

LAND LAW AND ITS IMPACT ON THE RURAL SPACE IN ROMANIA

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ABSTRACT. - **Land Law and its Impact on the Rural Space in Romania.** Through its functions, rural space is both an objective reality, as well as the outcome of a continuous evolution of some goal-oriented conscious actions. As a determining function, agriculture is mainly put into practice through agrarian structures which, in their turn, are being influenced by land legislation. Consequently, rural space is not only an objective reality, but also the outcome of constantly progressing/regressing actions which are materialized via spatial planning, aiming at ensuring by means of specific instruments – in the middle of nature and often against nature – the existence and well-being of the population.

Keywords: *Romania, rural space, land legislation.*

1. INTRODUCTION

Romania has a particular position on the European continent, being situated in a transition area both to the East, as well as to the South, at the border between the peninsular Europe and the Continental Europe, feeling the physico-geographical and especially the political-economic influences of the two areas of Europe in its general and especially agricultural development.

Romania's territory, as it appears, reveals the harmony of the geographical structures and of the agrarian potential – starting with the landforms, the hydrographic network, the soil and vegetation, the use of land and land planning, and ending with the communication methods, the network of inhabited areas and related economic activities, thus reflecting its natural-economic valences integrated within a continuous process of sustainable development, exploitation, restructuring, harmonious planning.

Within this entirety, rural space is all to be seen outside towns and municipalities, expressing the coexistent order between nature and the outcome of certain goal-oriented continuous voluntary actions; agriculture is the determining function whereas the territorial structure is determined by the land legislation. Consequently, agriculture is the foundation of rural economy in its capacity as sole owner of the territory as production and use, as well as population and settlements.

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Rural space is thus the expression of the coexistent order of the objects of material world, the position, location, form, size, surface and efficiency can only be fulfilled when coherence is achieved according to the main function of some viable agrarian structures as a factor of stability and economic growth in compliance with national strategies and sectoral programs correlated with EU directives and regulations.

This requires first of all the sustainable use of the land fund via the integration of socio-economic principles with the conservation of the environment, in order to achieve food safety, soil quality protection, economic and social viability through the diversification of economic activities – vegetal and animal production, industrial processing of agricultural, forestry and fishery products, handiwork and small scale industrial activities, tourism services and agro-tourism (the National Strategy for the Sustainable Development of Romania Horizons 2013-2020-2030, 2008).

2. LAND LEGISLATION DURING ITS HISTORICAL EVOLUTION

The land legislation enforced during our historical evolution along with each land reform - every 25 years – has easily solved existing problems as far as social action is concerned, still it ruined some viable structures, subsequently becoming much more difficult to reconstruct them. This happened because in all the cases, agrarian structures issues were solved according to the classic formula (there was a permanent slight moral and social resistance) “property right is a natural right”, meaning that everybody was entitled to property, even more strengthened in a period (after 1945) through the use of the concept according to which “land is property of those who work on it”, thus becoming decisive the principle of land social utility and function – ensuring the support of farmers, thus confirming that property establishment and re-establishment has always been meant to offer social assistance.

Even if in certain periods of time this solution was reasonable, in the contemporary age, a land reform can only be considered as efficient if the land – as the main means of production – is managed to allow the incorporation of the highest possible coefficient labor capitalization, organization, planning and management with a view to achieving higher quantitative, qualitative and economic outcomes in the framework of the national and world competition.

It is without doubt that agrarian structures – occurred as a result of the land legislation – should have fixed adequately the opposition of the concepts small-sized property - large-sized exploitation by considering as complementary the two forms taking into consideration the particularity of each natural-economic area, the evolution and the level of economic and social development, in general, and agricultural development, in particular, thus creating the necessary conditions for non-repetition of the agrarian phenomenon.

Nonetheless, the 7th Land Reform in Romania, deriving from the land legislation – starting with Law 18/1991 – Law on land fund – disregarded the axiom „property and exploitation are two different things”, which would have ensured the preservation of the existing agrarian structures which had been accomplished by the efforts and sacrifice of the post-war generations for the development of agriculture from its traditional forms to the modern organization, instrumentation and management forms.

