

REFORM OF THE CONSTRUCTION ADMINISTRATION IN RELATION TO THE PERMITTING OF BUILDINGS FOR RECREATION

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Abstract

The paper is devoted to the new legal regulation of public construction law and issues related to legislation in this area. In 2021, a new construction law was approved, which should, among other things, reorganize the public construction administration and should simplify the processes of building permits. The law should come into full effect on 1 July 2023. A major amendment to this construction law is currently being approved. Following these changes, the paper focuses on selected issues related to the change in the organisation of the construction administration in relation to the permitting of buildings for recreation.

Key words: Building Act, building authorities, authorities concerned

Introduction

The permitting of buildings, not only buildings for recreation, has long been an area of criticism in the Czech Republic. One of the problems is the length of the permitting process, its complexity (or the difficulty of understanding which specific process is to be used for a specific building) and last but not least the complexity and lack of transparency of the authorities that are supposed to comment on buildings. In recent years, a long process of recodification of public construction law was initiated with the aim of speeding up and simplifying building permitting in the Czech Republic. The legislator, which was the Ministry of Regional Development, proclaimed "one application - one authority - one stamp". The aim was that the builder could submit one application, apply to one authority, which would arrange everything else related to the building permit and then issue one permit, which would include all the requirements necessary for the building.

One of the criticisms of building permitting concerns the number of authorities that a builder has to go to if he wants to carry out a building, even a building for recreation. In general terms, there are several types of building authorities and, above all, a large number of so-called 'concerned authorities' involved in the permitting process. The number of authorities concerned is generally criticised, but this is not entirely accurate. The authorities concerned, as specialised bodies, protect a number of public interests that may be affected by the construction. This raises the question of whether the problem lies in the number of authorities or in the number of public interests protected by law, or in the processes for determining whether a public interest is affected. Resolving this issue could certainly help to eliminate one of the many criticisms.

One of the many proposals to resolve the problem of the large number of authorities involved in the building permitting process was to merge all the authorities involved in building permitting into one large super-agency which would do or ensure all the assessments of the public interest implications itself and would also ensure that the impacts of the permitted buildings on public interests, the impacts of the buildings on private interests, etc. are assessed. Such a planned super-office aroused embarrassment and concern not only among the professional public. Given the very purpose of the existence of the authorities concerned, such a solution did not seem appropriate. The authorities concerned in the individual proceedings are acting from a position of expertise that is usually not available to the building authority. However, since the radical solution was not adopted, it was not necessary to deal with it in practice. The legislative changes were such that only some of the authorities concerned were integrated and some remained in the original regime. At the same time, as will be shown below, there are also changes in the structure of the building authorities that will authorise construction.

Recodification process

In 2019, a legislative process aimed at reforming public construction law began, which was intended to achieve the set goal of simplifying and speeding up the process of building permits. This year saw the publication of the substantive draft of the Construction Law, which introduced new basic rules of public construction law, including a proposal to reform public administration in the construction sector. The legislative process of approving the new regulation was completed on 13 July 2021, when the new approved Construction Act was published in the Collection of Laws under the number 283/2021 Coll.

The new Construction Act came into force gradually, and the comprehensive law was supposed to come into force on 1 July 2023, with the fact that Act No. 195/2022 Coll. approved the so-called transitional period (for the purposes of paragraphs 2 and 3, the transitional period shall mean the period from 1 July 2023 to 30 June 2024), when most constructions will be permitted according to the existing legislation. An extensive amendment to the Building Act No 283/2021 Coll. is currently being approved. The amendment to the Building Act No 283/2021 Coll. has been approved by the Chamber of Deputies (Parliamentary Document No. 330) and is now awaiting consideration by the Senate (towards days 17.4.2023).

Structure of building permitting authorities

The current model of bodies administering in the given area distinguishes between planning authorities and authorities permitting construction projects and the so-called affected bodies, which ensure the protection of selected public interests.

The type of construction (construction activity) depends on the type of construction (construction activity) when determining the competent building authority that will deal with the construction. General constructions (recreational constructions, etc.) are under the jurisdiction of the general building authorities (usually the construction or building regulations department of the municipal authority of the municipality with extended competence or the municipality with a designated municipal authority). Special constructions are dealt with by special construction authorities: waterworks by water authorities (usually the environmental department of the municipal authority), roads by road administrative authorities (usually the transport departments of municipal, city and regional authorities and the Ministry of Transport), railway constructions by railway administrative authorities (the Ministry of Transport and the Railway Authority), and aviation constructions by the Civil Aviation Authority. If there is any doubt as to whether the construction is to be dealt with by the general building authority or by a special building authority, the special building authority will decide. It is important to note that the municipal building authorities and some special building authorities exercise their competence within the so-called delegated competence of the local self-government.

