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Time Limits in the Public Procurement Procedure

Terminy w procedurze zamówień publicznych

ABSTRACT

The article discusses issues related to the use of appropriate time limits in the course of the public procurement award procedure. Particular attention was paid to the doubts that arise in the context of time limits in the course of appeal proceedings before the National Appeals Chamber. It has been demonstrated that the legislature, despite numerous changes in the content of the Public Procurement Law, has not decided to unequivocally solve the diagnosed problem. The article presents deliberations related to the search for the optimal selection of provisions that should be used in the discussed procedure, in particular with regard to the time limits that should be binding on the parties in proceedings before the National Appeals Chamber. The author proposed then the use of time limits set out in the Administrative Procedure Code, demonstrating the correctness of the thesis put forward. The article is of a scientific and research nature.

Keywords: time limit; public procurement; public procurement award procedure; Administrative Procedure Code

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INTRODUCTION

Time limit[1] is one of the basic procedural concepts. It appears both in the case of administrative bodies or courts for which the legislature has set a period of time to decide cases, but also in the case of parties and participants in proceedings. Thus, time limit is a period determined for carrying out a specific action. Moreover, the time limit is in place irrespective of the will of the parties regardless of whether it is linked to the condition and whether it corresponds to the interests of the party concerned. For the party and the participant in the proceedings there is nothing more important than the time limit in the proceedings.

Time limit[2] is an additional reservation contained in the content of a legal action which makes the occurrence or cessation of a legal effect subject to a future and certain occurrence.[3] The effect of the legal action is thus limited in time or occurs at the end of the prescribed period. We can therefore distinguish between the initial time limits which make the legal effect dependent on the occurrence of a particular future event and the terminal time limits which make the termination of a legal effect conditional upon the occurrence of such an event.

The concept of time limit is crucial for the whole legal system, therefore we can distinguish:

1) substantive-law time limits – they are directly set out in regulations and are independent of the body as well as the party to the legal transaction,
2) procedural time limits – they result from procedural actions and can be further divided into:
   a) final – failure to act within the time limit results in the expiration of the right to do so,

[1] Judgment of the Appellate Court in Katowice of 19 September 2017, I ACa 354/17: "A time limit under civil law may mean a point in time, that is to say a specific moment, or a reservation by which the effect of legal action is limited in time, or a certain time interval – a number of consecutive units, such as a month, two weeks, etc. Holding unpaid roles as members in other bodies than the management board of a cooperative is a rule under the Act on housing cooperatives. An exception to this rule may be introduced by a housing cooperative in its statutes entitling members to a remuneration for attendance to meetings, paid in the form of a monthly lump sum, irrespective of the number of meetings, of no more than the minimum wage for work. This provision refers to meetings of other bodies than the management board of a housing cooperative. The body of the cooperative is the supervisory board, not its committees or standing executive committee, set up to organise the work of the board. Thus, by allowing members of bodies other than the management board of a housing cooperative to perform their duties for consideration as an exception, the law limits their remuneration by stating that the statutes may provide for paying them a consideration for participation in meetings and that this may take the form of a monthly lump sum not exceeding the minimum wage".

[2] *System Prawa Prywatnego. Prawo cywilne. Część ogólna*, ed. M. Safjan, Warszawa 2007.

[3] A. Wolter, *Prawo cywilne. Zarys części ogólnej*, Warszawa 1967, p. 268.

b) preclusive – after the expiry of the time limit without effect, the right to perform actions expires, the performance of actions after that time does not produce the desired legal effects.

Having regard to the importance of the time limits mentioned above, the aim hereof is to establish the existence of rules governing the application of time limits in the public procurement procedure, with particular reference to the issue of appeal proceedings before the National Appeals Chamber. The author argues that, despite the entry into force in 2021 of the new Public Procurement Law,[4] the legislature did not sufficiently regulate the issue of time limits in the course of proceedings before the National Appeals Chamber. The author has used the legal-dogmatic method for the purposes of his analysis.

