

LAW ON EXPROPRIATION

(Official Gazette of the Republic of Montenegro, No 55/00, 12/02, 28/06)

I Basic Provisions

Expropriation of Immovables

Article 1

Expropriation shall mean dispossession or limitation of the ownership right on immovables, when required so by the public interest, with a compensation based on the market value of immovables.

The public interest for expropriation of immovables shall be determined by law, or on the basis of law.

Through the expropriation of immovables, the expropriation user shall acquire the right to use that immovable property for the purpose that the expropriation has been done for.

The expropriation procedure and bodies for its implementation shall be regulated by this Law.

Expropriation can be complete and incomplete.

Immovables

Article 2

Under this Law, immovables shall be considered to be land, buildings and other construction facilities.

Complete Expropriation

Article 2a (Official Gazette of the Republic of Montenegro, No 28/06)

Through expropriation, the owner of expropriated immovable property shall be changed (complete expropriation).

Article 3 (Official Gazette of the Republic of Montenegro, No 12/02)

Annulled on the basis of the Decision of the Constitutional Court of the Republic of Montenegro.

Incomplete Expropriation

Article 4

Through expropriation, both easement on immovables and land lease can be created for a defined period of time (incomplete expropriation).

The lease can be created only when the land, with respect to the purpose that the lease is proposed for, shall be used for a limited period of time, at the most up to three years (for research of mineral and other wealth, the use of quarries, extraction of clay, sand and gravel, the lease of natural goods for the purpose of placing them under protection, and similar).

Upon expiration of the time period that the incomplete expropriation is performed for, the expropriation user shall be obliged to return the land into the original condition.

Temporary Occupancies

Article 5

Land that should serve a specific need regarding the construction of a facility (in order to accommodate workers, materials, machines, and similar) can be temporarily occupied (temporary occupancy).

Temporary occupancy shall be cancelled as soon as the need that it has been established for ceases to exist.

Temporary Activities

Article 6

Performance of preparatory activities for the purpose of expropriation may be allowed on a certain immovable property.

Expropriation User

Article 7

Expropriation can be carried out for the needs of the State, municipality, state funds and public companies, unless otherwise determined by law.

In the expropriation procedure, easement for the benefit of citizens can be created, if envisaged so by law, in order to install water supply pipes, electric and telephone cables, and similar.

Expropriation of the Remaining Part Article 8

If it is determined, during expropriation of one part of immovable property, that the owner does not have the economic interest to use the remaining part of the immovable property, or if, as a result, his existence on the remaining part of the immovable property is made impossible or significantly more difficult, that part of immovable property shall also be expropriated, at his request.

Compensation Article 9

Compensation for expropriated immovable property shall be determined in money, unless otherwise determined by this Law.

Expropriation of Land under Building Article 10

Through expropriation of a construction facility on urban construction land, the right to use the land under the facility and land that serves for its regular use shall be expropriated or terminated.

Return of the Expropriated Immovable Property Article 11

The expropriated immovable property can be returned to the former owner under the conditions prescribed by this Law.

Special Expropriation Procedure Article 12

In areas affected by natural disasters, expropriation of immovable property shall be implemented in accordance with a special procedure prescribed by this Law.

Competent Body Article 13 (Official Gazette of the Republic of Montenegro, No 28/06)

The expropriation procedure of the immovable property that the public interest is determined for shall be implemented by an administration body competent for registration of rights on immovables (hereinafter: the competent administration body).

Determination of Public Interest

Article 14 (Official Gazette of the Republic of Montenegro, No 28/06)

If the public interest for expropriation of immovable property is not determined by a separate law, the public interest can be determined also by the Government of the Republic of Montenegro (hereinafter: the Government), on the basis of a special study, in accordance with law.

The proposal for determining the public interest for expropriation shall be submitted by the person who, in accordance with provisions of this Law, may be the expropriation user.

The proposal for determining the public interest shall be submitted to the Government through the administration body competent for registration of rights on immovables (hereinafter: competent administration body), and it shall contain the data on immovables that the determination of public interest is proposed for, purpose of expropriation and other data important for determining a public interest.

