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THE UNCOMPLETED PRIVATIZATION OF FUNCTIONAL LAND IN SLOVENIA AND ATTEMPTS AT ITS RE-NATIONALIZATION

The article discusses the unsettled ownership status of many tracts of urban land in Slovenian cities that persists as a consequence of the disorderly transition from the socialist into the market institutional environment. Problems arising from the privatization of real estate, which can be detected all over the former Yugoslavia, typically affect functional land, i.e. land directly intended for the regular use and functioning of a building. Frequently, the land register does not show the rightful ownership status of such plots, leading to disputes and lengthy court proceedings for the determination of ownership. This is particularly the case with shared outdoor parts of residential neighborhoods, which are often subject to unfounded ownership claims based on obsolete entries in the land register. Even some municipal authorities have attempted to bring such land into public domain under this pretense, which would, if successful, amount to a 21st century nationalization.

Key words: *Appertaining land. – Functional land. – Nationalization. – Privatization of real estate in Slovenia. – Social property.*

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1. INTRODUCTION

The ownership status of a significant share of urban land in Slovenian towns and cities remains unsettled, which is the result of an uncompleted privatization of real estate that took place during the period of transition from a socialist into a market institutional environment. Similar problems, stemming from common historical roots, can also be generally found in other parts of the former Yugoslavia. Problems arising from the privatization of real estate in Slovenia typically affect the so-called functional land of buildings or – in todays' terms – appertaining land of buildings (Slo. *funkcionalno zemljišče*, *pripadajoče zemljišče*), i.e. land that directly enables the regular use of a residential building and without which the building cannot function. Many such plots of land are still registered in the land register as "social ownership" (Slo. *družbena lastnina*) or as "general peoples' property" (Slo. *splošno ljudsko premoženje*).

This is particularly true with outdoor common (shared) parts of apartment buildings and of other types of residential neighborhood buildings (shared playgrounds, parks, waste collection points, parking spaces, premises for residential board meetings, sheds, etc.). When buying apartments or individual (detached, semi-detached or terraced) houses in residential neighborhoods, buyers obtained, *ex lege*, the right to use such common land. This right was in many ways a functional equivalent of today's ownership; however, the entry of such rights into the land register at the time of the former Yugoslavia was all too often omitted. The legal status of such plots of land remained unaddressed for decades.

In the recent years, however, correct ownership registrations for such parcels have gained importance since outdated entries in the land register allowed the legal successors of former construction companies and other socially owned enterprises to claim ownership of such land, often evidently acting in bad faith in order to profit by selling the land either to its rightful owners or to third parties, or by encumbering it to the detriment of their rightful owners, by establishing mortgages or leases on it. Some municipalities have also relied on outdated land register entries to claim ownership of common land in residential neighborhoods, mainly under the pretense that such real estates are local public goods (Ude, Vlahek, Damjan 2016, 3–4).

The aim of the article is to explore the problems of privatization of functional land in residential neighborhoods in Slovenia and the resulting unsettled status of such plots of land, which prevents their development and their full use by their rightful owners. First, we describe the notion of the right to use land in social ownership, which was the focal concept of the socialist real estate regulation. In order to present the ongoing

problems pertaining to the legal status of privatized land in residential neighborhoods in Slovenia, we analyze the concept of functional land, and present how residential neighborhoods were constructed and legally regulated. We then turn to the typical irregularities that arose in the process of privatization of the former socially owned property and allowed ineligible persons to register as owners of former functional land. Finally, we outline several legal paths for the protection of the rightful owners' rights, which have been devised in recent decades both through special legislation and in the case law.

2. THE RIGHT TO USE LAND IN SOCIAL OWNERSHIP

In Yugoslavia, construction land in cities and other urbanized settlements was socially owned since the mid-1960s, regardless of whether it was developed or not (Finžgar 1979, 42; Zečević 1975, 175).[1] Where the land had previously been privately owned, it was nationalized, i.e. its ownership status changed to social property (Juhart, Tratnik, Vrenčur 2007, 42, 46; Kramberger Škerl, Vlahek 2016, 19; Finžgar 1979, 107; Zečević 1975, 175). Buildings, however, that were constructed on such socially owned land could themselves be either privately owned or social property (Zečević 1975, 170). This was possible because the principle of connection between the land and the building built on it (*superficies solo cedit*)[2] did not apply to social property (Juhart, Tratnik, Vrenčur 2007, 46; Vlahek, Podobnik 2014, 306–307). In any case, the owner or the legitimate user of a building that had been lawfully constructed on socially owned land automatically (*ex lege*) obtained a semi-permanent right to use the land on which that very building was located (building site, Slo. *stavbišče* or *zemljišče pod stavbo* or *zemljišče, ki ga pokriva zgradba*) as well as the land necessary for the building's regular use.[3] In case of apartment buildings, the right to use land in social

[1] For details on the evolution of the socialist economy before the implementation of the social property regime in Yugoslavia, see Kramberger Škerl, Vlahek 2016, 17–18; Juhart, Tratnik, Vrenčur 2007, 45, 46; Možina, Kovač 2014, 19; Finžgar 1979, 107.

[2] For further details on this principle, see Kramberger Škerl, Vlahek 2016, 27, 32–33, 35, 42–43, 59; Kambič 2013, 253–269.

[3] The right of use was in principle time-limited by the duration of the building (superstructure) itself. There was no right to redevelop the plot of land, but in some cases, the courts have allowed dilapidated buildings to be demolished and built anew, in accordance with the relevant urban plan. See, e.g. Art. 6/2 of the federal Act on Transactions with Land and Buildings (Slo. Zakon o prometu z zemljišči in stavbami, *Official Gazette of the FPRY*, No. 26/54 et seq.), Art. 37 et seq. of the Act on the Nationalization of Leased Buildings and Building Land (Slo. Zakon o nacionalizaciji najemnih zgradb in gradbenih zemljišč, *Official Gazette of the FPRY*, No. 52/58), and Art. 12 of the federal Act on Basic Property Law Relations (Slo. Zakon o temeljnih

ownership was held commonly by all the owners or users of the individual apartments in the building. The right to use the building site and the functional land could not be transferred separately but rather only in conjunction with the building (or the apartment in an apartment building).[4] The rights to land therefore followed the rights to buildings, rather than the other way around, following the principle of *superficies solo cedit*. This legal pattern has been retained to this date with regard to apartment buildings.[5]

