“Implementation of the New Law on Construction Land” booklet

CONTENT

BIH CONFERENCE

“IMPLEMENTATIO OF THE NEW LAW ON CONSTRUCTION LAND”

Tuzla, Bihac, Mostar, Sarajevo, Trebinje, Banja Luka

Organised by:

Administration for Geodetic and Property-Legal Affairs of the Federation of Bosnia and Herzegovina and Administration for Geodetic and Property-Legal Affairs of the Republika Srpska

In cooperation with:

Ministry for Spatial Planning and Protection of Environment of Federation of Bosnia and Herzegovina

Ministry for Spatial Planning, Civil Engineering and Ecology of Republika Srpska

Sponsored by: the Office of the High Representative

PART I

INTRODUCTORY REMARKS

Despite a transformed BiH society and the right to private property proclaimed by the Constitution and international conventions, the introduction of market economy, advanced transitional process and privatisation, the BiH system still includes some categories and pieces of legislation that are typical for the former socialist system such as the former Law on Construction Land. The process of regulating property titles on construction land, including its expropriation, conversion into public property, and restrictions on transfer, began with the Law on Nationalisation of Federal People's Republic of Yugoslavia, which transformed both developed and undeveloped city land in urban areas, and residential areas of urban character, into socially owned property. These processes continued under the Socialist Republic of Bosnia and Herzegovina via the Law on Socially Owned Construction Land of 1974 and the Law on Construction Land of 1986, which was taken over by the Federation of BiH including amendments thereto and without further amendments. It was also adopted by the Republika Srpska where it was amended on several occasions.

Fundamental changes occurring in BiH society globally changed how such property is treated in BiH. The Decision of the Constitutional Court of BiH of February 2000 which, among

other things, concerns construction land, the Decisions of the High Representative which introduced restrictions on the use and allocation of construction land, and requests from several sides lead to a the initiation of changes in the way construction land is regulated by law in Bosnia and Herzegovina. As a result the High Representative imposed the Law on Construction Land for both the Federation of BiH and Republika Srpska on 15 May 2003 and this legislation entered into force on 16 May 2003.

The new legislation on construction land introduced a significantly different approach, which is evidenced by:

- the classification of both private and social ownership over such land;
- its entry in the market for trade;
- the more transparent process of its allocation;
- a reduction in the amount of prescribed fees;
- the required review of allocations made after 6 April 1992;
- the return of designated construction land that was not fully used for the purposes for which it was allocated; and
- the restoration of domestic authority, from the Office of the High Representative, for monitoring and supervision of the allocation process.

Regarding the law and its application, all municipalities in Bosnia and Herzegovina held workshops regarding the topic “Application of the New Law on Construction Land”, which was organised by the Administration for Geodetic and Property-Legal Affairs of the Federation BiH, the Administration for Geodetic and Property-Legal Affairs of RS and Office of the High ‘Representative for Bosnia and Herzegovina in co-operation with the Ministry of Physical Planning and Environment of the Federation BiH and Ministry of Physical Planning and Ecology of the Republika Srpska. The workshops were held in various municipalities in the Federation and

Republika Srpska during the months of July and August 2003. Representatives of cantons, municipalities, officers of legal departments and departments for geodetic affairs and urbanism and municipal public attorneys took part in the workshops. The total number of participants who attended these workshops is approximately 475.

The overriding goal of these workshops was to promote a better understanding of the new legislation and its practical application, to present a correlation between this law and other relevant laws, and to provide explanations and answer to typical questions regarding the law's application. The workshops utilised comparative presentations and practical demonstrations in relation to prior decisions of courts and administrative bodies.

Federal Administration for Geodetic and Property Legal Affairs

I. "The Law on Construction Land" – Comparison of new and previously applicable arrangements, administrative and judicial practices and practical application

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1. Basic terms and definition of construction land

The Law on Construction Land (Official Gazette of SR BiH, Nos. 34/86, 1/90, 29/90, 3/93 and 13/94) of 1986 in its Article 1 regulated terms, manner and deadline for cessation of ownership over the construction land. Article 2 of this Law defined this land as property of public interest while the new Law on Construction Land as imposed by the High Representative for BiH (Official Gazette of the Federation BiH, No. 25/03) the Law of 2003 in its Article 1 regulates the terms and manner to acquire the right over the land in cities and places

of urban character and other areas foreseen for residential and other complex construction, time when such rights shall cease to exist, the manner to use and manage this land and fees for the use thereof.

The 2003 Law defined in Article 2 the construction land as follows:

1. **City construction land** is defined in Articles 2, 4 and 12 of the Law as developed and undeveloped land in cities and other places of urban character, which is designated in plans for spatial planning and urban plans for construction of facilities in accordance with the Law on Spatial Planning (Official Gazette of the Federation BiH, No. 52/02).

2. **Other construction land** – in accordance with Article 2, paragraph 2, the Law shall include developed and undeveloped land located outside of city construction land zones, i.e. outside of cities and similar places of urban character, designated for construction of facilities in accordance with the provisions of the Law on Spatial Planning.

2. Ownership over and trade in city construction land

Unlike the arrangement under the 1986 Law on Construction Land, which provided only for the form of socially and/or state owned land pursuant to the provisions of Article 4, and allowed only for a possibility to acquire rights regulated by the law over such land and which explicitly excluded in the provision of Article 5 any possibility to remove such land from state or social ownership, the new 2003 Law is particularly innovating. It provides for both private and state ownership over this land and in Article 15 it stipulates that the issuance of a decision designating the city construction land shall not change the form of ownership over such land. Similarly, Article 7 provides that privately owned city construction land is marketable unlike previous regulations under which this land was not subject to trade on

the market. Article 39 of the new Law regulates that upon the entry into force of this law the owner of a building, or particular parts of a building, shall acquire ownership rights over the land beneath the building and over the area that is foreseen in the regulation or parcelling plan for use as regular service area of the building. The same arrangement is maintained in Article 53 concerning cases of land allocation and the construction of buildings after the entry into force of this Law where the 1986 Law regulated in Articles 39, 40, and 57 that the owner shall acquire the permanent right of use over such land. The new approach of the 2003 Law introducing these arrangements harmonised legal arrangements introduced under the Law on Property-Legal Relations, (Official Gazette of the Federation BiH, Nos. 6/98 and 29/03), which provides under Article 12 that the owner of a building shall have an ownership right over the land beneath the building and the land which is used for regular use, unless otherwise regulated by the law.

A significantly different approach of the new Law is also apparent with regarding the delivery of the possession of undeveloped construction land to the municipality before the issuance of a procedural decision on taking over the land:

– The 1986 Law regulates this issue under Article 26 and allows the previous owner to deliver possession of the land to the municipality, which was obliged to take it over. A statement on the delivery, as it is known, was to be given for the records to the municipal body responsible for property-legal affairs. If this body refused to take this statement for the records, the previous owner could submit their own in statement. Here is one example from the case-law, e.g. a position taken by the Supreme Court in its judgement U-300/01 of 19.04.2001, which states that in a case of delivering possession of city construction land to the municipality by way of written statement, the first instance body is obliged to forward such statement without delay to the responsible

body for the entry of changes into the land book or any other public book for the registration of rights concerning real estates in terms of the provisions of Article 26, paragraphs 2 and 3. The Court held the view that no legal document was required in such cases, as the statement on the delivery is made for the records or submitted in a proper form for registration into the registry books and as such is considered adequate document.

The new 2003 Law regulates in its Article 24 that the municipal council shall issue a procedural decision on taking over possession of undeveloped city construction land in order to designate it for its ultimate purpose, e.g. in order to prepare it for construction. It also provides that statements shall be taken from the previous owner and/or holder of temporary right of use over the land within the procedure of transferring possession. Article 25 further provides that before issuing the procedural decision on transferring possession, the previous owner of state owned undeveloped city construction land and/or the temporary use right holder may offer undeveloped city construction land to the municipality, which has a right of first refusal. If the municipal council/assembly does not accept the offer, the previous owner may transfer the right of use to third persons but not at a lower price than offered to the municipality.

Thus, the arrangements under the applicable Entity law indicate the drafters' commitment to develop a certain type of pre-emptive right; this also created the possibility for the temporary right of use to be placed on the market for sale.

3. Management and allocation of city construction land

Allocation of the city construction land

Articles 47 to 51 of the 1986 Law regulate allocations of city construction land to legal and natural persons under procedural decisions issued by municipal councils, through

public competitions as a rule, or through a direct settlement in specified circumstances that generally encompass a broader public-general interest. There are some examples from case law, e.g. positions taken by the Supreme Court in its decision No. U-284/97 of 08.01.1998, which confirm the procedural decision of the Federal Administration for Geodetic and Property-Legal Affairs no. 01-475-189/96 of 02.04.1997. That procedural decision states that the permanent right of use may be established only for the benefit of owners of a building who were also previous owners of the construction land or who acquired the right of use over the land in a legal manner and who at the moment of establishing the right under Article 40 are legitimate users/occupants of the construction land. The permanent right of use may be established for the benefit of the owner of the building only on the basis of a decision passed by the municipal council legally authorised to allocate construction land to legal and natural persons for construction purposes. Procedural decision of the Supreme Court, No. U-390/01 of 17.04.2002, upheld the procedural decision of the Federal Administration for Geodetic and Property-legal Affairs No.: 05-31-23/2001 of 25 January.20001. The court held that in cases where construction land is allocated by direct settlement there is no possibility to appeal or initiate an administrative dispute. The Court distinguished allocations for use via tender and disputes involving land disposals.

Articles 44 to 48 of the 2003 Law provide that the municipal council allocates undeveloped construction land for the purpose of construction, subject to equitable compensation and provided that the land is allocated on the basis of:

- **A public competition**, which is published via media outlets in the manner and under the procedures prescribed by this law, and on the basis of the regulations passed on the basis of this law;
- **Direct settlement** for the construction of the following

buildings:

- military facilities and buildings for the non-residential requirements of state bodies (allocation is not possible for construction of housing purposes)
- facilities for foreign diplomatic and consular offices
- facilities for public utilities infrastructure.

The new Law introduced a rule that city construction land may not be allocated to natural persons through a direct settlement. Only exceptionally may natural persons be allocated city construction land through direct settlement an alternative land plot within the compensation procedure for expropriated and appropriated land.

Article 46 also introduces an innovation by providing that the prioritized competition to persons who owned or held occupancy rights to residential property on 30 April 1991 or members of their family household should not allocate state owned city construction land. Additionally this provision prohibits selection committees form considering allocation requests, or allocating such land, unless the application includes evidence that the applicant and/or his/her household family member from 1991 do not use a property which has been claimed under the provisions of the Law on Cessation of the Application of the Law on Abandoned Apartments of the Federation of Bosnia and Herzegovina (Official Gazette of the FBiH, Nos. 11/98, 38/98, 12/99, 18/99, 43/99 and 31/01) and the Law on Cessation of the Application of the Law on Temporarily Abandoned Real Properties Owned by Citizens of the Federation of Bosnia and Herzegovina (Official Gazette of the FBiH, Nos. 11/98, 29/98, 27/99 and 43/99).

The new Law maintains the possibility under the prior provisions to allocate construction land plots to be used by multiple persons who conclude a contract on joint construction. Similarly, it remains possible to challenge

procedural decisions allocating construction land in an administrative dispute before a competent court.

The new Law significantly increases and further defines the role of the Public Attorney in the process of land allocations. Article 16 obliges the municipal council to obtain the opinion of the public attorney confirming that the proposed allocation is in accordance with the applicable legislation and that the procedures set forth in the law were complied with. The responsible public attorney is obliged to provide his/her opinion within 15 days after receiving the draft allocation decision. By obliging the public attorney to review any proposed allocation and verify that all relevant laws and procedures have been honored implies the Public Attorney's active participation in the entire procedure until the final land allocation.

Loss of the right of use over the land allocated for the purpose of construction

Under the previous law, the basis upon which the right of use on construction land is essentially carried over from the 1986 Law. Articles 49 to 53 provide that natural and/or legal persons lose the said right if within a year of the legal validity of the procedural decision allocating construction land allocation they fail to submit a request for a building permit or if they fail to complete a majority of the planned construction within a year after the building permit is issued.

Further, procedural decisions allocating construction land that contravene the terms, procedures and criteria for allocating land through public competition under Article 46 are null and void. Recipients of construction land under these decisions will loose all registered rights of use under a procedural decision of the municipal administration responsible for property-legal affairs in accordance with Article 50. In cases where rights of use are lost, the

municipality is obliged to pay to them the construction value of any uncompleted structure and due fees.

By way of illustration, a decision of the first instance body no. 05/1-475-293/96 of 02.09.1996 on the cessation of the right of use over undeveloped city construction land based on the right holder's failure to submit a building permit request within one year was upheld by the second instance body and the appeal was refused by its procedural decision, No. 01-475-298/98 of 10.07.1998. Similarly, the Supreme Court of the Federation BiH by its judgment No. U-433/99 of 18.10.2001 refused a complaint submitted in an administrative dispute and upheld the decision of the second instance body whereby it supported the decision's rationale on the loss of the right of use over the land allocated for construction on the grounds of failure to meet the time limit set out in the law. The Court rejected the plaintiff's argument "that the time limits set forth in the law ceases to be valid during times of war threat". Considering that this specific case concerns preclusive time limits under the substantive law, time limits thus cannot be extended except in cases where specifically justified and where an extension for additional time period is permissible. These time limits cannot be deferred nor can they be suspended during the state of war or imminent threat of war.

Use of partially completed structures on city construction land

The new Law regulates the transfer, mortgaging and devising partially completed structures on a city construction plot. Provisions of this Law restrict these activities and provide that any partially completed structure may be alienated subject to approval of the municipal assembly. If no legitimate reasons prevented either the right holder (of an acquired priority right or use right) on the construction land, registration of a buyer's right of use occurs on the basis of a purchase contract and upon the consent of the

Municipal Assembly. If the municipality does not approve such registration as requested by the holder of the right of use or their legal successor, the municipality is obliged within a 3-month period to appropriate the partially completed structure and pay compensation as specified under Article 51.

The 2003 law provisions retain the old definition of a partially constructed building – that is the completion of the first horizontal enclosure to the extent required for authorized use within the meaning of the Law on Spatial Planning.

4. Compensation for the city construction land

Articles 62 through 75 of the 2003 Law defines the compensation payments required for the allocation, developing and use of city construction land.

Compensation for the allocated land (established by land allocation decisions) encompasses the compensation for taken land, compensation based on the natural advantages of city construction land, and advantages of the developed communal infrastructure during the period of use, i.e. rent.

Compensation for the expenses of developing that land (as established by an urban permit decision) and compensation for the use of city construction land (as established by a decision of the municipal administrative body in charge of utility sector). The construction permit determines the rent rate for the state owned city construction land in cases of construction extensions or upgrading existing objects and the construction of auxiliary objects.

