



PUBLIC ADMINISTRATION AND LOCAL GOVERNMENT CENTER

Draft Law on Property of Local Self-Government

Basic Provisions

The subject of the law

Article 1

This law regulates the acquisition, use, exploitation, management and disposition of things and other goods owned by a local self-government unit.

The Property of a Local Self-Government Unit

Article 2

The property of a local self-government unit, in the sense of this law, comprises: rights to immovables and movables, bonds and other property rights.

Principles

Article 3

(1) A local self-government unit shall be independent in the exercise of its property rights.

(2) The property rights of a local self-government unit can be limited only by the law.

(3) In the exercise of its property rights a local self-government unit shall act as a good steward, bearing in mind the public interest and in a transparent manner.

The Property of a Local Self-Government Unit

The Right of a Local Self-Government Unit to Own Property

Article 4

(1) A local self-government unit shall have the right to own things acquired in accordance with the law.

(2) In view of goods of general interest a local self-government unit shall have the right of ownership as well as other rights in accordance with the law.

(3) In view of certain kinds of things and goods a local self-government unit can have more restricted rights than property rights, the scope and kind of which shall be determined by the law.

(4) The ownership rights and other property rights of a local self-government unit can be withdrawn or restricted under general conditions governing the withdrawal and restriction of ownership and property rights.

(5) Unless otherwise stipulated by the law, the acquisition and cessation of ownership rights and other property rights of a local self-government unit shall be governed by general norms.

The Right of a Local Self-Government Unit to Dispose of Its Property

Article 5

(1) A local self-government unit shall decide on the acquisition and disposition of its rights in accordance with the general act adopted by the assembly of the local self-government unit.

(2) Disposition in the sense of this law is the alienation of ownership rights over the property of a local self-government unit, letting for utilization i.e. lease, and mortgaging immovables and movables.

(3) The act defined in point 1 of this article shall regulate the jurisdiction and procedure for the adoption and implementation of the act on disposition.

(4) Unless otherwise regulated by the law, for the purpose of property disposition in the sense of sale and transfer of rights for financial compensation the competent body of the local self-government unit shall carry out a public competition procedure in accordance with the act defined in point 1 of this article.

(5) Any contract counter to the provisions contained in points 1 to 4 of this article shall be null and void.

The Right of a Local Self-Government Unit to Facilities and Building Land

The Rights of a Local Self-Government Unit to Facilities

Article 6

(1) A local self-government unit shall acquire the ownership right over any facility which is, on the day of this law coming into effect, in state ownership and of which it has the right of use or which is factually used by it either completely or predominantly.

(2) If a facility is not factually used by the local self-government unit with the right of use, the ownership right shall be vested in that unit to which the right of use belongs.

(3) Exceptions to the provision contained in point 1 of this article shall be the facilities for which the right of use belongs to a public enterprise, an institution or some other legal entity founded by the Republic of Serbia, those which are factually used by them either completely or predominantly, the property which constitutes the basic capital of public enterprises or institutions founded by the local self-government unit; the local self-government unit shall not acquire the ownership right over such facilities.

(4) If the ownership right over a facility described in points 1 to 3 of this article is entered in a public register, the local self-government unit shall acquire the ownership rights in the manner envisaged for building land in articles 8 to 9 of this law.

The Ownership Right over Building Land

Article 7

(1) A local self-government unit shall have the right to acquire the ownership right over the building land housing a facility defined in article 6 of this law, as well as the building land exempted from the possession of the previous owner to the benefit of the local self-government unit and not transferred to a third party for building purposes.

(2) A local self-government unit shall acquire the ownership right described in point 1 of this article in the manner envisaged in articles 8 to 9 of this law.

Building Land in Social Property

Article 8

(1) A local self-government unit shall have the right to acquire the ownership right over the building land which is, on the day of this law coming into effect, entered in public registers as social property and the local self-government unit specified as the user.

(2) A local self-government unit shall have the right, in case of point 1 of this article, to demand a change of entry in the procedure envisaged by the law.

Building Land in the Property of the Republic of Serbia

Article 9

(1) A local self-government unit shall have the right, under the conditions described in article 7 of this law, to acquire ownership right over the building land which is, on the day of this law coming into effect, entered in the public register as the property of the Republic of Serbia.

