

STUDY REGARDING THE VALORIZATION OF A LAND TAKEN INTO CONCESSION, BELONGING TO THE MUNICIPALITY OF CLUJ-NAPOCA

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ABSTRACT

A case study was prepared in the course of the paper on the concession of a building belonging to Cluj-Napoca, with the aim of dismantling it resulting in 32 parcels and the access road to them, with a view to authorizing the construction of 32 youth housing. The legislative framework on the possibility of the concession of property owned by the State or its territorial entities is also presented. The proposed street to be carried out within the framework of the housing complex, which will be built following the concession, is 1703 m long and 1.50 m wide. The aim is to ensure a 6 m carriageway for two directions, a bicycle path and a pavement on either side of the roadway.

The assessment of the investment for street planning, plus the cost of the drinking water and sewerage network, the electricity grid, the natural gas network and the selling price of the undeveloped land, represents the minimum concession price limit per sqm, so as to ensure the recovery in 25 years of the selling price of the land. Following the analysis carried out, the proposed minimum starting price of the auction is 2051 RON/sqm (435 €/sqm).

INTRODUCTION

The concession represents the contract by which one of the parties, called the concessionaire, transmits for a certain period to the other party, called the concessionaire, the right and obligation to exploit a good, an activity or a public service, in exchange for a royalty.

The main notion to which the idea of concession is related is that the good, respectively the work / service that is the object of the concession to be part of the public domain of the state or of a territorial administrative unit.

Other aspects arising from the definition of the concession are that there must be a fixed term of the contract, as well as the existence of a fee.

They have the quality of grantor, on behalf of the state, county, city or commune:

a) ministries or other specialized bodies of the central public administration, for the goods public property of the state;

b) county councils, local councils, the General Council of the Municipality or public institutions of local interest, for the public property goods of the county, city or commune.

The principles underlying the award of concession contracts are:

1. transparency - making available to all interested parties information on the application of the procedure for the award of the concession contract;

2. equal treatment - the application, in a non-discriminatory manner, by the public authority, of the criteria for awarding the concession contract;

3. proportionality - implies that any measure established by the public authority must be necessary and appropriate to the nature of the contract;

4. non-discrimination - the application by the public authority of the same rules, regardless of the nationality of the participants in the procedure for awarding

the concession contract, in compliance with the conditions provided in the agreements and conventions to which Romania is a party;

5. free competition - ensuring by the public authority the conditions for any

MATERIAL AND METHOD

Legislative framework

Both the Constitution and the New Civil Code, as well as other normative acts, such as Law no. 15/1990 on the reorganization of state economic units as autonomous companies and companies, Law no. 215/2001 on local public administration, O.U.G. no. 54/2006 and Law no. 98/2016 on public procurement, regulates the possibility of concession of public property of the state or its territorial entities.

Also, Law no. 50/1991 on the authorization of the execution of construction works regulates the possibility of concession of lands for constructions in Chapter II of its contents. O.U.G. no. 34/2006 on the award of public procurement contracts, public works concession contracts and service concession contracts was repealed by Law 98/2016 on public procurement.

Award of the concession contract

The "award" of the concession contract, which can be done following an auction or by direct negotiation and direct award - exception to the auction rule and is the procedure for granting public property in exceptional situations.

According to art. 15 of Law no. 50/1991, the lands belonging to the private domain of the state or of the municipality of Cluj-Napoca, destined for construction, may be concessioned without public auction, in the following situations:

a) for the achievement of objectives of public utility or charity, of a social nature, non-profit, other than those achieved by the local communities on their lands;

b) for the construction of housing by the National Agency for Housing, according to the law;

participant in the award procedure to have the right to become a concessionaire under the law, international conventions and agreements to which Romania is a party.

c) for the construction of housing for young people up to the age of 35;

d) for the displacement of households affected by disasters, according to the law;

e) for the extension of the constructions on adjacent lands, at the request of the owner or with his consent;

f) for works of protection or enhancement of historical and architectural monuments, with the joint approval of the Ministry of Culture and Religious Affairs and the Ministry of Transport, Construction and Tourism, when the land is in their protection zone.

