

THE STATE OF CADASTRE, LAND MARKET AND REAL PROPERTY DEVELOPMENT IN SERBIA AND MONTENEGRO

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ABSTRACT

The paper provides basic characteristics of Real Estate Cadastre as a unique record system of real estate and registration rights with overview regarding its implementation and ways of managing Land Cadastre and Land Books. The problems of unique record system have been emphasized due to its inclusive real estate data and registration of rights. In the paper there are also presented some other problems which has negative effects regarding the land reform process in Serbia.

KEY WORDS

Land Registration, Land Cadastre, Land Book, Real Estate Cadastre,

1. INTRODUCTION

Conditions necessary for existence of legally regulated real-estate market (land and buildings) are first of all, clearly laid down property legislation and administration of real-estate information. To this end, there is an extremely significant reason: large share of investments is related to purchase of land and buildings. Buyer has to be sure that land and the building belong to the seller, while on the other hand, he has to be sure that he will become the owner of real estates that he buys. This kind of security can be provided only if the state has regular real property register.

Precondition for existence of regulated real-estate market is to make clear distinction of what belongs to whom, because without reliable property (real estate) register, transaction of real estates are usually costly, time consuming and uncertain. The most important task for a country is to provide up to date informations about owners of real estate properties in the most responsible manner. In particular, it is the most important to have reliable data concerning the real properties in cities and centres with registered strong economic activities and convenience of real properties.

At the moment, Serbia and Montenegro are in the period of transition from unsecured to secure system, from unreliable to an up to date property register, with clear, safe and guaranteed ownership rights. The assignment is complex and time consuming, but has to be done.

2. REAL PROPERTY REGISTRATION AND CADASTRE SYSTEM

The Serbian cadastre and land registration system dates from 19th century and it is based on the system of the Austro-Hungarian Monarchy on the one hand, and on the Ottoman system on the other hand. Today, the Cadastre System and Ownership Records in Serbia are held in either the new Real Estate Cadastre (REC), a unified registry comprising both factual and legal data of real properties; or in the older records of the Land Cadastre and Land Book (Register of titles); or in the Title Deed Book (or “deed book”, in Serbian “*tapija*” in cases where no other register exist), due to historical reasons. The Title Deed Book is, nowadays, used rarely, only in cases where the Land Books or the Land Cadastre does not exist at all and that is why they will not be discussed further on.

2.1 Land Cadastre

The Land Cadastre contains data on land parcels and objects with regard to their position, shape, area, and category, more exactly about land cultivation, solvency, class, cadastre revenue and users. These data are maintained, calculated and recorded on the basis of cadastre parcels, organized by cadastre number and the denomination of the cadastre municipality in which the respective parcel is located. The position and shape of all cadastral parcels and objects located on the parcels are shown on maps, while other data are recorded in cadastral documentation.

Land Cadastre:

- is done for the whole territory of Republic of Serbia,
- is done according to the data from the state survey of the country
- serve as the base for Land Books,
- does not contain data on actual rights on real estates (isn't an ownership registry),
- does not contain data about special parts of buildings and apartments.

There are no legal difference between recognition and registration between public and private lands.

There is a special situation in the Autonomous Province of Vojvodina. For this area, both Land Books and Land Cadastre are available.

Land Cadastre was run and maintained by administrative body called Governmental Geodetic Authority (GGA).

The state survey was done in the Gauss-Krüger projection and covers the whole territory of Serbia, except for 149 cadastral municipalities in Vojvodina, where the survey was performed in Stereographic projection and 42 cadastral municipalities in Central Serbia where survey was done in Zoldner projection. The reference ellipsoid for the state survey is the ellipsoid of Bessel.

It has to be emphasized that negligible number of cadastral maps are transferred into digital form, somewhat more than 1%. The fact that cadastral maps are not at the higher technological level, especially the cadastral maps of cities, is the main reason for incapacity in establishing of modern and integrated information system. That is why there are no possibilities for the efficient space management. Furthermore, in the areas where digital cadastre maps are done, they are not used in adequate manner.

