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JAROSŁAW DOBKOWSKI[1], PAWEŁ SOBOTKO[2]

On Judicial Review of Civil Status Registration Activities[3]

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Abstract

The analysis offered in this paper explores the legal definition of civil status and points out the different meanings of this concept in the basic branches of law as well as its relevance to the application in Poland of the norms of the Act of 28 November 2014 – Vital Records Law. The essence of vital records has also been considered. The discussion addresses the administrative-legal nature of civil status registration activities, highlighting their permissible legal forms. This is followed by a review of the most important features and scope of judicial review exercised by common and administrative courts, which serves as the background for an evaluation of the dispersed judicial review. The conclusion offers *de lege ferenda* proposals relating to a uniform model of judicial review of civil status registration activities.

Keywords: civil status, civil status registration, technical actions, judicial review of administration, court jurisdiction.

[1] Professor Jarosław Dobkowski, PhD, DSc – University of Warmia and Mazury in Olsztyn (Poland); e-mail: j.dobkowski@uwm.edu.pl; ORCID: 0000-0002- -2010-4152.
[2] Paweł Sobotko, MA – University of Warmia and Mazury in Olsztyn (Poland); e-mail: pawel.sobotko @ uwm.edu.pl; ORCID: 0000-0002-8625-6191.
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Introduction

The authors of this study, as students of the Honourable Jubilarian – Professor Andrzej Kabat – with whom they had the privilege and pleasure of collaborating during their legal and administrative studies at the Institute of Law and Administration and the Faculty of Law and Administration of the University of Warmia and Mazury in Olsztyn, not only as participants in seminars, lectures, and examinations in administrative procedure and administrative court procedure,[4] have gratefully and enthusiastically accepted the invitation to contribute to this commemorative publication. It is a great honour for us to participate in this way in celebrating the 90th anniversary of our teacher, recalling his classes as both highly engaging and profoundly educational.

The topic addressed in this paper – activities involved in the registration of civil status – focuses on significant issues of judicial review of public administration, including the role of administrative courts. This subject raised also resonates with the scholarly contributions of the Honourable Jubilarian.

Object and Types of Civil Status Registration Activities

"Civil status" is not a uniform legal institution. Moreover, it is currently one of the more controversial concepts of law and jurisprudence. This is a formulation that has long been variously understood by legal scholars and commentators, and especially in the context of the dogmatics of specific branches of law.[5] From a substantive

[4] Paweł Sobotko wrote his master's thesis titled *Orzecznictwo sądów administracyjnych w sprawach stopni naukowych* [EN: *The Jurisdiction of Administrative Courts in Matters of Academic Degrees*] under the supervision of Professor Kabat and defended at the Faculty of Law and Administration of the University of Warmia and Mazury in Olsztyn, Olsztyn 2010, pp. 228 + XXVI (typescript).

[5] See e.g.: L. Dworzak, *Przestępstwa naruszenia stanu cywilnego*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1929, 2, pp. 136–157 ("Civil status belongs to undetermined concepts to which they ascribe various meanings" – p. 137); idem, *Stan cywilny jako przedmiot ochrony karnej*, "Przegląd Prawa i Administracji im. Ernesta Tilla. Rozprawy i zapiski literackie", 1930, pp. 366–382; J. Litwin, *Prawo o aktach stanu cywilnego z komentarzem*, Łódź 1949, p. 16 *et seq.*; idem, *Prawo o aktach stanu cywilnego. Komentarz*, Warszawa 1961, pp. 15–19; J. Ignatowicz, *Stan cywilny i jego ochrona*, "Annales Universitatis Mariae Curie-Skłodowska", sec. G (Ius), vol. X, 1963, pp. 129–172; idem, *Pojęcie stanu cywilnego i praw stanu cywilnego*, [in:] J. St. Piątowski (ed.), *System prawa rodzinnego i opiekuńczego*, Wrocław 1985, p. 75 *et seq.*; K. Pietrzykowski, *Stan cywilny*, [in:] E. Smoktunowicz, C. Kosikowski (eds.), *Wielka Encyklopedia Prawa*, Białystok 2000, pp. 960–961; I. Dybus-Grosicka, *Pojęcie stanu cywilnego*, [in:] H. Cioch, P. Kasprzyk (eds.),

