

REAL ESTATE AND CONSTRUCTION

1.36

Due to foreign policy events that inevitably have an impact on all market trends - the procurement of construction materials and raw materials for its production, the supply chain, as well as the employment of the workforce, the construction industry is facing challenges that may pose a threat to the growth and development of this sector. Therefore, it is necessary, through further improvement of procedures and legislative activity, to act preventively and give the necessary impulses so that the growth of this sector is not jeopardized.

private ownership remains significant obstacle to construction in Serbia. It is necessary to consider the possibility of amending the law that regulates the issue of conversion with a fee in the part that concerns the payment of the fee for the conversion, so that the fee as a concept is completely abandoned for certain categories of persons.

The issue of land ownership and mixed forms of state and

The electronic business of the real estate cadastre and the cadastre of utilities is faced with numerous challenges, which require a systemic solution and which must be overcome in a timely manner.

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
CONVERSION OF THE RIGHT OF USE TO OWNERSHIP OF CONSTRUCTION LAND				
<p>The Law on Conversion for a Fee should be amended in order to reduce the costs of the conversion fee.</p> <p>With regards to the undeveloped construction land, the holder of the right of use on the undeveloped construction land should be entitled to request registration of the ownership over such land, whereas the registration of the ownership in the Real Estate Cadastre should be accompanied with registration of annotation that the conversion fee has not been paid. This type of registration, would be a sufficient legal basis for the owner to acquire the construction permit, prior to payment of the conversion fee. Further, if such holder of right of use (i.e. newly registered owner) manage to obtain a construction permit and construct real estate on such land and register it in the Real Estate Cadastre within a period of 10 years, he should acquire the right of ownership on such land free of charge. Alternatively, if the real estate has not been constructed within the period of 10 years, such holder of right of use (i.e. newly registered owner) should be obliged to pay a reasonable fee in the fixed amount per square meter of the surface area of the subject land.</p> <p>When it comes the developed construction land, possibility of abolishment of payment of conversion fees should be considered, if in the moment of the entry into force of the new law, there is a legal building constructed on such land. Alternatively, prescribing a reasonable fixed amount of fee per square meter of the land without determining the land for regular use of the facilities, would be also a good incentive for further development of this sector. The amount may be determined according to the size of the city or municipality. For example, in Belgrade, the conversion fee can be 10 euros per m2, and in smaller cities and municipalities 3 euros per m2.</p>	2021		√	
<p>It remains unclear to what extent companies use the possibility of construction land leasing as an alternative to conversion. It is also unclear whether it is possible for a company that has the property right on the building with a corresponding right to use the land, to lease such (built) land instead of converting (for example, to demolish an existing building and build a new one), given that the institute of building land lease has so far generally been reserved only for undeveloped construction land.</p>	2021			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The state needs to take the necessary actions to promote this alternative (lease instead of conversion) and use the lease more often in practice.	2021			√
CONSTRUCTION				
It is necessary to improve software solutions and capacities to facilitate and speed up the procedure of electronic submission of documentation.	2021		√	
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).	2021			√
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.	2021			√
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.	2021			√
LEGALIZATION				
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.	2021			√
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).	2021			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2021			√
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.	2021			√

CONSTRUCTION LAND AND DEVELOPMENT

1.18

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.

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 had 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 (governed by a separate law).

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 legal successors in terms of status;
- 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 generally considered as positive because their goal was to facilitate the procedures and to make clarifications, as well as to improve the regulatory framework.

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

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 to 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 suspended in the respective case, 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.

Amendments to 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.

During the final phase of the preparation of this White Book, the Ministry of Construction, Transport and Infrastructure has formed a Working Group to work on the Law on Conversion for a Fee and on the reform of the institute of conversion with a fee, whose members are all relevant representatives of state authorities, as well as the economy. We welcome the activities of the Working Group and the demonstrated willingness to solve the conversion problem as soon as possible. We will be able to evaluate the results of the work of the Working Group in the next edition of the White Book.

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.

