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JUDICIAL REGIME OF CONSTRUCTIONS

BY

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Abstract. The return to the two forms of properties, public ownership and private estate, after 1989, imposed the development of normative acts to regulate them. Yet, some of these, even if just issued, have suffered several modifications, motivated by the appearance of new problems still not brought under regulation by the corresponding normative acts.

The aim of this work is to analyse the judicial regime of the constructions, in terms of the normative acts in force.

Other analysed problems are meant to outlight the new legal dispositions concerning the land development and city planning, as well as the authorization of construction works execution, these being normative acts which regulate/govern the judicial regime of constructions and lands to be built on.

The adduction of these regulations is important for the understanding of the judicial freamework within which the ownership exercise is now practiced.

Key words: construction; judicial; contract; law.

1. Introduction

From the standpoint of the assets that make the object of the right to private property, any asset, except those exclusively belonging to the public property, can be the object of this right.

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The subjects of the right to private estate can be: natural persons, legal persons of private law–trading companies, farming companies, other associations with patrimonial purpose, craftsmen cooperative societies, cooperatives of credit or consumption, state, administrative-territorial units, religious cults organized as legal persons, etc.

Given the importance of assets and taking into account the general and social interest, exerting the right of property on certain category of assets is subjected by the law giver to some special rules, whose disobedience entails both administrative (contraventional fines) and civic (invalidity of the judicial act concluded by disobeying the conditions stipulated by the law under certain situations) sanctions.

Taking the above mentioned into account, the judicial regime of the constructions will be analysed on the ground of the normative acts that regulate them.

2. General Notions Concerning the Judicial Regime of the Construction Execution and Demolition

The Law no. *350*/2001 concerning land development and city planning, as well as the Law no. *50*/1991 concerning the authorization of construction works execution, are normative laws which regulate the judicial regime of constructions and the lands on which these are erected.

For instance, the Law no. *350*/2001, item 9, establishes the objectives of land development, more precisely, „the balanced economical and social development of the regimes and zones, improvement of life quality for the people and human collectivities, responsible management of the natural resources and environment protection, as well as the rational utilization of the territory".

From the point of view of the building judicial regime, the city planning certificate must specify the purpose it is issued for, must contain specifications regarding the ownership on the building and the liabilities of public interest inflicted on it; land location inside or outside the city; stipulations of the city planning document which imposes a certain regime on the building – protected zones, zones where a preemption is exerted, as well as some special interdictions – if these exist – in the case where the specified building is included in the list of historical monuments of Romania (item 29, par. (5) of the Law *350*/2001).

3. Execution of Construction Works or Their Demolition

Is regulated by the dispositions of the Law no. *50*/1991 concerning the authorization of the construction works and certain measures for dwelling houses realization, modified and completed by the Law *453*/2001, according to

which the execution of the construction works *can only be made based on the licence of construction or demolition, accordingly.*

Civil, industrial, farming or any kind of constructions can only be executed in agreement with the building licence issued under the law.

The building licences are issued by the Chairmen of the County Councils, the mayors of localities or the general mayor of the Bucharest municipality respectively, and the application for licence must be accompanied by the city planning certificate.

The building licence is issued within at most 30 days since the date when the application was registered at the City Hall, based on a documentation which will comprise

a) City planning certificate.

b) Legalized copy of the title deed proving the ownership on building, land and/or constructions or, accordingly, the excerpt from the updated land register plan, and the excerpt from the cadastral register up to date, in case the law does not stipulate otherwise.

c) Technical documentation (D.T.).

d) Notices and agreements established by the city planning certificate, the standpoints of the competent authority for environment protection and, accordingly, its administrative deed.

e) Evidence of payment of all the taxes afferent to the city planning certificate and the building licence.

According to law, one can execute without authorization only works which do not alter the resistance structure, the initial characteristics of the afferent constructions and facilities or their architectural aspect.

Disobedience of the law regarding the mandatory construction licence and exactly complying with its stipulations is sanctioned by the law.

As regards the operations of demolition or disassempling – partly or completely – of some constructions or facilities afferent to these, as well as of some developments, these can only be executed based on the liquidation licence, previously obtained from the public authorities, the same authorities which have issued the building licence.

It is important to keep in mind that the licences for building or liquidation which were issued by disobeying the legal dispositions can be annulled by the instances for litigious administrative affairs; their annulement can be required by the prefect, inclusively at the intimation of the State Inspectorate in Construction.

