The Legal Requirements for Retrocession of Real Estate Owned or Managed by the Administrative-Territorial Units in Romania

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Abstract: The fundamental property of any system of law. The Romanian legislator defines the nature, the object, destination and the distinction of the real estate assets. They are owned or they are in the administration of the territorial administrative units of the state which are part of the state public domain or are found in its private property. We will present in this work the method of administration, holding and estrangement of the real estate assets. Can become the subject to the restitution requests: the land located in the metropolitan area and outside the territorial administrative units, the erected buildings and the buildings with various destinations which form the totality of the real estate assets. Considering the role played by central and local administrations through the incursion after 1990 of the citizens access to the rights established according to the legal norms regarding the restitution of real estate assets. Settling of administrative notices versus court settlement of requests for the restitution of real estate property are the two ways citizens can use to exercise their right to property. We have found the deficiencies of the administrative system in the process of retrocession, as well as the shortcomings of the normative regulations considered from the point of view of the Romanian citizen that has to go through in retrocession of his right to property.

Keywords: *ownership; restitution; administrative; territorial; public; private; real estate assets.*

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Introduction

Throughout the development of human society, we see that private property in the retrospective of civilizations is a fundamental concept that reaches different stages of development.

We can note the existence of the property from the primitive age, where the territory was considered to be a community settlement of the family. State organization evolves and the next stage of development in terms of ownership is divided into state property and private ownership.

In ancient times, the lands were classified according to their special destination. Hugo Grotius in his work *On the Law of War and Peace* (Grotius, 1968, pp. 999) marks a boundary between territory and land, highlighting four kinds of land among which the land belonging to a particular person because it has human limits, was called a border.

In the Middle Ages, in the opinion of Grigore Geamănu and Leon Duguit, the property was considered attributed to the person who held the distinction between territorial domination and the supremacy of public law, with the specification that it does not include the right to private property as a property right. (see Geamanu, 1998, p. 480).

If in the antiquity the property was common, in the Middle Ages it was differentiated, as private property and state property.

I. Regulatory setting of immovable property

Currently, the property of real estate is "the full possession of real estate property on the basis of a recognized right" (Property, n.d.). Etymologically speaking, the word of property comes from the Latin properties, as well as from the French *propriété*.

Addressing the issue of property in the legal sense, according to the provisions of art. 136 of the Constitution of Romania para. (1) "property is public and private" (Constitution of Romania, art.136 paragraph (1)) The normative act in this way classifies the ownership forms according to the applicable legal regime.

In this respect, the fundamental law in art. 136 par. (2) states that "public property is guaranteed and protected by law and belonging to the state or administrative-territorial units" (Constitution of Romania art.136 paragraph (2)). and Article 44 (2) governs private property as "guaranteed and equally protected by law, irrespective of the holder" (Romanian Constitution Art.44 paragraph (2)).

The legislator in art. 585 The new Civil Code defines public property as belonging to "the State or an administrative-territorial unit of goods which, by their nature or by the declaration of law, are of public interest, provided that they are acquired by one of the modes provided by law, (NCC, art. 585). The private domain of the state or of its territorial administrative units is made up of the property and the object of the private property belonging to the state legal entities. They are in the civil circuit when the law has no other way (NCC, art. 553).

The distinction between public and private ownership of the state is based on different criteria of delimitation. Given their nature, public goods cannot be alienated, donated, expropriated. Property cannot be extinguished through its use, it cannot be acquired through usucapion or by possession in good faith.

In comparison, goods in a state's private property may be alienated or remain in the civilian circuit. Another criterion is considered to be the damage to the public utility asset.

Presenting the ownership of real estate to the public or private property of a state introduces us into the atmosphere of the researched theme. Importance is the legal nature of the real estate at the time of requesting its restitution. It is necessary to know whether it is in the public or private property of the state. If the asset is of public utility, the restitution process will be carried out by way of damages, if the good is of public utility.

By the provisions of Law no. 213 of 17 November 1998 published in the Official Gazette no. 448 of 24 November 1998 establishes the legal nature of public goods as being of public use or utility. (Law no. 213/1998).

As a result of the nationalization, agrarian properties were transferred from private property, to the state property or territorial administrative units: Decree no. 83 of 2 March 1949 or the Expropriation Law no. 187 of 1945.

