



## Contentious civil procedure concerning expropriation in Kosovo

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**Abstract:** The right of ownership constitutes one of the fundamental human rights which enjoy legal protection by International Conventions, Constitution and respective laws. Besides powerful legal protection legal provisions have regulated also situations when this right shall be exercised in a limited manner. Expropriation of immovable property constitutes one of the legal restrictions in exercising the right of ownership over his immovable object known in legal theory as gaining ownership in an originated manner. Concerning this issue is important to be emphasized the fact that taking the right to property is done with an adequate compensation and according to procedure provided by law. In such cases there is a problem concerning fixing height of compensation for expropriated real estate when exists general interest and opposing interests of the parties regarding this expropriation procedure. The expropriation issue has been regulated by legal provisions also in the past, but due to the role and importance currently this institute has is paid increasingly more importance, therefore in addition to procedural provisions the Law on Contested Procedure contains, this issue had been regulated also by provisions of material character summarized in the Law on expropriation. Despite legal infrastructure regulating the issue of expropriation judicial practice had faced difficulties of different nature by means of which actions and omissions of courts is questionable legal security of subjects of law in civil-legal and administrative relations.



**Keywords:** Expropriation, The Law on Contentious Procedure, The Law on Expropriation, Object of expropriation, the height of compensation, final decision.

## 1. Introduction

The right of ownership for each subject of law represents one of his fundamental rights, and state is obliged to provide legal protection to everyone related to it. However, every rule has its exception, and in certain cases is the state itself which deprives the holder of ownership right from exercising the right in his private property, for a general interest. This is allowed only based on expropriation institute.

Expropriation procedure in Kosovo in the past, but also nowadays continues to face numerous obstacles, which derive from legislation with many flaws being reflected in non-efficiency of competent bodies concerning law enforcement.

Therefore since in our country for realization of many public interests has been applicable this procedure, which was accompanied with problems and disagreements by involved parties, especially when it comes to fixing compensations on expropriated properties, this constitutes the main issue of elaborating this problematic on this scientific paper.

## 2. Meaning of expropriation

One of the fundamental rights of each individual provided by national legal acts, as well as by international ones is the right of ownership. To each subject of law whether natural or legal person is guaranteed the right to own property in various items. The right to own property is guaranteed.<sup>1</sup> In the same sense, also international acts have provided legal protection of the right of ownership. Protocol 1 of the European Convention on Human Rights in Article 1 has sanctioned the right of ownership, by stating: Every natural or legal person is entitled to the

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<sup>1</sup> The Constitution of the Republic of Kosovo adopted by the Assembly, on April 9, 2008, and entered into force on June 15, 2008, article 46, paragraph 1.



peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

In similar formulations also the Charter of Fundamental Rights of the European Union, then the Universal Declaration of Human Rights and Freedoms and other international acts have put emphasis on the right of property of each, as well as the possibility of its legal protection, by raising it in stage of one of the main rights of every one.

However there is no absolute right in terms of its exercise, because first of all there is a principle which goes like this *my right ends up where commences the right of another*. Therefore, by this we understand that also the right of ownership is limited by other legal institutions among which include: the right of the other and cases provided by law for general interest.

Possible limitations of the right of ownership, in property law in fact represents also one of the originated manners of acquiring ownership is expropriation. Expropriation is the transfer of private property in public property, for a general interest (public) by adequate compensation.<sup>2</sup>

Expropriation is a manner which limits the right of private property because only by expropriation institute can be taken private property in order to be transferred in public ownership always by adequate compensation (according to market price).<sup>3</sup> So, by this we understand when it comes to achievement of a goal which is of general benefit, and in the future shall serve to majority or all citizens of the country, then legal provisions itself allow such limitation of the right of ownership, because the benefit which derives from expropriation goal is much greater rather than benefit only one individual has from this right.

Even various international treaties established basis of expropriation, by specifying in which cases individual ownership shall be limited. According to this, Charter of the European Union states that everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the

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<sup>2</sup> Dr. Abdulla Aliu, *“Property law”*, Prishtinë, 2014, pg. 194.

