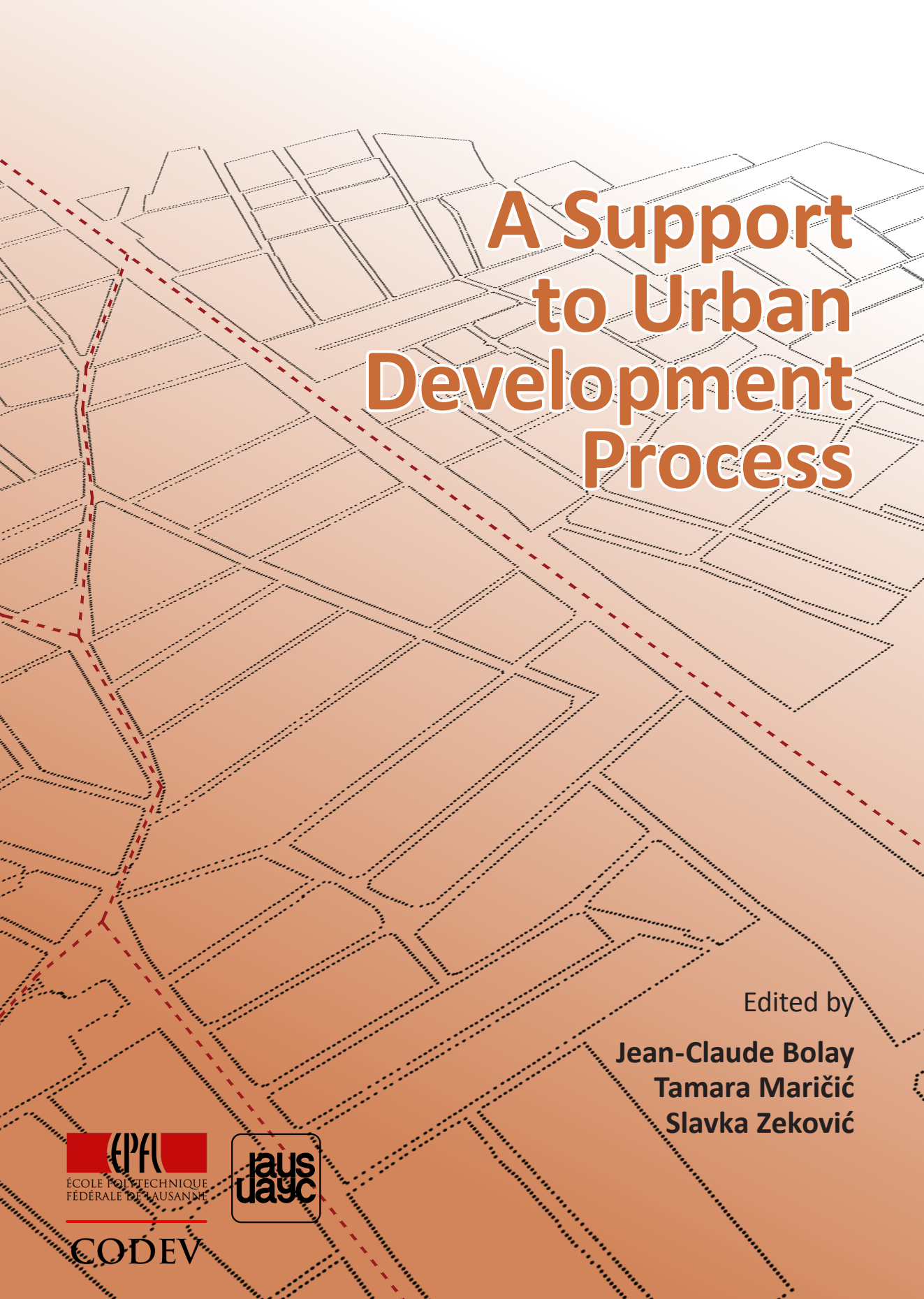

A Support to Urban Development Process

Edited by

Jean-Claude Bolay
Tamara Maričić
Slavka Zeković

ÉCOLE POLYTECHNIQUE FÉDÉRALE DE LAUSANNE
CODEV
laus uasc

A SUPPORT
TO URBAN DEVELOPMENT PROCESS

Edited by

Jean-Claude Bolay
Tamara Maričić
Slavka Zeković

This book has been prepared and published as a part of research project *Support to Process of Urban Development in Serbia (SPUDS)* no. 160503, with the financial support by the Swiss National Science Foundation (SNSF). Information about the SPUDS Project is available at http://www.spuds.edu.rs/

Edited by
Jean-Claude Bolay, Tamara Maričić & Slavka Zeković

ISBN 978-2-8399-2394-1

Citation
Bolay, J.C., Maričić T., Zeković, S. (Eds.) (2018) *A Support to Urban Development Process*, Belgrade: EPFL & IAUS.

Reviewers
Đorđe Alfirević, *Studio Alfirević, Belgrade*

Vera Backović, *Faculty of Philosophy, University of Belgrade*

Simone Franceschini, *Università degli Studi di Sassari / UNISS, Dipartimento di Scienze Economiche e Aziendali Sassari/ DiSEASE, University of Sassari*

Miroljub Hadžić, *Singidunum University, Belgrade*

Miodrag Vujošević, *Institute of Architecture and Urban & Spatial Planning of Serbia, Belgrade*

Miloš Živković, *Faculty of Law, University of Belgrade*

Translation
Sonja Stojanović

Proofreading
Marija Obadović
Tatjana Živić

Cover page design
Tanja Bajić

Computer design
Jelena Živanović Miljković
Danijela Srnić

Published by
École polytechnique fédérale de Lausanne (EPFL) Cooperation and development center (CODEV) CM 2 - Station 10, CH-1015 Lausanne, Switzerland in cooperation with *Institute of Architecture and Urban & Spatial Planning of Serbia (IAUS)*, Bulevar kralja Aleksandra 73/II, 11 000 Belgrade, Serbia

