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SPECIFICITIES OF THE PROPERTY RESTITUTION PROCEDURE UNDER THE LAW OF THE REPUBLIC OF SERBIA

ABSTRACT: In all the republics of the former Yugoslavia, including in the Republic of Serbia, property relations were highly dynamic, with the answer to the question of who held ownership rights frequently changing. In Serbia, among the last countries in the region, a systemic law regulating property restitution was only passed in 2011 – the Law on the Restitution of Confiscated Property and Compensation. This law, encompassing both substantive civil and procedural administrative law, introduces a special procedure for the return of confiscated property and compensation, in which, in certain areas, significant deviations from the general rules of administrative procedure are evident. This paper examines the specificities of the property restitution procedure as a special administrative procedure and highlights the key differences compared to the general administrative procedure.

Keywords: *property restitution, administrative procedure, special administrative procedure.*

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Introductory remarks

The restitution of confiscated property represents a relatively novel legal phenomenon, that is, a legal institute, which, in the first place, seems to be peculiar primarily to countries with a previous socialist system. This because the socialist system implied a significant reduction in the scope and importance of private property, while state and common social property expanded and strengthened. After the establishment of the system of competitive economy, the abolition of socialism, and an increase in the importance of private property, states found themselves in a problem regarding property rights over property confiscation from private persons, and then transferred to state or social property. The subject of this paper is the review of certain issues regarding legal regulation of the issue of property restitution in the Republic of Serbia. The paper aims to provide an overview of the key regulation of property restitution in our country, in particular to point out the differences that exist between the rules of the general administrative procedure, on the one hand, and the rules of the property restitution procedure, as a special administrative procedure, on the other hand. The methods used in this paper are the normative-dogmatic method, the legal-economic method, the historical method, as well as the deduction method, which applies general principles to specific issues.

1. A historical overview of the regulation of property restitution in the Republic of Serbia

Discussions about property restitution and its necessity, in our country, have been taking place for almost three decades. Viewed from the constitutional legal perspective, the prerequisites for privatization were created in 1988 with the adoption of the Amendment to the Constitution of the SFRY, which fundamentally changed the concept of property relations, reaffirmed the right to property, and thus opened up space for private property in all areas and activities, without limitation. Even then, it became quite certain that the right of the new owners to unlimited private property required opening the issue of returning property to its previous owners, and their heirs, which, under significantly different circumstances, was taken from them by state intervention measures (Veselinov, 2017, p. 2; Stefanović, 2008).

Although the Law on Property Restitution and Compensation (hereinafter: Law on Restitution or LR), was long anticipated, this law was not the first by which the state tried to eliminate the consequences of property confiscation

carried out during the first decades after the establishment of the socialist regime. As the concept of religion, in fact, stood in opposition to socialism, its ideals and goals, the churches and religious communities, practically, represented the enemy of the state. Consequentially, there are numerous immovable and movable properties that the state confiscated from churches and religious communities.

That is why back in 2006, *i.e.*, a full 5 years before the law regulating general restitution was adopted, the *Law on the Restitution of Property to Churches and Religious Communities* was passed which came into effect on October 1, 2006. This regulation is significantly narrower in scope, compared to the general Law on Restitution but, unlike the Law on Restitution, faced no major problems in its enforcement. This regulation was, as can be deduced from the name itself, of limited scope and referred only to property that was confiscated from churches and religious communities, *i.e.*, legal entities, *i.e.*, parties to the proceedings could only be churches and religious communities. The law limited the possibility of submitting a claim for the return of property to 2 years, *i.e.*, until September 30, 2008.[1] What turned out to be a good solution in this law was that the legislator resorted to a broad definition of regulations according to which property was confiscated. Namely, Article 3, Paragraph 1, Item 1 of this law stipulates that the regulations on confiscation of property *"*means the regulations of AVNOJ, DFY, FNRY and SFRY, as well as regulations of the Republic of Serbia and the SR of Serbia after the Second World War, according to which the state, for its own benefit or for the benefit of other legal or natural persons, confiscated property from churches and religious communities*"*, while in the general Law on Restitution, the legislator resorted to listing the regulations on the basis of which the confiscation of property had taken place.[2] On October 6, 2011, sixty-six years after the first confiscation of property following the Second World War, and five years after the adoption of the Law on the Restitution of Property to Churches and Religious Communities, a Serbian law on general restitution took effect.

