REAL ESTATE AND CONSTRUCTION

1.48

This year recorded a noticeable decrease in the number of issued building permits, which can be undoubtedly attributed to current market and inflationary trends.

As a part of the working group that participated in the drafting of the recently adopted amendments to the Law on Planning and Construction, this Committee offered a part of the solution to stimulate all participants in the construction market to continue with transactions. First of all, the reform of ownership regime on the construction land and mixed forms of state and private ownership was carried out through the abolition of the conversion of the right of use into the right of ownership on construction land with compensation for certain categories of entities. The aim is to unlock new locations for construction and reduce construction costs for investors, which should ultimately result in expanding the offer of residential and commercial spaces on the market, increasing competition, and balancing the costs of acquiring and renting real estate.

Great efforts have been made to reduce the time required for obtaining permits, not only through the improvement of the unified procedure for issuing construction permits, but also in terms of the number of steps that precede this procedure. This primarily refers to completing the planning framework in Serbia, as well as optimizing the procedure and way of issuing technical conditions for designing by the competent authorities.

The focus of the board in the coming period will be support and greater engagement in the reform of the Real Estate Cadastre and Line Cadastre.

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				
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.	2022	√		
CONSTRUCTION				
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			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
It is necessary to improve software solutions and capacities to facilitate and speed up the procedure of electronic submission of documentation.	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, 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.	2021			√
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.	2021			√
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.	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 compared to the owners of other buildings with different purposes for which it is not required to obtain an energy licence.	2021			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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 would be acknowledged by appropriate content of the decision (without an additional technical examination /obtaining of a special permit to use).	2021			√

CONSTRUCTION LAND AND DEVELOPMENT

1.33

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.

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.

Construction

The Planning and Construction Law was amended several times in the past few years.

The recently adopted Law on Amendments and Supplements to the Law on Planning and Construction introduces several important changes in the field of construction. By implementing these novelties, it is expected simplification of the process of issuing construction permits, improve the energy efficiency of buildings, reduce negative impacts on the environment, and encourage the development of sustainable practices in the construction industry.

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. With the new set of amendments within the Legalization Law, the legislature aims to address the issue posed by the previous version of the Legalization Law, which prohibited the connection of illegally constructed buildings to the electricity grid, gas network, and/or district heating, as well as water supply and sewage system.

POSITIVE DEVELOPMENTS

The new Law on Amendments and Supplements to the Law on Planning and Construction has been adopted, with the expectation of further contributing to the growth of the construction sector.

The most significant improvement introduced by the new law is the abolition of the conversion of the right of use into the right of ownership of construction land with compensation (conversion of construction land with compensation) for certain categories of individuals. This primarily includes legal entities privatized based on laws regulating privatization, bankruptcy, and enforcement procedures, as well as their legal successors in terms of status, and individuals who acquired the right of use of the land after September 11, 2009, by purchasing a building with the accompanying right of use from privatized legal entities.

An important innovation and improvement is the recog-

nition and definition of the concept of "green construction" and other elements of the green agenda. Planning and construction of buildings must now take into account energy efficiency, sustainable materials and technologies, waste management, water and air protection, and similar considerations. In that regard, the new law introduces the obligation of obtaining energy passports for all properties that will be constructed after its enactment. Even pre-existing structures are not exempt from this requirement, with a grace period provided for obtaining energy passports. The legislator seeks to implement this obligation through an additional legal provision that mandates the attachment of an energy passport to all future notarizations of sales and lease agreements as an integral part of the documentation, and failure to comply with the aforementioned obligations may result in financial penalties.

Another improvement brought by the new law is the "E-space," which refers to the information system for spatial planning and construction. The introduction of this system is expected to facilitate the processes of issuing construction permits and other necessary approvals.

Additionally, the new law introduces the obligation to establish the Agency for Spatial Planning and Urbanism of the Republic of Serbia, which will take over some of the responsibilities that were previously within the jurisdiction of state authorities. All planning documents issued in accordance with this law will be recorded in the Central Register of Planning Documents, which will be under the jurisdiction of the Agency.

Construction

Recently, there has been a noticeable slowdown in construction and a decrease in the number of issued construction permits, which can be attributed to current market trends. On the other hand, there is also a noticeable tendency towards facilitating the process of issuing permits.

Additionally, there is a noticeable trend within the law to regulate new technological solutions in the field of "green construction." In this regard, the new law explicitly outlines the procedure for installing electric vehicle chargers on privately-owned land. The finer details, such as the method of charging for this service, are yet to be addressed through the Energy Act or other subsidiary legislation as currently service providers charge for this service by leasing parking spaces.

