Spatial Rights Legislation in Israel – A 3D Approach

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SUMMARY

This article will update on the process of amending Israeli legislation in order to make spatial parcels possible.

Israeli Land Law is, in itself, a strata legislative compendium, which, in its more recent phase (1969-today) has a definitely perfectionist, all-inclusive streak.

After a brief review of the existing legislation's main characteristics, the reader will be able to learn about the main, manifold challenges facing Israeli legislative drafters in introducing the concept of strata ownership in the law, and the possible, different ways to confront them. These challenges are not to be ascribed only to the inherent features of the Land Law. They stem also from additional, external factors - such as the relationship between Land Law and Planning Law, the structure of existing combination deals and infrastructure 3D projects already under way and the experience gathered during over 50 years of condominium law and practice .

Thus, what is needed in this case is, essentially, a kind of "3D legislation" effort .

Such a kind of legislative intervention is needed in order to make strata ownership creation and its management feasible in a way which will be harmonious with the existing legal structure and its comprehensive features, maximize the enormous potential of this novel kind of property right - and yet not create a Golem whose influence on Land Law, Property Law and maybe even actual land development and use will be difficult to control and regulate.

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1. FOREWORD

Property Law legislation is always a task to be approached with great care. The impact property, especially land property, has on an individual's personality, freedom and well being is cardinal (*Dagan H.*). Furthermore, property legislation has an encompassing and lasting effect and it is not usually taken as a legal field where frequent legislative interventions are particularly welcome or beneficial.

Spatial rights legislation is perhaps the most striking case of Property Law revolution by law, since, intuitively, it runs counter to the well established principle that land is a limited resource, which cannot be extended nor created; such legislation has the potential of multiplying property units and owners creating new legal relationships in assets whose potentials and pitfalls are not always fully known. Even if most legislatures have various methods of splicing land property rights, notably Condominium laws, building, surface and construction rights, long term leases and servitudes – nevertheless, spatial rights property legislation, when taken to its full extent, effectively creates a whole new set of rules and norms in a field in which most legislators thinks everything - or almost everything – has already been normatised.

In Israel, activities towards the establishment of a 3D cadastre have been brewing for quite a while (*Forrai J., Kirschner G., 2001; Forrai J., Kirschner G.; Shoshani et al.)*.), and indeed this article would not have been possible were it not for all the highly professional work and manyfold activities which have been undertook in Israel in the subject of 3D cadastre and registration, especially under the aegis of the Survey of Israel; those activities include some serious thoughts and in depth think-tanking about the necessary legislative amendments and their formulation.

Conceiving spatial rights legislation in Israel requires, fittingly, a three dimensional approach, which must constantly take into account the following parameters: (1) **the existing legislation**; (2) the **concept,** or proposed scope of the legislative intervention; and (3) its **content**, or the questions it needs or wishes to deal with. Such an approach is vital in order to make strata ownership creation and its management feasible in a way which will be harmonious with the existing legal structure and its comprehensive features, make a long term and stable impact on law and practice, maximize the enormous potential of this novel kind of property right - and yet not create a Golem whose influence on Land law, Property law and possibly even actual land development and use will be difficult – if not downright dangerous - to control and regulate.

This Article will briefly address all three dimensions, hopefully shedding some light on the challenges awaiting the Israeli property rights legislative whilst perchance stimulating a very much needed discussion on the topic.

2. THE FIRST DIMENSION: EXISTING ISRAELI PROPERTY LAND LEGISLATION

Aptly, Israeli legislation pertaining to land has a marked multistrata character.

During the period when what is today the State of Israel was part of the Ottoman Empire (1520-1921), the Ottoman Land Law of 1858 was introduced. The Ottoman legislation was based on the default concept of the ruler's ownership of all land, as an agent for the divinity, but allowed for full or partial acquisition of private rights, notably by prescription or by active endowment. Some provisions of the Ottoman Civil Law code, the Medjelle, published between 1870 and 1876, also dealt with land law; especially relevant for the purpose of this outline is article 1194 of the Medjelle, which sets forth the principle known as *cuius est solum* and states " The owner of land, owns together with it all which is under and all which is above it".

