THE PROCEDURE OF REGIVING THE RIGHT FOR OWNING THE PROPERTY REGARDING THE FARMING SITES

PROCEDURA DE RECONSTITUIRE A DREPTULUI DE PROPRIETATE ÎN CAZUL TERENURILOR AGRICOLE

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Abstract: *The study discusses numerous problems in connection with the procedure of reconstruction of the property right in the case of arable land and it offers strictly practical information for the solving of some controversial or non-unitary matters in the domain. The material contains rich juridical information and a practical approach regarding the procedure of reconstruction of the property right for arable land in today's legislative context.*

Key words*: Property Right, disspossessed owners, legal heirs, title to inheritance*

INTRODUCTION

In the present-day social-economical context, when we analyze the stage of property laws application it is important to take into consideration the technical-juridical evolution of the laws, the consumed stages, the causes that led to the slowing of the reconstruction process as well as the significance of the great number of writ of summons lodged by beneficiaries of the special norms in the field of property.

At the same time, the particularities of applying the laws of property constitute a topic for both the practitioners of law and for the specialized literature.

MATERIALS AND METHODS

The most relevant aspect concerning the technical-juridical evolution of the laws of property is the reestablishing of the title to inheritance of persons who prior to 1989 had no right to inherit real estate in the category of arable land.

The Law 18/1991 for real estate regulated the reconstruction of the right of property over land to the entitled persons, for the area of 10 hectares of arable land and 1 hectare of forest.

According to Law no. 169/1997, which modifies and completes Law no. 18/1991, it is ruled that the reconstructed area may be of maximum 50 hectares per family and maximum 30 hectares of forested land, forests, riverside coppices, grazing fields and forested hay fields.

Law no.1/2000 for the reconstruction of the right of property over arable and forest land requested in conformity with the provisions of Law no. 18/1991 and of Law no. 169/1997 does not modify the areas that can be reconstructed either for the arable land or the forest, but it stipulates that land that once belonged to former I.A.S. can be reconstructed.

Starting with 2001, the laws of real estate underwent successive modifications and completions, thus O.U.G: no. 1102/2001 extends the regime of reconstruction for legal persons of public law, for composesorates, and freeholders' communal estates.

The Law no. 400/2002 for the approval of O.U.G. no. 102/2001 brings new modifications and completions to the laws of real estate and it expressly provides a new category of beneficiaries, namely the former frontier guards for the frontier guard forests, while to the legal persons of public law, the communal forests that originate in frontier guard forests are reconstructed.

Also in the field of laws of property, the Law no.10/2001 regarding the legal regime of real estate abusively taken during 6th March 1945-22nd December 1989 regulated the reconstruction of the said estate.

Regulating laws are also:

1. Law no. 9/1998, regulating the compensation of Romanian citizens for the goods passed into the Bulgarian state property as a consequence of the Romania-Bulgaria Treaty signed at Craiova on 7th September 1940.

2. Law no. 290/2003 regulating the compensations or reimbursements of Romanian citizens for their goods that were sequestered, held or left in Bassarabia and North Bucovina and the Herta county, as a consequence of the belligerent state and of applying the Peace Treaty between Romania and the Allied and Associate Forces, signed in Paris on the 10th February 1947.
3. The Urgency Government Ordinance. 94/2000 concerning the reconstruction of estate that belonged to religious cults in Romania, with subsequent modifications and completions, approved through modifications and completions by Law no. 501/2002.
4. The Urgency Government Ordinance no. 83/1999 concerning the reconstruction of estate belonging to communities of citizens of ethnic minorities in Romania, approved through modifications and completions by Law n0. 66/2004.

The above mentioned regulations have been modified and completed by Law no. 247/2005 concerning the reform in the field of property and justice, as well as some adjacent measures. For a correct analysis of the evolution of legislation in the field it is important to also mention Law no. 7/1996 of cadastre and estate publicity as well as Law no. 213/1998 of public property and its legal regime. Obviously all this 17 year period was marked by a secondary legislation through which the Government organized the application of the mentioned laws.