As regards the lands that belong to the private domain of the state or other administrative-territorial units, destined to construction, these can be sold, leased or rented through public tendering under legal conditions and with observance of city planning and land development documents approved according to the laws in force, in view of the construction execution by the titulary.

In certain situations, the lands destined to be built on can be also leased without public tendering, but with payment of a royalty fee according to law, or can be consigned for a limited period of time (item 15 of the Law no. *50*/1991) for

a) Realization of certain objectives of public utility or benevolence, with social character, without remunerative purpose, other than those executed by local communities on their own land.

b) Realization of dwellings by the National Agency for Dwelling Houses, according to law.

c) Realization of dwelling houses for young people (up to 35 years).

d) Relocation of the households affected by disasters, according to law.

e) Extension of constructions on the joining lands, at the owner request or with his approval.

f) Works for protection or capitalization of the historical monuments defined according to law, with notice according to the Ministry of Culture and Cults, based on planning documentation approved according to law.

4. Judicial Circulation of Constructions

The private property buildings are in the civil circuit, which permits them to be carried off or acquired through one of the legally stipulated manners: convention, will, succession (inheritance), uzucapio, accession, etc.

The law also stipulates that the *foreign* natural or legal persons can acquire the ownership on constructions and, with this, they will also get the right of superficies or possession accordingly, on other judicial bases, on the lands on which these are located (Law no. *312*/2005).

It is important to keep in mind that construction alienation through an act under private signature can not lead to acquirement of ownership on the afferent land, but only to the settlement of a superficies right having as titulary the acquirer of the construction.

The ownership on construction can be entailed by a mortgage or by a real estate privilege.

In the case when, from various reasons, the owner of a construction alienates a building whose land is also his property, there will be no obstacle for estrangement.

Yet, under certain situations, it is possible that the person who alienates a construction is not the owner of the land where the construction to be sold is built, the owner only having the right of possession or concession on the land. In this case, together with construction alienation, the right of possession or,

accordingly, of concession of the land afferent to construction, will be automatically transmitted, as the effect of conveying the ownership on it.

In this connection, the Law no. *50*/1991, concerning the authorization of construction works execution, modified and republished, stipulates at item 41 that the right of concession on the land is conveyed in case of succession or alienation of construction for whose realization this right was established. At this item it is specified that the construction licence is also conveyed (in case of succession or estrangement).

5. Conclusions

Given the fact that the circulation of constructions, as well as of the lands after 1989, could not occur outside the corresponding legislation, the development of normative acts that regulate the two domains became imperiously necessary. This is also reasoned by the fact that within the time interval we analyse, a great volume of transactions on constructions (buildings) was performed, irrespective of the fact that these were destined to be dwelling houses, offices, business centres, hotels, residential complexes, etc.

Carrying out activities of building alienation without obeying the legislation in force results in consequences entailing from here, contravention, civil or penal consequences accordingly.

As a consequence, the normative acts invoqued in the present paper stipulate both rights and liabilities for the parties involved in these activities, as well as sanctions applicable in case of law disobedience.

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* * * Legea nr. *50*/1991 privind autorizarea executării lucrărilor de construcţii, modificată şi completată prin Legea *453*/2001, Bucureşti.

* * * Legea nr. *350*/2001 privind amenajarea teritoriului şi urbanismul, Bucureşti.

* * * Legea nr. *247*/2005 privind reforma în domeniile proprietăţii şi justiţiei, precum şi unele măsuri adiacente, Bucureşti.

* * * Legea nr. *312*/2005 privind dobândirea dreptului de proprietate asupra construcţiilor de către persoanele fizice sau juridice străine.

REGIMUL JURIDIC AL CONSTRUCȚIILOR

(Rezumat)

Revenirea la cele două forme de proprietate, proprietatea publică şi proprietatea privată, după 1989 a impus elaborarea unor acte normative care să le reglementeze. Însă, unele dintre acestea deşi abia elaborate au suferit numeroase modificări, motivate şi de apariția unor noi probleme, dar nereglementate de respectivele acte normative.

Obiectul lucrării îl constituie analiza regimului juridic al construcțiilor, prin prisma actelor normative în vigoare.

Alte probleme supuse analizei au drept scop scoaterea în evidență a noilor dispoziții legale referitoare la amenajarea teritoriului şi urbanismului, precum şi la autorizarea executării lucrărilor de construcții – acestea fiind actele normative care reglementează/guvernează regimul juridic al construcțiilor şi al terenurilor pe care primele se construiesc.

Invocarea acestor reglementări este importantă pentru înțelegerea cadrului juridic în care se realizează, în prezent, exercitarea dreptului de proprietate.