During the period of the British Mandate, the basic structure of the Ottoman legislation and its underlying principles were not changed, but some important alterations were brought to the administration of immoveable property; thus, the 1920 Transfer of Land Ordinance introduced a system of deed registration and the 1928 Land Settlement of Rights Ordinance

allowed for the introduction of Title Registration, thus fully introducing the Torrens system in Mandatory Palestine. Similarly, changes were made by the mandatory legislator, limiting acquisition of rights in land by prescription.

Since the establishment of the State of Israel, sweeping changes have been made to the essence of Land Law; the 1969 Land Law abolished all Ottoman legislation – whilst preserving rights acquired under its provisions before its inception (*Weisman, J.)* and incorporated all Israeli legislation enacted since the establishment of the state, most notably Condominium laws. Regarding the administration of rights in land though, the basic Torrens principles set forth during the Mandate are still in force. The Land registries comprise three types of Registries – Deeds Registry, Title Registry, and Condominium Registry. The process of title settlement is still under way, and it is carried on under the basic principles of the mandatory legislation, which was reenacted with minor changes after the establishment of the State . Title registration has absolute evidentiary value, as opposed to deeds registration, which has only *prima facie* weight.

The 1969 Land law and its amendments tend to be all-encompassing. Their provisions are detailed and strive to leave no doubts as per the law to be applied. This is not to say there are no disputes regarding their correct interpretation, but it is worth noticing that there are exceedingly few cases where a lacuna was found to exist in land legislation.

Articles 11-13 of the 1969 Land Law are particularly relevant to the purposes of this overview.

They state as follows:

"Art. 11 The ownership in a land parcel extends to all underlying depth, subject to the laws concerning water sources, oil, mines, quarries *et alia*, and to the empty space above it, without detracting from rights of flight, subject to any relevant provision of the law.

Art. 12 Ownership in land extends to all which is built or planted on it, and to all fixed chattels, except chattels which can be detached from it, whether these fixtures were built, planted or attached by the owner or by anyone else.

Art. 13 A transaction in land applies to the land and all which is specified in Art. 11 and 12; a transaction in a physical part of a parcel is not valid, unless the law states otherwise."

The concept of land ownership in Israeli Law is, in principle, three dimensional, inclusive and unseverable – unless an exception has been made by law. Such exceptions exist regarding leases, servitudes – and a subplot in a condominium, which is considered as a "separate unit regarding ownership, rights and transactions" (*Land Law art. 54, 78, 93)*.

It is worth mentioning that land legislation (Art. 126-133 of the Land Law) allows for *caveat* annotations to be made in the registries; the most important of those regards contractual obligations in land rights made by the rights' owner.

Israel has no formal constitution, but rather a series of Basic laws; they are all considered to be above the law, and some have formal provisions to this effect. One of the most important Basic Laws is the Basic law: Human Dignity and Freedom, enacted in 1992, which in Art 3 states "A person's property right is not to be infringed upon".

Art 8 of the Basic Law states: "Rights protected under this Law shall not be violated, except under or according to the provision of legislation which is consistent with the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than required." This provision has set the basis for the "doctrine of proportionality" (*Barak A.)* under which Israeli legislation and administrative actions dealing with property have been reviewed since the inception of the Basic Law.

Israeli legislation is not just multistrata in its historical dimensions, but also in regard to its sources. Israel is a mixed jurisdiction, since its legal system is based not only on written laws, but also on judicial precedents. In this context, it is relevant to note two judicial decisions: the first, from the 1970s, **Rodomilsky** vs. **Friedman**, a trespass case dealing with a TV cable stretched above the plaintiff's property. Whilst the three Supreme Court judges all agreed that the plaintiff was not entitled to any redress, they differed on the motivations of the decision, basing it, alternatively, on the *de minimis* doctrine, on the principle of abuse of rights, or on the exception set forth in Art. 11 of the Land law as per ownership in space.

