Historical Aspects of the Non-translative Effect of Real Estate Contracts in Serbia: From the Serbian Civil Code to Current Legislation

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ABSTRACT
This paper explores the evolution of property rights and land registry systems in Serbia, spanning from the adoption of the Serbian Civil Code in 1844 to the dawn of the 21st century. In its early stages, three distinct systems coexisted: land registers, property deed systems, and property cadastres, with the first two serving as the primary legal records. Following the introduction of the 1844 Serbian Civil Code, which was based on the Austrian model, the land register system was established, though its implementation proved challenging. The onset of the socialist regime in 1946 ushered in a shift towards state ownership of property, with confiscation and nationalization becoming widespread practices that fundamentally altered property rights and registry procedures. However, despite these changes, private ownership persisted, albeit in limited forms. A landmark in this progression came with the 1981 Real Estate Transactions Act, which allowed the sale of privately-owned immovable property, though subject to certain restrictions. After the fall of socialism, efforts to unify and modernize property records reached a significant milestone with the establishment of the Republic Geodetic Institute in 1992. Subsequent legal reforms, including the Real Estate Transactions Act of 2014 and the 2018 Act on the Procedure of Registration in the Cadastre of Immovable Property and Utilities, reinforced the legal frameworks governing property registration and the transfer of ownership, aiming to ensure transparency and legal certainty in property transactions. This historical account delves into the interplay between legal reforms, societal changes, and property rights in Serbia over the past two centuries.
KEYWORDS
Property rights registration, Serbian Civil Code, land registers, socialist regime, nationalization, real estate transactions.

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Aspecte istorice ale efectului non-translativ al contractelor privind proprietatea imobilelor în Serbia: de la Codul Civil sârb la legislația actuală

Rezumat
Acest articol examinează evoluția drepturilor de proprietate și a sistemelor de evidență funciară în Serbia, de la adoptarea Codului Civil sârb în 1844 până la începutul secolului 21. Inițial, au coexistat trei sisteme distincte: registrele funciare, sistemul cărților de proprietate, respectiv cadastrul de proprietate, primele două având rolul principal de registre legale. După adoptarea Codului Civil sârb din 1844, bazat pe modelul austriac, a fost introdus sistemul registrelor funciare, dar implementarea sa a întâmpinat dificultăți. Începutul regimului socialist din 1946 a adus o schimbare către proprietatea de stat, confiscarea și naționalizarea devenind practici răspândite care au schimbat fundamental drepturile de proprietate și procedurile de evidență. Cu toate acestea, proprietatea privată a continuat să existe într-o formă limitată. Legea privind tranzacțiile imobiliare din 1981 a reprezentat un moment crucial, permițând vânzarea proprietăților imobile private, însă cu anumite restricții. După socialism, eforturile de unificare și modernizare a evidenței proprietăților au culminat cu înființarea Institutului Geodezic al Republicii în 1992. Legislația ulterioară, inclusiv Legea privind tranzacțiile imobiliare din 2014 și Legea din 2018 privind procedura de înscriere în cadastru a proprietăților imobile și a utilităților, a consolidat cadrul juridic al înregistrării proprietăților și al transferului dreptului de proprietate, având ca scop claritatea și securitatea juridică a tranzacțiilor imobiliare. Această prezentare istorică analizează relația dintre reformele juridice, evoluțiile sociale și drepturile de proprietate în Serbia în ultimele două secole.
Cuvinte cheie
Înregistrarea drepturilor de proprietate, Codul Civil sârb, registre funciare, regim socialist, naționalizare, tranzacții imobiliare.

I. INTRODUCTION

In classical Roman law, a contract of sale was regarded as a consensual juridical act, meaning that it came into existence when the parties reached an agreement on both the price and the object.[2] From that moment, the parties were bound to fulfil their respective duties: to deliver the goods, and to pay the price.[3] Furthermore, the seller's obligation was to ensure that the object was in peaceful possession rather than to transfer ownership.[4] However, if the object represented a fundamental means of production, the seller was also required to adhere to the *mancipatio* formalities.[5]

In such instances, the mere conclusion of a contract was insufficient to transfer ownership rights on the object involved. This was particularly true when the object of

2 Magdolna Sič: Translativno dejstvo ugovora o kupoprodaji u zapadno rimskom vulgarnom pravu i zadržavanje ovog koncepta u savremenim pravnim sistemima, *Zbornik radova Pravnog fakulteta u Novom Sadu,* 3/2004, pp. 285–311, p. 286.
3 Sič (2004): p. 286.
4 Sič (2004): p. 286.
5 Sič (2004): p. 287.

a contract was immovable property, which was considered a fundamental means of production.[6] In these cases, the transfer of ownership rights required not only the conclusion of a contract but also a public act to effect the conveyance of those rights.[7]

Although transfers of land were rare in those times, when they did occur, they were carried out through a ritual known as *mancipatio.* This process was highly ceremonial, involving the presence of five witnesses and a scale-bearing measurer, thus ensuring both the public nature and the legitimacy of the change in ownership.[8]

Property boundaries were safeguarded through symbolic gestures, and transactions were made public, offering the necessary legal protection at a time when the distinction between ownership and possession had not yet fully developed.[9] In early legal conceptions, possession of property was intrinsically linked to ownership—whoever used, physically occupied and declared the land as their own was considered its rightful owner and could exercise control over it.[10] Due to the absence of established legal conceptions, the mere fact of possession was regarded as sufficient evidence of ownership, obviating the need for written records or a defined legal framework discriminating between various forms of property rights.[11]

As time passed, the notion that the transfer of rights to immovable property should be public and ceremonial took root in Germanic law as well, with courts eventually assuming pivotal roles.[12] This shift arose from the economic and existential significance of land, leading to the establishment of a custom where ownership of immovable property was transferred personally before the court. Both the transferor and the transferee made statements regarding the transfer of ownership,[13] which were recorded in the court and subsequently entered into official books for systematisation.[14] This custom laid the foundation for the formal process of acquiring property and other real rights to immovable property, culminating in the practice of registration in public official books.[15]

Although courts were established in Serbia during the First Serbian Uprising at the beginning of the 19th century, no written civil laws existed at the time.[16] It was not until 1844, with the enactment of the Serbian Civil Code, that provisions regarding the non-translative effect of a contract on the sale of immovable property were introduced.[17] As the Code was drafted based on the Austrian Civil Code of 1811, it incorporated the