law perspective, regarding the official registration of legal events that shape a person's legal status as expressed through individualising characteristics and which fits within the domain of public law, the term has its own distinct object. Its scope also varies depending on whether it concerns civil (family) status rights or is viewed as a legally protected personal good of an individual.[6] It is not always possible to precisely delineate the essence and boundaries of these spheres, which translates into occasional inconsistencies in administrative practice and divergences in judicial decisions. Additionally, there is the essence and scope of civil matters in a formal sense, which encompass a distinct object in the form of cases related to civil status (falling within the jurisdiction of common courts of law in the realm of civil status registration). These cases are qualitatively different from the aforementioned civil matters considered from the perspective of substantive law.[7] Civil matters related to civil status primarily border on administrative court matters, which include objects examined by administrative courts in connection with the challenge of specific acts and activities related to civil status registration, as well as administrative decisions.

An attempt to systematise the legal framework in Poland was made ten years ago, with the introduction of a statutory definition of civil status. According to Article 2(1) of the Vital Records Act,[8] civil status is defined as the legal situation of a person expressed through individualising characteristics, shaped by natural events, legal acts, judicial rulings, or administrative decisions, as recorded in vital records (also referred to as civil status records). This definition has been subject to justified criticism in the literature dealing with the matter.[9] It should be therefore emphasised that framing civil status within explicit legal boundaries does not have systemic significance, but pertains only to its official registration.

However, this term – with clear legal designations – has significance for the application of the norms of the act in whose glossary it has been explained. The substantive scope of the Vital Records Law Act, as specified in Article 1, covers the principles and procedures for civil status registration and the performance of activities related to such registration. The act of civil status registration itself is

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Z zagadnień prawa rodzinnego i rejestracji stanu cywilnego, Lublin 2007, s. 109–118; T. Smyczyński, *Pojęcie stanu cywilnego*, [in:] idem (ed.), *System Prawa Prywatnego*, *Prawo rodzinne i opiekuńcze*, vol. 11, Warszawa 2009, pp. 12–14, marginal number 28–32.

6 J. Słyk, *Definicja stanu cywilnego*, "Kwartalnik Prawa Publicznego" 2023, 3, pp. 49–59.

7 Cf. J. Mucha, *Postępowania w sprawach dotyczących aktów stanu cywilnego – kompetencja organu administracji publicznej czy sądu powszechnego?*, "Studia Prawa Publicznego" 2015, 3(11), p. 32 *et seq*.

8 Act of 28 November 2014 – Vital Records Law, uniform text in the Journal of Laws of the Republic of Poland of 2023, item 1378, as amended (hereinafter referred to as the VRLA).

9 M. Wojewoda, *Kilka uwag o definicji „stanu cywilnego" w nowej ustawie Prawo o aktach stanu cywilnego*, "Metryka. Studia z Zakresu Prawa Osobowego i Rejestracji Stanu Cywilnego" 2014, 2, pp. 17–37; P. Kasprzyk, *Pojęcie stanu cywilnego*, [in:] P. Kasprzyk (ed.), *Podręcznik urzędnika stanu cywilnego*, *Podstawowe instytucje prawa o aktach stanu cywilnego*, Vol. 1, Lublin 2018, p. 96.

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carried out using the electronic civil status register, with the status taking form of an entry in vital records,[10] which represent the typical and most frequently performed activity in this area. Other activities related to civil status registration are conducted either through administrative decisions or technical actions.[11] It should also be stressed that a refusal to perform an activity related to civil status registration must take the form of an administrative decision. Although the statutory definition of "civil status" is to some extent flawed by tautological and ambiguous reasoning (*idem per idem* and *ignotum per ignotum*), a clear distinction must nevertheless be made between determining a person's legal situation expressed through individualising characteristics via legal events and recording them in vital records as a result of registration.

