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Administrative Procedures and Protection of Property Rights in Serbia

Abstract

Besides the general administrative procedure stipulated in detail in the Law on General Administrative Procedure, there are numerous special administrative procedures in the Republic of Serbia, contained in sectoral laws that regulate certain areas. This is the case in the field of property-related legal affairs e.g. in connection with nationalization, expropriation, colonization, restitution, etc. The purpose of this paper is to provide an analysis of special administrative procedures and their „reflections” on the exercise of the right of citizens to peaceful enjoyment of their property, as well as procedures providing for the possibility that the state in the public interest restrict this right. Also, the analysis should determine how this special legal regime affects the efficient and effective exercise of the right to peaceful enjoyment of property on the one hand and on the other what is the real scope of administrative-procedural protection.

Key words: administrative procedures, property rights, expropriation, nationalization, restitution, Serbia

Introduction

With the emergence of constitutionality and legality after the great revolutions in the late XVII and early XIX centuries followed by significant declarations of human rights and the creation of the modern legal state in XIX century, the right to property became one of the basic human rights of the first generation - civil and political rights. Thus,

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even Napoleon's Civil Code (*Code civil*) from 1804 guaranteed the right to private property through the stipulation that no one can be forced to give up their property, unless it is in the public interest and with prior fair compensation (Milkov 2011: 46). Consistent with the concept of legal state (state viewed solely as an apparatus of power and enforcement - *Rechtsstaat*), to justify an action of authorities towards citizens it was necessary to comply with the law and other regulations. In this respect and specifically, with regard to the possible restrictions of the right to property, by reducing the competence for the authoritative execution of the law to the state administration or its rendering of „administrative acts“, as acts of authority in their own right and to the execution of administrative actions as material acts of enforcement, administration became a significant factor in the recognition and limitation of property rights (Milenković 2013: 43-46).

With the creation of the new concept of legal state after the Second World War as well as the launch of the concept of universal human rights, the role of administration changed. Human rights of the first generation gained transnational forms of protection, which concerned transnational protection of the right to the peaceful enjoyment of property. All major human rights documents recognize this right. For example, the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: European Convention), in its Protocol no. 1 guarantees this right.²

„There is a longstanding and very powerful argument that the stability of property is essential to economic well-being“ (Rose 2000: 2). Right to property, as one of the basic human rights, is guaranteed by the Constitution of the Republic of Serbia (hereinafter: Constitution). „Peaceful tenure of a person's own property and other property rights acquired by the law shall be guaranteed. Right of property may be revoked or restricted only in public interest established by the law and with compensation which cannot be less than market value“.³ Evidently, international law, legal traditions and the Constitution clearly demonstrate that the right to the peaceful enjoyment of property is not unlimited, or „absolute“ right, and that there are certain reasons due to which it can be subject to restrictions. These restrictions, however, consistent with the concept of the European Convention, must be: determined by law; in accordance with principles of international law; in the „public interest“.

2 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Protocol no. 1. Art. 1. Paris, 20 March 1952.

3 Constitution of the Republic of Serbia, Official Gazette of the RS, no. 98/06, Art. 58.

Starting from the legal traditions since ancient times, there are certain legal institutes which, in relation to the private property also "constitute" the specific "right" of the state to intervene, when in public interest, within the right to the peaceful enjoyment of property, and therefore, within the area of property-related legal relations. One such legal institute is certainly the institute of expropriation, whose roots can be found even in the Roman law - „vindication alicuius rei“ (Herber 2015: 3).

From the standpoint of the modern legal state and democratic society, it is not only a "legal", but also „legitimate“ institute. The idea of expropriation is based on the compulsory transfer of ownership (compulsory buying, buying for public benefit), when the public interest outweighs interests of private individuals to the peaceful enjoyment of property, and so this institute, because of the specific form of „compulsion“ from the state toward the individual, significantly differs from an ordinary purchase relation. „Scholars support the thesis that expropriation is not only a simple limitation of the right, but also loss of the right“ (Boantă, Ploșteanu 2010: 2). Legitimacy of such conduct stems from the public interest, and in this sense, even „compulsion“ itself can be a way of treatment when it is legitimate from the standpoint of social justification (general interest).

