

## **Land Administration in Bosnia and Herzegovina after the war**

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### **SUMMARY**

After having been occupied by different empires more than 500 years long, Bosnia and Herzegovina (BiH) has declared its own independence in 1992, resulting from the implosion of the former Federal Socialist Republic of Yugoslavia. Simultaneously, a civil war began, due to high tensions between communities - Serbs, Bosniacs and Croats - living in the country. War could stop only end of 2005 with the signature of the Dayton Agreement.

As generally civil wars are, this war was particularly hard: from a population of around 4.4 million, more than 0,2 million victims, 2,2 million refugees or displaced persons, hundreds and hundreds of villages totally destroyed by militias or armies in the name of the so-called "ethnic cleansing". Cumulated with the still living sufferings from WW II, the consequences of war(s) will unfortunately remain sensitive for generations. The country was ruined by the war and the economy is today at a very low level.

The International Community has decided to strongly support the reconstruction of BiH. In particular, the Swedish and German Governments decided to finance the drafting of several laws in the economic law sector: law on obligations, law on bankruptcy, law on notaries, law on land registry, law on cadastre, law on property, etc. The law on land registry entered in force in 2003. Other laws on cadastre and on property rights are in drafting, and should be adopted hopefully in 2004, at the latest in 2005. The implementation of this new legal framework shall contribute to the reconstruction of social peace and to the strengthening of the economy.

### **RÉSUMÉ**

Après avoir été occupée pendant plus de 500 ans par différents empires, la Bosnie-Herzégovine (BiH) s'est déclarée indépendante en 1992, résultant de l'implosion de la République Fédérale Socialiste de Yougoslavie. Simultanément, une guerre civile a éclaté, due aux tensions entre communautés - Serbes, Bosniaques et Croates - vivant dans le pays. La guerre n'a pris fin qu'en 1995 par la signature de l'Accord de Dayton.

Comme toutes les guerres civiles, celle-ci fut particulièrement atroce: d'une population d'environ 4.4 million, plus de 0.2 million de victimes, 2.5 million de réfugiés ou personnes déplacées, des centaines de villages totalement détruits par les milices ou les armées au nom de l'« épuration ethnique ». S'ajoutant aux souffrances encore vives de la 2<sup>ème</sup> Guerre Mondiale, les conséquences resteront encore sensibles pour des générations. Le pays a été ruiné par la guerre, et le niveau de l'économie est au plus bas.

La Communauté Internationale s'est engagée à soutenir massivement la reconstruction du pays. En particulier, les gouvernements suédois et allemand ont décidé de financer l'élaboration de plusieurs lois dans le domaine économique: code des obligations, loi sur les faillites, loi sur les notaires, loi sur le registre foncier, loi sur le cadastre, loi sur la propriété (droits réels), etc. La loi sur le registre foncier est entrée en vigueur en 2003. D'autres lois sur le cadastre et sur la propriété sont en phase d'élaboration, et devraient être adoptées en 2004 ou au plus tard en 2005. La mise en oeuvre de ce nouveau cadre légal doit contribuer à rétablir la paix sociale et à soutenir le développement économique.

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# LAND ADMINISTRATION IN BOSNIA AND HERZEGOVINA AFTER THE WAR

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## 1. HISTORY

### **BiH until the Middle-Age**

Called Illyricum in ancient times, the Romans conquered the area now called Bosnia and Herzegovina in the 2nd and 1st centuries B.C. and folded it into the Roman province of Dalmatia. In the 4th and 5th centuries A.D. Goths overran that portion of the declining Roman Empire and occupied the area until the 6th century, when the Byzantine Empire claimed it. Slavs began settling the region during the 7th century. Around 1200, Bosnia won independence from Hungary and endured as an independent Christian state for some 260 years.

### **BiH in the Ottoman Empire**

The expansion of the Ottoman Empire into the Balkans introduced another cultural, political, and religious framework. The Turks defeated the Serbs at the famous battle of Kosovo in 1389. They conquered Bosnia in 1463. During the roughly 450 years Bosnia and Herzegovina was under Ottoman rule, many Christian Slavs became Muslim. A Bosnian Islamic elite gradually developed and ruled the country on behalf of the Turkish overlords. As the borders of the Ottoman Empire began to shrink in the 19th century, Muslims from elsewhere in the Balkans migrated to Bosnia. Bosnia also developed a sizable Jewish population, with many Jews settling in Sarajevo after their expulsion from Spain in 1492. However, through the 19th century the term *Bosnian* commonly included residents of all faiths. A relatively secular society, intermarriage among religious groups was not unknown.

