

H.E. Mr Michael Hayward Davenport
Head of Delegation
Delegation of the European Union
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Your Excellency,

What we are currently witnessing in Kosovo is a process of abolishing one of the basic values of our civilization: inviolability of property rights. I believe you are all aware of the decision made by Kosovo Assembly earlier this month regarding the company “Kombinat Trepča” (pronounced: Trepcha), which is to be confiscated by the special law. Only reason being that “Trepča” is owned by shareholders that are companies, banks and investment funds registered in the Republic of Serbia.

In spite of the fact that “Kombinat Trepča” was established well before World War II, in the Kingdom of Yugoslavia back in 1927, almost 40 years before Kosovo acquired its status as the province of the Socialist Federal Republic of Yugoslavia, and even though the company has been organized as a joint-stock company since 1992 - Kosovo Assembly had interfered with the property rights of its shareholders. “Kombinat Trepča” is owned by its shareholders, legal entities whose registered capital is 108,293,888.80 EUR. The majority shareholder is The Development Fund of the Republic of Serbia, with 78.5% ownership. Other shareholders include Generalexport in bankruptcy (9.7%), Progres Beograd (2.8%), banks: Jugobanka (3.3%) and MTS Banka (2.7%), EPS (2.1%), insurance company Dunav osiguranje, and other companies such as Ratko Mitrovic Ltd., IMK 14. oktobar in bankruptcy and Termoelektro Ltd.

Not only “Trepča’s” shareholders and their shareholders property rights have been violated, but indirectly also property rights of “Trepča’s” creditors and creditors of its shareholders. Some shareholders, such as Generalexport and IMK 14. oktobar, are currently in bankruptcy proceedings, meaning that bankruptcy proceedings and secured and unsecured creditors property rights have been affected. The “Trepča” law in its essence is a decision by the Kosovo Assembly to confiscate property, for the simple reason that they are owned by other nationals. It is an unprecedented situation, as nothing similar happened to the capital and property of legal entities and individuals of any other nation in Kosovo, except the Serbian nation.

The law itself does not contain any relevant provisions, apart from the one that it grants 80% of company's equity to the Government of Kosovo, and the remaining 20% to its employees, and ignores all company shareholders and creditors. Therefore, this is not an Act, but a unilateral decision to seize the property and deny property rights. Similar acts are almost unheard of in the rest of the world, and even the former president of Venezuela Hugo Chavez used the institute of nationalization with compensation, not partisan confiscation.

Therefore, not only is this decision in collision with the principles underlying the rule of law and contrary to the fundamental postulates of the natural law - it is also anti-civilizational. This decision is both damaging to owners and creditors of "Trepča" and undermining the achievements of democracy and the rule of law throughout Europe. Finally, this is a test for the European Union itself, since it accepted responsibility for the rule of law and observation of the standards of the best European practices, through its EULEX Mission in Kosovo. Beyond that, the fact that Kosovo is in the process of joining the EU, requires the EU to sincerely request the compliance with these good practices from each candidate.

This European practice clearly defines the concept of property rights, based on the concept of fundamental human rights proclaimed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. I remind you that this concept includes the positive obligation for the state to protect the property rights of its holders. Since it has no real power in Kosovo, the Republic of Serbia can not help its citizens and legal entities under its jurisdiction to protect their property rights in Kosovo. But EU can and must do so. If the Union does not address this issue properly, it will create a precedent by which Turkey will be able to seize the Russian Sberbank, according to which Russia would be able to confiscate the Norwegian Telenor or by which Serbia will be able to seize a Croatian IDEA or German Hemofarm. It would all be perfectly legitimate based on the law and good practice in the case of "Kombinat Trepča".

Kosovo is not a member of the Council of Europe, nor United Nations. For some of you, Kosovo is a sovereign state, for others it is still a province of the Republic of Serbia. But that has nothing to do with the core issue raised here, and the question each of you can answer easily. The question is: Does anyone have the right to confiscate someone's property just because it is owned by legal entities and individuals belonging to another nation? This is the first and to our knowledge the only law in Europe, which is made to seize the capital, and which applies only to legal entities and individuals from Serbia. If anyone is uncertain, even for a moment, how to answer this question, then we have a problem that is far greater than Trepča, Kosovo and even Europe.

We all know that human rights are not negotiable. They are inalienable and can not depend on the political will and other interests. No one has the mandate to erode human rights, including the property rights. On the other hand, we all know when and how human rights, including the property rights, can be restricted. And we are all aware that these conditions are not met in the case of Trepča.

Therefore, please recognise this moment as historic. Some 85 years ago there was not enough unity in Europe to raise its voice against the burning of books and property confiscation based on religious grounds. I'm sure many have repented for their silence. Now is the time to remember Otto von Bismarck's words, learn from the mistakes of others, and stand against similar actions before someone thinks of doing something even worse. Not only because of Serbia or Kosovo, but because of Europe and its future.

Sasa Radulovic

Member of the National Assembly of the Republic of Serbia
President of the movement "Enough Is Enough"