Expected Legal and Financial Effects of the Continuation of the Process of Privatization of the Housing Fund in the Republic of Croatia

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Summary

Since the fiscal burden of the citizens in the Republic of Croatia has reached its maximum, it is necessary to pay much more attention to non-fiscal financing of public requirements on the state level, as well as on the level of the units of local self-government. Significant non-fiscal income could be realized in the structure of the state budget and of the budgets of the units of local self-government, if the housing fund that used to be in public ownership and that is now the property of the Republic of Croatia were allowed for purchase.

In addition to financial effects, this would also have legal effects, which are even more important, because these apartments and houses could now be bought even by those categories of citizens that were not in the position to that before. By continuing the process of privatization of the housing fund, the Republic of Croatia would prove to its citizens that it is a democratic and social state in which the power derives from the people and belongs to the people as the community of free and equal citizens.

In this paper, the following methods were applied: analysis and synthesis, classification, comparative method, dialectical method, empirical method, and the case study method.

Key words: public revenues, non-fiscal income, public ownership, tenancy rights.

Introductory Notes

The Republic of Croatia is one of the transition countries that have decided to privatize certain parts of property that used to represent the so-called public ownership. However, it must be emphasized that the problem of transformation of ownership, i.e., of privatization in the Republic of Croatia was more complicated than in other former socialist countries, primarily due to the ideological construction of the term public or social property. Public ownership was, namely, not defined as a legal but as a social-economic relation, where there was no holder of the rights over the property (legal owner).

Principal goal of privatization was to avoid budget deficit by alimenting the so-called non-fiscal revenues in the structure of the state budget and of the budgets of the units of local self-government.[1]

Public Ownership

"Ownership is a social-economic production relation transformed into a legal relation in which, by force of the legal norm, a certain property belongs entirely to a certain legal subject."[2]

In former socialist countries there was a form of socialist ownership, which was, in fact, a type of collective ownership. This type of ownership, of course, emerged for the first time in the Soviet Union, and it was present in all former. But the former SFRY (Socialist Federal Republic of Yugoslavia) with all its republics and both autonomous provinces were developing a different system of socialist ownership, which in the period of existence of the republics and provinces also represented a constitutional category defined as public or social ownership. Thus public or social ownership represented an original form of socialist ownership, which was different from state socialist ownership.

Socialist character of ownership was formulated in the Constitution of the SFRY from 21st February 1974, as well as in the constitutions of the republics and provinces. Article 12, paragraph 1 of the Constitution of the then Socialist Republic of Croatia, as well as other republic constitutions adopted the definition of social ownership from the federal constitution, which says: "means of production and other means in associated labor, products of associated labor and income realized through associated labor, means for satisfaction of common and general social requirements, natural wealth and goods in general use are socially owned property."

The Constitution of the Republic of Croatia[3] no longer recognizes social ownership; it guarantees the right of private ownership and organizes the Republic of Croatia as a social state. Provisions of Article 48, Paragraph 1 of the Constitution of the Republic of Croatia stipulate: "Right of ownership is guaranteed". This constitutional provision, namely, marks the return to the sources of civic constitutionality; it lifts all previous limitations of the right of ownership that were introduced in the Socialist Republic of Croatia. This provision has also conditioned the passing of adequate legislation that would allow the transformation of social ownership into new, in their character different forms of ownership relations.

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[1] Financial theoreticians classify public income according to various criteria; one of these classifications is the classification according to the need to use fiscal sovereignty, i.e., the division into fiscal and non-fiscal revenues. Fiscal revenues are those that the public authority, that is the state introduces by virtue of its authority, i.e., by using its fiscal sovereignty under which we understand the constitutional and legal empowerment and right to install fiscal revenues, i.e., their introduction and determination of their amount. Forms of fiscal incomes are: taxes, customs fees, contributions, duties or fees and parafiscal revenues. According to the basis of their alimentation, non-fiscal revenues differ from fiscal revenues; basic distinction lies in the fact that they are not collected as results of legitimate means of public coercion. Their budgetary alimentation is exclusively the product of the disposition of the state and of its citizens. There are two financial interests in their budgetary alimentation. The first, public interest, is generated by the state that is by the state's units of local self-government, and their goal is to satisfy public consumption. The second, private interest is found in physical or legal persons who wish to make some profit by purchasing certain property, through exploitation of a concession and the like.

[2] Vedriš, M. – Klarić, P. D.: Građansko pravo, Narodne novine, Zagreb, 1996, p. 183

[3] "Official Gazette of the Republic of Croatia", no 56/1990, 135/1997, 8/1998 and 113/2000

Tenancy Right

During the existence of the Socialist Federal Republic of Yugoslavia respectively of the Socialist Republic of Croatia, tenancy right was one of the constitutional rights. Provisions of Article 64, paragraph 1 of the Constitution of the Socialist Federal Republic of Yugoslavia[4] and Article 242, paragraph 1 of the Constitution of the Socialist Republic of Croatia[5].

Tenancy right, as a constitutional right, made it possible for the user of an apartment to permanently and freely use housing premises over which he was holding the tenancy right in a manner prescribed by the Law on Housing Relations,[6] the provisions of which obligated the tenant to take care about the apartment and its maintenance but also gave him the right to participate in the management of the whole building. Accordingly, the holder of the tenancy right had to behave diligently as a good master of the house if he did not want to be put into the position of losing his tenancy right that could be renounced by the provider of the apartment.