In the context of the idea that "associative forms are the future of Romanian agriculture", this concept could not be adequately put into practice in the agricultural policy, respectively in the land legislation; if things were different, this would have ensured in the area of private property the advantages of large-sized exploitations, already existing structures, and all that needed to be done was the rectification of the retribution, respectively the implementation of the rent for the land owned and the participation in the profit of units (exploitations, farms) which just needed to be adjusted to the requirements of the market economy.

Considering that the great land reforms resulted in the dissolution of the large latifundia and the apportionment of property (for peasants), eliminating the strong feudal remains by changing the destination of property, were merely meant to play the role of a social assistance tool (Bulgaru, 1936), the land laws after '89 (Bold&Craciun, 1995; Bold&Craciun, 1998; Bold&Predila, 2003), which almost over night replaced the mighty producer with the small farmer, who had no capital and lacked the necessary equipment and, in many of the cases, was unfamiliar with the production technologies implemented, resulted in the disintegration and irrational use of land, respectively the decrease of agricultural production and the transformation of Romania into a marketplace.

Historically speaking, we should not omit the fact that the peasant-owner is an element of stability and social balance, still the dissolution of large production units (such as CAP, IAS, complexes, farms) in which modern techniques and technologies could have been used, having the land agglomerated and organized in optimally placed and sized farms - each following a certain pattern according to the particularity of the agricultural production, was a bad choice as they would have materialized in the framework of rational agriculture systems the outcomes and recommendations of the scientific research in agriculture. The following systems accomplished until 1990 were dissolved or destroyed during the fast privatization process: 3.1 million ha irrigation systems, 3 million ha drainage systems, 2.2 million ha CES, 776 farms and stall-fed cow and ox facilities, 98 farms and stall-fed pig facilities, 138 poultry farms, 66 factories for mixed feed, silos and reception bases, orchards and vineyards, farms of the production agricultural cooperatives, storage centers, production centers of CAP and IAS, mechanization stations, dissolution of CAPs (4200), IASs (600), farms (24.000), respectively the failure to use over 65.000 higher education experts and over secondary education 15.000 individuals.

Consequently, we are now facing the same agricultural system as that existing 100 years ago, and the situation is even more exacerbated by the deindustrialization process which ruined the socio-economic balance of rural space and the depopulation of rural areas, both processes being encouraged by the European integration process and the globalization.

3. RESULTS AND DISCUSSIONS

Under the circumstances, the implementation of an adequate agricultural policy, respectively an adequate legislative framework is a must, having regard to the current situation of the Romanian agriculture, respectively the polarization of agrarian structures: 50% of the agricultural surface of 1375 million ha is in the possession of households having a surface of up to 10 ha (3.9 million households), whereas approx. 40% is owned by exploitations of over 100 ha (fig. 1 and 2).

In the current context, the prognosis according to which there will be a reduction of 2.4 million small-sized subsistence exploitations by 2013 (about 500,000 annually) by agglomerating these surfaces in middle-sized farms, is not a realistic one (the dissolution of industrial, mining, forestry etc. activities which were the main source of income for rural families, as well as the emigration of younger population, still make the small-sized farm the basic subsistence resource for the rural population, most of it being composed of senior citizens; it is also unrealistic to assume the production of energetic raw materials in agriculture as long as food safety in our domestic production is not guaranteed and as long as over 60% of the imports of food products can be produced in Romania.

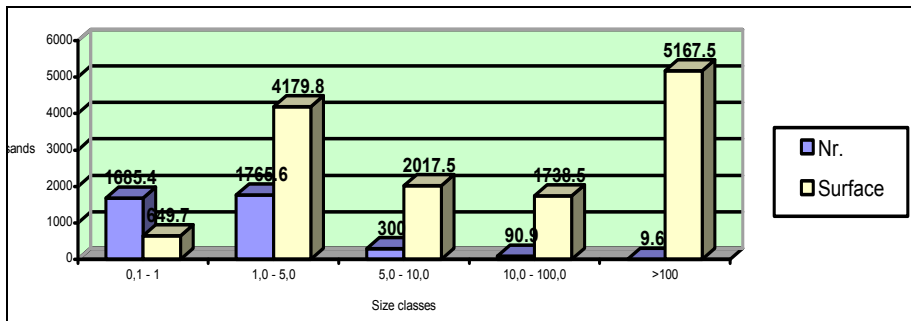


Fig. 1. Structure of Agrarian Surfaces.

