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Some Theoretical-Practical Considerations Regarding Land Estate in the Republic of Moldova

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Abstract: This article examines patrimony and especially land estate in the Republic of Moldova. Our approach is important because the issues of patrimony and property, of forms of property, have been the subject of heated contradictory discussions for centuries. These controversies were and are substantiated, even more, they continue to be fueled by a complex of economic, philosophical-religious ideas, theories and conceptions. The domain issue in general and land in particular, which in our opinion is part of the domain of the institution of patrimony and the institution of property, is part of the category of topics that have sparked fierce discussions and controversies among public law theorists, starting from the century. XIX

Keywords: patrimony; land patrimony; property; private property; public property; domain; land fund

1. Introduction

The analysis of a fundamental legal concept, of great complexity, such as that of "patrimony", implies as a priority the knowledge of the conditions and processes through which it came into being, was formed, developed and last but not least, the ways in which it was imposed and has been accepted by most legal systems, be they ancient, modern or contemporary.

As a fundamental landmark of legal theory and practice, patrimony constitutes one of the most important concepts specific to the private domain, with the widest applicability. Imposing itself, thus, since the "beginnings of law", more precisely during the period when, within the ancient Roman state, legal relations were considered to have a sacred nature, the concept of patrimony transcribed history to place itself at the foundation of the legal system modern private (Duțu, 2013, p. 6).

The changes in the political, legal, economic and social reality, which occurred after the independence of the Republic of Moldova, conditioned changes in the field of public patrimony as well as private patrimony, in the field of property, including in the field of land ownership in terms of approach, attitude, responsibilities and competencies. The transition to the market economy meant the change and bringing back into use the terms private patrimony and property and public patrimony and property, trained in free competition.

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These new realities forced the state authorities to act quickly in order to ensure the necessary legal instruments for the administration and use of public property in the most efficient way, taking into account the general interests of society. Over the years, several legislative - normative acts have been approved that regulate the way of recording, management, use and administration of public patrimony. However, local public authorities and other factors of interest at the local level continue to face a multitude of economic-legal, financial, institutional, organizational difficulties in the administration of public patrimony (Bulat, 2018, p. 11).

There are still many cases, when assets, including public patrimony lands, are not managed and used in the most efficient way; not all goods from the public patrimony are taken into account, they are not subject to inventory; their state registration is not ensured; not all possible economic-legal means are used to ensure their efficient use and putting into use. As a result, many of the assets that are part of the public patrimony have been privatized in violation of the legal provisions, the value of public property assets is unjustifiably reduced, revenues in local budgets are missed, opportunities are missed to develop public property, to increase its value, including through assistance programmes, financed from the state budget or with external financing.

Immediately after the declaration of independence of the Republic of Moldova, extensive activity was initiated to create the legal framework intended to regulate the privatization process and the right to land ownership. In 1992, during the massive redistribution of state property, the essential shortcomings of the former land patrimony registration system were highlighted. During the years 1995-1996, the situation that was created in the field of the land fund was analyzed, the registration of immovable assets, including the land as an asset that is part of the land fund of the Republic of Moldova, and the world experience in this field was studied, being examined positive particularities and possible problems regarding the creation of the unique information system of immovable objects and the register of rights over this object. In that period, there was a lack of legal basis in the field of registration of rights over real estate, which caused a dose of mistrust regarding the security of property rights. There is a complicated procedure for transferring land sectors into ownership (Buzu & Guțu, 2010, pp. 106-127).

2. Main Text

The problems of patrimony and property, of the forms of property, have been the subject of heated contradictory discussions for centuries. These controversies were and are substantiated, even more, they continue to be fueled by a complex of economic, philosophical-religious ideas, theories and concepts (Pop, 2001, p. 89).

The domain issue in general and land in particular, which in our opinion is part of the domain of the institution of patrimony and the institution of property, is part of the category of topics that have sparked fierce discussions and controversies among public law theorists, starting from the XIX century.Science tried to systematize in a coherent way the dominant theories, on historical stages and to integrate them into an articulated and argued discourse, including on the basis of the context of their affirmation. The notion of domain (etymologically –*dominion*) was used to denote the assets of someone who holds public power – king, state, public power (Bălan, Iftene & Văcărelu, 2016, p. 118).

