

POSSIBLE INTERPRETATIONS OF ARTICLE 6, LAW 10/2001 A CASE STUDY

Codruța JUCAN

Abstract

In the context of restitution Law no. 10/2001 a particular situation is discussed: are the goods that existed at the moment of taking over subjected to restitution? Everything in the chemist's shop represent its inventory and, at the same time, they are the chemist's shop itself, because their destination is not given by the building in this case, but by the fact that there is the right to practice and necessary equipment to make it a sanitary unity according to legal standards. Consequently, they are movable goods which became immovable through incorporation (as is the shop license to be a chemist's shop - sanitary unity, given to the person because he possessed the quality of a chemist, and work authorization for the building as such), as well as goods, that is to say utensils and outfit, taken over at the moment of abusive nationalization.

Key words: restitution, movable goods, immovable goods, destination.

It is interesting that certain aspects regarding Law 10/2001 can still be raised for discussion. Anyway, this law is one of the most analyzed, discussed, commented and dissected legal norms in Romanian legislation.

Law 10/2001, Article 6, above mentioned, refers to the goods which are settled under the incidence of the juridical norm, that refers, as well-known, to immovable goods abusively taken over during the period March 6 1945 – December 22 1989. That is to say that, according to the meaning given by the already mentioned law, in the mentioned article „(1) By immovable, according to the present law, we mean plots of land, with or without buildings, with any of the destinations they had at the moment when abusively taken over, as well as movable goods turned into immovable through having incorporated them into these buildings. (2) The reparative measures also concern the equipment and outfit overtaken by the state or other juridical persons at the same time with

the building, except the case when they were replaced, annulled, or destroyed.” The lawful above mentioned stipulations were partially blended and explained by H.G. 250/2007, which appeared with a significant delay to establish methodological norms to apply the mentioned normative act. According to H.G. 250/2007 for the approval of the Methodological norms of unitary application of Law 10/2001 it is established that the law refers to goods which were in the building at the moment of overtaking, no matter of its destination, goods which may be returned in kind or for which compensations can be given through equivalent¹.

The present exposition is grounded on some real situations, which were concretized in files recorded pending sub judice, and having a similar object.

According to Decree 134, April 2 1949 there were nationalized health unities, namely chemist's shops of any kind, druggist's shops, chemical, pharmaceutical and medical tests laboratories, as well as all the goods constantly used in the activity of nationalized sanitary unities (any equipment, furniture, druggs, sanitary stuff, utensils, means of transport, immovables, etc.). According to official reports and due annexe, closed by the state at the moment of taking over, chemist's shops inventory generally consisted of sums of money, dishes, apparatus, utensils, druggs, sanitary stuff, devices, druggist's and perfumer's articles, furniture, annexed pieces, the chemist's shop library, registers, files, archive, other various objects, including tenancy agreements or concession agreements for the building where the chemist's residence was.

The stipulations of Art. 1, 2, 3 and 4, Decree 134/1949, as well as of Art. 15 and 16 where sanctions are stipulated, sanctions applicable in case of inobservance of the decree, underline the abusive character of nationalization, in the same way as the mentioned compensations (Art. 11 and next ones) were unilaterally established by the state, without any legal remedy for the decisions of compensation committees. No compensation has ever been paid off in order to compensate the loss of nationalized goods.

According to Law 10/2001, legal term, more physical persons formulated notifications, demanding the assigning in kind and the re-establishment of the right to property over some chemist's shops which

¹ Comments in Fl. Baias, B. Dumitrache, Marian Nicolae, *Regimul juridic al imobilelor preluate abuziv. Legea 10/2001 comentată și adnotată*, vol. I, 2nd edition, Rosetti, București, 2002, pp. 146-149.

notifying persons or their predecessors possessed. Through the disposals issued by the mayors within the zone of territorial competence there were rejected those notifications by means of which the restitution in kind is claimed, with the motivation that demanded goods are not subject of Law 10/2001, related to stipulations in Article 6 in this normative act. These rejecting disposals were appealed against in legal time.

