

# SOCIALLY RESPONSIBLE STATE BUSINESS AND AGRICULTURAL LAND RESTITUTION PROCEDURE<sup>1</sup>

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## Abstract

*In this paper, the authors analyze the conditions and procedure for returning confiscated agricultural land to the previous owners, that is, their heirs, and the state's attitude towards the said procedure. The obligation to return the land represents a kind of correction of the injustice that was done to the previous owners, and in this connection a just compensation of the owner of the restitution. However, based on the analysis of cases and publicly available information, the authors determined that it cannot be said that the state is consistent in respecting the principle of justice, when considering the amount of state land in local self-government units that are eligible for return in the restitution procedure and quantity intended for return. Considering the obligation of socially responsible behavior in all, including in this procedure, all business entities, and especially the state, which should be an example of respecting the rules of social responsibility and morality, the authors came to the conclusion that the state must show much more conscientiousness and fairness in return procedures confiscated property.*

**Key words:** *socially responsible business, the state's attitude towards restitution, restitution, agricultural land, property.*

## Introduction

The domestic public hears and reads about the obligation of socially responsible business every day. One hears and reads about state initiatives regarding responsible and sustainable business and transparent management, then initiatives and projects of the third sector (civil society) regarding the application of responsible behavior in the community, but also initiatives, projects

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and activities of the real sector. At the same time, the state refers to small, medium and large companies, starting from its own position, it seems that it is the state that always and uncompromisingly respects and implements the rules of its own socially responsible business. However, very little information can be found about the state's activities in the area of socially responsible business. The authors believe that the best way to learn about the respect for socially responsible behavior of the state in the procedures for returning agricultural land is based on the analysis of existing cases, data of interested parties available in the media and public data available through the websites of local self-government units (JLS).

The return of confiscated property is an issue that imposes on Serbia the indirect obligation to return the property to the persons from whose ancestors it was confiscated and is one of the mandatory conditions related to the European integration of a country that is interested in becoming a member of the European Union. Protocol No. 1. with the European Convention on Human Freedoms and Rights does not create for the signatory states, any general obligations or restrictions regarding the restitution of property (right to restitution, scope of restitution and conditions) that was taken from the former owners before they ratified the Convention. That issue is left to the states to solve themselves (Judgment of the European Court of Human Rights).

Restitution is a complex issue from the not-so-distant past of the communist period, from a time that entailed: reshaping, collectivization and nationalization of human consciousness and private property.

That idea, regardless of the fact that it was based on the then legally valid normative framework, had an aggressive appearance directed by the state, which acted with the power of its *ius imperium*, degrading human freedoms and property rights. Therefore, restitution is, in every country where it is carried out, a major state project based on law. In addition, the real will of the current government is necessary, which not only returns the property to the former owners, but also definitely introduces a new philosophy of private property whose protection, until restitution is implemented, will continue to be only declarative (<http://projuris.org/denacionalizacija.html>), only on paper (Rajnović, et al 2020).

## **Research method and data sources**

The data used for research in this paper were obtained by analyzing the case of a request for the return of agricultural land in the restitution procedure. Information related to data on available land for return in the observed LGU in Vojvodina from publicly available information via the Internet and other means of information.

The main goal of this paper is to show the socially responsible behavior of the state in the process of returning agricultural land in relation to the restitution of the restitution. In order to collect and evaluate relevant information, the following methods were used:

- case analysis, which refers to the return of agricultural land,
- the synthesis method was used to summarize the conclusions, while giving recommendations for the application of good rules in this area.

From the analysis of all collected data and the fact that Serbia is predominantly a rural country, which is important for the entire economy, and the fact that property rights are guaranteed by the Constitution, the authors came to the knowledge that the state did not have a fair relationship with the holders of the right to land restitution, that there was the possibility of returning quality land in much shorter terms.

## **Research results**

### **About the state and socially responsible business**

There are various definitions of socially responsible business. There is no single definition that is universally accepted. They largely depend on national development strategies and strategic development priorities of individual countries. In this sense, and depending on the achieved level of development of individual countries and the fundamental needs of society, certain countries will emphasize the necessity of achieving economic goals, while others will emphasize the importance of environmental or social goals. Thus, definitions of socially responsible business will also differ, because socially responsible business is a micro-aspect of sustainable development, and the development of the real sector largely depends on national development priorities.

