

EVOLUTION OF LEGAL RULES RIGHT ON FOREIGNERS ACQUIRE LAND IN ROMANIA

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Abstract

The issue of land acquisition in Romania by foreign individuals or legal entities accounted for over time a sensitive issue. If the regulations adopted by 2003 categorically forbade land sales to foreigners in the context of Romania's accession to the European Union has become permissive legal framework, foreigners can acquire ownership of lands, as stipulated by special laws.

Keywords: legal rules, acquire land, Romania, European Union, special laws

1. Aspects of the legal condition of aliens in Romania

1.1. Term foreign

The legal regime of foreigners in Romania individuals is regulated both by internal legal acts and international legal acts.

The notion of "alien" is defined by the provisions of the Government Emergency Ordinance no. 194/27 December 2002, art. 2 contains a series of "definitions", representing the legal aspect, the legal qualifications of the concepts it defines. Thus, the provisions of the ordinance, the terms offered legal qualifications: foreign stateless foreigners authority, visa, visa, airport transportation, right of residence, residence, marriage of convenience.

Under the provisions of art. 2 letter a) of O.U.G. No. 194/2002[1] is considered "foreign" Romanian stateless person.

The provisions of art. 2 letter b) defined the notion of "stateless" which means foreigner who does not have citizenship of any state.

The enactment provides a clear and unified conception of the notions of "foreign" and "stateless", removing ambiguous interpretations of these concepts. Previous regulations did not define clearly the concept of statelessness, it is appreciated that the

person without citizenship, being assimilated by way of interpretation of the foreigner. The current regulation beyond this shortcoming, determining the application of the law.

Although the personal status of the alien is subject to national laws and regulations of their own personal status of stateless keep the law of the domicile or residence[2], we consider that the current regulation are necessary conditions for and stateless persons can benefit from some favorable provisions in the Conventions or international treaties concerning certain aspects of foreign .. so far, stateless persons could not benefit from the provisions of such conventions, just foreign nationals being granted certain rights provided by their sources of public international law.

1.2. The notion of legal condition of the foreign

The legal institution of "legal condition of foreigners" is one of the areas of private international law.

The legal condition of the alien Notiu means all the legal rules governing the ability to use the alien, that the rights and obligations it may have in a particular state, who is a stranger.

Regarding the content or scope of the institution's legal condition of the alien, must be underlined that, on the one hand, it refers to a set of rights and obligations that are protected by legal rules specific to various branches of law and on the other hand that legal provisions which establish these rights and duties are covered by different sources both internal and international sources. With regard to international sources in the interest of the legal condition of the foreigner those international legal instruments containing provisions relative to certain rights and obligations of foreigners, such as legal assistance treaties and bilateral agreements in certain areas, consular conventions, agreements for the promotion and safeguarding investments, double taxation conventions, treaties and trade agreements, technical cooperation agreements economic and transport, etc.

The legal status of the foreigner is established by the State of residence of the foreigner, and hence its unilateral nature. Not be excluded, however, the conclusion of international agreements concerning the legal status of aliens, which gives him a bilateral character.

In determining the legal status of the alien, the State of residence can follow two directions: providing an alien legal system appropriate to their interests and legal regime stranger as similar to that of its citizens. For economic reasons some states resort to other factors in determining the legal status of foreigners, tourism being one of them, often most importantly.

The provisions of Article 57 of the Constitution on 'exercise of the rights and freedoms "establish that Romanian citizens, foreign citizens and stateless persons shall exercise their rights and liberties in good faith, without violating the rights and freedoms of others.

Under the provisions of art. 18 para. 1 of the Constitution, foreign citizens and stateless persons that live in Romania shall enjoy general protection of persons and property, guaranteed by the Constitution and other laws¹⁴.

Rights enjoyed by foreigners in Romania are covered by domestic legislation and in international regulations.

In principle, in Romania, the legal regime applicable to foreigners is a national scheme, with some exceptions.

