# RIGHT TO COMPLAIN ABOUT EXCESSIVE LENGTH OF PROCEEDINGS AND TO CLAIM COMPENSATION

DOMINIKA CZERNIAK*

## 1. INTRODUCTION

Since the judgement in the case of *Kudła v. Poland*, the ECtHR judgements have assumed that the right to effective protection of the rights and freedoms (Article 13 ECHR) is applicable also when the right to a hearing within a reasonable time (Article 6 §1 ECHR) has been violated.[1] Therefore, before a complaint about excessively long proceedings is filed to the ECtHR, a State should have an opportunity to prevent it or find an effective remedy on its own,[2] and an individual should be able to claim a remedy before a national authority first.

Affording States some discretion, the ECtHR did not decide in what manner the States should organise their domestic appeal mechanism concerning excessive length of proceedings but indicated what it must meet the requirement of being "effective" (Article 13 ECHR). Legal solutions adopted by the Contracting States cannot constitute only a formal barrier resulting in the potential postponement of an application to the ECtHR, but should guarantee real protection of a person's rights. They must be effective from the legal and practical perspective, play a preventive

* MA, doctoral fellow at the Department of Criminal Procedure, Faculty of Law, Administration and Economics of the University of Wrocław; dominika.czerniak@onet.pl

1 As far as the right to a hearing in a reasonable time is concerned, the Court initially held that if in the same case it had already recognised the violation of Article 6 §1 ECHR, it was not necessary to issue a separate judgement on a State's entities' actions from the perspective of Article 13 ECHR. In the judgement in the case *Kudła v. Poland*, the Court held that "in the light of the continuing accumulation of applications before it", in which the principal allegation is a failure to ensure a hearing in a reasonable time, the time has come to review its case-law in this matter. The ECtHR judgement of 26 October 2000 in the case *Kudła v. Poland*, application No. 30210/96, §148.

2 Compare, M. Sykulska, *Prawo do skutecznego środka odwoławczego na przewlekłość postępowania – skutki wyroku Kudła przeciwko Polsce dla polskiego prawa i praktyki* [Right to effective complaint about excessive length of proceedings – impact of the judgement in the case *Kudła v. Poland* on the Polish law and legal practice], Gdańskie Studia Prawnicze Vol. XIII, 2005, p. 393.

function, i.e. prevent lengthiness, and a compensatory one.[3] Their main task should be to prevent lengthiness of proceedings by accelerating decisions made by a particular entity (preventive function).[4] However, the Court does not recognise the measures designed to ensure only a compensatory remedy as ineffective.[5] The Court prefers those solutions that prevent unjustified delays in the issue of a judgement because it is more important for the parties to proceedings to have the proceedings concluded in a reasonable time than to be afforded compensation.

The Act of 17 June 2004 on complaints about violation of the right to a hearing without unjustified delay in preparatory proceedings conducted or supervised by a prosecutor and in court proceedings[6] (hereinafter: ACLP – the Act on complaints about lengthiness of proceedings) introduced a complaint about lengthiness,[7] which formally matches all the features of an effective measure of safeguarding an individual's rights and freedoms under Article 13 ECHR.[8] Initially, after ACLP entered into force, the ECtHR did not hear complaints concerning excessive length of proceedings if an applicant had not claimed his rights to a hearing in a reasonable time before a Polish court.[9] The Court even indicated that Poland "perfectly" implemented the Strasbourg requirements concerning the introduction of an effective measure of preventing

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[3] M. Kłopocka, *Skarga na przewlekłość w postępowaniu sądowym (ze szczególnym uwzględnieniem przepisów postępowania karnego)* [Complaint about excessive length in court proceedings (with particular focus on criminal procedure law)], Nowa Kodyfikacja Prawa Karnego Vol. XIX, 2006, p. 150.

[4] F. Edel, *The length of civil and criminal proceedings in the case-law of the European Court of Human Rights*, Strasbourg 2007, p. 75, http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-16(2007).pdf [accessed on: 4.11.2016].

[5] ECtHR judgement of 29 March 2006 in the case *Scordino v. Italy*, application No. 36813/97, §§184–187, http://hudoc.echr.coe.int/ [accessed on: 4.11.2016].

[6] Journal of Laws [Dz.U.] of 2009, No. 61, item 498. At the beginning ACLP was applicable only to court proceedings. The Act of 20 February 2009 amending the Act on complaints about violation of the right to a hearing without unjustified delay (Journal of Laws [Dz.U.] of 2009, No. 61, item 498) introduced provisions applicable also to preparatory proceedings.

[7] M. Sykulska, *Prawo do skutecznego…* [Right to effective…], pp. 393–397; M. Kłopocka, *Skarga na przewlekłość…* [Complaint about excessive length…], pp. 150–151.

[8] For more, see inter alia: M. Zbrojewska, *Skarga na przewlekłość postępowania* [Complaint about excessive length of proceedings], Palestra No. 11–12, 2004, pp. 24–26; C.P. Kłak, *Wymogi formalne skargi na przewlekłość* [Formal requirements for a complaint about excessive length of proceedings], Prokuratura i Prawo No. 3, 2010, pp. 37–61; M. Śladkowski, *Skarga na przewlekłość postępowania sądowego w świetle orzecznictwa sądów polskich oraz Europejskiego Trybunału Praw Człowieka* [Complaint about excessive length of court proceedings in the light of the judgements of Polish courts and of the European Court of Human Rights], Monitor Prawniczy No. 2, 2016, p. 85; C.P. Kłak, *Temporalna niedopuszczalność złożenia nowej skargi na przewlekłość postępowania* [Temporal inadmissibility of filing a new complaint about excessive length of proceedings], Prokuratura i Prawo No. 3, 2011; M. Romańska, *Skarga na przewlekłość postępowania sądowego* [Complaint about excessive length of court proceedings], Przegląd Sądowy No. 11–12, 2005, p. 56; C.P. Kłak, *Rozpatrzenie sprawy bez nieuzasadnionej zwłoki i skarga na przewlekłość postępowania: zagadnienia wybrane* [Examination of the case without unjustified delay and complaint about excessive length of proceedings: selected issues], Ius Novum No. 2, 2011; C.P. Kłak, *Skarga na przewlekłość – zagadnienia proceduralne* [Complaint about excessive length – procedural issues], Ius Novum No. 2, 2010.

[9] Also see, inter alia, the ECtHR decision of 1 March 2005 in the case *Charzyński v. Poland*, application No. 15212/03, §§41–42, http://hudoc.echr.coe.int [accessed on: 4.11.2016].

lengthiness of proceedings.[10] However, the practice of ACLP application showed low effectiveness.[11] The ECtHR heard and acknowledged the complaints against Poland that were also connected with excessive length of the proceedings, in which Polish courts had formerly not recognised the violation of the right to a hearing in a reasonable time.[12] In the judgement in the case *Grzona v. Poland*, in connection with the change of the adjudicating practice, the ECtHR recognised a suit for compensation under Article 417 Civil Code[13] as an effective appeal measure in the meaning of Article 13 ECHR. Analysing the above-mentioned judgement, the representatives of the doctrine noticed that the ECtHR stand undermines the sense of the introduction of ACLP to the Polish legal system.[14] In the judgement in the case of *Rutkowski and others v. Poland*[15], ECtHR held that the complaint about excessive length of the proceedings under Polish law failed to play its role of an effective measure of the protection of an individual's rights and freedoms ensuring that a party can claim the right to a hearing in a reasonable time, and obliged Poland to undertake adequate steps to solve the problem.[16]

It is worth looking for the reasons why ACLP does not function properly and checking whether, and if so, what measures the legislator has which make it possible to implement the ECtHR recommendations and let ACLP effectively exercise the right to a hearing in a reasonable time. Leaving the analysis of the criteria for the

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[10] ECtHR judgement of 29 March 2006 in the case *Scordino v. Italy*, application No. 36813/97, §§184–187, http://hudoc.echr.coe.int [accessed on: 4.11.2016].

[11] Compare, E. Holewińska-Łapińska, *Postępowania ze skargi na naruszenie prawa strony do rozpoznania sprawy cywilnej w postępowaniu rozpoznawczym przed sądami rejonowymi i okręgowymi bez nieuzasadnionej zwłoki, zakończone orzeczeniem merytorycznym* [Proceedings resulting from a complaint about violation of the party's right to have the civil case heard in preparatory proceedings in district and regional courts without unjustified delay, ending with a substantive judgement], [in:] E. Holewińska-Łapińska, A. Siemaszko (ed.), *Prawo w działaniu, t. 2, Przewlekłość postępowania sądowego* [Law in action. Vol. 2: Excessive length of court proceedings], Oficyna Naukowa, Warsaw 2007, pp. 162–201; E. Holewińska-Łapińska, *Praktyka zasądzania „odpowiedniej sumy pieniężnej" w przypadku stwierdzenia przewlekłości postępowania* [The practice of adjudicating "appropriate amount of money" in case excessive length of proceedings is recognized], [in:] E. Holewińska-Łapińska (ed.), *Prawo w działaniu, t. 6* [Law in action. Vol. 6], Oficyna Naukowa, Warsaw 2008, pp. 146–173.

[12] Compare, inter alia, the ECtHR judgement of 7 February 2012 in the case *Gut v. Poland*, application No. 32440/08; §§17–19, 31–34; the ECtHR judgement of 22 April 2010 in the case *Flieger v. Poland*, application No. 36262/08; §§23–24, 30–32, http://hudoc.echr.coe.int [accessed on: 4.11.2016].

[13] ECtHR judgement of 24 April 2014 in the case *Grzona v. Poland*, application No. 3206/09, §§34–36, http://hudoc.echr.coe.int [accessed on: 4.11.2016].

