

A PLEA FOR THE AGRARIAN LAW AS A DISTINCT AND AUTONOMOUS BRANCH OF LAW

Carmen-Mariana DIACONU¹

e-mail: avocatcarmendiaconu@gmail.com

Abstract

The hereby article aims at proving the necessity of regulating the agrarian law as a distinct and autonomous branch of law, given the specificity of the social and legal relationships in the agricultural field. In this context, we consider that it is necessary to introduce the agrarian law in the academic curricula, as a distinct subject, in the faculties of law, in the light of the importance of agriculture, juxtaposed with the unionist politics of sustainable development.

Key words: Agrarian law, autonomous branch of law

The agrarian law stands out as a distinct and autonomous branch of law, within the context where the actors in the agricultural field are the beneficiaries of a specific legislation. Why agrarian law? When talking about a branch of law, according to its particular dogma, we can refer to a branch of law in terms of interests protected by the legal standard. (Verginia Verdinaș - *Drept administrativ*, 4th edition, Universul Juridic Publishing House, 2009, Bucharest). When analyzing its subject matter, we can conclude that the agrarian law reflects, on one hand, the legal relationships between the competent management in the field of agriculture and rural development and, implicitly, of specific funding and the addressed subjects of law with a specific activity, such as: commercial society for farming production, agricultural societies, bodies founded under the Government Emergency Ordinance no. 44 from 2008 pertaining to the conduct of the economic activities, under the command of authorized natural persons, individual and family businesses. Hence, we can state that the agrarian law is governed by the plurality of legal standards, equally subjected to the application of public law standards, motivated by the fact that the competent management provide specific services to private individuals, such as: granting of visas, granting of subventions, etc and, on the other hand, the activity of the legal bodies in the field of agriculture imply specific social relationships (we shall take into consideration the legislation pertaining to the Agricultural Real Estate, the legislation pertaining

to agricultural societies and co-operations, specific aspects to the agricultural lease etc.).

MATERIAL AND METHOD

The hereby article reflects a theoretic and dogmatic study based on the relevant legislation, including: Romanian Constitution, Law no. 215 from 2001 pertaining to local public administration, Law. no. 393 from 2004 pertaining to the status of local elected representatives, Government Emergency Ordinance no. 44 from 2008 pertaining to the conduct of economic activities under the command of authorized natural persons, individual and family businesses, Law no. 36 from 1991 pertaining to agricultural societies, Law no. 566 from 2004 pertaining to agricultural co-operations.

RESULTS AND DISCUSSIONS

By analyzing the specific character of the agrarian law as a branch, we conclude that its complex themes include a structured approach, with theoretical notions juxtaposed with their practical applicability. In our view, a possible dogmatic approach can have as a starting point, the analysis of social and legal relationships as it follows: agrarian law, as a branch of law, in terms of defining the object, sources of the norms and specific legal administrative relationships sources, by emphasizing the national and European administrative structures with powers in the field of agricultural policies. Taking into consideration the fact that we cannot talk about agriculture and specific relationships without approaching the right

¹ “Ion Ionescu de la Brad” University of Agricultural Sciences and Veterinary Medicine, Iași

to propriety, it is necessary to analyze these in terms of goods for specific agricultural exploitation specific to the field of agriculture. Thus, I suggest to structure the issue of the right to property pertaining to the goods of agricultural exploitation in the view of the holder of the right to property, namely of the derived state and its bodies, on one side, and its private economic agents, on the other side. Due to the applicative approach, we suggest to equally address the legal means regarding the transfer of right to property of both goods of agricultural exploitation and contentious issues reflected by the relevant judicial practice.

In the context of governmental policies of restoration of the right to property, under Law 18 from 1991, amended and republished, it is nonetheless required to equally tackle on the theoretical and practical legal notions pertaining to the Agricultural Real Estate, along with the analysis of the Law 1 from 2000 and Law 247 from 2005. The Agricultural Real Estate gives rise to an extensive judicial practice, marked by the evolution in time of the relevant legislation, respectively, we refer to normative provisions as laid down by the Law 165 from 2013 pertaining to the measures for the completion of the restoration process in kind or equivalent to the real estate improperly taken over during the communist regime from Romania and, implicitly, for the modification of the Criminal Procedure Act under Law no. 2 from 2013 pertaining to the good measures for the relief of the court, as well as in preparing for the implementation of Law no. 134 from 2010 pertaining to the Criminal Procedure Act, corroborated with the Government Emergency Ordinance no. 4 from 2013 pertaining to the modification of Law no. 76 from 2012 pertaining to the implementation of the Civil Procedure Act and, implicitly, the modification and completion of some ancillary legal acts.

The right to property, taken as a whole in terms of art. 1 paragraph (1) to Protocol I, regarding the European Convention on Human Rights, involves approaching the theoretical and practical aspects pertaining to the real estate registration of the right to property of the goods for agricultural exploitation. The issues of real estate registration of the right to property involved, without a doubt, addressing notions of real estate advertising, stressing out the actual procedure of the registration of the right to property in the Real Estate Register without omitting the specific elements and corresponding case load of legal liability, which is assigned to the civil servant from the Land Title and Survey Offices. The branch of agrarian law implies, without a doubt, the analysis of specific contractual relationships, under Law no.

