EMPOWERING LOCAL COMMUNITIES IN THE FIELD OF PROPERTY RIGHTS PROTECTION IN THE EXPROPRITION PROCESS

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INTRODUCTION

Owing to the necessity of building or enlarging major infrastructural and energy structures (building the road corridors 10 and 11, the small Ada river-island bridge, extending of the open-pit coal mines of the Kolubara and Kostolac mining basins), large-scale property expropriations and resettlements are being carried out in Serbia).

The main victims in those proceedings are the affected local communities and individuals, considering that, in pursuit of their interests, the companies gravely violate the human and property rights and the right to a healthy environment in the resettling process.

The general aim of this handbook is the protection of population rights with a view to the exercise of their rights guaranteed by the national legislation and international conventions signed by the state of Serbia, at the individual and local community levels, while at the general social level, its aim is to reinforce the resistance against socially irresponsible companies, with the ultimate aim of attaining the level of responsibility stipulated by the European standards.

This is especially important from the aspect of environmental protection, since Serbia insists on the monopoly of coal-fired electric power generation facilities, which results in enormous hyper production of coal, exceeding Serbia's real needs by far. Hence, we expect our handbook to have an indirect influence on the environmental quality as well, in all aspects (soil degradation, reduction in the emissions od particles and harmful gases, water protection, protection of rare and endangered plant and animal species etc.), with the common aim of a strategic shift towards the use of renewable energy sources, being exceptionally compatible with the geographical and meteorological features of Serbia (biomass, solar and wind energy, geothermal energy).

Considering that the legally guaranteed level of rights in Serbia is difficult to achieve through regular proceedings or mediation, and that court proceedings are commonly resorted to, this handbook has been developed in collaboration with the non-governmental organization "House of Justice - Strasbourg", led by the renowned Belgrade lawyer Predrag Savić, who has great experience in representing citizens and local communities before the domestic and international courts.

This is particularly important, as it is the best possible way of implementing the Aarhus Convention provision on access to justice, since our aim is to inspire individuals and local communities to become aware of their rights and seek them before the courts,

which, at the same time, represents an additional aspect of pressure on socially irresponsible companies.

This cooperation is of an international nature, since the local community of the town of Lubin, Poland, invited us to visit in September 2012, offering us an opportunity to deliver joint lectures on how to protect the rights of the local communities and individuals jeopardized by energy companies and coal mines. On that occasion, we made the acquaintance of Mr Radoslaw Gaulic from ECO-UNION POLAND, and continued our collaboration within the framework of the international coalition "Development-YES, Open-pit mines-NO".

House of Justice - Strasbourg and the Predrag Savić Law Office have the capacity to raise awareness of property rights and provide representation before courts, from basic courts to the European Court of Human Rights in Strasbourg.

Permanent action in the non-governmental sector is of immeasurable importance, as well as collaboration with other civil associations with a view to the exercise of the human rights guaranteed by the constitution and international conventions.

Among these organizations and individuals, especially distinguished are Zvezdan Kalmar from the Centre for Ecology and Sustainable Development and the Belgrade lawyer Saša Đurić from the association "Equitable Serbia", without whose professional and human efforts many rights of the population affected by the resettlement would not have been realized at all.

We also owe special gratitude to Nikola Aleksić from Novi Sad, Chair of the Assembly of the Environmental Movement of Serbia - League of Environmental Organizations of Serbia, whose experience and personal model are a paragon to all of us.

A considerable part of the success of the Predrag Savić Law Office is reflected in its nearly daily cooperation with the media (considering that, for years, he himself had been an editor of the European issue of the highest-circulation daily paper in Serbia - Večernje Novosti (Evening News), working in Germany), including frequent media releases and press conferences, and frequent submissions to independent regulatory authorities, such as: the Civil Protector, the Commissioner for Public Information, the Equality Commissioner, most commonly in cases of discrimination, which prevails in the procedures for the protection of social and property rights and the right to a healthy environment.

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EXPROPRIATION

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WHAT IS EXPROPRIATION?

Expropriation, as a legal institution, denotes the compulsory seizure of private property in the general interest, with a fair reimbursement tied to the market value of the expropriated real estate.

Expropriation is performed all over the world in favour of the state, for the purposes of realization of public interests, e.g. building of structures in the public interest (airports, hospitals etc.) or extension of an industrial area, mineral extraction or other public projects. In the USA, expropriation is defined as "the supreme right to property on the part of the state" (i.e. "eminent domain"). In the United Kingdom, there is also the term "compulsory purchase" (e.g. for the purpose of building housing, sports facilities, communal infrastructure, industrial structures). Even the French are familiar with the concept of "taking away property in the public interest". In Germany, the norms of expropriation are contained in the Building Law, but may be stipulated by some other legal acts if necessary. In Italy, it is not even possible to take administrative action against the declaration on public benefit, which precedes expropriation.

EUROPEAN STANDARD AND CONSTITUTIONAL FRAMEWORK

Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms was signed in Paris on 20 March 1952. Its Art. 1 deals with an issue of crucial importance for the protection of property. This norm of exceptional importance for expropriation procedures in the Council of Europe member states notes that every natural person and legal entity has the right to unhindered enjoyment of property. Protocol 1 provides that nobody can be deprived of his/her property, except where this is in the public interest and under the conditions foreseen by law and the general principles of international law. The aforementioned provisions, however, in no way affect the right of

the state to apply those laws which it considers necessary in order to regulate the use of property in accordance with the general interests or to ensure the payment of taxes or other levies or fines.

In the current Constitution of Serbia, enacted in 2006, Art.88, para.2, provides the general framework for expropriation, elaborated in accordance with the abovementioned Paris Protocol. According to the constitutional norm, "the right of ownership may be taken away or limited only in the public interest established pursuant to the law, with a reimbursement not lower than the market price." Thus, the Constitution determines the aim of expropriation, namely public interest, and the foreseen minimum amount of the reimbursement for the property taken away, which may not be lower than the market value of the real estate concerned.

The expropriation procedure is regulated in more detail in the Law on Expropriation, passed in 2009. The same law has undergone a series of amendments through the parliamentary procedure and by decisions of the Constitutional Court of Serbia, which points to the necessity of passing a new, more contemporary law, which would be harmonized with the European standards and the case law of the European Court of Human Rights in Strasbourg and the Constitutional Court of Serbia.

PUBLIC INTEREST

Public interest represents the cornerstone of every expropriation. In our positive legislation, it was defined already in the socialistic self-government times, in a sterile and narrow way, where, in the domain of housing construction, only the construction of solidarity housing was favoured. Therefore, the current Law on Expropriation does not allow proclaiming public interest in case of construction of ordinary housing, food service and tourist structures. This is a consequence of the narrow-minded communist interpretation of public interest, dating from the time of the prevalence of social ownership, which essentially meant nobody's land.

In Art. 8 of the Law on Expropriation, the legislator has provided that expropriation be carried out for the needs of: the Republic of Serbia, autonomous provinces, cities, the City of Belgrade, municipalities, public funds, public enterprises, as well as for the needs of companies in which a majority of capital is state-owned and which have been founded by the Republic of Serbia, an autonomous province, a city, the City of Belgrade, or a municipality, unless otherwise stipulated by the law.

The Government may establish public interest for expropriation by a special law, as is the case with the lex specialis on the construction of Belgrade Waterfront or in accordance with Art.20 of the Law on Expropriation. This article enumerates the cases in which public interest exists; these are the following situations:

"If the expropriation of the real estate is necessary for building structures in the fields of: education, public health, social protection, culture, water management, sports, transport, energy and municipal infrastructure, structures for the needs of state authorities and the authorities of territorial autonomy units and local self-government, structures for the purposes of state defence, as well as for building housing to address the housing needs of socially disadvantaged persons.

The Government may also establish public interest in case the expropriation of real estate is necessary for mineral extraction, to secure environmental protection and protection against natural disasters, including the building of structures and performing works for these purposes, as well as procuring vacant land to resettle a settlement or a part thereof in case the area of that settlement or a part thereof is subject to public interest for expropriation of real estate for the purpose of mineral extraction, as well as in other cases foreseen by law."

Public interest for expropriation may be established only in case a corresponding planning document has been adopted in accordance with the law, as stipulated by Art.20 of the Law on Expropriation.

A proposal to establish public interest for expropriation may be made by an entity listed in Art.8 of the Law on Expropriation as one of the possible beneficiaries of expropriation.

A proposal to establish public interest for expropriation is submitted to the Government through the ministry in charge of finance. The proposal includes the data on the real estate subject to the establishment of public interest, type of structure or type of works, as appropriate, whose building or performance is foreseen on the land concerned, as well as the data about the land procured for the purpose of compensating the former owners of the expropriated real estate who are to be resettled for the purpose of mineral extraction, or, where appropriate, about the land procured in order to provide an in-kind investment of the Republic of Serbia for the establishment of a company, and other data relevant to the establishment of public interest. The proposal is accompanied by an extract from the relevant planning document; in case real estate is procured in order to provide an in-kind investment of the Republic of Serbia referred to in this paragraph, an extract from the pertinent contract on a joint venture or founders' agreement is enclosed in the absence of a relevant planning document.

The government is required to reach a decision as to the proposal to establish public interest within 90 days.

The Government designates the expropriation beneficiary by the instrument establishing public interest.

The decision on the proposal to establish public interest may be adopted without prior hearing of the parties. The Government decision adopting the proposal to establish the public interest is published in the Official Gazette of the Republic of Serbia and is considered to be delivered to the parties to the procedure on the day of its publication.

Few citizens are aware of that the Government decision on the proposal to establish public interest may be challenged by initiating an administrative dispute before the competent court within 30 days of its delivery, i.e. its publication in the Official Gazette of the Republic of Serbia. Case law includes numerous cases where decisions establishing public interest were annulled by the judgments of the Administrative Court on the grounds of formal or substantive deficiencies. As a rule, the Government remedies those deficiencies in a new decision establishing public interest, although in certain cases the expropriation is carried out according to the annulled decisions and, for instance, the expropriated households are demolished. As a result, the previous owner is entitled to seek indemnity in court according to the rules of civil law.

PARTICIPATION OF MUNICIPIAL ADMINISTRATION AUTHORITIES

In its first stage, expropriation is of a public-law nature, and administrative law is applied predominantly.

The procedure in response to an expropriation proposal is conducted and the decision on expropriation issued by the municipal administration department in charge of property affairs in the municipality in which the real estate proposed for expropriation is situated (hereinafter: municipal administration). These are mainly secretariats for property affairs.

Provided that the expropriation proposal is accompanied by all the necessary documents, such as bank guarantees and cadastre certificates, or that these documents are submitted subsequently, and that they prove the pertinent facts, the secretariat will adopt the expropriation proposal by issuing a decision; otherwise, the proposal will be rejected.

The decision on expropriation, as well as the decision on administrative transfer, issued without the decision establishing public or general interest for expropriation or administrative transfer, as appropriate, of the real estate, is null and void.

Prior to issuing the decision on expropriation, the official in charge is required to hear the owner of the real estate with regard to the facts relevant to real estate expropriation.

An appeal against the first-instance decision on the expropriation proposal is considered by the ministry in charge of finance.

Pursuant to Art. 30 of the Law on Expropriation, the authority conducting the expropriation procedure is required to advise the former owner of the possibility of filing an application for expropriation of the remainder of the real estate and having it entered into the protocol. This application for extension may be filed within two years of the completion of the structure or the works, as appropriate.

In case the application for expropriation of the remainder of the real estate is filed prior to the issuance of the first-instance decision on expropriation, the municipal administration considers the application simultaneously with the proposal of the expropriation beneficiary; however, if the application is filed after the issuance of the first-instance decision, it is considered in a separate procedure.

The decision adopting the expropriation proposal in accordance with Art. 31 of the Law on Expropriation must indicate:

1. the expropriation beneficiary;

2. the real estate to be expropriated, together with the data from the real estate cadastre or other public records in which rights in real estate are registered;

3. the real estate owner and his/her domicile or its seat, as appropriate;

4. the purpose of expropriation, i.e. the structure whose construction is the reason for real estate expropriation, as well as the number and date of the decision establishing public or general interest for expropriation and the name of the issuing authority;

5. the expropriation beneficiary's obligation to pay reimbursement, to give another real estate in compensation if this is requested by the previous user, as well as the obligation to grant another real estate on a long-term lease in case there is a long-term lessee;

6. the owner's or possessor's obligation to hand over the possession of the real estate to the expropriation beneficiary, as well as the handover date;

7. the expropriation beneficiary's obligation to submit to the municipal administration a written offer of the form and amount of the reimbursement for the expropriated real estate within 15 days from the day of the decision taking effect.

EXAMPLE FROM PRACTICE

Legal instruction from the Civil Protector's Recommendation No 17-445/11, dated 25 March 2011, whereby

It is ascertained that there are deficiencies in the work of the Municipal Administration of the Metropolitan Municipality of Lazarevac, which have caused a violation of the principle of good administration, as well as violations of the rights of A. A. and other citizens of the settlement of Veliki Crljeni, owing to insufficiently transparent and impartial procedures for the expropriation and/or demolition of the structures built without permits.

The observed omissions have caused legal uncertainty and unequal treatment of citizens in the exercise of their rights to have expropriated the structures that have not been registered in the public records of real estate, in accordance with the conclusion of the Government of the Republic of Serbia.

REASONS

On the basis of the established deficiencies, the Civil Protector hereby advises the Municipal Administration of the Metropolitan Municipality of Lazarevac as follows:

On 2 November 2010, the Civil Protector received a complaint by the NGO "The League for the Protection of Real Estate and Human Rights Veliki Crljeni", followed by another complaint, dated 25 February 2011, by A. A. from Veliki Crljeni, both submitted due to illegal action of the competent Department for Urban Planning, Construction and Communal Affairs, Property Affairs and Building Inspection of the Municipal Administration of Lazarevac in the procedures for demolishing the structures built without building permits.

It follows from the abovementioned complaints and the enclosed documentation that the Decision of the Government of the Republic of Serbia 05 No 465-7958/2007, dated 29 November 2007, established the general interest for the expropriation of real estate (land and structures) in favour of Public Enterprise Electric Power Industry of Serbia (EPS) for the purpose of opening and conducting coal mining operations on the Veliki Crljeni Open-Pit Mine by the company RB Kolubara d.o.o. (Kolubara Mining Basin, Limited Liability Company) of Lazarevac.

Pursuant to the decision establishing general interest, towards the end of November 2008, the expropriation procedure was initiated by filing individual proposals in respect of specific real estate owned by specific persons.

Art. 27 of the Law on Expropriation (Official Gazette of the RS No 53/95) provides that an expropriation proposal is accompanied by a certificate from the real estate cadas-

tre or other public records in which rights in real estate are registered; the certificate must contain the data on the real estate proposed for expropriation. Given that the settlement of Veliki Crljeni and the neighboring settlements are situated in a non-urban, rural area, it was observed that, out of the approximately 450 existing housing, commercial and ancillary structures, only a few had building and occupancy permits, which is a prerequisite for the registration in the real estate cadastre.

With a view to overcoming this problem, on 17 December 2009, the Government of the Republic of Serbia adopted Conclusion 05 No 465-8001/2009-3, whereby it allowed the submission of proposals for expropriation of all structures registered in the orthoimage of 15 January 2007 in the expropriation/administrative transfer procedures, regardless of whether they were registered in the public records of real estate and rights therein, if the expropriation was necessary for the implementation of the Energy Sector Development Strategy of the Republic of Serbia until 2015.

At the meeting held on 27 December 2010 with representatives of the citizens of Veliki Crljeni and Vreoci, the Civil Protector was informed that, in accordance with the RS Government Conclusion, the expropriation procedure had been initiated in respect of many structures. However, in respect of some structures built before 2007, instead of initiating the expropriation procedure, the company Kolubara Mining Basin had initiated inspections, with the aim of precluding compensation for their owners. At the same time, some structures without building permits, built after 15 January 2007, were expropriated. As an obvious example of inconsistency, it was stated that compensation had been paid for several structures whose construction had been commenced and finalized in 2009.

The meeting participants pointed out that many of the disputed structures were traditional ancillary farm structures, whose construction was not conditional upon obtaining building permits, as acknowledged in the enclosed decisions of the Second Basic Court in Belgrade on the discontinuance of criminal proceedings conducted for the crime referred to in Art. 149 of the Law on Planning and Building (Official Gazette of the RS No 47/03). In addition, the court decisions stated that the structures whose construction was the object of criminal proceedings had been built between 2000 and 2003, i.e. considerably earlier than indicated in the case files.

It was brought to the Civil Protector's attention that such actions and unequal treatment of citizens living in the area of the open-pit coal mine advance direction had instilled in them a sense of legal uncertainty and suspicion that the local government officials and authorities were under the influence of the expropriation beneficiary - the company Kolubara Mining Basin, as a result of which they frequently acted to the detriment of the citizens' rights and interests in the real estate expropriation procedures.

Having found herself in this situation, Ms A. A. from Veliki Crljeni filed a complaint with the Civil Protector. She had a commercial structure, built on cadastral lot (CL) No ... Cvetovac, which had been provided to her father in compensation for land expropriated in the past. At the request of the expropriation beneficiary, the inspection procedure was initiated for illegal construction. By its Decision III-06 No 356-22/2009, dated 25 December 2008, the Building Inspectorate of the Department for Inspection Affairs of the Municipal Administration of Lazarevac ordered the demolition of the structure, on pain of forced enforcement.

At the same time, criminal proceedings were initiated against the abovementioned individual; as part of the proceedings, expertise was performed in order to ascertain the time of construction of the disputed structure. According to the findings of the authorized expert witness of 4 May 2010, the structure had been built in 2002-2003.

The enforcement of the decision ordering demolition was postponed until a decision was issued on the application for legalization, which had been filed by A. A. in the meantime. After her application was finally rejected, on 18 January 2011, a conclusion allowing enforcement was issued, and the demolition of the structure was scheduled for 28 February 2011.

As it was observed that the actions of the competent authorities could constitute a violation of citizens' rights, in order to act preventively and remedy any irregularities, in accordance with Art.21, para.1, point 2 of the Law on the Civil Protector, a meeting with representatives of the Municipal Administration of Lazarevac was held on 28 February 2011. On the basis of the talks held and information shared, it was found that:

• the responsible persons in the Municipal Administration did not have the data on the time of construction of A. A.'s commercial structure on CL No ..., Cadastral Municipality (CM) of Cvetovac; instead, it was assumed that it had been built in 2009.

• the expert witness findings dated 4 May 2010, provided in the criminal case I-b K No 502/09 before the Second Basic Court in Belgrade were negated and it was claimed that these and similar findings were aimed at discontinuing the criminal proceedings against the developer, for which reason the time of construction was determined arbitrarily;

• the Head of the Department for Urban Planning, Building and Communal Affairs, Property Affairs and Building Inspection had no records of the time of construction of the buildings in respect of which demolition decisions had been issued in the inspection procedures; instead, it was pointed out that such records were kept by the Kolubara Mining Basin's legal department;

• the management of the Municipal Administration was not aware of the Civil Protector's Recommendation of 17 March 2010, which indicated the measures and activities to be undertaken with a view to the proper conduct of the legalization procedure and which had been duly delivered to this authority on 31 March 2010;

• when the Head of the Department was advised of point 5 of the Recommendation, instructing the administration authorities to adopt a demolition plan with a schedule of enforcement of demolition decisions and to adhere to it, so as to leave no room for suspicion of arbitrariness in the selection and order of structures to be demolished, he responded that Kolubara Mining Basin's legal department would not be able to apply this;

• the Head of the Department did not know whether A. A.'s structure had been recorded in the orthoimage of 15 January 2007, as all the ortho-images were kept at Kolubara Mining Basin's legal department;

• in his opinion, the structure in question was not in the ortho-image and was not among the structures covered by the RS Government Conclusion;

• according to his interpretation of the pertinent RS Government Conclusion, its point 3 excluded the application of points 1 and 2 in all cases where demolition decisions had been issued in the inspection procedures in respect of specific structures; according to

him, for this reason, it was unquestionable that the Government Conclusion was not applicable in the situation at hand.

On the basis of the talks held and information shared, it was concluded that the representatives of the Municipal Administration of Lazarevac maintained their earlier views, although it had been pointed out to them that the presented interpretation could not fulfill the aim of the Conclusion. The RS Government's intention was to enable all citizens of Veliki Crljeni, Vreoci and other settlements to receive compensation in the expropriation procedure, also for those structures which were not registered in the real estate cadastre. Therefore, the Conclusion was adopted, allowing the submission of expropriation proposals for all structures registered in the ortho-image of 15 January 2007, including those whose construction had been commenced before that date without building permits. The RS Government took into account the fact that, in this non-urban, rural area, it had never been common practice to apply for building permits and register structures in public records of real estate.

It was unquestionable that no structures built on the land on which general interest had been declared could be legalized, regardless of the time of construction, and that all the existing structures would be demolished, in line with the pace of open-pit coal mine extension. However, it was essential to clarify the criteria according to which some structures were subject to inspections, while others were not. Therefore, solely by inspecting the abovementioned orthoimage, it could be ascertained without doubt whether the construction of a specific structure had been commenced before or after 15 January 2007; on the basis of this finding, it was to be ascertained whether the expropriation procedure would be initiated in respect of that structure and compensation paid pursuant to the expropriation regulations.

The legalization procedure was the way for A. A. to postpone the demolition until, as the decisive fact, she could prove the time of construction of her structure. In the case at hand, the demolition of the structure concerned was not the essence of the problem, seeing that it was to be demolished, just as all other structures in Veliki Crljeni, in pursuit of the public interest for which expropriation was ordered. However, in case the disputed structure had been built before 15 January 2007, in conformity with the RS Government Conclusion, she would be entitled to compensation in the expropriation procedure, and in case it was found that the structure was not recorded in the orthoimage, it would be demolished in conformity with the law.

Although it was agreed at the meeting to suspend the implementation of the conclusion allowing enforcement, i.e. the demolition of the structure, until it was ascertained whether A. A.'s commercial structure was recorded in the abovementioned orthoimage, the Civil Protector received the information that the demolition proceeded and the structure had been removed.

Civil Protector representatives requested to be provided with a copy of the part of the orthoimage containing the location of the CL No ... Cvetovac at the earliest convenience. The requested document was not provided, although the Municipal Administration of Lazarevac provided other agreed documentation with its letter III-03 No Sl/2011 on 3 March 2011.

