

THE ROLE OF GEODESY AND CADASTRE IN THE PROCESS OF RESTITUTION

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Summary *The property relations in the former Yugoslavia changed a lot. Social ownership was acquired and based on legal institutions according to which it had a privileged position in relation to private property. Later, former owners of taken property sought compensation, where the term restitution appeared for the first time, as a process of returning the taken property. The subject of this paper is the role of geodesy and cadastre in the restitution process.*

Keywords: *restitution, nationalization, geodesy*

1. INTRODUCTION

After the Second World War, in Serbia (then within Yugoslavia), on several grounds (confiscation, agrarian reform, nationalization, expropriation, etc.), private movable and immovable property was nationalized or taken away [1]. Immovable property was subsequently gradually restored, pending the Law on Restitution of Property to Churches and Religious Communities, in 2006 (according to this law, in total 3049 requests were submitted), the Law on Restitution of Taken Away Property and Compensation, 2011 (75414 requests were submitted) and the Law on Removing the Consequences of the Property Confiscation for Holocaust Victims who do not have living legal inheritors, 2016 (about 450 requests have been submitted so far, with the deadline for submitting a request until the end of February 2019) - by which the final denationalization is carried out. Denationalization has a opposite meaning of nationalization, but in wider sense, It means returning former owners which is taken away from different reasons. In submitted requests, from immovable property a large number of buildings, flats, factories, mines and land (agricultural, forest or construction land in total 173000 hectares) are claimed. By the end of February of the current year (2018), according to the Law on Restitution of Property to Churches and Religious Communities, property rights were restored and established on 58558 hectares of land and 90269 m² of buildings - business premises, apartments and buildings, according to the Law on Restitution of Taken Away Property and Compensation-30130 hectares of land and 435500 m² facilities, and according to the Law on Removing the Consequences of the Property Confiscation for Holocaust Victims who do not have living legal inheritors - about 530 hectares of land and 3878 m² of facilities were returned.

In all these cases, when deciding on the property return, as well as where it was not possible to return in their so-called natural form, they have made monetary compensation for confiscated property (about 60% cases were solved), among others, cadastral data and documentation were used. However, in many cases where the identification of real estate was complex, on the basis of the competent Real Estate Cadastre data, often because of the lack of archival cadastral documentation, in the areas where was cadastral register or where the land consolidation was carried out and where changes in the field were not recorded in the Real Estate Cadastre, expertises were carried out by surveying engineers, and in some cases, by civil engineers.

2. LEGAL BASIS FOR APPLICATION OF SURVEYING ENGINEERING AND CADASTRE IN THE RESTITUTION PROCESS

In the Republic of Serbia, over twenty-five years, as it is the Constitutional Court in its decision no. 119/2008 of 20 April 2011 noted "partial and gradual" denationalization is being conducted [2]. Many laws regulating the issue of denationalization were adopted, of which the most important today are: The Law on the Restitution of Property to Churches and Religious Communities, the Law on Restitution of Seized Property and Compensation and the Law on Removing the Consequences of the Property Confiscation for Holocaust Victims who do not have living legal inheritors. The legislator entrusted denationalization procedure under these laws to the Restitution Agency.

The use of cadastral data and documentation, as well as the application of geodetic-technical work, has great importance in the procedure for issuing a decision on return or compensation for taken away property. This was recognized in the early 1990s, so in 1991, the Decree on the Implementation of the Law on the Way and Conditions for the Rights Recognition and the Return of Land Transformed into Social Ownership Based on the Agricultural Land Fund and Confiscation because of Unpaid Obligations from Obligatory Repurchase of Agricultural Products [3], with Technical Instruction for performing geodetic-technical works in the land restitution process.

