Chapter 6

Administrative Procedure Before the Consul in Polish Law

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Abstract

On 1 November 2015, the Act of 25 June 2015 – Consular Law came into force, providing a comprehensive framework for the political status, responsibilities, and competencies of consuls, as well as the administrative proceedings conducted before them. The Polish consular procedure exhibits several distinctive features:

First, it constitutes a legal framework separate from the general provisions governing the application of administrative law, as codified in the Code of Administrative Procedure. This separation is not part of a broader decodification of administrative procedure but is justified by the unique circumstances of consular functions – namely, the performance of administrative tasks within foreign jurisdictions and the need to respect the sovereignty of the receiving state.

Second, a characteristic feature of the consular procedure is the lack of comprehensive procedural regulations. Instead, it is supplemented by domestic legal provisions, European Union law, and classical sources of international law, which may modify or supplement consular procedural rules with specific legal solutions.

Third, a core principle of consular procedural law is its simplification compared to general administrative procedures, with an emphasis on protecting the sovereignty of the Republic of Poland. As a result, the consul is not strictly bound by a formalised statutory procedure, enabling significant procedural flexibility and broad procedural rights for parties involved in consular proceedings.

Fourth, the consular procedure governs not only the application of substantive law in both its *sensu stricto* and *sensu largo* dimensions but also the processes of applying the law, including the execution of factual actions and complex sequences of conventional-factual actions.

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Despite certain imperfections and procedural gaps, the legal framework represents a well-considered construct that accounts for both the legal and practical realities of consular operations abroad. The adopted compromise balances three fundamental legal principles across all procedural provisions: the principle of legalism, the principle of flexibility in consular actions, and the principle of establishing the material truth.

Keywords: consular procedure, application of administrative law, consular function, consular jurisdiction, separate procedure, principle of flexibility.

1. Development of the Current Model for Administrative Procedure Before the Polish Consul

To comprehensively evaluate the current legal framework governing the procedural rules for administrative functions performed by the consul of the Republic of Poland, it is necessary to examine the legal landscape prior to the introduction of these regulations.

During the interwar period, the Republic of Poland did not establish specific procedural regulations concerning the activities of its consuls. The primary legislative act governing consular functions was the Act of 11 November 1924 on the Organisation of Consulates and the Duties of Consuls.[1] However, this law did not include provisions regarding procedural rules for administrative proceedings before the consul. It remained in force until 30 June 1984. Art. 18 of this law stipulated that consuls should perform their duties in accordance with Polish law, without violating international treaties and customs, but it did not refer procedural matters to the general rules of administrative proceedings. Furthermore, the Ordinance of the President of the Republic of Poland of 22 March 1928, on Administrative Procedure,[2] which served as the cornerstone for general administrative proceedings, explicitly excluded its application in matters handled by Polish diplomatic and consular posts abroad, including the Commissariat General of the Republic of Poland in Gdańsk (Art. 112c). This exclusion was later reaffirmed by the original version of the Act of 14 June 1960 – Code of Administrative Procedure. Under Art. 194 Sec. 1, item 10, the Code explicitly excluded the application of general administrative procedure in cases handled by Polish diplomatic and consular posts abroad.[3]

The first Polish procedural regulation addressing consular activities was introduced by the Ordinance of the Minister of Foreign Affairs of 4 November 1985 on

1 Journal of Laws No. 103, as amended.
2 Journal of Laws No. 36, item 341, as amended.
3 Journal of Laws No. 30, item 148.

the Detailed Procedure Before the Consul.[4] This regulation was issued based on the authorisation granted in Art. 31(1) of the Act of 13 February 1984, on the Functions of Consuls of the People's Republic of Poland.[5] The 1985 ordinance represented a self-contained and comprehensive procedural framework for consular proceedings,[6] in force from 1 January 1986 to 31 October 2015.

Under the previous legal system, ordinances were issued by the Prime Minister or relevant ministers and could carry normative authority. They were introduced into the legal system based on Arts. 40(2) and 42(2) of the Constitution and could be issued to execute tasks assigned to authorised bodies. Unlike the current legal system, which requires a specific legislative authorisation for regulations implementing a law, ministers were empowered to issue ordinances without a statutory basis. Ordinances could be issued under a general constitutional clause and were not required to be strictly executive in nature or limited to statutory matters.[7]

The change in the political system, including changes to the sources of law, and particularly the adoption of the 1997 Constitution of the Republic of Poland through a referendum – which introduced fully democratic legal solutions – brought about a requirement for statutory authorisation for the issuance of executive acts regulating rights and obligations of the individual. This led to widespread and justified criticism of the aforementioned ordinance, highlighting its potential unconstitutionality.[8] Outside the doctrine, this criticism became formalised and was the subject of interventions by the Ombudsman.[9]

The adaptation of legal regulations to meet the requirements of the 1997 Constitution of the Republic of Poland was addressed in the Act of 22 December 2000 on the Amendment of Certain Statutory Authorisations for Issuing Normative Acts and on the Amendment of Certain Laws.[10] Under Art. 25(5) of this law, the previous provisions were revised, introducing an authorisation for the Minister of Foreign Affairs to issue an ordinance regulating the procedure before the consul. Art. 78 of the same law stipulated that the previous ordinance of 4 November 1985 would remain in force until the new ordinance was issued. However, despite this legislative mandate, the Minister of Foreign Affairs failed to issue the required ordinance for 13 years. Due to this prolonged delay, the Ombudsman filed a request with the Constitutional Tribunal (CT) on 15 April 2014, challenging the constitutionality of Art. 31(1) of the Act of 13 February 1984, on the Functions of Consuls of the Republic of Poland, as well as the Ordinance of the Minister of Foreign Affairs of 4 November 1985 on the Detailed Procedure Before the Consul. The Ombudsman argued that these provisions were incompatible with Art. 92(1) and Art. 93(1) and (2), second sentence, in

4 No. 35, item 233.
5 Journal of Laws. No. 9, item 34.
6 Cf. Frankiewicz, 2003, pp. 96–99.
7 Official Gazette of the Republic of Poland, No. 35, item 233.
8 Wróblewski, 2015, pp. 15–19.
9 The report on the intervention is presented in Czubik and Woźniak, 2008, p. 189–190.
10 Journal of Laws, No. 120, item 1268.

conjunction with Art. 87(1) of the Constitution. In its judgment of 28 October 2014 (K 8/14),[11] the CT fully supported the Ombudsman's position and ruled that the challenged provisions were unconstitutional.

The CT asked a fundamental question: whether a matter of this nature can be regulated entirely by an executive ordinance. In addressing this question, the CT emphasised that

> the requirement to specify by statute certain main aspects of a given matter should be regarded as particularly strict when it comes to determining the forms of activity of public administration that has legal effects for citizens, the rights and obligations of an administrative authority and citizens within the realm of public law, or the citizens' exercise of their rights and freedoms. Proceedings before a consul regard such elements. A consul as a special administrative authority issues administrative decisions in individual cases; at times, the said decisions may be final (e.g. in cases concerning the issuance of visas). The procedure consists in the fulfilment of duties on the part of a given consul within the scope of providing Polish citizens with assistance, as well as it also specifies the rights and obligations of citizens-parties to those proceedings. For this reason, such matters should be regulated by statute. Delegating the entire procedural framework of consular proceedings to regulation by ordinance would grant the executive authority the unchecked ability to determine the conditions, principles, and procedures for interfering with constitutionally protected rights.

Regarding ordinances, the CT emphasised that, under the current Constitution, these should be regarded as internally binding acts. According to the Constitution, such acts have a limited scope of application, as they can only bind organisational units directly subordinate to the body issuing the ordinance. They cannot impose obligations on entities that are not under the authority of the issuing body.[12] The CT held there was no doubt that the Ordinance on Proceedings Before the Consul was inconsistent with Art. 93(1) and (2), second sentence, in conjunction with Art. 87 of the Constitution: 'Not only does the challenged Ordinance lack the character of an internal legal act, but above all it constitutes a legal basis of decisions and other determinations issued with regard to citizens, foreigners as well as legal entities'. The CT further noted that the prolonged validity of this contested ordinance – more than 13 years since the Act on the Amendment of Certain Statutory Authorisations took effect – raises serious concerns about such a practice.

The expiration date for the aforementioned legislation was set for 12 months. However, before this deadline passed, the Consular Law of 25 June 2015[13] came into force on 1 November 2015. This new law comprehensively regulated various aspects,

11 OTK-A 2014, No. 9, item 105.
12 Constitutional Tribunal ruling of 19 October 2010, case K 35/09, OTK ZU No. 8/A/2010, item 77.
13 Journal of Laws, 2023, p. 1329.

including the constitutional position, duties, and powers of consuls, as well as the administrative proceedings conducted before them.

2. The Place of Proceedings Before the Consul in the System of Polish Administrative Procedures and the Sources of Their Distinctiveness

The evolution of procedural rules governing administrative proceedings before the consul is a key factor that defines their distinct position within the broader framework of administrative procedures in the Republic of Poland.

Polish legal provisions have shaped proceedings before the consul, as defined in the Act on Consular Law, as distinct from general regulations governing administrative law processes. This differentiation has been present from the outset of Polish legal regulations, as reflected in Art. 112(c) of the Code of Administrative Procedure, then in Art. 194 Sec. 1 point 10, and further in the amendments effective from 1 September 1980 to the present, particularly in Art. 3 Sec. 2 point 4 of the Code of Administrative Procedure. According to the provision of the last-mentioned article, the Code of Administrative Procedure does not apply to cases within the jurisdiction of Polish diplomatic representations and consular offices.

This distinction introduces different procedural rules for dealing with administrative matters by consuls, even for cases that would otherwise follow the Code of Administrative Procedure within the Republic of Poland. Notably, the provision incorrectly uses the term 'consular office' instead of 'consul' as the administrative authority. The consular office should be understood as an auxiliary body providing personnel and material support, while the consul is the organ of the state with legal authority.

Despite this error, the key issue pertains to whether the exclusion in Art. 3 Sec. 2 point 4 is objective or subjective in character – i.e. whether it applies strictly to proceedings before the consul or to all consular proceedings, regardless of the authority or stage.[14] This matter was eventually clarified by judicial and administrative rulings. In its judgment of 7 October 2004 (ref. OSK 106/04),[15] the Supreme Administrative Court held that

> the exclusion of the application of the provisions of the Act of 14 June 1960 – Code of Administrative Procedure (Journal of Laws 2000 No. 98, item 1071, as amended) from proceedings before Polish consular offices abroad does not mean that this

14 Bogusz, 2021, p. 143.

15 Supreme Administrative Court, Central Database of Administrative Court Decisions (cbosa). [Online]. Available at: https://orzeczenia.nsa.gov.pl/cbo/query (Accessed: 1 November 2024).

exclusion applies to public administration bodies in Poland that control, by way of supervision, the decisions made in individual cases of Polish citizens. In other words, an authority of a higher level than the consular authority, acting in Poland in a supervisory capacity, is obliged to apply the provisions of the Code of Administrative Procedure.

Thus, it has been established that the exclusion in Art. 3 Sec. 2 point 4 is subjective in character, limited to proceedings before the consul, in which case the general rules of the Code of Administrative Procedure do not apply. If a case was initiated before the consul, but it is then handled by higher administrative bodies within Poland (i.e. the Minister of Foreign Affairs of the Republic of Poland), then the procedure will be based on general regulations, i.e. the provisions of the Code of Administrative Procedure. This distinction reflects the legislator's intent to treat cases differently depending on whether they are handled abroad by a consul or domestically by Polish administrative authorities. This principle applies to the substantive handling of cases. Furthermore, Art. 3 Sec. 4 of the Code of Administrative Procedure allows for the application of its provisions regarding complaints and applications in proceedings before the consul, but this does not pertain to the substantive handling of administrative cases or the issuance of legal acts. Therefore, it does not abolish or affect the effectiveness of the adopted rule.