The administrative-legal nature of activities related to civil status registration

Historically, a vital record (also: civil status record) served as an official certification of significant life events: birth, marriage, and death. It was evidence that the recorded facts had indeed occurred. Thus, it constituted a document enabling its holder to assert rights related to their civil status. Over time, the contents of these documents, initially dispersed and fragmented, were simultaneously entered into dedicated civil status registers, often under successive entries, and the civil status record came to signify an entry in these registers, externally represented by a complete or partial extract issued as a separate document. A civil status record meant, therefore, documenting a person's birth, marriage, or death by a civil registrar in the civil status register. This practice remains unchanged. According to Article 3(3) of the Vital Records Law Act, a civil status record is an entry in the civil status register concerning birth, marriage, or death, along with subsequent entries that affect the content or validity of that record.

Activities related to civil status registration may take the form of civil status records, administrative decisions, or technical actions.[12] The concept of an administrative decision, either in the substantive legal sense or in the administrative procedural sense, does not give rise to significant doubts and it is commonly known that it is an administrative act qualified as to its form and procedure of issue, one resolving a matter concerning civil status registration, a technical action in the

[10] See: Article 2 section 2 of the VRLA.

[11] See: Article 2 section 5 of the VRLA.

[12] See: Article 2 sections 2 and 5 of the VRLA.

area of civil status registration is an official action of a public administration body concerning the rights or obligations arising from the provisions of the law. Yet, it is impossible to determine clearly what a civil status – or vital – record actually is. If a civil status record is an entry concerning birth, marriage, or death in the civil status register, along with subsequent entries affecting its content or validity, then in legal terms, it does not resemble a legal act such as an administrative decision (even of a declaratory nature). Instead, it constitutes a technical action within the domain of public administration. It has a qualified statutory designation but essentially resembles the drawing up of a protocol the content of which is externally represented by extracts – either full or partial – that serve as certificates of a special nature. These extracts constitute exclusive evidence of the events they document and certify[13], and their presumed authenticity can only be challenged through special judicial proceedings proving the record's inaccuracy.[14]

It is also important to bear in mind the principle that civil status records take precedence over other forms of activity in matters concerning civil status registration. For obvious reasons, this does not apply to the refusal to perform a registration activity, which must always take the form of an administrative decision.[15] A distinction should also be made between independent technical actions related to civil status registration and those carried out as part of executing an administrative decision, as well as the possibilities for their review under extraordinary administrative procedures.[16]

The above considerations shed light onto the judicial review of activities related to civil status registration, encompassing both appellate and judicial review of administrative decisions and the jurisdiction of common courts of law in matters concerning civil status registration.

Judicial review of civil status registration activities by common courts of law

It should be clearly emphasised that activities involved in civil status registration, particularly the issuance of civil status records, are carried out by the head of a civil

13 See: Article 3 of the VRLA.

14 Cf.: J. Dobkowski, *Preponderancja polskich aktów stanu cywilnego*, "Metryka. Studia z Zakresu Prawa Osobowego i Rejestracji Stanu Cywilnego" 2011, 2, pp. 15–32.

15 See: Article 2 section 6 of the VRLA.

16 Cf.: J. Dobkowski, *Czynności materialno-techniczne z zakresu rejestracji stanu cywilnego a kodeks postępowania administracyjnego*, "Metryka. Studia z Zakresu Prawa Osobowego i Rejestracji Stanu Cywilnego" 2018, 1, pp. 39–50.

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registry office or their deputy.[17] These activities are not performed by common courts of law.

Nevertheless, in cases specified by law, common courts of law verify civil status records. Specifically, a civil court may correct a civil status record,[18] supplement a death record,[19] annul a civil status record or an additional note to it,[20] establish the content of a civil status record,[21] or annul a new birth record of an adopted person.[22] These activities are undertaken in non-litigious proceedings, with matters concerning civil status being the subject matter of such proceedings. This jurisdiction of civil courts should be distinguished from the previously described cases concerning civil status (family) rights and the protection of civil status. This distinction is important because the clearly defined competence of common courts of law reflects the principle of making their jurisdiction concerned with matters broadly understood as civil status, including their authority to review activities related to civil status registration.