The Government shall be obliged to make a decision on the proposal for determining public interest within 60 days.

The Government shall also determine the expropriation user by the act on determining public interest, in accordance with provisions of this Article.

Administrative dispute before the Supreme Court of the Republic of Montenegro can be initiated against the Government act on determining the public interest.

II Preparatory Activities for the Purpose of Expropriation

Performance of Preparatory Activities

Article 15

A legal entity intending to submit a proposal for expropriation can request to be allowed to carry out the necessary preparatory activities on a specific immovable property (land survey, geodetic measurements and surveying and similar) in order to develop the preliminary feasibility study or proposal for expropriation.

Proposal for the Permit

Article 16 (Official Gazette of the Republic of Montenegro, No 28/06)

In the proposal for permit for carrying out preparatory activities, the following must be included: the purpose on the basis of which the expropriation is to be proposed, the immovable property on which preparatory activities are intended to be performed,

owner of that immovable property, nature, scope and purpose of activities, as well as their duration.

The proposal for permit for carrying out preparatory activities shall be decided on by the administration body competent for registration of rights on immovables (hereinafter: competent administration body).

Prior to deciding on the proposal for permit for preparatory activities, the body competent for making the decision shall hear the owner of immovable property on facts important for the permit for carrying out preparatory activities.

Decision on the Permit

Article 17 (Official Gazette of the Republic of Montenegro, No 28/06)

If the party submitting the proposal for the permit for carrying out preparatory activities makes probable that preparatory activities are needed for the purposes determined by this Law, the administration body competent for registration of rights on immovables (hereinafter: competent administration body) shall allow the performance of preparatory activities.

In adopting the decision on the permit for carrying out preparatory activities, it shall be taken into account that they are not performed at the time inconvenient for the owner of immovable property, with respect to the cultivation of land and purpose that the immovable property is used for.

In the decision referred to in paragraph 2 of this Article, preparatory activities, which the party submitting the proposal may perform, as well as the deadline within which he shall be obliged to complete them, must be stated in addition to everything else.

The decision, under paragraph 2 of this Article, cannot allow the execution of construction or other similar works.

Compensation

Article 18

A legal entity, for whose benefit the performance of preparatory activities is allowed, shall be obliged to pay in return a compensation prescribed by this Law to the owner of immovable property.

III Expropriation Procedure

Proposal for Expropriation

Article 19 (Official Gazette of the Republic of Montenegro, No 28/06)

The proposal for expropriation may be submitted by the expropriation user, only after a public interest for expropriation of immovable property is determined in accordance with law.

The proposal for expropriation shall be submitted to the administration body competent for registration of rights on immovables (hereinafter: competent administration body) - to the regional unit in the municipality on whose territory the immovable property proposed for expropriation is located (hereinafter: competent administration body).

Contents of the Proposal

Article 20

The proposal for expropriation of immovable property must include:

- 1) The name and headquarters of the party submitting the proposal for expropriation (the expropriation user).
- 2) The immovable property proposed to be expropriated and the location of that immovable property;
- 3) The owner of the immovable property proposed to be expropriated and his habitual residence or headquarters, and
- 4) The purpose that expropriation is proposed for.

Attachments to the Proposal for Expropriation

Article 21

The following shall be attached to the proposal for expropriation:

- 1) Excerpt from the cadastre of immovables and other public books where rights on immovables are registered, which contains data on immovable property proposed to be expropriated;
- 2) Proof that the public interest for expropriation has been determined, in accordance with law.

Proof of Payment

Article 22 (Official Gazette of the Republic of Montenegro, No 28/06)

In addition to the documents referred to in Article 21 of this Law, with the proposal for expropriation, a certificate that the expropriation user paid in a special deposit account of the Ministry of Finance funds in the amount of market price of the immovable property proposed to be expropriated shall be submitted.

The competent administration body shall evaluate the market price of the immovable property referred to in paragraph 1 of this Article, at the request of the expropriation user.

