Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 21/11/2026 17:19:35

Part 4. Studia Iuridica Lublinensia vol. XXVII, 1, 2018
DOI: 10.17951/sil.2018.27.1.205

Adam Szot
Maria Curie-Skłodowska University in Lublin, Poland
adam.szot@poczta.umcs.lublin.pl

Precedent as an Element of Shaping Public Administration Policies

Precedens jako element kształtowania polityk administracji publicznej

SUMMARY

The aim of this publication is to answer the question why and to what extent the arguments expressed in previous decisions issued in the result of law application processes (precedents) – both from the administration itself as well as from the judiciary – may influence the development and shape (content) of public administration policies. In addition, the limitations of this phenomenon in the rule of law will be discussed.

Keywords: precedent; administrative policies; decision lines

INTRODUCTION

Policy in the process of deciding within public administration can be understood in various ways. One of them, relevant form the point of view of the aim of this paper, is the meaning of policy of administrative actions, deciding in the public sphere, which refers to adopted by the authority courses of action within their competence or referring to procedures in which things are decided in the sphere of its discretionary power[1]. That directly or indirectly may affect the choice of the type of action its course and the content of issued decision. It is stressed that the

[1] See more: M. Stefaniuk, *Działanie administracji publicznej w ujęciu nauk administracyjnych*, Lublin 2009, p. 113. This corresponds with the distinction made by J. Jeżewski (*Polityka administracyjna. Zagadnienia podstawowe*, [w:] *Administracja publiczna*, red. A. Błaś, J. Boć, J. Jeżewski, Wrocław 2004, p. 316) who "distinguishes policy towards administration" and "administration policy".

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 21/11/2026 17:19:35

content of administrative policy is to identify the one hand, methods of legal regulation, on the other hand, determine the most effective ways (within legal limits) to achieve public goals. It relates to both the law-making, as well as the application of the law processes.

The aim of the paper is an attempt to answer the question of why and to what extent the arguments expressed in the previous decisions (precedents) – both administrative and judicial decisions – may influence the development and the shape (content) of public administration policies. Additionally, it is worth considering and pointing out limitations of this phenomenon in the democratic rule of law state. The thesis will be formulated on a general level but because of the perspective of research, some examples basing on Polish legal order will be given. The main argument of the paper is that precedents and precedential argumentation are present in public administration actions and influence (or may influence) the course of its actions (at least up to some point)[2]. This results from the specific characteristics of public authorities apparatus that influence the course of actions undertaken by its bodies.

Public administration itself and its bodies unlike courts are not independent. It is related both organizationally and politically, and its activities and effects are settled in a complex system of organizational and legal-political dependencies. So one may distinguish three main factors affecting the reasonings of specific authority in a given case and the content of final decision[3]: (1) organizational, (2) legal, and (3) political once.

First of all one need to keep in mind that administration is a specific organization, which highlights the problem of purposefulness and rationality of its activities. The implementation of tasks set to the administration (by the lawmaker, political body or administration itself) within limited resources it owns enforces the necessity of effective management in conditions of dynamically changing socio-economic world. Thus, the praxeological aspect of administration is of great importance. This means that the decision-making processes and their effects should be optimal under specific conditions. A negative assessment of the body's activity may be the basis for demanding or commissioning the implementation of various types of plans. It can also lead to negative consequences for the body or specific persons responsible for the content and quality of the activities undertaken. In

[2] See more: A. Szot, *Swoboda decyzyjna w stosowaniu prawa przez administrację publiczną*, Lublin 2016, pp. 80–85, 206–213, 291–297, 333–346.

[3] This corresponds to the concept of J. Boć, who, on the basis of Polish administrative law, has divided the whole range of premises determining the scope of administrative activity into premises-conditions and premises-objectives. The premises-conditions include three groups of factors: a) material possibilities of the state, b) the status of organization of the state, c) the content of socio-economic policy. See more: J. Boć, *Pojęcie administracji*, [w:] *Prawo administracyjne*, red. J. Boć, Wrocław 2010, pp. 16–23.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 21/11/2026 17:19:35

practice, such interactions, in fact, affect the direct interest of the entity administering the direction and content of the activities undertaken and, consequently, their targeting within the scope of their freedom. The activities of the administrative entities will be influenced, in addition to legal norms, by internal organizational standards (formalized in the form of internal documents or developed in the form of a paradigm)[4].

