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**IMPLEMENTATION OF THE  
PRINCIPLE OF OPENNESS  
IN PROCEEDINGS BEFORE  
ADMINISTRATIVE COURTS USING  
NEW TECHNOLOGIES**

## ABSTRACT

The presence of new technologies in almost every area of human life leads to a natural consequence of this state, which is the use of computerization in the activities of the judiciary. The author puts forward the thesis that the use of new technologies in administrative court proceedings is conducive to the implementation of the principle of transparency of proceedings, which is an element of the right to a court. The use of new technologies in administrative court proceedings takes place during communication between the court and the parties to the proceedings and between the parties to the proceedings and the court, as well as in the case of the possibility of participating in a court hearing conducted in a localized mode with simultaneous transmission of image and sound.

**KEYWORDS:** *The principle of openness, trial, new technologies*

## INTRODUCTION

New technologies more and more widely and faster enter almost every area of human life. Nowadays, they are an element of reality that people willingly use when performing many activities, which definitely facilitates functioning in both private and public space. M. Hapunik emphasized that new technologies are used in every place and culture in the world.<sup>[1]</sup> An increase in interest in new technologies in the functioning of the judiciary, including administrative courts, was observed during the SARS-CoV-2 virus pandemic. There is no doubt that the use of new technologies by the parties to court proceedings and by the courts affects the possibility of effectively taking procedural actions, including participation in a court hearing in a localized mode. Nevertheless, the question may also arise whether the use of new technologies does not limit the principle of openness in administrative court proceedings. The research objective of this study is to determine whether and to what extent the use of new technologies affects the implementation of the right to court and the principle of openness in relation to the parties to the proceedings, the court and other entities that may participate in the court hearing as an audience.

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<sup>[1]</sup> M. Hapunik, *Czynności operacyjno-rozpoznawcze a nowe technologie*, s. 120.

## THE PRINCIPLE OF TRANSPARENCY

The principle of openness of proceedings plays a key role in the creation and implementation of the right to a fair trial. It is regulated both in the Constitution of the Republic of Poland<sup>[2]</sup> as well as international law.<sup>[3]</sup> The principle of transparency is expressed in two aspects: external transparency (for the public) and internal transparency (disclosure for the parties to the proceedings)<sup>[4]</sup>

In administrative court proceedings, the principle of openness is regulated in Art. 10 of the Law on proceedings before administrative courts<sup>[5]</sup>, according to which the examination of cases is public, unless a special provision provides otherwise<sup>[6]</sup>, and in Art. 90 of the Law on proceedings before administrative courts which states that unless a special provision provides otherwise, court sessions are public and the adjudicating court hears cases at a hearing (Art. 90 § 1 of the Law on proceedings before administrative courts), the court may refer the case to a public hearing and schedule a hearing also when the case is examined at a closed session (Article 90 § 2 of the Law on proceedings before administrative courts).

M. Romańska characterized the principle of openness in such a way that all or most of the procedural steps necessary to issue a decision in the case, as well as the announcement of the decision, take place in front of the parties and

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<sup>[2]</sup> Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997 r., Dz.U. nr 78, poz. 483; dalej jako Konstytucja RP.

<sup>[3]</sup> Art. 47 Karty praw podstawowych Unii Europejskiej; art. 10 Powszechnej deklaracji praw człowieka, art. 14 ust. 1 Międzynarodowego paktu praw obywatelskich i politycznych, Dz. U. z 1977 r., Nr 38, poz. 167, art. 6 ust. 1 Konwencji o ochronie praw człowieka i podstawowych wolności, Dz. U. z 1993 r., Nr 61, poz. 284 ze zm.

<sup>[4]</sup> Zob. H. Dolecki, Komentarz do art. 9 Kodeksu postępowania cywilnego, (w:) Kodeks postępowania cywilnego. Komentarz, t. 1: Artykuły 1-366, red. H. Dolecki, T. Wiśniewski, Lex/el 2011.

<sup>[5]</sup> Ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi, Dz. U. z 2023 r. poz. 259 ze zm., dalej jako p.p.s.a., Prawo o postępowaniu przed sądami administracyjnymi.

