

MANAGEMENT OF THE ACTIVITY OF LEASE AND CONCESSION OF LANDS WITH AGRICULTURAL DESTINATION BELONGING TO THE PUBLIC AND PRIVATE DOMAIN OF THE STATE WITHIN SIBIU COUNTY, ROMANIA

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Abstract

This paper analyzes a topical issue, namely the lease and concession of agricultural land belonging to the public and private domain of the state, with the pointing of the particularities of land allocation in the case study, conducted in Sibiu County. It is an extensive study based on important opinions expressed by the literature and statistical data provided by the National Institute of Statistics in Romania. Specifically, the scientific research undertaken aimed at studying historically and comparatively the evolution of leasing and concession contracts in our country. It highlights the steps to be followed to become a contractual partner of the two types of contracts, the procedure for carrying out and pursuing these contracts by the State Domains Agency both at national and local level. The methodology used is the case study and is based on the secondary analysis of statistical data and relevant literature. In essence, the study highlights a set of elements with a role in highlighting the most common categories of rented and leased use, efficient management of state-owned agricultural land, improving soil quality, increasing revenues to the state budget.

Key words: lease, concession, management, ground, meadow

INTRODUCTION

The notion of public domain is not a relatively new notion, it has been used over time by great doctrinaires and scientists in various scientific works and has acquired several connotations [1]. From ancient times, there was a need to extract from the rules of private law, certain categories of goods, which were intended for use by the whole community, were to be subject to special rules. These goods, seen as of great importance for social interests, were subject to limitations over time, so as not to be diverted from the purposes they served, forming the public domain. In the literature, it has been argued that “public domain goods are subject to an exorbitant legal regime, derogating from common law” [7]. According to another opinion, the reason behind the imperative of the existence of specific statutes, derogating from the common law, in the matter of these goods is represented by the general public

interest, which the administration must realize [1]. Any society that has reached a certain stage of organization must recognize both the goods that belong to each individual and those goods that belong to the community. Precisely for this reason, two categories of goods were highlighted. A first category consisted of goods similar to those owned by individuals and over which the public authority exercises the same rights as them, forming the private domain. A second category consisted of goods considered of greater importance for social interests, goods that were subject to restrictions, in order to prevent their diversion from the purposes they serve, forming the public domain. With the adoption of the 1991 law, the provisions on the public domain were reintroduced into Romanian legislation. Although the object of this law is given by the lands, the same law provides that they may belong to the public domain. Public lands refer to those lands that are subject to public use. The inalienable character of the public

property, attests the fact that the goods that make up the public property are not in the civil circuit. As a result, such land or property may not be passed on to others during their lifetime or by will or bequeathed after their death. The dismantling of property rights is also prohibited. So, the inalienable nature of the public property right means the prohibition of alienation of assets that make up this property by legal acts of private law, but also the impossibility of acquiring such assets by foreigners, by any means established by law [2]. Failure to comply with this prohibition will result in the sanction of absolute nullity. The right to property is imperceptible. This legal character of the public property right is a consequence of the inalienability of this property and consists in the impossibility of pursuing the public property goods by the creditors in order to realize their claims. At the same time, the “impossibility of constituting real guarantees on these goods is highlighted [11]”. “The right of public property is imprescriptible, as it results from the provisions contained in article 861 paragraph 2 of the Civil Code”. “It follows that ownership of public lands does not cease to be unused”. “Also, the provisions on usufruct are not applicable in the present case[8]”. Private property is guaranteed and protected by the constitution, as it results from the provisions of art. 44 paragraph 1 of the Constitution, which stipulates that: “the right to private property, as well as claims against the state are guaranteed”, as well as art. 44 para. 2 of the Constitution according to which [5]: “private property is protected and guaranteed equally by law, regardless of the owner” [12]. As we well know, the other main real rights have been regulated on the basis of the right of property, private or public, and here I refer to the right of usufruct, use, habitation, surface, the right of administration, concession or free use. In agriculture, taking into account the fact that the main means of production is the land, we find ourselves in the presence of a type of land ownership, which highlights the right of possession, use, disposition, management and usufruct of a land area by own power and interest own [10]. So we are talking about two forms of land

