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Summons as a Condition for Effectively Filing a Complaint against Inactivity or Excessive Length of Proceedings: An Assessment of Key Changes in Force Since 1 June 2017

Ponaglenie jako warunek skutecznego wniesienia skargi na bezczynność lub przewlekłe prowadzenie postępowania. Ocena kluczowych zmian obowiązujących od 1 czerwca 2017 r.

ABSTRACT

This study examines the institution of the reminder introduced by the Act of 7 April 2017 amending the Act – Code of Administrative Procedure and certain other acts. The new remedy was intended to effectively reduce instances of failure to issue an act within the prescribed time or of conducting proceedings in a manner clearly contrary to the requirements arising from the principle of expeditious proceedings. In practice, however, the fundamental causes of inaction and delays in the conduct of administrative proceedings have not been eliminated, while new problems have emerged

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– this time related to the structure of the reminder itself. The study aims to assess the functioning of the reminder institution from the point of view of more than seven years of practice in its application and to identify practical problems in this area.

Keywords: reminder; inaction; delay; complaint to the administrative court

INTRODUCTION

This study is dedicated to the institution of the reminder, introduced by the Act of 7 April 2017 amending the Act – Code of Administrative Procedure and certain other acts.[1] Instead of a call to remove the violation of the law, the legislator decided that "before potentially filing a complaint with the administrative court regarding inaction or undue delay of the authority conducting the proceedings or a higher authority (if such exists), the party should signal, through an urging request, that the matter has not been resolved in due time or that – in their opinion – it is being dealt with longer than necessary".[2] Importantly, on this occasion, the legislator ultimately distinguished between two situations: inactivity of the authority and excessive length of the proceedings, the interpretation of which prior to the amendment had given rise to discrepancies in case law[3] and legal doctrine.[4]

As a result of the above, the new institution was intended to effectively reduce cases of failure to issue decisions on time or to conduct proceedings in a manner inconsistent with the requirements arising from the principle of expeditious proceedings. However, in practice, the fundamental causes of inaction and delays in administrative matters have not ceased, and new problems have emerged – this time related to the very structure of the objection. Although the legislator explicitly emphasized that the procedure related to the new means of appeal "should not suspend the consideration of the case", doubts arose regarding the admissibility period for appealing to the administrative court over contentious situations when questioning the agency's sluggishness or the prolonged nature of the administrative proceedings within the legally stipulated timeframes.

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[1] Journal of Laws 2017, item 935.

[2] Sejm RP, VIII kadencja, Uzasadnienie rządowego projektu ustawy o zmianie ustawy – Kodeks postępowania administracyjnego oraz niektórych innych ustaw, Druk nr 1183, https://orka.sejm.gov.pl/Druki8ka.nsf/0/F3388D1AB00B1313C125809D004C3C8E (access: 9.7.2026), p. 24.

[3] Judgment of the Voivodeship Administrative Court in Kraków of 10 May 2017, III SAB/Kr 21/17, LEX no. 2307484.

[4] J. Smarż, *The Admissibility of a Complaint against Inaction and Prolixity Despite the Ending of Administrative Proceedings*, "Studia Iuridica Lubliniensia" 2022, vol. 31(4); eadem, *Bezczynność i przewlekłość postępowania administracyjnego jako rażące naruszenie prawa*, [in:] *Srebrna księga jubileuszowa upamiętniająca XXV-lecie Wydziału Prawa i Administracji*, ed. R.A. Stefański, Warszawa 2022.

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The aim of this study is to assess the functioning of the institution of admonition from the perspective of over seven years of its application and to highlight the practical issues in this area. This is a particularly significant issue, as the absence of appropriate actions by the public administration authority negatively affects the legitimate social interest, leading to a fiction of timely case resolution. In such a situation, it is challenging to develop a new direction in administrative procedure law in the spirit of the universal values of administrative due process, as emphasized by Z. Kmieciak.[5] The analysis of the subject matter is conducted using the dogmatic-legal method.

