

# Public and Private Property in Romania

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## SUMMARY

There are now in Romania two forms of property: public and private property. The state protects property. Public property belongs to the state or administrative-territorial units. Lands may belong to public or private domain. The assets that belong to public domain are: inalienable, indefeasible and imperceptible.

Private property is equally protected by the law, irrespective of the owner. Natural and legal persons, the state and the administrative-territorial units can own the private property right. The object of ownership right is any mobile or immobile asset that is part of the civil circuit.

Any kind of lands, no matter the destination or the public or private domain they belong to, constitute the land of Romania. The foreign and the stateless citizens cannot obtain the ownership right of lands.

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## 1. DEFINITION, JURIDICAL CONTENT AND OWNERSHIP RIGHT CHARACTERISTICS

Romania's Civil Code defines property in article 480: "property is that right that somebody has to enjoy and dispose of in an absolute and exclusive way, within the limits established by law".

In doctrine, ownership right has been defined as any real right that gives holder the possession, utilization and disposal attributes over any good whom only the owner can exert over to the full, in his own power and to his own interest, keeping up with the juridical norms in action.

The Constitutional Court decided that this right has a fundamental nature so that its preservation is one of the state organized society's purposes; that's why its basic characteristics have to do with Constitution rather than with the Law.

Property can be understood as being an object of ownership right, appointing the asset that ownership preserves. This sense is given by Art. 582 Civ. C. which concerns that persons whose property is on the edge of a running water; Art. 589 Civ. C. which concerns the look on neighbour's property; Art. 614 Civ. C. which regards the parting line of the two properties; Art. 620 Civ. C. which concerns the fact that holders may settle a servitude on their properties or to their benefit.

As it results from ownership right definition, the attributes that form its juridical content are: possession (*jus utendi*), utilization (*jus fruendi*) and provision (*jus abutendi*).

Yet, it is to be observed that these three attributes of ownership right can be cumulated or separated one from the other. Thus, it is possible that all the attributes should belong to the same owner, case in which we find ourselves in the presence of full ownership right or in the situation that the first two attributes belong to other holders of real rights, while the nude property, the disposal attribute respectively should belong to ownership right holder.

Ownership right attributes, no matter if they are reunited or separated, must be exerted according to their economic and social purpose, as well as with observing all legal conditions.

Possession is an important attribute of property and consists in the prerogative of ownership right holder to possess the asset *de facto*, directly and immediately through its own power and its own meaning or to accept possession be exerted in its name and interest, by another person.

Some authors have defined possession as an indispensable asset for each owner to realise his purpose, that is the economic utilization of his property.

Possession has also been defined in doctrine as the possibility of the owner to hold the asset that belongs to him in its concreteness, behaving towards others as the ownership right holder.

Utilization confers holder the possibility to use the asset to his own interest, collecting its fruits (natural, civil and industrial).

Disposal as attribute of ownership right involves in its essence the possibility that ownership right holder should draw juridical acts of gratuitous or onerous giving up, to constitute to other persons' benefit other accessory or principal real rights.

As attribute of ownership right, disposal contains both the right of material disposal and the right of juridical disposal. Exerting the right of material disposal, the owner has the possibility to dispose of his asset's substance, respecting legal settlements. Juridical disposal confers its owners the possibility to estrange the ownership right with gratuitous or onerous title, through acts between living persons or mortis causa and to tax it with real rights.

The owner has a complete freedom in exerting the disposal right “but only within the limits established by law (Art. 480 Civ. C.). When , by exercising his ownership right, the holder prejudices other persons, we are in the presence of abreach of right. In practise, in our country, the breach of right is to be met quite often in exerting ownership right, particularly in neighbouring relations. From vecinity reports derives the need for each owner to limit himself to a normal utilization of his own asset without disturbing the others rights.

As concerns the disposal right, Art. 475, par. 1 Civ.C. affirms that: “Anybody may freely dispose of his own assets, within the modifications established by the law” and in Art. 481 Civ.C. it says that: “Nobody can be forced to give up on his property, except for public use causes, by receiving a preliminary and right compensation”. According to these shown above regarding the disposal right, Romania's Constitution supports in Art. 41, Par. 3 that: ”Nobody can be expropriated except for a public use cause, established by the law, with preliminary and right compensation”.

