

Fines according to the new building draft law

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Stoppage of building works

In terms of the explanatory report to BDL it is proposed to empower the more restrictive regime of unapproved buildings in § 147 and § 162 BDL, mainly by the implementation of processes for providing stoppage of building works. The goal of new facts of the cases qualifications is to protect effectively unapproved performing buildings.

A building office will order to stop building works carried out without decision or approval of a building office required by BDL or contrary to it by the decision according to § 147 of BDL. An appeal against the decision on building works stoppage has not delaying effect. The builder or the building owner, who is carrying out the building or its modification without the building permission or contrary to it, can be imposed the fine from 33 thousand to 170 thousand Euro.

However, the sanctioned in this case can be not only the builder or the building owner res. but also its contractor or the user of the distribution system or network (supplier of electricity, gas and water) based on especially treated facts of the case of administrative torts. By this a part of responsibility for adhering to provisions of BDL is shared to contractual partners of the builder, which will be threat by sanctions. It is assumed that those building objects will „press“ the builder to adhere to provisions of BDL and duties imposed by the building permission.

Sanctions against the contractor

The building office or the inspection will impose the fine in terms of § 163 of BDL from one thousand to 170 thousand Euro to the entrepreneur, who like a contractor is carrying out for example the building, its modification or terrain treatments without the building approval or without the building permission or contrary to it, res. he is displacing the building without permission of the building office or contrary to it.

The provision is formulated that after a breach of some duty is found the building office is obliged to impose a fine. The building office or the inspection while imposing a fine due to the administration tort will specify the amount according to seriousness of the administration tort mainly taking into consideration the way of its committing, its consequences, circumstances upon which it was committed, the decree of delinquency, incentives and the person of the delinquent.

Disrespecting the building office decision on stoppage of works on an unapproved building by the contractor is regarded be particularly serious breach of BDL. Regarding it seriousness the amount of the fine can be expected attaining the upper limit. The building office can also apply for the cancellation of the contractor business permission in case of finding repeated breach.

Sanctions against suppliers of energies

Together with the decision on works stoppage the building office will issue the writing measure, by which it will call the supplier of water and electrical energy to immediate stoppage of supplies. The building office will also announce the stoppage of the being carried out unapproved building on the movable official table placed on the unapproved building and set down the minutes, where it will document the state of the building progress in detail and supplement the picture documentation if needed.

The fine from 3 300 to 170 thousand Euro will be imposed by the building office or the inspection to the distribution network operator, if it does not respect the appeal of the concerned office for the stoppage of electric energy, water or other media supplies, for the purposes of the building carrying out without the building approval or the building permission.

Discipline measures

Other tool, which should ensure adhering to duties in connection with the building are in terms of § 167 of BDL. The building office or the inspection will impose the disciplinary fine 3 300 Euro to whom, who defends executing the check observation of the building during its carrying out or performance of the state building survey thus that he will not offer necessary assistance.

Because necessary assistance is a general term, BDL shows several cases, when this duty is considered be breached. Mainly withholding the verified project documentation, the daybook, the record on the building, the building permission or other decision of the building office is concerned, which have to be on the building or on the building area. The same is valid if the builder or the contractor defends the execution of the decision on the order of the measure at the neighbour land or of the decision on the order of the building eviction.

The administration body, which imposed the disciplinary fine, can decrease or to forgive it if the immediate correction was made.

Imposing fines

Proceedings on a fine for an administrative tort can be started-up within two years since the day, when the administration body authorized to impose a fine gathered about it, that an entrepreneur breached or did not fulfil a duty. This term is the so-called subjective and begins to progress when the concerned body really gathered about breaching a duty. The administration body can attain to such decision based on the executed check-up. However, it is not excluded, that the administration body will gather about the breach based on the announcement of a third party.

In spite of two-year subjective term a fine can be imposed within three years at latest since the day when the breach itself happened or when the duty ought to be fulfilled. This term is the so-called objective. After its elapse the administration body cannot impose the fine. After three years have elapsed since the duty was breached the two-year subjective term also stops elapsing to the administration body, res. it cannot begin to elapse.

Making imposing a fine more restrictive will reflect in possibility to impose a fine in doubled amount of the upper limit (2×170 000 Euro) if the administration tort was repeated within one year since the effectuality of the decision on the imposing the fine is attained. The building office or the inspection will again have not any other possibility than to impose a fine, whereas its amount is defined beforehand by § 164 BDL be the double of the upper limit while the way of its committing, consequences or circumstances are not taken in to account.

Temporary provisions

Attention has to be paid to temporary provisions sometimes omitted also by lawyers, specifying, which legal regulation/form will be used after BDL validity. According to § 176 the proceeding, which began before July 01, 2010, will be finished according to the current regulations, it means according to BDL. The mentioned is also valid for proceedings on a fine imposing as well as for example for proceedings regarding a building permission. After BDL is published in the collection of laws where the date of its effectiveness is known definitely, the certain space is being open, in terms of the mentioned provision, for waiting or in contrary - for accelerated application of the proposal or the proceeding launch.

The building office, which will obtain the knowing for example on performing the building without the building permission (before the objective or the subjective term res. is elapsed), can wait for BDL validity and consequently to launch proceeding on a fine impose, the amount of which will follow the provision of the BDL.

Conversely, if the proceeding on a fine impose will launch before the BDL validity yet, the fine will be imposed in the amount which is accepted by the current BL.

The builder will also have the possibility to decide whether he will ask for the building permission before BDL validity or whether he will apply for the building permission before the BDL is valid and will finish building proceedings according to the current B or will wait for validity of BDL and consequently he will apply it according to BDL. The mentioned will have its meaning mainly in case of buildings, which will not require the building permission or the building announcement res.

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Illustration photo - Juraj Pokorný

Editorial remark: photos showed in this article have exclusively illustration character without any concrete relation to its content.

28.04.2009 09:53, SF / Zuzana Chudáčková