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THEORETICAL AND JURISPRUDENTIAL CONSIDERATIONS ON SERVITUDE IN THE MEANING OF THE ROMANIAN CIVIL CODE OF 1864 AND THE NEW ROMANIAN CIVIL CODE

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***Abstract**: This material aims to analyze from a theoretical point of view what servitude is in the context in which the legislator has expressly regulated it in the Romanian Civil Code. Being a topical and very important subject in the context in which there are many cases before the Romanian courts of law concerning easements in one form or another, I believe that by addressing the theoretical and practical aspects of this topic, the material may prove quite useful for those interested in a better understanding of the subject but also for practical work.*
***Keywords:** servitude, Romanian, civil, code.*

Introductory aspects

The legal doctrine has defined an easement as a real right in its own right, the main characteristic of which is to serve the use and utility of a real estate or land. At the same time, this right also constitutes a dismemberment of the right of ownership. (Bîrsan, 2013, p. 290)

On the other hand, the concept of servitude has its origin in Roman law, from the Latin word "servitus, -utius" and represents the burden that encumbers the real estate, i.e. the servient land in favor of another real estate, i.e. the dominant land, and which is constituted by the agreement of will between the owners of the two lands.

Another doctrinal approach regarding the right of easement is based on the legal definition given by Art. 755 para. (1) of the Romanian Civil Code, which specifies expressis verbis that an easement is "the burden that encumbers a real estate, for the use or utility of the real estate of another owner.". If we refer to utility, it is presented as an increase in the comfort of the dominant land as provided for in art. 755 para. (2) of the Romanian Civil Code. (Gabriel Boroi, 2013, p. 193)

According to another view, an easement is a right in rem, a dismemberment of the right of private property, provided for by the provisions of the Romanian Civil Code and which manifests itself as a burden on the servient land for the use and utility of the dominant land owned by another person. This utility results from the economic use of the dominant land, or in essence represents an increase in its comfort.

Servitudes can also be defined as ways of connecting two neighboring or nearby properties and facilitating their economic exploitation for the benefit of one of them, i.e. the dominant land. The land that bears the burden of the easement is called servient land. (Stanca, 2015, p. 50)

Legal characteristics of the right of easement

This dismemberment of the right of ownership which is the easement has several legal characteristics, namely:

a) It is a **real property right** which is constituted on the immovable property of another person, not on the immovable property of the holder of the easement right.

b) **It** necessarily **presupposes two immovable properties**. They must be owned by different persons. The property for whose benefit/use the easement is established is known in the legal literature as the **dominant estate,** while the other property burdened by the easement is called the **servient estate.**

c) It is **accessory in nature**, that is to say, the easement cannot be separate from the land and constitute a right in its own right. The action of sale or mortgage of the right of easement without alienation or mortgage of the dominant land is inconceivable, inadmissible. The transfer of the servitude right is made at the same time as the dominant land, even if the parties have not expressly stipulated this in the deed by which the dominant land is alienated. The burden corresponding to the right of servitude shall follow the servient land regardless of the person who acquires it, provided that the formalities prescribed by law for the publication of real estate title are complied with.

d) **The perpetual nature of** the servitude right derives from its accessory nature and means that if the parties have not stipulated a term and if the situation which gave rise to the servitude right continues, it will last for the duration of the existence of the two funds (dominant fund and servient fund) and will be passed on to the legal or testamentary heirs.

e) **The indivisibility of the servitude** as a legal character refers to the fact that the servitude encumbers the servient land in its entirety and benefits the entire dominant land. Where the servient land is in the private ownership of several persons, i.e. in common ownership, the easement can only be created by a legal act with the consent of all the co-owners, since it is a legal act of disposition. The situation is different in the case where the dominant land is common property because in this case the easement can be established even if there is not the consent of all the co-owners because we are no longer in the presence of a legal act of disposition but of one of administration or conservation, as the case may be, and the provisions of art. 640 Romanian Civil Code or art. 641, para. (1) Romanian Civil Code. (Gabriel Boroi, 2013, p. 194)

