Balancing the Legal Circuit Through the Intervention of Courts on Administrative Decisions. Case study

Alina-Raluca CUCU

ABSTRACT
The question of ownership and expropriation has been and continues to be a hot topic of debate, both in academia and in legal practice.
The multitude of opinions and interpretations given in specialized literature, but also in judicial practice regarding the property issue, makes approaching the study topic a real challenge. The concern for this subject derives from the topicality of the topic, the issue of expropriation for reasons of public utility representing an encroachment on the right of private property by the state, with real and current practical values, property being the basis of most ideological and judicial conflicts in the contemporary world.
From the variety of problems that circumscribe the field of expropriation, we consider it relevant, from a practical and current point of view, to highlight the way in which the courts intervene in balancing the legal circuit in some administrative decisions regarding expropriation.
Therefore, the purpose of this paper is to highlight the way in which the state, through the courts, exercises its right to balance the legal circuit in the contemporary legal reality in Romania.
In order to fulfill the objective of the proposed research, we started by analyzing the notion of expropriation, applying the logical-interpretive method, on the texts of primary legislation regarding expropriation, in order to extract the spirit of the legal provision, so that, then, through two case studies, we highlight, concretely how the intervention of the courts restored the balance of the legal circuit affected by wrong administrative decisions.
The study of these two cases focuses on how several public entities understand how to apply the legal provisions incorrectly and even abusively, the consequence being the violation of the rights of owners, while also focusing on how the courts ruled in each case in part.
At the end of this study, the conclusions drawn from the research can be found, followed by some lege ferenda proposals or directions of action, aimed at harmonizing the social and legal relations that are the subject of the research undertaken.
KEYWORDS: *property right, administrative procedure, expropriation for reasons of public utility, court, special law.*

1.Introduction

The purpose of this study is to highlight the way in which the judicial system balances the legal circuit in the contemporary legal reality in Romania, a legal circuit that was disrupted by administrative decisions in cases of expropriation for the cause of public utility.

In order to fulfill the purpose of the proposed research, we shal undertake a brief presentation of the special law regarding expropriation for public utility, in order to better

understand, aplied to specific case studies, how the wrong decisions of the administration unbalanced the legal circuit and the way judiciary reestablished the balance.

For the purpose of this research, two case studies will be analyzed, highlighting how several public entities understand to apply the legal provisions in a wrong way and even abusively, with the consequence of violating the rights of the owners and how the courts ruled in each case, to rebalance the civil circuit disturbed by the administrative decisions taken in violation of the legal provisions.

At the end of this study, the conclusions drawn from the research can be found, followed by some *de legae ferenda proposals* and some directions of action, aimed at harmonizing the social and legal relations that are the subject of the research undertaken.

2. Legal framework

One of the ways of extinguishing the right of private property is regulated by paragraph 3 of art. 562 of the Civil Code and refers to expropriation for reasons of public utility.

In addition to the general provisions stated by the organic law, there are the provisions of the special law no. 33/1994[1], which regulates the conditions and procedures for implementing the expropriations.

Regarding the scope of applicability of the law on expropriation, this is clearly specified in the content of art. 1, which establishes that "the expropriation of real estate, in whole or in part, can be done only for the cause of public utility, after a fair and prior compensation, by court decision", as is to be defined in the following articles which represent, according to the law, public utility, showing that it is declared by the Government, for works of national interest or by the County Councils or the General Council of the Municipality of Bucharest, for works of local interest, defining at the same time which works are considered of national interest and which of local interest.

From the drafting of legal texts, one can understand that public utility is a pre-existing condition at the time of expropriation, which must be declared in advance before the court can rule on expropriation.

It is very important to note that the legal provision clearly states that the only competent authority to rule on expropriation is the judicial authority. The fact that the special law does not allow room for arbitrariness or abuse by the authorities to expropriate private property is, in our opinion, an expression of the protection that the state offers to private property.

Republished Law 33/1994 establishes in Chapter IV what is the administrative procedure prior to the investment of the court. Provided that, in the preliminary proceedings, the owner and the expropriator agree on the manner of transfer of ownership and compensation, the expropriation procedure will no longer be initiated before the courts, but if the parties have agreed only on at the transfer of the right, but not with regard to the amount or nature of the compensations, then the court, within the special procedure, decides on the respective amount.

The law on expropriation allows the parties to negotiate the transfer of private property rights and the amount and nature of compensation. In the same time, this special law establishes

[1]Law no. 33 of May 27, 1994, republished, on expropriation for reasons of public utility, *Official Gazette no. 472 of July 5*, 2011;

the obligation of the State to compensate the expropriated owners with a fair amount, by this phrase being understood the payment of a compensation calculated at the real market value of the expropriated good.

