

LEGAL REGULATIONS REGARDING THE RIGHT OF PRE-EMPTION IN AGRICULTURAL LAND SALE-PURCHASE RELATIONS

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Abstract *The right of preemption can be established by law or by contract. This right is enjoyed by someone who is preferred as a buyer before others. The holder of the right of pre-emption, called the pre-emptor, can buy a good with priority, according to art. 1730 paragraph (3) Civil Code. The holder of the right of pre-emption who rejected a sale offer can no longer exercise this right with regard to the contract that was proposed to him. The offer in the case of the sale of movable goods must be accepted within 10 days at most. The offer in the case of the sale of real estate must be accepted within 30 days at most. In these cases, the term runs from the communication of the offer to the pre-emptor.*

Key words: *law, preemption, priority, pre-emptor*

INTRODUCTION

The right of preemption - the right to be one step ahead of everyone. Firstness - is an attribute pursued and coveted by many. Nowadays, when the competition is at such a high level, getting the right to occupy the first place in importance, in value, matters enormously. Relying on this desire of the nation, the Romanian legislator regulated the right of preemption, a subjective civil right that confers priority. And not just any kind of priority: priority to purchase! The doctrine prior to the New Civil Code defined the right of pre-emption as "a subjective civil right, recognized by law for natural or legal persons, which consists in the possibility given to them to buy a certain asset first" [10].

The right of preemption is that right enjoyed by someone who is preferred as a buyer of a good. This should not be confused with the priority right of purchase, which arises from the agreement of the parties, having a contractual nature. On the contrary, the right of pre-emption is specified in the law and is provided as an imperative legal norm [11].

The right of preemption reborn after 1989 was also known in the old Romanian law as *protimis*, the first document attesting the existence of this institution in the Romanian Countries being a Byzantine document from the middle of the 15th century. In 1991, as a result of the adoption of the Land Fund Law no. 18/1991 which established in art. 48 - 49 a right of pre-emption to purchase agricultural lands located outside the village, rekindled the interest of the doctrine regarding the analysis of this institution. Initially, the definitions and analysis of this right were made starting from the specific features of the right of preemption regulated by Law no. 18/1991. Thus, it was shown that the pre-emption represents a subjective right that is recognized only to certain owners to enjoy priority when buying an agricultural land outside the village, in compliance with the other legal provisions in the matter [12].

The right of preemption can be established by law or by contract. This right is enjoyed by someone who is preferred as a buyer before others. The holder of the right of pre-emption, called the pre-emptor, can buy a good with priority [9].

According to art. 1730 paragraph (3) Civil Code. The holder of the right of pre-emption who rejected a sale offer can no longer exercise this right with regard to the contract that was proposed to him. The offer in the case of the sale of movable goods must be accepted within 10 days at most. The offer in the case of the sale of real estate must be accepted within 30 days at most. In these cases, the term runs from the communication of

the offer to the preemptor. According to art. 1731 Civil Code, the sale of the property with respect to which there is a legal or conventional right of pre-emption, can be made to a third party, only under the suspensive condition of not exercising the right of pre-emption by the pre-emptor.

According to art. 1734 Civil Code if several holders have exercised their preemption on the same asset, the sales contract is considered concluded:

- a) with the holder of the legal right of pre-emption, when it is in competition with holders of conventional rights of pre-emption;
- b) with the holder of the legal right of pre-emption chosen by the seller, when he is in competition with other holders of legal rights of pre-emption;
- c) if the asset is immovable, with the holder of the conventional pre-emption right that was first entered in the land register, when he is in competition with other holders of conventional pre-emption rights;
- d) if the asset is movable, with the holder of the conventional right of pre-emption having the earliest certain date, when he is in competition with other holders of conventional rights of pre-emption [3].

