**Jacek Jaśkiewicz**
ORCID 0000-0003-2934-9858
Jacob of Paradies University

# Judicial control of the effectiveness of activities related to public administration

**Abstract**

Legal procedures in Europe must comply with the principles of procedural fairness. These rules include a set of conditions ensuring real, fast and effective consideration of the case in accordance with guarantees stipulated under Article 6 and Article 13 of the Convention for the Protection of Human Rights, taken by jurisprudence of the European Court of Human Rights.

The article presents the characteristics of Polish court proceeding in the scope of enforcing the effectiveness of public administration activities in the light of these requirements. Legal remedies to prevent tardiness of administration actions as well as discipline efficiency and speed of national administrative proceedings within this system were also discussed.

**Keywords:** judicial control, effectiveness of public administration

**1.** Organisation of institutions for legal protection and decision-making procedures in which litigations are conducted are diverse. The Polish legal system features a system which is referred to as the adjudication system. Entrusting an entity equipped with relevant authority competences, acting pursuant to codified procedural regulations, with settlement of a regulatory legal position or litigation shall be recognised as a distinctive feature of the system[1]. The adjudication procedure prevails with respect to all national judicial proceedings: civil proceedings, criminal proceedings and proceedings before administrative courts. Nonetheless, the aforesaid proceedings are characterised by differences related to organisation concerning the cognitive process of factual

[1] Four main types of procedures are distinguished within the doctrine: contractual, mediation, arbitration and adjudication; L. Morawski, *Główne problemy współczesnej filozofii prawa. Prawo w toku przemian* (*The Main Issues of the Modern Philosophy of Law. Law under the Transformation Process*), Warsaw 2005, p. 213.

circumstances which shall be the basis for settlement. In this respect, the national procedures are constructed basing on one of two competitive approaches: the adversarial model or the inquisitorial model.

The adversarial litigation is based on the principles of party disposition and principles of adversarial process. The first principle expresses a competence, to which the litigants are entitled, to exercise (dispose of) substantive laws or procedural laws. The adversarial process, on the other hand, is considered with respect to obligations of the litigants related to preparation and presentation of the litigation material (proceedings material), as well as proving statements of claim.

As far as the adversarial proceedings are concerned, the procedure for recognition of litigations shall correspond to properties or nature regarding the phenomena which are the reason why the aforesaid litigations have arisen. The principles of adversarial proceedings are based on the assumption saying that if an individual is entitled to exercise specific rights in their own interest, only that individual shall decide if they wish to protect this right and by means of what remedies. A representative example of this model is demonstrated by the structure of rights and obligations of the parties to civil proceedings.

With respect to the inquisitorial model, in turn, the examination proceedings are based on the ex officio principle, which means that a competent authority shall carry the burden of evidence for establishing findings of fact ex officio. When it comes to the administrative procedure, the objective of the competent authority is to collect all information of material importance in a particular matter (principle concerning completeness of evidentiary proceedings). Therefore, the competent authority shall seek for sources and evidence and shall review and verify the factual statements issued by the parties.

**2.** Regardless of the model configuration of a particular procedure, it is deemed that each procedure shall comply with the requirements referred to as the principle of procedural justice. Stable, comprehensible and predictable legal regulations are considered to comply with the aforesaid standards (principle of legal certainty and principle of confidence in applicable law). Moreover, the standards also include procedures ensuring real access to court to an individual, devoid of formal or economic limitations, comprehensive and meticulous examination of the circumstances which are relevant to resolve a litigation, as well as procedures which shall guarantee equality of 'arms' and a right to present arguments to litigants. Out of the aforesaid legal regulations, the regulations protecting human rights and civil rights, expressed in international agreements, pacts and treaties, are deemed to be of major significance. Within this context,

the provision stipulated by article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms[2] expresses a fundamental principle of procedural justice, namely the right to an effective remedy. The concept underlying this principle provides for establishing, at a national level, a guarantee for an effective remedy based on the grounds of infringement of the rights and freedoms set forth in the Convention. The provision is of universal nature as it refers to all rights and freedoms guaranteed by virtue of the Convention and simultaneously, it is of accessory nature, complementing the scope of protection arising out of particular provisions stipulated under the Convention.

The terms with which an effective means of appeal (legal remedy) shall comply are specified within the framework of judicial decisions of the European Court of Human Rights. Exercising such remedy is deemed to be directly dependent on an individual's decision aiming at preventing from actions (inaction) inflicting damage to the rights protected under the Convention, particularly capable of inflicting harm. The Convention does not directly specify which remedy shall be deemed effective, nor does it require that the remedy be a single remedy. In fact, the provision is interpreted and applied in order to commit the signatory states to the convention to introduce, within the framework of the national law, remedies which shall secure execution of the provisions under the Convention without the necessity to commence proceedings before the Court.

Consequently, the guarantees stipulated under Article 13 of the Convention shall be of complementary nature towards the national system of legal protection. Thus, commencing proceedings before the Court shall require that claimants exercise all means of appeal stipulated under the national law. The contracting states shall be afforded some discretion as to the manner in which they are to ensure remedy of violation provided that the requirements of the convention are observed and complied with. The required legal remedy must be effective in practice, whereas the scope and types of legal remedies to be guaranteed shall vary depending on the nature of infringed right or protected right[3].