This is, by and large, the legislative framework that best emphasizes the interest and protection that the state, through current legislation, gives to the private property right. The special law of expropriation for the cause of public utility represents the common law, and the protection that the state offers to private property is clearly stated in the legal text, the specific measures to achieve this protection being highlighted by the express establishment of the jurisdiction of the courts of the expropriation procedure.

The state's obligation to protect and guard private property is a constitutional one, implemented secondary both by the general law that is the civil code, but also by special laws, carried out through specific procedures by central and local public administration bodies.

The public administration, by virtue of its role in applying the legal norms, is called to enforce the provisions of the primary and secondary legislation, so that the legal balance of the legal circuit is not disturbed.

Following the research design, two case studies will be carried out, on two legal situations, both definitively solved during 2019, having as object the provisions of law 33/1994 on expropriation for the cause of public utility. We have chosen to analyze these two cases, because the object brought before the court refers to the special way of extinguishing the property right, by expropriation, in order to see how the State, through the judiciary, protects the private property right.

3. First Case Study presentation

During 2008 the Tribunal was invested by the plaintiffs with a claim by which they requested that in contradiction with the defendant Romanian State, through the National Company of Motorways and National Roads of Romania SA - further NCMNRR SA, for the Court to order the annulment of the Decision by which NCMNRR SA had established compensation and the establishment by the court of the correct amount as compensation, according to the provisions of art. 4, para. 2 of the republished law 33/1994.

In the motivation of the request, the plaintiffs showed that, following the preliminary administrative procedure, the parties reached an agreement on the manner of transfer of ownership and the amount and manner of payment of compensations, but the latter terms were not met, the defendant through NCMNRR SA issuing the contested decision regarding an amount other than the one on which they had agreed, without taking into account the compensation for the unrealized benefit, respectively the investment made by the plaintiffs prior to the initiation of the expropriation procedures.

In probation, the plaintiffs file documents, which show the history of negotiations between the parties, the decision whose annulment is required and the proof of investments made in connection with the expropriated building, prior to the start of expropriation proceedings and require the court to conduct an appraisal on the amount of compensation due by the defendant, according to disp. art. 26 para. 2 of Law no. 33/1994 which stipulates that "when calculating the amount of compensation, the experts, as well as the court will take into account the price at which

the buildings of the same kind are usually sold in the administrative-territorial unit, at the date of drawing up the expertise report"

In response, the defendant makes defenses, requesting that the claim of the plaintiffs be rejected as unfounded, showing that the decision to establish the compensations whose annulment is requested is made according to the legal provisions, and the amount of compensations is correctly calculated by assessing the average value between the tax value of the real estate and the notary chart for estate value. The defendant also pointed out that, according to the provisions of the Tax Code applicable in this case, as an authority financed from the state budget, it is obliged to apply certain legal procedures when calculating compensations, from which it cannot derogate, the calculation method of a public money expenditure representing a special regulation derogating from the common law rules, which exclude the negotiating component referred to by the applicants.

Regarding the unrealized benefit from the investment made to be calculated and added to the amount to be compensated, the defendant requests the rejection of this request, showing that there is no provision in the special law 33/1994 to allow such a calculation to be made, in this case, by the plaintiffs, because the exit of the good from their patrimony, prior to the completion of the investments made.

At trial in the first instance, the Tribunal orders an expertise to be performed, in order to establish the amount of compensations. First Court based its ruling on the fact that, as long as the provisions of the general law, art. 562, paragraph 3 of the Civil Code and those of the special law 33/1994, art. 26 established a just and prior compensation, at the market value of the property at the date of expropriation, the legislator aimed to protect the interests of the owners and to maintain the balance of the civil legal circuit, especially since all legal provisions indicate that in this particular procedure the parties, by mutual agreement, establish the amount of compensation.

The Tribunal further states, that by the drawing of the legal norms mentioned before, the legislator established a position of legal equality of the parties, within this procedure, so that the defendant's defenses, that he would have acted in public power, based on the provisions of the fiscal code are to be removed as unfounded.

The appointed expert calculated the market value of the property, at the date of the expertise and established the amount of compensation awarded, based on method called purchase offers.

The First Court approved the report the expert made and issued a decision admitting in part the claim of the plaintiffs, finding that the defendant's decision establishing the amount of compensations does not meet the legal requirements, so it annulled it and ordered the defendant to pay to the plaintiffs compensation, at the amount established by the expert through the drafted expertise report.

Both sides appealed against this solution, criticizing it for illegality and unfoundedness.

The plaintiffs, criticized the way of carrying out the expertise, by the fact that the method used in drafting the report was that of the purchase offers and not the method of direct comparison of the prices in which real estate of the same nature in the same area are purchased and this contravenes the provisions of art. 26 of the special law, which establishes that the value of the compensations is made according to the value of free trading on the market. The Tribunal,

approving an expert report drawn up in breach of the legal provisions, issued an illegal decision on these issues.

