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LEGAL REGIME OF LANDS AND THEIR LEGAL CIRCULATION

BY

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Abstract. The object of this work consists in the analysis of the legal regime of lands as well as their circulation, in terms of the normative acts in force.

Other problems subjected to investigations have as target to highlight the new legal dispositions regarding the concession, regulated by O.U.G. *54*/2006, concerning the regime of contracts of concession of public property goods, as well as the expropriation for public utility cause, an operation necessary for the realization of objectives of national, county or local interest, regulated by the Law no. *255*/2010.

As regards the expropriation, this work points out the buildings that can be the object of this, the stages in carrying out the procedure, as well as the effects resulting from the expropriation institution.

The invoked normative acts contribute to the application of the legal framework that governs at present the legal circulation of lands.

Key words: land; concession; law; expropriation; contract.

1. Introduction

The unprecedented development of constructions during the last twenty years imposed the legal regulation of the lands on which these buildings were

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erected, also in order to be able to obtain the necessary licenses and advices to build them. At the same time, the regulation of the legal circulation of lands became imperiously necessary.

One should add to these other legal situations generated by land exploitation, such as that concerning the land concession, establishing of some real rights, like superficies or easement, registration of ownership.

Another problem that constitutes the research object in the present work is that concerning the expropriation of some lands from natural persons, in order to execute objectives of public interest, such as highways, ring roads surrounding big urban settlements, realization of hospitals, public administrative institutions, etc.

The legal regime of the lands is analysed based on normative acts in force that regulate this field.

2. Legal Regime of Lands

In the case when, for various reasons, the owner of a construction alienates the construction, he will meet no obstacle in doing that if he also owns the land on which the construction is built.

Yet, as specified before, in certain cases, it is possible that the person who alienates the building is not the owner of the land on which the building that is to be sold/ alienated, as he only has a possession or a concession right. In this situation, while alienating the construction, he will also transfer accordingly the possession or concession right over the land afferent to the construction, as an effect of transmitting the ownership over the building.

In this connection, the Law no. *50*/1991 related to the authorization of construction works, modified and republished, stipulates at art. 41 that the right of concession over the land is transmitted in case of succession, or alienation of the building for whose realization this right was instituted. The same article of law stipulates that the construction license is transmitted under the same conditions (in case of succession or alienation).

3. Legal Circulation of Lands

After 1990, in Romania a series of normative acts were issued, regulating the legal circulation of lands. We can mention here the Law of Land Fund (Law no. *18*/1991), republished in 1998, Law no. *54*/1998 on legal circulation of lands, which was abrogated when entered in force the Law no. 24/2005 concerning the fields of properties and justice, as well as certain adjacent measures, Law no. *312*/2005 concerning the acquirement of the right of private property on lands by foreign, stateless citizens, or foreign legal persons.

We shall analyse in what follows the problem of legal circulation of lands as it is regulated by the Law no. *247*/2005, where the present legal regime of land circulation in our civil law is established.

A first principle, consecrated by Title X, art.1, of the Law no. *247*/2005, is that according to which, irrespective of their destination and holder, the lands in private property are and remain in civil circuit. They can be freely alienated or acquired through any of the legally stipulated ways, while complying with the dispositions of the present law.

The second principle established through the present regulation is that according to which the extra-urban or intra-urban lands, with or without constructions, irrespective of their destination or extension, can be alienated or acquired through legal acts between living people, concluded in authentic form, under the sanction of absolute nullity (art. 2, paragraph. (1)).

Another element of novelty brought by art. 3 of the Law no. *247*/2005, is that which stipulates that the foreign or stateless citizens, as well as foreign legal persons, can acquire the ownership of lands in Romania under the conditions stipulated by the Law no. *312*/2005. Thus, the art. 3 of this Law stipulates that "the citizen of an European Union member state, stateless resident in one of the member states or in Romania, as well as the legal person constituted in accordance to the legislation of an European Union member state, can acquire the ownership of lands under the same conditions with those stipulated by the law for the Romanian citizens and for Romanian legal persons".

4. Concession of State Owned Goods

According to art.3 of O.U.G. no. *54*/2006, "the goods that are in public ownership of the state or of an administrative-territorial unit, can constitute object of concession in accordance with the Constitution and to the other legal acts which regulate the public ownership".

In case when the concession act has as an object goods in public ownership that belongs to the state, the quality of grantor belongs to the ministries or other specialized organs of the central public administration.

Yet, when the concession contract has as an object goods in public ownership that belong to the county, city or village, the quality of conceding person belongs, accordingly, to the county councils, the local councils, the General Council of Bucharest municipality or public institutions of local interest. Irrespective of the citizenship of the concessionaire, the concession contract will be concluded under the conditions established by Romanian law (art. 5 and 7 of O.U.G. no. *54*/2006).

As regards the royalty fee, its manner of calculus and payment is established by the entitled ministries or other specialized organs of the central

public administration or by the authorities of local public administration and they become an income to the state budget or, accordingly, to the local budgets.

