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LIMITATIONS OF THE RIGHT OF PRIVATE PROPERTY IN ROMANIA, BY MEANS OF CIVIL NORMS, FOR THE PURPOSE OF ENVIRONMENTAL PROTECTION

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Abstract: *In recent decades, the development of the economy, with the help of increasingly technologically advanced means, in most areas of the world, has generated numerous ecological problems, especially by accentuating pollution, which has led to the destruction of the ecological balance, with negative consequences for the performance of socio-economic activities as well as for human life, thus making it necessary to adopt prohibitive rules that limit the right to property. Even if this right is a fundamental right, the owner and his property are surrounded by third parties, so that the exercise of the prerogatives of the right to property is integrated into a certain social context and in a given geographical space. Gradually, the limitation of the exercise of the prerogatives regarding the right to property was imposed by the general interest, which is increasingly evident, so that, as a consequence, the right to property is undergoing an increasingly intense process of "socialization". The exercise, in a restrictive way, of the right of ownership implies that the owner can perform all the material and legal acts that are not expressly forbidden to him, as well as the fact that the limitations brought to the right of property appear as exceptions to the rule, having to be provided for by law.*

Keywords: *Civil rules, private property, limitation of rights, environment, ecological balance*

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INTRODUCTION

The degradation of natural ecosystems in recent decades, negatively influenced, especially by the scale of the development of the economy, brings ecological problems more and more into discussion, in order to ensure the ecological balance and the health of the population, it is necessary to preserve a balanced environment that does not affect the lives of the owners.

The right to a healthy environment (Paraschiv, 2013, p.152) and ecologically balanced, being part of the fundamental rights, is characterized by a particular dynamic in terms of its recognition and legal guarantee.

The term environment has been used (Paraschiv, 2015b, p.80) since the nineteenth century, as the natural environment of living beings, but later it has also been extended to living spaces (Duțu, 2013a, p.9) as well as to economic zones, which are increasingly technological, which create numerous ecological problems, especially by accentuating pollution, deepening (Mihuț, 1989, p.259) the disharmony between the man-made environment and the natural one.

Thus, massive exploitation, through harmful processes, of natural resources, and the development of industry negatively influence the quality of life of the inhabitants, if adequate measures are not taken, being necessary to impose obligations on the owners, which limit the right to use the property.

In view of the evolution of society, the relationship between (Duțu, 2013b, p.127) the right to property and the right to a healthy environment must be approached in a new vision, which should be reflected in the legal provisions.

MAIN TEXT

The raising of the standard of living, through the development of the economy, the progress in (Paraschiv, 2015c, p.463) the sphere *of science and technology,* but especially the explosion *of computerization* in almost all fields of activity, although they have a positive role, also produce negative effects, which can significantly affect human rights regarding the maintenance of health and the development of existence in normal environmental conditions, if they are not properly managed.

An example of this is the modernization of agriculture, which, by using toxic substances for crop protection, produces negative consequences for a long time on the soil, affecting the quality of products and, implicitly, the health of consumers.

Since the right to a healthy environment is of particular importance (Paraschiv, 2014, p.240) for the development of life in appropriate conditions, social requirements have been imposed more and more and have been diversified, taking into account the consequences of technical-scientific progress and the need for socio-economic and political integration worldwide.

From the perspective of legal instruments, environmental conservation (Duțu, 2013b, pp.128-129) involves the use of classical techniques, especially the rigorous regulation of activities considered to pose a significant risk to the environment, the use of special administrative police not leading to the expected results.

The extension of the process of economic globalization influences the public and environmental policies (Duțu, 2012, pp.29) of the states, amplifying the evolutions in the sense of uniformity and universalization of the objectives and instruments for achieving them, which leads to the globalization of ecological problems.

The general trend, at the international level, is that the environment (Paraschiv, 2015c, p.464) is protected, mainly, by agreements concluded by states on the prohibition of actions that could affect it, in order to prevent the damages, specific to this field, the reason being that the ecological damage is often definitive, the deterioration is irreversible, and the cost of repair, in some cases, is very large, so that an intervention "a posteriori", after the damage has been done, is not, as a rule, an effective measure for the protection of the environment.

It should be noted that, over time, the tools and techniques used in environmental law have evolved, in relation to the aims pursued by it. At the beginning, its sole objective was represented by the idea (Jégouzo, 2008, p.23) of saving, preserving and protecting, thus identifying itself as a right

that aims to preserve a state of nature considered to be part of a heritage. In this context, this right falls within the scope of the rules for the protection of cultural heritage or those relating to the preservation for future generations of representative natural samples, through the creation of reserves and natural parks. In a second stage of its development, following the changes in ecological realities and socio-cultural mentalities, it was realized that it is not enough to protect through conservation measures, but also a positive action of restoration and environmental management is required. Thus, for example, water quality is ensured not only by prohibiting the discharge of pollutants into it, but also by an upstream action of prevention.

