DOI: 10.17951/glosa.2025.4.77-88

Emil Kruk, PhD
ORCID: 0000-0002-7954-0303

emil.kruk@mail.umcs.pl
Faculty of Law and Administration
Department of Administrative Law and Administrative Science
Maria Curie-Skłodowska University in Lublin

Prof. Robert Suwaj
ORCID: 0000-0003-1372-9039

robert.suwaj@pw.edu.pl
Faculty of Administration and Social Sciences
Department of Administrative Law and Public Policy
Warsaw University of Technology

Manners of the extinguishing of liabilities arising from administrative fines

Keywords: *administrative fines; effectiveness; liability; statute of limitations; remission; enforcement*

The paper contains a formal-dogmatic analysis of legal regulations defining ineffective methods of extinguishing liabilities arising from administrative fines, which include the expiry of the limitation period for the enforcement of administrative fines and the remission of administrative fines. The paper also discusses the importance of legal measures to guarantee the enforcement of administrative fines, including interest for late payment, administrative enforcement procedure, as well as information activities undertaken towards the obligor aimed at voluntary fulfilment of the obligation. The analysis seeks to show the legal mechanisms that are supposed to ensure the fulfilment of administrative obligations, essentially serving to protect the interests of the state and strengthening the public sense of justice. The need to address this issue is determined by the awareness that one of the constant trends in the development of administrative law is the expansion of the sanctioning powers of the public administration, while the recovery of amounts due from administrative fines, which are a generic form of such sanctions, largely determines the ultimate effectiveness of legal regulations, i.e. the achievement of the goal intended by the legislature.

Introduction

Administrative fines are one of the basic legal instruments to secure the fulfilment of administrative obligations.[1] Consequently, it is

[1] On the place and role of administrative fines in the Polish normative system, see e.g.: R. Suwaj, *Zasady nakładania administracyjnych kar pieniężnych*, Warszawa 2021, *passim*; *Sankcje administracyjne*, eds. M. Stahl, R. Lewicka, M. Lewicki, Warszawa 2011, *passim*; M. Wincenciak, *Sankcje w prawie administracyjnym i procedura ich wymierzania*, Warszawa 2008, *passim*; L. Staniszewska, *Administracyjne kary pieniężne. Studium z zakresu prawa administracyjnego materialnego i procesowego*, Poznań 2017, *passim*.

worth paying attention to issues related to the ways of extinguishing liabilities that arise out of this title. This is important because failure to enforce or ineffective enforcement of fines (as well as failure to impose them) both reduces due revenues of the state budget and may result in a sense of impunity for those responsible for breaching the law and a sense of injustice in the rest of society. It is also beyond doubt that undertaking by the public administration appropriate action in this respect determines the compliance of the social effect of the operation of the legal norm with the intentions of its lawmaker, while protecting the authority of the state and the law enacted by it. Naturally, this issue could be presented in a multifaceted way, such as through the lens of problems important from the point of view of the economic analysis of law or e.g. in the context of findings made under sociology of law. However, the limited intended scope of this study make us to reject such research perspective in favour of a legal-dogmatic analysis of the legal provisions governing the topic in question, which applies in particular to selected provisions of Section IVA "Administrative fines" of the [Polish] Act of 14 June 1960, Code of Administrative Procedure (hereinafter: CAP).[2] In view of the foregoing, the primary objectives of this paper will be the identification of the relevant provisions, their interpretation using the rules of systemic interpretation and necessary references to practical problems in their application, systematisation of these provisions, formation of the necessary concepts, and, if necessary, also formulation of conclusions for the law as it should stand (*de lege ferenda*). More specifically, the research task set requires, in particular, the presentation of ineffective ways of extinguishing liabilities arising out of administrative fines, namely the limitation period for the enforcement of the administrative fine and the remission of the fine, as well as the characterisation of legal measures guaranteeing the fulfilment of obligations arising out of the administrative fine, which include interest for late payment, administrative enforcement procedure, as well as information activities undertaken towards the obligor aimed at voluntary performance of his/her obligation. The issues listed above will be discussed further herein, according to the order indicated. To this end, the collected normative material and the findings made by scholars in the field and the judicature will be used. It should also be noted that the concept of effectiveness will be understood for the purposes of this study in a pragmatic sense as the ability of a given legal measure to produce the intended effect in the form of the fulfilment of a monetary obligation, i.e. to bring about its expiry. In addition, due to the adopted research perspective, the study disregards the issue of payment as the primary and at the same time effective way of extinguishing liabilities arising from administrative fines, as this issue has already been widely described in the literature and does not pose significant interpretive or practical difficulties.

1. Limitation of enforcement of the administrative fine

Pursuant to Art. 189g § 3 CAP, an administrative fine shall not be enforced if five years have passed from the day the penalty was to be paid. This provision does not apply where separate provisions regulate this matter otherwise (Art. 189a § 2 point 4 CAP). In practice, this most often concerns the method of determining the commencement of the limitation period for the enforcement of administrative fines, and less frequently its length.[3] According to the Code regulation, where legal provisions set the

[2] Ustawa z dnia 14 czerwca 1960 r. – Kodeks postępowania administracyjnego (t.j. Dz.U. 2024, poz. 572) [consolidated text Journal of Laws of 2024, item 572].

