THE REGIME OF PUBLIC PROPERTY UNDER THE RULES OF THE NEW CIVIL CODE

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Abstract

Law 213 from 1998 covered until now public property regime in Romania. Along with the entry into force of the new Civil Code,it have been affected and some rules on public property. These changes are just taken into account in this study which wants to illustrate what is currently public property regime in Romania and what are the rules that govern this system.

Keywords: *public property, the New Civil Code, domainiality, estate legal regime, perpetuity and transferability*

Introduction

In administrative law science, genesis of field theory is conferred by doctrine and jurisprudence[1].

Field category - especially the public estate - has a long history, receiving over time various scientific interpretations.

From ancient times it was felt the need that, certain goods, due to their nature or other reasons, be designed, by special regulations, to collective use.

The modern age has brought into question the concept of public service and for its provision, it was revealed again the need for the existence of a special categories of goods - public goods.

It was therefore outlined the idea according to which legally organized public communities - governmental or local - may possess, just as individuals, movable and immovable/, tangible and intangible assets - that they use in process of providing general interests. These are public goods that belong to a moral public legal entity.

1. Public property constitutional status

The legal status applicable to such goods includes specific form and content rules concerning their management, administration or alienation. Some of these goods belong to private property, others to public property[2].

"Estate" concept stems from the Latin "dominium", meaning possession, property.

The existence of estate, of property owned by the holders of public authority - state, local communities - is linked by the purpose of ensuring, by these authorities, of the general public interest of the community concerned.

Legal connection between owners of the field and assets that make up the field is constituted by means of property institution. Exercising ownership right by the state or local community on their own estate property is subject to specific rules that overlap or are added to the general property regime governed by common law.

Domainiality even require the regulation of a specific property form - public property - belonging only to the holders of power to manage public affairs, i.e. the State or local authorities.

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[1] M.Waline, *Manuél élémentaire de Droit administratif*, (Paris, Rousseau,1936), p.516.

[2] E. Bălan, *Property administrative law,* Master, (Editura C.H.Beck, Bucharest, 2007), p.3.

Legal rules governing this subject are exorbitant rules, derogating from the common law, belonging to public law[3].

For a better understanding of the investigated subject, a brief historical analysis is required.

In Roman law[4] there were goods forming the public sector- *res publicae*, making up all goods belonging to the Romanian people. These goods were divided into two categories:

a). goods which represented a source of income: *res publicae* in *pecunia populi,* in the composition of which also were included *ager publicus* - lands conquered from their enemies;

b). property intended for the public use, given for direct and immediate public use, called res *publicae in usu publico*, which includes *res comunis* - the sea shore, calculated up to where water reached in case of flow.

Under the feudal reign, the kings' estate was dismembered by the seniors, who had become owners of roads, streams and rivers, substituting in the rights of kings.

All feuds emanated from kings, which had created by various concessions and royal jurisdiction dispensation.

Later, the kings, by their fight against feudal lords, succeeded to reconstruct the royal sector (belonging to the Crown), resuming successively roads, rivers, mines, fairs, etc.

Wishing to preserve the property of the estate, kings have taken precautionary measures for that time, countermanding alienations previously made and forbidding them for the future. Thus, by Ordinance of February 1566, given by Moulins under the reign of Carol, the IXth - inalienability of estate property was raised to the rank of a true public law principle. Kings' property was thus subject to inalienability, on the grounds that were part of the Crown estate and not because they were beneficial for anyone[5].

The old French law did not know any distinction between the two estates, within the modern meaning. Thus, although the theory of the Crown estate accepted the heterogeneity of the estate due to the presence of incorporated rights (royal, seigniorial, tax), along with material elements (rivers, roads, places of battle, etc.), supported their joint legal condition, all considered to be the King's property, likely to bring income and equally subject to inalienability rule. This single legal regime was applicable even to goods that were acquired by the king as personal property, by the common law procedure.

An evolution in the field is marked by the French Revolution of 1789, when it was discussed the distinction between the national and the Crown estate. Since then, the nation not wishing be the same person as the king, it was asked to distinguish between the two estates.

