

NEWSLETTER

March 2015

amendment to the Act – the Law of the Administrative Courts Procedure

Dear Sirs,

We would like to inform on the amendment to the Act – the Law of the Administrative Courts Procedure adopted by the Sejm [Polish Lower House of Parliament]. In the adopted Act several significant changes have been proposed, the importance of which seems to be invaluable in practice.

- I. The most significant change is the provision of the Voivodship Administrative Courts with the authority to adjudicate on the merits in the case of a review of administrative decisions and rulings. For the parties to the proceedings it is of crucial importance due to the fact that, based on the new provisions, the court will be able to impose a method of resolution of the case. So far, it specified only how to interpret the provisions but after the changes have come into force, the court will be able to indicate a binding method of resolution of the case.
- II. Regulations of the adopted Act assume that in the case when the court upholds a complaint against a decision or a ruling (in connection with an infringement of the substantive law which influenced the outcome of the case or due to the declaration of invalidity of a decision in whole or in part), if this is justified by specific circumstances of the case, the court will be able to oblige the body to issue a decision or a ruling within specified timeframes, at the

same time advising on the method of handling the case or resolution of the case unless the resolution has been left to the discretion of the body.

Therefore, the adopted amendment grants to the administrative courts the authority to determine a method of handling the case in a ruling upholding a complaint and even the future resolution, should it be justified by circumstances of the case. Therefore, in the case of lodging a complaint against a decision of the administrative body, the court will be able to reverse a decision (overturn a ruling) and oblige the body to issue a new decision (ruling) within specified timeframes with advising the body on the method of handling the case or obliging it to adopt a specific resolution.

- III. The above is related to implementation of one of the main assumption of the amendment aiming at providing the administrative courts with the authority to adjudicate on merits of a case. Under the binding legislation, the court, which can only reverse a decision, includes in a judgment nothing but legal evaluation and instructions concerning the further procedure and that frequently results in a repeated negative decision issued by the body and consequently the case comes before the Voivodship Administrative Court once again.
- IV. Equally important is that the new regulation prevents the cases of non-compliance with the guidelines of the court. **The body is obliged to notify the court of the made decision which has been recommended to the body.** In the event when this obligation has not been met, the court may impose a fine on the body. **In addition to the above, in the event when the decision or a ruling on the indicated resolution has not been issued within the timeframes specified by the court, the party will have the right to lodge a complaint with a request to give a judgement stating on the existence or non-existence of the entitlement or obligation.** The court will give a judgment on this issue if the circumstances of the case allow. Moreover, the court may impose a fine on the body or order the body to pay a specified amount of money for the plaintiff as a specific compensation for a failure to enforce the judgement.