The Ministry of Finance shall prescribe the manner and procedure for payment of funds referred to in paragraph 1 of this Article.

Procedure and Decision on Expropriation **Article 23 (Official Gazette of the Republic of Montenegro, No 28/06)**

The competent administration body shall implement the procedure based on the proposal for expropriation and make a decision.

Prior to adopting the decision on expropriation, the body referred to in paragraph 1 of this Article shall hear the owner of immovable property about the facts regarding expropriation.

The Ministry of Finance shall decide on the appeal against the first-instance decision adopted at the proposal for expropriation.

Request for Expropriation of the Remaining Part **Article 24**

In the case referred to in Article 8 of this Law, the body carrying out the expropriation procedure shall be obliged to inform the former owner that he can submit the request for expropriation of the remaining part of the immovable property and to enter that in the minutes.

The request under paragraph 1 of this Article may be submitted until the adoption of the final decision on expropriation.

If the request for expropriation of the remaining part of the immovable property is submitted until the adoption of the first-instance decision on expropriation, the competent body shall make a decision on the request at the same time with the proposal of the expropriation user, and if the request is submitted after the adoption of the first instance decision, the request shall be decided upon in a separate procedure.

Contents of the Decision on Expropriation **Article 25**

The decision on adoption of the proposal for expropriation shall especially include:

- 1) Indication of the expropriation user;
- 2) Indication of the immovable property to be expropriated, with indication of the data from the cadastre of immovables;
- 3) Indication of the owner of the immovable property, and his habitual residence or headquarters;

- 4) Indication of the purpose of expropriation;
- 5) The obligation of the expropriation user to meet the requirements referred to in Articles 36 and 38 of this Law;
- 6) The obligation of the owner to transfer the immovable property to the possession of the expropriation user, as well as the deadline for transfer; and
- 7) The obligation of the expropriation user to submit, within 15 days from the day of receiving the decision on expropriation, to the regional body competent for property relations a written offer regarding the form and amount of compensation for the expropriated immovable property.

Notes regarding Expropriation

Article 26

On the basis of the proposal for expropriation, the competent body shall make, *ex officio*, notes regarding expropriation in the cadastre of immovables where rights on immovables are registered.

Divestiture of the immovables for which the note regarding expropriation is made, as well as changes in the immovable property relations, which can have the impact on the obligation of the expropriation user, shall not have a legal effect against the expropriation user.

Expropriation Costs

Article 27

The expropriation user shall bear the costs of the expropriation procedure.

Taking into Possession

Article 28 (Official Gazette of the Republic of Montenegro, No 28/06)

The expropriation user shall acquire the right to take into possession the immovable property on the day when the decision on expropriation becomes valid, if he, until then, paid a compensation or transferred into the ownership of the former owner another adequate immovable property, i.e. with the proof that the former owner is properly invited, but that he refused to receive the payment of the compensation referred to in Article 22 of this Law.

Transfer of Immovable Property

Article 29 (Official Gazette of the Republic of Montenegro, No 28/06)

At the request of the expropriation user, the administration body competent for registration of rights on immovables (hereinafter: the competent administration body) may decide to transfer to the expropriation user the immovable property prior to validity of the decision on expropriation, but not prior to finality of the decision on

expropriation, if it evaluates that to be necessary due to the urgency of construction of a certain facility or execution of works.

The transfer of the immovable property into the possession of the expropriation user shall not be allowed if the expropriation user previously did not determine the necessary elements for determining the amount of compensation for the expropriated facility, under Article 25, item 7 of this Law.

If the immovable property is transferred to the expropriation user before the decision on expropriation becomes valid, and the proposal for expropriation is in a further procedure rejected by a valid decision, the expropriation user shall be obliged to return to the owner the immovable property and compensate the damage.

Restitution of expropriated property **Article 30**

The expropriation user may, until the decision on expropriation becomes valid, withdraw the proposal for expropriation.

At the request of the former owner of the expropriated immovable property, the valid decision on expropriation shall be annulled or amended, if the expropriation user has not carried out at least one third of the value of the total value of the envisaged works, from the validity of the decision on expropriation.

