

# POSITION OF HOLDERS OF RIGHT TO RETURN LAND IN THE PROCEDURE OF RESTITUTION AND LESSEE OF LAND<sup>1</sup>

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## Abstract

*In this paper, the authors analyze the status of the holder of the right to restitution of the confiscated land in relation to the holder of the right to lease the land subject to restitution and thus the rank of application of regulations on agricultural land in the restitution procedure in the Republic of Serbia. The return of property confiscated during the communist period is part of the transition process, which implies comprehensive changes in the state, including privatization of state-owned property and market operations on the principles of private property and competition, but also a need to correct injustice to former owners. According to the regulations of the Republic of Serbia, restitution is mandatory, but in practice it is realized very slowly, especially when the subject of restitution is the return of agricultural land, although this process realizes one of the basic human rights of citizens, defined in the international agreement, the UN Universal Declaration of Human Rights, the right to free enjoyment of private property. In this paper, the authors analyze the conditions for the return of agricultural land e.g., the conflict of interest of the owner of the returned property and the holder of the right to lease on the returned property, and the implemented solutions in practice, on the example of a local government unit.*

**Key words:** *restitution, holder of the right to return, legitimate expectation, land lease, principles of the constitution, discrimination.*

## Introduction

To assess the state of ownership of agricultural land in the Republic of Serbia, the authors used the official results of the 2012<sup>5</sup> agricultural census as

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5 Agriculture in the Republic of Serbia I 2013; Agriculture in the Republic of Serbia II 2013

well as other data from official statistics, the Agency for Restitution and the Agricultural Land Administration. Serbia is an agrarian country. The basic economic entities that perform agricultural activity are agricultural farms. There are 631,552 business entities in Serbia that own a total of 3,861,477 ha of agricultural land. Of this number, 628,555 are family farms, and 2,567 are enterprises, cooperatives, entrepreneurs and farms in private and state ownership or owned by churches and religious communities.

The total area of Serbia is 8,840,000 ha, of which agricultural land is 5,700,000 ha, and arable land 4,200,000 ha. The largest part of the territory of our country, 73% is agricultural land. Private arable land is 87%, average farm size: 3 ha, number of villages: 4,700, 55% of the population lives in rural areas and 45% of the active rural population works in agriculture.

This is the reason why regulations and activities related to agricultural land, return of agricultural land to previous owners, sale of land to domestic and foreign legal and natural persons, lease of state agricultural land, are always the subject of interest not only of economic entities to which they apply but also public in Serbia, which is not surprising, because most of the total territory of Serbia is agricultural land. As a country whose natural and climatic conditions favor the cultivation of various agricultural crops and as a country inhabited by almost 1.5 million farmers, these regulations will undoubtedly attract the attention of the Serbian public.

In this regard, the issue of restitution of agricultural land confiscated according to regulations from the post-communist period is also regulated. Restitution implies the return of ownership of property that in the past was unjustifiably taken away from certain persons, a group of citizens or an entire class or ethnic group in countries where certain, significantly different social circumstances previously existed.

The return of confiscated property is an issue that is simultaneously included in the process of transition of any post-communist country and, one of the unavoidable issues related to the European integration of a country that is interested in becoming a member of the European Union. Protocol no. 1. in addition to the European Convention for the Protection of Human Rights and Fundamental Rights<sup>6</sup>, it does not create for the signatory states any general obligations or restrictions regarding the restitution of property (right to restitution, scope of return and conditions) This issue is left to states to resolve on the basis of their

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6 European Convention for the Protection of Human Rights and Fundamental Freedoms.

regulations, but within the framework of the principles of conscientiousness and honesty and other principles of international law and the constitution of countries that have the obligation to return confiscated property<sup>7</sup>.

Denationalization is a significant process of modern development, based on private ownership, decentralization, deregulation and weakening of the regulatory and managerial role of the state. Denationalization is related to the processes of economic growth and progress, based on technological development, globalization and market competition, with the aim of restoring liberal values in social life, and especially to the creation of open market economies. It is commonly believed that the advantages of private ownership are in greater initiative and motivation of private owners for more efficient management and operations as well as in greater mobility of goods, capital, labor and knowledge. Private ownership also extends to areas of service of general interest, which have traditionally been in the sphere of state ownership and management. The policy of returning the property to the previous owners is in line with that.

