

THE PROCESS OF DENATIONALIZATION IN THE REPUBLIC OF MACEDONIA AFTER ITS INDEPENDENCE

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Introduction

After the independence and the change of political and economic system, following the example of countries in the so-called communist bloc, the Republic of Macedonia in 1998 adopted the Law on denationalization, which has undergone several amendments. The purpose of this law was to correct a historical and ideological injustice made to the owners of the property that was seized in the previous political system and to enable them to re-exercise the right of ownership over it. The adoption of the law was aimed to reaffirm the constitutional right to ownership of private property as one of the fundamental rights. Article 30 of the Constitution “guarantees the right to property and inheritance. No person may be deprived or restricted of property and the rights deriving from it, except for the public interest which is determined by law.” This constitutional provision guarantees the right of ownership for the category of citizens whose property was forcefully seized during the communist regime. According to the Law on denationalization, individuals and religious institutions have the right of property restitution or monetary compensation, if the deprivation of their property occurred from August 2, 1944.

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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.¹ 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. In its decision of 10th of March 1999⁴, the Constitutional Court of Macedonia decided to abolish article 2⁵, the fifth and sixth points of paragraph 1 of

¹ Petar Simonetti, *Denacionalizacija*, Rijeka: Pravni Fakultet Sveucilistau Rijeci, 2004, p. 20.

² Number 120/1999 of the 10th of March 1999, Official Gazette of the Republic of Macedonia no.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 Official Gazette of the Republic of Macedonia no.70/1992.

⁵ The abolition of Article 2 put an end to the fact that there was only a limited possibility to claim restoration, namely only in case this had been based on certain statutes. The Court argued that “in the abovementioned article 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 Cons-

article 9⁶, the first paragraph of article 11⁷, the first paragraph of article 23,⁸ the second paragraph of article 29⁹, and the 38th article of the Law on Denationalization of 1998.¹⁰

titution, namely with that “All citizens are equal in front of the Constitution and laws”.

- ⁶ **By abolishing article 9, paragraph 1, points 5 and 6, the real estates 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.**
- ⁷ **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 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.**
- ⁸ **The second paragraph of article 22 was abolished because it left in private-public co-ownership the arable, forests, the ”mountainous land”, 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.**
- ⁹ **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 30 and Article 52 of the Constitution.**
- ¹⁰ Official Gazette of the Republic of Macedonia no.20/1998.

The amended Law on Denationalization of 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 were abandoned due to their forced deportation.

The term 'nationalized property' was also expanded, now including also those real estates 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 proceedings initiated within the deadline were not yet finished by the 28th of April, 2005.¹¹

Later amendments of the Law on Denationalization

A further short amendment¹² was brought in 2003, 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 in 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

¹¹ Stefan Georgievski, **The Law on Denationalization** – *Collection of Rules with Commentary, Explanations*, Skopje, JP Sluzben Vesnik, 2000, p.13.

¹² Official Gazette of the Republic of Macedonia, no.43/2003.

acts concluded between the state and the claimant during the application period for restoration, are considered null¹³.

The next amendment was brought on the 27th of May 2010¹⁴ 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 adopted on the 30th of December 2010¹⁵ and clarified the unclear paragraph 6 of Article 39, stating that for the compensation payments regarding the concession 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.

Expropriation and denationalization of confiscated property

The Law on Expropriation provides two forms of expropriation: total and incomplete expropriation. Total expropriation means cancellation of the property rights and neighboring rights, meaning also the loss of tenure and all other rights that exist, such as real rights (servitude, usufruct), contract (rental) rights and others, although it is not expressly stipulated in the law. Moreover, expropriation ends the right of owner-

¹³ Vladimir Babunski, "Transferring, Denationalization, Transformation and Privatization", **Macedonian Lawyers Association Journal**, Volume 9, 2008, p. 12.

¹⁴ Official Gazette of the Republic of Macedonia no.72/2010.

