

The legal status of, and issues concerning transactions involving parking spaces

A number of rulings passed by the Supreme Court of Cassation (SCC) between 2007 and 2014 proceed, in no uncertain terms, from the premise that a parking space is not a separate, stand-alone object of ownership rights, which complicates transactions involving parking spaces. On the one hand, a parking space is not a facility in the sense as per § 5, item 39 of the Additional Provisions of the Spatial Development Act (AP/SDA), according to which clause 'a facility' is a separate building or an actual part thereof designated by its own name, location, independent functional purpose and individual identifier as per the Cadaster and Property Register Act (CPRA). Similar is the provision of CPRA article 23, pursuant to which real properties can be one of the following kinds: land; a building or a technical infrastructure facility containing a separate object of ownership rights; or a separate, stand-alone object constituting part of a building or a technical infrastructure facility.

Such exhaustive definitions by the current legislation lead to a single viable conclusion: that a parking space cannot be a separate, stand-alone object of rights in rem. This means that in its essence, a parking space is a non-distinct, non-separate part of an object of ownership rights, such as a land plot, a building or a separate unit within a building, and cannot, therefore, be a separate object of an ownership transfer transaction or of a preliminary contract (which, in and by itself, has no ownership transfer effect). All of that notwithstanding, however, the transfer of ownership rights over ideal parts of the designated object itself (whether a land plot, a building or an individual unit within it), for the purpose of being used as a parking space, is entirely possible under certain conditions.

The root cause of the issues highlighted herein is the stagnant legislative and statutory framework that, with few exceptions, lags permanently behind the practical use and the ubiquity of parking spaces in the present-day construction industry, and in real property transactions. Bills supposed to define and regulate the status of parking spaces have been discussed on more than one occasion over the years; yet, for all intents and purposes, a minuscule part of these have become law. Examples of such successful enactments are the amendments to the SDA promulgated in State Gazette, No. 101/22.12.2015. Those amendments, however, settled the issue only in part while, in the final analysis, the legislator has so far failed to assign to parking spaces the status of separate, stand-alone objects of ownership rights.

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Although incomplete and piece-meal, this resolution of the issue of parking spaces has made it possible, in actuality, to outline and establish two principal methods of acquiring and transferring ownership of parking spaces, depending on their location, namely:

- for parking spaces located on ground level in the yard area of a structure built within a regularized land plot, by acquiring the corresponding ideal parts of the land plot on which the building stands;
- for parking spaces constituting parts of an underground parking garage, by acquiring the ideal parts of the respective building or of a parking garage, if it constitutes a separate facility, corresponding to the parking space.

In either case the specific parking space being transferred must be delineated in terms of its boundaries and location in the approved development plans on the basis of which the building has been constructed.

Transactions involving parking spaces situated within a yard area

For parking spaces situated at ground level within the yard area of a structure built within a regularized land plot, the development plan must provide that a parking area with designated parking spaces be clearly delineated within said land plot. Essentially, the text of SDA article 43(3), enacted in 2015, describes two separate scenarios for configuring parking spaces within a yard area. The first scenario concerns cases where the regularized land plot is a common area adjacent to a multi-unit residential building. In such a case, the necessary parking spaces can be delineated within the available yard area by means of the distribution of part of said area between the residents for their individual use by the general assembly of the homeowners' association, in keeping with the statutory minimum landscaping requirements. The second scenario is applicable when the land on which the residential building stands does not have the status of a common part as per article 38(1) of the Property Act (PA) and parking space is provided by distribution between the occupants of such a part of the available yard area as is not relevant to the use of the building for its intended purpose.

In considering the matter of distribution of usable yard area, one should take into account the following: in a best-case scenario, the developer is the sole owner of the land plot on which the building work takes place. Thus, at the time of approval of the development plans and

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commencement of works, there is no residential building as such; the developer is the owner of both the land plot and the construction site and has full authority to determine single-handedly what part of the yard area will be used for what. A multi-unit residential building emerges at a later stage by the act of sale of the units in a multi-story building to buyers, whereby the building and its adjacent areas become property of more than one person or entity (PA article 37). It is from that point onwards that the yard area can be regarded as belonging to the building, because (on account of the units within it), it loses its status as a stand-alone object and becomes merely an area serving the building. Therefore, it is from that moment that we can assume that the use of the yard area has been divided between users, as the original owner and the first person or entity to have acquired a separate unit within the building have agreed between themselves on the use of part of the yard area for parking purposes, as well as on the number of parking spaces and their location, which is all recorded in the title deed attesting to the transaction between them. Whether the first buyer has acquired an ideal part of the yard area and whether he/she has become authorized to use any of the parking spaces, is irrelevant.

