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A comparative analysis of limitations in administrative appeals in Europe: the case of Poland and Slovakia

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Abstract

The article focuses on the issue of administrative appeals and possible limitations in Poland and in Slovakia. The authors provide information on the efficiency requirements in administrative remedies and on the nature of administrative appeal. All these aspects are subsequently examined from a comparative perspective. The aim of the research is to analyse existing limitations in appeal systems and their impact on parties' rights and the efficiency of proceedings. These limitations discussed in appeals procedure are divided into three stages: at the initiation stage, in the course of the proceeding and at the termination stage. They further present other proposals for limitations to administrative appeals which have been taken into consideration in Polish and Slovak scholarship.

1. Introduction

It is undeniable that a claimant has the right to effective procedural protection in administrative proceedings before state authorities. The right to an effective remedy and to a fair trial are guaranteed in Art. 19, para-

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graph 1 of the Treaty on European Union,[1] Art. 47 of the Charter of Fundamental Rights[2] and in Art. 13 Convention for the Protection of Human Rights.[3] The meaning of an effective remedy entails many requirements, which have been developed in the jurisprudence of the Court of Justice of the European Union (hereinafter 'ECJ') and the European Court of Human Rights (hereinafter 'ECtHR') respectively. An effective remedy should thus not be illusory. Member States are held responsible for ensuring the thorough and effective protection of basic rights and, more specifically, for compliance with the rights to an effective remedy and to a fair hearing.[4] While these standards are primarily related to remedies before a court and there is no existing obligation to create a system of appeals in administrative proceedings, we argue in this article that they are also binding before administrative authorities when legislators create obligatory administrative lines of appeal before court proceedings may be initiated.[5]

A remedy is effective when the proceedings, which are initiated by bringing a dispute to a relevant court, fulfills the requirements of the above-mentioned provisions. One of the main requirements that needs to be satisfied for the principle to be applicable can be met in the course of administrative appeals. During this process, a party has the right to question an administrative act,[6] present new arguments[7] and obtain a new decision, the outcome of which carries no guarantee of meeting the applicant's expectations.[8] The administrative

1 Official Journal UE (2012), C 326, 1.

2 Charter of Fundamental Rights of the European Union, Act of 18 December 2000, Official Journal of the European Communities C 364/1.

3 Convention for the Protection of Human Rights and Fundamental Freedoms, Act of 4 November 1950, *Official Journal of Polish Law* (1993), nb 61, poz. 284 as Am., hereinafter only as European Convention.

4 Ruling of the ECJ of 8 November 2016, *Lesoochranárske združenie VLK v Obvodný úrad Trenčín*, complaint no C 243/15.

5 According to the Art. 22 (2) of the Recommendation CM/Rec (2007)7, administrative appeals, prior to judicial review, shall in principle, be possible. In certain cases, they may be compulsory. They may concern an appeal on merits or an appeal on the legality of an administrative decision. See more recommendation CM/Rec (2007)7 of the Committee of Ministers to member states on good administration, adopted on 20 June 2007, https://rm.coe.int/16807096b9 (access on 2 November 2017). The same ECJ has stated, that an administrative appeal intended to relieve the courts of disputes which can be decided directly before the administrative authority concerned and to increase the efficiency of judicial proceedings as regards disputes in which a legal action is brought despite the fact that a complaint has already been lodged. Ruling of the ECJ of 27 September 2017, *Peter Puškár v Finančné riaditeľstvo Slovenskej republiky*, Kriminálny úrad finančnej správy, complaint no C 73/16, para. 67.

6 Ruling of the ECtHR of 28 May 2002, *Urbańczyk v Poland*, complaint no. 33777/96, LEX no 55263.

7 Ruling of the ECtHR of 18 December 2008, *Saccoccia v Austria*, complaint no. 69917/01, LEX no 468510.

8 An applicant has not certainty, that the final outcome of the proceeding will be in compliance with his expectations. Ruling of the ECtHR of 23 October 2001, *Beller v Poland*, complaint no 51837/99, LEX no 49835.

authority should itself be given the opportunity to examine all aspects of a case which are significant for the final outcome.[9]

An administrative appeal needs to be effective. Apart from the positive functions of the right, effectiveness is threatened by factors such as the length,[10] formal constraints[11] and, ultimately, the costs of proceedings.[12] These negative effects could be associated with limitations to administrative appeals which should not interfere with the basic grounds of the appeal, such as the accessibility of the remedy, the scope of the hearing and adjudication in an administrative case.

In this paper, we will analyse how legislators in Slovakia and Poland make administrative appeals more effective by employing procedural limitations to achieve this objective. These two countries share a similar cultural and historical background that has helped shape their respective legal systems. Nonetheless, several differences in the standards of appeal proceedings before administrative authorities can be identified. The main aim of our research is to inquire into procedural limitations and even restrictions placed upon some procedural guarantees that aid individuals in both avoiding the abovementioned negative effects and strengthening their right to effective protection in administrative proceedings. Finally, *de lege ferenda* proposals are formulated, which, in the authors' opinion, could constitute more effective administrative appeal procedures.

2. The essence of administrative appeals

In both Slovakia and in Poland mandatory appeals serve as withdrawals from lodging administrative appeal which preclude actions from being taken before administrative courts.[13] This requirement is perceived by the CJEU as consistent with EU law, above all with Art. 47 of the Charter of Fundamental Rights under concrete circumstances. An appeal should be

9 Ruling of the ECtHR of 20 September 2005, *Dizman v Turkey*, complaint no. 27309/95, LEX no 156557.

10 Ruling of the ECtHR of 10 September 2010, *McFarlane v Irleand*, complaint no 31333/06, LEX no 603472, Ruling of the ECtHR of 7 July 2015, *Rutkowski v Poland*, complaint no 72287/10, LEX no 1749574.

11 Ruling of the ECtHR of 10 April 2008, *Wasserman v Russia*, complaint no 21071/05, LEX no 370471.

12 Ruling of the ECJ of 22 December 2010, DEB Deutsche Energiehandels- und *Beratungsgesellschaftmb H v Germany*, complaint no C 279/09, LEX no 669397.