RESEARCH AND RESULTS

1. The essence of timely handling of administrative matters

The adherence to procedural standards by public administration bodies contributes to strengthening citizens' trust in public authority. In this context, timely resolution of matters is of key significance, as it stems from the principle of expeditious proceedings specified in Article 12 § 1 CAP.[6] This principle concurrently serves as a guarantee for the implementation of the principle of trust in the actions of public administration bodies[7] and is a significant element of the right to good administration[8]. Therefore, the administration's actions should be characterized by proactivity to efficiently and properly address matters.

The stated general principle serves a dual role: it provides guidance for the administrative authority and protects the interests of the citizen and society.[9] Excessive delay in conducting proceedings can lead to negative consequences for the party involved and undermine their trust in the state and its legal system.[10]

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[5] Z. Kmieciak, *Czy nowy kierunek rozwoju prawa o postępowaniu administracyjnym?*, "Państwo i Prawo" 2023, no. 5, p. 18.

[6] Act of 14 June 1960 – Code of Administrative Procedure (consolidated text, Journal of Laws 2024, item 572, as amended).

[7] Article 8 CAP in conjunction with Article 2 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended).

[8] K. Samulska, *Zasada szybkości postępowania administracyjnego w prawie polskim*, Legalis 2017.

[9] J. Smarż, *Nowe zasady ogólne Kodeksu postępowania administracyjnego chroniące interes jednostki w postępowaniu administracyjnym*, [in:] *Ochrona praw jednostki w postępowaniu administracyjnym i podatkowym*, eds. S. Fundowicz, P. Możyłowski, T. Stanisławski, Radom 2018, pp. 15–21.

[10] Judgment of the Voivodeship Administrative Court of 21 March 2019, II SAB/Ol 110/18, LEX no. 2642265.

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As E. Iserzon noted, delays in proceedings can lead to their annulment, as a decision that was significant at a certain time may become irrelevant over time.[11] Therefore, the administrative authority should conduct proceedings efficiently, avoiding unjustified delays, in order to conclude them in the shortest possible time.

Speed and simplicity in the handling of cases by administrative authorities are significant procedural values; however, they must be subordinate to the overarching goal of the proceedings, which is to accurately determine the rights and obligations of the individual. Therefore, the priority cannot solely be a quick resolution of the matter, as this does not constitute an independent or key criterion for assessing the quality of the administrative procedure.[12] Speed cannot overshadow the diligence and care required to establish objective truth.

The confirmation of this position can be found in the case law, which emphasizes that the principle of promptness in proceedings does not authorize the authority to bypass specific stages of the procedure or violate the procedural rights of the parties involved. The legislator clearly stresses that thoroughness in conducting proceedings takes precedence, with speed being a secondary concern.[13] Therefore, adherence to the principle of promptness cannot come at the expense of principles that guarantee the protection of the interests of the parties and other participants in administrative proceedings.[14]

The importance of the principle of promptness in administrative proceedings has been emphasized by the legislator through the introduction of successive legal changes aimed at streamlining this process by "removing existing barriers" and "reducing the time it takes".[15] The most recent amendment in this regard was made by the Act of 7 April 2017. In the justification for this bill, the issue of procedural "lengthiness", "frequent cases of public administration authorities failing to meet designated deadlines for resolving matters", and "excessive formalism" in procedural actions were highlighted.[16]

The legislator underscored that if a party does not receive a decision within the legally prescribed timeframe, the public administration authority falls into a state of inactivity, also referred to as administrative silence. The consequence of this inactivity is a peculiar "state of suspension" for the party, due to the fact that the

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[11] E. Iserzon, [in:] E. Iserzon, J. Starościak, *Kodeks postępowania administracyjnego. Komentarz, teksty, wzory i formularze*, Warszawa 1970, p. 62.