It is deemed that an effective means of appeal shall allow for controlling if the decision to be challenged was compliant with the law and was duly substantiated by means of a material statement of reasons. This shall not be equivalent, according to the Court, to a guarantee of reaching a favourable settlement adjudication. Nonetheless, should the competent authorities to examine a case deem a request for protection to be reasonably substantiated or justified, they

[2] https://www.echr.coe.int/documents/convention_eng.pdf [accessed on: 25.05.2021]

[3] Case Menteş and Others v. Turkey, 23186/94, http://hudoc.echr.coe.int/eng?i=001-58206 [accessed on: 25.05.2021].

shall hold proper competences to issue a relevant decision. The Court emphasised that the provisions stipulated under Article 13 of the Convention shall guarantee availability of a legal remedy at a national level in order to ensure that it is applied and, consequently, to declare non-compliance with the content of the rights and freedoms included in the convention, regardless of the form in which they may be protected within the framework of the national legal order. Nonetheless, the provision cannot reasonably be interpreted so as to require a remedy in domestic law in respect of any supposed grievance under the Convention that an individual may have[4]. Should a domestic legal remedy (or a group or such legal remedies) result in obtaining specific relief in respect of the alleged breaches of the provisions stipulated under the Convention, intervention of the Court shall not be necessary any longer. Yet, failure to meet this condition shall be deemed as lack of the requisite accessibility and effectiveness[5].

The Court appears to pay special attention to 'quality' of domestic remedies. Moreover, the Court requires that the aforesaid remedies be predictable. Nevertheless, it is emphasised that although Article 13 of the Convention requires that any individual who considers themselves injured by a measure allegedly contrary to the Convention should have a remedy before a national authority in order to have their claim decided or to obtain redress. That provision does not, however, require the certainty of a favourable outcome[6].

**3.** The structure of legal remedies intended to enforce effectiveness of public administration activities is strictly related to organization and efficiency of legal proceedings. Similarly, enforcement of a court judgment, within the context of the right protected by virtue of Article 6 and Article 13 of the Convention, is understood as an integral part of entire administrative proceedings. As emphasised numerous times by the European Court of Human Rights, acquiescence to occurrence of the situation, within the framework of the internal legal order, where court judgements are ignored by public administration organs is non-compliant with the principles of correct functioning of the system of justice. As a consequence, providing internally effective judicial protection is not sufficient. Thus, it is necessary to provide administrative courts with instruments enabling to force correct operation of public authorities. Nowadays, this kind of 'external' system for controlling public administration seems to be a basic criterion

[4] Case Boyle & Rice v. the United Kingdom, 9659/82, http://hudoc.echr.coe.int/eng?i=001-57446 [accessed on: 25.05.2021]

[5] Case Čonka v. Belgium, 51564/99, http://hudoc.echr.coe.int/eng?i=001-60026 [Case Boyle & Rice v. the United Kingdom, 9659/82, http://hudoc.echr.coe.int/eng?i=001-57446 [accessed on 25.05.2021]

[6] Case Amann v. Switzerland, 27798/95, http://hudoc.echr.coe.int/eng?i=001-58497 [Case Boyle & Rice v. the United Kingdom, 9659/82, http://hudoc.echr.coe.int/eng?i=001-57446 [accessed on: 25.05.2021]

for measuring the operation of the national system of justice with respect to administrative law. The idea of community administration includes also ensuring practical enforceability of law. Therefore, institutions or legal remedies occurring in particular member states shall take this recommendation into account[7].

**4.** The provision of Article 78 of the Constitution of the Republic of Poland stipulates that each party shall have the right to appeal against judgments and decisions made at first stage (court of first instance) and that exceptions to this principle and the procedure for such appeals shall be specified by statute (Act of Parliament). The provision of Article 176 of the Constitution stipulates, on the other hand, that court proceedings shall have at least two stages (two-instance procedure), whereas the organisational structure and jurisdiction, as well as procedure of the courts shall be specified by statute. This means that the constitutional standards do not order that a specific model concerning means of appeal be introduced, thereby transferring the issue to the statutory regulation.

The types of legal remedies adopted within the framework of the Law on Proceedings before Administrative Courts[8] are adjusted to systemic specificity with respect to objectives and functions carried out by administrative courts. Pursuant to Article 184 of the Constitution, the Supreme Administrative Court and other administrative courts shall exercise, to the extent specified by statute, control over the performance of public administration. Such control shall also extend to judgments on the conformity to statute of resolutions of organs of local government and normative acts of territorial organs of government administration. Supervision of courts over execution of statutory powers by public administration shall be exercised solely on the basis of conformity to law[9]. Hence, the basic objective concerning control of administrative court shall be reinstatement of conformity to law, disrupted by a faulty administrative decision[10].

The controlling competence of administrative court is therefore tantamount to assessment pertaining legality of functioning of a public administration organ with respect to three aspects concerning application of substantive law,

---

[7] E. Schmidt-Aßmann, *Ogólne prawo administracyjne jako idea porządku. Założenia i zadania tworzenia systemu prawnoadministracyjnego* (*General Administrative Law as an Idea of Order. Assumptions and objectives concerning establishment of Legal and Administrative System*), Warsaw 2011, p. 513.

