

HISTORICAL LANDMARKS ON THE EVOLUTION OF THE RIGHT OF PREEMPTION IN ROMANIAN LAW

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Abstract: *Preemption is a pre-sale state of affairs enhancing the right to buy before others. From its roots in Roman law and medieval customs to its codification in the 19th century, suppression during the Communist era, and revival in the post-Communist period, preemption has played an important role in regulating property transactions and preserving the integrity of land ownership. The evolution of the right of preemption in Romanian law reflects broader social, economic, and political changes in the country's history.*

Key words: *history, right, preemption, Romanian law.*

1. Introduction

The right of preemption, or “*dreptul de preempţiune*” in Romanian, is a legal concept that grants certain individuals or entities the privilege to take priority over others in claiming land subject to preemption (Black 's Law Dictionary, 2019, p. 1427) or, in another words, to purchase property before others can.

The origin of the word comes from Latin *emptio* meaning purchase or the act of buying and *pre* meaning before, previous. So, *pre-emption* or *preemption* is a pre-sale state of affairs enhancing the right to buy before others.

Strictly legal, the right of preemption is a subjective civil, legal or conventional right, which gives preference to some persons, holders of the right, to buy a good, at an equal price, when its owner sells it. In short, the right of preemption manifests itself as a legal mechanism established by law or convention in order to protect public or private interests.

One of the fundamental reasons for the existence of this right is to prevent the fragmentation of land, in particular in the context of agricultural or family property. Giving co-owners, family members or neighbors a priority right to purchase avoids excessive division of property, thereby ensuring that the ownership of land is not excessively fragmented.

This essay will explore the historical development of the right of preemption in Romanian law, focusing on its origins and development.

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2. Evolution of the right of preemption in Romanian Law

2.1. Roman Era

The right of preemption has deep roots in ancient legal systems, including Roman law.

In the Roman Empire, the principle of *ius protimiseos* introduced by *Corpus Iuris Civilis* (529-534) at the request of emperor Justinian allowed certain individuals, often neighbours or family members, the opportunity to acquire property before it could be sold to external parties at the same price within two months. This early version of preemption was designed to preserve the integrity of land ownership within specific social groups or families.

2.2. Medieval period

The origins of the right of preemption can be traced to customary law in the medieval period. At that time, property transactions were closely regulated by local customs, which sought to maintain the cohesion of family estates and local communities.

Land, being the most important economic resource, was not easily alienated. Customary law recognized the preemptive rights of family members and co-owners, ensuring that land would remain in the hands of those with a vested interest in its preservation (Cernea & Molcuţ, 1996, p. 101).

The medieval period in Romanian history, particularly in the regions of Wallachia and Moldavia, played a crucial role in the development of the right of preemption (*dreptul de preempţiune*). This era was marked by the consolidation of feudal systems and the emergence of local customs that governed property rights.

The right of preemption, during this period, became an essential tool for preserving the social and economic fabric of communities, ensuring that land remained within local families or communities.

In medieval Romania, the social and economic structure was primarily based on feudalism. Land ownership was the foundation of power and wealth, with the land being divided into large estates owned by the nobility and the church. The peasants worked the land, often under the system of serfdom, with limited rights to the land they cultivated.

The right of preemption in this context was not a formalized legal concept as we understand it today but rather a customary practice that reflected the need to preserve the unity of estates and the local community's control over land.

Given the importance of land in maintaining feudal authority and economic stability, the transfer of property was strictly regulated through customary laws. These customs passed down orally and practiced by the local population, prioritized keeping land within the family or local kinship groups.

Romania's medieval legal system was predominantly based on *jus valachicum*, the customary law of the Vlach (Romanian) population, which was distinct from Roman law and other European legal traditions. This body of law included principles related to land inheritance, property transactions, and preemption.

The right of preemption in medieval Romanian customary law primarily applied to two key groups: family members and neighbours or co-villagers.

