

## THE LEGAL FRAMEWORK CONCERNING THE OWNERSHIP IN REPUBLIC OF MACEDONIA

The bases for the right of ownership, as generic term for all types of ownership, are found in article 30, paragraph 1 of the Constitution of Republic of Macedonia (Official Gazette of Republic of Macedonia, number 52/91): *“Right of ownership and heritage are guaranteed”*.

In the legislation of Republic of Macedonia, the article 30 paragraph 1 of the Constitution of Republic of Macedonia is the basis for the implementation of the legal framework concerning the ownership in the legal system of Republic of Macedonia. The implementation of the legal frame concerning the ownership is realized on two levels. The first level of implementation of the legal framework concerning ownership is the general Law of Ownership and Other Real Rights passed by the Parliament of Republic of Macedonia on February, 20, 2001 (Official Gazette, number 18/01) – the law had a prolonged *vacatio legis* and it became into force 6 months after it was officially announced in the Official Gazette. The second level of implementation of the legal framework concerning ownership in Republic of Macedonia is realized by special law where particular aspects of the ownership right have been regulated.

The special laws that regulate particular aspects of ownership are passed in order to regulate: 1. The legal framework concerning different types of ownership, such as the ownership of the state (state ownership), ownership of juridical persons which is a form of private ownership (Law of juridical persons, Law of public corporations etc.); 2. Legal framework concerning ownership of certain types of objects of ownership (things), such as objects of public interest for Republic of Macedonia (For example: The Law for agricultural land from 2007, (Official Gazette of Republic of Macedonia, number 135/07), The Law for waters from 2008 (Official Gazette of Republic of Macedonia, number 87/08), The Law for construction grounds from 2008 (Official Gazette of Republic of Macedonia, number 82/08) etc.) and 3. Legal frame for the forms for acquiring ownership in special cases determined by law (The Law for expropriation from 1995 (Official Gazette of Republic of Macedonia, number 33/95, The Law for denationalization from 2000 (Official Gazette of Republic of Macedonia, number 43/00), The Law for privatization of construction grounds ownership of the state from 2005 (Official Gazette of Republic of Macedonia, number 4/05) and others.

Having in mind that the primary goal of this text is the presentation of the legal framework concerning the ownership in the legal system of Republic of Macedonia the text is divided into three chapters: I. OWNERSHIP ACCORDING TO THE CONSTITUTION OF REPUBLIC OF MACEDONIA II. GENERAL LEGAL FRAMEWORK CONCERNING THE OWNERSHIP IN REPUBLIC

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## OF MACEDONIA and III. SPECIAL LAWS THAT REGULATE OWNERSHIP IN REPUBLIC OF MACEDONIA

### I. OWNERSHIP ACCORDING TO THE CONSTITUTION OF REPUBLIC OF MACEDONIA

The constitutional legal framework concerning ownership is determined in article 30 of the Constitution. Structurally, this article is placed in the paragraph where human rights and basic freedoms are regulated. This article stipulates *“Right of ownership and right of heritage are guaranteed. Ownership creates rights and obligations and it serves for the good of the individual, as well as the community.*

*No one may be deprived of ownership and rights that emerge from it, unless it is a matter of public interest determined by law.*

*In case of expropriation of ownership and in case of limitation of ownership, just compensation that shall not be less than the market price is guaranteed”.*

It can't be disputed that in the past 18 years the interpretation of the paragraph 1 of the article 30 of the Constitution of Republic of Macedonia (*right of ownership and heritage are guaranteed*) was very difficult for the Constitutional Court. From its formulation it is obvious that the legislator regulates primarily individual property, because only the individuals have the right of heritage. **This means that the Constitutional Court of R. Macedonia is obligated to perform an extended interpretation of the rigid formulation of the article in order to extend its meaning as a guarantee for all forms of ownership** (regardless of the fact that the article structurally is placed in the paragraph of the Constitution where human rights and liberties are regulated).

It is obvious that paragraph 2 of article 30 of the Constitution of Republic of Macedonia (*“The ownership creates rights and obligations and it must serve for the wellbeing of the individual and the community”*) overwrites the individualistic concept in paragraph 1 of article 30. Paragraph 3 of article 30 (*“No one may be deprived or limited in his right of ownership and the other rights that emerge from ownership, unless it is a mater of public interest determined by law”*) reflect the relativity of the guarantee of ownership because it means that person may be deprived or limited in this right, but only in case of public interest determined by law. Regarding the deprivation or limitation of ownership, it is obvious that the Constitution of Republic of Macedonia recognizes only the expropriation as a legal mean and not the nationalization, as it is shown from the current practice of the Constitutional Court of Republic of Macedonia.

