The Croatian Administrative Court Ruling: Foreigners Eligible for Compensation for, or Return of, the Property in Croatia Taken During the Communist Era

On 14 February 2008, the Administrative Court of the Republic of Croatia rendered the first decision that will enable the return of the nationalised property to a foreigner. The right to return of or the right to be compensated for the apartment building, located in the centre of the Croatian capital Zagreb and taken immediately after the Second World War, has been recognized to Zlata Ebenspanger, a Brazilian national, i.e. to her son who stepped into her procedural position upon her passing away. The Administrative Court annulled the first-instance administrative decision rejecting the application and along with the instructions on the proper interpretation of the Act remitted the case back for decision by the same body.

According to the initial text of the 1996 Compensation for the Taken Property during the Yugoslav Communist Government Act, former owners had no right to request the return of property or compensation for it if on the day this Act was rendered they did not have Croatian citizenship at the time the Act was rendered (Article 9). The Act further provided that the right to return/compensation does not exist in case where an international treaty has already settled that matter (Article 10). It was additionally prescribed that persons (natural and legal) not having Croatian citizenship were not eligible, except in cases where an international treaty specifically provided otherwise (Article 11). The Constitutional Court of the Republic of Croatia was asked to rule on the constitutionality of the cited provisions. In 1999, the Constitutional Court declared the limitations concerning the foreign natural (but not legal!) persons unconstitutional and the respective provisions void (Decision docket number U-I-673/96, published in Official Gazette of the Republic of Croatia 39/1999, accessible here). In its reasons the Constitutional Court stated:

Differentiating former owners on the basis of their legal bond to a certain state (i.e. on the basis of citizenship) – when at the same time some are granted the compensation (Croatian nationals) while others are not at all granted this right – is unjust and cannot be justified by the need to protect some other important constitutional or other right. All the more since to all persons, Croatian nationals and those who are not, the property was taken by the same means, at the same time and on the basis of the same legal grounds, and their property – if still preserved – remained in the Republic of Croatia owned by the state or other legal entities.

Differentiation in the volume of potential rights of Croatian nationals and foreigners is common (and not contrary to the Constitution) in cases when the legal entities are regulated under the public laws or laws concerning the commencement of the employment relation. Nonetheless, when the relations concerning the property are at stake such differentiation in such a general, wide-ranging form cannot exist and it is contrary to the Constitution.

For these reasons, by the law that will be adopted instead of the void one, the former owners who are not Croatian citizens should in principle be granted the right to compensation or return of the property, and defined the preconditions under which these persons will be granted the right to compensation. The right of foreigners to have the immovable returned to them should be regulated in accordance with the provisions of other acts on the rights of foreigners to acquire immoveable on the territory of the Republic of Croatia.

In 2002, the Croatian Parliament passed the Act Amending and Supplementing the 1996 Compensation for the Taken Property during the Yugoslav Communist Government Act (Official Gazette of the Republic of Croatia 80/2002 and 81/2002) which, amending Article 10 and deleting Article 11, on top of the part of Article 9 being deleted by the Constitutional Court, made it possible for foreign natural persons to acquire the right to be compensated for the taken property yet only if so determined by an international treaty. Until recently, the interpretation of this provision was that if the state, whose citizenship the applicant has, has not concluded an international treaty in respect to these matters with the Republic of Croatia, its citizens cannot be granted the right to compensation or return of property. A case in point is a decision of the Administrative Court of the Republic of Croatia, Us-10052/2004 of 28 April 2005, accessible via this link.

However, the interpretation of this Act has been reversed in the latest decision of 14 February 2008. According to this precedent, the requirement of an international treaty is no longer a preclusive element, although the provision actually says so. Namely, the Administrative Court did not rest solely on the linguistic interpretation, but took account of the fact that the Constitutional Court erased the part of Article 9 which set the precondition of applicant's Croatian citizenship and concluded that right to be compensated belongs to all foreign natural persons in respect to which the issue of the taken property has not been resolved by an international treaty. This interpretation has been taken at the February 2008 session of the respective section of the Administrative Court which is available here. Whether this interpretation may be considered justified is indeed arguable, but the outcome seems to be in accordance with the principles highlighted in the Constitutional Court decision.