Printed by Planeta print, doo., Belgrade

Number of copies: 100

CONTENT

URBAN LAND USE REGULATION IN SERBIA: AN ANALYSIS OF ITS EFFECTS ON PROPERTY RIGHTS

Jelena Živanović Miljković[1]

Abstract

The paper provides a systematic, qualitative and critical analysis of the regulatory framework in the management, planning and use of urban construction land in Serbia and its effects on property rights. It explores and highlights – in current domestic research in the field of spatial planning – the insufficiently investigated aspects of the impact of urban land use regulation on urban land property rights. In the period after the Second World War, parallel with a variety of changes in urban land regulations, property rights regarding urban land in Serbia were accompanied by redistributions and transformations, supported by different legal measures (confiscation, nationalization, expropriation etc.). Recent changes, typical for the post-socialist transition period, have caused a new transformation in property rights and relate to the reattribution/redefinition of property rights, and the privatization and restitution of urban construction land. Taking into account the socio-historical and contemporary social context, in terms of the facts, the paper presents changes in property rights regimes concerning urban construction land that were created under the influence of various urban construction land regulations, with a pronounced regulatory role of spatial and urban planning. The starting observation that land use regulations affect property rights on land is examined and confirmed. The results of this analysis present a framework for urban land use regulations that affect property rights on urban land in Serbia.

Key words: *urban construction land, regulation, property rights, Serbia.*

[1] Jelena Živanović Miljković, PhD, Institute of Architecture and Urban & Spatial Planning of Serbia, Serbia, jelena@iaus.ac.rs

1. INTRODUCTION

Property rights have long been discussed, primarily in the theory of law, but also in politics, economics, and so on. Generally, most countries in the world have accepted and declared, by means of either their constitutions or international treaties[2], that the right to property is a basic human right, which has a variety of legal applications[3]. The common fact that property rights can only be delimited / restricted in the public interest in cases and under the conditions provided for by law, with fair compensation paid to the owners for their loss has different modalities. In this regard, land use may be regulated by law in so far as is necessary for the general interest (EC, 2007). The legal protection of land is very strict and depends on perspective, i.e., on the legal system[4].

The objective of this paper is to provide a framework for land use regulations (LUR) that affect property rights related to urban land in Serbia. Bearing in mind different theoretical perspectives on the relationship between LUR and land property rights, the author perceives various delimitations, obligations or benefits for landowners caused by LUR. In-depth analysis of the socio-historical, institutional and regulatory framework is very important for perceiving property rights transformation in the post-socialist context in Serbia. Starting from the fact that spatial planning has a fundamental impact on interests to control land use and land property rights, both private and public (UN-ECE, 2008), the author also considers the role of the planning process, as a kind of land use regulation, in property rights transformations. This research is conducted using: qualitative research methods, literature studies on theoretical approaches in order to analyse the relations between property rights and land use regulations, terminological research, and *ex-ante*, *ex-post* and critical analysis of the institutional and regulatory framework.

---

[2] Universal Declaration of Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms, Charter of fundamental rights of the European Union etc.

[3] Property rights regimes vary in an international context (private, common/collective/communal/state and open access). Issues related to various forms of land titling ("bundle of rights", land tenure and other disposal of the ownership /property rights) are not the concern of this paper. For discussion on this issues see e.g. Živanović Miljković, 2016:34-49.

[4] *Roman law* (civil, continental, European law) is considered to be the beginning of property laws, with a wide influence on the modern law of Western civilizations, while *Anglo-American law* (common law) is conducted in most Commonwealth countries. For more detailed discussions on property and property rights issues from the perspective of modern legal processes, see e.g. Hoofs (2010), Van Erp & Akkermans (2010) etc.

2. THEORETICAL BACKGROUND ON LAND PROPERTY RIGHTS AND LAND USE REGULATIONS

Land is usually considered as a **property** (real property, real estate, realty, immovable property), which may be defined as "an object to which legal rights may be attached" (UN-ECE, 2004:8). Further, real property includes "the land and anything fixed, immovable, or permanently attached to it" (Black's Law Dictionary, 2005).

Ownership is possession and "control", the position of the owner in relation to the object of possession, and it often implies the rights or interests of a proprietor (owner). The term *property right*[5] relates to a real (absolute) right (lat. *dominium*, *proprietas*), and it represents the broadest property right, that is, the highest legal and factual authorization of the holder of possession, the use and right of disposal in accordance with the law, which ensures protection from the abuse of rights and damage to other subjects of the right (relation between the owner and non-owner).

De Soto (2000:164) argues that property is not a primary quality *of* assets / property but the legal expression of an economically meaningful consensus *about* assets. Therefore, property is not the assets themselves, but the consensus between people as to how those assets should be held, used and exchanged (Ibid.).

Property rights take into account formal and informal institutions and arrangements that govern access to land and other resources, as well as the resulting claims that individuals hold on those resources and on the benefits they generate (derived from Bromley, 1997 and McElfish, 1994 according to Wiebe & Meinzen-Dick, 1998:205). Eggertsson (1990) (according to Benham & Benham, 1997) articulated the concept of property rights and summarized that the system of property rights is "a method of assigning to particular individuals the 'authority' to select, for specific goods, any use from an unprohibited class of uses."

One of the key issues for property rights over land is a well-established, modern land administration system. A land administration system is the set of structures and institutions which implement the land policy, affect property rights, deliver titles and deeds, and manage information systems (EC, 2004). The registration of property rights in public registers enables the formal identification of owners, but it is also legal proof of property rights. The concept of "multi-purpose cadastres"

[5] Based on: Vukićević *et al.* (2013:54-55), Merriam Webster's Dictionary of Law (1996), WordNet (2010).