6 Sič (2004): p. 288.
7 Sič (2004): p. 288.
8 Magdolna Sič: Katastri, zemljišni registri i isprave o kupoprodaji u Starom Rimu – Elemeneti modernih zemljišnih knjiga, *Zbornik radova Pravnog fakulteta u Novom Sadu*, 2/2013, pp. 279–302, p. 280.
9 Sič (2013): pp. 280–281.
10 Sič (2013): pp. 280–281.
11 Sič (2013): p. 281.
12 Radenka Cvetić: Evidencija nepokretnosti, *Zbornik radova Pravnog fakulteta u Novom Sadu*, 1–3/2002, pp. 297–312, p. 299.
13 Cvetić (2002): p. 299.
14 Cvetić (2002): pp. 299–300.
15 Cvetić (2002): p. 300.
16 Dušan Nikolić: Dva veka građanskog prava u obnovljenoj srbiji (1804–2004), *Zbornik radova Pravnog fakulteta u Novom Sadu*, 2/2004, pp. 277–309, p. 281.
17 §292 and §294, Serbian Civil Code 1844.

relevant provisions pertaining to the non-translative effect of a real estate sale contract as well.[18]

As has already been noted, the economic and existential significance of land underscored the necessity for a public and solemn process in transferring property rights. Such records were entrusted to courts or other competent state authorities, thereby imbuing them with legitimacy and authority.[19] Over time, the development and expansion of real estate transactions gave rise to the need for a reliable means of publishing the acquisition of ownership rights to real estate, thereby ensuring legal certainty in these transactions.[20]

Initially, the purpose of registration in the land registers was to provide publicity, making information about the true legal status of immovable property accessible to the widest possible audience. However, influenced by Germanic law, the acquisition of real rights to immovable property became conditional upon registration in official public books.[21] Consequently, the function of most registers on immovable property did not merely reflect the legal status of immovable property; rather, registration itself became a constitutive act for the acquisition, limitation, transfer, or termination of ownership rights to real estate.[22]

Building upon the historical foundations of the non-translative effect of a real estate sales contract in Roman law, this paper explores the historical development of the non-translative effect of contracts concerning the transfer of ownership rights in immoveable property, and the evolution of real estate registration systems. The focus is on their progression from the formalised registration requirements of the 1844 Serbian Civil Code to the current legislation. The paper explores how these systems have adapted to ensure legal certainty and transparency in real estate transactions, emphasising their crucial role in establishing and protecting property rights while facilitating public access to property information within the framework of contemporary legal norms in Serbia.

II. THE ADOPTION OF THE SERBIAN CIVIL CODE

At the time of the enactment of the Serbian Civil Code in 1844, registration in the land registry books, the real estate cadastre, or the deed transfer process was a constitutive action for the acquisition of ownership rights over immovable property based on juridical acts.[23]

18 Sič (2004): p. 288.
19 Miodrag Orlić: Uvođenje i obnavljanje zemljišnih knjiga, *Glasnik Advokatske komore Vojvodine*, 2000, pp. 413–437, p. 428.
20 Cvetić (2002): p. 300.
21 Cvetić (2002): p. 300.
22 Cvetić (2002): p. 300.
23 Cvetić (2002): p. 301.; Orlić (2000): p. 51.; Slavka Zeković, Miodrag Vujošević (2018): Uticaj kontekstualnih faktora na politiku građevinskog zemljišta i urbanog razvoja u Srbiji, in Jean-Claude Bolay, Tamara Maričić, Slavka Zeković (ed.): *Podrška procesu urbanog*, Cooperation and development center (CODEV), Beograd, p. 37.

During this period, three distinct and parallel systems of records existed in Serbia, each serving to document property rights or other pertinent information, concerning immovable property, its owners (or holders), and any encumbrances on immovable property—essentially, the legal status of the land.[24] These systems included the land register system, which focused on recording legal transactions relating to property; the property deed system, which documented ownership and transfers; and the property cadastre (land cadastre), which provided a comprehensive overview of land plots and their legal status.[25]

Among these, the property cadastre did not hold the same legal significance as the other two systems, as it only recorded information on the users (or holders) of particular real estate, rather than the owners.[26]

In contrast, the land register system and the property deed system served as the primary legal registers of rights concerning immovable property, containing information on ownership and any encumbrances, thus detailing the legal status of the land.[27]

The land register system was introduced following the adoption of the Serbian Civil Code of 1844.[28] In recognition of Serbia's autonomy within the Ottoman Empire, Miloš Obrenović commissioned an influential Serbian lawyer and writer, Jovan Hadžić, to draft a civil code.[29] Hadžić, drawing inspiration from the 1811 Austrian Civil Code (*Allgemeines bürgerliches Gesezbuch*—ABGB) created the Serbian Civil Code, which was enacted in 1844.[30]

Austrian legal literature notes that the system of land registry records became formally regulated with the coming into force of the Austrian Civil Code, since it provided the general principles of land registers, forming a normative framework for the development of real estate registers.[31] A key advancement in Austria's 19th-century land registration system was the completion of the first comprehensive land cadastre, known as the Land Tax Cadastre.[32] Though primarily intended to assess land taxes, this cadastre became an indispensable, detailed record of land ownership throughout much of the Austro-Hungarian Monarchy.[33] It laid the foundation for a more formalized and structured approach to land records, aiding in the standardisation of property transactions and land management. The land registry system itself was thoroughly governed by legislation under the General Land Registry Act of 1871.[34]

24 Cvetić (2002): p. 300.
25 Cvetić (2002): p. 300.
26 Zeković, Vujošević (2018): p. 37.
27 Zeković, Vujošević (2018): pp. 37–38.
28 Orlić (2000): p. 435.
29 Emőd Veress (2022): Private Law Codifications in East Central Europe, in Pál Sáry (ed.): *Lectures on East Central European Legal History*, Central European Academic Publishing, Miskolc, p. 176.
30 Attila Dudás: A polgári jog kodifikációjának történeti áttekintése Szerbiában, *Jogtörténeti Szemle*, 1/2013, pp. 9–17, p. 10.
31 Sofija Nikolić: Evidencija nepokretnosti u Austriji, *Glasnik Advokatske komore Vojvodine*, 10/2011, pp. 503–520, p. 504.
32 Nikolić (2011): p. 504.
33 Nikolić (2011): p. 504.
34 Nikolić (2011): p. 505.

