

# **CURRENT ISSUES IN THE TRANSCRIPTION OF BIRTH CERTIFICATES FOR CHILDREN OF SAME-SEX PARENTS: SELECTED REMARKS IN LIGHT OF ADMINISTRATIVE COURT JURISPRUDENCE AND STANISŁAW KASZNICA’S THOUGHT ON THE “AUTHORITATIVE INTERPRETATION OF LEGAL NORMS CONTAINED IN LEGISLATIVE ACTS”**

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**dr Dominika Tykwińska-Rutkowska**

University of Gdansk, Poland

ORCID: 0000-0002-2275-4394

email: [dominika.tykwinska@prawo.ug.edu.pl](mailto:dominika.tykwinska@prawo.ug.edu.pl)

## **ABSTRACT**

One of the problems addressed in Stanisław Kasznica’s work was the importance of administrative court rulings in the process of interpreting administrative law. In order to illustrate this in the current state of the law, judgments of administrative courts – the Regional Administrative Courts and the Supreme Administrative Courts – were selected in cases involving complaints against decisions of provincial governors upholding decisions of heads of the civil registry office refusing to transcribe the birth certificate of a child in which people of the same sex were indicated as parents, as well as a specific resolution of a panel of seven judges of the Supreme Administrative Court of 2 January 2019, II OSK 1/19.

## **KEYWORDS**

transcription of birth certificate; civil status registration; judicial and administrative review; interpretation of administrative law

## **1. INTRODUCTION**

Among the various problems addressed in Professor Stanisław Kasznica’s works, the importance of judicial-administrative jurisprudence emerging in the process of controlling the activity of public administration should be highlighted. He referred to this issue in his publication *Polskie prawo administracyjne: pojęcia i instytucje zasadnicze*, 2nd edition, Poznań 1946. In this work, Professor Kasznica emphasised its strong and beneficial influence on the development of administrative law, as well as its significance in the process of interpretation, and even the

possibility of considering it a separate source of administrative law<sup>1</sup>. Indeed, he pointed out that:

In fact, (...) the binding force of A.C. judgments extends beyond the specific cases they decide: they regulate administrative activity in general. They are not an autonomous source of administrative law, their role being limited to authoritatively interpreting the legal norms contained in legislative acts. However, where the A.C. is composed of eminent jurists and such a composition is maintained over a long period of time (...), this interpretative activity develops so intensively and comprehensively, complementing and developing the thoughts contained in positive legislation. It has such a pronounced characteristic of independent creativity, and by the power of its intrinsic value, it has such a strong influence on the development of administrative law that, in such a state of affairs, the case law of the A.C. may be regarded as a separate, very important source of this law.<sup>2</sup>

This study aims to show the importance of the judicial-administrative jurisprudence arising within the framework of the control exercised over the activity of the public administration in the field of civil status registration – its role in the process of interpreting the law. In relation to the above, the issue of civil status registration is currently regulated by the Act of 28 November 2014 on Civil Status Certificates (the “CSC Act”)<sup>3</sup>, which replaced the Act of 29 September 1986 on Civil Status Certificates (the “CSC Act of 86”)<sup>4</sup> and implementing acts. Civil status registration constitutes a public task of government administration that is performed by the head of the civil status office or their deputy(s), and outside the country to some extent by the consul or a person appointed to perform those functions. Facts normalised by private law, namely the provisions of the Act of 25 February 1964 – Family and Guardianship Code (the “FGC” Act)<sup>5</sup> are also relevant to this registration, along with the provisions of the Act of 23 April 1964 – Civil Code (the “CC” Act)<sup>6</sup> on civil status as a personal good set out in Article 23 thereof, the provisions of the Act of 17 November 1964 – Code of Civil Procedure (the “CCP” Act)<sup>7</sup>, as well as the Act of 4 February 2011 – Private International Law (the “PIL” Act)<sup>8</sup>.

Given that civil status is the legal situation of a person, expressed in terms of the characteristics that define them, and is documented in a specific type of primary public document – a civil status certificate confirming legally relevant facts and with a specific evidentiary role in proving a person’s civil status, it should be noted that, apart from certain exceptions, all events that determine that status are confirmed in these certificates.

In recent years, as the phenomenon of internationalisation of personal and family relations has intensified, the problem of proving events concerning Polish citizens subject to the registration obligation

1 S Kasznica, *Polskie prawo administracyjne: pojęcia i instytucje zasadnicze* [Polish Administrative Law: Basic Concepts and Institutions] (Wydawnictwo Prawnicze 1946) 21, 34, 179–180.

2 Ibid., 179–180.

3 Ustawa z dnia 28 listopada 2014 r. Prawo o aktach stanu cywilnego [The Act of 28 November 2014 on Civil Status Certificates] [2023] JoL 1378.

4 Ustawa z dnia 29 września 1986 r. – Prawo o aktach stanu cywilnego [The Act of 29 September 1986 on Civil Status Certificates] [2011] JoL 212.

5 Ustawa z dnia 25 lutego 1964 r. – Kodeks rodzinny i opiekuńczy [The Act of 25 February 1964 – Family and Guardianship Code] [2023] JoL 2809.

6 Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny [The Act of 23 April 1964 – Civil Code] [2024] JoL 1061.

7 Ustawa z dnia 17 listopada 1964 r. – Kodeks postępowania cywilnego [The Act of 17 November 1964 – Code of Civil Procedure] [2023] JoL 1550.

8 Ustawa z dnia 4 lutego 2011 r. Prawo prywatne międzynarodowe [The Act of 4 February 2011 – Private International Law] [2023] JoL503.

that took place outside the borders of the Republic of Poland has gained importance. In connection with this, in Articles 104-107 of the CSC Act, the legislator has provided for the institution of transcription of the civil status certificate otherwise referred to as location<sup>9</sup>, carried out by the relevant public administration bodies. Against this background, it should be noted that in the jurisprudence practice of the Polish administration bodies more and more cases of the location of civil status certificates are birth certificates in which same-sex couples (homosexual spouses or people living in a homosexual partnership) are indicated as parents interested in transferring the birth certificates of adopted children, biological children of one of the partners adopted by the other partner or born to a surrogate mother and later acknowledged or adopted by a homosexual couple<sup>10</sup>. The decisions of the heads of the civil registry office refusing the transcription of a birth certificate and the decisions of provincial governors upholding the decisions of those heads of the civil registry office in such cases are subject to the control of administrative courts. The analysis of their rulings will show that, on the grounds of the Act of 30 August 2002 on Proceedings Before Administrative Courts (the "PBAC" Act)<sup>11</sup> and the Act of 25 July 2002 on the System of Administrative Courts (the "SOAC" Act)<sup>12</sup>, the problem of the importance of judicial-administrative jurisprudence – its role in the process of interpreting administrative law – remains a topical one. Its presentation, however, needs to be preceded by remarks on the institution of transcription, along with a reference to selected judgments of administrative courts and a resolution of a panel of seven judges of the Supreme Administrative Court.

## 2. THE ESSENCE OF TRANSCRIPTION, I.E. THE LOCATION OF A CIVIL STATUS CERTIFICATE

The institution of transcription consists in transferring a foreign civil-status certificate that is evidence of an event and registering it in the civil-status register. The content of the document recognised in the country of issue as a civil status document with the authority of an official document, issued by a competent authority, which does not raise any doubts as to its authenticity, is subject to a faithful and literal transfer by the head of the civil registry office, who may not introduce any changes to its content. The function of this institution thus comes down to reproducing – transcribing – the content of a foreign civil status document into the Polish register of civil status in accordance with the official language in force in Poland and in a form appropriate to the national registration of events affecting the civil status of a person<sup>13</sup>. It is there-

9 CfM Wojewoda, 'Transkrypcja zagranicznego dokumentu stanu cywilnego – kilka uwag na temat ewolucji konstrukcji w prawie polskim' [Transcription of a Foreign Civil Status Document – A Few Comments on the Evolution of the Structure in Polish Law] (2021) *Metryka. Studia z prawa osobowego i rejestracji stanu cywilnego* vol. 2, 52, footnote 13; M Wojewoda, 'Uznanie rozstrzygnięć organów państw obcych a przesłanki transkrypcji zagranicznych aktów stanu cywilnego' [Recognition of Decisions of the Authorities of Foreign Countries and the Conditions for Transcription of Foreign Civil Status Certificates] (2018) *Studia Prawno-Ekonomiczne* 2018, vol. 109, 164; P Wypych, 'Charakter prawny transkrypcji aktu stanu cywilnego sporządzonego za granicą' [Legal Nature of Transcription of a Civil Status Certificate Prepared Abroad] (2003) *Kwartalnik Prawa Prywatnego* vol. 1, 191.