According to art. 18 of Law no. 50/1991 The lands provided in art. 13, which is concessioned for the construction of houses and built spaces associated with them, depending on the provisions of the local urban planning regulations, approved according to the law, will have the following areas:

a) in urban localities: up to 450 m² for an apartment in a building with ground floor or ground floor and first floor;

According to art. 16 of Law no. 50/1991 (1) The natural and legal persons, who benefit from the land under the conditions of the present law, are obliged to request the issuance of the building permit and to start the construction within maximum one year from the date of obtaining the land concession deed.

The right of concession on the land is transferred in case of succession or alienation of the construction for the realization of which it was established. The building permit is submitted under the same conditions. [Art. 41].

Auction

In the case of the tender procedure, the grantor has the obligation to publish in the Official Gazette of Romania, Part VI, in a

daily newspaper of national circulation and in one of the local circulation the tender notice. The tender notice is sent for publication at least 20 calendar days before the deadline for submission of tenders.

The tender procedure can only be carried out if at least 3 valid bids have been submitted following the publication of the tender notice. If at least 3 valid tenders have not been submitted following the publication of the tender notice, the grantor is obliged to cancel the procedure and to organize a new tender.

Direct negotiation

The grantor has the right to apply the direct negotiation procedure only if, after repeating the tender procedure, at least 3 valid bids have not been submitted.

In the case of the direct negotiation procedure, the grantor has the obligation to publish in the Official Gazette of Romania, Part VI, in a daily newspaper of national circulation and in one of the local circulation the announcement of the direct negotiation. The notice of direct negotiation shall be sent for publication at least 10 calendar days before the deadline for submission of tenders.

Determining the winning bid

The offers are written in Romanian. The bidders send their bids in two sealed envelopes, one outer and one inner, which are registered, in the order of their receipt, in the "Bids" register, specifying the date and time. The outer envelope will indicate the object of the concession for which the offer is submitted

The inner envelope, which contains the actual offer, shall state the name or denomination of the tenderer, as well as his domicile or registered office, as the case may be.

The sealed envelopes are handed over to the evaluation commission on the day set for their opening.

The composition of the evaluation commission, its members, as well as their deputies are established and are appointed by Decision of the local council. The evaluation commission is

made up of an odd number of members, which cannot be less than 5.

In order to determine the winning bid, the evaluation committee applies the award criterion to the highest level of the fee. If the award documentation provides, in addition to the highest level of royalty, another / other award criteria / criteria, the weight of each criterion is set out in the award documentation. The share of the criterion of the highest level of the royalty must be higher than 50%. The winning bid is the bid that meets the highest score following the application of the award criteria. If there are equal scores between the first place bidders, their division will be made according to the score obtained for the criterion of the highest level of royalty, and in case of further equality, the tie will be made according to the score obtained for the criterion that has the highest weight according to the aforementioned criterion.

CONCESSION DATA SHEET

This specification is the documentation necessary for the concession of a building consisting of land with an area of 22232 sqm, belonging to the public domain of the Municipality of Cluj-Napoca. It is desired to dismantle the building in question, resulting in 32 plots and the access road to them, in order to build housing for young people.

It is the obligation of the concessionaire to arrange the access road with an area of 9329 sq m, located on the concessioned land, which ensures the connection between the proposed plots. Each plot will be delimited by fencing.

In order to obtain the building permit, a concession Zonal Urban Plan will be drawn up by the concessionaire, highlighting the organization of the street network, functional zoning of lands, urban indices and indicators (alignment regime, height regime, POT, CUT, etc.), development of municipal infrastructure, legal status and land movement, mention of public utility objectives, environmental protection measures as a result of specific programs, detailed specific

regulations (permits and restrictions) included in the local urban regulation related to the PUZ.