ownership: private property and public property. The first form of ownership includes the amalgam of land belonging to individuals, legal entities or the state. The private domain of the state includes those lands that are found or have become its property. Within the property under public law we will find those lands that are of national or local use or interest. The lands found in state property that remained after all restitution applications were exhausted are divided into two distinct categories - the public domain of the state and the private domain of the state. The public domain areas of the state are of special interest and use. As such, they cannot be sold or exchanged, but can be leased or concession. Agricultural areas, which are part of the private domain of the state, represent the residual land that belongs to the state, but is not classified as part of the public domain. Therefore, the mentioned land can be sold, leased or concession. Part of this private state land belongs to villages, towns, municipalities and counties and is allocated to cover local needs and uses. However, another part is found in the administration of the State Domains Agency and is generally leased to farmers. Leasing the land is also a way of manifesting private property over the land, through which a certain area of land found in the property is given for temporary use by the owner, a natural or legal person called the lessee. It should be noted that the lessee must have specialized studies or agricultural practice [10]. According to art. 1836 of the Civil Code, the following goods fall under the lease: agricultural lands and animals, constructions of any kind, machines, equipment and other such goods intended for agricultural exploitation. In this case, it is interesting to rent agricultural goods, because, at present, there is a growing interest in renting such land by Romanians.

This study aims to efficiently manage land under state management through the method of leasing and/or concession by meeting the following objectives: highlighting the categories of use most often leased and / or leased, maintaining balance and improving soil quality, state assets, management efficient use of leased and leased agricultural land,

.realization of the objectives of programs established at national level within agricultural land.

MATERIALS AND METHODS

The study was conducted in Sibiu County located in central Romania between 45°28'-46°17' north latitude and 23°35' - 24°57' east longitude which has a total area of 5433 km² which represents 2.3% of the country. The State Domains Agency manages in Sibiu county agricultural and non-agricultural lands from the public and private domain in a total area of 17,254.48 hectares, of which 483.79 hectares represent the public domain area, and the surface of 16,770.69 hectares is represented by the private domain. This research contains elements that attest to the complexity and timeliness of the issue addressed, which led to the adoption of the case study as a research methodology [6]. The relevance of choosing the case study consists in the ability to correctly highlight complex situations, to allow the shaping of clear images of the highlighted problems and to identify the causes that generated them [4]. The research is a descriptive and explanatory study on the management of concession and lease of agricultural land found in the state, based on the most important opinions expressed by the literature and statistical data provided by the National Institute of Statistics in Romania. Specifically, the scientific research undertaken aims to study from a historical and comparative point of view, the evolution of leasing and concession contracts in our country.

The purpose of this research is the efficient administration of agricultural land under state management, through the method of concession and lease, within Sibiu County.

The main interest is the administration, respectively the proper management of the agricultural lands that are found in the private or public property of the state by the beneficiaries of the lease and concession contracts.

RESULTS AND DISCUSSIONS

In Romania, the land groups 10 categories of use, among which we distinguish 5 categories of agricultural land and 5 non-agricultural categories, each having in turn subcategories of use [3]. The five categories of agricultural use: arable land, pastures, hayfields, vineyards and orchards are also found in the private or public management of the state. These are defined by a set of specific characteristics, by surfaces that oscillated in a positive and negative direction after 1990 requiring an update [9] and present in 2018 the following expression: (Table 1 and Table 2).

