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## The problem of valuation of state-owned real estate in the Republic of Moldova

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**Abstract.** This study examines the issues that arise at the stage of implementation of the enforcement acts on the capitalization of public property in the public domain, especially those faced by real estate appraisers. Conceptual and defining legislative errors are exemplified and analyzed. The authors proposed some solutions in order to harmonize the legislative aspects with the executive ones related to the public patrimony, in particular the correlation of the provisions of the regulation regarding the capitalization of the state-owned lands with the regulations of the evaluation activity in the Republic of Moldova.

**Keywords.** Equitable rent, equitable value, market rent, market value, price, value.

### Introduction

In the Republic of Moldova, within the Land Registration and Evaluation Project, cadastral works are being carried out for the delimitation of public property in approximately 430 localities from 14 districts of the country and the municipality of Bălți. During 2022, about 2,600 publicly owned immovable assets located only in the city of Chisinau and eight suburban localities are to be delimited by ownership and domain. At the same time, it is intended to capitalize on public property. However, some capitalization ways contain errors and loopholes. The transposition of viable rules for privately owned immovable property onto publicly owned immovable property is not always correct. Problems and divergences arise, in particular, with reference to state properties in the public domain. In the present study, we will examine the problems that arise at the stage of implementation of some executive acts, especially those faced by real estate appraisers.

### 1. General legislative controversies

In 2019, for the first time in the Republic of Moldova, the evaluation of the “market rent” was imposed by law, although the evaluation in the case of the transfer of the right of use over public property of the state or their leasing is considered mandatory since 2002 [1]. The regulation regarding the capitalization of public land owned by the state, approved by Government Decision No. 91 from 11.02.2019 [2] provides that the amount of payment for publicly owned lands of the state in the public and private domain, related to state-owned real

estate under management and privately owned real estate, for state-owned land included in the annex to Law no. 668 /1995 for the approval of the List of units whose lands intended for agriculture remain state property, for publicly owned lands under the administration / management of public authorities/institutions, with the exception of lands in the field of forestry, and lands under the administration of the Customs Service, as well as for publicly owned lands of the state located in the perimeter of the deposit of national public interest and its underground spaces the rent/lease is established on the basis of the evaluation report, completed by licensed evaluators according to Law no. 989/2002 regarding the evaluation activity. However, it will not be less than the payment for rent/lease of public property lands, determined by the Public Property Agency pursuant to Law no. 1308/1997 regarding the normative price and the method of sale and purchase of land, with the exception of land exposed to public auction. The payment of the royalty in the case of the transmission of the surface land is determined and established under the same conditions.

Through point 11 of the above mentioned Regulation, it is specified that the independent appraiser is to determine the market price for rent/lease/area.

Referring to the respective normative act, we will draw attention to three fundamental controversies:

1. The licensing of the evaluation activity is canceled in the Republic of Moldova by LP185 from 21.09.17, MO371-382/27.10.17 art.632. Therefore, licensed appraisers do not exist. In the law regarding the evaluation activity, there is the notion of “evaluator's certificate”, respectively the phrase “certified evaluator” can be applied.
2. The notion of “related land” is applied in various legislative acts, but its interpretation is vague. According to DEX [3] adjacent/related means “1) relating to, depending on, or arising from something. 2) (Legal) Which belongs to someone”. In the Regulation [2, p.11], the notion “land related to immovable property/installations solidly connected to the ground” is applied, while the Civil Code of the Republic of Moldova [4, art. 459] provides that “Immovable property is considered the land registered in the register of real estate under a distinct cadastral number”. Therefore, the adjacent/related land: is a land related / dependent on a land registered in the immovable property register or according to the second part of the phrase: land related / dependent on the installations solidly connected to the ground. If we expand this notion considering the Civil Code provision art. 460 “Component parts of real estate” [4, art. 460, paragraph 1], we get that “the adjacent/related land is a land related / dependent on a land registered in the real estate register, of buildings, underground constructions, separate aquatic objects, rooted plantations, unharvested fruit, regardless of whether these component parts are or are not registered in the immovable property register separately”.

In the Civil Code of the Republic of Moldova, the notion of “adjacent/related land” it is not used. The notions of “attached to the land”, “attached to the property”, “incorporated in the property” are used. Neither the Real Estate Cadastre Law [5], nor the Law on the Formation of Real Estate [6] provides for this notion.