[12] R. Kędziora, *Prawnoprocesowe determinanty sprawnego działania organu administracji publicznej w sprawie administracyjnej*, "Teka Komisji Prawniczej PAN Oddział w Lublinie" 2019, vol. 12(1), p. 104.

[13] Judgment of the Voivodeship Administrative Court in Gliwice of 17 September 2014, I SA/Gl 305/14, LEX no. 1779126.

[14] Resolution of the Supreme Administrative Court of 27 May 1996, OPS 1/96, Legalis no. 40179.

[15] Sejm RP, VIII kadencja, *op. cit.*, p. 1.

[16] *Ibidem*, p. 24.

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matter has not been resolved, which may hinder their ability to exercise their rights. This is an undesirable situation from the perspective of the functioning of public administration. Therefore, the implemented solutions aim to ensure the efficiency and effectiveness of public administration.[17]

2. A reminder as a remedy against excessive length of proceedings and inactivity of the authority

The provisions of the Code of Administrative Procedure aim to prevent delays in administrative proceedings by setting deadlines for the resolution of cases by administrative authorities. They also introduce a system of institutions and sanctions designed to discipline these authorities with regard to timely case handling. Each day of delay corresponds to a postponement in the realization of the principle of the rule of law, hindering the achievement of the goals of administrative proceedings and imposing burdens on the addressees of decisions.[18]

A means of protection against delays in proceedings or inactivity of an authority is the right of a party to submit a reminder, and subsequently to lodge a complaint with the administrative court.[19] These institutions are very important because the principle of speed and simplicity, unsupported by institutional solutions, would not be able to prevent administrative inaction or eliminate it.

The new remedy for appealing against the inactivity of a public administration authority and delays in proceedings replaced the previous complaint to a higher authority and the call to remedy a violation of law in situations where there was no higher authority to address, and it was submitted to the same authority. The purpose of this change was to streamline and expedite administrative procedures.[20] According to the intention of the legislator, a reminder serves to signal to the authority conducting the proceedings that it is violating the principles of timely case handling. According to the justification for the proposed law, a reminder does not constitute a means of appeal in administrative proceedings in the strict sense. Therefore, it should be assumed that this measure serves to initiate incidental proceedings aimed not at resolving the case on the merits, but solely at enabling

[17] A. Wiktorowska, [in:] *Postępowanie administracyjne – ogólne, podatkowe, egzekucyjne i przed sądami administracyjnymi*, ed. M. Wierzbowski, Warszawa 2007, p. 80.

[18] J. Smarż, *Szybkość, prostota i wnikliwość jako determinanty postępowania administracyjnego*, [in:] *Determinanty prawa i postępowania administracyjnego oraz sądowoadministracyjnego. Księga jubileuszowa dedykowana Profesor Aleksandrze Wiktorowskiej*, eds. J. Jagielski, A. Jakubowski, K. Wojciechowska, K. Zalasińska, Warszawa 2024, pp. 13–20.

[19] R. Hauser, M. Wierzbowski (eds.), *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, Legalis 2021, commentary on Article 149.

[20] P. Kobylski, *Instytucja ponaglenia w postępowaniu administracyjnym*, Radom 2021, p. 89.

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a higher authority (or the same authority where no higher authority exists) to verify whether a state of inactivity or excessive length of proceedings has occurred.[21]

As provided for in Article 37 CAP, a party has the right to submit a reminder in two situations: where a case has not been resolved within the time limits specified in Article 35 CAP or in special provisions, which constitutes inactivity of the authority, and where proceedings are conducted for longer than necessary to resolve the case, which indicates delays in proceedings.

