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Anna WILK[*]

PROTECTION AGAINST NUISANCES RELATED TO A CONSTRUCTION OF A BUILDING – SELECTED ISSUES

Summary
The paper deals with protection against nuisances related to a construction of a building. The nuisances frequently take place and in connection with the increase of the density of buildings it is possible that they will become more burdensome. Protection against such nuisances may be realized at two levels: civil law and administrative. Civil law protection measures cover primarily a negatory claim[1] and a claim for withholding the construction[2]. Administrative law protection is possible under the provisions of the act on construction law, which enable the people living in the neighbourhood of the planned investment to participate in the proceedings concerning the construction permit and thereby provide proactive protection of their interest. Application of both civil law and administrative protection measures against nuisances related to a construction of a building is connected with difficulties: a misinterpretation of provisions, their unclear structure and a lack of legal regulation of certain essential issues like the administrative decision status in the civil proceeding. In the paper the focus is on the most important of the mentioned problems and presents the solutions.

Key words: *nuisances, building, civil action, administrative decision*

Introduction

A lot of owners of properties, and also people who use those buildings on the basis of other obligation or property legal titles, experience difficulties due to a burdensome neighbourhood, frequently in the form of nuisances, which mean troublesome and harmful impact of the environment on the properties, restricting a possibility of free usage of the properties and infringing the property right. With the economic and

[*] Anna Wilk, a doctorate in law, a lecturer at Bielsko-Biała School of Finance and Law, an advocate's trainee.
[1] Article 222 Section 2 in conjunction with Article 144 of the Civil Code.
[2] Article 347 of the Civil Code.

technological development the increase of conflicts in the neighbourhood connected with nuisances is unavoidable and gaining strength. The growing urbanization and the increase of the density of the buildings cause that a significant part of the burdensome impact the properties constitute the nuisances related to a construction of a building on the territory in the neighbourhood. Therefore, it is worth to focus on legal possibilities of protection against such nuisances. It may be obtained by means of civil law or administrative law. Nevertheless, it should be emphasized that in this context the interpermeating of two issues that belong to both law branches mentioned above is apparent. Some administrative law issues may influence the civil procedure decision and in the administrative proceeding it may be necessary to refer to the civil law.

1. The nuisance

The Civil Code does not include any definition of a legal nuisance and does not use this term at all. However, the term "nuisance", which comes from the Roman law, is commonly used in the doctrine and judicature to define the impact on a property, determined in Article 144 of the Civil Code. Therefore, it is not a term of legal language but legal jargon. The attempts of defining this term in literature rarely relate to nuisances in general, more often they refer to the types of nuisance singled out by particular authors. Nevertheless, it is worth to mention some already existing general definitions. According to S. Rudnicki, nuisances are an impact on a property, coming from the neighbourhood properties, located closely or in distance, where the impact is generated and spread in the form of a noise, flavours or electromagnetic waves[3]. W. Kocon considers nuisances as the activities coming from one property (output), which interfere the usage of the properties in the neighbourhood[4]. R. Czarnecki defines nuisances as an impact on a property which is a result of actions or events coming another property[5].

[3] S. Rudnicki, *Sąsiedztwo nieruchomości. Problematyka prawna*, Kraków 2008, p. 17.
[4] W. Kocon, *Ochrona cywilnoprawna przeciwko niedozwolonym oddziaływaniom na nieruchomości sąsiednie (Article 144 of the Civil Code)*, „Palestra" 1981/5, p. 69.
[5] R. Czarnecki, *Niektóre zagadnienia prawa sąsiedzkiego*, „Nowe Prawo" 1969/6, p. 909.

2. A negatory claim as a means of protection against nuisances related to a construction of a building

When it comes to the civil law means of protection against nuisances related to a construction of a building, the most important is a negatory action, on the basis of Article 222 Section 2 of the Civil Code. According to this provision, if a person violates the property in any other way than depriving the owner of the actual rulership of an item, then the owner has a right to a claim for restoring the condition compliant with the law and termination of infringements. With reference to the nuisance, this provision is strictly connected with Article 144 of the Civil Code, which states that the owner of the property should refrain from the actions, which can interfere the usage of the properties in the neighbourhood above the average, which a result of a social and economic purpose of the property and local relationships. It is Article 144 of the Civil Code that establishes a prohibition of nuisance.

In the doctrine it is stated that the negatory protection is available not only for the owners of the properties, but also, on the basis of the references contained in the Civil Code and specific provisions, for the persons who use the properties under legal titles other than the title of ownership. A possibility of an action in the court on the basis of Article 222 Section 2 of the Civil Code is therefore available for perpetual usufructuary[6], persons entitled in respect of limited property rights[7], tenants[8], leesees[9], and also persons who have a co-operative right to premises[10]. A detailed elaboration of the rationale of the negatory claim would exceed the frameworks of this paper, therefore it is worth to focus on the most significant issue in this context, which is the meaning of administrative decisions defining the development method of the property in the negatory proceeding.

B. Walaszek presents his point of view, according to which the development method of the property does not constitute a subject of the

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[6]See T. Smyczyński, *Ochrona prawa wieczystego użytkowania*, „Palestra" 1971/3, p. 17.

[7]See B. Walaszek, *Prawo sąsiedzkie a najem lokalu mieszkalnego,* „Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1965/1, p. 47.

[8]See W. J. Katner, *Ochrona własności nieruchomości przed naruszeniami pośrednimi*, Warszawa 1982, p. 116, *Ukształtowanie...*, op. cit., p. 50; co trary: the resolution of the Supreme Court of 15.04.1967, file no. III CZP 26/67, Lex Polonica no 296665.

[9]See the sentence of the Supreme Court of 22.11.1985, file no. II CR 149/05, Lex Polonica no 296403.

[10]See B. Walaszek, *Prawo sąsiedzkie...*, op. cit., p. 33.

civil law interest, but of administrative law[11]. Obviously, the competence in terms of establishing the development method, as well as granting the construction permit are the responsibility of the administrative authorities, not ordinary courts. However, it does not mean that this issue does not matter in the civil proceeding. On the contrary, in the negatory proceeding oftentimes there may appear a necessity of the situation assessment, considering the content of the construction authorities' decision.

The key issue to consider is the matter of a potential binding power of the administrative decision in the civil proceeding. For the aspect of protection against nuisance, administrative decisions have a significant meaning in cases when an interfering action is done on the basis of such decisions – it is a common defence argument of the defendants in the negatory proceedings. A classical example is when a defendant refers to the fact that the building which is the source of nuisance was constructed on the basis of a final construction permit, according to the provisions, and in consequence the impact coming form is not illegal and cannot be judged as infringement of Article 144 of the Civil Code. Moreover, if this issue of the construction legality was already judged by the administrative authorities, which according to the provisions of the act on construction law (they will be discussed later) are obliged to ensure that the planned investment does not interfere the interest of the third party, in the negatory proceeding there may appear an accusation of unjustified interference by the Civil Court with the area reserved to the competence of the administrative authorities. However, it is worth to ask a question if such reasoning is effective.

