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# **EXPROPRIATION ISSUES THROUGH THE PRISM OF LIMITATIONS OF CONSTITUTIONAL GUARANTEES OF PROPERTY RIGHTS IN THE LEGAL SYSTEM OF THE REPUBLIC OF CROATIA**

**ABSTRACT:** Although the institution of expropriation is known in all contemporary legal systems, it should be observed through the lens of limitations on the constitutional guarantee of property rights. This is especially important since the inviolability of property is one of the highest values of the Croatian constitutional order, which in itself serves as a criterion for interpreting the Constitution of the Republic of Croatia. Therefore, the focus of this paper is on the theoretical definition and normative framework of expropriation through the analysis of relevant constitutional and legal provisions, with particular attention given to the jurisprudence of the Constitutional Court of the Republic of Croatia. Finally, the paper addresses several contentious issues regarding the legal regulation of expropriation in Croatia, as well as the need for specific solutions *de lege lata* and *de lege ferenda*.

**Keywords:** *expropriation, property rights, Constitution, Constitutional Court.*

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## 1. Introduction

The Constitution of the Republic of Croatia (hereinafter: the Constitution), as the fundamental legal act of the Croatian state, is not value-neutral but is based on the highest values it embodies, which serve as the foundation for its interpretation. One of the fundamental values of the constitutional order of the Republic of Croatia, as proclaimed in Article 3 of the Constitution, is, *inter alia*, the inviolability of ownership. Furthermore, Article 48 of the Constitution guarantees the right to ownership as a human right, with constitutional judicial protection ensured before the Constitutional Court of the Republic of Croatia (hereinafter: the Constitutional Court). Specifically, the principle of the inviolability of ownership, i.e., the constitutional guarantee of the right to ownership, is one of the principles that is significantly applicable in expropriation procedures.

Although the state is authorized, through legally justified actions, to limit or, in certain cases, even to take ownership, such measures are permissible only when they are strictly necessary and in the interest of the national community, i.e., in the public interest. In other words, the fundamental criterion for expropriation is the public interest, which exists, for example, when it is necessary to construct major infrastructure projects for which the acquisition of land is a *conditio sine qua non*.

This paper is based on research conducted using the methods of content analysis and synthesis, as content analysis has proven suitable for examining the historical development of the institute of expropriation. This method allows for tracking legal changes, identifying existing problems, and proposing potential solutions for improving normative regulation. Qualitative content analysis enabled an objective examination of various data on the topic, while the method of synthesis facilitated the contextualization of data from different sources into a new coherent whole.

The aim of the paper is to examine the issue of expropriation from various perspectives, particularly from the standpoint of normative regulation and theoretical determination. This is done through the constitutional role of the inviolability of ownership and the limitations of ownership rights guarantees within the legal system of the Republic of Croatia, with special attention given to the jurisprudence of the Constitutional Court. The paper seeks to contribute to a deeper understanding of the exceptional importance of the inviolability of ownership as a fundamental constitutional principle and the constitutional guarantee of ownership rights in the context of expropriation. This is achieved through legal recognition and practical application.

Accordingly, the paper highlights certain contentious issues in the legal regulation of expropriation in the Republic of Croatia, emphasizing the need for specific solutions both *de lege lata* (under current law) and *de lege ferenda* (for future legislation).

## **2. Constitutional Guarantee and Constitutional Court Protection of Ownership Rights**

### ***2.1. The Inviolability of Ownership as a Fundamental Constitutional Value***

It was initially emphasized that, as the fundamental legal act of the Croatian state, the Constitution is not value-neutral but is founded on ethical principles expressed through its fundamental values. Article 3 of the Constitution stipulates the highest values of the constitutional order of the Republic of Croatia as: freedom, equality, national equality and gender equality, peacemaking, social justice, respect for human rights, preservation of nature and the human environment, the rule of law, a democratic multiparty system, and, relevant to the topic at hand, the inviolability of ownership. It is worth noting that the highest values of the Croatian constitutional order were already prescribed in the 1990 Constitution and were intended to serve as the basis for establishing and achieving a modern democratic state. The second amendment to the Constitution in 2000 further specified that these highest values serve as the foundation for interpreting the Constitution (Šarin, 1997).