The second structural feature of proceedings before the consul, as adopted in the Consular Law, is the lack of comprehensive procedural regulation.[16] In addition to the provisions of the Consular Law, procedural rules are also derived from other legal sources. Domestically, these include national special laws that govern matters within the consul's jurisdiction, providing additional procedural regulations specific to certain types of cases. From the perspective of international law, relevant sources include European Union law and classical international law, which can modify or supplement the procedural provisions of the Consular Law with specific legal solutions.[17]

In legal scholarship, it is unanimously recognised that the separation of proceedings before the consul is not an example of decodification of the administrative procedure system, which is generally viewed negatively.[18] Rather, this separation has its own specific rationale. Primarily, it is an important factor connected to the performance of the administrative functions and tasks of the Polish State in foreign countries. These functions have a clear legal basis in international law and do not

16 Bogusz, 2021, p. 144.

17 These issues are illustrated by the example of the procedural and legal grounds for visa issuance by consuls (visas can also be issued by other authorities). The procedure varies by visa type and is regulated by the Aliens Act of 12 December 2013 (Journal of Laws), the EU Community Code on Visas (OJ EU L 243 of 15 September 2009, as amended), and consular law. See: Dąbrowski, 2015, p. 45.

18 A negative example is the tax procedure regulated by the Tax Ordinance, widely criticised in the field of law studies.

infringe on the sovereignty of other states. Beyond the formal legal aspect, this issue also involves practical considerations related to the limited material and personnel resources available to consuls abroad, as well as the inherent unpredictability of the scope and nature of tasks the consul may be required to perform.

In contrast, the exercise of public administration by authorities within the Republic of Poland allows for a degree of stability and predictability, with the ability to adjust the administrative apparatus as needed. However, such stability and predictability are absent in the tasks consuls undertake, due in part to the nature of their duties, which extend beyond administrative matters to encompass what is called consular functions. These functions, though not defined by the Vienna Convention of 24 April 1964 on Consular Relations,[19] are outlined in Art. 5, which lists thirteen key responsibilities.[20] As a result, proceedings before the consul need to be structured in a way that grants the consul greater flexibility. Legal scholars point out that while the consul operates on the basis of Polish law, he or she does so within the legal framework of a foreign state.[21] This may be less of an issue in countries aligned with Western legal traditions but could have informal and extra-legal significance in culturally different regions, indirectly influencing the consul's activities.

A more universally significant factor, regardless of cultural context, is the size of consular districts, which often cover large geographic areas, making it difficult for the consul to maintain close contact with parties involved in administrative proceedings. Such circumstances were taken into account when designing consular procedures, which exclude some key elements of standard administrative procedures. For example, the consul cannot be removed from a case within his or her subject-matter jurisdiction. In domestic administrative proceedings, another authority nearby could take over the case if necessary; however, with consular cases, the exclusion of the consul could mean transferring the matter to another consul, possibly from another country. This could jeopardise the interests of the parties more than any concerns about the consul's impartiality, which can be addressed by higher authorities in the second instance if needed. Additionally, such a transfer would conflict with international consular law, which stipulates that consuls handle cases originating within their own consular districts[22] rather than cases transferred from another district due to the exclusion of another consul.

For these reasons, the legal solutions and procedural institutions characteristic of the general regulations in force domestically are not considered adequate for consular activities conducted outside national borders. The guiding principle behind consular procedural solutions is their simplification compared to the general rules,

19 Journal of Laws 1982, No. 13, item 98.

20 See Sawicki, 1992, passim, especially pp. 11–25; Czubiński, 1984, p. 125; Sutor, 1993, p. 28; Czubik and Kowalski, 1999, pp. 91–93.

21 Bogusz, 2021, p. 146.

22 For instance, according to Art. 6 of the Vienna Convention on Consular Relations, in 'special circumstances' and with the receiving state's consent, a consular officer may perform functions outside their consular district.

along with the need to protect state sovereignty, particularly by limiting the access of foreigners to the country's territory (in the context of visa matters). Consequently, the consul is not bound by a rigid statutory procedure that would grant extensive procedural rights to the parties involved, thus introducing restrictions on the consul's discretion.[23] These observations are especially relevant when dealing with foreigners applying for visas.

In other categories of administrative cases, the protection of citizens' procedural rights is ensured by the option to appeal the consul's first-instance decisions, transferring the case to a higher authority (i.e. the Minister of Foreign Affairs), where the appeal will be handled in accordance with the Code of Administrative Procedure, ensuring full respect for citizens' procedural rights.

3. Consul as an Administrative Authority. The Scope of the Consul's Jurisdiction

3.1. Consular Functions

The Consular Law defines the role of a consul by outlining both consular tasks (Art. 1) and functions (Art. 18). According to Art. 10, a consul serves as the head of a consular office or, in the absence of such an office within a consular district, as an appointed consular officer within a diplomatic representation. Art. 18 provides a detailed list of consular functions,[24] indicating that in the course of performing their duties, the consul:

1. protects the rights and interests of the Republic of Poland and its nationals, within the limits permitted by international law;
2. works to promote friendly relations and cooperation between the Republic of Poland and the receiving state;
3. undertakes activities to strengthen ties between the Republic of Poland and Polish nationals, persons of Polish descent, and individuals declaring their affiliation with the Polish Nation residing in the receiving state;
4. advocates for the Polish national minority and the rights and freedoms of individuals belonging to it, within the limits imposed by the laws of the re-

23 See Dąbrowski, 2015, p. 49.

24 On the concept of functions, see: Stasikowski, 2009, pp. 34–36, and literature cited therein.

ceiving state, international agreements, and documents of the Organisation for Security and Co-operation in Europe;
5. oversees, within his jurisdiction, the implementation of international agreements in force between the Republic of Poland and the receiving state;
6. works to develop and enhance economic, scientific, technical, and cultural cooperation between the Republic of Poland and the receiving state, and promotes the Polish economy, science, culture, and the Polish language;
7. provides information to the authorities and public opinion of the receiving state regarding the foreign and domestic policy of the Republic of Poland and developments in Polish economy, science, and culture;
8. familiarises himself with the conditions in the receiving state, particularly regarding its economy, science, culture, and legal system, and provides relevant information to interested Polish citizens, as well as to the appropriate authorities and institutions in Poland.

Although the provisions above do not explicitly state that performing state administration tasks is among the basic consular functions, these tasks should undoubtedly be considered among them. Therefore, they should be clearly identified within the catalogue of consular functions. The Vienna Convention of 24 April 1963 on Consular Relations, an important normative act of international law (reflecting, to a significant extent, the content of customary international law), includes the performance of administrative tasks among consular functions (see Art. 5).[25] However, this appears to result from the broad scope of tasks assigned to consuls. This could have been regulated more explicitly by adding a specific point in the catalogue of consular functions that highlights the performance of administrative tasks as defined by law.

The shortcomings of Art. 18 of the Consular Law are addressed by the legislator later in the Act, specifically in Art. 34, which outlines the consular function of performing administrative tasks outside the Republic of Poland. This article defines a catalogue of such tasks carried out by consuls abroad. Moreover, this is not the only provision relating to the performance of administrative tasks: for example, the provision of financial assistance (Arts. 39 and following) and the provision of aid (Art. 48) should also be regarded as such.

An analysis of these provisions leads to the conclusion that the consul's administrative tasks include both those that, within domestic conditions – i.e. on the territory of Poland – are performed by internal administrative bodies[26] (as listed in Art. 34), as well as those that can only be performed abroad and fall exclusively within the consul's jurisdiction (as specified in Arts. 39 and following, and Art. 48 of the Consular Law).

25 UNTS 1969, vol. 596, p. 261 (in Poland promulgated in Journal of Laws 1982, No. 13, item 98).
26 Cf. Borkowski, 1970, pp. 15–16.

3.2. Administrative Tasks of the Consul

According to Art. 34 of the Consular Law, the consul, under separate regulations:

1. issues, revokes, declares invalid, and refuses to issue passports and temporary passports;
2. issues, revokes, or cancels visas; processes requests for reconsideration, and cancels visa stickers;
3. grants, refuses, or revokes permits for local border traffic;
4. accepts applications for granting, restoring, confirming possession or loss of Polish citizenship, or for consent to renounce Polish citizenship, and transmits them to the competent authority in Poland, and accepts statements regarding Polish citizenship;
5. issues, or refuses to issue, temporary Polish travel documents for foreigners;
6. issues, or refuses to issue, temporary travel documents for citizens of other European Union countries;
7. issues decisions on determining Polish ancestry and decisions on eligibility for a Polish visa for repatriation purposes; grants and pays aid from the state budget, covers the costs of participation in a Polish language course, translates or certifies the translation of foreign documents required for preparing a Polish civil status certificate under Art. 12c(2) of the Repatriation Act of 9 November 2000 (Journal of Laws of 2022, item 1105), and forwards them, along with the application for the civil status record, to the civil registry office selected by the person referred to in Art. 12c(1) of that Act;
8. grants, refuses to grant, or cancels the Pole's Card, issues the Pole's Card, and extends its validity;

8a. issues documents to students and teachers certifying their entitlement to discounted travel in connection with studying or teaching Polish-related subjects, and extends their validity;

9. issues certificates authorising the importation or transportation of weapons through Polish territory and makes entries in the European Firearms Pass;
10. issues certificates for the importation of corpses and remains from abroad;
11. accepts assurances from individuals intending to marry that there are no circumstances precluding marriage;
12. accepts declarations of marriage and statements on the names of spouses and their children;
13. issues certificates confirming that a marriage can be contracted under Polish law;
14. accepts applications for the registration of births or deaths that occurred abroad but were not registered, or when no civil status registration exists in the country of birth or death;
15. accepts the necessary statements for the acknowledgment of paternity;

16. receives name-related applications and statements and forwards them to the competent authority;
16a. receives requests for the transcription of foreign civil status documents and forwards them to the competent authority;
17. performs activities concerning ships flying the Polish flag and their crews, including issuing temporary certificates of Polish nationality and ship safety certificates, and accepts maritime protests;
18. receives applications for permission to serve in a foreign army or military organisation and forwards them to the competent authority;
19. certifies signatures, accepts and transmits to the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation applications to access documents in the archives of the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation, applications to issue copies of these documents, or applications to issue objects in the archives of the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation;
20. performs activities related to elections and national referendums;
21. accepts letters and transfers them to Poland, if submitting them to the consul ensures observance of deadlines in proceedings under separate regulations;
22. confirms the creation of a trusted profile on the ePUAP platform.

In most cases, the public administration tasks specified in Art. 34 of the Consular Law are classified as government administration tasks. These are tasks that must be performed uniformly, 'always and everywhere'. Generally, within Poland they are carried out by general administrative bodies. Some are executed by government administration bodies, while others are delegated or entrusted to local government bodies. This means that these tasks are managed by a diverse range of structurally varied government and local government administrative bodies.[27] Their assignment to different bodies was based on providing citizens with easy access to the administration. These tasks are significant from the perspective of civil liberties, rights, and the functioning of Polish citizens outside the borders of the Republic of Poland. Therefore, entrusting them to consuls is considered a sound legal solution.