On appeal, the defendants criticized the solution adopted by the Tribunal regarding the annulment of the decision establishing the amount of damages, resuming the defenses from the objection previously filed.

The Court of Appeal admitted the Appeal, for the criticisms formulated by the plaintiffs, which it found well-founded and ordered the retrial of the case, rejecting the appeal of the defendant as unfounded, maintaining as legal and solid the reasons for rejection of the first instance, regarding the reasons for annulment of the decision issued by the defendant in establishing the amount of compensations. In retrial, it was ordered to carry out a new expertise, informing the appointed expert to take into account the method of direct comparison of actual transactions when establishing the amount of compensation.

At the same time, the second court found ex officio the fact that the first instance left unsolved the request regarding the inclusion in the compensation amount of the unrealized benefit. It found that, indeed, as the defendant argued, the provisions of the special law speak only of the transaction value of the property at the date of expropriation, so that the court has no legal basis for the admissibility of this request in the special expropriation procedure for public utility.

However, the Court of Appeal considered that the ongoing investments on the expropriated land have been proven, the expenses incurred so that proven the damage inflicted upon their property, and the part of the investment already made at the date of expropriation might increase the value of the property, so it allowed the appointed expert to calculate the total amount of the compensations and a possible increase of value brought to the real estate by the respective investment, if such an increase was to be found.

On the merits of the case, the second court, in retrial, admitted the plaintiffs' request, approved the expertise report prepared according to the court's provisions and ordered the defendant to pay damages to the plaintiffs, in the amount established by the second expertise report.

Against the solution pronounced by the Second Court, the defendant initiated a redress, showing that illegally the second court ordered a new examination, because the method used by the first expert was a method of calculating the legal and accepted market value, according to the rules of evaluators' technical expertise. He also criticized the illegal inclusion in the amount of compensation of the increase in value brought to the market value of the real estate by the ongoing investments, considering that, on this aspect, the court ruled in favor of what was not requested, as it had been invested with a claim for unrealized benefit not for possible increase in value.

The Third Court, analyzing the redress, in view of the criticisms of illegality formulated by the defendant, rejected it. In order to rule in this way, the Third Court found that, according to the procedural provisions, the grounds of redress had to relate to the illegality of the decision of the Second Court, and the criticisms of the defendant's redress concerned the illegality of a piece of evidence - and how that evidence was considered pertinent and conclusive by the Second Court, a situation that does not fall within the procedural provisions of admissibility of the redress, as the redress concerned the expertise report. Moreover, analyzing the redress, in view of the criticisms

that, the Second Court ruled in favor of what was not requested, the Third Court admitted the redress.

The Third Court motivated its rule by the fact that the constitutional principle of the just and prior compensation enshrined by the provisions of art. 44 of the Constitution did not have the meaning of recognizing, in the abstract, the right of the party to a certain compensation, beyond the special procedural rules incident in this case.

Thus, neither the unrealized benefit nor the increase in value brought to the land, through the investments made, was included in the notion of damage referred to in the provisions of art. 26 of Law no. 33/1994 so that the Court to rule in this way. Moreover, the claim of the plaintiffs to establish the amount of compensation according to the unrealized benefit, considered damage, was explicit, the court not being able to give another interpretation to the claim which it was invested with.

Constantly in its jurisprudence, the High Court has established that the damages referred to in the provisions of art. 26 of Law no. 33/1994 are those that result directly from the expropriation measure, such as the loss of crops from the expropriated land, the decrease of the value of the land remaining in property, due to the reduction of the surface and the location of the public utility work, the damages caused by the expropriation works to the rest of the property not affected by the legal measure of expropriation and so on. In the presented casethe compensations granted by the Second Court for the increase value of the estate was illegal, firstly by not being legally invested to rule this claim and secondly due to the fact that the same expert that considered that the investments made increased the value of the estate considered also that the value of the estate was diminished by the fact that the respective estate was occupied with unfinished constructions.

By partially admitting the redress filed by the defendant, the decision of the Second Court remained final only regarding the determination of the amount of compensation due to the plaintiffs as a result of the expropriation, which reflected the transaction value of the property at the date of expropriation.

The analysis of this case study emphasizes the following aspects relevant to this study:

The authority, in the presented case the defendant, by a misinterpretation of the fiscal provisions, violates the provisions of the special law on fair and prior compensation due in the expropriation procedure.