As S. Hanausek points out correctly that the connection between the civil and administrative proceedings may be apparent at the following levels:

- when a condition of the admissibility of the case recognition by the court is the previous administrative proceeding and the administrative decision,
- when a condition of a decision by the administrative authorities in a case is the previous settlement by the court of an issue, which is of a preliminary nature for the administrative proceeding,

[11] Zob. B. Walaszek, *Prawo sąsiedzkie...*, op. cit., s. 33.

- in the legal proceeding there appear an issue of a preliminary nature, and the decision is of the administrative authorities competence,
- the same actual state is the actual basis for the administrative and legal proceedings, because it brings results both in the civil law area, with the admissibility of the legal proceeding, and the administrative law area; the establishment of the same facts takes place both in the civil and administrative proceedings[12].

First three presented situations may be solved with the application of the provisions on a possibility of suspending the civil or administrative proceedings on the grounds of a necessity of issuing co called prejudication by - respectively - a civil court or administrative authorities[13] [14]. With reference to the civil proceeding it may be stated that in such situations the result of this proceeding depends on the prejudication content[15]. An example may be some cases relating to repealing of co-ownership or division of the estate, where the division of one property into several requires the prior decision of proper administrative authorities.

However, the most practical problems are caused by the last case of the ones mentioned above, where there is no prejudicational relation between the civil and administrative proceedings, therefore for the final settlement in the civil proceeding the prior administrative decision is unnecessary, because the same actual state may be the basis of both administrative and civil proceedings. Such cases may be dealt with in the negatory proceedings, because the court recognising the cases does not have to await the issuance of a decision concerning e.g. the level of acceptable emission of specified substances, by any administrative authorities.

From the point of view of the problems raised in this paper the most interesting are cases, where at the level of recognising a civil case by the court there was issued a final administrative decision concerning the matter which has a significant influence on the settlement of the civil

[12] S. Hanausek, *„Związanie" sądu cywilnego decyzja administracyjną*, Studia Cywilistyczne, Tom XXIII, Warszawa 1974, p. 7.

[13] Article 177 Section 1 Subsection 3 of the Civil Procedure Code, Article 97 Section 1 Subsection 4 of the Administrative Procedure Code.

[14] See K. Piasecki, *Z zagadnień stosunku postępowania cywilnego do postępowania administracyjnego*, [in:] *Proces i prawo. Rozprawy prawnicze. Księga pamiątkowa ku czci Profesora Jerzego Jodłowskiego*, Wrocław-Warszawa-Kraków-Gdańsk-Łódź 1989, p. 443 and the following.

[15] Ibidem, p. 449-451.

proceeding. It is worth to notice that the civil proceeding does not provide an equivalent of Article 11 of the Civil Procedure Code[16] in comparison with the decisions of administrative authorities. However, as S. Hanausek rightly observes, the administrative decision is a legal event, which is a part of actual circumstances of the case and should be considered in this form by the court giving decision in a particular case[17]. Therefore, even a lack of prejudicational relation between the civil and administrative proceedings the content of such a decision constitutes a meaningful proof in the case.

When it comes to the influence of such a decision on the settlement of the Civil Court, it should examine the situation for the rationale defined in Article 144 of the Civil Code[18], which are autonomous in relation to the administrative standards. Therefore, the compliance of an action with the administrative decision does not prejudge automatically a lack of possibilities of qualifying such an action as nuisance in the civil law context. From the point of view of the problems of protection against nuisances related to a construction of a building, especially the opinion of the Supreme Court deserves attention, stated in the act of 21.03.1984, file no. III CZP 4/84[19], according to which *it does not matter if the construction of a building is compliant or non-compliant with the provisions of the construction law. In each case, if the owner of the output property pleads the compliance of the building construction with the construction law, it does not exclude the application of the provision of Article 144 of the Civil code.* A similar position was stated by the Court in the sentence of 10.02.2004, file no. IV CK 454/2002[20], in which it claimed that *the administrative decision defining the method of using the rooms in the building on the premises, where the nuisances are generated does not exclude automatically a possibility of assessments and arrangements done by the Court to determine if this method does not interfere the usage of the properties in the neighbourhood above the average as defined in Article 144 of the Civil Code.* It is worth to notice that this position permeated also into the judicature of the administrative

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[16] Relates to the extent of the binding of the Civil Court with the final criminal judgement.
[17] See S. Hanausek, *„Związanie”* ..., op. cit., p. 31.
[18] Of average size, resulting form the social and economic purpose of the property and the local relations.
[19]Lex Polonica no 301738.
[20] Lex Polonica no 1633054.

courts[21]. Therefore, the formal compliance of the construction with the construction law standards, as well as the fact that it is conducted on the basis of a proper permit, cannot cause dismissing the negatory claim, the content of which is a claim for termination of burdensome nuisances generated in the constructed building and influencing the buildings in the neighbourhood.

However, it becomes complicated when in the negatory proceeding there appear the most radical claim, which may be defined on the basis of Article 222 Section 2 of the Civil Code, and it is a claim for restoring the condition compliant with the law by demolition of the building which is the source of nuisances. The Supreme Court in the sentence of 16.12.1992, file no. I CRN 188/92[22] concluded that *allowing the negatory claim in the situation when a construction of a building in compliance with the construction permit infringes the rights of the owner of the property in the neighbourhood by interference of the usage of this property cannot be equivalent to the order of demolition of the object.* A similar position was presented also in other decrees. The example may be the sentence of the Court of Appeals in Gdańsk of 05.05.1995, file no. I ACr 175/95[23], according to which *if a construction of an object is compliant with the construction permit, then even if it infringes the rights of the neighbouring property by an interference of the usage of this property, there cannot be allowed a claim for demolition of the building. The construction permit is the final administrative decision, therefore – if this is not completely invalid – it is binding in the civil proceeding, as issued under the provisions of the act Construction Law and the provisions implementing of this act.* The same attitude was presented by SC[24] in the sentence of 18.06.1998, file no. II CKU 6/98[25], in which it concluded that *in the negatory claim proceeding it is possible to order the demolition of the building, unless the construction of this object was conducted in compliance with the construction permit. It is assumed that the interest of the third party are protected in the administrative proceeding in terms of the construction law, and the common court of law is not empowered to control the administrative decisions (...) The*

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[21] See the sentence of the Voivodship Administrative Court in Warsaw of 13.01.2011, file no.VII SA/Wa 1851/2010, Lex Polonica no 2510740.
[22] Lex Polonica no 296416.
[23] Lex Polonica no 314258.
[24] Skrót SN oznacza Sąd Najwyższy.
[25] Lex Polonica no 335298.

application of the provision of Article 222 Section 2 of the Civil Code cannot lead to a conflict with the competence of the granted construction authority.