3.3. The Manner in Which the Consul Deals with a Case or Performs an Administrative Task

In most cases referred to in Art. 34 of the Consular Law, the consul deals with the case directly; in some instances, however, the consul acts as an intermediary, receiving the party's request and forwarding it to the competent authority in Poland

27 Borkowski, 1970, pp. 15–16.

(see Art. 34 points 14–16a, 18, 19, 21 of the Consular Law). These cases vary in nature and are justified by differing reasons. For cases referred to in Art. 34 points 14–16a of the Consular Law, the consul is not formally authorised to maintain or make entries in the relevant registers. This lack of authority is likely due to the requirement for specific qualifications of civil registry office employees. For cases listed in points 18, 19, and 21, the intent is to facilitate handling important matters for citizens residing or staying abroad by designating the consul to accept and forward their letters, requests, etc., to the appropriate authorities. Those making such requests to the consul may do so because of challenges in sending documents by themselves to the competent authority, which includes knowing the necessary address details for correspondence.

Based on the provisions of Art. 34 of the Consular Law, it is essential to distinguish among the issues entrusted to the consul that relate to:

a) an administrative matter resolved by the issuance of an administrative decision (*sensu stricto*);
b) an administrative matter resolved by carrying out an action (administrative matter *sensu largo*);
c) an administrative case in the broadest sense (*sensu largissimo*);
d) the performance of a public task through various actions or sequences of factual and legal actions by the consul.

In the first two types of cases, substantive law is applied. Resolving an administrative case in the strict sense involves applying substantive administrative law *sensu stricto* and culminates in the issuance of an individually specific act of law in the form of a decision (administrative decision, ruling). Conversely, resolving an administrative case *sensu largo* involves performing a material-technical act (e.g. issuing a passport or visa), which falls within the category of law application *sensu largo*.[28] In administrative matters *sensu largo*, an authority issues a specific act or performs a public administration action related to an individual's rights or obligations under the law. Here, the essence of the consul's action lies solely in assigning a right or duty explicitly regulated by law to a specific person.

While drafting acts, the legislator may employ norms of substantive law that are concretised either through an administrative act or through a substantive-technical action.[29] In both types of administrative cases, a party has an interest in the specific application of substantive law to them, either through the formal determination of the administrative-legal relationship via an administrative decision in the strict sense, or through the determination of their administrative-legal position via a material-technical action *sensu largo*. Substantive law norms establish the prerequisites for granting a certain right to an individual and specify the legal form for granting it, thereby resolving the case. Only in these two types of administrative cases do the

28 Cf. Wróblewski, 1988, pp. 42–43.
29 Leoński, 2005, pp. 9–13.

administrative proceedings covered in this study apply. Importantly, the legislator can use either form of concretising a substantive law norm within the same type of case. For example, the legal solutions adopted in the Act of 27 January 2022 on Passport Documents[30] illustrate this. According to this act, acquiring entitlement to a certain type of passport document occurs via a material-technical action, while the cancellation of a passport document may be achieved by either a material-technical action or an administrative decision, and the declaration of invalidity or issuance of a refusal decision is made through an administrative decision. This flexibility demonstrates that a single subjective right of an individual can be concretised in various ways by the legislator.

In general, the tasks listed in Art. 34 of the Consular Law pertain to administrative matters (in both senses), with reservations resulting from the discussion above. However, some cases are not straightforward, as certain tasks may involve complex procedures that complicate the clear legal classification of the case in question.

The consul's handling of administrative matters *sensu largissimo* must be differentiated from cases in which substantive law is applied. This category is not homogeneous and includes tasks that involve accepting certain statements of intent from the parties and, in some instances, forwarding these for further processing by the competent body in Poland. In such cases, there is neither an application of a substantive administrative law norm nor the establishment of the administrative-legal position of a specific individual. However, what is significant here is the initiation of proceedings and the establishment of a new case. This case proceeds with the participation of a specific person, enabling them to address a fragment of reality relevant to themselves, though it does not, or may not ever, establish their administrative rights and obligations. Such cases are covered under Art. 34, points 11–12, 14–16a, and 18–19 of the Consular Law.

Finally, the consul's performance of other public tasks should be distinguished. These activities are addressed to an unspecified audience (a general addressee). They take the form of specific, factual actions performed by the consul, as indicated in Art. 34, points 20–21 of the Consular Law. Such actions, related to the fulfilment of public tasks, occur outside the process of applying substantive law and are executed through factual actions by the consul or sequences of factual and legal actions tied by a common purpose, such as the organisation of elections. Certain procedural provisions under the Consular Law apply to these activities; however, their performance does not culminate in the issuance of a decision.

30 Journal of Laws, 2024, p. 1063.

3.4. Construction of the Legal Basis for the Performance of Administrative Tasks by the Consul

The performance of the aforementioned administrative tasks is based on provisions of competence and substantive administrative law, regulated by separate statutory provisions. Art. 34 of the Consular Law provides the systemic legal foundation, but it does not constitute the basis for defining the consul's specific powers or scope of authority. Therefore, the substantive legal basis for actions in administrative matters listed in Art. 34 of the Consular Law lies within specific laws regulating these issues. Consequently, the provisions of Art. 34 of the Consular Law may be referenced in the legal basis for the consul's actions solely as a supplementary legal basis.

Attention should also be given to the legal solutions arising from Art. 33 of the Consular Law. Art. 33(1) of the Consular Law states that a consul performs activities based on written authorisation from the Minister of Foreign Affairs, and – for activities specified in Arts. 28(1), 31, and 32 – based on authorisation granted jointly by the Minister of Foreign Affairs and the Minister of Justice. However, this provision does not apply to tasks outlined in Art. 34 of the Consular Law. Under the authorisation from the competent minister, the consul may perform tasks including notarial activities, as well as activities related to document translation and legalisation.

It should also be noted that performing a public task generally lies beyond the discretion of the administrative body. If the task is mandatory, the body is obligated to perform it regardless of circumstances. For optional administrative tasks, however, the legislator grants the body the authority to assess their necessity or makes their implementation contingent upon the availability of sufficient resources. Consequently, the provisions of Art. 35(1) and (2) of the Consular Law, which state that a consul may refuse to perform an action that would contravene the law or principles of social conduct (para. 1), do not apply to the performance of public tasks. A consul may refuse to perform an action if its execution: 1) could endanger their own or others' life or health, 2) could result in significant damage, or 3) would require disproportionate expenditure when other options are available to the applicant (para. 2). Public tasks assigned to consuls are aimed to enable citizens exercise their rights and freedoms; their performance inherently aligns with the law and principles of social conduct and serves to uphold individual rights and freedoms. Therefore, these actions cannot be classified as those listed under Art. 35(1) and (2) of the Consular Law. The provisions concerning refusal to perform an action should apply primarily to the consul's notarial actions and translations.

3.5. On Entrusting Consular Functions to a Representative of a Third Country

It is worth highlighting a distinctive legal provision in consular law regarding the authorisation of a diplomatic representative or consul from a third country to perform certain consular functions. Pursuant to Art. 15(1) of the Consular Law, after notifying the receiving state and in the absence of objection, the minister responsible

for foreign affairs may authorise the head of a diplomatic mission or consul from a third country to carry out specific consular duties. Consequently, a Polish consul may also undertake consular functions for a foreign country.

Based on linguistic interpretation alone, it is impossible to determine which functions may be involved, leading to an open conclusion. However, the interpretative process should also include systemic interpretation directives. The wording of the law does not prohibit transferring certain public tasks to international organisations or another state. Such tasks then no longer remain duties of the Polish State but are performed as tasks of an international organisation or another state, with the competent bodies of those entities responsible for execution. However, concluding an international agreement and completing its ratification by law is necessary in this case. Within the Polish legal system, it is impermissible for foreign state authorities to execute administrative tasks assigned to the Polish state under applicable Polish law. This prohibition is rooted in the principle of state sovereignty,[31] upheld in various ways, including the restriction against foreigners working in Polish public administration. For this reason, it is inadmissible to use Art. 15(1) of the Consular Law to transfer the competencies assigned to a Polish body – a consul – to a foreign state body on the basis of a decision of the minister responsible for foreign affairs. Therefore, as the Constitution permits transferring parts of Polish sovereignty solely through an international agreement ratified by law, the conclusion follows that administrative tasks reserved exclusively for Polish state bodies cannot be transferred under the procedure in Art. 15(1) of the Consular Law. However, this does not preclude the possibility of using this procedure to transfer other consular functions, which are not as central to the Polish State's sovereignty as public administration.

3.6. The Consul as a Special Administrative Body

Under the current legal framework, the consul is vested with the authority to deal with administrative matters through specific laws, which establishes the consul as an administrative body. However, given that the consul also undertakes unique administrative tasks – i.e. those that can be performed exclusively by the consul – and that, beyond public administration tasks, the consul also fulfils various consular functions, such as acting as a notary, delivering correspondence, and executing other public tasks of state interest,[32] it is necessary to categorise the consul as a distinct type of administrative body. The Constitutional Court acknowledged this in its judgment on case ref. K 8/14, referring to the consul as a 'special administrative body'[33] but without clarifying what makes it 'special'. Therefore, the consul does

31 On the understanding of the principle of state sovereignty and permissible limitations, see: Garlicki, 2000, pp. 58–59.

32 Cf. Rylski, 2019, pp. 7–35; Wach, 2015, p. 116.

33 It stated, 'The consul, as a special administrative body, issues administrative decisions in individual cases, sometimes with finality (e.g. visa cases)'.

not fit the standard profile of an administrative body, as the role encompasses more than administrative functions and tasks. Indeed, the consul performs duties that go beyond those typically reserved for the state; these are either not conducted within the Republic of Poland due to their objectlessness (see Art. 18 of the Consular Law). Or, if performed, they are carried out by non-administrative entities under state oversight, such as a civil-law notary, who holds a position of public trust, or Poczta Polska, a public utility providing official correspondence delivery services.

Another reason for the consul's unique status as an administrative body is the range of tasks performed, which, domestically, are handled by various separate bodies, both local and governmental. The consul's legal status as an administrative body does not align with the general organisational structure of public administration on the Polish territory. Typically, domestic administration is categorised by conceptual distinctions such as self-government versus government administration, central government versus territorial administration, and – within territorial government – combined versus non-combined administration. None of these classifications adequately capture the legal standing, operational framework, or organisation of the consul as an administrative body. The only undisputed fact is that the consul falls under government administration and represents a component of centralised government administration, although the consul's personal and operational dependencies differ from the traditional centralised model.

In terms of personal dependency, the consul is appointed by the minister responsible for foreign affairs upon the recommendation of the director general of the foreign service and can be dismissed through the same process (Art. 12(1) of the Consular Law). Consuls are appointed from among consular officers who possess the required qualifications, verified by passing the consular examination (Art. 6 of the Consular Law).[34] Additionally, only individuals who can guarantee the proper performance of consular duties are eligible to become consuls (Art. 11), and they generally carry out consular functions personally, though they may authorise subordinate consular officers in writing to perform functions on their behalf (Art. 16(2) of

34 According to Art. 6(2) of the Consular Law, the consular exam includes:
1. knowledge of the receiving state, cooperation, and relations between the receiving state and the Republic of Poland;
2. knowledge of laws and other regulations governing the consul's activities;
3. knowledge of international law, EU regulations, and international customs related to consular functions;
4. knowledge of the specifics of consular duties in the receiving state;
5. knowledge of Polish policy towards the Polish diaspora in the receiving state;
6. practical skills in handling cases and performing consular duties.

the Consular Law).[35] Consequently, the statutory framework precludes viewing the consul as a politically appointed official; rather, the position is entrusted to professionals with the requisite qualifications, as confirmed by a state examination. This structure limits the minister's discretion in appointing consuls, requiring reliance on a pool of qualified personnel rather than unrestricted decision-making.