In this paper, the authors discuss the right of restitution holders to return agricultural land (primarily in nature) that was taken away on the basis of earlier regulations from the communist period, or even without grounds, without fair compensation or in some other similar way in relation to tenant rights returned land.<sup>8</sup> In the legal sense, restitution means the establishment of the previous situation in relation to the person from whom the property was confiscated, in the way it was before the act of confiscation and refers, primarily to the return of the same property that was confiscated, i.e. in nature.<sup>9</sup> In the practice of Serbia, a multi-year lease of land often appears as a restriction on the possession of the title of restitution on the returned land.

### **Restitution in Serbia and the right to lease**

The reasons for the return of confiscated property in Serbia are based on the idea of including Serbia in the currents in Europe, harmonizing the legal and

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7 Judgment of the European Court of Human Rights

8 Kozminski, K. A. 1997, *Restitution of Private Property: Re-privatization in Central and Eastern Europe*, Communist and Post – Communist studies, The Regents of University of California, Press, Published by Elsevier Science Ltd, Great Britain, p. 95-106, (available at: <https://online.ucpress.edu/cpcs/article/30/1/95/399/Restitution-of-Private-Property-Re-privatization>)

9 Jugovic A., (2009) *Restitution as a value turning point in the democratization of Serbian society, Rehabilitation and restitution in Serbia - Proceedings of the round table Belgrade, Center for the Advancement of Legal Studies, Congress of Serbian Unification, Studenica Endowment*, p. 289-297.

institutional framework with EU member states, correcting the injustice done decades ago to former agricultural land owners and creating a new / old middle class economic entities.

Restitution is a big state project. In addition to the enactment of regulations, the real will of the government is necessary, which not only returns the property to its former owners, but also definitely introduces a new philosophy of private property whose protection should not only be declarative, but also real.<sup>10</sup>

The extent of the return of confiscated property to previous owners is based on the economic strength of the state, and the success on the reputation of the state, socially responsible behavior of the state, including respect for human rights.

Some countries have already carried out the restitution procedure with more or less success, in a shorter or longer period, which depends not only on the adopted regulations but also on the real political and social will, which is reflected in the consistent implementation of constitutional principles and principles of the constitution and laws. Serbia has not yet completed the procedure for returning the confiscated land, although the current law came into force in 2012. The biggest problems are in the procedures whose subject is the return of agricultural land. It has been shown that legal solutions cannot lead to results in practice if not everyone is equal before the law and the constitution. This brings us back to the rule of law, which is a precondition for exercising the individual rights of the owner of the confiscated property.

The most European countries initiated the restitution procedure in the 1990s. In Serbia, unlike most countries where the restitution procedure was conducted in a much shorter period, this procedure takes an unreasonably long time. Many claims for repossession of property, submitted to the competent institution at the time the law enters into force, have not yet been completed, usually without good reason. In addition, a major problem for restitution holders is the lease of land that is in the process of restitution. The land intended for return to the previous owners was leased, not only before the law on restitution came into force, but it was leased again all the time, for a period of one to five or more years.

This is an additional reason for dissatisfaction of restitution holders because they believe that not everyone is in the same position, some get property of much higher value and others much less, additionally burdened by multi-year lease, although most local governments have enough land to return. Although restitution removes moral injustice, it cannot be ideal, but it is very important

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10 <http://projuris.org/denacionalizacija.html>.

to be fair and effective. It is also fair that the issue of restitution does not drag on for years, as it does in Serbia, and that the country that is the subject of restitution is not under a multi-year lease, but returns in the same agricultural year in which the return decision becomes final.

Otherwise, the Law on Agricultural Land<sup>11</sup>, The law regulates the conditions and procedure for leasing state land, whereby the right to lease and use state-owned agricultural land can be exercised by natural and legal persons who are holders or members of registered agricultural holdings if they meet additional conditions depending on the lease basis. State-owned agricultural land is leased and used in a transparent procedure, based on the right of first refusal and through public bidding<sup>12</sup>.