A similar settlement is given by Law No. 33/1994 concerning expropriation for public use causes in Art. 1: “Real estate expropriation, entirely or partially, can be made only for public use causes, after a preliminary and right compensation, through juridical verdict” (published in the Official Monitor of Romania, Part 1, No. 139/2 June 1994).

Text of Art. 2 from the same law specifies that real estates which are property of natural or legal entities, with or without lucrative purpose, as well as those found in the private property of villages, towns, cities and counties can be expropriated.

The object of expropriation is represented by real estates, property of natural or legal persons, with or without lucrative purpose, as well as those found in private property of villages, towns, cities and counties.

According to Art. 5 from the above mentioned law, public use is declared for national or local interest enterprises.

The following works are of public use: prospecting and geological surveys; extraction and processing of useful mineral substances; installation for producing electric power; lines of communications; streets opening, alignment and extension; electric power systems; telecommunication, gas and district heating connections, water, sewerage; installation for environmental protection; rivers regularizations and damming, accumulation lakes for water source and high flood attenuation; flow derivations for water supply and high flood deviation; hydrometeorology and seismic stations for dangerous natural phenomena, warning and prevention systems and population alarming systems, draining and irrigation systems; systems for depth erosion control; buildings and grounds for social dwelling and other social objectives: education, health, culture, sport, social protection and assistance, as well as public administration and juridical authorities; monuments, historical sites, ensembles as well as national parks, natural reservations and nature's monuments to be rescued, protected and re-evaluated; prevention and removing of natural slides; country defence, public system and national security (Art. 6 from law).

Among the main real rights, the most important and most complete concerning the attributes it confers to its owners is the ownership right. It is one of the fundamental rights that are acknowledged and settled to the benefit of natural and legal persons. In this way, Romania's Constitution states in Art. 41, Par. 1 that ownership right is fully guaranteed and in Art. 41, Par. 2 and in Art. 135 property is protected.

According to the disposals of Civil Code, Constitution and other legal norms, as well as to the definitions given in theory, it results that ownership right has the following characteristics:

- exclusive character that results from the content of Art. 49 Civ.C. quoted above. This character allows the holder to exert all the attributes of ownership by himself. In case that there are more joint-owners, they will exert together the attributes of ownership right. The exclusive character also results from Art. 475 Civ.C. which establishes that: “Anybody can freely dispose of his own assets relying on the changes stated by law”.

Law can limit the exclusive character of ownership, case when dismemberment of ownership may occur. So, the exclusive character of ownership right can be diminished with the holder's consent (constitution to other person's benefit of a real right of usufruct (Art. 518 Civ.C.) or the establishment of a servitude in neighbour fund's benefit. Art. 577, Art. 620 and next Civ.C.) and without the holder's consent, by law's effect (natural and full servitudes Art. 577, Art. 578 and Art. 585 Civ.C.).

- the perpetual character presupposes that ownership right is unlimited in time, that is it lasts as long as the asset exists and it doesn't extinguish by non-use. This character of ownership right appears in the syntagm “to sell or to buy for ever”.

Specific to the perpetual character of ownership right is the length in time of its object, no matter the patrimony the asset belongs to in a certain moments of its existence.

Estrangement can't extinguish the ownership right. In certain situations, both the nature and the ownership right content are changing by asset passing from one person to another; for instance, the case of expropriation for public use.

Ownership right is not lost by its owners' death and it is not extinguished by non-use on behalf of the owner (it is imprescriptible). It is a transmissible right, because it transmits itself through juridical acts between living persons and for cause of death.

- ownership right is an individual right. Co-property constitutes an exception from this rule. That's why text of Art. 728 Civ.C. specifically stipulates: “Nobody can be forced to remain in joint”.
- absolute character presupposes that the ownership right, according to the law, disposes of his asset as he wishes (Art. 480 Civ.C.). Othetwise, Constitution stipulates in Art. 41, Par. 1: “the ownership right content and limits are established by the law”.

## **2. TYPES OF PROPERTY. PRELIMINARY STATEMENTS**

Romanian Constitution dedicates in Art. 135, Par. 2, two forms of property: public and private, and in Par. 3 we found that: “Public property belongs to its state or administrative-territorial units”.

Law No. 18/1991 concerning the fund (published in the Official Monitor of Romania, Part I, No. 37/20 February 1991), with further changes, was the first normative act that settled the juridical regime of public property with special application, concerning agricultural fields. Thus, in Art. 4, Par. 2 it is specified that: “the public domain can be of national interest... or local interest... ”.

