



**The Process of Denationalization in the
Republic of Macedonia from the
Perspective of International Law and in the
Light of the Country's Accession Process to
the EU**

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Abstract: This paper highlights some considerations concerning the restoration process of previously deprived private property by the communist regime from the perspective of international and European legal commitments which became part of the Macedonian legal system through adhesion, ratification and state succession. There are several publications that deal with practical aspects of the process of denationalization in Macedonia, however very few of them relate the issue with country's obligations under international and EU law. The paper uses legislative analysis to highlight some of the most important obligations that derive from international legal instruments regarding the process of denationalization. It also analyses the reports of the European Union following the motoring of the accession process and their implementation in practice. The monitoring of the denationalization process in Macedonia by the European Union has had positive results, however, it should not be limited only to the review of the existing legislation, but should seek concrete action plans with clear benchmarks, budgets and responsible institutions. The study could have implications for the category of people who intend to restore the property rights that had been deprived by the communist regime. This paper offers an insight on the issue of denationalization in Macedonia in the context of its accession in the European Union.

Keywords: property; deprivation; restitution; international law; rule of law

1. Introduction

The change of the political regime in ex-communist states brought considerable novelties in the area of lawmaking regarding real property². In line with other Eastern European states, the Republic of Macedonia decided to transform its political, economic and social regime after the dissolution of the Socialist Federal Republic of Yugoslavia on the basis of the basic tenets of a modern state: creating a civil society, a democratic political system and a functioning market economy. In

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² Many of the ex-communist countries in which these measures were applied, attempted to restore the confiscated property in kind or compensate the previous owners.

this line, one of the tasks in carrying out the preconceived political-economic transformation was the restoration of the previous private property structure. The general consensus among the political forces in favor of the restoration process was that it was necessary in order to avoid future political and social problems. But the practice of returning the properties to their original owners showed to be more complicated and tedious than foreseen. It had to comply with two antagonistic claims: to satisfy the former owners justified claim for restoration and at the same time taking into the consideration and possibly avoiding harming the interests of the nationalizations' beneficiaries. The nationalized or confiscated property was later often transferred or sold by the state to new private owners. Thus, houses and apartments were often sold to the tenants. The same happened with the commercial facilities which were also sold or given into concession to companies. The following will show that it often was (and still is) difficult to overcome these problems.

In this paper I will highlight some considerations concerning the restoration process of previously deprived private property by the communist regime from the perspective of international and European legal commitments which became part of the Macedonian legal system through accession, ratification and state succession. I will also present the views of the European Union following the permanent monitoring the accession process, including that of the restoration of the pre-existent ownership structures, seen as necessary for the establishment of a functioning market economy according to the EU's country reports from 2008 to 2012. It is presented Macedonia's place in the legal domain of real property restoration in the international and European setting.

2. Republic of Macedonia and its International Obligations in the Field of Property Rights

2.1. United Nations Treaties

The International Covenant on Economic, Social and Cultural Rights (ICESCR) (Botsiou & Lamers, 2003, p. 78) of the UN was ratified by Macedonia in 1994 as the successor of Yugoslavia which on its turn had signed the Covenant on 8 August 1967 and had ratified it on 2 June 1971. The International Convention on the Elimination of All Forms of Racial Discrimination in its Article 5 protects property rights and states: "Everyone has the right to equality before the law without distinction to race, color and national or ethnic origin, including the right to own

property alone as well as in association with others". These principles were embedded in the Yugoslav constitution and also in the Macedonian constitution of 1991.

The Convention on the Elimination of All Forms of Discrimination against Women extends ownership rights to women, declaring in its article 16 that "both spouses have the same rights respecting the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration". This convention was ratified by Macedonia in 1994 as the consequence of its succession of Yugoslavia (SFRY), which had adopted and ratified it during its existence. This in fact presented no real change for Macedonia, as the equal legal standing of men and women was already adopted by the communists when they came to power in 1945. Moreover, Yugoslavia as the predecessor of the present Republic of Macedonia has ratified the equality of women and men regarding all rights earlier, through the adherence to the ICESCR¹. The fact that in some (mainly Islamic) communities, this equality is not fully recognized is rather hidden and constitutes disrespect for the existing laws. Similarly, the Convention on the Protection of the Rights of Migrant Workers and Members of Their Families and the Convention relating to the Status of Refugees prohibit discrimination among people in relation to property rights.

