UNIVERSITY OF CRAIOVA
FACULTY OF LAW
DOCTORAL STUDIES

EXPROPRIATION FOR PUBLIC PURPOSE

SUMMARY

SCIENTIFIC COORDINATOR:

Prof. univ. dr. Sevastian Cercel

DOCTORAL STUDENT:

Nicolcescu V. Ana - Maria

Craiova

2019

Expropriation for public purpose represents a frequently debated subject in the domain's literature, yet observing that contemporary doctrine did not widely approach such an actual and current domain in the courts of law, but only specifically, aspect that motivated us to study its issues in a systematic method that wishes not to overlook essential matters that could lead to the general understanding of the expropriation process.

This study contains seven chapters that open the issue of essence in expropriation, and systematically approaches the subjects of current issues, but also the historical perspective of this judicial institution based on an apparently unrevolutionary structure given the technical aspect of the presented judicial institution, but it contains a considerable amount of personal opinions or new associations between institutions, doctrinarian opinions or cases attached classically to some issues, thus receiving other connotations in this work.

Thus, *Chapter I. "Introduction"* contains arguments that speak of the necessity and actuality of this study in a country where development of public utility' projects are based on the alternative of expropriation, that should remain the exception to the constitutional principle provided by art. 44 of the fundamental law.

The same chapter approaches the summary structure of the theses and detailed distinction is made between the various forms of property rights in terms of expropriation, details that facilitate the definition of the expropriation and public utility concepts in the second chapter, as well as the outline of thirteen examples of atypical situations in connection with classical expropriation.

The second chapter offers information regarding the history of typical and atypical expropriation in Romania in order to satisfy the exigence of the historical perspective, to offer an overview of the evolution of this judicial institution and a profound understanding of the concept of expropriation, as the legislator proposes to in our times, concluding that the procedure of expropriation for public purpose follows a similar fundamental structure from the beginning until now and only agricultural reforms or regulation from the communist era have forced a different approach, determined by the public utility it was subdued in the shown historical examples, being an atypical form of expropriation, actually, that draws our attention only from a historical, economic and political point of view, being seen as an „exceptional expropriation regulated by special laws”.

None of the applicable laws explicitly defines expropriation, but the Civil Code enumerates expropriation in art. 863, letter b) as a form of obtaining the right of public property, being regarded by some academics

also as a real method of ceasing of private property rights. Yet, this theory is not unanimously accepted, reported to the permanent character of the property right, stating that property is qualitatively transformed by transfer from one patrimony to another.

In our opinion, both points of view can be accepted, as the permanent character of the property right allows for the qualitative transformation of the property right, but, also, it can be said that private property right becomes inexistent in the patrimony of the former owner and is being transferred on the same asset as a public property right (thus, of different nature), having a new owner.

Another argument in sustaining the thesis that private property right initially ceases can be founded on the Art. 864 of the applicable Civil Code, by symmetry, because the public property right ceases when the usage or public interest ceases to exist.

Also, Art. 562 par. 3 of the Civil Code treats expropriation at a constitutional level of principles in the article dedicate to ceasing of the private property right, but without these reference standards we consider that a link would become missing between the constitutional act and laws dedicated to expropriation, that specifically refer to the provisions of the Civil Code, if these do not conflict the provisions of these acts.

In case law, conception regarding cease of private property right has been established and, accordingly, public property right is born, therefore this dispute remains at an academic level.

Also, in order to delimit the classical notion of expropriation from other similar situations, we have analyzed thirteen atypical cases that highlight the complex effects of the measures taken by the authorities in this domain, exceptions having the precisely the role to underline the classical concept of expropriation, therefor they appear already in this stage, besides being introduced in this thesis as many times as our work relates to them.

The chapter also contains a section dedicated to the nature of assets that can be expropriated - without delimiting the object that it applies to, we cannot speak of expropriation; there is also a separate section dedicated to the definition of the public utility concept as a basic element of the expropriation procedure, in lack of which it would miss the object, also based on a historical approach in order to highlight the evolution of one of the basic notions.