[8] Act of 30 August 2002 - Law on Proceedings before Administrative Courts, consolidated text, "Journal of Laws" 2019, item 2325, hereinafter referred to as PBAC.

[9] Further described in M. Jaśkowska, *Właściwość sądów administracyjnych* (*zagadnienia wybrane) (Jurisdiction of administrative courts (selected issues)*), [in:] *Koncepcja systemu prawa administracyjnego* (*A concept of the Administrative Law System*), edited by J. Zimmermann, Warsaw 2007, p. 565.

[10] Cf. T. Woś, *Prawomocność decyzji administracyjnych* (*Legal validity of Administrative Decisions*), „Przegląd Prawa Publicznego" 2008, nr 5, p. 41.

procedural law and system provisions[11]. Although administrative courts do not assess purposefulness or legitimacy of administrative acts, it is pointed out that the solution complies with constitutional and international standards[12].

Proceedings before administrative courts are based on an adversarial litigation approach. Accomplishment of this objective is ensured under provisions which shall guarantee to parties participation in proceedings, access to proceedings records and ability to express an official opinion, both on an unsolicited basis and in response to an opinion of other parties. A significant aspect of this model is the principle of equality expressed under Article 32 of PBAC, pursuant to which each party to the proceedings shall be provided with identical legal remedies and identical possibilities of applying such legal remedies by undertaking relevant procedural acts[13]. Such structure of the procedure results in a change of position of the organ, which acts as an entity settling a case on an executive power basis within the framework of the administrative proceedings. As far as court and administrative proceedings are concerned, in turn, the position of an organ whose action is the grounds for a complaint shall be equal to the position of the claimant, being one of two opposite parties to court and administrative proceedings, holding identical procedural powers[14]. Nonetheless, the principle is modified by the provisions permitting participation of entities others than the claimant in the proceedings and allowing the court to undertake relevant actions, affecting the course of the proceedings, ex officio.

Proceedings before administrative courts include, however, an essential element of formality, arising out of the obligation to control the legality of an appealed act or action beyond charges and proposals of the complaint (art. 134 §1 of PBAC), imposed on the court, which means that rules of proof typical of the Code of Civil Procedure are subject to considerable impairment, particularly the rules of proof associated with obligation of proof and burden of proof.

**5.** A basic legal remedy to initiate proceedings before administrative court is a complaint. Pursuant to Article 52 §1 of PBAC, a complaint may be lodged upon exhaustion of means of appeal should these means of appeal served the claimant within the framework of proceedings before a competent authority in

[11] A. Kabat, *Prawo do sądu jako gwarancja ochrony praw człowieka w sprawach administracyjnych* (*Right to a trial as a warranty of human rights protection in administrative cases*), [in:] *Podstawowe prawa jednostki i ich sądowa ochrona* (*Basic Rights of an Individual and Court Protection of such Rights*), Warsaw 1997, p. 231.

[12] Resolution of the full bench of the Supreme Administrative Court of 26 October 2009, I OPS 10/09, ZNSA 6/2009, item 94.

[13] B. Adamiak [in:] B. Adamiak, J. Borkowski, *Postępowanie administracyjne i sądowoadministracyjne* (*Administrative Proceedings and Court and Administrative Proceedings*), Warsaw 2008, p. 388.

[14] cf. Resolution of the Supreme Administrative Court of 15 December 2004, FPS 2/04, ONSAiWSA No. 1/2005, item 1.

the case, unless the complaint is lodged by prosecutor, Ombudsman for Civil Rights or Ombudsman for Children Rights. Exhaustion of means of appeal shall be understood as a situation where a party is not entitled to exercise any means of appeal, such as a complaint, appeal or petition for judicial review, stipulated under the Act (Article 52 §2 of PBAC). A party to the proceedings shall therefore have a right, rather than obligation, to exercise the complaint.

Efficiency of judicial review is strictly connected with establishment of proper legal remedies concerning not only substantive resolution of cases by administration, but also with ensuring reasonable timeframe of administrative proceedings or effective execution of a decision issued within the framework of the proceedings[15].

Control and review of public administration activities, exercised by administrative courts, includes also judgment with respect to cases concerning inaction of organs or excessive duration of proceedings in the cases stipulated under Article 3 §2, items 1-4a of PBAC, and in other cases only when stipulated under a specific act. Jurisdiction of administrative courts in such cases applies therefore to failure to undertake acts or actions, required by law, with respect to individual cases within the specified timeframe by public administration organs.

With respect to a complaint concerning inaction of the authority, the subject of judicial review shall not be a specific act or action of the public administration organ, but failure to undertake such act or action in the event that the organ shall undertake an action in a particular form and within the deadline specified by law. Lodging a complaint in this case is justified not only due to failure to meet the deadline for resolution of the case, but also refusal to issue an act despite a statutory obligation in this respect even if the organ erroneously considered that resolution of the case shall not require issuing an act[16].