Some international agreements protect the rights of tenants, also in cases where they occupy an estate illegally or do not have any proof of a formally lawful possession right². These rights are protected by Article 11 of the Convention on Economic, Social and Cultural Rights of the United Nations, which was interpreted such (Gruda, 2001, pp.46-48) that the right to adequate housing is a human right of economic, cultural and social character.

2.2. Council of Europe

In the European context, the right to property is also protected in several regional conventions. Therefore, I will now turn to protection of property rights within the framework of the Council of Europe and of the European Union's *acquis communautaire*.

¹ Pacte internationale relative aux droits économiques, sociaux et culturels (International Covenant on Economic, Social and Cultural Rights).

² For more see the report of the committee on migration, refugees and population, document nr.12106" Solving property issues of refugees and displaced persons", available at <http://assembly.coe.int>.

Among the several international agreements signed by the member countries of the Council of Europe, the European Convention on Human Rights (ECHR) is the most important one which also provides an effective enforcement mechanism for the protected rights through the European Court of Human Rights. Macedonia became a member of the Council of Europe in 1995. The ECHR provides protection against deprivation of property by the state¹ through Article 1 of the Protocol no. 1 of the Convention² which states that every natural or legal person is entitled to the peaceful enjoyment of his possessions and that no one shall be deprived of his possessions except for the public interest and subject to the conditions provided for by law and by the general principles of international law. A derivative right not to be disturbed in the possession of someone's residence is set forth in Article 8 of the European Convention on Human Rights³, which was signed by Macedonia in 1995 and ratified in 1997 when it also entered into force.

After the accession to the Council of Europe in 1995, the Republic of Macedonia expressed its willingness to become a full member of the European Union. This presumes the creation of a functioning market economy, which in turn requires stable and clearly established ownership structures and respect for the rule of law (General Secretariat of the Government of Republic of Macedonia, 2003, pp. 40-41).

2.3. EU Accession and Denationalization

In 2001 Republic of Macedonia signed and ratified the Stabilization Association Agreement⁴ with the European Union. The Parties recognize the importance of the approximation of the existing and future laws of the Former Yugoslav Republic of

¹ Article 8 of this Convention provides that "Everyone has the right to respect for his private and family life, his home, and his correspondence" and prohibits interference with this right by the state, unless the interference is in accordance with law and necessary in the interests of national security, public safety, economic well-being of the country, prevention of disorder or crime, protection of health or morals, or protection of the rights and freedoms of others".

² Article 1 of the Protocol nr.1 states that: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except for the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".

³ Known formally as the Convention for the Protection of Human Rights and Fundamental Freedoms

⁴ From which derive rights and obligations for both parties.

Macedonia to those of the Community¹. The Former Yugoslav Republic of Macedonia shall endeavor to ensure that its laws will be gradually made compatible with those of the Community.

The issue of denationalization, the respect of property rights as part of the principles of the rule of law, democracy and market economy, are a precondition for the free movement of capital, people, goods and services, i.e. the basic principles of European integration (Le Mire, 2006, pp. 7-68). In this line, article 2 of the Stabilization Association Agreement states “Respect for the democratic principles and human rights as proclaimed in the Universal Declaration of Human Rights and as defined in the Helsinki Final Act and the Charter of Paris for a New Europe, respect for international law principles and the rule of law as well as the principles of market economy as reflected in the Document of the CSCE Bonn Conference on Economic Cooperation, shall form the basis of the domestic and external policies of the Parties and constitute essential elements of this Agreement”. According article 4 of the same agreement “FYROM commits itself into cooperation and good neighbor relations concerning the free movement of goods, capital, people and services”.

Moreover, article 74 of SAA agreement states that “In their cooperation in Justice and Home affairs, the parties will attach particular importance to the reinforcement of institutions at all levels in the area of administration in general, law enforcement and justice in particular. This includes the consolidation of the rule of law and independence of the judiciary”.

