

I Annex - Democracy and the rule of law

2. LAW ON EXPROPRIATION

LAW ON EXPROPRIATION

(Official Gazette of the Republic of Montenegro 55/00, 12/02, 28/06, Official Gazette of the Republic of Montenegro 21/08 of 27 March 2008)

I BASIC PROVISIONS

Expropriation of immovable property

Article 1

Expropriation is deprivation or limitation of proprietary rights to immovable property, with fair compensation, when this is of public interest.

Public interest of immovable property expropriation shall determine with Law or on the strength of Law.

With immovable property expropriation, the expropriation beneficiary acquires the right to use the immovable property in the purpose for which expropriation was carried out.

This Law shall prescribe process of expropriation and authorities for its realisation.

Expropriation may be complete and incomplete.

Properties

Article 2

Land, buildings and other constructions are considered as immovable property, within the meaning of this Law.

Complete expropriation

Article 2a (Official Gazette of the Republic of Montenegro 28/06)

Expropriation shall change the owner of expropriated immovable property (complete expropriation).

Article 3 (Official Gazette of the Republic of Montenegro 12/02)

Stopped to be legally effective on the strength of decision of Constitutional Court of the Republic of Montenegro.

Incomplete expropriation

Article 4

Expropriation may determine officialdom on immovable property and lease on the land for certain period (incomplete expropriation).

Lease may be determined only in case that land, regarding the purpose for which the lease is proposed, will be used for limited period, maximum three years (for researching of mineral or some other wealth, usage of quarry, extraction of clay, sand and gravel, lease of natural resources in order to put it under protection etc.)

After expiring of time for incomplete expropriation, expropriation beneficiary shall return the land in original condition.

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Temporary occupation

Article 5

Land planned to be used in certain purpose related to construction (for workers' accommodation, material storage etc. may be temporary occupied (temporary occupation).

Temporary occupation will terminate as soon the need for which it was determined disappears.

Temporary activities

Article 6

It is possible to empower carrying out of preliminary works on immovable property, with the purpose of expropriation.

Expropriation beneficiary

Article 7

Expropriation may carry out for needs of the state, municipality, state funds and public companies unless otherwise provided by Law. In the process of expropriation, officialdom may be determined in favour of citizens, due to placement of water pipes, electricity and telephone cables etc., if provided by Law.

Expropriation of remaining portion

Article 8

If is found that due to expropriation of one portion of immovable property the owner does not have economic interest to use the remaining part and that his/her existence with that is disabled or more difficult, the other part will be expropriated, upon his/her request.

Fair compensation

Article 9

Fair compensation for expropriated immovable property may be determined as financial assets or as giving some other, appropriate, immovable property to ownership or co-ownership.

Expropriation of land under building

Article 10

With expropriation of building, the land under the building and the land, which serves for its regular use shall also expropriate, otherwise the right to use this land shall terminate.

Return of expropriated immovable property

Article 11

Expropriated immovable property may be returned to previous owner under conditions prescribed by this Law.

Special expropriation procedure

Article 12

In areas affected by natural catastrophe, immovable property expropriation shall follow the separate proceeding, prescribed by this Law.

Competent authority

Article 13 (Official Gazette of the Republic of Montenegro 28/06)

Administration authority competent for registration of immovable property (in further text: competent administration authority) shall realise the process of expropriation for which public interest was determined.

Determination of public interest

Article 14 (Official Gazette of the Republic of Montenegro 28/06)

If public interest is not prescribed with separate Law, the Government of Montenegro (in further text Government) may determine it, on the strength of special study, in accordance with law.

Person that may be expropriation beneficiary, according to provisions of this Law will submit the proposal for determination of public interest.

The proposal for determination of public interest will be submitted to the Government, through administration authority competent for registration of immovable property rights (in further text: competent administration authority); it will contain information about immovable property proposed for determination of public interest, purpose of expropriation and other information important for determination of public interest.

Upon the proposal for determination of public interest, Government is obliged to make decision within the period of 60 days.

With act about determination of public interest, Government will also determine expropriation beneficiary, in compliance with provisions of this Article.

It is possible to institute administrative proceeding against act of Government about determination of public interest with the Supreme Court of Montenegro.