In 2011, the European Commission changed its initial definition of socially responsible business to a new, simpler and more adapted to modern changes in society, according to which socially responsible business is the responsibility of business entities for the effects of their business on society. The organization World Business Council for Sustainable Development (WBCSD) describes socially responsible business as the continuous commitment of business entities to contribute to sustainable economic development by improving the quality of life of their people and their families, as well as the local community in particular.

International Business Leaders Forum (IBLF5) defines socially responsible business as the application of responsible business practices that facilitates the achievement of social, private, ecologically sustainable development by maximizing the positive impact of private property on society, while minimizing negative effects (Pavić-Rogošić, 2016).

Therefore, socially responsible business is actually a derivative of sustainable development. It should be emphasized that sustainable development presupposes the successful integration of economic growth, environmental protection and the quality of relations and development of society (social cohesion) (Rajnović, Lj., (2013). This connection of socially responsible business and sustainable development is clearly shown in the image below.

Figure 1. *Functions of socially responsible government management.*



Source: *Author's work.*

Certainly, the materialization of sustainable development requires a change in behavior patterns in all segments of activity of all economic entities, and above all the state as the creator of behavior on the market, that is, a fundamental revision and change of values (Drljača 2012). In this way, the funda-

mental starting points of socially responsible business were argued in great detail in science in such a way that four crucial responsibilities of business entities in society were distinguished and shown through the pyramid of responsibilities (Carroll 1991) as follows:

- Economic - business profitability as the foundation on which everything rests
- Legal - operate in accordance with the law
- Ethical - to work justly, properly, honestly and responsibly towards stakeholders
- Philanthropic - giving to and in the community

This demarcation of the fundamental responsibilities of business entities is very often used in discussions about socially responsible business, although another approach is also very practical (Elkington, 1998). year by discussing the measurement of business success through three perspectives: people, planet and profit.

Very often, the mentioned approach is also called “3P”. Based on this, a Venn diagram was presented in 2023 showing three key domains of corporate responsibility – economic, legal and ethical corporate responsibility (Carroll & Schwartz, 2003). From this, it is clear that philanthropic activity is omitted, but not completely, because this difference from the originally defined pyramid of responsibility is argued in such a way that the philanthropic activity of economic entities is largely connected with economic success, but also with ethical business, so it is considered that as it is not necessary to separate it out.

And no less important is to distinguish defensive from offensive social responsibility. In the first case, business entities most often start undertaking some socially responsible activities when they have already caused some kind of problem in society. Offensive social responsibility presupposes the proactive responsible action of business entities in society and a pre-planned strategy of socially responsible activities that business entities will undertake in the coming years. In that case, business entities take care every day that their business does not negatively affect their internal and/or external interest groups and behave as a good citizen who does not function in isolation but together with all other constituents in the community in which they operate.

## **Restitution of agricultural land**

The most problems in the restitution procedure were during the return of agricultural land, which was owned by the state in all LGUs throughout Serbia, much more than the land claimed in the restitution procedure. The state has prepared parcels intended for restitution, whereby large and best areas of agricultural land are exempted from restitution. The treatment of holders of restitution rights was not the same. Quality land was returned to some in one piece, while the majority were offered low-quality land, a large number of small plots, far from each other, as a result of which there was ([http://www.agronews.rs/drzava-iz-restitucije-izuzela -the best-of-land/](http://www.agronews.rs/drzava-iz-restitucije-izuzela-the-best-of-land/)) starting numerous court proceedings, or the holders accepted it only to get as much as possible (Rajnović, et al 2020).

Due to an insufficiently allocated fund for the restitution of the land, the holders of the restitution are placed in an unequal position. Those who were offered inadequate land were harmed, their right to fair restitution and the principle of equality was violated, while there is a sufficient fund of state land that can be subject to restitution.