[3] For example, Art. 129e para 6 of the Act of 6 September 2001 Pharmaceutical Law (consolidated text Journal of Laws of 2024, item 686) [ustawa z dnia 6 września 2001 r. – Prawo farmaceutyczne (t.j. Dz.U. 2024, poz. 686)], provides for a three-year period of limitation for the obligation to pay a fine imposed by a decision of the provincial pharmaceutical inspector.

time limit for the payment of a fine, the limitation period for the payment of the fine runs from the last day of that time limit. In certain cases, however, the legislature introduces another regulation, requiring that this period be counted "from the date of issuance of the final decision on imposing the fine,[4]" "from the date on which the decision on its imposition became final[5]" or e.g. "from the end of the year of expiry of the time limit for payment" of the liability under the administrative fine.[6] Moreover, the application of the provision of the Code of Administrative Procedure in question may entail problems in a situation where special provisions do not specify the time limit within which the penalty should be paid. One should assume in such a case that the limitation period for enforcement will commence on the day following the service of the decision imposing the fine, as the payment obligation would have to be fulfilled promptly.[7] It therefore happens that non-Code provisions regulate the length of the limitation period for enforcement differently, the moment of commencement of the limitation period, or modify the rule according to which the limitation period for the enforcement of a fine cannot begin to run before the expiry of the period for its voluntary payment. It is worth noting that the limitation period for the enforcement of an administrative fine is a substantive-law period and is mandatory; the authority applying the law may neither shorten nor extend it. Upon expiry of this period, the obligation to pay the fine expires, and it becomes inadmissible for the authorities (the creditor and the enforcement authority) to take action to enforce it. As stated by the Provincial Administrative Court in Warsaw: "The essence of the statute of limitations is that, due to the passage of a specified period of time (…) from the moment the performance became due and payable, during which the competent authorities (…) failed to take action to enforce it or such action proved ineffective, the obligation expires. Such obligation therefore ceases to exist, and the expiry of the obligation also entails the expiry of interest for late payment. This effect arises by operation of law after the expiry of the limitation period.[8]"

In order to supplement the findings presented above, reference should also be made to the issue of interruption of the limitation period for the payment of a fine. Pursuant to the general principles expressed in Art. 189j § 1–4 CAP, the limitation period for the enforcement of an administrative fine is interrupted by the declaration of bankruptcy of the party. Once the period of limitation for the administrative enforcement of the fine has been interrupted, it runs anew from the day following the date on which the decision on the closing or discontinuation of bankruptcy proceedings becomes final. If, on the other hand, the party has been declared bankrupt before the start of the period of limitation for the enforcement of an administrative penalty, the period of limitation begins to run from the day following the date on which the decision on the closing or discontinuation of bankruptcy proceedings becomes final. Moreover, the limitation period for the enforcement of an administrative fine does not commence,

[4] Art. 131 para. 2 of the Act of 19 December 2014 on maritime fishery (consolidated text Journal of Laws of 2024, item 243) [ustawa z dnia 19 grudnia 2014 r. o rybołówstwie morskim (t.j. Dz.U. 2024, poz. 243)].

[5] Art. 40 para. 2 of the Act of 29 November 2000 on foreign trade in goods, technologies and services of strategic importance to national security and to maintenance of international peace and security (consolidated text Journal of Laws of 2023, item 1582) [ustawa z dnia 29 listopada 2000 r. o obrocie z zagranicą towarami, technologiami i usługami o znaczeniu strategicznym dla bezpieczeństwa państwa, a także dla utrzymania międzynarodowego pokoju i bezpieczeństwa (t.j. Dz.U. 2023, poz. 1582)].

[6] Art. 89 para. 9 of the Act of 16 April 2004 on the protection of nature (consolidated text Journal of Laws of 2023, item 1336, as amended) [ustawa z dnia 16 kwietnia 2004 r. o ochronie przyrody [(t.j. Dz.U. 2023, poz. 1336 ze zm)].

[7] M. Jabłoński [in:] *Kodeks postępowania administracyjnego. Komentarz*, eds. M. Wierzbowski, A. Wiktorowska, Warszawa 2023, Legalis, commentary on Art. 189g, thesis 20.

[8] Judgment of the Regional Administrative Court in Warsaw of 24 January 2007, III SA/Wa 2417/06, LEX no. 298147.

and once commenced is interrupted upon: 1) the use of an enforcement measure of which the obligor has been notified; 2) the service of the order to secure claims under the provisions on enforcement proceedings in the administration. In view of the above, it must be assumed that the mere initiation of enforcement proceedings is not a precondition for interrupting the limitation period for the enforcement of an administrative fine before its commencement, or for interrupting it if already commenced. To cause such an effect, it is necessary to apply an enforcement measure, which is associated with the obligation to notify the obligor as specified in the provisions of Section II of the Act on Enforcement Procedure in Administration.[9] Pursuant to § 5 of Art. 189j CAP, the limitation period for the enforcement of an administrative fine starts, and once interrupted runs anew, from the day following the day on which: 1) an enforcement measure of which the obligor was notified was applied; 2) an order to secure claims has been served in accordance with the provisions on enforcement proceedings in administration.

