STRENGTHENING THE LEGAL FRAMEWORK REGARDING THE DELIMITATION OF STATE AND ADMINISTRATIVE-TERRITORIAL UNITS PUBLIC PROPERTY

https://doi.org/10.52327/1813-8489.2021.1(109).18
CZU: 351.711

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SUMMARY

In the Republic of Moldova, there is currently a lack of a unitary, complex and appropriate to existing legal realities, legislative act that will take into account the trends, the experience and current scientific-practical achievements in the field of patrimonial relations of public entities, which will regulate in detail, clear and appropriately the main aspects of public administration activity in the field of public domain property management and private property. In the absence of adequate and unitary normative regulations that will regulate in detail the legal regime of public property, local public authorities in particular, face serious problems in their property management activity being very vulnerable in their relations with central authorities and control bodies. Moreover, the confusing and contradictory normative framework generates favorable conditions for systematic infringement of the patrimonial rights and interests of the local communities, as well as conflicts of competence between public authorities at different levels in the field of public property management, especially related to the delimitation of property by owners and categories. In this regard, several decisions of the Constitutional Court are relevant. They have repeatedly canceled several normative and legislative acts in the given domain and also alerted central public authorities on the need to improve the respective legal framework and bringing it into line with the constitutional principles of ownership, decentralization and local self-government.

Keywords: *public property, public domain, delimitation, inventory, state, administrative territorial unit.*

Ensuring the right to property and efficient use of public property of the state and public property of administrative-territorial units, including the delimitation of public property, has been the subject of several normative acts during the almost 30 years of independence of the Republic of Moldova including policies, without, however, enjoying quality, clarity and stability in terms of regulations.

The delimitation of public property was the subject of regulation of Law no. 981/2000 [1], law that was declared unconstitutional by the Decision of the Constitutional Court no. 12/2005 [2], of the Law no. 91 / 2007 [3], Law no. 68/2012 [4], of Government Decision no. 1528/2007 [5]. Today the normative act that regulates the delimitation of public property is Law no. 29/2018 [6], Government Decision no. 63/2019 [7], Government Decision no. 80/2019 [8], as well as Government Decision no. 911/2016 [9].

Thus, the delimitation represents a

totality of targeted actions towards the identification and formation (constitution) of the property of the local collectivities and of the state property. The legal importance of delimitation consists in the fact that after performing all the actions provided by law, it can be interpreted as a way of recognition (and even acquisition) or ownership of certain goods, whose legal regime is uncertain - it is not known if they are owned by the state or by the administrative-territorial units. For example, in the case of delimitation of publicly owned land, by identifying the areas of land owned in a locality and their subsequent approval in the manner established by law by the local council and government, takes place, on the one hand, acceptance by the local council of the identification (delimitation) carried out in agreement with the representatives of the central authorities. And on the other hand, there is the recognition by the state of the property right of the local authority on the land areas concerned. Consequently, the legal regime of the lands on the territory of the administrative-territorial unit is clarified and the emergence of the right of local authorities to draw up documents confirming ownership, as well as the right to manage these assets, by virtue of their exclusive competence for the general administration of the public domain and private domain of the local community, independent as any owner, within the limits established by law.

In other words, the delimitation of the property on holders, belongs to the administrative-territorial organization of the state which represents nothing but the delimitation of the state territory into administrative-territorial units tasked with managing a group of citizens (population) that lives in a certain part of the national territory or what French doctrine calls the administrative division of the territory.

The organization of the territory of a state into administrative-territorial units is done for the purpose of a better administration of the interests of its inhabitants. The administrative-territorial units have legal personality under public law and they have full legal capacity and their own patrimony. As defined in art. 453 of the Civil Code of the Republic of Moldova, the patrimony represents, all patrimonial rights and obligations (which can be valued in money), regarded as a sum of related assets and liabilities, belonging to individuals and legal entities. Therefore, the patrimony of the administrative-territorial units as well as of the state is composed of two categories of goods: public property, these being the public domain of the state and of the administrative-territorial units governed by a legal regime of public law, and private property, which constitutes their private domain, governed by a legal regime of private law, unless otherwise provided by law. The status of ownership of public and private property attracts the holder of the rights and obligations arising from contracts concluded for administration, concession, lease or tenancy, loan of goods in the public or private domain of the state or of the administrative-territorial unit.

The autonomy of decentralized authorities requires first and foremost for these organizations to have a heritage. This problem arises from both territorial decentralization and decentralization on services. When the state wishes to organize a decentralized administration, it is obliged to allocate its own patrimony to that administration [10].

Consequently, the state must recognize the decentralized administration's legal personality, as it is the owner of a patrimony. Impairment of assets is an essential condition for guaranteeing the autonomy of decentralized authorities. Without this

patrimony and consequently without their own revenues, the decentralized authorities would depend on the state authorities and would no longer be able to guarantee public services autonomously [10].