<sup>3</sup> Ibid.



public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.<sup>4</sup>

Our current law which is dedicated to expropriation defines expropriation in this manner: “Expropriation” shall mean any act by an Expropriating Authority that involves a) the taking of any lawful right or interest held or owned by a Person in or to immovable property, or b) the compulsory establishment or creation of any servitude or other right of use over immovable property.<sup>5</sup> While the Law on Expropriation of former SFRY which was applicable in Kosovo until adoption and entry into force of the current law does not give a definition of expropriation, but determines that: “real estate shall be expropriated when is necessary for the construction of economic, housing, municipal, health and cultural facilities and other objects of general interest”.<sup>6</sup>

Expropriation is a necessary tool for any democratic government in order to gain access to property and usage of property in the common interest. The expropriation procedure is an essential instrument of the state and makes it possible to legally deprive individuals by possession of property when it comes to common interest.<sup>7</sup>

Therefore, from what was abovementioned it results that expropriation institute presents an exemption from general rule of ownership right, and even nowadays it keeps a special place in any legal system, due to the fact through this institute shall be realized the goal of every state to create better conditions for its citizens. Through expropriation of individual property shall be realized the goals whose result is the collective benefit of society.

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<sup>4</sup> The Charter of Fundamental Rights of the European Union adopted in Nice in 2002, and amended by the Lisbon Treaty, Article 17, paragraph 1.

<sup>5</sup> Law No. 03 / L-139 on Expropriation of Kosovo Property, with the changes made by the Law No. 03 / L-205, October 28, 2010, article 2 and Rrustem Qehaja “Expropriation and Compensation” The Law No. 1/2005, Prishtina, 2005, pg 135-146.

<sup>6</sup> Law on Expropriation, Official Gazette of Socialist Autonomous Province of Kosovo, April 26, 1978. Article 2, paragraph 1.

<sup>7</sup> Organization for Security and Cooperation in Europe, Mission in Kosovo, Expropriations in Kosovo, December 2006.



## 2.1. Causes of expropriation

Institute of expropriation can be expressed in cases provided by law in order to be realized a general interest (public). However, what contains the term “general interest (public)” is defined by any law. By our law on expropriation under this notion shall be included different construction of objects, roads, railways, parks, various infrastructure facilities and other extensions of different objects for the needs of expropriating authority. In meanwhile, expropriating authorities according to this law are the Government of Kosovo and a Municipal Public Authority, which depending on whether this goal shall be achieved in a municipality or state level are entitled to expropriate properties and property rights of individuals.

Similarly, also other laws, such as the one of former SFRY and the Republic of Albania have determined what enters into general interest. By the Law on Expropriation, a general interest was determined based on the decision for expropriation, or urban plan of municipality or government,<sup>8</sup> and within this could be included: construction of railways, roads, parks, building factories, energy facilities, telecommunication, afforestation, establishment of settlements and other cases.<sup>9</sup>

In meanwhile, according to the Republic of Albania legislation, as expropriating objects are foreseen real estates in the form of land, constructions of any type by permanent character as well as movable property, whereas reasons for which these expropriations can be made are similar to those mentioned above as: for realization of state obligations deriving from international conventions and treaties; for realization of projects and national investments; for realization of projects on national protection, as well as for protection of different historical, cultural, and archaeological monuments and other cases.<sup>10</sup>

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<sup>8</sup> Law on Expropriation, Official Gazette of Socialist Autonomous Province of Kosovo, April 26, 1978, articles 3-5.

<sup>9</sup> Ibid. article 2.

<sup>10</sup> Law No. 8561 on Expropriations and taking temporary use of private property in the public interest and by-laws for its implementation, in 2010.



Therefore, in general causes of implementing expropriation shall be presented similar whether in terms of time between legislations that used to be applicable, but due to the socio-economic circumstances there have been changes and supplements of those laws, as well as in territorial comparison aspect between legislations of different countries, where is noted that reasons remain almost similar in every society.

## **2.2. Legal basis of expropriation in Kosovo**

Expropriation in principle is a constitutional and legal category which is based in provisions of our Constitution. This is because in article 46, paragraph 3, is stated that: no one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.

Nevertheless, except its basis is in constitutional provisions, further procedure specification is done by the law. In meanwhile, in addition to domestic regulation of expropriation, it is also sanctioned by international conventions and treaties, of the scope of human rights and freedoms.