The Civil Protector is of the view that positive legislation and the principles of good administration require public authorities to act in good faith towards citizens and to take account, at all times, of the balance between citizens' individual interests and the public interest stipulated by the law. The duty of equal treatment requires public authorities to treat all citizens in the same legal situation equally. In accordance with the internationally accepted principles of good administration, they are required to act in good faith, predictably, transparently and impartially, with equal treatment afforded to all citizens. Public authorities should be equitable and independent in their work and respect citizens' justified and reasonable expectations, as any other conduct constitutes bad administration and results in denying citizens access to their rights, thus instilling in them a sense of doubt and uncertainty.

COMPENSATION AGREEMENT

After the expropriation decision takes effect, the municipal administration is required to immediately schedule and hold a hearing on the consensual determination of compensation for the expropriated real estate.

Pursuant to Art. 56 of the Law on Expropriation, the expropriation beneficiary is required to submit a written offer, stating the form and amount of compensation, to the municipal administration, within a time limit that may not exceed 15 days from the date of the expropriation decision taking effect.

The municipal administration forwards a copy of the offer to the former owner of the expropriated real estate without delay, and collects information from administrative and other authorities and organizations about facts that may be relevant to the consensual determination of compensation.

The agreement on compensation for the expropriated real estate must specify, in particular, the form and amount of compensation and the time limit for the fulfillment of those obligations by the expropriation beneficiary, as well as the former owner's obligations, if stipulated by the agreement.

The compensation agreement is recorded in a protocol, which must contain all the data necessary for the fulfillment of the parties' obligations.

The compensation agreement has the force of an executive title, unless the municipal administration declines to conclude the agreement (Art. 57 of the Law on Expropriation).

If the municipal administration declines to conclude the compensation agreement, it is required to promptly deliver all expropriation case files to the municipal court having territorial jurisdiction for the purpose of determining compensation.

In the proceedings before the municipal administration or the competent court, the parties may agree: on the granting of ownership or co-ownership of another real estate in lieu of the expropriated real estate; on the financial amount of compensation; on mutual payments of any difference in real estate value; on the relocation of the expropriated structures to another site, allowed by the regulations; on the construction of access ways, passageways and access roads, as well as other lawful consideration (Art. 59 of the Law on Expropriation).

Agreements on financial compensation are enforced by the competent court, and agreements on other forms of compensation are enforced by the municipal administration.

THE MOST COMMON PROBLEMS IN ADMINISTRATIVE PROCEEDINGS

As regards the first phase of expropriation, it is noticeable that many municipal administrations act in a discriminatory manner towards citizens - former property owners. They omit to advise them of their rights, favour expropriation beneficiaries, as these are, as a rule, companies dominant in the areas covered by the municipal administrations, or urban building land directorates.

Municipal administrations often lack high-quality staff capable of conducting these procedures in a lawful manner, which is particularly prominent in the south of Serbia.

Aiming to underestimate the market value of the expropriated real estate as far as possible, municipal administrations often abuse inspections: after the submission of expropriation proposals, they carry out inspections especially in rural areas, and issue decisions ordering the demolition of the allegedly illegally built structures. These are often rural homes built before the adoption of any urban plans and documents.

Municipal administrations and expropriation beneficiaries often hire expert witnesses who are in a conflict of interests, as is the case with the City Department for Expertise, and who provide abnormally low appraisals of the market value of the expropriated real estate.

The Tax Administration, which should appraise the market value of expropriated land, often tries to ensure the appraised prices are as low as possible. This particularly intensifies the prevalent impression among the people that the expropriation beneficiary is omnipotent, and the citizen - absolutely powerless!

Expropriation procedures before municipal administration authorities are often a "source" of corruption. The corruptive practice in such situations follows a pattern:

"Retired workers or sometimes even employees of the expropriation beneficiary visit the households to be expropriated and offer their 'intermediation' services. They promise to expedite the expropriation procedure, provide the missing documents in the administrative proceedings, ensure higher market prices and, especially in Vreoci, ensure the payment of EUR 30,000 for infrastructure development, for an adequate fee of up to 20% of the market price. These intermediaries claim to have their own people in the expropriation beneficiary's legal department, municipal administration, among expert witnesses etc."

Hence, in the administrative proceedings, they often receive offers of compensation based on "market prices" that are sometimes several times lower from those appraised by independent expert witnesses in the proceedings before the competent non-contentious courts. Unfortunately, an enormous number of citizens - owners of expropriated real estate - accept such low offers and conclude agreements out of fear, ignorance or lack of information, convinced that "the battle against the state cannot be won".

PROCEEDINGS BEFORE THE NON-CONTENTIOUS DEPARTMENT OF THE BASIC COURT

In case a compensation agreement is not finalized within two months of the day of the expropriation decision taking effect, pursuant to Art. 61 of the Law on Expropriation, the municipal administration will deliver the effective expropriation decision accompanied by all case files to the competent court for the purpose of determining compensation.

If the municipal administration fails to comply with this provision, the former owner and the expropriation beneficiary may directly approach the court for the purpose of determining compensation.

Once the case is considered before the basic court, citizens have considerably better chances of protecting their rights and receiving compensation equal to the market value for their expropriated real estate! However, this pathway is also encumbered by a range of problems: many courts, such as the Higher Court in Belgrade, which resolves appeals in the second instance, are trying to build up case law that will brutally trample on the rights of citizens - former owners of the land on which Zemun-Borča Bridge and its slip roads were built and violate the right to a fair trial within a reasonable time before an independent and impartial judicial authority.

EXAMPLE FROM PRACTICE:

An extract from the letter of a group of citizens to the High Judicial Council and the Delegation of the EU in Belgrade:

"The first-instance proceedings for the determination of compensation for expropriated land before the First Basic Court in Belgrade were, in most cases, concluded - in some cases, two years ago. Subsequently, following by the Public Enterprise 'Directorate for Road Construction of Belgrade', all cases were forwarded to the Higher Court in Belgrade, while some were delegated to the Higher Court in Požarevac and other higher courts throughout Serbia. In several cases, the Higher Court in Belgrade quashed the decisions concerned for 'contrived' reasons and ordered re-examination of the cases by first-instance courts, thus prolonging the several years' agony that precludes us from finally receiving fair compensation as former owners of the real estate. As you are well aware, non-contentious proceedings are, by their very essence, URGENT; however, we have waited for years for the compensation to be determined, let alone paid! It need not be emphasized that the final beneficiary has long since taken possession of all expropriated land lots!

You are well aware how the Case Law Department effects the quashing of decisions in appeal proceedings on non-contentious matters before the higher courts, notably the Higher Court in Belgrade. The judges that were compelled to sign decisions ordering re-examination of cases by the Basic Court for 'contrived' reasons and contrary to the case law of the Constitutional Court have spoke up and 'justified' themselves by citing the influence of the Case Law Department on their decision-making. The entire mechanism for such decision-making is also well-known.

To add insult to injury, the Directorate boasts of having 'finalized and closed' everything before the Higher Court in Belgrade through political connections, and that

‘invoking Constitutional Court decisions was a futile exercise for applicants in expropriation proceedings’! We wish to reiterate that the Constitutional Court’s position is that expertise is evidence that MAY be presented in non-contentious proceedings, and that such conduct constitutes a grave violation of the position of the Constitutional Court!

The claims of expropriation beneficiaries that they will go bankrupt if they pay the market price of the expropriated structures cannot be a justification for pressure on independent judicial authorities. Similarly, the Belgrade Land Development Public Agency argues that the expert witnesses’ high appraisals of the value of the land used for bridge construction may have an impact on its business operations; hence, it has resorted to insults in order to discredit the expert witnesses and enable the City of Belgrade to expropriate land at paltry prices offered by the Tax Administration - as low as 164.00 RSD/m2 for individual land lots used for bridge construction, which, at the same time, belong to the category of urban building land!!!

Through various forms of pressure, the users of the expropriated land are trying to secure court decisions in favour of the expropriation beneficiaries, to the detriment of former owners’ property and rights.

We are compelled to take action to counter such practice of discrimination and disregard for binding decisions of the Constitutional Court. This is a dangerous practice that could cause a new affair comparable to the Savamala case for the sake of a petty benefit - buying time for the Belgrade Land Development Public Agency. It should be noted that some of the applicants passed away in the course of the proceedings and did not live to receive compensation for their land taken away in the expropriation process...

On the other hand, some of us who reside in the settlements of Ovča and Borča are of Romanian ethnicity; those of us demand that the Embassy of Romania in Belgrade, the EU Delegation in Belgrade, European parlamentarians etc. be informed about the compromised independence and autonomy of judges and the violations of our rights to a fair trial. In that respect, we are of the view that it is necessary to approach you first, with a request to protect our rights, primarily the right to property, which is grossly violated by such actions on the part of courts!”

Specifically, in non-contentious proceedings, the expropriation process should have a civil law character, without the compulsion elements which exist in legal proceedings. This very fact should ensure a better position for citizens - former owners, who now have the status of parties - applicants, while the expropriation beneficiary is treated as the applicant’s adversary. The proceedings are conducted before the non-contentious department, i.e. before a trial chamber composed of one professional judge and two lay judges. The court and the parties act pursuant to the provisions of the Law on Non-Contentious Proceedings, which stipulate two-party non-contentious proceedings, and by analogous application of the provisions of the Law on Litigation Proceedings.

How is compensation set?

The legislator has stipulated that compensation is set on the basis of market values, and expert witnesses play a very important role in this! It is specifically provided that the Tax Administration assesses the value of building and agricultural land: this has caused considerable problems, which have partly been solved by Constitutional Court decisions in proceedings following citizens’ constitutional appeals!

EXAMPLE FROM PRACTICE:

The Constitutional Court took the following stance in its Decision Už:5686/2011 dated 28 February 2013:

"Therefore, according to the assessment of the Constitutional Court, the task of the Tax Administration is not to set the market price of expropriated real estate, but rather to assess it, with the proviso that, if no agreement on compensation is reached, only the court has competence to set the compensation for expropriated real estate in non-contentious proceedings. Once again, the Constitutional Court emphasizes that it follows from the provision of Art.42 of the Law on Expropriation that the compensation assessed by the Tax Administration constitutes the lowest amount of compensation for expropriated real estate that may be set by the court. The Constitutional Court particularly emphasizes that it follows from the provision of Art.136, para.2 of the Law on Non-Contentious Proceedings that, in addition to the assessment provided by the Tax Administration, the court may present other evidence proposed by the parties and seek expertise, if it deems it relevant to setting the compensation amount."

The cited Constitutional Court decision constitutes the precedent for numerous other decisions made by the Constitutional Court in cases where constitutional appellants maintained violations of the right to property in proceedings for setting compensation for expropriated real estate.

EXAMPLE FROM PRACTICE:

Declaration of the Constitutional Court Decision Už:7833/2011 dated 3 July 2014:

"On the basis of the contents of the constitutional appeal lodged by Dragan Stanojević and the enclosed evidence, the Constitutional Court has found that, in the non-contentious proceedings preceding the Constitutional Court proceedings, the said appellant was in a materially similar factual and legal situation as the constitutional appellant in case Už.5686/2011.

Starting from this, the Constitutional Court has found that the contested Decision of the Higher Court in Jagodina Gž.867/13 dated 9 August 2013 violated the constitutional appellant's right to property, guaranteed by Art.58 of the Constitution of the Republic of Serbia.

This Decision is founded on the reasons presented in the Statement of Reasons for the Constitutional Court Decision Už:5686/2011 dated 28 February 2013, published on the Constitutional Court website.

On the basis of the above and pursuant to the provisions of Art.89, para. 1 and 2 of the Law on the Constitutional Court, the Constitutional Court has upheld the constitutional appeal, quashed the Decision of the Higher Court in Jagodina Gž.867/13 dated 9 August 2013, and ordered the said court to repeat the proceedings following the constitutional appellant's appeal against the Decision of the Basic Court in Paraćin - Court Unit in Ćuprija R1.37/11 dated 4 June 2013."

With reference to the Constitutional Court Decision Už:7833/2011 dated 3 July 2014, the Basic Court in Paraćin issued a decision in case R1 No 41/14 dated 8 September 2015, which stated:

"The former owner lodged a constitutional appeal to the Constitutional Court of Ser-

bia; subsequently, by Decision Už. 7833/2011 dated 3 July 2014, the Constitutional Court of Serbia upheld the constitutional appeal of the former owner Dragan Stanojević, found that the Decision of the Higher Court in Jagodina violated his right to property, guaranteed by Art. 58 of the Constitution, quashed the Decision of the Higher Court and rejected the constitutional appellant's claim for non-pecuniary damages.

Following this, by Decision Gž.708/14 dated 27 August 2014, the Higher Court quashed the Decision of the court of first instance and returned the case files for the proceedings and deliberation to be repeated.

Referring to the case law of the Constitutional Court, courts of general jurisdiction have delivered judgments whose statements of reasons declare that the compensation assessed by the Tax Administration constitutes the lowest amount of compensation for expropriated real estate that may be set by the court, as well as that, in addition to the assessment provided by the Tax Administration, the court may present other evidence proposed by the parties and seek expertise, if it deems it relevant to setting the compensation amount."

EXAMPLE FROM PRACTICE:

In its Decision No 4R1-606/13 dated 21 January 2015, THE FIRST BASIC COURT IN BELGRADE states:

"In deliberating the amount of compensation for expropriated land, by applying Art. 42 of the Law on Expropriation of the RS, on the basis of the entire evidentiary hearing conducted, the Court has found that, under the effective Decision of the Metropolitan Municipality of Palilula, Department for Property Affairs, No 465-74/2013-I-3 dated 27 May 2013, the full expropriation with compensation was conducted in respect of CL 1614/2, having an area of 105 m2, LN 2000, CM of Ovča, property of deceased Ljubica Kopšan, whose legal successor is the applicant Aurel Kopšan, for the purpose of building the second track of the Belgrade-Center-Pančevo Bridge-Pančevo Central Station railway; that compensation to the applicant for the expropriated cadastral lot was not set by an agreement or paid; that, according to the Findings and Opinion of expert witness Velimir Aleksić dated 27 July 2014, the market value of the expropriated land was appraised at 2,182.00 dinars per m2; hence, the Court has imposed the obligation on the final beneficiary, the adversary of the applicant Aurel Konošan, to pay the amount of 229,110.00 dinars within 15 days of the receipt of the Decision.

The Court has weighed the claims made by the applicant's adversary that, under the Law on Expropriation of the RS, the market value can only be assessed by the Tax Administration and that the Court should set the compensation for the expropriated cadastral lot according to the assessment of the Tax Administration as the only authority competent to assess the market value of expropriated land, but found them to be groundless; this is because, according to the stance of the Constitutional Court filed under No Už.5686/11, adopted at the chamber session held on 28 February 2013, the task of the Tax Administration is not to set the market price of expropriated real estate, but rather to assess it, with the proviso that, if no agreement on compensation is reached, only the court has competence to set the compensation for expropriated real estate in non-contentious proceedings. Once again, the Constitutional Court emphasises that it follows from the provision of Art.42 of the Law on Expropriation that the compensation assessed by

the Tax Administration constitutes the lowest amount of compensation for expropriated real estate that may be set by the court. The Constitutional Court particularly emphasises that it follows from the provision of Art. 136 of the Law on Non-Contentious Proceedings that, in addition to the assessment provided by the Tax Administration, the court may present other evidence proposed by the parties and seek expertise, if it deems it relevant to setting the compensation amount. In the case under consideration, when the applicant proposed the presentation of evidence by obtaining expertise, the Court upheld this proposal and founded its decision on the findings and opinion of the expert witness, having found it justified.

At the same time, we emphasise that, in revision proceedings, the Supreme Court of Cassation issued Decision Rev.1316/2015 dated 4 February 2016, which also refers to and cites the case law of the Constitutional Court:

"In deliberating the amount of compensation for expropriated real estate, courts of lower instance have applied Art.41, para.2 of the Law on Expropriation, Art.132 of the Law on Non-Contentious Proceedings, and Art.136, para.2 of the Law on Non-Contentious Proceedings; at the same time, they were aware of the stance of the Constitutional Court that the compensation assessed by the Tax Administration constituted the lowest amount of compensation for expropriated real estate that could be set by the court, as well as that, in non-contentious proceedings for the setting of such compensation, in addition to the assessment provided by the Tax Administration, the court could present other evidence proposed by the parties and seek expertise, if it deems it relevant to setting the compensation amount.

In this case, in contrast to the revision claims, courts of lower instance founded their decisions on the findings and opinions of expert witnesses, rather than Tax Administration reports, and substantiated such decisions with clear and justified reasons, which are fully endorsed by the court of revision. Specifically, the applicant first approached the Tax Administration, and then the Commission of the Tax Administration, which proposed expertise. Given that expertise was requested by the Tax Administration itself, the courts of lower instance acted correctly by setting compensation for expropriated real estate on the basis of the findings and opinions of expert witnesses."

The pecuniary amount of compensation for expropriated real estate is set on the basis of the market price, as at the moment of the conclusion of the compensation agreement, or, if no agreement is reached, as at the moment of the first-instance decision-making about compensation.

If the real estate is handed over to the expropriation beneficiary before the expropriation decision takes effect, the former owner is entitled to choose whether compensation is set as at the time of handover of the expropriated real estate or as at the time of first-instance decision-making about compensation.

If expropriated real estate comprising different property types is owned by the same owner, the compensation agreement or the court decision, as appropriate, must specify the compensation for each property type separately (land, buildings, equipment etc.).

Compensation for expropriated agricultural and building land is set pursuant to Art.42 of the Law on Expropriation, in a monetary amount based on the market price of such land, unless otherwise provided by law.

CASE LAW:

Declaration from the Decision of the Higher Court in Belgrade Gž.636/15 dated 1 September 2015:

"The court of first instance has found that the disputed lot is agricultural land; therefore, pursuant to Art. 42 of the Law on Expropriation, it has decided as stated in the dictum, on the basis of the Tax Administration Report dated 19 April 2013, which contains the proposed market value of an 8 ha part of the cadastral lot as land suitable for building.

However, the applicant correctly notes in his appeal that, in issuing the appealed decision, the provisions on litigation proceedings stipulated by Art. 374, para. 2, point 12 of the Law on Litigation Proceedings were materially violated.

In the case at hand, the contents of the enacting terms of the final decision on expropriation III-o5 No 465-32/2009-359 dated 18 August 2010 are incomplete and incomprehensible with regard to the factual situation concerning the principal matter - the expropriated real estate. Specifically, the contents of the enacting terms are not clear and precise with regard to the land category of the expropriated CL 1114/2, which is contrary to Art. 198, para. 2 of the Law on General Administrative Proceedings, i.e. the material fact that building land is being expropriated is not indicated in accordance with . Art. 26, para.1, point 2 and Art.31, para. 1, point 2 of the Law on Expropriation; instead, this can only be ascertained by indirect means, which renders the contested decision unlawful. The reason for this is that the applicant's cadastral lot is building land, because it is surrounded by already built infrastructure (transport routes, power, water, telephone and internet networks, street lighting etc.) and built residential and commercial structures, and also because the planning document - the General Regulation Plan for Vreoci Settlement dated 17 December 2008, 06 No 145/2008, published in the Official Journal of the City of Belgrade No 54/08 includes the expropriated CL 1114/2, which, in accordance with Art. 82, 85, 86 and 88 with reference to Art. 11 and 216 of the Law on Planning and Building, renders it a building land lot; hence, it must be treated as building land, which fact is presumed by the law and need not be proved separately. The fact that the authority that adopted the planning document failed, in accordance with Art. 87 of the said Law, to submit this document with an inventory of the land lots converted from agricultural to building land to the authority competent for state survey and cadastre affairs, which was to implement the said conversion by issuing a decision, must not cause the real estate owner, i.e. the applicant in this case, to sustain any harmful consequences. The failure to ascertain the material fact that the expropriated land was building land renders the contested decision legally invalid within the meaning of Art. 31 and 35 of the Law on Expropriation, and its enforcement is not possible, in accordance with Art. 257, para.1, point 3, as a result of which the first-instance judgment is quashed."

In Art.42, para. 2. of the Law on Expropriation, the legislator has stipulated that the assessment of the market price of land and building land is provided by the authority competent for the assessment of real estate transfer tax. The case law of the Constitutional Court, which has quashed dozens of judgments of the Higher Courts in Jagodina, Pirot and Subotica, has led to the legal rule that land value is determined by all means of evidence, including expertise. The assessment of the Tax Administration constitutes only the starting point, as it often happens that the prices assessed by the Tax Administration are ten times lower than those assessed by expert witnesses.

Compensation for an expropriated residential building, flat or commercial space is set on the basis of the market price of such real estate, in accordance with Art. 43 of the Law on Expropriation.

The user of expropriated state- or publicly-owned building land is entitled to compensation, as follows:

1) former owner or another person whose right of use is founded on the former owner's right, within the meaning of Art. 84 of the Law on Planning and Building (Official Gazette of the RS Nos 47/03 and 34/06) - compensation equal to the market value of the land;

2) person who became the user of state-owned building land up to 13 May 2003, within the meaning of Art. 87 of the Law on Planning and Building (Official Gazette of the RS Nos 47/03 and 34/06) - compensation equal to the amount invested in the acquisition of the land.

Specific rules for setting compensation for expropriated fruit-bearing vineyards or orchards are stipulated in Art. 45 of the Law on Expropriation. Thus, in case of a vineyard or orchard, compensation for land is determined first; the market price of non-depreciated investments in the establishment and maintenance of vineyard or orchard is then added, as well as the amount of net yield that would be generated by that vineyard or orchard, taking into account its age and fertility, over the number of years needed to establish a new vineyard or orchard and for it to reach full yield.

Compensation for an expropriated young non-fruit-bearing vineyard or orchard is determined by determining compensation for land and adding the value of the investments in its establishment and the amount of net yield that would be generated in the number of years equal to the age of the vineyard or orchard at the moment of expropriation.

The same legal rules apply to the determination of compensation for individual fruit trees or vines on expropriated land.

Compensation for an expropriated plant nursery is determined in the same manner as for agricultural land. The compensation thus determined is increased by the market price of planting materials (seedlings and other plant propagation materials) that have not been used by the former owner by the day of real estate handover to the expropriation beneficiary.

Compensation for expropriated mature or almost mature forest is stipulated in Art. 47 of the Law on Expropriation and comprises: the value of forest products determined on the basis of market prices for timber delivered at forest roadside terminal or other point of loading or purchase, less production costs.

A major problem in determining compensation for forests is that expert witnesses in forestry always determine the market price on the basis of the price list of Public Enterprise Srbijašume (Serbia Forests). As a rule, expert witnesses refuse to add value-added tax to this price, which is not banned by non-contentious court departments according to the rules; instead, courts award compensation at forest product market prices without value-added tax!