REMAINING ISSUES

Construction

There is a problem with the content of the use permits issued through the system of unified procedure in the matter of utilities/installations - generally, in the wording of these permits, installations/utilities are not mentioned individually, or not mentioned at all, so even though through the CEOP, a geodetic study is also submitted with the use permit in to whom the installations are shown, RGA does not register the rights to them on the basis of the attached usage permits, but the party is exposed to additional costs and loss of time by obtaining a subsequent expert opinion

in order to register the rights to the lines according to the issued usage permit, which leads to the conclusion that this problem should be solved in cooperation with the competent ministry.

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.

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.

The length of the conversion procedures, especially in cases where appeals or administrative suits were lodged, remains a serious issue.

FIC RECOMMENDATIONS

Conversion of the Right of Use to Ownership of Construction Land

- It is necessary to consider the possibility of amending the Law on Conversion for a Fee in order to exempt the following categories of persons or entities from the obligation to pay the fee for conversion, i.e. for whom the conversion of the right of use on construction land into the right of ownership would be provided without fee:
 - (i) persons or entities that were or are commercial companies and other legal entities that were privatized on the basis of laws governing privatization, bankruptcy and enforcement proceedings, as well as their legal successors in terms of status;
 - (ii) persons or entities that acquired the right of use on the land after September 11, 2009, by purchasing the building with the accompanying right of use, from entities that were privatized on the basis of the laws governing privatization, bankruptcy and enforcement proceedings, and who are not their legal successors in terms of status;
 - (iii) persons or entities - holders of the right of use on undeveloped construction land in state ownership that was acquired for construction in accordance with the previously applicable laws that regulated construction land until May 13, 2003 or based on the decision of the competent authority;

Construction

- It is 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, as well as whether the main contractor is obliged to have license if its 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 rulebook regulating issuance of the licences for construction buildings for which the municipalities issue construction permits.
- Enactment of rulebook on issuance of licences for constructing buildings for which the municipalities issue construction permits and clarify the obligation of subcontractors engaged by a contractor to hold licenses which are already held by the contractor and vice versa.

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, 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 compared to the owners of other buildings with different purposes for which it is not required to obtain an energy licence.
- 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.
- It is necessary that the Decision on legalization has the power of a construction permit and a use permit, which would be acknowledged by appropriate content of the decision (without an additional technical examination / obtaining of a special permit to use).

MORTGAGES AND REAL ESTATE FINANCIAL LEASING

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WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	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 mortgages 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			√
The Law on Mortgage needs to be amended to simplify the requirements in relation to the mandatory elements of the mortgage document pertaining to the secured claim, i.e., not to require more than the amount, currency and interest (if any). Further, adequate language to be stipulated for future claims by e.g., specifically allowing registration of maximum future secured amount.	2021			√

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

Given that there were no legislative changes in longer period of time, there have been no manifest developments in this area. One point that can be mentioned here is digitalization process within the real estate cadastre which has positive effect on the speed of the mortgage registration procedure.

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. Given that the only requirement for a real estate sale contract is that it should be solemnized by a notary public, there is no policy reason why the same practice should not be applied to the mortgage documents as well.

The requirements of the Law on Mortgage in relation to the mandatory elements of the mortgage document pertaining to the secured claim are too excessive and inadequate

for claims other than the loans. Further, such requirements are completely inadequate for future claims.

The position of the tenant in the case of an out-of-court settlement of a mortgage is not entirely clear. Unlike the Law on Enforcement and Security which explicitly states that the tenant can be evicted unless his lease is registered in the cadastre before all the mortgages and enforcement orders, the Law on Mortgage is silent on this matter. Thus, this implies that the general regime from the Law on Obligations applies, meaning that the lease agreement survives out-of-court foreclosure if the tenant was already in possession of the mortgaged property.

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 mortgages 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.
- The Law on Mortgage needs to be amended to simplify the requirements in relation to the mandatory elements of the mortgage document pertaining to the secured claim, i.e., not to require more than the amount, currency and interest (if any). Further, adequate language to be stipulated for future claims by e.g., specifically allowing registration of maximum future secured amount.