However, the lack of broader powers granted to civil courts, such as those described by a so-called general competence clause, and the introduction of appellate review of administrative decisions, followed by administrative courts' judicial review of the legality of such decisions and the compliance of technical actions with the law, has led to a phenomenon of dispersed judicial oversight over civil status registration activities.

This phenomenon is not inherent or unavoidable. It is possible to design a normative solution allowing for an administrative decision resolving a civil status registration matter – whether issued by a first-instance authority or by a higher-rank administrative authority – to be brought before a common court of law. Similarly, it is possible to imagine common courts of law reviewing technical actions. For instance, civil courts currently annul additional notes to civil status records. They also review the legality and validity of notifications of refusal to perform specific activities, effectively addressing the inaction of administrative bodies by not nullifying the notification, but rather by ordering the authority to perform the activity in question. However, the legislator has narrowly defined the scope of civil court review, limiting it to the verification of civil status records or additional notes in cases specified by law.

17 See: Article 5 section 5 of the VRLA.
18 See: Article 36 of the VRLA.
19 See: Article 38 of the VRLA.
20 See: Article 39 section 1 of the VRLA.
21 See: Article 40 of the VRLA.
22 See: Article 74 section 1 of the VRLA.

Despite the principle of non-competition between judicial and administrative judicial proceedings, the existing body of judicial decisions has increasingly broadened the scope of judicial review of actions related to civil status registration, which is now also exercised by administrative courts.

Judicial review of civil status registration activities conducted by administrative courts

The administrative judiciary's oversight of public administration activities[23] initially encompassed, following its reinstatement on 1 September 1980,[24] only final administrative decisions in enumerated cases. Among these, the legislator from the outset provided for the appealability of decisions regarding "civil status records and [the change of] first and last names," matters handled in the first instance by heads of civil registry offices.[25] The act reinstating administrative courts included a derogation clause that annulled – with a few exceptions – "all provisions concerning matters regulated in the Code of Administrative Procedure."[26] However, these new regulations did not infringe upon specific provisions allowing common courts of law to consider e.g. "cases examined in administrative proceedings."[27] These included cases involving the annulment or correction of civil status records.[28]

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23 The head of a civil registry office is a public administration body – instead of many, see: P. Kasprzyk, *Kierownik USC i jego zastępca jako organ administracji publicznej*, [in:] P. Kasprzyk (ed.), *Podręcznik…*, pp. 40–44 and the literature indicated therein. Cf.: Provincial Administrative Court in Olsztyn judgment of 12 August 2010, ref. II SA/Ol 415/10, LEX no. 666047, where it was held as follows: "The head of a civil registry office is undoubtedly a public authority, organisationally separate, acting on behalf of the State, empowered to apply authoritative measures and acting within the competences granted to them. These features mean that they may be regarded as a public administration body in the organisational sense." See also: P. Sobotko, *Zakres stosowania przepisów kodeksu postępowania administracyjnego w sprawach dotyczących rejestracji stanu cywilnego. Rozważania na kanwie wyroku WSA w Olsztynie (II SA/Ol 415/10)*, "Metryka. Studia z Zakresu Prawa Osobowego i Rejestracji Stanu Cywilnego" 2014, 2, pp. 35–85.

24 Act of 31 January 1980 on the Supreme Administrative Court and on amendments to the Act – Code of Administrative Procedure (Journal of Laws of the Republic of Poland of 1980, no. 4, item 8, as amended, hereinafter the 1980 SACA).

25 Cf. Article 196 § 2(5) of the Act of 14 June 1960 – Code of Administrative Procedure (uniform text in the Journal of Laws of the Republic of Poland of 1980, no. 9, item 26).