[1] In essence, the same period of two years was also contained in the Law on Restitution, although the start date was not definitively defined but stipulated that the claim must be submitted within 2 years from the publication of the public invitation from the Agency for Restitution, on the website of the ministry in charge of financial affairs (Law on Property Restitution and Compensation, 2011, Article 42).

[2] Samardžić correctly observes that the effort to unnecessarily limit the application of the law by the "initial" date of confiscation (March 9, 1945), on the one hand, and by the list of regulations according to which confiscated property can be subject to restitution, on the other hand, indicates a rather restrictive attitude of the legislator in relation to general restitution and, in a rather skilful way, in the language of nomotechnics (Samardžić, 2012, p. 450).

According to the express provision of Article 1 of this law, this law regulates the, "terms, method and procedure for the restitution of and compensation for the property which was confiscated on the territory of the Republic of Serbia with the application of regulations on agrarian reform, nationalization, sequestration, and other regulations, on the basis of nationalization acts, after **9 March 1945**, from natural persons and legal entities and transferred into national, state, social or cooperative property (hereinafter referred to as "property restitution"), (underlined by author)". On the other hand, Article 2 of the Law on Restitution foresees, according to the *numerus clausus* principle, an exhaustive list of regulations according to which property was confiscated and whose return was made possible by the Law on Restitution.

2. On the relationship of the property restitution procedure and the general administrative procedure

It could be said that the property restitution procedure represents a special administrative procedure[3], the subject of which is the resolution of an administrative matter related to deciding on the return of property rights over previously confiscated property, as one of the forms of administrative matters. The property restitution procedure is being conducted with a purpose of determining ownership rights, *i.e.*, the return of previously confiscated property to the former owner or his heirs, or for the purpose of determining monetary compensation in case of impossibility of natural restitution. Having that in mind, the relationship between the property restitution procedure and the general administrative procedure is, by its very nature, a relationship between the special and the general.

The need for specialized administrative procedures is required by the broad range of administrative areas and their unique characteristics. Consequently, the Law on General Administrative Procedure (LGAP) aims to establish minimum rules common to all administrative activities and procedures. However, even the most comprehensive legislation on general administrative procedures cannot account for every specific peculiarity of various specialized procedures, and our legislator and the LGAP are no exception.[4] Therefore, LGAP, in its Article 3, allows for certain issues of (special) administrative procedure to be regulated by a special law, but only if that is necessary in specific administrative area, and if it is in accordance with the basic principles determined by LGAP,

[3] See in detail about special administrative procedures in: Lončar, 2016, pp. 1231–1249.
[4] On the shortcomings of the LGAP, see in detail Milkov, 2017.

and if such special rule do not reduce the level of protection of rights and legal interests of the parties guaranteed by the LGAP