In this way, the hierarchy of applicable legal sources concerning expropriation institute in Kosovo includes:

1. Constitution of the Republic of Kosovo, and international agreements directly applicable in our country, such as the Universal Declaration of Human Rights; European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
2. Law no. 03/L-139 on Expropriation of Immovable Property in Kosovo, with the amendments and supplements made by the Law No.03/L-205 date October 28, 2010;



3. Law No. 03/L-007 on Contentious Procedure and the Law No.02/L-028 on Administrative Procedure.

These represent fundamental legal basis by means of which is regulated and conducted expropriation procedure. Up to adoption of the current law, was applicable the Law of former SFRY on Expropriation, as well as our Law on Contentious Procedure. Indeed, by bearing in mind the fact contentious procedure provisions concerning expropriation procedure, and in particular of fixing compensation were complied in compliance by provisions of the Law of former SFRY, is noted now during the usage that the current law has many deficiencies and many provisions do not comply with the current law on contentious procedure.

**3. Expropriation procedure**

In principle, the expropriation procedure is an entirety of rules and legal actions through which shall be regulated all the undertaken actions when it comes to commencing, conducting and fixing compensation for the expropriated property and termination of this procedure. In fact, by previous law the expropriated procedure was much better regulated, because it had provided the possibility to be terminated also by agreement of parties, expropriating authority and the expropriated, especially when it comes to fixing compensation, whereas only in exceptional cases procedure could have gone to contentious procedure before the court.

By the Law on Expropriation of Kosovo, have been provided the fields for which this law is applicable. Therefore by this law shall be specified: rules and terms under which the Government or a municipality can expropriate property rights or other rights in immovable property of a person; rules and terms according to which the Government can authorize limitation and temporary use of immovable property; procedures for expropriation or limitation of ownership; rules and procedures which shall be used in fixing the amount and payment on



compensation of expropriation or limitation of ownership, and other provisions regulating other issues concerning expropriation or limitation of ownership.<sup>11</sup>

However, now with the new law this issue actually is more complicated due to the fact the new law not only does not give space to the party to whom is made expropriation that in agreement with expropriating authority to decide on the amount of compensation, but also the relation between legal provisions of contentious procedure with those of applicable law quite differ, when it comes to objection issue, respectively appealing the verdict in fixing compensation.

Duly, the current law, as well as the previous one provides four phases in which passes expropriation procedure within expropriating authority by including: preparatory work, determination of common interest (public), decision on expropriation and decision on compensation. In the following shall be elaborated only several phases abovementioned.

### **3.1. Initiation of Procedure**

The initiation of expropriation procedure represents a phase to which after being performed several preliminary work, then commences the implementation of expropriating process, so in this way will be determined exactly the property which shall be expropriated; shall be made necessary calculations concerning fixing the amount of compensation, and is issued the verdict on expropriation, which must accompanied by payment of compensation amount and at the end registration of ownership right on behalf of expropriating authority.

Preparatory activities in fact lead expropriation procedure as provided by articles 5 and 6 of our law, so these activities commence after receiving a proposal that would be necessary the application of expropriation for realization of a particular public goal. Usually these activities include necessary measurements whether that property may serve for a concrete

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<sup>11</sup> Law No. 03 / L-139 on Expropriation of Kosovo Property, with the changes made by the Law No. 03 / L-205, October 28, 2010, article 4.





goal, and notifications of parties which shall be affected by this expropriation, in order to continue with the main procedure of expropriation.

Based on legal provisions, initiation of expropriation procedure can be done by expropriating authority (Municipality and/or the Government of Kosovo) according to official duty, on its own initiative, or based on request in expropriating authority by a public authority or public enterprise. According to this, there are two manners of commencing expropriation procedure: procedure according to official duty/*ex-officio*, and the one pursuant to the principle of availability of parties, which means by submitting a request from an interested party.

### **3.2. Fixing compensation for expropriated property**

The most important issue when it comes to implementing expropriation procedure is the one of fixing compensation amount for property which shall be expropriated. Undoubtedly this is vital because the persons whose property shall be expropriated should instead of that property to get another one which shall be with features and in value of that which was taken. This obligation of granting an adequate consideration is constitutional and legal obligation for the expropriating authority due to the fact also in international conventions and domestic legislation explicitly is stated an obligation of adequate compensation for expropriated property.

