

LEGISLATIVE AND INSTITUTIONAL CONSTRUCTION FROM 1990-2016 PERIOD ON THE LAND TENURE RELATIONS IN ROMANIA

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Abstract

For Romania, the importance of land arises, first of all, from the position agriculture has in the national economy, but also from its determinant role in ensuring the productive support in the field. The intensified interference in the last years between the Romanian economy and its external partners have induced several and unanticipated mutations. Some of these mutations have disturbing effects in the public opinion regarding the way of farmlands' manifestation under the known attributes of the capitalist market. The mutations produced in the field of land ownership relations from the perspective of causes, effects and solutions represent, in their essence, the topic of this study.

Keywords

Land alienation, economic theory, property movement actions, European agreements

Introduction

The issue of land alienation is being increasingly discussed and it is raising many concerns of the Romanian public opinion. Undoubtedly, the process of land alienation, with special reference to the agricultural one, to persons other than citizens of the Romanian nationality has been taking a large scale lately. Considering the importance of agriculture in the Romanian economy and its role in ensuring food security, the interference in the last years between the Romanian economy and its external partners have induced several and unanticipated mutations.

The consequences of property rights alienation are proved by the new risk factors that appeared in Romanian society and economy. Among these factors, the most important ones are those regarding the following:

- social imbalances, with clear tendencies of aggravation, resulting in unequal opportunities in the relations of the land market and the domestic investors in front of foreign ones;
- intensification of net income leakage without equivalent in the national space, with negative impact on the economic growth financing sources in the field;
- reducing the chances of food security, on the background of some disturbing factors – natural, social, economic, political and beyond.

In this context, this paper investigates the main causes that determined and amplified the land alienation and it suggests a solution package needed for managing in national interest the entire land fund. The paper is structured in several sections. Firstly, a short literature review is conducted in order to emphasize the importance of this topic. Secondly, the main causes of land alienation are discussed while, in the third section, several solutions for tackling this problem are proposed. Finally, the paper presents several conclusions which

could substantiate current and future decisions regarding the proper management of land fund and the food security. The Romanian statistical data as well as EU and national regulatory documents were used for conducting this research by adopting a critical approach of reviewing the land alienation problems.

1. Literature review

The literature regarding the land alienation has become of great interest in Romania since the moment of its membership candidacy at EU, as the effects on the social and economic dimensions emerged. Alecu et al. (2014) point out that the European Unions' laws had to be adopted accordingly and, since 2014, all EU citizens could own the Romanian agricultural fields. These authors (Alecu et al., 2014) emphasize that this aspect is required by one of the four liberties stipulated in the Rome Treaty, the free movement of capital.

Another review of the land alienation legislative framework is conducted by Luca and Alexandri (2010). These authors discuss the phases of land market liberalization in Romania by referencing the discourse to the law 18/1991, the law 54/1998 and the law 247/2005.

The assumed and forwarded values of land alienation differ because official data and information does not yet exist or they are confidential. Information regarding Romanian land alienation to foreign citizens fluctuates on a scale of 2 to 50%. Two opposite views are relevant to illustrate this issue: the perspective of a non-governmental organization and official one. The first view is the one of "Land Matrix" NGO. According to it and based on a study requested by the EC (www.economica.net), the level of land alienation has reached 350000 hectares, which means 2.4% of the agricultural area. On the opposite side, stand the opinions of Romanian officials. The most recent one comes from the Romanian President, who mentioned a value of 30% of land being in property of foreigners, at the INDAGRA event on the 3rd of November, 2016.

2. The causes that determined and amplified the land alienation to foreigners

The main causes could be grouped on three distinct problems in the agrarian politics area: the economic theory, the property movement actions and the European agreements.

2.1 The economic theory

In a generic sense, the importance of land results from both the position of the agriculture in the national economy and the its crucial role for providing support for the productive branch. The recent intensification of the interference between the Romanian economy and its foreign partners, particularly the EU ones, induced numerous and unanticipated mutations regarding the expression of the agricultural land under the recognized attributes of the capitalist market. These attributes exceeds those of agronomic type, so often invoked so far. In this context, the land tenure has as recognized four distinct attributes, namely: means (object) of production; income source; exchange instrument (and/or exploit); object of accumulation (and/or storing value).

