

An Anti-corruption Assessment of the Legislation -
a Report on the Law on Expropriation

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INTRODUCTION

The basic text of the Law on Expropriation was adopted in 2012 (Official Journal of the Republic of Macedonia no: 95/2012 of July 26, 2012), which has been amended and supplemented on 7 occasions (Official Journals of the Republic of Macedonia: 131/2012, 24/2013, 27/2014, 104/2015, 192/2015, 23/2016 and 178/2016). This Law does not have a consolidated version, which makes the analysis of the provisions more difficult. The current Law on Expropriation enters into force after the expiry of the Law on Expropriation whose basic text was adopted in 1995.

In addition, the Constitution of the Republic of North Macedonia establishes the right to a fair compensation which may not be lower than the market value in case of expropriation, which makes this institute one of the main postulates in the creation of the democratic principles of the state.

The current Law on Expropriation does not establish some of the more significant bylaws, but the local self-government units adopt individual acts that stem from this Law separately.

The aim of this Law is to stipulate the expropriation and limitation of the right of ownership and of the property rights of real estate in order to protect the public interest established by law, and for the purpose of constructing buildings and performing other works, establishing the public interest, the expropriation procedure and the procedure for determining the market value of the compensation.

The methodology of the State Commission for Prevention of Corruption¹, for anti-corruption screening of the legislation, the comparative analysis and methodology of the Regional Cooperation Council of Southeast Europe, as well as the Regional Anti-corruption Initiative were used for the needs of the analysis².

¹ The State Commission for Prevention of Corruption, methodology for anti-corruption screening of legislation, November 27, 2020, available at: https://www.dksk.mk/fileadmin/PDF/Metodologija_za_antikorupciska_proverka_na_legislativata.pdf

² Regional Cooperation Council, Anti-Corruption Assessment of Laws ('Corruption Proofing') Comparative Study and Methodology, November 2014, available at: https://www.rai-see.org/php_sets/uploads/2020/11/Comparative_Study-Methodology_on_Anti-corruption_Assessment_of_Laws.pdf

CORRUPTION RISKS DETECTED IN THE LAW ON EXPROPRIATION

One of the basic preconditions for legal security is the existence of a consistent legal framework that is not subject to frequent amendments and supplements and which is a consolidated document. In the case of the Law on Expropriation, a consistent legal framework is absent, and apart from an unofficial consolidated text published on the internet site of one of the ministries, there is no other way to obtain the text. In addition, the individual acts for establishing the market value of the real estate which is subject to expropriation are not publicly available in order to ascertain whether the compensation that was determined really corresponds to the market value. This does not represent an immediate risk of corruption, but it leads to legal insecurity and a potential for future misuse of the rights of the persons whose real estate is subject to expropriation.

Apart from the legal insecurity that was detected, there are risks of corruption in myriad segments that relate to the grounds for expropriation, as well as to the expropriation procedure itself. Specifically, risks of corruption were found in the following provisions of the Law itself:

1. Article 6, paragraph 2 establishes that public interest of significance to the state may also be ascribed to the expropriation of buildings, plants and lines for production, the transmission and distribution of electricity or for the transmission and distribution of natural gas, for plants and systems for production and distribution of

heat energy, as well as for water management facilities and plants, for the purpose of providing a public service.

By using a norm established in this manner, the state may expropriate property of persons that are in the business of electricity production, which may cause severe consequences to the person, but also to the economy. This principle is one of the approaches that have received a lot of criticism and is an example of the way non-democratic societies work.

2. Articles 6 and 7 establish the grounds on which the state/the local self-government unit may carry out expropriation, and one of the basic requirements is the construction of a building of public interest on different grounds.

Bearing in mind that agricultural land may also be expropriated (Article 3, paragraph 1, line 2), in order to carry out the construction, the agricultural land must be converted to land for construction purposes. After going through the entirety of the law, it remains unclear why if the state converts the agriculture land to land for construction purposes, the expropriation of the property is still being carried out as if it was agricultural land. In this manner, the owner of the property that is expropriated is placed in a less favorable position and the market value of their property is much lower than the real value for the purpose of expropriation.