In this sense, an urbanism certificate will be requested for drawing up and approving the Zonal Urban Plan, according to Law no. 350/2001 on spatial planning and urbanism, with subsequent amendments and completions.

After the approval of the Zonal Urban Plan by the Technical Commission for Urbanism and Spatial Planning within the Cluj-Napoca City Hall and the approval in the Local Council meeting, the investment objective will be achieved only on the basis of a technical project prepared in accordance with Law no. 50/1991, regarding the authorization of the execution of the construction works, republished, with the subsequent modifications and completions, which will take over the conditions from the approved PUZ.

The concessionaire has, in principle, a monopoly in the operation of the concessioned public service. The grantor cannot grant the same public service to two concessionaires.

The concessionaire has the right to collect tariffs from the users of the public service it manages, tariffs that are controlled by the grantor. The current trend of concessionaires is to reduce tariff control, in order to increase the sense of responsibility of management among concessionaires.

* The obligations of the concessionaire are limited to ensuring the functioning of the public service, in compliance with the rules of the concession contract and the specifications.

The provisions regarding the operation and maintenance (management) of the project are the most important levers in determining the level of quality of the services to be provided or how the good /

work will serve the public interest. The provisions on operation and maintenance are all the more important as the assets must return to full ownership of the public authority under the same conditions as they were at the beginning of the operating period, or in an improved form (according to the contractual provisions).

Goods that will be used by the concessionaire in the course of the concession are:

1. goods that return in full, free of charge and free of any charges to the grantor upon termination of the concession contract. They are return goods, the goods that are the object of the respective concession, the land and the infrastructure investments.

2. own goods which at the end of the concession contract remain the property of the concessionaire. They are own goods, the goods that belonged to the concessionaire and were realized by him during the respective concession, the built building.

As for the royalty, the method of calculation and payment is established by the line ministries or other specialized bodies of the central public administration or by the local public administration authorities and is made to the state budget or local budgets, as appropriate (Article 4 of GEO No. 54/2006). Therefore, the concession is a contract for consideration.

The minimum limit of the concession price is established, as the case may be, by the decision of the county council, of the General Council of the Municipality or of the local council, so as to ensure the recovery in 25 years of the sale price of the land, under market conditions. adds the cost of the related infrastructure works[art.17].



Figure 1. Area Town Planning

RESULTS AND DISCUSSIONS

The starting price per sqm of concessioned land is calculated as follows: the sale price of the vacant land without the cost of related infrastructure works, plus the necessary expenses for the arrangement and provision of

municipal networks, divided by the total area proposed for concession.

The road proposed by this project has a length of 1703 m and a width of 1.50 m. The aim is to provide a roadway of 6 m for two directions of traffic, bike path and sidewalk on either side of the roadway.

Table 1

The value of street design

Paper article	U.M	Amount	Unit Price (Ron)	Value (Ron) without VAT	Value with VAT
PARTE CAROSABILA					
Dig into the street platform	smc	89.41	1000	89407.50	106394.93
Leveling the excavation	smp	178.82	200	35763.00	42557.97
Road bed compaction	smc	53.64	200	10728.90	12767.39
Ballast layer 35cm	mc	8323.84	50	416191.91	495268.38
Macadam layer	mc	2270.95	120	272514.06	324291.73
Asphalt concrete BAD25PC	to	2574.94	420	1081473.12	1286953.01
Asphalt concrete BA16	to	1716.62	420	7201982.08	857968.68
20x25 border	ml	1710.00	100	171000.00	203490.00
SIDEWALK					
10x15 border	ml	1710.00	80	136800.00	162792.00
Concrete C8 / 10	mc	1074.15	350	375952.50	447383.48
Asphalt concrete BA8	to	735.70	320	235422.72	280153.04
Ballast	mc	1528.87	50	76443.41	90967.66