The same legal characteristics for the right of servitude, namely: right in rem in immovable property; existence of two immovable properties belonging to two different owners; accessory to the land to which it belongs; perpetual and indivisible character, are also dealt with in another specialized work. (Bîrsan, 2013, p. 290)

Classification and how easements are created

If we refer to the classification of easements according to their external manifestation, we have **apparent** and **non-apparent easements.** Art. 760 para. (1) of the Romanian Civil Code defines apparent servitudes as those whose existence is attested by a visible sign of servitude such as a door, a window or a water conduit.

Non-apparent easements are defined by Art. 760 para. (2) and are those easements the existence of which is not attested by any visible sign of an easement, such as an easement not to build or not to build above a certain height.

In terms of the exercise of easements, they are classified into **continuous and non-continuous easements.** Continuous easements within the meaning of Art. 761, para. (2) of the Romanian Civil Code are those the exercise of which is or may be continuous without the need for an actual act of man, such as an easement of sight or an easement not to build. Non-continuous easements are governed by art. 761, para. (2) of the Romanian Civil Code and are those for the existence of which the actual fact of human existence is necessary, such as an easement of passage by foot or by means of transportation.

If we analyze the criterion of the exercise of the prerogatives of the right of ownership by the two owners (the owner of the dominant land and the owner of the servient land) we distinguish between **positive and negative easements**. According to art. 762, para. (2) of the Romanian Civil Code, are those by which the owner of the dominant land exercises part of the prerogatives of the right of ownership over the servient land, such as the easement of way. Para. (3) of Article 762 of the Romanian Civil Code defines negative easements as those where the owner of the servient land is obliged to refrain from exercising some of the prerogatives of his property right, such as the easement not to build. (Lupașcu, 2022, p. 167)

The methods for the creation of easements, as provided by Article 756 of the Romanian Civil Code, are as follows:

1. The legal act, which can be a convention or a legacy. The legal instrument constituting the easement must take the notarially authenticated form ad validitatem, otherwise the sanction will be absolute nullity because real property rights such as easements are subject to registration in the land register. In order for an easement to be established by a legal act, the agreement of the owner of the dominant land and that of the owner of the servient land is required. It follows that a unilateral legal act between living persons (inter vivos) constituting an easement is excluded. If the owner of two properties bequeathed the properties to his two children by will and also established an easement between the two properties, there would be no infringement of the relevant legal provisions.

2. Tabular and extra-tabular usucaption. In the case of extra-tabular usucaption we are talking about positive servitudes. The provisions of the Romanian Civil Code in force apply to servitudes constituted by usucaption where possession has commenced since the date of entry into force of the Romanian Civil Code. (Gabriel Boroi, 2013, p. 196)

We should not overlook the approach of the Romanian Civil Code of 1864 to the creation of servitudes. There were several such ways, namely: natural factors; the law; and man's act.

Natural factors could give rise to natural servitudes. Examples here are: the easement of the mound; the easement of enclosure; the easement of springs; the easement of natural water drainage, etc.

The following types of easements were considered to be constituted by law: easements of rights of way; easements concerning the distance between plantations; easements concerning common separations (common fence; common ditch; common wall).

Human will could give rise to easements. These include: usucaption; covenant/contract; will.

An important part of the doctrine generated heated discussions on the way easements were constituted under the Old Romanian Civil Code, as it was considered that natural easements could not exist without a legal basis.

The classification into natural easements and legal easements also gave rise to numerous doctrinal controversies because it was considered that they were not dismemberments of the right of ownership. They were seen as a means of determining the content of the property right and the limits up to which that right could be exercised.

Even under the old rules, easements, i.e. dismemberments of the private property right, could be considered only those that allowed the owner of the dominant land to exercise the prerogatives relating to the legal content of the property right of the land that was subject to the easement. (Bîrsan, 2013, p. 294).

