

October 2011

In focus: Law on Maintenance of Residential Buildings

1. *Unconstitutional provisions of the Law*

On April 20th 2011, the Decision of the Constitutional Court was announced in the Official Gazette of the Republic of Serbia no. 27/2011, declaring as unconstitutional provisions of the Law on Maintenance of Residential Buildings („Official Gazette of the Republic of Serbia“ no. 44/95,46/98 and 1/01) which prescribe that the assembly of the building’s tenants, by consent of the owners of apartments and other detached parts of the building who own more than half of the total surface of apartments and other detached parts of the building, can render decisions on:

- conducting repairs of the flat roof, i.e. the roof construction, according to which a new apartment can be built or adapted, in accordance with the regulations on spatial planning and arrangement, as well as building of structures,
- transforming common premises into an apartment or business premises,
- joining common premises to an adjacent apartment, i.e. the attic, if the premise doesn’t meet the prescribed conditions for transforming into a detached apartment,

- the possibility that the aforementioned works can be carried out by one of the owners of the apartment, members of their household or a third person if it is established that the owners or members of their household are not interested in the work.

The Constitutional Court has rendered the subject Decision taking into consideration the provisions of the Law on the Basics of Property Relations which prescribe that owners of detached parts of the building have common indivisible ownership over common premises, therefore the owner of a detached part of building with a larger surface cannot have a greater right of ownership over common premises than the owner of a detached part of building with a smaller surface, i.e. all owners possess equal ownership rights. In addition, the Constitutional Court, while deciding, has taken into consideration the fact that the Constitution of the Republic of Serbia prescribes that ownership right may not be restricted, except in the public interest determined by law.

2. *Proposal for amendments of the law*

The Proposal for the Law on Amendments of the Law on Maintenance of Residential Buildings (hereinafter: the “**Proposal Law**”), published on August 1st, 2011 on the

website of the National Assembly of the Republic of Serbia, determines that the above mentioned decisions of the assembly of the building's tenants shall be rendered by the majority of the total number of members of the assembly.

3. *Retroactive implementation and elimination of consequences of the unconstitutional provisions of the law*

Pursuant to the Law on the Constitutional Court, anyone whose right has been violated by a final or legally binding individual act, adopted on the basis of the law or other general act, that has been established not to be in accordance with the Constitution by the decision of the Constitutional Court, is entitled to demand from the authorized body to amend that individual act. Proposal for amendment of the unconstitutional individual act may be submitted within six months as of the date of the announcement of the decision of the Constitutional Court, provided that a period of two years has not expired starting from the date of delivery of an individual act until submission of a proposal or initiative for commencement of the procedure. If it is established that amendment of an individual act cannot eliminate the consequences which arose from the implementation of the unconstitutional general act, the Constitutional Court may order the consequences to be eliminated by restitution, indemnification, or otherwise.

Therefore, anyone whose right has been violated by a decision of the assembly of the building's tenants regarding the disposal of common premises, will have the possibility to submit the proposal for amendment of such a decision to the

Ministry of Environment, Mining and Spatial Planning (hereinafter: *the "Ministry"*), within the deadline determined by law.

It remains to be seen how, until adoption of Law on Amendments of the Law on Maintenance of Residential Buildings, the Ministry, as the body authorized to implement the decisions of the Court, shall act on the received requests for amendments and elimination of consequences of the unconstitutional decisions made by the assemblies of the building's tenants.

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