Supporters of such views in order to justify them put forward a thesis on autonomy of the settlements of the administrative authorities, which is supposed to cause that the common court of law is not empowered to issue the decisions modifying the content of the decisions on the matters, in which the competence belongs to those authorities[26]. There comes back the subject of the binding power of the administrative decision in the civil proceeding. It is not difficult to notice the contradictions between the previously cited decisions, according to which the compliance of an action with the administrative decision does not prejudge that it cannot be considered an infringement of the nuisance prohibition defined in Article 144 of the Civil Code, and the above views of judicature, which seems to make an exception from this rule, when the content of the negatory is a demand of demolition of the construction object.

With reference to the above, it is worth to ask a question – if the interference of the usage of the property may be considered as nuisances, despite their compliance with the administrative decision, then why not refer this to the nuisances which are result of the construction of the building and not allow the claim for its demolition? Special attention should be paid primarily to the issue of negative nuisances, connected with the construction of a building which deprives the neighbouring properties of the natural light or access to specified media. In case of such nuisances frequently there arises a problem on the method, apart from demolition of the building, of restoring the state compliant with the law and terminating the infringement,[27] defined in Article 222 Section 2 of the Civil Code? Excluding the possibility of demolition of the building would lead then to a paradox – on one hand it is accepted that the interference exceeds the average level, and on the other hand, the owner of the neighbouring property is deprived of the only effective means of defence from the nuisance. In the author's opinion W. J. Katner is right, because he claims that the demolition of the construction object is obviously the most radical means of protection against such negative

[26] See M. Armata, : *A gloss to the ordinance of the Supreme Court of 16.12.1992., I CRN 188/92*, „Orzecznictwo Sądów Polskich" 1994/4, p. 202-204.
[27] The problem is noticed by W. J. Katner – see idem: *A gloss to the ordinance of the Supreme Court of 16.12.1992, I CRN 188/92*, „Palestra" 1994/3-4, p. 155.

nuisances, although in justified cases this means should be allowed[28].

W. J. Katner pays attention to another important problem, because in his opinion the protection of the properties against nuisances as a result of a construction of a building in the neighbourhood is still too poor, and in practice lawlessness and a lack of respect to the rights of third party when realising those investments is very common[29]. It seems that this accusation is justified not only in relation with the investors but also unfortunately the administrative authorities, issuing the construction permits. When considering the applications for the construction permits, the interest of the future neighbours of the planned construction object are too rarely taken into account. As it was rightly concluded by SCA[30] in the sentence of 02.04.2008, file no. II OSK 261/2007[31], *the construction permit, especially in the urbanized areas, in many cases must involve the contradictory interest of the investor and on the other hand, the persons, whose rights or interest might be infringed or endangered by this permit.* Moreover, SACP in the sentence of 16.11.2004, file no. OSK 786/2004[32] concluded that *when recognising the investor's application for issuing a construction permit of an object close to a site boundary, the public administrative authority should consider the constitutional duty of an equal treatment of the parties (Article 32 Section. 1 sentence 2 of the Constitution of the Republic of Poland), as well as the provision which says that the owner of the property should restrain from the actions, which might interfere the usage of the neighbouring properties above the average, resulting from the social and economic purpose of the properties and local relations (Article 144 of the Civil Code)*. A necessity of considering by the construction administration authorities the legitimate interest of the owners of the neighbouring properties was emphasised also in other decisions of SACP of 18.01.2008, file no. II OSK 1878/2006[33], of 29.01.2008, file no. II OSK 1955/2006[34] and of 07.02.2008, file no. II OSK 2006/2006[35]. A similar decision was also issued by the Voivodship Administrative Court in Poznań in the sentence

[28] See Ibidem.
[29] See W. J. Katner, *Glosa...*, op. cit., p. 155.
[30] SCA for the Supreme Court of Administration.
[31] Lex Polonica no 2478346.
[32] Lex Polonica no 381800.
[33] Lex Polonica no 1967335.
[34] Lex Polonica no 1961957.
[35] Lex Polonica no 2476258.

of 10.11.2009, file no IV SA/Po 500/2009[36], according to which the duty of the administrative authority considering the application for the construction permit is *to balance the interest of the parties so that the investment is realised in a way that does not infringe the justified interest of the neighbouring premises' owner*. This claim, however absolutely right, seems to be still only a wishful thinking. Perhaps, *de lege ferenda* it should considered to implement in the act Construction Law a direct reference to Article 144 of the Civil Code. Anyway, there arises a conclusion – to realise the postulated stronger protection of the owners against negative nuisances, a consistency in deciding is necessary[37] and establishing the right, as the paper's author claims, view that the Civil Court in the negatory proceeding is empowered to some extent to question the administrative decision, the realisation of which causes interference above the average in the context of Article 144 of the Civil Code.

3. A claim for termination of the construction

There are other significant issues connected with another civil law means of protection against nuisances resulting from a construction of a building – a claim for termination of the construction, regulated by Article 347 of the Civil Code. According to Section 1 of this provision, the owner of the property is entitled to a claim for termination of the construction, if the construction may interfere their property or put it at risk. Section 2 states that the claim may be executed before the beginning of the construction, however it expires if it is not executed within a month from the beginning of the construction. It is a claim of a preventive nature, which may be applied not only in case of already existing nuisances, but also the risk of such nuisances.

Article 347 of the Civil Code is placed among the provisions on the property and its protection but undoubtedly the claim for termination of the construction may be used also by the owner of the property. Each owner of a property has *locus standi*, including the dependent possessor and the easement possessor[38]. Everyone who conducts construction work

[36] Lex Polonica no 2547836.
[37] Especially of the Supreme Court.
[38] See B. Lackoroński, [in:] *Kodeks cywilny. Komentarz*, (ed.) K. Osajda, Warszawa 2014, wyd. 8, Legalis (electronic document); A. Kubas, *Roszczenie o wstrzymanie budowy*, „Palestra" 1971/6, p. 11.

in a way that interferes the property of others or is harmful to them[39] will be sued.

The Supreme Court concluded on the matter of construction, defined in Article 347 of the Civil Code, in the act of 30.08.1969, file no. III CZP 68/68[40], in which it stated that *construction in the context of Article 347 of the Civil Code means erecting a building or other facility, the significant value of which justifies – on the grounds of the social and economic interest and the interest of the builder – the prohibition of demolition of this facility on demand of the premises' owner, despite the fact that the property was infringed as a result of the construction; erecting a fence or other railing usually does not correspond with these requirements. (…) Therefore, if these provisions (Article 347 of the Civil Code – the author's note) consider the protection against economic waste, then they may be applied only in case of a construction that is aimed at erecting an object of a significant value. Usually, buildings are objects of this type, and other facilities – depending on the value and their purpose. Obviously, fencing – especially if it covers a short distance (e.g. a gate design) – does not correspond with those requirements, although, it cannot be excluded that there may be a type of special fencing of high cost.*

