

Legal opinion

New rules on annulment of building permits and occupancy permits

Following the latest amendment to the Construction Law, which came into effect on 19 September 2020, the maximum time in which authorities may declare a building permit or occupancy permit null and void has been reduced to 5 years.

Under Article 37b (1) of the amended Construction Law, "A decision to grant a building permit may not be declared null and void if 5 years have elapsed since the date of its delivery or announcement." And under Article 59h, "A decision to grant an occupancy permit may not be declared null and void if 5 years have elapsed since the date it became final."

The way they are worded, both provisions should be regarded as *lex specialis* to the general rule expressed in Article 156 paragraph 2 of the Code of administrative procedure, which states: "A decision may not be declared null and void for the reasons set out in paragraph 1, items 1, 3, 4 and 7, if 10 years have elapsed since the date it was delivered or announced, and when it has produced irreversible legal effects." The said paragraph 1 of Article 156 reads as follows:

"A public administration authority shall declare null and void a decision that:

- has been issued in breach of the rules on jurisdiction;
- has been issued without a legal basis, or in flagrant breach of the law;
- concerns a case already decided, either by means of another final decision or tacitly;
- has been addressed to a person who is not a party to the case;
- was unenforceable on the date of its issuance and its unenforceability is of a permanent nature;

- would give rise to a punishable offence in the event of it being enforced;
- has a flaw that makes it null and void by the force of law."

Where 5 years have passed since the decision to grant a building/occupancy permit was delivered or announced / became final, the public administration authority will merely limit itself to stating that the decision was issued in breach of the law, and cite the circumstances why it is not declaring the decision null and void, in line with Article 158 paragraph 2 of the Code of administrative procedure.

As noted, the wording of the two Construction Law articles implies they refer to decisions annulled pursuant to Article 156 of the Code of administrative procedure. So it is worth bearing in mind that the Code also contains other procedures for nullifying flawed administrative decisions, to which the 5-year time limit will not apply.

Thus, Article 146 of the Code says a decision may not be declared null and void for any of the reasons set out in Article 145 paragraph 1, items 1 and 2, if 10 years have elapsed since it was delivered or announced. The said part of Article 145 reads as follows: "A case already decided by a final decision shall be reopened if 1) the evidence based on which factual circumstances material to the case have been established has proved to be false; 2) the decision has been issued as a result of a criminal offence." So here the time limit is 10 years.

Furthermore, a decision may be declared expired, or null and void, pursuant to Article 162 of the Code without any time restriction. It applies to cases where "1) the decision has become irrelevant, and declaring it expired is dictated by law, or is in the public interest, or in the interest of a party; 2) the decision has been issued subject to a condition being fulfilled by a party, which the party did not fulfil."

Although the reduced time limit for annulment applies only to building permits and occupancy permits, there is no doubt that the change will make life easier for investors, strengthening the security of legal transactions.

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