Previous interpretation corresponds to an improved concept of the legal state occurring after the Second World War, in which state is no longer viewed solely as an instrument of power, but as state that takes care of its citizens, the general social and cultural progress and development of production and services. The new concept of the legal state goes beyond the insufficiencies of formal, normative model centered around power and rule of law (legality), in which the ideals of justice and fairness occupy the "center stage", which holds the state accountable, especially in the exercise of compulsion, not only in terms of the legality but also for the social justification of its actions. This is inevitably reflected in the work of a modern administration, even in the area of property-related legal affairs. The same also applies to the administrative-procedural implementation and protection of property rights, as well as the "right" of public administration to legitimately intervene in this area, so its work evolves and takes on a new dimension.

However, the original concept of legal state, which reduces state to an „apparatus with a monopoly of physical force and compulsion“ became intense in the Soviet Union in the context of contemporary „class

essence of state and law“. After the Second World War, especially under the Soviet hegemony, this concept was expanded and survived in other communist countries of Eastern Europe that were under the Soviet domination, as well as in the former Socialist Federal Republic of Yugoslavia. It disappeared with the fall of the Berlin Wall when these countries, in varying circumstances, were entering the process of democratic transition.

„Weak property rights were typical for socialist regimes and since 1989, private property has been a fundamental factor in the transition into the market-based democracy“ (Zaleczna, Havel 2008: 177). In these non-democratic systems, the right to peaceful enjoyment of property was seriously constrained, even rendered meaningless as such, in particular through the actions involving the nationalization of property and other similar procedures (implemented agrarian reform, colonization, confiscation of property from agricultural cooperatives, etc.).

Specifically, „(...) in countries of socialist orientation, nationalization had the function of social revolution. Therefore, nationalization is a class-to-class relation, often punishment for the violation of rules of order and morality (from the standpoint of the new society). (...) More broadly, nationalization is the attitude of the new order to the ruling class of previous socio-economic formations“ (Vulić 2015: 436). Apart from the Soviet Union, where it began in 1917, in the countries of socialist orientation, nationalization was carried out and implemented after the Second World War.

In this context, nationalization, as a measure in the aforementioned conceptual definition, represents a severe violation of human rights, especially of the right to the peaceful enjoyment of property as a fundamental human right. Therefore, historical injustices in all countries that have pleaded to become democratic and go through the process of transition at the end of XX century, had to be corrected after the collapse of communist and socialist regimes. In the time that followed, they have partly or mainly done that, or their correction is still in progress. Correction of these historical injustices is primarily provided through administrative-procedural implementation and protection of rights, due to which in the Republic of Serbia (hereinafter: RS), as a country that is increasingly constituted as a modern legal state and where this process is still ongoing, the role of public administration in the area of property rights is again very relevant and important.

Therefore, we will further try to analyze the range of specific procedures and their „reflection“ on the implementation of citizens' rights

to peaceful enjoyment of their property, as well as procedures in which there is a possibility for the state to restrict this rights in the public interest. Also, the analysis should determine the manner in which this specific legal regime is affecting the efficient and effective implementation of the property rights on the one hand, and on the other, the real results of the administrative-procedural protection of these rights.

Expropriation

The term “expropriation”

„Expropriation is the deprivation or restriction of rights of ownership of immovable property by natural or legal persons, which occurs in the public interest by an act of a competent state authority. There is almost no country that does not recognize the institution of expropriation, because in every country there is a need to build certain structures for which the public interest takes precedence over the private interest of previous owners of some immovable property. As a rule, expropriation is undertaken due to some objective reasons, which are here generally formulated and terminologically marked as public interest, while some legal systems refer to the general interest or public benefit“ (Milkov: 44). ”Expropriation is carried out on the basis of an administrative act rendered by a competent authority, as a rule in the administrative procedure, on the basis of which an administrative relation characterized by the subordinate relation of the authority toward the other party is created” (Staničić: 2015: 187). Thus, from the standpoint of the European Convention, expropriation represents a legally permissible institute of restriction of the right to private property. This, however, does not mean that this restriction of the right is not subject to review by the European Court of Human Rights (Zagajski: 2008: 505). However, for many authors all over the world, (...) acquisition and expropriation of property by the state for public purposes is a controversial issue“ (Reddy, Garbharran 1990: 22).

