

SPECIFIC ISSUES APPLYING THE LAW 165/2013

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Abstract: *During the last years, in Romania there were complex situations involving restoration of property rights by the authorized bodies. A big step was made in 2013, when the applicable law was changed by Law no.165/2013. Between 2013 and 2017 the legislative framework was changed twelve times, according with different emergency ordinances, government decisions and laws, in order to complete the restitution process – in kind or by compensation –of the real estate’s abusively taken during the communist regime. In this paper we want to highlight the incident methodology and some specific issues encountered during the restitution process in a specific case study.*

Keywords: *restoration of property rights, Law no.165/2013, National Authority for Property Restitution*

1. Introduction

The National Authority for Property Restitution (NAPR) acts according with the Decision No. 572/2013 on the organization and functioning of NARP.

In the Official Gazette No. 393 of June 29th, 2013 has been published Government Decision no. 401/2013 for approval of the Application Methodology of Law no. 165/2013 on measures to complete the restitution in kind or by equivalent of buildings abusively taken during the communist regime in Romania. In figure 1 is emphasized the main legislative changes regarding restitution process.

In present the restitution workflow in Romania is ongoing and the main problem is to identify cases where the refund can be made in kind, or by equivalence, where is not possible restitution in kind. It is obviously to be mentioned that there are cases where these compensatory measures were given several times, several people who claimed the same property. The major accurate and delicate problems still are the real inventory and according the equivalent amounts based on an appropriate proof.



Figure 1 - The main legislative changes regarding restitution process

2. Workflow

According to the Methodological Standards, the workflow for the Application of Law 165/2013 can be seen in figure 2.

It should be noted that the specific of the locality is established by those public authorities and institutions that are managing land owned by the state in public or private property. Those administrative-territorial units which - at the date of entry into force of the Law 165/2013 implementing rules – did not have hired a cadastral surveyor, agricultural engineer, agricultural referent or not carrying out a service contract with its object specific activities, can contract services with other professionals (authorized persons by the National Agency for Cadastre and Land Registration to perform and verify works in the field of cadastre, geodesy and cartography in Romania). [3]



Figure 2 – Workflow

The local Commission's role is to identify lands with local investments that can be subject of ownership reconstitution by determination on site. Findings for identifying the type of investment, its associated area, and the existence of the land administrator agreement on the investment will be recorded in a report signed by Committee of local inventory members and by the investment owner. Committee is requiring investors any documents showing the date of the investment, the investment amount, including its evaluation made by an authorized evaluator expert. [3]

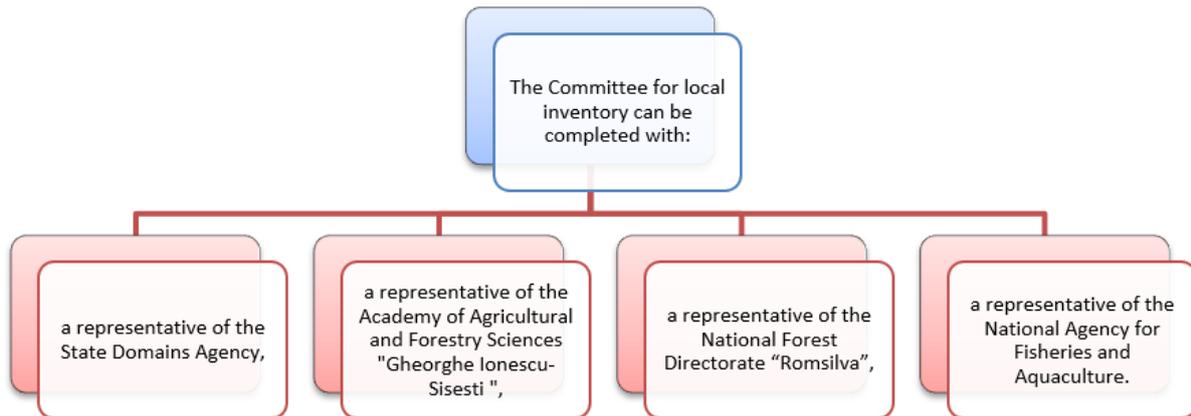


Figure 3 – Completion of the Committee for local inventory

The situation of lands that may be the subject of ownership reconstitution can be provided by the State Domains Agency to land local Committees, at the request of Bucharest or county land commissions.