<sup>[6]</sup> A special provision justifying the secret examination of a complaint is Art. 38 sec. 2 of the Act of 5 August 2010 on the protection of classified information, Journal of Laws of 2023, item 756 and Art. 15zszs4 sec. 3 of the Act of 2 March 2020 on special solutions related to the prevention, counteraction and combating of COVID-19, other infectious diseases and crisis situations caused by them, Journal Laws of 2021, item 2095, as amended, hereinafter referred to as the Covid Act..

possibly also the audience. These persons may observe the course of the proceedings, and the parties may also actively participate in these proceedings<sup>[7]</sup>. Thus, in administrative court proceedings, it is possible to distinguish external transparency (publicity for the public, the audience of the proceedings) and internal transparency (publicity for the participants in the proceedings)<sup>[8]</sup>. The principle of openness also applies to the objective criterion, which makes it possible to obtain information about a given court proceeding, which entails the need for the legislator to create appropriate tools for obtaining information about a given case, whether by the parties and participants, or third parties<sup>[9]</sup>.

The need to maintain internal transparency in the trial is obvious and is closely related to the protection of human rights. Transparency in this dimension must be defined as the accessibility of the process mainly to the parties and their representatives, as entities directly interested in the final decision. In the literature, it is rightly argued that internal transparency applies to all entities that defend their own legal interest in the process (even those who are not parties) or act as representatives of those persons in the trial<sup>[10]</sup>.

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<sup>[7]</sup> M. Romańska, (w:) *Postępowanie sądownoadministracyjne*, red. T. Woś, Warszawa 2015, s. 137.

<sup>[8]</sup> J. Misztal-Konecka, *Jawność postępowania cywilnego ze szczególnym uwzględnieniem elektronicznego postępowania upominawczego*, *Kwartalnik Prawa Publicznego* 32012, s. 96. W. Szafrąńska considers internal transparency in relation to entities directly interested in the resolution of the case, i.e. parties and other participants in the proceedings. External transparency is ensured by provisions enabling anyone (the public) to become acquainted with the case, i.e. also the so-called third parties not related to the case. W. Szafrąńska, *Zasada jawności w postępowaniu sądownoadministracyjnym*, *Radca prawny. Zeszyty Naukowe* 1/2021, s. 74 oraz literatura tam podana.

<sup>[9]</sup> W. Szafrąńska, *Zasada jawności w postępowaniu sądownoadministracyjnym*, *Radca prawny. Zeszyty Naukowe* 1/2021, s. 74 oraz literatura tam podana.

<sup>[10]</sup> R. Koper, *Zasad jawności a jawność wewnętrzna w procesie karnym*, *Studia Prawnicze* 2/2019, s. 130 oraz literatura tam podana.

## LEGAL GROUNDS FOR THE USE OF NEW TECHNOLOGIES IN ADMINISTRATIVE COURT PROCEEDINGS

The use of new technologies in administrative court proceedings is associated with amendments to the Administrative Judiciary Procedure Act. The basic legal act that regulates the introduction and use of new technologies in administrative court proceedings is the Act of 17 February 2005 on the computerization of activities of entities performing public tasks.<sup>[11]</sup> However, the legislator did not decide to include administrative courts in the scope of entities covered by the solutions of the Act on computerization.<sup>[12]</sup> The adaptation of the administrative court proceedings to the possibility of using new technologies took place with the adoption of the Act of 10 January 2014 amending the Act on computerization of the activities of entities performing public tasks and certain other acts<sup>[13]</sup>. Subsequently, solutions for the introduction of new technologies were introduced by the Act of 16 October 2019 amending the Act on computerization of the activities of entities performing public tasks and certain other acts,<sup>[14]</sup> and the Act of 5 August 2022 amending the Act – Executive Penal Code and certain other acts<sup>[15]</sup>. The possibility for the court to conduct a hearing in an off-site mode with simultaneous transmission of image and sound was introduced by the Covid Act and Art. 96 point 18 of the Act of 18 November 2020 on electronic deliveries.<sup>[16]</sup>

The Act of 12 February 2010 amending the Act – Law on the Organization of Administrative Courts and the Act – Law on proceedings before administrative courts is of significant importance for the process of computerization

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<sup>[11]</sup> Dz. U. z 2023 r., poz. 57, dalej jako ustawa o informatyzacji.