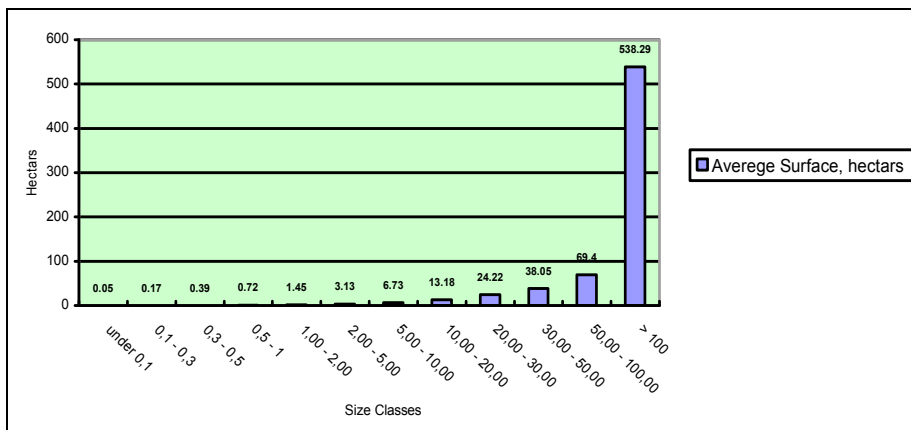


Fig. 2. Average Surface on Size Classes.

Having regard to the existing agrarian structures and the national economic imbalance due to deindustrialization, the protection of national production is a must, by harmonizing the development of multifunctional agriculture in close connection with the environment and in compliance with the Common Agricultural Policy of the EU covering the complexity of all its economic, socio-cultural and environmental functions.

For the development of agriculture and rural space, due consideration should be given to the provisions of the National Program for Rural Development – PNAR-2007-2013, establishing the increase of competitiveness in agriculture and forestry (Axis 1), Improving the environment and rural areas (Axis 2) and The quality of life in rural areas and diversification of the rural economy (Axis 3). Likewise, the National Strategy for Sustainable Development – 2013-2020-2030 and the Agriculture and Rural Development Strategy – 2009-2013 generating new financing systems for agricultural producers, processors and other such activities under the form of Structural Funds (European Regional Development Fund and the Cohesion Fund) for investments, have offered irredeemable financial assistance for structural, economic and social problems (European Social Fund – FSE, European Regional Development Fund – FEDR, the European Agricultural Guidance and Guarantee Fund, Financial Fund for Fisheries Guidance and the establishment of the first European institution in Romania – Agricultural Credit Guarantee Fund (FGCR).

Under the circumstances, all that needs to be done is the reimplementation of a policy involving the role of the state and the guidance of economic development, and not at all the sole responsibility of the market. Basically, having regard to the diversity of geographical conditions, of the natural and human resources, the diversity of property forms and usage of land, of the ethnic and cultural traditions, as well as the different level of socio-economic development, it is the rural space and agriculture to create such agrarian structures to ensure the usage of land, the technological equipment and the development of the network for processing, storage and marketing of agro-food production (Romanian Center for European Policies – CRPE – 2009; Joint Declaration of the Ministries of Agriculture, 2011).

To this purpose, the integration into the Common Agricultural Policy of the EU and into the National Program for Rural Development for the period of time 2007-2013 facilitated direct subsidies and the use of EU funds for the modernization of agriculture and the increase of competitiveness of Romanian agricultural products, as well as rural development. The priorities of the program are concretized in 4 fields of activity (axes): Axis 1: Increase of competitiveness in agriculture and forestry – 45% of the total of EU funds; Axis II – Improving the environment and rural areas – 25% of the money dedicated to the other fields of activity. European irredeemable funds are awarded for the following types of private investments: modernization of agricultural exploitations; increase of the economic value of forests; increase of the added value of agricultural and forestry products; improvement of the agricultural and forestry infrastructure; diversification of non-agricultural activities; encouragement of tourism; basic services for the rural economy and population. It is worth noticing that the middle-term Strategy 2009-2013 highlighted the structural deficiencies that increase the gaps as compared to the other Member States – plots fragmentation, insufficient or outdated technological facilities – stipulating as a fundamental measure the reduction of the fragmentation of agricultural surface and the stimulation of agglomeration of small-sized farms (about 3.9 million with an average surface of 2-9 ha; having also defined the minimum limits for agricultural exploitations, smaller farms are considered to be family agricultural exploitations).