II PRELIMINARY WORKS WITH PURPOSE OF EXPROPRIATION

Exercising of preparing activities

Article 15

Legal person that intends to submit proposal for expropriation may ask for permission to do necessary preliminary works (land testing, geodetic record etc.), with the reason of preparing previous feasibility study or expropriation proposal.

Motion to permission

Article 16 (Official Gazette of the Republic of Montenegro 28/06)

Motion to permission for preliminary works must specify the purpose of proposed expropriation, immovable property on which preliminary works are planned, the immovable property owner, nature, scope, purpose and duration of preliminary works.

Administration authority competent for registration of immovable property rights (in further text: competent administration authority) shall make decision about proposal of permission for preliminary works.

The competent authority has to hear the owner of immovable property about important facts related to permission for preliminary works, before making decision about the proposal.

Decision about permission

Article 17 (Official Gazette of the Republic of Montenegro 28/06)

If applicant of motion to permission for doing preliminary works presents as probable that preliminary works are needed in purposes that are prescribed by this Law, administration authority competent for registration of immovable property rights (in further text: competent administration authority) will approve preliminary works.

On adopting decision of permission for preliminary works, it will be taken in consideration that activities are not carried out in time that would be inappropriate for immovable property owner regarding the land culture and purpose in which the land is used.

In the decision of paragraph 2 of this Article, among other things, it is necessary to indicate preliminary works that applicant of proposal is allowed to do and deadline for finishing them.

Decision within the meaning of paragraph 2 of this Article cannot authorise constructing or other similar activities.

Compensation

Article 18

Legal person that got permission to carry out preliminary works is obliged to pay compensation, prescribed by this Law.

III EXPROPRIATION PROCEEDING

Expropriation proposal

Article 19 (Official Gazette of the Republic of Montenegro 28/06)

Expropriation beneficiary may submit expropriation proposal only after determination of public interest for immovable property expropriation. Expropriation proposal shall be submitted to the administration authority competent for registration of immovable property rights (in further text: competent administration authority) - to district unit in the municipality where is immovable property that is subject of expropriation located (in further text: competent administration authority)

Proposal content

Article 20

Proposal for expropriation of immovable property must indicate:

- 1) Name and head office of the applicant (expropriation beneficiary);
- 2) Immovable property, which is subject of expropriated, and its location;
- 3) Owner of immovable property, which is subject of expropriation, and location of the property;
- 4) Purpose of proposed expropriation

Petitions with expropriation proposal

Article 21

Alongside the expropriation proposal, it is necessary to submit:

- 1) Statement from immovable property cadastre and other public register where immovable property rights are registered, with figures about immovable property that is subject of expropriation;
- 2) Proof that the public interest of expropriation is determined, in compliance with the Law.

Evidence of provided payment

Article 22 (“OGRM” 28/06)

In addition to Article 21 of this Law, together with expropriation proposal, expropriation beneficiary shall submit receipt about payment of adequate compensation for immovable property that is subject of expropriation, on the separate deposit account of the Ministry of Finances.

Competent administration authority shall make estimation of fair compensation from paragraph 1 of this Article, upon the request of expropriation beneficiary.

Ministry of Finances will prescribe the manner and proceeding of payment from paragraph 1 of this Article.

Proceeding and expropriation decision

Article 23 (Official Gazette of the Republic of Montenegro 28/06)

Competent administration authority shall make decision and follow procedure upon the expropriation proposal.

Authority from paragraph 1 of this Article will hear the owner of immovable property about facts related to expropriation, before making expropriation decision.

Ministry of Finances shall resolve the appeal against the first instance decision about expropriation proposal.

Request for expropriation of remaining portion

Article 24

In case from Article 8 of this Law, the authority that leads the expropriation procedure is obliged to advise the previous owner of immovable property about possibility to submit request for expropriation of portion of immovable property and to record it in the minutes.

Request within the meaning of paragraph 1 of this Article may be submitted until the final decision on expropriation.

In case of submission of the request for expropriation of remaining portion of immovable property until the passing of an expropriation decision by the court of first instance, the competent authority shall make decision all together with proposal of expropriation beneficiary. If the request was submitted after the passing of an expropriation decision by the court of first instance, the competent authority would decide in separate procedures.