It is deemed that a complaint against inaction of an organ shall be a derivative of a complaint against specific forms of the organ's actions, i.e. shall be permissible solely within the limits under which a complaint to administrative

[15] See J. Chlebny, *Standardy Rady Europy i Europejskiego Trybunału Praw Człowieka w procedurze administracyjnej i sądowo administracyjnej* (*Standards of the Council of Europe and the European Court of Human Rights within administrative proceedings and court and administrative proceedings*), [in:] *Postępowanie administracyjne w Europie* (*Administrative Proceedings in Europe*), edited by Z. Kmieciak, Warsaw 2010, pp. 31-42.

[16] B. Adamiak [in:] B. Adamiak, J. Borkowski, *Kodeks postępowania administracyjnego. Komentarz* (*Code of Administrative Proceedings. Commentary*), Warsaw 2012, p. 311; G. Łaszczyca [in:] G. Łaszczyca, Cz. Martysz, A. Matan, *Kodeks postępowania administracyjnego. Komentarz* (*Code of Administrative Proceedings. Commentary*), vol. I, Warsaw 2013, p. 626; P. Przybysz, *Kodeks postępowania administracyjnego. Komentarz* (*Code of Administrative Proceedings. Commentary*), Warsaw 2006, pp. 177-178; A. Wróbel [in:] M. Jaśkowska, A. Wróbel, *Kodeks postępowania administracyjnego. Komentarz* (*Code of Administrative Proceedings. Commentary*), Warsaw 2011, p. 452).

court against administrative decisions, specific decisions, as well as acts and actions concerning public administration related to granting, acknowledging or recognising a right or obligation arising out of law regulations shall serve, as well as in the event of failure to issue individual interpretation of taxation law in writing[17].

The subject of control or review in the event of inaction shall not be a specific act or action of an administration organ, but a lack of such act or action should the organ be obliged to undertake action in the form and within the deadline specified by provisions of public procedural law. Both of the aforesaid scopes of control or review (legality of action or state of inaction) are constructed on a separate basis and may not be subject of the same court and administrative proceedings. It is therefore deemed that the court adjudicating in respect to a complaint against inaction of an organ or excessive duration of the proceedings shall not be entitled to determine the direction or prerequisites of resolving a particular case by an administrative organ. A judgment in such case may not concern issues affecting substance of future act or action[18], whereas the scope of inaction (excessive duration) shall be determined by the scope of applying regulations stipulating administrative proceedings in a particular case[19].

**6.** From the perspective of efficiency of public administration activities, the instruments enforcing or sanctioning events concerning tardiness of administration actions appear to be of major importance. Pursuant to Article 149 of PBAC, an administrative court, allowing a complaint against inaction or excessive duration of proceedings by organs with respect to cases stipulated under Article 3 §2, items 1-4a of PBAC, shall oblige the organ to issue, within a specified deadline, an act or interpretation or to perform an action or to acknowledge or recognise a right or obligation arising out of law regulations.

The provision has been amended three times within the last two years in relation to its original wording[20]. The legal remedies, introduced to administrative

[17] Decision of the Supreme Administrative Court of 4 April 2012, II GSK 1324/12 and of 17 July 2012, I OSK 1620/12 (available at the website of the Supreme Administrative Court).

[18] cf. A. Kabat [in:] B. Dauter, B. Gruszczyński, A. Kabat, M. Niezgódka-Medek, *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz* (*Proceedings before Administrative Courts. Commentary*), Warsaw 2009, p. 398.

[19] M. Miłosz, *Bezczynność organu administracji publicznej w postępowaniu administracyjnym* (*Inaction of a Public Administration Organ within the Framework of Administrative Proceedings*), Warsaw 2011, p. 110.

[20] Three subsequent amendments introduced by:

- Art. 2, clause 1 and 7 of the Act of 3 December 2010 on amendment to the act 'Code of Administrative Procedure' and act 'Law on Proceedings before Administrative Courts', "Journal of Laws" 2011, No. 6, item 18, as amended), effective from 11 April 2011.
- Art. 14, clause 2 of the Act of 20 January 2011 on material liability of public officials for flagrant violation of law, "Journal of Laws" 2011, No. 34, item. 173, effective from 17 May 2011.

proceedings and court proceedings, which discipline efficiency of proceedings and claiming damages for excessive duration of proceedings arise out of judicial decisions of the European Court of Human Rights, which indicated on numerous occasions that executing the principle of case resolution without unreasonable delay require effective remedies to combat such excessive duration of proceedings, as well as possibility of claiming redress of damage arising from excessive duration of proceedings[21].

In spite of being unquestionably necessary, the changes provoked, however, a heated and critical discussion. Modifying the previous structure of Article 149 of PBAC (and accordingly the provision of Article 37 of the Code of Administrative Procedure[22]) and adding 'types of excessive duration', unknown within the previous legal circumstances, the legislator did not modify a legal definition of both these terms. Justification of the grounds for the amendment indicated that the change aims at providing parties to administrative proceedings with a right to challenge (contest) not only inaction of organs, but also excessive duration of the proceedings.

