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Considerations regarding the Legal Nature of the Activity Undertaken by the County Committee on Land Restitution

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Abstract. In the following study, we aim to present and analyse the regulation and functioning of one of the principal administrative bodies charged with the accomplishment of land restitution in Romania, the County Committee on Land Restitution. This committee, as an administrative body of the state – which is nonetheless charged with property distribution (restitution) –, is regulated by several laws, chief among them being Land Law No 18/1991. Its activity of an administrative-jurisdictional character is, however, subject to little oversight and only limited judicial review. In the course of our study, we will present the consequences of this model of regulation and operation in practice. We conclude that, in the light of the provisions of the European Convention on Human Rights and the practice of the European Court of Human Rights, this model of regulation is untenable, and the judicial oversight of these committees should be strengthened.

Keywords: agricultural land restitution, Romania, administrative land restitution, Constitutional Court, European Convention on Human Rights

I. Introduction

In accordance with Art. 12 of Land Law No 18/1991, Art. 22 of Law No 1/2000, and Art. 72 of Government Decision No 890/2005 (Implementing Regulation of the Land Law), with the purpose of establishing or re-establishing property rights, effectively attributing arable and forested land to the legally entitled by vesting in possession and issuing a title to property, a County Committee on Land Restitution was instituted in each county by order of the prefect, who also served as its president. In accordance with Art. 4 of Government Decision No 890/2005, the Committee would be composed, besides the prefect, of the sub-prefect as well as of the leaders of decentralized public services.

II. The Problem of the Nature of the County Committee on Land Restitution

In a case[1] before the European Court of Human Rights regarding the County Committee, the Court decided that *the Committee holds an administrative function and does not fulfil the condition of independence in relation to the executive branch and as a result cannot function as a court of law (has no right to act in a jurisdictional capacity*. Even though the ECHR has stated that the Committees are not in compliance with the requirement of independence set forth by Art. 6, paragraph (1) of the Convention, the administrative-jurisdictional character of the Committees' activity has been imposed by law by means of maintaining Art. 52, paragraph (1) of Land Law No 18/1991 in force, however, without providing it with the necessary elements required for proper functioning as a Court of Law, in the meaning of Art. 6, paragraph (1) of the Convention.[2]

Based on Art. 51 of Land Law No 18/1991, the County Committee needs to resolve the challenges of those dissatisfied by the Decisions issued by the Local Committees on Land Restitution and also needs to validate/invalidate the measures (land restitution and land grants to persons not entitled to restitution) set forth by Local Committees. In both cases, the Decisions of the County Committee are administrative acts emitted by an administrative-jurisdictional entity that has been conferred this quality expressly by the law according to Art. 52, paragraph (1) of Land Law No 18/1991.

In relation to qualifying an authority that exercises an administrative-jurisdictional activity as a public authority or an administrative authority of the executive branch, the matter must be analysed in accordance with Law of Administrative Litigation No 554/2004. From the latter's content, we can conclude that not all public authorities can exercise an administrative-jurisdictional activity but only a certain category of public authorities, namely the administrative authorities of the executive branch.

According to Constitutional Court Decision No 97/30.04.1997,[3] the notion of *administrative authority* has been replaced by the concept of *public authority*. Nonetheless, the notion of administrative authority is still being used, usually when there is mention of administrative-jurisdictional decisions and special

1 Case of Glod v Romania – see ECHR Decision of 16.09.2003, published in the Official Journal of Romania no 1127 from 30.11.2004. The County Committee on Land Restitution cannot be considered 'a tribunal' in the meaning of Art. 6, paragraph. (1) of the Convention, whereby a jurisdictional activity cannot take place there, and thus it cannot be sentenced to paying the costs of litigation, as stated in the provisions of Art. 52, paragraph (3) of Land Law No 18/1991. Following the same logic, see: Deleanu 2008. 173.

2 For details on the unconstitutionality of the administrative-jurisdictional character of the activity done by the County Committee on Land restitution, see Trăilescu 2008. 116–120, Puie 2007. 130–153.

