Without any mode

Sometimes we handle cases in which, in the course of administrative proceedings, the party's company name changes. In such cases it often turns out that knowledge of the entries in the National Court Register is less common than the presumption in this respect would indicate. Many times administrative bodies, on the date of issuing a decision in favour of the company (applicant), did not check the validity of entries concerning it in the National Court Register and often addressed decisions in favour of the company under its old business name, even though at the time of issuing the decision, the company's new name was already disclosed in the register.

Despite the transparency principle arising from the act on National Court Register, the case law indicates that administrative authorities are not obliged to monitor all entries in the register. However, according to the Code of Administrative Procedure, the designation of a party is an obligatory element of a decision. Verification of data individualising the addressee of an administrative decision, e.g.. the company name, registered office, should be the rule in such a case.

It would seem that this is not a significant problem. Despite issuing a decision in favour of the applicant with the "old name", a full receipt from the court register should suffice to prove the addressee's identity. However, we have many times encountered the surprising position of administrative bodies that, due to a change of a business name, a completely new company is created, and the company with the old name ceases to exist. Thus, we can imagine a situation in which a company, having received, for example, an environmental decision or a decision on development conditions, in which it is indicated with its previous name and with a full copy of the receipt from the register, applies for a decision on a construction permit. The competent authority (erroneously, of course, but nevertheless) may refuse to issue such permit due to a different company indicated in the abovementioned decisions. According to the authority, in such a case, the applicant does not hold the required preceding decisions addressed onto him.

It is obvious (probably not only to a lawyer) that a company name change does not result in the change of an entity itself. The company retains its legal existence. Only the designation of the entity's name as the addressee of the decision is amended. It is only a 'technical' change. It may be compared to a change of the surname of one of the spouses as a result of marriage – it is the same person all the time.

However, misunderstanding of the matter turns out to be quite common. To avoid problems at a further stage of using such a decision (in particular during the investment process), there may be, therefore, a need to adjust its content to the actual state. Unfortunately, the provisions of the Code of Administrative Procedure do not provide an answer to the question of how to "update" an administrative decision that does not take into account the change of the company's name. None of the procedures provided for in the Code (whether correction or supplementation, amendment, appeal, resumption of proceedings or declaration of invalidity) is entirely adequate for such a situation.

It would appear that the procedure closest to correcting the decision regarding the indication of the company's current name could be a correction. However, it has been indicated in some court rulings that the incorrect designation of the party to the proceedings in a decision is not an obvious mistake and, therefore, a correction in this respect is inadmissible. When attempting to "update" a decision in such a manner, it has even happened to us that an administrative authority, in recognition of a request for correction of a decision in such a situation, issued a decision transferring (sic!) the original decision to a company under a new name. Leaving aside the lack of a procedure for making such a decision in light of the party's request, the authority also apparently came to the conclusion that it was dealing with two different entities.

All these practical problems could be avoided if the authorities were more precise in description of the addressee of the decision. Both the designation of natural persons solely by their first name and surname and of legal persons by their name and registered office seem inadequate to the dynamics of the market. There are, after all, relevant data (PESEL, NIP and KRS) which remain unchanged and allow for unambiguous identification of the addressee. In administrative bodies, however, they have apparently "not caught on".

Do you want to know more? Contact us!

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