Rights and obligations of the landowner dominant as regards the easement

The owner of the dominant land has the right to use the servitude in accordance with the title deed and the relevant legal provisions without aggravating the situation of the servient land and without causing any prejudice to the owner of the servient land.

If the owner of the dominant land has the right to draw water from a spring on another person's land (main easement), he must cross that land (servient land) to reach the spring. The right of way in this case constitutes an accessory easement.

The owner of the dominant land has the right to defend his easement in court against those who prevent him from exercising his right by means of an action for a confession of easement.

If the servitude has been constituted by agreement and the owner of the servient landowner breaches that agreement, the owner of the dominant land has an action in contractual civil liability against the owner of the servient landowner.

The owner of the dominant land is also entitled to bring a possessory action, but only in the case of positive servitudes is possession exercised.

The owner of the dominant land has the right but also the obligation to take all measures and may carry out, at his own expense, all works to exercise and preserve the easement, unless otherwise provided for, according to art. 765, para. (1) of the Romanian Civil Code.

The owner of the dominant land is obliged to bear the costs of preserving the works for the exercise of the servitude if they benefit only the dominant land. If they also benefit the servient landowner, the costs shall be borne by the two owners in proportion to the advantages obtained by the two owners, in accordance with Art. 765, para. (2) of the Romanian Civil Code. (Lupașcu, 2022, p. 167)

Rights and obligations of the landowner servient servitude

The owner of the servient land may change the place where the servitude is exercised if there is a serious and legitimate interest and it remains as convenient for the owner of the dominant land.

With regard to the obligations of the owner of the servient land, we must start from the provisions of art. 759 of the Romanian Civil Code, which specifies, in para. (1) that the deed of incorporation may impose certain obligations on the owner of the servient land in order to ensure the use and utility of the dominant land. The owner of the servient landowner may bind

the owner of the dominant land to maintain and preserve the access to the dominant land. Paragraph (2) of Article 759 of the Romanian Civil Code stipulates that, subject to noting in the land register, the obligation is transferred to the subsequent acquirers of the servient land.

Situation of easements in the event of partition dominant or servient land

According to art. 769 of the Romanian Civil Code, if the dominant land is partitioned, the servitude may be exercised for the use and benefit of each party without affecting the situation of the servient land, i.e. without creating a worse situation. If the servitude is exercised for the exclusive use and benefit of one of the lots which have been separated from the dominant land, the servitude for the other parties shall be extinguished.

If the servient land is partitioned, the servitude may be exercised for the use and benefit of the dominant land on all the parts resulting from the partition, provided that such exercise does not aggravate the situation of the servient land and does not in any way prejudice the owner of the servient land. If, after the division of the servient land, the servitude may be exercised over only one of the resulting parts, the servitude over the other parts shall be extinguished. (Bîrsan, 2013, p. 290)

Ways of extinguishing servitudes

Taking into account the provisions of Article 770 of the Romanian Civil Code, with the marginal title Causes for the extinction of easements, in para. (1), the following causes are specified: consolidation, when both land ends up with the same owner, relinquishment by the owner of the dominant land, expiry, redemption, definitive impossibility of exercise, non-use for 10 years and disappearance of any utility.

In para. (2) of the same article provides for expropriation as a cause of extinguishment of easements and expropriation if the easement is contrary to the public utility to which the expropriated property will be affected. (Lupașcu, 2022, p. 168)

Consider the view of your neighbor's property

Article 614 of the Romanian Civil Code expressly prohibits the making of windows or openings in the common wall. If the owners agree, this window or opening may be made.

The distance between the enclosed or unenclosed land belonging to the owner of the neighboring land and the window for the view, balcony or other such works that would be oriented towards this land is at least 2 m, according to art. 615, para. (1) of the Romanian Civil Code.

If the bay window, the balcony or other such works are not parallel to the boundary line to the neighboring land, the distance shall be at least 1 m, according to art. 615, para. (2) of the Romanian Civil Code.

