TRANSPARENCY AND PUBLICITY OF PROPERTY RIGHTS

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Abstract:
The protection of property rights and the imposition of standards of publicity and transparency constitute an intrusion or a necessary and equitable manifestation in a test of proportionality in a democratic society in the conditions of the exercise of the attributes of property by subjects other than those who have certain obligations given by the exercise of a public office. The certainty and predictability of legal norms in the social exposure of property is absolutely and impetuously necessary in the context of the defense of property rights.
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Introduction

The right to property is one of the fundamental human rights, benefiting from extensive normative regulation in international, European [1] or national legal instruments, but any right, even fundamental, is subject to forms of exercise, adapted to the needs of the society that protects it.

Starting from the reality that the right to property is a fundamental right that has the greatest correspondence in private law [2], for efficient protection it is necessary to know and enforce this right against third parties.

Depending on the real estate or movable nature of the asset whose ownership is being analyzed, the system of publicity and opposability is different, so if in the case of movables it is sufficient to establish a presumption of ownership for the owner, completed with a register of movable guarantees, within real estate a system of publicity of the right of ownership has been established, in our country, this being ensured by the land books.

Beyond the publicity and opposability of the right of ownership, in special and expressly regulated cases, society, as a reaction to transparency in the good management of public funds, has also imposed a series of measures of good governance and management of public funds, requesting specialized subjects to make the patrimony

transparent from the moment of access to the situation of impact on public funds and until the completion of this legal situation.

In some cases, for reasons related to the need for better management of public funds, the legislature has enacted legal norms that extend transparency measures beyond the qualified subject who manages or is paid from public funds and to some members of their family.

Like the legal situation of extended confiscation, this legal situation calls into question the extension of justified measures towards the holder of a property right and towards third parties towards the acts of the legal entity that generate the social and legal impact.

A recent decision of the Constitutional Court of Romania [3], although it clarifies certain aspects, gives the legislator the task of reconciling the need for transparency of property with interference with the property rights of other persons in the family of the person subject to the transparency procedure, a fact that argues, from my point of view, the need for as many analyses and proposals as possible in order to achieve the goal of predictable and efficient legislation, which are also the objectives of this study.

Transparency of property rights in national legislation

Law no. 176/2010, although it was previously subjected to other analyses by the Constitutional Court, on the occasion of which the legal norm was deemed constitutional, as an example we indicate Decision no. 651/2022, no. 309/2014 etc. through a decision not published at the time of this study, was assessed in a revival of jurisprudence as being unconstitutional regarding part of the publicity of the statements of those exercising public functions.

The decision focuses on two aspects considered unconstitutional:

The first aspect would be the one related to the unconstitutionality of the obligation to make a declaration for the assets of the husband, wife and adult children in maintenance. Without prejudice to the proportionality test stated in the press release of the constitutional court, I appreciate that beyond the impossibility of assuming a declaration on the assets of other persons even if they are part of the families in maintenance of the declarant, there are other aspects that justify the adopted solution.

These relate to the very ambiguity and lack of efficiency of the legal norm, which is also this aspect retained by the court.

First of all, the legislation does not take into account the possibility of separating the assets between spouses, as it does not take into account the situation of the declarant's life partners, and here perhaps there would be an argument in support of the introduction of civil partnership, which nevertheless requires further analysis and discussion. At the same time, the segregation of the situation of adult children in maintenance from those of age who are not in maintenance of the declarant is even questionable. The existence of maintenance and the right to own property do not require an interdependence of declaration, the situation of the adult child but not in maintenance not justifying a difference in legal treatment.

Beyond the above, it is correct not to require a declarant under criminal penalty to make a description of the assets of a third party even if they are a close family member but an adult. The state of majority implies a natural separation of assets, in some cases affectivity, however, it is not fair and proportional for an adult to assume the evidence of the assets of another adult.

In another line of thought, the issue of transparency of the assets, including the declarant's, is not justified on constitutional grounds since the exposure is not necessary, the constitutional court considers.

Here we cannot fail to note that the system of advertising real rights over immovables ensures sufficient transparency over the assets of the declarant or their family members. Just as we cannot fail to note that patrimonial transparency over movable assets cannot be satisfied with current public means.

Or precisely here there is and is necessary a special attention to the equalization of the public interest with the private one, following that the legislative will analyze this right of transparency not through the objective access of only one or some interested categories but through the perspective of an efficient public access.

In all the criticisms expressed after the Constitutional Court's decision, what is claimed is in fact not only the principle of transparency but of the accessibility of information with public impact [4]. And it is true that the "guardian of democracy" or “watchdog of democratcy” [5], namely professional and decent journalism, is deprived of

means of information, analysis and presentation of some slip-ups. Here we specify that the criminal investigation organs, the ANI inspectors, undoubtedly still have access to declarations and very importantly to means of verification and analysis of movable and immovable property, here we mention access to tax declarations, accounts, land registry extracts, etc. but for other categories this access is suppressed for the most part, mainly due to regulations regarding the protection of personal data.

And we can say that it is absolutely difficult to create a legal framework that would allow journalists and other potentially interested persons access to at least identification data of persons, let alone of the patrimony that needs to be identified by owner.

What is evident at the current national level is that without any possibility of guaranteeing a margin of access, cumbersome and quite inefficient, exists, in terms of advertising movable and immovable property, but we can also say here that an analysis or "journalistic investigation" is obviously unlikely to succeed.

Without setting ourselves up as the defender of journalism, we cannot help but notice that it does not benefit from a clear, predictable and effective framework of access to what the constitutional review court has imposed, perhaps transforming itself into a positive creator of legislation, by declaring unconstitutionality, respectively maintaining the obligation to submit personal statements to ANI.

Conclusions and proposals for lege ferenda

However, what will pose a problem to any attempt by the legislature to reconcile the principle of transparency as it has been analyzed and constitutionally resolved with the constitutional provisions but also with the rest of the legislation will be access to personal data.

Although we have a specific and comprehensive legislation, there are specific situations that need to be resolved.

In the present case, the issue of access to declarations of assets and interests filed with ANI, this obligation still subsisting personally, could be resolved by granting accreditations to those interested with clear obligations regarding access, dissemination and deletion of the applicant's personal data.

The same accreditation, with access possibilities according to name criteria, should also be granted to all databases that ensure the publicity of movable and immovable property rights, thus ensuring a necessary balance between all those involved.

References:

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[3] https://www.ccr.ro/comunicat-de-presa-29-mai-2025/
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[5] For more informationsin consult the case of Khural and Zeynalov v. Azerbaijan (application no. 55069/11) the European Court of Human Rights