Paragraph 4 of article 30 of the Constitution of Republic of Macedonia stipulates that: *“In case of expropriation of ownership or in case of limitation of ownership a just compensation is guaranteed that may not be smaller than the market price”*. This section of article 30 of the Constitution in fact guarantees legal protection in case of deprivation or limitation of ownership.

Besides article 30, the legal framework for guaranteeing the ownership in Republic of Macedonia is also found in the articles 8, 31, 56, 114 and 117 of the Constitution.

**2. Article 8 of the Constitution of Republic of Macedonia**, determines the **legal protection of ownership** as one of the basic values of the constitutional order: Basic values of the Constitution of *Republic of Macedonia* are: ... *legal protection of ownership*" (article 8, paragraph 1, point 6). We will agree that ownership enjoys the highest form of legal protection, in the same level as the protection of rights and freedoms of individuals.

**3. Article 31 of the Constitution of Republic of Macedonia** is of crucial importance for overcoming the recession in Macedonian society: "*Foreigners in Republic of Macedonia may acquire ownership under conditions determined by law*". Besides that, according to paragraph 1 of article 59 of the Constitution of Republic of Macedonia, foreigners are guaranteed the possibility to export freely the invested capital and the profits. We should bear in mind that the formulation of the Constitution "*under conditions determined by law*" refers to the Law of ownership and other real right, or to be more exact it refers to Chapter IV of the Law named as REAL RIGHTS OF FOREIGNERS. In this regard we will only point out that conditions for acquiring ownership for foreigners in Republic of Macedonia have been liberalized in 2008 when the amendments and supplements of The Law of ownership and other real rights were passed (more on this issue in the next chapter).

**4. Article 56 of the Constitution of Republic of Macedonia** undisputably reflects the **ownership of the state**, because its paragraph 1 proclaims that "*all natural treasures of the Republic, vegetation and wild life, goods of public use as well as things and objects of particular cultural and historic importance are determined as goods of public interest for the Republic and enjoy special protection*". This form of ownership (the ownership of the state) is implied, as because the text of the Constitution doesn't express it directly. However, the fact that paragraph 3 of the same article proclaims that "*Law regulates the manner and conditions in which the goods of public interest for the Republic may be given for use*", it is obvious that this goods of public interest are ownership of the state, as only the state has the authority to allow the use of this goods (this is the prevailing opinion in the legal practice). Today, as the next chapter will show, the ownership of the state is regulated in various laws, among which the formulation "*ownership of the state*" is used in the Law for use and administration of things of the government bodies (Official Gazette of Republic of Macedonia, number 8/05). The rest of the laws, regulate the ownership of the state along with the other forms of ownership. Such laws are: the Law for agricultural land, the Law for construction ground etc. In any case, with regard to the way that the Constitution of Republic of Macedonia regulates ownership it can't be disputed that article 56 is the constitutional basis for the regulation of the ownership of the state as one of the basic forms of ownership.

**5. Constitutional basis for regulation of the ownership of the municipal units, as one of the basic forms of ownership are articles 114 and 117** of the Constitution of Republic of Macedonia, because they express the existence of this basic form of ownership. In this regard, paragraph 4 of article 114 proclaims that *“Municipal units are financed from personal sources of income determined by law, and sources of the state”*, while paragraph 3 of article 117 proclaims that *“The city of Skopje is financed by personal sources of income determined by law, and sources of the state”*. The laws that regulate the legal regime of ownership of municipal units are: The Law for municipal self-government from 2002 (Official Gazette of Republic of Macedonia, number 2/02), and the Law for financing the municipal units from 2004 (Official Gazette of Republic of Macedonia, number 61/04).

We must not forget that even if the Constitution of Republic of Macedonia from 1991 does not mention the social ownership, this form of ownership is mentioned in the Constitutional law for enforcement of the Constitution of Republic of Macedonia (Official Gazette of Republic of Macedonia, number 52/91) *where the transformation of social ownership in other forms of ownership is regulated*.