<sup>[12]</sup> G. Sibiga pointed out that in administrative courts, new technologies can be used using solutions proposed in other normative acts, in the 18 Act of September 2001 on electronic signature, Journal of Laws of 2013, item 262 as amended and the Act of 6 September 2001 on access to public information, Journal of Laws of 2022, item 902. G. Sibiga, Zastosowanie środków komunikacji elektronicznej w postępowaniu przed sądami administracyjnymi – uwagi de lege lata i de lege ferenda, *Zeszyty Naukowe Sądownictwa Administracyjnego* 3/2008, s. 82 – 83.

<sup>[13]</sup> Dz. U. z 2014 r., poz. 183, dalej ustawa z 10 stycznia 2014 r.

<sup>[14]</sup> Dz. U. z 2019 r., poz. 2294, dalej ustawa z 16 października 2019 r.

<sup>[15]</sup> Dz. U. z 2022 r., poz. 1855, dalej ustawa z 5 sierpnia 2022 r.

<sup>[16]</sup> Dz. U. z 2023 r., poz. 285.

of administrative courts<sup>[17]</sup>, the solutions of which made it possible to perform court actions in the electronic document management system, which in turn led to at least partial keeping of court files in electronic form.<sup>[18]</sup>

## THE USE OF NEW TECHNOLOGIES IN ADMINISTRATIVE COURTS

Nowadays, new technologies are an element of human life and their use is basically a part of every human act. The use of new technology solutions undoubtedly facilitates functioning in the space of private life and in the space of public life. M. Hapunik noted that technological development consists of new opportunities and new threats, which in the near future will play a key role in defining the broadly understood security strategy<sup>[19]</sup>. The development of new technologies, allowing for remote communication and sending information via electronic means, makes the parties to court proceedings interested in using them in their contacts with the judicial authorities<sup>[20]</sup>.

The use of new technologies in the functioning of administrative courts should be related to the subjective and objective dimension. The subjective dimension refers to parties to court proceedings, authorities cooperating with courts and persons who want to participate in court proceedings as an audience. On the other hand, the objective aspect of the process of using new technologies covers the following areas: organisational, informational and procedural. Organizational measures should contribute to reducing and streamlining the functioning of the administrative back-up of the judiciary. The information area refers to the optimal use of the Internet as a communication tool, thanks to which citizens' trust in the judicial authorities may increase, and not only the parties to the proceedings can communicate with the court

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<sup>[17]</sup> Dz. U. Nr 36, poz. 196, dalej ustawa z dnia 12 lutego 2010 r.

<sup>[18]</sup> Until now, the court files of the administrative court case are kept in paper form, while the administrative files submitted to the court together with the complaint may be in electronic form.

<sup>[19]</sup> M. Hapunik, *Czynności operacyjno-rozpoznawcze a nowe technologie*, s. 118.

<sup>[20]</sup> Por. P. Kapusta, *Nowe technologie w służbie prawa do sądu*, w: *Aktualne wyzwania w ochronie praw i wolności jednostki: prace uczniów i współpracowników dedykowane profesorowi Bogusławowi Banaszakowi*, red. M. Jabłoński, S. Jarosz-Żukowska, Wrocław 2014, s. 290.

using the Internet. The procedural area, on the other hand, refers to the electronization of process activities, which affects the dynamics of the process<sup>[21]</sup>. One of the key principles of administrative court proceedings is the principle of speed, which is implemented e.g. through the use of new technologies in the performance of procedural activities<sup>[22]</sup>.

The use of websites in the activities of administrative courts should also be treated as a way of communicating with a wide range of people who may participate in a court hearing as an audience. The unquestionable benefits of using Internet services are, for example: providing information with unlimited capacity around the clock, selecting and downloading information by customers themselves without the need for direct contact, detailed and very quick search of documents, and consequently building positive relations between the customer and the office<sup>[23]</sup>.