The payment of above stated compensations are required for the issuance of the construction permits and for registering the right to use city construction land in the cadastral records or land registry.

Revenues derived from allocated city construction land, for

the development of a city construction land plot, and for use of a city construction land plot (rent), are to be respectively used to pay the expenses of compensation to previous owners, the expenses for land development and for producing urban planning documentation. While natural persons to whom construction plots were allocated without compensation during the period after 6 April 1992 until the time the Law has entered into force and whose pre-war property rights were restored, lose the right to all the exemptions from paying land allocation compensation and enter the obligation to pay them while, in parallel, all decisions, decrees and other regulations which sets forth the said exemptions became null and void.

City construction land, according to advantages, is divided in six zones, which are established based on the location of land, the extent to which the land is equipped with:

- Communal premises and installations, road traffic networks, the type and capacity of premises for daily and periodic supplies;
- The level of health protection facilities, education, culture and child protection facilities;
- And the natural and ecological conditions for land use such as inclination of the ground, orientation, sunlight, air temperature, wind and air pollution.

The basis for calculating rent is the average final construction price per m2 of usable housing surface on the territory of the municipality identified in the previous year; the Municipal Council by Decision establishes this rate each year, no later than 31 March for the current year and evaluates it every three months.

Based on practical experience and requests from businesses, the amount of rent (per square meter of usable surface to be construct) is significantly reduced. The level of rent is a percentage of the average final construction price, determined

for each zone of construction land, and where the compensation for the use of city construction land identified for each land unit (m2) is 0.01% of its rent amount. Article 63 of the Law provides that no one can be exempted from the obligation to pay compensations identified by law except under circumstances specified by law; thus all decisions, decrees and other regulations that contravene this prohibition are rendered null and void.

5. Cessation of social/state ownership on construction land which has not been used for intended purpose, as well as the restoration of the said land into private property

Article 96 of the new Law provides that "upon entry into force of this law state ownership on Construction Land which was transferred into social, now state, ownership by a municipal decision, but which has not been used for intended purpose in accordance with the regulation plan, ceases to exist as a legal classification, *ex lege.* The cessation of social/state ownership, as well as the restoration of previous property-legal status (which thus has declarative character) is established by decision of the municipal department responsible for property-legal affairs. These Decisions may be disputed by an appeal before the Geodetic and Property and Legal Administration of the Federation of Bosnia and Herzegovina and the valid decision shall be delivered *ex officio* to the body responsible for the registration of rights on real property for enforcement."

These provisions represent a complete novelty compared with the previously valid Law that did not foresee any possibility of restoration or transformation of the ownership structure on the construction land that became social/state ownership and which occurred in response to proposals and requests dictated by the practical needs. Prior to the adoption of the new Law on Construction Land the restoration of previously seized real property was only possible in the process of de-expropriation under Article 32 of the Law on Expropriation. (SR BiH Official

Gazette 12/87 and 38/89 and RbiH Official Gazette 20/93 and 15/94). Naturally, such legislative solutions were followed by implementation by administrative and judicial bodies (e.g. 27 July 2000 verdict of the BiH Federation Supreme Court U.1834/98 which upheld the restoration of nationalised construction land and the process of de-expropriation).

II Revision of land allocation in period from 6 April 1992 to 15 May 2003

Presented by: OHR – Edisa Pestek, Sanja Hasanovic, Sanja Cerovšek, Officers for Property/Legal issues

Brief overview of the provisions which explains reasons and basis for introducing the Revision procedure as one of the new items that was introduced into the Law on Construction Land

Revision as one of the key concepts has been introduced into the Law to provide a framework of domestic protection of land use, within the context of Annex 7, for Displaced Persons and Refugees.

Revision also represents the substitute for the High Representative's Decision of 27 April 2000, which banned disposal of socially owned property and which ceased to exist on 16 May 2003, with the aim to protect the rights of former and current land users.

In accordance with Annex 7 of the Dayton Peace Agreement refugees and displaced persons have "the right to have restored to them property of which they were deprived" during the war, without distinction as to the type of property. During the war, and the years following it, many rights to use state owned land have been taken over, sometimes, unfortunately, in violation of relevant laws and procedures that protect former users (i.e. the priority right to

reconstruct on land where the building was destroyed represents one example). Similarly, the rights to use land have sometimes been taken over either without paying adequate compensation as defined by the Law on Expropriation or without paying any compensation at all.

The wholesale distribution of free land plots has created liabilities for responsible bodies to lay infrastructure in new settlements and, because land plot beneficiaries often lack the funds to construct new homes or possess habitable property elsewhere, 67% of the approx. 40,000 known allocations of land plots remain undeveloped.

Illegal land disposal of socially/state owned land had created completely new mono-ethnic settlements, which made a the return process of the pre war inhabitants to that particular region difficult.

The Revision Process, as addressed in the interim and final measures (Articles 87-92), creates an administrative procedure for challenging allocations made since 6 April 1992. Specifically, these provisions establish an administrative process through which pre-war user rights can be restored or compensated for, and which establishes the right to seek full compensation before a court.

Natural persons (and their legal heirs) who held a right of use to state owned city construction land may file before the municipal organ competent for property legal affairs a request for revision of the decision canceling their user right if:

- The land was used on or before 6 April 1992 for residential, private agricultural or business purposes;
- If their right of use was terminated without their consent between 6 April 1992 and 16 may 2003;
- If no waiver of the High Representative’s Decision on disposal with socially-owned property of 27 April 2000 was issued by OHR;

- Such request is filed within 2 years after entry into force of this law i.e. until 16 May 2005.

A person who seeks to challenge an allocation made in this period where an OHR waiver was issued may still do so, but only before a competent court.

A member of the family household may also bring the claim for revision.

The municipality is obliged to decide on the claim within one month from the date the request is filed.

1. Resolving the Revision claims

When deciding upon claims for revisions the Municipality is obliged to return the right of use to the claimant where:

- Their rights were cancelled without their consent;
- The claimant's consent was obtained through a legal representative appointed by the Municipality in their absence; or
- If the Municipality failed to pay the compensation as required by this law and the Law on Expropriation.

However, if a claimant alleges that inadequate compensation was paid, the claim must filed be before a competent court.

2. Rights of successful claimants under revision

Successful claimants have the right to have their "use rights" to state owned city construction land restored to them.

However, if a began construction on the disputed land plot, a successful claimant can choose between:

- financial compensation, in accordance with this law and the Law on Expropriation; or
- an alternate land plot of similar size and character without charge.

3. Rights of 3rd Parties on Land where construction has not commenced

Under the certain circumstances in accordance with the Law on Construction Land the third parties, i.e. persons who were allocated a land plot now subject to Revision and have not commenced construction, have a right to either have any fees paid for the plot refunded to them or the right to receive another plot of land of similar size and character, free of charge.

Competent bodies (i.e. the RS and FED Geodetic Administrations and the RS and FED Ministries for Spatial Planning and Environment, within their respective competencies) will pass instructions on implementation of the LCL and the relevant bylaws.

Working on this Law together with the representatives of both Entities, Office of the High Representatives is aware of several unresolved issues associated with this reform effort and recognises that a successful implementation of the law requires hard work and commitment of all implementers. Therefore the main goal of this Office is to by this Booklet ensure better practical application of the Law on Construction Land.

III Correlation of the Law on Construction Land and provisions of other laws

Proponent: Blagoje Veskovic – staff associate

Provisions of the Law on Construction Land (hereinafter: this Law), which the High Representative passed in identical language for Federation BiH (Official Gazette of the Federation BiH, No. 25/03) and for Republika Srpska (Official Gazette of Republika Srpska, No. 11/03), are mutually

interrelated with several other laws. It primarily refers to the Law on Administrative Procedure, then the Law on Expropriation, Law on Urban Planning, Law on Land Registry, Law on Property and Legal Relations, Law on Transactions with Immobile Properties and Law on Inheritance.

To the largest extent possible provisions of this Law are connected with provisions of the Law on Administrative Procedure. It arises from the fact that provisions of this Law regulate a series of activities to exercise rights and identify obligations of particular parties. Concretely, provisions of this Law regulate the following procedures:

- the taking over of undeveloped city construction land for designating permanent purposes (Article 24);
- establishing of loss of the temporary right of use (Article 26 Paragraph 2);
- establishing of the priority right to land use (Article 29 Paragraph 2);
- the allocation of undeveloped construction land to a person who could not exercise the priority right to use the land (Article 30 Paragraph 2);
- establishing of the land to be used for regular use of the building (Article 39 Paragraph 2);
- The allocation of construction land for the purposes of erecting buildings (Article 44);
- the establishing of loss of the right of land use for construction due to the non-issuance of a construction permit and the failure to exercise works in greater extent on building (Article 50);
- the establishing of usufructs (Article 55);
- the temporary occupation of a city construction land (Article 56 Paragraph 2);
- the permit to allow necessary preparatory activities on the city construction site (Article 57);
- Establishing of ownership on city construction land at which a building without the right to use for

construction was built (Article 61);
- the revision and drafting decision procedure (Article 88); and
- the cessation of the state ownership on construction land, which has not been used for intended purpose, as well as the restoration of previous property-legal status (Article 96).

Provisions of this Law only partially regulate procedure, which precedes the passage of decisions in the procedures stated above. The status of the party to the procedure, method of initiating procedures and competencies to pass decisions are defined. In all other respects, relevant provisions of the Law on General Administrative Procedure (i.e. the Law on Administrative Procedure) are applied. It means that basic principles of the administrative procedure, as well as appropriate legal provisions regulating the procedure in administrative matters, are applied: summoning procedures, delivery, minutes, exemptions, deadlines, witnesses, court experts, investigative procedures, decisions, appellate procedure, renewal of procedure etc.

1. Application of Article 96 of this Law – The cessation of the state ownership on construction land that has not been used for intended purpose

Provisions of Article 96 of this Law, together with Article 39 and Article 87 through 94 (revision), make substantial changes in current administrative regime of city construction land.

The procedure under Article 96 of this Law deserves special attention. The issue is what city construction land is the decision passed for under Article 96? Furthermore, whether a joint cumulative decision will be passed in this case which, in parallel, encompasses all city construction land on which state ownership ceases to exist or whether individual decisions will be passed for each individual owner of city construction land, remains unclear. There is also an issue of

whether the investigation procedure will be conducted before passing the decision and who can be the party to the procedure.

As to which city construction land decisions in accordance with Article 96, Paragraph 1 of this Law, are passed, the answer lies within this legal provision and sets forth that after entry into force of this Law, (i.e. 16 May 2003), under the force of law, the state ownership on construction land, which has not been used for intended purposes in accordance with the zoning plan, and which was transformed to social, now state, ownership based on a municipal decision, ceases to exist. Therefore, this legal provision relates only to city construction land which has been transformed to social, now state, ownership pursuant to decision of the Municipal Assembly, adopted at some point on the basis of Articles 13 and 16 of the Law on Construction Land (SR BiH Official Gazette No. 34/86, 1/90 and 29/90). It means that Article 96 of this Law is not related to city construction land that were transformed to social, now state, ownership pursuant to the Law on Nationalisation of Rented Buildings and Construction Land (FNRJ Official Gazette No. 52/58), as well as separate laws which were thereafter passed in 12 municipalities (Banovici, Banja Luka, Bosansko Grahovo, Doboj, Hadzici, Ljubuski, Orasje, Rudo, Tuzla, Visegrad, Vitez and Zvornik). City construction land, which was transformed to state ownership based on nationalisation and separate lawsremain in state ownership and it means that dual property and legal regime on city construction land is now established, in parallel to state owned land, there is also privately owned land.

By prescribing that after this Law has entered into force state ownership on construction land, which has not been used for intended purposes, ceases to exist by force of law, it has also defined the character of decisions to be passed under Article 96, Paragraph 2. This decision has no constitutive but

declarative character. State ownership on respective construction land ceases to exist, *ex lege,* by force of law, which is only identified by a procedural decision of the administrative body in charge of property and legal affairs. The procedure preceding the adoption of resolutions under Article 96, Paragraph 2, should definitively establish the manner which city construction land is deemed not be in use for purposes consistent with the spatial plan. It will be most appropriately determined if a geodesist is hired who, based on a decision to identify city construction land, produces a scientific study containing data on city construction land that is not being used for the intended purposes, specifying the owner and the possessor of the land. This study may not be made with on-the-ground-insight since the data from the municipal decision to identify city construction land underwent a several changes. Therefore, it is necessary to identify which construction land is not used for its planned purpose in each concrete case and with regard to each owner. Scientific study, apart from cadastral data, should also include land registry data. Based on the data referred to in the scientific study, the landowner, i.e. his/her successor, will be asked to state whether all of his/her construction land not used for its planned purpose is encompassed and whether there are any objections to the professional findings of the geodesist.

An important issue is who is the party to the procedure in identifying cessation of the state ownership on construction land in terms of Article 96 of this Law and to whose benefit the former property and legal ownership relation will vest. The answer to this question is based on provisions of Article 20, Paragraph 2 of this Law. These provisions sets forth that the former construction land owner is considered:

a) person who, at the time of the transformation of construction land into social, now state property, had a right of ownership registered in the cadastre or land book registry;

b) a person whose right of ownership at the time of the transformation of the construction land into social, now state, property is established; and

c) a person on whom the previous owner transferred the right of land use before the date of transformation of the construction land into social, now state property, on the basis of a contract that bears valid signatures verified by the competent body, or if the payments under the contract were made through a bank or a post office, or if the new owner paid tax or contribution for that land.

As above stated Items a) and c) are clear, as they are their application in practice will not cause any problems. However, some dilemmas may appear with regard to the application of Item b). This provision is relates to cases envisaged in provision of Article 14, Paragraph 2 of former Law on Construction Land. The said provision states that, prior to the adoption of the decision to identify city construction land, the municipal administrative body in charge of property and legal matters will discuss, as a preliminary matter, property relations on city construction land for the territory where the cadastre of immobile property is not established under the Law on Survey and Cadastre of Immobile Property (SR BiH Official Gazette, No. 22/84), in accordance with provisions of that Law. It means that in cases where prior to the adoption of the decision to identify city construction land property relations were discussed, as former owners are considered persons who are owners of city construction land (irrespective of the status of their entry into land registry) and who are as such identified in the decision on the identification of city construction land. Former owners of city construction land will be considered persons for whom, during the process of establishing the cadastre of immobile property, it is established by a decision of the competent commission that they are owners of city construction land.

If the former owner of city construction land has died his/her

heir will be summoned to participate as the party to the procedure under Article 96. However, if the inheritance proceeding is not concluded, the former property and legal status will not be established for the benefit of the heir but for the benefit of his/her legal predecessor; after the inheritance proceedings the heir will have to regulate the issue of recording his/her right of ownership in the land registry.

