

CZECH ADMINISTRATIVE LAW

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REAL ESTATE IN CONSTRUCTION LAW

Introduction

Legal regulation in the area of construction law is, under conditions of the system of law of the Czech Republic, anchored in the Act No. 183/2006 Sb., on land planning and building regulations, as subsequently amended, namely with effect from 1 January 2007.

Before referring more closely to particular procedures of administrative authorities, we will focus on the definition of a basic term, closely associated with the given problems, which is the concept of construction. Building Act defines the construction as all construction works, developed by construction or assembly methods, regardless of their construction version, used construction products, materials and structures, for the purpose of utilisation and duration¹. The construction can be regarded as a result of preparation and implementation of the project related to building development and decisive means to achieve goals of the project of this type.

The approval to carry out and locate the constructions is performed in a form of the decision-making process that is generally in competence of the administrative authority, namely of the building authority, whereby local competence complies with the place of construction or intent implementation.

¹ Section 2 of the Act no. 183/2006 Sb., on land planning and building regulations, as subsequently amended.

Building Act No. 183/2006 Sb. governs particular procedures both of applicants for the construction location and implementation and administrative authorities granting these permissions.

Every built construction requires the assessment by administrative authorities, competent to decide in the matter of the construction location permission, following the construction realization permission and the construction occupancy permit. It concerns three scopes. It is necessary to solve them separately, but in mutual connections.

Planning Permission

In the first stage it is necessary to lay down the procedures of administrative authorities that shall decide on the construction location permission. The basis is the process of obtaining the planning permission that can be substituted by planning approval in some cases. A possibility of obtaining the planning approval is a manifestation of pursuit of maximum simplification of the construction and its control. Generally, it can be stated that the planning approval will be sufficient for buildings that have no increased demands on environment, no increased (adverse) environmental impact and that are without conflict from the point of view of neighbourly relationships, accordingly, it concerns mostly the constructions that require the notice for their realisation or that can be built even without any notice².

Building authority can give the planning approval³ on the basis of statement of intent, if the intent is in built-up territory or in area suitable for building on, conditions in the territory do not change substantially and the intent does not require new demands on public transport and engineering infrastructure. Planning approval cannot be given if the binding opinion of involved body includes conditions, or disapproval is expressed by such binding opinion or if the intent is subject to assessment from the point of view of environmental impact according to the Act No. 100/2001 Sb. on assessment of environmental impacts.

The building authority is under an obligation to decide within 30 days after the date of the notice presentment.

If the building authority comes to the conclusion that the intent does not meet criteria for granting approval or if it is necessary to set the conditions of its implementation, it will decide in the order on discussion about the intent in planning procedure. Validity of the planning approval is 12 months after the date of its giving.

² A. Klíková, K. Valachová, P. Havlan, E. Hamplová, *Stavební právo – praktická příručka*, Praha 2007, p. 88.

³ Section 96 of the Act no. 183/2006 Sb., on land planning and building regulations, as subsequently amended.

If the conditions to give the planning approval are not met, the planning permission must be given before the construction location. It concerns the administrative procedure, initiated on request of the participant in the procedure.

Within the planning procedure, public oral proceedings are ordered⁴. An applicant is obliged to ensure that information on his intent and on the fact that he filed the application for obtaining planning permission, would be posted and disclosed to public. Information on the intent is to be posted in the space determined by the building authority or in a suitable public place at the construction or land, in which the intent is to be implemented. In the event that all conditions for obtaining planning permission are met, the building authority will give it.

Planning permission of the construction location is valid for 2 years after the date of coming into legal validity. The planning permission loses its legal force if the building application or building notice was not filed within the validity period.

Under the Building Act No. 183/2006 Sb., it is possible to conduct the so-called summary planning procedure that is more suitable than time possibilities⁵. Summary procedure on the construction location can be performed further only when the intent is in the area suitable for building on or in built-up territory, it does not require the assessment of environmental impacts, the application has all prescribed essentials and it is accompanied by binding opinions of the involved authorities and consent of owners of neighboring properties.

The building authority will publish the draft verdict of planning permission and it will also deliver the draft verdict to involved authorities and the applicant. Within the time of 15 days after the date of the draft publication, involved authorities can raise in writing their objections and involved parties can make their objections to the summary planning procedure. If reservations, objections or comments were not raised in due time, the decision is considered to be given and it gains legal validity.

Building Permission

After obtaining the permission with location of objective constructions, both in forms of the planning approval or of planning permission, it is necessary to settle a matter of permission of the objective construction realization.

Two variants can be differentiated here, namely the building notice and permission.

4 Section 87 of the Act no. 183/2006 Sb., on land planning and building regulations, as subsequently amended.

5 Section 95 of the Act no. 183/2006 Sb., on land planning and building regulations, as subsequently amended.

In routine of the construction notice to the building authority, the notice has to comply with conditions as every filing according to rules of the administrative procedure and further the requirements mentioned in the provision of Article 105 of the Building Act. Beside compliance with these requirements, the builder will provide enclosures of the notice to the building authority.

The notice that does not have formalities requested by law is not considered to be the notice in accordance to the Building Act and the building authority will postpone it by a decree.

The builder can carry out the announced construction or equipment on the basis of a written consent of the building authority. The consent applies for 12 months. Within this period the builder has to initiate the construction, failing that, the consent loses the legal force.

If the consent to the realization of announced construction will not be delivered to the builder within 40 days after the date when the notice came to the building authority or prohibition of the announced building construction or equipment will not be delivered to him within this period, it is deemed that the building authority gave the consent.