When a landowner intended to sell or transfer property, family members were granted the first opportunity to buy the land. This custom was deeply rooted in the idea that family estates should remain intact and that land should not be alienated from the bloodline.

In the case of land situated within a village, neighbouring landowners were often given preemptive rights. This was intended to prevent outsiders from acquiring land and disrupting the local social and economic order. The village community, being tightly knit, relied on these customs to maintain cohesion and prevent external influence over local resources.

These preemptive rights were not only a matter of economic concern but also had social and political implications. By keeping land ownership within the family or local community, the ruling elite and local leaders (known as *cneji* and *jupani*) could maintain their influence over the peasant population and ensure that land-related disputes were minimized.

The medieval church also played a significant role in the exercise of preemption rights. As a major landowner, the Orthodox Church held vast estates throughout Wallachia and Moldavia. The church's influence in local communities meant that it often acted as a mediator in property transactions, ensuring that customary laws were respected.

In some cases, the church itself enjoyed preemptive rights over land being sold. This was particularly true in situations where land was located near ecclesiastical properties. By exercising these rights, the church could expand its holdings while ensuring that the moral and spiritual authority it wielded in local communities was reinforced. Moreover, the church's role in maintaining written records of transactions gave it a legal advantage in asserting these rights.

The right of preemption during the medieval period also served to reinforce the relationship between the nobility and the ruler of the Romanian Principalities. Land was granted to the nobility in exchange for military and political loyalty, and maintaining control over these estates was essential for both the nobility and the ruler.

When a member of nobility sought to sell land, preemption rights could be exercised by other members or even by the ruler himself. This practice was particularly prevalent in situations where the sale of land might disrupt the balance of power among the nobility or weaken the ruler's authority. By allowing a trusted ally or relative to acquire the land, the nobility could strengthen their familial and political networks, while the ruler could ensure the stability of his realm.

Medieval inheritance laws in Romania further reinforced the principle of preemption. These laws, governed by custom, favored the transmission of property within the family. Sons were generally given priority in inheriting land, although daughters could also inherit under certain circumstances, particularly if there were no male heirs.

The principle of preemption came into play when heirs sought to sell their inherited land. Family members, particularly siblings and close relatives, had the first right to purchase the property. This ensured that estates were not fragmented and that family

wealth was preserved across generations. In some cases, disputes over preemptive rights could lead to lengthy legal battles, as land ownership was closely tied to social status and political power.

Both customary law in Wallachia and Moldavia and Hungarian and Saxon (written) law in Transylvania have regulated the right of preemption in favour of relatives, neighbours and co-owners, to which was a right of redemption, in case the rules of pre-emption were not respected.

In a nutshell, the right of preemption in medieval Romanian law was an essential mechanism for regulating property transactions and preserving the social and economic order of feudal society.

Rooted in customary law, it reflected the priorities of medieval communities, which valued the preservation of family estates, the cohesion of local communities, and the stability of the feudal hierarchy.

While the right of preemption in this period was not codified in the way it would later be under modern legal systems, it nonetheless played a crucial role in shaping the development of property law in Romania. Its legacy can be seen in the formalization of preemption rights in later centuries, as Romania transitioned from a feudal society to a modern nation-state.

In the medieval era, however, the right of preemption was a tool of both social preservation and economic necessity, ensuring that land—the most valuable resource of the time—remained within trusted hands.

2.3. The right of preemption in the 18th and 19th centuries

In the 18th and 19th centuries, Romanian law began to develop more formal rules regarding the right of preemption. This period, characterized by the rise of the Romanian Principalities of Wallachia and Moldavia, saw the codification of many traditional legal principles.

In the 18th century, there is a strong Byzantine influence on this right of priority. It is precisely the name of *protimis* that emerged as an expression of the influence of the Romano-Byzantine influence in Romania in the 18th century.

