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CONSTITUTIONAL AND NORMATIVE REGULATION OF PROPERTY RIGHTS IN BULGARIA AT THE TRANSITION FROM PLANNED TO LIBERAL ECONOMY (1989 – 2019)

Abstract:

The regulation of property at constitutional level can be seen as one of the most significant consequences of the evolution of constitutional rights in the twentieth century, at least because property is a true expression of civilizational development. It is indeed what allows the regulation of property rights under the Bulgarian Constitutions of 1879, 1947, 1971 and 1991 to be seen not only as a legal expression of the spirit of the individual historical epoch, but also as a way to realize the dominant ideology and economic organization of society. In that sense, the review of the various constitutional concepts of property, from socialist property, nationwide property to private property and the separation of private and public property regimes, is rather an attempt to present not the legal form of the same, but rather the socio-economic situation, expressed by this legal form.

Key words: *Constitution, private and public property, nationwide property, state and municipal property*

I. INTRODUCTION

The emergence of property regulation at a constitutional level can be seen as one of the most significant consequences of the evolution of constitutional rights in the twentieth century. In fact, before World War I, the provisions of most national constitutions in this regard were reduced to the formal declaration of private property. Later, however, under the influence of the two World wars and the global economic crisis, the degree of public intervention in the economic sphere, including in property rights relations, has increased significantly. While this right has traditionally been regarded in civilist doctrine as a concept of property law, and more precisely, as one of the institutions in the system of its general part,[1] property as a social phenomenon goes beyond the boundaries of legal science. This is the case, since the social phenomenon of property right can, to the greatest extent possible, and through legal means of expression, reveal its purely historical perspectives. A proof of that phenomenon is the

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[1] Stoyanov, V., *Property Law*, 2004, publication 214; Boyanov, G., *Property Law,* Avalon, 2004, publication 290; Venedikov, P., *The New Property Law*, 1999, publication 208; Vasilev, L., *Bulgarian Property Law*, 2001, publication 250.

regulation of property rights by the Bulgarian constitutions – i.e., a normative expression of the spirit and ideology that have dominated the social and historical development of society throughout the various historical eras.

II. THE RIGHT OF PROPERTY UNDER THE „TURNOVO“ CONSTITUTION (1879)

The Constitution of 1879 is the first written constitution of Bulgaria, adopted by the Constituent National Assembly on April 16, 1879, shortly after the restoration of Bulgaria as an independent state in 1878 and was repealed in 1947. From a socio-political aspect, the Turnovo Constitution proclaimed the constitutional monarchy (art. 4, art. 5, art. 9, art. 10 and art. 12) with a directly elected National Assembly, a universal suffrage (art. 86), a government responsible before the National Assembly (art. 153), and a separation of powers (arts. 9, 12 and 13). With regards to the rights of the citizens, it guaranteed the right of property (arts. 67 and 68), the inviolability of housing and correspondence (arts. 74 and 77), the freedom of the press and the right to form associations (arts. 79, 81, 82 and 83). According to art. 67 of the Turnovo Constitution ***"property rights are inviolable"***, and according to art. 68 ***"The forced withdrawal of a property can be done only for the sake of the state and public benefit, and by a fair and upfront compensation***. ***The way in which such retreat may take place must be determined by a special law."***

It is well-known in the law that historically, when discussing the relevant text regulating property rights (art. 63 of the draft Turnovo Constitution) within the Constituent Assembly, one of the leaders of the Conservative Party – MP D. Grekov – suggested that it should read as follows: *"The right of ownership and the right of possession are inviolable*". In support of his proposal, he pointed out that the majority of the population were landowners, not landlords, and their interests should be protected because *"these lands despite being owned by the government are in the possession of private persons"*. This proposal was opposed by the Liberal Party leader P. Karavelov, who claimed that there were lands ruled without any legal basis, and as such they could not be protected by the Constitution. The complex legal dispute over the 'right of ownership' and the 'right of possession' was not understood by the majority in the Constituent Assembly, and due to purely political bias the Assembly rejected D. Grekov's proposal.[2]

At the same time the Turnovo Constitution did not draw a distinction between private and public property, respectively the existence of a municipal property was not foreseen. According to some authors,[3] these "deficiencies" in the regulation of property were due to the fact that after the Russian-Turkish War of 1877-1878, under the Land Law Act of Bulgaria, the Bulgarian Principality was the legal owner of the landed property, in fact many acts created by the Provisional Russian Government, and then by the National Assembly, did not make a distinction between possession and ownership – i.e., between the right to use and the right to own. This was a consequence of the fact that the state did not treat uncovered real estate as its property, which allowed its citizens to own and use it. The legislator often identified the limited ownership of possession or use with full ownership. The consequence was that the relevant laws did not refer to state ownership of land (as it was under the Turkish land legislation), but to the property rights of its individual holders. Moreover, no distinction was made between the full ownership, which the people had over the so-called **'mulk'** land and the right of possession people had over the so-called **'mirie'**. For the Bulgarian legislator, the right to use and the right of possession were identical to the right of ownership.

