

Legislative analysis on property restoration in the Republic of Macedonia

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Abstract— In this article I will outline the events and processes occurring after Macedonia's peaceful secession from Yugoslavia in 1991, around the issue of denationalization, which in 1998 led to the first law on this topic.

The aim of this article is to present the content and evolution of the denationalization laws that were introduced as a consequence of the former deprivation of private property like expropriation, nationalization and confiscation during the communist socialist regime. The importance of this article is that it describes restoration process for a country where this is seen as a major topic in daily political life. This is relevant to assess the degree of enforcement of real property rights in the Republic of Macedonia.

The first law on denationalization had many shortcomings and was attacked by the opposition. It underwent significant changes after decision of the Constitutional Court of Macedonia.

Index Terms— of Macedonia, Property rights, expropriation, nationalization, constitutional court, denationalization, restoration.

1 INTRODUCTION

The aim of this article is to present the content and evolution of the denationalization laws that were introduced as a consequence of the former expropriation, nationalization and confiscation during the communist socialist regime. The restoration process commenced in 1995 with the adoption of a Law on Expropriation, followed by the first Law on Denationalization in 1998, later amended substantially in 2000 and less significantly in the coming years (2003, 2007 and 2010). Laws related to construction of land, property and other real rights were enacted in 2001, followed in 2002 by a law on compensation bonds, followed by the emission of 11 series of compensation bonds, having a 10 year maturity each.

2 THE LAW ON DENATIONALIZATION OF 1998

Similarly to other former communist countries but considerably later, Macedonia started to initiate the creation of a restoration law in line with that of the other former communist countries in order to restore private property nationalized in different ways from 1944 onwards.

The first initiatives to enact a Law on Denationalization took place in late 1994 and were motivated by the moral obligation to compensate the former owners and their heirs who were dispossessed of their property under the rules of the former communist regime. On the 29th of April 1998, the National Assembly of the Republic of Macedonia adopted the Law on Denationalization nr. 20/1998¹, which came into force on the 7th of May 1998.

When the law entered into force, the application of the law was suspended by provisions of the law itself, which stated

that a claim for restitution could be submitted only on a form established by the Minister of Finance. It is interesting that this made the application of the entire law dependent on the goodwill of the executive power – the minister, who did not draft the necessary form in the 2 years that followed, so the denationalization could not be applied until 2000 to the detriment of all interested citizens.

Analyzing its content, non-governmental organizations disputed the provisions brought by this law pointing out that they were restrictive and discriminatory in terms of the equal treatment of the former expropriated owners. In 1999, the Constitutional Court of Macedonia indeed decided² to abolish some of its provisions³, which are presented below.

In its decision of 10th of March 1999⁴, the Constitutional Court of Macedonia decided to abolish article 2, the fifth and sixth points of paragraph 1 of article 9, the first paragraph of article 11, the first paragraph of article 23, the second paragraph of article 29, and the 38th article of the Law on Denationalization of 1998.⁵

The abolition of Article 2 put an end to the fact that there was only a limited possibility to claim restoration or denationalization, namely only in case this had been based on certain statutes.⁶ The Court argued that "in the abovementioned arti-

² Number 120/1999 of the 10th of March 1999, Published in the Official Gazette of the Republic of Macedonia nr.18/1999.

³ Article 2, the first paragraph of article 9, articles 5 and 6, the first paragraph of article 11, the second paragraph of article 22, article 23, the first paragraph of article 28 and articles 29, 34 and 38.

⁴ Published in the Official Gazette of the Republic of Macedonia nr.70/1992

⁵ Published in the Official Gazette of the Republic of Macedonia nr.20/1998

⁶ It stated: "Subject to restitution is the property seized after the 2nd of August 1944 on the basis of the following laws and regulations:

1) Law on agrarian reform and colonization ("Official Gazette of the DFY" nr.64/45) and the interpretation of the Law ("Official Gazette FPRY" nr.16/46), Law Confirming the Amendments to the Law on Agrarian Reform and Colonization ("Official Gazette of FPRY" nr.24/46) and Law on Agrarian Reform and Colonization on the territory of the Federal Macedonia ("Official Gazette of FM" nr.25/45 "Official Gazette of the SRM" nr.11/46. 3/48, 10/49, 32/57 and "Official Gazette of SRM" nr.15/65);

¹ Official Gazette of the Republic of Macedonia, nr.20/1998, Published on the 29th of April 1998.

cle there are not included all the regulations through which the property was nationalized, expropriated, confiscated etc., and this can bring certain citizens in a disadvantaged position and will divide them into two groups: citizens to whom their property will be returned and citizens who would not have their properties returned". In fact, the Court found that in assessing the basis of the restoration of the nationalized property, the constitutional principle of equality between the citizens in front of the Constitution and laws was violated, and that Article 2 of the Law on Denationalization was not in accordance with Article 9 paragraph 2 of the Constitution, namely with that "All citizens are equal in front of the Constitution and laws".