[14] Sic: T. Zembrzuski, *Skuteczny środek odwoławczy przed organami krajowymi a prawo do rozpoznania sprawy sądowej w rozsądnym terminie – rozważania na tle wyroku Europejskiego Trybunału Praw Człowieka z 24.06.2014 r. w sprawie Grzona p. Polsce (skarga nr 3206/09)* [Effective appeal measure before local bodies and the right to a hearing within a reasonable time – considerations in the light of the judgement of the European Court of Human Rights of 24 June 2014 in the case *Grzona v. Poland* (application No. 3206/09)], Europejski Przegląd Sądowy No. 3, 2015, p. 18.

[15] ECtHR judgement of 7 July 2015 in the case *Rutkowski and others v. Poland*, applications No. 72287/10, 13927/11, 46187/11; §§174–175, 179–186, http://hudoc.echr.coe.int [accessed on: 4.11.2016].

[16] More in: M. Mrowicki, *Glosa do wyroku ETPC z dnia 7 lipca 2015 r., 72287/10, 13927/11 i 46187/11* [Gloss on the ECtHR judgement of 7 July 2015, 72287/10, 13927/11 and 46187/11], el/LEX 2016.

assessment of lengthiness of proceedings aside,[17] it is necessary to focus on the issue of accessibility of a complaint about lengthiness and its compensatory function. It seems that for a person who is going to complain about excessive length of proceedings, it is first of all important when and under what conditions he may make use of ACLP, what compensation he is entitled to in case his complaint is recognised as justified and what factors are taken into consideration in establishing the compensation amount.

## 2. ADMISSIBILITY OF A COMPLAINT ABOUT EXCESSIVE LENGTH OF CRIMINAL PROCEEDINGS

Admissibility of a complaint about excessive length is essential for a person who intends to exercise that right. Before a court assesses a case of lengthiness, a complaint must be filed. The issue of admissibility of a complaint about excessive length of proceedings may be analysed based on four criteria: which entity may file a complaint about lengthiness, when and in what types of proceedings, and what formal requirements must be met; only the objective scope of ACLP does not raise doubts.[18]

In accordance with Article 1(1) ACLP, a complaint about lengthiness may be filed by entities referred to in Article 3(1) ACLP, whose right to a hearing without unjustified delay was infringed as a result of action or inaction of a court or a prosecutor conducting or supervising preparatory proceedings.[19] However, in this context, it is controversial to leave outside the objective scope of ACLP criminal cases *sensu largo*[20] that were not conducted or supervised by a prosecutor, which

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[17] There is no doubt that because of the wording of Article 2(2) ACLP, which concerns the criteria for the assessment of lengthiness of proceedings worked out in the ECtHR case law (compare, F. Edel, *The length of civil…*, p. 40), the conflict with the ECtHR expectations results from inappropriate interpretation of this provision by Polish courts, and the legislator has little chance of effective influencing the judicature. Moreover, the criteria of the assessment of lengthiness of proceedings are mainly addressed to adjudicating bodies and from the perspective of a complainant they are of minor importance.

[18] The right to complain about lengthiness is the right of the party to the proceedings at the given stage of it and of the aggrieved even if he has not the rights of a party to judicial proceedings. However, it is worth noticing that what raises doubts is a public prosecutor's right to lodge a complaint about lengthiness. M. Zbrojewska is against such a possibility (compare, M. Zbrojewska, *Skarga na przewlekłość…* [Complaint about excessive length…], pp. 24–26). Differently, M. Śladkowski, *Skarga na przewlekłość…* [Complaint about excessive length…], p. 85.

[19] The right to complain about lengthiness is applicable only in relation to the main proceedings and does not apply to interlocutory ones. Compare, the ruling of the Appellate Court in Katowice of 11 December 2007, II S 16/07, KZS 2007, No. 12, item 66. The provision of Article 3 ACLP indicating entities entitled to complain also determines the proceedings in which the appeal measure can be used, inter alia, in cases concerning misdemeanours, collective entities' liability for punishable acts or in executory penal proceedings, unless the case concerns redress, compensation or reparation of harm ruled in favour of the aggrieved (Article 2(1a) ACLP).

[20] In relation to broadly understood criminal cases, it is worth drawing attention to doubts concerning the possibility of complaining about lengthiness, inter alia, in the proceedings involving minors (Act of 26 October 1982 on proceedings concerning minors, Journal of Laws [Dz.U.] 2016, item 1654), as well as in screening proceedings (compare, the Act of 18 October

is in particular applicable to fiscal penal proceedings. A *de lege lata* complaint about lengthiness does not apply to investigations[21] conducted by financial entities running preparatory proceedings under the supervision bodies superior to them.[22] The length of the proceedings in fiscal crime cases, which are not included within the objective scope of a complaint about lengthiness, are relatively short and account for six months at the most.[23] However, in a situation when a case is subject to obligatory defence (Article 79 §1 CPC), when it is necessary to appoint expert psychiatrists to assess actual state of psychical health of the accused or if a court rules temporary detention, a prosecutor must supervise the proceedings *ex officio*. He may also supervise investigations conducted by fiscal entities because of special significance or particularly complicated case but the dominant form of preparatory proceedings in cases concerning fiscal crimes is an investigation conducted without a prosecutor's supervision at the initial stage.[24] There is an opinion in case law that a prosecutor's decision to prolong an investigation is the first supervisory activity "because refusal to prolong an investigation would finish the stage of preparatory proceedings, and the decision to prolong them has an impact on the efficiency of the proceedings, makes them long, and as a result, on the right to a hearing without unjustified delay"; and the content of Article 298 §1 CPC is for such interpretation of Article 153 §1 FPC.[25] Approving of the opinion that prolonging an investigation for a period exceeding six months is the first supervisory activity, provided that cases referred to in Article 151c §2 FPC do not take place, the Supreme Court, in the

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2006 on revealing information about documents issued by the state security entities in the period 1944–1990 and the content of those documents; i.e. Journal of Laws [Dz.U.] of 2016, item 1721). Although ACLP does not directly stipulate a admissibility of a complaint about lengthiness and Article 3 does not indicate entities entitled to file a complaint, it seems that, due to the criminal aspect of those proceedings, it should be assumed that such a possibility exists (compare, W. Jasiński, [in:] J. Skorupka (ed.), *Skarga na naruszenie prawa strony do rozpoznania sprawy bez nieuzasadnionej zwłoki. Komantarz* [Complaint about violation of the party's right to a hearing without unjustified delay. Commentary], C.H. Beck, Warsaw 2010, pp. 116–118). In relation to proceedings concerning minors, it is sometimes indicated that they are included in the scope of "criminal proceedings" under Article 3(4) ACLP (compare, A. Piaseczny, *Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu przygotowawczym prowadzonym lub nadzorowanym przez prokuratora i w postępowaniu sądowym bez nieuzasadnionej zwłoki. Komentarz* [Act on complaints about violation of the right to a hearing without unjustified delay in preparatory proceedings conducted or supervised by a prosecutor and in court proceedings. Commentary], thesis 10 to Article 3 ACLP, Warsaw 2013, el/LEX.

[21] A prosecutor supervises investigations regardless of the fact whether a fiscal or a non-fiscal body for preparatory proceedings conducts them (Article 151c §1 FPC).

[22] Sic, G. Łabuda, T. Razowski, *Zakres przedmiotowy skargi na przewlekłość postępowania* [Objective scope of the complaint about excessive length of proceedings], Prokuratura i Prawo No. 1, 2012, pp. 75–76.

[23] In accordance with Article 153 §1 FPC, if a fiscal body for preparatory proceedings conducts an investigation or an inquiry and it is not concluded within the period of six months, a competent prosecutor can prolong it for another fixed period.

[24] Compare, M. Świetlicka, *Metodyka pracy prokuratora w postępowaniu w sprawach o przestępstwa skarbowe i wykroczenia skarbowe* [Methodology of a prosecutor's work in cases of fiscal crimes and misdemeanours], Krajowa Szkoła Sądownictwa i Prokuratury, Kraków 2014, pp. 7–9.

[25] Ruling of the Appellate Court in Katowice of 27 November 2013, II AKz 717/13, LEX No. 1488978.

resolution of seven judges of 28 January 2016, held that since a case is conducted or supervised by a prosecutor from the moment of undertaking steps referred to in Article 153 §1 FPC, a complaint about its lengthiness may concern activities performed after a prosecutor started supervising an investigation. Thus, the Court excluded a possibility of filing complaints about inappropriate way of conducting an investigation during the first six months.[26]

However, it is hard to agree with the Supreme Court's stand, which deprives a party to the proceedings of a possibility of claiming lengthiness of proceedings until a prosecutor starts supervising it, and postpones the moment of assessment of delays pursuant to Article 2 ACLP. At the same time, the proposal of the interpretation of Article 153 §1 FPC in conjunction with Article 122§1 FPC that admits the possibility of filing a complaint about lengthiness also when a prosecutor does not know about an investigation, has not contributed to delays, but is responsible for them, i.e. in the period of six months of the fiscal penal proceedings, seems to be controversial.[27] Taking into account the present objective scope of ACLP,[28] one can accept the limitation of the possibility of filing a complaint about lengthiness until a prosecutor starts supervising an investigation concerning a fiscal crime, provided that a party can effectively question the way in which preparatory proceedings are conducted by fiscal authorities at the moment a prosecutor starts supervising it. Treating the first six months of penal fiscal proceedings as a typical temporal limitation of the right to complain about lengthiness seems to be an acceptable compromise between the two presented earlier diverse stands of the doctrine and the judicature. On the one hand, a prosecutor is not responsible for lengthiness that he did not know about, and on the other hand, there is a possibility of efficient exercising the right to a hearing in a reasonable time from the moment of an actual initiation of fiscal penal proceedings. A prosecutor is responsible for lengthiness, which is not his fault in fact, but which he knew about and did not undertake efficient steps to remedy and accelerate. Prolonging an investigation, he must get acquainted with the material collected so far. Thus, he is aware of deficiencies of the proceedings and, due to relatively short time when an investigation is conducted

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[26] Supreme Court resolution (7) of 28 January 2016, I KZP 13/15, www.sn.pl [accessed on: 4.11.2016].