WATER LEAK					
Rainwater pipe Φ 400	ml	2000.00	250	500000.00	595000.00
Φ 500 drains with grill	buc	100.00	400	40000.00	47600.00
Connecting pipe Φ 150	ml	600.00	180	108000.00	128520.00
Visiting manholes	buc	50.00	400	20000.00	23800.00
Horizontal signaling	mp	800.00	5	4000.00	4760.00
TOTAL				4294679.21	5110668.25

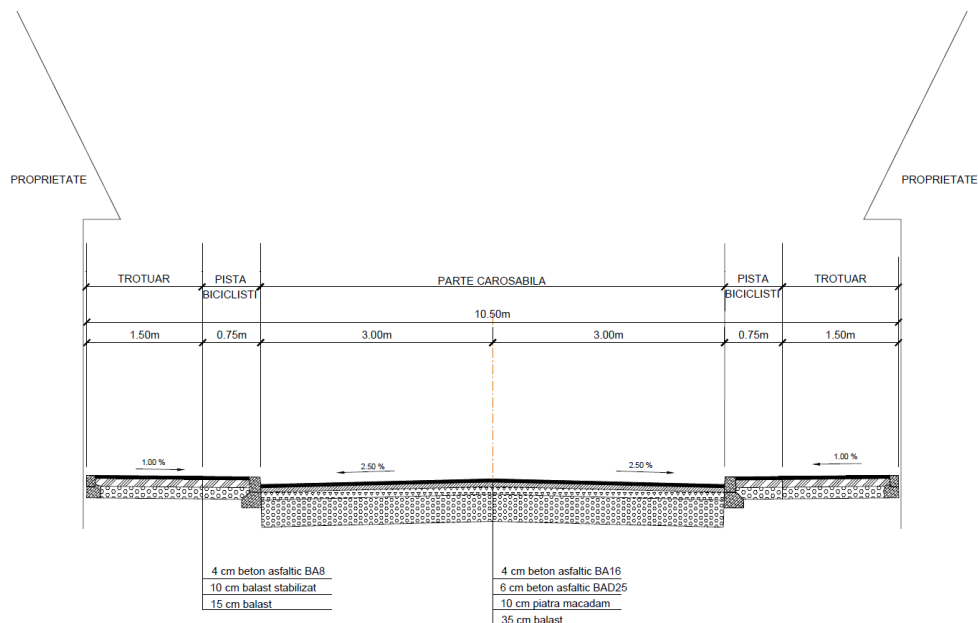


Figure 1. Street cross profile

Table 2

Value related to municipal networks

Name of the work	Price (Ron/ml)	Total price (Ron)
Drinking water and sewerage network	2000	3406000
Electrical network	6000	10218000
Natural gas network	4000	6812000
Total		20436000

Table 3

The value of the investment required before the building is parceled out

	RON	EURO
Street arrangement cost	5110668.25	1083916.91
Cost of building networks	20436000.00	4334252.39
TOTAL	25546668.25	5418169.30

The evaluation of the investment for the arrangement of the street presented in table 4.2.7.1, to which are added the cost of the drinking water and sewerage network, the electricity network, the

natural gas network and the sale price of the undeveloped land, represents the minimum concession price per sqm, so to ensure the recovery in 25 years of the sale price of the land.

Table 4

Proposed minimum bid starting price

SURFACE PLOTS (sqm)	12903	
Free land value	912582 RON	193548.75 EURO
Investment value	25546668.25 RON	5418169.30 EURO
TOTAL	26459251 RON	5611718.051 EURO
Land / sqm value after arrangement	2051 RON	435 EURO

The minimum price proposed to start the auction is the equivalent in lei of 435 euro / sqm, and the price will be set at the exchange rate of B.N.R., lei-euro from the day of payment.

The annual royalty will be paid for a period of 40 years, in the amount resulting from the auction, at the B.N.R. from the day of payment.

The manner of payment of the concession price and the penalties for non-compliance with the payment obligations will be established by the concession contract.

