Rules of building rights applicable to objects used for security and defense objectives

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SUMMARY:
The article elaborates on the provisions of the construction law, concerning the buildings necessary to ensure security and state defence, located on enclosed premises and other areas. The aim of the presented legal provisions is to facilitate investment and exploitation, as well as to limit the access to information within the mentioned infrastructure.
1. INTRODUCTION

This article continues to discuss the issues concerning infrastructure necessary to ensure security and state defence, located on enclosed premises referred to in – Law on Geodesy and Cartography [14], and other areas – mentioned in:

• theses [1, 2] – on legal identification of the buildings necessary to ensure security and state defence, including the buildings that require special protection;

• thesis [3] – on the identification of the enclosed premises defined by the law [14], as well as on the legal status quo concerning the protection of information on the buildings located on the enclosed premises;

• thesis [4] – on the issues concerning the enclosed premises, defined under the construction law;

• thesis [5] – on the issues concerning the enclosed premises defined under – Law on Planning and Land Management [21].

However, this article concerns particularly the legal provisions:

• on the buildings necessary to ensure security and state defence and

• on the enclosed premises discussed in the construction law, as shown in Figure 1.

The mentioned theses provide further details on the issues of defence and security in the planning and land management, presented in the articles [6, 7].

The knowledge of the legal provisions in this field is important to the people who participate in the process of investment and exploitation of the buildings necessary to ensure security and state defence [8, 9], located on enclosed premises and other areas.

**Figure 1** Legal provisions on the notion of the enclosed premises under – Law on Geodesy and Cartography [14], as well as on the issues of security and state defence
2. ISSUES CONCERNING THE BUILDINGS NECESSARY TO ENSURE SECURITY AND STATE DEFENCE, AND THE ENCLOSED PREMISES, DEFINED UNDER – LAW ON ENVIRONMENTAL PROTECTION

Law on Environmental Protection [15] defines the rules of the environmental protection and specifies how to use its resources, with regard to the requirements of the sustainable development, in particular:

• the rules for determining:
  - the conditions for the protection of natural resources,
  - the conditions for the introduction of the substances or energy to the environment,
  - the expenses generated by the use of the environment;
• duties of the administrative authorities;
• responsibilities and sanctions.

Article 3 Paragraph 40 of the law [15] provides the definition of the enclosed premises, which in particular cases denotes a building or its part, accessible only to authorized persons and strictly defined by the law [14]. In this respect, it should be underlined, that this term is often wrongly attached to the notion of accessibility, which does not constitute in itself a criterion determining the enclosed premises under the provisions of the law [14].

The legal provisions [15] focus, amongst others, on the following issues concerning security and state defence:

• Article 101d Paragraph 2 – the identification of the potential historical pollutions of landscape should not take place on the areas exploited by the activity aimed at the security and state defence, as well as international security.

Article 114 Paragraph 3 – residential buildings, hospitals, public nursing homes or other buildings aimed for the permanent or temporary stay of children and youths, located on the enclosed premises and on the areas used for the production activities, warehousing or storage, should be protected against noise by the use of technical solutions ensuring the proper acoustic conditions in the buildings.

• Article 378 Paragraph 2 – the regional director for the environmental protection is the authority competent for all the issues concerning the events occurring on the enclosed premises.

3. ISSUES CONCERNING THE BUILDINGS NECESSARY TO ENSURE SECURITY AND STATE DEFENCE AND THE ENCLOSED PREMISES IN THE PROVISIONS OF LAW – WATER LAW

Water Law [16] regulates water management, in accordance with the sustainable development, in particular the protection of water resources, the exploitation of water resources and water management. The enclosed premises are mentioned in the following provisions of this law:

• Article 108 Paragraph 3 – audit work, incurred on the enclosed premises, by national hydrological and meteorological services, national hydrogeological services or national construction security services, in order to accomplish the tasks defined under Article 103, 103a Paragraph 1 or Article 105 of the law [16], as well as works concerning the operation or maintenance of measuring devices, are subject to the permission of the competent minister.

• Article 123a
  - Paragraph 1 – a notification to the national competent authority is required in case of:
    3) The use of overhead power lines or telecommunication lines over waters other than inland waterways, if it would affect water resources, as well as the conduction of these lines over the flood protection embankments;
    4) The use of power lines, telecommunication lines or other devices under the waters other than inland waterways;
    6) Drainage of the construction pits;
  - Paragraph 2 – the notification should be submitted to the competent authority, district head, who is in charge of the duties of the national administration. However, if the notification concerns works on the enclosed premises, under the provisions of the law [14], it should be submitted to the territorially competent director of the regional board.