The right to use social property (Slo. *pravica uporabe družbene lastnine*) was the most extensive right that could be established over socially owned assets, and gave its holder the right to use, manage and dispose of such assets. The right was effective *erga omnes* and enjoyed comparable legal protection as private property (Finžgar 1979, 51).[6] However, the legal literature of the time stressed that the right of use should not be interpreted simply as *ius in re aliena* – a subsection of entitlements arising from conventional (private) ownership right – since a qualitative and not only a quantitative difference existed between the two.[7] The social property doctrine rejected the equalization of the rights to manage, use and dispose of social property with any substantive rights of conventional property law (Sajovic, 1980, 43; Zečević 1975, 12–13, 57). Under the Associated Labor Act of 1976,[8] the central Yugoslav piece of legislation laying down the rules on social property, the workers in associated labor were both entitled and obliged to use socially owned assets under their control in accordance with the assets' nature and purpose. The user of a socially owned building plot was thus obliged to use this land in accordance with its purpose, determined in spatial planning acts, and with the specific conditions of use that were laid down

lastninskopravnih razmerjih (ZTLR), *Official Gazette of the SFRY*, No. 6/80 et seq.). For further details, see Finžgar 1967, 334; Žuvela 1985, 61, 426; Stojanovi, Pop-Georgiev, 1980, 54.

[4] Art. 12 of the ZTLR and Art. 7 of the Slovenian Act Regulating Transactions in Real Estate (Slo. Zakon o prometu z nepremičninami (ZPN), *Official Gazette of the SRS*, No.19/76 et seq.).

[5] See the Property Law Code of 2003 (Slo. Stvarnopravni zakonik (SPZ), *Official Gazette of the RS*, No. 87/02 et seq.) and the Housing Act of 2003 (Slo. Stanovanjski zakon (SZ-2003), *Official Gazette of the RS*, No. 69/03 et seq.).

[6] See also Supreme Court of Slovenia, II Ips 324/2007, 18 March 2010, para. 10.

[7] Supreme Court of Slovenia, II Ips 389/2006, 11 December 2008, para. 5. Whereas ownership right entitles the owner to use their property and appropriate its fruits solely for their private purposes, socially owned land did not have a recognized owner and was supposed to belong to the society as a whole. The right to use social property could be exercised only in a manner concordant with the interests of the society. Cf. Begović, Mijatović, 1993, 8; Finžgar, 1979, 50–51; Gams, 1968, 321.

[8] Slo. Zakon o združenem delu (ZZD), *Official Gazette of the SFRY*, No. 53/1976 et seq.

in the administrative procedure of transferring the building land for the purposes of construction (Zečević 1975, 176).[9]

3. THE NOTIONS OF FUNCTIONAL LAND AND APPERTAINING LAND

In Slovenia, the land essential for the building's regular use was referred to as "functional land" (Slo. *funkcionalno zemljišče*) whereas in other parts of the former Yugoslavia the legal regulation and practice did not make use of such term despite recognizing the underlying notion. The concept of "land required for the regular utilization of the building" (Slo. *zemljišče, potrebno za redno rabo objekta*) was introduced by Yugoslav federal legislation already by the late 1950s. The Act on Nationalization of Leased Buildings and Building Land of 1958[10] stated that where a non-nationalized building was erected on a nationalized building plot (Sl. *gradbena parcela*), the owner of the building had the right of free use of both the building site and the "land which is required for the normal utilization of the building" for as long as the building exists[11] (Juhart 2008, 22–23; Begović, Mijatović, 1993, 9).

Further federal legislative acts regulating, inter alia, expropriation, apartment construction, building land, land transactions, etc. laid down the rules for this type of land and the rights to it. After the Yugoslav constitutional reform of 1974, the competence to regulate these issues was transferred from the federation to the individual republics (Juhart 2008, 22–23). In Slovenia, the notion of "land necessary for the building's regular utilization" was, for example, applied in the 1976 Act on the Cessation of Ownership and Other Property Rights on Land Planned for Complex Construction,[12] which provided that whereas an edifice is erected on land that has been transferred into social property, the edifice itself does not become social property while its owner obtains the right to use the land under the edifice and the land necessary for the building's regular use, lasting as long as the building exists (Juhart 2008, 23). Further, the 1976 Act on Rights on Parts of Buildings[13] stated that the apartment or offices owners have a joint right to use the land in social

[9] See also Higher Court in Ljubljana, I Cp 2872/2009, 25 January 2010.

[10] Slo. Zakon o nacionalizaciji najemnih zgradb in gradbenih zemljišč (ZNNZGZ), *Official Gazzette of the FLRJ*, No. 52/58.

[11] *Ibid.* Art. 37.

[12] Slo. Zakon o prenehanju lastninske pravice in drugih pravic ne zemljiščih, namenjenih za kompleksno graditev (ZPLP), *Official Gazette of the SRS*, No. 19/76.

[13] Slo. Zakon o pravicah na delih stavb (ZPDS), *Official Gazette of the SRS*, No. 19/76 et seq.

ownership (or joint ownership where relevant) on which the building is erected, as well as the land necessary for the building's regular use.[14] Shared parking lots were, for example, explicitly listed as common parts of the building that are in joint ownership of the apartment owners (or in joint use of the persons holding the right of use the apartment).[15]

It is almost impossible to determine when exactly the notion of "functional land" was first applied in the Slovenian legal environment (Juhart 2008, 22). It has been utilized in legislation at least since 1984, when the Act on Urban Planning and Other Forms of Land Use[16] defined the building plot as "building land [(Slo. *stavbno zemljišče*)] on which a building is or is planned to be erected (building site), as well as building land required for its regular use (functional land)."[17] The Act clarified that the functional land of existing buildings and facilities in areas where the spatial plan has not yet been adopted, is to be determined by the municipal body in charge of spatial planning, on the basis of the spatial planning regulation upon the request of the owner or user.[18] The Building Land Act of 1984[19] also explicitly mentioned functional land by stipulating that where, according to the spatial plan, a building can remain on the building land that has become social property, the building is not transferred into social ownership and its owner has the right to use the building plot and the functional land (in social property) as long as the building exists.[20]

The Slovenian Housing Act of 1991[21] defined functional land of a residential building as land directly intended for the regular use of the residential building without which the building cannot function.[22] Access roads, driveways, parking spaces, waste collection areas, playgrounds, rest areas and similar areas were listed as examples of such land. Functional land that directly or indirectly served two or more residential buildings and did not have the special legal status of a public good (property in common use of all citizens) was considered shared functional land.[23] In cases of apartment buildings (or combined apartment and office

[14] *Ibid.* Art. 6.

[15] *Ibid.* Arts. 4 and 5.

[16] Slo. Zakon o urejanju naselij in drugih posegov v prostor (ZUN), *Official Gazette of the SRS*, No. 18/84 et seq.

[17] *Ibid.* Art. 42/2.

[18] *Ibid.* Art. 42/3.

