LAND PROPERTY: FROM STATE CONTROL TO FULL PRIVATIZATION: WHERE TO DRAW THE LINE?

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УДК 332.2(470.631)
ББК 65.44(235.7)-51

Goal. The aim of this research is to shed light on the negative outcomes of excessive land privatization and development in the post-Soviet transition period in traditional resort areas. It will specifically examine the case of the Northern Caucasus area where the main challenge today is to find ways of restoring a sense of common good through the revision of existing planning laws and regulations. The paper also tries to explore the chances of reinstating to a certain extent some of the state's role as main regulator and guarantor of the public domain.

Methods. The case was investigated using face to face interviews with local and regional authorities, property owners, and visitors to the Dombay resort. It was also performed through field visits in addition to analyzing satellite images, cadastral maps and property registry. The research was also based on a thorough understanding of the exiting Russian land and planning laws.

Results. The investigation has shown that the lack of public spaces significantly reduces the quality of the urban environment, the attractiveness of resorts and, consequently, the value of land. Finding tangible solutions requires joint efforts at various levels of government including the amendment of existing legislations on urban planning and land use and the development of various forms of public-private partnerships, which means the need to reassert the state's role in regulating urban development.

Scientific novelty. The paper shows connection of land use and urban environment's quality that has significant influence on place's touristic attractiveness. At the same time, this fact is not recognized by authorities and is not used in local policies. The survey showed a necessity to shift attention to long-term vision in constructing of municipal economic benefits and interrelation between different levels of governance.

Key words: land use policy, privatization, public space, urban planning law, land law.

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Introduction.

The Soviet Union's collapse was the starting point for a significant transformation in land use and urban planning in Russia. The accessibility to private land ownership drove city development to a new dimension; however on the other hand, it complicated land management and urban planning.

In Russia land privatization was not preceded by an adequate legislative base [1]. Moreover, the process was neither based on a strong planning system nor on urban planning documents. All Soviet master plans were considered "inapplicable and obsolete under new conditions" and, accordingly, no longer legally binding [2]. Moreover, the government strategy during the first decade of the post-soviet era was oriented towards unplanned development.

This was a result of the discredited Soviet planned economy and of a belief in the market's ability to regulate socio-economic development and land use.

Consequently, numerous hasty decisions at the planning level were made, which are now requiring mitigation through complicated solutions and negotiation with many actors, costing substantial budget money. In fact, Russian cities usually do not suffer from a lack of land for their development due to the existing possibility for extensive growth of their territory. In most cases this caused urban sprawl. At the same time in some regions there are settlements which have already exhausted their territorial limits and faced the challenges of solving their problems with internal resources.

Soviet legislation: interaction between land and urban planning law in the USSR.

A brief description of the relation between the land law and the urban planning law in the USSR is necessary for an understanding of the starting point of the land privatization process in Russia and its influence on cities' transformation.

The main paradigm of the Soviet state organization was the absence of private land ownership. Land was declared as national wealth by the Decree "On land" in 1917 [3]. The land fund was managed by the State and was provided for temporary or permanent use for free. The whole land was divided into six categories according to its functional purpose. Change of category was carried out on the basis of long-term development plans by the relevant ministries. There was a legislatively determined possibility as well as procedures for the withdrawal of land for public needs. [4, 5]. The state was free from the need to consider private interests, but land use was strictly dependent on the state's long-term development plans. Thereby, state urban planning took precedence over land relations. The Russian word used for the term "urban planning" is *"Градостроительство"*, which could be translated in English as a "construction of cities". It perfectly describes the ideology of the socialist planning system which was the main tool of the state's policy implementation. Soviet urban planning was integrated into the system of centralized management and growth-oriented planned economy. In fact, it was a physical planning tool, determining suitable land for construction of industrial, residential and infrastructure projects. Planners, who worked within the Soviet planning system, recall that it was a "paradise" for planners. They were exempted from the need to negotiate with land owners and they always had specific planning requirements from the government, where public interests were a priority. Functional zoning developed in general plans for the cities was a base for regulation of the territorial use.

Private ownership: decades of law development and current situation.