2. Evolution of regulations on land acquisition by foreigners

2.1. The evolution of the constitutional provisions

Constitution of 1991, like the previous ones, that Constitutions of 1866, 1923 and 1938, denying the sale of land to foreigners and stateless persons.

In the new geopolitical context, with the accession of Romania's role in the European Constitution in Article 44 paragraph 2 of the 2003 has that "Foreign nationals and stateless persons may acquire private ownership of land under the terms resulting from the accession of Romania to the European and other international treaties to which Romania is a party, on a reciprocal basis, as provided in the organic law and lawful inheritance. "

¹⁴ The same regulation is taken and the provisions of art. 3 pt. 1 of O.U.G. No. 194/27 December 2002

The constitutional provisions aimed at gaining ownership of land in general without distinguishing between classes of lands or within or outside the city.

2.2. Law Nr. 54 of 2 March 1998 on the legal circulation of land [3]

Pending amendment of the 2003 Constitution, the Law no. 54 of 2 March 1998 on the legal circulation of land prohibiting alienation of land by foreigners. Thus, at art. 3, the law provided that "foreign citizens and stateless persons can not acquire ownership of the land. Individuals who have Romanian citizenship and residence in Romania abroad can acquire by legal acts between living and heritage, land of any kind. Foreign legal entities may acquire land in Romania by legal acts inter vivos or upon death. "

2.3. Constitutional Court Decision no. 408 of 7 October 2004 [4] on the unconstitutionality of the provisions of Article 3 para. (1) of Law No. 54/1998 on the legal circulation of land put prohibitive provisions of the law consistent with the Constitution of 2003 permissive decision finds that prohibitive effects generated by critical legal text can not find the application in the current constitutional regime (ie, the set of art. 44 para. 2 with art. 154 paragraph 1 of the Constitution adopted in 2003).

2.4. 247/2005 law on the reform of property and justice[5]

The provisions of Title X of the Law. 247/2005 was regulated legal circulation of land, sitting in the art. 3 that [6] "foreigners and stateless persons may acquire ownership of land in Romania as provided by special law." So, I appreciate that the provisions of Law no. 247/2005 were provisions for reference, foreigners and stateless persons can not acquire land through effective application of the law to be passed a special law in this regard.

2.5. 312/2005 Act for entitlement to private property by foreign nationals and the foreign legal persons [7]

This law, which came into force on accession to the European Union, comprised Displays The following provisions on land sales to foreigners;

- According to art. 3 "citizen of a Member State, stateless persons domiciled in a Member State or in Romania, as well as the legal entity formed under the laws of a Member State may acquire ownership of land under the same conditions as those provided by law for Romanian citizens and Romanian legal persons. "

- According to Article 4, "a citizen of a Member State resident in Romania, stateless persons resident in Romania residing in a Member State and a non-resident legal person constituted under the laws of a Member State may acquire ownership over land for residences or secondary offices, the end of a period of five years from the date of accession to the European Union ".

- According to Article 5, "a citizen of a Member State, stateless persons domiciled in a Member State or in Romania, as well as the legal entity formed under the laws of a Member State may acquire ownership of agricultural land, forests and forestry land in end of a period of seven years from the date of accession to the European Union ".

The provisions of par. (1) does not apply to self-employed farmers and are appropriate:

- a) nationals of Member States or stateless persons domiciled in a Member State, the taking up residence in Romania;
- b) stateless persons residing in Romania.

Member States citizens or stateless persons domiciled in a Member State prove the quality of the self-employed farmer with documents issued / issued by the competent authorities of the Member State or origin. Stateless persons residing in Romania prove that quality certificate issued in this regard by the Ministry of Agriculture and Rural Development.

Persons under par. (2) acquire ownership of agricultural land, forests and forestry land under the same conditions applicable to Romanian citizens from Romania's accession to the European Union.

