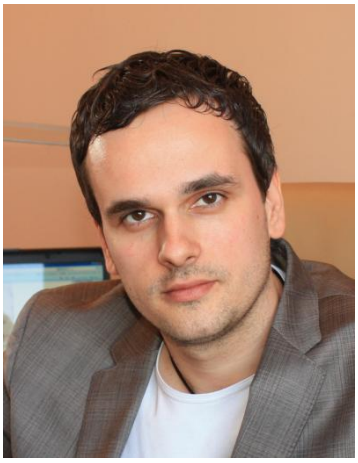


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Urban and land planning legislative reform

Problematic issues in this research article represents just a part of a «legal confusion» of today's Ukraine. In many aspects such legal confusion is a legacy of the Soviet Union. In particular, there still exist numerous Soviet regulations effective in the areas of construction, land planning and land use, as well as governmental standard forms which need revision. The so called «Soviet mentality» when the territory belonged exceptionally to the state and even the land parcels under private buildings were not privately owned, still has not been completely overcome. In such circumstances, land and urban planning disregarded private interests, while public interests, in turn, were actually identified as the interests of state. No matter how strict planning restrictions used to be those days (sometimes reaching the level of expropriation of property) nobody raised the issue of damages. However, a lot of positive features of those days urban and land planning (e.g. developed system of regional planning, reservation of suburban areas for urban development, etc.), have not been inherited by the independent Ukraine.

Construction industry provides the population with residential, industrial and public buildings, orphanages, schools, hospitals and other buildings and structures designated to satisfy various needs. Planning areas and granting land plots for development should be always conducted before the construction stage. Therefore, improving legislation in the aforementioned areas represents a task of considerable social importance.

Thus, our primary task is to research into possible ways of minimizing budget expenditures without affecting control functions of state and municipal authorities and increasing budget revenues as a result of construction activity.

With due account of the the abovementioned major purpose of the report we have to identify the specific ways of improving legislation in order to decrease expenditures of state and local budgets and to increase their revenues from the construction activities while maintaining appropriate control over the activities of urban and land development. At the initial stage it will not require significant resources. For input procedure of the proposed amendments will require from 1 to 2 years.

Of course the very fact of introducing amendments to the effective legislation won't resolve all existing problems. It is necessary to improve the system of state authorities in land and urban planning, as well as to constantly raise the professional level of specialists

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dealing with enforcement of respective laws and regulations, the level of legal, land use and urban culture and so on. This, however, is beyond the scope of this article. Moreover, the ongoing introduction of sporadic changes to the legislation in itself may result in political and economic instability incompatible with the principle of «predictability of law». Nevertheless, such unpopular measures might have a positive effect in a transitional economy.

In any case, any legislative transformations should be cautious, deliberate, premeditated and developed with due account of possibility of their implementation within the relatively long term period. According to our expectations amendments proposed in this article meet the above requirements. Is it already possible to achieve at least something by changing the laws? According to our opinion, it is. We believe that the following measures should be taken first hand:

- revision of urban and land planning legislation regulating spatial planning for the purpose of (i) combining land and urban planning of territories in unified planning documentation instead of planning the same areas in separate urban and land planning documentation; (ii) unifying results of works already conducted in different systems of coordinates in order to connect them to integrated contemporary system of coordinates acceptable for European countries;
- exclusion of the provisions which require to develop the documentation of uncertain nature (plans for land and economic management) and the documentation, which can be viewed as both “urban” and “land planning” (land-planning documentation in the structure of the general plans of settlements, detailed plans of territories and zoning plans) due to the absence of any essential advantage while terms and expenditures for development of such documentation are considerable;
- taking measures to merge central executive authorities (bodies of the State Agency for Land Resources of Ukraine («Derzhzemahentstvo») and the Ministry of Regional Development and Construction of Ukraine («Minrehionbud»); merging executive bodies with common budget financing on regional and local levels; formation of unified «land and urban planning offices» at the level of executive bodies of local councils; merging of state and other enterprises and institutions, including research institutions operating in the area of urban and land planning;
- considering partial merge of powers on forecasting, programming and planning of use of land, natural objects and resources by the state agencies engaged in the above mentioned activities (e.g., the State Water Resources Agency («Derzhvodahenstvo»), the State Forest Resources Agency («Derzhlisahenstvo»), etc.);
- development of unified bylaws necessary to implement the above mentioned changes;

