

News regarding the crime of continuing the execution of the works after ordering their stop by the competent control bodies provided by Law no. 50/1991

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Abstract – – Law 50/1991 on the authorization of construction works, as republished, outlines in Article 24 three criminal offenses, including the continuation of construction work despite a stop order issued by the competent control authorities. While the term "competent control body" is not explicitly defined, its scope can be understood from Article 27 of the same act. This provision assigns responsibility to the presidents of county councils, mayors, and control bodies within local and county public administration authorities to ensure compliance with regulations on the authorization of construction works within their administrative-territorial units. Depending on the identified legal violations, these authorities are tasked with applying sanctions or referring cases to judicial or criminal prosecution bodies, as appropriate.

Keywords – *crime, construction works, competent control body, prosecutor.*

1. INTRODUCTION

Under the provisions of Article 24 of Law 50/1991, the following acts are classified as criminal offenses and are punishable by imprisonment ranging from 3 months to one year or by a fine:

- a) Executing construction, reconstruction, consolidation, modification, extension, rehabilitation, change of use, or repair of any type of structure, as well as related installations, without a building or demolition permit or in violation of its terms, except where exemptions are provided by law.
- b) Continuing construction work after a stop order has been issued by the competent control authorities in accordance with legal provisions.
- c) Drafting or signing the technical documentation necessary for authorizing construction works, as well as technical projects and execution documentation, for disciplines other than those certified by a university diploma, as stipulated in Article 9.

By criminalizing the continuation of construction work after a stop order is issued, the legislator sought to address situations where administrative liability proved inadequate to achieve the objectives of Law 50/1991, namely maintaining order in the construction

sector. This measure reflects the need to deter individuals who persist in illegal activities, disregarding fines and the complementary sanction of a work stoppage.

Article 27(1) of Law 50/1991 assigns the responsibility of monitoring compliance with construction authorization regulations to county council presidents, mayors, and control bodies within local and county public administration. These authorities are tasked with imposing sanctions or referring cases to judicial or criminal prosecution bodies, depending on the nature of the violation.

Similarly, Article 28(1) provides that, alongside imposing fines for the contraventions specified in Article 26(1)(a) and (b), authorities must order the cessation of construction work. Additionally, they may require measures to bring the work into compliance with the authorization or, where applicable, mandate the demolition of unauthorized or non-compliant structures within a timeframe specified in the contravention report. By the phrase "control bodies" in the content of the offense provided by Article 24 letter (b) of Law no. 50/1991 on the authorization of the execution of construction works, analyzing the texts of the law, grammatically but also systematically, the legislator sought „to make a clear distinction between the judicial bodies - the prosecutor and the court, which carry out activities within a criminal trial regarding the offenses provided by this normative act, and the control bodies with attributions regarding the discipline in constructions, the attributions of each category of bodies being explicitly mentioned, and their competence being, thus, strictly delimited by law.

2. LEGAL FRAMEWORK FOR CONSTRUCTION AUTHORIZATION AND COMPLIANCE IN LAW NO. 50/1991

To undertake a thorough analysis of the relevant legal framework, it is essential to examine specific provisions of Law No. 50/1991, which governs the authorization of construction works. This legislation establishes clear requirements and responsibilities for various types of construction activities to ensure compliance with permits and design standards.

In Chapter I, Article 3 outlines the fundamental principle that all civil, industrial, agricultural, and infrastructure constructions must adhere to a valid building permit and applicable regulations. This requirement applies to a wide range of activities, including construction, reconstruction, modification, extension, rehabilitation, change of use, and repair of structures and their associated installations, except for those explicitly exempted by the law. The article also extends these obligations to works carried out on historical monuments, protected areas, and constructions of significant architectural or historical value, emphasizing the need for proper authorization and compliance.

The scope of these requirements includes works related to communication routes, technical networks, hydrotechnical structures, and land improvements, as well as temporary constructions such as kiosks, exhibition spaces, and other provisional installations. Specific provisions aim to simplify the authorization process for temporary constructions, such as urban furniture, green spaces, and recreational areas, by allowing permits based on simplified technical documentation.