3 Published in the Official Journal of Romania no 210/27.08.1997.

administrative jurisdictions, with emphasis on the fact that only the administrative authorities of the executive branch may emit such decisions.[4] In the same sense, both legal doctrine[5] and jurisprudence[6] have generally qualified the County Committees on Land Restitution as administrative authorities.

In order to answer the question whether the County Committees on Land Restitution are administrative authorities, we must look at their organization and functioning as well as their legal attributions.

III. The Organization and Activity of County Committees

Firstly, the County Committees on Land Restitution are collegial bodies, having been formed by the members mentioned in Art. 4 of Government Decision No 890/2005.[7] From the standpoint of organization, the County Committees on Land Restitution are independent from the institution of the prefect even though they usually have their headquarters in the prefecture buildings, are run

4 See Cimpoeru 2007. 59–71.

5 See Petrescu 1996. 49, Popescu 1995. 31.

6 See the Supreme Court of Justice, section for administrative litigation, Decision No 1018/1995, Petrescu 1996. 49. The Supreme Court stated that the County Committee, as the issuing authority of the title of property, has the character of an *administrative authority*. In the same sense, see the Supreme Court of Justice, section for administrative litigation, Decision No 94/1995, Negoiță 1997. 38. In the same case, the Supreme Court qualifies the County Committee on Land Restitution as a *public administrative authority*. For an opposite meaning, see Dăuceanu 1993. 78. According to the opinion, 'the County Committee's competence demonstrates the fact that we are not dealing with an administrative authority because in its composition, apart from a few people from the administrative apparatus of the prefecture, it is composed of members that are outsiders to this authority' (translation by the author).

7 The County Committee or the Committee of the Municipality of Bucharest is named by order of by the prefect and will have the following composition: a) the prefect – the President of the Committee; b) the sub-prefect, named by the prefect – in case of determined lack of availability due to illness, resignation, or suspension of the prefect, he takes over the latter's prerogatives; c) the general secretary of the prefect's institution – the secretary of the Committee; d) the Director of the office of administrative litigation and control of legality; e) the Director of the County Land Registry Office; f) the Executive Director of the Department of Agriculture and Rural Development of the County or of the Municipality of Bucharest; g) the territorial representative of the Agency of State Domains; h) the Director of the territorial branch of the National Administration on Land Improvement Corp.; i) a representative assigned by the County Committee or the Committee of the Municipality of Bucharest; j) the chief-inspector of the Territorial Forestry Inspectorate or his representative; k) the director of the Forestry Inspectorate of the Romsilva National Forestry Administration or his representative; l) a representative of the Romanian Forrest Owner's Association; m) a representative of the Forrest Administrator's Association; n) a representative of the legally constituted Agricultural Land Owner's Association; o) a representative of the research and development unit, named by the Academy of Agricultural and Forestry Science 'Gheorghe Ionescu-Şişeşti', if it is necessary. In order to support the County Committee in fulfilling its attributions, by order of the prefect, a workgroup will be appointed, composed of specialists that are delegated by the directors of the institutions, economic agents, or associations listed above.

by the prefect as their president, are also composed of public servants from within the prefecture, and are the heads of decentralized public services, who are subordinates to the prefect.

All these elements have led the European Court of Human Rights[8] to the conclusion that these County Committees are not in compliance with the requirements set forth by Art. 6, paragraph (1) of the Convention regarding the requirement of independence from the executive. In the interpretation of the Court, the County Committees are administrative committees. Keeping in mind all the considerations listed above, it is necessary *de lege ferenda* to amend the provisions of Art. 52, paragraph (1) of Land Law No 18/1991 by qualifying the County Committees on Land Restitution as administrative authorities with an administrative-jurisdictional authority.