However, these dimensions have not been correlated with the strict entirety of the European legislation according to which small-sized producers (private individuals or small-sized farms) sell small amounts of food products produced in their own household to end consumers (Agricultural and Rural Strategy 2009-2013).

In this context, semi-subsistence farms covering between 2 and 8 ESU in size are being assisted via irredeemable funds. The Economic Size Unit (ESU) is the unit expressing the economic size of an agricultural exploitation, which is calculated based on the standard gross margin of the exploitation (Decision no. 85/377/EEC of the Commission) and one economic size unit amounts to 1.200 Euro.

As a matter of fact, farmers, local public authorities and organizations willing to obtain structural funds from the EU have at their disposal active measures, under the form of projects consisting of selection criteria and beneficiaries established by the Ministry of Agriculture and Rural Development. Individuals may currently submit projects for 8 types of activities: settlement of young farmers (measure 112); modernization of agricultural exploitations (measure 121); increase of the added value of agricultural and forestry products (measure 123); assistance for the semi-subsistence farms (measure 141); establishment of the groups of producers (measure 142); establishment and development of micro-enterprises (measure 312); encouragement of tourism (measure 313); renovation and development of villages, improvement of the basic services for the rural population and rural economy and assertion of the rural inheritance (measure 322); functioning of local action groups, acquisition of competence and territory revival (measure 431).

Under the present circumstances, agricultural policy should be differentiated according to the current situation, respectively the existence of small-sized subsistence and semi-subsistence households, on the one hand, and the existence of large-sized exploitations, on the other hand (established via association, leasing or cooperation) providing the market with agricultural products, constantly in favor of association, cooperation, leasing (Fig. 3 a, b). It is thus to finally understand that the establishment of middle-sized properties (through purchasing or agglomeration) is no longer a viable solution.

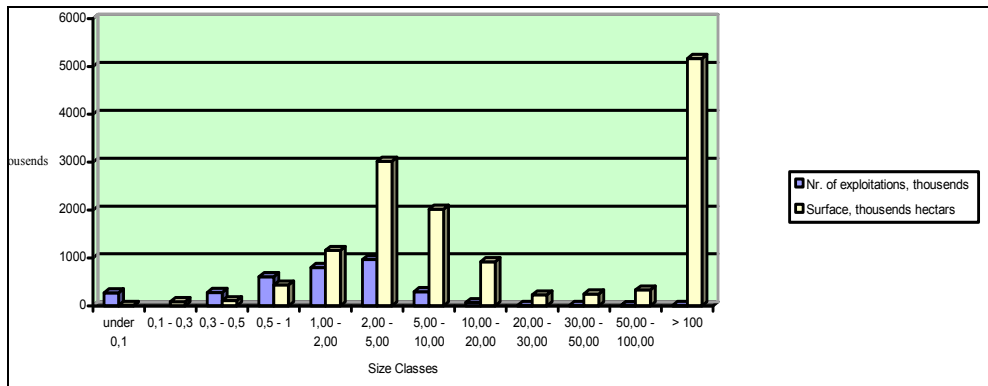


Fig. 3a. Structure of Agrarian Surfaces and Number of Exploitations.

It is a must that the assistance awarded to farmers producing agro-food products should be diversified in terms of their technological facilities and their integration as to the processing and marketing of their products, lawfully compelling supermarkets to sell minimum 50% of the Romanian products.

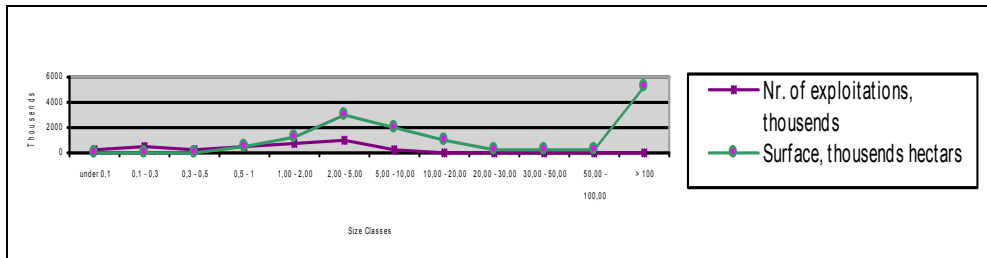


Fig. 3b. Structure of Agrarian Surfaces and the Number of Exploitations on Size Classes.