Chapter III addresses responsibilities and sanctions, detailing actions that constitute criminal offenses under Article 24. Among these are the execution of construction works without a valid permit or in violation of its terms, the continuation of works despite a stop order issued by the competent authorities, and the drafting or signing of technical documentation by individuals without proper qualifications. These offenses are subject to

penalties, including imprisonment of three months to one year or fines, reflecting the legislator's commitment to maintaining discipline and legality in the construction sector.

By establishing clear rules and penalties, Law No. 50/1991 emphasizes the necessity of adhering to proper procedures in construction activities, aiming to uphold order in the construction sector and ensure compliance with both legal and technical standards.

Article 241 outlines the legal measures available to address unauthorized construction works within the judicial process. When ruling on the merits of a case, the court has the authority to require that the construction works be brought into compliance with the terms of the authorization or, alternatively, to order the demolition of unlawfully executed structures.

Additionally, both the prosecutor and the court are empowered to take preventive action during criminal proceedings. They may, either on their own initiative or at the request of a party, impose a temporary suspension of construction activities for the duration of the trial. These provisions ensure that unauthorized works are addressed promptly and effectively, safeguarding legal and regulatory compliance throughout the judicial process.

Article 26(1) defines specific actions that are considered contraventions, provided they do not meet the legal conditions required to be classified as crimes:

- a) the execution or demolition, totally or partially, without authorization of the works provided for in art. 3, except for those mentioned in letter b), by the investor and the executor;
- b) the execution or dismantling, in violation of the provisions of the authorization and the technical project, the works provided for in art. 3, except for those mentioned in letter b), as well as the continuation of the execution of the authorized works without requesting a new building permit in the situations provided for in art. 7 para. (15), by the investor and the executor;
- c) approval of the supply of urban utilities, as a result of the execution of works of connections and connections to networks for new unauthorized constructions;
- d) the maintenance after the expiry of the term provided by the authorization or after the completion of the authorized works or the adaptation for purposes other than those provided for in the authorization of the constructions, works and arrangements of a provisional nature;
- e) failure by the investor to bring the land to its initial state, after the completion of the works provided for in art. 3 letter c), as well as failure to carry out the cleaning, arrangement or clearing works, as the case may be, of the site and/or adjacent lands temporarily occupied during the execution, once the basic works are completed;
- e1) failure to fulfill the obligation to restore to the previous state the land that was the subject of the lease agreements by the holders of licenses/permits/authorizations, provided for in art. 71 para. (2), upon their dissolution;
- f) preventing or evading the performance of the control, by prohibiting the access of the competent control bodies or by not presenting the requested documents and documents;
- g) failure to announce the date of commencement of the authorized construction works, in accordance with the provisions of art. 7 para. (8);
- h) failure to issue urban planning certificates within the term provided for in art. 6 para. (2), as well as the issuance of incomplete urban planning certificates or with erroneous data, which do not contain the list containing the legal approvals and agreements necessary in relation to the investment objective, or their issuance conditioned by the prior elaboration of an urban planning documentation or any technical documentation

defining the purpose of the request, exceeding the legal term, or the unjustified refusal or conditioning of the provision of information of public interest provided for in art. 6 para. (1);

h1) failure to issue building permits and permits within the term provided by this law;

h2) unjustified refusal to issue the building/demolition permit and/or the urban planning certificate within the term provided by law for complete documentation;

i) issuance of construction/demolition permits:

- in the absence of a real right over the building, which would confer the right to request the building/demolition permit;

- in the absence or non-compliance with the provisions of the urban planning documentation, approved according to the law;

- based on incomplete documentation or elaborated in inconsistency with the provisions of the urban planning certificate, of the Civil Code, of the framework content of the technical documentation - D.T. for authorizing the execution of construction works, which do not contain the necessary legal approvals and agreements or which are not verified according to the law;

- in the absence of technical expertise regarding the safety of the entire construction, in the case of consolidation works;

- on the basis of documents other than those required by this law;

j) failure to organize and not exercise control over discipline in the authorization and execution of construction works by the competent departments within the own apparatus of county councils and mayoralities, in their administrative-territorial units, according to the provisions of art. 27 para. (3) and (4), as well as the failure to follow the manner of fulfilling the provisions of the State Inspectorate in Constructions, according to the provisions of art. 29 para. (3);

k) failure to fulfill, within the established term, the measures ordered by the State Inspectorate in Constructions at the previous control;

l) the unjustified refusal or obstruction in any form of the access of natural persons or representatives of legal persons to the documents provided for in art. 34 para. (7);

m) exceeding the term of 15 days for issuing the necessary permits and agreements in order to authorize the construction works, according to the provisions of art. 7 para. (20);

n) failure to carry out the acceptance at the end of the construction works under the provisions of art. 37 para. (2);

o) failure to set up the database by the responsible public authorities or failure to transmit by the owners of technical-municipal networks within the legal terms the cadastral plans provided for in art. 45 para. (6).