After the Soviet Union's collapse a long period started in which the state functioned without any planning system. Socialist planned economy caused a kind of allergy to planning in general which was blamed for all economic and urban problems. The new ideology which immediately emerged was based on an infinite belief in the self-regulating ability of market economy. The old economic model had been completely rejected as a discredited system. Accordingly, the natural resources of the country had to be included in the new Russian economy through the process of privatization. Land property was not recognized everywhere immediately as an attractive investment, however gradually the situation changed, causing a significant transformation of the urban environment. The most important events that characterized the new historical stage of development were the appearance of private land property, the fast transformation of land law and the prioritizing of land management. At the same time the updating of existing urban planning laws did not match the needs of public interests.

Thus, in 1990 for the first time in recent Russian history rent and payments for land were established. In the same year the Law "On Land Reform" was enacted, in which there was the first legislative fixation of private land ownership. Nonetheless, the Russian Constitution of 1990 established a 10-year moratorium on the right to dispose of land (10 years of ownership before the acquirer could dispose of the land). In 1991 a new Land Code was enacted, but it was still limited by the 10-year moratorium established by the Constitution. In 1992 several amendments to the Constitution were made, allowing citizens to purchase and sell land in four cases: for private farming, gardening, dacha construction and individual housing construction. In 1993 a new Constitution that fixed private land ownership rights was adopted. All the same, until 2001 the privatization process and the development of private property rights had been governed by presidential decrees that had a lot of contradictions and inconsistencies [6]. Finally, in 2001 a new Land Code was enacted [7], which became the base for the current model of land regulation in Russia. Thus, within ten years after the Soviet Union's collapse Russian land law had experienced significant transformation [8].

At the current moment it may seem that possibilities for private land ownership in Russia are still limited. In fact, according to the Land Code, the Russian land fund is divided into seven different categories: agricultural land, land belonging to settlements, industrial and special land, land of specially protected areas, land of forest fund, land of water fund and reserve land. Only land belonging to three categories may be privatized: agricultural land, settlements land, and industrial land. These three categories

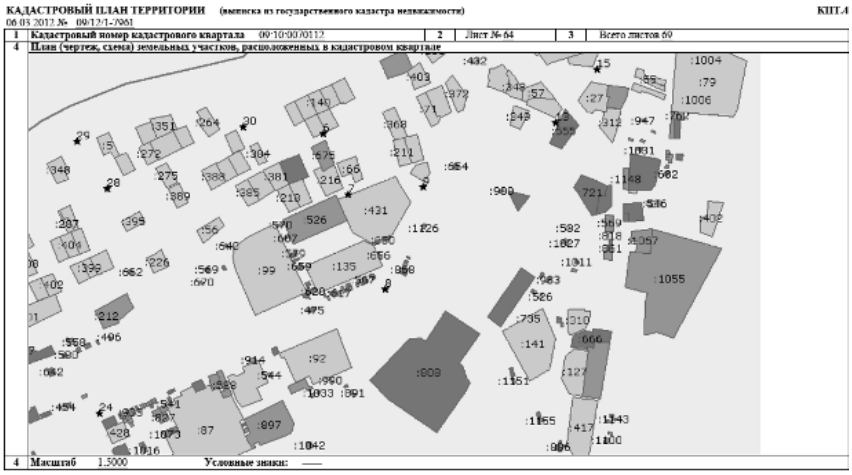


Figure 1.
Fragment of the cadastral plan of the city of Karachaevsk, 2012. Only part of the city's land is privatized and the owners' rights are registered.

represent only one quarter of the whole Russian land fund. Land under remaining categories may be privatized after a change in category following long, complicated procedures. Nonetheless, the area of land of "permitted" categories was 512,7 million hectares in 2013, from which only 132,9 million hectares (26%) were privatized [9]. This fact makes the land resource very attractive.

Return to planning: is it a real shift in priorities?

In contrast with the constant updating of land law in Russia, urban planning law was almost out of the State interests. A New Urban Planning Code was enacted in 1998, yet it could not play a visible role especially in a context of rapidly changing land legislation. It became just a formality for spatial planning projects, in which those plans simply could not be legally approved and were not legitimate [10]. A new Urban Planning Code developed in accordance with land law was enacted only in 2004 [11]. This did not change the main peculiarity of the modern Russian legislative system characterized by the prioritizing of land law and land relations (regulations) over the urban planning law. The most important disposition of this new Code was that it set a planning obligation for all regions and municipalities under which it became forbidden to provide land for any use if planning documents for any particular territory were absent.

