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The Legal Regime of the Right to Private Property in Romania

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ABSTRACT: In Romania, the right of the titleholder to possess, use and dispose of an asset in an exclusive, absolute and perpetual manner is guaranteed and protected equally by the law, regardless of the titleholder. In this regard, both the Constitution of Romania and the Civil Code and numerous legislative acts adopted after the December 1989 Revolution regulate private property. Also, given that the right to property is one of the fundamental human rights, in addition to the internal legal regulations, one must also take into account the international treaties and conventions ratified by Romania, such as the European Convention on Human Rights and Fundamental Freedoms and its additional Protocol no. 1 which states that "*no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law*". The study presents an analysis of how the Romanian law regulates one of the most important and ample *real rights*, namely the right to private property which is also a *full right* because the owner has full powers over his asset.

KEYWORDS: absolute right, disposal, possession, real right, right to private property, right to property, titleholder, use

Introduction

The change of the political regime of December 30th 1947 and the installation of the communist regime have brought about significant changes in Romania with regards to the legal framework regulating property. One of the key communist concepts was to "eliminate man's exploitation by man" and, by way of consequence, they proceeded to the transfer of all production means from private property to public property, as, in the new political regime's opinion, they represented the people's assets. Subsequently, the first Communist Constitution of 1948 fostered the nationalization of the production means, the expropriation of landlord properties and the collectivization of farming properties (Berceanu 2003, 458).

After the removal of the communist regime by the Revolution of December 1989 and the adoption, in 1991, of the first Democratic Constitution, the rational private property regulations were reinstated. These are the regulations that this paper focuses on (The Constitution was adopted in the meeting of the Constituent Assembly of November 21, 1991, it was published with the Official Gazette of Romania, Part I no. 233 of November 21, 1991, and it came into force following its approval pursuant to the national referendum of 8 December 1991).

Hence, art. 41 and art. 135 of the Constitution adopted in 1991 stipulated two forms of property, i.e. private and public property and they also consecrated the equal protection of the private property, regardless of the titleholder. Moreover, it was mentioned that the property title, as well as the debt held against the state are guaranteed and that the content and limitations of these titles were established under the law (Constantinescu, Deleanu, Iorgovan, Muraru, Vasilescu and Vida, 1992, 295 *et seq.*). Subsequently, the Law reviewing the Constitution of Romania no. 429/2003 amended the two aforementioned articles, which, following the renumbering performed upon the republication of the Constitution, became art. 44 and, respectively, art. 136 of the Constitution (The Law Reviewing the Constitution of Romania no. 429/2003 it was passed pursuant to the national referendum of 18-19 October 2003 and it came into force on 29 October 2003, when it was published with the Official Gazette of Romania, Part I, no. 758 of 29 October 2003 The Decision of the Constitutional Court no. 3 of 22 October 2003 in confirmation of the result of the national referendum of 18-19 October 2003 on the Law reviewing the Constitution of Romania).

Definition and Subject of the Private Property Right

According to art. 555(1) of the Civil Code, *the private property is the* "*the right of the titleholder to possess, use and dispose of an asset in an exclusive, absolute and perpetual manner, within the limits stipulated under the law*."

Starting from the Civil Code definition, the recent Romanian doctrine (Boroi, Anghelescu and Nazat 2013, 5; Bîrsan 2017, 52) defines the private property right as "the subjective title over certain assets, other than the ones that constitute the public domain, pursuant to which the titleholder exerts the possession, use and disposal, at its own discretion and in order to serve its own interest, within the limits stipulated under the law."

According to the provisions in art. 553(1) of the Civil Code, "all private use or interest assets belonging to natural persons, private or public law legal entities, including the assets constituting the private domain of the state and of the administrative-territorial units" are subjected to the private property title. The interpretation of the text above leads to the conclusion that the private property title may have as a subject any movable or fixed asset, except for those that, through their nature, represent the exclusive subject of the public property.

In Romania, according to art. 859(1) of the Civil Code "Public interest subsoil resources, the air space, national interest waters with energetic potential that can be capitalized, beaches, the inland sea, the natural resources of the economic area and of the continental shelf, as well as other assets stipulated under the organic law represent the exclusive subject of the public property. (2) The other assets belonging to the state or to the administrative-territorial units are, as applicable, part of the public or private domain thereof, but only if acquired by one of the means stipulated under the law."

With regards to the subject of the private property law, it should be highlighted that, due to their importance as well as to some other general interests, certain private property assets are subjected to a special legal regime. For instance, weapons and ammunition, explosives' intoxicant products, materials and mixtures, medication, toxic products and materials, documents that are part of the national archives, national heritage assets, and so on.

The Romanian Civil Code Regulates vacant inheritance, i.e. inheritance with no successors, whether by law or testament. In this regard, according to art. 553(2) of the Civil Code, "vacant inheritances are acknowledged through a succession vacancy certificate and they become part of the private domain of the commune, town or city, as applicable, without being entered with the real estate register." At the same time, the law also regulates the situation of the real estate properties subjected to the property title waiver according to art. 562(2) of the Civil Code. Thus, according to the final part of art. 553(2) of the Civil Code, the respective real estate properties "are acquired, without being entered with the real estate register of the commune, town or city, as applicable, and they become part of the private domain thereof, pursuant to a local council decision."