SIGNIFICANCE OF TIME LIMITS IN THE POLISH LEGAL SYSTEM

Time limits therefore play a fundamental role in Polish law and their observance in a given procedure is essential for its normal course. Failure to comply with a substantive-law time limit results in termination of rights or obligations under substantive law. Failure to comply with a procedural time limit established for the performance of a given action in proceedings usually results in the ineffectiveness of the action, for which it has been established. Therefore, it should be borne in mind that if the beginning of a time limit set in days is an event, the day on which the event occurred is not taken into account in calculating the time limit. The expiry of the last of the specified number of days sis to be considered as the end of the time limit.

Time limits set in weeks end with the end of the last week's day of the same name as the day starting the time limit period. Time limits specified in months end with the end of the day in the last month which corresponds to the initial day of the period of the time limit or, if there is no such day in the last month, the last day of that month. Time limits set in years end with the end of the day in the last year which corresponds to the initial day of the period of the time limit or, if there is no such day in the last year, with the day immediately preceding that day. It is also very important that if the end of the time limit period is a public holiday or Saturday, the period ends on the next day which is neither a holiday nor a Saturday. In this situation, the end of the time limit is "postponed" to the nearest weekday.[5]

[4] Act of 11 September 2019 – Public Procurement Law (consolidated text, Journal of Laws 2021, item 1129, as amended), hereinafter: PPL.

[5] See also judgment of the Voivodeship Administrative Court in Poznań of 22 August 2013, IV SAB/Po 63/13: "Since in Polish law, in the light of the general rule expressed in Article 111 § 1 of the Civil Code, and applicable also in the administrative procedure (cf. Article 57 § 1 of the Civil

Going to the area of the public procurement law,[6] it should be borne in mind that, as a rule, to the actions taken by the contracting entity, economic operators and participants in the contract award procedure and contest, as well as to agreements in public procurement matters, the provisions of the Civil Code[7] shall apply.[8] It is also important to note that despite the reference to the regulations of the Civil Code, the Public Procurement Law sets out its own autonomous regulation of certain time limits. The Public Procurement Law, as a special regulation, assumes that time limits specified in hours start at the beginning of the first hour and end at the end of the last hour.[9] If the commencement of a time limit specified in hours is a certain event, the hour in which this event occurred is not taken into account in calculating the time limit. It is important that Public Procurement Law assumes that a time limit covering two or more days includes at least two working days. However, a working day is not a day statutorily declared a holiday (i.e., Sunday or any other holiday specified in the Act of 18 January 1951 on public holidays[10]) and Saturday. Thus, pursuant to the provisions of Article 8 (1) PPL, to the contract award procedure and contest, as well as to agreements in public procurement matters, the provisions of the Civil Code shall apply, unless statutory provisions provide otherwise.

The above means that Articles 111 to 115 of the Civil Code apply to the calculation of time limits in public contract award procedures and in agreements for the performance of these contracts, subject to the provisions of Article 8 (2) to (5) PPL. Looking at public procurement from the stage of the contracting entity's activities from the moment of notice of the proceedings until the moment of selecting the most advantageous tender, the most important time limit will certainly be that for the submission of tenders and their opening, which is defined as a specific date

Procedure Code) and administrative judicial procedure (Article 83 § 1 of the Law on the Proceeding before Administrative Courts), the shortest (calculation) unit of time is 'day', understood as a full day counted from midnight to midnight (the so-called *computatio civilis*), then actions performed on the same day must be considered as performed simultaneously".

[6] K. Bełdowska, *Postępowanie o udzielenie zamówienia w trybie podstawowym wedle nowej ustawy PZP*, Warszawa 2022, p. 14.

[7] Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2014, item 121).

[8] Decision of the Voivodeship Administrative Court in Wrocław of 22 September 2014, I SA/Wr 2399/13: "The time limits are to be calculated according to the provisions of civil law, namely the provisions contained in Articles 110 to 115 of the Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2014, item 121), where the last day of the time limit period falls on a Saturday or a statutory holiday, the last day of the period shall be considered to be the day following the holiday(s). For the purposes of Article 111 §§ 1 and 2 of the Civil Code, the time limit determined in days shall end with the end of the last day and, where the beginning of the time limit determined in days is an occurrence, the day on which that occurrence took place shall not be counted for calculating the time limit".

[9] H. Pietrzykowski, *Metodyka pracy sędziego w sprawach cywilnych*, Warszawa 2012, p. 295.

