TYPES OF PROPERTY AND RECONFIGURATIONS OF THE CONCEPT OF PROPERTY, IN THE 19TH AND 20TH CENTURIES IN ROMANIA

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Abstract. There are different criteria that can represent the basis of a viable classification on addressing the property, either depending on the period in which the ownership and the right to property are placed, or on the typology of owners, and the typology of the possessed objects.

The new conditions appeared after the elimination of feudalism, and the forming of the capitalist relations, led to socio-cultural effects, in all the aspects of the social life, especially on addressing the right to property.

The development of merchandise production, and the consolidation of central power, determined the uniformity of legal norms, manifested in ample written regulations, which determined that the right to property to be regulated by ample norms, codes (of Calimach, Caragea etc.), and some special legislations (land records, charters, etc.), legal books, along with some Byzantine norms.

Keywords: property, the right to property, the typology of owners, codes of laws, the forming of the capitalist relations.

There are different criteria that can represent the basis of a viable classification on addressing the property, either depending on the period in which the ownership and the right to property are placed, or on the typology of owners, and the typology of the possessed objects.

Thus, the right to property, in the Feudalism, including the Romanian one, is characterised through different limitations, "through connected obligations, such is the complex aspect that consists of superposition and discriminations, essentially different, from this point of view, from the property of the Justinian Roman law, and the common Roman law. It is also characterised through the diversification of property according to owners, the social categories they belonged to"[1].

Princely property in Wallachia and Moldova, or *royal*, in Transylvania, the first category of feudal property, according to the owner, "initially included: the

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[1] Vladimir Hanga (coordinator), *Istoria dreptului românesc*, Vol. I, Bucharest, Romanian Academy Publishing, 1980, p. 534.

lands that did not belong to the individuals, category that became smaller, as much as the feudalism developed and the land became successively private property: the deserted plots (they had either been deserted, or had become deserter, due to certain reasons); the plots that used to belong to vacant estates (who would lack successors); the lands confiscated as a penalty for betrayal; the citadels and the mines. From all the land, the monarch gave donations, through which his domain gradually diminished, a fact that determined, at some point, the revising of the previous donation documents, in order to ascertain their viability. His approval of certain important legal documents: sales, exchanges and donations of donative estates, unions, adoptions, *praefectio* ("the settling of the daughters over the sons"), – was necessary due to the right of superior ownership, which he had over these estates; through the granting of his consent, there was manifested the renouncing to the retracting right that they enjoyed"[2].

Starting with the 14th century, the Romanian citadels had an extremely significant role in the defensive system of the country, and for the maintenance of each of them there was built the so-called *arrondissement*, made of wide lands and numerous villages that used to belong to the ruler. The dwellers from these villages had the obligation to work for continuing the fortification of the walls etc., and the supplying of the garrisons with food. Parts of the ruler's domain were given to their courts, their income being used for supporting the garrison, the administrative staff, and the ruler's entourage, when he was visiting a specific court.

The rulers enjoyed all the rights from the land at their disposal, donating or selling parts of it. Due to this practice, towards the middle of the 17th century, the public land was almost liquidated. Nonetheless, reduced parts from the public domain, which belonged to Moldova, from the arrondissements of towns as Botoşani and Iaşi, remained at the disposal of the rulers, up until the 17th century[3]. As much as the public domain was diminishing through acts of donation and selling, the rulers transmitted over the dwellers from the villages that belonged to the boyars and monasteries, all the money and work obligations, with public character.

The feudal laic property consisted of immovable and movable goods. On addressing the way it had been obtained, it could be acquired in an *original* manner: by taken possession over the ownerless mobile goods, or occupying them by clearing (grubbing) the land; but, in most of the cases, it was gained in a *derived* manner: through inheritance, ruler's or royal donation, usurpation, concluding of documents (buying, donation from private persons, exchange), or *mortis cauza* documents (testaments).

Although feebly concentrated and less extended that the ones from Byzantium, the boyars' villages from Wallachia and Moldova were mostly similar

[2] *Ibidem*, pp. 534-535.