Information on which state-owned land is planned for leasing and use on what basis and for what period is available on the website of the Agricultural Land Administration. Decisions on announcing advertisements for the issuance of land are available, as well as a tabular overview of cadastral parcels for which a public invitation for issuance has been published and intended for issuance.

The Agricultural Land Administration has also developed its own public Geoport, which provides numerous opportunities for quick and easy access to all data on state-owned agricultural land, maps and applications for the preparation of the Annual Program for the Protection, Development and Use of State-Owned Agricultural Land.

Thus, information on the status of state-owned agricultural land, including that which is subject to restitution, is public. In practice, there are many cases where the holder of restitution, when after many years receives a final decision on the return of land, cannot take possession because the land is under a multi-year lease. The price of leasing state land is significantly lower than the price of land of the same quality in the same area owned by a private person, who has a greater interest in earning, leasing or cultivating land in relation to the state as the owner. Thus, the benefit of the private owner from issuing the land (not counting the processing that gives higher income) is much greater than the benefit of the state.

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11 Zakon o poljoprivrednom zemljištu („Službeni glasnik RS”, 62/2006, 65/2008 – dr. Zakon, 41/2009, 112/2015, 80/2017 i 95/2017 – dr. Zakon).

12 Uprava za poljoprivredno zemljište, <https://upz.minpolj.gov.rs/sadrzaj/vest/kako-uzeti-pod-zakup-ili-na-korisenje-poljoprivredno-zemljiste-u-drzavnoj-svojini/>

## **Restitution of agricultural land in Serbia with the example of one local self-government unit**

The Law on Restitution of Confiscated Property and Compensation stipulates that agricultural land, which was confiscated from the previous owners, will be returned to the applicants for the return of confiscated property.

The bylaw establishes the obligation of the Agency for Restoration (hereinafter: the Agency) to, on the basis of its data on claims from the submitted requests of previous owners for the return of property, inform the Agricultural Land Administration (hereinafter: the Administration) about the areas of agricultural land, are sought in certain cadastral municipalities. Based on that, the Administration is obliged to determine state-owned cadastral parcels in an area that will be sufficient to complete the procedure of property restitution, which may be subject to restitution in terms of the Law and Regulation on criteria for determining the area of agricultural and forest land in procedure for the return of confiscated property (Regulation).

The stated data, the List of determined cadastral parcels in state ownership that can be the subject of return in the restitution procedure (hereinafter: the List) must be accurate, publicly published on the website of the Administration and the Agency for Restitution. The Agency has the obligation to update them daily, so that all interested persons have the opportunity to be informed about the parcels that are intended to be returned in the restitution procedure, which parcels have already been returned during the procedure and which is left to be returned.

It is prescribed that the List may not include cadastral parcels that are at the time of entry into force of the decree:

- leased on the basis of consent to the investment plan given by the competent commission in accordance with the regulations governing the priority right to lease agricultural land;
- leased on the basis of ownership of infrastructure facilities;
- leased for more than ten years<sup>13</sup>.

It is known that the most problems in the restitution procedure were and still are, precisely in cases when the subject of return is agricultural land. In all local self-government units (LGUs) in the whole of Serbia, there is much more state

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<sup>13</sup> Zakon o vraćanju oduzete imovine i obeštećenju ("Sl. glasnik RS", br. 72/2011, 108/2013, 142/2014, 88/2015 - odluka US i 95/2018).

land in relation to the area of land claimed in the restitution procedure.<sup>14</sup> The Administration has compiled a list of cadastral parcels intended for return in the restitution procedure. However, large areas of agricultural land are exempt from return and given on long-term lease. One number of restitution holders was given back quality land in one piece, and a large number of the remaining ones were offered land that is under long-term lease or low-quality land, small plots of land below or about one hectare, which are far from each other, which no one wants which led to a delay in the process of returning agricultural land<sup>15</sup> and the initiation of numerous judicial and administrative proceedings.

