

INTERPRETATIVE DIMENSIONS ON OBJECT OF PUBLIC PROPERTY

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Abstract

In accordance with Art. 1 of the Law of administrative decentralization¹, the competences of local public administration authorities represent all rights and duties of local authorities in the areas of activity that are established for them. In order to achieve its competences, local authorities have in handy institutional financial, human and respectively *property* resources. All of them determine the administrative capacity of the each authority.

Through art. 4 of the European Charter of Local Autonomy, is established the principle of subsidiarity, and it is stipulated that local authorities have, within the law, the entire competence of taking the initiative in any matter which is not excluded from their competence or is not assigned to another authorities.

Thus, the exercise of public power should be shared by those authorities which are close to the citizens, and the responsibilities which are assigned to local authorities shall normally be full and complete. Or, as stated by a French decree of 1852 it can be governed from afar but it can be managed only from close.

Keywords: Law of administrative decentralization, the competences of local public administration authorities

There is the issue of determining the sphere of the goods which constitutes the object of public property and are therefore a part of public domain of the state or territorial-administrative units.

Analyzing the regulations in force, primarily we find that those categories of goods listed by the Constitution or law are the objects of public ownership. The approach of this problem requires some clarifications:

1. The first normative act from which we should begin our discussion, is the fundamental law;
2. The remaining normative acts which delimit this area are either prior or subsequent to the Constitution;
3. The prior normative acts to Constitution will be analyzed by reference to the fundamental law, namely those which complete by interpretation the places where the legislative act is vague or confusing.

Constituent legislature of the Republic of Moldovain terms of determining the sphere of public property, expressly provides that a good of public property can not be find out only in state ownership or in the ownership of administrative-territorial units (art. 127 paragraph 3 of the Constitution of the R. M.).

Thus we see that the implicit criterion of distinction between goods that will constitute state property and those which will include in the sphere of public property of

¹ Legea nr. 435 din 28.12.2006 privind descentralizarea administrativă, Monitorul Oficial al RM, nr. 29-31 din 02.03.2007.

the territorial-administrative units, is the interest of the respective good, i.e. the *public interest*.

Moreover, we find no delimited sphere of goods that constitute public property of the state and that of administrative-territorial units.

This was regulated by organic law, the law that was adopted only in 2007, namely the Law of public property lands and their delimitation (*Legea nr.91 din 05.04.2007*).

At the art.127, paragraph 4 of Constitution of the Republic of Moldova, we find the following techniques (provisions):

1. The specific determination of the category of concerned goods: it is about air space, ways of communication etc.

2. Specification of the genre and the mission to determine the species will be entrusted to the organic legislature – we do not find lined land, air, naval, ways etc. Any means which receive the destination of the mean of communication is circumscribed to the sphere of public domain property.

3. The use of "public interest" as the decisive criterion for belonging to the public domain: *"waters and forests that can be used in the public interest"*.

4. The norm of reference to an organic law, through which the sphere of public property goods can broaden *"as well as other goods established by law"*. The norm of reference to an organic law, through which the sphere of goods of public property can broaden: *"and other assets established by law"*.

We note that art.127, paragraph 4 of the Constitution of Republic of Moldova speaks only of law, without specifying what kind of law is all about, its organic character results from the combination of art.127, paragraph 4 and art. 72, paragraph 3, letter i of the Constitution, namely, by the organic law is provided *"...the legal status of the property..."*.

In conclusion we can note the following:

a) The constitutional text does not exhaust the field of public property goods, the listing has illustrative and not limiting character;

b) The general criterion was preferred by the legislature, because it allows for the future the possibility of including of more and more goods, which can be considered as a "species" and to extend the scope of these goods.

The right of public property represents one of the forms of the right of property, which consists both of general characteristics, specific to the right of property, namely, the *absolute, perpetual, exclusive* character and of specific features that are designed to ensure the compliance of destination of the goods which form its object.

Thus specific characteristics of public property right are *inalienability, imprescriptibility* and *imperceptibility*. The basis of this assertion can be found in the Civil Code (art.296 paragraph 4), the Law of public property lands and their delimitation (Article 2, paragraph 1), Law of public property of the administrative-territorial units (Article 11 paragraph 1), Law of administration and privatization of public property (article 10, paragraph 1, 2) and the Law of Local Public Administration (Article 75, paragraph 3).

Inalienability of public property has primarily meaning of alienation prohibition through private legal acts of the goods within it, which are thus removed from civil circulation.

Equally, inalienability has the consequence the impossibility of acquiring the goods which form the object of public property by third parties by any means of acquiring property right regulated by law.

In legal literature it is mentioned that a consequence of real estate inalienability which belongs to the public domain is the impossibility to form dismemberments of the property right on them (*Pascari A., Cojocari E., 2004*).

Also, it doesn't violate the principle of inalienability of goods which are public property, the establishment of rights on them, such as right of concession. This is not an act of alienation, but a specific way of valorization, exploiting the assets of public domain that is constituted by an administrative contract and under go to a legal regime of public law. More over, public property renting and leasing is not alienation, it only gives rise to a right of claim. Nor transfer of assets from the public to the private domain as the transfer of assets from the public domain of the state in at the administrative-territorial unit, or vice versa, are exceptions to the rule of inalienability, because it is performed as well through administrative legal acts and not by means of private law.