There are cases where the transfers of rights to use undeveloped city construction land are made via sales contracts. There are also registered cases that the Revenue Administration collected turnover tax on the basis of such contracts. All such contracts are concluded contrary to provisions of this Law and as such they are null and void which is explicitly set forth in Article 10 of the former Law on Construction Land.

Regarding the application of Article 96, Paragraph 2 of this Law, it was highlighted previously that joint and cumulative decisions on cessation of state ownership on construction land will be adopted in line with this Article and reinstatements of previous ownership rights, and legal relations or individual decisions will be adopted for each former owner. A more acceptable solution is to pass a special decision for each former owner. If a cumulative decision is passed, we would face legal and technical complications, such as: partial legal validity of such decision, adding the legal validity clause, distribution of the decision, and difficulties implementing such a decision in land registries. It is also unacceptable to separate the procedure under Article 96, i.e. to identify cessation of state ownership on construction land in one decision and then reinstate former property and legal relations in a special decision (or decisions). This is because under the formulation of provisions of Article 96, Paragraph 2 arises that one decision has defined the cessation of state ownership on construction land and the reinstatement

of former property and legal relation. Furthermore, the separation of the procedure has no practical purpose considering that it would delay the procedure under Article 96 of this Law.

2. Application of Article 39 of the Law on Construction Land – Transforming the permanent right of use into private ownership right

Article 39, paragraph 1 of this Law prescribes that upon the entry of this Law into force the owner of a building, or a particular parts of a building, obtains an ownership right on the land beneath the building, and on the area foreseen in the regulation or parcelling plan for its regular use as the regular service area of the building, except in cases subject to revision under Articles 87- 92 of the Interim Provisions of this Law.

Paragraph 2 of this Article prescribes that a municipal body of administration competent for property legal issues, upon obtaining the opinion of the body of administration competent for urbanism issues, determines by its decision the area of land to be used for the regular use of the building, if this area is not specified by the regulation plan or parcelling plan.

The provisions of paragraph 1 of Article 39 implies that by the entry of this Law into force (16 May 2003) the owner of a building erected on city construction land, obtains by force of law an ownership right on the land beneath the building and on the area of land contemplated in the regulation or parcelling plan for use as the regular service area of the building; therefore the state ownership on this land and the permanent right of use ceases to exist at the same time.

The following is important with regard to the application of this legal provision: The provision of Article 39 refers to developed city construction land, contrary to the provision of

Article 96 of this Law, which refers only to the undeveloped city construction land that at some point was transformed into the state ownership only based on the decision of the municipality. Therefore, the provision of Article 39 refers to all developed city construction land that was transformed into social and now state ownership, based on the Law on Nationalization of Rental Buildings and Construction Land, specific laws that were passed in 12 municipalities and the decisions of the municipalities on determining the city construction land.

Contrary to the provision of Article 96, paragraph 2, the provisions of Article 39 of this Law gives authorisation to neither the body of administration competent for property legal issues nor any other body to make a procedural decision that determine the termination of the state ownership and the transformation of permanent rights of use into a private ownership rights on land beneath buildings and its surrounding land for the buildings regular use.

It is well known that for a many buildings erected on city construction land there was neither provisional acceptance of the completed works nor were building inspection certificates issued; this means that there was neither planning for these buildings nor registration in the land books. In addition, the area of the land required for the regular use was not determined in accordance with the regulation plan or parcelling plan for many buildings. The owner of the constructed building should initiate all procedures that will result in the registration of an ownership right in the land books for the benefit of the building owner. For all above-mentioned reasons, the law could not authorise the legal departments to bring decisions pursuant to Article 39 of this Law.

After receiving the building inspection certificate, determining the land which serves for the regular use of the building and entry of the building into plans, the owner of a

building will give a proposal to the to the land registry office of the competent court to perform the registration of the ownership right on the land beneath the building and service area.

In determining the ownership right on the construction land beneath a residential building in which all apartments have been purchased, the starting point should be appropriate provisions of the Law on Property Legal Relations of the Federation of BiH, which regulate condominiums and/or provisions of the still valid Law on Ownership of the Parts of Buildings being applied in Republika Srpska ("Official Gazette of the SR BiH", No.35/77).

Article 22 of the Law on Property Legal Relations of the Federation BiH prescribes that owners of particular parts of buildings (condominium owners) have an indivisible joint ownership right on the common parts of a building, which serve to their separate parts, and the indivisible joint ownership right or a permanent right of use on the land beneath the building and the land which serves for the regular use of the building.

Similar provisions are contained in the Law on the Ownership of Parts of Buildings being applied in Republika Srpska (Article 4 and Article 6).

The correlation between the provisions of this Law and the Law on Spatial Planning ("Official Gazette of the Federation BiH", no.52/02) and/or the Law on Spatial Planning ("Official Gazette of Republika Srpska", no.19/96) can be found in many provisions of this Law. Firstly, the provisions of Article 12 prescribe the land a municipality may identify as the city construction land. This may be only the land that falls under a regulation plan or urban plan according to which the construction and preparation of the land, which is encompassed by the medium term plan of the municipality, will be implemented completely or to a large extent, within 5 years.

The definition of these plans, as well as the procedure for their enactment is regulated by the above-mentioned regulations on spatial planning.

Article 62, paragraph 3 of this Law prescribes that the amount of compensation for developing city construction land is established by an urban permit decision, and in this way refers to the provisions of the Law on Spatial Planning, which regulates the issuance of the urban permit. Paragraph 4 of the same Article prohibits the issuance of construction permits prior to submitting proof that the compensation for overtaking the land and compensation for developing the land has been paid by a holder of the construction right. Article 68 prescribes that the rent rate for the state owned city construction land is determined by the construction permit decision in cases of construction, extending existing objects, upgrading and the construction of auxiliary objects,. Finally, Article 76 prescribes that the decision determining other construction land is based on the natural layout of the municipality, or the physical plan of the special area which encompasses the borders of an urban area and other areas upon which the construction, or the execution of other works from the urban development plan, urban order or the regulation plan, is foreseen. More detailed provisions on these urban categories are contained in the Law on Spatial Planning of the Federation BiH and/or the Law on Spatial Planning of the RS.

The correlation between the provisions of this Law and the Law on Property Legal Relations are found in Article 32, paragraph 3 of this Law, which prescribes that a primary right to the land use for construction purposes is exercised according to the provisions of the Law on Property Legal Relations (“Official Gazette of the Federation BiH”, No.6/98) and/or provisions of the Law on Basic Property Legal Relations (“Official Gazette of the SFRY”, No.6/80), which is applied in Republika Srpska until the adoption of a new law. Pursuant to provisions of the stated laws, the court decides on cases when

co-owners do not reach the agreement regarding the exercise of the priority right of use.

3. Expropriation of the City Construction Land

Connections between this Law and the provisions of the Law on Expropriation can found in many Articles of this law. The provisions of Article 3 of this Law prescribes that the construction of cities and similar settlements on city construction land, and on other construction land, is carried out in accordance with the regulation plan and is considered of public interest. The provision of Article 16, paragraph 4, prescribes that the Municipal Assembly and/or Municipal Council may expropriate a privately owned construction land in an expropriation procedure. While applying the provisions of Article 3 and 16, paragraph 4, of this Law, in practice, certain dilemmas might appear. Therefore, after analysing the correlation between other provisions of this Law and the provisions of the Law on Expropriation, the wider review of these provisions will be provided.

Article 58 of this Law foresees that in the case of determining easements (Article 55), temporary occupation of the city construction land (Article 56) and the performance of preparatory activities (Article 57), the compensation is specified in accordance with the Law on Expropriation, which means in accordance with the procedure prescribed by that Law. Furthermore, Article 69, paragraph 4 of this Law prescribes that the compensation for overtaking construction land is determined and paid in accordance with the provisions of the Law on Expropriation. This means that with regard to the amount of the compensation the criteria prescribed by the Law on Expropriation are applied, and this also refers to the procedure of determining a compensation for expropriated city construction land. Specifically, it refers to the process of determining compensation by consent before the administrative body competent for property legal relations or by extra-judiciary procedure, if agreement is not otherwise reached.

As above-mentioned, now we will consider the application of the provisions of Article 3 and 16, paragraph 4 of this Law and/or other disputable issues that may appear in the interpretation of these provisions. There is question whether it is possible, and who may submit a proposal for the expropriation of the city construction land, to construct a building in cities and similar settlements, having in mind that the provision of Article 3 of this Law considers this of public interest.

In answering this question it should be considered that a precondition for any expropriation is the identification of a public interest in the construction of every single building. Therefore, the public interest must refer to a concrete building and the specific land on which such building will be constructed. However, while the provision of Article 3 of this Law generally formulates the identification of public interest, but this is not sufficient for determining what kind of a building will be constructed and on which land. Contrary to the regulatory plan, urban project or parcelling plan, the regulation plan does not define a concrete building and specific construction land on which such building will be erected. Therefore, the procedure for expropriation cannot be undertaken based on Article 3 of this Law. It will be necessary to clarify the provision of Article 3 of this Law within future amendments to the Law on Expropriation in order to more concretely regulate the public interest in the construction of buildings on the city construction land (e.g. in such cases the public interest is determined based on certain urban planning acts). Until the Law on Expropriation is amended as suggested, the public interest in the construction of buildings on the city construction land will be determined in the manner prescribed by provisions of the Law on Expropriation.

The procedures of expropriation in the case of constructing buildings, which are un-doubtfully of public interest

(construction of schools, libraries, hospitals, parks, streets, roads, etc), will not create problems in practice. However, there is a question whether a procedure of expropriation of city construction land, which serves for the construction of individual houses or commercial buildings by natural persons, can be undertaken. If the accepted position is that the public interest cannot be determined in the case of such buildings (and everything implies that this is true), then it appears that interested investors can only acquire construction land on the market via purchase/sale. If a certain location is privately owned city construction land foreseen for individual housing or commercial construction, but owners do not want to sell that land, or if they demand enormously high amounts, there is a question in which way the construction on such location can be carried out. The municipality is very interested in such construction since the infrastructure is constructed on such location and there is a need to collect revenues from investors (compensation for developing the land, rent fee and compensation for use, in order to invest in infrastructure on other locations).

Provisions of the Law on Construction Land that exhaustively regulate rights of previous owners and other persons on undeveloped city construction land (temporary right of use, primary right of use, right of use for construction purpose, transfer and loss of these rights, compensation for overtaking the land, etc) should be strictly applied as long as such provisions exist. These kinds of provisions exist because of the dual property legal regime on city construction land, and more precisely because part of the city construction land is still state owned. It should be expected that the law will soon regulate that the state ownership ceases to exist on the remaining city construction land and that previous ownership legal relations are re-established. Upon completion, a single legal regime will be established for the city construction land, which will be mostly privately owned. Since there will be no need to regulate rights of the previous owners, this Law

will lose its property legal dimension and the remaining norms from this Law, which remain valid, will have only a urban – spatial character and could make up a specific chapter in the Law on Spatial Planning of the Federation BiH and the Law on Spatial Planning of Republika Srpska (requirements and method of determining the city construction land and other construction land, regulation of compensations for natural advantages and compensations for the use of the city construction land). In this way, there would be no further need for the separate Law on Construction Land.

IV Common Grounds of the Law on Construction Land and the Law on Spatial Planning of Republika Srpska

Prepared by: Mensur Sehagic – Minister of Spatial Planning, Construction and Ecology, Milenko Stankovic, Adviser to the Minister, and Biljana Markovic, Assistant

The balanced and planned development of the overall area of Republika Srpska is a primary strategic objective of the Law on Spatial Planning. Because we are aware that without an adequate policy regarding land, the definition and regulation of property relations and legal land holders, there can be no efficient application of legal solutions in the field of spatial planning, we have synchronised activities with the Administration for Geodesy and Property Legal Relations of the RS in order to jointly reach rational and optimal solutions jointly as partners. We expect and request good co-operation with organs of municipalities and cities, so that by the synchronisation of the planned solutions and implementation, in the form of concrete Decisions, we can reach efficient and easily implementable solutions. Legal solutions that we have had until now in the field of the land management proved difficult to implement in practice.

The new Law on Construction Land intends to eliminate the omissions from the past and move closer to European practice. The elimination of monopoly, allocation of the land regardless of the public competition, and transformation of construction land into private ownership by decree, are only some of attempts to achieve a more regular allocation and management of the construction land. In order to remove possible omissions and misuses, the audit of the construction land allocated in the period between 6 April 1992 and 15 March 2003 is planned, and is one of the initial contributions.

Considering the aspirations of the Law on Spatial Planning and the achieved political consensus that there should be no future construction without a plan, the Law on Construction Land conceptually supports and allows the transformation of the construction land into the private ownership only in the case of the implementation plans, which will be carried out in the short-term period of five years. The prescribed deadline requests from municipalities and cities to urgently draft operational plans for the planned solutions implementation direct them towards the target and harmonise them with citizens' needs in the development of a settlement.

The joint work of the Urban Planning Ministry of Republika Srpska, the Geodetic Administration and OHR is intended to bring the legal solutions closer to the municipal and city bodies, and to ensure the more efficient implementation of legal solutions in practice.

We will try to remove the differences identified with regard to the terminology of legal solutions and the understatements of the competence via by-laws acts (rulebook or certain amendments to the law), and by taking into consideration public comments and suggestions after consultations in regions are complete. The full transparency will ensure the adequate availability of legal solutions to all interested parties and consequently their qualitative implementation in the field.

The construction land in these areas has been so far managed in a very specific and administrative manner. This is because construction land in these areas was an obstacle, rather than a stimulus, to development, as elsewhere in the world. Real property that is equipped with infrastructure is big business around the whole world, and therefore for centuries it has been a fertile ground for speculations. This has been the case in these areas as well.

The conditional quality of the location resulted in a property monopoly over property. The price of infrastructure and the relative value of the location resulted in high real estate prices, which have continuously grown, especially in urban settlements. The level compensations prescribed by the old Law and Decisions of the Municipalities were quite diverse. In some municipalities the compensations have never been collected or were symbolic in value, while in other areas they were unrealistically high and promoted illegal construction.

The jurisdictions of the urban-construction inspection and property legal inspection are not precisely separated. Funds have been raised based on compensations for:

- allocated construction land, which consists of the compensation for the overtaken construction land; compensation on the basis of the natural advantages of the land and compensation for previously constructed infrastructure, which is not the result of the investments by the owner or a user of the real estate – (rent) and which was under the control of the Administration and their inspection for the development of the construction land; and
- compensation for the use of the construction land. These compensations were calculated in the procedure for issuing the urban permit and were mostly subject to the control and urban- construction inspection after issuance of the decision on the use of a constructed building.

Common for all compensations is that they were collected for legislatively specified purposes, but in practice the collected funds were often not used for such purposes.