Supporting small-scale agriculture is a necessity in order to contribute to its comprehensive integration into the economic activity, thus contributing to the consolidation of competitiveness and the preservation of the vitality of rural areas – avoiding depopulation and land abandonment, ensuring a balanced rural development, especially in mountainous and in underprivileged areas, eliminating depopulation and village “dormancy” in the traditional natural economy - in order to facilitate the transfer from and subsistence economy to the commercial economy through the economic organization of farmers (associations, cooperatives, companies, groups of producers). The main agricultural producers are companies, within the meaning of Law 31/1990; republished, with subsequent amendments; agricultural firms and other forms of association in agriculture, within the meaning of Law 36/1991; associations in compliance with GO 26/2000 on associations and foundations, approved by amendments and additions via Law 246/2005; agricultural cooperatives, within the meaning of Law 566/2004 and any other legal form of association, in compliance with the laws in force.

In the capitalist context, the agricultural producer is more and more playing the double role of buyer of industrial products and seller of agricultural products, thus requiring such priority measures:

- Development of associative, respectively cooperative structures (collective cropping, supply and capitalization, credit institutions, specialized capitalization cooperatives (cereals, fruit, vegetables etc.), and of groups of producers equipped with warehouses which can store enough products for supermarkets and for export purposes. The tradition and experience of many other countries confirm that association is a must, still the Romanian state must play its judiciary role by guaranteeing reference prices and the reduction of their fluctuation, as well as advantageous credits – as incentives for the association;
- Improving market functioning conditions by eliminating monopolist situations and regulating the flow of products in the agro-food chain. The failure to organize markets (producers, processors, warehouses, sellers) results in an unreal market price, thus bringing prejudice to the agricultural producer, who is often unable to cover his/her production costs. The legal provision – as mentioned before – according to which at least 50% of the agro-food products must by all means be of Romanian origin in supermarkets;

- In favor of credits, with an interest of maximum 10-12%, over a period of time of 20 years, for all small-sized and large-sized producers, by eliminating any restriction, respectively guaranteeing co-financing not only via their own production-based activities, but also via Rural Credit Guarantee Fund (RCGF), created by the Ministry of Agriculture and Rural Development, which guarantees through banks a credit up to 80% of the total value, thus creating a partnership among Fund-Bank-Farmer. This approach shall ensure the development of agricultural activities, the decrease of the level of under-development of non-agricultural activities, the more comprehensive exploitation of the available human and economic potential, providing the financial resources necessary for a strategically adjusted and oriented implementation of the Community and National funds. The Lisbon Strategy of the European Union established the following community-goals: competitiveness, improvement of agricultural and forestry land, sustainable development, increase of the quality of life.
- A policy of direct intervention by the state in order to ensure social balance based on the stabilization of farmers' income, by assisting subsistence and semi-subsistence households to cover first-necessity expenses (social protection) and production costs having regard to the "promises" made in 1989, as well as agro-environmental subsidies for under-privileged and mountainous areas. All these actions should be taken in order to permanently leave out the idea according to which agriculture is a national priority exclusively in statements and on election agenda in terms of the Release of the National Rescue Front towards the Population aired on December 22nd, 1989, under point 5: „Restructuring agriculture and the assistance of small farmers' production”.
- An investment policy of the state to rehabilitate land improvement systems – irrigation systems, drainage systems and soil erosion control, development of the infrastructure and the increase of the tourism capital through the conservation of vital elements (soil, water, forests, flora, fauna).
- Differentiated taxation on land, having regard to the value of the land which is determined by the capitalized rent in order to ensure the exploitation of the land to the general good and sanctioning those who fail to cultivate it or fail to protect and conserve it. The tax should be considered as the sum of the differential rent I – respectively the natural fertility of the land, as well as the differential rent II – respectively its location in the territory and capital investments (land improvement works, plantations etc.)
- Giving support to agricultural exploitations through land survey and territorial organization – free of charge, by specialized bodies of MADR (Bold, 2011), with a view to creating rational and economic agrarian structures for each commune, according to the specific conditions and taking into consideration the county and commune territory plans, as an integral and simultaneously open system, ensuring conformity among land resources, environmental requirements and envisaged development, polarization centers and communication flows, ending with the organization and planning of each category of usage and the creation of differentiated cultivation systems (crop-rotation, strip cropping,