Real estate was nationalized according to Decree no. 92 of 20 April 1950 or on the basis of Decree no. 524 of 1955. At that time, confiscation of immovable property, requisition or expropriation, were the main ways in which, according to the above normative acts, private persons were dispossessed of the land and buildings owned by them.

Since 1990, social transformations through the establishment of democracy have led to legislative changes in the field of real estate, which have been abusively taken over from 1948 to December 1989.

The restitution of agricultural land, land in urban areas and buildings has been, is and will probably be a long, tedious process that involves both the state as the administrator and the rightful person, a step towards

normalization of the injustices done to the owners during the period of establishment and the existence of communism.

After 1990, normative acts were adopted, which regulate the right of persons entitled to request the right to retrocession of immovable property abusively taken over during the communist period by administrative procedures, but also by courts.

Under this legislative aspect, the provisions of the special laws are classified by the matter they deal with. At present, the main normative acts regarding the restitution, possession and establishment of the right to ownership of immovable property are: Law no. 18/1991 on Land Fund, Law for the restoration of the right to property on agricultural and forestry land, Law 169/1997 of Law 1 / 2000, GD 1095/2005, Law 247/2005 on the reform of property and justice and some adjacent measures, Law 10/2001, republished on the legal regime of some immobile properties taken over from March 6 1945 to December 22 1989, Law 165/2013 on the measures for completing the restitution process, in kind or equivalent, of the buildings abusively taken over during the communist regime in Romania.

Jurisprudence has given this matter over the years a lot of pithiness, so that the property right regains its own values. The legislator brings modifications, additions, and reprints to the legal basis to which we refer in this study, as legal practice has demonstrated this need.

By different legal acts, the following categories of immovable property are regulated:

- Agricultural land, forests, pastures, ponds, ponds, etc.
- Lands located in urban areas and buildings representing living quarters or spaces of another destination.

II. Categories of immovable property

For all categories of immovable property, entitled persons who requested the possession of property abusively taken over by the state, were required, in accordance with the legal provisions of Law 18/1991 and Law 10/2001, to make a written notification in authentic form and to submit it within a time limit set by the legislator, at the headquarters of the territorial administrative unit within whose radius the entitled person requests the restitution of the immovable property.

This criterion has been considered restrictive for the beneficiaries and heirs of the property right. Persons who did not respect the request in authentic form within the time limit set by the restitution laws could not require the administrative units to issue a title to the immovable property.

Analyzing the application of property laws, we find that the dynamics of the restitution process on the demands of entitled persons, beneficiaries of the above-mentioned special laws, has been witnessing ongoing work and implementation.

By Law 18/1991, a maximum of 10 hectares of agricultural land and up to 1 ha of forest land could be claimed. The period 1991-1997 is characterized by the fact that the reconstruction took place on the old site or by assigning an equivalent land within the administrative territorial unit where the landowner had the agricultural land.

Law 169/1997 rectifies the deficiencies of the normative act regarding the land fund by establishing a specific procedure to the restitution of the goods that were the subject of the nationalization.

Through Law 1/2000 new circumstances are created at the level of normative and procedural provisions. In the case of the impossibility of restitution of agricultural land, it is possible that the rightful person to whom the right to property has been restored may be compensated.

The *restitutio-in-integrum* principle is admitted in accordance with Law no. 247/2005, a normative act that deals with the reform in the fields of property and law, but also about some adjacent measures.

The land and buildings subject to the restitution claims shall be returned on the basis of Law 10/2001. The entitled person may request the administrative restitution in kind or equivalent of the immovable property. If constructions have been destroyed, totally or partially demolished, alienated or have been turned to public utility, repairs will be done in equivalent to international standards.

The procedure for restitution of land and buildings states the different situations regarding the immovable assets which are in the administration of the administrative territorial units, which at the time of restitution had concluded lease agreements. In this situation, the procedure is established by Law no. 241/2001 and EGO 40/1999 on the protection of tenants and the establishment of rent. Thus, the new owner will be subrogated to the rights of the state or of the legal person holding the property if the contract was concluded in accordance with the law (Law 10/2001 Article 14).

