

DREPTUL INTERNAȚIONAL AL PROPRIETĂȚII

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Dreptul proprietății este un ansamblu de norme juridice care reglementează astfel de raporturi de proprietate, în care persoanele autorizate își pot exercita drepturile de proprietate (lucruri) fără a fi nevoie de acțiuni pozitive ale altor persoane. Multă vreme a fost pusă sub semnul întrebării posibilitatea de cumpărare și vânzare a drepturilor de proprietate. Da, cumpărarea și vânzarea de drepturi de proprietate își pierde trăsăturile distinctive, fuzionând parțial cu cesiunea de drepturi în temeiul obligațiilor. Iar din punct de vedere juridic, o astfel de înlocuire a unui concept precis, asociat cu consecințe cunoscute, cu un concept larg și nedefinit, oferă puține avantaje. Dar răspândirea largă a tranzacțiilor în concesiune plătită a drepturilor de proprietate a dus la necesitatea reglementării acestora.

Cuvinte-cheie: proprietate, dreptul proprietății, drept civil, obligație, moștenire, tranzacție.

INTERNATIONAL PROPERTY LAW

Property law is a set of legal norms regulating such property relations, where authorized persons can exercise their rights to property (things) without the need for positive actions of other persons. For a long time, the possibility of buying and selling property rights was called into question. Yes, the purchase and sale of property rights loses its distinguishing features, merging in part with the assignment of rights under obligations. And from a legal point of view, such a replacement of a precise concept, associated with known consequences, with a broad and indefinite concept gives few advantages. But the wide spread of transactions in paid concession of property rights led to the necessity of their regulation.

Keywords: property, property right, civil law, obligation, inheritance, transaction.

DROIT INTERNATIONAL DE LA PROPRIÉTÉ

Le droit de la propriété est un ensemble de normes juridiques régissant de telles relations de propriété, dans lesquelles les personnes autorisées peuvent exercer leurs droits de propriété (choses) sans avoir besoin d'actions positives d'autres personnes. Pendant longtemps, la possibilité d'acheter et de vendre des droits de propriété a été remise en question. Oui, l'achat et la vente de droits de propriété perdent leurs caractéristiques distinctives, se confondant partiellement avec la cession de droits en vertu d'obligations. Et d'un point de vue juridique, un tel remplacement d'un concept précis, associé à des conséquences connues, par un concept large et indéfini, offre peu d'avantages. Mais la large diffusion des transactions en concession rémunérée de droits de propriété a conduit à la nécessité de les réglementer.

Mots-clés: propriété, droits de propriété, droit civil, obligation, héritage, transaction.

МЕЖДУНАРОДНОЕ ПРАВО СОБСТВЕННОСТИ

Право собственности означает совокупность правовых норм, регулирующих такие имущественные отношения, при которых уполномоченные лица могут осуществлять свои имущественные права (вещи) без необходимости позитивных действий других лиц. Возможность покупать и продавать права собственности уже давно подвергается сомнению. Да, купля-продажа имущественных прав теряет свои отличительные черты, частично сливаясь с уступкой прав по обязательствам. А с юридической точки зрения, такая замена точного понятия, связанного с известными последствиями, на широкое и неопределенное понятие, дает мало преимуществ. Однако, широкое распространение сделок по платной уступке прав собственности привело к необходимости их регулирования.

Ключевые слова: имущество, право собственности, гражданское право, обязанность, наследование, сделка.

Introduction

According to part 1 Art. 2600 of the Civil Code of the Republic of Moldova [3]: “The acquisition and termination of ownership rights and other real rights to property are determined by the law of the state in whose territory the property was located or was located at the time when an action or other circumstance took place that served as the basis for the emergence or termination of the right property or other real rights, unless the legislation of the Republic of Moldova provides otherwise”.

Signs of property rights are: a) Property rights are prescribed by the norms of civil law, namely, according to Art. 454 of the Civil Code of the Republic of Moldova [3]: “Property rights and limited property rights are recognized as property rights”. Limited property rights include: the right of usufruct, the right of use, the right of residence, the right of superficies, the right of servitude, security property rights, including pledges and mortgages, and other rights given such a character by law. b) The right in rem is an absolute right, namely, when its owner is confronted by an unlimited circle of subjects on whom the obligation is imposed, the rights of the bearer of the right in rem are not violated. c) Property right accompanies a thing as a result of its transfer to other persons, the so-called succession right. In the event

that the owner of the thing leaves possession of the thing against his will, he still remains the owner and is not even deprived of the right to reclaim the thing from someone else’s illegal possession. d) Property rights - rights of advantage, in case of contradictions between property rights and obligation rights, the priority will be on the side of property rights. e) Individually defined things are the object of property rights. The central institute of real property law is the property right. The legal content of the ownership relationship is manifested through a set of subjective exclusive rights of the owner, through the triad of the following components: possession, use and disposal. The owner of the thing has the right to dispose of the thing as he wishes and to prevent other persons from affecting the thing in any way.

