

## Conclusions of the summary report on the jurisprudence relating to building authority proceedings

As of 2013, there have been significant changes in the regulation of building authority procedures, resulting in a significant reduction in the number of construction activities requiring prior building permits and, simultaneously, in an increase in the number of construction activities requiring notification, while building regulation and control procedures have become of prime importance.

In 2020, in the framework of the examination of administrative jurisprudence, the President of the Curia of Hungary ordered to set up a jurisprudence-analysing working group for the examination of the courts' jurisprudence relating to building authority proceedings.

As a rule, jurisprudence-analysis covers only cases determined under a final decision therefore, in view of the recent nature of the changes in the legal environment and the duration of the administrative and court proceedings, the majority of the examined decisions were based on legal provisions that were applicable under the former regulatory regime. This fact determined the objectives of the jurisprudence-analysis, since an analysis of decisions adopted in a legal environment having preceded the concept change would not in itself have constituted a contribution to the development of the relevant jurisprudence. Therefore, in addition to analysing decisions based on the former regulatory regime, the group also set it as an objective to present and analyse judgments adopted under the new regulation, to draw attention to the differences found, and to identify problems having arisen in relation to the application of the law by the public authorities. Thirdly, the working group devoted special attention to the impact of the regulatory model change on building authority proceedings as well as on town and country planning.

From among the available methods, the working group opted to analyse Curia of Hungary decisions, as it found it unnecessary to examine the entire case files. Lower court judgements were included in the analysis where few Curia of Hungary decisions were available on the subject examined, or where no petition for review was filed against a first instance judgment having significant impact.

The analysis covered the period lasting from 1 January 2015 to 20 February 2020, that is, Curia of Hungary decisions from this period were analysed by the working group's rapporteurs, who were free to extend the scope of their scrutiny to earlier or later decisions, if it was warranted.

In addition to the classical areas of building jurisdiction – construction, maintenance, occupation, demolition – which formed the core of the analysis, issues relating to clients' legal status and standing in such proceedings, the taking of evidence by experts, and the issues determined in resumed proceedings upon remittals were discussed and presented in separate chapters as issues which cannot be ignored in judicial practice.

The section related to procedural issues provides an insight both into the regulation set out in the new procedural codes and the related jurisprudence. The report devotes a special section to compensation for building restrictions, as this legal instrument is primarily governed by the relevant construction law, and its legal basis is to be found basically in that law.

The report also presents the problems having arisen in the application of the law under the new regulatory regime by the public authorities. Some of those problems have already been

answered by the courts, but the remaining issues will have to be addressed by the administrative courts, and finally by the Curia of Hungary, in cases brought before them.

The regulatory model change was examined by the working group from two aspects. On the one hand, from the aspect of its impact on building authority proceedings and, on the other hand, from the aspect of building administration, including town and country planning. Organisational and competence-related changes were also duly taken into consideration.

The report also contains a separate section on the civil law aspects of violations of neighbour rights by buildings and by construction and building activities because, due to the nature of the related disputes, in addition to the private law rules which are primarily applicable to the determination of such cases, the provisions of the building law are also to be taken into consideration.