

LAW ON EXPROPRIATION

*(Official Gazette of the Republic of Macedonia no. 33/95)
July 5, 1995*

I. GENERAL PROVISIONS

Article 1

This Law shall stipulate the expropriation of the ownership and the rights that derive from it on land, buildings and other facilities (real property) for the purpose of constructing buildings and performing other works that are of public interest, establishing the public interest and determining the fair compensation for the expropriated real properties.

Article 2

Public interest established by this Law shall be the treatment, rational use and humanization of the space and protection and promotion of the environment and nature by constructing buildings and performing works provided in the Spatial Planning Acts, as follows:

- construction of railroads, roads, bridges, airports and accompanying buildings and plants;
- construction of power plants for production of electricity, buildings, gears and power lines designed for transmission and distribution of electricity;
- construction of buildings and plants for mailing, telephone and telegraph traffic, plants for radio and television connections and information systems;
- construction of buildings for defense and civil protection;
- construction of border posts;
- construction of buildings and plants for research and exploitation of mines and other natural wealth;
- construction of water management facilities and plants;
- construction of streets, squares, parking lots and parks;
- construction of dumps, processing stations and other facilities for protection of the nature and the environment;
- construction of gas-lines, oil-lines and other lines;
- construction of waterworks, sewer, central heating, cemetery and other communal facilities;
- construction of buildings for education, upbringing, science, culture, health, social protection and sport when the activity is performed as a public service, and
- construction of settlements in times of enormous disasters (earthquakes, floods, fires and earth creeping) and moving settlements (submerge, ecological reasons and construction of complex buildings).

Public interest for construction of buildings and performing other works may also be determined with another Law.

Determining public interest for expropriation of real property that has a special cultural and historical significance set by law shall be done under conditions and method prescribed with a separate law.

Article 3

User of the expropriation shall be the state.

The expropriation shall be done for the needs of the public services, public enterprises, public funds and the units of the local self-government (hereinafter: users of expropriation).

A user of expropriation may also be some other legal or natural person , when prescribed with a separate law.

Article 4

With the expropriation the right to ownership and the other rights that derive from it of the real properties (hereinafter: complete expropriation) shall cease.

With the expropriation the right to ownership may be limited by establishing the right to usufruct, occupancy, temporary limitation of the right to use and temporary occupation in order to perform preparatory works on the land (hereinafter: incomplete expropriation).

Article 5

The right to usufruct shall be instituted for real property in order to place waterworks, sewer, energy lines, and place and construct other lines and works that are of public interest.

Article 6

Occupancy shall be instituted on a land in order to research and exploit mineral raw materials.

The occupancy shall be instituted on a definite period of time, but not longer than three years following the day of giving the land in possession.

If as a result of the occupancy the properties of the land are destroyed in a way that it could no longer be used in way and for the purpose it had been used before instituting the occupancy, the owner of the expropriated land may demand complete expropriation of the land, within one year following the day of termination of the occupancy.

In regard to the rights and duties that derive from the occupancy and which have not been stipulated with this Law, the property regulations shall be applied.

Article 7

The right to use the land shall temporarily be limited, which shall serve for certain needs regarding the construction of the building or performing other works (temporary placement of the machinery needed for construction of the building, raising buildings for temporary accommodation of the workers who work on the building, access roads and securing the building).

The temporary limitation referred to in paragraph 1 of this article shall be abrogated, as soon as the need for which it has been established ends, and the latest by the completion of the work on the building, because of which the expropriation was carried through.

Article 8

Temporary occupation of a land shall be done for performing preparatory works (re-measuring and analysis) in order to prepare an expropriation or investment study.

Article 9

When real property owned by a natural or legal person is part of a public interest, determined in article 2 of this Law, while the organ for expropriation did not know that nor it could have known that, the real property shall be considered expropriated, while the former owner shall have the right to a compensation according to the provisions of this Law, within five years following the date of giving the real property in possession to the user of the expropriation.

Article 10

For the expropriated real property a fair compensation shall be paid, which may not be lower than the market value of the real property.

In order to determine the fair compensation, the market value of the real property shall be established based on the criteria determined by this Law at the moment of submission of the expropriation proposal or on request of the owner, or the carrier of some other property right, at the moment of determining the compensation.

Article 11

The compensation for the expropriated real property and the expenses for the expropriation procedure shall be borne by the user of the expropriation.

Article 12

If during the expropriation of one part of the real property it is established that the owner does not have economic interest in using the remainder of the real property, or if as a result of that the working and living conditions on the remaining part have been disabled or significantly worsened, that part shall also be expropriated on his request.

A remaining part in reference to paragraph 1 of this article shall be considered the remainder of the parcel, part of the real estate or remaining part of the total real estate that is not subject to expropriation.

The official in charge of the expropriation procedure shall have the obligation to inform the owner that he may file a request in reference to paragraphs 1 and 2 of this article.

The request for expropriation of the remaining part of the real property may be submitted until passing the primary decision for expropriation, and if the owner has not been instructed in reference to paragraph 3 of this article, until the effectiveness of the decision for expropriation.

By exception of paragraph 4 of this article, a request for expropriation of the remaining part may also be filed within three years following the date of completion of the building, or the works that were reason for expropriation, when it is determined that as a result of the functioning of the constructed building cases referred to in

paragraphs 1 and 2 appear, which could not have been foreseen during the expropriation procedure.

II. EXPROPRIATION PROCEDURE

Article 13

The expropriation proposal shall be submitted by the user of the expropriation to the Management for Real Property and Legal Works (hereinafter: organ for expropriation).

Article 14

The expropriation proposal shall particularly contain information about:

- 1) the proposer of expropriation;
- 2) the real property proposed for expropriation;
- 3) the owner of the real property and the carriers of other property rights and their places of permanent residence, or headquarters, and
- 4) the building, or about the other works that are reason for expropriation.