Since the Constitution represents a unified whole, it cannot be approached in a way that extracts a single provision from the overall relationships it establishes, interpreting it separately and mechanically, without regard to all the other values protected by the Constitution. The structural unity of the constitutional text gives rise to an objective order of values, which, as such, must be protected and promoted. In other words, the Constitution possesses an internal unity, and the meaning of any individual part is inherently linked to all other provisions. Viewed in this sense, the Constitution reflects comprehensive principles and fundamental decisions that must guide the interpretation of all its individual provisions.

This means that the two classical groups of rights protected by the Constitution, namely, the group of personal, civil, and political rights and the group of economic, social, and cultural rights, which includes the right to ownership, must be considered as a unified whole, coordinated and equally

valued protected goods. In summary, no constitutional provision can be isolated from its context and interpreted independently. Each constitutional provision must always be interpreted in accordance with the highest values of the constitutional order of the Republic of Croatia, including the inviolability of ownership. These values, as noted at the outset, serve as the foundation for interpreting the Constitution itself. For the Constitutional Court's legal position on the unity of the constitutional text, see, for example, Decision No. U-I-3789/2003 et al., dated December 8, 2010; Decision and Resolution No. U-IP-3820/2009 et al., dated November 17, 2009; and Decision No. U-I-3597/2010 et al., dated July 29, 2011.

It is particularly noteworthy that the Constitutional Court, in its constitutional jurisprudence, has confirmed that Article 3 of the Constitution has an additional function. In addition to serving as a foundation for interpreting the Constitution, it also acts as a guideline for the legislature when elaborating on individual human rights and fundamental freedoms guaranteed by the Constitution. Therefore, it is directed at state authorities rather than directly at citizens. The highest constitutional values, thus, should guide administrative bodies and courts in resolving individual cases, since, according to the Constitution, courts and other state bodies base their decisions on the Constitution, laws, international treaties, and other valid sources of law (Smerdel, 2010; Häberle, 2002; Scalia, 1997; Dworkin, 1985).

However, it is important to emphasize that the Constitutional Court, after some hesitation, expressed in 2014 its stance that fundamental values, although not constituting a direct constitutional basis for protecting constitutional rights and freedoms through the institution of constitutional complaints, must be considered alongside other guarantees of human rights and fundamental freedoms (See Decision and Resolution No. U-III-6559/2010, dated November 13, 2014).

In summary, fundamental values represent an ethical concept underlying the Croatian Constitution, aiming to avoid arbitrariness in its interpretation and application. Observing Article 3 of the Constitution through the principles of constitutionalism, its significance lies in the fact that it represents a list of the highest criteria for interpreting any constitutional provision. This is particularly relevant given the brevity of the Constitution, which at times requires interpretation to establish the true meaning of individual provisions and the Constitution as a whole, especially when dealing with broad concepts such as the inviolability of ownership (Bačić, 2011; Bačić, 2006).

Obiter dicta, the Constitutional Court, recognizing this fact, has developed extensive case law interpreting the highest values of the constitutional order

of the Republic of Croatia. Their content, indeed, has been interpreted by the Constitutional Court in numerous decisions and rulings, primarily in proceedings for the abstract constitutional review of laws and subordinate acts (protection of constitutionality in abstracto), but also in proceedings for specific constitutional review (in concreto protection of constitutionality) (Šarin, 2015; Krapac, 2014).

## ***2.2. Constitutional Guarantee of the Right to Ownership***

Constitutional guarantees, including the constitutional guarantee of the right to ownership, are primarily aimed at protecting the rights and freedoms of individuals or social groups or safeguarding certain relationships that form the socio-economic foundation of society or its superstructure. Given the above, when discussing the inviolability of ownership, Article 3 of the Constitution must also be emphasized alongside Article 48, which explicitly guarantees the right to ownership.

At the time the Constitution was adopted, this marked a return to classical sources of constitutionality, as the restrictions on ownership characteristic of the former communist system were abolished. The Constitution eliminated the dualism of property relations and no longer recognizes social ownership. Moreover, the Constitution prescribes and guarantees the inviolability of (individual) ownership belonging to a specific natural or legal person, guaranteeing the holder of ownership rights the right to dispose of their property (Crnić, 1991).

Ownership is, therefore, a fundamental legal institution for delineating private property relations within a community. From a constitutional perspective, its most important aspect is its private usability and the general freedom to dispose of the object of ownership. Since ownership is not absolute, it must be shaped and protected through legal regulation, adapting its content and function to changing social and economic circumstances. The state has committed to this regulation by embedding the guarantee of the right to ownership in the Constitution, as well as its social function, according to which ownership entails obligations. Hence, ownership holders (and their users) are required to contribute to the general welfare.

