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Legal Consequences of Violation of Time Limits in Legislative Proceedings

Skutki prawne naruszenia terminów w postępowaniu legislacyjnym

SUMMARY

The aim of the article is to present the issues related to the time limits set for individual organs of public authority (the Sejm, the Senate, the President of the Republic of Poland) for the performance of specific activities within the legislative procedure. These time limits should be calculated according to conventional rules, that is, from the beginning of the day following the day on which the act on which the legal provisions are binding begins. However, the action will also be effective if it is performed on the same day on which the said event occurred. Violation of the time limit in legislative proceedings is of fundamental importance for the act, as a normative act, within the scope of its validity. As part of the review of the constitutionality of the law, the Constitutional Tribunal also examines the correctness of the proceedings in which the law was adopted. According to the latest jurisprudence of the Constitutional Tribunal, violation of the minimum time limits required for the performance of individual activities, which have only been specified in the Rules of Procedure of the Sejm, may constitute an independent basis for declaring the entire act unconstitutional. This view differs significantly from the existing, well-established approach to this subject. The effects of violating the time limits of the legislative procedure can also be considered at the level of the rights (competences) of individual authorities within a specific proceeding. The signing of the act by the President after the expiry of the constitutional time limit should be deemed legally effective. The admissibility of issuing by the Constitutional Tribunal of scope judgements should be considered in cases of violation of the rules of correct legislation, leading to the omission or reduction of *vacatio legis*.

Keywords: legislation; procedure; time limits; the Constitutional Tribunal; the Sejm; the Senate; act

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INTRODUCTION

Legislative proceedings (also known as the legislative procedure or legislative process) are all activities undertaken by authorized entities, the goal and final result of which is the adoption and entry into force of the statute[1]. The purpose of the proceedings is to express an opinion on the further fate of the bill submitted in the exercise of the right of legislative initiative. The authorities participating in the legislative procedure are, first of all, the Sejm, the Senate and the President of the Republic of Poland.

The legislative procedure should be considered in the context of the constitutional principles of the system. First of all, it concerns the principle of a democratic state ruled by law (Article 2 of the Polish Constitution[2]) and the principle of the rule of law (legalism; Article 7 of the Polish Constitution). On the one hand, the activities in the proceedings are the implementation of the competences of individual state organs, conferred on them by the provisions of the Constitution. On the other hand, the statute is the basic source of universally binding law, with the help of which it is possible to interfere in the legal situation of individual legal entities (addressees), including natural persons.

Thus, the legal regulation of law-making activity follows from the principle of legality. Every action of organs of public authority in this respect must be based on the provisions of the Constitution or on legal statutes adopted on its basis, which create the competence of this organ. On the other hand, exceeding the time limits defined by the Constitution by any organ is equated with its loss of legitimacy[3].

Any violation of procedural rules is violation of the law and of the principle of legality. However, this does not mean that each such violation will have legal effects, or that the possible consequences will be the same for each violation. In connection with the above, it is reasonable to investigate the possible legal consequences of individual procedural violations. These effects can be analyzed from different points of view. The most important, however, seem to be the effects that refer to the statute as a normative act, within the scope of its validity. The consequences for the sphere of rights of individual participants in a specific legislative procedure are also important.

Within the procedural provisions, one can distinguish a regulation concerning procedural time limits. This issue is noteworthy as the provisions of the Polish Constitution do not formulate the rules for calculating the time limits referred to

[1] See entry: *Postępowanie ustawodawcze*, [in:] A. Szmyt (ed.), *Leksykon prawa konstytucyjnego. 100 podstawowych pojęć*, ed. A. Szmyt, Warszawa 2016, p. 245.

[2] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483 as amended), hereinafter: the Constitution of the Republic of Poland, the Polish Constitution, or the Constitution. English translation of the Constitution at: www.sejm.gov.pl/prawo/konst/angielski/kon1.htm [access: 10.12.2020].

[3] See B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2012, pp. 77–78.

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therein and do not directly indicate the legal consequences related to the infringements made. This means that it is possible to have doubts, not only as to the legal consequences that can be attributed, but also whether, in a given factual situation, the infringement took place at all. This article aims to consider these issues.

There is no comprehensive study on time limits in legislative proceedings. It is worth noting that in recent years decisions of the Constitutional Tribunal have been issued, which may herald a change in the existing jurisprudence. For the first time, the Constitutional Tribunal ruled that the entire act was inconsistent with the Constitution (the provisions indicated by the applicant) due to failure to meet the time limit for legislative proceedings, which had its normative basis only in the rules of procedure of the Sejm of the Republic of Poland[4]. In connection with the above, there is a need to review the views previously expressed on the violations of time limits in the legislative proceedings.