The administrative redraft is considered to have caused various causes that have slowed the process of restitution. The lack of clear evidence to show the situation of the nationalized land. The activity of the local and county commissions of the land fund coincides with the decentralization of the local public administration, which in the first period after 1991 leads to a slower process of administrative restitution. Another cause of slowing down

the process is frequent legislative changes with the introduction of new elements such as compensation. The delaying and incompetent solving of the files by the local and central authorities was a consequence that led to the low efficiency of the housing commissions regarding the establishment and reconstruction of the property right.

In this way, the citizens found themselves attacked in the right they were requesting, they did a little bit harder than the administrative solution of the files containing the documents for retrocession, sometimes they found the agricultural registers or the property documents, which made it clear that they were entitled to request the reconstitution of the property right.

In the legal literature authors such as: Al. Băicoiu, C. Hamangiu and I. Rosetti Bălănescu (Hamangiu, Rosetti, Bălănescu, & Băicoiu, 2008, pp. 11-12) appreciate that property is a "civilizing force", that constitutes a sustainable spring of human activities.

Given the impact on the determination of the right to property, we will look at its defense regarding the retrocession of immovable property.

The owner or the rightful owner of the right to property accomplishes this through the legal means of defense, namely through legal actions that "allow the removal of the touches to this right and the assurance of its exercise in normal conditions" (Stănescu & Bîrsan, 2008, p. 194). In the opinion of the lawyers B. Dumitrache, M. Nicolae and R. Popescu, the means of defending the property right are "those actions that the owner can exercise in order to remove the prejudice of his right by third parties" (Dumitrache, Nicolae, & Popescu, 2001, p.153).

III. Buildings and action in translation

In legal practice, the return of the immovable property from the illegitimate owner to the rightful owner is the action in the claim. The owner requests by court the right of ownership of the asset for which he has been deprived. In the juridical doctrine, the notion of the action in the claim is formulated as "the actual action and the petition by which the owner who lost possession of his property claims his restitution from the non-owner" (Dumitrache, Nicolae, & Popescu, 2001, p.153). We subscribe to this notion since the legal nature of the evidence presented by the holder or the entitled person is important by admitting the existence of a title of property.

Through the process of nationalization, the state and the administrative territorial units have deprived by private action the real owners of their property rights. We mention that the possession of a person

other than the owner of the property right "cannot be the subject of a transmission" (Cosmovici, 1998, p. 111).

We consider that in this situation the state was in possession of agrarian land, springs, forests, constructions built by natural and legal persons, or land in the localities.

Regarding the loss of ownership, we show that it can be achieved in two ways: by transfer to another person or by abandonment. In order to produce effects, possessions, it was necessary to meet the following qualities: to be a "continuous, uninterrupted, undisturbed, public and under the name of the owner" (the old C. civ 1847).

According to the normative acts regarding the registration of real estates in the Land Book and the provisions of the new Civil Code, the way of acquiring the property through real estate usucapion is also changed. It can be "inscribed in the land book on the basis of usucapion, for the benefit of the person who has possessed it for 10 years" (NCC article 930). Thus, the right of the person who registered him without the right of ownership of a building cannot be challenged if he has possessed the immovable property for 5 years after the registration of the application (NCC Article 931). However, there is a condition that the good was not viciat at the time of tabling.

From a technical and legal point of view, ownership is not prescribed. But we'll turn our attention to the rules of enrollment in the Land Registry about notation of possession. These, through the context of the entry into force of Law no. 185/2018 on completing and amending the Law on Cadastre and Real Estate Advertising no. 7/1996 on July 26, 2018. The provisions of the aforementioned normative act modify the term stipulated in the NCC by the provisions of the abovementioned law. The rules provide for the acquisition of property as a result of the possession of a real estate for a period of 3 years after its registration in the land book. We consider it a fast way to acquire property on the real estate. Correction of land register entries is admitted by final court decisions, which decide the deletion of the tabular right (see, Law 185/2018, Law No. 7/1996)

In terms of legal nature, action for the recovery of immovable property is based on a real property right, has a pecuniary character and is imprecise.

We pronounce on evidence of the right of ownership by which, according to art. 249 of the NCPC, "the burden of proof" rests with the one who "makes a support during the process" (NCPC art.249). Consequently, before the court, proof must be provided to prove ownership of the immovable property.