Case-law in the RS creates a significant distinction between *expropriation*, which is determined by an individual act rendered in accordance with the law, and the term *nationalization* which we will deal with in the next chapter - which is performed by the law itself.⁴ Current Law on

4 Judgment of the Supreme Court of Serbia, Rev. 1086/96, 20.3.1996.

Expropriation (hereinafter: LOE) was adopted in 1995 and repeatedly amended (last time in 2013).⁵

General Expropriation procedure

A proposal for expropriation may be filed by the beneficiary of expropriation only after the public interest for expropriation of immovable property is determined in accordance with the LOE, which means that this specific administrative procedure is preceded by another specific procedure for the determination of the public interest for expropriation of immovable property, and is decided by the Government.

Public interest for expropriation may be determined by law or decision of the Government. Government may determine the public interest for expropriation if expropriation of immovable property is necessary for the construction of facilities in the areas of education, health, social protection, culture, water, sports, traffic, energy and utility infrastructure facilities for needs of state bodies and bodies of territorial autonomy and local self-government, facilities for defense purposes as well as for the construction of apartments for resolving housing needs of socially vulnerable persons. The government may determine public interest also in cases where expropriation of immovable property is necessary for the exploitation of mineral resources, to ensure environmental protection and protection from natural disasters, including the construction of structures and works for this purpose, as well as for provision of undeveloped land necessary for the relocation of a settlement or part of settlement, if the area of settlement or part of settlement is determined as being in public interest for expropriation of immovable property for the purpose of exploitation of mineral resources, as well as in other cases stipulated by the law. The government may determine public interest for the expropriation of immovable property, which, according to the contract on joint investment in the company, or on the joint establishment of the company concluded by the RS, is necessary to secure non-monetary contribution of the RS in the company, and which is covered by the contract, or an appropriate planning act. Public interest for expropriation can be determined if the corresponding planning document is adopted in accordance with the law, unless the LOE provides otherwise.⁶

5 Law on Expropriation, Official Gazette of the RS no. 53/95, Official Gazette of the FRY, no. 16/01 – decision of the FCC, no. 2009 and 55/13 – decision of the CC.

6 Law on Expropriation, Art 20, Par. 1-4.

Proposal for the determination of public interest for expropriation may be filed by a person who, under the provisions of the LOE, may be beneficiary of expropriation. The government is responsible to decide on the proposal for the determination of public interest within 90 days.⁷

If the proposer of procedure for the determination of public interest does not provide all evidence stipulated by the LOE, or fails to provide this evidence within the additional deadline, which is why it cannot act upon the submitted proposal, the Ministry in charge of finance will reject such a proposal as incomplete by a conclusion. By the Act on determination of public interest, the Government will determine the expropriation beneficiary. In the decision of the Government by which a proposal for determination of the public interest is adopted, immovable properties where the public interest is determined are listed individually or by reference to the Act, including the Contract (title of the Act, name of the authority that issued the Act, or the name of Contracting Parties and the number and date of adoption of the Act or conclusion of the Contract), by which the exact immovable property covered by this Act can be determined with certainty. An administrative dispute can be initiated against the decision of the Government within 30 days of its submission.⁸

In this way, this first administrative-legal procedure where the Government determines the public interest ends, and it proceeds with the procedure of expropriation. When the public interest is determined, a new procedure is initiated - expropriation procedure.

On behalf of the RS, this procedure is initiated by the Public Attorney through the submission of the proposal for expropriation. On behalf of the autonomous province, the town, the City of Belgrade and the municipality, the proposal for expropriation is submitted by the competent Public Attorney, or other person representing the autonomous region, town, the City of Belgrade, or municipality. Proposal for expropriation is submitted to the municipal administration of the municipality of the immovable property proposed for expropriation within one year from date of determination of the public interest for expropriation.⁹

Procedure upon a proposal is conducted and decision is rendered by the municipal administration service competent for property-related legal affairs of the municipality of the immovable property proposed for

7 Ibid. Art. 20, par. 6-7.

8 Ibid. Art. 2. Art. 20, Par. 8-13.

9 Ibid. Art. 25-28.

expropriation (hereinafter: municipal administration). These tasks, except deciding upon appeals in the second instance, as well as other tasks of the state administration determined by the LOE, are performed by municipalities, towns and the City of Belgrade, as delegated tasks. The decision on expropriation, as well as the decision on the administrative transfer rendered without the decision establishing public or general interest for expropriation, or administrative transfer of immovable property, is null and void. Before the rendering of the decision on expropriation, the municipal administration service shall hear the owners of the immovable property about the facts of importance for the expropriation of property.¹⁰