17 from 2014 pertaining to the sale of agricultural lands outside the build-up areas, legal relationships specific to the agricultural lease, analyzed in its full regulatory evolution, beginning with Law 16 from 1994 until Law 287 from 2009, which entered into force on 1st November 2011. In this sphere of specific contractual relationships, the approach of contractual concession relationships as laid down by the Government Emergency Ordinance 54 from 2006 pertaining to the regime of supply contracts in the public sphere, is also involved.

The agricultural activity also involves specific industries, such as food industry, characterized by legal standards, opinions and authorizations, analyzed in terms of national and European public policies. The modern concept turns the study of agriculture into the study of life sciences, with focuses on the environment, seen as a social and legal concept, which goes beyond the cognitive perception of the component elements of water, soil and air. The environment must be treated properly and, therefore, there are strict regulations regarding the use of phytosanitary substances employed in the field of specific agricultural crops. The phytosanitary legislation regulates de facto the legal relationships pertaining to the free movement plants and animals, seen as possible epidemiological bearers and messengers, aspects controlled by the European Phytosanitary Passport. In addition, this phytosanitary law panel covers the legal regulations regarding the authorization of phytosanitary substance production, registered in Codex, under the notice of the Inter-Ministerial Commission for Homologation. The public strategies regarding customer protection of goods and services corresponding to the field of agriculture involves the analysis of Law 296 from 2004, pertaining to the Consumption Code in this perspective. Any economic activity requires the accessing of funds and specific funding measures, due to which the author of the study considered that the branch of agrarian law also includes legal parameters which regulate the funding instruments of agricultural policies, both at national and international level. Agricultural public policies always entail the sphere of state authority, reflected by civil servants who work in competent institutions in the field of agriculture, since they are treated as subjects of different types of disciplinary, patrimonial and/or criminal liability, along with an approach of the relevant case load. Since we talk about life sciences and about addressing the environment in terms of European policy of sustainable development, we cannot rule out the inclusion of misdemeanor liability in this branch of law within

the context of state relationship of coercion, imposed by the environment legal norms.

CONCLUSIONS

We strongly believe that given the current emerging economy, the agricultural field remains fundamental in terms of its decisive role in sustaining the population with food. It is indeed true that the behavior of the specific consumer to the agricultural market has changed, but even so, it is the evolution of social relationships between all the involved actors that require the granting the agrarian law its rightful role of autonomous branch of law in the academic curricula. The economic actors in the field of agriculture mark a return to tradition, to national specific, to intercultural exchanges, not only in terms of local products, but also of the stories that add up to traditional brands and even the ones with designated origin.

REFERENCES

- Alexandru I., 2001** - *Administrația publică: teorii, realități, perspective.*, Editura Lumina Lex, București.
- Antoniou G., Volonciu N., Zahariu N., 1988** - *Dicționar de procedură penală*, Editura Științifică și Enciclopedică, București.
- Bârsan C., 2008** - *Drept civil. Drepturi Reale Principale*, Ed. Hamangiu, București.
- Boroi G., Anghelescu C.A., Nazat B., 2012** - *Curs de Drept Civil, Drepturi Reale Principale* – ediția a II-a revizuită și adăugită, Ed. Hamangiu, București.
- Diaconu Carmen Mariana, 2015** - *Răspunderea penală a funcționarului public și uniformizarea dreptului la nivel european. Implicații socio-politice*, Editura Ion Ionescu de la Brad, Iași.
- Firoiu D.V., Iancu Gh., 1997** - *Istoria României, vol. II*, Ed. George Barițiu, Cluj-Napoca.
- Fuerea A., 2006** - *Manualul Uniunii Europene*, Ed. Universul Juridic, București.
- Giurgiu N., 2000** - *Drept penal general: doctrină, legislație, jurisprudență*, Ediția a II-a, Editura Cantes, Iași.
- Mazilu D, 2005** - *Integrarea europeană. Drept comunitar și instituții europene*, ed. a 3-a, Ed. Lumina Lex, București.
- Mihăilescu Mădălina-Elena, 2016** - *Drept administrativ. Partea generală. Curs universitar*, Editura Hamangiu, București.
- Mihalache Carmen Mariana, 2011** - *Răspunderea penală a funcționarului public*, Editura Hamangiu, București.
- Petroiu M., 2014** - *Dreptul de acces la informațiile de interes public. De la litera Legii, la abuzul autorităților*, Editura Hamangiu, București.
- Podaru O., 2010** - *Drept administrativ. Actul administrativ. Repere pentru o teorie altfel-vol. I*, Editura Hamangiu.
- Preda M., 2006** - *Drept administrativ*, București, Editura Lumina Lex.
- Safta M., 2015** - *Drept constituțional și instituții politice* – Ed. Hamangiu, București.
- Șandru D.M., 2007** - *Drept comunitar. Integrare europeană*, Ed. Universitară, București.
- Toader T., 1997** - *Drept penal român: partea specială*, Ediția a III-a, Casa de Editură și Presă Șansa, București.
- Toader T., 2015** - *Noul Cod penal, Noul Cod procedură penală*, Ed. Hamangiu, București.
- Toader T., Michinici Maria-Ioana, Crișu-Ciocântă Anda, 2014** - *Noul Cod penal: comentarii pe articole*, Editura Hamangiu, București.