As we can see, LGAP itself foresees for the possibility of deviating from its provisions. However, the enactor of the LGAP did not leave the next legislative majority, nor to the executive branch, a complete freedom to prescribe deviations at their discretion. In that sense, the enactor of the LGAP set relatively clear conditions that must be met for a deviation from the rules of general administrative procedure to be considered as permitted and justifiable. Therefore, the legislator set a confines within which every future legislator and executive must move when they prescribe rules for special administrative procedures.[5] For such special administrative activities and areas for which a deviating procedure has been prescribed by special legal procedural provisions of the law, those provisions are followed and those provisions "must be in accordance with the basic principles established" by LGAP (Dimitrijević, 2019, p. 232). Firstly, as explicitly stated in Article 3 of the LGAP, special administrative procedures cannot be exclusively governed by separate legislation; instead, only certain administrative procedural matters may be regulated differently and separately. The following limitation refers to the act, in the formal sense, and the adopter of that act, who can define rules for a special administrative procedure. Only the formal enactment of law by parliament can authorize deviations from the general administrative procedural rules. This means that any exceptions or modifications to these rules must be explicitly established through legislative processes overseen by the parliament as the legislative body, which must be considered as reasonable and justified, bearing in mind that it was the parliament who defined the rules of general administrative procedure, thus only it can prescribe deviations from the same. In addition, as Milkov (2017) correctly observes, "the legislative body is the most democratic body, *i.e.*, the state body, and as the rules of general and special administrative procedure cover a wide range of people, *i.e.*, almost every citizen, only the representative body is authorized to adapt the general administrative procedure to the specifics of certain administrative areas, when necessary" (p. 76).

[5] At this point, the author points out the existence of unresolved issues regarding the concept of "systemic laws", which was created through the practice of the Constitutional Court (see: IUz-185/2018, Dissenting opinion of Judge Korhetz, T.), which raised one varient of law above all other laws making it as some kind of "supra law", being directly below the Constitution, but above other laws. However, the intention of the drafters and enactors of the Constitution on the possibility of the laws of different levels cannot be found nowhere in the text of the Constitution, neither explicitly nor implicitly.

Therefore, Article 3 of the LGAP enables the introduction of special rules for special administrative procedures. However, only with the adoption of the corresponding law, which deviates from the rules of the LGAP, will this article be implemented. In this sense, Article 11, Paragraph 1 of the Law on Restitution prescribes that the procedure according to the property restitution claim will be carried out according to the provisions of that law, while the following sentence read that, *"*the provisions of the law governing the general administrative procedure shall be applied to matters not regulated by this law[.]*"* This provision establishes a two-way connection between the LGAP and the LR, because the LGAP imposes frameworks within which deviations from the general administrative procedure are permitted, while the LR directly and unequivocally returns the referral back to the LGAP for all issues that are not expressly regulated by that law.[6]

The Law on Restitution prescribes certain deviations from the rules of the general administrative procedure, and this paper points out that these deviations include rules regarding the parties to the procedure, deadlines for decision-making, the jurisdiction of authorities, and other issues that, as *lex specialis*, have been provided for by the Law on Restitution.

3. Deviations from the rules of the Law on General Administrative Procedure contained in the Law on Restitution

Therefore, when conducting the property restitution procedure, the special legal rules contained in the Law on Restitution are primarily applied, while the rules of the general administrative procedure are applied as secundary. In this sense, special rules related to the property restitution procedure are contained in Chapter Four of the Law on Restitution, and includes the provisions of Articles 39–50. In terms of scope, this is certainly one of the less extensive derogations of the rules set forth in LGAP.[7]

[6] The discrepancy between special laws regulating specific administrative areas and the provisions of the Law on General Administrative Procedure (LGAP) remains unresolved, despite the deadline for harmonizing these special regulations with the LGAP having expired in June 2018.

[7] For example, the tax procedure is almost entirely regulated by a special law – the Law on Tax Procedure and Tax Administration – with legal solutions that are very often diametrically opposed to the provisions of the LGAP, which certainly calls into question the justification of such regulation bearing in mind that Article 3 of the LGAP foresees the possibility of the partial regulation of a special administrative procedure, and not the whole, as well as the provision according to which special regulations cannot reduce the level of protection of rights and legal interests guaranteed by the provisions of the LGAP.

