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The connection between urban land use planning, land structure and urban land development instruments – Kosovo case

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Abstract. A rational use of land often requires changes in land structure that can be made only if adequate urban development instruments and methods are adapted to suit the socio-economic conditions of the country, its government and the land tenure system. These instruments must have adequate legal support that is often needed to break the barriers that are imposed by individual landowners' interests influenced by strong property rights.

This paper aims to highlight the importance of the link between the land use planning, land structure and instruments or methods applied to urban land development. In order to emphasize the importance of links between these elements to urban planning process in Kosovo there have been analyzed the urban planning legal framework of Kosovo and a number of Urban Regulatory Plans in main city of Kosovo. These urban plans have been analyzed in various aspects such as the approval procedures, the legal support and the instruments used to implement them. Results from the study show that there is a strong connection between these land use, property structure and ownership and urban land development instrument chosen to implement the urban plans. This is especially important in cases where the land is very fragmented and where the strong property rights hinder the plan implementation.

Keywords: Land use planning, instrument, land development, transition, Kosovo

Introduction

Urban land use plan is a spatial planning document that defines how a certain urban area will be developed in the future. In other words, it determines whether a certain land parcel is going to be used for building public infrastructure, public parks, the areas for public facilities, residential or commercial uses etc.

However, in general there is a connection between land use, ownership structure and property structure (Larsson, 1993). In specific urban development cases the land use plan doesn't require big changes of property units inside the area covered by plan. In other cases, fundamental changes in land structure are required to adopt it to planned development. In this way, land use and property structure are interdependent. In certain urban land patterns, the border lines of the properties can be easily changed to fit the planned use of the land. In other cases, changes in the boundaries of the parcels are necessary to allow the change in land use. Changes in land structure are difficult to be achieved especially in the conditions of legal uncertainty, the changes in system of governance, property rights and economic system, which are characteristics of most of transition countries.

Moreover, the flexibility in adapting of physical urban patterns in a specific area is highly depended on the form of land tenure (Dunkerley, 1988) that is again linked with, system of governance and legal framework of a country. In urban situations where the land structure is not

to stand in the path of planned development it should be found an efficient method or instrument to change and adopt it to the planned use. If one or another method or instrument is going to be used in the process of land-use change it largely depends on the planned land use, ownership structure and property structure (Larsson, 1993).

During the past decades, all European transition countries have reached significant improvement in their alternation from the economies which were socialist and centrally-planned to the market-based and democratic systems.

“The transition introduced institutional reform and planning innovations in most of those countries. However, in many cases the governance modalities of former state control and closed decision-making processes have not been fully disassembled “.(UN-Habitat ,2013).

However, the legal framework on urban planning remains challenging for most of countries in transition. The institutional reforms have been followed by reforms in other parts of the system. Still, the governance is characterized by non-transparency, informality in economy, legal uncertainty and non-conformity.

Kosovo belongs to the group of transition countries, characterized by weak institutions, weak economies, legal uncertainty, etc. The country is yet politically instable and due to its unclear status internationally the country is facing problems in integration process of the regional and international organizations. Still, the country is facing different urban development problems relating to urban planning and management. The most significant reason for this is the “transition from a rather centralized form of urban planning, a typical aspect of the Yugoslav planned economy into a markedly free form of development” (Boussauw, 2012 p. 143). The transition is characterized by the loss of control by the authorities and their inability to find appropriate methods and tools to facilitate a certain aspects of these processes.

Despite the efforts of the institution of country in these last two decades to transform the urban planning system in Kosovo it is still suffering from many urban development problems. The socio economic transition a characteristic of countries of the former socialist bloc has undoubtedly contributed greatly to the creation of urban development problems of the country. However, the armed conflict in 1999, in addition to the consequences for the country's population and economy, has also contributed greatly to the creation of urban problems. The newly constituted institutions after the conflict in Kosovo in 1999 were unprepared to manage a huge migration of populations toward urban centers of Kosovo. As a result, a very huge number of illegal constructions (around 350.000) is a picture of main urban centers of Kosovo including its capital city Prishtina.