(Dale & McLaughlin, 1999) comprises juridical, fiscal, planning and other information systems which facilitate land use planning, land management and the enforcement of regulations.

Numerous studies deal with the application of property rights theory in planning practice (e.g. Webster & Lai, 2003; Buitelaar, 2004; Needham, 2006; Havel, 2014 etc.). Norton & Bieri (2014) discuss the appropriate role for planning to play in mediating the relationships between the individual and the community, the state and its citizens, the government and the market, and people and property, especially with regard to the inherent tensions between planning, the law, and private property rights.

Hartmann & Needham (2012) consider "planning by law and property rights" to be indispensable for spatial planning, and it can be achieved in two ways in the planning process. One way is to assume the conditions on how owners can use their property rights, by acting on the law on land use planning. These conditions should guide and encourage certain rights, whereby the role of planning is in creating a framework for the activities of different stakeholders. The second way of planning according to the law and property rights is more indirect, namely, when the competent public institution target creates a property rights market in order to achieve the desired physical environment (e.g., transferable construction rights). Irrespective of the manner in which it has being implemented, the plans necessarily remain within the boundaries of the laws governing the planning and which regulate property rights (Ibid.).

This highlights the *regulatory character* of spatial planning. Through land use planning, as a legal instrument of the state for the realization of the (wider) public/general interest, planning is tasked to find a balance between the owner's right to use his land and public interests. The enforcement of regulations relies on the government's legitimate monopoly on the use of force (Hopkins, 2001:10). A spatial and urban plan has a normative strength and directly obligates the users of space and development drivers to respect the rules and also the precise land use. As stated by Janssen-Jansen (2015:15), planning is and will continue to be a core government function and important public intervention process for debating the politics of land use.

2.1. Land use regulations and effects on land property rights

According to Hopkins (2001:9-10) "Regulations [are] . . . enforceable assignment and reassignment of rights (including zoning, property taxes, impact fees, etc.). Regulations affect the scope of permissible actions. Plans . . . provide information about interdependent decisions in relation to expected outcomes but these plans

do not determine directly the scope of permissible actions". To some extent, land use regulations or policies can be regarded as a product of land use planning practices, although the implementation and enforcement steps are not generally controlled by the planners (Kim, 2011).

In any case, LUR primarily aims towards better management of the spatial arrangements of various human activities by controlling the use of land associated with these activities (e.g. for controlling urban sprawl, preserving agricultural activities in peri-urban areas, protecting nature, etc.) and is implemented through a variety of instruments. Most of them have a binding character and serve to implement the wider development goals of the local community, including instruments for controlling construction (e.g. urban growth boundaries, zoning plans, building height or minimum lot size restrictions etc.) as well as instruments for implementing plans. The plan regulates the land use and category of the zone, while the regulations (zonings) change ownership rights (Hopkins, 2001).

There is much literature on the effects of LUR on a variety of outcomes. In recent decades, there has been a focus on researching the effects of LUR on land value, construction and housing (Pollakowski, Wachter, 1990; Quigley, Rosenthal, 2005; Ihlanfeldt, 2007; Glaeser, Ward, 2009; Alterman, 2012; Kok et al., 2014, etc.). There is generally a consensus that LUR has significant impacts on housing and land value, although there are different opinions about the nature of these impacts. Based on comparisons of numerous empirical analyses in the United States, McLaughlin (2012: S54) summarizes that LUR has a negative impact on the land and housing market, social equity, environmental sustainability and the vitality of the regional economy, while, on the other hand, Jaeger (2006) takes the stance that, in many cases, LUR has a positive impact on the value of land and increases its value rather than decreases it. Kim (2011) concludes that economic development is more efficiently accomplished through appropriate taxation, labor force training, industrial policies, and so on, rather than through any intervention in land use.

Alterman (2012:759) claims that the mainstream debates about property rights focus on: the appropriate degrees of land use and environmental regulation, the extent of government powers to take land for public needs, the level of compensation for injurious regulation, and whether the increase in value due to the government decision should be recouped for the public. Extensive research on whether the LUR has positive or negative impacts on land prices is particularly important in the context of ongoing legal debates on cases of "regulatory takings" in the United States. Namely, a decrease in land value caused by LUR is recoverable on the basis of regulatory takings doctrine. There is a dilemma about whether the state is obligated to compensate private landowners for the decline

in land value caused by the change of LUR ("wipeouts" or "worsement"). On the other hand, the term "windfall" in American literature and "betterment" in British literature, i.e. "unearned income", "plus value" and "value capture" indicate any increase in the land value caused by planning decisions or decisions in the public interest.

According to Paasch (2012: 59), everything which is dictated by a public agency represents a *public regulation*, which is the result of political decisions on various levels, from pan-national political institutions (e.g. an EU directive), down to fiscal measures, subsidies and planning regulations for land use issued locally and influencing the land owners' right to use land. Such regulations could create restrictions/delimitations, obligations/mandatories and advantages/benefits for land owners in performing certain activities on land.

3. THE ROLE OF SOCIO-HISTORICAL AND INSTITUTIONAL FRAMEWORKS IN CHANGING PROPERTY RIGHTS REGIMES

3.1. General context

In the last three decades, the Central and Eastern European (CEE) region has faced various political, economic, social and spatial changes typical for transition / post-socialism. This has particularly sparked interest in research with a focus on political and spatial restructuring and economic development (Andrusz, 1996; Tosics, 2006), institutional and spatial changes and planning tools (e.g. Taşan-Kok, 2006; Tsenkova, 2006; Stanilov, 2007; Djordjević, Dabović, 2009; Nedovic-Budic et al., 2012; Zeković et al., 2015), land privatization and restitution (Savas, 1992; Sutela, 1998; Heller, Serkin, 1999; Karadjova, 2004), socio-economic changes (Vujošević, Nedović-Budić, 2006), etc.