Thus, by Law of 22nd November to 1st December 1780, although a distinction was not made between the public and private estate of the state, however, it is created the national estate, passing upon nation all properties producing income, along with those intended for the public use. So, *res publicae in pecunia populi* could be alienated by this law, according to certain forms, by virtue of a decree of the assembly sanctioned by the king and *res publicae in usu publico* were inalienable, because they were intended for the public use.

Napoleonic Civil Code mentioned the goods that were part of the public sector in the meaning of current doctrine.

Even the Romanian Civil Code, in art. 476, speaks of goods that are not private property, "as dependencies of the public sector", meaning the estate goods or state goods, without distinguishing

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[3] E. Bălan, *Property administrative law, Master*, (Editura C.H.Beck, Bucharest, 2007), p.4.

[4] St. Măndreanu, *Concessions on public sector. Their legal nature*, (Bucharest, Tipografia R.Cioflec, 943), p.9-14. Also, a historical analysis of the problems studied is found in: A. Iorgovan, *Administrative law treaty, vol.II, ed. a IV – a,* (Bucharest, Editura All Beck, 2005), p.128-145; D. A. Tofan, *Administrative law, vol. II*, (Editura All Beck, 2004), p.88-96.

[5] E. Bălan, *Property administrative law, Master*, (Editura C.H.Beck, Bucharest, 2007), p.4-5.

between public and private sector. Also, art.477 of the same Code considers as part of the public wealth also the vacant successions or unclaimed property, matter reviewed by Law 213/1998[6].

We note that the distinction between public and private sector work is especially the work of doctrine and jurisprudence, rather than objective law.

So, the sector category (administrative sector in the meaning of inter-war doctrine)[7] includes goods that the state or local communities as administrative entities[8] assign to the general interest tasks incumbent on them.

The sector represents a universality that allows its divisibility into two masses of goods: public and private sector. The distinction between the two sectors is not purely formal, but it involves a duality of legal regimes to which property is subject.

Beyond the differences in legal regime, public and private sectors have a common function, namely to not allow public persons fulfill their administrative missions[9].

Estate regime helps us give answer to questions such as those related to differences in legal regime applicable to identical goods, but belonging to different owners: one of them- the state and the other- a private entity.

Scientific language is and still remains the result of terminological conventions. For these reasons, we further present the conventional meaning of certain terms, given to them in light of this paper.

1. *sector*- ensemble of movable or immovable, tangible or intangible assets, belonging to the holders of power to manage public affairs: state, county, town, commune (synonym – estate goods);
2. *estate legal regime*- all form and content legal rules applicable to ownership right of the estate property;
3. *domainiality* - all features of ownership on sector assets (i.e. establishment of a specific ownership form applicable only to them - public property; printing of characters specific to private ownership exercised on estate assets).
4. *estate rights* - public ownership and private ownership on estate assets; real property rights established based on them, such as administration right, use right, concession right; rights of claim provided in connection with an estate good;
5. *estate code* – complex law including all regulations in the field of estate[10].

Public property constitutional regulation is suffering as a result of the generalism characteristic of these rules, but enjoys a precise and clear delineation of the great principles governing its legal status.

Constitution of Romania which came into force in December 1991 and revised in 2003 regulated the property, both public and private one, as a fundamental institution lying not only in public or private law, but we can say at the border between the two classical law branches.

The text of the Constitution contains two articles on the property, the one in Title II dedicated to fundamental freedoms, liberties and duties, entitled "Protection of private property" (Article 44), respectively that of Title IV "Public economy and finances" entitled "Property" (Article 136). Constitution drafting committee considered, by this two-headed arrangement, that the issue on property generally have an general establishment where property system be established in Romania, so the forms property take, as well as a special establishment of primary ownership, as a fundamental right.

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[6] According to art.25 of Law no. 213/1998 on public property and its legal status (Official Gazette no. 448 of 24 th November 1998), by phrase "public sector", contained in art.477 of the Civil Code, it is meant the private sector of the state or administrative units, as appropriate.

[7] E.D. Tarangul, *Romanian administrative law treaty*, (Tipografia Glasul Bucovinei, Cernăuți,1994), p.355 et sequens.

[8] E. Bălan, *Public law institutions*, (Editura All Beck, 2003), p.35-39.

