

PRIVATE PROPERTY BETWEEN ECONOMIC RELATIONSHIP AND LEGAL RELATIONSHIP

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Abstract: *Property is a topical subject, a fundamental institution of civil law, as well as a defining feature of the market economy. Private property combines two distinct elements: on the one hand, it concerns the process of owning, using and exploiting resources, and, on the other hand, it concerns a legal relationship through which the owner's prerogatives over the asset are recognized, organized and guaranteed. In a market economy, the way rights over resources are defined and protected influences investments, credit, the circulation of goods, the organization of production, and the accumulation of capital. The paper aims to analyze the concept of property from both the economic and legal perspectives. The paper will also present and analyse the specific elements of the notion of property regarding its evolution, respectively private property, as it is the one that generates added value both at the individual and collective level of society.*

Keywords: *property, legal relationship, economic relationship.*

JEL Classification: *A12, P26.*

1. Introduction

One of the fundamental rights, recognized by all states of the world, is the right to property—the primary source of the branching system of rights and obligations agreed upon in modern society, and the most important economic category: private property (the foundation of the economy), which represents the economic expression of individual freedom.

Property rights represent an extremely important societal tool, helping people form a series of expectations in dealing with their peers (Demsetz, 1974), and derive their importance from the fact that they help a person form the expectations that he or she can reasonably have in his or her relationships with others.

Property represents the foundation of any legal system, and the history of every human society, regardless of the geographical area in which it emerged, is born and built upright through property. Emerging alongside the appearance of humans on Earth, property has been and remains at the core of human society's development, representing one of the fundamental issues of individual existence and human society (Birsan, 2007). Property has not remained solely within the scope of legal regulation because it constitutes the foundation of all economic activity—that is, the foundation upon which the engine of any society operates—and the purpose of law is precisely to organize and ensure the proper functioning of society. (Chelaru, 2000). The right to private property is the legal instrument through which individuals appropriate¹ objects and things, removing them from their natural state and bringing them into the realm of civilization, thereby transforming them into property.

Although in everyday language the economic relationship and the legal relationship are often conflated—as is commonly seen when people say that a person is the owner of a certain

¹ To appropriate means to take possession of a (foreign) thing. The verb "to appropriate" also carries the meaning of making a thing suitable for a specific purpose (Explanatory Dictionary of the Romanian Language, Academy Publishing House, Bucharest, 1975, p. 47).

asset or that a particular business is the owner of a factory—one cannot equate ownership, as an economic relationship, with the right of ownership, as a legal relationship.

There is a close relationship between the person who is the owner and the property that is the subject of the right of ownership, or between the holder of this right and the other persons in relation to that property.

2. Property from the Perspective of the Economic Relationship and the Legal Relationship

The economic relationship of property means the appropriation of the natural premises of any production—that is, the appropriation of the material goods resulting from the acquisition of property. However, viewed as an economic relationship, property appears as the most important component of any production.

During primitive communism, humans appropriated goods for the first time whenever they needed them, as they found them in nature. Over time, the appropriation carried out by one individual was gradually recognized by others. If one produced more than they needed and found that someone else had produced goods they were interested in, an exchange took place. This led to the formation of the market, and subsequently to social organization, which implied a certain specialization of human activity through the division of labour.

Following the path of social evolution, members of emerging human communities began to mutually recognize each other as owners of goods. In other words, the control exercised by an individual over their goods and wealth had to be acknowledged by others. Ownership became, by its very nature, a way of exerting human power over wealth.

Property became a social relationship of appropriation. As soon as this social relationship was incorporated into legal rules, ranging from customary rules to those imposed by the entity that came to organize and regulate it, namely the state, it became a legal relationship, that is, a right of ownership.

On the scale of the development of human society, this process unfolded gradually and varied across different communities. Its essence, however, remains the same: the transformation of the social relationship of ownership into a legal relationship, with all the resulting consequences. (Bîrsan, 2007, Hrosa L-M, 2006). According to Baias, Dumitrache, Nicolae (2002), there is an indestructible relationship between the individual and property.

As a result of contractual freedom, the owner of a property usually has the power to create different types of rights related to the object in favor of the other party (Ballardini, Kaisto & Similä, 2021).

3. The Evolution of the Concept of Private Property in the Romanian Economic Space

From the very beginning, it should be noted that in Romania, until the end of the feudal period, there was no written commercial legislation, separate from the civil one - "custom was law and custom was a justice which in the silent acceptance of the lordship and the inhabitants of the country gained a special power" (Ministry of Justice, 1944).