Among the means frequently used (Prieur, & Henriot, 1979, p.10) to protect the environment are the administrative limitations of the right to property.

Any person can acquire goods to use for personal interest, the right to property being the most important subjective real right.

The owner is free to perform all material and legal acts that are not expressly prohibited by civil law; prohibitions appear as exceptions to the rule and must be provided for by law.

The exercise of the right (Bîrsan, 2007, p.47) of property cannot be unlimited, and property can only be protected within the limits of the functions to which it must respond; the right to property entails limitations imposed by its moral aims, its economic effectiveness and the general interest, including those relating to the protection of the environment.

Within human settlements, environmental protection (Paraschiv, 2013, p.153) takes into account environmental factors, such as air, water, soil, subsoil, noise, radiation and others. It is achieved through methods of combating pollution with the help of technical measures and procedures, such as locating polluting industries at a distance from localities, reducing pollution caused by means of transport, using technological methods that produce as few pollutants as possible, neutralizing non-recoverable waste, reducing noise pollution, carrying out activities dangerous to man and the environment in safe conditions, etc.

The owner and his property are surrounded by other properties, in a given geographical space, which, if it is not in harmony with the environment created in the vicinity, becomes less beneficial for (Popescu, 1984, p.227) the development of social activities and for the health of living beings.

Until the appearance of the new regulations in the field, the Civil Code (1864) provided, within its 480th article, that property represents the right that someone has to enjoy and dispose of a thing exclusively and absolutely, but within the limits determined by law. Currently, the Civil Code (2009) defines private property, within para. 1 of its 555th article, as "the right of the holder to possess, use and dispose of an asset exclusively, absolutely and perpetually, within the limits established by law". Thus, the vision (Duțu, 2013b, pp.130-135) of an absolute, inviolable and imprescriptible right, which concerns everything, the elements of nature being transformed into goods, giving them a commercial value, is thus consecrated. However, a certain category remained outside the domain, namely the so-called "res nullius", things without a master and, in general, without a significant economic value, such as wild game, rainwater or others. They can become, in a certain sense, goods, given that, for concrete consumption, they require transformations and expenses, acquire a price and become a commodity – for example, water captured, treated and delivered to consumers as drinking water or for other economic and social uses. Traditionally, this category of things includes essential natural resources, such as air, water, sea, wind, which are not accessible. However, the use by people of these things, to which access is in principle free, must nevertheless know and respect some limits. Man thus became the holder of a real right par excellence, absolute master of its object, being able not only to use things his property, but also to dispose of them, both in a legal and physical sense – in this sense, defending a true "right to destroy".

As regards the absolute nature of the right to property, it should be noted that, in the doctrine, there is no point (Boroi, Anghelescu, & Nazat, 2013, p.17) of a unitary view, regarding the explanation of this character. Thus, in one view, it is shown that it aims at the enforceability "erga omnes" of the right to property, in the sense that all other subjects of law are obliged to respect the prerogatives of the holder. In another view, the absoluteness is explained by the fact that this right is unlimited, unrestricted in its content, but, as we have observed, this statement is not exact, since the right to property is exercised only "within the limits established by law." In a third opinion, by the absolute nature of the right of ownership it is understood that, in the exercise of the attributes of the right of ownership, its holder does not need the assistance of another person. In a last opinion, the majority, the absoluteness is explained by relating the right of property to the other real rights, showing that only the right of property unites the three attributes, namely possession, use and disposal, the other real rights having only one or two attributes.

Beyond the particularities imposed by historical developments, the notion of ownership currently undergoes a series of shared developments. Thus, the State has both the right and the duty to restrict, to a certain extent, the exercise of the right of private property in order to preserve collective, public interests. Thus, the content of the right of ownership, respectively the prerogatives conferred on the owners, is determined by the legal order of the state, as provided for in the second part of the definition given by the Civil Code (2009). Ownership of subsoil and soil, vital and unlimited resources, has always been the subject of heated controversies, and the conditions for exercising the right of ownership are established by a large number of special regulations.

In this context, if the limitations brought by laws and regulations constituted, initially, the exception to the rule of quasi-unlimited attributes – of "ius utendi", "ius fruendi" and "ius abutendi" – of the right to property, over time, the relationship has changed considerably, if we take into account the numerous restrictions imposed in the name of the general interest, such as those set out by urban planning and spatial planning regulations or environmental protection measures.

