

LAND ADMINISTRATION AND HOUSING MARKET DEVELOPMENT

A. Introduction

This chapter is focusing on the land administration systems in Serbia and Montenegro, which had a common origin, but had been developed in different directions, as well as on property market developments pertinent to housing issues.

The term “land administration” has been defined by the *UNECE Working Party on Land Administration* as a formal system to identify and locate land and real property and to register ownership and other rights as an indispensable tool for a market economy and for sustainable management of land resources. The development and maintenance of housing, a functioning land and real property market and real estate development also are based on such a system.

The land administration system prevailing in Central Europe is based on principles which in general are followed by Serbia and Montenegro, such as:

- The cadastre defines an object, i.e. a land parcel with all improvements (buildings, or parts of buildings permanently fixed on it; this is called the “superficies solo cedit principle”.
- The purpose and objective of the cadastre is the collection and processing of data on cadastral plots, buildings and parts of buildings, i.e. the position, shape, area and use of a land parcel, and people claiming rights on it.
- All land parcels are supposed to be registered with their physical data in the cadastre. No difference is made between state or privately owned land as in the eyes of the law, public and private parties have equal rights.
- The acquisition of property rights (purchase/sale, heritage, gift), mortgage rights and other rights, i.e. the “title”) has to be realized through the legal “modus” of registration in the real property

register. The registration has a constitutive character.

Cadastre and real property registration are essential instruments for providing the State and the economy with reliable data on real estate and about real property and its improvements. Such data are not only necessary for the creation of legal certainty with regard to real property, but also serve as an authentic source of information for economic transactions with real property and for each citizen involved in such a transaction. In addition, reliable data on land and real estate guarantee fair taxation and provide the basis for land administration, land use planning and for other areas.

Land use is a core element for economic activities and has to be organized in terms of objectives, laws and regulations and institutions for implementation. The objectives of the determination of land use are to keep a balance between (1) economic development of the land, (2) social, economic, cultural needs of the population affected by the actual or planned use of the land, and (3) the protection of nature and natural resources. To arrive at such balanced sustainable policy decisions, a carefully structured decision-making process based on objectives, reliable information and data that have been prepared by a competent institution is required. An effective control mechanism preventing and correcting misuse or abuse of land and providing feedback for regulatory changes is needed.

Separate developments in Serbia and Montenegro since 2003 make it necessary to address the issues in a three-fold manner: (1) review the aspects common for Serbia *and* Montenegro, and then, separately for (2) Serbia and (3) for Montenegro. It has to be noted, though, that a major emphasis is given to Serbia as the legal and institutional situation there to a certain extent (unless otherwise described) applies also to Montenegro.

B. The land administration system in Serbia and Montenegro

1. Property rights

The cadastral and land registration system of Serbia and Montenegro dates from the 19th century and is based on the system of the Austro-Hungarian Monarchy and the common principles developed at that time. Parts of present Serbia and Montenegro were part of the Austro-Hungarian Monarchy until 1918. The Kingdom of Serbia had a similar land administration system which was continued by the Kingdom of Yugoslavia from 1918 to 1947 (see Annex).

With regard to (1) land administration and (2) real property market and real estate development, the present situation in Serbia and Montenegro can be characterized in a summary way as follows:

Land is categorized into construction (urban) land and agricultural (rural) land. Whereas the first category is still state-owned, the latter category to a large extent was privately owned. Efforts are now underway to create the basis for privatisation of the land.

Property rights. Along with the development of worker's management during *Tito's* regime, State property was reduced and converted into so-called "social property". Socialist self-management did not mean participation of workers in management, but management by workers themselves. This system was applied in all fields of social activity, like business, trade, health, education etc. Social property originally was understood as the property of all citizens. In fact, it meant that means of production (capital or other) were "*socially owned*" and thus belonged to society as a whole, represented in management by workers who operated these means.