Thus, the constitutional norm guaranteeing the right to ownership must be interpreted broadly to extend beyond the guarantee of individual ownership of a specific item to include ownership as a legal institution within the legal system of the Republic of Croatia. For the Constitutional Court's legal position see Decision No. U-I-46/1994, dated November 30, 1994.

Since ownership, in the sense of Article 48(1) of the Constitution, “must be interpreted very broadly” as encompassing “in principle all property rights,” including economic interests inherently tied to property and the legitimate expectations of parties that their property rights, based on legal acts, will be respected and their realization protected, the Constitutional Court has adopted general legal positions on the inviolability of ownership and the constitutional guarantee of ownership rights. See, for example, Decision No. U-III-661/1999, dated March 13, 2000; Decision No. U-IIIB-1373/2009, dated July 7, 2009; Decision No. U-III-3871/2009, dated May 13, 2010.

It should be noted that while the constitutional guarantee of ownership rights binds the legislature, which may not limit ownership below the level set by the Constitution, this does not mean the legislature cannot adapt specific elements of ownership rights to social, economic, environmental, and other circumstances of societal development. However, this can only be done while preserving the “essence of ownership rights.” The constitutional guarantee of ownership rights protects this right from state encroachments, broadly understood, as encompassing all property rights. In other words, the guarantee of ownership rights prevents administrative authorities, whether through individual acts or regulations, from infringing on ownership by imposing certain obligations to act, tolerate, or refrain, except where such encroachment is based on law, as will be discussed further in the text.

### ***2.3. General Legal Positions of the Constitutional Court on the Constitutional Guarantee of Ownership Rights***

The general legal positions on the constitutional guarantee of ownership rights, or the content of the three constitutional rules on ownership, were first elaborated by the Constitutional Court in Decision No. U-IIIB-1373/2009 of July 7, 2009. It relied on the legal positions of the European Court of Human Rights (ECHR) regarding the protection of ownership under Article 1 of Protocol No. 1 to the European Convention on Human Rights (hereinafter: the Convention). The Constitutional Court emphasized that Article 48(1) of the Constitution, which guarantees ownership rights, must be viewed in conjunction with Article 50 of the Constitution, which regulates the constitutional possibilities for its deprivation or limitation to protect certain constitutional values or goods.

The first rule, contained in Article 48(1) of the Constitution, is of a general nature and prescribes the guarantee of ownership rights. It requires that the state not abolish the essence of ownership rights, which include the

general freedom to dispose of the object of ownership. Above all, the essence of ownership rights encompasses private use, meaning that the object of ownership belongs to the right holder for their benefit, serving as a basis for free private enterprise and work. The constitutional guarantee of ownership thus requires that the owner be provided with free space within the property-legal sphere, allowing them to develop and independently shape their personal and entrepreneurial spheres of life.

Unlike the first rule, the second and third rules pertain to certain degrees of interference with ownership rights. The second rule, contained in Article 50(1) of the Constitution, governs the expropriation or restriction of ownership, which shall not be considered constitutionally impermissible if it is prescribed by law, is in the interest of the Republic of Croatia, and if compensation equal to the market value of the expropriated or restricted property is ensured and paid. Thus, the second rule permits state interference in ownership rights when it is in the interest of the Republic of Croatia. The Constitution, in fact, provides the basis for determining that the cited article refers to the general interest, i.e., the interest of the Republic of Croatia directed toward achieving the common good. Therefore, any interference in ownership undertaken in the interest of the Republic of Croatia, whether it involves expropriation or restriction, presupposes compensation of market value guaranteed by the Constitution. The foundation of such compensation lies in the fact that, in all mentioned cases, the goal of limiting or expropriating ownership is precisely to contribute to the realization or improvement of the common good, which is the previously emphasized social function of ownership.

However, the third rule, contained in Article 50(2) of the Constitution, grants the legislature the authority to restrict ownership rights by law without the obligation to pay any compensation. It is important to emphasize that the legislature can do so only in exceptional circumstances, i.e., when necessary measures must be taken to protect certain constitutional values or goods that the constitutional framers deemed so important as to place them under the category of state or general community interests: the protection of the interests and security of the Republic of Croatia, nature, the human environment, and public health. This concerns the protective function of ownership, inherently tied to the public interest of the community as a whole or its parts. As noted, the Constitution does not guarantee compensation for such restrictions. It is particularly important to stress that the three constitutional rules on ownership are neither independent nor unrelated. Specifically, the second and third rules, which pertain to certain degrees of interference with ownership rights, must always be interpreted in light of the general guarantee of ownership rights.