On the basis of the statements in Chapter I, we can conclude the following:

***“Article 30 of the Constitution of Republic of Macedonia regulates the right of ownership as a generic term for all types of ownership and as such, it is the legal framework for regulating this right in the general Law of ownership and other real rights, and, in special laws that regulate the legal regime of ownership of things of public interest for Republic of Macedonia, and laws that regulate the acquisition of ownership in special cases determined by law.*”**

## II. GENERAL LEGAL FRAMEWORK CONCERNING THE OWNERSHIP IN REPUBLIC OF MACEDONIA

### 1. Basic forms of ownership

Legal framework concerning ownership (more precisely legal framework regulating the existence of ownership and its legal protection) is article 2 of the Law on ownership and other real rights that regulates three forms of ownership: 1. Ownership of foreign and domestic (natural and juridical) persons (private ownership), 2. Ownership of the state (state ownership) and 3. Ownership of the municipal units (municipal ownership). The regulation of these three forms of ownership means equality between all forms of ownership and the persons that acquire these forms of ownership (natural and juridical persons, municipal units and the state).

Actually, article 2 of the Law on ownership and other real rights corrects the constitutional void existing in article 30 of the Constitution of Republic of Macedonia, where only individual ownership is regulated. Article 2 of the Law on ownership and other real rights, besides the fact that it reflects the pluralism of ownership, in the same time presents the basic forms of ownership. These forms of ownership are: private

ownership, state ownership and municipal ownership. *These forms of ownership represent the basic forms of ownership because the right belongs to one person.*

## 2. Sub-forms of ownership

*If the right of ownership belongs to more than one person, according to the Law on ownership and other real rights we have sub-forms of ownership. In those cases ownership may manifest itself as co-ownership (art. 31-58), joint ownership (art. 59-94) and condominium (art. 95-111).*

a) **Co-ownership is the ownership of more persons who have the right of ownership on undivided thing and their parts of ownership are expressed in ideal parts** (art. 31, Law on ownership and other real rights). If the ideal parts of the co-ownership are not determined, the law stipulates that they are equal. (art. 31, paragraph 3). Co-ownership may exist between two basic forms of ownership – mixed co-ownership (art. 31, paragraph 3). According to the Law of ownership and other real rights co-ownership may be acquired by contract, law or succession. Co-ownership is realized in a manner that each co-owner uses the thing together with the other co-owners, and in regard of the amount of the ideal part which he/she possesses, without effecting the rights of the other co-owners.

b) All of the co-owners have the right to possess the whole object, but they may agree to leave the possession of the object and the realization of all rights to one or more co-owners.

In case of sale, co-owners have the right of pre-emption of the ideal part that is being sold (art. 33-34).

Co-owners have the right to administrate the co-owned object and the right to participate in the decisions regarding the object (art. 35-38). This right may be transferred to other person or persons by the co-owners (art. 38-48).

Co-ownership is in most cases terminated by sale of the whole object or by division of the object in real parts. The division of the object may be judicial or contractual.

b) **The joint ownership, according to the Law on ownership and other real rights is ownership of more persons over undivided object, when their parts are determinable but they are not determined.** Joint ownership exists in cases of acquiring property in marriage, extra marital relationship, in case of acquiring property by heritage, in family community and in other cases determined by law.

- Joint ownership in marriage is the property that spouses acquire in the course of the marriage. This property the spouses hold, use and administrate together: *spouses administrate and use the property jointly* (art. 70, paragraph 1). The spouses have no right to sale or otherwise transfer the part of the joint ownership they possess, before it is determined. In case of sale of the part in the joint ownership belonging to one of the spouses, the other has the right of pre-emption (art. 70, paragraph 2 and 3).

- Joint ownership is considered to be the property acquired by persons in extra marital relationship in the course of that relationship (art. 81).

- Joint ownership by heritage is the property that heirs acquire from the moment of death of the successor until the finality of the heritage proceedings (art. 82). This property the heirs use and administrate together (art. 85, paragraph 1). If there is no executor of the will, and the heirs have not reached an agreement on how to administrate the heritage, the court is authorized, upon demand of one of them, to appoint an administrator of the heritage. For an administrator may be appointed one of the heirs (art. 85, paragraph 2 and 3). In the course of the heritage proceedings, each heir has the right of pre-emption of the parts of the other heir in the joint ownership.