The main institutions that have to deliver the necessary data to complete the annexes are the following:

- public authorities and institutions
- research institutes and resorts which are managing the public or private land belonging to the state or the municipalities.

The necessary data to complete the annexes shall be submitted together with the ortho plot of land in the form of polygons in the national projection system, in .dxf format, with all the documents that are proving ownership/management right.

The National Agency for Cadastre and Land Registration (NACLRL), through the Cadastre and Land Registration Office (CLRO) approves the cases that are subjects of reconstitution of ownership, established by the local committees for inventory, certifying the analytical calculation of returned areas, and placing them in an integrated database of cadastre and land registry.

3. The National Authority for Property Restitution and the Compensatory Amounts

The compensatory amounts is granted when the local government unit, the neighboring village or - where appropriate - the county has no land available for reconstruction of ownership. In this situation, the local committee prepares the nominal table like in Annex no. 11 of the Law and forwards it along with all documentation, to the

Bucharest or County Land Commission, in order to be analyzed and submitted for the award of compensatory amounts, according to Law no. 165/2013.

The National Authority for Property Restitution issues certificates of owner points I cases when the rights arising from compensation decisions are transmitted, in whole or in part, or partially recovered in the national auction property or cash.

In October 2013, the National Authority for Property Restitution initiated the issuance of payment for approved cases before the Law No. 165/2013. Notification of payment and payment titles are sent from NAPR in the next period by mail. In order for these documents to arrive in possession of case holders, people who have moved in recent years are required to submit to the NAPR, by mail, copies of identity documents with the new address.

In case of transfer of rights recognized by decision clearing –to the points acquirer and in case of partially transmission for undelivered items – to the individual rights transmitter;

In case of partial recovery of the rights recognized by decision clearing/certificate of holder points – to the holder of compensation or to the holder of certificate for unused points in national property auctions or cash;

In the event of the death of the compensation decision/certificate holder points – to the heirs in shares due to them.

Figure 4 – The circumstances for obtaining a certificate on an individual basis points

By amending Law No. 165/2013, files holders established under Law No. 10/2001 can choose to return the files registered with the Central Committee for Compensation Establishment to the entities invested with solving of the notification for refund or compensation in kind with other real estate. In the original form of the law, returning of files at local level was possible only in the case of requests made under the land laws. Another important change to the law is the provision that, if from the files documents cannot identify the old location or technical characteristics of the building, the calculation of compensation amount shall be made by applying the minimum value established by notaries grid for that locality. The request for recovery of points in cash amounts is submitted in person or by attorney using a proxy in original at the National Authority for Property Restitution, accompanied by the decision or certificate of holder compensation points in the original and the identity card of applicant.

The major problem identified was the need to understand the local and county commissioners that if the author or his legal heirs or testamentary alienated rights they are entitled, under Article 1 of the Law, the only remedy to be granted of the new customers (buyers, transferee, transferor , etc.) is compensation by dots. Restitution in kind is made only to the owners who have not divested their rights or to their heirs .

In order to implement the principle of prevalence of restitution in kind, the law requires suspension of activity or county committees, or, as appropriate, of Bucharest Committee, to draw up a summary statements on the situation of agricultural and forest land that can be restituted by the Committee for local land inventory .

Regarding to claims that were made according to Law No. 10/2001 for settlement urban land restitution, that were agricultural lands at date when were abusively taken, the

Authority required to be respected the limit of 50 hectares for each dispossessed owner. In this respect, NAPR highlighted that these situations requires a careful check, which to remove the possibility of granting rights in case of the same area was restored by applying land laws.

4. Case study

The case study presents a situation of identifying a claimed property, with the determination of its surface, dimensions and neighborhoods. It also asks for the possibility of returning in kind and the degree of occupation with construction and urban networks.

According to the purchase-sale act, authenticated in 1925, H.F. and O.A. have acquired in an individual and equal shares an area of 25000 square meters, together with the existing buildings on it, related to the brick factory and sand and gravel quarries, located in Sos. Giulești, Cătun Crângași, Roșu commune, Ilfov County. Attachment to the 1925 contract there is a plot of land having as neighbors: to the east side, the CFR property is 139.50 m long, to the south side Tănase Bengel property, on a length of 236.40 m, to the west side Road to Roșu on a length of 149.00 m and to the north one side of 168.20 m, where it is mentioned that there is a street towards Șos Giulesti.