In 1946 all private companies engaged in any of 42 specifically enumerated major economic sectors (among them mining, transportation, printing, building, banking, insurance) were nationalized and transformed into government (State) ownership. The property of "national enemies" was nationalized or confiscated, while the property of absent persons was put under sequester. In 1948, private companies were nationalized. In 1958, dwelling houses consisting of three or more apartments, as

well as building lots located within the building areas of cities and settlements (urban building land), were nationalized. By these actions, ownership rights in the former SFRY had mostly been abolished: not only were the assets of companies nationalized, but also many assets were confiscated from "national enemies". Limited private property was recognized in the form of agricultural land (up to 10 ha), and residential buildings with up to 2–3 apartments, which deprived many owners of their property. Apartments and residential buildings exceeding this limit were proclaimed public property and they were used under the same conditions as were new public apartments constructed afterwards. They were allocated to citizens who were the holders only of the occupancy rights.

Business premises and business buildings were confiscated in a similar way to apartments and residential buildings. They remained strictly public property, and after 1990 became the State property of the Republic of Serbia and Montenegro. These business premises are managed and leased to private entities by the State through the local self-management bodies.

Since 1989, restrictions on private property ownership have been abolished.¹⁰⁷ Ownership and other rights over property are guaranteed by the Constitution of the FRY (see Articles 51, 69, 70 and 73) as well as the Constitution of the Republic of Serbia (see Article 72), both to individuals and legal entities. Social property is not mentioned in the 1992 Constitution of the FRY, which just distinguishes between private, state and co-operative ownership.¹⁰⁸ The Constitutional Charter of the Federation of Serbia and Montenegro, adopted in March 2003, does not distinguish between different forms of ownership. Article 11 of the Constitutional Charter states: *Economic relations in Serbia and Montenegro shall be based on market economy that rest on free enterprise,*

¹⁰⁷ Injustices caused after the Second World War were corrected only partially. Under the Law on restitution of land to previous owners, referring to land taken in 1953 and held in social ownership under agricultural land fund (Official Gazette No. 18/1991), the agricultural land was returned. But this Law did not include restitution of land confiscated between 1945 and 1953 within the Agricultural Land Fund. Around 85 per cent of agricultural land in the fund was taken by force.

¹⁰⁸ However, social property is still present in the Constitution of the Republic of Serbia of 1990 (see Article 56 of the Serbian Constitution).

competition, liberal trade policies and the protection of property.

The Law on Basis of Ownership and Proprietary Relations¹⁰⁹ establishes the principles for ownership rights on movable and immovable property and contains regulations on acquisition on rights, types of rights and transactions. Article 24 of this law states: “A person who might erect a building or any other structure on the land which is in another’s ownership shall acquire the right of ownership also on the land on which the building is erected and on the land which is necessary for its use, if that person did not know or could not have known the he/she is building on someone’s else land, or if the owner of the land knew about the constructor’s activities and did not object immediately. The owner of such land has the right to compensation within three years from the day he/she became aware of the finished construction, but at the latest ten years after finished construction and can claim the value of the land in the amount of the sales price valid at the time of issuance of the court decision.”

Articles 25, 26 contain provisions on adverse possession; the right of pledge is dealt with in Article 61, while easement is defined in Article 49.

2. Cadastre and property rights registration institutions and procedures

Traditionally, in the region of South Eastern Europe, courts were competent for the registration of real property rights, whereas administrative authorities had to ascertain the physical status of real property, like location, size and value. The Land Cadastre, together with the land books, was introduced during the times of the Austro-Hungarian Monarchy at the end of the 19th century. Unlike the land books, the land cadastre is comprehensively available for the entire territory.

Until 1988, public records of real estate and title holders on real estate were maintained in land books and in the land cadastre. In 1988, the

Serbian Government decided to transform the then existing dual system into a new unified Real Estate Cadastre.

C. Analysis of the Situation in the Republic of Serbia

1. Land and land use

The actual situation in Serbia is characterized by the lack of a concept for comprehensive spatial planning and land use. There are only basic land use categories established by law as shown below. The law classifies all land into two categories:

Construction land:

- Public construction land;
- Other construction land.

Agricultural land:

- Cultivable (arable);
- Uncultivable.

In the cities public construction land is defined by the master plan. All public construction land is in the ownership of the Republic of Serbia, effectively establishing a State monopoly. One can only acquire the exclusive “right of use” on the urban building land under the following procedures:

First case – no building

The “right of use” of building land is obtained through an open public bidding procedure or through a public tender (for buildings bigger than 10,000m² or in cases where the building site has not been assigned). The price is determined by taking into account the site location and the cost of the infrastructure development. The municipality issues the license for the “right of use” of the building land to the highest bidder.