• Article 140
  - Paragraph 2a – the director of the regional board is the authority competent to grant water licenses if the special use of waters takes place on the enclosed premises, defined under the water law [14], save as otherwise provided.
Paragraph 3 – the authority competent to grant water licenses is also competent to claim the expiry, withdrawal or limitation of these licences, as well as to decide that the property law of the water device shall be transferred to the owner of the water.

• Article 158 – in case of control, without prejudice to the provisions on the protection of undisclosed information and on the accommodation of armed forces, the inspector has the right to perform controlling activities, as far as water management defined in Article 157 Paragraph 2 of the law is concerned [16].


- provision 8 activities that might influence the environment in an extensive way, and take place on:
  - provision 8 activities that might influence the environment in an extensive way, and take place on:
- provision 9 security and state defence;
- provision 10 public security.

• Article 72 Paragraph 8 – in case of activities that might influence the environment in an extensive way, aimed exclusively at:
  1) Security and state defence and
  2) Rescue actions or civil protection emergencies, when dealing with the direct threat to the security of the society.

The environmental permit should not be issued, if such a decision would have a negative impact on the issues mentioned above.

• Article 75 Paragraph 1-b – the authority competent to issue the environmental permit is the regional director for the environmental protection – in case of works conducted on the enclosed premises.

- Paragraph 6 – in case of works, which are partially conducted on the enclosed area, the environmental permit concerning the whole work, shall be issued by the regional director for the environmental protection.

Article 79 Paragraph 2 – the authority conducting the proceedings on the environmental permit, can by reasoned order, exclude the application of the provisions of Section III and IV with regard to the works conducted on the enclosed premises, if their application could have a negative influence on the security or state defence.

5. ISSUES CONCERNING THE BUILDINGS NECESSARY TO ENSURE SECURITY AND STATE DEFENCE AND THE ENCLOSED PREMISES IN THE PROVISIONS OF LAW – PUBLIC PROCUREMENT LAW

Public Procurement Law [18] establishes the procedures and conditions for public procurement, legal remedies, checks on procurement and authorities competent in matters regulated by the mentioned law.

The law [18] deals comprehensively, amongst others, with public procurement in the field of security and defence. These matters are discussed in Section 4a (containing articles 131a – art. 131w).
From the provisions of the law mentioned, it is clear that:

- According to Article 131d – the public procurement procedure in the field of defence and security is accessible to the contractors residing in one of the member countries of the European Union, the European Economic Area or in a country bound with the European Union or with the Republic of Poland by an international contract on public procurements. However, the contracting entity may be precise in the procurement notice that public procurements concerning defence and security are also accessible for the contractors from countries other than these mentioned above.

- According to Article 131bb Paragraph 2 – the Prime Minister defines, by way of an ordinance, the full range of priority and non-priority services, taking into account the provisions of European Council Directive 2009/81/WE of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts supply contracts and service contracts by contracting authorities or entities in the fields of defence and security and changing the Directives 2004/17/WE and 2004/18/WE.

On the website of the Public Procurement Authority, there is a publication available on public procurements concerning defence and security, containing the Directive of the European Parliament and European Council 2009/81/WE, as well as the announcements and explanatory notes of the European Commission, concerning the so-called Defence Procurement Directive (publication: Contracts related to Defence and Security).

6. ISSUES CONCERNING THE BUILDINGS NECESSARY TO ENSURE SECURITY AND STATE DEFENCE AND THE ENCLOSED PREMISES IN THE PROVISIONS OF LAW – LAW ON ENVIRONMENTAL PROTECTION

Law on Environmental Protection [19] establishes the aims, rules and forms of protection of animate and inanimate nature and of landscape. The issues, concerning security and state defence, are discussed in the following provisions of the mentioned law:

**Article 15:**
- Paragraph 1. In national parks and in nature reserves it is forbidden, amongst others to construct or reconstruct buildings or technical facilities, with the exception of the objects used for the aims of the national park or national reserve.

**- Paragraph 2.** These prohibitions do not concern:
  a) The execution of tasks aiming at the realization of the security plan or of the security tasks;
  b) The conduction of rescue action or other activities concerning general security;
  c) The execution of tasks and duties related to the state defence and state security;
  d) The execution of public interest investments under Article 2 Paragraph 5 of the Law [21].

**- Paragraph 4.** The abolition of such forms of nature protection, as: natural monuments, documentary sites, ecological grounds or natural-landscape complexes, may result from a loss of natural and landscape values, determining the establishment of these forms of protection or, if it is necessary to execute there a public interest investment and no alternative solution exists, or if it is necessary for general security.

