REAL ESTATE AND CONSTRUCTION

According to the latest statistics of the World Bank, Serbia finds itself ranked 9th when it comes to obtaining building permits. For several years in a row, Serbia has established its place among the top 10 countries in this area.

The amendments to the Law On Conversion Against The Fee from 2020 enable the continuation of conversion procedures even if they are the subject of a request for restitution, if there is confirmation that it is not possible to return the property in kind.

As in other areas of business, the work of the Republic Geodetic Authority was extremely affected by the COVID-19 pandemic. After the initial confusion, some progress was made in communication through the issuance of electronic sheets of real estate and copies of plans, as well as the resolution of cases (however, slowly) submitted to the cadastre by notaries electronically.

CONSTRUCTION LAND AND DEVELOPMENT

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;
- entities which acquired the right of use on the land after 11 September 2009, through purchase of the building, with the accompanying right of use on the land, from the entities, which were subject of privatization in the past (as indicated immediately above);
- 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.

Construction

The Planning and Construction Law was amended several times in the past few years. The amendments may be gen-

erally 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.
- concept of condominium is introduced.
- 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.
- establishment of Register of investment locations is prescribed.
- 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.

COVID-19

All the procedures which were not digitalized prior to the COVID-19 outbreak were significantly slowed down due to reduction of work force in the administration. This is yet another confirmation of necessity to proceed with implementation and development of new technologies that would make administrative procedures faster and available via online services.

We witnessed that there were no administrative hurdles, and procedures were not delayed only in those fields that were digitalized prior to the outbreak of this pandemic.

POSITIVE DEVELOPMENTS

Conversion of the right of use to ownership of construction land

- 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.

Provisions of Article 11, paragraph 6 of the Law on Conversion for a Fee, stipulated 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 and legally binding completion of the restitution process.

Amendments of the Law on Conversion for a Fee from 2020 have changed the respective provisions in less strict manner and hence the conversion procedure shall be immediately suspend in the respective case, until the until the final and legally binding completion of the restitution process, or until the final decision on in-kind restitution is enacted, or until the confirmation that the natural restitution is not applicable is issued.

- It is necessary to clarify when the conversion is carried out with the fee and when not.

Amendments of the Law on Conversion for a Fee from 2020 in more detailed manner stipulate the cases to which the conversion with the fee applies, as well as the exceptions to the conversion with the fee regarding the real estate which belonged to entities which were privatized in the past.

Additionally, certain 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.

REMAINING ISSUES

Conversion of the right of use to ownership of construction land

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 to further amend Article 11, paragraph 6 of the Law on Conversion for a Fee, in order for the respective provisions 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 clarified the dilemma regarding cases when the conversion is carried out with a fee, it remains to be seen whether this will enhance the process of making a coherent legal practice and effectiveness in decision making by the competent authorities.

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.

The competent authority in the integrated procedure should issue 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).

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 in cases when the main contractor (an entity with whom the investor entered into a direct construction agreement for the whole works) holds the license and is the main contractor obliged to have license if all subcontractors hold appropriate licenses. The answer to this question does not only affect the existence of the obligation to initiate the process of obtaining the license, but also other aspects of the subcontractor's and contractor's business, especially if it is a foreign entity. In addition, it is necessary to enact the rulebooks regulating issuance of the licences.

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, 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. 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. 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. (1)
- Digitalisation of public administration and all administrative procedures. (1)
- It is necessary to amend the Legalization 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. (3)
- 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). (1)
- 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. (3)
- Creation of coherent legal practice and improvement of effectiveness in decision making in conversion procedures by the by the competent authorities, having in mind the latest amendments of the Law on Conversion for a Fee. (2)
- Enactment of rulebooks on issuance of licences and clarify the obligation of subcontractors engaged by a contractor to hold licenses which are already held by the contractor and vice versa should be clarified. (3)

MORTGAGES AND REAL ESTATE FINANCIAL LEASING

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.

COVID-19

There has been no impact to the current situation caused by COVID-19.