The European treaty states that a country which wants to be part of it, has to meet the key criteria's for accession defined as Copenhagen Criteria's: stable institutions guaranteeing democracy, rule of law, human rights and respect for/and protection

¹ Article 68 states that “The Parties recognise the importance of the approximation of the existing and future laws of the former Yugoslav Republic of Macedonia to those of the Community. The Former Yugoslav Republic of Macedonia shall endeavour to ensure that its laws will be gradually made compatible with those of the Community. This gradual approximation of law will take place in two stages. Starting on the date of signing of the Agreement and lasting as explained in Article 5, the approximation of laws shall extend to certain fundamental elements of the Internal Market acquis as well as to other trade-related areas, along a programme to be defined in coordination with the Commission of the European Communities. The Former Yugoslav Republic of Macedonia will also define, in coordination with the Commission of the European Communities, the modalities for the monitoring of the implementation of approximation of legislation and law enforcement actions to be taken, including reform of the judiciary. Deadlines will be set for competition law, intellectual property law, standards and certification law, public procurement law and data protection law. Legal approximation in other sectors of the internal market will be an obligation to be met at the end of the transition period”.

of minorities; functioning market economy and the capacity to cope with competition and market forces in the EU (Reka & Ibrahim, 2004, pp. 230-232). In this line, the denationalization issue, the respect of property rights are the part of the principle of rule of law, democracy and market economy and they are precondition for free movement of goods, capital, services and people (Zajmi, 2001, pp. 140-148). Article 6 of the EU treaty states “The Union is founded on the principles of liberty, democracy, respect of human rights and fundamental freedoms, rule of law – principles which are common to the member states”.

Application is addressed to the Council, which after consulting the Commission and received assent of the Parliament, shall act by absolute majority of its members. The conditions of admission shall be the subject of an agreement between the EU and applicant state (Pertek, 2004, pp. 236-294).

3. The European Commission Reports

The European Commission country reports on Macedonia consistently highlight that the process of returning property confiscated in Macedonia during the period of existence of the Socialist Federal Republic of Yugoslavia is still not completed. They also state that little progress is made in dealing with restitution claims. The EU Commission reports also find that no progress is achieved in the field of restoring the property of the religious communities “As regards property rights, the process of returning property confiscated during the period of the Socialist Federal Republic of Yugoslavia has still not been completed. The administrative capacities of the state geodetic institute have been strengthened, but progress in dealing with restitution claims is slow. No progress has been made in returning property of the religious communities¹.

The progress report for 2009 also found that legal disputes regarding restoration of property were often delayed beyond the deadlines set for deciding them “As regards property rights, the process of returning property confiscated during the period of the Socialist Federal Republic of Yugoslavia is yet to be completed. A rulebook on internal organization of the cadastre put in place a new structure. Administrative capacity was strengthened with the aid of some training. However, progress on dealing with restitution claims was slow. Property dispute procedures tended to be delayed beyond the legal deadlines, and in some cases both the

¹ See e.g. the report 2008, available at <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2008:2695:FIN:EN:PDF>.

decision on a claim and the appeal against it were dealt with by the same people. There has again been no progress on returning property of religious communities”; in some cases, both the decision regarding a claim and the appeal against it were decided by the same judges¹.

The report of 2011 mentioned as a positive sign that the Macedonian Constitutional Court annulled the retroactive effect of the amendments to the Law on Denationalization. On the other hand, the return of property in kind was replaced by compensation bonds. The Constitutional Court also annulled the provisions of the Law on Denationalization that excluded its applicability to the religious communities. However the enforcement of the final decisions concerning restitution claims remained unsatisfactory. The backlog of property disputes continued to cause delays. Breaches of property rights linked to the process of denationalization alone accounted for 32% of petitions lodged with the Ombudsman. It was finally noted that there was again no progress shown in the field of restoring the property of religious congregations².

