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Review Paper

RESTITUTION OF PROPERTY IN SERBIA TO CITIZENS OF THE FORMER SFRY REPUBLICS

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Abstract. *In the 1990s, the Socialist Federal Republic of Yugoslavia (SFRY) was broken up into constituent republics. After gaining independence, all the newly formed states, with the exception of Bosnia and Herzegovina, initiated procedures for the return of seized property and compensation to the former owners, or their legal heirs. Slovenia was the first to begin the comprehensive restitution process, followed by Croatia, North Macedonia, Montenegro and Serbia. If we exclude Bosnia and Herzegovina which still has not passed a law on restitution, Serbia was the last to start solving this extremely sensitive issue. The return of seized property in the Republic of Serbia to applicants who are foreign citizens is regulated in such a way that the right to return is held by natural persons – foreign citizens; in case of their death or declaration of death, the right passes on to their legal heirs, under the condition of reciprocity. It is assumed that there is reciprocity with the country that did not regulate the restitution of property if a domestic citizen can acquire property rights and inherit immovable property in that country. This paper presents and analyses data on the current course of returning seized property and compensation to citizens of the former SFRY republics.*

Key words: *forfeiture, restitution, nationalization, Serbia, former owners, foreign citizens, principle of legality, property.*

1. INTRODUCTION

After 1990, all former socialist countries of Eastern Europe adopted laws on the return of seized property and compensation, most often through a combined model of in-kind and monetary restitution. The subject matter of restitution is confiscated property, primarily immovable and movable property, but in some countries it also refers to certain property rights. In all those countries, the form of restitution provided for is, primarily, natural restitution, i.e. the return of the same property that was seized from the former owner, and,

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alternatively, compensation in the form of other appropriate property or payment of monetary compensation (Directorate for Restitution of the Republic of Serbia, 2010). At the end of the 20th century, six successor states emerged on the territory of the former SFR Yugoslavia: Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Montenegro, and North Macedonia. In order to realize the ideal of homogeneous national states, more than four million people had to be displaced in an area that used to be characterized by a unique ethnic and cultural plurality (Čalić, 2013: 229). Both due to internal circumstances and under the pressure of the international community, especially the United States of America (hereinafter: USA) and the European Union (hereinafter: EU), all newly formed states (except for Bosnia and Herzegovina), in addition to other social and institutional reforms, initiated procedures for natural restitution and compensation. After the year 2000, several laws on restitution were drafted in Serbia, but the final text of was adopted in October 2011 (Gulan, 2015: 16).

The Act on Property Restitution and Compensation (hereinafter: PRC Act)[1] stipulates that natural persons (foreign citizens) have the right to the return of seized property and compensation; in case of their death or declaration of death, the right passes on to their legal heirs, under the condition of reciprocity (Article 5, para.1, line 5 of the PRC Act). It is assumed that there is reciprocity with the state that did not regulate the restitution of property if a domestic citizen can acquire the right to own and inherit immovable property in that state (Article 5, para.2 of the PRC Act).

2. Return of Seized Property to Croatian Citizens

2.1. Introductory considerations

After the Second World War, the Communist Party of Yugoslavia positioned itself in Croatia as the leading political force, and started a radical confrontation with all owners of property rights in order to enable the transformation from capitalism to socialism (Anić, 2008: 819-832). The entire legal system was aimed at creating a new social order (Kisić-Kolanović, 1992: 49-99). After the end of the war, the former Yugoslavia recorded constant economic growth but, after the *golden age* of the 1960s, it entered the phase of recession in the early 1970s. Paradoxically, in that decade, Yugoslavia had the greatest wave of investments in its history. However, at the beginning of the 1980s, Yugoslavia fell into the deepest economic, political and socio-psychological crisis, which influenced the creation of increasing animosity among the people in the former Yugoslav republics. One of the last unsuccessful attempts to preserve the common state was undertaken by the Federal Assembly at the end of 1988 by introducing privatization, abolishing socialist forms of property and self-management (Čalić, 2013: 242). The national identity crisis, the deterioration of the population's material status and the strengthening of right-wing organizations influenced Croatia to declare independence on 25 June 1991, which was rejected by a rather large Serbian minority, and ultimately led to several years of armed conflicts. After declaring independence, Croatia passed a law on restitution on 11 October 1996,