Main ideas of the research

The subject of any contract is the “object of the contract”, i.e. that to which the performance of all obligations under the contract is directed. Let’s take, for example, a lease agreement”, namely Art. 1288 of the Civil Code of the Republic of Moldova [3], where it is stated: “Under the lease agreement, one party (the lessor) undertakes to provide the other party (the lessee) with possession and use for a certain period of time of the land plot and / or other agricultural property, and the latter undertakes to pay the rent. For the purposes

of this chapter, agricultural property is understood as basic assets (agricultural land, including those located within the boundaries of settlements and land of the reserve fund, machines, equipment and equipment for performing agricultural work, constructions, including hydrotechnical platforms, places intended for the storage of agricultural products with adjacent territory, animals used in the agricultural process and, depending on the circumstances, movable assets". Regarding commercial contracts, it should be noted that they have a special object - a movable thing *in the form of goods*. Every trade involves the presence of an object of trade, therefore, in trade turnover there is an offer of goods and the demand for this product. The primary demand for the product, as it is known, gives rise to the offer. To satisfy the demand, the producer (producer) creates a product that takes the form of a product, which, in turn, is necessary in order to be sold [6, p. 19].

Consequently, not every manufactured or created thing can acquire the status of a commodity. As a distinctive feature of the product, its potential opportunity to be sold, i.e. the possibility of concluding a remunerative transaction makes a thing a commodity, therefore, the commodity value is an integral criterion of the commodity. When there is a demand for a product, the manufacturer produces an item with the properties of the product, however, due to the peculiarities of the market structure and the properties of the product, the manufacturer does not always manage to find a consumer specifically for this product. For this, the goods need to be promoted from one entity - the producer to another entity - the consumer. Such a movement of goods on commodity markets is possible through the conclusion of various transactions.

From the above, it is possible to record three stages of the movement of goods:

- a) production of goods;
- b) product promotion on the market;

c) consumption of goods.

Such a step-by-step chain allows you to reveal the consumer essence of the product, which boils down to promoting it from the manufacturer to the consumer through a system of paid transactions and achieving the final result - the use of the product as intended.

Commodity (thing) is a multifaceted concept. At the same time, the economic and legal purpose of the goods should be clearly distinguished. If we consider it from an economic point of view, then this is everything that can satisfy the emerging need and is offered to the market with a further goal - this is to attract the attention of the buyer, the further acquisition of the goods by the buyer, and finally the use of the goods for their intended purpose. A product is a product of labor activity intended for sale [12, p. 92].

In this sense, both physical objects, services, and various ideas, etc., can act. If viewed from a civil-law point of view, objects of civil rights that have a materialized form are recognized as goods. For commercial turnover, the product has special significance, because is the central object of commercial contractual relations. The Civil Code of the Republic of Moldova does not contain a legitimate definition of goods, it is found only in the form of things. The category of goods in civil law is synonymous with the category of object of civil law. The majority of objects of civil rights appear in the economic form of goods and, by virtue of this, are included in the concept of civil (property) turnover [15, p. 396].

Things are the most common, traditional object of purchase and sale, on which the legal regulation of this institute is focused. According to Art. 1108 of the Civil Code of the Republic of Moldova [3]: "According to the contract of sale, one party (the seller) undertakes to transfer ownership of the item to the other party (the buyer), and the buyer undertakes to accept it and pay the stipulated price for it", i.e. it is about the fact that any thing is recognized as a thing,

be it: movable or immovable, divisible or indivisible, individually defined or determined by family characteristics, consumable and non-consumable, with the exception of money (except foreign currency), there are still a number of other laws and legal acts regulating the sale and purchase of certain types of things.

For a long time, the possibility of buying and selling property rights was called into question. Yes, “the purchase and sale of *property rights* loses its distinguishing features, merging in part with the assignment of rights under obligations, and from a legal point of view, such a replacement of a precise concept associated with known consequences with a broad and indefinite concept gives few advantages”, but the wide spread of [13, p. 317] transactions in paid concession of property rights led to the necessity of their regulation.

It is very important to divide things as follows: financial and commercial property belongs to the category of intangible property rights from securities and negotiable instruments. Financial property is understood as monetary paper (bonds, promissory notes, checks), documents expressing the right to participate in companies or companies (shares, shares). Regarding commercial property, these are goods distribution documents that express the right to receive goods (for example, a bill of lading). As the main classification of real property objects, this is the division of things into movable and immovable property, where immovable property means things that are located in the same place and that have individual characteristics. As for movable things, they can be moved and replaced by other homogeneous things.

According to French legislation, immovable property includes land and related structures, forests, and immovable property includes machines, raw materials used in enterprises, cattle in the estate, but when we separate all these objects from the composition of the estate, then they will become movable. Also un-

der the concept of real estate should be added rights established on land, such as easements, usufructs, mortgages, and other types of property, including incorporeal ones, are recognized as movable.