The Act codified principles of registration, notably the principle of registration itself and the principle of trust, while also affirming the maintenance of land records.[35] This legislation laid a firm legal foundation for a transparent, reliable, and systematically ordered approach to land registration in the region.

Given that the Serbian Civil Code of 1844 was modelled upon the Austrian Civil Code, it seems to represent the earliest legal source from which the non-translative effect of a real estate contract was concurrently derived. In adherence to the provisions of the Austrian Civil Code,[36] the Serbian Civil Code of 1844 contains the following provision:

> *"[a]s it is determined, the immovable property should be entered in the land books (or land registers) of the district courts, thus with each change of owner, the same immovable property will have to be transferred to the new owner and registered."*[37]

In connection with the cited provision, it is worth noting that distinguished Serbian scholar, Dr. Dragoljub Aranđelović,[38] offered a measured critique of the Code; yet, its role in shaping the foundations of land registration cannot be overlooked.[39]

Notwithstanding the provisions set forth in the Serbian Civil Code, the establishment of a comprehensive land registry system in Serbia remained an aspiration rather than a reality, owing to the absence of the necessary social conditions for fully implementing a general land registry system. However, in the years that followed, real

35 Nikolić (2011): p. 505.

36 In § 380 the ABGB states that: "*[n]o property can be acquired without a title and a legal form of acquisition*." The ABGB can be found on the following website: https://www.jusline.at/gesetz/abgb (accessed on 17.11.2022).

37 § 292, Serbian Civil Code 1844.

38 József Salma: Srpski građanski zakonik (SGZ, 1844) i obligaciono pravo, *Zbornik radova Pravnog fakulteta u Novom Sadu,* 2/2004, pp. 311–335, p. 314.

39 Dr. Aranđelović's critique of the Code primarily focused on the linguistic formulations, which, in his view, were archaic, and out of step with the vernacular language in general use at the time of its adoption. Moreover, he accentuated that the Code is an inadequate, inaccurate translation of the ABGB. A comparison of two provisions (§ 380 ABGB and § 292 Serbian Civil Code) demonstrates that his criticisms were not without merit. First, § 292 is positioned in the fifth chapter of the Code, titled "*About acquiring things by handing over*", whereas § 380 ABGB is titled "*Legal Requirements of Acquisition*." The wording of these provisions indicate that, in the Serbian Civil Code, the transfer of real estate was not effected by transferring ownership rights in the land books (which would be based on an appropriate legal foundation), but rather by the registration of the property itself. Furthermore, § 292, in contrast with the ABGB, makes no reference to the necessary title for the transfer of rights. However, the requirement for a *iustus titulus* can be derived from § 294, which provides that for immovable property to be transferred to another person, the property's owner must personally appear before the court in accordance with the contract or declaration. Although the criticisms levelled by Dr. Aranđelović are not without substance, the author of this article contends that, despite the shortcomings, the Code represents a commendable initiative for the establishment of the non-translative effect of contracts. From its provisions, a legal basis for the non-translative effect of real estate can indeed be derived.

estate—and, more specifically, rights to immovable property, particularly arable land—gained considerable significance in society. Land came to be valued not merely as an object of cultivation but as a stable financial asset, serving as both a secure basis of capital and a means of mortgage security for creditors.[40]

The transition to modern property law in Europe during the 19th century was profoundly shaped by the interests of the burgeoning bourgeoisie. Driven by its economic imperatives, this rising class sought legal regulations that would guarantee the security of real estate ownership while facilitating the transfer of real estate and associated rights.[41] These demands arose from the necessity of enabling capital accumulation, ensuring consistency in real estate transactions, and fostering broader economic activities, including trade, investment, and agriculture.

In response to these shifting social and economic dynamics, most European nations, including the Austro-Hungarian Monarchy, undertook substantial legal and administrative reforms. Among the most important advancements of this period was the systematic execution of land surveys in the last century, culminating in the establishment of land cadastres and land registries as the basic records of real estate.[42] These systems were designed to serve as the foundation for documenting property ownership, boundaries, and recording associated rights in a clear and reliable manner.

As one of Europe's preeminent political powers at the time, the Austro-Hungarian Monarchy spearheaded these reforms. In its various territories—including regions that today lie within the borders of Serbia—it commenced the implementation of land registers and cadastres.[43]

This development proved instrumental in transforming traditional patterns of landholding in regions under Austro-Hungarian rule, such as parts of modern Serbia. Beyond safeguarding private property rights, these registries functioned as mechanisms of governance, affording the state greater control over land use, taxation, and resource allocation. Prior to these reforms, property ownership in these communities was frequently determined by customary practices, oral agreements, and local customs. These informal arrangements were gradually supplanted by standardised, written records, which introduced greater legal certainty and transparency. The process reached a decisive turning point with the adoption of the first legal acts on the subject, the Land Cadastre Act, promulgated on 10 January 1929, followed by the Land Register Act in 1930.[44]

These statutes adhered to the model set forth by the Serbian Civil Code concerning the non-translative effect of real estate contracts. However, in this regard, the latter act appears of particular significance, because it contains provisions for the transfer of real rights. It explicitly provides that "*book rights*" may be acquired, transferred, restricted, or revoked solely through registration in the land registry.[45] The wording of

40 Vladimir Lukić, Mustafa Begić, Jasmin Imamović (1991): *Teorijski i praktični komentar Zakona o premjeru i katastru nekretnina*, Struka, Sarajevo, p. 4.
41 Lukić, Begić, Imamović (1991): p. 4.
42 Lukić, Begić, Imamović (1991): p. 4.
43 Lukić, Begić, Imamović (1991): p. 4.
44 Zeković, Vujošević (2018): p. 38.
45 §4 in connection with §8 and §9 of Land Register Act, 1930 of the Kingdom of Yugoslavia.

this provision strongly suggests the establishment of a direct correlation between the acquisition and registration of ownership rights.