[27] More in: W. Jasiński [in:] J. Skorupka (ed.), *Skarga na naruszenie…* [Complaint about violation…], pp. 103–106. The stand is based on the assumption that since a prosecutor may supervise all preparatory proceedings at every stage, including investigations in fiscal penal cases from the moment of their initiation, and the interpretation of Articles 3 and 5(4) ACLP depriving a party of the right to make use of ACLP until a prosecutor informs about the proceedings would be in conflict with ECHR; applying a pro-ECHR interpretation, it is necessary to assume that a complaint about lengthiness is also admissible in case a prosecutor does not supervise proceedings. Supervision of a fiscal penal investigation does not mean effective exercise of the rights under Article 326 CPC in conjunction with Article 113 §1 FPC, and a potential possibility of supervising the proceedings in the first six months is sufficient.

[28] It is noted in the doctrine that ACLP does not meet the aim for which it was enacted and it is proposed to amend it: first of all, changing the title by deleting the phrase "conducted or supervised by a prosecutor", and remodelling the mode of lodging a complaint and hearing a complaint about lengthiness. Sic, G. Łabuda, T. Razowski, *Zakres przedmiotowy…* [Objective scope…]…, pp. 76–77.

without his knowledge, should undertake appropriate supervisory activities.[29] In practice, the period of investigation in fiscal penal cases without a prosecutor's supervision, which a party may accuse of being groundlessly lengthy, is shorter than six months. For the accused, the time of proceedings is essential from the moment when an entity starts prosecution activities, e.g. detains him or conducts searches. Before an investigation changes a few weeks may pass from a stage "into a case" to a stage "against a person". Moreover, there is no aggrieved party in fiscal cases so the right to a hearing in a reasonable time cannot be infringed in the stage of proceedings *in rem*. However, after a prosecutor gets acquainted with the materials of the proceedings and the way in which it was conducted, he has a real possibility of improving the proceedings and issuing adequate requests or instructions concerning the continuation of the proceedings and preventing lengthiness.

The ECtHR does not indicate at which stage of proceedings and when it is possible to file a complaint in order to have the right to a hearing without unjustified delay respected and leaves detailed regulations at the discretion of the legislative of the Council of Europe Member States. However, it emphasises in its judgements that the assessment of lengthiness of proceedings should cover the period from the moment when a person is officially informed that the proceedings are conducted against him[30] till the issue of a final adjudication, including all the instances in which a case was heard.[31] As it was indicated above, it also believes that a complaint about lengthiness should serve the improvement of the proceedings rather than compensation for loss or harm caused.[32] As a result, if a complaint is to force entities conducting proceedings to respect the right to a hearing without an unjustified delay, there is no doubt that it should be admissible mainly in the course of proceedings: from the moment of criminal proceedings initiation until a definite adjudication on the rights and obligations of a party to the proceedings. This does not mean, however, that the domestic legislative cannot introduce limits to admissibility of legal measures aimed at improving proceedings provided it does not influence the modification of the period that is subject to assessment of potential lengthiness.[33]

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[29] He may, in accordance with Article 326 §3(2) and (5) CPC in conjunction with Article 113 §1 FPC, get acquainted with the intentions of the bodies conducting the proceedings, indicate directions of an investigation, instruct and make decisions and orders, and in case the bodies conducting the proceedings do not comply with them, inform a superior body. Moreover, if, analysing the material collected in the proceedings, he notices irregularities resulting in lengthiness of the proceedings, he may apply Article 19 §1 CPC in conjunction with Article 113 §1 FPC.

[30] ECtHR judgement of 2 November 2000 in the case *Philippe Bertin-Mourot v. France*, application No. 36343/97; §52, http://hudoc.echr.coe.int [accessed on: 4.11.2016]. Official information about the proceedings conducted means, inter alia, presenting charges, detention, conducting an interrogation and a search. For more, see: F. Edel, *The length of civil…*, p. 23 and case law referred to therein.

[31] Compare, inter alia, the ECtHR judgement of 26 October 2000 in the case *Kudła v. Poland*, application No. 30210/96; §122, http://hudoc.echr.coe.int [accessed on: 4.11.2016].

[32] ECtHR judgement of 29 March 2006 in the case *Scordino v. Italy*, application No. 36813/97, §§184-187, http://hudoc.echr.coe.int [accessed on: 4.11.2016].

[33] Compare, e.g. Article 7 of the Finnish Act on Compensation for the Excessive Length of Judicial Proceedings; http://www.finlex.fi/fi/laki/kaannokset/2009/en20090362.pdf [accessed on: 4.11.2016]. Also compare, Article 14 ACLP.

Based on ACLP, when it is admissible to file a complaint about lengthiness, on the one hand, it is determined in Article 5(1) ACLP and on the other hand, in Article 14(1) ACLP.[34]

In accordance with Article 5(1) ACLP, a complaint about lengthiness may be filed "in the course of the proceedings into a case" in preparatory proceedings conducted or supervised by a prosecutor and in court proceedings. In case law, the concept was initially referred to the currently conducted stage of proceedings and treated as a temporary measure aimed at immediate improvement of a trial, which "in a direct way is to serve the enforcement of the right to a hearing in a case, in which the right to a hearing in a reasonable time was infringed",[35] and the phrase "in the course of the proceedings into a case" was identified with conducting proceedings at one of its stages (in preparatory proceedings, before a court of first instance, before a court of second instance) and not as a whole. Thus in practice, filing a complaint, a petitioner had to assess whether the proceedings or one of their stages may be finished in the foreseeable future because only then his request to recognise lengthiness or to award him compensation had a chance to be examined by a court, and the accusation of the infringement of the right to a hearing without unjustified delay had to concern the stage of the proceedings at which the case currently was. Otherwise, the proceedings initiated by a complaint was discontinued as groundless.[36]

The Supreme Court, standardising the former adjudication policy in its resolution of 9 January 2008, emphasised that the conclusion of a given part of the proceedings, and even a valid judgement in a case before a hearing of a complaint about lengthiness, does not exclude the possibility of adjudicating whether a complaint is justified and executing the repressive-compensatory function.[37] On the other hand, in a later judgement, the Court held that the legislator's use of the phrase "in the course of the proceedings conducted" does not mean that the complaint "must be limited to the current stage of the proceedings as it refers to a complaint filed in the course of the proceedings into a case and not in the course of the proceedings in a given instance".[38] As a result, a complaint about lengthiness may be filed regardless of the stage of the proceedings at which a case is, and an accusation may refer to all, also those completed, stages of the proceedings. A complainant has a guarantee that the complaint will be heard even if a valid judgement in the case is issued within this period. The only limitation concerning the possibility of filing a complaint about

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[34] The provision introduces limitation in the form of inadmissibility of re-lodging a complaint about lengthiness of proceedings in the same case for a period of 12 months (or six months in cases where the accused is detained), if the former complaint had been rejected. For more on this issue, C.P. Kłak, *Temporalna niedopuszczalność…* [Temporal inadmissibility…], p. 45.

[35] Compare, the Supreme Court resolution of 23 March 2006, III SPZP 3/05, OSNP 2006, No. 21–22, item 341.

[36] Compare, inter alia, the ruling of the Appellate court in Kraków of 22 November 2007, II S 6/07, KZS 2007, issue 12, item 65; the Supreme Court ruling of 10 May 2006, III SPP 19/06, OSNP 2007, No. 11–12, item 179.

[37] Supreme Court resolution of 9 January 2008, III SPZP 1/07, OSNP 2008, No. 13–14, item 205.

[38] Supreme Court ruling of 24 September 2013, III SPP 188/13, LEX No. 1448755; also compare, in particular, Supreme Court resolution of 28 March 2013, III SPZP 1/13, OSNP 2013, No. 23–24, item 292.

lengthiness is the issue of a valid judgement in the case. Once the case was heard in accordance with Article 5(1) ACLP and a petitioner filed a complaint after the issue of a valid judgement, his aim was not to accelerate the proceedings but to obtain a compensation. The latest aim may be with no obstacles fulfilled in a civil lawsuit, although it is more difficult than under ACLP. It will be necessary to point out all the requirements for the State Treasury compensatory liability (occurrence of lengthiness, loss and a causative relation between them), and a civil law court has a total discretion to award a compensation that in its assessment will be adequate with respect to the circumstances of a given case. These are considerable obstacles in comparison to a simplified way of claiming a compensation in connection with lengthiness of the proceedings laid down in ACLP, and a complainant has not been guaranteed a minimum amount of compensation.[39]

Based on the literal wording of Article 6 ACLP, formal terms of a complaint about lengthiness are not troublesome, even if one takes into consideration the fact that the applicant is not requested to supplement formal deficiencies referred to in Article 6(2) ACLP.[40] Apart from general rules of a procedural document (Article 119 CPC), PLN 100[41] is charged accompanied by a request to recognise lengthiness in a particular case and a list of circumstances justifying this request (Article 6(2) ACLP). However, in the doctrine and case law, listing circumstances justifying a request to recognise lengthiness is interpreted[42] as an obligation to indicate particular procedural activities a court or a prosecutor failed to undertake or undertook inappropriately "causing this way an unjustified delay in the proceedings", and "the necessity to assess punctuality of actions undertaken at the current as well as the former stages of the proceedings takes place only when a complainant states charges concerning those stages of the proceeding".[43] The indication of the period of proceedings alone does not meet the requirements laid down in Article 6(2) ACLP.[44]

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[39] Nota bene, it should be noticed that the lack of a guarantee of compensation or redress for lengthiness in civil proceedings causes that a lawsuit under Article 417 Civil Code cannot be treated as a measure of protection of an individual's rights in compliance with the ECtHR's requirements. The ECtHR emphasises that it is necessary to ensure a base amount for every year of unjustified delay in hearing a case. Compare, the ECtHR judgement of 10 November 2004 in the case *Apicella v. Italy*, application No. 64890/01, §26, http://hudoc.echr.coe.int [accessed on: 4.11.2016].

