



April 2015

In focus: Law establishing the public interest and special procedures of expropriation and issuance of the construction permit for realization of the project “Belgrade Waterfront”

Introduction

On April 9th 2015, the National Assembly of the Republic of Serbia adopted by urgent procedure the Law establishing the public interest and special procedures of expropriation and issuance of the construction permit for realization of the project “Belgrade Waterfront” (hereinafter: the “Law”). The Law was published in the Official Gazette of the Republic of Serbia no. 34/2015 on April 14th 2015 and entered into force the day following its publication, i.e. on April 15th 2015.

The Bill explains the reason for urgent adoption of the Law and its entry into force before the eighth day from the date of its publication, stating the need to avoid exceeding the time limit for completion of the project “Belgrade Waterfront”, wherein the deadline for completion of the project is not stated anywhere in the text.

The reason for adoption of the Law is the necessity of creating a legal basis for expropriation of real-estate for the purpose of realization of the project “Belgrade Waterfront”, broadening the concept of public interest in relation to how it is

defined in the provisions of the current Law on Expropriation. The passing of this Law was preceded by adoption of the Spatial plan for the special purpose area and development of part of Belgrade’s coastal – the riverside area of the river Sava for the project “Belgrade Waterfront” (“Official Gazette” of the Republic of Serbia no. 7/15 – hereinafter: the “Planning document”) and the decision of the Government of the Republic of Serbia whereby the project “Belgrade Waterfront” is declared a project of special significance for the Republic of Serbia and the City of Belgrade.

Since, according to the provisions of the Law on Expropriation, it is not possible to determine the public interest for expropriation of real-estate for the construction of commercial and residential buildings, the solution was to pass a special Law that would create a legal basis for expropriation in this specific case.

In its legal nature, the Law represents a “lex specialis” in relation to the general law – the Law on Expropriation, since it establishes the public interest for expropriation of real-estate for the construction of the commercial and residential complex “Belgrade Waterfront”, with accompanying infrastructure.

This approach by which the public interest, as a reason for the revocation or limitation

of ownership rights without the will of the owner, is determined by passing a special law for the realization of one given project, rather than to perform it through amendments of the provisions of the Law on Expropriation which regulate the conditions, criteria and procedures for determining the public interest for expropriation, is contrary to the legal nature of laws as general acts which should be valid and apply to an advance indefinite number of cases, i.e. to all future situations that can be subsumed under the general provision, thus providing legal certainty and equality of all before the law.

Subject of the Law

As already mentioned, the Law defines the public interest for expropriation of real-estate with the aim of bringing the land to its purpose for construction of the commercial and residential complex “Belgrade Waterfront” (hereinafter the “Project”), with supporting infrastructure, in accordance with the adopted Planning document. At the same time, the Law defines the parties to the expropriation process and expropriation users, and regulates the expropriation process and other relations arising in realization of the Project, the procedure and manner of issuing construction permits and other documents required in the process of constructing buildings in the area covered by the Planning document.

The Law contains a provision which, unless otherwise specified by said law, refers to the application of the provisions of the Law on Expropriation, Law on Planning and Construction and Law on General Administrative Procedure. Not only is such a

provision in the Law redundant, since the provisions of mentioned general laws are applied without explicit reference to them, but the Law unnecessarily contains provisions that are already included in the general laws.

Priority in resolving with requests for the establishing of cadastral lots

The law expressly provides that requests for the establishing of cadastral lots on the basis of the land re-allotment project which was prepared for the purpose of expropriation or on the basis of the land allotment plan for public purpose construction lots contained in the Planning document, submitted to the Republic Geodetic Authority – Department of Real-Estate Cadaster, have priority in resolving and do not need the approval of previous applicants for urgent resolving.

Provisions with such and similar content clearly show the intention of the legislator to, through solutions adopted in this Law, provide absolute priority and efficiency in resolving all requests which are a prerequisite for realization of the Project and the mentioned intention is clearly expressed throughout the entire text of the Law.

Parties to the expropriation process

Parties to the expropriation process are the user and owner of real-estate that is the subject of expropriation.

In accordance with the Law, users of expropriation are:

- 1) The Republic of Serbia;

- 2) The City of Belgrade, for the construction of public purpose areas, i.e. for the construction of public facilities and public areas for which special laws have established jurisdiction of the City of Belgrade in terms of construction.