Article 27 establishes a detailed framework for the responsibilities of public authorities in monitoring compliance with construction authorization regulations and addressing contraventions through specific measures:

(1) The presidents of the county councils, the mayors and the control bodies within the local and county public administration authorities have the obligation to monitor the observance of the discipline in the field of authorizing the execution of construction works within their administrative-territorial units and, depending on the violation of the legal provisions, to apply sanctions or to address the courts of law and criminal prosecution bodies, as the case may be.

(1^a) In addition to the authorities provided for in para. (1), for the works related to the transport infrastructure of national interest, the designated control bodies within the Ministry of Transport have the obligation to monitor the observance of the discipline in the field of authorizing the execution of construction works and, depending on the

violation of the legal provisions, to apply sanctions or to address the courts of law and criminal prosecution bodies, as the case may be.

(2) The chief architect of the county and the empowered staff of the specialized department subordinated to him shall observe the discipline in the field of authorizing the execution of construction works on the administrative territory of the

county, as well as the observance of the discipline in urban planning and territorial planning related to the construction authorization process.

(3) The contraventions provided for in art. 26 para. (1), except for those in letters h), h1), i)-k) and o), shall be ascertained and sanctioned by the specialized departments with control attributions of the local public administration authorities of the counties, municipalities, sectors of the municipality of Bucharest, cities and communes, for the deeds committed in their administrative-territorial unit or, as the case may be, in the administrative territory of the sectors of the municipality of Bucharest, according to the competences for issuing construction/demolition permits.

(3¹) In addition to the authorities provided for in para. (3), for the works related to the transport infrastructure of national interest, authorized by the Ministry of Transport, the contraventions provided for in art. 26 para. (1), except for those in letters c), d), h)-l), shall be ascertained and sanctioned by the designated control bodies of the Ministry of Transport.

(4) The contraventions provided for in art. 26 para. (1) letters h), h1), i)-k) and o) shall be ascertained and sanctioned only by the control bodies of the State Inspectorate in Constructions.

(5) The reports of finding the contraventions, concluded by the control bodies of the local public administration, shall be submitted, in order to apply the sanction, to the head of the department that coordinates the activity of territorial planning and urban planning or, as the case may be, to the president of the county council or to the mayor of the administrative-territorial unit or of the sector of the municipality of Bucharest in whose area the contravention was committed.

Article 28 establishes the procedures for addressing unauthorized construction works, detailing the obligations of authorities and the measures to be taken. The provisions are as follows:

(1) The imposition of a fine for the contraventions specified in Article 26(1), letters a) and b), is accompanied by an order to stop the execution of the works. Additionally, measures must be taken to align the works with the provisions of the authorization or, where applicable, to dismantle constructions carried out without authorization or in violation of its terms, within a timeframe specified in the contravention report.

(2) The decision to retain or dismantle constructions executed without a building permit or in breach of its provisions is made by the competent public administration authority. This decision is based on urban plans and associated regulations that are endorsed and approved according to the law or, where applicable, by the court. For works on buildings specified in Article 3(b), approval from the Ministry of Culture and Religious Affairs is required.

(2¹) For constructions related to transport infrastructure of national interest, the decision to retain or dismantle unauthorized works is made by the Ministry of Transport based on technical expertise prepared in accordance with the law or, where necessary, by the court.

(2²) To substantiate the decision on whether to retain or demolish unauthorized constructions, the results of technical expertise must be submitted for approval to the Technical-Economic Council of the Ministry of Transport. This ensures the conformity of the executed works with the technical execution project developed in compliance with

the law and environmental agreements or assessments. The final decision, approved by an order of the Minister of Transport, serves as the basis for issuing construction or demolition permits.