The use of new technologies in court-administrative proceedings positively affects the implementation of the constitutional right to a court<sup>[24]</sup>, which includes the right of access to court, i.e. the right to start a procedure before a court – an independent, impartial and independent body; the right to the appropriate shaping of the judicial process in accordance with the requirements of fairness and transparency; the right to a court judgment understood as the right to obtain a binding decision of the court<sup>[25]</sup>. The principle of openness is an element of the right to a fair trial, therefore ensuring its implementation through the use of new technologies undoubtedly positively affects the possibility of a fuller implementation of the right to a fair trial. The Constitutional Tribunal emphasized that in a state governed by the rule of law, the right to

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[21] Zob. K. Flaga-Gieruszyńska, E-wymiar sprawiedliwości w sprawach cywilnych jako przykład rozwoju nowych technologii w sferze publicznej, *Ekonomiczne Problemy Usług* 1/2017, s. 339-340.

[22] A similar position on the use of new technologies in arbitration is presented by W. Wydmański, Nowe technologie jako szansa dla rozwoju arbitrażu w erze globalizacji, *Global Studies Review* 1/2020, s. 142. to the implementation of the principle of speed using new technologies in court-administrative proceedings points W. Trybka, Nowe technologie w postępowaniu sądowo-administracyjnym a konstytucyjne prawo do sądu, *Kwartalnik Prawa Publicznego* 5/2015, s. 70.

[23] M. Dymyt, Rola strony internetowej w komunikacji wizualnej wymiaru sprawiedliwości w Polsce, *Naukowy Przegląd Dziennikarski* 3/2016, s. 62 i literatura tam podana.

[24] Regulated in Art. 45 of the Constitution of the Republic of Poland.

[25] B. Banaszak, *Prawo konstytucyjne*, Warszawa 2008, s. 500.

a fair trial cannot be understood only formally, as the availability of a judicial route in general, but also materially, as a possibility of legally effective protection of rights in court<sup>[26]</sup>.

In court-administrative proceedings, the use of new technologies is possible already at the stage of initiating court proceedings<sup>[27]</sup> and extends to the entire course of the process, including the possibility of participating in the hearing using technical devices that enable it to be conducted remotely. The computerization of the activities of administrative courts allows the parties to the proceedings and other participants in legal transactions to communicate with the court, which translates into the possibility of performing procedural activities. Administrative court proceedings are initiated when a complaint is lodged with the administrative court through the body whose activity, inaction or lengthy conduct of the proceedings is the subject of the complaint (Article 54 § 1 of the Law on proceedings before administrative courts).<sup>[28]</sup> A complaint in the form of an electronic document is submitted to the electronic inbox of this authority (Article 54 § 1a of the Law on proceedings before administrative courts). Filing a complaint to the administrative court in the form of an electronic letter takes place only to the electronic inbox, while sending a complaint to the recipient to an e-mail address that is not an electronic inbox, cannot be considered as effective lodging a complaint in the form of an electronic document to the electronic inbox of this organ<sup>[29]</sup>.

The computerization process is also present at the stage of creating and maintaining court files in a court-administrative case.<sup>[30]</sup> The Act of 10 January 2014 amended the existing provision of Art. 12a of Law on proceedings before administrative courts, e.g. enabling the parties and the parties' representatives to access court files in a digital version (Article 12a § 5 and § 5a of the Law

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<sup>[26]</sup> Wyrok TK z 25 stycznia 1995 r., W 14/94, OTK 1995, nr 1, poz. 1.

<sup>[27]</sup> The possibility of initiating administrative court proceedings in electronic form has been introduced in Art. 4 of the Act of 10 January 2014 amending the Act on computerization of the activities of entities performing public tasks and certain other acts.

<sup>[28]</sup> Postanowienie WSA w Gliwicach z 23 maja 2022 r., III SA/Gl 132/22, CBOSA.

<sup>[29]</sup> Postanowienie WSA w Poznaniu z 24 marca 2022 r., IV SA/Po 1018/21, CBOSA.

<sup>[30]</sup> The provision of Art. 2 of the Act of 10 February 2012, Art. 12a of the Law on proceedings before administrative courts regulating the manner and mode of keeping and processing court files.



on proceedings before administrative courts). The Act of 10 January 2014 amended the existing provision of Art. 12a of Law on proceedings before administrative courts, e.g. enabling the parties and the parties' representatives to access court files in a digital version (Article 12a § 5 and § 5a of the Law on proceedings before administrative courts). Court files are made available at the request of an authorized entity by converting paper files into electronic form, and then placing them in the PASSA system<sup>[31]</sup> and granting access to their content. An integral part of the application for access to digitized court files of a court-administrative case is the indication of the applicant's PESEL number. (Article 12a § 5a of the Law on proceedings before administrative courts).