[40] Compare, however, Article 6(2a) of the governmental Bill amending the Act on complaints about violation of the right to a hearing without unjustified delay in preparatory proceedings conducted or supervised by a prosecutor and in court proceedings and some other acts – the Sejm paper no. 851, where it is proposed to summon a complainant to correct formal errors in a complaint about lengthiness.

[41] The necessity to pay a fee is not an excessive requirement – the charge is not high and a complainant may apply for exemption, and in case a complaint is rejected, the fee is subject to a refund (Article 17(3) ACLP).

[42] C.P. Kłak, *Szczególne wymogi skargi na przewlekłość postępowania* [Special requirements for the complaint about excessive length of proceedings], Prokuratura i Prawo No. 6, 2012, pp. 9–21 and case law referred to therein.

[43] Supreme Court ruling of 24 September 2013, III SPP 188/13, LEX No. 1448755.

[44] P. Górecki, S. Stachowiak, P. Wiliński, *Skarga na przewlekłość postępowania przygotowawczego i sądowego. Komentarz* [Complaint about excessive length of preparatory and court proceedings. Commentary], Wolters Kluwer, Warsaw 2010, p. 84.

Failure to meet those requirements is an irremovable deficiency resulting in the rejection of a complaint without summons to remedy deficiencies of a complaint.[45]

The way of interpreting the concept of "circumstances justifying a request to recognise lengthiness of the proceedings" is in conflict with the ECtHR stand and too rigorous in relation to the literal wording of Article 6(2.2) ACLP. In the judgement in the case of *Wende and Kukówka v. Poland*, the Court emphasised that formal requirements for measures of human rights protection cannot be too formalistic because they limit a complainant's right to them and jeopardise the achievement of their aims. The Court also noted that finding a complaint about lengthiness inadmissible on the grounds that the complainant failed to indicate circumstances justifying the request without summoning to remedy the deficiencies should be found to be disproportionate to the aim of ensuring legal certainty and the proper administration of justice.[46] Thus, the proper and pro-Convention interpretation of Article 6(2.2) ACLP should ease formal requirements in order to make access to the discussed measure easier.[47] Now that the provision stipulates only "indication of circumstances" and not charges, like for example Article 427 §1 CPC, the level of their precision may be lower.[48] Thus, complainants should justify their request of lengthiness recognition expressing the proceedings deficiencies causing unjustified delays in their own words. They cannot be required to provide a detailed analysis of punctuality and appropriateness of undertaken procedural activities because the obligation to indicate circumstances justifying a complaint does not impose on them an obligation to prove lengthiness.[49] It is a procedural entity that is to prove that the course of the proceedings was proper and a complainant's claims groundless. Moreover, depending on the circumstances of a particular case, the period of the

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[45] Supreme Administrative Court ruling of 13 August 2014, II FPP 5/14, LEX No. 1494964; Also, P. Górecki, S. Stachowiak, P. Wiliński, *Skarga na przewlekłość…* [Complaint about excessive length…], pp. 82–87. However, a complainant may lodge a new complaint about lengthiness of proceedings in the same case, regardless of the temporal limitations laid down in Article 14(1) ACLP.

[46] ECtHR judgement of 10 May 2007 in the case *Wende and Kukówka v. Poland,* application No. 56026/00, §§53–54, http://hudoc.echr.coe.int [accessed on: 4.11.2016].

[47] It is worth approving of the proposal to amend ACLP (the governmental Bill amending the Act on complaints about violation of the right to a hearing without unjustified delay in preparatory proceedings conducted or supervised by a prosecutor and in court proceedings and some other acts – the Sejm paper No. 851) and acknowledging that a complaint should include a claim for recognition of lengthiness of proceedings and can contain a description of circumstances justifying this claim (compare Article 6(2) and (2a)). It is also proposed in the Bill that a court should be obliged to summon a complainant to correct formal errors in the complaint (compare Article 9(1)). However, the above proposal was not adopted in the course of legislative procedure in the Sejm. Thus, Article 14(2) ACLP is the only change easing the formalism connected with lodging a complaint about lengthiness of proceedings.

[48] The opinion that is essentially equalising "circumstances justifying a request for recognition of lengthiness" and charges stated in appeal measures hampers access to a complaint about lengthiness also because of lack of possibility of correcting errors referred to in Article 6(1) ACLP. If a party to proceedings does not indicate allegations in a complaint or any other procedural document, the authorised body is obliged to return it to the complainant to correct formal errors in seven days or else the complaint will not be dealt with (Article 120 CPC).

[49] Sic, ruling of the Appellate Court in Wrocław of 13 November 2013, II S 31/13, LEX No. 1392152.

proceedings alone may speak for recognition of a complaint as justified, especially when cases uncomplicated as to their legal state and merits take a disproportionally long time.[50]

## 3. COMPENSATORY FUNCTION OF A COMPLAINT ABOUT EXCESSIVE LENGTH OF PROCEEDINGS

The compensatory function of ACLP is not less important than preventing lengthiness. The provision of Article 12(4) ACLP, in case of recognition of a complaint about lengthiness and a complainant's claim admissible, obliges a court to rule an adequate amount of compensation (PLN 2,000-20,000).[51] The legal nature of the measure under Article 12(4) ACLP is a controversial issue in the doctrine and case law.[52] It is due to the fact that it is not classical damages for loss or injury sustained.[53] On the other hand, it is indicated that it "plays the role of damages for pain and suffering caused by lengthiness of court proceedings"[54] and in accordance with the dominant stand, it is recognised as a special form of redress for the infringement of the right to a hearing in a reasonable time.[55]

However, it is worth noting that the amount of money under Article 12(4) ACLP is sometimes thought to be "a specific form of a lump sum awarded just for the

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[50] Ruling of the Appellate Court in Wrocław of 13 November 2013, II S 31/13, LEX No. 1392152.

[51] The provision of Article 12(4) ACLP also indicates how the sum of compensation should be calculated: "Having recognised a complaint as justified, a court on a complainant's request awards him a compensation from the State Treasury, and in case of a complaint about lengthiness of proceedings conducted by a bailiff – from a bailiff, as the amount of money from PLN 2,000 to PLN 20,000. The amount within the indicated limit accounts for PLN 500 for each year of the proceedings so far, regardless of the number of stages which were recognised as excessively long. A court may award a sum higher than PLN 500 per year if a case is especially significant for a complainant who did not contribute to this lengthening of proceedings. Amounts already awarded to a complainant in the same case are treated as paid towards the compensation. A sum of money is not awarded in case a complaint is lodged by the State Treasury or state bodies for public finance".

[52] A sum of money is treated as a substitute for compensation, redress or a lump sum of reparation. For more on those concepts, see: W. Jasiński, *Charakter odpowiedniej sumy pieniężnej orzekanej na podstawie ustawy o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu przygotowawczym prowadzonym lub nadzorowanym przez prokuratora i postępowaniu sądowym bez nieuzasadnionej zwłoki* [Nature of the appropriate amount of money awarded based on the Act on complaints about violation of the right to a hearing without unjustified delay in preparatory proceedings conducted or supervised by a prosecutor and in court proceedings], Gdańskie Studia Prawnicze-Przegląd Orzecznictwa No. 2, 2011, pp. 121–131 and literature and case law referred to therein; Z. Cichoń, *Glosa do pkt 8 i 9 uzasadnienia postanowienia Sądu Najwyższego z 6 lutego 2006 r.* [Gloss on para. 8 and 9 of the justification for the Supreme Court decision of 6 February 2006], Palestra No. 9–10, 2007, pp. 325–328.

[53] A. Piaseczny, *Ustawa o skardze…* [Act on complaints…], theses No. 9 and 10 to Article 12 ACLP, el/LEX.

[54] Supreme Court ruling of 28 May 2015, III SPP 10/15, LEX No. 1740741.

[55] W. Jasiński, W. Szydło, [in:] J. Skorupka (ed.), *Skarga na naruszenie…* [Complaint about violation…], p. 223. M. Romańska, *Skarga na przewlekłość…* [Complaint about excessive length…], p. 72.

fact of lengthiness of the proceedings",[56] and it is emphasised that it is partially independent of compensation[57] and is sometimes called lump sum reparation. Although it is emphasised that excessively long waiting for adjudication, as a rule, results in harming a complainant,[58] and in criminal cases, it may additionally infringe personality rights of the accused, *in concreto* it is not possible to eliminate a situation in which he will not suffer the negative consequences of proceedings conducted excessively long.[59] Thus, it is not possible to share the opinion that the compensation under Article 12(4) ACLP is similar to reparation in nature.[60] It is to compensate the lengthened period of waiting for the final adjudication in a case and it should be associated not with financial or moral loss but mainly with lengthiness of the proceedings.[61] A complainant may claim compensation in a civil lawsuit.[62] Assuming that the measure under Article 12(4) ACLP is a form of a compensation,[63] this creates a possibility of reducing the settlement under Article 417 Civil Code or Articles 445 and 448 Civil Code. However, it seems that such action is inadmissible.[64] Both measures, a compensation or redress under Article 417 Civil Code (or Articles 445 and 448 Civil Code) and a lump sum under

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[56] Judgement of the Appellate Court in Warsaw of 5 December 2014, I ACa 230/14, LEX No. 1661263.

[57] Sic, M. Kłopocka, *Skarga na przewlekłość…* [Complaint about excessive length…], p. 165; A. Góra-Błaszczykowska, *Skarga na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki* [Complaint about violation of the party's right to a hearing in court proceedings without unjustified delay], Monitor Prawniczy No. 11, 2005, p. 538.

[58] The harm results from uncertainty concerning the legal situation resulting from excessively long waiting for adjudication. Compare, inter alia, the ECtHR judgement of 21 February 1997 in the case *Guillemin v. France,* application No. 19632/92; § 63; the ECtHR judgement of 29 March 2006 in the case *Scordino v. Italy*, application No. 36813/97 §204, http://hudoc.echr.coe.int [accessed on: 4.11.2016].

