

Contractual consequences of an invalid urban development permit

In a decision of 8 March 2018 ([C.17.0390.N](#)), the Court of Cassation overturned a decision of the Court of Appeal of Antwerp of 13 March 2017 (TROS 2017, 230) concerning the contractual relations of parties after the nullification of an urban development permit.

In this case, the principal claimed compensation from the contractor and the architect because of the harm that the principal suffered due to the partial collapse of the constructed building. However, the urban development permit for the project was nullified (after the works had been performed) by the Council of State. The nullification of the permit has a retroactive character, as a result of which it is deemed never to have existed. Agreements that are in conflict with the urban development legislation are in violation of public order and thus absolutely null and void. The contested decision ruled that the principal's claim for compensation was inadmissible, given that the architectural and contracting agreements had (or received) an unauthorised character through the nullification of the urban development permit.

The Court of Cassation nevertheless emphasises that the foregoing does not exclude the possibility that a contracting party, in the event of non-performance, can claim damages in so far as this claim neither directly nor indirectly comes down to giving rise to or maintaining the unauthorised condition. By failing to examine whether the principal's claim in concrete terms merely strove to preserve the situation in violation of public order, the Court of Appeal of Antwerp did not lawfully justify its decision. And for that reason the Court of Cassation overturned the decision.

Thus concretely one must always examine whether the claims based on a contracting or architectural agreement with regard to unauthorised works merely strive to preserve the situation that is in violation. If not, the fact that the agreement itself is unauthorised does not automatically exclude such claims.

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