ACQUISITION OF REAL ESTATE BY FOREIGNERS IN THE COMPARATIVE LAW

Maida Bećirović-Alić

Univerzitet u Novom Pazaru,
Novi Pazar, Srbija
maida.becirovic-alic@uninp.edu.rs

Abstract
Acquisition of real estate is an inexhaustible topic that is always current, and the issue that additionally actualizes it is the right of foreigners to acquire real estate in a certain country. The main purpose of this brief article is to explore the legal structure and the procedure of purchasing real estate in comparative law through the analysis of existing laws that regulate the manner of acquiring property rights on immovable property, inter vivos and mortis causa.

Key words: real estate, foreigners, comparative law

INTRODUCTION

Private property law, as a central institute of law in general, developed as a set of rules that regulate relations regarding the appropriation of economic values (appropriation of goods). The general characteristics of property and its rights are holding, using and disposing of certain assets.

The authority to hold things is the possibility of exercising de facto authority over things (the state) in order to use the thing. Related to this is the authorization to use the thing, which enables the owner to thus benefit from the object in question (income). Disposition is an authorization concerning the substance of the thing and its legal status.
The right of private property is the most important civil right and it enables the holder to have the most complete disposal of a thing. Restrictions on the right of private property refer to the subjects, objects and content of this right. With regard to the subject, the restriction refers to the possibility that one person can become the holder of a certain property right with regard to his properties. In terms of the object of restriction, they refer to things that can become objects of private property (refers to immovable things). In terms of the content of rights, the restriction refers to abuse, i.e., the holder may exercise his right in a manner that does not abuse it. There are also some restrictions regarding the disposal of things, which is indicated in the so-called the right of pre-emption (offer when selling the thing first to the co-owners, and then to third parties). Legal relations based on a set of legal facts on the basis of which a legal entity acquires the right of private property is called the way of acquiring the right of private property. There are several ways of acquiring this right: on the basis of a contract with the previous owner. They can further manifest as increment, finding things, appropriation, etc. The general legal rules related to the acquisition of property rights on immovable property by domestic citizens are not questionable, however, when it comes to foreign citizens, the legal systems of countries in comparative law provide certain guidelines in which cases and in what way the property right can be acquired.

LEGAL FRAMEWORK OF ACQUISITION OF REAL STATE BY FOREIGN CITIZENS IN THE REPUBLIC OF SERBIA

Land is a fundamental resource of the nation state. Without land, without territory, there can be no nation state (Jennings, Watts, 1992:121). As the modern state emerged, those who were not citizens were classified as "foreigners" or "aliens" who, by their very status as such, were deemed not to be appropriate recipients of full rights of land ownership and use (Hodgson, Cullinan, Campbell, 1999:1). The Law on Fundamentals of Property Relations regulates the rights of foreigners to acquire property rights on real estate and states that natural and foreign legal entities can acquire property rights on real estate by legal transactions inter vivos (contract of sale, gift contract, lifetime support contract, etc.) and legal affairs mortis causa (inheritance). This law clearly defines that foreigners who perform activities listed in Article 82a in paragraph 1 may acquire the right of ownership over real estate if they need to perform those activities on the condition of reciprocity, but the law also mentions natural persons who do not perform activities in the Republic of Serbia. The right of ownership of an apartment and a residential building is also conditioned by reciprocity. The same law in paragraph 2 prescribes that foreigners may not acquire the right of ownership on other types of land unless there is an apartment or residential building or land used for regular use of the apartment or residential building. The legal acts that regulate this issue in more detail are the Law on Stabilization and Association and the Association Agreement between the European Communities and their member states on the one hand and the Republic of Serbia on the other. The Law on Agricultural Land explicitly prescribes that a foreign natural or legal person cannot be the owner of agricultural land, which includes fields, gardens, pastures, vineyards,
orchards and all other lands used for agricultural production. The competent ministry is obliged to clarify reciprocity, if this issue is raised. This law does not regulate the type of reciprocity that is necessary for the acquisition of property rights over real estate, in addition, it is assumed that the legislation of a particular state allows foreign persons to acquire property rights over real estate and that there is no need for a contractual diplomatic) reciprocity. Citizens of the Republic of Serbia can acquire the right to property in foreign countries on the basis of real reciprocity. The existence of real reciprocity means that persons can acquire rights to immovable property in the territory of the state with which such a relationship has been established under conditions that are not more difficult than the conditions in the home state. The right of ownership of real estate by a foreign person can also be acquired on the basis of a bilateral or multilateral agreement, so these issues inter vivos regulate this issue in countries that have concluded this type of agreement. The most-favored-nation clause also exists as the basis for real estate property rights: the United Kingdom, the United States, the Kingdom of the Netherlands and Japan. By exchanging notes and concluding agreements on reciprocity, the Republic of Serbia regulates the issue of reciprocity with many countries on the basis of legal regulations.