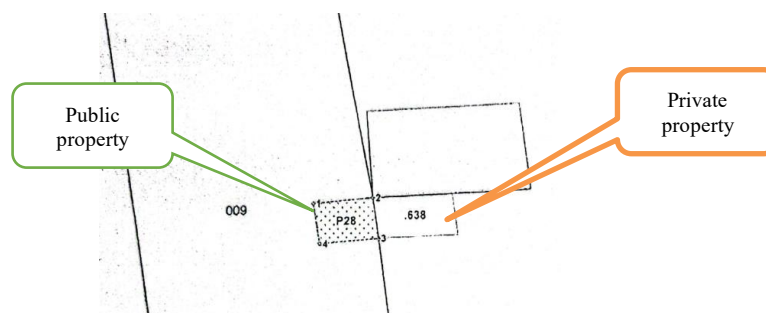
A generic explanation is provided by the Regulation on the sale-purchase and rent/lease of related land [7]: “The adjacent/related land is composed of the land area on which the real estate (buildings, edifices, unfinished constructions) is directly located and the adjacent land, used in the technological process and/or for their service”. However, the provisions of the given regulation do not apply to land in the public domain; those related to residential houses and privatized or private goods, located in residential houses; those located in the areas of the water bed, in rest areas, parks, public gardens and squares or intended for the development of

engineering networks and public needs, according to the territorial development plan of the administrative-territorial unit and the general urban plan of the localities of this unit; those related to assets that cannot be privatized, etc.

The regulation on the capitalization of publicly owned lands of the state (2019) [2] provides that “the surface of the land required for the technological process, which is requested by natural and legal persons in the rent/lease/surface right, is established in accordance with the provisions of the normative documents in constructions and urban planning norms, based on the related land scheme, developed by a licensed enterprise in the field of urban planning”. We will mention the fact that the activity in the field of urban planning has not been licensed since 2017, and the specialists can obtain an urban planning certificate for designing public utility works of national interest valid for a period of 24 months [8]. The norms in the field of urban planning only indicate the minimum distance between the buildings depending on their type and destination [9]. Thus, the legislator does not indicate either the size or the limits of a related land.

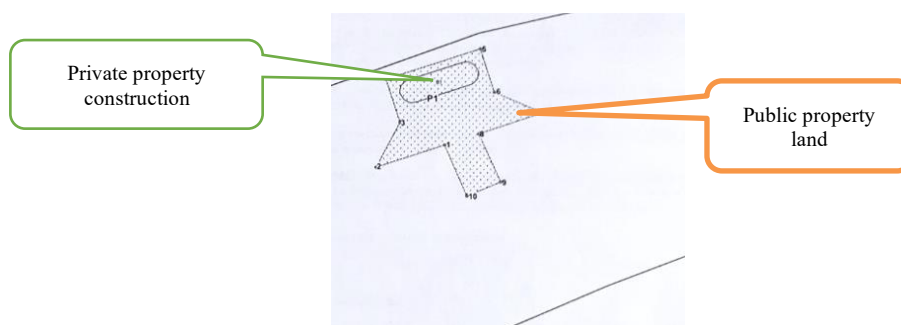
Therefore, the existing legislation allows to consider as related lands:

- a. Publicly owned land adjacent to privately owned land registered in the real estate register, provided that it is dependent / linked to the first. For example, it allows convenient access (fig. 1).



**Figure 1.** Publicly owned land adjacent to privately owned land. Source: elaborated by the author

- b. Publicly owned land on which a privately owned building is located (fig. 2). However, the size of the land remains uncertain, as a rule, at the discretion of local public administrations, whose opinion is often subjective, dependent on the personal relationships of the stakeholders.



**Figure 2.** Public property land related to private property construction. Source: elaborated by the author

- The third controversy concerns the type of value to be estimated by the appraiser. The regulation on the capitalization of public land owned by the state [2] provides that the amount of the rent/lease, i.e. the market price for the rent/lease/surface right, is to be determined in the evaluation report. However, the legislation of the Republic of Moldova regarding the evaluation activity [1, 10] does not provide for such a notion. The legislation [1, art. 1] provides that the evaluation activity represents the activity carried out by evaluation companies, which consists in estimating the market value or other value of the object of evaluation; and the evaluation represents a process of determining the value of the object of evaluation at a specific date, taking into account the physical, economic, social and other factors that influence the value. Therefore, the appraiser *does not determine the market price but the market value*, these notions being conceptually different (tab.1).

**Table 1.** Distinguishing the conceptual notions “value” and „price”.

Value	Price
Assumed, estimated amount Reflects the reviewer's opinion	Actual amount paid in the transaction It reflects the agreement of the parties to the transaction
It is determined before the transaction It represents the monetary expression of current utility, future income Evaluation results differ	It is determined in the transaction process The monetary expression of the level of costs and profit The result is strict, precise
It does not depend on the form of financing. It reflects the common market situation.	It depends on the form of financing the transaction (in cash or by transfer, with or without recourse to loan/credit, with or without staggered payments, etc.)