Their perception is conditioned, above all, by the development stage of the national economy, with direct manifestations from the economic, social, political, historical, etc. factors. The more agriculture has a larger percentage in GDP, the more important is becoming its production function, while the appearance of intensive industrialism generates a shrink of this function. Also, as the contribution of agriculture in GDP formation decreases, with the production function the other three have increasing proportions.

In the last two decades, in Romania, the pressure on the agricultural supply has significantly decreased, as an effect of the combined action of three categories of factors: the accelerated growth of the degree of intensification of large and very large farms in

lowlands; the diminishing domestic demand as a result of demographic involution and external drain; the flow without customs barriers and lower prices of food products from external sources. Attributes of the land, as a source of income from rent and as a tool of exchange and store of value, were little known and later understood by the vast majority of local owners. No one thought to inform and train them in this direction. The effects are visible now and surely will endure long into the future.

2.2 Property movement actions

The property movement actions take the form of a complex array of economic and non-economic activities, whose functionality showed an own legal and institutional scaffolding and a specific economic instrumentation. In the category of extra-economic actions are found two reformatory moments: when the agricultural lands were restituted from cooperatives (1991) and from units of state (2000). Economic actions are subscribed to land market and concern: the sale, purchase, lease, cooperation, association and concession.

Land ownership movement after 1990 occurred with relatively successive slippages, but without consistency ratios motivated or supported by scientific or strategic criteria. Thus, the actions constituting the land market started later and at different times from the first stage of the reconstruction of 1991. The second reconstitution, respectively since 2000, occurred after the key moves in the land market structure, when association, leasing and sale had been enacted.

2.2.1. Reconstitution of land ownership

This was the first source of the causes that prevented setting up a healthy, durable property regime. Some of the causes are the following: superficial reporting to historical truth; accepting the old measurement units land without their official approval/update; differentiated managing on regionally historical land ownership; accepting the evidence of witnesses in the absence of official documents; the drawbacks caused by changes in the agricultural landscape architecture and territorial structure of settlements; the destruction of borders between properties of the communist period made it almost impossible to settle the parcels in the old locations; restoration of property rights as "usually on the same settlements" took full extent of land fragmentation of the prior cooperative period; restoration of property rights without land cadaster and land registers, proper management tools in defining ownership in all its attributes; reconstitution property only in physical size, not in terms of abstract characteristics, namely the natural value (evaluation marks) and economic value.

All these shortcomings occurred amid obvious doctrinal slippage as it is seeking to resolve imbalances through specific decisions guided by social market economy, while throughout Western Europe, to which the author wanted to compare, conduct their economic policies in accordance with the neo-liberal doctrine. As such, "social peace" pursued by policymakers through the restoration of property rights land in Romania resulted in the dissolution and removal of the capitalist market. By neglecting "the triangle principle" and the exclusion of arbitration in the public properties translation, fragile property relationships were configured, generating conflicts and with a high degree of vulnerability to pressures history.

2.2.2 Land market

The land market started functioning under the impact of a major package of non-compliance:

- The land market was an exercise unknown to beneficiaries of the newly constitution and reconstitution actions because this market throughout the communist period was almost gone (non-co-operate sporadically areas).
- Low income, old age and scarcity of capital exploitation belonging to the newly land owners made the land offer to exceed demand – at least until the EU accession (2007), and land prices to maintain low for a long period.
- In the early 90s, the economic theory proposed limited definition of the acts of sale – purchase on the land market.
- Lack of economic valuation of agricultural land and forestry – as a basis for establishing the trading prices, rent, royalties – allowed the expression of the buyers "dictate".
- The absence of specific financial instruments through which to stimulate local entrepreneurship (credit, interest, collateral, etc.) for land acquisition weakened the position of Romanian entrepreneurs, whose investment capacity was below the potential of their EU counterparts, on the land market.
- Permissiveness of the legal system to foreign investors was another cause which lessened the chances of local investors in this market.
- The shortcomings of functionality overlap land market over the constitution and reconstitution of the land ownership right. In fact, some are related to one another in mutual formula.

