

Legal opinion

Construction law amendment including provisions on legalizing unlawful building works

On 23 January 2020 – exactly a month after it was submitted to the Sejm, and eight days after its first reading – the lower house of Polish Parliament passed a government-sponsored package of changes to construction laws. The legislation, titled “Act Amending the Construction Law and Some Other Acts” (“Act”, “Amendment”), is now in the Senate, where it is being considered by the Infrastructure Committee.

Among other things, the Amendment alters regulations pertaining to the building design and the technical design; sets a maximum of five years for declaring a planning permission or occupancy permit null and void; makes changes to the list of constructions exempt from the obligation of obtaining planning permission; and introduces provisions to bolster enforcement of the obligation to connect buildings to the heating system.

But the changes that have attracted the most attention concern legalization of unlawful building works. Under existing law, when unlawful building works – i.e., a construction, or part thereof, that was built or is being built without planning permission (or without prior notification, in cases where planning permission is not required) – is found, the competent construction supervision authority orders the demolition of such a building works or structures.

Under the Amendment, the authority will first issue a suspension order, and give the owner until 30 days from receipt of the suspension order to apply for legalization. When such an application is submitted, the authority will officially request the applicant to submit legalization documents. These will include, amongst others: a certificate of compliance with the local zoning plan and other local regulations, or (where a local zoning plan does not exist) compliance with the decision on site development and management conditions; the building design; the technical design; or (in the case of constructions exempt from planning permission) the site/plot management design.

If the submitted legalization documents are complete and correct, the authority will determine a legalization fee, upon payment of which the applicant will receive an official decision approving the building design or site/plot management design, and permitting construction to be resumed (if it was still underway upon being found).

Furthermore, and in a truly revolutionary development, the Amendment introduces a simplified legalization procedure for unlawful building works that are 20 years old or more. If the submitted legalization documents are complete, and if an expert opinion is presented stating that the structure in question poses no risk to people and can be safely occupied, the authority will proceed to legalize it, without charging any fee. Should no further changes be introduced to the Amendment during the legislative process, the simplified, and free of charge legalization will be possible for structures that were 20 years old when the suspension order is issued.

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