The body, which decided on the proposal for expropriation in the first instance, shall decide on withdrawing the proposal for expropriation and on the request for annulling or amending the valid decision on expropriation.

Prior to making a decision, the body referred to in paragraph 3 of this Article shall hear the authorized representative of the body competent for determining the public interest.

In case of a dispute, the regular court shall decide on property relations between the expropriation user and owner of immovable property.

IV Special Procedure for Expropriation in Areas Affected by Large Scale Natural Disasters

Natural Disaster **Article 31**

In areas affected by earthquake, floods, fires, ecological disasters and other large scale natural disasters, expropriation for the purpose of construction of facilities and execution of works removing the consequences caused by these disasters shall be carried out in accordance with the provisions of Articles 32 to 34 of this Law.

Decision on Temporary Occupancy

Article 32

Land can be temporarily occupied when it is necessary to do so and appropriate in order to install and construct temporary facilities (facilities for the accommodation of citizens and property, and similar).

Appeal lodged against the decision establishing temporary occupancy of the land shall not postpone the execution of the decision.

The decision on temporary occupancy of the land shall be annulled as soon as the need for which it has been adopted ceases to exist.

Transfer of Immovable Property

Article 33

The expropriation user can, on the basis of the final decision on expropriation, request the transfer of that immovable property for setting it aside for a specific purpose.

If an apartment building, apartment as a separate part of the building or business premises are expropriated, the expropriation user shall be obliged to provide the former owner with another apartment or business premises in ownership or lease.

Until the apartment or business premises are provided, the expropriation user shall be obliged to provide, prior to demolishing such a facility, the persons referred to in paragraph 2 of this Article with temporary accommodation that meets conditions of accommodation or performance of activities.

The provisions of paragraphs 2 and 3 of this Article shall be applied also in the case of expropriation of other facilities.

Areas

Article 34

The Government shall determine the areas and time for the application of the provisions of Articles 32 and 33 of this Law.

Unless otherwise determined by provisions of Articles 32 and 33 of this Law, other provisions of this Law shall apply to areas affected by natural disasters of greater volume.

V Compensation for Expropriated Immovable Property

Amount of Compensation Article 35

The value of facility given into the ownership or co-ownership in the name of compensation and value of expropriated facility, in the case of establishing the right of ownership or co-ownership, shall be determined in accordance with the market price of these facilities at the moment of creating the rights of ownership or co-ownership.

The amount of compensation in money for expropriated immovable property shall be determined at the market price, according to the circumstances at the moment of concluding the agreement on the amount of compensation, and if the agreement is not reached, in accordance with the circumstances at the moment of adopting the first-instance decision on compensation.

If the immovable property is transferred to the expropriation user prior to validity of the decision on expropriation, the former owner shall have the right to choose whether the compensation will be determined in accordance with the circumstances at the time of transfer of expropriated immovable property or at the time of adoption of the first-instance decision on compensation.

If the expropriated immovables of different types are in the ownership of the same owner, the compensation for individual types of immovables (land, building, devices, etc.) shall be stated separately in the agreement on the amount of compensation or decision of the court.

Compensation for Agricultural Land Article 36

Compensation for the expropriated agricultural land shall be determined in money in accordance with the market price of such a land.

The compensation for the expropriated cultivable agricultural land to a person whose livelihood depends on the revenue from that land, at his request and if the conditions for this have been met, shall be determined by giving into ownership another adequate land of the same culture and class or adequate value in the same place or within the nearby area.

The compensation for the former owner of the expropriated facility that was used for raising cattle and storage or processing of agricultural products, and whose livelihood depends on the revenue from those activities, at his request and if the conditions for this are met, shall be determined by giving into the ownership another facility where he can be able to continue the performance of the activities at the place proposed by the former owner within the boundaries of his agricultural land, and in accordance with the applicable regulations.

Until transferring to possession of the facility to be given into the ownership in the name of compensation, the expropriation user shall be obliged to enable, before demolition of the expropriated facility, the former owner to use another facility.