Secondly, administration is a specific organization also because of the role that binging legal norms play in its activities[5]. Legal norms determine the structure of administration and its interrelationships and the areas of its activity, indicating in a more or less detailed way its tasks and the ways and forms of their implementation. In the rule of law, all actions taken by public administration must have their basis in law and "fall within" its borders. In the rule of law state, this value takes on a primary importance. Therefore, law is the basic determinant of the scope of activities and freedom (discretionary power) that administrative bodies have – legal norms may introduce more flexible or strict (binding) actions frameworks.

Thirdly, public administration is politically dependent and political decisions may influence the reasoning of decisional body as well as content of issued decision in different ways. One have to keep in mind that the task set to the administration is the consequence of accepted by dominant political force vision of the state and society. Therefore values preferred by them will affect public administration indirectly through legislative activity (when it will be transformed into legal norms) as well as by the way of "understanding" of public interest ("common good")[6] in which public administration should act. Another aspect is that some public administration bodies (to be precise their holders/chairmen) combine political and administrative functions. Whether they are appointed through political nomination or through elections (often by a political party), they take responsibility for the quality of their actions and the content of their decisions (as a whole or, less frequently, for individual decisions) from the point of view of conformity with the values preferred by the entity that has nominated or appointed them. If this is the case, the bodies are directly interested in aligning their activity with the pre-established criteria.

[4] J. Supernat (*Zarządzanie,* Wrocław 2005, p. 14) rightly points out that organizational norms go beyond the concept of a legal norm. See: B. Gay Peters, *Administracja publiczna w systemie politycznym*, Warszawa 1999, pp. 66–67)

[5] See: Z. Cieślak, *Istota i zakres prawa administracyjnego*, [in:] *Prawo administracyjne. Część ogólna*, red. Z. Cieślak, I. Lipowicz, Z. Niewiadomski, Warszawa 2002, pp. 58–59; J. Łukasiewicz, *Zasada organizacyjnej elastyczności aparatu administracji publicznej*, Warszawa 2006, p. 85; W. Dawidowicz, *Założenia badań nad administracją państwową oraz nad podstawami jej funkcjonowania w społeczeństwie*, „Państwo i Prawo" 1975, z. 6, pp. 20–21.

[6] Cf. J. Łukasiewicz, *Nauka administracji. Wstęp do teorii administracji*, Przemyśl 1999, p. 70.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 21/11/2026 17:19:35

PRECEDENTS IN ADMINISTRATIVE ACTIONS AND MOTIVATION TO COMPLY WITH THEM

The policy of decision-making, in the meaning introduced at the beginning, can be understood as a certain way of performing tasks and, as a consequence, a way of acting in cases of a given type, or a way of managing resources that are available to the body. The policy of decision-making can be shaped by different factors. The one, important from the perspective of this paper, are previous decisions of law application (precedents) both upcoming from administration itself and judiciary. We are in fact talking about at least three different types of precedent (former decision *sensu largissimo*): previous decision if that single body, decisions issued by an appeal body (or generally speaking the body that is higher in the hierarchy and can somehow influence other bodies) and judgements of courts especially those which are responsible for verification of public administration actions.

Regarding to the policy making one may say that it can be created in more or less intentional process of cooperation between public administration bodies especially in hierarchical subordination structures (which makes the influence of administrative presents more noticeable) or independently, but still within the scope of the administration's organizational system. This means that the administration sets detailed tasks for itself (which, in fact, complement the ones set by the lawmaker), as well as ways and methods of their performance. This, in turn, leads essentially to a more or less conscious activity. Consequently, decision-making borderlines are created, which are a result of certain internal guidelines or practices concerning the ways of dealing with similar cases. In the Polish legal system, public administration bodies do not have the competence to determine binding decision-making delineation for other bodies (to formulate specific "precedents"). Guidelines coming from the decision-making policy, regardless of the way it is shaped, the level of formalities and the motives that the body is guided by when referring to them can influence the way in which the body uses the discretionary power it is entitled to, especially in relation to the decisions made within the scope of administrative approval[7].

The influence of judicial precedents can be seen as formal or informal. The first of them regards to situations in which, according to binding legal norms, administrative body is obliged to undertake a decision that was previously annulled by the court and at the same time need to take into account circumstances (factual and legal) pointed in the justification of such ruling[8] or even issue a decision of

[7] A. Szot, *Stosowanie prawa przez administrację publiczną – między prawem a polityką*, [in:] *Zagadnienia stosowania prawa – perspektywa teoretyczna i dogmatyczna*, red. W. Dziedziak, B. Liżewski, Lublin 2015, pp. 205–217.