At this point, we should recall the provision of Article 3 of the Law on General Administrative Procedure which allows for special rules for special administrative procedures, but only on the condition that the deviation is, "in accordance with the basic principles determined by this law", and that such deviation, "does not reduce the level of protection of the rights and legal interests of the parties guaranteed by this law." Therefore, from a strictly formal point of view, the special rules for the property restitution procedure should not go against the basic principles of the LGAP, nor should they violate the level of protection of the rights and legal interests of the parties guaranteed by the LGAP. However, as will be seen below, the principles contained under Article 3 of the LGAP have not always been respected.[8]

3.1. Parties to proceedings regarding the claim for property restitution

Starting from the general definition of a party from Article 44, Paragraph 1 of the LGAP according to which, "a party in administrative proceedings is a natural or legal person whose administrative matter is the subject of administrative proceedings and any other natural or legal person whose rights, obligations or legal interests can be affected by the outcome of the administrative procedure", it can be seen that the determination of a party, in terms of the Law on Restitution, is quite narrow. Namely, the Law on Restitution stipulates that, "A party in the proceeedings shall mean a person on whose request a process has been initiated, or a person who has a legal interest, an obliged party as well as the State Attorney of the Republic." (Law on Restitution, Article 39). However, this norm is not complete in terms of the answer to the question of who can be a party to the request for the property restitution procedure, because the provision is partly of a blanket character. In order to get an answer to this question it is necessary, through a systematic interpretation, to look at all the provisions of the Law on Restitution, especially the provisions of Article 5 of the Law on Restitution, which stipulate that the right to property restitution or compensation is granted to:

[8] Bearing in mind the fact that the LGAP was adopted five years after the enactment of the Law on Restitution, one could argue that harmonization between these special rules and the rules of the LGAP cannot be expected. However, this point of view cannot be accepted for the simple reason that the legislator himself, in enacting the LGAP, prescribed in Article 214 of the LGAP that special laws regulating certain issues of administrative procedure would be harmonized with the LGAP by June 1, 2018, at the latest. As it has turned out, this deadline passed and many special laws regulating certain administrative procedural issues remained unaligned with the provisions of the LGAP.

1. A domestic natural person who is the former owner of the confiscated property, and in the event of their death or declaration of death, their legal inheritors, as determined by inheritance regulations in the Republic of Serbia and the provisions of the Law.
2. An endowment whose property has been confiscated, or its legal successor.
3. The former owner who recovered their former property that was confiscated based on an encumbered legal transaction.
4. A natural person who concluded a sales agreement with the state authority between 1945 and 1958, if court proceedings determine that the person was harmed by the purchase price; this person shall have the right to compensation reduced by the amount of the paid purchase price, in accordance with the Law.
5. A natural person who is a foreign citizen, and in the event of their death or declaration of death, their legal inheritors, based on the principle of reciprocity.

Therefore, the right to property restitution is almost entirely reserved for natural persons, while legal persons, with the exception of endowments, remain denied the right to claim property restitution or compensation. Apart from the question of the constitutional justifiability of such approach, bearing in mind the provisions on the prohibition of discrimination and equality under law[9] it seems completely clear to us that this determination significantly narrows the definition of a party defined by the provisions of the LGAP, and thus reduces the level of protection of rights and legal interests of all legal entities that remained outside the definition of the Law on Restitution, which in itself is contrary to Article 3 of the Law on General Administrative Procedure. In the specific case, with the consistent application of the principle of "systemic law", the Constitutional Court would have to, even though such jurisdiction was not afforded to it by the Constitution, establish that the provision of Article 39 of the Law on Restitution was inconsistent with the provisions of Articles 3 and 44 of the Law on General Administrative Procedure, because it reduces the degree of protection of rights and legal interests guaranteed by the Law on General Administrative Procedure.