However, in the written sources of Romanian law, the mid-17th century marks the first references to associations of individuals aimed at exploiting a common fund. Remarkable examples include the emergence of the first written regulations, such as *Cartea românească de învățătură de la pravilele împărătești* [The Romanian Book of Learning from the Imperial Laws] (1646) in Moldavia, *Pravila cea mare sau Îndreptarea legii* [The Great Code or The

Correction of the Law] (1652) in Wallachia, and Corpus Juris Hungarici, the Transylvanian Diets, law collections (Approbatæ Constitutiones and Compilatae Constitutiones), royal privileges, statutes, and the Leopoldine Diploma (1691) in Transylvania.

What should be noted is that, under the feudal law of Wallachia and Moldavia, certain lucrative communities, such as brotherhoods and guilds of craftsmen and merchants, were recognized as subjects of rights and obligations. These collective subjects of rights and obligations were formed either by the will of their members or by state authority. Their legal capacity, limited to the purpose provided in the constitutive act, and their generally indefinite duration led legal historians to refer to them as moral or legal persons. (Hanga, 1980).

The Calimach Code (1817) adopted in Moldavia, is an important document for understanding the norms that led to a good development of economic relations in the Romanian area, representing the leap and the transition of the entire socio-economic system from Byzantine to Western, modern orientation. It constituted the first branch-specific code, largely inspired by the Austrian Civil Code of 1811.² The Calimach Code recognized only associations formed for collectively purchasing property. However, a legal entity could also be established *without a princely charter* if it was not prohibited by law or contrary to public safety or good morals.

It is important to note that commercial companies existed as early as the 17th century in Sibiu and Braşov in Transylvania. The modern era brought about innovations in the regulations of the three Romanian principalities through the Organic Regulations—one for Wallachia in 1831 and one for Moldavia in 1832. These regulations introduced an organized legal regime and, for the first time, established institutions of commercial law, namely acts of commerce, including commercial companies (establishments) among bankers, merchants, and small traders, and specialized commercial courts, such as the courts of Bucharest, Craiova, and the Galaţi Tribunal.

The continuous development of Romanian economic activity and the progress of commercial operations led to the creation of the first Romanian Commercial Code between 1883 and 1887, which was almost entirely inspired by the Italian Commercial Code. During the 19th and 20th centuries, commercial companies experienced significant growth and dynamism regarding their establishment and regulation, due to advancements in science and technology, as well as social emancipation. By the end of the 19th century, a new form of company emerged, namely the limited liability company (LLC), which combined characteristics of general partnerships and joint-stock companies. The historical events in Central and Eastern Europe at the beginning of the 1990s led to profound transformations in the countries involved, the most significant of which were the democratization of society and the radical restructuring of the old centrally planned economies by creating a viable market economy. These new directions primarily aimed at restructuring society around two poles: rights and obligations on the one side, and power and resources on the other. This was achieved by creating functional, constitutive, institutional, and operational structures within an economic system where the market was to become the core mechanism for coordinating economic activities and aligning the interests and actions of economic agents.

The transition from a centralized command economy to a free market economy was a fundamental action in creating a new socio-political system in our country.

² The drafting of the Calimach Code was carried out in two stages: first under the supervision of Anania Cuzanos, the editor of the Greek text, and later under the editorship of the scholar from Braşov, Chr. Flechtenmacher, the latter adopting the structure of the Austrian Civil Code.

The state can influence the functioning of the economy not only through economic intervention or non-intervention but also through legal regulations.

In other words, the state can intervene from the outset, even during the phase of establishing legal titles, just as the mere establishment of property rights does not automatically ensure the conditions for their exercise. At the same time, expanding the range of privatization methods, parallel to eliminating the organizational constraints and centralized management of this process, must be subject to legal rules and, respectively, to an economic approach to property law (ownership, inheritance, civil and criminal liability, contracts), corporate law (incorporation, bankruptcy, antitrust regulations, etc.), and even family law.

The direct connections between private property and the marketization of the economy, which manifest through direct and indirect influences on economic structures and behaviors, are particularly important because, from an economic standpoint, “property rights do not represent relationships between people and goods, but codified relationships (according to regulations) between people” that arise in connection with the use of possessed assets (Andreef, W., 1982).

The possession of property rights has meaning only to the extent that they are utilized and valued through relationships between owners or between owners and non-owners.

From this perspective, the market represents an exchange of properties (Greff, X., 1985), and these relationships highlight an essential fact: property constitutes a fundamental component of the institutional system of a society (Ruttan, V.; Hayami, Y., 1984).