[19] Slo. Zakon o stavbnih zemljiščih (ZSZ), *Official Gazette of the SRS*, No. 18/84 et seq.

[20] *Ibid.* Art. 15.

[21] Slo. Stanovanjski zakon (SZ), *Official Gazette of the RS*, No. 18/91-I et seq.

[22] *Ibid.* Art. 9.

[23] See also Supreme Court of Slovenia, II Ips 634/2007, 1 July 2007, para. 7.

buildings), functional land was expressly listed in the Housing Act as one of the common (shared) parts of the building in co-ownership of the apartment owners, and the general rules on common spaces applied *mutatis mutandis* also to functional land.[24] The Housing Act required the apartment owners to conclude a contract on the management of the apartment building and its functional land, whereas the owners of separate buildings with shared functional land had to conclude a contract on the management of this shared land.[25] The maintenance of functional and shared functional land and the care for the protection of the living environment were defined as "investments intended to ensure careful maintenance and careful handling of the surroundings of residential buildings."[26] The extent of functional land in specific parts of the city area was, as a rule, decided by the municipality in its urban planning documents. Where such planning documents were not adopted, the owner or user of a building could request the municipal administrative bodies to designate functional land pertaining to their building, based on spatial planning conditions.

After social ownership of building land was abolished in Slovenia, the term functional land was eventually omitted from the legislation, but it still appeared in case law—be it with regard to cases addressing the relationships pertaining to former functional land, or at times ambiguously even with regard to cases dealing with the establishment of relationships involving real estate within the modern property law regime, in which functional land no longer existed (Juhart 2008, 22, 25). Unlike its predecessor of 1991, the new Housing Act of 2003 did not regulate functional land. Its transitional provisions, however, provided that the functional land comprised part of the common (shared) spaces co-owned by the owners of apartments in an apartment building.[27] If the right of use was not registered in the land register in favor of the apartment owners, the holder of the right of use on the date of entry into force of the Privatization of Real Estate in Social Ownership Act (hereinafter ZLNDL)[28] was to be determined on the basis of the documents and legal acts based on which the building was constructed. If the functional land was shared by multiple apartment buildings and such determination was impossible, the rules on the contractual land consolidation set out in the

[24] *Ibid.* Art. 15 referring to Arts. 13 and 14, and Art. 28.

[25] *Ibid.* Art. 22.

[26] *Ibid.* Art. 24. The provision is somewhat unclear since investments and maintenance are two fundamentally distinctive activities.

[27] *Ibid.* Art. 190. The provision explained that the functional land need not be officially determined as long as it was land on which the apartment owners held the right of use on the date that the privatization legislation entered into force.

[28] Slo. Zakon o lastninjenju nepremičnin v družbeni lastnini (ZLNDL), *Official Journal of the RS*, No. 44/97 et seq.

Construction Act of 2002[29] applied until 2008, when special interventional legislation for the determination of such land, in the form of the Act on Establishing Divided Co-ownership and on Determining the Appertaining Land (ZVEtL-2008),[30] was enacted.

In 2008, the concept once known as functional land was reintroduced to Slovenian legislation under a different name— "appertaining land" (Slo. *pripadajoče zemljišče*) by the ZVEtL-2008. The term was retained by its successor, the Act on Establishing Divided Co-ownership and on Determining the Appertaining Land (ZVEtL-2017)[31] of 2017, which defines appertaining land as land that was directly intended or is needed for the regular use of a building and it became the property of the owner of the building on the basis of the rules valid prior to 1 January 2003,[32] such as, in particular, the rules on the privatization of real estate in social ownership, rules regulating the erection of buildings on others' land, rules on ownership in apartment buildings, etc.[33] A further notion of "shared appertaining land" corresponds to the former shared functional land and is defined, rather awkwardly, in the ZVEtL-2017 as the land that was directly intended or necessary for the regular use of several buildings at the same time and which, on the basis of the abovementioned regulations, became the property of the owners of these buildings.

4. CONSTRUCTION OF RESIDENTIAL NEIGHBORHOODS AND THE LEGAL STATUS OF LAND IN SUCH NEIGHBORHOODS

Major residential construction projects in the socialist Yugoslavia were carried out within the system of "socially directed housing construction," where the municipality provided a tract of building land in social ownership and temporarily conferred the right to use the land on the construction firm in order to build the entire planned complex of apartment buildings or single-family homes, including communal facilities and other public spaces (Zečević 1975, 175). After the Second World War

[29] Slo. Zakon o graditvi objektov (ZGO-2002), *Official Gazette of the RS*, No. 110/02 et seq.

[30] Slo. Zakon o vzpostavitvi etažne lastnine na predlog pridobitelja posameznega dela stavbe in o določanju pripadajočega zemljišča k stavbi (ZVEtL-2008), *Official Gazette of the RS*, No. 45/08 et seq.

[31] Slo. Zakon o vzpostavitvi etažne lastnine na določenih stavbah in o ugotavljanju pripadajočega zemljišča (ZVEtL-2017), *Official Gazette of the RS*, No. 34/17.

[32] This date was set because after 1 January 2003, when the current rules of the new Slovenian Code of Property Law already applied, and the anomalies regarding real estate entries should no longer occur. For further details, see Fajs, Debevec 2017.

[33] Art. 42/1 of the ZVEtL-2017.

this became the key approach to spatial planning in the cities, such as Ljubljana, which had a housing shortage (Čelih 2015; Draksler 2009, 28). It mirrored the model of residential community unit planning developed in the 1920s by American urban planner Clarence Perry, which was also implemented in England and Scandinavia and from there also in Slovenia (Čelih 2015; Draksler 2009, 6–7, 28). Following this model, Slovenian architects and urban planners aimed to construct residential neighborhoods that would offer the workers and their families better living conditions than the former cold and unimpressive industrial housing (Čelih 2015). Following this model, "functional, safe and attractive neighborhoods" (Perry 1929, 487), such as Soseska Murgle, Soseska Koseze, Bežigrajska soseska 3 – BS3, Črnuška Gmajna, and many more, were constructed in Ljubljana between the 1960s and the 1980s. These consisted mostly of a complex of apartment buildings, while in some cases, the neighborhoods consisted of a complex of detached, semi-detached or terraced houses.