The results of the research may turn out to be important for entities participating in the legislative procedure, participants of the proceedings before the Constitutional Tribunal, as well as for individual units that are addressees of legal norms.

GENERAL CHARACTERISTICS OF TIME LIMITS IN THE LEGISLATIVE PROCEDURE

The exercise of rights (competences) and the performance of legal obligations may be specified in time. In this context, time limits are a normative approach to time. As part of the legislative procedure, it is possible to indicate a number of procedural time limits, most often absolutely marked, defining a period of time by indicating the number of days and months. They find their normative basis both in the Constitution of the Republic of Poland, as well as in the Rules of Procedure of the Sejm[5], the Rules of Procedure of the Senate[6] and in statutes[7]. One can also see, in the principle of discontinuation of the work of parliament, a specific final date which has no clear legal basis[8].

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[4] See judgement of the Constitutional Tribunal of 14 July 2020, Kp 1/19; judgement of the Constitutional Tribunal of 14 November 2018, Kp 1/18. Judgements of the Constitutional Tribunal are available on the Internet Rulings Portal (IPO) at https://ipo.trybunal.gov.pl/ipo/Szukaj?cid=1.

[5] Rules of Procedure of the Sejm of the Republic of Poland of 30 July 1992 (consolidated text M.P. 2019, item 1028 as amended).

[6] Rules of Procedure of the Senate of 23 November 1990 (consolidated text M.P. 2018, item 846 as amended).

[7] Act of 23 June 1999 on the Exercise of Legislative Initiative by Citizens (consolidated text Journal of Laws 2018, item 2120).

[8] M. Radajewski collected the views of the doctrine and jurisprudence of the Constitutional Tribunal regarding the essence and source of the principle of discontinuation, and also listed the issues

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It should be borne in mind that within the legislative procedure one can distinguish the ordinary[9] procedures and urgent[10] procedures, as well as procedures required for statues on adopting the budget[11] or on amending the constitution[12]. Depending on the type of procedure, some differences have been introduced that also apply to procedural time limits (most often they shorten them).

To be able to speak of a violation of the time limit, it must first be calculated. This means setting its starting point and ending point if we are considering a time limit which is a certain period, or one point if we are looking for a time limit which is a point in time. It should be noted that there are two basic ways to calculate time limits. In the doctrine, calculating the course of a time limit to the day, hour and minute (*a momento ad momentum*) is called *computatio naturalis*. On the other hand, calculating the time limit from day to day (*dies a quo*) is called *computatio civilis*[13]. The advantages of the latter include the exclusion of the need to establish the exact moment when the event occurred, which marks the beginning or end of the time limit. In practice, this translates into a reduction of possible evidence problems[14]. This way of calculating time limits is conventional, as it uses certain assumptions that detach the starting and ending moments from the exact moment when legally significant events occurred[15].

In publications considering the problem of calculating constitutional time limits, the most common methods of calculating them according to *computatio civilis*[16] are indicated. One can discern various sources of the application of these rules – from the use of characteristic linguistic phrases in the content of constitutional provisions (setting time limits by indicating the number of months and days instead of

excluded from the application of this principle. See M. Radajewski, *Wyjątki od zasady dyskontynuacji prac polskiego parlamentu*, „Przegląd Prawa Konstytucyjnego" 2020, no. 2, pp. 155–170.

[9] Articles 118–122 of the Polish Constitution.

[10] Article 123 of the Polish Constitution.

[11] Articles 219–225 of the Polish Constitution.

[12] Article 235 of the Polish Constitution.

[13] See, in particular, I. Nowikowski, *O regułach obliczania terminów w procesie karnym (kwestie wybrane)*, [in:] *Teoretyczne i praktyczne problemy współczesnego prawa karnego. Księga jubileuszowa dedykowana Profesorowi Tadeuszowi Bojarskiemu*, eds. A. Michalska-Warias, I. Nowikowski, J. Piórkowska-Flieger, Lublin 2011, pp. 877–894.

[14] See M. Kulik, *Przedawnienie karalności i przedawnienie wykonania kary w polskim prawie karnym*, Warszawa 2014, p. 222.

[15] See R. Orłowski, *Calculation of Time Limits Resulting from the Constitution of the Republic of Poland from April 2, 1997 (Selected Issues)*, „Przegląd Prawa Konstytucyjnego" 2019, no. 6, pp. 322–323.

[16] See L. Garlicki, *Komentarz do art. 98 Konstytucji*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. L. Garlicki, Warszawa 2000, p. 9.

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the number of hours and minutes), through the use of *analogia iuris* reasoning or *analogi legis*, to the direct application of statutory provisions[17].

