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THE LEGAL STATUS OF THE OWNER OF THE EXPROPRIATED PROPERTY IN THE REPUBLIC OF MACEDONIA

Abstract: *The text analyses the legal status of the owner of the expropriated real estate as the weaker party in expropriation proceedings. Expropriation is a forceful loss of the right of ownership aimed at exercising the public interest of the state or local administration. The expropriation creates a situation where the owner of the expropriated real estate becomes a "victim" of a set of interests. The legal system of the Republic of Macedonia protects the rights of the owner of the expropriated real estate by the constitutional proclamation of the right of just compensation and by the special Expropriation Act. The detailed analysis of the Expropriation Act shows that there is an adequate level of protection of the weaker party but the fact remains that there are provisions that may put this party in unfavorable position.*

Keywords: *property, acquisition, expropriation, public interest, forced loss of ownership, construction, activities in public interest.*

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1. Introduction

In the civil doctrine, expropriation is determined as a forced loss of ownership or limitation of the ownership right on real estate in public interest as determined by law.¹

In conditions where social ownership was a dominant form of ownership in the Socialistic Republic of Macedonia (member of the Socialistic Federal Republic of Yugoslavia), expropriation in the full sense of the word meant “*expropriation of private ownership*”,² such as ownership of natural persons, civil associations and other legal entities (according to the provisions of Article 8 of the Basic Property Relations Act).³ In those times, expropriation implied a loss of the rights to hold, use, and dispose with ones private property,⁴ and the real estate became societal ownership, i.e. part of the social resources. In such conditions, the civil doctrine defined full expropriation as a forced loss of the right of ownership (*ex proprius – expropriare*) by the government. By doing so, the government deprived natural persons and civil associations of the right to enjoy their private property in favor of increasing the social property on real estate. According to the 1974 Constitution and the Basic Property Relations Act, societal property was a form of property with no exclusivity in its enjoyment (it belongs to everyone and to no one at the same time).

Analyzing the views of scholars regarding the definition of expropriation, the authors show that the institute is based on several points.

First, the legal institute of expropriation is defined as a loss and acquisition of ownership, or transfer of ownership from one subject to another.⁵ Second, expropriation is a forced way of loss of ownership determined by law. Third, the loss or limitation of ownership in expropriation proceedings is in favor of the public

1 R. Kovačević – Kuštrimović, M. Lazić. 2004:153; A. Gams, LJ. Gurović, 1990: 597; D. Stojanović.1987:170; М.Орлић, О.Станковић, 2009:121; Р. Живковска, 2010: 350.

2 R.Kovačević – Kuštrimović, M. Lazić, 2004:160; А. Групче, 1980:60.

3 *Official Gazette of SFRJ*, no. 6/80 and 36/90.

4 N. Gavella, et. al.,1992:26-27. Ph. Simler, 1996:10.

5 In Macedonian legal system, full expropriation means loss of private or municipal ownership, and acquisition of the right of ownership of the state (art. 9, Expropriation Act). According to the law of Bosnia and Herzegovina, full expropriation is loss of private ownership in favor of the expropriation beneficiary, except in cases where the expropriated real estate is a thing of public interest (art. 7, Expropriation Act). According to Serbian law, expropriation leads to a change of ownership of the expropriated real estate (art. 4, Expropriation Act, *Official Gazette of Republic of Serbia*, no.53/95). According to Croatian law, the expropriation beneficiary becomes the owner of the expropriated real estate (art. 3, De-possession Act, *Official Gazette of Republic of Croatia*, no. 9/94).

interest determined by law,⁶ which is realized by construction or performance of other activities on the expropriated real estate. Forth, the loss or limitation of ownership must be subject to just compensation, a right guaranteed by the Constitution.⁷

As scholars, we must agree that in expropriation proceedings the owner of the expropriated real estate, because of the forced loss of ownership, is a “*special victim*” of the public interest.⁸ Therefore, giving compensation for the expropriated real estate is intended to provide balance between the two parties. Relying on the principle of equality, as one of the basic principles in civil law, it may be concluded that the owner of the expropriated real estate should not be put in a worse material position after the expropriation of his/her real estate. Under the principle of equality, the compensation for expropriated real estate should not lead to enrichment of the former owner.⁹

Providing for financial balance in expropriation proceedings is based on the guarantee of just compensation in the amount of the market value of the real estate. It is also important that the expropriation proceedings are just even if the government is authorized to perform expropriation in favor of the public interest.