Many years later, the Supreme Court was asked to sit on judgment on the legality of the subterranean land lease rights expropriation made in order to make possible the excavation of the Carmel tunnel highway in Haifa (*Forrai J., Kirschner G., 2001*) , in what is known as the **Akonas** case. The petitioners, holders of lease and ownership rights in the parcels above the expropriated land, claimed that the expropriation was unconstitutional – as it ran against Art. 8 of the Basic Law: Human Dignity and Freedom - and illegal as contrary to Art.13 of the Land Law.

The Supreme Court, in a very detailed decision of 2003, validated the expropriation after making sweeping changes to it, and turning it into an ownership expropriation of the "sleeve subsoil" necessary, under the relevant building plan, to build and maintain the tunnel.

The Court ruled that even if the Expropriation legislation predates the Basic Law and its provision are thus immune from constitutional scrutiny, expropriations made after the inception of the Basic Law – including expropriations of the subsoil - are reviewable under the provisions of Art. 8 of the Basic Law, since they are executive actions undertaken after the Basic law came into effect; after applying the "blue pencil" principle, as mentioned, the expropriation was deemed proportional and constitutional under the Basic Law.

Regarding the claim of illegality, the Court ruled that Art. 13 of the 1969 Land Law does not apply to expropriations, insofar as an expropriation is not a voluntary transaction, and in the same Art. 13 does not prohibit the expropriation of a physical part of a surface parcel, thus it should not interpreted as prohibiting the expropriation of subsoil.

In a telling aside, the judges' opinions split on the question of default ownership of the subsoil.

Justice Naor ruled that subsoil expropriations are not immune from constitutional review, and that it would be wrong to limit the right of private ownership to the area of "effective use", also given that this area is difficult to define to start with, and would change with time, thus bringing an element of instability to the concept of ownership in land.

Justice Barak, relying on the concept of "social responsibility of ownership" (*Dagan H., 2006*) stated that "the subsoil constitutes the *terra nullius* of the future" and urged the legislature to consider the topics of subsoil ownership and compensation to be paid for subsoil expropriation. On this last point Justice Barak was joined by the third judge sitting in the case, Justice Rivlin.

The **Akonas** case was referred back to the District Court, which practically redefined the borders of the expropriation as per the building plan. But the expropriation proceedings have not been completed yet, *inter alia* because the Israeli cadaster is basically bidimensional (*Benhamu M., Doytsher Y.)*; even condominium plans are not fully tridimensional, and as of today it is not possible to register a three dimensional parcellation. In the **Akonas** case, the Court was aware of the fact, but elegantly glissed upon it, not deeming the registration problem as critical for the outcome of the case, since a *caveat* note registration could be made (and in fact was) on the parcels whose subsoil had been expropriated.

The scope of this article does not extend to the amendments needed – if at all – to Planning Laws in order to make spatial parcellation possible. Nevertheless, in order to fully appreciate the issues facing the legislator of three dimensional property rights in land, a brief mention should be made to the relationship between Property and Planning Laws. This relationship is an unsettled one; whilst the traditional view, following Anglo Saxon concepts, views the two systems of law as essentially unrelated, and considers building regulations as a system of law deemed to curtail full ownership rights, recent judicature and even some laws seem to be stemming from the presumption, based in practice, that building regulations produce building rights which enhance the value of property and sometimes have effectively a market of their own, and thus can be viewed as a "quasi property", or a weighty appendix to property which cannot be overlooked in its characterization.

3. THE SECOND DIMENSION: THE SCOPE OF THE PROPOSED LEGISLATION

The overview of the first dimension, the base of our 3D construction, as it were, has shown us that the need for legislation in the quest toward spatial parcellation in Israel is definitely not to be overlooked.