Regarding official dependence, the consul is part of the centralised government administration apparatus under the authority of the minister responsible for foreign affairs (Art. 13(1) of the Consular Law). This official dependence includes the minister's right to supervise consular functions, except where a specific provision states otherwise (Art. 13(2)). The act specifies that in exercising supervision, the minister may issue binding guidelines, make recommendations, and request information, explanations, and documents from the consul (Art. 13(3)). However, these guidelines and recommendations may not pertain to substantive decisions made by the consul in specific cases (Art. 13(4)). This arrangement contrasts with classic models of official dependence by explicitly limiting the supervisory powers of the minister to only those specified in the law, thereby prohibiting any additional interference in the consul's activities beyond these statutory confines.

3.7. Consular Jurisdiction

The Consular Law does not reference the concept of territorial jurisdiction; however, the consul is authorised to perform consular functions within a specific consular district, defined as the area designated for consular functions in accordance with the Vienna Convention on Consular Relations of 24 April 1963. These functions may be carried out outside this district only with the consent of the receiving state and upon the consul's receipt of written authorisation from the Minister of Foreign Affairs permitting consular functions beyond the designated consular district (Art. 14 of the Consular Law). According to Art. 53(2) of the Consular Law, territorial jurisdiction is determined based on the party's place of residence or domicile within the consular district or the location of the event that initiated the proceedings.

The consul's substantive jurisdiction is established by national laws governing specific areas of social relations subject to administrative and legal regulation, as well as by European Union regulations and international agreements.[36]

35 According to Art. 16(3) of the Consular Law, in justified cases and with the consent of the Minister of Foreign Affairs, a consul may grant written authorisation for a specified period to perform certain functions to: (1) members of diplomatic-consular staff or auxiliary personnel, as defined by the Act on Foreign Service of 21 January 2021; (2) persons employed at a Polish foreign mission based on a work contract compliant with the receiving country's law or through appointment under the Labor Code Act of 26 June 1974 (Journal of Laws 2022, items 1510, 1700, and 2140, and 2023, items 240 and 641), including those employed for the duration of a family member's official assignment to the mission.

36 Bogusz, 2021, p. 150.

Collectively, these legal provisions underscore the distinctiveness of the consul's systemic status as an administrative body, setting it apart from administrative bodies operating within the Polish borders. This distinction allows the consul to be classified as a unique type of administrative body.

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4. Course of Administrative Proceedings Before the Consul

4.1. General Remarks

The unique and distinctive nature of the administrative procedure conducted by the consul is highlighted by the scope of procedural regulations set out in the Consular Law. These provisions differ significantly from the general Polish procedural norms established in the Act of 14 June 1960 – Code of Administrative Procedure, both in terms of the subject matter addressed and often the content of the legal regulations themselves. Thus, it is essential to consider not only what has been specifically regulated within the Consular Law but also what has been omitted in comparison to the Code of Administrative Procedure. Procedural regulations under the Consular Law are outlined in Part III, which is divided into chapters: 'General Provisions' (Arts. 50–57), 'Processing' (Arts. 58–62), 'Time Limits' (Arts. 63–65), 'Deliveries' (Arts. 66–71), 'Initiation of Proceedings' (Arts. 72–77), 'Evidence' (Arts. 78–80), 'Decisions and Rulings' (Arts. 81–87), 'Appeals, Complaints, and Requests for Reconsideration' (Arts. 88–94), 'Recommencement of Proceedings' (Arts. 95–101), 'Certificates' (Arts. 102–104), and 'Consular Fees and Expenses' (Arts. 105–119).

Compared to the general administrative proceedings regulated by the Code of Administrative Procedure, the Consular Law omits several key procedural regulations. The Consular Law lacks explicit provisions regarding the general principles of consular proceedings and does not include guidelines for excluding a consul or authorised consular employee due to conflicts of interest. Additionally, it does not contain regulations for the participation of parties with procedural rights, nor does it comprehensively regulate the evidentiary process – its provisions are limited to only two types of evidence. Moreover, there are no mechanisms in the Consular Law for appealing against inaction or procedural delays, such as submitting a reminder. It also omits requirements that would oblige a consul to allow a party to review gathered evidence, provide comments, or submit new evidence before issuing a decision. Furthermore, the Consular Law restricts the ability to revoke a final decision solely to the reopening procedure, offering limited recourse for reconsideration.

A distinctive feature of the administrative procedure before the consul is that it encompasses not only the procedure for issuing acts applying the law – similar to the Code of Administrative Procedure – but also includes the procedural framework

for actions performed by the consul.[37] This broader regulatory scope means that the consular procedure is designed to cover a wider range of consular functions within a unified set of provisions. Consequently, the scope of consular procedure is objectively more extensive than that of general administrative procedure, which typically focuses on issuing acts that apply substantive law.

4.2. Parties to Administrative Proceedings Before the Consul

Art. 50 of the Consular Law specifies that a party to proceedings before the consul includes anyone whose legal interests or responsibilities are the object of the proceedings, mirroring part of Art. 28 of the Code of Administrative Procedure. The doctrine indicates that such wording indicates the *ex officio* mode of initiation of proceedings. Additionally, however, Art. 28 indicates that proceedings can be initiated upon request ('a party to proceedings is any person (…) who requires the intervention of a body in respect of their legal interests or responsibilities')[38] Art. 50 does not include such wording that would indicate initiation upon a party's request. The omission is noted as inconsistent, as it does not fully align with the general procedural framework used in the Code of Administrative Procedure, despite the fact that the concept of a 'party' in consular proceedings is materially equivalent to that used in domestic procedures. Moreover, the consul's subject-matter competence generally involves cases initiated at the party's request, while Art. 50 of the Consular Law seems more suited to cases initiated *ex officio*. Although formal initiation of cases *ex officio* is possible after a party application, this approach should ideally be consistent with the consul's typical procedural scope, as outlined in Art. 72(1) of the Consular Law, which specifies that the consul initiates proceedings either at the request of a party or *ex officio*.

The doctrine widely accepts that the concept of a 'party' is fundamentally procedural, meaning that a party only exists within the context of an administrative proceeding. For a proceeding to begin, an administrative case with substantive legal relevance must first exist as the subject matter of the proceeding. Only then can the proceeding be initiated, and a party can formally appear within it. This creates a clear distinction: the party is involved only in the proceeding, not directly with the case itself, although the proceeding addresses the case. The case, in turn, can exist on the grounds of substantive law.[39] The legal solution adopted in Art. 50 of the Consular Law respects this distinction.[40]

The concept of legal interest and responsibility is not defined within the provisions of the Consular Law, necessitating reliance on doctrinal interpretations. The doctrine equates a legal interest with an interest that is either rooted in law or

37 Bogusz, 2021, p. 149.
38 Knysiak-Sudyka, 2017, p. 187.
39 Zimmermann, 1996, p. 77 et seq.
40 See Supreme Administrative Court (NSA) judgment of 21 October 2011, case I OSK 1819/10.

protected by law, thus associated with a specific, generally applicable legal norm. On this basis, one can legitimately seek action from a body (i.e. the consul) in alignment with individual needs and expectations, or, alternatively, request the body's restraint or limitation of actions that contradict the needs of an individual within a particular factual and legal context.[41]

A party's legal interest, understood as an individual's claim against a public body, must meet several criteria: it must be individual, personal, concrete, relevant (in the sense of not being hypothetical or contingent upon uncertain future events),[42] and objectively verifiable.[43] The source of a legal interest lies in the norms of generally applicable law, including substantive administrative law,[44] substantive civil law,[45] and procedural law.[46] Legal interest cannot be derived from the broader realm of law application activities; meaning it cannot be based on civil law claims, contracts, internal statutes, bylaws, corporate regulations,[47] or ongoing proceedings in other administrative, judicial, criminal, or disciplinary cases.[48] Additionally, a person may qualify as a party due to a binding obligation, understood as a specific order or prohibition, sourced exclusively from provisions of generally applicable administrative law.[49]

Polish procedural-legal doctrine has long debated the theoretical concept of a party under Art. 28 of the Code of Administrative Procedure. While a detailed review of this debate is unnecessary here,[50] its conclusions suggest that, under Art. 50 and Art. 54 Sec. 1 of the Consular Law, the legislator favours a more objective concept of a party. Finding that there is no legal interest or obligation during the proceedings will lead to a decision to discontinue the proceedings. A subjective concept of a party assumes that anyone who asserts and is personally convinced that the proceeding involves their legal interest or obligation. The consul's investigation then examines the existence of this claimed legal interest or responsibility. If the consul determines that a legal interest exists, it results in a positive decision; if absent, it leads to a decision to discontinue the proceedings.

A notable limitation of the Consular Law is its omission of provisions that define general procedural capacity, i.e. the criteria determining who may act as a party in consular proceedings. Nevertheless, this gap can be addressed through legal reasoning by deriving procedural capacity from specific legal rights in various administrative contexts. For example, the right to hold a passport, outlined in Art. 5(1) of the

41 See NSA judgment of 10 August 1998, case II SA 742/98.
42 See NSA judgment of 16 October 2012, case II OSK 1125/11; NSA judgment of 26 February 2014, case II GSK 1916/12; NSA judgment of 19 April 2017, case I OSK 1817/15.
43 Klonowiecki, 1938, pp. 10–12, 14, 31, 35–37; Adamiak and Borkowski, 2017, pp. 222–224.
44 See NSA resolution of 3 February 1997, case OPS 9/96, OSNA 1997, No. 3, item 102.
45 See NSA resolution of 28 May 2001, case OPS 1/01, ONSA 2001, No. 4, item 146.
46 Duda, 2008, pp. 184–186.
47 See NSA judgment of 13 October 1999, case IV SA 1349/97.
48 See NSA judgment of 24 September 2009, case II GSK 1074/08.
49 Knysiak-Sudyka, 2017, p. 189.
50 On this subject, see: Gołaszewski, 2018, p. 250 and literature cited therein.

Law of 27 January 2022 on Passport Documents,[51] implies that procedural capacity and standing extend to Polish citizens of any age.

The Consular Law only partially addresses the concept of postulatory capacity, i.e. a party's factual and legal ability to act personally in consular proceedings. According to Art. 57(1) of the Consular Law, a party may act either in person or through an attorney, unless specific actions or provisions require the party's personal involvement. The attorney must be a natural person with full legal capacity, and the power of attorney must be provided in writing. However, in minor cases, the consul has discretion to waive the requirement for a written power of attorney if circumstances clearly indicate the attorney is acting on behalf of the party (Art. 57(2) and (3) of the Consular Law). Notably, the Consular Law lacks provisions addressing situations where parties may lack actual capacity to act independently in proceedings, such as minors, legally incapacitated persons, or those who do not understand the Polish language. This regulatory gap leaves questions unanswered about how these individuals can effectively participate in proceedings.

A particularly interesting provision relating to postulatory capacity, while also regulating a specific evidentiary measure, is Art. 55 of the Consular Law. Under para. 1, the consul may summon a party to appear in person if personal attendance is essential to resolve the case or if a specific legal provision requires it. The distinctiveness of this provision lies in the consequences for non-compliance: per Art. 55(3), if the party fails to appear when summoned, the consul is permitted to leave the application unprocessed. The summons must inform the party of this consequence and of any additional repercussions for failing to appear, if specified in other relevant provisions.

4.3. Initiation of Consular Proceedings

Under Art. 72(1) of the Consular Law, the consul may commence proceedings either upon request from a party or *ex officio*. *Ex officio* proceedings occur in three specific circumstances: (1) to protect the rights of the Republic of Poland and its citizens, (2) as mandated by law, or (3) upon receiving information from the authorities of the receiving state regarding an event that necessitates the consul's intervention, with the consul informing the party of any actions taken.

The commencement date of proceedings varies depending on submission method. For requests submitted in person or by mail, the commencement date is when the request is delivered to the consul. For electronic submissions, the date of commencement corresponds to the issuance of a receipt, as outlined in Art. 41 of the Act of 18 November 2020 on Electronic Delivery (Art. 73(1) and (2) of the Consular Law).

