

Summary of doctoral thesis

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Dissertation topic: Resolving conflict of interest in construction law

The aim of the study is to analyze the institutional forms of implementing the legal interest in construction law from the point of view of conflicts of interest and their resolution and protection mechanisms. The fundamental area of analysis are the mechanisms of legal regulation serving to resolve conflicts of interest. However, conflict of interest is not the subject of the dissertation. The main problem analyzed is the law as a product of specific decision-making processes that take place in conditions of conflict of interest and the law as a factor affecting conflict situations, which include issues of regulation, resolution and suppression of specific conflicts. The starting point for undertaking such a study are material regulations. In other words, material elements are original and they relate to specific legal acts and concepts. However, these concepts have a dual dimension - both material and procedural.

The basis of conflict situations are always certain interests. It confirms the belief in the key importance of the concepts of interest and conflict of interest. The law is not only a conceptual creation. The law is primarily an expression of the interests that the state guarantees, and its essence manifests itself in a dispute of conflicting interests over legal guarantees of their implementation. The presentation of conflicts between the interests of entities of different categories and the drawing of conclusions on the assessment of the effectiveness of individual forms of implementing these interests in construction law has been included from the perspective of improving the construction process and at the same time implementing the principle of construction freedom. The basic postulate of the study is to include the law as a tool for actions, which is a factor that promotes desirable social changes and introduces order, which play the role of a regulator and controller of mechanisms, not the role of an absolute factor imposing specific behavior patterns.

The analysis was conducted using the broadly understood *acquis* of administrative law doctrine with reference to the case law of administrative courts. Conflicts of interest and their protection, reduced by the growing importance of construction freedom, were presented using the analytical and dogmatic method as well as the historical method, which concerns changes in the protection of interests in the construction process that took place over time. The comparative method was used as an auxiliary method. Polish solutions were compared to

existing solutions in selected European countries. Legal institutions were analyzed using linguistic, system and purposefulness interpretations.

The presented analysis was subordinated to the abovementioned assumptions. The study consists of six chapters. The whole discussion focuses on the main thesis, which is the assumption that the conflicting of interests is an immanent feature of the construction process. The first chapter shows the importance of conflict and the evolution of institutional forms of implementing the interests of entities of different categories. The current institutional forms of implementing the interest such as construction freedom, building permit and notification of construction works were also presented in the study. The presentation of historical transformations regarding the change in the resolution of conflicts of interest in individual forms of construction has allowed to determine the reasons for these changes and the scope of protection of interests. The second chapter presents institutional forms of pursuing interests in selected European countries. It aims to determine the place of Polish solutions in the European standard. Chapter three is dedicated to explaining key concepts for conflicts of interest. It is impossible to analyze these issues without the basic definitions for this branch of law. For this reason, the concept of interest and its individual categories were characterized and understanding of conflicts between them was presented. Chapter four presents the context of conflicts of interest in construction law. The area of impact of the object, which is not clearly defined in law, as well as the character of the building object were analyzed. This chapter also sets out the principles of good neighborliness from a conflict perspective. Chapter five captures the subjective aspect of the conflict, which is undoubtedly the concept of a party in the investment and construction process. This chapter includes participants in a conflict of interest in building law in the form of an architectural and building body and building supervision. The last chapter presents ways and forms of resolving conflicts of interest: the legalization of building arbitrariness, the legal nature of protection measures in confrontation with conflicts of interest in construction law and the transparency of construction proceedings. It also includes a comprehensive summary of considerations and a gradation of conclusions from the research. The whole work includes such values as: spatial order, security, legal certainty, order, because due to their protection, complete freedom of construction cannot be allowed.

The description of the construction law institution as the subject of an organizational game related to the protection and guarantee of achieving the desired values, as well as pursuing specific public and individual interests, shown through the prism of reducing uncertainty and guaranteeing a certain degree of security in the conditions of conflict of their aspirations, has become the main thesis of the study. Postulates for the transformation of conditions and the role

of the forms of creating and applying the law were also presented. However, they were not treated as exhaustive and closing the theory. Due to the multifaceted nature of research on law, they may become one of many possible initiatives in the long process of reevaluating existing models of law. The analysis of views and solutions regarding institutional forms of resolving conflicts of interest, as well as their implementation shown on the example of selected EU countries, provide the basis for verification of accepted research hypotheses. The consequence of these arrangements is the broadly defined *de lege ferenda* postulate stating that in Poland there is a need for a comprehensive approach to conflicts and institutions for their resolution, which, in striving to initiate construction freedom, would guard the interests of entities of various categories and values guaranteed in the Polish Constitution.

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