¹⁰⁹ Zakon o osnovama svojinskopravnih odnosa -- Official Gazette SFRY No. 60/80, 36/90, Official Gazette FRY No. 29/96.

Second case – existing building

Another way to obtain the “right of use” of urban building land is to acquire the building on that land. When acquiring property rights on the building (construction in any stage), the exclusive “right of use” is automatically acquired as well.

2. Legal framework

The main laws governing property rights and/or real property registration in Serbia are the following:

- *Constitution of the Republic of Serbia of 1990;*
- *Constitutional Charter of the State Union of Serbia and Montenegro of 2003;*
- *Federal Law on Basic Elements of the Property Rights 1980;*
- *Federal Law on Obligations of 1978;*
- *Law on Land Books¹¹⁰ of May 18, 1930 (came into force on January 1, 1931) plus the*
- *By-law on keeping the land registers¹¹¹ of 1931;*
- *Housing Law¹¹² of 1992;*
- *Law on Restitution of Agricultural Land¹¹³ of 1991 as amended in 1996;*
- *Law on Assets in the Ownership of the Republic of Serbia¹¹⁴ of 1995;*
- *Law on Basic Elements of the Property Rights;*
- *Law on State Survey, Cadastre and Registration of Rights on Real Property.*

Property relations are mainly regulated by the *Law on Basic Elements of the Property Rights of 1980*, as amended in 1996. This law defines the terms of possession, ownership, the acquisition of possession and ownership on movables and real estate, based on the principle of “title and modus”. It further contains regulations on rights and obligations of the owner, liens, co-ownership, rights of foreigners on movables and real estate, as well as the loss of ownership and possession, respectively. Pursuant to its Article 33, the ownership right on real estate can be acquired only by way of entry into the public book or by way of any other appropriate way provided for by law (see above). This rule, however, has never been “executed” strictly, and real estate used to be sold, rented etc. without prior entry into the land registers. Due to the unreliable status of the land books and the fact that land books were not updated properly after the Second World War, even courts used to protect the “real” holder of the real estate more than the registered owner.

The *Law on Land Books of 1930* is still applicable in Serbia in those cases which have not been regulated by laws enacted later. After 1945, the courts did not apply it directly, but applied its principles such as the principles of registration, trust in the correctness of the land book entries, priority and legality. In addition, the Serbian *Law on State Land Survey, Cadastre, and Registration of Rights on Real Property (SSCR Law) of 1992* has taken over all relevant regulations and conditions of the *Law on Land Books* of 1930. The Real Estate Cadastre established by this law, like the land books, is kept open to the public, so everyone interested in the legal status of a particular parcel of land may inspect the registers and obtain an extract from the land book.

The most important codes are the following:

- *Law on Obligations, which provides regulations of general contract law, commercial contracts, law of torts (damages), unjust enrichment et al., and contains general principles of civil law, which are also well known in the Austrian civil law tradition (e.g. freedom of contract, good faith and fair dealing, prohibition of abuse of rights et al.);*
- *Inheritance Law¹¹⁵ of 1996;*

¹¹⁰ Zakon o zemljišnim knjigama, "Official Gazette of the Kingdom of Yugoslavia" / "Službene novine Kraljevine Jugoslavije" No./ (Kingdom of Yugoslavia) br. 146-LIII/307, 146-LIII/308, 62-XVIII, 62-XVII/105, 64-XIX/120.

¹¹¹ "Official Gazette of the Kingdom of Yugoslavia" / "Službeni glasnik Kraljevine Jugoslavije" No. / (Kingdom of Yugoslavia) br. 64-XIX/102 of March 21, 1931.

¹¹² Zakon o stanovanju, "Official Gazette RS" / "Službeni glasnik RS" No./ br. 50/92, 76/92, 84/92, 33/93, 53/93, 67/93, 46/94, 47/94, 48/94, 44/95, 49/95, 16/97, 46/98, 26/01.

¹¹³ Zakon o povratku obradivog poljoprivrednog zemljišta, "Official Gazette RS" / Službeni glasnik RS" No./ br. 18/91, 20/92.