[2] Tokushev, *History of the Bulgarian State and Law 1878-1944*, Sibi 2008, publication 209-211.
[3] Ibid.

III. THE RIGHT OF PROPERTY UNDER THE 'DIMITROV'S' CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BULGARIA (1947)

Just as the first constitutions were intended to anchor the emerging new social relations that were coming, replacing the feudal state and the social system, so the 1947 Constitution came as a consequence and legal expression of dramatic political changes in Bulgarian society that occurred after 9 September 1944, which initiated the transformation of society according to the model of state socialism in its form of 'people's democracy'.

The Constitution of 1947 was discussed and adopted in a complex domestic and international environment for Bulgaria. This inevitably affected its content. The private property (including the means of production) was the dominant concept at the time of the adoption of the Constitution of 1947. Moreover, although the right to municipal property was not known under the Turnovo Constitution, the Law on Mortgages of Property and Servitudes ("LMPS") of 1904 presupposed the existence of municipal land (an argument to that end is set out in art. 39, according to which waters coming from municipal lands were declared a municipal property). It was only with the adoption of the ordinances/laws for the urban municipalities of 1934 and for the rural municipalities, that the powers of the municipality in relation to the management of municipal properties were determined. **With the adoption of the Constitution of Bulgaria of 1947 and that of 1971, municipal property as a type of property right was not settled, which is why it was tacitly repealed**.[4]

In fact, **the 1947 Constitution established the unity of the state property fund by eliminating the distinction between municipal and state property and by introducing the concept of 'nationwide property'**. According to art. 6 of the 1947 Constitution and art. 2 of the Property Law Act ("PLA"),[5] the property belongs to the state, to the cooperatives and to other public organizations (socialist property), as well as to private persons (private property). From the two types of property regulated, socialist and private, the former included state property (so-called 'nationwide property'), cooperative property and property of other public organizations, while the second included the personal property of natural or legal persons. The socio-economic system of the former socialist countries, such as Bulgaria, assumed that ownership of the means of production could have been private, which in turn necessitated the introduction of the concept of 'socialist property'. In countries, where land was nationalized and state-owned, socialist property was seen as one collective ownership.[6]

Thus, according to art. 7, para. 1 of the Constitution of 1947, all ores and other natural resources in the bowels of the earth, forests, water (including mineral and medicinal), natural resources, rail and air communications, post offices, telegraph, telephone and radio broadcasting were state-owned, i.e. <u>nationwide property</u>. It was this text that also served as the normative basis for the nationalization carried out by deliberate laws, which was essentially the transformation of private property or activities into nationwide ones, state owned, being used in the public and not in the private interest.[7] The nationalization can also be defined as the deprivation of private ownership of the means of production and the establishment of socialist property over them. As an idea, it is associated with the understanding that certain activities cannot be left to be exercised by private entities, and at the same time that certain assets cannot be privately owned.[8]

[4] See the Court motives in Decision No. 527 of 9.06.2009 of the Supreme Court of Cassation in civil case No. 1430/2008.
[5] State Gazette, issue No. 99 of 1963.
[6] Katsarov, K., *Theory of Nationalization*, Siela 2011, publication 208.
[7] Boyanov, G., *Property Law*, Avalon, 2004, publication 362.
[8] Katsarov, K, page 138.