[8] For example according to Article 153 Polish act from 30 August 2002 – The law on proceedings before administrative courts "The legal assessment and indications as to the further proceedings

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 21/11/2026 17:19:35

a specific content in accordance to court guidelines[9]. Informal influence applies to all cases in which the body is not legally bound by the indications made by the court. This influence can be noticed especially in relation to analogous (factual and legal similarity) administrative matters that belong to the competence of the authority whose previous decision was subjected to judicial and administrative review. In Polish legal doctrine, it is indicated that public administration bodies which decide in similar cases and who are afraid of repealing a decision, treat the content of previous decisions (administrative decisions or judgments) as "another part of the applicable law"[10].

With respect to other decisions taken by public administrations, the greatest importance can be attributed to the decisions taken by bodies hierarchically higher than the decision maker. What is interesting, the analysis of the administrative decision-making practice within the Polish legal system shows the growing presents judicial precedents in the justifications of administrative decisions, with almost no official reference to earlier administrative decisions. However, in my opinion, this does not diminish the role of the latter in the decision-making processes of public administrations. Judicial decisions influence public administration through their justifications by setting out some general "standards" on how to conduct the application of the law processes. This leads then to more general observation that stable case law (judicial decision lines) may influence the way public administration deals with cases of a given type. While decisions of the administrative authorities, through the direction of specific decisions, contribute more strongly in shaping the policy of decision-making[11]. At the same time, the absence of a direct reference to them does not imply that the body did not take into account the "standard" indicated by the court or the decision-making policy settled within administration. Due to the structural and political dependences of administration and the lack of it independence we can observe the influence of precedent practice on the courses of action undertaken by public administration bodies within their competence or deciding in the scope of its discretionary power, so shaping policies.

---

expressed in the court's judgment are binding on the authorities whose actions, inactivity or lengthy proceedings were subject to appeal, as well as the courts, unless the legal regulations have changed".

[9] For example Article 145a Polish act from 30 August 2002 – The law on proceedings before administrative courts, which gives the administrative court the right to issue a ruling instead of an administrative decision (after certain requirements have been met).

[10] A. Błaś, J. Boć, J. Supernat, *Źródła prawa administracyjnego*, [in:] *Prawo administracyjne*, red. J. Boć, p. 125; D. Dąbek, *Prawo sędziowskie w polskim prawie administracyjnym*, Warszawa 2010, *passim*; *eadem*, *Współczesne pojęcie źródeł prawa administracyjnego na tle konstytucyjnego pojęcia źródeł prawa*, [in:] *Koncepcja systemu prawa administracyjnego*, red. J. Zimmermann, Warszawa 2007, p. 91.

[11] L. Leszczyński, *Podstawa decyzji stosowania prawa administracyjnego. Ustalenia walidacyjne*, [in:] *System Prawa Administracyjnego*, t. 4: *Wykładnia w prawie administracyjnym*, red. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2012, pp. 121–123.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 21/11/2026 17:19:35

There are two groups of motives of such practice:

a) pragmatic arguments – positive assessment of undertaken actions and contend of issued decisions by an appeal body as well as court controlling administrative case and in consequence saving the time and resources (limited) necessary to re-address the decision in case of negative evaluation which may also affect the assessment of the body or its holder (chairman),
b) axiological arguments – striving to ensure compliance of legal actions with legal norms and values of legal order and building citizens' confidence in the authorities.

INFLUENCE OF PRECEDENTS

The influence of precedents can be seen in the strongest and most visible way on two phases of decisional process – the first one and the last one namely at the pre-decisional phase where the body will decide whether it is necessary (for the objective or subjective point of view) to begin the process and at the phase of formulation of final decision, especially in all situations in which the body will have at least minimum scope of discretion. Of course, this influence can be observed also in other stages but for shaping the administrative policies those two are the most important ones because those are the situations in which body will decide what are the most optimal ways of acting in a specific type of situations.