51 According to which, every Polish citizen has the right to possess a passport document (Journal of Laws 2024, 1063).

Requests to commence proceedings must generally be made either orally or in writing, with some cases or specific provisions requiring a written request in paper form (Art. 74 of the Consular Law). A written request must contain the request itself, the party's name, signature, and address of residence. For electronic submissions, a qualified electronic, trusted, or personal signature is required, while paper-based applications must include a handwritten signature. If a request does not meet these formal requirements, it is left unrecognised, as the Consular Law does not provide a procedure for rectifying such formal deficiencies. However, if the application lacks other necessary elements or attachments, the consul will issue a written summons for the applicant to rectify these deficiencies within 14 days, notifying the applicant that failure to do so will result in the application being left unrecognised (Art. 77 of the Consular Law).

These legal solutions diverge from those in the Code of Administrative Procedure, and the rationale for differentiating the weight of specific formal deficiencies in the application is not readily apparent. The approach taken in consular proceedings requires that necessary documents be submitted early, as deficiencies cannot be supplemented once the investigation and evidence stage has begun. This connects with a narrower application of the principle of officialdom in consular proceedings, which rely on only two forms of evidence: documentary evidence (Art. 78 of the Consular Law) and statements made on the record by the party or another individual before the consul (Art. 79 of the Consular Law). The legislator's intention appears to be that a party with a document essential for a favourable decision should provide it at the outset. If a party lacks such a document, it is assumed that the proceedings are likely to end unfavourably for them. Hence, it is more efficient to request these documents at the commencement stage rather than advancing to proceedings with a predictable negative outcome. This preliminary requirement avoids unnecessary procedural steps by enabling the consul to leave incomplete requests unprocessed early in the process.

If the consul lacks the substantive jurisdiction to deal with a case, or if the application has been submitted by a non-party, the consul must inform the applicant of the appropriate body and return the application (Art. 54(1) of the Consular Law). However, if another consul within the same receiving state holds jurisdiction (i.e. the issue is one of territorial rather than substantive jurisdiction), the consul should notify the applicant and forward the application to the proper consul, unless otherwise specified by a special provision (Art. 54(2) of the Consular Law). When faced with deficiencies in substantive or territorial jurisdiction, the consul's initial actions should address these jurisdictional issues, even if the application contains formal deficiencies. An exception to this procedure applies when deficiencies are so significant that the application must be left unprocessed – for instance, if the applicant fails to provide personal data and a residential address, making it impossible to act under Art. 54 of the Consular Law.

4.4. Deadline for the Consul to Resolve the Case

The time limit set for the consul to process a case reflects the unique nature of the consular procedure. The legislator aims, on the one hand, to ensure a prompt resolution for the party involved, while, on the other, introducing flexibility that allows the consul to adapt to the specific circumstances of each case. This balance between expediency and adaptability is captured in Art. 58(1) of the Consular Law, which mandates that the consul should handle the case 'without undue delay', but within thirty days of the initiation of the proceeding. The requirement to proceed 'without undue delay' is intentionally vague, allowing for the consul's assessment of promptness based on the specific factual and legal circumstances of the case, as well as the consul's operational environment.[52] However, regardless of these factors, the case must be concluded within the thirty-day maximum from the initiation date.[53]

Generally, the individual regulations in this area align closely with the legal framework for similar bodies operating domestically. However, the Code of Administrative Procedure provides a more detailed structure concerning time limits for handling cases, distinguishing these based on criteria such as complexity and the scope of investigation required. Conversely, the Consular Law includes unique provisions absent in the Code of Administrative Procedure. Notably, Art. 58(2) allows the consul to extend the basic deadline without specifying an absolute upper limit. This provision states that the consul must notify the party of any circumstances necessitating an extension, setting a new deadline accordingly. Linguistic interpretation of this provision suggests that the consul may extend the deadline indefinitely, as necessary – a flexibility not found in the Code of Administrative Procedure. Systematic interpretation confirms this flexibility. According to Art. 60(1), the consul may request additional information or assistance from public administration bodies in Poland or the receiving state when needed to resolve the case. In such situations, the initial deadline of 30 days (Art. 58(1)) is extended to three months. However, Art. 60(2) stipulates that if resolving the case within this extended period is not feasible, the consul reverts to Art. 58(2), further extending the deadline as necessary. This framework implies that the three-month period under Art. 60(1) is not a definitive cap; if circumstances demand, the consul may continue extending the deadline, provided the party is notified in writing, informed of the reasons, and given a new realistic timeline.

The Consular Law includes specific provisions on calculating, observing, and restoring deadlines in cases of non-compliance. These regulations mirror the general administrative procedure framework, often referencing or replicating it directly. Arts. 63–64 of the Consular Law address the calculation and observance of deadlines, closely aligning with Art. 57 of the Code of Administrative Procedure. Additionally,

52 The Supreme Court (SN) addressed this issue in a civil law context in the resolution of 30 November 1988, case III CZP 48/88, OSNC 1989, No. 3, item 36.

53 Wiktorowska, 2012, p. 79.

Art. 64 the Consular Law governs the restoration of deadlines, largely replicating Art. 58 of the Code of Administrative Procedure.

In essence, the time limit for resolving a case under the Consular Law functions as a procedural deadline. This means that missing such deadlines does not prevent the body from issuing a decision nor does it render the decision invalid.[54] This would differ if the legislator had introduced substantive deadlines with specific legal consequences for non-compliance. The Consular Law does not provide parties with procedural remedies to contest the consul's inaction or prolonged proceedings. Parties can only file a complaint with the consul's immediate superior – namely, the minister responsible for foreign affairs.

4.5. The Course of the Evidentiary Process

Most objections to the legal framework adopted for administrative proceedings before the consul are raised by the provisions governing the evidentiary process, which are, in principle, largely absent. Regulation of this critical phase of the proceeding – essential for the content of the decision – has been limited to defining the types of evidence admissible in consular proceedings.

The core issue examined in this part of the paper is distilled into two questions: (1) whether the course of the evidentiary process can be reconstructed based on the sparse legal provisions, and (2) whether the regulations in the Consular Law are sufficient to stimulate the reasoning processes needed to address the obvious gaps.

An analysis of the legal solutions pertaining to the evidentiary process leads to a negative evaluation of the adopted legal framework. The legislator has regulated only two types of evidence (Arts. 78–79 of the Consular Law) and stressed the importance of facts known to the consul *ex officio* (Art. 80 of the Consular Law), entirely neglecting to regulate the course of the evidentiary process.

In consular proceedings, the reasoning process is based on two types of evidence: documentary evidence and statements from the parties involved. A relevant fact can also be established by a circumstance known to the consul *ex officio*, meaning information derived from records, registers, or lists maintained by the consul. In such cases, the consul determines the relevant fact based on official databases without requiring the party to submit supporting evidence (e.g. documents to confirm certain information; Art. 80 of the Consular Law). For documentary evidence, both private and official documents are acceptable, but only originals are permitted (Art. 78(1) of the Consular Law). A copy may be accepted if it has been verified as identical to the original by a competent body in Poland, the receiving country, or a third country, provided no special provision requires the original.

Official documents prepared in the appropriate form by authorised bodies within their scope of activity carry increased evidentiary weight, as the legislator has deemed them to be reliable evidence of the statements they contain (Art. 78(3)). Statements

54 See NSA judgment of 7 May 1998, case I SA/Ka 1215/96.

made by a party or other individual may also serve as evidence if submitted in a protocol before the consul after a warning of criminal liability for false statements. This protocol must include the date and place of its preparation, the subject of the action, personal details of those involved, the warning about criminal liability and a note confirming that this warning has been communicated, the content of the statement, and signatures of the participants (Art. 79(1) and (2) of the Consular Law).

A party's statement is treated as evidence in the form of a hearing, while a third-party statement serves as a substitute for witness testimony. This unique approach seems to be intended to simplify proceedings, as a formal hearing requires the presence of all parties, whereas statements can be recorded at any time before the consul, even outside formal administrative proceedings. The only requirement is adherence to the formalities stipulated in Art. 79 of the Consular Law.

Such scope of the regulations allows the following conclusions to be drawn:

1. First, proceedings before the consul are based on the principle of material truth.
2. Second, the legislator implicitly prohibits using all possible types of evidence to explain the case, limiting admissible evidence to two types.
3. Third, the responsibility to submit documents lies with the party. However, this does not preclude the consul from initiating and requiring a party to submit certain documents if the case would otherwise remain unprocessed. The same applies to submitting necessary statements, suggesting indirectly that the consul acts as the 'host' of the proceedings. This implies that the principle of officialdom governs these proceedings, albeit in a modified form, as the regulations do not mandate the consul to independently seek necessary evidence. Instead, the consul may impose this duty on the parties. Should a party fail to meet this obligation, the case may remain unprocessed.
4 Fourth, limiting regulation of the evidentiary process to the identification of evidence aims to simplify the proceedings and remove certain procedural rigors from the clarification process that would otherwise bind the body (e.g. notifying a party of a witness hearing and allowing this party to participate). This regulation also grants certain procedural rights to the parties.
5. Fifth, the evidentiary process may take the form of proceedings in chambers, excluding the possibility of an administrative hearing.
6. Sixth, it is the body's duty to evaluate the gathered evidence. This duty is only indirectly derived from the formal rule of *ex officio* evidence evaluation. Since the legislator has specified the method of evaluation, the consul has discretion in evaluating other aspects, such as statements from a party or other individuals. This obligation also stems from the principle of two-instance proceedings, which implies that evidence must be evaluated thoroughly enough

in the first instance to allow for a legal assessment of the decision in the second instance.[55]

In general proceedings, the principle of officialdom[56] – meaning the administrative body's duty to act *ex officio* – defines a conduct paradigm for the body, which includes duties related to: a) directing and conducting all proceedings in the public interest, with the content tailored to each case; b) commencing proceedings and individual procedural actions *ex officio*; c) carrying out procedural actions directly, particularly evidentiary actions; and d) adjudicating incidental (preliminary) and primary issues, even against the will of the addressee. This configuration of the principle stems from the administration's mission to serve the public interest, necessitate *ex officio* action, direct the proceedings, and act as the 'host' in striving to clarify the case, including through additional *ex officio* actions, and ultimately issuing a decision.[57]

Acting as the host of the proceedings, which is central to the principle of officialdom, gives the body discretion over commencing the proceedings and determining their scope,[58] with public interest as the sole criterion. This responsibility also includes the burden of proof, encompassing the legal duty to comprehensively gather evidence to establish a factual basis that reflects reality.[59] Such factual clarity is required to the extent necessary to resolve the case.[60]

In general proceedings, the burden of proof lies with the body, though this does not absolve the party from cooperating in clarifying the case.[61] Many factual circumstances relevant to the case's substantive aspects may only be known to the party, meaning the party's failure to disclose these facts limits the body's ability to investigate. In such cases, where the party remains passive, the body fulfils its duty if it exhausts all reasonable measures based on available and accessible data.

In consular proceedings, the situation is complex. For documentary evidence, submitting it is the party's responsibility, though the consul may initiate this process

55 See Warsaw Administrative Court (WSA) judgment of 23 February 2011, case V SA/Wa 1873/10.

56 In the doctrine, on this topic, see: Klonowiecki, 1938, pp. 67–68; Starościak, 1969, pp. 264 et seq; Iserzon, Starościak and Dawidowicz, 1955, p. 86; Łaszczyca, 2018, pp. 525 et seq; Rozmaryn, 1961, pp. 892–893; Łętowski, 1990, pp. 229–231; Służewski, 1982, p. 44.