In the southern regions of Serbia, land registers were never introduced, even following the adoption of the aforementioned land register acts in the Kingdom of Yugoslavia. Instead, the deed system persisted as a remnant of Ottoman rule.[46]

As previously observed, the system of publicity was incorporated into Serbian law from the Austrian legal tradition. Prior to the adoption of the Civil Code, the transfer of immovable property in Serbia took place before the courts, meaning that for such a transfer to be legally effected, the contract had to be confirmed by the court.[47] However, with the entry into force of the Civil Code of 1844, full publicity was introduced, envisaging the establishment of heritage books. Since these books were not immediately implemented, a legislative decision, dated 13 July 1850, was appended to § 292 of the Civil Code of 1844.[48] This decision stipulated that, until the introduction of the heritage books, the judicial transfer of property deeds should serve as a substitute for the formal registration of the transfer of ownership rights.[49]

Although this measure was intended as a temporary solution until the introduction of heritage books, as prescribed by the Civil Code, the anticipated system was ultimately never realised.[50] Following the First World War and the formation of the Kingdom of Serbs, Croats, and Slovenes (which adopted the name Yugoslavia in 1929), no comprehensive reform of real estate law was undertaken on the territory of present-day Serbia. Given that no unified system replaced these inherited laws during the interwar period, and considering the limitations of the article's scope, this era will not be examined in detail. The discussion will therefore proceed directly to the post-Second World War period, marked by the establishment of the totalitarian regime and the significant transformations it introduced to property rights and legal structures.

III. CHANGES BROUGHT ABOUT BY THE SOCIALIST REGIME

The socialist system and social structures in Yugoslavia were founded upon the concept of social ownership of the means of production and other instruments of collective labour and self-management, which reflected the ideological and socioeconomic climate of the era.[51]

As a distinct form of property right, social ownership encompassed all the attributes traditionally associated with property—*ius utendi, freundi, et abutendi*—*yet* the social representatives were not vested with the unrestricted authority to dispose of all these rights in the manner of private property owners. Rather, their powers were circumscribed by legal provisions, permitting them to exercise ownership only within

46 Zeković, Vujošević (2018): p. 38.; Cvetić (2002): p. 301.
47 Lazar Marković (1912): *Građansko pravo prva knjiga*, Banka "Slavija", Beograd, p. 353.
48 Marković (1912): p. 353.
49 Marković (1912): p. 353.
50 Marković (1912): p. 354
51 Zeković, Vujošević (2018): p. 38.

the limits prescribed by law and under conditions set forth by legislation.[52] Ownership was not vested in identifiable individuals or corporate entities but was instead conceived as a dispersed right collectively shared by society.

The first legal foundations for the acquisition of social property were established as early as January 1942 in the regulations known as the "Fočan Regulations." These provisions authorised the confiscation of property belonging to enemies of the people, transferring such assets to the National Liberation Fund.[53]

During and after the Second World War, with the emergence of the new administrative-socialist system of the Federal People's Republic of Yugoslavia[54], the legal continuity of the Kingdom of Yugoslavia was effectively severed, bringing about the dismantling of the previous order, including land registry laws of the 1930s.[55]

In particular, the enactment of *Act on Invalidity of Legal Regulations enacted before 6 April 1941 and during the Enemy Occupation* in 1946, formally disrupted the continuity of the Kingdom of Yugoslavia's legal system, rendering the aforementioned land registry laws obsolete. Nevertheless, under the provisions of the Invalidity Act, the legal rules enshrined in the land registry regulations of 1930 continued to apply until such time as land registers were replaced by real estate cadastres.[56]

As the Communist Party of Yugoslavia extended its control over larger territories during and after the Second World War, it began implementing legal measures that profoundly reshaped property ownership.[57] Specifically, the authorities introduced regulations facilitating confiscation of property belonging to individuals deemed to have been associated with the occupying forces and their collaborators.[58] This marked a deliberate effort to restructure property relations in alignment with the new political regime and its ideologies, reflecting the broader social and economic transformations occurring under the dictatorial regime.

One of the most consequential legislative enactments of this period was the Act on Property Confiscation and Execution of Confiscation, adopted in 1945.[59] The Act defined confiscation as the compulsory and uncompensated seizure of property by the

52 Milorad Kukoljac, Tomislav Ralčić (1969): *Priručnik sudske prakse, pozitivnih propisa i pravnih instituta iz oblasti građanskog prava : sa objašnjenjima, pravnim pravilima, obrascima i registrom pojmova*, Savremena administracija, Beograd, pp. 75–76.

53 Kukolac, Ralčić (1969): p. 76.

54 Hereinafter referred to as: FPRY.

55 Zeković, Vujošević (2018): p. 38.

56 Art. 4, Zakon o nevažnosti pravnih propisa donetih pre 6. aprila 1941. godine i za vreme neprijateljske okupacije (Act on Invalidity of Legal Regulations enacted before 6 April 1941 and during the Enemy Occupation), Službeni list FNRJ, br. 86 od 25. oktobra 1946, 105 od 27. decembra 1946, 96 od 12. novembra 1947 – obavezno tumačenje (Official Gazette of the FPRY, No. 86 of October 25, 1946, No. 105 of December 27, 1946, No. 96 of November 12, 1947 – mandatory interpretation), hereinafter referred to as: Act on Invalidity.

57 Marijan Maticka: Zakonski propisi o vlasničkim odnosima u Jugoslaviji (1944–1948), *Radovi Zavoda za hrvatsku povijest Filozofskoga fakulteta Sveučilišta u Zagrebu*, 1/1992, pp. 123–148, p. 124.

58 Maticka (1992): p. 124.

59 Maticka (1992): p. 132.

State, either in its entirety (complete confiscation) or in part (partial confiscation).[60] In practice, confiscation functioned as an ancillary punishment for crimes prescribed by law, serving as a mechanism through which the government, via orchestrated judicial proceedings, condemned the owners of substantial capital as enemies of the people. Those targeted faced long-term deprivation of liberty, coupled with the confiscation of all their property.[61] Through these measures, several pieces of property were converted into social ownership.

