

# THE WARRANTY AND PROTECTION OF PRIVATE PROPERTY IN ROMANIA

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## 1. GENERAL FEATURES

- The term of property and the one of right for property are synonymous. The first term "property" is also used to show its juridical expression, being "the right to property". The Romanian Constitution (modified and completed by the Law no.429/2003 for the revising of the Constitution of Romania) uses both the terms of property and the one for right for property. Both terms, property and the right for property, had a different social – economical content, from one society to another, throughout time. The content of the right for property is different with regards to the object and the owner of the right.
- The right to property was defined, in doctrine, as being that real right which gives the owner the attributes of possession, usage, disposal, attributes which only the owner can manifest in their fullness, by his own power and in his own interest, according to the juridical norms respecting the provisions of the Law.

## 2. FORMS OF PROPERTY

- The Constitution of Romania stipulates the forms of property as follows: "The property is public or private" and "The public property is guaranteed and protected by the Law and belongs to the State or to the territorial-administrative units".
- The art.136, 3<sup>rd</sup> paragraph in the Romanian Constitution, stipulates, in an explicit way, that the following goods make the object of public property: the riches of the underground for public interest, the air space, the waters of national interest with electric power potential that can be harnessed, beaches, territorial sea, the natural resources of the economical zone and of the continental plateau and other goods provided for by the organic Law.
- Private property is the main form of property, because the goods that compose it are in the civil circuit. In other words, the private property is the general rule and public property is the exception.

## 3. THE DEFINITION OF PRIVATE PROPERTY. LEGAL PROVISIONS.

- The Romanian civil code defines property in art. 480 as being "someone's right to enjoy and dispose, in an exclusive and absolute way, of a good, within the limits stipulated by the Law".
- The right to property can be defined as being a subjective real right which belongs to the natural persons, legal persons, to the State or to the territorial – administrative units over mobile or real estate (immovable) goods, which allows its owners to manifest the attributes of the right to property (possession, usage and disposal), in an exclusive and perpetual way, by personal power and interest, in the limits stipulated by the Law.
- It results from the above that the attributes of the right to private property are: possession (jus utendi), usage (jus fruendi) and disposal (jus abutendi).
- The juridical characters of the private property are: private property is alienable, meaning that the goods are in the civil circuit; private property is subject to prescription meaning that the private property is submitted to the acquisitive and extinctive prescription; private property can be followed (it is traceable) by creditors in order to satisfy their claims.
- Private property is reglemented by the Constitution of Romania (art.41, 2<sup>nd</sup> paragraph and art.135, 2<sup>nd</sup> paragraph); the Law no.18/1991 regarding the real estate with its afterwards modifications; the Law no.215/2001 regarding the local public administration, in the Civil Code and in other normative acts.

## 4. THE OBJECT OF PRIVATE PROPERTY

- The Romanian Constitution, lists the goods that make the exclusive object of public property and there is no mentioning regarding the private property, which means that the object of private property consists in the mobile and real estate (immovable) goods that do not belong to the public property.
- The Law no.18/1991, regarding lands, stipulates that: "The State's private property and thus, the villages', the towns', county's and districts' private property consists of the fields acquired according to the provisions of the Law and of the fields taken out of usage from the public area according to the Law."

## 5. THE SUBJECTS OF THE RIGHT TO PRIVATE PROPERTY

- The owners of the right to private property can be natural persons, legal persons, the State or the territorial-administrative units.
- The natural persons can own mobile or immovable goods and can dispose of them freely by selling, renting, leasing, etc. them within the limits of the Law.
- The natural persons entitled to achieve rights can be subjects of the right to private property. The Civil Code stipulates in art.949 that: "Any person who is not forbidden by the Law can contract" and in art.1306 that: "All those to whom it is not forbidden by the Law can buy and sell." These texts refer only to the natural persons who are Romanian citizens.
- The State is a legal person and it is represented as a subject of rights and obligations by the Minister of Public Finances, if the Law does not stipulate otherwise.
- The villages, cities and districts are legal persons. The administration of the private property of the village and of the city belongs to the local council and the administration of the private property of the district belongs to the district's council.

