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Expropriation for Reasons of Public Utility

Maria Cristiana Ieremie[1]

Abstract: In Romania, before the events that led to the overthrow of the communist political regime, Antonie Iorgovan considered that the goods in respect of which the state administration bodies hold the right of administration for public use, form the public domain. Expropriation for reasons of public utility is a set of administrative and jurisdictional acts and operations, by which the state or local public administration authorities impose the forced transfer, for their benefit, of ownership of real estate belonging to individuals or legal entities with or without profit , as well as those in the private property of communes, cities, municipalities and counties, for the purpose of public utility and in exchange for a fair and prior allowance.

Keywords: public domain; public administration; administrative authorities; public utility

1. Introduction

During a long period of construction and crystallization of the theory of public domain, both the authors of works of public or private law and jurisprudence pursued, in the absence of unequivocal legal regulation, to define the notion of public domain.

The opinions outlined following these debates represent an essential development in the theory of property, as it is known in civil law works. All the discussions that took place in connection with this institution of administrative law have not only a purely theoretical significance but also a practical one, given the fact that the public domain is subject to a special legal regime, which removes it from the legal regime of

[1] Student, Danubius University of Galati, Romania, Address: 3 Galati Blvd., 800654Galati, Romania, Corresponding author: cristianamaria.ieremie@univ-danubius.ro.

individual property and to a certain extent even by the legal regime of the private domain of the state or of the administrative-territorial units.

Thus, according to the authors Laon Duguit and Roger Bonnard, "*all movable and immovable property which, being assigned to a particular public service, is directly used or consumed by it to enable it to achieve its purpose, or to ensure that it is part of the public domain its operation* " (Bonnard, 1940, p. 537). For his part, Maurice Hauriou argued that "*all property belonging to a public utility intended for formal use belonged to the public domain*" (Hauriou, 1901, p. 617).

In the Romanian interwar doctrine, inspired mainly by the French legal literature, Professor Paul Negulescu was noted in the first instance, according to which "*buildings and equipment directly and specifically affected by a public service and used by it are to satisfy the general interest of the public domain* " (Negulescu, 1934, pp. 134-136). The author also disputed that these goods produce income because they can be exploited like private goods, but they belong to the state, county, commune, unlike goods that form the private domain and are in principle subject to the rules of private law. According to the author Erast Diti Tarang, the most complex and correct notion of the public domain is the one supported by the authors Bonnard, Hauriou and Bandry-Lacantinerie according to which "*public domain goods are those affected by a general interest, due to which they are subject to a legal regime exceptional, exorbitant, as opposed to private property which is not affected by a general interest and which is consequently subject to the rule of private law"* (Tarangul, 1944, pp. 355-359).

In Romania, before the events that led to the overthrow of the communist political regime, Antonie Iorgovan considered that the goods in consideration of which the state administration bodies hold the right of administration for public use, form the public domain. According to this reasoning, the author defined the public domain as "*a set of goods, which by their nature or by the express arrangement of the law, are intended for public use, being administered for this purpose by state administrative bodies, exclusively by power or , in a complex regime in which the power regime has a leading role*" (Iorgovan, 1989, p. 138).

2. The Procedure of Expropriation for Reasons of Public Utility

Inspired by the previous regulation, by the general principles of law and aiming to ensure real guarantees of the right of private property, the current legal regulation in

our country, respectively Law no. 33/1994 on expropriation for public utility causes establishes a complex procedure that takes place during two distinct phases, the first being represented by the administrative phase, and the second by the judicial phase. Interested parties may agree both on the method of transfer of ownership and on the amount and nature of compensation, in compliance with the legal provisions on substantive, formal and publicity conditions, without initiating the expropriation procedure announced. These cases of amicable transfer and establishment of compensation, provided by art. 4 of the law may intervene not only prior to the declaration of public utility, when the agreement of decisions acquires the legal significance of a real estate sale, but also in the other stages of the procedure, respectively after the display of the declaration of public utility, until the expropriation request by the competent court. As stated in the literature, the legal nature of this convention is that of an out-of-court settlement contract, which precludes the contentious judicial procedure which is regulated in Chapter IV of the law in question (Giurgiu, 1997, p. 60).

