

POSSIBILITIES FOR TRANSFORMATION OF THE URBAN LAND MANAGEMENT IN SERBIA¹

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The paper presents possibilities for establishment of a new market-based concept of the urban land management in Serbia in the period of transition. Urban land system and land policy are very important factors for competitiveness of cities in Serbia and initiating changes in this field is a necessity. The article discusses an option for privatization of urban public land and possible establishment and inclusion of leasehold land. Some open questions concerning the choice of the urban land system concept are considered, the possibility of urban land privatization and possibility for the establishment of leasehold of urban public land in Serbia. The paper concludes that there is a lack of political will to fairly solve problems of urban land reforms under the new market conditions. Some current research options suggested a reform based on privatization of public urban land, but there was no research on other options (leasehold for the majority of public land).

Key words: urban land management, market-based urban land system, privatization, leasehold

INTRODUCTION

Although quite a period passed from the introduction of market-based system in many fields, the current system and practice of managing urban land in Serbia have not been harmonized with the main courses in transitional reforms and changes. A great number of basic, conceptual problems have not yet been solved, which indicates the necessity to outline the reforms in this field as soon as possible, considering the fact that the realization of the policy of sustainable spatial and urban development and the policy of organizing, developing and using space considerably depends on its organization. The urban land market is undeveloped, therefore basic regulatory mechanisms and institutions and updated means of financing the urban land development are necessary. In conditions of an undeveloped market, the mechanism of urban land rent seems incomplete and distorted, and it does not contribute to a rational use of urban land and to private and socially acceptable

distribution of costs and profits among various parties. For example, as a result of unauthorized and uncontrolled parcelization of agricultural land, for the best city locations, in zones of heavy infrastructure, enormous rents from land use go to private owners, various intermediaries in this business, investors et al. There are numerous speculations with land, illegal constructions, substandard urbanization et al. In Serbia, this rent is not adequately taxed (property sales tax covers only 2% of the market value). In a situation where spatial and urban planning are underdeveloped, and there are radical changes in the ownership relations and structure, the current solutions cannot have an adequate impact on the sectoral and spatial structure of intensifying investment, which should be one of the main roles of a sound future policy of urban land management.

The following text considered a comparative analysis of some open questions of the market systems with different ownerships and possibilities for urban land privatization or the establishment of leasehold for urban public land in Serbia.

REFORM FRAMEWORK FOR URBAN LAND MANAGEMENT IN SERBIA

Transformation of urban land system should rest on a greater, complete expertise, where all key problems would be analyzed and strategic solutions offered, as long-term bases for management of urban land policy in the future organization and spatial planning and urban development policy of Serbia. The formulation of a new land policy is a result of political will and implies the understanding of the land market business. The government needs a defined land policy with clear aims in order to assure an efficient land market, social equality and ecological sustainability. Considering that the regulation of relations in this field presents one of the most complex and socially, economically and politically most delicate fields of social regulation (social management), it is necessary to urgently establish *the most widespread social dialogue* about all key problems and by social compromise and consensus to arrive to the mainstream solutions.

Reformed and transparent urban land system and policy should be, on one hand, a powerful leverage for competitive national space policy, competitive economy, an instrument for

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securing better fiscal effects, as well as an important leverage in the prevention of the corruption process, speculations with urban land, elimination of possible stock market manipulations, prevention of potential activities of the so-called „urban mafia“; and on the other suppress and limit illegal construction etc..

As far back as in 1992, the World Bank pointed out to the frameworks of institution and urban land policy reform in developing countries (including countries with economies and societies undergoing transition), among which of particular importance are the following: [1]

