CONSIDERATIONS ON OWNERSHIP AND OWNERSHIP OF FORESTS

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ABSTRACT

Property is the foundation of any legal system. The history of every human society, in any geographical space, has emerged, is born and verticizes by property.

The legal institution, called "property," is a special social reality, fundamental to any community, being unanimously recognized that property ownership is the most important of man's real rights.

Occurred with the very appearance of man on earth, property stood and is at the basis of the development of human society, representing one of the fundamental problems of individual existence and of human society.

Property could not remain outside the scope of the law because it is the premise of any economic activity, that is, the premise of the operation of the engine of any society, and the purpose of the law is precisely to organize and ensure the proper functioning of society.

INTRODUCTION - GENERALITIES ON OWNERSHIP

In the economic sense, the property expresses the ratio of man's acquirement of material goods, the meaning in which the notion is used in the current language.

From a legal point of view, ownership is reflected by its attributes: possession, use and disposition.

Possession - usus or jus utendi is the prerogative of the owner of the property right to master the asset in its materiality,

The use - fructus or jus fruendi expresses the possibility of using the good and gathering its fruits, in relation to its nature.

The provision - abusus or jus abutendi refers to the right of the holder to dispose of the substance of the good, consuming it, transforming it or destroying it, at its own will.

In accordance with the specialized doctrine, we appreciate that ownership has the following legal characters:

- it is absolute and inviolable, being a real right, which implies erga omnes opposability; - is exclusive, so that the holder exercises it without the participation of others, third parties being obliged to abstain, in order to guarantee the free exercise of the right by its holder; - is complete, giving the holder all three attributes of the aforementioned right;

-is perpetual and transmissible, expressing the fact that there is as long as there is and the good on which it bears and does not quench through the useless;

- is individual, because no one can be compelled to remain in indivision;

- the content of the right of ownership is legally determined by the Constitution, the Civil Code and various special laws.

Two concepts of the proprietary legal institution appear in literature, one inspired by the Roman-German law system and based on usus, fructus and abusus, and the other inspired by the common law system, focused on the notions of property and ownership. In the economic analysis of the property right, some authors understand by ownership the cumulative possession and disposition components, ie usus, fructus and abusus, considering that ownership excludes the possibility of alienation. For other authors, ownership includes usus, fructus, and abusus.

In the Romanian legal system, forests and forest lands are in the form of public or private property. Forests of

devastation or indivi- duals are subject to a special legal regime, res communis, the result of a system of evolution with deep roots in time. The legal regime of res communis does not mean that forests are "common good" in the economic sense.

Deaf forests are privately owned goods, but which are customized by the special ways of acquiring and transmitting the right to property, ways dependent on belonging to a particular community.

The present analysis is based on the distinction between the legal or formal property right and the right of economic ownership, that is, the capability of the holder of the good to enjoy freely and unhindered the use of his possessions.

After 1990, the return to the former owners of the forest vegetation land was aimed at creating a strong private sector and a market economy in rural areas.

The reintroduction of the private property on the forests was accomplished by Law no.18 / 1991 of the Land Fund, with the changes made in the years 2000 and 2005.

The legal framework thus established has not determined, as would be expected to recreate a strong private forestry sector. The private forests of individuals or communities is marked by the slow pace of private property reconstruction, the difficulties of ensuring the legality of wood harvesting, and especially the lack of a legal settlement of the apparent public-private conflicts of interest in the management activity of the forestry resource.

Although the form of private ownership of forest land has a clear legal definition, a number of Constitutional Court decisions on forest management rights suggest that ownership of forest land has particularities that justify important exceptions from common law.

This paper supports this thesis by showing that there are two different approaches to the forestry sector in public policies.

Firstly, the general reform policies aimed at restoring private ownership of forest land in line with the situation prior to nationalization.

Subsequently, the forest is considered a resource of national importance, irrespective of the form of ownership, its management being strictly framed by a complex of rules that make up the forestry regime. The existence of these rules defines an economic content of the forestry property right, different from the content of the property right in the neo-liberal sense.

THE MANAGEMENT OF THE UNCULTIVATED FOREST

Forest management, irrespective of ownership, is subject to the forestry regime, which is a system of rules aimed at ensuring the sustainable management of forest ecosystems. The skeleton of the forestry regime is given by the rules laid down in the Forestry Code (Law 46/2008).