The building authority can proscribe the announced building construction or equipment if it would be inconsistent with the binding opinion of the involved authority. The building authority will proscribe the announced building construction or equipment in a form of the decision that has to be given within 30 days after the date of the construction or equipment announcement⁶.

In the event that it does not concern the construction at which only its announcement is sufficient or the construction that required neither permission nor notice, it is necessary that the builder would apply for obtaining planning permission⁷. Building permission proceedings are always initiated on the builder's request.

A participant in the building permission proceedings is, above all, the builder, further the construction owner in which a change or maintenance work are to be performed, a holder of the land on which the construction is to be built, the construction owner of the land on which the construction is to be built, and owners of neighboring properties.

The building authority will notify participants in the procedure who are known to him and involved authorities of commencement of the building permission proceedings at least 10 days before the oral proceedings. In the building permission proceedings, the concentration principle applies, which means that the building

6 J. Doležal, J. Mareček, V. Sedláčková, T. Sklenář, M. Tunka, Z. Vobrátilová, Nový stavební zákon, Praha 2006, p. 210.

7 Section 115 of the Act no. 183/2006 Sb., on land planning and building regulations, as subsequently amended.

authority is under an obligation to notify involved authorities and participants in proceedings that they can make binding opinions and objections, or evidence, in the oral proceedings at the latest, failing this, they will not be taken into account for reasons of the proceedings concentration.

Likewise, the objections are not taken into account that should or could be applied in the planning procedure. If the envisaged construction or intent complies with all terms requested by law, the building authority will give the building permission, authorizing the construction. The building authority lays down conditions for building construction in the building permission and if it is necessary, also for its use and it will decide on objections of participants in the proceedings. The building permission loses its legal force if the construction was not initiated within 2 years after the date when it came into effect.

Under conditions provided by the Building Act, it is possible that the so-called summary building permission proceedings will take place. It concerns the proceedings, the result of which will be the building permission that is conducted with the help of the authorized inspector.

If the builder concludes the contract for check of project documentation with the authorized inspector for the construction that he aims to build, he can notify only the building authority of such construction if concurring binding opinions of involved authorities were delivered and statement of persons who would be participants in the building permission proceedings were delivered, and it does not concern the construction that is directly defined as unfit for the summary building permission proceedings. The authorized inspector confirms by certificate that he verified the project documentation and attached documents necessary for giving of the building permission and that proposed construction can be built.

Final Building Approval

The building use is crowning of the whole process of the building construction. It is actually the very reason for construction of a specific building. Forms of the permission of use of specific buildings are different according to the specific construction type. Some buildings have very markedly simpler possibility of permission of their use.

If the constructions were built and completed, for execution of which the building notice or permission was required, it is necessary to notify the building authority of initiation of its use or to apply for obtaining the occupancy permit.

The occupancy notice is sufficient at buildings that are not subject to the occupancy permit. The builder is obliged to notify the building authority of his intent

to initiate to use the building, at least 30 days before the actual use of the above-mentioned building⁸. The builder can initiate to use the building for the purpose for which the construction was approved if the building authority does not prohibit by its decision to use the building within 30 days after the date of the notice.

The occupancy permit applies to the constructions whose properties cannot be influenced by future users⁹. It will concern mostly the constructions designed for use by some other person than the actual builder, for instance the construction of hospital, rental housing, commercial and factory building, construction for assembly of higher number of persons, construction of transport and residential infrastructure, construction for accommodation of convicted and accused persons, further the construction in which the execution of testing operation was set and conversion of the building that is a cultural monument.

The occupancy permit is given on the request of the builder. The building authority will set the date of the final control inspection of the construction within 15 days after the date of delivery of the builder application, and it states, at the same time, which documents will be presented by the builder in it. If the building authority will find defects preventing from safe use of the construction or contradiction with binding opinions of involved parties, it will give within 15 days after the date of the final control inspection the decision, by which it will prohibit to use the construction. If the building authority will assess in the course of the final control inspection of the construction work that the construction meets all requirements for its safe and proper use, it will give the occupancy permit within the period of 15 days after the date of the final control inspection of the construction that is a proof of allowed purpose of the construction use.

Further possibilities how to use the building is a possibility of the so-called premature use, i.e. use of the building even before definitive construction completion. The building authority can give, on the builder's request, time limited premature occupancy permit of the construction before its full completion if it does not have a fundamental influence on the construction usability, it will not endanger safety and health of persons or animals or living environment. The construction occupancy permit is given under the provision of Article 123 of the Building Act.

8 Section 119 of the Act no. 183/2006 Sb., on land planning and building regulations, as subsequently amended.
9 Section 122 of the Act no. 183/2006 Sb., on land planning and building regulations, as subsequently amended.

Conclusion

In the Czech Republic, the area of public construction law is regulated by a relatively new legal form, aimed at maximum simplification of decision-making processes and at minimum burden on builders. Most of decision-making processes take place in a form of administrative procedure that should provide as wide as possible possibilities of protection of rights of all participants in the procedure. Apart from this, there are the processes whose aim is to reduce maximally decision-making and to formalize them minimally. These can be applied especially in constructions without neighbor problems and in buildings having no environmental impact.

Streszczenie

Artykuł poświęcony jest charakterystyce czeskich regulacji z zakresu prawa budowlanego. Szczególną uwagę poświęcono zagadnieniom związanym z pozwoleniami na budowę – procedurze uzyskiwania pozwolenia (procedurę „zwykłą” oraz skróconą), obowiązkowi informacyjnemu, możliwości korzystania z budynku na podstawie zgłoszenia, możliwości zobowiązania inwestora do podjęcia starań o zezwolenie na zamieszkanie.