[1] Act on Property Restitution and Compensation, *Official Gazette of the Republic of Serbia*, 72/2011, 108/2013, 142/2014, 88/2015 – CC decision 95/2018

grandiosely named the Act on Restitution/Compensation of Property taken during the Yugoslav Communist Government (hereinafter: Property Restitution/ PR Act).[2]

2.2. Beneficiaries of restitution in Croatia

The PR Act stipulates that the right to restitution of property belongs to natural persons – the former owners of seized property, i.e. their legal heirs of the first line of succession (Article 9, para. 1 of the PR Act). Applicants who are not citizens of the Republic of Croatia have the right to restitution of seized property, except in the case when the issue of restitution is defined by interstate agreements. This means that foreign citizens, including the citizens of the Republic of Serbia, have the right to return of seized property, except when the recognition of the right to return of seized property is contrary to other laws that determine the kind of property for which foreigners cannot acquire the right of ownership, but then the former owners, i.e. their legal heirs of the first line of succession, acquire the right to compensation for seized property (Restitution Agency RS, 2022).

2.3. Outcome of restitution procedure for Croatian citizens in Republic of Serbia

Considering the legal understanding of the issue of reciprocity of the Administrative Court, the Restitution Agency began to accept requests for the restitution of the property of Croatian citizens after the adoption of a legally binding position established at the 57th session of all judges of the Administrative Court held on 21 December 2015 and after obtaining a notification from the Ministry of Justice of the Republic of Croatia. In accordance with the Serbian Act on Property Restitution and Compensation, in the legal period that lasted from 1 March 2012 to 3 March 2014, there was a total number of 269 requests for the return of seized property (i.e. compensation) submitted by Croatian citizens, as well as 31 request where the applicants for restitution were citizens of Croatia and other foreign countries. Until 1 August 2022, the Restitution Agency passed 23 approving decisions, which ensured the return of property and established the right of ownership to the legal heirs of the former owners who were Croatian citizens. Acting upon the requests where the applicants were the citizens of Croatia and other foreign countries, the Restitution Agency passed 4 additional approving decisions. Based on these approving decisions, the returned property included" 34 business premises with a total area of 1,349 m²; 6 buildings with a total area of 964 m²; 6 apartments with a total area of 182 m²; one garage with a total area of 16 m²; and 17ac 18m² of construction land. The total amount of compensation determined by compensation decisions, based on the requests of Croatian applicants, is €553,898.21, while the total number of applicants/Croatian citizens covered by compensation decisions is 31 (Agency for Restitution, 2022).

As of 1 August 2022, 58 rejecting decisions were made. The total area of agricultural land indicated in the requests for the return of seized property was 359ha 69ac 21m². In addition to these requests for agricultural land, requests claiming 43ac 95m² of construction land, 307ha 37ac 39m² of forest land, and 24 other immovable properties (buildings and special parts of buildings) were rejected as well. (Restitution Agency, 2022).

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[2] Act on Restitution/Compensation of Property taken during the Yugoslav Communist Government, *Official Journal* of the Republic of Croatia, no. 92/1996, 39/1999, 42/1999, 92/1999, 43/2000, 131/2000, 27/2001, 65/2001, 118/2001 and 80/2002.

3. Return of Seized Property to Slovenian Citizens

3.1. Introductory considerations

On 23 December 1990, a referendum was held in Slovenia in which 88.5% of its citizens voted for the separation from the SFRY. After gaining independence, Slovenia passed the Denationalization Act[3] (hereinafter: SDA) on 29 November 1991, which entered into force on 7 December 1991. This Act regulates the denationalization of property that has been forfeited on the basis of regulations on the agrarian reform, nationalization and confiscation, as well as on the basis of other regulations and methods regulated by that law (Article 1 of the SDA). Exceptionally, the beneficiaries of the right to restitution are also natural persons whose property was forfeited without compensation on the basis of a regulation adopted before the entry into force of the 1963 SFRY Constitution or by a measure of a state authority without a legal basis (Article 4 of the SDA).