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. (3)
- 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. (3)
- The rights of the tenant in the case of extrajudicial enforcement should be specified. (3)

CADASTRAL PROCEDURES

CURRENT SITUATION

Over the past year, the Republic Geodetic Authority has worked intensely on the digitalization of procedures with the aim of establishing e-desk service and allowing an increasing number of users to download data from the cadastre electronically. By concluding an appropriate agreement with the RGA, notaries, geodetic organizations, attorneys, and real estate brokerage agencies obtain direct access to cadastre database, which reduced the number of new requests which mostly refer to the obtaining of cadastral excerpts. Electronic notice board represents an attempt to overcome the problem of decision delivery and, as such, it provides more transparency with regard to the acts adopted by the cadastre. An address registry was established, as well as a procedure for determination of house numbers on the territory of the entire country. Introduction of e-desks enhanced digital communication between geodetic organizations which realize operations envisaged by the Law on State Survey and Cadastre.

The progress in this area is noticeable, but there is still room for improvement.

The exact number of unresolved cases in the first and second instance is yet to be determined, but the assumption is that there are hundreds of thousands of them. The lack of capacity and untimeliness of the staff bring about piling of unresolved cases, and the priority is given to the requests submitted by notaries. It is essential to improve the organization of services in order to reduce the number of unresolved cases as soon as possible.

There is still the problem of slow work of the utility cadastre departments, as well as the non-resolved issue of documentation required for registration of rights to lines (non-recognition of permits issued in accordance with applicable laws for lines built several decades ago, ie before introduction the possibility to register right on lines, but also for lines for which the permit was issued under the unified procedure due to non-listing individually all lines to which the permit refers).

COVID-19

As is the case with other areas of business, the operation of the RGA was extremely affected by the COVID-19 pandemic. Operation of the offices was hindered as the result of regulations on the number of employees that may be present at work, whereas remote work made it impossible to resolve the cases which require access to the archive. These circumstances further obstructed the work and delayed deadlines for the delivery of first-instance and second-instance decisions. In addition, it was noticed that during the state of emergency, real estate cadastre offices acted differently upon the same or similar requests.

After the initial confusion, a certain progress in communication was noticeable in the issuing of electronic cadastral excerpts and plan copies, as well as slow completion of the cases that were electronically submitted to the cadastre by notaries.

POSITIVE DEVELOPMENTS

In relation to the recommendations of the Council from the 2019 White Book, significant improvements were made in the digitalization of processes. A certain amount of progress has been made in relation to the following recommendations:

- It is necessary to ensure clearer and more transparent instructions on the implementation of laws and regulations with the aim of accelerating and improving the foreseeability of cadastral procedures – RGA website offers instructions, request forms, the possibility to monitor the status of the case and make an appointment with the person who processes the request

- Republic Geodetic Authority should contribute to the harmonization of practices of real estate cadastre offices/cable duct cadastre departments and strengthen control over their work, to ensure accessibility for the parties that request consultations, act more promptly upon complaints, and allow complaints about the work of cable duct cadastre departments to be filed via link on the RGA official website - the harmonization of practices was successful in certain cases,

- Software maintenance and improvement has to be more efficient – besides noticeable problems that are rapidly resolved, improvements have been made in the maintenance of the publicly accessible cadastre database.

The implementation of the above listed recommendations can be generally regarded as positive, as their adoption

contributes to timeliness, reduces clients' waiting time, simplifies and accelerates registration procedures, even though there is still plenty of room for improvement.

REMAINING ISSUES

The main problem lies in inconsistent interpretations of applicable regulations by different real estate cadastre services, which are often non-compliant with other laws and bylaws.

One of the major problems is the inconsistency of the Law regulating the issuance of permits for construction and use (Law on Planning and Construction - Unified Procedure) and the law on the registration of real estate / lines and rights on them (Law on the Procedure of Registration in the Real Estate Cadastre and Lines). Very often, a construction expert must be hired to confirm through the expert's findings the exact facilities to which the issued permit refers (construction, use and project-technical documentation), because without this finding the cadastre will not conduct registration since the permit disposition does not contain individual enumeration of lines e.g. to which the permit applies. This is primarily a problem with the registration of lines, which are not covered by the dispositives of the decision on construction and use. In this way, the time required for registration is extended, and the party who obtained a valid permit also incurs additional costs for hiring an expert and obtaining his findings.