[10] Consolidated text, Journal of Laws 2015, item 90, as amended.

and time.[11] At the same time, the contracting entity must post on the website of the procedure being conducted the amount that it intends to allocate to finance the contract to be awarded under the procedure. That amount cannot be equated with the determined value of the contract, since the basis for determining the value of the contract is the economic operator's total estimated consideration, excluding value added tax, which is taken into account in the expenditure intended. The contracting entity, posting the information on the amount intended to be used for financing the given contract, undertakes to select the most advantageous tender, provided that the price or cost offered does not exceed the amount specified by the contracting entity. The amount which the contracting authority intends to allocate for the contract corresponds to the actual possibilities of financing the contract in a certain amount. This amount is a minimum amount, which means that the contracting entity can make expenditure corrections in its financial plan. It is therefore possible to increase it. The rules for determining the time limit for submitting tenders are provided for in the Public Procurement Law itself. The next most important time limit in proceedings is the time limit for filing an appeal with the National Appeals Chamber against the actions[12] and omissions of the contracting entity.[13] The time limit for lodging an appeal to the President of the National Appeals Chamber, (1) in the case of contracts whose value is equal to or exceeds the EU thresholds, is: a)

[11] E. Grabowska-Szweicer, M. Saczywko, *Wybór najkorzystniejszej oferty w postępowaniu o udzielenie zamówienia publicznego*, Warszawa 2021, p. 27.

[12] Judgment of the National Appeals Chamber of 8 February 2022, KIO 178/22: "Since the legislature defined the moment about notifying each of the economic operators of the score awarded to other economic operators applying for the same contract as 'promptly after selecting the most advantageous offer' and at the same time the contracting entity, implementing Article 253 (1) PPL, provided information on the non-price criteria scores awarded to other economic operators, along with information on the selection of the most advantageous tender, and from that moment the time limit runs for appealing against the contracting entity's actions consisting in awarding non-price criteria score to other tenders. On this date, the economic operators applying for the contract were notified about the contracting entity's action that could constitute the basis for an appeal in the form of a score (the number of points in individual criteria) awarded to tenders submitted by other economic operators in non-price criteria".

[13] Judgment of the National Appeals Chamber of 27 October 2021, KIO 3007/21: "In view of the wording of Article 308 (2) and (3), Article 515 (1) (2) (a) and Article 509 (1) and (2) PPL, it is not possible to consider justified the arguments about the lack of correlation between the provisions related to the time limits for signing the agreement with the time limit for lodging an appeal. The legislature established the so-called standstill for the period between the notification of the selection of the best tender and the date of signing the agreement not with an aim to allow the contracting entities to freely regulate this time, recognizing that since the time limit for concluding the agreement has expired on Saturday, it may conclude an agreement on Monday, not taking into account the fact that another contractor during this period may appeal. Such a behaviour of the contracting entity constitutes a gross violation of law and must be met with justified criticism. The action of the contracting entity would actually prevent the appellant from submitting an appeal within the time limit adopted by the legislature and an unacceptable shortening of this time limit by the awarding entity".

10 days from the date of providing information on the contracting entity's activity constituting the basis for its submission, if the information was provided electronically, b) 15 days from the date of providing information on the contracting entity's activity constituting the basis for its submission, if the information was provided otherwise than electronically; (2) in the case of contracts the value of which is lower than the EU thresholds: a) 5 days from the date of providing information on the contracting entity's activity constituting the basis for its submission, if the information was provided electronically, b) 10 days from the date of providing information on the contracting entity's activity constituting the basis for its submission, if the information was provided otherwise than electronically.

An appeal[14] against the content of a notice initiating the public contract award procedure or contest, or against the content of the contract documents must be lodged within the following time limit: 1) 10 days from the date of publication of the notice in the Official Journal of the European Union or of the publication of the contract documents on a website, for contracts the value of which is equal to or above the Union thresholds; 2) 5 days from the date of publication of the notice in the Public Procurement Bulletin or the contract documents on the website, in the case of contracts the value of which is below the EU thresholds.

