REAL ESTATE AND CONSTRUCTION

1.44

According to the latest statistics of the World Bank, Serbia is ranked 9th when it comes to obtaining building permits, which is an exceptional leap compared to the 152nd place that Serbia occupied just a few years ago.

Conversion: Some improvement has been seen with regard to the conversion proceedings, and a growing interest from investors to initiate and finalize these proceedings has been evident. However, it is essential that the application of Article 11, paragraph 6 of the Law on Conversion for a Fee be confined to cases where the applicant for conversion is a company with majority public or state-owned capital, so that restitution claims do not block the conversion process.

Law on the Registration Procedure with the Cadastre of Real Estate and Utilities: By adopting the new Law on the Registration Procedure with the Cadastre of Real Estate and Utilities, some progress has been made in the operations of real estate cadastre, which is primarily reflected in the implementation of information technologies in almost every segment of cadastral operations, which contributes to increased promptness, customers' time savings and simpler and faster registration procedures. In principle, the implementation of the Law can be assessed as positive, but there is still plenty of room for improvement.

Restitution: The issue of the freedom of the assessment of proofs in restitution procedures has not been resolved. Claimants in restitution procedures who are not able to obtain the legally prescribed specific proof – the document on confiscation – will not be granted restitution rights regardless of the existence of other proofs that the seizing of the property did occur.

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Construction land and development				
The implementation of the latest version of the Planning and Construction Law should be monitored by all relevant stakeholders.	2015		√	
It is necessary that all competent authorities are clearly and precisely trained to implement the Planning and Construction Law.	2018		√	
The implementation of the new Law on the Legalization of Buildings should be monitored by all relevant stakeholders.	2014		√	
It is essential that the application of Article 11(6) of the Law on Conversion for a Fee be confined to cases where the applicant for conversion is a company with majority public or state-owned capital.	2016			√
Dialogue, communication, and long-term co-operation should be established between the state, relevant ministries, local authorities and all other relevant institutions on the one hand, and the FIC with its Real Estate Committee and other stakeholders dealing with real estate on the other, in respect of strategic issues, with the goal of improving the real estate market in the best interest of everyone.	2009		√	
Restitution				
The Restitution Agency should conduct transparent restitution procedures granting the right to restitution to redress the injustice perpetrated 70 years ago, taking due care to protect basic human rights of the parties to the proceedings and enabling foreign nationals to exercise the right to restitution, equating them with Serbian nationals in these proceedings, irrespective of their citizenship and nationality, in accordance with decisions of judicial authorities and the Ministry of Finance.	2015			√
State authorities should ensure that the acquired rights of foreign investors are protected in accordance with the law.	2015			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
State bodies, namely the Ministry of Finance, in administrative proceedings as initiated in line with the provisions of the former Law on Co-operatives by newly-founded agricultural co-operatives, should seek to protect the full private property rights of foreign investors.	2018		√	
Mortgages and Real Estate Financial Leasing				
The Law on Financial Leasing must be harmonized with current real estate regulations, in particular in terms of the possibility of registering an existing real estate lease in the real estate cadastre, which must be clearly prescribed by the Law on Cadastre and State Survey. Also, by elaborating the tax legislation, the state should create a more favourable climate for implementing financial leasing in the real estate sector.	2009			√
The Law on Mortgage needs to be amended to explicitly regulate the procedure and consequences of amendments to registered mortgages, to regulate some of the more flexible types of mortgage envisaged by comparative law, such as conditional, credit and continuous mortgages, and allow a mortgage to be registered as collateral for multiple claims on different legal grounds, and for different creditors' claims.	2018			√
The rights of the tenant in the case of extrajudicial enforcement should be specified.	2018			√
Cadastral Procedures				
More transparent and clearer instructions should be provided for the implementation of the law in order to further accelerate and increase the predictability of cadastral procedures.	2012			√
Online access to cadastral data should be unlimited and free, with daily updates, and the issuing of simple documents, such as title deeds, should be made possible on the spot.	2012			√
The formation of the utility cadastre should be finalized.	2015		√	
The State Geodetic Authority should ensure the harmonization of administrative practices among all cadastral offices, increase control over their operations, ensure more availability to clients for consultations, and handle complaints in a more timely manner.	2015			√
The State Geodetic Authority should resolve all unresolved second-instance cases as soon as possible.	2018			√
Software maintenance and improvement practice must reach a higher level.	2018		√	
Through change of practices and/or the regulatory framework, there is a need to secure the recognition and adequate treatment of exceptions from the principle of formality, so that diligent investors and mortgage creditors do not suffer any negative consequences due to a rigid interpretation of laws.	2018		√	

CONSTRUCTION LAND AND DEVELOPMENT 1.80

CURRENT SITUATION

The focus of the Foreign Investors Council (FIC) remains on the implementation of the Planning and Construction Law, and in particular the permitting procedure, construction land status and legalization of buildings. New investments, obtaining the necessary permits in the integrated procedure and the follow-up of the adopted legislation remain the FIC's main areas of interest.

Construction Land and Development

The issue of property rights and mixed forms of private and public property remains a substantial obstacle in the construction sector in Serbia. Until 2009, the state was the sole owner of urban construction land, and the only right that someone could have to this land was a permanent right of use, or a long-term lease of 99 years.