10 M Zachariasiewicz, 'Transkrypcja aktów urodzenia dzieci par jedнопłciowych' [Transcription of Birth Certificates of Children of Same-sex Couples] (2019) *Studia Prawno-Ekonomiczne* vol. 111, 146.

11 Ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi [Act of 30 August 2002 on Proceedings Before Administrative Courts] [2024] *JoL* 935.

12 Ustawa z dnia 25 lipca 2002 r. Prawo o ustroju sądów administracyjnych [Act of 25 July 2002 on the System of Administrative Courts] [2024] *JoL* 1267.

13 Cf *inter alia* the judgment of the PSC III CSK 380/06 [2007] *Lex* 457689; decision of the PSC III CSK 296/14 [2015] *Lex* 1712817. See in the literature: J Jagoda, 'Odmowa dokonania transkrypcji zagranicznego dokumentu stanu cywilnego z powodu sprzeczności z podstawowymi zasadami porządku prawnego' [Refusal to Transcribe a Foreign Civil Status Document Due to Contradiction with the Basic Principles of the Legal Order] (2022) *Białostockie Studia Prawnicze* 27(3), 143.

fore technical by nature<sup>14</sup>. Transcription is a declaratory act and not affecting the assessment of the substantive legal effects of the events stated therein<sup>15</sup>, in the sense that these effects – legally created and recognised by the state that issued the document in question – do not extend to the Polish legal area<sup>16</sup>. Consequently, the act created as a result of transcription, on the one hand, does not differ in content from the transcribed act, and on the other hand, it does not differ from civil status certificates registering domestic events in terms of form, evidential validity or rules of correction<sup>17</sup>. In other words, it enters into legal circulation on general principles<sup>18</sup>, “detaching itself” from the original act registering the event<sup>19</sup>.

Transcription of a civil status certificate is carried out by the head of the civil registry office at the request of the person affected by the event subject to transcription or any other person who demonstrates a legal interest in the transcription or an actual interest in the transcription of the death certificate. It is also possible to transcribe the act *ex officio* (see Article 104(6) CSC Act). In addition, the legislator has provided for the institution of obligatory transcription<sup>20</sup>. It is performed pursuant to the provisions of Article 104(5) of the CSC Act in three cases. Firstly, if a Polish citizen who is the subject of a foreign civil status document holds a civil status certificate confirming previous events, drawn up on the territory of the Republic of Poland and demands that civil status registration be carried out. Secondly, it is compulsory to transcribe the certificate if the citizen applies for a Polish identity document and thirdly, if he applies for a PESEL number.

The transfer of a civil status certificate takes a different legal form from an administrative decision. The competent authority performs a material and technical act<sup>21</sup>. As a general rule, when carrying out a transcription, the authority does not carry out a substantive assessment of the acts subject to it<sup>22</sup>, but

14 Attention to this feature has been drawn in the case law of the Polish Supreme Court. See decision of the PSC V CK 6/2002 [2003] Lex 82443; decision of the PSC III CZP 12/2011 [2011] Lex 847153; decision of the PSC III CSK 259/2010 [2011] Lex 1129120; resolution of the PSC III CZP 58/12 [2012] Lex 1227013.

15 P Wypych (2003) 192.

16 M Pillich, ‘Mater semper certa est? Kilka uwag o skutkach zagranicznego macierzyństwa zastępczego z perspektywy stosowania klauzuli porządku publicznego’ [Mater Semper Certa Est? A Few Comments on the Effects of Foreign Surrogacy from the Perspective of the Application of the Public Policy Clause] (2018) *Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego* vol. 16, 12; M. Zachariasiewicz (2019) 148.

17 See judgments: Regional Administrative Court in Gliwice II SA/GI 1157/15 [2016] Lex 2035383; Regional Administrative Court in Warsaw IV SA/Wa 270/10 [2010] Lex 779862; decisions of the PSC III CSK 380/06 [2007]; decisions of the PSC III CSK 259/10 [2011].

18 Cf P Kasprzyk, P Mostowik, P Skubiszewski, ‘Transkrypcja zagranicznych dokumentów stanu cywilnego’ [Transcription of Foreign Civil Status Documents] in P Kasprzyk (ed), *Podręcznik urzędnika stanu cywilnego* [Civil Registrar’s Manual] (Fundacja Instytut Naukowy im. prof. Józefa Litwina 2018) 283–314.

19 Resolution of the PSC III CZP 58/12 [2012].

20 As is clear from the explanatory memorandum to the Draft Act on Civil Status Certificates, the intention of the legislator was “to ensure that a Polish citizen for whom a civil status certificate has been drawn up in the Republic of Poland, and who holds later civil status certificates drawn up abroad, transcribes these certificates in order to ensure continuity of knowledge about the person in the state registers if that person intends to maintain his relationship with the country. (...) A single act of transcription will relieve a Polish citizen from using foreign documents before domestic public administration authorities and from the obligation to translate them more than once for the purposes of the explanatory proceedings in progress”. See the Explanatory Memorandum to the Draft Act on Civil Status Certificates, Parliamentary Print No. 2620, 49.

21 See D Tykwińska-Rutkowska, ‘Czynność materialno-techniczna’ [Material and Technical Activity] in E Bojanowski, K Żukowski (eds), *Leksykon prawa administracyjnego. 100 podstawowych pojęć* [Lexicon of Administrative Law. 100 Basic Concepts] (CH Beck 2009) 39–41.

22 M Wojewoda, ‘Kolizyjnoprawne aspekty rejestracji stanu cywilnego’ [Conflict of Law Aspects of Civil Status Registration] in M Pazdan (ed), *Prawo prywatne międzynarodowe System Prawa Prywatnego* [Private International Law, Private Law System] (CH Beck 2015) 597.

only a check as to the fulfilment of formal conditions. This is a consequence of being bound by the general principle of confidence in a foreign civil status document<sup>23</sup>.

Pursuant to Article 107 of the CSC Act, the head of the civil registry office shall issue an administrative decision to refuse transcription in the specifically enumerated cases outlined in the statute. This provision establishes narrowly defined limits for this institution, which has become the standard under the currently applicable law<sup>24</sup>. Transcription is refused in three main cases. First, if the document is not recognised as a civil-status document in the State of issue, or does not have the force of an official document, or was not issued by a competent authority, or raises doubts as to its authenticity, or confirms an event other than birth, marriage or death. Secondly, if the foreign document is the result of a transcription in a country other than the country of the event. Thirdly, if the transcription would be contrary to the fundamental principles of the legal order of the Republic of Poland (public policy clause<sup>25</sup>). At this point, it is worth noting that Article 107(3) of the CSC Act, “allows the refusal of a transcription if the transcription itself is contrary to the Polish legal order”<sup>26</sup>. It is disputed in the literature whether this provision also applies in the case of obligatory transcription<sup>27</sup>.

### 3. PROBLEMS OF TRANSCRIPTION OF BIRTH CERTIFICATES OF CHILDREN OF SAME-SEX PARENTS AS INTERPRETED BY ADMINISTRATIVE COURTS

Pursuant to Article 1 of the PBAC Act, the basic function of administrative courts and the proceedings pending before them is to exercise the administration of justice through control activities over the performance of public administration<sup>28</sup>. In accordance with Article 1 § 2 of the PBAC Act it is the control of compliance with the law, i.e. legality of public administration activities. The court, using the methodology of control over the interpretation of law, leads to elimination of illegal acts and actions of public administration bodies from the legal turnover, and also prevents violations of law in the future<sup>29</sup>. Both functions of judicial control – repressive as well as preventive – affect the unification of interpretation and application of administrative

23 M Wojewoda, ‘Transkrypcja aktu urodzenia dziecka, które zostało uznane za granicą’ [Transcription of the Birth Certificate of a Child Recognized Abroad] (2017) *Kwartalnik Prawa Prywatnego* 26(2), 338.