The right of preemption is indivisible: it is exercised in the presence of the entire good that is the subject of the sale. This right is temporary, according to art. 1740 Civil Code, the conventional right of preemption is extinguished by the death of the preemptor, except for the situation in which it was established for a specific term. In the latter case, the term is reduced to 5 years from the date of incorporation if a longer term was stipulated. The right of pre-emption is inalienable: it cannot be transferred or assigned. From a contractual point of view, it cannot be transmitted by documents between the living and it cannot be transmitted by inheritance, unless it was established for a certain term. From a legal point of view, it can only be transmitted together with a certain quality of the holder. According to art. 1737 Civil Code the conventional right of preemption in relation to a building is noted in the land register. According to art. 1746 of the Civil Code, the lands in the forest fund under private ownership can be sold in compliance with the right of pre-emption of the co-owners or neighbors [3].

MATERIALS AND METHODS

The materials used to write this work consist of normative acts and web pages. The methods used are legal, namely the formal method, the comparative method, the logical and sociological method and the analytical method. The use of these methods had the role of carrying out a systematic analysis of the information from the studied sources in order to elaborate the points of view, the results of the research carried out and the conclusions.

RESEARCH RESULTS

The legislation regulating the sale-purchase of agricultural land located outside the city has recently undergone a series of important changes as a result of the approval of Law 175/2020, on October 13, 2020, amended and supplemented by GEO no. 203 of November 23, 2020. Thus Law 175/2020 which amends and completes Law 17/2014 on the sale of agricultural land located outside the village, introduces a series of restrictions regarding the exercise of the right of preemption in the case of ownership transfer, but also regarding the development of agricultural activity and the regime of agricultural lands [13].

The right of preemption represents a derogation from the principle of the free movement of goods and from the principle according to which the owner can freely dispose of his property [6].

In essence, the sale of the good with regard to which there is a legal or conventional right of pre-emption can be made to a third party only under the suspensive condition of

the pre-emptor not exercising the right of pre-emption, and the seller is obliged to immediately notify the pre-emptor of the contents of the contract concluded with the third party. Also, the seller can notify the intention to sell to the pre-emptors, before concluding the contract with a third party. In both cases, the holder of the right of pre-emption who rejected a sale offer can no longer exercise this right regarding the contract that was proposed to him. The pre-emptor can exercise his right by communicating to the seller his agreement to conclude the sales contract, within no more than 10 days, and in the case of the sale of real estate, within no more than 30 days of receiving the notification, accompanied by recording the price at the disposal of the seller [14].

Alienation by sale-purchase, without respecting the right of pre-emption, is sanctioned with relative nullity, considering that it violates legal provisions that establish a particular interest, in this case, of the pre-emptor. For the sale of agricultural land outside the village, a clear procedure specified in the law must be followed. Thus, the owner of the land to be alienated must register at the town hall of the administrative-territorial unit, in the situation where the land is located, a request requesting the display of the offer for sale of the land, in order to inform the pre-emptors, who must be accompanied by supporting documents. In order to conclude the contract for the sale of the agricultural land outside the village, either in authentic form at the notary, or through the pronouncement by the court of a decision that takes the place of a contract of sale, a final opinion will be required, which is issued by the territorial structure, in the case of the alienation of a land whose surface reaches 30 hectares or of the central structure, in the case of surfaces exceeding 30 hectares [15].

Law 33/1994, republished, provides for a special right of preemption, regarding works of public utility. This according to art. 37 if the works for which the expropriation was carried out have not been completed, and the expropriator wishes to alienate the building, the expropriated - former owner - has a priority right to acquisition, at a price that cannot be higher than the updated compensation. In this situation, the expropriator will notify the former owner, and if he does not opt for the purchase within two months of receiving the notification, the property can be disposed of freely [1].

1. The right of preemption regulated by art. 45 of the Forestry Code Co-owners and neighboring owners of forest land, natural or legal persons, under public or private law, have a right of preemption, in the order provided in art. 1746 of the Civil Code and under the terms of this law, when purchasing privately owned forest land at the same price and under equal conditions. Through Law 60/2012 art. 1231 a clarification of the provisions of art. 1746 C.civ., in the sense that, in order to apply the provisions of this article, only neighbors who are owners of forest land benefit from the right of preemption [4].