As for the object of public ownership right, Law No. 18/19921, makes in Art. 5 an enumeration of those real estates or grounds that have this quality.

A more complete settlement, concerning public property is given in Art. 1 from Law No. 213/1998 (published in the Official Monitor of Romania, Part I, No. 448/24 November 1998) regarding public property and its juridical regime to this effect: “Public ownership right belongs to the state or to the administrative-territorial units, on assets that, according to the law or by their own nature are of public interest or use”.

Next, we'll be refering to public and private ownership right on plots of land.

### **3. JURIDICAL REGIME OF PUBLIC PROPERTY LANDS.**

#### **3.1 Settlements**

Normative acts that settle public property are: Romanian Constitution (Art. 135); Law No. 213/1998; Law No. 219/1998 (published in the Official Monitor of Romania, Part I, No. 519/30 December 1998) regarding concessions regime; Civil Code Art. 475, Par. 2, 476, 478, 480 and following, 1844; Land Fund Law No. 18/1991, republished, with further changes, Local Public Administration No. 215/1998 (published in the Official Monitor of Romania, Part I, No. 204/23 April 2001), Law No. 33/1994 concerning expropriation for use reasons.

#### **3.2 Juridical Characters of Public Ownership Right on Land**

According to Art. 135., Par. 5 from Romanian Constitution: “Public Property assets are inalienable” and according to Art. 5 Par. 2 from Law No 18/1991, republished: “The lands that are part of public domain are inalienable, imprescriptible and imperceptible. They can't be introduced in the civil circuit unless, according to the Law they are removed from the public domain”.

According to those above Art. 11 Par. 1 from Law No. 213/1998 concerning public property and its juridical regime, and Art. 122 Par. 1 from Local Public Administration Law No. 215/2001, specifies that: “Public domain assets are inalienable, imperceptible and imprescriptible”.

As a result, the lands that are part of public domain are inalienable, imprescriptible and imperceptible.

- They are inalienable, because ownership right on these grounds cannot be alienated because they are not on the civil circuit. Alienation acts concluded regarding these assets are struck by absolute nullity.

The grounds that constitute the object of public ownership right can't undergo dismemberments of ownership: use, usufruct, occupancy, servitude or superficies.

In case a ground is lawfully passed from public domain to private domain, it may be alienated according to legal provisions. The lands belonging to public domain can only be given to the administration, by concession or rented in law conditions (Art. 11, Par.1, a- Law No. 213/1998).

- They are imprescriptible. According to Art. 1844 Civ. C. “we can't prescribe the domain of things that, by their own nature or by a legal declaration cannot be object of private property, but they are drawn out from trade”. Upon public domain grounds, action for recovery of property right is imprescriptible, and the third party can't invoke to the public domain's owner the effect of acquisitive prescription (usucapio) and good faith possession, as ways to obtain the property (Art. 11, Par. 1 Civ.C., c - Law No 213/1998).
- They are imperceptible, that is state or administrative-territorial units' creditors can't follow up with a view to obtain their debts, fulfilment and can't constitute upon the lands that belong to the public domain (Art. 11, Par 1, b - Law No. 213/1998)

Juridical acts, concluded with non-observance of legal provisions concerning the juridical regime of public domain lands are struck by absolute nullity (Art. 11, Par. 2 from Law No. 213/1998).

### **3.3 Subjects of Public Ownership Right**

Romanian Constitution specifies in Art. 135 Par. 3 that public property belongs to state or administrative-territorial units and Law No. 213/1998, Art. 1 states that public ownership right belongs to state or administrative – territorial units.

It results from above that the only holders of public ownership are the Romanian state and its administrative – territorial units.

Therefore, natural and legal persons can't hold assets of public use.

According to Art. 25 from Decree No. 31/1954 (published in the Official Bulletin No. 8 from 30 January 1954, with changes that have been brought to it by Law No. 4/1956, published in Official Bulletin No. 11/4 April 1956) regarding natural and legal persons: “The state is a legal person when it participates directly, in its own name, as subject of rights and duties.

It participates on such reports through the Ministry of Finance except in cases when the law decides otherwise”.

The administrative – territorial units are: the village, the towns and the county, according to Art. 18 Par 1 from Law No 215/2001.