It should therefore be stated that the time limit counted in days ends with the expiry of the last day of the time limit (i.e. at 24.00). If it begins with an event, the time limit begins with the beginning of the next day (i.e. at 00.00). If a time limit is calculated in weeks, months or years, it ends on the expiry of that day in the last week or month that corresponds with its name or date to the starting day. If there was no such day in the last month, the time limit expires on the last day of that month[18].

However, no justification can be found for several solutions that are common in the currently binding administrative and court proceedings. This applies to the principle according to which, if the end of the time limit for performing an activity falls on a statutory holiday (possibly also on Saturday), this time limit expires on the next weekday. There is also no possibility of suspending (except for the situation specified in Article 122 para. 6 of the Polish Constitution) or interrupting the running of the time limit, nor can it be restored.

Particularly noteworthy is the method of calculating the end of the term of office of the Sejm in the context of the principle of discontinuation of parliamentary work. It was clearly defined as "the day preceding the assembly of the Sejm of the succeeding term of office" (Article 98 para. 1 of the Polish Constitution). There is, however, a close connection of this point in time with the official date set by the President of the Republic of Poland. The first meetings of the Sejm and the Senate are convened by the President of the Republic of Poland[19], as a rule, "on a day within 30 days following the day of the elections" (Article 109 para. 2 of the Polish Constitution).

VIOLATION OF THE PROCEDURE AND CONTROL OF THE CONSTITUTIONALITY OF THE LAW

The course of the legislative procedure is assessed as part of the procedure before the Constitutional Tribunal, as part of constitutional review[20]. The actual law-making effect is attributed only to judgements stating the non-conformity of the object and patterns of control (including the so-called simple rulings and scope rulings). It consists in eliminating the challenged provision as the editorial unit of

[17] For more on the calculation of time limits and the legal justification of the methods used, see R. Orłowski, *op. cit.*, pp. 315–328.

[18] *Ibidem*, p. 323.

[19] See L. Garlicki, *Komentarz do art. 98 Konstytucji…*, p. 10 and the literature cited therein.

[20] The legal regulation concerning the Constitutional Tribunal was included in Articles 188–197 of the Polish Constitution and in the Act of 30 November 2016 on the Organization and Procedure of Proceedings Before the Constitutional Tribunal (consolidated text Journal of Laws 2019, item 2393).

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a normative act (all legal norms that can be interpreted from a specific provision, in the case of a simple ruling) or a specific legal norm (one of the legal norms that can be interpreted from a specific provision, in the case of a scope ruling)[21].

It is assumed that the judgement of the Constitutional Tribunal resolving a question of law[22] is also universally binding. This means that in accordance with the view established in the science of law that any other court, when examining a case similar to the one in question, should refuse to apply a provision ruled as lacking the conformity to the Constitution[23]. Thus, it can be concluded that the effect does not refer to the aspect of the validity of a normative act, but to the possibility of its application.

The rules of procedure before the Constitutional Tribunal will be of decisive importance for the assessment of the effects of procedural violations in the framework of legislative proceedings. In particular, it concerns the principle of accusatorial procedure and the presumption of the conformity of a normative act to the Constitution.

According to the principle of accusatorial procedure, only entities specified in the provisions of the Constitution[24] are authorized to initiate proceedings. Additionally, when adjudicating, the Tribunal is bound by the scope of the appeal indicated in the application, question of law or constitutional complaint. The scope of the appeal covers the indication of the challenged normative act or its part (specification of the subject of control) and the formulation of the allegation of non-compliance to the Constitution, ratified international agreement or act (indication of the control pattern[25]). The Tribunal examines both the content of such an act or contract as well as the competence and compliance with the procedure required by law to issue an act or to conclude and ratify a contract[26].

The principle of the presumption of constitutionality can be considered in two aspects. On the one hand, it should be equated with the presumption according to which a statute unchallenged with the final verdict of the Constitutional Tribunal should be considered compliant with the constitutional regulation (the system founding rule of the presumption of constitutionality)[27]. On the other hand, the

[21] L. Bosek, M. Wild, *Kontrola konstytucyjności prawa. Komentarz praktyczny dla sędziów i pełnomocników procesowych*, Warszawa 2014, pp. 198, 200–202.

[22] The legal grounds for the court to submit a question of law to the Constitutional Tribunal is Article 193 of the Polish Constitution.

[23] B. Banaszak, *op. cit.*, p. 997 after M. Safjan, *Skutki prawne orzeczeń Trybunału Konstytucyjnego*, „Państwo i Prawo" 2003, no. 3, p. 16.

[24] It is primarily about Articles 191 and 79 of the Polish Constitution.

[25] Article 67 para. 1 and 2 of the Act on the Organization and Procedure of Proceedings Before the Constitutional Tribunal.