REMAINING ISSUES

Construction

Building the related infrastructure for facilities, which is a prerequisite for obtaining an use permit, often presents a challenge in practice, with the requirement to provide the use permit as the sole valid proof that the relating infrastructure is constructed. Such issues can negatively impact construction timelines and the acquisition of use permits, significantly increasing construction costs for investors.

The authorities responsible for issuing permits in the unified procedure currently issue them with content that prevents the registration of ownership rights for investors on newly constructed facilities (especially when dealing with complexes with multiple buildings and utility networks). Instead, additional specific documentation (expert opinions, etc.) must be obtained by the investor to confirm what the construction/use permits refer to (by comparing the permit with the project based on which the permit was issued).

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.

Finally, the law stipulates that only buildings visible on satellite image of the territory of the Republic of Serbia from 2015 are subject to legalization. However, the law fails to adequately regulate the legalization of underground facilities, such as underground utility networks. As a result, the competent authorities reject the legalization of underground utility networks since such facilities are not visible on the mentioned satellite image.

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.

FIC RECOMMENDATIONS

Construction Land

- It is necessary for the authorities responsible for issuing use permits for a facility in the unified procedure to accept other evidence (such as expert reports, written confirmations from the electricity distribution company - EDB and/or EMS) that the related infrastructure for the respective facility has been built.

- It is necessary for the authorities responsible for issuing permits in the unified procedure to issue them with appropriate content that will, in accordance with applicable regulations, enable the registration of ownership rights for investors on newly constructed facilities (especially when dealing with complexes with multiple buildings and utility networks) without the need for additional delays and expenses to obtain additional specific documentation (expert opinions, etc.) confirming what the construction/use permits refer to (by comparing the permit with the project based on which the permit was issued). They should also promptly provide the issued permits to the relevant cadastral authorities or utility departments (in the case of constructed utility networks) for implementation on an official basis.

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.

- 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).

- The provisions of the law should be amended to introduce alternative means of proof for underground utility networks, such as project documentation of the completed facility, which was prepared before November 2015.

Subcontractor's license

- 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.

MORTGAGES AND REAL ESTATE FINANCIAL LEASING 1.00

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 adoption of the Law on Mortgage in 2005 represented a significant step forward in terms of mortgage rights in the Republic of Serbia. The law provided a more comprehensive regulation of an area of law that, due to obsolescence and inadequacy of provisions in the Law on the basis of Property Law Relations, had previously represented a legal gap in our legislation.

The last amendments to the Law on Mortgage were made during 2015. Despite some general criticism that these changes were not far-reaching enough, the problems that emerged in practice after the adoption of the Law on Mortgage still persist.

Significant progress has been made regarding the procedure of registering mortgages in the real estate cadaster, which was amended with the adoption of the Law on the

Procedure for Registration in the Cadastre of Immovable Property and Utilities in 2018. Additionally, the digitalization of processes in the real estate cadaster has had a positive impact on the speed of the mortgage registration procedure.

However, as there have been no regulatory changes for an extended period of time, we can no longer consider the digitalization of processes as progress in this field.

Financial leasing of real estate, introduced by the amendments to the Law on Financial Leasing in 2011,. The financial leasing of real estate, introduced by amendments to the Law on Financial Leasing 2011, has not yet taken root in practice. The legal framework concerning financial leasing of real estate is not sufficiently elaborated, thus making financial leasing of real estate practically non-functional in practice.

POSITIVE DEVELOPMENTS

There has been no significant progress or improvement in this field.

REMAINING ISSUES

A situation where 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. Similarly, a common issue in practice is the deletion of a mortgage established on multiple distinct properties through the waiver of the mortgagee, as the law does not provide the mortgagee with the right to waive the mortgage on individual properties, but only the mortgage as a whole.

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

Given that the mortgage creditor can choose whether to activate their pledge based on the Law on Mortgage or the Law on Enforcement and Security interests, one should consider the differences in the legal position of the creditor and the rules of these procedures. The mortgage sale procedure is more cost-effective, with lower expenses, and, if chosen, may achieve a more favorable price compared to public sales in enforcement proceedings. On the other hand, the enforcement procedure is significantly more efficient, legally secure, and precise than the mortgage sale procedure. In the enforcement process, the role of the public enforcement officer, their authority after the sale of the real estate, and the possibilities of vacating the property are concisely prescribed, whereas such provisions are lacking in the mortgage sale procedure, often causing issues in practice.

Considering all the aforementioned, the Law on Mortgage should provide a safer and more comprehensive way to conduct extrajudicial sales, providing creditors with a higher level of security, thereby reducing their reliance on enforcement proceedings and judicial sales in the vast majority of cases.