### **BiH in the Austrian-Hungarian Empire (1878-1918)**

At the Congress of Berlin in 1878, following the end of the Russo-Turkish War (1877–1878), Austria-Hungary was given a mandate to occupy and govern Bosnia and Herzegovina, in an effort by Europe to ensure that Russia did not dominate the Balkans. Although the provinces were still officially part of the Ottoman Empire, the Austro-Hungarian Empire annexed them on Oct. 7, 1908. As a result, relations with Serbia, which had claims on Bosnia and Herzegovina, became embittered. The hostility between the two countries climaxed in the assassination of Austrian Archduke Franz Ferdinand in Sarajevo on June 28, 1914, by a Serbian nationalist. This event precipitated the start of World War I (1914–1918). That was a period of high economical development, which is still visible nowadays.

### **BiH in the Yugoslavian Kingdom (1919-1945)**

Bosnia and Herzegovina were annexed to Serbia as part of the newly formed Kingdom of Serbs, Croats, and Slovenes on Oct. 26, 1918. The name was later changed to Kingdom of Yugoslavia in 1929.

### **BiH in the Federation of Yugoslavian Socialist Republics (1945-1992)**

When Germany invaded Yugoslavia in 1941, Bosnia and Herzegovina were made part of Nazi-controlled Croatia. During the German and Italian occupation, Bosnian and Herzegovinian resistance fighters fought a fierce guerrilla war against the Ustachi, the Croatian Fascist troops. At the end of World War II, Bosnia and Herzegovina were reunited into a single state as one of the six republics of the newly reestablished Communist Yugoslavia under Marshall Tito. His authoritarian control kept the ethnic enmities of his patchwork nation in check. Tito died in 1980, and with growing economic dissatisfaction and the fall of the iron curtain over the next decade, Yugoslavia began to splinter.

### **BiH as independent country (since 1992)**

In Dec. 1991, Bosnia and Herzegovina declared independence from Yugoslavia and asked for recognition by the European Union (EU). In a March 1992 referendum, Bosnian voters chose independence, and President Izetbegovic declared the nation an independent state. Unlike the other former Yugoslav states, which were generally composed of a dominant ethnic group, Bosnia was an ethnic tangle of Muslims (44%), Serbs (31%), and Croats (17%), and this mix contributed to the duration and savagery of its fight for independence.

Both the Croatian and Serbian presidents had planned to partition Bosnia between themselves. Attempting to carve out their own enclaves, the Serbian minority, with the help of the Serbian Yugoslav army, took the offensive and laid siege, particularly on Sarajevo, and began its ruthless campaigns of ethnic cleansing, which involved the expulsion or massacre of Muslims. Croats also began carving out their own communities. By the end of Aug. 1992, rebel Bosnian Serbs had conquered over 60% of Bosnia. The war did not begin to wane until NATO stepped in, bombing Serb positions in Bosnia in Aug. and Sept. 1995. Serbs entered the UN safe havens of Tuzla, Zepa, and Srebrenica, where they murdered thousands.

Peace talks held in Dayton (Ohio – USA), led to an Agreement in 1995 that called for a Muslim-Croat Entity (Federation of Bosnia and Herzegovina) and a Serb Entity (Republic of Srpska), within the larger State of Bosnia and Herzegovina. The Federation is made of 10 cantons, 3 of them with Croat majority, the others with Muslim majority. Sixty thousand NATO troops were to supervise the implementation of the Dayton Agreement, of whom about ten thousands are still on site in 2004.

The International Community put in place its so-called High Representative with very extended power, to support and control local Authorities in implementing the Dayton Agreement, in establishing corresponding new structures, in developing new economical and legal environment. NATO troops and the High Representative should retire completely in a few years (2006?). The International Community has also supported the reconstruction of the country with many multilateral as well as bilateral cooperation projects, estimated at more than 1 billion EUR per year since the end of the war.

In 2004, there are unfortunately still many barriers standing on the way of reconciliation, reconstruction and economical development: no real acknowledgement of their faults by the war makers, too strong influence of nationalist political parties, very low progress of democracy, too complicated State structures, high level of corruption and mafia system, collapse of previous socialist economical system without replacement by new economical structures, high unemployment rate and difficulties due to transition to market economy. The hope of the population is set in the perspective of EU membership at long term.