The judicial practice of the time further reinforced this transformation. In a landmark ruling, the Supreme Court of Yugoslavia held that, when a criminal judgment imposed the penalty of complete confiscation, the property of the convicted person became social property. The ruling further clarified that such property, regardless of whether it had been explicitly listed in the confiscation order, could not form part of an inheritance, nor could it be claimed as the legacy of the convicted individual.[62]

In 1947, the Decree on the Registration of Ownership Rights on State-owned Real Estate was adopted, introducing a significant deviation from the formal principles governing the non-translative effect of real-estate contracts. This decree disrupted the continuity of the legal framework that had been established by the Serbian Civil Code, as it allowed for the acquisition of social property even in the absence of its registration in the land register—thus permitting *ex lege* ownership.[63] The eminent Serbian jurist Andrija Gams scrutinised these provisions, noting that, in cases where the State acquired social property through a juridical act, the certification of such a contract was not required. Instead, the sole condition was that the contract be in writing, thereby negating the obligation to register ownership rights in the land registers.[64]

This interpretation was reinforced by judicial practice, as exemplified in a ruling by the Supreme Court of the People's Republic of Serbia. In its reasoning behind decision No. Gž.2636/59, the Court stipulated that, for a written contract of sale to be recognised under Article 9 of the Transfer of Land and Buildings Act, it had to be drawn up in writing in the form of a contract, with the seller and buyer explicitly identified, the purchase price clearly specified, and the signatures of the contracting parties affixed.[65]

60 Art. 1, Zakon o konfiskaciji imovine i o izvršenju konfiskacije (Act on Property Confiscation and Execution of Confiscation), Sl. list DFJ, br. 40/45, 56/45 – autentično tumačenje i 70/45 (Official Gazette of the DFY, No. 40/45, 56/45 – authentic interpretation and 70/45).

61 Goran Marinković: Stvaranje državne i društvene svojine na području Srbije i bivše Jugoslavije, *Zbornik radova Građevinskog fakulteta*, 2012, pp. 135–147, p. 141.

62 Supreme Court of Yugoslavia, Rev-1459/63.

63 Marinković (2012): p. 142. Art. 6 Uredba o upisu prava vlasništva na državnoj nepokretnoj imovini (Decree on the Registration of Ownership Rights on State-owned Real Estate), Službeni list FNRJ br. 58/1947 (Official Gazette of the FNRY No. 58/1947).

64 Andrija Gams (1952): *Stvarno parvo*, Nolit, Beograd. *apud* Enes Bikić, Alaudin Brkić: Materijalne i procesnopravne posljedice nedostataka forme ugovora u pravnom prometu nekretnina, *Anali Pravnog fakulteta Univerziteta u Zenici*, 5/2010, pp. 129–159, p. 131.

65 Bikić, Brkić (2010): p. 131.

In 1950 and 1951, the Federal People's Republic of Yugoslavia (FNRY) embarked on the development of an autonomous socialist and self-governing system, underpinned by numerous reforms. At the core of this transformation lay the concept of social property, which was elevated to the status of a fundamental economic and legal principle.[66]

It was during this period that large-scale nationalisation took place, leading to the transfer of private enterprises, hospitality establishments, major warehouses, the land and buildings of foreign nationals into state ownership or social property.[67] Additionally, by 1958, nationalisation expanded further to include rented residential and commercial buildings, as well as construction land situated within the narrower construction areas of cities and urban settlements.[68]

That same year, the FNRY passed the Act on Nationalisation of Rental Buildings and Construction Land in the country,[69] which nationalised all construction land in cities and urban settlements. Construction land was transferred to the State; thus, the State assumed full control.

However, according to the provisions of the aforementioned Act, citizens were still allowed to acquire and own in the territory of Yugoslavia, family residential buildings, a maximum of two apartments as separate parts of the building, two family residential buildings with a maximum of two apartments and a third smaller apartment, or one family residential building, and one apartment as a separate part of the building.[70] Nevertheless, the Act also prescribed a limitation to the aforementioned provisions. Should any citizen, civil legal entity, social organisation, or other association of citizens possess or acquire more buildings and special parts of buildings than permitted under the law, any surplus real estate would automatically be converted into social property by operation of law.[71]

The provisions of the aforementioned regulation signified a partial disruption of legal continuity regarding the non-translative effect of real estate contracts, since they expressly stated that immovable property undergoing nationalisation became social property *ex lege*.[72] In essence, the process of nationalisation of immovable property was confined to property which extended beyond the quantity allowed by law.

Furthermore, the law affirmed that buildings, specific parts of buildings, and land not subject to nationalisation remained in free circulation and could be inherited.[73] Thus, one can observe a partial termination of legal continuity regarding the

66 Zeković, Vujošević (2016): p. 42.
67 Kukolac, Ralčić (1969): p. 81.; Selver Keleštura: Oblici oduzimanja imovine građana i reprivatizacija (privatizacija) u Bosni i Hercegovini, *Geodetski glasnik*, 31/1996, pp. 5–20, p. 8.
68 Kukolac, Ralčić (1969): p. 81.; Keleštura (1996): p. 8.
69 Zakon o nacionalizaciji najamnih zgrada i građevinskog zemljišta (Act on Nationalisation of Rental Buildings and Construction Land in FNRY), Službeni list FNRJ, br. 52/1958 (Official Gazette of the FPRY, No. 52/1958), hereinafter referred to as Act on Nationalisation 1958.
70 Art. 2 of Act on Nationalisation 1958.
71 Art. 4 of Act on Nationalisation 1958.
72 Art. 12 of Act on Nationalisation 1958.
73 Art. 6 of Act on Nationalisation 1958.

non-translative effect of real estate contracts, because the provisions of the Act imply that immovable property unaffected by nationalisation could continue to represent an object in real estate transactions. This suggests that, regarding these properties, the process of transferring ownership remained unchanged.

Further restrictions were imposed with the enactment of the Act on the Transfer of Land and Buildings of 1965.[74] This Act prohibited the alienation of agricultural and construction land, as well as buildings held under social ownership.[75] However, much like the earlier regulation, it permitted the free transfer of privately owned property between individuals and civil legal entities, provided such property had not been incorporated into the nationalisation process.[76]

Under the Act, users of agricultural land in social ownership had the right to use it, but did not have ownership rights, whereas buildings in social ownership could be objects of ownership transfer.[77] Users were entitled to transfer their right of use over immovable property in social ownership to other users, either with or without compensation, in accordance with the conditions determined by law and the normative act of the self-governing body. Such transfers were formalised through a written contract between the existing user of real estate in social ownership and a new user to whom the right of use was transferred.[78] Therefore, in the case of transfer of real estate in social ownership between users, ownership was not transferred, since the users of land were not vested with ownership rights.

The Act on Land Transfer of 1965 also prescribes the legal form of real estate transaction contracts, stating that such legal transactions must be concluded in writing; failure to adhere to this requirement rendered the transaction legally void.[79] By mandating a written form, this Act also established form as an essential element of *iustus titulus*. Notably, however, the Act contained no explicit provision regarding *modus acquirendi*. However, its necessity for acquiring ownership rights over immovable property can be deduced from the text of the provision, which refers to the obligations of the court when registering the transfer of ownership rights. An analysis of the provision of Article 47 suggests that the *modus acquirendi* of the transfer of ownership rights on immovable property was the "land registry" transfer, conducted under the jurisdiction of the competent court.