This means that before considering whether the first rule has been respected, it must be determined whether the other two rules apply to the specific case or law under constitutional review.

Thus, the legislature is tasked with realizing the guarantee of ownership rights and, taking into account the socially just regulation of ownership, considering the protected interests of private owners and general or public interests, establishing a fair balance that aligns the two. Just as the guarantee of ownership rights does not protect the abuse of ownership, the social function of ownership does not justify disproportionate or excessive restrictions on private ownership rights. For the Constitutional Court's legal position see Decision No. U-I-763/2009 et al., dated May 30, 2011.

In this sense, the principle of proportionality applies to all rules on ownership. That is, any regulation of ownership must ensure the mentioned fair balance and an even relationship between the ownership rights of private individuals and general or public interests. In other words, interference with ownership rights must ensure a fair balance between the demands for respect and protection of the constitutional right to ownership of private individuals and the demands of state, public, or general community interests, which may include the protection of the opposing rights or interests of third parties. Therefore, in every individual case, there must be a reasonable proportionality between the means used to expropriate or restrict ownership and the goals intended to be achieved. The constitutional order of the Republic of Croatia is based on the principle of proportionality, as stated in Article 16 of the Constitution, which reads: "Freedoms and rights may only be restricted by law to protect the freedoms and rights of other people, the legal order, public morality, and health. Any restriction of freedom or rights must be proportionate to the nature of the necessity for the restriction in each individual case."

It should be noted, however, that the state enjoys a certain margin of appreciation in applying measures related to ownership and contractual and other relationships associated with it, just as it does in applying measures in other areas connected to the country's social, financial, or economic policies. The Constitutional Court must consider this margin when examining alleged violations of ownership rights in each individual case it reviews. A similar stance is upheld by the European Court of Human Rights (ECHR), as seen, for example, in *Agosi v. the United Kingdom*, Application No. 9118/80, ECHR Judgment, October 24, 1986, para. 52, and *Stretch v. the United Kingdom*, Application No. 44277/98, ECHR Judgment, June 24, 2003, para. 37. (Omejec, 2013; Letsas, 2007).

In conclusion, we can summarize that in the constitutional order of the Republic of Croatia, ownership may be expropriated: a) only by law, b) only if an interest of the Republic of Croatia is established, and c) with compensation equal to market value, while the restriction of ownership (not expropriation) is exceptionally allowed only by law to protect: a) the interests and security of the Republic of Croatia, b) nature, c) the human environment, and d) public health.

### **3. Normative Framework for Expropriation in the Republic of Croatia**

#### ***3.1. The Concept and Assumptions of Expropriation***

From the earliest days of human society and the establishment of social relations through legal norms, the institution of ownership has emerged as a crucial element and, one might say, a constant in all existing legal systems. Ownership rights represent one of the fundamental institutions of the entire legal and social order, particularly in the legal systems of the continental European legal tradition, which developed on the foundations of the reception of classical Roman law (Gavella, Josipović, Gliha, Belaj & Stipković, 2007). However, despite being a historical and legal constant, ownership rights have not been immune to various modifications, primarily driven by social and political changes.

Since ownership rights traditionally contain strong components of absoluteness and exclusivity, the issue of their restriction or deprivation is highly complex. As previously mentioned, the Constitution guarantees ownership rights both in terms of protection from public authority intervention and as a guarantee of the preservation of the institution of ownership itself. In other words, by guaranteeing legal entities certain freedoms and rights, including ownership rights, public authority imposes limitations upon itself (Pezo, 2007). However, this guarantee does not mean that ownership rights are entirely unrestricted or that the Constitution prohibits any intervention by public authorities in the proprietary rights of legal entities. Ownership may be restricted or expropriated by law in the interest of the Republic of Croatia, with compensation at market value. It is important to emphasize that the constitutional phrase “ownership may be expropriated by law” should not be interpreted literally to mean that a formal law must be enacted for every individual case of expropriation. Instead, this constitutional expression means that the law must prescribe the conditions under which expropriation

is permitted, in accordance with the Constitution, in legal (administrative or judicial) proceedings, concerning specific legal (administrative or judicial) matters.

