EXPROPRIATION IN THE LEGISLATION OF THE TURKISH REPUBLIC OF NORTHERN CYPRUS

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ABSTRACT

The concept of expropriation, conditions of expropriation process, acquisition notice, acquisition order, cancellation of expropriation, renunciation of expropriation, compensation for expropriation, the use of expropriated property and disposal process thereof in the Turkish Republic of Northern Cyprus have been examined under the title of Expropriation in the Legislation of the Turkish Republic of Northern Cyprus in the framework of the Constitution of the TRNC, 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit and judgements of the Supreme Court of the TRNC.

Keywords*: TRNC, Expropriation, Acquisition Notice, Acquisition Order, Constitution of the TRNC.*

ÖZET

KUZEY KIBRIS TÜRK CUMHURİYETİ HUKUKUNDA KAMULAŞTIRMA

Kuzey Kıbrıs Türk Cumhuriyeti Hukukunda Kamulaştırma başlığı altında KKTC'de kamulaştırma kavramı, kamulaştırma işleminin koşulları, iktisap ihbarı, iktisap emri, kamulaştırmanın iptali, kamulaştırmadan vazgeçilmesi, kamulaştırma tazminatı ve kamulaştırılan malın kullanılması ve elden çıkarılması konuları KKTC Anayasası, 15/1962 sayılı Amme Menfaati Yararına Maksatlar İçin Zorla Mal İktisabına Dair Yasa ve KKTC Yüksek Mahkeme kararları çerçevesinde incelenecektir.

Anahtar Kelimeler*: KKTC, Kamulaştırma, Kamulaştırma ihbarı, Kamulaştırma emri, KKTC Anayasası.*

I. Introduction

Rules on proprietary rights (right to own property) are regulated under Article 36 under Chapter 3 of the Constitution of the TRNC under the title of "Social and Economic Rights and Liberties and Duties". There are regulations in Law

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15/1962, the Law on Expropriation in addition to article 41 of the TRNC Constitution. According to the Constitution of the TRNC, proprietary rights are not immune rights, but they are deemed as rights for public interest that are limited within a social nature.

The expropriation process, which is compulsorily acquired from the concerned party in order to be used for public interest, which is named as the largest restriction imposed on proprietary right, has been an issue discussed all the time.

II. The Concept of Expropriation

Even though the term of expropriation has been defined differently by many lawyers, these definitions are generally similar and they complete each other. Such that; according to Özyörük, expropriation is revocation of a proprietary right on an immovable property for public interest by the Administration by paying its equal financial value in advance (Özyörük, 1948:230). In accordance with Dönmezer, expropriation is the compulsory acquisition of the possession of properties that belong to individuals by public authority by means of paying an equitable and antecedent value (Dönmezer, 1941:41). According to Azrak, expropriation is the compulsory acquisition of immovable properties belonging to private ownership which is required by the state or other administrative legal entity in order to carry out their ordinary services by seizing them from their owner (Azrak, 1976:56). According to Günday, when expropriation is in question, public interest encounter with private interest and superiority is given for public interest. Such that, private interest is sacrificed to enable public interest, private ownership is removed on a certain immovable property and that property is placed among the properties of the administration for allocating it for the purpose of public interest (Günday, 2015:250). Gözler and Kaplan defined expropriation as; intervention made on proprietary right of individuals (Gözler/Kaplan, 2015:712). On the other hand, Zevkliler defined expropriation as transferring possession of immovable properties and resources that belong to private persons on the grounds of law compulsorily and completely or partially under the possession of public legal entity by paying its equivalent price in advance; where the possession is transferred by paying the equivalent of the expropriated property without requiring registration (Zevkliler, 1977:938).

III. Conditions on Expropriation Process

Under the expropriation and requisition title of Article 41 of the Constitution

of the TRNC, it is regulated that expropriation can be made for a purpose of public utility specifically provided by a general law for compulsory acquisition.

Regulations of expropriation in the TRNC have also been included in 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit.