Moreover, the respective authority did not act in a regime of legal equality, but in a regime of public power, imposing on the expropriated owners the amount that the authority considered to be sufficient compensation, in clear violation of the rules governing this specific field, which impose a position of equality, legal provisions that, moreover, emphasize consensualism regarding the settlement of the legal relationship in the matter of expropriation for the cause of public utility.

In a first phase, the public authority in solving the issue in the administrative procedure, violates the legal provisions abusively, in regime of public power. Through this behavior, the measures for the protection of private property, established by the legal provisions, are annihilated, thus disturbing the balance of the civil legal circuit.

However, by virtue of the obligation that the State has in protecting the private property, the Judiciary comes and restores the balance of the civil legal circuit, by annulling the abusively

adopted provisions of the authority and ordering it to pay fair compensation to expropriated owners, in the correct and legally calculated amount.

Therefore, in the presented case, the State has proved the proper fulfillment of its duties, through the judiciary, which annulled the illegal measures adopted by the administrative authority and restored the legal balance, by the correct application of the legal provisions.

The next case study that we propose in the present paper, is also about expropriations for the cause of public utility, but also involves the appliance O.G. no. 43/1997[2] provisions, an Ordinance that comprise limitations regarding the use of certain categories of land.

4. Second Case Study Presentation

The plaintiffs natural persons A. and the legal person B. SRL through judicial liquidator C. requested the Tribunal that, in contradiction with the defendants Commission for the Application of Law no.198 / 2004, Local Council of Commune D, Prefecture of County E, Romanian State - through the National Company for Motorways and National Roads of Romania, hereinafter NCMNRR, the Ministry of Transport and Infrastructure and the National Agency for Cadastre and Real Estate Advertising - Office for Cadastre and Real Estate Advertising F to issue a court order ordering the defendants to pay compensation regarding the surface of 50 sqm, land and the afferent constructions, in order to cover the damage suffered by the devaluation of the land remaining in the property of the plaintiffs, the restoration of the cadastre and the interruption of the activity within the commercial company; to order the National Agency for Cadastre and Real Estate Advertising - Office of Cadastre and Real Estate Advertising F to delete from the land book no. x / y / z, with reference to no. cadastral a / 200, the mentions regarding the surface of the expropriated land.

By its judgment, the First Instance upheld the plea of lack of active procedural capacity of the legal person B. SRL, rejected the applicant's claim as being brought by a person without active procedural capacity, and on the merits allowed the application partially, as specified by the plaintiff A. in contradiction with the defendants Commission for the Application of Law no.198 / 2004, Commune D, Prefecture of county E Romanian State - through the National Company of Motorways and National Roads of Romania, A.N.C.P.I. - O.C.P.I. Office of Cadastre and Real Estate Advertising F. Following the admission of the request, the Tribunal obliged the defendant Romanian State through NCMNRR to pay the amount of 15 thousand euros, in lei equivalent on the date of actual payment and 10,000 lei, the latter amount updated with the index of inflation at the date of actual payment, to the plaintiff, representing compensation. At the same time, it obliged the defendant ANCPI - OCPI - Office of Cadastre and Real Estate Advertising ordered the defendant Romanian State through NCMNRR to pay the costs to the plaintiff, in the amount proved by the documents submitted to the file.

Against this solution, both the plaintiff A and the plaintiff legal entity BSRL and the defendant NCMNRR formulated appeal, and by the pronounced Decision, the Second Court rejected the appeal of plaintiff A., but admitted the appeals declared by the other parties, ordering the partial change of the sentence, by ordering to the defendant NCMNRR for the Romanian State, to initiate the expropriation procedure for the surface of 26 sqm affected by the execution of the

[2]Ordinance no. 43 of August 28, 1997, republished on the road regime*, Official Gazette no.237 of June 29*, 1998;

pedestrian sidewalk inside the expropriation corridor (between contour points 24-28'-28 ”-12-11-24), as well as by modifying its details (between contour points 28” -29-24-24 ' -28 ”), identified according to RET Y. and Z. (received with the reception report no. 778/214 of the O.C.P.I. - B.C.P.I.F regarding the work H from November 2014), with the obligation to comply with the obligations regarding real estate advertising, rejecting, at the same time, the claims for compensation, as prematurely formulated. At the same time, the decision of the Court of Appeal upheld the sentence against the Ministry of Transport and Infrastructure and rejected the claim against the other defendants, forcing the appellant-defendant NCMNRR to pay the costs on appeal to the plaintiff legal person B. S.R.L.

Following the redress formulated by the plaintiffs A. and B. SRL through the judicial liquidator, against the decision given by the Second Court, the Third Court admits it and orders the quashing of the appealed decision and the sending of the case for retrial to the same Second Court.