Chapter III is dedicated to the common law in expropriation matters - Act 33/1994 and *chapter IV* describes the special law, represented by Act 255/2010 and although in might seem that they have a classical structure that follows the content of these acts, they are sustained, beside the doctrine, by

the case law of the High Court of Cassation and Justice, ECHR, Constructional Court as well as a vast number of recent unpublished decisions of the internal courts, that applies into practice our scientific initiative.

The proposals of *de lex ferenda* issued in stages for each of the two applicable basic laws regarding the expropriation underlines the deficiencies of some provisions, and in the context of a unique act in th future, they are relevant in order to avoid some repetitive errors, therefore not necessarily to effectively introduce these proposals, fit to that act and that do not need to be revived unconditionally.

The chapter dedicated to common law is structured by the following formula: administrative stage, judicial stage, expropriation fiscality, excess of public authorities' power and the procedure of expropriation, temporary expropriation.

Thus, the stage regarding the administrative stage has more subsections, following closely the stages of Law 33/1994; Declaration of the public utility. The titularies; Preliminary research; Measures before expropriation; Declaration of public utility by law.

Analyzing the content of Art. 7 of Act 33/1994, we can observe that the titularies of this procedure are representative institutions of the central or local public administration, depending of the public interest of the work done, but also the Parliament, when the public utility is declared by law.

Also, Art. 8 of the framework law establishes the obligation of a preliminary research before declaration of the public utility feature, with the condition of registering the work in the municipal plan and territory development, in the purpose declared by Art. 10 par. 1 of the same law.

For the first substage, we emphasize, as the title says, on the preliminary character, with regards to the fact that it stands before the pronunciation of the public utility, once it has been registered in the aforementioned plans, given the fact that the local or national public interest of an objective cannot be established beforehand, but as a result of a special investigation.

De lex ferende, we propose that the owner should have the possibility to claim the procedure of expropriation for his immovable property when the works of public utility in the area indirectly affects his possibility of capitalization of the private property rights at the same monetary level, keeping in mind from the conclusions of this thesis the other discussions regarding the "expropriation - remedy".

The stage of declaring the public utility character is followed by the stage of planning, comprising of the lands and buildings proposed for

expropriations, indicating the name of the owners and the amounts offered for compensation. In this stage, after submitting the documentation at the competent institutions, the interested parties have the possibility to look into it, except for the documents regarding issues of national defense and safety, if this is this case, only a list of immovable properties is submitted to the local council, the list of owners and compensation offers.

As mentioned before in the previous section, for the latest hypothesis, the transparency of the expropriation procedure is very limited and actually, interested parties cannot access the entire documentation, but only the data specified above.

Last, but not least, the possibility of declaring the public utility by law still exists "for any other works than the ones specified at Art. 6", but also in exceptional situations. The law does not make any distinction between the exceptional situations that can drive to the declaration of the public utility and this aspect can be criticized by private persons only after receiving the notification for expropriation proposal, an uncertainty that can lead to matchless practices at court level, that see themselves in the position to substitute the legislator.

As a procedural aspect, we emphasize that Art. 78 of the Romanian Constitution enforces the obligation to publish the act in the Official Gazette of Romania, but this can be criticized only by aspects of legality and not of opportunity.

Therefore, declaration of public utility will be analyzed by the Constitutional Court before promulgating the law, under the conditions of Art. 147, letter a of the Constitution, or a posteriori, as an exception of unconstitutionality, but even if the exception of unconstitutionality may be invoked by the parties, the intimation of the Constitutional Court may be left at the discretion of the court, thus we can evaluate that the declaration of the public utility by law should be limited only to those exceptional situations specified by Art. 7 par. 4 of Law 33/1994.

Also, invocation of the unconstitutionality exception can be made only during a pending case, that assumes its activation based on the principle of responsibility by an interested party, although the law by definition is an act of public power. Therefore, in lack of a pending case, declaration of public utility by law becomes uncensorable.