In their capacity of legal persons of public right, with personal patrimony and with absolute juridical capacity, the villages, the towns and the counties have in public property, lawfully, assets of local or regional public use or interest, accordingly (Art. 3, Par. 1, 3 and 4 from Law No. 213/1998, Art. 122. Par. 1 from Law No. 215/2001).

Holders of ownership on forest fund, private or public property, exert their ownership within the law limits and conditions, with a view to preserving the conservation and sustainable management of forests (Art. 5 from O.G. No. 86/1998, published in Romania's Official Bulletin, Part I, No. 320 from 26 August 1998. Republished in Art. IV from Law No. 141/1999's foundation for approval of Government's Ordinance No. 86/1998 regarding the settlement of forest regime and administration of national forest fund, published in Romania's Gazette, Part I, no. 355 from 27 July 1999, giving text a new numbering).

### **3.4 The Object of Public Property**

Assets that make the object of public property are enumerated in Art. 135 Par. 4 of the Romanian Constitution and on the list containing certain assets that make up the state public domain and administrative - territorial units, annex to Law No 213/1998.

For the first time after December 1989, the notion of public domain is settled by Law No. 18/1991.

Thus, in Art. 4, Par. 1, it is shown that lands may belong to public domain and in Par. 2 of the same article that: “public domain can be of national interest, in which case property on it, in public right regime, belongs to the state or of local interest, in which case property also, in public right regime, belongs to villages, towns or counties”.

Public domain lands are those affected to public use (Art. 4, Par. 4).

Land plots on which are placed constructions of public interest markets, lines of communication, highways and street networks, public parks, ports and airports, forest grounds, riverbeds, lake basins of public interest, interior sea water bottoms and of territorial sea, the BlackSea coast and beaches, grounds for natural reservations and national parks, monuments, ensembles and archaeological and historical sites, nature's monuments, grounds for defence purpose or for other utilization which, according to law, belong to public domain or which, by their nature, belong to public use or interest, also belong to public domain.

From these above, it results that, according to Law No. 18/1991, the assets which are destined for public use or interest belong to the public domain.

Public domain also includes:

- state property grounds administrated by scientific research stations and institutes, agricultural and forest-oriented, destined to research and seed production based on superior planting natural and of high-breed animals, as well as from the administrartion of the Institute for Testing and Recording the Varieties of Culture Plants and of its territorial centres which they remain in their administration (Art. 35, Par. 2 from Law No. 18/1991, Art. 9, Par. 1 from Law No. 1/2000);
- state property grounds used at the time of the present Law, by agricultural and forest profile and those that pass in their administration education units (Art. 35, Par.4 from Law No. 18/1991, Art. 9, Par.2 and 3 from Law No. 1/2000).
- According to property form, the national forestry fund, defined in Art. 1 (Law No. 26/1996 – Forest Fund Code has been publishe in the Official Monitor of Romania, Part I, No. 93 of 8 May 1926) from Forest Code, is made up of:
  - forestry fund – state public property;
  - forestry fund – public property of administartive - territorial units (villages, towns, cities);
  - forestry fund – private property of religious units (parishes, hermitages, monasteries), of education institutes or other legal persons;
  - undivided private property forest fund of natural persons (Art. 3 from O.G. No. 96/1998);
  - forest ways and railways existing at the time of O.G. No. 96/1998 becoming functional irrespective of the property form of forestry fund they cross, belong to the state, too;
  - national forestry fund, irrespective of the property form, is subjected to the forestry regime.



Forest regime represents a unitary system of norms with technical forest, economic and juridical character regarding the arrangement, guard, protection against pests, forests' exploitation and regeneration, with a view to ensurance of lasting administration of forest ecosystems.

Grounds that belong to public domain can be given in admistration to independent enterprises or to public institutions or can be given on lease hired out (Art. 135, Par. 2 from Constitution). In this way Art. 12 of Law No. 213/1998 specifically states that: “assets from public domain can be given after case, in the administration of indipendent enterprises, to prefectures of local and central public administration authorities, to other public offices of local, county and national interest”.

#### **4. JURIDICAL REGIME OF PRIVATE PROPERTY GROUNDS**

##### **4.1 Settlement. Definition**

Romanian Constitution protects private property. Thus, in Art. 135, Par. 2 it affirms that property may be public or private, and in Par. 6 of the same article that: “private property is, according to the law, inviolable”.