Electronic deliveries have been introduced to administrative court proceedings, Art. 4 point 12 of the Act of 10 January 2014. Electronic communication may take place between the court and the party to the proceedings, and between the party to the proceedings and the court, and in the case of letters delivered to the prosecutor, Ombudsman and Ombudsman for Children and to the authority participating in the proceedings before the court, whose action, inaction or protracted conduct of the proceedings has been appealed against, the court sends the letter directly to the electronic inbox of the public entity within the meaning of the Act of 17 February 2005 on the computerization of the activities of entities performing public tasks, with an official acknowledgment of receipt (Article 74a § of the Law on proceedings before administrative courts).

The SARS-CoV-2 virus pandemic has forced a wider use of new technologies, also in the judiciary, introducing the possibility of conducting a remote hearing with the simultaneous transmission of image and sound<sup>[32]</sup>. Conducting a court hearing in an off-site mode with simultaneous transmission of image and sound is possible during the state of epidemic emergency or state of epidemic declared due to COVID-19 and within a year of the cancellation of the last of

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<sup>[31]</sup> Portal Akt Sądowych Sądów Administracyjnych.

<sup>[32]</sup> A hearing in the off-site mode was introduced to the Act of 2 March 2020 on special solutions related to the prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them, Journal of Laws of 2012, item 2095, hereinafter referred to as the Covid Act by the provision of Art. 46 point 21 of the Act of 14 May 2020 amending certain acts in the field of protective measures in connection with the spread of the SARS-CoV-2 virus, Journal Laws of 2020, item 875.

them (Article 15 zzs<sup>4</sup> of the Covid-19 Act). Whereas Art. 10 of the Act of 5 August 2022, § 2 was added to Art. 94 of the Law on proceedings before administrative courts, concerning the possibility of holding a hearing in a localized mode. Pursuant to Art. 94 § 2 of the Law on proceedings before administrative courts, the chairman may order a public meeting to be held using technical devices enabling it to be held remotely. In such a case, the participants may participate in a court session when they are staying in a building of another court or in a prison or detention center when they are deprived of liberty, and perform procedural activities there, and the course of procedural activities is broadcast from the courtroom of the court conducting the proceedings to the place of stay of the participants of the proceedings and from the place of stay of the participants of the proceedings to the courtroom of the court conducting the proceedings. At the place of residence of the person deprived of liberty, a representative of the administration of the penitentiary institution or detention center is involved in the procedural activities, and a representative, if appointed, and an interpreter, if the person deprived of liberty does not speak Polish sufficiently, may participate. The content of the quoted provision shows that the legislator limited the possibility of conducting a hearing in a remote mode with simultaneous transmission of image and sound compared to the solutions adopted in Art. 15 zzs<sup>4</sup> of the Covid Act. The provisions of the Covid Act did not introduce restrictions on the possibility of conducting a hearing in a localized mode with simultaneous transmission of image and sound, as was done in Art. 94 § 2 of the Law on proceedings before administrative courts. Solutions adopted in Art. 15 zzs<sup>4</sup> of the Covid-19 Act are temporary solutions, applied during the state of epidemic threat or the state of epidemic announced due to COVID-19 and within a year from the cancellation of the latter, which was in force last. On the other hand, conducting a hearing with the use of technical devices enabling it to be conducted remotely pursuant to Art. 94 § 2 of the Law on proceedings before administrative courts is not a temporary solution. Taking into account the specific situation of persons deprived of their liberty, it should be assumed that allowing them to participate in a trial in a localized mode will contribute to a fuller implementation of the principle of openness, and consequently the fairness of the court.