In reference to the thematic scope of this international conference, the authors of this paper start from the standpoint that owners of the expropriated real estate are the weaker party in the expropriation proceedings since the loss of ownership in such cases is forced by the state. In order to provide an answer to the question how Macedonian civil law, more precisely the Expropriation Act, should provide legal protection of the weaker party, we will consider the constitutional proclamation and legal provisions on expropriation (1), the types of expropriation according to the Expropriation Act (2), and the protection of

6 In Macedonian law, public interest is exercised by construction on real estate or performance of other activities in the public interest of the State or local administration (art. 6 and 7 of the Expropriation Act). According to Croatian law, construction or performance of other activities is of public interest of the Republic of Croatia (art. 1, De-possession Act). In the law of Bosnia and Herzegovina, there is but one public interest exercised by construction of buildings in public interest (art. 1 and art. 3 par. 2, Expropriation Act). In Serbian Law, the public interest is exercised by construction of objects determined by law (art. 20, Expropriation Act).

7 In Macedonian law, compensation for expropriated property is usually given in money and it cannot exceed the market value of the real estate. According to the law of Croatia, real estate is usually given as compensation that is of the same value as the expropriated real estate (art. 32, De-possession Act). In the law of Bosnia and Herzegovina, real estate is offered as compensation in the expropriation proceedings (art. 45, par. 1, Expropriation Act). Serbian law prescribes that compensation for expropriated real estate is paid in money unless the Expropriation Act states otherwise (art. 11, Expropriation Act).

8 R.Kovačević - Kuštrimović, M. Lazić, 2004:156.

9 Ibid, 157.

the weaker party in the expropriation proceedings (3). The main objective is to determine whether and to what extent the how Macedonian civil law protects the owner of the expropriated property.

2. Constitutional and Legal Proclamation of Expropriation

The right of ownership is guaranteed in the Constitution of the Republic of Macedonia (Article 30 para.1),¹⁰ stating that “*The right of ownership and the right of inheritance is guaranteed*”. Although the right of ownership is guaranteed alongside the right of inheritance (as a right primarily afforded to natural persons), the Constitutional Court of the Republic of Macedonia has interpreted the formulation “*right of ownership*” (ever since the Constitution came into force in 1991) as referring to all types of ownership (private ownership, ownership of the state, etc.).

Article 2 of the general Act on Ownership and Other Real Rights of 2001¹¹ determines the pluralism of ownership and also introduces a third type of ownership called “municipal ownership”. The introduction of property system where three types of ownership coexist started to undermine the base on which the 1995 Expropriation Act was enforced.¹²

The proclamation of pluralism of ownership determined by Article 2 of the Act on Ownership and Other Real Rights also means that all types of ownership are equal, even in the field of expropriation. In case of expropriation this means that the private owners and the state or municipality should have an equal position. This equality should not be only formal but essential so that it can provide equal opportunity for enjoyment of property for the appropriator as well as for the previous owners in sense of Article 8 of the Act on Ownership and Other Real Rights.¹³ Also, in conditions where three equal types of ownership exist, it should not be disregarded that full expropriation may lead to loss of private ownership and loss of municipal ownership.¹⁴

Introducing the municipal ownership and two types of public interest (public interest of the State, and local public interest) creates two different situations in expropriation proceedings. In the first situation, when the public interest of the state is in question, expropriation leads to loss of private or municipal

10 *Official Gazette of Republic of Macedonia, no. 52/91.*

11 *Official Gazette of Republic of Macedonia, no. 18/01.*

12 *Official Gazette of Republic of Macedonia, no. 33/95.*

13 “*The owner has the right to hold, use and fully enjoy the object of ownership in accordance with his or her will, if it is not contrary to law or rights of others*”.