With regard to the *ratio legis* of the statute of limitations, it should be pointed out that it determines the legal consequences resulting from the failure to exercise rights for the statutorily defined period. Its application prevents the pursuit of an existing claim, which may raise various doubts, including those of a moral nature. This is so because the effects of the statute of limitations can be perceived as a kind of "bonus" for an unreliable debtor. On the other hand, it should be borne in mind that this institution protects the value of certainty in legal transactions. As it is pointed out in the literature: "Even an unlawful situation requires legalisation in the interests of protection of the public order if it lasts for a sufficiently long period (*quieta non movere*), and, over time, difficulties with evidence arise which may prevent the debtor from defending themselves correctly and the court from finding an objective truth, and there is no reason to protect a creditor who has neglected to exercise their claim at the right moment.[10]" It should be agreed with the view that the entity concerned should not be left with more than reasonable uncertainty as to the extent of their rights, obligations and possible liability. Moreover, the institution in question is capable of protecting an individual from the arbitrariness of the authorities and the instrumentalisation of the law itself. All in all, it is possible to imagine a situation where an administrative body reaches back to past events in order to put pressure on a citizen who criticises body's activities.[11] However, it should be kept in mind that the statute of limitations is not a vested constitutional right,[12] but only a legislative policy instrument that can (but does not have to) be used by the lawmakers in this area.

2. Remission of the administrative fine

Another ineffective method of extinguishing liabilities arising from administrative fines is their remission. This option is provided for in Art. 189k § 1 points 3 and 4 CPA, which states that a public administration body that has imposed an administrative fine may, at the request of the party, where it is justified by an important public interest or an important interest of the party, may grant relief in the enforcement of the administrative fine by remitting the ad-

[9] See e.g. Art. 72 § 4 point 1 of the Act on enforcement proceedings in administration, which imposes on the enforcement authority the obligation to notify the obligated party about the seizure of their remuneration. Moreover, as the Supreme Administrative Court points out in its case law: "the application of an enforcement measure will only have the effect of interrupting the limitation period if the notification of its application is made before the expiry of the limitation period". See resolution of the Supreme Administrative Court of 3 June 2013, I FPS 6/12, LEX No. 1315793. See also the position of the Supreme Administrative Court expressed in the resolution of 18 March 2029 (I FPS 3/18, LEX No. 2633666) concerning the obligation to notify the legal representative of the application of an enforcement measure.

[10] A. Wolter, J. Ignatowicz, K. Stefaniuk, *Prawo cywilne. Zarys części ogólnej*, Warszawa 1998, p. 346.

[11] E. Kruk, *Sankcja administracyjna*, Lublin 2013, p. 131.

[12] See judgment of the Constitutional Tribunal of 25 May 2004, SK 44/03, OTK ZU 2004, Vol. 5A, item 46.

ministrative fine in whole or in part, as well as by remitting the interest for late payment in whole or in part.[13] It should be added that, pursuant to the provision of Art. 189k § 2 of the Code of Administrative Procedure, in the event of remission of an outstanding administrative fine, the interest for late payment shall also be remitted in whole or in part, to the extent that the outstanding administrative fine has been remitted. Regarding the aforementioned regulations, it should be noted that proceedings on the remission of an administrative fine are separate from proceedings aimed at imposing it and involve only the examination whether granting the applicant such relief is reasonable, which is conditional on the existence of grounds of important public interest or important interest of the party. The legitimacy of the imposition of the fine or its amount may not be effectively challenged in such proceedings. On the other hand, the decision that closes the administrative fine remission proceedings is discretionary in nature. When issuing such a decision, the body chooses the legal consequences of the facts established based on statutory conditions in a manner appropriate to the circumstances of the case. These conditions are disjunctive. This means that the existence of only one of them (important public interest or important interest of the party) is sufficient for the body to accept the request, but it is not mandatorily bound by this fact.[14] It should be stressed that refusal to remit an administrative fine does not create a state of "res iudicata.[15]" In the event of an essential change in the factual circumstances (e.g. a significant deterioration of the life situation due to a progressive illness preventing the party from taking up gainful employment), the party may again demand that the administrative fine be remitted. Nothing also prevents a party who has been refused remission of an administrative fine to effectively apply for other types of relief, such as postponement of the time limit for enforcement of the administrative fine or its payment in instalments, even if the factual circumstances remain the same. The body is bound by the scope of the party's request as to the type of relief the party is applying for and the liability concerned.

As mentioned above, the legislature allows for the possibility of remission of the administrative fine where it is justified by an important public interest or an important interest of the party. These both terms are characterised by a high level of vagueness, intensified by the use of the quantifier "important," making it difficult to attribute specific content to them in isolation from a specific factual situation. However, relying on the case-law of administrative courts, it can be assumed that the body applying the law, when determining the scope of meaning of the concept of "important public interest," should take into account the need to implement values relevant to the whole society, such as justice or confidence in state authorities. On the other hand, the "important interest of the party" should not be associated solely with extraordinary situations, such as the occurrence of a sudden unpredictable event preventing the payment of the administrative fine. This concept has a broader meaning, including the normal economic situation of the obligor, which depends on the amount of income being earned and the daily living expenses (e.g. expenses for the treatment of a chronic illness).[16] For the sake of clarity,

[13] Due to the limited volume of this study, it does not address problems related to the reliefs in the payment of administrative fines, granted at the request of the party conducting business activity, which are governed by the provisions of Art. 189k § 3–5 CAP. This would require, above all, a broad discussion of issues such as public aid, assistance *de minimis* and assistance *de minimis* in agriculture or fisheries. See on this topic e.g. J. Wegner [in:] Z. Kmieciak, J. Wegner, M. Wojtuń, *Kodeks postępowania administracyjnego. Komentarz*, Warszawa 2023, LEX, commentary on Art. 189k, points 5 and 6.