Conversion of the right of use to ownership of construction land

The Planning and Construction Law provides for two types of conversion: no-fee conversion, set as a general rule, and conversion for a fee.

Conversion for a fee applies to holders of the right of use that are:

- entities which were privatized under the laws governing privatization, bankruptcy and enforcement proceedings, as well as their universal successors;
- companies that acquired the right of use over state-owned undeveloped land which was acquired for development before 13 May 2013 or based on a decision of the competent authority;
- sport and other associations;
- socially-owned companies;
- entities incorporated in ex-Yugoslavia to which the Succession Treaty is applicable.

The Law on the Conversion of the Right of Use to Ownership of Construction Land for a Fee ("Law on Conversion for a Fee") prescribes conditions for the conversion of the right of use to ownership over publicly-owned construction land and the possibility of establishing a long-term lease on such land.

The conversion fee is set at the market value of land (by the local municipality) at the time of submitting the request for conversion. Reductions of the fee are possible, under the terms stipulated by law (the most notable reduction is in the case of developed land, where the fee is not payable for land under a building and for a regular use of a building). State aid clearance applies to reductions (to the extent applicable).

The Law on Conversion for a Fee allows for concluding a 99-year lease agreement with the owner of construction land until conversion. In this way, the lessee can obtain a construction permit before paying the conversion fee.

During the preparation of this edition of the White Book, the Ministry of Construction, Transport and Infrastructure published the Draft Law on Amendments to the Law on Conversion for a Fee. The final text of the amendments to the Law is not yet known, so the effects will be seen after their adoption and implementation.

Construction

The Planning and Construction Law was amended several times in 2018 and 2019.The amendments may be generally considered as positive because their goal was to facilitate the procedures and to make clarifications, as well as to improve the regulatory framework.

Some of the most significant amendments are as follows:

- a construction permit ceases to be valid if the commencement of works is not notified within three years from the day when the decision on the construction permit becomes final, instead of the previously prescribed two-year period.
- instead of the Serbian Chamber of Engineers, the Ministry competent for construction and spatial and urban planning issues licenses to the responsible planner, responsible urbanist, responsible designer and responsible contractor. The Ministry shall check whether foreign citizens meet the requirements to provide these services.
- the Central Registry of Energy Passports (CREP) has been established. It contains a database of authorized organizations which qualify for the certificate issuance, of responsible engineers for energy efficiency who are employed at such organisations, and of issued certificates on energy characteristics of building.
- Instead of being held jointly responsible with the investor for all liabilities against third parties, the financier is responsible for liabilities towards third parties which are consequences of activities performed by it in accordance with its authorisations.

Legalization

The legislators tried to cope with legalization issue by enacting various regulations, but none of these attempts were deemed successful. The Legalization Law from 2015 stipulates only two options for illegally built facilities – demolition or full legalization. This law was significantly amended in 2018, with the prohibition of disposal on illegal buildings and the 2023 deadline for the completion of the legalization process being the significant amendments.

POSITIVE DEVELOPMENTS

Conversion of the right of use to ownership of construction land

Some improvement was made regarding conversion procedures. The authorities are becoming more cooperative in this regard.

Construction

As for the number of issued construction permits, one may note an increase in the number of issued construction permits since the unified procedure was introduced.

According to the World Bank's recent global Doing Business ranking, Serbia is in 9th place in terms of obtaining construction permits, which represents an exceptional leap compared to 152nd place only a few years ago. In addition, the World Bank noted that reforms are being undertaken to facilitate business in this area.

Legalization

For facilities used without a use permit, the respective permit is to be obtained in a regular procedure, in accordance with the law governing the construction of buildings, unless, in the course of construction, deviations from the construction permit were such that an amendment to the construction permit cannot be obtained. Exceptionally, only in cases when a construction permit was issued in a previous legalization procedure, but no use permit has been obtained, the designated authority will issue a decision on legalization, without implementing the procedure prescribed by this law.

Only a building for which there is evidence of title to the construction land, or to the building itself, is eligible for legalization, and the Law specifies what is considered evidence of title.

Properties for which an earlier application for legalization was already denied cannot re-apply for legalization, unless the planning document was amended or the request was denied for reasons which are otherwise stipulated in the Legalization Law, and which are more favourable for the owner of the illegally constructed building.

The law stipulates for a fixed legalization fee determined using several criteria, such as the intended use of property (commercial or residential) and surface area, while the procedure has been significantly simplified.

Furthermore, buildings for which a legalization request has not been submitted in accordance with previously applicable laws will also be subject to legalization, provided that such facilities are visible on a satellite image of the Republic of Serbia produced in 2015.

If a request for the legalization of a building is rejected or denied, the building will be demolished. In practice, there has been no significant enforcement of demolition orders.

REMAINING ISSUES

Conversion of the right of use to ownership of construction land

A large number of conversion cases have been suspended, mainly on the grounds of Article 1, paragraph 5 and Article 11, paragraph 6 of the Law on Conversion for a Fee, which stipulate that the conversion process shall be immediately suspended by the competent authority if it is established that the plot of land is subject to restitution, until the final completion of the restitution process.