The ministry in charge of finance will act upon the appeal against the first instance decision on the proposal for expropriation. LOE does not contain detailed provisions on the right to appeal, which indirectly means that, regarding deadlines, general rules of administrative procedure shall apply to this procedure. Although it is a final or second instance decision, the LOE does not expressly stipulate the possibility of filing a complaint to the Administrative Court, but it stems from the general regulations on administrative-judicial protection, namely the Law on Administrative Disputes (hereinafter: LAD)¹¹. Property-related legal affairs between the beneficiary and the owner of immovable property shall be solved by the competent court.¹²

Special expropriation procedures

Besides this procedure, the LOE stipulates another special (administrative) procedure for expropriation carried out in an area affected by earthquake, flood, fire, environmental accident or other large-scale natural disaster, when the expropriation is carried out for the purpose of construction facilities and performance of works for the removal of effects caused by the disaster. For the purposes of this special administrative procedure, land may also be temporarily seized when necessary to set and build temporary facilities (office buildings, facilities for residents and property etc). Appeal against a decision for the determination a temporary confiscation of land does not postpone its execution. Municipal Assembly may, upon the request of the expropriation beneficia-

10 Ibid. Art. 29.

11 Law on Administrative Disputes, 'Official Gazette of the RS' no. 111/09.

12 Ibid. Art. 29. Par. 6.

ry, decide to transmit the immovable property after the first-instance decision if it is necessary due to the urgency of works. If the object of expropriation is a residential building, apartment as a separate part of a building or business premises, expropriation beneficiary is obliged to provide for the previous owner, occupancy right holder and lessee another apartment or business premise in ownership, co-ownership, lease, within the time limit not longer than six months from the date of eviction from the expropriated building, apartment or business premises. Until the provision of apartment or business premise, the expropriation beneficiary shall, before the demolition of such facility, provide temporary accommodation meeting basic criteria for residence or business use (certain number of rooms, electric lighting, water supply, etc.). The government will determine the areas where these specific provisions will be applied.¹³ There are no specific provisions in the LOE with regard to the initiation of this procedure and decision-making authority, but by analogous application of regulations, it should be the same authority competent for the „general“ procedure of expropriation. The same applies to the initiation of an administrative dispute.

However, as stipulated in the LOE, public interest for expropriation may also be determined by law. Special expropriation procedure is the procedure stipulated by the Law on the determination of public interest and special procedures of expropriation and issuance of a building permit for the realization of the Project „Belgrade Waterfront“.¹⁴

Since public interest is established by the Law itself, special expropriation procedure is determined in its later provisions. Parties in the procedure of expropriation are expropriation beneficiary and the owner of the immovable property which is the subject of expropriation. Under this Law, the expropriation beneficiary is the RS, represented by the State Attorney's Office, and the City of Belgrade will be determined for the expropriation beneficiary for the construction of areas with public purpose, represented by a public company or other entity in accordance with the responsibilities set out within the general acts of the City of Belgrade. The proposal for expropriation shall be filed no later than five years from the date of entry into force of this Law, and *the local-self government body competent for property-related legal affairs* will decide upon the proposal. An appeal against the decision can be filed to the

13 Ibid. Art. 37-40.

14 Law on the determination of the public interest and special procedures of expropriation and issuance of a building permit for the realisation of the Project “Belgrade Waterfront”, Official Gazette of the RS no. 34/2015, 103/2015.

Ministry in charge of finance within 15 days from the delivery of decision.¹⁵

The law stipulates a very specific situation in the case of „silence of administration“. In the case that the competent authority does not issue a decision on expropriation within the determined deadline, the expropriation beneficiary has the right to a special appeal due to „silence of administration“. In this case, the expropriation beneficiary within the appeal submits the necessary documentation and evidence. An appeal related to the „silence of administration“ shall be submitted directly to the Ministry in charge of finance, which is obliged to decide upon the proposal for expropriation within eight days from the filing of the appeal.¹⁶

Nationalization/Denationalization

Denationalization and Transitional Justice

Unlike the previously mentioned acquisition of property by expropriation, which occurs on the basis of an act of the competent authority, property is acquired by nationalization on the basis of the law itself. Nationalization is the deprivation of property right on certain goods (immovable, movable property, financial assets) in specific commercial sectors of general-state interest and its transfer into state property, with the possibility, but without obligation, to pay compensation to former owners (Vulić: 435).

