



RGW Rocławski Graczyk i Wspólnicy Adwokacka Spółka komandytowa

Newsletter Nr II/2011

Amendment to the act – Code of Administrative Proceedings (“CAP”)

On 11 April 2011, the act of 3 December 2010 became effective amending the act – the Code of Administrative Proceedings and the act – the Law on Proceedings before Administrative Courts (Journal of Laws of 2011, No. 6, item 18). The said amendment introduces a number of changes aimed at improving administrative proceedings.

- **Modification of chief principles of the CAP**

The amendment modifies the content of chief principles laid down in art. 7 and 8 of the CAP. In accordance with the new wording of art. 7 of the CAP, during the proceedings the public administration bodies are guarding law and order, ex officio or at the request of parties they take any and all measures necessary to clarify thoroughly facts of a case and take care of the matter. The change made entitles parties to have an active influence on clarification of the facts of a case.

- **Final decisions**

The amendment to art. 16 § 1 of the CAP specifies that those decisions are final which do not entitle to an appeal in the administrative instance or a petition for rehearing the case. This change is aimed at dispelling existing doubts as to the decisions given by ministers and self-government appeals boards.

- **Changes with respect to art. 25 and 36 of the CAP**

The change in art. 35 § 4 of the CAP makes higher-lever bodies lose the possibility of determining the type of cases which are to be handled within a shorter time-frame than provided in art 35 § 3 of the CAP. Quicker handling of cases will only be possible under specific regulations. The essence of the amendment to art. 36 of the CAP is to extend application of this regulation to special laws providing for shorter or longer time-frames for the handling of cases than those provided for in art. 35 of the CAP, and simultaneously

to impose an obligation on the administrative body to inform parties of any failure to handle a case within this shorter time-frame and reasons for such delay.

- **Complaint about lengthiness of proceedings**

The amended art. 37 § 1 of the CAP introduces the institution of a complaint about the lengthy conduct of proceedings. Extension of the right to make a complaint to the body of higher instance about the lengthy conduct of proceedings will have such effect that the lengthiness of proceedings, in a similar way as currently the failure to handle a case on time, will be subject to the cognition of administrative courts who will be free to fine the body conducting proceedings in a lengthy way.

- **Agent for service**

Pursuant to § 4 and 5 added to art. 40 of the CAP, a party residing abroad or having its registered office abroad, unless it appointed an agent for handling the case residing domestically, shall be obligated to name a domestic agent for service. In case an agent for service is not named, the letters addressed to that party shall be put on file of the case with the effect of having been served.

- **Decision to refuse the institution of proceedings**

In art. 61a of the CAP, the amendment introduces the institution of refusal to initiate proceedings. The reasons for refusal to initiate proceedings shall be formal considerations or a petition being presented by a person who is not a party. So far, in case a petition is presented by an entity other than a party, a decision should have been given to discontinue proceedings.

- **Uniqueness of application of art. 138 § 2 of the CAP**

In the light of the amended art. 138 § 2 of the CAP, the appellate agency may overrule the appealed decision in its entirety and refer the case for rehearing to the body of first instance when such decision has been given in violation of the rules of proceedings, and the scope of the case which has to be clarified is materially relevant to the settlement thereof. This change is intended to discipline the body of second instance so that it does not misuse the decision which overrules the decision of the body of first instance and refers the case for rehearing.

- **Amendment of art. 154 and 155 of the CAP – change and reversal of the final decision**

As a result of the amendment, only the body who has given the final decision shall be free to overrule or change it under the procedure provided for in art. 154 and art. 155 of the CAP. In the previous legal situation, also the body of higher instance had such possibility.