The concession contract is concluded for an established time duration. In this connection, the O.U.G. no. *54*/2006, art. 7, paragraph. (1), stipulates that the duration of concession contract can not exceed *49 years* calculated from the date of its signature. This duration can be extended by at most half of its initial period, through the simple mutual agreement of the parties. In accordance with to art.2 of the same Ordinance, the concession contract must be concluded in written form. The manners used to terminate a concession contract are stipulated by O.U.G. no. *54*/2006.

First of all, the concession contract ceases to exist through *reaching its term*. At the expiration of the term for which the concession contract was concluded, this ceases to exist by right, except for the case when its extension was established by partners agreement for a period of at most half of its initial duration (art. 57, letter a)).

Another way to terminate the concession contract is the one sided denunciation by the conceding person; yet, in this case he will be forced to pay the concessionaire a just and previous damages that can be established by mutual agreement of the parties; in case of disagreement, the damage will be established by the law court (art. 57, letter b)).

The third way to terminate a concession contract occurs when the concessionaire does not fulfill his contractual obligations: the conceding person is entitled to one sided denounce the contract and, accordingly, to force the concessionaire to pay damages for the prejudice suffered by the conceding person (art. 57, letter c)). Yet, the opposite situation is also valid, namely when the conceding person does not comply with its contractual obligations, he can be forced to pay damages for the prejudice brought to the concessionaire (art. 57, letter d)).

At the same time, the concession contract ceases through the disappearance of the concession object due to a case of force majeure or by renouncement, in the case of an objective impossibility of the concessionaire to exploit the good, in which situation no damage can be invoked (art. 57, letter e)).

5. Expropriation for Public Utility

In certain situations stipulated by the law, the social interest can lead either to the restricting the exercise of some attributes of the ownership, or, in other cases, even to the loss of private ownership on buildings – lands and/or constructions – that can be expropriated and passed in public ownership of the state or other administrative-territorial units, with the payment of indemnities to the owner. In this connection, an example can be the situation from the

International Airport of Iaşi, for which, for more than two years, the local authorities are looking for solutions for the expropriation of a land that belongs to a citizen who owns the land from Airport zone and blocks the imperiously necessary extension works, taking into account the importance of this objective for the economical development of the North-East zone of the country.

Perhaps this is exactly the thing the legislator took into consideration when he established, through art. 44, paragraph. (3), of the Constitution of Romania, that "Nobody can be expropriated unless for a cause of public utility established according to the law, with rightful and previous indemnity".

Likewise, Law *33*/1994 on expropriation for public utility that has to achieve works of public utility serving and taking into account the failure by the expropriation exception granted by the Constitution and other laws in force, private property rights was developed in a uniform regulation, to ensure the appropriate legal framework and establishing procedures for expropriation compensation and protection of the right of private property.

For all these reasons, the legislator stipulated that the partial or total expropriation of buildings can only be executed for cause of public utility, after a rightful and previous indemnity whose level is determined, through judgment *in rem*.

The Law no. *255*/2010 specifies at art. 2, par. (1) concerning the expropriation for public interest cause, necessary to accomplish some objectives of national, county or local interest, the works of public utility.

5.1. Buildings that Can Constitute Object of Expropriation

In accordance with the provisions of the Law no. *255*/2010, art. 3, one can expropriate assets belonging to natural persons or legal persons, with or without lucrative purpose, or to any other entities, as well as those in private properties of communes, cities, municipalities and counties, on which public utility works of national, county or local interest are executed.

Nevertheless, we should keep in mind that the public property lands belonging to the state or administrative- territorial units can not be expropriated. At the same time one can neither expropriate the assets that are in state-private property, because, as owner, the state, through his competent organs, can allot to public utility any asset it holds in private property. Yet, such a situation will change the legal regime of the corresponding state owned buildings, by transferring them from state-private property to state public property. In this connection, the Law *255*/2010 stipulates at art. 28, par. (1), that the buildings in public property of certain administrative- territorial units, which are affected by works of public utility, are transferred, under legal conditions, in state-public property and in the administration of expropriators representatives in terms of 30 days from the notification of the administrative-territorial units. Are

exempted from the provisions of the present paragraph the construction works of the roads of county interest, and those afferent to the development of the airports of local interest.

We must specify that, in the case of the assets that are in state public or private property and in the administration of public institutions, research-development institutes, autonomous administrations, as well as of any other public authorities established through special laws, in order to accomplish the objectives of national importance specified in the present law, the transfer of administration right is carried out through Government Decision, in terms of at most 15 days since the date when the technical-economical indicators of the objectives are approved.

5.2. Expropriation Procedure

According to the law, the expropriation procedure occurs in the following four stages:

a) The first stage consists in the approval of technical-economical indicators of the works of national, county or local interest.

b) The second stage is represented by consigning the individual afferent sum representing the payment of compensations for the buildings which belong to the expropriation corridor and posting up the list of the buildings owners.

c) The third stage is that in which the transfer of property right is transferred.

d) The fourth stage consists in finalizing the expropriation procedures.