The heir of the aforementioned property claimed in court that the land be returned or compensated. To this end, he asked an expert to conduct an extrajudicial expertise and in order to strengthen the conclusion of the extrajudicial expert report, he asked the Patrimony Department of the Bucharest City Hall to find out the artery and postal number of the property that was located on the Rocilor Street no. 16. The Patrimony Department's response shows that the "Rocilor" Entrance was named "Factories" Entrance.

Indeed, extrajudicial expertise places the land just above the land surface of the Silvarom furniture factory.

The main elements taken into account in the reconstitution of the site in the extrajudicial expertise were:

- the shape, size and orientation of the initial land, which is within the configuration of the area;
- the fact that the two sides of the east and west are oblique to one another, fixed the position of the south side in a length of 236.40 m very precise, this position being unique;
- the west side is on the edge of the current street, called Murelor Street, or the initial Road to Roșu;
- the southern side was positioned on an old boundary, materialized by a concrete fence;
- the east side has been set on the property boundary between the property in question and CFR Giulesti land; this side has an unmistakable position that has been preserved over time, even to the present day;
- the north side is also defined by access to the Rocilor street, the former street to the Giulesti street in the act.

In conclusion, the extrajudicial expert report shows that the land belonging to the old property overlaps the S.C. Silvarom S.A. and cannot be recovered on the old site, but monetary damages can be granted, according to the law. Also, the proposed solution solves the problem, in the sense of restitution of the land claimed by the heirs of the former owners, under the concrete conditions existing on the spot, without disturbing the existing urban systematization or neighboring properties.

When performing the judicial expertise, the representative of the Silvarom plant showed that the oldest information related to the plant's establishment plans dates back to 1962. Following the requests made to the Bucharest Office of Cadastre and Land

Registration, it showed that it does not have the plan to fit in the area located on street Rocilor no. 12-16 from the period 1911-1940.

It was not possible to identify the real estate - 25,000 sqm land on Rocilor Street no. 16, district 6, Bucharest, since for the identification of the property on natural or conventional boundaries, according to the sale / purchase contract of 1925 no linear, planimetric and topology elements were found to allow identification of this land.

We have shown that the expert who drew the extrajudicial expertise reconstituted the land with great ease because:

- "shape, dimensions and orientation of the initial terrain, which fit into the configuration of the area". Any geometric form, including that of the sale-purchase property of 1925, can be rotated and aligned anywhere on a plan.
- "the fact that the two sides of the East and the West are oblique, one from the other, fixed the position of the South side, at a length of 236.40 m, very precisely, this position being unique" and "the South side has positioned itself on a boundary, materialized by a concrete fence." On the cadastral plan it is noticed that the expert has aligned the Murelor Street with the proposed location and the rest of the sides pass over the halls and other constructions of the furniture factory. There is a factory fence in the south, but it is located 25 m south of the location proposed by the expert, and the age of the fence can be seriously questioned.
- "the East side was established on the property boundary between the property in question and the CFR Giulesti land". We can mention that this limit also crosses the furniture factory halls on the 1962 plan, after which the expert made the positioning.
- "the West side is on the edge of the Murelor Street, or the "initial Road to Roșu". This claim is untenable because there was no connection between the Road to Roșu Street and the Murelor Street. There was also no connection between the Rocilor street and the street to the Giulesti road from the land plan presented in the sale act of the Brick Factory, the sand and gravel quarries on Giulesti Road, Catunu Crângași, Rosu Commune. Also data about Tănase Benghel property does not exist.