2.2 Land Books

Land Book is public register in jurisdiction of the court, where the actual rights on real estates are registered (land, buildings and special part of buildings). Land Book is based on data from the Land Cadastre. Condition to register lands, buildings and special part of buildings (such as apartments) is that the lands and buildings have been surveyed, drawn on the cadastral plan and registered in cadastral operation files with adequate documentation enclosed (construction permit and occupancy permit).

Introduction of land-book register of Austro-Hungarian type has started in Serbia in 1930 by adoption of the Law on Land Books, and still apply nowadays. Until the Second World War, Land Books were introduced only in 1/3 of the Serbian territory, but wasn't continued after the War due to political reasons. The reason is the same in the areas of many courts, where Land Books were damaged or destroyed for never to be renewed again, although the renewal procedure was regulated by legal rules.

During domination of public property, it was considered unnecessary to register public and state owned real estates. At that time, Land Books were considered outdated and the private property was marginalized. As the time passed by, Land Books became incomplete, inefficient and not harmonized with data from the Land Cadastre, therefore unusable. This situation didn't happen because the registries were of poor quality, but due to political orientation at the time, which quietly boycotted and did not manage Land Books. This general tendency, which addressed the registration of rights for all real estates, had a great influence on registration of buildings and apartments.

It can be concluded, that the Land Books condition is completely disatisfactory due to the reasons not very much in connection with the Land Book, but due to attitude of the state, towards existence of private property.

According to Governmental Geodetic Authority (GGA) data, Land Book is managed in 777 cadastre municipalities or 17% out of total number of cadastre municipalities, i.e. 2 298 821 ha which amounts to 29% out of total territory of Republic of Serbia. In particular, it has to be emphasized that Land Book was maintained in all cities in Vojvodina and in some of the cities south of Sava and Danube river (in parts of Belgrade, in the cities Kragujevac, Valjevo, Pozarevac, etc.), but in towns such as Pirot, Uzice, Nis, were either not established at all, or maintained unsatisfactorily.

2.3 Real Estate Cadastre

Without respect for true reasons of poor conditions of Land Books, one part of expert public opinion completely blamed the Land Books. Solution was found in year 1988 by bringing into force new Law on State Land Survey, Cadastre and Registration of Rights on Real Property (SSCR Law), which provided creation of new register of rights over real estates – Real Estate Cadastre. This Law is presently in force, and it has been amended many times since 1988. Last time it was amended in 2002. It is important to emphasize that this Law originates from social governing period, when real-estate market practically did not exist and when there was solely cadastral registration. It has not been significantly changed in later amendments of this Law.

The Real Estate Cadastre is the public record of real estate objects and the rights established on them. The REC is established on the basis of gathering and uniting the data from the Land Books, the Title Deed Books and the Land Cadastre. The Real Estate Cadastre united two functions - the classic function and a new one. While the classic function aims at keeping relevant data on land, the new one focuses on the registration of rights *in rem* on immovables. The cadastre, in its new function, takes over the role of the Land Books, until their keeping does not cease completely.

The Real Estate Cadastre contains data about cadastral parcels, buildings, apartments and business improvements, separated parts of buildings and other structures, describing their position and shape, the area, kind of use, solvency, cadastre class, cadastral revenue, actual rights on them and holders of those rights on such real property. Real Estate Cadastre, however, does not contain market value of the real estate, which has negative effect to real-estate market.

The Real Estate Cadastre is established, kept and maintained by the GGA, which is an administrative body.

Pursuant to Article 5 SSCR Law, rights on immovable property are acquired, transferred, restricted and deleted by entry into the Real Estate Cadastre.

The Real Estate Cadastre consists of: the work original of maps, the collection of deeds and the cadastral documentation (cadastral operate). The work original of maps is a copy of the archives original and serves for maintaining of the survey and the Real Estate Cadastre. The collection of deeds consists of the originals or certified copies of deeds important for the registration of rights on the real property.

The cadastral operate consists of real property sheets¹. According to the data from the real property sheets, the following documentation is made:

- an index of cadastre parcels,
- a list of the cadastral income,
- a collected overview of surfaces and cadastre income according to the purpose of use and the cadastral classes and
- an alphabetical index of owners, holders of the right of use and holders of the real properties.