(2) A local self-government unit shall acquire the ownership right over the building land defined in point 1 of this article in the manner and according to the procedure envisaged by this law.

Building Land in Areas without Public Registers

Article 10

In the areas without public registers of immovables for entries of ownership rights over building land, a local self-government unit shall have the right to acquire the ownership right over building land under the conditions envisaged by article 7 and in the manner envisaged by article 21 of this law.

Assets of General Interest

An Asset of General Interest

Article 11

An asset of general interest, in the sense of this law, is an asset in general use, a natural resource and other assets which are, due to their properties, limited quantities and significance, proclaimed assets of general interest.

An Asset in General Use

Article 12

An asset in general use, in the sense of this law, is an asset which can be used by any person, with or without the payment of compensation, in the manner suitable to the qualities of the property; this can be a public road, street, square, public park or a property which is, by a special law, proclaimed an asset in general use.

The Rights of a Local Self-Government Unit over Assets in General Use

Article 13

(1) In view of an asset in general use for which the local self-government unit is responsible, either by law or pursuant to the act of a competent body, the ownership right shall belong to the local self-government unit, unless regulated otherwise by the law.

(2) A local self-government unit shall acquire the ownership right described in point 1 of this article over assets for which it is responsible on the day of this law coming into effect.

(3) A local self-government unit shall determine which assets in its ownership are in general use, their purpose and manner of use as well as when the assets described in point 1 of this article cease to be in general use.

(4) An asset acquires or loses the status of an asset in general use on the day of the entry of the change in the relevant public register; however, in the areas where such registers do not exist and in case of assets not subject to registration in a public register, this shall happen on the day of the act on the acquisition or loss of asset-in-general-use status coming into effect.

(5) An asset in general use shall be transferred only between local self-government units and the Republic of Serbia.

(6) An asset in general use cannot have a right of access or any other burden which would prevent or significantly hinder its regular use.

(7) Notwithstanding the provision of point 5 of this article, a concession can be granted over an asset in general use under the conditions of point 6 of this article.

A Natural Resource

Article 14

A natural resource, in the sense of this law, is understood to be a resource created in a natural manner, which, due to its qualities, has special economic or social significance; it can be a forest, meadow, pasture, ore, source of thermal waters, natural lake, spring, waterway, deposit of sand or gravel, rock or some other resource which is by special law proclaimed a natural resource.

The Right of Local Self-Government Units to Natural Resources

Article 15

(1) A local self-government unit shall have the right of ownership over natural resources of local significance which are, on the day of this law coming into effect, in state ownership, unless regulated otherwise by law.

(2) A local self-government unit shall acquire the ownership right defined in point 1 of this article on the day of this law coming into effect.

(3) When assessing whether a natural resource is of local significance the following shall be taken into account; its economic value, social significance, interest in its exploitation and some other circumstances.

ALTERNATIVE :

(4) When in doubt whether a natural resource is of local significance, it shall be deemed not to be.

The Rights of a Local Self-Government Unit over a Natural Resource

Article 16

(1) A local self-government unit shall have the ownership right over a natural resource of local significance; in case of a natural resource which cannot be legally owned it shall have the right of use and exploitation.

(2) A local self-government unit shall transfer the right to exploit or use a natural resource of local significance in accordance with the law.

(3) A local self-government unit shall keep a register of contracts made on the transfer of natural resources of local significance (henceforth: transfer register).

(4) The transfer register is a public register in which the following entries shall be made: the data on contracts made and particularly the data on contractors, contract subject, contract duration, the transfer compensation and other obligations considered important by contractors.

(5) A written contract on transfer shall be a part of the transfer register.

(6) A local self-government unit shall enter any contract made on transfer in the transfer register within 30 days from the day of the contract being signed.

Other Assets of General Interest

Article 17

Unless otherwise regulated by the law, a local self-government unit shall have an obligation to regulate relations, provide the possibility of use of other assets of general interest defined in article 11 of this law, excepting assets in general use and natural resources, to persons to whom this right belongs in the manner suitable to the properties and nature of the assets and to ensure that the owners of assets of general interest exercise their powers without infringing upon the rights of others.

The Right of Local Self-Government Units to Acquire Other Things or Property

Other Immovables

Article 18

The provisions of this law envisaged for building land shall apply to other immovables, with the exception of facilities and building land.