The right of pre-emption has a rather thick regulation in several normative acts, in order to prioritize pre-emptors who are preferred before others to buy a good. Through this right, the destination of certain categories of land is preserved most of the time [8].

The seller has the obligation to notify all the pre-emptors in writing, through the bailiff or the notary public, about the intention to sell, showing the price requested for the land to be sold. If the co-owners or neighbors of the fund, other than the administrator of the state-owned forests, do not have a known domicile or headquarters, the notification of the sale offer is registered at the town hall or, as the case may be, the town halls within which the land is located and is displayed, in the same day, at the town hall headquarters, through the care of the secretary of the local council.

Holders of the right of pre-emption must express in writing their intention to buy and communicate their acceptance of the sale offer or, as the case may be, register it at the town hall office where it was displayed, within 30 days from the communication of the sale offer or, as the case may be, from its display at the town hall headquarters.

In the situation where the land to be sold is adjacent to the forest fund, public property of the state or administrative-territorial units, the exercise of the right of pre-emption of the state or administrative-territorial units within the 30-day period, prevails in relation to the right preemption of the neighbors.

If, within 30 days, none of the pre-emptors shows their intention to buy, the sale of the land is free. In front of the public notary, the proof of the notification of the preemptors is made with a copy of the communications made or, if applicable, with the certificate issued by the town hall, after the expiration of the 30-day period in which the intention to purchase had to be expressed.

Failure by the seller to notify all preemptors or the sale of the land at a lower price or under more advantageous conditions than those shown in the sale offer results in the cancellation of the sale [3].

2. Right of pre-emption regulated by Law no. 17/2014 amended by Law no. 175/2020

The alienation by sale of agricultural land located outside the village is done in compliance with the substantive and formal conditions stipulated by Law no. 287/2009 on the Civil Code, republished, with subsequent amendments, and the right of preemption, at the same price and under equal conditions, in the following order[5]:

- a) **first degree preemptors:** co-owners, first degree relatives, spouses, relatives and relatives up to the third degree inclusive
- b) **rank II preemptors:** owners of agricultural investments for tree crops, vines, hops, exclusively private irrigation and/or lessees. If there are agricultural investments on the lands subject to sale for tree crops, vines, hops and for irrigation, the owners of these investments have priority when buying these lands
- c) **rank III preemptors:** the owners and/or lessees of the agricultural land adjacent to the land subject to sale
- d) **rank IV preemptors:** young farmers
- e) **rank V preemptors:** Academy of Agricultural and Forestry Sciences "Gheorghe Ionescu-Sișești" and the research-development units in the fields of agriculture, forestry and food industry, organized and regulated by Law no. 45/2009 regarding the organization and functioning of the "Gheorghe Ionescu-Sișești" Academy of Agricultural and Forestry Sciences and the research-development system in the fields of agriculture, forestry and the food industry, with subsequent amendments and additions, as well as educational institutions with an agricultural profile, for the purpose of buying agricultural land located outside the village with the destination strictly necessary for agricultural research, located in the vicinity of the existing lots in their patrimony
- f) **rank VI preemptors:** natural persons with domicile/residence located in the administrative-territorial units where the land is located or in the neighboring administrative-territorial units
- g) **rank VII preemptors:** the Romanian state, through the State Domains Agency.