A special curiosity of the provision of Article 39 of the Law on Restitution is the stipulation that the party in the proceedings is also the State's Attorney

[9] What the Constitutional Court of Serbia has already declared and what has already been discussed in the previous footnotes.

of the Republic.[10] Namely, since this body is not one of the listed subjects who can submit a claim for property restitution, nor would this, by the nature of the matter, be logical, and since the essential role of the state attorney's office is to represent the property rights and interests of the Republic of Serbia, it is the only logical and a legally acceptable conclusion that the state attorney appears as an opposing party in the proceedings, standing opposite the party that submitted the claim. From this provision, it is only possible to conclude that the property restitution procedure can be conducted as a multi-party administrative proceeding – when the State Attorney's office decides to act in a specific case on behalf of the Republic of Serbia. Bearing in mind the fact that the case is decided by the Agency for Restitution, as the acting authority, with the application of relevant regulations and based on the established factual situation, and bearing in mind that the Republic itself adopted this regulation for the purpose of returning confiscated property, with natural property restitution enjoying priority over monetary compensation (as a mean of property restitution), and as it is in the interest of the Republic that restitution procedures be completed as soon as possible, it is not entirely clear why it was necessary to enable the intervention of the State Attorney's office and prevent the Agency for Restitution from quickly, in shortened examination procedures conducted within a reasonable period of time, deciding on the submitted claims.

3.2. Initiating a property restitution procedure and submitting a claim

The question procedure being initiated is also differently regulated in relation to the general rules of the LGAP. Although it can be considered that the restitution procedure is fully regulated by the Law on Restitution, the provisions contained in the LGAP should also be taken into account given the fact that certain ways of initiating this procedure, which have been prescribed by the LGAP, have been excluded by the LR. Namely, as a general rule, Article 90 of the LGAP regulates the initiation of administrative proceedings. Thus, Paragraph 1 of this Article stipulates that the procedure, "is initiated at the request of the party or ex officio", while Paragraph 2 stipulates that, "the

[10] The Law on Restitution mentions the Republic's public attorney, although that body has not existed for a long time. In its place, a new body was established – the State Attorney's Office of the Republic of Serbia, *i.e.*, the State Attorney of the Republic of Serbia.. Bearing in mind what has been said, in this paper the term corresponding to current legislation will be used – state attorney's office, instead of the legal term. This is just one more example in a series of inconsistencies between the Law on Restitution and other current regulations.

procedure is initiated ex officio when it is prescribed by the regulation or when the authority determines or learns that, considering the factual situation, it is necessary to protect the public interest."[11]

In addition, the LGAP provides for another way of initiating administrative procedure. Namely, LGAP, in its Article 94, foresees for the option of initiating the procedure with a public invitation. Thus, according to Paragraph 1 of this Article the authority can initiate proceedings with a public invitation when dealing with a large number of persons who are unknown or cannot be identified, if these persons may have the capacity to be parties to the proceedings, and the authority's request is essentially the same for all of them, and according to Paragraph 2 the procedure is initiated when a public invitation is published on the authority's web presentation and notice board. However, the Law on Restitution itself does not foresee for the possibility of such an initiation of a property restitution procedure, but still contains a reference norm to the LGAP.

In such a state of affairs, the question can be raised as to whether the property restitution procedure can, in some cases, be initiated *ex officio* or by public invitation. The answer to this question is not simple or uniform and, in our opinion, the activity of the authority, which *ex officio* publishes a public invitation and which a party responds to by submitting a claim, is necessary for the restitution procedure to commence. Thus, each of the elements: 1) the activity of the acting authority *proprio motu*, 2) public invitation, and 3) the activity of the party – submission of a claim, represents, individually, *conditio sine qua non* for initiating and conducting restitution proceedings.

Namely, the Law on Restitution foresees and insists, formally, on only one way of starting the property restitution procedure: at the request of the party. Contrary to the usual way of prescribing, nowhere in the Law on Restitution can one find an express provision that would state the manner of initiating the procedure, and nowhere does the legislator explicitly state the exclusion of other ways of initiating the procedure. However, with a systematic interpretation of the Law on Restitution,[12] it will be clear that the only way to formally initiate the procedure is a corresponding claim by an applicant. However, there is one (pre)condition for claim submission. Article 40, Paragraph 2 of the Law on Restitution stipulates that the Agency

[11] For the critic of the solution and clumsy legislative approach see Milkov, 2017, p. 169.