[3] *Uricariu*, VII, pp. 237-238; *Surete,* XV, pp. 85 and 101, *apud.* Vladimir Hanga (coordinator), *Istoria dreptului românesc*, Vol. I, Bucharest, Romanian Academy Publishing, 1980, p. 536.

to them. Yet, there were differences, especially in periods of weak development of the boyars' reserve. "The immune regime was fundamentally the same, with the well-known abuses and excesses; quasi-existence of the legal immunity in favour of the boyars, unlike the immunities awarded to the monasteries, is identical; the direct producer had direct access to the ruler's judgement, and the listening and subjecting to the boyar, and defended by the ruler through drastic independence documents, were ensuring the boyar with a minor "de facto" justice, an efficient one, and more encompassing than could be imagined. The serfs owe these taxes and labour conscriptions, the same as those from Byzantium, but multiplied and in aggravating conditions, imposed by the ottoman domination. The payment in two instalments is multiplied in quarters, more than four times a year. The difference between the autochthonous serfs and the settlers, on one side, and the hired people, one the other side, is a fundamental one, but their settlement is different, at the edge of the domain. There can also be found here the category of the independent peasants, free of any taxes, the only ones that could be brought in the new settlement and especially for the new villages of colonisation on empty places and barren land to be repopulated[4].

An essential distinction and a characteristic of the feudal law, was, in Transylvania, for thenobles' buildings, that between the *bona auitica* and the acquired goods (*bona aquisita*), a distinction for which there were granted different rights, on one side to the owner, and on the other side, to their families. The tendency of the feudal law to maintain the integrity of the family patrimony and to guarantee its intact transmitting, from father to son, through the interdiction of the free alienation of the *bona auitica*, for which the rights reserved for the family were accentuated, creating unavailability for the temporary owner of the property right, which could, in exchange, dispose freely of the acquisitioned goods[5].

The church's property, belonging to churches (monasteries, parishes, bishoprics) came especially from royal or princely donations, but also private donations, of immobile and mobile goods, forming episcopal and monastic great lands, whose legal regime was presenting similarities with the noble properties.

The peasants' property had, as much as that of the people living in towns, a special character in the feudal system, in which the dominant and characteristic form of real estate property was the noble donative one.

On addressing the distinction between the movable property and the peasant real estate one, there must be mentioned that, besides the differences between the categories of afferent rights, and the ways it was obtained and transmitted, differences that could have, to a certain extent, corresponded to those of the same categories of the noble class, a characteristic of the peasant real estate in the feudal period, which made it distinct from that of the nobility, was that the

[4] Vladimir Hanga (coord.), *op. cit.*, vol. I, p. 536.
[5] *Ibidem*, p. 537.

first one din not represent a form of exploitation, being worked by peasants, generally in the same family.

The real estate of the free peasants from Transylvania was shared or individual. Firstly, in the early feudalism, there was the common property of the communities of free peasants, which was either progressively taken, in the period of the developed feudalism, by the laic and ecclesiastic nobility, "the peasantry from the counties being reduced to the state of serfdom (the same system was applied by the cities to the villages under their administration), or it was transformed into individual property, by renouncing to the joint possession". Initially, the joint ownership was extended not only over the forests and waters, but also over the arable land, for the share that each family had being periodically drawn the lots; in time, it was limited to forests and waters, the arable land going to into the category of individual properties (H.H. Stahl)"[6].

The village of free people, as shared property was including: the precinct, the farming land, divided on 1st degree "old-people" and second degree "old-people"; the land of the church; the common property (forest, pasture, ponds etc.); "plots of land". In Wallachia and Moldova, not only the free peasants had the right to property, in the above mentioned forms, but the dependent producers too. The serf could also be a landowner, outside their place of living, and had a consolidated right over the plot, with limited and controlled possibility to alienate it, and leave it as a heritage for the successors. Gradually, especially the right to alienate would become more and more limited, or denied by the lords. In 1746, in Wallachia, and in 1749 in Moldova, the serfs become socmen, or village dwellers, so-called the free peasants, but they lost the plots for the benefits of the lords. The ownership of the serfs was more consolidated over the places that they had fallowed (clearing, draining, grubbing). The dependent peasant could decide on the working interval and cattle. He also enjoyed a better position on addressing the house, the yard (garden, orchard). The dwellers from the villages were considered serfs, still keeping lots of community structures, pre-existent to the feudal organisation, but the feudal lord and his agents substituted for many of attributions of the free community. The status of serf was a hereditary one, the same as in Byzantium, and the exclusion of the woman from serfdom was rather theoretical; in some documents, the same as in the West, there are mentioned the serf women.

