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THE LEGAL REGIME OF HIRING PUBLIC GOODS. RENTING PARKING SPACES ON PUBLIC DOMAIN

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THE LEGAL REGIME OF HIRING PUBLIC GOODS. RENTING PARKING SPACES ON PUBLIC DOMAIN

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Abstract

Throughout this article we will address the issue of organizing public auctions regarding the rental of parking spaces on public domain.

The current theme is very important since, in the context of the lack of parking spaces in the big cities, the rental of parking spaces can constitute a means of protecting the residents that will now have a parking spot secured, in their residence area, while dysfunctions may arise in the administration of parking spaces if the rental isn't done in a way that permits the parking of vehicles that don't have rented spaces in reasonable distances from the areas of public interest. Otherwise, the lack of parking spaces increases the predisposition of many drivers to park illegally both on the road, and in rented parking spaces, temporarily unoccupied.

Keywords:

parking spaces rental; rental of goods in public property; parking; residence parking; urban ecology.

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Introduction

Throughout this article we will address the issue of organizing public auctions on renting parking spaces located on public domain.

The current theme is very important since, in the context of the lack of parking spaces in the big cities, the rental of parking spaces can constitute a means of protecting the residents that will now have a parking spot secured, in their residence area, while dysfunctions may arise in the administration of parking spaces if the rental isn't done in a way that permits the parking of vehicles that don't have rented spaces in reasonable distances from the areas of public interest. Otherwise, the lack of parking spaces increases the predisposition of many drivers to park illegally both on the road, and in rented parking spaces, temporarily unoccupied.

The effective management of public domain concerns, in our opinion, the need to maintain a balance between the need of the citizen (Nemţoi, Ignătescu, 2014) to have access to public spaces, and the need of the local public administration to obtain extra-budgetary financial resources by exploiting the public domain spaces of the respective territorial administrative unit. The issue of parking spaces represents an element of general urbanism regarding their location, as well as one of urban ecology which targets the features of policies of urban development, given the fact that the existence or non-existence of parking spaces generates a pedestrian traffic influx, or on the contrary, auto traffic in certain areas with consequences for all areas of local development from the variation of the cost of living in a certain area, until the development or bankruptcy of small businesses, but also of the institutions in a particular area.

Applicable legal perspective

The administrative territorial units benefit from the lease of public property goods – goods belonging to public domain – as a way of using and capitalizing them in order to gain an income for their budget.

The constitutional regulations (Nemţoi, 2015) contained in Art. 136 alin. (4) which refer to public goods, provide as methods their use by territorial administrative units by giving them into administration, concession and lease (Negrut, 2008).

The constitutional provisions are complemented by those contained in Law no. 213/1998 (art. 14; 15) that provides the possibility of renting public property goods to territorial-administrative goods to any individual of legal person, only by public auction.

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The same issue of renting public property goods to territorial administrative units is regulated through the Law of Local Public Administration no. 215/2001 (art. 123) which states in terms of public or private domain, of local interest, that the rental of goods (spaces on that public domain) can be done only by the decision of local or county councils, of the General Council of Bucharest, and only based on organising public auctions in accordance with the law (Albu, 2008).

The above mentioned regulations are supplemented by those of O.G. no. 53/2002 – Status of the territorial administration – on the use of goods that belong to the territorial-administrative unity, where they establish the criteria that needs to be used by the administrative territorial units in the activity of renting goods that belong to public or private property of the administrative-territorial unity (Balan, 2007).

Along with rental, O.G. no. 53/2002 regulates also other means of using public goods by giving them in management or disposal by the autonomous regies and public institutions, or by free use by legal persons with non-profit purposes (Negrut, 2008).

Administrative practice concerning the rental of parking spaces

The territorial administrative units proceed to renting parking spaces based on regulations issued by the local Council. In this case we will present the existing regulations in Cluj-Napoca, which being unofficially presented on the City Hall's website, without any mention, has all the reasons to be considered enforced. The rugles of renting the land for car parking lot, garages or sheds on public or private domain of Cluj Napoca, provides in Art. 1 that the existing parking spaces in the public parking lots, built by the State, will be assigned based on a subscription, priority given to individuals or legal persons residing or having the headquarters or working points in proximity, and that own a vehicle with valid periodical inspection and who doesn't own another parking spot or garage, followed by individuals which own in use a vehicle legally owned by a legal person.

This article doesn't present the organizing of public auctions, but the attribution based on subscription. The criteria of proximity and of ownership of the vehicle can be introduced as tiebreaker criteria which could underlie an agenda of tasks in organizing the auction. Moreover, in the context of the current regulation it isn't mentioned the organizing of an auction in order to attribute that subscription. What is more, it refers to the ways of direct attribution which practically derogate from the legal provisions with the lack of respecting the hierarchy of legal acts. The

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regulation refers to the need for a local council decision (art. 6) regarding the annual rental which should be consistent with the requirements of the law, that the rental is done by the Local Council, but in our opinion, it eludes the obligation of organising public auction. We agree that the practice of organising public auctions for renting parking spaces raises the bureaucracy, taking into consideration the low value of the amounts gained by the state budget, but we couldn't identify, up until this point, the legal ground of this derogation. What is more, in the existing administrative practice in other cities, the auction is mandatory and stipulated expressly.