The public utility is declared by the Government for conduct of national interest and by the county councils or that of the Bucharest municipality for works of local interest. The declaration of public utility is preceded by preliminary research by commissions appointed by the Government - for works of national interest - and by the permanent delegation of the county council or by the general mayor of Bucharest - for works of local interest. The composition of the respective commissions is the one provided in art. 9 paragraph 2 and 3 of the law, and the working procedure for conducting the preliminary research is established by a regulation approved by the Government. In consonance with art. 10[1], the preliminary research will establish if there are elements that justify the national or local interest, the economic-social, ecological or any other advantages that support the necessity of the works and cannot be realized in other ways than by expropriation, as well as the inclusion in the plans. of urbanism and landscaping, approved according to law.

The declaration of public utility is an administrative act by virtue of which a certain work acquires the special character of work in the general interest subject to the special legal regime of expropriation for public utility. We agree with the opinion expressed in the legal literature according to which the declaration of public utility, once brought to the public's attention by posting to the local council in whose territorial area the building is located, or by publishing in the Official Gazette, meets

[1] Law no. 33/1994 on expropriation for reasons of public utility.

all elements of an administrative act, in the case being the expropriation procedure is initiated.

It has also been ruled in jurisprudence that the act retains this character even if it takes the form of law, and the statements emanating from local, city, municipal or county councils constitute real administrative acts of authority, subject to judicial control exercised under the Law of Contentious administrative. The administrative contentious court examines only the legality of the declaration of public utility and not the opportunity of the act which is left to the exclusive discretion of the administrative authorities.

However, in the event of annulment of the declaration, the public administration authority may not continue the expropriation procedure, except in those cases where an agreement has been reached between the interested parties, either on the method of transfer of ownership or on the nature and amount of compensation. . Chapter III of the law is devoted to pre-expropriation measures, which are taken by expropriators, as well as by specially constituted commissions, by Government decision for works of national interest and by decision of the permanent delegation of the county council or by order of the mayor of Bucharest, for those local interest.

The presence in these commissions of some specialists in the field of activity in which the public utility work is carried out and especially of some real estate owners from the locality, chosen by lot, is likely to emphasize the democratic character of the new regulation and ensure effective protection of private property rights. Thus, they have the quality of expropriator, within the meaning of the law, the state through the bodies designated by the Government for the works of national interest and the counties, municipalities, cities and communes for the works of local interest.

From a procedural point of view, in connection with the expropriation proposals, the owners and holders of other real rights over the real estates in question may object within 45 days from the date of notification. The settlement of these objections is made by the commissions provided in art. 15 and in which the mayor's vote is predominant. Analyzing the way of setting up the commissions according to art.15 paragraph (2) respectively of 3 specialists in the field of activity in which the public utility work is executed, 3 property owners from the municipality, city or commune where the buildings proposed for expropriation are located and the mayor of the locality, but also from the competences with which they were invested, it results that these bodies must be considered as true administrative-jurisdictional authorities, which organize the effective execution of the law in their field of activity.Being an

administrative jurisdiction, it is natural that against the administrative-jurisdictional act, the interested parties should have open the appeal to the courts of administrative contentious.

Judicial control involves examining the legality of the administrative-jurisdictional act in terms of conformity with substantive requirements such as compliance of expropriation plans with documentation of public works designed, or formal requirements such as legal rules establishing the administrative procedure, deadlines, composition of commissions and the like.

Next, I will analyze the regulations of expropriation for a cause of public utility from the perspective of the judicial phase according to which the provisions of art. 21 of the law stipulate that the settlement of expropriation requests is within the competence of the county court or that of the Bucharest municipality within whose radius the building proposed for expropriation is located. The territorial jurisdiction of the court, as a court of common law, is therefore determined by the location of the real estate, and the process, initiated at the request of the expropriator, if no objection was made against the expropriation proposal or if this appeal was rejected (Giurgiu, 1997, p. 68).