[14] Judgment of the Regional Administrative Court in Warsaw of 30 January 2020, VIII SA/Wa 526/19, LEX No. 3072467.

[15] Judgment of the Regional Administrative Court in Opole of 21 February 2018, I SA/Op 444/17, LEX No. 2474920.

[16] Cf. judgment of the Regional Administrative Court in Wrocław of 27 February 2018, III SA/Wr 544/17, LEX

however, it should be noted that financial difficulties may not always justify the application of relief in the form of remission of the fine. This concerns primarily cases in which a difficult financial situation of the party is independent of party's conduct, and the payment of the fine is objectively and permanently impossible to achieve or could render it impossible to meet the basic living needs of the obligor and his/her family members, and consequently result in the need to resort to welfare aid. The mere subjective conviction of the party that there is a need to remit the administrative fine is also not sufficient for the condition in question to be considered to be met if it is not confirmed by objective circumstances.[17] Therefore, in the administrative proceedings initiated with the application for relief in the form of remission of an administrative fine, special emphasis should be put on analysing the economic situation of the party, while taking into account all the factual circumstances of the case and the reasons why the fine has been imposed and the functions it was to perform. On the other hand, considering that the procedure in question is initiated at the request of the party and in party's interest, and the importance of the factual circumstances of the party's situation for the decision to be taken, one must share the view that the primary burden of proving the aforementioned conditions must be borne by the applicant.[18] Of course, this does not exempt the body from making the necessary findings in this regard.

Undoubtedly, remission is the most advantageous relief from the reliefs available in the procedure of enforcement of administrative fines provided for in the Code of Administrative Procedure, because it results in the expiry of the obligation to pay the fine, which will not be enforced and, consequently, will not fulfil its intended function. In view of the above, it should be concluded that this relief is of an exceptional character and should be applied on an incidental basis, as the rule is to pursue claims for administrative fines imposed.[19] It is a form of assistance provided by the state to the party in order to minimise the undesirable effects of the enforcement of an administrative fine, both from the point of view of the public interest and the interest of the individual. The point is that the state should not incur, as a result of seeking claims of this type, higher costs than if it had refrained from exercising its powers in this regard.

3. Legal measures that guarantee the payment of an administrative fine

The main legal measure to increase efficiency in the collection of administrative fines is interest for late payment of this obligation. Pursuant to the provisions of Art. 189i § 2 CAP an overdue administrative fine (i.e. a fine not paid on time) shall be subject to default interest in the amount specified as for tax arrears, unless otherwise provided for in separate provisions. The provision obliges the competent administrative authority to charge interest regardless of the reasons behind the delay in payment. It does not matter in such an event whether the default was culpable or not. Such circumstances may, however, affect the granting of relief in the execution of an administrative fine, e.g. by waiving the interest for late payment in whole or in part (Art. 189k § 1 point 4 CAP). It is worth emphasizing that interest is ancillary

No. 2477138; judgment of the Regional Administrative Court in Wrocław of 6 November 2019, III SA/Wr 139/19, LEX No. 3086483.

[17] Judgment of the Regional Administrative Court in Warsaw of 12 February 2021, IV SA/Wa 1897/20, LEX No. 3164906; judgment of the Regional Administrative Court in Olsztyn of 9 January 2019, II SA/Ol 818/18, LEX No. 2611427.

[18] Judgment of the Regional Administrative Court in Białystok of 14 February 2019, II SA/Bk 698/18, LEX No. 2633572.

[19] As it is rightly pointed out in the literature, adopting a different practice may lead to a violation of the principle of equality before the law, as well as expose the authority to the allegation of groundless abandonment of the recovery of the budgetary receivable. See: A. Cebera, J. G. Firlus [in:] *Kodeks postępowania administracyjnego. Komentarz*, ed. H. Knysiak-Sudyka, Warszawa 2023, LEX, commentary on Art. 189k, point 7 and the literature referred to therein.

to the main liability. Each time they are charged for a full period, counted from the day following the date of expiry of the period for payment of the fine until the date of expiry of this performance, unless special provisions provide otherwise.[20] The interest may expire (in whole or in part) in the following situations: 1) payment (in whole or in part) of the due amount under the administrative fine, together with accrued interest (voluntarily or by means of administrative enforcement); 2) remission of the administrative fine (in whole or in part) pursuant to Art. 189k § 1 point 3 CAP; 3) remission of interest for late payment (in whole or in part) under Art. 189k § 1 point 4 CAP; 4) expiry of limitation period for the enforcement of the administrative fine pursuant to Art. 189g § 3 CAP, As for the amount of interest, it is determined under the provisions of Chapter 6 "Default interest and extension fee" of Chapter III of the Tax Ordinance. More specifically, pursuant to Art. 56 § 1 of the Tax Ordinance, the rate of interest for late payment is the sum of 200% of the basic Lombard rate, determined in accordance with the provisions on the National Bank of Poland, and 2%, but this rate may not be lower than 8%.[21] Such a solution results in an automatic adjustment of the interest rate to market conditions, in particular inflation processes, in order to maintain the disciplinary nature of this instrument. Moreover, as the literature points out, "linking the interest rate for tax arrears with the lombard rate is an objective, flexible solution which fulfils the requirements of the punitive function of default interest.[22]" The mere charging of interest on late payment of fines should not be seen as "a manifestation of excessive fiscalism of the State.[23]" After all, it is not a question of deriving revenue from the "wickedness of citizens", but of disciplining those who have already breached the law. So far, the constitutionality of such indexation has not been questioned, and the real revenues from it are not considerable. Moreover, it should be kept in mind that the fulfilment of the preventive objective of a sanction is conditioned not only by its inevitability but also by its promptness.[24]