In the retrial, the Second Court issued a new decision admitting the appeals filed by the plaintiffs A., B. S.R.L. and the defendant NCMNRR, as follows:

It partially changed the sentence in the sense that ordered to the Romanian State through NCMNRR to pay to the plaintiff A. the amounts of: x lei representing the circulation value of the land with an area of 38 sqm, equivalent to y euro; the amount of z lei, representing the value of the lack of use of this land; the amount of w lei representing compensations for the safety zone with an area of 33.9 sqm; the amount of v lei representing compensation for the protection area as identified in the technical expertise report made in the appeal.

It olso ordered to the defendant to pay to the plaintiff B. SRL, through judicial liquidator, the total amount of zz lei representing the value of the demolished constructions on the expropriated land surface and court costs to all plaintiffs, maintaining, otherwise, the sentence of the Tribunal (the First Court).

The defendant NCMNRR again redressed against this decision, requesting mainly its quashing and sending the case for retrial to the Second Court, and in the alternative the partial modification of the Decision, in the sense of removing the obligation for the Romanian State through NCMNRR, to pay the plaintiff the value of the protection and safety zone, motivated by the fact that the appellate court gave the plaintiff the value of the protection and safety zone, considering that the Court had not been invested by the applicant with such compensation, but at most with an alleged depreciation of the value of the remaining 38 sqm land. The redressant considered that by this way of pronouncing the Second Court, in retrial, disregarded the limits of the cassation and ordered the granting of compensations regarding a plot of land that was not expropriated and was not the subject of the lawsuit.

The disputed land, which represented an area of protection and safety from the national road, was not expropriated and was still the property of the applicant A. The redressant further conceded that the fact that there are certain building restrictions on that plot of land did not amount to an expropriation, which did not entitle the owner to compensation. At the same time, it considered that the decision given by the Second Court is firstly unmotivated, secondly it violates the resolution of the factual situation established by the cassation decision, and thirdly it violates the obligation to have an active role in solving the case brought before the court.

The redresser conceded that the Second Court did not examine or justify the existence of a causal link between the applicant's damage due to the depreciation of the land remaining in the applicant A.'s property and the expropriation of the disputed area, given that the non-existence of this causal link was held by the First Instance, that did not take into account whether or not the land remaining in the applicant's property suffered a depreciation of value caused by the expropriation of 38 sqm, nor whether the alleged depreciation was a direct consequence of the expropriation of the disputed land.

If it had examined the entire evidence in question, the Second Court should have found that the compensation sought by the applicant could not be granted as long as the depreciation of the land was not caused by the expropriation of 38 sqm, but by the execution of works near the property of the plaintiff, which exceeds the procedure regulated by Law no. 33/1994.

As in the present case brought before the court, it was ruled, with res judicata authority, that the expropriated has opened in the present case only the way of a civil action based on the provisions of Law no. 33/1994 and only in the context of the provisions of art. 4 of this normative act, any other compensations exceed the present case as they were not generated by the expropriation of the 38 sqm.

In the situation where the Third Court will not send the case for retrial, but will retain it for settlement, it is necessary to remove the obligation for the Romanian State through NCMNRR upon payment to the applicant of the amount representing the value of the protection and safety zone. Regard to the costs, it must be reduced, as the applicant's action must be upheld only in part.

The Third Court, after analyzing the redress in the light of the reasons invoked, was to reject it as unfounded. In order to state in this way, the Third Court stated that, regarding the ground of redress aimed at violating the limits of the decision of cassation in retrial, the decisions of the Third Court on the issues of law resolved, as well as on the need to administer evidence are mandatory for the judges of the merits. Thus, the Second Court, at the retrial of the case, was obliged to observe the resolutions and indications comprised in the cassation decision.

That Decision required the Second Court to examine the legality and validity of the applicants' claims in terms of the value of the demolished buildings on the expropriated land, as well as in terms of compensation for the land affected by the protection and safety zone, and a new expert report, as well as the administration of any other evidence that the Second Court deemed necessary "to determine whether the land owned by the applicant A., which remained not expropriated, suffered a depreciation of value caused by the expropriation of the land which was the subject of the present case; in relation to this finding, it will be determined whether claimant A. was entitled to compensation for this component of the damage"[3] .

The Third Court also states that the cassation decision required the Second Court to find if, following the evidence, the depreciation of the value of the land remaining in the plaintiffs' property and the demolition of the buildings were the consequence of the expropriation of the disputed area and an expertise to be administered in the retrial with the aim of calculating the compensations for these components of the alleged damage.

[3]Cited in the content of the motivation of the court decision, from the content of the cassation decision previously pronounced in the file;

The Third Court finds that the Second Court, in retrial, strictly observed all the landmarks imposed by the cassation decision.