Article 15

Along with the expropriation proposal the following shall be submitted:

- 1) certificate of the Spatial Planning Act, or the act that substitutes it;
- 2) numeric information on the real property for which expropriation is proposed, prepared according to the procedure and method prescribed by the regulations on geodetic works;
- 3) offer on the type and amount of the compensation for the real property that is proposed for expropriation;
- 4) proof for ownership of the real property that is offered in exchange for the expropriated real property and
- 5) proof for provided means for compensation of the expropriated real property.

Article 16

The organ for expropriation shall be obliged:

- to submit the expropriation proposal, along with all documents from article 15 of this Law, to the owner of the real property and to the carriers of other property rights within eight days of the receiving of the expropriation proposal and
- to submit the expropriation proposal to the organ responsible for keeping public books, where the encumbrances of the real properties are registered in order to note down the expropriation, within eight days of the receiving of the expropriation proposal.

After the note down referred to in paragraph 1 line 2 of this article, circulation of real property which is subject to expropriation may not be done.

The legal act used for circulation of the real property referred to in paragraph 2 of this article shall be invalid.

Article 17

The organ for expropriation shall schedule a discussion about the expropriation proposal where it shall invite the owner, the carriers of other property rights and the user of the expropriation. The discussion shall particularly determine the existence of public interest, the right to ownership and other property rights, the type and amount of the compensation, as well as other facts and circumstances important for the expropriation. The discussion may not be scheduled before 15 days of the submission of the expropriation proposal to the owner and the carriers of the other property rights.

The discussion may end with a settlement (agreement) for the compensation.

The settlement referred to in paragraph 2 of this article shall substitute the decision for expropriation, while the procedures for expropriation and determining the compensation shall be considered valid.

If settlement referred to in paragraph 2 of this article is not reached, the organ for expropriation, depending on the facts and circumstances determined in the procedure, shall pass a decision about the expropriation proposal.

Article 18

The decision for adopting the expropriation proposal shall contain information about:

- 1) the user of the expropriation;
- 2) the real property that is expropriated by listing information from the real estate register;
- 3) the owner of the real property and the carriers of other property rights for that particular real property and their place of permanent residence or headquarters, and
- 4) the building or the other works for which construction or performance expropriation is undertaken.

Article 19

An appeal may be filed to the Commission of the Government of the Republic of Macedonia against the decision of the organ for expropriation.

Article 20

The user of the expropriation shall gain possession over the expropriated real property on the day of fulfillment of the settlement, or the decision of the court about the compensation.

By exception of paragraph 1 of this article, but on request of the user of the expropriation, in cases of emergency or in order to eliminate obvious damage, the organ for expropriation, with a prior agreement from the Minister of Finance, may decide to give the real property in possession to the user, after passing the primary decision.

In the cases referred to in paragraph 2 of this article the owner, or the carrier of other property rights, shall have the right to a compensation for not using the real property from the day the property is given in possession to the user of the

expropriation until the day of fulfillment of the settlement, and/or the decision of the court about the compensation.

When the owner, or the carrier of the tenancy title, lives in the expropriated apartment building or business premises, he shall have the right to a temporary accommodation.

Article 21

If the user of the expropriation gains possession, according to paragraph 2 of article 20 of this Law, while the expropriation proposal has been effectively rejected in the further procedure, the property and legal relations between the user of the expropriation and the former owner or another carrier of a property right shall be resolved pursuant to the regulations on property relations.

Article 22

The user of the expropriation may quit the expropriation proposal before the decision for expropriation becomes effective.

The effective decision for expropriation shall be revoked, if the user of the expropriation and the former owner both demand that.

On request of the former owner of the expro-

On request of the former owner of the expropriated real property, the effective decision shall be revoked completely or partially, if within three years of the effective decision the user of the expropriation does not perform more significant works related to the building, or works that were reason for expropriation, having in mind the nature, size and value of that building.

The request referred to in paragraph 3 of this article may be filed within ten years following the date of the effectiveness of the decision for expropriation, when the real property was taken from possession of the owner.

In case of reassignment of the purpose that was reason for expropriation, the decision for expropriation shall be revoked by official responsibility, if the former owner of the expropriated real property agrees with that.

The organ that passed the decision for expropriation referred to in paragraphs 1, 2 and 3 of this article shall decide about the revoke of that decision.

The property and legal rights between the user of the expropriation and the former owner in case of revoke of the decision for expropriation, or quitting from the expropriation proposal shall be settled in a procedure for determining the compensation, prescribed with this Law.

III. DETERMINING AND PROCEDURE FOR COMPENSATION

Article 23

The compensation for the expropriated real property shall be determined by giving other corresponding real property or in cash, if the former owner, or the carriers of other property rights and the user of the expropriation do not settle otherwise.

Article 24

The compensation for the expropriated land shall be determined by giving another land in exchange, which in size, quality and location is correspondent to the expropriated land.

If the user of the expropriation does not have a corresponding land or due to other circumstances (mass expropriations, expropriation of a small part of the parcel), the compensation shall be determined in cash.

The market value of the expropriated land shall be determined based on the elements that according to the customs and circumstances, and depending on the time and place on the market, help to determine the market price of the land.

In the process of determining the market value of the expropriated land, referred to in paragraph 3 of this article, that serves for agricultural, forest and other production, the following shall also be considered: the solvency and cadaster class of the land, the climate factor and the economic conditions, while for the construction land, the suitability for construction and the position of the location.

Article 25

The former owner of the expropriated land shall have a right to compensation of the value of the unredeemed part of the investments that are significant for the purpose, preservation and improvement of the land.

Article 26

The former owner shall also have a right to compensation for the cultivation, tillage and the forests on the land and the fruits, based on the elements that according to the customs on the market help to establish their market price, unless they have been integrated in the market value of the land.