Moreover, mandatory elements of the mortgage deed give rise to other problems. Namely, if a creditor chooses to initiate an enforcement procedure, they are obliged to quote the mortgage statement in its entirety as it was given, including all spelling and description errors of the property, as they were listed in the real estate cadaster at the time the mortgage statement was issued. This represents a burden due to outdated descriptions and figures that no longer correspond to the cadaster's current state, and it creates issues concerning the courts' interpretation of rights and poses problems when calculating interest in the mortgage statement.

The interest problem in mortgage statements became evident when the courts began rejecting enforcement motions concerning interest. This issue emerged because creditors submitted enforcement motions based on the mortgage statement, where they quoted the statement in the binding part of the motion to make it identical to the given statement. Consequently, creditors sought interest in the same manner as it was stipulated in the contracts. How-

ever, the somewhat descriptive nature of this description is assessed by the court as undecided.

All the foregoing could be partially resolved in favor of the creditor and legal certainty if the Law on Mortgage provided for different mandatory elements of the mortgage deed.

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 interest 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 Contacts and Torts applies, meaning that the lease agreement survives out-of-court foreclosure if the tenant was already in possession of the mortgaged property.

There is no possibility for mortgage creditors to mutually agree on the change of the order of registered mortgages or to carry out the substitution without deleting them from the real estate cadaster records. The only method provided by the law in this case is the deletion of the registered mortgages, the notarization of new mortgage statements, and the subsequent registration of mortgages in the real estate cadaster, which may result in mortgage creditors losing priority in the collection of their claims. The situation is identical even when the need arises to modify the mortgage itself and its obligatory elements due to changes in the underlying legal transaction that the mortgage secures. In such cases, the principle of the accessory nature of the mortgage doesn't yield its intended effect, and parties are compelled to notarize new pledge statements, thereby incurring additional costs and all the other risks mentioned.

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

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.
- The Law on Mortgage needs to be supplemented regarding the possibility for mortgage creditors to agree on the change of the order of registered mortgages without deleting them from the real estate cadaster records.

CADASTRAL PROCEDURES 1.82

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2021		√	
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.	2022			√
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.	2022		√	
It is necessary to find a systemic solution as soon as possible in order to solve all backlogged first-degree and second-degree cases.	2018			√
It is necessary to allow full control of registration procedure by the parties in the case which was initiated by a notary.	2021		√	
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).	2022		√	
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.	2019		√	
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.	2021	√		

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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 submits a request for registration of ownership right and does not submit proof of ownership rights to that immovable property.	2022			√
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.	2022		√	
Prepare a draft of the Law on Infrastructure and start work on the introduction of the infrastructure register.	2022		√	

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 regarding 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.

One of the reasons for the constant existence of a certain fund of unresolved claims is the absence of historical documents, or the existence of inadequate documents (according to current regulations) required for the registration of rights to real estate in general, and especially to real estate originating from the unregulated market. Opening a discussion to consider moving the procedure of validation of such documents to other holders of public authority can represent a step towards finding a systemic solution for the reform of the Real Estate Cadastre.

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).

During the final stage of the preparation of this year's White Book, the Serbian Parliament adopted the Law on Amendments to the Law on State Survey and Cadastre and

the Law on Amendments to the Law on the Procedure for Enrolment in the Cadastre of Real Estate and Utilities, with the aim of creating a legal basis for upgrade the cadastre database of pipelines to include, in addition to pipelines, other infrastructure facilities, as well as all underground facilities, which would create the Cadastre of Infrastructure. We will assess the full effects of the changes made in the next edition of the White Book.

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 Amendments to the Law on State Survey and Cadastre and the Amendments to the Law on the Procedure for Enrolment in the Cadastre of Real Estate and Utilities were adopted, and the introduction of the infrastructure register can now be expected.

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 in terms of resolving the requests submitted to the Offices by the professional users, the main problem are the unresolved cases submitted by the parties (either personally or through professional users), as well as a large number of unresolved cases from the past (as a matter of historical heritage). , some of which date years back. The aforementioned also applies to the resolution of 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. This problem is closely related to the aforementioned problem of untimely decision making of submitted requests. The impossibility to participate in a case update or abandonment of the submitted request by the parties can also lead to unwanted and unnecessary costs (e.g. if there is a previously unresolved request on the real estate, upon receiving of a new request for registration of a mortgage by the notary public (ex officio) the service will not resolve it due to the principle of priority of the real estate cadastre, while in the meantime the party can pay off the debt to the mortgage creditor, and due to the impossibility of abandonment of the request submitted by the public notary, the

mortgage creditor approaches the certification of the written statement (erasure permit), after which the cadastre in the future issues a decision on registration mortgages and payment of tax on the same without a valid reason).

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. In practice it is not possible.

