



A new chance for Serbia to complete ownership transformation of the construction land

A brand new Law on Conversion of Right of Use into Ownership on Construction Land for a Fee was enacted last year to fill the gap which existed in this area for more than two years. Under this Law, ownership transformation on the construction land can finally be completed, given that the current Serbian Constitution does not recognize a concept of the right of use. The conversion for a fee refers to five different groups: privatized companies and their legal successors, undeveloped state-owned land acquired for construction until 13 May 2003, sport and other associations, socially owned companies and the assets owned by companies from former Yugoslav Republics.

The conversion fee represents the market value of construction land, with possibility of its reduction. The reduction may be applied for land located in insufficiently developed municipalities, or if applicant already had borne the expenses regarding acquisition of the subject land (such as costs of expropriation and administrative transfer, expenses of remediation and revitalization etc.). Moreover, in case of the developed construction land, the conversion fee is not even payable for the land required for regular use of objects located on such land. In any case, when the question of reduction of the conversion fee has been put forward, the authority for state aid control is authorized to decide upon it.

The Conversion Law came into force in July last year, after more than two years of legal gap. In 2009 the Planning and Construction Law introduced two types of conversion, depending on when and how the land was acquired: conversion without a fee, as a general rule, and conversion for a fee for those who acquired the land through privatisation, bankruptcy or enforcement proceedings. The conversion for a fee was blocked in 2013 when the Constitutional Court found that legal provisions regulating the conversion fee were unconstitutional. This situation left most of the vital locations blocked for further development as the construction permit could not have been obtained prior to conversion.

In the meantime, the conversion for a fee became a political issue, rather than a legal matter. A number of political, business, lobby and other interest groups attempted to impose their own proposals. Several draft laws on conversion were withdrawn due to lack of compromise between the major stakeholders. In addition, few representatives of the European Commission raised their concerns that the conversion, if not performed with adequate fee, shall allegedly violate the EU Stabilisation and Association Agreement and local Law on State Aid. In the midst of this legal-political chaos, a concept of conversion without any fees for all, as performed long ago in the whole post-socialist region, could not even reach out to the legislator. Many prominent legal and real estate experts were of the opinion that the conversion without any fee was the only logical and reasonable

solution for all cases, however, due to certain number of allegedly questionable privatizations, there was no room for waiving compensation for conversion.

Historical background is similar to all the regional countries. Namely, during the 1950s, construction land was taken away from private owners and transformed into the state-owned land, allowing the former owners to hold the right of use on such land based on ownership of a building located on the land. Up to 2009, the state was the sole owner of urban construction land, and the maximum scope of rights someone could claim on such land was either a permanent right of use or a long-term lease of 99 years. In 2009, the enactment of the Planning and Construction Law allowed “privatization” of the construction state-owned land through a conversion of right of use into ownership. It should be noted that a concept of the right of use on land has never been easily comprehended and acceptable right for foreign investors. Moreover, banks are not willing to grant a loan for construction without a mortgage registered on the land itself, which is, again, not possible prior to completed conversion.

By enactment of this Conversion Law, Serbia is finally in a position to leave the right of use as a relic of the past, and regain the concept of private ownership of construction land increasing the level of legal certainty and encouraging new investors interested in the SEE region to develop their projects in Serbia.

Still, a conversion fee and how it is to be determined remains a burning issue mostly because the conversion fee is determined exclusively on the basis of the annual municipal act. The act generally serves for determining average price of a square meter of real properties with the purpose of determining a property tax for each municipal zone. It is crucial that the municipal authorities behave realistically in estimating the market value of construction land on their territories. Unfortunately, this was not always the case in the past, as these assessments were followed by lack of transparency, unclear criteria and strange standards (which resulted last year in excessive property tax duties). It is worth mentioning that persons engaged in assessments within the municipalities are not even professional evaluators, and sometimes lack professional knowledge and expertise. For all these reasons, international standards and professional evaluation of market value of the land should have been included in the Conversion Law.

The total surface of the land subject to the conversion for a fee is of approximately 5,300 ha. This is relatively small compared to the total surface area of construction land in Serbia (approximately 661,000 ha in total). However the subject land is mostly located in prime and exclusive locations across the state, with approximate value of more than 1,420 million euros.

Based on the Conversion Law, a right of use on the land for persons entitled to a conversion for a fee may still serve as legal ground for obtaining the construction permit, however, only until 28 July 2016.

Ivan Gazdic, attorney-at-law