Other subjects involved in the exercise of public administration in the field of construction law are the authorities concerned, which protect public interests whose protection is entrusted to them by special laws. These individual public interests are in many cases constitutionally enshrined in the Constitution of the Czech Republic or the Charter of Fundamental Rights and Freedoms. Since there is not, and cannot be, a single universal public interest common to all administrative authorities, it is necessary to address the consequences of the plurality of public interests which arise from various legal provisions and whose promoters and protectors are at the same time the authorities concerned. The public interests protected by a number of special laws are, for example, health protection, environmental protection, fire safety, protection of monuments, etc.

The model planned under the new Building Act (Act No. 283/2021 Coll.) creates new types of building authorities that should no longer be part of the territorial self-government but should exercise their competence as a direct exercise of state power. There was to be a Supreme Construction Authority as a central authority (the exercise of the central authority's powers was to be transferred from the Ministry of Regional Development to this newly created authority), a Specialised and Appellate Construction Authority, as well as regional (state) construction authorities and other construction authorities. The other construction authorities were to be the Ministry of Defence, the Ministry of the Interior and the Ministry of Justice. Another important aspect was the merger of the general construction authorities and the special construction authorities into one administrative body. For example, the construction authority would now be responsible for permitting the construction of waterworks, while the water authority would permit water management.

The amendment to the new Construction Act currently under discussion prepares another model of the structure of administrative bodies (<https://www.psp.cz/sqw/historie.sqw?o=9&t=330>). According to the amendment under discussion, the Ministry of Regional Development should remain the central authority. A new Transport and Energy Construction Authority should be created. However, the basis for the exercise of public construction administration should remain within the exercise of delegated competences of territorial self-government units (regional authorities, municipal construction authorities) and other construction authorities should continue to function.

Buildings for recreation and their permitting

Due to the variety of buildings for recreation, for the purposes of this article we will focus on the construction of holiday cottages (according to the Building Act, this building is referred to as a building

for individual recreation) and the construction of a pond (according to the Water Act, the construction of a water work, specifically the construction of a dam damming a watercourse). For the purposes of this paper, the form and method of permitting construction projects related to the above described construction is not relevant, but the administrative authorities involved in permitting construction projects are relevant.

Holiday Cottage



Fig. 1: Cottage in Adršpach

In the first case, it is the construction of a holiday cottage (or a building for individual recreation). The administrative authority that should authorise the construction is currently the municipal building authority (namely the municipal authority of the municipality with the municipal authority in charge, or the municipal authority of the municipality with extended competence). This building authority can also authorise the location of the building and its implementation. The authorities concerned are also involved in the permitting process and should assess in each case whether the public interests they protect are affected.

According to the new Building Act, the permitting authority should be the regional building authority (within the framework of direct state administration). The agenda of the authorities concerned has been largely integrated into the activities of the building authorities, where, for example, the permit for the withdrawal of agricultural land (Act No. 334/1992 Coll., on the protection of the agricultural land fund) from the agricultural land fund for projects permitted under the Building Act (i.e. including a holiday cottage) replaces the permit for the project under the Building Act.

According to the amendment to the Building Act under discussion, the permitting authority should be the municipal building authority (specifically, the municipal authority of the municipality with a designated municipal authority, or the municipal authority of the municipality with extended competence). Some change is expected in the authorities concerned in connection with the new law on the single environmental statement. The essence of this draft law is to integrate the issuance of the administrative acts supporting the authorisation of a construction project under the various environmental laws into a single binding opinion. The environmental agendas integrated into the Construction Act should be separated out from the environmental agendas that will be integrated in a single opinion issued by the competent environmental authority instead of the construction authorities as foreseen in the new Construction Act (Kusák, Mareš, 2023).

Permitting the construction of a pond, resp. construction of a dam damming a watercourse



Fig. 2: Fish pond



Fig. 3: Pond in Křtiny arboretum

According to the current legal regulation, for the construction of a pond (or the construction of a dam damming a watercourse), the competent authority to permit the location of the construction is the municipal building authority (municipal authority of the municipality with the authorized municipal authority or municipal authority of the municipality with extended competence, in the delegated competence), and to permit the implementation of the construction is the water authority (municipal authority of the municipality with extended competence, in the delegated competence), which at the same time as permitting the construction permits the water management (water accumulation). The authorities concerned also comment on the construction and protect any interests involved. It is possible to combine the process of permitting the siting of the building and the permitting of the building into a single procedure and thus permit the building (both the siting and the construction) and

the water management in one administrative procedure. The permit can therefore be issued by a single authority.