¹⁵ Official Gazette of the Republic of Macedonia, no.171/2010.

ship on the buildings built on expropriated land, as in case of total expropriation. Expropriation of a special part of that building (apartment or business premise), also ends the right of ownership on the common parts of the building (staircase, courtyard, cellar etc.).¹⁶

In the second form of expropriation, the incomplete one, the property may not be deprived nor the rights arising from it. Incomplete expropriation of property and rights arising from it are limited to four cases: the establishment of an easement, the establishment of a lease, a temporary restriction of land use and temporary occupation of land for the purpose of carrying out preparatory work on the land before construction. In that case it should always be taken into consideration that the establishment of the servitude and lease rights can be done if there exists a public interest for the temporal limitation of usage rights on the land in order to carry out preparatory construction work. In practice, often the temporary expropriation is used instead of incomplete expropriation.¹⁷

One of the most complex issues arising during the expropriation is the determination of the market value of the expropriated real property because it is known that the market value is established on the market and it depends heavily on the existing offer and demand, therefore any determination of the market value results not exactly in a market value, but in an approximate value based on objective criteria¹⁸. The moment of establishing the market value should be before the announcement of an expropriation is made because the public announcement or disclosure of the expropriation value reduces the market value of the property. The law leaves the establishment of the proper time for fair compensation to the former owner. The market value can be determined by comparing the market value of another identical or similar property which can be freely sold.¹⁹

¹⁶ Venceslav Efremov, **Komentar na Zakonot za Ekspropriacija so Modeli na Akti**, Skopje: Nova Makedonija, 1995, p. 67.

¹⁷ Milan Ristic, **Ekspropriacija Nepokretnosti i Pravni Rezim Gradevinskog Zemjista**, Beograd: Ekonomika, 1980, p. 24.

¹⁸ Articles 23-36.

¹⁹ Efremov, **Komentar na Zakonot za Ekspropriacija**, p. 56.

When the state is the primary beneficiary and the expropriation is carried out for satisfying its own needs, the compensation shall be paid from the secured assets or from its endowment. However, when funds prove to be insufficient, the difference will be paid by the Republican council directly from the central budget. When the beneficiaries of the expropriation are public legal entities, they are obliged to pay the prescribed amount of compensation provided by their real property or real assets. If the funds are insufficient, the public legal entity is responsible to cover it with its own assets. All costs (e.g. costs for experts, witnesses, interpreters, provision of evidence, etc.) for submitting the proposal for expropriation until the handover of the estate are to be covered by the beneficiary of the expropriation, regardless whether the proposal is approved or denied by the authority²⁰.

The denationalization law also foresaw the restoration of the property nationalized through confiscation²¹. In practical terms, the request for the modification or cancellation of the sentence including the confiscation of property could be submitted within three years from the date of enactment of the law to the competent court corresponding to the domicile of the condemned person at the time of his conviction. The denationalization application had to be accompanied by the imposed sentence.

The court was obliged to adopt a decision within three months after the submission of the request of the applicant, after assessing the fulfillment of the conditions necessary for abolishing the punishment of confiscation, based on the article 389 of the Criminal Procedure Code. Finally the court could either modify the sentence especially when confiscation was imposed as a minor and accompanying penalty, or revoke the sentence – if confiscation was pronounced as a single sentence. The

²⁰ Except for the provisions of this article, in addressing the procedural cost issue the subsidiary provisions of Chapter IX of the Law on General Administrative procedure will also be applied. Thus, for example according to Article 117 of that Act, the costs would be decided by expropriation or settlement under Article 113, paragraph 2 and shall not recognize as eligible the costs incurred by the owner during the procedure of expropriation, if they were caused by his guilt.