Article 27

The compensation for an expropriated apartment building or another building shall be determined by giving in exchange another apartment building or another building that according to the size, quality, purpose and location corresponds to the expropriated apartment building or another building.

If the user of the expropriation does not have a corresponding apartment building or another building, the compensation shall be determined in cash.

The market value of the expropriated apartment building or another building shall be determined on basis of the elements that according to the time and place on the market help to establish the market price for an apartment building or another building.

In the process of determining the market value, referred to in paragraph 3 of this article, of the expropriated apartment building or another building, the following shall particularly be considered: the construction value of the apartment building or another building, the invested funds in the arrangement of the construction land, the depreciation, the type of the building and the position of the location.

Article 28

The market value of the expropriated real property determined in accordance with articles 24 to 27 of this Law, may not be lower than the price that for a same or similar real property prevails in the free circulation.

The market value referred to in paragraph 1 of this article shall be proportional to the determined price in the concluded contracts in the free circulation, the real property at the time and place of determination of the compensation for the expropriated real property.

Article 29

The user of the expropriation shall be obliged to give in exchange another building to the former owner who lives in the expropriated building, or performs an activity as a natural person, if he requires that, which is correspondent by size, quality, purpose and location to the expropriated building.

Article 30

If there is a difference in the value between the expropriated building and the building that is given as compensation, the user of the expropriation or the former owner shall have the obligation to pay out the difference to the other party.

If the obligation referred to in paragraph 1 of this article is due by the former owner, he may pay out the difference in cash or gain right to ownership only to a part of the building up to the amount of the determined compensation.

The method, terms and deadlines for pay out of the difference in the value from paragraph 2 of this article shall be specified with a settlement, or a decision of the court.

Article 31

If real property of an enterprise or a store is expropriated, in the process of determination of the compensation it shall also be taken into consideration the damage suffered as a result of discontinuance of its business, as well as the damage caused by changing the location, if such occurred.

The size of the damage shall be determined for each individual case.

Article 32

When determining a compensation for some building, which because of its nature is not in circulation on the market and for which market price is not formed (wells, fencing walls, etc.), the amount of the compensation shall be determined according to the market value of the material and services necessary for constructing these buildings, decreased for the appropriate amount of depreciation.

Article 33

For the established right to usufruct a compensation shall be paid in the amount of the decreased value of the real property.

The owner of the real property shall have the right to compensation for the damage, when with the establishment of the right to usufruct the owner suffers damage.

The decreased value and the compensation of the damage shall be determined for each individual case.

Article 34

The compensation for occupancy shall be determined according to the amount of the occupancy that is realized for a same or similar land on a free market.

If the occupancy causes damage to the owner of the real property, he shall have the right to compensation of the damage.

The compensation of the damage shall be determined for each individual case.

Article 35

The compensation, or the damage caused during temporary limitation of the right to use and the temporary occupation in order to do preparatory works on the land, shall be determined in that same way as for occupancy.

Article 36

The former owner, or the carrier of other property rights, shall also have a right to market value for the things that due to the expropriation lost their function, as well as compensation for moving expenses.

Article 37

The former owner of the expropriated real property shall not have a right to compensation for investments made after the day he had been delivered the expropriation proposal.

Article 38

The user of the expropriation and the former owner or carrier of other property rights may come to an agreement until the effectiveness of the decision for expropriation, while in case such agreement is not reached the organ for expropriation shall be obliged within eight days after the effectiveness of the decision to schedule a discussion in order to settle the compensation.

If after the discussion for settlement one is not reached, the organ for expropriation shall be obliged within eight days after the discussion to submit the case with all documents to the competent court.

Article 39

The settlement shall determine the type and amount of the compensation.

The settlement shall be entered in a Record, which has to contain all information necessary for fulfilling the duties of the user of the expropriation and the former owner or carrier of other property rights.

The settlement shall be concluded when both parties sign the Record.

The settlement shall have character of an executive document.

Article 40

The user of the expropriation shall have an obligation to give the real property in possession, which serves as compensation, or to pay out the compensation in cash, within 15 days following the date of the settlement, or the effectiveness of the decision.

If the user of the expropriation does not give the real property in possession within the period specified in paragraph 1 of this article, and/or if he does not pay the compensation in cash, he shall be obliged to pay compensation for the damage, or interest according to a discount rate of the National Bank of the Republic of Macedonia, on the full or part of the unpaid amount.

Article 41

If in exchange for the expropriated real property that was under mortgage or personal usufruct another real property was given, the right of the third party shall be transferred to the given real property.

If for the real property referred to in paragraph 1 of this article a compensation in cash is given, then the mortgage creditor and the carriers of other property rights on the expropriated real property shall be paid out from that amount. In case of dispute, the user of the expropriation shall deposit the cash by order of the organ for expropriation to a special account in the bank. The bank shall pay out the compensation on basis of a settlement verified by a competent organ, or a decision of the court.

Article 42

The registration, or the change of the carriers of the real properties rights in the public books shall be done on basis of the effective decision for expropriation and the settlement, or the court decision for the compensation.

IV. SPECIAL PROCEDURES

Article 43

With a decision of the organ for expropriation, when there is a Spatial Planning Act according to a procedure for expropriation of real properties determined with this Law, the right to use real property in state ownership may be abrogated or limited.

The user of the right from paragraph 1 of this article shall have a right to compensation for the invested funds.

Article 44

The started expropriation procedure shall be a basis for constrained purchase of a concession, which shall be done under conditions and method provided by the regulations for concession.

Article 45

With a decision of the organ for expropriation, passed in accordance with article 2 of this Law, when no procedure is being conducted according to the provisions of another Law, tearing down without compensation may be done on a building constructed without a construction permit after February 15, 1968.

In the case referred to in paragraph 1 of this article the holder of the building shall have an obligation to tear down the building and to remove the material within the period specified by the organ for expropriation.

The expenses for tearing down the building and removal of the material shall be borne by the holder of the building.