The presented solutions regarding the use of new technologies in court-administrative proceedings make it possible to implement the principle of openness of proceedings for both parties to the proceedings and other participants in legal transactions. They enable efficient communication with the court through the use of the E-PAUP platform, delivery of documents electronically and participation in a public hearing using an Internet connection. The construction of the provision of art. 74a of the Law on proceedings before administrative courts. gives the parties to the proceedings the opportunity to decide on the form of service of court documents. This is an important procedural right of the party to the proceedings, because it depends solely on its decision whether it will use new technologies in exercising its right to a fair trial.

Access to digitized court files of a court-administrative case should be treated as a factor influencing the improvement of court proceedings and accelerating their course. The parties to court proceedings have unlimited access to the court files of the case, which is the implementation of the principle of openness.

Of particular importance for the implementation of the principle of openness is the possibility of participating in the hearing in electronic form with the simultaneous transmission of image and sound. This possibility was provided both for the parties to the court proceedings and for the public. The solutions adopted in the Covid Act remain in force one year after the end of the pandemic<sup>[33]</sup> or pandemic emergency<sup>[34]</sup>, The solutions adopted in the Covid Act remain in force one year after the end of the pandemic or pandemic emergency, however, they will allow a wider range of interested people to participate in the hearing as an audience and will enable the parties to attend the court session and present their position on the case. The solutions introduced in Art. 94 § 2 of the Law on proceedings before administrative courts refer to a specific situation occurring outside the state of epidemic or epidemic

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<sup>[33]</sup> Regulation of the Minister of Health of 12 May 2022 on the announcement of an epidemic emergency in the territory of the Republic of Poland, Journal Laws of 2022, item 1028, the state of epidemic was lifted in Poland, declaring a state of epidemic threat.

<sup>[34]</sup> The state of epidemic emergency was canceled on 1 July 2023 by the Regulation of the Minister of Health of 14 June 2023 on the cancellation of the state of epidemic emergency in the territory of the Republic of Poland, Journal of Laws of 2023, item 1118.

threat, when the party has been deprived of liberty and cannot participate in a court session. It can be assumed that in the future the legislator will aim at guaranteeing a wider circle of entities participation in court sessions in an off-site mode with simultaneous transmission of image and sound.

## SUMMARY

The activities of public authorities, especially the judiciary, based on the implementation of the principle of openness, do not raise any doubts in the era of the information society<sup>[35]</sup>.

The use of new technologies in the judiciary is a consequence of the use of computerization in the areas of social, economic and political life. Therefore, it is not surprising that the ubiquitous possibility of fast electronic communication has been used in the performance of procedural activities in judicial authorities, including administrative courts. The use of new technologies affects the implementation of the right to court and the principle of openness, which is a component of the right to court. Thanks to computerization processes, the availability of services that can be used by the parties to the proceedings as well as other persons acting as the public is expanding, which allows to build citizens' trust in the judicial authorities and facilitates access to the court for a wide range of entities. The analysis of solutions regarding the use of new technologies before administrative courts indicates a cyclical expansion of the range of services available to the parties to the proceedings and the public. It should be assumed that the range of services available with the use of new technologies will expand along with the broadening of the Internet accessibility.

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<sup>[35]</sup> T. Zembrzuski, Ograniczenia jawności postępowania w sprawach cywilnych w dobie pandemii – potrzeba chwili czy trwałe rozwiązanie?, Forum Prawnicze 3/2021, s. 5.

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- Regulation of the Minister of Health of 12 May 2022 on the announcement of an epidemic emergency in the territory of the Republic of Poland, Journal Laws of 2022, item 1028, the state of epidemic was lifted in Poland, declaring a state of epidemic threat.
- Regulation of the Minister of Health of 14 June 2023 on the cancellation of the state of epidemic emergency in the territory of the Republic of Poland, Journal of Laws of 2023, item 1118.

The Constitution of the Republic of Poland dated April 2, 1997, Journal of Laws No. 78, item 483.

Universal Declaration of Human Rights.

**CASE LAW**

Decision of the Administrative Court in Gliwice dated May 23, 2022, Case No. III SA/GI 132/22, CBOSA.

Decision of the Administrative Court in Poznań dated March 24, 2022, Case No. IV SA/Po 1018/21, CBOSA.

Judgment of the Constitutional Tribunal dated January 25, 1995, Case No. W 14/94, Constitutional Tribunal Judgments 1995, No. 1, item 1.