According to the new legislation (according to the approved valid Building Act No 283/2021 Coll.), the construction of a waterworks should be authorised by the regional building authority within the direct exercise of state administration, but the water management should be authorised by the water authority within its delegated competence (namely the municipal authority of the municipality with extended competence). The authorities concerned will be partly integrated into the competence of the building authority.

The authorisation for water management, which can only be exercised by using a water body (which is the case of the dam damming of a watercourse that we have mentioned), is a condition for the enforceability of the authorisation of the water body under the Construction Act. The water management permit ceases to be valid if the planning permission under the special law does not come into force within 3 years from the date on which it became legally valid.

According to the amendment to the Construction Act under discussion, the construction of a waterworks should be authorised by the construction authority (municipal authority of a municipality with delegated municipal authority or municipal authority of a municipality with extended competence in delegated competence), but the water management permit should be issued by the water authority (municipal authority of a municipality with extended competence in delegated competence). As an improvement over the version in the current Building Act No 283/2021 Coll., it can be considered that both authorities will decide in the so-called delegated competence and there will be a certain possibility (after meeting a number of conditions) to combine these procedures into one under the Administrative Code (Act No 500/2004 Coll.). The above described suspension of the enforceability of water permits will apply equally.

Conclusion

The new Building Act will certainly bring some simplification in relation to the processes of permitting buildings (not only) for recreation. On the other hand, it is necessary to reflect on whether the planned simplification will also take place in relation to the institutions involved in the permitting process. Given that the new structure of building authorities has not been and will not be created as planned by the new Building Act, it is worth reflecting on the benefits of the approved amendment.

When comparing the current situation in the context of permitting holiday cottages (building for individual recreation) with the planned change, it is obvious that there will be no fundamental change concerning the authorities. The building authority authorising these structures will continue to be the municipal building authority.

When comparing the current legislative situation with the planned legislative situation for the permitting of the pond (dam), we conclude that it will be a more complicated process than at present. The main problem is the separation between the permitting of the construction itself and the permitting of water management (water storage). Under the current legal situation, one authority can authorise both, whereas the new system will involve two authorities.

Given the uncertainties surrounding the changes to the Building Act, initial application confusion can also be expected. It is worth considering whether the reform of the construction administration should not be done more comprehensively, with greater care and attention to the possibilities and requirements of practice.

The originally proposed changes to the construction administration, which aimed at deconcentrating the construction administration and separating it from the system of delegated competences, were certainly a well-intentioned solution, but the actual incorporation into legislation has not brought the desired expectations. For this reason, a major amendment to the new Building Act was also tabled in 2022, which changes the newly proposed system and brings it back under the delegated competence of municipalities.

References

Parliamentary Document No. 330

Act No. 334/1992 Coll., on the protection of the agricultural land fund

Kusák, M., Mareš, D. (2023). Jednotné environmentální stanovisko v rámci připravovaných legislativních změn nového stavebního zákona, zdroj: <https://www.epravo.cz/top/clanky/jednotne-environmentalni-stanovisko-v-ramci-pripravovanych-legislativnich-zmen-noveho-stavebniho-zakona-115637.html> [ke dni 17. 4. 2023]

Souhrn

Nový stavební zákon jistě přinese určité zjednodušení ve vztahu k procesům povolování staveb (nejenom) pro rekreaci. Na stranu druhou je nutné se zamyslet, zda také dojde k plánovanému zjednodušení ve vztahu k institucím, které se na procesu povolování podílí. Vzhledem k tomu, že nevznikla a ani nevznikne nová struktura stavebních úřadů, tak jak plánoval nový stavební zákon, je vhodné se zamyslet nad přínosem schvalované novely. Když porovnáme stávající situaci v rámci povolování rekreačních chat (stavba pro individuální rekreaci) s plánovanou změnou, je evidentní, že k zásadní změně týkající se úřadů nedojde. Stavebním úřadem povolujícím tyto stavby bude i nadále obecní stavební úřad.

Při porovnání stávajícího legislativního stavu s plánovanými legislativními změnami v rámci povolování stavby rybníka (hráze), docházíme k závěru, že se bude jednat o proces komplikovanější než nyní. Problém je hlavně v oddělení povolování samotné stavby a povolování nakládání s vodami (akumulace). Dle současného právního stavu obojí může povolit jeden úřad, kdežto nově to budou dva úřady.

Vzhledem k nejasnostem panujícím ohledně změn ve stavebním zákoně, lze také čekat úvodní aplikační zmatky. Je k zamyšlení, zda by se neměla reforma stavební správy udělat komplexněji s větší pečlivostí a s důrazem na možnosti a požadavky praxe.

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