3.2. Beneficiaries of restitution in Slovenia

Beneficiaries of the right to restitution in Slovenia are the former owners of seized property, or their legal successors, if they were Yugoslav citizens at the time the property was nationalized or if their citizenship was recognized by a law or an international agreement after 9 May 1945. Otherwise, the right to restitution can be obtained by people who were not Yugoslav citizens, provided that they were confined for religious or other reasons or fought on the side of the anti-fascist coalition. Persons who acquired property from the occupying forces or their organizations during the Second World War cannot exercise the right to the return of seized property. If the former owners had Yugoslav citizenship on 9 May 1945, and subsequently obtained foreign citizenship, they are considered to be the same beneficiaries of restitution only in case such a right is also recognized for Slovenian citizens in the country whose citizens are the beneficiaries of restitution. Finally, it should be noted that the property which is seized as a result of the termination of citizenship is considered a seized property of a Yugoslav citizen, which does not apply in cases where the sentence of citizenship deprivation was imposed simultaneously with the seizing of property (Article 9 of the DA).. It should also be noted that Slovenia, along with North Macedonia, is the only former SFRY republic that does not recognize the right to restitution to former owners – foreign citizens (persons who did not have Yugoslav citizenship on 9 May 1945) and their legal successors, not even under the condition of reciprocity (mutuality).

3.3. Outcome of restitution procedure for Slovenian citizens in Republic of Serbia

Until 1 August 2022, 4 rejecting decisions were made on requests for restitution submitted by Slovenian citizens. The total area of agricultural land included in the rejecting decisions is 13ha 75ac 92m². When it comes to requests for restitution filed by Slovenian citizens, the reason for not making decisions to return property and establish the ownership right to property in the natural form to persons of Slovenian citizenship lies in reciprocity. Namely, the issue of reciprocity with the Republic of Slovenia has not been finally determined yet (Restitution Agency, 2022).

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[3] Denationalization Act, *Official Gazette of the Republic of Slovenia,* 27/1991, 31/1993, 65/1998, 66/2000, and the decision of the Constitutional Court of Slovenia in no. 56/92, 13/93, 24/95, 20/97, 23/97, 76/98.

4. Return of Seized Property to Macedonian Citizens

4.1. Introductory considerations

In 1991, the Republic of North Macedonia separated from the SFRY peacefully, without conflict. As in other former Yugoslav republics, multi-party elections in North Macedonia were held in 1990, after which the issue of North Macedonia's separation from the SFRY began to be resolved. Unlike Slovenia and Croatia, North Macedonia started solving the issue of restitution of seized property a bit later than the day of their independence. The Macedonian Denationalization Act[4] (hereinafter: MDA) was adopted on 2 April 1998, and significantly amended in 2000.

4.2. Beneficiaries of restitution in North Macedonia

The Macedonian law, at the very beginning, defines that the right to the restitution of property belongs to natural persons, religious temples, monasteries and waqfs, whose property was confiscated after 2 August 1944, based on regulations for the general confiscation and limitation of property, based on the regulations for seizing the property in order to achieve generally beneficial goals, as well as property expropriated for achieving generally beneficial goals, i.e. goals of general interest, if the conditions for returning the property according to the provisions on expropriation are not met, as well as for property seized without legal basis (Article 2 of the MDA). The provision according to which the Macedonian law does not recognize the right to restitution of property to foreign citizens is particularly interesting. Namely, the MLD directly states that the right to submit a request for restitution, and therefore the right to return seized property, belongs to the previous owners, that is, persons who are their legal heirs, if they had Macedonian citizenship on the date when the MLD entered into force (Article 12 of the MDA).

