

PROTECTION OF THE INTERESTS OF FORMER OWNERS IN THE PROCEDURE OF EXPROPRIATION IN NORTH MACEDONIA

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Abstract

The right to private property is enshrined as a fundamental and constitutional right, recognized and protected by Article 30 of the Constitution and Article 1 of the Additional Protocol to the European Convention on Human Rights. Both domestic and international legal frameworks ensure the inviolability of private property, safeguarding it from unjustified interventions by state bodies and third parties. However, instances of private ownership restriction, such as expropriation, may occur, wherein private property is transferred to state or municipal ownership in pursuit of public interest, subject to fair compensation, which must not fall below the market value, while respecting the right of appeal of the affected individual, the former owner, regarding the compensation amount.

This paper aims to examine the legality of the expropriation process and the protection of the interests of former owners within this procedure. According to the European Convention on Human Rights, state-imposed restrictions on property rights are legitimate if they fulfill three main criteria: legality, ensuring compliance with established legal standards; necessity, serving a public or general interest; and proportionality, commensurate with the sought objective. Domestic legislation should ensure appropriate procedural measures to shield expropriated former owners from arbitrary actions.

The methods of ensuring effective protection for the rights of individuals impacted by expropriation will be explored. Additionally, this paper will delve into the methodology for determining compensation amounts in expropriation cases, the expropriation process itself, and procedural safeguards against baseless and capricious decisions by state authorities.

Keywords: *Expropriation, Expropriation process, Fair compensation, Public interest*

1. Introduction

Property is one of the most important economic rights and a fundamental right of every human being, guaranteed not only by domestic legislation but also by international law. Ownership constitutes one of the main institutions of private law, without which the existence of legal-property, legal-obligatory, and legal-inheritance relations cannot even be conceived. In our legislation, ownership is defined according to its content as the right of the owner to keep and use their property (*ius utendi*), fully utilize it (*ius fruendi*), and dispose of it (*ius abutendi*) at will, provided this does not violate the law or the rights of others. However, everyone is obliged to refrain from infringing on the property rights of others (Article 8 of the Law on Ownership and Other Real Rights – LOORR). This is because the right of ownership is a subjective civil right with an absolute character, operating *erga omnes*.

Due to its extraordinary importance, the right to property is not only a legal category but also a constitutional one. The Constitution of the Republic of North Macedonia guarantees the right to property and states that no one can take away or limit ownership and the rights derived from it, except when it is in the public interest as defined by law (Article 30, paragraph 3 of the Constitution). In this regard, the Constitution expressly provides that in cases of expropriation of property or restriction of ownership, fair compensation is guaranteed, which cannot be lower than the market value (Article 30, paragraph 4 of the Constitution). The Constitution provides for expropriation only as a legal measure for obtaining or limiting land ownership when this is an obstacle to the construction of any object of general or public interest.

Expropriation is a means of transferring private ownership of immovable property (land, buildings, and other objects) to state ownership for public interest, with fair compensation (Aliu, 2014). A more accurate definition is "*the institution of expropriation, as an element of civil law, is defined in civil doctrine as the termination or limitation of the right of ownership of immovable objects due to the existence of a public interest defined by law, leading to the creation of state or municipal ownership*" (Zhivkovska & Przheska, 2013, p.51). Domestic and international legislation guarantees the inviolability of private property from unjustified interventions by state bodies and third parties. However, there are cases where private property can be restricted, such as expropriation, where the state must respect the restriction in fulfillment of some public interest, provide fair compensation, and uphold the right of the affected individual to appeal regarding the amount of compensation.

According to the European Convention on Human Rights, restrictions imposed by the state on the right to property are legitimate if they meet three main criteria: the restriction must be legal, meaning it must be provided by law and respect the standards of the rule of law; it must be for public or general interest; and it must be proportionate to the objective sought to be achieved. Limitation of the right to ownership is allowed only when these conditions are met cumulatively, that is, all together. Thus, any limitation on the right to property must be in accordance with the Constitution, international agreements, and internal legislation of the Republic of North Macedonia. In this regard, local legislation should guarantee appropriate procedural measures to protect the expropriated former owner from arbitrariness.

The law that regulates the acquisition and limitation of ownership and real rights over real estate for the realization of public interest as defined by law, as well as the procedure for expropriation and determination of market value, is the Law on Expropriation. The Law on Expropriation aims to compensate owners when their property is registered in the public registers of the Real Estate Cadastre Agency, while the determination of the value of the expropriated property, and consequently the amount of compensation, is carried out in accordance with the provisions of the Law on Valuation and the Methodology for Valuation of the Real Estate Market, approved by the Minister for Transport and Communications.

Subject: This paper examines the process of expropriation in North Macedonia, focusing on the protection of the interests of former property owners.

Purpose: The purpose is to analyze the legality of the expropriation process, the procedural safeguards in place to protect former owners, and the methods for determining fair compensation.