For example, in the USA and England, the terms movable and immovable property are used in the case of relations that are directly related to foreign law. Real estate is land and everything that is inseparably connected with it, for example, buildings, structures, crops, etc., the rest of the property is movable property. The 1985 Hague Convention on the Law Applicable to Trusts and Their Recognition appeared as a demand for the unification of property rights [17].

At the European level, a special unified international legal regulation of property relations was formed. For example, Article 1 of Protocol No. 1 to the European Convention on the Protection of Human Rights and Fundamental Freedoms [5]: “Every physical or legal person has the right to respect for his property. No one can be deprived of his property, except in the interests of society and under the conditions stipulated by law and general principles of international law”.

As for the European Court regarding this issue, it interprets the concept of property more broadly and refers to the objects of property rights as any private right that represents property value. In order to qualify the object of the legal relationship as property, the European Court has developed the following criteria: a) The presence of a sign of economic value, namely, the property has an economic value determined in monetary form on the basis of objective criteria; b) The presence of a sign of reality, namely, the property is in cash and must be legally registered in the name of the person interested in it.

The main role in the regulation of property rights and other real rights, which are directly related to the foreign legal order, is occupied by national conflict of laws law. Regarding real estate, the principle that the right of ownership of such property is subject to

the law of the place where the thing is located applies. For example, according to §36 of the Law on Emergencies of China [2]: “The right of the place in which it is located applies to real rights to immovable property”. This law defines the content of ownership of real estate, the form, procedure and conditions for the transfer of property rights. The solution to the issue of conflict regulation of movable property is very difficult. In most countries, the law of the location of the property is considered to be the principle of conflict of interest for determining property rights to movable property. For example, in Art. 21 of the Law on Emergencies of Azerbaijan [10] stipulates the following: “The origin and termination of real rights to property are established by the law of the country where this property is located”. If the right of ownership arose according to the law of the place where the thing is located, then this right is preserved even when the thing is transported across the border. It should be noted that all legal systems recognize the extraterritorial nature of property rights. However, according to Art. 66 of the Code of Civil Procedure of Bulgaria [4]: “When changing the location of a thing, the rights acquired on the basis of the law of the state in which the thing was located cannot be exercised in a way that may lead to a violation of the law of the state in which its new location is located”. The law of the place where the thing is located determines the scope of the property right.

As a result of moving things from one state to another, the content of the owner’s rights changes at the same time. The right of ownership of a thing acquired abroad is recognized, but its content is determined not by the law of the place of acquisition of the thing and not by the personal law of the acquirer [11, p. 211], but by the law of the place where the thing is located. §37 of the Law on IPR of China [2]: “The parties may choose the law applicable to real rights to movable property”. If the parties have not made a choice, the law of the place in which the movable

property was located at the time of the occurrence of the legal fact shall be applied. This principle of the law of location is also significant in solving the issue of protection of a *bona fide* purchaser. According to the civil legislation of Belarus, namely Art. 1123 of the Civil Code of Belarus [7] establishes that the law of the country where the property is located or the law of the court of the country shall be applied to the protection of property rights and other property rights at the choice of the applicant. The law of the country in which the property is located applies to the protection of property rights and other real rights to immovable property.

In the legislation of such countries as: Bulgaria, Belgium, namely in Art. 90 of the Belgian Emergencies Code [16] provides for the conflict regulation of such a category of things as cultural heritage, cultural values: “If a thing, which the state considers included in its cultural heritage, left the territory of this state, in a way that is considered illegal, then the demand for return is governed by the law of this state, or at the option of the latter, by the law of the state in whose territory the thing is located during the recovery”. If the law of the state, which considers the thing to be part of its cultural heritage, does not provide protection to a *bona fide* acquirer, the latter may request the protection provided to him under the law of the state in whose territory the thing is located at the time of vindication.

In a number of countries, the principle of Roman law is applied: the risk passes to the buyer at the moment of the contract, regardless of whether the buyer has the right of ownership of the sold goods (*periculum est emptoris*) [9, p. 367]. This principle is expressed in the legislation of Japan and Switzerland. Regarding countries such as Great Britain and France, the principle (*res perit domino*) applies there - the risk is borne by the owner. The moment of transfer of risk coincides with the moment of transfer of ownership. The moment of emergence and termination of the right

of ownership of one or another property, which is the subject of the transaction, is established according to the law of the place of the transaction, in the event that if not otherwise better.

Conclusions

Signs of property rights are:

a) Property rights are prescribed by the norms of civil law;

b) The right in rem is an absolute right, namely, when its owner is confronted by an unlimited circle of subjects on whom the obligation is imposed, the rights of the bearer of the right in rem are not violated;

c) Property right accompanies a thing as a result of its transfer to other persons, the so-called succession right;

d) Property rights - rights of advantage, in case of contradictions between property rights and obligation rights, the priority will be on the side of property rights; e) Individually defined things are the object of property rights.

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