V. TRANSITORY AND FINAL PROVISIONS

Article 46

In regard to article 2 of this Law, the public interest shall be considered determined for construction of residential-business complexes, which understands urban aggregations with many residential, business or residential-business buildings with accompanying components and limited with appropriate roads, when their implementation was started before this Law became effective.

In order to construct the buildings referred to in paragraph 1 of this article, the expropriation procedure may be conducted within one year following the date when this Law became effective.

Article 47

With a decision of the organ for expropriation, when there is a Spatial Planning Act according to a procedure for expropriation of real properties determined with this Law, the right to use a real property in social ownership may be abrogated or limited.

The user of the right referred to in paragraph 1 of this article shall have a right to compensation for the invested funds.

Article 48

The holder of the residential right in the procedures determined with this Law shall be provided with another apartment.

The apartment referred to in paragraph 1 of this article shall be provided by the user of the expropriation for utilization.

Article 49

The started expropriation procedures shall continue according to the provisions of this Law until the effectiveness of this Law.

Article 50

The effective decisions for expropriation, which have not been executed and for which compensation has not been determined, and which are not in accordance with article 2 of this Law shall be revoked on request of the former owner, provided that public interest has not been determined with a separate law.

Article 51

In the procedure for determining compensation for the cases where settlements have not been reached, or effective decisions have not been brought, the compensation shall be determined according to the provisions of this Law.

Article 52

On the day when this Law becomes effective, the Law on Expropriation (Official Gazette of SRM no. 46/89 and Official Gazette of the Republic of Macedonia no. 36/91) shall cease to be effective.

Article 53

This Law shall become effective the eight day following the date of its publishing in the Official Gazette of the Republic of Macedonia.

*OFFICIAL GAZETTE OF THE REPUBLIC OF MACEDONIA NO. 33/95
JULY 5, 1995*

The Constitutional Court of the Republic of Macedonia, pursuant to articles 110 and 112 of the Constitution of the Republic of Macedonia and article 70 of the Journal of the Constitutional Court of the Republic of Macedonia (Official Gazette of the Republic of Macedonia no. 70/92), on the session held on January 17, 1996, passed the following

D E C I S I O N

1. TO ABROGATE article 46 of the Law on Expropriation (Official Gazette of the Republic of Macedonia no. 33/95).

2. TO ABROGATE the temporary measure for cessation of execution of separate acts or activities that have been undertaken pursuant to article 46 of the Law, stated in item 1 of this decision.

3. This decision shall have legal effect on the day of its publishing in the Official Gazette of the Republic of Macedonia.

4. The Constitutional Court of the Republic of Macedonia on initiative of Kosta Bozinovski and 16 other citizens from Tetovo with Decision U. No. 293/95 from December 6, 1995 started a procedure for evaluation of the constitutionality of article 46 of the Law, stated in item 1 of this Decision, because there is a foundation for questioning its accordance with the Constitution of the Republic of Macedonia.

At the same time, the Court has forestalled the execution of separate acts and actions undertaken pursuant to the disputed article 46 of the Law.

5. On the session the Court has determined that pursuant to article 1 of the Law, this Law stipulates the expropriation of ownership and the rights that derive from it to the lands, apartment buildings and other buildings (real property) for the purpose of constructing buildings and performing other works of public interest, determining the public interest and specifying the fair compensation for the expropriated real property.

In article 2 of the Law it has been provided that public interest stipulated with this Law shall be the arrangement, rational use and humanization of the space and protection and promotion of the environment and nature by constructing buildings and performing works provided in the acts on spatial planning, listing the buildings that are of public interest (railroads, roads, bridges, airports, power plants, postal buildings, buildings for defense and civil protection, borders, research buildings and plants, water management facilities, streets, squares, parks, dumps, gas lines, irrigation, sewer and other buildings for public works, buildings for education, upbringing, science and culture, construction of settlements, but only in cases of big natural disasters).

This article of the Law also provides that public interest for construction of buildings and performing other works may also be prescribed with another law.

User of the expropriation, pursuant to article 3 of the Law, is the state, but users of the expropriation may also be other legal and natural persons, when stipulated with a separate law.

The expropriation shall be done for the needs of the public services, public enterprises, public funds and units of the local self-government (users of the expropriation).

The disputed article 46 is placed in the transitory and final provisions of the Law and it provides that in reference to article 2 of this Law, the public interest shall be considered determined for construction of residential-business complexes, which understands urban aggregations with many residential, business or residential-business buildings with accompanying components and limited with appropriate roads, when their implementation has been started before this Law became effective. The expropriation procedure for constructing the buildings from paragraph 1 of this article may be conducted within one year following the day this Law became effective.

Also, the Court has determined that in article 49 of the Law it has been provided that the started expropriation procedures until the effectiveness of this Law, shall continue according to the provisions of this Law.

6. In article 30 of the Constitution of the Republic of Macedonia the ownership and right of inheritance are guaranteed. The ownership creates rights and duties and has to serve to the benefit of the individual and the community. No one may be taken or limited the ownership and the rights that derive from it, except in cases of public interest provided by law. In case of expropriation of the ownership or in case of limitation of the ownership a fair compensation shall be guaranteed, which may not be lower than the market value.

Out of the presented constitutional provisions it turns out that the ownership may be taken away or limited only when there is a public interest for that, which must be provided by law. Also, out of these provisions it turns out that in case of taking or limitation of the ownership, or in case of expropriation, a fair compensation shall be guaranteed, which may not be lower than the market value.

Therefore, for the sake of the constitutional guarantee for protection of the ownership, the Constitution does not allow the public interest for expropriation to be provided with some other act except a law, meaning that in accordance with the aforementioned constitutional provision the law shall clearly and precisely determine the public interest, but it shall not be allowed the public interest to be considered determined on basis of other acts, such as the urban development plans, which according to the Law on system for spatial and urban planning shall be passed by the assemblies of the municipalities.