Also, one of the current problems is the impossibility of scheduling more than one appointment through the "eKatastar" service for submitting submissions and/or appointments for waiving the right to appeal on the same day (by parties as well as professional users), which contributes to limiting business due to restrictions that only one request can be submitted in the scheduled appointment, i.e. it is possible to schedule an appointment for waiving the right to appeal only in one case. The e-counter for professional users and the application "Transfer of real estate" used by public notaries are incomplete. They do not permit professional users to submit all the required requests. For example, it is not possible to initiate the procedure for the condominium of an existing building, nor can notaries public submit a request for the registration of the lease of a building or office space in the real estate cadastre.

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.

The existing solution 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.

Also not for every request for the registration of the possession right in the records of the Utility Cadastre on the basis of a valid construction permit issued before June 8, 2018, i.e. before entry into force the Law on the Procedure for Registration in the Cadastre of Immovable property and Utilities, the state registration was carried out in favour of the applicant with a legally valid building permit, but the utilities were already registered to an unidentified owner, which is an action contrary to RGA notice 959-1/2020 of 09/25/2020 which provides registration of the possession right in favour the applicant - investor on the basis of the submitted valid building permit issued before 08.06.2018, geodetic study and findings of experts.

It is expected that the adoption of the Law on Amendments to the Law on State Survey and Cadastre and the Law on Amendments to the Law on the Procedure for Enrolment in the Cadastre of Real Estate and Utilities, will create prerequisites for up-to-date management and reliable access to data on infrastructure facilities and in the future it is expected to overcome the previously mentioned problems. The Law on Amendments to the Law on State Survey and Cadastre abolishes the misdemeanour liability of civil servants for failure to make a decision within the time prescribed by law, which could result in an additional extension of the duration of the procedures conducted before the Real Estate Cadastre.

Also, for managing data on infrastructure facilities, according to the available information, the development of new software is in progress, which, in addition to time for testing and implementation, will also include the migration of data from the existing Cadastre of Utilities database. Although the digitization of the Cadastre Utilities will be a step towards the improvement of this system, there is a fear of the business that in the phase of transition from the old to the new software, it could further complicate and slow down the work of the Cadastre Utilities. The optimal solution for speeding up the work of the Cadastre Utilities is for the RGA to introduce additional human resources for the entry/registration of previously registered utilities that have not been entered into the existing software, and to quickly resolve backlog cases related to utilities.

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 pro cedures, including finding an adequate solution to overcome problems with the registration of utilities built in accordance with former regulations.
- It is also necessary to allow professional users to schedule more than one appointment per day through the "eZakazivanje" system, in order to submit the requests in person on the cadastre premises and/or more than one appointment for waiving the right to appeal in the cadastre premises. The problem is systemic, bearing in mind that it is prohibited to schedule more than one appointment during the day through the same IP address, and solving this system can greatly facilitate measures business and communication of large systems with the cadastre.
- 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. Consider transferring the procedure for the validation of documents related to real estate from the unregulated market to other holders of public authority and open a public debate on the reform of the Real Estate Cadastre as a service that only formally registers rights to real estate, archives registration documents and delivers its decisions to the parties.
- It is necessary to allow full control of registration procedure by the parties in the case which was initiated by a notary, as it is just a service performed by notaries.
- 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 bot regarding the registration of underground reservoirs and other issues where uniformity does not exist.

- 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) caused excessive fees for certain companies that own hundreds of land plots. The fee for sheets in those situations amounts to several thousand euros, taking into account that each sheet is charged separately. 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 get the right to issue official copies of cadastral plans and cadastral plans of utility lines (in the same way as they can issue extracts from the electronic database of the Real Estate Cadastre), and not that the only way to obtain them is by submitting a request to the cadastre of lines by geodetic organizations (or other professional users), whose issuance can take up to several days.

- Without delay 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 submits a request for registration of ownership right and does not submit proof of ownership rights to that immovable property. Until the aforementioned changes, it is necessary for the RGA to issue a notification in order to unequivocally determine how the Real Estate Cadastre services should act in these cases.

- 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.

- The information system of RGA needs to be further improved in order to remain sufficiently secure.

- During the phase of transition from the old to the new Cadastre software, it is necessary for the RGA to introduce additional human resources for the entry/registration of previously registered lines that have not been entered into the existing software, and to quickly solve the backlog of cases related to lines.

RESTITUTION 1.33

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 inter-

national 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.

By the decision of the Constitutional Court of Serbia from 2021, the uncertainty regarding the scope of individuals entitled to restitution or compensation in situations where the legal heir of the former owner did not submit a claim within the timeframes prescribed by law has been resolved. In such cases, the legal heir who has submitted such a claim is entitled to the full restitution of the property or compensation, thereby preventing an extensive interpretation of the provisions of the law and further safeguarding the interests of the claimants.

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