The lessee who wants to buy the leased agricultural land located outside the village must have this quality on the basis of a valid lease contract concluded and registered according to the legal provisions at least one year before the date of the sale offer being displayed at the town hall and meet the following conditions [5]:

- a) in the case of natural person lessees, to provide proof of domicile/residence located on the national territory for a period of 5 years prior to the registration of the offer for sale of agricultural land located outside the city
- b) in the case of tenants, legal entities and associations, natural persons, to provide proof of domicile/residence located on the national territory for a period of 5 years prior to the registration of the offer for sale of agricultural land located outside the city

c) in the case of legal entity lessees, with another legal entity as shareholder, the shareholders who control the company to provide proof of the registered/secondary headquarters located on the national territory established for a period of 5 years prior to the registration of the offer for sale of the agricultural land located outside the city

In the case of the exercise of the right of pre-emption by young farmers, the priority for the purchase of the land subject to sale is given to the young farmer who carries out activities in animal husbandry, in compliance with the condition regarding the domicile/residence established/established on the national territory for a period of at least one year prior to the registration of the offer for sale of agricultural land located outside the village [3].

For the purposes of this law, a young farmer is a person up to 40 years of age, as defined in art. 2 para. (1) lit. (n) from Regulation (EU) no. 1,305/2013 of the European Parliament and of the Council of December 17, 2013 regarding the support for rural development granted from the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EC) no. 1,698/2005 of the Council, with subsequent amendments, who intend to carry out or carry out agricultural activities [7].

In the case of the exercise of the right of preemption by the owners of neighboring agricultural lands, the priority for the purchase of agricultural lands located outside the village is established as follows:

- a) the owner of neighboring agricultural land that has a common border with the largest side of the land that is the subject of the sale offer
- b) if the land that is the object of the sale offer has two large sides or all equal sides, the neighboring agricultural land owner, a young farmer, whose domicile/residence is located on the national territory on a period of at least one year prior to the registration of the offer for sale of agricultural land located outside the village
- c) the owners of neighboring agricultural land that have a common border with the land that is the subject of the sale offer, in descending order of the length of the common border with the land in question
- d) if the large side or one of the equal sides of the land that is the subject of the sale offer has a common border with a land located within the radius of another administrative-territorial unit, the owner of agricultural land neighboring the domicile/residence has priority when buying the land within the administrative-territorial unit where the land is located [5].

As an exception to the provisions of para. (1), the alienation by sale of agricultural land located outside the village on which classified archaeological sites are located is done according to the provisions of Law no. 422/2001 on the protection of historical monuments, republished, with subsequent amendments and additions.

If the holders of the right of pre-emption do not express their intention to buy the land, the alienation by sale of the agricultural land located outside the village can be made to natural persons in compliance with the following cumulative conditions:

- a) to have the domicile/residence located on the national territory for a period of at least 5 years prior to the registration of the sale offer;
- b) to carry out agricultural activities on the national territory for a period of at least 5 years, prior to the registration of this offer;
- c) to be registered by the Romanian tax authorities at least 5 years before the registration of the offer for sale of agricultural land located outside the city.

If the holders of the right of pre-emption do not express their intention to buy the land, the alienation by sale of the agricultural land located outside the village can be done to legal entities in compliance with the following cumulative conditions [5]:

- a) to have its registered office and/or secondary office located on the national territory for a period of at least 5 years prior to the registration of the sale offer
- b) to carry out agricultural activities on the national territory for a period of at least 5 years prior to the registration of the offer for sale of agricultural land located outside the village;
- c) to present the documents showing that, of the total income of the last 5 fiscal years, at least 75% represents income from agricultural activities, as provided by Law no. 227/2015 on the Fiscal Code, with subsequent amendments and additions, classified according to the CAEN code by order of the Minister of Agriculture and Rural Development
- d) the partner/shareholder who holds the control of the company must be domiciled in the national territory for a period of at least 5 years prior to the registration of the offer for sale of agricultural land located outside the city
- e) if in the structure of legal entities, the associates/shareholders who control the company are other legal entities, the associates/shareholders who control the company must provide proof of domicile located on the national territory for a period of at least 5 years prior to the registration of the offer of sale of agricultural land located outside the village.