Expected Results: It is expected that the analysis will reveal that North Macedonia's expropriation process is designed to balance public interest with the rights of former property owners by ensuring that compensation is not lower than market value, providing procedural safeguards against arbitrary decisions, and offering avenues for appeal to the European Court of Human Rights if domestic remedies are exhausted. This study will also highlight areas for potential improvement in the expropriation process to further protect the rights of former property owners.

2. Public interest as a prerequisite for expropriation

Expropriation can only be justified if the purpose is in the public or general interest. The public interest must be well defined, as otherwise, there is a risk of unfounded and arbitrary decisions to the detriment of private owners. In cases of expropriation, a fair and proportional relationship between the need

and necessity of the expropriation must be maintained. This balance does not exist when the individual owner is burdened with an excessive individual burden.

Public or general interest in the context of expropriation refers to the government's power to take private property for a purpose that benefits the community or society as a whole. This concept is foundational in many legal systems and is often balanced by the requirement to provide fair compensation to the property owner. Public interest includes projects like infrastructure projects, urban development, and environmental protection. Public interest is precisely defined by the 2012 Law on Expropriation; however, the law permits the establishment of public interest by another law. It encompasses the arrangement, rational use, and humanization of space, along with the protection and improvement of the environment and nature through the construction of facilities and execution of related work (Article 4 of the Law on Expropriation). The construction of facilities and the execution of work in the realization of public interest can be significant for the Republic and for units of local self-government, as provided for by spatial planning acts.

According to the Law on Expropriation, public interest of significance for the Republic of Macedonia is determined for purposes such as *"building nuclear power plants, thermal power plants, and hydroelectric power plants with a capacity of 1 MW or more; transmission lines with a voltage level of 35 KV or more; facilities for the production of electricity from renewable sources with a capacity of up to and over 1 MW; transformers with a voltage level of over 10 KV and batteries; construction of oil pipelines, product pipelines, main gas pipelines, gas metering stations, and secondary gas networks; installation of optical cables for state bodies; construction of railways, railway stations, airfields, state roads, and bridges; building non-hazardous and hazardous waste landfills; facilities for defense, state bodies, agencies, and foundations of the Republic of Macedonia; facilities for diplomatic-consular needs and international organizations; technological industrial development zones established by the Government of the Republic of Macedonia; telecommunications centers for receiving satellite signals; border crossings; regional water supply and sewage systems with treatment systems; facilities with installations for the production of thermal energy; lake and river harbors; stadiums and sports halls with a capacity of over 10,000 spectators; facilities and works for the state public service in education, sports, science, culture, health, and social protection; building settlements in case of major natural disasters (earthquakes, floods, fires, and landslides) and relocation of settlements (due to flooding and environmental reasons); and the exploitation of mineral resources of strategic importance for the Republic of Macedonia"* (Article 6, paragraph 1 of the Law on Expropriation).

Public interest of local importance can be determined in the following cases: *"building facilities and performing works for the needs of municipal public services in the field of education, upbringing, science, culture, health, and social protection; building power lines with a voltage level up to 35 KV and substations with a voltage level of up to 10 KV; construction of tram lines; construction of fire protection facilities; construction of local water supply and sewage systems with purification systems; construction of stadiums and sports halls with a capacity of up to 10,000 spectators; construction of multi-storey garages; and building facilities for general use, namely: municipal roads, squares, public parks, markets, public parking lots, and cemeteries"* (Article 7 of the Law on Expropriation).

The determination of public interest in the construction of buildings and the execution of works of significance for both the Republic and of local significance, as outlined in the Law on Expropriation, is aligned with the Law on Building from 2009. Specifically, the Law on Building distinguishes between buildings categorized as first and second class. According to Article 58 of this Law, first-class buildings are those of national importance, while second-class buildings are of local significance.

The 2012 Law on Expropriation includes a specific provision for determining public interest of significance for the Republic of Macedonia, which is not linked to the deprivation of property rights due to construction or works of national importance. Specifically, Article 6, paragraph 2, outlines a scenario where expropriation is allowed for facilities, plants, and lines related to the production, transmission, and distribution of electricity; transmission and distribution of natural gas; thermal energy production and distribution systems; as well as water management facilities and plants.

In this case, the public interest encompasses the transmission and distribution of natural gas, the transmission and distribution of electric energy, the production and distribution of thermal energy, as well as water management. These activities are deemed to be of public interest as determined by Article 6 of the Law on Energy and Article 3 of the Law on Water.

In cases where private ownership rights (individual or collective) are terminated due to the realization of a public interest of local significance, ownership is transferred to the municipality. However, the Law on Expropriation establishes an exception to this general rule. This exception occurs when a public interest of local significance is realized, but the property does not transfer to municipal ownership; instead, it becomes state property. This applies specifically to the construction of municipal roads, squares, public parks, markets, public parking lots, and cemeteries. These properties become state-owned because, according to Article 16, paragraph 4 of the LOORR, items for general use are exclusively owned by the state.