The urban landed property. Through special documents, initially, the lords acknowledged to the urban communities the ownership over the precincts, along with a nearby territory, which was used commonly, by all the members of the community, for agriculture and animal husbandry. "The members of the urban community, being free people, did not depend on anybody, did not have metayage obligations, unless they worked the princely land, and, therefore, they could move freely. The urban communities enjoyed special privileges, having the possibility to

[6] *Ibidem*, p. 539.

defend their right to property on the land they had received from the prince, considering them properties from which they used to obtain their food, even if, until the 19th century, a part of the population from the towns was still practicing agriculture. The plot that was at the disposal of an urban community was called "the boundary of the borough", and, besides the farming land, it included the pasture, the hayfield, the bee garden and the mills. The land used for agriculture by the urban communities was called "the tilled land of the borough", and there was cultivated according to the norms established by the communities. Each spring, the bailiffs were distributing the plots according to the family members"[7].

Besides the land given to the urban communities, "nearby the cities, there were other plots at the ruler's disposal, known as "princely boundary", which was sometimes encompassing the villages. From the princely boundaries that were near the cities, the rulers donated plots to the boyars and monasteries"[8].

The city dwellers did not renounce willingly to the right to property to their own "boundaries", when facing the requests of different feudal lords, and resorted to justice, sometimes succeeding in winning the case. Something usual in courts was that "the urban communities were requested to show written evidence, meaning the property documents, which they did, when they had them, or sue those who had taken the land from them, through treachery and abuse. In the 17th century, the urban communities, menaced of losing the entire landed property they had used, brought the monopolisers to law, but the sentences were usually unfavourable. Moreover, starting with the 16th century, and until the end of the 18th century, in Moldova, there were supressed the "boundaries" of the cities of Siret, Suceava, Fălciu, Baia, Bârlad, Vaslui, Târgul Frumos, Scheia, Orheietc"[9].

Reconfigurations of the concept of property, in the 19th and 20th century in Romania

The new conditions appeared after the elimination of feudalism, and the forming of the capitalist relations, led to socio-cultural effects, in all the aspects of the social life, especially on addressing the right to property.

The development of merchandise production, and the consolidation of central power, determined the uniformity of legal norms, manifested in ample written regulations, which determined that the right to property to be regulated by ample norms, codes (of Calimach, Caragea etc.), and some special legislations (land records, charters etc.), legal books, along with some Byzantine norms. "Similar to the anterior period of time, property was mainly divided – according to the titular – into that of: the prince, church, boyars, towns or peasants; the characteristic of this

[7] *Ibidem*, p. 542.
[8] *Ibidem*.
[9] *Ibidem*.

institution in the new period, that is after the second half of the 18th century, and the beginning of the 19th century, consisted into the tendency of "purging" the feudal property over the estates, and the granting the peasants the right to use it, culminating with its proclaiming as an absolute right"[10]. The process of extension of the great domains started in the 18th century, accentuated at the beginning of the next century; "as resulting from a census made in 1803, the boyars' villages made more than a half of Moldavian villages, being owned, most of them, by the great boyars, respectively, by the 28 families that made this class"[11]. On the other side, in the same period, the free peasants' property (*răzeşi* in Moldova, *moşneni* or *megieşi* in Wallachia), suffered an accentuated diminishing in length, due to the extension of individual ownership principle over the land, and the fight that the great feudal domain was carrying out – through allowed or not-allowed means, against the peasants' communities. Thus, on one side, the people who were sharing property wanted to "choose" their part of land, and to extend it, to the detriment of the others, and on the other side, the foreigners entered into the community (called "moşinaşi"), and marked the frontiers of the bought plot. The procedure of frontier-marking of the estates became more frequent, due to the development of the feudal land, and the disaggregation of the free communities. The ruling institution itself, invoking – in certain moments – the fact that the property is proven by means of documents, pretended that the land that had been in the property of the freeholders since unmemorable times would be due to this institution, in the virtue of *dominium eminens* principle[12].