Dale & Baldwin (2000) draw attention to the fact that in the socialist period land policy was driven by an ideological belief in the *common* or *social* ownership of property, the allocation of resources according to centralized planning including state intervention processes and the associated suppression of the individual private ownership rights in property. The concept of the *right to use* – a unique institutional characteristic for former socialist countries – was related to social ownership. As noticed by Marcuse (1996:135), in socialist systems, the right of use is given a higher position than the private property right.

The collapse of the socialist ideology in the CEE gave a strong impetus to the right of private property. The reattribution of property rights – the acquisition of land property rights – has become a prominent task for all countries in the post-socialist discourse, which has created new conditions for the land market, but

with many differences in the policies adopted, while restitution and compensation for loss of ownership have been accompanied by transitional changes[6].

Serbia has followed recommendations for the reattribution of property rights, in order to create conditions for the land market and transfers from public to private ownership, including restitution, but the high complexity of these issues has led to its slow resolution (Živanović Miljković & Popović, 2014).

3.2. Urban land policy and property rights in Serbia from 1945-1990s

After World War II, land policy was a part of the general principles of society, which created new conditions, with large land property rights redistributions and transformations. Those transformations radically changed the ownership structure and legal relations, and were marked by legal measures – confiscation, agrarian reform and colonization, nationalization, expropriation, as well as recent changes in ownership relations in the transition phase, from 1990 to the present.

After the end of World War II, in Serbia and other republics of the former Yugoslavia, the institutionalization of socialism began with profound political, social and economic changes. Taking into account the general interest, the then constitutional framework placed civic (private) property rights in rigid frames, favoring national (state / social) and cooperative property rights.

In accordance with strengthening the new socio-political ideological environment, the land that was in the private property regime was compulsorily taken by various legal instruments. For all forms of taking property rights or de-privatisation in socialist Yugoslavia, the common characteristics is that they were often implemented without any compensation to private owners. The *Basic Act on Expropriation* (1947) did not prescribe a time limit for the discretionary right to temporarily land taking, containing unclear and ambiguous provisions that "taking terminates as soon as the need, for which land is obtained, terminates". An analysis of the expropriation procedures carried out after World War II found that the compensation for expropriated property, which implied a market value, was symbolic until 1968, while it was often never paid (Sekulić, 2012:4), so that assessing the legitimacy of the expropriation itself is very complex, and even subtle (Begović et al., 2006:8). Confiscation was an important method for land acquisition, implemented on the basis of the *Confiscation of Property and the Execution of Confiscation Act* (1945). Pronounced as the main or a secondary criminal sanction, confiscation implied the taking – without compensation – of all private property rights and their transition to the state / social-property rights.

[6]To understand the modalities that particular post-socialist countries have adopted in resolving these issues, see: Dale & Baldwin, 2000; Tosics, 2005; Šljukić, 2004; UN-ECE, 1996 etc.

Regarding urban land, extensive nationalization based on a set of laws was carried out. On the basis of the *Nationalization of Lease Buildings and Construction Land Act* (1958), all constructed land and land planned for construction in the territory of towns or urban settlements became social property. By the *Determination of Construction Land in Towns and Settlements of Urban Character Act* (1968) certain construction land became social property. So, by determining some land as urban construction land, it began to be under social ownership. Bearing in mind that the *Constitution of the SFRY* (1974) prohibited private property rights on urban land in towns and settlements of urban character and other areas intended for housing and other complex construction, which, in accordance with the conditions and procedures established by law, were determined by the municipality, the nationalization of construction land was made permanent (Sekulić, 2012).

In the post-war period, properties in social ownership enjoyed special protection in terms of mandatory registration in land books. Firstly, the federal law, and then the republic *Registration of Socially Owned Immovable Property Act* (1965), required the obligatory registering of socially-owned properties, as well as any change in the holder's right to use the socially-owned property. Also, property registration was determined for the acquisition of property rights (according to Article 33 of the *Basics of Property Rights Act*, 1980).

3.3. Urban land property rights in the period of post-socialist transformations

From the early 1990s, land policy in the transition period in Serbia was marked by strong structural changes and challenges. The direct effects of the property rights regime on land had the following changes, which were characteristic for the post-socialist transition period: reattribution/redefinition of property rights, land privatization and restitution (Živanović Miljković, 2016:73-89; Živanović Miljković & Popović, 2014).

3.3.1. Reattribution of property rights

The reattribution / acquisition of property rights, was initiated by the *Constitution* in 2006, which created new paradigms of land ownership. The Constitution recognizes three forms of ownership – *private*, *public* (state property, ownership of autonomous province and ownership of local government units) and *cooperative*, while it abolished *social* ownership. The existing social property, which as a form of collective ownership existed between 1953 and 2006, was

transformed into private property under the Constitution, in the manner and within the deadlines stipulated by the law.

In contrast to the existence of both private and collective ownership of agricultural land, which was specific to the Yugoslav model of socialism, property rights relating to urban land were quite different. In the period 1958-1995 urban land was in the system of social ownership, and, in accordance with the principles of this form of common ownership, was excluded from legal transactions. The owners of buildings on socially owned land had the right to *use* the land for the regular use of their buildings. By expanding the area of urban construction land, the subject land "automatically" went under social ownership, expropriated from private owners. Urban plans were direct instruments for the implementation of such ownership transformations. With the adoption of the *Construction Land Act* (1995) the "etatization", "nationalization of the nationalized" began (Begović et al., 2006:11), i.e. the transition of construction land ownership from social to state ownership. Urban construction land was in state ownership, which was determined by the then constitutional framework. However, this reattribution of property rights was only a formality, and the land could not be a commodity. A special case was the issue of "land use" on land designated as urban construction land by an urban plan, or whether the reason for expropriation was realized. The Act stipulated the possibility of establishing private property regimes which preceded the determination of land as urban construction land, i.e. returning it to its former owners if the subject land was not use for planned purposes within five years. Those provisions maintained their form in the act that followed.