Nevertheless, the imbalance in the development of urban planning law and land law is felt under any aspect. Whereas the land law is supported by the creation of many additional regulations, requirements, structures, information systems, urban planning legislation is still represented by just one framework law and a couple of normative optional documents, describing formal requirements for the projects. For example, the State Register of the cadastral engineers was created at the national level while there are no Registers, licensing system or professional Chamber for urban planners. Moreover, there is almost no possibility for the regional government or municipalities to set any requirements for the qualification of companies developing urban projects or even to set requirements as to the quality of the final project. The Russian law regulating state procurements gives priority to the financial bid and the project implementation period. This has usually resulted in the creation of formal strategic and planning documents, which are almost useless and do not consider the real needs of cities. In the best of cases, such documents provide for the interests of investors in land properties.

In the decade after it was enacted, the Urban Planning Code was significantly transformed by a large number of

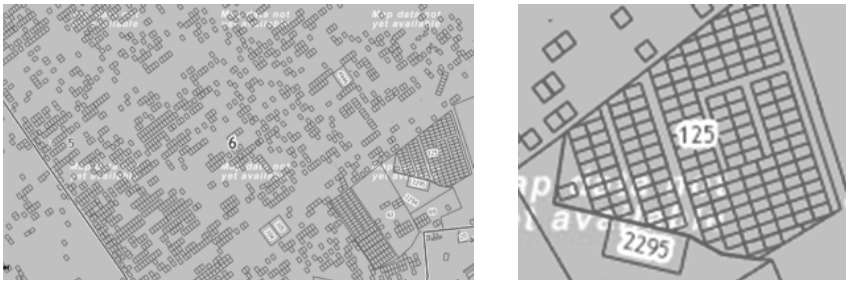


Figure 2.
Fragment of the cadastral map for the city of Nazran', 2014. Map shows a mass of new plots of 600 square meters each granted for the construction of individual houses. The right fragment demonstrates plots formed excluding the possibility of street creation. Source: Public Cadastral Map [12]

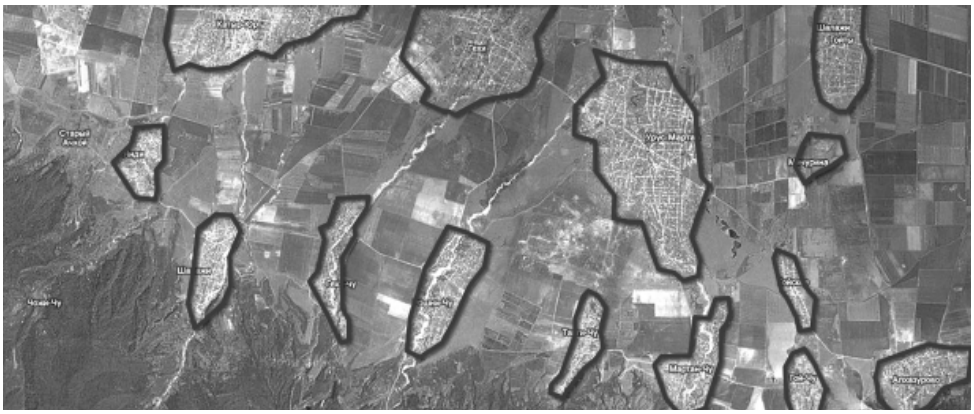


Figure 3.
Settlements' system in Chechen Republic. Source: https://maps.google.com/

amendments that made its implementation more difficult for planners as well as for local authorities. At the same time, and according to the current version of Russian Urban Planning Code, the main focus of spatial planning documents is to facilitate the provision of land and building permits. In fact, the current provisions and the imbalances between the land law (selling, buying ownership, renting) and the urban planning law tend to favor privatization. Thus the latest transformation of land law made recently facilitates the acquisition of land by privates.

Consequently, uncontrolled land privatization during the first decade of new Russian history resulted in urban sprawl and degraded urban environments in many cities, which did not receive special government attention.

Substantial quantities of land plots were created in favor of individual developers. These new urban areas are characterized by a monotonous urban environment, and the absence or poorness of public spaces. Compared to the urban environment of the Soviet cities' so actively criticized before, yet with the quality of place provided within, and the prevalence of public spaces, the new settlements seem no match for their predecessors.

The planning realities illustrated above may hardly be corrected with existing planning and management instruments within the prevailing law due to the prioritizing of private ownership and the lack of financial means to reclaim the land for the public good.

Caucasus as a specific area

Since Russia is the largest country in the world, it is difficult to imagine that cities may suffer from land deficits. However, regional differences are significant and there are some regions in Russia experiencing problems of exhausting territorial limits for their development.

