DIACHRONIC SURVEY ON THE CONSTITUTIONAL RIGHT OF OWNERSHIP IN ROMANIA

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Abstract:
This paper aims to provide a synthetic and diachronic presentation of the constitutional right of ownership in Romania. The Constitution of 1991, in effect, amended in 2003, divided property into public and private property. The right of private ownership has gradually limited its sphere over time. In the past, it included one's right of ownership on the natural resources of the soil and subsoil. The Constitution of 1866 did not specify anything about the exclusive right of the state on mineral resources. Carp Law from 1895 introduced underground metalliferous resources in the property of the state. The Constitution of 1923 extended the state's right over almost all mineral resources, including oil. The introduction of this principle triggered strong debate at the time.
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1. Introduction

Since ancient times ownership has represented a right of an individual, of a family and of a community. Over time and in parallel with the organization of the society, it was regulated through customs and, later on, by written constitutions. In the modern age, the regulation of ownership has generated

various debates and brought several changes imposed by the evolution of the society itself.

In our analysis we highlight the evolution of the constitutional concept of ownership. Starting from the stipulations of the Constitution consecrated in 1991, amended in 2003, in force at the moment in Romania, we outline how this concept has evolved from the first Constitution of Romania, the one from 1866, and later on due to the major changes introduced by the Constitution 1923.

2. The right of ownership in the Constitution of 1991, amended in 2003

The Romanian Constitution in force since 1991, amended in 2003, “in the context of the increased process of democratization and orientation of the Romanian society towards Euro-Atlantic structures” [1], regulates the right of owneship in Article 44 and Article 136. Art. 44 stipulates in paragraph 2 that: “Private property is guaranteed and protected equally by the law [...]”. In Par. 3 it is specified that “No one may be expropriated except in the public interest, determined by the law, against just compensation paid in advance”. Par. 5 of the same article adds that “for works of general interest, public authority may use the underground part of any real estate with the obligation to indemnify the owner for any possible damage to soil, plantations or buildings, as well as for other kind of damage imputable to authorities”.

Article 136, paragraph 3, reiterates the fact that “underground resources of public interest […], shall be exclusively in public property”. Par. 1 of the same article states that “Property may be public or private” [2].

To conclude, the Romanian Constitution in force clearly stipulates that the property of the Romanian state is divided into public and private property. Private property is guaranteed and protected by the law. Expropriation is allowed only for reasons of public utility, with a just and prior compensation. Underground

resources are public property and may be exploited on condition that compensations are paid.

3. The right of ownership in the Constitution of 1866

The first Constitution of the modern Romania, namely that consecrated in 1866, reglemented the right of ownership in two articles. Art. 19 provided that "property of any kind, as well as all claims against the state, are sacred and inviolable. No one can be expropriated except for the public interest that is legally noticed, and only after just and prior compensation. As public interest, one is to understand public communication and sanitation, as well as works that are vital for the defence of the country. The existing laws on the alignment and widening of roads, as well as on the banks of the rivers crossing or flowing by them remain in force. Special laws shall regulate the procedure of expropriation. Free and unimpeded use of navigable and floatable rivers, of roads and other means of transportation is in the public domain". Article 17 of the same law specified that "No law may establish the penalty of confiscating one's wealth" [3].

A first remark to be made is that property was considered sacred and inviolable and could not be confiscated. Secondly, we note that the first Constitution of Romania introduced the principle of expropriation, but only in case of public interest. The sphere of public utility, however, was restricted to public transport and sanitation, and to the defense of the country.

Economic interests of the Romanian society were totally excluded in the vision of this first legislative document. One possible explanation of this vision can consist in the early stage of the economic development of modern Romania, as well as in the conservative, traditionalist perspective on private property that existed in the Romanian society at the time, and not only.

4. The right of ownership in the Constitution of 1923

The Constitution of 1923 was the one to broaden the sphere of public property and to change the balance of the traditional equilibrium by extending the

issue of public utility to economic interests. The historical context in which this Constitution was adopted was completely different from that of 1866. Meanwhile, Romania had won its political independence, in 1877, Dobrogea had been integrated in the Romanian state, and, in 1918, Bessarabia, Bukovina and Transylvania had united with Romania. From an economic perspective, the Romanian state presented at the time a quite diverse and dynamic picture, in which the industrial aspects could not be neglected any more. Oil industry, for example, had become of European and even global importance. The introduction of universal suffrage and the political life after the Great Union from 1918, as a whole, indicated a stage of maturity for the democracy of the Romanian society.