An appeal may also be lodged within the following time limit:[15] 1) 10 days from the day on which it was learned, or with due diligence it was possible to learn about the circumstances on which it was based, in the case of contracts the value of which equals or exceeds the EU thresholds; 2) 5 days from the day on which it was learned, or with due diligence it was possible to learn about the circumstances on which it was based, in the case of contracts the value of which is lower than the EU thresholds.

If the contracting entity has not published a notice of intention to conclude the agreement or, despite such an obligation, has not sent the economic operator a notice of selection of the most advantageous tender or has not invited the economic operator to submit a tender under the dynamic purchasing system or the framework agreement, the appeal shall be lodged not later than: 1) 15 days from the date of publication of the notice of the outcome of the proceedings in the Public Procurement Bulletin or 30 days from the date of publication of the contract award notice in the Official Journal of the European Union or, in the case of a contract awarded in the form of negotiated procedure without publication or a sole-source contract, a notice of the result of the proceedings or the contract award notice, stating the reasons for the award of the contract in the form of negotiated procedure without publication or a sole-source contract; 2) 6 months from the day of concluding the agreement, if the contracting entity: a) has not published a contract award notice

[14] E. Sikorska, *Wymogi formalne odwołania po nowelizacji*, "Zamawiający" 2016, no. 20, p. 68.
[15] J. Pieróg, *Prawo zamówień publicznych. Komentarz*, Warszawa 2015, p. 582.

in the Official Journal of the European Union, or b) has published in the Official Journal of the European Union a contract award notice which does not state the reasons for the award of a contract in the form[16] of negotiated procedure without publication or a sole-source contract; 3) one month from the day of concluding the contract, if the contracting entity: a) has not published a notice of the outcome of the proceedings in the Public Procurement Bulletin, or b) has published in the Public Procurement Bulletin a notice on the outcome of the proceedings, which does not state the reasons for the award of a contract in the form of negotiated procedure without publication or a sole-source contract.

CHARACTERISTICS OF TIME LIMITS IN THE PUBLIC PROCUREMENT LAW

It should be noted that the time limits for filing an appeal are final time limits, and their observance is of key importance for challenging the contracting entity's decisions. On the other hand, the time limits for filing an appeal thus adopted by the legislature, and their preclusive nature are aimed at quick conduct of the public contract award procedure.[17] In view of the above, it should be noted at this point that the Public Procurement Law does not contain a separate definition of procedural time limit, therefore it seems that for systematic and consistent approach to the law, the relevant provisions of the Civil Procedure Code should be applied, however this solution seems to be highly debatable. This is because it is problematic to establish the rules of their application due to the lack of direct reference in the provisions of the law on public procurement to the general provisions of the Civil Procedure Code. First of all, it should be stressed, as it results from the position of the National Appeals Chamber, that – while keeping in mind that the ruling refers to the provisions of the previous Public Procurement Law of 2004[18] – "Pursuant to the provision of Article 185 (7) of the Public Procurement Law, the provisions of the Civil Procedure Code on the arbitration court shall apply *mutatis mutandis* to appeal proceedings, unless the Public Procurement Law provides otherwise. Thus, the provisions of the Civil Procedure Code shall apply in appeal proceedings only to the narrow extent as indicated therein and provided that the Act of 2004 Public Procurement Law does not specify otherwise".[19]

[16] A. Szyszkowski, *Tryb podstawowy w nowej ustawie PZP*, Warszawa 2022, p. 72.

[17] See decision of the National Appeals Chamber of 12 January 2022, KIO 3755/21.

[18] Act of 29 January 2004 – Public Procurement Law (consolidated text, Journal of Laws 2019, item 1843).

[19] See judgment of the National Appeals Chamber of 8 August 2014, KIO 1506/14.