**7.** According to the current view, 'excessive duration of proceedings' shall be understood as incorrect action of an organ, characterised by performing an activity with excessive time intervals or performing an activity ostensibly, whereas inaction shall be understood as failure to perform any activities[23]. The concept of 'excessive duration of proceedings' shall therefore involve tardy, inefficient and ineffective actions of an organ when the case might have been handled, settled or resolved within a shorter period of time. An instance of excessive duration shall also include, under specific circumstances, a state in which unreasonable and unjustified failure to undertake a suspended proceedings or unreasonable extension of a deadline to handle or settle the case under Article 36 of the Code of Administrative Procedure occur[24].

- Art. 1, clause 1 of the Act of 25 March 2011 on amendment to the act 'Law on Proceedings before Administrative Courts' and act on amendment to the act 'Code of Administrative Procedure' and act 'Law on Proceedings before Administrative Courts', "Journal of Laws" 2011, No. 76, item 409, effective from 12 July 2011.

[21] cf. Judgments of the ECHR of 15 October 1999 concerning case 26614/05 Humen v. Poland; of 30 October 1998 concerning case 27916/95 Podbielski v. Poland; of 26 October 2000 concerning case 30210/96 Kudła v. Poland and of 6 May 2003 concerning case 52168/99 Majkrzyk v. Poland.

[22] Act of 14 June 1960 on Code of Administrative Procedure [CAP], "Journal of Laws" 2013, item 267, as amended.

[23] Further described in Z. Kmieciak, *Przewlekłość postępowania administracyjnego* (*Excessive Duration of Administrative Proceedings*), PiP No. 6/2011, pp. 30-43.

[24] Ibid., p. 33; see also M. Miłosz, (as above), pp. 289-290; and J. Drachal, J. Jagielski, R. Stankiewicz [in:] *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz* (*Proceedings before Administrative Courts. Commentary*), edited by R. Hauser, M. Wierzbowski, Warsaw 2011, pp. 69-70; judgment of the Voivodeship Administrative Court in Łódź of 9 October 2012, II SAB/Łd 108/12; judgment of the Voivodeship Administrative Court in Białystok of 17 April 2012, II SAB/Bk 15/12; judgment of the Voivodeship Administrative Court in Poznań of 25 August 2011, II SAB/Po 42/11; judgment of the Voivodeship Administrative Court in Cracow of 11 January 2012, II SAB/Kr 143/11.

Pursuant to amended Article 149 §1 and §2 of PBAC, allowing a complaint against inaction or undertaking excessive duration of proceedings (Article 3 §2, clause 8 of PBAC) shall consist not only in obliging an organ to issue an act within a specified deadline, but also in settling (taking a decision) if inaction or excessive duration of proceedings involved flagrant violation of law and in imposing a fine. Under the previous legal circumstances, an institution of complaint against inaction was primarily justified by the need to enforce action of an organ. Other objectives of judicial control or review in this respect were recognised as incidental.

In this respect, two competing views had already existed with respect to the doctrine under the previously applicable law. In accordance with the former instance, when, upon lodging a complaint against inaction of an administrative organ to administrative court, the organ issued an act or undertook actions, court and administrative proceedings became devoid of purpose, which gave basis to remit the proceedings pursuant to Article 161 §1, item 3 of PBAC[25]. In accordance with the latter instance, when a state of inaction occurred while lodging a complaint, its cessation prior to the date of adjudication (passing a judgment) as a result of the organ's action did not result in remission of court proceedings[26].

The former stance has become established within the framework of judicial decisions[27]. The content of amended Article 149 of PBAC re-prompted a question if it was still valid. Although enforcement of action of an organ remains the basic objective of judicial review concerning a state of inaction, the second sentence with the following wording: 'Simultaneously the court shall declare if inaction or excessive duration of proceedings have occurred on a flagrant violation of law basis' was added under the amendment to Article 149 of PBAC of 20 January 2011. On the other hand, §2 with the following wording: 'The court referred to in §1 may also adjudicate ex officio or upon the request of a party to impose a fine towards an organ in the amount stipulated under Article 154 §6 of PBAC' was added to the provision by means of amendment of 25 March 2011.

The intention in the amendments was to correlate the provisions stipulating judicial control or review concerning efficiency of administrative proceedings with the provisions stipulating liability of public officials for

[25] cf. M. Jagielska, J. Jagielski, R. Stankiewicz, as above, p. 537 and J. P. Tarno, *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz* (*Proceedings before Administrative Courts. Commentary*), Warsaw 2006, p. 369.

[26] T. Woś [in:] T. Woś, H. Knysiak-Molczyk, M. Romańska, *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz (Proceedings before Administrative Courts. Commentary)*, Warsaw 2009, pp. 609-610.

[27] Resolution of the Supreme Administrative Court of 26 November 2008, OPS 6/08, ONSAiWSA 4/2009, item 63.

infringement of law and to connect liability of a particular public official with an instance of gross inaction or excessive duration of proceedings[28]. This kind of qualification shall occur by means of a binding judgment of administrative court (Article 149 §1, sentence 1 of PBAC or Article 154 §2 of PBAC).

Thus, the functional context of the indicated amendments points out that enforcing action of an organ shall not be an exclusive objective of judicial control or review concerning inaction or excessive duration of proceedings. Similarly, imposing a fine referred to in the provision stipulated under Article 149 §2 of PBAC shall not be treated as securing accomplishment of the main objective, but as a sanction for contributing to a state of inaction or excessive duration of proceedings by the organ. Administrative court is, in fact, obliged to examine occurrence of a state of 'gross' inaction or excessive duration of proceedings also in the event that the organ has issued an act or performed an action between the date of lodging a complaint and the date of issuing a judgment.