3. Article 18 - Compensation

According to this provision, a fair compensation shall be awarded for the expropriated real estate, which shall not be lower than the market value of the real estate. In addition, the provision establishes that the market value shall be determined according to the methodology, rules and standards stemming from the Law on Appraisal³. The largest risk in this provision is that according to the methodology, the market value shall be determined in line to the value that has been set for the appropriate area in the competent cadaster. Bearing in mind that the cadastral values do not reflect the real value of the property and that the prices are depreciated in relation to the market prices⁴, it becomes unclear whether this methodology actually works. The market value calculation does not take into account the type of land, its location and its functionality. In addition, these methodologies are not publicly available and the Law does not specify whether and how frequently they are being updated. This situation is confirmed by the large number of court disputes in front of the Administrative Court of the Republic of North Macedonia, in which in most of the cases the price established in the course of the expropriation process is being disputed.⁵

4. Article 20 - Expropriation of the remaining part of the real estate

This provision establishes that if the expropriation of one part of the real estate resulted in significant reduction of the area of the remaining real estate,

thus dampening the economic interest of the owner to use the remainder of the real estate, the remaining part may also be subject to expropriation at the request of the owner. The provision articulated in this way grants the implementing authority a discretionary right to decide whether to expropriate the rest of the property, in which the owner has a reduced economic interest. This puts the owner in a subordinate position and, in addition, the criteria that have to be met in order for the expropriating authority to be able to decide by merit for the rest of the property are not specified. Integrating discretionary powers into laws that are of key importance for the protection of private property results in a high risk of corruption or misuse of influence.

5. Article 25 - Proposal for expropriation

This Article regulates the type of expropriation and the compulsory elements in the proposal for expropriation. The Law fails to clarify why the grounds for expropriation are not a compulsory element in this proposal, but just a selection mechanism of the authority that proposes the expropriation. Such formulation clashes with the basic principle of this law in Articles 6 and 7, where the grounds for expropriation are established precisely. Namely, if the grounds for expropriation are not contained in the proposal, the person whose property is being expropriated cannot know whether the authority has exceeded its competences and whether the procedure adheres to the basic principles of this Law.

³ Law on Appraisal, Official Journal of the Republic of Macedonia no. 115/10, 158/11, 185/11 and 64/12, unofficial refined text, available at: http://komoranaprocenuvaci.mk/wp-content/uploads/2013/04/zakon_za_procena.pdf

⁴ Human Rights Institute, OVER 15 MILLION EURO PAID ON ACCOUNT OF COURT EXPROPRIATION DECISIONS FOR LAND ON THE KICHEVO - OHRID HIGHWAY, 5 MILLION OF WHICH FOR EXPENSES by Sashe Dimovski, available at: <https://www.ihr.org.mk/storage/app/media/%D0%9F%D1%80%D0%BE%D0%B5%D0%BA%D1%82%D0%B8/2018%20-%20%D0%97%D0%B0%D0%B5%D0%B4%D0%BD%D0%BE%20%D0%B2%D0%BE%20%D0%B1%D0%BE%D1%80%D0%B1%D0%B0%20%D0%BF%D1%80%D0%BE%D1%82%D0%B8%D0%B2%20%D0%BA%D0%BE%D1%80%D1%83%D0%BF%D1%86%D0%B8%D1%98%D0%B0/%D0%98%D1%81%D1%82%D1%80%D0%B0%D0%B6%D1%83%D0%B2%D0%B0%D1%87%D0%BA%D0%B8%20%D1%81%D1%82%D0%BE%D1%80%D0%B8%D0%B8/15-Final-version-story-mk.pdf>

⁵ Third monitoring report on the work of the Ombudsman's Office of the Republic of North Macedonia, Human Rights Institute, December 2019, available at: https://www.ihr.org.mk/storage/app/media/Publications/%D0%A2%D1%80%D0%B5%D1%82%20%D0%BC%D0%BE%D0%BD%D0%B8%D1%82%D0%BE%D1%80%D0%B8%D0%BD%D0%B3%20%D0%B8%D0%B7%20%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98_%D0%9C%D0%9A.pdf

6. Article 27 - Proposal for expropriation presented in an initiative

This provision refers to a situation in which expropriation is carried out for the purpose of constructing a facility of public interest or a facility for carrying out an activity of public interest or for providing a public service in the area of energy, mineral raw materials and telecommunications. The proposal for expropriation is submitted by the Ombudsman of the Republic of North Macedonia or the local self-government unit and the city of Skopje, upon an initiative of a legal entity that intends to achieve the public interest. In this way, the owner of the property is prevented from launching a direct negotiation with the legal entity that plans to achieve the public interest.