26 Article 12(1) of the 1980 SACA.

27 Article 12(3)(1) of the 1980 SACA.

28 Article 26 of the Decree of 8 June 1955 – Civil Register Law (Journal of Laws of the Republic of Poland of 1955, no. 25, item 151, as amended; hereinafter: the CRL Decree). The rationale for a court's annulation of the record was "an event that is untrue" or "shortcomings in the preparation of the civil status record result in a diminution of its probative value," while the rationale for a court's correction of a record was "erroneous or inaccurate editing." It should be stressed that the legislator qualified cases of annulment and correction of civil status records as administrative cases, despite the fact that in

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Since its re-establishment, the administrative judiciary has recognised its role, particularly in citizen-friendly interpretations of norms that did not explicitly define the legal forms of administrative activity.[29] In 1983, for instance, the Supreme Administrative Court, when examining a refusal to include an additional note in a birth record, stated: "Regardless of the reason for the refusal by the head of the civil registry office to make the requested entry in civil status records, such refusal should – according to the court – be issued in the form of an administrative decision. This constitutes a negative resolution of an administrative matter requested by a party with a legal interest therein. Such a form of resolution, allowing for both appellate and non-appellate review of its legality, best protects both the public interest and the individual interest of the party concerned. (…) (…) The form of resolution through an administrative decision adopted by public administrative bodies and approved by the Supreme Administrative Court in disputes over whether the entry (note) requested by parents in a child's birth record is permissible under civil status law is the result of seeking, through interpretation, the solution most appropriate to the nature of the matter".[30]

The systemic and political changes that took place in 1990 led to an expansion of the SAC's jurisdiction, achieved by replacing the positive enumeration in former Article 196 of the Code of Administrative Procedure with a general clause.[31] Subsequent changes further extended the SAC's jurisdiction to include not only complaints against administrative decisions, but also against rulings issued in administrative proceedings that could be appealed or that concluded the proceedings. This jurisdiction was also extended to encompass other "acts, actions or activities of public administration involving the granting, establishment, or recognition of rights or obligations arising from legal provisions.[32]" As the Honourable Jubilarian, Professor Andrzej Kabat, wrote years ago: "The essence of the adopted solution was to subject to judicial review those activities of public administration which, while not taking

Article 25 of the CRL Decree they are explicitly referred to as non-contentious proceedings, and thus considered civil cases in the formal sense (cf. J. Mucha, *op. cit*., pp. 13–15 and 37–38).

29 The legislator's and administrative authorities' "evasion" of the form of a decision resulted in a lowering of the level of protection granted to citizens against administrative authority. Cf. W. Dawidowicz, *Z problematyki decyzji organów administracji państwowej w świetle orzecznictwa NSA*, "Państwo i Prawo" 1984, 3, pp. 4–16; J. Zimmermann, *Polska jurysdykcja administracyjna*, Warszawa 1996, pp. 133–140; B. Adamiak, *Zagadnienie domniemania formy decyzji administracyjnej*, [in:] *Podmioty administracji publicznej i prawne formy ich działania. Studia i materiały z Konferencji Naukowej poświęconej Jubileuszowi 80-tych urodzin Profesora Eugeniusza Ochendowskiego, Toruń, 15–16 listopada 2005*, Toruń 2005, pp. 7–21.

30 Judgment of the Supreme Administrative Court of 25 February 1983, ref. II SA 2083/82, ONSA 1983, 1, item 14, LEX no. 9723.

31 Article 1 item 22 of the Act of 24 May 1990 on amendments to the Act – Code of Administrative Procedure (Journal of Laws of the Republic of Poland of 1990, no. 34, item 201).

32 Article 16(1)(1), (2) and (4) of the Act of 11 May 1995 on the Supreme Administrative Court (Journal of Laws of the Republic of Poland of 1995, no. 74, item 368, as amended).

the form of administrative decisions or rulings, could affect an individual's position in relation to the state administrative apparatus. This regulation undoubtedly constitutes an additional safeguard for individual interests. Such a safeguard appears necessary as long as public administrative bodies attempt in various ways to 'evade' the form of a decision, especially when imposing various obligations on individuals."[33] The ability to challenge such "other acts, actions or activities" has proven particularly significant in civil status registration cases, as the legislature envisioned extensive use of technical actions by heads of civil registry offices, which could significantly affect the content of civil status records.