Compensation for expropriated young forest is determined on the basis of the costs of establishing such forest, increased by the value growth factor to reflect the value of mature forest.

Production costs comprise the costs of logging, manufacturing and transportation of forest products from the forest to the forest roadside terminal or other point of loading or purchase.

The costs of establishing a young man-made forest equal the costs of afforestation, while the costs of establishing a young natural forest equal the costs of artificial afforestation by seed sowing.

Forest almost mature for logging is understood as even-aged forest of at least two thirds of mature forest age, and young even-aged forest is understood as forest of up to two thirds of mature forest age.

Uneven-aged forest (selection forest or small-group uneven-aged forest) is considered to be forest mature for logging.

The former owner is not entitled to compensation for the investments made after the day of written notification of the submitted expropriation proposal, except for the costs necessary for the use of real estate.

The former owner is notified of the submitted expropriation proposal by the authority competent for issuing the expropriation decision.

INCREASED COMPENSATION

In Art. 51 of the Law on Expropriation, the legislator has provided for the possibility of increasing compensation. In setting compensation, an amount higher than the market price may be set, taking into consideration the financial and other personal and family circumstances of the former owner, if those circumstances are of material importance for his/her livelihood (number of household members, number of household members capable of economic activity, and/or number of those employed, health status of household members, monthly household income etc.).

EARLY HANDOVER OF POSSESSION

At the request of the expropriation beneficiary, the ministry in charge of finance affairs may decide, pursuant to Art. 35 of the Law on Expropriation, to hand over the real estate to the expropriation beneficiary before the decision on compensation for the expropriated real estate takes effect, or, where appropriate, before the conclusion of the compensation agreement, but not before the issuance of the second-instance decision on appeal against the expropriation decision, if this is deemed necessary on the grounds of urgency of the construction of a specific structure or the performance of works.

Handover to the expropriation beneficiary before the decision on compensation takes effect, or before the conclusion of the compensation agreement, as appropriate, may not be allowed if the expropriation beneficiary has not first established the necessary elements for setting the amount of compensation for the expropriated structure, within the meaning of Art. 31, point 7 of the Law on Expropriation.

If the real estate is handed over to the expropriation beneficiary before the decision on compensation takes effect, or before the conclusion of the compensation agreement, as appropriate, and the expropriation proposal is finally rejected in further proceedings,

the expropriation beneficiary is required to return the real estate to the owner and compensate damages.

THE PROVISION OF ARTICLE 35 SHOULD BE APPLIED SELECTIVELY AND RESTRICTIVELY; HOWEVER, EXPROPRIATION BENEFICIARIES OFTEN OBTAIN DECISIONS ON EARLY HANDOVER OF POSSESSION FROM THE MINISTRY OF FINANCE, THUS RENDERING THIS LEGAL INSTITUTION A MATTER OF COMMON PRACTICE, AS A RESULT OF WHICH PEOPLE'S HOMES ARE DEMOLISHED AND THEIR HEARTHS DESTROYED! With police assistance, CHILDREN are evicted from houses, and livestock from STABLES. All items found in households are thrown out, without paying a single dinar in compensation... OR PROVIDING EMERGENCY ACCOMMODATION. THE WORST ASPECT IS THAT THE PROCEDURES FOR EARLY HANDOVER OF POSSESSION ARE INITIATED BY PEOPLE WHO ARE SAID TO OWN SEVERAL FLATS OWING TO THEIR CLOSE TIES to expropriation beneficiaries; THIS, HOWEVER, DOES NOT STOP THEM FROM TAKING AWAY ROOF OVER OTHER PEOPLE'S HEADS, WITHOUT ANY INDICATION THAT COMPENSATION FOR IT WILL BE PAID ANY TIME SOON!

According to an unwritten rule, when Art. 35 of the Law on Expropriation is applied, expropriation beneficiaries go to great lengths to obstruct the procedure for setting compensation. In those situations, non-contentious proceedings sometimes last for decades.

FORGOING EXPROPRIATION

By the time the expropriation decision takes effect, the expropriation beneficiary may forgo the expropriation proposal.

The effective expropriation decision will be annulled or amended in all cases where this is jointly requested by the expropriation beneficiary and the former owner.

At the request of the former owner of expropriated real estate or his/her heir, the effective expropriation decision will be annulled or amended if, within three years of the decision on compensation taking effect or of the conclusion of the compensation agreement, the expropriation beneficiary has not performed any considerable works on the structure for the construction of which the expropriation was performed, in line with the nature of the structure.

Art. 35 of the Law on Expropriation stipulates that, after the expiry of five years of the decision on compensation taking effect or of the conclusion of the compensation agreement, the former owner of expropriated real estate or his/her heir may not file a request for the annulment or amendment of the effective expropriation decision.

In case of expropriation for the purpose of mineral extraction, the effective expropriation decision will be annulled or amended within the meaning of para. 3 of Art. 35 of the Law on Expropriation if, within six years of the decision on compensation taking effect or of the conclusion of the compensation agreement, the expropriation beneficiary has not conducted any considerable preparatory and other works required for mineral extraction.

In case expropriation is performed for the purpose of mineral extraction in open-pit mines, the former owner of expropriated real estate or his/her heir may not file a request

for the annulment or amendment of the effective expropriation decision after the expiry of eight years of the decision on compensation taking effect or of the conclusion of the compensation agreement.

The forgoing of expropriation proposal and the request for the annulment or amendment of the effective expropriation decision shall be considered by the authority that considered the expropriation proposal in the first instance.

In case the real estate expropriated by the decision whose annulment or amendment is sought was owned by several co-owners, in order for the request to be considered, it needs to be filed by a majority of those owners, with the proviso that the competent authority will invite the remaining ones to declare their position concerning the request.

In the event of a dispute, property relations between the expropriation beneficiary and the real estate owner will be resolved by the competent court.

FACTUAL EXPROPRIATION

It is not uncommon that structures of public interest are built on citizens' private property without any expropriation procedure. In such situations, "factual expropriation" takes place and the aggrieved citizens are compelled to seek compensation in litigation proceedings. Such proceedings are less favourable for citizens since, in contrast with non-contentious proceedings, they are required to pay all the court charges (for lawsuit, judgment, appeal, revision), expert witnesses' expenses and remuneration, and other legal expenses. As the value of the property concerned is usually very high, filing lawsuits and initiating court proceedings is worthwhile. In drafting lawsuits, the following example from case law should be used.

REPUBLIC OF SERBIA
APPELATE COURT IN BELGRADE
Gž. No 14159/10
Date: 11 April 2011
B E L G R A D E

IN THE NAME OF THE PEOPLE

THE APPELATE COURT IN BELGRADE, the Chamber composed of judges Tamara Uzelac Đurović, President of the Chamber, Dobrila Strajina and Vesna Mitrović, Members of the Chamber, in the litigation proceedings concerning compensation, brought by the plaintiffs AA, AA1 and AA1, represented by AB, attorney-at-law, against the defendant Metropolitan Municipality of Obrenovac, having its seat in Obrenovac, represented by the Municipal Public Attorney of Obrenovac, and the Obrenovac Public Enterprise for Construction, having its seat in Obrenovac, in determining the appeals of the defendants against the Judgment of the Second Basic Court in Belgrade III - 9 P. No 362/08 dated 15 April 2010, at the Chamber session held on 11 April 2011, delivered the following

J U D G M E N T

I. The defendants' appeal is hereby DISMISSED as unfounded and the Judgment of the Second Basic Court in Belgrade, Court Unit in Obrenovac, III - 9 P. No 362/08 dated 15 April 2010, contained in the first paragraph of the dictum, is hereby UPHELD.

II. The ruling on the cost litigation proceedings contained in the second paragraph of the dictum of the Judgment of the Second Basic Court in Belgrade III - 9 P. No 362/08 dated 15 April 2010 is hereby QUASHED and the Second Basic Court in Belgrade, Court Unit in Obrenovac, is ordered to conduct a RETRIAL in respect of that part of the case.

Statemnt of Reasons

The contested judgment upheld the claim and bound the defendants Metropolitan Municipality of Obrenovac and Obrenovac Public Enterprise for Construction to pay the plaintiffs as follows: the sum of 331,187.00 dinars to AA, the sum of 331,188.00 dinars to AA1, and the sum of 662,375.00 dinars to AA2 with the appertaining statutory interest on the awarded amounts for the period from 7 October 2009 to the day of the payment, on account of compensation for expropriated land, namely CL No 2713/1, CL No 2713/2, CL No 2713/3, CL No 2713/4, CL No 2713/5 and CL No 2713/6, CM of Zabrežje (para. I of the dictum). The defendants Metropolitan Municipality of Obrenovac and Obrenovac Public Enterprise for Construction, having its seat in Obrenovac, were bound to pay the sum of 476,000.00 dinars to the plaintiffs on account of costs of litigation proceedings.

The defendants lodged a timely appeal against the said judgment on the grounds of all legal reasons provided for by the provision of Art. 360, para.1 of the Law on Litigation Proceedings.

Having examined the regularity of the contested judgment within the meaning of the provision of Art. 372 of the Law on Litigation Proceedings (Official Gazette of the RS No 125/04 with subsequent amendments), the Appellate Court found that the defendants' appeals were partly founded.

By filing a suit, the plaintiffs initiated litigation proceedings that established a procedural law relationship, which was further developed by the procedural parties by taking specific actions aimed at effecting the determination of the claim. In these procedural developments, the court of first instance correctly applied those provisions of the Law on Litigation Proceedings whose application was occasioned by the parties to the dispute with their actions and doings. Indeed, the court of first instance acknowledged each action taken by a party to the dispute and took the correct stance thereon from the aspect of the relevant norm of the procedural law. The court apprised one party of the actions taken by the opposing party and their legal consequences, thus ensuring the conditions for unhindered progress and further development of the procedural law relationship through the stages of the litigation proceedings, until the conclusion of the main hearing. After the conclusion of the main hearing, the court of first instance delivered a judgment in

conformity with the provision of Art. 342 of the Law on Litigation Proceedings. Hence, the Appellate Court finds that the contested judgment is not affected by absolutely material violations of the provisions on litigation proceedings of Art. 361, para. 2 of the Law on Litigation Proceedings, which are safeguarded by the court ex officio, or relatively and absolutely material violations of the provisions on litigation proceedings of Art. 361, para.1 and 2 of the Law on Litigation Proceedings, which are maintained by the defendants in their appeals.

As regards the factual situation, the Appellate Court is of the view that the appealed judgment is correct and lawful in that aspect as well. Specifically, the court of first instance conducted the evidentiary hearing and, by correctly assessing the evidence presented, ascertained the factual situation, from which, according to the findings of this court, it follows: - that the plaintiffs' legal predecessors were owners, registered in land registry, of CL aa/1, aa/2, aa/3, aa/4, aa/5 and CL Aa/6 in CM vv; that the Decision (No 462-4 dated 23 February 1993) of the administrative authorities of the Municipality of Obrenovac established that those land lots constituted urban building land; that, on the grounds of that decision, the plaintiffs' legal predecessors retained the right of use of those lots; that a road was built and water supply and sewerage pipes laid over the said lots; that those lots were not formally expropriated from the plaintiffs and their legal predecessors; that the market value of the land amounted to 1,324,750.00 dinars; and that the plaintiffs were co-users of those lots, namely AA and AA1 with aliquot parts of 1/4 each, and AA2 with an aliquot part of 1/2.

Finally, once the procedural law relationship was mature for determination on merits, the court of first instance correctly applied the substantive law on the correctly established factual situation, i.e. it applied the provisions of Art. 1, 15 and 43-a of the Law on Expropriation of RS and concluded that the plaintiffs' claim was founded. This court agrees with the legal conclusion of the court of first instance, as it is substantiated by reasons which correctly explain how the plaintiffs acquired their entitlement to compensation and why the defendants are obliged to pay it. The matter in question is the so-called factual expropriation, where, by its very logic, it is not necessary for the municipality to have formally expropriated the land in order for the owner or user of the land taken away to be entitled to financial compensation. The relationship of factual expropriation occurs when roads, infrastructure or other structures of public and general interest are built on land, although a decision on land expropriation does not exist. Therefore, factual expropriation occurs as a result of omission on the part of the municipality, which allows the construction of structures of public interest on land that has not been formally expropriated. Such practice leads to jeopardizing and violating subjective civil rights of natural persons and legal entities in respect of land and other real estate. The legal institution of factual expropriation protects the owners or users of land vis-a-vis the municipality and other public authorities that, either directly or through the agency of third parties (final beneficiaries), organize the construction of public and other assets on land that has not been formally expropriated. It is precisely for these reasons that the court of first instance bound the defendants to pay compensation to the plaintiffs for the factually expropriated cadastral lots. Indeed, the construction of a street with the necessary utility infrastructure altered the character of the land through which the street runs. It is no longer a private asset, i.e. a private road, but a public asset tended by the state through its authorities and

public enterprises. At the same time, the municipality and the final beneficiary are liable towards the land owner or user, because they have brought their land into line with the relevant use without expropriating it first. As for the amount of compensation awarded, this court finds that the court of first instance correctly concluded, in conformity with the provision of Art. 43-a of the Law on Expropriation of RS, that the defendants were obliged to pay to the plaintiffs the total sum of 1,324,750.00 dinars. The first-instance decision is also correct where it concerns the statutory interest awarded, as it is correctly founded on the provisions of Art. 277, para.1 of the Law on Contracts and Torts.

In view of the above, in accordance with the authority referred to in Art. 375 of the Law on Litigation Proceedings, this court dismissed the defendants' appeals as unfounded and upheld para. I of the dictum of the first-instance judgment.

The defendants challenge the results of the evidentiary hearing in their appeals, attempting with their claims to cast doubt on the accuracy of the conclusions of the court of first instance regarding the material factual matters of the disputed relationship. This court has no grounds to doubt the factual situation presented in the contested judgment, given that, in the statement of reasons, the court of first instance provided the reasons that clearly and completely explain how the evidentiary hearing progressed, what evidence was presented during that hearing, and how the facts material for the determination of the plaintiffs' claim were established. Therefore, this court need not repeat and re-interpret the reasons whereby the court of first instance substantiated its factual conclusions. Given that the factual situation was correctly and fully established and given that it includes facts that are presumed by the legislator for the application of the said provisions of the Law on Expropriation of the RS, the claims in the appeal arguing that the court of first instance erroneously applied the substantive law in determining the plaintiffs' claim are also unfounded.

As regards the regularity and lawfulness of the ruling on the costs of litigation proceedings, this court finds that the court of first instance correctly concluded that the plaintiffs' entitlement to the recovery of those costs should be recognized; however, the court of first instance obviously did not take account of whether all the actions taken by the plaintiffs' attorney were indispensable and necessary for the conduct of these proceedings, as a result of which the ruling on the costs of litigation proceedings cannot be considered correct and lawful. Specifically, when the legislator stipulates in Art.150, para. 1 of the Law on Litigation Proceedings that the court considers only those costs which were necessary for the conduct of the litigation proceedings, this provision should be regarded as the legal norm that defines the conditions under which the prevailing party in litigation proceedings may be entitled to recover the costs of those proceedings. In the said legal norm, the legislator uses the formulation "costs which were necessary for the conduct of litigation proceedings"; the content of this formulation is non-specific and implies that the court should examine the essence of the procedural actions for which the recovery of costs is sought, and only then reach the legal conclusion whether the entitlement to the recovery of costs may be recognized in respect of those actions. In determining the costs of the proceedings, the court of first instance did not address the said factual matters at all; instead, it recognized the plaintiffs' entitlement to the recovery of costs for the drafting of 13 submissions. This court is, therefore, of the view that the

court of first instance failed to fully establish the factual situation necessary for reaching a correct and lawful decision on the costs of litigation proceedings, as a result of which, in accordance with the authority referred to in Art. 387, para. 1, point 3 of the Law on Litigation Proceedings, the decision on the costs of litigation proceedings was quashed, as stated in para. II of the dictum. In retrial, the court of first instance shall first establish what procedural actions were taken in the name and on behalf of the plaintiffs by their attorney and whether these were indispensable and necessary for the conduct of these litigation proceedings. Following this, the court of first instance shall, in accordance with the plaintiffs' claim, determine the costs of litigation proceedings by applying the Lawyers' Tariff applicable at the time of conclusion of the main hearing, as well as the "joinder of parties" rule (since the plaintiffs' side included several persons represented by the same attorney) to the correctly and fully established factual situation.

This court took account of all claims made by the defendants in their appeals, but found that these do not cast doubt on the regularity and lawfulness of the contested judgment.

PRESIDENT OF THE CHAMBER - JUDGE
Tamara Uzelac Đurović, sgd.
Accuracy of the copy of judgment verified by
Head of the Clerk's Office
Svetlana Antić

GOLDEN RULES OF EXPROPRIATION

1. Immediately engage a lawyer with experience in expropriation procedures, as the expropriation beneficiary covers all the costs, including the fees and expenses of the opposing party's legal counsel. In addition, most specialized lawyers are readily willing to represent citizens in these procedures under a contract whereby the payment of attorney's fees and expenses is due only after the final payment for expropriated property.

2. Use all legal remedies, from those in administrative disputes against decisions establishing public interest, appeals in administrative proceedings before the local administrative authority, to appeals in non-contentious proceedings, if you are not satisfied with the compensation awarded, which may not be lower than the market value of the expropriated assets.

3. Make sure you receive all summons and administrative and judicial documents served on you.

4. Do not allow expert witnesses who are in conflict of interest to perform the "rough" inventory of your property.

5. Check whether the expropriation decision includes all the real estate, accessories (sheds, fences, walkways, levees, terraces, cesspools, wells, plantations, horticulture etc.).

6. Collect all evidence of the sale or lease of real estate in your neighborhood, as well as other data on the market value of the property being expropriated from you.

7. After obtaining the Tax Administration's assessment of the value of the land being expropriated, if you are not satisfied, make sure you request expertise by an expert witness in the relevant field.

The team of the Predrag Savić Law Office has extensive experience in expropriation procedures. This highly complex procedure, with its integral parts before administrative authorities and the non-contentious court, requires outstanding proficiency. The Predrag Savić Law Office represents many former owners throughout Serbia, whose property was expropriated for the purpose of road and railway construction, mineral extraction and the like. As attorneys of many residents of Ovča and Borča whose property is being expropriated to build the Belgrade Bypass Road, residents of Ćuprija and surrounding villages whose property is under expropriation to build the Jagodina-Paraćin railway, and many households in the Municipality of Lazarevac whose property accumulated by several generations is being expropriated to expand the open-pit mines and coal mining operations, we have been involved in expropriation and compensation-setting procedures in respect of:

- BUILT STRUCTURES (residential and ancillary structures and accessories; commercial structures and factories),

- CROPS (forests, orchards, vineyards, horticulture, specific crops such as horseradishes, roses etc.).

- LAND (developed and vacant building land, agricultural land, land under forest).

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Thus, the above considerations lead to the conclusion that the expropriation procedure is very complex and involves multiple authorities: executive, administrative and, possibly, judicial. It is, therefore, essential that persons whose property is subject to expropriation pay attention and engage professional legal services, in order to protect their rights in an adequate manner and obtain fair compensation equivalent to the value of their property.

MOST COMMON REASONS FOR COURT ACTION

(brought by individuals, civic associations or elected officials)

Non-compliance with the Law on Expropriation (application of the contractual resettlement principle - payment of advances, which is not recognized by the Law on Expropriation)

Non-compliance with the Law on Burials and Burial Grounds (Art. 18-20), as well as compelling citizens to give consent to the exhumation of their deceased family members before real estate expropriation, i.e. before they are able to know where their new place

of residence will be, given that the location for collective resettlement has not been identified yet

Ill-gotten gains by payment for land at a reduced value, contrary to the Law on Building and Planning, for the benefit of the company Kolubara Mining Basin

Low and inadequate appraisals of built structures

Property usurpation

Gross violations of procedural dynamics

Failure of the expropriation beneficiary to honour the commitments to the local community flowing from the programme and planning documentation

Individual disputes before courts concern the legality of the procedure, the amount of compensation (undervaluation of land, contrary to the Law on Planning and Building), as well as unlawful decisions to exhume graves, which are considered private property of the users of burial plots, under the European Convention on Human Rights and Fundamental Freedoms.

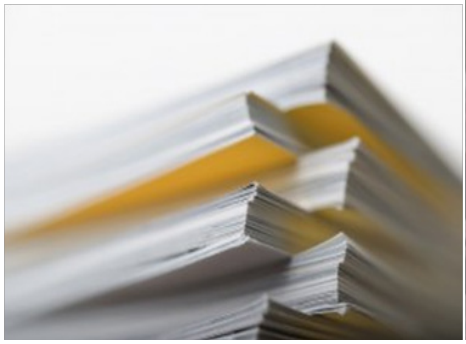
Disputes brought by civic associations or elected officials concern the enforcement of unfulfilled obligations from planning documents - collective resettlement, preservation of entities, local community, legal compliance, fair compensation, provision of bearable living conditions in infrastructural, communal and environmental terms during the resettlement process, until project completion, which is also a commitment undertaken in the General Regulation Plan for Vreoci Settlement.

It is evident that the initiation of proceedings and the conclusion of the initiated ones are being stalled, while the energy company Kolubara Mining Basin pursues its interests by grossly violating laws and human and property rights of the local population and community, contrary to the law and good business practice.

APPRAISALS OF REAL ESTATE (STRUCTURES AND LAND) VALUE (PROPERTY UNDERVALUATION) AND FAILURE OF EXPROPRIATION BENEFICIARIES TO HONOUR THEIR COMMITMENTS

The process of valuation of citizens' property in expropriation procedures is particularly problematic. The value of built structures is appraised by the Belgrade-based City Department of Expertise, which has a contractual relationship with the company Kolubara Mining Basin; thus, in the process of appraisal, citizens' structures are undervalued owing to the fact that the City Department of Expertise is biased towards its client. On the other hand, land value is not appraised in accordance with the Law on Expropriation and the Law on Planning and Building; instead, it is appraised on the basis of the findings of a joint committee, whose members included the representatives of the Metropolitan Municipality of Lazarevac and the company Kolubara Mining Basin. Thus, conflict of interest is present in both cases, as it is not logical to have property value appraised by the expropriation beneficiary and the local government authority. By payment for land

at a reduced value, contrary to the Law on Expropriation and the Law on Planning and Building, the company Kolubara Mining Basin receives ill-gotten gains to the detriment of the citizens of Vreoci and the Republic of Serbia, as this is a unique case of twofold "savings" - on the base for property transfer tax (since, instead of the market price, property owners receive only half of that sum in expropriation procedures), and also on "fair" compensation to owners (a criminal charge was filed with the Higher Public Prosecutor's Office in Belgrade on 30 November 2011, case No KTR - 4468/11). Voluminous materials were also submitted to Mr Miljko Radisavljević, Special Prosecutor at the dedicated organized crime department, about organized crime at the company Kolubara Mining Basin and Metropolitan Municipality of Lazarevac in connection with unlawful dealings in expropriation procedures in Vreoci.