The legislator has not completed the definition of public benefit in Article 3 of 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit; however, which purposes are to the public benefit have been determined.

While the Administration is carrying out its duties, the interests of the whole community and certain right communities accordingly should be prioritized instead of prioritizing people on an individual basis (Onar, 1960:1141). Therefore, public interest shows difference in each case and in case of dispute, whether the Administration abides by the public interest shall be inspected by the jurisdiction.

While the public interest is defined by the TRNC Constitutional Court, it was stated that the term of public benefit covers both public order and public interest.[1] In the respective decision, the Constitutional Court stated that due to the Constitution of TRNC, the State has a main purpose as all democratic Constitutions have. This main purpose is to fulfil public order and benefit. In our opinion, protection of fundamental rights and freedoms of individuals under the Constitution means protection of public order. The term of public benefit contains both public order and public interest. Public benefit is the benefit of the whole community. The State is the creator and protector of public benefit. The State is entitled to make an effort for creating public benefit with every means it has. This duty is required to be carried out both in regular and in extraordinary situations. In some cases, when an extraordinary situation and a state of necessity occurs, the State needs to take some measures in order to ensure and protect public benefit.

The decision on expropriation is required to be given in accordance with the conditions determined in 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit.[2] In the related decision of the High Administrative Court (YİM) it was stated that the purpose of expropriation is, as it can be

[1] Constitutional Court 6/1973, 3.8.1973 dated judgement

[2] High Administrative Court joined cases 218/1988 ve 227/1988 Distribution 7/1990, 9.3.1990 dated judgement

understood from the summarized facts that, not for town planning or a house project, but for preventing eviction of immigrants. However, under which circumstances expropriation can be made has been listed in Article 3(2) of Law numbered 15/62. It appears that the expropriation, which was made without conducting any of these, was carried out with excess of power and against the legislation in force. It is decided that the decision on expropriation is null and ineffective and it will not bear any consequence.

Action of nullity can be filed at the High Administrative Court within seventy-five days as of the order for acquisition is published in the Official Gazette. Prescription period is the seventy-five day period as of the date when the order for acquisition is published in the Official Gazette.[3] In the respective decision, YİM stated that under Article 152(3) of the Constitution of the TRNC, when a recourse is requested to be made to the High Administrative Court, such a recourse shall be made within seventy-five days from the date when the decision or act was published or, if not published or in the case of an omission, within seventy-five days from the date it came to the knowledge of the person making the recourse. Otherwise, the recourse is prescribed. As it can be seen from Exhibit 2, the decision of the Council of Ministers for expropriation, it was published in the Official Gazette dated 27.5.1994. In this case, the seventy-five-day period, which is envisaged in Article 152(3) of the Constitution, needs to begin as of the date of being published. The seventy-five-day period has expired a long time ago from the date it was published until it was filed on 30.5.2000. Not only but also, in his testimony, the Plaintiff stated that even though he became knowledgeable about the expropriation decision, which was taken in 1994 by the Council of Ministers, in 1996, he filed the action a long time later than the prescription period. As this is the case, considering that the main action was filed on 30.5.2000, the seventy-five-day prescription period, which is mandatory according to the Constitution, has expired a long time ago.

Constitutional Court of the TRNC considered that not publishing acquisition notice on the Official Gazette was sufficient for cancelling the notice.[4] In the related decision, the Constitutional Court stated that first of all, expropriation of the subject matter houses is not possible as Law 52/95. As it is emphasized in the examination section of our decision, in order for an immovable property to be able to be expropriated, there is no decision, which is taken by expropriating authority in accordance with the rules considered in a general expropriation law and which

[3] High Administrative Court 92/2000 Distribution 17/2001, 8.8.2001 dated judgement

[4] Constitutional Court 8/1995 D. 7/1996, 28.6.1996 dated judgement

clearly states the reasons of expropriation, in addition to other facts. General Expropriation Law is 15/1962 Law for Compulsory Acquisition. The Law stipulates that the following need to be published in the Official Gazette: purposes of acquisition need to be indicated (Article 3); a notice, which contains the description of the property that will be acquired, as well as the purposes and grounds of acquisition and which invited any person having interest on the property to submit any objection against the acquisition within the given period in such notice that being not less than two weeks as of the date of being published (Article 4). Not publishing the acquisition notice on the Official Gazette is sufficient for the notice to be cancelled.