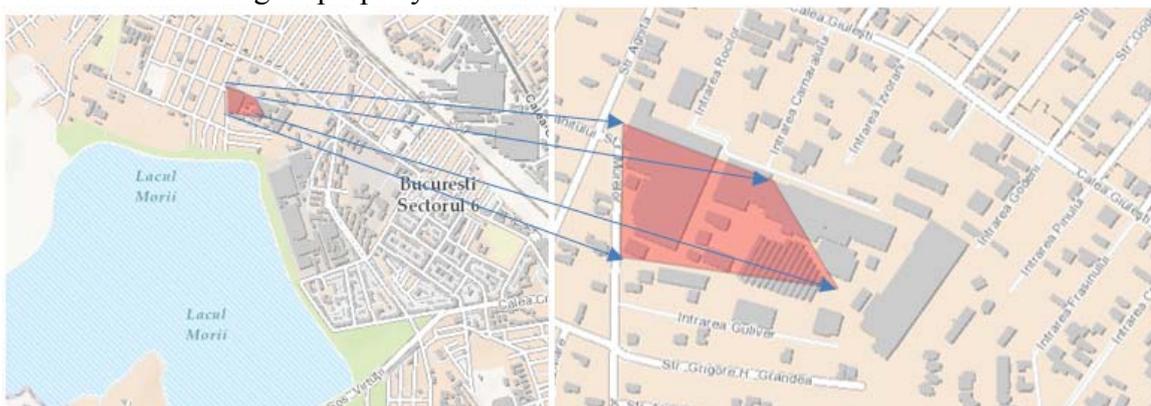


Figure 5 - Plan of land claimed by the extrajudicial expertise

Representative of the Silvarom mentioned during the expertise that it is the fourth claim on the Silvarom plant site, so identifying land on former state property is a practice for insuring monetary compensation, even if the site's location can not be identified by certain topographic elements. The Brick Factory, according to the local inhabitants, was on the edge of the Dâmbovița River, which was plausible, because sand and gravel could be extracted. Dambovița River was transformed after systematization in 1960 in Lacul Morii.

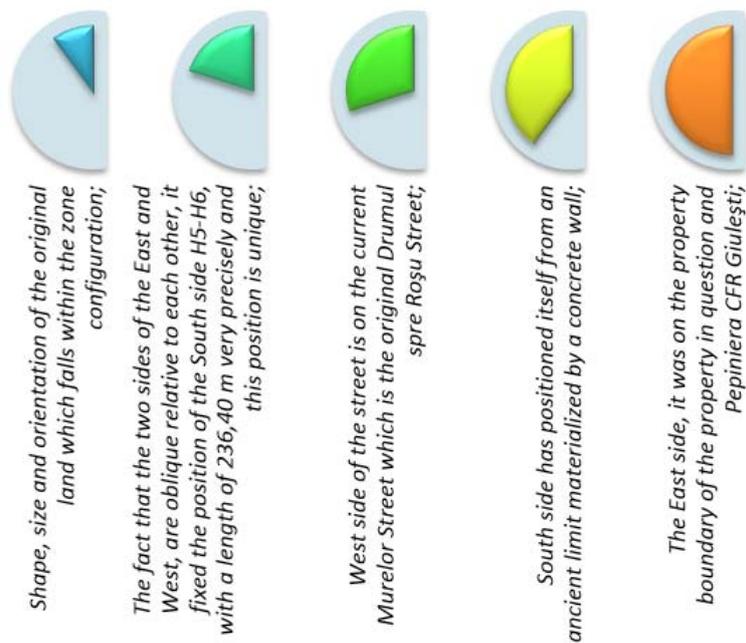


Figure 6 – Basis of Field Reconstruction



Figure 7 - Reconstitution of land as in the extrajudicial expertise

6. Conclusions

In Romania there are many situations where the property hasn't a clear identification. There are many applications for restoration of ownership.

In the last years, the complaining party require positioning of these lands over areas of former state property belonging to:

- industrial areas,
- factories,
- schools, etc.

The lack of a clear graphics and textual databases with the lands for which restitution is required, may lead to the fact that for the same land should be different persons to claim it. There are many applications for restoration of ownership.

An inventory of the terrain outside the city available for restitution was attempted through Law 165/2013, each administrative territorial unit making an annex identifying the land remaining at the disposal of the Local Land Fund Commission. A disadvantage of this inventory is that available land has been identified on the basis of existing digital data in the mayoral service, without measurements being made for this purpose, and so there may be inconsistencies with field reality.

The present case study refers to a situation in Bucharest, which has not implemented an IT system specific to real estate. In the localities where this information system is in place, this situation of the claims on the same field, which belonged to the state, theoretically, is eliminated.

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