In the period following the adoption of the Act on the Transfer of Land and Buildings of 1965, the Yugoslav federation experienced a gradual decline in institutional cohesion, resulting in shifts in the distribution of competencies between the federal government and the individual republics.

74 Zakona o prometu zemljišta i zgradama (Act on the Transfer of Land and Buildings), Službeni list FNRJ br. 26/1954, 19/1955, 48/1958, 52/1958, 30/1962, 53/1962, Službeni list SFRJ br. 15/1965, 57/1965, (Official Gazette of the FNRY, No. 26/19, 19/1955, 48/1958, 52/1958, 30/1962, 53/1962, Official Gazette of the SFRY No. 15/1965, 57/1965), hereinafter referred to as: Act on Land Transfer 1965.

75 Zeković, Vujošević (2016): p. 43.

76 Art. 5 of Act on Land Transfer 1965.

77 Art. 1 of Act on Land Transfer 1965.

78 Kukolac, Ralčić (1969): p. 103.

79 Art. 9 of Act on Land Transfer 1965.

With the passing of the Act on Expropriation in 1968,[80] expropriation emerged as a legal mechanism for the acquisition of social property with respect to immovable property, carried out in the public interest and accompanied by fair compensation. Two distinct forms of expropriation can be distinguished: the first involved the transfer of immovable property into social ownership, while the second, an incomplete form of expropriation, established only a temporary occupation of privately owned immovable property for the purpose of constructing a facility. This latter form was executed in the guise of either a lease or an easement.[81]

Although the process of nationalisation of property proceeded under the provisions of this Act, it nevertheless allowed the citizens of Yugoslavia to acquire and retain ownership of family residential buildings. Specifically, individuals were allowed to own either a building with two apartments or three smaller apartments, or a maximum of two apartments as separate parts of the building, or two-family residential buildings with a maximum of two apartments and a third smaller apartment, or alternatively, one family residential building and one apartment as a separate part of the building.[82]

As a consequence of these legislative changes, laws concerning surveying and land cadastres were adopted at the republican level in 1967, 1971, and 1976.[83]

IV. EARLY SIGNS OF DEPARTURE FROM THE SOCIALIST SYSTEM

The gradual shift away from the socialist system gained momentum with the adoption of the Real Estate Transactions Act in 1981, which allowed the conveyance of ownership rights over immovable property.[84] However, this newfound freedom remained subject to significant restrictions. The transfer of ownership of immovable property in social ownership was authorised solely between social legal entities. Exceptions to this rule applied to agricultural and construction land, the alienation of which from social ownership remained strictly prohibited. In contrast, family residential buildings, even if classified social property, could be alienated freely.[85]

In comparison with the Act on Land Transfer of 1965, the Real Estate Transactions Act of 1981 introduced more stringent regulations regarding the form of real estate transaction contracts. To be deemed valid, such contracts not only had to be in written form but also required the signatures of the contracting parties to be formally

80 Zakon o eksproprijaciji (Act on Expropriation), Sl. list FNRJ, br. 12/57 i 53/62 i Sl. list SFRJ, br. 13/65, 5/68, 7/68 – ispr. i 11/68 – prečišćen tekst (Official Gazette of the FPRY, No. 12/57 and 53/62 and Official Gazette of the SFRY, No. 13/65, 5/68, 7/68 – correction and 11/68 – consolidated text), hereinafter referred to as: Act on Expropriation of 1968.

81 Kukolac, Ralčić (1969): p. 86.

82 Art. 2 of the Act on Expropriation of 1968.

83 Zeković, Vujošević (2018): p. 43.

84 Art. 3, Zakon o prometu nepokretnosti (Real Estate Transactions Act), Sl. glasnik SRS, br. 43/81 (Official Gazette of the Socialist Republic of Serbia, No. 43/81), hereinafter referred to as: Real Estate Transactions Act, 1981.

85 Art. 10 and 14 of Real Estate Transactions Act 1981.

accredited by the court.[86] Much like its predecessor, the Real Estate Transactions Act 1981 lacked provisions regarding *modus acquirendi*. However, by that time, the matter had already been addressed in the relatively new Act on Basic Ownership Relations of 1980, which provided that the acquisition of ownership rights over immovable property through juridical acts was contingent upon registration in "public registers."[87]

The Act, however, did not specify which public registers were to be used for such entries. In the absence of other relevant public records at that time, land registers became the default option until the republics and provinces designated specific public registers and established procedures for their maintenance.[88]

The Act was amended in 1987 by the Act on Amendments to the Real Estate Transactions Act, which introduced restrictions on the free alienation of property rights. These restrictions were framed within the context of national equality and other constitutionally established freedoms and rights of citizens. The amendment granted the municipal assembly the authority to temporarily prohibit property transfers, both between citizens and between citizens and civil legal entities, within the territory of the municipality or any of its parts. This prohibition applied when real estate transactions were conducted under conditions of coercion, which endangered national equality or other constitutionally established freedoms and rights. Such measures were specifically aimed at the emigration of members of a certain nation, that is, nationality.[89]

Furthermore, in 1990, the Constitutional Court of Yugoslavia declared the relevant provisions of the Act on Amendments to the Real Estate Transactions Act of 1987 unconstitutional.[90] Subsequently, the Act on Conditions of 1991[91] was adopted, which provided that the land seized and confiscated due to unfulfilled obligations arising from the mandatory purchase of agricultural products, in accordance with the regulations on such purchases, shall be returned to the ownership of the former owner, or their legal successor.[92]

86 Art. 4 of Real Estate Transactions Act 1981.

87 Art. 33 Zakon o osnovnim svojinsko-pravnim odnosima (Act on Basic Ownership Relations, Official Gazette of the SFRY No. 6/1980, 36/1990, Official Gazette of the SRY No. 29/96 and Official Gazette of the Republic of Serbia No. 115/2005 – other statute), hereinafter referred to as Act on Basic Ownership Relations 1980.