In the doctrine it is stated that the above view of the Supreme Court constitutes narrowing of the literal construction of Article 347 of the Civil Code, which shows that the claim defined in this provision arises in case of every construction. The Supreme court narrows the definition of the term "construction" in the context of this provision only for such constructions, the results of which may be as significant that their removal may infringe the social and economic interest of the builder or the rules of social co-existence[41]. However, this point of view may raise doubts, because the court order of termination of every construction, regardless of its social and economic purpose, constitutes an interference in the rights of those who is the builder. The results of the construction should be considered, according to Article 347 of the Civil Code, primarily from the point of view of a person endangered by this construction and in terms of protection of their interest. A risk may arise even in connection with a construction of an inconsiderable value and

[39] See W. Kocon, *Zakaz dokonywania robót ziemnych, grożących nieruchomościom sąsiednim utratą oparcia*, „Nowe Prawo" 1975/12, p. 1556.
[40] Lex Polonica no 296539.
[41] See B. Lackoroński, [in:] *Kodeks cywilny. Komentarz*, (ed.) K. Osajda, op. cit.

size, and excluding the possibility of submitting a claim for its termination would lead to a significant limitation of the legal protection of the endangered property's owner, who would have to seek possibilities of the construction termination administratively. It seems that the definition of the term "construction" in the context of Article 347 of the Civil Code should cover each construction, which may interfere one's property or do harm.

In the sentence of 04.07.1969, file no. III CRN 462/68[42] the Supreme Court presented the view that *the provision of Article 347 of the Civil Code may be applied both when the defendant builds without a permit of the construction authorities , and also when they build with the permit.* This position, which is right itself, may constitute one more argument for the broad definition of the term "construction", which is defined in Article 347 of the Civil Code, because in case of depriving the owners of the possibility of submitting a claim for termination of the construction in terms of those of inconsiderable meaning, obtaining the legal protection administratively may be difficult, because for the administrative authorities the circumstances when the construction is conducted on the basis of a proper permit will rather prejudge its legality and the challenge of the final construction permit will be also difficult.

4. Protection against nuisances related to a construction of a building in the act Construction Law

As it was already stated, the protection against nuisances may be obtained under the civil law or administratively. Regulations of this subject are included in the act of 07.07.1994 Construction Law[43]. For the purposes of this paper there will be discussed only the issues connected with the protection against nuisances resulting from a construction of buildings in the phase of obtaining the construction permit, therefore, the preventive protection.

According to Article 28 Section 1 Construction Law, construction works may be started only on the basis of the final decision on the construction permit, and subject to the conditions of Articles 29-31 Construction Law. The most significant for the neighbouring properties' owners is Section 2 of this provision, which states that the parties in the proceeding for the construction permit are: the investor and the owners, permanent

[42] Lex Polonica no 296536.
[43] Consolidated text: Journal of Laws of 2010 No 243, item 1623 with amendments.

usufructuaries or property managers who are in the area of the object's impact. The provision constitutes *lex specialis* in relation to Article 28 of the Code of Administrative Procedure, according to which the party of the proceeding is everyone, whose legal interest or duty the proceedings refers to, or who claims for the authority action due to their legal interest or duty. Article 28 Section 2 Construction Law limits therefore the range of subjects that may be a party in the administrative proceeding for the construction permit[44]. Additionally, under Article 23 Section 3 Construction Law a possibility of participation of social organizations in this proceeding was excluded.

A possibility of participating in the administrative proceeding as a party allows participation at each stage of it, expressing one's position, and also – what is the most important aspect - appealing the authorities' decisions, also before administrative courts. Therefore, determining if a given person may be a party in the proceeding for the construction permit has a fundamental meaning, because determining that it is possible gives this person an absolute possibility of protecting their own interest in the course of the proceeding.

To determine if a person may be a party in the proceeding for the construction permit defining if the property is located in the area of impact of the planned object is of key importance. The legal definition of the area of impact of the object is in Article 3 Section 20 Construction Law, according to which it is the area designated in the neighbourhood of the construction object on the basis of the separate provisions, implementing limitations connected with this object concerning developing, including the building arrangement of this area. The term "the area of impact of the object" is a substitute of a civil term" a neighbouring property", and at the same time acknowledgement that a given property is located within the borders of this area prejudges a possibility of acknowledging its owner, a perpetual usufructuary or a manager a party in the proceeding for the construction permit.

The separate provisions defined in Article 3 Section 20 Construction Law, as stated in the judicature, may be e.g. the regulations of the Polish Minister for Infrastructure of 12.04.2002 concerning the technical

[44] Zob. B. Kurzępa, *Prawo budowlane. Komentarz do ustawy i orzecznictwo*, Toruń 2008, p. 230. Similarly adjudicated the Supreme Administrative Court on 10 January 2013, sygn. akt II OSK 1644/2011, Lex Polonica no 5186229, and on 11 June 2013, sygn. akt II OSK 362/2012, Lex Polonica nr 7515/086.

condition that the buildings should be compliant with and their location[45], as well as the regulations on the environmental protection[46]. It is therefore appropriate to adopt, that these may also be any other provisions in terms of the broadly defined design and usage of the buildings and land-use planning.

It is worth to remember that in jurisdiction the position according to which the term of "separate provisions", defined in Article 3 Section 20 Construction Law shall mean also the provisions of the civil law gains acceptance. As it was rightly indicated by the Supreme Administrative Court in the sentence of 20.12.2013, file no. II OSK 841/2013[47], *the provision of Article 3 Section 20 Construction Law, which implements the statutory definition of "the area of impact of the object" should be interpreted in conjunction with Article 5 Construction Law. The rule of an investment process is a respect to the justified interest of third party, which refers primarily to the owners (perpetual usufructuaries) of the properties bordering the investor's parcel. The separate provisions, which implement the limitations for development of the investor's parcel connected to the investor's construction object are also the civil law provisions, which guarantee the owner of the neighbouring property a right to use their property and prohibit the infringement of the property (Article 144 and 222 of the Civil Code). If a construction object may impact the rights of the owner of the neighbouring property, then the property is within the area of impact of the object and its owner should be a party in the proceeding concerning this object.* The Supreme Administrative Court referred here to Article 5 Section 1 Subsection 9 Construction Law, which states that the construction object should be designed and built with respect to the existing justified interest of the third party within its area of impact. Taking into consideration this interest means, in opinion of the Court, the necessity of referring not only to the public-law standards, but also private law, because they may

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[45] Journal of Laws of 2002 No 75, item 690 with amendments. The provisions of this ordinance were included in the "separate provisions", defined in Article 3 Section 20 Construction Law, by the sentence of SCA of 24.01.2013, file no. II OSK 1772/2011, Lex Polonica no 5176829. The provisions of this ordinance in details see M. Bojarski, *Warunki techniczne i usytuowanie budynków. Zagadnienia administracyjnoprawne*, Warszawa 2009, for example in terms of protection against noise and vibration, p. 411-419.

[46] See the sentence of SCA of 28.03.2007, file no. II OSK 208/2006, Lex Polonica no 1811108.

[47] Lex Polonica no 8200446.

designate the limits to the planned by the investor of the property way of development. This view should be considered right.