3. Complete and incomplete expropriation

The law distinguishes between two types of expropriation: complete and incomplete. When the right of ownership of real estate is revoked, which occurs with complete expropriation, there is a relative termination of the right of ownership. This termination is relative because while the right of ownership ceases for one party, it emerges for another. The cessation of the right of ownership entails the cessation of its constituent powers, namely: the right to possess, the right to use, and the right to dispose of, as stipulated in Article 8 of the LOORR. Therefore, when complete expropriation is executed in pursuit of a public interest vital to the Republic of Macedonia, there is a cessation of private property rights (held by natural or legal persons) or municipal property rights (held by local government units and the city of Skopje), and state property is established (Article 9, paragraph 1 of the Law on Expropriation).

With expropriation for the realization of a public interest of local significance, the ownership rights of individuals and legal entities (private ownership) cease, and the ownership rights of local self-government units and the city of Skopje (municipal ownership) are established (Article 9, paragraph 2 of the Law on Expropriation).

In addition to the termination of property rights, the current Law on Expropriation also recognizes the limitation of property rights, known as incomplete expropriation. Limiting the right of ownership does not imply its termination but rather restricts the content of the ownership right. The restriction of property rights in the case of incomplete expropriation entails a temporary or permanent limitation of one of the powers inherent in property ownership. Simultaneously, the limitation of ownership rights can occur due to the pursuit of public interest regarding privately owned real estate, whether owned by individuals or legal entities, or by local self-government units and the city of Skopje.

Article 10 of the Law on Expropriation establishes several methods of limiting property rights through incomplete expropriation. This includes the establishment of easements and other restrictions on ownership rights, such as temporary land occupation for preliminary works, temporary land occupation for detailed geological surveys of mineral resources in line with the Law on Mineral Resources, and temporary land occupation for construction and public interest projects.

4. Expropriation proceedings

The expropriation process is a special administrative procedure. The expropriation process, as outlined in the Law on Expropriation, is overseen by the competent authority for expropriation. In the Republic of Macedonia, this authority is the Administration for Property and Legal Affairs within the Ministry of Finance. The expropriation procedure comprises several stages: it begins with the submission of the expropriation proposal, followed by a hearing on the proposal, and culminates in the decision-making phase regarding the expropriation proposal.

The proposer for submitting the proposal for expropriation is either the Republic of Macedonia or the local self-government units, including the city of Skopje. This depends on whether the public interest being addressed is of national importance for the Republic of Macedonia or of local importance for the self-government units and the city of Skopje (Article 21 of the Law on Expropriation).

The law provides for one exception to this rule: when an easement is established as an incomplete expropriation, the proposal is submitted by the developer of the line infrastructure. Additionally, when temporary occupation of land is required for detailed geological surveys, the proposal for expropriation is submitted by the concessionaire.

According to the Law on Expropriation, when a public interest of national importance to the Republic of Macedonia is realized, the proposal for complete expropriation is submitted by the State Attorney of the Republic of Macedonia. The State Attorney also submits the proposal for expropriation when the public interest is for public enterprises, funds, agencies, directorates, public institutions, trading companies, and other institutions established by the state (Article 22 of the Law on Expropriation).

When realizing a public interest of importance for the local self-government units and the city of Skopje, in the case of complete expropriation, the proposal is submitted by the respective local self-government unit or the city of Skopje. Specifically, the proposal is submitted by the mayor of the municipality, who is authorized to represent the municipality as outlined in Article 50 of the Law on Local Self-Government.

Article 22, paragraph 4 of the Law on Expropriation stipulates that when public interest is pursued for the construction of a building of public interest, a building for performing an activity of public interest, or providing a public service in the fields of energy, mineral resources, and telecommunications, the proposal for expropriation is submitted by the State Attorney General of the Republic of Macedonia or the local self-government unit and the city of Skopje, following the prior initiative of a legal entity that intends to realize the public interest.

Pursuant to Article 28 of the Law on Expropriation, the authority responsible for handling the expropriation procedure must submit the proposal, along with all relevant documents, to the owner and other property rights holders within five days of receipt. The proposal must also be submitted to the Real Estate Cadastre Agency, where it will be recorded.

The next stage of the expropriation procedure involves scheduling and holding a hearing on the proposal for expropriation. This hearing must be attended by the property owner or other property rights holders, as well as the proposer of the expropriation.

The hearing must be scheduled and held 15 days after the submission of the proposal for expropriation to the holder of the ownership rights and other property rights of the real estate. During the hearing, several facts should be discussed, including the existence of public interest, the existence of ownership rights or other property rights, the amount and type of compensation, and any other facts that may be important for the expropriation. The proposer of the expropriation makes a compensation offer, which is then presented to the owner by the expropriation authority. However, the proposer has no legal means to influence the owner's decision regarding the type and amount of compensation. It is illegal for the expropriation authority to exert pressure on any participant in the procedure, whether the owner or the proposer, to act in a certain way. Such actions constitute an abuse of official position and powers.