Provided manner on fixing compensation under current and previous law substantially differs. This due to the fact the previous law recognized fixing compensation in administrative procedure and by achieving agreement between parties, even this was an essential way of this designation, and only in cases of disagreement the issue passed to litigation, by means of which the amount was determined by court. Whereas, now the manner of determining by agreement is not mentioned at all, and this determination is in competence only of Expropriating Authority, to determine it by final decision, and against this decision the expropriated party have the right to appeal, which means this would the commence of contentious procedure.



Compensation shall be made based on the market value of property as determined in accordance with provisions of this law and by-laws adopted pursuant to paragraph 6 of this article.<sup>12</sup> This means that Expropriating Authority makes the exact assessment of property which shall be expropriated and it should be compensated in that sum in order not to damage the party, because its ownership right shall be limited for a public interest only based on an adequate consideration.

Whereas by paragraph 2 of the article 15, compensation shall include the compensation of any demonstrable direct damages incurred by the expropriated person due to the expropriation plus the value of the immovable property expropriated, including – if applicable - its accessory parts and fruits. Therefore the Expropriating Authority shall be careful in this issue because most of disagreements and delays in such proceedings come as a result of dissatisfaction when it comes to compensation.

Unlike the current law, a previous one provides in detail how compensation would be done for each type of property which could be an object of expropriation. Undoubtedly under this law compensation shall be made based on the market value, but then for each respective property, depending on its object were assigned additional rules when it came to compensation.

Thus, the article 28 of the Law on Expropriation, is determined that compensation for expropriated agricultural land is assigned based on the price in market for agricultural land. For the market price of agricultural land is taken the price which is formed on the territory of region respectively habitation in which is located the agricultural land. If the market price is not formed in that territory, then is taken into account the market price which is formed in neighboring territory. In meanwhile by following articles 29, 30, 31, 32, 33, 35, 37 the law determines exactly manners for each type of property which shall be object of expropriation such as: nurseries, fruits, construction buildings, forest, barren lands, building lands and vineyards and orchards.

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<sup>12</sup> Law No. 03 / L-139 on Expropriation of Kosovo Property, with the changes made by the Law No. 03 / L-205, October 28, 2010, article 15, paragraph 1.



A special characteristic of the law already abolished, that cannot be found in the current law, is the establishment of a specific provision concerning the assessment of material situation of person to whom is made expropriation during the assessment of compensation. Personal and material situation of the previous owner is taken into account when it comes to assessment of compensation, if those circumstances have obvious value to his material existence.<sup>13</sup>

Concerning fixing of compensation amount is foreseen within Ministry of Finance to be established a special department which as its basic obligation has the assessment of property being an object of expropriation, and then based on that assessment is issued the final decision in which is included also the amount of compensation. The Ministry of Economy and Finance (now Ministry of Finance) shall establish, within its Department of Property Tax, an Office of Immovable Property Valuation which shall be the competent public authority for valuing any immovable property that is subject to an expropriation procedure by any Expropriating Authority.<sup>14</sup>

Whereas according to article 22 paragraph 3, The Office of Immovable Property Valuation shall issue in writing its final valuation determination within one hundred fifty (150) days after the date it received the application from the Expropriating Authority pursuant to paragraph 6 of Article 8 of this law. Such determination shall contain:

- the overall valuation of the property;
- a valuation of any and all other damages required to be paid by this law;
- a description of the specific methodology used to make such valuations;
- the details of the Persons to whom compensation is to be paid and the amount of compensation to be paid to each; and
- the details of the Persons, if any, who sought compensation but were determined not to be entitled thereto.

However, expropriation procedure in Kosovo was not developed in the appropriate manner, because since the post-war period had faced many problems, especially when it comes

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<sup>13</sup> Law on Expropriation, Official Gazette of Socialist Autonomous Province of Kosovo, April 26, 1978, article 39.