Concerning the urban planning process, the country has inherited some of the past urban planning system's features and procedures that do not fit the existing circumstances in Kosovo. As a consequence, the urban planning process in Kosovo is still to a certain degree top-down driven and the participation in the process of landowners and other interested parties is very limited. Since 1999, the international organization UN-HABITAT is assisting the central and local institutions of Kosovo to shift “from the former centralized, top-down planning system towards an inclusive, participatory and multi-disciplinary approach to planning” (D'hondt, 2006 p.4). However, the authorities' efforts have not been successful. Kosovo's municipalities continue to face various urban development problems, which are mainly manifested in the difficulty of implementing urban plans.

On the other hand, the property rights in Kosovo after 1999 have been substantially increased and the land purchase by the municipality for public uses has become challenging due to legal procedures and economic constrains of municipalities.

The urban development issues such as the land assembly for (re)development, the adaption of parcel border lines to the planned use, the purchase of land for public purposes and the finance of public infrastructure construction are the key issues in which the current urban planning system is hindered in the efficient implementation of urban plans in Kosovo.

The urban planning legal framework

Kosovo Spatial Planning Law no.04 / L-174 (2013) (*MESP*) represents the legal framework for urban planning in Kosovo. According to the Law, the spatial planning in Kosovo is a competence of both central and local administrative institutions. The spatial planning for the entire territory of Kosovo through Spatial planning documents, such as the Spatial Plan of Kosovo (SPK), Zonal Map of Kosovo (ZMK) and Spatial plans for special areas (SPSA) is a competence of the central authorities, while the local level of planning for the territory of the municipalities through Spatial planning documents, such as the Municipal Development Plan (MDP), Municipal Zoning Map (MZM) and Urban Regulatory Plans (URP) is a responsibility of the municipality.

Characteristics of urban land pattern and ownership in Kosovo

The protected property rights are considered as a social value of a democratic society. The question is: how these property rights contribute to, or at worst impede the sustainable urban development.

After 1999, in Kosovo there has been a transformation of land tenure system. Most of the state-owned land properties have been privatized. On the other hand, the property rights are more advanced than in previous governance system. The property right in Kosovo is a constitutional right. According to “Article 46 (Protection of Property) of the Constitution of Kosovo” (CK), the property right is guaranteed and protected by the law.

“The use of property is regulated by law, in accordance with the public interest and no one shall be arbitrarily deprived of property. The Republic of Kosovo or public authority of Kosovo may expropriate private property if such expropriation is authorized by law and if it is necessary or appropriate to achieve the public purpose. The expropriation is allowed to support the public interest and is followed by providing immediate appropriate compensation for the person or persons whose property has been expropriated”

(Constitution of Kosovo, 2008 p.13).

Based on the “Law on Expropriation of Immovable Property” in Kosovo, Law no. 03/L-139 (LEIPK), municipalities have the right to expropriate the private property or their parts to implement the urban plans and projects that are under their authority. The Law on Expropriation of Immovable Property in Kosovo defines cases in which the municipal authorities have the right to expropriate the private land.

Besides, the “Expropriating Authority of a Municipality may expropriate immovable property only if the expropriation is clearly and directly related to the accomplishment of one of the following public purposes” (LEIPK p.6):

- The implementation of an urban and/or spatial plan that has been adopted and promulgated by a Municipal Public Authority;
- The construction of a building or facility to be used by a Municipal Public Authority;
- The construction, enlargement, establishment or placement of any of the following infrastructure and/or facilities if this promotes the general economic and/or social welfare of the municipality or provides a public benefit to the population of the municipality and otherwise complies with applicable legal requirements:
 - For the construction of municipal roads
 - Construction of public facilities needed for the provision of public education, health and/or social welfare services;
 - Installation of pipes for providing public water and sewage services;
 - Providing land for municipal landfill sites;

- Providing land for municipal public cemeteries; and
- Purchasing land for municipal public parks and sports facilities (LEIPK p.6, 7)”.

Another important issue in the selection of methods or instruments for urban land development is the physical urban land pattern. As it was pointed out above, it is not always easy for authorities to adjust the boundaries of plots to the planned land use. Whether this adjustment of property lines will be easy or difficult to be achieved it depends on the land tenure system and selected urban land development instrument for altering urban land structure.