Content of expropriation decision

Article 25

The decision about adoption of proposal for expropriation contains in particular:

- 1) Specification of expropriation beneficiary;
- 2) Specification of immovable property that is subject of expropriation, with stipulation of figures from immovable property cadastre;
- 3) Specification of owner of immovable property, place of residence and head office;
- 4) Specification of expropriation purpose;
- 5) Obligation of expropriation beneficiary to fulfil Article 36 and 38 of this Law;
- 6) Obligation of immovable property owner to handover the immovable property in possession actual of expropriation beneficiary and deadline of handover, and
- 7) Obligation of expropriation beneficiary to submit a bid that contains type and quantum of compensation for expropriated immovable property to district authority competent for immovable property-legal issues, within 15 days after receiving the decision about expropriation.

Expropriation encumbrance

Article 26

Based on expropriation proposal, the competent authority will record expropriation, by official duty, in immovable property cadastre where immovable property rights are registered.

Alienation of immovable property for which expropriation encumbrance is made or change of relations on immovable property that could have influence on expropriation beneficiary will not have any legal effect to expropriation beneficiary.

Costs of expropriation

Article 27

Expropriation beneficiary shall pay for expropriation costs.

Entry into possession

Article 28 (Official Gazette of the Republic of Montenegro 28/06)

Expropriation beneficiary will acquire the right on entry into possession of expropriated immovable property on the date when expropriation decision will become legally effective. It will be in case that the beneficiary paid compensation or handed over the other appropriate immovable property to the previous owner until that date or with proof that the previous owner was regularly invited but he/she rejected to receive compensation from Article 23 of this Law.

Immovable property handover

Article 29 (Official Gazette of the Republic of Montenegro 28/06)

Administration authority competent for registration of immovable property rights (in further text: competent administration authority) may decide to handover the immovable property to expropriation beneficiary before the expropriation decision becomes legally effective but not before final decision about expropriation. This may be by the request of expropriation beneficiary, in case of estimated necessity for doing that, because of urgency of constructing certain building or carrying out of some activities.

Handover of immovable property in ownership of beneficiary expropriation will not be admissible if expropriation beneficiary did not previously established needed elements for determination of compensation quantum of expropriated immovable property, within the meaning of Article 25 paragraph 7 of this Law.

In case of hand over of immovable property to expropriation beneficiary before legal effectiveness of expropriation decision and rejecting of expropriation proposal, expropriation beneficiary must give back the immovable property to the owner and indemnify it.

De-expropriation

Article 30

Expropriation beneficiary may withdraw the expropriation proposal until expropriation decision becomes legally effective.

Legally effective expropriation decision shall revoke or change if expropriation beneficiary, within the period of three years from the date of legal effectiveness of the decision did not execute at least one third of total value of foreseen works, upon the request of previous owner of expropriated immovable property.

2. LAW ON EXPROPRIATION

The previous owner may submit request for revoking or changing expropriation decision after the expiry of three years from the date of legal effectiveness of expropriation decision but not after the expiry of six years from the date of legal effectiveness of decision.

Authority that decided about the proposal for expropriation on the first instance shall also decide about withdrawal of the proposal and request for revoking or changing of legally effective expropriation decision.

Authority from paragraph 3 of this Article will hear authorised representative of authority competent for determination of public interest, before adoption of decision.

Regular Court shall resolve proprietary-legal relations between expropriation beneficiary and immovable property owner, in case of dispute.

IV SPECIAL EXPROPRIATION PROCEDURE FOR AREAS CAUGHT BY ELEMENTARY DISASTERS OF BIG EXTENT

Elementary disaster

Article 31

In areas caught with earthquake, floods, fires, ecologic accident and other elementary disasters of big extent, expropriation due to construction or activities that will reduce consequences caused with the disasters, shall follow provisions of Article 32 of this Law.

Decision about temporary capture

Article 32

The land may be temporary captured if it is necessary and suitable for allocation and construction of temporary objects (objects for shelter of inhabitants etc.)

Appeal against decision about temporary land capture will not postpone execution of decision. Decision about temporary land capture will revoke as soon as stops the need due to which it was adopted.

Immovable property handover

Article 33

Expropriation beneficiary shall ask for handover of immovable property due to bringing to purpose, on the strength of final expropriation decision.

If the subject of expropriation is housing building or business office, expropriation beneficiary is obliged to lease another apartment or business office for the previous owner.

Until providing apartment or business office, expropriation beneficiary is obliged, to provide temporary accommodation that fulfils housing conditions or doing business to persons from paragraph 2 of this Article, before striking that object.