Agricultural land use, forests and forest land can not be changed during the transition to the persons referred to in para. (2). "

Analyzing these provisions that citizens of the EU / EEA could acquire land in Romania since 2012 residences and where applicable, secondary locations.

With regard to third-country nationals, as provided. Article 6, they can acquire land in Romania solely on the basis of mutual international agreement between the Romanian state and country of affiliation. If no such agreement, the citizen who is not a member state of EU / EEA can only buy ownership of building, acquiring a right of superficies on land adjacent building during its existence.

For the correct application of the law to be clarified certain aspects of the legal classification of concepts, as follows:

a) First you need clear meaning of the term "residence" to determine the scope of persons covered by the provisions of Articles 3 and 4.

The literature was analyzed legal rules describes the concept of "right of residence" that will apceciindu the Romanian legislator was that the application of Law 312/2005 to be given to the description of the right of residence Romania by OUGnr.102 / 2005, amended by OGnr.30 / 2005[8].

b) Second to be clarified whether 312/2005 law is "special law" referred Devic. art. 3 of Title X of Law 247/2005.

In this regard, the literature has found that Law no. 312/2005 not be considered special law referred to art. 3 of Title X of Law. 247/2005 as land laws concerning civil circuit courts outside runs and not to enter into civil circulation with the restoration of property rights by issuing the title deed and Lgea no. 312/2005 covers civil circuit courts. [9]

Special Law on reconstitution of ownership was considered to be Law. 18/1991 as it was republished in 1998 and then amended in 2005, no longer concerned, in June 1998, the acquisition of ownership of foreign citizens on land inheritance path. Special law of the land, reissued in this form officially left silent situation acquiring ownership of land by foreigners through inheritance. The analysis of the provisions of that law, acquiring ownership of land on the path reconstruction based on acquiring the land law is based either on the quality of the applicant was the owner (ie interest on their own) or the quality heir of the former owner (ie interest as an heir).

c) The text of the law does not contain a legal qualification of the term "farmer" to implement the provisions of article 5 of the law. Follow this quality is proven with

documents issued / issued by the competent authorities of the Member State or origin. I think that requires a uniform legal qualification of the term "farmer".

2.6. Law. 17/2014 regarding some measures to regulate the sale and purchase of agricultural land located in the unincorporated area. [10]

As provided. art. 2 of the Act, "agricultural land located in town not covered by this regulation. The provisions of this law shall apply Romanian citizens or nationals of a Member State of the European Union, of the states that are party to the European Economic Area Agreement (EEAA) and the Swiss Confederation and stateless persons residing in Romania, a member of European Union in a State party to the EEAA and the Swiss Confederation and the Romanian legal persons who are nationals or of a Member State of the European Union, the states party to the EEAA and the Swiss Confederation. Citizens and legal persons belonging to a European Union Member State or States which are party to the EEAA or the Swiss Confederation may acquire agricultural land in Romania in terms of reciprocity.

Citizen of a third country and stateless persons residing in a third State and legal persons having the nationality of a third country may acquire ownership of agricultural land located in the unincorporated area as regulated by international treaties, reciprocal, under this law ".

According to Article 3 "farmland from outside the city to a depth of 30 km from the state border and the Black Sea, to the interior, and those from outside the city at a distance of up to 2,400 m of special objectives may be alienated the sale only with the approval of the Ministry of Defence specific, issued in consultation with state agencies with responsibilities in national security, the specialized internal structures referred to in art. 6 paragraph 1 of Law no. 51/1991 on Romania's national security, as amended and supplemented. "

In art. 4 of the law is regulated right of preemption. The 'transfer by sale, a farm located in unincorporated tereurilor be subject to the pre-emption right of the individual co-owners, tenants, neighbors, individuals, individuals aged up to 40 years pursuing agricultural activities across administrative territorial locality where the land is situated,

respectively, and the Romanian State (the State Domains Agency), in that order, at the price and on equal terms. "

2.7. Order no. 719/740 / M.57 / 2333 approving the Methodological Norms for the application of Title I of the Act no. 17/2014. [11]

Methodological rules detailing the rules and procedures to be followed in the event of the transfer by sale of agricultural land located in the unincorporated area.

