

The Independent Status of Car Parking Spaces in Accordance with the New Amending Bill to the Urban Planning and Development Act

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On 11 February 2015, an amending bill to the Urban Planning and Development Act ("the UPDA") on the legal status of car parking spaces was lodged into the National Assembly. The need for legislative regulation of this matter has been in existence for years on end and experience has borne it out that problems emerge on a daily basis when car parking spaces are to be disposed of or mortgaged. The root cause is the fact that currently car parking spaces are considered to belong to the curtilage of an apartment, an office or another accommodation and therefore they can be purchased only if the immovable property to which they belong is purchased by the same buyer. Thus it becomes virtually impossible to acquire unfenced car parking spaces, which generates great inconvenience to undertakings, citizens and business in general. These problems ensue from the existing legal framework that does not specify car parking spaces as separate objects. At present, it is possible for transactions to be concluded so that to transfer the ownership to undivided ideal shares of the whole underground (or surface) car parking facility in case the car parking spaces are located therein. This situation, however, causes a lot of hardships to the owners.

The problem with car parking spaces is not a novelty and the regulation of their status with an explicit legal provision has been expected for quite a long time. Moreover, car parking in big cities and, especially, downtown or in highly urbanized neighbourhoods has grown increasingly problematic and, for that matter, new solutions are needed to overcome the existing difficulties. These solutions should be backed by adequate legislation so that the transactions involving car parking spaces could be included in the overall business turnover, while providing safeguards to the legal relationships between the parties in connection with the ownership and disposal of car parking spaces and regulating the status quo.

The new bill envisages a changed legal status of a car parking space, transforming it into a separate object that can be disposed of independently. The proposal reads that a car parking space should be treated as a separate immovable object in the cases in which it has the status of construction works within the meaning of the Urban Planning and Development Act, or as a limited property right (special easement) in the cases in which an investment project is not required for the establishment of the car parking space and the latter does not

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constitute construction works under the terms and conditions laid down in the UPDA. The same opinion is put forward in the report of the Parliamentary Legal Committee. The proposed amendments could be summed up as follows: (i) where construction works exist, the car parking space is a separate immovable object and a site within the meaning of the UPDA, whereas (ii) where no construction works exist, the car parking space is subject to a limited property right expounded in an easement.

Paragraph 5 of the Additional Provisions of the bill provides for the insertion of two new subparagraphs 84 and 85 with the following legal definitions of the terms “one car parking space” and “special easement”:

84. “One car parking space” is a site which, in accordance with an approved investment project, is used for the purposes of parking a motor vehicle and may be either:

- a) a separate site in a building, to which parking access is provided, without being covered or fenced; or
- b) a separate part of an un-built land property or of a vacant area in a built-up property, to which parking access is provided; or
- c) a separate parking area in an automated mechanical system which is permanently affixed to the ground or to the building.

85. “Special easement” is a limited property right which may be subject to establishment, transfer, or termination. The special easement is inheritable. The special easement established in connection with the dominant object may not be modified or terminated within the life of the dominant object.”

The bill reads that the provision on the independent status of car parking spaces is applicable also to car parking spaces acquired prior to the entry into force of the new law through acts in the form prescribed by law, except for those declared null and void on the basis of an enforceable court judgment. For the purposes of protecting the stability of the investment process and the rights of the owners who have already acquired car parking spaces, the law-maker envisaged retroactivity to cover such existing cases.

According to the reasons in the explanatory memorandum of the amending bill to the Urban

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Planning and Development Act, the expected fiscal effect should be positive because the new arrangements will contribute with substantial tax revenues as a result of the development of an entire market segment and a secondary market for car parking spaces.

It should be noted that the provisions described above have not been approved yet and the wording might undergo changes in the course of the debates and the voting of the amending bill to the Urban Planning and Development Act.