

Over 15 million euros paid after court orders for land expropriation for the highway Kichevo - Ohrid, of which 5 million euros for costs

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A resident of a village of Ohrid, who was deprived of 4 square meters of land for the construction of the road Kichevo-Ohrid, remained dissatisfied with the offer of the state to pay him 550 denars per square meter and asked the court to determine the real price. An expert was hired, who estimated that the property was worth 20 euros, twice as much as what had been offered. The court, after several hearings, determined compensation of 4,800 denars, and also awarded costs in the court proceedings of 30,000 denars, which is 8 times more than the value of the litigation.

This case is not the only one where the court costs have exceeded the value of the litigation, and thus, about 5 million euros were spent only for court costs, lawyers, forensic experts and appeals, or one third of over 15 million euros, as the PE for state roads paid in total in the period 2014-2020 for the confiscated land for construction of the road from Kichevo to Ohrid, according to court decisions.

The state, by determining the value of the land by forensic experts from the State Bureau of Forensic Expertise, offered sums of 30 to 100 denars per square meter in the Kichevo area, up to about 10 euros per square meter in the Ohrid area, which is close to the lake.

7,563,567, 5 square meters of land have been expropriated for the construction of a route, landfills, slopes, junctions, access roads, as well as widening of slopes for the construction of the highway A2 section Kichevo - Ohrid since 2014. The land from the additional slopes is to be expropriated, too - the Public Enterprise for State Roads answered the question of how much land had been seized for the construction of the road Kichevo - Ohrid, for the needs of this research.



15.5 million euros paid for over 3 thousand lawsuits from 2014 to 2020



This project is funded
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3,043 citizens of Ohrid and Kichevo decided to seek justice in court as they had not agreed with the state on the price of the confiscated land.

Starting from 2014, the competent State Attorneys in Ohrid and Kichevo submitted a total of 3,043 proposals for expropriation (DP Ohrid 2412 proposals, and DP Kichevo 631 proposals). The procedures for determining the compensation for expropriated real estate for the construction of the highway Kichevo-Ohrid are conducted before the primary courts in Ohrid and Kichevo – according to the statistics of the Public Enterprise for State Roads.

From 2014 to mid - December 2020, the Public Enterprise for State Roads paid almost 15.5 million euros for expropriation of the land for construction of the road Kichevo-Ohrid, following court decisions.

Of these over 15 million euros paid after the trials, over 5 million euros were paid for court and lawyer costs for over 3,000 proceedings before the primary courts in Kichevo and Ohrid and before the Courts of Appeal in Bitola and Gostivar, according to the research that we conducted for court proceedings and paid money from 2014 to the end of 2020 in a non-litigation procedure.

This amount of 15.5 million euros does not include about one million euros paid in litigation, where damages were sought for destroyed forest, native trees, such as walnuts, pears, plums, vineyards and for which, in addition to the Public Enterprise for State Roads, the road construction companies were sued for damaging other land outside the road construction boundaries, property that had not been expropriated before.

Expropriations paid for the construction of the highway Kichevo - Ohrid by years and in total	
2014	54.912.412,00 ден
2015	104.916.667,00 ден
2016	18.185.375,00 ден
2017	43.938.922,00 ден
2018	237.875.110,00 ден
2019	289.887.621,00 ден
By 15.12.2020	192.362.539,00 ден
Total: 942.078.646,00 (15.318.351,00 евра) 1 евро 61.5 мкд	

*** The PE does not have special data on paid court costs from the stated aggregate amount. The amount of 5 million euros is calculated by inspecting cases and determining the average**



As can be seen from the table, the most money was paid in 2019, almost 290 million denars, followed by 2018 with 238 million denars, over 192 million denars in the last 2020. The least money was paid in 2017, about 44 million denars.

The Bureau for Forensic Expertise “cheap” in determining the land price

A research has shown that the state could have saved at least 5 million euros in legal and court costs if it had shown a minimum willingness to negotiate with landowners when it became clear that court-appointed experts had assessed the land 10 to 20 times higher than the assessment of the Bureau of Forensic Expertise, which in some places on the road Kichevo-Ohrid had assessed that one square meter costs 10, 30 or 50 denars.

“I am really sorry that for a large part of the land I made decisions to be taken for a price of 100 or 150 denars, as much as a pack of cigarettes costs, but I had no way to make another judgment as the first assessment by the state was that the land was worth only 30 denars” - said one of the judges in the primary courts that worked on these cases, within our research.

According to him, they were aware that the land was worth more, but they did not have a benchmark for comparison, because on that part of the route, before the land was confiscated, there was no sale - purchase of land, for which there would have been evidence from notaries and the PRO, and the price could have been formed.

The courts in Kichevo and Ohrid were overwhelmed with lawsuits, because the number of over 3 thousand non-litigation cases on only one ground is not small.

Anyone who sued, won, because the courts accepted the expertise of private licensed experts, which were even more than 10 times higher than the assessment of the amount of compensation for confiscated land calculated by the Bureau of Forensic Expertise, as a state body. The courts of appeal took the position that the prices of the State Bureau should not be accepted, because they had been made for the needs of the administrative, and not for the court, out-of-court procedure.