However, Article 9 of the Law on Property Restitution and Compensation provides that only a public enterprise or other legal entity (i.e. an entity founded by the Republic of Serbia, autonomous province or a local government unit, a company with a majority state-owned capital and cooperatives, including enterprises and cooperatives in the process of bankruptcy or liquidation) is obliged to return nationalized property, and that restitution in kind is not possible in all other cases. Consequently, a stay of the conversion process in all these other cases is unjustified.

It is, therefore, essential that the application of Article 11, paragraph 6 of the Law on Conversion for a Fee be confined to cases where the applicant for conversion is a company with a majority public, i.e. state-owned capital.

Additionally, there are serious problems with inconsistencies in the calculation of the conversion fee by the relevant authorities. Consequently, investors cannot predict in advance the amount of the conversion fee for large-scale projects and plan the funds in their accounting records accordingly. The unpredictability of the costs of conversion proceedings significantly affects plans of investors to acquire locations that require conversion proceedings.

Also, although the amendments to the Planning and Construction Law have to a certain extent clarified the dilemma regarding cases when the conversion is carried out with a fee, there are still hesitations and uncertainties of the competent authorities present in practice when resolving conversion requests, especially in cases where the buildings were transferred after the completion of privatization, bankruptcy or enforcement proceedings, or when assets (buildings with associated usage right on the land) and not legal entities are being purchased in these proceedings. In that sense, it would be necessary to make legal texts more precise and, in the meantime, for competent authorities to take a consistent position for the purpose of efficiency in these proceedings.

Construction

The implementation of the integrated procedure and the latest version of the Planning and Construction Law should be monitored by all relevant stakeholders in order to timely identify and remove the problems that arise in practice. It is also necessary to improve software solutions and capacities to facilitate and speed up the procedure of electronic submission of documentation.

It is necessary to continue with the education of authorities in charge of the law's implementation. It is often a case in practice that certain applicable regulations are not applied by authorities in a uniform way.

Also, it is required that the competent authority in the integrated procedure issues permits with the appropriate content which will, in accordance with the relevant legislation, enable the investors to register ownership rights at the newly constructed building(s) (especially when it is related to a complex with several buildings and lines/pipelines), and without being exposed to an additional consumption of resources and time in order to obtain some special documentation (evaluation reports and etc.) by which it will be confirmed what building/s the construction and usage permits are related to (comparing the permits and projects based on which the permits have been issued). It is necessary that permits be forwarded without delay and in accordance with the official duty to the competent cadastre authority of immovable properties i.e. the office for the utility network cadastre (if it is related to the constructed pipelines).

The latest version of the law introduces amendments in relation to the issuance of construction, upgrade or reconstruction permits for utility infrastructure and line infrastructure and energy power facilities by providing, as proof of settled property-legal relations on the land, inter alia, the investor's statement that it will settle property-legal relations prior to issuing use permit. The idea of the legislator is to issue a construction permit for the whole project, and to start works on parts of the project on parcels where the property-legal situation has been resolved, all in order to accelerate the start of construction. However, this solution has no visible effect in practice, because the previous legal solution already envisaged that the notification of the commencement of works cannot be made before obtaining evidence on resolved property-legal relations.

Additionally, it is necessary to make the legal definition of evidence on settled property-legal relations from Article 69, paragraph 9 of the Law more precise. The current formulation leads to an illogical legal solution because Article 148, paragraph 5 of the Law prescribes that (if the construction permit was issued on the basis of the investor's statement that it will resolve property-legal relations before the issuance of a use permit) notification of the commencement of works may be submitted only for the part of the building for which the investor has submitted evidence on the resolved property-legal relations. In this way, the statement would at the same time be the basis for the issuance of construction permit, and evidence of settled property-legal relations on the basis of which the works may be notified, which is not in accordance with the spirit of the law.

Subcontractor's license

The lack of precision regarding the obligation to obtain a license for contractors and subcontractors leads to uneven and unclear practice. The question arises as to whether subcontractors are obliged to obtain the license or if it is sufficient for the contractor to hold the license and vice versa. The answer to this question does not only affect the existence of the obligation to initiate the process of acquiring the license, but also other aspects of the subcontractor's and contractor's business, especially if it is a foreign entity.

Legalization

Prohibition on disposal has created a problem when the title holder of an illegal building and the title holder of the land

are not the same person. The Law should be amended in order to enable the legalization of such buildings when there is consent of both sides. Also, given the huge number of illegal buildings in Serbia, it is necessary to reconsider whether the prohibition on the disposal of illegal buildings should be limited to buildings that cannot be legalized because in practice, the existing prohibition significantly complicates legal transactions in situations where legalization is possible and hence such prohibition is not justified. Also, prescribing the deadline for legalization which results in the rejection of a request for legalization is a principle that should be changed, because the procedure is conducted ex officio and does not depend on the will of the party, and therefore the owner of an illegal building should not bear consequences of the administration's inefficiency.

