

# Legal opinion

## Historical monuments in the Construction Law Act of 7 July 1994

The Construction Law Act of 7 July 1994<sup>1</sup> (henceforth the Construction Law) stipulates that its provisions are without prejudice to separate regulations, and in particular to regulations pertaining to the protection and care of historical monuments<sup>2</sup> – sites and structures entered in the register of historical monuments, and sites and structures subject to conservation protection under the local zoning plan.<sup>3</sup> The Supreme Administrative Court has stated in its rulings that provisions of the Act on the Protection and Care of Historical Monuments should not be regarded as *lex specialis* to the provisions of the Construction Law, and that no existing regulations exclude the jurisdiction of the competent building supervision authority in cases where the competent conservation officer is also conducting a proceeding.<sup>4</sup> This means that the relationship between the two Acts is one of co-application, i.e. that to structures and construction works covered by the Act on the Protection and Care of Historical Monuments both the provisions of this law and the Construction Law apply.<sup>5</sup>

<sup>1</sup> Journal of Laws 2019.1186 consolidated text.

<sup>2</sup> Act on the Protection and Care of Historical Monuments of 23 July 2003, Journal of Laws 2020.282 consolidated text.

<sup>3</sup> Art. 2 para. 2 item 3) of the Construction Law

<sup>4</sup> NSA ruling of 17 December 2014, II OSK 961/13, LEX no. 1643782.

<sup>5</sup> NSA of 22 January 2013, II OSK 1733/11, LEX no. 1361598.

By the nature of things, the historical monument referenced in the Construction Law is a stationary monument. It is defined as a property (or a part or set thereof) that is man-made or associated with human activity and constitutes a testimony of a bygone era or event whose preservation is in the public interest due to its historic, artistic or scientific value.<sup>6</sup> Because of the special value ascribed to them, the Construction Law regulates a number of issues differently where historical monuments are involved. These differences concern the following areas:

- 1)** rules of design and construction,
- 2)** application for departure from technical and construction regulations,
- 3)** work exempt from building permit requirements,
- 4)** advance notification of construction, objection and imposition of permit requirement
- 5)** execution of construction work,
- 6)** demolition of abandoned or unfinished structures,
- 7)** alteration of use.

**Ad. 1)** A building structure and all its component parts should – taking into account their anticipated period of use – be designed and built in accordance with the applicable regulations, including the technical-construction regulations, and with the rules of technical knowledge, while at the same time ensuring that any structures entered in the register of historical monuments or covered by conservation protection, if such are involved, are protected.<sup>7</sup>

<sup>6</sup> Art. 3 item 2) in connection with item 1) of the Act on the Protection and Care of Historical Monuments of 23 July 2003..., op. cit.

<sup>7</sup> Art. 5 para. 1 item 7) of the Construction Law

**Ad. 2)** The Construction Law permits departures from the technical and construction regulations in justified cases. The competent architectural and building administration authority grants or refuses to grant its consent for such a departure upon authorisation from the minister who issued the technical and construction regulations. The authority applies to the minister for such an authorisation before issuing the decision on the building permit. But where structures entered in the register of historical monuments, or other structures located on sites covered by conservation protection, are involved, this application must include a positive opinion from the voivodship conservation officer.<sup>8</sup>

**Ad. 3)** The Construction Law contains a list of construction works for which a building permit is not required. But these exemptions do not apply if the works in question are conducted at structures entered in the register of historical monuments – in which case a building permit is required – or on sites entered in the register of historical monuments, in which case an advance notification of construction is required. A permit from the competent voivodship conservation officer has to be enclosed with the building permit application or notification of construction in such cases.<sup>9</sup> Similarly, the installation of advertising boards and devices is exempt from the requirement to obtain a building permit, but this exemption does not apply when the advertising boards/devices are mounted on structures entered in the register of historical monuments (as defined in regulations on the protection and care of historical monuments).<sup>10</sup>

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<sup>8</sup> Art. 9 of the Construction Law

<sup>9</sup> Art. 29 para. 4 of the Construction Law

<sup>10</sup> Art. 29 para. 2 item 6) of the Construction Law

**Ad. 4)** The Construction Law stipulates that an advance notification has to be provided to the competent authority of the installation of iron bars on a structure entered in the register of historical monuments.<sup>11</sup> The authority can, within 21 days of receipt of the notification, raise an objection by issuing a decision to this effect. The installation work can only begin if no such objection is raised within this timeframe. The authority can, as part of its objection, impose on the applicant an obligation to obtain a permit for the installation of the bars, if it concludes that the historical monument's conservation state would deteriorate as a result.<sup>12</sup>

**Ad. 5)** Article 39 of the Construction Law stipulates that performance of construction works at a structure or on a site entered in the register of historical monuments requires, before the decision on the building permit is issued, a permit from the relevant voivodship conservation officer. It also stipulates that a permit for the demolition of a structure entered in the register of historical monuments may only be issued after a decision by the General Conservation Officer removing the structure from the register of historical monuments has been obtained. With respect to structures and sites that are not entered in the register but are included in a local list of historical monuments maintained by the commune, the architectural and building administration authority issues a building or demolition permit in agreement with the voivodship conservation officer. The voivodship conservation officer has to take a position on the matter within 30 days of receipt of the application, otherwise it is assumed that no objections were raised.

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<sup>11</sup> Art. 30 para. 1 item 3) letter a) of the Construction Law

<sup>12</sup> Art. 30 para. 5 and para. 7 item 2) of the Construction Law

**Ad. 6)** In principle, if an abandoned or unfinished structure is unfit for renovation, reconstruction or finishing, the construction supervision authority issues an order telling the owner or manager of the structure to demolish it and tidy up the site, specifying when the work should commence and be completed. But this rule does not apply to structures entered in the register of historical monuments. And in the case of structures that are not entered in the register but are covered by conservation protection under the local zoning plan, the construction supervision authority issues the demolition order upon agreement with the voivodship conservation officer. Again, the voivodship conservation officer has 30 days to take a position on the matter, otherwise agreement is assumed.<sup>13</sup>

**Ad. 7)** Alteration of the use of a structure (or part of it) requires that an advance notification be provided to the architectural and building administration authority. The notification has to specify the current and intended use. The authority can raise an objection to such a change under certain circumstances, one of which is when it concludes that the change could cause an unacceptable deterioration in the conservation state of a historical monument.<sup>14</sup>

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<sup>13</sup> Art. 67 of the Construction Law

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<sup>14</sup> Art. 71 para. 5 of the Construction Law