Since 2003, the area of construction land use has been regulated by the *Planning and Construction Act* (2003), which, besides the elements of land policy, introduces new paradigms of construction land. Unlike public construction land, which is in state ownership, the category of *other construction land* can be in all forms of ownership and is a commodity. The next *Planning and Construction Act* (2009), which has been multi-changed, prescribes that construction land can be in all forms of ownership and is a commodity – it can be sold, exchanged or leased.

The state is responsible for regulating and ensuring property rights and requirements, as well as the protection of all forms of property. Thus, the owners of building land have all forms of property rights – the right to use, the right of disposal and the right to earn an income, but also the requirements, among which the most important is the payment of taxes (on property, transfer of ownership, non-earned income, succession, etc.).

Serbian legislation recognizes the principle of *superficies solo cedit*, i.e. the rule according to which an object built on land is subject to the property rights of that

land and belongs to the owner of the land (Živanović Miljković & Popović, 2014: 23) and they are treated as an inseparable entity. Formerly, the field of application of this principle was narrowed. In the case of social ownership of land, this principle was not applied, so the construction land ownership and the ownership of the buildings were not treated in the same way – the land was only used (as a permanent right to use), and the buildings had their own owners.

3.3.2. Privatization of urban land

Since privatization had strong economic and political motives and was generally seen as a step towards a market economy in all post-socialist environments, Serbia faced the issue of privatizing construction land in social and state ownership, which should have been preceded by the restitution of the land to its previous owners.

The provisions of the *Constitution* (Article 85) and the *Privatization Act* (2014) allow foreign physical and legal subjects to acquire ownership of land. These provisions are supported by the Stabilization and Association Agreement, which recently entered into force (September 1, 2017), which obliges Serbia to legally enable EU citizens to acquire and enjoy property rights on immovable property.

The acquisition of property rights on construction land is also stipulated by the provision of the *Planning and Construction Act* (2009). This act envisaged the privatization of construction land by *conversion of the right to use into a property right*, whereby the property right on the cadastral parcel is entered for the benefit of the person who is registered as the owner of the object /objects built on that parcel, or for the benefit of the person who is registered as the holder of the right to use on a cadastral parcel on unbuilt construction land. Such a procedure of conversion of the right to use into the property right on construction land establishes the unity of the real property, i.e. the unique object of the property right.

3.3.3. Restitution of urban land

Since 1990 the state has been gradually returning the confiscated land. The *Restitution of Confiscated Property and Compensation Act*, which declares the principle of priority return of property in a natural form (restitution in kind) was adopted in 2011, so the vindication, i.e. restitution of property to its former owners, is limited by numerous exceptions. Thus, the subject of natural restitution is not:

- construction land – built or planned for construction of the objects for public purposes; leased construction land in public property; built

construction land with an object of a permanent character, but without conversion of the right to use into the property right on the land; construction land built on with an illegal object, which in the procedure of legalization is determined as land for regular use of the object;
- unbuilt construction land – with the legal rescript for a location permit (which is a prerequisite for construction) on which the construction of an object is part of an economic development project, or an object designed for social housing is planned.

On the other hand, there are considerably fewer circumstances under which the confiscated land can be returned: ■ unbuilt construction land in public ownership; ■ built construction land in public ownership that is leased, whose previous owner at the time of confiscation did not have the right to ownership or co-ownership; ■ unbuilt construction land in public ownership that is leased, whose tenant does not have the right to convert the right to use into a property right.

Therefore, the object of restitution in kind cannot be: land that has been privatized in the meantime, i.e. land acquired in the privatization process as the assets or capital of the subjects of privatization (in accordance with the *Privatization Act*); land in long-term lease; built construction land and land planned for the build of objects for public purposes and objects that are part of economic development projects; land for the regular use of objects that are in the process of legalization, etc. Former owners can only reclaim unbuilt construction land (without a location permit at the time of the adoption of the Act), as well as a limited state bond fund for the purpose of compensation.

Hence, although restitution in kind, as an obligatory relation issue, has a priority in the domestic legal system, restitution primarily includes compensation for lost profits, which deny and affect the efficient implementation of the Restitution Act.

4. LAND USE REGULATION IN SERBIA

The land use regulation framework in Serbia is very complex and it consists of numerous legal and strategic documents that regulate issues related to the use and protection of land – as a nature resource/soil (Živanović Miljković, 2008), as an element of the environment and an important segment of spatial and urban development – and public registration on the property rights on land. Table 1 presents an overview of regulations which have delimitating, mandatory or beneficial impacts on the private property rights on land.

Table 1: Regulations affecting private property rights on urban land in Serbia – delimitation, mandatory and benefits assessment

Regulative/stipulation	Regulatory content	Impacts/effects on private property rights
Constitution, Article 58,88	•property right can be compulsorily taken or restricted in the established public interest only, with compensation at the market value • restriction of property use (in order to eliminate the danger of damage to the environment, to prevent the violation of property rights or legally based interests of other subjects; for collecting taxes and other charges or etc.)	**delimitation**
Expropriation Act, Article 1, 4, 5	•property right can be compulsorily taken or restricted in the established public interest only, with compensation at the market value	**delimitation**
Basics of property rights Act, Article 6, 21, 49 etc.	•property right is acquired by creating a new thing by - joining, mixing, building on another subject's land, separating fruits, maintaining, acquiring property rights from non-owners, occupation and in other cases prescribed by law	**benefit**
	•establishment of rights on another subject's property (right of service, right of passage, etc.)	**delimitation**
Real Property Transfer Act, Article 2, 3.	• real property transfer is property rights transfer • property rights on a building object (right to use, to lease or ownership) are simultaneously transmitted on the land on which the building object is located, as well as on the land used for the regular use of the object,	**benefit**