In the *Legal Book of Al. Donici* (XI, § 1–30), along with the Code of Calimach (division of goods, obtaining of property, possession, joint possession, serfdom), the juridical regime of the property is amply regulated. In Wallachia, the legal regulations were referring to the protection of property, frontier-marking, and the Law of Caragea was regulating and protecting the property, the joint possession, the frontier-making, the serfdom.

The goods "were defined by the Code of Calimah as "everything that does not represent a person and serves to people" (§ 378) and could be public or private – they either belonged to the physical or moral persons (§ 379) –, together with those "common and without an owner" (§ 380). According to their nature, the goods were divided in "corporal and not-corporal, living and inert, spending (*fungibiles*) and not-spending (*non fungibiles*) (representing those that can be breakable and diminished with the usage, and those that do not diminish, nor break) and pricey and not-pricey" (§ 390)"[13].

On addressing the title – "the legislator, who conveys the obtaining of a right" (*Code of Calimach*, § 417, n. 23) –, the goods could represent private

[10] Vladimir Hanga (coord.), *op. cit.*, vol. II, part I, p. 261.
[11] *Ibidem*, p. 261.
[12] *Ibidem*, p. 262.
[13] *Ibidem*, pp. 263–264.

property(*Codul Calimach*, § 64); Law of Caragea II, 1, § 3–6; *Legal book of Donici* IX, 1-30), joint property – "shared"(*Code of Calimach*§ 1101), "common", "in joint property" (*Law of Caragea* III, 13, §1–9), individually or jointly, "through serfdom" (*Code of Calimach*§ 616), "serfdom just for working" (*Law of Caragea* II, 2, §1). The rules of the dominators were considered correct, when "they are grounded on o rightful purpose, a lawful earning situation", or, on the contrary, "when they are not grounded on a rightful purpose, they are considered unjust rules" (*Code of Calimah*, § 416).

The obtaining of goods could be innate or derived. In the first category, there was the possession over buildings, through occupation or accession, and movable assets, which were categorised as fruit picking, livestock, hunting or fishing; the ores of the subsoil were considered to belong to the lords (*Code of Calimach*, § 509). The fallowing was the main way in which the town dwellers, and even the dependent peasants, could obtain land. The voluntary derived ways of obtaining goods were inheritance or donation, but the legal documents were becoming increasingly more numerous, being also the determinant element of the title of property: "Buying, exchange, donation, inheritance, lease, earnest etc.; and the manner of winning was the treason" (*Code of Calimach*, § 417, n. 23). The acquisitioned prescription, as an involuntary derived way, was operational, only in case of god-faith ownership (*Donici*, IX, 1), and was regulated in details, with terms of 10. 20, 30 or 40 years; it was not applied to other people's possessions, or to the "haggling between people, or the possessions of holy church, the cemeteries, and the shared community plots" (*Donici*, IX, 26).

The protection of property was provisioned by legal proceedings "against the person who seized a possession, either in good-faith or ill-intentioned faith (*Donici*, IX, 4). The proceeding was personal ("personal petition") if the claimer would lose the possession, and if they already owned the estate, "they would be granted the rights to own the requested estate" (*Donici,* IX, 4).

For marking the boundaries, there were used big rocks and coal. The operation was performed only by the legal authorities "the neighbours being considered according to the old custom, that is the rank"[14]. In case of boundary change, there was resorted to the procedure with witnesses that "would show, on the spot, where the boundaries used to be"[15]. As evidence, the Law of Caragea would admit the documents, the measurements, the old marks and the witnesses. For the measurements, there were used the same measuring units as those from the documents, which meant "the measurement is to be made with the stajen, the one mentioned in the charters of C. Brâncoveanu and Şerban Cantacuzino… And when it is no written evidence of such measurement, there is made according to the stajen of Şărban Vodă" (Law of Caragea, II, 3, § 4 and 5).