Compensation for City-Building Land **Article 37**

Compensation for expropriated building and city-building land shall be determined in money in accordance with the market price of such a land.

Compensation for Apartment and Business Premises **Article 38**

Compensation for expropriated apartment building, apartment or business premises shall be determined in accordance with the market price of such immovable property.

The expropriation user may give to the former owner of the expropriated apartment building or apartment or business premises that he used for performing the activity, at his request and if the conditions are met to do so, in ownership or co-ownership another apartment building or apartment, i.e. business premises at the same place, which, in accordance with the structure, area and location of premises correspond to the conditions of accommodation or performance of the activity, which the former owner had before expropriation.

The former owner, who has used the expropriated immovable property as referred to in paragraph 1 of this Article, shall be provided with another immovable property before demolition of the expropriated facility.

The expropriation user shall be obliged to provide the lessee of the apartment in the expropriated apartment building or apartment as a separate part of the building, before demolition of the building, with another adequate apartment for use, with the right to lease for indefinite period of time.

Difference in Price **Article 39**

In the case that the values of the expropriated facility and the facility given in the name of compensation in ownership or co-ownership differ, the expropriation user or the former owner shall be obliged to pay the other party the difference in price.

The former owner shall have the obligation referred to in paragraph 1 of this Article only in the case he agrees that the facility of value greater than the value of expropriated facility is given to him in ownership or co-ownership, in the name of compensation.

The manner, conditions or payment deadline for difference referred to in paragraph 1 of this Article shall be determined by the agreement between the parties, i.e. by the decision of the court.

Compensation for Vineyard or Orchard

Article 40

Compensation for an expropriated vineyard or orchard that give fruits shall be determined by determining compensation for the land in accordance with Article 36 of this Law, and adding to that amount the market value of non-amortized investments in growing and maintaining such a vineyard or orchard and the amount of net return that would be provided by this vineyard, with respect to its age and fertility, for the number of years necessary for the new vineyard or orchard to grow and become fertile.

Compensation for an expropriated young vineyard or orchard that do not give fruits shall be determined by determining the compensation for land in accordance with the provisions of Article 36 of this Law, and adding to that amount of the investments made for its growing and the amount of net return that would have been generated for as many years as this vineyard or orchard has until the moment of expropriation.

In accordance with the provisions of paragraphs 1 and 2 of this Article, the compensation for individual trees of orchard and grapevine located on the expropriated land shall be determined.

Compensation for Nursery

Article 41

Compensation for expropriated nursery shall be determined as in the case of agricultural land (Article 36), and the compensation determined in such a manner shall be increased for the market price of the planting material (seedlings and other material for reproduction) that the former owner has not used until the day of transferring the immovable property to the expropriation user.

Compensation for Forest

Article 42

Compensation for an expropriated mature or approximately mature forest represents the value of the forest assortments and other forest products determined in accordance with the market prices at truck road or another loading location, i.e. place of repurchase reduced by the production costs.

Compensation for the expropriated young forest shall be determined in accordance with the costs of growing such a forest increased for the factor of location value by which the value of mature forest is reached.

Compensation determined in accordance with the provisions of paragraphs 1 and 2 of this Article shall be increased by the amount of compensation for the land determined in accordance with the provisions of Article 36 of this Law.

Production costs shall mean the costs of cutting, processing and transportation of forest assortments from the forest to the truck road or another loading or repurchase location.

Costs of growing a young forest through artificial means shall be determined in the amount of forestation costs, and the costs of growing a young forest through natural means in the amount of costs of artificial forestation by seeds.

Type of Forest

Article 43

Under this Law, approximately mature for cutting forest shall mean that even-aged forest, the two thirds of which, at least, are mature, whereas young even-aged forest shall mean that forest where up to two thirds of forest is forest mature for cutting.

Uneven-aged forest (selection cut forest and clear-cut uneven-aged forest) shall be considered as the forest mature to be cut.