Regulative/stipulation	Regulatory content	Impacts/effects on private property rights
Planning and Construction Act, Article 3, 31, 84, 99, 100, 107, 108 etc.	• urban norms –parcel size and form, rules for construction etc.)	**mandatory**
	• protection of natural and cultural goods, the environment, etc. •special land use regimes (e.g. national park) • prohibition of incompatible land use in areas with specific land use (e.g. areas around a water accumulation) • acquisition of unbuilt construction land into public property by expropriation or another legal transaction (i.e. agreement with the owner) •building restrictions (in accordance with planning land use) •urban reallocation	**delimitations**
	•expanding of the right to build (in accordance with a planning document)	**benefit**

The Constitution guarantees the peaceful use of property and other property rights acquired by law. According to the *State Survey and Cadaster Act* (2009), property rights (ownership, co-ownership and common ownership) and other real property rights (rights to use, lease, service, mortgages, etc.) are acquired by entering real property rights into the cadaster, and they transfer, restrict or stop deletion from the cadaster.

The *Expropriation Act* (1995) specifies cases in which the state determines the public interest, which is the basis for permitting land expropriation, which can be: *complete* – when the owner is changed on expropriated land; or *incomplete* – when the right to dispose is limited by establishing a service right or lease on a fixed-term basis. The public interest in expropriation is determined exclusively by the Government of the Republic of Serbia on the basis of the planned purpose prescribed by the adopted planning document. The local self-government unit is responsible for the implementation of expropriation.

The state implements various LUR instruments, based on planning solutions and propositions, regarding the fact that plans are legally binding. Namely, planning solutions and propositions establish the "regime of use", i.e. obligations and restrictions regarding the manner of use and competence in land management. As a rule, this implies the restriction of property rights (e.g. by changes in ownership relations, the requirement to implement protection, the definition of urban coefficients, construction rules, etc.) or a complete exclusion of property rights when changing the land use for public purposes. Urban plans, as instruments of local authorities for developing management, contain the division of planning areas into zones with specific regulations (regulation rules and construction rules with urban conditions, parcel subdivisions etc.). In urban land use planning, municipalities can set generally binding content, which is mandatory for everyone, irrespective of the ownership of land. If a plan foresees a public space on a property/parcel, the owner has no right to build on it. If a parcel is the subject of housing expansion, the owner is guaranteed the right to build according to the plan, which expands his property rights. Also, legal provisions provide a framework for urban land reallocation, as a newer instrument of the LUR, which establishes new ownership structures (private and public) for existing cadastral parcels. Each LUR instrument application assumes the synchronization of all land records data (identification of the land ownership structure, timely implementation of parcel subdivision, etc.).

5. CONCLUDING REMARKS

As one of the basic human rights, the property right enjoys institutional guarantees (both on national level and universal) in every society. However, all property rights are subject to certain restrictions/repressions by the state, founded in law, and also to exclusions for the purpose of public interest. In this respect, existing private property rights on land do not affect the right of a state to apply the laws it deems necessary in order to regulate the use of land in accordance with public/general interests (e.g. for expropriation, for urban-legal norms, etc.) or in order to secure the collection of taxes, other charges or penalties (Živanović Miljković, 2016:126).

Ex post analysis of the socio-historical and institutional context in Serbia has presented its decisive role, both for the property rights regimes on land and for land use regulation. Legal provisions that regulate ownership issues are often conflicting, which makes it difficult – or even impossible – to be implemented in practice, and that points to the need for a systemic resolution of these issues (i.e. the priority of solving restitution issues).

Quality analysis confirmed the starting observation that LUR affects property rights on land. LUR in Serbia in many ways delimits - even excludes - private property rights. Also, the planning process, initiated by public investment interest, with clear needs and expectations regarding land use, affects private property rights on land. On the other hand, LUR partly gives benefits for property owners (e.g. expanding the right to construction).

The results of a systematic, qualitative and critical analysis of the effects of urban LUR in Serbia on property rights have contributed to the study of this under-researched area in the domain of spatial planning. The research has also opened some issues, and therefore highlighted the need for further research. How is it possible to deal with competing interests in land use and, therefore, in changing property rights? How is it possible to develop new methods for coordinating property rights? In that sense, the role of planning is very important. The planning process and the implementation of planned solutions should always be "planning by law and property rights", aimed at achieving a balance in the relationship between different relevant needs in space and ownership interests.

6. ACKNOWLEDGEMENT

The paper was prepared within the scientific project "Support to the Urban Development Process" (SPUDS) financed by the SCOPES program of the Swiss National Science Foundation and scientific project No. III 47014, financed by the Republic of Serbia Ministry of Education, Science and Technological Development in the period 2011–2018.

7. REFERENCES

Alterman, R. (2012). Land-Use Regulations and Property Values: The "Windfalls Capture" Idea Revisited. In: Brooks, N., Donaghy, K., Knaap, G.J. (Eds.) *The Oxford Handbook of Urban Economics and Planning*. New York: Oxford University Press, 755-786.

Andrusz, G. (1996). Structural change and boundary instability. In: G. Andrusz, M. Harloe, I. Szelenyi (Eds.), *Cities after socialism: Urban and regional change and conflict in post-socialist societies (studies in urban and social change)*, Oxford: Blackwell Publishers, 30–69.

Begović, B., Mijatović, B., Hiber, D. (2006). *Privatizacija državnog zemljišta u Srbiji*. Beograd: Centar za liberalno-demokratske studije.

Benham, A., Benham, L. (1997). Property Rights in Transition Economies: A Commentary on What Economists Know. In: Nelson, J. M., Tilly, C., Walker L. (Eds.) *Transforming post-Communist political economies*, Washington D.C.: National Academy Press, 35-36.

Black's Law Dictionary (2005). 8th edition, St. Paul: Thomson

Buitelaar, E. (2004). A Transaction-cost Analysis of the Land Development Process, *Urban Studies, 41*(13), 2539–2553.