In Serbia, according to the Glossary drafted by the Agency for Restitution (hereinafter: Agency), nationalization - is „(...) transfer of private property, immovable property, movable property and rights into social ownership, with stipulated symbolic compensation or free of charge. This is an economic-political measure which after 1945 in Serbia had the aim to establish and strengthen social ownership and socialist economy and therefore, it was primarily related to the confiscation from private individuals and nationalization of property units such as private companies, banks, shops, etc., pursuant to regulations adopted in 1946 and 1948, as well as confiscation of private residential and commercial buildings, apartments, business premises and building land (1958).“¹⁷

¹⁵ Ibid. Art. 4-10.

¹⁶ Ibid. Art 11, Art. 1. Par. 2.

¹⁷ Agency for Restitution, Glossary of nationalization and denationalization, [Online]. Available at: <http://www.restitucija.gov.rs/pojmovnik-restitucije.php>, accessed: October 10th, 2016.

Therefore, it is the institute that led to the suspension of the right to peaceful enjoyment of property as a fundamental human right in the period of communism and after the Second World War in all countries of the former Eastern bloc, in the former Yugoslavia, but also in other countries after totalitarian regimes came to power (Guatemala, South Africa, etc.). With aim to correct historical injustice, at the beginning of the last decade of XX century, the process of denationalization in the RS began as well. This institute, including restitution, is becoming a significant element of transition and for some authors „retroactive“ (Morvai 1993-1994: 32-33), and it has been applied also in other aforementioned countries after the fall of totalitarian regimes (Williams 2007: 1).

In this paper, denationalization is perceived in a broad sense because gradual and partial denationalization until now has been based on several laws which, after 1990, opened the legal possibility for former owners to partially restore confiscated property in some form. These laws are included in the analyses below. Legislative process was finally completed with the adoption of the Law on Property Restitution and Compensation (hereinafter: LPRC), which definitely stipulated the remaining issues of denationalization, anticipating restitution of property and compensation for all individuals (and endowments), so the LPRC has an impact on the financial status of several hundred thousand citizens who are considered former owners (or their legal successors).

Special administrative procedure related to the Recognition and restitution of agricultural land

“It should be noted first that confiscation without expropriation is also a way of expropriation“ (Avci 2014: 149). In Serbia, one of the tasks of the Ministry of Finance is second instance procedure on appeals against the first instance decisions of the municipal committees for restitution of land confiscated on the basis of the agricultural land fund and confiscation due outstanding liabilities from compulsory purchase of agricultural products. The process of administrative-procedural implementation and protection of the rights contained in the Law on the method and terms of recognition and restitution of land that has been transformed into social property on the basis of the agricultural land fund and confiscation due outstanding liabilities from the compulsory purchase of agricultural products (1991), which initially envisaged the subject of the right, and that the claimant may submit a claim no

later than 10 years from its entry into force (deadline expired in 2001), whereby it did not stipulate what would happen in the case where the claim was not filed, or whether in this way the right shall cease to be valid.

The law applied exclusively to land that was in social ownership at the time of the claim submission, and it is unclear (although the Law is formally still in force) whether the jurisdiction of the municipal commission to adopt an administrative act (decision) on this right still exists, or the provisions of this Law no longer apply (inter alia, on the land that in the meantime changed its ownership form and after the 2006 Constitution became state or public property). According to this Law, the Commissions formed by the Minister of Agriculture, Forestry and Water Management upon the proposal of the Municipal Assembly (consisting of the President and four Members who have Deputies) shall adopt a decision on the claim (in a special procedure stipulated by the Law), in a multi-party process (where one party is the previous owner and the other one municipality and agricultural organization who confiscated the land), the Ministry of Finance acted upon the appeal on decision of a Commission.¹⁸ Even now, the Department for Administrative Affairs of the Sector for Property-Related Legal Affairs has „live cases“, i.e. cases that are still pending.

Special administrative procedure related to restitution of pastures to village use

The issue of rural pastures that have become social property on the basis of the Law on proclamation as national property of rural pastures and forests, property of land, urbarial and similar communities and border property communities,¹⁹ have been restituted to villages to use under the conditions and in a manner stipulated under the Law on restitution of pastures to village use (1992).²⁰ The method of the restitution

18 Law on the method and the terms of recognition and restitution of land that has been transformed into social property on the basis of the agricultural land fund and confiscation due to outstanding liabilities from the compulsory purchase of agricultural products, Official Gazette of the RS, no. 18/91, 20/92, 42/98; Art 1. par. 3., Art. 2., Art. 3-7, Art. 10.