Source: completed on the basis [11]

In the same context, we mention that the legislation of the Republic of Moldova in the field of real estate valuation does not define the market value of the rent (or “market rent” as defined in the International Valuation Standards [12]). The only reference can be found in the Provisional Regulation on the valuation of immovable property [10, p. 3-4], which states that “the methods used to determine the value of immovable property can be applied to determine other types of values, provided that the data appropriate to the type of estimated value are used”, and the market value serves as the basis for determining the amount of the lease payment.

## 2. Conceptual peculiarities

To estimate the “market value of the rent” it is necessary to understand the conceptual framework of this notion. The International Valuation Standards define the market rent as “the estimated amount for which a right in real property could be leased, at the valuation date, between a determined lessor and a determined lessee, with appropriate lease terms, in an impartial transaction, after adequate marketing and where the parties each acted knowingly, prudently and without coercion” [12, IVS104, p. 40]. That definition must be applied in accordance with the conceptual framework of market value set out in the International Valuations Standards. We will pay attention to the following explanations:

“The estimated amount” means a rent expressed in monetary units in an unbiased market transaction and excludes a rent increased or decreased by special clauses, offsets or discounts.

“For which a right in real property may be let” refers to the fact that a right is being let, and the rent of that right is an estimated sum of money rather than a predetermined sum of money or an actual rent.

“At the valuation date” indicates that the value must be specific to a specific point in time, given that the market conditions may change and the estimated value may be incorrect or inappropriate for another date.

“Between a determined lessor and a determined lessee” refers to the fact that both the lessor and the lessee are motivated, but not bound / forced to rent / lease at any value.

“Appropriate rental terms” means those that would normally be agreed in the market for that type of property, at the valuation date, between the market participants. The International Evaluation Standards warn that “the market rent evaluation should only be made in relation to the main lease terms considered by the appraiser”.

“In an unbiased transaction” refers to the fact that the parties are not related to each other, each acting independently.

“After proper marketing” indicates that the property is exposed to the market in the most appropriate manner to be rented at the highest market rent. The duration of the exposure time on the market is not limited, it depends on the type of the good, and the time required to bring that good to the attention of an adequate number of market participants.

“In which the parties have each acted knowingly, prudently” implies that both the lessor and the lessee are informed of the nature and characteristics of the asset, its current and potential uses, and the state of the market at the valuation date “without coercion” indicates that each party is motivated to enter into the transaction, but neither is unduly forced to do so.

Therefore, the market rent does not reflect the characteristics of an asset (physical, geographical, economic or legal characteristics) that have value only for a particular lessor or lessee and that are not available to other market participants.

### 3. Evaluation of land owned by the state

Real estate public property of the state is divided into the private domain and the public domain. The regulation on the capitalization of land owned by the state [2] does not distinguish between these two categories, requiring appraisers to report “market price to rent/lease/surface right” regardless of the category of the property.

**Table 2.** Characteristics of goods.

The comparison element	Goods of the private domain	Goods of the public domain
Destination	Strictly determined destination, other than the satisfaction of a general interest	Satisfying the general interests of the state
The civil circuit	It is allowed	It is banned
Transfer of ownership	It is allowed (for some categories it is allowed with a free title)	It is not allowed
Encumbrance of ownership:	It is allowed	It is allowed
<ul style="list-style-type: none"> <li>• rent / lease / surface right</li> <li>• the lease / rent or surface right of free land for the</li> </ul>	It is not allowed (since 31.12.2021)	It is not allowed



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purpose of building some constructions on it		
<ul style="list-style-type: none"> <li>• servitude</li> </ul>	It is allowed	It is conditionally allowed
<ul style="list-style-type: none"> <li>• establishment of life interest</li> </ul>	It is allowed	It is allowed

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Source: elaborated on the basis [13]

The comparative analysis of the characteristics of real estate in the private domain versus the public domain (tab. 2) allows highlighting the particularities of the assessment for each category. The first and most important difference lies in the type of value to be estimated.

In accordance with the explanations of the definition of “market rent” presented in the previous paragraph, we note that real estate in the public domain: has value only for a limited number of potential tenants, the way of use is limited, strictly determined, respectively it cannot be modified to ensure the highest potential rent payment in the market. Therefore, the value estimated by the appraiser will not represent “market rent” but another type of value.