¹¹⁴ Zakon o sredstvima u svojini Republike Srbije, "Official Gazette RS" / "Službeni glasnik RS" No./ br. 53/95, 3/96, 54/96, 32/97, 44/99.

¹¹⁵ Službeni glasnik RS" No. / br. 46/95.

- *Law on Marriage and Family Relations*¹¹⁶ of 1980;
- *Federal Law on Contentious Procedure*¹¹⁷ of 1977, the republican *Law on Non-contentious procedure*¹¹⁸ of 1982, the federal *Law on Execution Procedure*¹¹⁹ of 2000;
- *Federal Law on Basic Elements of the Property Rights (Property law)*¹²⁰ of 1980.

The main laws governing institutions and/or procedures with respect to real property registration are the following:

- *Law on Interior Settlement, Foundation and Revision of Land Registration of 1930*;
- *Law on Land Registration Division, Depreciations and Ascriptions of 1931*;
- *Law on Conveyance of Real Property*¹²¹ of 1998;
- *Law on Maintenance of Residential Buildings*¹²² of 1995;
- *Law on State Land Survey, Cadastre, and Registration of Rights on Real Property of 1992 (SSCR Law)*;
- *Law on Privatization*¹²³ of 2001, as amended in March 2003;
- *Planning and Construction Law*¹²⁴ of May 2003. This new law combines several former laws into one single law. By its adoption the following laws became invalid:
- *Law on Building land*¹²⁵ of 1995;

- *Law on Planning and Spatial and Settlement Area Regulation*¹²⁶ of 1995;
- *Law on Erection of Constructions*¹²⁷ of 1995;
- *Law on Special Conditions for Issuing Construction Permits and Use Permits, respectively for Particular Property*¹²⁸ of 1997.

In the Republic of Serbia today, the *Law on Obligations*, adopted in 1978 and revised in 1993, is still in force. Until now, **restitution of ownership** has not been resolved, although discussions are under way to resolve this issue.

Real estate and property rights registration

The Land Book System, based on a general cadastral survey of the real estate, was introduced in Serbia by enactment of the Law on Land Books and the Law on Interior Settlement, Foundation and Revision of Land Registration in 1930. Besides these regulations, two further laws were enacted which regulated the division, depreciation and ascription of land parcels in the Kingdom of Yugoslavia. Land books covered about 25–40 per cent of the territory of Serbia¹²⁹. They were well kept in Vojvodina and other parts at the coast in Montenegro, even during the socialist era. However, in Niš, Kragujevac, Priort and Užice, for example, the land books were not established. The land book system is gradually being phased out and replaced by the Real Estate Cadastre.

The Title Deed Book System (“tapija”) is a public record on the owners of real estate. The owners registered with the title book are given a “tapija” (deed) as a proof of the ownership, which states that a certain person is the owner of a house or a real estate. The title deed books were established in the Kingdom of Yugoslavia for those parts of the country respectively (southern

¹¹⁶ Službeni glasnik SRJ" No. / br. 22/80, 11/88, "Official Gazette RS" / "Službeni glasnik RS" No. / br. 22/93, 25/93, 35/94, 46/95.

¹¹⁷ Sl.I. SFRJ" No. / br. 4/77, 36/77, 36/80, 69/82, 58/84, 74/87, 57/89, 20/90, 27/90, 35/91, "Official Gazette FRY" / " Sl.I. SRJ" No. / br. 27/92, 31/93, 24/94, 12/98, 15/98.

¹¹⁸ Službeni glasnik SRS" No. / br. 25/82, 48/88, "Official Gazette RS" / "Službeni glasnik RS" No. / br. 46/95.

¹¹⁹ Službeni glasnik SRJ" No. / br. 28/00, 73/00.

¹²⁰ Sl.I. SFRJ br. 6/80, 36/90, Sl.I. SRJ br. 29/96.

¹²¹ Zakon o prometu nepokretnosti, Službeni glasnik RS br. 42/98.

¹²² Zakon o održavanju stambenih zgrada, Službeni glasnik RS br. 44/95, 46/98, 1/01..

¹²³ Zakon o privatizaciji, Službeni glasnik RS br. 38/01, 18/03.