In calculating the above-mentioned distances, the starting point shall be the point closest to the boundary line on the face of the wall where the view has been opened or, as the case may be, on the outside line of the balcony, up to the boundary line. In the case of non-parallel works, the distance shall also be measured perpendicularly, from the point closest to the boundary line up to the boundary line, in accordance with Art. 615, para. (3) of the Romanian Civil Code.

In the case of light windows, the owner may open such windows, without any distance limit, provided that they are constructed in such a way as to prevent the view of the neighboring land, in accordance with art. 616 of the Romanian Civil Code.

Right of way considerations

If the owner of the land is deprived of access to the public road, he has the right to be allowed to cross the land of his neighbor for the exploitation of his own land, according to Article 617, para. (1) of the Romanian Civil Code.

The owner of the dominant land must exercise the right of way in such a way as to minimize any inconvenience to the exercise of the property right over the land over which the right of way is being exercised (the land being used). If there is more than one neighboring land having access to the public road, the passage shall be made on the land that would cause the least prejudice according to art. 617, para. (2) of the Romanian Civil Code.

At para. (3) of the same article stipulates the imprescriptibility of the right of way. This right is extinguished when the dominant land acquires another access to the public way.

If as a result of legal transactions such as sale, exchange, partition or the like, the owner of the dominant land no longer has access to the public way, the right of way may be claimed from those who acquired the part of the land on which the right of way was previously granted, in accordance with Article 618, paragraph. (1) of the Romanian Civil Code.

If the lack of access to the public right of way is attributable to the owner claiming the right of way, it can be established only with the consent of the owner of the land having access to the public right of way (the servient land) and with the payment of double compensation, according to Art. 618, para. (2) of the Romanian Civil Code.

According to Art. 619 of the Romanian Civil Code, the extent and manner of exercising the right of way are determined by agreement of the parties, by court decision or by continuous use for 10 years.

The owner of the servient land may bring an action for compensation against the owner of the dominant land within the period prescribed by law, which starts to run from the moment the right of way is established in accordance with Art. 620, para. (1) of the Romanian Civil Code.

If the right of way ceases to exist, the owner of the servient land is under a mandatory legal obligation to repay the compensation received, with deduction of the damage suffered in relation to the actual duration of the right of way in accordance with Art. 620, para. (2) of the Romanian Civil Code.

Examples from judicial practice regarding concerning the right of way and the window

Example 1: Right of way. By the action brought before the Court of Câmpulung Moldovenesc, the plaintiffs BE, CR and CE against the defendants TȘ, PA (deceased), continued against PC a A, PL, PG, SP, MA (deceased), continued against MV and MM, sought the establishment in their favor of a right of way over the property of the defendants, and an order that the defendants comply with that right of way, identical to the newly formed plots, entered in CF 2045, 550 and 2396, as follows: on the land of the defendant SP on an area of 50 sq.m (3 m wide/16.66 m long); on the land of the defendants MM and MV, heirs after MA, on an area of 215 sq.m (3 m wide/71. 66 m in length) on the land of the defendants PC, PG and

PL (heirs after PA), on an area of 538 sq. m (3 m wide/179.33 m in length) and the entry in the land register in the names of the plaintiffs, respectively, the defendants' right of easement and order the defendant MV to pay the costs. (SC 832/02.07.2012). In their evidence, the plaintiffs submitted extracts from the land register in which they stated that they are the registered owners of plots with topo numbers 1721, 1722/2, 1723/2, 1723/2, 1724, 1726 and 1712/2 of CF 320 M, as well as of plot no. 221 of CF 262 M. The land of these plaintiffs adjoins that of the defendants MA and PA. The plaintiffs have pointed out to the court that the property they own is a dead-end and that they have two access routes to reach it. In their evidence, they requested a technical topographical expert's report, on-the-spot investigation and the testimony of the witness PE.

The defendants sought the dismissal of the claim as unfounded on the ground that on the land on which the access road would pass, the defendant MV had applied to the town hall to build a house and would thus cause him serious damage, and would no longer be able to build. He also pointed out that on the land where the road would cross, a piece of land is being plowed for cultivation and that he has parked and machinery which he has nowhere to move and which he needs for his household and to grant the plaintiffs' request would constitute an unlawful and disproportionate interference with his property rights.