The main rules of the forestry regime, whether implicitly or explicitly included in the legislation, refer to:

- the obligation to maintain the land use of the land;
- control of the quantities of wood extracted, in order not to exceed the annual possibility of forests;
- respect for forest functions and the obligation of a management system;
- obligatory afforestation of the exploited land; - control of the activity of the tree stands (handing-over of the parcels); - land use change tax; - restraining grazing; - special construction regime; - maintaining the volume of wood harvested within the limits of the possibility of the forest; - Establishment of the annual forestry opportunity and wood quota by forest owner;

compulsory marking of harvesters;

- transport of wood accompanied by documents of origin;
- respect for forest functions (multifunctional management);

intensive management of forests with a protective function;

-prohibiting the exploitation of the forest in certain special situations (conservation regime, Natura 2000 network);
-the establishment of a minimum management system;
-forest planning and planning plan, establishment of the ten-year plan of works.

RIGHT TO MANAGE PROPERTY ATTRIBUTES

Forest owners are obliged to apply minimum forest management services, which involves two categories of obligations: preparing a plan, ie a long-term management plan (usually 10 years) of the forest resource, and carrying out related activities to manage the resource through authorized forestry structures.

The plan is a management plan that specifies the rules to follow in forest culture and wood harvesting. The rules are prescribed in detail in the forestry technical norms, starting with the number of saplings and forest species to be planted and up to the calculation of the wood that will be harvested annually. Forest management is an obligation of all forest holders and managers (Article 20 of the Forestry Code).

The forestry arrangements are of two types: a) Type I arrangements, in which case only one arrangement is made for all forest properties less than 100 ha / owner, included in the administrative territory of a locality; b) type II arrangements - one arrangement for each forest property of more than 100 ha / owner or for each area resulted from the association of the owners, if it is more than 100 ha.

The forestry arrangements are developed by specialized units certified by the central public authority responsible for forestry and their value is borne by:
a) the State Forestry Fund administrator;
b) owner, for areas larger than 100 ha.

The costs for elaboration of forestry arrangements shall be borne by the state budget, through the budget of the central public authority responsible for forestry, for areas of maximum 100 ha of the private property forestry of natural and legal persons, whether or not they are included in associations .

Thus, depending on the area of the forests owned, the associations of landowners, rakes or composers may or may not benefit from the state financing of the arrangement. A critical aspect of the arrangement operations and the management plan resulting from them is the fact that all aspects of forest culture are regulated in detail on the basis of technical standards. Owners' preferences or market opportunities are not taken into account when establishing management solutions, which in our opinion is equivalent to an interference with property rights, as guaranteed by the Constitution and Art. 1 of Protocol No. 1 to the European Convention on Human Rights.

In general terms, advanced exploitation ages of more than 100 years for most forest species of economic importance are foreseen, given that for some uses trees with ages of 60 or 80 are preferred.

The second obligation in the same category related to the management of the resource is to organize the production of wood in forest structures with specialized personnel: "the private forestry private individual (former composers, patrons, sparrows or their heirs) is administered by the owners through their own authorized forest structures, similar to those of the state, or, upon request, existing forest structures authorized, on the basis of contracts agreed between the parties.

RIGHT TO ALIENATE

In addition to the forest belonging to other entities of private law, natural or legal persons, the deluge forest is customized in terms of ownership transfer

(jus abutendi, or right of alienation), as described in Law no. 247/2005. The regulation of the transmission of forest land in devastated property is detailed in art. 28 of the Law no. 1/2000, modified by Law no. 247/2005. The inalienability of degraded forest land is a rule of civil law, also taken over in the forestry legislation. Instead, the possibility of alienating all other property attributes (wood, accessories, goods and services) is given both by the nature of the good and the provisions of the forestry law.

With the exception of wood, it is not possible to alienate most of the forest products and services by selling: on the one hand, it is pure public goods and on the other hand it is semi-private goods but with a possibility of poor exclusion fruits and mushrooms, medicinal plants).

The possibility of alienation, being an essential component of the property right, the position of the forest owner can be described as follows: the owner has a full private right in respect of wood produced by the forest (attenuated if the state does not have the necessary capacity to protect the owner of forest trees); the owner has a private but non-exclusive right over other material products, accessories of the forest (mushrooms, berries) that can be consumed free of charge by the general public; the owner has only a right to use the public goods generated by the forest in the property. There is a possibility that this situation will change in the future if solutions are found to market the public good effects of the forest.

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