The importance of cadastral documentation and geodetic-technical works is also recognized in the Law on Restitution of Property to Churches and Religious Communities, where, in Article 26, Paragraph 1, subparagraph 1, it is prescribed that "the request must contain data on the type, the size and location of the property to which the request refers to ", and in paragraph 2, subparagraph 3 of the same article, " with the request, if it refers to the real estate, it shall also submit an excerpt from the public book in which registration on real estate is made, as well as data from the land cadastre or other documents that more closely determine this data " [4]. It is known that the largest part of the taken land was in the area of Vojvodina, where then was the old Austro-Hungarian survey, with a different cartographic projection, coordinate systems and scale and the captive system of units was used, so, It is obvious that it is necessary during the land identification to make transformation and convert the area into a valid state coordinate system, or to determine on which parcel the taken property is today in order to determine the way of return. The above-mentioned problem of the relation of old and new survey, with different mathematical-cartographic-geodetic methods, is valid for the whole Serbia. In order to return the taken ownership right on immovable property, it is

necessary to provide data in the solution which, according to the valid (current) survey, describe closer this property (number of cadastral parcel, area, cadastral municipality) in order to be able to return back the same value of taken property, after decision execution, in accordance with the Article 30 of the Law.

The Law on Restitution of Taken Away Property and Compensation also treats cadastral and geodetic data because it faces the same problem in identifying real estate. Thus, by the decree of Article 42, paragraph 3, subparagraph 2 of this Law, the request also contains data on "confiscated property to which the request refers - type, name, size, or area, the place where the real estate is located, the number of cadastral parcel according to the old and the valid survey, appearance and state of the property at the time of confiscation ... ", whereas by the decree of paragraph 4, subparagraph 2 of the same Law, is determined to attach with the request, in the original or certified photocopy - excerpt from real estate register, excerpt from register of movable items, certificate by the Republic Geodetic Authority on the identification of cadastral parcels of old and new survey, except for cadastral parcels for which the land consolidation was conducted. " Also, by the decree of same Article, paragraph 2, is prescribed that If the taken agricultural or forest land was subject of land consolidation after the confiscation, the former owner has the right to return the consolidated land [5]. Finally, by the decree of Article 47, paragraph 1, is prescribed that the Restitution Agency "shall determine all the facts and circumstances of importance for deciding on the request and shall make a decision determining the user, the property to be returned" ... It is clear that the owner can register its property in the Real Estate Cadastre only on the basis of current survey, which is undoubtedly identified in the denationalization procedure.

Law on Removing the Consequences of the Property Confiscation for Holocaust Victims who do not have living legal inheritors also contains decrees on the application of cadastral data and geodetic-technical works in denationalization procedures. By the decree of Article 15, paragraph 1, subparagraph 2 of this Law, It is prescribed that request also must contain data on "confiscated property to which the request refers - type, name, size, or area, the place where the real estate is located, the number of cadastral parcel according to the old and the current survey- except If the request refers to the agricultural land that is consolidated, appearance and state of the property at the time of confiscation ... ", whereas by the decree of paragraph 2, subparagraph 1 of the same Law, is determined to attach with the request, in the original or certified photocopy - excerpt from real estate register, excerpt from register of movable items, certificate by the Republic Geodetic Authority on the identification of cadastral parcels of old and new survey, except for cadastral parcels on which the land consolidation was carried out. By the decree of Article 18 paragraph 1, the Restitution Agency "shall determine all facts and circumstances of importance for deciding on the request and make a decision by which the request is adopted and property determined that is transferred to the property of the Jewish municipality" ... and by the decree of Article 21, paragraph 1, "on the basis of a final decision determining the property transferred to the property of a Jewish municipality, the Jewish municipality has the right to register ownership on that real estate ..." [6]. It is understood, as with the previous two Laws, that the property can be entered in the real estate cadastre, only on the basis of the current survey.

Having in mind the significance of the surveying engineering and the cadastre in the restitution procedure, as regulated by the Laws, the Restitution Agency employs persons of geodetic profession who are in charge of these tasks.