[14] *Ibidem*, pp. 264-265.
[15] *Ibidem*, p. 265.

The Organic Regulations promoted the idea of "holy rights over property" (art. 70), acknowledging the owners of the estate the right to full property over a third of the estate, which led to the increase of working obligations for the peasants, through more days of corvee and the use, to an extent, of some new juridical forms, stipulated in the leasing contract. On addressing the subsoil resources, "The Organic Regulations stated that these resources (except for the salt that had become the state's monopoly) were constituting the property of the rightful owner of the surface; nonetheless, through a law, the state would regulate their exploitation. Tightly connected to the right to property – and with ample effects on it – there can be noticed other legal regulations, such is the forbidding, due to modern provisions, of the patrimony right of the state and the personal character of civil liability, through the abolishment of the collective liability. Moreover, a significant provision was that allowing the Romanians to buy real estates, of any kind, in the both Principalities"[16].

In the period of transition from feudalism to capitalism, the main forms of ownership – that would later become modern property – on the soil, plantations, buildings and serfs, were continuing to be limited by the preemption and retract rights, a limitation that, in the previous period, had constituting one of the modalities in which had been conditioned the landed property. "Technically, their conditioning was needed – as any type of alienation – otherwise limited – *to announce the authorities (denuntiatio)*, that the alienation would be performed *with their knowledge and according to their will*, followed by a request for the renouncing to the preemption. A short term was given for all these operations, under the sanction of losing the retract privilege. The extra-judicial operation, proved with witnesses and documents, tends to be a judicial procedure, better and more originally organised in Moldova"[17].

In the second half of the 18th century, and the beginning of the next one, the preemption and the retract were further representing the local solidarity feature, but once with the creation or the accentuating of certain circles of solidarity, different from the previous ones. The landlord and the socmen, who lived and worked on an estate, were constituting a "circle of solidarity", and, when the leasing of the estates was gradually moving towards the foreign elements, in the 18th century, the socmen imposed the preemption to the boyars and leaseholders, contested by the boyars and the church, and renounced at in 1816 in Moldova, and 1818 in Wallachia.

In the transitional period, and especially after 1765, there is accentuated the contribution to a creative and savant adapting, the modernisation of the Byzantine law of the preemption, to the solving of problems that the Romanian institutions were implying, their very strongly amorphous and customarystructures, and the general need of systematisation, unifying coding, and even reformation of law,

[16] *Ibidem*, p. 266.
[17] *Ibidem*.

promoting an "enlightened despotism". The Byzantine contribution was mirrored in the terminology of the institution, which was still preserving its local features. The preference of buying was expressed through "having a stronger right" than the abroad foreigner, or, in 1747 and 1757 in Wallachia "they were allowed to buy", a formula which is stipulated in the Law of Caragea as the right "of those who are allowed … to buy" (III, 2,§7) and in the same way in the Code of Calimah (§1444–1447) and the Book of Donici.

The second half of the 19th century, and the beginning of the 20th are registering "substantial progresses in the Romanian economy, regarded in the entireness of the national territory. The development, due to the dramatic conditions of existence, was unequal, at different paces, and with different results, from one historic province to another. The rhythm of the capitalist modernisation of the economy was faster in the old Romania, in Transylvania and Banat, and relatively more reduced in Dobrogea (until 1878), Bukovina and Bessarabia"[18].

The construction of the Romanian modern state marked the entering of our country into a new stage of the capitalist evolution. The reforms of Alexandru I. Cuza, especially the agrarian one, contributed to the development of economy in the old Romania. The obtaining of state independence led to the removal of one of the main obstacles against the capitalist development, represented by the dependency over the Ottoman Empire. The possibility to conclude commercial and customs treaties freely, with different states, allowed the adopting of an economic policy that would favour the industrial development of the country, an essential condition for the well-being of Romanian modern state. Od addressing the agriculture, although after the agrarian reform had appropriated the peasants with large surfaces of land, nonetheless, a part of the dwellers from the villages was continuing to lack the land that would have secured the existence of their families.