Could the Israeli legal system go the way of other legislative systems and make do with existing legislation to make room for 3D properties? Maybe – but it would be far from being the optimal solution. Using existing legal tools (notably leases, easements and condominiums

laws) without changing their essence and features would create a huge gap between factual and legal reality, possibly greatly hamper the possibility to effectively use strata in an efficient and just way and, potentially, even bring confusion in the interpretation of the law in other fields and subject matter. Moreover, leaving spatial parcellation unregulated, and comparing it, to all intents and purposes, to surface parcellation, seems a step too fraught with risks and unknown factors.

To date, there seem to be consensus among all those versed in the subject that a legislative amendment is necessary in order to make special rights possible and viable in Israel.

Upon this assumption, we should then look at the second dimension – what should be the concept of the legislation and its breadth? Whilst the first dimension is a given datum, which has to be known and interpreted, the second will be as the legislator will shape it. But we can – and should – try to pose some relevant questions and formulate what we think are lines of thought which could help in defining this dimension and, thus, the "height" of the proposed legislation.

First of all, the question of **essence** should be addressed. In other words – should proposed legislation deal with proprietary issues? Should it redefine ownership in the subsoil? Should it further define what proprietary regime governs the air?

As the *obiter dicta* in the **Akonas** case hints, the very first draft of the Israeli Civil Code, which was published in 2004 and was in its advanced blueprint when the verdict was issued, did, in fact, propose limiting land property in Israel to the area of effective use. Such limitation would have had the effect of nationalizing the subsoil, since under Israeli law, the concept of *terra nullius* does not exist, and the State, following the traditional principles of Ottoman law detailed above, claims residuary ownership over all immovable property. Justice Naor shows familiarity with the criticism which was directed at the proposal at the time (*Sandberg H.*), and which continued after its formal publication (*Dagan H.*); furthermore, this proposal was not recommended as viable by the Survey of Israel 3D Cadaster R&D group (*Shoshani et al*), mainly because of practical implementing difficulties, as per to Justice Naor's opinion in the Akonas case – but also due to eventual constitutional claims of non proportional infringement upon private property.

It is questionable whether limitation of private ownership in land to the area of effective use constitutes indeed a constitutional infringement, and comparative law will show us this to be the doctrine in quite a few legislatures where the *cuius est solum* principle applies.
Nevertheless, given the intrinsic indefinable character of "effective use", and the presumption that if such a limitative legislation is necessary – the area of ineffective use to some can be indeed of effective use to others – in this case, the State – it is felt that in order to justify the, at least theoretical, infringement to private ownership on land caused by its limitation to "effective use" , further research pointing to the actual need for such sweeping, unconditional limitation is needed. This, especially taking into account that no legal precedent in Israel has yet formulated a solution to the question of compensation to be paid in the matter of

expropriation of the subsoil, and that such precedent could either considerably lower the need for ownership limitation or indeed make its need clearer.
Furthermore, it can be argued that since Israel lands– i.e. lands owned by the State, the Jewish Fund and the Development Authority - constitute over 93% of the overall land surface – all that is needed to make use of the subsoil is limit the physical volume of leased land upon the lease's renewal to the area of effective use to the lessor, thus solving most practical questions in a contractual way. The Israel Lands Administration has in fact begun to take significant steps in this direction.

It would seem, therefore, that the initial breadth of the legislative intervention should limit itself to the aim of making ownership in spatial parcels possible, without changing the existing methods of ownership acquisition.

Defining the aim as making ownership in spatial parcels possible – is not the same as defining the **technique** by which this aim is to be reached. This task is not a simple one and it is still before us.

Theoretically, there are four main legal paths which can be taken in order to reach that aim.

The first could be making use of the existing legal tools and working to stretch them so as to make them able to embrace the concept of spatial parcels.