IV. The Legal Attributions of the County Committees

Regarding the issuing of property titles, the County Committees act as administrative authorities and not as administrative-jurisdictional organs because the procedure is non-litigious. The titles of property for the injured parties who have filed a claim before the Court of Law based on the provisions of the Land Law will be filled out and will only be released after the passing of the definitive judgement.[9]

The County Committees have jurisdiction in solving challenges and in validating or invalidating the measures established by Local Committees.[10] This way, the necessity has arisen of having to pursue an administrative-jurisdictional appeal at the County Committees when there is a litigation that stems from the solution given by the Local Committees on Land Restitution. In order for a decision to be adopted at the County Committees on Land Restitution, it is only necessary to present all the required documents, and they will take note of the neighbour's mutual acknowledgement of property boundaries,[11] without the possibility of emitting subpoenas and questioning the other parties who have filed a complaint against the solution, in order for the original parties to be able to express their arguments and points of view, as it is deemed necessary by the requirements of an administrative-jurisdictional procedure.[12]

8 See the Case of Glod v Romania, see ECHR Decision of 16.09.2003, published in the Official Journal of Romania no 1127 from 30.11.2004.

9 According to the provisions of Art. 36, paragraph (5) of Government Ordinance No 890/2005.

10 According to the provisions of Art. 51 of Land Law No 18/1991.

11 According to the provisions of Art. 8, paragraph (3) of Government Ordinance No 890/2005.

12 The procedure of resolving the challenges in front of the County Committee takes place in accordance with the provisions of Art. 27, paragraph (3), in conjunction with paragraphs (6)–(7) of Government Ordinance No 890/2005 in the following way: those unhappy with the proposals of the village, town, or municipal committees for establishing property rights can file a complaint addressed to the County Commission in 10 days' time calculated from the displaying

In conclusion, the rule that the parties should be heard is being infringed upon in relation to the administrative-jurisdictional character of the County Committee's activity. Despite these elements, the Constitutional Court, requested to solve a constitutional challenge directed at Art. 53 of Land Law No 18/1991, has stated that the Committee does exert administrative-jurisdictional attributes and that the procedure constitutes a protective measure that does not have the purpose of limiting access to justice and is in compliance with the requirements set forth by Art. 6 of the Convention.[13]

Art. 21, paragraph (4) of the Romanian Constitution provides for the optional and free character of special administrative jurisdictions. Nonetheless, the provisions of Art. 51 of Land Law No 18/1991 impose the compulsory nature of following through with the administrative-jurisdictional remedy at the County Committees on Land Restitution in cases of dissatisfaction with the solution of the Local Committees given to land restitution requests. Only after exhausting the above remedy[14] before the County Committee may a complaint be filed at the Court, this way entering the judicial field according to the provisions of Art. 53, paragraph (2) of Land Law No 18/1991,[15] removing the benefit given by Art. 21, paragraph (4) of the Constitution, which establishes the optional and free character of special administrative jurisdictions.

Constitutional Court Decision No 507/15.05.2012, which resolved the constitutional challenge to these provisions, can be presented in the light of the same reasoning, as Art. 255, paragraph (1) of the Government Emergency Ordinance No 34/2006 – regarding the attribution of public acquisition contracts, public works concession contracts, and public services concession contracts –, similarly to the provisions of Art. 53, paragraph (2) of Land Law No 18/1991, provides that it is mandatory for any person who feels that his/her rights or

of the proposal which is unsatisfactory to them. The filing of the complaint will be done at the secretary's office of the village, town, or municipal committees, the latter being legally obliged to receive it and hand it over to the county committee in 3 days' time. The county committees will analyse the proposals received from the village, town, or municipal committees under the aspect of being in compliance with legal provisions regarding the establishing of property rights as well as with regard to the challenges of those unhappy by the way the property rights have been established by the village, town, or municipal committees. After its analysis, the county committees will solve the challenges, will validate or invalidate the proposals by a decision in 30 days' time calculated from receival, and will pass it on to the local committees by means of a delegate in 3 days' time, the latter being obliged to display it in plain sight at its headquarters and to pass it on under signature of reception to the people who have originally filed the challenge.

13 See Constitutional Court Decision No 60/31.01.2007, published in the Official Journal of Romania no 118 of 04.02.2007 as well as Constitutional Court Decision No 908/18.10.2007, published in the Official Journal of Romania no 809 of 27.11.2007.

14 The county committees are competent in resolving complaints and in validating or invalidating the measures set by the local committees.

