

SPECIAL LEGAL REGIME OF AGRICULTURAL LAND, FOREST LAND AND GRASSLAND

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Abstract: *Certain categories of land have a special character and, consequently, a strict legal regime, regulated by various legal provisions whose application leads, indirectly, to a restriction of the right of private property for the owners. These limitations are imposed to protect the public interest, but it is important to find a fair balance between the interests of private owners and those of the community. Through this study we will investigate which are these limitations, at European level, respectively at national level.*

Key words: *special domain regimes, land, limitation, agricultural*

1. Introduction

Although we are in the realm of the right of private property exercised by natural persons and legal persons of private law, the legislator has created certain limitations, these being justified by the specificity of the goods over which the right is exercised. In the present study we present and analyse the situation of special domain regimes, which are delimited by the administrative domain, the latter being composed of the public and private domain of the state and of the administrative-territorial units. Therefore, the situation of goods included in special domain regimes should not be confused with the situation of the administrative domain. If, in the case of the first category enunciated, there are limitations on the exercise of the right of private property and *propter rem* obligations, assumed in direct connection with the nature of the property subject to protection, in the case of the second category, these assets are subject to the principle of inalienability (Dinu, 2016, p.68).

2. Special Domain Regimes. Agricultural Lands Outside the City

For a correct application of the restrictive provisions of *Law no. 17/2014 on some measures to regulate the sale of agricultural land located outside the built-up area and to amend Law no. 268/2001 on the privatization of companies holding public and private*

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land owned by the state for agricultural use and the establishment of the State Domains Agency, with subsequent amendments and completions, it is necessary to establish a concordance with the methodological norms approved by Order 311/2020 to amend the Order - the Minister, the Minister of Agriculture and Rural Development, the Deputy Prime Minister, the Minister of Regional Development and Public Administration, the Minister of National Defence and the Deputy Prime Minister, the Minister of Culture, no. 719/740 / M.57 / 2.333 / 2014 regarding the approval of the methodological norms for the application of title I of Law no. 17/2014 regarding some measures to regulate the sale-purchase of agricultural lands located outside the built-up area and to amend Law no. 268/2001 regarding the privatization of the commercial companies that hold in administration lands of public and private property of the state with agricultural destination and the establishment of the State Domains Agency.

In practice, different interpretations of the same regulations have been found, either by notaries public, cadastre and real estate advertising offices or the Ministry of National Defence, so that the owner of the property right does not know exactly what procedure to follow for the alienation of agricultural land if it is located outside the town on a depth of 30 km from the state border and the Black Sea coast, inland, and is therefore subject to the provisions of Article 3 paragraph (1) of Law no. 17/2014 - when the alienation is made to pre-emptors, as they are defined by the same law. We are in fact referring to the obligation to request and obtain the specific approval of the Ministry of National Defence (Mocanu, 2017).

Thus, art.3 paragraph (2) of Law no.17 / 2014 establishes for pre-emptors an exception to the rule according to which the agricultural lands located outside the built-up area on a depth of 30 km from the state border and the Black Sea coast, inland, as well as those located outside the town at a distance of up to 2,400 m from the special objectives can be alienated by sale only with the specific approval of the Ministry of National Defence, issued after consultation with state bodies with responsibilities in the field of national security, through structures specialized interns.

However, the Methodological Norms of 2014 for the application of Title I of Law no. 17/2014 on some measures to regulate the sale of agricultural land located outside the built-up area and to amend Law no. 268/2001 on the privatization of companies holding public and private land owned by the state for agricultural purposes and the establishment of the State Domains Agency in order to obtain the specific approval of the Ministry of National Defence, as amended by Joint Order no. 311/2020 (entered into force on February 8, 2021), do not take the exception provided by law, thus leading to the conclusion that the opinion of the Ministry of National Defence is mandatory in all cases, whether the alienation is made to pre-emptors or, in their absence, to other persons.

According to Article 1 paragraph (1) of the mentioned methodological norms, "the specific approval of the Ministry of National Defence is issued by the General Staff, exclusively in case of free sale of out-of-town agricultural lands, based on the request made by their seller, according to the model specific, favourable or negative, provided in the annexes no. 2A, respectively no. 2B ", and according to art. 4 paragraph (1) of the same norms," in order to obtain the specific approval, the seller submits a request, according to the model provided in annex no. 2C, respectively in annex no. 2D ".