Provisions of paragraph 2 and 3 of this Article will implement accordingly also in case of expropriation of other objects.

Areas

Article 34

The Government shall determine areas and time for implementation of provisions of Article 32 and 33 of this Law.

In areas covered by elementary disaster of bigger extent, other provisions of this Law will be followed, unless otherwise provided by provisions of Article 32 and 33 of this Law.

V COMPENSATION FOR EXPROPRIATION OF IMMOVABLE PROPERTY

Quantum of compensation

Article 35

Previous owner shall receive fear compensation for expropriated immovable property. The quantum of compensation shall be determined by comparing with market price of same kind of immovable property in the same or similar municipality area, possibly increased for the lost profit in the period of relocation, depending on exploiting of immovable property and costs of relocation, according to circumstances in the moment of making agreement or the moment of judgment of a first instance court.

The previous owner of expropriated immovable property (object) who will receive the other immovable property in ownership or co-ownership, has right to get appropriate immovable property of the same value, in the moment of getting proprietary/co-proprietary rights, with additional payment of costs from paragraph 1 of this Article.

If market price from the paragraph 1 of this Article cannot be determined by comparing with the same or similar municipality area, the other municipality with same or similar revenues per capita will be used for comparison, according to the Law, which defines equalisation subventions.

If value of remaining portion of immovable property of previous owner significantly increased due to investments of expropriation beneficiary in the property (highway construction, main roads or other infrastructural objects), fear compensation shall determine with proportional reduction of market price in relation to these circumstances.

If expropriated immovable property is handed over to expropriation beneficiary before legal effectiveness of decision about expropriation, the previous owner has right to choose the period that will use for determination of compensation, if it will be the period of handover or period of making decision of first instance.

If one person is owner of different types of expropriated immovable property, the agreement about compensation rate, and the court decision about compensation will be worded separately for individual properties (land, buildings, devices etc)

Compensation for agricultural land

Article 36

Compensation for expropriated land shall determine as payment of fear compensation for that kind of land.

Compensation for expropriated cultivated agricultural land to person to whom the land revenue is of existential importance, will be determined as giving the other adequate land of the same culture or class or appropriate value in the same or close area, upon personal request and if conditions are fulfilled.

For the previous owner of expropriated object, which was used for animal breeding, storing or processing of agricultural products, and for whom this revenue is of existential importance, compensation will be made by giving the other object, that will enable continuation of all activities and be on the spot proposed by former owner, inside agricultural estate and in accordance with legally effective provisions, upon the request of previous owner and if conditions are fulfilled.

Before handover of object, which is given in ownership as compensation, expropriation beneficiary is obliged to provide usage of other object to the previous owner, before striking of expropriated object.

Compensation for municipal-building land

Article 37

Compensation for expropriated building and municipal-building land shall determine as monetary compensation in quantum of fear compensation of such land.

Compensation for apartment and business premises

Article 38

Compensation for expropriated housing building, apartment or business premises shall determine in quantum of fear compensation of such immovable property.

Expropriation beneficiary may give another housing building, apartment or business premises, of adequate structure, surface, location, housing conditions, in ownership or co-ownership to the previous owner of expropriated building, apartment, business premises or apartment that he/she used for certain activities, upon the request of property owner and if conditions are fulfilled.

Before striking of expropriated immovable property, another immovable property will be provided to the previous owner, who uses expropriated immovable property within the meaning of paragraph 1 of this Article.

Expropriation beneficiary is obliged to provide using of another appropriate apartment, with the right on lease, without time limit to apartment lessee in expropriated housing building or apartment as separate part of building.

Difference in price

Article 39

In case of difference in value of expropriated object and object that is given to compensation as ownership or co-ownership, expropriation beneficiary is obliged to pay the difference in price to another party.

In case that previous owner agrees to be compensated, as ownership or co-ownership with object of bigger value than value of expropriated one, the previous owner has obligation from paragraph 1 of this Article.

Manner, conditions and deadline for payment of difference from paragraph 1 of this Article shall determine with agreement of parties or court agreement.

