

REAL ESTATE COMMITTEE

OBJECTIVE 1: MAKE THE CADASTRE MORE EFFECTIVE

...BY REVIEWING PROCEDURAL FORMALITIES

CHALLENGE: The new Law on Registration with the Cadastre of Real Estate and Infrastructure has to some extent enhanced the cadastre's effectiveness, primarily by automating nearly all of its activities, leading to greater responsiveness, time savings for clients, and faster registration. Clients should be made aware of how digitalisation has affected their rights, and especially that they will no longer be able to file applications physically at cadastre offices.

Even though better regulation of procedural formalities will streamline the cadastre's operations, it also runs the risk of reducing efficiency and responsiveness. One particular issue in this regard is the cadastre's newly introduced ability to reject an application it deems incomplete without having to notify the applicant of the deficiencies it has identified.

RECOMMENDATION: Clarify time limits for applicants to submit additional documentation to avoid applications being rejected due to formal deficiencies. An applicant's lack of knowledge or sophistication must not be sufficient reason to reject an application: the authorities should notify all such applicants of why their applications were deemed deficient and set a limit for them to address the issues identified. Clients should be allowed to correct any deficiencies, submit additional documents, respond, and protect their rights and interests, especially given the large number of outstanding cases older than one year that still require clients to physically interact with the cadastre.

...BY AMENDING LEGISLATION TO BETTER REFLECT REALISTIC TIME LIMITS FOR ACTIONS BY AUTHORITIES IN THE REAL ESTATE REGISTRATION PROCEDURE

CHALLENGE: Time limits for decision-making on applications for real estate registration are regularly breached due to excessive workloads of cadastre services. There are issues with both first-instance cases where applications were filed in person by applicants before the new law took effect, and with actions taken by the National Land Survey Authority (RGZ) in second-instance cases.

RECOMMENDATION: Improve efficiency of decision-making, especially for applications not made directly by notaries public and other authorities, especially as individual applicants will be able to file applications in person only until the end of 2020 and enhance oversight to promote compliance with statutory time limits.

...BY PROMOTING CONSISTENCY AMONGST THE VARIOUS CADASTRE SERVICES

CHALLENGE: Various cadastre services interpret legislation inconsistently and at odds with other laws and regulations.

RECOMMENDATION: Provide more transparent and clearer implementing instructions for legislation applied by the cadastre and appropriately train staff to follow them to ensure cadastral procedures become faster and more predictable.

...BY UPDATING THE CADASTRE TO REFLECT THE ACTUAL SITUATION IN THE FIELD AND PROMOTING THE RELIABILITY OF CADASTRAL DATA

CHALLENGE: The descriptive sections of cadastral files may differ from the cadastral plans they refer to. Moreover, information available on the online *e-Katastar* service is not always reliable as the data are not updated regularly.

RECOMMENDATION: Link information systems and ensure automatic exchange of information between public authorities and the online *e-Šalter* system.

OBJECTIVE 2: EFFICIENT CONVERSION OF USAGE RIGHTS TO FREEHOLD TITLE

...BY CONTINUING CONVERSION PROCEDURES IN CASES WHERE PROPERTY MAY NOT BE RESTORED IN KIND

CHALLENGE: Operation of Articles 1(5) and 11(6) of the Law on Conversion with Compensation often results in the suspension of restitution proceedings, as these provisions mandate that authorities that identify a parcel as being subject to a restitution claim are required to immediately order suspension of conversion proceedings until the final completion of the restitution process, or until the issuance of a final decision establishing entitlement to indemnification or of a certificate attesting that the property may not be restored in kind.

In effect, these provisions serve to block conversion efforts, as the authorities have not been responsive in issuing the decisions and certificates required by law, even in cases where it is clear that indemnification is the only option as the property may not be restored in kind.

For instance, Article 9 of the Restitution and Indemnification Law stipulates that nationalised property can be restored in kind only by a business or other legal person established by the Republic of Serbia, an autonomous province, or local authority, or a majority socially-owned business or co-operative, including businesses and co-operatives in bankruptcy or liquidation. Restitution in kind is not an option in any other case, so there is no justification for suspending conversion in these situations.

RECOMMENDATION: As the Restitution and Indemnification Law clearly prioritises conversion with compensation over restitution in kind, we believe that Articles 6 and 11 of the Law on Conversion with Compensation should be limited only to cases where property can be restored in kind, pursuant to provisions of the law governing restitution of nationalised property and indemnification.

...BY PROMOTING PREDICTABILITY OF PROCEDURES AND COSTS FACED BY INVESTORS

CHALLENGE: Conversion efforts are hindered by the lack of clarity in terms of procedures and division of decision-making powers between the RGZ and the appropriate local bodies. These issues include inconsistencies with conversion fee assessment methods and jurisdiction for ruling on whether requirements are met for conversion with or without compensation.

RECOMMENDATION: Ensure strict compliance with the Planning and Construction Law, which clearly states that decisions issued by the real estate cadastre have declaratory rather than constitutive force. This would dispel much doubt as to how conversion without charge should operate and make it easier for investors to benefit from the Law on Conversion with Compensation.

OBJECTIVE 3: COMPLETE THE RESTITUTION PROCESS

...BY SAFEGUARDING EXISTING INTERESTS AND ASSETS

CHALLENGE: Case law regarding the Restitution and Indemnification Law is neither extensive nor consistent, which may jeopardise rights holders. The Law is poorly drafted and permits authorities to make discretionary decisions even in the most sensitive disputes where multiple parties claim to hold rights, whilst not allowing the same options for making decisions as to whether an asset may be restored (as it limits options for producing evidence).

In some cases, the Restitution Agency has interpreted the Law so as to hinder or even prevent foreign nationals from receiving restitution or indemnification. Public authorities have also been reluctant to issue indemnification decisions.

RECOMMENDATION: The authorities should ensure existing rights are safeguarded as envisaged by Law, with no discrimination between Serbian and foreign nationals.

...BY ALLOWING EQUITABLE INDEMINIFICATION

CHALLENGE: The law is not geared towards allowing persons entitled to indemnification to actually access it, firstly as the authorities have been tardy in issuing indemnification decisions, secondly as maximum indemnification is limited by law and further reduced by a set of weighted adjustments, and, lastly, as the indemnification consists of bonds that only mature in ten years.

RECOMMENDATION: Amend the Law to ensure that Serbia provides more equitable indemnification to those who are entitled to it.