Another issue to be discussed with respect of the effectiveness of extinguishing liabilities arising from administrative fines is the enforcement of this type of amounts due. Outstanding administrative fines (together with interest for late payment) are subject to collection in the manner and on the terms set out in the Act of 17 June 1966 on enforcement proceedings in administration[25] regarding the enforcement of liabilities of a monetary nature. This is determined by Art. 2 § 1 point 2 of that law, according to which administrative enforcement covers "fines and financial penalties imposed by

[20] For example, the waiver of the obligation to pay interest was provided for in: Art. 48 para. 3 of the Act of 17 November 2021 on counteracting unfair use of contractual advantage in trade in agricultural and food products (consolidated text Journal of Laws of 2023, item 1773) [ustawa z dnia 17 listopada 2021 r. o przeciwdziałaniu nieuczciwemu wykorzystywaniu przewagi kontraktowej w obrocie produktami rolnymi i spożywczymi (t.j. Dz.U. 2023, poz. 1773)]; Art. 112 para. 5 of the Act of 16 February 2007on the protection of competition and consumers (consolidated text Journal of Laws of 2024, item 1616) [ustawa z dnia 16 lutego 2007 r. o ochronie konkurencji i konsumentów (t.j. Dz.U. 2024, poz. 1616)].

[21] According to Art. 56d of the Tax Ordinance the rates of the interest for late payment shall be announced by the Minister competent for public finance. See: Obwieszczenie Ministra Finansów z dnia 14 września 2023 r. w sprawie stawki odsetek za zwłokę od zaległości podatkowych, obniżonej stawki odsetek za zwłokę od zaległości podatkowych oraz podwyższonej stawki odsetek za zwłokę od zaległości podatkowych (M.P. 2023, poz. 1017).

[22] S. Babiarz [in:] B. Dauter, W. Gurba, R. Hauser, A. Kabat, M. Niezgódka-Medek, A. Olesińska, J. Rudowski, S. Babiarz, *Ordynacja podatkowa. Komentarz*, Warszawa 2024, LEX, commentary on Art. 56, point 1.

[23] M. Wincenciak, *Sankcje w prawie administracyjnym i procedura ich wymierzania*, Warszawa 2008, p. 147.

[24] For the topic of indexation of amounts due for monetary sanctions, see: E. Kruk, *Sankcja administracyjna*, Lublin 2013, pp. 269–271.

[25] Ustawa z dnia 17 czerwca 1966 r. o postępowaniu egzekucyjnym w administracji (t.j. Dz.U. 2023, poz. 2505).

public administration bodies.[26]" Moreover, in most of the regulations providing for the possibility of imposing (charging) administrative fines, the legislature states expressly that these penalties "are subject to collection under the provisions on administrative enforcement proceedings," an example of which is Art. 176 of the Act of 20 February 2015 on renewable energy sources.[27] This determination is important if only because one of the basic principles of these proceedings is the obligatory undertaking by creditors and enforcement authorities of actions aimed at causing performance or securing the performance of the obligations referred to in Art. 2 of the Act on enforcement proceedings in administration.[28] This is confirmed by the jurisprudence of administrative courts. It can be read as follows in the substantiation of the judgment of the Supreme Administrative Court in Lublin of 14 March 2001 (I SA/Lu 452/00, LEX No. 47495): "The initiation of administrative enforcement proceedings against debtors of the State Treasury is a statutory obligation (…), and therefore the creditor cannot be guided by its own discretion whether to initiate enforcement or not." On the other hand, the Supreme Administrative Court, in its judgment of 18 October 2011 (II FSK 797/10, LEX No. 984589), expressed the view that "the principle of obligatory initiation enforcement applies in the administrative enforcement proceedings; the effect of the «actions» taken by the creditor is essentially the obligation for the enforcement authority to initiate proceedings and proceed with enforcement." It is worth emphasizing that failure to comply with this obligation leads to a breach of public finance discipline. According to Art. 5 of the Act of 17 December 2004 on liability for breaching public finance discipline,[29] the breaches of public finance discipline include irregularities in determining, collecting, investigating, cancelling, deferring repayment, spreading repayment into instalments, as well as allowing the expiration of receivables of the State Treasury, local government units or other public finance sector units. This provision applies to all types of receivables: resulting from legal provisions, determined by sovereign decisions, resulting from civil law relations, including the principal, interest, contractual penalties, receivables resulting from prohibited acts.[30] Thus, the measures undertaken by the enforcement authority to comply with the obligation to impose an administrative fine should be as effective as possible. It is worth adding at this point that in only a few cases, in order to increase the effectiveness of these actions, the legislature provides for the possibility of establishing a security for the collection of a fine. Such a solution can be found e.g. in Art. 59 paras. 1–3 of the Act of 21 March 1991 on the maritime areas of the Republic of Poland and maritime administration,[31] according to which, in order to secure the collection of a fine, the director of the maritime office may demand from the offender to secure the receivables, and in the event of refusal, the director

[26] This provision goes in line with Art. 66 of the Act of 27 August 2009 on public finance (consolidated text Journal of Laws of 2024, item 1530) [ustawa z dnia 27 sierpnia 2009 r o finansach publicznych (t.j. Dz.U. 2024, poz. 1530)], according to which the provisions on administrative enforcement proceedings apply to the enforcement of non-tax budgetary receivables of a public-law nature.