2.3 European agreements

The entire legislative and institutional building on land ownership movement in Romania was set directly in line with EU principles and regulations. The central point around which pivots relations in the land market is supported by one of the four operating principles and freedoms of the EU: the free movement of capital. Since the land is, according to the economic theory, the capital element and not just any but the most important for agriculture. Naturally, his movements are made under this principle. By reaching an agreement between the principles and rules in the EU and the national ones, in other words the national interests, involved professionally opening and supporting negotiations on the issue by national decision-makers. However, the way the land market operates in Romania proves clearly that putting the national interests in line with the European principles was weak and unconvincing supported. Not in the same way occurred the facts with some of our neighbors.

3. "The package" of ideas that might count in the correcting the Romanian land market

The economic development relies on resources and progress. But, compared to the market, they are not in equal positions. History has shown that in terms of profitability, the progress was superior to resources. As such, the person or persons who hold primacy in the acquisition and appropriation of profit progress can impose its will on market relations. The late start in the race for progress has put Romania in asymmetric position to the developed countries in the rest of Europe. The asymmetry had double effect, namely: first, it should be understood that Romania wanted the European model, not vice versa. Not England, France or Germany came to Romania, but Romania went to them; secondly, for the appropriation of progress, resources have been the only safe payment solution, regardless of the form in which they were presented, namely: natural, agricultural, forestry, raw or processed, etc.

Supporting progress through resources, at least in the first phase, until it acquires the ability to reproduce, it has both positive and negative effects: positive, because obviously they could influence labor productivity and, thereby, increase the overall economy; negative, because some manifestations of disproportions in the market, as objective economic regularity between the price of resources and the price of progress, have facilitated the emergence risk of leakage without equivalent net income of the national space outward phenomenon that, over time, significantly reduced development capacity.

Amid the experience of the last century and a half, when, for progress, Romania has almost exhausted a good part of the reserve of resources, results the need to formulate new and specific strategic objectives, in line with the European ones, to which our country must report for the economic relations with all developed countries. Among these objectives it could be found the following:

- Developing the legislation on economic evaluation of agricultural and forestry land considering the scientific economic and mathematical formulas and the reporting economic categories of land market (price, lease, rent, royalties) at the land value thus determined;
- Establishing an authorized body of valuers (the recognition priority to the agrarian economists), modeled after the cadastral engineers;
- Classification and assessing the data from the National Institute of Soil Science on natural land evaluation marks from Romania;
- Implementing a mandatory draft necessary to be made by the seller as a "dossier of alienation" of land holdings of more than five hectares, where to find: documents for the property file, cadastral registrations in the Land Registry, the natural value (creditworthiness), economic value and the minimum asking price – which cannot be below economic value;
- Proving the intentions of the buyer; the buyer must prove to be a "good farmer" – by documents certifying education level and experience in the field. In addition, the applicant must submit an investment plan to ensure growth through productive capacity of the soil by technology practiced or where appropriate, irrigation works, drainage, drainage, erosion control and the like, but also environmental protection (Popescu, 2013: 65).

Conclusions

Since becoming part of EU, Romania had to comply with several requirements which included also the allowance of foreign citizens to acquire land. So, land alienation is becoming increasingly discussed in the Romanian context due to its impact on national social dimension. This paper critically discusses the main causes of land alienation in Romania and it offers some solutions for tackling this problem. The main causes of land alienation are generated by the economic theory, the property movement actions and the European agreements. The reconstruction of land ownership by questionable means, such as witnesses without official documents or different regional units of measurements, caused shortcomings of the liberalization of land, that, further, generating conflicts and a high degree of vulnerability to pressures history. Also, the malfunction of the land market represents another cause for land alienation to foreigners.

So, the main solutions propose a revision of the legislative and administrative framework along with introducing supplementary criteria for the foreign buyers of Romanian land. This paper represents a support for decision makers for thoroughly understanding the main issues concerning land alienation and it provides practical solutions for protecting national resources, directly involved in the matter of food security.

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