



Establishing a System for Verifying Matriculation Exam in Polish Administrative Law: Selected Aspects

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Abstract

The secondary school leaving exam exists under various names and with varying characteristics across the globe. The Polish matriculation exam (“matura”) deserves special attention as it has assumed a new, external aspect since its overall reform in 2005. Unfortunately, the first years after the reform revealed a significant problem with its assessment: numerous cases of incorrectly graded papers have been reported which fueled large-scale social unrest as there was no procedure in place for appealing against the matura results. After more than ten years, the regulations were changed for the better, and a special body, the College of Examination Arbitration was installed. In this paper, I consider this historic development, and I offer a general treatment of its administrative and constitutional implications as to the educational rights and civic liberties within the Polish legal context.

Keywords

secondary school leaving exam; matriculation exam; external examination; higher education admission; control of examinations

1 Introduction

Arguably, the most important phase in the course of secondary education is its conclusion, that is the school-leaving exam. At least in the Western tradition, the school-leaving exam is associated with compulsory education, with widely accessible public options, and maturity date normally coincides with taking the school-leaving exam, or matura. There are of course several region-, nation-, or culture specific peculiarities, but even within that vast array of national varieties, the Polish solutions stand out.

With the educational reform of examination in 2005, the matriculation (matura) exam has attained a novel and much more important function in Poland both for the students concerned and education system-wise. However, the said reform also fueled considerable social unrest and posed certain legal dilemmas with respect to assessing the correctness of the individual exam results. Many errors were discovered yearly, but due to the lack of appropriate procedures, these errors could not have been challenged by the candidates. As a result of this growing social

tension, a system for verifying the results in a two-instance procedure was established and a new body, the Examination Arbitration College, was set up to address the incorrect assessment of matura exams.

In this article, I consider the historical development of this regulatory framework, together with the special circumstances of the Polish legal context, and I do so with the single purpose of offering a policy proposal for remedying its verificatory discrepancies. My conclusion could be generalized, however, and extended to all legal systems in which entrance into higher education, that is, the right to education, depends entirely on the results of the secondary school-leaving exam.

2 Matura exam in Poland: recent historical developments

The secondary school leaving exam serves different purposes around the globe, its concrete function is mostly dependent on the structure of the given educational system. It can be simply an examination at the end of secondary education, without any further implication as to higher education, it may be a condition for entering higher education, or both at the same time. It could be obligatory or optional. And its nature exhibits a country specific variety as well: it can be external (organized, conducted and assessed by institutions independent of schools and universities) or internal (organized and assessed by teachers of a specific school for their own students). Moreover, the matriculation exam may exist simultaneously with university entrance exams (in such a model, admission to studies is determined by the results of entrance exams organized by universities, and passing the matriculation exam is only a condition for taking the entrance exams), or instead of them (in such a model, the results of high school leaving exams directly determine the result of recruitment to studies).

Matriculation exam has a long tradition in Poland, but since 2005 it has assumed a completely different character. After the education reform of 1999 (see Jakubowski et al., 2010; Jakubowski et al., 2016), it became a standardized and external exam, conducted by examination commissions, independent of schools (Radó et al., 2021, 130; Jakubowski, 2015; Kierznowski, 2023c, 152–154). Exam papers are checked by specially trained examiners with double anonymity, and most of the organizational and coordinating competences were also transferred to the newly established Central Examination Commission, including the competence of assessing exams together with its logistical and technical side, which was delegated to eight district examination commissions (Pilich, 2015, 185, 194–195). Schools are only places where students take the exam, under the supervision of their teachers who ensure its procedural correctness. Teachers do not have any influence on the content of the questions, nor do they check their own students' exam sheets.

For these reasons, the matura exam, being an objective measure of the level of students' achievements and the effectiveness of their teachers or even entire schools, began to fulfill new functions, such as diagnostics, evaluation, and information (see Kellaghan & Greaney, 2020; Kellaghan & Madaus, 2003) that did not exist with the "old" matura exam. But the most important novelty consists in matura exam being the key criterion for admission to first-cycle studies and long-cycle Master's studies. Passing the matura exam remains a condition for starting studies (just like before the reform), but since the reform, it has become the single criterion for selecting applicants, except for some given disciplines and fields of study. Needless to say that it has, thus, completely changed the recruitment conditions for first-cycle studies and long-cycle Master's studies.