[59] For example, in cases in which, due to lengthiness of proceedings, a negative procedural premise under Article 17 §1(6) CPC is updated and the proceedings are discontinued, and the accused, as a result of lengthiness, may avoid liability for a crime committed.

[60] As it has already been indicated, the legal nature of a measure under Article 12(4) ACLP is disputable.

[61] Sic, also, T. Zembrzuski, *Skuteczny środek odwoławczy…* [Effective appeal measure…], p. 17; M. Kłopocka, *Skarga na przewlekłość…* [Complaint about excessive length…], p. 165.

[62] Compare, the judgement of the Appellate Court in Kraków of 22 May 2015, I ACa 330/15, orzeczenia.ms.gov.pl; judgement of the Appellate Court in Warsaw of 5 December 2014, I ACa 230/14, LEX No. 1661263. Compensation under ACLP applies to the infringement of the right to a hearing without unjustified delay and not to other potential negative consequences of lengthiness such as harm or material loss sustained by a complainant. A complainant may claim compensation for the latter in a civil lawsuit.

[63] W. Jasiński, W. Szydło, [in:] J. Skorupka (ed.), *Skarga na naruszenie…* [Complaint about violation…], p. 221.

[64] E. Bagińska, *Odpowiedzialność odszkodowawcza za wykonywanie władzy publicznej* [Compensatory liability for performing public authority function], C.H. Beck, Warsaw 2006, p. 373; T. Zembrzuski, *Skuteczny środek odwoławczy…* [Effective appeal measure…], p. 17. Sic, also, J. Kuźmicka-Sulikowska, *Suma pieniężna przyznawana z tytułu przewlekłości postępowania* [Amount of money awarded due to excessive length of proceedings], [in:] E. Marszałkowska-Krześ (ed.), *Aktualne zagadnienia prawa prywatnego* [Current issues in private law], Prawnicza i Ekonomiczna Biblioteka Cyfrowa, Wrocław 2012, pp. 105–106, http://www.bibliotekacyfrowa.pl/Content/40582/04_Joanna_Kuzmicka-Sulikowska.pdf [accessed on: 4.11.2016]. A different opinion in: A. Góra-Błaszczykowska, *Skarga na naruszenie…* [Complaint about violation…], p. 538.

Article 12(4) ACLP fulfil different aims. In the former case, a complainant pursues a compensation for moral or financial loss, which is in a casual relation with the recognised lengthiness of the proceedings. On the other hand, with the use of the measure under ACLP, he claims compensation for lengthiness of the proceedings unjustified by the circumstances of the case, which might, although it do not have to, expose him to negative consequences. Although it is necessary to agree with the statement that excessive length of proceedings is connected with the presumption of loss or harm to the complainant, refutation of the presumption does not result in depriving him of a compensation under Article 12(4) ACLP. It can only influence the amount of money awarded which cannot be lower than the minimum laid down in Article 12(4) ACLP. If a complainant sustained harm in connection with lengthiness of the proceedings, only bringing a lawsuit under Article 417 Civil Code will make it possible to obtain a compensation for financial loss in full amount.[65] Claims against the State Treasury resulting from the infringement of the right to a hearing without unjustified delay are admissible for two independent reasons: lengthiness of proceedings alone (Article 12(4) ACLP) and harm or violation of personality rights resulting from that lengthiness (Article 417 and Article 455 or 448 Civil Code).

A court cannot assess grounds for claiming to rule an appropriate sum of money and in case a complainant lodges such a claim, it may only award it. However, a court has considerable discretion over the amount of money awarded. Taking decisions within the statutory limits, it can freely adjust the sum. The legislator did not indicate the criteria that an entity should follow awarding an appropriate amount of a compensation. However, it should be established in relation to a period of proceedings in a case and take into consideration the level of its complexity and inconvenience for a complainant and then other negative consequences. In its judgement in the case of *Apicella v. Italy*, the ECtHR made recommendations for establishing the amount of a compensation for lengthiness of proceedings.[66] It is necessary to establish a basic amount for each year of the proceedings conducted and, based on it, calculate the total amount. The basic amount should be enlarged in especially sensitive cases, e.g. those involving pre-trial detention. Another factor influencing the amount of a compensation may be, e.g. the number of instances hearing a case and whether a complainant contributed to lengthiness. In such cases, an amount finally awarded may be respectively reduced. The ECtHR also emphasises that the amount of a compensation cannot result from the fact that the case was adjudicated in favour of a complainant or not.

An analysis of Polish courts' rulings seems to suggest that financial or non-economic loss, and not a long time of waiting for a final judgement, is the main factor taken into account in establishing the amount of a lump sum of a compensation. Justification of awarding an appropriate sum of money indicates, e.g. the fact that

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[65] A civil court is not bound by the limit of a sum of money. The limitation of the compensation in proceedings concerning a complaint about lengthiness results from Article 12(4) ACLP.

[66] ECtHR judgement of 10 November 2004 in the case *Apicella v. Italy*, application No. 64890/01, §26, http://hudoc.echr.coe.int [accessed on: 4.11.2016].

a complainant "did not sustain any calculable financial loss" [67] or that he did not present reliable circumstances confirming that as a result of lengthiness he sustained "classified harm consisting in negative psychical and moral experiences caused by uncertainty concerning the adjudication in his case".[68] Those factors to a great extent decide about awarding the amount of a compensation higher than the statutory minimum, although, as research shows, its amount usually fluctuates close to the minimum level and it is rarely awarded at the maximum level.[69]

Looking for the reasons of the defective adjudication practice, one can draw a conclusion that it results from misunderstanding of the function that a sum of money awarded for lengthiness of proceedings is to play. A compensatory function should be the most important one, i.e. a complainant should be paid for defective conducting of the proceedings by procedural entities, which resulted in the infringement of his right to a hearing without an unjustified delay. However, case law indicates that the dominant function is attributed to the punishment imposed on the law enforcement body for inappropriately conducted proceedings.[70] It is emphasised that "it is a certain type of sanction for inappropriate functioning of the institution of justice",[71] and a compensatory aim is taken into account as a secondary one. Such an approach in connection with understanding the attitude to lengthiness of proceedings resulting from defective organisation of the bodies instituting justice[72] explain why courts award a compensation close to the lowest statutory level.[73] In case a complainant did not sustain any calculable financial or non-economic loss, a procedural entity is not guilty of law infringement under

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[67] Compare, e.g. the ruling of the Appellate Court in Kraków of 4 December 2013, II S 30/13, LEX No. 1402864.

[68] Supreme Court ruling of 6 February 2006, III SPP 163/05, OSNP 2007, No. 5–6, item 87. Also compare, the judgement of the Appellate Court in Kraków of 22 May 2015, I ACa 330/15, LEX No. 1761977.

[69] A. Rutkowska, [in:] O.M. Piaskowska, K. Sadowski (ed.), *Przewlekłość postępowania w sprawach cywilnych* [Excessive length of proceedings in civil lawsuits], Wolters Kluwer, Warsaw 2015, pp. 179–182.

[70] Compare, especially: W. Jasiński, *Charakter odpowiedniej sumy…* [Nature of the appropriate amount…], p. 126; Z. Cichoń, *Glosa do pkt 8 i 9…* [Gloss on para. 8 and 9…], pp. 325–328.

[71] Judgement of the Voivodeship Administrative Court in Krakow of 12 February 2015, I SA/Kr 1705/14, LEX No. 1649610; also compare, the Supreme Court ruling of 6 January 2006, III SPP 154/05.

[72] For example, it is assumed that there are no grounds for recognition of lengthiness of proceedings in a situation where a complainant was waiting for an appeal hearing appointment for six months because the "level of workload" in a particular court must be taken into account, i.e. the number of cases that were filed and an average time required for an appointment of a hearing (compare, the Supreme Court ruling of 9 September 2015, III SPP 20/15, LEX No. 1794319). The Supreme Court holds that the features of lengthiness are recognised in case of several months' or longer inactiveness of a court of second instance concerning the appointment of an appeal hearing, and a few (e.g. six or eight) months' period matches the term of a reasonable time, in which a case may wait for a hearing (compare, the Supreme Court ruling of 22 July 2014, III SPP 123/14, LEX No. 1515457; Supreme Court ruling of 15 December 2015, III SPP 26/15, LEX No. 1962535).

[73] Research in the doctrine indicates that the sums awarded based on Article 12(4) ACLP are close to the minimum values indicated by the legislator, i.e. PLN 2,000-3,000 (E. Holewińska-Łapińska, *Postępowania ze skargi…* [Proceedings resulting from a complaint…], pp. 163, 167–169, 174, 194 and 199), and according to the data of the Ministry of Justice, an average awarded

Article 6(1) ECHR. In case a delay in a hearing resulted from organisational difficulties, the expectation that in every case a court of a higher instance, from "inside" the system of instituting justice, knowing the reality of the functioning of courts in Poland, would rule a "penalty" higher than the statutory minimum seems to be idealistic.

It is also doubtful that it would be possible to charge a court or a prosecutor's office where a case is under examination for the amount under Article 12(4) ACLP.[74] After the amendment to ACLP of 30 November 2016,[75] in accordance with Article 12(7) ACLP, recognising a complaint as admissible, a court indicates the share of compensation that a given entity should pay in case lengthiness occurred in the proceedings conducted by more than one entity. This way, the cost of a compensation under Article 12(4) ACLP can be proportionally divided, but whatever the burden is for an entity that, although did not contribute to lengthiness, hears the case at this stage and is obliged to participate in the cost of the compensation, it may raise understandable resistance for a few reasons. Firstly, it inspires the treatment of the amount under Article 12(4) ACLP as a penalty (moreover, often a groundless one) for an entity that currently hears the case and to which a complaint about lengthiness has been lodged. Thus, the issue of a compensation for a complainant for excessively long waiting for the final adjudication on his rights and obligations becomes less important, and the protection of financial interests of entities of justice institution becomes more important. Secondly, the entity that has contributed to lengthiness most not always faces financial consequences of inappropriate acting. In adjudication practice, it is assumed that the lump sum compensation is a sanction imposed on an entity of justice institution. Thus, the imposition of that sanction on a court of second instance may cause justified objections because the source of lengthiness lies in the defective proceedings conducted by a court of first instance.[76] Therefore, the stand of the Supreme Court seems understandable. It held that lengthiness should be assessed (and compensation awarded under Article 12(4) ACLP) in connection with the proceedings before a current court instance and the

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amount is PLN 2,839 (statistical data available on the website: https://bip.ms.gov.pl/pl/dzialalnosc/statystyki/statystyki-2012 [accessed on: 4.11.2016]).