[27] Ustawa z dnia 20 lutego 2015 r. o odnawialnych źródłach energii (t.j. Dz.U. 2024, poz. 1361).

[28] Pursuant to the wording of Art. 6 § 1 of the Act on enforcement proceedings in administration the creditor should take steps to apply enforcement measures where the obligor evades to perform the obligation. On the other hand, Art. 26 § 1 of the Act on enforcement proceedings in administration directly obliges the enforcement authority to initiate administrative enforcement at the request of the creditor, provided that the creditor submits an enforceable title drawn up in accordance with the applicable model.

[29] *Ustawa z dnia 17 grudnia 2004 r. o odpowiedzialności za naruszenie dyscypliny finansów publicznych* (t.j. Dz.U. 2024, poz. 104).

[30] K. Subocz [in:] *Odpowiedzialność za naruszenie dyscypliny finansów publicznych. Komentarz*, ed. A. Kościńska-Paszkowska, Warszawa 2021, LEX, commentary on Art. 5, point 1.

[31] Ustawa z dnia 21 marca 1991 r. o obszarach morskich Rzeczypospolitej Polskiej i administracji morskiej (t.j. Dz.U. 2024, poz. 1125).

applies to the enforcement authority to seize the ship or other objects used to commit the infringement. The security for the collection of a fine involves the payment of a specified amount of money to the deposit maintained by the authority conducting the proceedings or the submission of a bank guarantee by a bank or an insurance company based in Poland.[32] It should be remembered that, in accordance with Art. 7 § 2 of the Act on enforcement proceedings in administration, the enforcement authority must apply enforcement measures that directly lead to the performance of the obligation, and where several such measures are available, the measure that is least burdensome for the obligor. However, which of the applicable enforcement measures is the least burdensome for the obligor cannot be arbitrarily decided by the authority conducting the enforcement proceedings, because the authority should take into account the circumstances of the specific case and the requests made by the obligor.[33]

In order to supplement the above findings, it should be mentioned that the creditor may take notification measures towards the obligor. Namely, according to Art. 6 § 1b of the Act of 17 June 1966 on enforcement proceedings in administration, before taking steps to apply enforcement measures, the creditor may apply notification measures towards the obligor leading to voluntary performance of the obligation. The *ratio legis* behind this provision is to improve the quality of services provided by the administration and to improve the contacts between creditors and the obligors through the possibility for creditors to undertake information activities aimed at voluntary performance of the obligation by the obligor before referring the case to enforcement proceedings.[34] The forms of information activities undertaken towards the obligor, the cases in which these actions may be taken and the manner of recording them are specified in the Regulation of the Minister of Finance of 23 February 2024 on the proceeding by creditors having monetary receivables.[35] Pursuant to § 2 paras. 1 and 2 of the said Regulation, the creditor may undertake information activities if the period until the expiry of the limitation period for a monetary receivable is longer than 6 months and the enforceable title has not yet been issued. The information activities can be carried out orally or in writing. It should be assumed that in order to ensure a high degree of effectiveness of enforcement proceedings, such actions should be aimed not only at persuading the debtor to voluntarily perform the obligation, but also at obtaining reliable information about debtor's financial situation.[36] Appropriate orientation in this area enables the creditor to assess the legitimacy of initiating enforcement proceedings, which should not be conducted if these do not allow for the recovery of an amount exceeding the enforcement costs.[37] Furthermore, as Piotr M. Przybysz notes: "The legislature attaches such

[32] An analogous solution is provided for in Art. 130a paras. 3–5 of the Act of 18 August 2011 on maritime safety (consolidated text Journal of Laws of 2024, item 1068, as amended) [ustawa z dnia 18 sierpnia 2011 r. o bezpieczeństwie morskim (t.j. Dz.U. 2024, poz. 1068 ze zm.)].

[33] See judgment of the Supreme Administrative Court of 23 August 2011, II OSK 1262/10, LEX No. 1068979.

[34] See: Uzasadnienie rządowego projektu ustawy o administracji podatkowej z dnia 10 kwietnia 2015 r., druk nr 3320, Sejm RP VII kadencji, https://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=3320 (3.02.2025).

[35] Rozporządzenie Ministra Finansów z dnia 23 lutego 2024 r. *w sprawie postępowania wierzycieli należności pieniężnych* (Dz.U. 2024, poz. 316).

[36] *Postępowanie egzekucyjne w administracji. Komentarz*, eds. R. Hauser, M. Wierzbowski, Warszawa 2024, Legalis, commentary on Art. 6, thesis 12.

[37] The determination that the amount in excess of the enforcement expenses will not be obtained is the basis for optional discontinuation of the enforcement proceedings. It should be noted that undertaking information activities is not a condition for the admissibility of enforcement. Pursuant to Art. 59 § 2 of the Act on enforcement proceedings in administration, enforcement proceedings may be discontinued if further administrative enforcement is ineffective due to the lack of assets or a source of income of the obligor from which it would be possible to recover funds exceeding the costs of enforcement. See Judgment of the Supreme Administrative Court of 13 March 2013, II GSK 2373/11, LEX No. 1302902.

importance to the voluntary performance of obligations subject to administrative enforcement that one should speak of the general principle of persuading the debtor to voluntarily perform the obligation.[38]" Apart from information activities undertaken towards the debtor, this principle is also implemented through the obligation of the creditor to issue a notice to the obligor, as provided for in Art. 15 of the Act on enforcement proceedings in administration, and indirectly also through the possibility of entering the obligor in the Register of Public Law Liabilities, which constitutes an additional form of pressure on the obligor, aimed at persuading them to voluntarily perform their obligation (see Art. 18a et seq. of the Act on enforcement proceedings in administration). It should be stressed that undertaking information activities under the current legislation in force is not a condition for the admissibility of enforcement.