7. Article 34 - Renouncing the proposal for expropriation

This Article establishes that the entity that proposed the expropriation has the right to renounce the proposal for expropriation unless the decision has become final. The fact that it is possible that a longer period passes from the moment the proposal for expropriation was submitted until the potential renouncement from the proposal remains a risk for the owner of the property that was being expropriated, as within this timeframe the property was frozen and inaccessible and the owner could not use it in legal trade. In addition, the legislator does not foresee any compensation for using the property during this period, which leaves the door wide open for corruption.

8. Article 35 - abolishment of a legally valid expropriation decision

The legislator leaves a 10 year window for the previous owner of the property to be able to submit a request for abolishment of the expropriation decision if they fail to achieve the goal of the expropriation. The 10 year deadline is too long to allow the state/local self-government unit not to use the property, especially since the fact that the budget funds are used to carry out the expropriation is also brought into question. No sanctions are foreseen for any reckless and imprudent behavior in this specific case, which means that any potential misuse is not regulated.

9. The Law is quite strict in the section that covers the settlement hearing.

Namely, the settlement hearing procedure is being regulated by Articles 30 and 31. If the owners whose property is being expropriated do not agree on the price, they may file a lawsuit, but that does not postpone the expropriation of the property. In this way the expropriation authority directly misuses its superior position.

10. The Law offers virtually no protection from an expropriation procedure that was poorly implemented.

The sole misdemeanor provision in the law covers the situation in which an official fails to act in an expropriation procedure. This effectively makes it impossible to impose any sanctions for inadequate expropriation procedures, which may result in a risk of corruption and legal insecurity.

CONCLUSION

One of the basic conclusions that stem from the analysis of the Law on Expropriation is the fact that the legislator has intended to protect the state instead of the owners of the private property that is being expropriated.

The Law bestows discretionary powers to the authorities that implement the expropriation, which in turn paves the way for potential misuse of influence and corruption.

The compensation in the expropriation process remains to be the greatest weaknesses in the

implementation of this Law. Despite the fact that the Constitution and the Law are allegedly grounded on the premise of the real market value, in practice this is missing and the subject of most of the court disputes is the value of the compensation and the extremely undervalued prices that the expropriation authorities offer.

The legal gaps in the misdemeanor provisions, on the other hand, leave room for misuse in the procedures themselves and provide no mechanisms for punishment of poor implementation of the expropriation procedures.

RECOMMENDATIONS

Because of the large number of changes to the Law on Expropriation, an official, refined version must be drafted, or a brand new law has to be created that would integrate the following recommendations appropriately:

- The provision in Article 6, paragraph 2, which violates the protection of private property as a constitutional concept, must be removed. It can not be allowed for the Law to enable the expropriation of buildings, plants and lines for production, of transmission and distribution of electricity or of transmission and distribution of natural gas, of plants and systems for production and distribution of heat energy, as well as of water management facilities and plants, in order to provide a public service.
- A suitable penal policy for poor implementation of the expropriation procedure needs to be established. A basic mechanism for preventing corruption, that is misuse of discretionary powers, is to have a repressive mechanism for all participants in the process. The Law thwarts this possibility, so it is necessary: to implement a structured penal policy for all participants in the

process; to find any authority that inadequately implements the expropriation liable; to establish liability if the goal of the expropriation is not achieved within a specific timeframe etc.

- To design a procedure that would benefit the owner of the property that is being expropriated. The settlement hearing is regulated rigidly, and the authority is granted discretionary powers to reject the request of the property owner ad-hoc. There is no second instance procedure in case the authority rejects the proposal, but a court proceeding is launched immediately, while this procedure does not postpone the expropriation decision.
- The market price, as compensation, should be subject to amendments and supplements in line with the real market circumstances. The compensation offered does not match the market value, which is also confirmed by the court verdicts which support this view. It is necessary to introduce urgent changes to the methodology for establishing the market price, so that it corresponds to the real price and is publicly available.



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