According to Article 42 SSCR Law, the real property 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).

The A sheet contains data on the real estate, the number of the sheet of the real estate, the cadastral municipality, the number of the parcel, address, the type of use, the cadastral class, area, the cadastral revenue, as well as the kind of real estate (e.g. urban building land).

¹ Article 41 of the SSCR Law

The B sheet contains data on the holder of the rights on the real estate, the number of the sheet of the real estate, the cadastral municipality, name, address, seat of the holder, the type of right (e.g. right of use), the category of ownership (e.g. state ownership of the Republic of Serbia) and the extent of the right (e.g. only holder or co-holder).

The V sheet, subsection I, contains data on buildings and other improvements as well as the holder(s) of the rights on these buildings, the number of the sheet of the real estate, the cadastral municipality, the number of the parcel, the number of floors, the legal status of the property / building, the type of use and the kind of the improvements, e.g. residential building or business improvements, address of the property, house number, the holder of the right(s) on the building or improvements (name, address, seat), the category of right (e.g. ownership), and the extent of the right.

The V sheet, subsection II, contains data on apartments and business improvements as special parts of a building or other buildings and the holders of the rights thereon, namely the number of the parcel, the number of the special part of the building, area, address of the special part, floor, the number of rooms, the holder of the rights on the special part of the building, name, address, seat, the type of the right (e.g. user, owner), the kind of ownership (e.g. state ownership of the Republic of Serbia, social ownership, private ownership), and the extent of the right.

The G sheet contains data on charges and encumbrances, the number of the sheet of the real estate, the cadastral municipality, the number of the parcel, the number of the special part of the building, the kind of use of the special part of the building, the type of encumbrance and the obligor (e.g. prohibition to purchase the building), the date of the entry, and the duration of the encumbrance. Thus, the G sheet, for instance, indicates the existence of mortgages, servitudes, or contains an annotation that the construction object has been erected without building permit (illicit construction), or that for the construction object in question, no use permit has been issued.

The amendments to the SSCR Law enacted in May 2002 brought some significant changes, in particular that the GGA monopoly of geodetic works was abolished: at present, all geodetic works “in the field” (surveying, subdivision and amalgamation of cadastral parcel, road network, etc.) are done by private geodetic companies. The evidence of rights on real estate, however, stays within the GGA.

Real Estate Cadastre, in the part related to registration of real estates rights, is similar to Land Books. Main differences lies in the fact that SSCR Law prescribed that two registers, maintained separately – register of actual condition (land cadastre) and register of legal condition (land register) are connected into one.

It is hardly feasible to fit into single register two completely different principles of managing two registers (unify both factual and legal data on real property), i.e. to regulate input of technical measurement together with legal registration and that is why these two differences are the weakest points of this Law.

It is obvious that, the intention of uniting the factual and legal data was to update the register more efficient, but also it has happened that the design of Real Estate Cadastre in cities, was infinitely extended due to complicated legal-property problems, which resolved in slowing the registration of changes. Out of 2794 cadastre municipalities in which Real Estate Cadastre

was completed, in Republic of Serbia, there is a small number of city cadastral municipalities. The creation of Real Estate Cadastre for three Belgrade's cadastre municipalities out of 74 in total, lasted for 5 years or more.

According to data from GGA Real Estate Cadastre has been made so far for 2794 cadastre municipalities out of 4529 in total or 61.7 % (excluding cadastral municipalities at Kosovo and Metohija).

3. REAL ESTATE PROPERTY AND PROMOTION OF THIS FIELD

In ex-Yugoslavia, after the Second World War everything from agricultural land, forest land to construction land, apartments, residential buildings, business premises and business buildings was confiscated on different basis and based on various laws, with the aim of establishing total state control over the real estate property.

Construction land was taken away by communist authorities in a number of ways, and the most massive nationalization on the whole territory of ex socialist Yugoslavia occurred when the Law on Nationalization of Leased Buildings and Construction Land was passed (Official Gazette FNRJ, No. 52/58). Construction land became public property, and later on it became state property, which is still the case in Republic of Serbia.