Compensation for vineyard or orchard

Article 40

Compensation for expropriated vineyard or orchard that give products shall determine as compensation for land, according to Article 36 of this Law, plus value of non-depreciated investments invested in cultivation and maintaining of such vineyard or orchard, plus quantum of wholesome revenue that this vineyard would have given, for number of years needed for raising the new fertile vineyard or orchard, depending on its fertility and mature.

Compensation for expropriated little vineyard or orchard that do not give products shall determine as compensation for land, according to Article 36 of this Law, plus value of investments invested in its cultivation, plus quantum of wholesome revenue that this vineyard would have given, for age of fertile vineyard or orchard.

Compensation for some fruit trees and grapevine on expropriated land shall determine according to provisions of paragraph 1 or 2 of this Article.

Compensation for hotbed

Article 41

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Compensation for expropriated hotbed shall determine in the same way, as for agricultural land (Article 36) and compensation determined in this way shall increase for the price of seedlings (seedlings and other material for reproduction) that previous owner did not use until the date of handover of immovable property to expropriation beneficiary.

Compensation for forest

Article 42

Compensation for expropriated ripped or almost ripped forest represents value of forest sorts and other forest products and shall determine by comparing with the market prices on truck way or other loading point or surrender place, reduced for the costs of production.

Compensation for expropriated little forest shall determine with taking in consideration costs of cultivation of such forest increased for the space factor of value by which is achieved ripped forest value. Compensation determined by provisions of paragraphs 1 and 2 of this Article shall increase for compensation value for the land determined by provisions of Article 36 of this Law.

Costs of production include costs of cutting, processing and transportation of forest products until the truck way or other loading point or surrender place.

Cultivation costs of little forest cultivated in artificial way shall determine on the level of afforests cost. Cultivation costs of little forest cultivated naturally shall determine in quantum of costs of artificial afforest by seed.

Species of forest

Article 43

Within the meaning of this Law, the forest of same age that has at least two thirds of ripped forest is considered as almost ready for cutting. The forest that has until two thirds of ripped forest for cutting is considered to be little forest of same age.

Forest of various ages (selective forest and group forest of various age) is considered the forest ready for cutting.

Seedlings on constructing land

Article 44

Compensation for vineyard, orchard, hotbed and forest that are placed on constructing land shall determine by provisions of Article 40 until 42 of this Law.

Compensation for investment

Article 45

The previous owner does not have right to get compensation for investment that he/she realised after receiving written information about submitted proposal for expropriation, except expenses that were necessary for using of immovable property.

Authority competent for making decision on expropriation shall inform the previous owner about submitted expropriation proposal.

Article 46

In the procedure of determining compensation, it may determine higher quantum than the market price, in accordance with provisions of this Law, taking in consideration material and other personal and family circumstances of previous owner. This will happen if these circumstances are of existential importance for the owner (increased number of household members and number of

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working age, actually number of employed members, health condition of household members, monthly revenues of household etc.)

Crops removal

Article 47

Previous owner has right to remove crops and do harvest products form expropriated land. Authority competent for making decisions on expropriation may authorise the expropriation beneficiary to start works on expropriated land before sowing or products are ready for harvest, in cases of emergency, upon beneficiary request.

If previous owner was disabled to remove sowing or pick up products because expropriation beneficiary got permission to start works before removing sowing and collection of products, the previous owner has right to ask for compensation for sowings and products, determined according to market price minus expenses of harvest or vintage that he would have had.

Compensation for determination of officialdom

Article 48

In case of establishing officialdom, compensation shall determine as value for which is reduced market value of land or buildings due to officialdom.

Compensation from paragraph 1 of this Article shall be determined following procedure for determination of compensation prescribed by this Law.

Compensation for lease and temporary occupation

Article 49

In case of determination of lease and temporary land occupation, compensation shall determine on the level of market lease on the nearest similar land.

Compensation shall determine as one-time payment during the period of lease and temporary occupation in same time intervals, starting from date of land handover and beginning of temporary occupation.

Compensation for preparing activities

Article 50

Compensation for preliminary works shall determine on the level and in a manner that this Law prescribed for determination of lease. Value of period of preliminary works and period needed to put it in original function or function of future purpose are taken as ground for this calculation.

Compensation damage

Article 51

Compensations from Article 49 and 50 of this Law do not exclude right on compensation for damage by provisions about responsibility for damage.

Compensation agreement

Article 52

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Parties may agree about type and quantum of compensation, and also about handover of expropriated property, apart from procedure prescribed by this Law, until the legally effectiveness of decision about expropriation.