24 M Wojewoda (2021) 53.

25 See comments on the public policy clause under the CSR Law: J Gajda, ‘Klauzula porządku publicznego w prawie o aktach stanu cywilnego z 29 września 1986 r. oraz z 28 listopada 2014 r.’ [Public Order Clause in the Act on Civil Status Certificates of September 29, 1986 and November 28, 2014] (2015) *Administracja: teoria – dydaktyka – praktyka* 4(41), 14.

26 E Przywiślak-Urbanek, ‘Aktualne orzecznictwo sądów administracyjnych dotyczące rejestracji pochodzenia dziecka od osób tej samej płci’ [Current Case Law of Administrative Courts Regarding the Registration of a Child’s Descent from People of the Same Sex] in J Gołaczyński, W Popiołek (eds), *Kolizyjne i procesowe aspekty prawa rodzinnego* [Conflict and Procedural Aspects of Family Law] (CH Beck 2018) 151–160.

27 See J Gajda (2015) 42; M Wojewoda (2017) 350; J Pawliczak, ‘Odmowa transkrypcji zagranicznego aktu urodzenia dziecka, w którym jako rodziców wskazano dwie kobiety. Głos do uchwały NSA z dnia 2 grudnia 2019 r., II OPS 1/19’ [Refusal to Transcribe a Foreign Child’s Birth Certificate Indicating Two Women as Parents. Głos to the Resolution of the Supreme Administrative Court of 2 December 2019, II OPS 1/19] (2021) *State and Law* vol. 1, 146–156.

28 T Woś, in T Woś (ed), *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz* [Act on Proceedings Before Administrative Courts. Commentary] (Wolters Kluwer 2016) 25.

29 L Leszczyński, ‘Orzekanie przez sądy administracyjne a wykładnia prawa’ [Adjudication by Administrative Courts and the Interpretation of Law] (2010) *Zeszyty Naukowe Sądownictwa Administracyjnego* vol. 5–6, 267–268.

law by public administration bodies<sup>30</sup>, as well as administrative courts. Indeed, the important role of administrative courts in the process of the correct shaping of the interpretation of administrative law<sup>31</sup> needs to be emphasised. They participate in determining the meaning of certain provisions of law or fragments thereof, making the so-called operative interpretation (decisional<sup>32</sup>) in the course of considering a particular administrative court case and, moreover, in the case of the Supreme Administrative Court, by adopting resolutions. Although resolutions constitute the area of non-judicial activity of this court, it directly influences judicial-administrative jurisprudence and, in a broader perspective, also administrative jurisprudence (preventive function of judicial control)<sup>33</sup>. For, as J.P. Tarno notes, they serve to shape: “a certain style of behaviour that is supposed to realise the values that are assumed in a democratic state of law”<sup>34</sup>.

In the context of the issue of the transcription of foreign birth certificates of children of same-sex parents, it should be noted that until 2 December 2019, i.e. the adoption of the resolution of the panel of seven judges of the Supreme Administrative Court of 2 December 2019, II OPS 1/19, the rulings of administrative courts in recent years in cases on complaints against administrative decisions refusing it<sup>35</sup>, or against the material and technical act of transcription<sup>36</sup>, could be divided into two main groups. Firstly, these are the judgments which advocated the inadmissibility of transcription of such acts, such as the judgment of the Supreme Administrative Court of 17 December 2014, II OSK 1298/13 issued on the grounds of the CSC Act of 86, and in the current state of the law, among others, the judgments of the Supreme Administrative Courts: of 20 June 2018, II OSK 1808/16; of 11 February 2020, II OSK 1330/17; of 17 February 2021, II OSK 2284/18, as well as judgments of the Regional Administrative Courts: in Łódź of 14 February 2013, III SA/Łd 1100/12; in Gliwice of 6 April 2016, II SA/Gl 1157/15; in Warsaw of 14 April 2016, IV SA/Wa 182/16; in Cracow of 10 May 2016, III SA/Kr 1400/15; in Warsaw of 20 October 2016, IV SA/Wa 1784/16; in Łódź of 5 February 2020, III SA/Łd 617/19; in Wrocław of 15 December 2020, IV SA/Wr 312/20.

30 T Woś (2016) 29.

31 A Skoczylas, ‘Problem zachowania jednolitości orzecznictwa sądów administracyjnych’ [The Problem of Maintaining the Uniformity of the Jurisprudence of Administrative Courts] in R Hauser, Z Niewiadomski, A Wróbel (eds), *Sądowa kontrola administracji publicznej* System Prawa Administracyjnego [Judicial Control of Public Administration, Administrative Law System] (CH Beck 2016) 690; JP Tarno, *Naczelny Sąd Administracyjny a wykładnia prawa administracyjnego* [Supreme Administrative Court and the Interpretation of Administrative Law] (DIFIN 1999) 173–174.

32 M Zieliński, ‘Rodzaje wykładni prawa’ [Types of Interpretation of Law] in M Zieliński (ed), *Wykładnia prawa. Zasady, reguły, wskazówki* [Interpretation of the Law. Rules and Tips] (LexisNexis 2012) 59–61.

33 J Zimmermann, *Prawo administracyjne* [Administrative Law] (Wolters Kluwer 2012) 405.

34 JP Tarno (1999) 136–137.

35 Rulings of administrative courts on the review of rulings of competent public administration bodies in matters of citizenship, identity cards or passports, which are detailed administrative cases in relation to the general case for the transcription of a civil status certificate, although they remain closely related, have been excluded from the analysis. Cf P Mostkowik, *Problem rejestracji w polskich aktach urodzenia pochodzenia dziecka od “rodziców jedнопłciowych” na tle orzecznictwa sądów administracyjnych w 2018 r.* [The Problem of Registering a Child’s Descent from “Same-sex Parents” in Polish Birth Certificates Against the Background of the Case Law of Administrative Courts in 2018] (Instytut Wymiaru Sprawiedliwości 2019) 10–11; E Przywiślak-Urbaneł (2018) 151–160.

36 See the judgment of the Regional Administrative Court in Cracow III SA/Kr 233/19 [2019] Lex 2691369; the judgment of the Regional Administrative Court in Szczecin II SA/Sz 1075/19 [2020] Lex 2956995. The admissibility of challenging a substantive and technical act of transcription in proceedings before an administrative court has been questioned in the literature. See M Wojewoda, ‘O przypadkach dokonanej transkrypcji aktów urodzenia dzieci par jedнопłciowych’ [About Cases of Transcription of Birth Certificates of Children of Same-sex Couples] (2021) *Problemy Prawa Prywatnego Międzynarodowego* vol. 28, 148–151.



In the opinion of the deciding courts, under the previously applicable CSC Act of 86, refusals to transcribe were made on the basis of the public policy clause in Article 7 of the PIL Act, indicating that the location would produce effects contrary to the fundamental principles of the legal order of the Republic of Poland<sup>37</sup> in conjunction with Articles 7(4) and 73(1) of the CSC Act of 86 in conjunction with the provisions of the CCA contained in Section Ia “Parents and Children”, Chapter I “Origin of the Child”, Chapter II “Relationship between Parents and Children” and Section II “Adoption”. In the current state of the law, a clear legal basis in this respect has been introduced in Article 107(3) of the CSC Act, from which it follows that the head of the civil registry office refuses a transcription if this would be contrary to the fundamental principles of the legal order of the Republic of Poland.

In these judgements it was indicated, *inter alia*, following the view expressed in the Polish Supreme Court decision of 26 February 2003, II CK 13/03, that the basic principles of the legal order are the fundamental principles of the socio-political system, i.e. constitutional principles, but also the main principles governing individual areas of law, including civil, family and procedural law<sup>38</sup>. Hence, for the purpose of the public policy clause in the analysed judgments it was assumed that in accordance with Article 18 of the Constitution of the Republic of Poland, marriage is a union of a man and a woman – therefore the notions of parenthood and parents should be referred to people of different sexes<sup>39</sup>. Moreover, it was pointed out that these concepts have a legal nature, i.e. the basic principles set out in Polish family law concerning the determination of maternity and paternity, and indirectly other provisions, e.g. Article 115 § 1 of the FGC Act concerning adoption by spouses, i.e. people of different sex<sup>40</sup>, are decisive for the determination of the child’s origin. This position, according to the content of the analysed judgments, is also confirmed by provisions of other laws, e.g. Article 42 CSC Act of 86 – in the current legal state Article 60 CSC Act – concerning the content of civil status certificates and the provisions of executive acts specifying the templates of these certificates<sup>41</sup>. Both in the previous and in the current legal state, the template of the birth certificate provides for the mother and the father to be entered on the certificate. Even if, in the opinion of the Supreme Administrative Court expressed in its judgment of 17 December 2014, II OSK 1298/13, the rubrics in the templates had other terms, e.g. parent or parents, in Polish law these terms are understood as mother and father. Moreover, as the cited court expressly emphasised, Polish law does not know the institution of same-sex parents nor does it provide for the possibility of sanctioning such a family on legal grounds, and the term “same-sex parents” constitutes a *contradictio in se*, as no child can be conceived from a same-sex union.