In the attempt to solve *the social problem* with the help of the reforms, "there was promulgated, on the 14th/26th of August, the Law on the rural property"[19], which was provisioning "the appropriation through the acknowledgement of the right to property on the received plot (art. 1), and the emancipation of the direct producers, through the compensation of the obligations they had with the lord of the land (art. 10), which was conferring the former socmen the right to exercise the attributions of their legal personality"[20]. The way followed by the Romanian legislator was that of *sorting*, also applied in the central Europe[21].

Through the ceasing of the co-property, the landlords became singular owners of the land they had in their possession ("the emancipation of property"), and the property was declared sacred and inviolable, receiving important

[18] Vladimir Hanga, *op. cit*, vol. II, part II, p. 15.
[19] Of. G. no.181, from the 15th of August 1864.
[20] Vladimir Hanga, *op. cit.*, vol. II, part I, p. 19.
[21] Cf. H.H. Stahl, *Contribuţii la studiul satelor devălmaşe româneşti*, vol III, parte V, chapter III.

compensations for the peasants they "were declared free" (592.2 – 1321.10 lei for each villager)"[22].

By abolishing, "once for all, and in the entire Romania" all the forms of feudal obligations of the peasants, the law provisioned, in the same time, that "the agreement are accepted between the landlords and the villagers", but only for five years (art.12). These dispositions constituted the ground for *the law of agricultural agreements*, through which there was organised the new regime of relations, based on capitalist rules. The later appropriations (married people, veterans etc.) covered only to a small extent the needs for land of the rural population, which led to serious conflicts that culminated with the significant uprising of the peasants from 1907, against the serfdom, this time created by the harsh working conditions they were obligated to accept. Therefore, there was discussed a new agrarian reform around the first world war, which was nonetheless accomplished – once with the satisfaction of political claims – only after the end of it, and, in which "constructed as a legal revolution, there should have been changed the situation of the peasantry, as economic and political event within the country"[23].

After Dobrudja returned to Romania, the Romanian state *substituted itself to the rights* of the Ottoman one, and on addressing the public property, which, in Dobrudja, was constituting the main landed property, but having not an eminent, but a useful right, the possession was limited by the rights to use. "Through analogy, the Law for the legalisation of real estate from the 3rd/15th of April 1882, there was established that the obligations of the land owners to the state – from which it was requested a feudal instalment, and not a tax – to be compensated once for all, through the payment of a sum of money (3 lei a year for a hectare, for the first three years, and 4 lei, for the rest of 10 years)", or the ceasing to the state of the third part of the land, liberated by any obligations to the former owners, a situation similar to that from the old Romani, where, through the reform from 1864, the condition of co-property had ended, due to sorting. In exchange of the feudal compensating obligations, or the partial ceasing of land, the direct producers obtained, over the land they had used, the right to full property, freed of any feudal obligations, paying only taxes, in their new quality of absolute owners, the same as the former socmen from the left of Danube, and the state – and the landlords from the old Romania – benefiting by an absolute right over the third part of the land, which remained in its direct administration"[24].

The agrarian reform from Dobrudja experienced several stages, some preliminary (the temporary abolition of the metayage, the verification of the property documents, the delimitation of plots), and others, describing the

[22] "The notion of *undivided property*, introduced by art. 728 Civil Code, can suggest the analogy with the action of severance of the joint tenancy, to which only the 30 years limitation could oppose (Cas. I, dec. No. 203 din 1912, in "Curierul", 1912, no. 44)", *apud.* Vladimir Hanga, *op. cit.*, vol. II, part. II, p. 20.

[23] Nicolae Iorga, *Discursuri*, p. 304, *apud.* Vladimir Hanga, *op. cit.*, vol. II, part. II, p. 21.

[24] Vladimir Hanga*, op. cit.*, vol. II, part. II, pp. 21–22.

transformation of property (the compensation for the metayage, the selling of the plots to the state, the appropriation of certain categories of people), which generated the special character of the legal relations[25].