[12] Article 11 addresses, "The procedure according to the claim shall be carried out..."; Article 39 states that, "the party in the proceedings is the person at whose claim the proceedings were initiated..." From this follows that the restitution procedure is, in fact, a procedure that is initiated based on a claim submitted by the applicant.

shall announce a public invitation for the submission of claims for property restitution in at least two newspapers distributed throughout the Republic of Serbia, as well as on the official website of the Ministry of Finance and the Agency, within 120 days from the date of entry into force of the Law, while the interpretative provision of Article 3, Paragraph 1, Item 5 of the Law on Restitution prescribes, "under the term "Claim for property restitution", i.e., "compensation"(hereinafter referred to as the "claim") shall mean a claim which a party authorized by the Law submits to the Agency on the basis of an announced public invitation." From the above, it is clear that in order to submit a claim, it is necessary for the acting authority – the Agency for Restitution – to previously publish a public invitation for the submission of claims. This is because the Agency for Restitution is entrusted with the implementation of the entire property restitution procedure.

From the above, it can be concluded that, in this particular case, it is a *sui generis* way of initiating administrative proceedings. This is due to the fact that the action of any subject, by itself, is not sufficient – if the Agency for Restitution publishes an invitation, and the entitled persons do not submit a claim, the procedure cannot be initiated. On the other hand, if an entitled person submits a claim without a public invitation being published beforehand, the restitution procedure cannot be initiated. Therefore, both conditions must be met. Strictly speaking, although it is an unusual choice of the legislator, it could not be said that this manner of initiating the procedure derogates rights or reduces the level of protection as foreseen by the LGAP. This *a fortiori* since the LGAP itself, under Article 90, Paragraph 5, prescribes that the proceedings cannot be initiated *ex officio* in administrative matters in which, by law or nature of the matter, the procedure can only be initiated at the request of an entitled party. Thus, it is not unreasonable to consider that the previous condition of publishing a public invitation is a justified and legitimate manner of the initiation of the property restitution procedure.

When it comes to the claim itself, its form and elements are established in advance, while the method and procedure for receiving and processing the claim, as well as the list of post offices where the claim can be submitted, are to be defined by the finance minister (Law on Restitution, Article 42).[13]

According to Article 42, Paragraphs 1 and 2 of the Law on Restitution, the claim with corresponding appendices must be submitted to the acting regional unit of the Agency for Restitution via the post office, within two

[13] For a detailed description of the necessary elements of the claim and appendices, see Article 42, Paragraph 3-5 of the Law on Restitution.

years from the date of publication of the public invitation on the website of the Ministry of Finance.

As nothing else is stipulated in the Law on Restitution itself, the provision of Article 91, Paragraph 1 of the LGAP has to be applied, according to which the procedure is initiated by the entitled party's claim when the authority receives it.

If the claim is not submitted on the appropriate form, that is, if it is not submitted with all the necessary elements and with all the necessary attachments, such a claim is, in accordance with the provisions of Article 43, Paragraph 1 of the LR, dismissed as incomplete. In that case, the applicant can submit a new claim if the period of two years from the date of publication of the invitation has not expired (Law on Restitution, Article 43, Paragraph 2). An appeal is not permitted against the act dismissing the request as incomplete, but an act can be challenged before the Administrative Court (Law on Restitution, Article 43, Paragraph 3).

3.3. The deadline for rendering a decision based on a claim

The Agency for Restitution decides on the merits of a claim with a decision on the return of property or compensation.[14] The Agency for Restitution must issue a decision on the merits of the claim within 6 months of receiving the complete claim, with the exception that this deadline can be extended by another 6 months in particularly complex cases (Law on Restitution, Article 46).