CADASTRAL PROCEDURES

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WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
It is necessary to ensure uniform, transparent and clear implementation of laws for further acceleration and foreseeability of cadastral procedures, including how to overcome the problems with registration of utility lines built according to old legislation.	2021		√	
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.	2019		√	
Republic Geodetic Authority should conclude all unresolved first-instance and second-instance cases as soon as possible.	2018		√	
It is necessary to allow full control of a registration procedure by the parties in the case which was opened by a notary, as it is just a service performed by notaries.	2021		√	
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 utility cadastre (as it has been done with real estate folios that are issued from the real estate cadastre).	2019		√	
Property sheets in electronic form from Cadastral online database are not user-friendly, especially for plots with several objects, where it is not possible to get an overview of A sheet in which all objects / parts of one plot are listed on the same place. It would be beneficial to improve the format so as to be similar to the the form in which the hard copy property sheets were issued before 2020. This new format (because of which each part of the plot and each building/part of the building must have a separate sheet) has caused excessive fees for some companies who possess over several hundreds of land plots, for example, a huge agricultural site. The fee for sheets in such cases amounts several thousands of euros, given that each sheet is charged separately. Although the e-cadaster evidence has been established, banks and other institutions require the official and original excerpts to be obtained. Hence, this issue must be solved as soon as possible, as it causes significant burdens to the investors.	2021			√
It is necessary to register all lines (and rights to them) in the utility cadastre without delay.	2019		√	
Real estate cadastre must be more accessible to general public and companies, such as, email communication with the real estate cadastre must be more efficient, the cadastre should work harder to make people more familiar with the electronic procedures, anyone should be entitled to easily schedule a face-to-face meeting in the relevant cadastre, etc.	2021			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Software of the utility lines cadastre and a notary's digital platform must be harmonized in order to allow the notaries to file requests for mortgage registration or mortgage release towards the utility lines cadastre, as well as to enable them to obtain sheets on utility lines.	2021		√	
Online access to real estate cadastre data should be free and unlimited, with real-time update.	2012		√	
Geodetic organizations should be entitled to issue official copies of cadastral plans and cadastral plans of utility lines.	2021			√

CURRENT SITUATION

Over the past year, the Republic Geodetic Authority has continued to work intensely on the digitalization of procedures that it started implementing in 2020. 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 in the work of geodetic organizations and lawyers which realize operations envisaged by the Law on State Survey and Cadastre and Law on the Procedure for Registration in the Cadastre of Immovable Property and Utilities

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

According to analysis conducted by the Republic Geodetic Authority, the exact number of unresolved cases before the adoption of the new Law on the Procedure for Registration in the Cadastre of Immovable Property and Utilities was 1,200,000, while three years after the law was passed, the number fell below 500,000. The effects of COVID-19 pandemic have additionally contributed to delay in resolving cases, despite the efforts on digitalization of work of RGA's services. Regardless of the potential effects of the pandemic or other unforeseen difficulties, it is essential to find systematic solution through dialogue between all stakeholders on the market and holders of public authorities in order to reduce the number of unresolved cases and thus speed-up the process of decision making as soon as possible.

There is still the problem of necessity to increase the efficiency of work of the utility cadastre departments, as well as the non-resolved issue regarding the documentation

required for registration of the rights to the utility lines (non-recognition of permits issued before introduction the possibility to register rights on lines, but also for lines for which the permit was issued under the unified procedure due to non-listing each and every line to which the permit refers). Further step towards improvement of the utility cadastre is introduction of the adequate software which will connect public notaries with the cadastre (for example, currently it is not possible to file a request for the mortgage registration on the utility lines through the notary's office).