At the same time, the legislator defined the inactivity of an authority and the delays in the proceedings conducted by it. This is significantly important from the perspective of the extent of the obligations of the administrative authority in achieving the goal of ensuring the speed of proceedings. Inactivity is the factual state defined by the failure to issue a decision, as it is a state in which a case has not been resolved within the statutory deadline or the deadline indicated in the notification of the failure to resolve the case. On the other hand, delays are defined as a factual state characterized by conducting proceedings longer than is necessary to resolve the case, exceeding the time limits set by law or those indicated in the notification of the failure to resolve the case, issued under Article 36 § 1 CAP.[22]

Thus, a reminder regarding the inactivity of an authority will be possible to submit when the authority exceeded the deadlines and failed to meet the requirements specified by the legislator in Article 36 § 1 CAP. In the case of delays, it will suffice to demonstrate that the proceedings have been conducted "longer than is necessary to resolve the case". This may involve, among other things, the authority performing actions with excessively long intervals or carrying out seemingly unnecessary actions, as well as multiplying evidence activities beyond what is needed based on the essence of the case.[23] The incompetence of the authority, such as undertaking actions and evidential measures that are inadequate to clarify the essential circumstances of the case, may also be recognized as a manifestation of prolonged proceedings.[24]

The purpose of questioning the inactivity of the authority and delays in proceedings is to compel the administrative authority to ensure the resolution of the case.[25] However, achieving this goal relies on different arguments. In cases of alleged inactivity, the party points out that the authority has not adhered to the deadlines

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[21] R. Hauser, M. Wierzbowski (eds.), *Kodeks postępowania administracyjnego. Komentarz*, Legalis 2023, commentary on Article 37.

[22] B. Adamiak, J. Borkowski, *Kodeks postępowania administracyjnego. Komentarz*, Legalis 2024, commentary on Article 37.

[23] Judgment of the Supreme Administrative Court of 15 December 2016, II GSK 5075/16, LEX no. 2227632.

[24] Judgment of the Voivodeship Administrative Court in Gliwice of 16 March 2017, III SAB/Gl 3/17, LEX no. 2276035.

[25] M. Jaśkowska, M. Wilbrandt-Gotowicz, A. Wróbel, *Komentarz aktualizowany do Kodeksu postępowania administracyjnego*, LEX/el. 2024, commentary on Article 37.

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provided for the resolution of the case. In contrast, in the case of delays, the party does not argue that the authority is inactive but contends that despite setting additional deadlines, the proceedings are being conducted ineffectively and inefficiently, causing them to extend longer than necessary for the resolution of the case.

A reminder may only be submitted by a party or a participant in the proceedings acting as a party, meaning a social organization acting in the capacity of a party, or by the prosecutor or the Ombudsman.[26] It must meet the conditions specified by law both in terms of content (Article 63 §§ 2, 3, and 3a CAP) and form (Article 63 § 1 CAP). An essential element of a reminder is its justification (Article 37 § 2 CAP), which is intended to prevent unfounded accusations against the authority. The legislator did not specify the elements of such justification, but it must clearly indicate that, in a given case, there has been inactivity of the authority or delays in the proceedings. The argumentation in cases of inactivity should focus on demonstrating that a decision resolving the case was not delivered to the party within the statutory timeframe.

P.M. Przybysz advocates against the admissibility of lodging a complaint with the administrative court regarding the inactivity of the authority or the delays in proceedings after the conclusion of such proceedings.[27] He argues that this does not violate the right to court (Article 45 § 1 and Article 77 § 2 of the Polish Constitution) nor the right to compensation for damage caused by unlawful actions of public authority (Article 77 § 1 of the Polish Constitution). The author argues that since the party did not submit a reminder regarding inactivity or delays during the proceedings, it thereby accepted this mode of proceeding. Therefore, there are no reasons to consider that inactivity or delays lead to a state of unlawfulness in the conduct of the administration, which should also be combated unconditionally even after the conclusion of the proceedings, without time limits.

J. Wegner-Kowalska presents a different position. She indicates that the possibility of ruling under Article 149 § 1 (3) LPAC[28] arises when, on the day of closing the hearing, there is no state of inactivity of the authority (prolonged proceedings), but such a state existed earlier.[29] In this case, the authority's obligation to act or to determine or recognize rights or obligations arising from legal provisions is unnecessary. This does not mean the complaint is without subject matter or that it is automatically unfounded. The court then has the obligation to determine whether there was inactivity of the administration (prolonged proceedings) before the deci-

[26] Judgment of the Supreme Administrative Court of 27 May 2020, I OSK 2835/19, LEX no. 3036881.