Moreover, it is worth to pay attention that the jurisdiction of the administrative courts refers also to the civil definition of the term of " a neighbouring property", indicating that *"a neighbouring property", where the investment is realised, may cover not only the property bordering physically with the property, where the owner's interest was infringed, but also other properties. Such a comprehension of a neighbouring property is commonly accepted under the provisions of the Civil Code, including the regulations relating to so called neighbour law, and in details – Article 144 of this code, covering the prohibition of a negative impact on one's property in the form of so called indirect nuisances. It should be accepted also in the interpretation of the definition of the third party interest under the act of 7 July 1994 Construction Law*[48].

The above jurisdiction results in the conclusion that the area of impact of the object should be defined each time for the purposes of a particular proceeding, taking into account both the content of the separate provisions[49], defining the way of the land use, and also the individual characteristics of the land and the planned construction object. For the purposes of designating the area of impact of the object, a broad comprehension of the neighbourhood should be taken into consideration, which involves the area where there might be not only properties directly adjacent to the land where the investment will be realised, but also others, depending on the planned scope of the investment.

There is a question left – what does "the impact of the object" mean? The Supreme Court of Administration in the sentence of 26.02.2013, file no. II OSK 2011/2011[50] concluded that *any impact of the investment on the environment does not provide the status of a party in the proceeding, but only the impact defined in Article 3 Section 20 Construction Law. The definition included in this provision is about limitations of development of the land neighbouring the object, which are the result of the "separate provisions", on the basis of which there was designated a land in the neighbourhood of the construction object. The limitations cannot be the consequence of an increase of burden for the environment, related to the*

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[48] The sentence of the Supreme Court of Administration of 13.10.2003, file no. IV SA 456/2002, IV SA 457/2002, IV SA 458/2002, Lex Polonica no 365638.

[49] Including the provisions of the civil law.

[50] Lex Polonica no 5193373.

future usage of the construction object, because "indirect nuisances" from one property to another may bring certain civil law claims, but does not give a status of a party in the context of Article 28 Section 2 in conjunction with Article 3 Subsection 20 Construction Law.

It seems to be a wrong view, because it results from the above jurisdiction of the Supreme Court of Administration in the context of the area of impact of the object that in the process of designating this area, not only the content of the separate provisions, but also the actual circumstances should be taken into account, related to specific characteristics of the given land and the planned object. It was also expressed by SCA in another sentence of 06.06.2013, file no. II OSK 332/2012[51], in which it stated that *it is impossible to accept that in a situation when the investment is compliant with the technical and structural provisions, then it does not interfere the neighbouring properties, thereby the owners of those properties cannot be parties in the proceeding for the construction permit. (...) Therefore, the area of impact of the construction object cannot be identified only with obeying by the investor the requirements defined by the technical and structural provisions.* The circumstances when a given investment may be a source of burdensome impact on the neighbouring properties, should not be omitted in the settlement, if their owners should have a status of a party in the proceeding concerning the construction permit. If the term "separate provisions", which designate the area of impact of the object, means also the provisions of the civil law, it should be consequently accepted that a potential possibility of nuisance gives those persons endangered by the nuisances an opportunity of legal protection not only in the civil proceeding but also administrative.

It seems that the Vivodship Administrative Court in Warsaw formulated a right general rule concerning granting the neighbouring properties‘ owners the status of a party in the proceeding for the construction permit, and in the sentence of 04.04.2011, file no. VII SA/Wa 86/2011[52] it stated that *in the light of Article 140 of the Civil Code the owner of the neighbouring property has a legal interest in participating as a party in the administrative proceedings, in which there may be a decision made which will shape the way of usage of the neighbouring property that it will influence the exercise of the property*

[51] Lex Polonica no 7515079.
[52] Lex Polonica no 2563301.

rights by the owner of the neighbouring property.

Considering the application for the construction permit, particularly relating to an object bordering the neighbouring property, therefore the administrative authority should take into consideration not only the public-law standards but also the provisions of the neighbour law, particularly Article 144 of the Civil Code. The fact of being the owner of the property bordering the planned investment, which may cause objective danger due to burdensome nuisances should entitle to participation in the administrative proceeding concerning the permit for the realisation of the investment. Such an attitude towards the problem, taking into account also regulations of the private law during the settlement of administrative issues, is compliant with mutual interpenetration of the civil and administrative law that can be currently observed, and an increasing influence of the civil law on the public administration actions, apparent particularly in the field of a broadly defined property management and the construction law[53]. This attitude does not interfere the rules of the construction law, all the more that cited previously Article 5 Section 1 Subsection 9 Construction Law states clearly a necessity of respect to the interest of the third party when designing and building the objects. The construction administration authority is obliged to take the interest into account ex officio, in each proceeding for the construction permit[54]. In literature and jurisdiction it is emphasized that replacing the administrative law means of protection of the interest of the third party with the civil law means may lead to a deterioration of the legal situation of these persons, since the application of these means is usually possible *post factum*, whereas in the administrative proceeding it is possible to prevent form the realisation of an investment potentially burdensome for the neighbours[55]. Additionally,

[53] See R. Godlewski, H. Kisilowska, *Przenikanie się prawa administracyjnego i prawa cywilnego na przykładzie gospodarki nieruchomościami i prawa budowlanego*, [in:] D. R. Kijowski, P. J. Suwaj (ed.) *Kryzys prawa administracyjnego? Tom III – Wypieranie prawa administracyjnego przez prawo cywilne*, (ed.) A. Doliwa, S. Prutis, Warszawa 2012, p. 34.

[54] See E. Janeczko, *Dopuszczalność sytuowania budynku bezpośrednio przy granicy działki budowlanej*, „Rejent" 2001/10, p. 19.

[55] See M. Romańska, *Środki ochrony właściciela przed szkodliwym oddziaływaniem na jego nieruchomość w związku z realizacją inwestycji budowlanej (wybrane zagadnienia)*, [in:] *Kryzys prawa administracyjnego?*, (ed.) D. R. Kijowski, P. J. Suwaj op. cit., p. 81-82 and the cited sentence of the Constitutional Tribunal of 20.04.2011., file no. Kp 7/2009, Lex Polonica no 2503043.

it is worth to pay attention to one more significant aspect, which is the lack of a possibility of arranging the content of the issued permit for the construction with the content of a prospective settlement of the Court, issued on the basis of Article 144 in conjunction with Article 222 Section 2 of the Civil Code – sending the owners of the properties neighbouring the land of the planned investment straight to the Civil Court and ignoring their rights in the administration proceeding is therefore unfavourable[56]. It is obvious then that when designating the area of the impact of the object it is not about every nuisance but those which are above the average should be taken into account. The administrative authorities should consider such an impact in every proceeding for the construction permit.