The Constitution of 1923 regulated the issue of property in four articles, i.e. Art. 15, Art. 17, Art. 19 and Art. 20. Article 17 stipulated that "property of any kind, as well as the claims against the state, are guaranteed. Based on law, public authority has the right to use, for the purpose of public works, the basement of any real estate, with the obligation to pay for any damage produced to the terrain, the existing buildings and works. In case of disagreement, the compensation shall be established by the court. No one may be expropriated except in the public interest, and only after fair and prior compensation set by the court" [4].

In comparison with the provisions of the Constitution from 1866, the sphere of public utility was generously extended, thus coming to include interests of cultural nature and others, vaguely and expansively defined as: "general and direct interests of the state and of the government" (Art. 17). The same article suggested the possibility of extending this sphere to "other cases of public interest", which "will be determined by laws voted by a majority of two thirds". The statement that "a special law will determine the cases of public interest, the procedure and manner of expropriation" (Art. 17) conferred parliamentary control over the issue of the property that could be integrated into the sphere of public utility. The same article was the first to include the underground part of any building in the sphere of public interest property.

Article 19 of the Constitution consecrated in 1923 stipulated that “mine ores and underground resources of any kind are in the property of the state”. There were exempted “masses of common rocks, construction materials quarries and peat deposits”. The article also stated that “a special law on mines would determine the rules and conditions for the exploitation of these natural resources”. It also stated that one’s earned rights “would be taken into account” (Art. 19).

Article 20 stipulated that all “ways of navigation, air space, as well as navigable and floatable waters” were considered public property. Article 15 maintained the formulation and the provision of the Constitution from 1866 related to private property, when stipulating that “No law may establish the penalty of confiscating one’s wealth”.

Considering all these, one may notice that the Constitution of 1923 regulated the issue of property by a number of notable articles. The document granted adequate space to this aspect, due to the novelty and importance of the introduced principles. The extension and a clearer embodiment of the concept of “public utility”, the right of the state to exploit the underground part of any real estate and the exclusive right of the state over mineral resources were elements that revolutionized the existing concept and legislation.

The introduction of these provisions was neither easy nor rapid. The principle of the state’s right of ownership over mineral resources was partially introduced by a special law, i.e. the Mining Act of 1895, known as the Carp Law, after the name of its originator. According to this law, underground metal resources (excepting those from Dobrogea) came into the property of the state. Oil deposits still remained in the property of the landowners. The reason for issuing this law was mainly economic, as it aimed to create the conditions for the development of the industrial sector, by providing necessary resources. The law was, undoubtedly, a compromise between the traditionalist ideas on property, as sacred and immutable, and the evolution of the modern society [5].

The development of the oil industry in the early 20th century, as a dynamic element of the national economy and budget, determined the preparation of the final “assault”, namely that of placing almost all mineral resources, including oil, into state property. The promoters and supporters of this principle were the representatives of the Romanian liberalism. They had to face extremely fierce opposition both from the local landowners and from the representatives of major international oil trusts, existing at that time on the Romanian market.

The efforts to implement this principle started after the First World War, with the legislative work of drafting the new Constitution of 1923. Once the Liberals had won the elections from March 1922, they formed a parliamentary committee with the aim of carrying out the preliminary draft of the Mining Law. Its president was M. Pherekyde and the rapporteur was C.D. Dissescu. During the debates there were outlined two different attitudes. The former was supported by V. Brătianu, M. Constantinescu and D. Ioaniţescu, who wanted the nationalization of all mineral resources, while the latter, represented by M. Pherekyde and Istrate Micescu, opposed this principle. Ludovic Mrazek was invited to express his opinion as a specialist and he “provided a splendid argument in favour of nationalizing the subsoil” [5].

In the autumn of the same year, the conceptual design was completed and accepted by the parliamentary committee. The principle and the issue of nationalizing all mineral resources were included in Article 19. In early 1923, the text agreed by the committee became the draft of the new Constitution. Last changes were made to the text during the parliamentary debates from February – March.

In his explanatory memorandum, C. Dissescu insisted that, in the modern era, property ceases to be one's abusive right and should be regarded as a social function, which can be expropriated for the public interest, obviously with related damages. As a subsoil natural resource, oil should therefore become the property of the state, representing a genuine atribute of its economic political and

military independence. The principle of mineral resources nationalization was agreed at that time by the legislation of other states [5].