The question that arises is to what an extent are the notifications well-grounded (therefore the rejecting disposals issued by the mayor are illegal and groundless) or not, taking into consideration this particular aspect.

What should be underlined and understood is that notifiers-plaintiffs request not so much the quantity and list of movable, corporal goods which belonged to the chemist's shop, some of them no longer existing (therefore they cannot be demanded on the basis of the mentioned law), but especially the shop license. This is closely related to its residence, that is to the building abusively overtaken by the state. The nationalization of the chemist's shop the plaintiffs' predecessors supposes not only the abusive overtaking of movable goods related to the building in which the mentioned sanitary unity was, but especially the taking of the right to practice, and shop license belonging to this chemist's shop.

The goods that existed at the moment of taking over everything in the chemist's shop represent its inventory and, at the same time, they are the chemist's shop itself, because their destination is not given by the building in this case, but by the fact that there is the right to practice and necessary equipment to make it a sanitary unity according to legal standards. Without these goods the residence could not be used as a chemist's shop, and, at the same time, these goods can be used nowhere else, but in a chemist's shop. Consequently, we consider they are movable goods which became immovable through incorporation (as is the shop license to be a chemist's shop - sanitary unity, given to the person because he possessed the quality of a chemist, and work authorization for the building as such), as well as goods, that is to say utensils and outfit, taken over at the moment of abusive nationalization.

This right is inseparable from the building it was given for, taking into consideration the special conditions for authorizing it to be a chemist's shop, which is not a commercial society, but has to possess special authorizing conditions, and shop license.

An extremely important argument is the fact that, in the same building, using the goods of the previous owners and, especially, on the basis of their license as chemists (which supposes the shop license as such), a chemist's shop continued to exist and work, this time belonging to the state. The state did not re-authorize the new shop, did not take the necessary steps once again, did not follow the same special procedure, necessary when having in view the setting up of a new chemist's shop in that space. The Romanian State simply used the authorization and shop license belonging to the previous owners, whose right of property over those goods which were abusively taken. The taking over inventory of the chemist's shop states, that besides all the goods specified and the whole due documentation for functioning, documentation that was given continuity by not modifying the situation de facto of the building and chemist's shop.

As far as the term „goods” is concerned, we consider that, as also stated by the mentioned article, this is not enlarged but to immovable goods, but also to movable ones, as stated by the inner law, and even more, the term „goods” includes not only corporal goods, but also incorporeal ones, including accounts rights, no matter what form they may take (e.g. those resulted from the tenancy agreement of the plaintiff's successor, the shop's assets).

(CEDH Febr. 23 1995 *Gasus Dossier-und Fordertechnik GmbH c/Pays-Bas*, Comis.EDH, 8 Febr. 1979, no. 7456, *Wiggins c/Royaume-Uni*, CEDH, 20 Nov. 1995, *Pressos Compania Naviera S.A. c/Belgique a.o.*).

Similarly, The court considered that in the circumstances when there is „the legitimate and reasonable hope” regarding an authorization or a shop license linked to a liberal profession and this can be a good in the sense given by the Convention and should have the protection offered by it².

The plaintiffs' predecessors had the right to practice, abusively taken over by the Romanian State at the moment the shop was nationalized, a right conferred because they were chemists, which is successionally transferable when the successor possesses the required conditions. Or, the plaintiff has, in his turn, the quality of being a chemist and the right to practice, consequently he has had the possibility of exercising this activity. Likewise, in the residence of the previous chemist's shop are, as we already

² C. Bârsan, *Convenția Europeană a Drepturilor Omului*, All Beck, București, 2005, p. 977.

mentioned, chemist's shops as well, therefore, the conditions specified by the Court jurisprudence are fulfilled so as to consider the license of the plaintiffs's predecessors as a good in the sense established by convention.

As well, inclusively the present chemist's shops' legislation, namely Law 236/2009 for the modification and completion of chemist's shop Law nb.266/2008, published in Monitorul Oficial of Romania, Part 1, nb.404, June 15 2009, establishes similar conditions for chemist's shops.