Expropriation process can be made by bodies that have the expropriation authority for public services which intervene their own area of duty.

In accordance with the legislation of the TRNC, expropriation can be conducted by the State, municipalities, public legal entities, which are entitled for expropriation by the law or organizations that have public interest. Natural persons or authorities that do not have public legal entity are not entitled to conduct expropriation. As there is only one public legal entity in centralization and as the prime ministry and ministries do not have public legal entities, they cannot conduct expropriation apart from their areas of duty. Expropriation authority of ministries, which represent public legal entities in their areas of duty although they do not have public legal entities, is also accepted (Atik, 2014:305). As administrative judgement procedure has a distinctive structure, it enables those that do not have legal entity to be accepted as plaintiff and respondent in some cases (Erhürman, 2012:267).

Expropriation can be made for a purpose that is specifically pointed in 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit and that is for public interest. The reason for expropriation being made only in circumstances where public interest exists is that this is a method, which requires the State to use force and which requires a profound intervention on private ownership (Köroğlu, 1995:7).

Expropriation is made in accordance with grounds and procedures laid down in the 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit. In accordance with the principle of state of law, every transaction made by the administration is required to be lawful and the administration should use this power in a careful manner.

IV. Acquisition Notice

Article 4 of 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit has imposed the obligation for the authority, which makes expropriation, to publish the acquisition notice with regards to the property that is requested to be expropriated on the Official Gazette.

In such a notice published in the Official Newspaper of the Republic, in addition to title deed references of the property, which is planned to be expropriated, the purposes and grounds of expropriation are required to be presented as well.

Concerned parties that have objection against the expropriation are warned in the acquisition notice to submit their objections within the period given in the notice. The period of objection given in the notice cannot be less than two weeks.

In case of municipality being the authority that makes acquisition, no expropriation notice shall be published by the Council of Ministers unless a fifteen-day notice is made to the Council of Ministers that such a notice will be published.

The fact that the law imposed an obligation for competent bodies to publish the notice, which contains the property that is planned to be acquitted for public interest, the purposes of acquisition and the grounds for acquisition, on the Official Gazette in order to enable the party, which has right and benefit on the property requested to be acquired, to object, is to the point; however, it is insufficient.[5]

The respective notice should also be served to the proprietor, possessor and other concerned parties by registered mail. Publishing the notice of acquisition on the Official Gazette only with sheet and plan numbers and making an ownership search at the Land Registry Department by the administration after the acquisition notice is published, cause property owners to suffer.

The notice of acquisition will be sent in accordance with the law by making the necessary legal regulation under 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit, it will be accepted as necessary notification and it will be a significant step for the protection of proprietary right by sending a registered mail to owners by applying the method which regulates notices under article 17 by making a property research beforehand.

[5] www.adabasini.com/haber/vatandas-istimlak-mağduru-47731.html (accessed 24.4.2016)

High Administrative Court has considered that not publishing the acquisition notice on the Official Gazette for expropriation process as a reason for cancellation without looking into other conditions.[6] In the respective decision of YİM, it was stated that expropriation has been regulated with Article 41 of the Constitution of the TRNC and 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit. Article 4 of 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit has regulated that in case of a property is requested to be compulsorily acquitted for a public interest purpose, the authority that makes acquisition is required to publish a notice, which contains the description of the property that is planned to be acquired, which clearly shows the purposes and grounds of acquisition and which enables a person that has interest on such property to object for acquisition within the determined period, in the Official Gazette. However, as it has been stated before, acquisition notice on the expropriation of the subject matter building plot has not been published in the Official Gazette in this case. According to Article 161(1) (3) of the Constitution, such notice cannot enter into force unless it is published in the Official Gazette. As the acquisition notice for the building plot was not published in the Official Gazette in accordance with Article 4 of 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit, there existed a decision for expropriation, which does not have any legal impact and which is only on paper. Kyrenia Municipal Council cannot reject to give the construction permit to the Applicant by showing this ineffective expropriation decision as a reason or justification. Nevertheless, Municipal Council has rejected to give construction permit to the Applicant on the reason or justification that the subject matter building plot had been expropriated by Kyrenia Municipality. Kyrenia Municipal Council acted against the law with this action, exceeded and misused its authority. In the light of the abovementioned facts, the decision on this matter is required to be cancelled.