(3) The measure of demolition also applies when the offender fails to obtain the necessary authorization within the timeframe established in the contravention report for achieving compliance.

These provisions establish a clear legal framework for addressing unauthorized constructions through fines, compliance measures, or demolition, depending on the specific circumstances and the level of infraction.

Article 29 regulates the exercise of state control in territorial planning, urban planning, and construction authorization, as follows:

(1) The state control in territorial planning, urban planning and the authorization of the execution of construction works shall be exercised by the State Inspectorate in Constructions, throughout the territory of the country, and by its territorial inspectorates, which shall order the measures and sanctions provided by this law.

(2) The State Inspectorate for Constructions and the territorial inspectorates may order the stop of the execution of the construction or demolition works, as the case may be, when they find that they are carried out in violation of the legal provisions, of the requirements regarding the quality assurance in constructions, without a technical project or on the basis of illegally issued authorizations.

(3) The State Inspectorate in Constructions and the territorial inspectorates shall inform the authority of the public administration on whose territory the control was carried out and the Ministry of Transport, as the case may be, on the findings and measures ordered. In this situation, the control bodies of the county and local councils or of the Ministry of Transport, as the case may be, have the obligation to follow the compliance with the provisions of the State Inspectorate in Constructions.

Article 32 establishes the procedure for addressing non-compliance following the imposition of a contravention sanction. According to para. (1), if the sanctioned individuals have stopped the execution of works but failed to comply within the specified deadline with the measures outlined in the contravention report, as stipulated in Article 28(1), the authority that imposed the sanction is required to notify the courts. The court may then order one of the following measures, as appropriate:

- a) the framing of the works in the provisions of the authorization;
- b) the dismantling of illegally built constructions.

3. INTERPRETATION OF ARTICLE 24(B) OF LAW NO. 50/1991 : DELIMITATION OF COMPETENCES BETWEEN CONTROL BODIES AND JUDICIAL AUTHORITIES

In the Official Gazette part I no. 1007/8.X.2024 was published Decision no. 46 of 16 September 2024 by which the High Court of Cassation and Justice admitted the complaint filed by the Court of Appeal Braşov — Criminal Section requesting the issuance of a preliminary decision for the resolution of the following questions of law: „If the offence provided for in art. 24 letter b) of Law no. 50/1991 on the authorisation of the execution of construction works, consisting in the continuation of the execution of the works, after their stop has been ordered by the competent control bodies according to the law,

also refers to the same prohibited conduct, criminalised as a criminal offence and if the works are not stopped, but their cessation is ordered by the criminal prosecution bodies?"

Consequently, the High Court established that the offence provided for in art. 24 letter b) of Law no. 50/1991 on the authorization of the execution of construction works, consisting in the continuation of the execution of the works after their stop has been ordered by the competent control bodies according to the law, does not also refer to the situation in which the works continue after their stop has been ordered by the criminal prosecution bodies.

In the reasoning of the decision, the High Court states that the question of law raised by the referring court aims to establish the conditions of typicality of the offence provided for by Art. 24 letter b) of Law no. 50/1991 regarding the authorization of the execution of the construction works in the situation in which the construction works continue after the order of their temporary stop, during the criminal trial, by the prosecutor, in the case of the buildings provided for in art. 3 para. (1) letter b) of the same normative act. The provisions of art. 24 of Law no. 50/1991 on the authorization of the execution of construction works criminalizes two distinct conducts in letters a) and b).

Thus, letter a) criminalizes the execution without a building permit or with its non-compliance with the works provided for in art. 3 para. (1) letter b) of the law, with the exceptions provided. In this case, we are talking about a series of works carried out on all categories of historical monuments provided by law, on constructions located in monument protection areas and in protected built areas, established according to the law, or on constructions with special architectural or historical value, established by approved urban planning documentation. The realization of these categories of works on the mentioned buildings, due to their special importance in considering the historical, architectural value, was provided by the legislator as directly attracting the most serious form of liability, criminal liability.