²¹ Article 4 of the Law on Denationalization, Official Gazette of the Republic of Macedonia no. 20/1998.

final decision of the court on the revocation or modification of the confiscation sentence was the *sine qua non* for the initiation of the restitution proceedings.²²

The methods and forms of compensation

In the Law on Denationalization of 2000, compensation is defined as is normal in civil law, namely as a way to put a party as much as possible in the position it would have been in without the damaging act. The legal object of compensation can be residential buildings and apartments, commercial buildings and business premises, commercial estates for rental, business facilities and capacities, movable and immovable property of cultural, historical and artistic importance, movables, arable lands, mountains, forests, pastures, meadows and construction land.

In case of properties which could not be restored because of the impossibility to be returned in kind sometimes due to their factual inexistence, the Law on Denationalization²³ provided the conditions for their compensation²⁴. The amount of compensation is to be determined according to the status of the property at the time of its expropriation, in accordance with the Decree for the assessment and determination of compensation for denationalized property, brought by the Government of Macedonia in 2000. In the case of the actual non-existence of the former real property, other real property (land) is given as compensation.²⁵

In practice, there are cases when the property was not subject to nationalization but it was nationalized and therefore compensation was given either in cash or in bonds. This form represents a form of violation of the Law on Denationalization since the acceptance of government bonds instead of the property may prove to be a symbolic compensation; if it is based on past time prices and not revaluated for ongoing real estate

²² Rafail Cerepnalkovski, "The Denationalization Law in the Court Procedure", **Law Review of the Law Faculty of the UKM Skopje**, Volume 42 2004, p. 20.

²³ Abbreviated from time to time as Law on Denationalization in the parts to follow.

²⁴ In its Article 37.

²⁵ Vasil Velkovski, **Dekonfiskacija**, Skopje: Praven Fakultet, 2004. p. 37

market prices, it may prove also disastrously small for the former owners. The value of such property is determined according to the procedure laid down in the above mentioned decree, briefly known as UMPV or Decree no. 43/2000.²⁶

For the property which can not be restored or which does not exist anymore, compensation can be allocated in two ways: in kind, meaning to cede another state property of the same type, or by allocating compensation shares in the form of denationalization bonds or other goods in state ownership.²⁷

In case of compensation provided in the form of bonds, the Republic of Macedonia issues denationalization bonds, regulated by a special law²⁸. The purpose of issuing bonds is to meet the compensation obligations of the state under the denationalization procedure. The use and funding of these so called “denationalization bonds” are regulated in article 6 and 41 of the Law on Denationalization. The denationalization bonds are kept electronically in the Central Depository of Securities, and citizens have acquired the right of ownership to such bonds by the time of their registration at this center in the manner and procedure regulated by the ministry of finance. The compensation claims are not subject to legal prescription, nor is the income originating from their possession taxable.²⁹

The first denationalization bonds were issued on the 11th of June 2002 having a maturity of 10 years. The government of the Republic determines the amount of bonds in each year, which depends on the amount of compensation determined by a final decision during the procedure of denationalization. These denationalization bonds were issued in electronic form, as is also usual today. These bonds were used to compensate the former owner in case their nationalized property was to be privatized

²⁶ Cerepnalkovski, **The Denationalization Law in the Court Procedure**, p. 79.

²⁷ Kiril Cavdar & Dimko Milenkov, **Propisi za prisilno odzemanje na sopstvenosta**, Skopje: Akademik, 1995, p. 30.

²⁸ Law on issuing bonds of Republic of Macedonia regarding denationalization, Official Gazette of the Republic of Macedonia, no. 37/2002.

²⁹ Georgievski, **The Law on Denationalization**, p.13.

and the shares or parts of such enterprises were owned by the Privatization Agency the of Republic of Macedonia³⁰; the bonds were also used for the payment of shares reserved for the former owners under the Law of Privatization³¹; for the use of the agency for the rehabilitation of the banks, funded from the sale of state companies; for the purchase of state assets offered for sale provided that is allowed to be performed by the use of such compensation bonds; for the purchase of shares in the privatization process as well as for the payment of compensations for the leasing of assets by the state and for other obligations nascent under this law³².