The role of the court is to verify that all legal requirements for expropriation are greeted, as well as to determine the amount of compensation due to the owners or, as the case may be, the owners, other real rights holders or any known persons who can justify a legitimate interest in the proposed properties expropriated.

In our jurisprudence from the interwar period it was noted that "the court is intended to determine only whether the decision of the administrative authority, which establishes the public utility and decides the extent to be expropriated and the time in which the land is to be taken possession"[1]. The tribunal has more of the character of a court for the approval of work done by the administration, in appreciation of the formalities required by law, and cannot examine, for example, the appropriateness of expropriation or the quality and usefulness of expropriated property.

The court decision has as main consequence the transfer of the property right over the expropriated real estate in favor of the expropriator and to transform the real rights that encumber the respective property into debt rights. In practice, however, the transfer of the property right occurs only from the moment the expropriator fulfills the obligations imposed on him by the court decision, which means the

[1] High Court of Cassation and Justice, Section III, Decision no. 1451/1921, "Romanian Pandects", 1921, p. 140.

payment of the established compensation, and in the land book regions, from the moment this right is registered in the benefit of the expropriator.When the parties, or only some of them, agree only on the expropriation, not on the compensation, the court notified with the expropriation request will take note of this partial agreement and will establish the compensation by sentence[1].

Particularly important is the provision contained in art. 28, according to which the transfer of the property right over the goods subject to expropriation in the patrimony of the expropriator occurs only from the moment of fulfilling the obligations established by the court decision. In fact, as shown in the previous analysis, it is a question of the payment of compensations due to the expropriated on the basis of the constitutional principle of just and prior compensation.

In the absence of an agreement between the parties, the court shall determine the manner and term of payment of damages, which may not exceed 30 days from the date of irrevocability of the decision. At the same time, any lease ceases by right, but in order to achieve a real protection of the persons occupying the expropriated buildings as owners or tenants, the legislator conditioned their evacuation, the provision by the expropriator of a suitable living space and in the manner specified by the court in the operative part of the judgment. The issuance of the enforceable title and the possession of the expropriator is carried out later, on the basis of a decision pronounced by the court, which finds the fulfillment of the obligations regarding the compensation, not later than 30 days from the date of its payment.

From the legislative point of view, another law stipulates the legal regime of expropriation for public utility reasons regarding the achievement of objectives of national, county and local interest in this case Law no. 255/2010 on expropriation for public utility cause, necessary to achieve objectives of national, county and local interest. According to this normative act, the legislator establishes the legal framework for taking the necessary measures for the execution of construction, rehabilitation and modernization works of some objectives of public interest.

Thus, in accordance with art. 2 of this law, a series of works are declared of public utility, of which I will briefly mention some of them as follows: construction works, rehabilitation and modernization of roads and parking lots of national, county and local, as well as all the construction, rehabilitation and extension works of the public railway infrastructure, the works necessary for the development of the metro transport network and the modernization of the existing network, the works for the

[1] Law no. 33/1994 on expropriation for public utility, art. 24.

development of the airport infrastructure, as well as of the naval transport infrastructure; works in the field of water management, respectively hydrotechnical constructions and ancillary works, permanent and non-permanent water accumulations, exploitation cantons, flood protection dams, hydrometric constructions and installations, installations for automatic water quality determination, arrangement, regularization or consolidation works of riverbeds, hydrotechnical canals and diversions, pumping stations, as well as other hydrotechnical constructions carried out on water, renaturation works, rehabilitation of wetlands and ensuring lateral connectivity; construction, rehabilitation, modernization, development and greening works of the Black Sea coastal area, as well as of the tourist resorts of national interest; works of national interest for the realization, development of electricity production, transport and distribution, natural gas transmission and distribution, natural gas extraction, development, modernization and rehabilitation works of the National Crude Oil, Gasoline, Ethane Transmission System , condensate; works of national interest for the construction of permanent landfills of radioactive waste and spent nuclear fuel, resulting from the operation and decommissioning of existing nuclear and radiological installations on the national territory, mining works of national interest for the exploitation of lignite deposits, which is executed under an exploitation license by economic operators under the authority of the Ministry of Energy, Small and Medium-sized Enterprises and the Business Environment, as the line ministry[1].