By abolishing article 9, paragraph 1, points 5 and 6, the real estate's given in concession by the state as well as those used for public healthcare, social and child protection and education, like schools, clinics, and hospitals, were brought back in the circle of the potential objects of denationalization. According to the abovementioned provisions such estates should not have been returned, but compensation was going to be provided in exchange. In the Constitutional Court's opinion:

"Such a definition does not include the need for the pre-determination of the public interest, or puts it into a too wide context – beyond the dimensions specified by the Constitution. Namely the public interest is in close correlation with the term "general interest" and represents a clear definition of the objects concerning which such a relationship can be established. This interest cannot be covered only by one specific law, hence, its determination regarding facilities, should clearly specify the objects which according to their nature require the exercise of such rights coming from a wider range of legal entities or other users. Furthermore, it must be clearly seen why those objects can have such a character. An object of general

interest can be a particular object, but it can also encompass a range of facilities, otherwise such general interest should be determined based on the type of the object or facility. Starting from the constitutional framework defining the term of public interest, that conclusion arises that the decision of not restoring the property, but providing compensation instead for such property which is in public use, but without defining the public interest for each case, the provisions of Article 9 paragraph 1 points 5 and 6 of the Law restrict the right of ownership".

Accordingly, these provisions were found to be not in compliance with Article 30 of the Constitution, which states that:

"The right to property ownership and the right of inheritance are guaranteed. Ownership of property creates rights and duties and should serve the wellbeing of both the individual and the community. No person may be deprived of his/her property or of the rights deriving from it, except in cases of public interest, which is determined by law. If property is expropriated or its use is restricted, a just compensation is guaranteed which could not be lower than its market value".

The passage "day of entry into force of this law" in the first paragraph of Article 11 was abrogated in order to widen the circle of persons entitled to restitution. By paragraph 1 of article 11 of the Law was regulated the right of application for restitution and was set up as being held by the former owner, his/her heirs alive on the date of entry into force of this Law, in accordance with the inheritance rules. The Constitutional Court found that this provision was not in accordance with Article 30 paragraph 1 of the Constitution, namely that the right to property ownership and to inheritance are guaranteed and so on and therefore violated the right of inheritance since it excluded the right of the heirs which have gained that status after the entry into force of this law, regardless of until which date was the deadline of submission for the restoration or compensation application was fixed at three or five years from its entering into force. Interestingly, the second paragraph of this article, which restricts the circle of claimants to those persons only who were citizens of the Republic of Macedonia on the day of its entering into force, was not abolished. In this way people who were expelled, took refugee abroad, emigrated forcefully or legally and lost their citizenship, consequently have not regained any right to their property lost due to nationalization, confiscation, expropriation, or agrarian reform.

The second paragraph of article 22 was abolished because it left in private-public co-ownership the arable, forests, the "mountainous land"⁷, pastureland and meadows used by the state in its agro-industrial "complexes". According to Article 22, paragraph 2 when the property is going to be returned for agricultural lands, forests, forest lands, pastures and meadows located within the agro-industrial facilities the claimant acquired only a co-ownership right alongside with the state.

Considering the content of Article 30 of the Constitution, and bearing in mind the contents of the disputed provision of Article 22, paragraph 2, according to the Court's opinion, the

2) Basic law for dealing with expropriated and confiscated forest estates ("Official Gazette of FPRY" nr.61/46) and the Law governing registered burdens of the estates that have crossed into the state ownership on the basis of the Law on Agrarian Reform and colonization and the Basic Law handling expropriated and confiscated forest estates ("Official Gazette of FPRY" nr.106/47);

3) Law on nationalization of private business enterprises ("Official Gazette of FPRY" nr.98/46 35/48) and Obligatory interpretations of the Law ("Official Gazette of FPRY" nr.63/48 27/53);

4) Law regulating the ownership of land holdings of the farmers dealing with nomadic cattle breeding, in relation to the implementation of agrarian reform ("Official Gazette of the NRM" nr.4/46) and Law on nationalization of large livestock holdings ("Official Gazette of the NRM" nr.11/48);

