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Building without a building permit: New Government Decree regarding simple notification in respect of the construction of residential buildings

On the strength of Government Decree No 456/2015 (XII. 29.) Korm. entered into force on 2 January 2016, builders have the opportunity to simply notify the competent recorder's office of the settlement in which the residential building will be situated regarding the building activities if they desire to build a new residential building having a total useful floor area of a maximum of 300m^2.

Is this procedure easier?

The notification of the builder does not qualify either as an application filed for the initiation of an administrative procedure or a circumstance giving rise to the initiation of public proceedings to be instituted *ex officio*. Based on additional alterations in relation of simple notification, it is not necessary to conduct a procedure for commenting on, and notification in relation of, the townscape.

Co-owners, neighbours

"If there is a third party other than the builder who holds ownership title to the real property in which building activities are planned to be carried out, the recorder shall notify – within eight days of the submission thereof – the rightholder regarding the notification." The "rightholder" was not defined in the decree, and so it is not unambiguous whether the recorder's office shall notify the co-owner or the builder since this paragraph was incorporated in the text of the law after regulating incomplete notification.

Within the framework of the building control procedures of the authorities, during the procedures of licensing and acknowledgement, the qualification as customer – in respect of the owner (neighbour) of the plot of land, structure, part of structure affected by building activities – is important since if his legitimate right or interest is affected by the case, and considering all circumstances of the case – also taking into account the nature of the building activity they desire to carry out – the authority proceeding in the matter establishes that the qualification as customer exists, it has the right to seek (for example) remedies in relation to the procedure.

Given that the notification of the builder does not qualify as administrative procedure, the possibility to have neighbours qualified as customer is also missing from the procedure, and so they cannot become involved in the licencing procedure related to the building activities. Starting from the assumption that if the neighbours desire to enforce their rights or legitimate interests, they are only allowed to do so at a later date, during the building control procedure on account of unprofessional construction activities, or in a civil trial (action for damages) brought on account of limitation of neighbours' rights or their ownership right.

Enclosure to simple notification; energy calculation

The content of the notification dossier is precisely defined in Annex No 1 to the Government Decree. When the content of the enclosure is compared to another government decree regulating the content of applications for building permit, we can find substantial differences.

Among other things, the project documentation must be submitted using smaller scale. The enclosures must be signed individually by the builder and the architectural technical designer rather than on a uniform signature sheet.

It is a more important issue that the obligation to submit energy calculations is missing from the list of mandatory documentations to be enclosed, as compared to the former rules of procedure. It is of considerable importance that will be felt by the builders at the end rather than at the beginning of the building activities when obtaining a statutory certificate in lieu of an occupancy permit, in the course of this procedure.

The energy certification of the building must be enclosed among others to the statutory certificate regarding the completion of the building. In case of a certificate to be issued for the issuance of the occupancy permit or the acknowledgement of occupancy, and in respect of building activities subject to simple notification, for the application requesting a statutory certificate verifying fulfilment, it is necessary to verify compliance with the requirements under the legislation in force, in the manner specified for the building, building structures, engineering systems and their elements.

As the rules governing energy expectations for buildings (e.g., for the risk of overheating of the building in summer or for mechanical engineering systems etc.) valid until 2021 are established, these will change gradually during the following period until they reach the values set in advance. In that sense, it imposes incredibly high risk on the builder and the architectural technical designers in giving a precise preliminary estimate for the exact date of the completion of construction and the building energy features to be applied as mandatory at that time.

Administrative service fee, imposition of demolition

Among others, a certificate must be enclosed to the statutory certificate stating the completion of the construction of the building, verifying that the administrative service fee has been paid for the statutory certificate. The amount of the fee is specified in the annex to the Act on the formation and protection of the built environment in such a way that the fact of the completion of the construction of the new residential building with a total useful floor area of a maximum of 300m^2 – if it is completed within three years of the notification – will be verified free of charge by issuing a statutory certificate.

In the reasons stated in the new regulations, for the purposes of preventing buildings from remaining unfinished or delayed, lawmakers has introduced a progressive remuneration subject to the duration of the construction and imposed the obligation of demolition if the building is not completed within 10 years of the notification.

In summary, although at first sight easier procedural rules apply to the construction of new residential buildings having a total useful floor area of a maximum of 300m^2, it still implies many pitfalls and also high risks are involved in consideration of the responsibility on the part of either the builder or the designer, the submission of claims for damages or the strict rules governing the obligation of demolition. It may of course occur that lawmakers will refine the rules in the future in order to enhance the safety of the new regime.