The most appropriate type in value in this category of goods, defined according to the International Evaluation Standards, is “fair rent” derived from “fair value”.

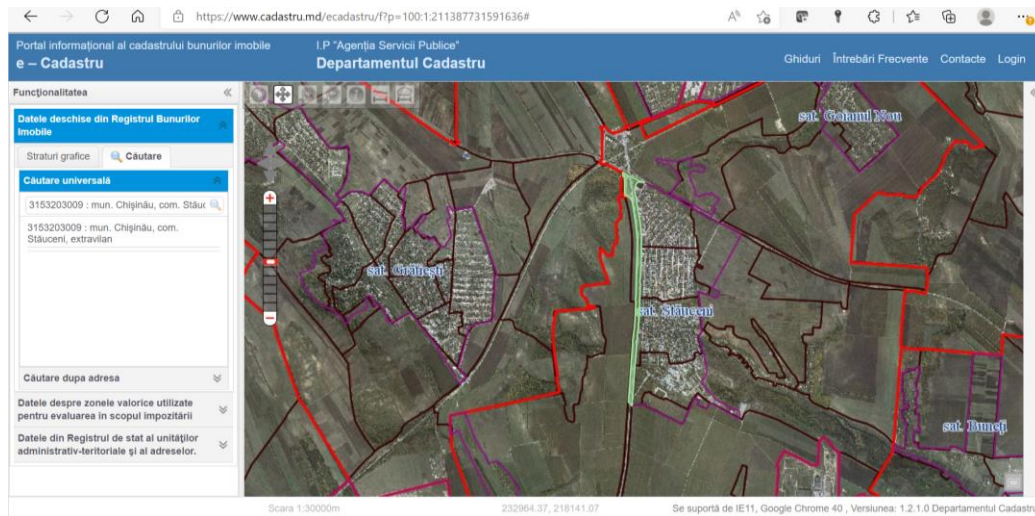
We get the definition of fair rent by adjusting the conceptual framework of the definition of “fair value”, which is a much broader concept than market value to that of “market rent”.

*Fair rent is the estimated amount for which a right to real property could be rented between identified, informed and determined parties, an amount that reflects the interests of those parties.*

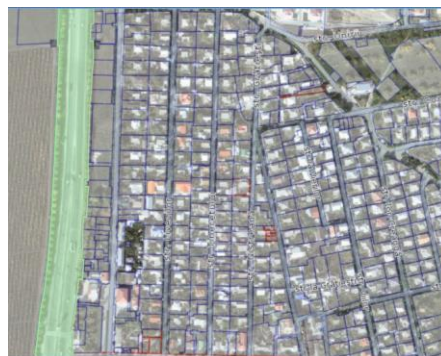
Fair rent involves estimating the amount that is fair to both specific, identified parties, taking into account the advantages or disadvantages that each party will gain from the transaction.

### 3.1. Case Study

According to Government Decision no. 161/2019 [14] the land with no. cadastral 3153203.009 with an area of 18.6396 ha is qualified as public state property, public domain, under the administration of the Public Property Agency. The land is intended for transport; it includes a portion of the national road M2 Chisinau-Soroca-border with Ukraine in the outskirts of Stăuceni (fig. 3). In accordance with the provisions of art. 52 of the Land Code [15], the respective land represents immovable property with industrial / special purpose. At the borders of the road protection zone, especially on the perimeter of the towns (fig. 4), some economic agents carry out different types of activities (fig. 5). In order to ensure convenient access for customers, an appropriate area of the publicly owned land is used.



**Figure 3.** Public property land public domain. Source: [16]



**Figure 4.** Plots of privately owned land on the border of publicly owned land. Source: [16]



**Figure 5.** Economic activities on land with access from the public domain. Source: elaborated by the author

In accordance with HG91/2019 [2] the lands owned by the state can be capitalized by rent / lease / surface right following the auction. However, the number of people potentially co-interested in the use of some portions of the public land is limited to the number of plots of privately owned land located on the border with the publicly owned land. Moreover, for a piece of land there is only one potential tenant.



Therefore, the land with cadastral number 3153203.009 with an area of 18.6396 ha public property of the state, the public domain does not possess market rent in any case. From the point of view of economic agents, public domain plots located next to private property have a special value, which is strictly individual to each one. From the state's point of view, the respective plots can only be valued against a fair rent.

### **Conclusions and recommendations**

The present study shows the particularities of the assessment of publicly owned immovable assets compared to those in private ownership, but also of publicly owned immovable assets in the public domain compared to those in the private domain of the state. The analysis of the case study allows to ascertain the considerable difference in the value of the rent of the public lands in the public domain located in the inner city or the outer city of the localities.