The Law is ambiguous on the issue of whether a decision on legalization substitutes a construction permit and a use permit, as can be concluded from Article 12, paragraph 1 of the Law. Namely, a decision on the legalization of a building is issued by the Ministry of Construction, i.e. the competent authority of the autonomous province i.e. the local authority (hereinafter referred to as the Competent Body) upon the performed procedure, when it will be determined whether an illegally constructed building fulfils the stipulated conditions for use and other conditions defined by the Law. However, the practice has shown that a decision on legalization does not constitute, pursuant to the opinion of the competent institutions, a valid legal base for issuing an energy licence, which is why the energy licencing procedure requires performing a special technical acceptance procedure for buildings which have been subject to legalization, i.e. obtaining a special technical examination commission report in which it will be clearly stated that the building is fit for use in accordance with its purpose even though for such a building the purpose is stated in the decision (for example: a tank for euro diesel with a capacity of Xm3). Furthermore, the owners of the buildings are exposed to additional expenses and are put into an unequal position compare to the owners of other buildings with different purposes for which it is not required to obtain an energy licence.

FIC RECOMMENDATIONS

- The implementation of the Planning and Construction Law should be monitored by all relevant stakeholders.
- All competent authorities should be clearly and precisely trained to implement the Planning and Construction Law.
- The implementation of the Legalization Law should be monitored by all relevant stakeholders. It is necessary to amend this Law in order to limit the prohibition of disposal to buildings that cannot be legalized, as well as to delete the provision that provides for rejecting a request for legalization if the legalization is not completed by 2023. Moreover, it is necessary that the Decision on legalization has the power of a construction permit and a use permit, which will be prescribed by the appropriate content of the decision (without an additional technical examination /obtaining of a special permit to use).
- Article 11(6) of the Law on Conversion for a Fee should be confined to cases where the conversion applicant is a company with majority public or state-owned capital. Also, it is necessary to clarify when the conversion is carried out with the fee and when not.
- Communication and co-operation should be improved between the authorities on the one hand, and the FIC and other stakeholders dealing with real estate on the other, in respect of strategic issues, with the goal of improving the real estate market in the best interest of all.
- Definition of evidence on the settlement of ownership rights in Articles 69(9) and Article 148(5) should be clarified, to avoid the interpretation that the investor's statement stating its intent to settle ownership of the real estate before the issuance of a use permit is also proof that ownership rights were settled.
- The obligation of subcontractors engaged by a contractor to hold licenses which are already held by the contractor and vice versa should be clarified.

MORTGAGES AND REAL ESTATE FINANCIAL LEASING 1.00

CURRENT SITUATION

The Law on Mortgage, adopted at the end of 2005, was last amended in 2015.

We have to point out again that these latest amendments to the Law on Mortgage were not sufficiently far-reaching, the impression being that they lack additional clarifications, which could have been very useful. In addition, they also failed to introduce some new useful concepts.

Notwithstanding the fact that the Law on Mortgage has not been subject to amendments recently, the procedure on mortgage registration in the cadastre has been significantly amended by the adoption of the Law on the Registration Procedure with the Cadastre of Real Estate and Utilities in 2018, which reflected not only on the procedure for mortgage registration, but on the implementation of certain provisions of the Law on Mortgage as well.

The financial leasing of real estate, introduced by amendments to the Law on Financial Leasing in May 2011, is not yet operational in practice.

POSITIVE DEVELOPMENTS

On the whole, the Law on Mortgage from 2015 introduced significant improvements to eliminate the biggest problems in practice, including a very important amendment to the provision on the reservation of the rights of lower-ranking mortgage creditors in case of out-of-court mortgage settlement, because of which many mortgage creditors opted for the slower but more secure in-court foreclosure proceedings.

The possibility to appoint a third party as the "security agent" has been introduced and is applied in practice in cases of syndicated lending by multiple banks although the provision on authorizations of the "security agent" is not sufficiently clear.

Regulating the time frames within which cadastral authorities must decide on requests for the registration of relevant annotations has resulted in an increased efficiency of the cadastral authorities in terms of registration. Furthermore, the introduction of the principle of officiality under the Law on the Registration Procedure with the Cadastre of Real Estate and Utilities, which provides for the public notary's obligation to submit the certified document within 24 hours of certification of the document, has additionally contributed to the acceleration of the registration procedure.

One of the positive changes is also the resolution of the issue of which procedure is applicable when a foreclosure is initiated on the basis of both the Law on Mortgage and the Law on Enforcement and Security.

REMAINING ISSUES

A situation that is not uncommon in practice, i.e., the registration of one mortgage as collateral securing multiple claims on different grounds and also by multiple creditors has not yet been explicitly regulated. Issues related to setting up a mortgage to secure claims of multiple creditors have appeared as a consequence of the opinion of public notaries that such a mortgage may be set up only in cases when the claims of different creditors have the same legal basis.

The introduction of the institute of a "third party" (in effect "the security agent") is a positive step, but the existing provision does not elaborate on the role of the security agent in relation to the relevant authorities. We believe that, in practice, the security agent will probably need to obtain special authorizations for undertaking actions on behalf of mortgage creditors before the competent authorities.

The form of the mortgage document has not been regulated in a satisfactory manner yet. Bearing in mind that the enforceable mortgage document must be drawn up in the form of a notary deed (in itself an enforceable document), the legislator's requirement with respect to the exact wording of the mortgage document is unnecessary. Conversely, given that the only requirement for a real estate sale contract is that it should be solemnized by a notary public, there is no reason why the same practice should not be applied to mortgage documents as well.