<sup>14</sup> Law No. 03 / L-139 on Expropriation of Kosovo Property, with the changes made by the Law No. 03 / L-205, October 28, 2010, article 21, paragraph 1.



to fixing compensation. In its report, OSCE had issued several recommendations to the Ministry of Administration and Local Government; Municipalities, The Assembly Committee for Economy, Trade and Industry; Provisional Institutions of Self-Government of Kosovo; KFOR; UNMIK and International Donors. Among these recommendations included: <sup>15</sup>

- Provide legal advice to the municipalities to help ensure that property rights are protected when expropriations take place. Such guidance shall be in accordance with the following principles: uniformity of the procedure of expropriation in every municipality; mandatory compensation; transparency of the procedure; adequate notice and access to legal remedies for affected property right holders.
- Ensure that every stage of the procedure foreseen in the Law on Expropriation is complied with to ensure the protection of individuals' rights to property.
- Assess the expropriation decisions taken by municipalities in Kosovo since the establishment of UNMIK in order to intervene using reserved powers when necessary to protect property rights.

The most important thing from this report were numerous cases of violations found by OSCE, in particular concerning payments of compensations for expropriated property, because there were cases when value was not paid at all, while work was almost complete. In Shtime, a water reservoir was constructed in 2000 without identifying the affected property right holders. To this day, no compensation has been granted due to the alleged lack of budget and it was not until June 2006 that the Municipality was able to identify the exact number and names of all concerned property right holders. <sup>16</sup>

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<sup>15</sup> Organization for Security and Cooperation in Europe, Mission in Kosovo, Expropriations in Kosovo, December 2006, pg 5.

<sup>16</sup> Organization for Security and Cooperation in Europe, Mission in Kosovo, Expropriations in Kosovo, December 2006, pg 11.



In each case when the expropriation procedure commences, in the respective proposal for expropriation one of the key elements must be also the proof and evidences that Expropriation Authority has available sufficient means to make the compensation of expropriated property, because exactly these decisions made without consulting with expropriated subjects make the procedure inefficient and with many deficiencies.

Concerning fixing compensation manner is noted a deficiency to the current law. According to this law, fixing the amount which shall be paid on behalf of compensation is made directly by Administrative Authority established exactly for this issue, which means the party to whom is conducted this procedure has no opportunities to intervene or express its own opinion regarding the amount, but it is allowed only to file a complaint in court. On the other hand, the Law on Expropriation provided that before the Administrative Authority where were conducted a procedure, parties initially by agreement could determine the amount of compensation, and if this agreement was not reached or for any other reason the deadline was passed within which should be made the determination of amount, then it was passed in contentious civil proceedings.

### **3.3. Agreement of parties and judicial procedure in fixing compensation**

According to article 52 of the Law on Expropriation if the agreement for compensation in general is not achieved within 3 (three) months from the day when the decision on expropriation has become final the municipal administration authority competent on legal property affairs sends without delay all acts to municipal court in whose territory is the expropriated real estate in order to determine the compensation. According to this provision is noted this law had left a prior possibility in order to resolve by agreement the compensation issue, and only when there was a failure of it, then there was a possibility to litigation, whether by the initiative of Expropriating Authority, but also it was allowed to the owner of expropriated property to commence this procedure. However, by current law the decision is made directly by Expropriating Authority, and only if party is not satisfied then it shall appeal to the court.



In our law, it is foreseen in principle a legal remedy which shall be used by parties who are not satisfied against decisions on expropriation. So, by article 35 is foreseen the possibility of appealing the Preliminary Decision on Expropriation; by article 36 is provided the possibility of appealing against the adequacy of compensation, and by article 37 Complaints for Compensation for Damages Arising from a Partial Expropriation.

In our case is of a special importance appealing against the decision on determining the adequacy of compensation. By final decision of Expropriating Authority not only is determined which property shall be expropriated, but at the same time also the amount which shall be paid based on assessments made by authority for valuation of expropriated property. However, before these two issues were assigned by separate decisions, because one decision was issued for fixing expropriation, whereas the amount was determined by agreement or in exceptional cases in contentious proceedings by court.