Following the adoption of the Constitution in 1990, a series of systemic laws in the Republic of Croatia guarantee ownership rights, protecting them as a fundamental institution of the free market economy. Foremost among these is the Ownership and Other Real Rights Act (hereinafter: ZOV).

Given that the Constitution allows the legislature to limit or expropriate ownership only as a strictly defined exception prescribed by law, public authorities are permitted to intervene. Ownership rights may be restricted against the owner's will or even expropriated entirely, but only under conditions and in a manner prescribed by law (Jelušić & Šarin, 2015; Crnić, 1994).

One of the legal mechanisms for restricting or expropriating ownership rights is the legal institution of expropriation, defined in legal theory as the forced deprivation or encumbrance of ownership in the general or public interest, based on an individual act of authority, with compensation paid at market value (Pezo, 2007).

In accordance with the ZOV, ownership rights may, in the interest of the Republic of Croatia, be expropriated by law (complete expropriation) or limited by establishing another party's right over the owner's property (partial expropriation), in which case the owner is entitled to compensation as provided by the regulations on expropriation.

It is important to emphasize that, although the Republic of Croatia adheres to an individualistic conception of ownership, private interests are protected only insofar as they do not conflict with the public interest. Specifically, in the context of expropriation, public authorities, when pursuing certain public interests, are entitled under legally defined conditions to intervene in an individual's property rights, suspend their rights to disposal and exclusion of third parties to a certain extent, or even deprive them of ownership rights if necessary.

By interpreting theoretical definitions, constitutional provisions, and legal norms, it can be concluded that public interest, or in this case, the interest of the Republic of Croatia, is the fundamental prerequisite for initiating the expropriation process. Public interest, or the interest of the Republic of Croatia, is understood as an interest directed toward the welfare of the state and all its citizens and, as such, enjoys legal protection. Since no legal act exhaustively and definitively enumerates what constitutes the interest of the Republic of Croatia, its definition, meaning, and protection as a legal standard

often depend on the competent authorities that deal with it and are determined on a case-by-case basis (Smerdel, 2013; Smerdel & Sokol, 2009).

Given that expropriation encroaches on one of the fundamental human rights, it is necessary to approach the determination of public interest with particular caution and avoid any potential conflict, both through legal regulation and the actions of competent authorities.

### ***3.2. The Genesis of Expropriation as a Legal Institution***

Tracing the historical development of the legal institution of expropriation reveals that expropriation is not a concept whose origins can be attributed to the modern development of legal systems. Expropriation, as a legal mechanism, was known as far back as ancient Roman law, and examples of its use during the Middle Ages (albeit under the conditions applicable at the time) demonstrate that this institution is not particularly novel in legal practice or, consequently, in legal theory (Britvić Vetma, 2009).

Institutionally, the legal regulation of expropriation emerged during the French Revolution. The Declaration of the Rights of Man and of the Citizen emphasized: “No one shall be deprived of even the smallest portion of their property without the owner’s consent, except where a legally established public interest so requires, and then only with fair and prior compensation.” After the Revolution, almost all elements of classical expropriation were established in French expropriation laws by 1810 (Staničić, 2013).

The legal institution of expropriation was first introduced in the territory of present-day Croatia through the Austrian General Civil Code (hereinafter: OGZ) in 1853. In Dalmatia, it had been in force since 1811, and it stipulated that, in the interest of public welfare, the state could expropriate private property with appropriate compensation. After the Croatian-Hungarian Settlement, expropriation was regulated through a combination of the OGZ and domestic laws. During the period from 1918 to 1941, it was governed by the OGZ and the Serbian Civil Code of the Kingdom of Serbia, which also provided for compensation in cases of expropriation due to public necessity.

Mention should also be made of the Federal Expropriation Act of 1957, which thoroughly regulated the expropriation process but allowed for state coercion without fair compensation. By contrast, the 1978 Expropriation Act of the Socialist Republic of Croatia allowed for expropriation of real property with fair compensation or the limitation of ownership rights if the general interest, as determined by law, so required.

In 1994, the Croatian Parliament adopted the Expropriation Act, which was generally aligned with the constitutional guarantee of ownership rights and prescribed a two-step expropriation process: determining the interest of the Republic of Croatia and conducting the expropriation procedure, including the determination of compensation. While the law had positive aspects, it was criticized for its unclear procedural rules, lack of transparency in the expropriation process, and the hindrance of investments caused by local government obstructions.