Movables

Article 19

(1) The movables owned by the Republic of Serbia which are, on the day of this law coming into effect, in the custody of a local self-government unit, shall be owned by the local self-government unit unless they were transferred by the Republic of Serbia for custody on the basis of a concrete legal process.

(2) The provision of point 1 of this article shall not apply to the movables used by a local self-government unit for the performance of tasks entrusted to it by the Republic of Serbia, which shall belong to the Republic of Serbia, except in cases when the local self-government unit has acquired these things from a third party.

The Rights of Public Enterprises and Institutions Founded by the Local Self-Government Unit

Article 20

(1) The facilities, building land and other immovables and movables owned by the Republic of Serbia and entered in the public register as the basic capital of public enterprises or institutions founded by a local self-government unit shall be the property of the public enterprise or institution on the day of this law coming into effect.

(2) The facilities, building land and other immovables and movables owned by the Republic of Serbia and constituting other capital of public enterprises or institutions founded by the local self-government unit shall be the property of the local self-government unit on the day of this law coming into effect.

The Procedure for the Establishment of Property Rights

Agreement on Property

Article 21

(1) A local self-government unit and the Republic of Serbia may agree on things and other assets which shall belong to the local self-government unit.

(2) Following a proposal of a local self-government unit the agreement from point 1 of this article shall be concluded, on behalf of the Republic of Serbia, by the Directorate for the Property of the Republic of Serbia having previously obtained opinion of the Public Legal Officer of the Republic.

(3) If the Directorate for the Property of the Republic of Serbia rejects a proposal or fails to respond officially to it within 3 months from the day of the reception of the proposal for the conclusion of an agreement, the local self-government unit shall institute proceedings before the Commission.

(4) A local self-government unit shall have the right to submit a proposal for the institution of proceedings described in point 3 of this article within 3 months from the reception of the decision on rejection or the expiry of the term for official response.

(5) Non-action by the end of the term defined in point 4 of this article does not eliminate the right to institute proceedings before a competent court.

The Establishment of the Ownership Right without Dispute

Article 22

(1) In the case described in article 8 of this law a local self-government unit may submit a request for the entry of ownership right to the body in charge of public register within three months from the day of this law coming into effect.

(2) Within 30 days from the reception the body defined in point 1 of this article shall forward the request to the Public Legal Officer of the Republic asking him/her to make an official response within three months from the reception day.

(3) If the Public Legal Officer of the Republic agrees to the request for the entry of a change or if he/she fails to make an official response within the defined term, the body in charge of public register shall enter the ownership right to the benefit of the local self-government unit.

A Dispute about the Establishment of Ownership Right

Article 23

(1) If the Public Legal Officer of the Republic expresses his/her disagreement within the term defined in article 22 point 2 of this law, the body in charge of the public register shall inform the local self-government unit within 30 days from the reception of the response.

(2) In the case described in point 1 of this article, the local self-government unit shall have the right to initiate a procedure before the Commission within 3 months from the day of the reception of information on rejection.

(3) Non-action by the end of the term defined in point 2 of this article shall not abrogate the right to institute proceedings before a competent court.

The Commission

Article 24

(1) In case of a disagreement between a local self-government unit and the Republic of Serbia, the Commission for the Establishment of Ownership Rights (hereinafter: the Commission) shall decide what property shall belong to the local self-government unit.

(2) The Commission comprises thirty members elected by the Assembly of the Republic of Serbia and they are: ten members proposed by the Government of the Republic of Serbia, ten members proposed by the Permanent Conference of Cities and Municipalities and ten members proposed by the 20 previously elected members.

(3) Following the request from the Assembly of the Republic of Serbia each proposing entity or individual is obliged to propose, within 30 days, twice as many candidates than the number to be elected and if they fail to do so in the prescribed time limit, members shall be proposed by the board of the Assembly of the Republic of Serbia in charge of judiciary and administrative affairs.

(4) The Commission shall have a president and vice-president elected by the appointed members from among themselves by majority vote of the total number of members.

(5) If the president and vice-president are not elected within 30 days from the day of the appointment, the mandate of the appointed members shall cease and the appointment procedure shall be repeated.

The Work of the Commission

Article 25

(1) The Commission shall work in three-member councils one from among of those elected following the proposal of the Government of the Republic of Serbia, Permanent Conference of the Cities and Municipalities and those proposed by the previously appointed members; the last member shall also be the council president.