The main steps of the procedure are:

- Submission of application at City Hall by the seller on the display showing the sale offer, together with the documents referred to in the law;

- Sending file by mayor central structure (the technical specialist within MARD) and spatial structures (Directorates for Agriculture and Rural Development county) within 3 working days of the date of filing;

- Any pre-emptive rights holders wishing to exercise this right at the town hall communication record sales offer is accepted within 30 days from the posting of the offer for sale at the town hall, under penalty of forfeiture;

- Choosing preemptorului potential buyer by the seller, in accordance with the procedures laid down in art. 7 of law and communicate his name to the town hall.

- Transmission by mayor central structures or regional structures, where appropriate, particulars of preemptorului potential buyer chosen by the seller;

- Publication of tenders for the sale of land on the site of the central and territorial structures of the institution;

- Issue final opinion by the central structure, if the land is purchased by a preemption, to conclusion of the final vanzare. Avizul / negative opinion forward the seller by mail with return receipt, or at his request, be given to the seller or authorized person. The final opinion is valid six months from the date of the seller. The opinion goes further fulfillment of that period, if the parties have concluded a preliminary contract during its term or option pact covers unincorporated agricultural land for which it was issued.

- If any preemption not its intention to purchase, in legal terms, the sale is free;

- City issued a certificate vendor, accompanied by a certified copy of the original offer of sale, are expected to choose a buyer. If the offer is not set any conditions, land can be sold under any circumstances except the price reduction.

References:

- [1] Published in the Official Gazette no. 955/27 December. Ordinance No. 2002. 194/2002 amended by Law no. 482/2004; Law Nr. 306/2005, Law 56/2007, Law 347/2007. Republished in the Official Gazette No. 421/5 June. 2008 amended by Law No. 157 of 11 July 2011 amending and supplementing certain acts concerning aliens in Romania
- [2] New York Convention of 28 September 1954 relating to the Status of Stateless Persons
- [3] Published in the Official Gazette. 102/4 in March. 1998 Law. 54/1998 was repealed by art. 8 of Title X of the Law. 247/2005
- [4] Published in the Official Gazette. 1054/2004 - Of. No. 1054-1015 nov. 2004
- [5] Published in the Official Gazette. 653 / 22.VII.2005.
- [6] Repealed by Act 71/2011 - for implementation of Law no. 287/2009 the civil code of 3 June 2011, Official Gazette 409/2011.
- [7] Published in the Official Gazette. 1008 of 14.11.2005.
- [8] Claudiu Drăgușin, Dragos Bârlog, *"Gaining faction ownership of land by foreign citizens, stateless persons and foreign legal The persons after Romania's accession to the European Union"* in Law no. 6/2007, p. 20-25
- [9]<http://www.forumuljudecatorilor.ro/index.php/2009/11/dreptul-cetatenilor-straini-la-reconstituirea-dreptului-de-proprietate-asupra-terenurilor-in-calitate-de-mostenitori-ai-autorului-lor/> Simona Kovács
- [10] Published in the Official Gazette, Part I no. 178 of 12 March 2014 amended by Law no. 68/2014. One of the main changes introduced by Law 68 targeted penalties for the sale of agricultural land outside the city are made without respecting the right of preemption of preemptorilor under Law 17 or without obtaining permits issued by the Ministry of National Defense, Ministry of Culture and Ministry of Agriculture and Rural Development . Currently, due to changes in law 17 penalties applicable to infringements of these provisions lies in the relative nullity. The original of Law 17 sanction such non-compliance with absolute nullity.
- [11] Published in the Official Gazette of Romania no. 401 of 30 May 2014.