Users of expropriation have all the rights, obligations and responsibilities of users of expropriation under the Law on Expropriation and this Law.

The Law also contains provisions that regulate who will be considered a party to the process in the following situations:

- 1) When the subject of expropriation is construction land on which a building is constructed contrary to the law, and an application for legalization has been filed for the subject building upon which, until initiation of the expropriation process, a final and binding decision has not been rendered or an application was filed for the subject building in accordance with the provisions of the Law on Special Conditions for Registration of Ownership Rights on buildings constructed without a construction permit upon which a final and binding decision has not been rendered, the party to the expropriation process is the owner of the construction land on which the building is constructed.
- 2) When the subject of expropriation is construction land on which a building is constructed over which the ownership right is registered in

accordance with the provisions of the law regulating legalization or on the basis of the Law on Special Conditions for Registration of Ownership Rights on buildings constructed without a construction permit, and for which the land for regular use is not determined in accordance with the law regulating construction land, the parties in the process are the owner of the subject building and owner of construction land on which the building is constructed.

- 3) When the subject of expropriation is construction land on which a building is constructed over which the ownership right is registered in favor of the person referred to in Article 102, paragraph 9 of the Law on Planning and Construction, who is also the user of construction land on the cadastral lot on which the subject building is constructed, the parties to the expropriation process are the owner of the building and owner of the construction land. This pertains to persons whose right to the conversion of the right of use into ownership rights over construction land will be regulated by a special law in accordance with the Law on Amendments to the Law on Planning and Construction ("Official Gazette" of the Republic of Serbia no. 132/14).
- 4) When the subject of expropriation is undeveloped construction land where the unit of local self-

government is registered as the title holder of the right of public ownership, the party to the expropriation process is the owner of the construction land.

The expropriation process

The proposal for expropriation shall be submitted not later than five years from the date of entry into force of the Law.

The expropriation process, including the jurisdiction of the first and second instance authority for resolving the expropriation proposal, contains solutions that are virtually indistinguishable from the relevant provisions of the Law on Expropriation, with the difference that the Law provides short deadlines for undertaking procedural actions in this process, which further and once again emphasizes the need for urgency in resolving, which is otherwise a characteristic of this Law.

On the other hand, the Law is unnecessarily burdened with provisions that are already contained in general laws, such as provisions which provide for the right to appeal against the decision on expropriation, the possibility of withdrawing the right to appeal, the right to an appeal, as well as the right to a lawsuit in an administrative dispute before the court due to "silence of the administration", although these are general legal institutes which are regulated by provisions the Law on General Administrative Procedure, Law on Administrative Disputes and Law on Expropriation, and the Law itself in regard to these questions does not contain

solutions that deviate from the provisions of general laws.

Compensation for expropriation

In accordance with Article 58 paragraph 2 of the Constitution of the Republic of Serbia, the Law provides that the owner of the expropriated real-estate is entitled to compensation that cannot be lower than the market value of the real-estate.

The Law specifically regulates the right to compensate the owner of real-estate in the following situations:

- 1) When the subject of expropriation is construction land on which a building is constructed contrary to the law, and an application for legalization has been filed for the subject building upon which, until initiation of the expropriation process, a final and binding decision has not been rendered or an application was filed for the subject building in accordance with the provisions of the Law on Special Conditions for Registration of Ownership Rights on buildings constructed without a construction permit upon which a final and binding decision has not been rendered, the owner of such building has the right to compensation for the constructed building in the amount of the estimated construction value of said building.
- 2) When the subject of expropriation is construction land on which a building is constructed over which

the ownership right is registered in accordance with the provisions of the law regulating legalization or on the basis of the Law on Special Conditions for Registration of Ownership Rights on buildings constructed without a construction permit, and for which the land is for regular use is not determined in accordance with the law regulating construction land, the owner of such building has the right to compensation in the amount of the market value of real-estate.

- 3) Persons who have acquired the right of ownership of construction land in the process of converting the right of use into ownership rights without compensation, are entitled to compensation for the market value of the land if the right of use is acquired by legal transaction with compensation, namely if the right to use construction land is derived from the right of the earlier owner.
- 4) When the registered holder of the right of use on developed and undeveloped construction land is the person from Article 102 paragraph 9 of the Law on Planning and Construction, the expropriation process shall be conducted in relation to the title ownership holder of the land, respectively owner of the building.