15 A complaint can be submitted against the decision of the County Committee at the Court which has territorial jurisdiction determined according to the place of the land, in 30 days' time calculated from the communication of the Judgement.

legitimate interests have been infringed upon by an act of the contracting authority, that is, in violation of legal dispositions regarding public acquisitions to file a complaint, ask for the annulment of the act, ask for the contracting authority to be compelled to issue an act, or ask for the recognition of the said right or legitimate interest by administrative-jurisdictional means.

The primary appeal for redress in public acquisition procedures needs to be directed towards the National Council for Solving Complaints, an organ qualified by the law to undertake administrative-jurisdictional activity. The author of the constitutional challenge stated that the criticized legal provisions are in violation of the constitutional provisions of Art. 21 regarding free access to justice.

Examining the constitutional challenge, the Court concluded that the unconstitutionality of the criticized legal provisions cannot be ascertained because the said provisions do not pose an obstacle towards free access to justice. Also, it was noted that the statement according to which the criticized legal provisions state that the administrative-jurisdictional procedure has a compulsory character for solving complaints against acts issued by contracting authorities regarding public acquisitions also cannot be established. In Art. 255, paragraph (1) of Government Emergency Ordinance No 34/2006, the lawmaker did not provide for an obligation for people to only follow the administrative-jurisdictional path before the National Council for Solving Complaints, but, quite oppositely, the term 'may ask for' means that the choice is recognized for the person who files the complaint to start an administrative-jurisdictional appeal, without being in any way obligated to follow this path. Such a conclusion can also be drawn from the provisions of Art. 256, paragraph (1) of Government Emergency Ordinance No 34/2006, which states *expressis verbis* that, in order to solve complaints in the administrative-jurisdictional field, the party whose rights have been allegedly violated has the right, and *not* the obligation, to file a complaint at the National Council for Solving Complaints.

The dispositions of Government Emergency Ordinance No 34/2006 do not imperatively state the necessity of following through with an administrative-jurisdictional appeal but view it as an option for the injured party. The reasons behind it are the social implications, an efficient way of preventing and limiting the abuse of rights, considering the fact that solving complaints in the field of public acquisitions needs to be done and needs to be tried according to a procedure that is characterized by celerity, and it is well known that trial proceedings in these kinds of matters can go on for a very long time. The existence of such an appeal does not prevent the injured party from choosing a judicial appeal at a court of law so long as he deems that it serves his best interests.

Since there is no interdiction in instituting proceedings directly before a court of law, the injured parties may choose such course of action. In support of such a conclusion, we note the provisions of Art. 8, paragraph (2) of Administrative

Litigation Law No 554/2004, according to which the court with jurisdiction in administrative cases also has jurisdiction in solving cases that originate pertaining to the conclusion, modification, or execution of an administrative contract as well as in the precontractual phase of such a contract. The fact that the provisions of Government Emergency Ordinance No 34/2006 do not reiterate what has already been established by Art. 8, paragraph (2) of Law No 554/2004 as well as the possibility of a judicial appeal does not mean that it cannot be used or that Government Emergency Ordinance No 34/2006 is in conflict with Art. 21, paragraph (4) of the Constitution.

The Court held that the provisions in question are fully in compliance with the constitutional requirement set forth in Art. 21, paragraph (4), according to which 'administrative special jurisdiction is optional and free of charge', the injured party having the option of choosing between filing a complaint for the administrative act via the administrative-jurisdictional route or bringing a direct lawsuit before a court of law, under general provisions in the field of administrative litigation.

For the same reasons, we believe that the above decision will also be applied in cases in the field of land law, the party injured by the decision of the Committee on Land Restitution having the option of choosing between contesting the solution before the County Committee on Land Restitution through the administrative-jurisdictional channel and pursuing an action directly before a court of law.