The position of the tenant in the case of an out-of-court settlement is not entirely clear. Specifically, following the amendments to the Law on Mortgage, it seems that in the case of a foreclosure, the mortgagee/buyer of the real estate can in any case demand that the tenant vacate

the property, which is not always feasible in practice (e.g. in the case when the mortgagee was or could have been familiar with the existence of the lease at the time when the mortgage was created). On the other hand, the Law on Enforcement and Security protects the dutiful tenant who stays in possession of the real estate even following the court foreclosure procedure. The legislator must provide clear rules for resolving the conflict between the rights of the mortgagee in a foreclosure procedure (court or out-of-court) and the rights of the tenant. Given that courts have different practices in respect to this issue, we are of the opinion that trainings of judges should be organized on a regular basis, because the Law on Mortgage and the Law on Contracts and Torts are in many cases interpreted incorrectly, which leads to an inconsistent application of these two laws.

Bearing in mind the principle of officiality introduced by the Law on the Registration Procedure with the Cadastre of Real Estate and Utilities, it remains unclear how the provision under Article 53 of the Law on Mortgage, which provides for the disposal of an unreleased mortgage, will be implemented. Specifically, the disposal of an unreleased mortgage is subject to the provision of evidence that the secured claim has ceased to exist, i.e., to the issuance of a deed of release by the previous mortgage creditor in the form of a notary deed or a document solemnized by a public notary. Hence, it is unclear how the mortgage debtor who wants to dispose of the subject unreleased mortgage will prevent its release in case of the notarization of a deed of release, when a public notary is obliged to submit the subject deed of release to the competent cadastre registry within a 24-hour deadline. On the other hand, without a notarized deed of release, the owner of mortgaged real estate will not be able to dispose of the unreleased mortgage.

Finally, the Law on Mortgage has not explicitly stipulated more flexible forms of mortgage that exist in comparative law, such as deposits, credits or continuing mortgages, as well as the (im)possibility and effects of annexing existing mortgage documents.

As for real estate financial leasing, we point out that it still does not work in practice, as the legal framework has not been sufficiently developed.

FIC RECOMMENDATIONS

- The Law on Financial Leasing must be harmonized with current real estate regulations, in particular in terms of the possibility of registering an existing real estate lease in the real estate cadastre, which must be clearly prescribed by the Law on the Registration Procedure with the Cadastre of Real Estate and Utilities. Also, by elaborating the tax legislation, the state should create a more favourable climate for implementing financial leasing in the real estate sector.
- The Law on Mortgage needs to be amended to explicitly regulate the procedure and consequences of amendments to registered mortgages, to regulate some of the more flexible types of mortgage envisaged by comparative law, such as conditional, credit and continuous mortgages, and allow a mortgage to be registered as collateral for multiple claims on different legal grounds, and for different creditors' claims.
- The rights of the tenant in the case of extrajudicial enforcement should be specified.

CADASTRAL PROCEDURES 1.43

CURRENT SITUATION

By adopting the new Law on the Registration Procedure with the Cadastre of Real Estate and Utilities, some progress has been made in the work of the real estate cadastre, which is primarily reflected in the implementation of information technologies (IT) in almost every segment of cadastral operations and which contributes to increased promptness, clients' time savings and simpler and faster registration procedures. The implementation of regulations can generally be assessed positively, but obviously there is still plenty of room for improvement.

The new Law on the Registration Procedure with the cadastre of Real Estate and Utilities introduced important novelties which are primarily reflected in the manner of submitting requests and documentation to the cadastre, relations between the cadastre and other public authorities, as well as deadlines for procedures. The law should further expedite cadastral procedures by introducing the obligation of public notaries, courts, public enforcement officers and other state authorities to send their records electronically in shorter time. By introducing the electronic counter, the aim of this law is for written cadastral procedures to be gradually converted to electronic ones as well as to improve cadastral procedures. However, the drawback of the law is an even more strict treatment, reflected in the reduction of one of the most important principles of procedural law - helping the uneducated clients. The effective implementation of this law is a challenge that is ahead of us.

POSITIVE DEVELOPMENTS

The new Law on the Registration Procedure with the Cadastre of Real Estate and Utilities provides visible results in terms of the acceleration of processes, as well as clearer and more efficient cadastral procedures. It is expected that the newly adopted law will strengthen this trend by simplifying the complicated cadastral procedures and shortening the deadlines.

One of the key novelties introduced by the law is the obligation of public notaries, courts, public enforcement officers and administrative authorities to submit ex officio documents that represent a legal basis for registering in the cadastre, for the purpose of implementing the change. With this novelty, the entire process has been significantly shortened because the real estate cadastre will no longer have to check the legality of submitted documents, because the legality of a document is under examination in the process of its adoption, compiling or confirmation, so it is not necessary for the same documents to be examined by the authority for registration in the cadastre. With this novelty, the arbitrariness of the authority for registration in the cadastre is reduced to a certain extent because the assessment of legality has been transferred to other authorities, which have shown greater preparedness for the harmonization of their work and transparency in decision making.