During this period, *protimisis* was defined as a legal right, enforceable erga omnes, by virtue of which persons who were in certain durable relations of solidarity with the owner who was under an encumbrance to alienate his property to a third party (kinship, affinity, neighbourhood, etc.) could acquire the thing itself or its use, paying the price of alienation and thus being preferred to the foreign acquirer.

In Wallachia and Moldavia, the preemption right was increasingly recognized in the sale of agricultural land. Large estates, known as *moşii*, were often passed down through generations, and the right of preemption was a key tool in ensuring that land did not fall into the hands of outsiders. It was primarily family members or neighbouring landowners who enjoyed this right. Preemption during this period was not only a matter of private property law but also had a social function—keeping land within a closed circle was viewed as essential for the preservation of wealth and social status.

The most significant transformation of the right of preemption in Romanian law came with the adoption of the Civil Code of 1864, under the reign of Alexandru Ioan Cuza.

This code was heavily influenced by the Napoleonic Code and other European legal traditions, reflecting Romania's efforts to modernize its legal system and align it with Western Europe. Under this new legal framework, preemption rights were extended to co-owners of property, neighbours, and tenants in certain cases.

2.4. Lost and revival of the right of preemption

Romanian law experienced profound changes during the Communist era, which began after World War II and lasted until the 1989 revolution. The Communist regime imposed a centrally planned economy, leading to the nationalization of private property and the suppression of individual property rights, including preemption.

During this time, land reform policies dismantled large private estates, and the state became the dominant landowner. The right of preemption, as it was previously understood, lost much of its relevance as private land ownership was restricted. The state itself, however, became a preemptive buyer of sorts, as it held the power to nationalize and redistribute land in the name of collective ownership and economic equality.

During this period there was no preemptive right regulated in the Civil Code applicable at that time and, moreover, there was no provision relating to the preemptive right in other special legislative acts.

After the fall of the Communist regime in 1989, Romania embarked on a process of legal reform and the restoration of private property rights. The right of preemption was reintroduced in the post-Communist period, as part of a broader effort to re-establish private land ownership and encourage the development of a market economy.

The current Romanian Civil Code, adopted in 2011, regulates the right of preemption in the provisions of art. 1730-1740. The provisions of the Civil Code constitute a common law applicable to all legal or conventional preemption rights.

The specific provisions on the right of pre-emption outlines the conditions under which preemption can be exercised. It applies primarily to co-owners of property, tenants, and neighboring landowners, echoing earlier practices while adapting to modern legal and economic realities.

In the post-Communist period, the right of preemption has taken on new significance in the context of agricultural land transactions.

The Romanian state, in particular, has been granted preemptive rights in the sale of agricultural land. This is intended to prevent excessive foreign ownership of Romanian farmland and to ensure that land remains in the hands of Romanian citizens and businesses.

The state's preemption right serves as a tool to promote national interests in the agricultural sector, reflecting broader concerns about food security and national sovereignty.

Subsequently, we could observe an explosion of pre-emptive rights in the most varied and diversified fields of application, including franchising, agricultural land, privatization, expropriation, business etc.

3. Conclusions

The evolution of the right of preemption in Romanian law reflects broader social, economic, and political changes in the country's history.

From its roots in Roman law and medieval customs to its codification in the 19th century, suppression during the Communist era, and revival in the post-Communist period, preemption has played an important role in regulating property transactions and preserving the integrity of land ownership.

The right of pre-emption is established for a variety of reasons, all aimed at protecting legitimate interests - either of the family, the community, the state or persons with direct economic links to the property. This right provides stability, continuity and protection against alienation of the property outside the circle of persons or entities that have a primary interest in acquiring it.

Today, the right of preemption continues to be a significant legal instrument in Romania, especially in the context of agricultural land sales. It serves as a bridge between traditional legal principles and modern economic concerns, ensuring that property transactions take place in a manner that reflects both individual rights and the broader interests of society.

References

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