

mgr Jan Zaliwski

The place of general complaint in the guarantee system of the correct operation of public administration

Summary

The right to submit a general complaint (*actio popularis*) belongs to the category of political rights, which results from placing it in the subsection of Freedoms and political rights of chapter II of the Constitution of the Republic of Poland. Article 63 states that everyone has the right to submit petitions, applications and complaints in public, personal or another person interest with his or her consent to the public authorities and to social organizations and institutions in connection with their tasks in the field of public administration. The procedure for the consideration of petitions, applications and complaints shall be specified by statute. This right is a public subjective right of a claim nature. On the side of its addressees, it is the duty to examine the case (consideration) and thus to take a position and respond to the complainant.

A general complaint is therefore a means of defense and protect the various interests of the individual, which do not give rise to demand general or special administrative proceedings, nor can they constitute a ground for an action or application aimed at initiating court proceedings. The complaint is at the same time treated as a deformalized measure of social control over the operation of public administration control of retrospective character, i.e. regarding events that took place in the past, undertaken in individual or public interest.

The research hypothesis of the dissertation is formulated as follows: The general complaint has certain universal features that complement the catalog of guarantee means of correct operation of the public administration granted to the unit.

The aim of the doctoral thesis is to try to answer the following questions:

- what is the contemporary public administration;
- what means the understanding, the system of regularity of public administration activities;
- what is the role of a general complaint in the activities of contemporary public administration;
- whether in the current extensive judicial system as well as out-of-court protection of individual rights, a general complaint as an institution originating from Soviet law is still valid, or that it is not an illusory law.

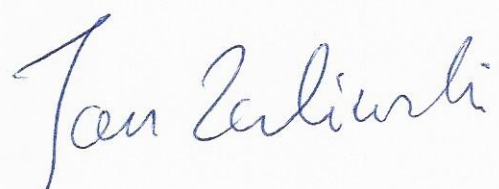
Another objective of the thesis is to assess the existing legal regulations, to demonstrate their imperfections and to put forward *de lege ferenda* applications.

The doctoral dissertation consists of six chapters. The first chapter concerns the purpose, the object of the thesis and the applied research method. The way of understanding the concept of the operation of the public administration as the basic right of an individual and the sources of its definition resulting from European law as well as the Constitution of the Republic of Poland and national law are outlined. In addition, the term public administration has been

clarified and the essence of its operation has been shown. In the second chapter, an attempt was made to find axioms that make up the system of regularity of public administration activities such as: rule of law, efficiency or ethics. This is the starting point for further consideration. The concepts and sources of their definition have been thoroughly analyzed. In the analysis of terms, such as efficiency or ethics, it is also justifiable to briefly present how these issues are perceived in other scientific disciplines (e.g. organization and management or philosophy). The next chapter presents the legal structure of the general complaint and, in particular, its versatile (universal) character was emphasized. The sources of law that give the individual the possibility to submit a general complaint are indicated, such as the Constitution of the Republic of Poland, subconstitutional acts, EU law and constitutions of selected European countries. In addition, the institution of a general complaint was compared with other selected legal protection measures, for example, a constitutional complaint, a complaint to an administrative court or an appeal to the Ombudsman. Chapters 4 and 5 of the thesis include considerations regarding the place of a general complaint in the protection of the rule of law, efficiency and ethics of public administration. The issue concerning the location of the institution of a general complaint as a means of protecting the rights of the individual in administrative proceedings as well as in other forms of public administration activity was discussed in detail. Attention was also paid to the issue of excluding the competitiveness of a general complaint from the lawfulness of acts under appeal. This chapter also describes the role of a general complaint in protecting the efficiency and ethics of public administration. The forms of public administration in various areas of its functioning are also briefly presented. The last chapter complements theoretical considerations with practical (statistical) themes. A qualitative and quantitative analysis of complaints submitted to public administration bodies was presented. The issues of practical qualification of citizens' letters by the competent authorities as a general complaint were highlighted. The use of information contained in common complaints in public administration activities was also presented, and the importance of supervision and control by the competent authorities over receiving and settling complaints was indicated.

As indicated in the dissertation, the general complaint supplements the catalog of measures to protect constitutional freedoms and rights, but it does not replace them. It guarantees not only fundamental rights, but also all individual and general rights and interests. It also leads to positive changes in the operation or organization of public administration, or to a change in the legal status by implementing corrective actions. In conclusion, it should be stated that the institution of general complaint, despite critical voices appearing in the doctrine, fulfills its role and is not a dead law, therefore it should remain in the Polish legal order.

Wroclaw 20.08.2019 r.

A handwritten signature in blue ink, reading "Jan Zieliński". The signature is written in a cursive style with a large initial 'J'.