Apartments and residential buildings after 1945, were confiscated on different basis and based on various laws, they were proclaimed public property and they were used under the same conditions as well as newly constructed public apartments afterwards. They were allocated to citizens, and the citizens were only the holders of the occupancy right.

Business premises and business buildings were confiscated in similar way as apartments and residential buildings, but their fate was completely different. The State carefully took care that business premises and business buildings remain strictly public property, and after 1990 state property of Republic of Serbia. These business premises are managed by the State through the local self-management bodies with the possibility to be leased to the private persons.

Contrary to other socialist countries, state private property was not completely marginalized. Throughout the socialist period the rural areas were characterized by a dualism of private ownership and social ownership in the form of agrokombinates and cooperatives. The share of private ownership of all cultivable land never dropped below 75 percent of the total. Private property was possible only over agricultural land up to 10 ha and over rural family houses. In the mountain areas that limit was 20 ha, including fields, pastures and forests.

Injustices caused after the Second World War were corrected only partially, which had negative impact on development of land and real estate market and overall economic development of Republic of Serbia. Under the Law on restitution of land to the previous owners (Official Gazette No. 18/1991), referring to land taken from the private owners in 1953 and held in social ownership under agricultural land fund, the agricultural land was returned². But this Law did not include restitution of land confiscated between 1945 and 1953

² The social ownership has being defined as the supreme power over assets owned by social legal entities (associations, institutions).

still remaining within the agricultural land fund. Around 85% of agricultural land being in the composition of agricultural land fund is the land taken by force. Practically all forests and forestland taken away today belong to the state property within Srbijasume enterprise.

Today, in 95% of all the cases, apartments are in private ownership. In the beginning of 90ties, after the Law on apartment redemption was passed, almost all public apartments were bought out by their residents, at the time being – holders of occupancy rights. Within the cities, only the state is the landowner. This means that the land where buildings are erected (construction land) is still in state ownership, while owners of the building acquires only use right over the land above building and land necessary for ordinary use of the building (cadastral parcel). The State can only renounce construction land to be used, with appropriate fees being paid, but paying the fee does not create any kind of ownership rights over the land, nor any kind of sales of such land is possible, by the person whom the land was renounced to, in regard to utilization of the land. When the property owner sells the building, the right of use over the land under the building and land needed for the ordinary use of the building must be conveyed, too. From above described situation, it is clear that the State has monopoly over the urban construction land, and when monopoly exists there is no true market, which makes investing into any kind of construction difficult.

So, it is certainly obvious that the private property is still marginalized. By the fact of not bringing into force the Law on restitution represents clear signal that the private property was still undesirable. That complicates, and undermines as well the privatisation process, whose end cannot be seen. That is why the status of urban construction land is not being solved that represents special problem and has negative impact to real estate market development.

4. CONCLUSION

Serbia is one of the states that are in a period of transition from poor and bad economy to a welfare society. This road is long and treaded with obstacles, but has to be taken. The economic growth of the country cannot be imagined without the reliable, secure and efficient source of information concerning real property. Clear and secure real property rights, as well as an up to date and reliable registration of real property are the most important circumstances for production of capital. With reliable information about an asset, and well-implemented legal framework, real estate is no longer just a physical object; it becomes a ground for investment and production of new capital. Serbia must find the way to transform millions of real properties into base for potential investment of ordinary citizens. People must be able to see their assets as potential capital, not just a place where to live (house) or work (land).

A unified system for registration of properties and property rights (Real Estate Cadastre), run by a single agency, GGA, facilitates the collection, maintenance and distribution of the data. Serbia is in the process of transformation from analogue to digital cadastral register, but the project is still in the initial phase, sponsored by the World Bank and other donors. The digital Real Estate Cadastre should solve numerous problems (archiving, maintenance, distribution of the data) and contribute to more reliable, efficient and comprehensive database.