Article 5 of 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit regulates that after the acquisition notice is published, authorized officer and/or employee by the authority that makes expropriation can enter into the respective immovable property, can survey the property, measure its altitudes and can perform any other action that can be necessary to determine whether it is suitable for the purpose of expropriation or to appraise its value. However, some actual interventions can be made with the written permission of the person that possess the respective property. Such that; in case of the property subject

[6] High Administrative Court 131/1988 D. 6/1990, 6.3.1990 dated judgement

to expropriation being a residence, intervention can be made if a justified legal document exists. In case of intervention being made to any building other than residence, intervention can only be made by noticing the person possessing the respective property eight days before. In case of a property other than residence and building is requested to be intervened, it is compulsory to give notice to the person that possess the property one day before the intervention.

V. Acquisition Order

In case of the State is the authority that makes expropriation, the related Minister shall examine any objection raised against expropriation within a reasonable period after the period stated in the acquisition notice ends and shall bring it before the agenda of the Council of Ministers together with its proposals.

In case of the authority that makes the acquisition does not consider the raised objection appropriate or in case no objection is raised, the Council of Ministers shall approve the issuance of the order that the immovable property and/or properties, whose descriptions are given in the expropriation notice, are appropriate for expropriation for the purpose stated in the notice and shall order the immovable property to be expropriated in accordance with the rules stated in the law as per Article 6 of 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit. This order for acquisition shall be published in the Official Gazette.

The order for acquisition is issued by the Council of Ministers or the authority that makes acquisition. In case of the authority that makes acquisition being public legal entity or an institution of public benefit, there is the requirement to obtain the approval of the Council of Ministers in advance. The order for acquisition shall not be published in the Official Gazette if approval is not obtained from the Council of Ministers. In case of 12 months is passed as of the date of the related acquisition notice being published in the Official Gazette, such order shall not be issued.

VI. Cancellation or Renunciation of Expropriation

It is regulated in Article 7 of 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit that the authority that made acquisition may cancel the published acquisition notice or the acquisition order as a whole or as a certain part of the property shown in the order with an order published in the Official Gazette at any time after the acquisition notice is published in the

Official Gazette before the price of expropriation is paid or deposited. All transactions that are initiated due to the acquisition notice or acquisition order shall be null and void after the decision for cancellation and expropriation shall be considered to be renounced.

In case of the order for expropriation not being published in twelve months after the expropriation notice is published in the Official Gazette, all transactions that are initiated due to the expropriation notice shall be null and void and the acquisition order as a whole or the property or a certain part of the property shown in the order shall be considered to be renounced.

In case of expropriation being renounced partially or as a whole, the authority that made expropriation is required to make payment to any person that has interest on the property for the cost reasonably made or for the loss incurred due to the acquisition notice or the acquisition order after the acquisition notice is published.

VII. Price of Expropriation

It is obvious that the owner whose property is expropriated has incurred a loss as a result of the expropriation. This loss incurred from expropriation is compensated by paying the owner of the property a full and equitable compensation. Compensation of the subject matter right for the owner, whose proprietary right is removed, is the requirement of social state of law.

Appraisal of the price of expropriation is conducted in accordance with the rules set forth in Article 10 of 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit.