[26] Article 68 of the Act on the Organization and Procedure of Proceedings Before the Constitutional Tribunal.

[27] See judgement of the Constitutional Tribunal of 24 February 1997, K 19/96.

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principle of the presumption of constitutionality can be equated with the procedural principle in force in proceedings before the Constitutional Tribunal. The principle is related to the determination of the burden of argumentation in the proceedings before the Constitutional Tribunal and applies to all subjects and patterns of control. It is not about the "obligation" to show that a given act is inconsistent with a hierarchically higher act, but about the procedure of the Constitutional Tribunal in *non liquet* situations, when there are doubts as to the compliance of a normative act with a hierarchically higher act, but they are not serious enough to unequivocally determine the defectiveness of the act under examination[28].

The above-mentioned reservations are extremely important for the assessment of the effects of violation of time limits in the legislative procedure. In a situation where an act has passed the entire legislative procedure, has been published and has become part of the legal order, the identification of any possible defects may only be bindingly ascertained under a procedure specially established for this purpose by the Constitutional Tribunal. Due to the limited number of entities authorized to initiate such proceedings, it may happen that, despite obvious procedural violations in the legislative process, the constitutional review will not be launched. Moreover, any possible defects may go unnoticed during the proceedings before the Constitutional Tribunal. It should be noted, however, that the Tribunal is obliged to thoroughly examine the case, and it examines the correctness of the legislative procedure *ex officio*, regardless of the requests of the participants in the proceedings. Therefore, it should be noted that the effect in the scope of the validity of a normative act will never result from the mere fact of the existence of a defect in the legislative process.

The essence of the constitutional review of the law also determines the control patterns. In the case of an act that is the subject of such control, the provisions of the Constitution of the Republic of Poland will be its control model. Therefore, it can be concluded that only the violation of procedural rules set out in the rules of procedure of the chambers, which will also lead to the violation of constitutional elements of the legislative process[29], or occur with such intensity that it prevents deputies from expressing their views on individual provisions and the entire act[30], in the course of the work of committees and plenary sessions, will be of significant importance.

The position presented above, which can be described as traditional, was firmly established both in the doctrine and in the jurisprudence of the Constitutional Tribu-

[28] Regarding the previous legal status, see L. Bosek, M. Wild, *op. cit.*, p. 95.

[29] A significant violation of the legislative procedure was found to be, for example, a vote in favor of the Senate's amendments (instead of their rejection) and a misinterpretation of the result of voting on these amendments (judgement of the Constitutional Tribunal of 5 October 2017, Kp 4/15), or presentation to the President by the Marshal of the Sejm of a different content than that adopted in the framework of parliamentary work (judgement of the Constitutional Tribunal of 7 July 2003, SK 38/01).

[30] Judgement of the Constitutional Tribunal of 23 March 2006, K 4/06.

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nal. However, attention should be paid to the latest decisions of the Constitutional Tribunal, namely the judgement of 14 July 2020 (Kp 1/19) and the judgement of 14 November 2018 (Kp 1/18). The Tribunal took the position that the violation of the rules of legislative procedure, which had their source in the Rules of Procedure of the Sejm, violated the principle of legality (Article 7 of the Polish Constitution). It was emphasized that by adopting the rules of procedure, the Sejm would self-terminate with the provisions of this act. Therefore, the Sejm should abide by the provisions of the law it has adopted. It does not matter that the chamber has the power to change these regulations at any time by adopting an appropriate resolution. A catalog of conditions has also been formulated that should be considered before considering that a violation of the regulations is also a violation of the Constitution. It is necessary to examine "the importance of the subject matter, the significance of the infringed provisions, the stage of legislative work at which the violation occurred, the effect of any violations as well as the scale and frequency of violations"[31].

However, there are doubts as to the correctness of the adopted control pattern and the possibility of formulating different legal assessments in the face of the same facts (the same violations under the legislative procedure). It was also indicated that the new decisions constitute a significant departure from the previously presented position, which poses a risk of violating legal relations. Many bills came into force despite the defects during the parliamentary stage of the legislative procedure, which had not been thoroughly examined before[32].

SPEED OF LEGISLATIVE PROCEEDINGS

As shown by statistical research on the actual course of legislative proceedings, they may differ significantly in terms of their duration, counted from the moment of the implementation of the legislative initiative, to the moment of their publication in the Journal of Laws[33]. The decisive factor here is the length of the proceedings in

[31] See judgement of the Constitutional Tribunal of 14 July 2020, Kp 1/19; judgement of the Constitutional Tribunal of 14 November 2018, Kp 1/18.

[32] See dissenting opinion of judge of the Constitutional Tribunal M. Muszyński to the judgement of the Constitutional Tribunal of 14 July 2020, Kp 1/19.