POSITIVE DEVELOPMENTS

Compared to the recommendations of the FIC from the 2020 and 2021 White Book, certain improvements were made in relation to the following recommendations:

- It is necessary to ensure clearer and more transparent instructions on the implementation of laws 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/utility 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 utility cadastre departments to be filed via link on the RGA official website - the harmonization of practices was successful in certain cases. Also, RGA regularly publishes documents on its website that are important for standardizing the practice of services and which enable interested parties to become familiar with the practice of RGA (information, cadastral-legal practice, etc.);

- The Republic Geodetic Authority is actively working on solutions and is open to recommendations in order to find an adequate solution for a more efficient resolution of old cases;
- There is a noticeable tendency of more efficient software maintenance and improvement- besides noticeable problems that are actively 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

Despite improvements, one of the most important problems lies in inconsistent interpretations of applicable regulations by different real estate cadastre offices, which are often non-compliant with other laws and bylaws.

The deadlines for delivery of decisions upon clients' requests for registration in the cadastral and utility registry represent one of the most significant problems, as the deadlines are routinely exceeded, due to overloaded offices with unprocessed cases and inadequate internal work organization (for example, during the submission of cases to the utility cadastre departments by some real estate cadastre offices, the geodetic studies were submitted without the requests and supporting legal documentation that were submitted by the parties). Even though a certain improvement has been made, a large number of cases from the past remains unresolved, as a matter of historical heritage, 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 party is not allowed to participate in a possible case update or abandonment of the submitted request.

There is also a problem with the registration of facilities built under the Law on Mining and Geological Research and the rights to them, particularly in relation to the lines built several decades ago under permits obtained in accordance with the then applicable regulations.

A major problem in the work of real estate cadastre offices remains the lack of transparency in work and inaccessibility to parties (especially professional users). Although it is formally possible to schedule a meeting with an officer dealing with a case, scheduling a meeting is a painstaking job and is often impossible to schedule even after several months.

The existing decision from Article 58 of the Law on the Procedure for Registration in the Cadastre of Immovable Property and Utilities regarding deletion of the holder and the possession is incomplete and therefore needs to be amended. Namely, the aforementioned provision foresees that, if the legal conditions are not met by May 1, 2028 at the latest for the registration of property rights on immovable properties where a certain person is registered as a holder in accordance with the Law on State Survey and Cadastre, the office will ex officio delete the status of the holder and this persons possession on the immovable property. However, the Law does not prescribe the legal conditions for registering property right instead of state possession, as well as what the consequences would be after May 1, 2028, that is, who would be the owner of the real estate.

Speaking of the cadastre of utility lines, it should be noted that in practice notaries do not have any access to this cadastre, hence cannot obtain a sheet of utility lines, nor they can electronically file a request for the mortgage registration on utility lines. On the other hand, certain Utility Cadastre Services do not allow submission of hard-copy request, however according to the information received from RGA, they are working on solving this problem.

Also, the issue of systematic (ex officio) entry into the cadastre software of those utilities and boreholes for which legally binding decisions have already been made by the real estate cadastre office remains unresolved, because those utilities and boreholes are registered only at the special request of the party and not by official duty based on the already adopted decisions of the real estate cadastre. In order to have proper records of all previously issued decisions on the registration of utilities in the Utility Cadastre, as well as for the possibility of issuing copies of utility plans and lists of utilities for all previously registered utilities, we believe that it would be more expedient to have RGA ex officio enter all utilities for which there are previously issued decisions by the real estate cadastre offices.

One of the controversial issues is the issue of registering underground tanks, i.e. whether they will be recorded in

the real estate cadastre or in the utility cadastre, which affects the circumstance on whether, for the purpose of recording them, it is necessary to record the underground tanks and submit them in the studies for the real estate cadastre, or in the studies for the utility cadastre. Also, cases when the tanks are located under the canopy, in which case they cannot be registered in the real estate cadastre due to overlapping with another object, are also a problem. On these issues, it is necessary to standardize the practice.

The Republic Geodetic Authority was paralyzed for a long time due to a recent hacker attack, which indicates that the information system of the RGA needs to be further

improved in order to be sufficiently secure.

The e-counter for professional users and the application "Real Estate Transactions" used by public notaries are not complete, i.e. they do not allow professional users to submit all the necessary requests (e.g. it is not possible to start the procedure for the condominium of an existing building) nor all the documents for registration in the real estate cadastre (e.g. public notaries cannot submit a request for registration of the lease of a building or office space). It is also necessary to consider the introduction of an infrastructure register, in order to enable up-to-date management and reliable access to data on infrastructure facilities, such as wind turbines.