There is also a problem with the registration of facilities built under the Law on Mining and Geological Research and the rights to them, especially in relation to facilities, primarily lines, built several decades ago under permits obtained in accordance with then applicable regulations, which are not recognized as valid in the procedure of registration of lines and rights to them in accordance with the valid Law on the procedure of registration in the cadastre of real estate and lines. This approach leads to the conclusion that there is practically no legal continuity between the previously valid and currently valid laws in this area, which certainly affects the legal certainty.

Even though there is an evident tendency that, through digitalization, the real estate cadastre becomes a register of real estate and all the occurring changes, it is also clear that there are a number of requests in which the decisions made by the cadastre have constitutive effect. It is particularly evident in the cases that were opened years ago, but which require public debate to be concluded. On the other hand, the law excludes the possibility of conducting a public debate in a cadastral procedure, which renders rapid and efficient conclusion of such cases impossible.

The deadlines for delivery of decisions upon clients' requests for registration in the cadastral registry represent one of the most significant problems, as the deadlines are routinely exceeded, due to the fact that cadastre offices are overloaded with unprocessed cases. Even though a certain amount of progress has been made, a number of cases from the past remains unresolved, some of which date years back. The aforementioned also applies to the second-instance cases.

Offices still exhibit excessively formalistic approach to the resolution of requests for the registration of real estate rights. It is evident from their acting in the cases which are submitted by notaries, where the client is not allowed to participate in a possible case update or abandonment of the submitted request.

A large number of unresolved cases include the implementation of lien statements and discharge statements in the process of registration and release of mortgages. In certain offices, the said cases remain unresolved for years, due to which there are instances where the client repays the entire loan to a bank while the request for the registration of a mortgage, which serves as a security for the said loan, has not been resolved.

The cadastre will be facing a major challenge with the beginning of complete digitalization as of 01/01/2021. In accordance with the law, as of this date, requests shall be submitted to the cadastre only in electronic form.

FIC RECOMMENDATIONS

- It is necessary to ensure uniform, transparent and clear implementation of laws for further acceleration and foreseeability of cadastral procedures, and to harmonize the laws according to which permits are issued with the

laws related to the registration of real estate and rights to them, ie to establish legal continuity by recognizing permits obtained in accordance with the provisions of previously valid laws regulating this area. (3)

- Connectedness and promptness of information systems and exchange of data between cadastres and other state authorities. (3)
- It is necessary to establish an efficient system for the resolution of clients' requests and simplify the manner of submitting updates to the so-called notary cases or introduce the obligation for the notaries to add the documents necessary for the completion of registration to the documents they are certifying. (3)
- Republic Geodetic Authority should conclude all unresolved first-instance and second-instance cases as soon as possible. (3)
- It is necessary to allow deployment of a party in the case which was opened by a notary, as it is the service performed by notaries. (3)
- It is necessary to determine the number of unresolved cases which include registration and release of mortgages and resolve them as a priority in order to introduce legal certainty into business processes. (3)
- Establishment of an electronic base for Utility cadastre which will be accessible to the public or registered users, as it has already been done with the real estate cadastre, with the possibility of issuing excerpts from the cable duct cadastre (as it has been done with real estate folios that are issued from the real estate cadastre). (2)
- It is necessary to register all lines in the utility cadastre without delay, but also the rights to them, which is of general importance (it is important to know who owns the line due to the needs of, for example, quick reaction in certain situations in order to protect life and health of people, property and the environment) . (2)
- Online access to real estate cadastre data should be free and unlimited, with real-time update. (1)
- Real estate sheets in electronic form from GKIS are illegible, primarily for plots with several objects, where it is not possible to get an overview of A list in which all objects / parts of one plot will be listed on one list / page. It is necessary to return the form in which LNs were issued by July 6, 2020. (1)

RESTITUTION

CURRENT SITUATION

Restitution

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 discretionary 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.

COVID-19

The COVID-19 epidemic did not impact the processes.

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 determine 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.

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. (3)
- 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. (3)
- State authorities should ensure that the acquired rights of foreign investors are protected in accordance with the law. (2)
- 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. (2)