[27] P.M. Przybysz, *Kodeks postępowania administracyjnego. Komentarz aktualizowany*, LEX/el. 2024, commentary on Article 37.

[28] Act of 30 August 2002 – Law on Proceedings Before Administrative Courts (consolidated text, Journal of Laws 2026, item 143, as amended).

[29] J. Wegner-Kowalska, *Nowy wymiar ochrony sądowej w sprawach bezczynności administracji lub przewlekłego prowadzenia postępowania?*, "Państwo i Prawo" 2018, no. 8, p. 67.

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sion was made or actions were taken. When making a ruling under Article 149 § 1 (3) LPAC, the court expresses it in a statement. As the quoted author points out, the sense of the self-sufficiency of the grounds for ruling under Article 149 § 1 (1) to (3) LPAC is that an individual may obtain a ruling as indicated in Article 417[1] § 3 of the Civil Code,[30] regardless of when the inactivity of the administration (prolonged proceedings) occurred. In particular, the court should address a complaint concerning a case resolved after its submission, as well as one submitted after the conclusion of the administrative proceedings.

In principle, a reminder will be submitted to a higher authority through the authority conducting the proceedings, which is obliged to forward it to the higher authority without undue delay, but no later than within seven days of its receipt. If there is no higher authority above the authority conducting the proceedings, then the reminder will be submitted to the same authority.

Along with the reminder, the authority is obliged to provide the necessary copies of the case files. This solution is intended to ensure that exercising the right to submit a reminder does not disrupt the continuity of the proceedings. During the consideration of the reminder, the authority should therefore take actions aimed at concluding the case. Submitting a reminder cannot work to the detriment of the party.

The reminder must be considered within seven days of its submission. If inactivity or delays in proceedings are established, the authority issues a decision requiring the authority handling the case to resolve it within a specific timeframe, provided that the proceedings in question have not been concluded. Additionally, the authority orders the identification of the causes and individuals responsible for the inactivity or delays, and, if necessary, takes steps to prevent similar situations in the future. At the same time, the authority resolves whether the inactivity or delays occurred with gross violations of the law.

There is no right to appeal against the decision made by the authority considering the reminder. A complaint to the administrative court is also not admissible, as the subject of appeal may be the state of inactivity of the authority or delays in the proceedings, but not the position of the authority considering the reminder.[31] A complaint to the administrative court is also not permissible regarding the inactivity of a higher authority that did not respond to a reminder submitted under Article 37 § 1 CAP.[32]

A party has the right to lodge a complaint regarding the inactivity or prolonged conduct of proceedings immediately after submitting a reminder, without waiting

[30] Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2026, item 795, as amended).

[31] Judgment of the Supreme Administrative Court of 27 November 2020, II OSK 244/20, LEX no. 3097831.

[32] Decision of the Voivodeship Administrative Court in Gliwice of 5 June 2009, IV SAB/Gl 21/09, LEX no. 504035.

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for the substantive consideration of the reminder.[33] Therefore, the mere fact of submitting a reminder opens the way for the party to file a complaint. This results from § 2b of Article 53 LPAC, according to which a complaint regarding inactivity or prolonged proceedings can be lodged "at any time" after the reminder has been submitted to the appropriate authority. Therefore, the possibility of filing a complaint is not dependent on whether the reminder has been considered by the higher authority or the outcome of that consideration. The phrase "at any time" used in the cited provision means that such a reminder should be submitted during ongoing administrative proceedings that have not concluded with an appropriate decision.