In case of agreement, the further expropriation procedure shall discontinue.

Discussion about compensation

Article 53 (Official Gazette of the Republic of Montenegro 28/06)

After decision about expropriation becomes legally effective, competent administration authority is obliged, without postponement, to arrange and hold discussion for determination of compensation for expropriated immovable property, by mutual agreement.

Expropriation beneficiary is obliged to submit written bid about compensation level in the period no longer than 15 days from the date when decision on expropriation became legally effective.

The authority from paragraph 1 of this Article, shall present one copy of bid to the previous owner of expropriated property, without any postponement, and it shall provide information about facts, which could be important for determining compensation by mutual agreement.

Content of compensation agreement

Article 54

Compensation agreement for expropriated immovable property has to determine, in particular, type and quantum of compensation, deadline for fulfilment of obligations by expropriation beneficiary and obligations of previous owner, if they are defined by agreement.

Compensation agreement shall record in the minutes, which must contain all needed information for fulfilment of parties' obligations.

Types of agreements about compensation

Article 55 (Official Gazette of the Republic of Montenegro 28/06)

In the proceeding with the competent administration authority or with competent court, parties may agree about following: giving of other immovable property in ownership or co-ownership instead of expropriated immovable property; quantum of compensation payment; mutual additional payments of differences in immovable property values; replacement of expropriated objects on another position, empowered with provisions; constructing porches, passes and access paths.

Deliverance of documents to court

Article 56 (Official Gazette of the Republic of Montenegro 28/06)

If compensation agreement is not made within the period of two months from the date when expropriation decision became legally effective, the competent administration authority will submit legally effective decision about expropriation, with all documents, to the competent court that is in charge of the area of expropriated property due to determination of compensation.

If the competent authority does not follow provision of paragraph 1 of this Article, the previous owner and expropriation beneficiary may address directly to the court due to determination of compensation.

Charges and other limitations

Article 57

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Personal officialdom and all real charges on expropriated immovable property will terminate on the date when expropriation decision becomes legally effective, except real officialdom, which implementation is possible after bringing the expropriated property to a purpose.

Determined mortgage on the expropriated immovable property shall shift on the immovable property given in ownership as compensation or on some other personal immovable property of appropriate value. Real rights from paragraph 1 of this Article shall delete in cadastre of immovable properties, upon the proposal of expropriation beneficiary.

Immovable property registration

Article 58 (Official Gazette of the Republic of Montenegro 12/02)

(Paragraphs 1 and 2 stop to be legally effective based on decision of Constitutional Court of Montenegro.)

Ownership registration and other immovable property rights assigned to the previous owner through the compensation will realise based on legally effective expropriation decision and ministerial acts about compensation.

Article 58 a (Official Gazette of the Republic of Montenegro 28/06)

Ownership registration and other immovable property rights assigned to the previous owner through compensation will realise on the strength of legally effective expropriation decision and proof about compensation payment.

Each party may submit request for registration.

Tax payment

Article 59

In the process of expropriation and determination of compensation for expropriated immovable property, all petitions and decisions are relief from tax duty.

Keeping on record about expropriation

Article 60 (Official Gazette of Montenegro 28/06)

The competent administration authority shall keep on record about expropriation on the territory of municipality. Content and manner of making record is prescribed by administration authority competent for registration of immovable property rights (in further text: competent administration authority)

VI INTERIM AND FINAL PROVISIONS

Previous procedures

Article 61

Proceeding upon proposal for expropriation that is not closed with legally effective decision until entered into the force of this Law, will finalize by provisions of previous Law, except in cases that business premises or housing buildings are subject of expropriation.

Procedure of determination of compensation for expropriated immovable property for which, until the date when this Law entered into force, agreement about compensation was not concluded, more exactly legally effective decision not ruled, will finalise following provisions of this Law.

Termination of previous law

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Article 62

Law on Expropriation (Official Gazette of Montenegro 20/81 and 10/90) stops to be legally effective on the date this Law will come into force.

Coming into force

Article 63

This Law shall enter into force on eighth day following that of its publication in the Official Gazette of Montenegro.

NOTE:

Decision of Constitutional Court of Montenegro, which determines that provisions of Article 3 and Article 58, paragraph 1 and 2 of Law on Expropriation (Official Gazette of Montenegro 55/2000) are not in compliance with Constitution of Montenegro.