In our opinion, opportunity can be analyzed by the Constitutional Court in some cases indirectly, by reporting the respective laws to the case law with the object of fundamental rights, but this perspective is more a theoretical one.

As a conclusion, the procedure of public utility declaration by law „for any other works than those specified by Art. 6” limits the access to justice of the owners that would have pertinent arguments to oppose the public utility, the essential element of the expropriation procedure.

The judicial stage consists of multiple subpoints, also based on the structure of the law, respectively: Administrative litigation/non-administrative litigation of the property right transfer; Other procedural rules; The subsidiary character of the administrative litigation; Compensation evaluation; The effects of the judge's decree regarding the expropriation; Compensation payment and institution of the property right of the expropriator; The usage right, the right to retrocession and the right to pre-emption.

Despite the fact that the dispute at law can be subsumed in administrative litigation, it is subdued to common right case law due to the lack of other specific provisions of the legislator, therefor we consider that solving this type of litigation by the civil law departments specialized in property issues is aligned to the tendency of balancing the private property law to the public property law, at the end of a procedure that favors the latter.

Regarding the second subpoint of this section, the law uses the term of "arrangement", but the court will take note of a transaction when all the conditions of form and content are met, setting the conclusion that the object can be transacted and if a specific transaction signed by the parties does not exist, the court can issue a decree solicited by the parties, of common agreement, after verifications.

We do not agree on the fact that the decree of expedient to be final, but to be submissive to the same appeal as the decree issued based on the judge's research, as the contract between the parties can be cancelled for various reasons of absolute or relative nullity, the more the judicial practice recognized the admissibility of the separate judicial proceeding in the nullity of the agreement in the judicial stage of the expropriation the court has issued a decree for. At the same time, the court of judicial control has the possibility to verify and correct eventual procedural errors, such as the lack of citation of a party etc., with indirect implication in the solutioning of the request.

The alternative for amicable resolution of the presented stages does not mean the eluding a stage itself and as long as the parties do not agree, the lack of any of these elements lead to the nullity of the procedure.

With regards to compensation establishment, the court is obliged to gather a commission of experts, formed by an expert appointed by the court,

one appointed by the expropriator and a third one, on behalf of the expropriated persons, the mandatory character of this formula being specified in Art. 27, derogatories from common law that allow the report to be made by one or three experts.

The initial form of the law instituted the jury committee, selected amongst the taxpayers of the establishment where the immovable asset was found or around the locality, by copying the French law, that was subsequently replaced by the arbitrator committee, appointed in these terms for the reason that the initial version did not work in the Romanian society, observing at the same time that the alternative considered viable in 1900 worked until now, even if the arbitrators have been replaced by experts; in the respective period we also found rules regarding the recusation and arbitrators, transferred in the modern legislation.

Along with the constitutional administrative litigation court case law, we can observe that there is a detailed case law of the supreme court with regards to the evaluation of compensations in the matter of Law 33/1994, which continues the vast case law before the Cassation Court regarding the same aspects and, given the essential role of this guiding court in uniformization of practice, some reference examples with opposability effect must be presented, as well as the decrees issued in appeal in the interest of the law, their repetitivity being a landmark for the judges of other courts.

Regarding the effects of expropriation decrees, we can conclude, shortly, that the expropriation decree has an exceptional character and it is derogatory from common law, attributing rights with absolute effect, respectively *erga omnes*, to all legal entities, including non-participants in the respective trial, aspect that strengthens our conclusion that although the judicial stage is subdued to civil procedure rules, it keeps as a substance the character of public law for the expropriation procedure.

Last, but not least, from the case law attached to this stage in Law 33/1994 but also in other Romanian laws regarding expropriation, we can conclude that the price of expropriation can be set only as amount of money with the value in the moment of expropriation, principle that has been contoured ever since the application period of the Law in 1864, which leads us to the idea that expropriation can be assimilated, by applicable rules to a forced sale.