Nationalization includes: 1) transferring the means of production to the community (not necessarily to the state); and 2) their use not in the private but in the general (not necessarily state) interest.[9] Under the theory of nationalization, the property right is acquired *ex lege* – in other words, it performs the so-called 'social function' – i.e, society and the public interest[10] are between the owner and the property, which justifies the existence of nationwide property. **According to the Constitution of 1947, the nationwide property was the mainstay of the state in the development of the national economy, and as such it enjoyed a special protection (art. 8, para. 1), while private property was viewed with distrust, especially if it did not concern the 'acquired through labour private property'.**
Under the argument of art. 8, para. 2 of the Constitution of 1947, the nationwide property was managed by the state, but the state could also conceded to someone else the management of the means of production, as in art. 9 it was provided that the state supported and encouraged cooperative associations. The exercise of the right of state-owned enterprises to manage state property granted to them for the exercise of their activity (the so-called 'management right')[11] was based on art. 8, para. 2 of the Constitution of 1947, and on the basis of this text the State Property Act of 1948 was adopted (art. 9), the PLA of 1951 (art. 7), the State-Owned Enterprises Act of 1960. In the category of entities entitled to manage state-owned property were state institutions and state-owned enterprises (art. 7 of the PLA).
Nationwide ownership was used in various ways to support and encourage cooperative associations. For instance, the gratuitous transfer of state property from the state to the cooperatives (art. 25 of the repealed PLA), the gratuitous granting of the cooperatives the right to build on state land (art. 15, para. 1 of the PLA, revision effective in 1967), the gratuitous assignment in favor of the cooperatives of the right to use state property (art. 15, para. 2 of the PLA, revision in force in 1967 and art. 33 of the State Property Regulations in connection with arts. 29, 30, 31 and 32 of these Regulations), the replacement of state properties with cooperative properties (art. 14 of PLA, edition effective in 1967). These were the ways in which, by 1967, the cooperatives could acquire a right of ownership or a limited right to property from the state.
Nevertheless, the provision set out in art. 10 of the Constitution of 1947 prescribed for the existence of private property, insisting that 'private property' and its inheritance was recognized and protected by law, and that private property acquired through labor and savings was enjoying special legal protection. It was precisely due to this limitation of the permissibility of private property that, under the Constitution of 1947, a series of laws that eliminated private property,[12] or limited it substantially[13] in favor of the state were enacted.

IV. THE RIGHT OF PROPERTY UNDER THE 1971 'ZHIVKOV'S" CONSTITUTION

The property right regime, created by the Constitution of 1947, was preserved almost entirely and transposed into the Constitution of 1971, defined as a 'Constitution of the advanced

[9] Katzarov, K., *Theory of Nationalisation*, Martinus Nijhoff, The Hague 1964, p. 153.
[10] Ibid.
[11] See Tadzher V., *The Right to State Socialist Property in Bulgaria*, 1975; Decision No. 237/2015 of the Supreme Court of Cassation in civil case 2068/2014.
[12] E.g., numerous enterprises were nationalized and became state-owned in accordance with art. 1 of the Act on the Nationalization of Private Industrial and Mining Enterprises (revoked).
[13] Through the **Act on Expropriation of Large Urban Covered Real Estate** a revolutionary measure of the people's power was implemented – i.e. assigning to the state housing stock categories of property, which were legally taken away (confiscated) from their owners, and subsequently granted mostly to persons close to the political power. The former were subsequently allowed to acquire state-owned residential properties, where they were forcibly housed.

socialist society'. Formally, the latter did not change the previous regime of state property, but it was systematized and detailed. According to the original wording of art. 14 of the Constitution of 1971 the forms of ownership in the People's Republic of Bulgaria were: state (nationwide), cooperative, public organizations property and personal property. As if by accident, the name **'private'** property contained therein was replaced by **'personal'**, but this change had a deep socio-economic meaning. In particular, private ownership of the basic means of production was denied, and instead the personal ownership of the necessities of life and of very small 'tools of labor' was timidly acknowledged. Their possession was allowed under a very restrictive regime – e.g., small pieces of land, small machines necessary to secure the subsistence of the owner and his household.

It was only the revision of art. 14 of the 1971 Constitution (implemented in 1990, after the November coup of 1989), which distinguished state property from municipal, cooperative, public organizations property, and private property. A division, which was also adopted under the 1991 Constitution, i.e. the municipal property as a separate type of property, along with state property, was restored in 1990 with the change of art. 14 the 1971 Constitution. **Art. 16, para. 2 of the revised 'Zhivkov' Constitution, defined as a municipal property the forests, natural pastures, quarries, water sources and roads (other than those of national importance), as well as other sites determined by law, as a municipal property.**

V. THE RIGHT OF PROPERTY UNDER THE CONSTITUTION OF REPUBLIC OF BULGARIA (1991)

The political and economic changes in society after November 10, 1989 necessitated the urgent amendment of the Constitution of 1971. For instance, the text regarding the leading role of the Bulgarian Communist Party was deleted. In addition, in 1990 some amendments concerning the right of property were introduced. However, these amendments did not solve the problem of the radical restructuring of the social system – i.e., that could only be satisfied with the adoption of a completely new constitution. The idea was to adopt it in the order established by the provisions of the Turnovo Constitution. To this end, elections for the Grand National Assembly were held on 10 and 17 June 1990. Following sharp and contradictory debates between the various political factions, this constituent body adopted the current Constitution on 12 July 1991.