The legal decision denying foreign nationals the right to submit a request and, therefore, the restitution of seized property directly contradicts the basic principles proclaimed in the Constitution of (North) Macedonian [5] (hereinafter: NM Constitution), which guarantee the legal protection of property (Article 8 of the NM Constitution). This legal provision also made it impossible for Macedonian citizens to exercise the right to the restitution of property in other countries (primarily in Serbia) where they or their legal predecessors owned property, bearing in mind the principle of reciprocity or mutuality applied in these countries.

4.3. Outcome of restitution procedure for Macedonian citizens in Republic of Serbia

Until 1 August 2022, a total of 20 negative decisions were made on requests for restitution submitted by North Macedonian citizens. The total area of construction land included in the rejecting decisions is 13ac 45m². When it comes to Macedonian citizens, the Restitution Agency *ex officio* determined the existence of reciprocity, and concluded that only Macedonian citizens could exercise the right to the return of seized property in North Macedonia, but not the citizens of other countries, not even the citizens of the Republic of Serbia. Therefore, the Restitution Agency determined that there is no reciprocity in the return of seized property of the Republic of Serbia with the Republic of North Macedonia (Restitution Agency, 2022).

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[4] The Denationalization Act, *Official Gazette of the Republic of Macedonia*, 43/2000-revised text.
[5] The Constitution of North Macedonia, *Official Gazette of the Republic of Macedonia*, 52/91.

5. Return of Seized Property to Citizens of Montenegro

5.1. Introductory considerations

Unlike other former SFRY republics whose citizens supported the creation of independent, sovereign and internationally recognized states on the territory of the former SFRY in referendums organized in the early 1990s, the citizens of Montenegro voted in the referendum held on 1 March 1992 and chose an union with Serbia (Čalić, 2013: 387). However, in the referendum held on 21 May 2006, Montenegro restored its statehood and became an independent and internationally recognized state again. Before gaining independence, Montenegro started solving the issue of returning the property confiscated after the Second World War, i.e. the issue of restitution, neglecting the restitution of property to churches and religious communities in Montenegro.

5.2. Beneficiaries of restitution in Montenegro

According to the Montenegrin Act on the Restitution of Confiscated Property and Compensation Rights (hereinafter: RCPCR Act)[6], the former owners (natural or legal persons and their legal heirs or successors) have the right to file a request for the restitution of property if their property rights were confiscated in favor of the public, state, social or joint property (Article 2 of the RCPCR Act), as well as former owners who returned their confiscated property rights based on a paid legal activity before this Act entered into force (Article 3 of the RCPCR Act).

In addition to the terminologically vague definition of natural persons who have the right to submit a request for restitution, using the term former owners for both former owners and their legal heirs, the Montenegrin law also prescribes a specificity that is unnecessary. Namely, the legal heirs of the former owner are determined before the competent court in a procedure that corresponds to the probate procedure in case of subsequently found property. This further led to a specific form of the decision on the restitution of property; namely, in case the former owner has passed away, the decision on restitution will not apply to him but to his/her unnamed heirs who are determined by the court's decision in probate proceedings (Sekulić, 2012: 24).

5.3. Outcome of restitution procedure for Montenegro citizens in Republic of Serbia

Under the Montenegrin RCPCR Act which regulates the return of property, citizens of the Republic of Serbia have the right to return property, and citizens of the Republic of Serbia can also acquire the right to own and inherit immovable property in the Republic of Montenegro. Therefore, when it comes to reciprocity, there are no obstacles for the citizens of Montenegro regarding the return of confiscated property. In this regard, it should be noted that up to 1 August 2022, the Restitution Agency made 6 approving decisions, thus returning a total area of 19ha 92ac 77m² of agricultural land to the citizens of Montenegro, 1 building and 1ha 56ac 83m² of forest land; in addition, 1 approving decision was made on the basis of the request in which the applicants are the citizens of Montenegro and other foreign countries. Moreover, 11 decisions were made on the compensation of Montenegrin citizens. The total amount of compensation to Montenegrin citizens is €140,173.09, while the compensation decisions included a total number of 20 applicants. Finally, it should be

[6] Act on the Restitution of Confiscated Property and Compensation Rights, *Official Gazette of the Republic of Montenegro*, no. 21/04.

noted that 8 rejecting decisions were made on requests for restitution by Montenegrin citizens, and that the total area of agricultural land covered by rejecting decisions is 5ha 59ac 63m², while the total area of the forest land is 1ha 44ac 16m² (Restitution Agency, 2022).

