

PUBLIC UTILITY EXPROPRIATION

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INTRODUCTION

The property has been and always remain an indispensable element of society. Being guided by the state, it is firmly attached to her owner and is as shown in the "citizen" Declaration of Human Rights is the most sacred of his rights. Ownership is considered to be the most important component of the legal system.

I chose this research topic because Moldova is a country that is developing and the need for state acquisition of private property, motivated by the public is welcome to further achieve the goals of general interest. Republic of Moldova and other countries in transition is confronting with such problems as: how much property is, where it comes from, who belongs, who deserve it, on who should be given on.

I. EXPROPRIATION –GROUNDS FOR TERMINATION OF PROPERTY

1.1 Ownership, it's characters

Ownership characters is a property right that gives the holder the right of subjective exercise their own power and self-interest of the attributes of possession, use and dispose of his property within the limits set by law. Property is very current issue in Moldova, the state is in transition from primarily state ownership to public and private property. This period is characterized by division and redistribution of property.

Characters can be listed ownership:

a) **absolute** by the meaning that all the attributes of what legal form the content holder and are recognized by their fullness belong to the copyright holder without the need for other people. Also in absolute terms means that title is enforceable against all (erga omnes), the holder being able to oppose its right of all people, they are obliged to recognize and respect the prerogatives of ownership. Thus, the property is absolute in

comparison with other real rights, as against all, but not absolute in itself.

b) The **exclusive** character of ownership allows the owner to do what they want with their property within the limits prescribed by law. Exclusive nature of property rights excludes the idea that outside owner in the same time another person has the same asset ownership rights. This does not exclude competition but the same good property rights belonging to different owners as common property rights. In this sense, only the owner or co-owners in case of individuals are entitled to exercise this right of property attributes that are its object.

c) **Perpetual** nature of ownership, requires firstly that lasts as long as there are both good and secondly, that ownership does not go by unused perpetual nature of ownership and it is revealed by the fact that this is a hereditary right is inalienable in terms of extinction it, is inviolable and may not be transferred by force. However, although this character is assumed that ownership as long as there is good is, not excluded that it may be assigned by court documents certifying the need for the declaration of public utility.

d) **Individual** character of ownership, explains itself by its nature it is an individual right in the sense that its attributes belong and are exercised by one person. An exception is the joint ownership to individual character, in which ownership belongs simultaneously to two or more persons, carrying both its characters.

e) **Legal** character is also characteristic of ownership, meaning that the law establishes both the content and limits the powers as owner. The property is exercised within the limits determined by law, holders of property rights requires respect for its rules and tasks that are stipulated by law as a restriction. Therefore, ownership can not be considered free in its content, but rather limited by law. Furthermore, attributes and methods of execution are by their nature governed by the law that means restricted.

1.2 Principles for the public expropriation

Expropriation can be considered as a mechanism of rights owners as strange it can be seemed, although it leads to settle ownership. They say this because expropriation must be made in compliance with legal and political principles.

Different legal systems treat different the expropriation, but a principle which should persist in all the systems would be under the owner must have paths that would allow it to challenge the expropriation. Establishing such a principle will allow once again to say that in this way is trying to find the point of tangency between the state and expropriated. Because of private property can be expropriated and pass into the public domain, it is necessary in the public interest. The necessity of public declaration is based and provided in art. 46 of the Constitution, Art. 316 of Civil Code and Law on expropriation for public utility. Declaration of public utility is made only after research prior to the power of committee appointed by the Government for works of national or local interest. Another applicable expropriation principle, is the existence of a just and prior compensation expropriated. As stated in the literature, the public interest can justify the expropriation, but not exempt the payment of compensation to expropriated loss suffered by the owner and possibly other holders of real rights over property expropriated." Compensation must be right, that is to represent the true value of the property expropriated. Thus, the content of the constitutional guarantee of property rights is included mandatory condition for expropriation compensation. Moreover, the conditions expressly stated compensation. The conclusions are that the compensation is on a hand a justification, and on the other hand, is a limit.