The new Law on Construction Land directs that compensation funds must be collected and used for prescribed purposes. This is specified in Article 63 of the new Law, paragraph 3, which foresees use of collected funds for: compensation to former owners, expenses for land regulation and expenses for spatial planning documentation.

So far, citizens were not adequately informed about levels of funds collected in the form of compensation or about adequate usage thereof. In fact, they were not given an opportunity to take part in the decisions prioritising the use of funds to meet infrastructure needs. In practice, this resulted in weak infrastructure capacities in urban areas. Articles 70, 71 and 72 of the new Law on Construction Land specify an obligation to regulate the whole area, the real expenses of compensation, and sanctions for non-enforcement- all in accordance with the regulation program.

A common feature of urban settlements in these areas, regardless of the amount of compensation collected in accordance with the old Law on Construction Land and municipal decisions pursuant to it, is that they have an extremely low level of infrastructure capacity. The lesson here is that decisions related to construction land issued by municipalities and cities must contain instruments for fund management and automatism, which follows the principle of returning funds to the particular location from which it was derived. This will improve living conditions in that area and establish a balance between development and collection of compensation for the benefit of citizens. Changes in the political system and new laws have created a possibility for formerly state-owned construction land to now be held in both private and state ownership. This has strengthened the interest of the titleholders, which are now appropriately

directed towards sustainable planned development of urban areas. A clearly defined policy of spatial planning and protection of the environment, together with the principles of integrated planning and management of an area for sustainability, required urgent changes to the Law on Construction Land. The goal was to eliminate the perceived conflicts inherited from the past as quickly as possible.

Further, civic and public participation in the decision-making process was more declarative than practical. Under the new law, adequate public participation and control in this process must be ensured. The goal is to direct compensation funds towards high quality solutions that raise the capacity of infrastructure in urban areas and improve living conditions.

The close relationship between the tasks of land allocation, planning, construction and land management created the need to harmonise and synchronise legalsolutions thatensure more rational and efficient management and use of construction land.

The Law on Physical Planning specifies an obligation to prepare physical planning documentation for the entire Entity territory. Decisions related to regulating the status of illegally constructed buildings specify that funds collected in this way should primarily be channelled into drafting the missing physical planning documentation.

The Law on Construction Land directs determination of construction land only at the level of implementing planning documents, the construction of which will be executed within 5 years. These three mentioned activities require urgent intervention and synchronisation to allow municipalities and cities to determine the proper direction of their future planned development.

The previous practice of drafting physical plans without updated geodetic databases and plotting of construction land

by the geodetic departments without the adequate plotting plans in the form of an excerpt from the appropriate implementation planning document caused many conflicts in the area and stimulated illegal construction. An analysis of this area identified some problems inhibiting sustainable development, including the lack of updated geodetic databases, lack of information-documentation about the area, and inadequate analyses of the situation regarding legal and illegal construction in the area. The process also identified the lack of harmonisation of legislation and technical regulations, overlapping competencies, poor practical applicability and general deficiency of physical planning documentation/development and implementation plans. Traditionally long procedures of drafting and adopting plans, poor implementation feasibility, unclear instruments for application, and inflexibility are also identifiably persistent problems.

It is necessary to synchronise all activities of responsible municipal and city authorities in the area of urban planning and geodetic administration in order to implement the new legislative solutions with the aim of improving general living conditions.

The arbitrariness with which the final prices for usable residential spaces were established in the process of determining compensation levels must be eliminated. In practice the responsible authorities often modified this price basis to suit immediate needs and now should be established at market value within the framework of the tax administration, or in a similar manner, to eliminate this practice.

The issue of leasing construction land also needs to be adjusted to the Law on Physical Planning and conditions should be made for a land market, freely regulated locations for local and foreign investors.

V Review and comparison of new solutions and regimes from the Law on Construction Land

Submitted by: Milenko Cvijan, acting director of the Republika Srpska Geodetic and Property Affairs Department

Property relations related to construction land, due to their complexity, content, as well as their importance, which they have in the realisation of citizens' and other subjects' rights, also have an important place in the sphere of property relations in general.

Regulating property relations for construction land in the area of the former SFRY, to which the territory of the RS belonged) dates back to the adoption of the Law on Nationalisation of Lease Buildings and Construction Land ("Official Gazette of the SFRY", No: 52/58). This Law carried out the nationalisation of construction land to a large extent in the so-called inner construction zones. The Law made it possible for further nationalisation of construction land in the way of extending the nationalised zones and by specifying new inner construction zones.

The nationalisation of construction land meant that the right of ownership of former owners ceased and new rights of previous owners were established, as well as a right of temporary use until take-over and the permanent right of use over the land under the building and over the land for regular use of the building. Under these conditions, the former owner of the land was entitled to a pre-emptive right of use for the purposes of construction of buildings. On the basis of the allocation of land for usage by the municipalities, other persons (physical and legal) may exercise the right of using construction land for the purpose of building under the conditions and in a manner regulated by the provisions of the Law on Nationalisation of Leased Buildings and Construction

Land.

Since 1968, nationalisation of construction land was carried out on the basis of the Law on Specification of Construction Land in Towns and Urban Areas ("Official Gazette of the SFRY", No: 5/68 and 20/69). This Law provided that nationalisation of construction land may be done on the basis of the RepublicLaw, and special laws were used for nationalisation of construction land in 12 municipalities of the former SR BiH (Banovici, Banja Luka, Bosansko Grahovo, Doboj, Hadzici, Ljubuski, Orasje, Rudo, Tuzla, Visegrad, Vitez and Zvornik).

In 1974, a Law on Socially-Owned Construction Land was adopted ("Official Gazette of the SR BiH", No: 13/74) which was in force for 12 years as it was put out of force with the adoption of a new Law on Construction Land, which entered into force on 4 October 1986.

The Law on Construction Land from 1986 was conceived on the factual and legal continuity of property relations for nationalised construction land. In accordance with the Constitution Law for Application of the RS Constitution, this Law was applied in the RS since 1992 with the amendments made in 1990 ("Official Gazette of SR BiH", No: 1/90, 29/90) and amendments adopted by the National Assembly of the RS and published in the Official Gazette of the RS, No: 29/94, 23/98, 5/99).

Property relations under the current legal solutions for nationalisation of construction land were specific to the Yugoslav legal system and as such they were contrary to the constitutional solution of BiH and the RS in terms of equalising all forms of property, and in terms of according them equal legal protection.

Besides, it was no longer in accordance with the transitional reforms in the property market in the context of the future reform process of property laws in accordance with the

European Convention on Human Rights.

Considering the urgency and need for the adoption of entity laws on construction land, and using the authorities from Article 5 of Annex 10 (Agreement on Civilian Implementation of the Peace Agreement) of the GFAP in accordance with the conclusions of the Peace Implementation Council from Bonn in December 1997, the High Representative for BiH issued a decision on 15 May 2003 enacting the Law on Construction Land of the Republika Srpska, which entered into force on 16 May 2003 and was published in the "Official Gazette of the RS", No: 42/03 and Law on Construction Land of the Federationof BiH ("Official Gazette of the Federation of BiH", No: 25/03) with an authentic text.

The new Law on Construction Land of the RS stipulates new solutions in relation to the previous law with regard to the conditions, manner of acquisition of the right to land in cities and urban areas of a town character, and other areas foreseen for residential and other complex construction, time of cessation of these rights, manner of use and management as well as compensation for land use.

Apart from this, there is now a new legal regime established by the possibility to submit a request for review of allocated construction land in the period between 6 April 1992 and 16 May 2003.

Also, one of the most important new legal solutions is that city construction land can now be state *and* privately owned (Article 4). The Law regulates the issue of acquiring the right of private ownership on city construction land, the issue of transactions of privately owned city construction land, the transformation of the permanent right of use into private ownership, and the issue of transforming state owned land into private ownership if it was expropriated under municipal decisions.

Apart from this, the most important new legal solutions are:

– The Law does not entitle municipal assemblies or city assemblies to allocate undeveloped state owned construction land to physical and legal persons for rent to construct temporary buildings and declares null and void legal deeds on renting city construction land concluded in contravention of the limitations regulated under this Law (Article 9);

– Strengthening of controls on transforming the use of agricultural land into city construction land (Article 13);

– The decision on specifying city construction land will not change the form of ownership of the land (Article 15);

– Allocations of state owned city construction land, upon entering into force of the Law, will not be submitted to the Office of the High Representative for exemption, while the municipal or city assemblies have an obligation to acquire the opinion of the public attorney of the RS before the actual allocation is made, to confirm that the proposed allocation meets legal provisions and that the procedures stipulated by this law are fully met (Article 16);

– According to Article 18 of the Law, a company and another legal person may transfer undeveloped city construction land only to the municipality or the city for the purpose of permanent construction as regulated by a relevant plan;

– Resolving disputes with regard to regulating boundaries on city construction land, which is being used for the intended purpose in accordance with the regulation plan is within the competence of the authority responsible for property legal affairs (Article 22);

– Removing the obligation upon municipalities or

cities to take over undeveloped city construction land in the procedure of transferring the land to the municipality in cases where the former owner or temporary use right holder does not wish to hold the relevant land and registering the pre-emptive right for taking over this land by the municipality. In cases where the municipal assembly or city assembly does not accept the offer of the former owner of state owned undeveloped city construction land or of the temporary use right holder, there is no possibility that the former owner transfers the right to use the land to third persons for a lower price than that offered to the municipality or city (Article 25);

– Former owners of city construction land or temporary use right holders may now forfeit this right, without an entitlement to compensation, if the city construction land has passed into possession by a physical or legal person without a legal basis, and the former owner fails to submit a complaint or a request for return of the land or compensation within 5 years from the loss of the possession and no later than 10 years, and the loss of this right is determined in the form of a decision by the relevant authority in charge of property affairs (Article 26);

– Upon entering into force of the Law, the former permanent right of use of land beneath the building and the area that serves for regular use of the building is transformed proper ownership for the building owner or owners parts of buildings, except cases which are subject to review (Article 39);

– A pre-emptive right of construction on undeveloped city construction land is being introduced for the benefit of companies and other legal subjects to whichthey are entitled in accordance with the regulation plan (Article 42);

– An imperative provision of the Law stipulates that the municipal and city assemblies are entitled to allocate

undeveloped construction land for the purpose of construction, but an equitable compensation for the allocated land is also introduced (Article 44);

– The Law designates cases in which city construction land is allocated by direct settlement (Article 45), and denies the right to the municipal or city assemblies to regulate to so by their own decisions and in other circumstances that were possible under the previous law;

– New legal solutions were introduced with regard to the loss of the right to use for the purpose of building (Articles 49 – 52);

– This Law stipulates that in the case a building is built in accordance with the law in force on the city construction land which was allocated after this Law enteredinto force, the right of use of land for the purpose of construction ceases and the right of ownership is acquired (Article 53);

– With regard to illegal disposal of city construction land courts and other responsible authorities under this Law, once they are informed that the contract from paragraph 1 of Article 59 is concluded or an illegal allocation of land has been made, are required to inform the responsible public attorney who is obliged file a suit before the responsible court to determine nullity of that contract or illegal allocation (Article 59);

– In order to ensure a stronger protection of the established regime on city construction land illegal disposal, among other things, is considered to be illegally allocated land (paragraph 3, article 59);

– There is a possibility of remedying the relations established with illegal construction of buildings on city construction land (so-called “legalization”, article 61);

– The new Law stipulates that no one may be exempted from paying the compensations specified under this Law, except in cases stipulated under articles 90 and 91 of the Law, and all decisions, decrees and other regulations which are contradictory to the Law are null and void (paragraph 6, article 63);

– With regard to taking over, allocating, regulating and using city construction land, the Law specifies precisely the rights and obligations, which refer to the compensation (article 62 – 75);

– A possibility of determining a legal value of the allocated construction land (REVISION) in the period between 6 April 1992 and 16 May 2003, as the date of entry into force of the Law, to which physical persons had a right of use on or before 6 April 1992, for private, residential, agricultural and business purposes except that the subject of review will not be construction land allocated in this period if it was approved by the High Representative, which can only be disputed before the responsible courts (article 87);

– Upon entering into force of the Law, state ownership on construction land which was not regulated for the purpose as specified by the regulation plan, ceases and the social ownership, former state ownership was established under a municipal decision (article 96).

On the basis of the above, it can be stated that: the new Law on Construction Land introduces considerable changes in the legal regime of the construction land, which manifests in the way that city construction land may be state owned and privately owned, allocated in a transparent manner, provides for a review of the allocations made after 6 April 1992, and restores domestic authority to dispose of construction land.

This ensured regulation of property relations with regard to construction land in a manner that is in accordance with

transitional reforms being implemented in BiH and its entities.

Part II

TYPICAL QUESTIONS AND ANSWERS

REGARDING THE LAW ON CONSTRUCTION LAND

1. QUESTION:

What is the construction policy (Article 46)?

ANSWER:

Construction policy shall be defined as implementation of measures and actions by the municipality for the object building for the purpose of general, common and personal needs of citizens. Housing and other construction policy within Municipality, is determined by the planning documents – urban plan, spatial plan, regulation plan, parcelation plan, etc., for the purpose of securing the rational use of city construction land, as well as realization of other common interests within the process of construction and spatial development (Article 46 of LCL).

2. QUESTION:

With regard to Article 16, who is the competent Public Attorney that receives the draft land allocation decision?

ANSWER:

According to Article 16, the Municipal Assembly i.e. Municipal Council is legally obliged to obtain a Public Attorney's opinion before allocating construction land. (The department for property legal issues prepares land allocation decisions). The Public Attorney's opinion must confirm that the proposed allocation is in accordance with applicable Law and that

procedures anticipated by Law are fully obeyed. The competent Public Attorney is obliged to provide requested opinion within 15 days from the day when the proposal of the decision is submitted.

In relation to above, the competent authorities (in the RS are the Regional Units of the Republika Srpska Administration for Geodetic and Legal-property issues, and in the Federation of BiH, the Municipal departments for property-legal affairs) in the municipality where the allocation is proposed are obliged to provide a draft land allocation decision and Municipality Assembly i.e. Municipal Council must obtain a competent Public Attorney's opinion.

3. QUESTION:

Can the priority right of use be obtained by the person with the highest bid, determined by the Law on Construction Land, and in line with the conditions outlined in the public tender.

ANSWER:

Conditions and manners for allocating city construction land for construction purposes, as well as procedures and criteria for determining priority rights within a public tender (i.e. the priority right for direct settlement), are determined by Decisions of the Municipal Assembly. The Assembly/Council decision must be in accordance with the municipal construction policies, including the housing construction policy. (Article 46 paragraph 1 LCL).

4. QUESTION:

Regarding the implementation of Article 41, can the sale contract be realized in the land-books registry and cadastre?