[33] It is worth paying attention to the following studies: Z. Gromek, *Przebieg procedury ustawodawczej w Sejmie VIII kadencji – analiza ilościowa*, „Przegląd Sejmowy" 2020, no. 4, pp. 31–62; D. Chrzanowski, W. Odrowąż-Sypniewski, *Analiza projektów ustaw wniesionych do Sejmu II kadencji*, „Przegląd Sejmowy" 1998, no. 2, pp. 31–69; D. Chrzanowski, W. Odrowąż-Sypniewski, P. Radziewicz, *Analiza projektów ustaw Sejmu III kadencji (20 października 1997 r. – 20 października 1998 r.)*, „Przegląd Sejmowy" 1999, no. 1, pp. 79–116; J. Lipski, R. Tymiński, *Analiza projektów ustaw wniesionych do Sejmu w toku całej IV kadencji*, [in:] *Ustawy 2001–2005. Sejm IV kadencji*, ed. T. Muś, Warszawa 2006, pp. 9–64; J. Sokołowski, P. Poznański, *Struktura procesu legislacyjnego w analizie ilościowej*, [in:] *Wybrane aspekty funkcjonowania Sejmu w latach 1997–2007*, eds. J. Sokołowski,

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the Sejm, both in the first stage of the proceedings leading to the adoption of the bill, as well as in the matter of expressing opinions on the Senate amendments. In this regard, there are no binding time limits, understood as the maximum time during which the Sejm would exercise its powers.

Special time limits, specifying the minimum time that should elapse to proceed to a specific stage of the legislative procedure in the Sejm, find their legal basis in the Rules of Procedure of the Sejm. Traditionally, it has been indicated that they are only of an instructional nature, and their possible shortening or extension may not constitute grounds for challenging the legality of the act for formal reasons by the Constitutional Tribunal[34].

As regards the ordinary legislative procedure, the first reading may be held no sooner than on the seventh day following the delivery of the draft bill to the deputies, unless the Sejm or a committee decide otherwise[35]. The second reading may be held no sooner than on the seventh day following the delivery of the committee report to the deputies, unless the Sejm decides otherwise[36]. On the occasion of the proceedings on the Senate's amendments, consideration of the committee report by the Sejm may take place not earlier than the third day from the delivery of the report to the deputies, unless the Sejm decides otherwise[37]. Still, other minimum time limits have been introduced for the processing of bills on amendments to the Constitution and codes[38].

The above-mentioned regulations should be viewed through the prism of the recent decisions of the Constitutional Tribunal. It was in the judgement of 14 July 2020 (Kp 1/19) that the Tribunal decided that the entire act was unconstitutional, as the minimum time limits set out in the Rules of Procedure of the Sejm relevant for amending codes were not met. At the same time, the Constitutional Tribunal indicated that the infringement consisting in proceeding with the bill in an inappropriate manner may be corrected, provided that the appropriate time limits suitable for the correct procedure are observed[39].

When analyzing the above-mentioned regulations, it can be concluded that the ordinary procedure by the Sejm should last no less than 14 days or 17 days if the

P. Poznański, Kraków 2008, pp. 237–280; O. Kazalska, J. Maśnicki, M. Żuralska, *Analiza działalności ustawodawczej Sejmu VI kadencji*, Warszawa 2012; M. Żuralska, A. Brudnoch, K. Dąbrowska, M. Sierzputowska, *Analiza działalności ustawodawczej Sejmu VII kadencji*, Warszawa 2017.

[34] It was indicated by, i.a., L. Garlicki, *Komentarz do art 119 Konstytucji*, [in:] *Konstytucja Rzeczypospolitej Polskiej…*, p. 12; S. Patyra, *Tryb pilny w teorii i praktyce procesu ustawodawczego pod rządami Konstytucji z 1997 r.*, „Przegląd Prawa Konstytucyjnego" 2011, no. 1, p. 77; Z. Gromek, *op. cit.*, p. 47. Otherwise: A. Szmyt, *Uwagi na marginesie trybu pilnego*, [in:] *Regulamin Sejmu w ekspertyzach i opiniach Biura Studiów i Ekspertyz Kancelarii Sejmu*, Warszawa 2001, pp. 229–230.

[35] Article 37 para. 4 of the Rules of Procedure of the Sejm of the Republic of Poland.

[36] Article 44 para. 3 of the Rules of Procedure of the Sejm of the Republic of Poland.

[37] Article 54 para. 5 of the Rules of Procedure of the Sejm of the Republic of Poland.

[38] Articles 86i, 89 and 95 of the Rules of Procedure of the Sejm of the Republic of Poland.

[39] Judgement of the Constitutional Tribunal of 14 July 2020, Kp 1/19.