Thus, in the retrial, the Second Court ordered a new expertise, with the objectives: if the land remaining in the property of the plaintiff after the expropriation of the surface of 38 sqm suffered a damage as a result of the expropriation, and if so, to calculate the value of this damage; if the expropriation works had as effect the demolition of the constructions (fence, warehouse, barracks, vulcanization and canopy), and if so, to calculate their equivalent value.

Following the conclusions of this new expertise, the Second Court found that although the expropriation concerned only the area of 38 sqm, in reality the property of the plaintiff A. suffered an additional depreciation, affecting an area of 22 sqm, corresponding to the safety and protection zone related to the objective that was the basis of the expropriation, respectively the Highway area.

Regarding the demolition of the buildings, the conclusions of the expert report established that the expropriation affected a series of buildings, on a total length of 22 sqm, while the metal shack and the store located in the protection zone remained in a situation of illegality , as it is no longer possible to obtain a permit for consolidation, modernization or extension, the cost of their inevitable decommissioning falling on the owner, so that also on these issues the Second Court will find that the applicants' request is justified.

About the safety and the protection zone, the Third Court noticed that the Second Court in its motivation was referring to of application in this case of the provisions of O.G. no. 43/1997[4] on road regime. In view of this mention of the Second Court, the Third Court found that the contested decision is motivated on this point, this reference allowing to understand the reasons for which the land related to the safety and protection zone, respectively the constructions still existing in that area, must be considered affected by the expropriation, justifying the compensation of the claimant A.

Continuing to motivate the rejection of the redress, the Third Court showed that, according to the provisions of art. 16 of O.G. no. 43/1997, safety zones are land areas located on either side of the roadway, intended exclusively for road signs, road plantations or other purposes related to road maintenance and operation, traffic safety or protection of property located in the vicinity of the road. The safety zone also includes land areas intended to ensure visibility in curves and intersections, as well as land consolidation areas of the road and the like, being prohibited to carry out agricultural or forestry crops in these areas.

The Third Court considered, in interpreting these legal provisions, that the safety zones are subject to a severe and restrictive legal regime, their affectation being exclusively related to ensuring the safe development of road traffic.

Due to these severe restrictions, the owner of the land belonging to such an area is really deprived of the prerogative of the material disposition and the use of his property right. In these situations, the property right is practically emptied of content, and the Third Court considered that such a situation has the legal validity of a de facto expropriation.

[4]See law cited, on road regime;

For these reasons, both the Second and Third Court considered that it was appropriate to compensate the owner of a land that was integrated into the safety zone, on which the state entities failed to order the expropriation under the conditions and procedure established by special law.

Next, the Third Court emphasized that art. 17 of O.G. no. 43/1997 stipulated that the protection zones represented by the land surfaces located on either side of the safety zones, necessary for the protection and future development of the road, they remained in the management of the legal or natural persons who have them in administration or ownership, meanwhile retaining the obligation that, through their activity, do not harm the road or the safe conduct of traffic by not ensuring the proper drainage of water, execution of constructions, fences or plantations that cause snow on the road or impede visibility on the road, execution of works which endangers the stability, safety of traffic or changes in groundwater or surface water regime.

The indicated legal text allow one to conclude that, although the law expressly states that all these lands remain the property of the former owners, many restrictions are imposed on the use of these lands. The multitude of restrictions imposed on the use of those lands obviously has the significance of an infringement on the property right of the holder, who cannot, thus, fully enjoy his right, within the meaning of art. 44 of the Romanian Constitution and of art. 1 of the Additional Protocol no. 1 of the European Convention on Human Rights.

Consequently, the Third Court considered that owners' compensation, for reparative purposes, as a form of compensation for the damage caused to the use of the object of the property right, represented a necessary measure, so that the reasoning of the Second Court is correctly grounded in fact and in law.

Likewise, the Third Court found that motivation given by the Second Court allowed the causal link between the expropriation and the damage suffered by the applicant to be identified with sufficient clarity, so that the decision given by the Second Court was reasoned in this regard as well.

In conclusion, the Third Court considered that the redresser's criticisms could not be accepted in the sense of not motivating the decision or that by admitting the action in the sense of those ordered in retrial, a violation or misapplication of the law would have been reached.

On these issues, the Third Court, in its justification for rejecting NCMNRR's action, found that the actual existence of the highway, in terms of establishing the right to compensation and its extent, could not be dissociated from the expropriation itself. Contrary to the redresser's assertions, the overall consequences of the expropriation must be determined by reference to the objective achieved on the expropriated property, because only according to their particularities and implications the possible effects borne by the owner of the expropriated land can be established more precisely, in its entirety.

Next, it was also noted that the ground of redress is unfounded, in its criticism of Second Court that ruled exceeding its limits of investment, as it was not invested, in the redreser's assessment, with "granting the value of the protection and safety zone"[5] considering the Third

[5]Cited in the content of the motivation of the court decision, from the content of the cassation decision previously pronounced in the file;

Court that the Second Court judged within the limits expressly indicated by the cassation decision, as stated within the motivation given to the rejection of the first ground of redress.