Thus, the distribution of the user rights over the yard area is considered to have taken effect from the initial emergence of ownership of a unit in a multi-unit residential building, so each subsequent buyer is obliged to comply with it. Such an ideal part of the yard area as had been delineated by its distributed use can then be transferred by the developer freely and without the consent of the remaining owners of apartment units. The purpose of such a transaction is a legitimate one, and according to SCC, the transaction is not null and void. Of course, depending on the moment of emergence of ownership of a unit in a multi-unit residential building, respectively the moment of distribution of ideal parts of the yard area for parking purposes, it is possible that some complications to the above may arise.

Transactions involving parking spaces as part of an underground parking garage

Where the parking spaces are configured in an underground parking garage, which is the most common option for newly built structures having the status of a multi-unit residential building, a distinction can be made between three basic solutions that have become established in practice and are governed by SDA article 37(4):

In the first case, the development plans provide for the existence of a stand-alone facility,

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i.e., an underground parking garage with its own cadastral identifier and, respectively, with clearly delineated and numbered parking spaces. Each of the parking spaces in that stand-alone facility is regarded as ideal parts of the underground parking garage, in the way it has been individuated in the development plans and the calculation of the total built-up area. The subject matter of the purchase agreements should therefore include both the delineated ideal parts, namely, individually numbered parking spaces, and the ideal parts of the common parts of the underground parking garage adjacent to the parking space. Such common parts comprise the underground driveways leading to the parking spaces, entry and exit ramps, stairwells and other approaches to the facility, depending on the architectural configuration. Practice shows that this scenario also allows non-residents of the building to purchase ideal parts constituting a parking space, inasmuch as the underground parking garage is a separate, stand-alone facility. One drawback to that solution is that the buyers of parking spaces in the underground parking garage enter into relations of co-ownership. This necessitates that the title deed attesting to the acquisition of a parking space must state the buyer's consent to the distribution of user rights over the common parts of the underground parking garage, in order to be able to transfer the respective delineated part of the shared property to third parties in the future.

In the second scenario, the development plan itself assigns parking spaces as integral parts of individual units within the building. An important detail here is that, since a parking space is not defined by a law or statute as a separate, stand-alone piece of real property, it should be assigned as belonging to another stand-alone unit within the building in the sense as per § 5, item 39 of AP/SDA, whether an apartment, a commercial space, an atelier, etc. Relevant to that is the provision of SDA article 37(4), subpar. 3, according to which a development plan may provide for individual parking spaces, but they should be integrated with the respective stand-alone units within the building. In practice, that means that those parking spaces may be the subject of transfer of ownership transactions only if the stand-alone units they belong to are also subject of the same transaction. Being an adjacent part to the main property, a parking space must also be included in the floor plan of the respective stand-alone unit, as issued by the Geodesy, Cartography and Cadaster Agency.

It is important to note that the existence of a parking space is not a determinant feature for

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the status of a stand-alone piece of property to the extent that a designated storage area is with respect to a residential unit (SDA mandates that every home must have a designated storage area, whether as part of the residential unit itself, or separate from it, in a basement, attic or the like). This makes it possible, therefore, to transfer ownership of a parking space separately from the residential or commercial unit to which it belonged, but solely to an owner of another property within the same building, because a parking space cannot exist as a stand-alone object of ownership.

The third option provided under SDA article 37(4), subpar. 2, seems to have the least practical application. Here the underground parking garage in its entirety constitutes a common part of the building. This means that all parking spaces, without exception, can only be the property of owners of delineated stand-alone units within the building. It is impossible for a third-party buyer to acquire ideal parts of such an underground parking garage. Moreover, another setback to this scheme is that the maintenance costs for that common part are divided between all homeowners in the multi-unit residential building, regardless of whether they own and/or use a parking space.

Apart from all that was said above, it should also be noted that by introducing the new 2021 provision of SDA article 43(4), the legislator has allowed an exception in that homeowners are allowed to park underground in buildings located within neighboring regularized plots of land using common means of ingress and egress, with all entry and exit points, maneuvering and other service areas being designed for common use and constituting common parts for the owners (co-owners) for the adjacent underground parking garages. That legal option has been realized in development plans, with the proviso that in order to be able to apply it, the individual owners and/or holders of the right to build on neighboring regularized plots of land must have notarized contracts between themselves.

In conclusion, I believe that it would be impractical to seek solutions to issues regarding transactions involving parking spaces in case law or in consultations with lawyers, architects or notaries interpreting the existing legal and statutory framework. The only proper solution is in the hands of the legislator, and should amount to giving parking spaces the status of stand-alone objects of the right of ownership, similar to that of a self-contained garage. Hopefully, this, too, will happen sooner or later.