3. Admissibility of a complaint regarding inactivity or prolonged conduct of proceedings

In recent years, a prevailing view[34] has emerged in the judiciary that, when assessing the admissibility of a complaint regarding both inaction and the excessive length of proceedings by the authority, the manner of resolving a reminder is irrelevant. In this context, its submission, in accordance with Article 53 § 2b LPAC, is a formal prerequisite for bringing a complaint. Generally, it suffices to exhaust the available legal remedies, such as an appeal or, in this case, a reminder, as provided by law. Certainly, this interpretation is supported by the normative phrase "at any time", which requires that the reminder be submitted during the ongoing administrative proceedings before their formal conclusion. Following this line of reasoning, the legislator did not foresee a specific period (as there are no appropriate regulations governing administrative court proceedings) that should elapse between submitting the reminder and filing the complaint with the administrative court. Importantly, the reminder must be submitted no later than the complaint to the administrative court. Moreover, the date of dispatch of the reminder is what matters, not its receipt by the authority. It should be noted that this position is entirely contrary to that which emerged in the context of reminders in the Tax Ordinance[35] – "as long as the authority does not issue a ruling on the matter, the proceedings initiated by the reminder have not concluded, which means that it cannot be reasonably claimed that the legal remedies available to the party have been exhausted. Article 141 of the Tax Ordinance does not specify the form in which the tax authority should act

[33] Judgment of the Supreme Administrative Court of 30 January 2020, II OSK 3092/19, LEX no. 3010527; judgment of the Supreme Administrative Court of 21 January 2020, II OSK 2497/19, CBOSA.

[34] Judgment of the Voivodeship Administrative Court in Wrocław of 28 May 2020, III SAB/Wr 239/20, LEX no. 3111110; judgment of the Voivodeship Administrative Court in Gliwice of 14 March 2024, III SAB/Gl 4/24, LEX no. 3702893.

[35] Act of 29 August 1997 – Tax Ordinance (consolidated text, Journal of Laws 2023, item 2383, as amended).

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when considering a reminder. (…) A complaint regarding inaction or excessive length of proceedings may be effectively lodged until the cessation of those states, that is, until the matter is resolved by the public administration authority through the issuance of a decision, ruling, or another act or the undertaking of actions".[36] This is notably curious since the proceedings before the appellate authority, be it in tax or administrative proceedings, are subject to the principle of adversariality. Consequently, the appropriate authority has the right to consider the reminder and issue a ruling solely based on the instrument triggering "incidental" proceedings. It is the responsibility of the appellate authority to verify whether all related formal conditions have been fulfilled.[37] The decision of this authority does not, of course, conclude proceedings concerning inaction or excessive length of such proceedings; rather, it merely aims to eliminate that inaction or lengthiness.[38]

The above considerations lead to the following reflections. First, the consideration of a reminder does not fall within the catalog of matters specified in Article 3 § 2 (1) to (4) LPAC. It cannot be stated that the decision addressing the reminder should be equated to a decision that is subject to an appeal, or one that concludes the proceedings, or one that resolves the matter at hand. Undoubtedly, filing a reminder does not initiate a new administrative matter and cannot be separated from the case in relation to which the legal remedy was submitted. Additionally, there is no instance procedure regarding the reminder, as occurs with an appeal or a response. Second, the mere consideration of the reminder and issuance of a decision based on Article 37 § 6 CAP does not allow for the "automatic" appeal of that decision to the administrative court because the complaint referred to in Article 3 § 2 (8) and (9) LPAC concerns inaction or excessive length of the ongoing proceedings. In this context, however, another doubt arises concerning the admissibility of a complaint to the administrative court regarding the inactivity of the authority or the lengthiness of proceedings after the issuance of an administrative decision.

W. Chróścielewski believes that the adoption of the former provision of Article 216 § 3 CAP (which stated that a complaint regarding the failure to issue a decision could be lodged at any time after the expiry of the time limit for resolving the matter, until the matter is resolved[39]) would eliminate the aforementioned doubts regarding the rules of administrative proceedings.[40]

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[36] Judgment of the Supreme Administrative Court of 19 July 2013, I FSK 1325/13, LEX no. 1347119.