Currently, if in accordance with article 11 of this law (Law on Expropriation), If an Expropriating Authority issues a Final Decision, any concerned Owner or Interest Holder with respect to property and/or rights expropriated by such decision may file a complaint with a court of competent jurisdiction challenging the amount of compensation and/or damages that such decision provides shall be paid to such Owner and/or Interest Holder.<sup>17</sup> However, as a competent court the law determines that in cases when the decision is issued by municipal authority then competent is the Municipal Court, now according to the new law shall be Basic Court, General Department, Civil Division, whereas in cases when as Expropriating Authority is the Government of Kosovo, then this issue shall be passed directly to the Supreme Court.

Contentious procedure precedes the proceedings before administrative authority of competent municipality for property legal work, which made the decision on expropriation. The aim of this procedure is the assignment of compensation by the will of interested.<sup>18</sup>

Now, according to our Law on Contentious Procedure, when case goes to court in the procedure of compensation fixing for expropriated real estate, court will fix amount of reward

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<sup>17</sup> Law No. 03 / L-139 on Expropriation of Kosovo Property, with the changes made by the Law No. 03 / L-205, October 28, 2010, article 36, paragraph 1.

<sup>18</sup> Pozniq, B. Civil Procedural Law, Prishtina, 1976.



for expropriated real estate when the user of expropriation and previous owner in front of administrative competent body did not reach the agreement for compensation for expropriated real estate.<sup>19</sup> Indeed, formulation of this provision in this law is almost the same with the Law on Expropriation of SFRY, because it contained also provisions concerning compensation fixing and passing the issue in court in case of disagreement.

However, by current Law on Contentious Procedure, with the article 216, paragraph 1, is stated that: if the participators in expropriation procedure do not reach agreement within the deadline of two months from the day in which judgment for expropriation has taken final form, administrative competent body will send the final judgment for expropriation to the owner together with all procedural documents and proofs for paying offered amount for compensation, or for its depositing in the court in which territory is settled expropriated real estate, with the aim of compensation fixing. Obviously, this law still contains provisions in accordance with the law which was applicable in Kosovo on expropriation, due to the fact procedure before the court provides only when parties did not reach an agreement, whereas the current law the commencing of judicial proceedings foresees only as a “second instance” for appealing the decision if the owner does not agree with the particular amount, but he is not able to participate together with the expropriating authority in fixing the amount of compensation.

Further, paragraph 3 of this article states judgment for expropriation together with the procedural documents of competent court can be send and after the deadline of two months if the declaration of ex owner ascertains that cannot be reached agreement for compensation.

In principle, procedure for fixing compensation for expropriated real estate competent court begins and develops according to official if it sends the matter from competent body that has committed expropriation. In contrary without initiative of ex owner of expropriated real estate does not begin the procedure of fixing the compensation.<sup>20</sup>

Obviously, under these provisions, procedure of fixing compensation can be done also *ex-officio* by the court, whereas by the Law on Expropriation according to which is allowed only

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<sup>19</sup> Law no. 03 / L-007 on Kosovo Contentious Procedure, adopted on 20 November 2008, Article 215.

<sup>20</sup> Ibid. article 217, paragraph 1.



the complaint against *fait accompli* for fixing the compensation, the complaint can be filed only within deadline of 30 (thirty) days from the date of finality of final decision, and the expiry of this deadline loses the possibility of party to attack the decision. However, if the issue has already been passed to contentious procedure, then party is entitled according to principle of multiple instances to send the issue up to the highest court, and also through extraordinary legal remedies, in which is permitted only revision according to article 27 of the Law on Contentious Procedure concerning determined conditions in the Law on Contentious Procedure.

Regardless of whose initiative procedure has commenced, it should be over within 60 days from its commencing day in court. Court under the article 218 of the Law will determine court session in which will be given opportunity to its participators to declare for form and volume, respectively the height of compensation, also for proofs for expropriated real estate value, which will be taken according to official obligation.

In judicial procedure, the court<sup>21</sup> shall have the authority to re-calculate the amount of compensation and/or damages specified in the concerned decision in accordance with the requirements of this law. If the court determines that the concerned decision specifies an amount of expropriation compensation and/or damages that is less than or greater than the amount required by this law, the court shall issue a judgment modifying the Final Decision to adjust the amount of expropriation compensation and/or damages owed to the complainant.