In case of non-exercise of the right of pre-emption, the potential buyers can submit to the town hall a file containing the supporting documents regarding the fulfillment of the conditions provided for in paragraph. (1) and (2), within 30 days from the expiration of the 45 working day period. In case of non-exercise of the right of pre-emption, if none of the potential buyers, within the legal term, does not meet the conditions to be able to buy the agricultural land located outside the village, its alienation by sale can be done to any natural or legal person, under the conditions of this law. Agricultural lands located outside the village can be sold, before the completion of 8 years from the purchase, with the obligation to pay the tax of 80% on the amount that represents the difference between the sale price and the purchase price, based on the notaries' grid of the respective period. In the case of direct or indirect alienation, before the completion of 8 years from the purchase, of the control package of companies that own agricultural lands located outside the village and that represent more than 25% of their assets, the seller will have the obligation to pay a tax of 80% of the difference in value of the respective lands calculated on the basis of the notaries' grid between the moment of acquiring the lands and the moment of alienation of the control package. In this case, the profit tax on the difference in value of the shares or social shares sold will be applied to a reduced base proportional to the percentage of the share of the respective agricultural land in the fixed assets, any double taxation being prohibited.

The owners of the agricultural lands located outside the village are obliged to use them exclusively for carrying out agricultural activities from the date of purchase, and in the event that there are agricultural investments on the agricultural land for the crops of trees, vines, hops and exclusively private irrigation will preserve the agricultural purpose of this investment." By derogation from art. 1730 et seq. of Law no. 287/2009, republished, with subsequent amendments, the seller registers, at the town hall within the administrative-territorial unit where the land is located, a request requesting the display of the offer for sale of the agricultural land located outside the village, in order to bring it to the attention of the preemptors. The request is accompanied by the offer to sell the agricultural land and the supporting documents provided by the methodological rules for the application of this law.

Within 5 working days from the date of registration of the request, the town hall is obliged to display the sale offer at its headquarters and, as the case may be, on its website for 45 working days.

The City Hall has the obligation to transmit a file to the structure within the central apparatus of the Ministry of Agriculture and Rural Development, hereinafter referred to as

the central structure, respectively to the county agriculture directorates or the Bucharest municipality, hereinafter referred to as territorial structures, as the case may be, as well as to the State Domains Agency which includes the list of preemptors, copies of the request to display the sales offer and the provided supporting documents, the minutes of the display of the offer, within 5 working days from the date of registration of the documentation. For the purpose of extended transparency, within 3 working days from the registration of the file, the central structure, respectively the territorial structures, as the case may be, have the obligation to display the sale offer on their websites, for 15 days.

The city hall has the obligation to transmit the file to the central structure, respectively to the territorial structures, as the case may be, within 5 working days from the date of registration of the documentation. Within 10 working days from the date of registration of the request, the town hall has the obligation to notify the holders of the right of pre-emption, at their domicile, residence or, as the case may be, their headquarters, of the registration of the sale offer; if the holders of the right of pre-emption cannot be contacted, the notification will be made by posting at the town hall office or on the town hall website. The procedure regarding the notification of the holders of the right of pre-emption regarding the registration of the offer for sale of agricultural land located outside the village is regulated by the methodological rules for the application of this law. If the land surface that is the object of the intention to sell is located on the border of two administrative territories, the town hall will notify the local public authority with which it borders, which in turn will notify the holders of pre-emption rights, in compliance with the legal provisions.