37 See judgment of the Supreme Administrative Court II OSK 1298/13 [2014] Lex 1772336; judgment of the Regional Administrative Court in Łódź III SA/Łd 1100/12 [2014] Lex 1287159.

38 See *inter alia* judgments of the Supreme Administrative Court: II OSK 1298/13 [2014]; II OSK 1808/16 [2018] Lex 2513922; II OSK 1330/17 [2020] Lex 3062328.

39 See *inter alia* judgment of the Supreme Administrative Court II OSK 1298/13 [2014].

40 See *inter alia* judgments of the Supreme Administrative Court: II OSK 1808/16 [2018] and II OSK 1330/17 [2020].

41 See the rozporządzenie Ministra Spraw Wewnętrznych i Administracji z 26 października 1998 r. w sprawie szczegółowych zasad sporządzania aktów stanu cywilnego, sposobu prowadzenia ksiąg stanu cywilnego, ich kontroli, przechowywania i zabezpieczenia oraz wzorów aktów stanu cywilnego, ich odpisów, zaświadczeń i protokołów [Ordinance of the Minister of Internal Affairs and Administration of 26 October 1998 on the detailed rules for drawing up civil status certificates, the manner of keeping civil status books, their control, storage and security, and the templates of civil status certificates, their copies, certificates and protocols] [1998] JoL 884, and now rozporządzenie Ministra Spraw Wewnętrznych z 29 stycznia 2015 r. w sprawie wzorów dokumentów wydawanych z zakresu rejestracji stanu cywilnego [Ordinance of the Minister of Internal Affairs of 29 January 2015 on the templates of documents issued from the scope of the civil status register] [2015] JoL 194.

In view of the above, in this group of rulings the administrative courts assumed that the transcription of a child's birth certificate in which two people of the same sex are indicated as parents would be contrary to the legal order in force in the territory of the Republic of Poland, which was understood as the impossibility to reconcile it with the values considered fundamental by the Polish legal system<sup>42</sup>. At the same time, the courts emphasised that the refusal of transcription does not lead to a violation of international and EU law regulations, specifically Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as Article 7 and Article 21 of the Charter of Fundamental Rights of the European Union<sup>43</sup>. In the judgment of the Supreme Administrative Court of 17 December 2014, II OSK 1298/13, the panel of judges indicated that the refusal to enter the child's birth certificate in the civil status book, in which two women are indicated as parents, does not violate the applicants' right to respect for family and private life, since the subject of the proceedings was neither the applicants' family nor private life, but only the formal conditions required for the entry of a civil status certificate. On the other hand, with regard to the violation of Article 21 of the Charter, the Regional Administrative Court in Warsaw, in its judgment of 20 October 2016, IV SA/Wa 1784/16, noted that the refusal to enter the child's birth certificate does not affect the child's or her mother's right to freedom of movement within the Union or the right to freedom of residence in the Republic of Poland or in the competent State according to the child's place of birth.

Secondly, these are rulings which allow for the transcription of a foreign birth certificate of a child in which same-sex people are entered as parents, which include, among others, the judgments of the Supreme Administrative Courts: of 22 August 2018, II OSK 2129/16; of 10 October 2018, II OSK 2552/16; of 27 February 2023, II OSK 388/2020; and judgments of the Regional Administrative Courts: in Poznań of 5 April 2018, II SA/Po 1169/17; in Cracow of 4 June 2019, III SA/Kr 233/19. These judgments were made in a different factual situation, in which Article 104(5) of the CSC Act concerning the so-called obligatory transcription was applied.

In the aforementioned rulings, the courts pointed out that the actions of the authorities taken on the basis of Article 107(3) of the CSC Act in an unreflective manner, in the logical layer, are correct, because in the light of the provisions of Polish family law, the mother is the woman who gave birth to the child and the father is the man, regardless of how this paternity is established<sup>44</sup>. Nevertheless, the authorities should bear in mind the fact of the obligatory nature of transcription resulting from Article 104(5) of the CSC Act. In their opinion, it is not lawful not to implement the obligation of transcription resulting directly from the provisions of the law – this obligation was therefore referred to the public administration body – with reference to Article 107, point 3 of the CSC Act applicable in the case of optional transcription<sup>45</sup>. If the legislator did not want a special procedure for the situations specified in Article 104(5) of the CSC Act, it would not have introduced changes to the solutions existing on the grounds of the CSC Act of 86.

The obligation to make a transcription of a foreign civil status certificate is therefore, in the opinion of the administrative courts, part of a broader system of the protection of children's rights established not only by the Constitution of the Republic of Poland in force, but also by acts of international law<sup>46</sup>. Therefore, the interpretation of the provisions of the CSC Act concerning

42 See *inter alia* judgment of the Regional Administrative Court in Warsaw IV SA/Wa 182/16 [2016] Lex 2459345.

43 See judgment of the Regional Administrative Court in Gliwice II SA/Gl 1157/15 [2016].

44 See judgment of the Regional Administrative Court in Poznań II SA/Po 1169/17 [2018] Lex 2478177.

45 See judgment of the Supreme Administrative Court II OSK 2552/16 [2018] Lex 2586953.

46 See judgment of the Regional Administrative Court in Cracow III SA/Kr 233/19 [2019].



the transcription of birth certificates of children of Polish citizens in which people of the same sex are indicated as parents should be performed in a broader constitutional context – constitutional standards for the protection of children’s rights, inter alia the right to health care and the right to education (Article 68(3) and (5) and Article 70(1), (2) and (4) of the Constitution of the Republic of Poland) – and in consideration of the provisions of the Convention on the Rights of the Child, from which it follows that it is the state that should take appropriate legislative and administrative steps to safeguard the interests of the child<sup>47</sup>. Thus, it is other goods and interests, e.g. the principle of parenthood, that should give way to the welfare of the child, in particular in the case of contradictions between laws<sup>48</sup>. This clause, in the opinion of the Regional Administrative Court in Poznań, which agrees with the views of the doctrine, is in fact “a means of adapting statutory law to specific life situations, by means of the competence given to the body applying the law to use, in certain cases, extra-legal assessments and rules”<sup>49</sup>. A child who does not have confirmed citizenship – *nota bene* acquired by operation of law – as emphasised by the Regional Administrative Court in Cracow in its judgment of 4 June 2019, III SA/Kr 233/19, is only a potential and presumed citizen, in fact cannot exercise the rights vested exclusively in a Polish citizen. The Supreme Administrative Court made a similar statement in its judgment of 10 October 2018, II OSK 2552/16. Without questioning the legitimacy of the application of the public policy clause in general, this court emphasised, referring to the jurisprudence of the CJEU<sup>50</sup>, that the notion of public policy as a justification for a derogation from the fundamental action of transcription should be interpreted narrowly, taking into account the specific realities of the case at hand and the serious threats to one of the fundamental interests of society.

Therefore, as a consequence of the pro-constitutional interpretation of the provisions of the CSC Act in the opinion of the Supreme Administrative Court as expressed in the judgment of 10 October 2018, II OSK 2552/16, as well as the judgment of the Regional Administrative Court in Poznań of 5 April 2018, II SA/Po 1169/17, there are no obstacles to the transcription of the birth certificate of a child of Polish citizens in which same-sex people are indicated as parents, since, as emphasised by the Regional Administrative Court in Cracow in its judgment of 4 June 2019, III SA/Kr 233/19 it is the failure to transcribe the birth certificate that would violate the basic legal order and lead to a situation in which a citizen, having not received identity documents, would not be able to materialise subjective rights.