Since 2005, regulations regarding the functioning of universities has deprived the universities of their right to conduct respective entrance examinations, and obliged them to conduct recruitment based on the results of the matura exam in subjects selected by the university. Universities may conduct entrance examinations exceptionally and only in those areas not covered by the matura. However, matura does cover almost all subjects taught in general education (Jakubowski, 2015), leaving therefore room for the inspection of rather special skills and knowledge only (e.g. artistic studies). Hence, the outcome of the matura is of key importance with a view to the future of the candidates, not only in the educational, but also in the legal sense. In practice, this is the only selection criterion for accessing higher education in Poland, especially if one wishes to be admitted to a prestigious university or a popular field of study (Kierznowski, 2023a, 1–3).

These peculiarities set the Polish model aside from the vast majority of countries, wherein access to higher education is usually based on entrance exams, conducted by the universities themselves. It has a clear rationale of maintaining the universities' autonomy, which is firmly established in Western legal systems. And a vital component of this autonomy consists in the right to independently organize and assess exams and to establish entry requirements. Universities may set their own entry requirements, depending on the given legal system's understanding of university autonomy and the right to education and equal access to education which are *prima facie* not necessarily compatible with one another.

In Poland, the said autonomy is considered a guarantor of human rights and civic liberties, which, in line with the Constitutional Tribunal's interpretation, must ensure the widest possible implementation of the right to education, understood in terms of equal opportunities (Judgment of the Constitutional Tribunal of November 8, 2000, SK 18/99). The Polish universities' autonomy is limited, therefore, to deciding on which subjects and in what proportions are being considered in the course of admission, and this system, based on the current form of the matura exam, has a clearcut focus on ensuring equal opportunities in university admission. As such, applicants may apply for any number of studies at any number of universities without the need to prepare separately for multiple different entrance examinations, and they may take or retake this exam multiple consecutive times.

3 The problem of incorrect assessment of matura exams in Poland

As mentioned above, the Polish reform of the secondary school leaving exam, implemented in 2005, significantly increased the importance of its results in terms of determining access to higher education. And this phenomenon has also reinforced the problem of possible errors in the course of assessment. Such errors are of considerably less consequence in the context of examinations whose outcomes do not influence educational trajectories and serve solely an informative purpose. However, should the exam's results have a selective function, determining candidates' qualification to university studies, potential errors in the assessment, especially those of the unfavorable ones, could bear significant legal consequences. Such is the inability to enroll to some selected studies or universities offering those studies, or the involuntary subscription for a gap-year. With the most highly sought after fields of study, especially at the best universities, each point is extremely important and allows to outdo many competitors in the ranking list. The matura exam thus plays a critical role in realizing the constitutional right to education, especially in highly competitive, elite metropolitan universities where strict meritocratic criteria (based on the matura exam) are being observed (Kwiek, 2013).

Unfortunately, the first years of the matura exam, following its 2005 reform, revealed a significant issue regarding the correctness of assessments. As it turned out, the subscription to rigid and uniform answer keys does not prevent incorrect assessments. Each year, the Polish Ombudsman receives a significant number of complaints related to alleged grading errors, and has publicly acknowledged that the “scale of the problem is huge”. Moreover, many other initiatives were issued by human rights’ organizations and private individuals alike. For instance, the Helsinki Committee for Human Rights has warned of incorrect exam evaluation for years, private individuals held public campaigns, and the media coverage was so extensive that articles on the matriculation exam rages to the hundreds. It is hardly surprising that incentives were raised by Members of Parliament as well (Kierznowski, 2023a, 4–5).

The breakthrough event in the official ‘disclosure’ of the problem of incorrect assessment of high school final exams in Poland was the report of the Supreme Audit Office (NIK), published in 2015. The audit revealed that in the years 2009–2013 access to exams papers was granted to 40,266 high school graduates, while 10,065 were reassessed on grounds of graduate petitions. Correction was necessary in 2,596 cases, which means that 25.8% of the exams being reassessed were assessed incorrectly by the first examiner. The audit also revealed that even if an exam was assessed incorrectly, all of the other exams assessed by the same examiner were not investigated at all. What is more, examiners erring in the process were not excluded from the examination procedure (Supreme Audit Office, 2015).