[37] J. Wegner-Kowalska, *op. cit.*, pp. 54–68.

[38] M. Kotulski, *Ochrona przed bezczynnością i przewlekłością w postępowaniu administracyjnym*, "Samorząd Terytorialny" 2015, no. 6, pp. 67–77.

[39] A. Zieliński, [in:] *Kodeks postępowania administracyjnego. Komentarz*, ed. J. Borkowski, Warszawa 1985, p. 326.

[40] W. Chróścielewski, *W kwestii dopuszczalności zaskarżenia do sądu administracyjnego bezczynności organu administracji już po wydaniu w sprawie decyzji administracyjnej*, "Zeszyty Naukowe Sądownictwa Administracyjnego" 2022, no. 3, p. 22.

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4. The postulate for changing the time frame between submitting a complaint and filing a lawsuit in administrative court

In light of the observations made, it should be assumed that, as a general rule, the inactivity of the authority or the protraction of the ongoing proceedings ends with the resolution of the administrative matter. Under Article 104 § 1 CAP, the public administration authority resolves the case by issuing a decision unless the provisions of the Code provide otherwise. As a result, the date of resolution is determined by the issuance of the decision.[41] It should be noted that the application of Article 53 § 2b LPAC is also influenced by the provisions of the Code of Administrative Procedure. It is not possible to rely solely on a literal interpretation of this provision, as the process of interpreting a legal text is systematic in nature and requires reference not only to the entirety of the regulations contained in a given act but also to the legal system as a whole.[42] However, such an assumption cannot be made under the current legal framework with regard to the excessive length of proceedings.

Interestingly, the doctrine increasingly supports adopting such a view in the context of inactivity – "initiating a prompt does not guarantee that the authority's inactivity will be recognized in this manner. It is not only about the regulation mentioned in Article 37 § 8 of the CAP concerning non-hierarchical prompts, but it pertains to every instance of submitting this legal remedy. There will be no recognition of inactivity if the authority competent to adjudicate on the prompt disagrees with the assertion of the party that the deadline for resolving the matter has been breached. It cannot be ruled out that the prompt will remain unanswered. (…) It follows that, to obtain judicial protection, the complainant would have to immediately file a complaint with the court after submitting the prompt. Only then would they avoid exposing themselves to a decisive procedural action by the authority in the form of issuing a decision".[43] Without a doubt, as it stands, both with respect to complaints about inactivity or the protraction of proceedings, the deadline mentioned in Article 53 § 1 LPAC cannot be applied, as the legislator, using the normative phrase "at any time" in Article 53 § 2b LPAC, sought to emphasize the state of affairs existing on the date of filing the complaint, which violates the timely resolution of the matter.

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[41] R. Hauser, *Terminy załatwiania spraw w k.p.a. w doktrynie i orzecznictwie sądowym*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1997, no. 1, p. 3.

[42] T. Stawecki, *O praktycznym zastosowaniu hermeneutyki w wykładni prawa*, [in:] *Teoria i praktyka wykładni prawa*, ed. P. Winczorek, Warszawa 2005, p. 100; J. Starościak, *Prawne formy działania administracji*, Warszawa 1973, pp. 155–156.

[43] J. Wegner, *Skarga na bezczynność po zakończeniu postępowania administracyjnego. Glosa do uchwały NSA z dnia 22 czerwca 2020 r., II OPS 5/19*, "Glosa" 2021, no. 1, p. 117.