According to art. 4 of Law no. 17/2014, with subsequent amendments and completions, specific categories of pre-emptors are regulated (Prescure & Spîrchez, 2020, p.24).

In order to identify the correct answer, we mention that, by the entry into force of Law no.175 / 2020 amending Law no.17 / 2014, the provisions of art.4-art.9 were modified, so that the alienation of an agricultural land, if it is located outside the town on a depth of 30 km from the state border and the Black Sea coast, inland, as well as those located outside the town at a distance of up to 2,400 m from the special objectives, can be done by sale, *in the conditions of the existence of the specific approval of the Ministry of National Defence.*

According to the provisions of art. 16 of Law no. 17/2014, with subsequent amendments and completions, the alienation and therefore, the selling of agricultural lands located outside the built-up area without respecting the right of pre-emption, according to the provisions of art. 4-42, or without obtaining the approvals provided in art. 3 and 9 is prohibited and *is sanctioned with absolute nullity (Prescure & Matefi, 2012, p.215).*

In the context in which it is necessary to continue the measures regarding the regulation of sale-purchase of agricultural lands located outside the town on a depth of 30 km from the state border and the Black Sea coast, inland, *the seller has the obligation to obtain the specific approval of the Ministry of National Defence*, at the request of the public notary regarding the fulfilment of the provisions provided by law, at the conclusion of the sale-purchase contract (Marcusohn, 2021).

The seller is obliged to comply with the special legal regime applicable to this category of real estate, the selling being able to be done in compliance with this special destination, noted in the land book under the mention "real estate under Article 3 paragraph (1) of Law no.17 / 2014" and the right of pre-emption, according to the provisions of Law no. 7/1996, republished and of the Civil Code.

According to Order no. 700/2014 on the approval of the Regulation for approval, reception and registration in the cadastral records and real estate advertising, the conventional right of pre-emption is noted based on the document establishing the legal act by which the right was established, drawn up in authentic form.

However, in the case of alienation to pre-emptors, the prior procedure of obtaining the approval from the Ministry of National Defence is no longer necessary, given the fact that they are exempted by law from this obligation.

We also mention the fact that Law no. 17/2014 establishes certain measures regarding the regulation of the sale-purchase of agricultural lands located outside the built-up area, rules which, however, are not incidents within the forced execution procedures.

Thus, according to art. 2 para. (1) of Order no. 719/740 / M.57 / 2.333 / 2014 issued by the Ministry of Agriculture and Rural Development, the Ministry of Regional Development and Public Administration, the Ministry of National Defence and the Ministry of Culture regarding the approval of the Methodological Norms for the application of Title I of Law no. 17/2014, according to which the norms apply to the transfer of the property right realized on the basis of a sale-purchase contract authenticated by the public notary, as well as on the basis of a court decision that takes

the place of the sale contract, if the pre-contract is concluded according to Law no. 287/2009 on the Civil Code, republished, with subsequent amendments, and the relevant legislation.

3. Lands in Areas of Natural Protection

Another limitation of the exercise of the right of private property refers to the situation of privately owned lands that are in areas of natural protection or are under restrictions imposed by forestry arrangements,

According to the provisions of art.97 para. (2 ^ 1) -par. (2 ^ 2) of the Forestry Code, as they were inserted by Law no.197/2020: "*imposing restrictions on forest owners through forest arrangements, by the management plans and regulations of the protected natural areas are made only with the prior granting of reparatory payments to fully compensate the incomes not realized annually by the forest owner, natural or legal person, of public or private law. To the extent that they are not provided by European funds, the state allocates annually from the budget, through the budget of the central public authority for environmental protection, the amounts necessary for making the payments provided in par. (2).*"

In this sense, art.97 paragraph (2) of the Forestry Code regulates that the limitation of the property right over the lands from the national forest fund over the level of the forestry regime, as defined in annex no. 1 point 42, is made only with the granting of compensations, except for the situations in which the property right is limited to the initiative and by the express will of the owner.