In terms of determining the possibility of returning agricultural land in the restitution procedure, the authors analyzed the state of the existing state land fund in relation to the amount that is claimed in the restitution procedure in the JLS Ruma in Vojvodina. In 2016, based on public data published on the Administration's website, there was a total of 7,207,4594 hectares of arable agricultural land in the observed LGU. Based on the Agency's public data, the holders of restitution claimed 1,248,1484 hectares, which represents only 17.32% of the total available state fund. In all neighboring LGUs, the percentage of restitution claim holders was approximate.

Regardless of the above, part of the restitution holders received quality agricultural land, while others, with the threat of rejection of the request for land return by the Agency, were forced to take low-quality land, several small plots, distant from each other. This clearly discriminated against a large number of restitution holders. In addition to the above, the procedures take too long, which violates the right of the restitution holders to resolve their claims within a reasonable time, which is guaranteed by the Constitution of the Republic of Serbia. The authors believe that the basis of such confrontations between the state and the holder of restitution lies in the state's lack of will to return quality land.

In the case analyzed by the author, the Agency for Restitution (Agency) did not dispute the ownership of the previous owner, it made a conclusion on the expert opinion, accepted the expert opinion, and then unfoundedly made a decision rejecting the request for return with a contradictory explanation in which it does not dispute that the predecessor was owner, but states that the previous owner was not previously registered as the former owner of the plot of the old survey, but that the plot in question was subsequently entered in the same land register insert, based on the decision of the authorities at the time, so that it was then transferred to the ownership of the agrarian interested party.

Therefore, although it is indisputable that the predecessor was the owner of the disputed plot, which can be seen from the then land title (which contains information about the plot and the plot owner) and in addition to the accepted expertise that it determined itself, the Agency, after conducting all the evidence, refused to return the land. Also, in the part of the title deed, it is correctly stated that the plot was seized and assigned to an agrarian interested party, who, in accordance with the rule of legal succession, could acquire the rights that the predecessor had, namely the ownership of the plot.

At the time of confiscation of property, it was not even necessary for the person to be previously registered as the former owner of the plot of the old survey. The subject of confiscation was also off-book property, which the Agency accepted and returned property to other applicants, so with the aforementioned decision, the Agency put the applicants in a discriminatory position compared to others, which is illegal and immoral on the part of the state authority entrusted with the right to return the property.

### **Right to property**

The right to property, the right to inherit as its derivative, and in this connection the right to restitution of previously confiscated property is considered a personal right at the same time, guaranteed by the Constitution of Serbia and other regulations. Property rights aim to achieve human dignity through ensuring the economic independence of individuals (Paunović, Krivokapić, Krstić, 2018). In order to realize economic rights, the state is obliged to intervene in economic life, protecting the economically weaker from the economically stronger in order to avoid abuses and unwanted consequences of the liberal economy. In the case of the return of agricultural land, numerous holders of restitution rights encountered an unfair attitude of the state towards their constitutionally guaranteed rights.

## Conclusion

Scientists correctly concluded a little less than a century ago that the right to property has changed its legal nature and that property is no longer a right that exclusively serves the interests of the owner. In the exercise of his right, the owner is obliged to take into account the interests of the whole, because the use of private property to the detriment of the whole is prohibited.

It is clear, therefore, that the right to property has long since been deprived of its limitlessness, primarily for the purpose of protecting the public interest. Due to such a changed understanding of property, it no longer represents an absolute, unlimited right. There is, however, no general agreement on where the border is that the state must not cross, especially in cases of deprivation of property rights. The authors believe that in numerous procedures for the return of confiscated land, the state exceeded the limit of its powers in a negative sense and significantly damaged the rights of persons in the procedure for the restitution of agricultural land.

However, almost all countries in which property was confiscated after the Second World War have already carried out the restitution procedure in any case in a shorter period than Serbia, 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 laws. Serbia is still carrying out the restitution procedure, and the most problems are in procedures whose subject is the return of agricultural land. Any solution cannot lead to results in practice if they are not implemented consistently, that is, if everyone is not equal before the law and the constitution. This brings us back to the rule of law, which is a prerequisite for all changes and realization of individual rights of restitution holders.

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