As far as the redress against the obligation to pay the costs, the Third Court finds that the NCMNRR did not properly motivate statement, which leads to a failure to state reasons and the rejection of this ground of appeal.

In conclusion, by rejecting the redress, the Third Court found, in essence, that from the analysis of the provisions of art. 16 of O.G. no. 43/1997 one cand understand that the safety zones are subject to a severe and restrictive legal regime, so that the owner of the land belonging to such an area is really deprived of the prerogative of the material disposition and the use of his property right. In such conditions, the property right thus affected is, practically, emptied of content, a situation that can be assimilated to a de facto expropriation. Therefore, the judge's interpretation of the compensation due to the owner of such land integrated in the security zone and in respect of which the state entities failed to order the expropriation, under the conditions and with the stability procedure of law 33/1994, is fair, given the important amount of restrictions in connection with these lands which, according to art. 17 of O.G. no. 43/1997 are not subject to expropriation procedures, but remain the property of the former owners.

Both the Second and the Third Court rightly consider that in the analyzed case the ruling in a contrary interpretation of the legal texts indicated would constitute a violation of both art. 44 of the Romanian Constitution, as well as of art. 1 of Protocol no. 1 in addition to the European Convention, so that the compensation of the owner for reparative purposes, as a compensatory measure is the optimal solution.

The analysis of this case assesses that the public authorities, in misinterpretation and disregarding the principles of law, have adopted certain measures likely to harm the owners of expropriated land, as a direct consequence of the expropriation procedure.

The courts, in the joint interpretation of the incidental legal provisions in question, with the application of the general principles of law and of the constitutional and European Union provisions shall rule so as to restore the balance of the civil legal circuit.

Through the reparative measures adopted by the court, in order to compensate the owners for the damages caused on their property, as a result of the public utility works that imposed the expropriation procedure, it is proved once again that the State, through the judiciary, protects and guaranties the private property right.

Analyzing together the two cases presented, the following conclusions will be highlighted, which we will present in the following:

From both cases results a tendency of the public authorities involved to act in public power, in relation to the expropriated owners, in contradiction with the express legal provisions, that impose fallowing this procedure a position of legal equality.

Also regarding the conduct of the public authorities involved, there is a reluctance of them in the granting her due compensations, being concerned with setting these compensations at the lowest possible values, in flagrant contradiction with the legal provisions and the restitutio in integrum general principle of law.

In contrast to the approach of public authorities, the Courts ruled the cases both by referring to the provisions of the special incident law and by referring to the constitutional provisions, the

Union provisions but also the general principles of law, so that they can rule legal and sound decisions, meant to restore the legal balance of the civil circuit, a balance disturbed by the conduct adopted by the public authorities.

The judgments handed down in both cases attest to the fact that the State, through its judicial authority and in the exercise of the right of protection and guarding over the privately owned property, is a true force who effectively protects the compliance of rights and imposes the fulfillment of obligations.

5.Conclusions

The purpose of this study was to highlight the way the judiciary is balancing the legal circuit in the contemporary legal reality in Romania, legal circuit that had been disturbed by administrative decisions.

In order to fulfill the purpose of the proposed research, we undertook a brief presentation of the special law regarding expropriation for public utility, in order to better understand, aplied to specific case studies, how the wrong decisions of the administration unbalanced the legal circuit and the way judiciary reestablished the balance.

From the two case studies analyzed in this research paper is revealed the way in which several public entities understand to apply wrongly and even abusively the legal provisions, with the consequence of violating the rights of owners and highlighting the way in which the courts have ruled in each case.

Moreover, it is outlined in the analysis undertaken in the case studies that they represent the practical expression, the concrete, visible and palpable mean in which the state acts in reestablishing the legal balance, the solutions provided by the Courts being the embodiment of the form and the spirit of the law, specifically applied to some cases.

Regarding the relations identified in the case studies carried out, there is a tendency of the public authorities to act in public power, in relation to the expropriated owners, in contradiction with the express legal provisions, which impose in this procedure an equal position and their reluctance to grant compensation, being concerned with the establishment of such compensation at the lowest possible values, in flagrant contradiction with the legal provisions and the restitutio in integrum general principle of law.

In contrast to the approach of public authorities, the courts address the issue before the court both by referring to the provisions of the special incident law and by referring to the constitutional provisions, the Union provisions but also the general principles of law, so that they can rule legal and sound decisions, meant to restore the legal balance of the civil circuit, a balance disturbed by the conduct adopted by the public authorities.