Due to the insufficient allocation of the fund for the return of the land, the holders of restitution were brought into an unequal position. Those who are offered low-quality land and under lease, believe that they have been damaged, that the right to fair restitution and the principle of equality have been violated, and have decided to conduct court proceedings. The state cannot put the previous owners in an unequal position, and at the same time, since it could predict the moment of land return, it could adjust the plans for leasing the land to restitution because there is a sufficient state land fund that can be restituted.

In order to determine the possibility of returning agricultural land in the restitution procedure, the authors analyzed the condition of the existing state fund of state land in relation to the amount requested in the restitution procedure in JLS Ruma in Vojvodina. In 2016, according to public data published on the website of the Administration, there were a total of 7,207,4594 hectares of arable agricultural land in the observed local self-government.<sup>16</sup>

Based on public data from the Agency, the previous owners are claiming 1,248,1484 hectares, which represents only 17.32% of the total available state fund. In all neighboring LGUs, the percentage of claims of restitution holders was approximate, so that in LGU Ruma, there is enough quality state land to return in the restitution procedure and the issuance of land can be done annually.

This obviously discriminated against a large number of persons claiming property in the restitution procedure. At the heart of such confrontations between the state and the title holders of restitution lies the lack of will of the state to return quality agricultural land without encumbrance, when there is enough for all title holders to return confiscated property.

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14 Gulan B. (2015) *Sudbina oduzete imovine*, Novi Sad

15 <http://www.agronews.rs/drzava-iz-restitucije-izuzela-najbolje-zemljiste/>

16 <https://upz.minpolj.gov.rs/sadrzaj/>

## **The relationship between the legitimate expectations of the holder of restitution and the right of lease**

The authors of this text believe that it is possible to avoid the problem of returning the leased land, ie to solve the problem of conflict of interest, the person to whom the land was returned in the restitution procedure and the state, ie the lessee of the returned land. For example, the land was returned to the holders of restitution according to the decision on the return of the confiscated land, which is dated 17.04.2020. years. However, that land was leased for five years, according to a previously conducted public invitation, after which a lease agreement was concluded on April 19, 2020. years, ie only two days after the decision of the restitution agency on the return of land.

In this and similar cases, the question arises whether the said conflict of interest could have been avoided and who is responsible for damages to the party suffering the damage, whose right is stronger, whether the right of the new landowner or the tenant, whether there is discrimination and violation of basic moral principles guaranteed by the Constitution?

As described above, the procedure of leasing land lasts for months, the restitution procedure lasts for years, but the legitimate expectation of the title of restitution by the competent authorities is easy to determine so that the state as a participant in both procedures has knowledge of which country is subject to restitution. he knows at what point the land subject to restitution will be returned to the previous owner. By the act of determining the holder of restitution for the return of certain pre-offered parcels, the numbers of parcels that will be returned and to which person they will be returned, are publicly announced on the List, so that everyone can know which land should be returned to the new owner within a reasonable time, who should take possession at the end of the current agricultural year, on October, 03<sup>th</sup>.

Thus, the holder of the right to return the property can claim the confiscated property in the legally prescribed procedure, only when the prescribed conditions under which this "legitimate expectation" can be realized. The assets do not exist until a claim can be established over it, which occurs when the prescribed conditions occur.<sup>17</sup>

The European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) guarantees the owner the right to unhindered enjoyment of property, i.e, the prohibition of restriction of property

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<sup>17</sup> Odluka Ustavnog suda Srbije br. I-Uz.119/2008 od 20.04.2011.



rights and other property rights on any grounds, without compensation, which includes the prohibition of confiscation. However, since the Convention cannot be applied retroactively, it therefore does not establish the obligation of the state to eliminate violations of property rights that occurred before its entry into force. The Convention defines the definition of property, according to which property includes a claim based on which there is a legitimate expectation that the effective enjoyment of a property right can be acquired.<sup>18</sup> This legitimate expectation is in fact the fulfillment of the conditions for acquiring the rights from the restitution procedure, but also the moment when the state is aware that certain parcels will be returned to the holder of the rights from restitution within a reasonable time. At that moment, the state becomes unscrupulous if it leases the land for several years and thus prevents the new owner from freely disposing of the property.