Pre-decisional phase is the stage of the process of law application where the body decides whether to act – whether there is a legal obligation to undertake certain actions or public administration body has a freedom in the scope of its discretionary power in this matter. In this phase, the body also chooses a proper form of action – lawmaking, law application, other actions, e.g. information actions. Of course, often this choice is fully determined by the law-maker and the body will not have any freedom at this stage of the process because the occurrence of the fact, which is relevant from the point of view of legal norm, will oblige the authority to take the actions indicated in that norm. But there are, in the legal system, situations in which the legislator make the administration responsible for managing a particular sphere of social life without indicating specific obligations in this regard. Then the body will be responsible for seeking the best way of doing so. So it will first analyze the state of reality (factual situation) and determine the legal possibilities for different actions and then select the one that is optimal, by the body's best judgment, one. Those situations can be very complexed like, e.g., the expropriation process[12], which

[12] Expropriation of immovable property consists in deprivation or limitation, by an administrative decision, of ownership rights, perpetual usufruct right or other right in rem. See more: Article 112 Polish act from 21 August 1997 – on a real estate management.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 21/11/2026 17:19:35

according to Polish law can be made if public goals cannot be implemented otherwise than by deprivation or restricting the rights to real estate. The pre-decisional phase will, in this case, cover a number of findings of the decision-making entity, including the existence of a public purpose and the search for the optimal way of its implementation. If, in the opinion of the administration, there is a need to make expropriation due to the impossibility of achieving the goal in another way, he will decide to initiate a process that he is supposed to do. In this way, he will move to the decision-making phase of the law application process, in which he will indicate the property in relation to which he is to be expropriated, determine the right of ownership (or other relevant property rights) to these properties, etc.

In the future, in the situation in which this body will face the same problem in the similar state of affairs, above reasonings will be simplified and easier because the body will first verify whether the actions taken previously have been effective and whether the current state of affairs can be re-activated. This argument will be stronger if an earlier decision has been approved or denied by a higher authority or court controlling the administration. So this is the way how administrative decisions lines are being created. The development of these administrative habits in the form of specific administration decision lines will influence the way how public administration body uses its discretionary powers and in the consequent creation of administrative policies.

The final stage of the application of law process is the one where the final content of the action/decision is being formulated regardless of the type of the process. The influence of precedents on the formulation of the final content of the decision will depend on the degree of discretion the legislature has left to the authorities and will vary. This influence is particularly noticeable in the cases of decisions based on administrative approval[13]. The construct of administrative approval is to give the administrative body the power to choose between two or more legally acceptable and equivalent legal solutions. This situation takes place when the legal norm does not explicitly define the legal effect of a factual situation but explicitly leaves the choice of such an effect on the administration. Of course, this choice is not arbitrary, in the sense that it must have a basis in the facts of the case, and take into account the directives of consequences selection. These directives can be divided into two basic groups, ie. directives of first order and second order[14]. The first of them are introduced by the legislator itself in the norm that gives rise to a decision based on administrative approval. The legislator may, however, give up giving the decision

[13] About administrative approvall see more: M. Jaśkowska, *Discretionality, Margin of Decision and Administrative Discretionary Authority – an Attempt at Terminological Clarification*, [in:] *Discretionary Power of Public Administration Its Scope and Control*, eds. L. Leszczynski, A. Szot, Frankfurt am Main 2017, pp. 15–36.

[14] J. Wróblewski, *Sądowe stosowanie prawa*, Warszawa 1998, pp. 241–242.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 21/11/2026 17:19:35

maker specific criteria that he or she should take into account when deciding. The impact of directives belonging to the second group is related to the influence on the decision maker and the content of the decision he makes, some extra-legal factors and values – structural and political ones for example. And this is the place where previous decision (precedents) may influence the decision that is being issued. The decision maker is legally bound by the directives of the first group and at the same time, it is directed in actual way by the second group of them.

It is worth mentioning that also as we consider law-making processes where public administration, on a basis and within the limits of a clear mandate from the legislator (usually the parliament) can create general and abstract legal norms. Most often, competent authorities can only issue such an act to regulate only those matters that are specified in the norm that gives rise to the act. Thus, precedents (previous decisions) may have a strong influence on the content of legal norms created by the administration but within such a framework. At the same time, this influence will be general and indirect.

CONCLUSIONS

Trying to answer the main questions asked at the beginning at least few things are worth highlighting. Precedents are mostly and directly present in actions of public administration as decision lines. On one hand precedent influence the later decisions of a single body and on the other hand, these those decisions create all together decisional lines that influence even stronger future decisions. This regards both types of precedents – administrative and judicial ones. In this sense, it influences the content of public administration policies. At the same time, this is only one of the factor that public administration has to take into consideration while deciding. As we consider decisional processes within public administration one may say that most of them are being conducted in the situation of conflict (at least potential) of interests and arguments.