It results from the presentation and analysis made that the effective mean in which the legal circuit is rebalanced is through the judiciary. The judiciary is the only state institution that has the legal right to interpret the law in pronouncing decisions, so in this area it must intervene and balance the civil circuit when needed.

Because public authority does not have the right to interpret the law, but only to apply it, most of the time, abusively or purely by misunderstanding, it violates express legal provisions in special procedures.

As a *de lege ferenda proposal*, it is necessary for the legislator to adopt general rules binding on public authorities, clearly establishing the order of the legal provisions to which they are subordinated, so as to avoid situations in which the authorities, anchored in rigid procedures, violate fundamental rights.

Moreover, as a direction of action one can find necessary as well to implement in the conscience of the public authorities the understanding that the reason for which they are called to apply the legal provisions regarding the property right is that the administration represents an instrument that the State has at its disposal in balancing the legal circuit.

REFERENCES:

1. Adam, I., 1998, *Drept civil. Teoria generală a drepturilor reale*, Bucharest, Romania: Ed. Europa Nova.
2. Baias, F. - A., Chelaru, E., Constantinovici, R., Macovei, I. (coord), 2021, *Noul Cod civil. Comentariu pe articole*, Ed.3, Bucharest, Romania: Editura C.H. Beck.
3. Bârsan, C., Gaiță, M., Pivniceru, M.M., 1997, *Drept Civil. Drepturile reale*, Iaşi, Romania: Institutul European.
4. Berceanu, B., 2003, *Istoria constituţională a României, în context internaţional*, Bucharest, Romania: Ed. Rosetti.
5. Comșa Anghel, E., 2011, *Principii generale de drept.* Teză de doctorat, Bucharest, Romania.
6. Djuvara, M., 1936, *Drept şi sociologie*, Bucharest, Romania: Arhiva pentru ştiinţă şi reformă socială.
7. Djuvara, M., 1995, *Teoria Generală a Dreptului. Drept rațional*, Bucharest, Romania: Ed. All Beck.
8. Lupulescu, D., 1997, *Drept Civil. Drepturile Real Principale*, Bucharest, Romania: Ed. Lumina Lex..
9. Lupulescu, D., 2000, *Dreptul de proprietate comună*, Bucharest, Romania: Ed. Lumina Lex.
10. Marga, A., 2020, *Justiția și Valorile*, Bucharest, Romania: Meteor Press.
11. Uliescu, M. (coord.), 2011, *Noul Cod civil. Comentarii. Editia a III-a. Revăzută și adaugită*, Bucharest, Romania: Ed. Universul Juridic.
12. Munteanu, C.D., Bălan, E., Iftene, C., Văcărelu, M. (coord.), 2016, *Contencios vs necontencios. Scurte considerații introductive* în *Procedura administrativă necontencioasă*, Bucharest, Romania: Ed. Wolters Kluwer.
13. Prediger, E.J., *Fundamentele dreptului de proprietate*, summary, https://doctorate.ulbsibiu.ro/wp-content/uploads/REZ-ROM-PREDIGER.pdf, accesed November 2022.

14. Ciutacu, F., *Regimul juridic al proprietăţii publice şi private în România comparativ cu alte ţări*, în *ESEN – 2 Integrarea României în Uniunea Europeană. Drepturile şi structurile de proprietate*. Reglementări juridice, caiet 39.
15. https://www.google.com/search?q=essen+2+DREPTURILE+%C5%9EI+STRUCTURILE+DE+PROPRIETATE.+REGLEMENT%C4%82RI+JURIDICE&oq=essen+2+DREPTURILE+%C5%9EI+STRUCTURILE+DE+PROPRIETATE.+REGLEMENT%C4%82RI+JURIDICE&aqs=chrome..69i57.3808j0j7&sourceid=chrome&ie=UTF-8, accesed November 2022.
16. *Legislația terenurilor*, 2004, Bucharest, Romania: Ed. All Beck.
17. Alexandrescu, A.L. (coord), 2005, *Reglementări prvind imobilele preluate în mod abuziv de stat*, Bucharest, Romania: Ed. Indaco.
18. Law no. 33 of May 27, 1994, republished, on expropriation for reasons of public utility, Official Gazette no. 472 of July 5, 2011.
19. Ordinance no. 43 of August 28, 1997, republished on the road regime, Official Gazette no. 237 of June 29, 1998.

ABOUT THE AUTHOR

Alina-Raluca CUCU, PhD Candidate, barrister, Bucharest Bar Association member, ELI member, UJR member, "*Clubul de la Cheia Victor-Dan Zlătescu Association*" member, associate assistant, *Faculty of Public Administration, National University of Political Studies And Public Administration*, Bucharest, Romania.
Email: avocat.alinacucu@gmail.com