The price of expropriation should be the amount, which is expected to be obtained if it was sold by a willing seller in an open market at the date when the acquisition notice is published. After the price of expropriation is agreed on the value of the date when the acquisition notice is published, when a long time passed between the date of the acquisition notice is published and the date of payment and when changes in the value of money and loss of value particularly in the Turkish Lira are taken into consideration; it caused a full and equitable payment, which is envisaged by the Constitution, not to take place; therefore it was alleged to be against the Constitution and the TRNC Constitutional Court found that the respective

judgement contravened article 33/I (c) of the Constitution of the TRNC.[7] In the light of this decision of the Court, while the amount of compensation that will be paid is being calculated, the value of the property on the date when the compensation is determined or is paid should be taken as basis instead of the value on the date when the acquisition notice is published (Necatigil, 2015:98).

Compensation is equivalent of the loss incurred due to unilateral transaction of the administration. Possession of the owner for the property cannot be prevented unless the full equivalent of the expropriated property is paid (Özyörük, 1948:99).

The principle of equalling sacrifice requires the distribution of public obligations to be balanced and this is also resourced from the principle of equality before law (Kutlu,1992:43).

Article 41 of the Constitution of the TRNC regulates that in case of disagreement, expropriation can be made upon payment of a just and equitable compensation, which shall be determined by a civil law court, in cash, immediately or by instalments to be prescribed by law and spread over a period not exceeding five years.

Even though the Constitution of the TRNC enables institutions that are authorized to expropriate to make payment with instalments, there is no legal regulation in the legislation on how the instalments will be made and whether it was possible to demand interest.

Article 12 of 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit regulates that the agreed compensation or the compensation decided by the Court shall be paid in advance or in cash. As it can be seen from this regulation, the price of expropriation shall be paid in cash as a result of the agreement of the parties or after the compensation is determined by the Court after the order for acquisition is published in the Official Gazette.

An injured party, whose properties were expropriated; yet who could not receive their compensations for a long time, has been created due to the fact that the administration did not allocate sufficient funds for compensations before expropriation was made.

[7] Constitutional Court 14/1980 D. 6/1981, 21.1.1981 dated judgement

The rule is that the price of expropriation to be paid in advance. It is possible to say that in cases where the payment will be made in advance, the whole sum would be within the scope of obtaining sufficient fund for acquisition. In cases where it will be paid in instalments, it is required to obtain the amount that will be paid in advance and its equivalent is required to be foreseen in the budget. The equivalent of other payments of instalment extending to years are required to be obtained in the department for procedures and grounds regarding the budget (Yıldırım/Yasin/Karan/Özdemir/Üstün/Okay Tekinsoy, 2011:802).

Clause 2 of Article 12 of 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit regulates that in case of the owner not agreeing the compensation that needs to be paid or considering the compensation insufficient and/or not being paid as he is out of the TRNC, the authority that made expropriation may deposit the compensation that needs to be paid under the conditions that will be accepted by the Court to the Treasury and Finance Department by deducting taxes and fees.

Compensation can be money as well as it can be another movable or immovable property or a security such as shares and bonds. In foreign legal systems, it is prevalent for compensation to be money. In addition, not only some countries do not prohibit the administration and the party whose property is expropriated to reach an agreement through another imbursement, but also such agreements are allowed in some countries (Özyörük, 1948:103).

It has been stated in the doctrine that payment cannot be made by giving stock, bond and bill of debt (Hayta, 2014:51).

The most suitable method for being equitable is to determine the compensation, which the person whose property is expropriated is entitled to, in terms of monetary unit of measure first and then let the owner be free for choosing the type of payment. Restricting compensation only with bond, share and security increases doubt and concern on the party expropriated the property. The most appropriate condition is not to compel the individual on this matter (Özyörük, 1948:106).

There is vagueness in determining full and just compensation and it should be determined in the framework of legal principles of public in consideration of all conditions of the case and by being ‘full and just’ for both parties (Necatigil, 2015:246).