FIC RECOMMENDATIONS

- It is necessary to continue with intensive work in order to achieve uniformity of practice and clear implementation of the law for additional acceleration and predictability of cadastral procedures, including finding an adequate solution to overcome problems with the registration of utilities built in accordance with former regulations.
- It is necessary to make the cadastre more accessible to parties and professional users, which would certainly lead to greater efficiency in work, as well as a relevant legal service at each real estate cadastre office that would eliminate doubts that parties and professional users have without an appointment. In this way, the number of dismissed and rejected requests, and therefore the number of second-degree procedures, would be significantly reduced. The first step towards this should be to enable professional users to get in direct contact with cadastre officials and to get answers to questions directly and in a short period of time.
- 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.
- It is necessary to find a systemic solution as soon as possible in order to solve all backlogged first-degree and second-degree cases.
- It is necessary to allow full control of registration procedure by the parties in the case which was initiated by a notary.
- Electronic base for utility cadastre should 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 utility cadastre (as it has been done with real estate sheets that are issued from the real estate cadastre).
- It is necessary to register all utilities (and rights to them) in the utility cadastre without delay, i.e. enter the utilities registered so far into the existing software Utility Cadastre, and previously resolve all open issues and introduce uniformity regarding the registration of underground reservoirs.
- The new format of the extract from the electronic database of the Real Estate Cadastre (because of which each part of the plot, each building / part of the building must have a separate sheet) is insufficiently clear compared

to previous excerpt from immovable property and caused excessive fees for certain companies that own hundreds of land plots. Although the e-cadastre system has been established, banks and other institutions require obtaining official and original statements. For the above reasons, this problem must be solved as soon as possible and the calculation of costs in such a case should be adjusted, because it causes significant burdens for investors. Geodetic organizations should have the right to issue official copies of cadastral plans and cadastral plans of utility lines.

- It is necessary to amend the Law on the Procedure of Registration in the Cadastre of Immovable Property and Utilities in order to enable the conversion of possession into the ownership right. The solution could follow the path of the one provided for by the Law on State Survey and Cadastre before the adoption of the Law on the Procedure of Registration in the Cadastre of Immovable Property and Utilities, which provided that the possession right ex officio becomes the ownership right if a third party within a certain period does not submit a request for registration of ownership right and does not submit proof of ownership rights to that immovable property.
- It is necessary to further improve the e-counter and “Real Estate Transaction” application software in order to enable the submission of all types of requests.
- Prepare a draft of the Law on Infrastructure and start work on the introduction of the infrastructure register.

RESTITUTION

1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2015			√
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.	2015			√
Agriculture land under all type of objects/buildings such as lines and boreholes, have to be exempted from restitution and the agriculture land in the restitution for which the consolidation procedure was not being performed have to be listed and disclosed by the Agency.	2021			√

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 are processing individual requests, but still the impression is that the finalization of the procedures shall take some time, although the legal deadlines for resolution of individual requests have passed.

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.

POSITIVE DEVELOPMENTS

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. In practice such restitution process mostly does not take into consideration existence of different types of buildings/objects (such as lines and boreholes) in the ownership of third parties which agriculture land under such objects have to be exempted from restitution. The list of agriculture land that is included in the restitution procedure without being performed a land consolidation procedure is not officially disclosed.

In the beginning of 2021, the Government of the Republic of Serbia rendered a conclusion determining that the compensation in the cases where it is impossible to allow restitution in kind, will be 15% of the value of the seized property. Payments of compensation on the basis of final and binding resolutions on compensation have begun. The notification with instructions for receipt of payments of compensation is published on the Agency's web page. Portions of compensations payable as down payment are being duly paid, within short deadlines.

REMAINING ISSUES

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 those 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.

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.
- Agriculture land under all type of objects/buildings such as lines and boreholes, have to be exempted from restitution and the agriculture land in the restitution for which the consolidation procedure was not being performed have to be listed and disclosed by the Agency.