The construction had to be carried out under the conditions defined in a "social compact" (Slo. *družbeni dogovor*)—a quasi-administrative contract between social legal entities (Slo. *družbene pravne osebe*)[34] which also entailed some general normative effects (Geršković 1975, 20; Zečević 1975, 238, 245–246; Kulić, 189–191). The construction firm made a commitment to hand over the constructed residential facilities to their intended users, i.e. to the municipal housing funds that funded the construction, or to individual residents who bought the apartments or individual houses (and, for example, appertaining dislocated parking spots and garages). At the same time, the local public goods, such as public roads, public parks, public playgrounds, etc., that were constructed in conjunction with the residential buildings, were to be transferred to the municipal authorities, which were in charge of their management and maintenance. Hence, the construction firm was not granted a permanent right to use social property but solely the temporary right of use for the purpose of construction of the neighborhood and with the specific requirement that the right of use be transferred to the intended users after the completion of construction.

What happened in practice, however, was that the constructed buildings were handed over to the residents (buyers of residential units) in accordance with the planned use of the buildings, however the cadastral boundaries of the functional land belonging to specific residential buildings were not drawn and the rights to use such functional land were not entered in the land register accordingly (Vlahek 2016, 104–105). This was a result of the land register being significant neglected during the socialist period, particularly with regard to the transfer of social property

[34] For further details on the concept of a social legal entity, see, e.g. Zečević 1975, 171 ff.

rights (Fajs, Debevec 2017, 18). Sometimes, the building land on which the entire residential complex was constructed was not even divided into separate plots according to their use (functional land of individual buildings, shared functional land and public areas), which further hindered the correct transfer of social property usage rights (Ude 2007, 142–144). The procedure available to the owners under the Act on Urban Planning and Other Forms of Land Use for the determination of the functional land, was complex and lengthy (Juhart 2008, 24). It was only in 1999 that a special intervention law (the Act Determining Special Conditions for Registering the Ownership of Individual Parts of Buildings with the Land Register)[35] enabled the owners to request the determination, following a simplified procedure, of the building site, i.e. the land directly under the building,[36] while the determination of the functional land was still to be carried out.

The result of such developments was that the status of the rights to land, as entered in the land register, no longer corresponded to the actual legal and factual situation, i.e. to the actual use and ownership of apartments, houses, their functional land and other socially owned land in residential neighborhoods. The land register typically continued to show construction firms or municipalities as the exclusive holders of the right to use most of the land in residential neighborhoods. In some cases, the municipalities had not even registered social ownership on the land, which had been expropriated beforehand to enable the construction of residential neighborhoods.

In the period of social property ownership, the muddled legal status of building land in residential neighborhoods was not that detrimental to its rightful owners. Namely, the rules that applied to the transfer of entitlements of social ownership of real estate were different from those governing the transfer of private property rights: the right of use of social property could be transferred merely through the conclusion of a contract, without the land registry entry, even when the land was not divided into separate cadastral parcels. Registration was not required for the valid transfer of the right to use social property, and entry into the land register was considered only declaratory (Juhart 2008, 24).[37] Most often, only the legal status of social property of the given asset was entered in the land register and the first holder of the right to use these items of social property was registered (Juhart 2008, 24). Registration of agreements on further transfers of the right of use was repeatedly neglected, particularly

[35] Slo. Zakon o posebnih pogojih za vpis lastninske pravice na posameznih delih stavbe v zemljiško knjigo (ZPPLPS), *Official Gazette of the RS*, No. 89/99.

[36] According to Art. 2 of this act, it was deemed that upon entry into force of the ZLNDL, the holders of apartment rights had the right to use the building site.

[37] See also Supreme Court of Slovenia, II Ips 634/2007, 1 July 2010, para. 7.

where the right was transferred between various social entities, wherein the assets remained social property. Frequently, only the actual handover of land possession was carried out based on relevant documentation and legal transactions, while the state of rights in the land register was not updated. In addition, the disposal of a right to use social property was not considered to be of a derivative nature, therefore it was not subject to the principle that one cannot transfer more rights than one owns (*nemo plus iuris transferre potest quam ipso habet*) (Krisper-Kramberger 1992, 705; Sajovic, 1980, 37; Kramberger Škerl, Vlahek 2016, 169). This meant that the acquirer of the right to use social property could obtain a wider range or different content of entitlements than the transferor if this were in accordance with the nature and purpose of the socially owned assets. The courts established that floor ownership (condominium) could be created simply by dividing a residential building into several independent functional units (apartments) and selling these to the residents, again without appropriate registration. Consequently, legal transactions relating to apartments were also not entered in the land registered but were concluded simply by verifying the parties' signatures before the competent authority. It should be noted, however, that even where the sales contract did not specifically mention the functional land, and even if such land had not been surveyed, the courts held that the right to use this land, as defined in the relevant legislation, was automatically transferred together with the rights to the apartment.[38]

As a consequence of the described deviations from the traditional rules of real property law, the spatial extent of functional land belonging to specific buildings was not clearly defined, the legal status of specific tracts of land as functional land was not evident from public records, and it was almost impossible to ascertain the actual holders of the right to use this land solely by relying on the land register entries.

5. DIFFICULTIES IN THE PRIVATIZATION OF REAL ESTATE

The constitutions of the newly established states on the territory of former Yugoslavia mostly omitted the notion of social property. For example, the new Constitution of the Republic of Slovenia,[39] adopted in December 1991, mentions "property" and "private property", the latter for the purposes of showing that the concept of social property has no place in the new Slovenian legal order. Despite the new regime laid down in the constitution, social property did not cease to exist with its enactment.

[38] See, e.g., Supreme Court of Slovenia, II Ips 262/2009, 9 November 2009, II Ips 259/2008, 15 March 2012, and II Cp 2452/2018, 27 March 2019.

[39] *Official Gazette of the RS*, No. 33I/91-I et seq.

The transformation of social property into private property was slow and gradual and it cannot be defined as a single point in time.

In Slovenia, provisions on the transformation of specific types of social property could be found in at least 18 legislative acts, typically among their transitional provisions. The Slovenian legislation on privatization of socially owned real estate provided different conditions for acquiring conventional property rights, depending on the type and purpose of the given real estate. In some cases, the decisive factor was who held the right to use the social property on the cut-off date; in other cases, the purpose of the real estate in question was decisive, regardless of which social entity held the right to use it.

Buildings in social ownership intended for the housing of public employees and officials became either state or municipal property, together with other residential buildings to which the state or the municipalities had the right of use. Municipalities also obtained ownership of social housing constructed by the former solidarity funds and housing funds. Other legal entities that held the right to use socially owned apartment and residential buildings became owners of these properties on the day the Housing Act of 1991 entered into force. The new owners were, however, in most cases[40] under the obligation to offer the apartments for purchase to the tenants who held the so-called housing rights on social apartments. The Housing Act regulated only the privatization of apartments and residential buildings, while building land remained social ownership. Public roads, public parks, public playgrounds and other public infrastructure later became municipal property, under the provisions of the Act on Services of General Economic Interest.[41] Functional land, however, was privatized only in 1997, under the rules of the ZLNDL.