Regarding the notification of the intention to expropriate the real estate, the law stipulates in art.8 that it is sent by mail to the owners, specifying at the same time the term of release of the building, which cannot be less than 30 working days. The list of real estate is made public by displaying it at the headquarters of the respective local council and on the expropriator's own website.

The expropriation decision is issued by the expropriator within 5 working days from the expiration of the terms mentioned in art. 8 and establishes an enforceable title for the delivery of the real estate, both against those expropriated and against those who claim a right related to the expropriated real estate, until the final and irrevocable settlement of the dispute related to the ownership of the expropriated real estate. Also, it is issued and produces its effects even if the owners of the buildings included in the list do not appear within the terms established in art. 8, does not present a valid title or the owners are not known, as well as in the situation of unopened successions

[1] Law 255/2010 on expropriation for reasons of public utility, necessary to achieve objectives of national, county and local interest, art. 2.

or unknown successors or in case an agreement is not reached regarding the value of the compensation (Negruț, 2020, p. 117).

According to the regulations of art. 9 para. (2) Thesis II of the law in question, the appeal against the expropriation decision does not suspend the transfer of ownership of the real estate in question. Thus, the transfer of ownership of real estate from the private property of individuals or legal entities in public ownership of the state or administrative-territorial units and in the administration of the expropriator operates by right on the date of issuance of the administrative act of expropriation by the expropriator, after recording the amounts. Regarding real estate, public property of the administrative-territorial units, which are affected by the public utility works, they pass into the public property of the state and in the administration of the representatives of the expropriators within 30 days from the notification of the administrative-territorial unit. The exceptions are the construction works of roads of county interest and those related to the development of airports of local interest. (Negruț, 2020, p. 118)

Moreover, the law contains special regulations regarding the functioning of the commission for the verification of the property right or other real rights and the granting of compensations, constituted within 5 days from the issuance of the expropriation decision by the expropriator. Thus, according to the law, the expropriated person dissatisfied with the amount of compensation may address the competent court within the general limitation period, which runs from the date on which the decision establishing the amount of compensation was communicated to him, under penalty of forfeiture, without being able to contest the transfer of ownership to the expropriator over the property subject to expropriation, and the exercise of the remedies does not suspend the effects of the decision establishing the amount of compensation and the transfer of ownership.

The jurisprudence in this matter appreciates a significant variety, the expropriation procedure for reasons of public utility being complex by the nature of the legislative framework. A good example is represented by the Decision 473/RC of June 23, 2006 of the Pitești Court of Appeal by which it was established that the administrative act must be annulled, respectively the decision no. 228/2005 of the Râmnicu Vâlcea Local Council by which the urban plan of central area and measures were proposed prior to the expropriation of a building owned by a legal entity under private law. In the present case, the court found that the judgment was adopted outside the scope of

an expropriation, without issuing a declaration of public utility, in violation of mandatory legal rules[1].

3. Conclusion

The definition of the notion of expropriation has been one of the concerns of the authors in the field of administrative law since the emergence of the notion of state and its administration, these concerns thus continuing today. In Romania in recent years, the topic is all the more current as the economic situation and consequently the social situation are inextricably linked to the development of infrastructure, the network of public roads, highways and the like.

The current legislative ambiguities and the involvement of politics in the sphere of public administration determine the realization of a detailed analysis of the main theoretical and practical problems existing in the field of patrimonial relations of public authorities and the finding of viable solutions.

By establishing principles to be followed and respected in the expropriation procedure for reasons of public utility, the legislator wanted to ensure the protection of private property against abuse and arbitrariness of public administration, this being one of the reasons why expropriation was limited in terms of purpose for which it can be done, the goods that can be expropriated, the authorities that can make expropriations and the expropriation procedure.

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*** Law no. 33/1994 on expropriation for reasons of public utility.

*** Law no. 255/2010 on expropriation for reasons of public utility, necessary to achieve objectives of national, county and local interest.