

Legal opinion

Period of Validity of the Building Permit

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Article 37 (1) of the Construction Law of 7 July 1994 (Journal of Laws 2020.1333 of 3 August 2020) (henceforth "Construction Law") stipulates that a building permit lapses when construction has not commenced within three years of the date that the decision granting the permit became valid, or where construction has been interrupted for more than three years. Importantly, the three-year period has a substantive-law effect, which means it cannot be restored. These are the only circumstances in which a building permit lapses in Poland.

But what constitutes the commencement of construction? According to Article 41 (1) of the Construction Law, construction is deemed to have commenced when preparatory works have been initiated, as documented by an entry in the construction site logbook made by the construction site manager.

With respect to interrupted construction, the length of the interruption is also determined on the basis of the time that has passed since the last entry in the construction site logbook.

When one of the circumstances described in Article 37 (1) occurs, the building permit becomes invalid by virtue of law. An investor that is carrying out construction operations

on the basis of a lapsed permit is treated as if they were building without a permit. This was confirmed by a ruling of the Voivodship Administrative Court (WSA) in Poznan on 25 September 2019 (II SA/Po 580.19). In it, the court ruled that the carrying out of construction operations on the basis of a lapsed building permit is tantamount to unauthorised construction, to which provisions of Article 48 of the Construction Law pertaining to demolition of unauthorised structures apply.

Article 37 (1) constitutes an independent legal basis for the issue of a decision pronouncing the lapse of a building permit. The lapse is pronounced by the competent architecture and construction authority, based on Article 162 § 1 of the Code of Administrative Procedure in connection with Article 37 of the Construction Law. But because the lapse of a building permit has far-reaching consequences for the investor, the fact that the circumstances causing the lapse have indeed occurred cannot be assumed, but should be demonstrated beyond dispute. Furthermore, the circumstances themselves must be construed restrictively, not expansively, as an expansive interpretation would conflict with the Construction Law's intent to support construction in the public interest (the Voivodship Administrative Court in Gliwice's ruling of 11 February 2020, II SA/GI 1557/19)

There is one more thing that is worth noting. The three-year period prescribed by Article 37 (1) ceases to run when an administrative court or a public administration body issues a stay of execution on a building permit decision (or a decision granting the right to resume construction). As the Supreme Administrative Court (NSA) concluded in its ruling of 10 June 2005 (OSK 1269/04), the opposite situation, in which the period continued to run, would be at odds with the legal order, since by complying with the stay of execution, the investor becomes unable to exercise rights conferred in the permit.

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