5) Law for Agricultural Land Fund and Assignment of Land to Agricultural Organizations ("Official Gazette of FPRY" nr.22/53 52/53, 4/57 and 46/62 and "Official Gazette of SFRY" nr.10/65) and the Law on maximum arable land left to family cooperatives and agricultural households on the territory of the Socialist Republic of Macedonia ("Official Gazette of SRM" nr.16/65);

6) Resolution on insuring the conditions for the expansion of the housing stock in the Cities and Settlements of Urban Character ("Official Gazette of FPRY" nr.23/53), Law on Nationalization of rented buildings and Construction land (except for the provisions relating to construction land) ("Official Gazette of FPRY" nr.52/58) and Obligatory Interpretations of the Law ("Official Gazette of FPRY" nr.24/59 24/61 1/63);

7) Law on Circulation with Land and Buildings ("Official Gazette of FPRY" nr.26/54 19/55 and "Official Gazette of SFRY" nr.15/65 and 53/69) and Law on Circulation with Land and Buildings "Official Gazette of SRM" br.36/75, 41/75, 10/79 and 51/88) in respect of property that it was deprived from the state - above the allowed maximum and

8) Law on Building and Business Areas, ("Official Gazette of SRM" nr.36/75) in respect of property that the state deprived above the allowed maximum.

⁷ Land having typical forest soil, situated on deforested slopes and which is used mainly for grazing.

establishment of this category of co-ownership without the consent of the private owners and without the previous determination of the public interest, may restrict their rights arising from ownership, and given the equal standing/status of the co-owners in the management of the co-ownership, the will of the one of the co-owners (in our case that of the individual former owner), may be minimized, thus the goal of establishing a co-ownership is compromised or lost. As a consequence, the Court found that the above mentioned provision was not in accordance with the aims of Article 30 of the Macedonian Constitution.

Article 23 of the abovementioned law was abolished because it limited the restoration rights to people who actually lived in their nationalized buildings. The first paragraph of this article regulated the returning of residential buildings and apartments non factually inhabited by those holding the right to use them, as well as residential buildings inhabited by such people. In accordance with the second paragraph of this Article of the Law on Denationalization, residential buildings and apartments inhabited by holders of usage rights are not going to be returned into the former owners' ownership, the user will be left inside instead and the former owners are entitled to compensation only. In the opinion of the Court,

"The establishment of the category of holders of usage rights in residential buildings or apartments is in fact a new law, having elements of contractual relationship, without a clear determination of its legal nature. Namely, for a right of use or right to lease to exist, the assumption is the prior existence of a right to ownership. With the newly established right to use the private property of someone else, as a leftover of the tenancy law, the right of compensation for damages is exerted, this does not protect property, but the interests of the persons which have used such property on other grounds. Accordingly, certain realistic conditions that occurred during the use of the seized property can not serve as a legal basis for establishing the category of "holder of usage rights" on the apartments owned by others (irrespective of whether they are in social or private ownership) and that category can not be established as part of a measure of returning or not such a property. This category is not and cannot be considered being of public interest, nor the citizens as former owners can be put in the position to depend from those that have the right to use these residential buildings. On this basis, the disputed provision of Article 23 of the law limits ownership and the rights arising from it, and the citizens are put on unequal footing".

Hence the Court found that this provision of the law was not in accordance with the second paragraph of Article 9 and with the above mentioned Article 30 of the Constitution.

Article 29 of the law was abolished because it stated that owners were also entitled to compensation in case their former property was sold to creditors following the liquidation of the state enterprise which owned it. In the opinion of the Court, by not providing the opportunity to return the deprived property which is located within the premises of a company undergoing bankruptcy, although the property was not in the company's ownership and could not enter into the bankruptcy

procedure and due to failure to recognize the rights arising also from other laws, the restored ownership became restricted and the law also established a retroactive effect to the detriment of the citizens. Hence, the Court found that this article of the Law is not in accordance with Article 30⁸ and Article 52⁹ of the Constitution.

More precisely article 29 of the law¹⁰ abolished private property located within the premises of a state enterprise in bankruptcy, and also the property used as a mortgage, foreseeing compensation for the claimant in accordance with Article 31 paragraph 2 of this law, which stated that compensation will be determined according to the condition of the property existing at the time of its nationalization, in accordance with a Governmental Decree. This article (29) was abolished because it stated that those owners were also entitled to compensation in kind whose former property was sold to creditors, following the liquidation of the state enterprise which owned them.