According to Art. 41, Par. 2 from the fundamental Law, no matter the holder, private property is equally protected by law.

The Civil Code settles the state private domain in Arts. 475-478, Art. 646 and 680. Private ownership on grounds is settled in Art. 4 from Land Fund Law in this way: “Grounds can make the object of private ownership, natural or legal persons, or they may belong to public or private domain”.

Law No. 213/1998 concerning public property and its juridical regime states in Art. 5 Par. 2 that: “State' or administrative – territorial units'private ownership on private domain assets is subjected to the legal regime of common right, if the law does not dispose otherwise”.

The same law supports in Art. 4 that: “private domain of state or administrative–territorial units is made up of assets that are in their property and that don't belong to public domain.

On these assets, the state or administrative territorial units have rights of private ownership.

Law No. 215/2001 also settles in Art. 123, Par. 2 the private domain of administrative territorial units.

In doctrine, private ownership has been defined as the right that belongs to natural or legal persons, to state or administrative – territorial units, on certain immovable property or personal estates, exerting on them the attributes of ownership (possession, utilization and disposal), exclusively and perpetually, in its own interest and power, on legal conditions.

Other authors have defined the private ownership right that has as holders the state, administrative – territorial units, natural and legal persons, as being their right over these immovable properties or personal estates that are in the civil circuit, exerting on them the attributes granted by ownership rights (possession, utilization and disposal), in their own name and interest, within limits determined by law.

From the above definitions we find out who the holders of private ownership are, which is the object of the ownership, which are the attributes of ownership, the fact that this right is exerted in conditions and limits given by law over certain assets that are in civil circuit.

## **4.2 Juridical Characters of Private Ownership on Land**

Assets that make the object of private property right are alienable, prescriptible and perceptible.

- alienability of private property. This means that, even if the assets belong to state or administrative – territorial units, they are in the civil circuit.

The Civil Code affirms in Art. 475, Par. 1 that: “Anyone may freely dispose of his assets, with changes established by law”.

Law No. 54/1998, concerning land administration, underlines in Art. 1 that: “Private property grounds, irrespective of their holder, are and remain in the civil circuit. They may be alienated and obtained respecting the dispositions of the present law”. Law No. 54/1998 has come into force in term of 90 days from the date of publishing in Romania's Bulletin (No. 102/4 March 1998) and on date of coming in force Chapter V entitled “Juridical circulation of terrains” (Arts. 66-73 from Fund Law No. 18/1991, republished in Romania's Bulletin, Part I, No. 1/5 January 1998) has been replaced.

Grounds placed within the built-up area and outside built-up areas, can be alienated and obtained through juridical acts between living persons, concluded in authentic form.

- private property is prescriptible, meaning that it is subjected to acquisitive and extinctive prescription (usucapio).
- Upon a private domain asset of state or administrative – territorial units, can be obtained the ownership through the acquisitive prescription effect. In this way, the Civil Code stipulates in Art. 1837 that prescription is a means to obtain the property.
- Therefore, no matter the private ownership holder, the ownership over these assets can be obtained through the acquisitive prescription effect.
- Private property is perceptible . The assets that make the object of this property can be followed by creditors, with a view to satisfying their debts, without making distinction if they are movable or immovable.

According to the above, Art. 1718 Civ.C. asserts that: “Anyone who is personally forced is held off to fulfil his obligations with all his assets, movable or immovable, present and future”.

The state is presumed to be solvable no matter if the assets belong to private or public domains. In other words, assets that make the object of the private domain of state and administrative – territorial units will not be legally pursued.

### **4.3 Private Ownership's Subjects**

Holders of private ownership can be: natural persons, legal persons, the state or administrative – territorial units.

Can be holders of private ownership right: commercial partnerships founded on Law No. 31/1990, independent administration founded and organized based on Law No. 15/1990; agricultural societies founded on Law No. 36/1991, that have juridical personality, but without commercial purposes; handicraft or credit cooperatives, as well as those without lucrative purpose and foundations founded according to Law No. 21/1924 concerning the legal persons, annulated by O.G. No. 26/2000 (published in Romania's Bulletin, Part I, No. 39/31 January 2000) and religious cults.