Chapter VI of Law 33/1994 grants the expropriated persons some rights and priorities regarding the expropriated assets also as an expression of the necessity to keep the private property right, which was restricted by the measure of expropriation, at the moment when this procedure was not followed according to the mandatory stages set forth by the law. Some

authors consider that these rights constitutes atypical effects of expropriation, beside the typical ones, that consist of transferring the property right, real subrogation with private title, extinction of the afferent real and personal rights, as well as induction, but, in our opinion, these rights too are considered to be expropriation specific, being regulated even by the first Romanian law of expropriation, respectively the one from 1864, reason for which we consider them typical, but that are born conditionally at a subsequent moment, as we will see in the following explanations.

Thus, the real estate can be offerred for *rental* if it has not been used in the purpose it was expropriated for, with the condition to respect the priority right of the stripped person of renting in the terms of the law.

At the same time, the stripped person may request judicially the *retrocession of the property*, if in one year's time the expropriated property have not been used in the purpose of taking over, or in case after a preliminary notification to the initial address communicated to the expropriator the procedure to start the compensation settlement has not been initiated.

The former owner also has the right and a pre-emption right to acquiring, in the situation that the works for which the expropriation took place were not made, and the expropriator wishes to sell the property in return of a price that cannot be higher than the updated compensation.

At first sight, we could conclude that "transfer" is the exclusive equivalent of a sale, but, given the fact that the law does not make any difference, the right to pre-emption functions as in any other method when the expropriator decides to "transfer" the real estate or when the parties agree, agreement that cannot be materialized but in form of an extra-judicial and judicial transaction when, for various reasons the measures taken by the expropriator are disputed in court.

In the section regarding "fiscality", in the classical meaning, we appreciated that this cannot be associated to the measure of expropriation, due to the presented reasons, using this term in order highlight the lack of fiscality in the matter, but still a subject that stirred the shown controversies.

Towards this exposure in the chapter dedicate to common law, we have concluded that the other judicial alternatives cover the entire issue of public utility, therefor expropriation becomes a necessity and the optimal solution to find the balance between the public and private interests is that expropriation should not be used abusively, excess of power being analyzed in all stages of the procedure.

At least in case of Romania, it is noted that although the stage of repairing the prejudices caused by the abusive takeover of the real estate

properties has not ended, expropriation, also a forced measure, is necessary to develop infrastructure, public investment etc., context in which issuing a law for expropriation, which would respect the requirement of the constitution regarding the guarantee of property rights and the limited usage of this alternative represent the first landmarks that authorities should consider.

Finally, we have proposed the *temporary expropriation* as a remedy, judicial institution that would be similar with the requisition, but, as opposed to the latter, this can be finalized with a final expropriation after some time, during which the public utility work must be started. In the condition of accepting such form of expropriation, the question if the right to retrocession still exists arouses and we think that it does in the hypothesis that the parties do not reach an agreement and court solution is requested.

Chapter IV regarding Law 255/2010 is structured on the following sections: Main differences between the framework procedure; Government Ordinance nr. 53/2011 regarding the Methodological norms of application of Law 255/2010; Relevant case law elements highlighted in application of Law 255/2010; Decree nr. 67/21.02.2017 of the Constitutional Court.

This proposed comparison wishes to facilitate the scan of the special normative act and to easily find the vulnerable and strong points, if there are any, taking into consideration the fact that the special law takes over basic elements from the common law, only a few elements changing in the interest of speeding up the procedure.

Although Law 255/2010 is applicable, Law 33/1994 has produced effects a long time, giving birth to a vast case law on expropriation, in its own base, but also correlated to other special laws, thus becoming fundamental for this matter.

Nonetheless, the two applicable, normative acts produce effects by the principle of *tempus regit actum*, therefor Law 255/2010 is applied inly to expropriations done after the respective law entered into force, published in the Official Gazette nr. 35/20.XII.2010.