14 De-possession in cases of expropriation never involves the ownership of the State.

ownership, and state ownership is acquired.¹⁵ This also applies to situations when local interest involves the construction of things in public use (roads, bridges, etc.) since such things can only be owned by the state according to Article 16 of the Act on Ownership and Other Real Rights. In cases where local interest is in question, full expropriation leads to loss of private ownership and the right of municipal ownership is acquired.¹⁶

In the legal system of Republic of Macedonia, the proclamation on protection of the owner of the expropriated property in expropriation proceedings is contained in Article 30 (para.3) of the Constitution: *“In case of loss or limitation of right of ownership, just compensation is guaranteed that may not be less than the market value”*.

A similar provision is also envisaged in Article 10 of the Act on Ownership and Other Real Rights: *“The right of ownership may be limited or lost in cases of public interest determined by law”*.

The Expropriation Act embodies a similar provision in Article 18 paragraph 1. In addition, paragraph 2 of the same article specifies that *“the market value of the real estate is determined under conditions and manner determined by law, and in accordance to methodology, rules and standards prescribed by the Assessment Act”*.¹⁷ Considering the fact that the statute of limitation does not apply to the right of ownership,¹⁸ paragraph 3 of Article 18 of the Expropriation Act clearly states that *“the right to demand compensation for expropriated real estate does not fall under the statute of limitation”*.

As previously noted, the expropriation of real estate is only exercised when public interest is concerned.

According to Article 1 of the Expropriation Act, public interest may be exercised by: 1) construction, or 2) performance of other activities. Construction is regulated by the Construction Act.¹⁹ The Expropriation Act determines which types of construction may be reason for expropriation.²⁰ The *“performance of other activities”*, which implies activities not necessarily linked to construction, is also considered to be in public interest and thus reason for expropriation. It actually involves expropriation of the existing infrastructure for distribution of electri-

15 Art. 9, par. 1, Expropriation Act.

16 Art. 9, par. 2, Expropriation Act.

17 Assessment Act, *Official Gazette of Republic of Macedonia*, no. 115/10.

18 Art. 156, Act on Ownership and Other Real Rights.

19 *Official Gazette of Republic of Macedonia*, no. 130/09.

20 See: art. 6 and 7, Expropriation Act

city, gas, central heating, etc.²¹ The provisions of the Expropriation Act regarding the expropriation of infrastructure are in accordance to the provisions of the Energy Act²² where it is stated that providing continuity in public services is in public interest²³; they are also in compliance with the Water Management Act,²⁴ which specifies that water resources management is an activity of public interest, and non-performance of such services by the holder of the water management rights is against public interest.²⁵ In these cases, the expropriated infrastructure becomes ownership of the State, and such infrastructure is then given under concession according to special laws (Energy Act, Water Management Act, etc.).

3. Types of Expropriation according to the Expropriation Act

Before we address the issue regarding the types of expropriation in the legal system of Republic of Macedonia, it should be pointed out that expropriation involves not only the loss but also limitation of ownership and other rights in public interest. Article 1 of the Expropriation Act contains the formulation “*limitation of other rights on real estate*”. The limitation of other rights on real estate refers to other real rights (servitudes, mortgage, long-term lease), as well as the right to use construction grounds owned by the state (reminiscences of the social system, viewed by scholars as a right “*sui generis*”) and the right of long-term lease regulated by the Act on Privatization and Lease of Construction Grounds Owned by the State (also viewed as a right “*sui generis*”).²⁶ Since these two “*sui generis*” rights were terminated, we may conclude that today expropriation refers to the right of ownership and to other real rights such as the right of long-term lease (the right to build).²⁷ However, there are no precise provisions referring to expropriation of other real rights.

If the expropriation proceedings are exercised in public interest and the right of ownership is terminated, that is considered to be full expropriation.²⁸ In civil doctrine, full expropriation is also defined as forced transfer of ownership from

21 The legal provisions that expropriation is also permitted for undertaking other activities in public interest is in accordance to the opinion of the Supreme Court of Republic of Macedonia expressed in Decision no.201/2008-0-0 of 13.05.2009.