Described by some as an act of compromise, the Constitution of 1991 has been criticized for the many contradictions it contained, and above all for the discrepancy between the proclaimed principles and the inconsistency in the mechanism of their implementation.[14] However, it could not be denied that the 1991 Constitution established a new type of industrial relations based precisely on new forms of ownership. The division of ownership between private and public (state and municipal) was carried out, and according to art. 17, para. 3 of the Constitution of 1991, private property is inviolable. Furthermore, art. 17, para. 5 of the Constitution of 1991 stipulates that *"The forced expropriation of property for state and municipal needs can be done only on the basis of law, provided that these needs cannot be met by other means and after advanced and fair compensation has been granted".*

For the purposes of article 17, para. 2 of the 1991 Constitution, the public property is owned only by the state and the municipalities, and private is the property of natural and legal persons, who do not have any power of authority. **It should be clarified that, in a substantive sense, it is not state property that is public and private, but its objects are in**

[14] Stoychev, S., *Constitutional Law*, Siela, 2002, publication 117.

the mode of public or private state property. In other words, as a subject of civil law, only the state (and the municipalities under art. 136 of the Constitution of 1991) is the holder of objects under public ownership, and the objects under public ownership, with few exceptions, have been removed from the civil turnover. According to the Constitutional Court, in order to distinguish between which property is private and which public, a judgment should be made as to who the property right belongs to (i.e, with respect to the property right holder), what are the objects which are the subject matter of this right (i.e, according to the type and nature of the things) and what their purpose is.[15]

1. State ownership

The status of the property as a public state property is not determined by whether a public state property act was issued for them, since according to art. 5, para. 1 and para. 3 of the State Property Act ("SPA"), state property acts do not give rise to rights, but only establish and certify such rights. **Public property is only this property of the state, defined as such by a decision of the Council of Ministers or by law.** An additional criterion for defining which objects are publicly owned is their purpose. These are, above all, objects that serve the public needs or which serve the functions of the state and municipal bodies.

Among the separate groups of objects of public state property, special place and importance is placed by those which are exclusive state property, and of which only the state can be the holder. According to art. 18, para. 1 of the 1991 Constitution, the underground natural resources, coastal beaches, republican roads, as well as waters, forests and parks of national importance, the natural and archeological reserves designated by law, are **'exclusive state property'.**

The sites and resources referred to in art. 18, para. 1 are characterized by two features: **1) public importance**; and **2) universal utility**.[16] The enumeration of the groups of objects of exclusive state ownership is exhaustive. This exhaustiveness also applies to the sovereign rights of the state, which is also upheld in the case law of the Constitutional Court (*see, in particular, Decision No. 2 of 06.02. 1996 in case No. 26/95*, by which it was held that there is no basis for the sovereign rights under article 18 (2) and (3) of the Constitution of 1991 to be otherwise assessed except as exhaustively described and listed guaranteeing sovereign state power over the said sites). Hence, it is necessary to conclude that a broad interpretation of this constitutional provision is inadmissible (this was explicitly adopted in *Decision No. 4 of 15.06.2000 in case No. 5/2000*). This exhaustiveness of the list is the reason why in *Decision No. 4 of 7.10.2004 in case No. 4/2004*, the Constitutional Court accepted that the buildings of the national courts do not fall under the category of 'exclusive state property' within the meaning of art. 18, para. 1 of the Constitution of 1991.

However, the enumeration in the provisions of art. 18, para 1 and para. 2 of the Constitution of 1991, gives rise to some **corrective interpretations and clarifications in the practice of the Constitutional Court**. Thus, by *Decision No. 4 of 15.06.2000 in case No. 5/2000*, the Constitutional Court stated that the concept of 'coast' is wider than 'beach', and the basic law declares exclusive state ownership not the entire coastline, but only its beach part. Another interpretation of the substantive content of the objects listed in art. 18, para. 1, is provided in *Decision No. 2 of 6.02.1996 in case No. 26/95*, where the Constitutional Court ruled that the underground resources, to which the regime of exclusive state ownership and concessions traditionally apply, are such resources (oil, coal, ores, etc.) which are a one-off property, such as national community property, thus, they are non-recoverable when used. It is accepted that according to the Constitution of 1991 the only possible holder of the right of ownership of