There may arise some doubts about the interpretation of the term "the property manager" used in Article 28 Section 2 Construction Law, located in the area of the impact of the object. The Supreme Court of Administration on one hand indicates that *the term "the property manager" covers also the subject for whom the right to use the property was established (limited property right) on the basis of the provisions of the Civil Code*[57]*, and on the other hand it explains that the legal interest of such a subject must result from a particular provision of the material law, must be detailed by clear provisions of the agreement on limited property right, have a close connection with a specific legal-administrative relation in a given case and cannot collide with the property owner's law (perpetual usufructary). In case of a lack of establishing such circumstances it should be stated that the party in the administrative proceeding is the owner (perpetual usufructary) of a neighbouring property, and not the subject who has a limited property right to this building*[58]. At the same time in jurisdiction it is indicated that with relation to Article *28 of the Administrative Procedure Code Section 2 Construction Law is a particular provision applied in the case on the construction permit, significantly narrowing the range of parties of this proceeding. Out of this range, under the discussed Article 28 Section 2*

[56] Ibidem, p. 89 and the following, as well as the cited sentence of the European Court of Human Rights of 03.05.2011 in case of Apanasewicz v. Poland, file no. 6854/07, http://bip.ms.gov.pl/prawaczłowieka.

[57]The sentence of SCA of 15.11.2007, file no. II OSK 1510/2006, Lex Polonica no 2216066.

[58] The sentence of SCA of 08.03.2005, file no. OSK 682/2004, Lex Polonica no 3065369.

Construction Law there were excluded all the subjects who are the possessors of the derivative rights, including other property rights or obligations (e.g. rental right)[59], and also that *the tenant of a residential premises is not a subject entitled to the rights resulting from the provisions of the Construction Law, because they possess only the rights related to the subject being the owner of the building and the flat, but resulting from the obligation relationship*[60]. It seems that the general rule resulting from the jurisdiction mentioned above is that the term "the property manager", which is defined in Article 28 Construction Law, should mean not only the manager in the strict sense[61], but also a person using the property on the basis of the legal and material relationship, provided that the person has a legal interest in joining the proceeding and the interest is not contradictory with the interest of the owner or perpetual usufructuary of this property. According to the judicature, the parties of the proceeding for the construction permit cannot be the persons managing the property on the basis of the legal relationships which are obligations[62]. For acceptance of such a position there influences undoubtedly the actual editing of Article 28 Section 2 Construction Law, which in the author's opinion is inappropriate, because the lack of a precise definition of the term "the property manager" caused the acceptance by the administrative courts of such an explanation of this provision which in practice excludes any legal protection of persons managing the property on the basis of the obligations at the stage preceding the issuance of the construction permit.

In the context of the above it is worth to concentrate on one more important problem connected to the application of Article 28 Section 2 Construction Law as a particular provision in relations to Article 28 of the Administrative Procedure Code. In the judicature it is indicated that *if*

[59] The statement of the Provincial Administrative Court in Warsaw of 31.01.2006, file no. VII SA/Wa 1298/05, Not published, cited: B. Kurzępa, *Prawo budowlane*..., op. cit., p. 235.

[60] The statement of SCAof 27.03.2012, file no. II OSK 40/2011, Lex Polonica no 3906436.

[61] See provisions of Article 43-50 of the Act of 21.08.1997 on Real Property Management, concerning transferring the properties to the organisational units for permanent management; Consolidated text: Journal of Laws of 2004 No 261, item 2603 with amendment.

[62] Similar: A. Matan, *Postępowanie w sprawie pozwolenia budowlanego po nowelizacji marcowej (w aspekcie ochrony prawa własności)*, [in:] *Własność i jej ograniczenia w prawie polskim*, (ed.) K. Skotnicki, K. Winiarski, Częstochowa 2004, p. 83.

the provision of Article 28 Section 2 Construction Law narrowing the range of the proceeding parties in case of the construction permit, refers only to proceedings for the issuance of the permits, therefore it cannot be applied in other proceedings even when it is a similar proceeding[63]. It means that this provision cannot be applied in other proceedings regulated by the standards of the act Construction Law e.g. a proceeding for the construction project approval[64], legalisation of illegal buildings[65], or demolition of a construction object[66], therefore proceedings of this kind the third party may participate under general rules i.e. if they prove their legal interest, defined in Article 28 of the Administrative Procedure Code.

The above problems with interpretation lead to the conclusion that an exception from Article 28 Section 2 Construction Law is unnecessary, and by its unclear editing[67] it may without justification limit a possibility of participation of third party[68] in the most important proceeding among the ones regulated by the act Construction Law. *De lege ferenda* it would be necessary to postulate a derogation of this provision and apply also in this case general rules of the Administration Procedure Code, which in Article 28 links a right to participate in the administrative proceeding with the term of legal interest.

As it is stated in judicature, *the permit for the construction, especially in the urbanized areas, in many cases must consider contradictory interest – the investor's on one hand, and the persons', whose rights or interest may be endangered or infringed by this permit. The limits of those rights and interest are defined by the provisions of the construction law and other legal acts issued on the basis of the provisions of this law. Apart from these limits, thereby apart from the legal protection resulting from the positive law standards there remain the protests of the citizens expressing their personal views, expectations, postulates and requests relating to the specified spatial planning policy, mutual links between planned or realised investments. Not taking them*

[63] The sentence of the Supreme Court of Administration of 24.01.2012, file no. II OSK 2111/2010, Lex Polonica no 3890879.
[64] See. Ibidem.
[65] See. The statement of SCA of 06.10.2010, file no. II OSK 1505/2009, Lex Polonica no 2514874 and of 14.06.2012, file no. II OSK 508/2011, Lex Polonica no 3960117.
[66] See the statement of SCA of 07.05.2013, file no. II OSK 2674/2011, Lex Polonica no 7518009.
[67] Particularly related to the term "the property manager".
[68] E.g. using the property on the basis of obligations.

into consideration cannot be a basis for questioning the legality of the construction permit. The investor decides on the localization of a specific investment. If the project of a planned investment is compliant with the decision on the conditions of the development and arrangement of the land, and with the specific provisions, the architectural-construction authority cannot reject the approval of the project and issuance of the construction permit[69]. The protection of the interest of the third party in the proceeding for the construction permit covers therefore only the justified interest, connected with an objective concern about the negative consequences of the construction of a given object in the form of e.g. burdensome nuisances, which may be generated by the object in the future. However, in this proceeding subjective claims of those persons relating to a specific way of development of other persons' properties do not matter. The interference in the built right may take place only for justified reasons, and every person should be considered individually, together with the separate provisions , defining the way of development of the property[70], as well as actual circumstances.

Discussing the issues on the protection of the third party rights in the proceeding for the construction permit, one cannot overlook the fact that the obligation to obtain this permit does not refer to all the construction object. According to Article 29 Section 1 Construction Law the construction of many types of objects, which may be a potential source of nuisances[71] does not require the construction permit. The lack of obligation to obtain the construction permit does not mean the lack of information on a planned object transferred to the construction administration authorities, because with reference to some of the investments mentioned above the act Construction Law implements an obligation to obtain so called notification. This notification is required, according to Article 30 Section 1 Construction Law, in case of most of the construction objects, defined in Article 29 Section 1. In the notification there has to be defined the type, scope and method of the construction work and the starting date, and attach the statement about the right to use the property for construction purposes, and other

[69] The sentence of the Supreme Court of Administration of 02.04.2008, file no. II OSK 261/2007, Lex Polonica no 2478346.