Another problem that has been brought before the constitutional court is the constitutional challenge regarding the provisions of Art. 53, paragraph (2) of Land Law No 18/1991.[16] In the reasoning of the Court, it is essentially shown that the legal provision in question institutes discrimination between people that can be put in the same category as well as between citizens whose properties have been taken abusively by the state, by a communist organization, or by a legal entity. This way, in the case of immovable property, which is the object of the provisions of Law no 10/2001 concerning the legal regime of immovable property taken by the state between the 6th of March 1945 and the 22nd of December 1989, the state entity that is in possession of the immovable property for which restitution is being requested is required to answer the claim regarding restitution in kind in 60 days' time via a decision or motivated disposition, and the decision in question can be challenged before a court of law in 30 days' time from the communication of such a decision or disposition.

On the other hand, according to the provisions of Land Law No 18/1991, the legal provisions in question have a similar legislative solution, the possibility of attacking the County Committee's decision before a court of law in 30 days' time from the communication of the decision, however, without the law setting an express time limit within which a County Committee needs to reach a decision;

16 See Constitutional Court Decision No 1053/11.12.2012, published in the Official Journal of Romania no 56 of 24.01.2013.

this way, in the absence of a decision from the County Committee, the injured party cannot bring his claim before a court of law – such action will be dismissed as having been introduced prematurely.

Analysing these claims, the Court dismissed the constitutional challenge to the dispositions of Art. 53, paragraph (2) of Land Law No 18/1991 as inadmissible, claiming that the author of the constitutional challenge is asking the Court to add to the text of the law, and such a request cannot be upheld, being contrary to the dispositions of Art. 2, paragraph (3) of Law no 47/1992, which states that in the exercise of its functions the Constitutional Court can decide 'only with regard to the constitutionality of the matters that have been referred to the Court, without being able to modify or complete the legal provisions that are subject to its control'.[17] Accepting such a critique would lead to transforming the Administrative Litigation Court into a positive legislator, a result that would come into conflict with the provisions of Art. 61 of the Constitution, according to which the Parliament is the country's sole legislator.

V. Conclusions

All this being said, *de lege ferenda*, Art. 53 of Land Law No 18/1991 should be completed by the setting of a time frame in which the County Committee is obliged to pronounce a decision with regard to the complaint, this way the injured party having the possibility of filing a complaint before a court of law. Without setting such a time frame, in which the County Committee on Land Law has to solve the complaint against the Local Committee's solution, we reach a serious breach of the principle of solving a complaint in a reasonable time frame and in a predictable way; moreover, it is also a breach of the principle of the safety and stability of legal relationships, which, in general, is part of the content of the right to a fair trial, as stated in Art. 6 of the European Convention on Human Rights.

17 Translation by the author.

References

CIMPOERU, D. 2007. Actul jurisdicțional – delimitări conceptuale. *Revista de drept public* 1/2007: 59–71.

DĂUCEANU, C. 1993. Competența instanțelor de contencios administrativ de a obliga autoritățile administrative să execute dispozițiile legale referitoare la emiterea titlurilor de proprietate şi punerea în posesie a proprietarilor de terenuri. *Dreptul* 3/1993: 78.

DELEANU, I. 2008. *Drepturile fundamentale ale părților în procesul civil. Norme naționale, norme convenționale şi norme comunitare*. Bucharest.

NEGOIȚĂ, A. 1997. Noțiunea actului administrative. *Dreptul* 7/1997: 38.

PETRESCU, R. N. 1996. Natura juridică a titlului de proprietate emis potrivit Legii nr. 18/1991. *Dreptul* 12/1996: 49.

POPESCU, C. L. 1995. Mijloacele procedurale ce pot fi folosite de persoana care a obținut o hotărâre judecătorească împotriva refuzului comisiilor de aplicare a Legii fondului funciar nr. 18/1991 de a elibera titlul de proprietate şi de punere în posesie. *Dreptul* 7/1995: 31.

PUIE, O. 2007. Natura juridică a comisiilor județene de aplicare a Legii fondului funciar nr. 18/1991 în contextul dispozițiilor constituționale revizuite. *Romanian Journal of Private Law* 6/2007: 130–153.

TRĂILESCU, A. Discuții referitoare la neconstituționalitatea unor dispoziții ale Legii fondului funciar nr. 18/1991 şi ale Codului de procedură civilă. *Dreptul* 1/2008: 116–120.