4. The Implementation in Practice

These international agreements signed and ratified by Macedonia makes us wonder why these obligations were not implemented at home in Macedonia and why only in 2000, a single law regarding the restoration of nationalized property was put into place, although most of its present and former citizens were affected by nationalization, confiscation, requisition or other forms of deprivation of property.

Although some progress, the real property restoration process proves to be tedious and slow, Macedonia lacking the adequate administrative capacities which prevent its improvement and increasing its celerity. Even final decisions often prove difficult to enforce and the religious congregations' claims are continuously disregarded.

¹ See e.g. the report 2009, available at:

http://ec.europa.eu/enlargement/pdf/key_documents/2009/mk_rapport_2009_en.pdf.

² As regards property rights, the process of returning property confiscated during the period of the Socialist Federal Republic of Yugoslavia continues to extend substantially beyond the legal deadlines. The Constitutional Court annulled the retroactive effect of the amendments to the Law on denationalisation. Return of property was substituted by reimbursement in bonds. The Constitutional court also annulled the provisions of the Law on denationalisation that excluded its applicability to religious communities. The enforcement of restitution claims for which a final decision has been taken remains unsatisfactory. The backlog of property dispute proceedings continued to cause delays: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mk_rapport_2011_en.pdf.

The process of restitution of real property in Macedonia proved to be quite inappropriate and it is mainly the result of poor Macedonian governance in general, generated by an ineffective, inoperative public administration. The institutional path the former owners of nationalized property had to follow was bulky, unclear and very bureaucratic. Practice shows that there were cases where applications had been submitted but the property was sold to someone else, or given into long-term lease beforehand. Supporting documents for the existence of former property relations, like land book registries and acts of nationalization, confiscation or forced deprivation were often missing to accompany the formal requests because it was hard to obtain them, or they were simply not provided to the former owners by the empowered state institutions. The restitution commissions' work was unbalanced in general. A few of them were deciding between 100 and 120 requests monthly, while some others solved one or two in a month. Also, one of the reasons for this was the slow work of the cadastral offices, which needed a timeframe of 6 to 10 months to issue a certificate on the ownership history of the plot.

The restitution law in Macedonia was not applied uniformly not even in two separate districts within the same city and the same holds obviously for two or more cities within the Republic. 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 collection of the evidence and other reliable data from the state administration proved to be hard in general and at the same time contributed to the increase of the duration and costs of the trials.

Another setback was the lack of transparency and accuracy of the legal provisions concerning property rights and restitution. This is especially valid if we analyze the way how the population was informed about the aims and the overall procedure of restitution as they were laid down in the Law on Denationalization.

Even in case the current Law on Denationalization allows compensation where restitution in kind is impossible, the real market value and the one determined and offered by the state authorities do not match. Many claims are still pending usually due to missing documents or procedural mistakes which impeded or delayed the adoption of a final decision. Only after the year 2000, and under the pressure of the EU pre-accession monitoring process, the quality of governance in Macedonia has improved to a certain extent, including the process of property restitution.

5. Conclusion

The fact that the proper and fair denationalization is not a condition for the Macedonian roadmap to the EU and the fact that there is almost no leverage from the international community in relation with the denationalization policies raise suspicions that the matter will never be adequately or fairly resolved. The international community should give special attention to this issue as a starting point of the establishment of a market economy.

The issue of denationalization, the respect of property rights as part of the principles of the rule of law, democracy and market economy, are a precondition for the free movement of capital, people, goods and services, i.e. the basic principles of European integration. Therefore the effective, timely, fair and just implementation of the restitution laws and international treaties should become a clearer criterion for Macedonia to enter the EU.

I recommend the restoration process to be monitored by the European Union. Moreover, the European Union should monitor the legal system and mechanisms to assess the degree of implementation of the restoration of property. In this process the EU should not be limited only to the review of the existing legislation, but should seek concrete action plans with clear benchmarks, budgets and responsible institutions. This monitoring should be seen in a positive context since the reasonable and timely solution of this problem is of mutual interest for Macedonia as well as for the EU. The Council of Europe should also more closely monitor the implementation of Resolution nr.1096 of the 27th of June 1996 and assist its High Contracting Parties to implement the recommendations contained in it.

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