[9] E. Bălan, *Property administrative law, Master*, (Editura C.H.Beck, Bucharest, 2007), p.7.

[10] E. Bălan, *Property administrative law*, Master, (Editura C.H.Beck, Bucharest, 2007), p.13.

The solution chosen by the constituent legislature that first it should be regulated the protection of private property and then the property regime in Romania was criticized by the doctrine. Although Title I requires to first highlight the supreme values of the Romanian state (constitutional state in which human dignity, rights and freedoms of citizens, free development of human personality, justice and pluralism are supreme and guaranteed values), we consider that it would be have been provided here an article entitled "Property" including two paragraphs:

1). “State protects property”

2).”Property is public or private”

Then it followed that, in a separate article, "Public property", it should provided its features, as provided and developed in art. 136.

Systematic analysis of constitutional rules in relation to property must start from art. 136:

1).”Property is public or private”.

2). Public property is guaranteed and protected by law and belongs to the state or administrative - territorial units.

3). Wealth of public interest of the subsoil, air space, waters with capitalized energy potential of national interest, beaches, territorial sea, natural resources of the economic area, and of the continental area, as well as other assets established by organic law shall be exclusively subject to public property.

4). Public property goods are inalienable. In accordance with the organic law, they can be managed by autonomous administrations or public institutions or may be leased or rented; they may also be given for gratuitous use to public utility institutions.

5). Private property is inviolable, under organic law. "

Thus, one can see that art. 136, after showing that, in the general meaning of the term, any property is guaranteed and protected by state, specifies the two forms of ownership (public and private), then it sets the regime of public property, because public property is the exception (the rule in the society is made by the private property) and finally to enshrine the principle of inviolability of private property.

From economy of Article 136, it results that that holders of public ownership are exclusively those listed in subsection 2 of art. 136 and no other person can have this property right in its patrimony. As regards administrative-territorial units, as owners of public ownership, it should emphasize that such notion defines commune, city, town, county as legal and administrative entities with jurisdiction, while the notion of state, as owner of public property, public authority defines those public authorities whose competence is general throughout the country.

Another general principle governing the legal status of public property is developed by art. 136 paragraph 3, which defines in an incipient manner the public sector, as a *sine qua non* element of public property.

In other words, the above-mentioned legal text states in a declarative specification (but not limitative) the main goods forming the object of public ownership right. Declarative, example character of this constitutional specification is given by the expression used by the legislature at the end of the text, namely that it may be subject to public ownership "other assets established by organic law". Organic laws have been thus designed to decide with great precise the composition of the public sector.

If we refer to the owners of public property, it results that the goods subject to public ownership is the public sector that can be owned by the state (the national interest), or property of administrative-territorial units (the local interest).

The term of “public sector” is not restricted only to goods subject to public property. In some respects, to public sector also belong the immovable assets (farmland, forests) or movable assets (paintings, sculptures), which are privately owned.

Integration of a good of public sector (object of the state or an administrative – territorial unit property) is made by ways specific to a regime of public law or, where appropriate, by means of the common law, but "ordered" by a public law regime. Our Constitution admits:

a). administration by public institutions;

b). autonomous administration;

c). rental or lease to any legal entity;

d). free commissioning to public utility institutions.

Although the Basic Law does not use "*expressis verbis*", the expression of public sector or public estate, it does not mean it is unknown to the spirit of the Basic Law. It can be inferred implicitly from some constitutional provisions, sustaining the thesis of a report of synonymy between the expressions of public sector and public property.

In terms of the legal status of such goods, art. 136 paragraph 4 of the Constitution establishes mandatory rules of exclusive applicability, namely the public property is inalienable.

Inalienability of public sector components, or in other words, the prohibition that they be subject to legal acts or deeds with property translative effect, generates other two principles, namely indefeasibility and intangibility of public assets.

Goods in the public sector are intangible, i.e. they can not be subject to enforcement proceedings by creditors, the liquidation of state debts and administrative-territorial units being based on specific rules derogating from the common law.

Goods from public sector are indefeasible, both prescriptively and possessively. This means, on the one hand, that the holder does not lose ownership on these assets as long as they would not exercise it (extinctive prescription) and, on the other hand, a third party can not obtain a right on these goods no matter how much time it would actually exercise, even if in good faith, their holder being entitled to claim them.