The ZLNDL was of a subsidiary nature, adopted for the explicit purpose to bring to a close the privatization of the remaining real estate in social property, which had not yet been covered by the existing specific legislation. The ZLNDL transformed the right of use into conventional ownership rights. It simply stipulated that real estate in social ownership would *ex lege* become private property of natural persons or legal entities who held the right to use it, or their legal successors. Real estate to which the state, municipality or a city held the right to use, became the property of these public entities. Originally, the ZLNDL envisaged that this transformation of rights would be entered into the land register at the owner's request. As it turned out, the updating was very slow, an amendment to the law later mandated *ex officio* registration of the

[40] Previously nationalized apartment buildings, and custodial on-site apartments were excluded from the purchase option.

[41] Slo. Zakon o gospodarskih javnih službah (ZGJS), *Official Gazette of the RS*, No. 33/93 et seq.

ownership rights in favor of the natural or legal persons whose right to use the social property was already registered in the land register at the time.

This transformation meant that apartment owners in residential apartment buildings acquired the co-ownership rights to the functional land of their buildings, holding co-ownership shares proportional to the value of their respective apartments in relation to the total value of the building. Similar was true for owners of individual houses in residential neighborhoods with shared land and other spaces; here too, all such common spaces formed common (shared) functional land of all the individual houses. Ownership of the functional land (individual and shared) was acquired *ex lege*. In the event of an ownership dispute, therefore, the crucial question would be who held the right to use the functional land at the time that the ZLNDL entered into force. This must be assessed according the rules applicable at the time of the acquisition of rights (Juhart 2008, 22). No later piece of legislation limited the extent of building or apartment owners' rights over functional land.

However, the simplified approach to the privatization of real property, enacted in the ZLNDL, which relied primarily on the entries in the land register, caused new problems and further complicated the legal situation in all instances where the entries in the land register concerning the holder of the right to use social property were obsolete. Such situations were very frequent, particularly in residential neighborhoods. If the right to use the functional land was not entered in the land register in favor of the building's owner(s), the holder of the right of use, on the date that the ZLNDL entered into force, was to be determined on the basis of the documents and legal acts based on which the building had been constructed.[42] If the land was shared by multiple apartment buildings and such determination was impossible, the rules on the contractual land consolidation set out in the Construction Act of 2002[43] applied until the enactment of the Act on Establishing Divided Co-ownership and on Determining the Appertaining Land (ZVEtL)[44] in 2008.

5.1. Construction Firms Registered as Owners

Once the privatization of building land had been initiated, it soon became apparent that the lack of reliable records of the allocation of the right to use socially owned land in residential neighborhoods would present new problems. Under the provisions of the ZLNDL, the

[42] Supreme Court of Slovenia, II Ips 634/2007, 1 July 2010, para. 8.

[43] Slo. Zakon o graditvi objektov (ZGO-1), *Official Gazette of the RS*, No. 110/2002 et seq.

[44] Slo. Zakon o vzpostavitvi etažne lastnine na predlog pridobitelja posameznega dela stavbe in o določanju pripadajočega zemljišča k stavbi (ZVEtL), *Official Gazette of the RS*, No. 45/2008 et seq.

construction firms that remained registered as holders of the right of use on entire residential neighborhoods suddenly found themselves as registered owners of the land that was actually used as public roads or other public surfaces, or as private functional or shared functional land of apartment buildings or other residential areas (Ude 2007, 142–144). The construction firms had also been recently privatized, and their new management sometimes regarded themselves as legitimate owners of all this land or at least perceived the situation as an opportunity to gain profit by selling the land or charging for its use. A typical example where this occurred were parking lots that had been built on shared functional land in residential neighborhoods to serve their residents, but were later claimed by the construction companies as their own property and sold-off or leased to the residents or third parties.

Another problem of the outdated state of the land register was that all the property where large construction firms were still registered as owners became part of the bankruptcy estate when those companies went bankrupt. The actual owners of the functional land were thus faced with either loss of their property due to its sale in bankruptcy proceedings or with lengthy and costly legal proceedings in order to prove that they were the rightful owners. They were sometimes even not aware of the fact that their property was being sold in bankruptcy or enforcement proceedings.[45]

Although it was apparent under substantive law that the construction firms were not entitled to own functional land or public surfaces, the legal basis for the true owners to claim their rights was not immediately clear. The former social compacts or self-management agreements, which stipulated the construction firms' obligation to transfer the right of use to the apartment owners in the case of functional land and back to the municipality in case of public infrastructure, had been concluded several decades earlier. If the obligation of transferring the rights on land was treated as a regular claim under the law of obligations, the construction firms could simply defend themselves against lawsuits by arguing that the claim had already become time-barred under the general statute-barring period of five years. However, this defense should not be accepted.

The self-management agreements on the transfer of the right to use social property cannot simply be equated with present-day contracts for the transfer of property rights. Unlike conventional ownership rights, the right to use social property did not have its content fully defined in legislation but was specified in the act granting this right. The purpose for which the right of use was granted, burdened this right and became part of its content as permanently binding for the holder of the right.[46] The

[45] See, e.g., Supreme Court of Slovenia, III Ips 22/2012, 28 January 2014, and II Ips 286/2012, 28 May 2015.

[46] See Finžgar's position on social property as a dedicated property (Finžgar 1992, 6). Cf. Sajovic 1989, 30–32.

obligation to hand over the social assets and transfer the relevant rights to their use was an integral part of the obligation of the administrators of social assets to use these funds in accordance with their nature and purpose,[47] so it was not subject to statute of limitations. For this reason, the purpose for which the right of use of building land was transferred to the construction firm, should also be considered in the privatization process. The right to use social property could be converted into ownership right only where it had the nature of absolute property rights limited only by general rules on social property.[48] Consequently, land within residential neighborhoods that was intended and actually used as functional land of residential buildings or as a local public good could not become the construction company's private property solely on the basis of an obsolete entry of right to use in the land register.

Nevertheless, the construction companies, as the original sellers that received payments decades ago (or their legal successors), were oftentimes not willing to cooperate with the buyers of apartments or houses in their attempts to register as the new owners of functional land, or required additional payments for their support, particularly when the construction companies were themselves on the verge of bankruptcy (e.g. during the 2007–2009 global recession) It also occurred quite frequently that the documentation required for the registration was simply missing from the archives of both the construction companies and the municipalities that had provided them with the land for building the residential neighborhood.