After the publication of the Supreme Audit Office’s report, the growing problem of incorrect assessment of secondary school leaving examinations in Poland became an issue commented not only by state authorities, but even discussed in the mainstream Polish media. This problem could no longer be confined to specialist or administrative discourse, but became a subject of general discussion and eroding social trust. The ensuing social tension (in those years, several hundred thousand people passed the high school leaving examination every year) cried for guaranties for a reliable procedure of verifying the accuracy of examination results issued by the examination boards. This pressure was fueled both by matura’s legal significance and its being an integral part of the Polish cultural code: a symbolic and transgenerational “entry into adulthood”. Consequently, undermining trust in the matura results in distrust in the entire education system, and therefore in the state institutions and legal framework as a whole.

However, the establishment of a system for verifying the results of the high school leaving exam was essential not only from the perspective of the individual legal position of candidates for higher education (and their constitutional right to education), but also for the effective functioning of the entire education system. The effects of incorrect assessment of matura exam extended beyond the individual level and assumed a systemic dimension. Unreliable results of external exams cannot serve as a sound basis for broader systemic conclusions and decisions regarding education. The pressure to create a system of appeals against the matura results came not only from individuals who made their future dependent on the exam, but it was also articulated by state institutions, which recognized that errors in matura evaluations disrupted the informational and diagnostic functions of these examinations. And this, in turn, hindered the planning and implementation of the state’s public policy in the fields of education and science.

4 The lack of a procedure for appealing the matura exam result and judicial review

The findings of the Supreme Audit Office, which revealed the scale of errors in the assessment of matura exams, made it increasingly difficult to justify the lack of effective measures to address

this issue, particularly in light of the absence of any mechanism for external, independent verification of exam results. Since the after-the-reform matura exam has assumed such great educational and legal importance, it would be reasonable to expect that the examination procedure should include some external, independent mechanism of reviewing the results obtained at the request of the examinee. This is due to the fact that the result of the exam, having such ample legal significance, cannot be excluded from procedural verification, otherwise it is impossible to control the legality of the actions of public authorities that have legal effects. This concern is further amplified, then, by the standardized nature of matura answer sheets, which makes the correctness of the assessment easy to check.

However, no such appeals mechanism was introduced. For over 10 years, there was no form of appeal against the matura exam results. Quite the opposite, regulations (Education System Act¹ and subsequent implementing acts enacted on the basis thereof) provided that “the result of the examination is final.” This was not the only legal problem related to external exams, the regulations also provided for the inability to appeal against the invalidation of an exam after taking it and submitting the exam paper by the high school graduate. In 2015, the Polish Constitutional Tribunal (with five *votum separatum*) made a very controversial ruling, holding that the inability to appeal to an administrative court the decision on the invalidation of the exam is consistent with the Constitution of the Republic of Poland (see Jackowski, 2017).²

What is important here is that the cases of re-evaluation of exam sheets, described by the Supreme Audit Office, took place despite the lack of a regulated procedure and even with provisions entailing the finality of the results. Therefore, it was an “contra-legal” procedure, carried out by examination commissions without a clear legal basis, motivated by discretionary goodwill and unclear principles freely adopted by those boards. The lack of regulations also resulted in inconsistencies among regional examination commissions regarding the permissibility of modifying exam results in the event of identified errors. While some commissions allowed such corrections, others categorically refused, so the legal situation of different candidates differed depending on which district examination commission was responsible for the exam in their voivodeship. Moreover, since at that time there was no procedure in the regulations for changing the results in the event of an error, there was also no procedure ordering universities to conduct supplementary recruitment for those high school graduates whose amended results moved them up on the university ranking list (Kierznowski, 2016). Therefore, if an error was discovered and the results were corrected, that could in most cases have no effect as to the candidates score in the given enrollment period.

Meanwhile, the lack of procedures for appealing against matura exam result has incurred less and less social trust over the years. Cases of high school graduates who, after inspecting their work at the headquarters of the district examination commission, discovered the examiners’ error began to be increasingly reported in the media, and the Polish Ombudsman is also still intervening in the matter of the high school graduates’ rights. Some high school graduates filed complaints to the administrative court, but the courts found that they were not entitled to adjudicate in such cases, because they interpreted the ‘finality’ of the results as barring them from recognition in court. And this applies even to controlling the exams’ legality, a denial of examination activities being recognizable as administrative decisions.