The opinions expressed at the end of the 19th century and in the first half of the 20th century regarding patrimony or the public and private domain (including land patrimony) are considered classic opinions, being grouped into four large categories, according to the solution they give to the problem of public domain or public patrimony, respectively according to the answer given to the question „what is the

domainiality criterion?". From this point of view, several theories have been formulated in the specialized literature.

*The theory of general use and the non-existence of a property right.*This theory was supported both by the generation at the end of the 19th century and by the generation that asserted itself in the first decade of the 20th century, reaching maturity in the interwar period. In Romania, this theory was promoted by G. Hamangiu, being focused on two main ideas: the public domain includes goods that are affected by the use of all and the administration does not have a property right over these goods. This theory admits the existence of some assets over which the administration has a property right, in the fullness of its attributions, but the respective assets form another domain - the private domain of the administration (Băncioi, Zaharia, 2014, p. 81-91).

*The theory of property rights.*The civil theory of the property right of the state administration over the public domain is supported mainly by the French, by Planiol and Josserand, and in Romania by A. Ionaşcu. These authors admit a property right of the state administration over the public domain, rejecting the idea that public domain goods would not be susceptible to private ownership. According to this theory, the public domain is made up of the goods affected for the use of all, inalienable and non-prescriptible goods, in contrast to the goods in the private domain of the administration, which are not affected for the use of all, being alienable and prescriptive. This theory tries to classify theoretical disputes by expanding the notion of public domain, institution of public law, a traditional category of private law. In this sense, the "monopoly" tendency on the legal thinking of civil law is noticeable. Such solutions were also possible due to the lack of convincing theories in public law, and the theories in administrative law became convincing only after the public service category was substantiated.

*Public service theory of public law authors.*The foundation in traditional French law of the notion of public service cannot remain without consequences in terms of the theory of the public domain, imposing itself in particular through the works of Gaston Jeze, the thesis according to which "all movable and immovable goods affected by a service belong to the public domain "public". Gaston Jeze elaborates this theory in the context of "the general theory of the collaboration of individuals in the functioning of public services". He always makes a distinction between normal use and abnormal use of the public good, between a licit and an illicit use, even if it is covered by a formal authorization of the public authority. The author shows that not every abnormal use authorization is illegal (Adam, 2000, p. 25).

*General interest theory.*The theory of the general interest, also supported by the authors of public law, has as its starting point the idea that goods in the public domain are affected by a general interest, for this reason they are subject to a special, exorbitant legal regime. Unlike these goods, those in the private domain are not subject to a general interest, and consequently, the regime of private law is applied to them.

In conclusion, the property can be public or private, it can be part of the public domain or the private domain, and each of these can be of national or local interest.

It should be noted that the notions of public property and public domain, respectively private property and private domain, are not synonymous. Property is a legal institution, and the domain represents a totality of goods that are the object of ownership (Bălan, Iftene & Văcărelu, 2016, pp. 118-119).

Also, it should be remembered that the sphere of patrimony is much wider than that of the public domain, it also includes the private domain, as well as the rights and obligations of a patrimonial nature. It can be said that the relationship between the domain and heritage is one that designates the domain as the main constitutive element of heritage.

The land resources or the land that are part of the land heritage or the land fund represent the largest part of the national wealth and belong to the people who process it. It is used in all branches of the national economy.

More than that, the management of the land fund includes a wide spectrum of public relations: social, economic, legal, ecological and other types of management. For this reason, the management of land resources represents a systematic, conscious and strictly directed action of the state and society regarding land relations. This action is based on the knowledge of economic laws in order to ensure the functioning of the country's land resources in a rational and efficient way. By efficient use of the land is meant the most efficient way (from the point of view of ensuring the needs of the state and society) of using the land, taking into account the concrete natural, economic, social and political conditions in accordance with the existing principles of society's interaction with the nature.