- Joint ownership in family community is the property acquired by persons over the age 15 years who live and work in the family community, with the exception of the spouses (art. 92-94). This property is separated and acquired for the person. The value of the part of the joint ownership of each member of the family community is determined by his/hers contribution – invested work, income, administration of family affairs, care for the property and other forms of participation that leads to sustainment or enlargement of the joint ownership.

**c) Condominium is ownership of apartments, offices, cellars, garages and other parts of apartment or office buildings that have more than one apartment or office, and other parts owned by different natural or juridical persons.**

Condominium is a special sub-form of ownership, and not a type of joint ownership (as it was considered to be with the previous law - The Law on basic ownership relations), because it involves three types of relations: 1. Rights and obligations of the owners of parts of the building in regard of those parts (art. 96- 101), 2. Rights and obligations of the owners of parts of the building with regard to those parts of the building (art. 102-107) and 3. Rights and obligations of owners of the part of the building in regard to the construction ground under and surrounding the building (art. 108).

### **3. Objects of ownership**

Regardless whether it is a basic form of ownership or a sub-form of ownership, the object of the right is always a thing that belongs to natural or juridical persons. This means that object of ownership may be a thing which by its nature or by law may be an object of this right. In that sense the Law on ownership and other real right determines that “*A thing in sense of this law is a part of the material world that may be possessed by a person and it can be individualized*” (art. 12, paragraph 2).

### **4. Determination of the right on ownership**

According to the Law on ownership and other real rights, the right of ownership is consisted of the authorizations that make the

content of this right. This is reflected in the article 8, paragraph 1 of the Law on ownership and other real rights *“The owner has a right to posses, use and transfer the object by his/hers own will, as far as it is not contrary to the law or rights of other persons”*.

### 5. Acquiring, realization, protection and loss of the ownership right

a) The ownership right, according to the Law on ownership and other real rights, is acquired on the basis of **law, legal matter and succession**. Right of ownership may also be acquired with a decision of the government body in a manner and under conditions determined by law.

On the basis of law, ownership is acquired in the following cases: separation of fruits, acquiring from non-proprietor, occupation, fusion and alluvium, change of river-flow, creation of island, and other cases determined by law. (art. 13). Those other cases determined by law are: expropriation, denationalization, privatization, and similar cases regulated in particular laws.

b) **Right of ownership is realized on the bases of free disposition principle with necessary limitation determined by the Constitution and by law** (art. 5). In all cases, because the right of ownership is over objects, it must be realized in accordance to the nature and purpose of the object, as well as in the public interest determined by law (art. 9, paragraph 1).

In the course of realization of the right of ownership the owner must be respectful of the general and special limitation of ownership. General limitations are: 1. Forbidden misuse of right and 2. The ban on using the right in a manner that causes damage to others. Special limitations of ownership are emissions’ – actions that make the use of other real-estate more difficult such as: smoke, smell, noise etc (art. 11). The so called - neighbor relations are also special limitation of ownership.

c) **Protection of ownership** - Following the example of the Constitution, where the protection of ownership is proclaimed as a basic value, the Law on ownership and other real rights guarantees the protection of ownership in the article 6 *“Protection of ownership is guaranteed”*. More precisely, the protection of ownership is regulated by articles 156-163 in the FIRST PART, CHAPTER IV, and SECTION 5 of the Law. The Law on ownership and other real rights regulates the protection of ownership by legal suits such as: legal suit for recuperation of the thing (art. 162) legal suit for disturbing ownership (art. 162), legal suit for protection of co-ownership and joint ownership (art. 162), declaratory suit and extraction suit (art. 163).

d) Ownership according to the Law on ownership is extinguished by: destruction of the object (art. 164), when other person acquires the ownership (art. 165) and by an abandonment of the object (art. 166).

## 6. Real right of foreigners

In order to attract foreign investments and also to become a part of the EU, Republic of Macedonia has amended and supplemented the Law on ownership and other real rights embracing a more liberal regime regarding real rights of foreigners.

a) According to the original text of the law from 2001, with regard to the real rights of foreigners, the articles 240-252 of the law would apply unless an other law or international contract has regulated the matter differently. This was in accordance to the article 31 of the Constitution which provided that the foreigners may acquire ownership under conditions determined by law. According to the original text of the Law on ownership and other real rights, foreigners were able to acquire ownership on movables under the same conditions as domestic citizens (art. 242). With regard to the acquiring of ownership over apartments and offices foreigners were obligated to meet the condition of reciprocity (art. 243 and 244). According to the original text of the Law, the foreigners were not able to acquire property by contract on agricultural and construction grounds, but only the right to long-term lease (art. 254 and 246). In these cases, foreigners also needed the consent of the Ministry of Justice, and the opinion of the authorized Ministry and the Ministry of finance.