S t a g e 1. Belongs to the Govern through hid decision, or to the authority of public local or county administration, or to the General Council of the Municipality of Bucharest, accordingly, based on the afferent technical-economical documentation, works location, in accordance with to the final version of the pre-feasibility study, or to the final version of the feasibility study accordingly.

S t a g e 2. Consists in consigning the individual sum and posting up the list of the buildings which are to be expropriated. Therefore, after the approval of the technical-economical indicators, the expropriator has the obligation to consign the individual sums representing the payment of compensations set at the disposal of building owners, individualized corresponding to the owners list which results from the records of the National Agency of Land Register and Real Estate Advertizing, or of the administrative-territorial units affected by the law provisions, as well as the obligation to post up the list of the buildings which are to be expropriated.

S t a g e 3. Represents the transfer of the ownership; the law stipulates at art. 9, par. (1), that, in terms of 5 working days from the expiration of the term of 30 working days since the date of notification of the buildings owners, the expropriator must issue the expropriation decision.

The expropriation decision constitutes executory title for handing over the asset, both against those expropriated, and those who claim a legal right over the expropriated asset, until the definitive and irrevocable solution of the litigation related to the ownership of the expropriated asset.

The impugnment of the expropriation decision does not suspend the transfer of the property right on the assets in question. The expropriation decision is issued and makes effects also in the case when the buildings owners included in the list are not present within the term of 30 working days, or they do not produce an effectual title or the owners are not known, as well as in case of unopened successions or of unknown successors, but also when no agreement is settled concerning the compensations value.

The transfer of the property right on the buildings, from private property of natural or legal persons in the private property of the state or of administrative-territorial units and in the administration of the expropriator operates by right since the date when the expropriator issues the administrative act of expropriation, subsequent to consigning the sums afferent to compensations (art. 9, par. (4)).

S t a g e 4. After the transfer of property right, the expropriator has the task to require the registration of the property right on the expropriation corridor based on the documentation drawn up for each administrative-territorial unit apart, according to the legal dispositions in force. In the situation when only a part of a building which is not registered in the cadastre register is expropriated, both the expropriated and non-expropriated parts of the surface are determined based on the measurements carried out by the expropriator.

5.3. Effects Deriving from the Expropriation Institution

In the case when the building which was object of expropriation was affected by burdens like mortgage or privilege, these are transferred to the compensations established by the law.

As regards the servitudes established by human deed, these are extinct if they become incompatible with the legal situation of the objective which imposed the expropriation (for example, the building has a special regime, there is an institution of strategic importance that operates in it).

In the case when the expropriated building was the object of a location, this ceases by right at the moment when the expropriation decisions remains

definitive. When the expropriated buildings were used as a dwelling, the evacuation of the persons who occupied them legally as owners or tenants with legally concluded lease contract, the expropriation will only be executed after their living situation was solved in accordance to the law. What concerns the compensation quantum; this must include also the prejudice caused to the owners or tenants accordingly, by forcing them to leave the expropriated building.

6. Conclusions

Taking into account the large number of transactions with land concluded within the period since 1990 up to now, it became absolutely necessary to develop a legislation that regulates this field. One more reason is that, during the analysed period, there were several cases when the law was infringed even by some of the state employees, who concluded fraudulent transactions concerning the cost of the institutions whose representative were themselves. More concretely, this is the case of numerous exchanges between state owned lands situated in commercially very attractive zones, and far away hard to exploit lands, given in exchange by natural persons.

The fulfilment of activities of alienation of lands and, implicitly, of constructions built on these lands, without compliance with the legislation in force results in standing the consequences deriving from here, consequences of contravention, civil or penal nature accordingly.

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* * * Legea nr *312*/2005 privind dobândirea dreptului de proprietate privată asupra terenurilor de către cetățenii străini și apatrizi, precum și de către persoanele juridice străine.

* * * Legea nr. *247*/2005 privind reforma în domeniile proprietății și justiției, precum și unele măsuri adiacente.

* * * Legea nr. *255*/2010 privind exproprierea pentru cauză de utilitate publică.

* * * O.U.G. *54*/2006 privind regimul contractelor de concesiune de bunuri proprietate publică.

REGIMUL JURIDIC AL TERENURILOR ŞI CIRCULAȚIA JURIDICĂ A ACESTORA

(Rezumat)

Se efectuează o analiză a regimului juridic al terenurilor precum şi circulația acestora, prin prisma actelor normative în vigoare.

Alte probleme supuse investigației au drept scop scoaterea în evidență a noilor dispoziții legale referitoare la concesiune, reglementate de O.U.G. *54*/2006 privind regimul contractelor de concesiune a bunurilor proprietate publică, precum şi exproprierea pentru cauză de utilitate publică, operațiune necesară realizării unor obiective de interes național, județean şi local, reglementată de Legea nr. *255*/2010.

Referitor la expropriere, se fac referiri la imobilele care pot face obiectul acesteia, etapele parcurse în realizarea procedurii, dar şi efectele ce decurg din instituția exproprierii.

Actele normative invocate contribuie la aplicarea cadrului juridic ce guvernează în prezent circulația juridică a terenurilor.