¹²⁴ Zakon o planiranju i izgradnji, Službeni glasnik RS br. 47/03.

¹²⁵ Zakon o građevinskom zemljištu, Službeni glasnik RS br. 44/95, 16/97, 23/01; Službeni glasnik SRJ br. 16/01.

¹²⁶ Zakon o planiranju i uređenju prostora i naselja, Službeni glasnik RS br. 44/95, 23/96, 16/97, 46/98.

¹²⁷ Zakon o izgradnji objekata, Službeni glasnik RS br. 44/95, 24/96, 16/97.

¹²⁸ Zakon o posebnim uslovima za izdavanje građevinske, odnosno upotrebne dozvole za određene objekte, Službeni glasnik RS br. 16/97.

¹²⁹ The coverage of land books cannot be estimated due to controversial information varying from 25 to 40 per cent, depending on the source of information. According to several Belgrade judges, land books existed in up to 40 per cent of the Serbian territory, taking into account that only the territory of Vojvodina covers about 20 per cent. According to the GGA, land books existed for approximately 25 per cent of the territory of Serbia.

Serbia), that did not have land books. The title book system was inherited by the Turks.

The Land Cadastre was introduced during the times of the Austro-Hungarian Monarchy at the end of the 19th century. Unlike the land books, the land cadastre is comprehensively available for the entire territory. Serbia consists of 5,826 cadastral communities, organized in to 178 cadastral districts with the same number of cadastre offices in charge of surveying. Before admitting private surveying companies, all surveying work was performed by the cadastre offices.

The Land Cadastre contains data about parcels and land objects according to their position, shape, area, and category, more exactly about land cultivation, solvency, class, cadastre income (“fiscal cadastre”) and users. These data are maintained, calculated and recorded on the basis of cadastre parcels, organized by cadastral number and the denomination of the cadastre community in which that parcel is located. The position and shape of all cadastre parcels and objects on them are represented on the maps, while other data are recorded in cadastral registers¹³⁰.

The Real Estate Cadastre

Until 1988, public records of real estate and title holders on real estate were maintained in land books and the land cadastre. For various reasons, among them social and economical changes and new information technology, the Serbian government in 1988 decided to transform the then existing dual system to the new unified Real Estate Cadastre, uniting the maintenance of the factual status and the legal status of real property in one place. By enacting the *Serbian Law on State Land Survey, Cadastre, and Registration of Real Estate Rights (SSCR Law) in 1992*, as amended and extended in 2002, the Governmental Geodetic Authority (GGA) was instructed with the administration and maintenance of the Real Estate Cadastre. The GGA was empowered to perform not only works in the field of geodesy, but also legal tasks, namely to record entries of rights on real

property. Thus, since 1992, the courts are not competent any more to register immovable property of individuals or legal entities.

The Real Estate Cadastre is the public record of real estate objects and the rights established on them. It contains data about cadastral parcels, buildings, apartments and business improvements, separated parts of buildings and other structures, describing their position, shape, the area, kind of use, solvency, cadastre class, cadastral income, actual rights on them and holders of those rights. The Real Estate Cadastre, as a unique recording system of real property in the Republic of Serbia, enables the recording of all data about land, ways of using it, cultivation and class, objects, rights on real property and the holders of these rights in one place. When introduced in a respective cadastre municipality it replaces land registers, deed books and land cadastre documentation.

During the socialist period, the registration of public and State-owned real estate was not considered to be necessary. Land Registers became incomplete, inefficient and were not harmonized with data from the Land Cadastre. “Etagé”¹³¹ owners were not interested in the registration of apartments and other special parts of buildings until 1990. Registration was mainly requested by owners of family residential buildings. With regard to public “etage” property, big investors (public enterprises) had no interest to register neither the buildings nor the appartments. Since the privatization of public appartments was initiated in the 1990s, owners were anxious to register the acquired “etage” property, but were unable to do so since the buildings were not registered.

