2011b) 'Konstruowanie wzorca legalności decyzji administracyjnej na podstawie prawa UE przez polskie sądy administracyjne (cz. II)', *Europejski Przegląd Sądowy*. 2011/5, pp. 22–27.
- Kmiecik, Z. (2016) 'O pojęciu rządów prawa', *Państwo i Prawo*, 2016/ 9, pp. 21–35.
- Koch, C. (2005) 'The Doctrine of Supremacy of European Community Law as a Condition Precedent for the Doctrine of Direct Effect', *International Trade and Business Law Review*, 2005/9, pp. 201–219.
- Kochenov, D. (2018) 'Article 7 TEU: A Commentary on a Much Talked-About "Dead" Provision', *Polish Yearbook Of International Law*, no. 38, pp. 165–187; <https://doi.org/10.24425/pyil.2019.129611>.
- Lord Bingham (2007) 'The Rule of Law', *Cambridge Law Journal*, (66)1, pp. 67–85; <https://doi.org/10.1017/S0008197307000037>.
- Majchrzak, B. (2022) 'Poland' in Majchrzak, B. (ed.) *Elementy ustrojowo-funkcjonalne sądownictwa administracyjnego w wybranych państwach europejskich*. Warsaw: Instytut Wymiaru Sprawiedliwości, pp. 15–100.
- McCorquodale, R. (2016) 'Defining the International Rule of Law: Defying Gravity', *International and Comparative Law Quarterly*, (65)2, pp. 277–304; <https://doi.org/10.1017/S0020589316000026>.
- Nollkaemper, A. (2011) *National Courts and the International Rule of Law*. Oxford: Oxford University Press; <https://doi.org/10.1093/acprof:oso/9780199236671.001.0001>.

- Pech, L. (2010) 'A Union Founded on the Rule of Law: Meaning and Reality of the Rule of Law as a Constitutional Principle of EU Law', *European Constitutional Law Review*, (6)3, pp. 359–396; <https://doi.org/10.1017/S1574019610300034>.
- Raz, J. (1979) *The Authority of Law. Essays on Law and Morality*. Oxford: Oxford University Press [Online]. Available at: <https://bit.ly/3oYjc6t> (Accessed: 19 July 2023); <https://doi.org/10.1093/acprof:oso/9780198253457.001.0001>.
- Roszkiewicz, J. (2022) 'Indywidualny test niezawisłości sędziego powołanego z naruszeniem prawa – uwagi na tle orzecznictwa Trybunału Sprawiedliwości Unii Europejskiej, Europejskiego Trybunału Praw Człowieka, Sądu Najwyższego i Naczelnego Sądu Administracyjnego', *Przegląd Sądowy*, 2022/11–12, pp. 75–98.
- Sulyok, M. (2021) 'Compromise(d)? – Perspectives of Rule of Law in the European Union', *Central European Journal of Comparative Law*, (2)1, pp. 207–227; <https://doi.org/10.47078/2021.1.207-227>.
- Watts, A. (1993) 'The International Rule of Law', *German Yearbook of International Law*, 1993/36, pp. 15–45.
- Woś, T. (2004) 'Mechanizm postępowania sądowoadministracyjnego (mechanizm kontroli przez sąd zaskarżonego aktu lub czynności)' in Woś, T. (ed.) *Postępowanie sądowo administracyjne*. Warsaw: LexisNexis, pp. 263–267.
- Wróbel, A. (2010) 'Sądy administracyjne jako sądy Unii Europejskiej', *Zeszyty Naukowe Sądownictwa Administracyjnego*, 2010/5–6, pp. 474–496.
- Wróblewski, J. (1969) 'Zwroty stosunkowe – wypowiedzi o zgodności z normą', *Zeszyty Naukowe Uniwersytetu Łódzkiego. Nauki Humanistyczno-Społeczne*, series I, no 62, pp. 3–17.