In the opinion of the Court, by not providing the opportunity to return the nationalized property which is located within the premises of a company undergoing bankruptcy, although the property was not in the company's ownership and could not enter into the bankruptcy procedure and due to failure to recognize the rights arising also from other laws, the restored ownership became restricted. The Court found that the law also established a retroactive effect to the detriment of the citizens, and hence this article was not in accordance with Articles 30, paragraph 3 and Article 52 paragraph 4 of the Constitution. The first mentioned paragraph states that "No person may be deprived of his/her property or of the rights deriving from it, except in the cases concerning the public interest, determined by law" and the secondly mentioned paragraph that "Laws and other regulations may not have a retroactive effect, except in cases when they are more favorable to the citizens".

According to the original wording of the second paragraph of Article 34, the bonds are denominated in DEM¹¹ and are not bearing interest. The Court found inter alia that not paying interest limits the rights arising from ownership, and given the timeframe between the date of issuance of the bonds and their effective realization, compensation devolved in time, which it considered as unfair. Accordingly, taking into account the content of Article 30 of the Constitution, and having regard to the content of the section "and are not calculated interest¹²," the

⁸ "The right to ownership of property and the right of inheritance are guaranteed. Ownership of property creates rights and duties and should serve the wellbeing of both the individual and the community. No person may be deprived of his/her property or of the rights deriving from it, except in cases concerning the public interest determined by law. If property is expropriated or restricted, rightful compensation not lower than its market value is guaranteed."

⁹ "Laws and other regulations are published before they come into force. Laws and other regulations are published in "The Official Gazette of the Republic of Macedonia" at most seven days after the day of their adoption. Laws come into force on the eighth day after the day of their publication at the earliest, or on the day of publication in exceptional cases determined by the Assembly. Laws and other regulations may not have a retroactive effect, except in cases when this is more favourable for the citizens."

¹⁰ Article 29 of the Law on Denationalization

¹¹ DEM stands for Deutsche Mark or German Mark, the official currency of the Bundesrepublik Deutschland before the introduction of the Euro in 2002, considered as the most reliable currency in Europe at that time.

¹² Article 34, paragraph 2 of the Law on Denationalization of 1998

Court found that this part of the provision was not in line with the Constitution.

According to article 38, when compensation is received in bonds of Series "B", the payment of the compensation cannot exceed 60% of the determined amount of compensation, and even so cannot pass the threshold value of 100,000 DM. Considering the content of Article 9, paragraph 2 of the Constitution, and taking into consideration the content of Article 38 of this Law, in the opinion of the Court, the percentage limitation of the compensation as well as its limitation to a certain amount, per 100,000DEM citizens interested in the return of their property are put at a disadvantage with other claimants whom compensation was or were to be paid in full therefore the Court found that this provision of the law contravenes the principles of the Constitution. A similar reasoning was followed in the case of Article 34, paragraph 2.

Article 38 of the law was abolished because it provided a limitation to 60% of the value of the compensation performed through the use of bonds of a certain issuance and also established an upper limit of 100.000 DM for the entire compensation. In the opinion of the Court, "the determination of the limits of compensation as a percentage of the total value and its limitation to a certain amount, as in this case per 100,000 DEM, derives a conclusion that citizens interested in restoring their land ownership are put on unequal footing compared with other expropriated owners to whom the entire compensation is to be paid without restrictions". Hence, the Court found that this provision was not in accordance with the second paragraph of Article 9 of the Constitution.

While the above numbered provisions were abolished by the Constitutional Court, the law was also still inapplicable due the lack of bylaws – as explained above¹³. Given the fact that the new constitution of Macedonia was adopted in 1991, the postponement of the restoration process did not prevent many former owners to file civil and administrative lawsuits against the state for the return of their expropriated or confiscated property or for appropriate compensation. Their demands were rejected usually right at the beginning of the proceedings due to the lack of regulations.

Under the above circumstances the Assembly of the Republic of Macedonia finally brought the Law on Amendments to the Law on Denationalization¹⁴.

3 THE STRUCTURE OF THE AMENDED LAW ON DENATIONALIZATION OF 2000

The adoption of the Law on Denationalization number 43/2000 had great significance since it expanded the categories of those entitled to restoration. Individual congregations and other religious organizations could now also submit their claims irrespective of whether the real property belonging to their monasteries, temples or other religious sites were nationalized or their use was restricted only. Another category of people able to claim were Macedonian Jews, whose properties

¹³ Cerepnalkovski, Rafail: The Denationalization Law in the court procedure, Law Review of the Law Faculty of the UKM Skopje 2004, pp. 20-22.

