

DISPUTE OVER LAND BOUNDARY WITHOUT RECOVERY OF PROPERTY

Gheorghe PINTEALĂ

Abstract: *The dispute over land boundary is the action by which one claims the determination, by court decision, of the boundaries between two neighbour properties; by this action the plaintiff demands that, contentiously with the defendant, the court should determine the stretch of the two neighbouring lands.*

Keywords: *land, property, legislation*

The dispute over land boundary is a real, claiming, real-estate, declaratory and indefeasible action. It can be exerted firstly by the rightful owner of the land, and also by any person having a real right over it, like the superficial, usufructuary or the titular of the real right of use over the state-owned lands who demand the delimitation of their land from the neighbouring one; in case this action also involves the claim over a piece of land, only the owner has active procedural quality.

The dispute over land boundary is impermissible among co-owners, and if the land is a common asset the action must be formulated by both spouses. The object of the dispute is the delimitation of neighbour lands or moving the boundary by forcing the defendant to give back the area owned without a legal right from the plaintiff's bordering land; in the first case, the evidence must prove only the line of the real boundary without proving the ownership right of the plaintiff; the evidence falls with both parties since each of them is plaintiff and defendant alike; being a de facto problem, any means of evidence can be used to establish the boundary.

The dispute over land boundary produces effects only in respect of delimitating the lands belonging to the parties, and not the real right, which means that further on any of them can petition for a claim regarding the area of the land without opposition from the work authority. The expenses for the dispute and those for the delimitation and marking of the boundary established by the court are equally supported by both parties. If the land boundary was made with the parties' agreement, they can contest it by an action for annulment.

It is essential to make the difference between land boundary as a material delimitation action and the dispute over land boundary that arises due to a conflict between the rightful owners of the neighbouring properties.

In the new Civil Code, the dispute over land boundary finds its regulation under art. 560 that stipulates: „the owners of neighbouring lands

must contribute to land boundary by realigning the boundary and placing the corresponding signs by equally supporting the expenses”.

Giving the object of the dispute over land boundary, this is also known as „**land boundary action**”.

The dispute over land boundary can be started in case of the lack of a boundary between land properties, and also when there are signs of delimitation but they were not established by the agreement of the parties or by court decision.

The High Court of Cassation and Justice has pronounced in this case the Decision no. 433/2006 by stipulating that: „In a dispute over land boundary the court does not pronounce on the existence of the ownership right, but on the form of the land that makes up the ownership right for the party in litigation, whose perimeter is set by the separating boundary, determined by visible signs. The judicial dispute over land boundary presumes the identification of the real boundary, the layout of the boundary and the placement of the boundary signs”.

But if, on this occasion, the plaintiff demands a part of the bordering land, then the dispute is doubled by a claim of the respective portion of the land, so that they will have to bring evidence regarding the ownership right.

The right to a legal action based on the provisions of art. 584 Civil Code (1864) (correspondent 560 NCC), includes the possibility for an owner or any other person holding a real right over the bordering land to demand his neighbour, by court proceeding (or amicably), the reestablishment of the real boundary that divides the neighbouring lands and its marking with visible signs. In such a dispute, the judge will not pronounce over the existence of the ownership right (in its entirety), but over the shape of the land that makes up the ownership right whose layout is definitively fixed by the dividing boundary line, marked with visible signs. The judicial disputes over land boundary circumscribe the identification of the real boundary, the layout of the boundary and the placement of the boundary signs. The identification involves finding the ancient boundary signs by examining property titles, hearing the parties and witnesses, administering evidence with judicial expertise, and the onsite investigation. In the case of the land register, maps can be relevant, but only if they provide conclusive data that can facilitate the identification and reconstruction of the real boundary (High Court of Cassation and Justice, civil section and intellectual property, decision no. 2153/2005, in J.S.C. 2005, p. 40-42).

The dispute over land boundary is also available to other rightful owners, not only to tabular owners, including extra-tabular owners, the defendants can also be extra-tabular owners of an area, the rights of the parties being gained by the succession action (High Court of Cassation and Justice, civil section and intellectual property, decision no. 123/2005, in J.S.C. 2005, p. 6-8).

When considering its purely technical character, the dispute over land boundary does not involve the existence of the compliance to prove its ownership over the land for which was demanded the delimitation of the boundary with the neighbour, but the interest of the plaintiff is justified by the fact that on the land there were production facilities and, having the land under administration before 1990, and thus they were entitled to formulate a petition (High Court of Cassation and Justice, decision no. 433/2006, in *Dreptul* no. 2/2007, p. 218).

The problems were not few and far between mainly due to the complexity of problems related to the ownership right, but the legislation, doctrine or jurisprudence have tried to solve them.

After 1989, in Romania, because before properties went through a process of dissolution and when the ownership right met drastic limitations, they have tried to solve the property problem, especially the claiming of former properties that the communist state had abusively confiscated from people.

A dispute over land boundary falls under the category of administration and directive documents (Civ., 3e, 9 Jul. 2003, in *P.R.* no. 6/2003, p. 158).

The dispute over land boundary is not a right over someone else's asset or a burden imposed by a land for the benefit of another. Being established on the ownership right, the dispute over land boundary derives from it and is valorised through an action that targets the delimitation of the property (P. Perju p. 95, note 2). This judicial body formed of a right and an obligation is an essential attribute of the ownership right. (P. Perju, Problems regarding the dispute over land boundary, in *Dreptul* no. 6/1991, p. 32).

According to art. 560 NCC, the obligation for the dispute over land boundary falls with the bordering owners, in case a real estate is the object of co-ownership, each of the co-owners can stand alone in a dispute over land boundary, regardless of the procedural quality. This conclusion results from the provisions of art. 643 line (1) NCC that admit the right of every co-owner to stand alone in any dispute regarding the co-ownership (for the effects of the court ruling and some procedural aspects, see art. 643 line. (2)-(3) NCC).

This dispute lies at the border between the petition and possessory actions, since it does not challenge the existence of the real ownership right on the one hand, and on the other hand it does not defend possession as in the case of boundary displacement, C. Opreșan, Petition actions, in *Dreptul* no. 9-12/1990, p. 112.

We highlight the fact that none of the owners of the neighbouring lands are entitled to raise a partition wall whose value is a burden for the other neighbour if the latter didn't agree to it, since the right of a neighbour to force the other at a dispute over land boundary cannot be an abusive exercise of its rightful owner.

NOTE ON THE AUTHOR

Gheorghe PINTEALĂ is a lecturer at the Faculty of Management in Tourism and Commerce Timisoara, Dimitrie Cantemir Christian University Bucharest.