13 There are two major systems of administrative appeals – mandatory and optional. The second one is promoted by the French legal system (recoursadministratif). It attaches certain effects to the exercise of the administrative appeal, without making it mandatory. See D.C. Dragoș, M. Swora & A. Skoczylas, 'Administrative appeals in Romania and in Poland – a topical comparative perspective', *Transylvanian Review of Administrative Sciences* 37 (2012), 39.

provided for by law, respect the essence of that right and, subject to the principle of proportionality, remain necessary and meet the objectives of general interest recognized by the EU or the need to protect the rights and freedoms of others.[14] In both countries, the regulation of administrative appeals is made by statute and has largely been regarded as compatible with EU law[15] and the recommendations of the Committee of Ministers of Council of Europe.[16]

In the Polish legal system, the right to an appeal in administrative proceedings is guaranteed byArt.78 of the Constitution.[17] According to this provision, each claimant has the right to appeal against judgments and decisions issued at first instance. Exceptions to this rule and the course of appeal are only permissible when established by statute. This legal safeguard is further enacted in Arts. 127 to 140 of the Code of Administrative Procedure ('Polish CAP').[18]

In Slovakia, there are no comparable constitutional rules exist. The Constitution of the Slovak Republic ('CSR')[19] does not guarantee the right to appeal for both administrative and judicial proceedings. The only guarantee in the CSR is the right of access to an independent and impartial court.[20] However, *de lege lata*, it has been provided by legislation that an administrative appeal must be used to challenge the public administration's decisions issued at first instance before filing an administrative action. This is further acknowledged in the Slovak Code on Administrative Procedure ('Slovak CAP')[21] and the Act on Administrative Justice Procedure ('AJP').[22] According to art. 53 of Slovak CAP, unless otherwise provided by law and unless a party has waived its right to appeal, a claimant can appeal against a decision of an administrative authority. Pursuant to art. 7(a)AJP, the administrative courts cannot review decisions of the public administration if the claimant has failed to first seek administrative appeal.

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14 Ruling of the ECJ of 15 September 2016, *SC Star Storage SA v Institutul National de Cercetare-DezvoltareînInformatică* (ICI), complaint no C 439/14, para. 49, Ruling of the ECJ of 27 September 2017, *Peter Puškár v Finančné riaditeľstvo* Slovenskej republiky, Kriminálny úrad finančnej správy, complaint no C 73/16, para. 62.

15 Z. Kmieciak, Odwołania w postępowaniuadministracyjnym (Warszawa: 2011), 163-165.

16 See Škrobák, J., *Preskúmavanie právoplatných rozhodnutí vydaných v správnom konaní* (Bratislava: 2014), 22 and 26. See also P. Potasch et al, Všeobecné správne konanie, *teória a prax* (Šamorín: 2016), 151-153.

17 Constitution of the Republic of Poland, Act of 2 April 1997, *Journal of Laws* 78 (1997), item 483, as amended, hence forth Constitution of the Republic of Poland.

18 Administrative Procedure Code Act of 14 June 1960, *Journal of Laws* (2016), item 23, as amended, hereinafter only as Polish CAP.

19 Act no. 460/1992 Coll. Constitution of the Slovak Republic as amended. English translation of the CSR is available at http://www.ucps.sk/Ustava_SR_anglicky (accessed on 20 June 2018).

20 See article 46 CSR.

21 Act no. 71/1967 Coll. on Administrative Procedure as amended (hereinafter only as Slovak CAP).

22 Act no. 162/2015 Coll. on Administrative Justice Procedure (hereinafter only as AJP).

In both Slovakia and Poland, a right to two-instance proceedings is distinguished either among the principles of the administrative procedure, or in special chapters of the national codes of administrative procedure. According to the rule found in the Polish CAP, administrative proceedings have two instances, unless otherwise provided by special statute (Art. 15 CAP). In Slovakia, this right has been generally acknowledged[23] as an unwritten principle of administrative procedure. The underlying reason is that Art. 3 of the Slovak CAP does not expressly mention this right.[24] According to present Legal theory, the Slovak CAP contains several unwritten principles. These are principles derived from the *de lege lata* text of the Slovak CAP. The right to two-instance administrative proceedings is consequently derived from Arts. 53 to 61 Slovak CAP. The crucial role of two-instance proceedings has generally been accepted by the Supreme Court of the Slovak Republic ('SC SR').[25]

It must be noted that the right to two-instance proceedings does not absolutely pervade throughout all European countries in a number of areas of administrative law. For some countries, such as Austria, the general principle of two-instance administrative proceeding is foreign.[26] In Germany, the right to question administrative decisions is linked to the right of remedy from an administrative court (Widerspruchsverfahren).[27] In Hungary, the administrative procedure only permits one instance. However, the Hungarian CAP[28] has left open the possibility for enacting two-instance proceedings when provided by statute.[29] By contrast, internal two-instance administrative proceedings are typical for southern European countries like Croatia, Macedonia, Serbia and Slovenia, with some exceptions existing for decisions issued by governmental or municipal authorities.[30]

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23 See e.g. M. Vrabko, in: Vrabko, M. et al, *Správne právo procesné, všeobecná časť* (Bratislava: 2013), 68; S. Sobihard, *Správny poriadok – Komentár* (Bratislava: 2007), 35-36.

24 Art. 3 of Slovak CAP states that the basic principles that guide administrative procedure, such as principle of lawfulness, principle of cooperation, principle of act within reasonable time, etc. These principles are so-called written principles of Slovak CAP. See more P. Potasch, 'Hašanová', *Zákon o správnom konaní (správny poriadok)* (Praha: 2012), 6-25.

25 See for example decision of the Supreme Court of the Slovak Republic no. 1Sžd/18/2011 from 13 December 2011, or decision of the Supreme Court of the Slovak Republic no. 5Asan/2/2016 from 4 April 2018.

26 After the reform of the administrative judiciary in 2012, an administrative authority decides in a case as the one instance. Only in cases of self-government administration is the administrative course of the instance leaved. See more Ch. Grabenwarter & M. Fister, *Verwaltungsverfahrensrecht und Verwaltungsgerichtsbarkeit* (Wien 2014), 117.

27 W.R. Schenke in: F. Kopp, W.R. Schenke (ed.), *Verwaltungsgerichtsordnung – Kommentar*, (Műnchen: 2017), 838-840.

28 Act CL of 2016 on General Public Administration Procedures.

29 See s. 116(1) of Hungarian CAP.

30 B. Wieser, Das Verwaltungsverfahren im Vergleich in: B. Wieser & A. Stolz (ed.), *Vergleichendes Verwaltungsrecht in Sűdosteuropa* (Wien: 2016), 394-395.