Article 82b of the Law on International Law prescribes a provision which stipulates that foreign persons, like domestic citizens, may acquire the right of ownership over immovable property by inheritance, subject to reciprocity. Bilateral legal aid treaties provide diplomatic reciprocity that includes a national treatment clause. The national treatment clause means that citizens of one Contracting Party may inherit immovable property in the territory of the other Contracting Party under the same conditions as nationals. The existence of real reciprocity is important for this issue. The practice of international law is that each state recognizes the right of inheritance to foreign persons, which means that the existence of reciprocity is presumed and not determined in relation to each individual state, until it is said otherwise. Foreign citizens can inherit real estate in the Republic of Serbia on the basis of the existence of factual reciprocity, which is assumed but leaves the possibility to prove the opposite and deny the right to a certain person. (https://www.mpravde.gov.rs/sr/tekst/3579/pravo-stranaca-da-sticu-nepokretnosti.php)

**ACQUISITION OF REAL STATE BY FOREIGN CITIZENS IN COMPARATIVE LAW**

Each state has the right to limit foreign ownership of land in its territory, as well as to prevent the entry of foreign persons or to condition their entry, this area is regulated by law, because each state has sovereignty over its territory as a major natural resource and International customary law do not restricts states in this regard. International documents do not deal specifically with issues related to the ownership of real estate by foreigners, but the provisions of the Treaty of Rome, which were amended three times, in 1987 (Single Act), 1992 (Treaty on European Union), and 1997 (Treaty of Amsterdam), prohibit discrimination on grounds of nationality, guarantee the free movement of goods, services and capital, and free residence within
the EU, in addition to the provisions of the Treaty of Rome. These provisions do not apply to foreigners who are not EU citizens. (Hodgson, Cullinan, Campbell, 1999: 4).

The legal framework of a large number of countries (Germany, France, United Kingdom, Belgium, Luxembourg, Portugal, the Netherlands) does not recognize restrictions for foreign persons in acquiring property rights over real estate, on the contrary, acquiring property rights over real estate is a general right guaranteed to domestic and foreign persons to the same extent. In addition to the already mentioned countries, many others have the same or similar legal solution to this problem (Argentina, Chile, Colombia, Paraguay, Uruguay, Venezuela). However, there are states in which this right is limited in part or in full, depending on the type and use of land, the area where the land is located, or some other characteristics listed in the laws of those states. (Hodgson, Cullinan, Campbell, 1999: 2)

The Balkan states regulate this area in different ways, given the fact that some countries have already become members of the EU while others are still on that path. Laws in Bosnia and Herzegovina do not restrict the right to acquire real estate by foreign individuals and legal entities. The novelty in relation to the provisions of Articles 87-92 ZOVO is that the new provisions do not condition potential foreign owners to be potential investors or to have permanent residence in BiH, so that foreign and domestic persons are equal in acquiring this right, which is great a shift for the legislation of this country given its tendencies for EU accession. The only condition that is assumed is, of course, reciprocity, which does not need to be proven. In these and similar cases, persons who have lost the citizenship of BiH, persons born or descendants of citizens of Bosnia and Herzegovina have a special status. This provision regulates the status of persons who are closely connected with the homeland, ie the status of persons who were displaced around the world after the war which was the result of aggression. This provision provides for the possibility of restricting the rights of foreigners to acquire real estate in the Federation of Bosnia and Herzegovina and thus derogating from the general rule set out in Article 15 of the Law on Real Rights of the FBiH. Restrictions refer to the possibility to prohibit foreigners from acquiring any real estate in a certain area of FBiH, such a possibility, although not explicitly provided for, in the positive legal regulations of FBiH is currently in the Law on Agricultural Land of FBiH (Articles 7, 99).