It is worth mentioning that the urban land of Kosovo is a very fragmented one, with a small surface of plots inside the cities and larger in their peripheries. The land has been subdivided informally for long time. The land parcels inside urban centers are too small and have different irregular shapes that in most of cases are not suitable for construction of buildings according to the urban plan.

The country continues to use expropriation as an instrument for the development of urban land but in completely different social and economic circumstances than in previous governance system. There is a difference concerning the circumstances in which the expropriation instrument was used before 1999 when Kosovo was part of the former socialist state of Yugoslav and after 1999 to the present. In the past the state institutions were centralized they had the state power to carry out certain projects including urbanization. In order to implement the urban plans the state used the pre-emption strategy for the land included in urban plan. This means that all properties situated within the planned area were expropriated by the state nevertheless of their planned use. After 1999, the situation has changed in favor of landowners. The property rights are much more advanced and nobody can be arbitrarily deprived from his property. Although the expropriation is still the only instrument available to state authorities it has very limited scope of use. According to the law, the private land can only be expropriated for the public purposes mentioned above.

The absence of sufficient funds for timely expropriation of land surfaces planned for public use such as the areas for public infrastructure, schools, kindergartens, etc. is not the only concern of the municipal authorities. Based on the current legal framework, the local authorities in any situation cannot take the land foreseen by the plan for nonpublic uses. In any case, the expropriation instrument cannot be used for solving urban development problems related with regularization of private land foreseen for nonpublic uses in sense of reshaping or reallocating of plots in accordance with an urban plan. The central and local relevant institutions still have not consolidated the legal framework that would equip the local and central institutions with efficient mechanisms and instruments that could ensure the efficient implementation of urban plans and at the same time not violating the private property rights guaranteed by the law.

The current urban planning system has been shown to be inefficient in addressing number of planning issues. The planning system does not ensure the land assembly for development before the plan is approved for any urban situation. The relocation or reshaping of the parcel is emphasized only in the moment of urban plan implementation, exactly at the phase when the landowner or the potential investor applies for construction permit. The alternation of land structure after the plan approval has been shown to be very difficult because of individual interests of landowners. In most cases, the cooperation between the landowners is required. This cooperation is voluntarily and difficult to be reached due to planning procedures and different individual interests.

Case studies

In order to show this dependency between the land use planning, land structure and land development instrument in Kosovo conditions, the urban plans of the city of Pristina have been selected as case studies. The URP has been analyzed in different context such as the planning

procedures, planning documents, implementation methods and instruments used. The impact that the instrument has had on changing land structure and implementing urban plans has been analyzed and compared.

The impact of the instrument of expropriation on changing the land structure is analyzed for different urban situations: urban redevelopment, urbanization of new areas and redevelopment of the redevelopment of the area with illegal constructions.

Urban area “Qyteza Pejton”

The first case study is concerning the urban redevelopment of the urban area “Qyteza Pejton” in city of Prishtina. According to "Urban Strategic Development Plan of Prishtina 2004-2020" (USDPP), the area has been defined as one of the key areas for urban redevelopment. The purpose of drafting the Urban Regulatory Plan (URP) for this area has been the creation of legal conditions for the redevelopment of the area as one of the central city zones. The plan has been initiated by the municipal authorities. The neighborhood was initially built as a residential area mainly for individual housing units. New urban regulations set by the municipality through the URP enables the density increase of the area. Inside the area covered with urban plane there are some of public facilities such as the primary school. Other public facilities are planned to be constructed in private owned land. However, the new urban land plan has been approved by municipality assembly without prior changes in land structure or ownership.



URP “Qyteza Pejton” Pristina (source: municipality of Pristina)

The land inside the urban blocks dedicated for multistory housing is mainly private owned and the municipality authorities cannot take the land from landowners or in other ways to alienate it. Because of their size and shape, the plots individually are not suitable for construction of multistory housing buildings. Landowners have to join their plots in order to allow the density increase of the area. In any case, cooperation between landowners /developer and municipality is needed. This cooperation is voluntary based because the municipality does not possess any legal instrument or mechanism to enforce the landowners to cooperate with each other. To explain better the situation with urban development of the area, an urban block inside the area has been selected to be analyzed.