Conclusion

As follows from the analysis presented above, the principal duty of the creditor and the enforcement authority is to effectively seek the payment of amounts due from administrative fines, which, briefly speaking, is to serve the protection of the interests of the state. However, this cannot be done at any cost (i.e. irrespective of the circumstances of the case and the costs associated with such activities), which is why the legislature has anticipated ineffective ways of extinguishing such liabilities by introducing limitation periods for the enforcement of an administrative fine and the possibility of remission of the receivable in question. These solutions should be assessed positively, as they guarantee the stability and certainty of legal transactions, serve to increase the efficiency of the administration (mobilising it to act efficiently and reliably), and also allow the implementation of the principles of proportionality, humanitarianism and social justice. The requirement to undertake information activities, which can be an effective tool to support the process of debt recovery without the need to refer the case to enforcement proceedings, should also be assessed positively. Therefore, much depends on the skilful use of these institutions in the process of applying the law. The practice, however, is different. This is best evidenced by the audit reports of the Supreme Audit Office, which point to numerous irregularities in the activities of administrative bodies in the field of recovering receivables from administrative fines, which directly translates into low effectiveness of these activities, but also restricts the social impact of the fines imposed.[39] Such irregularities often consist in the failure of creditors to take disciplinary action against those fined who evade to pay, omitting to take debt recovery activities or taking them late, or e.g. the drafting of enforceable titles with defects. The reasons behind this situation would in principle need to be examined on a case-by-case basis. However, applying a certain generalisation, it can be concluded that these irregularities are usually the result of improper organisation of work in offices, in particular incompetence of officials, lack of ongoing flow of information about imposed administrative penalties between different organisational units of competent offices, inconsistency and delays in carrying out enforcement proceedings, lack of proper supervision. But these are already the issues of administrative praxis that require a separate study.

[38] P. M. Przybysz, *Postępowanie egzekucyjne w administracji. Komentarz*, Warszawa 2025, LEX, commentary on Art. 6, thesis 13.

[39] See e.g. Najwyższa Izba Kontroli, Informacja o wynikach kontroli: *Dochodzenie należności z tytułu kar administracyjnych nakładanych przez organy administracji publicznej*, LOP.430.004.2021, Nr ewid. 179/2021/P/21/082/LOP, Warszawa 2022, p. 92.

Abstrakt
Sposoby wygaszania zobowiązań z tytułu administracyjnych kar pieniężnych

Słowa kluczowe: *administracyjne kary pieniężne; efektywność; zobowiązanie; przedawnienie; umorzenie; egzekucja*

Artykuł zawiera formalno-dogmatyczną analizę regulacji prawnych określających nieefektywne sposoby wygaszania zobowiązań z tytułu administracyjnych kar pieniężnych, do których należą: przedawnienie egzekucji administracyjnej kary pieniężnej oraz umorzenie administracyjnej kary pieniężnej. W opracowaniu omówiono także znaczenie środków prawnych gwarantujących realizację zobowiązań z tytułu administracyjnej kary pieniężnej, do których należą odsetki za zwłokę, egzekucja administracyjna, jak również działania informacyjne podejmowane względem zobowiązanego, zmierzające do dobrowolnego wykonania przez niego obowiązku. Prezentowana analiza ma na celu ukazanie mechanizmów prawnych, które mają zapewniać realizację zobowiązań administracyjnych, służąc w swej istocie ochronie interesów państwa oraz wzmacniając społeczne poczucie sprawiedliwości. Potrzebę podjęcia tego zagadnienia determinuje świadomość, iż jedną ze stałych tendencji rozwojowych prawa administracyjnego jest rozszerzanie kompetencji sankcyjnych administracji. Z kolei dochodzenie należności z tytułu administracyjnych kar pieniężnych, które są rodzajową postacią tychże sankcji, warunkuje w znacznej mierze finistyczną skuteczność regulacji prawnych, tj. realizację celu zamierzonego przez ustawodawcę.

Bibliography

Literature
Dauter B., Gurba W., Hauser R., Kabat A., Niezgódka-Medek M., Olesińska A., Rudowski J., Babiarz S., *Ordynacja podatkowa. Komentarz*, Warszawa 2024, LEX.
Kmieciak Z., Wegner J., Wojtuń M., *Kodeks postępowania administracyjnego. Komentarz*, Warszawa 2023, LEX.
Kodeks postępowania administracyjnego. Komentarz, ed. H. Knysiak-Sudyka, Warszawa 2023, LEX.
Kodeks postępowania administracyjnego. Komentarz, eds. M. Wierzbowski, A. Wiktorowska, Warszawa 2023, Legalis.
Kruk E., *Sankcja administracyjna*, Lublin 2013.
Odpowiedzialność za naruszenie dyscypliny finansów publicznych. Komentarz, ed. A. Kościńska-Paszkowska, Warszawa 2021, LEX.
Postępowanie egzekucyjne w administracji. Komentarz, eds. R. Hauser, M. Wierzbowski, Warszawa 2024, Legalis.
Przybysz P. M., *Postępowanie egzekucyjne w administracji. Komentarz*, Warszawa 2025, LEX.
Sankcje administracyjne, eds. M. Stahl, R. Lewicka, M. Lewicki, Warszawa 2011.
Staniszewska L., *Administracyjne kary pieniężne. Studium z zakresu prawa administracyjnego materialnego i procesowego*, Poznań 2017.
Suwaj R., *Zasady nakładania administracyjnych kar pieniężnych*, Warszawa 2021.
Wincenciak M., *Sankcje w prawie administracyjnym i procedura ich wymierzania*, Warszawa 2008.
Wolter A., Ignatowicz J., Stefaniuk K., *Prawo cywilne. Zarys części ogólnej*, Warszawa 1998.