19 Law on proclamation as national property of rural pastures and forests, property of land, urbarial and similar communities and border property communities, Official Gazette of the RS, no. 1/48, 98/55.

20 Law on restitution of pastures to village use, Official Gazette of the RS, no. 16/92.

of pastures to village use is established by the Municipal Assembly, while the conditions and manner of their use are left to local citizens to agree on. However, the Law does not stipulate the transfer of ownership right to villages or local communities, but only their use. In terms of procedure (administrative), the legislator only determined that the procedure is initiated by a claim of the village inhabitants, and it can be initiated *ex officio*. With regard to the decision rendered, an appeal may be lodged to the Ministry of Finance as the second instance body. The Law makes no reference to the administrative-judicial protection in the case when the procedure had a negative outcome for the party (village or its citizens).

According to some analyzes, problems in the implementation of this Law are reflected in the lack of norms providing for the sanctioning of administrative bodies' omission to act, which led to present state with pastures, where a large number of areas have not been restituted to village use (the Law has not been implemented). Some municipalities never entered into the process of restitution of pastures, and in some cases the process failed (Šajin 2010: 9).

Also, the adoption of the new Law on Agricultural Land (2006, amended in 2008 and 2009),²¹ has brought new problems, because, all agricultural land owned by the state, including pastures, was transferred to the administration of the Ministry of Agriculture, until the decision on the lease of land is rendered. Legal background and competence to conduct the second instance procedure is unclear. This falls within the scope of work of the Ministry of Finance but is not stipulated by the Law. The Ministry still has pending cases of restitution of pastures to villages.

Special administrative procedure related to property restitution and compensation

This right derives from the LPRC²² which finally, in the legalistic sense, completed the process of restitution. The subjects of restitution are nationalized immovable properties: building land, agricultural land, forests, forest land, residential and business buildings, flats and business premises and other facilities that existed at the time when the LPRC entered into force in 2011. The right to restitution refers to a number of

21 Law on Agricultural Land, Official Gazette of the RS, no. 62/06, 65/08, 41/09. 112/15.

22 Compare: Law on Property Restitution and Compensation, Official Gazette of the RS, no. 72/11, 108/13, 88/15-dec. CC. art. 3. par. 1. point 6.

laws and other regulations adopted immediately after the Second World War from 1945 to 1958 and includes property confiscated through agrarian reform and colonization, internal colonization, confiscation of property and execution of confiscation, sequestration, redistribution, nationalization of leased buildings and construction land, etc.²³

LPRC elaborates the process of implementation and protection of this right, thus it is an example how to elaborate in detail the provisions of procedural law or special administrative proceedings in the implementation of the administrative-legal protection of this right through the provisions of substantive law. With regard to the administrative-legal implementation of the rights to restitution and compensation, an important role is played by the Agency established by the LPRC.²⁴ Thus, the Agency is the first instance authority in exercising the right to restitution and compensation.

With regard to the procedure, it should be noted first that it is multi-party administrative procedure because, according to LPRC, a party in the procedure is a person at whose claim the procedure is initiated or who has a legal interest, obligee, as well as the Republic Public Attorney, and the Agency deals with the claim for restitution of property in the first instance. In accordance with the LPRC, a claim for the restitution of property is submitted by all former owners of the confiscated property, or their legal inheritors and successors. The deadline for the submission of claim expired on March 1, 2014. However, this does not necessarily mean that the future administrative-procedural implementation and protection of the right will not take even decades.

The Agency determines all facts and circumstances relevant for decision making on a claim and adopts a decision on determining the beneficiary, property for restitution or compensation, basis for the amount of compensation and advance payment, as well as the manner and deadlines for the execution of determined obligations. The Agency submits the first instance decision to the claimant, obliged person and Republic Public Attorney.²⁵

The Claimant, obliged person and the Republic Public Attorney may appeal against the first instance decision to the Ministry in charge of finance, which is the second instance authority, within 15 days from date when the decision was delivered. With regard to the general ad-

23 Ibid. Art. 2.

24 Ibid. Art. 51.

25 Ibid. Art. 47.

ministrative procedure which envisages that the second-instance body should decide upon the appeal within 60 days, the LPRC stipulated that the Ministry in charge of finance is obliged to decide on submitted appeal within 90 days from date of its receipt and administrative dispute procedure may be initiated against the second instance decision which is considered urgent.²⁶

It appears that the provisions of the LPRC provide a satisfactory way of the implementation and protection of the right to restitution of property and compensation, except in the case where the completion of the claim is very difficult for the claimant, especially when it comes to documents in the possession of other state authorities, without getting into some other problems that accompanied the adoption of the LPRC, namely the envisaged form of restitution.