Transcription may also be made if the child was born as a result of a medically assisted procreation procedure as a consequence of a surrogacy agreement and two men are indicated on the birth certificate. In the opinion of the Supreme Administrative Court, expressed in the judgment of 29 August 2018, II OSK 2129/16, the refusal to transcribe the child’s birth certificate leads to questioning the origin of the minor from the applicant father based on the regulations and presumptions set out in the Family and Guardianship Code, which stipulate that the establishment of paternity depends on the prior establishment of maternity. According to the Supreme

47 See judgment of the Regional Administrative Court in Poznań II SA/Po 1169/17 [2018]; the judgment of the Supreme Administrative Court II OSK 2129/16 [2018] Lex 2563851.

48 Judgment of the Regional Administrative Court in Poznań II SA/Po 1169/17 [2018]. Cf judgments of the Polish Constitutional Court: of 28 April 2003, K 18/02 (2003) Lex 78052; of 11 October 2011, K 16/10 (2011) Lex 992832; of 21 January 2014, SK 5/12 (2014) Lex 1415468.

49 See judgment of the Regional Administrative Court in Poznań II SA/Po 1169/17 [2018].

50 See judgments of the CJEU C-438/14 EU:C:2016:401 para. 67, and C-193/16 EU:C:2017:542 para. 18 and the case law cited therein.

Administrative Court, referring to the ECtHR case law, “allowing a legal presumption to prevail over biological and social reality – irrespective of the established facts and the will of those concerned in a situation where this is of no benefit to anyone – is incompatible with the State’s obligation to effectively respect private and family life, even taking into account the extent of the State’s freedom in this sphere.”<sup>51</sup>

Since two currents of jurisprudence have formed in the jurisprudence, the Supreme Administrative Court, having examined on 17 April 2019 at a hearing in the General Administrative Chamber the cassation appeal of M.Z. against the judgment of the Regional Administrative Court in Warsaw of 20 October 2016, IV SA/Wa 1784/16 issued in a case on M.Z.’s complaint against the decision of the provincial governor on the refusal to enter a foreign birth certificate in the civil status certificates by an order pursuant to Article 187 § 1 of the PBAC Act presented the following legal issue raising serious doubts to a panel of seven judges: “Whether the provision of Articles 104(5) and 107(3) of the Act of 28 November 2014 on Civil Status Certificates (...) in conjunction with Article 7 of the Act of 4 February 2011 – Private International Law (...), permits the transcription of a foreign birth certificate of a child in which same-sex people are entered as parents?”

The resolution of 2 December 2019, II OPS 1/19, addressing this issue, just like the first group of rulings by administrative courts, rule out such a possibility. According to this resolution, the effects of transcribing a foreign birth certificate of a child, where people of the same sex are listed as parents, are irreconcilable with the fundamental principles of the legal order. Although the role of the authority in the case of transcription – according to the Supreme Administrative Court expressed in the aforementioned resolution – boils down to determining whether the document to be entered into the Polish register of civil status is a copy of a civil status certificate, whether it is an original document drawn up in the country of original registration, and whether it complies with the fundamental principles of the legal order of the Republic of Poland, it does not involve translating it into the Polish language<sup>52</sup>. As part of the transcription, the head of the civil registry office may not provide a different content of the certificate than that which arises from the document, unless there is a need to adapt the data contained in the foreign document to the rules of the Polish spelling; however, he may omit some data that are irrelevant from the point of view of Polish law, and consider others as requiring supplementation<sup>53</sup>. At the same time the modifications do not mean the possibility of such far-reaching changes which would lead to the content of the foreign act being in conflict with the Polish civil status certificate created as a result of the transcription, e.g. the relocation of the father’s data with the data of a woman who is not the child’s mother but is entered in the foreign certificate as the parent<sup>54</sup>. Indeed, in the light of the Supreme Administrative Courts position, the obligatory nature of the transcription does not exclude the application of the grounds for refusal listed in Article 107 of the CSC Act and, moreover, creates a higher standard of proof in the proceedings listed in Article 104(5) of the CSC Act. Moreover, these increased evidentiary requirements, in the Supreme Administrative Courts opinion, do not affect the principle confirmed by the Polish Supreme Court’s resolution of

51 See judgment of the ECHR 77785/01 [1995] HUDOC § 35.

52 See resolution of the Supreme Administrative Court II OPS 1/19 [2019] Lex 2746435.

53 Ibid.

54 Ibid.

20 November 2012, III CZP 58/12<sup>55</sup>, in the light of which foreign official documents have evidentiary force on an equal footing with Polish official documents. Thus, even a civil status certificate drawn up abroad and not entered in the Polish civil status books is excluded evidence of the events stated therein.

In the aforementioned resolution, the enlarged panel of seven judges of the Supreme Administrative Court also contained an important guideline for public administration bodies competent in matters of issuing identity cards, passports or assigning PESEL numbers as secondary to transcription cases. According to it, in those cases in which transcription is not possible because it threatens public order and the child's citizenship is not in doubt, the correct interpretation of Article 104(5) of the CSC Act, which assumes obligatory transcription, cannot lead to making the obtaining of an identity card or PESEL number by a Polish citizen conditional, although it should be remembered that these cases are completely separate and independent from the transcription case<sup>56</sup>.

At this point, it should be noted that the resolution under review is of a specific nature, i.e. it contains the resolution of legal issues of fundamental importance in the case in which they arose. Thus, in this resolution, the Supreme Administrative Court clarified legal doubts of an exceptional nature – legal issues arose, the clarification of which caused difficulties due to the possibility of a different interpretation of legal provisions. This resolution, pursuant to Article 187 § 2 of the PBAC Act is absolutely binding in a given case<sup>57</sup>, an individually designated panel of the Supreme Administrative Court and contains an interpretation of a specific provision of the law<sup>58</sup>, although it also has a real impact on the adjudicatory activity of other administrative courts and public administration bodies, which take into account the position of the Supreme Administrative Court in similar cases (preventive function of judicial control)<sup>59</sup>. The assessment expressed in the cited resolution was binding on the court which referred the question to the panel of seven judges of the Supreme Administrative Court, as reflected in the judgment of the Supreme Administrative Court of 11 February 2020, II OSK 1330/17. This one does not have the possibility to deviate from the assessment constituting an answer to the question posed by it. At the same time, bindingness in this case applies to the entire further proceedings until their final conclusion. On the other hand, as examples of rulings of administrative courts in which there was a reference to a resolution of the Supreme Administrative Court, which, pursuant to Article 269 § 1 in connection with Article 187 § 1 and 2 of the PBAC

55 See resolution of the PSC III CZP 58/12 [2013] OSNC 5, 55.

56 The obligation of the competent national authority of a Member State to issue an identity card or passport to a minor child of same-sex parents without first transferring by transcription that child's birth certificate to the national civil status register has also been pronounced by the CJEU. See order of the CJEU C-2/21 EU:C:2022:502, para. 45. Cf judgment of the CJEU C 490/20 EU:C:2021:1008, paras 56, 57.

57 The withdrawal procedure normalized in Article 269 of the PBAC Act applies to specific resolutions, with the exception that its activation does not affect the bindingness of the earlier resolution in the case in which it was adopted. H Knysiak-Molczyk, 'Jednolitość orzecznictwa sądów administracyjnych' [Uniformity of the Jurisprudence of Administrative Courts] in DR Kijowski, J Radwanowicz-Wanczewska, JP Suwaj, M Wincenciak (eds), *Wykładnia i stosowanie prawa administracyjnego* [Interpretation and Application of Administrative Law] (Wolters Kluwer 2012) 21–40.

58 D Tykwińska-Rutkowska, 'Uwag kilka o sformalizowanych instrumentach wykładni prawa administracyjnego w działalności sądów administracyjnych' [A Few Remarks on Formalized Instruments of Judicial Interpretation of Administrative Law by Administrative Courts] (2017) *Przegląd Prawa Konstytucyjnego* 2(36), 107–131.

