A critical Analysis of the Reprivatization process in Macedonia in practice – Part 1

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Abstract

The process of denationalization or reprivatization[1] was regulated with the law of 21.4.1998.[2] Denationalization[3] in Macedonia was understood as a method, conditions and procedure for the restitution of property or compensation for natural persons who are citizens of the Republic of Macedonia for the property or assets that were dispossessed without compensation by the state (Art. 1). In my opinion, keeping in mind that the privatization process started in 1990 with the *Markovic* law, this law entered into force very late. Macedonia, like Albania, opted for the "restitution before compensation" model. Priority therefore was the restitution of property; if this was not possible, it was replaced by the option of compensation. This method was used by all ex communist countries with the exception of Hungary and Romania. Main objective of this manuscript is the analysis of the reprivatization process in practice with a systematic method.

Keywords: Macedonia, reprivatization, commercial law, property.

Introduction

The restitution of property was not foreseen only for agricultural land (Art 22), for residential buildings and apartments (Art 23), commercial buildings and premises (Art 24) and movable property (Art 25),[4] but also for seized assets belonging to a company which was converted in accordance with the provisions of the privatization law of 1993. According to Article 26 of the Law on Denationalization, after a final decision on denationalization, the privatization agency transferred ownership of shares, real estate in the amount of the reserved part, as well as rent and other privileges, to the applicant. The compensation was paid out in the form of bonds and the funds for the disbursement[5] were provided from the budget of the Republic of

[1] Reprivatization is referred to as the restitution to earlier situation, ie in the course of the construction of socialist economic structures, usually between the years 1945 and 1950, but also later expropriated previous owners; Roggemann/Kuss, Unternehmensumwandlung 80.

[2] Zakon za denacionalizacija (Gesetz über die Denationalisierung) Sl V RM 1998/20.

[3] The object of the Denationalization law according to Art 2 was: assets expropriated after 1.8.1944 due to agrarian reform and occupation, confiscation of commercial buildings and premises; Koleva in Fischer/Pleines/Schröder 162.

[4] Schrameyer, Makedonien – Makedonisches Bodengesetz, WiRO 2002, 242 (242).

[5] The bonds are issued in two series, series "A" and series "B". If the compensation is paid in Series A bonds, the compensation will be 100 per cent of the specified compensation in the form of shares and units of companies that have been privatized, traded or used to purchase government property.

Macedonia in accordance with Art. 42 of the Denationalization Law.
The rules governing the administrative procedure were applied to the denationalisation procedure.[6] At the request of the former owner or persons entitled to inherit from the Law that entered into force in 1998 and who submitted their application to the Ministry of Finance (Denationalization Office) within three years of the entry into force of the Law, the procedure was initiated. The lawyer of public interest protected in these proceedings the property interests of the Republic of Macedonia. The Ministry of Finance kept a special register of denationalization applications, decisions and their execution. A complaint against the decision of the Denationalization Authority could be filed to the Government of the Republic of Macedonia (Art. 57).
Because of the many implementation difficulties and because the law did not regulate many areas and detailed questions, on 30.5.2000 a new denationalization law[7] came into force. For the first time in Art 2, this law provided for the restitution of the land of religious institutions, monasteries or Vakav (sacred places) in Art. 66. Like the law from 1998, this law also provided for a three-year period for filing applications from the entry into force of the law (Art 6). The law was valid also for dispossesed assets for which compensation had been set (Art. 8). No restitution but compensation was provided for in cases of withdrawal of property in the public interest (Art. 10).
The restitution of the property was regulated in Articles 20-36. In cases when the value of the property had diminished after the dispossession from the state, the difference was paid out (Art. 22-24 Denationalization Law from 2000). The restitution could also be made after the contract was terminated. According to this, the former owners could also carry out the property after the tenants had moved out or after they had received a new apartment from the state (Art. 25); in addition this law regulated the restitution of agricultural land, in cases when the agricultural land had been converted into building land or its conversion was imminent. Even in this case, according to Art. 28 of the Denationalization Law from 2000, the difference was paid out. Finally, the restitution of commercial buildings and premises was also provided for, unless otherwise stipulated, as well as assets of those companies that had already been privatized based on the privatization law of 1993 (Art. 33 Denationalization Law).
The compensation was paid in the form of bonds (Art. 40) if no restitution occured. It was followed by the division into bonds of the series "A" and "B". They could be exchanged with shares of companies involved in the privatization process (Art. 41). The denationalisation procedure was regulated in Articles 45-65, new was only the extension of the application periods from 3 to 5 years (Art 51).
To illustrate this, three decisions of the Ministry of Finance, which granted the requests of the previous owners to restitute building land, will be discussed.
Decision of 30.6.2006[8]

If the compensation selected is Series B bonds, the compensation will be equal to 60 per cent of the stipulated amount, in installments and over a period of 30 years from the year 2000, but not higher than the denar value of 100,000 DM.

[6] The denationalization procedure is regulated in Articles 45-63 of the Law on Denationalization.

[7] Izmena i zakon za denacionalizacija, Sl V RM 2000/43.

[8] Ministerstvo za Financi, Uprava za imotno-pravni raboti, Oddelenie vo Gostivar No 19-208/2 from 30.6.2006.