As is well known, the effective exercise of local self-government is unimaginable in the absence of financial and patrimonial resources and instruments, mentioned in the previous paragraph, which support and ensure the execution of local development decisions and projects. This means that local authorities must have material goods (movable and immovable) in their possession or under self-management, as well as sufficient financial means, to be administered according to the community interests. Otherwise, in the absence of the material basis and the freedom to manage it, on the one hand, it impedes the stable and consistent economic development of local authorities, and, on the other hand, it transforms the constitutional principles, on the basis of which the local public administration must be organized, into theoretical and declarative principles, without relevance in terms of practical actions [11].

The need to carry out the delimitations results from the fact that, according to the legislation in force, the holder of the property right over the public or private domain, obtains the right to adopt decisions regarding the management of the respective patrimony, as well as to accumulate all the dividends that the respective goods can bring, which is very important for the local public authorities in the current conditions of insufficiency and lack of budgetary resources for the accomplishment of the legal attributions and the needs of the local communities.

With the adoption of the legal framework in the field of local public administration and decentralization,[1] it was found that in the Republic of Moldova, there are several legislative benchmarks based on which the criteria and procedure for delimiting the state patrimony from that of the administrative-territorial unit, criteria that must underlie the delimitation of the patrimony of public collectivities and allow the establishment of clear rules that must govern the patrimonial relations between the local, central public authorities and other subjects of law.[2] Also, in the conditions of the insufficiency of local doctrinal achievements, we consider that the legal practice of the Constitutional Court of the Republic of Moldova is of special importance, which, in the field of local autonomy and patrimonial relations between local and central public authorities, including in terms of delimitation criteria, offered several fundamental and principled legal solutions [12].

Publicly owned land means land owned by the state or administrative-territorial units, the right of possession, use and disposal, over which falls within the competence of the Government or local public administration authorities. In other words, the general administration of state-owned land falls within the competence of the Government, as it results from the Law on Government, and

[1] We refer here to the year 2006, when the current Law on Local Public Administration and the Law on Administrative decentralization were adopted

[2] We remind that, according to the Law on Publicly Owned Land and their delimitation in 2000 (currently repealed), access to justice was restricted to local public authorities. Therefore, according to art.2, para.3 of the given Law, if state representatives and of ATU do not convene on the borders, in cases when state public property terrains border the public property terrains of the ATUs, the latter are determined by the Government at the proposal of ANCRFG (currently ARFC). We consider that this regulation constitutes a limitation of the right of the local public authorities to defend the patrimonial interests of the administrative-territorial units within the relations with other public authorities, by way of court.

the general administration of the lands owned by the administrative-territorial units, belongs to the local public administration authorities, as it results from the Law on local public administration, as well as from other normative acts.

Public ownership of land may be of national interest, a legal regime in which property belongs to the state, meaning the public property of the state, and of local interest, legal regime in which the property belongs to the village (commune), the city (municipality), the district, the autonomous territorial administrative unit of Gagauzia, that means, the public property of the local communities. The public domain of the state, district, ATU Gagauzia, city (municipality), village (commune), as of national or local interest, include the lands determined by law, as well as the lands which, by their nature, are of public use or interest.

In addition, this text of the law suggests that, from the point of view of the legal criteria for classifying land in the public domain, these are public use, public interest and the will of the legislator, criteria that we analyzed above.

For the criterion of public use to be applicable, it is necessary that the land to be intended for all users, and not just a reserved part of them. Accordingly, the lands, regardless of the category they belong to (agricultural, forest fund, water fund, urban or extra-urban localities, etc.) are for public use, if by their nature they are of general use. Lands of public interest are those lands destined to be used or exploited within a public service, for carrying out activities that interest the whole community, without the beneficiaries having access to their concrete and direct use, but to the public service, that exploits them. This category includes: land occupied by national roads, railways and their protection areas, land occupied by national and international gas transmission pipelines, land related to the objectives of socio-cultural public property of the local community, etc. As for the will of the legislator, we note that, since organic law regulates the general regime of property, and legal relations in the field of land ownership, the special legal regime of which is part of the general legal regime of property, are also regulated by organic law. As a result, by organic law, the legislator establishes the categories of lands that form the object of public property either of the state or of the local collectivities.

Regarding the purpose of delimiting state-owned assets and assets owned by local authorities, including public or private property, it takes a double form, as they are of national or local interest, namely:

- protection and efficient use of public property of the state in the interest of the citizens and of the Republic of Moldova;
- protection and efficient use of public property of local authorities in the interest of citizens and local authorities.

The delimitation of public property assets is carried out through actions of identification and formation of state-owned land and public-owned land of local authorities, including classified by areas: public and private. By land formation, we mean a complex of works executed for the emergence of a new real estate, as an object of independent law, by separation, division, merger or combination of real estate registered in the Real Estate Register [13]. Public land delineation works can be carried out in a massive way under the State Programs, as well as selectively, for a type of real estate or land - at the request of public authorities.

As an effect of the delimitation, the lands of the public and private domain are managed and capitalized by their owners, aiming at satisfying the national or local public interest, as the case may be. In other words, the lands of the public domain, re-

gardless of their owner, enter the administrative circuit.

Regarding the Program for delimitation of publicly owned lands, adopted by Government Decision no. 1528/2007, the delimitation actions were about to be concluded in 2009, by registering the state-owned lands and the publicly owned lands of local authorities, as well as their private lands in the Real Estate Register.