From the perspective of function and purpose of a court judgment, desistance from examining the prerequisites referred to in the provision stipulated under Article 149 §1, sentence 2 of PBAC would prevent from claiming damages (judicial redress) as per the regulations stipulated by the act on material liability of public officials for flagrant violation of law. Therefore, judicial control or review under the requirements of Article 13 in conjunction with Article 6 of the Convention would turn out to be incomplete or ineffective.

Thus, regardless of the fact if an organ, in respect of a case concerning a complaint against inaction or excessive duration of proceedings in a particular administrative case, has undertaken any actions prior to the date of judgment, particularly has resolved the case with respect to its essence of matter, administrative court shall define timeliness and correctness of actions and acts undertaken by the organ, taking into account a nature of the case, level of its factual and legal complexity, as well as significance to the party which has lodged the complaint[29].

**8.** As far as jurisdiction is concerned, it is deemed that administrative court shall have competence in passing separate judgments solely in respect of acknowledging if inaction (excessive duration of proceedings) involved flagrant violation of law. This means that issuing a decision by an organ upon lodging

[28] See the opinions of 9 February 2009 to the draft bill, printed form of the Sejm no. 1407 of the 6th term of the Sejm.

[29] The European Court of Human Rights highlights the need to examine those criteria, emphasising that evaluation if excessive duration of proceedings is justified shall be carried out upon providing for the criteria such as: level of case complexity or behaviour of particular authorities; cf. case, Kubiszyn v. Poland, 37437/97, http://hudoc.echr.coe.int/eng?i=001-60911 and case Jagiello v. Poland, 8934/05, http://hudoc.echr.coe.int/eng?i=001-89971. [accessed on 25.05.2021]

a complaint against inaction or excessive duration of administrative proceedings to court shall not result in proceedings becoming devoid of purpose within the scope concerning acknowledgment if inaction or excessive duration of proceedings involved flagrant violation of law[30]. Another issue is considering the nature of this violation because the act associates liability for damages with violation referred to as 'flagrant violation'. The vague character concerning the meaning of this term requires thorough consideration of this circumstance within the framework of a particular case.

As the act does not define a state of inaction or excessive duration of proceedings, the opinion which prevails with respect to judicature is that administrative court which is to adjudicate a complaint against inactive proceedings by organs shall burden the obligation of evaluation if the administrative proceedings concerning a particular case are also affected by excessive duration of the proceedings. It is also deemed that administrative court, adjudicating a ruling concerning inaction or excessive duration of proceedings, shall be entitled, pursuant to Article 149 §1 in conjunction with Article 135 of PBAC, to oblige an administrative organ to undertake (reinstate) suspended proceedings and issue an act or perform an action within a specified deadline[31].

As far as intertemporal problems are concerned, the prevailing opinion is that application of new laws contributes to the necessity of acknowledging that evaluation concerning legitimacy of the basis for a complaint against excessive duration of administrative proceedings includes not only actions (omission) of the organ occurring after the effective date of an amendment, but also actions (omission) of the organ prior to this date provided that excessive duration of proceedings occurs while the court is in the course of passing a decision or judgment[32].

**9.** Other instruments, significantly strengthening effectiveness of a legal remedy against inaction or excessive duration of proceedings, include a possibility of imposing a fine should an organ evade carrying out a judgment (Article 154 of

[30] See resolution of the Supreme Administrative Court of 13 December 2012, I OSK 2626/12; judgment of the Supreme Administrative Court of 5 July 2012, II OSK 1031/12; judgment of the Supreme Administrative Court of 15 January 2013, II OSK 2390/12; judgment of the Supreme Administrative Court of 3 September 2013, II OSK 891/13; available at the website of the Supreme Administrative Court.

[31] Judgment of the Supreme Administrative Court of 26 November 2013, I OSK 2704/13, available at the website of the Supreme Administrative Court.

[32] P. Kornacki, *Intertemporalne aspekty orzekania sądu administracyjnego w przedmiocie skargi na przewlekłość postępowania przed organem administracji publicznej* (*Intertemporal Aspects of Judgments by Administrative Court in respect of Complaints against Excessive Duration of Proceedings before a Public Administration Organ*), ZNSA 5/2011, p. 44; P. Gołaszewski, *Problemy intertemporalne postępowania administracyjnego i sądowoadministracyjnego po nowelizacji* (*Intertemporal Problems of Administrative Proceedings and Court and Administrative Proceedings upon Amendment*), MoP No. 10/2010, p. 562; also judgment of the Supreme Administrative Court of 8 May 2013, II OSK 2873/12, available at the website of the Supreme Administrative Court.

PBAC) or should an organ fail to submit a complaint to court (Article 55 §1 of PBAC) and possibility of examining or adjudicating a case by court by virtue of a copy of the complaint (Article 55 §2 of PBAC).