Following the aforementioned constitutional provisions the Law on Expropriation in article 2 determined the public interest, but it has not anticipated the construction of residential-business complexes as ground for public interest for expropriation.

Accordingly, the Court evaluated that article 46 of the Law deviates from the systemic decisions stipulated with this Law and that it allows the public interest to be considered as determined and for construction of buildings for which expropriation has not been conducted or started before this Law became effective, and for which buildings even before this Law became effective public interest has not been determined.

Considering that the disputed article 46 of the Law does not determine public interest, but it reckons that such interest has already been established with other acts that provide for the construction of the started buildings, which, on the other hand, have not been provided for in the systemic decisions of the Law, the Court evaluated that it is not in accordance with article 30 of the Constitution.

Further, considering that the disputed article of the Law refers to legal situations that occurred before this Law became effective, at the same time not stipulating a transitory regime, because it is provided in articles 49 and 50 of the Law, the Court evaluated that it does not question the constitutional proscription for reflexive action of the laws, determined in article 52 paragraph 4 of the Constitution.

7. The Court has abrogated the temporary measure for forestalling the execution of the separate acts and actions undertaken pursuant to this article 46 of the Law, because it passed a final decision for abrogating this article of the Law.

8. Based on the presented matters the Court decided as in items 1 and 2 of this Decision.

9. The Court passed this Decision, with majority of votes, in presence of the President of the Court Jovan Proevski, Ph.D. and the judges Bahri Islami, Nikola Krleski, Ph.D., Olga Lazova, Stojmen Mihajlovski, Ph.D., Milan Nedkov Ph.D., Besim Selimi, Josif Talevski, Ph.D. and Todor Dzunov Ph.D.

U. no. 293/95
January 17, 1996
Skopje

President of
the Constitutional Court of
the Republic of Macedonia

Jovan Proevski, Ph.D.

*OFFICIAL GAZETTE OF THE REPUBLIC OF MACEDONIA NO. 6/96
FEBRUARY 1, 1996*

The Constitutional Court of the Republic of Macedonia, pursuant to articles 110 and 112 of the Constitution of the Republic of Macedonia and article 70 of the Journal of the Constitutional Court of the Republic of Macedonia (Official Gazette of the Republic of Macedonia no. 70/92), on the session held on March 27, 1996 passed the following

D E C I S I O N

1. TO ABROGATE article 20 paragraphs 2 and 3 and article 21 of the Law on Expropriation (Official Gazette of the Republic of Macedonia no. 33/95).

2. This decision shall become legally effective on the day of its publishing in the Official Gazette of the Republic of Macedonia.

3. The Constitutional Court of the Republic of Macedonia on initiative of the attorney Viktor Aleksov from Skopje, Decision U. No. 323/95 from January 31, 1996 started a procedure for evaluation of the constitutionality of the disputed articles of the Law stated in item 1 of this Decision, because there is a foundation for questioning their accordance with the Constitution of the Republic of Macedonia.

4. On the session the Court determined that in article 20 paragraph 1 of the Law it has been provided that the user of the expropriation shall earn the right to use the expropriated real property on the day of fulfilling the settlement, or the decision of the court about the compensation.

In the disputed paragraph 2 of this article of the Law it has been provided that by exception from paragraph 1 of this article, but on request of the user of the expropriation, in cases of emergency or in order to eliminate obvious damage, the organ for expropriation with a prior agreement from the Minister of Finance, may decide to give the real property in possession to the user of the expropriation after passing the primary decision. In such case, according to paragraph 3 of this Law, the owner or the carrier of other property rights, shall have the right to a compensation for not using the real property from the day the user of the expropriation gained possession until the day of fulfillment of the settlement, or the decision of the court for the compensation.

In article 21 of the Law it has been provided that if the user of the expropriation has gained possession according to paragraph 2 of article 20 of this Law, while the expropriation proposal in the further procedure has been effectively rejected, the property and legal relations between the user of the expropriation and the former owner or another carrier of a property right shall be resolved pursuant to the regulations for property relations.

5. In article 30 of the Constitution of the Republic of Macedonia the ownership and right of inheritance are guaranteed. The ownership creates rights and

duties and has to serve to the benefit of the individual and the community. No one may be taken or limited the ownership and the rights that derive from it, except in cases of public interest provided by law. In case of expropriation of the ownership or in case of limitation of the ownership a fair compensation shall be guaranteed, which may not be lower than the market value.

Out of the presented constitutional provisions it turns out that the ownership may be taken away or limited only when there is a public interest for that, which must be provided by law. Also, out of these provisions it turns out that in case of taking or limitation of the ownership, or in case of expropriation, a fair compensation shall be guaranteed, which may not be lower than the market value.

Therefore, for the sake of the constitutional guarantee for protection of the ownership, the Constitution does not allow the public interest for expropriation to be provided with some other act except a law.

Considering that the intention of the constitutional provision of article 30 is to protect the owner, the Court determined that the public interest may not be considered determined before bringing a final decision for expropriation.

In the opinion of the Court the public interest for the owner whose property has been protected by the Constitution has been determined by bringing a final decision for expropriation, and not by the decision for taking the real property from possession, brought before conducting the expropriation procedure.

Considering that paragraphs 2 and 3 of article 20 and article 21 of the Law allow acquiring possession over a real property without previously establishing existence of public interest, or without previously conducted expropriation procedure in a manner provided by the Law, the Court evaluated that these provisions limit the rights that derive from the ownership, outside that conditions provided in article 30 paragraph 3 of the Constitution of the Republic of Macedonia and therefore decided as in item 1 of this Decision.

6. The Court passed this Decision in presence of the President of the Court Jovan Proevski, Ph.D. and the judges Bahri Islami, Nikola Krleski, Ph.D., Olga Lazova, Stojmen Mihajlovski, Ph.D., Milan Nedkov Ph.D., Besim Selimi, Josif Talevski, Ph.D. and Todor Dzunov Ph.D.