Due to legal uncertainty and ambiguities regarding the application of the law, which often led to legal disputes, it was deemed necessary to draft a new law that, adhering to constitutional constraints, would better balance the interests of the state, investors, and owners of expropriated properties (Uzelac & Javorović, 2015).

### ***3.3. Amendment of the Legal Framework: Adoption of the Expropriation and Compensation Act***

In 2014, the Government of the Republic of Croatia (hereinafter: the Government) submitted a draft Expropriation and Compensation Act to parliamentary procedure, emphasizing that adopting a new law had become necessary due to economic challenges. This move was aligned with entrepreneurial and market freedom as the foundation of the economic system of the Republic of Croatia and the urgent need to initiate an investment cycle in the country. This cycle was expected to stimulate the growth and development of the Croatian economy by creating conditions for increased investments and improving the management of assets of interest to the Republic of Croatia.

The Expropriation and Compensation Act (hereinafter: ZOI) was adopted by the Croatian Parliament on May 30, 2014. Its primary aim, as highlighted, was to improve the investment climate and promote economic development. The innovations intended to achieve this goal included: detailed regulation of the content of proposals and the required evidence and documents; standardization of the method for determining property values; agreement-based appointment of appraisers by the expropriation beneficiary and the property owner, with the option for the competent authority to appoint an appraiser if no agreement is reached; mandatory written notice of inspection dates for all involved parties; specification of evidence requirements; mandatory public disclosure of offers to enhance transparency; establishment of a register of expropriated properties; determination of the market value of properties based on their utility prior to the

change in their purpose; specification of compensation for properties deemed expropriated under special regulations; stipulation that expropriation procedures for strategic projects of the Republic of Croatia are to be conducted by the central state administration authority responsible for justice (See ZOI, 2014).

While the ZOI introduced several positive changes to the legal framework for property expropriation in the Republic of Croatia, certain legal provisions have sparked significant controversies within academic and professional circles.

One contentious issue is the possibility of expropriating property for the construction of structures or execution of works of national or regional importance and for implementing strategic projects declared as such by the Government. This provision creates potential for the abuse of state power to serve private interests, especially as strategic projects may encompass a broad range of activities, including private investments. This raises concerns about fairness and the protection of property owners' rights.

Another controversial issue pertains to the method of determining compensation for expropriated property. Compensation is calculated based on the market value of the property at the time of expropriation, considering its utility prior to the change in purpose that led to the expropriation. This provision could result in scenarios where property owners receive compensation that does not reflect the true value of their property after its purpose changes. This is particularly problematic in cases where the property is converted, for example, from pastureland to construction land. Consequently, the provision may be deemed unfair to property owners, as it does not account for the potentially significant increase in property value due to the change in its purpose. This raises questions about whether the constitutional and conventional guarantees of ownership rights have been adequately safeguarded.

A third potential issue relates to the costs of the appeals process. Although the costs of the expropriation process are borne by the expropriation beneficiary, property owners who file unsuccessful appeals are required to cover the costs associated with the appeal. This provision may have a discouraging effect on property owners seeking legal remedies.

A fourth problem, related to the previous one, concerns the provision that the value of the subject property in expropriation proceedings is deemed unassessable, despite the fact that the value of the expropriated property is evaluated during the proceedings. While this provision is justified as a cost-saving measure for appeal proceedings, the same goal could have been achieved differently, such as by amending attorney fee regulations.

Despite these shortcomings, it remains uncertain whether the objectives of adopting the ZOI have been fully achieved. The Government, as the

authorized proposer of the law, had anticipated that its enactment would accelerate expropriation procedures, increase transparency, and ensure fair compensation for expropriated properties. However, some of these goals have not been realized.

It is worth noting that the ZOI was amended twice, in 2017 and 2019. These amendments simplified the process of securing evidence of the condition and value of properties, aligned the form of compensation with the most common type, monetary compensation, and established compensation in the form of substitute property as an exception. The deadline for submitting expropriation proposals was extended from two to four years if the interest of the Republic of Croatia was determined by a Government decision. Furthermore, the appraisal report's validity period was limited to two years, and the concept of a temporary expropriation decision was introduced (See Act on Amendments to the Expropriation and Compensation Act, 2017). The Act on Amendments to the Expropriation and Compensation Act (2019) modified only the authorities responsible for conducting expropriation procedures.