3. THE IDENTIFICATION OF TAKEN LAND

The application of geodesy and cadastre in the restitution procedure refers to the identification of taken property (land, buildings or special parcel parts) of all types, purposes and categories and determining their present state in regard to the confiscation time.

3.1. LAND (EXCEPT AGRICULTURAL IN LAN CONSOLIDATION)

In the case of land identification, the following shall be performed:

- Comparison of the number, shape, area and position of the taken parcels of old survey with the current cadastral situation i.e. cadastral parcels of new survey, and determining whether the old plots according to the position and surface correspond to new ones or because of the possible partitioning, they are part of two or more plots of new survey, and calculation of the overlapped parcel surfaces in old and new survey.
- Determination of the state of construction of the identified parcels (existence of buildings, underground facilities, plumbing and installations or other facilities of any kind).
- Identification of the genesis of changes in the ownership form, changes in the types of rights and legal relationships, as well as the volume of holder shares of taken land.
- Determination the changes in the land type, the purpose and method of use, the cadastral class and the income of the taken parcels in relation to the current cadastral situation.
- Determination (if necessary) the legal basis for registration of changes and taxes on nationalized plots.

Identification in all listed issues is carried out by the Republic Geodetic Authority, or the competent Real Estate Cadastre through its certificates (certificate of identification of cadastral parcels of old and new survey, certificate of the history of changes in real estate), where the other prescribed documentation is also required for the decision making (copies of cadastral plans of old and new survey, land registers, real estate lists, individual documents from the collection of land register documents, etc.).

Problem occurs in cases:

- When the parcel in the old survey is located on two or more parcels in current survey and where it is necessary to calculate the overlapped surfaces.
- When in the acts of nationalization, an incorrect number of taken parcel is entered.
- When the request refers to the areas, where at the time of the nationalization of the immovable property, the inventory cadastre (properties described in the measures and boundaries) was in force, or during the war, cadastre documentation was completely destroyed.
- When from the obtained certificates and cadastral documents can not be precisely determined whether the parcels under agricultural and forest land that can be returned have an access to road.
- When according to cadastral documentation (copy of the plan, real estate list) there are no recorded (plotted on plan, or registered in the real estate list) built structures of any type on the parcel (buildings, roads, canals, etc), but they exist on-site. The problem is mainly related to construction land, however, in practice, there are cases

where such built structures, most often without construction approval, are also on agricultural and forest land.

- When the taken land was given for army utilization, so in the cadastral documentation, the topographic content (military facilities, roads, etc.) is hidden (not shown).

3.1.1. Taken parcel of old survey is located on two or more plots of new survey

Real Estate Cadastre offices, in principle, issue certificates that parcels of old survey are part of a new survey parcels, without calculating the respective areas. In such cases it is necessary to engage experts in geodetic profession. It is understood that the first step is digitalization of the old analogue plan (scanning and converting an analogue plan into a raster image, if that is not already done by the Republic Geodetic Authority, then transformation, georeferencing, and vectorization) [7].

Digitization of analogue plans for restitution needs has its specificity in the transformation and georeferencing phase, i.e. placing scanned raster images in the national coordinate system and solving the issue of scales, translation and rotation. Namely, for restitution, it is not important to preserve the accuracy of the entire digitized cadastral plan, but the aim is to achieve the highest accuracy partially, for the narrow area where is the parcel (or group of parcels) that are the subject of restitution (cadastral parcel of old and new survey is shown in Figure 1). After overlapping the old digitized plan and a new survey plan with the appropriate software, measurements of the total area of the taken parcel, or its parts on individual parcels of the new survey, are done.