Aleksandar Đurić, attorney-at-law

Under the Law on Expropriation, as the expropriation beneficiary, the company Kolubara Mining Basin is obliged to pay no less than the market price of expropriated real estate to the former owner. The undervaluation of property in the appraisal process is a frequent occurrence. It is difficult to have the property valued by an independent expert witness (except in court); instead, this is done by the enterprise "City Department of Expertise", which has a contractual relationship with the company Kolubara Mining Basin, which represents a classic example of conflict of interest, to the detriment of citizens.

RESETTLEMENT OF THE LOCAL COMMUNITY OF VREOCI

Author: Željko Stojković, President of Serbian Centre of Ecology

Vreoci, January 2017

BACKGROUND

In mid-2001, at the initiative of the management of the Public Enterprise Kolubara Mining Basin, talks were started about the development of the open-pit coal mines on the territory of the Local Community of Vreoci, as well as about the idea of relocating the local cemetery a few hundred meters northwards, as it was in the way of the largest open-pit coal mine in Serbia - Field D.

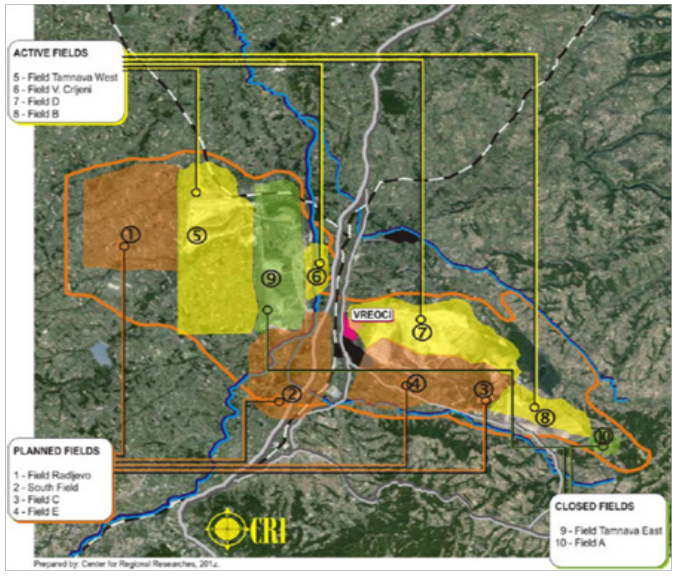
At that time, the management of Kolubara was requested to provide a clear idea of the development of the coal pits on the territory of Vreoci, in order to enable the local residents to plan their lives in this area.

FURTHER DEVELOPMENTS

In early 2002, the then management of Kolubara was dismissed and a new one appointed; among its first assignments was the issue of the cemetery in Vreoci. The management was also requested to present a development plan, which finally became available, but in an unofficial version.

On the plan presented to us, the territory of Vreoci would be reduced to about 30% of the original area, with about 50% of the previous population, who would continue living in an area of 5 square kilometres, 5 kilometres in length and, at some points, only 500 meters in width, together with all the industry, railway lines, roads, a network of 110 kV and 35 kV long-distance power lines and elevation of about 100 meters from the bottom of the open-pit coal mines, thus cut off from the eastern and western sides.

It was clear at first sight that survival in this area was impossible.



FURTHER COURSE OF EVENTS

In April 2002, at the gathering of citizens of the Local Community of Vreoci, the decision was made to seek a response about the fate of Vreoci directly from the Government of Serbia, which, according to the citizens' expectations, should consider not only of the interest of EPS (Electric Power Industry of Serbia), but also all aspects of life in this area.

A meeting was scheduled at the Ministry of Mining and Energy, where it was agreed to form a multi-disciplinary committee which would be composed of representatives of the ministries of mining, environmental protection, economy and urban planning, to provide an answer to the question what fate awaited the residents of Vreoci.

The committee was founded in the autumn of 2002; however, a problem arose when it transpired that the optimal timeframe for the committee to complete its work was 20 months, while the relocation of the cemetery was scheduled to start halfway through this period.

THE STRAW THAT BROKE THE CAMEL'S BACK

After months of negotiations with the management of Kolubara regarding the cemetery, which were accompanied by chronic indifference of the management as to the Vreoci residents' problems with the shortage of potable water, industrial pollution and discharge of foul wastewaters into our environment, the residents were fed up; on 16 January 2003, we gathered on the industrial railway lines and local roads and blocked the traffic in order to draw the attention of the competent authorities to years of injustice, manifold problems and those tasked with solving them but unwilling to do so, using cemetery relocation as leverage to blackmail the Vreoci residents.

VREOCI 2003

A.P. 15 January 2003
Večernje Novosti daily paper

RESETTLE THE RESIDENTS INSTEAD OF THE CEMETERY

Residents of the Local Community of Vreoci, in the vicinity of Lazarevac, will block the railway lines Vreoci - Nikola Tesla Thermoelectric Power Plant and Vreoci -Kolubara Thermoelectric Power Plant on Thursday, as no agreement has been reached concerning the relocation of the cemetery for the purpose of extending the open-pit coal mines.

As stated by **Miroslav Arsenijević, President of the Vreoci Ecological Association**, at the local community gathering, attended by Slobodan Djerić, Director of Public Enterprise Kolubara Mining Basin and Zoran Todorović, adviser to the Minister of Mining and Energy, the residents' demands regarding the resolution of the disastrous environmental situation had been rejected.

- At the six hours' meeting with the Kolubara management, not a single proposal of ours was accepted. We are of the view that the cemetery may not be relocated unless the entire settlement is resettled. We have not had potable water for years now, both soil and air are polluted, says Arsenijević.

- We demand the Municipality of Lazarevac to annul the decision from 1987 banning the building of housing structures on the territory of Vreoci Local Community, as well as to increase the amount of compensation for agricultural land from EUR 50 to EUR 150 per are.

Criminal charges were brought against an environmental protection engineer, head of the water supply enterprise and inspection authorities since, in the residents' opinion, they had allowed the Public Enterprise Kolubara Mining Basin to completely endanger the environment and people's health and lives.


Mališa Marković, President of the Council of the Local Community of Vreoci

The problem was defined after three days of railway blocks, when Minister of Mining and Energy Ms Kori Udovički came to the community and promised that Kolubara would solve most of the accumulated problems by April 2003, as well as that a technical and economic analysis would be carried out to determine the future of the entire community in terms of retaining it or resettling it to another location.

VISIT TO GERMANY - NOVEMBER 2006

By order of the Kolubara Director Dragan Tomić and due to the need emerging within the framework of negotiations and consultations regarding the conditions for resettling the settlement of Vreoci, a delegation of the Metropolitan Municipality of Lazarevac, Local Community of Vreoci and the Kolubara Mining Basin visited the German energy company RWE from 27 to 30 November in order to become familiar with the approach to resettlement in the Rhine area owing to the extension of open-pit coal mines and gain certain experiences that might be useful in the Vreoci resettlement procedure.


The delegation consisted of Slobodanka Mijović - Head of the Municipal Administration of the Metropolitan Municipality of Lazarevac, Julijana Nedeljković - Public Attorney of the Metropolitan Municipality of Lazarevac, Miroljub Božović - Assistant Manager of Kolubara in charge of investment affairs, Zoran Marković - jurist in charge of resettlement procedures, Dragan Arsenijević - member of the Council of the Local Community of Vreoci, Željko Stojković - member of the Council of the Local Community of Vreoci, Radiša Sinđelić - member of the Council of the Local Community of Vreoci, and Teodora Kaličanin - interpreter.

The delegation was very cordially received by Mr. Frank Schipers, in charge of international relations at RWE, who had prepared and realised the visit plan for the participants.

Talks were also held with Mr. H. Kunze, a resident of the former settlement, who had been in charge of coordinating the resettlement project together with the mine.

The following conclusions were reached at the seminar:

1. Resettlements are to be carried out in accordance with the planning documents based on legal regulations.
2. Planning is the basis for the operational strategy of RWE, and the resettlement procedure is feasible, since there is enough time to resolve all uncertainties associated with the procedure.
3. Resettlement is to be carried out in the spirit of mutual trust.
4. Transparency of the procedure is to be expected and all means are to be used to clarify all disputable cases.
5. The host's recommendation to all the parties involved in the procedure is to direct all their energy toward building a new community, rather than waste it on mutual conflicts.
6. Resettlement is not only about money, but also about the future of the people.
7. The resettlement location is to be chosen within own community, where infrastructure has already been built.
8. The value of the households is to be appraised by authorized experts, and the final decision is to be reached by the court in case of a dispute.
9. All contentious matters are to be resolved through dialogue.

Correspondence between the Local Community of Vreoci and the General Manager of Public Enterprise Electric Power Industry of Serbia (PE EPS) (Local Community of Vreoci 01-253/1, dated 1 July 2009, Public Enterprise Electric Power Industry of Serbia 1-07/26-07 dated 11 August 2009)

The President of the Council of the Local Community of Vreoci hereby informs the General Manager of PE EPS, as one of the three participants in the implementation of the Vreoci resettlement project, that the Metropolitan Municipality of Lazarevac, Public Enterprise Electric Power Industry of Serbia and the company Kolubara Mining Basin, involved in the implementation of the Vreoci resettlement project for the purpose of expanding the Kolubara open-pit mines, have so far **demonstrated inertia, frivolity and irresponsibility, as well as gross violation of the timeframe of the entire procedure;** as a result, the community is compelled to approach the PE EPS General Manager and invite him to exercise his authority in order to ensure the responsible implementation of this project of strategic importance for energy and the state of Serbia. The letter points out that a special group of problems is the absence of the essential living

conditions, caused mainly by the extension of the pits and the existing industrial infrastructure, all of it being contrary to the obligations of the participants in project implementation stipulated in the planning documents. The PE EPS General Manager is requested to schedule a meeting to agree how to solve these life and livelihood problems of the Vreoci population.

Radosav Radonjić, President of the Council of the Local Community of Vreoci

The reply of the General Manager of PE EPS stated verbatim: "Regarding your letter, kindly be informed that Public Enterprise Electric Power Industry of Serbia is not in charge of making decisions on the demands stated by the residents of the Local Community of Vreoci in their letter." And further: "(...) the letter should to be addressed to (...) Kolubara Mining Basin as the company in charge, for whose benefit the real estate expropriation has been performed for the purposes of opening new open-pit mines...".

It is clear from the reply of the General Manager of PE EPS that PE EPS, as one of the three expropriation beneficiaries (participants in the process) fails to see any responsibility for the public and private damages sustained by the residents of the Local Community of Vreoci due to the extraction of lignite for the purpose of electric power generation and sale, as well as for the breach of obligations assumed by PE EPS within this project.

TO THE ANCESTORS WITH GRATITUDE
TO THE DESCENDANTS FOR REMEMBRANCE

VREOCI 5 DECEMBER 2010

May this evening's gathering be a barrier to the desecration of the graves of our ancestors, as a token of gratitude and remembrance. May our Lord mention them in His eternal kingdom and receive them in heaven.

PE EPS, Belgrade, to the General Manager

Dear Sir,

We are writing in connection with all the irregularities to date in the process of Vreoci resettlement, as well as violations of the law by the Department for Property Relations and the Department for Environmental Protection and Development, Communal Affairs and Communal Inspection of the Metropolitan Municipality of Lazarevac, the company Kolubara Mining Basin and the Lazarevac Public Utility Enterprise.

The exhumation of graves, under the Law on Burials and Burial Grounds (Art. 18 and 20), as well as the Decision on the Development and Maintenance of Burial Grounds and Burials (Art. 3, 20, 22 and 26), may be carried out as follows: the remains of the deceased must rest in the burial plot for at least 10 years, and may be relocated only after the expiry of that period; however, even then, the consent of the burial plot user is required.

Since the company Kolubara Mining Basin, through the agency of its responsible and authorised persons, has concluded a contract on the conditions of relocation with persons who are not **exclusive** holders of the right to use burial plots in the Vreoci cemetery, i.e. it concluded a contract with unauthorised persons, with a view to preparing the grounds for the exhumation of graves without the consent of the actual users, and since such arrangements are unlawful, and those making the decision to commence the relocation of the cemetery are well aware of it, this is a case of intent and premeditation to perform an unlawful exhumation, which constitutes the criminal offence of violation of a grave (Art. 354 of the Criminal Code).

Entering the cemetery and beginning the exhumation would constitute illegal occupancy of land with a special purpose (cemetery), since the local community is the user of the Vreoci graveyard and the land lots on which it is situated; it should be noted that the issued decision on administrative transfer is not in effect due to the appeal lodged with the second-instance authority (Ministry of Finance - Department for Property Affairs).

In case of occupation of the cemetery, the elements of the criminal offence of "unlawful occupancy of land" from Art. 218, para. 2 of the Criminal Code will be present.

Due to a likely conflict between the resigned residents of Vreoci and the perpetrators of the described actions in the cemetery, and due to the heightened tension and the existing fear that the expropriation beneficiary is willing to take possession of the cemetery by force, with the assistance of the police (which was already attempted on 7 and 14

December 2010), in order to prevent the use of force, it is essential to urgently stop the unlawful usurpation of the cemetery and ensure undisturbed possession of the cemetery by the Local Community of Vreoci.

Therefore, you are kindly requested to use your authority to protect the residents, as well as the law and the city decisions that are not observed by the abovementioned entities - project participants.

Vreoci 24 December 2010

Dragan Popović, President of the Council of the Local Community of Vreoci

Date: **5 July 2011**

To: **The European Bank for Reconstruction and Development (EBRD) - to Directors**

Re: **Request to postpone the decision on loan for THE ENVIRONMENTAL IMPROVEMENT PROJECT AT THE KOLUBARA MINING BASIN IN SERBIA**

Dear Sirs,

We, representatives of the Local Community of Vreoci, are addressing you with regard to the planned project to be financed by EBRD: the Environmental Improvement Project at the Kolubara Mining Basin in Serbia, worth a total of EUR 140 million, namely the social impacts of this project related to the relocation of households and settlements in the Kolubara mining basin.

We request you to temporarily postpone your decision on this loan to the Electric Power Industry of Serbia (EPS) and, indirectly, to the Government of Serbia (which is providing guarantees for the loan), as one of the most important requirements in the project preparation and loan approval process is not fulfilled, namely the full implementation of the Vreoci Settlement Relocation Plan in a sustainable manner acceptable for Vreoci residents.

Despite the existence of two planning documents:

1. The Programme for Setting the Framework for the Relocation of the Settlement of Vreoci of 12 November 2007, and

2. The General Regulation Plan for the Settlement Vreoci of 17 December 2008,

which define the principles of relocation (collective relocation) and which are, in general, approved by Vreoci residents, we wish to point to the irregularities made so far in their implementation, violations of the laws and the Serbian Constitution, to delays in implementation, to corruption and misuse of the EPS funds earmarked for the relocation of Vreoci, which altogether represents unacceptable violations of the rights of the concerned stakeholders in the consultation process and implementation of the relocation programme.

People in Vreoci are confused, they live in uncertainty and in fear, as the media have created an impression that they are unreasonably opposed to the relocation, which ultimately compromises electric energy security and electric power generation in Serbia as a whole.

In Serbia, a large-scale investigation into corruption and misappropriation in EPS is currently in progress. It is our position that the EBRD cannot continue the EPS loan approval process until this investigation clarifies the corruption case, which has a bearing on Vreoci relocation, as the usual practice of misappropriation of funds could lead to us being deceived and forcibly evicted, without means for sustainable relocation.

A BRIEF OVERVIEW OF THE MAIN VIOLATIONS AND IRREGULARITIES:

1. In his Recommendation No 8260 dated 21 April 2011, the Serbian Ombudsman found that the complaints filed by the residents of Vreoci were founded and that the Serbian laws and Constitution were violated in the process of Vreoci relocation.

2. In our letter to the Minister of Environment, Mining and Spatial Planning dated 30 May 2011, we reiterated our decisions from the public hearings held in 200 and 2007 to **withhold consent** to the proposed locations Lazarevac 2 for the cemetery and Rasadnik for the settlement (locations unacceptable for us) and that those locations were imposed on us as solutions, despite our publicly stated needs and request for relocation of the whole settlement to the location Petka.

3. So far, no location with the necessary infrastructure has been provided for the collective relocation of Vreoci; thus, no conditions are in place for an acceptable relocation.

4. The activities conducted so far on selective expropriation show that this is not a process of relocation but of resettlement, and that there is no possibility for the relocation of our main public structures of general importance such as: Cultural Centre, Post Office, Retirement Home, Youth Centre, infirmary, playgrounds, farmers' market, kindergarten, sport hall, shopping mall, veterinary station, local cemetery and the church, which is very important for us.

5. The process of assessing the value of citizens' assets for expropriation purposes is particularly problematic. The value of land is not assessed according to the Law on Expropriation, on the basis of tax decisions issued by the Tax Administration, but rather on the basis of the findings of a joint commission consisting of representatives of the municipality and EPS, while the value of built structures is appraised by the City Department for Expertise in Belgrade, which has a contractual relationship with EPS; this situation leads to undervaluation of property in Vreoci as the City Department for Expertise is biased towards its client. In both cases, it is conflict of interests, since it is not logical

that our assets and land should be appraised by the expropriation beneficiary. In addition, for the reasons explained above, we are not able to exercise our right to an independent assessment by an expert witness.

6. Concerning the relocation of the local cemetery, preparations for exhumation have been under way for a long time, while the expropriation beneficiary -EPS - has not provided sufficient guaranties to the Vreoci population that our rights will be respected in the procedure and that the social and emotional concerns will be taken into consideration. Moreover, EPS has undertaken to conclude contracts on cemetery relocation conditions with natural persons that are not the exclusive holders of the rights to use burial plots in the Vreoci cemetery; this is done in order to ensure the conditions the exhumation of graves without the actual holders' consent. This will constitute violation of graves by EPS (Art. 354 of the Criminal Code of Serbia). Because of these concerns, we have written to the Serbian Ombudsman and initiated several disputes before different court instances - from basic courts to the Constitutional Court of Serbia, which are still in progress. Also, in the media and in its official documents, EPS has incorrectly stated that the number of burial plots in the Vreoci cemetery is 4000, while we have received the data from the Archive Institution of the City of Belgrade and the Secretariat of Belgrade City Administration according to which there were 8906 burials between 1837 and 2009 (official data from the Registry of Deaths). Citizens are in fear that more than half of our deceased will be forgotten, not recorded, not respected and forcibly excavated without the right to exhumations and religious rites.

Despite all this, on 4 July 2011, about 4.00 in the morning, our cemetery was surrounded by approximately one thousand police officer, who denied access to Vreoci residents, even for religious rites, as the forced exhumation of graves started.

To make things worse, exhumations were performed in the summer, at high temperatures, which was outrageous and contrary to sanitary regulations, thus further endangering the health of our citizens, as the cemetery is located in the immediate vicinity of the centre of the settlement.

We are also stressing that the primary school attended by over 500 children is a few hundred meters away from the cemetery, and the expropriation beneficiary intends to perform exhumations in the following one-year period, which coincides with school terms. If this happens, our children will be exposed to infection risk as exhumations will include the graves formed recently -for which the mandatory resting period has not elapsed.

7. Vreoci citizens lack the basic amenities, because in addition to enormous pollution of land, air and water (coal dust, ash, sewage, sludge, industrial waste), we are faced with a shortage of drinking water due to drying of wells, caused by mining activities, which is outrageous, considering the guarantees of civil rights according to the international conventions and the national legislation quoted in point 2, line 1 of Chapter 2 of the General Regulation Plan for the Settlement of Vreoci of 17 December 2008, including respect for the right to a healthy environment in accordance with Article 37 of the EU Charter and Article 74 of the Constitution of the Republic of Serbia. The abovementioned General Regulation Plan proclaimed the entire territory of the Local Community of Vreoci an open-pit mine area, thus precluding us from solving our life problems until the relocation.

Recommendations, conclusions and demands:

• We wish to point out clearly that the only arrangement acceptable to us is collective relocation to ensure the preservation of our cultural, historical and spiritual heritage and the identity and continuity of existence of our community also after the relocation, in accordance with the planning documents related to relocation, in which the EPS and the Government of Serbia assumed that responsibility.

• We do NOT accept the well-established policy of being presented with a fait accompli, which has been repeatedly applied in Serbia in the cases of displacement) (Roma settlements in Belgrade, Corridor 10 in southern Serbia, and in many other cases of displacement for the purpose of building large infrastructure and other structures).

• We request from the EBRD to postpone the decision on granting this loan, to provide monitoring of the status of Vreoci relocation, and to send a delegation to Vreoci to ensure that citizens are able to exercise their rights guaranteed by the standards of EBRD, international legislation and the laws of Serbia.

Yours faithfully,

Slobodan Đokić, President of the Council of the Local Community of Vreoci
Council of the Local Community of Vreoci
Diše Djurdjevića 91; 11550 Vreoci, Serbia
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Tel/fax: +381 11 8144 000

Jaska Jakovljević, 9 July 2011
DNEVNIK DAILY PAPER

THE STATE IS NOT TO BEHAVE LIKE A ROAD BRIGAND

Imagine a 600 million tons' ore deposit were lying under the New Cemetery in Belgrade, the resting place of the fallen warriors from the Serbo-Turkish, Serbo-Bulgarian and the Balkan wars, the First and Second World Wars, the Belgraders killed in the German bombardment on 6 April 1941 and the Allied bombardment on Easter Day in April 1944, as well as almost all eminent and celebrated people of this country in the past 130 years… Or if it turned out that 600 million tons of coal deposits and inexhaustible ore deposits of various precious metals and minerals were found underneath the Government of Serbia building, the House of the National Assembly in Belgrade, the Government of Vojvodina building, Svetozar Miletić Square in Novi Sad, or the City Halls in Niš, Subotica, Leskovac, Kikinda, Novi Pazar, Kragujevac, Kraljevo...

The residents of the settlement of Vreoci near Lazarevac could probably enumerate endless examples, as the worm of black humour starts burrowing when people are oppressed by the injustice inflicted on them. Due to the procedure of expropriation that commenced this week for the purpose of extending the Kolubara mining basin pit, the resettlement of Vreoci started, including the village cemetery comprising around 5000 burial plots, owing to the reported estimate of 600 million tons of coal lying on that location, indispensable for the supply of thermal power plants in the next 30 years.