In view of the foregoing, theoretically, the Civil Procedure Code provisions on time limits should not be applied in appeal proceedings. However, taking into account what I have already written about, that the current regulation lacks a definition of procedural time limits in the Act itself, it seems necessary to apply the solutions specified in the Civil Procedure Code. In general, the time limit for filing an appeal to the National Appeals Chamber is final and cannot be reinstated. However, also in this respect the National Appeals Chamber allows for exceptions to the general rule. If the appeal does not contain the signature of the authorised person, such a flaw should be treated as formal one. Therefore, it should be deemed that such a flaw may be supplemented at the request of the President of the National Appeals Chamber or the adjudicating panel of the Chamber within three days of service of the summons. This will allow the act of filing an appeal to be validated from the moment of its initial filing, and consequently, the time limit for filing an appeal will be observed.[20] However, it should be pointed out that, according to the case law, the mere posting of a mail at a post office is not sufficient for an effective filing of an appeal. In appeal proceedings, there is no such possibility, due to the fact that under the legislation currently in force, the legislature abandoned the provision making the effectiveness of compliance with the time limit for filing an appeal conditional on its service in person or posting it at a post office.[21] Thus, to meet the time limit for filing an appeal, it is necessary to deliver it to the President of the National Appeal Chamber within the required time limit. Admittedly, as a general rule, in basic procedural laws, for the procedural time limit to be met it is sufficient to post a mail at a post office.[22] However, such a presumption always follows directly from the regulations, while there is no such provision in this case. "Using the method of negative regulation, the legislature has excluded the application of this presumption by analogy to the filing of an appeal".[23] To conclude the analysis of the appeal proceedings from the point of view of procedural time limits, it should be shown that "the legislature has not provided in the Public Procurement Law for any possibility of restoring the time limit for filing an appeal, regardless of the reasons that caused the failure to comply with that time limit. There are also no

[20] See judgment of the National Appeals Chamber of 15 October 2012, KIO 2090/12, KIO 2121/12.

[21] See decision of the National Appeals Chamber of 16 June 2014, KIO 1117/14. Cf. decision of the National Appeals Chamber of 13 March 2013, KIO 510/13.

[22] Decision of the National Appeals Chamber of 7 January 2022, KIO 3779/21: "The date of the postmark is irrelevant to the time limit for filing an appeal. It should be noted that the Public Procurement Law does not contain provisions that would indicate that filing an appeal at a post office of a designated operator within the meaning of the Postal Law is tantamount to its filing, such a regulation is provided only for a lawsuit against the decision of the Chamber (cf. Article 580 (2) second sentence of the Public Procurement Law)".

[23] See decision of the National Appeals Chamber of 20 August 2014, KIO 1654/14.

grounds for auxiliary application of the provisions of the Civil Procedure Code".[24] The Public Procurement Law also does not provide for regulations with regard to procedural time limits related to judicial appeal proceedings.[25] However, the rules of application of the provisions of the Civil Procedure Code with regard to this issue are much clearer than the rules of application of the Civil Procedure Code in proceedings before the National Appeals Chamber. In order to observe the time limit for filing a lawsuit, unlike in the case of the time limit for filing an appeal, it is necessary, before its expiry, at least to send the lawsuit from a post office of a public operator to the address of the President of the National Appeals Chamber.[26]

The last difference related to procedural time limits in judicial proceedings is the possibility of applying the institution of restoring the time limit for filing a lawsuit.[27] Therefore, if a party or intervener did not perform the procedural act through no fault of their own[28], the court, at their request, reinstates the time limit. Importantly, a letter with the request for reinstatement of the time limit must be submitted to the court within 7 days from the date of cessation of the cause of failure to meet the time limit.[29] The letter should substantiate the circumstances justifying the request. At the same time, a party performs a procedural act. It seems

[24] See decision of the National Appeals Chamber of 13 June 2012, KIO 1045/12.

[25] *System zamówień publicznych w Polsce*, ed. J. Sadowy, Warszawa 2013, p. 326.

[26] See decision of the Voivodeship Court in Gliwice of 14 September 2010, X Ga 228/10/za. Cf. decision of the Voivodeship Court in Warsaw of 7 January 2013, XXIII Ga 2118/12; judgment of the Voivodeship Court in Warsaw of 20 March 2006, X Ga 62/06.

[27] See judgment of the National Appeals Chamber of 1 April 2016, KIO 408/16.

[28] Decision of the Supreme Court of 18 December 2019, I UZ 19/19: "The basic precondition for the restoration of the time limit is the party being not at fault in the breach of the time limit. The absence of fault occurs, i.a., in the case of sickness of the party or the attorney, which not only prevents the party from acting personally, but also from using the assistance of other persons. The failure to comply with the time limit for undertaking a procedural act is also attributable to circumstances such as a natural disaster, a transport disaster, or a misleading instruction by a court employee. Failures of a party with an attribute of fault in any form whatsoever, including negligence, makes it impossible for the court to reinstate the time limit".