57 Cf. Langrod, 1939, p. 18; Klonowiecki, 1938, p. 67.

58 Starościak, 1969, pp. 264–266.

59 On the burden of proof, see: Hanusz, 2004, pp. 182–183.

60 Borkowski et al., 1989, p. 62.

61 The Supreme Administrative Court ruled in the judgment of 26 October 1984, case II SA 1205/84, that 'According to Arts. 7 and 77 Sec. 1 of the Code of Administrative Procedure, the responsibility for gathering and considering all evidence rests with the authority conducting the administrative proceeding. This does not imply that the party is exempt from participating in fulfilling this duty, especially as the failure to prove a specific factual circumstance may result in unfavourable outcomes for the party. However, under the Code of Administrative Procedure, it is unacceptable for the authority to take a completely passive stance, limiting itself only to evaluating whether the party proved the facts underlying its claim, effectively transferring the burden of clarifying the case to the party'.

ex officio. Evidence in the form of statements by a party or another person may also be initiated and conducted *ex officio* by the consul.

The legal solutions adopted are justified by the simplified nature of cases falling within the consul's substantive jurisdiction. This point was already noted in the explanatory memorandum to the draft law,[62] which emphasised the need to avoid introducing complicated procedural rules and instead simplify proceedings to ensure swift case resolution. However, this simplicity in the evidentiary process and procedural flexibility must not undermine the consul's duty to ascertain the truth of the matter. Thus, procedural simplification is permissible only up to the point where it does not endanger the obligation to establish the facts accurately.[63]

4.6. Legal Forms of Dealing with an Administrative Case

The legal form for dealing with a particular type of administrative case results from the substantive law provisions that establish the consul's competence in a given area. In general terms, the consul exercises this competence by either issuing a decision or carrying out a material or technical action. The manner of these actions is governed by procedural rules and conducted within the framework of consular proceedings. It is important to distinguish the resolution of administrative matters from the consul's actions that are mandated by law, such as receiving various statements or performing factual acts. Both forms of fulfilling public duties are regulated by Art. 51 of the Consular Law, which specifies that the consul deals with a case by either performing an action or issuing a decision.

The 'dealing with the case' referred to in Art. 51 of the Consular Law should be distinguished from the performance of public tasks within the consul's cognizance. This does not involve the application of substantive law but rather consists of executing task norms directed at the general public. An example of this is the organisation and conduct of elections and a national referendum (Art. 34, item 20 of the Consular Law).

From the perspective of the legal form criterion of the consul's actions, consular proceedings concerning an administrative matter may conclude in one of the following ways:

a) through a material-technical action, involving the performance of a specific action, such as issuing a passport, visa, or travel document;
b) by issuing a positive or negative administrative decision;
c) by issuing a ruling.

The formal-legal basis for performing an action or issuing an administrative decision is established in Art. 51 of the Consular Law. The content of the action performed or the substantive content of the decision is governed by substantive law

62 See justification for the draft Consular Law, Sejm 7th term, parliamentary print No. 3290.
63 See the views of the doctrine: Borkowski and Krawczyk, 2020, p. 106.

provisions, which define the normative facts and the related administrative-legal rights or obligations arising from the fulfilment of substantive prerequisites. These provisions dictate the type and content of the material-technical action or administrative decision. The performance of an action or issuance of a decision is based on explicit statutory authorisation, with the construction being identical in both cases, differing only in the legal form for resolving the specific administrative matter.

Material and technical actions undertaken within the context of administrative matters are factual actions that produce indirect legal effects – i.e. they generate legal consequences through facts or events.[64] For example, issuing a passport involves a series of factual actions related to preparing the document and delivering it to the party by the consul; these actions do not directly produce legal effects, but possession of the passport grants the holder the legal right to cross state borders. In administrative law, material and technical actions have the following features: a) they are undertaken based on and for the purpose of implementing applicable legal norms, b) they contribute to the execution of the state's tasks, c) they are subject to control of legality, d) they do not directly aim to create, change, or extinguish legal relations, e) nevertheless, they can produce certain legal effects indirectly through facts.[65] Importantly in this context, these actions serve the purpose of executing (implementing) the law, which distinguishes them clearly from administrative decisions, which are acts of applying the law.

An administrative decision, in turn, represents the fundamental form of an administrative act. It can be analysed from the perspective of either substantive or procedural law. In the former, the focus is on the material prerequisites (i.e. the factual circumstances specified by law as conditions for issuing the decision) and the content of the decision. The content of an administrative act affects civil rights and freedoms and decisively shapes the legal situation of individuals, legal entities, and other entities in matters within the scope of public administration tasks.[66] Administrative decisions are acts of applying substantive law, transforming an abstract substantive legal norm (pertaining to a generally defined factual situation in the hypothesis) and a general norm (addressed to a broadly defined group through universal terms) into a concrete (i.e. addressing a specific factual situation) and individual norm (i.e. directed at a fully specified legal subject).[67]

64 Zimmermann, 2006, p. 355.
65 Stahl, 2002, p. 379.
66 Michalska-Badziak, 2002, p. 379.
67 Ochendowski, 2001, pp. 167–178; Zimmermann, 2006, p. 382; Maurer, 2006, p. 212; Dawidowicz, 1965, pp. 285–287; Dawidowicz, 1962, p. 22; Jaśkowska, 1998, pp. 12–13.

From the perspective of substantive law, a decision is an administrative-legal act issued by a body, containing a declaration of its will[68] (as opposed to a declaration of knowledge),[69] expressing the administrative power of the body, which independently (i.e. unilaterally) determines its content based on a substantive norm. In doing so, it disregards the expectations and wishes of the party to the proceedings, who remains outside the structure of public administration.[70] The decision generates legal effects regardless of the party's response to its content,[71] making it a sovereign and unilateral act – yet bilaterally binding. Its addressee is an entity external to the administration. This act produces direct legal effects under administrative law and, in some cases, extends to other areas of law, such as civil law.[72]

From a substantive perspective, the essence of a final decision is to establish, mandate, prohibit, or shape the rights or legal situation of its addressee. Decisions that mandate or prohibit something impose an obligation on the addressee to take a specific action, refrain from an action, or discontinue an ongoing action. Decisions that shape something create, modify, or terminate a particular legal relationship, while determining decisions establish a right or a legally significant characteristic of a specific person.[73]

On a procedural level in general proceedings, an administrative decision 'settles a case' (Art. 104(1) of the Code of Administrative Procedure), meaning it concretises a person's rights or obligations based on a substantive norm (i.e. it precisely defines their content). Additionally, besides settling the case on its merits, it may conclude

68 The provisions of Arts. 82–88 of the Civil Code regarding defects of declaration of intent do not apply to statements of will expressed in administrative decisions, as indicated in the NSA judgment of 3 December 1990, case II SA 740/90: 'The term 'free decision-making' in Art. 82 of the Civil Code refers solely to the formation of intent by the party in a civil-law relationship and does not pertain to the issuance of decisions as individual administrative acts'. In the court's view, it is permissible to declare a part of the decision invalid under Art. 156 Sec. 1 point 2 of the Code of Administrative Procedure due to gross violation of the law.

69 On the distinction between acts of will and acts of knowledge, see NSA judgment of 24 May 2022, case III OSK 949/21, in which the NSA stated, 'In administrative law and administration theory, actions of administration are divided into acts of will and acts of knowledge. Acts of knowledge do not contain normative statements but merely information subject to logical verification (i.e. determining whether it is false or true). In contrast, acts of will include various legal forms of public administration actions that set behaviour norms for specific entities. Acts of will contain normative statements that cannot be logically verified. Their legality can only be assessed as either legal or illegal. This means that the law specifies (more or less precisely) the types of permissible acts of will and the situations, conditions, and criteria for their selection by the authority'.

70 On the external nature of decisions, see: Dawidowicz, 1984, p. 6; Borkowski, 1998, p. 24.

71 Borkowski, 1972, pp. 46–49, noting that the essence of administrative authority emerges from: a) the sequence of two acts of will: the party's act of will requesting initiation of proceedings or a declaration of intent regarding the desired content of the act, and the body's act of will on content that decisively expresses its position; b) the presumption of validity, i.e. legality of administrative decisions; c) the potential use of administrative coercion to enforce the body's act of will. See also: Longchamps, 1964, passim; Ziemski, 2005, p. 516.

72 Zimmermann, 2018, pp. 382–384.

73 Zimmermann, 2018, p. 393, based on Maurer's classification proposal, 2006, pp. 217–218.

the proceedings 'by some other means' (Art. 104(2) of the Code of Administrative Procedure), such as by discontinuing the proceedings. Thus, in the light of the Code of Administrative Procedure, an administrative decision may not always be an act of applying substantive law; it may produce legal effects solely on a procedural level, acting only to end the administrative proceeding in a given instance.[74] Notably, in both doctrinal views and judicial-administrative jurisprudence, these 'other means' of concluding proceedings are understood for example as discontinuance.[75]

Therefore, in general proceedings regulated by the Code of Administrative Procedure, a decision settles a case on its merits, in whole or in part, or otherwise concludes the case in a given instance. The Code links the essence of a decision in a procedural sense to the administrative case and its substantive resolution. The interaction between the procedural dimension, related to the discontinuance of proceedings in a given instance, and the material dimension, related to the substantive resolution of the case and the application of a substantive legal norm, encapsulates the essence of an administrative decision under the Code.[76]

In consular proceedings, the legislator has introduced a slightly different legal approach, defining an administrative decision exclusively as an act of dealing with administrative matters on their merits, that is, an act that settles the case substantively (Art. 51 of the Consular Law). Furthermore, the consul is required to use the form of the decision even to resolve a case 'by other means,' not on its merits (Art. 86(3) of the Consular Law). Consequently, a decision issued by the consul constitutes an administrative act that settles an administrative case substantively, either in whole or in part.

The distinction in Art. 51 of the Consular Law (between dealing with a case by performing an action or issuing a decision) can be analysed through the lens of the legal forms of administrative action, as outlined above, or by adopting the criterion of the legal effects produced. The application of administrative law that results in the issuance of a decision (i.e. the application of law *sensu stricto*) creates a new norm within the legal order – an individual and concrete norm that establishes an administrative relationship. Conversely, settling a case 'by performing an action' (such as issuing a passport) also involves the concretisation of a substantive legal norm, though of a different nature. Here, the statutory norm is concretised by issuing an act or performing an action that establishes an administrative-legal situation.

74 Woś, 2017, p. 373.

75 NSA judgment of 16 February 2009, case II OSK 178/08; in the judgment of 11 January 1994, case SAB/Wr 31/93, ONSA 1995, No. 1, item 29, the NSA noted, 'The initiated administrative proceeding must be concluded by resolving the case. The administrative body resolves the case by issuing a decision unless the procedural regulations specify otherwise (Art. 104 Sec. 1 of the Code of Administrative Procedure). Even if the proceeding has become irrelevant for any reason, the public administration authority cannot abstain from resolving the case. In such a case, it issues a decision to discontinue the proceeding (Art. 105 Sec. 1 of the Code of Administrative Procedure)'.

76 Cf. Zimmermann, pp. 385–386.

This approach can be considered as the application of administrative law in the broader sense (*sensu largo*).

Determining the essence of administrative law application in the strict sense is thus achievable through the theoretical-legal construction of the administrative relationship.[77] Conversely, understanding the essence of administrative law application in the broad sense is possible through the auxiliary construct of the so-called administrative-legal situation. In the doctrine, Franciszek Longchamps understands this concept as the totality of meanings provided by the law for a given subject, with legal obligation and legal possibility as fundamental elements.[78] According to Jan Boć, a legal situation is any social situation of a particular subject, whose components have been shaped by law, either directly or indirectly, due to a specific factual event. The legal relationship serves to outline the relational arrangements of behaviour between two subjects, whereas the construct of a legal situation illustrates the state of rights and obligations of a single subject.[79] Both auxiliary constructs are thus essential for distinguishing between the two types of administrative law application.