Plants on the Construction Land

Article 44

Compensation for vineyard, orchard, nursery and forest located on the construction land shall be determined in accordance with the provisions of Articles 40 to 42 of this Law.

Compensation for Investments

Article 45

The former owner shall not be entitled to compensation for investments made after the day he was informed in writing on the submitted proposal for expropriation, besides the costs that were necessary for using the immovable property.

The notification on submitted proposal for expropriation shall be submitted to the former owner by the body competent for adoption of the decision on expropriation.

Article 46

In the procedure for determining the compensation, in accordance with the provisions of this Law, the compensation can be determined in the amount greater than the market price, taking into consideration material and other personal and family circumstances of the former owner, if those circumstances are of a substantial importance for his existence (big number of household members and number of

members capable to earn their living or employees, health condition of members of the household, monthly revenues of the household, and similar).

Harvesting Crops Article 47

The former owner shall be entitled to harvest crops and collect fruits from the expropriated land.

The body competent for adopting the decision on expropriation may, in emergency cases, allow the expropriation user, at his request, to start performing the works on the expropriated land prior to the time when crops or fruits become mature for harvest or collection.

If the former owner was not able to harvest the crops or collect fruits, because the expropriation user was allowed to start works prior to harvesting crops and collecting fruits, the former owner shall be entitled to compensation for crops or fruits in accordance with the market price after deduction of necessary costs he would have had by harvesting or collecting.

Compensation for Creating Easement Article 48

In the case of creating easement, the compensation shall be determined in the amount for which, due to creation of easement, the market value of the land or buildings is reduced.

The compensation referred to in paragraph 1 of this Article shall be determined in accordance with the procedure for determining the compensation prescribed by this Law.

Compensation for Establishing the Lease and Temporary Occupancy Article 49

In the case of establishing a lease or temporary occupancy of the land, the compensation shall be determined in the amount of lease on the market realized for the closest similar land.

The compensation shall be determined in the form of a one-time amount, during the period of the lease and temporary occupancy in equal time intervals, starting from the day of transferring land into a lease and the day of starting temporary occupancy.

Compensation for Preparatory Activities

Article 50

The compensation for preparatory activities shall be determined in the amount and in the manner prescribed by this Law for creating the lease, provided that the basis for calculating the compensation is the value of duration of preparatory works and time for restoring the original function or function of future purpose.

Compensation for Damage

Article 51

The compensation referred to in Articles 49 and 50 of this Law shall not exclude the right to compensation of damage in accordance with the regulations on liability for damage.

Agreement on Compensation

Article 52

The parties may agree on the forms and amount of compensation, as well as on the transfer of immovable property that is being expropriated outside the procedure prescribed by this Law until the decision on expropriation becomes valid.

In the case of agreement, a further procedure on expropriation shall be terminated.

Hearing about Compensation

Article 53

After the decision on expropriation becomes valid, the competent administration body shall be obliged to, with no delay, schedule and hold the hearing for mutual determination of compensation for expropriated immovable property.

The expropriation user shall be obliged to submit a written offer on the amount of compensation to the body referred to in paragraph 1 of this Article within the deadline that cannot be longer than 15 days from the day when the decision on expropriation becomes valid.

The body referred to in paragraph 1 of this Article shall, without delay, submit a copy of the offer to the former owner of the expropriated immovable property, and shall obtain from the administration and other bodies and organizations a notification on facts that could be of importance for determining the compensation by mutual agreement.

Contents of the Agreement on Compensation

Article 54

The following must especially be determined by the agreement on compensation for the expropriated immovable property: the form and amount of compensation, the deadline within which the expropriation user is obliged to fulfill his obligations, as well as obligations of the former owner, if they are contracted by the agreement.

The agreement on compensation shall be entered in the minutes, which must contain all data necessary for fulfilling the obligations of the parties.