When the decision on expropriation becomes final and binding, the procedure

for the agreed determining of the compensation for the expropriated real-estate shall be initiated, in accordance with the provisions of the Law on Expropriation. From the date of submitting the proposal for expropriation, until rendering of the decision on expropriation, the parties can agree on the forms and amount of compensation outside the procedure prescribed by the Law.

The law explicitly provides for the possibility that the Ministry of Finance, at the request of the user of expropriation, decides that the real-estate is handed-over to the user of expropriation before the decision on compensation for expropriated real-estate becomes final and binding, respectively before the date of concluding the agreement on compensation for expropriated real-estate, but not before rendering the second-instance decision upon the appeal against the decision on expropriation, if it deems it necessary due to the urgency of constructing a certain building or construction work. This is also a needless repetition of the solution already contained in the Law on Expropriation, however it should be noted that the said provision is imprecise in defining conditions for derogation from the general rule with respect to the moment of hand-over of real-estate to the user of expropriation, respectively it leaves a lot of space for the competent ministry to decide at its own discretion.

The Tax administration estimates the market value of the construction land and buildings.

Terms and method of issuing the building permit

In this part, the Law primarily refers to the application of the provisions of the Law on Planning and Construction in terms of the location conditions, construction permits, notification of commencement of construction works and occupancy permit, unless the Law itself provides otherwise.

Interestingly, the Law provides that, as proof of regulating obligations in terms of contributions for the development of construction land, the investor shall, together with the request for issuing the construction permit, submit the agreement on the regulation of mutual rights and obligations related to the preparing and equipping of construction land with resources of natural or legal persons, concluded with the unit of local self-government. Furthermore, the Law gives the possibility to the local self-government to prescribe by its decision that works related to the development of construction land, including construction of public purpose areas, as well as construction of public facilities in public ownership realized by the investor on the basis of the agreement, are recognized as a settlement of the total obligation for contributions on behalf of the development of construction land. The final calculation between the investor and the City of Belgrade will be made upon completion of construction of all facilities covered in the Planning document.

The above provision gives the opportunity to entrust to investors the construction of public facilities without the conducted procedure of public procurement, without competition and pre-determined price and payment terms, and that the costs of

constructing these facilities in full are recognized as payment of contribution for the development of construction land, which is contrary the Law on Public Procurement.

Agreements for bringing the land to its urban purpose

Upon completion of the expropriation process and registration of the ownership right on real-estate, the Republic of Serbia can, in accordance with the Law on Planning and Construction, long-term lease the undeveloped construction land, with the aim of bringing the land to its urban purpose.

The above provision is imprecise and leaves open many questions concerning the legal fate of the subject land. First of all, the Law does not determine the period for which the land would be leased, but only mentions the possibility of “long-term lease” of the land in accordance with the Law on Planning and Construction, which again does not define the term “long-term lease”. Furthermore, it is not clear whether the land is leased with or without compensation. Also, the question is what happens to the land after expiration of the lease agreement, particularly bearing in mind the provisions of Article 103 paragraph 3 of the Law on Planning and Construction which provide that on construction land in public ownership, for which the lease agreement was concluded without compensation in accordance with the provisions of said law, at the request of the tenant, the lease right shall be converted into the ownership right without compensation, when the decision on the occupancy permit for the building

constructed on the land becomes final and binding, if it is so provided by the lease agreement.

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Besides the lease agreement, the Republic of Serbia and the city of Belgrade can, with the aim of bringing the land to its urban purpose, also conclude other agreements, especially agreements whereby they entrust the construction, rehabilitation, recovery or reconstruction of buildings, utilities and other infrastructure, as well as all other areas for public use, including the construction of public facilities in public ownership and their maintenance, as well as the performance of certain utility and other jobs within the scope of the Planning document. The Law provides that conclusion of the lease agreement with respect to the land within the scope of the Planning document is not a precondition for the conclusion of these agreements.

Since the Republic of Serbia and the City of Belgrade can already conclude the aforementioned agreements according to regulations in force, the meaning and purpose of this provision is extremely imprecise.

Finally, it can be concluded that the Law, on the one hand, contains a number of provisions that unnecessarily include repetitive solutions that are already contained in the provisions of general laws, while, on the other hand, it does not regulate and leaves open many important issues in relation to the matter which is the subject to the Law and/or leaves the possibility for solutions which are in contradiction with the existing systemic laws.