

## PROPERTY LAW ENFORCEMENT IN TERMS OF PERSONS ENTITLED TO THE RECONSTRUCTION OF THE RIGHT TO OWN PRIVATE LAND

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**Abstract.** *In the application of laws of reconstructing ownership Romanian citizens have the same rights, whether the date of filing was resident in the country or abroad. The Romanian Constitution guarantees the right of foreign citizens and stateless persons to acquire through legal inheritance, ownership of lands on the Romanian territory, but only in terms resulting from Romania's accession to the European Union and other international treaties to which Romania is a party, basis of reciprocity, as provided by an organic law and by legal inheritance.*

**Keywords:** land, restoration of property rights, land restitution, Romanian citizenship

### INTRODUCTION

The literature has shown that the Law no. 1/2000 is a law for the implementation of the provisions of Law no. 18/1991, republished and of the Law no. 169/1997, in the sense that of these provisions benefit, as is quite clear from the content of art. 1, only those persons "who have made application for restoration of property rights" in legal terms.

According to Art. 30 of Law no. 1/2000, as amended by art. 1. pct.35 of Title VI of the Law 247/2005, "the application of the Land Law no. 18/1991, as amended by Law no. 169/1997 and of this Act, Romanian citizens have the same rights, whether the date of filing were resident in the country or abroad. According to art. 42 of Law no. 18/1991, as the initial condition of property entitlement by Romanian citizens residing abroad and the former Romanian citizens regained the Romanian citizenship, the establishment of a domestic residence. Subsequently, the Law no. 18/1991 was amended, art. 47, par. (A) of the Act provides that individuals who do not have Romanian citizenship and residence in Romania, as well as legal persons not established in Romania and Romanian nationality could not land in Romania and gain property of any kind between live acts. In the published form of Law no. 1/1991, art. 48 provide the right to make application to the Romanian citizens and the former Romanian citizens who have regained citizenship, whether or not they have established residence in the country. In the provisions of art. 44, par. (2) is mentioned that "The foreign citizens and stateless persons acquiring the right of private land property under the terms resulting from Romania's accession to the European Union and other international treaties to which Romania is party-based reciprocity, as provided by an organic law and the legal inheritance, the version prior to the review [art. 41, par. (2)], which provided that foreign citizens and stateless persons could not acquire ownership over land, it is clear that the scope of the special incapacity of acquiring ownership of land in Romania by foreigners and stateless persons was restricted, meaning that they were the conditions under which they can acquire such a right.

## LAW OF THE CONSTITUTIONAL COURT

*The provisions of art. 30 of Law no. 1/2000 in relation to the provisions of art. 44, paragraph (2) and art. 46 of the Constitution.*

In a process seeking referral authors claim against the County Commission decision to establish ownership of land, when they receive the rejection of the application for restoration of property rights, because they do not have the status of Romanian citizens, the authors of the objection (which are the heirs of the holder the right to seek reconstitution under the Land Law no. 18/1991) alleged unconstitutionality of the provisions of art. 30 of Law no. 1/2000, arguing that legal provisions criticized excluded from the category of persons entitled to the restoration of property rights under the law of the land. By Decision no. 640/2007 Constitutional Court has rejected on criticism of constitutionality basis, holding that the impugned text analysis, contained in Chapter IV - Final and Transitional Provisions - of the Law. 1/2000, should be considered to Law no. 1/2000, namely the restoration of property rights to individuals and legal persons who have filed claims in legal terms. However, these provisions of law should corroborate with art. 3 (5) of the Act, which defines the term "owner dispossessed" as the person holding the property right at the time of dispossession. While legacy is passed right over their successors since his death, means that the law recognizes their rights identical to those of the former owner whose inheritance is called, and will take no derogation from the rules of common law relating to probate procedure. Note, therefore, that as long as art. 48 of Law no. 18/1991, republished, make the right to make application for restoration of the status of a Romanian citizen and Law. 1/2000 regulates the procedures for effective implementation of Law no. 18/1991, only Romanian citizens and former Romanian citizens who have regained Romanian citizenship, whether or not they have established residence in the country are entitled to restoration of property rights over land in Romania. Art. 44 para. (2), second sentence of the Constitution guarantees the right of foreign citizens and stateless persons to acquire through legal inheritance, ownership of lands on the Romanian territory. The fact that the constitutional text does not distinguish between the regimes of these lands and not except certain categories of land, the author of a critique of unconstitutionality claimed that this means that aliens and stateless persons legally entitled to acquiring property and land forming the object of the Law. 18/1991 and the provisions of art. 48 of Law no. 18/1991 are unconstitutional because they limit the scope of persons who may require restoration of property rights only to Romanian citizens. By Decision no. 725/2009 Constitutional Court upheld the practice established by Decision no. 640/2007, which held that art. 30 of Law no. 1/2000 are consistent with the constitutional provisions of art. 44 (2), and Decision no. 630/2007 which ruled on the constitutionality of the provisions of art. 48 of Law no. 18/1991.

