

THE RESTORATION PROCESS OF PRIVATE PROPERTY IN THE REPUBLIC OF MACEDONIA - THE CASE OF ISLAMIC COMMUNITY OF MACEDONIA

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In this research, the process of deprivation of private property of Islamic Community of in Macedonia by the previous communist regime and the subsequent legislative measures to restitute property are described and analyzed. The analysis presents the major obstacles and problems which have occurred in the process of restitution and compensation. This analysis is relevant to assess the degree of enforcement of enacted property rights relating to Islamic Community.

In Macedonia, the restoration of deprived property is considered as one of the most important issues to create stable inter-religious and inter-ethnic relations. It is also one of the most difficult objectives to achieve in view of the fact that the deprivations took place in a 50 years timespan by the subsequent rulers of Macedonia.

Official data on the restoration process

In order to have the latest data on the process of restoration of property, I submitted a written request¹ to the Macedonian Government and to the Ministry of Finance of the Republic of Macedonia, regarding the stage of restitution. I have asked specifically the following questions:

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¹ Registered under nr.60-733/1 from 24.11.2011, pursuant to article 4 and article 12 of the Law on Free Access to Information of Public Character (Official Gazette of the Republic of Macedonia nr.13/1.2.2006).

- how many requests for denationalization have been submitted to date, on country level?;
- how many requests were submitted in each year since the day of entry into force of the Law on Denationalization?;
- how many cases were solved yearly?;
- which kinds of real property were targeted by the requests for restoration: plots, agricultural land, buildings, forests, commercial buildings, etc?;
- how many requests have been solved so far in total (in numbers and percentages)?;
- does the Ministry of Finance have data on the total area of the denationalized construction and agricultural land?
- what is the percentage in the total requested arable land, forest and pasture which was returned in kind?;
- how many buildings, facilities, business facilities and premises were returned?;
- how many requests for denationalization were compensated in the form of bonds, and which is the total value of the bonds emitted annually?;
- did any former citizens (of Macedonia or of the former Yugoslavia) file requests for denationalization?;
- did any, and if so to what extent, expropriated, nationalized or confiscated property enter into state ownership due to the failure of the submission of restoration requests or due to the rejection of such requests by the competent state authorities?
- The restoration of ICM property

On the 7th of December 2011, I have received an answer from the general secretariat in which is stated that the responsible institution

and thereby the holder of the information is the Ministry of Finance, more precisely the Commission for the coordination of the work of the commissions that are deciding upon the requests for denationalization. Hence and in accordance with article 18 paragraph 1 of the Law on Free Access to Information's of Public Character, my request was forwarded to the abovementioned commission.

Assuming that the government would give this kind of answer, I had prepared and submitted another request,² seeking only for information that the government has to have since the decisions taken in second instance are made by the Second Instance Government Commission. I therefore asked the Government how many complaints had been submitted to the Second Instance Government Commission for denationalization from the moment of entrance into force of the Law on Denationalization and what was the number of accepted requests/complaints in total and split out by year.

Based on article 21 of the Law on Free Access to Information's of Public Character, the general secretariat responded³ two of the three questions submitted by answering that according to the information from the records of the archive of the Second Instance Commission deciding in the area of denationalization by administrative procedures, there were in total 18682 cases registered at the Government of the Republic of Macedonia between 2004 and 2011, as shown in the table below.

Registered cases by years:

Year	Number of registered cases
2004	1681
2005	1143
2006	1275
2007	942
2008	3528

² Submitted on 30.11.2011, registered under nr.60/7627/1 from 02.12.2011, based on the same law - Law on free access to information's of public character.

³ Registered under nr.60/7627/2 from 16.12.2011.

2009	5026
2010	3898
2011	1189
	TOTAL: 18,682

Regarding the third question on the number of accepted complaints, I was informed that the Second Instance Government Commission does not possess that kind of records.

In line with the submitted questions, the Government provided the information in the same response, for the cases solved. According to the evidence of the Second Instance Government Commission, the situation for 2010 and 2011 is as shown in the tables nr.1 and 2 below.

Table nr.1 - Year 2010

Month	Accepted	Refused	Adm. Letters Rejected	Substantive decisions	Conclusions on corrections	Conclusions on termination	Procedure was terminated	Total	
January	242	247	45	11	0	2	4	0	551
February	228	224	50	7	0	5	0	0	514
March	142	201	46	10	0	2	0	0	401
April	56	164	26	7	4	1	1	1	260
May	72	175	26	13	2	1	2	0	291
June	119	111	30	7	2	0	0	1	270
July	94	72	25	2	1	0	0	0	194
August	82	105	26	3	1	1	0	0	218
September	87	239	35	10	2	0	0	0	373
October	101	202	26	8	5	0	0	0	342
November	183	229	29	16	10	2	0	0	469
December	259	83	47	7	1	3	0	0	400
Total	1665	2052	411	101	28	17	7	2	4283