**Article 45 Paragraph 1.** Natural monuments, documentary sites, ecological grounds or natural-landscape complexes may be protected by such...
restrictions as the prohibition of destruction, damaging or transforming an object or a landscape.
However, these restrictions do not concern:

a) The execution of public interest investments, if no alternative solution exists, following the agreement of the authority, that had established this particular form of nature protection;
b) The execution of tasks related to the state defence in case of a threat to the state security;
c) The liquidation of immediate threats to the public security and the conduction of rescue actions.

• Article 86 Paragraph 1. No fees are applied for the removal of:

a) Trees or bushes, which endanger the safety of people or property in the existing buildings or hinder the proper functioning of the devices, defined under Article 49 Paragraph 1 of the Civil code;
b) Trees or bushes, which endanger the safety of the traffic, the rail traffic or the ship transport.

Article 119. It is forbidden to construct buildings hampering access to water, to people and wild animals, living near the sea, lakes and other expanses of water, rivers and canals. This prohibition does not concern the buildings aimed at the water tourism, water management, the management of fisheries or those connected with general security and state defence.

7. ISSUES CONCERNING THE BUILDINGS NECESSARY TO ENSURE SECURITY AND STATE DEFENCE AND THE ENCLOSED PREMISES IN THE PROVISIONS OF LAW – LAW ON CRISIS MANAGEMENT

Law on Crisis Management [20] establishes the authorities competent in the issues related with crisis management, the tasks and procedures to be applied in this field, as well as financing rules concerning crisis management.

Crisis management is the activity of public authorities, constituting an element of the national safety administration and consisting in the prevention from crises, controlling them by means of planned activities, reacting to crises, removing their impact and recreating critical resources and infrastructure.

Issues concerning security and state defence, discussed in the provisions of the mentioned law:

• Article 3-1 of the law [20] provides the definition of crisis, as a situation having a negative impact on the level of safety of people, property or environment and causing significant constraints on the activity of the competent administrative authorities, due to inadequate forces and means possessed by them.

• Article 3-2 of the law [20] provides the definition of the critical infrastructure, which is understood as systems and functionally bound objects, including buildings, devices, installations, services crucial for the security of the state and its citizens, and aimed at the ensurance of the smooth functioning of administrative authorities, institutions and entrepreneurs.

• It results from the above definition that the critical infrastructure includes the buildings, which are particularly important for the state security and defence, and as such require special protection. Such buildings are mentioned in the provisions of the regulation, issued by the Cabinet of Ministers on the buildings particularly important for the state security and defence, and their special protection [22]. However, not every strategic building is a part of critical infrastructure. In fact, belonging to this group is determined by the detailed criteria, defined in the secret annex to the National Programme of the Critical Infrastructure [11-13].

The critical infrastructure plays a crucial role in the functioning of the state and its citizens. Because of some events, caused by nature or resulting from the human activity, the critical infrastructure may be subject to destruction or damage, and its functioning may be distorted, which can put lives and property of the citizens in danger. At the same time, such events influence the state’s economic development in a negative way. Therefore, the protection of the critical infrastructure is one of the priorities for the country to face. It includes all the activities, the aim of which is to ensure the continuity of functioning and the integrity of the critical infrastructure in order to prevent the dangers, risks or weak points. Another goal of these activities is to limit and neutralize the effects of danger and to be able to quickly reconstruct the critical infrastructure in case of emergency or other events, disrupting its proper functioning [11-13]. The importance of the critical infrastructure for the security and state defence results in the fact that the proper
functioning of the objects crucial for the security of the state and its citizens, is subject to the control of the Supreme Audit Office.

8. SUMMARY

1) Legal provisions in the field of construction, related to the buildings necessary for the security and state defence, contain the solutions particularly aimed at the protection of information related to these objects and the area on which they are localised.

2) Buildings necessary to ensure the security and state defence may be located on both enclosed premises and other areas.

3) Some of the discussed legal provisions concern enclosed premises, defined by – Law on Geodesy and Cartography [14].

4) The knowledge of the legal provisions related to the buildings necessary for the aims of security and state defence is important for the persons participating in the investment process and in the exploitation of the buildings, located on the enclosed premises and other areas.

LITERATURE


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[16] Ustawa z dnia 18.01.2001 r. – Prawo wodne (Dz. U. z 2017 r., poz. 1121, t.j.).
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[18] Ustawa z dnia 29.01.2004 r. – Prawo zamówień publicznych (Dz. U. z 2017 r., poz. 1579, t.j.).
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