[74] In accordance with Article 12(5) ACLP, a court in which lengthiness occurred or a district prosecutor's office where excessively long proceedings were conducted shall pay the amount of money from its own budget. In a situation where a complainant challenges the method of conducting preparatory proceedings and proceedings before a court of first instance, a regional or a district court is obliged to pay the lump sum compensation. If a complaint concerns the violation of the right to a hearing without unjustified delay before a regional and a district court or a district court and an appellate court, a court of second instance, i.e. a district or an appellate court, respectively, is obliged to pay compensation under Article 12(4) ACLP (Article 12(6) ACLP).

[75] Act of 30 November 2016 amending the Act: Common courts system and some other acts, Journal of Laws [Dz.U.] of 2016, item 2103.

[76] Compare the ruling of the Appellate Court in Wrocław of 20 November 2013, II S 32/13, orzeczenia.ms.gov.pl, where it is indicated that conducting preparatory proceedings, even in a complicated and difficult case, a prosecutor must always remember that "an investigation is the first stage of proceedings, after which court proceedings usually take place, which also require an adequate period".

length of former stages of the proceedings may only play an auxiliary role.[77] Thirdly, it is unlikely that judges or prosecutors conduct lengthy proceedings on purpose,[78] and delays, as a rule and mostly, result from organisational difficulties.[79] This is the State, not a court or a prosecutor's office, that is responsible for the organisation of the justice institution system and it seems that it should not transfer the costs of lengthiness on courts and prosecutor's offices. It is not a court president's or a regional or district prosecutor's responsibility to determine the number of posts in a given entity, and the number of cases that one person is to conduct.[80] It also seems that the necessity to cover the costs of the lump sum compensation may also result in inability to increase employment and this makes it more difficult to solve the problem of excessively long proceedings before a court or a prosecutor's office.

## 4. CONCLUSIONS

Inappropriate functioning of ACLP in the practice of justice institution in general does not result from the wrong construction of regulations but is a consequence of their erroneous interpretation by courts. They do not sufficiently refer to the judgements of the ECtHR and do not meet standards of the protection of the right to a hearing without an unjustified delay that were worked out there, which can be easily noticed in the course of an analysis of the issue of accessibility to a complaint about lengthiness and compensation for it. Instead of adjusting the domestic level of protection of the right under Article 6(1) ECHR in order to prevent lodging applications to the ECtHR, the legislator develops alternative conceptions that are in conflict with the ECtHR's requirements, e.g. concerning formal requirements or limitation of a possibility of lodging a complaint about lengthiness in the course of criminal proceedings to the currently examined stage of a trial. It also seems that the legislator's intentions as to the fulfilment of the compensatory function of a complaint about lengthiness have not been well understood. A sum of money awarded pursuant to Article 12(4) ACLP is treated as a penalty imposed on a given entity and not a form of compensation for a person who, as a result of defective acting of the justice institution system, must wait excessively long for the final adjudication on his rights and obligations. One can also get an impression that,

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[77] Supreme Court ruling of 22 July 2014, III SPP 123/14, LEX No. 1515457.

[78] Compare, A. Machnikowska, *Sprawność postępowania sądowego w kontekście etosu sędziowskiego* [Effective court proceedings with respect to the judge's ethos], Gdańskie Studia Prawnicze Vol. XXXIII, 2015, pp. 245–247.

[79] Empiric research has not been conducted in the field so far. It is only a hypothesis that needs verification. However, it seems doubtful that judges or prosecutors are interested in purposeful lengthening of proceedings, especially as punctuality is taken into consideration in judges' appraisal.

[80] Motions to increase the number of judges' appointments in a district or the provision of funds for a new court building sent to the Ministry of Justice by court presidents are not always accepted. Moreover, the procedure of appointing judges is long and it is difficult to state why. Compare, the announcement of the National Council of the Judiciary of Poland of 15 November 2012: http://www.inpris.pl/fileadmin/user_upload/documents/Biblioteka_MWS/39.pdf [accessed on: 4.11.2016].

although lengthiness of proceedings is often noticed and discussed in Poland, it is silently accepted. Courts know that they are not able, mainly for organisational reasons, to hear cases at an appropriate pace and they try, on the one hand, to limit the possibility of filing complaints about lengthiness by adequate interpretation of ACLP and, on the other hand, to reduce the burdens for the budget by ruling the payment of a compensation at the minimum level.

However, the legislator has, at least partially, adequate measures that make it possible to implement the ECtHR recommendations and make ACLP an effective remedy in the meaning of Article 13 ECHR. An amendment to ACLP seems to be necessary because of the expansion of the objective scope of a complaint about lengthiness and definite abandonment of the division of criminal proceedings into separate, independent, from the point of view of the assessment of lengthiness of a proceedings and a possibility of lodging a complaint, stages.[81] As far as the compensatory function is concerned, the legislator's intervention will be effective if the basic amount is increased or the method of calculating the sum of money is determined.[82] Statutory determination of the criteria to be considered in order to establish the amount of a compensation would not only eliminate differences in case law but also would be a valuable directive for a complainant. He would know what circumstances he must indicate to be awarded a compensation higher than the minimum. All the same, what is most important is to expose the significance of the compensation for a complainant and to stop treating it as a penalty imposed on the justice system. It is also worth considering a possibility of making the compensation settlement independent of the financial resources of a given entity, e.g. by establishing a dedicated fund in the state budget to cover the cost of a compensation awarded

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[81] As far as this is concerned, the proposal to amend ACLP deserves approval (the governmental Bill amending the Act on complaints about violation of the right to a hearing without unjustified delay in preparatory proceedings conducted or supervised by a prosecutor and in court proceedings and some other acts – the Sejm paper No. 851), where the legislator, introducing to Article 2(4) ACLP a principle that "the total period of proceedings so far" is assessed, tries to definitely solve the problem of proceeding fragmentation. However, the change was not included in the final version of the Act of 30 November 2016 amending Act: Law on common courts system and some other acts, Journal of Laws [Dz.U.] of 2016, item 2103.

[82] A similar situation was with the amendment of ACLP, i.e. the Act of 20 February 2009 amending the Act on complaints about violation of the right to a hearing before a court without unjustified delay (Journal of Laws [Dz.U.] of 2009, No. 61, item 498). In the event a compensation had been awarded, the amounts used to be symbolic, e.g. PLN 100. The amendment to ACLP and the introduction of obligatory compensation for a complainant claiming it resulted in awarding compensation, but as a rule it accounts for PLN 2,000. Thus, the introduction of the new regulations contributed to the implementation of the ECtHR recommendations to a small extent (compare, inter alia, the judgement of 23 October 2007 in the case *Tur v. Poland*, application No. 21695/05, §§62–68, http://hudoc.echr.coe.int [accessed on: 4.11.2016]) concerning the effectiveness of a complaint about lengthiness in the context of its compensatory function; the Court repeated the objections in the judgement in the case *Rutkowski and others v. Poland*. More in: O.M. Piaskowska, [in:] O.M. Piaskowska, K. Sadowski (ed.), *Przewlekłość postępowania…* [Excessive length…], pp. 158–163. Changes proposed in the governmental Bill to amend ACLP do not fully implement the ECtHR's recommendations. The proposed amount of PLN 1,000 for each year of excessively long proceedings is much lower than that awarded by the ECtHR. Compare, the objections of the Helsinki Foundation for Human Rights: http://www.hfhr.pl/wp-content/uploads/2016/10/HFPC_opinia_druk-851_27102916.pdf [accessed on: 4.11.2016].

because of lengthiness. It would contribute to emphasising the major aim of ACLP, i.e. the protection of an individual's right to a hearing without unjustified delay and not a penalty to a given court or a prosecutor's office. At the same time, it would prevent bringing a judge or a prosecutor to disciplinary liability for defective conducting of proceedings, which results in lengthiness.[83]

However, the legislator cannot change the attitude of courts to a complaint about lengthiness and the right to a hearing without unjustified delay with the use of an amendment to ACLP. The complainant-friendly interpretation of formal requirements for a complaint about lengthiness and awarding a compensation amounts higher than the minimum and appropriate to the level of the infringement of the right laid down in Article 6(1) ECHR mainly depends on the adjudicating bench hearing a particular case and, in the face of a lack of domestic patterns, on taking into consideration Strasbourg case law. In this context, it seems that the ECtHR judgements should be made available and the number of those translated into Polish should be increased. The Court's requirements concerning means of protection of an individual's rights and freedoms keep evolving. Thus, it is necessary to constantly update knowledge about them. At present, judgements issued in cases against Poland and, in accordance with the agreement on translation and making the ECtHR judgements available, 20 other leading judgements in cases against other states are being translated.[84] Relatively, it is a small number if one takes into consideration the ECtHR adjudication activity, and the amount and significance of issues it deals with (e.g. the right to life, prohibition of torture or the right to privacy). Knowledge of the Court's current stand, inter alia, in the field of the assessment of effectiveness of measures aimed at preventing lengthiness of proceedings, and awareness that it will certainly notice our domestic adjudication conceptions that are in conflict with ECHR would help in the harmonisation of the Polish and Strasbourg case law.

## BIBLIOGRAPHY

Bagińska E., *Odpowiedzialność odszkodowawcza za wykonywanie władzy publicznej* [Compensatory liability for performing public authority function], C.H. Beck, Warsaw 2006.

