

LEGAL CONDITIONS FOR THE CONSTRUCTION OF BACKYARD SHELTERS AND HIDES

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Abstract

In the current technical and construction regulations, there is no definition of the so-called protective structures. As a rule, this does not prevent their implementation. What's more, it is possible to erect this type of objects even according to simplified procedures (per notification). However, the possibility of erecting only above-ground objects of a double function without permission is unfavorable, because such objects generally have less resistance than objects completely recessed in the ground. The article presents the legal conditions relating to the construction of backyard shelters and hidden.

Keywords: shelter, protective structures, legal conditions.

1 Legal status and regulations

In Poland, there is no definition of a shelter in generally applicable laws (laws, regulations). In the 90s, the building instructions of the National Civil Defense Inspectorate and the orders of the Ministry of Spatial Economy and Construction, which defined these concepts, expired.

Currently, the only official act that defines technical requirements for shelters and hides are "Technical conditions to be met by protective structures" (Annex 1 to the guidelines of the Head of Civil Defense of the Country of December 4, 2018 on the rules for dealing with protective construction resources). According to these technical conditions:

- 1) shelter – is a protective structure with a structurally closed, hermetic casing, ensuring the protection of persons, devices, material stocks or other material goods against assumed factors of destruction affecting from all sides;
- 2) concealment – is a non-hermetic protective structure, equipped with the simplest installations, ensuring the protection of persons, devices, material stocks or other material goods against assumed factors of destruction affecting from specific sides.

Technical standards for shelters and concealments issued by the Head of civil defense of the Country are recommended for application, but do not constitute generally applicable law. The Ministry of Investment and Development is currently working on new legal solutions that are aimed at enabling the construction of so-called

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backyard shelters and hiding construction works for notification. A draft of technical requirements for shelters and hides has also been prepared. Until the entry into force of these regulations, the construction of shelters and concealments is subject to the general provisions contained in the Construction Law and the regulation on technical conditions to be met by buildings and their location.

A real problem is the compliance of the guidelines of the Head of Civil Defense of the Country with the Regulation on Technical Conditions to be met by buildings and their location. The guidelines contain recommendations that can be clearly defined as good practices for the design of protective structures. The problem, for example, concerns the minimum sizes of doors given in the Guidelines, which are also the most typical size. Also, the issue of the location in the so-called protective structures of rooms for permanent residence of people is not directly supported by technical and construction regulations.

The inconsistencies appearing in the guidelines of the Head of Civil Defense of the Country are of course not an insurmountable obstacle. It should be remembered about the procedure specified in Article 9 of the Construction Law, regulating the derogation from technical and construction regulations. At the moment, this is the only way to legally design and construct a protective structure, to the extent that the implementation of protective functions or equipment of the facility (e.g. the size of typical shelter doors) is impossible in the light of the Regulation. In this context, the Guidelines of the Head of the OCK, as an official and up-to-date document, are the best substantive justification for the submitted request for a derogation. However, regardless of the legal possibilities and the basis in the documents, this mode is, however, an extraordinary mode and does not facilitate the design and implementation of protective structures.

The concept of construction, which is one of the types of construction works, is defined in the Construction Law. Construction refers to the construction of a new building, as well as the reconstruction, superstructure and extension of an existing facility.

Backyard shelters and hiding places can be built as:

- 1) free-standing - which do not use the foundations, walls or roof of the neighboring building (it is required to be separated from the building by at least an expansion joint).
- 2) being part of a single-family residential building, or a residential building in a homestead (most often these are reinforced basement rooms).

2 Construction of shelters and free-standing hides

Home shelters and free-standing hiding places are included in the so-called protective buildings, and their construction is carried out on general principles. As a rule, it is required to obtain a building permit, however, the lack of a definition of shelter and concealment in the Construction Law allows in some cases the legal construction of such construction objects without the need to obtain a building permit. The amendment to the Construction Law of 28 June 2015 allowed the owners of plots to build one-storey economic objects with an area not exceeding 35 m², located at a distance of at least 3 m (in the case of a wall without windows and doors) from the side of the neighboring building plot.