Property reform, specifically changing the forms of property under specific Romanian conditions, also meant the creation and expansion of private property through the irreversible transfer of a portion of public (state) assets into private ownership, on the one hand, and through the creation of entirely new economic units, on the other. The correlation between law and economics corresponds to a certain regime of property rights, that is, a set of normative and transactional institutions that establish the rules of economic behavior, because, in the absence of an adequate institutional environment, economic agents are unable to respond effectively to economic incentives. Of course, this issue of harmonization and identifying the best regulatory solutions remains a pressing one in Romania, just as it is in any country undergoing the transition to a market economy, but also from the perspective of the complexity involved in taking a sustainable approach to the principles of sustainable development without compromising the resources needed by future generations.

In contemporary law, there is a notable need to establish a balance between the autonomy of the owner and the interests of other members of society. According to Art. 44 para. (7) of the Romanian Constitution, the right to property implies the mandatory compliance with obligations regarding “environmental protection, good neighborliness, and other obligations established by law or custom”. Property is, of course, an instrument of wealth autonomy, but its exercise can affect other individuals. Activity conducted on a piece of land may produce noise, pollution, or other inconveniences. The use of a structure may affect neighbors. The exploitation of a resource may have consequences for the environment. Therefore, the limits of property also serve a function of **reconciling private interests (Bucium, 2024)**. Furthermore, studies are arguing that property law must be defined in relation to the principles of equality and solidarity (Foster, S., & Bonilla, D., (2011)).

4. Conclusions

The recognition and establishment of the property right entail the implementation of an effective mechanism to help guarantee its realization, a process largely attributable to the courts, as well as to public authorities, which together contribute to building a rule-of-law state where human rights, including property rights, serve as the legal foundation of society. In practice, changing property forms under specific Romanian conditions meant expanding private ownership by transferring the largest share of state-sector assets, on the one hand, and creating entirely new companies, on the other. This formed a complex process of establishing private property structures as the foundation for building the new socio-economic system after the 1990s. This involved establishing new economic structures, the emergence of new economic entities, strengthening their potential and autonomy, creating and operating markets alongside a new banking and financial system, restructuring territorial administrative units and various activities, defining state functions, and promoting new economic policies suited to domestic demands as well as global and regional tendencies.

References :

1. Baias, F., Dumitrache, B., Marian Nicolae, M., 2002. *Regimul juridic al imobilelor preluate abuziv. Legea nr. 10/2001 comentată și adnotată* [The legal regime of abusively seized real estate. Law no. 10/2001 commented and annotated], Vol. I, 2nd ed. Bucharest: Rosetti Publishing House.
2. Ballardini, R.M., Kaisto, J., & Similă, J., 2021. Developing novel property concepts in private law to foster the circular economy. *Journal of Cleaner Production*, 279, 123747.
3. Bîrsan, C., 2007. *Drept civil. Drepturile reale principale* [Civil law. Main real rights], 2nd revised and expanded ed. Bucharest: Hamangiu Publishing House.
4. Buciuman, A., 2024. De la servituți legale la limite în exercițiul proprietății... și înapoi (privire asupra sarcinilor legale ale vecinătății), [From legal easements to limits on the exercise of property... and back (a view on legal encumbrances of neighborliness)]. *Revista Română de Drept Privat*, No. 2/2024. Universul Juridic Publishing House.
5. Chelaru, E., 2001. *Legea nr. 10/2001 privind regimul juridic al unor imobile preluate abuziv în perioada 6 martie 1945-22 decembrie 1989 comentată și adnotată* [Law no. 10/2001 regarding the legal regime of certain real estate property abusively seized between March 6, 1945, and December 22, 1989, commented and annotated]. Bucharest: All Beck Publishing House.
6. Chelaru, E., 2000. *Curs de drept civil. Drepturile reale principale* [Civil law course. Main real rights]. Bucharest: All Beck Publishing House.
7. Demsetz, H., 1974. *Toward a theory of property rights. In Classic papers in natural resource economics*. London: Palgrave Macmillan UK.
8. Foster, S., & Bonilla, D., 2011. The social function of property: A comparative law perspective. *Fordham Law Review*, 80, 101.
9. Hanga, V., 1980. *Istoria dreptului românesc* [The history of Romanian law], Vol. I. Bucharest: Publishing House of the Academy.
10. Ministry of Justice, Graphic Arts Institute “Tiparul Românesc”, *Codul comercial adnotat* [The annotated Commercial Code], Bucharest, 1944, introductory note by I.C. Marinescu, p. VII.
11. Pop, L., Harosa, L.-M., 2006. *Drept civil. Drepturile reale principale* [Civil law. Main real rights]. Bucharest: Universul Juridic Publishing House.