Among the existing tools in Israeli legislation, the most suitable to the task would seem to be the provisions regarding the creation and maintenance of condominiums. In practice, in the past such a solution had its supporters (*Sandberg H*). The trouble with such a solution is that under Israeli law the owner of a unit in a condominium is considered to be having curtailed property rights, as far as such rights are by default subjected to the rights, needs and wishes of the other unit owners, both regarding to the exercise of rights in the common property and to the use and enjoinment of each specific unit. Thus, defining a spatial parcel as another kind of "dwelling" in a condominium could seriously constrict its enjoyment and its full economic potential, encumbering it with the often unnecessary need to "consult" with the owners of the other units even where those units were by definition totally unrelated, physically and economically. Most solutions to these problems would require consensual agreements, since the law could not foresee all possible factual situations, and these agreements would in turn need to be entrenched in the Condominium Bye Laws in order to bind all actual and future owners.

Another hurdle to be taken into account is that traditionally, a condominium has to have some common property in order to be considered as such; accordingly, the questions of upkeep, management and use of such common property between unit owners who have nothing in common between them would constitute a fertile ground for disputes even if the actual management of each unit could be carried on peacefully and independently.

The second path could be to adopt a "non invasive" legal technique.

The supporters of this solution claim that, when considered from a practical point of view, there is no legal obstacle to the creation of spatial parcels under Israeli legislation; this, taking into account that there is no effective difference between traditional parcellation – seen as vertically cutting into the land plot – and spatial parcellation – seen as horizontally cutting into the land plot. Therefore, under this solution it would be enough just to clarify that Art. 11 and 13 of the Land Law do not prohibit or limit the possibility of spatial parcellation, letting the practice and the Courts find specific solution to everyday problems.

It should not come as a surprise that one holding dear traditional principles of Israeli property law would not welcome this solution or deem it suitable. It is felt that property rights, stability and certainty go very well together; notwithstanding the criticism that has been addressed to the Land legislation - its painstaking striving for details and for definite solutions to its main foreseeable problems has some definite advantages and serves to underline its importance to a person's rights; and its sometimes maligned features have nonetheless undeniably been amongst the causes for the constitutional entrenchment of property rights.

It is highly questionable, in this writer's opinion, whether there is any need to experiment such a radical deviation from the accepted principles of Property legislation; this, especially taking into account that subsoil properties are widely unknown until effectively acquired and exploited, at least partially. Therefore, the real and effective balance between the owner of the subsoil and the owner of the land surface would be known only after completion of purchase – an aspect of the spatial transaction which makes it radically different from traditional parcellation of land and does not allow much leeway in legal creativity *ex post factum*.

The third possible path could be to establish an "object registry", external to the Land registry, in which rights to subterranean and aerial objects could be registered and managed; this option, if adopted, would necessitate a whole new set of rules and provisions for the new registry; would clash with the indivisibility ownership principle of land and fixtures, set forth in Art. 12 of the Land Law; would harm the Torrens basic principle which sees the land registry as reflecting all rights and interests in land; would basically allow only for retroactive registration; could create a real danger of conflicting registrations; and could pose insurmountable hurdles to the financing of 3D projects, *inter alia* since mortgages could only be attached after completion of the project.

The fourth path would have the legislator literally taking the bull by its horns – establishing specifically in legislation the possibility of creating spatial parcels, defining their main regulating principles and effectively relating to the legislative amendment as the instrument for creating a new kind of property in land where before no similar one existed.

Such a technique is the most complex of all those set forth above, because it forces the drafters to try and foresee all possible hurdles to the creation and management of spatial parcels, and most possible problems in the interaction between them and other properties - spatial parcels, traditional parcels and units in condominiums - and decide whether legislative intervention is necessary or beneficial in their solution.

The present position of the Ministry of Justice, which is responsible for promoting governmental land legislation in general and spatial rights legislation in particular, is that it is advisable to adopt, for the time being, this maximalist fourth approach; should it become clear, during the drafting process, that the degree of uncertainty is far too palpable, so much that legislation could prove to be far too adventurous – it would then be much less complex to "retreat" to a variation of one of the other techniques described above.