Thus, the ownership right over the land is a real right that gives the owner, including the state of the Republic of Moldova and the administrative-territorial units, the real possibility to use the land according to its nature or destination, to use and dispose of it exclusively and perpetually, within the limits established by law, law and order and good morals.

Norms regarding land ownership, land ownership rights, land ownership forms, public property and public property rights are contained, in particular, in the Constitution of the Republic of Moldova of July 29, 1994 and many other legislative acts such as the Civil Code of the Republic Moldova (LP no. 1107/2002), Land Code of the Republic of Moldova (LP no. 828/1991), Basement Code of the Republic of Moldova (LP no. 3/2009), Forestry Code of the Republic of Moldova (LP no. 887/1996) , the Water Law (LP no. 272/2011), the Law on the administration and denationalization of public property (LP no. 121/2007), the Law on public property lands and their delimitation (LP no. 91/2007), the Law on local public administration (LP no. 436/2006),Law on public property of territorial administrative units (UAT) (LP no. 523/1999) and other normative acts.

As we see, in art. 9 of the Constitution, the legislator declared that property is public and private without specifying whether these are forms or types of property rights. Instead, in art. 127 para. (3) the Constitution talks about one of the forms of property rights - the public one. A first conclusion, which would be necessary here, is that currently in the Republic of Moldova, private property and public property are recognized and regulated, which, in our opinion, are forms of property rights.

The property right in the Republic of Moldova, unlike the legal framework of some other states, is recognized to be „perpetual" (paragraph (2) of art. 500 Civil Code), which proclaims the stability and durability of property relations in The Republic of Moldova, considering that also the Civil Code of the Republic of Moldova (paragraph (2) of art. 501) unequivocally establishes that the right to property in the Republic of Moldova „is guaranteed", and property, under the terms of the law, „is inviolable" (par. (1) of art. 501 Civil Code). However, despite the fact that the property right is perpetual and guaranteed, this right „may be limited by law or by the rights of a third party" (paragraph (3) of art. 500 Civil Code), including in case of expropriation for cause of public utility of privately owned lands (art).

The Land Code of the Republic of Moldova recognizes public and private ownership of land, and the state is obliged to equally protect both types of ownership (art. 3). There are a number of ways of differentiating between private property rights and public property rights. According to art. 4 of the Land Code of the Republic of Moldova, land owners are mentioned: citizens of the Republic of Moldova and foreign investors, but the state of the Republic of Moldova, foreign states, UTA, but also legal entities under private law of the Republic of Moldova are not mentioned as land owners those from abroad.

A gap that we mention is the fact that the Land Code of the Republic of Moldova only mentions public ownership of land in a very, very general formula as a form (*type)* of property, state property and municipal property over land are very vaguely mentioned, but it does not provide for the property right of the other administrative-territorial units over land. More than that, in the case of the other administrative-territorial units (villages, communes, cities), only the administration right of the „local self-administration bodies" is established, but not their ownership right over the lands (art. 42 Land Code). Apart from the above, the Land Code does not mention the existence of land in the public domain, nor the land in the private domain of the UAT, nor of the state.

The legal regime of public owned lands in the public domain. The civil circuit of the lands of the public domain, either of the state or of the UAT, is limited or totally prohibited, as the case may be. According to art. 5 of the Law of the Republic of Moldova regarding the delimitation of public property (LP no. 29/2018) public domain lands are: 1) inalienable; 2) imperceptible; and 3) non-prescriptive, because: a) they cannot be alienated or deposited in the social capital of legal entities; b) cannot be subject to compulsory prosecution; c) they cannot be included in the debtor's mass in case of insolvency/bankruptcy of the legal entity; d) they cannot be the object of a real guarantee; e) they cannot be acquired by natural or legal persons through usufruct.

*The inalienable nature of public domain lands.*The inalienable character consists in the fact that the lands of the public domain, including property of UAT: a) are removed from the general civil circuit of goods, because they cannot be privatized, they cannot be alienated by civil legal acts (sale, purchase, etc.) nor by expropriation; b) acts of alienation, privatization, sale-purchase of public domain assets are null and may be declared null at any time and under any circumstances.