[29] Decision of the Supreme Court of 30 May 2019, III CZ 12/19: "In assessing the party's fault in a breach of a time limit, account shall be taken of the standard of care which may be required of the party who takes care of their own vital interests and that assessment must be made taking into account all the circumstances of the case. The absence of fault occurs, i.a., in the case of a party's illness, in particular one which, while also affecting the psychological sphere of the person, prevents them from dealing with matters other than their own health, including deciding to carry out a particular procedural act. It is the sole responsibility of the party to take such a decision, and therefore the third party cannot help or assist the party. Thus, if the party's illness affects their psychological sphere in such a way as to impede the proper assessment of the procedural situation and the decision to carry out a particular act, the fault of the party in the failure to act cannot be attributed to that act. Likewise, the reason for the failure to meet the time limit may be the situation in the life of the party resulting, for example, from the need to care for a close family member, which has resulted in the emergence of a mental condition preventing the proper performance of procedural acts".

that despite the difference between Article 585 PPL and the provisions of the Civil Procedure Code, one should refer to the practice and interpretation of the principles of restoring time limits, developed on the basis of the Civil Procedure Code.[30] However, this does not change the fact that the legislature has completely ignored the issue of the response to the lawsuit, it is worth noting here that, although there is a position of some scholars in this respect, according to which it is not possible to reinstate the time limit for responding to the lawsuit, it seems to be isolated.[31] It should also be remembered that a party within the meaning of the provisions on the reinstatement of the time limit for performing a procedural act is also the party's attorney[32] and therefore the failure to act by the attorney may not constitute the basis for a request to reinstate the time limit by the party, unless the failure was due to circumstances beyond his control.

At this point, it is necessary to indicate a significant change that has been made in the act in the manner of representation in the appeal proceedings, in accordance

[30] Decision of the Supreme Court of 17 January 2020, III CZ 89/19: "The request for reinstatement of the time limit for a procedural act is examined successively in three separate stages of the procedure. The first involves examining formal deficiencies of the request in terms of the general procedural document requirements (Articles 126 and 128 of the Civil Procedure Code) and the specific requirements consisting in simultaneously carrying out the procedural act to which the request relates and submitting it (Article 169 § 3 of the Civil Procedure Code). It is possible to take corrective action, and failure to remedy deficiencies within the specified time limit or failure to do so (when the corrective action is inadmissible) results in the return of the request in the form of an order of the chairman (Article 130 § 2 of the Civil Procedure Code, Article 130 § 5 of the Civil Procedure Code). The second concerns the examination of the compliance with the time limits of Article 169 § 1 and Article 169 § 4 of the Civil Procedure Code and the admissibility of the request (Article 168 § 2, Article 168 § 4, Article 170 of the Civil Procedure Code), and the consequence of the violation of these requirements is the rejection of the request by a court order (Article 171 of the Civil Procedure Code). It is only in the third stage that the court may proceed to assess the grounds of the request and, accordingly, reinstate the time limit or reject the request (Article 168 § 1)".

[31] G. Mazurek, *Skarga do sądu na wyrok KIO, cz. 2*, "Monitor Zamówień Publicznych" 2011, no. 1, pp. 51–54.

[32] Decision of the Supreme Court of 14 June 2018, III CZ 39/18: "Where a party is represented by an attorney, the fault of the attorney is the fault of the party within the meaning of Article 168 § 1 of the Civil Procedure Code. A party may not plead lack of fault in a situation in which the failure to comply with the time limit is attributable to its attorney. The effects of any act or omission by an attorney are borne by the party who cannot, in the light of that request for reinstatement, justify the fact that it is not the party but the attorney who failed to perform the act. In such a situation, the party, in order to obtain the reinstatement of the time limit, should prove it probable that the time limit has been exceeded for reasons not attributable to the party's attorney. In other words, if the attorney is attributed a fault in failure to comply with the time limit, it cannot be reinstated at the party's request. Thus, if the party's attorney has not, culpably, submitted a reasoned request for service of the judgment of the court of second instance within the time limit, the party may not validly request the reinstatement of that time limit. Only civil liability of the attorney towards the party on this basis may be in place, if the relevant substantive conditions are met".

with Article 510 of the Act, the attorney may be an advocate or attorney-at-law,[33] and also a person managing the property or interests of a party or participant in the proceedings, and a person remaining with the party or participant in the proceedings in relationship of independent contractor, if the subject matter of the case falls within the scope of this relationship.