Supreme Court of TRNC defined the loss, which is suffered directly as given in Article 10. (k). of 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit as the loss which incurred for expropriation of a property, financial loss[8] In the related decision, Supreme Court stated that what is understood from the term of directly. It is defined as loss, financial loss caused due to a property being expropriated. The purpose for delivering a judgement for compensation is to compensate the loss, damage or harm suffered by the plaintiff. Loss that can be legally compensated can be categorized under two titles: Pecuniary and non-pecuniary damage. All monetary and tangible loss is covered in pecuniary damage, such as loss of income and hospital and treatment costs. Non-pecuniary damage covers physical pain or damage caused in the feelings of an individual. Pecuniary damage is calculated mathematically. Whereas, non-pecuniary damage cannot be calculated mathematically. Monetary compensation is not given to replace something; it is given in exchange for something that is more significant. The compensation that will be given will enable the suffered person to be in a position that hasn't received any suffer for the incident he has been compensated. Normal loss is the damage which will be suffered by every Plaintiff in the same position. Consequential loss is the loss specific to Plaintiff's own conditions. Loss or cost that is suffered due to loss of profit or violation can be considered as consequential loss if isn't remote. When build-and-sell is in question and the land that the build-and-sell will be constructed is expropriated, in the light of the fact that the same can be carried out in another place, it is not possible to accept that the profit which is expected and/or hoped to be obtained from the build-and-sell is considered within the scope of direct loss. Moreover, there is the principle that the loss, which can be demanded by the person who claims to suffer loss, cannot be quite remote.

VIII. Individuals Entitled to Compensation

Article 11 of 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit regulates that the person that has the right to be registered as the owner of an immovable property is entitled to have compensation for expropriation. In case of an existence of a dispute on the amount regarding the whole of the compensation or a part of it which is entitled for the individual, the dispute is decided by the Court upon the application of the authority that acquired the disputed property or the individual that has interest on such property.

Article 8 of 15/1962 numbered Law for Compulsory Acquisition for

[8] Court of Appeal joined cases 128 ve 130/2012 D.13/2013, 29.4.2013 dated judgement

Purposes to the Public Benefit regulates that the authority making acquisition may resort to negotiation method in order to reach an agreement for the price that will be paid for the property which will be expropriated with private agreement and for sharing this price among the related individuals; whereas it is regulated in Article 9 that in case of not reaching an agreement with related individuals within a month as of the date of the acquisition order being published in the Official Gazette or in case of not having a possibility to reach an agreement, the authority that made the acquisition or the related individual may apply to the Court in order for determining the compensation that will be paid for compensation and for sharing it among the related individuals. The action is filed in the district court, in which the property is within the scope of its jurisdiction.[9] In the respective decision, YİM stated that The Plaintiff/Applicant is 1/3 shareholder of the immovable property, which was inherited through probate. A part of this immovable property was expropriated by the State for the purpose of building road and compensation was not paid on the expropriated section by the Defendant/Respondent claiming that the remaining part of the property became more valuable. An action was filed at YİM for receiving compensation and the Court rejected the action by stating that the authorized court should be the district court.

Compensation is immediately paid and paid in cash to the individual and/or individuals that are entitled for compensation. In case of the interested individual not wanting to receive compensation or in case of the compensation not being paid as he is not in the TRNC, the authority that makes expropriation may deposit the amount of compensation to the Treasury and Finance Department on the condition that it is subject to any instruction of the Court. While the compensation is being paid, the authority that made expropriation deducts the taxes and other obligations regarding the expropriated property from the amount that will be paid and pays the taxes and obligations that are required to be paid to the related authority.

IX- Possession, Use and Disposal of Expropriated Property

The property whose expropriation price is paid is transferred to the possession of the acquired authority free of all encumbrances. Expropriated immovable property is registered under the name of the related authority when the fee is paid at the Land Registry and Surveys Department together with a satisfactory evidence on payment and deposit.