From the perspective of urban ecology, we note an interesting provision, namely the obligativity of ITP revision in the period of validity in order to rent the parking space. We consider that such regulation favours the elimination from the public domain of cars that are no longer in circulation and the speeding of their quashing by the owners, which leads to the renewal of the fleet and the diminish of using the parking space to store cars that are no longer in circulation. Of course, this provision has the effect of increasing the attention of vehicle owners on the technical state of their cars, which leads to the diminish of the risks of defective vehicles use in traffic.

Based on this regulation, a person entitled to rent parking spaces on the public domain close to their area of residence cannot rent more than 2 such spaces (art. 2). This article considers elements of urban ecology, avoiding the crowding of parking spaces with vehicles belonging to the same owner and the impossibility of other owners to rent spaces.

The regulation also refers to the period of validity of the subscription, its loss, withdrawal or cancellation etc. There are highlighted a series of norms regarding the rental of parking spaces and garages on public domain, built from private funds, which is done based on the same criteria. In this regulation we couldn't identify other specific elements of urban ecology, and on the City Hall's website we couldn't identify other documents to refer to the subject and talk about a strategy of urbanism in the field of creating parking spaces.

We present through comparison a few elements referring to the rental of parking spaces in Targoviste County, results from the analysis of the Regulation regarding parking vehicles, development, maintenance and operation of the parking spaces located in the County, and the inventory of the existing parking lots. This regulation includes a wider vision on the management of the parking space, being integrated the vision on residence parking spaces with that of public parking spaces, of vehicle stationary on public domain inside the city and the measures of blocking and removing

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the vehicles on public domain. Regarding the parking of residence, it is mentioned as being located at a distance of 30 meters from the housing (Art. 2, alin. b). The normative act regulates the creation of new parking spaces and new public parking lots are only constructed by the Decision of the local Council and in agreement with the Service of Road Police from Dambovita. In the Regulation it states the content of the request that needs to be addressed in order to approve the construction of new parking spaces, as well as the necessary documents:

Art. 13 – Request for establishing new parking spaces will consist of following elements:

- Name and address of the applicant;
- New parking site (identification using neighbourhoods)
- Number of apartments in the association, for the residence parking spot;
- Number of apartments owning cars at the date of the application for the residence parking spot;
- The agreement of the Association of Homeowners for public parking, if it is less than 30 meters from the buildings;
- The number of cars for which it is required to arrange the parking space for public parking;

Art. 14 – Request for arranging a new parking spot, together with the provisory outline of the location, will be subject to analysis to the Transport Bureau from D.A.P.P.P. – Targoviste Municipality.

Art. 15 – The design project of the new parking spot is done on topographic support by an authorized designer, in compliance with the normative and the legislation.

Art. 16 – In order to set up a new parking spot, will obtain approbation from the Service of Traffic Police from Dambovita, according to the applicable law.

Art. 17 – It will issue the request for gaining the certificate of urbanism, in order to establish the legal regime of the land on which the parking spot will be designed.

Art. 18 – After issuing the certificate of urbanism and declaring the land on which the parking spot will be constructed as being part of the public or private domain of Targoviste County, the building permit will be issued.

Art. 19 –Based on the certificate of urbanism and the authorization of construction issued by the Municipality of Targoviste, as well as the project of execution, the action of designing and arranging the new parking

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spaces is done. These works will be carried by specialized companies, the working contracts being awarded in accordance with O.U.G. no. 34/2006, updated, regarding public acquisition.

Art. 20 - After the reception of the works by the Reception Committee, the parking space will be given based on a verbal report and a prior contract, to the administrator.

We observe a slightly more careful approach on the issues of urbanism, the regulation containing express rules which target the elements of urban ecology, such as the approval of the project of urbanism necessary for constructing parking spaces. Regarding the administration of parking spaces, this is done privately. However, there is no real understanding of urban ecology which would translate through a plan of urbanism of the parking lot that would contain elements of urban optimization, such as the optimizing of traffic flow, unitary projection of parking spaces so that they would offer maximum functionality in traffic decongestion.

For Iasi County, relevant is the Rule of organizing and functioning of public paid parking lots and of residence, within Iasi County, contained in H. C. L. no. 144/2007. We observe that also the current document follows to establish an integrated management of parking for both public paid one, and the residential. Article 2 of the current regulation defines parking space as being that space destined in particular for parking vehicles, indicated by signs and markings that detached it from the carriageway of the road. In Iasi county, the parking lots are divided into residence and public paid ones, making a special mention for the parking spaces specially designed on public roads and signalled accordingly. Article 4 of the Regulation contains a series of mentions that fall into the area of urban ecology, namely the interest for the existence of parking spaces (paid) near public and cultural institutions. This meets the public interest regarding the facilitation of access to those institutions and implicitly increasing urban attractiveness of Iasi County and those institutions.