Fair compensation for expropriated real estate must not be lower than the property's market value. This market value is determined in accordance with the conditions and procedures outlined by the Law on Expropriation. The valuation process follows the Methodology, rules, and standards for valuation, including international standards for valuation.

The final stage of the expropriation procedure is the decision on the proposal for expropriation. The procedure can conclude with either a settlement (agreement) or an expropriation resolution.

If the expropriation procedure ends with an agreement, it determines the type and amount of compensation, which is recorded and serves as the basis for registration in the real estate cadastre in cases of complete and incomplete expropriation. In addition to the amount and type of compensation, the record

also includes other obligations that must be fulfilled by the proponent of the expropriation and the holder of the property rights. By signing the record, both parties agree that it has the capacity of an enforceable document, thereby legally completing the expropriation procedure (Article 30 of the Law on Expropriation).

The second method of concluding the expropriation procedure is through the issuance of a decision by the authority overseeing the process. In this scenario, the decision, functioning as an administrative act, outlines the rights, obligations, and legal interests of the involved parties. A lawsuit challenging the decision can be filed with the Administrative Court within 15 days of receiving the decision (Article 31 & 32 of the Law on Expropriation).

In terms of acquiring possession of the expropriated real estate, the proponent of the expropriation will gain possession within eight days of reaching an agreement. However, if the parties do not agree otherwise, possession will be acquired after the decision becomes final, if the procedure ends with the adoption of a decision. The law also outlines one exception, which allows the Government of the Republic of Macedonia to decide that the real estate be handed over to the proposer in possession before the decision becomes final, in accordance with Article 15 of the Law on General Administrative Procedure. In such cases, the proposer of the expropriation must submit a reasoned proposal explaining why it is necessary to acquire possession of the expropriated real estate before the decision becomes final.

In this scenario, if the proposal for expropriation is legally rejected later in the procedure, the Law on Expropriation mandates that the proponent of the expropriation must return the real estate to the owner within 15 days after the decision becomes final (provided the real estate still exists). If any damage occurred to the real estate after the expropriation proponent took possession, they are obligated to compensate for that damage as well. However, if the real estate no longer exists, the proponent of the expropriation must compensate the owner for the entire damage. The law also requires the expropriation authority to create a record to determine the state of the property before the proponent of the expropriation takes possession. This record will be used to ascertain any potential damages that may arise. Also, when the owner resides in an expropriated residential building, such as an apartment, or conducts business activities in the expropriated building or business premises, they have the right to temporary accommodation (Article 33 of the Law on Expropriation).

4.1. Determination of compensation and the procedure for compensation during the expropriation procedure

The Law on Expropriation, starting from the constitutional provision that guarantees fair compensation in the event of expropriation or limitation of ownership, specifies that such compensation cannot be lower than the market value. It further establishes that for expropriated real estate, fair compensation must be provided, which cannot be less than the market value of the property. Additionally, the Law on Expropriation mandates that the Law on Valuation is applied to determine the market value of real estate.

Article 4 of the Law on Valuation stipulates that the assessment of the market value of the subject property must be conducted in accordance with the methodology, rules, and standards for assessment. These include the European Standards for Valuation and the International Standards for Valuation, as well as other applicable laws regulating the assessment of various forms of property.

The legislator has established specific criteria that are crucial for determining the market value of expropriated real estate, based on its type. When determining the market value of expropriated land, factors such as customs and conditions, as well as the time and location of the market, are taken into account.

When determining the market value of expropriated land used for agricultural, forestry, and other production purposes, factors such as the credit and cadastral class of the land, climatic conditions, and economic conditions are considered. For construction land, the assessment also takes into account the suitability for construction and the location of the site.

The proposer of the expropriation bears the compensation for the expropriated real estate as well as the costs incurred during the expropriation procedure. Former owners have the right to be compensated for the costs incurred during the process of determining compensation for expropriated property. This right applies even if the expropriation decision is later canceled and the compensation determination procedure is halted. According to the Law on Expropriation, the standard rule is that compensation for expropriation is determined in monetary terms (Article 38 of the Law on Expropriation).

However, the law allows the proposer and the former owner to agree otherwise, and instead of money, the former owner can be awarded another piece of real estate. The property given as compensation should be equivalent to the expropriated property. The law also addresses situations where there is a difference in value between the expropriated real estate and the real estate being allocated. If the expropriated property is worth more than the property given in exchange, the proposer of the expropriation must compensate the difference in money. Conversely, if the property given is more valuable than the expropriated property, the former owner can either pay the difference in money or acquire ownership of only a portion of the property up to the amount of the determined compensation, to avoid being placed at a disadvantage (Article 41 of the Law on Expropriation).