Types of Agreements on Compensation

Article 55 (Official Gazette of the Republic of Montenegro, No 28/06)

In the procedure before the competent administration body or before the competent court, the parties may reach an agreement about: giving another immovable property in ownership or co-ownership instead of the expropriated immovable property; monetary amount of compensation; mutual additional payments of the difference in value of the immovable property; on transfer of expropriated facilities to another location as regulations allows; on the construction of access path; a passage and access roads, as well as other actions allowed by law.

Submission of Documents to the Court

Article 56 (Official Gazette of the Republic of Montenegro, No 28/06)

If the agreement on compensation is not reached in its entirety, within two months from the day the decision on expropriation becomes valid, the competent administration body shall submit a valid decision on expropriation, with all documents, to the court on whose territory the expropriated immovable property is located, in order to determine compensation.

If the competent body does not act in accordance with the provision of paragraph 1 of this Article, the former owner and expropriation user may directly contact the court for the purpose of determining the compensation.

Encumbrances and Other Limitations

Article 57

Personal easement and all real encumbrances, besides real easement whose execution is possible upon earmarked use of the expropriated immovable property, shall cease to exist on the expropriated immovable property on the day the decision on expropriation becomes valid.

Mortgage created on the expropriated immovable property shall be assigned to the immovable property given into the ownership in the name of compensation or to another personal property of adequate value.

The property rights referred to in paragraph 1 of this Article shall be deleted from the cadastre of immovables at the proposal of the expropriation user.

Registration of Ownership

Article 58 (Official Gazette of the Republic of Montenegro, No 12/02)

(Paragraphs 1 and 2 shall be annulled on the basis of the Decision of the Constitutional Court of the Republic of Montenegro).

Registration of ownership and other rights on immovables that are in the name of compensation given to the former owner shall be done on the basis of valid decisions on expropriation and execution documents on compensation.

Article 58a (Official Gazette of the Republic of Montenegro, No 28/06)

Registration of ownership and other rights on expropriated immovable property shall be done on the basis of valid decision on expropriation and proofs of paid compensation.

The request for registration may be submitted by any party.

Payment of Fee

Article 59

In the procedure for expropriation and determination of compensation for expropriated immovable property, all documents and decisions are exempted from fee payment.

Records on Expropriation

Article 60 (Official Gazette of the Republic of Montenegro, No 28/06)

The competent administration body shall keep the records on expropriation of immovables for the municipal territory.

The administration body competent for registration of rights on immovables (hereinafter: competent administration body) shall prescribe the contents and manner of keeping the records on expropriation of immovables.

VI Transitional and Final Provisions

Previous Procedures

Article 61

The procedure upon the proposal for expropriation, which has not been terminated by a valid decision until the effective day of this Law, shall be terminated in accordance with the procedures of the former law, except in the cases when subject of expropriation are business and apartment facilities.

The procedure for determining compensation for expropriation of immovable property where, until the effective day of this Law, the agreement on compensation is not reached, or valid court decision adopted, shall be terminated in accordance with provisions of this Law.

Superseding

Article 62

On its effective day, this Law shall supersede the Law on Expropriation (Official Gazette of the Socialist Republic of Montenegro, No. 20/81 and 10/90).

Coming into Force

Article 63

This Law shall come into force on the eighth day upon its publication in the Official Gazette of the Republic of Montenegro.

Note:

The Decision of the Constitutional Court of the Republic of Montenegro determining that the provisions of Article 3 and Article 58, paragraphs 1 and 2 of the Law on Expropriation (Official Gazette of the Republic of Montenegro, No 55/2000) are not compliant with the Constitution of the Republic of Montenegro

The Constitutional Court of the Republic of Montenegro, composed of: president Nikola Vujanovic and judges: Bozidar Martinovic, Radojko Djuricanin and Sefko Crnovrsanin, on the basis of the provisions of Article 113, paragraph 1, item 1 of the Constitution of the Republic of Montenegro, Article 51, paragraph 2 and Article 56, item 1 of the Law on the Constitutional Court of the Republic of Montenegro (Official Gazette of the Republic of Montenegro, No 21/93), at the meeting held on the 12th of February 2002, adopted the

Decision

It is determined that the provisions of Article 3 and Article 58, paragraphs 1 and 2 of the Law on Expropriation (Official Gazette of the Republic of Montenegro, No 55/2000) are not compliant with the Constitution of the Republic of Montenegro, and that they shall be annulled on the day of publication of this decision.