¹ Act of September 7, 1997 on the education system, Journal Of Laws of 1991, No. 95, item 425 with further amendments.

² Judgment of the Constitutional Tribunal of June 22, 2015, SK 29/13.

The Provincial Administrative Courts ruled that

the matura examination constitutes a form of assessment of the level of general education, checking knowledge and skills established in the standards of requirements underlying the conduct of the matura examination, as specified in separate regulations. This means that the matura examination is a form of committee-based assessment of the general education level of secondary school graduates in subjects defined by the regulations. The matura score is solely the result of checking the knowledge of the examined person by determining the correctness of the writings provided. When the examination board determines the result of the written part of the exam, it merely confirms a specific factual state, to which it has no direct influence, and establishes the number of correct answers. It thus does not create any legal relationship. As a result, it must be concluded that the points obtained in individual subjects are not issued within the administrative procedure and are not administrative decisions. The matura certificate itself also does not constitute an administrative decision, as it is not an authoritative determination of the rights and obligations of the party.³

Similarly, the Supreme Administrative Court ruled that

the action of determining the result of the matura examination (conducting the examination) and the result itself, as they merely confirm a specific factual state, do not constitute an administrative decision or an authoritative determination of the rights and obligations of the party, and are not subject to administrative court review [...] When the regional examination board determines the matura exam score, it does not make an authoritative decision about granting a specific right. It does not create a new legal relationship but rather assesses knowledge and skills.⁴

This view has been strongly criticized in the scholarly literature, for instance Aleksander Jakubowski (2011, 62) is of the opinion that such an interpretation of the administrative courts lack of competence with respect to the matura exam poses a threat to the civic liberties (see Flisek, 2017, 202–206; Króliczek, 2016).

This closure of the judicial path before administrative courts prompted some individuals taking the exam just to attempt to challenge its results before the common courts. However, their judiciary practice has reaffirmed their lack of jurisdiction in matters concerning the results of external exams, and consequently, there is no possibility of verifying the correctness of the exam results by such a court.

As the Court of Appeal in Kraków stated,

the finality and non-appealability of the maturity exam result means, according to the Court of Appeal, that even when this result is, so to speak, “in the background,” i.e., as in the present case, serves as the basis for a claim for the protection of personal rights, it cannot be subject to verification in judicial proceedings. The adequacy of the substantive grade issued is not subject to such control.⁵

³ Judgment of the Provincial Administrative Court in Gorzów Wielkopolski of April 25, 2012, II SA/Go 213/12.

⁴ Judgment of the Supreme Administrative Court of September 12, 2012, I OSK 1901/12.

⁵ Judgment of the Court of Appeal in Kraków of July 15, 2016, I ACa 494/16.

5 The system for verifying the results of the matura exam in Polish law

The above-mentioned reasons finally led to the creation of a two-instance appeal procedure against the matura exam results. The 2015 and 2016 amendments to the Education System Act introduced the possibility of verifying the sum of the points and appealing against the verification result.

The general shape of the procedure for challenging the matura exam results is currently regulated in Art. 44zzz of the Education System Act and looks as follows. The condition for challenging the exam results is the prior inspection of the graded exam paper, which is possible within six months from the date of issuance of the document containing the exam results by the district examination commission. Then, the examinee may apply to the director of the district examination commission (within two days from the date of inspection) to verify the sum of the points which is the first instance. The verification is carried out, then, within seven days from the receipt of the application, and an examiner, other than the original, is appointed to carry out the verification. Information about the verification result is provided to the examinee within fourteen days from the receipt of the application. If the examinee is dissatisfied with the result of the verification, there is room for appeal which constitutes the second instance of the procedure. The appeal is submitted to the College of Examination Arbitration through the director of the district examination commission. The College considers, anonymously, the appeal and brings it to a decision within twenty-one days from its submission by the director of the district examination commission. This deadline may be extended once, but by no more than seven days. The decision of the College of Examination Arbitration is final and cannot be appealed to an administrative court.