From the point of view of regulations in the field of reconstruction of property it is quite clear that legislators had in view the nature, the regime, the subjects and the legal modalities of reconstruction, restitution or reconstitution of the right of property over land, but the non-unitary application and interpretation, the successive modifications and completions during the 17 years allowed unpredictable changes of the jurisprudence in the matter and also caused the loss of the effect of social-economical balancing of the Romanian society.

RESULTS AND DISCUSSIONS

We should mention some of the stages of the reconstruction of the right of property over land:

First stage which can be conceived and identified in the process of reconstruction in the matter of real estate took place in the period 1991-1997.As mentioned before , according to Law no. 18/1991 of the real estate, citizens could request the reconstruction of arable land up to the limit of 10 ha and of forest up to 1 ha.The 10 ha limit and the fact that reconstruction was done starting from the situation of land held by CAP (Production Agricultural Cooperatives) at the date of 1st January 1990 disfavored the citizens whose properties were larger than the 10 ha, reconstruction or constitution of right being made on their initial locations.

It is also important for this stage to mention that the notion of reimbursement did not exist at the time, because if the reconstruction on the former location could not be achieved, the law requested that equivalent land should be given from the administrative-territorial units where such land was in excess. The main feature of this period was the difficulty in organizing and functioning of local Committees for establishing the right of property over land and of County Committees.

Thus, initially, the mechanism was the following: the right of property was acknowledged on the basis of a property certificate that functioned as a property title, a title was issued and afterwards the technical formalities for the identification, establishing the location and the effective writ of possession were carried out. This was the cause of many inconsistencies between the record circuit and the field actuality, which led to numerous conflicts that were brought to the law.

S**econd** stage, between 1997-2000, represent both the admitting of errors of Law no. 18/1991 through limiting the areas that could be reconstructed, but also the instituting of a specific procedure framework to correct the dysfunctions and deficiencies of its application, which were regulated by Law no.169/1999.

Third stage – concerns the period 2000-2005 when, after Law no. 1 /2000 becomes in force, new situations resulted both in regulating and in application. There appears the modality of reimbursement for persons entitled to the reconstruction of the right of property who cannot get their possession back because the initial location is not free and there is no exceeding land in the administrative territorial unit or at the disposal of the County Committee for establishment of the right of private property over land. In this stage significant modifications and completions of the laws of real estate were made through the OUG no. 94/2001 approved by Law no.

400/2002. We should also take into consideration the fact that in the matter of property special laws appear, such as O.U.G. no. 83/1999, approved by Law 66/2004, O.U.G. no.94/2000 approved by Law no. 10/2001, while Law no.213/1998 and Law no.7/1996 produce effects too in the sense of their application.

The fourth stage, the present-day stage, whose reference moment is constituted by the effects of Law no. 247/2005, is characterized by the acknowledgement on legislative level of the principle of restitutio-in-integrum.

Among the **causes** that led to the slowing of the reconstruction process we should mention:

1. During the first mentioned stage the main cause was the organizing and functioning of the local and county committees for establishing the right of private property over land.
2. The absence of jurisprudence in the matter of real rights led to solutions pronounced by juridical authorities with the exceeding of competences. The poor professional education of the members of permanent local and county committees.
3. The reference being made to a record of land held by CAP s at the date of 1st January 1990, without taking into consideration the fact that the collectivization process took place before the Law no. 2/1968 concerning the reorganization of the territory of the Popular Republic of Romania, when communes, towns and counties were reorganized and eliminated. The same causality characterized the second stage- that of slowing the application of the laws of property, with the amendment that now, through the non-contentious and contentious procedure instituted by Law no. 169/1997 the litigations between beneficiaries and the local authorities responsible for the application of the law were transferred to judiciary authorities in a simplified form. The coming into force of Law no.1/2000 for the reconstruction of the right of property over arable land and forest, requested according to the provisions of Law no. 18/1991 and Law no.169/1997 marks the beginning of the 3rd stage of application of the law concerning real estate. It is also the moment when there appears the notion of reimbursement for the situations in which

citizens entitled to have their right of property reconstructed in kind are offered the reimbursement in money for their good.