The special Law 255/2010 regarding expropriation for public purpose, necessary to realize objectives of national, county or local interest, sets forth the judicial frame to taking necessary measures for the fulfillment of the works specified in Art. 1, Art. 2 specifying the cases of public utility where applicability can be found, a known fact being that this normative act covers the majority of objectives of public interest, thus requesting a detailed analysis, just as the framework procedure.

These articles have been completed by Law 233/2018, Government Emergency Ordinance 99/2018 and Law 22/2019 in a relatively short

interval of time, adding more hypothesis to the existing ones, thus becoming mero exhaustive, at least at theoretical level, an expropriation measure taken based on Law 33/1994 being now difficult to identify.

The norms of coming into force of Law 255/2010 highlights even more the distancing of the special law and the common law, considering the fact that for Law 33/1994 there were no special norms issued for coming into force, which means even the fact that this is applicable only under the aspects that Law 255/2010 does not set forth explicitly, reported to Art. 32 of Law 33/1994,

Also, the legislative incoherence from the matter of expropriation is reflected in Government Ordinance 53/2011 through the fact that it adds to the norms of substantial law set forth by the specified law, although the norms by definition should regulate only procedural stages.

The special law in matters of expropriation is now developed based on a rich case law of the internal courts, which respond to the imperatives of protecting the private property rights by effective solutions given to a large number of individual expropriations, solutions that reflect at the same time, an imperfect, interpretable legislation with sometimes matchless at the courts of appeal.

As a result, we have presented some pertinent examples from the actual practice of the courts of law regarding expropriation, together with the afferent comments, gathered from multiple courts form all over the country, on all jurisdictional levels, noting the fact that in the administrative stage the interested parties address less to the courts than in the judicial stages, mostly because of lack of transparence in the procedure and due to the access of the parties to the procedure in this first stage.

For this judicial institution, the case law part has an overwhelming importance, noting that the law itself did not evolve too much from the first special law born in 1864, in other way that Montesquieu would say:
"Born from case law, law feeds by case law and often evolves under a motionless legislation", statement that fits perfectly in order to reflect to what we said regarding the motionless structure of expropriation.

The vast case law of the European Court of Human Rights in matter of nationalization, expropriation and property in general determines a separate analysis, chapter V presenting the general considerations for which this approach is also necessary, the admissibility conditions of a complaint based on Art. 1 of additional Protocol nr. 1 of the Convention, stating that the understanding of the reasons of the Court regarding to expropriation cannot be dissociated from this first part, the same being applicable to the approach

and applicability of the Convention norms in conjunction with other norms having the same mandatory force in internal or international law.

In the second part a case law review is made through the analysis of the ECHR reference cases and of recent cases, which are not published in other works, from the point of view of the most favorable law.

The balance between contradictory individual interests can be difficult to obtain, therefor Contracting States have been offered the so called "margin of appreciation", as national authorities are well better placed than the European Court to assess the existence of imperious social needs that could justify the interference in one of the right granted by the Convention, exercise that must be realized based on these principles when the national judge must verify the terms and conditions of the expropriation.

Considering that there are mandatory internal and international law provisions, which the national court is entitled to use during the analysis of the expropriation law and of the private law in competition with each other and with other fundamental laws, Art. 11 and Art. 20, par. 2 of the Constitution will be applied.

Related to the number of decrees pronounced in the field of property against Romania by the European Court of Human Rights, the relevant principles traced by this court must be presented, which need to be followed by the national judge and must which must be applied on concrete cases, respecting the provisions of Art. 20 of the Constitution.

Uncorrelated principles with effective examples would remain without content, therefor presenting the most important ones based on the facts emphasizes the correct reason of the Court, especially given the case the Court has limited attributions to verify the adherence to internal law, this attribution is held by the national judge.

Chapter VI, dedicated to compared law, emphasizes on the utility of studying other legal systems, in case of expropriation due to the fact that the judicial institution in the Romanian law is inspired by the French law and the convergent and divergent points, explained on historical, social and economic bases specific to each judicial space enlighten optimal solutions that need to be adopted in each case, leading to understanding of the elements that determined the expropriation forms in history.

