

Selected issues related to the suspension of construction works by the construction supervision authority

The commencement of construction works does not yet mean that the undertaking will be realized as intended. In addition to economic circumstances, completion of the investment can also face legal barriers such as, in particular, rulings of the competent construction supervision authority, which, in performance of its duties, is authorised, among others, to suspend ongoing construction works.

First of all, it should be noted that the construction supervision authority shall issue a ruling to suspend construction works conducted without a valid construction permit, a valid notification or in spite of the opposition brought by the competent architecture and construction administration authority. Importantly, construction works are suspended only if the construction complies with the applicable architecture and construction administration regulations, in particular with the provisions of the conditions defined in the local zoning plan or other acts of local law, and they are without prejudice to the effective regulations, including the technical and construction regulations, to an extent that it is impossible to bring the building structure into compliance with the law (Art. 48.2 of the Construction Law, Art. 49b.2 of the Construction Law). Otherwise, the construction supervision authority shall issue a decision to demolish realized structure or a part thereof – if legalization of unlawful construction works is ruled out, then the only way to bring the actual status of the construction into compliance with the law is to remove the results of the construction works performed. Moreover, the construction supervision authority shall suspend the construction works which are performed without a valid construction permit or notification in cases other than those referred to above – this applies to construction works other than construction, i.e. reconstruction, assembly, overhaul or demolition of the structure (Art. 50.1.1 of the Construction Law). A com-

mon feature of the situations referred to above, which result in the construction supervision authority suspending ongoing construction works, is that they are performed without authorisation, i.e. without obtaining approval of the competent administrative authority required under law in the form of a relevant administrative decision or non-raising of the objections.

Regardless of the foregoing, the construction supervision authority shall suspend construction works, which are conducted: (i) in a manner that may affect the safety of people or property, or be a threat to the natural environment, (ii) on the basis of a notification made in breach of the regulations applicable to notifications, or (iii) in a manner which differs significantly from the terms and conditions defined in the construction permit, the construction design or in the applicable regulations (Art. 50.1.2-4 of the Construction Law). It should be noted that each of the situations referred to above, considered in its own right, gives reasonable ground to suspend the construction works. Importantly, suspension of the works in the circumstances described above is not a consequence of conducting the works without the required authorisation, i.e. without prior obtaining the construction permit or making a relevant notification in advance, but it is caused by performance of the works in a manner inconsistent with the applicable regulations. The foregoing means that, under specific circumstances, even obtaining the final construction permit or making

the notification in an effective manner may not prevent suspension of the construction works – what really matters is the actual occurrence of circumstances ruled out by the law.

It should be emphasised that the list of reasons for suspension of the construction works defined in Art. 50.1 of the Construction Law is exhaustive – this means that, in principle, the construction supervision authority may not suspend construction works for reasons other than those defined therein, even it considers these reasons to be valid. In particular, as indicated in the judicature of the Supreme Administrative Court, the mere fact of the investor losing the title to the property, on which specific construction works are conducted, is not a reason for the construction supervision authority to suspend the performed works. It should be borne in mind that responsibilities of the construction supervision authority primarily include monitoring compliance and application of the provisions of the construction law. Naturally, the situation referred to above will have effects under the civil law, but it should be of no concern to the construction supervision authority.

It should be emphasised that in each of indicated situations the ruling to suspend the construction works may be subject of the appeal. The appeal must be filed to a superior authority via the authority, which issued the ruling being appealed against. However, it is important to note that, in principle, submission of the appeal does not suspend the enforcement of the ruling appealed against, but the authority issuing the ruling may stop its enforcement if it considers it justified. It should also be noted that the ruling to suspend the construction works may not be issued with respect to building structures which have been already finished – if this is the case, it is pointless to issue such a ruling, which, however, does not prejudice any other action by the construction supervision authority that may be provided for in the Construction Law.

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