A very important rule, which refers to the acquisition of public property right, is that found in art. 136, Second sentence, according to which goods subject to public property "may be managed by autonomous administrations or public institutions, or may be leased or rented". It is the law text that lead the way for major legislation on exercising the public property right, by creating new rights: the right of management, leasing or renting.

Administrative area includes a universality split into two masses of private property, being able to speak of a public and a private sector of the state, respectively, of the local territorial community.

From the above mentioned constitutional text, it results that the holder of the public sector can only be the state or administrative-territorial units, the latter being understood as legally organized local communities.

It must be noted that the notions of public property in the public sector, as well as private property and private sector, are not synonyms. The property is a legal institution, and the sector represents the totality of goods that are subject to property, connected between them by the holder of real property right and their destination to serve the public interest.

As regards the scope of public property holders, we note that it is fully established in the Constitution [Article 136 paragraph (2) of the Romanian Constitution, republished], while the sphere of public property object is started by the Constitution [Article 136 paragraph (3)] and must complete by law, the same being the case as regards the legal regime of public assets for which the Constitution, Article 136 paragraph (4) establishes just a few basic guidelines.

The series of special rules derogating from the common law applicable to the public sector, are, according to Andre the Laubadere, "estate regime".[11]

[11] A. Laubadére ş.a, *Manuel de droit adminstratif*, (Paris, 1988), p.336.

Thus, the state and local public community, sometimes called administrative entities in the doctrine are, as individuals, goods ownership, which are distributed into two groups, forming public and private sectors.

Due to the belonging of such goods to some persons of public law, administrative people in interwar doctrinal beliefs, such as the State or its territorial dismemberments, they were generically called using the expression *administrative sector*.

The distinction between public and private sectors is not purely formal, but it involves a duality of legal regimes which the goods of both sectors are subject to.

Beyond the differences in legal regime, public and private sectors have a common function, namely to allow the public persons achieve their administrative tasks.

We may understand the administrative sector as a set of goods which the state or local communities use in achieving the general interests of state or local community.[12]

2. Public sector-public property relationship

To understand this issue, it should be noted that public property is currently regulated by the Constitution, as stated above and the New Civil Code, which entered into force on the 1st October 2011. So far, public ownership was regulated by Law no. 213/1998. Law no. 71/2011 for the implementation of Law no. 287/2009 on the Civil Code (read the New Civil Code) provides that as of 01/10/2011, it amends the Title (new title, Law on Public Property), art. 12 paragraph (5) and repeal art. 1, art. 2, art. 5, art. 7, art. 10 paragraph (1), art. 11, art. 12 paragraphs (1) - (4) and (6), art. 13, art. 17 of Law no. 213/1998, published in the Official Gazette no. 409/10.06.2011.

In the doctrine were expressed critical views towards organic legislature of 1998, which "comes and establishes the expression of public property in an identical meaning as that of public sector". Professor Dana Apostol Tofan, author of this opinion, emphasizes the conclusions drawn from the enumeration of art. 3, paragraph 1 of law, regarding the goods that make up the state public sector, according to which it can be found neither in law nor in the list contained in the Annex, belonging to the public sector of some goods that have been privately owned, but which are equally containing the public sector (e.g. the national cultural heritage held by different owners, individuals or legal entities) and it is not recognized as a principle, any possibility of existing some estate protection rules, towards other private assets, others than those belonging to the public sector.

A possible solution to this problem could be to establish certain rules that should represent special estate regimes, be it goods of national cultural heritage, be it lands, forests, etc.., belonging to individuals or legal persons, others than the state or administrative-territorial units. These special estate regimes lead to a restriction, in some respects, of exercising the private property rights.

As Professor A. Iorgovan asserts, in such situations, "the estate regime, in consideration of a private property good, appears as a public regime of limiting the exercise of private property right, enrolling in art. 53 of the Constitution".

Public sector, as a legal entity, known throughout the history of law in general and public law, in particular, a series of fluctuations in its content, fluctuations that have seriously left its mark upon the way of defining the criteria for delimitation from the private sector, as well as procedures for inclusion of some property in this area.