Pursuant to the interpretation of art. 553(3) of the Civil Code, it may be noticed that the state holds the special vocation to also acquire "vacant inheritances located abroad." With regards to vacant inheritance assets, please note that they belong to the private property of the state or of the administrative-territorial unit.

Titleholders of the right of private property (Subjects)

According to the provisions in art. 44(2) thesis I of the Constitution of Romania "*the private property is equally guaranteed and protected under the law, regardless of the titleholder"*. Hence, any law subject may be a titleholder.

In other words, also considering the provisions in art. 553(1) of the Civil Code, private property titleholders may be:

- natural persons;
- private or public law legal entities;
- the state;
- its administrative-territorial units.

For instance, from amongst the *private law legal entities* who are holders of the private property title, we mention: *legal personality companies* that can be state-owned, privately-owned or mixed (state and private) capital; *farming companies* holding private legal personality; *cooperatives*; *associations and foundations* who are private law non-profit legal entities; *trade unions* who should be independent from public authorities, political parties and owners' associations; acknowledged *religious cults* and their places of worship (Urs and Ispas 2015, 42-45; Florea 2011, 47-48).

From amongst the *public law legal entities* who are holders of the private property title, we mention: *state bodies, state institutions, central public administration bodies*; *county public administration bodies and county interest public institutions; local public administration bodies and local interest public institutions; political parties* (Urs and Ispas 2015, 45-47).

Content and Legal Features of the Private Property Title

The key elements of the property title, regarded as one of the most important and complete main real rights, follow both from the underpinning attributes, and from the manner in which these attributes are exerted (Boroi, Anghelescu and Nazat 2013, 14-20; Bîrsan 2017, 43-47; Stoica 2017, 101-104). The property title is the only subjective right granting the titleholder its three attributes, i.e.: possession, use and disposal, also known in the doctrine as the "*classical trilogy*" (Ungureanu, Munteanu 2008, 166). With regards to the legal features of the private property right, art. 555(1) of the Civil Code states that the property title is *absolute*, *exclusive* and *perpetual*. Hence, the legal features of the private property title are: *its absolute nature; its exclusive nature and its perpetual nature.*

Means of Acquiring the Private Property Titles

If in the 1864 Civil Code (published with the Official Gazette no 271 of 4 December 1864, no. 7 (suppl.) of 12 January 1865, no 8 (suppl.) of 13 January 1865, no 8 (suppl.) of 13 January 1865, no. 8 (suppl.) of 14 January 1865, no 11 (suppl.) of 16 January 1865, no 13 (suppl.) *of 19 January 1865), the listing of the means to acquire the property title was imprecise and incomplete (Bîrsan 2013, 353)*, *being often criticized for the conflict it generated to the rules and principles of law (Vișoiu 2011, 9),* in the Civil code in force, art. 557 with the marginal title "*Acquiring the Property Title*" orders, under paragraph (1), in a more rigorous and clearer systematization, that "*The ownership title may be acquired according to the law, by convention, legal or testamentary inheritance, accession, usucaption, as an effect of the good-faith possession in the case of movable assets and of the fruit thereof, through occupation, Traditio, as well as by court order, if it involves property transfer as such*". Moreover, according to the law, the ownership title may also be acquired by to the effect of an administrative act, and the law may further regulate other means of acquiring the ownership title paragraph (3).

At the same time, according to art. 557(4) of the Civil Code, except for certain situations stipulated under the law, in the case of fixed assets, the ownership title is acquired by registration with the real estate register, in compliance with the provisions in art.888 of the Civil Code.

Art. 888 of the Civil Code stipulates that the entry of the acquisition of an ownership title with the real estate publicity register is carried out "*on the basis of the authenticated notary document, of the final court order, of the heir certificate or on the basis of any other document issued by the administrative bodies, if so stipulated under the law.*"

Private Property Title Limitations

The exerting of the property right is susceptible to certain limitations (restrictions), which, as also stipulated in the dedicated doctrine (Boroi, Anghelescu and Nazat 2013, 23) "*are but the expression of the combination of the titleholder's individual interest with the general interest*."

The general principles concerning the property title exerting limitations are included in the provisions of art. 556 of the Civil Code. In this respect, paragraph (1) of the mentioned article it is stipulated that "The ownership title may be exerted within *the material limitations of its subject*. These *are the corporeal limitations of the product* representing the subject of the ownership title, with *the restrictions stipulated under the law.*" Moreover, paragraph (2) of the same article

stipulates that *exerting the attributes of the ownership title may be limited under the law,* while paragraph (3) orders that the exerting of the ownership title can also be limited *by the titleholder's will,* with the exceptions stipulated under the law. In other words, the limitations may be the result of *the legislator's will*, of the *judge's will* or of *the titleholder's will.* It should be mentioned that regardless of the source of these limitations in exerting the private property right, we can by no means talk about depriving the titleholder of their right.

