

## ASPECTS REGARDING THE APPROACH TO EXPROPRIATED REAL ESTATE VALUATION

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**Abstract:** *The paper presents aspects regarding the approach to expropriated real estate valuation, the importance of cadastral system in recognising the real estate to be valued, from the physical and legal point of view, law regulation regarding property reform.*

**Keywords:** *real estate valuation, cadastral identification, indemnities.*

### 1. Law regulations regarding property reform

Property is a fundamental human right and a source of individual liberty, as provided by Protocol no. 1 of the European Convention on Human Rights. Romania assumed international responsibilities regarding human rights; therefore, in 2001, it promulgated Law no. 10, regarding the legal status of the real estate abusively taken over by the State between March 6, 1945 and December 22, 1989, in order to remedy the injustices made by the ex-communist regime, regarding the expropriated real estate which belonged to Romanian citizens.

This law is a comprehensive document which wants to remedy the injustices associated with the communist regime regarding the abusive confiscations and it emphasizes the legal steps which can be taken in order to rectify the situation of abusive property seizures made by the state during the communist regime (March 6, 1945 – December 22, 1989).

This law however did not cover the situation of all properties abusively confiscated in Romania.

By Law 247/2005 on the reform in the fields of property and justice, as well as certain adjacent measures, it was established the principle of restitution in-kind of properties unlawfully seized by the communist regime. Changes and additions were made in relation to the legal status of the ownership rights on buildings abusively taken over by the state, regulated by Law 10/2001, Government Emergency Ordinance 94/2002, approved by Law 501/2002 and Government Emergency Ordinance 83/1999 approved by Law 66/2004 and in the field of real estates, regulations which were initially introduced by Law 18/1991, amended and completed by Law 169/1997 as well as by Law 1/2000, regarding the restoration of agricultural and forest land ownership right, required under the laws mentioned above.

Modifications of the regulations regarding legal circulation of land, agricultural annuity were made, rules also being adopted in terms of accelerating trials on landed property restitution.

Restitution of abusively seized real estates is a difficult task from the legal point of view, it is a controversial task from a political point of view and painful from the human point of view.

In the process of property restitution, the following issues arise:

- respecting the conflicting interests of the parties, not only of those who lost their property but also of those who acquired them in good faith;
- complying with the constitutional provisions on property rights and with those on guaranteeing equality between those whose property has been recognized and who were compensated;
- many goods no longer exist in their materiality as they were demolished;
- the economic issues relating to the state's resources available in order to grant monetary compensations.

Law 247/2005 established some measures to ensure a full reparation of the abuses committed by the communist regime, such as the application of the principle of prevalence of in-kind restitution and, if this is no longer possible due to objective reasons, to provide just and fair compensation, established by the market value of the claimed real estate.

## **2. Approaches to valuing expropriated real estate to establish indemnities**

Law 247/2005, which represents the framework law in establishing and paying indemnities related to real estates abusively seized, provides for fair and equitable compensations determined by certified appraisers, who are remunerated from the budget of the National Authority for Property Restitution, while the evaluation of real estate which cannot be restituted in-kind will be performed in accordance with the International Valuation Standards (IVS). Certified appraisers are designated by the Compensation Committee, for the elaboration of the valuation report regarding the amount of indemnities.

In the process of evaluating expropriated property, the ways of establishing the value of lands and buildings which cannot be restituted in – kind to entitled persons, are regulated by the provisions of Law 10/2001, as follows:

-the value corresponding to the buildings which were abusively seized and demolished, of expropriated and demolished buildings is determined on the basis of their market value on the day of the notification settlement, established according to the IVS depending on the amount of information available to the appraiser – the value of lands, of undemolished buildings abusively taken over, of expropriated buildings and the corresponding lands, which cannot be restituted in-kind, is determined on the basis of their market value on the day of the notification settlement, established according to the IVS.

-if the real estate was alienated, in compliance with the provisions of Law 112/1995 which regulates the legal status of some real estates which have the destination of living areas, owned by state, with further modifications, the entitled person has the right to reparatory measures by the equivalent of the corresponding market value of the entire building, established according to the IVS.

Considering the above, the assessor will perform the specialty procedure, complying with the IVS.

The ownership right is estimated according to the IVS. The appraisal of this right is very important given that the property was alienated and does not belong to its former owner. The analysis of the ownership right is performed considering that this property belongs to the person entitled to the compensation. There is a difference between real estate and real estate rights because it refers to the rights, interests and benefits involved by owning a real estate.

The selection of the evaluation methods is based on the assessor's capacity to establish which information he can obtain, to search and analyze it so that he can express an opinion on value.

Each approach is based on the substitution principle, which states that, whenever more similar goods or services are available, the one with the lowest price will have the largest request and the most widespread distribution.