Pursuant to Article 3 § 1 of the current judicial procedural law,[34] administrative court oversight of public administration includes, in the context of the subject matter discussed, rulings on appeals and complaints against: 1) administrative decisions; 2) rulings issued in administrative proceedings that may be appealed or that conclude the proceedings, as well as rulings resolving the matter substantively; 3) acts, actions or activities of public administration other than those listed above, concerning rights or obligations arising from the provisions of the law in force, excluding acts, actions or activities undertaken within the framework of administrative proceedings.

In the VRLA, the legislator has made a rather clear distinction between the legal forms of activity of public administration bodies, distinguishing: 1) civil status records (entries on birth, marriage or death in the civil status register together with the content of subsequent entries affecting the content or validity of the record – Article 2(3) of the VRLA), which constitute *sui generis* a form of activity, 2) administrative decisions, and 3) technical actions (Article 2(5) of the VRLA)[35]. The legal form of an administrative decision is also prescribed for refusals to perform civil status registration activities (Article 2(6) of the VRLA). Additionally, the Act identifies a fourth type of activity outside this system: written notifications of refusals to perform specific activities, which do not take the form of decisions, but are appealable to common courts of law (Article 89 of the LCCR, a *lex specialis* relative to Article 2(6) of the LCCR).

Naturally, administrative decisions are subject to judicial-administrative review. For example, a refusal of the head of a civil registry office to authenticate and register a foreign civil status record (Article 2(6) in conjunction with Article 104 of the

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33 A. Kabat, *Prawo do sądu jako gwarancja ochrony praw człowieka w sprawach administracyjnych*, [in:] L. Wiśniewski (ed.), *Podstawowe prawa jednostki i ich sądowa ochrona*, Warszawa 1997, p. 229.

34 Act of 30 August 2002 – Law on Proceedings before Administrative Courts (uniform text in the Journal of Laws of the Republic of Poland of 2024, item 935, as amended; hereinafter referred to as the LPBAC).

35 The concept of "technical actions" was, until the VRLA came into force, a term from the realm of legal language, and not of the language of the law.

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VRLA),[36] correct a civil status record (Article 2(6) in conjunction with Article 35(1) of the VRLA),[37] or reconstruct the content of a civil status record (Article 2(6) in conjunction with Article 133(1) and (9) of the VRLA)[38] is subject, first, to the province governor's (also: voivode's) appellate review, and then to the jurisdiction of administrative courts. Similarly, a refusal to issue a full copy of a birth certificate due to the applicant's lack of legal interest (Article 2(6) in conjunction with Article 44(1) and Article 45 of the VRLA)[39] is subject to the same procedure.

As far as the technical actions of the head of a civil registry office are concerned, the VRLA provides for a number of them, and these have important consequences: 1) correction of a civil status record (Article 35 of the VRLA), 2) supplementation of a civil status record (Article 37 of the VRLA), 3) annulment of a civil status record or of civil status records (Article 39a of the VRLA), 4) annulment of an additional note (Article 41 of the VRLA), 5) primary registration of an event that took place abroad (Article 99 of the VRLA), 6) authentication and registration of a foreign civil status record (Articles 104-105 of the VRLA), 7) restoration of the contents of a foreign civil status document (Article 109 of the VRLA), 8) transfer and supplementation of a civil status record from a civil status file to a civil status registry (Article 124 of the VRLA), 9) annulment of a civil status record erroneously transferred to a civil status registry (Article 127a of the VRLA), 10) transfer of the contents of excerpts from civil status files kept prior to 1 January 1946 under the procedure of denominational registration (Article 132 of the VRLA), 11) restoration of the contents of a civil status record (Article 133 of the VRLA), 12) supplementation of birth and marriage certificates drawn up before the effective date of the VRLA (Article 134 (6) and (7) of the VRLA). It should be noted that the legislator added the phrase "in the form of a technical action" in order to indicate that a given activity is to take place without the need to make a decision, but they failed to notice that in principle all of the abovementioned activities lead either to the creation of a new civil status

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36 E.g. the Provincial Administrative Court in Warsaw judgment of 18 May 2016, ref. IV SA/Wa 581/16, LEX no. 3039610, which dismissed a complaint against the refusal to authenticate and register a foreign birth certificate which did not include the details of the child's mother.