According to the provisions of Article 4 of the Law on Housing Relations, tenancy right could only be acquired for an apartment in social ownership, and it started with the moment of moving into the apartment on the basis of a legally valid decision by which the apartment is given for use, or on the basis of some other legally valid grounds (Article 59, paragraph 1). However, the Law on Housing Relations also provided for some other grounds for acquisition of the tenancy right, such as for example the acquisition of tenancy right upon the death of the tenant (Article 67) etc. Tenancy right was acquired for an unlimited period of time.

According to Article 11 of the Law on Housing Relations, the tenancy right could be provided by: organizations of associated labor, work communities, Self-Managed Interest Community of Pension and Disability Insurance of the Workers of Croatia, basic units of pension and disability insurance of workers, social organizations, socially-political organizations, socially-political communities and the owner of a family house or of an apartment as a separate part of a housing building when they are used by a person from Article 3, paragraph 2 of the said Law. In addition to the above providers, according to the provisions of Article 18, paragraph 4 of the Law on Housing Relations, apartments could also be provided by self-managed interest communities in the sphere of housing. Housing relations could only be established between the mentioned legal persons and a citizen who satisfied legal conditions for the acquisition of the tenancy right. Thus, the housing relation existed between the party giving the apartment for use on one hand and the holder of the tenancy right on the other hand, and it was based on the then existing positive legal regulations on housing relations and on the contract for the use of the apartment made by these two parties.

Within the framework of its legislative policy, the state decided to conduct the transformation of ownership in the field of apartment ownership only for those apartments that were socially owned property by selling them to the holders of tenancy rights in the respective apartments. On the other hand, for the apartments in private ownership for which there were tenancy rights, the Croatian State Parliament (Sabor) decided that the tenancy rights should be transformed into lease, which is in its nature an institute of classical Civil Law, in such a way that the up-to-then holders

[4] "Official Gazette" of the SFRY, no 9 from 21st February 1974
[5] "Official Gazette of the Socialist Republic of Croatia", no 8 from 22nd February 1974
[6] "Official Gazette of the Republic of Croatia", no 51/85

of tenancy rights become tenants (lessees) and former parties providing apartments for use who have been and still are the owners of the apartments should – in relation to former holders of tenancy rights and now tenants – become lessors. During the period of transition, transformation and privatization the first law passed was the Law on the Sale of Apartments with Tenancy Rights,[7] and it was in the function of transformation of social ownership over apartments into private ownership rights. Later, at the end of 1996, the Law on Ownership and other Material Rights[8] was passed providing complete regulation of property-rights relations, including the property-rights relations in the sphere of housing, in keeping with the Constitution of the Republic of Croatia. The Law on the Rent of Apartments[9] was passed to regulate relations that were earlier regulated by the Law on Housing Relations and this, again, represents harmonization with the Constitution of the Republic of Croatia in the sphere of housing. Accordingly, when the Lease Act and the Law on Ownership and Other Material Rights became effective, the Law on Housing Relations was completely put out of force.

The sale of apartments for which there are tenancy rights was uniformly regulated on the state level, and particular regulations applying only to the value of the construction ground on which the housing building was constructed were left to the jurisdiction of the city governments.

The laws and by-laws regulating the sale of apartments over which there are tenancy rights are the following: Law on the Sale of Apartments with Tenancy Rights, Amending Law of the Law on the Sale of Apartments with Tenancy Rights[10], Law of Obligations,[11] Law on Ownership and Other Material Rights, Law on Land-Ownership Records[12], Act on Apartment and Garage Price Assessment Modes[13], Amending Act of the Act on Apartment and Garage Price Assessment Modes[14].

There are following phases in the procedure of realizing the apartment purchase right: submission of the request for the purchase of an apartment, conclusion of the apartment purchase contract, obligations following the conclusion of the apartment purchase contract and entry in the land-ownership records.

Alimentation of non-fiscal income from the sale of apartments for which there were tenancy right was realized by transferring the ownership rights from the seller to the purchaser, i.e., through the legal transaction known as sale, the provisions of which must always be in keeping with Article 454 of the Law of Obligations.

Absence of Legal and Financial Effects

Privatization of apartments that was conducted in the Republic of Croatia did not include all categories of citizens. Since the denationalization has not been performed yet, citizens residing in nationalized apartments were not entitled to buy off these apartments. Apart from this category of citizens, the citizens living in Croatian Danube Basin – the region that was last reintegrated into the constitutional

[7] "Official Gazette of the Republic of Croatia", no 43/1992
[8] "Official Gazette of the Republic of Croatia", no 91/1996
[9] "Official Gazette of the Republic of Croatia", no 91/1996 and 48/1998
[10] "Official Gazette of the Republic of Croatia", no 33/1992, 69/1992, 25/1993, 48/1993, 2/1994, 29/1994, 44/1994, 47/1994, 58/1995, 11/1996, 11/1997 and 68/1998
[11] "Official Gazette of the Republic of Croatia", no 3/1994
[12] "Official Gazette of the Republic of Croatia", no 91/1996
[13] "Official Gazette of the Republic of Croatia", no 35/1992
[14] "Official Gazette of the Republic of Croatia", no 77/1992

order of the Republic of Croatia – also did not consume the right to buy off the apartments for which they had tenancy rights. This region was, namely, under the transitional administration of the UNTAES until 30th June 1997, upon which date Croatian positive legislation was re-introduced there as well. Operative implementation of Croatian legislation started after 15th January 1998, i.e., after the peaceful re-integration of the Croatian Danube Basin into the constitutional system of the republic of Croatia was completed. While it was under the administration of the UNTAES, this region was excluded from the implementation of Croatian positive legislation, respectively of the Law on the Sale of Apartments with Tenancy Rights.

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