Thus, according to article 6, paragraph 1 of the Law of public property and land demarcation, land in state public property can be transferred to the public property of administrative-territorial units by a Government decision, with the consent of the local public authority and the passing of lands from public property of administrative-territorial unit in state ownership, is made at the proposal of the Government, by the decision, as appropriate, of the district council, the Popular Assembly of Gagauzia, the city (municipal) council or village (commune) council (article 6 paragraph 2 of the Law of public property lands and their delimitation).

In conclusion, according to article 2, paragraph 1 of the Law of public property lands and their delimitation, lands from the public domain are inalienable, that can not be sold, but can be given only in administration, concession, rent or lease, according to the law. End of legal documents on public property assets with violation of the principle of inalienability, absolute entail the nullity of them.

Being inalienable the assets which form the object of public property are imperceptible, so can not be pursued by creditors in order to achieve their claims. They can not be traced or when are given in the administration of state or municipal enterprises or some public institutions, even when are concessioned, rented or leased.

In the content of imperceptibility enter the impossibility to create the real guarantee on the public domain assets (mortgage or pledge), because other wise you could get on the way of enforcement, at their alienation, which would be contrary to inalienability too (*Bălan E., 1998*).

In conclusion, the lands from the public domain are imperceptible, i.e. cannot be subject to forced execution and over them can not constitute real guarantees (Article 2 paragraph 1 letter b., Law of public property lands and their delimitation).

The right of public property is imprescriptible. In terms of extinctive aspect, imprescriptibility consists of the claiming public property rights and can be brought at any time, and the right of action is not extinguished regardless of how much time has not been exercised. In terms of acquisition, imprescriptibility consists of publicly owned property which can not be acquired by usucaption property. The simple passage of time

can not have as an effect the usurping a right of public property by a third party (*Bălan E., 2007*).

The lands of the public domain are imprescriptibly, i.e. can not be acquired by usucapion by third parties (Article 2 paragraph 1 letter c., Law of public property lands and their delimitation).

We will finish this study by trying to point out some criteria for the classification of goods which form the public domain without delimiting this area by owners.

Thus the first criterion is retained, is ***from the point of view of the interest that these goods it represents***. According to that criterion, there is:

- a) Goods of the national public domain, i.e. those categories of goods which belong to the state of the Republic of Moldova;
- b) Goods of the public domain of local interest, i.e. those categories of goods which belong to administrative-territorial units;

From the point of view of determination, the public property goods can be grouped in the following way:

- a) Goods of public domain nominated by the Constitution (we refer to those categories of goods stipulated in art. 127par. 4);
- b) Goods of public domain nominated by other laws (talking about the Law of Local Public Administration, Law of public property lands and their delimitation, Act of public property of the administrative-territorial units, the Land Code, Civil Code, the Water Code, the Code subsoil Forest Code, enumeration has illustrative character);

From the point of view of their constitution, the scope of public domain goods can be categorized as follows:

- a) Goods of natural public domain, i.e. those categories of goods which are constituted by a natural fact. Public administration has the mission of establishing its existence, for example, the wealth of any nature of the subsoil, air, water etc.;
- b) Goods belonging to the artificial public domain, i.e. those categories of goods, which are incorporated on the basis of a legal act, an act that is emitted by the holder of the public domain, i.e. rail, river and sea ports, public roads airports, railway stations etc.;
- Goods belonging to the natural public domain, i.e. those categories of goods, constituted by a natural fact. Public administration has the mission of establishing the existence of it, for example, the wealth of any nature of subsoil, air, water etc.;

Another criterion for this classification of goods of public domain, it is ***that of the use by the public***. Under this criterion, we have:

- a) Goods which are directly;
- b) Goods which are used indirectly, i.e. via a public service;

From the point of view of the nature of the goods, their sphere is classified into:

- a) Terrestrial public domain (means of communication, natural monuments etc.);
- b) Fluvial public domain;
- c) Air public domain (air space with in the limits and above the Republic of Moldova);
- d) Cultural public domain (works of art, museum etc.);
- e) Military public domain (barracks, weapons, ammunition, park of vehicles etc.);

From the point of view of the use of the property affected for public use, we have:

a) Goods destined for direct and collective use by public (beaches, roads, squares etc.);

b) Goods for direct but individual and private use through a public service (tables in markets, halls, burial place in the cemetery etc.).

We do not claim an exhaustive treatment of the issue of the sphere of public property, however, from the point of view of the idea stated above and the fact that legislation of the Republic of Moldova contains provisions that refers to the sphere of public property, in this study we tried to fill the gap in the field that aims the issue of the sphere public property of the state and administrative-territorial units. To this end, we want to make a synthesis of the doctrine of reference, addressing to the essence and content of the legal regime applicable to the sphere of public property. Also, we tried to establish some criteria for the classification of public property.

Bibliography:

1. *Legea privind terenurile proprietate publică și delimitarea lor*, nr.91 din 05.04.2007, Monitorul Oficial al Republicii Moldova, 25.05.2007, nr. 70-73.

2. Pascari A., Cojocari E., *Dreptul de proprietate publică în Moldova*//Ghidul judecătorului în materie civilă și comercială a Republicii Moldova, Chișinău, Editura Rolsi Media SRL, 2004.

3. Bălan E., *Domeniul administrativ*, București: Editura Lumina Lex, 1998.

4. Bălan E., *Drept administrativ al bunurilor*, București: Editura Lumina Lex, 2007.