#### 6. THE REGLEMENTATION OF THE WARRANTY AND THE PROTECTION OF THE RIGHT TO PROPERTY

- The Romanian Constitution stipulates that the private property is guaranteed and protected in an equal way by the Law, regardless the owner and that it is intangible, in conformity with the organic Law.
- In the previous text of the Constitution it was stipulated that: "Private property is protected in an equal way by the Law, regardless of the owner" and in art.41, 1<sup>st</sup> paragraph, that the right for property is guaranteed.
- It results from the present wording of the art.44, 1<sup>st</sup> and 2<sup>nd</sup> paragraph, that the private property is guaranteed and protected regardless the good that forms its object and regardless the owner.
- The warranty of the right to private property presumes the protection of all the prerogatives of this right and, especially the right for disposal, but the principle of intangibility is defeated in the exceptional situation of the expropriation of the private property for the cause of public usage, according to the conditions and respecting the demands stipulated by the law.
- The Constitution stipulates that: "Nobody can be forced to give away his property, excepting only for the cause of public usage and by receiving a rightful and beforehand (legal redress) compensation", and that the compensation is established in a mutual agreement with the owner or, in case of disagreement, in Court.

#### 6. THE REGLEMENTATION OF THE WARRANTY AND THE PROTECTION OF THE RIGHT FOR PROPERTY

- Regarding the real estate property the Legislator demanded that the alienation of the agricultural fields situated outside the city (outside the built-up area), should be done by obeying the right of preemption. The provisions regarding the restraint of the disposal right are in the Law no.54/1998 regarding the juridical circulation of the fields which stipulates that "the alienation, by selling the agricultural fields situated outside the city will be done by obeying the right of preemption of the co-owners, of the neighbors, or of the leaseholders." Non-observance of these provisions brings forth the relative invalidity of the selling – buying contract.
- Regarding the alienation of the fields, the Law sets up some restrictions concerning the form of the legal papers of alienation, the extent of the object of alienation and the quality of the person who acquires it.

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Thus,

- The private property fields, regardless of their owner, are and remain in the civil circuit. The fields situated in the inner city and outside the city can be alienated and acquired through inter vivos legal papers contracted in an authentic form.
- Regarding the inter vivos contracts, the real estate of the acquiring person cannot surpass 200 ha of agricultural field, in arable land equivalent, per family, under the sanction of reduction of the legal paper of alienation to meet the legal surface.
- The fields attributed for the constitution of the right to property to certain categories of persons, provided for by the law, cannot be alienated inter vivos for 10 years, counted from the beginning of the following year in which the property was registered under their name, under the absolute invalidity sanction of the alienation paper. At the end of this term they can be sold.

#### 6. THE REGLEMENTATION OF THE WARRANTY AND THE PROTECTION OF THE RIGHT FOR PROPERTY

- The alienation of the fields in litigations at the Courts of justice is forbidden in every form, while these litigations are being solved.
- Foreign citizens and stateless persons cannot acquire the right to property of lands.
- These dispositions must be harmonized with the Romanian Constitution which stipulates that: "The foreign citizens and the stateless persons can acquire the right for private property over lands only according to the conditions resulted from Romania's accession to the European Union and from other international treaties to which Romania is a part, on the basis of mutual agreement, in the conditions stipulated by the organic Law, and also by the legal inheritance."
- Presently the foreign legal persons cannot acquire fields in Romania through legal papers inter vivos or inheritance (mortis causa).
- The Law no.18 /1991 regarding the real estate, modified, stipulates the loss of the land's usage right at the end of the year in course, by the agricultural owners who do not fulfill their obligations for cultivating the agricultural fields and for assuring the protection of the soil.

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- The same Law, provides for the restriction of the fields' usage right, obliging the owners to make available the degraded fields from the area which is to be improved, in order to enforce the actions and the works stipulated in the project for the improving of the land, while maintaining the right for property.
- As it can be observed, the purpose of these restraints is to make sure that the fields are cultivated, protected and improved.

#### CONCLUSIONS

- Romania's Constitution equally guarantees and protects the private property, regardless the owner.
- Natural and legal persons, the state and the administrative-territorial units (communes, towns, counties) can own the private property right.
- The object of private property right is represented by the mobile and immovable goods that don't belong to the public domain. Natural persons can own immovable goods and may freely dispose of these by sale, rent, lease etc. within the limits established by law.
- Alienation by sale of agricultural grounds placed outside town can be done respecting the preemption right of joint owners, neighbors or leaseholders.
- The technical record of the cadastre has no effect no matter how well it is done if it wouldn't be used to ensure the civil circuit of the immovable goods. (for instance, the civil code has no use without the civil procedure code who shows how to enforce it)
- That's why, as it has been shown in some of the papers presented so far at the FIG working week 2004, it is crucial that there is a better cooperation between the Justice Ministers and the respective national cadastre bodies.

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