In the three counties from the south of Bessarabia, returned to Romania after the Treaty of Paris, "the agrarian colonies enjoyed, according to the privilege from the 12th of March 1820, Romanian regulations too, from the 30th of April/12th of May 1857, a special regime (reconfirmed by A.I. Cuza through Decree no. 203 from the 2nd/14th of August 1861). The colonists would receive from the state, on an unlimited duration, with significant obligations of payment in money and kind plots "for their, and their successor's eternal possession, but not individually, but shared by each colony" (art. 84); only after buying, they could obtain immovable possessions, for which they would enjoy "all the rights, for their private property" (art. 92)[26]. Through the Decree no. 1247 from the 10th/22nd of June 1874, they "became and remained full owners of the land", but after compensating for the plots from their possession, along with the taxes and duties, with a sum of money established according to the surface, which was to be paid in 15 years, the state still keeping a legal mortgage[27]. Unlike the situation of the former serf peasants, who were acknowledged their right over the land, in Dobrudja, there was considered – following the example of the colonies from Occident – the buying of land was considered a production incentive[28].

The agrarian reform from Transylvania was related to the revolutionary events of 1848. "under the pressure of the masses, on the 8th/19th of June 1848, the Council of Transylvania had to abolish the metayages of the former serfs, acknowledging them as rightful owners of the land from the towns, in exchange of a compensation, paid as a tax, although the Assembly of the Romanians from Blaj, from the 3rd/15th of May, had requested that this reform to be accomplished without payment; the landlords were to receive compensations from the state"[29]. After the repression of the revolution, the Habsburg authorities had to admit the agrarian reform, through imperial licences, from the 18th of February 1853 and the 9th of June 1854, there was acknowledged the possession over the town land to the serfs, and the possibility of the serfs compensate their duties from the old owners, paying the value of a year work, multiplied by twenty, or ceasing a part of the land they had worked, to the landlords; the rest of the peasants who did not have any land, had to sell their manpower, becoming agriculture or industry workers.

In the period between the two world wars, once with the increasing of the financial capital, "the classic attributes of the property start to be considered outdated, the development of the joint stock companies and "the merging or banks

[25] *Ibidem*, p. 22.

[26] I.M. Bujoreanu, *Colecţiune de legiuirile României, vechi şi noi*, vol. I, Bucharest, 1873, pp. 742–743, *apud.* Vladimir Hanga*, op. cit.*, vol. II, part. II, p. 22.

[27] I.M. Bujoreanu, *op. cit*., vol. II, 1875, pp. 198–200, *apud.* Vladimir Hanga*, op. cit.*, vol. II, part. II, p. 22.

[28] Vladimir Hanga*, op. cit.*, vol. II, part. II, p. 22.

[29] *Ibidem*, p. 22.

and industry", making the transfer of property – including the real estates, to not need complicated formalities, and to become more and more "impersonal". From the simple "possession", there is made the transition to a "participation", to the administration of goods, and his unlimited right starts to become essentially "social" (L. Duguit, O. Gierke, R. Ihering), trying to justify the limitations of the right to disposition especially"[30]. While the old Constitution was limiting to only three pre-existent cases of expropriation (art. 19), in that from 1923, there was provisioned that "the public authority, based on a law, represents the right to use the basement of any real estate with the obligation to compensate the damages caused to the population, buildings and existent works"; to the cases of pre-existent expropriation, there were added "the military and cultural interest ones, and those imposed by the general interests of the state and public administrations" – thus, an institutionalisation of the "social function" principle, specifying that "the other cases of public use are to be established by the laws voted with the majority of two thirds" (art. 17).

From here to the accreditation of the idea that the property is, first of all, "an obligation", and not "a right", was no more than a step. The Constitution from 1938, placing firstly the obligations over the citizens' rights, extended this acceptation on the property too, with special consequences on the expropriation, stipulating that "in case of public use, there can be understood that it can use to all and to each" (art. 16), a definition that was allowing wider extensive interpretations.

The new agrarian reform, mentioned since the first world war, through the proclamation from the 23rd of March/6th of April 1917, and realised on the 17th of July 1921 for Muntenia, Oltenia, Moldova and Dobrudja, through the buying back of the estate land (the annual rate of the lease, multiplied by 20), gaining, in 1923, a constitutional provision[31].