According to the Action Plan on the implementation of the National Decentralization Strategy for 2012-2015 [14], in order to eliminate the difficulties in the process of public property management, the draft Law on the delimitation of public property was developed in order to improve the legislative framework in this area. The conditions that forced the elaboration of the respective draft law, consist in the fact that the Law on public property lands and their delimitation (no. 981/2000), although it is a special law, the purpose of which was to regulate the delimitation of state-owned land and public-owned land of administrative-territorial units, it has proven to be outdated and inefficient in many ways, including because it regulates a narrow segment of the entire process of delimiting public property, which means land only, or, the content of the field of public entities is much wider. In view of that, on March 19, 2018, the Parliament of the Republic of Moldova adopted Law no. 29/2018 regarding the delimitation of public property.

The process of delimitation of public real estate includes the following stages: a) inventory; b) delimitation according to affiliation; c) delimitation by domains; d) registration of real estate according to affiliation and by domains in the real estate register.

From the point of view of the administration of the process of delimitation of the public property, the competences are shared on several administrative levels. On the one hand, we have the Government of the Republic of Moldova, which exercises the function of owner of public property of the state as well as promotes the unitary policy of the state in the field of delimitation of public property. On the other hand, there is the Ministry of Economy and Infrastructure, which ensures the implementation of the state policy in the field of delimitation of public property as well as the process of delimitation of state public property in its administration, including its inventory. An important role in the administration of the process of delimitation of public property also belongs to the Land Relations and Cadastre Agency which ensures the realization of the state policy in the field of delimitation of publicly owned lands as well as elaborates and submits to the Government for approval of the State program for the delimitation of real estate, including public land. As for the Public Services Agency, it does not perform delimitation works, but ensures the receipt of the file of the delimitation work and the registration of the real estate and the rights over it, in accordance with the provisions of the legislation in force.

A distinct role in the administration of the process of delimitation of public property also belongs to the local public administration authorities which ensure the realization of the state policy regarding the delimitation of the public property goods of the administrative-territorial unit depending on the affiliation and by domains as well as the registration, in the established way, of the goods as public property of the administrative-territorial unit.

Therefore, once delimited, both by holders and from the point of view of the applicable legal regime, the assets of the local authorities are subject to state registration. Being a real right, the property right gives its holder the possibility to use the good according to its nature or destination, to use and dispose of it exclusively and per-

petually, within and in compliance with the law, the rule of law and good morals, it finds legal regulation in both constitutional and organic rules. Since the property right over the real estate is subject to state registration, the basic normative act regarding their registration (land sector, land share, constructions, etc.) the property of public entities, is Law no. 1543/1998 [15]. As a basis for the registration of public property and the right of ownership over it in the real estate register serve: a) the Government decision, which approved the lists of public property of the state, coordinated with the local public administration authorities of both levels / of the autonomous territorial unit of Gagauzia on whose administrative territory these goods are located; b) the decision of the deliberative authority of the local public administration, by which the lists of real estate public property of the first level administrative-territorial units were approved, coordinated with the local level public administration authorities of the second level / of the autonomous territorial unit of Gagauzia and with the specialized authorities of the central public administration or, in their absence, with the Public Property Agency; c) the decision of the deliberative authority of the local public administration / the decision of the People's Assembly of the autonomous territorial unit of Gagauzia, approving the lists of public real estate of the second level administrative-territorial units/of the autonomous territorial unit of Gagauzia, coordinated with the first level local public administration authorities and with the specialized authorities of the central public administration or, in their absence, with the Public Property Agency.

And last but not least, we would like to point out here the principle of stability of legal norms. However, the Venice Commission established in the Rule of Law Checklist, approved on 11-12 March 2016, that one of the fundamental elements of the rule of law is to ensure the stability of legislation, which in turn is based on the certainty and predictability of law.

The European Court of Human Rights, in its jurisprudence, has ruled that the stability of the regulatory framework is an expression of the principle of legal certainty, and the frequent amendment of normative acts is likely to create difficulties for the subjects addressed, in terms of adaptation to new procedures. However, in a state governed by the rule of law, observance of principles such as legality, legal certainty or the predictability of legal rules must be the norm. However, when the normal becomes abnormal, we are already talking about a state of legal insecurity, which generates the lack of trust of the citizen in the public authorities of the state and in the norms they enact. The constant change of legal norms or the creation of obscure legal norms is a sure source of social imbalance and, as such, distrust on the part of individuals.

Without claiming to be exhaustive in dealing with this subject, we would like, however, to highlight the most important stages that the Republic of Moldova has gone through in terms of regulations in the field of delimitation of public property, or as the title of this study suggests, by adopting Law no. 29/2018 and its related norms, the normative framework in this field has been consolidated, a moment that both theorists and public authorities enjoy alike. However, the purpose of delimiting the property of public entities, enunciated by the legislator in the Law on the delimitation of public property, consists in ensuring the property right and the efficient use of the public property of the state, of the goods public property of the administrative-territorial units of the first and second level, including the autonomous territorial unit of Gagauzia.

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Presented: 2 March 2021.

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