CONCLUSIONS

In view of those mentioned in this paper, the concession is made by concluding a contract by which a public institution or authority decides to transfer the right and obligations to perform a public service of local or national interest or the right to exploit a good considered public property to another people. The public institution waives its obligations to grant all rights to a public service to another person, here called a concessionaire, in exchange for a fee. The amount of the fee shall be set out in the contract concluded between the grantor and the concessionaire. The share of the fee may vary or may be set at a certain amount.

The concession contract is inflexible, most clauses are not subject to

negotiation, so it must be very well defined until the start of the award procedure.

The concessionaire has, in principle, a monopoly in the operation of the concession public service. The grantor cannot grant the same public service to two concessionaires.

The concessionaire has the right to collect tariffs from the users of the public service it manages, tariffs that are controlled by the grantor. The current trend of concessionaires is to reduce tariff control, in order to increase the sense of responsibility of management among concessionaires.

The obligations of the concessionaire are limited to ensuring the functioning of the public service, in compliance with the rules of the concession contract and the specifications.

The provisions regarding the operation and maintenance (management) of the project are the most important levers in determining the level of quality of the services to be provided or how the good / work will serve the public interest. The provisions on operation and maintenance are all the more important as the assets must return to full ownership of the public authority under the same conditions as they were at the beginning of the operating period, or in an

improved form (according to the contractual provisions).

The main contractual obligation of the economic operator is to operate and maintain the facilities as a good owner throughout the contract, but this does not mean that the public authority does not

monitor its activity in order to ensure the quality of the service / public good. A key aspect is to ensure that the responsibilities of the private operator are described in detail and there are no doubts or ambiguities about them.

Table 5

The advantages of the concession

Grantor	Concessionaire	The final consumer
- the financial balance on the basis of which the contract is signed ensures that no party loses		- benefits from a public service from which he could not have previously benefited or from a service provided to a higher standard - may pay less for the same type of service if the concessionaire finds a way to streamline and reduce costs
- find a solution for financing the necessary projects for the taxpayer - transfers the operating risks to the concessionaire - retains the right to approve and control tariffs and quality standards regarding the service / good / public works and may establish performance indicators - the decision to concession is taken at local level	- has access to an exclusive state market (a traditional service provided by the state) - income / profit levels are relatively easy to calculate and secure compared to those brought by other investment projects	

Table 6

Disadvantages of the concession

Grantor	Concessionaire	The final consumer
- the concession contract is a less flexible contract, rigid, which can only be modified under special conditions		Sometimes he can pay more for a public service
- must bear the pre-contracting costs (design, consultancy, etc.)	- is the party that has to bear the initial investment in the system / work, etc. - fully takes over the risk of operating the system / work / etc.	

The need to build housing for young people is justified by the very large number of applications for housing for rent / purchase, but also by the fact that more and more graduates are settling in Cluj-Napoca, where there are jobs and employment opportunities. Cluj-Napoca is an important IT center, but also a financial one. More and more

multinationals are opening jobs there, and universities attract about 80,000 Romanian or foreign students

The real estate analysis data show a decrease in the total supply of housing, in line with what happened with the demand. Thus, the total number of residential properties available for sale

decreased, the demand being higher than the supply.

Through this project, the grantor values a building that could not be better exploited given its destination and has the right to approve and control rates and quality standards for the property, and can set performance indicators.

This concession has a direct social impact, this being reflected in the socio-economic consequences of the construction proposed following the concession of this building, which will bring economic and social benefits from the following perspectives:

- restores an underused and currently undervalued area to the urban circuit

- the indirect socio-economic impact that the whole Municipality will benefit from due to the increase of the housing supply. There are a large number of requests for obtaining a rental / purchase home in Cluj-Napoca, but the total number of residential properties available for sale has decreased, the demand being higher than the supply.

- obtaining additional revenues to the local budget through the efficient exploitation, in a regime of permanent continuity of the land through the construction authorization process and taxes, their related taxes, taking into account the new destination of the land, approved by PUZ.

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