[70] Including the provisions of the civil law.

[71] As examples, it is worth to mention the types of the industrial objects, defined in this provision, used for agricultural production, and water and telecommunication facilities.

documents defined in the act[72], and the proper construction administration authority may object in cases defined in the act or impose an obligation to obtain the construction permit if the realisation of a given investment infringes the arrangements of the local plan of the spatial development or endangers the human or property security, deterioration of the health and sanitary conditions or implementation, preservation or increase of the limitation or burden for the neighbourhood[73].

An fundamental disadvantage of the above regulations is the lack of possibility of participation of the third party – the neighbours of the property, where the investment is planned in the proceeding preceding the start of the construction works. In cases when even the notification is not required, there is no need of any proceeding, and in case when the notification is required, the provisions of Construction Law do not require any form of expressing even an opinion of the owners, perpetual usufructuaries and the managers of the neighbouring properties. Meantime, a part of the objects, which do not require obtaining the construction permit may be a source of significant burden in the relations with neighbours. Admittedly, even in such an informalised procedure both the investor and the construction administration authorities are obliged to take into account the general regulation on respect of the interest of the third party, formulated in Article 5 Section 1 Subsection 9 Construction Law and the proper authority may impose an obligation to obtain the construction permit in case there should appear or increase burden for the neighbouring properties. However, in practice the protection of the neighbours' rights, since there is no possibility for the third party to participate in the proceeding, comes under question.

Therefore, there must be a concern about the latest legislative changes replacing the current law, according to which the construction permit is a rule and the lack of such a requirement or a requirement of a notification only - constitute exceptions, by making the rule out of a notification only, and limiting the obligation to obtain the permit only to specific cases. Under the Act of 20.02.2015 amending the Act Construction Law and other acts[74] also the construction of single-family housing objects was covered by a procedure of notification, which earlier

[72] It refers mainly to the projects, technical descriptions and permits, arrangements and opinions required under the separate provisions.
[73] Article 30 Sections 2-7 Construction Law.
[74] Journal of Laws of 2015, item 443.

required a construction permit. However, the possibility of starting the construction of such buildings on the basis of a notification was limited to the cases, where the area of impact of the object is located within the parcel or parcels, where the buildings are planned to be erected. One may expect that the requirement will cause similar problems with interpretation as the definition of the area of impact of the object in case of investments requiring the construction permit. The simplified notification procedure does not guarantee a proper assessment of the administrative authorities that the requirement is fulfilled, which in practice may lead to circumventing the law connected with the construction permit by the investors and using the notification procedure to construct objects which may generate significant burden in relations with the neighbours. Undoubtedly, with reference to the change, the possibility of the administrative law protection of the planned investment's neighbours' interest at the stage preceding the starting date of the construction works will further diminish.

Conclusions

It is worth to ask a question: which way of claiming for protection against nuisances is better? Undoubtedly, the civil law method is more universal. However, the possibility of obtaining the protection by the administrative method is, according to Article 28 Construction Law, reserved for a relatively narrow group of subjects, and as a result of the latest legislative changes may further diminish. Nevertheless, as it results from the cited judicature in this paper, also the negatory claim may not provide sufficient protection to the owner of the property who experiences nuisances, particularly in situations when the only way of this protection would be the order of demolition of the constructed object. Further doubts are raised by the reasonability of the restricted interpretation of Article 347 of the Civil Code done by the judicature. Therefore, while in case of the administrative method the problem constitutes the inappropriate editing of the construction law provisions, the difficulties in pursuing the civil law claims are related to the wrong – in the author's opinion – interpretation of the provisions of the Civil Code, which regulate those claims.

Legal acts

[1.] The Act of 23.04.1964 – The Civil Code (Journals of Law of 1964 No 16, item 93 with amendments).
[2.] The Act of 17.11.1964 – The Civil Procedure Code (Journal of Laws 1964 No 43, item 296 with amendments).
[3.] The Act of 07.07.1994 – Construction Law (Consolidated text: Journal of Laws of 2010 No 243, item 1623 with amendments).
[4.] The Act of 21.08.1997 on Property Management (Consolidated text: Journal of Laws of 2004 No 261, item 2603 with amendments).
[5.] The ordinance of the Minister of Infrastructure of 12.04.2002 concerning the technical condition that the buildings should be compliant with and their location (Journals of Law of 2002 No 75, item 690 with amendments).
[6.] The Act of 20.02.2015 amending the Act Construction Law and other acts (Journal of Laws of 2015, item 443).

Literature

[1.] Armata M.: *A gloss to the ordinance of the Supreme Court of 16.12.1992*, I CRN 188/92, „Orzecznictwo Sądów Polskich" 1994/4.
[2.] Bojarski M., *Warunki techniczne i usytuowanie budynków. Zagadnienia administracyjnoprawne*, Warszawa 2009.
[3.] Czarnecki R., *Niektóre zagadnienia prawa sąsiedzkiego*, „Nowe Prawo" 1969/6.
[4.] Godlewski R., Kisilowska H., *Przenikanie się prawa administracyjnego i prawa cywilnego na przykładzie gospodarki nieruchomościami i prawa budowlanego* [in:] D. R. Kijowski, P. J. Suwaj (ed.) *Kryzys prawa administracyjnego? Tom III-Wypieranie prawa administracyjnego przez prawo cywilne*, ed. A. Doliwa, S. Prutis, Warszawa 2012.
[5.] Hanausek S., *„Związanie" sądu cywilnego decyzja administracyjną*, Studia Cywilistyczne, Tom XXIII, Warszawa 1974.
[6.] Janeczko E., *Dopuszczalność sytuowania budynku bezpośrednio przy granicy działki budowlanej,* „Rejent" 2001/10.

[7.] Katner W. J.,: *A gloss to the ordinance of the Supreme Court of 16.12.1992*, I CRN 188/92, „Palestra" 1994/3-4.

[8.] Katner W. J., *Ochrona własności nieruchomości przed naruszeniami pośrednimi*, Warszawa 1982.

[9.] Katner W. J., *Ukształtowanie legitymacji w procesie negatoryjnym o pośrednie naruszenie własności*, „Palestra" 1981/5.

[10.] Kocon W., *Ochrona cywilnoprawna przeciwko niedozwolonym oddziaływaniom na nieruchomości sąsiednie (art. 144 kc),* „Palestra" 1981/5.

[11.] Kocon W., *Zakaz dokonywania robót ziemnych, grożących nieruchomościom sąsiednim utratą oparcia*, „Nowe Prawo" 1975/12.