The court granted the claim of the plaintiffs on the basis of the following evidence: the expert's report, the statement of the witness heard, the on-site investigation report and the documents in the file.

In its reasoning, the court applied the provisions of art. 616 of the Romanian Civil Code, which confer the right on the owner deprived of access to the public road to claim a right of way over his neighbor's land, with the duty to compensate him for the damage caused to him. The same court also applied the provisions of art. 617 and 618 of the Romanian Civil Code, arguing that the owner of the dominant land must make the passage on the part that would cause the least possible damage to the owner of the land that is under the easement in order to get out to the road.

The court also held that it is lawful for the owner of the dominant land who is absolutely unable to get out onto the public road or if the existing exit would be seriously inconvenient or dangerous to cross the land under easement. Art. 634 of the Romanian Civil Code has also been applied in the sense that when an easement of way is constituted, the interest of the person who will suffer its consequences must also be taken into account and not only the interest of the person who will benefit from that right.

If we analyze the above case we will notice that the plaintiffs are BE, CR and CE. The defendants are: TȘ, PA, PC a A, PL, PG, SP, MA, MV and MM.

The subject matter of this dispute is the confessory easement action because the plaintiffs, as owners of the dominant land, had no other access to the public roadway except on a certain area of land owned by the defendants, i.e. the servient land.

We consider this court's decision to be legal and well-founded because a vast amount of evidence was submitted in the case, such as: judicial topographical survey, on-site investigation, documents, testimonial evidence. In addition, the court correctly applied the provisions of the Romanian Civil Code because it chose the least prejudicial option for the

owners of the servient estate. **Example no. 2:** Window with a view: by means of a lawsuit registered at the Court of Sighișoara in 2014, the plaintiffs S.J. and S.A. requested the court to order the defendant K.E. to order the defendant K.E. to wall the window on the ground floor of the building in Chendu village, no. 110 with a view towards the building located in Chendu village, no. 109, jud. Mures and order the defendant to pay the costs.

In the grounds of the application, the applicants stated that they are co-owners and live in the property situated in Chendu, nr. 109, jud. Mureș and that for 40 years they have lived in harmony with all their neighbors. They also pointed out to the court that in the spring of 2014, the defendant K.E. built a window at the neighboring building with administrative no. 110 without a building permit and without their consent, a view window, which is parallel to their entrance in the kitchen, so they are annoyed that the neighbors see everything that happens in their yard as well as in the kitchen and they hear everything that is being said in their kitchen, disturbing their peace and privacy. The application was based in law on the provisions of Law 50/1991 and Articles 614-615 of the Romanian Civil Code.

As evidence, it was requested the production of written evidence, photographic plates, the defendant's cross-examination, testimonial evidence with witnesses B.I. A.I. and K.S., on-site investigation.

By its statement of defense, the defendant pleaded the plea of lack of standing as a plaintiff, on the ground that it is not the registered owner of the property situated in Chendu nr. 110, jud. Mureș, the exception of the acquisition of the easement of view and the easement of light and ventilation in favor of the property at no. 110 on the property at no. 109 by usucaption of 30 years by the junction of the possession of his father K. I. with his possession, and on the merits, the dismissal of the action as unfounded, with costs. He also pointed out that as far as Article 614 of the Romanian Civil Code is concerned, the properties are distinct, with no common wall.

The defendant also pointed out that the plaintiffs' allegations that he had built a window on the property at 110 in the spring of 2014, a bay window that would be parallel to their kitchen entrance, were erroneous. The allegations that he built without planning permission and thereby disturbed their privacy are also not true.

The building at no. 110 was built by his father, Mr. Joncz Ioan Joncz, in 1978 on the basis of a project approved by the People's Council of the Jud. Mures.