The holder of the right of pre-emption must, within the term of 45 working days, express in writing his intention to buy, communicate the acceptance of the seller's offer and register it at the town hall where it was posted. The city hall will display, including on its own website, within 3 working days from the registration of the acceptance of the sale offer, the data provided in the methodological rules for the application of this law, respectively it will send them for display on the website of the central structure or structures territorial, as the case may be. The communication of the acceptance of the seller's offer is registered at the town hall by the holder of the right of pre-emption accompanied by the supporting documents, provided by the methodological rules for the application of this law. If, within the term of 45 working days, several preemptors of different rank express in writing their intention to purchase, at the same price and under the same conditions, the provisions of art. 4. If, within the term of 45 working days, several preemptors of the same rank express in writing their intention to buy and no other preemptor of a higher rank has accepted the offer, at the same price and under the same conditions, the provisions of art. 4. If, within the term of 45 working days, a lower-ranking preemptor offers a higher price than the one in the sales offer or that offered by the other higher-ranking preemptors who accept the offer, the seller can resume the procedure, with the registration of the offer of sale at this price, in compliance with the provisions of art. 4. The procedure provided for in para. (5) will be held only once, within 10 days of the completion of the 45-day period. Within 3 working days from the registration of the communication of acceptance of the sale offer, the town hall has the obligation to transmit to the central structure, respectively to the territorial structures, as the case may be, the identification data of the pre-emptors, potential buyers, in order to verify the fulfillment of the legal conditions. If, within the term of 45 working days, the town hall finds that none of the holders of the right of pre-emption express their intention to buy the land, the provisions of art. 41 para. (3) and art. 6 para.

The sale of the land at a price lower than that requested in the sale offer, under more advantageous conditions than those shown herein or with non-compliance with the

conditions provided for in art. 41 attracts absolute nullity. If, within the term of 45 working days, respectively within the term of 10 days, the seller modifies the data entered in the sales offer, he resumes the application registration procedure, in compliance with the provisions of this law. Before the deadline stipulated in art. 6 para. (2), the seller can submit to the town hall where the request to display the sale offer was registered a request requesting the withdrawal of the offer. In this case, the mayor's office will conclude a protocol of annulment of the procedure provided for by this law and will communicate a copy of it to the central structure or the territorial structure, as the case may be, and to the State Domains Agency. If, before the end of the 45 working day period, one of the holders of the right of pre-emption who have expressed their acceptance of the offer registers at the town hall a request to renounce the communication of acceptance, the provisions of art. 4.

The final approval necessary for the conclusion of the sales contract in authentic form by the notary public or the court's pronouncement of a court decision that takes the place of the sales contract, for the cases provided for in art. 4, is issued by the territorial structures for lands with an area of up to and including 30 ha, and for lands with an area of more than 30 ha, by the central structure.

The approval necessary for the conclusion of the sales contract in authentic form by the notary public or the court's pronouncement of a court decision that takes the place of the sales contract, for the case provided for in art. 41 para. (1) and (2) or to art. 71 para. (2), it is issued by the territorial structures, for lands with an area of up to and including 30 ha, and for lands with an area of more than 30 ha, by the central structure.

The cancellation of the notices issued by the central structure or the territorial structures occurs as a result of the death of the seller or the death of the preemptor, before the conclusion of the sales contract or before the pronouncement of the court decision that replaces the sales contract, as the case may be. The authority issuing the notices can correct material errors in the content of the act, ex officio or at the request of the interested person [5].

The Civil Code does not provide a sanction for the hypothesis of non-compliance with the right of pre-emption. However, given the fact that according to art. 1731 Civil Code, the sale of the asset with respect to which there is a legal or conventional right of pre-emption can be made to a third party only under the suspensive condition of not exercising the right of pre-emption by the pre-emptor, he could exercise his preference at the moment he finds out about the new contract, without being bound by any term [16].

CONCLUSIONS

The right of pre-emption is of major importance for forest fund lands because by prioritizing certain people it protects the totality of forests, lands intended for afforestation, those that serve the needs of culture, production or forestry administration, ponds, stream beds, other lands with forestry and non-productive purposes, included in forestry facilities on January 1, 1990 or included in them later, under the terms of the law, regardless of the nature of the ownership right, the national forest fund.

The right of pre-emption also protects the agricultural lands located outside the village in order not to change their destination. The extra-urban agricultural land is the agricultural land located outside the town that can be cultivated in principle and on which construction is prohibited. It is used for the realization of agricultural crops or for the planting and exploitation of vineyards, orchards, wine nurseries, fruit trees, hop and mulberry plantations and the like.

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