Both domestically and internationally, outlining the public sector idea has been done in parallel with the materialization of the concepts of ownership and right of ownership, as well as at the same time with the outlining of holders of such real right. When it was found that public property has its own autonomy, different from the private property and when the owners of both types of property were clearly individualized, it was required the delimitation of the two types of property - public and private.

[12] E. Bălan, Property administrative law, Master, (Editura C.H.Beck, Bucharest, 2007), p.41-42.

On this line of thinking, trying a more clear delimitation of the public sector from the private one, in the doctrine, the public sector was defined as being that consisting of "all movable and immovable property, which, being designed to an established public service, are directly used or consumed by it to enable achieving its purpose or to ensure its operation."

Referring to our literature of public law, we shall retain that in the concept of public sector were also included assets making up the national cultural heritage, which, however, could be subject to private ownership right. Thus, with a view to formulating a definition of the public sector, it should be considered both the public property assets, as well as private property assets which are of a particular importance for the history, culture, etc.

Thus, by public sector we understand "those public or private assets, which by their nature or express provision of law must be kept and transmitted to the future generations, representing values to be used in the public interest, directly or through a public service and subject to an administrative regime, as well as to a mixed regime, under which the power regime is determined, being in the property or, where appropriate, in the keeping of public legal entities".

3. Public ownership

In economic sense, property is the ratio of appropriation of material goods by the individual and it is a condition of any production and, therefore, a prerequisite for the existence of any society[13].

As an essential component of the production relations, the property is part of the society: it originated with the society and it will last as long it will exist.

In the legal sense, property right, part of the society superstructure, expresses in terms of law, the economic content of the appropriation social relation. Ownership has occurred at a certain stage of development of society, along with the occurrence of state and law, when the economic ownership relationship was covered by the legal form, when the ownership of material goods has become a right of ownership, appropriation, enshrined and provided by the force of state coercion.

According to Liviu Pop, "The property is, both in economic and law meaning, the supreme expression of people's access to the possession, use and disposal of goods "[14].

Ownership is a fundamental right of old tradition in the catalog of fundamental rights and freedoms guaranteed to citizens. The content comprises the right of individual to acquire a property, to use and freely dispose in connection with its property and ability to assign its right to someone else.[15] The Constitution may establish some limitations on the scope of property, limitations clearly and expressly defined and determined only in the interest of establishing a system for protecting and guaranteeing the public interest.

Achieving ownership entails the obligation of the state to guarantee and protect the property obtained by lawful means.

Given its legal content and the specific position of the owner, according to Liviu Pop, ownership is "that real right granting its holder the attributes of possession, use and disposition of a property, attributes that only he can exercise in their completeness, in its own power and interests, in compliance with the legal rules in force "[16]. We mention that these doctrinal considerations keep their actuality even in the light of the new provisions of the Civil Code and in substance there are no significant differences between the previous and current concepts.

Ownership has a series of own characters, which distinguish it from other real rights. Thus, ownership is absolute and inviolable, full and exclusive, perpetual and transferable.[17]

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[13] M. Costin and others, *Civil law dictionary*, (Editura Ştiinţifică şi Enciclopedică, Bucharest, 1980), p.410.
[14] L.Pop, L.Harosa, *Civil law. Non-ancillary rights in rem*, (Editura Universul Juridic, 2006), p.78
[15] L.Pop, L.Harosa, *Civil law. Non-ancillary rights in rem*, (Editura Universul Juridic, 2006), p.83-84.
[16] E. Bălan*, Property administrative law*, Master, (Editura C.H.Beck, Bucharest, 2007), p.63-64.
[17] L.Pop, L.Harosa, *Civil law. Non-ancillary rights in rem*, (Editura Universul Juridic, 2006), p.86 et sequens.

a). *Absolute and inviolable character*. Ownership is *absolute* in a broad meaning, as it is recognized to its holder or in its relations with all others who are obliged to do nothing for breaching it. In other words, the ownership is enforceable against everyone, *erga omnes*.

Inviolability of ownership supports and strengthens its absolute character, in other words, ownership can not be violated by anyone.

According to art. 136 paragraph (5) of the Constitution, "Private property is inviolable, in accordance with the organic law".

