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*Betterment fee due to division of real estate on the basis of the Act on  
real estate management.*

*Legal and equitable depiction*

*Summary*

Doctoral dissertation prepared  
in the Department of Law Policy  
under the guidance of  
associate professor PhD  
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Łódź 2018

The aim of doctoral dissertation is to answer the question, if binding current legal regulation in the Republic of Poland regarding betterment fee due to division of real estate can be considered as just or not. As it follows main subject of research presented in doctoral dissertation is the institution, for which basic provision is Article 98a of Act of 21 August 1997 on real estate management (Journal of Laws from 2018, position 121 with amendments), according to legal status from 27 September 2017.

Inspiration of the choice of such topic was for the author of dissertation her professional practice as real estate appraiser, who draws up appraisal reports, also for the purpose of determining betterment fee due to division of real estate.

Justice as leading idea from the field of philosophy was also chosen not by accident as criterion of evaluation. It is not possible to say about good law without taking into account the aspect of justice. Unjust law can be only a set of norms, which observance is required by the legislator, but it is not, in opinion of the author of dissertation, the implementation of idea of law, i.e. putting into effect principles of social justice. *Prima facie* basic idea of betterment fees seems to be right. These fees are by definition so to speak treated as source of covering costs incurred by the State Treasury or a local government unit for providing individual assets for the entity, and therefore they are a form of compensation. However betterment fee for division of real estate differs significantly from other types of betterment fees and does not seem to be accurate implementation of this original idea.

Due to the fact that the concept of justice is one of the most ambiguous and controversial concepts in the history of human reflection, it would be naïve to expect single, unambiguous and uncontroversial answer to such a question. Then there is a need to indicate the perspective of made evaluation, which is appropriate for discussed legal institution and as universal as possible, so that drawn conclusions are acceptable for the widest possible group of potential addressees.

If main question of this work is the question about justice of betterment fee due to division of real estate, leading to it detailed questions are following:

What conceptions of justice can be a criterion of evaluation of betterment fee due to division of real estate?

What is the characteristic of the institution of betterment fee due to division of real estate?

Which conception of justice will be the most appropriate for evaluation of betterment fee due to division of real estate and why?

How should betterment fee due to division of real estate be evaluated from the point of view of adopted conception of justice and why?

What are the consequences of made evaluation? What postulates can be presented *de lege ferenda* regarding researched legal institution?

Above presented detailed questions determine the structure of dissertation.

In the first chapter of dissertation these from the conceptions of justice were discussed, which seem to provide the most adequate and universal criteria of equitable evaluation of the institution of betterment fee due to division of real estate. Therefore, basic ideas of Aristotle founding his concept of justice and categories of distributive and compensatory justice, views of the economic school of law concerning justice as a feature of law; various detailed judgments in the field of justice of participation of citizens in the costs of keeping the state and dogmatic and legal, constitutional depiction of justice of public charges were described.

In the second chapter functioning currently in the system of Polish law institution of betterment fee due to division of real property against the background of the institution of betterment fee in general and other types of betterment fees was characterized. Objective fee was also characterized in detail as a public-law service. This part of the work was dominated by formal and dogmatic method with elements of historical method.

In the third chapter the comparison of betterment fee due to division of real estate with selected conceptions of justice was made and thanks to this comparison the evaluation of this legal institution was made. As this evaluation was unsuccessful, various possible scenarios of amending the law were presented.

In conclusion the summary of considerations was made.

The conclusions from the research conducted on justice of betterment fee due to division of real estate turned out to be following.

From the point of view of adopted in dissertation conceptions, ideas and criteria, objective fee can not be considered as just. Axiological weaknesses of this institution can be presented through worked out in dissertation following postulates *de lege ferenda*:

1. Abolishing the discretion of the authority in the range of fixing the fee (introduction of generality).

2. Fixing uniform rate of the fee in the area of the whole country (ensuring the equality of burdens of legal entities).

3. Reduction of percentage rate. In opinion of the author current maximum rate is too high. Local government units do not incur any costs related to the confirmation of

division decision, which would justify so high participation in the increase of assets of private investor. Betterment fee in its construction is to be a form of compensation of expenditures for the community incurred from public funds for carrying out the procedure of division and meeting individual needs of the owner of real estate.

4. Making the obligation of paying a fee on the disposal of real estate arisen due to division within determined period of time, for example 5 years from the date of validation of decision confirming division of real estate, Such construction would bring betterment fee closer to already functioning in the conduct of legal transactions zoning fee , which would influence positively on coherence of legal system.

5. The change of objective basis of the fee. Resignation from determining by real estate appraiser hypothetical, future and uncertain profit from the sale or real estates arisen as a result of division and instead of this determining the amount of due fee as percentage of the sum of money obtained from actual sale. Such solution would allow to determine real increase of welfare of entity burdened by the fee and would be based on monetary values obtained under certain market conditions and not only on forecast profit. The implementation of this postulate would require certain detailed solutions, which would be a protection against circumvention of law.

6. Exemption from the obligation of paying betterment fee for the owners, who will transfer free of charge the ownership right of the parcel arisen due to division. It would allow to avoid a situation, in which the owner incur tangible costs of carrying out divisional procedure and then transfers the ownership of real estate through donation without obtaining actually any income, but has to pay betterment fee due to the increase of value. The implementation of this postulate would require some detailed solutions, which would be a protection against circumvention of law.

7. Taking into consideration in showed increase of value of real estate costs incurred by the owner for carrying out the procedure of its division, possibly also the costs of the sale of new parcels. The costs should be understood above all as costs of the work of land surveyor, costs of obtaining documentation necessary for the division, costs of establishing new land and mortgage book, costs of technical infrastructure development and other charges, which are documented by the owner and justified and necessary for carrying out division or sale (even cost of advertisements of offers of sale of separated parcels or remuneration of real estate agency due to brokering the sale) and they correspond to the rates binding currently in local market.

8. Indication in the act of law, in what period from the beginning the proceedings in a matter of determination of betterment fee is to be completed in maximum. Currently

binding regulation provides only that within 3 years from the date, on which decision confirming the division of real estate became final or judgment on the division became valid, proceedings in the matter of determination of betterment fee are to be begun. The legislator did not indicate deadline for such proceedings, what can cause for the parties a risk of lengthy administrative proceedings and long-term uncertainty of situation.

9. Allowing the settlement of due betterment fee also in the form of the transfer of the ownership of internal road to the community.

10. The form of settlement of charges due to the fee could be also performing by the owner specific technical infrastructure in the area of newly arisen parcels in other area agreed with competent authority. Optionally performing facilities for local community should be allowed, for example hardening the area, sport field, construction of playground, cleaning park, square, arrangement of day room, etc. Thanks to it whole community would participate in effective way in individual profit of investor obtained due to carrying up division of real estate.

Above mentioned postulates should be implemented at least to a certain extent, so that objective fee can obtain the virtue of justice. The alternative to proposed changes is complete resignation by the legislator from this legal institution.

In the work besides currently binding acts of law, jurisprudence of the Constitutional Tribunal and administrative courts and also the literature on the subject were used to a large extent.

14. 02. 2019.  
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