The cautious energy authorities assert that, otherwise, Serbia will face an electric power crisis already in 2013. We recall that two years ago, due to the extension of the open-pit mines in the Kolubara basin, the village of Mali Borak near Lajkovac, which has been referred to as a continuous settlement since the beginning of the eighteenth century, was also resettled. Today, there is only a signpost that reads "Mali Borak"- a village that does not exist anymore.

The residents of Vreoci have understanding for higher and general interests of the state with regard to the extension of the Kolubara basin, all the more so in view of the fact that, for years now, the landscape surrounding their community has consisted of the dusty coal-pits. However, the residents simultaneously insist on respecting what they assert has already been agreed: prior to the relocation of the cemetery situated above the first, most readily accessible strata of coal, the resettlement of their households is to be ensured, as well as of the cultural and historical sites. However, the relocation started on Monday by exhuming several graves in the cemetery and, according to media reports, cemetery access ways were secured by the police, and the cemetery by a few hundred police officers.


The Vice-President of the Local Community of Vreoci, Željko Stojković, in an interview for the daily paper Dnevnik, explains that such sequence of resettlement activities constitutes "disrespect for the agreement and breach of rights." Anyhow, the residents of Vreoci sent word from the protest promising to address all international institutions and, as the last resort, they announced they would emigrate from Serbia and seek asylum elsewhere. Stojković says that the village has existed for six centuries, and expressed his hope that an agreement would be reached with the state so that the assumed obligations regarding the resettlement would be honoured.

- In our view, all laws have been broken. Therefore, we shall approach the European Commission, the European Parliament, the OSCE and other European institutions - says Stojković. We are not blackmailing Serbia. We are aware of the need for development of the power system, but we also demand that our human and property rights be respected.

Asserting that, so far, Electric Power Industry of Serbia has not fulfilled the conditions set by the planning documentation for the resettlement of Vreoci, the interviewee alleges that the Council of the Local Community has decided that the residents start direct negotiations with the Government of Serbia concerning all the disputable issues.

- Let us say that, so far, a location for our collective resettlement has not been identified. Where will the structures of public institutions, cultural centre, school, health centre and other structures that we ourselves built, as cultural and historical heritage of Vreoci, including the 14th century church, be situated? The issue of living conditions, environmental and infrastructural, as well as the timetable of payment for households, have not been resolved either. Another disputable matter is the valuation of our real estate - notes Stojković.

According to publicly available information, it is foreseen in the papers that every household may choose either a building lot at the location of Rasadnik in Lazarevac, or EUR 30,000 to purchase land at another location with an advance payment amounting to 35% of the roughly appraised value of the real estate.

It was also promised to the residents that they would be allowed to use their old property for as long as two years after the payment, in order to be able to build new house. However, there was obstruction at the very beginning - the former judge, lawyer Goran Petronijević, categorically maintains that, in the expropriation procedure, the state is required to respect all rights to compensation of people living at the respective locations.

- Compensation must be fair, i.e. the real value of a household, of everything that those people have acquired over the years: plough land, meadows, orchards, houses, farmsteads, courtyards, auxiliary structures, fruit trees, must be paid for. And that would be

carried out either by monetary payment, or by exchange for a new location foreseen for the establishment of a new settlement - argues the lawyer.

According to Petronijević, expropriation is a common procedure undertaken by states worldwide in order to alter the use of certain locations in pursuit of general interest. And the question asked at the beginning of the text - what would happen if it turned out that enormous ore deposits were lying underneath Nemanjina Street - our interlocutor replied: "I do not know, perhaps the Government of Serbia would be undermined."

- I am just joking, of course. It is important, however, to point out the fact that expropriations followed by resettlement of entire settlements bring about great problems, as people are uprooted and feel the consequences for the years, even when they move to better locations. Therefore, in future, the state should at least make sure that those new locations are not attractive in terms of commercial exploitation, to avoid resettling those same citizens in a decade or two.

Another interesting question is whether, in the future, the state might sell the locations acquired by expropriation of Vreoci residents' property, say to an international corporation.

- Unfortunately, according to our laws, it is possible - points out Petronijević. - But the citizens whose real estate was subject to expropriation would have to be adequately compensated. The state is not to behave like a brigand.

As to injustice, we have seen it many a time!

According to Goran Petronijević, the Vreoci residents' revolt is a result of the attempts on the part of both the state and the future coal-pit operators to fare as cheaply as possible.

- We have seen such things many a time in this area: confiscation after the Second World War, expropriation, nationalisation... and since we have not solved those problems to this day, we are chastised by the EU -warns the lawyer.

- In addition, it should be said openly that, in our country, all forms of compensation are devalued, i.e. the compensation would be much higher in Europe. Unfortunately, our courts and case law are far from the European ones in this regard.

Source: Tanjug, Monday, 25 July 2011

VREOCI CITIZENS PROTESTING AGAINST THE EPS LOAN OUTSIDE THE EBRD OFFICE

A group of around forty residents of Vreoci near Lazarevac protested today in front of the European Bank for Reconstruction and Development (EBRD) office in Belgrade, asking it not to grant the planned EUR 85 million loan to the Electric Power Industry of Serbia for the purpose of increasing coal mining output in Kolubara.

At the protest organized by the Environmental Movement of Serbia, **Nikola Aleksić, President of the Assembly of the Environmental Movement of Serbia, assessed that, if the EBRD granted the loan to Kolubara, the money would be spent contrary to the designated purpose, and that the planned resettlement of Vreoci would not follow the plan.**

Vreoci should be resettled due to the need to extend the coal mine, and the problem arose because a number of residents were refusing the relocation of the cemetery.

For this reason, the relocation of the cemetery had started with police assistance, and the protesters accused the authorities of breaking the laws and civilizational customs.

EPS: EBRD LOAN UNRELATED TO VREOCI RESETTLEMENT

EPS, on the other hand, states they are unwilling to engage in public polemics with a group of Vreoci residents aiming to hinder the EBRD loan approval.

However, the company asserts that the European Bank for Reconstruction and Development (EBRD) loan amounting to EUR 80 million has no bearing on the resettlement of Vreoci residents due to the extension of the coal mine in the Kolubara Mining Basin.

"**The loan concerned is intended neither for resettlement nor for expropriation in Vreoci,** but solely for coal production quality improvement and promotion of environmental protection in the Kolubara Mining Basin," stated Electric Power Industry of Serbia.

However, Vice-President of the Local Community of Vreoci Željko Stojković, expressed his **hope that the EBRD would not grant the loan to EPS**, since the enterprise violated both Serbian laws and EBRD standards, as well as environmental and human rights in the course of Vreoci relocation.

After a statement to the press, the protesters' delegation spoke to Hildegard Gacek, EBRD Director for Serbia, and acquainted her with the problems arising out of Vreoci resettlement for the purpose of the Kolubara Mining Basin extension project.

• **Zvezdan Kalmar**, Centre for Ecology and Sustainable Development, CEE Bankwatch Network representative in Serbia

• **Željko Stojković**, LC of Vreoci

• **Nikola Aleksić**, Environmental Movement of Serbia

"We have drawn attention to the fact that corruption is rife in Kolubara, that much funding has been spent contrary to the designated purpose and that the relocation plan and the General Regulation Plan are not being implemented - instead, selective relocations are being carried out as required by mining operations," said Kalmar.

He stated that another problem was the irregularity in exhuming graves in Vreoci without the presence of medical examiners, as well as the several decades' environmental degradation, whereby EPS and Kolubara Mining Basin demonstrated that they were not socially responsible.

According to Kalmar, EBRD representatives had been invited to assure themselves of the veracity of Vreoci residents' claims on the spot, and only then decide on the loan.

"We have received assurances that Hildegard Gacek will convey our positions to her superiors at the EBRD and try to ensure, in cooperation with them, that an EBRD team comes to the field and verify the accuracy of our claims, which will be substantiated by voluminous documentation", said Stojković.

Oliver Dulić, Serbian Minister of the Environment, Mining and Spatial Planning, declined today to comment on the protest and Vreoci residents' demands, while Ministry representatives stated this was not within their mandate.

Kolubara Mining Basin is the largest coal mining area in Serbia, supplying Nikola Tesla Thermal Power Plants, which generate more than one half of the power for the Serbian market. According to expert assessments, Vreoci lies on top of more than 500 million tons of lignite, of which about 40 million tons are located underneath the cemetery. The relocation of the cemetery to enable coal extraction in the area started on 4 July and was met with protests by part of the Vreoci residents. The extraction of coal deposits underneath Vreoci is necessary in order to ensure smooth supply of coal to thermal power plants; in addition to the planned EBRD funds for this purpose, a EUR 75 million loan should be provided by the German development bank KfW.

VREOCI RESETTLEMENT TO BE SCRUTINISED CLOSER BY THE EBRD

The European Bank for Reconstruction and Development (EBRD) has announced that it will further scrutinise the modality of Vreoci resettlement for the purpose of extending the open-pit coal mines of Kolubara Mining Basin. ***"If deficiencies in the resettlement process are identified, the Bank will 'strongly encourage' EPS to address them"***, reads the statement.

The EBRD stated that Vreoci resettlement and cemetery relocation were not related to the Kolubara Environmental Improvement Project, for which the Bank is considering a EUR 80 million loan.

As pointed out by the EBRD, **the settlement and the cemetery were five kilometres from the nearest open-pit coal mine** covered by the project that the EBRD is considering funding. "In all EBRD projects, ensuring the compliance with social and environmental standards is a priority", highlights the statement.

It is emphasised that, in the preparations for loan approval, the Bank reviewed in detail the EPS policies and procedures on resettlement for the purposes of the project aimed at improving Kolubara's operational efficiency.

According to an independent assessment by the international consultancy ARUP, **the EPS approach to land acquisition, population resettlement and the relocation of two cemeteries fulfils the EBRD criteria.**

ПОЛИТИКА

Bojan Bilbija; Friday, 1 June 2012

Politika daily paper

CEMETERY MOVED WITHOUT A COURT DECISION

Owing to the relocation of the Vreoci village cemetery, in the vicinity of Lazarevac, Željko Stojković, President of the Local Community of the village, has been on hunger strike for five days. Kolubara Mining Basin is relocating Vreoci burial plots to a new cemetery for the purpose of mining operations on this location. Stojković has told *Politika* that these are unlawful exhumations, without consent of the family members.

- Given that, under our laws and European conventions, graves are the property of the holders of use rights, i.e. family members, 126 citizens who did not give consent for exhumation have filed suits to the Administrative Court in Belgrade. Kolubara Mining Basin has started exhumations in a forcible manner, without waiting for the court decision - explains Stojković.

According to his statement, people are hysterical, as they expect to receive summons for the hearing, but instead they receive Kolubara staff's telephone calls regarding exhumation. According to Stojković, the other reason for the strike is a matter of principle: he believes everyone, including large energy companies such as Kolubara, must respect the institutions and their authority.

- This is a classic example of violation of human rights and violence against the law. Regarding this matter, Kolubara explains curtly that it is not obliged to wait for the court decision because "there is no time". Who is in such a hurry and why, and who has the right to behave as thoughtlessly as this? Moreover, it there is no need to wait for the court decision, the issue of the very purpose of the court's existence arises. Without waiting for the court decision, Kolubara puts itself above the law - adds the head of the Vreoci local community.

Exhumations are performed by workers of the Lazarevac local utility enterprise, rather than specialised teams.

- It is done in the most primitive way possible, with spades, pickaxes, mattocks, shovels. The remains of our deceased are torn into pieces and are not transferred to the new cemetery in the condition in which they are found. The accessories found in coffins during these barbarous exhumations are incinerated, and the foul smell spreads through the settlement, seeing that the site is only 150 meters from the primary school as the crow flies - explains Stojković.

He adds that he only drinks water and does not eat anything. He recently felt very sick and the emergency medical service provided assistance.

- At that moment, my blood pressure was 90/60, I felt very dizzy and shivered. I received infusion and increased my water intake on doctor's advice. I will continue the hunger strike until my demands are fulfilled. I demand Kolubara or the responsible municipal officer to commit in writing or in the media to desist from exhumations of the graves in respect of which administrative disputes have been initiated, until the final decision is made by the court - says Stojković.

On 1 July 2015, the Council of the Local Community of Vreoci addressed a letter to the Prime Minister of Serbia, in which the problems faced by Vreoci residents in the resettlement process were described and a meeting with the Prime Minister requested. The letter especially emphasises the following:

- In the settlement of Vreoci, "because of mining operations, there are no conditions for a normal life for the citizens who live there, although they were supposed to be relocated by the end of 2015, as this was the timeframe of the abovementioned regulatory and planning instruments."

- The citizens have no document that would clearly define the deadline for the relocation of the remaining half of the settlement of Vreoci. This pertains both to the citizens who concluded contracts on the conditions of relocation, whose implementation deadline expired in June 2014, and to those who have not concluded such contracts as yet.

- "The environmental situation in Vreoci is disastrous: water supply problems, with water supply interruptions lasting several hours, or in some cases, even several

days; water, soil and air pollution; wastewater running through the settlement; filter-settling tank with piles of sludge; selective expropriation in the past, as a result of which in several dozen communities there are only one or two remaining households, surrounded by half-collapsed houses overgrown with weeds; common ragweed; informal waste dumpsites; noise; Kolubara Mining Basin's heavy machinery using local roads and jeopardising citizens', especially children's safety. The problems are compounded on a daily basis, since the Metropolitan Municipality of Lazarevac has informed the LC of Vreoci that a joint meeting will be scheduled with Kolubara Mining Basin concerning the expropriation of public structures (primary school, infirmary, football pitch, cultural centre, youth centre, retirement home, veterinary centre, farmers' market); consequently, the people still living in Vreoci will be left without these structures, and nobody from the Metropolitan Municipality of Lazarevac has been able to provide a reliable answer to the LC of Vreoci representatives whether and when the non-expropriated households will be relocated."

- "As we are surrounded by open-pit mines on all sides, the work of public, health care, educational, sports, religious and cultural institutions in Vreoci is severely compromised and hampered, since, owing to the unresolved problems, they are not able to plan their work, even in the short term."

Vreoci, 1 July 2015

Radiša Sinđelić, President of the Council of the Local Community of Vreoci

On behalf of Vreoci residents, the Council of the LC of Vreoci addresses an appeal to the Prime Minister of the Republic of Serbia to launch the process of solving the problems described above, which are of vital importance for Vreoci residents, and to schedule a meeting at which he will be provided with more detailed and thorough information about the manner of expropriation and Vreoci resettlement.

ANALYSIS AND COMMENTARY OF THE DOCUMENT "PROGRAMME FOR SETTING THE FRAMEWORK FOR THE RELOCATION OF THE SETTLEMENT OF VREOCI"

The document "Programme for Setting the Framework for the Relocation of the Settlement of Vreoci" of 12 November 2007 (Decision of the Managing Board of Public Enterprise Electric Power Industry of Serbia (EPS) No -925/3, dated 12 November 2007), endorsed by the Government of Serbia by its Consent 05 No 310-5277-3, dated 22 November 2007 constitutes an integral part of the General Regulation Plan for Vreoci Settlement dated 17 December, 2008, 06 No 145/2008 -XI (Official Journal of the City of Belgrade No 54/08), which is an urban planning document under Art. 11 of the Law on Planning and Building.

It is the General Regulation Plan for Vreoci Settlement that served to Kolubara Mining Basin to request and obtain from the Government of Serbia the Decision Establishing General Interest for Expropriation and/or Administrative Transfer of Real Estate, dated 29 September 2011 (Official Gazette of RS No 74 dated 5 October 2011), for the purpose of extending open-pit coal mines of Kolubara Mining Basin in the territory of Vreoci settlement.

Implementation participants:

1. PE EPS (in the capacity of founder of the company Kolubara Mining Basin),

2. The company Kolubara Mining Basin (in the capacity of developer - expropriation beneficiary),

3. Metropolitan Municipality of Lazarevac (in the capacity of local administration authority, responsible for urban planning, identifying the measures necessary for the implementation of the urban planning document and providing the prerequisites for communal activities until the end of the implementation period).

It is important to note that, for the first time, the participants in the resettlement of a local community committed in writing to assuming obligations during the procedure, which is generally a favourable development.

It is also worth noting that the LC of Vreoci declined to sign the document Programme for Setting the Framework for the Relocation of the Settlement of Vreoci, since, being the object of expropriation, it could not guarantee to itself and to its residents that the participants' obligations would be honoured.

This proved to be of great importance over time, when Kolubara Mining Basin, the expropriation beneficiary, started lagging behind the foreseen time-bound schedule of works and failing to honour the obligations it had assumed, the main one being to identify a location for collective relocation and provide it with infrastructure, in order to ensure continuity of the settlement, which is a European standard.

Since no location for the collective relocation of Vreoci to which public infrastructure buildings of general importance (cultural centre, school, post office, sports hall, shopping mall, veterinary centre) could also be relocated has been provided to date, which would ensure preserving the identity and continuity of the settlement even after it is re-

located, the individual relocation approach has taken. This constitutes a violation of the legal norms concerning the corpus of human rights, the population's right to relocation to a settlement provided with communal and social infrastructure, ensuring symbolic, cultural and social continuity with the present settlement of Vreoci, the largest and oldest local community in the area of the Kolubara coal basin.

The gross violation of the schedule of this time-bound process, scheduled to conclude by the end of 2015, leads to a scenario of many households foreseen for relocation being left at their present location, given that, in respect of many households that should have long since been relocated according to the schedule of the General Regulation Plan for Vreoci Settlement, the expropriation procedure has not even been initiated, by self-willed decision of Kolubara Mining Basin, the expropriation beneficiary.

All this is done maliciously in order to save the funds foreseen for the development of the collective resettlement location and for the costs of individual resettlements of households; this equates to the destruction and disappearance of a part of the population that is already extremely vulnerable just by reason of living in the centre of a coal mining basin, with all the negative consequences that coal mining operations entail.

As regards the environmental hazards, the greatest problem faced by citizens - property owners and the local population consists in Kolubara Mining Basin's failure to fulfil its obligations concerning the provision of communal, infrastructure and environmental living conditions, which have been compromised by the progress of the open-pit coal mines into the settlement, with all the negative impacts on the local community (soil, air and watercourses pollution, shortage of drinking water, noise, dust, vibration, electromagnetic radiation, impairment of the road network owned by the local community by Kolubara's transportation lorries and machines), whereby the population's health is directly compromised. In all these matters, the Metropolitan Municipality of Lazarevac has a particularly important role: instead of protecting the interests of the citizens it represents (which is not only a legal duty, but also its obligation as a participant in the Vreoci relocation project under the document "Programme for Setting the Framework for the Relocation of the Settlement of Vreoci"), by its inaction and its passive attitude, it openly supports the Kolubara management for political reasons, since the Kolubara management is of the same political affiliation as the municipal government; hence, municipal representatives protect their fellow party members from the Kolubara management, rather than citizens.

One of the key project deficiencies concerns reporting to the public (page 5 of the document "Programme for Setting the Framework"), in terms of insufficient transparency, especially in view of unequal access to the media, since the Municipality of Lazarevac and Kolubara Mining Basin have far easier access to the media - and thus also opportunities for media manipulation, projecting a superlative picture of themselves and creating an image of a socially responsible company, while in reality Kolubara Mining Basin pursues its interest by gross violations of human, social and property rights, right to a healthy environment, as well as the labour rights of the company workers.

This became particularly evident during the forcible excavation and unlawful exhumations of graves from July 2011 to October 2012, when the message was pushed that

Serbia's energy sector would be finished and a shortage of electricity would ensue unless the Vreoci cemetery was dug out. In fact, the true interest and the reason behind this was coal hyper-production in order to export electricity, rather than to fulfil the electric power balance, which became visible in 2013, when, by the account of Mr Aleksandar Obradović, EPS General Manager, 130 million euro's worth of electricity was exported. An interesting body is the Vreoci Relocation Monitoring Committee, which was indeed established pursuant to the chapter "Modality and Conditions of Vreoci Relocation" (page 6), and consisted of 12 people (the Municipality, Kolubara, LC of Vreoci and EPS had 3 representatives each).

This Committee was envisaged as a regulatory, supervisory and steering body for the project and it did hold about 15 meetings, consider problems, analyse activities and give recommendations; the problem, however, was that the project implementation participants (mainly Kolubara) did not take it seriously and disregarded its recommendations.

The Municipality took Kolubara's side, while EPS acted as if it had not been concerned at all. The then General Manager Dragomir Marković even responded in writing to a letter from the LC of Vreoci that Vreoci residents' problems were not the responsibility of EPS, which could not be true, for two reasons:

1. Kolubara was a subsidiary company of EPS, and EPS was its founder;
2. EPS as a legal entity was a participant in the Vreoci relocation project, together with Kolubara and the Municipality of Lazarevac, and also a signatory of the document "Programme for Setting the Framework for the Relocation of the Settlement of Vreoci".

Another particularly problematic issue is the failure to fulfil the obligation to reimburse the costs of provision of infrastructural and communal amenities for the building lots in the new location to citizens who opt for individual relocation or are compelled to do so owing to the absence of a location for collective relocation (page 11).

It is common knowledge that, in line with the Programme for Setting the Framework for the Relocation of the Settlement of Vreoci, since the beginning of expropriation, in determining the compensation for expropriated real estate, in each individual case, the former owners of the building lots who opted for individual relocation with compensation for the land value were also reimbursed by Kolubara for the costs of development (preparation and infrastructure provision) of the building lots in their new places of residence, all on the basis of the Expert Commission Reports No 207/207-K (Metropolitan Municipality of Lazarevac) and No 34663 (Kolubara Mining Basin) dated October 25, 2007. The reason for this was to ensure fair compensation for the land acquired, in conformity with the Law on Expropriation, whereby equal treatment was afforded to former property owners from Vreoci who opted for individual relocation and to those who opted for organised relocation to the collective relocation site provided and developed by EPS and Kolubara Mining Basin.

Shortly after assuming the duty of Assistant Manager for legal affairs at Kolubara Mining Basin, Ms Olivera Ninković introduced the practice of denying this form of compensation, which is especially problematic in view of the fact that this form of compensation represents part of fair compensation for the land acquired, under the Law on Expropriation and international commitments undertaken by the Republic of Serbia.

Considering that 235 households individually relocated so far have exercised this right, this form of compensation also represents an *acquired right*. Having in mind that the compensation for lost property is calculated as market value of the property, plus legal costs in the process of replacement of that property, the compensation to be paid to former owners by Kolubara as the expropriation beneficiary must be calculated in the amount of the cost of its full replacement, which means the market value of the property plus the appertaining legal costs, which in this case means the building lot development (preparation and infrastructure provision) costs at the new place of residence.