ANSWER:

Article 41, paragraph 1 provides that construction land may be alienated, transferred, encumbered or inherited, together with

the buildings erected on it. Therefore, the sale contract may serve as the legal basis for a transfer of the right of ownership of developed city construction land, but only together the building and cannot be the subject of separate transfer.

5. QUESTION:

Regarding Article 44, what is considered ‘fair compensation’? And who is authorised to evaluate appropriate compensation and the deadline for payment?

ANSWER:

The provisions of Articles 64-68 outline the manner in which compensation shall be calculated. Deadlines for the payments of specific types of compensation are determined elsewhere in the law and by the relevant municipal/city decision regarding that allocation pursuant to Article 46.

6. QUESTION

Does City Construction Land include all territory encompassed by the Urban plan, and does “other construction land” include the land outside Urban plan encompassed by the municipal spatial plan?

ANSWER:

City Construction Land is defined under Article 2 of the law and procedures for determining city construction Land is prescribed by Article 12 of the Law.

7. QUESTION:

What is City Construction Land in terms of State Property?

ANSWER:

State owned City Construction Land, includes the land that, based on the applicable law (The Nationalization Law on Leased

Buildings and Construction Land, “Official Gazette SFRJ”, No. 52/58, The Law on Defining Construction Land in Urban Cities and Similar Settlements “Official Gazette SFRJ” No. 5/68, special laws in B&H), and based on municipal decisions pursuant to the old Law on Construction Land were transformed into social, now state property. Further, state owned city construction also included land former social property which will now be transformed in private property through the application of this law.

8. QUESTION:

Regarding Article 68, why is it prescribed that the rent is only determined in the context of issuing the construction permit? Is the rent also determined under other circumstances during the same process of issuing the construction permit?

For instance: if a building owner demolishes existing building and wishes to build a new building on the same land, does this mean that he doesn’t need to acquire a new priority right of use the land to construct a new building?

ANSWER:

Article 68, paragraph 3 defines the circumstances under which compensation for land use (rent) is defined within the construction permit. Where the owner of building demolishes a legally existing structure, a new priority right is not required. However, the priority right holder (i.e. the owner) is obliged to pay rent compensation for the new structure in accordance with the law and applicable regulations. Under the above referenced provisions, the rent rate for the new structure would be determined by the construction permit.

9. QUESTION:

What is the status of the privately owned undeveloped City Constructed Land?

ANSWER:

Article 4, paragraph 2 of the Law defines privately owned City Construction Land. Article 7 provides that privately owned City Construction Land is alienable and that owners may dispose of privately owned City Construction Land in a manner consistent with the other applicable laws.

10. QUESTION:

How will a municipality, which has no spatial-planning documentation (urban-spatial plan) based on the Law of Spatial Planning, implement the Law on Construction Land?

ANSWER:

The Republika Srpska and Federation of BiH Law on Spatial Planning obliges preparation and adoption of these plans ("Official Gazette of RS", No. 84/02 Revised Text / "Official Gazette of FBiH", No. 52/02).

11. QUESTION:

Regarding Article 96, what is the procedure, if the land is partially used for the intended use?

ANSWER:

Article 96 of the Law provides that state owned City Construction Land, which has not been used for the purpose intended and in accordance with the regulation plan shall, ex officio, cease to exist. Consequently, the probative process of determining whether or not the land was used for the purpose intended at the time of conversion into social, now state, ownership must be initiated through on site inspections and through public hearings.

12. QUESTION:

Bearing in mind that Article 96 is consistent with Article 4,

which body determines if specific a parcel of land is privately property?

ANSWER:

Article 96 prescribes that decisions on cessation of state ownership on construction land not used for the intended purpose, as well as decisions restoring the pre-existing property ownership relations, are determined by the municipal department responsible for property legal affairs.

However, Article 39, also referenced by the definition of privately owned construction land under Article 4, does not authorise a specific body to determine the transformation of the permanent right of use into permanent ownership. The transformation occurs *ex lege* (by operation of law) upon the entry into force of the Law.

13. QUESTION:

What is meant by the term “ex officio” within the provisions of Article 96 of the

Law on Construction Land?

ANSWER:

Article 96 provision of the Law on Construction Land prescribes that upon entry into force, state ownership on Construction Land which was transferred into social, now state, ownership by municipal decision but which has not been used for intended purpose in accordance with the regulation plan, shall cease to exist as a legal classification by force of law.

Paragraphs 2-4 go on to provide that decisions on cessation of ownership under this article shall be delivered by the relevant department for property legal affairs to the body responsible for registering real property rights “ex officio”.

14. QUESTION:

What status will state owned land (and formerly socially owned) prescribed in the law as Construction Land in cities and similar settlements have if its classification as state owned construction land derives from the application of the Law on Expropriation?

ANSWER:

The application of the Law on Expropriation changes real estate ownership and is accompanied by obligatory compensation, and is undertaken for the construction of objects of common interest. If the building, for which the property had been expropriated, is not built yet, the former owner, pursuant to the Expropriation Law, acquires the right for de-expropriation. Therefore, considering that the land is transferred to public property under another legal basis, and not based on the municipal decision, Article 96 of the Law on Construction Land is inapplicable.

15. QUESTION:

Is the undeveloped land alienable and on what basis will this land be returned from public or state-ownership, i.e. from state-owned to private?

ANSWER:

As specified by Article 7 of the new law, privately owned City Construction Land is alienable within limits and under condition prescribed by relevant laws. Based on this regulation privately owned undeveloped City Construction Land consequently is alienable under the same conditions.

The new law prescribes disposal rights on City Construction Land. Therefore, transactions attempting to dispose of rights on city construction that are contrary to Law are illegal and deemed null and void by the Law. Under Article 59, any rights

related to City Construction Land that are the subject of illegal contracts are cancelled without the right to compensation.

16. QUESTION:

Regarding the application of Article 63, do the regulations of this Article concern cases, like Shehids and the families of fallen soldiers?

ANSWER:

Specific laws of the Federation of BiH and Republika Srspka regulate, respectively, the rights of “Shehid” families and the rights of soldiers and disabled war veterans of Republika Srpska. These laws, unless contrary to the Law on Construction Land and/or applicable municipal assembly/council decisions’, may specify basic criteria regarding compensation rates for the use of allocated City Construction Land and compensation for land development.

17. QUESTION:

Is Article 49 in conflict with Article 37?

ANSWER:

Article 37 and 49 do not conflict as the former prescribes the manner in which the priority right to build may be inherited by descendants of the right holder. Article 49 prescribes the conditions under which the right to build is forfeited, without regard to who may exercise that right (i.e. the right holder or their descendant).

18. QUESTION:

How does the Municipality regulate decision on fair compensation?

ANSWER:

The provisions of articles 64 – 68 of the LCL, regulate compensation for use of allocated city construction land. The compensation amount for allocated city construction land is established by the land allocation decision in accordance with basics and measures regulated by the LCL and Municipal Assembly's/Municipal Council's decision.

19. QUESTION:

Is there a possibility that the municipal decision establishes additional types of direct settlements?

Article 45 provisions of the Law on Construction Land, prescribes that City Construction Land shall be allocated for use for the purposes of construction on the basis of a public competition or by direct settlement. As prescribed by this Law, natural person may only be allocated land plots by direct settlement in circumstances exempted from public tender requirements by this Law (including Article 91) or in circumstances where land is allocated as compensation for expropriated land.

Therefore, the Municipal Assembly/Municipal Council can not by its decisions prescribe additional possibilities of allocating land by direct settlement.

20. QUESTION:

Could geodetic parcels be subdivided?

ANSWER:

Cadastral parcels on construction land where ownership rights already exist, either based on inheritance or on the legal transfer of ownership, may be subdivided. The partition of cadastral parcels on construction land where ownership rights already exist, based on inheritance or on the legal transfer of ownership, may be realized if the partition is conducted in accordance to spatial planning and environment management

regulations (Article 81 LCL).

21. QUESTION:

In what way are the land allocations executed for the purpose of constructing religious facilities, schools, hospitals etc?

ANSWER:

The way of acquiring land use rights for construction is prescribed by Articles 44, 45 and 46 of the LCL, and the terms and conditions are defined by Municipal Council / Municipal Assembly decision. Specifically, the rights must be in accordance with the programme of housing and other types of construction within the municipality (construction of religious buildings, schools, hospitals etc).

22. QUESTION:

How to resolve the situation where a person refuses to return compensation received for its exempted land?

ANSWER:

In this case, where a (legal or natural) person has received compensation for an exempted allocation, and by law are not allowed to keep it, the damaged party in this case, may exercise their rights before a competent court.

23. QUESTION:

Will land parcels be formed on particular lamellas?

ANSWER:

Land necessary for regular use of building is determined with either regulation or parcelling plan. According to Article 39, paragraph 2, if the regulation or parcelling plan does not define the land surface, necessary for regular use of building, this surface is defined by the authorized administration body for the legal-property relations after

obtaining the opinion of a competent body for urbanism issues.

24. QUESTION:

Are cemeteries and mortuaries considered as communal infrastructure objects?

ANSWER:

According to the Republika Srpska and Federation BiH Laws on Spatial Planning cemeteries and mortuaries are considered to be communal infrastructure objects.

25. QUESTION:

If the expansion of collective housing unit occurs, how will the allocation of this land be executed?

ANSWER:

When expanding an existing housing unit on land previously allocated for the same purpose, no new allocation is required. However, when expanding construction where new construction parcels are developed, either by the parcelling or regulation plan, the allocation of parcels of construction land to expand a collective housing unit must commence in accordance with all conditions and manners being regulated by law and by the municipal assembly/ council decision.

26. QUESTION:

How should usurped developed construction land be allocated?

ANSWER:

Article 61 of the Law provides that land on which a building is erected but where no right to construct existed, such rights may be subsequently granted by the Municipal Assembly / Municipal Council in accordance with the applicable provisions of the Entity law s on spatial planning. In such cases the builder or his /her legal heirs, acquires a right of ownership

with the land allocation and is obliged to pay compensation.

Therefore, usurped developed construction land may take place in a manner consistent with the provisions of Article 61 of the law.

27. QUESTION:

How can land be allocated by direct settlement, if former owner possess more than a half of a total surface, of construction parcels?

ANSWER:

In this case, according to Article 30, the interested party may submit a request to acquire the priority right of use for construction. Under Article 30, paragraph 1, the former owner of undeveloped city construction land that contains more than a half of construction parcels, although the total surface previously owned by him/her is no smaller than construction parcel surface, and whose permanent purpose is building construction, on which he/she could claim the right of ownership, has the priority right of use.

The request to acquire the priority right of use for construction is resolved by the authorised administrative body for legal-property issues, according to paragraph 2, Article 29 of this Law.

28. QUESTION:

Article 61 – is land allocation possible by direct settlement?

ANSWER:

It is possible, if the terms and conditions are fully met, according to Article 61 of the Law, and if it includes developed city construction land, then that building has been erected on land with no legal right for construction land use.

29. QUESTION:

When do we use term city construction land, and when to use term construction land?

ANSWER:

City construction land is defined in Article 2, paragraph 1 and “other construction land” is defined by paragraph 2 of the same Article of the Law on Construction Land.

According to these definitions, city construction land is considered as developed and undeveloped land in cities and similar settlements, planned for spatial management and by urban planning intended for building construction, in accordance with the Republika Srpska and Federation BiH laws on spatial planning.

Therefore, for developed and undeveloped land, located in cities and similar settlements, which by the planning acts, have been aimed for building construction, as well as land which according to the Article 12 and city construction land, it may be defined by the municipal assembly/municipal council, the term city construction land shall be used. The land, which is located outside city construction land zone, which is also in accordance with the Law on Spatial Planning, and purposed for building construction, the term construction land shall be used.

30. QUESTION:

Shall the rent compensation be paid for other construction land?

ANSWER:

Article 83 of the Law prescribes that the municipal assembly/municipal council may initiate compensation payments, according to Article 63, for the use and development of other city construction land.

31. QUESTION:

The Law on Construction Land neither predicted nor regulated question of city construction land leasehold for the construction of permanent buildings (kiosk etc),could this question be regulated by the decision on conditions for and manners of the land allocation and does the municipal mayor conclude contract of lease?

ANSWER:

Under Article 9 of the Law leasehold transactions on city construction land concluded outside of the provisions of this law, are invalid. However, bear in mind that according to Article 21, paragraph 2, the temporary land use holder is allowed, if permitted by the competent administrative body for this particular land, to construct temporary buildings (such as kiosks) for his own needs.

However, the general question on leasing construction land remains open to further development and may become a subject of future changes and amendments of the Law on Construction Land.

32. QUESTION:

How the initial price for other construction land is determined?

ANSWER:

Article 78 provision of the Law on Construction Land prescribes that provisions in regard to city construction land also apply to other construction land.

According to Article 78, paragraph 3 of the Law on Construction Land, the decision of the municipal assembly/municipal council on determining other construction land may include state-owned construction land as well as privately owned construction land.

If the municipal assembly/municipal council disposes of other construction land, which state owned, their decision will introduce measures to determine compensation for allocated other construction land.

33. QUESTION:

What happens to buildings erected on state owned city construction land when legalisations of these objects take place?

ANSWER:

According to Article 61 of the Law, if there is a building with no right of land use for construction purposes, and for which a construction permit is subsequently provided in accordance with applicable spatial planning law, the municipal assembly/municipal council, or city assembly establishes the ownership right for the benefit of the builder, or for the benefit of his legal heir, together with an obligation to pay land use and development compensation.

34. QUESTION:

Define average final price, for determining rent compensation?

ANSWER:

Article 66 of the Law on Construction Land prescribes the basis for determining the rent rate as an average construction price of serviceable housing space from the previous year per m2 for the municipal area. The municipal assembly/municipal council defines the price every year, no later than March 31.

According to the referenced provision, the Municipal Assembly/Municipal Council compiles prices of m2 serviceable housing space from the previous year from construction companies that built housing units, and on a basis of the collected data determines final average construction price of m2 serviceable housing space.

35. QUESTION:

In regard to the implementation of Article 74, what does 0.01% refer to?

ANSWER:

The 0.01% amount refers to the percentage according to m2 of developed useful housing area, business or similar surface (area) that is subject to ownership rights or a right of disposal.

36. QUESTION:

How is the investment rate determined on land which has been taken over?

ANSWER:

According to Article 18 of the Law, the transfer of undeveloped city construction land from a company and other legal entities, for permanent use which is transferred to the municipality, is executed either with no compensation or with compensation in an amount equal to the valuable investment in the land.

The investment rate for land shall be determined through a probative proceeding according to the provisions of the Law on Administrative Procedure.

37. QUESTION:

What happens with the construction land allocated up to year 2000, which has not been legalised? How is the public interest protected in such cases?

ANSWER:

In the case of state owned city construction land allocated for construction before the year 2000, the public interest may be protected through an authorised Public Attorney, or any

other interested party, which initiates before the body competent for property-legal issues. That body establishes the loss of the right by natural and legal persons to use construction land.

