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PARCIJALNA DENACIONALIZACIJA IMOVINE VJERSKIH ZAJEDNICA

S A Ž E T A K

U socijalističkoj Jugoslaviji, pod okriljem države, imovina je mjerom nacionalizacije u različitim postupcima oduzimana i samim vjerskim zajednicama i zadužbinama bez ikakve naknade ili uz simboličnu naknadu, čime je sprovedena kolektivizacija i stvoreno društveno vlasništvo. I pored toga što oduzimanje imovine ovim subjektima nije bilo neophodno čak ni radi ekonomskih i socijalnih ciljeva koji su se željeli postići, uzimajući u obzir gotovo identičnu svrhu korištenja imovine vjerskih zajednica i imovine nacionalizirane radi ostvarenja proklamirane ideje eliminiranja siromaštva, posljedica komunističke ideologije bilo je zadiranje i u pravo vlasništva vjerskih zajednica.

Denacionalizacija u post-socijalističkim zemljama kao opredjeljenje nije sama sebi cilj, već se sprovodi u okviru općeg postupka privatizacije – najvećeg projekta vlasničkog prestrukturiranja ikad zabilježenog radi uključivanja u globalne svjetske tokove, nakon što je utvrđena ekonomska neefikasnost društvenog vlasništva i došlo do pada komunizma, kako bi se reafirmiralo privatno vlasništvo, uspostavio međunarodni princip nepovredivosti prava vlasništva i ispravila povijesna nepravda prema nekadašnjim vlasnicima. Iako je namjera tranzicijskih zemalja da povrate nacionaliziranu imovinu bivšim vlasnicima veoma pohvalna, provođenje tog procesa u nekim zemljama, kao što je to slučaj u Bosni i Hercegovini, nije dalo sasvim adekvatne rezultate. Povrat nacionalizirane imovine u okviru procesa privatizacije, umjesto njenog prethodnog izdvajanja i vraćanja naturalno ili kompenzacijski da bi se uspostavila ravnoteža u odnosu na stanje koje je prethodilo oduzimanju imovine, doveo je do parcijalne denacionalizacije na određenim objektima, pri čemu u konačnici vjerske zajednice i zadužbine nisu posebno tretirane u odnosu na ostale ovlaštenike denacionalizacije. Time su silom prilika favorizirane određene grupacije bivših vlasnika u odnosu na objekte, ali uglavnom na njihovu štetu, neprincipijelnim davanjem prednosti subjektima privatizacije. Najeklatantniji primjer je žrtvovanje nacionaliziranih stanova u korist nosilaca stanarskog prava, čime su u velikoj mjeri pogođene i vjerske zajednice, uzimajući u obzir porijeklo i svrhu korištenja njihove imovine.

Nakon uvodne analize pojma vjerskih zajednica i zadužbina te porijekla i svrhe korištenja njihove imovine, u ovom doktorskom radu dat je prikaz evolutivnog i

komparativnog imovinsko-pravnog položaja vjerskih zajednica u dvije Jugoslavije (Kraljevini Jugoslaviji i socijalističkoj Jugoslaviji), s posebnim osvrtom na oduzimanje njihove imovine u postupku agrarne reforme u Kraljevini Jugoslaviji, te putem nacionalizacije i drugih pro-komunističkih mjera u socijalističkoj Jugoslaviji. Potom je elaborirana vlasnička transformacija – vraćanje vlasničkoj koncepciji privatizacijom i do sada provedenom parcijalnom denacionalizacijom, kao i pokušaji rješavanja opće denacionalizacije imovine vjerskim zajednicama u Bosni i Hercegovini. Posebno je s pravnog aspekta analiziran institut denacionalizacije, dat komparativni prikaz zakonske regulative denacionalizacije imovine vjerskih zajednica, te istaknuti mogući problemi povrata imovine vjerskih zajednica i zadužbina i s aspekta prakse domaćeg pravosuđa te jurisprudencije Europskog suda za ljudska prava. Slijedom navedenog, imajući u vidu nezavršenost procesa denacionalizacije u Bosni i Hercegovini općim denacionalizacijskim propisom, na kraju rada učinjena je ocjena postojećeg stanja i budućnosti denacionalizacije, uz ponuđene prijedloge za konačno uređenje ovog pitanja *de lege ferenda*.

Ključne riječi: *nacionalizacija, denacionalizacija, restitucija, privatizacija, vjerske zajednice, zadužbine, vakuf, stanarsko pravo, agrarna reforma, društveno vlasništvo*.

Sabina Hadžizulfić

PARTIAL DENATIONALIZATION OF RELIGIOUS COMMUNITIES' PROPERTY

S U M M A R Y

In Socialist Yugoslavia, under the aegis of the state, property was also seized from religious communities and pious endowments through various procedures of nationalization without any compensation or with symbolic compensation, which implemented collectivization and created social property. Besides the seizure of property from such entities was not necessary, not even for the purpose of economic and social goals that were to be achieved, taking account of almost identical purpose of use of religious communities' property and the property nationalized in order to implement the idea of poverty elimination, the result of communist ideology was also encroaching upon the property rights of religious communities.

Denationalization in the post-socialist countries as strategy was not a purpose for itself, but it was carried out within the general privatization procedure – the largest project of property restructuring ever for the purpose of inclusion into the world's global courses, after having established economic inefficiency of social property and communism failed, in order to reaffirm private ownership, establish international principle of inviolability of ownership rights and redress the historic wrong done to the former owners. Although the aim of the transition countries to return the nationalized property to the former owners was worthy of praise, the process implementation in some countries, as is the case in Bosnia and Herzegovina, did not yield entirely adequate results. The return of the nationalized property under the privatization process, instead of previous separation and return in kind or through compensation to establish balance with respect to the status preceding the seizure of property, led to partial denationalization of certain buildings; eventually, religious communities and pious endowments were not specially treated compared to other authorized entities of denationalization. Thus, owing to circumstances, certain groups of the former owners were favoured with regard to buildings, mainly to their own detriment, by unprincipled giving a priority to the privatization entities. The most striking example is the sacrifice of nationalized flats to the benefit of tenancy rights-holders, which greatly affected religious communities as well, taking account of the origin and purpose of use of their property.

After the introductory analysis of the notion of religious communities and pious endowments and the purpose of their property use, this doctoral paper gives a survey of evolutionary and comparative ownership-legal position of religious communities in two Yugoslavias (the Kingdom of Yugoslavia and Socialist Yugoslavia), with special reference to the seizure of their property under the agrarian reform in the Kingdom of Yugoslavia and through nationalization and other pro-communist measures in Socialist Yugoslavia. Then, the ownership transformation has been elaborated - return to the ownership concept through privatization and partial denationalization carried out to date, as well as attempts to resolve general property denationalization in favour of religious communities in Bosnia and Herzegovina. From legal aspect, the institute of denationalization has been especially analyzed, a comparative survey of legal regulations of religious communities' property denationalization has been given, and possible problems of return of property of religious communities and pious endowments have been pointed out from the aspect of local judicature and jurisprudence of the European Court of Human Rights. In view of the above, bearing in mind incompleteness of the denationalization process in Bosnia and Herzegovina by general denationalization regulation, the paper ends with evaluation of the existing status and future of denationalization, with proposals for final settlement of this issue *de lege ferenda*.

Key words: *nationalization, denationalization, restitution, privatization, religious communities, pious endowments, vaqf, tenancy rights, agrarian reform, social ownership.*