The essence of administrative appeal in Poland is understood as the possibility for a second examination and resolution of the same administrative case.[31] Some authors have suggested that during second instance proceedings a decision is controlled[32] by the administrative authority issuing it.[33] This view is, however, not shared by the majority of scholars who stress the substantial role of an appeal. This means that an administrative case is examined for the second time and not only controlled by an appellate authority.[34] According to the case law of the Supreme Administrative Court ('SAC') in Warsaw,[35] appeal proceedings cannot be based on a review of a decision issued at first instance, but on the reconsideration of an administrative case.[36] Thus, an administrative case should be examined at both first and second instance on its merits. Therefore, it is unlawful for a case to be marginally reviewed at first instance and on its merits at second instance.[37] In light of this, it would be justifiable to assume that the administrative case was examined only in the second instance proceedings. In such circumstances, a party to the proceeding has not received its guaranteed right to two-instance proceedings.

In Slovakia, second instance proceedings are seen as an opportunity to review the first instance decision with respect not only its lawfulness, but also its validity.[38] Slovak legal theory and jurisprudence has accepted that there is a connection between the notions of lawfulness and validity; however, they are not the same. A lawful decision is usually valid, but that are exceptions. An invalid decision is one that can be lawful; however, it is not effective because it does not take into account local conditions, or breaches relevant by-laws.[39] The legislator accepts this approach and does not stipulate any special requirements for an appeal apart from the need for appellants to identify who is filing the appeal, in what matter and what remedy they are seeking. Moreover, pursuant to Art. 59(1) Slovak CAP the second instance body is mandated to examine the decision that is the subject of the appeal in its entirety. This body is responsible for reviewing the decision and the procedure that leads to its issuance and is not bound by the grounds of the appeal. As such, it is vested with full jurisdiction

31 B. Adamiak in: B. Adamiak, J. Borkowski, *K.p.a. Komentarz* (Warszawa: 2016), 97; J. Zimmermann, *Aksjomaty postępowania administracyjnego* (Warszawa: 2017), 191-192.

32 Control means that a second instance authority only revise a decision issued by the first instance authority. Appeal means a merits-related examination of the case.

33 A. Wróbel in: M. Jaśkowska & A. Wróbel, *K.p.a. Komentarz*, (Kraków: 2000), 690-691.

34 G. Łaszczyca in: G. Łaszczyca, Cz. Martysz & A. Matan, *K.p.a. Komentarz*; Tom I. Komentarz do art. 1-103, (Warszawa: 2010), 162-163; H. Knysiak-Molczyk (ed.), *K.p.a. Komentarz* (Warszawa: 2015), 108; K. Glibowski in: R. Hauser, M. Wierzbowski (ed.), *K.p.a. Komentarz* (Warszawa: 2015), 82.

35 Hereinafter only as SAC.

36 Ruling of the SAC of 7 February 2017, complaint no. II OSK 1267/15, LEX no 2271251.

37 Ruling of the SAC of 9 November 2016, complaint no. II OSK 317/15, LEX no 2190770.

38 See J. Sobihard, *Správny poriadok – komentár* (Bratislava: 2007), 230.

39 See more K. Tóthová, *Rozhodovacie procesy v štátnej správe* (Bratislava: 1989), 18.

and the second instance proceedings serve as the complete reconsideration of the administrative case.

In both Slovakia and Poland, a party to administrative proceedings has the right to have the same case considered on its merits in two-instance administrative proceedings. The implementation of this right, however, depends on the procedural conditions established under national law. Consequently, the legislator is bound to establish the conditions necessary for the right to become real and admissible.

Administrative appeals in Poland are based on one of two models. According to the first model, an appeal is evaluated by the authority which is at a higher level than the body delivering the original decision in the structure of the executive power. The second model does not permit the escalation of the appeal to a higher level body in the administrative hierarchy because the request for appeal is lodged and considered by the same authority. This model is enforced when there is no superior authority to the one issuing the decision. The evident structural complication could thus lead to doubts in connection with the impartiality of the final decision.[40] It is limited by a merits-oriented examination of an administrative case and disqualification of an employee of an administrative authority who settled a dispute in a first instance proceeding.

The same model applies in Slovakia. According to the Slovak CAP, when analyzing regular remedies, a distinction exists between an appeal and a so-called remonstrance. An appeal has the effect of escalating the appeal to a higher administrative authority and is used against any decision of an administrative body where a superior body exists in the organizational structure of public administration(the second instance). However, since the appeal is possible only against bodies with superior administrative body, the party cannot file an appeal where no higher-ranking body exists (such as ministries). In this case, the regular remedy is not an appeal, but rather a remonstrance. Where remonstrance applies, a review of the decision is made by the head of the body (in the case of ministries, this is the respective minister) based on the non-binding proposal of a decision by the remonstrance committee.[41] In both cases (appeal and remonstrance), the second instance body is obliged to review the first instance decision in full. The second instance body can make use of evidence from the first instance proceeding and even seek new evidence. It reviews the decision and the proceedings that led to its issuance both from the perspective of lawfulness and validity.

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40 This issue is noted in the jurisprudence of the ECtHR. See Ruling of the ECtHR of 14 November 2006, Tsfayo vs. The United Kingdom, complaint no. 60860/95. The same danger is noticed in the jurisprudence of Polish Constitutional Tribunal. See Ruling of this Tribunal of 6 December 2011, complaint no SK 3/11, OTK-A 2011/10/113.

41 The remonstrance committee is a committee composed of experts. At least half of them cannot be employees of the body. See more e.g. M. Vrabko et al, *Správne právo, procesná časť* (Bratislava: 2007), 56.

With respect to the standard of an administrative appeal, in Poland it does not need to include detailed grounds. It is enough for the request to follow from a first instance appeal and that the party is dissatisfied with the initial decision.[42] This requirement is connected with the above-mentioned purpose of appellate proceedings which is to hear a case *de novo* and determine it on its merits.[43]

The same model applies in Slovakia. As already mentioned, the Slovak CAP does not impose any special requirements for an appeal. The Slovak CAP merely denotes the three basic elements of any application (i.e. including appeals)already described.[44] There are no requirements for the appeal to be specific or detailed apart meeting the basic application standard. In legal practice, however, appeals tend to be detailed in order to guide the appellate body on the subject of the review. In addition, since there are no special requirements imposed on the formulation of the appeal, the obligation of the second instance body to review the first instance decision in its entirety[45] is necessitated.

In Poland, an appeal in a hierarchical model is lodged with the competent appellate body before the administrative authority that had issued the initial decision within 14 days of the decision being delivered to the parties. The first-instance authority can grant the remedy sought in its entirety[46] or transfer it along with the administrative files of the case within seven days of receiving the appeal to the second-instance authority.[47] If an appeal does not have a hierarchical nature, then it is lodged before the same organ that had determined the case for the second time. The body can subsequently review the question again and may grant the remedy sought at the appellate stage.