The second offense provided for in Law no. 50/1991 regarding the authorization of the execution of construction works, respectively the one mentioned in letter b) of art. 24, consists in the continuation of the execution of the works after the order to stop them by the competent control bodies, according to the law. As regards the meaning of the phrase „control bodies” in the content of the offence provided by art. 24 letter b) of Law no. 50/1991 on the authorization of the execution of construction works, analyzing the texts of the law, grammatically, but also systematically, it is found that the legislator has made a clear distinction, on the one hand, between the judicial bodies (prosecutor and court) that carry out activities within a criminal trial with regard to the offenses provided for by this normative act, and, on the other hand, with respect to the control bodies with attributions regarding discipline in constructions, the attributions of each category of bodies being explicitly mentioned, and their competence being, thus, strictly delimited by law. The provisions of art. 27 and 28 of Law no. 50/1991 on the authorization of the execution of construction works individualizes the control bodies with attributions in terms of discipline in the execution of construction works and establishes their sphere of competences, respectively:

- the control bodies within the local and county public administration authorities that have the obligation to monitor the observance of the discipline in the field of authorizing the execution of construction works within their administrative-territorial units and, depending on the violation of the legal provisions, to apply sanctions or address the competent judicial and prosecutorial bodies and organs, as the case may be;
- the designated control bodies within the Ministry of Transport and Infrastructure that have the obligation to monitor compliance with the discipline in the field of authorizing

the execution of construction works and, depending on the violation of the legal provisions, to apply sanctions or to address the courts of law and criminal prosecution bodies, as the case may be;

- the control bodies of the State Inspectorate in Constructions.

These control bodies have the competence to ascertain the commission of the contraventions referred to in art. 26 of Law no. 50/1991 on the authorization of the execution of construction works and, at the same time, to order, together with the application of the contravention fine, the measure of stopping the execution of the works, accompanied by the taking of either the measures to frame the works in the provisions of the authorization, or the measures to abolish the works executed without authorization or in violation of its provisions. From the provisions of art. 241, art. 27, art. 28 and art. 32 para. (4) of Law no. 50/1991 on the authorization of the execution of construction works, it follows that the control bodies, depending on the violation of the law found, either apply the contravention fine and order the complementary measures, or notify the civil courts when the violation represents a contravention, or they can ask the criminal investigation bodies notified and, as the case may be, the court to order the temporary stop of the execution of the works, throughout the criminal trial, in the event of finding the offenses provided for by art. 24 of the law.

4. CONCLUSIONS

The provisions of Law No. 50/1991 clearly differentiate between the roles of administrative control bodies and judicial bodies in regulating construction discipline. Administrative control bodies are tasked with ensuring compliance, imposing fines, and ordering the cessation of works in cases of contraventions, as specified in Articles 27, 28, and 32(4). Judicial bodies, including prosecutors and courts, are empowered only to order temporary cessation of works during criminal proceedings.

Control bodies act within the administrative sphere, addressing contraventions under Article 26(1)(a) and (b) by stopping unauthorized works and requiring either compliance with authorization provisions or the dismantling of works. Judicial bodies, by contrast, intervene during criminal investigations, ordering temporary halts to ensure the case's resolution. This distinction is reinforced by Article 71 of the Methodological Norms, which links control activities exclusively to administrative authorities.

The legislator's choice to criminalize non-compliance with administrative stop orders issued after contravention liability reflects the inadequacy of fines and complementary measures in deterring continued violations. The offense under Article 24(b) of the law specifically targets those who persist in unlawful conduct despite administrative sanctions, distinguishing it from temporary cessation measures imposed by judicial authorities during criminal trials.

This separation underscores the legislative intent to regulate administrative and criminal liabilities distinctly, ensuring that substantive legal provisions are not applied by analogy to fill perceived gaps. Consequently, the continuation of works in defiance of a stop order issued by administrative control bodies constitutes a criminal offense, while the continuation of works after a temporary stop order from judicial bodies does not fall under the same criminal provision. This approach reflects a deliberate legislative framework designed to maintain construction discipline through clearly defined and differentiated enforcement mechanisms.

5. REFERENCES

- [1] Law no. 50/1991 on the authorization of the execution of constructions and some measures for the construction of housing, republished pursuant to art. III of Law no. 125 of 16 October 1996, published in the Official Gazette of Romania, Part I, no. 259 of 24 October 1996, giving the articles a new numbering.
- [2] High Court of Cassation and Justice, Decision no. 46 of 16 September 2024, published in the Official Gazette part I no. 1007/8.X.2024.
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