In administrative court proceedings, the procedural counterparts to acts or actions are those of public administration that, unlike decisions or rulings, concern powers or duties under the law as specified in Art. 3 Sec. 2(4) of the Law on Proceedings Before Administrative Courts. The criteria contained therein, in spite of encompassing a range of administrative actions that is difficult to precisely characterise, define acts or activities as having the following features:

a) they are sovereign in nature, but they are not decisions or rulings (which are appealable under Art. 3 Sec. 2 points 1–3 of the Law on Proceedings Before Administrative Courts);
b) they occur in individual cases;
c) they are of a public-law nature, as only such administrative actions are subject to review by administrative courts;
d) they relate to powers or obligations established by legal provisions. This requires a close and direct connection between the administrative body's action (or inaction) and the potential for an external entity to exercise a right (or fulfil an obligation) stemming from a legal provision, without an organisational link to the issuing body.[80]

77 I refrain from discussing the extensive scholarly contributions on the essence of both auxiliary constructions, limiting the discussion to views I share and consider suitable research tools for addressing the discussed problem.

78 Longchamp, 1964, pp. 45–47.

79 Boć, 2001, pp. 359–360.

80 See the resolutions of the seven-judge panel of the Supreme Administrative Court: 4 February 2008, case I OPS 3/07, ONSAiWSA 2008, No. 2, item 21; 3 September 2013, case I OPS 2/13, ONSAiWSA 2014, No. 1, item 2; 16 December 2013, case II GPS 2/13, ONSAiWSA 2014, No. 6, item 88. See also Starościak, 1978, pp. 109–110.

It should be noted that acts are more formalised and serve to establish the individual legal effects of a specific substantive law norm. Like decisions, if deemed unlawful, they are subject to revocation. They typically appear as documents such as letters, lists, certificates, registry extracts, fee assessments, customs and tax inspection results, or medical commission rulings. From the perspective of the theory of legal forms of action, they constitute material-technical actions. In contrast, the so-called 'actions' involve ordinary factual activities, such as removing data from a register, issuing documents (e.g. passports or construction logs), processing payments, registering residence, issuing vehicle license plates, or returning a driver's license. Actions are removed from the legal system by declaring them legally ineffective (Art. 146 Sec. 1 of the Law on Proceedings Before Administrative Courts).

In the doctrine concerning the acts and actions referenced in Art. 3 Sec. 2(4) of the Law on Proceedings Before Administrative Courts, it is noted that these terms do not represent two distinct forms of administrative action. Janusz Borkowski, commenting on previous legislation (Art. 16(1)(4) of the now-defunct Act of 11 May 1995 on the Supreme Administrative Court),[81] observed that 'the two terms must refer to individual material-technical actions that produce legal effects through facts'. According to him, these terms cannot refer to civil acts or actions, a view that holds under Art. 3 Sec. 2(4) of the Law on Proceedings Before Administrative Courts, as it pertains solely to acts or actions of public administration. They cannot concern actions of a general nature, nor, as is evident from a linguistic interpretation of this provision, can they apply to administrative actions in the form of administrative decisions or rulings.[82] Attempts to expand this category beyond the provisions listed in Art. 3 Sec. 2 points 2–3 of the Law on Proceedings Before Administrative Courts have been criticised in legal scholarship[83] and were subsequently excluded through an amendment in the form of Art. 3 Sec. 2 point 4 of this Law. Ultimately, this category includes factual actions that produce indirect legal effects (material-technical actions), although of a relatively diverse nature.

Another form of a consul's action that resolves a case is the issuance of a ruling. According to Art. 86 of the Consular Law, the consul may issue rulings in the following situations:

1) on procedural matters arising during proceedings that do not determine the merits of the case;
2) by refusing to perform a requested action;
3) by discontinuing proceedings when they become unnecessary or upon a party's request.

Issuing a consular ruling on procedural issues during the proceedings aligns with the general administrative procedure. However, issuing a ruling to refuse

81 Journal of Laws, 1995, No. 74, item 368, as amended.
82 Borkowski, 1997, p. 7.
83 Bogusz, 2000, p. 59; Łaszczyca, Martysz and Matan, 2005, pp. 366–367.

an action is especially interesting – not so much procedurally, but in terms of the grounds justifying the refusal, as outlined in Art. 35 of the Consular Law (see previous discussion).

Previous considerations established that this may involve actions such as the consul's preparation of a notarial deed. However, it is not permissible for a consul to refuse actions aimed at adjudication, such as issuing administrative decisions.

4.7. Elements of an Administrative Decision

As an act of substantive law application, an administrative decision must meet strict formal requirements regarding its content elements. From the procedural standpoint of consular law, an administrative decision must include: the name of the consul, the date of issuance, the name of the party, citation of the legal basis, the ruling, its legal and factual justification, information about the possibility and procedure for filing an appeal, and the consular officer's signature, along with their name and position (Art. 81(1) of the Consular Law). A specific provision may require additional components to be included in the decision (Art. 81(2) of the Consular Law).

In doctrine and jurisprudence based on the provisions of the Code of Administrative Procedure (specifically Art. 107), which align with the requirements outlined in Art. 81 of the Consular Law regarding the necessary elements of a decision, it is established that the minimum formal requirements for a decision include: the designation of the issuing authority, identification of the addressee, resolution of the case, and the signature of the representative acting on behalf of the body. Letters containing rulings on matters settled by decision are still considered decisions, even if they lack the complete form specified in Art. 107(1) of the Code of Administrative Procedure, provided they include the essential elements needed to qualify as a decision.[84]

A decision that concludes a case has a complex linguistic and substantive structure, comprising four elements: the ruling, its justification, the advisory note, and the signature of the person issuing the decision on behalf of the body. These elements do not form a single sentence in the logical sense. The ruling itself, along with the name of the consul, the issuance date, the name of the party, and the citation of the legal basis, collectively form an individual-concrete norm of behaviour that specifies the content of the administrative-legal relationship, its parties, the date on which it arose, and its legal basis within generally applicable law. All elements of the operative part of the ruling constitute a unified linguistic whole that expresses this norm of behaviour. The operative statement containing the ruling is not an affirmative sentence in the logical sense but rather a binding norm of behaviour. This norm derives its binding force from the universally binding legal norm, although this

84 Supreme Administrative Court (NSA) judgment of 20 July 1981, case SA 1163/81, with commentary by Borkowski, 1982, Nos. 9–10, item 169.

power is limited in scope – applying only to the specific situation regulated by the adjudication – and in its subject matter, affecting solely the party to whom the final decision is directed.

Another essential element of the decision is its legal and factual justification. According to Art. 81(3) of the Consular Law, the factual justification includes, in particular, an indication of the facts the consul deemed proven, the evidence upon which he or she relied, and the reasons for discounting the credibility or evidentiary value of other evidence. The legal justification consists of an explanation of the legal basis, accompanied by references to the specific provisions of law.

From a linguistic perspective, the justification is a structured set of sentences and norms, forming a cohesive whole that establishes the basis for issuing the ruling. It thus presents a 'descriptive-postulatory' argument,[85] intertwining issues from two distinct realms: legal existence and legal obligation, along with elements of extra-legal considerations (such as equity and justice) and aspects of praxeology and the politics of law application.

Under the Consular Law, there are instances where providing a justification may be waived. According to Art. 82(1) and (2), the consul may omit the justification of a decision, either wholly or in part, if a specific provision allows or if required for the defence or security of the Republic of Poland or for the protection of public security and order. Additionally, a decision granting a party's request in full does not require a justification.

Advisory notes take the form of affirmative statements informing the party of legal remedies related to challenging the decision, the option to waive the appeal and the effects of such a waiver, as well as the possibility of applying for cost exemption or legal assistance.

The signing of the decision is a formal expression of the will of the body. It is not a logical sentence, nor does it represent a legal norm. The act of signing marks the symbolic moment of issuance, indicating that the decision has assumed its final formal shape and content. Until the decision is signed, the body is still drafting it and may revisit previous stages or take any action necessary. Legally, signing signifies the body's unilateral statement of intent and the establishment of a new administrative-legal relationship. However, the body is not bound by the decision until it is served or announced to the party (Art. 83(1) of the Consular Law), allowing the decision to be removed from legal circulation if a significant procedural error affecting its content is discovered.

4.8. Ordinary Means of Reviewing the Consul's Administrative Decision

Under the Consular Law, the ordinary means of reviewing a consul's administrative decision include: (a) an appeal against the decision, (b) if a special provision

85 This term was used by Wróblewski, 1988, p. 294.

so provides, a request for reconsideration of a case concluded by the decision, and (c) a complaint against the decision.

According to Art. 88(1) of the Consular Law, a party may appeal the consul's decision to a higher authority, typically the minister in charge of foreign affairs, unless a special provision indicates otherwise (para. 2). The appeal must be filed within fourteen days of serving the decision on the party, via the consul who issued it. The consul then forwards the appeal and case file to the relevant higher authority in Poland, with confirmation of receipt, through diplomatic post or other available communication methods within consular offices or diplomatic missions of the Republic of Poland (Art. 89(2) of the Consular Law). If the consul concludes that the appeal is justified in its entirety, he may issue a new decision revoking or amending the appealed decision, in which case the provision of Art. 89(2) does not apply.

Thus, an appeal under consular law is, as in general administrative proceedings, a relatively devolutive remedy.[86] Competence for considering the appeal is transferred to a higher authority, provided that the consul does not uphold the appeal in its entirety through self-review.

Prior to the expiration of the deadline for appeal, the consul's decision is not enforceable unless a special provision provides otherwise (Art. 90 of the Consular Law). This provision establishes the principle of non-enforceability of a decision before the appeal period expires. However, consular law lacks an explicit provision specifying that an appeal against a consul's decision is suspensive, meaning that filing an appeal would suspend the decision's execution until the appeal is resolved. In contrast, the Code of Administrative Procedure (Art. 130 Sec. 2) explicitly provides such a regulation. Nonetheless, a suspensive effect may be inferred by reasoning *a fortiori*, specifically through *argumentum a minori ad maius*,[87] as this reasoning applies to prohibitory provisions. The prohibition on enforcing a non-final decision implies that, if it is prohibited to execute a decision before the appeal period expires, it is even more prohibited after an appeal has been filed.[88]

It should be stressed again that, as a rule, an appeal is reviewed by the minister responsible for foreign affairs, and its review (including the types of decisions issued in the second instance) follows the general procedural regulations outlined in the Code of Administrative Procedure.

An appeal is the basic remedy, while a request for reconsideration by the consul constitutes a special remedy, which requires a specific legal basis. According to Art. 94(1) of the Consular Law, this remedy is available to a party only in cases described by special provisions, and it is therefore a non-devolutive remedy. This request must be submitted in writing within fourteen days from the date of serving the decision on the party. The consul's decision following a request for reconsideration is final.

86 Kamiński, 2017, pp. 463–464.

87 Cf. Morawski, 2014, p. 250.

88 Cf. resolution of the Supreme Administrative Court of 16 October 2006, I FPS 2/06, ONSAiWSA 2007, No. 1 item 3.

In cases not regulated by special provisions, the provisions of Part III of the Consular Law apply to proceedings initiated by a request for reconsideration by the consul. Consequently, this constitutes a suspensive remedy.