At the same time, the study of the conjunction in the former communist countries is important to subsume an expropriation procedure regulated by the Romanian legal system, after a period of totalitarianism, in the European legal system, especially due to the reason that in the respective period expropriation was mistaken with confiscation.

The judicial institution of expropriation in the Romanian law is inspired by the French law, respectively our first expropriation law from 1864 is a reproduction, with small changes, of the French law from 1841, therefor the evolution of the two legal system must be analyzed in order to understand the basics of expropriation in Romania.

At the same time, convergent and divergent points, explained on historical, social and economic bases specific to each judicial space enlighten optimal solutions that need to be adopted in each case, leading to the understanding of the elements that determined the expropriation forms in history.

Our compared law exercise regarding the French legal system is not a first, but it is based on the extremely valuable work of G. Th. Avinianu in "Dissertation about expropriation" from the pre-war period, and of Alfred Crutzescu and I. G. Vântu in "Dissertation on expropriation for public purpose", published between the wars and where the legal systems of the two countries have been compared in detail, comments being supported systematically by the supreme courts case laws from France and Romania.

Thus, even from the pre-war period, it has been established that, also our expropriation law has been copied by the expropriation law from 1841 France, it does not have the same satisfactory results, although expropriations in that country were more numerous and more important as value, while especially the provisions regarding the juries needed the changing law from 1900, jurors being replaced with arbitrator committees.

Regarding the "expropriation jury", it has been established that the entire Europe ceased to use this judicial institution and if we start from the idea that the principles of the French for expropriation were widely spread in the entire European space at the beginning, it is interesting to know the moment and the form by which these did not represent a preferred model.

Secondly, the study of conjunctions in the former communist countries, but of those of occidental, modern countries too is important in order to place the expropriation procedure regulated by the Romanian legal system, after a period of totalitarianism, in the European legal system, especially due to the reason that in the respective period expropriation was mistaken with confiscation.

The last chapter, suggestively called *"General conclusions.*

Expropriation law and/or expropriation code?" observes the fact that the classic structure is applied, but the entire study considers that the norms regarding expropriation must be improved, updated and unified for the real protection of private property right.

Therefore, an Expropriation code is proposed, which should specifically separate the administrative stage of the judicial stage on an already established model, because in many cases not the radical change of a legal institution will improve and modernize it, but the changes together with the additions, where it is needed, lay the contour of the less criticizes form, adapted to the current needs.

The last chapter shortly reiterates the conclusions from the end of each chapter, highlighting *de lege ferenda* proposals and new judicial concepts that we consider relevant based on our research, yet it does not repeat punctually these elements, but only the most important proposals and critics, this being the reason why this thesis is relevant from the first to the last chapter, for all the systematically covered details.

Under the circumstances, we consider that the thesis delivers theoretical and detailed, substantial case law knowledge, which can be applied in practice, numerous personal opinions, original connections between these, compared law and in a significant proportion, information that cannot be found in other works, critical reasoning which emphasizes on the weak points from the internal legislation but also from the constant Romanian case law, therefore, almost every chapter is finalized with some conclusions that converge to the final conclusion from the last chapter.

The structure of the study might seem a very technical one and generally classic, yet the analyzed issue is both technical and flat, this being the reason behind the creation of a bond between expropriation law and other social sciences, through the addition of ideas taken from philosophy, history, psychology of communities, social anthropology etc., thus revealing the essence of property law so profoundly captured by Victor Cousin in the motto chosen for this work, a complex action that involves the use of the other classical research tools in legal sciences, without which we couldn't even criticize a simple legal text, the sociological method with which we can dissect expropriation by the means of other social phenomena and other social sciences, together with the qualitative method which would offer substance to our study.

The proposals and critics are based un a vast research of the relevant bibliography, the internal, unpublished case law, on ECHR and Constitutional Court case law, but also on the case law of the Supreme Court, considered of being of reference ,followed by a study of compared law, which does not limit to the special chapter, observing that especially the French doctrine completes its own ideas in some situations, during the study, as the Romanian law is of French inspiration and all the judicial institutions related to the expropriation evolved in parallel.