*The imprescriptible nature of public domain lands.*The non-prescriptive character of the lands of the public domain is the consequence of the inalienability of the goods, of the fact that they are removed from the civil circuit and is manifested by the fact that: a) the property right of the state or the UAT is not extinguished by prescription, with the passage of time, either 5, either 15 or hundreds of years; b) the imprescriptibility makes it possible at any time, from a legal point of view, for the state, by the UAT, to submit a claim action; c) the state's or UAT's right to action does not expire over time, even if it has not been exercised by the public authority for a long period (be it tens or hundreds of years).

The imperceptible nature of public domain lands. Public domain lands are unnoticeable because they cannot be pursued by creditors for state or UAT debts. The content of intangibility also includes the prohibition of creating guarantees on public goods. The pledging/mortgaging of goods from the public domain of the state or the UAT is prohibited (Teacă, 2015).

Public owned lands of the state represent a part of the public patrimony of the Republic of Moldova that belong to the Republic of Moldova by right of ownership, the right of possession, use and disposal over which is the competence of the Government. According to art., it refers to the category of public property of the state. 4 of the Law of the Republic of Moldova on public property lands and their delimitation (LP no. 91/2007) and art. 9 of the Law regarding the delimitation of public property (LP no. 29/2018): a) lands of institutes and scientific research stations, of agricultural and forestry education units, intended for research, production of seeds and planting material from the biological categories, as well as obtaining purebred animals; b) the lands included in the List of units whose lands intended for agriculture remain state property, approved by the Parliament; c) the lands of the forestry fund, public property of the state; d) the lands of the water fund public property of the state, including the lands of the surface aquatic objectives located on the territory of two or more districts, or located on the territory of a single district and intended for the protection of the energy system, the lands of the border aquatic

objectives; lands declared natural areas protected by the state; e) the lands related to the buildings where the ministries, other authorities of the central public administration, the institutions subordinate to them carry out their activity; f) the lands occupied by national roads, including road plantations, bridges, viaducts, uneven passages, tunnels, of defense and consolidation constructions, and consolidation, parking and stationary places and other facilities for road traffic safety, railways and their protection zones, the lands occupied by national and international gas transport pipelines and the lands on which they are place the pylons of high voltage electric transmission lines from other transmission networks owned by the state; g) lands intended for nature protection, including natural areas protected by the state, health protection, recreational activity and lands of historical-cultural value that are of national public interest; h) the lands intended for defense needs, the needs of border guards and internal troops, other lands used to ensure the security of the state.

The public property lands of the administrative-territorial units represent a part of the public property lands that belong by right of ownership to the administrative-territorial units of the Republic of Moldova, the right of possession, use and disposal over which is the competence of the local public administration authorities. The category of public property of the administrative-territorial units refers to: a) the lands in the use of the local public administration authorities; b) lands related to privatized objects or subject to privatization, including lands related to unfinished constructions, as well as lands related to objects from the leased non-inhabitable real estate fund; c) the lands related to buildings and other constructions transferred into private ownership on account of the value shares, according to the legislation on privatization; d) lands assigned for use or leased to private enterprises, established outside the process of privatization of public patrimony; e) forested lands, forest strips, lands intended for water retention, anti-erosion measures, ecological corridors and other environmental protection purposes; f) lands related to objects of social-cultural purpose, public property of administrative-territorial units, lands for public use (markets, streets, passages and other lands used for communication routes, parks, public gardens, squares, lands used for cemeteries and other needs of the local communal household); g) lands intended for road, rail, naval, air transport, through pipelines, for telecommunications and electricity transmission lines, for mining operations and for other industrial needs of the local public administration authorities; h) the non-privatized lots of fruit orchards; i) the lands of the reserve fund of the town halls, communes, cities, municipalities; j) the lands of suburban areas and green areas; k) lands occupied by ponds (reservoirs). i) the lands of the reserve fund of the town halls, communes, cities, municipalities; j) the lands of suburban areas and green areas; k) lands occupied by ponds (reservoirs). i) the lands of the reserve fund of the town halls, communes, cities, municipalities; j) the lands of suburban areas and green areas; k) lands occupied by ponds (reservoirs).