In cases involving the consul's refusal to issue a national or Schengen visa (Art. 76(1) of the Act on Foreigners of 12 December 2013),[89] revocation or cancellation of a national or Schengen visa (Art. 93(1) of the Law on Foreigners), or denial or revocation of a local border traffic permit, an appeal has been replaced by a request for reconsideration by the consul.[90]

A form of contestation of the consul's decision is a complaint. The key difference between a remedy and a complaint lies in the absence of the suspensive effect with respect to decisions subject to a contestation.[91] According to Art. 92(1) of the Consular Law, the consul's decision is subject to a complaint. Thus, in consular law, a complaint may be filed against any decision – a legal approach that differs from general administrative proceedings, where a complaint is permitted only if provided for in the Code of Administrative Procedure. The rationale behind this distinctiveness is difficult to discern.

However, other consular law regulations in this area align with general legal solutions. As in the Code of Administrative Procedure, a complaint must be filed within seven days of serving the decision on the party, and filing a complaint does not suspend the decision's execution. However, the consul who issued the decision may suspend its execution if deemed justified (Art. 92(2) and (3) of the Consular Law). In matters not subject to complaints, the provisions on appeals apply accordingly (Art. 93 of the Consular Law).

The Consular Law does not provide any means of appeal against the consul's actions taken while dealing with a case, such as the issuance of a certificate.[92] An action may be refused under circumstances specified in Art. 35 of the Consular Law, which occurs through a decision (Art. 86(2) of the Consular Law), subject to a complaint. The consul may carry out an action differently than the party expects, and in such cases, the party has no legal remedy. This legal approach in consular law appears appropriate, given the specific nature of consular activities and the limited resources available to meet the expectations of parties abroad. Notably, these are typically minor matters that do not significantly impact the personal rights of Polish citizens abroad and do not prevent their return to the Republic of Poland.

4.9. Extraordinary Means of Reviewing the Consul's Administrative Decisions

The legal solutions regarding extraordinary remedies for verifying consul's decisions appear distinct from those in general administrative proceedings only on the

89 Journal of Laws 2024, 769.
90 More on the nuances of visa appeals cases, see: Dąbrowski, 2015, pp. 46–49.
91 Kamiński, 2017, p. 462.
92 Bogusz, 2021, p. 155.

surface. The Consular Law provides for only one extraordinary means for such verification: the recommencement of proceedings concluded by a final decision. However, it does not include separate proceedings for invalidating a consul's decision. This absence does not preclude the possibility of invalidation. According to the Code of Administrative Procedure, the competent authority to invalidate a decision is a higher-level authority (Art. 157 Sec. 1 of the Code of Administrative Procedure). For consular decisions, this authority is, by default, the minister responsible for foreign affairs. Consequently, any invalidation proceedings for consul's decisions are conducted under the provisions of the Code of Administrative Procedure.[93]

However, the Consular Law regulations on the recommencement of proceedings are not merely a replication of the solutions adopted in general administrative proceedings. Under the Code of Administrative Procedure, recommencement is permitted only in cases concluded by a final decision (Art. 145 Sec. 1 of the Code of Administrative Procedure). In contrast, Art. 95 of the Consular Law allows for recommencement in cases concluded either by a final decision or by the execution of an action. This notably broadens the material scope of recommencement proceedings to include cases ending with a material and technical action. The provision does not specify the issuing authority for the final decision, but it is generally assumed that the consul is to issue it. In instances where a final decision is issued in the second instance by a minister, the legal basis for jurisdiction in the recommencement proceedings will rely on Art. 150 Sec. 3 of the Code of Administrative Procedure.

According to Art. 95 of the Consular Law the proceedings shall be recommenced if:

1. evidence by which the essential factual circumstances of the case were established is discovered to be false;
2. the issuance of a decision or the performance of an action was the result of a criminal act;
3. a party did not participate in proceedings through no fault of its own;
4. evidence or new factual circumstances is discovered that was in existence on the date the decision was issued and that was unknown to the consul;
5. the decision was issued before another body had adopted the position it was required to take by law;
6. the decision was issued on the basis of another decision or court judgment that has since been revoked or amended;
7. the Constitutional Tribunal has ruled that a normative act, on the basis of which a decision was issued or an action was performed, is incompatible with the Constitution, an international agreement, or a law;
8. a court ruling has been issued confirming a violation of the principle of equal treatment, as outlined in the Act of 3 December 2010, on the implementation of certain European Union provisions on equal treatment (Journal of Laws of

93 This view is shared by Bogusz, 2021, p. 155.

2023, item 970), where such a violation influenced the resolution of a case concluded by a final decision or the performance of an action;
9. a decision by the Court of Justice of the European Union has been issued that affects the content of the issued decision.

The adopted legal solution aligns with the provisions of the Code of Administrative Procedure, though the prerequisites for recommencement differ slightly, reflecting the unique nature of consular proceedings. However, the time limits for initiating recommencement proceedings are shorter. A consul's decision or action cannot be rescinded based on the grounds specified in Art. 95(1) and (2) of the Consular Law if five years have passed since the action was performed or the decision was served. For grounds specified in Art. 95(3–9), the limit is three years from the date of execution of the action or serving of the decision (Art. 96 of the Consular Law). By contrast, in the Code of Administrative Procedure, these deadlines are ten and five years, respectively.

The course of recommencement proceedings before the consul closely follows the general principles of jurisdictional proceedings. Recommencement can occur *ex officio* or at the request of a party, but for grounds specified in Art. 95(3) and (7–9), it is initiated only at the party's request. The application for recommencement must be filed with the consul who issued the final decision or performed the action, within thirty days from the date the party became aware of the circumstance justifying recommencement, or in the case of Art. 95 item 3 – from the date the party became aware of the decision or action.

For Art. 95(7), the application must be submitted within one month of the Constitutional Court's decision becoming effective. For Art. 95(9), it must be filed within one month of the publication of the Court of Justice of the European Union's decision in the Official Journal of the European Union. The consul issues a decision either to recommence or refuse to recommence proceedings, against which there is no right of appeal. Additionally, the consul undertakes proceedings to assess the grounds for recommencement and to resolve the case on its merits (Art. 100 of the Consular Law).

These legal provisions differ from those in the Code of Administrative Procedure, where Art. 150 assigns the higher-level authority the power to recommence if the first-instance body's activity is the reason for it. This authority also designates another body to conduct the proceedings.

According to Art. 101 of the Consular Law, after conducting the procedure outlined in Art. 100, the consul shall issue a decision to:
1. refuse to revoke an existing decision or action if no grounds for such revocation are found under Art. 95;
2. revoke the existing decision if grounds for revocation are found, and simultaneously decide on the merits of the case;
3. revoke the action if grounds for such rescission are found.

In the first two cases, it is assumed that an administrative decision is issued, yet questions arise regarding how to conclude proceedings initiated for the execution of an action if the authority finds no grounds for revocation. Generally, an action performed by the consul results in the acquisition of a certain right by an individual. Therefore, revocation of such an action should be formalised by decision, as this ensures the protection of the party's substantive and procedural rights within the recommencement proceedings.

A more complex issue arises when, during recommencement proceedings, the consul finds no grounds to revoke the action. In this case, the formal method of concluding the recommencement proceedings remains unresolved. It should be noted that recommencement proceedings for the execution of an action are initiated by decision. Given Art. 51 of the Consular Law (which reserves the use of decisions for substantive case settlements), it is appropriate that when the body finds no grounds to revoke the action, the proceedings should be concluded with a decision affirming the lack of grounds for revocation. This approach formally terminates the proceedings and establishes the basis for possible review by a higher authority.

There is no legal basis to invalidate an action by reasoning *per analogiam legis* from provisions on the invalidation of administrative decisions under the Code of Administrative Procedure. However, specific provisions contain autonomous regulations for invalidating certain actions, such as the cancellation of visas, passports, and temporary passports.

4.10. Judicial Review of Decisions, Actions and Conduct of Consular Proceedings

Subjecting the consul's activities to administrative court review is a complex and multifaceted matter. Four distinct problem areas emerge: first, the review of consul's formal settlings (i.e. decisions and rulings); second, cases involving the consul's execution of material and technical actions; third, cases related to visas and permits for crossing borders under local border traffic; and fourth, complaints regarding the consul's inaction and delays.

Turning to the first issue, in accordance with Art. 52(1) of the Law on Proceedings Before Administrative Courts, a complaint may be filed with the administrative court only after exhausting all available remedies provided to the complainant by the competent authority. This implies that filing a complaint against a consul's decision is not permissible when an administrative appeal can be filed with the minister responsible for foreign affairs. Where a special provision allows for an application for reconsideration of the case, Art. 52(3) sentence 2 of the Law on Proceedings Before Administrative Courts applies, which prohibits filing a complaint with an administrative court before submitting an application for reconsideration of the consul's decision. These rules apply *mutatis mutandis* to rulings as well. In conclusion, the only way to seek administrative court review of a consul's decision is by challenging

the second-instance authority's decision. This represents a strict application of substantive law, within which an administrative decision was initially issued.

The second group of cases subject to administrative court review involves complaints against acts or actions of public administration that are not administrative acts applying the law but instead relate to powers and duties established by law, as outlined in Art. 3(2)(4) of the Law on Proceedings Before Administrative Courts. These involve applications of substantive law *sensu largo* that result in an act or action directed at a specific person with content derived directly from legal provisions. In such instances, if no specific provision offers legal remedies against the consul's act or action, a complaint may be filed with an administrative court within the timeframe specified in Art. 53(2) of the Law on Proceedings Before Administrative Courts.

Third, under Art. 5(4) and (5) of the Law on Proceedings Before Administrative Courts, administrative courts lack jurisdiction over cases involving:

> visas issued by the minister responsible for foreign affairs or consuls, except for:
> (a) visas specified in Art. 2 points 2–5 of Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July 2009, establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.09.2009, p. 1, as amended),
> (b) visas issued to a foreigner who is a family member of a citizen of a European Union member state, a member state of the European Free Trade Association (EFTA) party to the European Economic Area Agreement, or the Swiss Confederation, as defined in Art. 2(4) of the Act of 14 July 2006 on the entry, residence, and exit of EU nationals and their family members in the Republic of Poland (Journal of Laws of 2024, item 633);
> local border traffic permits issued by consuls.

It should be noted that in these cases, a party may request reconsideration by the consul, which means such a case will never proceed administratively to a second-instance body and therefore will not be subject to judicial-administrative review.

Fourth, a complaint may be lodged with an administrative court against the consul's inaction or delay in a case concluding with a decision or a substantive-technical action (Art. 3(2) points 8 and 9 of the Law on Proceedings Before Administrative Courts). Additionally, it is possible to file a complaint concerning the consul's inaction or delay outside the processes of applying the law in both the narrow and broad senses, as long as specific provisions allow for complaints about such unlawful behaviour. For instance, the consul, as an administrative body, is obligated to provide public information under the Act of 6 September 2001 on Access to Public Information, and the consul's inaction in this matter may be appealed to the administrative court. Cases of this nature can indeed be found in administrative court jurisprudence

5. Summary

The current Consular Law, along with its regulations on administrative proceedings before the consul, represents a significant milestone for the Polish State, marking the first time a procedure has been established that fully embodies the principles of the rule of law and ensures the protection of individual constitutional rights and freedoms. Despite certain imperfections and regulatory gaps in various areas, these legal solutions form a carefully constructed framework that considers the legal and practical aspects of consuls' work abroad. The legislator has also accounted for the actual capabilities of consuls to perform public duties effectively. This compromise reflects three foundational legal principles. First, the entire administrative procedure adheres to the principle of legalism. Second, it incorporates the principle of flexibility in the consul's actions. Third, it mandates that the consul's actions be grounded in established material truth. Together, these competence guidelines enable the consul to uphold the legality of actions and address matters in accordance with material truth.

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