Whereas, if we analyze provision of the article 220 of the Law on Contentious Procedure we notice that after ascertaining basic facts court gives judgment with which determines form and volume, respectively height of compensation for expropriated real estate. Obviously, between these laws by means of which is regulated expropriation in our country there are essential differences in content, by determining in one hand appealing procedure according to one law and issuance of judgment, and on the other hand civil judicial procedure ending with a decision.

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<sup>21</sup> Law No. 03 / L-139 on Expropriation of Kosovo Property, with the changes made by the Law No. 03 / L-205, October 28, 2010, article 36, paragraph 6.





However, from an analyzed practical case issued by Kosovo Supreme Court, is noted for expropriations issues, all instances decide by decisions in cases of fixing compensation, because in disposition of this court decision is stated “It is accepted as founded the revision against the proposer the Government of Kosovo-Expropriating Authority and is annulled the verdict of the Appeal Court of Kosovo Ac.No. 3271/2014, date September 22, 2014, and of Basic Court of Prishtina Branch Glllogvc Cn.No.52/2013, date June 30, 2013 and the case is returned for retrial to the court of first instance”.<sup>22</sup>

However, by disposition of this decision not only is understandable that concerning expropriation courts decide by decisions, but at the same time sets the issue of court competence in cases when as expropriator is the Government of Kosovo, because the current law states that the Supreme Court is competent in expropriation cases from Government, whereas by disposition of this decision although Expropriating Authority was the Government, the case initially passed to Basic Court, to which is also returned for retrial by the Supreme Court.

By analyzing all these we understand unfortunately in our country in the field of expropriation there are many deficiencies, which also made such proceedings usually to be accompanied by numerous disagreements by owners whose property have been object of expropriation.

As a result of all this, procedure before the court can be completed in two ways: by court decision as abovementioned, by means of which court gives the deadline for fulfillment of obligations to parties if they do not specify this by agreement, as well as by agreement of parties before the court for the amount of compensation, by means of which court issues its decision based on this agreement.<sup>23</sup>

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<sup>22</sup> Decision of the Supreme Court of Kosovo by Revision No. 345/2014, April 4, 2015.

<sup>23</sup> Law no. 03 / L-007 on Kosovo Contentious Procedure, adopted on 20 November 2008, article 220, paragraph 2.



#### 4. Conclusion

Expropriation of immovable property is a manner of limitation of ownership right, if it is observed by the perspective of holder of immovable property that shall be expropriated.

Ownership right is absolute only in the context of being property law because in the context of its non-restriction is not absolute and as such becomes subject of various general and special limitations including also contentious procedure of expropriation.

In order to realize expropriation shall be fulfilled foreseen legal requirements including general interest despite adequate compensation.

The relation of expropriation is of legal-public nature, whereas the height of compensation on expropriation is of legal-private nature. Therefore, expropriation procedure is conducted by Expropriating Authority, as administrative procedure, whereas procedure concerning the height of compensation in case of appeal is conducted in a regular court as contentious civil procedure.

By issuing final decision from Expropriating Authority when the same is not favorable for holder of the right of ownership the same is entitled to file a complaint in Basic Court-Respective General Department when as expropriating authority is municipality, whereas in Supreme Court when Expropriating Authority is the Government.

However, according to a legal opinion of the Supreme Court in both abovementioned cases competent as first instance court must be Basic Court.

Procedure conducted by a competent court concerning the appeal against final decision is contentious civil procedure. In this procedure court may change the final decision in terms of height compensation respectively to increase or decrease this height.



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*The Constitution of the Republic of Kosovo*, adopted on 9 April 2008, and entered into force on 15 June 2008.

*Law on Expropriation, Official Gazette of Socialist Autonomous Province of Kosovo*, 1978.

*Law No. 03 / L-007 on Contentious Procedure*, 2008.

*Law No. 03 / L-139 on Expropriation of Kosovo Immovable Property*, with the changes made by the Law No. 03 / L-205, 2010.

Law No. 8561 on Expropriations and taking temporary use of private property in the public interest and by-laws for its implementation, in 2010.

### **Judicial practice**

Decision of the Supreme Court of Kosovo, by Revision No. 345/2014, April 4, 2015.