It is maybe superfluous, but nevertheless felt necessary, to state that it is imperative that the drafters of such kind of legislation work in tandem with all the State agencies involved in the issue, which can provide different perspectives about the points which the draft will need to address, and also the pitfalls which the draft would better avoid. Considering this, the drafting process is now undertaken by the Ministry of Justice together with leading representatives of the Survey of Israel Authority, the Housing Ministry and the Interior Ministry - all well versed in the theoretical and practical issues of spatial parcellation. The eventual disadvantage in time is, in this writer's opinion, greatly outbalanced by the advantages gained in comprehensive think-tanking.

Another very important aspect in detailed spatial rights legislation, as presently suggested, is of course comparative law experience. In this aspect, publications regarding the legal aspects of 3D cadastres are searched, studied and very much welcomed, as each one broadens the horizons of the Israeli bill drafters and provides a vital acid test of the validity of the existing concept.

4. THE THIRD DIMENSION: THE CONTENT OF THE PROPOSED LEGISLATION

We have thus reached the third dimension of the proposed legislation, its "depth", as it were.

Even working under the conclusion outlined in the precedent chapter that the **concept** of the spatial parcellation legal draft should be comprehensive, it is still important to separate between the wheat and the chaff.

A painstakingly detailed piece of legislation makes for cumbersome management – something which is definitely not needed for such a complicated subject matter – and could also be detrimental to related topics of Land law. Moreover, overregulation could also be unnecessary and harmful to the full enjoyment of the spatial property.

On the other hand, it could be dangerous in such a kind of groundbreaking legislation to take for granted provisions which are considered basic in germane legal contexts.

The dilemma is palpable, and this chapter will strive to give a few examples of the cardinal issues of content now facing the Israeli drafters.

The legislation should define clearly the spatial parcel, differentiating it from the traditional parcel – as a parcel bordered from all sides and defined by coordinates.

It should also apply to the spatial parcel, mutatis mutandis, the principle of fixtures' ownership, as set forth by Art. 12 of the Land Law, and the principle of indivisibility, as set forth by Art 13. Similarly, it should spell out the principle of residual ownership of the surface owner as relating to all land under the surface in which no spatial parcels have been created.

But should the Bill set forth the possible ways of creating a land parcel, i.e. planning or expropriation? This is not the case with surface parcels, and there is no provision of the law which unequivocally sets forth the ways for creating surface parcels. Nevertheless, it is felt that it is important to apply a higher degree of regulation in spatial parceling, thus setting forth in the law the principle of "no empty spaces" in order to prevent attempts to create spatial parcels purely for speculative reasons. Such concerns occupied also the Norway legislators (*Onsrud H.*) and effectively brought to the creation of 3D parcel intended as "construction parcels" both in Norwegian and Swedish recent legislation (*Valstad T.)*

This conclusion would seem to necessitate the limitation of creation of tridimensional leases, which could be used as a tool to circumvent the *numerus clausus* principle, to leases which are compliant to the approved zoning plans applying to the parcel. Such a conclusion is in tune with the 2006 draft of the Civil Code, which proposes to allow long term leases only if planning compliant.

As we have seen, Art. 11 of the Land Law sets forth that ownership in land extends to the "empty space" above it – but it does not define air as "land" and does not define air as an object of property. Should the new legislation specifically allow the creation of spatial parcels of air – for instance, the air above a parcel needed to build a structure linking two parcels bordering it? The arguments running counter to making this possible point to the possible attempts by surface owners to exploit the use of air where this was seen up till now as granted, and the possible anarchy which might stem as a result. On the other hand, one might argue that once the ways of creating a spatial parcel have been defined by *numerus clausus*, the latter concerns should drastically diminish.

Conversely, the decision to set a *numerus clausus* to the ways of creating spatial parcels would seem to require special attention to the pre-parcellation stage.