The Law on Property and Other Real Rights prescribes special rules for foreign natural and legal persons when acquiring real estate in the Republic of Croatia. Persons who are not Croatian citizens but are emigrants from the territory of the Republic of Croatia or their descendants are not considered foreign persons, and the state administration body responsible for deciding on citizenship has determined that they meet the preconditions for acquiring Croatian citizenship. These persons may acquire the right of ownership of real estate as Croatian citizens and legal entities established with their registered office in the Republic of Croatia. ZV sets certain restrictions for all other natural and legal persons, to a greater or lesser extent. These restrictions apply only to the acquisition of property rights and not to the acquisition of movable property rights or limited real property rights (for example, the acquisition of a lien on real estate). With regard to the possibility of acquiring ownership of real estate, ZV to some extent equates Croatian citizens and legal entities established in the Republic of Croatia with citizens and legal entities from the Member States of the
European Union. These citizens and legal entities may acquire the right to own real estate under the same preconditions as Croatian citizens, with the exception of agricultural land and special parts of nature determined by a special law. Pursuant to the provisions of the Agricultural Land Act (OG 20/18), foreign natural and legal persons may not be holders of ownership rights to agricultural land (regardless of whether they come from EU Member States or not), unless an international agreement or special regulation arranged differently. Exceptionally, foreign natural and legal persons may acquire the right of ownership of agricultural land by inheritance on the condition of reciprocity. The condition of reciprocity in this case means that a foreign citizen can inherit the right of ownership of agricultural land in the Republic of Croatia if a Croatian citizen could inherit the right of ownership of agricultural land in the country from which the foreign citizen comes. Foreign natural and legal persons outside the EU may, on the assumption of reciprocity, acquire ownership of real estate in the territory of the Republic of Croatia on the basis of inheritance. When acquiring property rights on other legal grounds (e.g., on the basis of sales contracts, gift agreements, etc.), foreign natural and legal persons may acquire real estate ownership on the assumption of reciprocity and if the consent of the Minister of Justice of the Republic of Croatia. In the event that a foreign natural or legal person does not obtain that consent, the legal transaction aimed at acquiring the right of ownership shall be considered null and void. Regarding the presumption of reciprocity, the Ministry of Justice of the Republic of Croatia publishes a list of countries with which there is reciprocity in the acquisition of property rights. A foreign person who has been denied consent to acquire the right of ownership of real estate may not repeat the request for consent to acquire the right of ownership of the same real estate before the expiration of five years from the date of submission of the rejected request.

The property right of foreigners in the Republic of Slovenia is regulated by the Constitution of the Republic of Slovenia. Article 68 of the Constitution stipulates that foreigners may acquire the right to purchase real estate under the conditions prescribed by law or an international agreement ratified by the National Assembly.

Foreigners can thus buy real estate or become property owners in Slovenia only if it is allowed by any of the applicable laws. Also, if it is the result of an international agreement that binds Slovenia.

International agreements that enable the acquisition of property rights of foreigners are:

- EU accession treaties,
- Agreement on inheritance issues (for citizens of the countries of the former republics of SFRY and legal entities established in those countries),
- Agreement on the European Economic Area,

Laws governing the acquisition of property rights by aliens include:

- Law on Conditions for Acquiring the Right to Property of Natural and Legal Persons of the Candidate Countries of the European Union,
- Law on Inheritance,
- Law on Relations between the Republic of Slovenia and Slovenes outside its borders.
Based on these regulations, some foreigners are free to acquire ownership of real estate in Slovenia. This applies to citizens and legal entities of EU, OECD and EFTA member states. Similarly, persons who have the status of a Slovenian citizen without Slovenian citizenship may acquire property rights to real estate. The right of ownership can also be acquired by foreigners from the former republics of SFRY, who have fulfilled all the conditions for the registration of property rights before December 31, 1990. Citizens of some countries need a special positive decision on the established reciprocity for the acquisition of property rights to real estate. This applies to citizens and legal entities of EU candidate countries (Northern Macedonia, Serbia, Montenegro and Albania). Citizens of other countries cannot acquire the right of ownership of immovable property, except on the basis of inheritance.