6. Return of Seized Property to Citiznes of Bosnia and Herzegovina

6.1. Introductory considerations

What preceded the exit of Bosnia and Herzegovina (B&H) from Yugoslavia can certainly be defined as the largest conflict between the warring parties on the territory of the former state after World War II. The necessity of involving the international community in resolving the conflict led to its participation in the creation of new borders and new divisions on the territory of Bosnia and Herzegovina, which began with the so-called Dayton Agreement on 21 November 1995, while the formal signing of the peace treaty in Paris took place on 14 December 1995. Although it remained in its pre-war borders as a single state (Muslim demand), Bosnia and Herzegovina was still divided into two independent parts of the country (Serbian demand). The Federation of Bosnia and Herzegovina, governed by the Croats and Muslims, obtained 51% of the territory, but it was composed of a complicated system of cantons (Croatian demand), while Republika Srpska remained as a separate part of the state and obtained 49% of the territory. The central government in Sarajevo gained only a small number of responsibilities, including foreign policy, the issue of citizenship and monetary policy, while the entities gained their own currency, police and army (Čalić, 2013: 402). The issue of restitution in Bosnia and Herzegovina is present in the public and at all levels of government, but, despite certain attempts, it is still unresolved. Republika Srpska adopted the Act on Return of Confiscated Property and Compensation in 2000, but it was suspended by the decision of the High Representative for Bosnia and Herzegovina, who took the position that this area should be regulated uniformly at the level of the entire country. For the same reasons, upon the intervention of a High Representative in the Parliament of the Federation of Bosnia and Herzegovina in 2002, the Draft of the Entity Act on Restitution was withdrawn from the procedure (Restitution Agency of the Republic of Serbia, 2010).

Bearing in mind that the representatives of the international community in B&H firmly advocate the position that the issue of denationalization should be regulated at the level of the entire country, in 2001, based on the decision of the Council of Ministers, the Ministry of Civil Affairs formed a working group tasked with preparing a framework of the law on restitution, but that law was neither published nor adopted. Then, in July 2007, the modified Draft of the Denationalization Act entered the parliamentary procedure, but it did not receive the necessary majority at the session of the B&H Parliamentary Assembly on 25 February 2008, so it was not adopted. After that, at the beginning of July 2009, the Ministry of Justice of B&H went public with a new proposal for the text of the Denationalization Act, but it was not adopted either. Despite certain efforts by the highest authorities to resolve the restitution issue, Bosnia and Herzegovina remained the only former SFRY republic that did not regulate the issue of restitution (Restitution Agency of the Republic of Serbia, 2010).

6.2. Outcome of restitution procedure for B&H citizens in Republic of Serbia

Until 1 August 2022, 11 adopting decisions were made, which returned property and established property rights to the citizens of Bosnia and Herzegovina. In addition, 6

adopting decisions were made on requests in which the applicants were the citizens of Bosnia and Herzegovina and other foreign countries. With these decisions, the following immovable property was returned: 43ha 76ac 24m² of agricultural land, 2,541m² of undeveloped construction land in Niš, 2 apartments – one in Kikinda and one in Belgrade, 1 building in Vlasotince and 27 business premises, 23 of which were in Kikinda and 4 in Belgrade. The total amount of compensation to the citizens of Bosnia and Herzegovina is €460,322.89, while the total number of claimants included in compensation decisions is 18. In addition, 28 rejecting decisions were made on requests for restitution by Bosnia and Herzegovina citizens. The total area of agricultural land included in the rejecting decisions is 73ha 75ac 12m². Negative decisions were also made on 3ha 39ac 70m² of construction land, as well as on 15 buildings with physically separate parts. When taking into account the rejecting decisions on restitution requests by the citizens of Bosnia and Herzegovina, the largest number refers to the requests for the return of agricultural land in Pančevački Rit, for which there are no confiscation acts. Therefore, there are no obstacles regarding the return of property to the citizens of Bosnia and Herzegovina, since there is reciprocity in terms of property law relations regarding immovable property between the Republic of Serbia and the Republic of Bosnia and Herzegovina, regardless of the fact that the Republic of Bosnia and Herzegovina has not started the restitution process yet.

