

The Saga on the Property in Croatia Taken to Foreigners in the Communist Era Seems to Have Reached the End

In reference to the post of 2008 reporting on the right of foreigners to claim compensation for or return of the property in Croatia taken during the communist era, the new decision of the Croatian Supreme Court merits attention.

The 2008 ruling by the Croatian Administrative Court recognized such right to a Brazilian national, i.e. her descendant of the first degree. This ruling was final and there were only extraordinary legal remedies available, among them the request for legality protection (*zahtjev za zaštitu zakonitosti*). On 19 June 2008, the Croatian State Attorney' Office launched such request before the Croatian Supreme Court, challenging the legality of the mentioned Croatian Administrative Court ruling. They essentially argued that the interpretation of the Administrative Court was incorrect because, in regard to Article 9 and 10 of the Compensation for the Taken Property during the Yugoslav Communist Government Act as amended in 2002 (often referred to as the Compensation Act), the legislative intention was not to make all foreigners eligible to return of or compensation for the taken property, but only nationals of those countries which have concluded the treaties to that effect with Croatia. They also argued that, pursuant to another provision of the Act, the right to return or compensation belonged only to those persons having acquired the Croatian nationality after 11 October 1996.

Deciding in the chamber of five, the Croatian Supreme Court rendered a judgment on 25 May 2010. The Court entirely rejected the request for legality protection and upheld the challenged decision stating that the authentic legislative intent should be sought by looking into the context of the statutory amendments which were consequential to the 1999 Croatian Supreme Court decision. The judges continued:

Starting from this, and taking into account, inter alia, the argumentation of the Constitutional Court of the Republic of Croatia that the former owners which

are not Croatian nationals have to be in principle recognized the right to compensation or return of the property, and that the conditions under which those persons should be recognized the right to compensation need to be defined, the conclusion has to be drawn that the legislator linked the right of a foreign person (natural and legal) to enforce the right to compensation for the taken property to the concluded intergovernmental agreement.

In this context it is obvious that in construing and searching for the genuine legislator's intent in regulating this matter, the provisions of Art. 10 paras. 1 and 2 of the Compensation Act need to be interpreted observing their mutual connection. The contents of para. 1 of this Article shows, thus, that the former owner shall not have the right to compensation for the taken property where this matter has been resolved under an intergovernmental agreement. By way of exception, according to para. 2 of the same Article, even where the issue of compensation for the taken property has already been resolved under the interstate agreement, the right to compensation may be acquired by the foreign persons if it is established by [another] interstate agreement. It derives under the interpretation argumentum a contrario that in other situations, where the issue of compensation is not resolved by an intergovernmental agreement, the former owner shall have the right to compensation for the taken property.

By virtue of this, implementing the decision of the Constitutional Court of the Republic of Croatia, the legal statuses of former owners of taken properties are consequently made equal irrespective of their nationality, thus achieving the equality of citizens before the law.

The Court concludes its reasons by stating that the requirement of Croatian nationality acquired after 11 October 1996, does not refer to the case at hand, and that this case falls under another provision which does not impose such requirements.

Such insistence of the Government of the Republic of Croatia not to recognize the right to return or compensation to foreigners must be understood against the background of more than 4000 requests being made from abroad, primarily from Israel, Austria, USA, Serbia, Argentina and Brazil, and of the estimation that these requests if accepted will cost the Republic of Croatia in between €350 and €500 million in the forthcoming period. However, in a view of 13 years that have

passed from the date the application for return was submitted in this case, it is to be hoped that this is truly the final chapter of the saga.