[9] High Administrative Court 320/80 D. 12/82, 29.3.1982 dated judgement

Expropriated property cannot be used for a purpose other than the purpose it was expropriated. In case of the expropriated property being used for a purpose other than its purpose, it is possible to file an action and the High Administrative Court.[10] If the owner of the expropriated property is deceased and if there is a dispute, administrator and inheritors may file an action at the High Administrative Court as people having legitimate interest.[11]

In case of public interest which lay the foundation for expropriation is eliminated or in case of the administration wants to fulfil public service in another way after the expropriation transaction is completed, the administration may renounce expropriation unilaterally or by reaching an agreement (Hayta, 2014:306).

As the transaction for expropriation is made for a certain purpose and reason, it is accepted that it is required to return the property to its owner if this purpose and reason is not materialized or it appears that it is not going to be materialized (Köroğlu, 1995:137).

Another interesting provision which shows that expropriation creates a significant sacrifice in our legislation is the obligation to show that the public interest seen in expropriation has been shown tangibly in a specific time. Otherwise, if a conclusion, which is suitable for public interest that is requested to be materialized with expropriation, does not appear, the authority arises for the possessor to take his property back (Uluşan, 2012:30).

In case of the purpose stated in public interest not being materialized or in case of its possibility being eliminated to be materialized, the method of returning the expropriated property to its owner can be considered (Gözübüyük/Tan, 2013:1007).

The owner of the expropriated property shall use his right to take his property by applying to the administration. However, in case of the application being rejected by the administration, filing a suit against the administration may appear. In case of this request being rejected by the administration and restitution is not being made, the action is required to be filed at the High Administrative Court as the decision delivered by the administration is an administrative transaction.

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[10] Court of Appeal 9/1985 D. 18/1985, 8.5.1985 dated judgement

[11] High Administrative Court 178/86, D. 49/87, 18.11.1987 dated judgement

The right to receive the property back for the person whose property is acquired is a right, which is given as a result of conditions that are regulated by the law are fulfilled after the transaction of expropriation is finalized and it is transferred to administration.

The authority that made the acquisition may use the acquired property only for acquisition purposes.

Article 15 of 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit regulates that in case of the purpose for acquisition is eliminated, the acquired authority renounced the purpose of acquisition or the property has been partially or completely surplus in three years as of the date the expropriated property entered into possession of the acquired property, the acquired authority may make an offer for the owner, whose property was acquired, for taking it back from the acquired price by sending a written notice.

In case of any decrease or increase takes place in the value of the immovable property or in case of a part of the immovable property being offered, the party acquired the property determines a reasonable price. The party whose property is acquired is required to give response with a written notice in three months as of the date of the notice is served.

The notice is sent to the last known residential address in the TRNC of the party whose property is acquired with a registered mail and it is published in a daily newspaper that is published and distributed in the TRNC for once.

In case of the party whose property is acquired does not reside in the TRNC, it is accepted being served in fifteen dates as of the date of whichever option of service is made later and three-month period starts as of this date.

In case of no response being given to the notice, the offer is considered as not being accepted. In case of the person whose property is acquired responds the notice positively, it makes the payment in three months as of the date of acceptance and the authority that acquired the property immediately transfers the ownership of the property on the person, whose property is acquired, at the Land Registry and Surveys Department.

In case of the person whose property is acquired does not accept the offer in three months after the written notice or in case of not paying the agreed price or if

the price is not agreed, the price determined by the Court within three months after accepting the offer or if the purpose of acquisition is materialized, however if the subject matter property is no longer required partially or completely, the party that acquired the property has the right to sell the property by way of auction and in addition, it has the right to detain the subject matter property partially or completely for another public interest.

The authority that made acquisition shall publish the title deed references, the purpose for requiring the property and the reason for detainment in the Official Gazette.

In case of the authority that made expropriation being a public legal entity or an institution for public interest, there is the obligation to receive permission from the Council of Ministers before the sale is made with auction. Even if all other conditions are fulfilled, sale cannot be made with auction unless permission is taken.