The transfer of lands from the public property of the state to the public property of the administrative-territorial unit is made by decision of the Government, with the consent of the respective local council.

The goods of the private domain of the state or of the UAT are the goods that are not part of the public domain of the state or of the UAT, but which belong to the state, village, commune, city, municipality, district, UTAG.

The legal regime of the lands of the private domain of the state or of the UAT. The lands in the private domain of the state or of the UAT, according to art. 6 of the Law of the Republic of Moldova on the delimitation of public property (LP no. 29/2018), as opposed to the assets of the public domain, are:

Alienable (they can be included in the general civil circuit of goods and can be subject to expropriation, like the goods privately owned by citizens);

Prescriptions (the statute of limitations for filing a claim action, etc. applies);

Noticeable (can be pursued by creditors for state or UAT debts).

Thus, the assets of the private domain of the state or of the UAT: a) can be alienated/privatized, except in the cases expressly provided by law; b) can be pursued by creditors for the debts of the state or of the UAT: c) can be the subject of a pledge/mortgage or other real guarantee; d) can be acquired by third parties through usufructuary/prescription (after 5 years of possession, in the case of movable assets and after 15 years of possession, in the case of immovable assets).

The government can decide to transfer goods from the private domain of the state to the public domain of the state, as well as from the public domain to the private domain of the state. The respective local council can decide the transfer of goods from the private domain of the UAT to the public domain of the UAT, as well as from the public domain to the private domain of the UAT.

More than that, the Republic of Moldova is part of the group of states that recognize the duality of property rights of local communities: local public property and local private property. However, currently it can be stated that the formation (constitution) of the separate and distinct land patrimony of the administrative-territorial units, the mechanism and the legal modalities for endowment of the local public authorities with the patrimonial resources necessary for the performance of their tasks and attributions, in the context of the consolidation of local autonomy, represents an among the most complex and controversial theoretical-practical problems in the Republic of Moldova (Furdui, 2004).

We believe that in the current legal realities, it is absolutely necessary for the Land Code of the Republic of Moldova to indicate as forms of public property both state property and UAT property, as well as the fact that both state-owned lands and privately owned lands of the UAT, are part, depending on the degree of socialization, both of the public domain and of the private domain of the state, and, respectively, of the respective UAT.

Conclusions

Considering the above, it turned out that the Land Code of the Republic of Moldova is not without several shortcomings, gaps and contradictory provisions, among which we mention:

- the lack of clear provisions to ensure the scientific, rational and efficient administration and management of publicly owned lands in their entirety;

- the lack of provisions providing for the delimitation of state-owned lands from UAT-owned lands;

- nor does it mention the lands owned by the state or the UAT that are part of the public domain, nor those in the private domain, which can create major confusion in the process of administration and management of publicly owned lands, including and first of all, lands owned UAT that are part of the public domain;

The Land Code of the Republic of Moldova generally mentions only public ownership of land, but:

- without indicating as forms of public ownership: state ownership and UAT ownership of land;

- without indicating the existence of the lands owned by the state, but also owned by the UAT, which are part of the public domain and the private domain of the state, and of the UAT, respectively.

Considering the fact that several provisions of the Land Code, in several respects, are not in accordance with the provisions of the Civil Code of the Republic of Moldova, the Law on administrative

decentralization (LP no. 435/2006), the Law on local public administration (LP no .436/2006), Law on public property lands and their delimitation (LPno. 91/2007),so that several contradictory provisions are contained, a radical solution would be the elaboration and adoption of a new Land Code in a new wording.

The legal and other guarantees of the right to land ownership, including the right to public ownership, are also contained in many other laws of the Republic of Moldova which, in their totality, allow us to affirm with all certainty that the right to property in the Republic of Moldova, at least, from the point of view of the legal framework, it is protected by the state and guaranteed by the law, and, first of all, by the Constitution of the Republic of Moldova.

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