Thus, "at the end of world war one, Romania made the most radical agrarian reform from Europe"[32].The positive dispositions of the expropriation and appropriation laws from 1921 "were preponderantly more numerous than the ones that would slow down the progress of agricultural exploitations"[33], but the reform, instead of giving a boost to agriculture, contributed, to a certain extent, although not alone, to a slower evolution. "The governmental circles were not ready to make, in such a short time, a work of that grandeur, which the finalisation of the agrarian reform works suffered from unusual delays. The state did not take firm measures for their finalisation, therefore, in the conditions of the slow agricultural progress, in some political circles, there was discussed the idea of an agrarian reform, as a solution for the straitening of this segment of the economy"[34].

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[30] *Ibidem*, p. 233.

[31] *Ibidem*, p. 34.

[32] Dumitru Şandru, *Colectivizarea agriculturii şi problema agrară: repere social-politice*, in Dorin Dobrincu, Constantin Iordachi (editors), *Ţărănimea şi puterea – Procesul de colectivizare a agriculturii în România (1949–1962)*, Iaşi, Polirom Publishing, 2005, p. 45.

[33] Idem, *Reforma agrară din 1921 în România*, Bucharest, Romanian Academy Publishing, 1975, pp. 73–75.

[34] Idem, *Colectivizarea…*, p. 45.

The agrarian problem from Romania, unsolved properly through the reform from 1921, "was brought up for public debate shortly after the political change from the 23rd of August 1944. Those who supported thoroughly its solving, by expropriation or appropriation, were the communists. In its first legal issue, *Scânteia* newspaper was inaugurated the propaganda on addressing the agrarian problem, declaring that the appropriation was representing the most important issue that was preoccupying the peasants, and that the expropriation, which from the legal point of view was more actual, was even more concerning"[35]. On the 24th of September 1944, the reform bill of the Romanian Communist Party for the creation of the Democrat National Front (DNF) "detailed the programme of the communists on addressing the agrarian policy. Point 3 was referring to the peasants and the way they were to be solved their stringent problems, promising an extended agrarian reform, through the expropriation of the agrarian properties of more than 50 hectares, and the appropriation of the peasants who did not have any land, or those with very little[36]. The provisions of the project were representing only the exposing of the general intentions, concerning the agrarian problem. "Owing to the fact that the document was regarding all the political forces in Romania, asking for their collaboration to its fulfilment, they had to present their point of view, related to the proposals of the communists. The parties and the organisations that showed their preferences for the left-side policy, adhered to the principles enounced in this project"[37]. The historical parties also declared in agreement to the appropriation of the peasants, but each came with its proper formula. In the introductory part of the *Programme-Manifesto*, from the 16th of October 1944, where there were displayed the principles and the doctrine of the National Peasant Party, there was mentioned that the party was basing "on the ground of the individual peasant property, mainly limited by the working capacity of a family", and that "the transformation of the present landed property, since the present moment the peasants' property, shall constitute one of the major preoccupations in this area"[38].

The liberals, who had had a dominant position in the agrarian reform from 1921 and 1943, had opted for the reform, after the 23rd of August 1944, declared themselves against the expropriation of the private estates. In exchange, they admitted the appropriation, which they were limiting to the availability of land from the state's possession. Later, the leadership of the party expressed the agreement for the appropriation of the peasants with plots that would come from the land the emigrants had abandoned, and those that would have been made part of the state's patrimony, through buying.

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[35] *Scânteia*, 21st of September1944, *apud.* Dumitru Şandru, *Colectivizarea…*, p. 47.

[36] Gheorghe Micle, *Răscoala pământului. Istoria luptelor politice ale ţărănimii române, 1933–1945*, "Frontul Plugarilor" Publishing, f.l., f.a., p. 381, *apud.* Dumitru Şandru, *op. cit.*, 2005, p. 47.

[37] *Ibidem.*

[38] National Peasant Party*, Programme-Manifesto*, *October 1944*, Bucharest, f.e., f.a., pp. 4–8, *apud.* Dumitru Şandru, *op. cit.*, 2005, p. 48.