On the strength of provisions of Article 113, paragraph 1, indent 1 of the Constitution of Montenegro and Article 51, paragraph 2 and Article 56, indent 1 of Law on the Constitutional Court of Montenegro (Official Gazette of Montenegro 21/93), the Constitutional court of Montenegro composed of Court President Nikola Vujanović and Judges Božidar Martinović, Radojko Đuričanin and Šefko Crnovršanin, on the session from 22 February, 2002 adopted

DECISION

IT IS DETERMINED that provisions of Article 3, and Article 58, paragraphs 1 and 2 of Law on Expropriation (Official Gazette of Montenegro 55/2000) are not in compliance with Constitution of Montenegro and cease to be legally effective on the publication date of this decision.

This decision shall be published in Official Gazette of Montenegro.

Explanation

Legal action for estimation of constitutionality of provisions of Article 3 and Article 58, Paragraph 1 and 2 of the Law denoted in the Minutes of this Resolution was instituted, by decision of Constitutional Court of Montenegro in No 14/2001 from December 11, 2001.

Constitutional court, after hearing of challenged provisions of Article 3 and Article 58, paragraph 1 and 2 from February 12, 2002 determined that they were not in accordance with Constitution of Montenegro.

Challenged provisions of the Law prescribe that on the date when expropriation decision becomes legally effective the owner shall change. This means that shape of ownership on expropriated property shall change (complete expropriation), that ownership and other rights on expropriated property shall register on the strength of legally effective decision about expropriation and that each party may submit the request for registration.

Constitution of Montenegro prescribes that Law, in compliance with Constitution, shall regulate way of enforcement of freedoms and rights, if it is necessary for their enforcement and other issues of interest for the Republic (Article 12, indents 1 and 4). Constitution prescribes that freedoms and rights are indefeasible (Article 16, paragraph 1). It also prescribes that proprietary right is guaranteed and that no one may be deprived of proprietary right neither that right may be limited, except when this is request of public interest, determined with Law or on the strength of Law, with compensation that may not be lower than market price (Article 45). Constitution prescribes that Parliament adopts laws, other regulations and general acts (Article 81 indent 2), and that law must comply with Constitution and other regulations and general act must comply with Constitution and Law (Article 107).

From quoted provisions of Article 45 of Constitution of Montenegro comes that proprietary right is guaranteed and that no one may be deprived of proprietary right neither that right may be limited,

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except when this is request of public interest, determined with Law or on the strength of Law, with compensation that may not be lower than market price. Constitution, therefore, guarantees proprietary right and only possibility of deprivation or limitation of proprietary right is admissible by way of exception, when this is request of public interest, determined with Law or on the strength of Law. Consequently, owner of property for which proprietary right is deprived or limited must get compensation that may not be lower than market price. Consequently, Constitution, apart to reasons for deprivations/limitation of proprietary rights defines the lowest limit for determination of compensation for proprietary right or its limitation, as equivalent.

Constitution does not define upper limit of compensation. Therefore, intention was, not to bring the previous owner in less convenient position than it was before implementation of these measures.

Therefore deprivation of proprietary right or limitation of this right is irresistibly connected with determination and payment of appurtenant compensation, whose quantum may not be lower than market price of thing for which property right was deprived or limited.

Therewith, by estimation of Constitutional court, determination and payment of compensation must proceed to transfer of proprietary rights or it has to accomplish, latest, at the same time with transfer of that right. Contrary to that, challenged provisions of Law enable expropriation beneficiary to registers property right on expropriated property on the day of legal effectiveness of expropriation decision and in that way deprive the previous owner of the right before payment of appurtenant compensation for that property. The challenged provisions enable this even before determination of that compensation, if parties did not make agreement about type and quantum of compensation, before decision became legal effective

Therewith, challenged provisions do not comply with Constitution of the Republic of Montenegro.

On the strength of presented reasons it is decided as in Minutes of this Resolution

Decision on termination of validity of provisions and about publication of decision is based on provisions of Article 115, paragraph 1 and Article 116, paragraph 3 of Constitution of Republic of Montenegro.

In No 14/2001

Podgorica, 12 February 2002.

President of Constitutional Court of Republic of Montenegro,

Nikola Vujanović