U. no. 323/95
March 27, 1996
Skopje

President of
the Constitutional Court of
the Republic of Macedonia

Jovan Proevski, Ph.D.

*OFFICIAL GAZETTE OF THE REPUBLIC OF MACEDONIA NO. 17/96
APRIL 10, 1996*

LAW ON AMENDING AND SUPPLEMENTING THE LAW ON EXPROPRIATION

(Official Gazette of the Republic of Macedonia 20/98)

Article 1

In the Law on Expropriation (Official Gazette of the Republic of Macedonia no. 33/95), in article 2 paragraph 1 line 12, at the end of the sentence the conjunction “and” shall be replaced with a semicolon, while after line 13 two new lines shall be added as follows:

“- construction of buildings for diplomatic-consular representative offices and embassy complexes or residences, international organizations and international representative offices and
- construction of official buildings for state organs”.

Article 2

Article 3 shall be amended as follows:

“The expropriation may be performed for:

1. The state - for its own needs, for the needs of the public enterprises founded by the state, the public funds, the education, upbringing, science, culture, health, social protection and sports when the activity is being performed as public (state) service.

2. The municipalities and the City of Skopje - for the needs of the units of local self-government and for the needs of the public enterprises and funds founded by the municipalities, or the City of Skopje.

3. For the needs of legal and natural persons for construction of buildings and performance of other works that are of public interest, prescribed in article 2 of this Law.”

Article 3

In article 9 the period at the end of the sentence shall be deleted and the following words shall be added: “which shall be borne by the user for whose purposes the real property has been expropriated”.

Article 4

In article 11 the period at the end of the sentence shall be deleted and the following words shall be added: “for whose needs the real property has been expropriated”.

Article 5

In article 13 new paragraphs 2, 3 and 4 shall be added as follows:

“When the expropriation is done for the needs of the state, the expropriation proposal shall be submitted by the Public Attorney of the Republic of Macedonia (article 3 item 1).

When the expropriation is done for the needs of the public enterprises founded by the state, the public funds, education, upbringing, science, culture, health, social protection, sports, when the activities are done as public (state) service, and for the needs of the municipalities, or the City of Skopje, the expropriation proposal shall be submitted by those subjects or by their authorized persons.

When the expropriation is done for the needs of the legal and natural persons, the expropriation proposal shall be submitted by those persons.”

Article 6

In article 15 in item 5 the following words shall be added at the end of the sentence: “(an account from which the compensation or the bank guarantee shall be paid out)”.

Article 7

In article 22 after paragraph 2 the words: “On request of the former owner of the expro-“ shall be deleted.

Paragraph 5 shall be amended as follows:

“In case of reassignment of the purpose for expropriation of a real property by changing the urban development plan, the decision for expropriation may be revoked on request of the former owner or on request of the subject for whose needs the real property has been expropriated.”

After paragraph 5 a new paragraph 6 shall be added as follows:

“When subject of expropriation is a real property with a building on it, the effective decision for expropriation may be revoked if the building exists.”

In paragraph 6 which now becomes paragraph 7 after the number “2” the conjunction “and“ shall be replaced with a comma, while after the number “3” the numbers “4 and 5” shall be added.

In paragraph 7 which now becomes paragraph 8, in the first line after the word “expropriation” the following words shall be added: “for whose needs the real property had been expropriated, or his legal follower.”

Article 8

In article 39 after paragraph 1 a new paragraph 2 shall be added as follows:

“By concluding the settlement, the former owner shall gain the right to ownership of the real property that was given to him as compensation in exchange for his property.”

The paragraphs 2, 3 and 4 shall become paragraphs 3, 4 and 5.

Article 9

In article 45 after paragraph 2, a new paragraph 3 shall be added as follows:

“If the holder of the building does not fulfill the obligation from paragraph 2 of this article, the tearing down shall be done by the organ responsible for urban development”.

Paragraph 3 shall become paragraph 4.

Article 10

In article 50 after the word “owner” the following words shall be added: “or the user of the expropriation (the subject for whose needs the real property has been expropriated).”

Article 11

In article 51 the period at the end of the sentence shall be deleted and the following words shall be added: “on expense of the subjects for whose needs the real property has been expropriated, or their legal followers.”

Article 12

This Law shall become effective on the eight day following the date of its publishing in the Official Gazette of the Republic of Macedonia.

*OFFICIAL GAZETTE OF THE REPUBLIC OF MACEDONIA NO. 20/98
APRIL 29, 1998*

LAW ON AMENDING AND SUPPLEMENTING THE LAW ON EXPROPRIATION

(Official Gazette of the Republic of Macedonia 40/99)

Article 1

In the Law on Expropriation (Official Gazette of the Republic of Macedonia no. 33/95 and 20/98) in article 12 paragraphs 1 and 2 shall be amended as follows:

“If with the expropriation of one part of the real property the remaining part of that real property is significantly decreased, which makes it obvious that the owner does no longer have economic interest in using that part, or if as a result of that decrease its use has been hardened or impeded, or if the working and living conditions have been significantly worsened, on his request that part shall also be expropriated.

Along with the request from paragraph 1 of this article the owner shall also declare and explain the reason for demanding expropriation of the remaining part of the real property.”

In paragraph 4 after the words: “submitted until” the following words shall be added: “obtaining the justification (settlement) referred to in article 17 paragraph 2 of this Law, or until”, while at the end of the sentence the period shall be replaced with a comma and the following words shall be added: “or after its effectiveness within the period specified in article 38 paragraph 1 of this Law.”

Paragraph 5 shall be deleted.

Article 2

In article 17 paragraph 1 the number “15” shall be replaced with the number “8”.

Article 3

In article 19 after paragraph 1 a new paragraph 2 shall be added as follows:

“The appeal referred to in paragraph 1 of this article shall not postpone the execution of the decision.”