b) With the amendment and supplementation of the Law on ownership and other real rights from 2008, the legal regime on acquiring ownership for foreigners was liberalized. As a result of that, foreigners, now-days, may acquire ownership on real-estate in Republic of Macedonia. It is important to point out that in the amendment and supplementation of the Law on ownership and other real rights a distinction has been made between the conditions that have to be met by foreigners from Member States of the EU and OECD, and others, that come from countries which are not members of these organizations.

Foreigners that reside in Members States of the EU or OECD, may acquire ownership on real-estate by heritage, under the same conditions as Macedonian citizens. If the foreigners are citizens of a state that is not a member of these organizations, then they may acquire ownership of real-estate by heritage in Republic of Macedonia only under the condition of reciprocity (if Macedonian citizens have the same right in the native country of the foreigner). With regard to foreign juridical persons, they may acquire ownership on real-estate by will, and only under the condition of reciprocity (art. 1, Amendment and supplementation of the Law on ownership and other real rights).

With regard to acquiring ownership over apartments and offices in Republic of Macedonia, on basis of a contract, **foreigners who reside in Member States of the EU and OECD are able to do so under the same conditions as Macedonian citizens** (art. 2, paragraph 1, Law of amendment and supplementation of the Law on ownership and other real rights). **Foreign natural and juridical persons who are not residents of Member States of the EU or OECD may acquire ownership over apartments and offices in Republic of Macedonia by contract only**



**under the condition of reciprocity** (art. 2, paragraph 2, Amendment and supplementation of the Law on ownership and other real rights).

**Foreigners who reside in Members States of the EU or OECD may acquire ownership on constructional ground on basis of a contract in Republic of Macedonia only by consent of the Ministry of Justice, and the opinion of the Ministry of Transport and Relations and the Ministry of Finance** (art. 3, paragraph 1, Amendment and supplementation of the Law on ownership and other real rights). Foreigners who reside in states who are not members of the EU or OECD may acquire ownership on constructional ground in Republic of Macedonia **under the condition of reciprocity and with the consent of the Ministry of Justice and the opinion of the Ministry of Transport and Relations and the Ministry of Finance.**

**With regard to acquiring ownership on agricultural ground in Republic of Macedonia, the legislator remained on the position that this right is exclusively reserved for Macedonian citizens** (art. 4, paragraph 1, Amendment and supplementation of the Law on ownership and other real rights). Concerning ownership over agricultural land acquired on basis of heritage, the Notary Association of Republic of Macedonia took the stance that it may be available for foreigners, as well (art. 1 paragraph 1 and 2, Amendment and supplementation of the Law on ownership and other real rights).

c) In order to liberalize the real-estate market in Republic of Macedonia in the domain of construction ground, and to attract foreign investments, **the the Government of Republic of Macedonia suggests that foreign natural and juridical persons should be able to acquire ownership on construction ground in Republic of Macedonia without the necessity of consent and opinions of the authorized ministry departments. The suggestion is already put in motion** with the Amendments of the Law on ownership and other real rights form 2009.

### III. SPECIAL LAW THAT REGULATES OWNERSHIP IN REPUBLIC OF MACEDONIA

The special laws that regulate the legal framework concerning ownership in Republic of Macedonia may be divided in three groups. The first group of laws concerning those that regulate the legal regime for objects of public interest ,such as agricultural land, construction grounds, public roads, forests and etc. The second group of laws are the laws that regulate the manner of acquiring ownership in special cases, determined by law. The third group is the law that regulates the inscription of ownership in the public records – the Cadastre of real-estate in Republic of Macedonia.

#### **1. Special Laws that Regulate the Legal Regime of Objects of Public Interest For the Republic of Macedonia**

In the group of laws that are considered to be of great importance concerning the legal regime of objects of public interest for Republic of Macedonia are: The Law on agricultural land from 2007, The Law on Construction Grounds from 2008, The Law on Cemetery

and Cemetery Services from 2008, The Law on Forests from 2009, The Law on Public Roads from 2008 and many other.