grassy strips, agro-terraces) in compliance with the recommendations of the scientific research community. Rational and economic agrarian structures can only be considered when the land is so organized and planned as to allow the implementation of the highest coefficient of capitalization, labor and management, competitive through the products produced on the national and world market, in accordance with the environmental requirements and the envisaged development from an economic, social and territorial point of view.

- Continuous improvement of the legislative and normative framework and the elaboration of a Rural Code, consisting of all the laws in the field of agriculture, forestry and related fields, in order to facilitate the process of information-documentation and the implementation of actions which have grown to be highly essential in the context of diversification of the property forms and economic activities.
- The strict control by the state of all agro-food products entering our country without paying adequate taxes and VAT, thus acting as a disloyal competitor in relation to the Romanian products and all the agricultural producers.

In our opinion, it is high time we changed things in the current history of Romania by giving agriculture what it needs to be given – its place as a vital field of activity, elaborating an adequate legislation with a view to creating viable agrarian structures according to the specific natural and economic conditions of each area and settlement.

To this purpose, the Department for Territorial Organization and Land Survey, including terrestrial measurements (geodesy, photogrammetry, remote sensing, cartography), which have initially been created and developed within the field of agriculture as the main owner and user of the land fund and rural space, must be transferred again to the Ministry of Agriculture and Rural Development.

This is imperative as it is essential to get familiar and rationally use the land in the framework of viable agrarian structures, in terms of adequate technological equipment of the territory and settlements, and the rural space in its entirety.

It is widely known that based on land survey, through a set of technical, economic and legal operations, we get to know and systematically and constantly take an inventory of the land fund in terms of its quantity, quality and legal status, respectively the surface, category of usage and its owners.

Otherwise the territorial organization represents a complex technical and economic activity, whose role is to create economic agrarian structures through land agglomeration (eliminating dispersal, fragmentation, disintegration), through the placement of various usages in compact real estate complexes, within optimally located and adjusted exploitations and farms, with the surrounding land adequately organized respecting the natural conditions (relief, soil, hydrology, climate), according to the development techniques (hydro- technical, biological, agro-technical), water distribution in soil (irrigation, draining), cultivable land systems (crop rotation, strip cropping, grassy strips, agro-terraces), modification of biological soil conditions (soil amendment, fertilization), differentiated organization of each usage in units of optimal sizes and forms (fields in rotation, strip grounds, lots, roads), constantly ensuring the rational use and the conservation of natural resources, fittings and technical equipment.

These secular activities have been performed by means of a constantly improved and developed system, especially over the past 50 years, after the creation within the Ministry of Agriculture of the Institute for Agricultural Studies and Design – ISPOTA (HCM 1240/1953) and the Institute of Geodesy, Photogrammetry, Cartography and Territorial Organization – IGFCOT (HCM 87/1971 and Decree 207/1973), dealing with research, technological engineering and design, whereas at the level of counties – the Office of Land Survey and Agricultural Territorial Organization – OCOTA.

IGFCOT and OCOTA efficiently used a unitary system of measurements, land registration plans and maps on different scales, meeting all the requirements of the national economy, of the geodesic and cartographic data bank, of the cadastral data bank, as well as a unitary system for territorial organization.

All this activity, having its own executive structure for terrestrial measurements, land survey and territorial organization, created and equipped by the Ministry of Agriculture, has been transferred under the area of competence of the Ministry of Administration and Home Affairs (at the request of an unprofessional minister of agriculture, priest Ilie Sârbu, so that he should avoid being asked questions regarding the enforcement of law 18/1991). Considering the diversity of the property forms and the land use, this activity should have been by all means subordinated to the Ministry of Agriculture. Furthermore, ignoring the provisions of Chapter VII of Law 18/1991 - Law on land fund, Territorial organization and planning have been abusively dissolved as an activity.