This decision concerned a claim in 5.7.2004 to the Department of Ministry of Finance for Property and Legislative Affairs, Office G ... on the denationalization of an unused area. The order concerned the return of an area of 1372 m², which had been confiscated by Decision No. 3292/1-55 of the village of K ... of 2.6.1955 for the construction of a silicon factory. The contested area was part of a silicon factory that had been privatized by the G ... AG. The property was not used by the factory on an area of 1336 m², nor was it of any significance for the factory and was undeveloped. Therefore, and based on Article 20 (1) of the Denationalization Law, the Commission decided to grant the request for restitution of immovable property and to order the payment of a sum of 28,056 denar. The restitution request was granted, but only as far as the area of the silicon factory was not needed. Relevant here was Article 20 (1) of the Denationalization Law of 2000. Article 20 (1) states:

"The immovable property shall be returned in full or in part and under the conditions of the date of entry into force of this Law;

The immovable property should be partially restituted if a full return is not possible. "

Decision of 1.8.2011[9]

The decision of the Department of the Ministry of Finance for Property and Legislative Affairs, Office G ... of 1.8.2011 was about a request for privatization of the G .... AG dated 10.5.2011 (SV No. 19-1818), for a state-owned building and building land with a total area of 80053 m², that with the decision of the Court of First Instance No. 28/2000 of 23.06.2003 was given for utilization to the G ... AG.

The basis for this privatization was the classification of the building plot as a commercial object and the establishment of a purchase price of 438.00 Denars per m². The claim for privatization was been transferred to the G ... AG. According to Art. 29 in conjunction with Art. 18 para. 2 of the Law on the Privatization and Purchase of State Land, [10] it was decided as requested in favor of the G ... AG.

This decision shows the lack of a privatization strategy by the government as well as the privatization of the property that was only transferred for usage.

Decision of 28.3.2012[11]

The decision of 28.3.2012 also concerned the privatization of property which had been granted for use in 2004 by the first decision of the Court of First Instance G ... No 32/02 of 14.6.2004 to the P ... GmbH , today RB GmbH. The request was accepted on the grounds that the application was addressed to the competent state body for property and legislation, in the district of which the respective land was a privatization subject. The responsibility for examining the claim was established in the above-mentioned Court Decision No. 32/02 of 14.6.2004. Thereafter, the property was sold in the name of A ... S ... R ..., to the AG with a branch in G ... and owned by the Republic of Macedonia, to the P ... GmbH, today R.B. GmbH. The firm had acquired the right to privatization, because it had the right of use. In such a situation, in accordance with Article 29 and Article 18 of the Law on the Privatization and Purchase of State Land, and on the basis of the evidence submitted, the conditions for the privatization were met.

[9] Ministerstvo za Financi, Uprava za imotno-pravni raboti, Oddelenie vo Gostivar No 26-1818/1 from 1.8.2011.

[10] Zakonot za privatizacija i steknuvanje na gradenje država, Sl V RM 2005/6.

[11] Ministerstvo za Financi, Uprava za imotno-pravni raboti, Oddelenie vo Gostivar No 26-2189 vom 28.3.2012.

For the last two decisions, the following should be stated:
The privatization implemented with these decisions showed another phenomenon in Macedonia. Because the companies did not have enough capital, some of the property was given only to dispose. In addition, companies were primarily concerned with the privatization and not so much with developing a strategy for managing and developing internal corporate rules. In addition, these decisions are examples of the division of the ownership of a functioning company into two new owners, who had nothing to do with the original business activity, but dedicated themselves to other business areas. Both privatization examples involved the privatization of land with the aim of carrying out construction activities.

Conclusions

As mentioned in the summary of the privatization process after the fall of communism, privatization and denationalization in Macedonia were also characterized by great legal insecurity. This was further increased by the fact that in the period between 1991 and 1993, so to speak, there was a vacuum because, on the one hand, the laws dating back to the Yugoslav era were abolished, but a new privatization law could only enter into force in 1993. The privatization agency also played an important role, it was noticeable that not so many institutions were involved in the procedure. There was a preferential treatment of workers and managers of their own company. Overall, the number of court cases was much lower than in Albania, not due to the fact that rule-of-law structures were better, but there were less assets and property to privatize and private initiatives were more widespread as a result of decades of workers self-government. The two decisions of the Department of the Ministry of Finance for Property and Legislative Affairs show, that Macedonia did not follow a clear strategy for the denationalization process, but decidec case by case and this brought corruption speculation. The new Denationalizion law that entered in force in 2000 simplified and harmonized the procedure.

References

Roggemann, K. Kuss, J. (1993). Unternehmensumwandlung und Privatisierung in Osteuropa – Gesetzestexte, Analysen, Vertragsgestaltung, Berlin.
Koleva, T. (2007). Restitution of expropriated Property, in Fischer/Pleines/Schröder (Hrsg), Movements, Migrants, Marginalisation – Challenges of societal and political participation in Eastern Europe and the enlarged EU.
Izmena i zakon za denacionalizacija (Gesetzesänderung über die Denationalisierung) Sl V RM 2000/43.
Schrameyer, Makedonien – Makedonisches Bodengesetz, WiRO 2002, 242.
Zakon za denacionalizacija Sl V RM 1998/20.
Ministerstvo za Financi, Uprava za imotno-pravni raboti, Oddelenie vo Gostivar No. 19-208/2 from 30.6.2006.
Ministerstvo za Financi, Uprava za imotno-pravni raboti, Oddelenie vo Gostivar No. 26-1818/1 from 1.8.2011.
Zakonot za privatizacija i steknuvanje na gradenje država, Sl V RM 2005/6.