• INSIGHT | TRUST | PASSION •

LEGAL BRIEFING – Dispute Resolution & Restructuring

by Sotiris Foteas – Partner

04 March 2021

s.foteas@aklawfirm.gr

Expropriations in the urban planning: From the "reasonable time" to a reasonable framework

Background

The Greek legal order has always acknowledged the validity of *encumbrances or limitations in rem* unilaterally imposed by the State on private real-estate property in order to serve purposes of public interest, such as the implementation of the overall urban planning. In this context, the so-called *"roadline expropriations"* («ρυμοτομικές απαλλοτριώσεις»), namely the expropriations aiming at expanding and delimiting the "common/public space" (κοινόχρηστος χώρος) are considered as legitimate means of implementation of the first-scale level of urban planning (thus *"urban planning expropriations"*). However, the subsequent inaction of the public agencies, following the initial imposition of the burden, is more than common in the Greek administrative practice. As a result of a fragmented planning approach and/or of the lack of funds available for the compensation of the owners, the commencing administrative act of "declaration" (κήρυξη) of the expropriation usually bind the property for an intolerable period of time, without any further continuation and completion of the procedure. Consequently, neither the owner has the ability to exploit the property under normal commercial terms nor the purposes of public interest are finally fulfilled.

The case law of the Greek Administrative Courts has elaborated the notion of "reasonable time" as a criterion for the maintenance or not of the burden.

Elapse of such period is thus invoked before the Court by the owner in order to substantiate the necessity of a judicial rescission (more concretely, of a judicial rejection of the Administration's refusal to revoke the burden). Taking into consideration the inherent delay of court proceedings, an average estimation would entail an additional 4-5 year period after the filing of the relevant remedy (already invoking the elapse of the reasonable time) for a Court decision in the first instance.

The recent Law 4759/2020 (hereinafter the **"Law"**) aims at facilitating the process of rescission by introducing objective criteria inspired by the case-law. The innovation lies in the rescission being now declared automatically, without the need of an administrative act revoking the previous one or a Court decision "substituting" the denial of such revoking act from the Administration.

The new framework

Automatic removal

Article 88 of the Law now provides for the automatic removal of the expropriation (rescission of the act of its declaration), without the need for the issuance of a new contrarious administrative act, provided that one at least of the following conditions is met:

- fifteen (15) years from the approval of the urban plan, by means of which the expropriation was initially imposed, have elapsed; or
- five (5) years from the ratification of the relevant implementing act (Πράξη Εφαρμογής ή Πράξη Αναλογισμού) have elapsed; or
- eighteen (18) months from the determination of the unit price (τιμή μονάδας), pursuant to Articles 18 - 20 of the Code of Compulsory Expropriation of Real Estate (Law 2882/2001), have elapsed.

The Law introduces thus objective time-based criteria of rescission, not subject to further interpretation.

"Buildability"

Following the above automatic removal, the owner may apply to the local Municipality for the amendment of the relevant urban plan in order to restore the "buildability"[1] of the property.

[1] The automatic removal does not restore the "buildability" immediately. Until the completion of the process of the amendment of the urban plan, the property remains "unregulated" from an urban planning point of view (Decisions No. 4586/2005, 843/2009 of the Council of State).

The relevant Municipal Council shall, within a period of six (6) months from the submission of the relevant application: either (a) accept the application and initiate the process of amendment of the urban plan pursuant to Article 90 of the Law, or (b) propose to the relevant regional Governor the re-imposition of the rescinded expropriation for the same purpose (partially or in its entirety), within the procedural framework described in Article 89 of the Law. Pursuant to Article 88 of the Law, such a total or partial re-imposition of the expropriation may take effect only once, as long as the following conditions are cumulatively met:

- serious planning reasons require the maintenance of the property or part thereof as a common or public space, and
- the local Municipality can afford to pay immediately the appropriate compensation to the beneficiaries, which is proved by the registration of the appropriate compensation in its budget.

Inspiration from the case-law

The above provisions of the Law reflect in fact and concretize the current case-law of the Council of State regarding the requirements for the rescission of expropriations. More precisely:

- The case-law provided for the criterion of the lapse of "reasonable time"[2].
- The removal of the burden does not render the property buildable *ipso facto*. An amendment to the Urban Plan is additionally required[3].

- In case of re-imposition of the expropriation, the competent bodies of the Administration are requested to provide stating reasons that the following conditions are cumulatively met: (a) the necessity of the expropriation for the overall planning and (b) the possibility of the immediate payment of the legal compensation to the beneficiaries[4]

The Law is indeed confirming and specifying the above jurisprudential findings.

Our thoughts

The innovation of the Law lies in the fact that the expropriations and relevant burdens are automatically rescinded under specific objective time requirements and a fast and effective procedure for the amendment of the urban plans is now being established.

[2] E.g. the lapse of eight years exceeds the reasonable limits for the maintenance of an expropriation (Decisions No. 240/2017, 463/2009, 269/2008, 2689/2004, 3713, 3365, 2641/1999 of the Council of State).
[3] Decisions No. 240/2017, 903/2015, 4842/2012, 3908/2007 of the Council of State.

[4] Decisions No. 3908/2007, 1154/2014 of the Council of State

The new framework is welcome and is expected to contribute into an improvement of the current status in both directions:

- Restricted by explicit temporal limits, the State will now be forced to accelerate the course of implementation of the planning policy and thus complete the expropriations of maximum necessity.
- On the other hand, the individuals will be entitled to seek the removal of any restrictions on private property on the basis of objective criteria and without the formalities of a long court procedure. The Courts will be released from a remarkable procedural weight. Maintenance or re-imposition of expropriations would require a direct payment of compensations. Allocation of public expenses will be more reasonable and will follow strict rules of prioritization.

The Law offers a remarkable input in legal clarity and quickness.

However, it is now determinant to assess the conduct of public bodies vis-à-vis this self-restrictive legislation. Is the State willing to "release" private assets or will abusively recourse to a "re-imposition" strategy approach? The answer is actually a matter of self-restraint of the State, undoubtedly triggering interesting constitutional parameters.