

Repealing the Socialist Republic of Bosnia and Herzegovina Law on Construction Land of 1986 Within the boundaries of Brcko District

Supervisory Order

Repealing the Socialist Republic of Bosnia and Herzegovina Law on Construction Land of 1986 Within the boundaries of Brcko District

And also repealing part of Article 60 of The Law on Spatial Development of Brcko District of 2003

And also repealing the Mayor's Decision on the Size of Fees For Development of Construction Land of 2004

In accordance with the powers vested in me in Paragraphs 8, 10, 13, 36, 37 of the Brcko Final Award of March 5, 1999, passed by the Arbitral Tribunal for Dispute over Inter-Entity Boundary in the Brcko area;

Emphasizing that legal certainty is one of the most important goals in promoting the rule of law, as mandated by the Final Award;

Believing that a clear, fair and consistently applied system of property taxation is of vital importance to the District's economic development and to strengthening the rule of law;

Noting that the Socialist Republic of Bosnia and Herzegovina

Law on Construction Land, passed in 1986 and published in the Official Gazette of the Socialist Republic of Bosnia and Herzegovina No. 34/86 (“the Law on Construction Land”) established certain rules and procedures to be followed for persons who desired to construct buildings and appurtenances thereto upon land;

Further noting that Articles 67 to 75 of the Law on Construction Land provided for different kinds of fees and taxes to be payable by a person constructing on land, and that these taxes and fees entail that a person constructing on land must make substantial payments, in full and before construction commences, including a fee charged under Article 68(2) “on the basis of the natural advantages of City Construction Land and advantages of the developed communal infrastructure, which may be present when using the land and which are not the result of investments by owners or beneficiaries of immovable property”, and that this type of tax is commonly called “renta”;

Further noting that Article 210 of the Law on Ownership and Other Property Rights of the Brcko District of Bosnia and Herzegovina, passed in 2001 and published in the Official Gazette of the Brcko District of Bosnia and Herzegovina number 11/01 (“the Ownership Law”), provided that “On the day this law enters into force laws and regulations on ownership and other property rights that applied in the territory of the District shall cease to be applied”;

Concerned that it seems to have remained a point of uncertainty as to whether Article 210 of the Ownership Law had the effect of repealing any or all of the Law on Construction Land, including Articles 67 to 75 thereof, and that the Government of Brcko District has continued, since the passage of the Ownership Law, to charge “renta”, seemingly pursuant to Article 68(2) of the Law on Construction Land;

Further noting that the second paragraph of Article 60 of the

Law on Spatial Development of Brcko District, passed in 2003 and published in the Official Gazette of the Brcko District of Bosnia and Herzegovina number 9/03 (“the Law on Spatial Development”) provides in part that “Urban development approval shall also comprise ... an amount of compensation for development or partial development of construction land ...”, and that the Mayor, in 2004, passed a “Decision on the Size of Fees for Development of Construction Land”, being Mayoral Decision number 01-014-003628/04, published in the Official Gazette of the Brcko District of Bosnia and Herzegovina number 24/04, prescribing the magnitude of the fees to be paid under the second paragraph of Article 60 of the Law on Spatial Development;

Of the opinion that the fee charged under Article 60 of the Law on Spatial Development is very similar in its economic effect to “renta”, that is to say, a significant tax upon construction unrelated to the economic advantage that may accrue to the builder in consequence of his construction, payable in a single up-front amount prior to construction commencing and as a condition for the necessary Government permission to build to be granted;

Further of the opinion that the economic effects of a tax such as this are deleterious to economy such as that of the Brcko District, acting as they do to create disincentives for legal construction;

Satisfied that any costs to the District Government of new construction, including the obligation to connect new buildings to existing infrastructure services, can be recouped more transparently from other sources, including infrastructure connection fees, existing tax revenues from other sources, and heightened future tax revenues from economic development consequent upon new buildings being constructed;

Further aware that taxes in the nature of “renta” have created

some legal uncertainties, as in a number of cases the Government has offset “renta” charges that would otherwise be due against certain other costs that private builders upon land have incurred, and opposing views have been expressed as to whether offsets of this kind are lawful;

Of the opinion that there are no provisions of the Law on Construction Land that remain operative, that the Law on Construction Land is defunct in its entirety, and that all forms of tax in the way of “renta” ought to be abolished in the interests of legal certainty, encouraging economic development and rule of law;

Believing that there are better methods of taxing real estate found throughout the European Union, with consequences less harmful to the rule of law and economic development, and recommending that the Assembly give serious consideration to adopting legislation imposing a form of real estate taxation consistent with that found elsewhere in Europe;

I hereby order that:

1. To the extent that it remains in force in Brcko District as of the date of this Supervisory Order, the Law on Construction Land of the Socialist Republic of Bosnia and Herzegovina, published in the Official Gazette of Bosnia and Herzegovina number 34/86, shall be abolished in its entirety from the date of this Supervisory Order. That law shall have no further legal effect in Brcko District.

2. The second paragraph of Article 60 of the Law on Spatial Development of Brcko District, published in the Official Gazette of the Brcko District of Bosnia and Herzegovina number 9/03, shall read as follows with effect from the date of this Supervisory Order:

“Urban development approval shall also comprise requirements for developing of construction land, if a structure is built on non-developed or partly developed construction land.”

The text that formerly followed this wording in the second paragraph of Article 60, namely, "an amount of compensation for development or partial development of construction land as well as other obligations of the user implied by the use of that land", shall be deleted, and shall have no further legal effect.

3. The Mayoral Decision on Fees for Development of Construction Land, number 01-014-003628/04, published in the Official Gazette of the Brcko District of Bosnia and Herzegovina number 24/04, shall be annulled with effect from the date of this order.

4. This Supervisory Order shall not have retroactive effect. Any questions of whether:

a. any sum already paid prior to the date of this Supervisory Order pursuant to the provisions of either of the Laws or the Decision referred to in paragraphs 1 to 3 above are recoverable in law;

or

b. any sum alleged to be owing as at the date of this Supervisory Order pursuant to the provisions of either of the Laws or the Decision referred to in paragraphs 1 to 3 above are actually owing,

shall not be affected by the terms of this Supervisory Order.

5. This Supervisory Order has immediate effect, and shall be published without delay in the Official Gazette of the Brcko District. The Government and Assembly of the Brcko District shall undertake all necessary measures to ensure its implementation.

Susan R. Johnson
Supervisor of Brcko

Deputy High Representative