Court held that constitutional provisions guaranteeing the right to protection and can not be relied proprieties in applying Law no. 18/1991, because the law is aimed at restoring (or creating) property right for a person (were cooperative, their heirs and others) that the entry into force of the law, had no ownership, such as following was born in the future. Also regulate the conditions in which they return to their former owners or heirs of the land taken over ownership of agricultural

production cooperatives or the state, including the aspect of persons entitled to the discretion of the legislation, making the exercise of the right to make application for restoration of land ownership status of Romanian citizens representing a particular option, which is fully constitutional. Regarding legal heritage as a means of obtaining ownership of land by foreign citizens or stateless foresees the Basic Law Court stated that constitutional rule established by art. 44 (2) second sentence implies that they, after 2003, can acquire land in common law (art. 650 et seq. C. Civ.) And not under Law no. 18/1991 republished, which is a special law which is aimed at Romanian nationals only.

Therefore, as required by art. 3 of Title X of the Law. 247/2005, "foreign citizens and stateless persons and foreign legal entities may acquire ownership over land in Romania under the conditions established by special law, Law no. 18/1991, republished, being such a special law, which allows the acquisition of ownership via inheritance laws, since by definition, the land was not in the heritage of the author, the date of opening the inheritance, but was restored to the successor table Law no. 18/1991 restored the right heirs of the estate option.

This situation when the land is restored to the state, as a result of a special law (Law no. 18/1991, republished, what makes the right formulation to rebuilt the quality demand of Romanian citizens), with the consequent issuance of title name all heirs according to the rules of devolution, succession is by definition different from the common law situation, the land is already in the civil circuit and part of the state, is passed to the heirs. To the two common law, are applicable provisions of the Constitution [which art. 44, paragraph (2), the second sentence allows foreign citizens and stateless persons acquiring ownership via inheritance law] and the Law 312/2005 (which stipulates the right of foreigners acquiring ownership of land in Romania's accession to the European Union). From the general frame dedicated to circulation on the land was part of Law no. 54/1998 regarding the legal status of land movement in the civil circuit (now repealed by Law no. 247/2005), which provided in Art. 3 (1) that "foreign citizens and stateless persons may acquire ownership over land. Individuals who have Romanian citizenship and residence in Romania and live abroad can acquire by legal acts inheritance, land of any kind. Foreign legal persons may not acquire land in Romania by legal acts *inter vivos* or cause of death". After reviewing the Constitution (in the sense that foreign nationals and stateless persons may acquire the common law right of property land through legal inheritance), this article has been declared unconstitutional by the Decision no. 408/2004, the Constitutional Court stating that foreigners can acquire filed ownership through legal inheritance, provided that the author's death to have occurred after the entry into force of the law review, after 31.10.2003.