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- optimizing the system for improvement of professional level and qualification of urbanists and land surveyors, increasing the level of legal and urban-planning citizens' culture;
- legislative regulation of the procedures for urban planning, development and beautification of territories located outside settlements, clear definition of procedure for approval by the "state authorities" of the relevant communities the issues of the «areas of common interests» development; legislative implementation of the approach under which the «suburban zones» are considered primarily as reserve areas for the relevant cities development with maximum possible compliance with environmental protection requirements aiming to reach the optimal balance between economic and environmental interests;
- implementation of the compensation mechanism for damages to real property owners caused by the approval of planning documents. This mechanism should be aimed to restrain municipal and state authorities from implementation of unreasonable planning decisions. This results in more economical, substantiated, efficient and rational use of territorial resources;
- ensuring institutional and organizational integration of urban planning and land cadastre systems;
- unification of licensing system in urban and land planning areas;
- ensuring review of land legislation regulating sale of lands on a competitive basis, in particular, to grant more autonomy to territorial communities in determination of means of transferring rights to municipal lands for the purposes of involving investments (including foreign ones) to construction industry. In our opinion, it is worth resolving this matter in the context of improvement of national legislation on public-private partnership;
- optimization of the local (municipal) legislation, the legislation regulating public-private partnership and concessions as well as other legislation in order to make the respective legal mechanisms more convenient for local authorities and investors. In particular, it seems appropriate (i) to grant local authorities wider powers for independent choice of partners-investors, at the same time leaving such relations transparent though not too over-regulated on the national level; (ii) to simplify the mechanism of formalization of title documents to the plots of land and construction permission documents, to be carried out by the «own powers» of local (municipal) authorities; (iii) to ensure availability of convenient and efficient mechanisms for fast cooperation between local (municipal) authorities and state authorities (State Architectural and Construction Inspectorate, Environment Protection Authorities, Cultural Heritage, etc.) for formalization of the respective documents;

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- implementation into effective legislation of the transparent mechanisms for acquisition by the local communities of shares in ownership to buildings and structures built on the municipal land and its subsequent management. It seems appropriate to consider possibility of involving on a contract basis professional managers for more effective management of municipal real estate. Apart from this, it is possible to create the legislative basis for the local communities' involvement of professional developers to ensure private lands acquisition and such lands development in the local community interests. Such measures will allow to turn local communities into full-fledged business partners and market participants, thus increasing local budgets revenues through the relevant entity.

CONCLUSIONS:

In our opinion, the proposed amendments and suggestions will, in particular, allow to immediately reduce budget expenditures and to create conditions for budget income increase at all levels on the account of new facilities construction and commercially effective use of existing municipal property. We also expect the improvement of the overall investment climate.

У статті подані деякі пропозиції щодо удосконалення законодавства у галузі містобудівного та землевпорядного планування територій. Такі зміни покликані, у тому числі, сприяти економії бюджетних витрат у вказаних галузях та покращити загальний інвестиційний клімат.

Ключові слова: *земельна ділянка, містобудівне планування, землевпорядне планування, місцевий бюджет, законодавство*

В статье предоставлены некоторые предложения по усовершенствованию законодательства в сфере градостроительного и землеустроительного планирования территорий. Такие изменения призваны, в том числе, содействовать экономии бюджетных расходов в указанных отраслях и улучшить инвестиционный климат в целом.

Ключевые слова*: земельный участок, градостроительное планирование, землеустроительное планирование, местный бюджет, законодательство*

This research article represents some proposals for legislation improvement in the field of urban planning and land management areas. Such changes may contribute the budget savings in these branches and improve the investment climate.

Keywords: *land plot, urban planning, land planning, local budget, legislation*

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