In Slovakia,a claimant must file its request for an appeal within 15 days of receiving the decision of the administrative body.[48] After the receipt of the request, the first instance body must inform all the other parties to the proceedings and call on them to provide their respective statements on the appeal. The first instance body is itself entitled to determine the appeal.[49] However, the first instance body is entitled to do so only if it accepts the appeal in its entirety, i.e. when the first instance body changes the decision according to what the appel-

42 Art. 128 of Polish CAP.

43 It doesn't mean, that a motivation of an appeal is not beneficial. See more D.C. Dragoş, M. Swora & A. Skoczylas, 'Administrative appeals in Romania and in Poland – a topical comparative perspective', *Transylvanian Review of Administrative Sciences* 37 (2012), 43.

44 Art. 19(2) of Slovak CAP.

45 Art. 59(1) of Slovak CAP.

46 Art. 132(1) of Polish CAP.

47 Art. 134 of Polish CAP.

48 Art. 54(2) of Slovak CAP.

49 When the proceedings concern more than one party, the other parties must agree to this process. If they do not, the first instance body must not decide the appeal and is obliged to deliver the appeal to the second instance body.

lant sought on appeal.[50] If the first instance authority does not comply with the request for appeal, then within 30 days of the receipt of the appeal request, it must deliver a decision consisting of all the statements of the parties along with its own statement on the question under review to the second instance body.

In Poland, the second instance authority, or the same authority if the appeal structure is not hierarchical, can hold additional discovery proceedings *officio* or at the request of a party.[51] The aim of this process is to supplement evidence collected at the first instance. The Supreme Administrative Court in its jurisprudence has stressed that discovery proceedings in the second instance have a distinct character to those held during first instance proceeding.[52] Newly introduced evidence should be supplementary to the evidence gathered during the first instance proceedings. In Slovakia, by contrast,there are no special rules set for the second instance body's gathering of evidence. Consequently, the second instance body may gather new evidence and consider evidence that had already been produced before the first instance body. Evidence may be introduced either by parties, or by the body itself.

In Poland, when it is necessary to hold repeated hearings to discover adequate evidence, a second instance authority must quash the decision before it and remand the case to be heard again by the first instance body.[53] This type of ruling is only possible in exceptional circumstances. It is not possible for a re-hearing to be ordered in a non-hierarchical appeal, since in this way a case would be remanded to the same authority. In light of the fact that an appellate administrative proceeding has a substantial nature, if an appeal is justified, the authority should quash the appealed decision in whole or in part and determine the case on its merits within the scope of the decision which has been quashed.[54] This is the typical model of adjudication in a system where administrative appeals reconsider the substance of the original decision.

In Slovakia, the second instance body may affirm the first instance decision and dismiss the appeal of the party, quash the first distance decision and terminate proceedings, quash the first instance decision and remand the case to be heard by the first instance body, or vary the administrative decision. It is widely accepted that if the second instance body must adduce a substantial amount of new evidence, which could considerably affect the first instance decision, then the decision should be quashed and the case remanded to be heard by the first instance authority. The reason for this process is that the first instance body has not met the principle of material truth and, thus, failed to establish the facts

50 The appellant has right to appeal even against this decision.
51 Art. 136 of Polish CAP.
52 Ruling of the SAC of 27 February 2014, complaint no. II OSK 2323/12, LEX no 1495262, ruling of the SAC of 15 December 2016, complaint no. II OSK 1427/16, LEX no 2268026.
53 Ruling of the SAC of 27 February 2014, complaint no. II OSK 2323/12, LEX no 1495262.
54 Ar. 138, para. 1, point 2 of Polish CAP.

of the case to the required minimum standard. Since the new evidence could lead to a significant variation of the decision, it is appropriated for the decision to be quashed and remanded.[55] By doing so, all the parties to the proceedings participate in two-instance proceedings and will be able to introduce counter-evidence. If the second instance body chooses not to remand the decision and instead varies it, such a verdict could be perceived as a "surprising decision" that ultimately goes against the principle of legal certainty.[56] In itself, this could lead to the quashing of the decision by the administrative courts.[57]

In practice, Polish administrative authorities have abused the possibility to quash a decision and remand a case to be heard by the organ of first instance. The legislator has consequently limited the possibility of such decisions being issued.[58] Presently, this is only possible if a contested decision was issued in breach of the rules of procedure or if the scope of the case, which is necessary to be defined, has been so significantly altered as to impact on the decision itself. These provisions are insufficient to stop the issuance of cassation decisions by the authorities in the second instance.

The Slovak CAP does not define the reasons for quashing or varying decisions other than their unlawfulness.[59] Since there are no further clarifications, the reasons for quashing or varying a decision could thus be substantial and/or procedural. There is no provision stipulating that quashing or varying a decision based on procedural grounds could occur only when the procedural failure is substantial and leads to the issuance of an unlawful decision by a public body. This condition is only provided for with respect to judicial procedures.[60] Such

55 See more e.g. Košičiarová, S. *Správne právo procesné. Všeobecná časť*. Šamorín 2017, p. 248.

56 The so-called surprising decisions are part of the right of legitimate expectation. In Slovakia, judicial authorities developed this concept. According to Constitutional Court of the SR, the aim of legitimate expectations is to guarantee predictability of acts of public authority bodies and to protect private persons against unpredictable interference of public authority bodies into legal situation of private persons given the fact the private persons expected certain legal situation to achieve. (see e.g. decision of the Constitutional Court of the SR No. PL. ÚS 16/06 from June 24, 2009 or decision of the Constitutional Court of the SR No. PL. ÚS 10/04 from February 6, 2008). As SC SR has added, surprising decisions are part of the right of legitimate expectations. This means that public administration bodies cannot depart from their previous decision(s) unless they justify the departure and let parties to the proceedings express themselves before issuing such decision (see decision of the SC SR No. 10Sžsk/34/2017from September 26, 2018).

57 See for example decision of the Supreme Court of the Slovak Republic No 8Sžo/7/2011 from February 14, 2012 or decision of the Supreme Court of the Slovak Republic No. 2Sžf/62/2013 from August 20, 2014.

58 W. Piątek, 'Wiążące wskazania sądu administracyjnego oraz okoliczności sformułowane przez organ odwoławczy w perspektywie ponownego rozpatrzenia sprawy administracyjnej', in: D.R. Kijowski, J. Radwanowicz-Wanczewska & M. Wincenciak (ed.), *Wykładnia i stosowanie prawa administracyjnego, Warszawa* (2012), 257-259.