Even now, the normative act in force that settles the functioning of chemist's shops, above mentioned, makes a clear cut distinction between a chemist's shop and a commercial society. Article 6 in this law distinctly specifies that „(1) The communitary chemist's shop is set up and functions within a commercial society organized according to the stipulations of Law 31/1990 regarding commercial societies, re-published, with the subsequent modifications and completions. (2) The commercial society as in paragraph (1) will have as activity commercialization by retail of pharmaceutical products, as well as products stipulated in Article 2, paragraph (1) let.e) and f)”. Articles 8-10 in the same normative act explicitly stipulate the conditions in which the shop authorization is given, distinct from a commercial society, including even special conditions regarding the space, namely the building for which this authorization is given. The whole documentation is handed over to the Ministry of Public Health, which, after an inspection gives its notice but only after a favorable inspection report has been made. Articles 12-14 establish in their turn the special conditions of the shop's functioning related to the building.

The authorization hasn't been legally withdrawn for inobservance of conditions stipulated by inner juridical norms regarding the functioning of the chemist's shop, but happened as a consequence of the decree at the moment of nationalization, the so-called „*praxis*” of the shop being abusively taken over, in its residence continuing to be a chemist's shop as well, this time belonging to the state, that also took over the association agreement done with the owners of the building, an agreement belonging to the previous chemist's shop and taken over through the zone pharmaceutical centre, belonging to the state. The two – the chemist's shop and the building – were inseparably linked – on the one hand, that chemist's shop taken over from the plaintiff's predecessors could not be in another residence, as the way of authorizing such an activity is of such a kind that it

does not allow a simple change of residence, other measures being necessary, and, on the other hand, the building had the destination as a chemist's shop, because before being taken over, a similar institution was there, but also after that and now.

From this viewpoint, we appreciate possible to include the plaintiffs' demand among those which legitimately aim at goods stipulated in Art.6, above mentioned, that distinctly settles that the goods referred to may be both movable goods, and, according to paragraph 1 „movable goods turned into immovable ones by being incorporated in these buildings”, as well as „equipment and outfit taken over by the state or by other juridical persons at the same time with the building,” according to paragraph 2.

One should also underline here that the chemist's shop is an intrinsic value in itself including especially the *praxis* of the sanitary unity – that may in itself become the object of a transmission of property right, both by means of a purchase agreement and deed of purchase, cession or license, and through acts for death cause, successionally, the inheritors being able to continue the activity only if they are chemists. At present, such agreements are frequently closed, by means of which small chemist's shops, private ones, are taken over by big pharmaceutical chains, on the basis of some perfectly legal agreements.

Also, according to Article 1 in the Protocol no.1 additional to the European Convention of Human Rights the right of property is established and „any physical or juridical person has the right to have his goods respected. Nobody can be deprived of his property but for public utility cause and the conditions stipulated by the law (...)”. Thus, the stipulations of the European Convention are applicable as well. The protection of property is distinctly specified, these norms being broken by the Romanian State even now by not granting goods restitution and not giving compensations to which the plaintiff is entitled on the grounds of the reparative law. It is obvious that the plaintiff predecessor's right of property was broken, as long as after the application of the nationalization decree, she couldn't dispose of her goods in no way.

Although giving compensations was stipulated, regarding these nationalized goods, as we already said, the plaintiffs' predecessors did not receive any sums of money and by no way those compensations, which couldn't be contested either; being established discretionary by the state,

they cannot be considered equitable.

As a conclusion, the question is left if instances will admit as possible such a request grounded on the reparative law (Law 10/2001) together with the stipulations of the European Convention of Human Rights and the application of the European Court's jurisprudence or if the ratification of a special juridical norm is necessary, that might, however, assure a compensation for these persons who were deprived both of their own goods, goods with a special statute, and of their means of subsistence, taken over abusively by the Romanian State.