An important novelty is that if registration is done by a notary public, one can also, at the client's request, submit a tax application for determining the tax on the transfer of absolute rights or inheritance and gift taxes, as well as a tax application for determining property tax, after which the cadastre can forward it to the competent tax authority.

In addition to the fact that the new law shortened the deadlines for submitting registration requests to the real estate cadastre, the deadlines for their realization are also shortened. It is envisaged that if the documents for registration are submitted by public notaries, courts or other competent authorities, the cadastre will render its decision within 5 business days, while if the requests for registration are submitted by a natural person, cadastre will render its decision within 15 business days, except in the case of mortgage registration or the registration of mortgage sales, as well as in simpler administrative matters, where the deadline is also 5 business days.

For the purpose of the reliability and accuracy of information about immovable property that are available in the real estate cadastre, the new law stipulates that for each immovable property a unique registration number shall be determined and entered, that prenotation of facilties and separate units of a facility that are under construction shall be recorded without the limitation of prenotation duration, the recording of new annotations –annotation of an appeal of a first-instance decision, annotation of the existence of a Concession Agreement, annotation that during the commissioning process the commission established the change of the title holder on a plot of land, and annotation that the document with which registration in the cadastre has been made has been delivered to the authority which is competent to initiate ex officio an appropriate procedure for its annulment, i.e. termination, as well as delivered to the public prosecutor.

Finally, although there is a tendency to replace paper form applications with electronic ones, clients are still left with the possibility to submit requests and all necessary documentation in paper form, while the cadastre will accept such requests until the end of 2020. Public notaries, public enforcement officers, and local government units shall submit documents to the real estate cadastre exclusively by electronic means, via e-counters, and the same obligation will be imposed on courts from 1 January, 2020.

Recently, the Geodetic Authority presented a new website, http://upisnepokretnosti.rs, which improved the availability of information on how to register in the cadastre, on competent public notaries, the status of cadastral subjects, statistics of solved claims, as well as other relevant information related to the procedure of cadastral registration.

REMAINING ISSUES

What continues to be the main issue is the inconsistent interpretation of applicable regulations by different cadastral offices, often in contradiction to other laws and by-laws.

Cadastral offices have taken a prominent formalistic approach to processing applications for the registration of rights to immovables. This approach will certainly help accelerate procedures at cadastral offices, which is one of the main expectations the investors have. Yet, an exceedingly formalistic approach can also aggravate the position of clients. In that sense, the power of the cadastre authority to reject an application that it finds non-compliant, without the obligation to inform the client about the deficiencies identified in it, is highly problematic as it results in such client losing priority to register the right and in unpredictable additional delays. It is therefore necessary to consider a possibility for a client, whose application was rejected for formal reasons, to retain priority in issuing the decision, provided that the same party re-files its application within a short deadline.

A persistent problem concerns the transfer of mortgages from buildings under construction to finished buildings in cases when an investor has deviated from parameters set out in the construction permit. This is particularly prominent in cases when separate units of a building under construction are mortgaged. Although the Mortgage Law clearly mandates that a mortgage covers improvements on immovables and prohibits the investor from making any alterations to the building without the creditors' consent, in practice there are deviations from construction permits and investors manage to legalize and register such altered buildings within the cadastre. However, due to its strictly formalistic approach, the cadastre authority refuses to transfer the mortgage from a building under construction to the finished building under the pretext that the mortgaged building no longer exists. Consequently, creditors risk losing the mortgage, and conscienceless investors are protected. To avert such situations, either the practice of the cadastre authority should be changed, or the law needs to be changed in order to create the obligation the cadastre authority to transfer mortgages in such cases. Alternatively, regulations on legalization should stipulate that the authority, when approving legalization, orders the transfer of the mortgage from the building under construction to the legalized building.

Also, in view of compliance with the principle of mortgage extension, the cadastre authority ought to register a mortgage to all facilities that were created out of the existing mortgaged one (e.g. a creditor has a mortgage on two apartments, and a debtor/owner splits those apartments into a few smaller ones or demolishes the partition walls and makes them part of the adjacent apartments). The same goes for various "upgrades," e.g. when entire floors are constructed on top of the existing buildings.

In addition, the legislature should define what is considered the principal thing and what its accessory, given the collision of the mortgage with the gage on movable items that ceased to be movable once they became incorporated into the immovable property (e.g. air conditioning, various installations).

The biggest problem that remains are the deadlines for deciding on the requests of the parties for registration in the cadastre register that are regularly exceeded due to work overload of the cadastre offices. Although some progress has been made, a large number of unresolved cases from the past have remained, some of which are more than several years old. Also, the Geodetic Authority should organize work on second-instance cases in a way to ensure a greater efficiency and speed of resolution, since decision-making in second-instance cases often lasts for several years.

Digitization and arrangement of cadastral plans have not been completed, and in practice, there is a lack of harmonization of the data contained in the cadastral operation and the corresponding cadastral plan, which is slowing down investments that as an object have large surfaces of land.

Software problems that prevent the implementation of regulations must be addressed and resolved quickly, rather than keeping them unresolved for a long period of time.

The data available through the e-Cadastre are not always reliable, because the updating of the data is not frequent enough.