Table nr.2 - Year 2011

Month	Accepted	Refused	Adm. letters	Rejected	Substantive decisions	Conclusions on corrections	Conclusions on termination	Procedure was terminated	Total
January	80	48	19	0	0	1	0	0	148
February	35	29	16	1	1	2	0	0	84
March	117	20	18	4	1	1	0	0	161
April	51	32	19	7	1	0	0	0	110
May	30	12	9	2	1	3	0	0	57
June	63	31	13	3	0	0	1	0	111
July	10	3	4	0	0	0	0	0	17
August	73	18	10	4	0	1	0	0	106
October	121	17	21	2	1	0	0	0	162
Total	580	210	129	23	5	8	1	0	956

Regarding the questions submitted to the Ministry of Finance, although the deadline for answering questions is only 30 days according to the Law on Free Access to Information of Public Character, I have not received any answer.

Case studies concerning property restoration disputes

As an illustration as how restitution is dealt with in practice, I will present a case study. This case shows the complexity of the restoration process, some of the legal loopholes and the relevant practices by the state authorities – commissions, ministry and courts.

The case-study is about restoration concerning the estates of the Islamic Community of Macedonia, the diocese in Skopje in special, illustrating the great number of cases pending and the unsatisfactory amount of compensation offered for centrally located plots and buildings.

I have sent an official request to the ICM⁴, asking for information about the stage of the restoration process of their seized property.

The ICM claims that the courts and the competent authorities for denationalization did not show any improvement in efficiency or quality in their work, surpassing the legal deadlines set for the proceedings and decision making in all stages of the procedures. In addition, ICM claims⁵ that there is a tendency to apply unfairly the substantive law, in particular the provisions of the Law on Denationalization and the Law on General Administrative Procedure by the first and second instance commissions, the Administrative Court and the Supreme Court.

Until 2011, ICM has submitted 350 requests for the restoration of in total 3.869.806,00 m² of land, including meadows, arable, pastures and mountainous land, and a total area of 41,258 m² of buildings including flats, houses and shops. Twelve years after the entrance into force of the Law on Denationalization, only 10 percent of the allegedly deprived property has been restored⁶.

As an illustration of this, ICM presents the following data. In Skopje, out of the 127 requests submitted, only in 10 cases were the claims accepted and led to some form of restitution. In Bitola, of the 56 submitted requests for over 180 cadastral parcels only 15 were effective; in Kumanovo of 10 submitted requests only 1 was effective; and in Prilep of 4 submitted requests for a dozen of cadastral parcels none was effective. The ICM claims that in the rest of the dioceses such as Debar, Ohrid, Negotino, Shtip, Veles, Kavadarci as well as in the entire Eastern part of Macedonia, the situation is the same.

The ICM achieved to restore the ownership of 496.806 m² of meadows, hayland, urban plots and 32 buildings. Ownership was again registered in the names of the appropriate dioceses. The return of the

⁴ Submitted on 07.12.2011.

⁵ Report of the Property department of the Islamic Community of Macedonia on restoration of deprived property, Published by Property Department of ICM for year 2010, published in 2011.

⁶ Ibidem, pp.1-9.

property appears a problem in all dioceses in Macedonia, but most significantly in Skopje where 127 denationalization requests were submitted, but only a very symbolic part of the expropriated property was returned. In 2010, ICM achieved to restore the ownership of 33.166 m² in the Tetovo diocese⁷. It also restored its ownership on a centrally located plot and received compensation bonds⁸ in the Gostivar diocese. There were restored 61000 m² in kind in the Bitola diocese, there were returned 14 stores, 2 homes and a plot of 1400 m² in the village of Doblezhik. The ICM property in the Veles diocese is in a very bad situation since the majority of it is occupied by local Macedonians. The Commission for denationalization was visiting the town of Negotino to identify the property to be restored. Earlier on the mosque was destroyed in Negotino and the ICM's request for compensation was rejected on the ground that it does not exist a decision on its nationalization. In Kicevo, the case of the actual green market's plot is returned for consideration to the first instance committee, following the ICM's complaint. In Kumanovo it is expected that the restoration process is to be completed soon. In Resen 73,712 m² of meadows, 7,814 m² of grassland was returned, in Skopje 10 shops on the outskirts of Kappan Han; 245,716 m² in Studenicani and so on.⁹ In the Stip diocese, some positive results were recorded, like the return of the property of 46,919 m² in the Pehçevo area. Much remains to be returned in Kumanovo, in the Anushevac Otel where in 2010 only 3 plots totalling approximately 24.000 m² were returned.

The ICM has received compensation bonds with a total value of 46.601.025,00 MKD or an equivalent of 757.740 euros, which is distributed as it follows according to the dioceses:

⁷ The Arabati Baba Tekke on a surface of 27 666 m² and other plots totalling in surface 5500 m².