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Senate adopts amendments to the act. This solution is to guarantee the possibility of active participation of individual deputies in the legislative proceedings. The mere reading of the documents relating to a specific procedure (bill, its justification, committee report) is a time-consuming process. Obviously, in order to meet the procedural requirements, it does not matter whether a given deputy actually got acquainted with these documents or had basic information about the subject of the act at the time of voting.

As practice shows, legislative proceedings may begin and end on the same day. This means that on the same day the right of legislative initiative was exercised and the adopted act was signed by the President. During the eighth term of office of the Sejm, such a situation took place once, while in five subsequent cases the entire procedure was completed in seven days[40]. The first of the indicated acts did not become the subject of proceedings before the Constitutional Tribunal. However, there are doubts about at least two aspects.

The first one relates to the method of calculating constitutional time limits using the conventional method, i.e. in accordance with the principle that the period specified in days begins to run on the day following the day on which a specific event occurred, to which the provisions of law bind the beginning of this period. In our considerations, these would be the following events: 1) submission of the text of the enacted bill to the Senate by the Marshal of the Sejm, after its adoption[41]; 2) submission of the text of the enacted bill to the President by the Marshal of the Sejm, after the end of the parliamentary stage of the proceedings[42]. The issue is whether the next steps were performed after the opening of the time limit for a specific activity, and whether such activity should be given legal effect.

Although there is no clear indication in the text of the Constitution or the regulations of the Sejm and Senate, legal enforceability should also be assigned to such activities that were performed on the same day, if, of course, the event marking the beginning of the time limit actually occurred. So there is no need to wait until the beginning of the next day[43]. Adopting a different view would lead to excessive procedural formalism.

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[40] Z. Gromek, *op. cit.*, p. 39. During one day, the work on the bill included in the Sejm Paper no. 2663 was completed; however, in seven days, the proceedings regarding the bills included in the Sejm Papers no. 10, 12, 793, 886 and 3398 were completed.

[41] Article 121 para. 1 and 2 of the Polish Constitution; Article 52 para. 1 of the Rules of Procedure of the Sejm of the Republic of Poland.

[42] Article 122 para. 1 and 2 of the Polish Constitution; Article 56 para. 1 of the Rules of Procedure of the Sejm of the Republic of Poland.

[43] This is a tendency that has been gradually adopted (not without hesitation) as part of the practice of applying a number of proceedings provided for by law, on the basis of filing appeal by the parties on the same day on which the quest.

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Therefore, in the case of the bill, the proceedings on which were completed within one day, we will not be dealing with violation of the constitutional time limits for legislative proceedings. It should be emphasized once again that "the speed of the legislative procedure in itself cannot constitute a declaration of unconstitutionality"[44]. Such proceedings, however, raise doubts as to guaranteeing deputies, senators and the president the opportunity to read the documents and time for reflection necessary for them to exercise their powers thoroughly.

When analyzing the decisions of the Constitutional Tribunal, one may come to the conclusion that the possibility of taking a position on the bill was guaranteed if during the plenary and committee meetings it was possible to express one's opinion (both on the merits and the procedure), which was confirmed in the report. However, it is hard not to get the impression that in some cases it would be only an apparent option, due to the lack of adequate time to consider the position reported. At the same time, there is no clear and objective criterion for assessing this issue[45].

The speed of legislative proceedings is connected with the so-called urgent procedure and fast-tracked legislation. The first of these legal institutions has its constitutional basis in Article 123 of the Polish Constitution. The Council of Ministers may classify a bill adopted by itself as urgent, with the exception of tax bills, bills governing elections to the Presidency of the Republic of Poland, to the Sejm, to the Senate and to organs of local government, bills governing the structure and jurisdiction of public authorities, and also drafts of law codes[46]. The most important effect of considering the bill as urgent is the shortening of the constitutional time limits for taking a position on the future law by the Senate (14 days instead of 30 days) and the President (7 days instead of 21 days). The Constitution also determines that the regulations of the chambers are to provide for certain differences regarding the legislative procedure concerning the urgent bill.

The aforementioned regulations will introduce several time limits that are to facilitate the procedure and some improvements in the planning of the work or-

[44] Judgement of the Constitutional Tribunal of 23 March 2006, K 4/06.

[45] The large number of legislative proceedings conducted within a given term of office of the Sejm determines that individual deputies and senators may not have an objective opportunity to thoroughly familiarize themselves with the documents relating to each of these proceedings. This means that they are forced to act with confidence in the conclusions of the individual parliamentary committees or clubs to which they belong. On the other hand, they can obtain knowledge about planned legal solutions even before the formal implementation of a legislative initiative by an authorized entity, in a situation where the most important assumptions are widely discussed in the media.