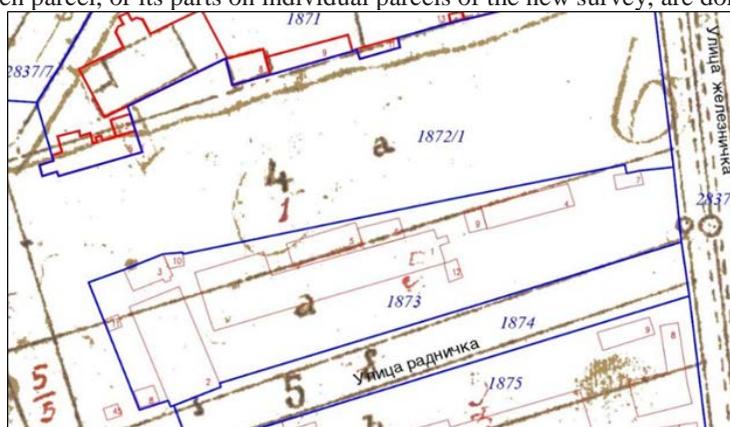


Figure 1. Cadastral parcel of old survey no. 4□1, CM Zabrežje, Obrenovac, obtain whole cadastral parcel 1873 and parts cadastral parcels 1871, 1872/1, 2837/1 of new survey

3.1.2. The taken land in the areas where the cadastral register was in force or cadastral documentation has been destroyed

In such cases, the competent Real Estate Cadastres are not able to issue precise certificates and submit the necessary documentation on the basis of which they could determine the precise facts necessary for deciding in the procedure before additional

preliminary professional field and administrative work. Therefore, it is necessary that the geodetic expert perform renewal survey, accurately identification and mapping of the taken land (mainly based on deeds or other available evidences of ownership, available cadastral plans, sketches, manuals and other graphic documentation), followed by the issuing of a certificate by Real Estate Cadastres [5].

3.1.3. Access to roads for the land that is the subject of the return request

According to the Article 25, paragraph 1, subparagraph 2, the Law on Restitution of Taken Away Property and Compensation, the agricultural and forest land does not return, if "a new land partitioning, is necessary in order to provide an access to road for the land that is subject of request". If it is not possible (from the obtained certificates and cadastral documents) to determine precisely whether an access to road exists, it is necessary to make an on-site survey.

3.1.4. Objects built on the parcels, but not recorded in the Real Estate Cadastre

In this case also, on-site survey is necessary to determine the factually situation, i.e. number, type and purpose of built objects (including military). According to the Law on Restitution of Taken Property and Compensation, the construction land on which a permanent building was built, including those that are in the process of legalization, is not returning.

3.2. AGRICULTURAL LAND IN LAND CONSOLIDATION

For the nationalized agricultural land that was subject of the land consolidation, no certificate is issued for the parcel identification of old and new survey by the Republic Geodetic Authority, but the certificate that the land consolidation in a certain area was conducted. By the conclusion of the Restitution Agency officials that are conducting the procedure, the selected expert of the geodetic profession is instructed to perform the expertise and propose another appropriate agricultural land in the same cadastral municipality, which is in the state ownership.

In the expertizing procedure, the following is performed:

- Identification of confiscated parcels with the condition prior to their entry into the consolidated mass - the book of the consolidated mass fund (numbers, areas, classes, cultures and controlling If the parcels are divided, etc).
- Determination of the culture, class and surface of the land that has been entered into the consolidated mass (the total area and surfaces of the same classes, where they are converted into the meter system of measuring units, if the areas of the parcels were in another system, and if this conversion has not been done before).
- Conducting the taken land to the first class land (by multiplying the area under the class by the corresponding factor), whereby it is reduced, i.e, the area for the newly designed road and canal network reduces, and the total number of units of taken land is finally reached.
- Preparation of a proposal for the return of existing agricultural land in state ownership, which according to the value units corresponds to the land that has been taken. The land proposed for returning does not have to be of first class, but can be

of any class, so the total returning area can be larger or smaller than the taken one. It is only important that the sum of the value units of the land proposed for return is equal to the sum of the value units of the taken land.

Based on expert Opinion, the official person of the Restitution Agency that conducts the procedure, makes the appropriate decision.