Europe has imposed borderless regions as the goal of its existence, and accordingly most EU member states do not have laws prohibiting foreigners from owning real estate (France, Germany, Italy, UK), in which domestic and foreign citizens are equal in this question. However, there are certain states that have conditioned and partially limited this right. Restrictions apply to the residence of foreigners, type of land, category of buyer, etc. Liechtenstein is an example of a country where only domestic citizens can buy real estate. State laws such as Andorra, Hungary, Denmark, Iceland, Poland and Malta stipulate that "foreign investors may own real estate after obtaining permission from local authorities" (Morrow, 2018: 9).

The regulation of this area is somewhat different, for example in Canada, where on the basis of the constitution, one part of the competence is assigned to the federal government, while the other part, among which the competence is related to real estate rights, is transferred to provinces in Canada. Each province has different legal provisions on this issue, but what they all have in common is that foreigners in Canada can buy real estate and most provinces, but each province sets a certain condition. Almost all conditions relate to obtaining a special license from the competent authority that will enable the transfer of real estate. (Morrow, 2018: 10).

The legal solutions of the acquisition of property rights on real estate is set in a similar way on a global level, some countries allow the acquisition of real estate by foreign and domestic citizens in the same way while some countries set conditions for acquiring this right by foreigners. In addition to this division, which includes the largest number of states, there are also states whose legislation does not allow the acquisition of property rights on real estate by foreigners.

**CONCLUSION**

Foreigners in different countries have different rights, one of the most sensitive question concerning foreigners are issues of ownership of immovable property. Comparative law defines this issue in different ways and generally each country prescribes special conditions with regard to its specificity on the basis of which a foreigner can acquire the right of ownership of real estate.

Each state has sovereignty over its territory, and in accordance with the policy of governing the state, laws are created that regulate legal relations related to the territory. The rights that are mainly the subject of analysis are the possession or use
of land, and the laws clearly define the manner of use as well as restrictions if any, which mainly relate to the type of land and the category of persons who may own it.

It can be concluded that legal restrictions on ownership and use of land by foreigners are designed to achieve a variety of policy objectives unique to the circumstances of each state, and may also be expressions of other unexpressed motives, however, the effort to make the world a place without strict borders, especially the EU’s effort to divide Europe into regions, with a unified legislative framework and free trade, should be a map of countries that want to prosper and be members of major international organizations. It is necessary to find a balance between the desire to protect the national territory from foreign influences and restrict the rights of foreign persons who want to have equal rights without restrictions, regardless of where they are.

LITERATURE

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REZIME

Stranci u različitim zemljama imaju različita prava, a jedno od najosjetljivijih pitanja koje se tiče stranaca su pitanja vlasništva nad nepokretnom imovinom. Uporedno pravo ovo pitanje definiše na različite
načine i generalno svaka država propisuje posebne uslove s obzirom na svoju specifičnost na osnovu kojih stranac može steći pravo svojine na nepokretnosti.

Svaka država ima suverenitet nad svojom teritorijom, a u skladu sa politikom upravljanja državom stvaraju se zakoni kojima se uređuju pravni odnosi koji se odnose na teritoriju. Prava koja su uglavnom predmet analize su posjedovanje ili korištenje zemljišta, a zakoni jasno definiraju način korištenja, kao i ograničenja ako postoje, koja se uglavnom odnose na vrstu zemljišta i kategoriju lica koja ga mogu posjedovati.

Može se zaključiti da su zakonska ograničenja u vlasništvu i korištenju zemlje od strane stranaca osmišljena kako bi se postigli različiti politički ciljevi jedinstveni za okolnosti svake države, a mogu biti i izraz drugih neizraženih motiva, međutim, nastojanje da se svijet učini mjestom bez strogih granica, posebno napora EU da podijeli Evropu na regije, sa jedinstvenim zakonodavnim okvirom i slobodnom trgovinom, trebalo bi da bude mapa zemalja koje žele prosperitet i biti članice velikih međunarodnih organizacija.

Neophodno je pronaći balans između želje da se nacionalna teritorija zaštiti od stranih uticaja i ograničavanja prava stranih lica koja žele da imaju jednaka prava bez ograničenja, bez obzira na to gde se nalaze.