



Public Defender of Rights

OMBUDSMAN

**Report in accordance with the provisions of § 24 Paragraph 1 b)
of Law No. 349/1999 Coll., the Public Defender of Rights Act, as subsequently
amended (hereafter simply "*the Public Defender of Rights Act*")
on individual matters in which adequate remedial measures have not been
achieved, despite having proceeded in accordance with § 20**

In this report I inform the Chamber of Deputies of the Czech Republic about cases in which I (or my deputy) have not managed to achieve adequate remedial measures, even after having informed a higher authority.

Malpractice on the part of authorities in the reconstruction of the power grid

My co-workers frequently come up against problematic practices adopted by building authorities in the reconstruction of power grid buildings. In granting consent for the reconstruction of power grid buildings, building authorities generally settle for the fact that the cable routing remains unchanged. However, the authorities must assess the extent of the reconstruction work, i.e. look at the question of whether the work involves mere structural alterations, or whether it is a completely new building. New buildings are considered to be all forms of reconstruction work in which, although the route remains the same, the original pylons are completely removed and replaced by new pylons with a different structure (different height and width) and another form of anchoring them in the ground is used. Therefore, replacing an original building with a new one cannot be considered as mere building alterations.

The Municipal Authority of Hořovice (building authority) issued consent for the reconstruction of the electricity mains with the proviso that the mains would not be rerouted, and therefore this constituted a building alteration for which neither a permit nor notification are required. The builder then removed the entire length of the existing mains situated on concrete posts and replaced it with a quadruple mains (from the original 3 conductor cables to 12) placed on reinforced concrete lattice pylons, now anchored in the ground using concrete foundations measuring approx. 2x2 metres and sunk to a depth of 2 metres.

In the opinion of my deputy, the building authority should have assessed the builder's application not as a building alteration but as a new building. Her conclusion was based particularly on a statement from the Ministry for Regional Development and also the jurisprudence of the administrative courts, which have repeatedly ruled that cases where electricity mains pylons have been completely replaced, including new bases to anchor the pylons, do not under any circumstances constitute a mere building alteration, but a new building, regardless of the fact that the original route, or the original width of the protective zone around this power structure, has been preserved.

Considering the fact that the building authority in Hořovice refused to acknowledge its error and insisted that the mains route had not been altered, and

therefore it was not a new building, my deputy contacted the Regional Authority of Central Bohemia, as the superior body, requesting that review proceedings be initiated. The regional authority, however, refused to perform a review, referring to a memo of the Federal Ministry for Technical and Investment Development dated 20 October 1981, which states that new pylons may be erected as part of building modifications, provided that the mains route remains unchanged. In this respect the regional authority failed to abide by the methodical statement issued by the Ministry for Regional Development, which provides an updated interpretation of the former Federal Ministry's memo, which is still valid. According to the interpretation of the Ministry for Regional Development, any changes to electricity mains, i.e. increasing the size of pylon foundations or course deviations, for example, must be classed as new buildings.

The deadlines for rectifying the improper procedure adopted by the building authority in Hořovice and the Regional Authority of Central Bohemia have now expired and there is nothing that can be done about the new electricity mains in the cadastres of Osek, Záluží, Tlustice and Žebrák. As both authorities continue to take standpoints that are evidently unlawful and fail to respect court rulings and particularly the methodical statement issued by the Ministry for Regional Development, I will be informing the Chamber of Deputies of the matter.

Brno, 20 October 2011
JUDr. Pavel Varvařovský
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