Natural persons who have the ability to obtain rights can be subjects of private ownership. The Civil Code states in Art. 949 that: “Any person that is not unable of law can contract” and in Art. 1306 that “Everybody who is not forbidden by Law can buy and sell”.

These texts refer only to Romanian citizens – natural persons. As for the surface of agricultural ground, Law No. 54/1998 stipulates in Art. 2, Par. 2 that, in case of obtaining it through juridical acts between living persons, the landed property of the procurer cannot exceed 200 hectares agricultural ground in arable equivalent on a family.

The situation for non-observance of this stipulation consists in the reduction of the juridical act until the limit of lawful surface.

Natural persons, foreign and stateless citizens cannot obtain ownership for land (Art. 3, Par. 1 from Law No. 54/1998).

Neither the foreign legal person can obtain land in Romania through juridical acts between living persons or for cause of death.

State is a legal person and it is represented as subject of rights and obligations by the Ministry of Finance unless the law disposes otherwise.

Villages, towns and counties are legal persons. Private domain administration of villages and towns is achieved by the council, while the private domain administration of the country belongs to town council.

### **4.4 Object of Private Property**

Romania's Constitution enumerates in Art. 135, Par. 4 the assets that make the exclusive object of public property.

Law No. 18/1991 regarding land administration says in Art. 6 that: “Private domain of state and of villages, towns, cities and counties respectively is made up of grounds obtained by them through ways stipulated by law, as well as grounds taken out, according to law, from public domain”.

Object of private property is also stipulated by Law No. 213/1998 as such: “Private domain of state or administrative – territorial units is formed of assets found in their property and that don't belong to public domain. On these assets the state or administrative – territorial units have a private ownership over them”, and in Law No. 215/2001 in Art. 123, Par. 1: “Private domain of administrative territorial units is made up of assets entered in their property by law”.

The object of private ownership is formed by movable and immovable property that don't belong to public domain.

Law No. 18/1991 with further changes and Law No. 1/2001 settles in detail the situation of grounds that can make up the object of private ownership.

#### **4.5 Legal and Persons Justified to the Constitution and Reconstitution of Private Ownership upon Land**

Law No. 18/1991 settled two modalities of obtaining ownership upon land in Art. 8, Par. 1. According to this text, the establishment of private ownership upon grounds found in the patrimony of agricultural production co-operatives is made by:

- reconstitution of private ownership upon grounds in favour of former owners or to their heirs' advantage;
- constitution of private ownership upon grounds for persons who have never had land in property in the respective locality.

According to Art. 8, Par. 2 from Law No 18/1991, the beneficiaries of this law are:

- co-operative members who brought in land in the agricultural production co-operative
- those who have been taken the land away from them lawfully
- their heirs
- co-operative members who haven't brought land to the co-operative
- other persons specially nominated.

Land Fund Law has advanced in Art. 11, Par. 3 that: Ownership right constitution is made on demand, function of the situation of grounds held by the agricultural production co-operative at January 1<sup>st</sup>, 1990, written in the evidence system of the general land cadastre or of the agricultural registre, corrected with the legally performed alienations by the co-operative by the time the Law became active.

#### 4.5.1 Reconstitution of private ownership upon grounds has been ordered for the following categories of persons

- former co-operative members who brought in land to the former agricultural production co – operatives. If the past owners weren't alive by the time Law become active, reconstitution was done in favour of their heirs (or to their heirs advantage).
- former private owners whose agricultural grounds have been amalgamated in the perimeter of some former agricultural production co-operatives, if these haven't been given, by compensation, other grounds in equivalent. Reconstitution of ownership has been made only on demand of former owners or of their heirs.
- Holders of “Mihai Viteazul” or “Mihai Viteazul cu spadă” titles or their heirs who have made their option and have been offered, at the time of land reform, arable ground, on condition that these persons should not have other grounds in property.

Reconstitution of ownership upon grounds to these persons' advantage can be made only if their grounds have passed with or without payment to the patrimony of former agricultural production co-operatives.

Law No. 1/2000 has dedicated the principle of integral and in kind retrocession of agricultural grounds. Only if reconstitution of integral ownership can't be made, redresses for the difference of unretroceded ground will be awarded.

#### 4.5.2 Constitution of ownership upon grounds has been made in favour of the following categories of persons or families

- former active co-operative members who didn't bring in land in past agricultural production co-operatives or they brought land less than 5000 mp in surface.
- persons who didn't have the quality of co-operative members but they worked as employees in the last 3 years in an agricultural production co-operative or co-operative association.