The main causes of slowing the process of application of the real estate law are the direct result of the application of the law in time; the frequent modifications of the seat of the matter as compared to the evolution of the other fields of social life led to the establishing of concrete juridical relations which were left without subject due to legislative interventions. The conflicts between laws in time were created by the judging power that created a jurisprudence judging by norms that were obsolete at the date of the judgment and by the non- unitary application and interpretation of legal norms by the county Committees.

The lack of efficiency at county committees' level is caused mainly by the delay with which the local committees forwarded the validation proposals and not lastly by the rashness in placing the persons entitled to reconstruction into the reimbursement annexes.

4. The existence of large areas of arable land and forest in public or private state property given for administration to the State Domains Agency or to Research and Development Institutes and Stations, which for the majority of cases cannot bring arguments for keeping their administration or for their development as related to the income they bring to the state budget, the direct consequence being an enormous financial effort of the consolidated state budget for the granting of reimbursements to the persons entitled to a reconstruction of their right of private property .
5. Another cause that led to the slowing of the reconstruction process in the matter of real estate laws was the supplementation of the responsibilities of the same authorities of local public administration, that is mayors, local committees, prefects, County Committees with the application of the provisions of: Law n0.9/1998, granting compensations for the goods passed into the property of the Bulgarian state as a consequence of the Romania-Bulgaria Treaty, signed at Craiova on 7th September 1940; Law no.10/2001 concerning the juridical regime of house properties abusively taken over in the period 6th March 1945-22nd December 1989; Law no. 290/2003, granting reimbursements or compensations to Romanian citizens for the goods that were sequestered, held or left in Bessarabia, North Bucovina and the county of Herta, as a

consequence of the belligerent state and of the application of the Peace Treaty between Romania and the Allied and Associated Forces signed in Paris on the 10th February 1947; The O:U.G. no. 94/2000 concerning the restitution of real estate that belonged to religious cults from Romania with consequent modifications and completions, approved through modifications and completions by Law no. 501/2002; O.U.G. no. 83/1999 concerning the restitution of real estate that belonged to communities of ethnic minorities from Romania, approved through modifications and completions by Law no.66/2004.

6. We should also take into consideration the fact that, as of 2001, the issuing of property titles was conditioned by the existence of cadastral documentation following the provisions of Law no. 7/1996 of cadastre and real estate publicity, with subsequent modifications, which could be a cause of the slowing of the reconstruction process, but at the same time eliminated overlapping and imposed the rigorous demarcation of properties.

In the present-day stage of applying Law no. 247/2005 concerning reform in the field of property and justice as well as some adjacent measures, from our professional experience we can identify the following causes leading to the slowing of the process of property reconstruction:

- A part of the members of local and county Committees for the reconstruction of the right of private property over land do not know and do not apply the legal provisions concerning the applying of the real estate laws.
- The carrying out of judge decisions is delayed.
- Some chairmen of county real estate Committees show a lack of exigency in applying the provisions of Law no. 247/2005 concerning reform in the fields of property and justice and some adjacent measures, in coordinating and controlling the activity of the local real estate committees
- In local committees , in the course of the right of property reconstruction process, we meet with -technical deficiencies that are caused by: the way of establishing locations, of making measurements and demarcating locations, the delay on the part of the petitioners in collecting the issued property titles;

- juridical difficulties: the existence of many litigations on roll at law courts.

There are confusions in interpreting the legislation for property reconstruction on the part of county and local committee members in what concerns the procedure of reimbursement granting, These confusions arise mainly from lending the procedure provided by the real estate laws to the procedure provided by Law no. 10/2001.

CONCLUSIONS

Due to the importance of the right of property both for the individual and for society, this right has been included in the category of fundamental rights protected by internal and international regulations. The institution of property has undergone qualitative changes in passing from one period to another, while the juridical concept of right of property has passed the borders of civil law to penetrate into all branches of law. Law 1/2000 is addressed to the dispossessed owners, Romanian citizens, regardless of their domicile, at home or abroad, as well as to the legal heirs and devisees of the former owner, who formulated petitions for the reconstruction of the right of property, in due time.Today the legal regime of land circulation is regulated by Title X from Law 247/2005 concerning reform in the fields of property and justice, completed. by the provisions of the Code of Civil Law, the Forest Law, Law 33/1994 and Law 312/2005.

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