[46] L. Garlicki rightly points out that the exception relating to "laws regulating the system and competence of public authorities" may raise most problems with interpretation. See L. Garlicki, *Komentarz do art. 123 Konstytucji*, [in:] *Konstytucja Rzeczypospolitej Polskiej…*, p. 7.

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ganization of the chambers. First of all, there was not even an instructional time limit for the Sejm to comment on the urgent bill, i.e. to pass a bill or reject a bill[47].

Whereas the so-called fast-tracked legislation is based only on Article 51 of the Rules of Procedure of the Sejm. In fact, the essence of this institution consists in deviating from the minimum time limits for proceedings at the parliamentary stage. Pursuant to the aforementioned provision, in particularly justified cases, the Sejm may shorten the procedure with bills and draft resolutions by: 1) beginning the first reading immediately after receiving the bill or draft resolution by deputies; 2) beginning the second reading immediately after the conclusion of the first reading without referring the bill draft resolution to the committees; 3) beginning the second reading immediately after the receipt by the deputies of a copy of a committee report. There is no equivalent of the quoted provision in the Rules of Procedure of the Senate. This is due to the fact that Senate Rules of Procedure do not use minimum time limits reserved for individual activities in legislative proceedings, so there is no need to introduce exceptions to them. Additionally, the introduction of constitutional maximum time limits for the work of the Senate is sufficiently mobilizing.

The application of the fast-tracked legislation does not violate the norm resulting from Article 123 of the Polish Constitution[48]. One should agree with the view that appropriate cooperation between the most important state authorities may lead to the importance of concluding the legislative procedure faster than in the case of the urgent procedure[49]. It is not surprising then that the urgent procedure is relatively rarely used.

EFFECTS OF VIOLATION OF THE TIME LIMITS FOR SUBJECTS OF THE LEGISLATIVE PROCEDURE AND THEIR RIGHTS (COMPETENCES)

The effects of failure to meet the time limits in the legislative procedure can also be considered through the prism of the effects of the procedural rights of individual participants in the procedure. It is primarily about the answer to the question whether there is a loss of entitlement (competence) to perform a specific action in a specific proceeding with the expiry of the time limit.

There is no doubt as to the fact that the Senate exceeds the constitutional time limit (usually 30 days) for adopting a position on the act results in the loss of the right to adopt amendments or adopt a resolution rejecting the act in its entirety.

[47] This aspect is emphasized in particular by S. Patyra. The author, therefore, questions the real, practical benefits of using the urgent procedure. He points to examples of undoubtedly protracted proceedings against urgent bills at the parliamentary stage. See S. Patyra, *op. cit.*, pp. 77–78.

[48] See judgement of the Constitutional Tribunal of 23 March 2006, K 4/06.

[49] S. Patyra, *op. cit.*, pp. 77–78.

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With the failure to exercise the Senate's rights within a specified period of time, the provisions of the Constitution are bound by a legal fiction – the act is recognized as adopted in the wording adopted by the Sejm[50].

The President, within a specified constitutional period (usually 21 days), is required to sign the adopted bill or exercise his veto right or submit an application to the Constitutional Tribunal initiating preventive control[51]. There is no clear indication of what legal consequences a violation of this time limit by the President would have. It seems, however, that the expiry of the time limit results in the loss of the President's ability to exercise his rights to the act, i.e. to submit a request to the Constitutional Tribunal or to apply the right of veto. However, there would still be an obligation to sign the adopted law. It should be stated that in such a case, the provisions do not formulate any legal fiction, be it assuming that the proposed act is deemed signed or that the President has implicitly exercised his right of veto. There is no doubt that without the act being signed by the President, it cannot be published in the Journal of Laws, and thus the act cannot enter into force.

In the practice so far, it has never happened that the President did not take any action against the adopted bill within his due time. Such a situation may, however, happen in the future, as a result of random events or as a result of a serious political crisis.

In my opinion, the possible signing of the act after the time limit should not make the act unconstitutional. Adopting a different view would lead to a situation in which the President, by omission, dependent solely on his will, could determine the significant defectiveness of each law. Therefore, there would be a ground for its subsequent questioning and elimination from the legal system for formal reasons. This would be contrary to the purpose of Article 122 of the Polish Constitution and would infringe the rights of other participants in legislative proceedings.

The exercise of rights after the expiry of the time limit – the result of the expiry would be its loss within a specific proceeding would always be an act without a legal basis and should be qualified as a material breach of the proceeding. Signing the adopted bill is an obligation, not a right of the President.