Cichoń Z., *Glosa do pkt 8 i 9 uzasadnienia postanowienia Sądu Najwyższego z 6 lutego 2006 r.* [Gloss on para. 8 and 9 of the justification for the Supreme Court decision of 6 February 2006], Palestra No. 9–10, 2007.

[83] Compare, Article 10 of the Act on the common courts system in conjunction with §§8 and 12 Resolution No. 16/2003 of the National Council of the Judiciary of Poland of 19 February 2003 concerning adoption of the principles of the judges' ethical code and Article 137 of the Act of 28 January 2016 (Journal of Laws [Dz.U.] 2016, item 177): Law on the public prosecution office in conjunction with §7(2) resolution No. 468/2012 of the National Council of the Public Prosecution of Poland of 19 September 2012 concerning adopting the principles of prosecutors' ethical code.

[84] See, the agreement of 24 March 2014 implementing the recommendations of the Brighton Declaration of 20 February 2012 on the Future of the European Court of Human Rights: http://trybunal.gov.pl/fileadmin/content/dokumenty/orzeczenia-etpc/Porozumienie_ws_tlumaczenia_i_udostepniania_wyrokow_etpcz.pdf [accessed on: 15.11.2017].

Edel F., *The length of civil and criminal proceedings in the case-law of the European Court of Human Rights,* Strasbourg 2007, http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-16(2007).pdf [accessed on: 04.11.2016].

Góra-Błaszczykowska A., *Skarga na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki* [Complaint about violation of the party's right to a hearing in court proceedings without unjustified delay], Monitor Prawniczy No. 11, 2005.

Górecki P., Stachowiak S., Wiliński P., *Skarga na przewlekłość postępowania przygotowawczego i sądowego. Komentarz* [Complaint about excessive length of preparatory and court proceedings. Commentary], Wolters Kluwer, Warsaw 2010.

Holewińska-Łapińska E., *Postępowania ze skargi na naruszenie prawa strony do rozpoznania sprawy cywilnej w postępowaniu rozpoznawczym przed sądami rejonowymi i okręgowymi bez nieuzasadnionej zwłoki, zakończone orzeczeniem merytorycznym* [Proceedings resulting from a complaint about violation of the party's right to have the civil case heard in preparatory proceedings in district and regional courts without unjustified delay, ending with a substantive judgement], [in:] E. Holewińska-Łapińska, A. Siemaszko (ed.), *Prawo w działaniu, t. 2, Przewlekłość postępowania sądowego* [Law in action. Vol. 2: Excessive length of court proceedings], Oficyna Naukowa, Warsaw 2007.

Holewińska-Łapińska E., *Praktyka zasądzania „odpowiedniej sumy pieniężnej" w przypadku stwierdzenia przewlekłości postępowania* [The practice of adjudicating "appropriate amount of money" in case excessive length of proceedings is recognized], [in:] E. Holewińska-Łapińska (ed.), *Prawo w działaniu, t. 6* [Law in action. Vol. 6], Oficyna Naukowa, Warsaw 2008.

Jasiński W., *Charakter odpowiedniej sumy pieniężnej orzekanej na podstawie ustawy o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu przygotowawczym prowadzonym lub nadzorowanym przez prokuratora i postępowaniu sądowym bez nieuzasadnionej zwłoki* [Nature of the appropriate amount of money awarded based on the Act on complaints about violation of the right to a hearing without unjustified delay in preparatory proceedings conducted or supervised by a prosecutor and in court proceedings], Gdańskie Studia Prawnicze – Przegląd Orzecznictwa No. 2, 2011.

Kłak C.P., *Skarga na przewlekłość – zagadnienia proceduralne* [Complaint about excessive length – procedural issues], Ius Novum No. 2, 2010.

Kłak C.P., *Wymogi formalne skargi na przewlekłość* [Formal requirements for a complaint against excessive length of proceedings], Prokuratura i Prawo No. 3, 2010.

Kłak C.P., *Rozpatrzenie sprawy bez nieuzasadnionej zwłoki i skarga na przewlekłość postępowania: zagadnienia wybrane* [Examination of the case without unjustified delay and complaint about excessive length of proceedings: selected issues], Ius Novum No. 2, 2011.

Kłak C.P., *Temporalna niedopuszczalność złożenia nowej skargi na przewlekłość postępowania* [Temporal inadmissibility of filing a new complaint about excessive length of proceedings], Prokuratura i Prawo No. 3, 2011.

Kłak C.P., *Szczególne wymogi skargi na przewlekłość postępowania* [Special requirements for the complaint about excessive length of proceedings], Prokuratura i Prawo No. 6, 2012.

Kłopocka M., *Skarga na przewlekłość w postępowaniu sądowym (ze szczególnym uwzględnieniem przepisów postępowania karnego)* [Complaint against excessive length in court proceedings (with particular focus on criminal procedure law)], Nowa Kodyfikacja Prawa Karnego Vol. XIX, 2006.

Kuźmicka-Sulikowska J., *Suma pieniężna przyznawana z tytułu przewlekłości postępowania* [Amount of money awarded due to excessive length of proceedings], [in:] E. Marszałkowska-Krześ (ed.), *Aktualne zagadnienia prawa prywatnego* [Current issues in private law], Prawnicza i Ekonomiczna Biblioteka Cyfrowa, Wrocław 2012, http://www.bibliotekacyfrowa.pl/Content/40582/04_Joanna_Kuzmicka-Sulikowska.pdf [accessed on: 04.11.2016].

Łabuda G., Razowski T., *Zakres przedmiotowy skargi na przewlekłość postępowania* [Objective scope of the complaint about excessive length of proceedings], Prokuratura i Prawo No. 1, 2012.

Machnikowska A., *Sprawność postępowania sądowego w kontekście etosu sędziowskiego* [Effective court proceedings with respect to the judge's ethos], Gdańskie Studia Prawnicze Vol. XXXIII, 2015.

Mrowicki M., *Glosa do wyroku ETPC z dnia 7 lipca 2015 r., 72287/10, 13927/11 i 46187/11* [Gloss on the ECtHR judgement of 7 July 2015, 72287/10, 13927/11 and 46187/11], el/LEX 2016.

Piaseczny A., *Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu przygotowawczym prowadzonym lub nadzorowanym przez prokuratora i w postępowaniu sądowym bez nieuzasadnionej zwłoki* [Act on complaints about violation of the right to a hearing without unjustified delay in preparatory proceedings conducted or supervised by a prosecutor and in court proceedings. Commentary], Lex Polonica, Warsaw 2013.

Piaskowska O.M., Sadowski K. (ed.), *Przewlekłość postępowania w sprawach cywilnych* [Excessive length of proceedings in civil lawsuits], Wolters Kluwer, Warsaw 2015.

Romańska M., *Skarga na przewlekłość postępowania sądowego* [Complaint about excessive length of court proceedings], Przegląd Sądowy No. 11–12, 2005.

Skorupka J. (ed.), *Skarga na naruszenie prawa strony do rozpoznania sprawy bez nieuzasadnionej zwłoki. Komentarz* [Complaint about violation of the party's right to a hearing without unjustified delay. Commentary], C.H. Beck, Warszaw 2010.

Sykulska M., *Prawo do skutecznego środka odwoławczego na przewlekłość postępowania – skutki wyroku Kudła przeciwko Polsce dla polskiego prawa i praktyki* [Right to effective complaint against excessive length of proceedings – impact of the judgement in the case *Kudła v. Poland* on the Polish law and legal practice], Gdańskie Studia Prawnicze Vol. XIII, 2005.

Śladkowski M., *Skarga na przewlekłość postępowania sądowego w świetle orzecznictwa sądów polskich oraz Europejskiego Trybunału Praw Człowieka* [Complaint about excessive length of court proceedings in the light of the judgements of Polish courts and of the European Court of Human Rights], Monitor Prawniczy No. 2, 2016.

Świetlicka M., *Metodyka pracy prokuratora w postępowaniu w sprawach o przestępstwa skarbowe i wykroczenia skarbowe* [Methodology of a prosecutor's work in cases of fiscal crimes and misdemeanours], Krajowa Szkoła Sądownictwa i Prokuratury, Kraków 2014.

Zbrojewska M., *Skarga na przewlekłość postępowania* [Complaint against excessive length of proceedings], Palestra No. 11–12, 2004.

Zembrzuski T., *Skuteczny środek odwoławczy przed organami krajowymi a prawo do rozpoznania sprawy sądowej w rozsądnym terminie – rozważania na tle wyroku Europejskiego Trybunału Praw Człowieka z 24.06.2014 r. w sprawie Grzona przeciwko Polsce (skarga nr 3206/09)* [Effective appeal measure before local bodies and the right to a hearing within a reasonable time – considerations in the light of the judgement of the European Court of Human Rights of 24 June 2014 in the case *Grzona v. Poland* (application No. 3206/09)], Europejski Przegląd Sądowy No. 3, 2015.

**Court rulings**

Supreme Court ruling of 6 January 2006, III SPP 154/05.

Supreme Court ruling of 6 February 2006, III SPP 163/05, OSNP 2007, No. 5–6, item 87.

Supreme Court resolution of 23 March 2006, III SPZP 3/05, OSNP 2006, No. 21–22, item 341.

Supreme Court ruling of 10 May 2006, III SPP 19/06, OSNP 2007, No. 11–12, item 179.

Ruling of the Appellate Court in Kraków of 22 November 2007, II S 6/07, KZS 2007, issue 12, item 65.

Ruling of the Appellate Court in Katowice of 11 December 2007, II S 16/07, KZS 2007, No. 12, item 66.