Consequently, the Ministry of Agriculture has been deprived of its main technical instrument which used to make possible the systematic and permanent familiarity with the land fund - from a quantitative, qualitative and legal point of view, respectively surface, use and owners, as well as of those bodies in charge with the creation of viable agrarian structures based on territorial organization and planning. As a result, some of the negative effects were: no inventory of land, no statistics of owners, uncultivated land and irrational use of land, the uncoordinated placement of investments, the lack of designing activities for the organization of viable exploitations through agglomeration, association, farming and the implementation of rational agricultural systems which are recommended by the field of scientific research, failure to use EU funds, failure to have a real tax and duty basis etc., failure to achieve a coordinated development of rural areas.

It is worth mentioning that the lack of territorial order, the dispersal and fragmentation (47 millions of lots compared to 22 millions of lots before the war) had the following consequences: 1/3 of the agricultural land is not cultivated, the impossibility to ensure the increase of the agricultural production resulting in the import of agricultural and food products.

As a matter of fact, with a view to accelerating the process of general land survey, Law 7/1996 – Law on Land Survey, established the National Department for Land Survey, Geodesy and Cartography which, via a number of other laws (Law 590/2001 on the organization and functioning of the National Department for Land Survey, Geodesy and Cartography, GEO no. 70/2001 regarding the replacement of the general land survey with the agricultural land survey, Law 308/2001 on the transfer of the national land survey body under the competence of the Ministry of Administration

and Domestic Affairs, GO no. 41/2004 regarding the amendment and supplement of the law on land survey no. 7/1996, Law 499/2004 on the establishment of the National Agency of Land survey and Real Estate Advertising, GD no. 1210/2004 on the organization and functioning of the National Agency of Land survey and Real Estate Advertising etc, which was transferred at the end of the year 2011 under the competence of the Ministry of Regional Development and Tourism) generated the dissolution of agricultural territorial organization, the development of some extremely convenient structures to the benefit of land survey, turning an activity to be performed in the field into an activity to be performed in an office - mostly focusing on the legal circulation of land and real estate goods. It is striking that the institution in charge with this activity (a now autonomous institution – “state within state”) has failed over the past 15 years to perform the land survey in any of the communes in Romania, even though this was its main lawfully established activity. We highlight that this complex Agency has only been concerned to deal with the urban land survey in city and town areas and to obtain direct material advantages in its relations with the citizens regarding the legal circulation of land and real estate assets; at the same time, the rural area (95% of the territory of Romania) is dominated by chaos; there is a deficiency of information concerning the land fund and territorial agglomeration and organization, in the context of property forms diversification.

Under the circumstances, the only viable solution has in view the transfer of this activity (land survey) from the Ministry of Regional Development and Tourism back to the Ministry of Agriculture and Rural Development and its reorganization as General Direction (instead of Agency) in order to be efficiently coordinated and controlled. It is also of great importance to go back to the former structure (OCOTA + IGFCOT), also covering agricultural territorial organization, thus bringing back into existence the main body in charge with the inventory and rational use of land, the establishment of a viable agrarian structure with agglomerated and organized lots of land, with a view to implementing rational agricultural systems which are recommended by the field of scientific research.

This necessary reorganization, whose main objective is to revive the activity in the field of Land survey and Territorial Organization, has a double effect: carrying out the technical, economic and legal evidence (respectively the identification, description and entry into cadastral documents of all buildings – land with or without constructions – existing in the entire country, regardless of their destination and owner, with a view to registering them in the Land Register), as well as the accomplishment of agricultural territorial organization and planning, arrangement of agricultural exploitations without which agriculture cannot fulfill its functions because it requires the existence of economically viable agrarian structures, having a territorial stability – as basis for the implementation of rational agricultural systems which are recommended by the field of scientific research.

4. CONCLUSIONS

As a consequence, an agricultural policy which is adequate for the existing agrarian structures (polarized) in which 8.9 million ha of the total of 13.75 million ha agricultural land belong to 3.9 million households, close attention should also be given to these so that they can be thoroughly integrated into the economic circuit both to

ensure a more comprehensive consumption of the products for their own needs, as well as for marketing them, by economically organizing farmers (associations, cooperatives etc) who can ensure market competitiveness and the protection of producers' income.

This is even more important taking into consideration the high level of rural areas as basis for the promotion of an economically adequate legislative framework.

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