22 *Official Gazette of Republic of Macedonia*, no. 16/11.

23 See: art. 3, par. 1, art. 58, Energy Act.

24 *Official Gazette of Republic of Macedonia*, no. 87/08.

25 See: art. 26 and 44, Water Management Act

26 Act on Privatization and Lease of Construction Grounds owned by the State, *Official Gazette of Republic of Macedonia*, no. 4/05.

27 Art. 4, Law on Ownership and Other Real Rights.

28 Art. 9, Law on Expropriation.

one subject (a natural person or legal entity or municipality) to another subject (the State or municipality). The subject acquiring the right of ownership in case of expropriation does it so regardless of the will of the previous owner; therefore, this type of transfer of ownership is called by scholars an “*original way of acquiring ownership*”,²⁹ on the bases of decision of an authorized government body.³⁰

In cases of full expropriation of real estate, the Expropriation Act does not contain provisions regarding the future of other real rights on the expropriated real estate. Regarding the future of other real rights on the expropriated real estate, Professor Zoran Rašović considers that, at the moment of enforcement of the expropriation decision, rights such as personal and real servitudes should be terminated, with exception of real servitudes that may be exercised even after the expropriation. Regarding the mortgage on the expropriated real estate, we must agree that the mortgage may be transferred to other real estate given as compensation or on other real estate of the mortgage debtor. In theory, the mortgage should be transferred or the secured claim be paid in full from the compensation (if the compensation is given in money). The authors of this paper consider that this issue should be regulated by the Expropriation Act because, if otherwise, the State or the municipality will acquire mortgaged real estate which contradicts to the nature of expropriation proceedings. Considering the fact that construction grounds owned by the state may not be mortgaged,³¹ it is clear that the issue of securing the claim of the mortgage debtor should be addressed in the expropriation proceedings.

In Macedonian law, partial expropriation is defined as a limitation of ownership and other rights on real estate owned by natural persons or legal entities and land owned by municipalities by instating servitudes or other limitation of the right of ownership.³² In these cases, there is partial expropriation because private or municipal ownership (as types of ownership) are not terminated but only limited for the purpose of exercising a public interest. The owner of the real estate subject to expropriation as the weaker party in the expropriation proceedings will be forced to exercise the right of ownership within the scope of such limitations temporarily or permanently. The partial expropriation also refers to the limitation of the right of long-term lease. Although there are no precise provisions, the authors of this paper consider that it is possible for such right to be limited with servitudes instated in expropriation proceedings.

29 Z.Rašović, 2009:182.

30 For more on loss of property, see: Р. Живковска, 2013:44-45.

31 Art. 45, Law on Construction, *Official Gazette of Republic of Macedonia*, no. 17/2011.

32 Art. 10, Law on Expropriation.

The Expropriation Act also recognizes partial expropriation when activities are undertaken for the exercise of public interest. It refers to cases when land is occupied for performance of activities such as geological surveys, research of minerals, and temporary occupation of adjoining real estate.³³

4. Protection of the Rights of the Owner of the Expropriated Real Estate

In this central part of the paper, the Expropriation Act provisions will be analyzed in light of the level of protection that the weaker party enjoys in expropriation proceedings and the additional protection provided by the courts.³⁴

The expropriation proceedings are initiated by proposal of the authorized subject. In the Republic of Macedonia, the State or municipalities are authorized to file an expropriation proposal.³⁵ When the public interest involves construction of infrastructure, the proposal is filed by the infrastructure project holder.³⁶ The proposal for expropriation is filed in front of the authorized administrative body – Public Administration Office for property-related matters. In cases of full expropriation for the public interest of the state, the proposal is filed by the State Attorney. When full expropriation is executed for local public interest, the proposal is filed by the municipalities. In exceptional cases, the proposal for expropriation may be filed following an initiative for expropriation. This is done in cases when the public interest involves construction or performance of services in the area of energy, minerals and telecommunications. The proposal is filed by the State Attorney, but only after an initiative was given by the subject realizing the public interest.