5.2. Municipalities Registered as Owners

A similar problem arose in cases where outdated entries in the land register referred to municipalities as holders of the right of use. In the past decade, some Slovenian municipalities have started issuing administrative decisions declaring as municipal property (and as local public good)[49] all land in residential neighborhoods where social ownership was still registered and where the municipality was entered in the land register as its manager or the holder of the right to use social property. By relying on the legislation on the privatization of public infrastructure, which instituted the possibility of such administrative decisions, the courts duly entered the municipalities in the land register as the rightful owners of all such real estate. However, such practice lacked a valid legal basis wherever the respective real estate did not in fact consist of public infrastructure, which was typically true in cases of shared functional land in residential neighborhoods (Ude, Vlahek, Damjan

[47] Art. 189 of the Associated Labor Act.

[48] Supreme Court of Slovenia, II Ips 457/2003, 3 February 2005.

[49] The latter possibly with the aim of being exempt from paying land taxes.

2016, 4). Indeed, clear delimitation between public land and shared functional land was often difficult and the municipal officials might not have been aware of the land's actual use and legal status when they instituted the proceedings. Nevertheless, one cannot help suspect that they eventually just took advantage of the outdated entries in the land register to claim exclusive ownership of the land in question (even with the aim of selling it later) rather than first making effort to clarify its legal status and allowing the proper owners to register their rights (Ude, Vlahek, Damjan 2016, 3–4). By claiming the ownership of this land based solely on land register entries, the municipalities have effectively performed widespread nationalization of private land.

The Municipality of Ljubljana, for example, launched a special project for identifying and auctioning off all unnecessary plots of land where the municipality was registered as the owner or, in outdated terms, holder of the right of use of social property. This was a decision worthy of a prudent businessman were it not for the fact that one outcome of the project was that also functional land in private ownership was being sold off by the municipality as its own. The rightful (but not registered) owners of functional land were thus forced to repurchase their own land or see it being sold to third parties or put in general use. Plots of shared functional land (owned and already paid for by all residents of the neighborhood) were often sold to individual residents who were motivated to expand their own plots at the expense of the common neighborhood land.

It seems that today city planners generally support any manner of bringing most of the shared land in residential neighborhoods into municipal ownership in order to keep it available to the public (e.g. open playgrounds, parking places and green areas) rather than see it fenced off or built up by the owners. Although this cause might be worthwhile, the described path to it is clearly legally unfounded. Municipalities have no ownership claims over individual or shared functional land (irrespective of how useful it might seem to be for the municipality) and cannot unilaterally proclaim it their own property other than by making use of the available procedures for expropriation against compensation. In order to prevent the owners from performing inappropriate spatial interventions, the municipalities may set out conditions for such interventions for each individual neighborhood, without interfering with the ownership to the extent that the owners are expropriated or left with *nuda proprietas*. In practice, municipal authorities focus on shared functional land (not on individual functional land) since the sales contracts for individual apartments or houses typically did not explicitly stipulate shared land as the object of sale.[50] Municipal ownership claims are supported also by

[50] Contracts for the sale of houses or apartments in residential neighborhoods usually focused on the house/apartment and the right of use of its building site, while it did not necessarily list in the article defining the object of the contract the rights of use of

referring to new spatial planning acts, adopted by the very same municipalities, which unsurprisingly list these real estates as local public goods, disregarding the basic rules of the social property regime on real estate and the rules of privatization.

An example where such attempts have occurred are some residential neighborhoods developed in the municipality of Ljubljana, such as the Črnuška Gmajna suburban neighborhood of terraced houses, built in the late 1980s and early 1990s. These typically consist of smaller individual plots of land around the houses, and larger green areas and other shared plots for the use and socializing of the residents, providing both a rational use of space and a high quality of living for the residents (cf. Fajs, Debevec 2017, 16; Draksler 2009, 8, 19–21, 29; Perry 1929a, 99–100). It is mostly evident from the spatial plans from the time of the construction, the contracts for the sale of individual houses or apartments, the attached maps and other available documents that these common plots of land were intended only for the use by the neighborhood residents, in the words of Perry, for the constitution of a "face-to-face fabric" (Perry 1929a, 100). This is evident at first sight from the ground plans, the exterior and the actual use of the neighborhood. The boundaries of such neighborhoods are usually clearly defined both in the documentation and by looking at the actual state of the neighborhood. Legislation also referred to various types of shared real estate in the neighborhoods of complex construction. Despite this, the Municipality of Ljubljana now tends to claim that all land in residential neighborhoods that is not strictly below and around the individual house, is municipal property and should be available to the general public (unless eventually sold off by the municipality). The respective plots, in particular the green spaces and parking spaces in the neighborhood are now perceived by the municipal urban planners as quality surfaces that should "remain" public property, overlooking the fact that they have been clearly sold to the residents together with the individual houses or apartments (cf. Fajs, Debevec 2017, 16). Municipal urban planners may indeed limit the landowners' use of their property, e.g. by limiting the availability of land for construction purposes or by prohibiting the erection of fences above a certain height, but this should not amount to expropriation of private land without having met the conditions for the expropriation and rendering compensation to the expropriated owners.

Slovenian courts have detected these problems and have stressed, for example, that unilateral municipal decisions proclaiming land to be a

other parts of land in the neighborhood. These other real estates and the right to use them were mentioned in greater or lesser detail in other parts of the contract, as well as in the maps that were attached to the contract and/or were the basis for the construction of the neighborhood. The registered owners have thus tended to show that all real estate not listed as the object of the contract was not covered by the contract.

local public good do not preclude civil courts from determining the legal status of such real estate, and that no prior annulment of such municipal decisions is required before civil courts are allowed to assess the ownership status of the real estate.[51] To prevent the municipalities from further abusive practices, a specific legislative provision clarifying this was eventually laid down in the ZVEtL-1 (see *infra*). Upon request by the rightful owners, the courts have also nullified some contracts for the sale of appertaining land to third parties (e.g. in the Soseska business neighborhood in Ljubljana) due to them being *contra bonos mores*.[52]

Problems almost identical to the ones described in Slovenia have arisen in Croatia, particularly in tourist residential neighborhoods constructed along the coast in the 1980s and 1990s (e.g. Barbariga and Mareda in Istria), which have not yet been properly surveyed, demarcated and registered. The construction firms and their successors are in most cases still registered as owners of common areas in such tourist resorts and are selling plots of this land to either existing owners of individual houses or apartments, or to third parties. The outcome of this is that new buildings and parking lots, which are not in line with the urban design of the area, are expanding at the detriment of common residential areas intended for socializing, playing, providing greenery and all of its benefits for the entire neighborhood; the common spaces are not being satisfactorily maintained; the residents are prohibited from using their parking lots or are charged for their use, etc. Consequently, the areas once designed as modern high-quality living neighborhoods have been decaying and turning into dilapidated districts.