Supreme Court resolution of 9 January 2008, III SPZP 1/07, OSNP 2008, No. 13–14, item 205.
Supreme Court resolution of 28 March 2013, III SPZP 1/13, OSNP 2013, No. 23–24, item 292.
Supreme Court ruling of 24 September 2013, III SPP 188/13, LEX No. 1448755.
Ruling of the Appellate Court in Wrocław of 13 November 2013, II S 31/13, LEX No. 1392152.
Ruling of the Appellate Court in Wrocław of 20 November 2013, II S 32/13, orzeczenia.ms.gov.pl [accessed on: 04.11.2016].
Ruling of the Appellate Court in Katowice of 27 November 2013, II AKz 717/13, LEX No. 1488978.
Ruling of the Appellate Court in Kraków of 4 December 2013, II S 30/13, LEX No. 1402864.
Supreme Court ruling of 22 July 2014, III SPP 123/14, LEX No. 1515457.
Ruling of the Supreme Administrative Court of 13 August 2014, II FPP 5/14, LEX No. 1494964.
Judgement of the Appellate Court in Warszawa of 5 December 2014, I ACa 230/14, LEX No. 1661263.
Judgement of the Voivodeship Administrative Court in Kraków of 12 February 2015, I SA/Kr 1705/14, LEX No. 1649610.
Judgement of the Appellate Court in Kraków of 22 May 2015, I ACa 330/15, LEX No. 1761977.
Supreme Court ruling of 28 May 2015, III SPP 10/15, LEX No. 1740741.
Supreme Court ruling of 9 September 2015, III SPP 20/15, LEX No. 1794319.
Supreme Court ruling of 15 December 2015, III SPP 26/15, LEX No. 1962535.
Supreme Court resolution (7) of 28 January 2016, I KZP 13/15, www.sn.pl [accessed on: 04.11.2016].

ECtHR judgement of 21 February 1997 in the case *Guillemin v. France*, application No. 19632/92; http://hudoc.echr.coe.int [accessed on: 04.11.2016].
ECtHR judgement of 26 October 2000 in the case *Kudła v. Poland*, application No. 30210/96; http://hudoc.echr.coe.int [accessed on: 04.11.2016].
ECtHR judgement of 2 November 2000 in the case *Philippe Bertin-Mourot v. France*, application No. 36343/97; http://hudoc.echr.coe.int [accessed on: 04.11.2016].
ECtHR judgement of 10 November 2004 in the case *Apicella v. Italy*, application No. 64890/01; http://hudoc.echr.coe.int [accessed on: 04.11.2016].
ECtHR judgement of 1 March 2005 in the case *Charzyński v. Poland*, application No. 15212/03, http://hudoc.echr.coe.int [accessed on: 04.11.2016].
ECtHR judgement of 29 March 2006 in the case *Scordino v. Italy*, application No. 36813/97; http://hudoc.echr.coe.int [accessed on: 04.11.2016].
ECtHR judgement of 10 May 2007 in the case *Wende i Kukówka v. Poland*, application No. 56026/00; http://hudoc.echr.coe.int [accessed on: 04.11.2016].
ECtHR judgement of 23 October 2007 in the case *Tur v. Poland*, application No. 21695/05; http://hudoc.echr.coe.int [accessed on: 04.11.2016].
ECtHR judgement of 22 June 2010 in the case *Flieger v. Poland*, application No. 36262/08; http://hudoc.echr.coe.int [accessed on: 04.11.2016].
ECThR judgement of 7 February 2012 in the case *Gut v. Poland*, application No. 32440/08; http://hudoc.echr.coe.int [accessed on: 04.11.2016].
ECtHR judgement of 24 June 2014 in the case *Grzona v. Poland*, application No. 3206/09; http://hudoc.echr.coe.int [accessed on: 4.11.2016].
ECtHR judgement of 7 July 2015 in the case *Rutkowski and others v. Poland*, applications No. 72287/10, 13927/11, 46187/11; http://hudoc.echr.coe.int [accessed on: 04.11.2016].

**Legal regulations and other sources**

Act of 20 February 2009 amending the Act on complaints about violation of the right to a hearing before a court without unjustified delay (Journal of Laws [Dz.U.] of 2009, No. 61, item 498).

Bill amending the Act on complaints about violation of the right to a hearing without unjustified delay in preparatory proceedings conducted or supervised by a prosecutor and in court proceedings and some other acts – the Sejm paper No. 851.

Act of 30 November 2016 amending Act: Law on common courts system and some other acts, Journal of Laws [Dz.U.] of 2016, item 2103.

Act on Compensation for the Excessive Length of Judicial Proceedings, http://www.finlex.fi/fi/laki/kaannokset/2009/en20090362.pdf [accessed on: 04.11.2016].

Agreement of 24 March 2014 implementing the Brighton Declaration of 20 February 2012 on the Future of the European Court of Human Rights, http://trybunal.gov.pl/fileadmin/content/dokumenty/orzeczenia-etpc/Porozumienie_ws_tlumaczenia_i_udostepniania_wyrokow_etpcz.pdf [accessed on: 04.11.2016].

Announcement of the National Council of the Judiciary of Poland of 15 November 2012 on the report on judiciary, http://www.inpris.pl/fileadmin/user_upload/documents/Biblioteka_MWS/39.pdf [accessed on: 04.11.2016].

Opinion of the Helsinki Foundation for Human Rights on the government bill emending the Act on complaints about violation of the right to a hearing without unjustified delay in preparatory proceedings conducted or supervised by a prosecutor and in court proceedings and some other acts – the Sejm paper No. 851, http://www.hfhr.pl/wp-content/uploads/2016/10/HFPC_opinia_druk-851_27102916.pdf [accessed on: 04.11.2016].

Statistical data of the Ministry of Justice concerning average amount of compensation awarded based on Article 12(4) ACEP, https://bip.ms.gov.pl/pl/dzialalnosc/statystyki/statystyki-2012 [accessed on: 04.11.2016].

## RIGHT TO COMPLAIN ABOUT EXCESSIVE LENGTH OF PROCEEDINGS AND TO CLAIM COMPENSATION

### Summary

The aim of the article is to identify the causes of defective functioning of the Act on complaints about violation of the right to a hearing without unjustified delay in preparatory proceedings conducted or supervised by a prosecutor and in court proceedings (hereinafter: ACLP). It also examines whether the legislator has adequate measures to implement the recommendations of the ECtHR laid down in the judgment of 7 July 2015 in the case *Rutkowski and others v. Poland* and make it an effective remedy for the violation of the rights and freedoms in the meaning of the Article 13 ECHR. Leaving aside the assessment of lengthiness of proceedings, the article analyses two issues which are essential for the complainant: accessibility to a complaint about the excessive length of proceedings and the possibility of being awarded an appropriate amount of money laid down in Article 12(4) ACLP. Before the court examines a complaint on its merits, a complainant should know when and on what grounds he can lodge a complaint, and under what conditions he may receive a compensation for excessive length of the proceedings. Due to the fact that the legislator did not lay down the criteria that a court should take into account when hearing a complaint about excessive length of proceedings, it is necessary to examine national case law and find out what factors affect the amount of compensation under

Article 12(4) ACLP, and whether these are consistent with the ECtHR case law. In conclusion, it is emphasised that defective functioning of ACLP in the judicial practice mainly results from the inappropriate interpretation of the provisions by courts. An amendment to ACLP can partly help the legislator implement the recommendations of the ECtHR. However, a change in courts' approach to a complaint about lengthiness of proceedings and consideration of the ECtHR case law are crucial for proper functioning of a complaint about lengthiness of proceedings.

Keywords: right to a hearing without unjustified delay, criminal proceedings, complaint about lengthiness of proceedings, right to an effective remedy for the violation of rights and freedoms

## PRAWO DO ZASKARŻENIA PRZEWLEKŁOŚCI POSTĘPOWANIA I OTRZYMANIA ODPOWIEDNIEJ SUMY PIENIĘŻNEJ

### Streszczenie

Celem artykułu jest ustalenie przyczyn wadliwego funkcjonowania u.s.p.p. oraz zbadanie, czy a jeżeli tak, to jakimi środkami dysponuje ustawodawca, które umożliwią wykonanie zaleceń ETPC wynikających z wyroku z 7 dnia lipca 2015 r. w sprawie *Rutkowski i inni p. Polsce* i sprawią, że będzie ona skutecznym środkiem ochrony praw i wolności w rozumieniu art. 13 EKPC. Pozostawiając poza zakresem rozważań kryteria oceny przewlekłości postępowania, analizie poddano dwa zagadnienia mające zasadnicze znaczenie z perspektywy skarżącego – kwestię dostępu do omawianego środka zaskarżenia oraz możliwości otrzymania przez niego odpowiedniej sumy pieniężnej określonej w art. 12 ust. 4 u.s.p.p. Zanim skarga zostanie merytorycznie rozpoznana, skarżący musi wiedzieć, kiedy i na jakich zasadach, może on wystąpić z omawianym środkiem zaskarżenia, a także pod jakimi warunkami może otrzymać rekompensatę z tytułu przewlekłości. Z uwagi na fakt, że ustawodawca nie sformułował kryteriów, które powinien wziąć pod uwagę sąd rozpoznający skargę na przewlekłość, analizując orzecznictwo, zbadano, jakie czynniki mają wpływ na wysokość sumy z art. 12 ust. 4 u.s.p.p. i czy są zbieżne z orzecznictwem ETPC. W konkluzji podkreślono, że niewłaściwe funkcjonowanie u.s.p.p. w praktyce wymiaru sprawiedliwości w zasadniczej części jest konsekwencją wadliwej interpretacji przepisów ustawy przez sądy. Ustawodawca poprzez nowelizację u.s.p.p. jedynie częściowo może zrealizować zalecenia ETPC, a decydujące znaczenie dla prawidłowego funkcjonowania skargi na przewlekłość ma zmiana podejścia judykatury do omawianego środka zaskarżenia oraz w większym stopniu uwzględnianie orzecznictwa strasburskiego.

Słowa kluczowe: prawo do rozpoznania sprawy bez nieuzasadnionej zwłoki, postępowanie karne, skarga na przewlekłość postępowania, prawo do skutecznego środka ochrony praw i wolności