59 JP Tarno (1999) 174–175, 180.

Act, applied accordingly, indirectly binds all the adjudicating formations of administrative courts, as long as there is no change in this position<sup>60</sup> as a consequence of the court re-presenting the legal issue arising to the relevant panel of the Supreme Administrative Court to resolve it<sup>61</sup>, it is worth indicating, among others, the judgments: Regional Administrative Court in Łódź of 5 February 2020, III SA/Łd 617/19 and Regional Administrative Court in Wrocław of 15 December 2020, II SA/Wr 312/20, which emphasise the importance of the resolution for the cohesion of the legal system of the interpretation of national laws.

#### 4. CONCLUDING REMARKS

The rulings of administrative courts and the resolution of the Supreme Administrative Court presented in the third part of the study undoubtedly show the influence of the interpretation made by the Regional Administrative Courts and the Supreme Administrative Court within the scope of the adjudicatory activity of the courts of first and second instance and the resolution of the Supreme Administrative Court on the activity of the administration, as Professor Kasznica pointed out, but also on the activity of administrative courts themselves. Both the judgments of the Regional Administrative Courts and Supreme Administrative Court, as well as resolutions of the Supreme Administrative Court can be seen as formalised instruments of interpretation of administrative law, in which administrative courts impose their interpretation of the law by virtue of the law, and thus have a wider or narrower impact, depending on whether the interpretation is made for the needs of the *case* or the environment<sup>62</sup>. Obviously, the interpretation made in judgments of higher instance court – the Supreme Administrative Court – versus lower instance courts – the Regional Administrative Courts – or public administration bodies has a broader impact<sup>63</sup>. It is in judgments, which constitute the most important procedural action of an administrative court<sup>64</sup>, that both courts of first instance, as well as the Supreme Administrative Court in the second instance, as J.P. Tarno notes, interpret the provisions of administrative law in a broader sense<sup>65</sup> – *ad casum* they interpret them in particular in cassation judgments binding on the authority and any court – even the Supreme Administrative Court – ruling again on the case<sup>66</sup>. *De facto*, the overtones of this interpretation are broader, as it also affects the handling of other cases – the same or similar to those which were the subject of the court's ruling – so it

60 Cf in jurisprudence: the judgment of the Supreme Administrative Court II FSK 147/14 [2014] Lex 2036424; judgment of the Regional Administrative Court in Łódź III SA/Łd 617/19 [2020] Lex 2791329.

61 See the possibility of reconsidering the legal issue pursuant to Article 269 § 1 PBAC Act in another case concerning the transcription of a birth certificate was pointed out in the judgment of the Supreme Administrative Court II OSK 2284/18 [2021] Lex 3242716. The panel stressed that this would be possible when, in a transcription case, there had already been a final and legally valid refusal to issue a Polish identity document to a Polish citizen for the sole reason that he had been refused transcription of his foreign birth certificate solely because a birth certificate revealing same-sex parents was to be transferred to the civil status register.

62 It is also possible to point to an alternative way of imposing the effect of interpretative activity on other entities – acting by force of fact. Cf E Łętowska, 'Uwag kilka o praktyce wykładni' [A Few Remarks on the Practice of Interpretation] (2002) *Kwartalnik Prawa Prywatnego* vol. 1, 34.

63 Cf *Ibid.*

64 T Woś (2016) 764.

65 JP Tarno (1999) 32.

66 As far as the impact of the administrative court's decision on the completed administrative proceedings and the decisions made in them is concerned, it is usually connected with the very operative part of this decision. See T Woś (2016) 890–891.

will be an important guideline in the process of interpreting administrative law for public administration bodies<sup>67</sup>. On the other hand, when the Supreme Administrative Court adjudicates as an appellate court, the essence of being bound by the interpretation of the law expressed by this court comes down to ensuring greater uniformity of jurisprudence and, moreover, limiting re-appeal of the ruling issued by the court of first instance, as a consequence of acknowledging the possibility of the appellate court to interpret legal provisions more accurately than the court of first instance<sup>68</sup>. The functions of the Supreme Administrative Court thus determine that the reach of the interpretation of the law by this court will be wider<sup>69</sup>.

On the other hand, resolutions of the Supreme Administrative Court are a qualitatively different instrument of interpretation of administrative law than judgments, as it follows from Article 15 of the PBAC Act that they are aimed at ensuring the uniformity of the jurisprudence of administrative courts<sup>70</sup>. It follows from the definition of their subject matter that they are acts of interpretation of law<sup>71</sup>. At the same time, a resolution adopted pursuant to Article 15 § (1)(3) of the PBAC Act is an individual act of interpreting the law – it is binding on an individually designated panel of the Supreme Administrative Court in the case and contains an interpretation of a specific provision of the law. As J.P. Tarno notes, “the legal assessment contained therein constitutes the official line of Supreme Administrative Court jurisprudence”, thus it has a real impact both on the jurisprudence activity of administrative courts and on the activity of public administration bodies, for which it also constitutes a model and a pattern to be used when adjudicating similar cases in the future, and leads to the creation of an element of normative novelty<sup>72</sup>. The assessment of their legal character in the literature on the subject is presented in various ways – from being regarded as an additional source of law next to the laws<sup>73</sup>, to a peculiar legal phenomenon of a hybrid character, since, while not being sources of law, from the functional side they act like sources of law – determining in a binding manner the meaning of the interpreted legal norm<sup>74</sup>.

67 J Dziedzic, *Sądowa kontrola administracji a wykładnia twórcza* [Judicial Control of Administration Versus Creative Interpretation] in DR Kijowski, J Radwanowicz-Wanczewska, JP Suwaj, M Wincenciak (eds) *Wykładnia i stosowanie prawa administracyjnego* [Interpretation and Application of Administrative Law] (Wolters Kluwer 2012) 131–145; JP Tarno (1999) 174.

68 B Dauter in B Dauter, M Niezgódka-Medek, A Kabta (eds), *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz* [Act on Proceedings Before Administrative Courts. Commentary] (Wolters Kluwer 2018) 697–704.

69 Cf the comments of JP Tarno (1999) 48.

70 See JP Tarno in JP Tarno (ed), *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz* [Act on Proceedings Before Administrative Courts. Commentary] (LexisNexis 2011) commentary on Art. 15.

71 E Bojanowski, ‘Uchwałodawcza działalność Naczelnego Sądu Administracyjnego i jej znaczenie w systemie prawa’ [The Legislative Activity of the Supreme Administrative Court and its Significance in the Legal System] in T Bąkowski, K Grajewski, J Warylewski (eds), *Orzecznictwo w systemie prawa* [Jurisprudence in the Legal System] (Wolters Kluwer 2008) 143.

72 See JP Tarno (1999) 174, 180.

73 D Dąbek, ‘Między precedensem a źródłem prawa (o uchwałach Naczelnego Sądu Administracyjnego)’ [Between Precedent and Source of Law (on Resolutions of the Supreme Administrative Court)] in T Bąkowski, K Grajewski, J Warylewski (eds), *Orzecznictwo w systemie prawa* [Jurisprudence in the Legal System] (Wolters Kluwer 2008) 205–206.

74 E Bojanowski, ‘Utrwalona linia orzecznictwa (kilka uwagi na marginesie orzecznictwa sądów administracyjnych)’ [Established Line of Case Law (A Few Remarks on the Margin of the Case Law of Administrative Courts)] in J Supernat (ed), *Między tradycją a przyszłością w nauce prawa administracyjnego. Księga jubileuszowa dedykowana Profesorowi Janowi Bociowi* [Between Tradition and the Future in the Science of Administrative Law. An Anniversary Book Dedicated to Professor Jan Boć] (Wydawnictwo Uniwersytetu Wrocławskiego 2009) 50.



The quoted excerpts from the justifications of the rulings of administrative courts, mainly in cases concerning complaints against the decisions of provincial governors upholding the decisions of the heads of the civil registry office refusing to transcribe foreign birth certificates of children of same-sex parents, firstly, illustrate the variability of the jurisprudence of administrative courts in these cases over the years. This variability reflects doubts, primarily regarding the legal admissibility of such transcriptions<sup>75</sup>. For the time being, these doubts have been clarified by a specific resolution of a panel of seven judges of the Supreme Administrative Court of 2 December 2019, II OPS 1/2019, in which, similarly to the earlier judgments of the Regional Administrative Courts and the Supreme Administrative Court, numerous issues of a twofold nature – theoretical and practical – from the borderline of different fields of law, i.e. private and public, were raised as a consequence of the changing social conditions regarding the recognition of same-sex partnerships and the possibility to adopt or jointly raise children coming from one of the partners of such a union, and, moreover, the internationalisation of personal and family relations<sup>76</sup>. Secondly, both the judgments and the significant resolution, show the role of administrative courts, which are the foundation of a democratic state of law, after all, without them there is no rule of law<sup>77</sup>, in “authoritatively interpreting the legal norms contained in legislative acts”<sup>78</sup>.