Table 1. "Categories of agricultural land use in the public domain of the state and the ATU (2018)"

"Indicators"	"Public domain belonging to the state (ha)"	"Public property belonging to ATU (ha)"	"Total (ha)"
Arable land	1,337	214	1,591
Pasture	3,447	3,880	7,327
Grassland	993	137	1,130
Vine	55	2	57
Orchards	619	10	629
Total	6,491	4,243	10,734

Source: Sibiu County Agricultural Directorate

Table 2. Categories of agricultural land use in the private domain of the state and the ATU (2018)

Indicators	State-owned private property (ha)	Private property belonging to ATU (ha)	Total (ha)
Arable land	3,401	3,432	6,833
Pasture	3,518	71,486	75,004
Grassland	2,218	2,440	4,658
Vine	1,369	20	1,389
Orchards	1,947	0	1,947
Total	12,453	77,378	89,831

Source: Sibiu County Agricultural Directorate.

The analysis of the data in Tables 1 and 2 highlights the relevance and the large share held by the categories of pasture and hay use. Thus, the total area of these categories of use is 4,440 hectares in public property belonging to the state, respectively 5,736 hectares in private property belonging to the state, respectively 4,017 hectares in public property belonging to territorial administrative units and 73,926 hectares found in private property of territorial administrative units.

The secondary analysis of the relevant data obtained from the literature and statistical sources shows that in 2020 in the administration of the State Domains Agency in Sibiu County, there are productive

agricultural areas in the public domain of the state totaling 429.29 hectares of land, of which the largest the surface is occupied by orchards and arable land (Table 3).

Table 3. Situation of agricultural land areas under the administration of A.D.S.

County	Domain type	Arable land (ha)	Pasture (ha)	Grass-land (ha)	Vine (ha)	Orchards (ha)	Total (ha)
Sibiu	Land in the public domain	116.18	17.85	48.79	63.96	182.51	429.29
	Private land	3,365.10	4,220.57	2,847.62	1,417.49	2,012.97	13,863.75
	Total	3,481.28	4,238.42	2,896.41	1,481.45	2,195.48	14,293.04

Source: own processing.

In the same period, according to official data, in the private domain of the state there is an area of 13,863.75 hectares, where the largest share is recorded by pastures, followed by arable land and hayfields. The analysis of the statistical data presented in Table 3 shows that in the public and private domain of the state, as areas under the management of ADS, there are 3,481.28 hectares of arable land, 4,238.42 hectares of pastures, 2,896.41 hectares of hayfields, 1,481.45 hectares of vineyards and

2,195.48 hectares of orchards. From this total we can observe that the surface representing the meadows under the administration of A.D.S. Amounts to a total of 7,134.83 hectares. The lands under the administration of the State Domains Agency in Sibiu County, represent an important agricultural resource to which many entrepreneurs show a special interest, so that by 2020 most areas are contracted by individuals and legal entities, as can be seen in the Table 4.

Table 4. The situation of the contracted agricultural land areas under the administration of A.D.S.

County	Domain type	Arable land (ha)	Pasture (ha)	Grassland (ha)	Vine (ha)	Orchards (ha)	Total (ha)
Sibiu	Land in the public domain	113.12	17.85	48.79	63.96	182.2	426
	Private land	3,064.43	3,803.38	2,448.58	857.43	1,595.15	11,768.97
	Total	3,177.55	3,821.23	2,497.37	921.39	1,777.35	12,194.89

Source: own processing.

The data analysis shows, for example, that out of a total of 116.18 hectares of arable land, 113.12 hectares are contracted, and in the case of pastures, hayfields, vineyards and orchards, the entire state-owned public area was contracted. The deepening of the studies regarding the contracting of the lands in public and private property of the state and administered by the State Domains Agency from Sibiu County highlights the existence at the level of 2020 of a number of 85 concession/lease/lease contracts underway in Sibiu County. Their distribution by types of contracts shows the following structure: 20 concession contracts (Fig.1), 41 concession contracts by direct award, 23 lease contracts and 1 rental contract.

