



Public Water Domain versus Occupation and Recognition of Private Property

The concept of Water Domain appeared by the Royal Decree in 1864, which created the Maritime Public Domain. This Decree established that the Margin of the Seawater would correspond to a track with special conditions, protection of access and therefore would constitute public property.

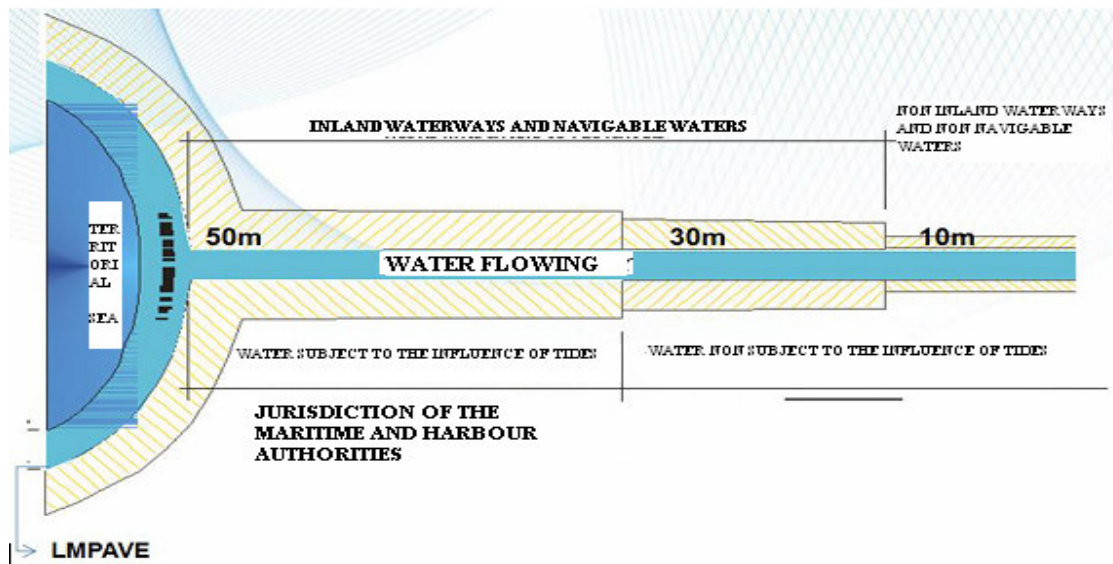
The Law n.º 54/2005, of 15th November (law that entered into force at the time of entry into force of the Water Law - Law n.º 58/2005 of 29th December (the day following its publication)) establishing the ownership of water resources, prescribes in n.º 1 of article 15.º a deadline for the exercise of the right of action for the recognition of private property, above riverbeds and of edges of the sea waters or any navigable waters can obtain this recognition, for instance, 1st January 2014, under penalty of obsolescence of that right.

A survey done by the Portuguese Environment Agency (APA) services, based on an analysis of 500 published case of delimitation of the Public Domain, estimates that private land and urban building occupy a total of 280 kilometres along the coast from Viana do Castelo to Vila Real de Santo António.

1. Plots on public water

It is considered by law land assigned to public water domain, all the land strip (article 11.º, n.º 2, 3 and 4 of the Law n.º 54/2005).

- i) With a width of 50 meters, adjacent and parallel to the seabed and riverbed, or even the normal line of the beach sands;
- ii) 30 m inland or navigable waters outside the jurisdiction of the maritime and port authorities;
- iii) 10 m for non-navigable or buoyant, particularly torrents, ravines and water streams of discontinuous flow.



2. Lawsuit

Thus, the owner interested in defending private property of his building, which lies on the shores of the sea, rivers, lakes and ponds must prove by documents that such grounds were for legitimate title, subject to private or common property before 31st December 1864 or, in the case of precipitous cliffs, before 22nd March 1868.

2.1. What elements should join the action for recognition of private property?

Should be presented the supporting land certificates documents relevant to the property / properties to which are petitioned the recognition of private property (or just private ownership) of the riverbeds and/or waterway margins inserted therein and all ownership records held focusing / focused on such properties, even if expired. Prior to the existence of land certificate and to complete the proof, other documentation must be submitted (deeds of purchase, divisions of inheritance, donation, mortgage, etc.) that identifies this / these properties as goods sold, divided of inheritance, donated, etc., and well all the documentation of others properties that generate them (e.g., disengagement made) and also documents that portray the succession of owners of these properties (records registration in favour) from one of those two dates indented (as the case) until the date of first registration in the Land Registry.

The recognition of property shall only be decreed if the property in question is, of legitimate title, subject to private or common property

before 31st December 1864 or, in the case of precipitous cliffs, before 22nd March 1868.

However, private property, even after the due recognition operated in court "should be subject to an easement." The owners have limitations: they can not prevent public access to the sea, nor build or occupy whatever they want, without meeting the legal standards imposed on the coast, namely the Spatial Planning of the Coastal Zone.

2.2 Extension of Time

The time limit for bringing proceedings for the recognition of private property has been extended until 30/06/2014, giving then a few more months, the affected owners.

2.3 Infringement of access to the courts

Another serious problem of this law is to establish a time limit for bringing a court action for recognition of a right to own property. Access to law and justice is a fundamental and constitutional right guaranteed. Therefore, you can not understand, how can a law dictating that the right to propose an action expires if not completed a certain period. This law thus violates all precepts constitutionally guaranteed, and directly related to private property, either by imposing a recognition of property, now legitimized, but also by the imposition of a deadline for acceptance of a constitutional guarantee.

3. Hooded Expropriation

The Law n. º 54/2005, either automatically move to the public domain plots of beds or shores of the sea or any navigable waters, owned by individuals (in other words, expropriate *private property*), which do not try this action for recognition until 30th June 2014.

This is undoubtedly a legislative measure exploitative of the property rights of those individuals that being an absolute, constitutionally guaranteed rights have limited time to enforce what is yours, even if they are not able to make the documentary evidence (either by reason of the cost, or otherwise).

4. Primary objective of the law

The law maintains that its publication is aimed at protecting the environment and especially water resources, however, his greatest and once again shows that the objective has economic reasons.

Owners, who can not or are not able to recognize their right to property, will have to pay a tax on the use, occupation or operation of such plots in Public Water Domain. This rate of water use per m2 will be charged and will not be limited to the value of € 2,500 per property.

5 . Resolution of the Assembly of the Republic n. º 97/ 2013, 11 / 07

The Assembly of the Republic, in this regard, has recommended to the government various measures in order to:

- a) Identify clearly the swathes territory, which according to law, are public water domains;
- b) Advancing shares boundary by public initiative;
- c) Promote the dissemination of relevant information to citizens about the occupation and recognition of private property in public water domains;
- d) Undertake a set of actions to raise awareness of the potential target in conjunction with municipalities and parishes;
- e) Promote the simplification of the procedure of demarcation in the domains public waterways, particularly as to the constitution of delimitation commission and its composition as well as the approval and publication of the acts of delimitation;
- f) Promote, in conjunction with local authorities, a letter of risk protection of persons and property that enables the retreat planned occupations situated in the territory bands that constitute the public water domains.

For these reasons, we will see what will happen until 30th June 30, 2014. But, in case of doubt about whether particular land is encompassed by public water or not, the best option is not to take risks and bring the lawsuit, supporting inherent charges.

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