

HIGHWAYS SITING IN POLISH LAW

The legal grounds and the mode of siting of investments in Poland are ruled by several laws. The Law of 27 March 2003 on planning and land development and the Law of 7 July 1994 – The Construction Law have an essential importance in this matter.

The provisions of the Law on planning and land development splits the investments into two groups: 1) investments of public purpose and 2) other investments. The attribute of the public purpose investment goes to all these investments which, independently on their form of property (private or public), implement public tasks precisely enumerated in article 6 of the Law on real estates management and other laws. A simplified mode of proceedings for public purpose investments is provided. One of its features is a fact that the competent body of public administration is not obliged, as in the case of other investments, to notify its intention to one of the parties (social organizations concerned) and the remaining parties are notified by way of announcements only.

In virtue of article 6 point 1 of the Law on grounds management, a highway is an investment of public purpose and – as such – benefits of the above mentioned simplified mode of siting. Aiming however at improving the process of roads siting and construction, the legislator has temporary excluded the application of general legal solutions with reference to highways and replaced them by exceptional solutions. They are contained in the Law of 10 April 2003 on particular rules of preparing and implementing investments in the domain of national roads, in force since 25 May 2003 till 31 December 2007.

According to the provisions of this special law, the siting of a highway is effected on the ground of an administrative decision on highway siting. This decision is delivered by the marshal of voivodeship – chairman of the voivodeship local government executive body, further to a motion of the General Director of National Roads and Highways, accompanied by opinions expressed by executive bodies of municipal, powiat and voivodeship local governments concerned. Though led in accordance with provisions of the code of administrative procedure, the mode of procedure on the highway siting is essentially simplified in virtue of the above mentioned special law, in particular as far as the notifications about its opening and continuation are concerned. The notification is effected in a form of announcements

published in municipal offices and in local press. Even the issue of the decision on highway siting is announced to the parties in this way. The said decision is served to the motion mover only.

Though the parties are entitled to lodge a claim against the decision on highway siting (to the minister competent for the matters of construction, land development and housing), the marshal of voivodeship is obliged to issue an order of immediate enforceability, if such a motion would be put forward by the General Director of National Roads and Highways. The claim to the minister should be examined within 14 days. After having exhausted the due course of instance parties are also entitled to an appeal to the administrative court – this appeal should be investigated within two months.

If the real estates destined for highways construction would not be taken over in virtue of a civil law contract, they are submitted to expropriation. The expropriation is initiated by the marshal of voivodeship who delivers an appropriate decision further to the motion put forward by the General Director of National Roads and Highways. In justified cases the marshal of voivodeship may allow, after having opened the expropriation proceedings, the seizure of the property before delivery of the decision on expropriation. The municipal real estates become property of the State Treasury pursuant the law.

The agricultural and afforested lands being object of the decision on highway siting cease to be protected. Trees and shrubs growing on land being object of the said decision also cease to be protected.

The final decision on highway siting opens the way to obtain highway construction permit enabling to begin construction works. The decision permitting highway construction is delivered by the same body as in the case of the decision on siting i.e. the marshal of voivodeship. He does it according to the rules determined in construction law, however considering the separateness formed by the special law. Like in the case of the decision on highway siting, the decision permitting the construction is notified only to the motion mover, the notification of remaining parties on the opening of procedure and issue of the decision is effected by way of announcements published in municipal offices and local press. The decision permitting construction may obtain an order of immediate enforceability. The 14 days term for claim examination and the two months term for investigation of the appeal by administrative court also applies. Independently, if there exists a necessity of

technical infrastructure rebuilding, appropriate stipulations appear in construction permit. These stipulations constitute the ground for a later limitation of the mode of using the real estate, by means of a separate decision. The decision permitting highway construction benefits also of a particular durability. After 14 days since the date this decision becomes final, its invalidity cannot be declared, if the construction works have started.

The beginning of highway exploitation requires an appropriate permit. This act however – having in mind mainly the security requirements – is delivered according to general rules determined by construction law.

Summing up, it should be said that Polish legislator, aiming at the need to intensify works over the neglected transport infrastructure, has temporarily adopted special solutions in the matter of highways siting in Poland, including the measures limiting rights of parties and minimalizing the participation of social element (ecological organizations) in appropriate administrative procedures. These solutions create undoubtedly some chances for highways siting process improvement, though they may provoke an understandable dissatisfaction of the parties involved, especially of the organizations and ecological movements.