The law stipulates that the former owner has the right to the plantations, crops, forests, and fruits on the land, as additions to the property (Article 39 of the Law on Expropriation).

In cases of complete expropriation, the former owner is not entitled to compensation for any investments made after the expropriation proposal is submitted. This provision is fully justified in the law, as it aims to protect the proposer of the expropriation from potential abuses by the former owner (Article 40 of the Law on Expropriation).

When determining compensation for complete expropriation, the law mandates that the proposer of the expropriation must provide another suitable property as compensation if the former owner lived in the expropriated property and requested it (Article 42 of the Law on Expropriation). Additionally, in cases of complete expropriation, the law stipulates that if the expropriated property was used for an activity, the proposer of the expropriation is obliged to compensate for any damage resulting from the change in location or the cessation of the activity (Article 43 of the Law on Expropriation).

Regarding incomplete expropriation, the law stipulates that when an easement right is established, the owner is entitled to compensation equivalent to the reduced value of the real estate (Article 45). For other forms of land use rights, compensation is determined based on the equivalent amount of the lease for that type of real estate (Article 46).

According to the Law on Expropriation, an agreement for compensation can be reached until the expropriation decision becomes final. The law requires the expropriation authority to make another attempt to reach a compensation agreement by scheduling a hearing within eight days after the decision becomes final. If an agreement is still not reached, the expropriation authority must submit all documents to the competent court (Article 47). In this case, a non-litigation procedure is carried out to determine the compensation, applying the provisions of the Law on Non-Contentious Procedure.

5. Judicial protection of former owners in the expropriation procedure

The local jurisdiction of the court to conduct proceedings for determining compensation for expropriated real estate is determined according to the *forum rei sitae* principle (Janevski & Zoroska – Kamilovska, 2010, p.165). For the determination of compensation for expropriated real estate, the district court within whose jurisdiction the real estate is located is competent (Article 243 of the Law on Non-Contentious Procedure). Regarding the composition of the court, the general rule of non-contentious proceedings is applied, whereby an individual judge presides over such proceedings.

The procedure for determining compensation for the expropriated real estate is an official non-contentious procedure, initiated *ex officio*. Participants in this non-contentious procedure are the former owner and the beneficiary of the expropriation. The procedure for determining compensation for the

expropriated real estate is initiated *ex officio* by the court when the documents are delivered to it by the competent authority of the administration (Article 242, paragraph 1 of the Law on Non-Contentious Procedure). Namely, if within three months from the entering into force of the decision on expropriation no agreement is reached on the compensation, the competent authority of the administration is obliged to issue the final decision on expropriation of the real estate, along with all documents, without delay. This submission should occur within eight days after the held hearing to the competent court for the purpose of determining compensation (Article 38, paragraph 2 of the Law on Expropriation and Article 242, paragraph 2 of the Law on Non-Contentious Procedure).

If, based on the statements and behavior of the parties during the proceedings before the competent authority of the administration, it is determined that an amicable agreement on compensation cannot be reached, the authority may submit the decision and related documents to the court even before the expiration of the three-month period. Should the competent authority of the administration fail to submit the decision and relevant documents to the court, the former owner has the right to immediately petition the court to determine the compensation for the expropriated real estate (Article 242, paragraph 3 & 4 of the Law on Non-Contentious Procedure). The former owner's appeal to the court for the determination of compensation for the expropriated real estate is not regarded as a proposal to initiate this procedure; rather, it serves as a signal to the court that the former owner is initiating the procedure *ex officio* (Janevski & Zoroska – Kamilovska, 2010, p.166).

In the procedure for determining compensation for expropriated real estate, the principle of urgency is paramount. This means that the court is obliged to expedite the process and take necessary actions promptly to determine the compensation as quickly as possible (Article 244 of the Law on Non-Contentious Procedure).

Regarding the determination of the factual situation as the basis of the court decision, the principle of officiality, or the investigative maxim, comes to the fore in this procedure. The court can establish facts and present evidence that it has acquired *ex officio*, independently of the proposals of the participants in the procedure (Article 245, paragraph 2 & 3 of the Law on Non-Contentious Procedure).

To determine compensation for expropriated real estate, the court should first ascertain the value of the property and schedule a hearing for this purpose. Holding the hearing is mandatory *ex lege* in the procedure for determining compensation (Article 245). At the hearing, the court summons the former owner and the beneficiary of the expropriation, allowing them to present their statements on the value of the expropriated real estate and the type and amount of compensation in money, based on evidence obtained *ex officio*. The court also presents other relevant evidence and, if necessary, may appoint expert testimony.