An attorney of a legal person, undertaking, including one without legal personality, or an entity without legal personality may be an employee of that unit. Thus, only a person who is statutorily provided with such authorization may be an attorney of a party in the proceedings. This results in the restriction of the parties' freedom to choose an attorney, which is absolutely binding on the parties and the adjudicating body.[34] Such deficiency may not be rectified by approving the actions performed by that person. The essence of a procedural power of attorney is the direct representation of a party in the performance of procedural acts, based on the assumption that the procedural acts of the attorney immediately have legal effect for the principal. Referring this issue to the current wording of the provision, it can be assumed that the legislature imposed, in a sense, on the appeal proceedings, the obligation of "compulsory representation by a professional lawyer", as it may seem, the rationale of this obligation is to ensure an appropriate professional quality of this procedure. A professional attorney should be expected to know the current legislation and the case law. An advocate and attorney-at-law are obliged to act with the diligence attributed to a professional. The party using the assistance of a professional attorney has the right to expect and require that the activities be performed with full knowledge of the applicable legal regulations.

EFFECT OF THE ADMINISTRATIVE PROCEDURE CODE ON THE COURSE OF PROCEEDINGS BEFORE THE NATIONAL APPEALS CHAMBER

There is no doubt that the Public Procurement Law does not govern issues concerning the procedural time limits in the appeal proceedings before the National Appeals Chamber and in judicial proceedings to challenge the decisions of the National Appeals Chamber. On a reference basis, the legislature merely ordered to apply *mutatis mutandis* the rules on appeal to the proceedings before the court. In

[33] Act of 6 July 1982 on attorneys-at-law (consolidated text, Journal of Laws 2020, item 75).

[34] Decision of the Supreme Court of 10 September 2020, III UZ 32/20: "It is not possible for common courts or the Supreme Court to disregard the requirement of representation by a professional attorney set out in Article 871 (1) of the Civil Procedure Code, and specifically the fact that the court-appointed attorney drew up an opinion in the present case on the absence of grounds for a cassation appeal does not constitute grounds for disregarding that requirement".

the light of the foregoing, it seems reasonable to take the view that the provisions of the Civil Procedure Code should apply to the entire proceeding (both before the National Appeals Chamber and courts). But it seems advisable to consider whether the provisions of the Administrative Procedure Code[35] should also apply in the procedure before the National Appeals Chamber, of course where not regulated by the latter itself.[36] Therefore, in the light of that legislation, it is appropriate to divide time limits[37] by the entity setting the time limit, namely: 1) statutory time limit – set by the legislature, e.g. the time limit for filing an appeal (Article 129 § 2 of the Civil Procedure Code), complaint (Article 141 § 2 of the Civil Procedure Code), application for reopening of proceedings (Article 146 § 1 of the Civil Procedure Code), request for reinstatement of the time limit (Article 58 § 2 of the Civil Procedure Code), request for supplementation of the decision (Article 111 § 1 of the Civil Procedure Code); statutory time limits may not be shortened or extended by the authority conducting the administrative proceedings; misinstruction by the authority regarding the time limit may not have a negative effect on the party who has complied with such wrong instruction; 2) official time limit – determined in proceedings by the administrative authority, e.g. for submitting a document, appearing in person (Article 54 § 1 (5) of the Civil Procedure Code).

Pursuant to the provision of Article 57 § 5 CAP, a time limit shall be deemed to have been met if, before its expiry, the document has been: sent in the form of an electronic document to the public administration body, and the sender has received an official acknowledgement of receipt; posted at a Polish post office of a designated operator or at a post office of an operator providing universal postal services in another Member State of the European Union, submitted to a Polish consular office; submitted by a soldier to the command of a military unit; submitted by a sea vessel crew member to the captain of the ship; submitted by an inmate to the administration of a penitentiary institution.