They built their house at no. 109 in 1980, the year in which his parents allowed him to live on the ground floor of their house for 8 months, even using the room, currently the kitchen, whose window opens into their courtyard. It was and is necessary to have a window in this place, because there is no other possibility of opening the window elsewhere in this room. The existing window from the time the house was built had a 35 cm/49 cm window frame and an 18 cm/32 cm glazed eye, and opened all the way to provide ventilation, being above the stove.

His parents, although there was no discussion with the complainants, in order to respect their privacy, although the window was at a height that did not allow a direct view into their yard, blocked the view with a large-hole sieve.

This window was used from the time the house was built until 2014, when he carried out renovations to the house at 110, replacing several panes of glass with double-glazing.

In order to avoid any discussion and to keep good neighborly relations, he asked the plaintiff to give his opinion about the window he was going to put in place of the old one, to

establish together the exact location, as he agreed to put in the smoked double-glazed window much smaller than the old one and which cannot open entirely, only half-opening dropping down and not sideways, a situation which does not even allow him to see the sky, in no way the neighboring yard.

In the presence of the plaintiff, by mutual agreement, they determined the exact location, she asking him and showing him in front of witnesses how to position the window. From inside the defendant's house they cannot see into the plaintiffs' yard, because the window is smoky, frosted, does not open at an angle that allows them to see, and in front of the window is the stove from this point of view they cannot approach the window.

The plaintiff S. A. even helped him to redo the electrical wiring in the kitchen, where the window in question is, and asked him to modify the electrical wires so that he could position this window exactly where his mother, the plaintiff S. J., had shown him exactly.

The defendant annexed to the statement of claim copies of photographic plans, a copy of the situation plan of the building located in Chendu nr. 110, jud. It also requested testimonial evidence with the witnesses K. C. and K. C., the plaintiffs' cross-examination.

By Civil Judgment no. 357 dated 2.04.2015, in case no. 2068/308/2014, Sighișoara District Court dismissed the plaintiffs' action, on the basis of art. 614 and 615 NCC and Law 50/1991 and ordered them to pay the defendant the amount of 1500 lei as legal costs representing attorney's fees.

In its reasoning, the court pointed out that, as shown by the photographic plan and the on-site investigation, the defendant's window is in the immediate vicinity of the stove and its installation was necessary. Being an opening for air and light, it can be erected at any height and distance from the neighboring property, since it constitutes an attribute of the property right and does not in any way prejudice the owner of the neighboring property.

In the same judgment, the court also pointed out that the concept of view means the opening of a window towards the neighboring property, through which it is possible to look towards it, and in the case before the court, however, it is not a window of view but the window of the kitchen of his building is a smoked window, which only turns inwards, and cannot be seen towards the plaintiffs' house. It is the defendant's right to make this opening to the building in which he lives, and it is not necessary to obtain planning permission as it is not a work which alters the building's structural strength and/or architectural appearance.

Analyzing the above case we note that the plaintiffs are S.J. and S.A. and the defendant is K.E.

The object of the dispute is the obligation to do, i.e. the court to oblige the defendant to wall up the ground floor window of the building, which in the plaintiffs' opinion would constitute a view window in violation of the Romanian Civil Code.

We also consider the above solution of the court to be a sound and lawful one because it has judiciously analyzed the entire factual situation, by reference to all the extensive evidentiary material, such as: documents, photographic plates, on-site investigation report, witness statements, answers to interrogatories, making a correct application of the provisions of Articles 614 and 615 of the Romanian Civil Code and Law no. 50/1991.