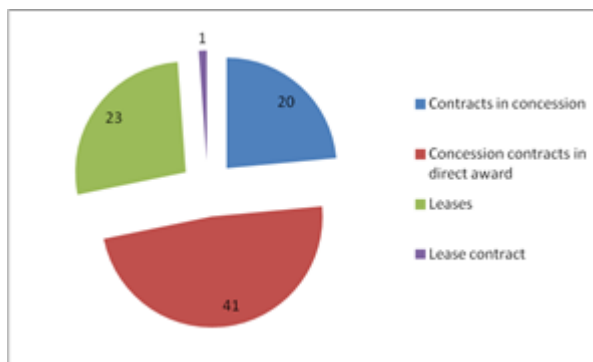


Fig. 1. Number of ongoing contracts in Sibiu County
Source: Own design.

Leasing of agricultural land belonging to the public and private domain of the state located in Sibiu County has the following features: orientation towards the categories of living use, orchards, hayfields when it comes to

leasing land belonging to the public domain of the state; orientation towards the categories of living use, respectively arable when it comes to the lease of lands belonging to the private domain of the state; Thus, in 2020 the leased area totals 383.11 hectares of arable land, 201.46 hectares of pastures, 298.34 hectares of hayfields, 482.24 hectares of vineyards and 192.24 hectares of orchards, in total (Table 5). The concession of agricultural lands belonging to the public and private domain of the state located in Sibiu county presents the following particularities: the orientation

towards the categories of arable use, respectively hayfields when it comes to the concession of lands belonging to the public domain of the state; orientation towards the categories of use pastures, arable land, hayfields when it comes to the concession of lands belonging to the private domain of the state; Thus, in 2020 the concessioned area totals 707.76 hectares of arable land, 1,297.77 hectares of pastures, 495.33 hectares of hayfields, 248.44 hectares of vineyards and 745.71 hectares of orchards, in total (Table 6).

Table 5. Situation of leased agricultural land under the administration of A.D.S.

County	Domain type	Arable land (ha)	Pasture (ha)	Grassland (ha)	Vine (ha)	Orchards (ha)	Total (ha)
Sibiu	Land in the public domain	3.67	7.32	24.09	63.96	37.78	136.82
	Private land	379.44	194.14	274.25	418.28	154.46	1,420.57
	Total	383.11	201.46	298.34	482.24	192.24	1,557.39

Source: own processing.

Table 6. The situation of the concessioned agricultural land areas under the administration of A.D.S.

County	Domain type	Arable land (ha)	Pasture (ha)	Grassland (ha)	Vine (ha)	Orchards (ha)	Total (ha)
Sibiu	Land in the public domain	109.04	5.12	16.99	0	0	131.15
	Private land	598.72	1,292.65	478.34	248.44	745.71	3,363
	Total	707.76	1,297.77	495.33	248.44	745.71	3,495

Source: own processing.

Concession by direct allocation of agricultural land belonging to the public and private domain of the state located in Sibiu County has the following features: orientation to the category of orchards when it comes to the concession by direct allocation of land belonging to the public domain of the state; orientation towards the categories of arable use, pastures, hayfields, orchards when it

comes to the concession by direct allocation of lands belonging to the private domain of the state; Thus, in 2020, the area concessioned by direct allocation totals 2,086.68 hectares of arable land, 2,322 hectares of pastures, 1,703.70 hectares of hayfields, 190,71 hectares of vineyards and 839,40 hectares of orchards, in total (Table 7).

Table 7. Situation of agricultural land granted by direct allocation under the administration of A.D.S.

County	Domain type	Arable land (ha)	Pasture (ha)	Grass-land (ha)	Vine (ha)	Orchards (ha)	Total (ha)
Sibiu	Land in the public domain	0.41	5.41	7.71	0	144.42	157.95
	Private land	2,086.27	2,316.59	1,695.99	190.71	694.98	6,984.98
	Total	2,086.68	2,322.00	1,703.70	190.71	839.40	7,142.49

Source: own processing.

