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EXPROPRIATION OF REAL ESTATE

1. INTRODUCTION

By expropriation we mean that real estate can be expropriated when this real estate is necessary for the construction of commercial, residential, municipal, healthcare, cultural and other buildings of general interest.

Real estate can be expropriated even when this is necessary for the development of other types of work which is of general interest.

2. OBJECTS OF EXPROPRIATION AND THE EXPROPRIATION AUTHORITY:

An object of expropriation according to the Law of Expropriation of Real Estate no. 03/L-139 of the Republic of Kosovo,²⁵ can be private property rights or other private rights over an immovable property, excluding rights over real estate which are part of a category of property which based on the Constitution or the Comprehensive Proposal are expressly determined to be objects for which expropriation is prohibited.

Real estate can be expropriated for the following reasons:

- Construction of railways, roads, bridges, airports, channels;
- Development of settlements, roads, parks, squares;

25 In Article 4 par.1, and 2 of Law no. 03/L-139 on expropriation of real estate, of the Republic of Kosovo, the expropriation authority is foreseen, and the object of expropriation;

- Construction of water supply systems, and other Municipal buildings;
- Construction of schools, museums, art galleries, and other buildings for educational and cultural purposes;
- Construction of hospitals and other buildings for healthcare and social purposes;
- Construction of buildings for physical arts and sports;
- Exploration of mineral wealth and other assets beneath the ground;

The expropriation authority (Government, Municipality) is authorised to make the expropriation of real estate only after the fulfilment of these conditions: expropriation is implemented to achieve a legal public objective within its authority; a legal public objective cannot be reached in practical terms without completing expropriation; the public benefit from expropriation is greater than the interest which would be negatively affected by expropriation; and real estate which is the object of expropriation has no other aim or discriminating objective.

3.COMPENSATION AND PAYMENT OF COMPENSATION²⁶;

Compensation is made on the basis of the properties market value.

The compensation for expropriated real estate is paid in Euro²⁷.

If a person refuses to accept compensation, these funds are deposited in a trust account in the Central Bank of Kosovo (CBK) in the name of the person in question.

All the funds deposited in a trust account are considered to have been “paid” with the aims foreseen by the Law on Expropriation of Real Estate of the Republic of Kosovo.

26 In Articles 15 par. 1 of Law no. 03/L-139 on expropriation of real estate, of the Republic of Kosovo, foresees compensation for the expropriated object;

27 In Article 16 par. 1, 2, 3 of the Law no. 03/L-139 on expropriation of real estate, of the Republic of Kosovo, foresees compensation for the expropriated object;

As far as evaluation of the property is concerned, an office is established within the Ministry of Economy and Finance for the evaluation of real estate, which is the competent public Authority for the evaluation of all real estate which is an object of the expropriation procedure conducted by any of the Expropriation Authorities.

The Office for evaluating Real Estate will issue the final evaluation act within one-hundred-and-fifty (150) days from date of receiving the request from the Expropriation Authority.

The written evaluation act should contain: the overall value of the property which is the object of expropriation, an evaluation of all damages – if any – which should be paid for according to this law, personal information on persons which will be paid with compensation; the sum of the compensation which will be paid to each one of them, and the list of persons that have required compensation, but which have been determined not to have a right to this.

4. LEGAL REMEDIES AND PROTECTION OF PROPERTY

Law no. 03/L-007²⁸ of the Republic of Kosovo on non-dispute procedure regulates the method of utilising legal remedies as in the following: if parties in the expropriation procedure do not achieve agreement for compensation of the real estate, the competent administrative Authority will forward the final decision on expropriation, along with all the paperwork, to the Competent Court where the expropriated real estate is located, in order to determine the compensation.

If the Administrative Authority does not forward to the Competent Court the Decision on Expropriation, then the owner has the right to directly address the Competent Court with a claim for determining the compensation for the expropriated property.

²⁸ In Article 215, Article 216 par. 1, 2, 3, and Article 217 par.2 of the Law nr. 03/L-007 on non-dispute procedure, of the Republic of Kosovo, the determination of compensation has been foreseen by the Competent Court for the expropriated real estate;

The procedure within the Competent Court should be concluded as swiftly as possible, and latest with a 60 day deadline, from the day of the proposal being filed with the Competent Court.

However, Law no. 03/L-139²⁹, on the expropriation of real estate of the R. of Kosovo regulates this as follows: The person who is not satisfied with the decision of the Expropriating Authority, has the right to an Appeal before a Competent Municipal Court.

If the Government expropriates then the appeal is filed with the Supreme Court of Kosovo.

The appeal should be filed within 30 days after the entry into force of the Decision on expropriating the real estate.