Another very sensitive issue concerns failure to respect the right to a social programme and failure to provide an adequate number of flats for the socially vulnerable population.

There are 45 households living in socially-owned flats in Vreoci. According to the Programme for Setting the Framework for the Relocation of the Settlement of Vreoci, a number of flats in multi-unit residential buildings should be built on the Rasadnik location in Lazarevac for the socially vulnerable population.

Accordingly, under the previous management, a design was prepared for such building, which would contain retail space for small businesses on the ground floor and social housing units on the first floor. After the appointment of the present management, the construction of this building was halted, which constitutes the gravest form of violating the social rights of the most vulnerable population affected by resettlement with a view to extending Kolubara's open-pit mines.

Željko Stojković (31 March 2014)

The general impression is that the document "Programme for Setting the Framework for the Relocation of the Settlement of Vreoci" has not fulfilled its purpose, as none of the obligations assumed by the project participant have been honoured or completely fulfilled; however, this was not due to the document's shortcomings, but rather to the self-willed actions on the part of the participants, in particular the company Kolubara Mining Basin.

EXAMPLE OF WORKING WITH THE JUDICIARY

17 April 2014 - An open letter was sent to the Delegation of the European Union to the Republic of Serbia, the Constitutional Court and the Supreme Court of Cassation about unlawful dealings in expropriation procedures. The letter had a great impact, as, on the basis of it, the Supreme Court of Cassation took the correct stance on the possibility of land appraisal by expert witnesses in expropriation procedures.

To the Delegation of the European Union to Serbia
To the President of the Constitutional Court in Belgrade
To the President of the Supreme Court of Cassation in Belgrade
To the President of the Higher Court in Belgrade
To the President of the Higher Court in Jagodina

OPEN LETTER ABOUT PROBLEMS AND UNLAWFUL DEALINGS IN EXPROPRIATION PROCEDURES

Basic courts in Serbia often handle non-contentious proceedings for setting compensation for expropriated real estate, in which unlawful actions are often taken, resulting in dramatic impoverishment of some citizens. The greatest problem is inconsistent case law in the application of Constitutional Court Decision Už No 5686/2011 with regard to Art. 42, para. 2 of the Law on Expropriation, where it concerns the modality of ascertaining the market value of expropriated real estate.

In the said Decision, the Constitutional Court takes the following stance: "Therefore, according to the assessment of the Constitutional Court, the task of the Tax Administration is not to set the market price of expropriated real estate, but rather to assess it, with the proviso that, if no agreement on compensation is reached, only the court has competence to set the compensation for expropriated real estate in non-contentious proceedings. Once again, the Constitutional Court emphasises that it follows from the provision of Art. 42 of the Law on Expropriation that the compensation assessed by the Tax Administration constitutes the lowest amount of compensation for expropriated real estate that may be set by the court. The Constitutional Court particularly emphasises that it follows from the provision of Art. 136, para. 2 of the Law on Non-Contentious Proceedings that, in addition to the assessment provided by the Tax Administration, the court may present other evidence proposed by the parties and seek expertise, if it deems it relevant to setting the compensation amount."

In connection with these arguments, it is worth citing the position of the Higher Court in Belgrade in case Gž No 112/2012, stated in the Decision dated 30 January 2013, that the land culture registered in the cadastre is not relevant to the appraisal of market value of the land concerned.

As the basic courts in the territory of the City of Belgrade are the only ones that comply with the abovementioned Constitutional Court Decision, expropriation beneficiaries have announced that they will use their monopoly position to effect new case law and the annulment of first-instance decisions in all proceedings where the valuation is not

based on the shamefully and unrealistically low assessments of the Tax Administration. The powerful expropriation beneficiaries, including Kolubara Mining Basin and the Belgrade Land Development Public Agency are already celebrating the fact that "the Higher Court in Belgrade is compelled to act in accordance with their preferences".

This situation is suited for the attempts to influence the General Session of the Supreme Court of Cassation in order for it to endorse the position whereby courts will be ordered not to apply the provisions of the Law on Planning and Building concerning the ascertainment of the type of land being expropriated, in particular the **Basic Court in Lazarevac**. Consistent with these tendencies is the case law of the Basic Court in Ćuprija and the Higher Court in Jagodina, which do not recognise the positions taken by the Constitutional Court and do not allow the market value of land to be ascertained by expert witnesses. We wish to highlight the position of the Constitutional Court in the abovementioned Decision: "However, according to the assessment of the Constitutional Court, the courts' conclusion that the provision of Art. 42, para. 2 of the Law on Expropriation precludes the possibility of ascertaining and assessing the compensation and the market value of expropriated real estate in some other manner except the assessment performed by the Tax Administration indicates that, in the case at hand, the compensation setting procedure was not conducted in conformity with the law."

The claims of expropriation beneficiaries that they will go bankrupt if they pay the market price of the expropriated structures cannot be a justification for pressure on independent judicial authorities. Similarly, the Belgrade Land Development Public Agency argues that the expert witnesses' high appraisals of the value of the land used for bridge construction may have an impact on its business operations; hence, it has resorted to insults in order to discredit the expert witnesses and enable the City of Belgrade to expropriate land at paltry prices offered by the Tax Administration - as low as 164.00 RSD/m2 for individual land lots used for bridge construction, which, at the same time, belong to the category of urban building land!!!

Through various forms of pressure, the users of the expropriated land are trying to secure court decisions in favour of the expropriation beneficiaries, to the detriment of former owners' property and rights.

This is particularly problematic since the Republic of Serbia is a party to the Treaty establishing the Energy Community of South-East Europe, whereunder power generation is not a public interest, but a commercial, market-oriented activity. Hence, it may not be subsidised by open state aid, which is provided by undervaluing the property necessary for the extension of Kolubara and Kostolac mines. Since the Law on Expropriation provides for FAIR COMPENSATION - NOT LOWER THAN MARKET VALUE of the property concerned, the position of the Basic Court in Lazarevac submitted to the Supreme Court of Cassation in a letter dated 1 April 2014 constitutes, at the very least, a gross distortion of truth and taking sides in the proceedings; in this case, the court takes the side of the mining company Kolubara, whose almost total output is used for power generation in EPS thermal power plants.

As open trade in electricity via the market operator is to be implemented as of 2014, we are of the view that the Basic Court in Lazarevac may not, under any cir-

cumstances, show concern for the financial position of companies involved in the power generation supply chain, especially given that it is contrary to the positive legislation and the Constitutional Court's existing position on the matter.

Considering that such relative interpretation of the law and pressure on the judiciary by the Basic Court in Lazarevac is connected with direct violations of the international commitments of the Republic of Serbia, we are compelled to approach the European Union authorities, ESPECIALLY IN VIEW OF THE OPENING OF ACCESSION NEGOTIATIONS, in the areas of both energy and the judiciary, since European Union standards entail respecting the attained level of human rights, in this case property rights.

By payment for land at a reduced value, contrary to the Law on Expropriation and the Law on Planning and Building, the expropriation beneficiaries receive ill-gotten gains to the detriment of the citizens and the Republic of Serbia, since damages are also caused to the national budget when compensation below the realistic value is paid, because in such cases expropriation beneficiaries pay the property transfer tax on a lower tax base, thus causing damages not only to citizens, but also directly to the state.

Since the compensation for expropriated property is inadequate because Kolubara Mining Basin receives ill-gotten gains to the detriment of the local population, a criminal charge No KTR 4468/11 has been filed with the Office of the Higher Public Prosecutor in Belgrade.

Kolubara Mining Basin misrepresents facts and thereby misleads the real estate owners, with whom it concludes agreements on compensation for expropriated real estate on the basis of the expropriation decision. More specifically, contrary to Art. 42 of the Law on Expropriation and Art. 82-85 of the Law on Building and Planning, the General Regulation Plan for Vreoci Settlement, the Opinion of the Ministry of Finance No 430-03-00115/2007-04 dated 5 July 2007, it offers the owners of the expropriated property, who are ignorant about law, to conclude agreements on compensation for agricultural land at the price of 120-180 dinars per square meter, inducing them to accept such agreements, although it is aware that the expropriated land is classified as building land, whose price ranges from 600 to 1200 dinars per square meter, according to the assessment of the local tax authority. This is to the grave detriment of property owners and constitutes ill-gotten gains for Kolubara, whereby Kolubara commits the criminal offence of fraud stipulated in Art. 208, para. 4 of the Criminal Code of the Republic of Serbia.

In addition to this, we wish to highlight the fact that one of the fundamental principles of our legal system is **the principle of legal certainty**, which is also incorporated in every citizen's right to a fair trial. **The courts are invited to ensure the consistency of case law in situations with the same underlying facts, in order to provide the assumptions for a fair trial.** This position is endorsed in a Constitutional Court decision (Constitutional Court Decision Už No 297/2012 dated 29 March 2012, published in the Official Gazette of RS No 53/2012 dated 24 May 2012). Moreover, in several decisions, the Constitutional Court itself took the position on the application of Art. 42 of the Law on Expropriation in non-contentious proceedings (this is, in fact, the affirmation of the position stated in assessing the constitutional compliance of the amendments to the Law on Expropriation in Decision IUZ-81/2009 dated 22 December 2009); as an example,

we are quoting Decision Už No 5686/2011 dated 28 February 2013: *"...The Constitutional Court notes that it follows from Art. 42 of the Law on Expropriation, whose misapplication is maintained by the appellant in her constitutional appeal, that the authority competent for assessing the property transfer tax assesses the market price for the expropriation of the real estate concerned, which, at the same time, constitutes the lowest amount of compensation for expropriated real estate (see: Constitutional Court Decision IUZ-81/2009 dated 22 December 2009)..."* ***Therefore, according to the assessment of the Constitutional Court, the task of the Tax Administration is not to set the market price of expropriated real estate, but rather to assess it, with the proviso that, if no agreement on compensation is reached, only the court has competence to set the compensation for expropriated property in non-contentious proceedings.*** *Once again, the Constitutional Court emphasises that it follows from the provision of Art. 42 of the Law on Expropriation that the compensation assessed by the Tax Administration constitutes the* ***LOWEST*** *amount of compensation for expropriated real estate that may be set by the court. The Constitutional Court particularly emphasises that it follows from the provision of Art. 136 of the Law on Non-Contentious Proceedings that, in addition to the assessment provided by the Tax Administration, the court may present other evidence proposed by the parties and* ***SEEK EXPERTISE****, if it deems it relevant to setting the compensation amount..."*

Therefore, in our legal order, a certain level of human rights protection, in particular the constitutionally guaranteed right to property, has already been attained and, under Art. 20 of the Constitution of the Republic of Serbia, it may not be diminished.

Such attempts are particularly problematic as it constitutes a direct violation of the Basic Principles and Guideline on Development-based Evictions and Displacement, as well as the Comprehensive Human Rights Guidelines On Development-Based Displacement (E/CN.4/Sub.2/1997/7, annex), all of which are based on international human rights law in conformity with the international community's Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2).

You are kindly requested to take all measures within your mandate to protect the rights of many former owners, whose rights are jeopardised in expropriation procedures before basic courts in the territory of Serbia.

House of Justice - Strasbourg
Predrag Savić, President
Equitable Serbia
Aleksandar Đurić, Chair of the Managing Board
Serbian Centre for Ecology
Željko Stojković, President
Centre for Ecology and Sustainable Development
Nataša Đereg, Director

This result is particularly important, as it will affect all court cases concerning land appraisal in expropriation procedures.

This success achieved very high visibility, as Večernje novosti, the highest-circulation daily paper in Serbia, published an article about it on 21 July 2014.

вечерње
НОВОСТИ

T. Spalević - E. Radosavljević | 21 July 2014
Večernje novosti daily paper

LAND LOTS TAKEN AWAY TO BE MEASURED BY EXPERT WITNESSES

After the Constitutional Court Decision, the state will be obliged to pay the realistic market prices for expropriated land. Its value will be ascertained by all evidentiary means.

In future, Serbia will have to "splash out" on expropriation. The value of the land purchased by the state to build infrastructure may also be assessed by expert witnesses, and not exclusively by the Tax Administration, which has, in many cases to date, caused damages to land lot owners by setting prices far below the actual market level. This is the essence of the decision of the Constitutional Court, which has upheld the appeals lodged by citizens from the Paraćin area against the decision of the Higher Court in Jagodina. More than nine ares of land was expropriated from those owners for the purpose of building the Gilje-Ćuprija-Paraćin railway with compensation of only 130,815 dinars.

In a statement to Novosti, the Ministry of Construction says that this Constitutional Court decision, which can be invoked in future by dissatisfied citizens in expropriation procedures, will not slow down any of the capital projects in respect of which the Government of Serbia has established public interest - e.g. road and rail corridors, South Stream, etc.

- Under the Law on Planning and Building, irrespective of the initiated procedure for real estate valuation, the end beneficiary will be enabled to take possession if there is a final expropriation decision and a conclusion of the Ministry of Finance - claims the Ministry of Construction. - By this arrangement, introduced by the Law of 2009, the owners are enabled to protect their rights through court proceedings, but they are conducted independently of the construction of the structure for which public interest has been established, and this cannot be suspended by the court case.

TAX SCALE The modality of assessment by tax officers is best illustrated by the example of land lots in the vicinity of a petrol station outside Belgrade. According to lawyer Savić, for some owners, the assessed land value per square metre was 300 dinars, while a hundred metres away, some others got up to 14,000 dinars per square metre.

However, as in the case of the quashed decision of the Higher Court in Jagodina, other courts will also be obliged to comply with the Constitutional Court's position and abandon the practice followed so far, according to which land valuation was the prerogative of the Tax Administration. The Constitutional Court ordered that land value be assessed by all evidentiary means, including expertise. This, of course, does not halt construction, but it does enable the owners to accomplish a better price, corresponding to the actual market level, for their lots. Indeed, tax officers have their scales and apply different yardsticks, depending on whether land is bought or sold by the state. Of course, this is always to the state's advantage, although in both cases, the market value should be the benchmark.

This Constitutional Court decision is a very important step in protecting the rights of many residents of Mijatovac and other villages around Paraćin, as well as the residents of Ovča, Borča, Vreoci, Veliki Crljeni and Kostolac, whose land under expropriation was valued at 90, 100, or at most 320 dinars per square metre.

- All citizens whose property is being expropriated and who have initiated appeal proceedings to have the actual market value of their land assessed by expert witnesses may invoke this Constitutional Court decision - says lawyer Predrag Savić. - Belgrade courts handling cases concerning expropriated land in Ovča and Borča have hired expert witnesses in the past. In some cases, the Tax Administration's assessment was as much as 10 times lower than that provided by expert witnesses. In addition, it is not logical to have land valued by the Tax Administration, which is a state authority and, therefore, is not independent.

EXAMPLES OF LETTERS TO INSTITUTIONS ABOUT VIOLATIONS OF SOCIAL AND PROPERTY RIGHTS AND THE RIGHT TO A HEALTHY ENVIRONMENT OF THE POPULATION AFFECTED BY EXPROPRIATION

Letter to the Delegation of the European Union to the Republic of Serbia (2014)

In its letter to the Delegation of the EU to Serbia, the NGO Serbian Centre for Ecology, based in Lazarevac, warns that the true essence and purpose of the project ID 41923 EPS - *Kolubara Environmental Improvement*, approved by the European Bank for Reconstruction and Development, are concealed, i.e. that the project purpose is not to improve the quality of the environment in the Kolubara lignite basin, but rather to purchase new machinery that will enable increasing the coal output, thereby also increasing environmental and public health risks, as the substandard conditions for coal processing and conversion into electricity will remain unchanged. The NGO Serbian Centre for Ecology draws the EU Delegation's attention to the fact that Serbia exports electricity generated from the extracted lignite and quotes the EPS General Manager, who stated in 2013 that Serbia had exported EUR 130 million worth of electricity (daily paper *Glas slobodne Srbije - Naše novine*, 7 December 2013), while, at the same, Vreoci residents are con-

demned to utterly degraded living conditions, the resettlement process is considerably behind schedule, and numerous arguments confirm that the manner of expropriation violates many human and, in particular, property rights of the citizens of Vreoci and other settlements near the open-pit mines. In the letter to the EU Delegation to Serbia, the NGO points to numerous violations of European standards in the area of involuntary resettlement, the state's obligation to guarantee peaceful enjoyment of property, to ensure timely and fair compensation for the expropriated property in cases of resettlement on the grounds of public interest, to guarantee public health and environmental quality standards, etc.

Letter of five NGOs to all institutions in the Republic of Serbia about violations of Vreoci residents' rights (2015)

Five NGOs (Vreoci Environmental Association, Serbian Centre for Ecology, CEKOR - Centre for Ecology and Sustainable Development, Equitable Serbia, House of Justice - Strasbourg) spoke out in a letter addressed to the General Manager of Electric Power Industry of Serbia, which was also forwarded to the President of the Republic, Prime Minister, Minister of Mining and Energy, Mayor of Belgrade and Delegation of the European Union to the Republic of Serbia (11 March 2015). The letter lists the obligations of participants in the implementation of the relocation project for Vreoci and several other settlements or parts of settlements in the area of Kolubara lignite basin and presents arguments about the manner and scale of non-fulfilment of the assumed obligations, whereby the population's fundamental civil, property, economic, social and cultural rights and the right to a healthy environment are violated:

- Kolubara Mining Basin is behind schedule in expropriation procedures and fails to fulfil other assumed obligations, in particular the obligation to develop a site for organised relocation in order to preserve the continuity of Vreoci settlement. According to the report of the General Manager of Kolubara Mining Basin dated 15 September 2014, fewer than half of the households had been relocated up to that date, while the accepted/confirmed deadline for the final relocation of the entire settlement was the end of 2015.

- Kolubara Mining Basin changes the transport routes arbitrarily and contrary to the adopted General Regulation Plan for Vreoci settlement and causes numerous other damages that directly jeopardise the living, working and health conditions of the population still living in Vreoci. By its inaction and passive approach, the Metropolitan Municipality of Lazarevac, which, pursuant to its legal authority, should protect the rights and

interests of the local population, which is also its obligation as a participant in the resettlement process, supports the management of Kolubara Mining Basin in breaching the assumed obligations in the resettlement process.

- Kolubara Mining Basin has discontinued the reimbursement of communal and infrastructural development costs for building lots on the new location to citizens who opt for individual relocation; the scheme was introduced and implemented at the initiative of this same company for a certain period of time in the past during the Vreoci resettlement process. The arbitrary discontinuation of this reimbursement testifies to the selective approach to expropriation and unequal status of expropriated property owners who opt for individual relocation.

- Participants in implementation have not facilitated the exercise of rights under the Social Programme, which concerns citizens living in socially-owned flats, as well as citizens who are not able to achieve the minimum housing standards at the new location (owing to old age, illness, economic strain, property of low value not sufficient to purchase another housing unit, etc.).

- Kolubara Mining Basin violates the decision adopted by the Government of Serbia to equalise the status of structures built with and without building permits in the expropriation process; this decision (Government Conclusion) is founded on binding provisions of international conventions and international financial institutions. Kolubara Mining Basin initiates inspections of structures built decades ago (rather than only those built after the date of establishing public interest, adoption of the General Regulation Plan and launch of the expropriation process, when a ban on any further construction in the zones within coal mine boundaries entered into force), thus precluding the expropriation process in respect of those structures and that property; in other words, it causes those structures to be demolished without any compensation to owners.

Gordana Kulić, President of the Vreoci Environmental Association

INDEPENDENT RESEARCH

CEE bankwatch network

Roger Moody - June 2015

A CLEAR AND PRESENT DANGER

How financial institutions and authorities have failed to address the human impact of resettlement in Serbia` s lignite mining fields

Lignite is among the dirtiest of fossil fuels; mining it may have profoundly negative impacts on soil, vegetation, water, air, and the livelihoods of people in neighbouring communities. This has already been the experience of those dwelling close to lignite mines in Germany.

But, nowhere is it more self-evident than in Serbia's Kolubara Mining Basin, the largest single source of lignite in Eastern Europe, where mining has continued for over fifty years. Burning this lignite provides the majority of Serbia's electricity, through the state-owned company, EPS, but at an unacceptable cost in terms of the country's toll in greenhouse gas emissions.

The European Bank for Reconstruction and Development (EBRD), along with German state development bank, KfW publicly commit to the "de-carbonisation" of European Union economies and thus a marked reduction in their current over-dependence on fossil fuels.

Despite this, in 2011, both banks invested in a programme, ostensibly designed to "improve the environment "of the Kolubara basin, and a "better" use of lignite, so as to lower Serbia's overall CO2 emissions. Effectively, however, this programme did little more than improve mechanisation at the mining site, and actually increased the amount of lignite extracted.

As a consequence, several hundred families living within the mine "footprint", already suffering from ill-health and environment deterioration caused by mining, found themselves "between a rock and a hard place".

Faced with increasing danger, damage, and threats to livelihoods, the people united in making demands that they be resettled as integral communities. They invoked rules, laid down by the EBRD, to ensure that this process be carried out justly, completely, and that their chosen economic means of survival would, at the least, be equivalent to what it was before relocation. And that they receive adequate compensation for loss of land, resources, and jobs, and to rebuild their homes.

Nonetheless, this has not happened, as testified to by representatives of local and national Serbian civil society organisations in the villages of Vreoci, Barosevac, Junkovac and Radljevo.

The Serbian government plan (the so-called "Blue Book"), set out in 2007 and aimed at relocating the community of Vreoci, has so far only been postponed. While it is

supposed to be fully-implemented by the end of 2015, on present indications this will not happen.

The EBRD has failed to enforce several of its basic principles on involuntary resettlement in this case. It has also neglected to carry out a mandatory Social Impact Assessment (in addition to an Environmental Impact Assessment) in order to comprehensively evaluate the livelihood conditions and entitlements of Kolubara inhabitants, prior to their removal from the area.

The Bank has not established an adequate system for monitoring the impacts of the resettlement programme beyond the point at which it officially terminates.

Nor has it observed principles, laid down by the United Nations, to determine that the impact on the human rights of persons relocated, or to be resettled, have been fulfilled.

In conclusion, the EBRD and KfW's decision to bulwark Serbia's lignite production was drastically flawed. This erroneous decision has been compounded by a number of important failures, evidenced in the course of implementing their loan agreements.

They should have walked away from the project at the point it was initially proposed.

They didn't. In all good conscience, they cannot do so now.

RECOMMENDATIONS

• The EBRD must publicly acknowledge a major responsibility for the environmental damage and threats to livelihoods created in the Kolubara mine basin since 2011.