Despite certain improvements brought by these amendments, such as the introduction of the concept of a temporary expropriation decision, fundamental criticisms remain. Specifically, the temporary expropriation decision seeks to balance conflicting interests, as the previous property owner receives compensation before the temporary decision is issued, with the possibility to continue the process if they consider the compensation inadequate. This mechanism enables investors to acquire ownership of the property after compensation is paid, while previous owners are entitled to market compensation based on the property's appraised value (See Article 36.a of the Act on Amendments to the Expropriation and Compensation Act from 2017).

In summary, while the ZOI introduced certain improvements to the expropriation system, the aforementioned issues raise concerns about fairness and effectiveness. These should be addressed through further amendments and revisions to fully ensure the protection of ownership rights and achieve greater alignment with European standards and constitutional rights.

#### 4. Conclusion

Since the Constitution reflects certain overarching principles and fundamental decisions that must guide the interpretation of all its individual provisions, no constitutional provision can be isolated and interpreted independently. It must always be interpreted in accordance with the highest

values of the constitutional order of the Republic of Croatia. In other words, the highest values stipulated in Article 3 of the Constitution, including the inviolability of ownership, serve as criteria for assessing every constitutional and other legal norm during its interpretation. These fundamental constitutional values act as criteria and guidelines for state administrative bodies and courts when resolving individual cases, including expropriation procedures. Through such procedures, the state, by intervening in property rights, takes or restricts these rights from certain entities for its benefit or the benefit of other entities.

Thus, the inviolability of ownership is undoubtedly one of the fundamental principles that holds significance and application in expropriation proceedings. This is alongside Article 48 of the Constitution, which guarantees the right to ownership as one of the human rights protected by the Constitutional Court, and Article 50 of the Constitution, which regulates the constitutional possibilities for the deprivation or limitation of ownership to protect certain constitutional values or protected constitutional goods. Since the adoption of the Constitution in 1990, a series of systemic laws have guaranteed the right to ownership, safeguarding it as a fundamental institution of the free market economy. However, ownership can still be expropriated by law, but only if there is a legitimate interest of the Republic of Croatia and with compensation at market value.

Given the high expectations surrounding the new legal framework for expropriation in Croatia, the enactment of the Expropriation and Compensation Act (ZOI) elicited mixed reactions within academic and professional circles. While supporters of the ZOI, consistent with the primary goal of the Government as the authorized proposer, believed it would address the shortcomings of the previous normative framework, critics highlighted certain contentious provisions and potential negative consequences in practice.

Considering that the ZOI contains numerous shortcomings, some of which were highlighted here and largely remained even after the amendments in 2017 and 2019, it is reasonable to question whether the law has fulfilled its *ratio legis*. Moreover, some normative provisions excessively restrict the constitutional (and conventionally guaranteed) right to ownership. This points to the need for a reevaluation of the legal regulation of the expropriation framework, as the existing issues cannot generally be resolved *de lege lata* but rather require solutions *de lege ferenda*.

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# **PROBLEMATIKA IZVLAŠTENJA KROZ PRIZMU OGRANIČENJA USTAVNOG JAMSTVA PRAVA VLASNIŠTVA U PRAVnom PORETKU REPUBLIKE HRVATSKE**

**APSTRAKT:** Iako institut izvlaštenja poznaju svi suvremeni pravni sustavi, valja ga promatrati kroz prizmu ograničenja ustavnog jamstva prava vlasništva. Tim više jer je nepovredivost vlasništva jedna od najviših vrednosti hrvatskog ustavnog poretka, a koje kao takve predstavljaju kriterij za tumačenje Ustava Republike Hrvatske. Stoga je fokus rada na teorijskom određenju i normativnom okviru izvlaštenja kroz analizu relevantnih ustavnih i zakonskih odredbi, pri čemu se osobita pozornost posvećuje jurisprudenciji Ustavnog suda Republike Hrvatske. Konačno u radu se ukazuje i na određena sporna pitanja zakonskog uređenja izvlaštenja u Republici Hrvatskoj, te na potrebu za određenim rješenjima *de lege lata* i *de lege ferenda*.

**Ključne riječi:** izvlaštenje, pravo vlasništva, Ustav, Ustavni sud.

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