The current situation of the Real Estate Cadastre on the territory of Serbia is characterized as follows:

- Land Cadastre covers the whole territory;
- Real Estate Cadastre covers 55 per cent of total number of cadastre municipality;
- Land Book covers 19 per cent of the total number of cadastre municipality;

¹³⁰ Vojvodina has both land books and land cadastre; in 23 per cent of the territory the land cadastre is in stereographic projection and measured in a fathom system like the old Austrian fiscal cadastre (Grundsteuerkataster). The maps including this measurement are in bad physical condition.

¹³¹ „Etagé” (the word follows the original legal texts) indicate ownership of an apartment unit. As opposed to the condominium concept where ownership comprises a portion (undivided interest) of land and common areas plus the specific apartment unit, this type of ownership is restricted to the apartment unit whereas the land and common areas remain in the ownership of the state.

- 26 per cent of the cadastre municipalities do not contain data on real estate rights.

The amendments to the *SSCR Law* enacted in May 2002 brought about some significant changes, in particular that the GGA monopoly of geodetic works was abolished: all geodetic works “in the field” (surveying, separation of parcels, shots of the parcels, ways and road network) will be done by private geodetic companies in the future. The evidence of rights on real estate, however, stays with the GGA. Pursuant to Article 5 of the *SSCR Law*, rights on immovable property are acquired, transferred, restricted and deleted by entry into the Real Estate Cadastre. Rights “*in rem*” are ownership, mortgage rights, usufructus, and easements. The rights “*in rem*” referring to each separate parcel of land and the names of the respective beneficiaries appear on the face of the registers (in the respective column), called “real estate sheets”. According to Article 42 of the *SSCR Law*, the real estate sheet contains data on:

- The real estate (parcel of the land) (A sheet);
- The holder of the rights on real estate (B sheet);
- Building, apartment, business improvements as special parts of the building and additional construction property as well as the entity or holder of the rights on those parts (V sheet);
- Restrictions to rights on real estate (encumbrances) (G sheet).

Illegally constructed buildings are noted in the part G as an encumbrance “teret”.

The registration of rights in the Real Estate Cadastre is performed upon a resolution of a qualified lawyer at the GGA. The administrative decision is done by a commission consisting of a lawyer, a surveyor and a person of confidence from the municipality. The lawyer at the GGA only performs a formal review of the underlying documentation, whereby only easily recognizable deficiencies can be detected. The Resolution of the GGA can be appealed in an administrative procedure: first to the municipal cadastre office, second to GGA in Belgrade and third to the court.

The implementation of the Real Estate Cadastre is hampered by lack of financial resources and the inadequate education and

training of personnel. A major project of the World Bank, assisted by the EU and bilateral sponsors, is being prepared and implementation should start in 2005. The challenges are significant. For example, it took four years to complete the Real Estate Cadastre for Stari Grad (Belgrade), a municipality with 100,000 inhabitants, and six years for the cadastral municipality of Rakovica. Belgrade has about 1 million inhabitants who live in 17 municipalities. Related to this process is the legalization of illegal constructions which also result in a formal registration in the Real Estate Cadastre. In Belgrade there have been 45,000 requests for registration under the legalization program so far and 55,000 more are expected.

Urban planning

Problems with illegal construction in Serbia are to some extent perpetuated by the inability of the planning system to cope with rapid changes in the development process. The Planning and Construction Law, adopted in 2003, introduced the following key provisions:

- Clear hierarchy and tasks of different spatial plans;
- Distinction of land ownership – public (which can not be a subject of transactions) and ‘other’ (can be owned by any party and be a subject of transactions);
- Licensing regimes for participants in the planning and construction processes;
- Development of communal infrastructure is an obligation of public utility companies financed by user fees;
- A simplified procedure for issuing construction permits;
- A procedure for legalisation of illegally constructed buildings and extensions; and,
- Strict penalties (e.g. illegal construction is treated as a criminal offence and is subject to imprisonment).

Planning, particularly in urban areas, lags behind the needs of both investors and local communities. For example, many old plans envisaged high-rise development and intensification in the urban periphery. As these plans are neither realised for decades, nor updated, illegal construction has sprawled on formally agricultural land.