5.3. Expropriated Owners Registered as Owners

An additional obstacle are the situations where the former owners who were expropriated by the municipalities decades ago, for the purposes of constructing residential neighborhoods, are still entered as owners in the land register. The Yugoslav legislation authorized the municipalities to determine areas intended for residential construction, and to expropriate the landowners for this purpose. Typically, privately-owned agricultural land was nationalized for residential construction (Zečević 1975, 176–179). As the land register did not play an important role in the socialist period, such acquisition of land was sometimes not recorded in the land register. Thus, the previous owners remained registered as owners of the land on which residential neighborhoods were constructed, and this has continued even thirty or forty years later. The original owners' heirs even

[51] See, for example, High Court in Ljubljana, I Cp 251/2015, 5 May 2015, I Cp 3289/2014, 5 May 2015, and II Cp 2676/2009, 11 November 2009.

[52] High Court in Ljubljana, I Cpg 358/20166, 26 April 2016, and Supreme Court of Slovenia, III Ips 88–72016, 7 March 2017.

received court decisions on the inheritance of these land parcels even though the land had no longer been owned by the deceased.

According to Slovenian legal theory and practice, the principle of trust in the land register[53] does not apply to cases where land was not obtained on the basis of a legal transaction (Vlahek 2007, 120). This is why even in cases where an individual inherits real estate and registers in the land register as its owner, this is not detrimental to the rightful non-registered owner (Vlahek 2007, 120). Further transactions might, however, lead to *a no domino* acquisition by third persons acting *bona fide*. The actual owners are in a difficult position also in cases where the heirs have managed to mortgage the land and see it sold off to third parties in enforcement proceedings.

6. JUDICIAL PROTECTION OF OWNERS' RIGHTS TO APPERTAINING LAND

6.1. Contentious Proceedings for Determination of Ownership

Before special legislation on the determination of appertaining land was enacted in 2008, building owners could only pursue their rights in a regular contentious procedure, since the courts held that adjudication of ownership claims was not an administrative matter. The lawful (co-) owners of the former functional land could exercise their rights by bringing action against unduly registered owners before the local court, to establish the existence of their ownership rights and to have them entered accordingly in the land register. In cases where boundaries of the disputed functional land have not yet been determined, the court adjudicating such a claim must also ascertain the extent of the functional land belonging to the plaintiff, to separate it from the rest of the building land and into an individual cadastral parcel. According to a principled legal opinion, adopted by the Slovenian Supreme Court in 1988,[54] this should be done by taking into account the criteria that applied when functional land was determined by the municipal administrative body responsible for spatial planning.[55] The Supreme Court warned, however, that the concept of land

[53] The principle of trust in the land register enables acquisition of real estate *a non domino*, which means that a third party who relies in good faith on the land register data can obtain ownership of real estate from the non-owner who is wrongfully entered in the land register as owner.

[54] The "legal opinions: and "principled legal opinions" of the plenary sessions of the Supreme Court of (S)RS are binding for all panels of judges of the Supreme Court, but not for the lower instances (Kramberger Škerl, Vlahek 2016, 22).

[55] Legal Opinion of the Supreme Court of SR Slovenia adopted at the plenary session of 21 December 1988, in 88(1–2) *Poročilo o sodni praksi Vrhovnega sodišča SRS* (1988), 55.

intended for regular use of the building should be applied restrictively when extending to adjacent plots.[56]

If a person had improperly registered as the owner of functional land under the provisions of ZLNDL and subsequently legally disposed of such a land plot, the sales contract is null and void due to an illicit basis (*causa*).[57] The right to use functional land could only be transferred together with the ownership of the building. This rule effectively still applies after the privatization because apartments as individual parts of an apartment building cannot be sold without proper entitlements on common spaces, parts, appliances, and land belonging to the building. Disposing of an object that cannot be a subject of independent legal transactions is not permissible, and the contract with such an object is null and void.[58]

6.2. Contractual Land Consolidation

As the high incidence of buildings whose functional land had not been surveyed and demarcated was becoming more and more apparent, several laws were adopted in Slovenia to ameliorate the situation by providing special rules for regulating the status of functional land. The Construction Act of 2002 envisaged the possibility of using contractual land consolidation (Slo. *pogodbena komasacija*) for settling the issue of residential neighborhoods in which public areas and functional land of buildings have not yet been demarcated. Under this procedure, the extent of the land acquired for the construction must be first determined by considering all available documents and actual land use. This is followed by the new parceling of the entire area so that regular use of all buildings is possible, and the function of all public spaces is maintained. The practical problem with the implementation of contractual land consolidation is the considerable number of parties in the procedure who must agree with the new division of land—among them also the entities still entered in the land register as exclusive owners of the land. For this reason, i.e. high transaction costs, the utilization of contractual land consolidation procedure for solving the issues of functional land was exceedingly rare in practice.

6.3. Special Rules of the Building and Housing Legislation

The new Housing Act of 2003 did not regulate functional land like its 1991 predecessor. It did, however, state that functional land (be it formally established as such or not) formed part of the common (shared)

[56] Supreme Court of Slovenia, II Ips 250/2007, 18 March 2010, para. 7.

[57] For further details on the validity of contracts, see Možina, Vlahek 2019, 85–86.

[58] Supreme Court of Slovenia, II Ips 262/2009, 9 November 2009, para. 12.

spaces in the co-ownership of apartments in an apartment building.[59] If the right of use of this land was not registered in favor of the apartment owners, its holder was to be determined on the basis of documents and legal acts based on which the building was constructed. If such determination of the functional land shared by multiple apartment buildings turned out to be impossible, the rules on the contractual land consolidation, laid down in the Construction Act of 2002, would apply. Both the Housing Act and the Construction Act provided that in the case of apartment buildings, the construction parcel is a common (shared) part of the apartment building.

6.4. Special Interventional Legislation on Non-Contentious Procedure for Determination of Appertaining Land

The described rules of the Construction Act and the Housing Act achieved little in resolving the increasingly complex disputes regarding former functional land. Special legislation was adopted in 2008 to address this issue. The ZVEtL authorized the courts to assess whether and to what extent a plot of land serves a certain building, i.e. whether it constitutes appertaining land (co)owned by the building's (co)owners. This piece of legislation has turned out to be extremely important as it provided a special non-contentious procedure that proved to be much more suitable for determining ownership of appertaining land than regular litigation,[60] since it is more flexible and can accommodate a large number of parties, which is typical in disputes concerning shared functional land in residential neighborhoods. In 2017, the ZVEtL was replaced by the ZVEtL-1, which amended to some extent the rules laid down in the 2008 act, considering the experiences and particularly the problems encountered in the proceedings carried out thus far.

