REmarks
PRACTICE IN LAWYERS VIEW

NGL

A brief reminder of the principles of expropriation

At the end of last year, Polish parliament started working on a draft bill concerning, among other things, an extension of the electricity price freeze. The proposal also envisaged amendments to the law commonly referred to as the 'wind farm law' and other laws to the extent related to renewable energy sources. However, just a few days later, an auto-amendment removed this part of the proposed changes.

One of the reasons for the confusion surrounding the draft law was the expansion of the catalogue of public purposes regulated in Article 6 of the Act on Real Estate Management ('UGN') to include the construction, reconstruction and maintenance of RES installations. There were claims that this could lead to the expropriation of properties on which investments in wind electric power plants were to be realised. Let us therefore remind ourselves of the basic principles related to the expropriation of real estate in Poland.

Pursuant to the UGN, real estate located in areas designated in local plans for public purposes or for which a decision on the location of a public purpose investment has been issued, may be expropriated. In both cases, expropriation is possible if the public purposes cannot be achieved otherwise than by depriving or restricting the rights to the property, and the rights cannot be acquired with mutual consent. Most importantly, however, pursuant to Article 113(1) of the UGN, expropriation of real estate is possible only for the benefit of the State Treasury or a local government unit. Under the current state of the law, expropriation for the benefit of an entity other than those mentioned above is not possible.

Expropriation is carried out through administrative proceedings, after prior obligatory negotiations, conducted by the starost on behalf of the State Treasury or by the executive body of the competent local government unit. If the parties fail to reach an agreement, expropriation proceedings, in which an administrative hearing is held, are initiated before the starost after the ineffective expiry of the two-month period for concluding the agreement. The transfer of the property to the property of the State Treasury or the local government takes place on the date on which the decision of the head of the district administration on expropriation has become final.

Expropriation of real estate is carried out against compensation. Its amount is determined according to the condition, use and value of the expropriated real estate on the date of the expropriation decision. Determination of the amount of compensation is done on the basis of an opinion of a property appraiser, determining the market value of the real estate.

The mere qualification of a given investment as a public purpose investment does not, therefore, prejudge the possibility of expropriation of real estate in connection with its implementation, since only the State Treasury or local government units could exercise the expropriation rights. What other effects, then, could such a qualification have? We recently commented on a major spatial planning reform, according to which the adoption and amendment of a local spatial development plan, as well as the issuance of decisions on development conditions and decisions on the location of public purpose investments, will not be possible in the absence of general plans. Well, an exception to this rule is the enactment of local spatial development plans, which relate to public purpose investments, and this can be seen as a facilitation for developers of RES installations.

It is to be expected that the planned changes will return to the legislative process. We will follow how expropriation issues will be handled in the new regulations.

Do you want to know more? Contact us!

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