⁸ It was returned the parking area near the Palace of Culture in the center of the city.

⁹ Also returned were: the parcel near the Clock Tower, home of former Reis in Jelen Kappa, a shop in the Bazaar near Arasta Mosque, a plot with surface of 1679 m² in Sveta Petka and a plot of 1900 m² in Gazi Baba.

Diocese	Value of compensation in MKD
Ohrid	9.023.440,00
Resen	9.957.236,00
Gostivar	16.292.250,00
Tetovo	330.880,00
Skopje	10.997.219,00
In total :	46.601.025,00

The congregational estates' issues were dealt with by two denationalization commissions. The first of these dealt with the plots in western Macedonia and Skopje and the second with those from Eastern Macedonia. In some towns, the restoration process did not even began yet because the dioceses did not made the assesments of the nationalized estates (Debar), or due to lack of expertise (Struga) or due to the destruction of the property documents during the clashes of 2001 (Prilep). In the heart of Skopje's old town, the Bazaar's ownership was not restored since it was considered a main Macedonian cultural heritage site, which according to the ICM is another example of the unfair application of article 7 of the Law on Denationalization¹⁰. The surrounding central plots which have been built later, hosting now many of the Macedonian national institutions, were compensated at a low value of 8euro/m²¹¹. An example is the case of a plot of 5345 m², which is hosting the building of the Macedonian Red Cross (just 100 meters from the Parliament of Macedonia) where

¹⁰ This provision prohibits the return of property which is considered to be of historic and cultural significance and protected as such by law.

¹¹ The plots owned by ICM located in the center of the capital of the Republic of Macedonia were expropriated and some of the main state institutions were built upon them, including the Basic Skopje Court 1 and 2, Appellate court, Supreme Court, State Archive, Macedonian Television, Academy of Sciences, the Macedonian National Bank, the House of Mother Teresa, the House of the Army, the Komunalec, the Faculty of Architecture, the Library "Miladinov brothers", the Macedonian museums in the Old Bazaar, the St. Cyril and Methodius University, the Opera and Ballet, the Polyclinic of Bit Pazar, the Macedonian Red Cross, primary schools across the municipality of Chair as "Jane Sandanski", "Cvetan Dimov", "Congress of the Monastery", "Freedom", "Tefejuz" and the kindergarden "Bratstvo Edinstvo". They cannot be returned into the ICM's ownership, but compensation was offered starting from approximately 8 euros per m².

the first instance commission brought a compensation decision for only 500 MKD per m². In other cases 10 denars (0.16 Euro) were offered as compensation for one m², like in the urban areas of Pehcevo, Bitola and Resen.

The ICM complains that in a significant number of cases, the disclosure of the evidence, or actions to determine the type and character of the land and its destination, were made under the influence of political and business interests, who were involved in the illegal privatization of the land that is subject to denationalization.

ICM accepted many decisions for denationalization, but for the majority of them it appealed to the second instance commissions or to the Administrative Courts because they considered the decisions to be discriminatory and unlawful. Furthermore, the ICM claims that it was not able to regain its rightful use of several mosques that the Government has agreed to return. In addition, the ICM supposes that in some cases the Government has delayed the process of restitution by selling or starting new construction on a disputed property and by questioning the historical legal claim of the ICM to its religious properties. The ICM observed greater difficulty in obtaining ownership of the previously owned property if the property was located in a desirable location for investors or business owners, often in urban areas.¹²

Conclusions

The case shows the actual legal wrangling for restoring the deprived private property, a situation which makes property relations unsecure, withholds any investment activity on these estates and consequently hurts also the economy of the city or region involved and not only the interests of the former owners. Such uncertainty surely discourages foreign investors from coming to Macedonia, despite the country's potential advantages and its desperate attempts to attract such investment.

¹² <http://www.state.gov/g/drl/rls/irf/2007/90187.htm>

The restitution of the Islamic communities' properties is the most difficult and controversial issue for at least two reasons. First, this is not about individual, but about collective property. Second, its objects are often buildings of national importance and cultural heritage sites, often situated in the central districts of towns. On the background, there remains a Christian-Muslim antagonism that may influence the decision. This antagonism is visible in Macedonian public life in general and there is a general reluctance towards the churches' demands on the part of former communist party members sitting in the commissions, ministries, municipalities and court panels of judges.

Macedonian State should return the deprived property to Islamic Community of Macedonia.

The Macedonian state should make bigger efforts to offer an acceptable compensation for these evkavs, while the evkavs should be more moderate in their demands, given the feeble character of the new state and the fragile political balance and ethnic peace installed after 2001.

A solution would be to compensate in kind these evkavs with acceptable plots, forests or other land in state property. In this way, the state budget would not be overburdened and the muslim communities would feel that their ownership is equally important than that of individuals or other congregations.