Dale, P., Baldwin, R. (2000). Lessons Learnt from the Emerging Land Markets in Central and Eastern Europe, *Proceedings of FIG Working Week*, https://www.fig.net/pub/proceedings/prague-final-papers/baldwin-dale.htm, (accessed 21.05.2014).

Dale, P., McLaughlin, J. (1999). *Land administration*. Oxford University Press.

De Soto, H. (2000). *The Mystery of Capital: Why Capitalism Triumphs in the West* and *Fails Everywhere Else*. New York: Basic Books, 164-231.

Djordjević, D., Dabović, T. (2009). System of spatial planning in Serbia: a critical overview, *Dela*, *31,* 143-157.

EC (European Commission) (2007) Charter of fundamental rights of the European Union, Official Journal of the European Union C 303/1, 14.12.2007.

Glaeser, E. L, Ward, B.A. (2009). The causes and consequences of land use regulation: Evidence from Greater Boston, *Journal of Urban Economics*, *65*, 265-278.

Hartmann, T., Needham, B. (Eds.) (2012). *Planning By Law and Property Rights Reconsidered*. Farnham: Ashgate.

Havel, M.B. (2014). Delineation of property rights as institutional foundations for urban land markets in transition, *Land Use Policy*, *38*, 615–626.

Heller, M.A., Serkin, C. (1999). Revaluing Restitution: From the Talmud to Postsocialism, *Michigan Law Review*, *97*(6), 1385-412.

Hoofs, K. (2010). Property rights in legal history, In: Bouckaert, B. (ed.) *Property law and economics*, *5*, Encyclopedia of Law and Economics, Second Edition. Cheltenham: Edward Elgar, 5-30.

Hopkins, L. D. (2001). *Urban development: The logic of making plans*. Washington DC: Island Press.

Ihlanfeldt, K., (2007). The effect of land use regulation on housing and land prices. *Journal of Urban Economics*, *61*, 420–435.

Jaeger, W. K. (2006). The Effects of Land-Use Regulations on Property Values, *Environmental Law*, *36*(1), 105-130.

Janssen-Jansen, L. (2015). Planning challenges in a context of discontinuous growth, In: R.Leschinsky, C.Legacy, (Eds.) *Instruments of planning: tensions and challenges for more equitable and sustainable cities*, Routledge, 15.

Karadjova, M., (2004). Property Restitution in Eastern Europe: Domestic and International Human Rights Law Responses, *Review of Central and East European Law, 3*, 325-363.

Kim, J.H. (2011). Linking Land Use Planning and Regulation to Economic Development: A Literature Review, *Journal of Planning Literature*, *26*(1), 35-47.

Kok, N., Monkkonen, P., Quigley, J.M. (2014). Land use regulations and the value of land and housing: An intra-metropolitan analysis, *Journal of Urban Economics*, *8,* 136–148.

Marcuse, P. (1996). Privatization and its discontents: property rights in land and housing in the transition in Eastern Europe, In: G. Andrusz, M. Harloe, I. Szelenyi (Eds.) *Cities after Socialism: Urban and Regional Change and Conflict in Post-socialist Societies*, Oxford: Blackwell, 119–191.

McLaughlin, R. B. (2012). Land use regulation: Where have we been, where are we going? *Cities*, *29*, S50–S55.

Merriam-Webster's Dictionary of Law (1996) Merriam-Webster, Inc.

Nedovic-Budic, Z., Zekovic, S., Vujosevic, M. (2012). Land privatization and management in Serbia-policy in limbo, *Journal of Architectural and Planning Research*, *29*(4), 306-317.

Needham, B. (2006) *Planning, law and economics: the rules we make for using land*, Routledge: Abingdon.

Norton, R. K., Bieri, D. S. (2014). Planning, law, and property rights: A U.S.-European cross-national contemplation, *International Planning Studies, 19*(3-4), 379-397.

Paasch, J. (2012) Modelling Public Regulations – A Theoretical Approach, *Nordic Journal of Surveying and Real Estate Research*, 9 (1), 59–75.

Pollakowski, H.O., Wachter, S.M., (1990). The effects of land-use constraints on housing prices, *Land Economics*, *66* (3), 315–324.

Quigley, J.M., and L. A. Rosenthal (2005). The effects of land use regulation on the price of housing: What do we know? What can we learn? *Cityscape: A Journal of Policy Development and Research, 8*(1), 69-137.

Savas, E.S. (1992), Privatization in Post-Socialist Countries, *Public Administration Review*, *52*(6), 573-581.

Sekulić, S. (2012). Pravno-istorijski okvir i uporedno-pravna rešenja. U: *Vraćanje oduzete imovine i obeštećenje (restitucija). Program obuke za sudije Upravnog suda*. Pravosudna akademija i USAID: Beograd, 4-28.

Šljukić, G. (2004). Društvena struktura u bivšim socijalističkim zemljama: tranzicija ili transformacija? *Sociološki pregled*, *XXXVIII*(1–2), 267–279.

Stanilov, K., (2007). Urban planning and the challenges of post-socialist transformation, In: K. Stanilov (Ed.), *The Post-Socialist City*, Springer, 413–425.

Sutela, P. (1998). Privatization in the Countries of Eastern and Central Europe and of the Former Soviet Union, UNU/WIDER Working papers No. 146.

Taşan-Kok, T. (2006). Institutional and spatial change. In: S. Tsenkova and Z. Nedović-Budić (Eds.) *The urban mosaic of post-socialist Europe*. Heidelberg: Physica-Verlag, 51-70.

Tosics, I. (2005). City development in Central and Eastern Europe since 1990: the impacts of internal forces, I.F.E.Hamilton, K.Dimitrovska Andrews, N.Pichler-Milanović (Eds.) *Transformation of cities in Central and Eastern Europe: Towards globalization*, United Nations University Press, 61.