### THE LEGAL PRACTICE

*Compared to the prohibitive provisions relating to acquisition of ownership under Law no. 18/1991 for foreigners (from issue of property as a Romanian citizen residing in the country), even if it holds true that there is a term meaning the request for reconstitution, such a mandate would have no legal effect, unable to believe that empowerment is a valid date for the principal legal acts forbidden by law.*

*In relation to the provisions of art. II of Law no. 169/1997, the fact that after the issue of the ownership dispute, the plaintiff also filed application for restoration*

*of property rights is irrelevant to the legal title being issued in compliance with legal provisions in force at the time of issue*

By request of the proceedings, the applicants A and B have asked the court that the rulings that will give contradictory to the defendants, the Local and County Commission to order cancellation of title issued in 1995 on the grounds that, under Law no. 18/1991, uncle applicants requested C restoration of property rights over the land area of 3.7550 ha, being instructed by the author in this respect the applicants, so applicants succession rights were clearly prejudiced. C's death occurred on 20.12.1996, the state remaining from it was collected by his wife, D, for which applicants have submitted a request summons to others. D intervener made welcome, which raised the plea of lack of *locus standi* of the applicants, except the right prescription for action in the material sense and application of inadmissibility, and on the merits, the application should be dismissed as unfounded on the grounds that the applicants' submissions relied on the warrant are false, adding that applicants not only the author has given a mandate to author intervener, but even his told him by letter that it had carried out any claims related to parents' legacy.

At a hearing on the date of 02.06.2006, the court discussed the procedure to verify completion of script, as the intervener has denied that the handwriting and signature on the documents under hand-raised by the plaintiffs-mail in support of her claims belongs to it. Records were taken for comparison and documents were submitted for our employees to keep the registry of the court. At a hearing on 23.03.2007, the court discussed the provisions of art. Civil Procedure Code 178 final paragraph and, given the fact that the intervener has not shown the script to take more than held that refusal as an admission document challenged being not able for verification process is going through scripts. The civil ruling, the court rejected as unfounded except for lack of *locus standi* of the applicants, except as qualified by default except for lack of interest, granted the application for summons and others claim is dismissed as unfounded.

With the exception of lack of *locus standi* of the applicants, qualified automatically as the exception to lack of interest, the court held fund, the documents filed in conjunction with the statements that witnesses heard, the plaintiffs, alleging Law. 169/1997, and reconstitute claim ownership of the land in dispute. Therefore have satisfied the requirements established under Art. 8 (3) of Law no. 18/1991, republished and amended, which states that "the establishment of ownership is made upon request." In view of these facts, the court held that the principal claim is unfounded, since the title is issued on behalf of all heirs who have made application for restoration of property rights according to art. Article 8. (3) and art. 13 of Law no. 18/1991, republished and amended. According to art. III, section 1 of Title V of Law no. 247/2005, has appreciated against the absolute invalidity of the provisions in force on the date of issue of disputed title, and according to art. II of Law no. 169/1997, "the provisions amending or supplementing or repeal of this law shall not affect in any securities or other ownership documents issued in compliance with the Land Law no. 18/1991, the date of their establishment.

Regarding the request of the proceedings of other persons due to the fact that the documents filed intervener has proved that quality heir of the person whose name was awarded the disputed provisions of seeing and art. 57 et seq. Civil Procedure Code. The court held that application has been accepted.

The civil order no. 1847R/07.12.2007, the Bucharest Tribunal, Civil Section IV of appeal held that the complaint is unfounded.

***Action for declaration of Romanian citizenship is inadmissible because the settlement of this request is given by law the jurisdiction of an administrative authority without judicial activity.***

By application to the court, the defendant call into justice defendants Ministry of Justice and Civil Liberties and National Population Inspectorate of Bucharest, requesting that the Ministry of Justice and Civil Liberties defendant to issue an individual administrative act of public authority by which to recognize quality of citizen of Romania and the defendant ordered the National Inspectorate for Personal Records to record it in his records under OGnr.97/2005 specialty as a Romanian citizen.