There are various reasons why public administration bodies follow or take into account precedents but for the point of view of administration itself, the most important is the pragmatic once. In most cases, it is not about decision coherence as a value itself as it may occur in the judiciary but rather as a decision coherence with certain extralegal arguments. This can lead to a situation that is referred to in the Polish doctrine as a reversed hierarchy of the sources of law[15]. The other thing which was not my field of interest is the question of whether administration should follow the decision lines from the point of view of an individual or the society as a whole. But one needs to remember that all public administration actions in the rule

[15] See more: J. Zimmermann, *Prawo administracyjne*, Kraków 2005, p. 362.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 21/11/2026 17:19:35

of law state must be undertaken on a basis of legal norms and in their framework that means that legal order (norm and values) sets holy limitation (holy borderline) of influence of precedential practice in public administration.

REFERENCES

Błaś A., Boć J., Supernat J., *Źródła prawa administracyjnego*, [in:] *Prawo administracyjne*, red. J. Boć, Wrocław 2010.
Boć J., *Pojęcie administracji*, [w:] *Prawo administracyjne*, red. J. Boć, Wrocław 2010.
Dawidowicz W., *Założenia badań nad administracją państwową oraz nad podstawami jej funkcjonowania w społeczeństwie*, „Państwo i Prawo" 1975, z. 6.
Dąbek D., *Prawo sędziowskie w polskim prawie administracyjnym*, Warszawa 2010.
Dąbek D., *Współczesne pojęcie źródeł prawa administracyjnego na tle konstytucyjnego pojęcia źródeł prawa*, [in:] *Koncepcja systemu prawa administracyjnego*, red. J. Zimmermann, Warszawa 2007.
Cieślak Z., *Istota i zakres prawa administracyjnego*, [in:] *Prawo administracyjne. Część ogólna*, red. Z. Cieślak, I. Lipowicz, Z. Niewiadomski, Warszawa 2002.
Gay Peters B., *Administracja publiczna w systemie politycznym*, Warszawa 1999.
Jaśkowska M., *Discretionality, Margin of Decision and Administrative Discretionary Authority – an Attempt at Terminological Clarification*, [in:] *Discretionary Power of Public Administration Its Scope and Control*, eds. L. Leszczynski, A. Szot, Frankfurt am Main 2017.
Jeżewski J., *Polityka administracyjna. Zagadnienia podstawowe*, [w:] *Administracja publiczna*, red. A. Błaś, J. Boć, J. Jeżewski, Wrocław 2004.
Leszczyński L., *Podstawa decyzji stosowania prawa administracyjnego. Ustalenia walidacyjne*, [in:] *System Prawa Administracyjnego*, t. 4: *Wykładnia w prawie administracyjnym*, red. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2012.
Łukasiewicz J., *Nauka administracji. Wstęp do teorii administracji*, Przemyśl 1999.
Łukasiewicz J., *Zasada organizacyjnej elastyczności aparatu administracji publicznej*, Warszawa 2006.
Stefaniuk M., *Działanie administracji publicznej w ujęciu nauk administracyjnych*, Lublin 2009.
Supernat J., *Zarządzanie*, Wrocław 2005.
Szot A., *Stosowanie prawa przez administrację publiczną – między prawem a polityką*, [in:] *Zagadnienia stosowania prawa – perspektywa teoretyczna i dogmatyczna*, red. W. Dziedziak, B. Liżewski, Lublin 2015.
Szot A., *Swoboda decyzyjna w stosowaniu prawa przez administrację publiczną*, Lublin 2016.
Wróblewski J., *Sądowe stosowanie prawa*, Warszawa 1998.
Zimmermann J., *Prawo administracyjne*, Kraków 2005.

STRESZCZENIE

Celem niniejszego opracowania jest próba odpowiedzi na pytanie, dlaczego i w jakim stopniu argumenty wyrażone w poprzednich decyzjach stosowania prawa (precedensach) – zarówno pochodzących od samej administracji, jak i od władzy sądowniczej – mogą wpływać na rozwój i kształt (treść) polityk administracji publicznej. Dodatkowo omówiono ograniczenia tego zjawiska w państwie prawa.

Słowa kluczowe: precedens; polityka administrowania; linie decyzyjne