

Legal Regime of Acquisition of Land Ownership by Newly Formed Families in the Republic of Moldova

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Abstract: *During the transition period of the Republic of Moldova from the planned economy to the one based on free trade, fair competition, etc., including from the public property of the Soviet state to the private property of individuals, the need to establish a clear regime for acquiring and exercising the right to land ownership had become a strict one. In parallel, with the adoption of the Land Code, in addition to the appropriation of agricultural land, it was also decided to assign land to newly formed families in order to help them develop a family, ensure decent living conditions, demographic growth and prevent emigration. Since then, when the legislative framework in the field was developed in a hurry, with many shortcomings and ambiguities, and up to the date of writing this article, the legislator has not taken any measures to rectify the legal situation regarding the acquisition of land ownership by families newly formed.*

Thus, against the background of the respective problem, we are determined to investigate the problem as a whole, trying to offer solutions, but also suggestions to the legislator to change the attitude of the public authorities responsible for assigning these lands.

Keywords: *land, property, family, human rights, assignment, marriage, public authorities, powers, land resources.*

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Introductory aspects

The good development of social relations, the guarantee of fundamental human rights, the provision of decent living conditions for the citizen, were and will remain priorities of the state, in other words, unconditional obligations resulting from its purpose and role in a civilized society. In this sense, any reform of the state has only to aim at increasing well-being, the safety of man in the future, the provision of goods and products necessary for his existence and development.

For the Republic of Moldova, the first priority, after gaining independence, was the development of reforms aimed at guaranteeing private property, a matter that started from the appropriation of land by citizens, the basic source of its existence in an agrarian country, previously subject to collectivization in forced way.

Naturally, the first legislative codification also occurred in the field of land relations regulation, it is about the adoption of the Land Code in 1991, in the content of which the order of ownership of land was provided. At the same time, in addition to the assignment of equivalent land quotas, the assignment of ownership of land for the construction of houses was also foreseen, the beneficiaries of which were designated the newly formed families.

Thus, pursuant to art. 11 of the Land Code, the public administration authorities assign free of charge, to newly formed families, issuing them property titles, sectors of land from the intra-village reserve until it is exhausted for the construction of houses, household attachments and gardens: in cities - from 0.04 to 0.07 hectares, in rural areas – up to 0.12 hectares. The concrete dimensions of the land sectors are established by the local public administration authorities.

Yes, it was natural that newly formed families should benefit from these lands, given that they are at the beginning of the development of a family, when the spouses are young and do not have the financial resources necessary to purchase a home or purchase a plot of land, quite expensive nowadays. However, this decision of the state is timely and valid in terms of efficiency even in today's times, taking into account the fact that the Republic of Moldova is a relatively poor country, and young people emigrate in the hope of finding a well-paid job abroad. Moreover, this would also be a measure to stimulate the formation of families in rural areas, where the population has decreased dramatically in the last decade.

The problem identified

Going beyond the realities shown, as can be seen, the provisions of the law are quite clear and explicit regarding the acquisition of the right of ownership by the newly formed families of the land intended for the construction of residential houses, a fact that is not as clear for the public authorities obliged to fulfill precisely these provisions. However, in practice, the cited norm is often interpreted differently, by each local public authority, but judicial practice does not look better in this segment either. And this happens, we believe, because of the lack of a normative act that would show the order of implementation of the provisions of art. 11 of the Land Code.

In fact, this lapse in regulation is also the cause of the fact that each local public authority has allowed to interpret in its own way the basis and order of assigning ownership of land intended for construction to newly formed families. Moreover, they approved through the decisions of the local councils and Regulations to provide for and interpret the basis, the method and the order of assigning the lands in question, the content of which is different from one locality to another, and what is disastrous, that they include the most unprofessional legal approaches in the field (G. Ardelean, (2020): 207). We identify this in all segments, such as: the beneficiaries of the rule from art. 11 CF; the list of documents required for land allocation; the procedure for examining the award request; creation of the register containing the waiting list; identifying alternative solutions in case of land depletion, etc.

Therefore, for a good consecutiveness of the exposition, but also for an extensive analysis of the issue addressed in the paper, in the following text we will refer to all the listed aspects with an attempt to give solutions as viable as possible.

Beneficiary subjects of land for construction

So, according to the analyzed norm, the beneficiaries of the right to land intended for the construction of residential houses are undoubtedly newly formed families, but the problem is that we do not identify the notion of newly formed family in any normative act. Respectively, those who developed the Land Allocation Regulations in the City Hall, not finding in the text of the Family Code a notion of the newly formed family, resorted to analogy, assimilating it with the notion of a young family, and later referring to the notion given by the Law with regard to youth, they defined the newly formed family as a couple, formed by marriage, in which one of the spouses

has not reached the age of 35, a family with children formed by a single parent up to 35 years of age.