## **2. SOCIO-ECONOMY**

Since the time of the Roman Empire, the Balkans has been a crossroads of religions and civilizations. The ethnic groups now known as Bosnians, Croats, and Serbs are largely the result of different religious and cultural identities created by contact with neighboring empires that expanded and contracted in the Balkans over centuries. With minor differences, they speak the same language, called Serbian, Croatian or Bosnian, according with whom you speak.

Before the war, the population of Bosnia and Herzegovina was approx. 4.4 million (census 1991), it is estimated now at 4.0 million. There are still refugees abroad, and many young people have emigrated or are still emigrating due to the poor economical situation. Life expectancy is significantly lower than in Western Europe.

Bosnia and Herzegovina (around 51000 km<sup>2</sup>) is surrounded by Serbia and Montenegro on the Eastern side, and by Croatia on the other sides. It has just a few kilometers coast with free access to Adriatic Sea in Neum, but without port installation. Access to the sea takes place in Plojce port in Croatia at the Adriatic Sea, or over the rivers Sava and Danube to the Black Sea. The existing transport infrastructure (road or railway) is quite insufficient.

Apart from the Northern plain along the river Sava, the country is very hilly and mountainous, the higher tops being more than 2500 m high. The climate is generally continental, under influence of Central Europe more than Mediterranean Sea, because the higher mountains are close to the Adriatic coast and consequently isolate the country on the Southwest side.

About half of the population is still living in rural areas, generally surviving from own food crops, but without long-term perspective. Most of the farms are very small and not competitive nor compatible with modern European agriculture. After the collapse of the socialist economy, the transformation into market economy is very slow, due to the incapacity of the local Authorities to implement appropriate framework, and to the resistance to privatization procedures. The natural resources consist mostly of energy (water, hydropower, coal), timber (40% forest area) and there are some good capacities and tradition in heavy industry (steel, cement) as well as in small and medium industry (textile, food processing, furniture).

## **3. EVOLUTION OF PROPERTY**

### **Until WW II**

The organization of BiH remained based on the feudal system until WW II. Big majority of land, industry and business was concentrated in the hands of the local aristocracy or of the religious communities. These structures were inherited from the Ottoman Empire, and did not change significantly under the Austrian-Hungarian Empire or under the Yugoslavian Kingdom.

### **Socialist regime**

Many revolutionary legal provisions were introduced during the period 1945 to 1960, which tended to minimize the private property and to transfer it to the State. On the basis of the Constitution of 1946, many laws were adopted like confiscation of property from opponents to the communist "Partizan", impoundment of property of war profiteers, expropriation of private business or industry, nationalization of agriculture land and constitution of

agricultural State-owned enterprises, systematic nationalization of land in urban area. This was real implementation of Marxist principles.

The property rights were transformed in rights of use, limited to the family house or apartment in urban area, or to the farm building and a small land plot in rural area.

With the new Constitution of 1963, certain liberalization was introduced, tolerating private property in restricted conditions. This liberalization became more positive during the 1970s, and was growing significantly in the 1980s. The Constitution was replaced after the independence in 1993 during the war, in the Federation (the Republic of Srpska had its own Constitution), introducing guarantee of human rights and private property again.

### **Privatisation process**

In all transition countries, the return to private property has met difficulties and has required a long period to be completed. In BiH, it has been additionally seriously disturbed by the war, due to free or forced migration (more than half of the population was refugee abroad or displaced in the country), or due to political decisions of changing property in accordance with ethnic cleansing policy.

Nevertheless, privatisation process could start slowly. Apartments, which were built mostly by State-owned companies for their employees, could be purchased by their users to a very reasonable price. Thanks to the recent law on construction land, users of land in urban area can claim for the property of that land, as far as they receive the agreement of the municipal administration. More generally, recently created business and industry are now totally private. The remaining State-owned sector is coming down to a limited part of the economy.

There is no specific law on restitution as it is the case in other countries in transition. There are so many different cases (still more than 100 laws about property in force!), and the State is so poor, that it is very likely that there will never be such a law on restitution. Most of the rights of use from the socialist period shall be transformed in property rights.

### **CRPC**

At the end of the war (1996), the International Community established the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), which mandate expired at the end of 2003. The CRPC was issuing decisions to help people who lost their homes during the war, in form of certificates confirming property rights or rights of use as they were on April 1, 1992, i.e. before the beginning of the war. 312'000 decisions concerning 360'000 claimants have been issued over 8 years, allowing concerned people to enjoy their pre-war homes again. These decisions have had a significant impact on the return of refugees or displaced persons.