37 E.g. the Provincial Administrative Court in Łódź judgment of 29 November 2023, ref. III SA/Łd 565/23, LEX no. 3726699, which dismissed a complaint against the refusal to correct the name of the child's father in the birth certificate.

38 E.g. the Provincial Administrative Court in Warsaw judgment of 11 January 2018, ref. IV SA/Wa 2479/17, LEX no. 2743924, which was subject to a last resort appeal dismissed by the judgement of the Supreme Administrative Court of 25 July 2019, ref. no. II OSK 1693/18, LEX no. 2704631.

39 E.g. the Provincial Administrative Court in Łódź judgment of 19 January 2024, ref. III SA/Łd 460/23, LEX no. 3668934, in which a complaint against the refusal to issue a full copy of the birth certificate of the biological parent to an adopted person was dismissed, as the adopted person has no legal interest in receiving such a copy, since the relationship of kinship in the legal sense has ended and the bonds of the adopted child with the biological mother have been severed.

record containing an annotation or an additional note (items 5–8 and 11), or to adding an additional note to a previously existing record, updating its content (items 1–4, 9, 10, and 12).[40]

Technical actions – in the absence of other means of challenging them granted under the VRLA – can be appealed to an administrative court within thirty days from the day on which the appealing party has learnt about the activity[41], whereby it is not necessary to first request the rectification of the infringement of law in view of the abolition of this institution in the LPBAC.[42] In practice, there are relatively few such appeals,[43] as the authorities are not obliged to inform individuals of their right to action brought before an administrative court without first exhausting the remedies typically associated with administrative proceedings.

A crucial issue that tends to be often overlooked in the judicial-administrative review of technical actions is the matter of the procedures for carrying out such actions. Regrettably, there is no general legal regulation addressing this matter, which makes it all the more difficult for the parties involved, the authorities performing the activities, and the courts reviewing them to act.[44]

It should be stressed that the jurisdiction of administrative courts in matters related to civil registration is not closed and remains dynamic. It also encompasses decisions by registry office heads that are not explicitly listed in the VRLA, such as the refusal to initiate proceedings for issuing a certified copy of a birth certificate (a decision made by the head of a civil registry office under Article 61a § 1 of the Act of 14 June 1960 – Code of Administrative Procedure,[45] upheld by a province

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40 The legislator does not usually indicate how an amendment to a civil status record is to be recorded and the basis on which it is to be made, which may sometimes give rise to doubts (annotations vs. additional notes – Articles 23-24 of the VRLA). An example of an explicit indication of the legal form of such an amendment is the authentication and registration of a foreign civil status document into the Polish civil status registry, which is carried out by: 1) drawing up the civil status record in the civil status registry and (2) annotating the basis for the authentication and registration – Article 105(1) of the VRLA.

41 Article 53 § 2 of the LPBAC.

42 Cf. A. Kabat, Komentarz do art. 52 i art. 53, [in:] B. Dauter, A. Kabat, M. Niezgódka-Medek, *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, Warszawa 2018, pp. 216–217, marginal number 12–15 and p. 219, marginal number 5.

43 Only a few of the can be found in the Central Database of Administrative Court Judgments, including e.g.: Supreme Administrative Court judgment of 15 January 2019, ref. II OSK 2402/18, LEX no. 2633538; Provincial Administrative Court in Olsztyn judgment of 19 March 2019, ref. II SA/Ol 96/19, "Metryka. Studia z Zakresu Prawa Osobowego i Rejestracji Stanu Cywilnego" 2019, 2, pp. 131–158, LEX no. 2641598 – with a gloss: P. Sobotko, *Glosa do wyroku Wojewódzkiego Sądu Administracyjnego w Olsztynie z dnia 19 marca 2019 r., sygn. akt II SA/Ol 96/19*, "Metryka. Studia z Zakresu Prawa Osobowego i Rejestracji Stanu Cywilnego" 2019, 2, pp. 167–185.