## REFERENCES

### LITERATURE

- Bojanowski E, ‘Uchwałodawcza działalność Naczelnego Sądu Administracyjnego i jej znaczenie w systemie prawa’ [The Legislative Activity of the Supreme Administrative Court and its Significance in the Legal System] in T Bąkowski, K Grajewski, J Warylewski (eds), *Orzecznictwo w systemie prawa* [Jurisprudence in the Legal System] (Wolters Kluwer 2008) 135–143.
- Bojanowski E, ‘Utrwalona linia orzecznictwa (kilka uwagi na marginesie orzecznictwa sądów administracyjnych)’ [Established Line of Case Law (A Few Remarks on the Margin of the Case Law of Administrative Courts)] in J Supernat (ed), *Między tradycją a przyszłością w nauce prawa administracyjnego. Księga jubileuszowa dedykowana Profesorowi Janowi Bociowi* [Between Tradition and the Future in the Science of Administrative Law. An Anniversary Book Dedicated to Professor Jan Boć] (Wydawnictwo Uniwersytetu Wrocławskiego 2009) 50–54.
- Dąbek D, ‘Między precedensem a źródłem prawa (o uchwałach Naczelnego Sądu Administracyjnego)’ [Between Precedent and Source of Law (on Resolutions of the Supreme Administrative Court)] in T Bąkowski, K Grajewski, J Warylewski (eds), *Orzecznictwo w systemie prawa* [Jurisprudence in the Legal System] (Wolters Kluwer 2008) 193–206.
- Dauter B, Niezgódka-Medek M, Kabta A (eds), *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz* [Act on Proceedings Before Administrative Courts. Commentary] (Wolters Kluwer 2018).
- Dziedzic J, *Sądowa kontrola administracji a wykładnia twórcza* [Judicial Control of Administration Versus Creative Interpretation] in DR Kijowski, J Radwanowicz-Wanczewska, JP Suwaj,

<sup>75</sup> See the decision of the Supreme Administrative Court II OSK 1330/17 [2020].

<sup>76</sup> Ibid.

<sup>77</sup> JS Langrod, ‘Sprawa reaktywacji sądownictwa administracyjnego’ [The Case of Reactivation of Administrative Courts] (1999) *Samorząd Terytorialny* vol. 5, 72.

<sup>78</sup> S Kasznica (1946) 179–180.

- M Wincenciak (eds) *Wykładnia i stosowanie prawa administracyjnego* [Interpretation and Application of Administrative Law] (Wolters Kluwer 2012) 131–145.
- Gajda J, 'Klauzula porządku publicznego w prawie o aktach stanu cywilnego z 29 września 1986 r. oraz z 28 listopada 2014 r.' [Public Order Clause in the Act on Civil Status Certificates of September 29, 1986 and November 28, 2014] (2015) *Administracja: teoria – dydaktyka – praktyka* 4(41), 5–46.
- Jagoda J, 'Odmowa dokonania transkrypcji zagranicznego dokumentu stanu cywilnego z powodu sprzeczności z podstawowymi zasadami porządku prawnego' [Refusal to Transcribe a Foreign Civil Status Document Due to Contradiction with the Basic Principles of the Legal Order] (2022) *Białostockie Studia Prawnicze* 27(3), 141–157.
- Kasprzyk P, Mostowik P, Skubiszewski P, 'Transkrypcja zagranicznych dokumentów stanu cywilnego' [Transcription of Foreign Civil Status Documents] in P Kasprzyk (ed), *Podręcznik urzędnika stanu cywilnego* [Civil Registrar's Manual] (Fundacja Instytut Naukowy im. prof. Józefa Litwina 2018) 283–314.
- Kasznica S, *Polskie prawo administracyjne: pojęcia i instytucje zasadnicze* [Polish Administrative Law: Basic Concepts and Institutions] (Wydawnictwo Prawnicze 1946).
- Knysiak-Molczyk H, 'Jednolitość orzecznictwa sądów administracyjnych' [Uniformity of the Jurisprudence of Administrative Courts] in DR Kijowski, J Radwanowicz-Wanczewska, JP Suwaj, M Wincenciak (eds), *Wykładnia i stosowanie prawa administracyjnego* [Interpretation and Application of Administrative Law] (Wolters Kluwer 2012) 21–40.
- Langrod JS, 'Sprawa reaktywacji sądownictwa administracyjnego' [The Case of Reactivation of Administrative Courts] (1999) *Samorząd Terytorialny* vol. 5, 68–79.
- Leszczyński L, 'Orzekanie przez sądy administracyjne a wykładnia prawa' [Adjudication by Administrative Courts and the Interpretation of Law] (2010) *Zeszyty Naukowe Sądownictwa Administracyjnego* vol. 5–6, 267–279.
- Łętowska E, 'Uwag kilka o praktyce wykładni' [A Few Remarks on the Practice of Interpretation] (2002) *Kwartalnik Prawa Prywatnego* vol. 1, 27–64.
- Mostkowik P, *Problem rejestracji w polskich aktach urodzenia pochodzenia dziecka od "rodziców jednopłciowych" na tle orzecznictwa sądów administracyjnych w 2018 r.* [The Problem of Registering a Child's Descent from "Same-sex Parents" in Polish Birth Certificates Against the Background of the Case Law of Administrative Courts in 2018] (Instytut Wymiaru Sprawiedliwości 2019).
- Pawliczak J, 'Odmowa transkrypcji zagranicznego aktu urodzenia dziecka, w którym jako rodziców wskazano dwie kobiety. Glosa do uchwały NSA z dnia 2 grudnia 2019 r., II OPS 1/19' [Refusal to Transcribe a Foreign Child's Birth Certificate Indicating Two Women as Parents. Gloss to the Resolution of the Supreme Administrative Court of 2 December 2019, II OPS 1/19] (2021) *State and Law* vol. 1, 146–156.
- Pillich M, 'Mater semper certa est? Kilka uwag o skutkach zagranicznego macierzyństwa zastępczego z perspektywy stosowania klauzuli porządku publicznego' [Mater Semper Certa Est? A Few Comments on the Effects of Foreign Surrogacy from the Perspective of the Application of the Public Policy Clause] (2018) *Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego* vol. 16, 7–37.
- Przywiślak-Urbanek E, 'Aktualne orzecznictwo sądów administracyjnych dotyczące rejestracji pochodzenia dziecka od osób tej samej płci' [Current Case Law of Administrative Courts Regarding the Registration of a Child's Descent from People of the Same Sex] in J Gołaczyński, W Popiołek (eds), *Kolizyjne i procesowe aspekty prawa rodzinnego* [Conflict and Procedural Aspects of Family Law] (CH Beck 2018) 151–160.