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However, it is difficult to accept the current state of affairs, considering the standards for remedying harm caused by public authorities enshrined in Article 77 § 1 of the Polish Constitution,[44] especially since the higher authority is obligated to examine the prompt within seven days of receiving it from the authority conducting the proceedings. If the subject of the review in the proceedings initiated by filing a complaint about inactivity or protracted proceedings is the assessment of whether the authority is obligated to issue an act or take measures to conclude the proceedings, or alternatively to determine whether the authority issued such an act or took that action within the appropriate time frame, then the weekly lapse of time for transmitting and examining the prompt does not seem particularly burdensome for the complainant. Although the practice of applying the law in most cases has led to a situation where a prompt submitted during the running of the deadline for resolving the matter does not provide grounds for rejecting the complaint, obligating the court to assess it substantively,[45] the way Article 53 § 2b LPAC is applied, it treats the content of Article 52 § 2 LPAC as a formal requirement that bears no significance for the participants in the proceedings, and subsequently for the court itself.

De lege ferenda, one should advocate for a legal construction that would establish a clear premise for submitting a complaint about the inactivity of the authority or the protraction of proceedings in cases where, despite filing a prompt, the matter has not been resolved with the issuance of a decision within the appropriate timeframe. Since the length of time that must elapse between submitting a prompt and filing a complaint with the administrative court is of no significance – because the provisions on administrative court proceedings do not foresee such a condition – there is a clear understanding of the postulate to repeal §§ 4 and 5 of Article 37 CAP regarding the time for transmitting the prompt and its examination. Generally, one can conclude that examining a prompt regarding inactivity or protracted proceedings by the public administration authority, at the moment when the court assesses the complaint in this respect, is unnecessary and constitutes merely excessive legal formalism. As it stands, the accepted legal construction regarding the time for substantive examination of the prompt by a higher authority does not even encourage the authority conducting the case to conclude it.

[44] M. Safjan, *Odpowiedzialność odszkodowawcza władzy publicznej (po 1 września 2004 r.)*, Warszawa 2004, p. 42.

[45] Judgment of the Supreme Administrative Court of 17 August 2023, I OSK 1524/21, LEX no. 3600517.

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DISCUSSION AND CONCLUSIONS

The amendment made to the Code of Administrative Procedure in 2017 aimed once again to simplify administrative procedures and bring authorities closer to citizens in the spirit of deepening trust in public authority. However, there are concerns regarding the scale of doubts associated with it. The attachment to a literal interpretation of the law has made the belief of J. Barnes that "the current sources of law governing administrative proceedings can be numerous and heterogeneous, all the more pertinent".[46] After all, the intended remedy for complaints was to provide, in its "constructive simplicity", an effective means for the party to signal issues if the authority failed to meet its obligations on time, at least hoping for a swift response from the court. This is especially relevant considering that the catalog of potential administrative cases becomes more extensive each year.

The interpretative issues discussed above illustrate not so much a lack of efficiency within the state apparatus as a deteriorating quality of law. The circumstances described in the article do not contribute to resolving systemic problems. The seemingly simple legal structure has resulted, on the one hand, in citizens becoming increasingly distant from the specialized and professional staff of public administration authorities, while, on the other hand, necessitating further amendments to the law. This situation, however, is inconsistent with the stability expected not only by administrative authorities and the entities subject to their actions, but also by the courts.

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ABSTRAKT

Opracowanie poświęcone jest instytucji ponaglenia wprowadzonej ustawą z dnia 7 kwietnia 2017 r. o zmianie ustawy – Kodeks postępowania administracyjnego oraz niektórych innych ustaw. Nowy środek zaskarżenia miał skutecznie ograniczyć przypadki braku wydania aktu w terminie czy też prowadzenia postępowania w sposób jawnie sprzeczny z wymogami wynikającymi z zasady szybkości postępowania. W praktyce jednak zasadnicze przyczyny bezczynności i przewlekłości w prowadzeniu spraw administracyjnych nie ustały. Co więcej, pojawiły się nowe problemy, tym razem związane z samą konstrukcją ponaglenia. Celem artykułu jest ocena funkcjonowania instytucji ponaglenia z punktu widzenia ponad siedmioletniej praktyki jej stosowania oraz wykazanie problemów praktycznych w tym zakresie.

Słowa kluczowe: ponaglenie; bezczynność; przewlekłość; skarga do sądu administracyjnego