• Having failed to ensure performance of a comprehensive environmental and social impact study, prior to the ongoing resettlement programme, it is now mandatory on the EBRD to ensure that the monitoring of all aspects of this programme is undertaken, at regular intervals, for as long as those affected submit complaints that the Bank's Performance Requirements are not being met

• The EBRD should acknowledge that what it defines as the "area of influence" of the Kolubara Environment Improvement Project logically encompasses the mining basin in its entirety; thus it cannot eschew responsibility for the negative impacts on people and the environment caused, at least in part by its investment in that project

• The German Bank KfW ought to perform its own due diligence study of how the mining equipment it funded has been used, specifically in causing direct and indirect environmental damage through the Kolubara Basin, and allocate any further funds necessary to remedy the damage caused

• The Serbian government must urgently examine the numerous failings of state-owned EPS to implement precautionary measures to safeguard the integrity of the Kolubara Basin; to protect its residents from danger; and to guarantee that they will enjoy improved livelihoods when resettled. - much of which was forewarned in its own commissioned environmental impact statements

• The Serbian government must revise its "Blue Book" on provisions for resettlement of the inhabitants of Vreoci, extending the deadline for implementation of this programme beyond the end of this year (2015), until such date as the human rights principles, set out by the UN Human Rights Reporters on adequate housing, have been fully implemented.

• Both the EBRD and KfW, recognising that any further support for lignite extraction and burning would be a direct contravention of the EU's "de-carbonisation" policy, should publicly refuse to make any financial or other commitment to promoting it

• Given the contention by both the EBRD and KfW that their backing for the Kolubara Environmental Improvement project was aimed at significantly reducing greenhouse gas emissions from power plants in the Kolubara Basin, they should commission an independent assessment whether this has been the case.

• The UK-based professional services firm, Arup, is urged to reveal full details of its dealings with the EBRD and EPS that led to its publishing an inadequate and flawed Environmental and Social Action Plan for the "Kolubara Environmental Upgrade Project" (sic).

Thursday, 10 September 2015

PRESENTATION OF A REPORT UNDER THE AUSPICES OF CENTRE FOR ECOLOGY AND SUSTAINABLE DEVELOPMENT (CEKOR)

Report on the Involuntary Resettlement Activities in the Kolubara Lignite Basin

Prepared by: Ksenija Petovar, social scientist, retired Professor of the Faculties of Architecture and Civil Engineering of the University of Belgrade

For many years, several CSOs have informed the public through the media and press conferences about the numerous omissions and violations of the legal regulations with regard to property expropriation and valuation, household relocation, (dis)respect for the provisions of adopted documents (spatial plan, general regulation plans, Programme for Setting the Framework for the Relocation of the Settlement of Vreoci), jeopardising of public health in the settlement of Vreoci, as well as the uncertainty that all households will be relocated, i.e. the assumptions thata number of households will be left living and working in socially, economically, culturally and environmentally degraded, devastated and dilapidated conditions in Vreoci.

All documents mentioned above provide/plan/foresee that the relocation/resettlement of the entire settlement should be completed by the end of 2015 and define the framework, basic conditions and obligations in the resettlement process. According to the Report submitted by the Director of Kolubara Mining Basin to the Municipal Assembly of Lazarevac (2-01-6192 dated 15 September 2014), fewer than half of all Vreoci households had been relocated up to that date.

For several years, the NGO CEKOR has cooperated with several civic associations from settlements in the area of the Kolubara lignite basin in an effort to jointly assist the citizens living in this area in protecting their legal rights in the expropriation process and to make it binding on expropriation beneficiaries to fulfil and honour the stipulated

and assumed obligations, guarantee compliance with legal regulations in the expropriation process and ensure environmental standards in settlements until the resettlement is finalised.

Speakers:

Prof. Ksenija Petovar

Predrag Savić, attorney-at-law

Željko Stojković, President of Serbian Centre for Ecology, Lazarevac

Zvezdan Kalmar, coordinator for energy and monitoring of financial institutions, CEKOR

REPORT ON THE INVOLUNTARY RESETTLEMENT ACTIVITIES IN THE KOLUBARA LIGNITE BASIN

Written by Ksenija Petovar - September 2015

Having consulted the available documents and sources in the process of writing this report, I have identified a number of problems and difficulties faced by the residents of the settlements and/or parts of the settlements due to be relocated as a result of open-pit lignite mining in the Kolubara Lignite Basin. The problems the inhabitants of these villages are confronted with are literally existential. In my opinion, firstly, there is the psychological problem caused by the inhabitants' **uncertain future** as regards property value, as well as the degraded living conditions in the households whose property has not yet been expropriated and who are still not certain whether, under what conditions and in what way they will be able to move out of their humiliating living conditions and environmentally inadequate settlements. And secondly, there is the unacceptable but omnipresent practice of **non-compliance and failure to fulfil the obligations** in terms of the time frame and conditions for involuntary resettlement, which are clearly and precisely defined by the planning documents, officially adopted by the Government of the Republic of Serbia and established as the obligations of the beneficiaries of expropriation. Indeed, according to the criterion of the rule of law, the endangerment and violation of citizens' civil and human rights, and especially property rights should certainly be the first in the hierarchy of problems within the practice of involuntary resettlement of households and settlements. The more the use of lignite for electricity generation is considered "public interest", the greater the responsibility of the public administration and the beneficiaries of expropriation to fully respect the citizens' constitutional and le-

gal rights in the area. This means that their property should be expropriated according to clearly defined criteria and that they should be provided with guaranteed living standards and quality of life until their eviction(expropriation), including the highest standards of health and protection of their property value.

In short, the analysis of the fulfilment of obligations set by the planning documents and decisions of the Government of the Republic of Serbia, assumed by the beneficiaries of expropriation, as well as the focus-group discussions with the citizens, have shown the following:

- The beneficiaries of expropriation were assigned **clearly defined responsibilities** as determined in the Resettlement Policy Framework for the Settlement of Vreoci, as well as in the Detailed Regulation Plans for Completely or Partially Displaced Settlements; however, as shown by substantial evidence, **these obligations have not been fulfilled**.

- Despite the establishment of the Monitoring Body for the Resettlement of the Village of Vreoci and the Cemetery in the Village of Vreoci, it failed to fulfil **its basic function of protecting the rights of the local population** in the process of resettlement, as well as alerting the public and competent institutions in all cases and situations when the commitments were not fulfilled in due time and defined frameworks.

- The local authorities in the Municipality of Lazarevac were obliged to protect the rights and interests of its population, as well as to ensure the fulfilment of all the proposals from the planning documents, thus ensuring and protecting the rights of the local population in their entirety. As evident from the documents available and even more so from the statements of the interviewed residents, **the local authorities rather protected the interests** of the other two beneficiaries of expropriation -EPS and Kolubara Mining Basin.

- The only way the citizens are able to protect their rights in the process of expropriation is by **brining court action**, i.e. through judicial proceedings. According to law firms and citizens' statements, the estimated number of ongoing cases is around several hundred. Citizens are forced to seek protection of their rights in courts, although they are well aware of the fact that trials last for years, that they are - at least from an average human lifespan perspective - endless, that they are costly and that their outcome is highly uncertain. However, **the beneficiaries of expropriation** actually benefit from such legal system. It is in their best interest that the judicial processes last as long as possible, since they are entitled to take possession of non-expropriated property on the basis of the "decision to secure possession due to the urgency of works" (as well as efficient and effective realization of the so-called "public interest"). Even in cases when courts do not decide in their favour, these proceedings will actually be profitable, because citizens' compensations and legal expenses are covered by taxpayers and not by the beneficiaries of expropriation. If the beneficiaries of expropriation had to cover legal expenses and citizen's compensations, and if they were not able to take possession of non-expropriated property, then the process of expropriation would be, beyond doubt, much more efficient, transparent and carried on with much greater appreciation and observance of property and other civil rights in the settlements within the basin area.

- Unauthorised provisional arrangements within the land use planning, demonstrated best by the example of the Family N and 30 more households, situated on the right-hand

side of the road section between Vreoci and Arandjelovac, point to “the unbearable lightness of planning“ and easy adoption of planning decisions, or to an a priori right of the holders of the so-called “public interest“ to meet all their needs and interests, regardless of their effect on citizens, local communities and other stakeholders. The total cost (time, economic, psychological, health, social) of resettlement, only a few months after the construction of a new house and croft was completed (and built with all the necessary urban planning and building permits), and moving to the building will be covered exclusively by the married couple concerned, already belonging to the category of the elderly population. This of course does not concern the other players, since they will not bear any consequences of their decisions.

- Although the planning documents provide for **monitoring** of the implementation of defined obligations, there is still no independent, objective, regular, reliable and public reporting on the practice of resettlement and the fulfilment of commitments. Occasion al involvement of independent institutions and careful reading of their reports and recommendations only confirm a lack of continuous monitoring and reporting, as well as lack of an institutional framework for monitoring resettlement conditions and commitments. For example, even the clear evidence of numerous irregularities and non-fulfilled obligations, which can be observed during a single tour around the new settlement of Jelav, is not recorded in the official reports of the beneficiaries of expropriation. Needless to say, monitoring and reporting should be carried out by independent bodies and not the beneficiaries of expropriation and/or other related organisations.

The citizens of Vreoci and the other villages to be displaced due to open-pit lignite mining have found themselves trapped in a “vicious circle of a lawless state“, is the lawyers’ comment that most concisely describes their situation, as well as the possibilities of exercising their legally established human(and property) rights. The beneficiaries of expropriation are granted the alleged legitimacy of such behaviour by the arbitrary and manipulative understanding and interpretation of the notion of “public interest”, as in the legislation of the Republic o fSerbia as well as in the use of this particular construct, it is a means (a lever or even a cudgel) for the realization of numerous corporate, private, individual and particular interests - related in one way or another - that have nothing in common with the notions of “public good“ and “public interest“. “Public interest” in electricity generation is understood as the generating company’s right to get hold of the product, regardless of the public harm and violation of the citizens’ property rights it might cause. In other words, the right to come into possession of the product in the same way it has been done for the past fifty years, when public interest in electricity generation was opposed to particular or private interests, was reflected in property and property rights, public health, environmental damage and pollution of soil, water and air, flora and fauna. This right flowed from the fact that the company was state-owned, and was based on the broadly accepted assumption that “public interest”(regardless of its content) was by definition a socially desirable and positive category and “individual (private or partial) interest” was by definition a selfish and meaningless category.

Jelena Milutinović, 3 October 2015

The European Bank for Reconstruction and Development breached its own procedures in 2011, when it granted a EUR 80 million loan to Electric Power Industry of Serbia. The loan was designated for environmental improvement in Kolubara Mining Basin. Following a complaint by Vreoci Environmental Association, an internal review at the EBRD found that not all environmental aspects had been taken into account in the loan approval process. The environmental activists of Vreoci settlement, situated on the very edge of the Kolubara coal mining basin, have long emphasised this.

An independent review has recently found that the Bank breached the internal procedures on environmental issues in the loan approval process.

STATEMENT OF THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT:

The EBRD has prepared an action plan to address the independent experts' report findings in the Kolubara case

An internal review at the Bank found that the Bank had breached its own environmental and social policy when approving a EUR 80 million loan (2011) to Elektroprivreda Srbije.

When the EBRD receives a complaint, it is usually dealt with through the Bank's project complaint mechanism if it meets certain criteria. This was the case here in the Kolubara project. Following the receipt of a complaint and an internal review, a compliance review process was recommended. This involves the EBRD hiring an external expert to independently assess the situation and this was done for the complaint related to the Kolubara project.

Certain areas of non-compliance with EBRD policy were identified by the consultant in his report. These mainly related to the scope of the environmental and social assessment of the project undertaken by the Bank. EBRD management generally agreed with the recommendations of the report. All details of the assessment, comments and procedures can be found here - on ebrd.com

The EBRD has prepared an action plan to address all the recommendations of the independent PCM review, relating both to EBRD policies and processes and to the Kolubara project.

Does the report have any consequences to the newly approved EUR 200 million loan to EPS?

Following the report, as a condition to the new project, the EBRD has required EPS to prepare a corporate Environmental and Social Strategy next year, which will set targets,

specific investments and adequate milestones for implementing further environmental improvements to meet EU requirements. It will also address present and future health and safety and social issues.

In addition, as a result of the new project, EPS will be able to deliver greater efficiency, accountability and transparency by implementing a financial consolidation plan.

Electric Power Industry of Serbia says they have not been informed about problems concerning the approved loan. In addition, in a statement sent to us, they explain that the delay in Vreoci relocation is, allegedly, due to unresolved property relations, as well as the floods that affected Kolubara last year.

EPS STATEMENT

The European Bank for Reconstruction and Development has not informed Electric Power Industry of Serbia that rules were broken in the loan approval procedure for the Environmental Improvement Project in PE EPS and Kolubara Mining Basin, or that there are any obstacles to the realisation of the loan.

In accordance with its business policy, EPS continuously cooperates with non-governmental organisations and is open to dialogue and constructive proposals on all projects. For years, by investing in the modernisation of its production capacities, EPS has invested in environmental protection and has achieved very good results in reducing the emissions of harmful substances into air, water and soil.

In the loan approval process for the Environmental Improvement Project in PE EPS and Kolubara Mining Basin, EPS conducted all the necessary activities in accordance with the European Bank's procedures. All the requirements were fulfilled within the set time limits. The activities included a detailed situation analysis concerning the environment and social policy. At the EBRD request, in June 2010, the Project's environmental impact was quantified, which demonstrated that its implementation would lead to considerable environmental improvements, on the basis of which the Bank concluded that this was a project of a wider economic as well as social importance and was, therefore, eligible to apply for a loan under the non-commercial, "green" line of credit. Accordingly, since the project was Category A in the EBRD's internal categorisation, the necessary documentation was prepared: Environmental and Social Impact Assessment (ESIA), Stakeholder Engagement Plan (SEP) and Non-Technical Summary (NTS), according to the rules stipulated by the EBRD. A Detailed Environmental and Social Analysis was also carried out, and, on the basis of the results of these assessments, the Environmental and Social Action Plan (ESAP) was prepared.

Loan funds amounting to EUR 80 million are drawn in line with the foreseen realisation schedule and about 70 percent of the funds has been utilised. The new EBRD loan, amounting to EUR 200 million, concerns consolidation, and these two loan arrangements do not affect each other.

Vreoci relocation is not part of the Environmental Improvement Project in PE EPS and Kolubara Mining Basin and is not funded by EBRD funds. This project is being implemented in conformity with the law and the Programme for Setting the Framework for the Relocation of the Settlement of Vreoci, endorsed by the Government of Serbia and still in effect. There is a range of objective reasons for the delays in the implementation

of the Vreoci Relocation Project, namely: unresolved property relations among co-owners, unresolved probate cases, annulment of decisions establishing public interest from 2009 and adoption of a new decision establishing public interest in 2011, as well as the disastrous weather and major floods of 2014, which affected Kolubara Mining Basin, as a result of which, for a long time, the PE EPS resources and staff were deployed focused on addressing the situation.

Further PE EPS activities regarding Vreoci resettlement are fully in accordance with the Programme for Setting the Framework for the Relocation of the Settlement of Vreoci, endorsed by the Government of Serbia and still in effect.

Source: B92, 9 December 2015

THE EBRD ADMITS MISTAKES WITH EPS

Belgrade - The EBRD has admitted the mistakes made with EPS within projects implemented in Vreoci and the company is expected to improve its procedures, announced CEKOR.

Yesterday evening, CEKOR met the EBRD Director for Serbia Daniel Berg to discuss the report of the EBRD Project Complaints Mechanism. In accordance with the assumed contractual obligations, EPS should improve its procedures not only in respect of the Vreoci case, the subject of the complaint, but also wherever it conducts its operations. In that respect, CEKOR expects EPS to accelerate Vreoci resettlement, and also to put efforts into socially responsible resettlement of the households in the mine protection zones in the villages of Junkovac, Radljevo, Baroševac, Zeoke in the Kolubara region and the entire village of Drmno in the Kostolac region.

At the last night's meeting with CEKOR representatives, Director Berg announced that he would visit Vreoci in the foreseeable future to become acquainted with the situation in the field.

Since the European Bank for Reconstruction and Development has a high-quality policy to protect the environment and local communities from any harm caused by projects funded by the EBRD, this monetary institution's contracts require borrowers, in this case EPS, to comply with the policies developed by the EBRD.

In that respect, on 17August 2012, Vreoci Environmental Association and the Local Community of Vreoci filed a formal complaint with the independent body tasked with

checking whether the EBRD and its borrowers adhere to the institution's proclaimed policies; the complaint concerned the loan granted to EPS for the development of Kolubara mines, a project which has numerous adverse effects on the environment and the property of Vreoci residents, since the village is situated directly between two large open-pit mine fields. On 1 October 2013, Centre for Ecology and Sustainable Development, as a member of the Bankwatch network, filed an additional complaint, in which it linked the effects of several EBRD and EPS projects and pointed to their cumulative impact.

After thorough consideration, the 58-page response of the EBRD's independent complaint-handling body was published a month and a half ago and is available on the EBRD website:

http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html

Independent expert Glenn Armstrong found that the Bank and its client had failed to follow the Bank's policy with regard to points 1, 3, 5 and 10 of the EBRD's Environmental and Social Policy of 2008. The report is accompanied by the Management Action Plan (attached) adopted by the international Board of Directors of the EBRD. Among the numerous objections concerning project implementation, it is worth highlighting the recommendation to improve the social and environmental policy implementation capacity and system of Electric Power Industry of Serbia. In that respect, in the process of corporative restructuring, EPS is expected to adopt a new social and environmental policy management system that will apply to the entire company. The EBRD will continue to cooperate with EPS in implementing the resettlement programme and, generally speaking, in resolving disagreements with stakeholders - reads the abovementioned document.

The issue of social responsibility is highly topical, as EPS is about to obtain a new loan from the EBRD, and NGOs are of the view that this must be tied to urgent improvement of standards.

VREOCI RESETTLEMENT ORDERED BY COURT AS WELL

After a several years' hard battle through the system's institutions and court action, an important victory has finally been achieved, which will lead to a turnaround in the Vreoci resettlement process.

By its judgments in the cases of two Vreoci residents, the Basic Court in Lazarevac bound Kolubara Mining Basin, which is now operating as a branch of Electric Power Industry of Serbia, to conduct the expropriation procedure, i.e. to launch the resettlement process.

In the case of Vreoci, Kolubara Mining Basin failed to fulfil its contractual obligations and the Government of Serbia instruments on Vreoci resettlement. The said first-instance judgments represent a significant step forward: if upheld by the Appellate Court, they will be binding and enforceable, unlike the documents titled "Relocation Schedule", adopted by Kolubara Mining Basin without any obligation to adhere to them.

Belgrade/Subotica

13 July 2016

House of Justice - Strasbourg
Predrag Savić, President
Equitable Serbia
Aleksandar Đurić, Chair of the Managing Board
Serbian Centre for Ecology
Željko Stojković, President
Centre for Ecology and Sustainable Development
Nataša Đereg, Director

G.V. 16-17 July 2016
Danas daily paper

EPS: ALL OUR ACTIVITIES ARE ENDORSED BY THE JUDGMENT

The Basic Court in Lazarevac has found that Kolubara Mining Basin is obliged to submit expropriation proposals for real estate in Vreoci

The judgments of the Basic Court in Lazarevac in cases of two Vreoci residents constitute an important victory that will lead to a turnaround in the process of resettling the community, claims Željko Stojković, President of Serbian Centre for Ecology.

According to Stojković, the judgment makes it binding on Kolubara Mining Basin to conduct the expropriation process, i.e. to launch the resettlement process, and finds that Kolubara was obliged to do so by end 2015. He notes that, in the case of Vreoci, Kolubara Mining Basin breached its contractual obligations and Government of Serbia instruments on Vreoci resettlement. According to him, first-instance judgments constitute a significant step forward: if upheld by the Appellate Court, they will be binding and enforceable, unlike the documents titled "Relocation Schedule", adopted by Kolubara Mining Basin without any obligation to adhere to them.

On the other hand, Electric Power Industry of Serbia has told Danas that the first-instance judgments delivered in cases of two Vreoci residents, according to which PE EPS and its branch Kolubara Mining Basin are obliged to file proposals for the expropriation of the plaintiff's real estate, do not constitute a turnaround in the Vreoci resettlement process, but rather endorse all the activities undertaken by EPS and Kolubara. EPS adds that, after overcoming the objective circumstances that slowed down the planned indicative schedule of expropriation in this settlement, the enterprise has continued the real estate expropriation activities in Vreoci. The relocation schedule was set by the Programme for Setting the Framework for the Relocation of the Settlement of Vreoci, endorsed by Government Decision dated 22 November 2007. Between 2007 and the floods of May 2014, PE EPS adhered to the planned relocation schedule foreseen by the Programme for Setting the Framework.

- Owing to funds being allocated for post-flood rehabilitation, real estate expropriation in Vreoci is decelerated, and therefore could not be completed by the end of 2015, as foreseen by the Programme for Setting the Framework. According to the proposed amendments to the Spatial Plan for the Kolubara Mining Basin Area, endorsed by the Ministry of Mining and Energy, the relocation of the entire settlement of Vreoci should be completed by end 2018. Further steps in the amended relocation schedule until end 2018 were agreed between PE EPS and the Local Community of Vreoci; this was formalised on 30 June this year by the conclusion of the Agreement on the Relocation Schedule of the Remainder of Vreoci Settlement - says EPS.

RESPONSE TO KOLUBARA'S CLAIMS ABOUT THE VREOCI RESETTLEMENT SCHEDULE

THEIR CLAIMS ARE DENIED BY THEIR OWN APPEAL

Dear Madam/Sir,

Pursuant to the Law on the Media, we hereby invoke the right to response.

Specifically, in the daily paper Danas issue of 16 July 2016, in the Economy section, on page 9, in the article titled "All Our Activities Are Endorsed by the Judgment", the leadership of Electric Power Industry of Serbia state, as quoted in the title, that the judgments of the Basic Court in Lazarevac, according to which PE EPS and its branch Kolubara Mining Basin are obliged to file a proposal for the expropriation of the plaintiff's real estate, do not constitute a turnaround in the Vreoci resettlement process, but rather endorse all the activities undertaken by EPS and Kolubara.

This could be regarded as true if EPS and Kolubara had not appealed these two first-instance judgments delivered in cases brought by two Vreoci residents; hence, their claims in the text titled "All Our Activities Are Endorsed by the Judgment" prove that Kolubara Mining Basin and EPS's actions are not suited to their words. These appeals and statements are contradictory and indicate the danger that the signed document "Relocation Schedule for the Remainder of Vreoci Settlement" might remain a mere piece of paper, especially in view of the fact that EPS and Kolubara failed to comply with the "Programme for Setting the Framework for the Relocation of the Settlement of Vreoci", signed by the Metropolitan Municipality of Lazarevac, Kolubara Mining Basin and Electric Power Industry of Serbia and endorsed by the Government of Serbia by its Consent 05 No 310-5277-3 dated 22 November 2007.