38. QUESTION:

What sort of registration should the land-books office of an authorized court and cadastre perform on the basis of a decision establishing city construction land in accordance with Article 14 of the Law?

ANSWER:

Considering that pursuant to Article 4, city construction land may be held in state and private ownership, upon entry into force of the decision establishing city construction land, the character of ownership does not change. (i.e. the right of private ownership does not cease to exist upon entry into force of this decision as provided for under the old Law on Construction Land.). Therefore, based on a decision declaring city construction land, no change to the land books is necessary. However, under the Law the decision should be delivered to the authorized court and cadastre.

39. QUESTION:

What are the implications of the fact that a municipal council/municipal assembly may take over the privately owned city construction land in the expropriation process considering that this process, and the allocation of the city construction land, is regulated by the Law on Construction Land?

ANSWER:

The issue of transferring ownership or real property rights with fair compensation is regulated by the Law of Expropriation.

Article 3 of the Law on Construction Land, which is *lex specialis* in relation to the Law on Expropriation, establishes the public interest and Article 16 prescribes that municipal assembly/municipal council may expropriate privately owned city construction in the process of expropriation.

40. QUESTION:

If a Municipality does not take over city construction land as offered by the beneficiary right holder because of the lack of financial resources, is the beneficiary allowed to transfer the land to a third party?

ANSWER:

Article 25, of the Law on Construction Land, prescribes that a municipality, or city possesses a priority right to take over undeveloped city construction land. If the municipal assembly/municipal council does not accept the offer from the former owner, (i.e. of the temporary use right holder) the previous owner may transfer the right of use to a third party, but may do so only at a price not lower than that offered to the municipality or city.

This means, that state owned city construction land can not be alienated for the benefit of a third party by sale contract as the property is still owned by the state, but it may, by a legal transaction be transferred to a third party.

41. QUESTION:

Which body is authorized for deciding upon appeals against a decision adopted by the legal-property department, considering that in many cases the decision is executed by the legal-property department? For example, determining the right of priority construction, defining the right of usufruct, forfeiture of the land use right, space for common building use, and decisions for public (state) property cancellation, etc.?

ANSWER:

The competent authorities for handling the first-instance administrative procedures, in Republika Srpska are regional units of Republika Srpska Administration for geodetic and property-legal issues, and on the appeal the second instance body is the Republika Srpska Administration for geodetic and property-legal issues at the level of the Entity.

In Federation of BiH, the competent authorities are the administrative departments for geodetic and property-legal issues and on appeal the second instance body is the Federation of BiH Administration for geodetic and property-legal issues at the level of the Entity.

42. QUESTION:

Which body is authorized to resolve questions if joint owners on a city construction land fail to agree on the priority right of use for construction? The law defines that this question should be resolved in accordance to the Law on Legal Ownership Relations, although this Law does not assign these and similar questions to the authorized administrative body, instead assigns them to the competent court.

ANSWER:

According to Article 32, paragraph 3 of the Law, former owners do not reach an agreement; the priority right of land use for construction is realized in accordance with the Federation of BiH Law on Legal Ownership Relations. ("Official Gazette of the FBiH", No. 6/98) and to the Law on Legal Ownership Relations that is being applied in Republic of Srpska ("Official Gazette SFRJ", Nos. 60/80 and 36/90). This means that the authorized court decides this issue.

43. QUESTION:

Can the municipal council/municipal assembly, *ex officio*, take

over city construction land, on which, in terms of the regulation plan, the housing units have been built and sold to another company by the construction company, and where the new buyers allocated these housing units to their employees? On portions of that land, adjacent to the housing units, parking spaces have been built, traffic and parks of this housing company that is still registered with the right of use. Could this company claim the right for land compensation?

ANSWER:

Developed construction land is legally treated in the same manner as the housing unit itself, and hence the company claims the right for land compensation.

44. QUESTION:

Is provisions of Article 49, paragraph 2 of the Law related to allocation that had taken place before the new Law was introduced, and allocation was undertaken by direct settlement?

ANSWER:

The provision of Article 49, paragraph 2, of the Law on Construction Land, does not relate to allocation executed before the introduction of the new Law on Construction Law.

45. QUESTION:

Is the municipal body for property legal issues obliged to inform previous users of city construction land, which has been subsequently allocated to another beneficiary, to apply for a revision?

ANSWER:

Under Articles 87 and 88, it can not be concluded that the administration body for property legal issues is obliged to inform the previous users of city construction land which has

been allocated to another beneficiary, to apply for revision.

46. QUESTION:

By the municipal assembly's/municipal council's decision, the city construction land was taken over from the temporary user and allocated for use to the municipality for construction of a traffic artery as part of the regulation plan. Along with the users, the fair compensation has been paid out. The traffic artery has not been completed yet. The former land users now request back their land. Do they have the right to re-claim their land?

ANSWER:

This case should be solved according to actual facts determining how much of the construction land has been used for the intended purpose in accordance with the regulation plan. Since the Law prescribes (under Article 96) that by operation of law, state owned property, that was transformed from public into a state-owned by a municipal decision, ceases to exist if such land has not been used for the intended purpose in accordance with the regulation plan.

47. QUESTION:

Could a joint decision be adopted establishing cessation of public/state ownership on city construction land that has not been used, and even today not excluded from the property of current users? Can this formal decision be adopted *ex officio*?

ANSWER:

It is possible to issue a joint decision on behalf of the representative for public ownership on city construction land that has not been brought to its intended use, but individual decisions are recommended (for the purpose of the appeal procedure). The decisions should be adopted upon the request of beneficiaries and not ex officio.

48. QUESTION:

Regarding Tenders – what sort of documents must be enclosed with the tender application?

ANSWER:

The provision of Article 45, paragraph 1 of the Law on Construction Land, prescribes that city construction land is allocated for construction purposes based on the public tender advertised in public media, under specified conditions, and in accordance with procedures and conditions defined by this law.

Article 46, paragraph 1 prescribes that the terms and conditions for allocating city construction land for building purposes, as well as the process and criteria for determining the priority right of use (i.e. direct settlement) is determined by the municipal assembly's/municipal council's decision according to the programme of housing and other types of construction in the municipality or the city.

According to above mentioned provisions, the municipal assembly/municipal council will, based upon the law, introduce decisions prescribing procedures and criteria for establishing the priority right of use when allocating city construction land through public tender. The municipality will by these decisions, and in accordance with housing and other construction programmes within municipality or city, prescribe the conditions more thoroughly and will include in the tender which types of documents must be included in the tender application.

49. QUESTION:

Will the right of ownership be established in cases where the requests for legalization of buildings built before 1992 were submitted before the end of 1999 in accordance with applicable law, or will the use right commence first, prior to determining the rights of ownership?

ANSWER:

If the building has been built on a state-owned city construction land with no right for land use for constructing, but the construction permit subsequently issued under the Republika Srpska or the Federation BiH Law on Spatial Planning, the municipal assembly/municipal council will, in accordance to Article 61 of the Law define the right of ownership to the constructor's benefit (or the legal heir), who is obliged to pay the land allocation and land development compensation.

Cases where the building was erected before 1992 and a legalization application submitted, has not been resolved yet.

50. QUESTION:

Article 94 is unclear. Please elaborate article 94.

ANSWER:

According to Article 94, proceedings initiated requesting the allocation of state owned construction land before entry into fore of this Law will be finalized in accordance with provisions of the former Law on Construction Land if the first instance decision was adopted before this law came into force.

Under these provisions, the proceeding where the first instance decisions on land allocation was introduced before the new law entered into force will be finalised in accordance to previous law.

Consequently, under Article 94, if the first instance decision allocating undeveloped construction land, which was adopted in accordance with the provisions of the former Law on Construction Land, is cancelled on second instance or within an administrative dispute, the reinitiated procedure will commence in accordance with the provisions of the new law.

51. QUESTION:

How will illegal construction be prevented in accordance with Article 8 and other relevant provisions of the Law?

ANSWER:

The Republika Srpska and Federation BiH Law on Spatial Planning regulate the question of construction and preventive measures regarding illegal construction. The municipality, under constitutional authority, administers and disposes of state owned city construction land under criteria and condition prescribed by law and applicable regulations. Article 8 of the Law on Construction Land authorises the Municipality to transfer its responsibilities to develop state owned construction land to a company or another legal person until its intended use, provided the party fulfils all legally prescribed conditions for completing these tasks.

The applicable Law on Spatial Planning and the Law on Construction Land allow and infer an obligation upon the municipality to prevent illegal construction.

52. QUESTION:

How is Article 96 applied to cases where the land has not been brought to its intended purpose according to relevant spatial plans but where planning documentation exists? Under these circumstances, how will it be determined whether the land is brought to its intended use or whether the parcelling plans exist?

ANSWER:

According to Article 96, upon entry into force of this Law, state ownership ceases to exist, by force of law, on construction land, that has not been brought to its intended purpose, in accordance with regulation plans and are transformed into state owned property by municipal decision.

There are no legal obstacles under the referenced legal provision which is applicable even in cases where a public land became state owned by municipal decision, which has brought to the intended use and for which there is no Regulation plan.

53. QUESTION:

Considering that Article 15 does not change the nature of land ownership, where will the right of use be registered?

ANSWER:

Under Article 15 of the Law, the Decision establishing city construction land the nature of ownership of on the land declared as construction land does not change, and, pursuant to Article 5, rights as determined by other laws may be acquired upon such land. The right of use acquired on city construction land, shall be, according normal criteria, registered in the appropriate real property (land book) register.

54. QUESTION:

If the land was taken over and paid for, but not brought to the intended use at the moment of entry into force of this law, how will the compensation be returned?

ANSWER:

Article 57 of the Law prescribes the process of preparatory works. In cases where, at the moment of entry into force of the Law, the municipality has already initiated preparation works to bring the land to its intended purpose, based upon a decision from the department for property legal issues, Article 96 shall not be applied.

55. QUESTION:

How is compensation for land which is taken over under this

Law paid, based upon the Law on Expropriation or by agreement?

ANSWER:

Pursuant to Article 69 of the Law, compensation for overtaken city construction land is defined and paid in accordance with the Law on Expropriation.

56. QUESTION:

In relation to Article 44, on what basis is fair compensation calculated?

ANSWER:

Article 44 provides that the municipal assembly/municipal council allocates undeveloped city construction land for building for fair compensation.

Article 63 further provides that, among other types of compensation, compensation for allocated city construction land is defined according to the conditions and criteria prescribed by the Law on Construction Land and by the municipal assembly's/ municipal council's decision.

Articles 64-68 of the Law prescribe the compensations for allocated city construction land.

57. QUESTION:

What is construction land?

ANSWER:

Construction land is defined as land, which is by the adopted plans for spatial and urban planning, is intended for erecting structures in accordance with the Federation of BiH / Republika Srpska Law on Spatial Planning.

58. QUESTION:

How is the rent rate evaluated?

ANSWER:

In accordance with Articles 64-68 of the LCL, the municipal assembly/municipal council shall determine final average rent rate from the previous year, upon which, depending on the city construction zone (6 zones), it shall execute the rent evaluation in the present 1%-6% from the stated final construction price.

59. QUESTION:

Pursuant to Article 53, it is assumed that citizens will, upon the implementation of this law, apply for the transformation of the permanent right of use into a right of ownership, and that the land-books office will issue extracts, and by doing so resolve the question of ownership. Does this mean that the legal-property department will have to implement the process and come up with the decision in any event?

ANSWER:

Article 53 prescribes that where on a city construction land, allocated after entry into force of this Law and where the building is constructed in accordance with applicable laws, the right of land use ceases to exist and the right of ownership is acquired. It can not be concluded that the administrative body for property legal issues, on such request, should initiate the process and prepare the decision on cessation of the use right, and acquisition of the ownership right, since the ownership right is acquired by operation of the law itself. The authorized bodies, in charge of real estate land books, will register, according to the permission for use of the constructed building, the right of use and the transformed right into one of ownership.

60. QUESTION:

What are the prerequisites for acquiring a construction permit?

ANSWER:

The prerequisites for obtaining and construction permit are specified under the Republika Srpska and Federation of BiH Law on Spatial Planning.

61. QUESTION:

Is it necessary, in the land allocation process, to follow the procedure, as foreseen by the High Representative decision of 27 April 2000?

ANSWER:

Article 16 of the LCL prescribes that the municipal assembly/municipal council, shall before allocation, provide an opinion of the Public Attorney, which confirms that the proposed allocation is in compliance with applicable law, and that the procedures, which this law anticipates are fully met. Accordingly, it is necessary that a list of documents, given to the Public Attorney for his legal opinion, contain all acts related to the specific allocation, from which the Public Attorney unequivocally determines whether the proposed allocation is in accordance with the valid law. However, the referenced Decision of the High Representative is no longer applicable.

62. QUESTION:

Does Article 61 of the Law imply that the registration in the land-books registry is conducted by “order”?

ANSWER:

If pursuant to Article 61, the municipal assembly/council establishes the right of ownership for the benefit of the builder (or his/her legal heir), the municipality decision

shall invoke the "*intabulandi*" clause, i.e. the authorized land book register office of the authorized court shall register the right of ownership on behalf of the builder.

63. QUESTION:

What is considered as constructed m2 of a housing space?

ANSWER:

Useful constructed m2 of a housing space is considered to be developed m2 space of the surface used for housing purposes.

64. QUESTION:

There are two types of rent. Does the municipality decide whether they are to be paid on monthly or annual basis?

ANSWER:

Compensation for the land facilities and for the advantages of developed communal infrastructure that may be present when using the land and which are not the result of investments by owners or beneficiaries of immovable property, is referred to as the rent. The rent rate is determined by the decision on construction land for use, intended for building. Therefore, the municipality will determine both, the type of payment according to this Law and according to the municipal assembly's/municipal council's decision, and this decision will be adopted in accordance with Articles 63, paragraph 1 and Article 64 of this Law.

65. QUESTION:

Do the compensations for tax and for city construction land have to be paid?

ANSWER:

The compensation payment obligation for city construction land (rent) is prescribed by Articles 73 – 75 of this Law.

Compensation for taxes is prescribed by other regulations on the tax payment obligation.

66. QUESTION:

Can occupancy right holders be treated as land owners on a basis of Article 20 of the Law on Construction Land?

ANSWER:

The Law precisely defines the term “previous owner of the state owned (formerly socially owned) construction land” (Article 20, paragraphs 2, 3 and 4).

Therefore, the occupancy right holders shall not be treated as former users of city construction land in sense of the provisions of Article 20 of this Law.

67. QUESTION:

Why the Law on Construction Land does not refer to auction?

ANSWER:

Article 45 of the Law prescribes that city construction land is allocated for use for building purposes on a basis of competition (i.e. public tender) or by direct settlement. The law does not provide for the allocation of the city construction land by auction.