The implementation of these laws in the legal system of Republic of Macedonia is proven to be very difficult, due to the inconsistency that exists between the special law and the general Law on ownership and other real rights. The difficulty in implementation of the special law is primarily due to the legal solutions brought by these laws which are only meant to be used as momentary solution for the current legal problems.

#### a) Law on agricultural land

The law on agricultural land from 2007, the same as previous from 1998, maintains the **concept that agricultural land may only be in private ownership and ownership of the state (art. 7, paragraph 1)**. Having in mind that this land is object of public interest for Republic of Macedonia, paragraph 2 the article 7 states: that: *“The ownership of agricultural land creates rights and obligations and it serves the benefit of the owner as well as the community”*.

With regard to the agricultural land ownership of the state, the Law clearly states that this land can not be sold, but it may be used on the basis of contract for lease, or it may be given with right to usufructus. The right of usufructs is only for persons in economic difficulty. In order to protect the agricultural land ownership of the state, the law prescribes that the unauthorized use of this land is considered to be misdemeanor.

In order to ensure enlargement of agricultural land the law also regulates the possibility for exchange of agricultural land ownership of the state with agricultural land in private ownership if these lands border each other.

#### b) Law on Forests

The Law on forests from 2008 determines forests as a natural treasure and object of public interest for Republic of Macedonia, which is in accordance to article 56 of the Constitution. The activities regarding planning, management and protection of forests are considered as activities of public interest (art. 3).

Forest, as an object of public interest, according to the law may be in private ownership and ownership of the state (art. 2). Forest ownership of the state may not be sold, leased or permanently changed, unless it is a matter of public interest.

In order to ensure enlargement of forest complexes, the law regulates the possibility for exchange of forest land ownership of the state with forest land in private ownership, if they border each other.

Novelty of the Law on Forests is the implementation of the Information system for forests and the Cadastre of forests and forest land.

### **c) Law on Waters**

The legal regime of waters as objects of public interest for Republic of Macedonia is regulated with the Law on waters of Republic of Macedonia from 2008. According to this law, waters are object of public interest for the Republic of Macedonia and they are ownership of the state (art. 6 paragraph 1). The law clearly states that water may not be in private ownership, regardless of the legal regime of the land they flow by.

Regarding the use of water, the law stipulates that its use for private needs that do not disturb the usage of water of third person is free (without special permits and fees). The use of waters for activities of public interest, concession, and other business reasons is realized by the so called water right (art. 24). Water right may be acquired by natural and juridical persons (foreign or domestic), the government bodies and the municipal units (art. 26).

### **d) Law on Construction grounds**

The new Law on construction grounds dating from August 2008 declares the construction ground as object of public interest for the Republic of Macedonia and the activity of construction, activity of public interest (art. 2). The new Law on construction grounds, equally as the previous, states that construction grounds are in private ownership or ownership of the state (art. 6).

The transfer of construction ground, according to the law, is free (art. 8, paragraph 1). Regarding the construction ground, the principle of “superficies solo cedit” is enforced. According to this principle, the buildings on the construction ground are legally attached to that ground, and share the legal destiny of the construction ground (art. 10). Exception of the principle exist in case of long-term lease of construction ground, when the building is legally attached to the right of long-term lease and share the legal destiny of that right.

Novelty of the Law is the proclamation that temporary objects placed on construction ground are not part of the ground and do not share the legal destiny of the construction grounds.

Article 13 of the Law prescribes the rights that may be acquired on construction ground ownership of the state. According to this article, the construction ground ownership of the state may be: 1. sold, 2. given under concession, 3. given on long-term lease, 4. given on short-term lease and 5. other rights. The Law also prescribes that construction ground ownership of the state may be exchanged with construction ground in private ownership.

The Law for construction ground also regulates the use of construction ground in public use (public roads, cemetery, parks and etc.). This type of construction ground is owned and managed by the state.

### **e) Law on Cemetery and Cemetery Services**

The basic goal of the Law is to regulate the separation of the two activities: 1. Maintenance of cemetery and 2. The Cemetery services. By the separation of these activities, the Government of Republic of Macedonia intended to eliminate the monopoly that existed in this area.

According to the Law on cemetery and cemetery services, the cemeteries are determined as construction grounds intended for burial (art. 3). Cemeteries are also declared as objects of public use and, as such, they are ownership of the state. The cemetery services, such as maintenance of graves and grave yards are also activities of public interest that are organized by the municipal units. The municipal units manage the cemetery services by forming a public company for cemetery services, or by juridical person with a permit to perform cemetery services.