(2) The Commission shall have eight councils of first-instance and two of second-instance.

(3) The Commission President shall determine the composition of councils in accordance with point 1 of this article.

(4) The Commission shall work according to the rules of administrative procedure and in accordance with the Work Regulations adopted by the majority of the total number of the Commission.

(5) Working premises, equipment, the necessary assistant staff as well as work compensation to the Commission members shall be provided by the Government of Serbia.

Procedures before the Commission

Article 26

(1) A procedure before the Commission is initiated by a local self-government unit by submitting a request with enclosed evidence for the establishment or implementation of its right.

(2) After the reception the Commission shall forward the request together with evidence enclosed to the Public Legal Officer of the Republic asking him/her to make an official response within 30 days from the day of the reception.

(3) After the expiry of the time limit defined in point 2 of this article the Commission shall decide on the basis of documentation available.

(4) If the Commission deems it necessary, it may hold a discussion to reach a decision on a particular request.

(5) If the evidence enclosed does not enable the Commission to ascertain who the subject property should belong to, it shall decide pursuant to the assessment of whose right is more probable.

(6) The Commission is obliged to decide on a request no later than six months from the reception of the request.

(7) The Commission's decision can be appealed against to the second-instance council of the Commission.

(8) The Commission's final decision cannot be the subject of an administrative dispute.

(9) On the basis of the Commission's legally binding decision the entry of the right shall be made in the appropriate public register.

(10) The legally binding nature of the Commission's decision shall not prevent the conduct of a lawsuit before a competent court.

(11) The court's legally binding decision contrary to the Commission's decision shall terminate the effect of the Commission's decision in the part in which it is contrary to the court's decision.

Taxation

Article 27

The acquisition of things and other property on the basis of article 21 point 1 and article 26 point 6 of this article shall not be understood to be trade in goods in the sense of the law regulating value added tax or trade in absolute rights.

The Registration of the Property of a Local Self-Government Unit

Property Registers

Article 28

(1) In the areas with public registers of immovables in which the ownership right can be entered, the local self-government unit shall keep records on the immovables and its other property if regulated so by the law.

(2) In the areas without public registers in which the ownership right over immovables can be entered, the local self-government unit shall establish its own register of immovables for its needs and keep records on its other property in accordance with a special law.

(3) The register of immovables defined in point 2 of this article shall include all the data entered in the public register of immovables in which the ownership right is entered.

The Register of Transfer

Article 29

(1) A local self-government unit shall keep the register of transfer with entries on legal affairs concerning disposition of its property and other legal affairs envisaged by the law.

(2) Any person is allowed insight into the register described in point 1 of this article.

Substatutory Acts

Article 30

The content and manner of keeping of the register described in article 28 and 29 shall be prescribed by the Minister for the Affairs of Local Government.

Penal Provisions

Offences

Article 31

A fine of 100,000 to 500,000 dinars shall be payable for the offence of a local self-government unit if it fails to open the register envisaged by article 28 point 2 of this law.

For the offence from point 1 of this article the responsible person in the local self-government unit shall be fined 5,000 to 25,000 dinars.

Article 32

The fine of 50,000 dinars to 200,000 dinars shall be payable for the offence of a local self-government unit if it fails to enter a contract on transfer in the register of transfer envisaged by article 29 point 1 of this law within the time limit envisaged by article 16 point 6 of this law.

For the offence described in point 1 of this article the responsible person in the local self-government unit shall also be fined 3,000 to 15,000 dinars.

Article 33

The fine of 20,000 to 50,000 dinars shall be payable for the offence of a local self-government unit if insight into the register of transfer is declined contrary to its obligation defined in article 29 point 2 of this article.

For the offence described in point 1 of this article the responsible person in the local self-government unit shall also be fined 2,000 to 10,000 dinars.

Transitional and Final Provisions

The Cessation of Effect of Regulations

Article 34

With this law coming into effect the Law on Assets Owned by the Republic of Serbia (“Off. Gazette of the RS”, no. 53/95, 3/96 – corr. 54/96 and 32/97) in relation to assets belonging to a local self-government unit, public enterprises and institutions founded by the local self-government unit shall cease to apply.

The Law Coming into Effect

Article 35

This law shall come into effect on the eighth day from the day of its publication in the “Official Gazette of the Republic of Serbia”.