1.3 The objects subjects to expropriation

Accordingly to the point 2 of the Law of the public utility expropriation, as the object of expropriation can be:

- objects of national interest;
- items of local interest;
- movable established by organic law, in case of emergency, martial law and war.

In the category of objects of national interest are:

- a) real property, at which is reported: land, underground water basins, forests, buildings, constructions and other objects related to land,

whose permutation is impossible or irreparable harm, so can not be used at the destination,

- b) the rights to use the term real estate of up to five years, unless the parties agree on another term ,

- c) property rights and personal non-related inventions that can directly contribute significantly to ensuring defense and security interests of the country,

- d) cultural and artistic values and historical o exceptional importance for the national feelings of the people and showing the country's statehood;

- e) ownership of the representatives of flora and fauna, for the natural area of Moldova is its development and reproduction and which are endangered in the world where there is real danger of extinction.

In the category of objects of local interest are:

- a) real property;

- b) rights on immovable property referred to in letter. a) and b) the category of objects of national interest. As for category movable expropriation, expropriation law for the public, states that they may be expropriated only in case of emergency, siege and war, established by organic law. I think that will be passed a law stating exactly what can be expropriated moveable in these situations should be other than those provided for requisition of goods.

II. PROCEDURAL ASPECTS OF RESORTING TO THE PUBLIC

2.1 Public utility and its declaration

Declaring it is a real administrative act, an act-condition that triggers the procedure of expropriation. Although, expropriation can only be for public works and art. 5 (1) of the Law on expropriation for the public, lists these works. As we stated, they are public works of national interest which, by their functions, meets the objectives and interests of the whole company or a large part of it. In contrast, local public utility works that are by their function, meets the objectives and interests of a social group or locality, a group of municipalities within a territorial-administrative units.

Declaration of public utility is made only after a preliminary investigation and only if there are any conditions for expropriation, as provided by law. The prior research establish supporting evidence of national or local interest, the economic preconditions for social, environmental or other

work of necessity, their enrollment in urban and spatial planning.

Previous research works of national interest are made by committees formed by the Government, which includes one representative of central government coordinating the industry for which the public work.

2.2 Measures for expropriation

After a preliminary declaration of public utility, expropriators which, according to art. 4 of Law nr.488/1999 on expropriation in the public interest, not by bodies other than the State's ability or through specially designated by law to perform the action for submitting the expropriation proposal within 10 days publication of the measure to declare public utility. Expropriation proposal will contain notification holders of real rights on buildings came into sight expropriator and on which the declaration was made public, the offer of compensation, how the transfer of property and economic rights. The term resolution of greeting and the commission objections are solved within 30 days by a committee made up by the decision of the works Government of national interest and decision of the local council works by the local interest or by decision of the respective local councils for the work of common interest.

Commission Decision. After deliberation the Commission issues a reasoned decision is communicated to the parties within 5 days of adoption. Commission decision serves as a basis for determining the amount of compensation, which in no case is less than that established in the proposal for expropriation. If the Commission accept the decision, the expropriated and expropriators can agree on how to transfer the property, will determine the amount and payment of compensation. Such an agreement among the parties is notarized, the expropriation expenses being incurred. If expropriators and expropriated not reach a compromise on the conditions of expropriation, even after taking note of Commission Decision, expropriation may be made only by a court with just and prior compensation. The essence of court involvement is that the dispute will be resolved by the court will determine compensation authorized to be expropriated to return.

2.3 Expropriation itself, remedies and establishing

According to art. 14 of the Law on the public expropriation, is obliged to inform expropriators expropriated and the also court in 10 days of notification of examination of the expropriation case, of the holders or other real rights over the property, otherwise expropriated will be responsible for compensation to owners. And where third parties do not lodge claims for it will not take into account when determining the amount of compensation. In addition to the express provision of expropriation, the court decision will also contain provisions relating to, right and prior compensation. Legally, compensation should cover the actual building, combined with the damage caused to the owner or other holders of rights. Value, the compensation shall be fixed by the court, between the supply and the amount requested expropriator expropriated and can not be less than the first, but not greater than the last.