In practice, there is also an inability to complete the so-called notarial requests, i.e. cases that are formed on the basis of requests and documents for registration that a notary public submits ex officio, to the cadastre. The only way to complete such subjects is through an appeal to the decision on suspending the procedure of the real estate cadastre office, which additionally complicates the entire procedure (for example, in case the Agreement on sale and purchase is certified before the entry into force of the new Law on the Registration Procedure with the Cadastre of Real Estate and Utilities, and clausula intabulandi after that date).

After number of legal changes, there is still ability to abuse the institute of annotation of an initiated dispute with direct effect on factual possibility of immovable property disposal. The law issues the registration possibility of annotation of an initiated dispute in itemized listed situations so the third party can be informed that a specific real estate title is the subject of a dispute, and that there is conditional possibility of changing the current state. Despite the legal framework, when a submitted demand for annotation request evidently does not fulfil legally settled criteria, competent authorities are taking part in making decisions that are made by their own merits, that can last for a long time, in which period the owners have difficulty with disposal of their immovable property (for example the existence of annotation discourages potential buyers of the immovable property). New legal solutions introduced the mechanism to help speed up decision making by the authority in this situation, but implementation in practice is inconsistent and depends on cadastre office.

Also, the fact that the notary public is obliged to submit notarized documents to cadastre within 24 hours, creates problems in practice when the parties want to postpone the submission in order to simultaneously perform some other actions (for example, a buyer is ready to pay the price to the seller from which the mortgage creditor registered on the object of the sale will be settled if he is sure that he will get a mortgage release permission). On the other hand, the mortgage creditor would be willing to issue such permission that would be held by a third party until he receives money. This scenario protects all three parties, but with the existing legal regulation this is not possible because the public notary would immediately forward the mortgage release permission to the cadastre, which would endanger the interest of the mortgage creditor.

The utility cadastre is not yet fully set up, which creates uncertainty in the domain of property rights, and prevents registration of encumbrances on utilities. A particular problem is the current work organization of the Geodetic Authority related to the registration of lines/utility networks and their rights. Namely, registration in the registry of the utility network cadastre upon request of the third party is performed by a small number of utility offices in the utility network cadastre (established in one centre – an office in charge of several municipalities), for which reason the work procedure has been additionally delayed, not only in the process of resolving cases before the utility network cadastre but also with respect to issuing copies of plans for already drawn/registered utility networks/lines even in comparison to the previous period (before the establishment of the subject office). Moreover, there is no possibility to lodge an electronic complaint regarding the work of the utility network cadastre office as a special organizational unit, via the website of the Geodetic Authority.

FIC RECOMMENDATIONS

- More transparent and clearer instructions should be provided for the implementation of the law in order to further accelerate and increase the predictability of cadastral procedures.
- Online access to cadastral data should be unlimited and free, with daily updates, and the issuing of simple documents, such as title deeds, should be possible to made on the spot.
- It is necessary to establish an even more efficient system of resolving requests of clients and to simplify the

way to complete the so-called notarial subjects or introduce the obligation of the public notary to attach the documents required for the registration.

- Forming electronic database for the Utilities cadastre that will be available to the public or registered users in the way that has already been done with the real estate cadastre, with the possibility of issuing a certificate from the utility network cadastre (corresponding to a certificate from the immovable property cadastre).
- Creating the legal possibility that the public notary should not be obliged to submit the notarized documents to the cadastre immediately if the clients wish so.
- It is necessary to register all utilities in the utilities cadastre without delay.
- The Geodetic Authority should ensure a harmonization of administrative practices among all cadastral offices / the utility network cadastre office, increase control over their operations, ensure more availability to clients for consultations, and handle complaints more efficiently, i.e. to enable electronic complaints about the work of the utility network cadastre office, through the website of the Republic Geodetic Authority.
- It is necessary to prescribe urgency when resolving clients' requests for entry/deletion of the annotation of a dispute at all stages of decision making, as well as a consistent implementation of the law.
- The Geodetic Authority should resolve all unresolved second-instance cases as soon as possible.
- Software maintenance and improvement practice must reach a higher level.
- Through change of practices and/or the regulatory framework, there is a need to secure the recognition and adequate treatment of exceptions from the principle of formality, so that diligent investors and mortgage creditors do not suffer any negative consequences due to a rigid interpretation of laws.

RESTITUTION 1.33

CURRENT SITUATION

The urgency of restitution is grounded in its tremendous potential for promoting the security of property rights in a symbolic and exemplary manner, clearly showing the state's intention to return what was unjustly expropriated. The deadline for filing claims has expired, and institutions have started processing individual requests, but still the impression is that this will take some time.

The Law on Property Restitution and Compensation (Law) protects the acquired rights of individuals, while the statutory obligation of restitution arises only in cases when a property, which may be subject of restitution, is not in private ownership. Although the Law prescribes in-kind restitution (i.e. restitution of an unjustly expropriated property) as the primary model, there are numerous exceptions and it is likely that compensation will be the most prevalent form of redress. In-kind restitution is the obligation of the Republic of Serbia (RoS), local governments, public enterprises established by the RoS and socially-owned companies and co-operatives, while the disbursement of compensation is the exclusive obligation of the RoS. Rarely, privatized companies may be obliged to make restitution in kind.