A separate remedy enforcing efficiency of administration activities is competence of court to pass a reformatory judgment in the event of failure to execute a judgment allowing a complaint against inaction or excessive duration of proceedings and in the event of the organ's inaction or excessive duration of the proceedings upon a judgment overruling or declaring nullity of act or action. Pursuant to Article 154 §2 of PBAC, the court may, apart from imposing a fine (Article 154 §1 of PBAC), decide about existence or non-existence of a right or obligation should the nature of the case and its factual and legal circumstances, devoid of reasonable doubts, allow for this. Simultaneously, the court shall declare if inaction of the organ or excessive duration of the proceedings by the organ involved flagrant violation of law.

Acknowledgement of rights or obligations arising out of provisions of law within the framework of a judgment revoking an act or declaring ineffectiveness of action is explained by a necessity to ensure essential protection to the claimant by means of a declaratory judgment[33]. Application of the right in question is intended to determine (acknowledge) a party's legal situation. Holding a court judgment, the party concerned may effectively exercise their rights, preventing administration from illegitimate encroaching of their legally protected interests[34].

**10.** The strictly cassation aspect of judicial review, resulting in the elimination of acts or actions undertaken by public administration organs with infringement of law is relatively cheaper and more efficient; however, it does not ensure a full scope of protection. Moreover, the previous instruments for controlling inaction were not sufficiently effective as their essential objective was to instruct an organ to undertake any action without a possibility of orienting the future decision. As a matter of fact, there were situations in which administrative authorities and organs issued decisions only in order to avoid excessive duration of proceedings, rather than resolve the essence of an administrative case[35]. The catalogue of legal remedies discussed herein is a modernised system of actions intended to enforce efficiency of public administration activities. Its objective is to enforce activity of administration and to qualify states of 'inaction', as well as to sanction cases

[33] See B. Dauter [in:] *Proceedings before Administrative Courts…*, as above, p. 408 and T. Woś [in:] *Proceedings before Administrative Courts…*, as above, pp. 636-637.

[34] Cf. Z. Kmieciak, *Efektywność sądowej kontroli administracji publicznej* (*Efficiency concerning Judicial Review of Public Administration*), PiP 2010, No. 11, pp. 29-30.

[35] Further described in *Polskie sądownictwo administracyjne* (*The Polish Administrative Jurisdiction*) edited by Z. Kmieciak, Warsaw 2006, pp. 227-228.

concerning flagrant violation of law. The aforementioned solutions simultaneously intend to express unification of procedural law of the European Union member states, aiming at effective protection of individuals' rights and freedoms.

**Bibliography**


1. Adamiak B., Borkowski J., *Postępowanie administracyjne i sądowoadministracyjne* (*Administrative Proceedings and Court and Administrative Proceedings*), Warsaw 2008.
2. Adamiak B., Borkowski J., *Kodeks postępowania administracyjnego. Komentarz* (*Code of Administrative Proceedings. Commentary*), Warsaw 2012.
3. Chlebny J., *Standardy Rady Europy i Europejskiego Trybunału Praw Człowieka w procedurze administracyjnej i sądowo administracyjnej* (*Standards of the Council of Europe and the European Court of Human Rights within administrative proceedings and court and administrative proceedings*), [in:] *Postępowanie administracyjne w Europie* (*Administrative Proceedings in Europe*), edited by Z. Kmieciak, Warsaw 2010.
4. Dauter B., Gruszczyński B., Kabat A., Niezgódka-Medek M., *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz* (*Proceedings before Administrative Courts. Commentary*), Warsaw 2009.
5. Drachal J., Jagielski J., Stankiewicz R. [in:] P*rawo o postępowaniu przed sądami administracyjnymi. Komentarz* (*Proceedings before Administrative Courts. Commentary*), edited by R. Hauser, M. Wierzbowski, Warsaw 2011.
6. Gołaszewski P., *Problemy intertemporalne postępowania administracyjnego i sądowoadministracyjnego po nowelizacji* (*Intertemporal Problems of Administrative Proceedings and Court and Administrative Proceedings upon Amendment*), MoP No. 10/2010.
7. Jaśkowska M., *Właściwość sądów administracyjnych (zagadnienia wybrane)* (*Jurisdiction of administrative courts (selected issues)*), [in:] *Koncepcja systemu prawa administracyjnego* (*A concept of the Administrative Law System*), edited by J. Zimmermann, Warsaw 2007.
8. Jaśkowska M., Wróbel A., *Kodeks postępowania administracyjnego. Komentarz* (*Code of Administrative Proceedings. Commentary*), Warsaw 2011.
9. Kabat A., *Prawo do sądu jako gwarancja ochrony praw człowieka w sprawach administracyjnych* (*Right to a trial as a warranty of human rights protection in administrative cases*), [in:] *Podstawowe prawa jednostki i ich sądowa ochrona* (*Basic Rights of an Individual and Court Protection of such Rights*), Warsaw 1997.
10. Kornacki P., *Intertemporalne aspekty orzekania sądu administracyjnego w przedmiocie skargi na przewlekłość postępowania przed organem administracji publicznej* (*Intertemporal Aspects of Judgments by Administrative Court in respect of Complaints against Excessive Duration of Proceedings before a Public Administration Organ*), ZNSA No. 5/2011.
11. Kmieciak Z., *Efektywność sądowej kontroli administracji publicznej* (*Efficiency concerning Judicial Review of Public Administration*), PiP No. 11/2010.