Conclusion

It is evident that the scope of the Ministry of Finance also covers participation in the implementation of a number of procedures and processes in the field of property-related legal affairs directly related to the implementation of the right to a peaceful enjoyment of property, especially those related to expropriation, denationalization or restitution. However, in certain analyzed processes, it remains unclear from which particular legislation certain specific tasks of the Ministry of Finance derive, unless they arise from an extremely general formulation contained in the current Law on Ministries relating to its scope of work.

Looking at two legal institutes - *expropriation* and *denationalization* (as well as *restitution* in its narrow sense), a variety of special procedures is noticeable, where this Ministry plays a role in the realization and protection of the right to the peaceful enjoyment of property.

With regard to the institute of expropriation, legislation in force provides several special administrative procedures, as well as participation of this Ministry in them. For the expropriation process, it is important also who defines public interest for expropriation under the law - the National Assembly or the Government of the RS. In the latter case, the Government, in a special administrative procedure, renders a decision for the determination of public interest. This special procedure has the character of the procedure that precedes the procedure of expropriation, because without its implementation there is no expropriation. In

26 Ibid. Art. 48.

this procedure, the possibility of administrative- judicial protection is expressly envisaged, because upon decision of the Government that regulates the public interest, the law expressly cites the possibility of an administrative dispute before the competent court. On the other hand, the legal provision stipulating that the proposal for determination of public interest has to be submitted to the Ministry in charge of finance represents a significant exception from the general rules of administrative procedure constitutes, since the law does not specify its closer role, and further, it envisages that the Ministry in charge of finance should “evaluate” the fulfillment of “formal” requirements of the application, because it can be rejected by a conclusion if it is incomplete.

With regard to the so-called „general“ procedure of expropriation, which is set by the LOE, it can be concluded that it is thoroughly regulated by the LOE and the legal development of this procedure explicitly stipulates the administrative-legal protection of the individual (through the right to appeal to the Ministry in charge of finance on a decision on expropriation of the municipal administration) as well as the administrative-judicial protection, because it expressly stipulates the possibility of an administrative dispute against the second instance decision of the Ministry in charge of finance. So, from the standpoint of administrative-procedural protection, we can conclude that it, at least normatively, corresponds with the European standards.

In addition to the „general“ procedure of expropriation, the LOE, also stipulates special administrative expropriation procedure carried out in areas affected by earthquake, flood, fire, etc. The latter procedure is not elaborated in such detail as the former one and does not provide direct possibility of administrative dispute, but this possibility arises from the previous „general“ expropriation process and from the subsidiary application of the LGAP and the LAD.

Since public interest for expropriation may be determined by law, a special procedure of expropriation is envisaged by the Law on the determination of the public interest and special procedures of expropriation and issuance of building permit for the realization of the Project „Belgrade Waterfront“. Within this special administrative procedure of expropriation, it remains unclear why the legislator left a shorter deadline for deciding upon an appeal in the case of „administrative silence“ (eight days) and why the legislator felt the need, only in a situation of „administrative silence“, to directly envisage the possibility of initiation of proceeding of administrative-judicial protection or administrative dispute before the Administrative Court, which has not been done in

other cases of decision making on appeal in the second instance procedure before the Ministry in charge of finance, although, of course, the possibility arises from general regulations the LGAP and the LAD.

With regard to analyzed procedures related to denationalization (in the broader sense of this term), it seems that certain legislation, particularly that adopted before the LPRC (2011) remains vague in terms of procedures and administrative-procedural protection of the right and a more detailed future analysis should include procedures related to regulations which after the Second World War led to the colonization, agrarian reform, etc., and which also had negative effects on the right to the peaceful enjoyment of property. LPRC specifies the procedure for restitution of property, as well as administrative-legal and administrative-judicial protection, and in this sense contains sound provisions, without entering into a further elaboration of the legal models of restitution (restitution of assets), extensively discussed at the time of the adoption of the LPRC and still under discussion.

