

Public tools for transparent use of public property

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Introduction

Via Iuris – Center for Public Advocacy held its 7th expert conference on November 19 – 20th, 2007. The theme this year was “Access to Justice – Barriers and Solutions”. Judges, attorneys and prosecutors sought answers to three questions, namely:

1. What options are available for of public control of power in Slovakia?
2. What obstacles prevent citizens exerting more effective control?
3. How may options be improved?

The conference discussed specific expert suggestions on the protection of public property from abuse. The public feel increasingly powerless in cases when property is sold or rented for extraordinarily low and non-market prices. This results losses of up the tens of millions Slovak crowns¹ in public budgets.

Income from public property use (selling and renting) makes significant contributions to municipal budgets, for example, in Bratislava since 1991 it has contributed to between 20 to 25 % of the yearly budget). In practice, real estate has been sold or exchanged for a price that is a fraction of the market price (as assessed by independent expert). Such sales benefit the only buyer aware that acquisition of the property was possible – typically there is no public announcement to sell the property in question. This results in large losses, in the form of unrealised profit, to (municipal) budgets.

Examples are not difficult to find. Via Iuris is involved in two cases currently investigated by the EC, both of which illustrate the sums and issues involved. In the Banka municipality in Slovakia, land was exchanged between municipality and a private business without a publicly announced offer to exchange the property. According to some expert evidence, the difference in value between the exchanged properties was approximately SKK 60 million (approx. EUR 1.8 million). The citizens have not succeeded in redressing the loss, nor have they secured a detailed review of this transaction. In a similar case in Bratislava, the difference was higher, being about SKK 225 million (approx. EUR 6.8 million).

¹ 1 Euro is approximately 34 Slovak crowns.

How to proceed in such a case?

Laws concerning use of municipal property provide a legal framework with criteria for effective use of property. The framework is vague and the law is difficult to enforce. The position of citizens, in terms of initiating an audit is weak, and in effect there is no real public control in this area.

Related to this, regulations for state aid are rarely applied by the municipalities or the audit institutions. Regulations on state aid are found in several EU documents: namely Articles 87 to 89 of the Treaty establishing the European Community (further as well as „the Treaty“); in Council Regulation (EC) No. 659/1999 establishing detailed rules on enforcing the Articles 87 to 89 of the Treaty, and in Act No. 231/1999 Coll. on state aid and other regulations of the Commission. This Slovak law regulates the individual substantive and process legal tools related to state aid.

In all of these regulations, the sale or rental of public property for inappropriately low prices is considered the same as providing undue state aid to the entrepreneur or firm involved, that is, giving them preferential treatment. To submit a complaint to the European Commission, the difference between the market price and the price for which the property was actually sold or rented must be at least EUR 200 000 (currently about 6.7 million SKK involving the operations of one legal entity during a 3 year period). Even if the difference is lower, legal entities (municipalities as well as higher territorial units) are obliged to refer such transactions to the Ministry of Finance of the Slovak Republic.

If the European Commission decides that the sale or rental in question is undue state aid, the relevant private business must reimburse the difference to the municipal budget (including interest).

Conclusions

In Slovakia, at the national level, it is difficult submit a complaint on the sale of property for a lower than market price. Such sales are in breach of EU law. Returning money to a municipal budget is possible using EC mechanism described above. This is available online at http://ec.europa.eu/comm/competition/stateaid_mail.html

or http://ec.europa.eu/comm/competition/state_aid/overview/contacts.html.

Further useful information on legislation and rules on procedure are available here:

http://ec.europa.eu/comm/competition/state_aid/legislation/rules.cfm.

For further information please contact Via Iuris (www.viaiuris.sk).

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