The view of the Constitutional Tribunal[52] concerning yet another type of violation of the time limit reserved for the President is controversial. This would take place when there are fewer than 21 days left until the enacted law is passed to the President. In practice, such a situation may occur when the date of entry into force has been specified by indicating a calendar date, while the legislative procedure itself with regard to this act has been delayed. First, it is difficult to show that any

[50] Article 121 para. 2 of the Polish Constitution.

[51] Article 122 of the Polish Constitution.

[52] See judgement of the Constitutional Tribunal of 14 July 2019, Kp 1/19 together with the dissenting opinion of judge of the Constitutional Tribunal M. Muszyński.

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such situation violates the provisions of the Constitution. The President might have had the will to make a decision right away, without waiting for the time limit to end. Secondly, the wording of the law does not affect the powers of the President, who can still exercise his powers within the time prescribed by law.

However, it should be agreed that in some cases this will lead to the defectiveness of the act, in the form of violation of the relevant *vacatio legis*. It should also be borne in mind that an adopted bill with a calendar entry into force may be the subject of a veto or a preventive motion to the Constitutional Tribunal. These procedures also take a certain time. It may therefore turn out that the President will be obliged to sign the adopted bill, even if the date of entry into force specified in it has long expired. Of course, in such a situation, the time limit for the President's decision would not expire, as its course would then be suspended.

It would be worth considering the theoretical possibility of issuing by the Constitutional Tribunal, in similar cases, scope judgements declaring the unconstitutionality of the provision constituting the entry into force of the act, in the scope in which it provides for the validity of the act in the period from the date indicated therein to the date specifically specified in which the act should enter into force while maintaining the correct *vacatio legis*. Such a decision could at the same time ensure the protection of individual rights and save a normative act, the content of which would not raise constitutional doubts. Scope judgements are currently issued in the so-called legislative omissions.

The specific time limit is related to the principle of discontinuity. Its essence is the prohibition of the continuation by the parliament of the new term of office of proceedings not completed in the previous parliamentary term[53]. Of course, there are a number of exceptions[54].

CONCLUSION

As the presented analysis shows, the problem of time limits is an extremely important procedural issue in the legislative procedure. Both the violation of constitutional and statutory time limits may lead to the elimination of the entire normative act from legal circulation. This is evidenced by the latest decisions of the Constitutional Tribunal, which may become a permanent line of jurisprudence in the future, very different from the existing, well-established views. Recognition of the nature of individual time limits and their proper calculation is therefore of decisive importance in the process of legislating and assessing its conformity to the Constitution.

[53] See L. Bosek, *Komentarz do art. 98 Konstytucji, teza 9*, [in:] *Konstytucja RP*, vol. 2: *Komentarz do art. 87–243*, eds. M. Safjan, L. Bosek, Warszawa 2016.

[54] See M. Radajewski, *op. cit.*, pp. 155–170.

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STRESZCZENIE

Celem artykułu jest przybliżenie problematyki związanej z terminami wyznaczonymi poszczególnym organom władzy publicznej (Sejm, Senat, Prezydent RP) na wykonanie określonych czynności w ramach postępowania legislacyjnego. Terminy te należy obliczać według reguł konwencjonalnych, a więc od początku dnia następnego po dniu, w którym nastąpiła czynność, z którą przepisy prawa wiążą rozpoczęcie terminu. Czynność będzie jednak skuteczna również wtedy, gdy zostanie wykonana w tym samym dniu, w którym nastąpiło wspomniane zdarzenie. Naruszenie terminu w postępowaniu ustawodawczym ma zasadnicze znaczenie dla ustawy, jako aktu normatywnego, w zakresie jej obowiązywania. Trybunał Konstytucyjny, w ramach kontroli konstytucyjności prawa, dokonuje także badania prawidłowości postępowania, w którym doszło do jego ustanowienia. Według najnowszego orzecznictwa TK naruszenie terminów minimalnych, wymaganych przy dokonywaniu poszczególnych czynności, które zostały określone jedynie w regulaminie Sejmu, może stanowić samodzielną podstawę do stwierdzenia niekonstytucyjności całej ustawy. Stanowisko to odbiega znacząco od dotychczasowego, ugruntowanego stanowiska w tym przedmiocie. Skutki naruszenia terminów postępowania ustawodawczego można rozważać również na płaszczyźnie uprawnień poszczególnych organów, w ramach konkretnego postępowania. Podpisanie ustawy przez Prezydenta, po upływie konstytucyjnego terminu, powinno zostać uznane jako prawnie skuteczne. Należy rozważyć dopuszczalność wydawania przez Trybunał Konstytucyjny wyroków zakresowych w sytuacjach naruszenia reguł poprawnej legislacji, prowadzących do pominięcia lub skrócenia *vacatio legis*.

Słowa kluczowe: legislacja; postępowanie; termin; Trybunał Konstytucyjny; Sejm; Senat; ustawa