Bibliography:

- Avcı, M. (2014) „A Study on Confiscation without Expropriation in the Turkish Law“, *Law & Justice Review*, 5(1): pp. 148-165.
- Boantă, A., Ploșteanu, N. (2010) „About the Necessity of a New Law on Expropriation by Public Utilities“, *Curentul Juridic*, 6(42): pp. 103-108.
- Vulic, M. (2015) „Nacionalizacija građevinskog zemljišta“, *Pravni život*, 64(10), pp. 505-523.
- Zagajski, S. (2008) „Zaštita prava vlasništva u postupcima izvlaštenja pred Europskim sudom za ljudska prava“. In: *Zbornik radova Pravnog fakulteta u Splitu*, 45(3), pp. 505-523.
- Milko, D. (2011) „Eksproprijacija – između privatnog i javnog“, *Anali Pravnog fakulteta u Beogradu*, LIX(2), pp. 43-62.
- Milenković, D. (2013) *Javna uprava – odabrane teme*. Čigoja štampa – Fakultet političkih nauka.
- Morvai, K., „Retroactive Justice based on International Law: A Recent Decision by the Hungarian Constitutional Court“, *East European Constitutional Review*, 4: pp. 32-34.
- Reddy P. S., Gabharran, H. L. (1990) „Expropriation Law: The South African Scenario“, *Town & Regional Planning Journal*, 29: pp. 22-25.
- Rose, M. C. (2000) „Property and Expropriation: Themes and Variations in American Law“, *Utah Law Review*, 52(1), pp. 1-38.
- Staničić, F. (2015) „Opće uređenje izvlašća u Njemačkoj – pouke za Hrvatsku“, *Pravni vjesnik*, 31(3-4): pp. 185-212.
- Šajin, D. (2010) *Seoske utrine i pašnjaci*, SKGO.

- Herber, F. R. (2015) „On the Importance of Expropriation in the Roman Empire and in Modern Europe“, *European Scientific Journal*, 11(1), pp. 1-18.
- Williams, C. R. (2007) *The Contemporary Right to Property Restitution in the Context of Transitional Justice*, International Center for Transitional Justice.
- Zaleczna, M., Havel M. (2008) „The Institutional Changes, Social Capital and Old Expropriation Consequences in Poland“, *Nordic Journal of Surveying and Real Estate Research (Special Series)* pp. 176-188.

Laws and jurisprudence:

- Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Protocol no. 1. Paris, 20 March 1952.
- Constitution of the Republic of Serbia, „Official Gazette of the RS“, no. 98/06.
- Law on Administrative Disputes, „Official Gazette of the RS“ no. 111/09.
- Law on determination of the public interest and special procedures of expropriation and issuance of a building permit for realization of the Project „Belgrade Waterfront“, „Official Gazette of the RS“ no. 34/2015. 103/2015.
- Law on Expropriation, „Official Gazette of the RS“ no. 53/95, „Official Gazette of the FRY“, no. 16/01 – decision of the FCC, no. 2009 and 55/13 – decision of the CC.
- Law on the method and the terms of recognition and restitution of land that has been transformed into social property on the basis of the agricultural land fund and confiscation due outstanding liabilities from the compulsory purchase of agricultural products, „Official Gazette of the RS“ No. 18/91, 20/92, 42/98.
- Law on restitution of pastures to villages to use, „Official Gazette of the RS“, no. 16/92.
- Law on conditions and manner of restitution of property acquired by work and business of cooperatives after 1 July 1953, „Official Gazette of the RS“, no. 46/90.
- Law on restitution of property to churches and religious communities, „Official Gazette of the RS“ no. 46/06.
- Law on Agricultural Land, „Official Gazette of the RS“, no. 62/06, 65/08, 41/09. 112/15.
- Law on Property Restitution and Compensation, „Official Gazette of the RS“, no. 72/11, 108/13, 88/15-dec. CC.
- Supreme Court of Serbia, Judgment Rev. 1086/96, 20.3.1996.

Internet Sources:

- Agency for Restitution, Glossary of nationalization and denationalization, [Online]. Available at: <http://www.restytucija.gov.rs/pojmovnik-restitucije.php>. Accessed: October 10, 2016.