- 1) *General problems of urban land system* (market, analysis of the current land policy system – what „works“ and what „doesn't“, the political dimension in the land regulation field, possible improvement of the current system etc.)
- 2) *Overcoming a long, confusing and difficult road to legal status of land* (establishing (cadastre?) registration/urban land records and the development of land system and policy etc.)
- 3) *Determining the reasons for obstruction of the land management process* (what is bad in the current system of land management, who are the losers and winners, the problems and trends in the main institutions).
- 4) *Overview of the inefficient operation in the urban land management process and instruments of policy*, especially in the domain: a) ownership rights, legislative framework, leasehold policy problems, availability of *freehold* (of land) and *leasehold*, model of *landlord-tenant*, limitations for land transaction, leasehold reform techniques et. al.); b) registration of transaction and titular of land; c) Regulation framework of land use (influence of various factors, pressures, force on the land market, land purchase, costs of development, questions of ways of de/regulation, the role of planners etc.); d) direct public/state intervention in land purchase; e) nationalization of land; f) forced land purchase and purchase of other real estate (expropriation); g) the need to form land banks for development; h) reconstructions and resettlement of certain settlements, zones, objects; i) *readjustment* of land.
- 5) *Determining the framework and course of reform* (priorities and principles, main questions and problems in urban land management, strategy and activities, institution

reforms, administrative procedures, activities and the role of legal institutions, reform of land policy instruments, introduction of various forms of leaseholds, enforcement of land/real estate registration, better regulation of land use, public/state intervention, assessment of projected results and profits, etc.) The World Bank has approved 200 million euros to Serbia for organizing the cadastre and has given the following recommendations for its land policy: [2].

- *Introduction of legislative amendments as a framework for improving ownership security, financing the real estate market and attracting FDI*, change in the urban land concept – a conversion into a modern lease system or private ownership.
- *Writing and adopting the law on denationalization*,
- *Preparation of the study for improving the administrative procedure in the process of obtaining urban land* and suggested measures of improvement; removing administrative barriers in questions concerning land and its assessment,
- *Evaluation of the current law on planning and construction and the suggested changes and improvements*; improvement of the land and real estate registration system (cadastre),
- *Legalization of objects*.

The key courses of reform in urban land management should include: a) aims and possible concepts of the urban land system, b) ownership problems (restitution and development of new ownership forms of public ownership – for example municipal land, cooperative land, condominium institute for multi-storey buildings – land as common property, institute of partnership, limited leasehold for commercial and highly profitable purposes and freehold for living, control of land transactions etc), c) organizing land books (cadastres, land registers), d) improvement of urban and spatial-planning regulative and planning in the period of transition, e) state intervention in land market, f) transformation of urban land system (selection of approaches and models).

General strategic aims of urban land policy in the conditions of transition are rational use of urban land (1) and establishing an efficient system of urban land management (2). This includes the establishment of adequate regulatory mechanisms and institutions, the formation of a new way of financing land and instruments of land policy (introducing a stock market, mortgage loans, mortgage bonds, concessions, donorships etc.) taxing land rent, solving open questions about privatization of urban land in state ownership, as well as dilemmas regarding the way urban land is managed in state/public ownership (leasing or sale) and assessing the consequences of pursuing an urban policy, planning and expanding the urban area, equipping and developing urban and other spaces, policy of local public funds, policy of developing local economy etc.

Open Questions Concerning the Choice of the Urban Land System Concept

The reform of the urban land management should consider different solutions within the present dominant models: a) liberal approach, with the emphasis on the main role of the market and private property domination, with attendant mechanisms, instruments; b) the Scandinavian-type land market model, with equality of all forms of property (public, private and joint etc.), with attendant mechanisms and instruments; and c) various combined modalities.

The key open questions and dilemmas are concerned with the selection, evaluation and definition of the new possible concept for the urban land system i.e. alternative options of model ownerships and land management. As a basic step in the choice of the concept of the urban land system (method of privatization of public urban land and method of retaining public urban land and introducing leaseholds of public urban land) there should be a comprehensive analysis of the effects of the suggested alternative options (above all from the public interest point of view, development and regulation of spaces and settlements, numerous private legitimate interests). There was a preference for privatizing public urban land in Serbia in the past two decades. During that period, several study documents and the

Law on urban land privatization have been written, whereas the possibility of system reform of urban land in public ownership by introducing leaseholds has never made the agenda.. In other words, the question whether urban land in state ownership should be privatized has not yet been asserted, but discussions and researches have been directed towards examining the privatization model of urban land. The neoliberal approach of public land privatization implies the dominance of private ownership and free market activity with as little as possible regulation by the state and local authorities in this segment. The followers of this concept of land privatization in Serbia have identified more than 10 types of land parcels and methods for privatization of each, which are all complex and heterogenous and therefore they demand more than one method of privatization [3] [4]. Natural restitution is one of the methods for privatization (for undeveloped urban land, which has a very limited scope of use). Natural restitution cannot meet the principles of efficient and just restitution due to the many confronting legitimate interests (vested rights), without an effective mechanism for solving these conflicts. Denationalization of one part of the town urban land is possible as well, by compensating the previous owners and taking into consideration the value of the property at the time of nationalization. It is also necessary to enable direct sale of urban land to local and foreign investors in order to enhance the legal security of the transactions. Conditions for treating urban land as part of the property of enterprises undergoing privatization that will finish in 2009, should be created in order to stimulate new investments.