The Court will consider the appeal of the appellant in an urgent manner.

Protection of Property is foreseen also with Article 17, par. 2 of the General Declaration on Human Rights, which amongst other states:

“No one can be deprived arbitrarily from their property”

Protection of property is ensured also based on Protocol no.1 of the Convention³⁰ for the protection of human rights and basic freedoms which amongst other states:

- ***Every natural or legal person has the right to peacefully enjoy their property;***
- ***No one can be deprived from their property, except for reasons of public interest and under conditions foreseen by law and under general principles of international law”.***

The protection of property is also guaranteed by the Constitution³¹ of the Republic of Kosovo, which in Article 46, par. 3, states that:

29 Article 35 of the Law no. 03/L-139 on expropriation of real estate, of the Republic of Kosovo, foresees legal remedies;

30 See Protocol no. 1 of the Convention for the protection of human rights and fundamental freedoms;

31 See the Constitution of the Republic of Kosovo, Article 46 par. 1, 3;

“No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.”

5. TRANSFER OF PROPERTY IN THE NAME OF THE EXPROPRIATION AUTHORITY

As the decision on expropriation of real estate takes a final form, and after the payment of compensation, the appropriate cadastral office registers the property in the name of the:

- Appropriate municipality, if the Expropriating Authority is the Municipality;
- Republic of Kosovo, if the Expropriating Authority is the Government.

6. RESTITUTION OF EXPROPRIATED PROPERTY AND LEGAL DEADLINES

Initially we cite Article 22, par. 4 of the Law on Expropriation of Kosovo “Official Gazette SAPK” 25/73³² which determines that:

“The final and binding decision on expropriation can be annulled also based on the request of the former owner, if the party utilising expropriation within a term of three years after the Decision on expropriation has taken a final and binding form, has not conducted, in accordance to the nature of the object, any substantial works in the construction of that building”

The same matter in the same manner is regulated also with the Law on Expropriation of the SAPK of 1978 – Article 21, par. 4; the Law on Expropriation of 1986 – Article 21, par. 4; and also the one of 1989.

³² See Article 22 par. 4 of the Law on Expropriation in Kosovo “Official Gazette SAPK” 25/73

While Law no. 03/L-139 of 2009³³ on expropriation of real estate in the Republic of Kosovo, states that: The person the property rights of whom over the real estate have been expropriated, has the right to file an appeal before the competent court and to require from the Court to issue an order for the restitution of the property rights over the given property. The right to an Appeal can be exercised only within 10 years after the final decision entered into force.

This Appeal before the competent Court can be presented for the following reasons:

- The property which was expropriated by the Government has not be expropriated for a legal public objective;
- The expropriated property, has be used by the Expropriating Authority in an active manner for a period of 3 (three) years for an illegal public objective, and;
- During an eight year period the expropriated property has not been utilised for any purpose;
- The former owner agrees to reimburse the paid or ensured compensation for the expropriation of the real estate, and if the compensation was done in cash then interest is also payable.

Conclusion:

Based on the Articles, Protocols foreseen with above mentioned Laws, European Convention, Kosovo Constitution, the general Declaration on human rights, we come to the conclusion that protection of property rights is guaranteed with the Constitution of Kosovo, the laws of the Republic of Kosovo, European Convention, and the general Declaration on human rights, and that private real estate can be expropriated by applying applicable laws, but only when this is necessary for the aim of developing works that are of general social interest and the fulfilment of certain conditions like: the expropriation is done to achieve a legal public objective; the real estate which is the object of expropriation has not other discriminating objective

³³ See Article 27 of the Law no. 03/L-139 on expropriation of real estate, of the Republic of Kosovo

or aim, and that Compensation has to be done in a fair manner and based on the market value of the real estate being expropriated.

Laws that we mentioned and are not in force in the Republic of Kosovo were mentioned because in Article 40 of the Law no. 03/L-139 On the expropriation of real estate in the Republic of Kosovo, states that:

“In relation to expropriation procedure initiated before the entry into force of this law, legal provisions applicable until the day of this law entering into force are applicable”.

By applying in a proper manner all the Articles foreseen in the above mentioned laws, it will be easier for the Republic of Kosovo to guarantee property rights during the process of acceding to International Organisations.

LITERATURE:

- Law no.03/L-139 on expropriation of real estate, of the Republic of Kosovo
- Law no.03/L-007 on non-dispute procedure, of the Republic of Kosovo;
- Law on expropriation in Kosovo “Official Gazette SAPK” 25/73;
- General declaration on human rights;
- Constitution of the Republic of Kosovo;
- European Convention for the Protection of Fundamental Human Rights and Freedoms.