Adapting the parcel boundaries with the planned development depends on the agreement reached between the landowners after the development rights are attached to the area. The process of joining several small plots to create a larger plot defines the future boundary of the newly created parcel. Since the rearrangement of the parcels borders is left for the later stage of the process, the adaptation of parcels border lines according to the plan is very difficult to be achieved. The

municipality does not have legal mechanisms that would force landowners to reach an agreement on joint development for their parcels.

The urban plan has been approved by the municipality assembly in year 2011 and since there a very little is done in its implementation of plan mainly because of planning procedures , the level of involvement of interested parties in decision making process and the method and instrument used to implement the plan.

Although the new urban plan use foresees changes to the land structure, namely the merging of parcels within the block to allow for increased housing density, this has failed to occur in almost any part of the area. The figure below shows the difference in land structure before urban plan approval and how it is now



Fig. The land structure of urban area “Qyteza Pejton” before URP and now

The suburb area “Mati 3”

The urbanization of peripheral areas of cities is the most common case in the urban developments of Kosovo. This is due to the fact that cities are constantly expanding as a result of demographic developments in the country. As it was already mentioned, after 1999 there was a migration of population from rural areas toward urban centers. Consequently, significant land surfaces that have been used for agriculture are part of the urbanization process.

The suburb area “Mati 3” is one of the peripheral areas of the city of Prishtina. According to Urban Development Plan of the city of Prishtina the area is defined as a low density residential area mainly for the construction of one-family residential buildings.

Concerning the ownership structure, the area consists of private and municipality owned properties. The presence of municipal property was an advantage for the area because it was planned for public uses, such as the areas for the elementary school, kindergarten and green areas. The Regulatory Plan “Mati 3” covers a large area of the city suburb, while only a part of its area consisting of a total of 13 private property parcels and one municipal-owned parcel has been taken for the case study.

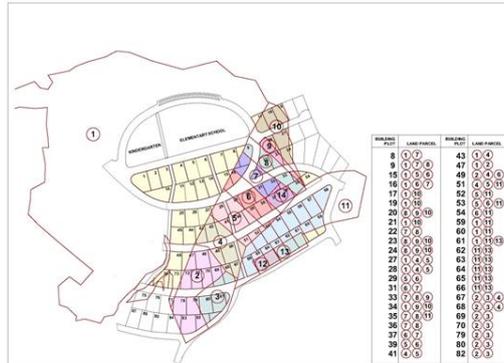


Fig. The existing land parcels and use plan of the part of the urban area “Mati3”

No changes in parcels' border lines have happened prior to final approval of the plan. The re-parceling of parcels that involves the changes in the parcels boundaries is required from the landowners / developers in the case of their application for construction permit. The application for a building permit is individual, thereby causing the development of the area "parcel by parcel". Such individual method approach to landowners is restrictive in parcel reorganizing and adjusting their boundaries according to the plan.

In order to enable the re-parceling and the planned development according to the plan it is required a cooperation and legal agreement between the most landowners of original parcels. The current legal framework and procedures do not force the landowners to reach any agreement in sense of land assembly for development. For example, to enable the re-parceling and adapting to the planned development of the planned building plot no. 9, it is required a cooperation and agreement between the landowners of original parcels 1, 7 and 8. In total, for 17 planned building plots it is required a cooperation of three landowners, while for the other planned building plots it is required a cooperation of two landowners of original parcels. Only in few cases the newly created parcels in private ownership do not require an agreement between two or more landowners, such as the case with parcels 38, 42, 48, 55,56,57,58 and so on.

The agreement between the landowners is voluntarily and it is not subject to any legal enforcement. In general, based on the current legal framework, the agreement between two or more landowners to exchange part of their plots in order to fit them to the planned development is difficult to be achieved due to various individual interests.

Expropriation as an instrument can only be used by the municipality for the purchase of surfaces that have been foreseen for the construction of public infrastructure but it cannot interfere in parcels planned for the construction of family residential buildings in this case. Therefore the issue of adjusting the boundaries of the parcels and adapting them to planned use is left to the free will of the owners which in most cases has not worked due to individual interests.

