

# NEWSLETTER

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## Complaint against the excessive length of proceedings inadmissible in the clause proceedings

We would like to inform you that the Supreme Court recently recognized the legal issue raised by the District Court in Gliwice concerning the possibility of bringing a complaint against excessive length of proceedings to assign an enforceability clause.

It should be noted that, in accordance with Article 781<sup>1</sup> of the Code of Civil Procedure, the court should recognize a motion to assign an enforceability clause no later than 3 days from the date of its submission.

Accordingly, the Supreme Court, as a result of a question given by the District Court in Gliwice, pondered whether exceeding the time limit indicated above shall entitle the applicant to file a complaint about the unreasonable length of the procedure to assign the enforceability clause.

In resolution published on August 4, 2016 (case no. Act III SPZP 1/16), the Supreme Court pointed out that **the complaint on length of proceedings is unacceptable, which is the subject of the delay in assigning enforcement clause to the lawful payment order issued by a regional court in warning proceedings** (art. 373 of the Code in connection with art. 397 § 2 of the Civil procedure Code and art. 8, paragraph 2 and art. 5, paragraph 1 of the Act of June 17, 2004 on complaint about a breach of the right to hear the case in preparatory proceedings conducted or supervised by the prosecutor and the judicial proceedings without undue delay – Journal of Laws No 179, item 1843, as amended (hereinafter referred to as the ‘Act’)).

As part of the justification of this position, the Supreme Court pointed out that **the complaint against the lengthiness can bring only during the procedure (‘in progress’), not ‘outside the course of’ proceedings**. Furthermore, the Court added that, in accordance with the cited Act complaint against lengthiness **should concern the excessive length within the framework of the exploratory phase of the proceedings** (in which the court rules on the merits of the dispute) **or phase of execution** (on the stage of the proceedings that led directly to the enforcement of the debtor's court ruling).

In the opinion of the Supreme Court, **clause proceedings has a specific character and it is impossible to classify it either as an exploratory phase or phases as enforcement**

**proceedings** - the clause proceedings is the 'intermediate stage' between the exploratory phase and enforcement, according to the Court.

Considering the above, the Supreme Court concluded that the proceedings against the excessive length of proceedings to assign the enforcement clause is unacceptable.

At the same time, in view of the above position, bearing in mind the protection of the rights of applicants affected by prolixity in clause proceedings, the Supreme Court pointed out that such persons can take advantage of other remedies - eg. take advantage of the possibility of referring the complaints referred to in the Act July 27, 2001 Act on common courts (Official Journal of Laws 2001 No. 98, item 1070, with further amendments).

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