Article 4

Article 20 shall be amended as follows:

“The user of the expropriation shall gain use over the expropriated real property 15 days after the date of obtaining the justification (settlement), referred to in

article 17 paragraph 2, or the settlement referred to in article 38 of this Law, if the user of the expropriation and the owner of the expropriated real property do not bargain otherwise, or with the effectiveness of the decision referred to in article 17 paragraph 4 of this Law.

By exception of paragraph 1 of this article, and on request of the user of the expropriation when the expropriation is done on basis of a decision in cases of emergency derived from: natural event (earthquake, flood, fire); military activities, terrorist actions; implementation of an adopted detailed urban development plan; implementation of an annual program related to planning, financing, construction, reconstruction, maintenance and protection of the highways, the regional and local roads, passed in accordance with the Law on Public Roads by the Government of the Republic of Macedonia, the City of Skopje, or the relevant municipality; implementation of the established need for constructing energy buildings in the Strategy for Energy Development in the Republic of Macedonia, adopted by the Government of the Republic of Macedonia in accordance with the Law on Energy; implementation of decisions for determining construction terms for buildings in accordance with the Law on Spatial and Urban Planning; implementation of decisions for construction of buildings and performing works provided in the acts for spatial planning, passed in accordance with this Law and other laws that stipulate the existence of public interest, the organ for expropriation may decide to give the real property in possession after passing the primary decision.

The emergency referred to in paragraph 2 of this article for construction of buildings that are of public interest may also derive from: determined construction terms; weather conditions; crediting the construction conditioned by beginning the works within the specified period; investment of domestic and foreign capital in strategic branches conditioned by fixed terms, etc.

In the cases referred to in paragraphs 2 and 3 of this article, when the organ for expropriation, on request of the user of the expropriation, decides to give the real property in possession after passing the primary decision in accordance with the provisions of this Law, it shall alternatively determine the type of compensation, while for the cash and approximate amount that belongs to the owner of the expropriated real property, also the fulfillment term. If there is no suitable real property to be given in exchange for the expropriated real property, the compensation shall be determined solely in cash.

If the owner refuses to accept the compensation referred to in article 4 of this article the user of the expropriation shall deposit the cash in court or at the notary's. The provisions of the Law on Obligations and the Law on Performing Notary Works shall be suitably applied on this type of depositing.

By obtaining the right to possession, the possession shall be repealed from the former owner and transferred to the new one, by which he acquires the opportunity to implement the construction project that was reason for expropriation.

The user of the expropriation shall be obliged to give indemnity for the property damage that will be caused for the owner of the real property by the early repeal of the possession. The amount of the indemnity and its payment term shall be determined by the organ for expropriation in the decision itself.

The organ that conducts the expropriation shall be obliged to make a Record, where it will state the condition of the property prior to its giving in use, provided that the condition of the property is significant for the indemnity. The owner shall be

given a copy of the Record, signed by the organ, the user of the expropriation and the owner of the real property.

When the owner, or the carrier of the right to use an apartment lives in the expropriated apartment building, or an apartment, or performs an activity in the expropriated building or office premises, he shall have a right to temporary accommodation.

The provision from paragraph 6 of this article shall suitably be applied also in cases when the owner is unknown or when it is questionable who the owner is or where he is to be found, or when the owner is incapable of work and does not have a representative.”

Article 5

After article 20 a new article 21 shall be added as follows:

“Article 21

If the user of the expropriation gains possession pursuant to paragraphs 2 and 3 of article 20 of this Law, while the expropriation proposal in the further procedure is positively resolved, the owner of the expropriated real property shall have the right to demand the difference up to the full amount of the compensation, if the determined approximate amount of the compensation referred to in paragraph 4 of article 20 is smaller than the amount that according to this Law belongs to him. In case of the difference up to the full amount the owner shall also be entitled to interest according to the discount interest rate of the National Bank of the Republic of Macedonia.

If the expropriation proposal of the user referred to in paragraph 1 of this article has been effectively rejected, he shall lose the right to possession of the expropriated real property and the same shall be returned to the former possessor.

In case of paragraph 2 of this article the property and legal relations between the user of the expropriation and the owner of the real property who has been returned the possession or another carrier of a property right shall be resolved in accordance with the rules for property rights.

The provision of paragraph 1 of this article shall suitably be applied to the cases when the compensation consists of another real property, which value is smaller than the expropriated one.”

Article 6

In article 28 after paragraph 2 a new paragraph 3 shall be added as follows:

“Under concluded contracts in the free circulation, in respect to this Law, one shall understand the contracts concluded in a form prescribed by law and registered in the organ competent for public revenues.”

Article 7

In article 39 paragraphs 1 and 2 shall be amended as follows:

“With the settlement from article 17 paragraph 2 and article 38 paragraph 1 of this Law the following shall particularly be determined: the type of the compensation

(giving another corresponding real property or cash payment), the amount of that compensation, if determined in cash, and the payment term.

The settlement shall be entered in a Record which shall contain all necessary information for fulfillment of the duties of the user of the expropriation and the former owner, or carrier of other property rights, and that shall be the basis for obtaining ownership of the real property that has been given to the owner in exchange for the expropriated real property.”

Article 8

In article 40 paragraph 1 shall be amended and shall be worded:

“The user of the expropriation shall be obliged within the term specified in the settlement from article 17 paragraph 2 and article 38 paragraph 1 of this Law, or within 30 days following the day of the effectiveness of the court decision to give the real property in possession, which is given in exchange for the expropriated real property, or to pay the compensation in cash, except in cases when that compensation has already been deposited in the court or at the notary, in accordance with article 20 paragraph 5 of this Law.”

Article 9

The started expropriation procedures shall continue according to the provisions of this Law until the effectiveness of this Law.