Suburb area “Mati 1” in Pristina

The case study area is a part of the suburb area located in the eastern part of Pristina in the direction of the rural settlement Mati. The land parcels are mainly privately owned. A very small amount of land is owned by the municipality. The area was not covered by any urban plan until 2012. The informal divisions made in different time periods have created a highly fragmented structure of the land. Furthermore, some parts of the areas were populated by the people that constructed their houses informally. Recently, the area has attracted the land developers' interest due to its favorable location in relation to the city.

In the urban development plan strategy the informally constructed zone is foreseen to be transformed and regulated through the density increase of the zone. In 2012, the new zoning regulations are set by the municipality through the urban regulatory plan “Mati 1”. In most of the urban blocks defined by the urban regulatory plan a density increase is enabled, thereby allowing

the construction of multistory housing buildings. The new zoning regulations set by the municipality for the area have attracted the landowners / developers interest for re-developing of the area.

The adaptation of the parcel border to the planned development; the provision of land for public purposes and public infrastructure finance are the main challenges of local authorities during the implementation of the urban plan.

The minimum parcel size for construction of multistory residential buildings is set by the new land-use regulation of the area. The majority of parcels are too small to get the construction permit for residential multistory buildings. The area consists of informally subdivided parcels of different sizes and shapes. The merging of two or more existing parcels to create a larger building parcel suitable for the construction of multistory building is voluntarily. The agreement between landowners to create a critical mass of land for development is determinant of the newly created parcel boundaries. These agreements are subject to negotiation between land developers and landowners. The boundaries of newly created parcels are a derivative of the original parcels boundaries. These boundaries of the newly created parcel do not fit the design of the plan.

In order to implement the plan the municipal authorities have improvised the solutions which in most cases have been unproductive because in many cases haven't been in accordance with the urban plan. In other words, the planning process and the instrument used for implementation did not produce a land structure that would allow easier and rational implementation of the plan. Today, the neighborhood can be considered as a bad urbanization example.



Fig The situation with land structure and urban development in suburb area "Mati 1" in year 2019

Conclusion

Kosovo is a new state emerged from the disintegration of former socialist state of Yugoslavia. Like other countries in transition it is facing different urban development problems. The most significant reason for this is the transition from a rather centralized form of urban planning into a markedly free form of development. The legal framework on urban planning remains challenging for most of countries in transition where Kosovo belongs too.

The country has inherited some of the past urban planning system's features and procedures that do not fit the existing circumstances. As a consequence, the urban planning process in Kosovo is still to a certain degree top-down driven and the participation in the process is very limited. On

the other hand, the property rights have become more advanced than in previous governing system. Now it is a constitutional right protected by the law.

A method or instrument cannot have the same effect in different situations and circumstances. Therefore, expropriation as an instrument for urban land development can only be effective in certain social and economic circumstances. The country still uses conventional instruments such as the expropriation for urban land development. The private land can be expropriated exclusively for public purposes like the areas for public infrastructure, schools, kindergartens, parks etc. In most cases the municipality lacks of funds for timely expropriations of land for public purposes that impact in timely implementation of urbanization projects.

The urban development issues such as the land assembly for (re)development, the adaption of parcel border lines to the planned land layout pattern, the purchase of land for public purposes and the finance of public infrastructure construction are the key issues in which the current urban planning system is hindered in the efficient implementation of urban plans in Kosovo.

Recommendations

The relevant institutions of the country need to make further reforms to the urban planning system in order to adapt it to the new conditions created as a result of the social and economic transition. The legal framework should ensure the stakeholder's involvement in decision-making process at all stages of the planning process for reaching consensus before the documents are sent for approval to the relevant institutions.

Active involvement of landowners in the decision-making process will make them more cooperative between each other and the institutions. Non-discriminatory policies and transparency of the process are essential to enhancing mutual trust and co-operation as a preconditions for successful implementation of the plan.

A deliberate choice of method or instrument is achieved only when it succeeds in harmonizing private interests with the public, ensuring sustainable development and at the same time not interfering with property rights guaranteed by law. Developing and developed countries all around the world use different methods and instruments for urban land development. Kosovo can learn from the experiences of countries that at certain stages of their development history have faced the problems of the same nature and use them in creating of its own policies.

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