In the procedure for determining compensation before the court, the beneficiary of the expropriation refers to the expropriation assessment conducted by the Bureau of Forensic Expertise during the administrative procedure. In court proceedings, the former owner has the right to submit expert findings and opinions. The court may also appoint an expert opinion to determine the market value. In such instances, the provisions of the Law on contentious procedure are applied, particularly in the section concerning expert examination. According to Article 236 of the law, the qualifications of individuals eligible to serve as experts are outlined. In court proceedings, an expert must possess an expert license issued by the Ministry of Justice and be entered in the register of experts maintained by the Ministry of Justice.

Article 7 of the Law on Valuation permits appraisals to be conducted by natural persons or sole traders registered under the law, holding an appraisal license, and listed in the register of authorized appraisers. These appraisers are registered in the Register of Appraisers and possess licenses issued by the relevant ministries aligned with their expertise. An appraiser is an individual who has passed a professional appraiser exam and is employed by an authorized estimating company specializing in estimation.

Article 37 of the Law on Expropriation specifies that the market value shall be determined by an authorized appraiser in accordance with the Law on Valuation. However, in court proceedings, as per the provisions of the Law on non-contentious procedure, the market value is determined by an expert opinion.

The expert will utilize the same criteria and parameters outlined in the methodology for estimating the market value of real estate.

The assessment conducted by the Bureau of Forensic Expertise is solely for the administrative procedure to facilitate reaching an agreement. However, if an individual holds licenses both as a skilled person and as an appraiser, they can act as a skilled person in court proceedings. Based on the findings presented by this skilled person, the court can determine the compensation to be paid.

If there are conflicting expert findings and opinions, the court may order a super expertise for clarification.

During the procedure for determining compensation for expropriated real estate, the participants (the former owner and the beneficiary of the expropriation) can agree on the type, scope, and amount of monetary compensation. If they reach an agreement, the court includes it in its decision. The court ensures that the agreement does not contradict mandatory regulations or represent an illegal disposition (Article 246). If the court determines that the participants are attempting to dispose of claims they cannot legally dispose of, it will not honor their agreement. In such cases, the court will decide as if no agreement had been reached between the participants.

If the participants do not reach an agreement during the procedure, the court will make a decision on the subject of the procedure after hearing the participants and presenting the evidence (Janevski & Zoroska – Kamilovska, 2010, p.167).

If, according to the law, the beneficiary of the expropriation is obliged to provide the former owner with another suitable building or apartment as compensation for the expropriated building, and has not offered a building or apartment during the procedure for determining compensation, the court will halt the procedure until the beneficiary fulfills this obligation. To protect his interests in such cases, the former owner can propose that the court impose a temporary measure, such as prohibiting the demolition of the expropriated building or apartment until the final completion of the procedure for determining compensation (Article 247, paragraph 1 & 2). When deciding on the proposal for a temporary measure, the court should consider the provisions of the Law on Securing Claims regarding the conditions for the admissibility of such a measure.

The court will halt the non-litigation procedure for determining compensation for expropriated real estate if the former owner, who is a farmer, requests to be given another piece of agricultural land as compensation for the expropriated agricultural land, provided this is stipulated by law (Article 247, paragraph 3).

The court decides on the compensation for the expropriated real estate with a ruling. In the operative part of the ruling, the court determines the type, scope, and amount of compensation in money. If the participants in the procedure agree on the type, scope, and amount of compensation, the court includes their agreement in its ruling, and it constitutes the dispositive part of the ruling.

When determining the compensation for the expropriated real estate, the court should take into account the provisions of the Law on Expropriation that refer to the type, scope, and amount of compensation in money. According to this law, compensation for the expropriated real estate is generally determined by providing another corresponding real estate or in money if the former owner and the beneficiary of the expropriation do not agree otherwise.

When the assessed value of the real estate subject to expropriation exceeds five million euros, and the owner or holder of the property rights is the same entity, the compensation is paid in equal annual installments over a period of up to five years. When the assessed value of the real estate exceeds twenty-five million euros, the compensation is paid in equal annual installments over a period of up to eight years.

The proposer of the expropriation is obliged to pay the compensation in money or hand over the real estate given as compensation for the expropriated property within the term established in the agreement, or within 30 days from the finalization of the court's decision on compensation. If the proposer of the expropriation fails to pay the compensation in money or to hand over the real estate given as compensation, they are obliged to pay compensation for damages, including interest.

The right to demand compensation for the expropriated real estate does not expire, as the right of ownership, being the primary real right, does not lapse.

In the operative part of the decision, the court will also decide on the costs of the procedure. The Law on non-contentious procedure contains provisions for the final reimbursement of the costs of this procedure, as well as for the obligation to submit (advance) the costs in advance (Article 248 & 249).

The costs of the procedure for determining compensation for the expropriated real estate are determined by the court in proportion to the success of the participants in the procedure. This implies that when determining the costs, the court should consider the extent to which each participant succeeded in proving the validity of their request. If the participants agreed on the compensation for the expropriated real estate, the costs are borne by the beneficiary of the expropriation.