Given the length of planning procedures, it is to be expected that in a spatial project, like in a traditional one, many contractual obligations will take place before the actual creation of the spatial parcel. The question arises whether limitations should be set on the possibility of registering in the surface parcel registration a *caveat* based on a spatial contractual obligation in land – mainly sales and mortgages.

Caveat registrations in Israel were originally intended as a simple "warning light" to the existence of a possible competing obligation; thus, under Art. 126 of the Land Law the registration of a *caveat* is possible even under an implicit obligation, at the request of one party to the obligation, there being no limitation to the time in which the registration can be made after the date in which the obligation was undertaken.

Due to many factors, though, *caveat* registrations in Israel have, during the years, assumed the positive value of quasi proprietary rights. The registration of a *caveat* relating to a 3D obligation before the creation of the spatial parcel to which the obligation relates could lead to false expectations and multiple litigations. At this stage, the inclination would seem to lean towards creating special set of rules for registering *caveats* relating to spatial transactions – such as limit caveat registrations relating to spatial parcelling only after the spatial plan has been approved or is substantially advanced, limiting the registration to explicit obligations, and only when all sides to the obligation apply for the *caveat* registration. Since such provisions would not prohibit the actual obligation and would not infer with freedom of contracts, but only limit the possibility to register a *caveat*, which today, under Art. 13 of the Land Law, does not exist at all, there would not seem to be grounds for claims of unconstitutionality under the Basic Law.

The interaction between spatial parcels and other immovable properties is also an object of consideration during the drafting process. At this point, in line with the Norse legislation, it is felt important to spell out that spatial parcelling is not a substitute for registering a condominium, and where the conditions for creating both types of property exist, a condominium should be registered; this, in order to give the owners of interdependent properties the greater protection afforded by condominium laws, dedicating spatial parcelling to economically and legally independent units.

A thorny issue is whether the new legislation should include special provisions about the right of support and the right of access relating to a spatial parcel. The right of support is to date entrenched in the Tort Law, whereas its proprietary aspects, together with the right of access, are to be found in the provisions of the Land Law relating to misuse of right, denial of enjoyment and trespass.

It can be argued, on the one hand, that the right of access and the right to support – interpreted in their wider sense, as including also, for example, the right to ventilation, are so vital to a spatial property, that they cannot be overlooked in the proposed legislation. On the other hand, entrenching those principles specifically regarding to spatial parcels could pose difficulties in the interpretation of the existing provisions regarding traditional land parcels and lead to their narrow interpretation. Moreover, the question of right to access between the original parcel and the spatial one works in both directions, since the original parcel owner might need access to the residual part of his or her parcel – a consideration which might indeed tilt the balance towards adopting existing legal principles without creating unique rules on the subject.

Another set of questions relates to the need to refer to the difficult relationship existing between Planning and Property law in the context of spatial parcellation law. As we have seen, the relationship between the two sets of law is not fully settled, and an attempt to formulate firm and clear principles in an unstable legal reality could be counterproductive. On the other hand, the strong links between the two would seem to need some sort of reference to the issue, and it is to be expected that the draft would at least allude to it. We have seen above that the existing frame of reference indeed refers to statutory planning and planning

procedures, but there are other issues which trouble the drafting team; for example, it is being considered whether to limit the possibility to attach a spatial parcel to a surface parcel different from the original surface parcel out of which it was carved – since such a transaction could be used as a platform to allow transfer of building rights, against planning regulations.

5. CONCLUSION

The topic of spatial rights legislation provides an insurmountable hurdle to all who claim that land legislation is devoid of interest and challenges. It is an enticing project**,** requiring of those undertaking it to walk along mostly untrodden paths to build a way whose outcome is not clearly defined. The difficulties should not serve as deterrent, though, but as an incentive to carry on, whilst trying at the same time to sparkle the widest and most specialized debate. It is to be hoped this article served, even partially, this purpose.

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