3.3. OBJECTS

Identification of objects taken away from individuals and legal entities, in essence, refers to the comparison of the current state of objects with its state in the period of nationalization. This is why following is done:

- Comparison of data on the location of old buildings from the period of nationalization (according to the act of nationalization) with current location data (cadastral parcel on which is the building, street, house number, etc.)
- Determination whether the gross surface of the building has been increased by increasing the dimensions: positional, basically (by adding walls) and by height (upgrading), i.e. determining whether the old objects are partially or completely demolished.
- Determination the area and the floors of old buildings, both those that remained in unchanged dimensions, as well as those that were partially or completely demolished.
- Identification of the genesis of changes in the ownership form, changes in the right types of and legal relationships, as well as the volume of holder shares of taken land
- Determination the object users in terms of Article 18, Law on restitution of confiscated property and compensation (users of state institution objects, hospitals, schools, foreign diplomatic and consular representative offices, cultural monuments, etc.).

The problem occurs in cases where the gross surface of the taken object has been increased, or when the old building is partially or completely demolished, and it is not possible to accurately determine the exact facts regarding the changes that are necessary for decision making from the obtained documentation. In these cases, expertise is carried out.

The conclusion of the officials conducting the procedure is directed to the selected expert of the geodetic profession (or civil engineer expert, especially for the part when determining the scope of increased gross surface of the building) to carry out the expertise for the identifying the nationalized objects and determining the resulting changes, where it is necessary to:

- Determine the number, type, purpose, and status of the object on the nationalized land - whether on the parcels there are only objects that were there also in the period of nationalization, whether there are newly built objects (which are registered in the Real Estate Cadastre) or newly built objects which are not recorded and that need to be surveyed and plotted in the appropriate plan. This task solves the construction volume problem of the taken construction land.
- Determine whether the old objects from the period of nationalization remained in the same dimensions, or changes occurred, what are the changes with the exact

testimony, the area and the floors of the old building or its resting part If It was partially demolished.

Figure 2 shows an analyze of object state from the confiscation time untill today. The object is confiscated as residential, ground level, surface area of 186 m², then existing as obj. no. 2 on cadastral parcel (c.p.) 4/1, CM Zabrežje, Obrenovac, now c.p. 1871. In the real estate list remains registered as ground level, the same surface. Condition on-site: The object is enlarged for parts no.2 / 3 (ground level, 46 m²), 2/4 (ground level + 1floor + loft, 30 m²), 2/5 (ground level, 18 m²) and 2/6 (ground level, 8 m²), total enlarged in the basis of 102 m². Extension made without a building permit. Formed 4 apartments whose owners are individual [8].