Time limits specified in months end with the end of the day in the last month which corresponds to the initial day of the time limit, and if there is no such day in the last month – on the last day of that month (Article 57 § 3 CAP). In accordance with the provision of Article 57 § 4 CAP, if the end of the time limit for the performance of an activity falls on a day declared by law to be a holiday or on Saturday, the time limit ends on the next day which is neither a holiday nor a Saturday. Pursuant to Article 58 § 1 CAP, in the case of failure to comply with a time

[35] Act of 14 June 1960 – Code of Administrative Procedure (consolidated text, Journal of Laws 2021, item 735, as amended), hereinafter: CAP.

[36] W. Iwaniec, *Polski system środków ochrony prawnej,* „Zamówienia Publiczne Doradca" 2012, no. 6, pp. 15–22.

[37] *Kodeks postępowania administracyjnego. Komentarz*, eds. B. Adamiak, J. Borkowski, Warszawa 2004, p. 450.

limit, the time limit may be reinstated at the request of the interested party if the party presents evidence that the failure occurred without the party's fault. The lack of fault of a party in failing to perform a given procedural action within the statutory time limit may occur only in the case of substantiating by the party that it was impossible to perform the action due to a sudden and insurmountable obstacle. Pursuant to the provision of Article 59 § 1 CAP, the reinstatement of the time limit is decided by the public administration body competent in the case. Importantly, the provisions of Article 35 §§ 1 to 3a CAP specify three-time limits for handling cases in administrative proceedings: without undue delay -the prompt handling of the case; one month; two months.

The handling of a case without undue delay[38] means that the case may be considered on the basis of facts and evidence that are generally known to the public or known *ex officio* to the body by that runs the proceedings, which should take into account the period of time necessary to undertake activities related to verification of the request[39] and organisation of the process, taking into account the interests of the parties.[40]

CONCLUSIONS

The discussion above demonstrates that, under the current Public Procurement Law, the problem of perception and determination of time limits in the proceedings before the National Appeals Chamber remains valid. Despite the numerous changes that can be noted in the text of the PPL in relation to the act in force until 2021, the legislature has not decided to clearly regulate the question of the time limits to be applied during the appeal proceedings before the National Appeals Chamber. It should therefore be emphasised that, in the opinion of the author hereof, the time limits governed by the Administrative Procedure Code must be relevant here.

[38] Judgment of the Voivodeship Administrative Court in Opole of 4 December 2019, I SA/Op 387/19: "The term 'without undue delay' used in Article 455 of the Civil Code should not be equated with an immediate time limit, because the term 'without undue delay' means an actual time limit, taking into account the circumstances of place and time, as well as the regulations contained in Article 354 and Article 355 of the Civil Code".

[39] *Kodeks postępowania administracyjnego. Komentarz…*, p. 33.

[40] T. Lewandowski, *Strona postępowania administracyjnego*, LEX/el. 2013, p. 4.

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ABSTRAKT

W artykule omówione zostały kwestie związane ze stosowaniem odpowiednich terminów w toku postępowania o udzielenie zamówienia publicznego. Zwrócono szczególną uwagę na wątpliwości, jakie pojawiają się w kontekście terminów w toku postępowania odwoławczego toczącego się przed Krajową Izbą Odwoławczą. Wykazano, że ustawodawca – pomimo licznych zmian w treści ustawy Prawo zamówień publicznych – nie zdecydował się na jednoznaczne rozwiązanie zdiagnozowanego problemu. W artykule zaprezentowano dywagacje poświęcone poszukiwaniu optymalnego wyboru przepisów, które powinny być stosowane w omawianej procedurze, w szczególności w odniesieniu do terminów, jakie powinny wiązać strony w postepowaniu przed Krajową Izbą Odwoławczą. Autor zaproponował wówczas stosowanie terminów przewidzianych na gruncie Kodeksu postępowania administracyjnego, wykazując słuszność podnoszonej tezy. Artykuł ma charakter naukowo-badawczy.

Słowa kluczowe: termin; zamówienie publiczne; postępowanie o udzielenie zamówienia publicznego; Kodeks postępowania administracyjnego