So we see that here the newly formed family is connected with the young family, while there are essential differences between them. However, two people can form a family even at the age of 50-60 years, no one forbids them from doing so, the respective family being newly formed, more correctly said, recently formed, regardless of the age of the spouses, because this is the period of formation of the family as an entity, distinct from the age of its members. On the other hand, the family is young when its members are young, and here too we do not know if it is correct to limit youth to the age of 35. Moreover, the youth law does not determine the length of time the family maintains its young family status, because we could say that the family formed 3 years ago is no longer young, for example.

Other localities formulated their own notion of "newly formed family", from elements that do not find any reasoning or logic. For example, in the city of Sângera, a newly formed family is considered to be a family that has been married for up to 5 years, in which none of the spouses has previously benefited from a lot under residential construction, they have not ordered and/or do not have private housing space, citizens of the Republic of Moldova, where both or one of the spouses were born and both live on the territory of the city of Sângera, the villages of Dobrogea or Revaca.

In Zaim locality, Căușeni district, a newly formed family is a husband and wife, citizens of the Republic of Moldova, one of whom has had a permanent residence visa in Zaim commune during the last 2 years, who founded a family, with the official registration of marriage according to the Family Code of the Republic of Moldova, of which none of the spouses has ordered and does not have land for the construction of the house or house in the Căușeni district and who previously did not benefit from land for the construction of the house in the territory of the Republic of Moldova lived for free.

And in the end, we do not understand why all the public authorities when drafting that Regulation defined the newly formed family as that family constituted by the act of marriage. What about the family formed through the effect of filiation, when the mother gives birth to a child, whether out of wedlock, or the one formed through adoption. It is certainly known that family relationships are established in similar ways, other than marriage, a fact confirmed by the majority of specialists devoted to the study of relationships regulated by family law (L. Belecciu, (2023): 9).

If we look up the notion of family in dictionaries, we find that it consists of all related people, who are of the same race; blood relatives,

lineage, ancestry; (spec.) social group based on marriage and made up of spouses and children; the totality of people who descend from a common ancestor, race, descent.

What is also interesting, some authorities linked the institution of land acquisition of newly formed families with the need to improve living conditions, circumstances that should not be confused, and others adopted their decisions taking into account the Law on the normative price and the method of sale purchase of land no. 1308/1997, while art. 11 of the Land Code clearly states that these lands are assigned free of charge. Moreover, and from the content of art. 10 para. (8) lit. c) from Law no. 121/2007, it is deduced that the respective lands were awarded only free of charge. Or, according to the rule, it is not allowed to alienate free of charge or to lend to individuals or legal entities with private capital the assets of the private domain of the state or of the administrative-territorial unit, except in cases where these assets represent lands that are assigned to individuals for the construction of individual houses, in accordance with the law.

Unfortunately, the ambiguities in the application of the provisions of art. 11 of the Land Code do not end here. If in some Regulations the condition is imposed on the newly formed family that has lived for at least 2 years on the territory of the locality where the land is requested, in others a term of 5 years is required. In some localities it is required that at least one of the family members was born in that locality, and in others, that both spouses were born there, etc.

List of documents required for land allocation

In the Regulations discussed above, elaborated by each public authority separately, the list of documents to be presented for land allocation is established. Therefore, the first document is the one that confirms the conclusion of the marriage, for example the marriage certificate, which implies that the authorities perceive as beneficiaries only the families established by the marriage certificate, which in our opinion is not the most correct. Or, it might be possible to accept the birth certificate of the first child born in the family, even if it is out of wedlock, or the decision to adopt a child who, in essence, still needs a place to live with his new family .

A second required document is the one issued by the Territorial Cadastral Service in order to confirm the fact that the family does not have housing, when in fact art. 11 of the Land Code does not refer only to families that do not own land, implying that all families have this right.

In some localities proof of the spouses' income is also required, which, according to us, has nothing in common with the right to receive land for the construction of the house.

The procedure for examining the request to assign land to newly formed families

If the conditions for submitting the assignment request are met, the Mayor proposes to the Local Council the adoption of the land assignment decision. After the meeting in session, the local Council votes to assign or reject the request for the assignment of the land within the village of the applicant family, with an area that does not exceed the limit provided for in art. 11 of the Land Code.

What's right, the cadastral number of the assigned land should be indicated in the decision, according to the order of assignment of the cadastral numbers indicated in the geometric plan of the land. And in this chapter there are some problems. Namely, many town halls have not drawn up the geometric plans of the lands in the intra-village reserve intended to be assigned as ownership to newly formed families, due to a lack of financial resources. In this case, the concrete cadastral number of the assigned land is not indicated in the awarding decisions, the beneficiary having to draw up this plan on his own, thus choosing the desired land from any part of the massif in the urban area of the town.