Caucasus is taken as an example for this paper due to its specific characteristics and possibility to showcase an extreme example of land privatization. Caucasus differs from other Russian regions and necessitates different planning approaches due to various reasons:

- *The natural characteristics of the Caucasus area* are set apart by complex geological and geomorphological conditions causing lack of land suitability for construction , which limits the territorial development of settlements;
- *High density of population and settlements* in comparison with most Russian regions;
- *The demographic situation,* making Caucasus one of the few Russian regions characterized by population growth;
- *Attractiveness of the region* for development due to the good climatic conditions and to the diversity of landscapes and resources*;*
- *Complex relationships within society* due to ethnic and religious differences.

Hence, problems of interaction between public and private ownership are much sharper here firstly due to disputed territorial limits, and secondly due to the significant deterioration they cause to the urban environment which in some cases have economic consequences.

Thus, in the Caucasus region planners face challenges that are atypical for Russia in general. These regional features are not considered in the general national law and other normative documents. Planners and city managers do not have any experience in working in such a complicated region under conditions of prioritizing private ownership. At the same moment this situation creates conditions (precedents) for the development of a regional urban planning law and practice.

The case of Dombay

The case of the Dombay resort is chosen for this research as an extreme example of the result of uncontrolled land privatization, which helps to demonstrate its most negative effects.



Figure 4.
Location of Dombay. Source: https://maps.google.com/

Dombay is a famous mountain resort in Caucasus, known since the Soviet time. Today it is included within the municipal territory of the city of Karachaevsk in the Republic of Karachay-Cherkessia. It was founded in 1935, when the first hotel was built there. The resort is located inside the "Teberdinsky" Federal nature reserve, only 15 km from the state border. The lake of Dombay is situated at an altitude of 1650 m above sea level and is formed by the Amanauz River and two of its tributaries – Alibek and Dombay-Ul'gen. This place is very picturesque, surrounded by high mountains (more than 4500 m). Nowadays Dombay serves mostly as a sky resort; the snow period there lasts from October to May, but during the Soviet period it was an important center for mountaineering and hiking – sports, actively supported by the Soviet government. So, for the Soviet Union it was a year-round resort of national importance included in a system of Caucasian resorts (200 km away from the "Resorts of Caucasian Mineral Waters" a national health resorts area, which consists of several cities-resorts).

Stages of spatial development

The Dombay Territory available for development is very limited due to the geomorphological characteristics of the place and to the presence of the Federal nature reserve, within which development is strictly forbidden. The planning structure of the resort was formed in several stages. The first was associated with the beginning of its development as a tourist destination in the first half of the 20th century. During that period, the first tourist complexes, such as "Solar Valley" were built. The second stage is connected to the second half of the 20th century, when the largest hotel complexes in Dombay, such as "Dombay", "Peaks", and "Amanauz" were built. The idea of this resort in the Soviet time was to aim at maximum conservation of the natural environment and guarantee a limited use. So, several large and compactly located hotels were built. Most of the area was designated as a natural park connected with wild nature of surroundings. The Soviet Union's collapse led to the destruction of the state system of management of the resort, impoverishment of the population and exacerbation of interethnic conflicts in the Caucasus. In reality, most hiking trails in the region were connected with Transcaucasia during the Soviet time, however after reshaping the state borders their use became impossible. Thus, in the 90's the resort was almost abandoned and the local people had been using the territory of Dombay for restoration and catering activities.

At the end of the century the process of privatization started and a period of primary capital accumulation began. Thanks to increasing population wealth and life quality touristic activities in Caucasus began to grow. An increase in tourists flow caused a boost in land values. Dombay became very attractive for private investment. Small businesses such as mini-hotels and restaurants appeared which seemed at the beginning as a sign of a positive trend driving the resort's development. However, increasing land value attracted speculators and during the last decade the resort land was totally sold.

A lot of buyers were not interested in real business; many of them were rich famous people from other regions of Russia. Land speculation became the most profitable business in Dombay. A lot of players took part in the process of land privatization; there were a lot of illegal deals. However participation of local government made cadastral registration possible. So, now all landowners have legal rights for this land which became a main feature of the new Russian legislative system.