The Construction Law and the implementing regulations lack a definition of a one-storey building. In the commonly accepted sense, the ground floor is called the first above-ground floor and such an interpretation does not raise doubts of architectural and construction bodies. The concept of storey is defined in the regulations. The underground floor is recessed **on all sides of the building at least half of its height** in the light below the level of the adjacent area. The above-ground storey is any non-underground storey.

A shelter (hiding) can therefore be considered a one-storey building:

- 1) with an above-ground structure;
- 2) with a structure recessed in the ground less than half the height;
- 3) with a structure completely recessed in the ground on three sides (e.g. in a slope), and on the fourth side recessed in the ground less than half the height.

The above-mentioned shelters or hiding places can (and should) be covered with a protective layer of soil, since such an earth embankment is not included in the level of the adjacent terrain.

At this point, it is still necessary to refer to the definition of an economic building. An outbuilding is a building designed for non-professional performance of workshop work and for storing materials, tools, equipment and agricultural products serving the residents of a residential building, a collective residence building, an individual recreation building, as well as their surroundings. In the case of an intention to build an outbuilding that meets the conditions described above, only a notification of construction works is required.

In the light of the interpretation of the applicable regulations, it will be legal to carry out a construction work described as an "economic building" (free-standing, one-storey, with a building area of up to 35 m²), whose construction and elements of technical equipment would meet the protective requirements assumed by the investor. It should also be added that construction works that do not require a building permit do not require the need to obtain a decision on development conditions, which is confirmed by the jurisprudence of administrative courts (m.in judgments of the Provincial Administrative Court in Krakow of 7.09.2016, II SA/Kr 790/16 and the Provincial Administrative Court in Wrocław of 4.04.2017, II SA/Wr 15/17). So far, such a qualification has not been questioned by architectural and construction authorities. The so-called dual-function shelters, which perform various useful functions outside the period of danger, are also a solution commonly used in other countries.

3 Construction of shelters and hiding places that are part of the building

The construction of home shelters and hiding places that are part of the building does not require the preparation of a separate construction project and obtaining a separate building permit. In this case, the shelter or hiding rooms are treated as part of a single-family building, just like a basement. However, it should be borne in mind that some correct architectural solutions (justified by the principles of building art for shelters and hide) may not be in accordance with the regulation on technical conditions to be met by buildings and their location. This applies in particular to low-lying air intakes, as well as a spare exit tunnel, doors and manholes, the dimensions of which are sometimes questioned by officials as non-compliant. Until detailed technical requirements for shelters and hides are issued, in order to avoid such problems, in projects it is worth using terms such as "technical room", "technical tunnel", etc.

4 Adaptation of existing rooms to the requirements of a shelter or concealment

The term "construction" does not include other construction works such as reconstruction, renovation, demolition or assembly of elements of technical equipment. The reconstruction of rooms in an existing building for shelter or concealment thus constitutes 'construction work' which is not construction. The performance of construction works consisting in the reconstruction of external partitions and structural elements of single-family residential buildings in order to prepare a shelter or concealment, unless it leads to an increase in the area of impact of the object beyond the plot on which the building is located, does not require a decision on a building permit. However, the notification of construction works referred to in Article 30 of the Construction Law is required.

5 Summary

In the current technical and construction regulations, there is no definition of the so-called protective structures. As a rule, this does not prevent their implementation. What's more, it is possible to erect this type of objects even according to simplified procedures (per notification). However, the possibility of erecting only above-ground objects of a double function without permission is unfavorable, because such objects generally have less resistance than objects completely recessed in the ground.

The lack of technical and construction regulations in the field of protective construction may also result in the need to obtain derogations under Article 9 of the Construction Law, which significantly prolongs the investment process. The unregulated legal status is also a threat to the safety of users of protective structures, because contractors of protective structures or manufacturers of prefabricated objects are not obliged to provide any resistance to shock factors.

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