59 Art. 59 of Slovak CAP.

60 E.g. Art. 191(1)(g) AJP.

a situation can lead to the second instance body potentially abusing its power to quash or vary a decision.

The abovementioned statutes contain special provisions allowing for greater flexibility in the rules that effectively place limits on some of the general provisions connected with the administrative appellate system. The discussion below seeks to broadly present some of the rules applicable to the initiation of the appeals procedure, course of the proceedings and the adjudication stage.

3. Possible limitations to an administrative appeal

3.1. Initiation of the appeal procedure

The first set of limitations is related to the right to request an appeal. In Poland, following the latest amendment to the CAP,[61] this right was and still is facultative, but currently a party to proceedings can withdraw from bringing an appeal during the period for lodging an appeal. As a result, a decision may at an earlier stage become final when it is connected with a hierarchical appeals procedure. In circumstances where there is a non-hierarchical appeal process, a party can bring the case directly before an administrative court.[62] This provision is an exception to the general rule, according to which the exhaustion of administrative appeals is mandatory before launching proceedings can be initiated in front of an administrative court.[63]

In the proposals for the amendment, it was clarified that a right to two-instance proceedings should be understood in light of the right to an appeal. Only by exercising this right does an administrative authority of the second instance have an obligation to examine a case on its merits.[64] This claim has, however, been met with some degree of criticism. It has been stressed that a public subjective law derived from Article 78 of Polish Constitution is inalienable. The inalienability of such rights thus guarantees equality for the citizens and excludes the possibility of any manipulation in the relation between individuals and the state.[65]

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61 The act of 7 April 2017, amending the Act - Code of Administrative Procedure, *Journal of Laws* (2017, item 935), as amended, hereinafter only as amendment of CAP.

62 A party has a choice to lodge an appeal or a complaint to an administrative court. It is possible also to lodge an appeal and then a complaint or straight a complaint to a court without a non-devolutive appeal.

63 This regulation is typical for other countries, for example Romania. See more D. C. Dragoş, M. Swora & A. Skoczylas, 'Administrative appeals in Romania and in Poland – a topical comparative perspective', *Transylvanian Review of Administrative Sciences* 37 (2012), 46-48.

64 Justification of the Project of the state from 7 April 2017, Sejm print no 1183, http://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=1183 (last accessed on 7 November 2017).

65 W. Jakimowicz, *Publiczne prawa podmiotowe* (Kraków: 2002), 242-246. See also T. Woś, *Moc wiążąca aktów administracyjnych w czasie* (Warszawa: 1978), 180-182; J. Zimmermann, *Administracyjny tok instancji* (Kraków: 1986), s. 85; J. Zimmermann, 'Kilka refleksji o nowelizacji k.p.a.', *Państwo i Prawo* 8 (2017), 15.

This statement, however, seems to be formalistic. If a party to the proceedings withdraws from requesting an appeal, it will fulfil a public subjective law. The possibility of withdrawing an appeal makes administrative procedures more effective since a claimant can obtain a final and binding decision at an earlier stage than would previously have been possible. If the party is aware of the consequences of a withdrawal from an appeal and their decision is voluntary, there are no reasons to question this possibility.

Two-instance proceedings in Slovakia are seen as the right of a claimant to proceedings and not as an obligation incumbent upon them. As in Poland, the second instance body can never initiate the second instance proceeding *ex officio*; similarly, administrative bodies do not have the right to initiate any review process when it comes to regular remedies since only a party to proceedings can file for an appeal.[66]

As a result of the Polish civil procedural reform, the new rules on administrative justice and administrative proceedings apply. One of the most significant changes is that from July 1 2016[67] all administrative proceedings must first go through two instances prior to the initiation of judicial review proceedings.[68] This means that a claimant must file a request for an appeal (or remonstrance) and wait for the decision before filing for judicial review proceedings. This rule applies to all proceedings – whether they are hierarchical or non-hierarchical. Unlike in Poland, it is impossible to resign from a remonstrance in order to expedite the process for lodging a complaint before the administrative court.

Before the new legal regulation on administrative justice in Slovakia came into force,[69] the administrative courts served as the second instance body in cases when stipulated by law. Consequently, refusals to register a religious society a political party can both subject to an appeal process before the Supreme Court of the Slovak Republic. Such a process is no longer possible *de lege lata*. All decisions have to be subject to appeal before administrative action may be filed. There are some exceptions when the first instance decision is immediately legally binding, but in those cases a party to proceedings is precluded from bringing judicial review proceedings.[70]

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66 However, the second instance body can initiate *ex officio* proceeding on extraordinary remedy pursuant Art. 65(2) of Slovak CAP. The second instance body can initiate this proceeding only if it meets the public interest.

67 On that day, AJP came into force.

68 However, there are several exceptions; in these cases, the decision has to be legally binding in order to file the administrative action – see below.

69 The aforementioned AJP that came into force on 1 July 2016.

70 An example is the proceedings where a Slovak citizen seeks permission to join military forces of other states. Permission is subject to decision of the president of the Slovak Republic. See Art. 19(5), Act no 370/2005 Coll. on Military Duty. The decision of the president is not subject to appeal and is not subject to review in the administrative courts.

Since an appeal is seen as the right of a party to proceedings, it is also at the party's full discretion whether to file the appeal or not. It can resign from filing the appeal (surrender the appeal)[71] and also withdraw an appeal that has already been submitted.[72] If this happens, the decision is legally binding from the day the party delivered the surrender or withdrawal of the appeal to the administrative body.

A withdrawal from the right to appeal not only exists in Polish administrative procedure, but also with respect to civil procedure[73] and in administrative proceedings. For instance, in Austria a party can withdraw from their right to appeal after the announcement or notification of a decision.[74] The same process applies in the Czech Republic; pursuant to art. 81(2) of the Czech CAP,[75] a claimant can withdraw from an appeal after the delivery of a decision. In Germany, a party to proceedings before an administrative court of first instance could withdraw from its right to an appeal to a court of second instance and lodge a request for revision (*Sprungrevision*) straight to the highest administrative court (*Bundesverwaltungsgericht*).[76] The main reason for this possibility is to shorten proceedings when the facts of a case are not in doubt.[77]

3.2. Course of the proceeding

The next set of limitations to administrative appeal proceedings relates to the hearing stage, particularly in proceedings concerned with the gathering of evidence. The most recent amendment to the Polish CAP brought about a significant change to proceedings concerned with the gathering of evidence. Before the amendment came into force, the previous law provided that an administrative authority at second instance could only hold additional discovery proceedings to supplement the evidence produced at first instance. This has now been changed so that an appellant can bring a motion to hold discovery proceedings to the extent necessary to settle the case. If the other parties approve the motion, the authority at second instance should hold discov-