But the real value will be determined the using of scientific method, by the specialized expertise, which will be conducted by a panel of experts including a representative that may attend the expropriator and expropriated. Expropriators has the right to stop the expropriation, including where the final decision regarding the compensation court if the latter was not made. In this case expropriated, is entitled to demand compensation for damage caused. Fees and expenses of expropriation case examination shall be borne by the expropriated in accordance with the legislation. Given that decisions of the court is subject to remedies provided by law, it is possible that at the time of payment, compensation may not match the actual value of the property and the amount of damage caused, so that interested persons may require updating the amount of compensation for it to remain "right" as required by law.

CONCLUSIONS

Expropriation remains one of the most severe limitations of ownership. Being seen as a way to stop private property, doing it without a just and prior compensation, leading to damage to private property enshrined the fundamental right of the Constitution in Article 46. In spite of its deep political nature, expropriation legal method can be

regarded as the ultimate guarantee of property rights against the state. In modern legal system, the individual must be guaranteed against the State, which is one of the most important aspects of what we call the rule of law.

Disastrous impact which may result from improper implementation of expropriation is of immense proportion. This justifies to find out a medium way between individual interests and social interests can only be done through strict regulation of the conditions of expropriation for the public. Unfortunately it is clear that this is not easy to achieve as long as unfortunately, practice and reality shows that the application of rights is a high difficulty, and the laws remain just adopted, their implementation is quite difficult making.

Some findings were revealed in order to spur scientific debate expected to have the purpose to remove loopholes and improving the legislation. The open nature of legal thought can thus contribute to a greater extent, to acquire knowledge and deepen research expropriation procedure. Stimulate thinking can not and should not replace individual study at practice. Going this way was necessary to achieve the goal. I believe that the necessity of knowledge for the expropriation concept in the public interest is unquestionable, because once the person is the owner of a property he can automatically become the candidate of expropriation for the public or local interest or national interest.

Bibliography

1. ***The Constitution*** adopted on 7/29/94. // Official Gazette of the Republic of Moldova no. 1 from 12.08.1994.
2. 1134-XIII of 02.04.1997 Law on joint stock companies. // Official Gazette of the Republic of Moldova nr.56/37 of 03/06/1999.
3. ***Law no.136-XIV*** of 16.09.1998 on the gas. // Official Gazette of the Republic of Moldova 1998, 111, 113.
4. ***Law 981-XIV*** on publicly owned land and their delineation of 11.05.2000. // Official Gazette of the Republic of Moldova no. 94-97/672 of 03.08.2000.
5. ***Law nr.488-XIV*** on expropriation for public utility of 08/07/1999. // Official Gazette of the Republic of Moldova 2000, no. 42-44/311.
6. ***Crutzescu A Vantu I.*** Treaty of expropriation for the public. - Bucharest Ed.Voievodul Michael, 1931.

7. ***Filipescu I.*** Civil ownership and other real rights .- Bucharest, Ed Actami, 1996.

8. ***Stoica V.*** Civil Law. Main real rights. - Vol I. - Bucharest, Humanitas Publishing House, 2004.

9. ***Baias F., Dumitrache B.*** Law 33/1994 on Discussion of expropriation for public utility. // Right no. 4 / 1994.

10. ***Crăciunean L.M.*** Some considerations on expropriation for public utility in comparative law and the ECHR // Journal of Public Law, nr.2/2006.

11. ***Puscas V.*** Defense constitutional right to property and restricting this right through the case law of the Constitutional Court. // Scientific and practical journal Law and Life, February 2010.

12. ***Șimbrian T.*** Historical considerations on expropriation for public utility. // Journal of Legal Sciences, University of Craiova, no. 5 / 1995.