The research carried out allows the following recommendations to be formulated in order to harmonize the legislative and executive aspects related to public heritage:

1. In the Regulation regarding the capitalization of land owned by the state, we recommend:
  - a. The change in p.3 of the phrase “licensed appraisers” to “certified appraisers”;
  - b. Modification of the phrase from p.5 “developed by a licensed enterprise in the field of urban planning” by “developed by a certified specialist in the field of urban planning for the design of public utility works of national interest”;
  - c. Changing the content of the phrase “market price” to “market value”.
  - d. The inclusion of the provision regarding the estimation of the “fair value of the rent / lease / surface right” for real estate in the public domain, this value being considered, if necessary, as the initial auction price.
2. Defining the notion of “adjacent/related land” by specifying the urban planning and construction parameters in the corresponding normative acts.

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### **References**

- [1] Law no.989 of 18.04.2002 on evaluation activity. *Official Gazette* nr.102 art. 773. [https://www.legis.md/cautare/getResults?doc\\_id=108062&lang=ro](https://www.legis.md/cautare/getResults?doc_id=108062&lang=ro)
- [2] Government Decision no. 91 of 11.02.2019 approving the Regulation on the valuation of state-owned land. *Official Gazette* Nr. 76-85 art. 127. [https://www.legis.md/cautare/getResults?doc\\_id=122289&lang=ro](https://www.legis.md/cautare/getResults?doc_id=122289&lang=ro)
- [3] The Explanatory Dictionary of the Romanian Language. <https://dexonline.ro/definitie/aferent%20>
- [4] Code No. 1107 of 06.06.2002. Civil Code of the Republic of Moldova. *Official Gazette* nr. 82-86 art. 661 [https://www.legis.md/cautare/getResults?doc\\_id=129081&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=129081&lang=ro#)
- [5] Law no. 1543 of 25-02-1998 on real estate cadastre. *Official Gazette* nr. 88-95 art. 79. [https://www.legis.md/cautare/getResults?doc\\_id=129079&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=129079&lang=ro#)
- [6] Law No 354/2004 of 28.10.2004 on the formation of real estate. *Official Gazette* nr. 233-236 art. 999. [https://www.legis.md/cautare/getResults?doc\\_id=123196&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=123196&lang=ro#)
- [7] Government Decision no.1428 of 16.12.2008 approving the Regulation on the sale-purchase and lease/rent of related land. *Official Gazette* nr. 226-229 art. 1437. [https://www.legis.md/cautare/getResults?doc\\_id=113298&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=113298&lang=ro#)

- [8] Law no. 160 of 22-07-2011 on the regulation by authorization of entrepreneurial activity. *Official Gazette* nr. 170-175 art. 494. [https://www.legis.md/cautare/getResults?doc\\_id=129336&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=129336&lang=ro#)
- [9] *Building regulations*. NCM B.01.05:2019 Town planning. Systematization and planning of urban and rural localities. Ministry of Economy and Infrastructure. Chisinau, 2019.
- [10] Government Decision no. 958 of 04-08-2003 on the approval of the Provisional Regulation on the valuation of real estate. *Official Gazette* nr. 177 art. 1006. [https://www.legis.md/cautare/getResults?doc\\_id=28063&lang=ro](https://www.legis.md/cautare/getResults?doc_id=28063&lang=ro)
- [11] ALBU, I., ALBU, S., ȚURCANU, N. (2007) Factor analysis of the market value of residential property. Chisinau: UTM.
- [12] IVS International Valuations Standards. <https://www.ivsc.org/publication-purchase/>
- [13] Law no. 121 of 04-05-2007 on the administration and deetatization of public property. *Official Gazette* Nr. 90-93 art. 401. [https://www.legis.md/cautare/getResults?doc\\_id=129363&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=129363&lang=ro#)
- [14] Government Decision no.161 of 07-03-2019 on the approval of the list of state-owned land under the administration of the Public Property Agency. *Official Gazette* Nr. 108-110 art. 215. [https://www.legis.md/cautare/getResults?doc\\_id=129507&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=129507&lang=ro#)
- [15] Code No. 828 of 25-12-1991. Land Code. *Official Gazette* nr. 107 art. 817. [https://www.legis.md/cautare/getResults?doc\\_id=122075&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=122075&lang=ro#)
- [16] Information portal of the real estate cadastre. Public Services Agency. Cadastre Department. <https://www.cadastru.md/ecadastru/f?p=100:1:211387731591636#>