71 Art. 53 of Slovak CAP.
72 Art. 54(4) of Slovak CAP.
73 According to Art. 505(8) Civil Procedure Code Act of 17 November 1964, *Journal of Laws* (2016, item 1822), as amended, a party present at the hearing at which the judgment was pronounced may resign from a right to lodge an appeal. In the event of a resignation of the right to appeal by all parties of a proceeding, the judgment becomes final.
74 § 63(4) Allgemeines Verwaltungsverfahrensgesetz (1991), BGBl. no 51/1991, idF BGBl. I no 161/2013.
75 Act no 500/2004 Coll. On AdministrativeProcedure.
76 § 134(1) Verwaltungsgerichtsordnung (1960), BGBl. 1991 I, 686 as am.
77 F. Hufen, *Verwaltungsprozessrecht* (München: 2008), 610-611, M. Redeker in K. Redeker & H.J. von Oertzen, *Verwaltungsgerichtsordnung* (Stuttgart: 2014), 953.

ery proceedings in their entirety and could thus issue a substantive decision.[78] Only in circumstances where conducting discovery proceedings would be excessively onerous may the administrative authority refuse the party's request and quash the initial decision.[79] In this way, the case may be remanded to be heard by the first instance authority.

The purpose of this amendment was to reduce the number of annulment decisions in second instance cases where there is the potential to issue a substantive decision.[80] As such, it has a common purpose with the option of withdrawing from an administrative appeal. This consequently empowers claimants in the course of proceedings and allows them to modify the activities of public authorities to a certain degree.

In Slovakia,a similar limitation may be found. The majority of administrative proceedings are subject to the principle of the unity of administrative procedure.[81] For the parties to the proceedings, this means that first and second instance proceedings are connected until the final decision becomes legally binding. This principle is applied in relation to evidence proceedings before a second instance authority. Since second instance proceedings are still a part of proceedings, the second instance body is not limited in its ability to engage in evidence gathering. It can rely on either the same evidence as the first instance body or, otherwise, gather new evidence which has been brought by a party to the proceedings or by the authority itself.

However, there are several exceptions to this rule in the Slovak legal system that stem from the Building Act.[82] For instance, in all second instance proceedings on spatial decisions,[83] the parties to the proceedings may not bring new evidence that should have been brought during first instance proceedings.[84] Therefore, the claimant may bring new evidence, but only in situations where it could not be brought during the first instance proceedings.

In Slovakia, any exception to the general rule on the provision of evidence, both by the first and second instance bodies, must be stipulated by law. The authors hold that this exception should not be granted in several types of administrative proceedings, for example in the area of administrative sanctions. In cases concerning administrative sanctions, the exclusion of the ability of the second instance body to consider new evidence could seriously breach the duty

78 Art. 136(2)(3) of Polish CAP.
79 Art. 136(4) of Polish CAP.
80 Justification of the Project of the state from 7 April 2017, Sejm print no 1183, http://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=1183 (last accessed on 7 November 2017).
81 See e.g. S. Košičiarová, Správny poriadok – Komentár, *Šamorín* (2013), 19.
82 Act No. 50/1976 Coll. On Spatial Planning and Building Procedure (Building Act) as amended (hereinafter only as Building Act).
83 I.e. decision on location of thebuilding, decision on landuse, decision on protected part of area and decision on buildingclosure.
84 Art. 42(5) Building Act.

to secure the principle of material truth by the administrative body. However, in reality, if the second instance body has to consider new evidence, it would usually quash the first instance decision and return the matter to the relevant authority. Therefore, the new Polish regulation limiting cassation decisions in second instance proceedings could serve as inspiration for the Slovak legislator.

3.3. Termination of proceeding

The final set of limitations in administrative appeal relates to the termination of proceedings. In both Poland and Slovakia, administrative appeal is generally expected to deliver a substantive outcome. This feature should be visible in particular at the end of the proceedings. Therefore, when a first instance decision is quashed and a case is remanded to be heard by the authority of the first instance, it should be treated as an exception.

In practice, this does not function as well as it should. The second instance authorities have been shown to abuse the right to issue an annulment decision in many cases, even in such circumstances when a decision should be merits-based. Because of that, the time taken to settle an administrative case is much longer than expected. Therefore, the Polish legislator has attempted to resolve this problem by reducing the possibility for second instance administrative appeals in leading to such decisions.

In Poland, a second instance authority can issue an annulment decision only if the original decision had been issued in breach of relevant procedural rules and, when determining the case, it would be necessary to hold new discovery proceedings in whole or in a significant part. In such circumstances, a second instance authority should indicate which issues have to be taken into account in the determination of the case.[85]

The Slovak CAP does not stipulate any particular reasons for the second instance body to quash decisions and remand the case to be heard by the first instance authority. The CAP only states that the second instance body may quash a decision where there are grounds for doing so; otherwise, it must affirm the first instance decision and dismiss the appeal.[86] As such, the administrative body has unfettered discretion in deciding when determining whether to quash a decision. The typical reasons provided include situations where the first instance decision breaches a substantial right of the party, where the conditions under the principle of material truth is not met and, thus, the facts of the case are not properly established, and when the administering body is in substantial breach of the relevant procedural rules so as to have issued an unlawful decision. However, since the Slovak CAP does not expressly stipulate any particular

85 Art. 138(2) of Polish CAP.
86 Art. 59(2) of Slovak CAP.

reasons for quashing a decision, the administrative body may do so based on any reason so long as it relates to the principle of legality. The second instance body is obliged to state reasons when quashing a decision and explain what the first instance body should do to avoid breaching the principle of legality. The first instance body is consequently bound by the legal opinion of the second instance body.[87]

The above-mentioned approach appears to be insufficient in avoiding an annulment decision by the second instance authority. Therefore, from the most recent amendment to the Polish CAP, a party can appeal against an annulment decision to the administrative court of first instance according to the rules of law on proceedings before administrative courts.[88] The court may only examine the circumstances leading to the issuance of an annulment decision in these proceedings. If the conditions stemming from the relevant rules of law are not met, then the decision is quashed and an administrative authority is required to issue a substantive decision.