To ascribe land in property for persons of this second category, the following conditions are to be fulfilled:

- there have remained grounds at the local commission's disposal after satisfying the past holders' requests;
- applicant persons settled or they are committing themselves to settle in the locality where they requested land and received the ground in property;
- respective persons do not possess grounds in property in other places;
- Romanian citizens belonging to the German minority, deported or displaced persons or dispossessed by normative acts issued after 1944 or their heirs;
- persons who, totally or in part, lost their working capacity and heirs to the persons who passed away, as a result of participation to December 1989 Revolution, who have the right to receive in property, lands in surface up to 10,000 mp, in arable equivalent;
- to any family that requests, in written form, the assignment in property of a ground surface, if they commit themselves to toil the respective ground.

Law No. 18/1991 specifically states that it is given land in property to these families, only with respecting the following conditions:

- in that place there exists a surplus of land and a deficit of labour force in agriculture;
- that family requests, in written form, the assignment of ground in property and it decides to cultivate it;
- the family that makes requests doesn't own ground there or they own ground in other places;
- the family is assuming the obligation to settle their domicile in the locality where the ground given in property is placed;
- family gives up the property they own in other localities outside cities, if this is the case.

In case in the respective locality there are no agricultural ground surfaces, in order to totally satisfy the applicants' demands who fulfil the conditions advanced by the law, reconstitution of ownership will be made also from agricultural ground surfaces passed to the village, town or city's property, according to Art. 49 of Law No 18/1991, republished, and, after case, in situations which, by final and irrefutable legal decisions, the absolute nullity of certain clear titles is established from agricultural grounds that pass to the private property of the state. According to Art. 49: "Persons who have been given ownership rights on agricultural plots of land are forced to precisely observe conditions stipulated by Arts. 19, 21 and 43, regarding the settlement (of domicile) and setting up of new householders.

Non-observance of these conditions attracts the loss of ownership right upon ground and buildings of any kind built on these. Compensations will not be awarded for ground and constructions, the holders will receive a compensation equal to their real value.

The organ authorized to see the situation stipulated by Par.2 in the Prefect, which, by order, certifies the loss of ownership right and its pass, after case, to the private property of the village, town and city on whose territorial area the land is found".

If reconstitution can't be done, as shown above, redresses will be given for the difference of unretroceded ground.

By dispossessed owner, in the sense of the present law, we understand the holder of ownership at the moment of dispossession (Art. 3, Par. 5 Emergency Ordinance No. 102/2001).

Law No. 18/1991, republished, also settles the assignment in agricultural utilization of certain ground surfaces. In this way, Art. 19, Par. 3 from the above mentioned law stipulates that: "can be ascribed, on demand, to agricultural utilization, up to 5.000 mp in arable equivalent, for each family, to speciality personnel from communal public services, as long as they work in the locality, if they don't own ground in property in this locality, they or their family members. Ownership on these grounds belongs to village, town, city, after case".

It results, from this text, that such a demand is admitted if the applicant doesn't own ground in the respective place, both he and his family members.

On departure from the locality these persons must get redresses for the investments made, with the preliminary consent of holder and if they are useful on the attributed surface.

Through Revision Law of Romania's Constitution from 18 September 2003 (published in the Official Monitor of Romania, Part I, No. 669/ 22 September 2003), Art. 41, Par. 2 and Art. 135, Par. 2 have been changed in this way:

Art. 41, Par 2: Private property is equally guaranteed and protected by law, irrespective of the owner. Foreign citizens and stateless people can obtain private ownership on lands, only on conditions resulted from Romania's adhering to European Union and from other international treaties on which Romania is part, on base of reciprocity, on conditions advanced by organic Laws, as well as by lawful legacy.

Art. 135, Par. 2: Public property is guaranteed and protected by law and it belongs to state or administrative – territorial units.

In Art. 41, after Par. 3 has been introduced a new paragraph (3<sup>1</sup>), with the following content:

Nationalization or any other measures of forcible passing to public property of certain assets on base of social, ethnical, religious, political allegiance or of other discriminating nature of holders, are prohibited.

Romanian citizens are called to express their will by vote within the framework of the national referendum concerning the Constitution revision on 19<sup>th</sup> October 2003.

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