

THE PRIVATE PATRIMONY OF THE ROMANIAN ACADEMY – SOME LEGAL ASPECTS REGARDING THE COMPLIANCE WITH TESTAMENTARY BEQUESTS

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Abstract: *Since its founding in 1866, the Romanian Academy had the right to receive "bequests and any offerings" according to its Internal Regulations, which were subsequently confiscated by the communist regime and only partially restored (agricultural lands, forest lands, and a number of real estate properties). This reality imperatively demands the retrocession of the entire patrimony through the total restitution of the assets belonging to the Academy, either in kind or in cash, through a special procedure that addresses each individual property based on its current legal status (restitution in kind, equivalent compensation with other assets, or through reparatory measures).*

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JEL Classification: *K11, K40.*

1. Introduction

Thus, as doctrine indicates, the holders of the right of public property – the state and its administrative-territorial entities – are, first and foremost, subjects of public law and, in this capacity, appear as bearers of power prerogatives in the exercise of the state functions with which they are vested, according to the Constitution and the laws governing their activity.

The right of public property is of paramount importance in ensuring social development because, on the one hand, it belongs to subjects of law that organize social life within a state itself, and, on the other hand, the respective assets, in principle, represent an interest for the entire society at different levels: state, county, or local. In order to have a clear situation and for optimal management of the patrimony, a periodic inventory and revaluation thereof are required.

2. Legal and Doctrinal Appraisals Regarding the Patrimony of the Romanian State – The Public and Private Domain

The primary purpose of the inventory process is to establish the real situation of all elements of the nature of assets, liabilities, and equity of each entity, as well as the assets and values held under any title belonging to other legal entities—in our case, the Romanian Academy—with a view to preparing the annual financial statements, which must provide a true and fair view of the entity's financial position and performance for the respective financial year. The exercise of the right of public property presents certain particularities, which relate both to its nature and purpose, and to the legal nature of the holders of this right.

Thus, regarding the situation of assets within the public domain belonging to administrative-territorial units, Art. 123 para. (1) of the updated Law no. 215/2001 on local public administration establishes as a prerogative of the county and local councils, namely, to decide that the assets belonging to their public domain, of local or county interest, as the case

may be, be given into the administration of autonomous regimes and public institutions, be conceded, or be leased.

Furthermore, according to Art. 124 of the same law, local and county councils may grant the free use, for a limited term, of movable and immovable properties belonging to the local or county public domain, as the case may be, to non-profit legal entities that carry out charitable or public utility activities, or to public services of local interest, a concept which, in this context, also includes services of county interest.

Therefore, entrusting public property assets to certain state entities—in this case, the Romanian Academy—as well as to central or local state authorities, and establishing, for their benefit, an individual right over the entrusted assets, namely the right of administration, constitutes a specific form of exercising the right of public property itself.

However, this is not the sole manner of exercising this right. Public property assets may be conceded, leased, or granted for use to other subjects of law, under the conditions provided by law.

Starting from the theory of general use and the non-existence of a property right, it must be specified that, from the very beginning, a series of opinions regarding the issue of the public domain have existed over time in the specialized literature.

One of these views stemmed from the need to justify the criterion for determining what constitutes the public domain – a theory supported both by the generation of legal scholars at the end of the nineteenth century and by those who emerged during the first decade of the twentieth century, reaching its full development during the interwar period. In Romania, it was promoted by Professor Constantin Hamangiu and was founded on two principal ideas: first, that the public domain comprises property dedicated to the use of everyone; and second, that the public administration does not hold a right of ownership over such property.

The new Civil Code lists the ways in which public property rights may be acquired, namely: through public procurement carried out in accordance with the law; through expropriation for public utility, under the conditions of the law; through donation or bequest, accepted under the conditions of the law, if the asset, by its nature or by the will of the donor or testator, becomes of public use or interest (the case of the multitude of movable and immovable assets belonging to the Romanian Academy); through an agreement for consideration, if the asset, by its nature or by the will of the acquirer, becomes of public use or interest; through the transfer of an asset from the private domain of the state to its public domain, or from the private domain of an administrative-territorial unit to its public domain, under the conditions of the law; and through other means established by law.

Current theories, focused on the concept of the property right, draw a distinction between a change of purpose and the transfer of ownership.

From the regulatory point of view, the state or national public domain comprises: the maritime, fluvial, aerial, and terrestrial public domain; the military public domain, national roads including crossings through localities, railways of general interest, various buildings, and movable assets.