This new remedy, referred to as an "objection to a decision", has been the subject of scholarly criticism. In spite of its largely positive role in eliminating decisions issued on the basis of Art. 138(2) CAP, it is not possible to evaluate the conditions for issuing an annulment decision without examining all of the aspects of the case. Furthermore, it is also questionable whether it is possible for a claimant to request a cassation remedy before the SAC if an administrative court dismisses an appeal request. Lodging a cassation remedy is impossible for an administrative authority if a decision is quashed.[89] The revised provisions of the Polish CAP as such create a gap between the competences of the administrative authority and the claimants in administrative proceedings. The impossibility of requesting a cassation remedy from administrative authorities raises concerns in light of the constitutional right to two-instance proceedings.

In Slovakia, the administrative courts can review decisions of the public administration based on the principle of general jurisdiction, according to which the courts may rule on all matters, with the only exceptions being where expressly provided for in law.[90] However, the review of decisions concerning fundamental human rights and freedoms cannot be excluded from the competence of the courts.[91] When it comes to the exclusion of the courts' jurisdiction,

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87 See Art. 59(3) of Slovak AJP.

88 The Act of 30 August 2002, Law on Proceedings, before administrative courts, *Journal of Laws* (2017), item 1369, as amended, hereinafter only as PPSA.

89 T. Woś & J.G. Firlus, *Sprzeciw od decyzji kasacyjnej organu odwoławczego wydanej na podstawie*, Art. 138 § 2, k.p.a., *Przegląd Prawa Publicznego* 6 (2017), 82; J. Zimmermann, Kilka refleksji o nowelizacji k.p.a., *Państwo i Prawo* 8 (2017), 18-19.

90 See e.g. decision of the Constitutional Court of the Slovak Republic no. III. ÚS 91/2016-74 from 17 May 2016.

91 Art. 46(3) CSR. See also decision of the Supreme Court of the Slovak Republic No. 5Sžf/17/2016 from 25 October 2016.

as enumerated in Art. 7 AJP. According to art. 7(e) AJP, the administrative courts cannot review decisions of a procedural nature.

One of the cornerstones of the AJP is the principle that administrative courts can only review decisions of the public administration that are legally binding and have an impact on substantial rights and interests of natural and legal persons.[92] Procedural decisions do not have any impact on the substantial rights and interests of natural and legal persons; these decisions merely regulate administrative procedures.[93] A decision of the second instance body that quashes a decision of the first instance body and remands a case to be heard by the latter is a procedural decision that administrative courts cannot review.[94]

4. Proposals in the academic literature for the limitation of an administrative procedure

The legal provisions outlined above do not eliminate the necessity of conducting research into the subject of procedural administrative limitations. This topic is discussed in both Polish and Slovak literature.

In Poland, the discussion is concentrated on two subjects. Firstly, the discussion is concerns the possibility of withdrawal from an administrative appeal in selected areas of substantive administrative law. In the most recent amendment of CAP, the Ministry responsible for the internal management of the Polish departments of public administration, is required to submit proposals for cases of possible withdrawal from two-instance administrative proceedings to the Minister of Administration and Minister of Economy within two years. In the literature, this obligation is understood as the disclosure of a significant limitation of the right to administrative appeal, which will be inconsistent with Article 78 Constitution Republic of Poland.[95] This assessment is not justified. The reports submitted by Ministers should be treated as the ground for discussion about the administrative appeal system and its efficiency and accessibility for citizens. A general exclusion of the right to an administrative appeal would be inconsistent with Article78 of the Constitution of the Republic of Poland, which provides for a possibility to introduce exceptions to the right to an appeal. In that sense, there is a possibility to change the current system of the administrative appeal to adjust it to the requirements of real necessities.

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92 See more I. Rumana, I. Hanzelová, I. Rumana & I. Šingliarová, *Správny súdny poriadok – komentár* (Bratislava: 2016), 45 and subseq.

93 M. Fečík, J Baricová, et al, *Správny súdny poriadok* (Bratislava: 2018), 127.

94 See e.g. decision of the Supreme Court of the Slovak Republic no. 4Sžo/30/2009 from 25 June 2009.

95 J. Zimmermann, Kilka refleksji o nowelizacji k.p.a., *Państwo i Prawo* 8 (2017), 16-17.

Secondly, the attention of researchers is focused on the possibility of replacing hierarchical appeal remedies with new measures which do not have this feature. The discussion in Poland is concentrated on a compliance of the second model with the right to an appeal derived from Art. 78 Polish Constitution. Some authors are convinced that the constitutional right to appeal encloses the right to a hierarchical appeal against an administrative decision issued in the first instance.[96] Those on the opposite side of the dispute stress that the right to appeal is more significantly connected to the right to examine the same case for a second time than for it being examined by an authority at a higher level in the structure.[97] From this standpoint, the principle of two instances is implemented where an appeal is examined again by the same authority.[98]

In Slovak legal theory, the discussion of regular remedies concerns two main topics. The first is the need to amend the Slovak CAP in order to stipulate the obligation of a claimant to state the grounds for the appeal. The second is a debate over the preservation of the remonstrance as a regular remedy.

Despite the obligation upon the second instance body to review the first instance decision and the administrative proceedings that preceded the issuing of the decision in its entirety (full jurisdiction), the literature notes that a party to a proceeding reduces its chance of being successful in the appeal if it does not state the grounds for the appeal.[99] Though legislation on various types of administrative proceedings does not usually state the obligation to state the grounds for appeal, there are some exceptions. The most significant one is the Tax Code,[100] which stipulates the obligation to state the grounds for the appeal in art. 72(4)(c).[101] We believe that the Slovak CAP should stipulate the obligation to state the reasons for the appeal. Despite the fact that such an approach would signify an amendment to the Slovak CAP, we hold that it would only portend harmonization between legal practice and the *de lege lata* state. We also think that actual stipulation of this obligation is not meaningless. Parties to proceedings should be able to state the reasons why they are not satisfied with the de-

96 J. P. Tarno, Psucie Kodeksu postępowania administracyjnego in: J. Niczyporuk (ed.), *Kodyfikacja postępowania administracyjnego*, Na 50-lecie k.p.a. (Lublin: 2010), 852; J. Zimmermann, Kilka refleksji o nowelizacji kodeksu postępowania administracyjnego, *Państwo i Prawo* 8 (2017), 12.

97 Ruling of the Constitutional Tribunal of the Republic of Poland (hence forth CTP) of 2 July 2010, complaint no SK 38/09, OTK-A 2010/5/46, ruling of the CTP of 25 March 2014, complaint no SK 25/13, OTK-A 2014/3/33.

98 H. Knysiak-Molczyk in: H. Knysiak-Molczyk (ed.), *K.p.a. Komentarz* (Warszawa: 2015), 107; R. Kędziora, *K.p.a. Komentarz* (Warszawa: 2014), 155-156.