Therefore, the expropriation law opens the road to a more profound research of the single field that applies a *manu militari* measure un privates that are not culpable of deeds which conflict social norms, as it usually happens in cases of coercive measures.

For this reason, the change of legislation must have a doctrinarian support in order to change the sedimented mentalities, which should balance a deformed judicial institution due to the lack of infrastructure development and other public objectives after the fall of the communist regime.

As a consequence, expropriation law should address also alternative solutions of expropriation, respectively economical and macroeconomic strategies when this extreme measure damages other rights along with the restricted property and more, accepting the fact that expropriation is an exception from the inviolability of property rights and not a rule already, as it happens in Romania, for obtaining the energy or developing infrastructure.

Among these we can find the temporary expropriation or the temporary use of some assets in order for the measure to become final when it is needed, emptying of content the rights of some private persons with regards to the fact that the public utility of a project and its objectivation can be prefigured in detail from the beginning.

The alternative solutions arouse also from the moral obligation to respect the rights of others as an expression of the real dimension of the human rights, which finally directs the human relation with the political power retaining the affective side of expropriation, which we analyzed in our work.

Also, atypical situations presented in Chapter II, which are at least apparently related to expropriation, emphasizes even more on the modality in which this has implications in various matters, therefor we cannot accept a pure theory of expropriation.

Analyzing the expropriation, we have come to the conclusion that also other judicial institutions have shortcomings and we hereby formulate proposals of *de lege ferenda*, so that it can be established that not only this law is influenced by other judicial institutions, but it also determines the evolution of others in a manner that gives dimension to the expropriation law.

The pending and future case-law, both of European and internal Courts, the interesting cases that we might have omitted because of the extent of the researched field, represent another understanding of the law of expropriation.

In parallel, we consider that the international law of expropriation also settles into shape, out of the need to level the norms for states involved in common development projects, based on the consideration that for the same

objective of public utility parties should have the same rights and obligations or at least similar, *per a contrario*, and the citizenship becomes, paradoxically, a criterion of discrimination

As we have drawn the conclusion in the chapter of comparative law, there are already many common elements, as concerns the technical matter of expropriation for all discussed law systems, which represent a starting point in the standardization we were referring to, and the expression of international law of expropriation has already been used in specialty studies; and also that of European law of expropriation , which is already defined by fundamental principles, according to the opinion of specialists.

Having these interpretations as starting point, the international law of expropriation represents also the fruit of the most important European Court in matter of fundamental rights, the European Court of Human Rights which, by means of case-law in matter, equally conducts the evolution of the concept.

Therefore, the idea of a law of expropriation is already launched and accepted, and it follows to assert whether within the Romanian judicial system it will be assimilated and, if so, if it will effectively function.

The criticisms made over time to expropriation laws from Romania after December did not bring the expected changes, but even more, the last project of amendment of Law no. 255/2010 contains even more controversial legislations, and this is why the President of Romania has requested to the President of Senate to re-examine this project, as of its content it might also result a mismatch with Law no. 33/1994.

Also, the amendments brought by means of Law no. 233/2018 do not bring a substantial improvement to exposed matters, as we were also showing in the chapter dealing with this special law, complementing, if applicable, in some places, certain articles, and the last amendments brought to art. 1 and 2 of this legal act by means of Law no. 22/2019 high lightens, in our opinion, the intention of the lawmaker to extend the sphere of expropriations in an accelerated manner to almost all types of works which could have a character of public utility.

Out of the exposure of reasons of the last amending law it results that the emergency of adopting the proposed disposals reside in the existence of situations exposed within investing programs conducted by big companies as expropriators in the sense of Law no. 255/2010, which prevents them to come to an end. But the initiative of approval belonged to a few numbers of parliamentarians, and the emergency and the reasons why effectively investment programs cannot end have not been explained.