The authors of this text do not intend to analyze the entire expropriation proceedings. The goal is to shed light on the legal status of the owner of the expropriated property as the weaker party in the expropriation proceedings, and to examine the possibilities how the law may provide a higher level of protection in this type of legal relations. Related to the matter, the following questions need to be answered: a) Is the compensation for the expropriated property just; b) Is there a justification for the provisions in the Expropriation Act that empowers the beneficiary of the expropriation to take possession of the expropriated real estate before the decision on expropriation becomes final; c) Is there justification for the right afforded to the owners of the expropriated property to demand expropriation of the entire real estate in cases when the proposal for expro-

33 Art. 14, Law on Expropriation

34 Art. 241-250.

35 Art. 21, par.1, Law on Expropriation

36 Art. 11, par. 3, Law on Expropriation

priation is filed only for a part of the real estate; d) Should revision be allowed in the court proceedings for compensation for expropriated real estate; e) Does the claim for compensation for partial expropriation fall under the statute of limitation; and f) Is the possibility of paying the compensation for expropriated real estate in several yearly payments justified.

a) Regarding the question if the compensation for expropriated real estate is just, the authors of the paper have researched the prices paid out to owners in expropriation proceedings in time of writing this paper. The research involved the expropriation proceedings initiated to obtain land for the construction of the new highway Kičevo – Ohrid. During these expropriation proceedings, the owners have been offered a price of 40 dinar (0,58 Euros) per square meter, even though the market value of the land in those areas is estimated to be somewhere around 1.800 dinar (30 Euros) per square meter.³⁷ The amount of the compensation offered to the owners of the expropriated land truly shows that they are being unjustly treated during the expropriation proceedings by not being offered the market value for their land. For this reason, most of the owners have initiated court proceedings in order to gain higher compensation. The court may provide additional protection to the owners of the expropriated property by determining the amount of compensation. In such cases, courts usually determine compensation that is maximum 20 or 30 % higher than the price offered in the expropriation proceedings. There is one exception known in Macedonian legal system: the case when land was expropriated for construction of the Airport “St. Paul” in Ohrid. In those expropriation proceedings, the Public Administration Office for property matters offered price of 1.000 dinars (around 16 Euros) per square meter. In the same cases when court proceedings were initiated to determine the compensation, courts ruled compensation to be paid in the amount of 3.000 dinars (around 48 Euros) per square meter.

The rights of the owner of the expropriated real estate are also infringed when another real estate is given as compensation. In such cases, it is the practice of the Public Administration Office for property matters to appraise the real estate given as compensation by assigning it a higher value than the expropriated real estate even in cases where the real estates in question are of the same quality and located in the same area!?

b) According to Article 33 of the Expropriation Act, the subject filing the proposal for expropriation may take possession of the real estate in 8 days from the day a settlement was reached in the expropriation proceedings (unless the contracting parties have agreed differently). In cases when no settlement was reached,

37 Decision on Expropriation, no. 26-959/2014 of 9.5.2014. The owners of the expropriated property have been offered 200 dinars (3,3 Euros) per square meter.