- Skoczylas A, 'Problem zachowania jednolitości orzecznictwa sądów administracyjnych' [The Problem of Maintaining the Uniformity of the Jurisprudence of Administrative Courts] in R Hauser, Z Niewiadomski, A Wróbel (eds), *Sądowa kontrola administracji publicznej System Prawa Administracyjnego* [Judicial Control of Public Administration, Administrative Law System] (CH Beck 2016) 685–766.
- Tarno JP (ed), *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz* [Act on Proceedings Before Administrative Courts. Commentary] (LexisNexis 2011).
- Tarno JP, *Naczelny Sąd Administracyjny a wykładnia prawa administracyjnego* [Supreme Administrative Court and the Interpretation of Administrative Law] (DIFIN 1999).
- Tykwińska-Rutkowska D, 'Czynność materialno-techniczna' [Material and Technical Activity] in E Bojanowski, K Żukowski (eds), *Leksykon prawa administracyjnego. 100 podstawowych pojęć* [Lexicon of Administrative Law 100 Basic Concepts] (CH Beck 2009) 39–41.
- Tykwińska-Rutkowska D, 'Uwag kilka o sformalizowanych instrumentach wykładni prawa administracyjnego w działalności sądów administracyjnych' [A Few Remarks on Formalized Instruments of Judicial Interpretation of Administrative Law by Administrative Courts] (2017) *Przegląd Prawa Konstytucyjnego* 2(36), 107–131.
- Wojewoda M, 'Kolizyjnoprawne aspekty rejestracji stanu cywilnego' [Conflict of Law Aspects of Civil Status Registration] in M Pazdan (ed), *Prawo prywatne międzynarodowe System Prawa Prywatnego* [Private International Law, Private Law System] (CH Beck 2015) 531–622.
- Wojewoda M, 'O przypadkach dokonanej transkrypcji aktów urodzenia dzieci par jedнопłciowych' [About Cases of Transcription of Birth Certificates of Children of Same-sex Couples] (2021) *Problemy Prawa Prywatnego Międzynarodowego* vol. 28, 131–161.
- Wojewoda M, 'Transkrypcja aktu urodzenia dziecka, które zostało uznane za granicą' [Transcription of the Birth Certificate of a Child Recognized Abroad] (2017) *Kwartalnik Prawa Prywatnego* 26(2), 337–361.
- Wojewoda M, 'Transkrypcja zagranicznego dokumentu stanu cywilnego – kilka uwag na temat ewolucji konstrukcji w prawie polskim' [Transcription of a Foreign Civil Status Document – A Few Comments on the Evolution of the Structure in Polish Law] (2021) *Metryka. Studia z prawa osobowego i rejestracji stanu cywilnego* vol. 2, 51–60.
- Wojewoda M, 'Uznanie rozstrzygnięć organów państw obcych a przesłanki transkrypcji zagranicznych aktów stanu cywilnego' [Recognition of Decisions of the Authorities of Foreign Countries and the Conditions for Transcription of Foreign Civil Status Certificates] (2018) *Studia Prawno-Ekonomiczne* 2018, vol. 109, 159–172.
- Woś T (ed), *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz* [Act on Proceedings Before Administrative Courts. Commentary] (Wolters Kluwer 2016).
- Wypych P, 'Charakter prawny transkrypcji aktu stanu cywilnego sporządzonego za granicą' [Legal Nature of Transcription of a Civil Status Certificate Prepared Abroad] (2003) *Kwartalnik Prawa Prywatnego* vol. 1, 189–209.
- Zachariasiewicz M, 'Transkrypcja aktów urodzenia dzieci par jedнопłciowych' [Transcription of Birth Certificates of Children of Same-sex Couples] (2019) *Studia Prawno-Ekonomiczne* vol. 111, 143–170.
- Zieliński M, 'Rodzaje wykładni prawa' [Types of Interpretation of Law] in M Zieliński (ed), *Wykładnia prawa. Zasady, reguły, wskazówki* [Interpretation of the Law. Principles, Rules and Tips] (LexisNexis 2012) 59–61.
- Zimmermann J, *Prawo administracyjne* [Administrative Law] (Wolters Kluwer 2012).

## LIST OF LEGISLATIVE ACTS

- Ustawa z dnia 25 lutego 1964 r. – Kodeks rodzinny i opiekuńczy [The Act of 25 February 1964 – Family and Guardianship Code] [2023] JoL 2809.
- Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny [The Act of 23 April 1964 – Civil Code] [2024] JoL 1061.
- Ustawa z dnia 17 listopada 1964 r. – Kodeks postępowania cywilnego [The Act of 17 November 1964 – Code of Civil Procedure] [2023] JoL 1550.
- Ustawa z dnia 29 września 1986 r. – Prawo o aktach stanu cywilnego [The Act of 29 September 1986 on Civil Status Certificates] [2011] JoL 212.
- Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z 26 października 1998 r. w sprawie szczegółowych zasad sporządzania aktów stanu cywilnego, sposobu prowadzenia ksiąg stanu cywilnego, ich kontroli, przechowywania i zabezpieczenia oraz wzorów aktów stanu cywilnego, ich odpisów, zaświadczeń i protokołów [Ordinance of the Minister of Internal Affairs and Administration of 26 October 1998 on the detailed rules for drawing up civil status certificates, the manner of keeping civil status books, their control, storage and security, and the templates of civil status certificates, their copies, certificates and protocols] [1998] JoL 884
- Ustawa z dnia 25 lipca 2002 r. Prawo o ustroju sądów administracyjnych [Act of 25 July 2002 on the System of Administrative Courts] [2024] JoL 1267.
- Ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi [Act of 30 August 2002 on Proceedings Before Administrative Courts] [2024] JoL 935.
- Ustawa z dnia 4 lutego 2011 r. Prawo prywatne międzynarodowe [The Act of 4 February 2011 – Private International Law] [2023] JoL 503.
- Ustawa z dnia 28 listopada 2014 r. Prawo o aktach stanu cywilnego [The Act of 28 November 2014 on Civil Status Certificates] [2023] JoL 1378.
- Rozporządzenie Ministra Spraw Wewnętrznych z 29 stycznia 2015 r. w sprawie wzorów dokumentów wydawanych z zakresu rejestracji stanu cywilnego [Ordinance of the Minister of Internal Affairs of 29 January 2015 on the templates of documents issued from the scope of the civil status register] [2015] JoL 194.
- Explanatory Memorandum to the Draft Act on Civil Status Certificates, Parliamentary Print No. 2620.

## JUDGMENTS

- Judgment of the ECHR 77785/01 [1995] HUDOC.
- Judgment of the Polish Constitutional Court of 28 April 2003, K 18/02 (2003) Lex 78052.
- Decision of the PSC V CK 6/2002 [2003] Lex 82443.
- Judgment of the PSC III CSK 380/06 [2007] Lex 457689.
- Judgment of the Regional Administrative Court in Warsaw IV SA/Wa 270/10 [2010] Lex 779862.
- Decision of the PSC III CZP 12/2011 [2011] Lex 847153.
- Decision of the PSC III CSK 259/2010 [2011] Lex 1129120.
- Judgment of the Polish Constitutional Court of 11 October 2011, K 16/10 (2011) Lex 992832.
- Resolution of the PSC III CZP 58/12 [2012] Lex 1227013.
- Resolution of the PSC III CZP 58/12 [2013] OSNC 5, 55.

Judgment of the Polish Constitutional Court of 21 January 2014, SK 5/12 (2014) Lex 1415468.  
Judgment of the Regional Administrative Court in Łódź III SA/Łd 1100/12 [2014] Lex 1287159.  
Judgment of the Supreme Administrative Court II FSK 147/14 [2014] Lex 2036424.  
Judgment of the Supreme Administrative Court II OSK 1298/13 [2014] Lex 1772336.  
Decision of the PSC III CSK 296/14 [2015] Lex 1712817.  
Judgment of the Regional Administrative Court in Gliwice II SA/Gl 1157/15 [2016] Lex 2035383;  
Judgment of the Regional Administrative Court in Warsaw IV SA/Wa 182/16 [2016] Lex 2459345.  
Judgment of the CJEU C-438/14 EU:C:2016:401.  
Judgment of the CJEU C-193/16 EU:C:2017:542.  
Judgment of the Regional Administrative Court in Poznań II SA/Po 1169/17 [2018] Lex 2478177.  
Judgment of the Supreme Administrative Court II OSK 1808/16 [2018] Lex 2513922.  
Judgment of the Supreme Administrative Court II OSK 2129/16 [2018] Lex 2563851.  
Judgment of the Supreme Administrative Court II OSK 2552/16 [2018] Lex 2586953.  
Judgment of the Regional Administrative Court in Cracow III SA/Kr 233/19 [2019] Lex 2691369.  
Resolution of the Supreme Administrative Court II OPS 1/19 [2019] Lex 2746435.  
Judgment of the Regional Administrative Court in Łódź III SA/Łd 617/19 [2020] Lex 2791329.  
Judgment of the Supreme Administrative Court II OSK 1330/17 [2020] Lex 3062328.  
Judgment of the Regional Administrative Court in Szczecin II SA/Sz 1075/19 [2020] Lex 2956995.  
Judgment of the Supreme Administrative Court II OSK 2284/18 [2021] Lex 3242716.  
Judgment of the CJEU C 490/20 EU:C:2021:1008.  
Order of the CJEU C-2/21 EU:C:2022:502.