In the Primary Court in Kichevo, as a small court with only 7 judges, 600 proposals were submitted by people from Kichevo, who did not agree to give their own land to the state for road construction, at a price offered to them in the administrative procedure. As much of the land now confiscated was agricultural, with orchards, or forests or pastures, citizens did not want to simply give up the land without being properly paid for that, as it brought them income every year, regardless of the fact they planted crops on it or not, grazed cattle or harvested trees.

Dragan Minoski is a judge in the civil department of the Kichevo court, where over 600 requests for determining compensation for the road have been resolved.

“By law these cases are urgent. If there are no obstacles, they can be resolved after 2-3 hearings” - says Judge Minoski, but the practice has shown that it went so easily, which can be seen from the explanations in the verdicts.



Lawyers and forensic experts have made money to the damage of the state which did not want to come to an agreement

The ombudsman submitted an expert report from the Bureau, and the court had to hire another licensed expert. The expertise was always different, and when the experts from the Bureau of Forensic Experts were called to comply with the second expert in the courtroom, they did not come, so the trial was postponed because of them. If the experts did not agree with each other, they went for a super expertise which is much more expensive.

The lawyer's fee for one trial for these cases is from 8,500 to 11,000 denars, which makes the procedure expensive. Of course, deferred trials are also paid.

This is just one example of a verdict brought before a primary court seeking damages for destroyed plantations.

Since the plaintiff succeeded in the dispute for the amount of 228,000 denars, the costs in the procedure are recognized in the total amount of 76,054 denars, the verdict reads. Just one case like this costs the state additional 1,300 euros for a trial before a court of first instance. For illegally cut three walnut trees, outside the route, the Kichevo court determined compensation of 252 thousand denars, as well as court costs of over 1,200 euros. The trees were 15 to 25 years old and over 15 meters high, in full fertility. They were destroyed by a subcontractor company, without seeking a consent from the owner, and they were located on a land along the road which was not taken away.

In view of the circumstance that the defendant PE for state roads lost the dispute in its entirety, for the amount of 128,710 denars the court ordered to reimburse the plaintiff for the costs incurred during the proceedings in the amount of 88,844.00 denar, pursuant to Article 148 of the LCP - writes in another verdict.

In this case, about 2,100 euros were paid for the confiscated land, plus about 1,500 euros for costs in the procedure, which is about 2/3 of the value of the dispute.

Costs were paid by the companies that worked on the road and caused damage to the property, as the example mentioned earlier.

DGTT T. DOO from Skopje paid damages for illegally felled timber, in the amount of 447,071 denars and costs of the proceedings in the amount of 52,989 denars - it is written in another verdict of the Kichevo court.

For 10 walnut trees cut along the road, the court determined damage of almost 12 thousand euros, plus about 1,200 euros for costs in the court proceedings.

Different courts decided differently for the same thing

However, it was not clear to the courts in 2014, when the lawsuits started to arrive, so the Court of Appeals in Bitola took the position that the land should be paid as construction, because it was intended for road construction, while AS Gostivar under whose jurisdiction is the Kichevo court, held that the land should be paid as agricultural, that is, in the category in which it was registered in the Cadastre at the time of taking it for the road construction.



This made a significant difference, because, if it was agricultural, the assessment was made by an agricultural expert, and if it was construction - by a construction expert. Of course, the price that was determined was also different.

After several attempts and mutual meetings to harmonize the court practice, the Bitola court, under whose jurisdiction the court in Ohrid is and the proceedings that are conducted for the Ohrid part of the road, remained on the position that compensation should be awarded as for construction land.

The Court of Appeals in Shtip and Skopje did not agree with this position, so the whole thing ended before the Supreme Court, which issued a general legal opinion that the land should be assessed according to the position of the Court of Appeals in Gostivar, that is the land to be paid as registered in the Cadastre at the time of the expropriation.

The compensation for expropriated real estate in the procedure before the court is determined by the market value according to the type and character of the real estate at the time of expropriation, based on the data from the Real Estate Cadastre, regardless of the needs and purpose of the expropriated real estate – concluded by the Supreme Court in April 2016, two years after different courts read the law differently in the judgment.

After this judgement by the Supreme Court, the Bitola and Ohrid courts changed the practice and assessed the value for agricultural, not for undeveloped construction land. According to our research, although the courts awarded the compensation calculated by the private experts, the State Attorney's Office did not try a settlement in any of the cases at the start of the trials, thus incurring over 5 million euros in costs before the first instance courts and the courts of appeals. The State Attorney's Office has data that in 23 percent of the non-litigation proceedings in 2019 it had filed complaints.

As part of this research we inspected about 500 cases which give a clear picture of how the compensation for the confiscated land and the costs of the procedure were decided.

The construction of the road Kichevo-Ohrid is more than 3 years late

Due to mistakes in the basic design, the road Kichevo Ohrid is stalled, the construction deadline that was planned for 2018 has long passed.

During 2019/2020, 5 new road junctions were identified, for which additional land was confiscated, so new lawsuits are expected for the amount of the confiscated land.

In Ohrid and Kichevo at the end of 2020 there were about 320 active court cases, and about 250 thousand euros are expected to be paid for court costs only.

All the plaintiffs agree that the Public Enterprise for State Roads was a good payer, so they did not have to hire enforcement agents, but received the money immediately after the verdicts were handed down.



This investigative story was produced with the financial support of the European Union. Its contents are the sole responsibility of the author and do not necessarily reflect the views of the European Union.



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