68. QUESTION:

Will the proceedings of Articles 39, 53 and 96 be executed *ex officio* and is the registration executed *ex officio*?

ANSWER:

The above mentioned Articles, do not strictly prescribe an obligation to conduct proceedings by *ex officio*, but they also do not prescribe that the proceedings be conducted strictly at party’s request either. Therefore, there is a possibility to

conduct the proceeding regarding by both mechanisms, *ex officio* as well as at the party's request. As to which of these two will occur, depends on the case itself.

The registration of rights on construction land shall conducted by the land –registry offices in accordance with the Law on Land Registry. The referenced Law does not prescribe registering rights *ex officio*, instead, that law provides for registration received and approved requests. Hence, the registration of rights in the land-register is not conducted *ex officio*. However, the deliveries of valid decisions for implementation are conducted *ex officio* – for instance decisions pursuant to Article 96, paragraph 4 of the Law.

69. QUESTION:

What about the cases of illegal allocation? Is the Revision going to determine such cases? Is the Revision going to resolve cases of land allocated without compensation?

ANSWER:

The Revision process deals with only the cases of illegal allocation, including those without compensation, at the request of damaged party.

70. QUESTION:

Why does the text of the Law refer to Urban and Spatial Plan, as they are both, developing and long-term plans made for the period of 20 years? The Regulation Plan is the only one made for period of 5 years.

ANSWER:

The basis for determining city construction land is the Regulation plan.

71. QUESTION:

What happens with the land that had been declared as construction after 1975?

ANSWER:

Article 96 of the Law refers to this type of land, if specified conditions are fully met.

72. QUESTION:

How is the compensation issue regulated for returned land, in accordance with Article 96, and what if the land has partially been brought to the intended use?

ANSWER:

The conditions, for the cessation of state property on construction land, according to the provisions of Article 96, require that the land has not been brought to intended use as declared by the municipal decision (this does not refer to nationalized construction land). The compensation payment has not been specified by the Law, as the condition for the land repossession. From this fact derives that state property ceases on construction land, which the compensation has been paid for, but in this case, the former owner to whom the land has been returned is obliged to return to the municipality the amount of compensation, which he had previously received. If the land has partially been brought to its intended use, in the proceedings that shall are initiated it is necessary to determine all relevant facts and circumstances and define the purpose for the return for part of the land, so that this part of the land may be returned if it has not been brought to intended use, and if the purpose is justified by it.

73. QUESTION:

Is the transfer of land use right, under Article 25, paragraph 2, the proper subject of a land registration, and is this right inheritable?

ANSWER:

According to Article 25, paragraph 2, the former owner of undeveloped city construction land permanently transfers his temporary right of use to another party. This right should have been registered in the land-registry for the benefit of the former owner. This right, legally and practically no longer exists under such circumstances and hence the registration of this right should be deleted in the land book records. The registration should be recorded, but for the benefit of the new right holder. This shall be done at he party's request for the registration of this right, and based on the contract transferring that right. The contract is considered as the full settlement between the former and new holder of the right holder.

Considering the above mentioned, it can be concluded that the temporary right of use for undeveloped city construction land, acquired in accordance to Article 25, paragraph 2 of the Law is inheritable.

74. QUESTION:

To what do the provisions of Article 63 refer?

ANSWER:

Article 63 refers to all entities, to which a plot of city construction land has been either allocated or it is being allocated, with no exceptions. The point of these provisions is that no one is exempted from paying construction land compensations, and it is also specified that the obligation exists without regard to previously foreseen and extended payment exemptions.

75. QUESTION:

Which is the authorised ministry according to Article 13?

ANSWER:

The Ministry of Agriculture Water Management and Forestry.

76. QUESTION:

Is the land return, according to Article 96 related to cases where the former owner received the compensation for overtaken land?

ANSWER:

The conditions for the cessation of state property on city construction land, according to the provisions of Article 96, require that the land has not been brought to its intended use and that the same fact has been declared by the municipality Decision (this does not refer to nationalized construction land). The Law, as the condition for land return, has not specified the compensation payment. From this it follows that state property on construction land ceases, even if compensation has been paid, but in this case, the former owner to whom the land has been returned is obliged to return the previously received compensation.

77. QUESTION:

What about the construction land held as private property, does this land become state-owned?

ANSWER:

Article 4 of the Law prescribes that city construction land may be both private and state property. Article 15 prescribes that Decisions establishing city construction land does not change the ownership rights on this land. Article 7 prescribes that city construction land held as private property is alienable. Further, Article 39 provides that a building owner, or the owner of a particular part of building, upon entry into force of this Law, acquires an ownership right over the land beneath the building, as well as over the land for which is, as determined either by the regulation or parcelling plan,

serves the regular use of the building. This is foreseen by Article 53 in the cases of allocation of the land and construction of building, after entry of this Law into force.

Because construction land may be held in either State or private ownership, its designation as construction land does not imply state ownership. Further, although a Municipal Assembly/Municipal Council may expropriate privately owned construction land, as provided by Article 16, paragraph 4 paragraph 5 of this Article obliges the council / assembly to offer the previous owner an opportunity to exercise their priority right to construct in accordance with the regulation plan.

78. QUESTION:

In what manner may the temporary right to construct be ceded for agricultural purposes under Article 21, paragraph 3 to a third party? Further, would this mean that the right of land use is temporarily transferable by this ceding?

ANSWER:

Ceding for use, solely for a agricultural purposes, of undeveloped city construction land under Article 21, paragraph 3, is executed according to a settlement (agreement) between the previous owner and the person to whom the right is ceded. More precisely, the parties settle the agreement, and accordingly this land is loaned for agricultural works for a certain period of time. This agreement determines the rights and obligations between the two parties. It is recommended to include a clause regarding cessation of the ceded right of use if the authorized municipal body introduces the decision on taking the land over in order to reallocate the land for construction. The land shall be taken over from the former owner but, during the procedure of take-over, the previous owner takes part, along with the holder of the ceded right, who shall be informed that the rights ceded on this land

ceases to be valid from the day of take-over. Therefore, in accordance to the land ceding, and according to Article 21, paragraph 3 of the LCL, the right of land use is not permanently conveyed.

79. QUESTION:

Is the issuance of a construction permit conditioned by the prior payment of compensation for the allocation of land?

ANSWER:

The condition for acquiring construction permit includes that the party is in possession of the land. Postponed payments are treated as questions of fact, considered depending on the case itself, and if the common interest and specific situation occurs.

80. QUESTION:

The implementation of Article 63 refers to returnees and people whose property was destroyed. Are there any exceptions with obligatory compensation payments for land allocation.

ANSWER:

Criteria are clearly prescribed by the law and include no exceptions.

81. QUESTION:

The deadline for the Regulation Plan is one year, and what proceedings shall take place where a person applies for land exchange?

ANSWER:

The Regulation Plan is strategy on how to plan and undertake city development. The means for the Regulation Plan implementation are municipal decisions, which are executed in co-operation between city departments for urbanism and

property departments.

82. QUESTION:

What is the role of Public Attorney?

ANSWER:

The role of Public Attorney should be directed towards simplifying the procedure as a whole, and at the same time the role should be a control mechanism ensuring legal compliance with the administrative process. Also, the Public Attorney's ensures fulfilment of compensation rights, ensures access to files and ensures protection of the parties during the process.

83. QUESTION:

Is the priority right of use for city construction land, applicable in case of reconstruction of the building on that land?

ANSWER:

In case of a priority right of land use, the party that had the priority right of land use, also has priority right on building reconstruction on that particular land.

84. QUESTION:

When does city construction land become private property, what needs to be done in cases of building reconstruction, and who is authorized to form new parcels?

ANSWER:

In case of a building being demolished, the land ownership remains unchanged. Articles 39 and 40 define the process and authorization for city construction land completion.

85. QUESTION:

What rights on undeveloped city construction land does a party upon whom the previous owner, based on Article 25, paragraph 2, transferred the right of use with compensation have?

ANSWER:

The party upon whom the previous owner transferred the right of use for undeveloped construction land, according to Article 25 paragraph 2, does not acquire, by this transfer, the rights the previous owner used to have. This means, that the party cannot realize the priority right of use on this land for construction, because this right by law could only be held and exercised by the previous owner. The holder of the right of use for undeveloped construction land according to Article 25, paragraph 2, has only temporary right of land use, and this right lasts until the municipal council, (i.e. municipal assembly) introduces the decision of taking over this land from his/her possession so that the land is brought to its intended use.

The holder of a temporary right of use, acquired according to Article 25, paragraph 2, may, if permitted by the authorized municipal administrative body, built a temporary construction for its needs (Article 21, paragraph 2). Also, he may allow others to use the land, on a temporary basis, but only for agricultural purposes (Article 21, paragraph 3).

The beneficiary of temporary right of use, according to Article 25, paragraph 2, is not allowed to transfer this right to another entity, since this possibility is not anticipated by the law.

86. QUESTION:

In regard to Article 25, how is the price evaluated for the land that was offered to the municipality which holds the priority right of purchase? Is the Law on Expropriation applicable in this case or is the market value applicable?

ANSWER:

The former owner of city construction land on state property, (i.e. holder of temporary right of use), may offer to the municipality, even before the decision on taking over is introduced, undeveloped city construction land at the market value. If the offer is rejected by the municipality, a new offer to a third party can not be lees than that offered to municipality. Therefore, the municipality has the priority right of purchasing, but the owner determines the price. The same price becomes the basis for free – trade.

87. QUESTION:

Is it necessary for the Municipality to conclude the sale contract with the owner under Article 25?

ANSWER:

The notification itself is not good enough. If the Municipality accepts the offer, the Decision becomes a legal basis for the specified purchase price.

88. QUESTION:

Who is authorized to adopt the land allocation decision and determine the criteria for land allocation?

ANSWER:

In accordance with Article 44 of the Law, the land allocation decision shall be passed by the municipal council / municipal assembly. The conditions, manners and criteria are to be determined in the above stated decision, which is, in turn, must be in accordance with Articles 46, 47 and 48 of the Law.

89. QUESTION:

Is it possible according Article 26, paragraph 2, to adopt the decision after 16 May, 2003 for city construction land from

Article 96?

ANSWER:

After entry into force of the Law on Construction Land, the municipality may not dispose of city construction land under Article 96, paragraph 1, because that land *ex lege* (by operation of law) became private property on the day of entry into force of this Law. Accordingly, in this case the competent authority for property/legal relations may not adopt the decision based on Article 26, paragraph 2 of the Law. However, a physical or legal entity as possessor of city construction land, may, if the conditions provided for by the Law on Legal Property Relations are met, request that an appropriate court establish by decision that the right of ownership has been acquired on the basis of adverse possession.

90. QUESTION:

When does payment of land allocation become obligatory?

ANSWER:

It is obligatory after the decision on land allocation becomes legally valid.

91. QUESTION:

How shall allocations with no payment be treated, when evidence in land registry comes on?

ANSWER:

If the decision on allocation entered the force, the issues shall be resolved under provisions of the old law, but if the allocations have not been completed at the level of first instance, further proceedings shall be initiated according to the new law.

92. QUESTION:

Article 39 addresses the transformation of the right of use into ownership. What type of form is acceptable to verify the newly created issue? Is this going to be a proceeding at the client's request or should the change be entered in the land registry *ex officio*?

ANSWER:

Upon each received request, the court shall register the transformed right of use as a right of ownership.

93. QUESTION:

Does Article 89 of the Law, determine the obligation, that in all cases where the cessation of rights without agreement of the particular right-holder took place, these rights should be returned or compensation should be secured?

ANSWER:

Article 89, as well as the other provisions for the revision proceedings are mandatory. This means that the initiated proceeding will determine whether a violation of specified rights occurred. If the violation of rights occurred, there is also obligation to restore these rights return or to provide compensation. If no violation of rights occurred, there is no further obligation under revision procedure. However, rights may cease upon the application of other provisions of the Law, (for instance, in case of loss of rights of land use for construction, in accordance to provisions of Articles 49 to 53 of the Law).

94. QUESTION:

In what way does the previous owner offer to the municipality to take over undeveloped city construction land over under Article 25 of the Law on Construction Land?

ANSWER:

The previous owner of the undeveloped city construction land may offer in a letter to the municipality to have the land taken over in accordance to Article 25 of the Law. The previous owner can offer the undeveloped construction land to the municipality in other ways as well: i.e. by giving a statement in the report, or in proceeding before the administrative body that is authorized for legal-property issues.

95. QUESTION:

How is the transfer of the right of use of undeveloped city construction land applicable to the third parties, if the municipality rejects the offer by the former owner, for that land transfer?

ANSWER:

In cases where the municipality rejects the offer of the previous owner for the transfer of the undeveloped city construction land, the previous owner, in accordance to Article 25 paragraph 2, may transfer temporary right for land use to the third parties, pursuant to a valid contract.

96. QUESTION:

How can the priority right of use for use of construction land be realised, if the previous owner failed to enter an agreement for that purpose?

ANSWER:

According to the provisions of the Law on Legal – Property Relations, ("Official Gazette of the Federation BiH", No. 6/98) and the Law on Basic Legal – Property Relations ("Official Gazette of SFRJ", No 6/80) that is, up until the introduction of new Law, still applicable in Republika Srpska, in cases where co-owners failed to agree on the realization of

the priority right of use, the authorized court adopts a decision on that issue.

97. QUESTION:

To what type of city construction land does the provision of Article 39 refer?

ANSWER:

Unlike Article 96 of the Law, which only refers to undeveloped city construction land that previously became a state property on the basis of a municipal decision, Article 39 refers to all developed city construction land. This means, developed city construction land which was transformed into social, but now state owned, property according to the Law on Nationalization of Leased Buildings and Construction Land from 1958, and according to specific laws on defining city construction land and the applicable municipal decisions.

98. QUESTION:

Does the administrative body for legal-property issue the decision, based on Article 39 determining the transformation temporary right of use into a private property?

ANSWER:

The provisions of Article 39 paragraph 1, (unlike Article 96, paragraph 2) does not authorize the administrative body for legal-property issues to make the decision establishing cessation of state property and transformation of the temporary right of use into a right of private ownership on land beneath buildings erected on city construction land and its surrounding land designated for the structure’s regular use. The cessation of state property and the establishment of private property on construction land surrounding a building designated for its regular use operates automatically by force of law. The building owner may apply to the land-books

registry office of the authorized municipal court to, based on Article 39, to delete the registration of the state property and temporary right of use. Further, the owner can request the registration of the right of use on this particular land for their benefit as the owner of the building situated on this land.

99. QUESTION:

How will the ownership right be established on construction land beneath an erected building and on the land for its regular use where the previous occupancy right holders have paid for all apartments?