Inviolability of private property is not absolute, since the exercising of such right is affected by the tasks that, under the law or custom, are incumbent upon the owner of the ownership for environmental protection, provision of good neighborhood, compliance with the other tasks.

Exceptions to the inviolability are also those provided in art. 44 paragraph (3) of the Constitution on expropriation for public utility and art. 44 paragraph (5) which allow that, in general interest, public authority may use the subsoil of any real estate with the obligation to pay any damages caused.

b). *Full and exclusive character*. Full character shows that ownership confers on its proprietor all the three attributes: possession, use and disposal.

Exclusive character shows that attributes of this right are independent of any power of another person on such good, apart from cases where the property is dismembered. So, the full and exclusive character of ownership of the property is lacking when dismemberments are established on such ownership and some attributes of this right are exercised by another person (usufruct, use, habitation, servitude, superficies).

Exclusive character may also be understood by giving the holder a true *monopoly* of the possession, use and disposition of the property subject of ownership.

Perpetuity and transferability. By perpetual nature of ownership it is meant that it is unlimited in time and lasts as long as the good subject to it exists. Moreover, it is not lost through non-usage or non-performance.

Usually, the action claiming ownership is imprescriptible.

Ownership can be transmitted among the living ones, under the law. Furthermore, transmission of ownership is inevitable and binding mortis causa.

Transmissibility is the natural consequence of ownership perpetuity. Given the finite nature of human life, by transferring ownership right is made its transmission from a person property to another person's property, ensuring its perpetuity.

We will see below that public ownership, because of its inalienable right, is not transferable.

Public ownership as a form of ownership, shows, with certain nuances, general features specific to this real right[18].

Law no. 213/1998 on public property and its legal status has been prepared pursuant to art. 135 of the Romanian Constitution (currently art. 136, after review), according to which property is public or private.

It is important to reveal that according to art. 73 of the Constitution, this law, being a law governing the general legal status of public ownership, is an organic law.

This results unambiguously from the provisions of art. 5 paragraph 1) of Law 213/1998, which foresees that "the legal status of public ownership is governed by this law, unless provided otherwise by special laws". We mention that this text, currently repealed, cleared up the legal nature of this law.

Article 1 of the law defined the scope of public ownership, noting that "Public ownership belongs to the State and administrative units, on the property that, under the law or by their nature are of public interest or use." Thus, it came to defining the public property as being the ownership of the

[18] E. Bălan, *Property administrative law,* Master, (Editura C.H.Beck, Bucharest, 2007), p.66-67

state or administrative-territorial units, communes, towns and counties upon goods that, under the law or by their nature or intended use, are of public interest or use".

We note here that the first part of art. 1 of law coincides with art. 136 of the Constitution, except that, while the latter refers to public property, the legislature uses the formula of public ownership. From this we may conclude that the two concepts should have finally expressed the same thing, which was otherwise expressed trenchantly in the doctrine and jurisprudence, such idea being promoted particularly by the civilist specialists.

By law are enshrined the notions of public and private sectors of the state and administrative-territorial units, concepts that do not appear for the first time in a law that contains regulations in connection with public private ownership, but in this law it acquires a unitary regulation.

Evidently, the special law establishes general criteria underlying the qualification of a good as belonging or not to the public sector. Therefore, it is established that a good may be the subject of public ownership on *sine qua non* condition, that it should be (by law or by its nature) of public use or public interest.

Law makes the delimitation between "the state public sector which is composed of assets referred to in art. 136 paragraph 3 of the Constitution, those provided in section I of the Annex, as well as other national public interest goods, declared as such by law "," public sector of the counties comprising goods referred to in section I of the Annex and other county public interest goods, declared by the county council decisions, if not declared by law as goods of national public interest or use" and" public sector of communes, cities and municipalities which is composed of assets referred to in section III of the Annex, as well as other goods of local public interest or use, declared as such by the decision of the local council, if not declared by law as goods of national or county public interest or use".

Goods that are subject to the public sector are mentioned in the Annex of the law, which contains one list for each of the public sectors: state public sector, county public sector and public sector of the communes, cities and municipalities. This listing has a great practical importance, even if it has a declarative character, and not a limitative one, a fact stipulated *expressis verbis* in the preamble of Annex.