The administration of evidence in the case of a claim in respect of immovable property is difficult or arduous to prove. Sometimes the document / act of sale-purchase written in authentic form or the immovable property are sent by a holograph signed between the parties. There are situations where, even if there is a property document, there are no topographical plans that individualize the real estate.

The legal regime of some buildings abusively taken over from March 6 1945 to December 22 1989 is regulated by the provisions of Law no. 10 of 8 February 2001. (Law no. 10 of February 8, 2001). Real estate: land and buildings are returned in kind or equivalent. Article 1 para. (1) Provides that "it shall be returned in kind" and in para. (2) "If restitution in kind is not possible, equivalent remedies shall be determined".

There are deferred terms for individuals entitled to claim real property in court. According to Law 165 of May 16, 2013, regarding measures for restitution in nature or equivalent of buildings abusively taken over during the Communist regime in Romania, it is mandatory that the request made under Law no. 10/2001, Law no. 18/1991, as well as Law no. 1/2000 exists.

The time-limit for bringing actions in court was different because, in accordance with Law 165/2013, applications for restitution under Law 10/2001 are 60 months from the date of entry into force and on Law 18/1991 and there was a period of 36 months from the entry into force of Law 165/2013.

In the case of non-observance of the above deadlines, the restitution actions under the property laws in court will be dismissed on the grounds of the delay in bringing the action.

We ask whether the observance of these terms are, or are not, constitutional, having regard to the provisions of art. 44 paragraph (1) and paragraph (2), by which "Property rights, as well as state debts, are guaranteed. The content and limits of these rights are laid down by law. (2) Private property is guaranteed and equally protected by law, irrespective of the owner, (Article 44 (1) and (2) of the Constitution) corroborated with the provisions of Art. 46 of the Constitution of Romania stating that "the right to inheritance is guaranteed".

Therefore, we consider that the claim under the NCC and NCPC provisions is the constitutive act of rights. Entitled persons, if they no longer have the opportunity to apply for a remedy either by administrative means or by the court, may, in our opinion, opt for the claim.

The differences between the action for the restitution of immovable property and the claim for immovable property are as follows:

- The restitution action follows primarily the procedures established by the special property laws;
- The action for revocation has as its main element the establishment of the right to property, which is based on the existence of legal acts from which the property right and documents from which the degree of kinship is shown in the case of the heirs.

Conclusions

Consequently, the claim is the legal remedy to be followed by the entitled persons to determine their ownership. The path to be followed in a speedy manner by the entitled persons in order not to interfere with the three-year term regarding the landmark in the Land Book.

I consider that the deadlines set in the property laws regarding the introduction of actions in the courts come in contradiction with art. 44 and art. 46 of the Constitution, by virtue of which the right to property is guaranteed, but also the provisions of the Civil Code, according to which the right of ownership is imprescriptible.

Consequently, an action may be brought before the Constitutional Court to address the unconstitutionality of the length of time for bringing actions in court on property laws.

This will solve the situations of failure by the state or the territorial administrative units: the obligations to issue Restitution Decisions on immovable property and property titles.

We note that the administrative imperfections in establishing the property right for the restitution of immovable property are - the application of the property reform by the local or county land or non-celerity land commissions - the multitude of the cases pending before the courts and the technical courts - setting, delimiting and measuring locations.

The article brings as a novelty how the periods of perpetuation of the enforcement of claims in property laws can be challenged by promoting an action before the Constitutional Court, as it violates the right of persons to property by failing to observe art. 44 and art. 46 of the constitution.

The reason I wrote this work is found in the multitude of provisions regarding property laws, corroborated with the NCC rules and those of the Constitution.

I approached the themes both chronologically and logically to highlight the administrative procedure as well as the way of introducing actions in the courts for the acquisition of the right to property on immovable goods.

The paper presents different ways of restitution of lands subject to the Land Fund Law in different legal provisions, compared to real estate representing land and buildings as claimed by Law 10/2001.

Essentially, over time, property has given rise to powerful controversies, theories, social, political, and legal conception, which has led to various transformations. Currently, we consider that the right to property of a real estate is a real right, which entitles the holder to use, dispose and use, allowing the exclusive use, in compliance with the legal regulations in force. For these reasons, persons who have the capacity of heirs can use and choose according to their own causes the way of gaining the right over the properties they have acquired through inheritance.

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