



The prolonged uncertainty surrounding the forced lease of land in Latvia

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The land restitution process in cities has resulted in long-standing conflict between landowners and apartment-owners, who pay a compulsory lease for restituted land under high-rise apartment buildings. In 2017, the parliament adopted a gradual reduction of the lease rate. The Constitutional Court in 2018 decided that the rate reduction was in breach of the Constitution, and the amendments will expire on 1 May 2019. Uncertainty continues.

Description

In 1940, when Latvia was incorporated into the Soviet Union and lost its independence, all land property was nationalised. After regaining independence in 1991, land restitution took place and the land, both in urban and rural areas, was returned to its owners (in July 1940) or their heirs. During the privatisation process, the tenants of the apartment buildings became apartment-owners when their dwellings were privatised. Those fortunate enough to live on state or municipal land could also benefit from privatisation of the undivided share of land under the building. During the last 20 years, the cadastral value of the land has increased, and there are also now very large differences in the amount which tenants pay for land, depending on the type of owner. While those who own their apartment and lease the land from the municipality pay land property tax at the rate of 1.5% of the cadastral value (and many groups of municipal lease-takers have reduced rates), lease-takers on privately-owned land paid 6%, in 2017, as a compulsory lease to the landowners. According to the State Land Service, land under 3,677 residential buildings with 110,970 apartments is subject to compulsory leasing. In 2018, only 10% of this land belongs to past landowners or their heirs, while 90% is owned by persons and entities who acquired it commercially.

Since 1995, the legal framework regulating compulsory leasing has been amended eight times and has been the subject of four claims brought before the Constitutional Court. In 1995-2009 the compulsory lease rate was 5% of the cadastral land value; in 2010-2017 it was 6%. In June 2017, the Parliament determined a gradual reduction of the rate: 5% in 2018, 4% in 2019 and 3% in 2020 and beyond. The landowners filed a claim with the Constitutional Court, stating that the rate reduction breaches their constitutional rights, and in April 2018, the Court supported the claim. The Court has granted the legislator one year to find another solution that would strike a better balance between the rights of landowners and apartment-owners.

Outlook & commentary

The issue of the compulsory lease of restituted land under apartment buildings has long been on the policy agenda. This controversial problem has both a social and a market-related side. While the price of land was merely symbolic at the time of the restitution and privatisation of the apartments, the sharp increase in cadastral values in the 2000s created problems for almost all stakeholders. The apartment-owners received increased bills and the compulsory lease reduced the price of their property: a prospective buyer, when choosing between two identical buildings, would always prefer to buy an apartment in a house located on municipal land (there can be

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neighbouring buildings in one yard, in the same condition, but one on private and one on municipal land). Landowners were often faced with apartment-owners refusing to pay the lease; the courts are submerged with claims.

According to the Chair of the Constitutional Court, Ineta Ziemele, this situation is an exception to the principle of single and indivisible property, set out in the Civil Law. In her opinion, the legal relationship between landowners and apartment-owners should be as close as possible to a civil law relationship based on the principles of a free market economy. The Court considers that the rights of landowners have not been sufficiently respected in the present version of the Law, which seems to have been drafted over-hastily.

The Chair of the Public Administration and Local Government Committee of the Parliament, Sergejs Dolgopolovs, disagrees, stating that "consideration [of the last amendments], from the first reading to the third one, lasted for 557 days. [...]. There was a huge number of informal consultations, negotiations with public organisations and official institutions, 12 meetings of the Committee, numerous meetings of the housing subcommittee and working group; the amendments have been discussed [...] in all fractions of the parliament". For most landowners, leasing the land is a type of entrepreneurial activity, whereby they receive guaranteed profits while providing absolutely no services, just owning the land, which many of them had bought "for pennies"; and the state, he says, should not

indemnify them for business risks. He argues that the compulsory lease rate bears the marks of monopolistic activity, which should be regulated by the state for public purposes. The Bank of Latvia shares the opinion that the privately-owned land under apartment buildings is overvalued, and that the current compulsory lease rates are too high.

The Government has drafted a bill to enable apartment-owners to buy up the land for its cadastral value, regardless of whether the landowner wants to sell it or not; the bill got through the first reading in April 2018. However, it is clear that the process would not be easy, as the buy-out price may vary from €200 to €5,000 for one apartment, and consensus has to be reached between all the apartment-owners of the building in order to commence the buy-out. Crediting of apartment-owners willing to buy out the land would be available only for collective applications and not for individuals. The buy-out procedures would involve the services of land surveyors, sworn bailiffs, the State Land Register and other state-borne expenditure. As worded by the representative of the Association of Commercial Banks, Kazimirs Šjakota, all stakeholders need to realise that although the state made mistakes in the past, it will not buy the land out and will not donate it to apartment owners.

Dolgopolovs is determined to clear up the uncertainty before the national elections in October 2018. Should the legislator not adopt a new regulation by May 2019, the compulsory lease rate will no longer be capped, and landowners may increase it as they please.

Further reading

Normas, kas no 2018. gada 1. janvāra samazina piespiedu nomas maksas apmēru, neatbilst Satversmei. [*Norms that reduce the amount of forced rents from 1 January 2018 are not in compliance with the Satversme*]. 12 April 2018: <http://www.satv.tiesa.gov.lv/press-release/normas-kas-no-2018-gada-1-janvara-samazina-piespiedu-nomas-maksas-apmeru-neatbilst-satversmei/>

Latvijas Republikas Satversmes Tiesa Spriedums Latvijas Republikas vārdā. [*Republic of Latvia Constitutional Court Judgment on behalf of the Republic of Latvia*]. 12 April 2018: http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/07/2017-17-01_Spriedums.pdf

Rolands Neilands. Zemes piespiedu nomas maksas samazinājums neatbilst Satversmei [*Reduction of compulsory land lease payment does not comply with the Satversme*]. News portal DELFI, 13 April 2018: <http://www.delfi.lv/news/comment/comment/rolands-neilands-zemes-piespiedu-nomas-maksas-samazinajums-neatbilst-satversmei.d?id=49931433>

Lidija Dārziņa. Piespiedu dalītā īpašuma izbeigšanai sagatavots jauns likumprojekts [*A new draft law has been drafted for the termination of the compulsory division of a property*]. News portal LV PORTAL, 2 March 2018: <https://lvportals.lv/skaidrojumi/293810-piespiedu-dalita-ipasuma-izbeigšanai-sagatavots-jauns-likumprojekts-2018>

Сергей Долгополов. Суд, аренда и Конституция [*Court, Rent and Constitution*]: <http://rus.delfi.lv/news/daily/version/s/sergej-dolgopolov-sud-arenda-i-konstituciya.d?id=49934771>

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