As objects of public use, the cemeteries are used by natural persons. In order to use the cemetery, the natural person may acquire the right to use the cemetery plot as a form of usufructus (art. 7). This right is inscribed in the Cadastre of real-estate. For the use of cemetery plot, the natural persons are due to pay a fee (art. 19). The right of use of cemetery plot may be transferred to third person with a need for cemetery plot, by a statement given before a notary (art. 19). This right may also be inherited by the spouse and other heirs.

### **f) Law on Public Roads**

The new Law on public roads from 2008 determines public roads as objects of public use ownership of the state. The law also clearly stipulates that private roads are not regulated by this law.

The planning, construction, maintenance, reconstruction and protection of public roads are activities of public interest. These activities are performed by the Agency for public roads. The management of public roads, according to the law is preformed in accordance with the Strategy for development and maintenance of public roads, delivered by the Parliament of Republic of Macedonia on proposal of the Government of Republic of Macedonia for a period of minimum 10 years.

Regarding the right to use the public roads, the law states that all natural and juridical persons may use the public roads for which they are due to pay fee determined by the Government of Republic of Macedonia.

### **g) Law on Protection of Cultural Heritage**

The Law on protection of cultural heritage dating from 2004 has a basic goal to protect the cultural heritage as object of public interest. The cultural heritage is considered by law to be one of the fundamental values of Republic of Macedonia. The protection of cultural heritage is considered to be an activity of public interest. The state and its bodies have the duty to protect the cultural heritage of Republic of Macedonia

(art. 5). Primarily the duty of protection of cultural heritage falls on the State archive of Republic of Macedonia.

## **2. Special Laws that Regulate the Manners of Acquiring Ownership**

The Law on ownership and other real right as general law regulates the manner of acquiring ownership in the legal system of Republic of Macedonia. Article 112, the law of ownership and other real rights states that the right on ownership is acquired by law, by legal act, by heritage and decision of government body, under conditions determined by law.

The law on ownership and other real right in article 113 prescribes that right on ownership on the basis of law is acquired by: 1. Creation of a new object, 2. Confusion; 3. Building on construction grounds; 4. Prescription; 5. Separation of fruits; 6. Acquiring ownership of non-owner; 7. Occupation; 8. Alluvium 9. Change of river flow; 10. Formation of an island and 11. Other cases determined by law.

When right of ownership is acquired in the first 10 cases from article 113, the condition and manner of acquiring ownership are regulated by the Law on ownership and other real rights. The last case – the 11-th case of acquiring ownership on basis of law refers to the special manners of acquiring ownership, regulated in special laws. These other cases of acquiring ownership on basis of law are: denationalization, regulated by the Law on denationalization (Official Gazette of Republic of Macedonia, number 43/00 - revised text) expropriation, regulated by the Law on expropriation (Official Gazette of Republic of Macedonia, number 33/95); privatization, regulated by the Law on privatization and long-term lease of construction ground ownership of the state (Official Gazette of Republic of Macedonia, number 4/05); special cases of acquiring private ownership by sale of public and ownership of the state, regulated by various laws; building on construction ground regulated by the Law on ownership and other real rights and the Law on building (Official Gazette of Republic of Macedonia, number 130/09); the exchange regulated by various laws and confiscation regulated by the Penal code (Official Gazette of Republic of Macedonia, number 37/96), the Law on misdemeanor violations (Official Gazette of Republic of Macedonia, number 62/06) and the Law on management of confiscated property, financial gain and object in criminal and misdemeanor proceedings (Official Gazette of Republic of Macedonia, number 98/08).

## **3. Law that Regulates the Inscription of Ownership on Real-estate**

With regard to the inscription of ownership on real-estate, a new law was passed in may 2008 – The Law of cadastre of real-estate (Official Gazette of Republic of Macedonia, number 40/08). The law instates a new type of information system for inscription of ownership on real-estate -so called the geodetic-cadastre information system (GCIS) which exists in electronic form.

The cadastre of real-estate is a part of that system. The important novelty of the new system is the obligatory inscription of ownership and

other real right in these public records ,by which the rights are actually acquired. There are three forms of inscription of rights: final inscription, pre-notation and notations. The right of ownership on real-estate is proven by ownership sheet, issued by the Agency for cadastre of real-estate.