The Romanian Academy is the highest national forum for scientific and cultural recognition in the country, according to Article 1 paragraph (1) of its Statute. While during its first decades, its primary purpose was the cultivation of language and history, in the decades that followed the Romanian Academy broadened its scope to embrace the advancement of literary and artistic creation as well as scientific research. As one of its

presidents, Professor Constantin Rădulescu-Motru, would later note: **"from a modest Literary Society, whose purpose was more to virtually assert the right of Romanians to their cultural unity, it was transformed in the year of [Carol I's] ascension to the throne, in 1866, into the Society that brought the country's independence, and the Romanian Academy took the name it bears today".**

From the analysis conducted, two important aspects must be highlighted:

1) The patrimony of the Romanian Academy was built during the period between 1860 (six years prior to the founding of the Romanian Literary Society, the predecessor of the Romanian Academy) and 1948 through donations provided by 200 donors, including members of the Romanian Academy, ruling princes and kings of the Romanian Principalities and of Romania, ministers, high dignitaries, and officials of the Romanian state as well as from other countries, academics, figures of culture and art, industrialists, bankers, ordinary citizens, etc.

2) Through a Decision of the Council of Ministers of the Romanian People's Republic, led by Petru Groza, the patrimony of the Romanian Academy existing in November 1948 was taken from the Academy—without prejudice to the legal status of the property—and transferred to the use of other institutions through a single article consisting of 11 lines.

The history of the 157 years of existence and spiritual work of the national academic institution offers the image of an extensive, continuously evolving process of establishing Romanian cultural unity and developing our national science and culture.

From its very foundation, in order to fulfill its mission, this high institution was provided with the necessary means—initially through a fixed annual donation inscribed in the state budget, and later, over time, through the creation of a significant patrimony of its own. This wealth came exclusively from donations and testamentary bequests made in its favor by generous individuals with a love for their nation, academicians and their descendants, historical figures, and various institutions. Unfortunately, in 1948, despite the brilliance illustrated by the activity of the most prestigious personalities of Romanian science and culture—who over the decades honored the finest embodiment of national spirituality—the Romanian Academy, after 82 years of existence, fell victim to political upheavals.

By Decree No. 76 of 1948, it was transformed into a state institution subservient to the newly established totalitarian power. To make this subjugation complete, within the framework of the somber transformations that occurred in the life of Romanian society, by virtue of Article 68 of Decree No. 198 of 1948 and the Decision of the Council of Ministers No. 1486 of November 8, 1948, the movable and immovable property of the Romanian Academy passed into the patrimony of the state and the use of various ministries. Thus, a total of 46 buildings, numerous construction plots, as well as all agricultural and forestry estates, along with 771,558 shares, annuities, bonds, and other similar securities, were abusively seized from its patrimony.

Logically, in December 1989, the reconstitution of the Romanian Academy's properties should have been carried out solely by repealing the Decision of the Council of Ministers No. 1486/1948, and through technical regulations, the Academy should have reclaimed its immovable assets from the former holders.

This was not possible, and due to imprecise, cumbersome, and complicated legislation, the Romanian Academy faced a multitude of obstacles in the process of reconstituting its patrimony and reclaiming its owned properties. The Land Law No. 18/1991, Law No. 1/2000, Law No. 10/2001, and Law No. 247/2005, etc., being defectively applied,

led to delays in the reconstitution of the patrimony; consequently, the academic institution had to provide proof of ownership through numerous reconstitution requests and title deeds (acceptances of donations, wills, deeds of gift, etc., sourced from the state archives). The Romanian Academy filed notifications for the recovery of its patrimony totaling thousands, even tens of thousands of pages, reports, and follow-ups addressed to local and county administrations, the City Halls of Bucharest, Constanța, and Mangalia, as well as to local courts, county tribunals, Courts of Appeal, and the High Court of Cassation and Justice. This resulted in the following recoveries in kind of 94 buildings, (56 in Bucharest and 38 across the country); the issuance of compensation Decisions based on values established by the ANRP (National Authority for Property Restitution): 12, of which 7 are in Bucharest and 5 across the country; unrecovered assets currently under the settlement competence of local committees / ANRP: 13, of which 10 are in Bucharest and 3 across the country (Dumitrache, 2022).

Yet, even in the case of certain restitutions—such as the Berthelot Manor in the Hațeg Country or the Djuvara Villa in Sinaia—the Romanian Academy found itself in the position of having to rehabilitate these estates at high costs due to the advanced state of degradation caused by the former holders (some of these properties are already nearing completion). Furthermore, several buildings in Bucharest require major interventions, including structural ones (several buildings are classified as presenting a high seismic risk, bearing the 'red dot' hazard rating).

3. Conclusions

The Romanian Academy has fulfilled and continues to fulfill the mission with which it has been entrusted since its creation, working in the service of Romanian society by leveraging the best intellectual resources at its disposal.

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