

# New Controversial Legislation on Highway Construction

In December 2007, the National Council of the Slovak Republic passed very controversial and broadly discussed legislation on extraordinary measures to be taken during the construction of certain highways and motor vehicle roads which should accelerate the construction of mainly the D1 highway from Bratislava to Košice and the R1 motor vehicle road from Nitra to Banská Bystrica. The legislation took effect on 31 December 2007. According to the Minister of Transport the newly passed legislation, enacted by the government coalition, will significantly accelerate the

highway exists on the land plot in question. According to critics of the new legislation, expropriation proceedings when a highway is already located on a land plot would to a considerable degree be only a formality.

## CONSTITUTIONAL COURT TO ASSESS THE NEW LEGISLATION

With respect to its compliance with the constitutionally guaranteed protection of ownership rights, the commencement of highway construction on private land without prior due and final expropriation and any effective chance of



Ondřej MAJER, Lawyer,  
PETERKA & PARTNERS Law Offices

completion of the highway connecting Bratislava and Košice, which has been blocked so far due to lengthy delays regarding the considerably high number of owners of small land plots in Slovakia. According to the Minister, the section of the D1 highway from Žilina to Prešov crosses more than 6,000 land plots.

## CONSTRUCTION WILL BE POSSIBLE BEFORE FINAL EXPROPRIATION

Formerly, highway construction was often considerably delayed by the necessity to obtain control over the property affected by the construction. This necessitated, before starting construction, either negotiations on the purchase with the respective owner of the land plots or conducting often lengthy expropriation procedures. Under the new legislation, construction may be carried out on the land plots of private owners before final expropriation. Consequently, where the expropriation process previously had to be completed before a building permit for highway construction was issued, resulting in considerable delays, now final expropriation of the relevant land plots before final inspections will be sufficient. The authorities can now begin construction before assuming control of the property concerned. After completing the construction, the final decision on expropriation must be annexed to the application for the highway use permit. The construction authority may also consent with putting the highway into operation even before issuing the final use permit if the current conditions do not impede secure traffic flow. A highway situated on a private land plot may theoretically be opened even before final expropriation. The new legislation does not deal with the question what happens if expropriation is ultimately refused when the fully functioning

owners being able to oppose the implemented construction is contentious.

For these reasons, in January 2008, a group of opposition MPs filed a petition with the Constitutional Court to repeal the contentious provisions of the legislation. As the legislation has already taken effect and the National Highway Company (Národná diaľničná spoločnosť) wishes to apply it immediately, a petition on the preliminary suspension of its effect was also filed.

Thus, the final decision on constructions on private land plots before related expropriation proceedings being terminated will be taken by the Constitutional Court.

## OTHER MEASURES TO SPEED UP CONSTRUCTION

The legislation also considerably shortens certain time-limits applied in planning and building procedures. Not only will the construction authority have to decide within a short time, but also participants in zoning or construction proceedings will have an extremely short time to appeal and missing the deadline cannot be mitigated.

Neither zoning nor construction proceedings under the new legislation may be suspended.

*Ondřej MAJER is a Lawyer with PETERKA & PARTNERS Law Offices.*

*This article is of an informative nature only and under no account can it be considered to be a legal opinion. Should you need any further information on the issues addressed in this article, please contact our Law Office PETERKA & PARTNERS, tel. +421 2 544 18 700, e-mail: office@peterkapartners.sk; URL: www.peterkapartners.com*