As grounds for the action the complainant alleged that her parents were Romanian citizens, so that it has acquired Romanian citizenship on the principle enshrined in Law No blood jus. 21/1991, which stipulates in art. 5 letter. b) that is a Romanian citizen who had at least one parent Romanian citizen, the provisions of art. 5. (2) of the Constitution stipulating that the Romanian citizenship can be withdrawn. The complainant also stated that the Law n. 171/2009 on the approval of GO 147/2008 amending and supplementing Law No. Romanian citizenship. 21/1991, to resolve promptly imposed by the Commission for granting Romanian citizenship to the Ministry of Justice and Civil Liberties of the applications submitted by those who *de jure* citizens by birth and not ever lost Romanian citizenship and their authors have not abandoned express it. Accordingly, the plaintiff argued that since Romanian citizenship is granted to persons who have lost and to grade III, including descendants, they provide both administrative procedure and the judiciary, to obtain recognition of their rights, citizens Romania's law, the deadline for resolution of such claims is governed by the speed that a maximum of five months.

The welcome, the Ministry of Justice and Civil Liberties defendant raised the plea of inadmissibility of the action, motivated by the fact that the applicant has not followed prior procedure under Law no. 554/2004, and the fact that courts are not empowered to declare a citizen of the Romanian people, incidents such as the provisions of art. 159 Civil Procedure Code.

National Inspectorate for Personal Records defendant, as alleged in the court lacked the materials of the case, since the Romanian national recognition as the person concerned should follow the procedure laid down in Art. 13-19 of Law no. 21/1991, before an administrative authority, that the Committee on Citizenship of the Ministry of Justice and Civil Liberties and is devoid of a judicial nature. Alternatively, the lack of quality procedures invoked except liabilities, given that in accordance with the provisions of GO no. Alterations of 84/2001 approved by Law no. 372/2002, only exercise its authority to put into power by law on the organization and coordinating authority for people with no attribution in connection with the recognition of Romanian citizenship.

By decision no. 167/16.10.2009, Suceava Court of Appeal, Commercial Division, administrative and fiscal, approved the exception of general jurisdiction court, holding that a sworn application for court to settle a dispute which was established by law power to an authority administration without judicial activity is a

fine of inadmissibility of the action, which he rejected as inadmissible. Thus, the Court held that under Article dispositions 13-19 of Law no. 21/1991, the Romanian citizenship is granted by the Minister of Justice under and in accordance with the conclusions of the report according to art. 16 and art. 17 of Law no. 21/1991, the Committee on Citizenship of the Ministry of Justice and Civil Liberties. Order of the Minister of Justice for granting or refusing the application may be appealed to the administrative courts. From these legal provisions, the procedure for handling the application for granting the Romanian citizenship takes place before an administrative authority and is devoid of a judicial nature. Consequently, a person claiming to be a Romanian citizen, but lacks evidence to prove that status, that does not have an identity card or passport issued by the Romania or Romanian citizenship certificate issued in terms of art. 19 (4) of Law no. 21/1991, cannot be recognized as such by an action in the statement.

In accordance with art. 137 paragraph (1) Civil Procedure Code. The other exceptions raised in question have not been analyzed.

### CONCLUSIONS

1. They are entitled to restoration of property rights over land in Romania only Romanian citizens and former Romanian citizens who have regained Romanian citizenship, whether or not they have established residence in the country.

2. Aliens may acquire field ownership through legal inheritance, provided that the author's death to have occurred after the entry into force of the law revising the Constitution, i.e. after 31.10.2003.

3. The fact that after the issue of the ownership dispute, the plaintiff also filed application for restoration of property rights is irrelevant to the legal title being issued in compliance with legal provisions in force at the time of issue.

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