Prescribing such long deadlines for decision-making, in principle, is not in accordance with the provisions of Article 3 of the LGAP, in terms of Article 145 of the LGAP. Namely, Article 145, Paragraph 2 of the LGAP prescribes that when the procedure is initiated by an entitled party, and when an administrative matter is decided in the direct decision-making procedure, the deciding authority is required to issue a decision no later than within 30 days from the initiation of the procedure, while Paragraph 3 of the same Article stipulates that when the procedure is initiated by the claim of an entitled party and when the administrative matter is not decided in the direct decision-making procedure, the deciding authority is required to issue decision no later than 60 days after the initiation of the procedure.

[14] For a detailed overview of the elements contained in the authority's decision, see Article 47 of the Law on Restitution.

These two provisions do not contain an exception. It implies that the decision will be made and that the party will be informed about the same within 30 or 60 days from the initiation of the procedure, which, as we pointed out earlier, is being counted from the date of submission of a proper claim.

Since the deadlines prescribed in the Law on Restitution are significantly longer than those prescribed by the LGAP, it must be concluded that the special norm derogates the protections, *i.e.*, lowers the level of protection of the party's rights and legal interests guaranteed by the LGAP. Therefore, any potential assessment of the compliance of these provisions with the provisions of the LGAP would have to conclude with finding of a violation.

3.4. Appeal in the property restitution procedure and other legal remedies

As part of the basic human right, the right to a legal remedy envisaged by the Constitution of the Republic of Serbia and the European Convention on Human Rights, the right to appeal is recognized to any applicant who believes that a right has been denied or violated during the property restitution procedure by the adoption of a decision on the return of property or compensation. In contrast to the rules of the general administrative procedure contained in the LGAP, which prescribes the right of raising objections and filing of appeals, tin respect of the Law on Restitution, an appeal is the only legal remedy available to the party in property restitution procedure.

An appeal during the restitution procedure means a legal remedy by which an entitled person (applicant, obligee and state attorney; Law on Restitution, Article 48, Paragraph 1) disputes the legality or regularity of a first-instance decision of the Agency for Restitution made during the property restitution procedure. An appeal, therefore, can only be filed against those decisions that pertains to the merits of the claim.

Similar to the rules of the general administrative procedure and according to the provisions of Article 47 of the Law on Restitution, an appeal can be filed against a first-instance decision, unless the law prescribes otherwise, but, although the Law on Restitution does not expressly provide for the same, an appeal can also be filed in the event that, at the request of the applicant, the decision was not rendered within the prescribed time period. This is so called "silence of the administration", which pertains to the inactivity of the acting body in respect filed claim, "which entails numerous consequences" (Torbica, 2021, p. 143).

An appeal can be filed within 15 days from the date of receipt of the decision (Law on Restitution, Article 48, Paragraph 1). An appeal filed against a first-instance decision is decided by the Ministry for Finance (Law on Restitution, Article 48, Paragraph 2), which, we believe, should be understood to mean that appeals are decided by the finance minister, or a person authorized for that purpose by the finance minister.

However, the Law on Restitution also provides specific rules regarding appeals in property restitution proceedings, which, it can be said, significantly deviates from the rules contained in the LGAP. Namely, the Law on Restitution prescribes a less favorable provision for the party which refers to the deadline for the decision of the second-instance body, ignoring the framework established by Article 3 of the LGAP. Namely, as a rule of general administrative procedure, Article 174 of the LGAP stipulates that a decision on the appeal shall be issued without delay, and no later than within 60 days from the date of submission of an appeal, unless a shorter period has been prescribed by law. Therefore, this provision foresees the only possibility for a separate regulation to provide a shorter deadline for deciding on an appeal, which is also in accordance with Article 3 of the LGAP. However, as Article 48, Paragraph 2 of the Law on Restitution stipulates that the finance ministry "must decide on the appeal within 90 days from the date of receipt of the appeal", this provision is inconsistent with Article 3 of the LGAP in terms of Article 174 of the LGAP, because prescribing a longer deadline for deciding on an appeal significantly reduces the degree of protection of the rights and legal interests of the parties guaranteed by the LGAP, and within which limits special regulations must operate.