Unfortunately, at the moment, analysing the present situation in Serbia, concerning registration of real properties and real property rights, the following conclusions can be reached:

- Real Estate Cadastre is not available for the whole territory of Serbia, the dual system is still in use in some area (Land Book and Land Cadastre). The process of unifying the data is still going on. This lags the economic development of the country and investments (especially foreign).
- The data concerning real property are still kept mainly in analogue form, transformation to the electronic keeping, maintaining and distribution of data is in progress.
- The lack of detailed legal regulation concerning the electronically maintained Real Estate Cadastre that is going on in Serbia.
- There is no electronic communication between the GGA, Municipalities, Courts and Tax Authorities, as some of the main actors in the procedure for registration of properties and property rights. That causes long-lasting procedures and high level of uncertainty for the transaction (for example, seller can sell the property to the third party, while the buyer is in the procedure for registration of his property right).
- Involvement of Municipality in the procedure for property formation (subdivision, amalgamation and reallocation), as a prerequisite for cadastral registration is, at the moment, slowing the procedure down. One of the reasons is poor communication between the authorities (Municipality and GGA).
- The SSCR Law has abolished the possibility of bringing an administrative action against the final ruling (second instance decision) of the Governmental Geodetic Authority. The Courts are completely excluded from the procedure where the property rights are acquired and lost. The only possibility left is the possibility of filing so-called erasure action. The involvement of the Courts should be taken into consideration.
- If codification is understood as a comprehensive, rounded regulation of certain legal matters, then property law in Serbia is not codified, since the main source of property law in Serbia is currently comprised in the Law of the Basic Property Relations and a lot of other legislation acts (SSCR Law, Law on the Convenience of the Real property, etc.). When investigating a problem, numerous of the current laws and regulations need to be analysed, published in different official papers without the time limit (some laws dated from the 1930 are still in use, such as the Law on Land Books). Further development of property law, through reform of the existing regulation in Serbia, is in progress, but it should be taken into consideration to summarize all the regulations into one source (codify), or to leave the property law re-codified as it is at this time. The advantage and disadvantage of both systems should be taken into account.
- Serbia is in the period of abolishing the category of social ownership and return to the unified concept of ownership (private and state ownership), but the transformation process is slow and painful followed by high level of unemployment, low investments, etc.

Government and public administration in Serbia are undertaking measures to reach the European standards and values in all areas of society. The concept of legal reliability and predictability, the transparency principle, the principles of accountability, economy, efficiency and effectiveness need to be implied.

The modernization process has started in the year 2000 and is still going on in Serbia. The secure, reliable, up to date and efficient registration of properties and property right is recognized as a prerequisite for the prosperity and welfare of the Serbian citizens.

The problems are numerous, when speaking about the cadastre system in Serbia, but the GGA, Government, Judiciary, other public administration authorities and private sector in the state, must work together to find the way to make Serbian cadastre system comparable with the rest of the developed countries. The legislation needs to be improved, the procedure for registration of properties and property rights should be simplified and accelerated. Serbia needs to make the cadastral system suitable and attractive for economic investment. Assets must be transformed into the capital in order to help our economy to rise to new level.

REFERENCES

1. J. von Schuckmann (2003) Expert opinion about the regulations on legal rules of land registration in the current "Law on State Land Survey, Cadastre and Registration of Rights on Real Property". Part of the GTZ project "Advice on the Legal Reform in Serbia and Montenegro".
2. Wessely, R., Jetzinger, D., Marosan, S. and other authors, (2004) Comparative Analysis and Review of Real Property registration and Cadastre Systems i Eastern and South-Eastern Europe - Serbia. Center of Legal Competence (CLC), Wien.
3. The Law on State Land Survey, Cadastre, and Registration of Rights on Real Property (SSCR, "Zakon o drzavnom premeru i katastru i upisima prava na nepokretnostima", Official Gazette of the Republic of Serbia No. 83/92, 53/93, 67/93, 48/94, 12/96, 15/96, 34/2001, 25/2002).
4. The Law on Urban Planning and Construction (UPC, "Zakon o planiranju i izgradnji", Official Gazette of the Republic of Serbia No. 47/2003).

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