The centralization of the data regarding the lease and concession of agricultural lands belonging to the public and private domain of

the state under the administration of the State Domains Agency and located in Sibiu county presents the following distribution of areas by

contract categories: lease (1,557 hectares); concession (3,495 ha), respectively concession by direct allocation (7,142 hectares). We mention that regarding the category of use pastures and hayfields (meadows) a total area of 499.8 hectares of land was leased by lease; 1,793.1 hectares of land by concession, respectively 4,025.7 hectares of concession by direct allocation.

The concession of the agricultural lands mentioned above, represents through the royalty fixed by the contract, a permanent source of income and guaranteed at the level of the state budget. It is very important to note that the person who deals with the conservation, maintenance and operation of agricultural land that has been received in concession, has a legal obligation to bear all the costs of these operations. Through the concession, the state seeks to ensure that the investments required for the management of the allocated agricultural land are also borne by the concessionaire. The latter also has the duty to pay the taxes and duties related to the lands received in the concession.

In order to achieve the most efficient exploitation of the concessioner land, the tender procedure is used, as it creates the conditions for a transparent environment between all potential concessionaires who have the same object of activity, for the award of the concession contract. Leasing and concession are defining elements in the characterization of the functioning of the State Domains Agency for the realization of which a set of work processes is developed (execution processes and managerial processes). The managerial process developed is a specific one and is achieved by going through certain stages that follow one another and for the accomplishment of which certain operations are performed. They are based on the fact that each type of contract is concluded and performed in legal conditions, by complying with all contractual clauses and implicitly the legal provisions provided in the Laws governing the performance in conditions of efficiency and effectiveness. Based on the statements, the methodological framework for monitoring lease and concession contracts is organized, which

highlights the necessary actions both by the State Domains Agency and by the contractual partners. This involves the use of several documents, among which we must mention: the lease or concession contract with the adjacent annexes; account statements certifying the receipt of payments; the report of possession; technical-operative file of the contractual partner; minutes of scoring; information and decision notes; invoices and payment notices; crop structure, etc. (Norms regarding the activity of following the contracts). The documents referred to have an essential role to play in obtaining receipts for leases or concessions. After receiving the contracts, the operation of verifying all the contractual clauses is performed and the client's file is opened and the mentioned data are entered in the computerized data management system.

CONCLUSIONS

The research entitled Management of the activity of leasing and concession of agricultural land belonging to the public and private domain of the state located in Sibiu County highlights a number of features given by the lack of transparency, efficiency and effectiveness of specific actions.

The research is a descriptive and explanatory study on the management of concession and lease of agricultural land found in the state, based on the most important opinions expressed by the literature and statistical data provided by the National Institute of Statistics in Romania.

The administration, respectively the proper management of the agricultural lands that are found in the private or public property of the state by the beneficiaries of the lease and concession contracts represents a current and complex topic of major interest for the responsible factors.

The categories of use of agricultural land in the public and private domain highlight the relevance and the large share of the categories of use of pastures and hayfields at the level of the studied territorial territorial unit, as shown in Tables 1 and 2.

At the level of Sibiu county, the research carried out highlights the existence of an area of 13,863.75 ha in the private domain of the state and in the administration of the State Domains Agency, of which pastures and hayfields hold more than 50%, according to Table 3.

The contracting of the lands in the public and private property of the state and administered by the State Domains Agency from Sibiu County highlights the existence at the level of 2020 of a number of 85 concession/lease/rental contracts underway in Sibiu County.

The land areas under the administration of the A.D.S. leased in 2020 shows the orientation of farmers towards the categories of use of vines and arable land (Table 5).

The land areas under the administration of the A.D.S. granted in 2020 shows the orientation of farmers towards the categories of pasture, orchard and arable land use (Table 6).

The land areas under the administration of the A.D.S. granted by direct allocation in 2020 highlights the orientation of farmers towards the categories of use pasture, arable land, hayfields (table 7).

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