Creation of the register containing the waiting list

In many cases, when the reserve within the locality intended for the allocation of land to newly formed families is exhausted, the public authorities reject the request for allocation, which in our opinion is incorrect. In this case, if the applicant family meets all the conditions for the assigning, but due to a lack of land it cannot be assigned at that time, the request must be accepted with the disposition of postponing the assignment procedure for the moment when a new reserve of the inner village will be established. Accordingly, a register (called in practice - Waiting Register) is to be drawn up, where the order of submission of applications by the newly formed families who are waiting will be indicated, and after this the order of initiation of the assigning procedure will be established in the case of filling the intra-village reserve. Moreover, how will the order of submission of the application be determined, respectively how will the initiation of the procedure be established, if after years the reserve will be filled, or will newly

formed families receive it? We think it would not be fair, the order of assignment to be followed even if there were no lands at the time of filing.

Moreover, this register can make the public authorities responsible, it will prevent them from assigning land in violation of the waiting order, but it will guarantee a certain safety for the families benefiting from the land, respectively transparency for the civil society, the authorities with attributions of control and supervision of the democratic processes. Speaking about the form and legality of this register, we would suggest that it be established and kept in accordance with Law no. 71/2007, including in electronic format on the page of the public authority responsible for its maintenance.

Identifying alternative solutions in case of land depletion

It is easy to understand that lands are assigned to newly formed families until exhaustion. At the same time, many of the lands of the towns in the suburbs of the big cities have long been used up, but the law comes up with solutions in such cases as well. Specifically, in art. 39 para. 2 of the Land Code states that the lands assigned to the property as lots next to the house (gardens), located adjacent to the boundaries of the inner village, are included in the boundaries of the inner village of the locality, are considered land intended for construction and are used for residential construction, provided they are included in the general urban plan of the locality. Yes, the logic of this rule is clear, in the conditions where there are no more lands in the inner city, to be given from the account of those with agricultural destination in the outer city of the locality, lands that were once assigned free of charge to the parents of children who founded families. However, until 1997, lands outside the village were assigned to families depending on the number of family members, respectively these lands, in the absence of those from within the village, are intended for construction, obviously on the condition of their inclusion in the general urban plan.

Despite this fact, the issue of facilitating young families to build on the lands that were once assigned to them for free, remains unresolved due to the fact that most localities in the Republic of Moldova do not have a general urban plan.

Also, a more ingenious solution of the legislator, with strict quotation marks, is that of excluding this right from the drafting of the new Land Code, which is at the draft stage. Thus, in the wording of the expected new Land Code, we do not identify a rule that provides for the right of newly formed families to land intended for the construction of residential

houses, it being only possible to alienate them at auction, otherwise, as was done until now.

The problem of the withdrawal from ownership of the lands assigned to the newly formed families

As paradoxical as it would be, but in the situation where many town halls reject the request to assign land to newly formed families, in other localities they assign land, but under the condition of the nullity of the property transfer act in cases where the beneficiary families will not build on this land for 3 years from the distribution of the lot. However, we can deduce this from the content of the Căușeni Town Council Decision, which in point 2 mentions the following: "the beneficiaries of the land for the construction of residential houses are obliged within no more than 3 years from the date of adoption of the land allocation decision to start the execution private construction in compliance with the project documentation, drawn up, endorsed and approved in the established manner and not to undertake land alienation actions under the penalty of absolute nullity of alienation acts. It is established that in case of non-compliance with these conditions by the beneficiaries of the land for the construction of residential houses, the Căușeni city council will withdraw the allocated land and assign it to another newly formed family based on the law". And here the question seems to us, what about the perpetual character of the property right?, with the right guaranteed by art. 46. para. 2 of the Constitution of the Republic of Moldova?. Probably the public authority when elaborating this decision was basing on the provisions of art. 25 para. 2 and 3 of the Land Code, where it is said that, "if the holder does not fulfill his obligations within the established term (no more than two years) he will lose the right to possess or use the land by the decision of the court at the request of the landowner. The decision regarding the termination of the right to use the land in the cases provided for in the first paragraph of Article 18 of this Code is adopted by the administration of the respective enterprise, institution, or organization. However, we draw attention to the fact that this norm refers to the withdrawal from the use of the land and not from the property, respectively all these decisions are to be annulled in the order of the administrative litigation.

Conclusion

As a conclusion to those examined in this article, we consider it necessary to maintain the right of newly formed families to free land intended for the construction of houses and in the content of the new Land Code, trying to find solutions to identify the owner of the land or to replace this right with the right to a single monetary compensation assigned to newly formed families at the conclusion of the marriage or the granting of preferential credits.

Another solution would be to alienate the lands of the newly formed families at auction, because these lands exist in the urban areas, at a reduced price. This fact will make it possible to purchase a plot of land, respectively it will cause young people to stay in the country to start families, contribute to the country's demographic development, etc.

It is also necessary to draw up a Regulation that indicates in detail the procedure for assigning these facilities to newly formed families, without leaving room for interpretation by public authorities or those that would eventually be concerned with establishing the right to certain compensations or exemption for newly formed families.

Moreover, the right to assistance and social protection guaranteed by the Constitution of the Republic of Moldova was not abrogated, and according to art. 47 para. 1, the state is obliged to take measures for every person to have a decent standard of living, which ensures the health and well-being of him and his family, including food, clothing, housing, medical care, as well as the necessary social services.

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