The administration that made expropriation may not conduct any transaction or installation for expropriation and transfer purpose on the expropriated property or may not allocate it for a requirement for public interest. In such case, there is a right for the owner or heirs to request the immovable property to be returned to them. This is called "the right of the proprietor to take it back (retrocession) (Köroğlu, 1995:137).

In accordance with 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit, the following conditions are required to be fulfilled in order for the right to receive the acquired property back:

a) The expropriation transaction to be completed and the property to be transferred to the possession of administration.
b) Three-year period to be expired.

The right of the former owner to take the property back shall begin three years after the expropriated property is transferred under the ownership of the acquired party.

c) Price of expropriation to be paid within three months.

In order for the expropriated property to be able to be taken back, the expropriation price that is determined by the administration is required to be paid in

three months to the administration that made acquisition. However, in case of no decrease or increase occurs in the value of the property or in case of a part of the property is being offered, the party acquired the property determines a reasonable price. The former owner has the right to object the price.

d) The acquisition purpose of expropriation to be eliminated.

It occurs in case of the authority that made acquisition renounce from the purpose of acquisition or when the property is partially or completely surplus. No transaction or instalment that is suitable for the purpose of expropriation must be made, it must not be allocated for public interest or no transaction must be made on it.

No transaction being made that is mentioned here means not conducting transactions, which are required to be made before the instalment is made that will be materialized for the purpose of expropriation. For example, if transactions such as preparing feasibility reports, making plans and projects are carried out, the owner cannot use his right to take the property back even if the instalment hasn't been made yet (Köroğlu, 1995:138).

If the administration left the property in the situation it was, did not repair, did not fence, did not begin any work, in other words, if the property stays as the same with its situation when it was taken, the owner will have the right to take the respective property back (Köroğlu, 1995:139).

By assessing each case within its specific characteristics, carrying out only preparation works shouldn't be considered that the purpose of acquisition is eliminated.

X. Conclusion

The law on expropriation in the TRNC, 15/1962 numbered Law for Compulsory Acquisition for Purposes to the Public Benefit was enacted in accordance with the Constitution of the Republic of Cyprus, which was established as a sovereign state on 16 August 1960, by the Assembly of Representatives consisting of Turkish and Greek Cypriot representatives. There have been no changes to this area of law since its enactment.

Under Article 21 of Good Governance Law no 27/2013 it is established that before any private person can lodge an administrative proceeding, in order for the

administrative proceedings be removed, withdrawn or a new proceeding to be started and such person shall apply to the higher authority and, in the absence of a higher authority to the official body making the transaction, within the time period set out for lodging a case, and that such applications will halt the term of litigation and that the authority receiving the application may reply negatively and also in the event of failing to give a reply within thirty days then the term of litigation will be resumed on. If there is a negative reply to the application made by the acquiring authority within the term of litigation as of the date on which the acquisition order is published in the Official Gazette, and in cases where no response is given as of the date of this reply, the term will be resumed following thirty days following the application.

The person whose property is acquired may object to the acquiring authority within the time period set out in the notice of acquisition that was published in the Official Gazette (which legally cannot be less than fourteen days). At this point the notice of acquisition must be delivered in person or by registered mail to their last known address in the TRNC. Under Article 17 of the Good Governance Law no 27/2013, in the event that an objection is filed by a property owner is rejected; the grounds of this rejection as well as information on the appeal ways and time limitations thereof shall be communicated to the owner.

The necessity of publishing the expropriation notice in the Official Gazette is to the point but not sufficient in consideration of the existing legal regulations and legal practice. The acquisition notice in regard to expropriation, shall be sent to the owner of the immovable property via registered mail. At this point the publication of the acquisition notice in the Official Gazette with only sheet and plan references and, the investigation of ownership by the administration after the publication of the acquisition notice result in unjust suffering of the property owners. In our opinion, due to the fact that not everyone reads the Official Gazette and the Official Gazette cannot be found everywhere, it will be equitable to notify the property owners by registered mail for any acquisition notice under Article 17 of 15/1962 Compulsory Expropriation for Public Purposes Law.

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