12. Kmieciak Z., *Przewlekłość postępowania administracyjnego* (*Excessive Duration of Administrative Proceedings*), PiP No. 6/2011.
13. Łaszczyca G., Martysz Cz., Matan A., *Kodeks postępowania administracyjnego. Komentarz* (*Code of Administrative Proceedings. Commentary*), vol. I, Warsaw 2013.
14. Miłosz M, *Bezczynność organu administracji publicznej w postępowaniu administracyjnym* (*Inaction of a Public Administration Organ within the Framework of Administrative Proceedings*), Warsaw 2011.
15. Morawski L., *Główne problemy współczesnej filozofii prawa. Prawo w toku przemian* (*The Main Issues of the Modern Philosophy of Law. Law under the Transformation Process*), Warsaw 2005.
16. *Polskie sądownictwo administracyjne* (*The Polish Administrative Jurisdiction*) edited by Z. Kmieciak, Warsaw 2006.
17. Przybysz P., *Kodeks postępowania administracyjnego. Komentarz* (*Code of Administrative Proceedings. Commentary*), Warsaw 2006.
18. Schmidt-Aßmann E., *Ogólne prawo administracyjne jako idea porządku. Założenia i zadania tworzenia systemu prawnoadministracyjnego* (*General Administrative Law as an Idea of Order. Assumptions and objectives concerning establishment of Legal and Administrative System*), Warsaw 2011.
19. Tarno J. P., *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz* (*Proceedings before Administrative Courts. Commentary*), Warsaw 2006.
20. Woś T., *Prawomocność decyzji administracyjnych* (*Legal validity of Administrative Decisions*), „Przegląd Prawa Publicznego" 2008.
21. Woś T., Knysiak-Molczyk H., Romańska M., *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz* (*Proceedings before Administrative Courts. Commentary*), Warsaw 2009.

Jurisprudence

1. Orzeczenia Europejskiego Trybunału Praw Człowieka/ Judgments of the European Court of Human Rights
2. Case 9659/82 Boyle & Rice v. the United Kingdom
3. Case 23186/94 Menteş and Others v. Turkey
4. Case 27798/95Amann v. Switzerland
5. Case 27916/95 Podbielski v. Poland
6. Case 30210/96 Kudła v. Poland
7. Case 37437/97 Kubiszyn v. Poland Case 51564/99 Čonka v. Belgium
8. Case 52168/99 Majkrzyk v. Poland
9. Case 8934/05 Jagiełło v. Poland
10. Case 26614/05 Humen v. Poland
11. Orzecznictwo polskich sądów administracyjnych/Judgments of the Polish Administrative Court
12. Resolution of the Supreme Administrative Court of 15 December 2004, FPS 2/04
13. Resolution of the Supreme Administrative Court of 26 November 2008
14. Resolution of the Supreme Administrative Court of 26 October 2009, I OPS 10/09
15. Resolution of the Supreme Administrative Court of 13 December 2012, I OSK 2626/12

16. Judgment of the Supreme Administrative Court of 4 April 2012, II GSK 1324/12
17. Judgment of the Supreme Administrative Court of 5 July 2012, II OSK 1031/12;
18. Judgment of the Supreme Administrative Court of 17 July 2012, I OSK 1620/12
19. Judgment of the Supreme Administrative Court of 15 January 2013, II OSK 2390/12
20. Judgment of the Supreme Administrative Court of 8 May 2013, II OSK 2873/12
21. Judgment of the Supreme Administrative Court of 3 September 2013, II OSK 891/13
22. Judgment of the Supreme Administrative Court of 26 November 2013, I OSK 2704/13
23. Judgment of the Voivodeship Administrative Court in Poznań of 25 August 2011, II SAB/Po 42/11
24. Judgment of the Voivodeship Administrative Court in Cracow of 11 January 2012, II SAB/Kr 143/11
25. Judgment of the Voivodeship Administrative Court in Białystok of 17 April 2012, II SAB/Bk 15/12
26. Judgment of the Voivodeship Administrative Court in Łódź of 9 October 2012, II SAB/Łd 108/12

**Sądowa kontrola efektywności działania administracji publicznej**

**Streszczenie**

Procedury prawne w Europie powinny respektować zasady sprawiedliwości proceduralnej. Zasady te obejmują zestaw warunków zapewniających rzeczywiste, szybkie i skuteczne rozpatrzenie sprawy, zgodnie z gwarancjami określonymi w art. 6 i 13 Konwencji o ochronie praw człowieka, rozwijanymi w orzecznictwie Europejskiego Trybunału Praw Człowieka.

W artykule przedstawiono charakterystykę polskiego postępowania sądowego w zakresie egzekwowania skuteczności działań administracji publicznej w świetle tych wymagań. W ramach tego systemu omówione zostały również środki prawne zapobiegające opóźnieniom w działaniach administracji oraz dyscyplinujące i przyspieszające krajowe postępowania administracyjne.

**Słowa kluczowe:** kontrola sądowa, efektywność administracji publicznej