Arbitrariness in the interpretation of this document and the manner of its implementation by its signatories - implementation participants speak volumes; it is precisely owing to that arbitrariness, subjective and partial interpretation that we are faced with a range of additional, artificially created problems because of which Vreoci residents have not been able to sleep at night for almost 10 years, since the launch of the relocation process.

These problems include: 1) discrimination in infrastructure cost reimbursement for the building land at the new location (in international law and EBRD standards, this is known as "the total cost of land acquisition in involuntary resettlement"; 2) abuse of inspections in the identification/-inventory of built structures, and 3) land undervaluation in expropriation procedures.

1) Having in mind that the compensation for lost property is calculated as market value of the property, plus legal costs in the process of replacement of that property, the compensation to be paid to former owners by Kolubara as the expropriation beneficiary must be calculated in the amount of the cost of its full replacement, which means the market value of the property plus the appertaining legal costs, which in this case means the building lot development (preparation and infrastructure provision) costs at the new place of residence.

2) Pursuant to Kolubara's application, the demolition of the so-called illegal structures in households in Vreoci is also under way, although this matter is regulated by the Conclusion of the Government of Serbia 05 No 465-8001/2009-3 allowing the expropriation by Kolubara of ancillary structures in households whose construction commenced before the passage of the Law on Building and Planning of 11 September 2011.

As the Kolubara Mining Basin's legal department has filed several reports to the building inspector of the Metropolitan Municipality of Lazarevac in order to have the "illegal structures" removed, it is our duty to inform you in detail about the background of these developments.

On 17 December 2009, the Government of Serbia adopted the Conclusion, whose para. 2, inter alia, foresees that expropriation or administrative transfer may be commenced in respect of ancillary structures defined in accordance with the Law on Planning and Building, which provides that structures may not be legalised on infrastructural corridors on which general interest is subsequently established; however, compensation must be paid during expropriation, seeing that otherwise the owners of those structures would be at a disadvantage compared to all other owners, who are able to have their structures legalised.

Point 3 of the Conclusion stipulates that the possibility of expropriation or administrative transfer does not apply to structures in respect of which an inspection has been initiated in order to have them removed; this, of course, concerns inspections initiated before the establishment of general interest, and not the retroactive initiation of inspections for the already inventoried and thus recognised structures, several years after the adoption of the said Conclusion. This phenomenon is so widespread that, in case of some structures, two reports were filed with the inspector.

In most cases, these are structures within households - in yards, or structures built before the adoption of the General Regulation Plan for Vreoci Settlement (06 No 145/2008-XI dated 17 December 2008 - Official Journal of the City of Belgrade No 54/08), which essentially banned further construction.

Inspections are thus abundantly used by the administration of the Metropolitan Municipality of Lazarevac to put Kolubara Mining Basin, the expropriation beneficiary, at an advantage and undervalue the property subject to expropriation. On the basis of the orthoimage in possession of the expropriation beneficiary, decisions ordering the demolition of many structures are issued, not only in Vreoci, but also in the neighbouring villages, such as Zeoke. Houses and structures within farming households are demolished or excluded from the expropriation procedure, as the municipal authority issues decisions on partial expropriation, which exclude structures subject to inspection and provide no compensation for them.

In addition, we are of the view that the orthoimage ordered by one party for its own purposes may not serve as evidence in administrative proceedings, all the more so because we are in possession of a contract that proves that the said orthoimage was produced as a result of the fact that Kolubara Mining Basin, via EPS, contracted its "production, ownership and use".

In this respect, it is especially important to note that this is yet another case of disregard for Government decisions by lower-ranking civil servants, considering that, on 29 September 2011, the Government of Serbia adopted the Decision Establishing General Interest for Expropriation and/or Administrative Transfer of Real Estate, encompassing the entire cadastral municipality of Vreoci (Official Gazette of RS No 74 dated 5 October 2011) in favour of Kolubara Mining Basin as the beneficiary and set the end of 2015 as the deadline for the completion of this task.

3) The fact that, in setting the amount of compensation for land in expropriation procedures, the land is treated as agricultural land, although it is actually building land, is especially problematic, also from the aspect of safeguarding the national budget: by payment for land at a reduced value, PE EPS - Branch "Kolubara Mining Basin" receives ill-gotten gains and, at the same time, causes damages to the national budget since, when compensation below the realistic value is paid, expropriation beneficiaries pay the property transfer tax on a lower tax base, thus causing damages not only to citizens - former property owners, but also directly to the state.

The claim that, between 2007 and the floods of May 2014, PE EPS adhered to the planned relocation schedule foreseen by the Programme for Setting the Framework is highly inaccurate, as the formal complaint lodged with the European Bank for Reconstruction and Development by the Local Community of Vreoci and the Vreoci Environmental Association dates from the period of unlawful and forcible digging up of the Vreoci cemetery, specifically from August 2012, and was occasioned, inter alia, by lack of adherence to the foreseen expropriation schedule.

In addition, the statement that "owing to funds being allocated for post-flood rehabilitation, real estate expropriation in Vreoci is decelerated, and therefore could not be completed by the end of 2015, as foreseen by the Programme for Setting the Framework" does not make sense either, since Vreoci relocation is funded from the EPS operational budget, while it is common knowledge that the consequences of the disastrous floods were addressed with World Bank loan funding.

House of Justice - Strasbourg
Predrag Savić, President
Equitable Serbia
Aleksandar Đurić, Chair of the Managing Board
Serbian Centre for Ecology
Željko Stojković, President

ANNEX

SUCCESSES OF ENVIROMENTAL DIPLOMACY

ПРАВЕ
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ТРИДЕСЕТ ПРВА ИЗЛОЖБА КРАВА СИМЕНТАЛСКЕ РАСЕ У ЛАЈКОВЦУ

пише Марко Миличевић

СТОЧАРСТВО КАО ТРАДИЦИЈА И СТИМУЛИСАЊЕ КВАЛИТЕТНЕ ПРОИЗВОДЊЕ ДАЈУ РЕЗУЛТАТЕ

Смотра је уврштена у европски календар изложби говеда сименталске расе, и највећа је те врсте у овом делу Балкана.
Шампионка изложбе је крав Озимера, власништво Видосава Читаковића из Горњег Мушића, које је припала новчана награда од двадесет пет хиљада динара, пехар, диплома и бројне робне награде.

НАЈАВЉЕНА ИЗГРАДЊА НОВОГ ВРТИЋА У ЛАЗАРЕВЦУ

Председник градске општине Лазаревац Драган Алимпијевић и његов заменик Бојан Стевић у пратњи директора општинских јавних предузећа обишли су неколико школских и предшколских објеката на територији ГО Лазаревац.

ЧЕТВРТА СЕДНИЦА СКУПШТИНЕ ОПШТИНЕ УБ

ДАН ОТВОРЕНИХ ВРАТА ПОСЕТА ЛАЈКОВАЧКИХ МАЛИШАНА ПРЕДСЕДНИКУ ОПШТИНЕ

БЕСПЛАТНИ БЕЖИЧНИ ИНТЕРНЕТ ЗА СВЕ ГРАЂАНЕ УБА

УСПЕСИ ЕКОЛОШКЕ ДИПЛОМАТИЈЕ

Жељко Стојковић, председник МЗ Вреоци

Миливоје Николић, директор ПК „Велики Црљени"

ОСНОВНИ ПРОБЛЕМ ЈЕ ЕКСПРОПРИЈАЦИЈА

6 АКТУЕЛНО 05. 10. 2012.

УСПЕСИ ЕКОЛОШКЕ ДИПЛОМАТИЈЕ

Повод за овај интервју су, слободно можемо рећи интензивне дипломатске активности председника МЗ Вреоци и активисте Еколошког покрета господина Жељка Стојковића, везане за решавање нагомиланих инфраструктурних, комуналних, еколошких, имовинско-правних, социјалних и осталих проблема привременог грађања Вреоца, а у ширем смислу и колубарског угљеног басена уопште.

Господине Стојковићу, реците нам о каквим активностима се у овом случају ради?

„Потпуно је тачно да су се на нашем животном простору умрежили негативни утицаји као последица производње, прераде и транспорта угља из нашим животном простору где се створио спектар загађења земља-ваздух-вода. Најсвежији примери за то су еколошки инциденти приликом испирања токсичних материја из ТЕНТ Колубара А – Велики Црљени у реку Турију приликом чега је дошло до помора рибе и самозапаљења угљене прашине и талога на II филтер таложнику отпадних вода Сушаре угља у погону „Колубара прерада" Вреоци, што је недопустиво.

Ако говоримо о епицентру дешавања, о Вреоцима као географском и економском центру колубарског угљеносног басена ту су још додатни проблеми везани за пресељење целог насеља ради потребе ширења површинских копова.

Управо из тих разлога, ми смо као представници локалне самоуправе наших насеља обратили Министарству енергетике, развоја и заштите животне средине позвани на састанак који је одржан у петак 14.09.2012. године у просторијама министарства у Београду. Примио нас је државни секретар господин Дејан Поповић и саветници у министарству господин Милош Гашанић и господин Милан Петровић, док смо са наше стране били господа Гордана Кулић, председник Еколошког друштва „Вреоци", Тања Стојановић, секретар Савета МЗ Вреоци и ја у својству председника МЗ Вреоци.

Проблеми које смо изложили сарстани су у седам тачака и то:

1. Проблем водоснабдевања;
2. Запошљавање;
3. Еколошки проблеми II филтер таложник отпадних вода Сушаре угља у погону „Колубара прерада" - Вреоци;
4. Кршење динамике процеса пресељења домаћинстава и насеља утврђене планским актима;
5. Процене вредности непокретности - објекта и земљишта (обезвређење имовине)
   5а. Објекти;
   5б. Земљиште;
6. Локација за колективно пресеље;
7. Комунална и инфраструктурно опремање дела насеља Вреоци који није директно

угрожен рударским радовима (засеок „Кусина").

Тамо смо примљени са великим разумевањем. Оно што нас је пријатно изненадило јесу сва наша обраћања министарству од 2005. године до данас које су ти људи извукли из архиве, ажурирали и детаљно проучили. Говорили смо о водоснабдевању што је највећи проблем и добили часта обећања да ће тај проблем бити решен по преласку новог директора ПД РБ „Колубара".

Prave novine, weekly paper, October 2012

This interview has been occasioned by the, we dare say, intensive diplomatic activities of Mr Željko Stojković, President of LC of Vreoci and Environmental Movement activist, concerning the accumulated infrastructural, communal, environmental, property, social and other problems affecting primarily Vreoci citizens, and more broadly the Kolubara coal basin in general.

Mr Stojković, please tell us about the type of activities in this case.

It is completely true that the area we live in is affected by intertwined negative impacts resulting from coal mining, processing and transportation in our area, where pollution has spread across the soil-air-water spectrum. The most recent examples are the environmental incidents in connection with toxic matter discharges from the Kolubara A Thermal Power Plant in Veliki Crljeni into the Turija River, as a result of which fish poisoning occurred, and the spontaneous ignition of coal dust and sediments on the filter-settling tank No II at the coal drying plant in Kolubara Processing in Vreoci, which is outrageous.

If we are talking about the epicentre of events, about Vreoci as the geographic and economic hub of the Kolubara coal basin, there are additional problems concerning the relocation of the entire settlement for the purpose of extending the open-pit mines.

It is precisely for these reasons that, after approaching the Ministry of Energy, Development and Environmental Protection, we, as local government representatives, were

invited to a meeting held on Friday, 14 September 2012 on the Ministry's premises in Belgrade. We were received by Mr Dejan Popović, State Secretary, and advisers at the Ministry Mr Miloš Tošanić and Mr Milan Petrović, while our representatives included Ms Gordana Kulić, President of Vreoci Environmental Association, Ms Tanja Stojanović, Secretary of the Council of LC of Vreoci, and myself, in the capacity of President of LC of Vreoci.

The problems we presented are classified under seven points, namely:

1. Water supply,

2. Employment,

3. Environmental problems (filter-settling tank No II at the coal drying plant in Kolubara Processing in Vreoci),

4. Non-adherence to the household and resettlement relocation schedule set by the planning documents,

5. Appraisal of real estate - structures and land (property undervaluation)

5a. Structures,

5b. Land,

6. Collective relocation site,

7. Communal and infrastructural development of the part of Vreoci settlement that is not directly affected by mining operations (the hamlet of Kusanja).

In addition, it has become known that you have recently returned from Poland, where you delivered an unusual lecture about our area. What kind of event was it and what are your impressions of Poland?

First of all, I can say that Poland is a highly orderly and energy-efficient country.

My participation in the **Conference on Environmental Protection in Coal Mining Areas** was a result of the invitation that I received as a representative of a local community whose citizens were directly affected by mining operations from Ms Irena Rogowska, Mayor of Lubin in western Poland. This witnesses to the fact that the problems we face go beyond local boundaries, since our experience of living in a region like this provides invaluable information to local communities in which similar activities will be undertaken in the future.

It could be said that, unfortunately, so far we have been a bad business practice example. The lecture I gave, accompanied by video materials, attracted much interest from the audience and the media, as well as fellow lecturers.

The high standing of the event is best illustrated by the list of participants, which included Ms Lidia Geringer de Oedenberg, MEP, who, as a member of the ruling majority at the EU level, represents the interests of the local community and the Commune of Lubin, as well as European environmental organisations' networks such as: Greenpeace, Eco-Union, Polish Green Network, Bankwatch.

Were there any other participants from Serbia?

Of course.

KUĆA PRAVDE
STRAZBUR

Given that, in addition to environmental ones, the conference also addressed social problems of the population living in open-pit mine areas or being relocated owing to their approach, one of the speakers was the renowned Belgrade lawyer Mr Predrag Savić, who is also the founder and President of the NGO House of Justice - Strasbourg. He presented the problems of protecting the population's property rights in expropriation procedures, as well as example of disputes before international courts concerning the protection of citizens' living environment in industrial regions.

Incidentally, House of Justice - Strasbourg is an NGO whose aims are the protection and enjoyment of human rights, as well as the promotion of the values embodied in the European Convention for the Protection of Human Rights and Fundamental Freedoms. As information about the work of the European Court of Human Rights in Strasbourg is generally missing, this NGO fills this gap, thus playing the role of an important educational institution in Serbia.

In addition to initiating proceedings by filing applications with the European Court of Human Rights, House of Justice - Strasbourg is also involved in research, monitoring, organisation of conferences and seminars.

In order to provide to the public an accurate picture of the European Court of Human Rights in Strasbourg, there are plans to launch a specialised magazine, House of Justice, which will, in addition to legal experts, also engage professional journalists - news, story, TV and radio feature editors. In addition to case law and

technical texts, the magazine will also publish practical information necessary for more efficient protection of human rights and freedoms, as well as commentaries and analytical texts, which would be a blend of information articles and technical papers, in order for citizens to familiarize themselves with the issues.

Was any future cooperation agreed?

After our presentations, which were well received by the hosts and participants, during the formal lunch we received an informal invitation of Ms Irena Rogowska, Mayor of Lubin, for the Local Community of Vreoci to join a coalition of six local governments in order to continue sharing experiences and deepen our cooperation.

Considering that, on behalf of the citizens I represent, I gave an affirmative answer, I expect to receive a formal invitation these days, to which I will certainly respond together with my colleagues from the Council of the LC of Vreoci.

After that, a delegation from Poland would come to a return visit to Vreoci, the Municipality of Lazarevac and Kolubara coal basin.

This will be very important, as an alliance with Polish local governments offers us an opportunity to act jointly and protect our rights before European Union authorities.

The guests also expressed the interest to hire lawyer Predrag Savić in case they needed to bring court action.

On that occasion, we made the acquaintance of **Mr Radoslav Gawlik** of Eco-Union, who is one of the best-known and most active environmental activists in Poland.
The return visit of the Polish delegation is depicted by a documentary, available on Youtube at:

https://www.youtube.com/watch?v=BaJZsmr5zMY

More interesting films about the issues of relocation, protection of social rights and the environment are available at:

https://www.youtube.com/watch?v=Q5LtZpgIt5o

https://www.youtube.com/watch?v=ipHbkibkdL0

https://www.youtube.com/watch?v=Atbx4Llf0lA

https://www.youtube.com/watch?v=jdCIkFpLaqc

https://www.youtube.com/watch?time_continue=1&v=MkSD9-1laUw

CONTENT

PREDRAG T. SAVIĆ,
ATTORNEY-AT-LAW

Born on 2 November 1964 in Valjevo.

Graduate of the Faculty of Law in Belgrade.

He served as Head of Oversight of the Judiciary and Assistant Minister of Justice in charge of normative affairs and the judiciary in the cabinets of Zoran Đinđić and Zoran Živković. He also held the position of Head of Municipal Administration in the Municipality of Palilula. At the time of Slobodan Milošević's regime, he participated in electoral commissions for several years as an opposition representative; subsequently, at the proposal of the DOS coalition, he became a member of the State Electoral Commission.

He is the author of the historical novel "Monks and Death", novel "Heavenly Secondment of Captain Sajić", short story collection "Icons and Busts", and travelogue collection "The Lights of Orthodoxy". He worked as a journalist for a long time and published over two thousand articles. He is currently the legal representative of Trade Union Association, RTV Politika, Network, Plastika-Žitište, etc.

At the moment, he is involved in 37 cases before the European Court of Human Rights.

ŽELJKO STOJKOVIĆ

Born on 24 June 1975 in Lazarevac.

A power systems electrical technician by background, employed with EPS - Branch "Kolubara". As a seasoned environmental activist, he was Deputy Director of the Environmental Movement of Serbia - League of Environmental Organizations of Serbia between 2008 and 2012, and President of the Local Community of Vreoci at the time of forcible cemetery excavation, in 2011/2012. He served as a member of the Managing Board of the Environmental Protection Fund of the Metropolitan Municipality of Lazarevac. He has participated in several dozen international and domestic environmental conferences and meetings. He was the founder and organiser of the event "Environment Days" in Lazarevac in 2009 and 2010, depicted in two eponymous documentaries. He has published the book "Monograph on Vreoci". He is currently President of the association Serbian Centre for Ecology.

Ksenija Petovar, PhD in Sociology
Professor Emeritus, University of Belgrade

Review of the manuscript EMPOWERING LOCAL COMMUNITIES IN THE FIELD OF PROPERTY RIGHTS PROTECTION IN THE EXPROPRIATION PROCESS, written by Predrag Savic and Zeljko Stojkovic

The topic of the manuscript *EMPOWERING LOCAL COMMUNITIES IN THE FIELD OF PROPERTY RIGHTS PROTECTION IN THE EXPROPRIATION PROCESS* is the legal framework, complex and not always clear conditions and practice of expropriation of citizens' property in the Republic of Serbia. It was reasonable to expect that the harmonization of legislation with international instruments and efforts to move closer to the European Union standards would protect property and other rights, including the right to a healthy environment, to a greater extent than in previous decades.

The preparation and printing of this manual, as authors Predrag Savic and Zeljko Stojkovic call this manuscript, is of great public importance, since the accompanying texts confirm that practice in this field of law is far behind the standards of the European Union and the rights which the Republic of Serbia is obliged to guarantee to its citizens in accordance with national legislation and international treaties.

As emphasized by the authors in the opening chapter, the main objective of this manual is to guide citizens through their rights in expropriation procedures, how to fight for these rights, and finally how to organize themselves within their local communities and resist various interest groups that, often with covert or open support of authorities, drastically violate citizens' property rights and cause various (public) damages to local communities, thus impairing or nullifying the basic human rights that the state is obliged to guarantee to all citizens.

The manuscript consists of several parts. **In the opening chapter**, Z. Stojkovic gives a brief summary of the reasons for writing this manual, the activities of the different players and the context in which the displacement of a large settlement in the open pit in Kolubara lignite basin is performed. The **first chapter**, entitled **Expropriation** (author P. Savic, attorney), refers to the meaning of this term, the European standards, the constitutional framework of the Republic of Serbia, the concept of public interest as the basis for the expropriation procedure, as well as other legal and "technical" parts, and the implementation of expropriation procedures (jurisdiction of the authorities, decision-making procedures, right of appeal, agreement on compensation, non-contentious proceedings before the basic courts, early handover of possession of property, etc.). Through real-life examples, the author tries to better explain this complex topic to the reader and highlight different experiences which he faced during many years of work in this area. The most common problems in the administrative proceedings are specifically commented on.

A separate heading presents Golden Rules of Expropriation laid down by the author and based on many years of his practice in expropriation procedures. The **second chapter Relocation of the Local Community of Vreoci** was written by Zeljko Stojkovic,

resident of the village of Vreoci, who is also the founder and president of the civil society organization Serbian Centre of Ecology. It describes the fate of Vreoci village, which is being displaced due to the expansion of the lignite open pit, while the process of displacement still has not been finished, almost two decades after it started. In addition to the Annex written by author Z. Stojkovic, this chapter also contains articles published in the print media, the correspondence of local community with various stakeholders (including the European Bank for Reconstruction and Development, as the lender funding mining activities) and authorized government representatives.

There is analysis, a commentary and detailed explanation of the problems in the (non) realization of the document "Programme for Setting the Framework for the Relocation of the Settlement of Vreoci", as the legal basis for the process of resettlement of households. Special emphasis is placed on the problems and arbitrariness in determining compensation for expropriated property. Also, there are summaries of several independent inquiries into the causes and consequences, damages in particular, sustained by the citizens of Vreoci, but also of other settlements in the Kolubara lignite basin. This chapter describes the activities of civil society organizations; the experience of how the local community of Vreoci organized itself is of special importance. It has demonstrated that citizens can fight for their rights and force the authorities to respect the laws and citizens' rights only by joining forces and forging liaisons. The proper involvement of the society and spreading the word through public media is a precondition without which the objectives of protection of property and other citizens' rights cannot be achieved.

This manual is of great value because it takes a systematic approach to expertise and legal framework of the expropriation, on the one hand, and provides guidance and informs citizens and local communities on how can they organize and fight for their rights guaranteed by the Constitution and other legal regulations and standards, on the other. It should be read by every citizen who is, or will be faced with the expropriation of his/her assets or a part thereof, or any citizen of this country who cares about legal certainty, the rule of law and protection of both the public good and the public interest and the protection of citizens' personal and private interests.

I recommend the manuscript for printing and publication.

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