

Changes in the real estate law

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The long awaited amendment to the Criminal Code, which includes provisions for real estate, should put an end to construction without permits. The legislation is committed to sending those who build without permits to jail, but does it deal with the issue effectively? Squire Sanders provides an insight.

Despite the fact that there are already penalties for building without a permit, the legislation itself provides the reason for the amendment as an insufficient efficiency of penalties in the construction field. Construction without a permit has not been unusual and these buildings are often completed. And why not, when the construction code provides an alternative to the standard procedure: go ahead, don't bother with the permits, you can legalize it later in the form of an ex-post facto building permit! This is an appealing option, especially since it can significantly decrease the time spent obtaining the construction permit and the scope of objections of participants in the proceeding. Perhaps after this amendment builders will be a bit more careful.

The amendment itself: Art. 299a Unauthorized Construction

(1) Who without a construction permit, or in conflict with an issued construction permit constructs a building or its part, and the construction will not be simple or minor according to the construction act, and causes a serious harm to the rights and rightful interests of a landowner

or several persons shall be punished by up to two years of imprisonment.

(2) Who has committed the act in section (1) despite having been convicted or punished for such act or a similar act in the preceding twenty-four months will be punished with three to five years of imprisonment.

What is the legislation trying to achieve?

We all know that the "black constructions" are a regular part of our city life. Some are built totally without a permit, some are built "only a little bit earlier" than the permit is issued and in some cases there are some parts of construction project contrary to the existing permit. It is obvious that the legislation to-date has not been sufficient. By the time the public, neighbors, owners or authorities discover the problem, consult legal documentation and then try to achieve recourse with the relevant construction office or even with court injunction the black construction is already completed. Then there is a nice way how to legalize such a black construction. Apply for an ex-post facto building permit ("dodatočné povolenie stavby"). Unless a conflict of the black building

with public interests is proven, the construction office has no choice but to permit the building. Due to the above practice, welcome this new legislation that will make those who build without a permit criminally liable. However, one of the key elements of enforcing criminal liability in this case is that the construction has caused serious harm to the rights and interests of "a landowner or several persons". First of all if the landowner is the developer himself, the criminal liability is executed and thus the developers owning the relevant plot will be liable only in case a harm is caused to "several persons". It is not quite clear what the intention of the inclusion of the "several persons" was. As we understand it, such "persons" do not need to be landowners, but serious harm must have been done to more than one person (such as neighbors for instance). The method of determining what constitutes "serious harm" is also uncertain. It will be up to a relevant investigator and then prosecutor and court to judge whether there was harm caused, to how many persons and how serious such harm is. The seriousness of such an act will be considered individually for each case with individual consideration for the degree of intrusion into the property rights or other rights. This allows very individual and uncertain application of justice. We must see how the courts will deal with these cases. The legislation goes even further as it sets a new merit for recidivists,

stating that one who has already committed the crime or a similar act in the preceding twenty-four months will be imprisoned for three to five years. The key element in this case is previous conviction or punishment and it is very interesting that it does not have to be previous criminal punishment – just an administrative punishment is sufficient for the act to fall under this qualified merit. This brings another serious task upon relevant construction offices or inspection – to really impose administrative penalties.

Be sure to comply with the binding decisions:

It is not solely the construction without a permit that is problematic. Authorities have reported trouble enforcing their binding decisions to stop such construction. That is why the legislation has added a new section to the Art. 348 in the criminal code regarding the disregard of binding decisions. According to this addition, ignoring a valid and effective binding decision of the construction office that prohibits continuation of works, changes to or implementation of a construction project, executing works, changes or otherwise continuing construction or its changes is punishable by up to two years of imprisonment.

Conclusion:

The new amendment provides a certain feeling of security to those who are dealing with illegal construction. It is up to the courts and the judges now, and it might take a little while for us to see the effects of the new legislation.



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