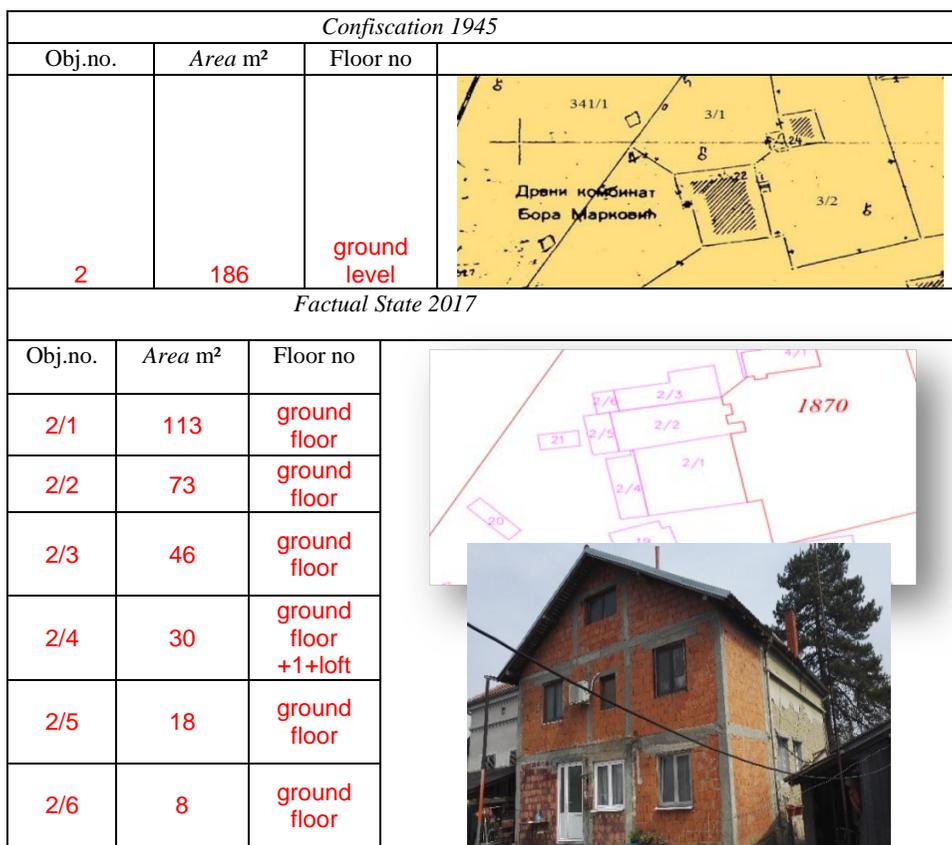


Figure 2. Analyzing the object state from the confiscation time[8].

3.4. SPECIAL OBJECT PART

In order to identify the nationalized special parts (apartments, garages, business premises ...), It is necessary prior to identify the object in which they are located, using the same procedures, data and documentation as previously described.

Key parts of the cadastral documents for the identification of special object parts - those that existed at the time of nationalization, and which are listed in the act of nationalization – are real estate list (especially V list - part 2), i.e. data on the number, area, method of use, object location, ownership form, type of right, scope of share and the right holder of the special part. In addition to the real estate list, other necessary documentation is also provided, especially if it is determined that changes have occurred on nationalized object or that the data from the real estate list are not up to date, such as: a trial report composed of the land registry department of the competent court, so-called P-8 sheet of housing authority, certificate of specification of special physical building parts, building permissions, purchase contracts, archive building project (situation, basics, cuts, prospects), etc.

Problems in identifying specific object parts occur: when an object changed its outer dimensions, when internal construction works were done, when some rooms of one particular part and the common part of the building were merged with other special parts and when changes of purpose on special object parts were made. In these cases, there is an on-site survey, and most often also an expert report, where at first the expert role has a civil engineer, then the expert from geodetic profession.

4. CONCLUSION

Cadastral works and archival cadastre, land register and project documentation are the key material in the process of deciding on the return or compensation of the nationalized property - real estate. Firstly, because this archival material "returns" in time and the condition of the immovable property (objects or their special parts and land) looked at the time of nationalization, and secondly, by overlapping it with the relevant current documentation, the changes on the real estate are discovered.

In cases where the archival documentation is lost or destroyed, or the records of changes in the nationalized immovable property are not up to date, i.e. that the recorded changes in the Real Estate Cadastre are not accompanied by changes in the field, from physical changes in the facilities dimensions or their special parts, to the changes of the right holder of the immovable property, on-site surveys in the presence of experts in the geodetic profession or, if necessary, construction professions are done.

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УЛОГА ГЕОДЕЗИЈЕ И КАТАСТРА У ПОСТУПКУ РЕСТИТУЦИЈЕ

Резиме: Својински односи на просторима бивше Југославије су се знатно мењали. Друштвено власништво се стицало на основу правних установа према којима је оно имало привилегован положај у односу на приватно власништво. Потом, бивши власници одузете имовине, тражили су поврат имовине, где се први пут појављује појам реституција, као процес враћања одузете имовине. Тема овог рада јесте улога геодезије и катастра у процесу реституције.

Кључне речи: реституција, национализација, геодезија