Legal Acts
Ustawa z dnia 14 czerwca 1960 r. – Kodeks postępowania administracyjnego (t.j. Dz.U. 2024, poz. 572).
Ustawa z dnia 17 czerwca 1966 o postępowaniu egzekucyjnym w administracji (t.j. Dz.U. 2023, poz. 2505).

Ustawa z dnia 21 marca 1991 r. o obszarach morskich Rzeczypospolitej Polskiej i administracji morskiej (t.j. Dz.U. 2024, poz. 1125).
Ustawa z dnia 29 listopada 2000 r. o obrocie z zagranicą towarami, technologiami i usługami o znaczeniu strategicznym dla bezpieczeństwa państwa, a także dla utrzymania międzynarodowego pokoju i bezpieczeństwa (t.j. Dz.U. 2023, poz. 1582).
Ustawa z dnia 6 września 2001 r. – Prawo farmaceutyczne (t.j. Dz.U. 2024, poz. 686).
Ustawa z dnia 16 kwietnia 2004 r. o ochronie przyrody (t.j. Dz.U. 2023, poz. 1336 ze zm).
Ustawa z dnia 17 grudnia 2004 r. o odpowiedzialności za naruszenie dyscypliny finansów publicznych (t.j. Dz.U. 2024, poz. 104).
Ustawa z dnia 16 lutego 2007 r. o ochronie konkurencji i konsumentów (t.j. Dz.U. 2024, poz. 1616).
Ustawa z dnia 27 sierpnia 2009 r o finansach publicznych (t.j. Dz.U. 2024, poz. 1530).
Ustawa z dnia 18 sierpnia 2011 r. o bezpieczeństwie morskim (t.j. Dz.U. 2024, poz. 1068 ze zm).
Ustawa z dnia 19 grudnia 2014 r. o rybołówstwie morskim (t.j. Dz.U. 2024, poz. 243).
Ustawa z dnia 20 lutego 2015 r. o odnawialnych źródłach energii (t.j. Dz.U. 2024, poz. 1361).
Ustawa z dnia 17 listopada 2021 r. o przeciwdziałaniu nieuczciwemu wykorzystywaniu przewagi kontraktowej w obrocie produktami rolnymi i spożywczymi (t.j. Dz.U. 2023, poz. 1773).
Rozporządzenie Ministra Finansów z dnia 23 lutego 2024 r. w spawie postępowania wierzycieli należności pieniężnych (Dz.U. 2024, poz. 316).

Case Law
Wyrok WSA w Warszawie z dnia 24 stycznia 2007 r., III SA/Wa 2417/06, LEX nr 298147.
Wyrok NSA z dnia 23 sierpnia 2011 r., II OSK 1262/10, LEX nr 1068979.
Judgment of the Supreme Administrative Court of 13 March 2013, II GSK 2373/11, LEX nr 1302902.
Uchwała NSA z dnia 3 czerwca 2013 r., I FPS 6/12, LEX nr 1315793.
Wyrok WSA w Opolu z dnia 21 lutego 2018 r., I SA/Op 444/17, LEX nr 2474920.
Wyrok WSA we Wrocławiu z dnia 27 lutego 2018 r., III SA/Wr 544/17, LEX nr 2477138.
Wyrok WSA w Olsztynie z dnia 9 stycznia 2019 r., II SA/Ol 818/18, LEX nr 2611427.
Wyrok WSA w Białymstoku z dnia 14 lutego 2019 r., II SA/Bk 698/18, LEX nr 2633572.
Uchwała NSA z dnia 18 marca 2019 r., I FPS 3/18, LEX nr 2633666.
Wyrok WSA we Wrocławiu z dnia 6 listopada 2019 r., III SA/Wr 139/19, LEX nr 3086483.
Wyrok WSA w Warszawie z dnia 30 stycznia 2020 r., VIII SA/Wa 526/19, LEX nr 3072467.
Wyrok WSA w Warszawie z dnia 12 lutego 2021 r., IV SA/Wa 1897/20, LEX nr 3164906.
Wyrok TK z dnia 25 maja 2004 r., SK 44/03, OTK ZU 2004, z. 5A, poz. 46.

Official Documents
Obwieszczenie Ministra Finansów z dnia 14 września 2023 r. w sprawie stawki odsetek za zwłokę od zaległości podatkowych, obniżonej stawki odsetek za zwłokę od zaległości podatkowych oraz podwyższonej stawki odsetek za zwłokę od zaległości podatkowych (M.P. 2023, poz. 1017).
Uzasadnienie rządowego projektu ustawy o administracji podatkowej z dnia 10 kwietnia 2015 r., druk nr 3320, Sejm RP VII kadencji, https://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=3320 (3.02.2025).