Normally there is no compensation for a property whose issue had been already solved – in whatever form: compensation of whatever amount or restoration or compensation in kind paid by that time. If the property still exists and can be returned, then the applicant is obliged to repay the compensation received³³. In this case the “final” compensation is determined according to the above mentioned principles of the Law on Denationalization.

The solution of compensation for commercial buildings and business premises (like shops) is based on very similar principles. Their value and the suitability of the location are evaluated according to evaluation methodology of the state owned commercial spaces (shops) used for determining the level of rent stated in the ordinance and upon the decision

³⁰ Called the Agency for the transformation of enterprises with social capital.

³¹ Called the Law for the transformation of enterprises with social capital.

³² The funds necessary for the payment for the denationalization bonds and their interest are provided by: part of the sums obtained from privatization; funds derived from the sale of assets of RM; those derived from the leasing of state property; those paid as compensation for the property, its added value and from inheritance tax; and from the state budget, the Ministry of Finance being responsible for the collection of these funds and payment of compensation, Law on Denationalization, Official Gazzete no.20/1998, articles 31-34.

³³ In the amount, in the manner and procedure prescribed by the regulations of the Republic of Macedonia, Article 31, paragraph 2 of the Law on Denationalization, Official Gazzete no. 20/1998.

of the Government of the Republic of Macedonia for determining the value of the assessment points.³⁴

The value of economic facilities and capacities (factories, mills, hotels, sawmills, pottery factories, etc) is assessed by the Methodology for Assessing the Value of State Enterprises Called Social Capital Enterprise³⁵. The non existing premises are assessed on the grounds of the same principles described in detail before. The value of movable and immovable property of important cultural, artistic and historical value is estimated according to the rules for the protection of cultural monuments like the Law on Protection of Cultural Monuments, the Convention for the Protection of architectural heritage of Europe of 1985, ratified by Macedonia in 1991 and by the European Convention for the Protection of Archaeological Heritage of 1960.³⁶

In case of agricultural land, forest, mountainous land and pastures, their value is estimated on the basis of their property tax base, their level of sales tax on real property and based on their rights defined by the public revenue office of the region according to their quality, cultivation rating and size. In assessing the value of agricultural land, forest, forest land and pastures, their value has decreased from agricultural point of view but on the other hand increased due to the inherent increase of their importance as becoming subjects of road constructions, establishment of tourist facilities, creation of artificial lakes and irrigation systems. In assessing the existing but immature forests, the value of their growth in the meantime is subtracted from the value of the compensation³⁷. The restorable construction is evaluated and compensated according to the urbanization of towns and settlements' areas in Macedonia.³⁸

³⁴ Georgievski, **The Law on Denationalization** p.81.

³⁵ Official Gazette of the Republic of Macedonia no. 38/93.

³⁶ Babunski, **Transferring, Denationalization**, pp. 17.

³⁷ Articles 11-13, *ibid*.

³⁸ Cerepnalkovski, **The Denationalization Law in the Court Procedure**, p. 103

Conclusion

The Republic of Macedonia is one of the last countries in Europe to start the process of property restitution. While in other countries of the so-called “communist bloc” this process has been effectively completed and the property has been restituted to the former owners, in Macedonia even though the government declared the process as formally completed it is difficult to estimate how much successful has the restitution has been. According several studies the process of denationalization has lasted unduly long. One of the main reasons for this situation is the lack of political will of the government to complete properly this process as opposed to its declared statements in public. The institutional path the former owners of nationalized property had to follow has been bulky, unclear and very bureaucratic. The Macedonian judicial system is characterized by courts overloaded with cases and long and expensive lawsuits, while the final decisions were often unpredictable due to the lack of unified jurisprudence. The slow and inefficient process of the restitution of the confiscated property to their owners, the numerous obstacles faced by applicants for restitution, the lack of coordination among state institutions involved in the process and use of building land, alienation of property which is subject to denationalization or taking activities that prevent the restitution of property, have created serious doubts about the successfulness of the whole process of denationalization.