possession is afforded after the expropriation decision becomes final. This legal solution is justified because when the decision for expropriation becomes final the owner loses the right of ownership over the expropriated real estate and, concurrently, the State or the municipalities acquire right of ownership over the same real estate. After the decision becomes final, the right of ownership is registered in public records – the Real Estate Cadastre.³⁸ However, in Macedonian law, there is an exception from this rule. The Expropriation Act states that, upon receiving a proposal of the subject authorized to initiate the expropriation proceedings and upon establishing that there is a “*need for urgency in construction or performance of other activities for preventing significant damages or removing danger to the health of people or the environment*”, the Government of Republic of Macedonia may decide to allow the subject to take possession over the expropriated property before the decision on expropriation becomes final.³⁹ Similar provisions on taking possession of the expropriated real estate before the decision on expropriation becomes final are envisaged in the laws of other states; for example: the Expropriation Act of Montenegro,⁴⁰ the Expropriation Act of Bosnia and Herzegovina,⁴¹ the Expropriation Act of Serbia⁴² and the Deposition Act of Croatia.⁴³ The problem with such a provision in Macedonian law is the way it is misused on many occasions. It is notable that, in most expropriation proceedings, the initiators of these proceedings take possession of the expropriated real estate before the decision on expropriation becomes final. This is usually the case when construction of infrastructure is undertaken, and it is considered to be in the public interest of the State. In such cases, the initiators of the expropriation proceedings take possession of the expropriated real estate and start construction even before obtaining the building permit. The reason why they do not have the building permit is because they are not registered as owners of the real estate in the Real Estate Cadastre; therefore, they are not able to acquire the building permit according to the provisions of the Construction Act.⁴⁴ The Macedonian Expropriation Act (just like the relevant laws in Serbia, Montenegro and Croatia) prescribes that, if the proposal for expropriation is

38 Art. 143, Law on Real Estate Cadastre, *Official Gazette of Republic of Macedonia*, no. 55/2013.

39 Art. 33, par. 3, Law on Expropriation

40 See: art. 29, Law on Expropriation

41 See: art. 31, Law on Expropriation.

42 See: art. 35, Law on Expropriation.

43 See: art. 29, Law on Expropriation.

44 According to the Construction Act, a building permit may be issued to natural or juridical person if that person owns land, has long-term lease on construction ground, concession, servitude or has acquired the right to built from the owner or the leaseholder, or that right was afforded in foreclosure proceedings. Art. 13, Law on Construction.

rejected in the expropriation proceedings, the real estate will be returned to the owners and damages will be compensated. However, the authors of this paper consider that the provisions for early possession of the real estate should be enforced only in exceptional situations and under more precise legal terms, which will limit the Government's discretion in rendering these types of decisions.⁴⁵

c) According to Article 20 of the Expropriation Act, if only a portion of the real estate is expropriated, resulting in the depreciation of value of the remaining real estate so that the real estate owner has no economic interest to use the remaining real estate, he or she may request expropriation of the entire real estate. The Expropriation Act provisions guarantee such right to the owner, but he is compelled to explain the reason for expropriation of the remaining real estate. The authors of this paper consider that these provisions of the Expropriation Act should be more precise and specific in terms of designating the situations when the administrative body executing the expropriation proceedings will be obligated to accept the owner's request. The current wording of the Expropriation Act provision gives the administrative body full discretion to accept or deny the owner's request for expropriation of the entire real estate. Such discretion may lead to infringement of the rights of the owner as the weaker party.

d) In Macedonian law, the proceedings for determining of the compensation for expropriation may be initiated before the courts, when settlement was not reached during the expropriation proceedings, and when the owner is not satisfied with the compensation offered by the Public Administration Office for property-related matters. In regard of court proceedings, it is debatable whether the revision of the court decision should be permitted. Regarding this issue, the Supreme Court of the Republic of Macedonia ruled that revision should not be allowed.⁴⁶ In spite of this decision, the judges of all Appellate Courts, after organizing several consultations in April 2015, decided that revision should be allowed for this type of court decisions, but only in cases when the value of the dispute is estimated to be over one million denars, which is accordance with the Civil Procedure Act. The authors of this paper consider that revisions of such court decision may be instrumental in improving the legal status of the owners of the expropriated real estate.

e) The Expropriation Act (Article 18, paragraph 3) prescribes that "*The right to demand compensation for the expropriated real estate is not subject to the statute*

45 In case of road construction, the State begins construction without a building permit. This is against the principle of equality regarding other subjects in civil law relations, such as natural and juridical persons and municipalities, who are obligated to obtain a building permit before they start construction works.