Article 858 defines public ownership as follows: "Public property is ownership that belongs to the state law or an administrative - territorial unit over the goods which, by their nature or by the declaration of law, are of public interest or use, provided that they acquired by one of the ways stipulated by law." One can easily see that the civil legislature did not alienate from the provisions of Law no. 213/1998.

The novelty of legal statement is found in art. 860, unambiguously talking about

"national, county and local public sectors."

As regards public ownership characteristics, according to art.861 we find the same characters: inalienability, indefeasibility and intangibility.

Article 862 stipulates what are the limits of exercising public ownership. Thus, public ownership is liable to any limits stipulated by the law or the New Civil Code for the private ownership, provided they are compatible with public use or interest to which assigned goods are intended. Incompatibility is established by agreement between the public property owner and the person concerned or, in case of divergence, in the court. In these cases, the person concerned is entitled to a fair and prompt compensation from the owner of public property. We may appreciate that these provisions are a novelty towards the primary regulation of Law no.213/1998.

4. Acquisition of public ownership

Article 7 of Law no. 213/1998, currently repealed, provides that public ownership is acquired in the following ways:

a). naturally;

b). by public procurement made under the law;

c). by expropriation for the public utility cause;

d). by acts of donation or legacy, accepted by the Government;

e). by the transfer of goods from the state private sector of its administrative-territorial units in their public sector, for public utility cause (the operation is called assignment):

f). through other ways provided by law;

Towards these provisions of Law no. 218/1998, as previously stated, they were repealed by art. 863 of the New Civil Code, the text listing the cases of acquisition of public ownership, as follows:

a). by public procurement, made under the law;

b). by expropriation for the public utility cause, under the law;

c). by acts of donation or legacy, accepted under the law, if the property, by its nature or by the will of its dispose, becomes of public interest or use;

d). by onerous convention, if the property, by its nature or by the will of its acquirer, becomes of public interest or use;

e). by transfer of a property from the state private sector in its public sector, or from the private sector of an administrative - territorial unit in its public sector, under the law;

f). by other means established by law.

One can easily see that the new provisions practically resume those of Law no. 218/1998, with slight amendments. It disappears the natural course as a means of acquisition, which is natural, as it was impossible to identify concrete ways considered by the legislature to be included in this text. Also under the new provisions, legacies and donations must be accepted under the law and not the government, as provided by law no. 213/1998.

A new provision is also introduced, from which it results the possibility of entry into public ownership of a property by an onerous convention, issue resulting by default from the provisions of Law no. 213/1998.

5. Termination / settlement of public ownership

Public ownership ceases if the property perished or passed into the private sector.

Law no. 18/1991 regarding the agricultural real estate, republished as amended, provides that lands belonging to the public sector, no matter who the owner of their property right might be, the state or administrative - territorial units, may be placed in the civil circulation only if, according to law , they are decommissioned from the public sector.

Passing of goods from the public into the private sector is made, where appropriate, by decision of the Government, of the county council, as well as of the General Council of Bucharest, or local council, unless otherwise provided by Constitution or law.

The decision of transferring of property in the private sector may be appealed to the competent administrative court in whose territorial jurisdiction is the property.

The New Civil Code provides in art. 864 that public ownership is extinguished if the property has perished or has been transferred to the private sector, if the use or the public interest has ceased, under the conditions provided by law.

In the New Civil Code[19] is regulated the settlement of public ownership, towards the previous provisions of Law no. 213/1998, currently repealed, which stipulated the methods for termination of public ownership.

[19] Elena Emilia Ştefan, *Administrative law manual, Part I, Seminar book. Theme 12. Public ownership*, (Editura Universul Juridic, Bucharest, 2012).

Conclusions

The new Romanian Civil Code defines private property in relation to the contents of this law, as follows: Private property is the owner right to possess, use and dispose of a good exclusively, absolutely and perpetually, within the limits set by law.

Currently, we find provisions on public ownership in the New Civil Code, Articles 858-875 (Title VI - Public property), provisions leading to the abolition of certain texts of law no. 213/1998.

In conclusion, this study aimed at highlighting what is currently public property regime in Romania and what are the rules that govern this system.

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