The Civil Code (2009) brought some changes regarding the limitation of the right of ownership, in favor of environmental protection, of preserving the ecological balance. Thus, according to Article 602, paragraph 1 (Civil Code, 2009), contained in the chapter entitled "Legal limits of the right to private property", Section 1 – "Legal limits", we note that "the law may limit the exercise of the right to property either in the public interest or in the private interest", while Article 603 (Civil Code, 2009), drafted under the title "Rules on environmental protection and good neighbourliness", evokes the fact that "the right of property obliges to comply with the tasks regarding the protection of the environment and ensuring good neighborliness, as well as to the observance of the other tasks that, according to the law or custom, fall to the owner". Thus, I note that Article 603 (Civil Code, 2009) faithfully reproduces the content of Article 44, paragraph 7 of the Constitution (1991), the justification, which removes the redundancy of the situation, being that the provisions of the Civil Code (2009) make it possible to apply the constitutional provisions as well as the respective legal institution in civil law relations. At the same time, it is considered that a wording more appropriate to the meanings of the field would have been welcome (Duțu, 2013b, pp.138-139), including from the perspective of a more correct and full integration of the article's theme into the general matter of the legal limits of the private property right.

From the point of view of civil law, the principled provisions of Article 603 of the Civil Code (2009) provide for a legal limitation, based on the public interest of protecting the environment. This limitation expresses the requirement that both the elaboration and the interpretation of the legal provisions, which regulate the exercise of the right of property, must take into account the requirements of environmental protection, established by the special legislation in the field.

Like the constitutional text, that of Article 603 (Civil Code, 2009) also uses the term "tasks", when referring to environmental protection, as opposed to the title of the third chapter and the title of the first section, which prefers the term "limits", with reference to the right to property. At least semantically, the distinction remains valid, the task evoking, rather, the legal figure of easement, a requirement imposed from the outside, while the wording "the right to property obliges respect (...)" suggests, rather, an internal limit, a self-limitation, which derives from the very content, the meanings of that right, regarding its exercise.

CONCLUSION

As a set of objective and subjective elements that constitute (Paraschiv, 2015c, p.465) the human life framework, the environment must be analyzed and kept in a direct relationship with health, because an appropriate environment allows and maintains an optimal state of health, while a polluted environment can contribute to the serious alteration of people's health.

In order to ensure normal living conditions and for a good coexistence of man with the environment, it is necessary to implement a global environmental strategy within the world ecosystem, including all natural elements, but also taking into account the economic, social or political elements existing in each country.

It must also be borne in mind that climate change, on a planetary scale, due to excessive pollution, is a 'delayed bomb', whose destructive effects on the environment can be very large, contributing to the degradation of people's living conditions.

In order to prevent negative consequences on the ecological balance, it is necessary for all countries of the world to unite their efforts to eliminate the causes that contribute to the degradation of the natural living environment, taking into account the results of medical and sociological studies carried out on a global scale, according to which the deterioration of the health status of the population depends, in a proportion of 30%, environmental factors.

In fact, in contemporary society, in general, and in medicine, in particular, a new concept has made its way, that (Paraschiv, 2015a, p.174) of "medicine of the healthy man", which aims not only to combat pathogenic and risk factors, but also to identify environmental factors capable of improving, as much as possible, the quality of life, prolonging it, such as habitat conditions, urbanization, work, environmental status, etc..

Educating people in the sense (Paraschiv, 2015b, p.81) of preventing acts that harm the environment can be achieved through a multitude of means, starting with the adoption of legal norms that provide for certain duties or restrictions, in this regard, and ending with the establishment of sanctions against those who are guilty of affecting this value that is particularly important for people's health and life. The requirements of environmental protection are ensured (Buzatu, & Uzlău, 2013, pp.19-25) predominantly, even today, by the use of procedures and instruments of administrative origin, called, in the Romanian legislation, "regulatory acts", so that numerous provisions on the application of criminal sanctions intervene when it is appreciated, by the legislator, that a harsher repression is necessary for the non-compliance with essentially administrative obligations, the criminal offense being, thus, incriminated and punished, in strict dependence on the administrative regulation.

The correlation between the right to property and the right to a healthy environment must increasingly be a balanced legal issue for both legal institutions, so that, through limitations on the right to property, for the purpose of environmental protection, owners can use the goods in their possession properly.

Thus, within the relationship between the right of property and the protection of the environment, priority will be given to the analysis of the first element, the law establishing the limits of the exercise of the right of ownership, necessary for the observance of the public, ecological interest.

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