From the landlord's interest point of view, leaseholder/tenant and potential investors, the main principles of transparency in the transition towards a market system of urban land management are: leasing a state-owned lot to an investor like in the other market economies; collecting rent in the form acceptable to both parties involved (periodically, one-off or combined); rent for land use should be paid in reasonable amounts, for which the different lease modalities have to be elaborated, and the institutions, mechanisms and arrangements should be established as well.

One of the conditions of transition in ex-socialist countries is the change in property relations, planning systems, with introduction of market institutional mechanisms. Changes to the area (due to investments/new construction) imply the regulation of social relations for urban land development, through rules, legal norms, urban legal norms and acts. Investments in towns unite the real estate/land market and capital and labour market, i.e., transformation of money/capital into investments. Land/real estate market is one of the main factors and guarantees of secure investment and crediting (mortgage loans and rights et. al) of town construction, which has been partly deflated by the global financial crisis.

One of the weakest links in the urban land system of Serbia is registering land (cadastre, land register). The land market has a stratified demand (according to purpose – commercial purposes, industrial production, residential, according to allocation – in certain towns, local environments. Investing into new urban land intended for economic activity, living and services has an institutional-legal framework, which exists, among other things, in urban legislation, local community and public finance regulation et al.

In Serbia, obtaining urban land in state ownership (by leasing or purchasing), as the investor's first step, is extremely insecure legally nowadays. The most attractive town locations became state-owned having been forcefully taken away from previous owners (nationalization, confiscation et al). Due to such legal origins of the greater part of urban land, there is no reliable legal security guarantee for investors concerning such land. Public tenders for the leasing or selling state-owned land do not have reliable data about whether the previous owners and their heirs have a right to the land or not, because the Law on restitution has not been passed yet. The absence of data and the current ones not updated in the public records (cadastre, land register) have led this country to feel legal insecurity in managing its land, which legitimately belongs to it, as well as to investor (as the leaseholder or landlord).

In the market system of urban land, there are two concepts: (a) a neoliberal market system of

urban land with dominant private ownership and (b) a market system of urban land with dominant public ownership. The first concept is characterized by a dominant private ownership of urban land, free urban land market, modern market, financial and legal institutions and mechanisms in urban land usage, minimized role of state in urban land use et al. Private owners of urban land must adhere to urbanistic norms and acts of law, which leads to the conclusion that there is no predominance of private ownership. The other concept is characterized by a dominance of public ownership of land, land leasing, market system and mechanisms of managing land, well-developed institutional and organizational mechanisms, arrangements, instruments of land and urban policy, aspiration towards an ideal balance of natural, economic, socio-political and eco-spatial demands. Preliminary evaluation of the listed systems and the current urban land system in Serbia isn't made in Serbia [5].

The Possibilities of Urban Land Privatization

The aims of urban land privatization are changes in the management of this resource, i.e., changes in the property relations of the land, abandoning the current administrative manner of the local authorities giving land to the investor (eliminating the nontransparent and quasi-market manner of choosing the investor/user of land; disappearance of the practise of determining the land development fee and charging it via a contract with the local authorities, i.e., the possibility for charging the fee exclusively for urban land equipping or introducing a fee for infrastructure); introducing market mechanisms and instruments in land management, increasing the role of the local authorities.

The expert opinions about the concept and dynamics of urban land privatization are conflicted. Mill evi G. [6] finds that it is "better to omit at least the central town areas from the program of total reprivatization, in order not to interrupt the process of transforming social into private property in all the fields of economy." The advocates of neoliberal discourse and the creators of several studies of urban land privatization in Serbia

promote the privatization of the greatest part of urban land [3]. In Serbia, there are two official models of urban land privatization which are in collision regarding the approach and dynamics of this process. The Ministry of Economy and Regional Development supports the approach – privatization after restitution, whereas CLDS (Center for Liberal Democratic Studies) promote the approach – privatization now and denationalization in the course of the process, as one of the models of privatization [7,8].