88 Tomislav Stevanović: Jedinstvena evidencija nepokretnosti, *Naša zakonitost,* 10–11/1984. *apud* Radenka Cvetić: Domašaj načela upisa i načela pouzdanja u Katastar nepokretnosti u našoj sudskoj praksi, *Zbornik radova Pravnog fakulteta u Novom Sadu*, 3/2015, pp. 1017–1036, p. 1021.

89 Zakon o izmenama i dopunama Zakona o prometu nepokretnosti (Act on Amendments to the Real Estate Transactions Act), Sl. glasnik SRS, br. 28/87 (Official Gazette of the SRS No. 28/87).

90 Decision No. IU-12/I-88, IU-101/1-89 and IU/101/2-89 of the Constitutional Court of Yugoslavia, 27 june 1990.

91 Zakon o načinu i uslovima priznavanja prava i vraćanju zemljišta koje je prešlo u društvenu svojinu po osnovu poljoprivrednog zemljišnog fonda i konfiskacijom zbog neizvršenih obaveza iz obaveznog otkupa poljoprivrednih proizvoda (Act on the Method and Conditions for Recognizing Rights and Returning Land that Transferred into Social Ownership based on the Agricultural Land Fund and Confiscation due to Unfulfilled Obligations from the Mandatory Purchase of Agricultural Products), Sl. glasnik RS, br. 18/91, 20/92 i 42/98 (Official Gazette of the Republic of Serbia, No. 18/91, 20/92 and 42/98), hereinafter referred to as Act on Conditions of 1991.

92 Art. 1 of Act on Conditions of 1991.

V. BEFORE THE AMENDMENT OF THE REAL ESTATE TRANSACTIONS ACT IN 2015 AND CURRENT LEGISLATION

In Serbia, the concept of a unified real estate register was conceived and implemented, involving the cadastral register assuming the role previously held by the land registers.[93] As noted earlier, Serbia had long sought to establish a comprehensive real estate cadastre to replace the land registers and the deed system. However, this objective proved difficult to realise because of certain difficulties. For one, there was no uniformity in the legal records concerning immovable property.[94] Therefore, land registers, while reliable, could not attain the same significance in Serbia as they had in more developed countries.[95] In addition, in areas where they were introduced, the land registers were either poorly maintained or, in some cases, destroyed during the Second World War.[96] Most crucially, there were instances where the data recorded in the land registers did not match the data in the land cadastre, with both of these records differing from the actual condition of the real estate.[97]

The most significant step towards establishing a general database on real estate was taken in 1992, with the establishment of the Republic Geodetic Institute under the State Survey and Cadastre and Registration of Real Estate Rights Act.[98] The Institute was set up as a special State organisation tasked with conducting expert geodetic surveys and administrative duties in the fields of State surveys, land cadastres, and real estate cadastres.[99] The Act effectively reinstated the situation that existed prior to the socialist regime: it provided that rights to immovable property are acquired, transferred, limited, and terminated through registration in the real estate cadastre, with such registration being based on a document eligible for registration according to the provisions of the law.[100]

In 1998, a new Real Estate Transactions Act was introduced,[101] marking a departure from its predecessor, particularly in regard to the form of the contract. Under this Act, the contract for the conveyance of ownership rights on real estate was required to

93 Redenka Cvetić: Nova pravila u postupku upisa u katastar nepokretnosti. Upis zajedničke svojine supružnika, *Zbornik radova Pravnog fakulteta u Novom Sadu*, 4/2019, pp. 1167–1186, p. 1168.
94 Cvetić (2002): p. 301.
95 Cvetić (2002): p. 302.
96 Cvetić (2002): p. 302.
97 Cvetić (2002): p. 302.
98 Zakon o državnom premeru i katastru i upisima prava na nepokretnostima (State Survey and Cadastre and Registration of Real Estate Rights Act), Sl. glasnik RS, br. 83/92, 53/93, 67/93, 48/94, 12/96, 15/96 – ispr., 34/2001 – dr. zakon i 25/2002 (Official Gazette of the Republic of Serbia, No. 83/92, 53/93, 67/93, 48/94, 12/96, 15/96 – correction, 34/2001 – other law, and 25/2002), hereinafter referred to as Cadastre Act 1992.
99 Art. 11 of of the Cadastre Act 1992.
100 Art. 5 in connection with art. 58g and art. 58d of the Cadastre Act 1992.
101 Zakon o prometu nepokretnosti (Real Estate Transactions Act), Službeni glasnik RS, br. 42/1998 (Official Gazette of the Republic of Serbia), hereinafter referred to as Real Estate Transactions Act 1998.

be concluded in writing, with the signatures of the contracting parties certified by the court.[102]

During this period, no *lex specialis* governing the procedure for registration in the cadastre of immovable property and utilities seem to exist. However, this did not impact the rules on the non-translative effect of a real estate purchase contract, as the Cadastre Act of 1992 was still in application.

However, with the adoption of the State Survey and Cadastre Act in 2009, the earlier Act of 1992 ceased to be effective.[103] The new Cadastre Act, while concise, provided minimal guidance regarding the *modus acquirendi*.

Nonetheless, the Act on Basic Ownership Relations of 1980 continued to hold sway, offering the fundamental legal framework for property rights in Serbia. This Act provided that ownership rights on immovable property were acquired by virtue of a juridical act. However, these rights were only effectively transferred upon registration in the public register or in another manner which was under the law directly identified as appropriate by registration in the public register or in another appropriate manner determined by law.[104] Although this provision was in line with the general principles of property law, it continued to be an important feature of the Serbian legal landscape, persisting until subsequent reforms and new legislation, such as the Real Estate Transactions Act of 2014, progressively introduced more sophisticated methods of property registration and legal formalities.

The current legal framework governing the non-translative effects of real estate contracts in Serbia was solidified with the adoption of the Real Estate Transactions Act in 2014,[105] which simultaneously rendered the Real Estate Transactions Act of 1998 obsolete. The primary distinction introduced by the 2014 Act lies in its reform of the *iustus titulus*, or valid title, required for the transfer of property. Under the new law, contracts for the conveyance of ownership rights on immoveable property must now be executed in the form of a notarised document. Failure to comply with this prescribed form renders the contract legally ineffective. Thus, the current legal framework, which brings changes to the form of the *iustus titulus*, provides that the contract on the transfer of real estate is concluded in the form of a notarised (solemnised) document; otherwise, a juridical act not executed in the prescribed manner is devoid of legal effect.[106]

Further developments took place in 2018 with the enactment of the Act on the Procedure of Registration in the Cadastre of Immovable Property and Utilities. This new

102 Art. 4, Real Estate Transactions Act 1998.

103 Art. 199 Zakon o državnom premeru i katastru (State Survey and Cadastre Act), Sl. glasnik RS, br. 72/2009, 18/2010, 65/2013, 15/2015 – odluka US, 96/2015, 47/2017 – autentično tumačenje, 113/2017 – dr. zakon, 27/2018 – dr. zakon, 41/2018 – dr. zakon, 9/2020 – dr. zakon i 92/2023 (Official Gazette of the Republic of Serbia, No. 72/2009, 18/2010, 65/2013, 15/2015 – Constitutional Court decision, 96/2015, 47/2017 – authentic interpretation, 113/2017 – other law, 27/2018 – other law, 41/2018 – other law, 9/2020 – other law, and 92/2023).