The intention to nationalize subsoil resources triggered a series of reactions in the Romanian society. *Moniteur du Pétrole Roumain* promoted certain interests and therefore strongly opposed the principle. In a series of public lectures, doctor engineer Vasile Iscu combated this intention. In February 1923, owners of oilfields from Prahova, Dâmboviţa and Buzău counties met in Ploieşti where they appreciated the idea of nationalization as being, essentially, a communist theory. Deputy Istrate Micesu even read passages from the Soviet Constitution, whereas Petre Stoicescu, landowner, stated that: "on a parchment from my box in Scorţeni village, I have written the right of ownership over the subsoil that I possess", as it was inherited from his great-grandparents, and deputy Constantinescu Borden asked for the support of his liberal colleagues from oil counties to vote against this principle [5].

The liberal leader I. G. Duca publicly stated within a conference that the concept of ownership should be reconsidered in a modern and flexible manner and that there should be made a clear distinction between the land and the subsoil of a property. Ion I. C. Brătianu, head of the Liberal Party, did not publicly pronounce in the matter, reserving the right to act decisively by the mediation of the parliament [5].

In the Romanian Parliament, Istrate Micescu refuted the principle of nationalization. In the debates within the Chamber of Deputies, on March 24, 1923, V. P. Sassu, Minister of Industry and Commerce, rejected the liberal ideas of his colleague Istrate Micesu. He also noted that Nicolae Iorga had associated with the opponents of nationalization out of emotional reasons and not out of substance considerations, namely because of his personal ties with Prahova county and his affection towards peasantry. Minister Sassu assured Iorga, that once the nationalization of mineral resources and the special law of mines have come into force, "life conditions of that peasant population, whom he cares so devoutly, will be much improved and their future more secured, when compared

with the kind of life and security that oil companies provide today, as they primarily follow their personal interests and only in the end they have time to think about the Romanian population” [6].

I. V. Sassu considered that the most important article of the future constitution was Art. 19, because “it gave to the new state, founded on the old borders of ancient Dacia”, its “core dowry” that may allow it to exist independently from an economic and political point of view.

The speaker did not neglect the fact that the opponents of subsoil nationalization were the same that had opposed the allotment of peasants, based on the land reform of 1921, and therefore, they were obviously against progress of any kind. He argued that both a modern vision and major interests of the state imposed the transfer of underground resources, including oil and gas, into state property. Given that Romania had become the fourth oil producer in the world, he also remembered what Lord Curzon had stated, namely that “the victory of the Allies came on waves of oil”. On these grounds, V. Sassu ended his speech by asserting that “it is in the interest of the state and of our nation, to have these resources in their patrimony, as they do not belong to any owner, but to the Romanian nation as a whole, and that present generation is due to use them cautiously so that generations to come may use them in the best interests of the state”[6].

The attitude of Istrate Micesu against the expansion of state ownership over underground resources was also combated from the parliamentary tribune by MP Constantin Georgescu. After pointing out that oil reserves were those that “ensure the supremacy of a people not only on land but also in air and water” and urging his fellow lawmakers to observe and follow the policy of the United States of America in the oil matter, he declared that he had voted in favour of the nationalization principle “wholeheartedly and fully aware of a duty fulfilled [...] as a patriotic deed of overwhelming significance” [7].

Having been passed by both Houses of Parliament, on 26 and 27 March and on 29 March 1923 respectively, the new Constitution of Romania was

promulgated and published in *Monitorul Oficial*. King Ferdinand appreciated that, by voting for the new fundamental law of the country, members of the parliament had proved their patriotism, as the Constitution "would be the foundation of the future development of the unified Romania" [8]. As the state had become the owner of almost all mineral resources [9], a new and important step in regulating and visioning the concept of property was made. The debates generated by this constitutional article revealed the difficulties caused by the changes in the legal regime of the property.

Eversince that moment, the regime of state's ownership over underground resources has remained immovable and the Constitution of 1991, as well as its amendments from 2003, are no exception.

5. Conclusions

Our survey highlighted the most important stages in the evolution of the constitutional right of ownership in Romania. Within 150 years of constitutional history, it has been very clearly asserted was is to fall in the property of the state and what cannot represent private property. As a result, the right of ownership of an individual was restricted solely to land and surface resources, while underground resources fell exclusively in the property of the state.

This major change occurred as a result of the Constitution consecrated in 1923, a fundamental law that became possible in the context of the dramatic democratic changes after the First World War. The Constitution of 1923 introduced the principle of "the social function of property", bringing further clarifications to the concept of "public utility" and that of "expropriation in the public interest".

The introduction of the principle according to which underground resources represent the property of the state constituted a genuine constitutional revolution and it was accepted with great difficulty because of the strong opposition of oilfields owners. This decision was part of the natural evolution and

modernization of the society, Romania aligning to other states that promoted both superior public interests and the principles of modern legislation.

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