Strategy of urban land privatization implies the political will and decision to start land privatization – land identification, defining principles, models and privatization policies, necessary regulation changes, institutional and human resource capacities, post privatization regulation (registers, rights, real property records, urban and spatial planning et al). Article 87 of the Constitution of the RS envisages that urban land privatization can be performed in accordance with the law. This means that there is a political will to begin with privatization of urban land and to pass laws on privatization of town urban land which entails the following elements: 1) model, 2) methods, 3) volume and dynamics of privatization and 4) delegation of authorities between the central and local governments. The key open questions in this process are establishing the role of the state in privatization, managing and distributing the processes of privatization, adopting decisions regarding privatization and its implementation, the role of local authorities etc. CLDS [7] suggests several *methods of urban land privatization*.

- 1 – Restitution of urban land (physical return of the same plots which the state had confiscated or nationalized to previous landlords),
- 2 – Giving urban land to users (physical and legal persons),
- 3 – Public sale-auction/tender (principle “who gives more”),
- 4 – Public sale to current users (at simulated market prices – through agencies),
- 5 – Time-limited lease of land (it is treated as an „assisting” method and a transitional solution).

Leasehold of Urban Land

Leasehold is a form of leasing /renting land and property where one party purchases the right to lease land or an object for a defined period of time (up to 99 years). A leasehold implies a selection of five different parameters: time-length of leasehold; value of time; market value of land that is being leased; annual rent payment; market value of property at the end of the leasehold. The ratios between these parameters are conditioned by the market or policy of public decision-making, which is why the contract can have a number of particulars for some of the parameter variations. In other words, leasing is the right to hold and use land that belongs to another proprietor (the state, private owner). In all land transactions the landlords keep the property rights over the objects, but allow the trade of rights and interests to use urban land. There are a number of legal-economic mechanisms that allow the transfer/transaction of land and other property (objects) ownership. Renart, V. [9] points out that from the economic philosophy viewpoint leasing is more a form of land co-ownership, because the leaseholder pays annually to the lessor. The key question refers to the legal nature of the contract due to the acceptance of the leasehold right as a “real property right” which implies that it can be mortgaged. The development of the leasehold as a “real property right” is opposed to “individual rights”, which is essential for development of this type of instrument.

Leasing land enables a correspondence of interests of the landlord, lessee and municipality. The landlord’s aim is to have value for the land in use, the aim of the owner of capital is to capitalize it at a favourable rate of return, the aim of the municipality/town is to collect rent (as a landlord) and by taxing the rent to improve its financial situation. In other words, the landlord’s interest is for the leaseholder to use the land as efficiently as possible in order to give the landlord a higher rent. Leasing land requires greater investment from the public funds into urban land, i.e. for the municipality to obtain land and to adapt its land policy to urban and socio-economic changes. Leasing requires efficient property and tax legislation and enables the municipality to, based on a feasibility study,

assess the effects of leasing or sale and to pass decisions. Leasing land and property of objects is an important practice in many countries in different parts of the world, which apply it significantly or in a limited way [10] [11]. The local authority establishes clear rules for the use of land, which in the cities of North Europe [12] [13] [14], Hong Kong, China, Korea, Israel etc, is mainly in its ownership [10] [14].

CONCLUSION

The analysis of the urban land system in Serbia estimated that it is necessary to change the current system towards the urban land market system. Main courses of change should include the introduction of urban land use and market system management, to increase the role of the local authority, as well as the use of measures and instruments of urban planning as the main corrective [16]. New market-based models are: 1) liberal market approach with dominance of private ownership of urban land, 2) market model of urban land with dominance of public ownership of urban land (with introduction leasehold of public land), and other ‘hybrid’ models. Both models have many positive and some negative effects. Because of delay in transformation of urban land system we, it can be concluded that there is a lack of political will to fairly solve problems of urban land reforms under the new market conditions. Therefore it is suggested that comparative analyses or research of both market-based models of transformation urban land in Serbia is conducted.

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