### **New law on property**

There is a new law on property under drafting, which should be ready for adoption procedure still in 2004. This law is necessary to:

- Establish the definition of property in accordance with European standards and market oriented economy
- Establish specific provisions related to immovable property (individual ownership, co-ownership, apartment ownership, encumbrances, mortgages, purchase procedure, etc.)
- Replace and cancel more than 100 laws still in force, and establish transitory provisions to straighten out the real rights created by these laws.

This law is essential to create a comprehensive legal framework, to build the confidence of the general public and to promote economical development.

#### **4. CADASTRE SURVEY**

##### **First systematic survey before WW I**

The first systematic large-scale mapping was made during the Austrian-Hungarian time, by the Austrian military administration. These maps were covering the whole territory of BiH, generally on scale 1:6250 and in some towns on scale 1:1562. They were providing location and size of land parcels, and basic description for the land registry.

The content of these maps was rather poor, mostly limited to the survey of parcel boundaries, constructions and land use, with parcel numbering and territorial boundaries, but without detailed topographic content.

These maps were used as reference for the setting up of land books according to the Austrian law. They are today still in use as reference of the valid old land books, but are in very bad conditions. This first survey is known as “old survey”.

##### **New survey from 1960 to 1990**

With the strong economic development and modernization of the Socialist Republic of Bosnia and Herzegovina after WW II, the needs for large-scale geographic information were growing fast. The existing mapping could not meet these needs, so that it was decided to edit a complete new map, in scale 1:1000 in urban area, and 1:2'500 in rural area.

The landowners or possessors were asked to signal the boundaries of their parcels with marks, which were visible on aerial photographs. The land parcels were stereo-plotted and drawn on stable paper pasted on aluminium sheet. Simultaneously, a complete topographic 3D map was plotted, offering a very homogeneous large-scale mapping system all over the country. Since that, the updating has unfortunately not been made systematically and must be now performed before use.

This survey is called “new survey”. Thanks to its good quality, this survey can easily be digitised and used as basic geographic information for the future Land Information System. In particular, it must be used in the new land registration system.

In addition to the maps, information was kept in form of lists of parcels with parcel description and name of users. In cases where old land books have been destroyed, these lists have been maintained in a similar way to land registry, and can be considered as a reliable basis to re-establish property rights.

The Entity geodetic administrations and municipal cadastre offices are in charge with the keeping and updating of this documentation.

##### **The real estate cadastre**

With the new law of 1984 on cadastre survey and real estate cadastre, BiH Authorities introduced a new system of registration, including cadastre survey and property rights. An administrative commission should investigate systematically property rights and other real rights on the basis of the new survey. All information should be managed in a single database, including legal information as well as technical information. Until the last war, some Municipalities could be covered with this registration system, representing less than 10% of the country. The progress of works was stopped by the war.

The concept of this system was satisfying from a management point of view (single database, one-stop-shop for the client), but offering no neutral and independent decision procedure in matter of property rights. The information collected was also too much detailed (every room in every flat!).

Where it has been legalised, the real estate cadastre will be taken over as existing record and introduced in the new registration system. This operation should be executed by automatic transfer function in two steps, first in selecting the relevant information, and secondly in transforming this information in the appropriate form.

### **New law on cadastre**

As a new law on land registry has been adopted, the law of 1984 has to be adapted to the new situation. In fact, it will be the opportunity to review completely the tasks of the cadastre, to think about new institutional framework, and to introduce the licensing of surveyors for the development of the private sector. This law is in drafting and should be adopted in 2004.

## **5. LAND REGISTRY**

### **Austrian-Hungarian “Grundbuch”**

From 1880, the Austrian-Hungarian land registry system was systematically implemented, simultaneously with the cadastre survey. Land registry judges in the first instance courts were making decisions, so that property rights and other in rem rights could be entered in specific forms bind in books. The whole territory of BiH has been covered before WW I.

Under the Kingdom of Yugoslavia, the law of 1930 was continuing this registration system, which has been kept up-to-date and in good conditions until WW II. During that war, the books were destroyed in some Municipalities, as consequence of internal fights between different Yugoslavian factions. After the war, these books have not been restored, and are still missing today.

When the books are still available today, i.e. in more than 80% of the country, they are the only available registration system of property rights.