Pursuant to the above, it follows that the property title limitations can be *materials and legal*.

The material limitations of the property right are determined by the corporeality of the asset, be it movable or material, subject of the ownership title. For instance, art. 559(1) of the Civil Code stipulates that the ownership title over the land extends both above and underneath it, provided that the legal limitations are observed. The titleholder is entitled to develop, above and underneath the ground, all the desired constructions, crops and works, excluding the exceptions stipulated under the law, and is entitled to draw all the benefit they might produce from them. The titleholder is, however, bound to observe, according to the terms and limitations stipulated under the law, the rights of third parties over the subsoil ore resources, springs and underground waters, underground plant and other such [paragraph (2)].

The civil code consecrates an entire chapter (Chapter III) to the *legal limitations* of the private property title, Book III (*On Assets*). Thus, these limitations may be: *legal limitations,* determined by the law (art.602-625), *conventional limitations* established by mutual agreement between the parties (art. 626-629) and *legal limitations*, i.e. established by a court order (art. 630).

According to art. 602(1) of the Civil Code, "*the law may restrict the exerting of the ownership title to the public or private interest*." In other words, some limitations in exerting the ownership title are established by (civil or administrative) legal provisions justified by either a public or a private interest. Hence, the legal limitations may be of *public* and *private interest.*

Conclusions

To conclude, we mention that in Romania, private property title is protected and guaranteed under the Constitution, the regulations in the laws in the field; the court orders passed in application of the laws to reinstate the private property title, as well as by the international treaties and covenants ratified in Romania, such as, for instance, the European Convention on Human Rights and Fundamental Freedoms (ratified by Romania by Law no 30 of 18 May 1994 ratifying the Convention on Human Rights and Fundamental Freedoms and the additional protocols to this covenant, published with the Official Gazette of Romania no 135 of 31 May 1994) and the First additional protocol to this covenant, signed in Paris on 20 March 1952 (Published with the Official Gazette no 135 of 31 May 1994) which, in art. 1, stipulates that "*no one can be deprived of their property other than for public service purposes, according to the provisions under the law and the general international law principles"*.

Moreover, it should be mentioned that in Romania Romanian or foreign natural or legal entities and, as well as the stateless, may acquire the ownership title over constructions without any restrictions. With regards to lands located in Romania, as also analyzed in the doctrine (Drăguşin and Bârlog 2007, 2, 9-29; Popa 1998, 7, 32-36) foreign citizens, the stateless and foreign legal entities may acquire the private property title over the same under certain conditions stipulated in art. 44(2) of the Constitution, in the Law no. 312/2005 on the foreign citizens', stateless persons' and foreign legal entities' acquiring the private property title over the lands (published with the Official Gazette no. 1008 of 14 November 2005) and in Annex no. 7 to Romania's Treaty of Accession to the EU (ratified by Romania by Law no. 157/2005, published with the Official Gazette no. 465 of 1 June 2005).

References

Berceanu, Barbu. 2003. *The constitutional history of Romania, in an international context*. Bucharest: Rosetti Printing House.

Bîrsan, Corneliu. 2013. *Civil law. The main real rights in the regulation of the new Civil Code.* Bucharest: Hamangiu Printing House.

Bîrsan, Corneliu. 2017. *Civil law. The main real rights in the regulation of the new Civil Code*, 3rd Rev. Bucharest: Rosetti Printing House.

Boroi, Gabriel; Anghelescu, Carla Alexandra and Nazat, Bogdan. *Civil law course. Real main rights*, 2nd Rev. Bucharest: Hamangiu Printing House.

Constantinescu, Mihai; Deleanu, Ioan; Iorgovan, Antonie; Muraru, Ioan; Vasilescu, Florin Bucur; Vida, Ioan. 1992. The *Romanian Constitution commented and annotated*. Bucharest: R.A. "Monitorul Oficial".

Drăguşin, Claudiu and Bârlog, Dragoş. 2007. "Acquisition of land ownership by foreign citizens, stateless persons and foreign legal persons after Romania's accession to the European Union". In *Low*, (6): 9-29.

Florea, Bujorel. 2011. *Civil law. The main real rights*, București: Universul Juridic Printing House.

Popa, Ioan. 1998. "The legal nature of the real right of foreign citizens and stateless persons on land related to their property construction". In *Low* (7): 32-36.

Stoica, Valeriu. 2017. *Civil law. The main real rights*, 3rd Rev. Bucharest: C.H. Beck Printing House.

Ungureanu, Ovidiu and Munteanu, Cornelia. 2008. *Treaty of civil law, The goods. The main real rights*. Bucharest: Hamangiu Printing House.

Urs, Iosif Robi and Ispas, Petruța Elena. 2015. *Civil law. The theory of rights,* 2nd Rev. Bucharest: Hamangiu Printing House.

Vișoiu, Claudia. 2011. *The Procedure of adverse possession. Regulated by the1864 Civil Code, Decree Law no. 115/1938 and New Civil Code.* Bucharest: Rosetti Printing House.