44 Cf.: P. Sobotko, *Glosa do wyroku Naczelnego Sądu Administracyjnego z dnia 7 grudnia 2021 r., sygn. akt II OSK 527/21*, "Metryka. Studia z Zakresu Prawa Osobowego i Rejestracji Stanu Cywilnego" 2021, 2, pp. 143–163.

45 Uniform text in the Journal of Laws of the Republic of Poland of 2024, item 572, hereinafter: Code of Administrative Procedure (CAP).

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governor).[46] In the course of judicial review, it may also turn out that an inadmissible appeal has been lodged with a province governor against the head of a civil registry office's technical action consisting in placing an additional note in a civil status record, and the appeal body had to declare it inadmissible by way of a decision (Article 134 of the CAP in connection with Article 2(5) of the VRLA).[47] Additionally, judicial-administrative review may extend to a ruling by the head of a civil registry office, upheld by a provincial governor, concerning the refusal to issue a certificate with the requested content. In such cases, the norms of Chapter VII of the CAP, pertaining to the issuance of certificates, apply. These norms require that refusals be resolved by a ruling rather than a decision, as outlined in Article 2(6) of the VRLA.[48]

The above underscores the significant role administrative courts play in overseeing administrative acts and technical actions undertaken in civil registration cases *sensu largo* by the relevant public administration authorities.

The model of judicial review of public administration activities in civil registration matters – *de lege ferenda*

The current model of dispersed judicial review for activities related to civil registration does not facilitate the creation of a logical and coherent system for judicial oversight of the actions of civil registry office heads, their deputies, and supervisory authorities – including province governors as higher-level administrative bodies. In both the jurisdiction of common courts of law and the substantive competence of administrative courts, similar types of activities related to civil registration overlap and 'coexist'. Common courts of law no longer only review civil status records, and administrative courts no longer solely examine their typical subjects of appeal. For example, in substantive terms, when an administrative court reviews an appeal against a refusal to register an event subject to registration, it must construct an implicit notion of the civil status record that would result from a favourable ruling. Moreover, the court must account for the consequences of annulling the refusal decision or declaring it invalid, as the enforcement of a binding judgment would generally require the creation of a civil status record with specific content. These considerations also apply to administrative decisions resolving cases on the merits and, most notably, to independent technical actions.

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46 Provincial Administrative Court in Poznań judgment of 24 July 2024, ref. II SA/Po 204/24, LEX no. 3746711.

47 Provincial Administrative Court in Warsaw judgment of 5 June 2017, ref. IV SA/Wa 532/17, LEX no. 2408936.

48 Cf. Provincial Administrative Court in Wrocław judgment of 27 October 2011, ref. IV SA/Wr 480/11, LEX no. 1155178, which dismissed a complaint against the refusal of the head of a civil registry office to issue a certificate with the content requested by the complaining party (Article 219 of the CAP).

This dual system of judicial oversight raises the question of its necessity. Before administrative courts existed, judicial review could only be exercised by common courts of law. On the other hand, civil cases concerning civil status records are procedurally formal matters and substantively distinct from cases involving civil status rights (family law) or civil status protection. Their connection lies primarily in nomenclature. Considering the *numerus clausus* of the subject-matter jurisdiction of common courts of law in civil registration and the implicit general clause that allows administrative courts to review the legality of decisions, rulings, and other acts, actions or activities of the administration, transferring the entire judicial review of civil registration activities to administrative courts is an idea certainly worth considering. Given the trend toward expanding the substantive competencies of administrative courts and the limited effectiveness of civil court rulings (which require execution), such a transfer would not significantly compromise the legal protection afforded. This area could also serve as a testing ground for extending the capabilities of administrative courts, transitioning from a last-resort (cassation) model to a reformative system. After all, there have been many successful cases of applying the CAP to independent technical actions in civil registration cases, which serves as a solid foundation for this evolution.

To address the fragmentation of judicial protection and to enhance its effectiveness, it would be reasonable to consider, *de lege ferenda*, a gradual elimination of the current mixed system of judicial review for civil registration activities with integration, uniformity, and systemic solutions in mind. Such matters should be transferred from the jurisdiction of civil courts to administrative courts.

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