7. CONCLUSION

In order to fully understand the restitution procedure, it is necessary to look at the historical context of making various decisions aimed at forfeiture, i.e. seizing of movable and immovable property from previous owners. Therefore, it is necessary to note that the institutionalization of socialism began on the territory of the former SFR Yugoslavia, which implied radical economic changes, i.e. the dominance of state, social and cooperative property, as well as the suppression and denial of private property. After the creation of new national states on the former SFRY territory, all states (except Bosnia and Herzegovina) began the restitution procedure of seized property. The Republic of Serbia was the last to start solving the issue of returning seized property, which was required not only by the basic democratic principles which the Republic of Serbia is based on (particularly the respect for human rights and freedoms established by national and valid international legal acts) but also by the attitude of the general public that the sense of fairness dictates that this issue should be resolved, and thus free the further economic, political and social development of Serbia from this burden of the past. During the adoption and implementation of the Property Restitution and Compensation Act, the Republic of Serbia regulated its relationship with the citizens of the republics that made up the former SFRY. The basis of that relationship is reciprocity (i.e. mutuality), which is illustrated and confirmed in this paper by presenting the results of the restitution procedure conducted by the Restitution Agency of the Republic of Serbia.

When it comes to the restitution of seized property, the Republic of Serbia arranged its relationship with citizens of other countries that made up the former Yugoslavia on the basis of reciprocity. Until 1 December 2022, the Republic of Serbia did not recognize the right to the return of seized property or compensation to the citizens of the Republic of North Macedonia, while the existence of reciprocity with the Republic of Slovenia has not been established yet, that is, it has not been determined whether the Republic of Slovenia

recognizes the right of the citizens of the Republic of Serbia to the return of seized property or compensation. The Republic of Serbia established the existence of reciprocity with the other countries that made up the former SFRY, including Croatia, Montenegro, and Bosnia and Herzegovina. Bearing in mind the data presented in this paper, it can be concluded that a large part of the claimed property was returned in its natural form to the citizens of the former SFRY republics.

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RESTITUCIJA IMOVINE U SRBIJI DRŽAVLJANIMA REPUBLIKA BIVŠE SFRJ

U radu prikazani podaci imaju višestruki značaj. Naime, svoj odnos prema državljanima drugih država koje su činile nekadašnju Jugoslaviju, kada je u pitanju restitucija oduzete imovine, Republika

Srbija je uredila na osnovu reciprociteta. Zaključno sa 01.12.2022. godine, Republika Srbija ne priznaje pravo na vraćanje oduzete imovine odnosno obeštećenje, državljanima Republike Severne Makedonije, dok sa Republikom Slovenijom još uvek nije utvrđeno postojanje reciprociteta, odnosno nije definisano da li Republika Slovenija priznaje pravo državljanima Republike Srbije na vraćanje oduzete imovine, odnosno obeštećenje. Sa ostalim državama koje su činile nekadašnju SFRJ, i to sa Hrvatskom, Crnom Gorom i Bosnom i Hercegovinom, Republika Srbija je utvrdila postojanje reciprociteta, i državljani tih država mogu ostvariti pravo na vraćanje oduzete imovine odnosno obeštećenje u Republici Srbiji. Imajući u vidu podatke prikazane u ovom radu, zaključak je da je veliki deo imovine koja se potražuje vraćen u naturalnom obliku držljavljanima bivših SFRJ republika.

Ključne reči: *podržavljenje, restitucija, nacionalizacija, Srbija, bivši vlasnici, strani državljani, princip zakonitosti, imovina.*