The above-mentioned College of Examination Arbitration is a new body established specifically to adjudicate appeals. Appeals at the College are considered by two-person panels of arbitrators, one of whom is a senior high school leaving examination examiner, while the other being an academic faculty member, specializing in the given field. The administrative support of the College is provided by the Central Examination Commission (see Kierznowski, 2023b). Giving the competence to consider appeals to a newly formed, independent body was intended to make final decisions separated from examination boards, whose faulty operation was perceived as one of the causes of the problem of incorrect assessment exams throughout Poland.

Importantly, in the newly established system for verifying the matura exam results, the exclusion of examination procedures from the Code of Administrative Procedure has been maintained.⁶ Therefore, neither the determination of the exam results, nor the appeal procedure in each instance against it takes place by way of an administrative decision under the Code. Moreover, the exclusion of decisions regarding the verification of the matura exam results or an appeal against this verification from judicial control was also upheld, it is therefore not possible to file a complaint to the administrative court against the decision on the matura exam results (which, due to the Polish model of judicial control of administration, would be reviewed solely according to the criterion of legality anyway).

⁶ Code of Administrative Procedure by the Act of June 14, 1960, Journal Of Laws of 1960, No. 30, item 168 with further amendments.

6 Discussion

There are plentiful precious incites that can be drawn from the above problem of incorrect assessment and its Polish solution of establishing the College of Examination Arbitration together with its two-instance procedure. These findings could be generalized and be applied to similar problems, existing in other countries that employ various types of public exams as part of their educational policies.

The creation of procedures for verification and appeal against the matura exam results should be perceived as an attempt by the legislator to minimize the problem of incorrect assessment in Poland. The lack of a reliable procedure for verifying the results of the final exams (i.e. the possibility for candidates to appeal against the results) was one of the reasons for the persistence of the phenomenon of incorrect grading and the concealment of its actual scale, as demonstrated in juristic literature (Kierznowski, 2023a, 87–89).

However, the establishment of a system for verifying high school final exam results is not free from controversy and legal dilemmas. The issue of judicial control over examination procedures remains a significant problem. In Poland, administrative courts rule based solely on the criterion of legality, and as such, they do not adjudicate on the merits of the appeal (Gut, 2024; Skoczylas & Swora, 2007). Therefore, determining the exam results or assessing the answers provided by a high school graduate in court is excluded. Still, theoretically, a complaint about the legality of the examination procedure cannot be ruled out, including, for example, the non-compliance of the assessment with the national rules for assessing this examination, as well as the legality of the decisions made during the examination process. But this possibility has been barred a while ago, and the administrative courts' case law consistently denies their jurisdiction over complaints regarding activities and decisions issued within the examination procedure, which was left intact even after the establishment of the Examination Arbitration College (in relation to its decisions). This means that currently neither the exam results from the district examination commission (as has been the case since 2005), nor the decisions of the Examination Arbitration College are subject to judicial review. Hence, the legal problem attending on the lack of judicial review over the matura exam results has amplified. Graduates can appeal against their matura exam results, but the legality of the entire exam procedure, including the appeal procedure and decisions of the Examination Arbitration College, remains beyond the jurisdiction of any court.

Thus, administrative courts upholds their view on this matter, finding no violation of the constitutional principle of the right to a court.

In the present case, the contested information from the Director does not fall under any act or action covered by the aforementioned provision. The final result of the vocational exam is not determined within the framework of administrative proceedings that end with the issuance of an administrative decision or another act within the scope of public administration. The result of the vocational exam does not constitute an authoritative decision regarding the rights and obligations of the party. The request for verification of the points sum in the exam paper, submitted by the complainant based on Article 44zzz(3) of the Education System Act, could not have initiated any proceedings where the decisions could be appealed to the administrative court. Therefore, the appeal against the information provided by the Director in response to the aforementioned request is not subject to the jurisdiction of that court. This fact is also confirmed by the content of Article 44zzzy of the Education System Act, according to which, inter alia, the results

of the vocational exam are final and no appeal to an administrative court is allowed. The above position is supported by the case law of administrative courts, which, although concerning the maturity exam, is similarly applicable in the present case due to the provisions of Article 44z of the aforementioned Act.⁷