In order to exercise a right under the provisions of the Convention, there must be “at least a legitimate expectation” that a particular property right can be exercised, and a legitimate expectation exists only when the Contracting State prescribes the conditions under which that expectation will be exercised, in terms of prescribing the conditions under which he will return the property.<sup>19</sup> The Republic of Serbia has prescribed by law the conditions under which it will return property to the right holders in the restitution procedure. This means, for example, if a request for restitution of property has been submitted, and it is necessary, as a prescribed condition, to rehabilitate the previous owner, the condition for restitution of property or compensation was acquired only when the decision on rehabilitation becomes final.

From the above, it can be concluded that state bodies that participate in the process of returning confiscated property, have accurate information when, first of all, a request for return of confiscated property is submitted, and then, when a legitimate expectation has arisen and based on that they can make plans, fairly and without discrimination, so that every acquirer of land could take possession of his returned property at the end of the first agricultural year. Conscientiousness is a social norm through which the highest values of society are concretized and must be respected.

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18 Evropska konvencija za zaštitu ljudskih prava i osnovnih sloboda.

19 Evropska konvencija za zaštitu ljudskih prava i osnovnih sloboda.

## Conclusion

According to the regulations from the communist period, the return of confiscated property also depends on external influences that occur in the environment. Currently, the process of returning the confiscated property is the most significant continuation of the changes in the ownership structure in agriculture of the post-communist countries of Eastern and Central Europe, which has an unavoidable impact on Serbia as well. In addition, globalization, which has affected the world economy for decades, inevitably creates a new economic order based on the dominance of the market economy within each country and internationally, private property ownership, market liberalization, strong competition from other economic entities and other changes.

Restitution is a procedure that must be carried out in Serbia in a fair way, so that all holders of the right to return confiscated property are in the same position because the state must be moral. The law must be socially purposeful, just, but also morally justified, which is not always the case, especially when it comes to discriminatory laws that can arise in different systems and times.<sup>20</sup> Thus, for example, it can be said that confiscation of property without compensation, through agrarian reform and nationalization and other regulations, is an unjust act, contrary to legal morality, although it is based on a legal act in the post-communist period in Serbia and other European countries.

Legal morality is contained in law and legal norms, as well as in the behavior of all those who apply or do not apply those norms. The state must be moral.

## Literature

1. Agriculture in the Republic of Serbia I 2013: Agriculture in the Republic of Serbia II 2013.
2. European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Rome.
3. Judgement of the European Court for Human Rights.
4. Konzminski, K., A. (1997): Restitution of Private Property: Re-privatization in Central and Eastern Europe, Re-privatization in Central and Eastern Europe, Communist and Post – Communist studies, The Regents of University of California, Press, Published by Elsevier Science Ltd, Great Britain, p. 95-106, (available at: <https://online.ucpress.edu/cpcs/article/30/1/95/399/Restitution-of-Private-Property-Re-privatization>).

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20 [https://projuris.org/pravni\\_moral.html](https://projuris.org/pravni_moral.html)

5. Jugović, A., (2009): Restitution as a value turning point in the democratization of Serbian society, Rehabilitation and restitution in Serbia - Proceedings of the round table Belgrade, *Center for the Advancement of Legal Studies*, Congress of Serbian Unification, Studenica Endowment, p. 289-297. <http://ipf.rs/restitucija-u-srbiji-i-postkomunistickim-zemljama/>.
6. The Law of Agriculture land („Official Gazette of RS,, 62/2006, 65/2008 – other Law, 41/2009, 112/2015, 80/2017 i 95/2017 – other Law).
7. Administration of Agriculture Land.
8. Law of restitution and of Taken Away property and Compensation (“Official Gazette of RS”, No. 72/2011, 108/2013, 142/2014, 88/2015 – Decision of the Constitutional Court and 95/2018).
9. Decision of the Constitutional Court of Serbia No: I-Uz.119/2008 ; (date 20.04.2011.)

**Internet source:**

10. <https://projuris.org/denacionalizacija/html>
11. <https://www.agronews.rs//drzava-iz-restitucije--izuzela-najbolje-zemljiste/>
12. <https://upz.minpolj.gov.rs/sadrzaj/>
13. [https://projuris.org/pravni\\_moral.html](https://projuris.org/pravni_moral.html)