99 V. Hutta, J. Machajová et al, *Všeobecné správne právo* (Bratislava: 2007), 177. The same reason is formulated by Polish legal theory. See Z. Janowicz, *Kodeks postępowania administracyjnego – Komentarz* (Warszawa-Poznań: 1992), 311; Z. Kmieciak, *Odwołania w postępowaniu administracyjnym* (Warszawa: 2011), 72.

100 Act No. 563/2009 Coll. Tax Code.

101 The same obligations for formulate concrete reasons for the appeal are located in Art. 22 Polish Tax Code *Journal of Laws* (2018), item 800, as amended.

cision that has been made.[102] The obligation of the second instance body to review the decision in its entirety should be preserved.

Some theorists criticise remonstrance as an ineffective means of regular remedy.[103] They even suggest that remonstrance is "useless" when the first instance proceeding is conducted by the Minister him or herself.[104] In such cases, the second instance proceedings are also conducted by the Minister. On the other hand, before a Minister decides on the remonstrance, the remonstrance is reviewed by the remonstrance committee. Although the Committee's proposal on how to determine the case is not binding for the Minister, the committee represents an objective element to the proceedings. Criticism of remonstrance is not prevalent within literature; a significant portion of which suggests that remonstrance is a well-known legal process and a verified regular remedy.[105]

Despite the fact that there are debates over the compliance of this process with art. 6 ECHR,[106] we have to conclude that Slovak legal theory does not reflect upon them. There are two main reasons for this.

The first is a result of historical tradition. As mentioned, remonstrance is a well-known remedy that has been verified many times since the Slovak CAP came into force. Secondly, pursuant to the Slovak CAP, we cannot apply its provisions on exclusion of biased employees of the public administration bodies.[107] Ministers are not employees of the respective ministries; they perform their duties as elected officials and not as employees.

The Slovak legal theory sees this as problematic; however, it also states that a claimant has the right to issue a decision issued by independent and impartial judicial review. Ministers can be biased, but the bias is partially eliminated given the fact that the remonstrance is, at first, reviewed by the unbiased members of the remonstrance committee.[108]

The nature of non-hierarchical remedies as regular remedies in the course of an administrative procedure is confirmed in Art. 16(1) the Polish CAP. Despite the fact that the CSR does not stipulate the right to two instance administrative proceedings as the Polish Constitution does, we believe that the Slovak approach

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102 J. Škrobák, *Preskúmavanie neprávoplatných rozhodnutí vydaných v správnom konaní* (Bratislava: 2014), 198.

103 For example, J. Staša, Divergence české a slovenské úpravysprávního řízení, Aktuálne otázky správneho konania (Bratislava: 2010), 167-181.

104 J. Vačok, *Možno vždy považovať rozklad za prostriedok nápravy, Days of Law* (Brno: 2008), 1666.

105 For example, see M. Horvat, Osobitosti rozkladu ako riadneho opravného prostriedku, *Kolegiální orgány ve veřejné správě* (Brno: 2013), 44-53; J. Škrobák, *Preskúmavanie neprávoplatných rozhodnutí vydaných v správnom konaní* (Bratislava: 2014), 176-178.

106 See Ruling of the ECtHR, *Tsfayo v The United Kingdom* (14 November 2006), complaint no. 60860/95.

107 Arts 9 to 13 of the Slovak CAP. See also J. Sobihard, *Správny poriadok – Komentár* (Bratislava: 2007), 50-51.

108 See e.g. M. Srebalová in: Vrabko, M. et al., *Správne právo procesné – Všeobecná časť* (Bratislava: 2013), 93-94.

is still in accordance with Art. 22(2) of the Recommendation CM/Rec(2007)7 of the Committee of Ministers to Member States on good administration. However, the right to appeal within the system of public administration is an important tool that guarantees protection of human rights, since second instance proceedings focus not only on the lawfulness of first instance proceedings, but also on their merits.[109]

5. Final considerations

In both Poland and Slovakia, the right to an appeal in administrative procedure is perceived as the guarantee of an individual to obtain a lawful final decision. In both countries, there are some procedural limitations which could make the course of administrative proceedings more effective without disturbing the essence of the right to an appeal. An example of such a limitation, currently in force in Poland, is the right of claimants to withdraw their right to administrative appeal. As a result, an administrative decision can become final at a more rapid pace. The binding force of this limitation thus simplifies individuals' right to change factual and legal situation and allows for procedural rules to adequately respond to contemporary legal service needs.

There are other proposals to establish more effective procedural rules presently under consideration in both states. A proposal presented in Slovak legal theory is connected with the introduction of an obligation to state grounds of appeal. This proposal could also be beneficial for Polish procedural system. In practice, many claimants fail to present concrete grounds for an appeal. By imposing such an obligation, parties could take greater consideration before making the decision to request an appeal. For an administrative authority, the statement of grounds of appeal would be of assistance since it would allow them to pay special attention to the grounds put forward by claimants.

In both Slovakia and Poland, there is an ongoing discussion over the practical usefulness of non-hierarchical remedies in administrative proceedings. By understanding how this model operates in each respective legal system, one may conclude that these remedies are not mandatory for private entities in the course of administrative proceedings and, above all, in accessing administrative courts. This does not mean that these remedies should not ordinarily be at the disposal of parties to disputes. The recent Polish experience following the entry into force of the latest amendment to the CAP has shown that claimants have not availed themselves of the right to withdraw from non-hierarchical remedies. Creating this opportunity has given private entities the choice to either end

[109] Košičiarová, S., *Procesné práva v správnom konaní*, in: *Verejná správa,základné práva a slobody* (Krakov: 2015), 354.

administrative procedures or, alternatively, present new evidence in a way that could obtain a more favourable final decision. In practice, parties to disputes usually choose the former option.

In our opinion, the limitations placed upon administrative appeals presented in this article deliver positively effects by creating useful and efficient procedures at the disposal of private entities. As such, they do not dilute the right to a fair procedure, but rather reduce unnecessary administrative formalities. In this respect, parties to disputes have a decisive influence on how administrative processes may take shape. In an era where there is a growing desire to challenge the decisions of public authorities, such limitations must meet rising social expectations of fair and effective administrative procedures.

In answer to the key question discussed in the introduction, the implementation of procedural limitations can be perceived as a useful tool in making administrative proceedings more effective, flexible and even favourable to parties to proceedings. These changes may reflect the core concerns of claimants and legislators alike. The foregoing analysis thus demonstrates that procedural limitations, which are known by individuals and can voluntarily be made use of, could play a positive role in making administrative procedure more effective.