By adopting the ZVEtL and the ZVEtL-1, the legislator sought to introduce a more practical procedure in which the status of the land register could be adjusted to the actual legal situation related to the ownership of functional land belonging to buildings constructed prior to 1 January 2003.[61] Once a request for the determination of the appertaining land (former functional land) is filed with the local court, the court immediately notes this in the land register meaning that no subsequent entries regarding this property are allowed pending conclusion of the proceedings.[62] The procedure under the ZVEtL or the ZVEtL-1 does not

[59] *Ibid.* Art.190.

[60] The owners could still file an ownership claim in regular contentious proceedings claiming, e.g. that they acquired ownership by prescription. For further details, see Vlahek 2006, 309–332.

[61] See supra note 30.

[62] Art. 11 of the ZVEtL-2017.

entail new determination of property rights, but merely the identification or reconstruction of the existing legal status, which should be identifiable on the basis of acts adopted in the past, but which has not yet been recorded in the land register. According to this procedure, undistributed land complexes in residential neighborhoods can be divided into land intended for the private use of a particular residential building, the common (shared) land of several buildings, and land intended for general public use. This division can be performed irrespective of who is entered in the land register as the owner of the land complex. Under the ZVEtL-1, the owner of the building is deemed to also be the owner of the appertaining land,[63] which excludes the use of the general rule of the Property Code whereby the person registered in the land register is presumed to be the owner of the property.[64]

Under the ZVEtL-1, the status and scope of the appertaining land are determined by the following criteria:

1. which land was planned for the regular use of the building in the spatial planning documents, in administrative permits, or in other documentation relevant for the construction of the building;
2. which land comprised access roads, driveways, parking spaces, garbage areas, playground and resting areas, lawns, atrium land, etc.;
3. the actual use of the land in question thus far;
4. criteria defined in the spatial planning acts adopted after the building was erected, prior to the privatization of the appertaining land.[65]

In cases where it is impossible to ascertain whether a plot of land is individual or shared appertaining land, the court enjoys discretion to decide the most fair and appropriate solution, taking into account the parties' petitions and the spatial and functional nexus between the land and the respective buildings.[66] The ZVEtL-1 expressly stipulates that shared appertaining land serving multiple buildings is in joint ownership of all the owners of these buildings.[67]

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[63] Art. 44/1 of the ZVEtL-2017.

[64] Art. 11 of the Property Code.

[65] In comparison to ZVEtL, these criteria have been importantly amended by ZVEtL-2017. See Ude, Vlahek, Damjan 2016, 6.

[66] Art. 43 of the ZVEtL-2017.

[67] Art. 55 of the ZVEtL-2017. Before this was explicitly stipulated, the proprietary status of such shared appertaining land was not entirely clear (regular joint ownership, regular co-ownership, joint ownership, or co-ownership that stems from ownership of the

A petition for the determination of appertaining land and its owner may be filed by an owner of a building or an apartment for which the appertaining land is to be determined; by the community of apartment owners of the apartment building for which the appertaining land is to be determined; by an individual registered as owner of the land that could be (deemed) appertaining land and thus the property of another person; or the municipality in whose territory the building in question is located.[68]

As a principle, the owners of a building are deemed to own the plot of land determined as the building's appertaining land. Nevertheless, the court may also determine that another person has acquired ownership of this land based on the rules on good faith acquisition, the law or a decision by a state authority. In some cases, the court may establish a right to purchase (Slo. *odkupna pravica*) in favor of one party or the other (Fajs, Debevec 2017, 20–21). The existence of the right of superficies (Slo. *stavbna pravica*)[69] may also be recognized. Moreover, the owner(s) of the building may request that the court ascertain that the rights registered as encumbrances of the appertaining land do not exist, while on the other hand, the holders of unregistered encumbrances on appertaining land may request the court to ascertain their existence.[70]

An important provision of the ZVEtL-1 concerns disputes between municipalities and building owners regarding the status of appertaining land. It stipulates that any prior municipal or other body's decision granting the status of public good to certain land does not prevent the courts from determining such real estate as privately owned appertaining land.[71] If the court finds that a plot of land is appertaining land, the administrative body that has declared it a public good, must, *ex officio* or upon request of an interested person, rescind this declaration. Appertaining land can thus return to full private ownership.

A conflict of rights could also arise in cases where (due to an erroneous entry in the land register) in the denationalization procedure, a plot of land was returned to its previous owner, although this land (or its part) had in the meantime become functional land of a certain building, which should bar its restitution in kind under the denationalization legislation. If the court finds, in proceedings under the ZVEtL-1, that the denationalized real estate is in fact appertaining land, it only rules on its territorial extent while staying the proceedings regarding ownership of the land and directs the interested party to request that the administrative decision on its denationalization be declared null and void.[72]

buildings), which posed difficulties for the courts as well as for the owners in their everyday management of this land.

68 Art. 46 of the ZVEtL-2017.

69 For further details on this institute, see Vlahek 2010.

70 Arts. 44–47 of the ZVEtL-2017.

71 *Ibid.* Art. 54.

72 For further details, see Fajs, Debevec 2017, 17.

7. CONCLUSION

The set of problems discussed in this article regarding the proprietary status of former functional land is intricately connected with the period of transition from the socialist to the market-based institutional environment. Experience thus far has shown that the complex and intertwined property relations concerning former shared functional land in residential neighborhoods elude simple solutions based on conventional rules of real property law. The unresolved property issues in such situations have typically lasted for decades and have been additionally complicated in the process of privatization of social property. Traditional litigation has proven unsuitable for resolving disputes involving a large number of parties with typically diverging interests. That is why introducing special substantive and procedural mechanisms in the ZVEtL and the ZVEtL-1 was a justified pragmatic solution, which proved to be relatively successful in practice even if (or precisely because) not dogmatically pure. Both acts could potentially serve as a useful model for resolving similar complex ownership issues arising from former social ownership in other parts of the former Yugoslavia, where such disputes have not yet been addressed suitably. The approach to addressing the issue of the legal status of shared real estate in residential neighborhoods must remain pragmatic and acknowledge the manners in which transactions concerning the transfer of real estate titles were carried out during the period of social ownership and in the course of its privatization. The courts must also be attentive to any irregularities regarding properties with unresolved status, which might harm the interests of their rightful owners and lead to the unfounded nationalization of private property. The precise criteria developed in case law for delineating appertaining land and their application in cases involving real estate in residential neighborhoods throughout Slovenia can be an interesting subject for further research. Once the issues of ownership of the functional land in residential areas are resolved, these areas can finally continue developing and offering what they were built for: a high quality of life for their residents.

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