¹⁴ Published in the Official Gazette of Republic of Macedonia registered under number 31/2000

were abandoned due to their forced deportation.

The term 'nationalized property' was also expanded, now including also those real estate's which were expropriated or confiscated without any legal basis. The new law also clarified the procedure of denationalization, especially the legal status of the heirs of the former owners. A new deadline (the 28th of April 2005) was set for completing the restoration process, meaning a five years period starting from 28.04.2000. The specific period for the solution of any individual case was counted from the date of submission of the restoration or denationalization request, adding a one year extension in case the proceedings¹⁵ initiated within the deadline were not yet finished by the 28th of April, 2005.

6 LATER AMENDMENTS OF THE LAW ON DENATIONALIZATION

A further short amendment¹⁶ was brought in 2003, entering in force on the 8th of July of that year, which established the Privatization Agency of Republic of Macedonia, responsible for the payment of the sums established for accepted compensation claims.

The next amendment was brought on the 31st of December 2007 after the expiry of the 5 year deadline fixed earlier for the submission of restoration claims, and changed article 49 of the initial law in the sense that the denationalization authority, respectively the court, could have returned in kind only those estates which presented no legal or factual obstacles for restoration, otherwise a compensation would have to be paid instead. Moreover it completed article 64 by adding the provision that all legal acts concluded between the state and the claimant during the application period for restoration, namely in between the 7th of May 1998 and the 7th of May 2003, are considered null¹⁷.

The next amendment was brought on the 27th of May 2010¹⁸ and added that restoration is possible even after the passing of the 5 years deadline if the applications concerned estates which presented no factual or legal obstacles to hinder the denationalization process. Another change concerned the authority to which a complaint could be addressed in case of dissatisfaction with the court's or administrative body's decision, and placed that in the competence of administrative organs, instead of the Government. The above amendment did not refer to congregations especially concerning arable land. The restoration procedures started before the entrance into force of this amending act could have been continued if they had not yet reached the stage of a first instance decision.

The last amendment was published on the 30th of December 2010¹⁹ and clarified the unclear paragraph 6 of Article 39, stating that for the compensation payments regarding the con-

¹⁵ Stefan Georgievski, The Law on Denationalization – Collection of Rules with Commentary, Explanations, Published by "JP Sluzben Vesnik", 2000, Skopje, p.13.

¹⁶ Published in the Official Gazette of the Republic of Macedonia, nr.43/2003.

¹⁷ Vladimir Babunski, Transferring, Denationalization, Transformation and Privatization, Legal Journal, no. 192, Published by Macedonian Lawyers Association, April 2008, pp. 12-17.

¹⁸ Published in the Official Gazette of the Republic of Macedonia nr.72/2010

¹⁹ Published in the Official Gazette of the Republic of Macedonia, nr.171/2010

cession of former state property, the former owner is not entitled to that part of the compensation which represented the contribution of the state; instead, this payment was going to become public revenue for the budget of the republic.

4 CONCLUSION

All these problems have caused a lot of discontent among the previous owners and the current tenants, and generated waves of complaints to the institutions concerned. But we can state today that restitution is under way in Macedonia, with its inherent imperfections and delays and that there is a hope for the majority of the dispossessed persons to have their ownership rights reestablished albeit with significant changes, not always in kind and with a proper compensation but at least there is a clear process on the move. The imperfections are also attributable to the imperfect democracy and the fragility of the legal framework of the newly born democracy which faces many institutional challenges as well.

With amendments and changes of the Law on Denationalization of 2010, according to which the previous owners cannot obtain their property in kind but only get compensated in securities, the state acquired the right to dispose of that property and conditioned the return in kind for a proof for preregistration of the denationalization request at the cadastral office, beginning from the year 1998. The fact that this activity was not foreseen in the law at the time of its application and these changes of the law were applied also to pending cases, damaged the citizens' rights and infringed the Macedonian Constitution according to which laws generally do not have reversible effect, only with the exception of the cases when the old law favors the citizens.

The conclusion is justified that the legal and administrative procedures to facilitate the process of denationalization in Macedonia are not coherent and efficient. This has led to a slow and inconsistent application of the legislation in place.

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