Current situation

The "wild privatization" has left only one remaining site in Dombay which may be considered as a public space:

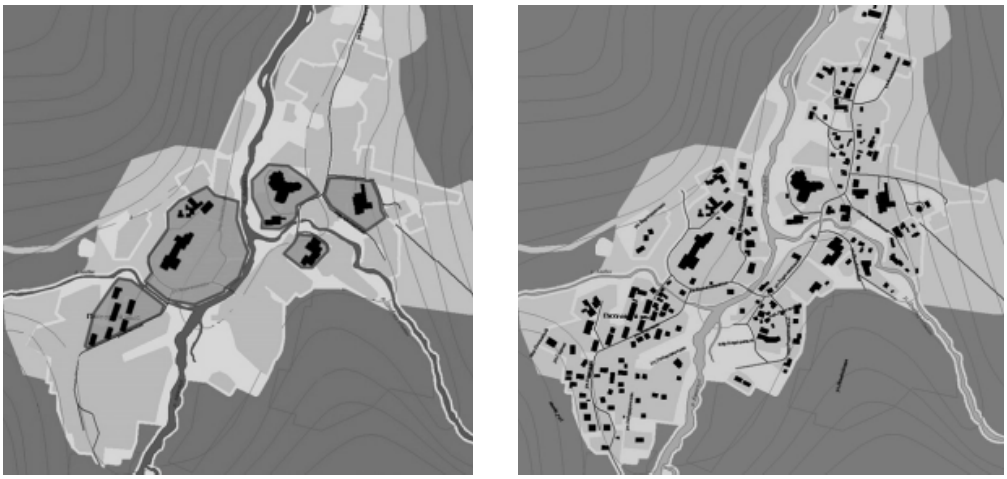


Figure 5.
Comparison of the built area of Dombay during the Soviet and current period. Maps are made by the author.

the federal road connecting the resort with its surroundings. This narrow strip of land concentrates many functions in addition to its transport function: walking, cycling, gathering, selling of local products and souvenirs, organization of excursions, information points, parking, cooking etc. The absence of land resources limits the ability of local authorities to the creation of public spaces.

In summary, the main problems in Dombay caused by the lack of public land are:

• Absence of Public Squares, parks or any other type of public spaces, leading to limited touristic activities in the resort. In fact, most activities happen out of the village, at the cable car stations higher in the mountains. The local authorities are struggling to create an informational touristic center, to organize areas to sell souvenirs and local products, provide places for new businesses etc.

• Local authorities are not able to organize large events; a local tradition in Dombay during the Soviet time (such as the Dombay song festival) which made the resort very famous and attractive. Due to the absence of public spaces, place is negotiated with the owners on a seasonal basis, wherever space is available within the property limits. The results of such negotiations can never be anticipated.

• There is a problem of parking for tourist's cars due to the impossibility to provide space for this function. This has caused negative effects for the provision of pedestrian paths, snow removal and cleaning of the streets, since tourists Park their cars along the streets.

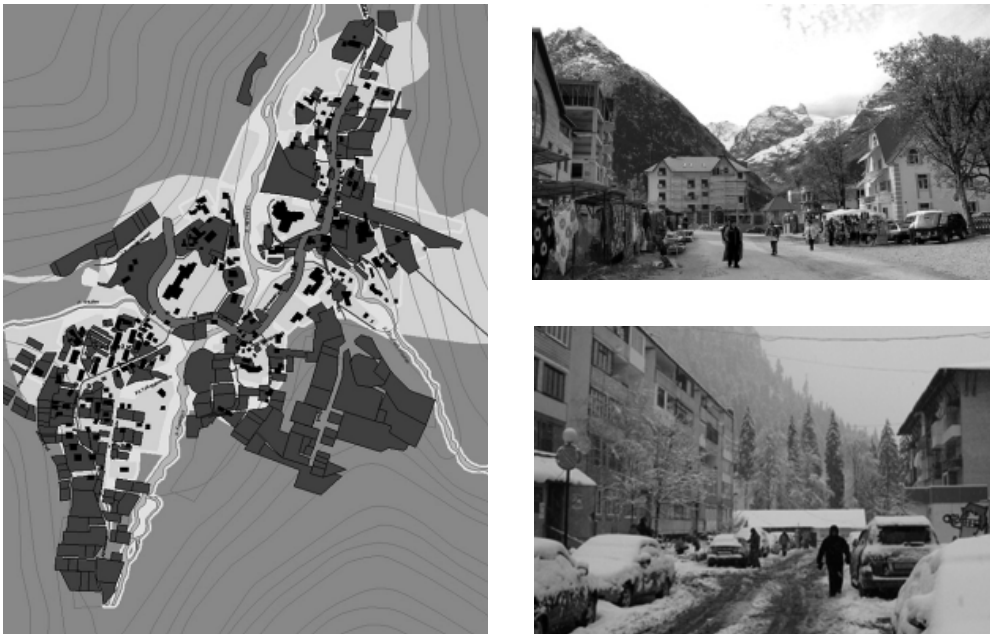


Figure 6.
The federal road used as a public space in Dombay. Map and photos are made by the author.