ANSWER:

The provisions of the Law on Legal Property Relations of the Federation of BiH, that regulates freeholders flats ownership ("Official Gazette of Federation BiH", No 6/98) and the provisions of the Law on Property in Parts of Buildings, which is still applicable in Republika Srpska ("Official Gazette SRBiH", No 35/77) addresses this circumstance.

Article 22 of the Law on Legal Property Relations in Federation of BiH prescribes that the owners of certain parts of buildings (freehold flats) possess undivided joint right of ownership on all common parts of building which are used for their particular parts and an undivided joint right of ownership or permanent right of use on land beneath the building and the land designated for the building's regular use. Similar provisions appear in the Law on Property in Specified Parts of Buildings under Article 46, which is applicable in Republika Srpska. These provisions, together with the provisions of Article 38 of the Law on Construction Land, regulate the joint building construction on city construction land and prescribes that every apartment owner acquires the right of joint ownership on land beneath the building and the land designated for the building's regular

use.

100. QUESTION:

In what way will previously submitted requests for the allocation of undeveloped city construction land pursuant to Article 96, which remain undecided, be processed if such requests were submitted prior to entry into force of the new Law on Construction Land?

ANSWER:

Following the entry into force of this Law on 16 May 2003, the Municipal Council's / Municipal Assembly's authority to dispose of city construction land that was transformed into private property ceased. That means that the Decisions to allocate such land may not be adopted upon such requests. The competent authorities shall adopt a conclusion terminating further proceedings on the unresolved requests pursuant to the previous law as provided for by law. (Article 128 Paragraph 2 of the Law on General Administrative Procedure in RS, and Article 123 of the Law on Administrative Procedure in FBIH).

101. QUESTION:

Are the proceedings going to be executed *ex officio* in accordance with Article 96?

ANSWER:

The constitutional status that occurs according to Article 96 is not derived from the decision of the administrative body that determines cessation of state property on certain construction land and the determination of new legal-property relation, but instead is derived *ex lege*, (by force of law). Hence, the decision adopted in accordance with Article 96, paragraph 2, of the Law has no constitutional character, but rather a declarative one. This decision only determines that

by force of law the cessation of state property on a construction land commenced and the previous legal property relationship is established.

In line with this formulation of Article 96 it can be concluded that the authorized administrative body may *ex officio* initiate the proceedings for its implementation. Also these proceedings may be executed at the party's request.

102. QUESTION:

Will a cumulative decision be introduced for the construction land under Article 96 of the LCL, or are individual decisions required?

ANSWER:

According to Article 96, a joint decision may be introduced, as well as individual decisions for any previous owner. In both cases before the introduction of the decision, the legal proceeding shall be decided on in which either the previous owner, or his legal heir, will be asked to answer: has the elaboration of a geodesic expert included all undeveloped land that was previously owned by him/her, and whether the facts on surfaces and parcels have been correct.

However, it would be more acceptable to introduce individual decisions according to Article 96 for each previous owner individually. In case of common decisions we may face the legal and technical complications that may derive from the process itself, including partial legal-validity of such decision and technical difficulties while passing the decision in land – register etc.

103. QUESTION:

Who is the party in the proceeding according to Article 96?

ANSWER:

In the proceeding executed according to Article 96, the party is, in the first place, the former owner (i.e. owner which is identified as such by the municipal decision determining that specific parcel as city construction land). However, in cases where former owner is no longer alive, the heir or heirs will represent the party in this proceeding. What may happen is that in the proceeding, a party appears to whom former owner, after the land had been defined as construction land, has sold the land by the invalid contract. This person could not be party in the proceeding according to Article 96. The party before the proceeding will be former owner or the legal heir.

104. QUESTION:

Who will benefit from establishing the previous property-legal relationship on city construction land according to Article 96?

ANSWER:

When answering this question we should refer to the provisions of Article 20, paragraph 2, which prescribes who is considered a former owner of undeveloped city construction land.

Also, the parties will be considered as the former owners of city construction land according to Article 96 that are in the process of establishing the property cadastre, by the decision of the authorized commission, to be determined as the land owners.

105. QUESTION:

To what sort of limits does the provision of Article 7, paragraph 2 refer regarding the disposal of privately owned city construction land?

ANSWER:

Article 29 of the Law on Transfer of Property prescribes that the landowner is, in the case of sale, obliged, to offer the

land to the municipality, and if the municipality rejects the offer, he is allowed to sell the land to another entity, but not at the less price than that offered to the municipality. Namely, according to the provisions of the Law on Spatial Planning, the owner of undeveloped city construction land may construct buildings on that land, only if this construction is defined by the urban regulation acts, and with previous urban agreement and construction permit.

Also, the limits in disposal of city construction land are established by the provisions of Articles 55-58 of the Law on Construction Land and by the Law on Expropriation. These Laws provide that only usufructs, temporary occupation and preparatory works on privately owned construction land can be established.

106. QUESTION:

What sort of act does the administrative body for legal-property issues adopt, and during what proceedings, when under Article 22, paragraph 2 litigation proceedings are initiated to establish borders on city construction land, which was brought to its intended use?

ANSWER:

The legal proceeding in accordance to Article 22, paragraph 2, started at the request of interested party, or at the request of a party that is in the process of litigation regarding border settlement on city construction land, which was brought to its intended use. In this proceeding it becomes necessary to determine all relevant facts upon which the right decision depends in relation to the action to settle the borders. According to the rules of procedure, at the hearing, the parties in dispute will be heard, together with other relevant parties, evidence considered – including the expert analysis and opinion by the geodesic-expert, and upon request, the opinion of an expert for urbanism issues. Based upon

established facts and information, the administrative body for legal-property issue passes the decision on border settlement. As part of that decision, the sketch of details prepared by the geodesic expert should be provided, and the map will include the border drawn and defined by the administrative body for legal-property issues.

107. QUESTION:

If an uncompleted building is located on city construction land which is now public, i.e. state–owned, according to municipal decision, will that land be treated as developed land?

ANSWER:

An incomplete building located on city construction land does not mean that this land has a status of a developed land. We consider developed land, only the land on which a building exists, a permit issued and a proper land registry registration entry recorded.

108. QUESTION:

Does city construction land, used as a cattle and cereal market, have the status of developed land (the land has a metal fence with concrete basis, cattle fold with concrete basis, chains for big cattle, space for scales and built building as office, wooden tables, embankment etc). The market is built with construction permit and used permit is acquired?

ANSWER:

If the city construction land with construction permit includes a cattle and cereal market, and if the permit was acquired and used, that land is considered developed, i.e. the land which has been brought to its intended use. Consequently, the constructed market, as explained in the question will be considered as building, since it contains all urban-

construction characteristics of a completed construction. That would be the case with constructed park on construction land (developed paths (walkways), greens, fountains etc).

109. QUESTION:

Could a legal – property relation be established on city construction land, according to Article 96 paragraph 2, for the benefit of the former owner's heir upon whom the probate proceeding was not executed?

ANSWER:

According to Article 96, on city construction land there cannot be legal-property relation established for the benefit of the former owner where the initiated inheritance proceeding has not occurred. In this case, the legal-property relation on construction land shall establish, for the benefit of the former owner, whose right for use was registered in the land-registry before the land transformed into public, i.e. state property. The legatees of the former owners could, following the probate proceeding, request the registration of their rights on that land in the land-registry, according to the decision on inheritance.

110. QUESTION:

Can a person be considered as former owner on whose favour the legal-property relations will be established on a plot of construction land, according to Article 96, if the land was nationalised and purchased under a sale contract from former owner and who paid for the transfer tax?

ANSWER:

In this particular case, the legal-property relations will be established for the benefit of the person that had owned the land during the transformation of the land from private into public, i.e. state-owned. The current landholder is left to

settle his land issue, with the former owner and the possible dispute will be within the jurisdiction of under the authorized court.

111. QUESTION:

Can a proposal for the expropriation of city construction land for the construction of building be accepted, based on a common interest determined in accordance to Article 3?

ANSWER:

The precondition of any expropriation is the determination of a common interest for the construction of any object. The common interest should hence, refer to a concrete object and the land on where the mentioned building shall be constructed. However, the provision of Article 3 has a basic formulation on establishing a common interest. The spatial plan does not define concrete buildings and construction parcels where the building is to be erected. This is opposite of the regulation plan, parcelling plan and urban project. Therefore, the proposal for the expropriation of city construction land refers to that the common interest which has been established according to Article 3 of the Law. Together with forthcoming changes to the Law on Expropriation, the provision of Article 3 of the LCL shall be developed more thoroughly. Precisely, the common interest on city construction land shall be regulated in greater detail. Until this is completed, the common interest on city construction land shall be determined in a manner consistent with the Law on Expropriation.

112. QUESTION:

Can the Revision process, according to Article 87 of the LCL, be initiated *ex officio*?

ANSWER:

This administrative issue for proceeding and processing the

administrative issues requires a request by an interested party. If the request does not exist, the authorized body cannot proceed and process the issue. Otherwise, if a decision is introduced without a request from the party, there is a great risk that this decision will be invalidated according to Article 266, paragraph 4 of the Law on General Administrative Proceeding. ("Official Gazette FNRJ", No. 52/56) and ("Official Gazette SFRJ", Nos. 10/65, 18/65 and 4/77) which are still applicable in Republic of Srpska, and in the Federation of BiH, Article 264, paragraph 4 of the Law on Administrative Proceeding applies. ("Official Gazette of the Federation BiH", Nos. 2/98 and 48/99).

113. QUESTION:

How will the legal-ownership rights be discussed and how the right of ownership on state-owned construction land be established where the building has been erected without the right to construct?

ANSWER:

In most such cases, the right of use will be inherited. This will include the compensation for undeveloped construction land, based on a (invalid) contract (hand written or oral) concluded between former owners and the builder who constructed the object without the right to do so.

The proceeding is processed by the authorized administrative body for legal-property issues according to Article 61, paragraph 2, at the request of an interested party (i.e. upon the request of the unauthorized builder). However, the construction permit may be issued afterwards.

In these proceedings, it shall be determined how the builder acquired the construction land on which the building is erected without the necessary rights and without necessary permits. If the property is considered inherited by the previous owner of the construction land (that is his/her legal

heir), along with paid compensation, and that s/he is eligible to subsequently receive a construction permit afterwards, (this report should be provided by the authorized body for urban –construction issues), the conditions to determine the ownership will be fulfilled. This will be for the benefit of the builder who erected a building without the right to use this particular land.

After the proceeded process and determined facts, the authorized administrative body for property-legal issues shall propose to the municipal council or municipal assembly, to introduce a decision, in accordance to Article 61, paragraph 1, of the Law. This decision will define the right of ownership on construction land beneath the building and the land surrounding building designated for its regular use.

114. QUESTION:

Is the decision, in accordance to Article 96, paragraph 2, for undeveloped city construction land going to be introduced, for land that was allocated before 16 May 2003? This means, the land allocated for construction, but the landowner has not built on it.

ANSWER:

The provisions of Article 94, paragraph 1, prescribe that the proceedings, upon the request for the allocation of state owned city construction (before entry into force of this Law) will be finalized in accordance with provisions of the Law on Construction Land ("Official Gazette SR BiH", Nos. 34/86, 1/90 and 29/90 and "Official Gazette R BiH", Nos. 3/93 and 13/94). This applies if the first instance decision is introduced before entry into force of the new Law on Construction Land. Paragraph 2 of this Article prescribes that, if the first instance decision on allocation of undeveloped construction land from the previous paragraph, is cancelled in a second instance proceeding or during an administrative dispute, the

new proceeding shall start in accordance with the provisions of this Law.

It can be concluded that for this land – although it has not been brought to intended use on the day when the Law on Construction Land entered into force, there shall be no decision introduced according to Article 96, paragraph 2. That is, the cessation of state ownership as well as restoration of former ownership-legal relations will not be executed.

Regarding implementation of Article 94 of the Law, we should analyse the situation when the decision (before entry into force the Law i.e. before May 16 2003) is introduced. This is the decision on allocating undeveloped city construction land for building construction, but the building itself has not been erected. This also means that, within a one year period from the decision on legal-validity for land allocation, there was no request for a construction permit.

In this case the administrative body for property legal issues is legally authorized by Article 50 to adopt a decision establishing the loss of the right of use for construction, following the completion of all proceedings that establishes all legally relevant facts.

The question arises: whether the municipality, after this decision has been introduced, is still entitled to dispose of this particular land, and is this municipality also entitled to allocate the same land for construction, or will the decision for this land be introduced according to Article 96, paragraph 2?

If the authorized body for property legal rights does not introduce the decision on the loss of the rights of use for construction and the user of this land erects a building based on a construction permit, thereby bringing it to its intended purpose then the builder becomes the owner of this building and the land beneath it. He also becomes the owner of the

surrounding land that is necessary for the building's regular use.

If, however, the decision is introduced (which is obligatory for the authorized body) establishing the loss of the right of use for construction, then the same decision should determine the cessation of state ownership on this land and restore the former ownership-legal relations.

115. QUESTION:

What type of compensations should be paid, for allocated construction land in state property, and for construction land in private property, and what act determines the obligation for payment and the compensation amount?

ANSWER:

I. Allocated city construction land requires payments for the following compensation:

1. Compensation for allocated land.

It is determined by the decision on allocated land and it includes the following:

a) Compensation for the taken land; and

b) Compensation on the basis of the natural advantages of city construction land and advantages of the developed communal infrastructure which may occur when using the land, and that are not the result of investments by owners or beneficiaries of immovable property, i.e. rent.

The rate amount for city construction land with facilities, expansion of objects, roof-toping is determined by the construction permit.

2. Compensation for construction land development expenses.

It is determined by the urban agreement decision.

3. Compensation for a city construction land allocated for use

It is determined by the decision of the municipal body administration authorized for communal issues.

II. The owner of city construction land in private property is obliged to pay of the following compensation.

1) Compensation on the basis of the natural advantages of city construction land and advantages of the developed communal infrastructure which may occur when using the land, and that are not the result of investments by owners or beneficiaries of immovable property, i.e. rent,

2) Compensation for land preparation expenses for construction land; and

3) Compensation city construction land utilization.

In case of city construction land as private property, there is no procedure of this land allocation, considering that the same land remains the owner's property. Therefore, in this case the decision can neither be introduced nor can it exist on the allocated construction land. Accordingly, the decision on allocated land shall not define "the compensation of natural privileges basis of the city construction land and privileges of formed communal infrastructure that may occur during the land utilization, that are the result of the owner's investment or estate owner – the rent". According to above mentioned, in any particular case, the possibility that remains to evaluate the amount of subject compensation – the rent, may be determined by the urban permit.

ABBREVIATIONS:

LCL – Law on Construction Land
BiH – Bosnia and Herzegovina
F BiH – Federation of Bosnia and Herzegovina
RS – Republika Srpska
OHR – Office of the High Representative