Other important novelty is the fact that now-days the cadastre of real-estate keeps records on unlawful objects and temporary objects placed on construction ground, and issues record list for these objects.

Novelty of the law are also the various manners of instatement of the cadastre of real-estate such as: 1. Systematic inscription; 2. Separate inscription of real-estate rights; 3. Inscription of un-inscribed rights and 4. Conversion of data from the cadastre of land in to cadastre of real estate.

The inscription proceedings in all cases are led by the Agency for cadastre of real-estate.

## Summary

### I.

The Constitutional legal framework concerning the existence of ownership in Republic of Macedonia are the articles 8, 30, 31, 114 and 117 of the Constitution of Republic of Macedonia.

1. Article 8 proclaims legal protection of ownership as a basic principle of the constitutional system.

2. Article 30 implements the right of ownership in general, and as such it is the legal frame for regulating of this basic real right in the legislation.

3. Article 31 implements the right of ownership for foreigners in Republic of Macedonia.

4. Article 56 gives the legal framework on ownership of the state and articles 114 and 117 give the legal framework on ownership of the municipal units.

### II.

The legal framework concerning the right to ownership is provided by the article 2 of the Law on ownership that implements three forms of ownership: 1. Ownership of natural and juridical persons, 2. Ownership of the state (public ownership) and 3. Ownership of the municipal units.

1. The three forms of ownership are considered to be general forms of ownership because there is one subject who has the right of ownership. In cases where there is more than one subject of the right of ownership, than according to the Law of ownership, there is co-ownership, joint-ownership and condominium ownership.

2. Independently of the form of ownership, the object of ownership are things. Owners have the right to use freely the things they own as long as it is not contrary to the law.

3. According to the Law on ownership the right to ownership is acquired by law, contract, by succession and on the basis of a court decision, in a manner determined by law.

### III.

1. The right on ownership is realized on the basis of the principle of free disposition with the necessary limitations determined by the Constitution and by law. In the process for realization of the right to ownership, the owner must respect the general and special limitations determined by law.

2. Owners can be foreign and domestic natural and juridical persons. Especially important for attracting foreign investments in Macedonia, and also for the efforts of Macedonia to become a member of the EU are the Amendments and supplementations of the Law on ownership from July 2008, according to which the legal regime for acquiring property for foreigners has been liberalized.

### IV.

The special laws that regulate the legal framework on ownership in Republic of Macedonia may be divided in three

groups. The first group of laws are those that regulate the legal regime for objects of public interest, such as agricultural land, construction grounds, public roads, forests and etc. The second group of laws are the laws that regulate the manner of acquiring ownership in special cases determined by law (expropriation, privatization, denationalization etc). The third group is the law that regulates the inscription of ownership in the public records – the Cadastre of real-estate in Republic of Macedonia.



**References:**

1. **Constitution of Republic of Macedonia**, Official Gazette of Republic of Macedonia, number 52/91;
2. **Law for agricultural land**, Official Gazette of Republic of Macedonia, number 135/07;
3. **Law for building**, Official Gazette of Republic of Macedonia, number 130/09;
4. **Law for Cemetery and Cemetery Services**, Official Gazette of Republic of Macedonia, number 86/08;
5. **Law for construction grounds**, Official Gazette of Republic of Macedonia, number 82/08;
6. **Law for denationalization**, Official Gazette of Republic of Macedonia, number 43/00;
7. **Law for expropriation**, Official Gazette of Republic of Macedonia, number 33/95;
8. **Law for Forests**, Official Gazette of Republic of Macedonia, number 64/09;
9. **Law for management of confiscated property, financial gain and object in criminal and misdemeanor proceedings**, Official Gazette of Republic of Macedonia, number 98/08;
10. **Law for misdemeanor violations**, Official Gazette of Republic of Macedonia, number 62/06;
11. **Law for privatization and long-term lease of construction grounds ownership of the state**, Official Gazette of Republic of Macedonia, number 4/05;
12. **Law for Public Roads**, Official Gazette of Republic of Macedonia, number 84/08;
13. **Law for waters**, Official Gazette of Republic of Macedonia, number 87/08;
14. **Law of Ownership and Other Real Rights**, Official Gazette, number 18/01;
15. **Penal code**, Official Gazette of Republic of Macedonia, number 37/96;
16. **The Law of cadastre of real-estate**, Official Gazette of Republic of Macedonia, number 40/08.