In addition to the rules for the final reimbursement of costs, the Law stipulates that when initiating a procedure to determine compensation for expropriated real estate, the court, at its discretion, will determine the amount necessary to cover the procedure's costs and will instruct the beneficiary of the expropriation to deposit this amount with the court within a specified period. If the beneficiary of the expropriation fails to comply with the court's decision and does not deposit the determined amount, the court will instruct the financial institution handling payment transactions to transfer that amount from the beneficiary's giro account to the court's giro account. The obligation to advance the additional costs of the procedure lies with the participant who proposed to undertake an action that incurs new costs ((Janevski & Zoroska – Kamilovska, 2010, p.168).

The Law on non-contentious procedure does not contain specific provisions regarding the possibility of filing an appeal against the decision to determine compensation for expropriated real estate. Therefore, the general provision of the Law on non-contentious procedure applies, allowing an appeal to the higher court against the decision made in the first instance within 15 days of receiving the decision. Both participants in the procedure - the former owner and the beneficiary of the expropriation - are authorized to file a complaint. No further appeal is allowed against a final decision for determining compensation for expropriated real estate.

6. Protection of the Interests of Former Owners in the European Court of Human Rights

Macedonian former owners have the possibility to seek protection before the European Court of Human Rights (ECHR) because North Macedonia is a state party to the European Convention on Human Rights (ECHR) and its Protocols. Among these, Protocol No. 1 is particularly important in the context of property rights.

As a state party to the ECHR and its Protocols, North Macedonia is bound to uphold the rights and freedoms enshrined in these documents, including the right to property protected under Article 1 of Protocol No. 1. Article 1 of Protocol No. 1 stipulates that every natural or legal person is entitled to the peaceful enjoyment of their possessions. It also states that no one shall be deprived of their possessions except in the public interest and under the conditions provided by law. It also states that no one shall be deprived of their possessions except in the public interest and under the conditions provided by law.

Before bringing a case to the ECHR, former owners must exhaust all domestic remedies. This means that the case should have been adjudicated through all three levels of the Macedonian judicial system: first instance court, appellate court, and the Supreme Court of North Macedonia. This requirement ensures that the national legal system has had the opportunity to address the issue (Article 35 of the ECHR).

As of 1 February 2022, an application to the ECHR must be submitted within four months of the final domestic judicial decision in the case, which is usually a judgment delivered by the highest court in the country concerned. This time-limit was previously six months. The four-month period starts from the date on which the decision becomes final and binding.

Applicants must clearly outline their grievances, demonstrating how their rights under the ECHR have been violated. They must provide all relevant documents, including the final decisions of the

Macedonian courts, and any other evidence supporting their claim. The ECHR will assess whether there has been a violation of the applicant's rights under the ECHR and its Protocols. The Court will consider whether the expropriation was carried out in the public interest, whether it was lawful, and whether the compensation offered was adequate and fair.

If the ECHR finds in favor of the applicant, it can order various forms of redress, including financial compensation, restitution of property, or other appropriate measures. The decision of the ECHR is binding on North Macedonia, which must comply with the Court's judgment.

By meeting these criteria and following the prescribed procedures, Macedonian former owners can effectively seek protection of their property rights before the European Court of Human Rights.

6.1. Relevant case law of the ECHR regarding the protection of the rights of former owners during expropriation

One relevant case law example from the European Court of Human Rights (ECHR) concerning the protection of former owners in expropriation procedures is:

- ***Sporrong and Lönnroth v. Sweden (1982)*** - In this case, the applicants, who were former landowners, challenged the Swedish government's decision to expropriate their properties for public purposes. The applicants argued that the compensation offered by the Swedish government was not sufficient and did not correspond to the true market value of their properties. The ECHR held that while states have the right to expropriate private property for public purposes, they must provide fair compensation to the affected individuals. The Court found that the compensation offered to the applicants did not meet this standard and violated their rights under Article 1 of Protocol No. 1 of the European Convention on Human Rights, which protects the right to property. This case established the principle that states must provide fair and adequate compensation to former owners in expropriation procedures, aligning with the protections of property rights under the European Convention on Human Rights. This case demonstrates the ECHR's role in ensuring that expropriation procedures respect the property rights of former owners and provide them with fair compensation. It underscores the importance of adherence to the principles of proportionality, fairness, and due process in expropriation proceedings, as outlined in Article 1 of Protocol No. 1 of the ECHR.

- ***Beyeler v. Italy (2000)*** - The applicant, a Swiss national, challenged Italy's expropriation of his property, arguing that it violated his right to property under Article 1 of Protocol No. 1 of the European Convention on Human Rights. The applicant claimed that the expropriation did not serve a legitimate public interest and that the compensation offered was inadequate. The Court held that the expropriation served a legitimate public interest as it was aimed at preserving cultural heritage. However, it found that the compensation offered was insufficient and did not strike a fair balance between the public interest and the applicant's right to property. The ECHR ruled that Italy had violated Article 1 of Protocol No. 1. This case emphasized the importance of fair compensation in expropriation procedures, even when carried out for the public interest. It reinforced the principle that states must strike a fair balance between public interests and individual property rights.