The approaches used to estimate the market value for providing compensation are: sales comparison, income capitalization and costs.

When information is available, the sales comparison approach is the most direct and systematic approach for value estimation. When there is not sufficient information, the applicability of the sales comparison approach can be limited.

The income capitalization approach is important, especially for properties which are bought and sold on the basis of their capacity and characteristics of generating gains, and also in the situation when there's market evidence for supporting the various elements incorporated in the analysis.

The cost approach establishes the value by estimating the land acquisition costs and the building costs of a new property, with the same utility, or by adapting an old property to the same use, without costs related to the time of construction/adaptation.

Land valuation is one of the most complicated missions. The following recognized methods of evaluation are being applied regarding land evaluation for establishing compensations: sales comparison technique, parceling and development technique, repartition (allocation), extraction, residual land technique, ground rent capitalization (rent).

Prices are influenced by many factors, therefore there are no formulas which can be applied and lead to an adequate market value. The value is affected by supply and demand, the economic utilization of the emplacement determining the value on a certain market. Best use analysis is of major importance.

### **2.1. Importance of cadastral identification**

According to GN1- Real Estate Valuation, in the process of evaluation, property identification represents a mandatory step. The appraiser's mission in this stage is to consult the cadastral documents and the land register extracts of the property and to perform on – site inspection in order to identify it according to documents. On this occasion the cadastral identification of the real estate is done, the ownership right is established together with its characteristics and physical condition. The cadastral documents and the cadastral register contain quantitative, qualitative and legal information regarding property, deriving from the three functions of the cadastre:

-technical, which refers to the determination of the position, shape and size of land surfaces and buildings;

-economical, by which one determines the quality class of lands and buildings are mapped depending on the building materials, on the physical state and endowment.

-legal, by which one identifies and records the name of the owner of the real estate;

This stage is very useful and represents the base of the valuation process. Without knowing the cadastral documents, essential for the recognition of the property to be evaluated, from the physical and legal point of view, the valuation process is extremely difficult.

### **3. Difficulties of the appraiser's mission which can arise during the valuation process**

In the process of property restoration, there are many difficulties:

-insufficient supportive documents, which can demonstrate the ownership right or the proof of the abusive seizure in the period of reference of the law;

-failure by the owners of the requested buildings to disclose all the required information which is necessary in solving the retrocession requests, i.e. data regarding the present legal status of buildings, the transformations which they suffered over time, sketches, plans;

-the elevated degree of complexity of the situation of some buildings which, after being seized by the state, suffered various changes, additions or reconstructions; in these cases the applicant is required to perform some technical surveys to establish the state's contribution in the case of these buildings;

Considering the above, the appraiser's task regarding the determination of the market value of buildings for compensation purposes is particularly difficult; he can face numerous problems, such as:

-site identification;

-legal aspects: the lack of cadastral surveys, town planning in course of elaboration, incomplete cadastral registers, which do not correspond to the real situation, the lack of authenticated statements or incomplete declarations regarding the existing situation at the time of takeover, often justified because of the long period of time elapsed from the date of expropriation;

-the lack of Annexes to the expropriation decrees, incomplete or illegible annexes;

-the lack of technical data, regarding the characteristics of the expropriated real estate: effective floor areas, built surfaces, joint tenancy share, the surface of the corresponding built terrain, and also the surfaces of the corresponding yards and gardens;

-the lack of the property sheet, with the description of the expropriated buildings, their structure, finishing, existing utilities, the age of the buildings, the technical condition of buildings, annexes located on the property (garages, warehouses), fencing;

-the lack of site plans, building plans, making very difficult the reconstitution of the on-site situation;

-aspects regarding the ownership right (situations when the person entitled to receive compensations deceased, and the inheritance procedures did not take place);

-the lack of documents which justify the granting and payment of compensations at the moment of expropriation;

-due to the lack of land delimitation, the classification of land within the urban areas is difficult;

-the evaluation of land, given that the ownership right on location development belongs to other owners;

-changing the initial destination of buildings;

-land location in areas with a great percentage of built surfaces, where the number of transactions with free lands is very small.

#### **4. Conclusions**

Because ownership is a fundamental human right and a source of individual freedom, this process has to be accomplished and carried out with competence and by applying correctly all the acknowledged methods which are necessary for performing a credible assessment in accordance with the IVS, regardless of the difficulties recognized by everyone who is involved in the evaluation process for granting compensations.

#### **5. References**

1. *Law no. 10/2001, regarding the legal status of the real estate abusively taken over by the State between March 6, 1945 and December 22, 1989. M.O. 798/2005;*
2. *The 8th edition of International Valuation Standards. International Valuation Standards Committee, 2007.*