Also, most law articles have suffered amendments/complements, but when exposing the reasons it is made referral just to art. 11 and 28, aspect which high lightens one more time what we have ascertained, in the sense that the lawmaker envisages to promote the public interest by accelerated measures and not a judicial law.

Also, Ministry of Economics has launched in public debate a law project of Mines in the autumn of year 2017, which should abrogate the old Law no. 83/2005, proposing, among others, also a simpler expropriation procedure, whose phases should be elaborated in technical and methodological rules of the law concerned, therefore a special procedure and separated from expropriation, which should move from the common frame of expropriation, in order to assure the perimeters of mine exploitation.

It is being noticed that the present Law of mines foresees the possibility of exercising the right to use also by means of expropriation, but at art. 9 it still expressly sends to general conditions of the law, from where it results that at least at this legal act there are no different rules for expropriation.

There are even internal regulations concerning the expropriation procedures in mining sector in order to improve the methodology of compensations, which strengthens our conclusion that expropriation is seen by authorities as current means to obtain energetic resources.

The expropriation of foreign investments which, as we have seen, is made more or less accordingly in the entire European space, must also not follow the abusive tendencies as concerns expropriation, which we have exposed, so that the principle of sovereignty of States should not be interpreted to the detriment of European integration and creation of a common economic space, as declared purpose of European Union.

This type of projects and tendencies lead us even more to the conclusion that it is necessary to elaborate a unique act as concerns expropriation, taking into consideration their manifest unconstitutional character under the aspect of respect of the right of private property, and that is why we warn that public debates should not remain inefficient.

In the exposed modalities, expropriation tends to transform into a form of exacerbated public acquisition, in the manner it existed during the communist regime for the realisation of blocks of flats, or of a main alternative of formation of public field, that is of public investment, while it still constitutes, by its purpose and construction, an exception from inviolable character of the right of private property.

The final solution is advantageous also from a practical point of view, all rules related to expropriation will exist in the same law for their easy

correlation, as the establishment of some separated methodological rules do not represent any advantage as compared to their insertion together with substantial and procedural rules concerning expropriation.

Out of the section concerning the detailed provisions of Law no. 255/2010 we observe that they do not bring any significant plus to the law, but rather they take it again under a not very different form, and this is why probably doctrinaire studies were not enough analysed. Even more, they add in an incoherent way rules of substantial right which should be attached to the law, reported to the structure initially chosen by the lawmaker.

The uniqueness of a legal act on a certain matter also reflects the maturity of the doctrine and of the case law, and in the case of expropriation they are not anymore at the beginning of researches, but they should impose the best results.

Under these conditions, the proposals *de lege ferenda* that we have made in a staged process for each of the two basic legal acts in force concerning expropriation, have pointed out more exactly the deficiencies of some disposals, and in the context of a unique law they have relevance for avoiding some repetitive mistakes, not necessarily by inserting those proposals, which were matching to that act, and which must not be resumed unconditionally, as it would be even the case of Law no. 255/2010, which should totally be avoided as model.

From our point of view, the Code of expropriation should bring together all elements which make reference to expropriation also by other special laws, such as Law no. 422/2001 concerning the protection of historical monuments etc., in order to be able to keep them under control, previously showing that at least in the mining activity the tendency is to use the measure of expropriation as main means to acquire surfaces necessary to deploy this activity.

Also, the case-law of European Court of Human Rights, not only in matter of property, reveals exactly the idea that fundamental rights should be applied unitary at the level of signing States of the Convention, aspect which we have also high lightened at the chapter of compared right in the light of the Decision – pilot Maria Atanasiu a.o. against Romania, where it is being done an analysis of the system of nationalization from several countries. Under these conditions, it could also be accepted the idea of a sole European expropriation code.

Therefore, we have built the last chapter not only on the classical structure of conclusions, but also on the skeleton of two clear, competitor proposals, in order to solve expropriation on internal plan, that is the

development of expropriation and elaboration of a code of expropriation, in a viable solution.