

Removal of trees and shrubs under the new legal regulations

The law amending the Nature Conservation Act, which amended regulations governing removal of trees and shrubs for the second time this year, came into force on 17 June 2017. When compared to the law amending the Nature Conservation Act and the Forest Act, which came into force on 1 January 2017, the amended law introduces stricter rules for the removal of trees and shrubs, but it does not revert back to the legal situation from before 2017.

The amended law, which took effect on 1 January 2017, introduced changes beneficial to entities removing trees or shrubs. The obligation to secure a permit to remove trees or shrubs growing on properties owned by natural persons that are to be removed for purposes not related to business activities was completely abolished. The number of cases where trees could be removed without having to obtain a permit was enlarged as the amended law introduced increased circumference criteria for tree removal without consent. Moreover, the law modified the height at which the girth of a tree trunk was to be measured. Previously, the height was measured at 5 cm above the ground; following the changes, it was set at 130 cm. Additionally, the rules applicable to obtaining a permit for removal of shrubs were also amended. Up until the end of 2016, removal of shrubs aged up to 10 years did not require a permit. However, starting from 1 January 2017, permits are not required to remove shrubs growing in a cluster with an area of up to 25 m².

The law which came into force on 17 June 2017 introduced a number of changes which are more restrictive than the provisions that had been previously softened. A new clause on removal of trees growing within the right-of-way of a public road was added. Permit to remove such a tree, with the exclusion of non-native poplar species, is issued subject to agreement with the regional director of environmental protection. Rules applicable to measuring the girth of tree trunks were modified and the girth of trees allowed to be cut without permit was also reduced. The amended law reinstated the rule of measuring the trunk girth at the height of 5 cm above the ground level, while the maximum trunk girth was differentiated depending on the tree species. It was set at 80 cm for

trees in Group 1 (poplar, willow, ash-leaf maple and silver maple), 65 cm for trees in Group 2 (horse chestnut, black locust and London plane) and 50 cm for all the other trees. By comparison, previous maximum trunk girth was 100 cm for trees in Group 1 and Group 2 and 50 cm for all the other trees. Prior to 2017, permits were not required for trees with trunk girth not exceeding 35 cm or 25 cm, respectively, at the height of 5 cm above the ground level.

The amended law introduced changes with regard to the removal of trees growing on properties owned by natural persons that are to be removed for purposes not related to business activities. However, the legislator did not address the issue of the removal of shrubs growing on properties owned by natural persons that are to be removed for purposes not related to business activities, which practically means that the rules introduced by way of the previous amended law remain in force. In the event of an intention to remove a tree, there is an obligation to make a relevant notification if the trunk girth exceeds the allowable limit. The property's owner is required to file the notification with the village head (*wojt*), town mayor (*burmistrz*) or city mayor (*prezydent*). Whereas removing a tree or shrubs from a property or a part of a property that is entered in the register of historic monuments is conditional on obtaining a permit from the provincial historic monument conservator. Within 21 days of serving the notification, the competent authority (village head, town mayor or city mayor) should inspect the tree in question. Afterwards, the authority may file an objection by way of an administrative decision within 14 days of the inspection date. The tree may be removed provided that the competent authority has not lodged an objection. If the tree is not removed within six months of the inspec-

tion date, a new notification must be filed. Importantly, if the property's owner applies for a construction permit within five years of the inspection date and the construction is associated with conducting business activities and it is to be carried out on the property's section where the removed tree was located, the competent authority referred to above will impose the duty on the property's owner to pay a charge for the removed tree. Determination of the charge is based on the findings of an inspection. It should be noted that the law still provides a good deal of freedom to remove trees or shrubs from properties owned by natural persons provided that the removal is not associated with conducting business activities.

Moreover, the amended law has restricted the powers of the municipal/communal council with regard to the removal of trees and shrubs. Under the new legal regime, the municipal/communal council does not specify the amount of charge rates for unlawful removal of a tree or shrubs, neither it is authorised to lay down exemptions from the charge for removal of trees or shrubs. Under the amended law, the minister with responsibility for the environment defines the amount of charge rates for unlawful removal of trees or shrubs by way of a regulation.

The regulation of the minister of environment on the amount of charge rates for removal of trees and shrubs came into force on 17 July 2017. The regulation specifies the amount of charge rates applicable to the individual types and species of trees depending on the trunk circumference as well as the amount of charge rates for the individual types and species of shrubs depending on the area of shrubs growing in a cluster. The amount of charge rates for removal of a tree is in the range between 12 and 210 depending on the tree species and trunk circumference. It should also be noted that the trunk girth based on which the charge is determined is measured at the height of 130 cm above the ground level. The amount of charge rates for removal of shrubs falls between 10 and 50 rates.

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