Example no. 3: On 05.06.2018, the plaintiff N.E.E. sued the defendants. L.; R.S.; R.I.; A.A.; and A.N. E; requesting the court to order by its judgment: to establish a right of way for the apartment located in the attic of the building in Bucharest, sector 6, the right of way to be established on the shortest path from the attic apartment to the public road; to order a right of access to the public road for the apartment located in the attic of the building owned by the condominium, the right of access to be established through the staircase that they own, through the hallway at the entrance to the condominium, through the courtyard of the building to the public road and through the land they own in the area of 41.29 square meters;

The plaintiff also requested, as an effect of the right of access to the public highway, that the access of the property to the public highway be established in concrete terms, the access necessary for the penthouse apartment and the establishment of a right of access to the public highway; that the access to the public highway from the penthouse be identified by the entrance hall on the ground floor of the property and the courtyard in front of the building; that the undivided property of 41.29 sq. m. be removed from the property; that the land of 41.29 sq. m. as well as the identification of the undivided share of the parts and outbuildings in common use of the building.

In her pleading, the claimant pointed out that she is the owner of the above-mentioned property, according to the attached deed of adjudication, and that it was not possible to take possession of the property by the bailiff because it was found that the owner of the ground floor apartment of the property has a court order prohibiting access to the parking lot and hallway of the property and that the deed of acquisition did not expressly establish a way to access the public road from the apartment in the attic of the property owned by the claimant. The applicant also informed the court that she tried to settle the dispute amicably but the defendants refused. In law, the plaintiff based its claim on the provisions of Articles 617, 618, 619, 621 and 622 of the Romanian Civil Code; Articles 576; 577; 586, 616 et seq. 627-629; 630-635 and 644 et seq. Romanian Civil Code since 1864; Law No 7/1996 on the cadastre and publicity of real property. As evidence, the plaintiff requested that the documents annexed to the application be admitted and submitted.

In their statement of defense, the defendants invoked the plea of lack of standing as plaintiff since there is no legal relationship between the plaintiff and the defendants. On the other hand, the defendants also pointed out that in the civil lawsuit finalized in 2014, by Decision No 505A/15.04.2014 of the Bucharest Tribunal, a decision that became res judicata, the owners of the apartments located on the first floor and attic should have requested by counterclaim the constitution of an easement right, which they did not do, and that the action must be brought against the owner who will be affected by the easement right. On the other hand, the plaintiff was aware of the legal situation of the property when it adjudicated it, namely that no easement had been established and that a final judgment had prohibited it from access through the ground floor hallway and the parking lot, and it had no objections at the time. As to the merits of the case, the defendants sought dismissal of the action and an order that the applicant pay the costs. The defendants also counterclaimed.

In law, the defendants based their action on the following provisions: Articles 36, 205, 453 of the Romanian Civil Code; Article 1707 of the Romanian Civil Code; Articles 35 and 37 of Law 7/1996 in its original form and on the same legal texts as amended. As evidence, they asked for the taking of the evidence of the documents annexed to the statement of objections,

as well as the evidence of a technical expert's report in the field of construction and another topographical report. In the judgment delivered in the above case, the court admitted the plea of lack of standing of the defendants A.A. and A.N.E. and rejected the applicant's claim against these defendants as being brought against persons who lack standing to bring proceedings.

The same court admitted in part the plaintiff's claim and the counterclaim of the defendants-claimants R.S. and R.I. Thus, it ordered the establishment of the easement of way through pedestrian and vehicular access in favor of apartments no. 2 and no. 3 of the building located in Bucharest, sector. 6. The court also established the route by which the access from the public road to apartment no. 3 in the attic of the building located in Bucharest, sector. 6., in the exclusive property of the plaintiff. The route of the access from the public road to apartment no. 2 on the first floor of the above-mentioned building owned by the defendants R.S. and R.I. The request for the release from the undivided property was also rejected.

In order to reach that decision, the court took into account the evidence in the case file and the conclusions of the expert reports drawn up in the case. The court also took into account the provisions of Article 1707, para. (5) of the Romanian Civil Code; the Romanian Civil Code of 1864 with regard to the right of servitude, the provisions of the New Romanian Civil Code with regard to judicial partition.

From the analysis of the above case we will note that the litigants are the following parties: the plaintiff N.E.E. and the defendants: L.D.-L.; R.S.; R.I.; A.A.; and A.N.E.
The subject matter of the present case is the action for a confession of servitude and judicial partition because the plaintiff N.E.E., as owner of the dominant land (of the apartment located at the attic of the building in Bucharest, sector 6) did not have access to and from her apartment to and from the public road. It was also requested the exit from the undivided property, i.e. judicial partition in the above case.