In article 5 of the Regulation, it is stated as mandatory the existence of 1-2 parking spaces for persons with disabilities, which, in our opinion, also represents a concern on urban ecology and the attractiveness of living in urban areas. Also regarding the attractiveness of housing, we mention the free access for people with first degree handicap, war veterans, former political prisoners etc.

Also, the Regulation requires the obligativity of a new HCL of certain parking spaces, without detailing the necessary documents for

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approving new parking spaces as we have seen in the Regulation of Targoviste County.

Regarding the rental of residence parking spots, the Regulation of Iasi County provides that the residence parking spaces are those situated less than 30 meters from the front of the buildings, parking the vehicles being allowed only upon payment, based on a monthly payment established after public auction. Residence parking spaces cannot be rented for cars weighing more than 3.5 tonnes. We observe that the regulation expressly provides as being mandatory the public auction for attributing parking spaces for the residences situated on public domain. In article 22 it is regulated the auction itself regarding the organizer, the starting price and the form of organizing.

The rental of parking residence spaces is done only after a public auction with outcry, the starting point being of 11 lei/space/month for the year 2007, and the pace of 1 leu. The guarantee of participating in the auction will be of 50 lei/place. In the case of tender adjudication, it will be credited in the monthly rent; otherwise, it will be returned, upon demand, to the payer. The starting point is established annually, by the Iasi Local Council. The number of parking spaces that will be auctioned is established in collaboration with the Association of Homeowners in the area. Usually, one third of the number of parking spaces is reserved for occasional parking (Art. 22).

The same concern for the attractiveness of housing is identified in article 23 alin. 2, which excludes from renting the parking spaces on public domain to the owners of vehicles riverans, owning a yard or garage in the area.

Also regarding the concern for urban ecology, we mention the Article 24, regarding the express obligativity of maintaining a parking spot with special destination for vehicles delivering supplies for appartments that are also commercial spaces.

The regulation also requires the obligativity of stipulating certain contractual norms to aim the reglementation of parking spaces in the case of events that take place close to that particular parking space, as follows:

Art. 13 – Request for setting up new parking space will contain following elements: Parking contracts will have clauses regarding the emptying of those space in certain days and time slots, in order to carry out special events or permit for repairs, markings etc. In case the owners/users of the vehicles don't respect these clauses, DAPPP will, at first, take measures in written warning, followed by contravention fine, removal and

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transport of the vehicles in storage space, on their expenses, at the following deviations (Art. 28).

We mention Iasi County as an example of good practice in the field of urban management from the perspective of the interest given to the quality of housing referring to the parking places and the attractiveness of different neighbourhoods, especially the residential ones.

In the administrative practice, applying the regulations had as main effect the dissolution of garages improvised on the public domain and the return of the space as residence parking lots for which the current regulations have been applied, including those referring to the organizing of public auction.

Parking space as element of urban ecology

The absence or lack of parking spaces generates an increase in car traffic in certain areas due to the impossibility of using parking spaces and the obligativity of car drivers to drive on relatively long distances in order to find a free parking space. The consequence is the increase in medium time necessary for driving in the urban environment and implicitly the transportation costs covered by the citizens.

Traffic congestion due to lack of parking space may lead not only to financial costs and time usage for the drivers, but also to costs related to the attractiveness of urban living in that city, implicitly through the diminishing of public services from the area of emergency care of health – the increase of waiting time for ambulances and the time it takes for them to deliver the patients to hospitals, the increase of time necessary for intervention for other public services such as fireman, police etc.

Occupying parts of the road with cars that are illegaly parked diminishes the traffic fluidity generating traffic jams and forcing the drivers to travel at a speed lower than the legal limit in that city.

As such, we consider that the problem of renting parking spaces should be considered in the general context of regional policies of urban ecology, the municipalities having and increased responsibility in this direction.

Although all major cities have policies of urbanism and urban development, we couldn't identify in the existing documents from the websites of the City Halls, policies and strategies of urban ecology to include the management of parking spaces, including the policies of renting. Between 2011-2014, we witnessed in Iasi a policy of demolishing the garages built on public domain, therefore increasing the number of parking spaces.

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Some of these parking spaces have been proposed for rental through public auction, giving priority to riverans. This policy of urban development should, in our opinion, be bolstered by a national policy of increasing the number of parking spaces and a wider distribution of those in all the areas of the county, focusing on creating additional parking spaces in the areas of concentration of urban activity, especially those in the city centers.

In this regard, we draw the attention on the policies of hypermarkets to allocate a generous parking area in their proximity, especially since hypermarkets in big cities have been built in the spaces that were emptied by the demolition of industrial facilities that have reached bankruptcy. Another tendency is the construction of underground parking spaces, generally in the basement of commercial buildings. Such an example is the Palas Mall underground parking lot, whose development was a clause given by the municipality for the concession of the necessary building space.

Conclusions

Residency parking space are an important element in the integrated management of urban ecology, being an element of ensuring urban attractiveness of the different neighbourhoods.

Consulting the documents referring to the rental of parking spaces and the establishment of parking areas, we consider that, for now, the local public administrations are at the beginning of transforming the activities of management of public goods – parking spaces – into projects of urban ecology that would consider sustainable development and the attractiveness of urban inhabitance.

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