

Some aspects of illegal construction projects

The Construction Law Act of 7 July 1994 contains no definition of illegal construction projects, and hence the term is used in varying contexts. The most characteristic type of illegal construction project, of course, is what is known as “typical” illegal projects (Article 48 ff. of the Construction Law), i.e. construction of a structure without the construction permit or notification required by law. Neither the act of notification, even where the relevant official body has not raised any objection within the statutory period, nor the fact that a construction permit has been obtained from the relevant body with jurisdiction, means that the investor is immune to the consequences if the notification was made or the construction permit issued in violation of the law and hence annulled. In this case this is also illegal construction, and the investor may be faced with the necessity of undertaking a suitable procedure designed to bring the project in line with the law.

The most rigorous sanctions are provided for in cases where the investor is in the process of building or has built a structure without seeking the required construction permit or notification (Articles 48 and 49b of the Construction Law). This regulation applies to a situation where the investor has neglected to obtain a construction permit or to make notification of his project, or has commenced construction before the construction permit became final, before the date by which objections to the notification have to be filed, or in spite of their having been filed. Article 48 of the Construction Law is not applicable, however, if the investor has “begun and pursued investment projects in possession of a construction permit marked as final”¹. It is important to point out, however, that submission of a notification and lack of objections to it essentially precludes the potential to apply Article 48 of the Construction Law only insofar as it will not be possible to char-

ge the investor with real intent to circumvent the regulations regarding obtaining a construction permit².

If any of the situations listed above comes into play, the relevant official body may order the demolition of the structure if its “legalisation” is impossible. Legalisation of such a structure will, specifically, be possible if the structure conforms to the terms of the local zoning plan or the planning permission, and does not violate regulations, including technical and building regulations, to an extent preventing the structure or part thereof to be brought into line with the law. After the appropriate procedure has been performed, involving the investor submitting the necessary documents and information, if the official body finds legalisation to be permissible, it will issue an appropriate decision and impose on the investor the obligation to pay a legalisation fee. The figure of this fee will be a product of the factor of the category of structure and the factor of its size (Article 59f in connection with Article 49 of the Construction Law). If legalisation is not possible, the official body will order demolition.

In other cases of illegal construction projects, i.e. where the structure has been built in a different way to that set down in Article 48 para. 1 or Article 49b para. 1 of the Construction Law, there is no legalisation fee. This is connected with the fact that the investor was acting in confidence of the official body that issued the construction permit or did not submit an objection to the notification, or issued a construction permit that was later annulled. In such cases proceedings are initiated that are called reparation proceedings, pursuant to Articles 50-53 of the Construction Law. These regulations apply both to structures already built and to those under construction. The goal of reparation proceedings is to bring construction works in progress (or completed) to a state that is

compliant with the law, including the local zoning plan or the planning permission. To this end the relevant body will order the investor to perform certain work or submit specific documents within a specified period, and if the construction work is still ongoing, will order work to be halted. Once that period has elapsed, or at the investor’s request, the relevant body will check execution of the order and issue a decision regarding approval of the construction design and a permit to recommence construction work or, if the work is completed, approval of the replacement construction design. If the order is not fulfilled within the designated period, the relevant body will issue a decision ordering further construction work to be halted, the structure or part thereof to be demolished, or the structure to be returned to its previous state.

These regulations apply also to illegal construction construed as significant departure from an approved construction design or other conditions of the construction permit.

The above brief outline of illegal construction in the context of the currently binding Construction Law is certainly not an exhaustive examination of the subject, but merely an indication of its scope. It is also worth noting that certain aspects of illegal construction projects may be subject to different regulations depending on the regulations of the Construction Law in force on the date when they were committed.

*Agnieszka Kowalczyk
Kancelaria Adwokatów i Radców Prawnych
Miller Canfield, W.Babicki, A.Chełchowski i
Wspólnicy sp. k.*

¹ Thus: verdict of the Supreme Administrative Court (WSA) of 19 August 2009, VII SA/Wa 345/09, LEX no. 553575 and verdicts including that of the WSA of 11 August 2009, case no. II SA/OI 587/09 LEX no. 553136

² Thus: verdict of the WSA of 27 January 2010, case no. II SA/Lu 651/09, LEX no. 600147