For the implementation of these legal provisions, both art. IV of Law no. 197/2020, and art. 98 of the Forestry Code specify that the methodological norms for requesting, calculating and granting compensations and compensations provided by art. 97 of Law no. 46/2008 - The forestry code, republished, with subsequent amendments and completions, is approved by Government decision, at the proposal of the central public authority responsible for environmental protection, within 90 days from the date of entry into force of Law no.197 / 2020, namely, 11 September 2020.

However, regarding the granting of compensations for the restrictions established by the management plans of the Natura 2000 Sites, the methodological norms have not yet been published in the Official Gazette of Romania.

For the granting of compensations representing the equivalent value of the products that the owners do not harvest, due to the protection functions established by forest arrangements that determine restrictions in wood harvesting, is currently in force Government Decision no. 447/2017 on approving the Methodological Norms for granting , use and control of compensations representing the value of products that the owners do not harvest, due to the protection functions established by the forest arrangements that determine restrictions in the harvesting of wood, which is in force until December 21, 2022.

4. The Legal Regime of Meadows

A last relevant situation regulated by the legislator that we want to mention in this

study refers to the legal regime of meadows established by Government Emergency Ordinance no. 34/2013 on the organization, administration and operation of permanent meadows and to amend the Land Law nr.18 / 1991. According to art.1 paragraph (3) of the enunciated normative act, in the category of meadows are included, besides the permanent meadows out of the locality, also the forested pastures with consistency less than 0,4, calculated only for the surface actually occupied by the forest vegetation, alpine pastures and pastures located in the floodplains of rivers and in the Danube Meadow and the "Danube Delta" Biosphere Reserve.

Therefore, the notion of meadow is synonymous with that of pasture, the lands that are found in the cadastral and land book documents under the latter name being also subject to the legal regime regulated by the Ordinance no. 34/2013, according to its provisions. Thus, art.2 defines pastures and hayfields as "agricultural areas registered in the property deeds with these categories of use, which are intended for the production of feed, grass and other herbaceous plants for animals, harvested by mowing or capitalized by grazing".

The meadows outside the built-up area cannot be permanently or temporarily removed from the agricultural circuit, according to art. 5 of the O.U.G. nr.34 / 2014.

Exceptions to this rule are expressly delimited:

- a) the location of the objectives of national, county or local interest, declared of public utility, under the conditions of the legislation in force;
- b) the establishment of new capacities for the production of renewable energy, in accordance with the law, which should not affect the good exploitation of the meadows;
 - b1) the installation of underground or above-ground physical infrastructure elements, necessary for the support of public electronic communications networks;
- c) works regarding defence, public order and national security, declared of public utility under the conditions of Law no. 33/1994 regarding the expropriation for a cause of public utility, republished;
- d) operations and works related to the exploration, development, exploitation of crude oil and other natural mineral resources, carried out on the basis of oil concession agreements, operations and construction works related to them and operations related to extraction, storage, processing, transport, distribution and marketing of crude oil production and natural mineral resources;
- e) reconstitution of the property right under the conditions of Law no. 165/2013 on the measures for finalizing the process of restitution, in kind or by equivalent, of the buildings abusively taken over during the communist regime in Romania, with subsequent amendments and completions;
- g) works within some local / county / regional development programs initiated by the local public administration authorities.

Therefore, the holders of the property right over the meadows outside the built-up areas cannot change the category of use of these lands, as they cannot be used to build buildings, for example, and cannot be transferred, in principle, to the built-up areas of the localities.

The introduction of permanent meadows in the built-up areas and the removal from the agricultural circuit is done with the approval of the Ministry of Agriculture and Rural

Development, only based on the building permit and in compliance with the obligation of the administrative-territorial unit to maintain permanent grassland at local, county or national level. as registered on 1 January 2007.

An interesting aspect is the one according to which the legislator opted for different ways of capitalizing on the meadows that are part of the public domain, respectively in the private domain of the administrative-territorial units. Thus, if the meadows in the public domain can be leased or rented, for a period between 7 and 10 years, the meadows in the private domain can only be rented for the same period, by direct award, under the conditions established by Law no. 287/2009 on Civil Code, with subsequent amendments and completions.

However, this differentiation is natural and, although earlier, as a regulation, the Government Emergency Ordinance no. 57/2019 on the Administrative Code, consistent with the provisions of the latter, but also with those of the Civil Code. In this context, the exclusive reporting of public goods to the legal institution of the concession is reiterated, as we have argued in other specialized works.

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