104 Art. 33 Act on Basic Ownership Relations 1980.

105 Zakon o prometu nepokretnosti (Real Estate Transactions Act), Sl. glasnik RS, br. 93/2014, 121/2014 i 6/2015 (Official Gazette of the Republic of Serbia, No. 93/2014, 121/2014, and 6/2015), hereinafter referred to as Real Estate Transactions Act 2014.

106 Art. 4 of the Real Estate Transactions Act 2014.

legislation partially repealed certain provisions of the 2009 State Survey and Cadastre Act, introducing vital updates and refinements to the legal process of property registration. Among its key provisions, the Act reinforced the notion that the right of ownership and other real rights concerning immovable property can only be acquired, transferred, limited, or terminated through registration in the cadastre.[107] This underscores the importance of official property records in ensuring legal certainty and transparency of real estate transactions, with the process of registration now recognised as an essential step in conveying property rights.

VI. CONCLUDING REMARKS

The evolution of the non-translative effect of real estate contracts, in parallel with the development of the Serbian real estate registration systems, traces a significant journey from the time of the First Serbian Uprising to the present day, underscoring the crucial importance of due process. Early property transfers, conducted through highly ceremonious means such as *mancipatio*, highlighted the respect for land not only as an economic asset but also in existential significance. These informal agreements eventually gave way to more formalized ownership rights conveyance, especially with the influence of Germanic law, which placed great emphasis on the formality of public transfers of property rights for the sake of publicity and legal certainty.

A major milestone in the establishment of property rights in Serbia came with the Serbian Civil Code of 1844, which marked a significant step forward. Drawing on the Austrian model, it laid the foundation for the creation of land records and emphasized the non-translative character of real estate contracts. Although developing an integrated system of land registers posed considerable challenges in its early stages, the rise of the bourgeoisie class and the increasing economic value of land spurred the development of more sophisticated legal frameworks.

The socialist regime in Yugoslavia, with its introduction of the concept of social ownership, radically transformed property relations. The nature of property rights shifted as a series of legislative instruments were enacted, incorporating socialist ideologies into the legal landscape, often at the expense of private ownership. Property rights were deliberately restructured, with nationalization and confiscation becoming tools for consolidating state control over land and other assets.

The post-socialist transition in Serbia witnessed efforts to re-align the country's property system with broader market-oriented principles. The Real Estate Transactions Act of 1981 marked the beginning of this transformation, enabling the transfer of ownership rights in immovable property, albeit with considerable restrictions. These were further defined in the Act on Basic Ownership Relations and the State Survey and Cadastre Act. Such reforms restored, at least in part, a degree of legal certainty and

107 Art. 6 Zakon o postupku upisa u katastar nepokretnosti i katastar infrastrukture (Act on the Procedure of Registration in the Cadastre of Immovable Property and Utilities), Sl. glasnik RS, br. 41/2018, 95/2018, 31/2019, 15/2020 i 92/2023 (Official Gazette of the Republic of Serbia, No. 41/2018, 95/2018, 31/2019, 15/2020, and 92/2023).

transparency to real estate transactions, lifting much of the ambiguity and impediments created by earlier socialist legislation.

Historically, the establishment of a unified real estate register represented one of the most significant advancements in modernizing the Serbian property system. In 1992, the creation of the Republic Geodetic Institute was a key step towards consolidating property records and ensuring the accuracy and reliability of cadastral data. The Real Estate Transactions Act of 2014, along with the Act on the Procedure of Registration in the Cadastre of Immovable Property and Utilities, further simplified the process of property registration, underscoring the importance of notarised documents and formal registration for changes in ownership rights.

In this connection, the historical trajectory of real estate registration systems in Serbia reflects a dynamic interaction between legal norms, socio-economic transformations, and political ideologies. From the ceremonious property transfers of Roman antiquity to the formalised processes of the 19th century and the sweeping changes brought about by the socialist period, the evolution of property rights in Serbia mirrors broader trends in legal and social development. While contemporary legislation works to overcome the legacies of previous systems, it seeks to establish a process that ensures transparency, legal certainty, and public access to property information, thereby laying the foundation for a stable and reliable real estate market in Serbia.

The evolution of Serbia's system of real estate registration stands as compelling evidence of the crucial role a legal framework plays in safeguarding property rights and fostering economic development. A thorough understanding of historical and legal contexts provides valuable insight into the intricate processes that shape property relations and their broader social and economic implications.

While the current legislative framework governing real estate registration in Serbia represents a commendable effort towards achieving transparency, legal certainty, and public accessibility in property transactions, there remains scope for further refinement. Modern technologies, notarised documentation, and formal registration procedures have undoubtedly streamlined property transfers and bolstered public confidence in the system. However, ensuring the accuracy and completeness of cadastral and personal data, as well as aligning the legal framework with contemporary economic realities, continues to present significant challenges.

While Serbia's existing legislative framework is robust, further enhancements could strengthen its efficiency and reliability. For instance, the introduction of clearer procedural safeguards and improved mechanisms for dispute resolution would inspire greater trust in the system. Additionally, a greater emphasis on digitalisation and interoperability between public records could expedite property registration processes, reducing administrative burdens and increasing efficiency.

In this light, the real estate registration system in Serbia, while promising, requires continuous refinement to maximise its functionality within an ever-evolving property market. Moreover, achieving the broader objectives of sustainable economic development necessitates ongoing adaptation, particularly in light of emerging technologies such as smart contracts and blockchain technology. These innovations offer unprecedented opportunities to increase efficiency, security, and transparency in property transactions, making it imperative for the legal framework to evolve accordingly.