The Restitution Agency (Agency), as well as other stakeholders including the Constitutional Court, have taken a rigid position, particularly with respect to foreign nationals. This is reflected in an inadequate application of the principle of dis-

cretionary evaluation of evidence, as well as in requests for documentation which is not necessary for decision-making and which is in most cases impossible to obtain.

The problem is a result of the deficiencies in the law itself which prevent the stakeholder to apply the principle of free assessment of the evidence, and there are also discrepancies between regulations in the field restitution.

Agricultural Land

Starting from 1 September 2017, EU citizens may acquire the ownership over agricultural land of a surface area up to 2 hectares, upon the fulfillment of the prescribed conditions. Foreign investments in Serbian agriculture are mainly made through the privatization of agricultural companies, whereby investors acquire a majority of shares in companies that own agricultural land. In some cases, companies face problems due to a misinterpretation of provisions of the Law on Agricultural Land.

The Law on Co-operatives adopted in 2015 does not contain any of the former provisions on the return of agricultural land to newly founded co-operatives. The abuse of rights by such co-operatives remains an issue since the final provisions of this Law stipulate that existing claims for the return of land filed by new co-operatives, founded with the aim of abusing this right, are to be settled under the rules of the former law, thus jeopardizing the acquired rights of foreign investors.

POSITIVE DEVELOPMENTS

Agricultural Land

The Law from 2015 indicates that the abuse of rights by co-operatives for the purpose of obtaining agricultural land will no longer be possible.

EU citizens may acquire ownership over agricultural land.

Restitution

In 2017, the Constitutional Court, the Supreme Court of Cassation, the Administrative Court of Serbia and the Ministry of Finance made decisions which annulled the Agency's decisions made in contravention of the law, which, provided that the Agency complies with these authorities' orders, should significantly contribute to progress.

According to the Constitutional Court's and the Supreme Court's decisions, the Agency is obliged, in each case, to request the missing documents from applicants before dismissing a request as incomplete, thus enabling the applicants to participate in the proceedings.

Under the Administrative Court's decisions, the Agency was ordered to act in accordance with all laws and international agreements, forbidding the Agency to make decisions on issues outside its jurisdiction, especially regarding the existence of reciprocity with foreign countries.

The Ministry of Finance ordered the Agency to comply with court decisions in further processing, in particular court decisions rehabilitating former owners. The Ministry's decision made it clear that in cases where former owners have been rehabilitated by court decisions, the Agency has no authority to deny requests for restitution on the grounds that the former owners were members of foreign occupying forces.

With amendments of by-laws, the restitution of agricultural land by substitution was made possible. This means that, in some cases, it is possible to acquire the right to restitution of agricultural land of the same type and quality as the seized agricultural land, but on the territory of a different self-government unit.

REMAINING ISSUES

Restitution

Ambiguities and inconsistencies in the Law have led to divergent practices by the Agency, which may jeopardize the acquired rights of foreign investors.

In some of the restitution cases, the Agency interprets regulations in a manner that hinders or even denies foreign nationals their right to restitution or compensation. Judicial and administrative authorities of the RoS have made decisions in certain cases to correct irregularities in the Agency's work, but the question remains whether the Agency will adopt and apply instructions from these decisions.

The question of the freedom of the assessment of proofs in restitution procedures has not been resolved. Claimants in restitution procedures who are not able to obtain the legally prescribed specific proof – the document on seizing – will not be granted the restitution right regardless of the existence of other proofs that the seizing of the property did occur. Unfortunately, the Constitutional Court of the RoS has taken the position that lawmakers are allowed to

exactly specify the proofs that must be submitted in the procedures for proving a certain fact, as well as that lawmakers are entitled to detremine that all the other means of proving are "insufficient and unreliable," so the initiative for determining the constitutionality and legality of the respective provision of the law has been rejected.

Agricultural Land

State bodies, namely the Ministry of Finance, have maintained the position that has been taken in a number of previous decision - that provisions of the former Law on Co-operatives may only be interpreted to mean that the private ownership of agricultural land acquired by private enterprises in the course of privatization or by other means cannot be taken away and given to newly-founded agricultural co-operatives, and, if it is to be taken away, due compensation must be paid. Otherwise, this shall constitute illegal confiscation of private property. Namely, as it has been pointed out in decisions of the Ministry of Finance, administrative bodies are not competent to decide on requests of co-operatives related to privately-owned property.

FIC RECOMMENDATIONS

- The Restitution Agency should conduct transparent restitution procedures granting the right to restitution to redress the injustice perpetrated 70 years ago, taking due care to protect basic human rights of the parties to the proceedings.
- Foreign nationals should be allowed to exercise the right to restitution, equating them with Serbian nationals in these proceedings, irrespective of their citizenship and nationality, in accordance with decisions of judicial authorities and the Ministry of Finance.
- State authorities should ensure that the acquired rights of foreign investors are protected in accordance with the law.
- State bodies, specifically the Ministry of Finance, in administrative proceedings as initiated in line with the provisions of the former Law on Co-operatives by newly-founded agricultural co-operatives, should seek to protect the full private property rights of foreign investors.