In addition, since the Law on Restitution does not provide an explicit rule regarding the suspensive effect of an appeal, the general administrative procedure rule from Article 154 of the LGAP has to be applied, according to which an appeal, unless otherwise prescribed, has a suspensive effect. Therefore, it must be concluded that, in the absence of a separate norm, the general rule must be applied, and the appeal in the property restitution procedure has a delaying effect, which could be criticized only in case when the Agency accepts the claim and the appeal is filed only by the State Attorney's office.

What is commendable is that the possibility of challenging the final administrative decision before the Administrative Court has been foreseen, as urgent (Law on Restitution, Article 48, Paragraph 3). Nevertheless, we believe that the legislator, perhaps bearing in mind the importance of the issue to be decided during the property restitution procedure, should have foreseen

the possibility of enabling an extraordinary legal remedy in an administrative dispute – a request to review a court decision against a decision of the Administrative Court.

4. Conclusion

It is true that the Law on Restitution contributed to a lot to the correction of the historical injustice that was committed against numerous subjects, by confiscating their private property with or without legal basis. However, this law introduced certain problems into our society and the domestic legal order.

Starting from its subject, this paper has pointed out the key problem of the restitution procedure, which represents the problem of the relationship between the rules of the general administrative procedure and the special property restitution procedure. Namely, the main issue stems from the legislator's ambitious goal in the 2016 "new" LGAP, which sought to create minimal protection for the rights and legal interests of parties in proceedings through a one single regulation, and to prevent any weakening of these protections with special legislation. Moreover, the "new" LGAP was adopted five years after the Law on Restitution. Consequently, in the property restitution process, there are many provisions that address specific administrative procedural issues differently, often to the detriment of the parties involved.

Due to the unique position imposed by the Constitutional Court's opinion on so-called "systemic laws," a reasonable legal method must be found to simultaneously apply conflicting provisions from different laws, resolving the conflict on both *in abstracto* and *in concreto* levels. This author, guided by the protective legislative intent behind the Article 3 of the LGAP, suggests that, as a starting principle for resolving this issue, all conflicting norms of the general and special administrative procedures should be interpreted and applied in the manner most favorable to the party involved.

De lege ferenda, maximum efforts should be made to harmonize the rules of general administrative procedure with special administrative procedures, particularly the property restitution procedure, which already should have been done by the June 1, 2018. It is possible that some subsequent legislator will be more consistent and fairer. In addition, the legislator should correct the injustice done to legal entities (legal persons) as former owners, with the exception of endowments, and enable them too, *i.e.*, the return of confiscated property to its legal successors, or to provide them with monetary compensation. Finally, bearing in mind the importance of the matter to be decided on during the property restitution procedure, it would not be unreasonable to envisage

the possibility of enabling an extraordinary legal remedy in an administrative dispute. This is the only way, we believe, that the state would correctly solve the problem of returning to legal and natural persons property confiscated during the socialist system.

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SPECIFIČNOSTI POSTUPKA RESTITUCIJE U PRAVU REPUBLIKE SRBIJE

APSTRAKT*:* Na prostorima svih republika bivše Jugoslavije, pa tako i na prostoru Republike Srbije, pitanje svojinskih odnosa je bilo izrazito dinamično, te se odgovor na pitanje titulara prava svojine često menjao. U Srbiji se, među poslednjim zemljama u regionu, tek 2011. godine doneo sistemski zakon koji reguliše restituciju – Zakon o vraćanju oduzete imovine i obeštećenju. Ovim zakonom, koji obuhvata materijalno građansko i procesno upravno pravo, predviđa se poseban postupak vraćanja oduzete imovine i obeštećenja, gde se, u pojedinim oblastima, u znatnoj meri odstupa od opštih pravila upravnog postupka. Ovaj rad ispituje osobenosti postupka restitucije kao posebnog upravnog postupka i ukazuje na ključne razlike u odnosu na opšti upravni postupak.

Ključne reči: *restitucija imovine, upravni postupak, posebni upravni postupak.*

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