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Changes to the building law in 2020. Are we on the brink of a revolution?

19 September 2020 marks the effective date of an act amending the Building Law of 7 July 1994. The authors of the bill talk about a revolution which will considerably simplify and speed up the project construction process. Is it really so? Opinions expressed by construction sector representatives are more skeptical. Presented below is a brief description of selected changes introduced by the bill amending the Building Law.

When is a building permit not required?

Currently, the regulations indicate when construction of a building requires a building permit or a pre-construction notification. However, the provisions are dispersed over several regulations. An analysis of the formal requirements to be complied with when constructing a building may take several hours or require reviewing the entire act of law. Moreover, non-transparent regulations give rise to problems due to their varying interpretations by the authorities.

The amendment indicates a list of situations where obtaining a building permit is not required; the situations are grouped under the following catalogues:

- construction which requires a pre-construction notification,
- construction which does not require either a notification or a construction permit
- construction works which require notification,
- construction works which do not require either a notification or a construction permit

This is intended to simplify the application of the regulations.

Also, the formal requirements for construction of certain buildings have been changed. Recently, there has been much discussion over the requirement to have a building permit for construction of self-service facilities for parcel deliveries. The amendment resolves this issue, and once it takes effect, construction of such facilities, if their height does not exceed 3 meters, will not require either a notification or a building permit.

At the moment, the regulation concerning the obligation to obtain a building permit for construction works done in buildings recorded on the register of objects of cultural heritage is also inconsistent. After the amendment, works done in such buildings will require a notification as a rule.

Simplified legalization of illegal buildings – no fees, fewer documents

As an alternative to the existing procedure of legalization of an illegal building, the amendment provides for a simplified procedure. It will apply to illegal buildings, facilities or parts thereof constructed without the required permit or notification, provided that at least 20 years have lapsed from their construction.

The simplified procedure cannot be applied to illegal buildings which were subject to a dismantling order before the effective date of the amendment (19 September 2020).

To benefit from the procedure, the competent authority must be provided with

- an as-built survey,
- a technical expertise and
- a statement confirming the right to use the real property for construction.

It is noteworthy that no legalization fee is required.

After submission of the complete set of documents, and if the expert opinion confirms that the technical condition of the building poses no threat to human health or life, and the building can be safely used, the authority is obliged to issue a decision on legalization.

New division of the building permit design

Currently, the building permit design is a uniform document comprising the following elements:

- a development plan for the plot of land,
- an architectural and construction design and
- a technical design.

So far, the project owner was obliged to enclose a design consisting of the three elements with the application for a building permit.

After the amendment, the design will be divided and each part thereof will constitute a separate document. The application for a building permit will be accompanied with the development plan for the plot of land (or site) and the architectural and construction design. The technical design will need to be submitted to the construction supervision authority only at the stage of issuance of the occupancy permit.

Transfer of a building permit

Also the procedure of transfer of a building permit to the real property buyer is changed. So far, the purchase of real property with a building under construction did not automatically result in transfer of the rights to the construction permit onto to the buyer. The consent of the existing project owner was required and a permit transfer decision had to be issued by the competent authority. In practice, there were situations where, since the previous real estate owner was not obliged to give the consent, the consent was not given.

Once the amendment takes effect, when real property

where construction works are in progress is purchased, the buyer will not need to get the consent of the previous owner to have the permit transferred (provided that the permit was issued to the previous owner). However, the permit transfer decision will still need to be issued by the competent authority.

Possibility to invalidate a decision limited in time

Before the amendment, the following decisions could not be held invalid:

- decisions issued in breach of the articles on jurisdiction;
- concerning an issue previously resolved upon another final decision;
- decisions addressed to a person who is not a party to the case;
- decisions which contain a defect rendering them ineffective by the force of law;

if 10 years passed from the day of delivery or publication of the decision, and if the decision had irreversible legal effects.

Starting from 19 September 2020, this will change. The new regulations lay down the rule that a building permit may not be invalidated if 5 years lapsed from the date of its delivery or publication. The occupancy permit will not be invalidated if 5 years lapsed from the date on which the decision became final.

In the explanatory memorandum, the shortening of the period during which the aforesaid decision may be held invalid was justified by the fact that the period of 5 years was sufficient to notice and confirm defects in a building permit.

Fine for illegal occupancy

Changes are made to the rules of penalizing for illegal occupancy of a building, in breach of the law or without the required permit. So far, the Authority could penalize the project owner once only. The amendment offers the possibility of more frequent penalization.

According to the new legislation, the Authority will first inform the project owner that the building must not be occupied without the occupancy permit or an effective notification of construction works completion.

After 60 days, the Authority will check that the project owner complied with the obligations or whether the building is still used in breach of the law. If the check proves that the legalization duties have not been complied with, the Authority will impose a fine.

Deviation from technical and construction regulations

A building constructed on the basis of a notification or a building permit should be designed and built in conformity with the technical and construction provisions. The provisions are set forth in regulations issued under Article 7(2) and (3) of the Construction Law, e.g. buildings should comply with the requirements of the Regulation of the Minister of Infrastructure of 12 April 2002 on technical conditions to be satisfied by buildings and their location.

If the project owner intends to construct a project which will be inconsistent with the regulations, e.g. the distance to neighbouring buildings will be shorter, he must obtain the authority's approval of deviation from the technical and construction regulations prior to issuance of the building permit.

On 19 September, the decision on deviation from technical and construction regulations can also be obtained before the building permit decision is changed.

How to evaluate the upcoming changes to the building law?

The upcoming changes are difficult to evaluate. Some of the solutions seem promising. However, they can hardly be called revolutionary or evaluated as contributing to considerable simplification and acceleration of the construction process. We may need to wait for a revolution until the government has implemented the promised electronisation of the construction procedures.

If you would like to learn more about the presented changes or talk about their impact on the activities of your company, please do not hesitate to contact us.



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