### **Deposited contracts**

Since 1993, privatisation of apartments has started according to specific laws. As the legal framework was not adapted, neither to define one apartment as having a right to a common property, nor to register this new type of property in the old books, it was decided to create a specific registration system. In fact, selling-buying contracts are registered, but without control of consistency.

As soon as the new law on property will have been adopted, the legal framework will be available to define precisely the content of apartment ownership right. These deposited contracts shall be taken one after the other, and transferred in the new registration system.

### **New law on land registry**

In November 2002 in the Federation of BiH, and in July 2003 in the Republic of Srpska, the same law on land registry has been adopted. This law is closed to European continental law (Germany, Austria, Switzerland, Baltic countries, etc.), with the principal characteristics that property rights and other real rights are only constituted when they have been registered in the land book. The first instance courts are in charge with the keeping of the land books, and



land registry clerks are acting as decision makers in matter of registration, like the old land registry judges.

Ministries of Justice have issued three by-laws, as guidelines in land registry matters, in electronic maintained land registry and about qualification of land registry clerks. So the legal framework is completed and can be applied.

Recently, the justice sector has been also reformed. The number of first instance courts has been reduced to 48 courts, each of them having a land registry office. This courts organisation is under implementation at the beginning of 2004 and should be achieved until mid-2004.

## **6. NEW REGISTRATION SYSTEM**

### **Methodology**

Since the 1880s, there was no real change in the daily practice in the land registry offices. Clerks are treated requests manually; they are still issuing extracts of land books in copying manually the contents of the books.

From 2004, the land registry shall be managed in electronic form. As a first step, all existing records shall be entered in the database, as they are in the old books or in the real estate cadastre. Then there will be a huge task of updating, in particular in entering the parcel descriptions in accordance with the new cadastre survey, but also in taking over the deposited contracts and in creating new records where the old books have disappeared. All this records shall be printed and signed by the land registry clerks.

After several years, when the database will be stable and secure enough, and when the land registry clerks will be psychologically ready, it will be possible to give up printing records and to maintain a full electronic system. This has taken about 10 years in some other Central Europe countries; it could go faster in BiH, because the country could benefit from the experience made in other countries.

### **Tools**

Terms of Reference have been developed in 2003 and the corresponding land registration software is under development by a local company and should be ready in the second part of 2004. The functions of this software are supporting the daily work of land registry clerks and assuring the necessary data processing in accordance with the law. The database is managed with the Oracle® database management system.

As there is for the moment no Wide Area Network available, one Local Area Network shall be installed in each court, with one database server, several workstations and peripherals. At long term, a central database system should replace this decentralised system, as soon as telecommunication facilities will be available. The database organisation allows then easy access over Internet.

### **Land Information System**

For the client, easy and transparent access to reliable information is important. The client must neither know how information is organised, nor who is responsible for the management. He must only have the right to access, which is completely free in BiH.

As first source of information, the cadastre database must be structured in compliance with the requirements of as many users as possible. One important user is the land registry, as far

as the description of immovable objects is exclusively a task of the cadastre: geographic position, location, size, use, area, etc. There must be a favoured interface between cadastre and land registry, so that both databases shall always remain consistent and coherent together.

## **7. EUROPEAN INTEGRATION**

### **Political objective**

As for all other countries of former Yugoslavia, the objective of the political Authorities as well as of a significant part of the population is to become a member of the European Union. The way to reach this goal is still long, but is very likely the best way to achieve long-term peace in the West-Balkan region. This goal can only be achieved in implementing many reforms in the political and legal system aiming to establish democracy, internal peace and freedom inside of the country, but also in developing friendly relationships with the neighbour countries.

### **Contribution of land administration**

The land administration sector, including both cadastre and land registry, can obviously contribute in a significant manner to reach this goal, in:

- Contributing to draft and adopt laws and by-laws meeting European legal standards, market economy standards and security of rights related with immovable property,
- Setting up a consistent, efficient, reliable and up-to-date cadastre database for the description of objects of immovable property,
- Setting up secure, independent and neutral procedures for the statement of immovable property rights and other related real rights,
- Managing a reliable and high performance land information system for the economical development.

Annex: map of BiH

Sarajevo, April 2004.

## REFERENCES

*Weike Joerg*, Situation des Grundbuchrechts in Bosnien und Herzgowina, Zeitschrift Rechtspfleger – Studienhefte, Heft 5, September-Oktober 2003, Seite 139 und ff.

## BIOGRAPHICAL NOTES

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ANNEX



Map of Bosnia and Herzegovina