46 Supreme Court decision, Rev.2, no. 664/2012 of 06.11.2013.

of limitation". In legal practice, the formulation "*expropriated property*" is interpreted as "*loss of ownership on real estate*", which implies full expropriation but not partial expropriation. Considering the official interpretation in the legal practice, the judges render decision refusing compensation for partial expropriation on agricultural land if the claim was filed five years after the expropriation proceedings, applying the five-year statute of limitation to all claims⁴⁷. The authors of this paper consider that the constitutional guarantee provided in Article 30 paragraph 3 of the Constitution refers not only to full but also to partial expropriation. Therefore, courts should accept claims for compensation even in cases of partial expropriation, and they should not consider the statute of limitation in such cases.

f) The amendments of the Expropriation Act instituted in 2013⁴⁷ introduced a new article 44-a in the Expropriation Act. This Article states that in case of expropriation of one or several real estates of a single owner in one or more related expropriation proceedings where compensation due exceeds the amount of five million Euros, the compensation will be paid out in several yearly payments in the course of five years; if the amount exceeds twenty five million Euros, the amount will be paid out in form of yearly payments in the course of eight years. In these cases, the owner of the expropriated real estate has the right to receive interest equal to the interest rate of three months' government bonds obtained in the last six months of being issued in the home market by the Ministry of Finance of Republic of Macedonia. The interest rate is calculated from the date when the expropriation decision became final or the settlement was reached. The interest rates are calculated on the amount that is due.

Regardless of the fact that the owner receives interest rate for the amount of compensation that is due, the fact remains that he/she is not only deprived of the right of ownership in the expropriation proceedings but also denied the right to receive the full amount of compensation at once. The authors of this text consider that there is no justification for such provisions in the Expropriation Act as they lead to grave infringement of the rights of the owner of the expropriated real estate, which are guaranteed by the Constitution and the laws of the Republic of Macedonia.

5. Summary

The paper points out that the civil doctrine today defines expropriation as a forced loss of ownership or limitation of the right of ownership on real estate in public interest as determined by law. Analyzing the views of scholars regarding the definition of expropriation, the authors show that the institute is

⁴⁷ *Official Gazette of Republic of Macedonia, no. 24/2013.*

based on several points. First, expropriation is defined as loss and acquisition of ownership, or transfer of ownership from one subject to another. Second, expropriation is a forced loss of ownership determined by law. Third, the loss or limitation of ownership in expropriation proceedings is in favor of public interest determined by law. Fourth, the loss or limitation of ownership must be subject of just compensation.

The paper emphasizes that the Constitution of the Republic of Macedonia guarantees the right of ownership in Article 30 paragraph 1. Similar proclamations are found in Article 10 of the general Act on Ownership and Other Real Rights, and Article 18 paragraph 1 of the Expropriation Act. Just compensation is guaranteed for expropriated real estate in the amount of its market value.

As further underlined in the text, there are two types of expropriation: full and partial expropriation. If the expropriation proceedings lead to loss of ownership, that is considered to be full expropriation. Partial expropriation is defined as a limitation of ownership and other rights on real estate owned by natural or juridical persons and land owned by municipalities by instating servitudes or other limitation of the right of ownership (cases when land is occupied for performance of activities such as geological surveys, research of minerals, and temporary occupation of adjoining real estate).

Analyzing the status of the owner of the expropriated property as the weaker party in the expropriation proceedings, the text points out to several questions that need to be answered: a) Is the compensation for the expropriated property just; b) Is there a justification for the provisions in the Expropriation Act that empowers the beneficiary of the expropriation to take possession of the expropriated real estate before the decision on expropriation becomes final.; c) Is there justification for the right afforded to the owners of the expropriated property to demand expropriation of the entire real estate in cases when the proposal for expropriation is filed only for a portion of the real estate; d) Should revision be allowed in court proceedings for compensation for the expropriated real estate; e) Does the claim for compensation for partial expropriation fall under the statute of limitation; and f) Is the possibility of paying the compensation for expropriated real estate in several yearly payments justified.