D. Analysis of the situation in the Republic of Montenegro

Legal framework

The *Law on State-Performed Surveying, Cadastre and Registration of Real Estate Rights* (Official Gazette No.55/2000) is based on the original *Law on State Land Survey, Cadastre, and Registration of Real Estate Rights* (SSCR Law) of 1984 and 1989 respectively. The main provisions of this law for the Real Estate Cadastre are:

- The term “immovable property” includes land, buildings, apartments and commercial structures.
- The cadastre is considered as the database evidence for the purpose of (1) legal, administrative, economical, scientific, statistical and taxation data, (2) proving of rights on such real property, (3) elaboration of spatial and urban plans, and (4) information for a wide variety of public and private tasks and activities.
- Surveying of real property is the basis for the establishment of physical data and their recording in the cadastre and the establishment of rights on such real property.
- Principles established in this law for the cadastre are: registration (only by registration the rights on an immovable property can be established), publicity and public access to data is given, surveying is a governmental task, but can be delegated to private, licensed and qualified surveyors.
- The cadastre is responsible for the geodetic network.
- The cadastre is organized into territorial units of cadastral municipalities and cadastral districts. Cadastral municipalities are identical with (administrative) municipalities.
- Land is classified in three categories: fertile land, non-fertile land, land with special use purpose. Sub-classes of land can be established. Most of the land is State-owned by the Republic of Montenegro, in particular in urban areas, whereas most of the agricultural land, now classified as “fertile land,” is privately owned.

- The cadastre is also the register for the registration of property rights (ownership and other rights). Registration is the modus of transferring property title.
- Other principles are contained in the law as well, such as legality (only rights defined by law can be registered), public trust, reliability and priority.
- The law also regulates joint ownership and condominium rights.
- The law differentiates between the actual registration (recording) and the pre-notation (conditional recording until final conditions are met within a time limit).

In 2002 a *Law on Restitution* was passed, but its implementation is doubtful.

2. Real estate cadastre and planning issues

The Directorate for Immovable Property is the Republic of Montenegro’s agency responsible for the functions of the cadastre and rights registration. It has 21 district offices performing cadastre and rights registration functions. Its organization and its capability to exercise its functions can be described as very poor due to lack of financing, poor technical standards and equipment and staffing problems.

The data in the Real Estate Cadastre in Montenegro is organized in to four sheets:

- The A sheet contains data on the real estate.
- The B sheet contains data on the holder of the rights on the real estate.
- The V sheet contains data on buildings and other improvements.
- The G sheet contains data on encumbrances.

Illegal construction is noted in sheet G as an encumbrance.

The Real Estate Cadastre is open to the public and its organization is similar, albeit more extensive, to the Austrian “Grundbuch” organization. The costs for services are as follows: information (abstract) from the land book is Euro five, while from the cadastre - Euro 10. Registration takes 15 days to one year, but for a

Euro 22 fee registration can be performed in one day.

The real estate cadastre system in Montenegro requires urgent attention. According to local experts, “the percentage of the territory of the Republic included in the Real Estate Cadastre is 56 per cent. For the remaining part there is no cadastre record, since this territory was covered by the Inventory Cadastre Recordings performed approximately 60 years ago. This part of the territory does not have official topographical cadastre maps.”

As a result, urban planning, the operation of real estate markets and resolving the problem of illegal construction is severely hampered by the status of the Real Estate Cadastre. Furthermore, land for construction in urban areas is owned by the State. To a small extent, State (Republic) land is being auctioned by the Directorate for Real Estate of Podgorica for real estate development purposes. This Directorate is also responsible for short-term land leases of up to one year. The large amount of illegal construction makes it almost impossible to create and prepare land for orderly real estate development through urban planning and the creation of infrastructure. At the same time,

creation of infrastructure. At the same time, though, municipal authorities are deprived of revenues from taxation, fees and payment for communal services, which are desperately needed for performing municipal functions.

A new *Law on Physical Planning and Development* is in the process of adoption, intending to introduce, among others, the following key provisions:

- Clear hierarchy and tasks of different spatial plans;
- Procedures for harmonisation of different types of plans;
- License regimes for all participants in planning and construction;
- Measures for non-compliance with statutory plans.

Inherited issues, deficits and inertia in spatial planning are still issues that need to be addressed. In addition, many urbanised areas lack some or all levels of spatial plans; in many others - the existing old plans are inadequate to present needs and interests in development. The process of legalisation will inevitably lead to much compromise in the new urban plans.