This decision shall be published in the Official Gazette of the Republic of Montenegro.

Rationale

Pursuant to the decision of the Constitutional Court of the Republic of Montenegro, No 14/2001 from the 11th of December 2001, the procedure for evaluation of constitutionality of provisions of Article 3 and Article 58, paragraphs 1 and 2 of the Law stated in the disposition of this decision is initiated.

The Constitutional Court has determined, upon considering the contested provisions of Article 3 and Article 58, paragraphs 1 and 2 of the Law, at the meeting held on the 12th of February 2002, that they are not harmonized with the Constitution of the Republic of Montenegro.

The contested provisions of the Law prescribe the following: the owner, i.e. ownership form on the expropriated immovable property (complete expropriation) is changed on the day the decision on expropriation becomes valid; the registration of ownership and other rights on the expropriated immovable property shall be made on the basis of a valid decision on expropriation, and the request for registration can be submitted by any party.

The Constitution of the Republic of Montenegro prescribes that law, in accordance with the Constitution, regulates the manner of exercising freedoms and rights, if it is necessary so in order to exercise them, and other issues of interest for the Republic (Article 12, items 1 and 4); the freedoms and rights cannot be violated (Article 16, paragraph 1); the ownership right is guaranteed and no person can be deprived of the ownership right and the ownership right cannot be limited, except when required

so by public interest determined by law or on the basis of law, with the compensation that cannot be lower than the market one (Article 45); the Parliament adopts laws, other regulations and general acts (Article 81, item 2), and law must be compliant with the Constitution, whereas other regulation and general act with the Constitution and law (Article 107).

It can be concluded from the quoted provisions of Article 45 of the Constitution of the Republic of Montenegro that the ownership right is guaranteed and that no one can be deprived of ownership rights and the ownership right cannot be limited, except when required so by the public interest determined by law or on the basis of law, with compensation that cannot be lower than the market one. The Constitution, thus, guarantees the ownership right and only in exceptional situations it allows for the possibility of depriving of or limiting the ownership right, in the case when it is required so by the public interest determined by law or on the basis of law. While doing so, the owner of property whose ownership right is taken away or limited must be paid the compensation that cannot be lower than its market value. Therefore, the Constitution determines, in addition to the reasons for depriving of or limiting the ownership right, the minimum threshold for determining compensation for taken away ownership right or its limitation, as equivalent. The upper compensation limit is not determined by the Constitution. The intention is, therefore, not to place the former owner, by application of measures regarding taking away of the property, into less favourable condition than the one he was in before the application of such measures. In accordance with that, depriving of ownership right or limiting that right is inseparably connected with determining and payment of associated compensation, i.e. equivalent, the amount of which cannot be lower than the market price of the property on which the ownership right is taken away or limited. Therefore, in accordance with the evaluation of the Constitutional Court, determination and payment of compensation must happen prior to the transfer of ownership right or, at the latest, at the same time with the transfer of that right. On the contrary, the contested provisions of the Law enable that the expropriation user registers the ownership right on the expropriated immovable property on the day when the decision on expropriation becomes valid, thus depriving the former owner of that right prior to the payment of the relevant compensation for that immovable property, even before determining that compensation, if parties did not agree on forms and amount of compensation and transfer of immovable property prior to validity of the decision on expropriation. Therefore, the contested provisions of the Law are not in compliance with the Constitution of the Republic of Montenegro.

On the basis of the aforementioned reasons, it has been decided as stated in the disposition of this decision.

The decision on annulling the contested provisions of the Law and publication of this Decision is based on the provisions of Article 115, paragraph 1 and Article 116, paragraph 3 of the Constitution of the Republic of Montenegro.

No 14/2001

Podgorica

February 12, 2002

President of the Constitutional Court of the Republic of Montenegro

Nikola Vujanovic, signed