- ***Mellacher and Others v. Austria (1989)*** - The applicants, former owners of expropriated properties, challenged Austria's expropriation laws, arguing that they lacked effective remedies to challenge the legality of expropriation. The applicants argued that the lack of effective remedies violated their right to a fair trial under Article 6 of the European Convention on Human Rights. The Court held that while states have a wide margin of appreciation in expropriation matters, they must provide effective remedies to challenge the legality of expropriation decisions. It found that Austria's expropriation laws did not sufficiently safeguard the applicants' rights and violated Article 6. This case highlighted the importance of effective legal remedies in expropriation procedures to protect the rights of former owners. It

emphasized the need for states to ensure that individuals have access to fair and impartial judicial review of expropriation decisions.

These cases demonstrate the ECHR's role in safeguarding the rights of former owners in expropriation procedures and ensuring that states adhere to the principles of fairness, proportionality, and effective legal remedies as outlined in the European Convention on Human Rights.

Conclusions

The expropriation process in North Macedonia involves a detailed administrative and judicial procedure to ensure the protection of the rights of former property owners. The procedure begins with the expropriation decision by the Authority, where an initial assessment and offer for market compensation are made. If an agreement on compensation is not reached, the matter proceeds to the competent court under the Law on Non-Contentious Procedure.

During the court proceedings, an expert opinion is crucial in determining fair compensation. The court can appoint experts, and if there are conflicting expert opinions, a super expertise may be ordered. The court facilitates an agreement between the former owner and the beneficiary of the expropriation regarding the type, scope, and amount of compensation. If no agreement is reached, the court makes a final ruling on compensation.

The expropriation process aims to balance public interest with the rights of former owners by ensuring compensation that is not lower than the market value of the expropriated property. Legal measures and procedural safeguards are in place to prevent arbitrary decisions by state authorities, thereby protecting the interests of the affected individuals.

Furthermore, former property owners in North Macedonia have avenues for seeking protection beyond the domestic legal system. If they believe that their rights under the European Convention on Human Rights have been violated, they can appeal to the European Court of Human Rights (ECHR). This international recourse ensures that their fundamental rights are upheld, providing an additional layer of protection against unjust expropriation practices. The ECHR has a history of adjudicating cases involving property rights, and its rulings emphasize the necessity of legality, public interest, and proportionality in expropriation processes. This reinforces the obligation of domestic authorities to adhere strictly to these principles, safeguarding the rights of former owners comprehensively.

BIBLIOGRAPHY

- Aliu, A. (2014). *E drejta sendore*.
European Convention on Human Rights. (1950). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG
Janevski, A., & Zoroska-Kamilovska, T. (2010). *Gragjansko procesno pravo –kniga vtora – Vonparnicno pravo*.
Law on Building (*Official Gazette of RM* 70/13).
Law on Contentious Procedure (*Official Gazette of RM* 79/05, 110/08, 83/09, 116/10, 124/15).
Law on Energy (*Official Gazette of RM* 96/18, 96/19, 236/22).
Law on Expropriation (*Official Gazette of RM* 95/2012, 131/2012, 24/2013, 27/2014, 104/2015, 192/15, 23/16, 178/16, 111/23).
Law on General Administrative Procedure (*Official Gazette of RM* 38/05).

- Law on Local Self-Government (*Official Gazette of RM 05/02*).
- Law on Mineral Resources (*Official Gazette of RM 136/12*).
- Law on Non-Contentious Procedure (*Official Gazette of RM 09/08*).
- Law on Ownership and Other Real Rights (*Official Gazette of RM 18/01*).
- Law on Real Estate Cadastre (*Official Gazette of RM 55/13*).
- Law on Securing Claims (*Official Gazette of RM 87/07*).
- Law on Valuation (*Official Gazette of RM 115/10, 158/11, 185/11, 64/12, 188/14*).
- Law on Water (*Official Gazette of RM 87/08*).
- Methodology for assessment of real estate (*Official Gazette of RM 54/12*).
- R. Zhivkovska, & T. Przheska. "Odzemanje i ogranicuvanje na pravoto na sopstvenost vo pravniot system na Republika Makedonija spored Zakonot za Eksproprijacija UDK 347.234.13(497.7)" vo „Zbornik na trudovi” Univerzitet Sv. Kiril i Metodij Skopje Praven fakultet „Justinijan Prvi” Skopje.
- Sporrong and Lönnroth v. Sweden, App. no. 7151/75 (ECtHR 23 September 1982).
- Beyeler v. Italy, App. 33202/96 (ECtHR 5 January 2000).
- Mellacher and Others v. Austria, Apps. 10522/83; 11011/84; 11070/84 (ECtHR 19 December 1989).