Concerning the issue of just compensation of real estate owners in expropriation proceedings, it is concluded that this constitutionally guaranteed right has been infringed in many cases because the owners are offered a price lower than the market value of the estate; in cases where another real estate is given as compensation, it is the practice of the Administration Office for property matters to appraise the real estate given as compensation with a higher value than the

expropriated real estate, even when the real estates in question are of the same quality and located in the same area.

The text also shows that there are many situations where the right of the initiator of the expropriation proceedings to take early possession of the expropriated real estate is being abused. On this issue, the authors point out that the provisions for early possession of the real estate should be enforced only in exceptional situations, and under more precise legal terms which will limit the Government's discretion in rendering such decisions.

It is noted that the right of real estate owners to demand expropriation of the entire real estate when the subject of expropriation is only a portion of the real estate is completely justified, taking into consideration the owner's economic interest. But, the authors also note that the Expropriation Act gives the administrative body full discretion to accept or deny the owner's request for expropriation, which may lead to infringement of the rights of the owner as the weaker party.

Regarding the question if the court decisions on compensation should be subject to revision, the authors point out that revision of such court decisions may be instrumental in improving the legal status of the owners of the expropriated real estate.

The text also addresses the practice of judges to deny the compensation of claims for partial expropriation when the five-year statute of limitation has passed. The authors point out that the Constitution guarantees just compensation for partial as well as for full expropriation; therefore, the statute of limitation does not apply to either situation.

The text also looks at the amendments of the Expropriation Act (the new Article 44-a) stating that, in case of expropriation of one or several real estates of a single owner in one or more related expropriation proceedings where compensation due exceeds the amount of five million Euros, the compensation will be paid out in several yearly payments in the course of five years; if the amount exceed twenty five million Euros, the amount will be paid out in form of yearly payments in the course of eight years. The authors point out that, regardless of the fact that the owner has received an interest rate for the amount of compensation that is due, the fact remains that he/she is not only deprived of the right of ownership in the expropriation proceedings but also denied the right to receive the full amount of compensation at once. The authors also underscore that there is no justification for such provisions in the Expropriation Act as they lead to grave infringement of the rights of the owner of the expropriated real estate, which are guaranteed by the Constitution and the laws of the Republic of Macedonia.

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ПРАВНИ ПОЛОЖАЈ ВЛАСНИКА ЕКСПРОПРИЈИСАНОГ ЗЕМЉИШТА У РЕПУБЛИЦИ МАКЕДОНИЈИ

Резиме

У правном систему Републике Македоније, право својине загарантовано је Уставом из 1991. Према члану 30. Став 3 Устава, право својине може бити ограничено само у јавном интересу који је утврђен законом. Уставу 4. истог члана наводи се да у случају експропријације приватне имовине власник има право на правичну накнаду у износу који није мањи од тржишне вредности имовине одузете у јавном интересу. Одређење јавног интереса као и поступак експропријације регулисани су посебним Законом о експропријацији из 2012. Упркос датим уставним гаранцијама, Закон о експропријацији садржи одређене одредбе које могу представљати повреду права власника одузете имовине, која су предвиђена Уставом.

У овом раду аутори истичу да је подређени положај власника одузете приватне имовине резултат ниског износа накнаде за извршену експропријацију земљишта или неких других ограничења права власника на својину, што је случај када се имовина одузима ради изградње јавних путева. Осим тога, било је много расправе око законских одредби које прописују да се, уместо исплате целог износа у тренутку извршења експропријације, новчана накнада може исплаћивати у ратама преко целе године.

Аутори наглашавају да је неповољан положај власника експропријисаног земљишта такође резултат законских одредби садржаних у Закону о експропријацији, које не прописују обавезу државног органа да понуди замену за имовину одузету у јавном интересу. Власник је такође у неповољном положају због законских одредби које омогућавају кориснику експропријације (држави или општини) да стекну државину над експропријисаним земљиштем пре окончања поступка експропријације. Додуше, остваривање ове врсте права корисника експропријације би требало да је ограничено на ванредне ситуације; међутим, у пракси је то веома честа појава.

Кључне речи: имовинско право, право својине, приватна имовина, Закон о експропријацији, правична накнада, Република Македонија.