Article 10

This Law shall become effective on the day of its publishing in the Official Gazette of the Republic of Macedonia.

*OFFICIAL GAZETTE OF THE REPUBLIC OF MACEDONIA NO. 40/99
JULY 6, 1999*

The Constitutional Court of the Republic of Macedonia, pursuant to article 110 of the Constitution of the Republic of Macedonia and article 70, line 1 of the Journal of the Constitutional Court of the Republic of Macedonia (Official Gazette of the Republic of Macedonia no. 70/92), on the session held on May 24, 2000 passed the following

D E C I S I O N

1. To abrogate paragraphs 2, 3 and 4 of article 20 of the Law on Expropriation (Official Gazette of the Republic of Macedonia no. 33/95, 20/98 and 40/99).

2. This decision shall become legally effective on the day of its publishing in the Official Gazette of the Republic of Macedonia.

3. The Constitutional Court of the Republic of Macedonia on initiative of Boris Pocev and Gore Duchkov from Gevgelija, Decision U. No. 200/99 from April 5, 2000 started a procedure for evaluation of the constitutionality of the paragraphs 2, 3 and 4 of article 20 of the Law stated in item 1 of this Decision, because there is a foundation for questioning their accordance with article 30 and article 15 of the Constitution of the Republic of Macedonia.

4. On the session the Court determined that according to paragraph 2 of article 20 of the Law on Expropriation, by exception of paragraph 1 of this article and on request of the user of the expropriation when the expropriation is done on basis of a decision in cases of emergency derived from: natural event (earthquake, flood, fire); military activities, terrorist actions; implementation of an adopted detailed urban development plan; implementation of an annual program related to planning, financing, construction, reconstruction, maintenance and protection of the highways, the regional and local roads, passed in accordance with the Law on Public Roads by the Government of the Republic of Macedonia, the City of Skopje, or the relevant municipality; implementation of the established need for constructing energy buildings in the Strategy for Energy Development in the Republic of Macedonia, adopted by the Government of the Republic of Macedonia in accordance with the Law on Energy; implementation of decisions for determining construction conditions for buildings in accordance with the Law on Spatial and Urban Planning; implementation of decisions for construction of buildings and performing works provided in the acts for spatial planning, passed in accordance with this Law and other laws that stipulate the existence of public interest, the organ for expropriation may decide to give the real property in possession after passing the primary decision.

In paragraph 3 of this article it has been provided that the emergency from paragraph 2 of this article for construction of buildings that are of public interest may derive also from: established construction terms; weather conditions; crediting the construction conditioned by beginning the works within the specified period;

investment of domestic and foreign capital in strategic branches conditioned by financial terms, etc., while according to paragraph 4 of the same article in the cases of paragraphs 2 and 3 of this article, when the organ for expropriation on request of the user of the expropriation, decides to give the real property in possession after passing the primary decision, in accordance with the provisions of this Law, it shall alternatively determine the type of the compensation, while for the cash and approximate amount that belongs to the owner of the expropriated real property also the accomplishment term. If there is no suitable real property to be given in exchange for the expropriated real property, the compensation shall be determined solely in cash.

5. In article 30 of the Constitution of the Republic of Macedonia the ownership and right of inheritance are guaranteed. The ownership creates rights and duties and has to serve to the benefit of the individual and the community. According to paragraph 3 of this article, no one may be taken or limited the ownership and the rights that derive from it, except in cases of public interest provided by law, while according to paragraph 4 of the same article, in case of expropriation or limitation of the ownership a fair compensation shall be guaranteed, which may not be lower than the market value.

Out of the presented constitutional provisions it turns out that the ownership may not be taken away or limited, unless there is a public interest for that, which must be provided by law and that in case of taking or limitation of the ownership a fair compensation shall be guaranteed, which may not be lower than the market value.

In this reference that Law on Expropriation stipulates the public interest for expropriation of the ownership and closer determines the type of buildings or other needs of the state that may be subject to expropriation. However, the Law not only determines the type of public interest but also its range, or the level and type of taking or limitation of the ownership. Thus, also with the provisions of article 20 the Law determined in which cases the user of the expropriation may acquire possession over the expropriated real property before the expiration of the legal deadlines, or before the effectiveness of the expropriation act. In the opinion of the Court the disputed provisions and the other provisions of article 20 of the Law have clearly and precisely determined the existence of public interest for expropriation, nor it allows to stipulate that with another act, which means a sufficient guarantee for protection of the ownership and achievement of the fair compensation for the expropriated real property.

Nevertheless, considering that with the disputed provisions of article 20 paragraphs 2, 3 and 4 of the Law, on request of the user of the expropriation and based on a decision in cases of emergency and determined public interest, the user of the expropriation may acquire possession over the expropriated real property after passing the primary decision, or the organ may decide to give the real property in possession before a previously conducted expropriation procedure in a manner provided by Law, the Court has evaluated that these provisions violate the rights that derive from article 30 of the Constitution.

Also, the Court evaluated that these provisions are not in accordance with article 15 of the Constitution, having in mind that with the decision of the organ for expropriation to give the real property to the user of the expropriation before the expiration of the deadline for complaint to the expropriation act, it jeopardizes the suspensive action of the complaint of the owner of the real property.

Based on the above said, the Court decided as in item 1 of this decision.

6. The Court passed this Decision in presence of the President of the Court, Milan Nedkov Ph.D. and the judges Nikola Krleski, Ph.D., Olga Lazova, Stojmen Mihajlovski, Ph.D., Jovan Proevski Ph.D., Besim Selimi, Josif Talevski, Ph.D. and Todor Dzunov Ph.D.

U. no. 200/99
May 24, 2000
Skopje

President of the Constitutional Court
of the Republic of Macedonia

Milan Nedkov, Ph.D.

*OFFICIAL GAZETTE OF THE REPUBLIC OF MACEDONIA NO. 45/00
JUNE 9, 2000*

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