

## NEW COMPLAINT FOR DELAY IN ADMINISTRATIVE PROCEEDINGS

So far, in administrative proceedings it has only been possible to file a complaint for inaction of an administrative authority. Under Art. 3(2)(8) of the Administrative Court Procedure Law, the complaint is considered by the administrative court. However, the law does not define “inaction” of an administrative authority, leaving the concept open to interpretation by courts and scholars. It is generally understood to mean that an administrative authority has failed to act on a matter within the time provided by law, or, despite a pending proceeding, the authority has not fulfilled a legal duty to conclude the proceeding by issuing a decision or other action.

In practice, the institution of the complaint for inaction has not solved all the problems associated with the parties’ desire that a matter be resolved within a reasonable time. Administrative authorities have exploited the right to postpone the deadline for resolving a matter, even when not objectively justified. In such case, a party is not entitled to file a complaint for inaction, even if a lengthy period has gone by, because the deadline for resolving the matter has not passed. As stated in the legislative history for the amendment, “Public administrative authorities often conduct proceedings ineffectively, taking a number of actions at long intervals or taking superficial actions so that technically they will not be considered inactive.”

The new amendment of the Administrative Court Procedure Law attempts to meet parties’ expectations in this respect by introducing a complaint for delay in proceedings, alongside the existing complaint for inaction. A substantial difference is that a complaint for delay may be filed before the deadline for resolving the matter, without first exhausting other legal remedies. The act does not define precisely what constitutes delay, but the definition created for purposes of a complaint for delay in judicial proceedings may be applied by analogy. Thus there will be delay if the proceedings before an administrative authority continue for longer than necessary to resolve the matter, based on the factual and legal circumstances. In order to determine whether there is **unjustified delay**, it will clearly be necessary to consider the complexity of the facts and the legal complications of the matter, as well as the conduct of the parties in the course of the proceedings. As in the case of a complaint for inaction, if the administrative court upholds the complaint for delay, it will order the administrative authority to issue a decision or take other action by a specific deadline. If the authority fails to comply with the order of the court, the party may summon the authority to resolve the matter, and if that fails the party may then file another complaint demanding that a fine be imposed on the authority.

The new provisions close an important loophole and provide parties with a new weapon against severe delays in proceedings before public administrative authorities. In

case of continued postponement of the deadline to resolve the matter, the parties will have the right to demand that the administrative court impose disciplinary sanctions on the dilatory authority.

For more information on this topic, please contact Aleksandra Faderewska-Waszkiewicz ([aleksandra.faderewska@laszczuk.pl](mailto:aleksandra.faderewska@laszczuk.pl)).

### **CHANGES CONCERNING EMPLOYMENT CERTIFICATES AND MEDICAL EXAMS FOR REHIRS**

Amendments to the Polish Labour Code concerning issuance of employment certificates to employees rehired to work for the same employer and referral of such employees for preliminary medical examinations entered into force on 21 March 2011.

The previous provisions required an employer entering into another employment contract with the same employee immediately following termination or expiration of the previous contract to issue the employee a certificate for the employment just ended, but only at the employee's request.

Under the amendment, an employer who continues to employ an employee after termination or expiration of a previous

employment contract for a specific period has a mandatory obligation to issue an employment certificate concerning the prior contracts. Under the new rules, if the employee continues to be employed with the same employer under an employment contract for a trial period or a definite period or for the time required to perform a specific job, the employer is required to issue employment certificates to the employee covering the completed periods of employment under all such contracts entered into within 24 months after entering into the first such contract. Under the interim provisions, the new rules for issuance of employment certificates in such situations will apply only to employment relationships entered into after 21 March 2011.

If an employer decides to rehire an employee who has been performing work for the same employer at the same position and under the same conditions, the employee is not required to undergo another preliminary medical examination. This applies only when the new employment contract is entered into within 30 days after termination or expiration of the previous employment contract.

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