This is a very controversial solution, which has already been criticized in the academic literature (see Bąkowski, 2017). After the establishment of the system for verifying exam results, the issue of excluding judicial review and significantly limiting the constitutional right to a court remains a current concern. Indirectly, this issue significantly affects the conditions for the exercise of the constitutional right to education, as the examination determining the access to this right is effectively insulated from judicial review. Although, it is clear that in the Polish administrative justice system, courts could not assess exam results, they could examine whether the result was determined in accordance with the law. For instance, courts could verify whether the assessment was made in accordance with the official rules for assessing task solutions, but such a review is still a legality check, not a substantive, scientific assessment of the exam. The admissibility and scope of judicial review of examinations in different countries would naturally depend on the model of judicial control of administration existing in the given country.

It is also worth noting that the current model is inconsistent with the other exams existing in Polish administrative law. Administrative courts in Poland have allowed review of the legality of other exams, conducted on the basis of administrative provisions (e.g. driving tests or entrance exams for certain professions). Therefore, it remains unclear what exact factors determine that the conduct of some exams may be subject to judicial review, but others may not. There are no uniform regulations concerning the judicial review of exams conducted by public administration bodies and there are no objective criteria established to resolve the dilemma of which state examinations should be subject to judicial review and which should not. This normative inconsistency seems to be unacceptable from a constitutional standpoint.

Moreover, the socio-legal background of the problem of incorrect assessment of secondary school leaving examinations in Poland and the attempt to partially solve it by creating the College of Examination Arbitration and a two-instance appeal procedure attests to a broader principle. If the legislator establishes an examination whose outcome determines the legal possibility of pursuing further educational paths (implementation of the right to education), then the right of appeal against the result must be an integral element of the procedure for its implementation. The Polish case, characterized by numerous incorrectly graded papers and the lack of any appeal procedure for over a decade, shows that such procedural guarantees are necessary conditions for any external examination system to have social trust and legitimacy, and for the results to be accepted by the candidates. However, this argument may apply not only to the high school leaving exam, but simply to any examination whose result has legal implications. The education sector is much more sensitive in this context due to the consequences that students face if their exam is not graded correctly. And this is one of the general features of educational law: its application is related to youngsters, and so any potential defects can have grave practical consequences which are difficult to reverse over time (Jakubowski, 2014, 202). In the case of the high school leaving exam, it is that of vocation-wise significance.

Finally, the procedure for re-marking exams at the request of candidates must be objective and transparent. Having appeals reviewed by the same body that determined the exam results

⁷ Judgment of the Provincial Administrative Court in Poznań of April 22, 2021, IV SA/Po 1815/20.

is not considered sufficient by the candidates, and it is not an administrative procedure in the strict sense (jurisdictional procedure). Trust in the fairness of the verification system is seriously undermined by such phenomena as re-marking carried out by the same examiner or allowing incompetent examiners to continue assessing exams in subsequent examination sessions. Furthermore, the integrity of the external examination system requires independent oversight and evaluation. If there had been no such control in Poland (conducted by the Supreme Audit Office), the scale of incorrectly graded matura exams would probably never have been revealed, and the procedure for appealing exam results would never have been adopted, because the examination commissions responsible for conducting exams downplayed the problem and concealed its real scale.

7 Conclusion

In conclusion, the case of the Polish matriculation exam and its problems of incorrect assessment shows that the process of establishing the external examination system in Poland was not without serious legal problems many years after its establishment. The introduction of regulations regarding the verification of the correctness of the assessment may be considered one of the most important legal devices to minimize the problem of incorrect assessment and its effects. The establishment of an appeal procedure in the Polish legal system may be an important point of reference for other countries with examinations that determine access to higher education or influence other various rights of individuals that are conducted and assessed through administrative procedure. This solution should be regarded as innovative in the Polish legal system, in which, until now, examinations in the education system were not accompanied by administrative procedures that would allow any form of administrative review in terms of the assessment's correctness.

It is too soon to estimate whether this trend will extend to other types of examinations conducted under Polish administrative law, as the current model applies only to selected and external exams in the education system. However, certain conclusions seem to have broader, universal applicability: the more the results of a given exam determines an individual's legal situation, the greater procedural guarantees should be established to minimize the risk of incorrect assessment of this exam and to provide the examinee with a sense of trust and participation in a due process.

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