Tosics, I. (2006). Spatial restructuring in post-socialist Budapest. . In: S. Tsenkova and Z. Nedović-Budić (Eds.) *The urban mosaic of post-socialist Europe*. Heidelberg: Physica-Verlag, 131-150.

Tsenkova, S. (2006). Beyond transitions: understanding urban change in post-socialist cities. In: S. Tsenkova, Z. Nedović-Budić (Eds.) *The urban mosaic of post-socialist Europe*. Heidelberg: Physica-Verlag, 21-50.

UN-ECE (2004), Guidelines on Real Property Units and Identifiers. Geneva: UN.

UN-ECE (2008). Spatial Planning: Key Instrument for Development and Effective Governance with Special Reference to Countries in Transition, Geneva: UN.

Van Erp, S., Akkermans, B. (2010). Property rights: a comparative view. In: B.Bouckaert (Ed.) *Property law and economics*. Volume 5, Encyclopedia of Law and Economics, Second Edition. Edward Edgar Publishing Inc, 31-52.

Vukićević, S., Kostić, M., Vukićević, S. (2013). Osnovi prava sa elementima privrednog prava. Beograd:Univerzitet Singidunum. 54-55.

Webster, C., Lai, L., W.-C. (2003). *Property rights, planning and markets: managing spontaneous cities*, Northampton USA: Edward Elgar.

Wiebe, K., Meinzen-Dick, R. (1998). Property rights as policy tools for sustainable development, *Land Use Policy*, *15*(3), 203-215.

WordNet 3.1. (2010), Princeton University, http://wordnet.princeton.edu (accessed 20.2.2016.)

Zeković, S., Vujošević, M., Bolay, J.-C., Cvetinović, M., Živanović Miljković, J., Maričić, T. (2015) Planning and land policy tools for limiting urban sprawl: the example of Belgrade. *Spatium* 33. 69-75.

Živanović Miljković, J. (2008) Some measures for soil regulation in Belgrade peri-urban zone. Spatium 17/18. 68-71.

Živanović Miljković, J. (2016) *Promene načina korišćenja zemljišta i vlasništva nad zemljištem sa aspekta prostornog planiranja.* Doktorska disertacija. Geografski fakultet: Beograd.

Živanović Miljković, J., Popović, V. (2014). Land use regulation and property rights regime over land in Serbia, *Spatium*, *32*, 22-27.

Legislation:

Basic Act on Expropriation [Osnovni zakon o eksproprijaciji] (1947) "Official Gazette of the FPRY", No. 28/1947.

Basics of Property Rights Act [Zakon o osnovama svojinskopravnih odnosa] (1980) "Official Gazette of SFRY", No. 6/80, 36/90, "Official Gazette of FRY", No. 29/96, "Official Gazette of RS", No. 115/2005 – other act

Confiscation of Property and the Execution of Confiscation Act [Zakon o konfiskaciji imovine i izvršenju konfiskacije] (1945) "Official Gazette of DFY", No. 40/45, 70/45.

Constitution *(*1990), "Official Gazette of the Republic of Serbia", No. 1/90.

Constitution (2006), "Official Gazette of the Republic of Serbia", No. 98/2006.

Construction Land Act [Zakon o građevinskom zemljištu] (1995) “Official Gazette of RS", No. 44/95, 16/97, 23/01.

Determination of Construction Land in Towns and Settlements of Urban Character Act [Zakon o određivanju građevinskog zemljišta u gradovima i naseljima gradskog karaktera] (1968) “Official Gazette of SRS", No. 32/68, 17/69, 29/69, 19/71, 16/72, 24/73, 39/73.

Expropriation Act [Zakon o eksproprijaciji] (1995) “Official Gazette of the Republic of Serbia", No. 53/95, “Official Gazette of the FRY", No. 16/2001 – Federal Court decision and “Official Gazette of the Republic of Serbia", No. 20/2009, 55/2013 – Constitution Court decision.

Nationalization of Leasing Buildings and Construction Land Act [Zakon o nacionalizaciji najamnih zgrada i građevinskog zemljišta] (1958) “Official Gazette of the FPRY", No. 52/58, 3/59, 24/59, 24/61, 1/63.

Planning and Construction Act [Zakon o planiranju i izgradnji] (2003), “Official Gazette of the Republic of Serbia", No. 47/2003, 34/2006.

Planning and Construction Act [Zakon o planiranju i izgradnji] (2009) “Official Gazette of the Republic of Serbia", No. 72/2009, 81/2009 - corr., 64/2010 – Constitutional Court decision, 24/2011, 121/2012, 42/2013 - Constitutional Court decision, 50/2013 - Constitutional Court decision, 98/2013 - Constitutional Court decision, 132/2014, 145/2014.

Privatization Act [Zakon o privatizaciji] (2014), “Official Gazette of the Republic of Serbia", No. 83/2014, 46/2015, 112/2015, 20/2016 – authentical interpretation

Real Property Transfer Act [Zakon o prometu nepokretnosti] (2014), “Official Gazette of the RS”, No. 93/2014, 121/2014, 6/2015.

Registration of Socially Owned Immovable Property Act [Zakon o uknjiženju nepokretnosti u društvenoj svojini] (1965) “Official Gazette of the SFRY", No. 12/65, “Official Gazette of the FRS", No. 45/71.

Restitution of Confiscated Property and Compensation Act [Zakon o vraćanju oduzete imovine i obeštećenju] (2011) “Official Gazette of the Republic of Serbia", No. 72/2011, 108/2013, 142/2014, 88/2015 – Constitutional Court decision.

State Survey and Cadastre Act [Zakon o državnom premeru i katastru] (2009), “Official Gazette of the Republic of Serbia", No. 72/2009, 18/2010, 65/2013, 15/2015 - Constitutional Court decision, 96/2015. 47/2017 - authentic interpretation