[15] See Decision No. 19/1993 of the Constitutional Court, National Gazette issue 4 of 1994.
[16] Decision No. 4 of 15.06.2000 of the Constitutional Court in case No. 5/2000.

these wealth can be the Bulgarian state. This is also true for forests, waters, national parks and the coastline. As stated in the Constitutional Court *Decision No. 19 of 1993*, *"the universal benefit of these objects* (all objects referred to in article 18, para. 1 are taken into account) *is so evident that the constitutional legislator considered it necessary to provide it to everyone"*. It should be added here that art. 18, para. 1 of the 1991 Constitution lists sites that may have historical or ecological significance (natural and archeological reserves), far beyond the borders of the country.

The need to interpret the concept of 'national importance' in art. 18, para. 1 of the 1991 Constitution – i.e., whether it refers to the waters and forests or only to the parks, has triggered *Decision No. 11 of 25.09.1997 in case No. 4/1997*, in which the Constitutional Court considered that the term 'national significance' applies only to parks.

2. Municipal property

The 1991 Constitution enshrined the independent existence of state and municipal property, whereby art. 140 explicitly stipulates that the municipality has the right to own property[17] which it uses in the interest of the territorial community. Similar to the property of the state, that of the municipalities serves the public interests, whereby the latter cannot be satisfied by the property of the citizens and legal entities. This conclusion was presented in the Constitutional Court *Decision No. 4 of 11.03.1998 in case No. 16 of 1997* and *Decision No. 2 of 06.02.1996 in case No. 26 of 1995*, as well as in legal theory.[18] **The state or municipal property regime is conditioned by the needs of these communities. State ownership implies the exercise of powers in the public interest – i.e., an object is characterized as public or private state property by its purpose to permanently satisfy public needs of national importance; it also depends on the quality of the entity to which the exercise was granted, and of the purpose of those objects. Then, when the objects satisfy public needs of local importance, they are municipal property.**

However, the real distinction between the two types of property was made with the amendments of art. 6 of the PLA and the final provisions §6 and §7 of the Local Government and Local Administration Act ("LGLA")[19]. Final provision § 6 of the LGLA defines which objects are municipal property, and final provision § 7 indicates which state-owned properties become municipal upon the LGLA entry into force. According to case law, the transfer of ownership occurs by right; specifically, the municipal infrastructure of locally important infrastructure, intended for health, sports and others, are being transferred to the municipality service. [20]

The 1991 Constitution points municipal property as one of the types of property, but does not contain any provisions specifying the objects of the same property or specifying the criteria for it. In Decision No. 11 of 21.05.2001 in case No. 18/2000, the Constitutional Court stated that it would take the prerogatives of the legislator if it tried to distinguish the public property of the state and the municipalities from their private property.[21] Art. 17, para. 4 of the 1991 Constitution envisages that these issues will be regulated by law. Therefore, it is necessary to take into account the legal framework of municipal property.

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[17] In interpreting art. 17, para. 2 of the 1991 Constitution, in Decision No. 11 of 21.05.2001 in case No. 18/2000, the Constitutional Court ruled that the circle of objects, which are municipal public or private property can be defined only by law.

[18] See Sarafov, P., *Public and Private Property as types of property*, 2003; Rustchev, I., *The Public State Property – Contemporary Law*, 1998.

[19] Promulgated in the National Gazette, issue 77/1991, effective 17.09.1991.

[20] See Decision No. 238 of 19.03.2010 of the Supreme Court of Cassation in civil case No. 4989/2008.

[21] See also Decision No 19 of 1993 case. 11, of 1993, State Gazette 4/1994.

The administrative practice assumes that until the entry into force of the Municipal Property Act ("MPA") in 1996 there was no public municipal property, regardless of its purpose. This was done after that time, in compliance with the terms and procedures established in the additional provision § 5 of the MPA. As a rule, municipalities as legal entities can (as well as the state) be a party to all types of civil relations, except for those arising solely between individuals. The powers of the municipal authorities and the need to use the property in the public interest do not justify their ownership being always public. In order to determine whether a property is a municipal property, one should consider the objective of the legislation, which in a series of norms affirms municipal property as an independent form of property and distinguishes it from the property of the state, other legal entities and the citizens.

VI.CONCLUSION

This brief overview of the normative framework of the right of property under the four Bulgarian constitutions, from Bulgaria's Liberation until today, indicates the dynamics of this legal regime, dictated by the different economic and political conditions that the Bulgarian state has undergone over the last 141 years of its history.