[12.] Kodeks cywilny. Komentarz, (ed.) Osajda K., Warszawa 2014, wyd. 8, Legalis (electronic document).

[13.] Kubas A., *Roszczenie o wstrzymanie budowy*, „Palestra" 1971/6.

[14.] Kurzępa B., *Prawo budowlane. Komentarz do ustawy i orzecznictwo*, Toruń 2008.

[15.] Matan A., *Postępowanie w sprawie pozwolenia budowlanego po nowelizacji marcowej (w aspekcie ochrony prawa własności)* [in:] *Własność i jej ograniczenia w prawie polskim*, (ed.) Skotnicki K., Winiarski K., Częstochowa 2004.

[16.] Piasecki K., *Z zagadnień stosunku postępowania cywilnego do postępowania administracyjnego* [in:] *Proces i prawo. Rozprawy prawnicze. Księga pamiątkowa ku czci Profesora Jerzego Jodłowskiego*, Wrocław-Warszawa-Kraków-Gdańsk-Łódź 1989.

[17.] Romańska M., *Środki ochrony właściciela przed szkodliwym oddziaływaniem na jego nieruchomość w związku z realizacją inwestycji budowlanej (wybrane zagadnienia)* [in:] D. R. Kijowski, P. J. Suwaj (ed.) *Kryzys prawa administracyjnego? Tom III-Wypieranie prawa administracyjnego przez prawo cywilne*, (ed.) A. Doliwa, S. Prutis, Warszawa 2012.

[18.] Rudnicki S., *Sąsiedztwo nieruchomości. Problematyka prawna*, Kraków 2008.

[19.] Smyczyński T., *Ochrona prawa wieczystego użytkowania*, „Palestra" 1971/3.

[20.] Walaszek B., *Prawo sąsiedzkie a najem lokalu mieszkalnego*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 1965/1.

Judicature

[1.] The resolution of the Supreme Court of 15.04.1967, file no. III CZP 26/67, Lex Polonica no. 296665.

[2.] The resolution of the Supreme Court of 30.08.1969, file no. III CZP 68/68, Lex Polonica no. 296539.

[3.] The resolution of the Supreme Court of 21.03.1984 r., file no. III CZP 4/84, Lex Polonica no. 301738.

[4.] The judgment of the European Court of Human Rights of 03.05.2011 in case of Apanasewicz v. Poland, no. 6854/07, http://bip.ms.gov.pl/prawaczłowieka

[5.] The judgment by the Supreme Administrative Court of 02.04.2008, file no. II OSK 261/2007, Lex Polonica no. 2478346.

[6.] The judgment by the Supreme Administrative Court of 06.06.2013, file no. II OSK 332/2012, Lex Polonica no 7515079.

[7.] The judgment by the Supreme Administrative Court of 06.10.2010, file no. II OSK 1505/2009, Lex Polonica no 2514874.

[8.] The judgment by the Supreme Administrative Court of 07.02.2008, file no. II OSK 2006/2006, Lex Polonica no 2476258.

[9.] The judgment by the Supreme Administrative Court of 07.05.2013, file no. II OSK 2674/2011, Lex Polonica no 7518009.

[10.] The judgment by the Supreme Administrative Court of 08.03.2005, file no. OSK 682/2004, Lex Polonica no. 3065369.

[11.] The judgment by the Supreme Administrative Court of 10.01.2013, file no. II OSK 1644/2011, Lex Polonica no. 5186229.

[12.] The judgment by the Supreme Administrative Court of 11.06.2013, file no. II OSK 362/2012, Lex Polonica no. 7515/086.

[13.] The judgment by the Supreme Administrative Court of 13.10.2003, file no. IV SA 456/2002, IV SA 457/2002, IV SA 458/2002, Lex Polonica no. 365638.

[14.] The judgment by the Supreme Administrative Court of 14.06.2012, file no. II OSK 508/2011, Lex Polonica no. 3960117.

[15.] The judgment by the Supreme Administrative Court of 15.11.2007, file no. II OSK 1510/2006, Lex Polonica no. 2216066.

[16.] The judgment by the Supreme Administrative Court of 16.11.2004, file no. OSK 786/2004, Lex Polonica no. 381800.

[17.] The judgment by the Supreme Administrative Court of 18.01.2008, file no. II OSK 1878/2006, Lex Polonica no. 1967335.

[18.] The judgment by the Supreme Administrative Court of 20.12.2013, file no. II OSK 841/2013, Lex Polonica no. 8200446.

[19.] The judgment by the Supreme Administrative Court of 24.01.2012, file no. II OSK 2111/2010, Lex Polonica no. 3890879.

[20.] The judgment by the Supreme Administrative Court of 24.01.2013, file no. II OSK 1772/2011, Lex Polonica no. 5176829.

[21.] The judgment by the Supreme Administrative Court of 26.02.2013, file no. II OSK 2011/2011, Lex Polonica no. 5193373.

[22.] The judgment by the Supreme Administrative Court of 27.03.2012, file no. II OSK 40/2011, Lex Polonica no. 3906436.

[23.] The judgment by the Supreme Administrative Court of 28.03.2007, file no. II OSK 208/2006, Lex Polonica no. 1811108.

[24.] The judgment by the Supreme Administrative Court of 29.01.2008, file no. II OSK 1955/2006, Lex Polonica no 1961957.

[25.] The judgement of the Court of Appeals in Gdańsk of 05.05.1995, file no. I ACr 175/95, Lex Polonica no. 314258.

[26.] The judgement of the Supreme Court of 04.07.1969, file no. III CRN 462/68, Lex Polonica no. 296536.

[27.] The judgement of the Supreme Court of 10.02.2004, file no. IV CK 454/2002, Lex Polonica no. 1633054.

[28.] The judgement of the Supreme Court of 16.12.1992, file no. I CRN 188/92, Lex Polonica no. 296416.

[29.] The judgement of the Supreme Court of 18.06.1998, file no. II CKU 6/98, Lex Polonica no. 335298.

[30.] The judgement of the Supreme Court of 22.11.1985, file no. II CR 149/05, Lex Polonica no. 296403.

[31.] The judgment of the Constitutional Court of 20.04.2011, file no. Kp 7/2009, Lex Polonica no. 2503043.

[32.] The judgment by the Voivodeship Administrative Court in Poznań of 10.11.2009, file no. IV SA/Po 500/2009, Lex Polonica no 2547836.

[33.] The judgment by the Voivodeship Administrative Court in Warsaw of 04.04.2011, file no. VII SA/Wa 86/2011, Lex Polonica no 2563301.

[34.] The judgment by the Voivodeship Administrative Court in Warsaw of 13.01.2011, file no. VII SA/Wa 1851/2010, Lex Polonica no 2510740.

[35.] The judgment by the Voivodeship Administrative Court in Warsaw of 31.01.2006, file no. VII SA/Wa 1298/05, not published., cited: B. Kurzępa, *Prawo budowlane. Komentarz do ustawy i orzecznictwo*, Toruń 2008, p. 235.