We consider the court's solution to be a sound and legal one because it correctly applied the legal provisions on the matter. We are also of the opinion that since the neighborhood relations between the parties arose prior to 1.10.2011 (the date of entry into force of the New Romanian Civil Code) the law applicable to the easement and the right of access to the public way are the provisions of the Romanian Civil Code of 1864 according to the principle known in the specialized literature and in judicial practice as tempus regit actum.

It should also be noted that the provisions of Articles 616, 617 and 618 of the Romanian Civil Code of 1864 provided that the owner whose land is enclosed and who has no access to the public highway may claim a passage over his neighbor's land for the exploitation of the land, on that part which would shorten the path of the owner of the enclosed land to get out of the road, but on that portion which would cause the least possible damage to the owner on whose land the passage is to be opened.

In the present case, too, the shortest access route to the public way which does not give rise to additional costs for either of the litigants and which causes the least inconvenience to the exercise of the right of ownership over the land having access to the public way was taken into account.

Last but not least, the right of way, seen as a dismemberment of the private property right, also constitutes a limitation of the property right of the owner of the land and of the

building where the access path will be opened. This limitation is manifested with regard to the use, which will be diminished because the owner of the servient land is obliged to allow the owner of the dominant land to use a portion of his property for the right of way.

Conclusions

We can draw some conclusions from the material presented. First of all, in order to better understand what easements are, we need to refer to the theoretical, doctrinal and legal components. Thus, easements are real rights in immovable property, dismemberments of private property rights, encumbrances that encumber a property for the use or utility of another owner's property. When we talk about easements, we must necessarily refer to two properties belonging to different owners, i.e. the dominant estate, for the benefit of which the easements are established, and the servient estate, i.e. the property encumbered by the easements.

These easements have well-defined legal characteristics, are created in the manner prescribed by law, the formalities of real estate publicity must be complied with and they are extinguished in accordance with the relevant legal provisions. It should also be borne in mind that the owners of the two funds have specific rights and obligations. Aceste drepturi trebuie exercitate cu bună credință, astfel încât să nu prejudicieze alte persoane, conform principiului jurisconsultului roman Ulpianus, ,,alterum non laedere, adică să nu fie vătămate alte persoane.

The obligations incumbent on the owners must also be carried out in full, subject to the penalties laid down by law.

I have already given examples of two of the best-known easements in practice, namely the easement of right of way and the easement of window. By analyzing them from the point of view of their legal regulation, but also by referring to the case studies presented, interested persons will be able to better understand what these easements actually represent, how they can be created and how they can be defended.

When the plaintiff brings a confessional action for an easement, I believe that he must explain very clearly and concisely to the court and prove that, for example, he is deprived of access to the public road and that he has no other way of accessing it other than by crossing an area of land owned by the defendant, and that he would cause as little damage as possible to the defendant.

It is our recommendation that the parties seek expert legal advice from a lawyer. With regard to the taking of evidence in such situations, it is advisable to request in the statement of claim that evidence such as: specialized technical expertise, documents, photographic plans, interrogatories, witnesses, on-site investigations, etc., be obtained and taken.

Even the defendant has means of defense available to him when he is summoned to appear in court in such situations involving the creation/establishment of easements. In his statement of defence he can plead that he is not the owner of the servient land, that the plaintiff is not the owner of the dominant land and that he has other access to the public highway without crossing his land, that the window built in the wall of the house is a light window, etc. The defendant can also rely on evidence such as that mentioned above for the plaintiff.

I also consider that if the parties were to reach an amicable agreement, show flexibility, openness and understanding, many lawsuits concerning easements could be avoided and a joint agreement could be reached so that the easement would be beneficial to both owners, thus avoiding lengthy lawsuits and the high costs they generate.

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