Figure 7.
Abandoned uncompleted hotel in Dombay. Photo is made by the author.

• The degrading quality of Dombay's built environment is exacerbated by the absence of public spaces and the excessive fencing of private plots. This interrupts the visual and physical connection of the urban space with the natural surroundings. As a matter of fact within the village's territory tourists are almost not able to feel the presence of wild nature.

As a result, the low aesthetic quality of the built environment in combination with the limited offer for possible recreational activities reduces the attractiveness of Dombay despite the uniqueness of the place.

Unfortunately, official data proving the decreasing tourist flow is not available. Similarly, business in Dombay is characterized by a high level of informal economic activities and a low level of control with little statistics about it. Information about the drop of tourist flows was given by the local authorities and local businessmen who have been losing profits in the last years. Those persons were interviewed during the development of the spatial plan for Dombay, however this information did not have any quantitative evidence. According to their collected statements, there is only one peak in the number of tourists during the year, which occurs in the fortnight of New Year holidays (from 28 December to 14 January).

In other periods of the year there are a lesser number of visitors, and during the snow-free period Dombay seems empty. Another important fact is that most stays last no more than one or two days. In addition, a visible feature of loss of investment's interests in this area may serve as indirect proof of a reduction in tourist flows. There are dozens of abandoned unfinished constructions in Dombay supposed to be mini-hotels that symbolize the end of the construction boom in this area.

Tourists were also interviewed in order to understand the attractiveness of the resort. Accordingly, there were many answers proving preliminary conclusions:

"There is nothing to do here for more than one day…"

"We run away from the city and we are in the city again…"

"I can't see mountains from here…"

"It's a very boring place…"

Work with businessmen in Dombay was complicated by the fact that many of them were not local people and were not available for interviews. In fact, only five hotel owners were available for the interview. Those businessmen confirmed information about the decrease in touristic flows. Their main complaints were about the lack of public spaces and the impossibility of organizing special events for tourists. The meetings held together with businessmen, local authorities and representatives of the regional government showed readiness of local entrepreneurs to unite and share their own resources in order to promote a change in the urban environment.

Despite these positive factors the situation is still far from being addressed due to specific circumstances: lack of experience and of the necessary management tools for an effective interaction between the government, the public and the private businesses, the high level of shadow economy, the absence of adequate legislations, in addition to the lack in experience in solving such problems.

Conclusion

The case of Dombay illustrates the extreme result of a total land privatization implemented without considering public interests and possible negative effects on the

quality of the urban environment that finally led to the decrease of resort's profitability. The privatization process in Russia is still in progress; the case of Dombay demonstrates the need for improving the system of land privatization. Russian urban planning legislation needs to be transformed to shift the focus from land law to urban planning law. It requires efforts on the National level with a better interaction between the different appropriate ministries and organizations. In addition, what seems even more important, new laws should focus on specific regional aspects. As Russia is characterized by a high level of regional diversity, this must be taken into account in its legislative system through establishing special status for different regions in addition to the development of regional laws and normative documents, which are almost absent now.

At present, the use of a top-down approach in the Russian case with its centralized state organization seems to be more effective. At the same time limited development potentials in Dombay may create the conditions and opportunities for unique original solutions and for new forms of interaction between stakeholders at different levels. Willingness of local entrepreneurs to unite and possible cooperation of local authorities and businessmen in order to develop a strategy for the future may lead to positive results, especially due to the high interest of the regional government for Dombay. Such interest at the higher level and initiatives from local actors, who have better insights of the specific aspects of the place, are a good combination for finding an adequate solution. Situations like this could be good starting points for deconcentration in Russia and for increased municipal prerogatives.

Finally, the Dombay case does highlight the negative aspects of hasty land deregulation, however at the same time it provides an opportunity to rethink the whole process of land privatization and to try to amend the mistakes that were once made in a specific context of political change.

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